Democracy 21

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Democracy 21 Fact Sheet -- What Would Happen if the Supreme Court Struck Down Overall Limits on Contributions?

Enclosed for your information is a fact sheet on the impact that can be expected if the Supreme Court were to strike down the federal overall limits on contributions by an individual to federal candidates and parties at issue in *McCutcheon v Federal Election Commission*.

The fact sheet shows why the overall contribution limits are essential to protecting our democracy against corruption. For almost four decades, the Supreme Court has repeatedly held that federal contributions can be constitutionally limited to protect against corruption and the appearance of corruption.

The *McCutcheon* case is scheduled for oral argument in the Supreme Court on October 8, 2013.

The fact sheet is part of a series of articles and background memorandum that Democracy 21 is issuing on the *McCutcheon* case, brought by Shaun McCutcheon, an Alabama Republican activist, and the Republican National Committee to challenge the constitutionality of the federal overall contribution limits.

On September 12, 2013, Democracy 21 President Fred Wertheimer published an op-ed article in POLITICO on the *McCutcheon* case entitled, "The Supreme Court's democracy test." On September 20, 2013, Democracy 21 released a Q and A on the issues in the *McCutcheon* case.

McCutcheon v. Federal Election Commission:

Fact Sheet on Impact if Supreme Court Were to Strike Down Overall Limits on Contributions to Candidates and Parties

McCutcheon v. Federal Election Commission is a challenge to the constitutionality of the federal overall limits on the total amount an individual donor can contribute to all party committees and PACs and to all federal candidates in a two-year election cycle. The plaintiffs in the case are Shaun McCutcheon, an Alabama Republican activist, and the Republican National Committee. The case is scheduled for oral argument in the Supreme Court on October 8, 2013.

This fact sheet provides information on the impact that can be expected if the Supreme Court were to strike down the overall contribution limits and shows why the overall limits are essential to protecting our democracy against corruption.

In 1976, the Supreme Court *in Buckleyv. Valeo* held that the limits on individual contributions, including the overall contribution limits, were constitutional on the grounds that large contributions to candidates and parties create opportunities for corruption and the appearance of corruption. Since the *Buckley* decision, the Supreme Court has repeatedly upheld the constitutionality of federal contribution limits.

In 2003, in *McConnell v. FEC,* the Supreme Court upheld a prohibition on national parties raising "soft money" – that is, large donations in excess of the federal limits on contributions to parties. The legislation also prevented federal officeholders and candidates from soliciting such large "soft money" contributions. The *McConnell* decision upholding the soft money ban was reaffirmed by the Supreme Court in 2010 in *Republican National Committee v Federal Election Commission,* with Chief Justice Roberts and Justice Alito voting in the majority.

If the Supreme Court were to strike down the limits on overall contributions at issue in the *McCutcheon* case, it would reverse almost 40 years of Supreme Court precedents upholding the constitutionality of federal contribution limits. Such a decision would allow individual donors to give million-dollar and multi-million contributions to directly support federal candidates and parties (See examples below.) This would return to federal elections the huge contributions that the Supreme Court has held could be prevented and would recreate the system of legalized corruption that existed prior to the Watergate scandals.

Overall Contribution Limits

The current overall contribution limits for the 2014 election cycle allow a single donor to contribute a maximum total of $74,600 to all party committees and PACs, and $48,600 to all federal candidates in a two-year election cycle.

Joint fundraising committees have long been used to raise contributions from individuals in amounts that are much larger than the amount an individual could give to a single candidate or single party committee.

Joint fundraising committees consist of two or more candidate and/or party committees working together to raise contributions. Officeholders and candidates can solicit and donors can make a contribution to the joint fundraising committee in an amount up to the sum of the contribution limits for each of the participating committees. The joint committee then distributes the contributions to each of the participating committees.

Since there are no limits on internal transfers between party committees, all of the contributions to individual party committees can end up in one party committee and can be spent by that committee to support the officeholder or candidate who solicited the contribution.

In 2012, for example, President Obama and Mitt Romney each had a joint fundraising committee consisting of his campaign committee, his national party's committee and several state party committees. Obama and Romney used the joint fundraising committees to solicit individuals to give a contribution of $70,800 for the party committees, which was the overall contribution limit for donations by an individual to all party committees in the 2012 election cycle. The money was then spent by the committees to support the presidential candidates who solicited the contributions.

If the overall contribution limits had not been on in effect in 2012, President Obama and Mitt Romney would have been able to solicit and have the benefit of $1 million contributions for the 2012 presidential election, almost fifteen times the amount they could legally solicit in 2012.

Given the simple rule of American politics that candidates will seek to raise the maximum contributions they can legally accept, and given that this is precisely what President Obama and Mitt Romney did in 2012, we can expect future presidential candidates to solicit and wealthy donors to give $1 million contributions, if the overall limits are struck down.

Consequences of Striking Overall Contribution Limits

Thus, the consequences of striking down the overall limits include the following:

- A party's presidential candidate could form a joint fundraising committee and solicit a contribution of as much as *$1,199,600* from a single donor for the election cycle. This would include:
    - The maximum contribution for their own campaign committee ($5,200); plus
    - The maximum contribution for the three national party committees ($64,800 each, for total of $194,000); plus
    - The maximum contribution for all state party committees ($20,000 each, for a total of $1,000,000).

- The Democratic leaders of the House and Senate, or their Republican counterparts, could form a joint fundraising committee, including their congressional party committees and

the committees of their congressional candidates. The leaders could solicit and donors could contribute contributions to the joint committee of as much as *$2,563,200* per donor for the election cycle. This would include:

  - The maximum contributions per cycle for their party's two congressional campaign committees (the DSCC and DCCC, or the NRSC and NRCC) for a total of $64,800 for each committee and $129,600 for both committees; plus
  - The maximum contributions for 435 House and 33 Senate candidates ($5,200 per candidate, for total of $2,433,600).

- The current President, Senate Majority Leader and House Democratic Leader, or the current House Speaker and Senate Republican leader could join form a joint fundraising committee with their national party committees, their state party committees and the committees of their federal candidates. They could solicit and donors could contribute contributions of as much as *$3,633,200* per donor for the election cycle. This would include:
  - The maximum contributions for their three national party committees ($64,800 each, for total of $194,400); plus
  - The maximum contributions for all their state party committees ($20,000 each, for a total of $1,000,000); plus
  - The maximum contributions for their party's presidential candidate and each of its House and Senate candidates ($5,200 each, for a total of $2,438,800).

- A member of Congress could form a joint fundraising committee with his or her own campaign committee, and the Member's three national party committees. The Member could solicit and donors could provide contributions of as much as *$199,200* per donor for the election cycle. This would include:
  - The maximum contribution for their own campaign committee ($5,200); plus
  - The maximum contribution for the three national party committees ($64,800 each, for total of $194,000).

The funds given to two of the national party committees could be transferred to the third party committee, the House or Senate party committee where the Member serves, and the nearly $200,000 contribution could be spent by the congressional party committee to support the Member who solicited the funds.

Thus, if the overall contribution limits are struck down, a President, House Speaker, Senate Majority Leader or any other federal officeholder could solicit and influence-seeking donors could contribute six-and seven-figure contributions, reaching as much as $3 million or more per donor in an election cycle.

This direct nexus between officeholders receiving and donors contributing large contributions creates the opportunities for corruption that are precisely the basis on which the Supreme Court has upheld the constitutionality of contribution limits in numerous decisions for nearly forty years. This nexus between officeholders and donors is also the basis upon which the Supreme Court has upheld the ban on federal officeholders and candidates soliciting large contributions.

The use of joint fundraising committees to raise large contributions is not speculative. This will happen if the overall contribution limits are struck down.

In 2012, President Obama and Mitt Romney solicited for their joint fundraising committees the maximum amount of $70,800 per donor that could legally be given to their party committees in an election cycle. A total of 1,257 individuals gave this maximum amount.[1] This included:

- 721 donors who made maximum party contributions to Romney Victory;
- 536 donors who made maximum party contributions to the Obama Victory Fund.

In total, 1,715 donors gave the maximum amount to party committees, including the donors who gave through the Obama and Romney joint fundraising committees.

In total, 591 donors also gave the maximum amount to federal candidates ($46,200 for the 2012 election cycle).

Take away the $70,800 overall limit on contributions to party committees, and the maximum amount a presidential candidate could raise and a donor could contribute becomes $1,199,600 per donor.

Take away the $46,200 overall limit on contributions to all federal candidates committees, and the maximum amount a federal officeholder or candidate could raise and a donor could contribute becomes $2,433,600 per donor.

Past history shows that huge contributions will be solicited and given.

In the 2000 election, the last presidential election in which large "soft money" contributions could be made to the national parties, more than 500 individuals each made contributions of $100,000 or more to the national parties.

And that was *thirteen years ago.*

In the 2012 election, there were 283 individuals who each gave $250,000 or more to Super PACs for a total of $407 million, or an average contribution of $1.4 million per donor. This included 86 individuals who each gave $1 million or more to Super PACs.

Of these Super PAC donors, 103 individuals who each gave the $70,800 maximum contributions to party committees in 2012 also each gave $250,000 or more to Super PACs for a total of $217 million, or an average contribution of $2.1 million.

Conclusion

Federal candidates and parties are not starving for resources under the existing system of overall contribution limits. Just the opposite is the case.

Federal candidates and parties spent *$5.2 billion* in the 2012 national elections under the overall contribution limits. This constituted *83 percent* of the total expenditures made in the 2012 elections and included more than $2 billion spent by the two major parties. By comparison, outside groups spent about $1 billion in 2012, or about 17 percent of the total expenditures.

Striking down the overall contribution limits will provide a tiny number of the wealthiest individuals in our country with opportunities for the corruption of our federal officeholders and government decisions.

Starting with the *Buckley* decision, the Supreme Court has drawn a line between large contributions made directly to candidates and parties which create opportunities for corruption and can be subject to limits, and money spent independently of candidates and parties which the Court has held do not create the opportunities for corruption and cannot be limited.

There is no reason to doubt that if *Buckley* is reversed and the overall contribution limits are struck down in the *McCutcheon* case, federal officeholders will solicit and individual donors will give the huge contributions which would become legal and which the Supreme Court has ruled in past decisions can be limited to prevent corruption.

The country will then be faced with the inherently corrupt system the Supreme Court warned against in *Buckley* when the Court upheld the constitutionality of placing limits, including overall limits, on contributions to federal candidates and parties.

[1]The campaign finance information on donors in the 2012 and 2000 elections was compiled by the Center for Responsive Politics from data filed with the FEC.

The Democracy 21 legal team filed a Supreme Court amicus brief on behalf of Representatives Chris Van Hollen and David Price in the McCutcheon case to defend the constitutionality of the overall contribution limits. The legal team was led by former U.S. Solicitor General Seth Waxman and his law firm, WilmerHale, and Scott Nelson, an attorney with the Public Citizen Litigation Group. Democracy 21 President Fred Wertheimer and Democracy 21 counsel Don Simon also served as attorneys on the amicus brief.

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