



Money race: GOP pushes Citizens United part 2

By Zachary Roth – July 1st, 2013

The Republican Party has thrown its weight behind a lawsuit aimed at demolishing a key remaining component of campaign-finance regulation left standing after *Citizens United*: limits on political contributions. A Supreme Court ruling for the GOP could sound a death knell for efforts to keep unlimited money out of politics, potentially opening elections to the highest bidder.

“Contribution limits are a fundamental pillar of campaign-finance law,” Paul S. Ryan, senior counsel with the Campaign Legal Center, which has submitted a brief opposing the Republican bid, told MSNBC. “And that pillar could be severely damaged, or undermined, or struck down, by this case.”

The GOP’s full-bodied embrace of the challenge hasn’t received much attention in most coverage of the case. But it puts the party on record, perhaps more clearly than ever before, as being opposed to any significant limits at all on political giving—a stance that appears to be radically at odds with Americans’ views on the issue.

“They’ve acknowledged that their ultimate goal is essentially to eliminate all limits on political contributions,” Rep. Chris Van Hollen, the Democratic point man on money in politics issues, told MSNBC. “So this is just their next step in that battle.”

The case, which likely will come before the Supreme Court in the fall, is being brought by Shaun McCutcheon, an Alabama businessman, who contributed to 16 federal candidates in recent elections. McCutcheon wanted to contribute to 12 more, and to give separate \$25,000 contributions to three Republican committees. But doing so would have put him over the total aggregate amounts—\$46,200 for contributions to candidates, and \$70,800 for contributions to groups—that federal law allows one person to give. McCutcheon, joined in the case by the Republican National Committee (RNC), argues that the aggregate limit is unconstitutional, challenging a lower court ruling that upheld the limits.

The implications of a victory for McCutcheon and the RNC will vary depending on how broadly the court rules. But even a narrow opinion confined to the aggregate limits that stymied McCutcheon could have far-reaching effects on money in politics. Such a decision, Ryan said, “would open up the flood-gates for members of Congress to solicit million-dollar contributions, and would essentially take us back to the pre-McCain-Feingold years of soft-money fundraising.”

Supreme Court could rule in favor of big money

But the court could go further, targeting not just the aggregate limits, but also the more significant limits on one-time contributions to individual candidates or committees, which are currently set at \$2,500 and \$30,800 (for a national committee) respectively, and which have existed since the 1970s. That's because a ruling for McCutcheon would call into question a key principle established by the court decades ago: That under the Constitution, direct contributions can be regulated more tightly than expenditures to outside political groups—the type of spending at issue in the 2010 Citizens United ruling—in part because they're more likely to lead to corruption.

Advocates of campaign-finance rules fear the justices could even go further still. Because the court already decided in Citizens United that corporations have the same contributions rights as people, a ruling for McCutcheon could ultimately allow wealthy individuals and corporations to give unlimited amounts directly to individual candidates—utterly eviscerating any efforts whatsoever to keep big money out of politics, and opening the system to a level of influence-buying not seen for a century.

“It could jeopardize limits on contributions directly to candidates, parties—who knows, once Pandora's Box is open?” said Ryan.

It's not just the RNC that's backing the effort. The list of those filing supportive legal briefs reads like a rundown of the Republican Party's key institutions: The GOP campaign committees for both the House and Senate have weighed in, as has Senate Minority Leader Mitch McConnell as well as several powerful outside conservative groups, including the Cato Institute.

The lead attorney on the case, James Bopp, is a former RNC committeeman and ally of RNC chair Reince Priebus. Bopp played a decisive role in the Bush v. Gore case that determined the 2000 election, then masterminded the Citizens United challenge that opened the door to unlimited political expenditures by corporations.

Other Republican lawyers supporting the challenge have ties to a different partisan cause pushed recently by the GOP: restricting access to the ballot box. Jason Torchinsky, who filed the brief on behalf of the party's House and Senate campaign committees, was a top lawyer for the Bush campaign in 2004, before helping to run the American Center for Voting Rights, a short-lived group of GOP operatives that, as election-law expert Rick Hasen wrote in 2007, “provided intellectual cover for the continued partisan pursuit of voter-ID laws that may suppress minority votes.” And Michael Morley, whose name appears on McCutcheon's brief, last year filed briefs in support of voter ID laws in Wisconsin and Pennsylvania, and an effort by Ohio Republicans to pare back early voting, as MSNBC reported at the time.

This is hardly the first time that key players in the Republican Party have lent their weight to efforts to weaken campaign finance rules. McConnell himself—represented by Bopp—brought a challenge to the 2003 McCain-Feingold soft money ban, which led to a key piece of the law being struck down, and submitted a supporting brief in Citizens United. But perhaps never before has so much of the GOP gotten behind a case with such far-reaching implications for campaign finance as in the McCutcheon case.

McConnell typically portrays the issue as a First Amendment question. His brief in the case describes him as “the Senate's most passionate defender of...unrestricted political speech.” And in a recent speech at the conservative American Enterprise Institute, he denounced a Democratic effort, led by Van Hollen, to require that super PACs disclose their donors. “For the

left, this isn't about good government or corporate governance. It's about winning at all costs," said McConnell. "Even if that means shredding the First Amendment."

But it's not hard to see why the GOP would believe that upending the campaign finance regulation system would be to its benefit. Last year, the top conservative super PAC, Restore our Future, spent \$143 million, more than twice as much as the top liberal super PAC.

After conservative donors appeared to get little for their money, some questioned the ability of big political spending to sway elections. But, based on the unanimity with which it's lined up behind McCutcheon, the GOP appears to disagree.

"I guess the Republican Party apparently believes it's got a whole lot of Sheldon Adelsons who are willing to pump huge amounts of money into campaign war-chests," said Van Hollen.

And if the Supreme Court rules in its favor, those Sheldon Adelsons could get the chance to do just that.