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While there has been much jurisprudential movement at the Supreme Court over the last five years in campaign finance cases, that movement has centered onindependent expenditures—money spent by individuals, corporations, unions, and other groups to speak independently of candidates.

During this time, there has been no movement to change the almost four decades long standard that the government may limit the size of contributions to candidates and party committees, including aggregate or total federal contributions, to prevent corruption and the appearance of corruption.

In the McCutcheon v. FEC case, the Supreme Court will now face a challenge to the aggregate contribution limit, first upheld by the Court in Buckley in 1976.

In Buckley, the Court separated election funding into two categories—independent spending, and contributions to candidates and parties, and allowed more government regulation of contributions. The Court recognized the obvious potential for corruption in having candidates, officeholders, and party officials solicit and receive large sums of money. With the backdrop of the Nixon re-election campaign in 1972, this was not a theoretical danger—large contributions had been solicited and received, and government policy affected.

Congress responded by limiting not only the size and sources of contributions to federal candidates and party committees, but by establishing an election cycleaggregate contribution limit—a total limit on what an individual may give to all federal candidates and party committees, combined. These limits were significantly increased in the McCain-Feingold reform legislation, and indexed for inflation they currently are:

- $123,200 aggregate total for the 2013-2014 cycle—federal candidates, parties and PACs (not SuperPACs at the moment, as they are considered by lower courts—and wrongly in my view—to be closer to independent expenditures than contributions).

- The $123,200 total has various sub-limits—$48,600 to all federal candidates combines, and $74,600 to all party committees combined.

It is these aggregate per-election cycle limits that Mr. McCutcheon and the RNC are challenging in this case.

The power of the government to limit political contributions was upheld in Buckley, where the Court said:

> "Appellants contend that the contribution limitations must be invalidated because bribery laws and narrowly drawn disclosure requirements constitute a less restrictive means of dealing with 'proven and suspected quid pro quo arrangements.' But laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action. And while disclosure requirements serve the many salutary purposes discussed elsewhere in this opinion, Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed." (Emphasis added).

Buckley then explicitly upheld the aggregate limits, stating:

> "The limited additional restriction on associational freedom imposed by the overall ceiling [is] thus no more than a corollary of the basic individual contribution limitation we have found constitutionally valid."

Since Buckley, the Court has had multiple opportunities to revisit the constitutionality of federal limits on contributions, and for almost 40 years has refused to do so. In recent years, the Court has upheld the government's right to limit the size of contributions to candidates and party committees in:

- McConnell v. FEC (2003)
- Randall v. Sorrell (2006)

- Citizens United (2010)
- RNC v. FEC (2010)

The Randall v. Sorrell case is of particular interest because the Court upheld the legitimacy of contribution limits in the context of deciding that Vermont's limited on the size of contributions—only several hundred dollars to statewide candidates—were too low to allow candidates to effectively communicate. That is not an argument being made in McCutcheon, in a world in which direct funding of candidates and party committees has risen every election cycle, even after the McCain-Feingold soft money ban (upheld in the RNC v. FEC 2020 case) was implemented.

Nonetheless, Mr. McCutcheon and the RNC are asking the Court to do is overturn a holding of Buckley, and the resulting almost 40 years of precedent. They argue that contribution limits can only be justified by preventing corruption and the appearance of corruption, and ask why giving the maximum contribution to 13 candidates, rather than 12, or $51,000 rather than $48,600 in aggregate is corrupting.

This argument ignores both Buckley, and more recent political finance developments.

In Buckley the Court recognized the important of the aggregate limit to preventcircumvention of individual limits. There is a record of candidates still trying to circumvent the limits—those who say "Give to the party committee after you have maxed out to me, and tell them they should spend it on my race."

However, the real threat here is something known only to political insiders—the "joint fundraising committee." These JFCs are established under FEC regulations, and allow federal candidates and political committees to set up a joint committee to receive contributions, and to agree among themselves how to divide the proceeds within federal limits. This means that donors can be solicited by candidates for quire large sums, and can write a single check to the joint fundraising committee.

In 2008, when I was General Counsel of the McCain campaign, donors were asked to write checks of $70,000 per individual ($140,000 per couple) to "McCain Victory 2008." In 2012, both Romney and Obama solicited checks of up to $75,800 from individuals for their

JFCs. The only thing that prevented these checks from being larger were the federal aggregate contribution limits! Those limits meant that only a few party committees and candidates coul;d participate before the current aggregate limits are reached.

Without those limits, each political party could solicit contributions to JFCs of over $1 million per cycle to federal and state party committees alone, and $3.5 million if party candidates for the House and Senate are included in the joint fundraising effort.

So this case is not about Mr. McCutcheon giving to 13 candidates rather than 12—it is about blowing up the contribution limits historically found legitimate to prevent corruption and the appearance of corruption, and returning to a world of candidates, officeholders, and party officials soliciting and receiving multi-million dollar contributions—exactly what the Court ruled 6-3 only three years ago in RNC v. FEC could be prohibited.