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DISTRICT COURT OF GUAM

TERRITORY OF GUAM

PHILIP B. MAISE PROPOSED PLAINTIFF AND CITIZEN ATTORNEY GENERAL OF THE UNITED STATES ACTING ON THE BEHALF OF THE U.S. FEDERAL ELECTION COMMISSION vs. POLITICAL ACTION COMMITTEES- CLASS I, INIDIVIDUAL DEFENDANTS-CLASS II-a, CLASS II-b, CLASS II-c, NON-INDIVIDUAL DEFENDANTS- CLASS II-d, ORGANIZATION DEFENDANTS- CLASS II–e, OTHER DEFENDANTS-CLASS III-a, CLASS III-b, CLASS III-c	)	Civil Case No. _____ Three-Judge Court COMPLAINT FOR DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION AND CERTIFICATE OF SERVICE; BRIEF IN SUPPORT OF DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION; PROPOSED DECLARATORY JUDGMENT; PROPOSED PRELIMINARY INJUNCTION; EXHIBITS 1-4. Class Action. Hearing: NOT REQUESTED THE HONORABLE JUDGES 1. 2. 3.

COMPLAINT FOR DECLARATORY JUDGMENT AND PRELIMINARY

INJUNCTION AND CERTIFICATE OF SERVICE

In accordance with Federal Rules of Civil Procedure (FRCP) Rule 17(a)(1)(G) now comes Philip B. Maise proposed Plaintiff and Citizen Attorney General of the United States acting on the behalf of the U.S. Federal Election Commission (Plaintiff) with the following complaint that seeks a trial on the merits and declaratory judgments as outlined in the supporting Brief that confirms among other items that:

1. Unlimited campaign spending by individuals in the United States is in violation of the law; 11 CFR 110.9 Violation of limitations. [67 FR 69949, Nov. 19, 2002]
2. Class I Defendants received excessive or prohibited campaign contributions in violation of the law; 11 CFR 110.9 Violation of limitations. [67 FR 69949, Nov. 19, 2002]
3. Class II Defendants made excessive or prohibited campaign contributions in violation of the law; 11 CFR 110.9 Violation of limitations. [67 FR 69949, Nov. 19, 2002]
4. Class III Defendants illegally benefited from excessive or prohibited campaign contributions;
5. The Plaintiff seeks to act as Citizen Attorney General of the United States to:

    (a) Enforce limitations in campaign expenditures on the behalf of the Federal Election Commission (FEC);

    (b) To maintain an action against Class I Defendants to prove receipt of excessive or prohibited campaign contributions.

    (c.) To maintain an action against Class II Defendants for making excessive or prohibited campaign contributions.

    (d) To maintain an action against Class III Defendants for benefiting from excessive or prohibited campaign contributions.

(e) To negotiate judgments against Defendants in a manner similar to the FEC's conciliation program in accordance with Federal Rules of Civil Procedure.

(f) To transfer Defendants from civil Court to criminal Court.

6. A preliminary injunction to require Class I defendants to treat excessive and prohibited campaign contributions as being in legal question until this action is resolved.

Authority to initiate this action is in accordance with 2 U.S.C. §§ 437d(a)(6) and (e), 437g(a)(5)(D) and (6)(A). The ability for the Plaintiff to act on the behalf of the Federal Election Commission is provided for under Title 2 Chapter 14 U.S.C § 9011(b)(1).

Incorporated into this complaint are a BRIEF IN SUPPORT OF DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION, the proposed PRELIMINARY INJUNCTION, and EXHIBITS 1-4. Cases, statutes, regulations, and other authorities are incorporated according to reference.

DATED: Miri, Malaysia, 12th Day of March 2012

/s/ Philip B. Maise

PHILIP B. MAISE pro se

PHILIP B. MAISE pro se

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CERTIFICATE OF SERVICE

This is a class action lawsuit involving three main Classes and a few subclasses. In accordance with Federal Rules of Civil Procedure (FRCP) Rule 23 the Court may direct appropriate notice to the classes after certification. If the judge to whom the application is made finds that the interests of justice require that the ex parte application be heard without notice, the judge may waive the notice requirement. Attached to the complaint were a BRIEF IN SUPPORT OF DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION, PROPOSED DECLARATORY JUDGMENT, PROPOSED PRELIMINARY INJUNCTION, and EXHIBITS 1-4.

It is anticipated there may be those that may wish to comment on the proposed Judgment and Injunction. Therefore, for this reason the Plaintiff has publicized and posted the documents for inspection on the Google Docs website. Anyone viewing documents from Google Docs is cautioned that they are viewing documents that have not been accepted by the clerk of the court and that they are being mailed between Malaysia and Guam. A hearing has not been requested..

/s/ Philip B. Maise

PHILIP B. MAISE pro se

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Plaintiff is reestablishing his Pacer account and requesting CM/ECF access to facilitate easier communication. Plaintiff intends to consent in writing to electronic service of all document, except a summons and copy of a complaint. According to local rules they must be hard copy. Until Plaintiff is able to establish CM/ECF access, a paper copy a Notice of Electronic Filing, together with a paper copy of the electronically of any filed document, shall be served in accordance with the Federal Rules of Civil and Criminal Procedure and the Local Rules. The public is informed there is a per page charge to view documents on the court system and the initial document is approximately 140 pages and will cost about $12 USD.

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DISTRICT COURT OF GUAM

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PHILIP B. MAISE PROPOSED PLAINTIFF AND CITIZEN ATTORNEY GENERAL OF THE UNITED STATES ACTING ON THE BEHALF OF THE U.S. FEDERAL ELECTION COMMISSION	)	Civil Case No. _____ Three-Judge Court BRIEF IN SUPPORT OF DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION
vs.	)	Class Action.
POLITICAL ACTION COMMITTEES-CLASS I, INIDIVIDUAL DEFENDANTS-CLASS II-a, CLASS II-b, CLASS II-c, NON-INDIVIDUAL DEFENDANTS-CLASS II-d, ORGANIZATION DEFENDANTS-CLASS II–e, OTHER DEFENDANTS-CLASS III-a, CLASS III-b, CLASS III-c	)	Hearing: NOT REQUESTED THE HONORABLE JUDGES 1. 2. 3.

BRIEF IN SUPPORT OF DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION

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GLOSSARY

CFR	Code of Federal Regulations
FCC	Federal Communication Commission
FEC	Federal Election Commission
FECA	Federal Election Campaign Act
FECL	Federal Election Campaign Law
FRCP	Federal Rules of Civil Procedure
HCVB	Hawaii Convention and Visitor Bureau
LR	Local Rules (Guam's)
IRS	Internal Revenue Service
NOM	National Organization for Marriage
PACs	Political action committees
U.S.	United States
USC	United States Code
U.S.C.	United States Code
USD	United States Dollars

BRIEF IN SUPPORT OF DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION

BASIS OF JURISDICTION

Philip B. Maise proposed Plaintiff and Citizen Attorney General of the United States acting on the behalf of the U.S. Federal Election Commission (Plaintiff) claims jurisdiction for this case rests with any Federal District Court. In evaluating whether subject matter jurisdiction exists, the court must accept all the complaint's well-pled factual allegations as true and draw all reasonable inferences in the Plaintiff's favor. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), overturned on other grounds, *Harlow v. Fitzgerald,* 457 U.S. 800 (1982) see also *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009). Jurisdiction should granted to "only those cases in which a well-pleaded complaint establishes either that Federal law creates the cause of action or that the Plaintiff's right to relief necessarily depends on resolution of a substantial question of Federal law." *Franchise Tax,* 463 U.S. At 27-28. This case involves both relief according and question of Federal law.

The Federal statutes and regulations that gave rise to this action did so either owing to their change, or lack of enforcement.

11 CFR 100.57 Funds must be treated as contributions

11 CFR 106.6(c) Allocation of funds

11 CFR 106.6(f) Payments for one or more clearly identified candidate

11 CFR 110.1 Contributions by persons.... (2 U.S.C. 441a(a)(1)).

11 CFR 110.2 Contributions by multi-candidate political committees (2 U.S.C. 441a(a)(2)).

11 CFR 110.3 Contributions ….other committees; (2 U.S.C. 441a(a)(5), 441a(a)(4)).

11 CFR 110.4 Contributions in the name of another; cash contributions (2 U.S.C. 441f, 441g, 432(c)(2)).

11 CFR 110.5 Aggregate biennial contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

11 CFR 110.9 Violation of limitations. [67 FR 69949, Nov. 19, 2002]

The Plaintiff right to relief represents an important Federal issue since it involves the funding and spending of millions or perhaps billions of dollars in Federal elections. If the rulings are in the Plaintiff's favor, campaign contributions that are channeled via third parties instead of directly to a candidate will be impacted.

The Plaintiff's motions and intent are for parties to comply with the Federal Election Campaign Act (FECA) and Law (FECL). The act provides a provision that allows this suit to proceed:

Title 2 Chapter 14 U.S.C § 9011(b)(2):

> *The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subsection and shall exercise the same without regard to whether a person asserting rights under provisions of this subsection shall have exhausted any administrative or other remedies that may be provided at law. Such proceedings shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court.*

This plainly places this matter in Federal and not State jurisdiction. *Tafflin v Levitt*, 493 U.S. 455, 471 (1990) (Scalia, J., concurring). Further it removes the argument that this case must first be first taken via an FEC complaint process.

In the instant case, the proposed list of co-defendants includes individuals that live in many different locations. There is no convenient Court for all parties. Therefore, no matter which Court this motion is entertained, there will be some inconvenience. This said, the Plaintiff is in Malaysia and has commitments there. If this case is heard in Hawaii or California, he would have to regularly commute from Malaysia and has limited resources to do this. The Defendants on the other hand, will not likely be inconvenienced since they will most likely have council represent their interests. It is for this reason he selected the closest Federal District Court and that is Guam.

The Plaintiff views this as a reasonable request within the Court's discretion and "an abuse of discretion occurs if the trial court has clearly exceeded the bounds of reason or disregarded rules or principles of law or practice to the substantial detriment of a party-litigant."

Elements of this action discuss Free Speech. However, when discussed, they are not intended to request the Court to resolve the potential issue of what constitutes Free Speech. Rather discussion is to provide the Court background regarding prior rulings, and show that unlimited campaign donations do not increase quantity nor quality of Free Speech. When there is the potential of a single case presenting to the Court two questions, "one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter." *Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). To a degree

this case may also be seen along the lines of *FEC v. Akins*, 524 U.S. 11, 27 (1998), wherein the Supreme Court entertained the possibility, but did not decide, that *Buckley*'s "express advocacy" narrowing construction was limited to addressing "the First Amendment problems presented by regulation of 'independent expenditures.'" Therefore, a Federal District Court may review FEC regulations even if there is a concern it may touch upon the area of Free Speech.

The Plaintiff is a US Citizen and all Defendants are believed to also be U.S. Citizens. It is illegal for campaign contributions to be made by a non-citizen and none are expected to be found. If one or more is case of foreign funds is identified, handling for these type of Defendants will most likely be delegated to the FEC. Corporations and non-individuals that are expected to be named in the final class of defendants are both in the Ninth's Circuit area and other Circuits.

STANDING

Congress set up the Federal Election Commission (FEC) to uphold the laws contained within FECA. However, according to George Farah in his book *How the Republican and Democratic Parties Secretly Control the Presidential Debates* (2004) "the FEC only two investigators in its enforcement division to cover thousands of cases". Even if enforcement effort multiplied several fold over these past years it is apparently not adequate and citizen involvement as anticipated by Congress when writing the FECA is necessary at this time.

Pursuant to Title 2 Chapter 14 U .S.C § 9011(b)(1) judicial review and suits to implement chapter may be made made by *"individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief."* The Plaintiff certifies he is a U.S. Citizen, of voting age, and eligible to vote for President.

The Supreme Court sustained the express reach of the FECA's citizen-suit provision in *Federal Election Commission v. Akins*. Cass R. Sunstein wrote it *"is by far the most important pronouncement on the general issue of standing to obtain information . . . [because] the Court appears to have held that any citizen has standing to sue under FECA*."

Akins addressed the question of whether individual voters' challenges to the FEC's refusal to take enforcement action against someone else presented a case or controversy within the meaning of Article III. The Court ruled that Congress can create a statutory "right" that the populace can enforce in court by sheer operation of the statute. Second, it lifted the ban on Article III courts' adjudication of grievances that are widely shared so long as the harm itself is not "abstract." And, third, it diluted the causation and redress-ability requirements beyond reasonable recognition.

The definition of "abstract" is arguable. The interest in punishing the defendants and deterring violations of law by the defendants and others was sufficient in previous cases to support the "standing" of the private prosecutor even if the only remedy was the sentencing of the defendant to jail or to the gallows. *Steel Co.*, 523 U.S. at 128 (Stevens, J., concurring in the judgment).

The entire Nation was founded in part on principles that were abstract. Democracy, free speech, liberty, and the pursuit of happiness are all abstract. A claim that there is a widely shared harm to many owing to unlimited campaign contributions is largely abstract. Specifically, if unlimited spending were to cease, the electorate would benefit from a greater amount of free speech since minor candidates won't be drowned out by the voice and money of the powerful ones. The

Nation would not have to ponder questions about how much candidates are beholden to special interests and candidates themselves won't have to frantically try and raise money while compromising values.

All of this is rather abstract. It should in itself be reason enough to merit standing. This would be in keeping with *Steel* and *Atkins*. Here too, there are express statutory provisions authorizing suit to challenge agency inaction. Had the FEC vigorously applied the law, illegal campaign monies would not flood the election process and lead to the type of injury suffered by the Plaintiff. Reasonably intelligent campaign contributors would think twice before exceeding campaign contribution limits. How can anyone view the making of the President of the United States, the election of Congress, and the subsequent appoints to the Judiciary as being abstract?

This said, Plaintiff, knowing how attorneys love to argue, is prepared to discuss *Lujan v. Defenders of Wildlife* 504 U.S. 555 (1992). However, he does so under protest. The concern is the Court may adopt the viewpoint that a political solution rather than the judicial one is the better route to address contested campaign contributions. Moving into the political arena was discussed in *Akins* when the Court reasoned that if a plaintiff suffers an injury that is '*undifferentiated and common to all members of the public,*' they have a '*generalized grievance*' that is best pursued by political means." *FEC v. Akins*, 524 U.S. 11, 35 (1998) (Scalia, J., dissenting) (quoting *United States v. Richardson*, 418 U.S. 166, 177 (1974)). Justice Scalia stated *"By particularized, we mean that the injury must affect the plaintiff in a personal and individual way."*

Therefore, and from reading other Ninth circuit rulings it appears a preference is *Lujan*. This in turn requires the Plaintiff to do exactly what Justice Scalia asked for. While the Plaintiff contends it isn't any of Justice Scalia's business, he certainly can show his grievance and injury isn't common.

1. The Plaintiff is now officially and on the record to the Court an "out" a gay man. This differentiates him from the majority of individuals that are women, the majority of men that are not gay, and gay men that are not "out" have to disclose this to the Court.
2. The Plaintiff, unlike most U.S. Citizens, co-owns a bed and breakfast in Hawaii that specifically carters almost exclusively to the gay niche market.
3. This becomes highly relevant when considering the fact that a bed and breakfast's income depends on tourists. Hawaii receives about 450,000 honeymooners per year (HVCB). Owing to the fact that same-sex marriages in the United States has been banned in most States, same-sex marriage honeymooners to Hawaii have been a very very few compared to the 450,000 "straight" couples.
4. There is nothing that distinctive about two men who had just celebrated a same-sex marriage that stops them going on a honeymoon. Many same-sex travelers select to stay at gay-owned bed and breakfast establishments.
5. Therefore, the connection between illegal, and unlimited campaign contributions that seek to prevent same-sex marriages translates into a loss of income.
6. For a short while it was legal in California for same-sex individuals to get married until a very well funded Proposition 8 put a stop to it. Much of the financing for the campaign came from a small group of wealthy individuals. (Exhibit 3 Page 3) EXHIBIT 3 is a document found on Wikipedia that describes the National Organization for Marriage.

7. While investigating what made it possible for a few wealthy individuals to effect the lives of all same-sex couples in California, and in turn the income to the bed and breakfast, the Plaintiff learned that the problem wasn't limited to California.
8. In Maine it also used to be legal for same-sex couples to marry. However, in 2009 a very well funded PAC using dark money spent a documented $1.8 million dollars to sway the electorate to repeal the law. *National Organization v. McKee No.* 11-1196 (First Cir. 1/31/2012)
9. Dark money, where it comes, how it is hidden from voters, and why it is illegal attracted the Plaintiff's attention. It readily became apparent to the Plaintiff that it was being used in many States to help finance ballot initiatives to prohibit same-sex marriages by incorporating laws onto the books that read to the effect marriage is "one man and one woman".
10. In States like New Jersey, Washington, and New York, groups like the National Organization for Marriage made pronouncements that they would invest heavily to defeat any Republican candidate that vote for same-sex marriages. (Exhibit 3 Page 6) On June 16, 2009, NOM announced the formation of NOM PAC New York, a political action committee with a goal of providing $500,000 to fund primary challenges against any Republican New York state senator who votes for gay marriage. (EXHIBIT 3 Page 3 of 15) While money and announcements like this cannot be said as being the sole factor why a Republican governor in New Jersey in 2012 vowed to veto a bill allowing same-sex marriages it certainly can be considered a contributing one. (Id)
11. The ability of a limited number of individuals with a tremendous amount of money to make unlimited campaign contributions to enact changes like this and cause injury to the Plaintiff is how this action came about.

“Dark money” has been defined in two ways. It is either money that flows from one organization that gathers monies from a group of individuals and passes it on without disclosure of original donors. Alternately, it is money given to a PAC from an organization created to hide one individual donor, or just prior to an election to escape a disclosure rule. (EXHIBIT 3 page 3 of 15) During the 2012 election race, the concept of a super PAC was invented that would enable individuals to make unlimited contributions provided the candidate had no connection or influence. These routes of unlimited or disguised funding into elections are largely made possible, but in the Plaintiff's view not legal, owing to the three changed statutes. These are 11 CFR 100.57, 11 CFR 106.6(c) and (f). (EXHIBIT 4) The changes are discussed later in this action.

This makes this a statutory injury. The breadth of the citizen-suit provision expressly allowing for standing to vindicate such statutory injury, moreover, waives any prudential objections that might remain regarding citizen standing.

The National Organization for Marriage isn't the lone organization cited with utilizing dark money in campaigns. Protect Marriage was cited in *ProtectMarriage.com v. Bowen*, 599 F. Supp. 2d 1197, 1211 (E.D. Cal. 2009)). Therefore, it isn't just one single group that has damaged the Plaintiff. However, rather than flooding the Court with evidence that unlimited and illegal campaign contributions effected the results of same-sex ballot initiatives and the way State officials consider bills, the Plaintiff intends to focus on why unlimited campaign donations are illegal. By stopping this illegal flow of money he believes his injury will be addressed better long term.

Long term the Plaintiff's injury is cured when candidates for office are not influenced by money to make direct threats to reverse the rights of same-sex couples and to prevent the judiciary from doing anything about it.

Many Class I Defendants support and funnel money for those running for Presidential office in the 2012 election. Many of the candidate positions are exactly in line with the type of contributors that make large donations to prevent same-sex marriages. When reporters sought their positions regarding this Circuit's ruling that helped the "cause" to enable same-sex marriages, three candidates receiving unlimited campaign contributions replied as follows:

On National Public Radio 12/12/2011 Kris Mineau, the head of the Massachusetts Family Institute, reported he has been working with Romney against gay marriage since 2004 *"Governor Romney was a champion on the battle for marriage in Massachusetts. Right from the get-go, he was rock solid and that's never wavered,"* says. According to a report on MSN.com's website dated 02/08/2012, Romney stated, *"I will protect traditional marriage and appoint judges who interpret the Constitution as it is written and not according to their own politics and prejudices."*

Candidate Rick Santorum according to the website Republican2012.org *"is firmly against homosexual marriage and believes that activist judges should not decide on matters of defining marriage."* According to a report on MSN.com's website dated 02/08/2012 Santorum *"has vowed to invalidate same-sex marriages as president."*

According to a 12/18/2011 report in Reuters - Republican presidential hopeful Newt Gingrich threatened on Sunday to have U.S. judges arrested if they disagreed with his policies as president. In a report on MSN.com website dated 02/08/2012 "*The former speaker had already said he wanted to abolish the Ninth Circuit judges because of their supposedly "anti-American" decisions."*

These three men that made these threats are no ordinary people. They are running for the highest office of government and that office has the ability to effect the judicial makeup of Federal Courts. They are the three leading contenders running under the Republican party. Therefore, their threats of injury by removing the right of same-sex individuals to marry is a *"credible threat"* and qualifies for both injunctive and declaratory relief. *Kolender v. Lawson,* 461 U.S. 352, 355 n.3 (1983). If men like this are brought into office by using illegal funds that are allowed to flow it is a *"reasonable expectation"* and a *"demonstrated probability"* that the Plaintiff will be injured again when they succeed in repealing same-sex marriages. *Weinstein v. Bradford,* 423 U.S. 147, 149 (1975). This is the same injury inflicted upon the Plaintiff in the past and what they have pledged to do.

Therefore, there is a direct link between those that tend to want unlimited campaign financing and those that tend to want to prevent same-sex marriages. The choice to exceed campaign donation limitations or hide disclosure and spending behind shell corporations has been made in the past, is being presently, and will be made in the future unless actions are taken to redress injury through citizen action against offenders. A Presidential candidate may say a lot of things they fail to deliver upon once obtaining office. However, given the money involved that has halted same-sex marriages in the past, and the payments being made via unlimited campaign

contributions, these Presidential candidate threats are not simply alleged, they are documented now into the record and likely to occur. *"A plaintiff must do more than merely allege imminent harm sufficient to establish standing, he or she must demonstrate immediate threatened injury as a prerequisite to preliminary injunctive relief." Associated General Contractors of California, Inc. v. Coalition for Economic Equity,* 950 F.2d 1401, 1410 (9th Cir. 1991).

A further proof how unlimited campaign money leads to these threats is contained within EXHIBIT 1. There were 4 candidates that were actively running to become the sole candidate of the Republican Party during the primaries held in February 2012. The record has already demonstrated the position on same-sex marriages of 3 of the candidates. A 4rth candidate's position wasn't reported since he didn't adopt a similar "hard-line" position. That candidate for office was Dr. Ron Paul. He didn't adopt a similar hard-line position and the consequences of this are borne out in EXHIBIT 1. EXHIBIT 1 was reproduced and converted into PDF format from the New York Times website as it appeared on February 14, 2012. It lists the top 18 PACs according to their expenditures to date in the 2012 Republican Party Presidential Primary race. Paul at this point was largely considered an "also-ran" and the odds of him winning were very small. However, notice the spending of PACs 13, and 15. PAC 13 reportedly spent 87% of $140,741 ($122,444) attacking Paul. Their reason isn't very clear. However, PAC 15 is the National Organization for Marriage and they spent 100% of $131,260 attacking Paul. PAC 14 is listed as also opposing same-sex marriages, spent 100% of $138,841 supporting Rick Santorum. Santorum adopted arguably the hardest-line position, he apparently doesn't even call them same-sex marriages but has adopted a more derogatory term "homosexual marriages". This means the net impact upon Paul for failing to adopt a hard-line position was less spending in his favor and more spending against him.

These facts are further borne out on EXHIBIT 3 Page 7 and the paragraph titled “2012 presidential pledge.” In order to get it into PDF format slight alterations were necessary however, the Plaintiff attests the information contained in EXHIBIT 3 is how the Wikipedia page appeared on March 10, 2012. This paragraph demonstrates how the 3 leading contenders for the Republican ticket all signed a “pledge” that they when in office will support a Federal marriage amendment, appoint Federal judges who are “originalists” and "establish a presidential commission on religious liberty to investigate and document reports of Americans who have been harassed or threatened for exercising key civil rights to organize, to speak, to donate or to vote for marriage". The paragraph further confirms that Ron Paul did not sign the pledge.

EXHIBITs 1 & 3 helps prove four things:

1. Spending in the Presidential race to try and prevent same-sex marriages and replace “anti-American”, “activist”, and “prejudiced” judges to make sure they never approved them again was already in the hundreds of thousands of dollars.
2. Failing to adopt a hard-line position led to direct attacks sponsored by unlimited campaign donations, even early in the primaries for a marginal candidate.
3. Agreeing to adopting the hardest-line position led to unlimited donations in support.
4. Campaign donors might be able to obtain a tax-deduction by donating via the National Organization for Marriage.

Preventing unlimited campaign dollars isn't about preventing or advancing one political party into office. Rather it is stopping the perversion it causes within candidates that vie for it and influence it has on those that resist. In particular note the second part of the “pledge” that

required the President after obtaining office to establish a “Presidential commission”. The men that have taken this pledge are not only the Presidential candidates, they are those running for Congress too. How NOM supports candidates for Congress can be seen in EXHIBIT 3 Page 5 of 15 where $112,000 was spent towards electing one House rep. President of NOM, Maggie Gallagher, has used the phrase “the Dede effect" to describe Republican lawmakers' fear of alienating their constituents by voting for same-sex marriage legislation. Dede refers to Dede Scozzafava who dared to say no to the dark money behind NOM. (EXHIBIT 3 Page 5).

The money driving unlimited campaign contributions is large, their power in the United States to make things happen is great. The Plaintiff has had to think long and hard before making this complaint. He knows within hours it will be sitting square in front of the type of individuals that are not used to being crossed who have the power to do things like appoint district attorneys to prosecute him and judges to convict him.

The relief sought is to help break this direct link and end the flow of illegal campaign monies that are partly intended to prevent same-sex marriages and inflict further injury. By being allowed to prosecute the proposed Defendants to the fullest extent of the law possible including prison terms no matter how high the case leads and it will be done as back as far as allowed by law. Perhaps then a few may wake up the fact the United States isn't based on common law.

Those who think that unlimited campaign contributions has anything to do with free speech and *Citizens United* have an excuse. Few people in this world down loaded and read every word written in former Supreme Court Justice John Paul Stevens' dissent in that case. Fewer yet are reading rulings made regarding cases in Maine. Connecting every dot should not be necessary

however, how unlimited campaign spending is specifically tied to those trying to prevent same-sex marriages.

In particular notice on Page 1 of 15 for EXHIBIT 3 that the National Organization for Marriage was founded in 2007 and received campaign donations in the million dollar range as noted on page 3 long before the *Citizens United* ruling. "In 2010, two donors provided $6 million, two-thirds of the total donations for the year." The ruling in regarding NOM by the First Circuit reveals donations were received by other individuals, however, these were tiny in comparison with the large ones. A few pages back it was mentioned that NOM spent $131,260 attacking Paul. By ascribing back to the source who was the original donor and apportioning the $131,260 to the original donor, it is the Plaintiff's contention he will demonstrate that single individuals, or individuals operating under the guise of a legal entity greatly exceeded individual campaign donation limits. Being able to do this part of the purpose of 11 CFR 106.6(c) Allocation of funds and 11 CFR 106.6(f) Payments for one or more clearly identified candidate as they were written prior to FEC Advisory Opinion 2005-13 (EMILY's List) (EXHIBIT 4).

The link between banning same-sex marriages and obtaining unlimited campaign funds is more clear the more the subject is studied. Quite quickly a quirky name Bopp pops up. Attorney James Bopp Jr is connected with 21 of roughly 30 actions that helped tear down the barrier holding back unlimited spending and has been the attorney for the National Organization for Marriage. In the wake of the tidal wave created by Citizens United vs FEC he stated something akin to a phrase falsely attributed to a French monarch. *"The Supreme Court doesn't care, and I don't care, and the Federal Election Commission doesn't care, No one that matters cares."*

His problem, and the problem now for his ilk, is the Plaintiff cares.

Note: While the Plaintiff specifically mentions Republican candidates by name, the intention in doing so is to help satisfy standing and to demonstrate a real and credible threat. This cannot be accomplished without identification by name and quotation. While the mention of Republican candidates for Presidential office may seem partisan, other candidate positions that received unlimited campaign funds would have been mentioned if they made similar threats. The Plaintiff recognizes in particular 11 CFC § 9409.1 (b)(3) that requires the FEC to *"maintain the Commission's impartiality among private litigants where the Commission is not a named party"*. Since it is the intention of the Plaintiff to act on the behalf of the FEC, it is his intention conduct himself in a manner in keeping with this Statute. Therefore, the Class of defendants will include any individuals or organizations that meet the threshold test established for each of the different classes and the Court's approval to certify the classes is required.

Some have argued in the past that this form of redress in elections is not possible. Once the money is spent the effect is done and can't be undone is a common refrain. Specifically, the FEC, after dragging their feet for years on a case will drop it since the person elected to office has already served for years and no agreement can be made to move forward. This is not the case here since this suit has been filed many months before the November 6, 2012 election. The Plaintiff is the one that can largely determine the form of redress for an injury that is acceptable to him. The form of redress he desires is to stem the flow of illegal money and allow voters to decide upon issues, and elected candidates based upon merit and not based upon who can adopt the most extreme view to obtain financing.

Most forms of redress are to a certain extent abstract. Holding those accountable who believe they are above the law is abstract. However, the fines and penalties that can come along with that form of redress is concrete. Further, if Courts permitted Defendants to claim they could go free whenever eye for an eye redress was not possible then murders would cite the complexity of bringing back the dead as merit to walk.

The Plaintiff realizes that what he is requesting may seem partisan. This in turn would prevent actions from moving forward as he may be seen to support one party or one candidate. To help prevent this line of reasoning, the Plaintiff has attempted to include all proposed Defendants that met the criteria outlined in this suit and it will be the Court that certifies the final classes. The Plaintiff has an interest in preventing all illegal monies flowing into campaigns since, no matter their source, contributors tend to want something in return.

This is not a *qui tam* filed under the False Claims Act. Therefore, no original information is needed and the Plaintiff is not a relator. He also need not provide his case under seal to the Court to enable the District Attorney to take the case on their own. The data and type of spending this suit questions has been available for months and if the District Attorney was going to act, they certainly would have done so by now. Of course this said, the second this action is filed it should be expected that they sudden pop their heads up and announce they were just about to do the same. Right.

The Plaintiff agrees that not just anybody should be able to file a suit. Rather their suit must have merit, and be soundly based upon the law. This argument covered both justifications for

standing: the more abstract basis of upholding the law for the sake of the common good; as well as a more definite link that is personalized and particularized.

COMPLEXITY OF BEING A PRO SE LITIGANT AND LOCATION:

This initial motion is presented on a pro se basis. The course of this action can be viewed as taking place in two separate phases. In Phase I the Court needs to review questions of Jurisdiction, Standing, and decide to grant or deny the Preliminary Injunction request. One added complexity to this case is the Plaintiff's request that the Court evaluate his immunity from attack. How best to handle evaluation of the immunity question is left to the Court's discretion. If this should come in the form of a separate motion, the Plaintiff will comply.

Phase II involves certification of the classes, disclosure to the classes, and trial or judgment on the merits. For this Phase the Plaintiff intends to be represented by council and/or the US District Attorney's Office. This will help ensure properly handled to ensure the greatest probability of convictions against the three classes of Defendants.

Owing to the complexity of the case and the different rules governing what is and isn't proper action, the Plaintiff a little more latitude than a litigant represented by counsel to correct defects in service of process and pleadings as afforded to him by *Moore v. Agency for Int'l Dev.*, 994 F.2d 874, 876 (D.C. Cir. 1993) (citing *Haines v. Kerner,* 404 U.S. 519, 520 (1972)).

Additionally, the Plaintiff is currently located in Malaysia where transmission of documents, signature upon documents, and communications to the Court are more difficult. Owing to the expense to travel to the Court and need to attend to matters aboard, the Plaintiff also requests to

appear by telephone at any initial hearings. Should the case advance to Phase II, the Plaintiff intends to relocate to Guam to facilitate the action.

Regarding disclosure to potential Defendants, while Plaintiff has prepared an initial list, it is not possible to include in this document owing to FEC statute.

> *437 (g)(12) (A) Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made.*

According to FRCP a classes need to be confirmed which is a second reason why a list cannot be included in this initial action. This said, the Court is still asked to make a declaratory judgment upon a typical Defendant. This isn't a binding judgment upon anybody and simply helps advance the action to Phase II where Defendants will have an opportunity to make a defense.

These items stated, please be assured the Plaintiff will make a good faith effort to adhere to FRCP. The Court is further requested to help facilitate the action in accordance to local rules governing “Complicated Cases”. Specifically a face to face meeting between attorneys will be difficult to manage, as well as discovery and disclosure. For this reason the Plaintiff requests the Court employ the Manual for Complex Litigation.

Leave of the Court is also requested in regards to the tone that this brief has in regards to the *Buckley* and *Emily's List* Courts. Ordinarily an attorney would have toned down these sections, however, leaving them as is was elected in part to demonstrate that injury was particularized by

the change of events. No contempt for individual judges is meant and the Plaintiff is railing against the system as a whole that enabled unlimited campaign donations to flow.

Finally, leave of the people of the Territory of Guam and the Federal District Court of Guam for bringing this matter into your area.

COMPLAINT

Defendants either made, received or benefited from excessive or prohibited campaign contributions that have damaged the Plaintiff by hurting his income by reducing the number of same-sex couples that travel to Hawaii.

CONCISE STATEMENT OF THE CASE

The United States is a common law country and divided into many sections called circuits Common law and the reasonable person test when applied against the proposed Defendants will find them guilty of donating, receiving, using, or benefiting from campaign contribution above the legal limit for individuals. These have helped to influence the ability for same-sex couples to marry in the United States and negatively impacted the Plaintiff's business in Hawaii that caters to same-sex couples.

This complaint contends this will be proven according to one or more of the three following manners:

1. Three regulations that, to some, make it appear that unlimited contributions were legal, were interpreted by one Circuit Court. This Court's ruling was erroneously applied across the entire United States outside that Court's jurisdiction.

2. A reasonable person making a campaign contribution to a so called “independent or non-coordinated” organization would have an expectation that it will be used towards the election of a specific candidate or to advance a specific party and is therefore deemed to be as if given to the candidate or party directly and subject to limits.

3. Unlimited campaign contributions is a violation of equal protection and a violation of free speech. There is evidence they do the opposite of expanding free speech and instead drown out the speech of others.

Additionally the suit advances the theory that funds donated by corporations, LLCs, foundations, or their like may be deemed to be a donation by an individual. When an individual(s) is identified as the actor behind the contribution it would render the funds to have been contributed in the name of another.

The jurisdictional basis, and the right (standing) for the Plaintiff to bring this action is based upon provisions within the Federal Campaign Election Act. The injury caused to him can be made whole again by ensuring any Defendants found guilty are penalized for their actions.

PROPOSED CERTIFICATION OF CLASSES

Pursuant to FRCP Rule 26, Plaintiff utilized the website OpenSecrets.org on March 4, 2012 and discovered there are many individuals and non-individuals that have the potential of being certified into several different classes. The website site describes itself as a nonpartisan guide to money's influence on U.S. elections and public policy. It is managed by The Center for

Responsive Politics 1101 14th St., NW Suite 1030, Washington, DC 20005-5635.(202) 857-0044 • fax (202) 857-7809 info@crp.org • webmaster@crp.org .

The Plaintiff is not permitted according to FEC regulations to divulge to the public the names of those under investigation until after certain conditions have been satisfied. At this point according to those rules it appears the Plaintiff is not permitted to divulge specific names. However, the Plaintiff attests to the Court that this website contains evidence that it is readily apparent there are sufficient numbers of proposed Defendants to justify a class action should the Court concur that unlimited campaign contributions is not permitted. Should the Court require further evidence that a group large enough to justify a class action is present, the Plaintiff will provide names and details in a sealed document.

Pursuant to FRCP Rule 23, the Plaintiff recognizes the a court that certifies a class must appoint class counsel. The following is a proposed description of Classes.

Class I: Political action committees or other organizations that retained, within the past 5 years of the filing date of this action, contributions to candidates for Federal Office and to the political committees that support them that exceeded limits.

To be in this class a group needs to have had the appearance of retaining at least $30,400 from a single individual Class II (a-c) or a single non-individual that qualifies as Class II(d) or Class (e). Class I proposed Defendants are being requested as part of this action to comply with FEC directives 11 CFR 103.3(a) or (b). This action disputes the legality of funds of this nature and Class I defendants are reminded that according to the FEC "*If a committee finds that a contribution is prohibited based on evidence not available when the contribution was deposited, the committee must refund the contribution within 30 days of discovery.* 11 CFR 103.3(b)(2)".

See Preliminary Injunction for more details.

Defendants that are specifically included are most "super PACs" that have raised over $49,999. From the inspection made on March 4, 2012 it was readily apparent that some Class I members received contributions many times the maximum from an individual contributor.

Class II: Individuals, and non-individuals that acted on the behalf of individuals, are Defendants who made, within the past 5 years of the filing date of this action, contributions to candidates for Federal Office and to the political committees that support them that were prohibited or exceeded limits. This Class is divided into sub-classes as follows:

Class II(a): Individuals who, within the past 5 years of this filing, made contributions that exceeded the annual or biennial limits, as set by the FEC, by $75,000 or more.

Class II(b): Individuals who, within the past 5 years of this filing, made contributions that exceeded the annual or biennial limits, as set by the FEC, by more than $10,000 but less than $75,000.

Class II(c): Individuals who, within the past 5 years of this filing, made contributions that exceeded the annual or biennial limits, as set by the FEC, by $10,000 or less.

Class II(d): Non-individuals where it is apparent a corporation, LLC, foundation, or similar entity was utilized by an individual(s) as an intermediary, within the past 5 years of this filing, to make contributions to a campaign for Federal Office that exceeded the annual or biennial limits for an individual(s), as set by the FEC, by $25,000 or more.

Class II(e): Organizations that received individual contributions from proposed Defendants Class II (a), (b), (c.), or (d) that were donated for the purpose of influencing a State or Federal

campaign or ballot initiative. Included in this Class are organizations that have received donations wherein a reasonable person viewing the transaction would conclude the contribution was made to help elect or defeat candidates along party or ideological lines.

Class III: Other defendants and subparts (a) (b) and (c.) have been reserved for other Classes that may have benefited from expenditure of the contested funds within the last 10 years of filing date.

While some proposed defendants live outside the Ninth Circuit, since the contested contributions were either related to nation-wide elections or effected same-sex marriage rights and in turn the Plaintiff's income their inclusion is specifically proposed.

THE FEC FAILURE TO ENFORCE ON ITS OWN

A citizen attorney is necessary at this point since the FEC has demonstrated that it lacks independence and has acted without a rational basis. The very setup of the FEC with 3 Republican and 3 Democratic commissioners virtually guarantees the board will only acted when it is in the interest of both political parties. In the cause that gave rise to this action the board acted in the combined interest of both parties at the detriment to minor political parties that refuse to participate in receiving illegal campaign contributions. Irrational acts by the FEC include failing to act upon the advice of its own counsel, tiny fines for large offenses, and an overall failure to give citizens any impression that elections in the United States are conducted on a fair basis.

This document would be a 100 times longer if most examples were provided. However, to avoid a claim that none were present in the record the following are typical:

From the New York University Law Review Vol. 85:1735, Matthew A. Samberg: Page 1756:

> The 3 to 3 "*political party balance requirement is not actually a restriction on the President's ability to appoint any given commissioner, but a restriction on the Commission's ability to act at all."*

From the National Journal; Washington; Feb 17, 2001; Eliza Newlin Carney; Volume: 33 Issue: 7 Start Page: 470-476 ISSN: 03604217.

> *Yet proponents of deregulation have enjoyed a striking series of legal and political victories. With the help of a dogged Indiana-based election lawyer named James Bopp Jr., they have quietly toppled dozens of state campaign finance reform laws. Bopp has successfully sued to block the Federal Election Commission from punishing conservative political groups, and he has forced the agency to drop some of its stricter regulations.*

In May 2011 FEC Commissioner Ellen Weintraub admits the FEC has no ability.

> *"Back in '06 and '07, they said we were 'feckless' and 'toothless...I am not sure what the adjective would be today." From fiscal 2006 to 2010, the average fine levied against campaigns, parties and political action committees for violating campaign finance law dropped from $180,000 to $42,000, Weintraub said. Similarly, the number of conciliation agreements, deals on penalties hammered out between the FEC and those under investigation, fell from 91 in fiscal 2007 to 29 in fiscal 2010, which Weintraub called a "pretty sharp drop."*

From Northwestern Journal of Law and Social Policy, by Lauren Daniel**,** 2010 Vol 5, Page 168

> *In reparation for unlawfully raising more than $22 million to influence the 2004 election, the Swift Boaters were ordered to pay a mere $299,500 in penalties to the FEC.151 Similarly, the MoveOn.org Voter Fund was fined $150,000 for expressly soliciting contributions to defeat George W. Bush under the guise of 527 status. While many other 527s were required to pay penalties to the FEC, America Coming Together (ACT), which raised a total of $103 million, made the largest payment of $775,000 to the FEC for its illegal use of non-Federal funds toward, among other purposes, its express*

advocacy for John Kerry.153 The FEC collected a total of $3 million from mischaracterized 527s and other tax-free or non-profit groups that were influential in the 2004 Federal elections, and which continue to remain active in Federal elections.

Still, the FEC's action against these 527s is likely to have little deterrent effect on future conduct. First, the penalties levied by the FEC on 2004 independent groups constituted a very small fraction of the unlawful money raised by such groups. The rulings, thus, portrayed FEC fees merely as the cost of doing business, rather than a deterrent to prevent 527s from exploiting campaign finance loopholes in the future. Next, 527 complaints were settled a startling two years after the 2004 election.

A Republican lawyer and former FEC commissioner named Trevor Potter when asked about the FEC replied: "It strikes me as dysfunctional," "They're unable to do their job."

The Washington Post describes it at the "The Little Agency That Can't":

*Fractured by partisan bickering, paralyzed by the commission's own convoluted procedures, the FEC did what the FEC so often does in contentious election matters: It did nothing. Today, nearly a decade after the alleged violations in Montana and deep into Burns's second Senate term, the case remains unresolved. Lately as these show, the price extracted by the FEC to illegally influence Federal elections are mere pennies on the dollar without any hint of any criminal action. Failing to authorize a citizen attorney to prosecute current apparent offenders only increases the number and scale of future instances. (*By Benjamin Weiser and Bill McAllister February 12 1997)

DAMAGES

The Hawaii Visitor and Convention Bureau (HVCB) reports that Hawaii is a top destination for honeymooners. There is no reason to doubt same-sex couples have no less incentive after being allowed to marry to go on a honeymoon. Since the Plaintiff co-owns a bed and breakfast that

caters to the niche market of same-sex couple travelers efforts to prohibit same-sex marriages negative impact the business.

Damages are real and the bed and breakfast business would have been fuller had more same-sex couples been allowed to marry. However, calculation, and the method of calculation of loss would quickly bog this case down with arguments. Further, since this is a class action lawsuit, ascribing a share of damages to each individual defendant isn't easily accomplished.

Therefore, all the Plaintiff can ask for in this action regarding his own injury is recovery of his expenses, attorney fees, and equitable judgments the Court deems reasonable.

LEGAL ARGUMENT: BACKGROUND

The Federal Election Campaign Act (FECA), approved by Congress in 1971, formed the basis of the Statutes that became integrated into Federal Election Campaign Law (FECL) in the form of group of Statutes called the United States Code (USC) which were in turn implemented into Code of Federal Regulations (CFR). The Federal Election Commission was created to enforce FECA and implement uphold the intentions of Congress.

Since its initial formation, a strong case can be made that over the years the FEC has lost the ability to fulfill Congress's intentions and there have been numerous Court challenges. Owing to these factors, the initial strength and protection that prevented unlimited spending by individuals has slowly been broken down.

September 18, 2009 in the case *EMILY's List v. FEC*, 581 F. 3d 1, 10 (D.C. Cir. 2009), the US Court of Appeals, for the District of Columbia ruled that three regulations in the CFR could not be enforced by the FEC. The three related to campaign contributions given to non-candidate political committees, and were as condensed below:

> 11 CFR 100.57 states that if a solicitation indicates that any funds received will be used to support or oppose the election of a clearly identified Federal candidate, those funds must be treated as contributions, unless such a solicitation also refers to a non-Federal candidate, in which case at least half of the funds received must be treated as contributions;
>
> 11 CFR 106.6(c) requires nonconnected political committees to use Federal funds to pay at least half of their administrative expenses, generic voter drives, and public communications that refer to a political party but no clearly identified candidates; and
>
> 11 CFR 106.6(f) requires nonconnected political committees to use Federal funds to finance voter drives and public communications that refer to one or more clearly identified Federal candidates, but do not refer to any clearly identified non-Federal candidates, and requires such activities that refer to both Federal and non-Federal candidates be financed with a proportionate mix of Federal and non-Federal funds.

After the ruling, 3 Democratic commissioners in the FEC wanted to appeal, however, the 3 Republican commissioners blocked their request. So on October 28, 2009 the FEC announced it would not appeal the decision to the US Supreme Court.

On December 17, 2009 the Commission adopted two rulemaking documents in response to the court's decision in regards to nonconnected committees reflecting that final order.

> 11 CFR 100.57, which determines whether funds received in response to solicitations are contributions, will not be enforced.
>
> 11 CFR 106.6(c) and 106.6(f) will not be enforced. Therefore, nonconnected committees and separate segregated funds need not allocate administrative expenses, costs of generic

voter drives, and public communications that refer to a political party. Nor do they need to report these allocations on FEC Form 3-X.

An examination of the three Judges that made the ruling is justifiable in light of the comments made by the three current Republican candidates for President. All three have railed against the Courts already. Is it possible a previous Republican President already has packed some of the Courts so rulings fall in favor of the Republican party? It certainly is a possibility, and it is perhaps just coincidental that the three Judge panel that made this ruling were all appointed by Republican Presidents.

Fortunately, the framers of the constitution and the writers of the Act anticipated many possible power struggles where one group advances higher than the other. Much talk is given about the balance between the three executive branches. However, the fourth and final check upon balance is from the people of the country. The people of the United States are the trunk of the tree supporting all three branches. This motion has risen out of that trunk and seeks to step in and bring order back to a situation that is apparently out of control.

When the dancers wearing party hats chant "magic words", spout expressed advocacy, and sip tea they usually do so under a banner reading *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). A typical citation reads "independent non-profits are treated like individual citizens who under *Buckley* have the right to spend unlimited money to support their preferred candidates or like political parties under *McConnell v. FEC*, 540 U.S. 93 (2003)". Hold on a second. Exactly where is it written that an individual citizens can spend unlimited money to elect the candidate of their choice?

Going to the source we can find in *Buckley*, the Supreme Court really said:

> *Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions.*

The *Buckley* court itself made some interesting statements that require review. For example it claimed *"Challengers can and often do defeat incumbents in Federal elections".* Perhaps that was true back then. However, the word "often" doesn't apply today. Challengers today are usually only successful if the incumbents is strongly implicated in corruption charges.

In the 1998 election season, 98% of US House members, and 90% US Senate members were voted back into office. A 2% and 10% chance is hardly described in modern language as often. Further, challengers are almost always from one of only two major parties. The chances of challenger from a minor party being elected over the last 30 years in the United States is closer to 0%.

Franking is one way incumbents tend to retain power, however, franking itself is not in dispute. What is in dispute is that incumbents tend to bump shoulders with very wealthy individuals who in turn make unlimited campaign contributions. It is a flawed argument when someone claims it is fine for one party to raise big money from a few individuals because a competing party can raise the same amount from many.

It is a better argument to say it is only possible to unseat an incumbent when an overwhelming majority of poor voters cannot be convinced by an expensive slick advertising campaigns sponsored by a few rich individuals to get their chosen candidate back into office.

It is not okay for one group to retain or take power based upon a few rich benefactors. It no longer is a democracy when the balance has to come from many more poor benefactors. The balance scale framed on the wall behind judges is supposed to contain equal amounts of voters and not money.

When presenting a case before the Court litigants frequently assume they need not explain why you can lead a horse to water but you can't make him drink. Certain things are supposedly shared experiences and common knowledge. When the *Buckley* Court claimed there was no sign reading Danger Thin Ice, it walked out and decided to invent an alternate reality. It wrote: "*limitations may have a significant effect on particular challengers or incumbents, but the record provides no basis for predicting that such adventitious factors will invariably and invidiously benefit incumbents as a class."* A translation of this sentence runs along these lines. *The Buckley Court recognizes some candidates get more money. However, no one bothered to mention how money influences voting so we will invent our own alternate reality and conclude money isn't a significant factor.*

To avoid that apparent error made by a past litigant, the following is presented into the record. There is a strong indication that that money serves as a good predictor of whether an incumbent is unseated. Data came from Common Cause:

	US House	US Senate
Incumbent	$772,016	$5,578,470
Challengers	$207,107	$2,442,660
Open Seat	$607,703	$2,336,939

The incumbent advantage in being able to attract campaign funding represents almost a 4 to 1 advantage in the House and over a 2 to 1 advantage in the Senate. The chances of odds of retaining the House seat were 98% and only 90% for the Senate. Therefore, the ratio of how much greater an incumbent spends over a challenger serves as a good indicator that the better the ratio, the more likely to be reelected.

Researchers have shown a direct link between the amount of campaign spending and the candidate success in articles including:

Krebs Timothy B. 1998. "The Determinants of Candidates' Vote Share and the Advantages of Incumbency in City Council Elections," American Journal of Political Science, 42 (3): 921-935.

Krebs Timothy B. and John P. Pelissero. 2001. "Fund-Raising Coalitions in Mayoral Campaigns," Urban Affairs Review 37: 67

Fuchs, Esther, E. Scott Adler, and Lincoln. A. Mitchell. 2000."Win, place, show: Public opinion polls and campaign contributions in a New York city election." Urban Affairs Review 35 (4):479-501.

Lewis, James, Tony Gierzynski, and Paul Kleppner. 1995. Equality of Opportunity? Financing 1991 Campaigns for the Chicago City Council. Chicago: Chicago Urban League.

When the Cato Institute challenged the limits on campaign contributions they acknowledged that *"A challenger needs large sums to campaign for public office, especially at the Federal level. He*

*needs **big money** to overcome the manifest advantages of incumbency"* (Emphasis added, Cato Handbook for Policy Making by Roger Pilon and John Samples). Demanding the ability to obtain "big money" in an article decrying the individual contribution limits for Federal campaigns can only be read one way. The Cato Institute recognizes that the type of candidates it supports needs unlimited contributions from wealthy individuals.

Another flaw in Buckley was the conclusion that: *"The charge of discrimination against minor-party and independent candidates is more troubling, but the record provides no basis for concluding that the Act invidiously disadvantages such candidates."* "Invidiously" simply means unfavorably. Perhaps this was true in the Courts day, however, times are very different today. Many minor party candidates have specifically looked at the corrupting effects of "big money" and refused to accept it. How the FECA is currently not enforced by the FEC clearly places minor party candidates at a disadvantage.

There is at least one minor party, the Green Party, that has made their position known. On February 9 2012 *"Green Party presidential candidate Jill Stein praised former Senator Russ Feingold today for speaking plainly when he says that, "The President is wrong to have embraced the corrupt corporate politics of Citizens United and that's what you're doing when you start using and consorting with Super PACs."* (Jillstein.org)

Therefore, in today's climate it would require a Court to abandon all reason to conclude candidates that adhere to what they believe is the intention of FECA are equal with candidates that seek how to circumnavigate it. All party candidates are hurt when unlimited spending by private individuals is allowed. During the South Carolina primary election for 2012, just one

private individual reportedly supported the candidacy of one presidential candidate to the tune of $5,000,000. This candidate, then zoomed forward in the polls and won South Carolina despite a poor showing in Iowa.

If a minor party candidate had a benefactor with a pocket this deep, and the morals to accept it, their media exposure would be completely different. Therefore, it is no longer true that the policy for unlimited spending treats all candidates equally (equal protection mandate). Those that see the money as a corrupting influence and refuse it face the choice of not getting elected or taking the money against their better judgment.

When Buckley was decided back in the early 1970's the world was a very different place than it is today. There was no such thing as the world wide web, and the ability to communicate to millions of voters through social networking sites. Further many of these websites are free and any candidate can put their party position where they are easy to find and research. Candidates can also post replies and rebuttals. Special interest groups can do the same. Hardly anything is stopping the right to free speech at little to no cost on the Internet. There is no limit on the number of speeches or interviews a candidate may give on a limited budget, and everyone of these can be posted on the internet complete with videos for all voters to see. Therefore, the need to have unlimited funds to buy advertising dollars to enable free speech is groundless. The complete platform, policy, supporting evidence are delivered instantly to the homes of most voters. Those without internet access, generally can access it in other manners including friends, relatives, or libraries. These things did not exist back when Buckley was decided.

Times are radically different from those in Buckley that justify the expenditure limits regarding corruption and the appearance of corruption justification.

When Buckley was decided there were far more media outlets and independent newspapers and radio stations. It was not possible to broadcast an e-mail, upload a video, and have it played almost instantly in most major markets, or put into print.. In an FCC report dated 2001 in the top 50 markets in the United States 87% of the market revenue in radio was controlled by just 4 firms. (FCC Review of the radio industry, September 2001). Further consolidation has taken place since then. As Marcelino Ford-Livene, counsel for the New Media Policy division of the FCC, remarked: *"The amount of deregulation and consolidation in broadcast television and radio today has become a critical problem in the area of diversity and media ownership."* (The Digital Dilemma: Ten Challenges Facing Minority-Owned New Media Ventures, 51 FED. COMM. L.J. 577, 578 n.1 (1999).)

Political ad spending on local TV set a new record in 2010. Of the estimated $3 billion spent, $2.2 billion (73%) went to local television stations, according to Evan Tracey, chief operating officer of Kantar Media's Campaign Media Analysis Group. Therefore, while there may be many more choices in owing to cable TV programming, the bulk of political spending has been concentrated on local TV stations. Each market only has a limited number.

The limited number in turn means limited advertising slots and this where Buckley really missed the mark. By allowing unlimited "free speech" it has created a situation where allowing so much money is destroying the ability to make any speech at all. During the 2012 primary election in Iowa, South Carolina Republican Party Chairman Chad Connelly stated that turn on a local

television station and its not uncommon to see five or six ads in a row supporting or slamming a particular candidate. Connelly said no advertising slots are left — the candidates or their SuperPACs have booked all television advertising space leading up to Saturday's vote at a cost of more than $50 million. (Interview Mark Gollom, CBC News Posted: Jan 20, 2012).

Another factor is that an in accordance with an FCC regulation, television stations have to sell advertising slots to candidates for both Federal and state office at the "lowest unit rate" within 60 days of a general election and 45 days of a primary. This doesn't apply to PACs. PACs are free to negotiate and pay a higher rate to get advertising slots. So even though the FCC tried to level the playing field, the reality of PAC spending is those candidates with PAC support can buy up all the slots. This kills the free speech of the minor party candidate. (Article by Richard Butler Feb 16, 2012).

During the 2012 South Carolina primary PACs were outbidding each other to control slots with reports of some paying double the going rate and bumping slots that were spoken for weeks before to Jeep and the Ford Motor Company to later times. "It's like carpet-bombing," said Scott Sanders, general sales manager for WIS, the NBC station in Columbia. "They're waiting until the last two weeks to reach everyone they can. He who shouts the loudest last might win."

Is this the type of free speech that Buckley envisioned? It certainly doesn't seem very free. It is perhaps a good thing the Carter Center is never asked if fair elections take place in the United States. How can a minor party that doesn't have millions complete? Yes it is true that internet adverting is nearly free. However, the reason so much is spent on television advertisements is they work. Stephen Ansolabehere and Shanto Iyengar of Stanford University Political

Communication Lab used an experimental setting to show that political advertising is effective even when, by design, it contains no direct information.

Therefore, parties with the strongest pocket book in the US now have the advantage of buying up television slots that are effective even if they provide no direct information. Weaker candidates are left in the cold.

The obvious solution is to look to the intent of Buckley that free speech on equal terms is important to all candidates and unlimited spending must be controlled otherwise it is only paid speech by the highest bidder. This renders the speech not free speech but a purely economic activity and well within the bounds of the Court to control. *U.S. v. Carolene Products,* 304 U.S. 144, 153 (1938).

This gets us to the next point where the Buckley Court failed to anticipate how things would change. Buckley removed limits that a candidate could spend from their own wealth. Buckley was flat wrong when believing that *"a restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed"*. They could not have foreseen that unlimited spending directly led to reducing the quality of expression and number of available views for voters to consider. No one would consider the political climate where super PACs slam candidates with repeated negative advertising as discussing issues. No minor party, no matter how qualified, can gain any serious attention without a giant check book. Further, discussion on TV regarding potential candidates looks, owing to human nature, towards the hand

that feeds it. Candidates and PACs have the ability to decide where advertising revenue goes and can outbid each other to gain favorable appearing reports on the news.

Another completely inaccurate statement in Buckley was *"The quantity of communication by the contributor does not increase perceptibly with the size of his contribution.."* Perhaps this was written before the cup test. When one contributor makes a $5,000,000 donation that is 1,000 times the maximum that can be given directly to a candidate, the quantity of communication that purchases goes up more than just a tiny bit. Buckley's did make at least a few correct predictions. When the Court wrote *"contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy"* it was spot on. Contribution limits when correctly enforced is exactly what enables political dialogue. Unlimited contributions changes dialogue to monologue and we might as well sit strapped in an non-monochromatic straightjacket and be subjected to It's A Small World *ad nauseum.*

When the Citizen's Court stated *"a speaker who wants to avoid threats of criminal liability and the heavy costs of defending against FEC enforcement must ask a governmental agency for prior permission to speak"* it did so largely based upon cut and pasting from briefs submitted intended to tear down restrictions on unlimited spending. A statement like this attempts to eliminate the reasonable person test and replace it with an ever more complicated set of bright-lines. This particular line of justification is often repeated and deserves detailed inspection. The first untruth is the "heavy costs of defending against the FEC". As shown in the record there is almost no cost to defend against the FEC. Doing nothing is effective even for serious violations, or at best a cost of doing business. The line of reasoning invents fictional character that *"wants*

to avoid threat of criminal liability". Isn't this a given? If we translate this phrase it is stating to the effect:

If we ponder the possibility there is some unknown risk-adverse, fictional character, with zero mental capacity, with no ability to follow the law, then to enable that person to have free speech the best thing to do is eliminate all laws.

The greatest thing feared by those who violate laws is the reasonable person test. For this reason election laws are frequently attacked as being "unconstitutionally vague." As long as reasonable persons are eliminated, loop hole after loop hole can be made fabricated into FEC statutes and the intentions of Congress when forming the FECA laughed at. The reasonable person test isn't an easy one at trial. It takes a unanimous verdict of 12 peers to convict someone of the feared criminal liability. That is not an easy threshold to meet. It takes just 1 person to conclude an advertisement wasn't clearly exactly what speaker intended. Therefore, anyone who spends money to create expensive advertising campaigns that require money to air has no fear if contributions are legal.

When characters request bright-lines within the statutes they are specifically looking to build in loop holes. This complaint isn't about prohibiting free speech, rather it is about permitting a greater quantity of quality speech. When Courts have made rulings that some interpret as allowing unlimited campaign contributions, they did so based upon abstractions and theory. As this record indicates there is no need for this anymore, and the only thing the Court should examine is hard evidence.

According to a February report by the Sunlight Foundation, almost half the contributions to the nine-largest Super PACs have come from just 22 donors, who each gave more than $500,000. The Romney-backed Restore Our Future Super Pac aired 13,000 TV commercials to fewer than 300 by his then-surging rival, Newt Gingrich, in the Florida primary. Romney won with Gingrich coming in second. The ratio 13,000 to 300 which means one candidate was able to afford over 43 advertisements to 1 from a competing candidate. (Source CNBC, Monday, 5 Mar 2012, by Mark Koba)

To maintain the "legality" of unlimited donations they must be spent without coordination with the candidate. This by definition means that those making the speech are not making the speech of the candidate himself. The commercials are invented without consultation or approval of the candidate. Therefore, halting those that spend unlimited amounts doesn't hinder the true original free speech of the candidate. To understand the scope of this problem examine the New York Times that reported on March 2, 2012 that:

> "The super PACs supporting Mitt Romney, Rick Santorum and Newt Gingrich have poured nearly $4 million into advertising in Ohio ahead of the primary next week, accounting for most of the spending on commercials there in what has become an overwhelmingly negative contest. Of the 11 commercials pegged to the presidential election run on Ohio television since Feb. 1, all but one have been negative, according to Kantar Media's Campaign Media Analysis Group." (Super PACs,' Not Campaigns, Do Bulk of Ad Spending by Jeremy W. Peters)

It is the contention of the Plaintiff that a negative advertisement made by a third party without consultation with the candidate can not be classified as a candidate's free speech. Further that helping bringing a halt to unlimited financing will increase the ability and quality of free speech so the electorate can decide on a more logical basis instead of which candidate attracts the greatest funding to run negative advertisements.

This action doesn't involve parties where there is a gray area. This action happens to involve a very solid bright-line rule that is easy for the Court to recognize. Either the proposed Defendants did or not exceed individual campaign contribution limits or they did not. Further this case doesn't even convict them. All this case asks for is the right to pursue action against them at which time they may bring any defenses.

This will help prevent wealthy organizations from bidding up the price of advertising and muzzle the free speech of other groups that can only afford the standard rate. In order to negate the magnitude of political spending some have attempted to equate it to spending of large corporations like Walmart. When they do that, it is an attempt to show that political spending is insignificant. However, what they fail to inform the Court Walmart spreads it spending out over the entire year. This isn't true for political free speech. The *Citizens* Court acknowledged this *"It is well known that the public begins to concentrate on elections only in the weeks immediately before they are held."*

When attorneys present briefs that claim something along the lines *"it is a constitutional requirement that there be bright lines*" perhaps they are right. However, common law and reasonable person are like trump cards.

EVIDENCE OF INVIDIOUS DISCRIMINATION

In *Cf. James v. Valtierra*, 402 U.S. 137 (1971). [424 U.S. 1, 32] where the court cited that absent "record evidence of invidious discrimination against challengers as a class a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded

restrictions". It isn't legislation from Congress that this motion seeks to address, rather it is rules rewritten by the FEC. When invidious discrimination occurs one group of people are treated less well than another. By opening unlimited spending to all, some argue that citizens are being treated equally. A common refrain during the 2012 Presidential election went along the lines that: while it maybe true that party A tended to attract millions of dollars from a few very wealthy contributors; that party B tended to attract millions of voters that could make small contributions to balance the equation. That justification is flawed since it looks for discrimination against the political party. It also demonstrates exactly why unlimited spending by wealthy individuals is wrong. It is the heavy hand of a few wealthy that requires the many hands of the poorer individuals to overcome.

Congress has long recognized that the absence of limits on contributions is unfair to the electorate. Jeffrey A. Benjamin in the NYU Journal of Law & 600 Liberty [Vol. 2:599] 2007 who was citing H.R. REP. NO. 93-1239, at 3 93d Cong., 2d Sess. 10 (1974):

> The unchecked rise in campaign expenditures, coupled with the absence of any limits on contributions and expenditures, has increased the dependence of candidates on special interest groups and large contributors . . . . Such a system is not only unfair to candidates, but even more so the electorate. The electorate is entitled to base its judgments on a straightforward presentation of a candidate's qualifications for public office and his programs for the Nation rather than on a sophisticated advertising program which is encouraged by the infusion of vast amounts of money.

Advertising costs money. The more money a particular party and its candidates have, the greater the amount of advertising they can afford. Since advertising pays for the salary of most media outlets, those paying for the advertisements tend to have more influence. This means the message and content reaching the electorate can be controlled. Under the "fairness doctrine" Court has already made attempts to prevent control of the media by a strong party. *Red Lion*

Broadcasting Co. v. FCC 395 U.S. (1969) 400. While this action seeks to help bring back a degree of fairness to elections so all candidates have a better opportunity to exercise their Free Speech.

As the Supreme Court explained in Buckley, "In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential." Buckley, 424 U.S. At 14–15; see also McConnell, 540 U.S. at 197 (recognizing the "First Amendment interests of individual citizens seeking to make informed choices in the political marketplace" (quoting McConnell v. FEC, 251 F. Supp. 2d 176, 237 (D.D.C. 2003))).

The importance of this issue is large. Controlling the message is how some parties rose to power with and mobs of citizens exalted their leaders while ignoring what filledthe train cars (qui quaerit locupletari avertit oculum suum). Incorporating into the record a more detailed explanation of the consequences of unlimited control of the message is not required since it is both common and frightful knowledge.

LEGAL ARGUMENT: INDIVIDUAL QUESTIONS

1. Has the Plaintiff established Jurisdiction and standing?
2. Do changes initiated based upon the actions of the D.C. Court apply to residents living outside of its jurisdiction?
3. In regards to the proposed Defendants, which ones is the Court able to examine for apparent violations?
4. Does the reasonable person test still apply in the Ninth circuit?

5. Do campaign donation from a corporation controlled by an individual equate to an individual contribution?
6. Based upon questions 1-5 does it appear any Defendants exceeded individual campaign contribution limits?
7. May the Plaintiff move forward to initiate actions against proposed Defendants that appear to have committed violations?
8. Is the proposed method of integrating the FEC's conciliation clause acceptable to the Court?
9. Is there justification for the injunction request?
10. Court approval of plan to notice PACs regarding preliminary injunction request.
11. Immunity of the Plaintiff and "Hohfeldian" request.

LEGAL ARGUMENT 1 : JURISDICTION AND STANDING

"[T]he Constitution mandates that prior to our exercise of jurisdiction there exist a constitutional 'case or controversy,' that the issues presented are 'definite and concrete, not hypothetical or abstract.'" Thomas v. Anchorage Equal Rights Comm'n, 220 F.3d 1134, 1138 (9th Cir. 2000) (en banc) (quoting Ry. Mail Ass'n v. Corsi, 326 U.S. 88, 93 (1945)).

The original action that first gave rise to this cause was unlimited campaign contributions that flooded California to change laws that enabled same-sex marriages to take place. This and other efforts like in other States like Maine, in turn led to the Plaintiff's injury by eliminating a primary source of potential income from same-sex honeymooners that were the focus customers of the bed and breakfast.

Evidence in the record demonstrates unlimited contributions in addition to being used to directly overturn or enact laws against same-sex marriages are being used to support candidates that take strong stances against same-sex marriages and attack those with marginal stances. (EXHIBIT 3 page 7 of 15)

The Plaintiff argues that campaigns contributions in excess of Federal limit or prohibited are illegal regardless of where they are sent or how they are disguised. The Defendants, while they have not made a formal response to this action, are certain to point to the fact that *Emily's List* was used to change statutes and apply one court's decision across the land. Further they can be expected to claim a degree of separation makes the campaign contributions they receive immune from inspection to determine donor intent. The Plaintiff counters this argument using the reasonable person test.

This is a clear controversy and jurisdiction should be granted.

Despite repeated Supreme Court rulings that *Akins* and not *Lujan* should be utilized to determine standing, the Ninth has frequently looked in the wrong direction. For this reason the Plaintiff presented a Lujanic argument. Whether standing under *Akins* or *Lujan* was met is largely irrelevant. One of the arguments made and demonstrated in the record is the effect that unlimited spending has on elections is the exact opposite of promoting free speech. Free speech is impeded by forcing the price to communicate that speech to the electorate higher. Therefore, standing can be seen along similar lines that standing was granted in *Cal. Pro-Life Council, Inc.*

v. Getman (CPLC–I), 328 F.3d 1088 wherein when the matter involved statutes effecting First Amendment rights, "*the Supreme Court has dispensed with rigid standing requirements.*"

In accordance with *Massachusetts v. EPA,* 549 U.S. 497, 535 (2007), standing could be contestable under the general theory that this is not a matter for the Courts rather a matter for the Executive Branch and Congress. The issue with the instant case isn't something involving an ancillary branch of Government, i.e. the EPA, rather it is regarding the funding of campaigns for reelection to office. Therefore, no impartial hearing could be expected if placed into the hands of incumbents trying to raise as much money as possible. For this reason the only proper standing possible is by a citizen attorney general using the power vested to him and to work within the Court system. Further no impartial ruling or action could be expected if the matter was presented before the FEC.

All same-sex couples, and potential couples have born the hurt caused by unlimited spending that either influenced electorate on ballot issues, or was utilized to help elect candidates that were against it. Therefore, it might be arguable that there is a large class of possible defendants. The same was true in *FEC v. Akins* 524 U.S. 11, 24 (1998) that an injury held in common with all voters could nonetheless give rise to standing because the plaintiff suffered that injury concretely and in a way particular to her. Therefore, it is not possible to deny standing on the basis this a political issue and not a judicial one.

The Courts have had according to some scholars a rather poor record in regards to denial of standing to marginal groups. (Nichol, Standing for Privilege, supra note 37, at 304; see also Gene R. Nichol, Jr., Justice Scalia, Standing, and Public Law Litigation, 42 DUKE L.J. 1141,

1168 (1993)) Justice Douglas concurring in *Flast* observed: "*The individual is almost certain to be plowed under, unless he has a well-organized active political group to speak for him."* Women typically are denied standing more often then men, minorities are denies standing more often then majorities, and as a member of a marginal group the Plaintiff naturally fears similar treatment in this suit. That is why particularly important for the Court to recognize, despite minor flaws that anyone could certainly point out, that standing to bring this action is necessary to further the interests of justice as a whole.

LEGAL ARGUMENT 2: CROSS CIRCUIT APPLICATION OF RULINGS

Do changes initiated based upon the actions of the D.C. Court apply to residents living outside of its jurisdiction? Decisions of on US Circuit Court of Appeals are not binding on another, or upon lower courts in another jurisdiction. *Hart v. Massanari* 266 F.3d 1155, 1172-1173. Neither Congress nor the Supreme Court weighed in on the changes that *EMILY's List* set in motion. Whether this case eventually lands in Guam, the closest Court to the Plaintiff, or Hawaii, his home State, both of these district Courts are in the Ninth Circuit.

The Ninth Circuit appears to have not had any cases to decide how common law is in concert with revised statutes. One Circuit, the Fourth, has had a case before it since the changes went into effect. That case was , *The Real Truth About Obama v. FEC* (Fourth Cir. 2011). This case included a challenge to CFR § 100.57. In its ruling the Fourth Circuit simply stated the challenge to § 100.57 has been mooted by *EMILY'S List FEC, 581 F.3d 1 (D.C. Cir. 2009)*. The difference in this case is the court is being asked to not set aside CFR § 100.57, rather it is a a showing that it hasn't been set aside in the Ninth Circuit.

The United States is a common law country. Common law principles are not embodied in statutes but arise from decisions made by the courts of the various states. Only one District Court came to its own conclusions.

Yes, the Ninth can look to DC Circuit for the logic they utilized. However, the same also applies to looking towards the 1st District where a more recent ruling dated January 31, 2012 regarding campaign contributions are in odds. Also the Court can look at its own prior rulings.

LEGAL ARGUMENT 3: JURISICTION OVER DEFENDANTS

Whether this case is heard in Guam, closest to Plaintiff, or Hawaii, his home State, it will be in the Ninth Circuit. A case might be made that since at least one Circuit court, the District of Columbia, has ruled to invalidate the contested Statute. Therefore, perhaps residents in that Circuit are not culpable in the injury-in-fact to a resident of another Circuit. However, the Court at this point is not being asked to make that determination. Rather, the Court is being asked to consider if should there be an appearance that they may have made excessive or prohibited contributions that they may be enjoined into the Classes.

Customers that come to the Plaintiff's bed and breakfast in Hawaii arrive from all States in the United States. Therefore, any unlimited campaign contributions, and spending have an impact upon him.

At the Federal level, the Presidential election itself elects a leader over the entire United States and this certainly would place any contributions to PACs focused on a Presidential candidate within the Class.

Primary elections eventually lead to the selection of one candidate to run on the party's ticket. This means spending on a primary in another state also can injure the Plaintiff especially when the thirst for money requires candidates to adopt extreme views that are carried out when in office.

The Plaintiff is effected by votes made in the House and Senate regardless of the State they represent since their actions are turned into policies enacted across the entire country. A new national law making it legal to enable same-sex couples to marry in all States is a possibility. It is Congressional members running at the State and territorial level that can help deliver a bill to the desk of the President to sign. Therefore, spending originating within, and made within a State outside the Ninth Circuit can lead to direct impact to the Plaintiff. Provisions with FECA do not state that the Plaintiff needs to establish actions in a Federal District Court in every Circuit. Therefore, the power to enjoin and prosecute Defenders regardless of their Circuit must be possible.

Therefore, for this reason the Plaintiff advances the argument that it doesn't matter if a proposed Defendant lives within another Circuit, the donation was spent in a different Circuit, or a candidate for Federal Office is in a different Circuit.

LEGAL ARGUMENT 4: REASONABLE PERSON TEST APPLICATION

Does the reasonable person test still apply in the Ninth circuit?

On January 31, 2012 in the United States Court of Appeals for the First Circuit *National Organization v. McKee* No. 11-1196 (First Cir. 1/31/2012) the reasonable person test was applied. If ever the Plaintiff needed to point to the pivotal moment that this entire action became clear it is upon reading that ruling. The Plaintiff apologizes if the citation for this case isn't exact. The National Organization for Marriage is sometimes referred to as NOM or simply National Organization.

Background: In October 2009 Maine voters were asked in a ballot question whether a recent law permitting same-sex marriage in Maine should be overturned. The National Organization for Marriage (NOM) claimed to be a nonprofit advocacy organization "dedicated to providing 'organized opposition to same-sex marriage in state legislatures,'" NOM I, 649 F.3d at 48, and it played a substantial role in Maine's same-sex marriage referendum campaign, see Nat'l Org. for Marriage v. McKee, 765 F. Supp. 2d 38, 43 (D. Me. 2011). The court concluded that when it comes to requests for donations to support a campaign that hence, *"the only relevant hearer is the hypothetical "reasonable person."*

EXHIBIT 1 is a printout from the New York Times and lists PACs by name along with a description of their expenditure activity. It was adapted into PDF format for easy transmission and the Plaintiff attests that the key information was dutifully reproduced. Candidate faces are associated with many of the groups. This is a consolidated list and not a solicitation from a PAC itself. However, anyone reading the New York Times need only scan the list and elect where to direct their contribution to best support the candidate of their choice. If they were against same-sex marriages, they couldn't help but not notice the National Organization for Marriage on the

list. The list demonstrates to any reasonable person how they should expect their contribution would be used toward the election of one specific candidate or advance one political party.

In cases where money is sent to a PAC that supports a specific candidate, it is effectively according to any reasonable bystander observing the transaction as if sent to the candidate directly. True, lawyers that search for bright-lines may always find reason to dispute this, however, it is clear enough. *Cf. Humanitarian Law Project,* 130 S. Ct. at 2720 (noting that "the scope of the . . . statute may not be clear in every application[,] [b]ut the dispositive point here is that the statutory terms are clear in their application to plaintiffs' proposed conduct"). That conduct is to make an excessive or prohibited campaign donation via an organization like those listed in EXHIBIT 1 that violates the limits listed in EXHIBIT 2.

Here the statutory terms involved are contributions as if directly a candidates only committee 26 U.S.C § 527(h)(2)(B). It is clear these are limited in EXHIBIT 2. The exact amounts are listed and proposed Defendants that wish to take the stand before a jury and claim they never heard of campaign limits are free to do so and let a jury or Judge determine the veracity of their claim. The specific statutes violated include contributions to:

National party committee, 2 U.S.C. §§ 441a(a)(1)(B), (2)(B), (c) and 441i(a)

Political committees, 2 U.S.C. § 441a(a)(1)(C) and (2)(C)

Presidential elections, 2 U.S.C. § 441a(a)(1), (2) and (6)

State party committee, 2 U.S.C. §§ 441a(a)(1)(D) and (2)(C) and 441i(b)

LEGAL ARGUMENT 5: NON-INDIVIDUAL CAMPAIGN DONATIONS

Do campaign donation from a corporation or foundation controlled by an individual equate to an individual contribution?

The Ninth Circuit, in Thalheimer vs San Diego (June 2011), quoted an often heard but untrue statement as if it were a fact:

> *"The Supreme Court has concluded that 'preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances.'" Id. at 694 (quoting FEC v. Nat'l Conservative Political Action Comm., 470 U.S. 480, 496-97 (1985)); see also Davis v. FEC, 554 U.S. 724, 741 (2008).* (brackets and quotations marks in original)

This untruth is on the blackboard of one attorney's office who repeats it over and over hoping to drive it into as many cases as possible. The sentence is taken out of context. It is Free Speech that is the compelling interest. Allowing Free Speech is what the Supreme Court is talking about and they are providing a justification that corporations and non-individuals may also enjoy that right. The Plaintiff is in agreement that this was the intention of the Supreme Court with one important provision. The provision is the non-individual that is allowed to speak isn't really an individual or group of individuals hiding being the mask of a legal construction.

The purpose of the Supreme Court wasn't enable a loop hole for individuals to exploit. However, that is exactly what seems to have taken place. While the Plaintiff at this point is not allowed to name specific names he can attest that upon review of the Open Secrets website that many very large donors were from legal constructions where one person had the power to spend money for the entire organization. Some of these campaign contributions were in the hundreds of thousands of dollars and even millions.

When the US Supreme Court permitted unlimited campaign donations by corporations, it did so specifically to corporations and not individuals. See *Citizens United v. FEC*, 130 S. Ct. 876, 886 (2010). Any individual above the age of 18 can set up a corporation with one individual holding all shares. Anyone can setup a foundation. A reasonable bystander observing the actions of a legal construction controlled by a single individual could not differentiate between the intention of the construction on paper or the intention of the individual.

This means the reasonable person test can render the contribution in the name of another which are prohibited . Title 2 Chapter 14 U.S.C § 441f

In the United States, if any individual was hiding behind a shame corporation committed a high crime, the attorney general can and would hopefully take actions. However, under the current operation of the FEC no action is taken. Free speech is cited as the excuse. Documentation of this was provided by Heather Gerken. the J. Skelly Wright Professor of Law at Yale Law School in her testimony submitted to the United States Senate Committee on Rules and Administration., February 2, 2010.

There is a well founded body of law that examines corporate officers and holds them responsible for their actions. The *United States v. Park* 1975 (Park doctrine) has landed many corporate officials in jail, and the same principles and precedents apply.

When corporations are “artificial entities” that reflect the view of a controlling shareholder no reasonable bystander could differentiate between the motivation and expectation of the actions.

A challenge to this line of reasoning is fully expected. An attorney will shortly file a reply that goes somewhat along the lines “it is impossible for a court to determine the mind set of a corporation, a fake company from a real one, and it is a grave inconvenience to corporations and

chill upon their right to free speech if they have to prove they are not acting on the behalf of an individual". In other words he shall insist the Court abandon the reasonable person test and establish a bright-line rule that any person that includes the letters "Inc." after his name need not comply with individual limits.

The voice of the real and functional corporation is no small matter. It effects the corporation internally as well as externally. Having worked for some very large corporations, the Plaintiff attests that many corporations forbid their employees to claim they were speaking as with the companies voice unless comments were approved. This is especially true in political matters. Some employees within a corporation may be pleased with the corporates political stance and applaud corporate campaign contributions. Others may be quite upset. For this reason alone, many large firms prohibit the actions of the corporation within the political arena. It leads to polarization within a firm. Employees then look at adhering to the company line in order to advance up the rank. Corporations with strong political connections tend to gather their employees to assist candidates, hold fund raisers, and pressure employees even more.

When a proper company sees adopts political views and endorses a candidate and spends money from its treasury it does so according to corporate policy and statute. Both policy and statute in a legally functioning corporation require important decisions to be made by the majority vote of the share owners within a meeting that has established quorum. In many "closely held" corporations this means one and only one person needs to decide. Establishment of quorum in a corporation typically requires one third of the outstanding shares to be present. A majority vote within one third is half that amount. This in turn means a single individual within a typical corporation holding as little as one sixth of the shares can issue by edict the voice of the corporation.

When one individual speaks with two voices there are two potential violations of FECA. The first violation is the combined total of individual contributions and contribution directed via the corporation may exceed campaign contribution limits. 11 CFR 110.9 Violation of limitations. [67 FR 69949, Nov. 19, 2002] The second violations is the actor that has initiated the corporation's voice is speaking via a third party. According to 2 USC Chapter 14:

§ 441f. Contributions in name of another prohibited

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another person.

Victor Brudney & Allen Ferrell in "Corporate Charitable Giving," 69 U. Chi. L. Rev. 1191 (2002) described how the ability of an executive officer of a company to give to their political cause could be considered to be executive pay. Under this argument, the funds spent by the corporation are an executive's total compensation package. Since this falls into the category of as their personal income a strong argument can be made when this link can be found.

However, under this initial round of Defendants the test using controlling amount of shares will be utilized. If future time allows to investigate major offenders where a contribution is really the equivalent to their pay, then the Defendant list will be expanded.

LEGAL ARGUMENT 6: APPEARANCE OF ILLEGAL ACTIVITY

Based upon the analysis in numbers 1-5 this section asks the question does it appear that any Class II Defendants exceeded individual campaign contribution limits? The Plaintiff is not allowed to provide the exact names and details of who is in Class II in a public document such as

this. However, the Plaintiff will attest that according to the website he reviewed that many of the proposed Defendants greatly exceeded individual limits. Some by as many as 10 times or more. The following table outlines the individual maximum contribution limit for 2011-12 according to FEC (http://www.fec.gov/pages/brochures/contrib.shtml). See EXHIBIT 2

To each candidate or candidate committee per election	To national party committee per calendar year	To state, district & local party committee per calendar year	To any other political committee per calendar year[1]	Special Limits
$2,500.00	$30,800.00	$10,000 (combined limit)	$5,000.00	$117,000* overall biennial limit: • $46,200* to all candidates • $70,800* to all PACs and parties[2]

Some figures in the table are slightly higher than limits for the 2009/2010 campaign season.

Recipients (Class I Defendants), contributors (Class II Defendants), and beneficiaries (Class III Defendants) are in violation of one or more statutes when campaign contributions exceeded these figures. Governing law includes:

11 CFR 110.3 Contributions ….other committees; (2 U.S.C. 441a(a)(5), 441a(a)(4)).

11 CFR 110.4 Contributions in the name of another; cash contributions (2 U.S.C. 441f, 441g, 432(c)(2)).

11 CFR 110.9 Violation of limitations. [67 FR 69949, Nov. 19, 2002]

The biennial limit runs for a two-year period beginning January 1 of the odd-numbered year to December 31 of the next even-numbered year. 11 CFR 110.5 Aggregate biennial contribution limitation for individuals (2 U.S.C. 441a(a)(3))

To create the different Class II Defendants, this table will be compared to data from sources including the public disclosure by Class I defendants. The different type of Class I defendants will be organized according to their best fit in the columns provided. So, for example a PAC that as of the filing date of this action is best described as focused on the election of a single Federal candidate, the first column would applied. PACs that are generically described as "conservative" or "liberal" and support Federal candidate would fall into the second column.

Examples:

1. A contributor making a $30,800 contribution to a PAC described as being "liberal" would not have exceeded the individual contribution limit, for that column. They would not qualify as a Defendant in this action unless they exceeded one of the other columns.

2. A contributor that made 3 different $30,800 contributions in the same year would fall into the final column and qualify as a Class II defendant for exceeding the $70,800 limit.

3. A contributor that made a $10,000 contribution to a PAC that described itself as supporting just one candidate for Federal Office will have exceeded the contribution limit.

This is an instance where the bright-line rule applies. If the Court is agreement with any of the 3 different legal theories presented that make the donations illegal, then the proposed Class II defendants either are or are not guilty.

It is anticipated that a tremendous wave of excuses will flow from this case, which may indeed have some merit for the smaller offenders. However, for larger offenders that had the means to consult with reputable attorneys there is little excuse. It is for this precise reason that the Plaintiff has not proposed all Class II defendants to be in the same Class.

One of the very odd things that the Plaintiff discovered when preparing this case is that one family that is associated with giving to prevent same-sex marriages, has requested money back in an apparent attempt to be certain they fell under the annual limit. One member of the family was still over the limit when the data was last checked. However, that may be only due to a delay in return of funds.

Consideration for removing members from Class II if they made a contribution and then were able to retrieve it is something that will have to be evaluated during certification of the different classes.

LEGAL ARGUMENT 7: TRIAL PLAN

May the Plaintiff move forward to Phase II of the action. Phase I only asks the court to consider jurisdiction, standing, declaratory, judgment, and preliminary injunction. Phase II enables to Plaintiff to move forward to formalize the classes along with approval to notify the classes. Since the action involves a large number of potential Defendants elements of their defense are expected to be similar. Further, the potential defendants that have have given or received millions of dollars in questioned campaign contributions are expected to put up a spirited defense that will assist the smaller offenders.

Should the Court agree with the stance that is typically taken by those that try and tear down spending limits and attempt to build in loop holes there isn't much point to proceed. Therefore, in reality the trial plan first and foremost begins with this Court's determination regarding common law and reasonable person test.

If no answer can be obtained on this question, or the US Courts are not based on common law as the Plaintiff believes his trial plan is simple. There is no Phase II. If on the other hand word from this court is encouraging the Plaintiff will proceed, however, will do so with council.

LEGAL ARGUMENT 8: INTEGRATION OF FEC CONCILIATION

Is the proposed method of integrating the FEC's conciliation clause acceptable to the Court?

The FEC allows offenders to negotiate a “conciliation”. A similar provision is within FRCP rule 68 that allows for an offer of judgment. Unlike under FEC regulations, the Defendants are already in Court and a conciliation is not possible to prevent Court action. However, FRCP Rule 68 offers Defendants a similar route. The difficulty with Rule 68 is that in an action against many Defendants the complexity of receiving and answering many different offers shortly before trial could lead to chaos.

In accordance with local rules the Plaintiff signifies the desire to submit the case early in the litigation to a settlement conference. Settlement offers will be extended according to several factors including type and scale of involvement.

This helps eliminate the FEC from making the conciliation since they have demonstrated that their conciliation agreements bore no relationship to the scale of the offense. Further the Plaintiff attests according to LR 16.6 that he does not object if the conference is held before the

judge trying the case, and this shall serve as the written stipulation that Plaintiff recognizes this fact. Opposing counsel that may be reading this are informed that they must also accept this stipulation in writing.

Any negotiated payment that is under $500,000 must be delivered within 60 calendar days from of mailing of a certified mail letter to the proposed Defendant informing the person of the acceptance of the settlement agreement. A settlement that is $500,000 or higher must be delivered within 90 days.

If settlement payments are not received within the prescribed time it will serve as an indication to the Plaintiff's settlement offer was rejected and a request for trial.

Corporate Defendants

1. A review of Corporations on this list will be conducted to first determine if there is sufficient independent data published to determine whether it was likely the firm had one shareholder that held directly, or controlled the interest of, enough shares to represent 50% of a quorum vote. Sources would included Yahoo Finance, and Baron's.

2. When no independent confirmation can be made, the Corporation will be contacted . The following data will be requested to provide credible: details of meeting held to approve the campaign contribution including: quorum requirements, shareholders present at the meeting and how they voted along with an affidavit that the information was accurate.

3. No further action will be taken if credible information indicates no single officer that voted for the contribution, held enough shares to control 50% of the minimum needed to establish quorum.

4. If no data is forth coming, or it is readily apparent a single individual controlled quorum, an action would be initiated using a licensed attorney to gain the Court's assistance.

5. If after consideration of the evidence and any defense, the Court determines that the Corporation and/or the individual is guilty, the Court will be asked to determine the consequences.

6. Since the FEC has demonstrated a failure to negotiate meaningful “concilations” that bore any relationship to the scale of the offense. Therefore, the party that will represent the interests of the United States in this negotiation shall be the proposed citizen Attorney General or his designated representative. Any proposed conciliation will be presented to the FEC for final approval. If rejected by the FEC on the basis that it is too low, the Attorney General will attempt to obtain a more favorable conciliation.

7. Any negotiated payment that is under $500,000 must be delivered within 60 calendar days from of mailing of a certified mail letter to the proposed Defendant informing the person of the acceptance of the conciliation. A conciliation agreement that is $500,000 or higher must be delivered within 90 days.

If settlement payments are not received within the prescribed time it will serve as an indication to the Plaintiff's settlement offer was rejected and a request for trial.

Class II(e) Defendants are also non-individuals. However, they are a slightly different breed. They collect money from donors, and pass it across the table to a PAC that does the spending. The names and contributors are typically kept secret. These types of organizations are more difficult to identify and the individuals behind them are more difficult to prosecute. Finding out they received large individual donations will require some discovery work. The Plaintiff will

need assistance from the Court to prosecute these to obtain statements (14 U.S.C § 1001 Statements) and they may only be incorporated into the early part of the trial plan. There is enough items in common with them to keep them as members of a class in this action. However, if they fail to reach settlements to prevent further action, it is anticipated that enough difference will be found between them to require trial of each one separately.

Five statutes are expected to come into play to prosecute these defendants: 11 CFR 100.57 Funds must be treated as contributions; 11 CFR 106.6(c) Allocation of funds; 11 CFR 106.6(f) Payments for one or more clearly identified candidate, and 11 CFR 110.4 Contributions in the name of another; cash contributions 2 U.S.C. 441f, 441g. U.S.C § 276 IRS Disallowance.

LEGAL ARGUMENT 9: PRELIMINARY INJUNCITON

In almost all areas of law, money that is illegally obtained, remains illegal and cannot be utilized. Washing money via shame organizations is called money laundering.

Many PACs were created to assist individual campaign donors so they could exceed their contribution limits. If the reasonable person test and common law still applies in this Nation, operations that assist others to violate the law need to be shutdown and put on notice.

A preliminary injunction is the best way to do this.

It may seem rather ironic that the Plaintiff frequently quotes the same cases and a similar argument that led to the break down in spending limitations. Breaking down spending limitations was seen by prior Courts as good. However, as if often the case with man, good intentions do not lead to the desired goal. As the marketplace that can deliver the most desired form of free speech is limited, control of unlimited spending is necessary. One reason

Guatemala invited the Carter Center in to help with their elections is they recognized "drug king-pins" had the ability to buy up almost all critical communication channels to the voters.

Note: To the credit of Guatemala's government and political parties they realized they had a problem and made the request to the Carter Center for assistance. Unlike the United States, the people of Guatemala can proudly point that they are on the road towards a more democratic country.

The preliminary injunction is a very easy one for this Court to make. It simply requests that the Court acknowledge this action. The action has been presented to the Court and it calls into question the legality of monies that groups may have received. This in turn requires the groups to handle the funds according to FEC statute.

"Courts have long recognized that '[o]ne does not have to await the consummation of threatened

injury to obtain preventive relief.'" *Cal. Pro-Life Council v. Getman*, 328 F.3d 1088, 1094 (9th Cir. 2003) (citation omitted). The threaten injury to the Plaintiff has been documented in the record and has spurred the case forward. However, in doing so, acting on the behalf of the FEC, the Plaintiff is attempting to help enforce the goals of FECA upon all parties on a non-partisan basis so the electorate can decide issues concerning them without the pollution of unlimited campaign contributions.

LEGAL ARGUMENT 10: NOTICE PRIOR TO PRELIMINARY INJUNCTION

Court approval of plan to notice PACs regarding preliminary injunction request. According to FRCP Rule 65 notice needs to be provided to the adverse party. However, the preliminary injunction applies to many different PACs that have received funds that according to the

arguments set forth in this action cannot be used to campaign. It is not possible for him to individually name them owing to 14 U.S.C. 437(g)(12). Nearly every "super PAC" appears to have received and spent monies of this nature. PACs can also reform, rename, move or solicit new monies almost overnight to circumnavigate an injunction that named only a few PACs. Therefore, the injunction request has been worded to include "all" PACs.

FEC Statutes are already in place that dictate what should occur when there is a question of legality regarding funds. The only new message that needs to be conveyed is that this suit calls those funds into question. Therefore, at this point it is not necessary to confirm that this entire document reached the PAC. Rather it is necessary that the document be placed on the Internet where it can quickly be downloaded without the delay of international post. Further it is necessary word of the action needs to be conveyed.

To coordinate getting information to as many PACs as possible regarding this pending injunction, so comment and rebuttal can be made, the Plaintiff shall make attempts to ensure knowledge of this action is broadcast as much as possible. This shall include:

*Posting the entire contents of this action on the Internet

*E-mails to PACs that appear to be still active that have raised over $1,000,000 as of February 15, 2012.

*Announcements to news agencies.

If additional disclosure need be made prior to issuing the preliminary injunction, the Plaintiff will comply with reasonable Court directions that take into account the expense of communicate internationally. The Plaintiff will supplement the Court record based upon any press the case

receives to help the Court in its consideration that knowledge of the action has reached Defendants.

LEGAL ARGUMENT 11: IMMUNITY OF PLAINTIFF

Immunity of the Plaintiff. In this complaint the Plaintiff shall be acting as an agent for the United States on the behalf of the Federal Election Commission (FEC). Protection from suit and immunity from prosecution as a consequence of this action is claimed along the same lines protecting the officers of the FEC. Relevant sections include:

11 CFR § 9409.1 (c.) Commission does not waive the sovereign immunity of the United States Further, protection has been established within the Ninth Circuit in *Bland v. Fessler,* 88 F.3d 729, 736-37 (9th Cir.1996) *"That one should not have to risk prosecution to challenge a statute is*

especially true in First Amendment cases." However, this doesn't necessarily mean that someone won't try and launch an attack upon the immunity of the Plaintiff. The Court has recognized that this must be done in an early stage. As a result, it has in *Hunter v. Bryant,* 502 U.S. 224, 227, 112 S.Ct. 534, 116 L.Ed.2d 589 (1991) (per curiam) stated *"we have repeatedly have stressed the importance of resolving immunity questions at the earliest possible stage in litigation."* Therefore, if there is valid reason to challenge the immunity of the Plaintiff it should be done early. Should the Court find that the Plaintiff does not have the same protections afforded to according to the standard laid out, the complaint may be withdrawn.

One of the chilling effects of the FEC's complicated statutes is the possible threat of retaliatory action against the Plaintiff. On the one hand the Plaintiff is being required to divulge he has injury-in-fact and is under threat of repeated harm. Otherwise he risks not being able to establish

standing. On the other hand if he demonstrates that he has a partisan agenda he might be at risk. Could someone claim he has a partisan agenda? Certainly they might. However, Congress authorized within FECA the capability of a citizen to act, and they most certainly had anticipated that citizens may act on a partisan basis which wouldn't have disqualified that party.

It is the contention of the Plaintiff that while the original cause of action that led to the injury-in-fact may seem to be partisan, the deeper it is looked at the more it is seen that unlimited campaign financing is what led to overturning laws for, or implementing new laws against, same-sex marriage. The Plaintiff's justification to attack unlimited campaign contributions and enforce FEC statutes isn't a partisan issue. The Court in approving the Plaintiff to move forward is enabling the Plaintiff to attack the source of his injury, which isn't partisan, and to a certain extent might be viewed as a necessity owing to FEC 11 CFR § 7.7(b) Prohibited conduct *"Giving favorable or unfavorable treatment to any person or organization due to any partisan, political, or other consideration."*

This all said, prior to the Court's determination of any declarations effecting any parties or issuance of a preliminary injunction, the Plaintiff, requests a "Hohfeldian". This is a term coined by Professor Jaffe to refer to the plaintiff who "seek[s] a determination that he has a right, a privilege, an immunity or a power." Louis L. Jaffe, The Citizen as Litigant in Public Actions: The Non-Hohfeldian or Ideological Plaintiff, 116 U. PA. L. REV. 1033, 1033 (1968) (citing Wesley Newcomb Hohfeld, Some Fundamental Legal Conceptions as Applied in Judicial Reasoning, 23 YALE L.J. 16 (1913)).

The Court has held in *Sierra Club v. Morton*, 405 U.S. 727, 737 (1972) that it is not enough to "argue the public interest in support of his claim". Therefore, a showing that the Plaintiff stands to benefit is not only a excusable, it is a requirement. Were this a qui tam, which it is not, the Plaintiff would stand to receive a great benefit from millions of dollars in potential fines to Defendants. If that were the case, his merit to seek immunity would be less tenable. However, even in a qui tam, the government encourages such suit by affording the plaintiff protection as a "whistle-blower".

Again, prior to the issuance of a preliminary injunction, the Plaintiff requests the Court to consider immunity first. If the Court cannot confirm indemnification of the Plaintiff on the same basis as if he was acting as an Officer of the FEC for the United States then the Plaintiff reserves the right to withdraw the preliminary injunction request.

STANDARD OF REVIEW FOR PRELIMINARY INJUNCTION REQUEST

The injunction request is a very simple one for the Court to consider. It merely requests that the Court review the arguments advanced in this brief and determine if any of them may have merit. If none of the arguments have any merit, the injunction request should be denied. If any of the arguments have merit, then legality of the monies that proposed Class I Defendants receive and Class 3 Defendants benefit from is in doubt. The FEC already has in place rules to govern how monies are to be treated if there is any legal doubt. Class I Defendants are free to continue receiving funds according to the FEC rules and only need to deposit them until the question of the legality of the funds is resolved. Therefore, Class I Defendants are not seriously hindered by the injunction and Class II defendants can continue to make contributions that are in question.

The Court may conduct a de novo review after it has been satisfied that enough notice has been provided to effected parties. Once a plaintiff has been wronged, he is entitled to injunctive relief only if he can show that he faces a *"real or immediate threat . . . that he will again be wronged in a similar way." Lyons,* 461 U.S. at 111, 103 S.Ct. 1660 (1983). *Mayfield v. United States,* 599 F.3d 964, 970 (9th Cir. 2010). The record has demonstrated that unlimited campaign contributions has led to contenders in the Republican race that have a real chance of obtaining office as President of the United States. They have vowed to once again prevent same-sex marriage and to replace judges that overturned laws that allowed them in the past.

Courts asked to issue preliminary injunctions based on First Amendment grounds face an inherent tension: the moving party bears the burden of showing likely success on the merits – a high burden if the injunction changes the status quo before trial – and yet within that merits determination the government bears the burden of justifying its speech-restrictive law. *Mazurek v. Armstrong,* 520 U.S. 968, 972 (1997), with *United States v. Playboy Entm't Group*, 529 U.S. 803, 816 (2000). Therefore, in the First Amendment context, the moving party bears the initial burden of making a colorable claim that its First Amendment rights have been infringed, or are threatened with infringement, at which point the burden shifts to the other party to justify the restriction. *Klein v. City of San Clemente*, 584 F.3d 1196, 1201 (9th Cir. 2009).

The status quo prior to the bidding up of advertising rates by organizations, sudden flush with cash, was the ability for free speech to flourish. The new status quo is owing primarily to the huge influx of cash from a relatively few wealthy contributors that exceed contested statutes. Until the challenge regarding the statutes can be adjudicated, the Plaintiff is likely to suffer

irreparable injury. The specific irreparable injury the Plaintiff fears the most is the election of a Presidential candidate that vows to destroy the Judiciary and remake the fabric of society in the image of the donors making the contributions. Radical elements of society are motivated the most to support candidates in a large way and this in turn leads to a radical society as a whole.

The prior uncontested quo is that before the changes to the statutes unlimited campaign contributions from individuals was illegal. By approval of the preliminary injunction request, the Court returns to the "last uncontested status quo between the parties." *Stenberg v. Cheker Oil Co.*, 573 F.2d 921, 925 (6th Cir. 1978). (citing *Ross-Whitney Corp. v. Smith Kline & French Laboratories,* 207 F.2d 190 (9th Cir. 1953)).

A verified complaint may be treated as an affidavit, and, as such, it is evidence that may support injunctive relief. See *Lew v. Kona Hosp*., 754 F.2d 1420, 1423 (9th Cir. 1985). The Plaintiff has presented evidence that unlimited campaign spending is a restriction on free speech. Those that cannot afford to be highest bidder are shut out from waging television advertising wars used to sway the electorate. The injunction request effects PACs and seeks to stop them from continuing to inhabit free speech by spending monies obtained by encouraging individuals to exceed individual campaign contribution limits, or using monies obtained owing to recent revisions to statutes that enabled them to pass money between shell organizations. (EXHIBIT 3 Page 3 of 15 has example of money passing in this manner.) Prohibiting funds from transferring between groups that are intended for electioneering purposes is why 11 CFR 106.6(c) Allocation of funds 11 CFR 106.6(f) Payments for one or more clearly identified candidate existed. Addressing the alterations that precipitated from *EMILY's List* is necessary to help stop this loop hole made wide by FEC Advisory Opinion 2005-13 (EMILY's List) (EXHIBIT 4).

In accordance with *Gonzales* 546 U.S. At 430 the Plaintiff must provide proof and not just speculation. In summary the proof was established in South Carolina when wealthy PACs began to outbid others for the narrow band of advertising slots available prior to the election. As contests grow more heated, that bidding war can only be expected to intensify and shut out free speech of others. Even if PACs were equally funded, and those that refuse unlimited contributions pale in comparison, determining the balance of harms and public interest, "[w]here the First Amendment is implicated, the tie goes to the speaker," *Wisconsin Right to Life,* 551 U.S. At 474. It is expected that some will argue once again that some PACs can raise equal amounts from thousands of voters instead of just a few. This in turn raises the question of equal protection. Protecting the rights of a few speakers to make their free speech while preventing the free speech of many isn't equal protection.

Regarding FRCP Rule 65(c) Security, it is the Plaintiff's contention that he is acting under statutes provided for this specific type of enforcement according to FECA and is therefore acting as an agent of the United States to uphold the Act owing to to the failure of the FEC.

This will enable PACs to provide any justifications to continue restrictions on free speech of less affluent candidates. It will be left to the Court's discretion whether enough notice and time has been provided to those effected by the request. This said, it is the Plaintiff's belief that thirty days from the date of filing this action are sufficient. The Court may act sooner if desired. The Court is requested to look at the likelyhood the Plaintiff would prevail against a challenge and evidence offered by PACs, if any, before ruling on the request.

DISPUTED FACTUAL ISSUES

This Brief has outlined many factual disputes, however, 4 disputes are the primary ones:

1. Whether a reasonable person can judge if a campaign contribution directed towards a third party is excessive or prohibited.
2. Whether it is possible to trace and ascribe donations transferred between organization back to the original donor to determine intent and judge it to be an individual donation.
3. Whether unlimited campaign contributions have led to increased quantity or quality of Free Speech or the opposite.

RELIEF PRAYED

1. To stop prohibited, excessive and illegal unlimited contributions from flowing into the political process that has led candidates to adopt hard-line positions against same-sex marriages.
2. To enable electorate to decide upon issues without the influence of “dark money” that attempts to sway them using illegal campaign contributions.
3. To act as Citizen Attorney General of the United States on the Behalf of the U.S. Federal Election Commission to press charges, and negotiate settlements against those are accused of violating the law.

DEMAND

For the foregoing reasons and arguments therein, the Plaintiff respectfully requests this honorable Court to: review immunity status of the Plaintiff; recognize the Plaintiff's jurisdiction and standing to bring this action; provide declaratory judgments as described; approve the

preliminary injunction requested; permit the Plaintiff to proceed as Citizen Attorney General Of the United States acting on the behalf of the U.S. Federal Election Commission, seek judgments against the Defendants for violations of FECL, negotiate settlements on the behalf of the FEC, and reimbursement of attorney fees and costs associated with this action as well as other equitable judgments the Court deems reasonable.

A non-jury trial is requested by a panel of three judges in accordance with FECA.

VERIFICATION

I, Philip B. Maise verify under penalty of perjury that the foregoing is true and correct. Executed and dated:

Miri, Malaysia, 12th Day of March, 2012

/s/ Philip B. Maise _____

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DISTRICT COURT OF GUAM

TERRITORY OF GUAM

PHILIP B. MAISE PROPOSED PLAINTIFF AND CITIZEN ATTORNEY GENERAL OF THE UNITED STATES ACTING ON THE BEHALF OF THE U.S. FEDERAL ELECTION COMMISSION	)	Civil Case No. _____ Three-Judge Court PROPOSED DECLARATORY JUDGMENT Class Action.
vs.	)	Hearing: NOT REQUESTED THE HONORABLE JUDGES
POLITICAL ACTION COMMITTEES-CLASS I, INIDIVIDUAL DEFENDANTS-CLASS II-a, CLASS II-b, CLASS II-c, NON-INDIVIDUAL DEFENDANTS-CLASS II-d, ORGANIZATION DEFENDANTS-CLASS II–e, OTHER DEFENDANTS-CLASS III-a, CLASS III-b, CLASS III-c	)	1. 2. 3.

PROPOSED DECLARATORY JUDGMENT

A COMPLAINT FOR DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION AND CERTIFICATE OF SERVICE was filed in the DISTRICT COURT OF GUAM, TERRITORY OF GUAM by the proposed Plaintiff Philip B. Maise acting as Citizen Attorney General for the United States of America, on behalf of the U.S. Federal Election Commission (Plaintiff).

A panel of three Judges reviewed the complaint along with the BRIEF IN SUPPORT OF DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION and EXHIBITS 1-4.

NOW THEREFORE, after consideration the court hereby ORDERS the following DECLARATORY JUDGMENT RELIEF: that consists of the following findings of fact and rulings:

1. Regarding the subject of immunity for the Plaintiff:

    (a) The Court has reviewed the request by the Plaintiff to determine if his level of immunity is the same as if he was a direct officer of the Federal Election Commission and has concluded that like immunity applies; or

    (b) The Court has reviewed the request and requires supplemental information or testimony as detailed in its ruling; or

    (c.) The Court has reviewed the request and concluded the Plaintiff will not qualify for the same immunity as an officer of the Federal Election Commission, however, he is allowed to act as his own peril.

2. Regarding request by Philip B. Maise to proceed as Plaintiff and Citizen Attorney General acting on the behalf of the Federal Election Commission (Plaintiff):

(a) The Court has reviewed the request and finds sufficient evidence for him to proceed with the action provided he adhere to Court requests 1, 2, 3....; or.

(b) The Court has not found enough justification in the record and requires supplemental information as follows 1, 2, 3.....:and/or

(c.) The Court requires notification to be made to …... and sufficient time …... days to reply; and/or

(d) The Court has set the matter for hearing on.....

3. Regarding requests for Plaintiff to attend hearings during "Phase I" by telephone:

(a) The Court approves the request and Plaintiff shall coordinate with …..... ; or

(b) The Court denies the request and requires Plaintiff to attend in person.

(c.) The request is moot since the Court approves Plaintiff to proceed to "Phase II" and he shall identify a licensed attorney to make appearances on his behalf, and proceed with identification and certification/notification of the classes.

4. Regarding FEC Advisory Opinion 2005-13 (*EMILY's List*) (EXHIBIT 4) that some believe helped make unlimited campaign contributions legal:

(a) The Court finds sufficient basis to conclude that limits are cumulative as described by the FEC and apply no matter where an individual lives and no matter where the donation is received or spent; or

(b) Individual limits to campaigns only apply based upon jurisdictional area. Individuals limited within one jurisdiction may make unlimited contributions to areas outside their particular Circuit's jurisdiction whenever that other jurisdiction allows.

5. Regarding EXHIBIT 4 and the applicability of the three statutes (11 CFR 100.57 Funds must be treated as contributions, 11 CFR 106.6(c) Allocation of funds, 11 CFR 106.6(f) Payments for one or more clearly identified candidate) that were changed owing to a ruling regarding *Emily's List* in the Circuit Court of Appeals for the District of Columbia, the Court finds that the other Court's ruling:

(a) Applies only within that Court's jurisdiction; and/or

(b) Was improperly applied into areas outside that Court's jurisdiction; and/or

(c.) Was based upon flawed argument and evidence indicates unlimited campaign contributions does not lead to increased quantity or quality of free speech; and/or

(d) This question must be taken to the US Supreme Court for resolution.

6. Regarding the question of applicability of common law and reasonable person test:

(a) The Court confirms the United States is ruled by the principles of common law. The reasonable person test is valid to interpret whether an individual complied with statutes.

(b) The Court now believes otherwise.

7. Regarding campaign contributions by non-individuals such as corporations, foundations, non-profits, or their like:

(a) The Court confirms that if evidence demonstrates a campaign contribution was made on the behest of a single or group of individuals then the contribution must be treated as if made by a single or group of individuals. When made by a group of individuals, it may be attributed evenly among the group unless evidence leads to conclude otherwise.; or

(b) To escape the possibility that an individual will violate the individual campaign contribution limits, they should direct contributions via a third party.

8. Regarding whether a receiving committee is independent of the candidate, cause, or party:

(a) The Court confirms that should a reasonable person when viewing the totality of the situation would conclude their contribution would be utilized to advance a specific candidate, cause or political party, then their contribution shall be considered to be as if made directly to the candidate, cause, or political party and subject to individual limits and disclosure.; or

(b) To circumvent the intention of FECA to limit individual campaign contributions, individuals should direct their contributions to a third party that will attempt to influence the electorate according to their wishes.

9. The Court has reviewed the logic of the First Circuit Court Of Appeals January 31, 2012 ruling wherein they determined funds contributed to the National Organization For Marriage (NOM) were to be treated as if given directly. This Court concludes that

(a) The same logic would hold if a similar case was presented in the Ninth Circuit Court of Appeals; or

(b) Judges of the First District Court of Appeals in Boston are misguided and any bright-line no matter how tenuous is how laws are supposed to be interpreted.

10. The Plaintiff has presented no named Defendants in accordance with FEC regulations and regulations requiring formal definition of classes. However, should evidence be presented before the Court that individual campaign contribution limits were violated via third party organizations, or by giving via a third party, then:

(a) The Court shall rule based upon the arguments and evidence presented; or

(b) The Court will be blind to any arguments and guarantees an innocent verdict.

11. The Plaintiff has indicated that the Defendants that are expected to be named within the classes are expected to come from nearly all Circuits of the United States. Based on the fact that

FECA enables a Citizen Attorney General to operated from “any” Federal District Court. Then this District Court has jurisdiction over all possible Defendants regardless of where they may reside.

12. Upon entry of the order, the Plaintiff shall provide press statement for immediate release that helps to notice as many effected parties as possible. At a minimum this shall include:

International Herald Tribune (http://www.iht.com);
USA Today International (http://www.usatoday.com);
Military Times Media Group (cvinch@militarytimes.com);
Overseas Vote Foundation(http://www.overseasvotefoundation.org/intro/);
Stars and Stripes (www.estripes.com);
National Public Radio (NPR.org);
CNBC (http://www.cnbc.com);
Wikipedia News (http://www.wikipedia.com);
and any other appropriate newspaper or news media
At a minimum the press release will describe:

13. After certification of the classes, the Plaintiff is to make a similar press release specific to the updated status of the case. The notice must clearly and concisely state in plain, easily understood language:

(i) the nature of the action;

(ii) the definition of the class certified;

(iii) the class claims, issues, or defenses;

(iv) that a class member may enter an appearance through an attorney if the member so desires;

(v) that the court will exclude from the class any member who requests exclusion;

(vi) the time and manner for requesting exclusion; and

(vii) the binding effect of a class judgment on members under Rule 23(c)(3).

14. The Plaintiff shall provide a status report regarding efforts to make the action known to potential Defendants of the classes so they can make a rebuttal by April 15, 2012.

15. To facilitate communication to Plaintiff he is to reestablish his Pacer account and setup an account for electronic documents on CM/ECF.

16. Other findings of fact and orders.

IV. DISPUTES

Defendants may formally dispute this Order by notification to the Plaintiff and the Court. Defendants have the burden of demonstrating that the position of the Plaintiff is arbitrary and capricious or otherwise not in accordance with law.

V. EFFECT OF ORDER

This Order for Declaratory Judgment is a partial remedy for the civil claims of the Plaintiff for the violations alleged in the Complaint filed in this action, and does not resolve the civil claims

of the United States for civil penalties and other injunctive relief for the violations alleged in the Complaint in this action. This Order also does not preclude the possibility that some actions against Defendants may be transferred into criminal court. (14 U.S.C § 9042) This Order is not a Judgment against any specific Defendant. Defendants have yet to be formally converted into Classes.

VII. RETENTION OF JURISDICTION

The court shall retain jurisdiction over this case until termination of this Order, for the purpose of resolving disputes arising under this Order, or effectuating or enforcing compliance with the terms of this Order.

SO ORDERED

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DISTRICT COURT OF GUAM

TERRITORY OF GUAM

PHILIP B. MAISE PROPOSED PLAINTIFF AND CITIZEN ATTORNEY GENERAL OF THE UNITED STATES ACTING ON THE BEHALF OF U.S. FEDERAL ELECTION COMMISSION	)	Civil Case No. _____ Three-Judge Court CLASS ACTION FOR: VIOLATIONS OF STATUTES OF FEDERAL ELECTION COMMISSION
vs.	)	PROPOSED PRELIMINARY INJUNCTION
POLITICAL ACTION COMMITTEES-CLASS I, INIDIVIDUAL DEFENDANTS-CLASS II-a, CLASS II-b, CLASS II-c, NON-INDIVIDUAL DEFENDANTS-CLASS II-d, ORGANIZATION DEFENDANTS-CLASS II–e, OTHER DEFENDANTS-CLASS III-a, CLASS III-b, CLASS III-c	)	Class Action. Hearing: NOT REQUESTED THE HONORABLE JUDGES 1. 2. 3.

PROPOSED PRELIMINARY INJUNCTION

Plaintiff Philip B. Maise acting as Citizen Attorney General for the United States of America, on behalf of the U.S. Federal Election Commission ("FEC") , filed a Complaint Federal District Court of Guam on March __ 2012, against 3 different classes of persons. These three classes were:

Class I – Organizations that received funds in excess of individual campaign contribution limits as set by the FEC within the last 5 years of filing date.

Class II – Individuals, and non-individuals that acted on the behalf of individuals, that excessive or prohibited campaign contributions within the last 5 years of filing date. 11 CFR 110.9 Violation of limitations. [67 FR 69949, Nov. 19, 2002]

Class III – Persons that benefited from expenditures from excessive or prohibited campaign contributions within the last 10 years of filing date.

This was filed under the Federal Election Campaign Act ("FECA") Title 2 Chapter 14 U.S.C § 9011(b)(1) and 2 U.S.C. §§ 437d(a)(6) and (e), 437g(a)(5)(D) and (6)(A).

The complaint alleges that Class I Defendants received campaign contributions that exceeded the limits as set forth by the FEC either directly from individuals or from organizations that acted on the behalf of individuals. The contends funds will be found to be illegal under one of three legal theories:

1. Three regulations that, to some, make it appear that unlimited contributions were legal, were interpreted by one Circuit Court. That Court's ruling was erroneously applied across the entire United States and was outside that Court's jurisdiction.

2. A reasonable person making a campaign contribution to a so called “independent or non-coordinated” organization would have an expectation that it will be used towards the election of a specific candidate or to advance a specific party and will therefore be deemed as if given to the candidate or party directly.

3. Unlimited campaign contributions is a violation of equal protection and a violation of free speech. By definition when PACs not connected with the candidate speak, they do not speak with the voice or approval of the candidate. Candidates are allowed only one official committee. Title 26 U.S.C § 527(h)(2)(B) Therefore, reducing this form of speech by requiring adherence to campaign contribution limits doesn't hinder the candidates right to free speech. There is evidence that unlimited campaign contributions muzzle the legal and true free speech of minority candidates.

NOW THEREFORE, after consideration of the Plaintiff's BRIEF IN SUPPORT OF DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION the court hereby ORDERS the following PRELIMINARY RELIEF:

I. DEFINITIONS

1. Terms used in this Order that are defined in the FECA, or in regulations promulgated pursuant to the FEC, shall have the meanings assigned to them in those statutes or regulations, unless otherwise provided in this Order. Whenever the terms set forth below are used in this Order, the following definitions shall apply:

   (a) “Contribution limits” Under the Act, individuals and groups are limited in the amounts they may contribute to candidates for Federal Office and to the political committees which support them. 11 CFR 110.1, 110.2, and 110.3. The limitations apply

to any type of contribution, including contributions of money, contributions of goods or services, loans, endorsements of loans, etc. The FEC announces the amount of the adjusted contribution limits in the Federal Register. 11 CFR 110.17(e).

(b) "Political committee" An organization that supports a candidate for Federal Office.

(c.) "Excessive contribution" A contribution that exceeds the "contribution limits". 11 CFR 110.9 Violation of limitations. [67 FR 69949, Nov. 19, 2002]

(d) "Suspect contribution" A contribution that has the appearance of being an "excessive contribution" or may have been made in the name of another. Title 2 Chapter 14 U.S.C § 441f

(e) "Individual contribution" contribution by a single individual, or in the case when an instrument is in the name of two individuals or more can be ascribe to multiple individuals "Presumptive Reattributions".

(f) "Presumptive Reattributions" When an excessive contribution is made via written instrument with more than one individual's name on it, but only has one signature, the permissible portion will be attributed to the signer and the excessive portion may be attributed to the other individual whose name is printed on the written instrument, without obtaining a second signature. This may be done so long as the reattribution does not cause the other contributor to exceed any contribution limit. 11 CFR 110.1(k)(3)(ii)(B)(1). Political committees employing this presumption must notify all contributors by paper mail, e-mail, fax or other written method within 60 days of the committee treasurer's receipt of the check. At the time of notification, the committee must offer the contributor who signed the check a refund of the excessive portion. 11 CFR 110.1(k)(3)(ii)(B)(2) and (3).

(g) "Complaint" shall mean the Complaint filed by the Plaintiff in this action.

(h) “Effective Date” shall mean the date upon which this Order is entered by the court as recorded on the court’s docket.

(i) “FEC” shall mean the Federal Election Commission

(j) “FECA” shall mean the Federal Election Campaign Act

(k) “Non-individual” shall mean any corporation, foundation, non-profit or the like that isn't an individual.

(l) “Parties” shall mean the Plaintiff and Class I, Class II, and Class III defendants.

(m) “Plaintiff” shall mean Philip B. Maise acting as Citizen Attorney for the United States on the behalf of the FEC

(n) “Brief” shall mean Plaintiff's BRIEF IN SUPPORT OF DECLARATORY JUDGMENT AND PRELIMINARY INJUNCTION

II. COMPLIANCE REQUIREMENTS

Based upon a review of the brief, the Court has concluded, there is sufficient probability that individual contribution that exceed contribution limits will be deemed excessive or prohibited campaign donations. Therefore, treasurers of political committees have a reason to suspect that contributions of this nature are excessive or prohibited.

Treasurers are reminded that according to FEC regulations that they are responsible for ensuring that all contributions are lawful. 11 CFR 103.3(b).

If the treasurer has reason to suspect that a contribution is excessive or prohibited, he or she must, within 10 days of receiving the contribution, either return the contribution to the donor or deposit the contribution. 11 CFR 103.3(a). If the contribution is deposited, the treasurer must:

Maintain sufficient funds in the account to refund the contribution should it prove to be illegal or place the contribution in a separate account for this purpose;

Keep written records noting the basis for the appearance of illegality;

Note that the legality of the contribution is in question when reporting the receipt of the contribution; and

Comply with appropriate deadlines. 11 CFR 103.3(b)(4) and (5).

Contributions made by one person in the name of another are prohibited. Title 2 Chapter 14 U.S.C § 441f

No person may knowingly permit the use of his or her name to effect such a contribution. It is also prohibited to knowingly assist someone in making or to accept a contribution in the name of another. It is also unlawful to knowingly permit the use of one's name to effect a contribution in the name of another or to help someone make or accept such a contribution. 11 CFR 110.4(b).

This injunction doesn't prohibit treasurers from receiving contributions from individuals that are within the contribution limits and mechanism to check as set forth by the FEC.

This injunction doesn't prohibit a treasurer from receiving funds from non-individuals such as a corporation, foundation, or non-profits. However, if the suit successfully demonstrates, as the Plaintiff contends, that many contributions from non-individuals will be judged to be from individuals, then funds from non-individuals should treated in accordance with FEC provisions:

If the committee decides to deposit a contribution that may have come from a prohibited source (instead of returning it), the committee must make at least one request to the

contributor for evidence that the contribution is legal. If the contribution's legality cannot be determined, the committee must refund the contribution within 30 days of its receipt. 11 CFR 103.3(b)(1).

This injunction is not a finding in fact that excessive contributions are illegal. That requires a judgment on the merits after Defendants have received sufficient notice to advance a defense. This said, treasurers are reminded that according to FEC statutes:

If a committee finds that a contribution is prohibited based on evidence not available when the contribution was deposited, the committee must refund the contribution within 30 days of discovery. 11 CFR 103.3(b)(2).

To reduce the amount of burden this may place upon committees the Court has set the following threshold test. Committee treasurers need only investigate contributions from a non-individual if they are cumulatively $10,000 or higher. Further, they are to take reasonable pro-cautions to be on the alert for individuals that attempt to circumvent limits by making contributions to many committees or under multiple organizations they control. The threshold test does not relieve treasurers of responsibility in general.

The Court cannot advise any party at this time if a particular individual contribution or non-individual contribution is excessive or prohibited. However, in general the Court can state that if a reasonable person understands from your solicitations (Title 18 Chapter 29 U.S.C § 603 Solicitation) and actions or a committee that it is focused on the election of a single Federal candidate, then contribution limits are set by the FEC according to individual candidate limitations. If a reasonable person understands from your solicitations and actions your group is

focused on a party as a whole, it would fall under the classification and limits for a Federal or State party committees. Figures for both types of organizations are set forth in tables provided by the FEC.

Pursuant to FRCP Rule 26, Plaintiff utilized the website OpenSecrets.org on March 4, 2012 and claims to have discovered there are many individuals and non-individuals that have the potential of being certified into several different classes. The website site describes itself as a nonpartisan guide to money's influence on U.S. elections and public policy. It is managed by The Center for Responsive Politics 1101 14th St., NW Suite 1030, Washington, DC 20005-5635.(202) 857-0044 • fax (202) 857-7809 info@crp.org • webmaster@crp.org .

The Plaintiff is not permitted according to FEC regulations to divulge to the public the names of those under investigation until after certain conditions have been satisfied. At this point according to those rules it appears the Plaintiff is not permitted to divulge specific names. However, the Plaintiff attested to the Court that this website contains evidence that it is makes it readily apparent there are sufficient numbers of proposed Defendants to justify a class action.

If you are reading this document and are concerned that you may be named within one of the different classes, that received, made, or benefited from excessive or prohibited campaign contributions you will have the right to remain within the class or defend against the action independently.

The following classes were only proposed classes and subject to certification by the Court.

Class I: Political action committees or other organizations that retained, within the past 5 years of the filing date of this action, contributions to candidates for Federal Office and to the political committees which support them that exceeded limits. The figure 5 years is based upon 28 U.S.C. § 2462. Time for commencing proceedings.

To be in this class a group needs to have had the appearance of retaining at least $30,400 from a single individual Class II (a), (b), or (c) or a single non-individual that qualifies as Class II (d) or Class (e). Class I proposed Defendants are being requested as part of this action to comply with FEC directives 11 CFR 103.3(a) or (b). This action disputes the legality of funds of this nature and Class I defendants are reminded

Class II: Individuals, and non-individuals that acted on the behalf of individuals, are Defendants that made, within the past 5 years of the filing date of this action, contributions to candidates for Federal Office and to the political committees that support them that were prohibited or exceeded limits. This Class is divided into sub-classes as follows:

Class II(a): Individuals who, within the past 5 years of this filing, made contributions that were prohibited or exceeded the annual or biennial limits, as set by the FEC, by $75,000 or more.

Class II(b): Individuals who, within the past 5 years of this filing, made contributions that were prohibited or exceeded the annual or biennial limits, as set by the FEC, by more than $10,000 but less than $75,000.

Class II(c): Individuals who, within the past 5 years of this filing, made contributions that were prohibited or exceeded the annual or biennial limits, as set by the FEC, by $10,000 or less.

Class II(d): Non-individuals where it is apparent a corporation, LLC, foundation, or similar entity was utilized by an individual(s) as an intermediary, within the past 5 years of this filing, to make contributions to a campaign for Federal Office that exceeded the annual or biennial limits for an individual(s), as set by the FEC, by $25,000 or more.

Class II(e): Organizations that received individual contributions from proposed Defendants Class II (a), (b), (c.), or (d) that were donated for the purpose of influencing a State or Federal campaign or ballot initiative. Included in this Class are organizations that have received donations wherein a reasonable person viewing the transaction would conclude the contribution was made to help elect or defeat candidates or cause along party or ideological lines.

Class III: Other defendants and subparts (a) (b) and (c.) have been reserved for other Classes that may have benefited from expenditure of the contested funds.

The Court shall retain jurisdiction over this action until the questionable legality of funds has been resolved and may enter such further relief as may be necessary for the effectuation of the terms of this Order and to enter such relief as may be necessary based upon any trial of the merits.

III. NOTICES

Plaintiff: Philip B. Maise

Current Location:
Miri Bay Marina – S.V. Hot Buoys
c/o Sarawak Land (Kemena Park)
Lot 271 Brighton, Jalan Temenggong Datuk Oyong Lawai Jau
Miri, Sarawalk, Malaysia 98000

pbmaise@yahoo.com
Phone (60) 019-879-5673

Note: Access to e-mail and phone can be difficult for the Plaintiff owing to his location in Malaysia. If underway access is limited to short text messages. However, there are no immediate plans to be underway before the end of 2012. Plaintiff has indicated to the Court he is is reestablishing his Pacer account and requesting CM/ECF access to facilitate easier communication. Plaintiff intends to consent in writing to electronic service of all document, except a summons and copy of a complaint which according to local rules must be hard copy. Note: Samling, the parent firm for the CO of the Plaintiff, has multiple offices be certain to indicate Plaintiff's name Marina S.V. Hot Buoys. Until Plaintiff is able to establish CM/ECF access, A paper copy a Notice of Electronic Filing, together with a paper copy of the electronically of any filed document, shall be served in accordance with the Federal Rules of Civil and Criminal Procedure and the Local Rules. The Plaintiff has indicated to the Court he intends to post documents that he prepares on Google-Docs. These posting are not a substitute for transmitting documents according to rules.

Notices submitted by express mail shall be deemed submitted upon mailing, unless otherwise provided in this Order or by mutual agreement of the Parties in writing. If notices are sent electronically, they shall be deemed submitted upon transmission, but a notice is not effective if the sending Party learns that it did not reach the Party to be notified. Owing to the Plaintiff's and Court's location three additional days are allowed for responding to service by mail or electronic service in accordance with FRCP 6(e) and Fed. R. Crim. P. 45(c). A recipient that fails to receive an electronic submission may request delivery by other means. Such a request does not affect the timeliness of the original submission.

IV. DISPUTES

Defendants may formally dispute this injunction by notification to the Plaintiff and the Court. Defendants have the burden of demonstrating that the position of the Plaintiff is arbitrary and capricious or otherwise not in accordance with law.

V. EFFECT OF ORDER

This Order for Preliminary Injunction is a partial remedy for the civil claims of the Plaintiff for the violations alleged in the Complaint filed in this action, and does not resolve the civil claims of the United States for civil penalties and other injunctive relief for the violations alleged in the Complaint in this action. This Order also does not preclude the possibility that some actions against Defendants may be transferred into criminal court.

VII. RETENTION OF JURISDICTION

The court shall retain jurisdiction over this case until termination of this Order, for the purpose of resolving disputes arising under this Order, or effectuating or enforcing compliance with the terms of this Order.

SO ORDERED