



January 8, 2016

Mark Langer, Clerk
U.S. Court of Appeals for the D.C. Circuit
E. Barrett Prettyman Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

RE: Notice of Supplemental Authority for *Holmes et al. v. FEC*, No. 15-5120

Dear Mr. Langer:

Pursuant to F.R.A.P. 28(j), Appellants respectfully advise this Court of the ruling in *Republican Party of Louisiana et al. v. FEC*, 2015 U.S. Dist. LEXIS 159095, No. 15-1241 (CRC) (D.D.C. Nov. 25, 2015).

Republican Party addressed the availability of a three-judge court¹ in a constitutional challenge to the federal “soft money” ban for state political parties. *Id.* at 4. Judge Cooper’s ruling applied this Court’s *Feinberg* test and, even without the benefit of *Shapiro v. McManus*, 577 U.S. ___, 136 S. Ct. 450, 193 L. Ed. 2d 279 (2015), enforced Congress’s jurisdictional determination that such challenges be heard under a special review procedure.

Most significantly, the *Republican Party*’s claims had been addressed facially in the omnibus challenge of *McConnell v. FEC*, 540 U.S. 93 (2003), and in multiple as-applied challenges. *Id.* at 1-2 (collecting cases, including challenges by the same plaintiffs the year before). While prior cases “upheld the constitutionality of the same provisions of BCRA that [the] Plaintiffs challenge[d t]here...[n]evertheless, subsequent statements by the Supreme Court and the *relatively low bar* that Plaintiffs must clear” compelled a three judge-court. *Id.* at 15-16 (emphasis added). *See Op.*

¹ The standard for convening a three judge court is similar to the applicable standard here. *Goland v. United States*, 903 F.2d 1247, 1257 (9th Cir. 1990)). The FEC agrees. Ans. Br. at 52-53 (discussing *Feinberg v. Federal Deposit Insurance Corp.*, 522 F.2d 1335, 1339 (D.C. Cir. 1975)).

Br. at 19 (facial decisions do not foreclose as-applied challenges); *id.* at 28 (discussing other district court opinions); Reply Br. at 23 (same).

Additionally, *Republican Party* noted and relied upon *McCutcheon v. FEC*, 572 U.S. ___, 134 S. Ct. 1434 (2014), in finding that the law governing contribution limits is in a state of flux. *Id.* at 16-18 (discussing *McCutcheon* and recent academic publications). As Appellants have argued here, the *McCutcheon* Court's reasoning calls into question other aspects of FECA, including the bifurcation of the base contribution limits. *See, e.g.*, Op. Br. at 37-42.

Thus, *Republican Party* supports both Appellants' understanding of § 30110's jurisdictional provision and the effects of the *McCutcheon* decision.

Respectfully submitted,

s/ Allen Dickerson

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Encl. *Republican Party of Louisiana et al. v. FEC*, 2015 U.S. Dist. LEXIS 159095, No. 15-1241 (CRC) (D.D.C. Nov. 25, 2015).

CC: All counsel of record