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Let Money Talk

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If Congress tried to limit spending by newspapers, the courts would reject such meddling as a blatant violation of the First Amendment. Likewise if Congress tried to accomplish its goal indirectly by limiting the amount of money newspapers receive from advertisers.

Yet the same sort of distinction supposedly justifies federal limits on campaign contributions, the subject of a case the Supreme Court heard on Tuesday. McCutcheon v. FEC involves just one aspect of campaign finance regulations: the overall limits on how much one person can give to candidates, parties and political committees during an election cycle. But the case gives the court an opportunity to reconsider the illogical constitutional line it drew nearly four decades ago between campaign spending and campaign contributions.

Shaun McCutcheon, an Alabama businessman and Republican activist, objects to the overall ceilings on political giving, which he says impinge on his First Amendment rights for no good reason. The current aggregate limit for donations to candidates, for example, is $48,600, which means McCutcheon can give the maximum legal contribution, $5,200 for primary and general elections combined, to no more than nine candidates.

If the risk of corruption from giving $5,200 to each of nine candidates is negligible, McCutcheon asks, why is giving the same amount to a 10th candidate suddenly intolerable? And if he has a First Amendment right to make those first nine donations, thereby exercising freedom of association and expressing his political preferences, why not the 10th? It certainly seems arbitrary to say that at that point he is supporting too many candidates.

The Federal Election Commission says the aggregate limits are necessary to prevent evasion of the restrictions on individual contributions. If a donor can give the maximum contribution to an unlimited number of political committees, for example, those committees might pass the money on to a particular candidate, the upshot being that he receives more than $5,200 of the donor's money.

McCutcheon responds that such an arrangement would be illegal if it were binding on the committees (since donations funneled through an intermediary are legally the same as

donations given directly to candidates) and ineffective if not. He does not take the additional step of arguing that the limits on individual donations are unconstitutional.

That task falls to the Cato Institute, which in a brief supporting McCutcheon urges the Supreme Court to abandon the dubious distinction it drew in Buckley v. Valeo, the 1976 ruling that rejected limits on campaign spending but upheld limits on campaign contributions. Since communicating a message requires money, the court recognized, limits on spending amount to restrictions on speech.

The court refused to acknowledge the obvious corollary: Restrictions on contributions amount to restrictions on spending. Or as Chief Justice Warren Burger put it in a partial concurrence, "(C)ontributions and expenditures are two sides of the same First Amendment coin."

Under current law, a wealthy man can spend as much money as he wants on his own political campaign or on independent messages advocating a candidate's election. But he can give that candidate's campaign no more than $5,200.

This puzzling restriction violates the First Amendment rights of the candidate as well as the donor. It rules out insurgent campaigns by challengers (such as Eugene McCarthy in 1968) who have not managed to build wide networks of donors but have attracted support from a few rich patrons. It thereby makes elections less competitive, contributing to alarmingly high re-election rates for members of Congress.

As Cato's brief notes, contribution limits hurt incumbents, as well, forcing them to "spend an inordinate amount of time raising money" instead of doing their jobs. The problem is compounded by the failure to adequately adjust for inflation: Today the real value of the maximum candidate contribution is about half of what it was when the limit was first imposed in 1974.

Public approval of Congress has seen a similarly precipitous decline during the same period. If limiting speech has reduced corruption, voters do not seem to have noticed.

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