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Citizens United II? Background Memo on *McCutcheon v. FEC*

Supreme Court Challenge to Aggregate Contribution Limits Could Radically Reshape the Financing of Federal Elections

On October 8, 2013, the U.S. Supreme Court will hear oral argument in *McCutcheon v. Federal Election Commission (FEC)*, a constitutional challenge to the federal aggregate contribution limits and a high-stakes test for the future viability of all contribution limits. If the Supreme Court chooses to ignore longstanding precedent and overturn the contribution caps, the decision would be every bit as damaging to the health of our democracy as the *Citizens United* ruling, which released unlimited corporate and union treasury funds into our elections.

The law challenged in *McCutcheon* allows an individual to make approximately \$123,000 in total contributions—a sum more than twice the U.S. median household income—to candidates, political parties and PACs in a two-year election cycle. Eliminating this limit would permit a single individual to donate several million dollars to the candidates and committees of his chosen political party, and would allow candidates to directly solicit these eye-popping sums, opening the door to an era of outright *quid pro quo* corruption and influence peddling.

Such a ruling by the Supreme Court would also likely require the reversal of the nation’s leading legal precedent in the field of campaign finance—the Supreme Court’s 1976 decision in *Buckley v. Valeo*¹—which specifically upheld the predecessor version of today’s aggregate limits. In *Buckley*, the Supreme Court reasoned that the aggregate limit prevented “evasion of the [base] 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 [their preferred] candidate, or huge contributions to the candidate’s political party.”²

Even more problematic is the request made by plaintiffs McCutcheon and the Republican National Committee that the Court also reconsider one of the fundamental principles set forth in *Buckley*—namely, the distinction it has long drawn between “contributions” and “expenditures.” For almost four decades, the Supreme Court has found that restrictions on campaign contributions represent a lesser burden on First Amendment rights than do restrictions on campaign expenditures; consequently, it has subjected the former to more relaxed judicial review than the latter. The McCutcheon plaintiffs and their allied *amici* now ask the Court to upend this

¹ 424 U.S. 1 (1976).

² *Id.* at 38.

cornerstone of campaign finance jurisprudence in hopes of heightening the Court’s scrutiny of the challenged aggregate contribution limits and enhancing their chance at success.

The *McCutcheon* case is thus sure to be a bellwether for the Roberts Court’s approach to constitutional jurisprudence. Will the Court continue the activist course set in *Citizens United v. FEC* or will it return to a more conservative path of adhering to past precedents and principles of *stare decisis*? At the least, a decision to invalidate the challenged law would likely require the Court to reconsider *Buckley*’s holding on the previous aggregate limit. A more radical approach might result in the Court casting doubt on the constitutionality of all contribution limits, and in so holding, undermining the modern campaign finance system’s central protection against donors seeking to purchase influence over candidates and officeholders, as well as damaging public confidence in the integrity of government—and the institution of the Supreme Court.

This case not only threatens to have a broad impact on laws limiting aggregate contributions, but could also, depending on the scope of the ruling, jeopardize even the longstanding “base” limits on contributions to candidates and political parties at every level of government—municipal, state and federal. If an adverse ruling in *McCutcheon* led to the invalidation of additional contribution limits, it would usher us back to a point in history long ago where elected officials received vast sums of money and those who pay the piper get to sing the tune. That result would be devastating for the integrity of our elections and our democracy.

In 2010, the Court’s controversial decision in *Citizens United v. FEC* ignored decades of legal precedent and unleashed vast corporate and union treasuries on the 2010 mid-term and the 2012 presidential elections. The Campaign Legal Center has urged the Supreme Court to avoid similar judicial overreach in *McCutcheon* and to uphold its longstanding precedent recognizing the significant public interest in maintaining contribution limits. We hope that you can find the time and space to write about this important case and its potential impact on our democracy.

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A. The Law

Since the passage of the Federal Election Campaign Act (FECA) and subsequent amendments following the Watergate scandal in the mid-1970's, direct contributions to influence federal elections have been governed by two sets of contribution limits.

First, there are “base limits” on how much an individual can give to a candidate, a party committee or a political action committee (or “PAC”). The base limits for individuals in the 2013-2014 elections are as follows:

	To each candidate or candidate committee per election	To national party committee per calendar year	To state, district & local party committee per calendar year	To any other political committee per calendar year
Individual may give	\$2,600	\$32,400	\$10,000	\$5,000

Under current law, the limit for contributions by an individual to a federal candidate is \$2,600 per election (a total of \$5,200 to a single candidate for a primary and general election in a two-year election cycle). The limit for contributions by an individual to a national political party committee is \$32,400 per year, which applies separately to each of the three national committees of a political party (e.g., the DNC, DSCC and DCCC).

Just as crucial as the base limits are the “aggregate limits,” the subject of the current Supreme Court challenge. Total contributions by an individual to all federal candidates are currently capped at an aggregate of \$48,600 in a two-year election cycle and total contributions by an individual to all party committees and PACs are capped at \$74,600 biennially.

These aggregate limits are crucial to making the base contribution limits effective:

- Without the \$48,600 aggregate limit on contributions to candidates, a single donor could contribute \$5,200 to every House and Senate candidate of his preferred party (given 468 federal elections per cycle), for a total of \$2,433,600.
- Without the \$74,600 aggregate limit on contributions to party committees, a single donor could give \$32,400 to each of a party's three federal party committees each year and \$10,000 to each of a party's 50 state party committees in a year, for a grand total of \$1,194,400 to one party's committees in a single election cycle.
- Finally, absent the aggregate limit, a donor could also contribute to potentially huge number of PACs aligned with his partisan or ideological interests. For instance, in the 2012 elections, over 2,757 “non-connected” PACs were active, demonstrating that even if no new PACs were formed, donors would have, at the least, hundreds of PACs available as additional conduits for circumventing the base limits.

Finally, without the aggregate limits, donors could route these huge aggregate contributions through numerous intermediaries to their chosen candidates and party committees by employing completely-legal circumvention schemes, such as the joint fundraising committees discussed below.

B. The Legal Case

The plaintiffs are the Republican National Committee (RNC) and Shaun McCutcheon, an Alabama businessman and treasurer of a Super PAC called the Conservative Action Fund. McCutcheon claims that he will comply with the base limits, but wishes to make over \$135,000 in total contributions to candidates, parties and PACs in the 2014 elections, exceeding the current aggregate limits. Plaintiffs argue that the aggregate limits are a severe burden on their First Amendment rights of speech and association, akin to expenditure limits, and therefore warrant strict scrutiny review. Plaintiffs also argue that the aggregate limits are not justified by the governmental interest in preventing *quid pro quo* corruption or the appearance of such corruption, claiming that amendments to the federal campaign finance law following *Buckley* have rendered the aggregate limits redundant.

The defendant FEC, represented by the U.S. Solicitor General before the Supreme Court, takes the opposite tack. It highlights that that *Buckley* upheld the predecessor version of today's aggregate limits, finding that the law is a "quite modest restraint" that serves "to prevent evasion of the [base] contribution limitation[s]."³ It also highlights that the Court has consistently found that contribution limits are not constitutionally burdensome and consequently has applied only an intermediate level of scrutiny to such limits. Finally, defendants point out that the Supreme Court has already affirmed the anti-corruption purpose served by the challenged aggregate limits, and that the amendments to federal law following *Buckley* did not address, much less resolve, the circumvention that the aggregate limit was devised to prevent. If anything, new innovations such as joint fundraising committees, described in further detail below, have simplified the process of circumventing the base limits by allowing donors to direct multiple contributions to a donor's favored candidates without violating the law.

C. High Stakes for Democracy

1. The real world consequence of eliminating the aggregate contribution limits would be large-scale circumvention of the base contribution limits.

As discussed above, absent the aggregate limits, a single donor could contribute a total of more than \$2.4 million to the congressional candidates of his favored political party and over \$1.1 million to the three federal committees and fifty state committees of that party in a two-year election cycle.

Plaintiffs maintain that it is not corrupting for a single donor to give millions of dollars to her party and party candidates because technically she is giving only multiple *limited* contributions to many *separate* entities and "accounts." But as the FEC and its allied *amici* point out,

³ 424 U.S. at 38.

plaintiffs' assumption that separate contributions will remain in separate accounts is counter to the reality of modern campaign finance practices. Federal campaign finance law allows national and state party committees of the same party to transfer money to each other without restriction, and likewise allows candidates to transfer money to national, state and local committees of their political party without restriction. It is thus child's play to transfer multiple contributions from a single donor between party and candidate committees for the purpose of directing all or part of the total amount to the donor's preferred recipients.

Furthermore, political players have already developed sophisticated mechanisms that—legally—would facilitate efforts to circumvent the base contribution limits in the absence of the aggregate limits and assure big donors that their largesse will be routed to their preferred candidates.

One such mechanism is “joint fundraising”—when two or more political committees combine fundraising efforts by forming a single “joint fundraising committee.” A donor may give a single check to a joint fundraising committee equaling the total amount that the contributor could legally contribute to all of the participants; this check is then “split” among the participants so that each participant's share does not exceed its contribution limit. Of course, all of the participants can then transfer or spend their proceeds to support a single beneficiary—without running afoul of contribution limits—making joint fundraising a potent method for circumventing the base limits.

This model has already been used by both major party presidential nominees in the last two presidential elections. It is thus untenable to claim, as plaintiffs do, that joint fundraising is a “far-fetched” or “hypothetical scenario.” In 2008, the campaign committee of then-presidential nominee Barack Obama and the DNC established a joint fundraising committee that could accept checks of over \$33,000.⁴ Then-presidential nominee John McCain was connected to a more complex joint fundraising effort involving the RNC, several state Republican parties, and his campaign's compliance fund that accepted as much as \$70,000 per donor.⁵ Furthermore, candidates' reliance on joint fundraising is hardly “hypothetical.” In the 2012 elections, the total amount raised by Romney's joint fundraising committee, Romney Victory, was over \$492 million, and Obama's committees, Obama Victory Fund and Swing State Victory Fund, raised approximately \$461 million.⁶

Without the aggregate limits, joint fundraising would go from merely problematic to disastrous for the integrity of our elections. Here's how it would work:

- A candidate could join with her party's three federal committees and 50 state committees to form a single joint fundraising committee. When one candidate “headlines” a joint

⁴ Michael Luo and Griff Palmer, *In Fine Print, a Proliferation of Large Donors*, N.Y. Times, Oct. 20, 2008, <http://www.nytimes.com/2008/10/21/us/politics/21donate.html>.

⁵ Matthew Mosk, *McCain Able to Skirt Limits of Federal Financing*, Wash. Post., Sept. 17, 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/09/16/AR2008091603321.html>.

⁶ Center For Responsive Politics, *Joint Fundraising 2012*, <https://www.opensecrets.org/pres12/jfc.php>.

fundraising effort, donors are tacitly informed that their full contribution will be used by all participating committees to support this candidate.

- This committee could to receive checks of \$602,400 in a year from a single individual—with \$97,200 allocated to the national party committees (3 x \$32,400); \$500,000 to the state party committees (50 x \$10,000), and \$5,200 to the candidate campaign committee (\$2,600 x 2, i.e., the primary and general election). In a two-year election cycle, the amount that could be raised by such a committee would total almost \$1.2 million.
- The party committees participating in the joint fundraising effort could then use their share to make contributions to the headlining candidate, engage in coordinated spending with the candidate and make independent expenditures to benefit the candidate.

In short, joint fundraising is a well-established practice that would facilitate the circumvention of the base limits by relieving donors of the logistical challenge of making separate contributions to many different committees, and allowing them to “signal” their interest in having all participants to the joint effort use their “share” to support the candidate headlining the effort, as was the case with the Romney Victory and Obama Victory Fund committees.

2. Elimination of the aggregate limits would resurrect the party “soft money” system and reintroduce political corruption endemic to this system.

Invalidation of the aggregate limits would allow a single individual to donate over a million dollars to a political party’s national and state party committees—which could be transferred across such committees without restriction. The resulting system would be indistinguishable from the “soft money” system outlawed by the McCain-Feingold Act of 2002 and denounced in the Supreme Court’s decision in *McConnell v. FEC* upholding the Act.⁷

The *McConnell* Court approved the McCain-Feingold limits on “soft money” contributions to parties—i.e. unregulated contributions not in compliance with the federal limits. After surveying the voluminous record, it concluded that that “there is substantial evidence to support Congress’ determination that large soft-money contributions to national political parties give rise to corruption and the appearance of corruption.”⁸

As the record in *McConnell* exhaustively outlined, not only do large contributions buy access and influence to candidates and officeholders, they also affect governmental action. The *McConnell* Court noted that “evidence connect[ed] soft money to manipulations of the legislative calendar, leading to Congress’ failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation.”⁹

Two illuminating examples in the record come from the McCain-Feingold Act’s co-sponsors. In 1996, during Senate consideration of an amendment to benefit Federal Express, a senior Senator

⁷ 540 U.S. 93 (2003). The soft-money restrictions upheld by *McConnell* were not invalidated or even considered by the Supreme Court in *Citizens United v. FEC*.

⁸ *Id.* at 154.

⁹ *Id.* at 150.

suggested to Sen. Russ Feingold (D-WI) that he supported the amendment because “they just gave us \$100,000.”¹⁰ And a popular generic drug bill died in Congress in 2002, shortly after two Republican Party congressional committees held a large gala fundraiser to raise almost \$30 million in contributions. Among the largest contributors to the gala were GlaxoSmithKline PLC (\$250,000), PhRMA (\$250,000), Pfizer (\$100,000), Eli Lilly & Co. (\$50,000), Bayer AG (\$50,000) and Merck & Co (\$50,000). Senator John McCain summed up the problem this way: “There’s a terrible appearance when the Generic Drug Bill, which passes by 78 votes through the Senate, is not allowed to be brought up in the House shortly after a huge fundraiser with multimillion dollar contributions from the pharmaceutical drug companies who are opposed to the legislation.”¹¹

Eliminating the aggregate limits would also cripple the prohibition on the solicitation of soft money by federal candidates and officeholders added by the McCain-Feingold Act and upheld in *McConnell*. The McCain-Feingold Act prohibited federal officeholders and candidates from soliciting or directing contributions that exceed the federal limits. Eliminate the aggregate limits, however, and one donor could give a joint fundraising committee a single check for a \$1 million that would be treated as the aggregation of numerous “hard money” contributions. Because these huge checks would therefore comply with federal contribution limits, candidates would be able to “make the ask” for enormous sums while technically obeying the McCain-Feingold solicitation restriction. The *McConnell* decision recognized the danger posed by this type of solicitation, noting that “[l]arge soft-money donations at a candidate’s or officeholder’s behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder.”¹²

Invalidation of the aggregate limits would thus herald the return of the “soft money” regime, where influence-seeking donors are solicited for and able to give huge checks with the full expectation that their generosity will be repaid in undue political access and influence.

3. An adverse decision in *McCutcheon* would likely require the Supreme Court to reverse *Buckley* and a broad ruling would cast doubt on all contribution limits.

The Supreme Court in its 1976 *Buckley* decision squarely considered a facial challenge to the original \$25,000 aggregate limit and ruled that the limit was constitutional. Thus, even a relatively narrow ruling in *McCutcheon* to strike down or narrow the aggregate limits would likely require the Supreme Court to reverse or at least reconsider this holding in *Buckley*.¹³

¹⁰ McConnell record, Feingold Dep. at 62; *see also* Simon Decl. ¶¶ 13-14.

¹¹ McConnell record, McCain Decl. ¶ 11.

¹² 540 U.S. at 154 (emphasis added).

¹³ The McCain-Feingold Act amended the original \$25,000 limit in certain minor respects—e.g., by splitting the overall limit into two sub-limits, for contributions to candidates and contributions to parties and PACs, and then raising those sub-limits and indexing them for inflation. These specific changes, however, are largely irrelevant to plaintiffs’ challenge, and provide no basis for plaintiffs to distinguish the holding in *Buckley*.

Plaintiffs attempt to sidestep *Buckley* by arguing that subsequent changes to federal law have rendered its analysis of the aggregate limits obsolete. But plaintiffs get the statutory history of the federal campaign finance law wrong, as the FEC and the Campaign Legal Center outline in their briefs. And those amendments that have indeed been enacted post-*Buckley* have not significantly reduced the potential for circumvention of the base limits in the absence of the aggregate limits. The circumvention schemes described by the *Buckley* Court—i.e., circumvention by “unearmarked contributions to political committees likely to contribute to [a] candidate, or huge contributions to the candidate’s political party”—remain possible today absent the aggregate limits. Indeed, new practices like joint fundraising may make such circumvention even simpler than in the *Buckley* era.

Thus, an adverse decision in *McCutcheon* will likely require the Supreme Court to reverse at least part of *Buckley*. And plaintiffs have asked the Court to rule still more broadly, and overturn the key principle set forth in *Buckley* that contributions and expenditures differ for the purpose of judicial review.

The *Buckley* Court viewed a limit on campaign expenditures as “direct and substantial restraints on the quantity of political speech” that “limit political expression ‘at the core of our electoral process and of . . . First Amendment freedoms.’”¹⁴ A contribution limit, by contrast, imposes “little direct restraint on [a contributor’s] political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor’s freedom to discuss candidates and issues.”¹⁵ Further, the *Buckley* Court pointed out that the “quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing”¹⁶—meaning that the quantum of an individual’s speech expressed through contributing is not significantly affected by a contribution limit of \$500 or \$5,000, or in the *McCutcheon* case, a combined aggregate limit of \$123,200. For these reasons, the Supreme Court has applied strict scrutiny to expenditure restrictions and “less rigorous” scrutiny to contributions for almost four decades.

Plaintiffs now propose that the Supreme Court upend this foundational principal of the Court’s campaign finance case law, a move that arguably would be even more disruptive than its decision in *Citizens United*. First, such a ruling would destabilize all contribution limits. *McCutcheon* would not itself invalidate the base limits, but by changing the applicable standard of review, a broad ruling would encourage legal challenges to *all* limits in the future. And subsequent invalidation of some or all of the base contribution limits would be so damaging that *Citizens United* would seem like a pinprick. The corporate contribution restrictions have been on the books since the 1907 Tillman Act, and certain individual limits have been in effect since the 1940 amendments to the Hatch Act. Federal restrictions on campaign contributions have been in place for over a century and it is almost unthinkable to imagine modern elections without this crucial anti-corruption measure.

¹⁴ 424 U.S. at 39.

¹⁵ *Id.* at 20.

¹⁶ *Id.* at 21.

Second, *Buckley* is the Court’s leading authority on campaign finance, likely qualifying as what some legal scholars call a “super precedent”—a decision entitled to particular judicial deference because it has been repeatedly affirmed and is central to the Court’s jurisprudence. This concept was raised at Chief Justice Roberts’ confirmation hearing, where he was asked by then-Senator Arlen Specter whether certain cases like *Roe v. Wade* had become superprecedents or “super-duper *stare decisis*.”¹⁷ In response, Roberts affirmed that cases like *Roe* were “settled as a precedent of the court, entitled to respect under principles of *stare decisis*,” demonstrating that Roberts, at least in theory, acknowledges the importance of well-established precedent.¹⁸ Indeed, Justice Roberts himself has specifically reaffirmed the distinction between contributions and expenditures drawn by *Buckley*, joining the 2006 plurality opinion in *Randall v. Sorrell* which noted that “[o]ver the last 30 years, in considering the constitutionality of a host of different campaign finance statutes, this Court has repeatedly adhered to *Buckley*’s constraints.”¹⁹ The *Sorrell* opinion went on to state that the Court could find “no . . . special justification that would require us to overrule *Buckley*” given that “[s]ubsequent case law has not made *Buckley* a legal anomaly or otherwise undermined its basic legal principles.”²⁰

To be sure, the Supreme Court already overruled its own precedents in *Citizens United*, specifically its 1990 decision in *Austin v. Michigan State Chamber of Commerce*²¹ and part of its 2003 decision in *McConnell*. Although *Citizens United* was an openly activist decision, the Supreme Court characterized these precedents as controversial outliers—and regardless of whether one agrees with this characterization, *Austin* and *McConnell* were indisputably both more recent and more narrowly decided than *Buckley*. By contrast, *Buckley* was a unanimous, *per curiam* ruling and remains the leading Supreme Court precedent in campaign finance today. Its reversal would reveal that the Roberts Court respects no boundaries in its effort to revolutionize First Amendment jurisprudence, and make a mockery of *stare decisis*, judicial restraint and Justice Roberts’ claimed allegiance to both principles in his confirmation hearings.

4. Striking these contribution limits would be another extreme decision just like *Citizens United*, and would further erode Americans’ faith in our democracy.

American elections are still reeling from the effects of *Citizens United*. Independent spending in 2012 *tripled* from the last presidential election, topping out at over \$1 billion according to the

¹⁷ See, e.g., Wash. Post., *Transcript: Day Two of the Roberts Confirmation Hearings*, Sept, 13, 2005, <http://www.washingtonpost.com/wp-dyn/content/article/2005/09/13/AR2005091300876.html>.

¹⁸ *Id.*

¹⁹ 548 U.S. 230, 242 (2006).

²⁰ *Id.* at 244.

²¹ 494 U.S. 652 (1990).

Center for Responsive Politics (CRP).²² Disclosure of such spending has plummeted, and the donors who funded over \$300 million of the outside spending in 2012 remain secret to this day.²³

Unsurprisingly, public confidence in government is at an all-time low. Gallup's tracking shows that public confidence in Congress is at a historic nadir, hitting 10% in 2013.²⁴ Even the Supreme Court, which has traditionally been held in relatively high esteem, has lost public support. Gallup indicates that public confidence in the Supreme Court before 2006 was consistently above 40% and often as high as 50%, but since 2006, it has steadily declined to its current level of 34%.²⁵

It is not implausible to attribute at least some of this mistrust to *Citizens United* and the Roberts Court's deregulation of political spending. An ABC/Washington Post poll conducted shortly after *Citizens United* found that 80% of Americans opposed the decision.²⁶ The rejection cut across party lines, with 76% of Republicans and 85% of Democrats opposing the ruling. And public opprobrium has not softened with time. An AP poll in 2012 found that 80% of Americans continue to believe that there should be limits on how much a corporation should be able to support outside organizations trying to influence federal elections.²⁷

While popularity is of course not the measure of whether a Supreme Court decision is constitutionally sound, the deep public disapproval of *Citizens United*, as well as citizens' growing distrust of the Supreme Court, bolsters the concern that we are nearing a crisis of confidence in the integrity of government.

In this atmosphere, another radical decision to strike protections against political corruption could be devastating to public confidence and participation in federal elections. Elimination of the aggregate limits would benefit no one but a miniscule percentage of wealthy Americans. According to CRP's analysis, fewer than 4,000 Americans (of more than 300 million) made contributions that reached the aggregate limits in 2012.²⁸ It is likely that from this select pool of motivated and rich donors a new class of Super Donors would emerge, able to afford the higher

²² CRP, *Total Outside Spending by Election Cycle, Excluding Party Committees*, http://www.opensecrets.org/outsidespending/cycle_tots.php.

²³ CRP, *2012 Outside Spending, by Group*, <http://www.opensecrets.org/outsidespending/summ.php?cycle=2012&disp=O&type=A&chrt=D>.

²⁴ Gallup, *Americans' Confidence in Congress Falls to Lowest on Record*, <http://www.gallup.com/poll/163052/americans-confidence-congress-falls-lowest-record.aspx>.

²⁵ Gallup, *Confidence in Institutions*, <http://www.gallup.com/poll/1597/confidence-institutions.aspx#1>.

²⁶ *In Supreme Court Ruling on Campaign Finance, the Public Dissents*, ABC News, Feb. 17, 2010, <http://abcnews.go.com/blogs/politics/2010/02/in-supreme-court-ruling-on-campaign-finance-the-public-dissents/>

²⁷ *The AP-National Constitution Center Poll* (Aug. 2012), at 21, http://ap-gfkipoll.com/main/wp-content/uploads/2012/09/AP-NCC-Poll-August-GfK-2012-Topline-FINAL_1st-release.pdf

²⁸ CRP, *McCutcheon v. FEC*, <http://www.opensecrets.org/overview/mccutcheon.php>.

price of admission and thereby purchase yet more access, influence and power in the halls of government.

Such a decision would not only grant enormous influence to the already influential super-elite, but it would further divest average citizens of control over elections. By way of perspective, earlier this month the U.S. Census Bureau reported that the median annual household income in our country is \$51,017. *McCutcheon* challenges a contribution cap for individuals of \$123,200—or more than twice what the average American family earns a year *before* taxes.

By declaring longstanding protections against political money unconstitutional, the Supreme Court in effect precludes Congress—and by extension, the American public—from legislating in the area of campaign finance altogether. The *Citizens United* decision blocks Americans from democratically deciding whether to regulate corporate spending in elections. Similarly, a decision by the Roberts Court to strike down aggregate limits—or to undermine all contribution limits—would effectively strip voters of any authority to protect local, state and federal elections from the corrosive effects of unchecked political giving. It would not only be legally questionable but also profoundly anti-democratic for the Supreme Court to decide that the most fundamental decisions about running our democracy cannot be made by democratic means.

For Additional Information

For more information please refer to the Campaign Legal Center's [review of the McCutcheon case](#) that includes a more comprehensive collection of the Supreme Court briefs than those listed below, as well as lower court filings and the district court decision upholding the aggregate contribution limits.

Supreme Court Documents

Appellants' Filings:

- To read appellant McCutcheon's merits brief (May 6, 2013), [click here](#).
- To read appellant RNC's merits brief (May 6, 2013), [click here](#).
- To read the jurisdictional statement filed by appellants McCutcheon et al. (Oct. 26, 2012) requesting review of the decision of the three-judge court, [click here](#).

Appellee's Filings:

- To read appellee FEC's merits brief (July 18, 2013), [click here](#).
- To read appellee FEC's motion to dismiss or affirm (Jan. 14, 2013), [click here](#).

Selected Intervenor/Amicus Filings:

On behalf of Appellee FEC:

- To read the *amici* brief filed by the Campaign Legal Center on behalf of itself and nine other non-profit organizations (July 25, 2013), [click here](#).

- To read the *amici* brief filed by Representatives Van Hollen and Price (July 25, 2013), [click here](#).
- To read the *amici* brief filed by Democratic Members of the U.S. House of Representatives (July 25, 2013), [click here](#).
- To read the *amicus* brief filed by Professor Lessig (July 25, 2013), [click here](#).

On behalf of Appellants:

- To read the *amici* brief filed by the National Republican Senatorial Committee and the National Republican Congressional Committee (May 10, 2013), [click here](#).
- To read the *amicus* brief filed by Senator McConnell (May 13, 2013), [click here](#).
- To read the *amicus* brief filed by the Cato Institute (May 13, 2013), [click here](#).