



Iowa General Assembly

2014 Legal Updates

Legislative Services Agency – Legal Services Division

<https://www.legis.iowa.gov/>

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

AGGREGATE POLITICAL CONTRIBUTION LIMITATIONS

Filed by the United States Supreme Court

April 2, 2014

McCutcheon v. Federal Elections Commission

No. 12-536, 134 S.Ct. 1434 (2014)

http://www.supremecourt.gov/opinions/13pdf/12-536_e1pf.pdf

Factual Background. During the 2011-2012 federal election cycle, Shaun McCutcheon made campaign contributions totaling \$33,088 to 16 individual candidates for federal office. McCutcheon also contributed \$27,328 to noncandidate political action committees during this period. McCutcheon sought to contribute additional moneys to 12 other individual candidates for federal office and to three political party committees but was barred from making contributions at the levels that he desired because of aggregate limits on federal campaign contributions. During the 2011-2012 election cycle the aggregate contribution limits were \$46,200 for individual federal candidates and a combined \$70,800 for federal political action committees and political party committees. McCutcheon further claimed that he would like to make contributions in excess of aggregate campaign finance limits in the 2013-2014 election cycle.

Procedural Background. Shaun McCutcheon and the Republican National Committee (RNC) jointly filed a complaint with a three-judge panel of the United States District Court for the District of Columbia (District Court) in June 2012. McCutcheon and the RNC motioned for a preliminary injunction to prohibit government enforcement of the aggregate limit provisions. The Federal Elections Commission (Government) filed a motion to dismiss the case. The District Court panel granted the Government's motion to dismiss and denied the motion for a preliminary injunction. The plaintiffs subsequently filed a direct appeal to the United States Supreme Court (Court).

Issue. Whether aggregate limits on contributions to individual candidates and noncandidate political committees violate First Amendment protections of free speech and association.

Holding. The Court held that aggregate limits on contributions to individual candidates and noncandidate political committees violate First Amendment protections of free speech and association because such limits are impermissibly overbroad as a means of furthering the government's interest in preventing quid pro quo corruption or its appearance.

Plurality Opinion by Chief Justice Roberts. Chief Justice Roberts' plurality opinion, joined by Justices Scalia, Kennedy, and Alito, Justice Thomas concurring in the result, analyzed current federal aggregate limits under the Bipartisan Campaign Reform Act of 2002 (BRCA) through the lens of the Court's earlier decision in *Buckley v. Valeo*, 421 U.S. 1, (1976), which upheld an earlier aggregate contribution limit of \$25,000 per federal election cycle. In considering First Amendment protections of speech and association, the *Buckley* Court applied a "closely drawn" test to uphold base limits on campaign contributions by finding that such limits worked to promote the compelling governmental interest in prohibiting quid pro quo corruption or the appearance of corruption through means narrowly tailored to advance that interest. The Court in *Buckley* also upheld the aggregate limit in a brief analysis of the function of the aggregate limit, describing it as "no more than a corollary" to the base limits in preventing individuals from circumventing the base limits.

The plurality found that the *Buckley* Court's analysis of aggregate limitations was not controlling because the parties in *Buckley* had not fully addressed it as a separate issue and the *Buckley* Court, consequently, did not consider an

overbreadth challenge with respect to the aggregate limit. The plurality then engaged in an independent analysis of whether the BRCA aggregate limits could pass the “closely drawn” test as laid out in *Buckley*. The plurality held that the aggregate limits in BRCA failed such a test as they restricted First Amendment rights disproportionately to the government’s interest in preventing individuals from circumventing base contribution limitations. The plurality further stated that preventing circumvention of base limits is not a plausible governmental interest under the current federal statutory and regulatory scheme that severely restricts the opportunity or desire to circumvent base contribution limits. The plurality stated that statutory or regulatory schemes are possible that are less burdensome than aggregate limits, especially those related to public disclosure and that would allow individuals to contribute to as many candidates or committees as they wish while also preserving the base limits as a means of preventing quid pro quo corruption. The plurality opined that prohibiting an individual from contributing fully to a candidate would be analogous to limiting how many candidates a newspaper may endorse.

The plurality rejected the Government’s argument that the aggregate limits also prohibit corruption in a manner independent of preventing circumvention of base limits. The Government argued that aggregate limits that restrict the total contributions of an individual to a candidate or party committee prevent corruption that may result from undue influence or access. The plurality, however, refused to expand the anticorruption rationale beyond the quid pro quo corruption rationale established in *Buckley*, stating that the government may not seek to limit “the appearance of mere influence or access.” Under this analysis, the plurality held that the aggregate limits on contributions do not further a governmental interest in prohibiting quid pro quo corruption and that the aggregate limits “intrude without justification” on citizens’ exercise of their most fundamental First Amendment rights.

The plurality repeatedly stated that preventing quid pro quo corruption remains the only compelling governmental interest in regulating campaign contributions and that the base contribution limits remain the primary means of such regulation.

Concurrence by Justice Thomas. Justice Thomas filed a concurring opinion agreeing only in the result reached by the plurality: the BCRA’s aggregate limits should be struck down. Justice Thomas opined that the Court should move further and overturn the holding that established a contribution and expenditure distinction in *Buckley*. The *Buckley* Court applied a strict scrutiny standard of review to its analysis of independent expenditure limitations, but applied the less stringent “closely drawn” test to contribution limitations. Justice Thomas opined that the Court should apply a strict scrutiny review to both expenditure and contribution limitations and should therefore strike down both the aggregate and base limitations. Justice Thomas stated that the *Buckley* decision denigrated core First Amendment speech rights. He further noted that the plurality conclusion that aggregate limits imposed a special burden on those seeking to contribute fully to multiple candidates should be applied more broadly to recognize that the base limits also apply a special burden on individuals seeking to robustly support an individual candidate or committee beyond current base limits.

Dissent by Justice Breyer. Justice Breyer filed a dissent, joined by Justices Ginsburg, Sotomayor, and Kagan, in which he criticized the plurality for relying upon its own view of the facts rather than one based on the evidentiary record established in this case, previous cases before the Court, and Federal Election Commission cases. Justice Breyer also criticized the plurality for failing to recognize a governmental interest in upholding aggregate limits aside from the anticircumvention effects of the law and for utilizing a narrow definition of corruption that encompasses only the direct exchange of an official act for money.

Justice Breyer stated that, even without a broader interpretation of corruption, the anticircumvention rationale in preventing actual corruption or its appearance is an important enough interest that the plurality erred in striking down BRCA’s aggregate limits on campaign contributions. Justice Breyer further criticized the plurality for offering alternative statutory and regulatory regimes, which displayed a lack of judicial deference to the political branches. Justice Breyer found no substantial mismatch between Congress’ objective of mitigating corruption or the appearance of corruption and the means that Congress used to meet that objective. The Court should therefore hold that the aggregate limitations are constitutional.

LSA Contact: Andrew Ward, Legal Services, (515) 725-2251.