

Shaun McCutcheon, a Republican activist from Alabama, has joined with the Republican National Committee to argue against individual aggregate campaign spending limits. Currently, an individual may give no more than \$123,200 in any one election cycle, abiding by limits both to individual candidates and to an overall limit. As Scotusblog explained, "In the last election cycle, 2011-2012, McCutcheon was prevented by the aggregate limits then in effect from going forward with a plan to contribute to twenty-eight different federal candidates ... and from donating what he planned to three committees set up by the national GOP."

"I'd like to see individuals have more influence," McCutcheon has said. "If the government tells you that you can't spend your money where you want, there should be a real, real good reason." John Ryder, general counsel for the Republican National Committee, argues that the current limit "stifles citizens' ability to engage in the political process by limiting the number of candidates they can support." Senate Minority Leader Mitch McConnell, R-Ky., filed a brief calling for the elimination of aggregate limits.

But advocates of stronger campaign finance laws argue that striking down aggregate limits will have a corrupting influence on U.S. politics. "Striking down these limits would create obvious possibilities for even the most blatant forms of corruption: solicitations for hundreds of thousands or millions of dollars, creating the opportunity for transactions exchanging contributions for anticipated political favors from officeholders," Reps. Chris Van Hollen, D-Md., and David Price, D-N.C., wrote in a brief supporting the FEC. Should the Supreme Court Uphold Personal Limits on Campaign Contributions?

Limits Are Negative For Democracy:

On Oct. 8, the Supreme Court will hear about another unjustified restriction on the rights of Americans to free speech and free association. They should rule in favor of Shaun McCutcheon, a business owner from Alabama.

During the 2011-2012 election cycle, McCutcheon contributed \$33,088 in congressional races across the nation. This included the symbolic amount of \$1,776 to each of 15 challengers trying to unseat incumbents, well below the federal limit of \$2,600 that can be contributed to federal candidates per election. McCutcheon wanted to contribute \$1,776 to another 12 candidates "interested in advancing the cause of liberty." But there is also an aggregate limit on the total amount that can be given to candidates in any two-year federal election cycle of \$48,600.

Due to the aggregate limit, McCutcheon was prevented from supporting and associating with candidates who "share his political philosophy, and whose message he embraced." He was punished for being too robust in his advocacy and was unable to exercise his constitutional right to make a contribution just because he had already made "too many" other constitutionally-protected contributions.

Congress set the maximum individual contribution limit at \$2,600 because it decided that giving that amount or less to candidates did not raise any issues of corruption or the appearance of corruption. Under that rationale, it is completely unreasonable to claim that someone like Shaun McCutcheon can make contributions of \$2,600 to 18 candidates, but if he contributes that amount to 19 candidates, it suddenly poses a danger of corrupting the election system.

Some claim that if the Supreme Court rules in favor of McCutcheon, wealthy contributors will funnel money through straw-PACs to support their picked candidates. However, federal law treat Also, contributions made by political committees established, financed, maintained or controlled by the same corporation, labor union or person are "considered to have been made by a single political committee." So if a wealthy individual sets up multiple PACs to make contributions to candidates, all of those contributions will be considered to have been made by him.

We should recognize the rights of Americans like Shaun McCutcheon to support all candidates who share their views. Aggregate limits are not a justifiable way of preventing corruption, especially when they violate the First Amendment right of Americans to engage in political advocacy and associate with those who share their ideological views.

Advocates of campaign finance "reform," i.e., restrictions on political participation, often tell us that "money" is not "speech." There is a pithy response to this. *So what?*

Limitations on campaign contributions do not limit "money"; they limit the ability of persons to combine their resources to speak. The First Amendment would mean little if it did not protect the means by which messages are communicated. The freedom of speech would confer a hollow right if all it protected was the right to stand on the side walk and yell at passing cars.

The United States Supreme Court has made clear that making contributions to a candidate for public office is a protected exercise of free speech and the right of association. It could hardly be otherwise. A democracy in which citizens could not come together and effectively communicate their preference for candidates or policy positions wouldn't be much of a democracy at all.

Nevertheless, the court has said, limits on the amount an individual may contribute to a candidate may be permissible because in an effort to prevent the potential for corruption or its appearance. But it has also said that this is the only justification for limiting political spending. It has also made clear that money given to someone other than a candidate does not create a sufficient risk of corruption to outweigh the First Amendment interest in making them.

Once you understand this, it is easy to see that aggregate limits are a regulation that the law has left behind. They can operate to prevent only those contributions to candidates in an amount that Congress (or a state legislature) has decided to permit, i.e., that have been determined not to present and unacceptable risk of corruption or its appearance.

In other words, aggregate limits are an effort to say that a certain amount of free speech and association is too much. After a certain amount of political participation, we should just shut up.

That might make sense if you believe that it is constitutionally permissible to restrict the ability of wealthier individuals to spend money on politics in an effort to level the playing field. It has recognized that the First Amendment creates a strong presumption against the notion that government may decide how and how much it's citizens may come together to speak.

Aggregate limits do not serve that interest and are unconstitutional. Free speech fosters political change, holds officials accountable and sustains a healthy democracy. Not only would liberating political speech energize our democracy and reduce corruption, it would be consistent with the Constitution.