



## Contents

- 1 Litigation
- 6 Public Funding
- 7 Advisory Opinions
- 8 Compliance
- 9 Outreach

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## Litigation

### ***McCutcheon v. FEC: Supreme Court Finds Aggregate Biennial Limits Unconstitutional***

On April 2, 2014, the Supreme Court issued a ruling in *McCutcheon v. FEC* that struck down the aggregate limits on the amount an individual may contribute during a two-year period to all federal candidates, parties and political action committees combined. By a vote of 5-4, the Court ruled that the biennial aggregate limits are unconstitutional under the First Amendment.

### **Background**

In 2012, Alabama resident Shaun McCutcheon and the Republican National Committee (together, plaintiffs) filed suit against the Commission challenging the Federal Election Campaign Act's (the Act) biennial limits on an individual's combined contributions to federal candidates, parties, and PACs. 2 U.S.C. §441a(a)(3)(A) and (B).

By law, the biennial aggregate limits are indexed for inflation every two years. In 2011-12, the overall limit was \$117,000, of which no more than \$46,200 could go to federal candidates and \$70,800 to PACs and party committees. Of the PAC/party total, no more than \$46,200 could go to state and local party committees and PACs. The remainder was set aside for the national party committees.<sup>1</sup>

Mr. McCutcheon contributed to 16 different federal candidates during the 2012 elections, complying with the base limits applicable to each (i.e., \$2,500 per candidate, per election). He argued that the aggregate biennial limits prevented him from contributing to another 12 federal candidates and to a number of non-candidate political committees, including the Republican National Committee.

The plaintiffs filed a complaint before a three-judge District Court, asserting that the aggregate limits were unconstitutional under the First Amendment. The District Court denied their motion for a preliminary injunction and granted the Commission's motion to dismiss. The Supreme Court's decision reverses the District Court's decision and remands the case.

## Supreme Court Decision

In the Court's plurality opinion, Chief Justice John Roberts wrote, "The right to participate in democracy through political contributions is protected by the First Amendment, but that right is not absolute. Our cases have held that Congress may regulate campaign contributions to protect against corruption or the appearance of corruption. See, e.g., *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976) (*per curiam*)."

Roberts went on to write, "Congress may target only a specific type of corruption—'*quid pro quo*' corruption . . . Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder's official duties, does not give rise to *quid pro quo* corruption. Nor does the possibility that an individual who spends large sums may garner 'influence over or access to' elected officials or political parties."

As a result, the Court concluded that "the aggregate limits on contributions do not further the only governmental interest this Court accepted as legitimate in *Buckley*. They instead intrude without justification on a citizen's ability to exercise 'the most fundamental First Amendment activities.'"

While the Court's decision removes the overall cap on individual contributions, it does not affect the Act's base limits on individual contributions to federal candidate campaigns, PACs or party committees. Currently, individuals may contribute up to \$2,600 per election to a federal candidate, \$10,000 per calendar year to a state party committee, \$32,400 per calendar year to a national party committee and \$5,000 per calendar year to a PAC.

The text of the Supreme Court's opinion is available [here](#).

U.S. Supreme Court No. 12-536.

<sup>1</sup> For 2013-14, the overall limit increased to \$123,200, of which no more than \$48,600 could go to candidates and \$74,600 to PACs and party committees.

(Posted 4/15/2014; By: Alex Knott)

## Resources:

- [The Supreme Court's Decision in \*McCutcheon, et al. v. FEC\*](#) [PDF]
- [McCutcheon et al. v. FEC Ongoing Litigation Page](#)
- Article: [James v. FEC](#)

## *James v. FEC*

On April 7, 2014, the Supreme Court vacated a district court judgment in *James v. Federal Election Commission* and remanded the case for further consideration in light of its decision in [McCutcheon v. FEC](#).

## Background

In August 2012, Virginia James filed suit in U.S. District Court for the District of Columbia challenging the Federal Election Campaign Act's biennial limit on an individual's total contributions to federal candidates. 2 U.S.C. §441a(a)(3)(A). That limit was among

those simultaneously before the court in [McCutcheon v. FEC](#) (D.D.C. Civ. No. 12-1034), which challenged the Act's biennial limits on total contributions to candidates, party committees and PACs.

On September 28, 2012, the court rejected all of the *McCutcheon* plaintiffs' claims and dismissed that lawsuit. Finding no basis to distinguish between the two cases, the court dismissed Ms. James' suit on October 31, 2012.

### **Summary Disposition**

On April 2, 2014, the Supreme Court reversed the district court decision in *McCutcheon*, finding the aggregate contribution limits unconstitutional under the First Amendment. Consistent with that opinion, the Court then vacated the district court's decision in *James* and ordered the district court to reconsider its opinion in light of *McCutcheon*. U.S. Supreme Court No. 12-683.

(Posted 4/15/2014; By: Isaac Baker)

### **Resources:**

- [Supreme Court Summary Disposition](#) [PDF]
- [James v. FEC Ongoing Litigation Page](#)
- [McCutcheon v. FEC Ongoing Litigation Page](#)
- Article: [McCutcheon v. FEC: Supreme Court Finds Biennial Limits Unconstitutional](#)

## ***Stop Reckless Economic Instability caused by Democrats ("Stop PAC"), et al. v. FEC***

On April 14, 2014, a group of political committees and a federal candidate filed suit against the Commission in the U.S. District Court for the Eastern District of Virginia challenging certain Federal Election Campaign Act (the Act) contribution limits for "multicandidate" and "non-multicandidate" political committees. Stop Reckless Economic Instability caused by Democrats ("Stop PAC"), Niger Innis, Niger Innis for Congress, Tea Party Leadership Fund (the "Tea Party Fund") and the Alexandria Republican City Committee ("City Committee") (collectively, Plaintiffs) claim that the limits infringe upon their First Amendment rights of association and expression and the Fifth Amendment's guarantee of equal protection.

### **Background**

The Act and Commission regulations define a multicandidate committee as a political committee that has received contributions from more than 50 persons, has contributed to five or more federal candidates and has been registered with the FEC for at least six months. 2 U.S.C. §441a(a)(4) and 11 CFR 100.5(e)(3). Currently, multicandidate committees may contribute no more than \$5,000 per election to a federal candidate, \$5,000 per calendar year to a state party committee and \$15,000 per calendar year to a national party committee. 2 U.S.C. §441a(a)(2). Non-multicandidate committees may contribute no more than \$2,600 per election to a federal candidate, \$10,000 per calendar year to a state party committee and \$32,400 per calendar year to any national party committee. 2 U.S.C. §441a(a)(1).

According to the Plaintiffs' complaint, Stop PAC has met the first two criteria for multi-candidate status, but has not been registered with the FEC for the required six months. To date, the committee has contributed \$2,600 to Nevada congressional candidate Niger Innis for his June 10 primary election. The committee would like to contribute an additional \$2,400 to Innis for the primary, but will not meet the six-month requirement in time to do so.

The Tea Party Fund has met the criteria for multicandidate status, so it may contribute no more than \$5,000 per calendar year to any state party committee (including affiliates). The Fund has already contributed \$5,000 to the City Committee (which is affiliated with the Virginia Republican State Committee) in 2014.

### **Complaint**

Plaintiffs challenge the constitutionality of certain contribution limits imposed on multi-candidate and non-multicandidate committees as being an infringement on their First Amendment rights of association and expression and the Fifth Amendment's guarantee of equal protection.

Plaintiffs allege that the Act unconstitutionally discriminates against Stop PAC and other political committees that have been registered with the FEC for less than the six-month statutory requirement to qualify as a multicandidate committee. The Act's "lower \$2,600 restriction on all new political committees is an impermissibly overbroad means of furthering any interest the Government may assert," plaintiffs claim, and thus they argue that restriction should not survive heightened constitutional scrutiny. The Plaintiffs also allege that the First Amendment rights of both Stop PAC and Innis (as a federal candidate wishing to receive additional contributions from Stop PAC) are infringed because the Act imposes a "six-month waiting period" before Stop PAC is able to qualify as a multicandidate committee and thus avail itself of higher contribution limits to federal candidates. Plaintiffs allege that such a waiting period "is comparable to a prior restraint and substantially burdens First Amendment rights of freedom of association and expression."

Plaintiffs further challenge the constitutionality of the multicandidate limits that prevent the Tea Party Fund from contributing more than \$5,000 to the City Committee (as an affiliate of a state party committee) and more than \$15,000 to a national party committee. The Tea Party Fund argues that, like non-multicandidate committees, it should be permitted to contribute up to \$10,000 to the City Committee and \$32,400 to a national party committee. The Plaintiffs allege that the lower limits for contributions by multi-candidate committees to political parties violate the Fifth Amendment's guarantee of equal protection because the lower limits are "not closely tailored to furthering an important government interest, and fail[] any form of heightened scrutiny."

Plaintiffs seek a judgment declaring unconstitutional the Act's \$2,600 limit on contributions from non-multicandidate committees to candidates per election, six-month waiting period for being designated a multicandidate committee, \$5,000 annual limit on contributions from multicandidate committees to state political party committees, and \$15,000 annual limit on contributions from multicandidate committees to national party committees. Plaintiffs also seek an injunction preventing the FEC from enforcing those statutory provisions, allowing Stop PAC to contribute up to \$5,000 per election to federal candidates, allowing the Tea Party Fund to contribute up to \$10,000 annually to state party committees and up to \$32,400 annually to national party committees, and any other relief the court deems appropriate.

(Posted 4/22/2014; By: Myles Martin)

**Resources:**

- [FEC Litigation Page](#)
- [Contribution Limits for 2013-14](#) [PDF]
- [Advisory Opinion 2012-32](#) (Tea Party Leadership Fund) [PDF]

***Libertarian National Committee v. FEC***

On March 26, 2014, the U.S. Court of Appeals for the District of Columbia Circuit dismissed as moot the Libertarian National Committee's (LNC) challenge to the Federal Election Campaign Act's (the Act) limits on contributions to national political party committees, as applied to a bequest the LNC received from the estate of Raymond Groves Burrington.

**Background**

In April 2007, Mr. Burrington died and bequeathed \$217,734 to the LNC in his will. Under the Act and Commission regulations, contributions made by bequest from a deceased person's estate are subject to contribution limits. See 2 U.S.C. §441a(a)(1), [AOs 2004-02](#) (National Committee for an Effective Congress) and [1999-14](#) (Council for a Livable World). As a result, the LNC could not accept the entire bequest at once, but rather accepted annual contributions from the Burrington Estate of \$28,500 in 2007 and 2008, the maximum contribution permissible at the time. The remaining balance of \$160,734 was placed into an escrow account, the terms of which allowed for the LNC to withdraw the maximum annual amount permitted by the Act.

On March 17, 2011, the LNC filed suit against the Commission seeking to permanently enjoin the application of the Act's contribution limits to bequests made to national party committees. The LNC argued that the Act's limit on contributions to national party committees (2 U.S.C. §441a(a)(1)(B)) and the Act's ban on national party committees soliciting or receiving any funds not subject to the limitations, prohibitions and reporting requirements of the Act (2 U.S.C. §441i) could not be constitutionally applied to decedents' bequests. As part of its challenge, the LNC asked the U.S. District Court for the District of Columbia to certify the legal question presented by its suit to the *en banc* Court of Appeals pursuant to 2 U.S.C. §437h.

On March 18, 2013, the District Court denied the LNC's request for *en banc* review in part and granted it in part. To the extent the LNC challenged the contribution limits as applied to potential future bequests to the LNC and to other political parties, the court denied the LNC's section 437h motion and granted the FEC partial summary judgment. The court concluded that this part of the LNC's claim was not substantial enough to be heard by the Court of Appeals because, in general, limits on bequests to political parties do not violate the First Amendment since bequests could cause corruption or appear corrupt. The District Court also found that the LNC's proposed question was improperly "laden with hypotheticals about the constitutionality of contribution limits under FECA." On March 26, 2013, the LNC appealed that portion of the District Court's ruling to the Court of Appeals in a separate matter (no. 13-5094). The D.C. Circuit summarily affirmed the District Court's ruling on February 7, 2014.

Despite declining to certify the LNC's proposed question, the District Court decided to certify a narrower version of that question to the Court of Appeals: Does imposing annual contribution limits on Mr. Burrington's bequest violate the LNC's First Amendment rights? Before the D.C. Circuit in that matter (no. 13-5088), the FEC filed a Suggestion of Mootness on February 3, 2014. The FEC informed the court that it no longer had jurisdiction to decide the issue because, as of January 1, 2014, the LNC had either already received or could immediately accept the remainder of Burrington's bequest. On March 26, 2014, the Court of Appeals issued a [per curiam order](#) dismissing the case as moot and vacating the portions of the district court's judgment certifying a question to the *en banc* court.

*(Posted 4/8/2014; By: Zainab Smith)*

#### **Related Documents:**

- [Libertarian National Committee v. FEC Ongoing Litigation Page](#)

## Public Funding

### **Convention Funding Eliminated**

President Barack Obama signed legislation on April 3, 2014, that will end the public funding of presidential nominating conventions.

One of the three components of the presidential public funding program, the convention grants have helped to finance every major party convention since 1976, as well as a minor party convention that qualified for funding in 2000. Under the program, each major party convention committee was entitled to \$4 million plus a cost-of-living adjustment (\$18.2 million in 2012), and minor parties could qualify for partial funding based on their nominee's share of the popular vote in the preceding presidential election. Eligible minor parties could supplement their partial funding—up to the amount of the major party grant—with private contributions. In exchange for the public funds, the convention committees agreed to limit spending to the amount of the major party grant, and to undergo an FEC audit after the convention.

Funded by the \$3 tax checkoff, the two remaining components of the public funding program provide matching funds to eligible presidential primary candidates and grants to qualified general election nominees.

*(Posted 4/4/2014; By: Alex Knott)*

#### **Resources:**

- [Text of H.R. 2019](#)
- [Brochure: Public Funding of Presidential Elections](#)
- [Brochure: The \\$3 Tax Checkoff](#)
- [Report: The Presidential Public Funding Program \(1993\)](#)
- [Press Office Backgrounder on Presidential Election Campaign Fund](#)

## Advisory Opinions

### **AO 2014-01: Party Committee May Use Predecessor's Funds**

A California party committee may transfer in funds from its predecessor's dormant federal account and use them for federal election activity, so long as the committee makes best efforts to disclose the sources of the transferred funds.

#### **Background**

The Solano County Democratic Central Committee ("SCDCC") registered with the Commission as a political party committee in September 2004. The SCDCC filed two reports with the Commission in October 2004, but did not file any reports for the remainder of 2004 or 2005. After sending the SCDCC nine unanswered failure to file notifications, the Commission administratively terminated the committee on September 20, 2005. Nevertheless, between 2004 and 2008, the SCDCC treasurer reported monthly to the committee's officers that the SCDCC was in full compliance with the law.

In 2008, SCDCC's chairman discovered that the committee had been terminated, and suspended use of its federal account. The chairman then registered a new committee with the FEC—the Solano County United Democratic Central Committee ("SCUDCC"). This new committee says its predecessor's federal account remained "nearly forgotten," isolated and unused between 2008 and June 2012. In 2012, SCUDCC elected a new treasurer, who re-discovered the dormant account, which contained a balance of \$11,654.77 as of October 2008. The committee located bank records for the account, including names and addresses of contributors and the date and amounts of those contributions received between 2005 and 2008.

#### **Analysis**

The Commission concluded that the SCUDCC may transfer funds from its predecessor's dormant federal account to its active federal and may use the money for federal election activity, as long as the committee makes best efforts to disclose the source of the nearly \$12,000 cash on hand balance.

Since the SCDCC's federal account has not been active since 2008, it falls outside the Commission's three-year requirement for record retention. However, the SCUDCC possesses names and addresses of previous contributors as well as amounts and the dates of their contributions. The Commission determined that the committee may attribute the remaining cash on hand balance to contributors listed on the committee's bank records through a reasonable accounting method, such as the last in, first out method described in 11 CFR 110.3(c)(4). The SCUDCC's treasurer must review all available contributor information for any potential excessive or prohibited contributions, making at least one written or oral request for evidence of the contribution's legality if it cannot be determined on its face.

Because the SCUDCC is the successor committee to SCDCC, the transfer of funds should be reported as a transfer from an affiliated committee on Line 12 of Schedule A on the committee's FEC Form 3X. Additionally, the Commission stated that the SCUDCC should amend its Statement of Organization (FEC Form 1) to disclose SCDCC as an affiliated committee on Line 6.

*(Posted 4/8/2014; By: Isaac Baker)*

**Resources:**

[Advisory Opinion 2014-01](#) [PDF]

[Commission Consideration of Advisory Opinion 2014-01](#) 

## Compliance

### **FEC Cites Committee for Failure to File April Quarterly Financial Report**

On April 30, 2014, the Federal Election Commission cited one campaign committee for failing to file the April Quarterly Financial Report required by the Federal Election Campaign Act of 1971, as amended (the Act).

As of April 29, 2014, the required disclosure report had not been received from:

- Grayson Committee (GA)

The report was due on April 15, 2014, and should have included financial activity for the period January 1, 2014 through March 31, 2014.

The Commission notified committees of their potential filing requirements on March 21, 2014. Those committees that did not file on the due date were sent notification on April 22, 2014 that their reports had not been received and that their names would be published if they did not respond within four business days.

Some individuals and their committees have no obligation to file reports under federal campaign finance law, even though their names may appear on state ballots. If an individual raises or spends \$5,000 or less, he or she is not considered a "candidate" subject to reporting under the Act.

Other political committees that support Senate and House candidates in elections, but are not authorized units of a candidate's campaign, are also required to file quarterly reports, unless they report monthly. Those committee names are not published by the FEC.

Further Commission action against non-filers and late filers is decided on a case-by-case basis. Federal law gives the FEC broad authority to initiate enforcement actions, and the FEC has implemented an Administrative Fine program with provisions for assessing monetary penalties.

*(Posted 5/2/2014)*

**Resources:**

- [FEC Non-Filer Press Release](#)
- [Compliance Map](#)
- [The Administrative Fine Program](#)
- [FEC Reporting Dates](#)
- [Late Filing and Other Enforcement Penalties](#) (Reports Analysis Division)

# Outreach

## New Search Engine Bridges Agency Data Sets

The Commission has upgraded the search engine on FEC.gov to provide a single point of access to information from across the entire website. The new, more robust search system can simultaneously query both static and dynamic content, including enforcement information, advisory opinion documents and campaign finance data that were previously available only through separate search tools. The new system also groups data by category and presents the results in an intuitive manner that not only helps users find the information they need, but also suggests additional content that may be relevant.

The new system goes beyond previous indexes of static files to provide access to the very latest dynamically generated data from FEC reports, as well as historical content dating back as far as 1975. A full list of resources is available on the FEC's website.

*(Posted 04/25/2014; By: Alex Knott)*

### Resources:

- [New, Online Search Engine](#)
- [Search Help and List of the Searchable Resources](#)
- [Campaign Finance Disclosure Portal](#) (related)

## 2014 Edition of 11 CFR Now Available

Printed copies of the 2014 edition of Title 11 of the Code of Federal Regulations (CFR) are now available from the Commission. Contact the Commission's Information Division at (202) 694-1100 or (800) 424-9530 (press 6, when prompted) to order printed copies of the CFR at no charge. You may also email the Information Division to place an order at [info@fec.gov](mailto:info@fec.gov).

Title 11 of the CFR is also available on the Commission's website at <http://www.fec.gov/law/cfr/cfr.shtml>.

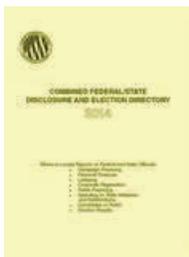
*(Posted 4/18/2014; By: Alex Knott)*

### Resources:

- [FEC Regulations](#)



## 2014 Combined Federal/State Disclosure Directory Now Available



The 2014 edition of the Combined Federal/State Disclosure and Election Directory is available on the Commission's website ([www.fec.gov](http://www.fec.gov)). This directory identifies the federal and state agencies responsible for the disclosure of campaign finances, lobbying, personal finances, public financing, candidates on the ballot, election results, spending on state initiatives and other financial filings.

The Directory is available at <http://www.fec.gov/pubrec/cfsdd/cfsded2014.pdf>. To order a printed copy, please contact the FEC's Public Disclosure Division at 800/424-9530 or 202/694-1120.

*(Posted 4/18/2014; By: Alex Knott)*

### Resources:

- [FEC Public Disclosure Division](#)

## FEC to Host May 21 Seminar/Webinar for Trade Associations, Membership and Labor Organizations and their PACs

The Commission will hold a seminar for trade associations, membership and labor organizations and their political action committees (PACs) at its Washington, DC, headquarters on Wednesday, May 21, 2014. The seminar will also be offered as a webinar



for those who cannot attend in person. Commissioners and staff will conduct a variety of technical workshops on the federal campaign finance laws affecting these organizations and their PACs. Workshops are designed for those seeking an introduction to the basic provisions of the law as well as for those more experienced in campaign finance law. To view the agenda or to register for the seminar, please visit the seminar website at <http://www.fec.gov/info/conferences/2014/tradememberlaborseminar.shtml>.

*Webinar Information.* Seminar workshops will be simulcast for online attendees, who will see workshop slides, hear the presentations and be able to ask questions via live chat. Additional instructions and technical information will be provided to those who register for the webinar.

*In-Person Attendees.* The seminar will be held at the FEC's headquarters at 999 E Street, NW, Washington, DC. The building is within walking distance of several subway stations. Attendees are responsible for making their own arrangements for accommodations. The FEC recommends that individuals planning to travel to attend the seminar wait to finalize travel arrangements until their conference registration has been confirmed by Sylvester Management Corporation.

*Workshop Materials.* Webinar participants will receive electronic copies of workshop materials in advance, and those attending in-person may choose that option when they register. Alternatively, seminar attendees may elect to receive a binder with printed materials the morning of the event.

*Registration Information.* The registration fee is \$100 to attend in-person or \$75 to participate online. Registration fees include a \$25 nonrefundable transaction fee. A refund (minus the transaction fee) will be made for all cancellations received by Friday, May 16; no refund will be made for cancellations received after that date. Complete registration information is available online at <http://www.fec.gov/info/conferences/2014/tradememberlaborseminar.shtml>.

### **Registration Questions**

Please direct all questions about seminar/webinar registration and fees to Sylvester Management Corporation (Phone: 1-800/246-7277; email: [Rosalyn@sylvestermanagement.com](mailto:Rosalyn@sylvestermanagement.com)). For other questions call the FEC's Information Division at 1-800/424-9530 (press 6), or send an email to [Conferences@fec.gov](mailto:Conferences@fec.gov).

*(Posted 4/10/2014; By: Molly Niewenhous)*

### **Resources:**

- [FEC Educational Outreach Opportunities](#)