

Justices to Weigh Key Limit on Political Donors

By ADAM LIPTAK

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McCALLA, Ala. — The Supreme Court's [Citizens United](#) decision reshaped American politics by striking down limits on independent campaign spending by corporations and unions. But it did nothing to disturb the other main form of campaign finance regulation: caps on individuals' direct contributions to candidates.

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Cary Norton for The New York Times
Shaun McCutcheon wants the Supreme Court justices to remove the overall limit for contributions to federal candidates.

Shaun McCutcheon wants to change that. He has built a thriving engineering firm here, and he wants to give some of the money he makes to conservative political candidates. But a federal law limits the overall amount he can contribute to all candidates in an election cycle, and that does not sit right with him.

"I think we need to spend more money on politics, not less," he said. "I think we need to improve it."

The Supreme Court will hear his challenge to the overall limits next Tuesday. Some critics of [Citizens United](#) say the new case, [McCutcheon v. Federal Election Commission](#), No. 12-536, has the potential to destroy what is left of federal campaign finance regulation.

"It's the second bomb dropping on controlling the abuses of money in politics," said [Fred Wertheimer](#), president of [Democracy 21](#), which supports strict campaign finance laws. "If you knock out aggregate contribution limits, you create a system of legalized bribery in this country."

Mr. McCutcheon, 46, said a lot of the liberal commentary on his case was laced with alarmism.

He has no quarrel, he said, with the familiar base limits on contributions, currently \$2,600 per candidate in primary and general elections. What puzzles him, he said, is why he is subject to [a separate overall limit](#) of \$48,600 every two years for contributions to all federal candidates.

The base limits on donations to individual candidates make sense, Mr. McCutcheon said, because large contributions could buy undue influence. But he said he did not grasp why he can give to 17 candidates, but not to an 18th. "If I give that same legal amount to an 18th candidate, I'm somehow corrupting the system," he said in [a recent speech](#). "Really?"

His critics respond that the aggregate limits are an important tool to prevent circumvention of the base limits. They say that allowing many contributions to interlocking political committees affiliated with candidates and parties could effectively

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funnel large sums from individuals to support given candidates.

“Without aggregate contribution limits, the amount of money that a contributor can hope to direct to a chosen candidate is virtually limitless,” wrote Charles Fried, a Harvard law professor who was solicitor general in the second Reagan administration, in [a brief](#) supporting aggregate contribution limits.

Some 2,000 donors gave the maximum amounts in the 2012 election, according to the Center for Responsive Politics, and many of them are presumably prepared to give more. Mr. McCutcheon, in an interview at his company’s headquarters here, near Birmingham, spoke in general terms about his finances and politics. He said he was a successful entrepreneur and conservative activist who was prepared to use his money to make more contributions if the overall limits are struck down.

His goal, he said, is to encourage the adoption of conservative principles. “To me,” he explained, “being a conservative means smaller government and more freedom.”

His case caught the attention of a prominent lawyer, James Bopp Jr., who represents the Republican National Committee.

“I don’t have the ability to do a case this large,” Mr. McCutcheon said. “So we joined up with the R.N.C.”

Together, they mounted an attack on the central distinction drawn by the Supreme Court in its seminal 1976 campaign finance decision, [Buckley v. Valeo](#).

Independent spending, the court said, is political speech protected by the First Amendment. But contributions may be capped, the court said, in the name of preventing corruption. Almost in passing, the court added that aggregate contribution limits were a “quite modest restraint upon protected political activity” that “serves to prevent evasion” of the base limits.

Mr. McCutcheon’s side says it is time for reconsideration of the basic structure established by the Buckley decision. “The reasoning underlying Buckley’s bifurcated standard has not weathered the test of time,” lawyers for Senator Mitch McConnell of Kentucky, the Republican leader, wrote in [a brief supporting Mr. McCutcheon](#).

The Obama administration, in [its Supreme Court brief](#) on behalf of the election commission, said the distinction established in Buckley was sound. Rejecting it, Solicitor General Donald B. Verrilli Jr. wrote, would create “massive upheaval in this important area of law.”

Mr. Wertheimer said that even a seemingly modest decision in the new case, one directed only at overall limits, could have radical consequences.

“The implications are incredibly dangerous,” he said. “If you are cutting into the Buckley decision on contribution limits, you are one way or another overturning Buckley and making inroads into using campaign contributions to corrupt officeholders.”

Mr. McCutcheon said he was mainly concerned with being able to donate to lots of individual candidates. There are also separate aggregate limits on contributions to political party committees, currently \$74,600. [Federal law](#) continues to ban both kinds of contributions by corporations and unions.

Last year, a three-judge panel of the Federal District Court in Washington [upheld both sets of overall limits](#), though it sounded a little conflicted.

“Although we acknowledge the constitutional line between political speech and political contributions grows increasingly difficult to discern,” Judge Janice Rogers Brown wrote, “we decline plaintiffs’ invitation to anticipate the Supreme Court’s agenda.”

The court led by Chief Justice John G. Roberts Jr. has so far been consistently hostile to campaign finance limits in its half-dozen decisions in argued cases on the subject so far.

The five more conservative justices have voted together in all of those cases, though Chief Justice Roberts and Justice Samuel A. Alito Jr. have taken a more incremental approach than the bolder one called for by Justices Antonin Scalia, Clarence Thomas and Anthony M. Kennedy.

Justice Kennedy, the swing vote in other areas of the law, has long been a skeptic of campaign finance restrictions. “Buckley has not worked,” [he wrote in 2000](#). If defenders of aggregate limits have hope of a victory or a limited loss, it probably rests with Chief Justice Roberts.

Mr. Bopp, the Republican National Committee’s lawyer, also filed the Citizens United case. He said the consequences of that decision require reassessment of contribution limits in the new case.

“Candidates and parties are being disadvantaged by the fact that individuals and corporations can give unlimited money to ‘[super PACs](#),’” he said, referring to committees that make only independent expenditures and are not subject to contribution limits. “You have the most accountable and transparent entities — candidates and parties — who are the most disadvantaged.”

Mr. McCutcheon agreed. “I would prefer direct contributions so the candidate controls the message,” he said. “This case is likely to drive PAC money down, not up.”

He spoke after giving a visitor a tour of the headquarters of his company, [Coalmont Electrical Development](#), showing off heavy machinery used in electrical systems for coal mines and other energy concerns.

He said the case had exacted a personal toll. “A lot of my close friends won’t hang out with me anymore,” he said, blaming the complexity and combustibility of the issues in the case for the rifts.

But there have been offsetting gains, he said, and he sounded a little star-struck by the attention he had received from prominent politicians, first for his donations and now for his lawsuit. “I met all the presidential candidates that came to Alabama, one-on-one meetings, including Mitt Romney,” he said.

He added that he had met some 15 senators during recent trips to Washington and had extended discussions with Mr. McConnell and Senator Mike Lee, Republican of Utah. “I never expected that kind of one-on-one time with sitting senators,” he said. “I never expected that in my lifetime.”

“I’m way more well known in D.C. than in Alabama now,” he said, indicating that this was fine with him.

“If the aggregate limits are struck down,” he said, “I’m going to donate more money.”

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