No. 12-536

IN THE

# Supreme Court of the United States

SHAUN MCCUTCHEON AND
REPUBLICAN NATIONAL COMMITTEE
*Plaintiffs-Appellants*,
v.
FEDERAL ELECTION COMMISSION,
*Defendant-Appellee.*

**On Appeal from the United States District Court for the District of Columbia**

# BRIEF *AMICI CURIAE* OF THE NATIONAL EDUCATION ASSOCIATION, ET AL., IN SUPPORT OF APPELLEE


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## TABLE OF CONTENTS


| | Page |
|---|---|
| TABLE OF AUTHORITIES | ii |
| INTEREST OF *AMICI CURIAE* | 1 |
| SUMMARY OF ARGUMENT | 2 |
| ARGUMENT | 4 |
| A. Aggregate Contribution Limits Must Be Reviewed Deferentially Under "Closely Drawn" Scrutiny | 5 |
| B. FECA's Aggregate Limits Do Not Significantly Interfere with Expressive or Associational Rights | 8 |
| C. FECA's Aggregate Contribution Limits Serve an Essential Function of Combating Corruption and the Public Perception of Corruption | 14 |
| CONCLUSION | 22 |

## TABLE OF AUTHORITIES

**Cases** Page

*Buckley v. Valeo*, 424 U.S. 1, (1976) ..... *passim*

*Cal. Med. Assoc. v. FEC*, 453 U.S. 182 (1981).. 12

*Citizens United v. FEC*, 558 U.S. 310 (2010)... 5, 14, 20

*FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001)..... 15, 16, 18, 19

*FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197 (1982)..... 19

*McConnell v. FEC*, 540 U.S. 93 (2003), *overruled in part on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010) ..... *passim*

*Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377 (2000)..... *passim*

**STATUTES AND REGULATIONS**

2 U.S.C. § 441a(d)..... 16

29 U.S.C. § 206(a)(1)(C)..... 10

11 C.F.R. § 102.6(a)(1)(ii)..... 16

11 C.F.R. § 102.17 ..... 16

11 C.F.R. § 102.17(c)(1) ..... 16

11 C.F.R. § 113(c) ..... 16

**MISCELLANEOUS**

Abby Blass, Brian Roberts, Daron Shaw, *Corruption, Political Participation, and Appetite for Reform: Americans' Assessment of the Role of Money in Politics*, 11 Election L. J. 380 (2012) ..... 21

TABLE OF AUTHORITIES—Continued

Page

Bureau of Labor Statistics, National Occupational Employment & Wage Estimates United States, May 2012, *available at* http://www.bls.gov/oes/current/oes_nat.htm ..... 10

Center for Responsive Politics, *available at* http://www.opensecrets.org/bigpicture/donordemographics.php?cycle=2012 ..... 11

FEC Two-Year Summary, Total Contributions for the DNC, DSCC, DCCC, RNC, NRSC, NRCC, Barack Obama, and Mitt Romney, *available at* http://www.fec.gov/finance/disclosure/candcmte_info.shtml ..... 13

Jason Cohen, *The Same Side of Two Coins: The Peculiar Phenomenon of Bet-Hedging in Campaign Finance*, 26 N. Ill. U. L. Rev. 271 (2006) ..... 7

Jesse Bricker, et al., *Changes in Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances*, Federal Reserve Bulletin, Vol. 98, No. 2, June 2012, *available at* http://www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf..... 9

Kevin Bogardus, *Lobbyists Fear Shakedown if Supreme Court Lifts Campaign Contributions Cap*, The Hill, Feb. 26, 2013, *available at* http://thehill.com/business-a-lobbying/284817-lobbyists-fear-shakedown-if-court-lifts-campaign-cap ..... 22

TABLE OF AUTHORITIES—Continued

Page

NEA 2011-2012 Average Starting Teacher Salaries by State, *available at* http://www.nea.org/home/2011-2012-average-starting-teacher-salary.html ..... 10

U.S. Census Bureau, Selected Economic Characteristics: 2011 American Community Survey 1-Year Estimates, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_DP03&prodType=table ..... 10

## INTEREST OF *AMICI CURIAE*

This brief *amici curiae* is submitted, with the consent of the parties,[1] on behalf of the National Education Association (NEA); American Federation of Labor-Congress of Industrial Organizations (AFL-CIO); Service Employees International Union (SEIU); and American Federation of State, County, and Municipal Employees (AFSCME).

NEA is a nationwide employee organization with approximately three million members, the vast majority of whom are educators and education support professionals in our nation's public schools, colleges, and universities. AFL-CIO is a federation of 56 national and international labor organizations with a total membership of approximately 12 million working men and women. SEIU is one of the largest unions in North America; it represents over 2.1 million workers in service industries throughout the United States and Canada. AFSCME is a labor organization with 1.6 million members in hundreds of occupations who provide vital public services in 46 states, the District of Columbia, and Puerto Rico.

NEA, AFL-CIO, SEIU, AFSCME, and the millions of workers they represent have a substantial interest in the outcome of this litigation because they are deeply concerned with ensuring a system of fair elections and clean government. Furthermore, NEA, AFL-CIO, SEIU, and AFSCME all sponsor federal political

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[1] Letters of consent are on file with the Clerk. No counsel for a party authored this brief in whole or in part, and no person or entity other than *amici curiae* made a monetary contribution to the preparation or submission of the brief.

action committees (PACs) that receive individual contributions subject to the aggregate limits at issue in this case. That being the case, *amici* have developed substantial expertise with the applicable laws and constitutional principles.

## SUMMARY OF ARGUMENT

Understanding that the integrity of our system of representative democracy is paramount, Congress has sought to combat both actual and perceived corruption of federal candidates and officeholders by placing limits on campaign contributions in federal elections, including limits on the aggregate amounts individuals may give over the course of an election cycle. This Court has properly deferred to Congress when it acts in this capacity, upholding contributions limits so long as they allow candidates and parties to amass sufficient funds for effective electoral advocacy.

The Appellants now invite this Court to abandon that deferential approach and apply an unreasonably demanding level of scrutiny that, on Appellants' view, results in the demise of the current—or any future—aggregate contribution limits. This Court should decline the Appellants' invitation, adhere to its existing precedent, and uphold the current aggregate limits.

Aggregate contribution limits impose only a marginal constraint on an individual's First Amendment rights. They do not meaningfully interfere with an individual's ability to express symbolic support for candidates or parties by making contributions. Nor do they restrain individuals in their ability to associate with candidates or parties, as individuals may

join parties or personally volunteer their services for candidates. That being the case, aggregate limits are subject to a deferential standard of review and survive as long as they are closely drawn to serve an important government purpose.

The existing federal aggregate limits easily satisfy this standard. The current limits—$48,600 to federal candidates and $74,600 to non-candidate committees and party committees, for a total of $123,200 each two-year election cycle—are so generous that they cannot be construed as significantly interfering with any expressive or associational rights that are implicated by contributions to a range of different candidates, parties, or committees. The large amount of money involved, the fact that the limits are indexed to inflation, and the small number of donors who even now approach the aggregate limits in a given election cycle all help to demonstrate that they do not impose a particularly restrictive condition on speech or association.

Finally, the aggregate limits are justified by the compelling interest in combatting both the reality and appearance of corruption arising from large campaign contributions. In the absence of an aggregate limit, the base limits on direct contributions to a given candidate could be easily circumvented. Likewise, the aggregate limits prevent the appearance of corruption that may arise when candidates and officeholders exert pressure on contributors with the implied threat to withdraw access if the contributors fail to deliver. Without prophylactic protections against the reality and appearance of corruption, voters could well decide that "the fix is in," which in turn would jeopardize their willingness to

take part in the democratic process on which our system of governance rests.

## ARGUMENT

At the urging of the American public, Congress has long been concerned with, and sought to mitigate, the "pernicious influence of large campaign contributions." *McConnell v. FEC*, 540 U.S. 93, 115-19 (2003) (discussing the development of campaign finance laws), *overruled in part on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010). To that end, the Federal Election Campaign Act of 1971 (FECA), as amended, imposes limits on individuals' political contributions—both on what can be given to a single candidate, party committee, or PAC and on what can be given in aggregate. This case presents a constitutional challenge to the aggregate limits on contributions, a version of which this Court upheld in *Buckley v. Valeo*, 424 U.S. 1, 21-22 (1976) (per curiam).

These limits are a straightforward means of addressing the "threat from politicians too compliant with the wishes of large contributors" and combatting "the cynical"—but frequently justified—"assumption that large donors call the tune." *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 389-90 (2000). The means that Congress chose in service of this goal are modest: placing biennial aggregate contribution limits alongside the per-recipient (or "base") limits on contributions to candidates, political parties, and PACs, and doing so at amounts so high that few Americans could even imagine exceeding them.

As we will show, the Appellants' quest to strike

down FECA's aggregate limits must fail. Because these contribution limits impose only a marginal constraint on an individual's First Amendment rights, they are subject to a deferential standard of review. Moreover, the aggregate limits satisfy this standard because they do not significantly interfere with the symbolic expression or associational interests implicated by contributions to different candidates, parties, or PACs. Finally, the aggregate limits are justified by the compelling interest in combatting both the reality and appearance of a "sense of obligation" arising from large campaign contributions. *McConnell*, 540 U.S. at 144.

### A. Aggregate Contribution Limits Must Be Reviewed Deferentially Under "Closely Drawn" Scrutiny

Ever since this Court's seminal decision in *Buckley*, a key distinction has animated the First Amendment analysis of all campaign-finance regulations. That distinction is between *expenditures*, on the one hand, that directly fund campaign-related speech and *contributions*, on the other hand, that simply fund the expression of others. As the *Buckley* Court explained, expenditure limits "represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech," while contribution limits "entail[] only a marginal restriction upon the contributor's ability to engage in free communication." 424 U.S. at 19, 20. Accordingly, this Court has held that an expenditure limit is subject to "strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United*, 558 U.S. at 340 (citations and quota-

tion marks omitted). But a contribution limit—even one "involving [a] significant interference with associational rights"—"is nevertheless valid if it satisfies the lesser demand of being closely drawn to match a sufficiently important interest." *McConnell*, 540 U.S. at 136 (citations and quotation marks omitted).

Faced with this precedent—including *Buckley*'s explicit rejection of a First Amendment challenge to FECA's then-existing aggregate limits—the Appellants and their supporting *amici* have called for this Court either to overrule *Buckley*, eliminate the distinction between contributions and expenditures, and apply strict scrutiny to both; or to apply to contribution restrictions a version of "closely drawn" scrutiny that is for all practical purposes indistinguishable from strict scrutiny. This Court should reject both of those entreaties. The distinction between contributions and expenditures is both conceptually sound and constitutionally significant, and this Court should continue to adhere to it, as it did when analyzing the aggregate limits in *Buckley*.

The rationale for less rigorous scrutiny is in fact at its strongest as it applies to aggregate limits because—even more than base limits on individual contributions to particular candidates, parties, or committees—they "le[ave] communication significantly unimpaired." *Shrink Missouri*, 528 U.S. at 378. After all, contributions to a particular candidate implicate the First Amendment because they at least serve "as a general expression of support for the candidate and his views," albeit without "communicat[ing] the underlying basis for the support." *Buckley*, 424 U.S. at 21; *see also Shrink Missouri*,

528 U.S. at 386 ("The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated symbolic act of contributing."). The communicative value of such contributions "inheres . . . in their ability to facilitate the speech of their recipients," which is why this Court has held that contribution limits will impose an undue burdens on free speech "if they are so low as to preven[t] candidates and political committees from amassing the resources necessary for effective advocacy." *McConnell*, 540 U.S. at 135 (alteration in original, citation and quotation marks omitted).

Yet, so long as the underlying base contributions limits satisfy this standard (something the Appellants do not dispute), an aggregate limit generally will *not* impose additional burdens of any consequence on First Amendment expression or association. First, any burden on the expressive content of multiple campaign contributions is quite limited. Campaign contributors may decide to support multiple candidates for myriad reasons or may even contribute to competing candidates in an election.[2] The mere fact that an individual might seek to make multiple contributions beyond the limits set in the law does not raise a genuine First Amendment concern. Indeed, compared to a contribution to a single candidate, party, or PAC—which at least has the virtue of giving a "very rough index of the intensity of the contributor's support," *Buckley*, 424 U.S. at 21—the communicative value inherent in

[2] *See*, *e.g.*, Jason Cohen, *The Same Side of Two Coins: The Peculiar Phenomenon of Bet-Hedging in Campaign Finance*, 26 N. Ill. U. L. Rev. 271, 288-89 (2006).

a combination of many contributions is far more generic, diffuse, and undifferentiated.

Second, as long as individuals can contribute at least some meaningful amount to all of their desired candidates and parties, and those entities can in turn amass adequate resources for effective advocacy, the aggregate limits impose no additional burden on the contributor's associational freedoms. The limits leave an individual "free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates, and allow associations to aggregate large sums of money to promote effective advocacy." *McConnell*, 540 U.S. at 136 (citations and quotation marks omitted). Thus, the "overall effect" of the aggregate limits—particularly when paired with the base limits—is "merely to require candidates and political committees to raise funds from a greater number of persons." *Id.* (citations and quotation marks omitted).

These observations generally would hold true for *any* aggregate limit that allows a wide array of contributions to be made within a set of base contribution limits. But they have particularly strong application to FECA's aggregate limits being challenged here. As we will show, the current limits are so generous that they cannot be construed as significantly interfering with any expressive or associational rights. Moreover, these limits are justified by the compelling need to protect the integrity of the election process.

### B. FECA's Aggregate Limits Do Not Significantly Interfere with Expressive or Associational Rights

The base and aggregate limits work in tandem to

prevent one individual from giving large amounts of money that would have a potentially corrupting influence on a candidate or party. The current aggregate limits, which are adjusted for inflation, allow individual contributors to give up to $48,600 to federal candidates, and to give up to $74,600 to non-candidate PACs and party committees, for a total of $123,200 each two-year election cycle. These limits are high enough that they do not involve a "significant interference" with expressive or associational rights. *Shrink Missouri*, 528 U.S. at 387 (citation and quotation marks omitted).

The overall $123,200 limit allows ample opportunities for contributions to any number of candidates, while mitigating the risk that a large donor will be able to buy improper influence, or the public will perceive democracy to be undermined by the improper influence of large donors. To put the aggregate limit in context, it far exceeds the entire net worth of well over half of American families (not just individuals), who in any event have much of their wealth invested in illiquid assets like housing.[3] By like token, the limit is approximately equal to what someone would earn if they worked at the minimum wage for every single

[3] In 2010, the median net worth of American families was approximately $77,300. *See* Jesse Bricker, et al., *Changes in Family Finances from 2007 to 2010: Evidence from the Survey of Consumer Finances*, Federal Reserve Bulletin, Vol. 98, No. 2 at 16-25, June 2012, *available at* http://www.federalreserve.gov/pubs/bulletin/2012/pdf/scf12.pdf. The mean net worth of American families in 2010 was approximately $498,800, a figure strongly skewed by the massive accumulation of assets at the upper reaches of the wealth scale. *Id.*

hour and day of an election cycle. More specifically, a worker earning the federal minimum wage of $7.25 per hour, *see* 29 U.S.C. § 206(a)(1)(C), would need to work more than 23 and a quarter hours per day every day for the entire two-year election cycle to earn an amount equal to the aggregate contribution limit.

Viewed through yet another lens, the aggregate limit is more than 4.6 times the per capita income in the United States; over the two-year election cycle, an individual paid this amount would earn less than 44 percent of the aggregate limit.[4] The cap is nearly double the $67,930 average annual salary of a registered nurse,[5] nearly three-and-a-half times the $35,672 average starting salary of a teacher,[6] and nearly five times the $24,850 average annual salary of a janitor.[7] An entire U.S. household pooling its resources is unlikely to earn as much of the aggregate cap over two years. The cap is more than 2.4

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[4] According to U.S. Census Bureau data, the per capita income in the United States was $26,708 in 2011. *See* U.S. Census Bureau, Selected Economic Characteristics: 2011 American Community Survey 1-Year Estimates, *available at* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_DP03&prodType=table.

[5] *See* Bureau of Labor Statistics, National Occupational Employment & Wage Estimates United States, May 2012, *available at* http://www.bls.gov/oes/current/oes_nat.htm.

[6] *See* NEA 2011-2012 Average Starting Teacher Salaries by State, *available at* http://www.nea.org/home/2011-2012-average-starting-teacher-salary.html.

[7] *See* National Occupational Employment & Wage Estimates, *supra* note 5.

times the median annual household income in the United States; over the two-year election cycle the median household earns approximately 80 percent of the aggregate limit.[8] And, all of this, of course, does not take into account living expenses and taxes that greatly reduce the amount of money individuals have available to contribute to political campaigns.

Given that so few Americans can give this amount of money, it is not surprising only a tiny fraction of the populace—only 1,877 individuals, or approximately 0.0006 percent of the population—came within even $22,000 of contributing the combined $117,000 aggregate limit that applied during the 2011-2012 election cycle.[9] To be sure, the First Amendment does not permit laws that violate even one person's constitutional rights, but the salient point is that the small number of donors who even approached the aggregate limit helps to demonstrate that it is not a particularly restrictive condition. On the contrary, it is a huge amount of money, more than most Americans could ever dream of donating to political campaigns.

Moreover, the generous aggregate limits leave an individual free to associate with as many candidates and political committees as she wishes. Appellant McCutcheon argues that the aggregate limitations are "far more invasive than base contribution limits"

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[8] According to U.S. Census Bureau data, the national median for household income in 2011 was $50,502. *See supra*, note 4.

[9] According to the Center for Responsive Politics, only 1,877 individuals gave more than $95,000 during the election cycle (the largest category of data provided). *See* http://www.opensecrets.org/bigpicture/donordemographics.php?cycle=2012.

because they "operate to prevent an individual from associating with, expressing support for, and assisting 'too many' candidates, political party committees, or PACs in a single election." *See* McCutcheon Br. at 17. This is untrue.

First, under the aggregate limit, an individual is free to donate a meaningful amount to a candidate in *every single* federal election each cycle. The current $48,600 aggregate contribution limit to candidates allows an individual contributor to give more than $100 to a candidate in every single federal election each cycle.[10] On top of this, contributors can give $74,600 to party committees and PACs that will assist these candidates. Furthermore, "[n]othing in [the challenged cap] limits the amount [McCutcheon] may independently expend in order to advocate political views; rather, the statute restrains only the amount that [he] may contribute." *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 195 (1981). McCutcheon may spend independently without limit to promote his favored candidates, donate unlimited money to so-called "Super PACs" for independent expenditures, and fundraise and volunteer other services to campaigns.

Second, the aggregate limits fully enable an indi-

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[10] The 2014 elections will include 435 House races and 33 regular Senate elections. Additionally, there are expected to be four special elections in 2013 and 2014, for seats left vacant by the resignations of Senators John Kerry and Jim DeMint and the deaths of Senators Daniel Inouye and Frank Lautenberg, for a total of 472 federal elections. An individual could donate approximately $103 to a candidate in each and every one of these 472 federal races.

vidual to imbue contributions with a symbolic dimension that this Court has identified as both a practical and constitutionally significant feature of individual contributions. *See Shrink Missouri*, 528 U.S. at 386. For example, McCutcheon has made a series of contributions of $1,776 because he finds that particular number "especially meaningful." McCutcheon Br. at 30. Under the current biennial aggregate limit of $48,600 to candidates, he could make as many as 2,736 contributions of 1,776¢. In other words, he could make contributions in an amount that has the same symbolic and numerological significance to far more candidates than there are major-party federal nominees in any election (and likely more than there are even candidates for such nominations).

Third, with respect to their effects on candidates, party committees, and PACs, the aggregate limits leave them "ample opportunities for soliciting federal funds on behalf of entities subject to FECA's source and amount restrictions." *McConnell*, 540 U.S. at 139. *Cf. Buckley*, 424 U.S. at 21 (observing that contribution limits may not be closely drawn "if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy."). During the 2012 election cycle, the six national party committees and the two major party presidential candidates raised nearly $1.7 billion in individual contributions.[11] This is in addition to billions more contributed to 468 Senate

[11] *See* FEC Two-Year Summary, Total Contributions for the DNC, DSCC, DCCC, RNC, NRSC, NRCC, Barack Obama, and Mitt Romney, *available at* http://www.fec.gov/finance/ disclosure/candcmte_info.shtml.

and House candidates, 50 state party committees, and thousands of PACs, not to mention independent expenditures on behalf of the candidates. The billions of dollars contributed make clear that the aggregate contribution limits impose only at most minor hardship on candidate, party committee, and PAC fundraising.

The Constitution does not require that an individual be allowed to spend virtually unlimited sums of money for the "undifferentiated symbolic act of contributing" to political campaigns. *Shrink Missouri*, 528 U.S. at 386. On the contrary, the existing aggregate limits "entail[] only a marginal restriction upon the contributor's ability to engage in free communication," *Buckley*, 424 U.S. at 21, and should therefore be upheld upon the government's showing of a sufficiently important interest.

### C. FECA's Aggregate Contribution Limits Serve an Essential Function of Combating Corruption and the Public Perception of Corruption

FECA's aggregate contribution limits easily meet the test of serving a "sufficiently important" government interest. As this Court has recognized since the earliest days of campaign finance regulation, contributions to candidates for federal office as well as contributions to political parties and PACs, pose a risk of *quid pro quo* corruption or the appearance of such corruption. *See Buckley*, 424 U.S. at 28 (observing that the "reality or appearance of corruption [is] inherent in a system permitting unlimited financial contributions."); *see also Citizens United*, 558 U.S. at 359 (noting that "contribution limits . . . have been an accepted means to prevent *quid pro quo* corrup-

tion"); *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 440-41 (2001) ("*Colorado II*") (observing that "limits on contributions are more clearly justified by a link to political corruption than limits on other kinds of unlimited political spending are"). The aggregate contribution limits are justified today, just as they were when *Buckley* was decided, by the interest in preventing corruption and the appearance of corruption.

**1.** The aggregate limits address the real and serious threat of corruption. The Appellants reason that the existing base limits represent a threshold below which there is no cognizable danger or corruption and, extrapolating from that, claim that numerous contributions at or below that limit to different candidates, parties, and committees likewise create no danger of corruption. *See* McCutcheon Br. at 37-38, 44-51; RNC Br. at 36 ("Doing something posing zero *cognizable* risk multiple times does not increase the risk.") (emphasis in original). Appellants further contend that prohibitions against earmarking, one individual controlling multiple PACs, base contribution limits on PAC and party committee giving, and limits on coordination prevent circumvention of base contribution limits, making aggregate limits unnecessary. *See* McCutcheon Br. at 39-51; RNC Br. at 16-24, 39-42.

This reasoning is flawed in every particular. First, the fact that Congress has chosen particular base limitations does not mean that they pose *no* risk of corruption. Rather, Congress chose base limitations to guard against corruption in a way that only minimally restricts expression and association. The fact

that it chose a particular maximum for candidate contributions does not preclude supplemental efforts to prevent corruption or the appearance of it. As the *Buckley* Court observed, if the Court "is satisfied that some limit on contributions is necessary, a court has no scalpel to probe" the specific limit Congress chose. 424 U.S. at 30.

Second, Appellants presume that only a large donation *directly* to one candidate can have a corruptive effect. While this argument might be plausible if each candidate operated truly independently and circumvention were easily detectable, the reality is that this country's electoral process is nearly completely dominated by two political parties that each operate as a team. "What a realist would expect to occur has occurred. Donors give to the party with the tacit understanding that the favored candidate will benefit." *Colorado II*, 533 U.S. at 458. Often, this is accomplished at the solicitation of a single candidate and one payment from the contributors. FEC rules allow "joint fundraising committees" to accept one check for as many candidates and committees as are part of the joint fundraising operation. 11 C.F.R. § 102.17. Although joint fundraising committees must initially allocate contributions amongst the participants, *id.* at § 102.17(c)(1), national or state party committees are free to transfer unlimited amounts among themselves, *id.* §§ 102.6(a)(1)(ii), 113.2(c), candidates are then free to transfer unlimited amounts to party committees, and party committees may also assist candidates by making coordinated expenditures that may greatly exceed the contribution limits that apply to other donors, 2 U.S.C. § 441a(d).

Notwithstanding Appellant RNC's insistence that the national party committees are "separate legal entities, with separate histories . . . [and] their own agendas," RNC Br. at 33, in fact the parties' fundraising and fortunes are extensively interconnected, and a gift to one candidate, party committee, or PAC may be viewed and may function as a gift to other party members. Because of this, Congress determined that aggregate limits are necessary to ensure that political parties and their leadership are not beholden to large contributors. Otherwise, base contributions without aggregate contributions would be largely meaningless. Aggregate limits act as "a corollary of the basic individual contribution limitation," preventing their circumvention. *Buckley*, 424 U.S. at 38.

In upholding the aggregate contribution limits, the *Buckley* Court observed that the base limits could easily be circumvented "through the use of unearmarked contributions to political committees likely to contribute to that candidate, or huge contributions to the candidate's political party." 424 U.S. at 38. As the Court later explained in upholding the ban on "soft money" contributions to national parties:

> The idea that large contributions to a national party can corrupt or, at the very least, create the appearance of corruption of federal candidates and officeholders is neither novel nor implausible. For nearly 30 years, FECA has placed strict dollar limits and source restrictions on contributions that individuals and other entities can give to national, state, and local party committees for the purpose of influencing a federal election. The premise behind these restrictions has been, and continues

> to be, that contributions to a federal candidate's party in aid of that candidate's campaign threaten to create—no less than would a direct contribution to the candidate—a sense of obligation. This is particularly true of contributions to national parties, with which federal candidates and officeholders enjoy a special relationship and unity of interest.

*McConnell*, 540 U.S. at 144 (internal citation and quotation marks omitted); *see also id.* at 151 (discussing the special access to discuss legislative matters that parties provide to large donors); *Colorado II*, 533 U.S. at 452 ("Parties thus perform functions more complex than simply electing candidates; whether they like it or not, they act as agents for spending on behalf of those who seek to produce obligated officeholders.").

This Court likewise has already addressed the argument that earmarking prohibitions render protections against circumvention unnecessary. In *Colorado II*, a state political party challenging coordinated spending limits argued that circumvention was not a concern because of the earmarking prohibition. As the Court explained, "This position, however, ignores the practical difficulty of identifying and directly combating circumvention under actual political conditions" where "circumvention is obviously very hard to trace." 533 U.S. at 462. "The earmarking provision . . . would reach only the most clumsy attempts to pass contributions through to candidates. To treat the earmarking provision as the outer limit of acceptable tailoring would disarm any serious effort to limit" circumvention. *Id.* Appellants provide no facts or argument to warrant the Court's reconsideration of that conclusion.

"Despite years of enforcement of the challenged limits, substantial evidence demonstrates how candidates, donors, and parties test the limits of the current law, and it shows beyond serious doubt how contribution limits would be eroded if inducement to circumvent them were enhanced" by invalidating aggregate contribution limits. *Colorado II*, 533 U.S. at 457. The aggregate limits fill obvious cracks in the system, and the hypothesis that money otherwise would flow through these cracks is not merely plausible but certain. There is more than enough evidence for the Court to affirm on this ground. *See Shrink Missouri*, 528 U.S. at 391 ("The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised."); *FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197, 210 (1982) ("Nor will we second guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared.").

**2.** The aggregate limits also combat the public perception of corruption that comes from massive campaign contributions. *See Buckley*, 424 U.S. at 27 (observing that the "impact of the appearance of corruption" is "[o]f almost equal concern as the danger of actual *quid pro quo* arrangements"). Corruption is notoriously difficult to prove, as corrupt contributors and politicians may avoid directly acknowledging what they are doing, and elected officials' legislative actions enjoy constitutional protection. *See id.* at 27-28 (noting that "laws making criminal the giving and taking of bribes deal with only the most blatant and

specific attempts of those with money to influence governmental action."). Contribution limits therefore serve a "preventative" function and "ensure against the reality or appearance of corruption." *Citizens United*, 558 U.S. at 357 (internal citation omitted). Even if the vast majority of politicians resist the temptation to repay large contributors with improper favors, "Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated." *Buckley*, 424 U.S. at 30.

Preventing public perception of corruption is critical because representative democracy is premised on the representation of voters, not moneyed interests. If voters believe politicians serve donors' interests over the public interest, our democracy is fundamentally undermined. The *Buckley* Court held that "Congress could legitimately conclude that the avoidance of the appearance of improper influence is also critical if confidence in the system of representative Government is not to be eroded to a disastrous extent." *Id.* (citation, quotation marks, and ellipses removed). "Take away Congress' authority to regulate the appearance of undue influence and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance." *McConnell*, 540 U.S. at 144 (quoting *Shrink Missouri*, 528 U.S. at 390; internal quotation marks omitted).

Survey research demonstrates that Americans per-

ceive a threat of corruption. For example, in a survey of more than 2,000 people, 70 percent of respondents said that politicians vote to please their campaign contributors either "all the time" or "often," while only 18 percent said they did so "sometimes" or "never." Abby Blass, Brian Roberts, Daron Shaw, *Corruption, Political Participation, and Appetite for Reform: Americans' Assessment of the Role of Money in Politics*, 11 Election L. J. 380, 385-86 (2012). Similarly, when asked to rate who their elected officials listen to and who has power in Washington, DC, "campaign contributors" received the highest score, while a "member's constituency preferences" received the lowest. *Id.* at 386. Thus, sizeable majorities believe that currently permissible large contributions have a corrupting influence on public officials, and that perception would likely increase if aggregate limits were removed and wealthy donors could contribute millions of dollars each election cycle.

Contributors themselves may perceive large contributions as the purchase price for political favors. As this Court has recognized, lobbyists, corporate executives, and wealthy individuals often contribute large amounts to political campaigns for the express purpose of buying influence. *McConnell*, 540 U.S. at 124-25, 147. If, on the other hand, they choose not to give, "[b]usiness and labor leaders believe, based on their experience, that disappointed Members, and their party colleagues, may shun or disfavor them because they have not contributed." *Id.* at 125 n.13. Politicians in turn look to lobbyists for large contributions, and, absent the aggregate caps, lobbyists

will be pressured to give even more.[12] It certainly "was not unwarranted for Congress to conclude that the selling of access gives rise to the appearance of corruption." *Id.* at 154.

Congress reasonably concluded that absent the aggregate limits, the size and frequency of these contributions inevitably would increase and would lead to more such stories arousing suspicions of corruption. This Court should uphold Congress' long-recognized power to mitigate the corrosive effects of large donations on democratic processes though modest aggregate contribution limits.

## CONCLUSION

For the reasons stated above, the judgment of the district court should be affirmed.

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[12] Kevin Bogardus, *Lobbyists Fear Shakedown if Supreme Court Lifts Campaign Contributions Cap*, The Hill, Feb. 26, 2013, *available at* http://thehill.com/business-a-lobbying/284817-lobbyists-fear-shakedown-if-court-lifts-campaign-cap ("'I like the limit because it gives me an excuse not to give more,' said one Republican lobbyist. 'If there was no limit, I would give more.'").

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