The
Coolidge Reagan
Foundation

March 15, 2024

BY OVERNIGHT EXPRESS MAIL
AND ELECTRONIC SUBMISSION

Ms. Amy L. Rothstein
Assistant General Counsel
Federal Election Commission
1050 First Street NE
Washington, D.C.

RE: FEC Inquiry into Potential Rulemaking on "Party Segregated Accounts," FEC Notice 2024-05

Dear Ms. Rothstein:

Please accept this comment on behalf of the Coolidge-Reagan Foundation ("CRF"), a 501(c)(3) non-profit corporation based in Washington, D.C. and incorporated in Virginia, as well as its Founder and Chairman, Mr. Shaun McCutcheon of Hoover, Alabama. CRF's mission is to defend, protect, and advance liberty, particularly the principles of free speech embodied in the First Amendment. CRF and Mr. McCutcheon submit this comment in response to the FEC's Inquiry into a Potential Rulemaking on "Party Segregated Accounts," *see* Federal Election Commission, *Party Segregated Accounts*, 89 Fed. Reg. 11,227 (Feb. 14, 2024), commonly referred to as "McCutcheon accounts" since they result from the U.S. Supreme Court's landmark First Amendment ruling in *McCutcheon v. FEC*, 572 U.S. 185, 193 (2014) (plurality op.).[1]

Background on "*McCutcheon* Accounts"

The First Amendment protects a person's right to make political contributions to federal candidates, political parties, and other committees. *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam). The Supreme Court has recognized contributions implicate free speech protections because they both involve a degree of symbolic political expression by the contributor, *id*. at 21,

[1] *McCutcheon* accounts are distinct from "*Carey* accounts," which stem from the U.S. District Court for the District of Columbia's ruling in *Carey v. Federal Election Commission*, 791 F. Supp. 2d 121, 131 (D.D.C. 2011). A *Carey* account is a separate segregated account established by a "Carey" or "hybrid" political committee which may "solicit and spend unlimited funds for independent federal expenditures (soft money)." This account is distinct from the committee's main account, which is subject to contribution limits but may be used to make contributions to candidates, political parties, and other political committees. *Id*. *Carey* recognized political committees have a First Amendment right to establish *Carey* accounts. *Id*. at 131-32 (citing *Emily's List v. FEC*, 581 F.3d 1, 8-9 (D.C. Cir. 2009)).

while also providing an important mechanism for facilitating political dialogue by the recipients, *id*. Contributions also entail a substantial amount of constitutionally protected political association. *Id*. at 22. "Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals." *Id*.

The Federal Election Campaign Act ("FECA"), Pub. L. No. 92-225, § 203, 86 Stat. 3, 9-10 (Feb. 7, 1972), as amended, *see* Federal Election Campaign Act Amendments of 1974 ("FECA 1974 Amendments"), Pub. L. No. 93-443, § 101(a), 88 Stat. 1263, 1263 (Oct. 15, 1974) (originally codified at 18 U.S.C. § 608(b)(1)-(2); recodified as amended at 52 U.S.C. § 30116(a)(1)(A)-(D)), established "base limits" on the amount a person could contribute to a particular candidate, political party, or other political committee. It also imposed "aggregate limits" to cap the total amount a person could contribute to all candidates as well as to all political committees over the course of a two-year election cycle.[2] FECA 1974 Amendments, § 101(a), 88 Stat. at 1263 (originally codified at 18 U.S.C. § 608(b)(3); recodified as amended at 52 U.S.C. § 30116(a)(3)).

In *McCutcheon v. FEC*, 572 U.S. 185, 193 (2014) (plurality op.), self-made American businessman and patriot Shaun McCutcheon challenged the constitutionality of FECA's aggregate limits. He had contributed over $33,000 to various candidates, and wished to engage in additional political expression and association by making symbolically important contributions of $1,776 to each of twelve other candidates who best represented traditional American values and supported an originalist approach to Constitutional interpretation. *See id*. at 194. After donating to several political committees, he also wished to contribute $25,000 to each of the three national Republican party committees. *Id*. Aggregate contribution limits prohibited him from contributing ***at all*** to those additional candidates and committees, thereby limiting his political expression and association. Mr. McCutcheon challenged these limits under the First Amendment in federal court.

In a landmark ruling—and one of the only times in American history contribution limits have been invalidated; *see also Randall v. Sorrell*, 548 U.S. 230 (2006)—the U.S. Supreme Court

[2] At the time of the Supreme Court's ruling in *McCutcheon*, a person could contribute no more than $48,600 per election cycle to federal candidates. *See* Federal Election Commission, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 78 Fed. Reg. 8,530, 8,532 (Feb. 6, 2013). They could also contribute a total of $74,600 to other political committees; of that figure, only $48,600 could be given to recipients other than national political party committees. *Id*.

struck down the FECA's aggregate contribution limits. *McCutcheon*, 572 U.S. at 193. Agreeing with Mr. McCutcheon, the Court declared they did "little, if anything, to address" the Federal Election Commission's ("FEC") claimed concern about preventing circumvention of base limits. *Id*. At the same time, aggregate limits "seriously restrict[ed] participation in the democratic process." *Id*. As the Court explained, "the aggregate limits prohibit an individual from fully contributing to the primary and general election campaigns of ten or more candidates, even if all contributions fall within the base limits Congress views as adequate to protect against corruption." *Id*. at 204. The Court added that requiring a person to contribute less money to a candidate in order to preserve his ability to support others "impose[s] a special burden on broader participation in the democratic process." *Id*. at 204-05. Additionally, while Congress may limit political contributions in order to combat actual or apparent quid pro quo corruption, the First Amendment does not empower Congress to adopt such restrictions in order to limit a person's "'influence over or access to' elected officials or political parties." *Id*. at 208 (quoting *Citizens United v. FEC*, 558 U.S. 310, 359 (2010)). As a result of the Supreme Court's ruling in *McCutcheon*, a person has a First Amendment right to engage in political expression and association by making political contributions, up to the applicable base limits, to as many candidates, political committees, and political party committees as they wish.

Only a few months later, in response to the Supreme Court's ruling in *McCutcheon*, Congress adopted a campaign finance reform measure in the Consolidated and Further Continuing Appropriations Act of 2015 ("Appropriations Act"), Pub. L. No. 113-235, Div. N, § 101, 128 Stat. 2130, 2772 (Dec. 16, 2014) (codified at 52 U.S.C. § 30116(a)(1)(B), (a)(2)(B), (a)(9)(A)-(C), (d)). Taking full advantage of the Court's invalidation of aggregate contribution limits, the Appropriations Act authorized national political party committees to establish up to three separate segregated accounts, generally called *McCutcheon* accounts after the Court ruling that triggered their creation. Each *McCutcheon* account may be used only for certain specified purposes. *Id*. These accounts include:

1. ***Convention account***—A national party committee (other than a national congressional campaign committee) may establish a separate segregated *McCutcheon* account "which is used solely to defray expenses incurred with respect to a presidential nominating convention." 52 U.S.C. § 30116(a)(9)(A). A committee may also use these funds to repay loans

taken out to cover such convention-related expenses. *Id*. A party may not spend more than $20 million per convention from this account. *Id*.

2. ***Headquarters account***—Each national party committee, including national congressional campaign committees, may establish a separate segregated *McCutcheon* account "which is used solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party." *Id*. § 30116(a)(9)(B). A committee may also use these funds to repay loans taken out to cover such headquarters-related expenses. *Id*.

3. ***Recount and legal proceedings account***—Each national party committee, including national congressional campaign committees, may establish a separate segregated *McCutcheon* account "which is used solely to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings." *Id*. § 30116(a)(9)(C).

The Appropriations Act also establishes contribution limits for each of these *McCutcheon* accounts. *Id*. § 30116(a)(1)(B), (a)(2)(B). A person or multicandidate PAC may contribute up to 300% of the standard limit on contributions to national party committees to each *McCutcheon* account of each national party committee. Currently, a person may contribute up to $41,300 annually to a national party committee's general treasury account, while a multicandidate PAC may contribute up to $15,000. *Id*.; *see also* Federal Election Commission, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 88 Fed. Reg. 7,088, 7,090 (Feb. 2, 2023). Accordingly, a person may contribute up to $123,900, and a multicandidate PAC may contribute up to $45,000, to each of a national party committee's *McCutcheon* accounts each year. *See* 52 U.S.C. § 30116(a)(1)(B), (a)(2)(B). Thus, a person may presently contribute a total of $413,000, and a multicandidate PAC may contribute up to a total of $150,000, to each national party committee annually.

Potential Rulemaking on *McCutcheon* Accounts

On January 8, 2016, the FEC received a Petition for Rulemaking concerning the *McCutcheon* accounts the Appropriations Act authorized. The petition explained each account arose "in part from previous statutes, regulations and advisory opinions," but the Appropriations Act's language "does not precisely track these earlier authorities." Letter from Marc Elias to FEC Acting General Counsel Daniel A. Petalas Re: Petition for Rulemaking 2 (Jan. 8, 2016) ("the Petition"); *see also* FEC, *Party Segregated Accounts*, 89 Fed. Reg. 11,227, 11,227 (Feb. 14, 2024) (noting the Commission has received a petition for rulemaking asking it to "issue new rules and to revise its existing rules regarding the segregated accounts of national party committees"). The Petition urged the Commission to adopt regulations concerning these accounts based on the Appropriations Act's "text, legislative history, structure and purpose." Petition at 2.

First, regarding Convention *McCutcheon* accounts, the Petition noted Congress had eliminated public funding for party conventions in 2014. *Id*. at 2-3 (citing Gabriella Miller Kids First Research Act ("Research Act"), § 2(a), Pub. L. No. 113-94, 128 Stat. 1085 (2014)). The FEC subsequently issued an advisory opinion allowing the Democratic National Committee ("DNC") and Republican National Committee ("RNC") to each establish a separate convention committee, which would be treated as a national political party committee subject to its own independent contribution limit. *Id*. at 3 (quoting FEC Adv. Op. 2014-12).

The Petition suggested the FEC should generally apply the same rules governing permissible and impermissible uses of a party committee's convention *McCutcheon* account, *id*. at 4 (citing 11 C.F.R. § 9008.7(a)-(b)), as well as for determining which expenditures count toward the party's cap on convention expenditures, *id*. at 5 (citing 11 C.F.R. § 9008.8(b)), which the FEC had applied when conventions were publicly funded.

Second, with regard to Headquarters *McCutcheon* accounts, the Petition explained prior to the Bipartisan Campaign Reform Act ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81, 113 (2002), national party committees could maintain an account separate from their general treasury for the "construction or purchase" of office facilities which would not be used to influence any particular federal elections. Petition at 5 (citing 2 U.S.C. § 431(8)(B)(viii), *repealed by* BCRA, Pub. L. No.

107-155, 116 Stat. at 113). Donors could provide unlimited amounts of soft money to such accounts. *Id*. In a series of advisory opinions, the FEC held these funds could generally be used for "capital expenditures," but not "operating costs," as those terms were defined in the Internal Revenue Code and related regulations. *Id*. at 5-6. In 2002, BCRA eliminated this provision, requiring national party committees to fund their headquarters and other office facilities through funds raised subject to contribution limits.

The Petition correctly noted the Appropriations Act allows the Headquarters *McCutcheon* account to be used not only for the construction of headquarters buildings, but their "purchase, renovation, [and] operation," as well. *Id*. at 7 (quoting 52 U.S.C. § 30116(a)(9)(B)). Accordingly, a party should be permitted to use its Headquarters *McCutcheon* account for both "capital expenditures" under the Internal Revenue Code and associated regulations, *id*., but also property taxes, rent, maintenance, repairs, improvements, and utilities, *id*. at 7-8. Moreover, FEC regulations should specify these funds may be used for multiple headquarters buildings "located throughout the United States." *Id*. at 9 (citation omitted).

Finally, concerning Recount and Litigation *McCutcheon* accounts, the Petition explains how FEC advisory opinions interpreting BCRA allow both candidates, Petition at 10 (citing FEC Adv. Op. 2006-24), and national party committees, *id*. at 10-11 (citing FEC Adv. Op. 2009-04; FEC Adv. Op. 2010-14), to establish a separate account, subject to separate contribution limits, for costs associated with recounts and election contests.

For all three types of *McCutcheon* accounts, the Petition maintains a party should be able to spend funds for the specified purpose—the convention, headquarters expenses, or recount and other litigation—from its general treasury account, and then reimburse that account from the appropriate separate segregated *McCutcheon* account after the fact. *See* Petition at 4-5 (conventions); *id*. at 9 (headquarters); *id*. at 12 (litigation). Likewise, the Petition insightfully suggests the FEC adopt a regulation specifying expenses paid from any of these *McCutcheon* accounts are neither allocable to candidates, *id*. at 5, 10, 12 (citing 11 C.F.R. § 106.1), nor subject to coordinated party expenditure limits, *id*. at 5, 10, 12 (citing 52 U.S.C. § 30116(d)(2)-(4)).

On October 23, 2015, the Commission's Office of General Counsel issued an outline of a draft Notice of Proposed Rulemaking summarizing suggested regulations in response to the

Petition. *See* Memorandum from FEC Acting General Counsel Daniel A. Petalas to the Commission, Re: REG 2014-01 Outline of Draft NPRM Implementing Party Segregated Accounts, Agenda Document. No. 15-54-B (Oct. 23, 2015). The outline's proposed regulations were broadly consistent with the Petition's proposals. On December 17, 2015, the Commission voted to refer the Petition to the Regulations Committee "for further work." Federal Election Commission, *REG 2014-10 Outline of Draft NPRM Implementing Party Segregated Accounts*, Agenda Doc. No. 15-54-B, at 1 (Dec. 18, 2015).

The following year, the FEC solicited comments in response to the Petition. *See* Federal Election Commission, *Rulemaking Petition: Implementing the Consolidated and Further Continuing Appropriations Act of 2015*, Notice 2016-10, 81 Fed. Reg. 69,722, 69,722 (Oct. 7, 2016). It explained the Petition asked the Commission to "adopt a 'new regulatory framework' for each type of party segregated [*McCutcheon*] account and to amend current regulations, or adopt new regulations, that would apply to all such accounts." *Id*. After several years of inaction, the Commission has now provided another opportunity for public comment "on the Petition[] and any other issues pertaining to party segregated [*McCutcheon*] accounts." Federal Election Commission, *Party Segregated Accounts*, 89 Fed. Reg. 11,227, 11,228 (Feb. 14, 2024).

Suggestions for FEC Rulemaking on *McCutcheon* Accounts

Should the Commission decide to commence a rulemaking to implement the Appropriation Act's authorization of *McCutcheon* accounts, Mr. McCutcheon himself, in his capacity as Founder and Chairman of the Coolidge Reagan Foundation, urges such regulations should incorporate the following features:

1. Using funds in *McCutcheon* accounts—The Commission should construe the statutory scope of each *McCutcheon* account as broadly as possible to allow for the widest range of authorized uses. For example, FEC regulations should allow national political party committees to make expenditures from their Convention *McCutcheon* accounts, independent of the statutory $20 million limit, to fund meetings or business trips of the Standing Committee on Site Selection, Standing Committee on Arrangements, Standing Committee on the Call, Standing Committee on Contests, Temporary Committee on the Presidential Nominating Contest, and/or equivalent entities responsible for planning, organizing, and convening the national convention. *See, e.g.*,

Rules of the Republican Party, R. 10(a)(4)-(a)(7), (a)(10). Such funds should likewise be available to fund all costs associated with meetings of a national political party committee at which such standing committees issue reports or recommendations, as essential steps in the convention planning and approval process.

Moreover, consistent with congressional intent, the FEC should adopt regulations specifying a national political party committee may designated multiple headquarters facilities throughout the nation, including but not limited to regional headquarters and headquarters for certain divisions or to oversee the performance of particular functions. *See* 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Speaker John Boehner) (explaining the Appropriations Act's provision authorizing Headquarters *McCutcheon* accounts may be spent on "party headquarters ***buildings*** located ***throughout the United States***" (emphasis added)); *accord id*. S6814 (daily ed. Dec. 13, 2014) (statement of Senate Majority Leader Harry Reid). These regulations should likewise specify the Headquarters *McCutcheon* account may be used to fund the construction, rental, operation, insurance, taxation, repair, furnishing, decoration, and/or maintenance of such multiple headquarters buildings.

Finally, FEC regulations should expressly authorize a party's Recount *McCutcheon* account to be used not only for recounts, election contests, and other litigation directly relating to the outcome of a disputed election, but more broadly for "costs, fees, and other disbursements associated with ***other legal proceedings***," as well. 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Speaker John Boehner) (emphasis added); *accord id*. S6814 (daily ed. Dec. 13, 2014) (statement of Senate Majority Leader Harry Reid).

2. Fundraising for, and Independent Expenditures with, *McCutcheon* accounts—FEC regulations should also expressly specify—consistent with congressional intent—a political party committee may use funds from any of its *McCutcheon* accounts to raise additional funds for that account. Both Republican Speaker John Boehner and Democratic Senate Majority Leader Harry Reid repeatedly declared on the floors of their respective chambers that national party committees could use funds from each of their *McCutcheon* accounts to cover "the costs of ***fundraising*** for [that] segregated [*McCutcheon*] account." 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Speaker John Boehner) (emphasis added); *accord id*. S6814 (daily ed. Dec. 13, 2014) (statement of Senate Majority Leader Harry Reid). National party committees should

therefore be expressly permitted to use each of their *McCutcheon* accounts to pay for solicitations, advertisements, and other such communications, conveyed through any medium, to raise more money for that account.

Since national party committees have a fundamental First Amendment right to make "unlimited independent expenditures," *see Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604, 616, 618 (1996) [hereinafter, "*Colorado I*"] ("The independent expression of a political party's views is 'core' First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees."), parties should be permitted to fund such efforts with their *McCutcheon* accounts even if they include language referring to a particular candidate which, if published by a private speaker, would make the communication an independent expenditure, *see* 52 U.S.C. § 30101(17) (defining "independent expenditure" in an unconstitutional manner which categorically excludes political party committees from being able to make such expenditures). For example, a solicitation for the Convention *McCutcheon* account might reasonably say, "Contribute funds to the Republican National Convention where Donald Trump will be nominated to win the Presidency!" FEC regulations should not permit the Commission to censor fundraising solicitations and communications for *McCutcheon* accounts.

3. Transferring Funds Among *McCutcheon* accounts—At a minimum, any regulations the Commission adopts should allow a national party committee to transfer funds from one of its *McCutcheon* accounts to the analogous *McCutcheon* account for another national party committee (for example, from the Republican National Committee's recount fund to the National Republican Senatorial Committee's recount fund). The FECA states, "The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party." 52 U.S.C. § 30116(a)(4). The Appropriations Act's provisions concerning *McCutcheon* accounts did not amend this part of the FECA.

Current FEC regulations implement this provision, stating, "[T]ransfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees under 11 CFR 100.5 and whether or not such committees are affiliated." 11 C.F.R.

§ 102.6(a)(1)(ii); *see also id.* § 110.3(c)(1) ("[C]ontribution limitations . . . shall not limit the . . . [t]ransfers of funds between affiliated committees or between party committees of the same political party whether or not they are affiliated . . . .").

Consistent with these provisions, national party committees should be able to transfer funds among their *McCutcheon* accounts. In general, transfers from one political party committee to another are not subject to federal contribution limits. And allowing transfers of funds from one *McCutcheon* account to another party committee's analogous *McCutcheon* account would ensure those funds are spent for the statutorily permitted purposes for which they were raised. Accordingly, such transfers would be consistent with both FECA and the Appropriations Act.

The Commission also might consider going further, however, by adopting a regulation specifying if a party has leftover funds in a *McCutcheon* account at the end of a calendar year, it may transfer those funds to its general treasury account.[3] For a party committee to take advantage of this proposed provision, it would have to demonstrate it had used the applicable *McCutcheon* account to pay for all expenses the party committee incurred over the course of that calendar year for which that account could legally be used.

For example, if a political party committee used funds from its Headquarters *McCutcheon* account to pay for all eligible headquarters-related expenses that party incurred throughout the calendar year, and has funds remaining in that account at the end of the year, it may transfer those funds to its general treasury account. Such relief is particularly necessary for the Convention *McCutcheon* account since a national party committee may not spend more than $20 million from that account on its convention, which occurs only once every four (4) years. 52 U.S.C. § 30116(a)(9)(A). The Appropriations Act should not be interpreted as requiring party committees to continue to accumulate unused funds in *McCutcheon* accounts that wound up never being spent.

4. Reforming Coordination Regulations for *McCutcheon* Accounts—The FECA, as amended, specifies, "Notwithstanding any other provision of law with respect to limitations on expenditures . . . or contributions, the national committee of a political party . . . may make

[3] All funds in a national party committee's *McCutcheon* account are derived from legally permissible sources including U.S. citizens, lawful permanent residents, and other political committees which themselves received their funds from such permissible sources.

expenditures in connection with the general election campaign of candidates for Federal office," subject to certain restrictions. 52 U.S.C. § 30116(d)(1). The Appropriations Act specifies those restrictions on coordinated political party expenditures do not apply to expenditures made from its special segregated *McCutcheon* accounts. 52 U.S.C. § 30116(d)(5). Accordingly, national party committees are free to coordinate with federal candidates' campaign committees. Thus, the FEC should adopt a new regulation, 11 C.F.R. § 109.32(c), specifying general limits on coordinated expenditures between political party committees and candidates regarding their general election campaigns *do not* apply to expenditures made from the party committee's *McCutcheon* accounts. *See* 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Speaker John Boehner) ("[I]t is the intent of the amendments contained herein that expenditures made from [*McCutcheon*] accounts . . . do not count against the coordinated party expenditure limits . . . of FECA." (emphasis added)); *accord id*. S6814 (daily ed. Dec. 13, 2014) (statement of Senate Majority Leader Harry Reid).

5. Redesignation of Contributions to Political Party Committees—FEC regulations allow candidate committees to invite donors to redesignate contributions which otherwise would be excessive so they may be attributed instead to future elections. *See* 11 C.F.R. § 110.1(b)(5). Current regulations do not similarly allow resignation of contributions to national political party committees. The FEC should adopt a new regulation, 11 C.F.R. § 110.1(b)(7), which allows a national political party committee to likewise invite a donor to redesignate contributions to either its general treasury account or its *McCutcheon* accounts so any funds in excess of applicable contribution limits may be attributed to a different party account (whether the general treasury account or a different *McCutcheon* account).

6. Joint Fundraising Committees—The Commission should amend 11 C.F.R. § 102.17(a)(2) to expressly specify each of a national political party committee's *McCutcheon* accounts may separately participate in joint fundraising committees on the same terms as political party committees themselves.

7. Declining to Enforce Expenditure Restrictions on *McCutcheon* Accounts—The U.S. Supreme Court has held campaign finance restrictions are constitutional only insofar as they combat actual or apparent quid pro quo corruption. *McCutcheon*, 572 U.S. at 207-08; *see also Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480,

497 (1985). The Court has likewise repeatedly held limitations on expenditures play no role in combating any such corruption, whether those expenditures are made by:

- individuals, *Buckley*, 424 U.S. at 44-45 (holding "the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify [the FECA's] ceiling on independent expenditures");

- political committees, *Nat'l Conservative Political Action Comm.*, 470 U.S. at 498 ("the absence of prearrangement and coordination undermines the value of the expenditure to the candidate, and thereby alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.");

- corporations, *Citizens United v. Federal Election Commission*, 558 U.S. 310, 357-58 (2010) ("[I]ndependent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.") or

- political party committees, *Colorado I*, 518 U.S. at 617-18 (recognizing "[m]ost of the provisions this Court found unconstitutional imposed *expenditure* limits" and rejecting the notion "a limitation on political parties' independent expenditures is necessary to combat a substantial danger of corruption of the electoral system").

Indeed, the Court has suggested independent expenditures by political parties are even less concerning than identical expenditures by individuals. *Colorado I*, 518 U.S. at 617. Independent expenditures constitute "core First Amendment expression" subject to maximal constitutional protection. *Buckley*, 424 U.S. at 47-48. Once Congress has established a base contribution limit allowing a political party committee to raise a specified amount of funds—including funds for the committee's *McCutcheon* accounts—barring the committee from using those funds on independent expenditures, as well, is unconstitutional because it does not further the Government's interest in combatting actual or apparent quid pro quo corruption. *See McCutcheon*, 572 U.S. at 210 (recognizing "no corruption concern" arises from contributions made within applicable base limits).

Accordingly, consistent with the constitutional avoidance canon, *see Chamber of Commerce v. FEC*, 69 F.3d 600 (D.C. Cir. 1995); *FEC v. Machinists Non-Partisan Political*

League, 655 F.2d 380, 392 (D.C. Cir. 1981); *see also Nat'l Mining Ass'n v. Kempthorne*, 512 U.S. 702, 711 (D.C. Cir. 2008) (recognizing the constitutional avoidance canon "trumps" *Chevron* deference), the FEC's regulations should decline to interpret the Appropriation Act's restrictions on permissible uses of *McCutcheon* accounts as extending to national party committees' independent expenditures. Rather, a political party committee's First Amendment right to make "unlimited independent expenditures," *Colorado I*, 518 U.S. at 618, extends to the use of funds in *McCutcheon* accounts.

Conclusion

CRF and Mr. McCutcheon respectfully request the Commission take these considerations and recommendations into account in crafting any potential regulations concerning *McCutcheon* accounts in response to the Petition.

Respectfully submitted,

Dan Backer, Esq.
Counsel for Commenters Coolidge-Reagan Foundation and its Founder & Chairman Shaun McCutcheon