

April 2, 2014

## U.S. Supreme Court Invalidates “Aggregate” Contribution Limits

### Executive Summary

This morning in *McCutcheon v. Federal Election Commission*, the U.S. Supreme Court invalidated the “aggregate” contribution limits in federal campaign finance law. Under the ruling, major donors will be permitted to contribute greater aggregate sums to candidates, parties, and PACs. Because the “base” contribution limits survive the opinion, however, federal elections will still rely heavily on expenditures from outside organizations like super PACs and 501(c)(4)s.

### Issue in the Lawsuit

*McCutcheon* did not concern the “base” contribution limits governing isolated donations to federal candidates, federal PACs, or political party organizations. Rather, *McCutcheon* concerned the “aggregate” contribution limits governing amounts transferred from a single donor to combinations of candidates, federal PACs, and political party organizations.

The plaintiff argued that the aggregate contribution limits burdened his First Amendment right to free speech and to participate in elections. The government, meanwhile, argued that the aggregate contribution limits were a permissible attempt to prevent corruption and undue influence. The Court upheld the aggregate limits in 1976, but the Court’s discussion of the issue in 1976 was very brief and was not the focus of the case.

### Decision

In a 5-4 opinion authored by Chief Justice John Roberts, the U.S. Supreme Court agreed that the aggregate contribution limits violate the First Amendment. Although the Court continues to recognize the validity of the “base” contribution limits, the Court invalidated all “aggregate” contribution limits because they were not “closely drawn” to prevent political corruption.

The immediate effect on federal contribution limits is as follows:

	<b>Pre-<i>McCutcheon</i></b>	<b>Post-<i>McCutcheon</i></b>
<b>Contribution to a federal candidate</b>	\$2,600 per election	\$2,600 per election – <u>unchanged</u>
<b>Contribution to a federal PAC</b>	\$5,000 per year	\$5,000 per year – <u>unchanged</u>
<b>Contribution to a state or local party</b>	\$10,000 per year	\$10,000 per year – <u>unchanged</u>
<b>Contribution to a national party committee</b>	\$32,400 per year	\$32,400 per year – <u>unchanged</u>
<b>Contributions to all federal candidates <i>combined</i></b>	\$48,600 per cycle	Unlimited
<b>Contributions to all other federal PACs and party organizations <i>combined</i></b>	\$74,600 per cycle	Unlimited

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## Significant Implications

Under McCutcheon, contributions from large donors to individual candidates will be subject to the same cap (i.e., \$2,600 per election)—but candidates and organizations working together through joint fundraising committees will ask major donors for substantially larger checks. For example, during the 2012 campaign, the joint fundraising committees working with the two leading presidential nominees customarily asked their largest donors for \$75,800 per person (i.e., \$70,800 for the three national committees affiliated with a presidential candidate's political party, plus \$2,500 for each of the candidate's primary and general elections). In the future, however, such joint fundraising committees will presumably request at least \$102,400 per person (i.e., \$32,400 for each of the three national party committees, plus \$2,600 for each of the primary and general elections). As a consequence, the total amount raised from major donors will likely increase significantly.

The decision does not, however, marginalize or seriously threaten outside groups like super PACs and 501(c)(4)s. Because the "base" limits survive McCutcheon, large donors cannot write unlimited checks to a candidate and/or party organizations. So for donors interested in writing six-figure checks to influence an election, the outside groups will remain a critical vehicle for their dollars and expression.

Finally, state and local parties will likely be better funded in this and future election cycles because large donors can, at least in theory, contribute \$10,000 to each state and local party nationally. Although few donors are likely to exercise this option, the decision significantly increases the field of potential large donors for state and local parties, and will likely allow the more sophisticated state and local party organizations to improve their fundraising efforts.

## Looking Forward

McCutcheon is a significant development in the deregulation of campaign finance laws by the Roberts Court, mostly because it signals the cohesion of the conservative Justices on First Amendment issues. Several prominent Court observers had publicly speculated, based on oral argument questions, that at least one of the five conservative-leaning Justices would vote to uphold the aggregate contribution limits (i.e., whether we had reached the outer limits of the Court's willingness to deregulate campaign finance). In light of today's decision, though, it appears the conservative bloc of Justices continues to be unified in its concern over government regulation of campaign finance and political speech.

Additional challenges to campaign finance laws are sure to follow.

Brownstein's Political Law Group advises candidates, elected officials, politically active corporations, nonprofit organizations, trade associations, ballot measure campaigns and others in political law compliance and litigation, in addition to constitutional and civil rights litigation.

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