

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

<b>Virginia James,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil No.</b>
	)	
<b>v.</b>	)	<b>Three-Judge Court Requested</b>
	)	
<b>Federal Election Commission,</b>	)	<b><u>Oral Argument Requested</u></b>
	)	
<b>Defendant.</b>	)	
	)	
	)	
	)	

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**VERIFIED COMPLAINT FOR DECLARATORY RELIEF**

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**I. NATURE OF ACTION**

1. Plaintiff challenges the limit on total contributions to candidate committees (“sub-aggregate limit”) under the Bipartisan Campaign Reform Act. Pub. L. 107-155, 116 Stat. 93 (2002) (“BCRA”); 2 U.S.C. § 441a(a)(3)(A) (indexed for inflation per 11 C.F.R. § 110.5(b)(4) at 76 Fed. Reg. 8368 (Feb. 14, 2011)).

2. *Buckley v. Valeo*, 424 U.S. 1 (1976), upheld the aggregate contribution limits of BCRA’s predecessor, the Federal Election Campaign Act

(“FECA”). *Buckley*’s holding stemmed from concern that contributors could circumvent limits on contributions to individual candidates by contributing to parties and other committees. *Buckley*, 424 U.S. at 38.

3. Plaintiff does not wish or intend to give to parties or PACs, thus negating the *Buckley* rationale. Therefore, this challenge to the sub-aggregate limit on total contributions to candidates is one of first impression.

4. Moreover, *Buckley* did not consider the sub-aggregate limits that exist under BCRA because those limits did not exist in 1976. Rather, *Buckley* considered a statute that contained only one, overall annual aggregate limit on all contributions to candidate committees, party committees and political committees.. Pub. L. 93-443, Sec. 101(3) (1974) (“Federal Election Campaign Act Amendments of 1974”); *see also* Pub. L. 92-225, Sec. 205 (definition of contributions for Federal Election Campaign Act of 1971).

5. Plaintiff Virginia James, a private individual, has given to political candidates in the past and plans to continue doing so. This biennium, she wishes to contribute more than the current sub-aggregate limit of \$46,200 to various political candidates, but does not wish to exceed the \$2,500 limit on contributions to each individual candidate. 2 U.S.C. § 441a(a)(1)(A) (indexed for inflation per 11 C.F.R. § 110.5(b)(3)-(4) at 76 Fed. Reg. 8368 (Feb. 14, 2011)). Nor does she wish to

exceed the overall biennial limit of \$117,000 on all contributions to candidates, PACs, and parties. 2 U.S.C. § 441a(a)(3)(A)-(B) (indexed for inflation per 11 C.F.R. § 110.5(b)(3)-(4) at 76 Fed. Reg. 8368 (Feb. 14, 2011)). Rather, she wishes to take money that she may legally contribute to PACs and parties, and instead contribute it directly to candidates she wishes to support.

### **I. JURISDICTION AND VENUE**

6. This Court has jurisdiction because this action arises under the First Amendment to the United States Constitution and a federal statute. 28 U.S.C. § 1331 (2012).

7. This Court has jurisdiction under sections 403(a)(1) and (d)(2) of the Bipartisan Campaign Reform Act of 2002 (“BCRA”). Pub. L. No. 107-155 (2002), 116 Stat. 81, 113-14. *See* 28 U.S.C. § 2284; LCvR 9.1.

8. This court has jurisdiction as to the constitutionality of FECA and its subsequent amendments under 2 U.S.C. § 437h (2012).

9. This Court has jurisdiction under the Declaratory Judgment Act. 28 U.S.C. §§ 2201 and 2202 (2012).

10. Venue in this Court is proper under 28 U.S.C. §§ 1391(e) (2012).

## **II. PARTIES**

11. Plaintiff Virginia James is an investor and resident of Lambertville, New Jersey, who has given to political candidates and political action committees (“PACs”) in the past, and plans to continue contributing to federal candidate committees.

12. Defendant Federal Election Commission (“FEC”) is the federal government agency charged with enforcing BCRA.

## **III. FACTS**

13. Ms. James wishes to exercise her First Amendment right to associate by contributing directly to various candidates for federal office.

14. This biennium, Ms. James has contributed to individual candidate committees, political action committees (“PACs”), and independent expenditure only committees.

15. During this biennium, Ms. James has contributed at least \$27,000 to candidate committees. Ms. James made these contributions in accordance with the \$2,500 limit on contributions to individual candidates under 2 U.S.C. § 441a(a)(1)(A) (indexed for inflation per 11 C.F.R. § 110.5(b)(3)-(4) at 76 Fed. Reg. 8368 (Feb. 14, 2011)).

16. Ms. James's contributions to candidates during this biennium do not exceed \$46,200.

17. During this biennium, Ms. James has contributed \$5,000 to PACs, an amount well below the \$46,200 limit on contributions to PACs under 2 U.S.C. § 441a(a)(3)(B) (indexed for inflation per 11 C.F.R. § 110.5(b)(3)-(4) at 76 Fed. Reg. 8368 (Feb. 14, 2011)).

18. Ms. James does not wish to make any further contributions to PACs this biennium, and stipulates that she will not do so.

19. Ms. James does not wish to make any contributions to political parties this biennium, and stipulates that she will not do so.

20. This biennium, Ms. James wishes to contribute up to the \$117,000 aggregate biennial limit under 2 U.S.C. § 441a(a)(3) (indexed for inflation per 11 C.F.R. § 110.5(b)(3)-(4) at 76 Fed. Reg. 8368 (Feb. 14, 2011)).

21. The *only* contributions Ms. James wishes to make during the balance of this biennium are direct contributions of up to \$2,500 to individual candidate committees.

22. Ms. James wishes to contribute more than the sub-aggregate biennial limit of \$46,200 on total candidate contributions.

23. Ms. James does not seek to contribute in excess of the current aggregate biennial contribution limit of \$117,000.

#### IV. CAUSES OF ACTION

##### COUNT 1:

The Sub-Aggregate Limit on Contributions to Individual Candidates is Facially Unconstitutional.

24. Plaintiff realleges and incorporates by reference paragraphs 1 – 23.

25. Contribution limits implicate the First Amendment by limiting the freedoms of political association and speech. *Buckley*, 424 U.S. at 15; *Randall v. Sorrell*, 548 U.S. 230, 246-247 (2006).

26. Contribution limits are permissible in the interest of preventing actual or apparent corruption. *Buckley*, 424 U.S. at 28.

27. But, “[i]n drawing that line, the First Amendment requires us to err on the side of protecting political speech rather than suppressing it,” *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 457 (2007) (“*WRTL IP*”), because “[t]he First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.” *Citizens United v. FEC*, 130 S. Ct. 876, 898 (2010) (internal citations omitted).

28. In *Buckley*, the Supreme Court upheld FECA’s contribution limits for both individual candidates and in the aggregate, based on different rationales.

29. The *Buckley* Court upheld contribution limits for individual candidates under the rationale that such limits were necessary to prevent actual or apparent corruption. *Buckley*, 424 U.S. at 26.

30. The *Buckley* Court upheld limits on aggregate contributions:

to prevent evasion of the [individual candidate] contribution limitation by a person who might otherwise 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.

*Buckley*, 424 U.S. at 38, *cf. McConnell v. FEC*, 540 U.S. 93, 152 n. 48 (2003).

31. BCRA also eliminated unlimited contributions to political parties for party-building activities; so-called “soft money.” *See* BCRA, § 323, 2 U.S.C. § 441i; *McConnell*, 540 U.S. at 288 (Kennedy, J. concurring in part and dissenting in part); *Citizens United*, 130 S. Ct. at 910.

32. In *McConnell*, the U.S. Supreme Court did not discuss BCRA’s sub-aggregate biennial limit on contributions to individual candidates—although the issue was properly pled before the Court. However, the Court did uphold FECA’s

annual, total aggregate contribution limit. *McConnell*, 540 U.S. at 152, 167 (2003).

The Court did so on identical grounds to those in *Buckley*. *Id.*

33. The sub-aggregate limit on candidate contributions prevents contributors from giving to more than a limited number of races in any one electoral cycle, despite the fact that an individual may wish to associate with multiple candidates in multiple races—all at a level Congress has identified as non-corrupting in setting other contribution limits.

34. Thus, there is no anti-corruption or anti-circumvention rationale that remains for individual contributors wishing to contribute solely to candidates. The sub-aggregate limit on individual candidate contributions unnecessarily chills speech and infringes upon associational rights through a means that is not appropriately tailored. Thus, that limit is unconstitutionally overbroad.

#### COUNT 2:

The Sub-Aggregate Limit on Contributions to Individual Candidates is Unconstitutional as Applied to Plaintiff.

35. Plaintiff realleges and incorporates by reference paragraphs 1 – 34.

36. *McConnell* did not address the factual landscape present here. Plaintiff pledges strict adherence to the individual candidate contribution limit and the overall biennial contribution limit. However, she wishes to contribute more than

\$46,200 of the biennial limit's \$117,000 directly to candidate committees. In light of the foregoing, this is a case of first impression.

37. The sub-aggregate limit on candidate contributions prevents Ms. James from giving to more than a handful of races in any one electoral cycle, despite the fact that she wishes to associate with multiple candidates in multiple races—all at a level Congress has identified as non-corrupting in setting other contribution limits.

38. There is no anti-corruption or anti-circumvention rationale that remains relevant given Ms. James's wish to emphasize candidate committees in assigning her contributions. The sub-aggregate limit on individual candidate contributions unnecessarily chills Ms. James's speech and infringes upon her associational rights through a means that is not appropriately tailored. Thus, that limit is unconstitutionally overbroad.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for the following relief:

A. A declaration that the aggregate limit on contributions to individual candidates at 2 U.S.C. §441a(a)(3)(A) is unconstitutional on its face.

B. A declaration that, in light of Ms. James' right to association and the government's mooted interest in the anti-circumvention and corruption rationales, the sub-aggregate limit on contributions to individual candidates at 2 U.S.C. §441a(a)(3)(A) is unconstitutional as applied to Ms. James.

C. An injunction barring enforcement of 2 USC §441a(a)(3)(A).

D. Costs and Attorneys' Fees.

E. Such equitable or other relief as this Court may consider just and appropriate.

Respectfully submitted this 31st day of August, 2012.

/s/ Allen Dickerson  
Allen Dickerson, DC Bar No. 1003781  
Center for Competitive Politics  
124 West Street South  
Suite 201  
Alexandria, Virginia 22314  
Phone: 703.894.6800  
Facsimile: 703.894.6811  
adickerson@campaignfreedom.org

*Counsel for Plaintiff*

VERIFICATION

STATE OF MAINE )  
 ) ss.  
COUNTY OF Hancock )

I, Virginia James, being first duly sworn, state under oath that I have read the foregoing VERIFIED COMPLAINT, and that the statements contained therein are true and correct to the best of my knowledge, information, and belief.

Virginia James

Subscribed and sworn before me this 30 day of August, 2012.

Diane M. Willey-Ward

Notary Public

My Commission Expires: \_\_\_\_\_

**DIANE M WILLEY-WARD**  
Notary Public, Maine  
My Commission Expires January 5 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on the 31st day of August, 2012, the foregoing document was served on the following, via first class mail:

Anthony Herman, General Counsel  
Federal Election Commission  
999 E Street, N.W.  
Washington, D.C. 20436  
Phone: 202.694.1650  
Facsimile: 202.219.0260  
Email: aherman@fec.gov

Eric H. Holder, U.S Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave. NW  
Washington, DC 20530.

*Counsel for Defendant, FEC*

Civil Process Clerk  
U.S. Attorney's Office  
501 Third Street, NW  
Washington, DC 20530

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/ Allen Dickerson  
\_\_\_\_\_  
Allen Dickerson