CASENOTES

CONSTITUTIONAL LAW—FIRST AMENDMENT—AGGREGATE LIMITS ON CAMPAIGN CONTRIBUTIONS VIOLATE FIRST AMENDMENT RIGHTS. *McCutcheon v. Federal Election Commission*, 134 S. Ct. 1434 (2014).

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In *McCutcheon v. Federal Election Commission*,[1] the United States Supreme Court addressed a First Amendment[2] challenge to the statutory aggregate campaign contribution limits[3] on the amount of money an individual donor may contribute to political candidates and party committees.[4] Alabama resident Shaun McCutcheon[5] and the Republican National Committee (RNC) challenged the constitutionality of the aggregate limits on campaign contributions, asserting that the aggregate limits under the Bipartisan Campaign Reform Act of 2002 (BCRA) violated

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[1] McCutcheon v. Fed. Election Comm'n (*McCutcheon II*), 134 S. Ct. 1434 (2014) (plurality opinion).

[2] "Congress shall make no law . . . abridging the freedom of speech . . . ." U.S. CONST. amend. I.

[3] The Bipartisan Campaign Reform Act of 2002 replaced the original $25,000 aggregate limit established in the Federal Election Campaign Act of 1971 with a "bifurcated limiting scheme" including base limits on the amount of money a donor may give to each individual, partnership, committee, association, corporation, union, or other organization, and an aggregate limit on the total amount of money a donor "may contribute in any two-year election cycle." McCutcheon v. Fed. Election Comm'n (*McCutcheon I*), 893 F. Supp. 2d 133, 135 (D.D.C. 2012), *rev'd and remanded*, 134 S. Ct. 1434 (2014); *see also* Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 307, 116 Stat. 81, 102-103 (2002), *amending* 2 U.S.C. § 441a(a)(1), (3) (2000) (Federal Election Campaign Act of 1971), *invalidated by McCutcheon II*, 134 S. Ct. 1434 (2014). Permissible contribution limits for the 2013–2014 election cycle equaled $48,600 for federal candidates and $74,600 for other political committees. *McCutcheon II*, 134 S. Ct. at 1442; *see also* 2 U.S.C. § 441a(a)(1), (3) (2010).

[4] *McCutcheon II*, 134 S. Ct. at 1442–44.

[5] McCutcheon contributed $33,088 during the 2011–2012 election year. *Id.* at 1443; *McCutcheon I*, 893 F. Supp. 2d at 136.

the First Amendment.[6] The aggregate limits prevented McCutcheon from making contributions to 12 candidates he intended to support and three Republican national party committees in the 2011–2012 election cycle.[7] McCutcheon challenged the aggregate limits because he intended to "make similar contributions in the future."[8]

The district court determined the aggregate limits served the purpose of preventing corruption by precluding circumvention of the base limits.[9] Consequently, the district court granted the Government's motion to dismiss and denied McCutcheon and the RNC's motion for a preliminary injunction.[10] The plurality in *McCutcheon* reversed the district court's decision and held aggregate limits unconstitutional, finding aggregate limits both do little to prevent "circumvention of the base limits,"[11] and fail to address directly the Governmental objective of "combatting corruption."[12] Moreover, the aggregate limits impede an individual's First Amendment right to participate in the democratic process.[13]

After noting that quid pro quo corruption[14] is the only legitimate form of corruption the Government can target, the Court decided the Governmental concerns of preventing corruption or the appearance thereof are not met by imposing the aggregate limits.[15] Drawing a distinction between quid pro quo corruption

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[6] *McCutcheon II*, 134 S. Ct. at 1443.

[7] *Id.* McCutcheon wanted to give $1,776 to 12 additional candidates, a figure that complied with the 2013–2014 base limit of $2,600 per candidate, per election. *Id.* at 1442–43.

[8] *Id.* at 1443.

[9] *Id.* (citing *McCutcheon I*, 893 F. Supp. 2d at 140).

[10] *Id.*; *McCutcheon I*, 893 F. Supp. 2d at 142.

[11] *McCutcheon II*, 143 S. Ct. at 1442, 1462. Preventing the circumvention of the base limits was the reasoning behind the Supreme Court's *Buckley v. Valeo* decision which found the aggregate limits constitutional. *See* Buckley v. Valeo, 424 U.S. 1, 38 (1976) (per curiam).

[12] *See McCutcheon II*, 134 S. Ct. at 1442.

[13] *Id.*

[14] "Quid pro quo" is Latin for "something for something." BLACK'S LAW DICTIONARY 1367 (9th ed. 2009). In the realm of campaign contributions, the term demonstrates corruption in the form of giving money for political favors. *McCutcheon II*, 134 S. Ct. at 1441; McCormick v. United States, 500 U.S. 257, 266 (1991) (citation omitted); *see also* Fed. Election Comm'n v. Nat'l. Conservative Political Action Comm., 470 U.S. 480, 497 (1985) ("The hallmark of corruption is the financial *quid pro quo*: dollars for political favors.").

[15] *McCutcheon II*, 134 S. Ct. at 1450–52.

and more innocuous, constitutionally protected forms of influence a wealthy donor may have on a candidate is important to protect First Amendment rights.[16] Further, there is no appreciable risk of corruption because the Court left base limits undisturbed.[17] Congress set the base limits at $5,200 biennially and the plurality in *McCutcheon* argued, "[i]f there is no corruption concern in giving nine candidates up to $5,200 each, it is difficult to understand how a tenth candidate can be regarded as corruptible."[18]

The dissent in *McCutcheon* argued that aggregate limits do not restrict First Amendment rights, and the Court should uphold its previous decision in *Buckley v. Valeo*.[19] However, the *Buckley* Court addressed aggregate limits merely as a corollary to the base limits[20] and before the Government implemented many of the anti-circumvention measures that are currently in place.[21] The plurality argued that there are other safeguards that accomplish the goal of preventing circumvention of the base limits, thereby preventing corruption or the appearance of corruption.[22] For example, the 1976 amendments to the Federal Election Campaign Act of 1971 (FECA)[23] limited contributions to political committees[24] and implemented an anti-proliferation rule.[25] Additionally, the Federal Election Commission (FEC) has executed a regulatory scheme[26] that defines earmarking broadly,

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[16] *Id.* at 1451.

[17] *See id.* at 1451–52.

[18] *Id.* at 1452.

[19] *See id.* at 1465 (Breyer, J., dissenting); *see also* Buckley v. Valeo, 424 U.S. 1, 38 (1976) (per curiam).

[20] *McCutcheon II*, 134 S. Ct. at 1446 (plurality opinion); *Buckley*, 424 U.S. at 38.

[21] *McCutcheon II*, 134 S. Ct. at 1446.

[22] *Id.*

[23] Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475.

[24] *McCutcheon II*, 134 S. Ct. at 1446. By limiting contributions to political committees, donors are no longer able to give large donations to candidates through the guise of donating to the political committee. *Id.*

[25] *Id.* The anti-proliferation rule helps to prevent circumvention of the base limits because it prevents "donors from creating or controlling multiple affiliated political committees." *Id.*; *see also* 2 U.S.C. § 441a(a)(5) (2012); 11 C.F.R. § 100.5 (g)(4) (2015).

[26] *McCutcheon II*, 134 S. Ct. at 1447. Examples of restrictions under the regulatory scheme include: A person may not contribute to a political candidate and that candidate's principle committee. 11 C.F.R. § 110.1(h)(1) (2015). A person may not contribute to candidate and a political committee that anticipates supporting the

thereby restricting a contributor's opportunity to circumvent the base limits.[27] Campaign contribution disclosure requirements also "minimize[] the potential for abuse of the campaign finance system."[28] The aggregate limits are unconstitutional because the aggregate limits prohibit donors from making legal contributions under the base limits if the donor has already contributed the maximum to nine candidates.[29]

Aggregate limits on campaign contributions were first challenged and upheld as constitutional in *Buckley v. Valeo*, when the constitutionality of many provisions of the FECA were originally challenged.[30] Similar to the McCutcheon decision, the Supreme Court addressed a First Amendment challenge to the constitutionality of contribution limits on campaign financing.[31] In addition to the contribution limits challenge, *Buckley* addressed and invalidated expenditure limits under the FECA.[32]

In *Buckley*, plaintiffs[33] originally filed the case in the United States District Court for the District of Columbia against the Secretary of the United States Senate, the Clerk of the United States House of Representatives, the FEC, the Attorney General, and the Comptroller General.[34] In addition to a declaratory judgment holding certain provisions of the FECA unconstitutional,

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same candidate if the contributor knows that the contribution will likely be "expended on behalf of that candidate for the same election." 11 C.F.R. § 110.1(h)(2) (2015). Earmarking is defined to include any "designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written." 11 C.F.R. § 110.6 (2015).

[27] *McCutcheon II*, 134 S. Ct. at 1447 (citing Buckley v. Valeo, 424 U.S. 1, 98 (1976) (per curiam)).

[28] *Id.* at 1459. Specifically, the disclosure requirements prevent corruption by making contribution information easily accessible to the public. *See id.* (citing *Buckley*, 424 U.S. at 67).

[29] *Id.* at 1448–49.

[30] *Buckley*, 424 U.S. at 6, 143–44.

[31] *Id.* at 13–14; *see also McCutcheon II*, 134 S. Ct. at 1444.

[32] *See Buckley*, 424 U.S. at 14, 58–59.

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> Plaintiffs included a candidate for Presidency of the United States, a United States Senator who is a candidate for re-election, a potential contributor, the Committee for a Constitutional Presidency McCarthy '76, the Conservative Party of the State of New York, the Mississippi Republican Party, the Libertarian Party, the New York Civil Liberties Union, Inc., the American Conservative Union, the Conservative Victory Fund, and Human Events, Inc.

Id. at 7–8.

[34] *Id.* at 8.

plaintiffs sought an injunction against the enforcement of those provisions.[35] After the district court denied plaintiffs' application for a three-judge panel and directed the case to be moved to the court of appeals, the court of appeals remanded the case back to the district court with orders to identify the constitutional issues, reexamine evidence, make findings of fact, and certify the constitutional issues to the court of appeals.[36] The court of appeals "found 'a clear and compelling interest[]' in preserving the integrity of the electoral process" and rejected the plaintiffs' constitutional claims.[37]

Buckley was a per curiam decision in which the Court determined that base and aggregate limits on contributions made by an individual in a calendar year to a political candidate or committee and limits on contributions by a political committee to a single candidate were constitutional; however, limits on candidates' personal expenditures, "ceilings on overall campaign expenditures," and ceilings on independent expenditures were held unconstitutional.[38] Base limits of $1,000 to a single candidate directly addressed the issue of preventing large campaign contributions, thus preventing corruption and the appearance of corruption,[39] whereas aggregate limits of $25,000 on total contributions in a calendar year prevented circumvention of the base limits.[40]

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[35] *Id.* at 8–9.

[36] *Id.* at 9.

[37] *Id.* at 10 (quoting Buckley v. Valeo, 519 F.2d 821, 841 (D.C. Cir. 1975), *aff'd in part, rev'd in part*, 424 U.S. 1 (1976), and *modified*, 532 F.2d 187 (D.C. Cir. 1976)) (citation omitted)).

[38] *See Buckley*, 424 U.S. at 38, 58–59; *see also McCutcheon II*, 134 S. Ct. 1434, 1444 (2014) (plurality opinion).

[39] *See Buckley*, 424 U.S. at 26–28.

[40] *Id.* at 38. *Buckley* addressed the issue of aggregate limits in one paragraph of the decision. The paragraph states:

> In addition to the $1,000 limitation on the nonexempt contributions that an individual may make to a particular candidate for any single election, the Act contains an overall $25,000 limitation on total contributions by an individual during any calendar year. . . . The overall $25,000 ceiling does impose an ultimate restriction upon the number of candidates and committees with which an individual may associate himself by means of financial support. But this quite modest restraint upon protected political activity serves to prevent evasion of the $1,000 contribution limitation by a person who might otherwise contribute massive amounts of money to a particular candidate through the use of unearmarked contributions to political committees likely to contribute to that candidate, or huge con-

In determining the constitutionality of the limits on campaign spending, the Supreme Court considered the primary purpose of the FECA.[41] Congress passed the FECA because the Government had an interest in limiting both corruption and the appearance of corruption that could result from "large individual financial contributions" to political candidates.[42] Expenditure limits on the amount of spending a candidate can use to support his campaign impose direct restrictions on "the number of issues discussed, the depth of their exploration, and the size of the audience reached."[43] Campaign contributions, however, are merely an expression of support, and the reasoning behind an individual's support is not directly revealed through the contribution.[44] As a result, the *Buckley* Court determined contribution limits were constitutional because the contribution limits did not encroach on an individual's First Amendment right to discuss candidates and issues.[45] According to *Buckley*, the $25,000 aggregate limit prevented the evasion of the base limits that could occur when an individual legally contributed "massive amounts of money to a particular candidate through the use of unearmarked contributions to political committees likely to contribute to that candidate."[46]

In 2002, Congress passed a series of amendments to the FECA of 1971 in the BCRA.[47] The goal of the BCRA was to limit the potential influence that large "soft money" campaign contributions have on federal elections.[48] *McConnell v. Federal Election*

> tributions to the candidate's political party. The limited, additional restriction on associational freedom imposed by the overall ceiling is thus no more than a corollary of the basic individual contribution limitation that we have found to be constitutionally valid.

Id. (citation omitted).

[41] *See id.* at 26.

[42] *Id.*

[43] *Id.* at 18–19.

[44] *Buckley*, 424 U.S. at 21.

[45] *Id.*

[46] *Id.* at 38.

[47] *See* Nadia Imtanes, *Should Corporations Be Entitled to the Same First Amendment Protections as People?*, 39 W. ST. U. L. REV. 203, 205–06 (2012); *see generally* Bipartisan Campaign Reform Act, Pub. L. No. 107-155, 116 Stat. 81 (2002) (codified as amended in scattered sections of the U.S. Code) (amending the Federal Election Campaign Act of 1971 in relation to "soft money" contributions).

[48] McConnell v. Fed Election Comm'n, 540 U.S. 93, 122–23 (2003), *overruled by* Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).

Commission[49] marked the first challenge to the BCRA's soft money provision.[50] *McConnell* consisted of a series of eleven actions challenging the constitutionality of several portions of the BCRA, all filed in the District Court for the District of Columbia.[51] In a two-judge per curiam decision, with three separate opinions, the district court declared some parts of the BCRA unconstitutional but upheld others.[52] The losing parties appealed directly to the Supreme Court.[53]

The BCRA was adopted in response to three significant issues that arose subsequent to *Buckley*: the increased importance of soft money contributions, an increase in "issue ads,"[54] and the investigation into the campaign practices of the 1996 federal elections.[55] Most importantly, the *McConnell* Court considered limits on soft money contributions to political parties.[56] Soft money refers to contributions above the federally permissible limit, but in the form of party building activities, such as get-out-the-vote drives, and party advertisements "not expressly advocat[ing for] the candidate's election or defeat."[57] The BRCA greatly restricts soft money contributions by prohibiting national party committees from soliciting, receiving, directing or spending any soft money.[58]

The Court rejected the facial First Amendment challenge to the BRCA's ban on soft money contributions and held the restrictions on soft money contributions constitutional.[59] The *McConnell* Court, in keeping with their reasoning in *Buckley*, applied a less rigorous level of scrutiny to the soft money contribution limits.[60] In its analysis, the Court recognized the importance of limiting corruption or the appearance of corruption

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[49] 540 U.S. 93 (2003).

[50] Imtanes, *supra* note 47, at 206–07.

[51] *McConnell*, 540 U.S. at 132.

[52] *Id.* at 132–33.

[53] *Id.*

[54] Issue ads are legal ads used to advocate for a candidate without expressly promoting the candidate with language such as, "Elect John Smith." *See id.* at 126.

[55] *Id.* at 122. The use of soft money and issue advertising by both parties allowed contributors to circumvent FECA protections and allowed for evasion of FECA contribution limits during the 1996 elections. *Id.* at 131.

[56] *McConnell*, 540 U.S. at 133.

[57] *Id.* at 122–24.

[58] 52 U.S.C. § 30125(a)(1) (2012).

[59] *See McConnell*, 540 U.S. at 161, 341.

[60] *Id.* at 141.

as a sufficient Government interest to sustain campaign contribution limits.[61] However, *McConnell* depends on a broader definition of corruption in which limiting the potential for access and influence over a candidate is also a valid Governmental interest.[62] Evidence showed that candidates used the soft money loophole to increase their election chances while donors used the loophole to exploit the gratitude felt by candidates receiving donations.[63] Soft money donations that are given to gain access project the appearance of corruption even if the access does not result in any influence over the officeholder.[64] Under this broader definition of corruption, Congress had a valid interest in limiting soft money contributions as a means to limit corruption or the appearance of corruption.[65]

Alternatively, in *Citizens United v. Federal Election Commission*,[66] the Court began to narrow the definition of corruption stating, "[i]ngratiation and access . . . are not corruption."[67] *Citizens United* involved a First Amendment challenge to the federal law prohibiting corporations from making donations directly to candidates using money from their general treasury funds in an effort to finance "electioneering communications."[68]

Citizens United is a nonprofit organization that receives approximately $12 million annually.[69] Donations mainly come through individuals, with a small portion of the annual budget acquired from for-profit corporations.[70] In January 2008, Citizens United released *Hillary: The Movie* (*Hillary*), a documentary

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[61] *Id.* at 143.

[62] *See id.*

[63] *Id.* at 146. The District Court compiled a 100,000-page record with testimony from over 200 witnesses. McConnell v. Fed. Election Comm'n, 251 F. Supp. 2d 176, 209 (D.D.C. 2003). There was no evidence of quid pro quo corruption in any form from soft money contributions. *Id*. at 395 (Henderson, J., concurring in part and dissenting in part). However, the record did show, through the testimony of Congress members, the influence of soft money contributions on the political system. *Id.* at 481 (Kollar-Kotelly, J., concurring in part and dissenting in part).

[64] *See McConnell*, 540 U.S. at 150 (citations omitted).

[65] *Id.* at 154.

[66] 558 U.S. 310 (2010).

[67] *See id.* at 360.

[68] *Id.* at 318. An "electioneering communication" is "any broadcast, cable or satellite communication" that "refers to a clearly identified candidate for Federal office" made within 30 days of a primary or 60 days of a general election. 2 U.S.C. § 434(f)(3)(A)(i) (2012).

[69] *Citizens United*, 558 U.S. at 319.

[70] *Id.*

film critical of Democratic primary candidate Hillary Clinton.[71] The movie aired in theaters and was released on DVD; however, Citizens United wanted to make the movie available through video-on-demand.[72] A cable company offered to make *Hillary* available to viewers for free if Citizens United paid the company $1.2 million.[73] Citizens United wanted to release the movie within thirty days of the primary elections.[74]

Citizens United feared that the film would be subject to the federal ban on corporate-funded expenditures.[75] Consequently, Citizens United filed suit against the FEC in the United States District Court for the District of Columbia, seeking declarative and injunctive relief from the enforcement of Section 441b restrictions on corporate-funded expenditures and BCRA Sections 201 and 311 concerning "disclaimer and disclosure requirements."[76] The district court denied Citizen United's motion for a preliminary injunction and granted summary judgment in favor of the FEC, holding that Section 411b was constitutional on its face under *McConnell* and as applied to *Hillary* because the only plausible interpretation of *Hillary* was that the film intended to persuade viewers to not vote for Hillary Clinton in the primary election.[77]

The Supreme Court noted probable jurisdiction and considered whether it should overrule its previous decision in *Austin v. Michigan Chamber of Commerce*.[78] The Court first tried to resolve the issue on narrower grounds but ultimately found that *Hillary* could not fall within a narrower exception without "chilling political speech."[79] In addressing the facial challenge to Section 441's ban on independent expenditures, the Court noted that the *Austin* decision marked a change in the Court's thinking on independent expenditures because it allowed Congress to "prohibit independent expenditures for political speech based on the

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[71] *Id.* at 319–20.

[72] *Id.* at 320.

[73] *Id.*

[74] *Id.* at 321.

[75] *Citizens United*, 558 U.S. at 321.

[76] *Id.* at 321–22.

[77] *Id.* at 322.

[78] *Id.*; *see also* Austin v. Mich. Chamber of Commerce, 494 U.S. 652, 655 (1990) (holding the Michigan Chamber of Finance Act did not violate the first amendment because it is justified by the compelling state interest of limiting corruption).

[79] *Citizens United*, 558 U.S. at 322, 329.

speaker's corporate identity."[80] However, in *Citizens United*, the Court determined that there was no support for First Amendment restrictions of political speech by media corporations.[81] The Court went further to note that the Governmental interest in preventing corruption or the appearance of corruption is not served by the restrictions on corporate expenditures because campaign expenditures do not give rise to corruption.[82]

The decision in *McCutcheon* greatly relied on the controversial definition of corruption.[83] Over the past forty years the Court consistently has held that avoiding corruption and the appearance of corruption is a valid reason for setting some limits on campaign contributions.[84] However, if the limits violate the donor's political speech under the First Amendment, then the limits cannot be constitutional.[85] In the foundational case *Buckley*, the Court did not clearly define corruption.[86] Without a clear definition of corruption, the Court's decisions over the past forty years have been inconsistent. Only recently in *Citizens United* and *McCutcheon* has the Court set forth a clear definition of the corruption that the Government has a valid interest in curtailing: quid pro quo corruption.[87] In *McCutcheon*, the Court determined that aggregate limits did not serve the goal of limiting corruption under its narrow definition of quid pro quo corruption and struck down federal aggregate limits on campaign contributions.[88]

Without the aggregate limits in place, individuals can now donate the maximum amount to each candidate or candidate committee ($2,600 per election), political committee ($5,000 per election), state and local party ($10,000 per year), and national party ($32,400 per year).[89] The removal of the aggregate limits

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[80] *Id.* at 336, 348.

[81] *Id.* at 353.

[82] *Id.* at 357.

[83] *See McCutcheon II*, 134 S. Ct. 1434, 1451 (2014) (plurality opinion).

[84] *Id.* at 1441.

[85] *See id.*

[86] *Compare Citizens United*, 558 U.S at 359 (defining corruption as limited to *quid pro quo* corruption), *with McCutcheon II*, 134 S. Ct. at 1469 (Breyer, J., dissenting) (defining corruption not only as *quid pro quo* corruption but also as access and influence on elected representatives).

[87] *See McCutcheon II*, 134 S. Ct. at 1438 (plurality opinion); *Citizens United*, 558 U.S at 359.

[88] *McCutcheon II*, 134 S. Ct. at 1442.

[89] *See How Much Can I Contribute?*, FED. ELECTION COMMISSION, http://www.fec.gov/pages/brochures/contriblimitschart.htm (last visited July 18, 2014).

potentially could benefit party committees and state parties, both of which often were overlooked when the aggregate limits were in place.[90] Many individuals would max out under the aggregate limits before they had the opportunity to contribute to party committees and state parties.[91] Additionally, candidates likely will establish significantly more joint fundraising committees to maximize contributions received from donors.[92] Joint fundraising committees combine fundraising for multiple candidates and committees, allowing donors to contribute in a single check.[93] The aggregate limits prevented donors from contributing above $48,600 to federal candidates, $74,600 to political parties, and $123,200 overall.[94] Without the aggregate limits, donors may use joint fundraising committees to give above those limits.[95]

The aforementioned cases show a continuing erosion of the statutory limitations on campaign contributions. The recent decisions of the Supreme Court show a gradual dismantling of the Federal Election Campaign Act of 1971. In the wake of the *McCutcheon* and *Citizens United* decisions, citizens of the United States are left wondering if the future holds a country in which there are no statutory limitations on campaign contributions outside of restrictions on quid pro quo corruption. In the *McCutcheon* decision, Chief Justice Roberts acknowledged that it is a conflict of interest for the Government to pursue any objectives outside of limiting quid pro quo corruption when he stated, "those who govern should be the *last* people to help decide who *should* govern."[96]

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[90] Chris Cillizza, *Winners and Losers from the* McCutcheon v. FEC *Ruling*, WASH. POST (Apr. 2, 2014), http://www.washingtonpost.com/blogs/the-fix/wp/2014/04/02/winners-and-losers-from-the-mccutcheon-v-fec-ruling/.

[91] *Id.*

[92] *See id.*

[93] *See id.*

[94] *Id.*

[95] *Id.*; *see* Paul Blumenthal, *Republican Launch First 'Super Committee' to Rake in Post-McCutcheon Money*, HUFFPOST POL., http://www.huffingtonpost.com/2014/04/11/mccutcheon-gop_n_5134246.html (last updated Apr. 11, 2014).

[96] *McCutcheon II*, 134 S. Ct. 1434, 1440–42 (2014) (plurality opinion).