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NATIONAL ASSOCIATION OF BUSINESS  
POLITICAL ACTION COMMITTEES

January 13, 2015

Federal Election Commission

Attn: Amy L. Rothstein  
Assistant General Counsel  
999 E Street, NW  
Washington, DC 20463

Re: Comments on Behalf of the National Association of Business Political  
Action Committees in Response to the Advance Notice of Proposed  
Rulemaking on Post-*McCutcheon* Regulatory Changes (Notice 2014-12)

Dear Commissioners:

The National Association of Business Political Action Committees (“NABPAC”) submits these comments in response to the Federal Election Commission (“FEC” or “Commission”) Advance Notice of Proposed Rulemaking (“ANPRM”) issued on October 17, 2014 (Notice 2014-12). Specifically, NABPAC is responding to the Commission’s request for comments on whether it should make any regulatory changes in light of *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014).

NABPAC urges the Commission to recommend to Congress that the limit on PAC contributions to candidates be increased to \$10,000 per election and indexed for inflation.

## I. NABPAC

NABPAC is a 501(c)(6) non-profit trade association dedicated to promoting, defending, and professionalizing PACs, as well as providing membership services to PAC and grassroots professionals. Our membership is composed of over 650 PAC and government affairs professionals from more than 200 corporations, associations, and vendors across the country. NABPAC is not a PAC and does not make contributions to candidates.

For thirty-seven years, NABPAC has supported efforts to provide for greater transparency in elections and enforcement of a responsible regulatory structure. We have fought for the continued role of PACs in the campaign finance system and have helped members navigate the complex array of PAC regulations.

## II. *McCutcheon*

Last April, the Supreme Court struck down the individual biennial aggregate contribution limits codified at 52 U.S.C. § 30116(a)(3). The Court concluded that the aggregate limits restricted core First Amendment speech and did not seriously inhibit actual or apparent *quid pro quo* corruption. *McCutcheon*, 134 S. Ct. at 1462. Moreover, the Court determined that the aggregate limits did not meaningfully prevent the circumvention of the base limits on individuals' contributions to candidates. Central to the Court's reasoning on this point was the existence of regulations that already prevent circumvention of the base limits. Specifically, the Court maintained that limits on contributions to and from PACs, and the prohibition on "earmarking" contributions to particular candidates, will continue to prevent circumvention of the base limits in the absence of the aggregate limits. *Id.* at 1446–47.

The FEC announced this ANPRM to reassess regulations implicated by the decision in *McCutcheon*. The FEC seeks comments on whether any regulatory changes are necessary in light of the decision. Because the increased candidate contributions permitted by *McCutcheon* will likely have an immediate and negative impact on contributions to and by PACs, we believe that the FEC should take steps to ensure a positive role for PACs in a post-*McCutcheon* world.

## III. Legislative Recommendation

The Commission is authorized to make legislative recommendations to Congress. 52 U.S.C. § 30111(a)(9). From 2003 through 2005, the FEC recommended to Congress that the limit on multicandidate PAC contributions to candidates be indexed for inflation. *See* FEC, *Legislative Recommendations* (2005), available at [http://www.fec.gov/law/legislative\\_recommendations\\_2005.shtml](http://www.fec.gov/law/legislative_recommendations_2005.shtml); *Legislative Recommendations* (2004), available at [http://www.fec.gov/pages/legislative\\_recommendations\\_2004.htm](http://www.fec.gov/pages/legislative_recommendations_2004.htm); *Legislative Recommendations* (2003), available at <http://www.fec.gov/pdf/legrec2003.pdf>. The Commission should do so again.

NABPAC urges the Commission to adopt a legislative recommendation that Congress increase the limit on PAC contributions to candidates to \$10,000 per election and index new limits for inflation. PACs are the most regulated and transparent entities in our political system. Authorizing PACs to contribute higher amounts to candidates will provide candidates with more transparent resources and will promote accountability in our political system.

PACs are collective participants in the campaign finance world. There are millions of individuals who support the thousands of PACs that are registered with the FEC. To date, PACs have contributed over \$450 million to federal candidates during the 2014 election cycle. *See* Center for Responsive Politics, *Political Action Committees*, available at <http://www.opensecrets.org/pacs/index.php?chart=T>. PACs represent a wide variety of organizations and political positions and contribute to candidates from all across the political spectrum.

Not only are PACs important vehicles for political expression, but the comprehensive disclosure obligations imposed on them allow PACs to promote transparency and accountability in our campaign finance system. A PAC must file regular reports with the FEC, itemizing most of its receipts and disbursements and disclosing the identity of any contributor who makes contributions in excess of \$200 per calendar year. *See* 11 C.F.R. § 104.3(a)(4). The Supreme Court has long held that disclosure obligations serve important governmental interests. In its seminal opinion in *Buckley v. Valeo*, the Court identified three purposes that disclosure requirements serve: they allow voters to obtain information about contributors and candidates; they help deter actual or apparent corruption; and they allow for the gathering of data necessary to enforce contribution limits. 424 U.S. 1, 66–68 (1976); *see also Citizens United v. FEC*, 558 U.S. 310, 367 (2010).

Nonetheless, the relative role of PACs has diminished considerably over the past forty years. Congress first imposed the \$5,000 limit on contributions from multicandidate PACs to candidates in 1974, as an amendment to the Federal Election Campaign Act of 1971 (“FECA”). *See* Pub. L. No. 93-443, § 101(a) (1974). A PAC qualifies as a multicandidate PAC if it receives contributions from at least fifty-one individuals, has been in existence for at least six months, and contributes to at least five candidates for federal office. 52 U.S.C. § 30116(a)(4). Non-multicandidate PACs may contribute up to \$2,600 to a candidate per election.

Since 1974, the value of the maximum PAC contribution has eroded. In 1974, the \$5,000 limit had a value of nearly \$24,000 in 2014 dollars. By contrast, \$5,000 in 2014 has the same buying power as \$1,043.82 had in 1974. *See* Dep’t of Labor, Bureau of Labor Statistics, *CPI Inflation Calculator*, available at [http://www.bls.gov/data/inflation\\_calculator.htm](http://www.bls.gov/data/inflation_calculator.htm). As the costs associated with campaigning for federal office have skyrocketed, the limit on contributions from PACs has remained the same. The maximum contribution from a PAC today simply does not have the value of a maximum contribution made forty years ago.

More recent developments in the law have further diminished the position of PACs in the campaign finance world. In 2002, President Bush signed into law the Bipartisan Campaign Finance Reform Act (“BCRA”). BCRA indexed for inflation the limit on individual contributions to candidates, which, in turn, resulted in a corresponding indexing of non-multicandidate PAC contributions to candidates, but did not provide for adjustments of the limit on multicandidate PAC contributions to candidates. *See* 52 U.S.C. § 30116(c). This omission has created a major inconsistency in campaign finance regulation. The limit imposed on contributions from individuals and non-multicandidate PACs will eventually surpass the limit imposed on contributions from multicandidate PACs.<sup>1</sup> Indeed, the limit on the amount a wealthy couple may contribute to a candidate *already* surpasses the amount a multicandidate PAC may contribute. This is so, despite the fact that FECA originally provided that multicandidate PACs could contribute to a candidate up to five times the amount that an individual could. *See* Pub. L. No. 93-443, § 101(a) (1974) (limiting PAC contributions to \$5,000 and individual contributions to \$1,000 per election).

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<sup>1</sup> This is quite concerning for existing multicandidate PACs, for which there is no mechanism to opt out of multicandidate status.

From 2003 through 2005, the FEC recommended to Congress that the limit on multicandidate PAC contributions to candidates be indexed for inflation. In its 2003 recommendations, the Commission noted that, because the limit on contributions from non-multicandidate PACs will eventually surpass the limit on contributions from multicandidate committees, the contribution limit will “create a substantial disincentive to achieve multicandidate committee status.” FEC, *Legislative Recommendations* (2003), available at <http://www.fec.gov/pdf/legrec2003.pdf>. The Commission should ask Congress to raise the limit on contributions from multicandidate PACs and renew its call for indexing this limit for inflation.

The disparate treatment of multicandidate PACs undermines Congress’s anti-corruption interest because PAC contributions to candidates are less likely to lead to actual or apparent *quid pro quo* corruption than direct contributions made by individuals. Unlike direct contributors, PACs represent multiple donors, reducing the risk that a candidate would feel indebted to any particular individual for a contribution the candidate received from a PAC. *McCutcheon*, 134 S. Ct. at 1454. Congress’s legitimate interest in combating corruption or the appearance of corruption would be better served if multicandidate PACs could contribute more than, or at least maintain relative financial parity with, individual contributors.<sup>2</sup>

The relative role of PAC contributions has further deteriorated in the wake of *Citizens United* and its progeny. After *Citizens United*, political donors are able to contribute more money to “super PACs” and politically active non-profits that are not subject to contribution limits (and some of which are not required to disclose the identities of contributors). *McCutcheon* will further compound this deficit because individuals are now able to contribute the maximum amount directly to an unlimited number of candidates. This option will likely make contributing to a PAC—and thus surrendering control over the direction of the contribution—less appealing to individual donors. Increasing the limit on the amount that PACs may contribute to candidates will enable PACs to dilute the role of new campaign finance entities and wealthy individual contributors.

Congress’s failure to increase the limit on PAC contributions to candidates has resulted in a system in which the most transparent and most regulated campaign finance entities are diminished. The FEC should ask Congress to empower PACs, and remedy the anomalies BCRA created, by increasing the limit on PAC contributions to candidates and indexing new limits for inflation. These changes are all the more necessary in light of the further distortions resulting from *Citizens United* and *McCutcheon*.

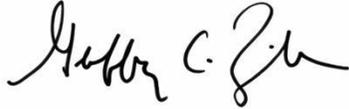
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<sup>2</sup> Increasing the limit on contributions a candidate may receive from a PAC would not seriously implicate any concerns about circumvention of the base limits. As the Supreme Court noted in *McCutcheon*, rules governing the handling of earmarked contributions and contributions from affiliated PACs adequately serve the government’s interest in preventing the circumvention of limits on individual contributions to candidates. See 134 S. Ct. at 1446–47. Moreover, PACs will continue to be subject to a limit on the amounts they receive from individuals.

#### **IV. Conclusion**

We urge the Commission to adopt a legislative recommendation that Congress increase the limit on PAC contributions to candidates to \$10,000 per election and index new limits for inflation.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoff C. Ziebart". The signature is fluid and cursive, with the first name "Geoff" being the most prominent.

Geoff Ziebart  
Executive Director  
National Association of Business Political Action Committees (NABPAC)