

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

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| SHAUN McCUTCHEON, <i>et al.</i> , |) | |
| |) | |
| Plaintiffs, |) | Civ. No. 12-1034 (JRB, RLW, JEB) |
| |) | |
| v. |) | |
| |) | |
| FEDERAL ELECTION COMMISSION, |) | MOTION TO DISMISS |
| |) | |
| Defendant. |) | |

DEFENDANT FEDERAL ELECTION COMMISSION’S MOTION TO DISMISS

Defendant Federal Election Commission respectfully moves the Court to dismiss this case for failure to state a claim on which relief can be granted. Fed. R. Civ. P. 12(b)(6). As grounds for this motion, the Commission refers to (and incorporates by reference herein) its Opposition to Plaintiffs’ Motion for Preliminary Injunction (Docket No. 16) (“FEC Inj. Br.”), in which the Commission demonstrated the constitutionality of the Federal Election Campaign Act’s aggregate biennial limit on campaign contributions by individuals, 2 U.S.C. § 441a(a)(3).

Specifically, as demonstrated in the Commission’s prior brief, plaintiffs’ claims fail as a matter of law because:

- In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court upheld the aggregate contribution limit as a constitutional means of furthering the government’s important interest in reducing actual and apparent political corruption. (FEC Inj. Br. at 7-9.)
- The aggregate limit continues to further the government’s anti-corruption interest by preventing massive contributions from circumventing and undermining individual contribution limits. (FEC Inj. Br. at 12-15 (discussing *Cal. Med. Ass’n v. FEC*, 453 U.S. 182 (1981); *FEC v. Colo. Republican Federal Campaign Comm.*, 533 U.S. 431

- (2001); *McConnell v. FEC*, 540 U.S. 93 (2003)), 19-21 (discussing potential for massive aggregate contributions), 28-29 (discussing contributions to non-party political committees), 30-33 (discussing contributions to candidates).)
- The aggregate limit furthers the government's anti-corruption interest by limiting contributors' ability to use contributions to national political parties to exert actual or apparently corrupt influence over federal officeholders. (FEC Inj. Br. at 23-26 (discussing *Colorado Republican*, *McConnell*, and *Republican Nat'l Comm. v. FEC*, 698 F. Supp. 2d 150 (D.D.C. 2010) (three-judge court), *aff'd mem.*, 130 S. Ct. 3544 (2010)).)

For the foregoing reasons and all the others discussed in the Commission's prior memorandum, the Commission requests that the Court dismiss this action with prejudice after the consolidated motion hearing currently scheduled for September 6, 2012.

Respectfully submitted,

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