UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

THE HISPANIC LEADERSHIP FUND, INC. P.O. Box 23162 Alexandria, VA 22304, Plaintiff, v. FEDERAL ELECTION COMMISSION 999 E Street, NW Washington, DC 20463, Defendant.	Civil Case No. **PLAINTIFF'S VERIFIED COMPLAINT FOR DECLATORY AND INJUNCTIVE RELIEF**

Plaintiff The Hispanic Leadership Fund, Inc. ("HLF") brings this action for declaratory and injunctive relief, and complains as follows:

INTRODUCTION

1. This is a pre-enforcement, as-applied challenge to a Federal Election Campaign Act definitional statute at 2 U.S.C. §§ 431(18) and 434(f) and the Federal Election Commission's parallel implementing regulations at 11 C.F.R. §§ 100.17 and 100.29 that impact HLF's ability to engage in constitutionally protected "issue advocacy" as set forth in *FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007) ("*WRTL II*").

2. This case challenges a law that, as interpreted and applied by the Federal Election Commission ("FEC"), abridges the freedom of speech and association guaranteed under the First Amendment to the Constitution. These challenges are brought as applied against 2 U.S.C. §§ 431(18) and 434(f) and their implementing regulations.

3. The First Amendment to the United States Constitution protects HLF's right to speak on matters of public policy without unwarranted governmental intrusion and restrictions. Wishing to exercise that right, HLF would like to engage in certain speech and know in advance its compliance obligations under the Federal Election Campaign Act ("FECA").

4. Disclosure and disclaimer requirements are subject to "exacting scrutiny." *See, e.g.*, *Citizens United v. FEC*, 558 U.S. 50, 130 S. Ct. 876, 914 (2010) ("The Court has subjected [disclosure] requirements to 'exacting scrutiny'"); *Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (per curiam); *accord Doe v. Reed*, 561 U.S. ___, 130 S. Ct. 2811, 2814 (2010). As a result, there must be a "'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Citizens United*, 130 S. Ct. at 914 (quoting *Buckley*, 424 U.S. at 64, 66).

5. To survive exacting scrutiny, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights." *Davis v. FEC*, 554 U.S. 724, 744 (2008) (citing *Buckley*, 424 U.S. at 68).

6. One governmental interest cited in *Citizens United* is "'[P]rovid[ing] the electorate with information' about the sources of election-related spending." 130 S. Ct. at 914 (quoting *Buckley*, 424 U.S. at 66).

7. In this case, HLF submits that its proposed advertisements are not election-related because they do not constitute "electioneering communications" involving "clearly identified candidates." Instead, they address substantive policy issues facing the federal government on a daily and regular basis.

8. Exacting scrutiny is not simply a way to force judicial approval of government regulations regarding the First Amendment. *See Buckley*, 424 U.S. at 64, 66 (describing exacting scrutiny as

a "strict test" requiring more than "a mere showing of some legitimate governmental interest"); *Elrod v. Burns,* 427 U.S. 347, 363 (1976) (noting the "[s]tate may not choose means that unnecessarily restrict constitutionally protected liberty" nor choose a regulatory scheme broadly stifling speech if the state has available a "less drastic way of satisfying its legitimate interests") (quoting *Kusper v. Pontikes,* 414 U.S. 51, 59 (1973) (internal quotation marks omitted)). Laws that are "no more than tenuously related to the substantial interests disclosure serves . . . fail exacting scrutiny." *Buckley v. Am. Const. Law Found.*, 525 U.S. 182, 204 (1999) (internal marks omitted).

9. In 1976, the U.S. Supreme Court explained in *Buckley v. Valeo* that a "clearly identified candidate" under the FECA has a very specific meaning:

> Section 608 (e) (2) defines "clearly identified" to require that the candidate's name, photograph or drawing, or other unambiguous reference to his identity appear as part of the communication. Such other unambiguous reference would include use of the candidate's initials (e. g., FDR), the candidate's nickname (e. g., Ike), his office (e. g., the President or the Governor of Iowa), or his status as a candidate (e. g., the Democratic Presidential nominee, the senatorial candidate of the Republican Party of Georgia).

Buckley, 424 U.S. at 43 n.51; *see also FEC v. Nat'l Org. for Women*, 713 F. Supp. 428, 433 (D.D.C. 1989) ("An explicit and unambiguous reference to the candidate must be mentioned in the communication . . . .").

10. This language has since been incorporated into federal regulation, 11 C.F.R. § 100.17, and federal statute, 2 U.S.C. § 431(18).

11. In 2002, Congress enacted The Bipartisan Campaign Reform Act of 2002 ("BCRA"), defining the term "electioneering communication" as:

> any broadcast, cable, or satellite communication which – (I) *refers to a clearly identified candidate for Federal office*; (II) is made within – (aa) 60 days before a general, special, or runoff election

> for the office sought by the candidate; or (bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and (III) in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

2 U.S.C. § 434(f)(3)(A)(i) (emphasis added).

12. Under the FECA, any person who makes an electioneering communication is subject to a number of disclosure, disclaimer, and reporting obligations with the Federal Election Commission.

13. The Supreme Court in *McConnell v. FEC*, 540 U.S. 93 (2003), upheld these disclosure and disclaimer rules against a facial challenge because, as the Court explained, they were "both easily understood and objectively determinable":

> [W]e observe that new FECA § 304(f)(3)'s definition of "electioneering communication" raises none of the vagueness concerns that drove our analysis in *Buckley*. The term "electioneering communication" applies only (1) to a broadcast (2) clearly identifying a candidate for federal office, (3) aired within a specific time period, and (4) targeted to an identified audience of at least 50,000 viewers or listeners. These components are both easily understood and objectively determinable.

McConnell, 540 U.S. at 194.

14. To date, the Federal Election Commission has declined to apply the Supreme Court's rulings in *Buckley v. Valeo* and *McConnell v. FEC* as those rulings pertain to the FECA and plaintiff.

15. This occurred most recently in the FEC's failure to grant an affirmative response to 5 of the 8 advertisements presented in an advisory opinion request by the organization American Future Fund ("AFF"). The request sought a declaration that the proposed communications

would not be deemed to refer to "clearly identified candidates," and therefore not be electioneering communications.

16. HLF's planned advertisements in Iowa, attached as Exhibit 1, are similar to the AFF advertisements that were at issue in the advisory opinion request and are currently not being produced due to the FEC's failure to correctly apply the FECA and controlling precedent to AFF's advisory opinion request.

17. Because of the FEC's failure to faithfully apply the FECA and controlling Supreme Court opinions, HLF intends to refrain from speech in which it had previously engaged and is halting its communications in the future for fear of civil and criminal penalties which potentially and realistically may be brought for failure to comply with the FECA.

18. HLF is presently stymied in its ability to speak regarding significant, important national political policy issues of the day while this matter remains unresolved.

19. The FEC has failed to abide by the straightforward and controlling opinion in *Buckley v. Valeo* with respect to interpretation of a long-standing statute.

20. The FEC's action, or rather inaction, infringes on the constitutionally protected rights of HLF, causing injuries by forcing it to seek judicial relief each time it wishes to engage in political speech which plaintiff reasonably believes is and should be protected by the First Amendment.

21. HLF seeks a declaratory judgment from this court (a) finding 2 U.S.C. § 431(18) (definition of "clearly identified" candidate), 2 U.S.C. § 434(f) (definition of "electioneering communication"), 11 C.F.R. § 100.17 (definition of "clearly identified" candidate), and 11 C.F.R. § 100.29 (definition of "electioneering communication") as applied to HLF's proposed communications cannot be constitutionally applied under the First Amendment based upon the

Supreme Court's decision in *Buckley v. Valeo*, 424 U.S. 1 (1976); (b) finding the regulations at 11 C.F.R. §§ 100.17 and 100.29 inapplicable to HLF's proposed communications under the Administrative Procedure Act ("APA"), 5 U.S.C. § 706, because the application would be arbitrary and capricious; and (c) preliminarily and permanently enjoining the FEC from enforcing the FECA against HLF and its intended activities based on FECA or any of the regulations and/or policies set out herein.

JURISDICTION AND VENUE

22. This Court has jurisdiction over this case pursuant to 28 U.S.C. §§ 1331 and 2201 as a challenge arising under the First Amendment to the Constitution of the United States, the judicial review provisions of the APA, 5 U.S.C. §§ 702-706, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

23. Venue is proper in this Court under 28 U.S.C. § 1391(e) because Defendant is an entity of the United States Government, and the injury to Plaintiff's constitutional rights is occurring in the state of Iowa, where Plaintiff wishes to distribute its proposed advertisements.

PARTIES

24. The Hispanic Leadership Fund, Inc., is a 501(c)(4) non-profit organization incorporated in 2008 as a Virginia non-profit corporation.

25. The FEC is the federal agency charged with enforcement of the Federal Election Campaign Act and is located in Washington, D.C.

STATEMENT OF FACTS

26. The Hispanic Leadership Fund, Inc., was founded in 2008 to advance free enterprise, limited government, and individual freedom.

27. The Hispanic Leadership Fund, Inc., has for a number of years been engaged in public communications on a wide variety of federal and state policy issues.

28. The Hispanic Leadership Fund, Inc., has previously made an "electioneering communication" under the FECA.

29. On March 30, 2012, the United States District Court for the District of Columbia issued an order invalidating a regulation that significantly expands the scope and burden of compliance with the "electioneering communications" provisions of the FECA. *Van Hollen v. FEC*, No. 11-0766 (D.D.C. Mar. 30, 2012) (striking down the FEC's 2007 regulation and reinstating the agency's 2003 regulation requiring disclosure of "donors who donate" more than $1,000 to the organization from January 1 of the prior year through the date of the electioneering communication).

30. The Supreme Court in *Buckley* and *McConnell* has held that "clearly identified candidate" must have a bright line meaning as a tool of statutory construction to avoid vagueness concerns with the constitutionality of the statute. *McConnell*, 540 U.S. at 121; *Buckley*, 424 U.S. at 41-44.

31. On April 18, 2012, American Future Fund submitted an advisory opinion request ("AOR"), attached as Exhibit 2, to the FEC pursuant to 2 U.S.C. § 437f. This request asked whether its proposed communications would contain references to a "clearly identified candidate" as defined at 2 U.S.C. § 431(18).

32. Pursuant to 11 C.F.R. § 112.1, the FEC accepted the AOR for review, assigned it AOR number 2012-19, and posted it on the FEC's website for public commentary on April 25, 2012. The comments submitted are attached as Exhibit 8.

33. On May 31, 2012, the FEC's general counsel issued a draft advisory opinion in response to AFF's AOR. The draft advisory opinion, Draft A, concluded that none of AFF's proposed communications contained references to clearly identified candidates that would be subject to the "electioneering communications" disclosure, disclaimer and reporting requirements. This "Draft A" advisory opinion is attached as Exhibit 3.

34. An alternate draft, Draft B, was also issued on May 31, 2012, and concluded that all but one of AFF's proposed communications contained references to clearly identified candidates. The alternative "Draft B" advisory opinion is attached in Exhibit 4.

35. On June 7, 2012, at an open meeting of the FEC, the Commission failed by a vote of 2-4 to approve Draft A. The Commission also failed by a vote of 3-3 to approve Draft B. The transcript of this hearing is attached as Exhibit 6.

36. The Commission did vote 4-2 to conclude that the proposed advertisements containing references to "Obamacare" and "Romneycare" did constitute references to clearly identified candidates. HLF does not challenge that determination of the Commission in this case.

37. The Commission also voted 6-0 that proposed Advertisement 4 containing references to Secretary of Health and Human Services Kathleen Sebelius and to "the government" did not contain references to any clearly identified candidate. HLF agrees with this determination of the Commission and it is not at issue in this case.

38. Pursuant to 11 C.F.R. § 112.4(a), the FEC certified on June 8, 2012, that it was unable to reach a conclusion with respect to AFF's other proposed communications because it lacked the necessary four votes. This certification is included as Exhibit 5.

39. The FEC provided a response to AFF on June 13, 2012. Commissioners Bauerly and Weintraub issued a concurring statement on June 14, 2012. Commissioner McGahn issued a

separate statement on June 29, 2012. The FEC's response and additional Commissioner statements are attached as Exhibit 7.

40. The FEC's failure to affirmatively provide a four-vote, binding advisory opinion in response to the bulk of AFF's request carries the equivalent legal effect of taking no action, and leaves AFF and all similarly situated organizations, including plaintiff HLF, subject to civil or criminal penalties under 2 U.S.C. § 437g for engaging in constitutionally protected speech.

41. The Commission's refusal to issue the requested advisory opinion to AFF deprives Plaintiff of the ability to rely on a legal defense available pursuant to 2 U.S.C. § 437f(c)(1)(B). Under that provision, Plaintiff HLF could have relied upon AFF's advisory opinion as a "person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered."

42. The advisory opinion process in this matter is complete and deprives plaintiff of a legal right – to engage freely in constitutionally protected speech and association. *See Unity08 v. FEC*, 596 F.3d 861, 865 (D.C. Cir. 2010) ("parties are commonly not required to violate an agency's legal position and risk an enforcement proceeding before they may seek judicial review"); *see also Democratic Senatorial Campaign Comm. v. FEC*, 918 F. Supp. 1 (D.D.C. 1994).

43. At the time of filing the advisory opinion request, the opening of the "electioneering communication" period with respect to the presidential primary conventions was approximately 4 months away.

44. The "electioneering communication" time period with respect to President Obama and the Democratic National Convention begins on August 4, 2012, and runs continuously through the general election.

45. More than 40 days after the request was filed, the Commission was unable to issue an advisory opinion on the majority of AFF's request. Given that the FEC could not issue a definitive statement concerning the application of the statute to AFF's planned actions, HLF will likely have to mute itself and curtail its own speech during the upcoming electioneering communication period.

46. HLF planned to distribute similar advertisements to the ones proposed by AFF in their AOR, These advertisements would call on the public to contact "the administration," "the government," or "the White House" to express their views on important public policy issues. They would also feature short audio clips of President Obama and other government officials speaking. HLF planned to air these advertisements in Iowa and other states.

47. As soon as possible, HLF would like a determination of its legal obligations with respect to specific communications during the upcoming electioneering communications period so that it is able to plan and implement its constitutionally protected political speech for the next several months.

48. If HLF chooses to engage in speech that is materially indistinguishable from the proposed advertisements at issue in the AFF AOR, in light of the FEC's failure to provide an advisory opinion, HLF is potentially subject to civil and criminal penalties, as well as the cost of government investigation and potential disclosure of its donors, for engaging in activity it does not believe requires any donor disclosure, disclaimer, or other compliance with FEC reporting requirements.

49. Specific examples of HLF's intended communications are attached as Exhibit 1.

50. In the absence of a declaratory judgment, HLF would be forced to curtail its speech on significant issues of the day.

51. Without an immediate ruling from this court, HLF will not have the necessary time to plan its activities, and each day after the electioneering communications period begins in August will be forced to curtail its speech for fear of government enforcement action.

52. HLF will face a credible threat of prosecution if it engages in speech it does not believe constitutes an electioneering communication, particularly when the FEC – the agency charged with enforcement of the FECA – was unable to reach a determination on AFF's request for guidance on materially indistinguishable communications.

53. HLF is chilled from proceeding with its planned activities because it reasonably believes that it will be subject to an FEC (and potentially a U.S. Department of Justice) investigation and possible enforcement action which could result in civil and criminal penalties based on the fact that the FEC has declined to issue an advisory opinion clarifying the current interpretation of the law.

54. HLF is also chilled from proceeding because, if Defendant subsequently determines that HLF engaged in electioneering communications, HLF would be in violation of disclosure, disclaimer and reporting requirements associated with the proposed communications.

55. The chilled speech of HLF constitutes irreparable harm because it is the loss of First Amendment rights. There is no adequate remedy at law.

COUNT 1
"Clearly Identified Candidate" at 2 U.S.C. § 431(18) and 11 C.F.R. § 100.17 – As Applied to the Phrase "the Administration" and "this Administration"

56. Plaintiff realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

57. The application of the statutory definition of "clearly identified" candidate at 2 U.S.C. § 431(18) and 11 C.F.R. § 100.17, to HLF's proposed Advertisements 1 and 4 which contain references to "the administration" or "this administration," is inconsistent with law and severely burdens HLF's right to freedom of speech free of government regulation.

58. "The administration" refers to the Executive Branch of the federal government, which employs some 2.7 million people.

59. If "the administration" refers to a clearly identified candidate, then all of the electioneering communications rules apply to HLF's proposed Advertisements 1 and 4.

60. "The administration" does not refer to any clearly identified candidate for federal office.

61. The application of the statutory definition of "clearly identified" at 2 U.S.C. § 431(18) to HLF's proposed Advertisement 1, which contains references to "the Administration" or "this Administration," if interpreted to refer to a clearly identified candidate, is inconsistent with Supreme Court precedent and severely burdens HLF's right to freedom of association free of government regulation.

62. As applied to HLF and other organizations that may not want to comply with the burdensome FEC regulations and disclosure requirements in order to speak on public issues, these provisions act as expenditure prohibitions.

63. As applied by the FEC's Draft B, 2 U.S.C. § 431(18) combined with 2 U.S.C. § 434(f) are the functional equivalent of a political speech ban imposed by federal statute against individuals and organizations who do not want and are not required to comply with the burdens of the disclaimer, disclosure and reporting requirements of the electioneering communications rules.

64. HLF has prepared advertisements speaking to important policy issues of the day which exhort the public to contact the government or include various other references to it.

65. But for operation of the law, HLF is prepared to run these advertisements and other communications similar to them consistently through the year.

66. Under 2 U.S.C. §§ 431(18) and 434(f) and the FEC's regulations, as interpreted and applied by the FEC in contradiction to the First Amendment and opinions of the U.S. Supreme Court in *Buckley v. Valeo* and *McConnell v. FEC*, HLF would be subject to the electioneering communications regime, including all of its attendant disclosure and disclaimer requirements.

67. The application of the electioneering communications rules to HLF's proposed communications severely burdens its right to associate with its potential donors by imposing broad and sweeping disclosure requirement that may discourage donations or require disclosure of donors who had no prior knowledge of the application of the disclosure requirements to HLF.

68. HLF poses no threat of corruption or its appearance because it has never made and has no plans to make contributions to candidates. *See Citizens United*, 130 S. Ct. at 909.

69. The application of the electioneering communications rules to this proposed communication violates its contributors' rights to freedom of speech and association under the First Amendment. By requiring HLF to disclose virtually all of its donors simply because it proposes to petition "the administration" to act on matters of national importance, HLF's rights and its contributors' meaningful ability to associate and speak through the act of contributing are unconstitutionally and unlawfully abridged.

70. As the Supreme Court clearly stated in *Buckley v. Valeo*, a "clearly identified" candidate must be consistent with Footnote 51, *see* 424 U.S. at 43 n.51, in order to constitutionally apply the statutory definition.

71. HLF is entitled to a declaratory judgment that using the phrase "the administration" or "this administration" is not a reference to a clearly identified candidate for federal office.

72. If the regulation at 11 C.F.R. § 100.17 is interpreted to apply to the phrase "this administration" or "the administration," then it goes beyond any permissible construction of "clearly identified candidate" as defined by the Supreme Court in *Buckley v. Valeo*, and is void as applied under 5 U.S.C. § 706.

COUNT 2
"Clearly Identified Candidate" at 2 U.S.C. § 431(18) and 11 C.F.R. § 100.17 – As Applied to the Phrase "the Government"

73. Plaintiff realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

74. The application of the statutory definition of "clearly identified" candidate at 2 U.S.C. § 431(18) and 11 C.F.R. § 100.17, as applied to HLF's proposed Advertisements 2, 3, and 5 which contain references to "the government," is inconsistent with law and severely burdens AFF's right to engage in protected speech free of government regulation.

75. The government refers to the entirety of the federal government, which employs some three million people.

76. If "the government" refers to a clearly identified candidate, then all of the electioneering communications rules apply to HLF's proposed Advertisements 2, 3, and 5.

77. HLF notes that applying the electioneering communications rule to Advertisements 2, 3, and 5 inherently conflicts with the FEC's very own conclusion by an affirmative vote in the AFF AOR that the references to Secretary Sebelius and "the government" in AFF's Advertisement 4 did not constitute references to a clearly identified candidate.

78. "The government" does not refer to any clearly identified candidate for federal office.

79. The application of the statutory definition of "clearly identified" at 2 U.S.C. § 431(18) as applied to HLF's proposed Advertisements 2, 3, and 5 which contain references to "the government," if interpreted to refer to a clearly identified candidate, is inconsistent with law and severely burdens HLF's right to freedom of association free of government regulation.

80. As applied to HLF and other organizations that may not want to comply with the burdensome FEC regulations and disclosure requirements in order to speak on public issues, these provisions act as expenditure prohibitions.

81. As applied by the FEC's Draft B, 2 U.S.C. § 431(18) combined with 2 U.S.C. § 434(f) are the functional equivalent of a political speech ban imposed by federal statute against individuals and organizations who do not want and are not required to comply with the burdens of the disclaimer, disclosure and reporting requirements of the electioneering communications rules.

82. HLF has prepared advertisements speaking to important policy issues of the day which exhort the public to contact the government.

83. But for operation of the law, HLF is prepared to run these advertisements and other communications similar to them consistently through the year.

84. Under 2 U.S.C. §§ 431(18) and 434(f) and the FEC's regulations, as interpreted and applied by the FEC in contradiction to the First Amendment and opinions of the U.S. Supreme Court in *Buckley v. Valeo* and *McConnell v. FEC*, HLF would be subject to the electioneering communications regime, including all of its attendant disclosure and disclaimer requirements.

85. The application of the electioneering communications rules to HLF's proposed communications severely burdens its right to associate with its potential donors by imposing

broad and sweeping disclosure requirements that may discourage donations or require disclosure of donors who had no prior knowledge of the application of the disclosure requirements to HLF.

86. HLF poses no threat of corruption or its appearance because it has never made and has no plans to make contributions to candidates. *See Citizens United*, 130 S. Ct. at 909.

87. The application of the electioneering communications rules to this proposed communication violates HLF's contributors' rights to freedom of speech and association under the First Amendment. By requiring HLF to disclose virtually all of its donors simply because it proposes to petition "the government" to act on matters of national importance, HLF's rights and its contributors' meaningful ability to associate and speak through the act of contributing are unconstitutionally and unlawfully abridged.

88. As the Supreme Court clearly stated in *Buckley v. Valeo*, a "clearly identified" candidate must be consistent with Footnote 51, *see* 424 U.S. at 43 n.51, in order to constitutionally apply the statutory definition.

89. HLF is entitled to a declaratory judgment that using the phrase "the government" in a communication is not a reference to a clearly identified candidate for federal office.

90. If the regulation at 11 C.F.R. § 100.17 is interpreted to apply to the phrase "the government" then it goes beyond any permissible construction of "clearly identified candidate" as defined by the Supreme Court in *Buckley v. Valeo*, and is void as applied under 5 U.S.C. § 706.

COUNT 3
"Clearly Identified Candidate" at 2 U.S.C. § 431(18) and 11 C.F.R. § 100.17 – As Applied to the Phrase "the White House" or an Image of "the White House"

91. Plaintiff realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

92. The application of the statutory definition of "clearly identified" candidate at 2 U.S.C. § 431(18) and 11 C.F.R. § 100.17, as applied to HLF's proposed Advertisements 1, 3, 4, and 5 which contain references to "the White House" or images of "the White House," is inconsistent with law and severely burdens HLF's right to freedom of speech free of government regulation.

93. "The White House" refers to the government building located at 1600 Pennsylvania Avenue, the approximately 500 federal employees who work there, or the entirety of the executive branch. The "White House" is involved in and has a responsibility for a wide range of important activities, from military action and foreign affairs, to federal legislation and judicial nominations, and to the administration of federal programs and the enforcement of federal laws It is frequently the case that citizens have opinions on what the "White House" should do in each of these areas and they often seek to publicly comment upon and urge particular actions they want the "White House" to take.

94. Because of these varied uses, the phrase is not a "clearly identified" reference to President Obama as asserted in Draft B.

95. If "the White House" refers to a clearly identified candidate, then all of the electioneering communications rules apply to AFF's proposed Advertisements 1, 3, 4, and 5.

96. "The White House" does not refer to any clearly identified candidate for federal office.

97. The application of the statutory definition of "clearly identified" at 2 U.S.C. § 431(18) as applied to HLF's proposed Advertisements 1, 3, 4, and 5 which contain references to "the White House," if interpreted to refer to a clearly identified candidate, is inconsistent with law and severely burdens HLF's right to freedom of association free of government regulation.

98. As applied to HLF and other organizations that may not want to comply with the burdensome FEC regulations and disclosure requirements in order to speak on public issues, these provisions act as expenditure prohibitions.

99. As applied by the FEC's Draft B, 2 U.S.C. § 431(18) combined with 2 U.S.C. § 434(f) are the functional equivalent of a political speech ban imposed by federal statute against individuals and organizations who do not want and are not required to comply with the burdens of the disclaimer, disclosure and reporting requirements of the electioneering communications rules.

100. HLF has prepared advertisements speaking to important policy issues of the day which exhort the public to contact "the White House."

101. But for operation of the law, HLF is prepared to run these advertisements and other communications similar to them consistently through the year.

102. Under 2 U.S.C. §§ 431(18) and 434(f), and the FEC's regulations, as interpreted and applied by the FEC in contradiction to the First Amendment and opinions of the U.S. Supreme Court in *Buckley v. Valeo* and *McConnell v. FEC*, HLF would be subject to the electioneering communications regime, including all of its attendant disclosure and disclaimer requirements.

103. The application of the electioneering communications rules to HLF's proposed communications severely burden its right to associate with its potential donors by imposing broad and sweeping disclosure requirements that may discourage donations or require disclosure of donors who had no prior knowledge of the application of the disclosure requirements to HLF.

104. HLF poses no threat of corruption or its appearance because it has never made and has no plans to make contributions to candidates. *See Citizens United*, 130 S. Ct. at 909.

105. The application of the electioneering communications rules to this proposed communication violates its contributors' rights to freedom of speech and association under the First Amendment. By requiring HLF to disclose virtually all of its donors simply because it proposes to petition "the White House" to act on matters of national importance, HLF's rights and its contributors' meaningful ability to associate and speak through the act of contributing are unconstitutionally and unlawfully abridged.

106. As the Supreme Court clearly stated in *Buckley v. Valeo*, a "clearly identified" candidate must be consistent with Footnote 51, *see* 424 U.S. at 43 n.51, in order to constitutionally apply the statutory definition.

107. HLF is entitled to a declaratory judgment that "the White House" is not a reference to a clearly identified candidate for federal office.

108. If the regulation at 11 C.F.R. § 100.17 is interpreted to apply to the phrase "the White House" or photographs of the White House then it goes beyond any permissible construction of "clearly identified candidate" as defined by the Supreme Court in *Buckley v. Valeo*, and is void as applied under 5 U.S.C. § 706.

COUNT 4
"Clearly Identified Candidate" at 2 U.S.C. § 431(18) and 11 C.F.R. § 100.17 – As Applied to an Unidentified Audio Clip of a Public Official

109. Plaintiff realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

110. The application of the statutory definition of "clearly identified" candidate at 2 U.S.C. § 431(18) and 11 C.F.R. § 100.17, as applied to HLF's proposed Advertisement 2 which contains an unidentified audio clip of President Obama saying "we must end our dependence on foreign

oil," is inconsistent with law and severely burdens HLF's right to freedom of speech free of government regulation.

111. Neither the underlying statute, the implementing regulations, nor any court decision has ever determined that unidentified audio clips of public officials are "clearly identified" references to those public officials.

112. Because the proposed Advertisement 2 does not reference or identify the speaker of the audio in any way, it simply cannot be that this audio clip is the required "reference" to a "clearly identified" candidate for federal office.

113. If Congress intended the statute to apply to audio clips, then the Commission or Congress would have amended the statute or regulation to say as much.

114. The application of the statutory definition of "clearly identified" at 2 U.S.C. § 431(18) as applied to HLF's proposed Advertisement 2 which contains an unidentified audio clip of a public official, if interpreted to refer to a clearly identified candidate, is inconsistent with law and severely burdens HLF's right to freedom of association free of government regulation.

115. As applied to HLF and other organizations that may not want to comply with the burdensome FEC regulations and disclosure requirements in order to speak on public issues, these provisions act as expenditure prohibitions.

116. As applied by the FEC's Draft B, 2 U.S.C. § 431(18) combined with 2 U.S.C. § 434(f) are the functional equivalent of a political speech ban imposed by federal statute against individuals and organizations who do not want and are not required to comply with the burdens of the disclaimer, disclosure and reporting requirements of the electioneering communications rules.

117. HLF has prepared advertisements speaking to important policy issues of the day which exhort the public to contact the government or include various other references to it, and in one version include audio of President Obama making a relatively generic statement.

118. But for operation of the law, HLF is prepared to run these advertisements and other communications similar to them consistently through the year.

119. Under 2 U.S.C. §§ 431(18) and 434(f), and the FEC's regulations, as interpreted and applied by the FEC in contradiction to the First Amendment and opinions of the U.S. Supreme Court in *Buckley v. Valeo* and *McConnell v. FEC*, HLF would be subject to the electioneering communications regime, including all of its attendant disclosure and disclaimer requirements.

120. The application of the electioneering communications rules to HLF's proposed communications severely burden its right to associate with its potential donors by imposing broad and sweeping disclosure requirement that may discourage donations or require disclosure of donors who had no prior knowledge of the application of the disclosure requirements to HLF.

121. HLF poses no threat of corruption or its appearance because it has never made and has no plans to make contributions to candidates. *See Citizens United*, 130 S. Ct. at 909.

122. The application of the electioneering communications rules to this proposed communication violates HLF's contributors' rights to freedom of speech and association under the First Amendment. By requiring HLF to disclose virtually all of its donors simply because it proposes to incorporate an unidentified audio clip of a public official into its public communications, HLF's rights and its contributors' meaningful ability to associate and speak through the act of contributing are unconstitutionally and unlawfully abridged.

123. As the Supreme Court clearly stated in *Buckley v. Valeo*, a "clearly identified" candidate must be consistent with Footnote 51, *see* 424 U.S. at 43 n.51, in order to constitutionally apply the statutory definition.

124. HLF is entitled to a declaratory judgment that the use of an unidentified audio clip of a public official is not a reference to a clearly indentified candidate for federal office.

125. If the regulation at 11 C.F.R. § 100.17 is interpreted to apply to an unidentified audio clip of a public official then it goes beyond any permissible construction of "clearly identified candidate" as defined by the Supreme Court in *Buckley v. Valeo*, and is void as applied under 5 U.S.C. § 706.

COUNT 5
"Clearly Identified Candidate" at 2 U.S.C. § 431(18) and 11 C.F.R. § 100.17 – As Applied to an Unidentified Audio Clip of an Unelected Public Official

126. Plaintiff realleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.

127. The application of the statutory definition of "clearly identified" candidate at 2 U.S.C. § 431(18) and 11 C.F.R. § 100.17, as applied to HLF's proposed Advertisement 3 which contains an unidentified audio clip of the White House press secretary saying "we must end our dependence on foreign oil," is inconsistent with law and severely burdens HLF's right to freedom of speech free of government regulation.

128. Neither the underlying statute, the implementing regulations, nor any court decision has ever determined that unidentified audio clips of unelected public officials are "clearly identified" references to candidates for federal office.

129. Because the proposed Advertisement 3 does not reference or identify the speaker of the audio in any way, it simply cannot be that this audio clip is the required "reference" to a "clearly identified" candidate for federal office.

130. If Congress intended the statute to apply to audio clips, then the Commission or Congress would have amended the statute or regulation to say as much.

131. The application of the statutory definition of "clearly identified" at 2 U.S.C. § 431(18) as applied to HLF's proposed Advertisement 3 which contains an unidentified audio clip of a unelected public official, if interpreted to refer to a clearly identified candidate, is inconsistent with law and severely burdens HLF's right to freedom of association free of government regulation.

132. As applied to HLF and other organizations that may not want to comply with the burdensome FEC regulations and disclosure requirements in order to speak on public issues, these provisions act as expenditure prohibitions.

133. As applied by the FEC's Draft B, 2 U.S.C. § 431(18) combined with 2 U.S.C. § 434(f) are the functional equivalent of a political speech ban imposed by federal statute against individuals and organizations who do not want and are not required to comply with the burdens of the disclaimer, disclosure and reporting requirements of the electioneering communications rules.

134. HLF has prepared advertisements speaking to important policy issues of the day which exhort the public to contact the government or include various other references to it, and in one version include audio of an unelected federal official making a relatively generic statement.

135. But for operation of the law, HLF is prepared to run these advertisements and other communications similar to them consistently through the year.

136. Under 2 U.S.C. §§ 431(18) and 434(f), and the FEC's regulations, as interpreted and applied by the FEC in contradiction to the First Amendment and opinions of the U.S. Supreme Court in *Buckley v. Valeo* and *McConnell v. FEC*, HLF would be subject to the electioneering communications regime, including all of its attendant disclosure and disclaimer requirements.

137. The application of the electioneering communications rules to HLF's proposed communications severely burden its right to associate with its potential donors by imposing broad and sweeping disclosure requirement that may discourage donations or require disclosure of donors who had no prior knowledge of the application of the disclosure requirements to HLF.

138. HLF poses no threat of corruption or its appearance because it has never made and has no plans to make contributions to candidates. *See Citizens United*, 130 S. Ct. at 909.

139. The application of the electioneering communications rules to this proposed communication violates HLF's contributors' rights to freedom of speech and association under the First Amendment. By requiring HLF to disclose virtually all of its donors simply because it proposes to incorporate an unidentified audio clip of an unelected federal official into its public communications, HLF's rights and its contributors' meaningful ability to associate and speak through the act of contributing are unconstitutionally and unlawfully abridged.

140. As the Supreme Court clearly stated in *Buckley v. Valeo*, a "clearly identified" candidate must be consistent with Footnote 51, *see* 424 U.S. at 43 n.51, in order to constitutionally apply the statutory definition.

141. HLF is entitled to a declaratory judgment that the use of an unidentified audio clip of an unelected public official is not a reference to a clearly indentified candidate for federal office.

142. If the regulation at 11 C.F.R. § 100.17 is interpreted to apply to an unidentified audio clip of an unelected public official then it goes beyond any permissible construction of "clearly

identified candidate" as defined by the Supreme Court in *Buckley v. Valeo*, and is void as applied under 5 U.S.C. § 706.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief:

1. A declaratory judgment that the application of 2 U.S.C. § 431(18), 2 U.S.C. § 434(f), 11 C.F.R. § 100.17, and 11 C.F.R. § 100.29 to HLF's proposed advertisements is unconstitutional and void as applied under 5 U.S.C. § 706;

2. A preliminary and permanent injunction enjoining Defendant FEC from enforcing 2 U.S.C. §§ 431(18) and 434(f), as well as any applicable rules and regulations regarding those provisions, against The Hispanic Leadership Fund, Inc., and its intended activities;

3. An award of nominal damages of $1 for the violation of Plaintiff's constitutional rights;

4. Costs and attorney's fees pursuant to any applicable statute or authority;

5. Any other relief that the Court deems just and appropriate.

Dated: July 30, 2012

Respectfully submitted,

By: /S/Matt Dummermuth

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Counsel for The Hispanic Leadership Fund, Inc.

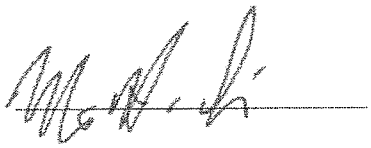
**Motion for pro hac vice admission pending*

THE HISPANIC LEADERSHIP FUND, INC. VERIFICATION

I, Mario H. Lopez, declare as follows:

1. I am the president of the Hispanic Leadership Fund, Inc.
2. I have personal knowledge of the Hispanic Leadership Fund, Inc., and its operations, including those set out in this Complaint, and if called upon to testify, I would testify competently as to the matters stated herein.
3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this Complaint concerning the Hispanic Leadership Fund, Inc., are true and correct.

Executed this 27th day of July, 2012



Mario H. Lopez

CERTIFICATE OF SERVICE

I hereby certify that on July 30-31, 2012, copies of the foregoing Verified Complaint for Declaratory and Injunctive Relief were served by hand delivery and certified mail on the following parties:

VIA HAND DELIVERY
Federal Election Commission
999 E Street, NW
Washington, DC 20463

And

VIA CERTIFIED MAIL
Attorney General Eric H. Holder, Jr.
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

And

VIA HAND DELIVERY
Nicholas A. Klinefeldt
U.S. Attorney for the Southern District of Iowa
U.S. Courthouse Annex
110 East Court Avenue, Suite # 286
Des Moines, Iowa 50309-2053

/s/ Matt Dummermuth
MATT DUMMERMUTH