

Official Comments of Campaign for Liberty President John Tate

REG 2014-01

Submitted to the Federal Election Commission (FEC)

January 15, 2015

5211 Port Royal Road

Springfield, VA 22151

703-865-7162

On behalf of Campaign for Liberty's nearly three quarters of a million members, I urge the Federal Election Commission (FEC) to reject proposals to impose new regulations on groups such as Campaign for Liberty as a part of any rulemaking undertaken in response to the Supreme Court's ruling in *McCutcheon v. Federal Election Commission*, [572 U.S. ____](#) (2014).

Campaign for Liberty is a 501 (c)(4) social welfare organization that works to advance social welfare by mobilizing Americans to convince their elected representatives to support individual liberty and limited government. As a 501 (c)(4), we do not endorse or oppose any candidate for office. However, we do survey candidates for federal and state offices to determine their position on key issues, and we inform our members about where their elected officials and other candidates stand on these issues. We also regularly mobilize our members to convince their elected officials to support pro-liberty legislation and reject legislation that expands government power.

Our goal is not to elect or defeat any candidate but to get all elected officials and candidates from all parties to support individual liberty. Even though we do not engage in electioneering, there are still those who believe the FEC should regulate our activities.

Imposing new regulations restricting Campaign for Liberty's activities would dramatically affect our members' ability to meaningfully participate in the political process. Many Americans simply do not have time to keep up on Congress' activities, so they join groups such as Campaign for Liberty that work to advance the issues they care about. By informing our members of developments at the federal, state, and local levels of government and encouraging them to contact their elected representatives to let them know their views on the legislative issues of importance to them, we enable our members to directly affect the legislative process. I am at a loss as to how the American people would benefit from an FEC rule making it more difficult for American citizens to affect and understand public policy.

Protecting the ability of Americans to receive information about their elected officials and use that information to influence their elected representatives to support or oppose certain pieces of legislation is central to the liberty protected by the First Amendment. The Supreme Court recently upheld the First Amendment right of organizations such as Campaign for Liberty to engage in "issue discussion" in *FEC v. Wisconsin Right to Life* [551 U.S. 449](#) (2007).

While the statute at issue in *FEC v. Wisconsin Right to Life* would have imposed an absolute ban on issue advocacy, the language of the majority opinion, as well as subsequent cases' First Amendment challenges to campaign finance law (e.g. *Citizens United v. Federal Election Commission*, No. [08-205](#), 558 [U.S. 310](#) [2010]), suggest the Court would strike down any regulations attempting to limit or burden in any way our ability to communicate with and mobilize our members. As Chief Justice Roberts wrote in the *Wisconsin* case, when it comes to laws affecting the ability of Americans to participate in the political process, ". . . we give the benefit of the doubt to speech, not censorship."

Of all the potentially unconstitutional ideas being presented to the FEC, one that is particularly concerning to us is any regulation that would force Campaign for Liberty to divulge the names of our donors. Supporters of forcing Campaign for Liberty to disclose the names of our donors are apparently either ignorant of, or choose to ignore, the many court precedents upholding the right of political organizations such as Campaign for Liberty to keep the names of their members confidential.

The main case on this point is *NAACP v. Alabama*, [357 U.S. 449](#) (1958). In *NAACP*, the Supreme Court held that the NAACP had a First Amendment right to not comply with the State of Alabama's demand that the NAACP turn over a list of their members.

Representing the majority, Justice Marshall Harlan wrote that "Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order. Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."

In the years since the *NAACP* decision, the right of organizations such as Campaign for Liberty to keep their donor lists private has been upheld by several other courts. For example, in *International Union, UAW v. National Right to Work Legal Defense and Educational Foundation*, 590 F 2d 1139 (D.C. Circuit 1978), the National Right to Work Foundation successfully fought an attempt by their political opponents to force them to divulge the names of their donors.

Just last year, the Internal Revenue Service had to pay \$50,000 to the National Organization for Marriage for "accidentally" leaking the name of that organization's donors to their political opponents. This case demonstrates the dangers of using federal regulations to force public policy organizations that express "dissident beliefs" to divulge the names of their donors to government agencies.

The FEC should also consider that, in 2010, Congress considered and rejected legislation (the DISCLOSE Act, H.R. 5175/S. 3628) that would have forced organizations such as Campaign for Liberty to give the government the names of our donors. The DISCLOSE Act was rejected by a Congress that was much more favorable to regulations of political activity than the current Congress, and the rejection of this legislation indicates the American people do not support further restrictions on their ability to participate in the legislative and policy process. Using the rulemaking process to impose new regulations that have been rejected by Congress is an abuse of agency authority. The Constitution vests law-making power in the people's elected representatives, not in the unelected officials at the Federal Election Commission.

In conclusion, on behalf of Campaign for Liberty's members, I once again urge the FEC to reject any proposal to increase regulation on 501 (c)(4)s such as Campaign for Liberty. Such regulations strike at the very heart of the First Amendment by limiting our members' ability to effectively influence the policy process.

As per the FEC's instructions in the *Federal Register* notice 2014-12, I am notifying the agency that either myself or Campaign for Liberty Vice President of Policy Norman Singleton would appreciate the opportunity to testify at the public hearing on February 11.