United States District Court
District of Columbia

Shaun McCutcheon 5011 Lake Crest Circle Birmingham, AL 35226 **Republican National Committee** 310 First Street, SE Washington, D.C. 20003, *Plaintiffs* *v.* **Federal Election Commission** 999 E Street, NW Washington, DC 20463, *Defendant*	**Civil Case No.** _____ THREE-JUDGE COURT REQUESTED

Verified Complaint for Declaratory and Injunctive Relief

Plaintiffs McCutcheon and Republican National Committee ("RNC") complain as follows:

Introduction

1. This is a First Amendment constitutional challenge to the individual aggregate biennial contribution limits at 2 U.S.C. § 441a(a)(3) (set out *infra* ¶ 14), including challenges to

a. the limits on contributions to non-candidate committees at 2 U.S.C. § 441a(a)(3)(B), as applied to contributions to national party committees and facially, and

b. the limit on contributions to candidate committees at 2 U.S.C. § 441a(a)(3)(A).

2. The biennial contribution limits were enacted as § 307(b) of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81 (2002), which repealed the old ceiling of $25,000 for an individual's overall contributions in a year (with non-election-year contributions treated as received in the following election year) in § 315(a)(3) of the Federal Election

Campaign Act of 1971 ("FECA") and replaced it with multiple limits.

3. Because Plaintiffs elect the judicial-review provision provided by BCRA § 403, *see infra* ¶ 4, "[i]t shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of this action and appeal." BCRA § 403(a)(4) and (d)(2).

4. In relevant part, BCRA § 403, 116 Stat. at 113-14, provides as follows:

> **SEC. 403. JUDICIAL REVIEW.**
> (a) SPECIAL RULES FOR ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.—If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:
> (1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard by a 3-judge court convened pursuant to section 2284 of title 28, United States Code.
> (2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.
> (3) A final decision in the action shall be reviewable only by appeal directly to the Supreme Court of the United States. Such appeal shall be taken by the filing of a notice of appeal within 10 days, and the filing of a jurisdictional statement within 30 days, of the entry of the final decision.
> (4) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.
> (b) . . . .
> (c) . . . .
> (d) APPLICABILITY.—
> (1) INITIAL CLAIMS.— . . . .
> (2) SUBSEQUENT ACTIONS.—With respect to any action initially filed after December 31, 2006, the provisions of subsection (a) shall not apply to any action described in such section unless the person filing such action elects such provisions to apply to the action.

5. In a brochure titled *The Biennial Contribution Limit*, the Federal Election Commission ("FEC") describes the biennial contribution limits as follows, though with a non-statutory overall limit of $117,000 (*see infra* ¶¶ 15-16, 21):

As an individual, you are subject to a biennial limit on contributions made to federal candidates, party committees and political action committees (PACs). The limit is in effect for a two-year period beginning January 1st of the odd-numbered year and ending on December 31st of the even-numbered year. 11 CFR 110.5.

The biennial limit is indexed for inflation in odd-numbered years. The 2011-12 limit is $117,000. This limit includes up to:

- $46,200 in contributions to candidate committees; and
- $70,800 in contributions to any other committees, of which no more than $46,200 of this amount may be given to committees that are not national party committees. 11 CFR 110.5(b)(1).

The Commission announces the amount of the adjusted overall limit in the *Federal Register*. 11 CFR 110.5(b)(4).

Moreover, within this biennial limit on total contributions, an individual may not exceed the specific limits placed on contributions to different types of committees, as illustrated in the contribution limits chart later in this brochure.

* * *

Individual Limits for 2011-2012

Recipient Federal Committee	**Limit**
Candidate Committee	$2,500* per candidate, per election [FN5]
National Party Committee	$30,800* per calendar year
State, Local & District Party Committee	$10,000 per calendar year (combined limit)[FN6]
Political Action Committee	$5,000 per calendar year

* These contribution limits are indexed for inflation in odd-numbered years. The Commission announces the amount of the adjusted contribution limits in the *Federal Register* and on the FEC web site.

* * *

_____

[FN5] A primary, runoff and general are each considered separate elections.

[FN6] Because local party committees are presumed to be affiliated with the party's state committee, a contribution to a local party committee counts against the contributor's limit for the state party. 11 CFR 110.3(b)(3).

FEC, *The Biennial Contribution Limit* (revised 2011) (available at http://fec.gov/pages/brochures/biennial_limit_brochure.pdf) (footnotes omitted). *See also* "Price Index Adjustments for Contribution and Expenditure Limits and Lobbyist Bundling Disclosure Threshold," 76 Fed.

Reg. 8368, 8369 (Feb. 14, 2011) ("2011 Price Index Adjustments").

6. Regarding terminology, Plaintiffs here follow the FEC's use of "candidate committee," "national party committee," and "political action committee" ("PAC"). *See* FEC, *The Biennial Contribution Limit.* "Candidate committee" includes "candidate" because candidates (except for Vice President) must designate a principal campaign committee (and may designate additional authorized political committees), *see* 11 C.F.R. § 101.1(a)-(b), and receive any contributions as agents of their authorized committee(s), *see* 11 C.F.R. § 101.2. The cited brochure uses "state, local & district party committee," but "state party committee" will be used here to include local and district party committees, unless context contraindicates, because all share a $10,000 per calendar year combined limit. Plaintiffs do not follow the FEC's use of "biennial contribution *limit*" to refer to all limits at 2 U.S.C. § 441a(a)(3) because the statute contains multiple limits: (1) a limit (currently $46,200) on contributions to candidate committees, (2) a limit (currently $70,800) on contributions to all non-candidate committees (i.e., national party committees, state party committee, and PACs) , and (3) a sub-limit (currently $46,200) of the latter limit on contributions to non-candidate, non-national-party committees (i.e., state party committees or PACs). Instead, Plaintiffs refer to the limits collectively as "biennial contribution limits" or to a specific "biennial contribution limit." *See infra* ¶¶ 15-16, 21.

Jurisdiction and Venue

7. This Court has jurisdiction over this First Amendment challenge under 28 U.S.C. § 1331 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

8. This Court also has jurisdiction under the judicial-review provisions of BCRA § 403, 116 Stat. at 113-14, *see supra* ¶ 4, which apply to "any action . . . brought for declaratory or injunctive relief to challenge the constitutionality of any provision of [BCRA] or any amendment made

by [BCRA]," BCRA § 403(a), 116 Stat. at 113-14, because Plaintiffs "elect[] such provisions to apply to this action," BCRA § 403(d)(2), 116 Stat. at 114. BCRA § 403 provides for a three-judge court and direct appeal to the United States Supreme Court.

9. In the alternative, should this Court find that it lacks jurisdiction under BCRA § 403, Plaintiffs invoke the FECA judicial-review provision, 2 U.S.C. § 437h, which provides that "the national committee of any political party[] or any individual eligible to vote in an election for the office of President may institute actions . . . to construe the constitutionality of any provision of [FECA]," and "[t]he district court immediately shall certify all questions of constitutionality of [FECA] to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc."

10. Venue is proper under 28 U.S.C. § 1391(e) and BCRA § 403, 116 Stat. at 113-14.

Parties

11. Plaintiff Shaun McCutcheon is a United States citizen and a resident of the State of Alabama. He is eligible to vote in an election for the office of the President of the United States.

12. Plaintiff RNC "ha[s] the general management of the Republican Party, based upon the rules adopted by the Republican National Convention." *Rules of the Republican Party* at Rule 1 (as adopted by the 2008 Republican National Convention; amended in 2010 by RNC) (available at http://www.gop.com/images/legal/2008_RULES_Adopted.pdf). RNC is a "national committee," which "by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission." 2 U.S.C. § 431(14). RNC is a "political committee[] established and maintained by a national political party" under 2 U.S.C. § 441a(a)(1)(B) and (3)(B), i.e., it is a national party committee.

13. FEC is the government agency with enforcement authority over FECA and BCRA.

Other Facts

The Individual Biennial Contribution Limits

14. The **biennial contribution limits** were enacted as BCRA § 307(b), 116 Stat. at 102-03, which repealed FECA § 315(a)(3), the $25,000 limit on individual contributions (in a two-year period), and replaced it with two new separate biennial contribution limits (one with a sub-limit), codified as follows (2011-12 inflation-adjusted amounts in brackets):

> (3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than—
> (A) $37,500 [$46,200], in the case of contributions to candidates and the authorized committees of candidates;
> (B) $57,500 [$70,800], in the case of any other contributions, of which not more than $37,500 [$46,200] may be attributable to contributions to political committees which are not political committees of national political parties.

2 U.S.C. § 441a(a)(3).

15. The FEC implemented the BCRA biennial contribution limits statute with the following regulation (2011-12 inflation-adjusted amounts in brackets), which imposes an overall limit of $117,000 (currently) that is not in the statute (but is the sum of the statutory limits on contributions to candidate committees and non-candidate committees):

> **§ 110.5 Aggregate biennial contribution limitation for individuals (2 U.S.C. 441a(a)(3)).**
> (a) *Scope*. This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.20 and 11 CFR part 115.
> (b) *Biennial limitations.* (1) In the two-year period beginning on January 1 of an odd-numbered year and ending on December 31 of the next even-numbered year, no individual shall make contributions aggregating more than $95,000 [$117,000], including no more than:
> (i) $37,500 [$46,200] in the case of contributions to candidates and the authorized committees of candidates; and
> (ii) $57,500 [$70,800] in the case of any other contributions, of which not more than $37,500 [$46,200] may be attributable to contributions to political committees that are not political committees of any national political parties.

> (2) [Reserved]
>
> (3) The contribution limitations in paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased contribution limitations shall be in effect for the two calendar years starting on January 1 of the year in which the contribution limitations are increased.
>
> (4) In every odd-numbered year, the Commission will publish in the Federal Register the amount of the contribution limitations in effect and place such information on the Commission's Web site.

11 C.F.R. § 110.5 (a)-(b).

16. Though the FEC sometimes refers to the biennial contribution *limits* at 2 U.S.C. § 441a(a)(3) as the biennial contribution *limit* (*see supra* ¶ 5), there are actually limits on contributions to candidate committees and non-candidate committees, with the latter limit containing a sub-limit on contributions to non-national-party committees (i.e., state party committees and PACs). The singular use of "limit" derives from the FEC's creation of an overarching limit (currently $117,000) that is not in the statute.

17. As a result of the biennial contribution limits, individuals are unable to contribute to the full extent permitted by the base contribution limits at 2 U.S.C. § 441a(a)(1). Thus, though an individual currently may contribute $2,500 per election to a candidate committee under the base contribution limit at 2 U.S.C. § 441a(a)(1)(A), the individual is limited in the number of candidate committees to which the individual may contribute in this amount by the $46,200 (currently) biennial limit on contributions to candidate committees at 2 U.S.C. § 441a(a)(3)(A).

18. Though an individual currently may contribute $30,800 per year to any national party committee, $10,000 per year to any state party committee, and $5,000 per year to any PAC under the base contribution limits at 2 U.S.C. § 441a(a)(1)(B)-(D), the individual is limited in the number of such committees to which the individual may contribute by the $70,800 (currently) biennial limit on contributions to non-candidate committees at 2 U.S.C. § 441a(a)(3)(B).

19. As applied just to national party committees, though an individual may contribute $30,800 per year to any national party committee under the base contribution limit at 2 U.S.C. § 441a(a)(1)(B), an individual wishing to contribute $30,800 each, for example, to RNC, the National Republican Senatorial Committee ("NRSC"), and the National Republican Congressional Committee ("NRCC") in a year (totaling $92,400) or a biennium (totaling $184,800) may not contribute those amounts because of the $70,800 biennial limit on contributions to non-candidate committees.

20. Though an individual may contribute $5,000 per year to a PAC and $10,000 per year to a state party committee, 2 U.S.C. § 441a(a)(1)(C)-(D), the biennial sub-limit on contributions to these non-candidate, non-national-party committees is $46,200 (currently), 2 U.S.C. § 441a(a)(3)(B), and, as noted, such contributions count against the $70,800 (currently) biennial limit on contributions to non-candidate committees at 2 U.S.C. § 441a(a)(3)(B).

21. All contributions—to candidate committees, national party committees, and non-candidate, non-national-party committees—count against the FEC's overall $117,000 (currently) biennial contribution limit at 11 C.F.R. § 110.5(b). But to the extent the underlying statutory limits (of which $117,000 is a sum) are unconstitutional, this limit is without statutory authority.

Shaun McCutcheon

22. **Shaun McCutcheon** is an individual with deeply held principles regarding government and public policy. He believes that the United States is slowly but surely losing its character as an exceptional nation that stands for liberty and limited government under the Constitution. McCutcheon is deeply concerned about the direction of policy in this country, which for decades—in his view—has been marked by steady increases in the power of the federal government over the lives of individuals and the autonomy of states and communities, all in derogation of the

principles contained in the Declaration of Independence and the Constitution. McCutcheon further believes that this slow creep toward consolidation of power in Washington has been brought about by elected federal officials—presidents and members of Congress—who enact ill-conceived and overreaching laws.

23. Understanding that elected Federal officials have the power to pass legislation that may either protect or trample liberty and constitutional principles, McCutcheon desires to make contributions to individual federal candidates, most of whom are challengers, who are interested in advancing the cause of liberty. He seeks to pool his resources with like-minded individuals, and signal his support of suitable candidates, by making financial contributions to the authorized campaign committees of such candidates.

24. Mr. McCutcheon wants to contribute to candidates as described next—and is ready, willing, and able to do so—but he cannot do so fully because he is limited by the biennial contribution limit at 2 U.S.C. § 441a(a)(3)(A).

25. Mr. McCutcheon intends to fully comply with the base per-candidate, per-election limit and plans to contribute, and in some cases already has contributed, $2,500 to each of three candidates for use in their primary elections, $2,500 to one of the same candidates for use in the general election, and $1,776 to 25 other candidates during the 2012 election cycle. Despite the fact that all of his proposed contributions would be within the base limit, McCutcheon is prohibited from supporting the candidates of his choosing with these contributions because of the biennial contribution limit of $46,200 on contributions to candidate committees for the 2012 cycle. *See* 2 U.S.C. §§ 441a(a)(3)(A) and 441a(c). Because McCutcheon's proposed contributions would exceed $46,200, his otherwise lawful speech and association is prohibited.

26. As of June 18, 2012, McCutcheon has made 16 contributions to candidate committees

totaling $33,088, and he plans to make 12 more contributions to candidate committees totaling $21,312, if legally permitted, for a grand total of $54,400 in candidate-committee contributions this election cycle. *See infra*.

27. McCutcheon *has already made* the following contributions to 15 candidates during the 2012 election cycle (totaling $33,088):

a. $5,000 total to Josh Mandel, a non-incumbent candidate for U.S. Senate from Ohio in the 2012 election cycle ($2,500 for the primary and $2,500 for the general);

b. $2,500 to Scott Beason, a non-incumbent candidate in the 6th Congressional District of Alabama;

c. $2,500 to Martha Roby, an incumbent office holder in the 2nd Congressional District of Alabama;

d. $1,776 to Brad Wenstrup, a non-incumbent candidate for Congress in the 2nd Congressional District of Ohio;

e. $1,776 to Glenn Morton, a non-incumbent candidate for Congress in the 5th Congressional District of Maryland;

f. $1,776 to Richard Mourdock, a non-incumbent candidate in the Republican primary for U.S. Senate from Indiana;

g. $1,776 to Ilario Pantano, a non-incumbent candidate for Congress in the 7th Congressional District of North Carolina;

h. $1,776 to James Kuiken, a non-incumbent candidate for Congress in the 15th Congressional District of Texas;

i. $1,776 to Sean Siebert, a non-incumbent candidate for Congress in the 18th Congressional District of Texas;

j. $1776 to James Engstrand, a non-incumbent candidate for Congress in the 36th Congressional District of Texas;

k. $1,776 to Rick Tubbs, a non-incumbent candidate for Congress in the 3rd Congressional District of California;

l. $1,776 to Bob Dutton, a non-incumbent candidate for Congress in the 31st Congressional District of California;

m. $1,776 to Nick Poppaditch, a non-incumbent candidate for Congress in the 53rd Congressional District of California;

n. $1,776 to Patrick Murray, a non-incumbent candidate for Congress in the 8th Congressional District of Virginia; and

o. $1,776 to Chris Perkins, a non-incumbent candidate for Congress in the 11th Congressional District of Virginia.

p. $1,776 to Markwayne Mullin, a non-incumbent candidate for Congress in the 2nd Congressional District of Oklahoma;

28. Mr. McCutcheon *intends to make* (if legally permitted) the following additional contributions to candidates in the 2012 election cycle, either to their respective primary election campaigns or general election campaigns (totaling $21,312):

a. $1,776 to Joe Coors, a non-incumbent candidate for Congress in the 3rd Congressional District of Colorado;

b. $1,776 to Martha Zoller, a candidate in the Republican primary for the newly created 9th Congressional District of Georgia;

c. $1,776 to Charles Djou, a non-incumbent candidate for Congress in the 1st Congressional District of Hawaii;

d. $1,776 to Chris Coutu, a non-incumbent candidate for Congress in the 2nd Congressional District of Connecticut;

e. $1,776 to Brian K. Hill, a non-incumbent candidate in the Republican primary for U.S. Senate from Connecticut;

f. $1,776 to Ron DeSantis, a non-incumbent candidate for Congress in the 4th Congressional District of Florida;

g. $1,776 to Evelio Otero, a non-incumbent candidate for Congress in the 11th Congressional District of Florida;

h. $1,776 to Mark Oxner, a non-incumbent candidate for Congress in the 27th Congressional District of Florida;

i. $1,776 to Dan Severson, a non-incumbent candidate in the Republican primary for U.S. Senate from Minnesota;

j. $1,776 to Mia Love, a non-incumbent candidate for Congress in the 4th Congressional District of Utah;

k. $1,776 to Dick Muri, a non-incumbent candidate for Congress in the 10th Congressional District of Washington; and

l. $1,776 Ray Boland, a non-incumbent candidate for Congress in the 3rd Congressional District of Wisconsin.

29. Under 2 U.S.C. § 441a(a)(1)(A), as indexed for inflation for the 2012 election cycle, an individual is limited to contributing $2,500 to any single federal candidate per election. McCutcheon's completed and planned contributions are all within this base contribution limit, and most of them are well below the limit. Despite compliance with the base per-candidate limit at 2 U.S.C. § 441a(a)(3)(A), McCutcheon is limited to contributing an aggregate $46,200 to all

federal candidates in the 2012 election cycle.

30. The current unconstitutional prohibition on McCutcheon's planned contributions at 2 U.S.C. § 441a(a)(3)(A) will force him to withhold support from candidates of his choice, as time ticks away before the relevant primaries and the November general election.

31. If McCutcheon's rights are not vindicated before these coming elections, he will forever lose his right to political speech and association with respect to the candidates to whom he is unable to contribute before the elections. While McCutcheon will be forced to sit on the sidelines, he will be unable to pool his resources with like-minded individuals and the candidates (most of whom are challengers who do not enjoy the institutional benefits of incumbency) will be deprived of critical support during their campaigns.

32. During the 2013-2014 election cycle, McCutcheon intends to make multiple contributions to candidates, all of which will be within the applicable base per-candidate limit but which will aggregate more than $60,000. In future elections, he intends to make contributions in like amounts that will exceed the applicable biennial contribution limit.

33. Now and in the future, Mr. McCutcheon wants to exercise his core First Amendment rights to free political speech and association by contributing to any and all candidate committees of his choosing to the full extent permitted by the base contribution limit at 2 U.S.C. § 441a(a)(1)(A) without limitation by the biennial contribution limit at 2 U.S.C. § 441a(a)(3)(A).

34. Mr. McCutcheon is also ready, willing, and able to contribute $25,000 each to RNC, NRSC, and NRCC, and wants to do so before the November general election but cannot because he is limited by the $70,800 biennial contribution limit at 2 U.S.C. § 441a(a)(3)(B) on contributions to all non-candidate committees and the FEC's overall $117,000 biennial contribution limit at 11 C.F.R. § 110.5(b).

35. As of June 18, 2012, Mr. McCutcheon has contributed $1776 each to RNC, NRSC, and NRCC. He intends to make further contributions to these national party committees that will total $25,000 each before the November general election if he obtains the judicial relief here sought. He wishes and intends to contribute the same amount to RNC, NRSC, and NRCC at each time that he makes contribution to them, rather than giving to them in differing amounts.

36. In addition to these contributions to RNC, NRSC, and NRCC, Mr. McCutcheon has to date in this biennium made the following contributions to non-candidate federal committees:

a. $2,000 to the Senate Conservatives Fund (the leadership PAC associated with Senator Jim DeMint);

b. $10,000 in 2011 to the federal account of the Alabama Republican Party (an additional $17,625 was paid to the Alabama Republican Party's state account through joint fund-raising activity); and

c. $10,000 in 2012 to the federal account of the Alabama Republican Party (an additional $16,000 was paid to the Alabama Republican Party's state account through joint fund-raising activity).

37. Mr. McCutcheon's contributions to non-candidate federal committees in this biennium total $27,328, and, if he is permitted to exceed the $70,800 biennial limit by contributing $25,000 each to RNC, NRSC, and NRCC, his total biennial contributions to non-candidate committees would total $97,000. Mr. McCutcheon has not, and will not earmark, these contributions in any way.

38. Mr. McCutcheon wants to exercise his core First Amendment rights to free political speech and association by contributing as he chooses to non-candidate committees in general, and RNC and any other national committees in particular, now and in the future, to the full extent

permitted by the base contribution limits at 2 U.S.C. § 441a(a)(1)(B)-(D) without limitation by the unconstitutional biennial contribution limits at 2 U.S.C. § 441a(a)(3)(B).

RNC

39. **RNC** wants to receive the contributions that Shaun McCutcheon would make, now and in the future, but for the biennial contribution limit.

40. RNC has had to refuse and/or refund contributions from other individuals that were permissible under the base contribution limit at 2 U.S.C. § 44a(a)(1)(B) but impermissible under the biennial contribution limit at 2 U.S.C. § 441a(a)(3)(B). RNC believes that other contributors would contribute to RNC but for the restriction of the biennial contribution limit, and it also wants to receive contributions from those contributors. RNC "has standing to sue to vindicate the political-speech rights of its contributors." *Wisconsin Right to Life PAC v. Barland*, 664 F.3d 139, 148 (7th Cir. 2011) (collecting cases).

41. RNC wants to exercise its core First Amendment right to receive political speech and to associate by receiving contributions from Mr. McCutcheon and others who would contribute, as described in the foregoing paragraph, now and in the future, to the full extent permitted by the base contribution limit at 2 U.S.C. § 441a(a)(1)(B) without limitation by the biennial contribution limit at 2 U.S.C. § 441a(a)(3)(B).

42. The FEC treats the three national party committees of a national political party—such as RNC, NRSC, and NRCC—and "[t]he State committee of the same political party" as not being affiliated for purposes of sharing contribution limits by providing that they do not share a limit on contributions "made or received" as follows:

> (b) *Contribution limitations for political party committees.* (1) For the purposes of the contribution limitations of 11 CFR 110.1 and 110.2, all contributions made or received by the following political committees shall be considered to be made or received

> by separate political committees—
>
> (i) The national committee of a political party and any political committees established, financed, maintained, or controlled by the same national committee; and
>
> (ii) The State committee of the same political party.
>
> (2) Application of paragraph (b)(1)(i) of this section means that—
>
> (i) The House campaign committee and the national committee of a political party shall have separate limitations on contributions under 11 CFR 110.1 and 110.2.
>
> (ii) The Senate campaign committee and the national committee of a political party shall have separate limitations on contributions, except that contributions to a senatorial candidate made by the Senate campaign committee and the national committee of a political party are subject to a single contribution limitation under 11 CFR 110.2(e).
>
> (3) All contributions made by the political committees established, financed, maintained, or controlled by a State party committee and by subordinate State party committees shall be presumed to be made by one political committee. . . .

11 C.F.R. § 110.3(b)(1)-(3).

43. RNC, NRSC, and NRCC are in fact distinct, with separate controlling officials and governing bodies and focusing on unique activities.

44. The *RNC* Chairman is Reince Priebus. *See* http://www.gop.com/index.php/issues/leadership/. RNC's members are an elected committeeman, committeewoman, and state chairman from each state Republican Party ("state" here includes territories and the District of Columbia). *See Rules of the Republican Party* at Rule 1 (2008). The RNC officers are a chairman and co-chairman elected by RNC, eight vice chairmen elected at regional caucuses of RNC members, and a secretary and treasurer elected by RNC (and any other officers that RNC deems necessary). *Id.* at Rule 5. RNC has an Executive Committee, made up of 28 officers and RNC members, to "exercise . . . executive and administrative functions . . . between meetings of the [RNC]" (with certain exceptions). *Id.* at Rule 6. RNC focuses largely on presidential campaigns and general party matters, along with supporting Republican candidates and promoting its issues, which are available in the *Republican Platform* (2008) (available at http://www.gop.com/2008Platform/2008platform.pdf).

45. The *NRSC* Chairman is U.S. Senator John Cornyn. *See* http://www.nrsc.org/. "[NRSC] is the only political committee solely dedicated to electing Republicans to the U.S. Senate. The NRSC provides invaluable support and assistance to current and prospective Republican U.S. Senate candidates in the areas of budget planning, election law compliance, fundraising, communications tools and messaging, research and strategy." *Id.* "The NRSC was founded in 1916, as the Republican Senatorial Campaign Committee, following the ratification of the 17th Amendment to the Constitution—which provided for the direct election of Senators. In 1948, the Committee reorganized and was renamed the National Republican Senatorial Committee." *See* http://www.nrsc.org/about-the-nrsc/. NRSC currently focuses especially on the issues of courts, the economy, education, energy, health care, and national defense, its views on which are at http://www.nrsc.org/about-the-nrsc/views-and-issues/.

46. The *NRCC* Chairman is U.S. Representative Pete Sessions. *See* http://www.nrcc.org/about/About-NRCC/. "[NRCC] is a political committee devoted to maintaining and increasing the 242-member Republican majority in the U.S. House of Representatives." *Id.*

> The NRCC's origins date back to 1866, when the Republican caucuses of the House and Senate formed a "Congressional Committee." Today, the NRCC is organized under Section 527 of the Internal Revenue Code. It supports the election of Republicans to the House through direct financial contributions to candidates and Republican Party organizations; technical and research assistance to Republican candidates and Party organizations; voter registration, education and turnout programs; and other Party-building activities.

Id.

> The NRCC is governed by its chairman, U.S. Rep. Pete Sessions (TX-32), and an executive committee composed of Republican members of the U.S. House of Representatives.
>
> The Chairman is elected by the House Republican Conference after each Congressional election. Republican Leader John Boehner and the seven other elected leaders of the Republican Conference of the House of Representatives serve as ex-officio members of the NRCC's executive committee.
>
> The day-to-day operations of the NRCC are overseen by Executive Director Guy Harrison, who manages a staff of professionals with expertise in campaign strategy devel-

opment, planning and management, research, communications, fundraising, administration, and legal compliance.

Id.

47. *RNC*'s amended *2007* year-end report[1] (FEC Form 3x, filed 02/08/2008) shows $82,009,995 in contributions received from "Individuals/Persons Other Than Political Committees," $0 in contributions from "Political Party Committees," and $1,064,212 in contributions from "Other Political Committees (such as PACs)," for total contributions received of $83,074,207, of which refunded contributions totaled $148,988. The same report showed $40,000 in "Contributions to Federal Candidates/Committees and Other Political Committees," $0 in independent expenditures, and $89,205 in "Coordinated Expenditures Made by Party Committees (2 U.S.C. 441a(d))."

48. RNC's amended *2008* year-end report (FEC Form 3x, filed 04/06/2009) shows $201,926,681 in contributions received from "Individuals/Persons Other Than Political Committees," $0 in contributions from "Political Party Committees," and $1,111,071 in contributions from "Other Political Committees (such as PACs)," for total contributions received of $203,037,752, of which refunded contributions totaled $495,897. The same report showed $484,495 in "Contributions to Federal Candidates/Committees and Other Political Committees" (but with "Refunds of Contributions Made to Federal candidates and Other Political Committees" received totaling $425,148, so these net contributions made were $59,347), $53,459,388 in independent expenditures, and $24,767,657 in "Coordinated Expenditures Made by Party Committees (2 U.S.C. 441a(d))."

49. RNC's amended *2009* year-end report (FEC Form 3x, filed 03/02/2010) shows

[1] All of the reports referenced here and in the following paragraphs discussing reports are reports to the FEC that are available at www.fec.gov, with numbers rounded to the nearest dollar.

$80,850,039 in contributions received from "Individuals/Persons Other Than Political Committees," $0 in contributions from "Political Party Committees," and $491,050 in contributions from "Other Political Committees (such as PACs)," for total contributions received of $81,341,089, of which refunded contributions totaled $522,349. The same report showed $29,269 in "Contributions to Federal Candidates/Committees and Other Political Committees" (but with "Refunds of Contributions Made to Federal candidates and Other Political Committees" received totaling $452,511, so these net contributions were -$423,242), $0 in independent expenditures, and $124,111 in "Coordinated Expenditures Made by Party Committees (2 U.S.C. 441a(d))."

50. RNC's amended *2010* year-end report (FEC Form 3x, filed 06/21/2011) shows $85,688,364 in contributions received from "Individuals/Persons Other Than Political Committees," $0 in contributions from "Political Party Committees," and $414,759 in contributions from "Other Political Committees (such as PACs)," for total contributions received of $86,103,122, of which refunded contributions totaled $51,817. The same report showed $31,500 in "Contributions to Federal Candidates/Committees and Other Political Committees," $0 in independent expenditures, and $936,644 in "Coordinated Expenditures Made by Party Committees (2 U.S.C. 441a(d))."

51. RNC's *2011* year-end report (FEC Form 3x, filed 1/31/2012) shows $80,687,824 in contributions received from "Individuals/Persons Other Than Political Committees," $0 in contributions from "Political Party Committees," and $1,524,476 in contributions from "Other Political Committees (such as PACs)," for total contributions received of $82,212,300, of which refunded contributions totaled $99,815. The same report showed $10,000 in "Contributions to Federal Candidates/Committees and Other Political Committees," $0 in independent expenditures, and $1,723 in "Coordinated Expenditures Made by Party Committees (2 U.S.C. 441a(d))."

52. RNC's *May monthly report* (FEC Form 3x, filed 05/20/2012) shows the following year-to-date totals as of April 30, 2012: $43,544,582 in contributions received from "Individuals/Persons Other Than Political Committees," $0 in contributions from "Political Party Committees," and $1,100,000 in contributions from "Other Political Committees (such as PACs)," for total contributions received of $44,644,582, of which refunded contributions totaled $131,166. The same report showed $5,000 in "Contributions to Federal Candidates/Committees and Other Political Committees," $0 in independent expenditures, and $0 in "Coordinated Expenditures Made by Party Committees (2 U.S.C. 441a(d))."

53. RNC's FEC report summary for the *2009-10*, election-cycle biennium shows that RNC had receipts of $196,336,723; disbursements of $210,769,855; cash on hand of $725,654; and debt of $21,056,780. *See* http://fec.gov/finance/disclosure/srssea.shtml (searchable).

54. RNC's FEC report summary for the *2011-12* election cycle shows that through April 30, 2012, RNC had receipts of $135,157,906; disbursements of $101,071,289; cash on hand of $34,797,272; and debt of $9,9000,000. *Id.*

55. *NRSC*'s FEC report summary for the *2009-10* election cycle shows that NRSC had receipts of $84,513,719; disbursements of $68,099,551; cash on hand of $0; and debt of $0. *Id.*

56. NRSC's FEC report summary for the *2011-12* election cycle shows that through April 30, 2012, NRSC had receipts of $60,578,818; disbursements of $39,040,763; cash on hand of $21,656,370; and debt of $0. *Id.*

57. *NRCC*'s FEC report summary for the *2009-10* election cycle shows that NRCC had receipts of $133,779,119; disbursements of $132,098,663; cash on hand of $2,538,302; and debt of $10,500,000. *Id.*

58. NRCC's FEC report summary for the *2011-12* election cycle shows that through April

30, 2012, NRCC had receipts of $80,619,807; disbursements of $51,889,660; cash on hand of $31,268,448; and debt of $0. *Id.*

PACs, Super PACs, and Campaign Data

59. To put this case in broader context, to assist the Court's understanding, and to provide information for ready citation in later briefing as needed, Plaintiffs here provide information about PACs, super PACs, and campaign-finance data. By contrast to contributions from individuals, political action committees, including those administered by a corporation or labor union, may make unlimited aggregate contributions to candidates. *See* 2 U.S.C. § 441a(a)(1)-(8); *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 198 (1981) ("*CMA*") (observing that multicandidate committees "are not limited in the aggregate amount they may contribute in any year").

60. Though they make no contributions, independent-expenditure-only PACs ("IE-PACs" or "super PACs") have now become powerful players in American politics, due to their ability to raise unlimited contributions for making independent expenditures, which contributions are unlimited in amount and may be from corporations and unions. *See, e.g.*, Jeremy W. Peters, *'Super PACs,' Not Campaigns, Do Bulk of Ad Spending*, N.Y. Times, Mar. 2, 2012, http://www.nytimes.com/2012/ 03/03/us/politics/super-pacs-not-campaigns-do-bulk-of-ad-spending.html?_r=1&ref=politics; Bob Biersack, *Outside Spending: The Big Picture (So Far)* (June 11, 2012), http://www.opensecrets.org/news/2012/06/outside-spending---the-big-picture.html.. *See also* FEC Advisory Opinions 2010-09 (Club for Growth) and 2010-11 (Commonsense Ten).

61. The Sunlight Foundation Reporting Group compiles reporting information on IE-PAC spending, listed by IE-PAC, with links to each group's FEC filings on the FEC website. *See* http://reporting.sunlightfoundation.com/outside-spending/super-pacs/. For example, it reported, as of June 12, 2012 (based on then-current FEC reports), that IE-PACs had expended a total of

$119,535,108 in independent expenditures in the 2011-12 election cycle, including $46,540,815 for Restore our Future, Inc. (supporting Mitt Romney) and $17,003,039 for Winning Our Future (supporting Newt Gingrich), and $7,529,619 for Red White and Blue Fund (supporting Rick Santorum). *Id.* (last visited June 12, 2012).

62. The Sunlight Foundation Reporting Group also compiles reporting information on candidates supported or opposed by independent expenditures (by any entity), as well as electioneering communications (essentially targeted broadcast communications mentioning federal candidates in defined periods before elections, *see* 2 U.S.C. § 434(f)(3) ("electioneering communication" definition)). *See* http://reporting.sunlightfoundation.com/outside-spending/candidates/. For example, it reported, as of June 12, 2012 (based on then-current FEC reports), the following amounts for independent expenditures either supporting or opposing the following candidates: Barack Obama = $3,514,309; Mitt Romney = $25,346,828; Rick Santorum = $28,931,757; Newt Gingrich = $32,200,502. *Id.* (last visited June 12, 2012). Clicking on the candidate's name at the same URL will provide a list of IE-PACs making independent expenditures supporting or opposing the selected candidate, whether the IE-PAC supported or opposed the candidate, the amount of the independent expenditure, and links to download FEC data (on independent expenditures or electioneering communications) in spreadsheet format.

63. A list of all federal races by office with total independent-expenditure and electioneering-communication spending (based on current FEC data) is available at http://reporting.sunlightfoundation.com/outside-spending/races/ (last visited June 12, 2012).

64. At the FEC website, www.fec.gov, the reports of candidate and other committees are available with a search feature. 2012 presidential campaign finance information is available at http://www.fec.gov/disclosurep/pnational.do. As of June 12, 2012 (based on then-current FEC

reports), this latter website reported the following (rounded in millions of dollars) amounts of contributions received (among others): Obama = 217; Romney = 97.6; Paul = 38.7; Gingrich = 23.1; Perry = 19.7; Cain = 16.3; Santorum = 21.8; Bachmann = 10.3. *Id.* (last visited June 12, 2012).

Restrictions on Transfers Between Federal Candidates

65. The authorized committee of one officeholder or candidate can only contribute up to $2,000 per calendar year to the authorized committee of another officeholder or candidate. 2 U.S.C. § 432(e)(3)(B).

66. Earmarking contributions to a particular candidate via an authorized committee of another candidate does not allow circumvention of contribution limits because any funds directed to a candidate through an intermediary are considered contributions to the intended recipient and any transfers in derogation of the contribution limits are prohibited. 2 U.S.C. §§ 441a(a)(8) and 441f.

Penalties

67. Under 2 U.S.C. § 437g(d)(1), knowing and willful violations of a contribution limit, such as the provisions here at issue, can carry criminal penalties of up to $500,000 and five years in prison.

68. Under 2 U.S.C. § 437g(a)(5)(B), knowing and willful violations of the provisions here at issue can carry civil penalties of the greater of $10,000 or 200 percent of any contribution involved in the violation.

Advisory Opinion Request

69. Though the courts in *Davis v. FEC*, 554 U.S. 724, 740-42 (2008), and *Citizens United v.*

FEC, 130 S. Ct. 876, 904-11 (2010), clearly limited the scope of "corruption"—the sole cognizable interest for restricting core political activity—to the quid-pro-quo-corruption risk and rejected the antidistortion interest in overruling *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), the FEC continues to stonewall and ignore these rulings, causing continued injury to McCutcheon.

70. On March 9, 2012, Shaun McCutcheon submitted an advisory opinion request ("AOR") to the FEC pursuant to 2 U.S.C. § 437f. (All documents related to this AOR are available at http://saos.nictusa.com/saos/searchao?SUBMIT=continue&PAGE_NO=-1.) This request asked whether his actions would be lawful if he made contributions to numerous federal candidates all within the base per-candidate limit at 2 U.S.C. § 441a(a)(3)(A) but which aggregated in excess of the $46,200 biennial limit.[2]

71. Pursuant to 11 C.F.R. § 112.1, the FEC accepted the AOR for review, assigned it AOR number 2012-14, and posted it on the FEC's website for public comment on March 14, 2012.

72. On April 23, 2012, the FEC's general counsel issued a draft advisory opinion in response to McCutcheon's AOR. The draft advisory opinion concluded that McCutcheon's planned contributions would be subject to the contribution limits of 2 U.S.C. § 441a(a)(3)(A) and related FEC regulations. The draft advisory opinion did not reach the merits of McCutcheon's constitutional challenge to the statute, asserting that the Commission lacked authority to review for constitutionality a statute the Commission was charged with enforcing.

73. On April 26, 2012, at an open meeting of the FEC, the Commission voted to approve the

[2] McCutcheon's request indicated that his planned contributions would total $51,900 during the 2011-2012 biennium. Because McCutcheon contributed $2,500 to Josh Mandel for the general election, in addition to the $2,500 primary contribution to Mr. Mandel, the aggregate total of McCutcheon's planned contributions this biennium was actually $54,400.

draft described above as Advisory Opinion 2012-14.

74. The Commission's issuance of Advisory Opinion 2012-14, declining to review the constitutionality of the biennial aggregate limit on candidate contributions, deprives McCutcheon of a legal reliance defense that he could otherwise receive under 2 U.S.C. § 437f(c). Because the FEC asserts that it must enforce the statute, despite and without any consideration of its constitutional defects, McCutcheon may be subjected to civil or criminal penalties under 2 U.S.C. § 437g for engaging in political association. The advisory opinion process in this matter is complete and deprived plaintiffs of a legal right—to engage freely in constitutionally protected speech and association. *See Unity 08 v. FEC*, 596 F.3d 861, 865 (D.C. Cir. 2010) ("parties are commonly not required to violate an agency's legal position and risk an enforcement proceeding before they may seek judicial review"); *see also Democratic Senatorial Campaign Committee v. FEC*, 918 F. Supp. 1 (D.D.C. 1994).

Immediate Harm to Plaintiffs

75. Mr. McCutcheon desires to make a series of contributions before coming primaries and the November general election that will exceed the biennial contribution limits. McCutcheon's First Amendment rights are, and will be, violated each day that he is prohibited from making the planned contributions. Though the primary and general elections are fast approaching, he is prohibited by 2 U.S.C. § 441a(a)(3)(A) and related FEC regulations from making these contributions, and thus from engaging in political speech and associating with the candidates of his choosing and like-minded individuals. Every day that passes is another denial of his right of speech and association in this election cycle and denies the candidates of critical funds that could assist with the candidates' campaigns. For those candidates who do not advance past the primary election, McCutcheon will have lost completely the ability to support those candidates, and if he

is not allowed to support candidates before these primaries and the general election, he will be irreparably harmed.

76. Mr. McCutcheon filed his FEC advisory opinion request as promptly as possible to ensure that his planned speech and association would be deemed lawful under BCRA and related regulations. The FEC issued a definitive statement against the legality of McCutcheon's planned contributions, and he has effectively been prevented from exercising protected rights of political association.

77. Mr. McCutcheon similarly faces immediate and irreparable harm if he is unable to contribute to RNC, NRSC, and NRCC as verifies his desire to do. The November general election is less than a half year away and, if his contributions are to be used for the various activities in which national party committees engage in advance of general elections, as he desires, then he must be able to make his contribution as soon as possible.

78. RNC likewise faces immediate harm if it is unable to receive these intended contributions to it, from McCutcheon and other would-be contributors, to use as soon as possible in advance of the November 2012 election.

Future Plans and Ongoing and Irreparable Harm

79. Before the 2012 primary and general elections, Mr. McCutcheon would like to make the planned contributions outlined above, but he cannot because of the biennial contribution limits at 2 U.S.C. § 441a(a)(3)(A) and (B).

80. During the 2013-2014 election cycle, Mr. McCutcheon would like to make contributions permitted by the base contribution limits at 2 U.S.C. § 441a(a)(1) to a number of federal candidates whom Mr. McCutcheon decides to support in the next election cycle, aggregating in excess of $60,000, and to national party committees aggregating at least $75,000. Unless the unconstitu-

tionality of 2 U.S.C. § 441a(a)(3)(A) and (B) is recognized, McCutcheon will not be permitted to do so.

81. In the future, all Plaintiffs intend to do materially similar actions to those that they state their desire and intention to do here, if not limited by the biennial contribution limits. Given the recurring election-related context, the usual length of time for litigation such as this to be finally resolved, and the ongoing restrictions imposed by the biennial contribution limits, there is a strong likelihood that situations similar to those described here will recur without opportunity for full litigation. Thus, even if this case is not fully litigated before the upcoming primaries and the November 2012 election, this case will not be moot because it will be capable of repetition yet evading review. *See, e.g.*, *FEC v. Wisconsin Right to Life*, 551 U.S. 449, 461-63 (2007) ("*WRTL-II*") (Roberts, C.J., joined by Alito, J.) (controlling opinion); *Davis v. FEC*, 554 U.S. 724, 734-36 (2008).

82. Plaintiffs will face a credible threat of prosecution if they make, or receive, contributions in excess of the biennial contribution limits at 2 U.S.C. §§ 441a(a)(3) and 441a(c) (as indexed for inflation at 76 Fed. Reg. at 8369).

83. If Plaintiffs do not obtain the requested relief, they will not proceed with their planned activities. In such an event, they will be deprived of their constitutional rights under the First Amendment to the United State Constitution and will suffer irreparable harm. There is no adequate remedy at law.

Count 1

The Biennial Limit on Contributions to Non-Candidate Committees Lacks a Constitutionally Cognizable Interest as Applied to Contributions to National Political Party Committees.

84. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of

the preceding paragraphs.

85. Shaun McCutcheon and RNC challenge the $70,800 (currently) biennial contribution limit on contributions to all non-candidate committees at 2 U.S.C. § 441a(a)(3)(B) as unconstitutional as applied to contributions to national party committees.

86. The base contribution limit currently allows contributions of up to $30,800 per year to a national party committee, 2 U.S.C. § 441a(a)(1)(B), but this biennial contribution limit caps contributions to non-candidate committees at $70,800 (currently), 2 U.S.C. § 441a(3)(B).

87. In *Buckley v. Valeo*, the Supreme Court rejected a facial constitutional challenge to an "overall $25,000 ceiling" on total contributions in a two-year period that was in the 1974 version of FECA that *Buckley* considered. *See* 424 U.S. 1, 38 (1976).

88. The FECA contribution-limits scheme in effect in 1974 included only the following applicable *contribution* limits, codified at (then) 18 U.S.C. § 608:

- a $1,000 per election limit on contributions by a "person" to a candidate, *Buckley*, 424 U.S. at 189;
- a $5,000 per election limit on contributions by what would now be called a multi-candidate political committee to a candidate, *id.*; and
- a $25,000 ceiling on total contributions by an individual in a year, with contributions in non-election years counted as being made in the following election year, *id.*[3]

[3] The *Buckley* Appendix, 424 U.S. at 189, set out these contribution limits as follows:

(b) Contributions by persons and committees.

(1) Except as otherwise provided by paragraphs (2) and (3), no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $1,000.

(2) No political committee (other than a principal campaign committee) shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $5,000. Contributions by the national committee of a political party serving as the principal campaign committee of a candidate for the office of

89. The 1974 FECA scheme also included several limits on *expenditures*, including by candidates and by any person of $1,000 per year "relative to a clearly identified candidate." *Buckley*, 424 U.S. at 193. These expenditure limits were all held unconstitutional by *Buckley* because they restricted core political speech and were not justified by interests in avoiding corruption or the appearance of corruption, *id.* at 45-48, circumvention of contribution limits, *id.* at 44-48, or leveling the playing field (an impermissible interest), *id.* at 48-49.

90. Missing from the FECA scheme that *Buckley* considered were limits on contributions *to* political committees *other than* the $25,000 biennial ceiling on total contributions. *Without* the ceiling, in a biennial period an individual could give $1,000 per election to an unlimited number of candidates or unlimited amounts to unlimited political committees (including political party committees and PACs). This is the system that *Buckley* considered, that governed its analysis, and that controls the extent of its holding.

91. *Buckley* spent little time in upholding the "overall $25,000 ceiling" on "contributions," noting that the issue got little briefing and offering this limited analysis:

> The overall $25,000 ceiling does impose an ultimate restriction upon the number of candidates and committees with which an individual may associate himself by means of financial support. But this quite modest restraint upon protected political activity serves to prevent evasion of the $1,000 contribution limitation by a person who might otherwise

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> President of the United States shall not exceed the limitation imposed by the preceding sentence with respect to any other candidate for Federal office. For purposes of this paragraph, the term "political committee" means an organization registered as a political committee under section 433, Title 2, United States Code, for a period of not less than 6 months which has received contributions from more than 50 persons and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.
> (3) No individual shall make contributions aggregating more than $25,000 in any calendar year. For purposes of this paragraph, any contribution made in a year other than the calendar year in which the election is held with respect to which such contribution was made, is considered to be made during the calendar year in which such election is held.

> contribute *massive* amounts of money to a particular candidate through the use of unearmarked contributions *to political committees likely to contribute to that candidate*, or huge contributions *to the candidate's political party*. The limited, additional restriction on associational freedom imposed by the overall ceiling is thus no more than a corollary of the basic individual contribution limitation that we have found to be constitutionally valid.

Id. at 38 (emphasis added).

92. In response to *Buckley*, Congress put in place a new contribution-limits scheme without expenditure limits, codified (as now) at 2 U.S.C. § 441a(a), adding new limits on contributions *to* political party committees and *to* PACs to deal with any possible circumvention risk by eliminating the possibility of what *Buckley* called "massive" contributions, as follows:

- a $1,000 [now $2,500] per election limit on contributions by a person to a candidate;
- a (*new*) $20,000 [now $30,800] per year limit on contributions by a person *to* a national political party;
- a (*new*) $5,000 per year limit on contributions by a person *to* any other political committee;[4]
- limits on contributions by a "multicandidate committee"[5] of—
  - $5,000 per election to a candidate,
  - (*new*) $15,000 per year *to* a national political party, and
  - (*new*) $5,000 per year *to* any other political committee; and
- a $25,000 biennial ceiling on total contributions by an individual.

[4] BCRA increased the limit on contributions to state party committees from $5,000 to $10,000 per year. *See* Pub. L. 107-155, § 102, 116 Stat. at 86-87 (2002).

[5] These limits are only for *multicandidate committees*, i.e., those recognized as political committees for 6 months, receiving contributions from over 50 persons, and contributing to 5 or more candidates. *See* 11 C.F.R. § 100.5(e)(3). So a single-candidate committee, *see* 11 C.F.R. § 100.5(e)(2), or other non-multicandidate committee would be a "person" limited to the same limits as other "persons," here $1,000.

See Pub. L. No. 94-283, 90 Stat. 475 (1976).[6]

93. Though limits were added on contributions by persons *to* political parties and political committees, the "overall $25,000 ceiling" on individual contributions was *also* retained.

94. The $5,000/year limit on contributions by "persons" to a PAC was upheld in *CMA*, 453 U.S. 182, based on eliminating a circumvention risk. *Id.* at 197-99 (Marshall, J., joined by Brennan, White & Stevens, JJ.) (footnotes omitted); *id.* at 203 (Blackmun, J., concurring in part and concurring in the judgment).

95. In footnote 18, the *CMA* plurality recorded key legislative history for the 1976 FECA amendments, which history explains that the new limits on contributions to party committees and PACs were, inter alia, to "restrict . . . circumvent[ion]" of contribution limits, including by the

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[6] The "Federal Elections Campaign Act Amendments of 1976" added new contributions in a new § 320 as follows:

LIMITATIONS ON CONTRIBUTIONS AND EXPENDITURES

"Sec. 320. 2 USC 441a. (a) (1) No person shall make contributions—,

"(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000;

"(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $20,000; or

"(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

"(2) No multicandidate political committee shall make contributions—,

"(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000;

"(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000; or

"(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

"(3) No individual shall make contributions aggregating more than $25,000 in any calendar year. For purposes of this paragraph, any contribution made to a candidate in a year other than the calendar year in which the election is held with respect to which such contribution is made, is considered to be made during the calendar year in which such election is held.

proliferation of PACs focused more on "advancing a candidate's campaign" than their own agendas:

> FN18. The Conference Report on the provision in the 1976 amendments to the Act that became § 441a(a)(1)(C) specifically notes:
>
> "The conferees' decision to impose more precisely defined limitations on the amount an individual may contribute to a political committee, other than a candidate's committees, and to impose new limits on the amount a person or multicandidate committee may contribute to a political committee, other than candidates' committees, is predicated on the following considerations: first, *these limits restrict the opportunity to circumvent the $1,000 and $5,000 limits on contributions to a candidate*; second, these limits serve to assure that candidates' reports reveal the root source of the contributions the candidate has received; and third, these limitations minimize the adverse impact on the statutory scheme caused by political committees that appear to be separate entities pursuing their own ends, but are actually a means for advancing a candidate's campaign." H.R. Conf. Rep. No. 94-1057, pp. 57-58 (1976), U.S. Code Cong. & Admin. News 1976, pp. 929, 972.

Id. at 198 n.18 (emphasis added).

96. In addition, the Conference Report set out the new anti-proliferation rules in the new law to eliminate the ability to circumvent contribution limits by the use of many created political committees:

> The anti-proliferation rules established by the conference substitute are intended to prevent corporations, labor organizations, or other persons or groups of persons from evading the contribution limits of the conference substitute. Such rules are described as follows:
>
> 1. All of the political committees set up by a single corporation and its subsidiaries are treated as a single political committee.
>
> 2. All of the political committees set up by a single international union and its local unions are treated as a single political committee.
>
> 3. All of the political committees set up by the AFL-CIO and all its State and local central bodies are treated as a single political committee.
>
> 4. All the political committees established by the Chamber of Commerce and its State and local Chambers are treated as a single political committee
>
> 5. The anti-proliferation rules stated also apply in the case of multiple committees established by a group of persons.

H.R. Conf. Rep. No. 94-1057, pp. 57-58 (1976). The Conference Report said the "conference substitute is the same as the Senate bill" (with exceptions), *id*. at 57, which in turn was "intended

to curtail the vertical proliferation of political committee contributions," *id.* at 53-54.

97. The 1976 scheme that Congress enacted in reaction to *Buckley* differs for purposes of constitutional analysis in substantial ways from what *Buckley* considered, so the facial upholding of the old "overall $25,000 ceiling" did not control after those 1976 amendments. BCRA repealed and replaced the old "overall $25,000 ceiling" with two biennial contribution limits (candidate and non-candidate) with the latter containing a sub-limit that also acts as a cap on contributions to non-candidate, non-national-party committees (i.e., state, district, and local party committees and to PACs), so the holding in *Buckley* does not control the BCRA scheme. In any event, the upholding of the "overall $25,000 ceiling" in *Buckley* involved a facial challenge that cannot control the challenges here that are as-applied.

98. By placing limits on contributions *to* political parties and PACs to eliminate the circumvention risk, Congress eliminated the conduit concern on which *Buckley* relied to facially uphold the "overall $25,000 ceiling" on contributions. That scheme has been continued to the present. So a contributor can no longer contribute what *Buckley* called "massive" amounts of money to a political committee or political party. As a result, there is no possibility of a benefit flowing to any candidate that implicates either a cognizable quid-pro-quo-corruption risk or a cognizable risk of circumvention that would trigger the quid-pro-quo-corruption risk.

99. Moreover, candidate committees were "persons" limited to contributing $1000 per election to candidates or candidate's committees under the FECA scheme that *Buckley* considered and in 1980 Congress enacted a new limit of $1,000 per election on contributions from candidate committees to candidates committees, *see* Pub. L. No. 96-187, 93 Stat. 1339 (1980), codified at 42 U.S.C. § 432(e)(3)(A)-(B), which was increased to $2,000 in 2004, *see* Pub. L. No. 108-447, 118 Stat. 2809 (2004). *See* 11 C.F.R. §§ 102.12(c)(2) and 102.13(c)(2) (same). Consequently,

contributions to candidate committees could not pose any possibility of a circumvention by "massive" contributions to candidate committees that might somehow benefit other candidates.

100. In addition, the "anti-proliferation rules" of the 1976 FECA amendments, *see supra* ¶ 96, eliminate circumvention of contribution limits by means of proliferating political committees.

101. Since the limits on contributions to political parties and PACs eliminate any "massive"-contributions-circumvention concern and restrict the effect of a proliferation of PACs particularly promoting a particular candidate, there is no longer any constitutionally cognizable circumvention interest to justify the biennial contribution limits as applied to contributions of up to $30,800 (currently) per calendar year to national party committees.

102. National political parties pose no cognizable quid-pro-quo-corruption risk to their candidates. *See, e.g.*, *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604, 616 (1996) ("Breyer, J., joined by O'Connor & Souter, J.J.) ("We are not aware of any special dangers of corruption associated with political parties . . . .") ("*Colorado-I*"); *Colorado-II*, 533 U.S. at 456 n.18 (not deciding whether parties posed a corruption risk to their candidates because case could be decided based on anti-circumvention interest); *id.* at 476 (Thomas, J., joined by Rehnquist, C.J., and Scalia & Kennedy, JJ., dissenting) (because the Court could not show that political parties corrupted their candidates, it relied on an anti-circumvention interest).

103. Thus, there is no cognizable governmental interest supporting the biennial contribution limits at 2 U.S.C. § 441a(a)(3)(B) as applied to contribution limits to national party committees that are otherwise permissible under 2 U.S.C. § 441a(a)(1)(B), and such application is unconstitutional.

104. The aggregate contribution limit at 2 U.S.C. § 441a(3)(B) as applied to national party

committees should be subjected to strict scrutiny because it substantially burdens McCutcheon's right to free speech and association with the national party committees of his choosing. Because the base contribution limit at 2 U.S.C. § 441a(a)(1)(B) already limits contributions to national party committees, the biennial limit is effectively a limit on expenditures and should be considered under the scrutiny applicable to expenditures. Alternatively, if this Court considers the aggregate limit to be a contribution limit, though the U.S. Supreme Court has treated contributions and expenditures to different standards of scrutiny, § 441a(a)(3)(B)'s very real burden on speech and association means *Buckley*'s holding that contribution limits are subject to less rigorous "exacting scrutiny" rather than strict scrutiny, 424 U.S. at 19-23, 25, must be revisited. Strict scrutiny requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. *Citizens United*, 130 S. Ct. at 898. But under either level of scrutiny, Plaintiffs should prevail.

105. The biennial limit on contributions to non-candidate committees at 2 U.S.C. § 441a(a)(3)(B) is unconstitutional under the First Amendment guarantees of free speech and association as applied to contributions from individuals to national party committees of up to $30,800 (currently) per calendar year as permitted by 2 U.S.C. § 441a(a)(1)(B).

Count 2
The Biennial Limits on Contributions to Non-Candidate Committees Are Facially Unconstitutional for Lacking a Cognizable Interest.

106. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

107. Shaun McCutcheon and RNC challenge the biennial contribution limits (currently $70,800 and $46,200) on contributions to non-candidate committees at 2 U.S.C. § 441a(a)(3)(B)

as facially unconstitutional.

108. As noted above, the post-*Buckley* 1976 FECA amendments eliminated the two bases on which *Buckley* relied, 424 U.S. at 38, to facially uphold the now-repealed and replaced "overall $25,000 ceiling," i.e., there can no longer be either political-committee proliferation or the risk of circumvention of contribution limits by moving "massive" amounts of money through party committees or PACs "to" candidates. *See supra* ¶¶ 92-101. Thus, there is no cognizable interest to justify these biennial contribution limits as applied to any non-candidate committee, so they are facially unconstitutional.

109. These biennial contribution limits are facially unconstitutional for being substantially overbroad under the analysis of *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973). This Court is justified in "prohibiting all enforcement" of the limits because their application to protected speech and association is substantial, "not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications." *Virginia* v. *Hicks,* 539 U.S. 113, 119-20 (2003). The unconstitutional application of 2 U.S.C. § 441a(a)(3)(B) to all national party committees is substantial, not only in an absolute sense, but also in a relative sense, especially because there is no "scope of . . . plainly legitimate applications" due to the lack of legitimate application to state party committees and PACs, as set out in the preceding paragraph.

110. Because the $46,200 sub-limit on contributions to non-national party committees is an integral part of 2 U.S.C. § 441a(a)(3)(B), because Congress thereby indicated its intention that the provision operate as a unit, and because the sub-limit is dependent grammatically on the whole of § 441a(a)(3)(B) for its meaning, this sub-limit must fall facially with the whole provision.

111. These biennial limits on contributions to non-candidate committees at 2 U.S.C.

§ 441a(a)(3)(B) are facially unconstitutional under the First Amendment guarantees of free speech and association.

Count 3
The Biennial Limits on Contributions to Non-Candidate Committees Are Unconstitutionally Too Low, as Applied and Facially.

112. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

113. Shaun McCutcheon and RNC challenge the biennial contribution limits on contributions to non-candidate committees at 2 U.S.C. § 441a(a)(3)(B) as unconstitutional for being too low, as applied to national party committees and facially, in violation of the First Amendment rights of expression and association under the analysis of *Randall v. Sorrell*, 548 U.S. 230 (2006). That analysis rejects contribution limits that "fail to satisfy the First Amendment's requirement of careful tailoring," i.e., "they impose burdens upon First Amendment interests that (when viewed in light of the statute's legitimate objectives) are disproportionately severe." *Id.* at 237 (plurality opinion).

114. Mr. McCutcheon's contributions to non-candidate federal committees in this biennium total $27,328, and, if he is permitted to exceed the $70,800 biennial limit by contributing $25,000 each to RNC, NRSC, and NRCC, his total biennial contributions to non-candidate committees would total $97,000.

115. The current biennial limit on contributions to non-candidate committees (including national party committees, state party committees, and PACs) is $70,800, of which no more than $46,200 may go to non-national-party committees. 2 U.S.C. § 441a(a)(3)(B).

116. In *Randall*, the Supreme Court struck down as too low a $400 limit on contributions an

individual may make, over a two-year period, to a state party committee. *Id.* at 262 (plurality opinion). The state party committee at issue in *Randall* needed funds to reach the voters in a population of 621,000, *see id.* at 250 (Vermont population in 2006).

117. Applying *Randall*'s analysis to the current $70,800 biennial limit as applied to national party committees shows its unconstitutionality. RNC and its sister committees need funds to reach the voters in a population of over 308,000,000, *see* http://2010.census.gov/2010census/data/ (2010 United States population was 308,745,538). A ratio shows that contributions of $198,389.69 over two years to the national committees of one political party—RNC, NRSC, and NRCC—would still be too low under *Randall.* ($400/621,000 = $198,389/308,000,000). The $30,800 per national-party committee per year that individuals are permitted to give under 2 U.S.C. § 441a(a)(1)(B) would result in $184,800 to the party committees per biennium. This $184,000 is much closer to the $198,389 ratio derived from *Randall*. But the national party committees cannot accept these otherwise legal amounts because of the $70,800 biennial limit, which is far too low to be constitutional. The biennial limit frustrates an individual's right to meaningfully associate with the national committees of his political party and to fund robust political discussion.

118. This $70,800 biennial contribution limit is also facially unconstitutional as too low because it is substantially overbroad under *Broadrick*, 413 U.S. at 613. This $70,800 limit applies to national party committees, state party committees (also district and local party committees), and PACs. This Court is justified in "prohibiting all enforcement" of the limit because its application to protected speech and association is substantial, "not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications." *Hicks,* 539 U.S. at 119-20. Its unconstitutional application to all national party committees is substantial, not only in an abso-

lute sense, but also in a relative sense.

119. Because the $46,200 sub-limit on contributions to non-national party committees is an integral part of 2 U.S.C. § 441a(a)(3)(B), because Congress thereby indicated its intention that the provision operate as a unit, and because the sub-limit is dependent grammatically on the whole of § 441a(a)(3)(B) for its meaning, this sub-limit must fall facially with the whole provision.

120. The biennial limits at 2 U.S.C. § 441a(a)(3)(B) on contributions to non-candidate committees are unconstitutional, as applied and facially, under the First Amendment guarantees of free speech and association because the limits are not properly tailored because they are too low.

Count 4
The Biennial Limit on Contributions to Candidate Committees Lacks a Constitutionally Cognizable Interest.

121. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

122. Shaun McCutcheon challenges the biennial limit on contributions to candidate committees (currently $46,200 per biennium) at 2 U.S.C. § 441a(a)(3)(A) as unconstitutional because it lacks a constitutionally cognizable interest to justify it.

123. During the current election cycle (2011-12), Mr. McCutcheon is ready, willing, and able, and has already begun, to make contributions to federal candidates that are fully within the base, per-candidate, per-election limit at 2 U.S.C. § 441a(a)(1)(A) but exceed the biennial limit at 2 U.S.C. § 441a(a)(3)(A).

124. Mr. McCutcheon similarly desires to make contributions to multiple federal candidates in the 2014 election cycle that would be permissible under the base contribution limit but not un-

der the biennial contribution limit because they aggregate at least $60,000.

125. Because Mr. McCutcheon's desired contributions to candidate committees would aggregate $54,400 during the 2012 election cycle, and at least $60,000 during the 2014 election cycle, McCutcheon is not permitted to support the candidates of his choice by making these contributions. The biennial limit on contributions to candidate committees at 2 U.S.C. § 441a(a)(3)(A) severely burdens McCutcheon's right to free speech and association. It is the functional equivalent of a ban on an individual associating with the candidates of his choosing because it has the effect of prohibiting contributions to "too many" candidates.

126. Even candidates who do not represent Mr. McCutcheon's home district or state nevertheless have a direct effect on him and the implementation of his principles, such as by chairing committees or subcommittees, controlling the legislative agenda through leadership in the chambers of Congress, being staunch advocates for certain issues or co-sponsors of key legislation, and so on. Thus, McCutcheon has just as much interest in being involved in races outside his home district and state as within his home district and state. But this biennial contribution limit restricts contributors' ability to do so by forcing them to make non-sensical tradeoffs. To use an arbitrary example, if a contributor were just under his aggregate cap, he might have to choose between his belief in a strong national defense (by donating to the ranking member of the Senate Armed Services Committee) and a free economy (by donating to the chair of the House Commerce Committee).

127. The biennial limit on contributions to candidate committees should be subjected to strict scrutiny because it substantially burdens McCutcheon's right to free speech and association with the candidates of his choosing. Because the base contribution limit at 2 U.S.C. § 441a(a)(1)(B) already limits contributions to national party committees, the biennial limit is

effectively a limit on expenditures and should be considered under the scrutiny applicable to expenditures. Alternatively, if this Court considers the aggregate limit to be a contribution limit, though the U.S. Supreme Court has treated contributions and expenditures to different standards of scrutiny, § 441a(a)(3)(B)'s very real burden on speech and association means *Buckley*'s holding that contribution limits are subject to less rigorous "exacting scrutiny" rather than strict scrutiny, 424 U.S. at 19-23, 25, must be revisited. Strict scrutiny requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest. *Citizens United*, 130 S. Ct. at 898. But under either level of scrutiny, McCutcheon should prevail.

128. Section 441a(a)(3)(A) fails strict scrutiny because it is not supported by a compelling government interest. *See Randall*, 548 U.S. at 267 (2006) (Thomas, J. dissenting) (I would subject contribution limits to strict scrutiny, which they would fail).

129. Alternatively, under exacting scrutiny, the biennial aggregate limit on candidate contributions fails exacting scrutiny because it is not supported by a sufficient government interest.

130. The United States Supreme Court has rejected any theory of corruption beyond actual financial quid pro quo, such as preventing candidate influence, access, or gratitude, which do not constitute corruption. *See Citizens United*, 130 S. Ct. at 909-10.

131. The Supreme Court has expressly and thoroughly rejected the "antidistortion" rationale as a cognizable justification for contribution limits. *See, e.g.*, *Davis*, 554 U.S. at 741-42 ("[T]he concept that the government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.") (quoting *Buckley*, 424 U.S. at 48-49). The Supreme Court has stated that the "antidistortion" rationale is not only insufficient, but is an illegitimate government interest, *see Davis*, 554 U.S. at 741, and even a "dangerous enterprise," *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*,

131 S. Ct. 2806, 2826 (2011).

132. This biennial aggregate contribution limit is not supported by an interest in eliminating the quid-pro-quo-corruption risk, which can be a justification for government restrictions on political contributions. *See Citizens United*, 130 S.Ct. at 909-10; *Davis*, 554 U.S. at 741-44; *Buckley*, 424 U.S. at 26-28. But this anti-corruption interest does not apply because the biennial contribution limit does not apply to any contribution to a *particular* candidate (which would be necessary for there to be a cognizable quid-pro-quo-corruption risk) and Mr. McCutcheon's proposed contributions will be within the base contribution limits ($2,500 per candidate per election), which precludes any quid-pro-quo-corruption risk.

133. This biennial aggregate contribution limit is not supported by any anti-circumvention interest, which would be the only cognizable interest that could support such an overall aggregate limit. *Buckley* did not even suggest that the old "overall $25,000 ceiling" might be justified by the use of candidate committees as conduits. Contributions to candidate committees posed no threat that a "person . . . might . . . contribute *massive* amounts of money to a particular candidate through the use of unearmarked contributions *to political committees likely to contribute to that candidate*, or huge contributions *to the candidate's political party*." 424 U.S. at 38. No "massive" funds could be channeled through candidate committees because candidate committees were "persons" limited to contributing $1,000 per election to candidates or candidate's committees under the FECA scheme that *Buckley* considered. Moreover, in 1980 Congress enacted a new limit of $1,000 per election on contributions from candidate committees to candidates committees, *see* Pub. L. No. 96-187, 93 Stat. 1339 (1980), codified at 42 U.S.C. § 432(e)(3)(A)-(B), which was increased to $2,000 in 2004, *see* Pub. L. No. 108-447, 118 Stat. 2809 (2004). *See* 11 C.F.R. § 102.12(c)(2) and 102.13(c)(2) (same). Consequently, contributions to candidate com-

mittees could not pose any possibility of circumvention by "massive" contributions to candidate committees that might somehow benefit other candidates. Even Congress itself clearly does not view contributions to candidate committees as posing a circumvention risk. *See CMA*, 453 U.S. at 198 n.18 (quoted *supra* ¶ 95).

134. The fact that this biennial aggregate limit is not remotely directed at a threat of quid-pro-quo corruption or an anti-circumvention interest—but is directed at a noncognizable anti-distortion interest—is demonstrated by simple arithmetic. In 2006, the Supreme Court invalidated a contribution limit of $200 per election to statewide candidates passed by the Vermont legislature, holding that it was unconstitutionally low. *Randall*, 548 U.S. at 249, 262-63. Vermont's population in 2004 was 621,000, *id.* at 250, well below the population of the average congressional district, i.e., 646,947.[1] By comparison, in 2006 the biennial aggregate contribution limit was $40,000. If an individual wanted to make a contribution of equal value to one candidate of his choice in all 468 federal races that year (435 House races, 33 Senate races, and the presidential race), in order to comply with 2 U.S.C. § 441a(a)(3)(A), he would have been limited to contributing only $85.29 per candidate for the entire 2006 election cycle, which amounts to $42.64 per election (primary and general, without accounting for any runoffs). That is far below the $200 limit held too low in *Randall*. In the 2012 biennium, with an aggregate limit of $46,200, McCutcheon is limited to $98.71 per candidate for the entire cycle (468 races). This amounts to a mere $49.35 per election—and leaves out the fact that thirty-three of those races are statewide races for Senator, requiring candidates to reach an average of 8.7 times the number of persons needed to be reached in a congressional campaign. Aside from being too low under *Randall*, *see*

[1] In 2000, the population of the average congressional district was 646,947 (dividing the U.S. population, 281,421,90, *see* http://www.census.gov/main/www/ cen2000.html, by 435).

infra Count 5, considering that $49.35 is $2,450.65 less than the per-candidate limit Congress itself deems permissible, it is clear—based on the math alone—that the aggregate limit has nothing to do with preventing corruption or circumvention.

135. Instead, the math demonstrates that this restriction furthers only the antidistortion goals, an illegitimate government purpose. *See, e.g.*, *Davis*, 554 U.S. at 741-42. To the extent the government argues that, despite appearances, the aggregate limit is actually directed at quid-pro-quo corruption or circumvention, the fact remains that this limit operates apart from, and in addition to, the base per-candidate limit which McCutcheon does not challenge. The burden is on the FEC to demonstrate how an aggregate limit on contributions to candidates addresses a threat of corruption. The court should not defer to Congress's judgment on the scope of the corruption threat and the constitutionality of responses thereto because incumbents are not motivated to protect candidates challenging their hold on power. *See Randall*, 548 U.S. at 270 n.2 (Thomas, J., concurring). While prior holdings of the Supreme Court have extended deference to Congressional judgment on contribution limits, *see, e.g.*, *Davis*, 554 U.S. at 737, those holdings should be revisited, if necessary, though the Supreme Court has since clarified that deference must yield to the First Amendment. *See Citizens United*, 130 S. Ct. at 911 ("When Congress finds that a problem exists, we must give that finding due deference; but Congress may not choose an unconstitutional remedy.").

136. Because the biennial limit on contributions to candidate committees at 2 U.S.C. § 441a(a)(3)(A) is unsupported by any cognizable government interest, it fails constitutional scrutiny at any level of review.

137. The biennial limit on contributions to candidate committees at 2 U.S.C. § 441(a)(3)(A) is unconstitutional under the First Amendment guarantees of free speech and association.

Count 5
The Biennial Limit on Contributions to Candidate Committees Is Unconstitutionally Too Low.

138. Plaintiffs reallege and incorporate by reference all of the allegations contained in all of the preceding paragraphs.

139. Shaun McCutcheon challenges the biennial limit on contributions to candidate committees (currently $46,200 per biennium) at 2 U.S.C. § 441a(a)(3)(A) as unconstitutional because it is unconstitutionally too low.

140. The reasons set out in ¶ 134, *supra*, demonstrate the unconstitutionality of this biennial limit.

141. Because the biennial aggregate limit on contributions to candidates, is set at an amount that prevents Mr. McCutcheon from meaningfully associating with all the candidates of his choice, it is set too low to pass muster under the First Amendment to the United States Constitution and must be invalidated.

142. The biennial limit on contributions to candidate committees at 2 U.S.C. § 441a(a)(3)(B) is unconstitutional under the First Amendment guarantees of free speech and association because it is not properly tailored because it is too low.

Prayer for Relief

Wherefore, Plaintiffs pray for the following relief:

1. Convening of a three-judge court to consider this "action . . . brought for declaratory or injunctive relief to challenge the constitutionality of any provision of [BCRA] or any amendment made by [BCRA]," BCRA § 403(a), 116 Stat. at 113-14, and BCRA § 403, Local Civil Rule 9.1, and pertinent law as soon as practicable;

2. "[A]dvance[ment] on the docket and . . . expedit[ion] to the greatest possible extent the disposition of this action . . . ." BCRA § 403(a)(4) and (d)(2);

3. Alternatively, should the Court deem this a challenge to FECA, as soon as possible the certification of this case to the United States Court of Appeals for the District of Columbia Circuit, which shall hear the matter sitting en banc. 2 U.S.C. § 437h;

4. As requested in Count 1, a declaratory judgment holding the biennial contribution limit at 2 U.S.C. § 441a(a)(3)(B) unconstitutional as applied to contributions to national party committees because the provision lacks a cognizable interest;

5. Preliminary and permanent injunctions enjoining FEC from enforcing 2 U.S.C. § 441a(a)(3)(B) as applied to contributions to national party committees because the provision lacks a cognizable interest;

6. As requested in Count 2, a declaratory judgment holding the biennial contribution limits at 2 U.S.C. § 441a(a)(3)(B) unconstitutional facially because the provision lacks a cognizable interest;

7. Preliminary and permanent injunctions enjoining FEC from enforcing 2 U.S.C. § 441a(a)(3)(B) facially because the provision lacks a cognizable interest;

8. As requested in Count 3, a declaratory judgment holding the biennial contribution limits

at 2 U.S.C. § 441a(a)(3)(B) unconstitutional because they are too low, as applied to national party committees and facially;

9. Preliminary and permanent injunctions enjoining FEC from enforcing the biennial contribution limits at 2 U.S.C. § 441a(a)(3)(B) because they are unconstitutionally too low, as applied to national party committees and facially;

10. As requested in Count 4, a declaratory judgment holding the biennial contribution limit at 2 U.S.C. § 441a(a)(3)(A) unconstitutional because the provision lacks a cognizable interest;

11. Preliminary and permanent injunctions enjoining FEC from enforcing 2 U.S.C. § 441a(a)(3)(A) because the provision lacks a cognizable interest;

12. As requested in Count 5, a declaratory judgment holding the biennial contribution limit at 2 U.S.C. § 441a(a)(3)(A) unconstitutional because it is too low;

13. Preliminary and permanent injunctions enjoining FEC from enforcing the biennial contribution limit at 2 U.S.C. § 441a(a)(3)(A) because it is unconstitutionally too low;

14. Costs and attorneys fees pursuant to any applicable statute or authority; and

15. Any other relief that this Court in its discretion deems just and appropriate.

Respectfully submitted,

/s/ James Bopp, Jr.

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Verification

I, Reince Priebus, declare as follows:

1. I am the Chairman of the Republican National Committee ("RNC").

2. I have personal knowledge of RNC, its activities, and its intentions, including those set out in the foregoing *Verified Complaint for Declaratory and Injunctive Relief*, and if called on to testify I would competently testify as to the matters stated herein.

3. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Complaint* concerning RNC, its activities, and its intentions are true and correct. 28 U.S.C. § 1746.

Executed on June 20, 2012.

Reince Priebus

Verification

I, Shaun McCutcheon, declare as follows:

1. I am a Plaintiff in the present case, a natural-born citizen of the United States of America, and a resident of the State of Alabama. I am eligible to vote in an election for the office of the President of the United States.

2. I have personal knowledge of myself, my activities, and my intentions, including those set out in the foregoing *Verified Complaint for Declaratory and Injunctive Relief*, and if called on to testify I would competently testify as to the matters stated herein.

4. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Complaint* concerning myself, my activities, and my intentions are true and correct. 28 U.S.C. § 1746.

Executed on June 21, 2012.

Shaun McCutcheon

Certificate of Service

I hereby certify that the foregoing complaint was served, on June 22, 2012, on the following persons by certified mail, return receipt requested, and that a courtesy copy was emailed to Anthony Herman at aherman@fec.gov:

Anthony Herman, General Counsel
FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20436
(202) 694-1650

Eric H. Holder, U.S Attorney General
U.S. DEPARTMENT OF JUSTICE
950 Pennsylvania Ave. NW
Washington, DC 20530.

Civil Process Clerk
UNITED STATES ATTORNEY'S OFFICE
501 Third Street, NW
Washington, DC 20530

I further certify that on the same date a copy of the complaint was provided by the same means "to the Clerk of the House of Representatives and the Secretary of the Senate" as required under § 403(a)(2) of the Bipartisan Campaign Reform Act of 2002, 116 Stat. 114, at the following addresses:

Clerk of the House of Representatives
U.S. HOUSE OF REPRESENTATIVES
U.S. Capitol, Room H154
Washington, DC 20515-6601

Secretary of the Senate
UNITED STATES SENATE
Washington, DC 20510-6601.

/s/ Dan Backer
Dan Backer, DC Bar #996641
DB CAPITOL STRATEGIES, PLLC
209 Pennsylvania Ave., S.E., Suite 2109
Washington, DC 20003