



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matters of )  
 )  
Hillary Victory Fund, *et al.* ) MURs 7304 & 7331  
 )  
Trump Victory, *et al.* ) MUR 7339  
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**STATEMENT OF REASONS OF CHAIR ELLEN L. WEINTRAUB**

In 2016, the presidential campaigns of both Donald J. Trump and Hillary R. Clinton exploited joint fundraising committees to raise millions of dollars in contravention of individual contribution limits. These campaigns used this tactic to enable wealthy megadonors to write checks worth hundreds of thousands of dollars, avoiding the contribution limits then in effect.<sup>1</sup> Collectively, millions of dollars in excessive contributions from hundreds of donors were routed to the national party committees to be used on behalf of their presidential candidates. The source of this loophole? The Supreme Court’s 2014 plurality decision in *McCutcheon v. FEC*,<sup>2</sup> which struck down aggregate contribution limits.<sup>3</sup> The aggregate limit was designed to prevent candidates and parties from circumventing the longstanding limits on individual contributions.

When the aggregate contribution limit was challenged in court, FEC attorneys warned that without this limit, an individual would be able to write a single million-dollar check to a

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<sup>1</sup> For the 2016 election cycle, individual contributors were allowed to donate no more than \$2,700 per election to a federal candidate committee, \$10,000 per calendar year to a state political party committee, and \$33,400 per calendar year to a national political party committee. 52 U.S.C. § 30116(a); 11 C.F.R. § 110.1(b)(1), (c)(1), (c)(5); Price Index Adjustments for Contribution & Expenditure Limitations & Lobbyist Bundling Disclosure Threshold, 80 Fed. Reg. 5,750 (Feb. 3, 2015).

<sup>2</sup> 572 U.S. 185 (2014).

<sup>3</sup> In 2002, Congress reformed federal campaign-finance law through the passage of the Bipartisan Campaign Reform Act of 2002 (“BCRA”). Through BCRA, Congress restructured the contribution limits enacted by the Federal Election Campaign Act of 1971 (“FECA”), including an aggregate contribution limit. BCRA, H.R. 2356, 107<sup>th</sup> Cong. §§ 102, 307 (2002). The aggregate contribution limit allowed an individual to contribute up to \$123,200 across all campaigns and elections for the 2013-2014 election cycle. *McCutcheon v. FEC*, 572 U.S. 185, 194 (2014).

joint fundraising committee<sup>4</sup> composed of a variety national party committees and their state party affiliates.<sup>5</sup> The money could then be funneled to a narrow set of candidates.<sup>6</sup>

With a remarkable lack of prescience, four Justices on the Supreme Court discounted this possibility.<sup>7</sup> Despite placing their finger on a hypothetical scenario whereby joint fundraising committees could be used to circumvent individual contribution limits, the plurality found the risk to be “divorced from reality.”<sup>8</sup> They could not envision a number of state party committees joining such an endeavor. Yet the danger of a “loophole measured in the millions” arose almost as soon as the ink dried on the *McCutcheon* decision.<sup>9</sup> That danger materialized in 2015 when the first of these super-joint-fundraising committees was formed.

Millions poured into the 2016 presidential race through the joint fundraising committees created by the campaigns of Donald J. Trump and Hillary R. Clinton. On the Democratic side, an individual donor could have donated up to \$772,200 to Clinton’s joint fundraising vehicle.<sup>10</sup> Thirty-eight Democratic state party committees joined Clinton’s joint fundraising committee.<sup>11</sup> On the Republican side, an individual donor could have contributed up to \$449,200 to Trump’s joint fundraiser.<sup>12</sup> Twenty-one Republican state party committees joined Trump’s joint fundraising committee.<sup>13</sup> The result was the same on both sides: the systematic circumvention of individual contribution limits.

Other troubling facts suggest that the state party committees involved were merely pass-throughs. The money was routed through the state parties on a quick trip to the national party committees, which then used the money for coordinated expenditures benefitting their respective presidential candidates.

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<sup>4</sup> The joint fundraising regulations provide a mechanism for multiple political committees to raise funds at the same time. *See* 52 U.S.C. § 30102(e)(3)(ii); 11 C.F.R. § 102.17. These regulations were not intended to allow the separate participants to ignore their respective contribution limits. 11 C.F.R. § 102.17(c)(4)(i) (“The fundraising representative and participating committees shall screen all contributions received to insure that the prohibitions and limitations of 11 CFR parts 110 and 114 are observed.”).

<sup>5</sup> Def. FEC’s Opp’n to Pl.’s Mot. for Prelim. Inj. at 30-34, *McCutcheon v. FEC*, 893 F. Supp. 2d 133 (D.D.C. 2012) (No. 12-1034), *rev’d and remanded* *McCutcheon v. FEC*, 572 U.S. 185 (2014).

<sup>6</sup> *Id.*

<sup>7</sup> *See* *McCutcheon v. FEC*, 572 U.S. 185, 214-216 (2014) (plurality opinion) (“[T]o the extent that the law does not foreclose [this] scenario . . . , experience and common sense do. The Government provides no reason to believe that many state parties would willingly participate in a scheme to funnel money to another State’s candidates.”).

<sup>8</sup> *Id.*

<sup>9</sup> *McCutcheon v. FEC*, 572 U.S. 185, 249 (2014) (Breyer, J., dissenting).

<sup>10</sup> First Gen. Counsel’s Rpt. at 19, MUR 7304, *et al.* (Hillary Victory Fund, *et al.*).

<sup>11</sup> *Id.* at 19 n.57.

<sup>12</sup> First Gen. Counsel’s Rpt. at 5, MUR 7339, *et al.* (Trump Victory, *et al.*).

<sup>13</sup> *Id.* at 20.

On the Democratic side:

- The state party committees collectively transferred nearly 80% of their joint fundraising receipts to the DNC, with some sending 99% of their allocations.
- Some of the money due to the state party committees passed through them to the DNC within a day or two of receipt—there are over 400 examples of this kind of pass-through transfer.
- Some pass-through transfers to the DNC were the exact amounts received by the state party committees.
- Some state party officials may not even have been aware that money was being transferred into and out of their accounts.
- The state party committees transferred more than \$80 million from over 1,500 individuals who had already reached their limits for direct contributions to the DNC.<sup>14</sup>

The Republican joint fundraising framework presents a similar alarming pattern:

- The state party committees collectively transferred nearly 90% of their joint fundraising receipts to the RNC, with the majority transferring as much as 99% of the money.
- There are over 100 instances of jointly raised money passing through the accounts of the state party committees to the RNC within a day or two of receipt—the dollar amounts coming into their accounts were the same or nearly the same as the amounts going to the RNC.
- \$25 million of the \$29 million received from the joint fundraiser were transferred from the state party committees to the RNC in the six weeks before the general election.
- The way that two of the state party committees described some of the pass-through transfers (e.g., “JFC Transfer”) indicates that these funds were always intended for the RNC, not for the state parties.
- The state party committees transferred more than \$27 million from over 500 individual contributors who had already reached their contribution limit to the RNC.<sup>15</sup>

The FEC’s Office of General Counsel took these facts as evidence of a potential violation of the FECA and Commission regulations.

I voted to pursue an investigation in these matters to ensure that individual contribution limits are not rendered meaningless by joint fundraising. My Republican colleagues, however,

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<sup>14</sup> First Gen. Counsel’s Rpt. at 21-26, MUR 7304, *et al.* (Hillary Victory Fund, *et al.*).

<sup>15</sup> First Gen. Counsel’s Rpt. at 15-20, MUR 7339, *et al.* (Trump Victory, *et al.*).

have blocked the first enforcement matter with the potential to shed light on the circumvention schemes forecast in *McCutcheon*.

The individual contribution limits were adopted by Congress and upheld by the Supreme Court to “deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions . . . .”<sup>16</sup> By circumventing these individual contribution limits with large checks from wealthy megadonors, the risk of corruption increases dramatically. The Supreme Court denied that this would happen, but it has. These presidential joint fundraising committees have eviscerated the individual contribution limits. And both sides will continue doing it so long as Republican FEC commissioners refuse to stop them.

May 31, 2019

Date



Ellen L. Weintraub

Chair

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<sup>16</sup> *Buckley v. Valeo*, 424 U.S. 1, 28 (1976).