No. 12-536

In the Supreme Court of the United States

SHAUN McCUTCHEON, ET AL.,
Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,
Defendant-Appellee.

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

BRIEF OF SENATOR MITCH MCCONNELL AS *AMICUS CURIAE* SUPPORTING APPELLANTS

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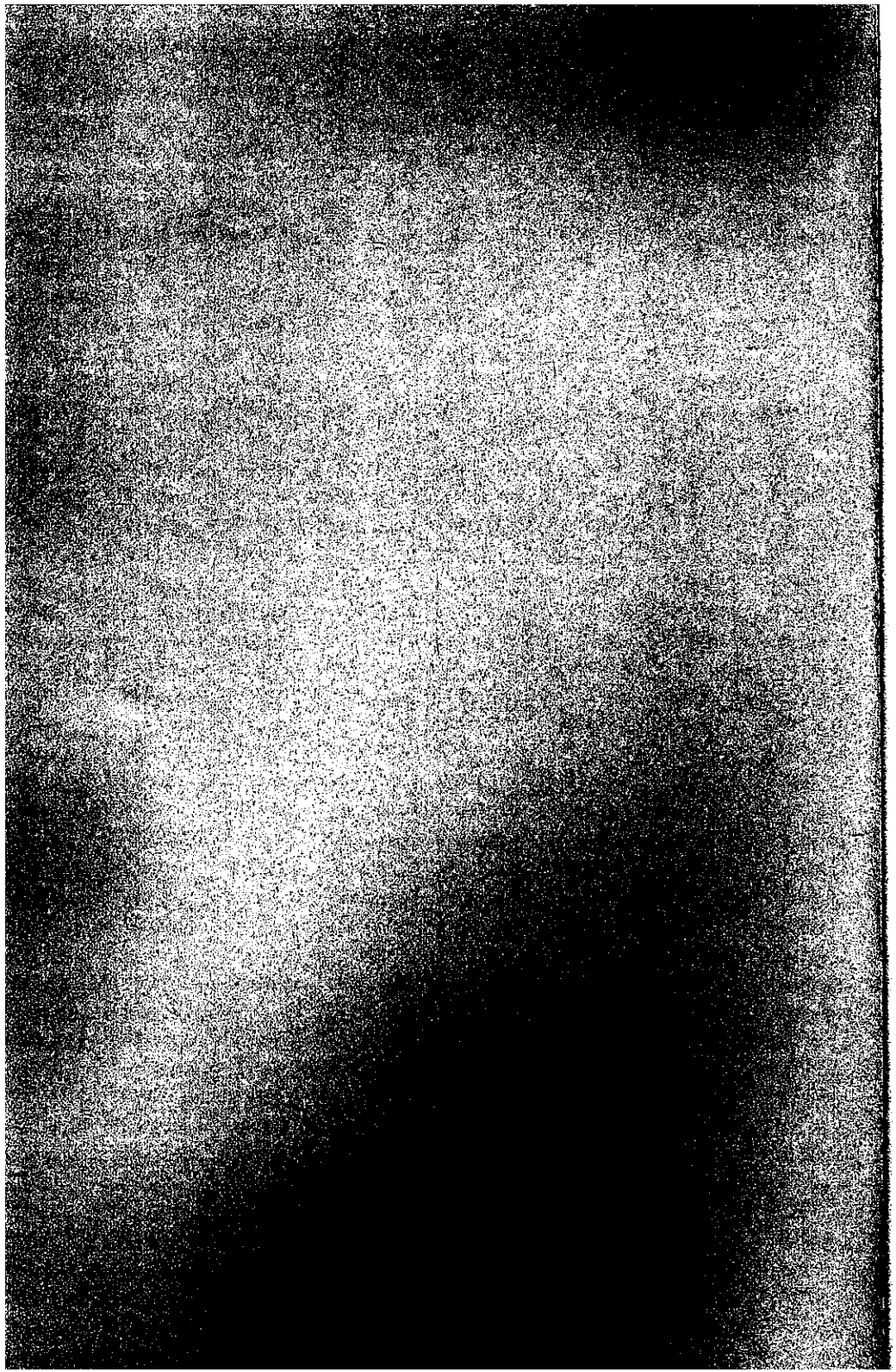

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INTEREST OF AMICUS CURIAE

Senator Mitch McConnell is the senior United States Senator from the Commonwealth of Kentucky.[1] He is the Republican Leader in the United States Senate and the former Chairman of the National Republican Senatorial Committee, a national political party committee comprising the Republican members of the United States Senate.

Senator McConnell is a respected senior statesman and is recognized as the Senate's most passionate defender of the First Amendment guarantee of unrestricted political speech. He has acquired considerable experience over the last three decades complying with federal and state campaign finance restrictions and legislating on campaign finance issues. For many years, Senator McConnell has participated in litigation challenging restrictions on political speech. For example, he was the lead plaintiff challenging the Bipartisan Campaign Reform Act ("BCRA") in *McConnell v. FEC*, 540 U.S. 93 (2003), and participated as *amicus* both by brief and oral argument in *Citizens United v. FEC*, 558 U.S. 310 (2010), which overruled *McConnell v. FEC* in part. Senator McConnell submits this brief in support of Appellants.

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[1] This brief is filed with the consent of all parties and pursuant to United States Supreme Court Rule 37.3(a). Pursuant to Rule 37.6, Senator McConnell states that no party or person other than Senator McConnell and his counsel participated in or contributed money for the drafting of this brief.

SUMMARY OF ARGUMENT

I. The Court should revisit the bifurcated standard of review for political contribution and expenditure limits and hold that strict scrutiny applies to both. The justifications set forth in *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*), for the less rigorous standard of review for contribution limits have proved invalid, and case law shows that a principled distinction between contributions and expenditures is difficult to draw.

II. Should the Court nevertheless decide that "closely drawn" scrutiny should still apply to contribution limits, the aggregate limit on contributions by individuals to candidates cannot pass even that less rigorous standard. Once an individual contributes $48,600[2] over a two year period to federal candidates, the aggregate limit imposes a total ban on non-corrupting contributions from that individual to any other candidates. This total ban severely infringes the rights of association and speech. In view of restrictions on earmarked contributions, on the proliferation of affiliated political committees, and on the political party committees, the government cannot show a single instance in which a contributor has been able to channel excessive contributions through multiple candidate committees to a single candidate.

[2]The aggregate contribution limits referred to herein are the 2013-2014 aggregate contribution limits, *available at* http://www.fec.gov/info/contriblimitschart1314.pdf (last visited May 7, 2013).

III. The $74,600 aggregate limits on contributions by individuals to political committees, of which not more than $48,000 may go to committees which are not political parties, suffers from the same flaws as the aggregate limit on candidate contributions. It imposes a severe infringement on the rights of speech and association, but cannot be supported by even a single instance of successful evasion.

ARGUMENT

This case presents an opportunity for the Court to reject, based on almost four decades of experience, the less rigorous, "complaisant" level of First Amendment review accorded to contribution limits. *See FEC v. Beaumont*, 539 U.S. 146, 161 (2003). Since *Buckley*, the Court has employed a bifurcated standard to review campaign finance restrictions, applying strict scrutiny to political expenditure limits and never upholding them, while applying "closely drawn" scrutiny to political contribution limits and almost never striking them. The reasoning underlying *Buckley*'s bifurcated standard has not weathered the test of time. Moreover, even if this Court upholds "closely drawn" scrutiny for direct contributions to candidates, the aggregate contribution limits at issue in this case are very different from other contribution limits; aggregate contribution limits inflict greater infringements of association, but raise none of the *quid pro quo* concerns that might justify "closely drawn" scrutiny.

Alternatively, even under "closely drawn" scrutiny, the aggregate contribution limits impose severe burdens on the rights of speech and association for both the putative contributor and the putative recipients of

the prohibited contributions. In view of the restrictions on earmarked contributions and the unrealistic prospect that a contributor could channel excessive funds to a preferred candidate, the aggregate limit is not closely drawn to serve any significant government interest. Indeed, even though the current aggregate limit, considered in isolation, would allow an unscrupulous contributor to channel as much as $123,200—over *47 times* the $2,600 limit—to a preferred candidate through other candidates and political committees, the Government has come forward with no evidence that any contributor has successfully done so. Other restrictions in the Federal Election Campaign Act ("FECA"), as amended, 2 U.S.C. §§ 431 *et seq.*, and its accompanying regulations, prevent this prospect.[3]

I. AS WITH POLITICAL EXPENDITURES, STRICT SCRUTINY MUST APPLY TO POLITICAL CONTRIBUTIONS.

The Court first distinguished the scope of review applicable to contribution limits from the scope of review applicable to expenditure limits in *Buckley,* 424 U.S. at 24-31. The Court deemed the "restriction of one aspect of the contributor's freedom of political association" to be "the primary First Amendment problem" raised by contribution limits. *Id.* at 24. Although recognizing that the right of association is a

[3] Indeed, in the lone instance cited below by the Government, in which the Democratic Senatorial Campaign Committee ("DSCC") "tallied" contributions for Senate candidates, the DSCC admitted violating the earmarking provision (but not the aggregate limit) provision. *See* p. 27 n. 16 below.

"basic constitutional freedom," the Court held that "[e]ven a '*significant interference* with protected rights of political association may be sustained if the State demonstrates a *sufficiently important interest* and employs *means closely drawn to avoid unnecessary abridgement* of associational freedoms." *Id.* at 25 (emphasis added) (citations and internal quotation marks omitted); *see also Davis v. FEC*, 554 U.S. 724, 737-38, n.7 (2008). Because it deemed the contribution limits in FECA to be "closely drawn" to address actual or apparent *quid pro quo* corruption, the Court concluded "under the rigorous standard of review established by our prior decisions, the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the [contribution limit]." *Buckley*, 424 U.S. at 25, 29. In contrast, the Court struck down the expenditure limits after subjecting them to the "exacting scrutiny applicable to limitations on core First Amendment Rights of political expression." *Id.* at 44-45.

Subsequent decisions have clarified that the Court applies "strict scrutiny" to limits on political expenditures. "Laws that burden political speech are '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 omitted). Yet, the Court continues to use so-called "closely drawn" scrutiny to review limits on political contributions. This "relatively complaisant review" of contribution limits, *Beaumont*, 539 U.S. at 161, improperly diminishes the importance of contributions to core political speech and association,

has become a formulaic caricature that invites word play rather than rigorous constitutional analysis, and has drawn repeated and compelling criticism from Members of this Court. The time has come for the Court to revisit the distinction. *See Citizens United*, 558 U.S. at 363 ("'This Court has not hesitated to overrule decisions offensive to the First Amendment.'") (citations omitted).

A. Political Contributions Are Central Elements of Core Political Speech and Association.

The Court recognized in *Buckley* that both "contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities," to which "[t]he First Amendment affords the broadest protection." 424 U.S. at 14. Both "contribution and expenditure limitations impose direct quantity restrictions on political communication and association by persons, groups, candidates, and political parties." *Id.* at 18. Further, "[t]he First Amendment protects political association as well as political expression." *Id.* at 15. Association "undeniably enhance[s]" effective advocacy. *Id.* (citation omitted). Importantly, the Court recognized that "it is beyond dispute that the interest in regulating the alleged 'conduct' of giving or spending money 'arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful.'" *Id.* at 17 (citations omitted).

Contribution limits restrict the rights of speech and association of both the contributor and the recipient of the contribution. For the contributor, an investment of

money is both a symbolic show of support and affiliation, but it is also tangible and quantifiable. Not all persons have the name recognition of a George Clooney, a Bruce Springsteen, or a Donald Trump, from whom a public endorsement or appearance would possibly carry weight. Nor do all people have the free time, skills, or proximity to be effective campaign volunteers. Thus, for many if not most persons, a contribution of money is by far the most effective means of supporting a preferred candidate. And, just as intensity of support can be divined by the number of volunteer hours spent, for many if not most contributors the intensity of support is directly related to the size of the check.[4]

For the recipient, whether candidate or committee, contributions also implicate the rights of speech and association. Contributions directly enable speech, and allow "candidates and political committees [to] amass[] the resources necessary for effective advocacy." *Buckley*, 424 U.S. at 21. *See also Randall v. Sorrell*, 548 U.S. 230, 262 (2006) (opinion of Breyer, J., announcing judgment of the Court) (holding that Vermont contribution limits prevented candidates from amassing sufficient resources). But recipients of contributions also have a First Amendment right to associate with many contributors, and to associate at

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[4] *See* David A. Strauss, *Corruption, Equality, and Campaign Finance Reform*, 94 Colum L. Rev. 1369, 1374 (1994) ("At the ballot box, a voter has a difficult time showing how enthusiastically she supports a candidate . . . . By contrast, a contributor can spend her money in direct proportion to the intensity of her views.").

varying levels of intensity.[5] Campaigns and political party committees generally communicate more frequently and extensively with large contributors, invite them to events, and involve them more fully in their campaigns and other efforts.[6]

In short, it is no exaggeration to say that political contributions are not only an avenue of symbolic political expression, but are also a concrete and tangible expression of support that enables the political speech at the core of the American political process. As Chief Justice Burger correctly observed in his *Buckley* dissent many decades ago, contributions and expenditures are simply "two sides of the same First Amendment coin," and the effort to distinguish them has produced mere "word games." 424 U.S. at 241, 244 (Burger, C.J., concurring in part and dissenting in part).

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[5] *Cf.* Treas. Reg. § 56.4911-5(f)(1)(i) (a person is a "member" of a charity and qualified to receive certain exempt communications only if the person "makes a contribution of *more than a nominal amount.*") (emphasis added).

[6] *See, e.g.*, Arizona Democratic Party, *Join the Arizona Democratic Council*, http://azdem.org/action/contribute/adc/levels/ (last visited May 7, 2013) (high contributors receive tickets to election night parties); Republican Party of Arkansas, *Contribute—Business Counsel*, http://www.arkansasgop.org/ index.cfm?p=business-council (last visited May 7, 2013) (high contributors may attend quarterly briefing calls with key Virginia elected officials); and Georgia Democrats, *Georgia Democrats Yellow Dog Club*, http://www.georgiademocrat.org/ contribute/yellow-dog-club/ (last visited May 7, 2013) (high contributors receive regular "insider" updates and invitations to regular conference calls on the "State of the State Party").

B. Complaisant Review of Contribution Limits Is Unfounded and Illogical.

Buckley justified a less rigorous standard of review for contributions on the ground that contribution limits primarily (but not exclusively) restrict associational freedoms, rather than expressive freedoms. 424 U.S. at 24. Notwithstanding the dual effect of contribution limits on associational and expressive freedoms, the Court has "proceeded on the understanding that a contribution limitation surviving a claim of associational abridgment would survive a speech challenge as well." *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 388 (2000). According to *Buckley*, whereas "[a] restriction on the amount of money a person or group can *spend* on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached," "a limitation upon the amount that any one person or group may *contribute* to a candidate or political committee entails *only a marginal restriction upon the contributor's ability* to engage in free communication." 424 U.S. at 19, 20-21 (emphasis added).

Buckley provided four reasons for less stringent review of contribution limits:

> [1] A contribution serves as a general expression of support for the candidate and his views, but *does not communicate the underlying basis for the support.* [2] 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. At most, the size of the contribution provides a *very rough index of the intensity* of the contributor's support for the candidate. [3] The limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it *permits the expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues*. [4] While contributions may result in political expression if spent by a candidate or an association to present views to the voters, *the transformation of contributions into political debate involves speech by someone other than the contributor*.

Id. at 21 (emphasis added). Experience shows that this reasoning does not withstand careful analysis.

At the outset, these four justifications for less rigorous scrutiny of contribution limits address only the *expressive* value of the contribution, whereas the *Buckley* Court recognized that "the primary First Amendment problem" with such limits is their infringement of the right of *association*. *Id.* at 24. Although *Buckley* deemed contribution limits only a "marginal" restriction on the right of association, it never justified its assumption that a $1 contribution is equivalent in its power to associate to a $1,000 contribution. That proposition is not self-evident, and is rebutted by the fact that so many contributors—most of whom have no agenda other than to support the

candidate, party, or cause—give the maximum amounts allowed by law.

Nor are the four justifications for restraining the expressive element of contributions persuasive. *Buckley's* first justification for less rigorous review of contribution limits—that a contribution is "a general expression of support for the candidate and his view," but does not state "the underlying basis for support"—is flawed for two reasons. To start, a campaign message stating "I endorse Jones" is entitled to no less protection than a message stating "I support Jones because he favors low taxes and limited government." Moreover, the Court has never required a speaker to state the reason for a symbolic act, such as flag burning, in order to obtain full First Amendment protection. *See Texas v. Johnson*, 491 U.S. 397, 406, 412 (1989) (applying "the most exacting scrutiny" to reverse a conviction under Texas flag desecration statute); *United States v. Eichman*, 496 U.S. 310, 318 (1990) (applying strict scrutiny to invalidate a statute prohibiting flag burning). *See also Virginia v. Black*, 538 U.S. 343, 365 (2003) (invalidating a cross burning statute because of its *prima facie* assumption that the burning was for the purpose of intimidation rather than speech).

The second justification—that "the quantity of communication by the contributor does not increase perceptively with the size of his contribution" and is merely "a very rough index of the intensity" of support—is also unpersuasive. Again, the precedents of this Court do not require speech to be made with any reasoning, or at any particular decibel level or font size, for full First Amendment protection. Moreover, the

amount of a contribution does, indeed, show the intensity of support. If a contributor feels more strongly about candidate A than about candidate B, he may give a larger contribution to candidate A. The contribution decision is not merely binary—contribute or don't contribute—but involves a critically important intensity component as well. Publicly available data demonstrate that individual contributors do give varying amounts of money to different candidates.[7]

Even if variations in contribution amounts are "a very rough index of the intensity of the contributor's support for the candidate," the amount contributed is the *best*, if not the *only*, index of such intensity. Words spoken, events attended, or doorbells rung might also indicate intensity of support for some people, but the difference between a contributor's $100 contribution to candidate Jones versus a $2,600 contribution to candidate Smith sends a strong and quantifiable message of association and support, and can be just as

[7] For example, during the 2012 election cycle, public figures including Donald Trump, Mayor Michael Bloomberg, and Aaron Sorkin contributed varying amounts to different candidates. Mr. Trump contributed $1,000 to former Congressman Allen West while contributing the maximum amount to former Senate candidate Linda McMahon. Similarly, Mayor Bloomberg donated $1,000 to Congressman Grace Meng and the maximum contribution to Senator Tim Kaine. Mr. Sorkin contributed $1,000 to Senator Elizabeth Warren while contributing the maximum amount to former Congressman Howard Berman. *See* Federal Election Commission, *Query by Individual Contributor*, http://www.fec.gov/finance/disclosure/ advindsea.shtml (search "Donald Trump," "Michael Bloomberg," and "Aaron Sorkin") (last visited May 7, 2013).

meaningful, or more so, than wearing a button or posting a yard sign.

Third, the notion that a contribution limit "permits the symbolic expression of support . . . but *does not in any way infringe the contributor's freedom to discuss candidates and issues*," *Buckley*, 424 U.S. at 21 (emphasis added), suggests that contribution limits are allowable merely because other avenues of speech remain available. This notion discounts the central importance of contributions to the funding of *all* candidate political speech. A contributor may make a maximum contribution and continue "to discuss candidates and issues," but the coordination rules prevent such additional speech in coordination with the candidate. Speech *by the candidate*, paid for with contributions from supporters, is far more effective than the independent speech of a supporter. *Cf. FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 498 (1985) ("*NCPAC*") ("The absence of prearrangement and coordination undermines the value of the expenditure to the candidate"). Most fundamentally, the existence of alternative avenues of expression is not a justification for limiting one important avenue. For example, it is unlikely this Court would condone a statute prohibiting radio appearances by candidates so long as they could also appear on television. *Cf. Citizens United*, 558 U.S. at 326 ("We must decline to draw, and then redraw, constitutional lines based on the particular media or technology used to disseminate political speech from a particular speaker.").

Finally, the *Buckley* Court justified less rigorous review of contribution limits on the ground that "the

transformation of contributions into political debate involves speech by someone other than the contributor." 424 U.S. at 21. Again, this justification is not well reasoned. The line between "contributions" and "expenditures" is not always clear. *See Jurisdictional Statement Appendix* 7a ("[W]e acknowledge the constitutional line between political speech and political contributions grows increasingly difficult to discern"); *see also Nixon*, 528 U.S. at 405 (Breyer, J., concurring) (hypothesizing "making less absolute the contribution/expenditure line," and citing as an example candidate expenditures from personal funds which "might be considered contributions to their own campaigns"). As an example, FECA deems all expenditures made in coordination with a candidate to be "contributions" to that candidate, even when the coordinated expenditures are pure speech. *See* 2 U.S.C. § 441a(a)(7)(B)(i). Coordinated political advertising has just as much expressive content as non-coordinated advertising. And, even though statutorily exempted from the definition of contribution, 2 U.S.C. § 431(8)(B)(i), volunteer services ranging from doorbell ringing to concerts performed by volunteer rock stars are services "of value" that have an expressive component. Were Congress to treat volunteer services as "contributions," the Court's jurisprudence on contribution limits suggests they would *not* receive full First Amendment protection.

The blurred—but outcome determinative—distinction between contribution and expenditure limits pervades this Court's recent jurisprudence. In *FEC v. Colo. Republican Federal Campaign Comm.*, 533 U.S. 431, 446 (2001), this Court upheld, under the less rigorous standard of review, the coordinated

expenditure limit for political parties. It did so notwithstanding that the "contributions" at issue in that case were *core political speech*—advertisements aired by a political party committee in coordination with candidates. The Court divided on whether to deem the advertisements "contributions" or "expenditures." *Compare id.* at 456 ("scrutiny appropriate for a contribution limit"), *with id.* at 467-68 (Thomas, J., dissenting, joined by Scalia and Kennedy, J.J.) (disagreeing with characterization).

Moreover, in *McConnell v. FEC*, the Court applied the less rigorous review standard to uphold section 323 of BCRA, 2 U.S.C. § 441i(a)(1), which states: "the national committee of a political party . . . may not *solicit, receive, or direct* to another person a contribution, donation, or transfer of funds or any other thing of value, or *spend any funds*, that are not subject to the limitations, prohibitions, and reporting requirements of this Act." (emphasis added). The Court reasoned that the provision did not become an expenditure limitation merely because it "prohibit[ed] the spending of soft money." 540 U.S. at 139. "[I]t is irrelevant," the Court wrote, "that Congress chose in § 323 to regulate contributions on the demand rather than the supply side." *Id.* at 138. The Court also deemed the speech inherent in solicitation of contributions to be subject to the less rigorous standard. *Id.* at 140. *But see id.* at 266, 272 (opinion of Kennedy, J.) (criticizing the majority's denomination of section 323 as a contribution limit because it "exchanges *Buckley*'s substance for a formulaic caricature of it;" the provisions "are neither contribution nor expenditure limits, or perhaps both at once"); *id.* at 309 (Thomas, J., dissenting) (disagreeing

with conception of statute "as nothing more than a contribution limit," and lamenting "the steady decrease in the level of scrutiny applied to restrictions on core political speech"). In short, the supposition that campaign money falls neatly into the category of nonexpressive "contributions" versus expressive "expenditures" is belied by the very jurisprudence of this Court.

Notwithstanding the *Buckley* Court's focus on the rights of the contributor, the Government now contends that "the constitutionality of a contribution limit is analyzed from the perspective of the recipient, not the contributor." Appellee's Mot. Dismiss or Affirm 24 ("Gov't Motion"). It is true that one avenue of challenging contribution limits is to show that they are so severe as to prevent "candidates and political committees from amassing the resources necessary for effective advocacy." *Buckley*, 424 U.S. at 21. This Court has found this high standard met only once in 37 years, formulating a case-specific five factor test that may prove difficult to apply in future cases. *See Randall*, 548 U.S. at 253-62. As shown above (pp. 7-8), candidates and political committees rely on the *amount* of contributions to engage in core political speech, not just on their symbolic, associational value. The demanding "amassing resources" standard, however, assumes that, at any specific contribution limit, the candidate—however unknown at the outset of his candidacy—can successfully appeal to a large number of potential contributors to "amass" campaign resources. Under a regime of contribution limits—including aggregate limits—the better known candidate (usually the incumbent) has an inherent

advantage. Complaisant review of contribution limits entrenches that advantage.

C. Justices of This Court Have Repeatedly and Consistently Questioned the More Relaxed First Amendment Review of Contribution Limits.

These analytical shortcomings of the contribution-expenditure limit dichotomy have not gone unnoticed by the Justices of this Court. Four of the eight Justices participating in *Buckley* eventually rejected the dichotomy as constitutionally flawed. In *Buckley*, Chief Justice Burger and Justices Blackmun and White questioned the logic of the dichotomy. Chief Justice Burger observed that "[t]he Court's attempt to distinguish the communication inherent in political contributions from the speech aspects of political expenditures simply 'will not wash.'" 424 U.S. at 244 (Burger, C.J., concurring in part and dissenting in part). Noting that "contributions and expenditures are two sides of the same coin," he predicted that "[l]imiting contributions, as a practical matter, will limit expenditures and will put an effective ceiling on the amount of political activity that will take place." *Id.* at 241-42. Justice Blackmun reached a similar conclusion, writing that he was "not persuaded that the Court makes, or indeed is able to make, a principled constitutional distinction between the contribution limitations on the one hand, and the expenditure limitations on the other." *Id.* at 289 (Blackmun, J., concurring in part and dissenting in part). Justice White also questioned the logic. *Buckley*, 424 U.S. at 261 (White, J., concurring in part and dissenting in part). And nine years after joining the portion of

Buckley distinguishing contributions from expenditures, Justice Marshall admitted that "the distinction has no constitutional significance." *NCPAC*, 470 U.S. at 519.[8]

While the composition of the Court has changed since *Buckley*, the criticism of this bifurcated standard of review has not abated. Justice Thomas has argued

> [C]ontribution limits infringe as directly and seriously upon freedom of political expression and association as do expenditure limits. The protections of the First Amendment do not depend upon so fine a line as that between spending money to support a candidate or group and giving money to the candidate or group to spend for the same purpose. In principle, people and groups give money to candidates and other groups for the same reason that they spend money in support of those candidates and groups: because they share social, economic, and political beliefs and seek to have those beliefs affect governmental policy. I think the *Buckley* framework for analyzing the constitutionality of campaign finance laws is deeply flawed.
>
> . . . [T]here is no constitutionally significant difference between campaign contributions and expenditures: Both forms of speech are central

[8] While Chief Justice Burger and Justice Blackmun advocated full First Amendment protection for contributions, Justices White and Marshall advocated greater regulation of expenditures. All four agreed that the distinction between contributions and expenditures was not material to First Amendment analysis.

> to the First Amendment. Curbs on protected speech, we have repeatedly said, must be strictly scrutinized.

Colo. Republican Fed. Campaign Comm. v. FEC, 518 U.S. 604, 640 (1996) (Thomas, J., concurring in part and dissenting in part).[9] Justice Kennedy has also criticized this distinction, noting that "by accepting half of what Congress did (limiting contributions) but rejecting the other (limiting expenditures)," *Buckley* created a "half-way house" and a "misshapen system [that] distorts the meaning of speech." *Nixon*, 528 U.S. at 407, 410; *see also McConnell*, 540 U.S. at 311 (Kennedy, J., concurring in part and dissenting in part) (referring to the less rigorous review of contribution limits in *Buckley* as "[u]nworkable and ill advised").[10]

[9] *See also, e.g.*, *Beaumont*, 539 U.S. at 164 (Thomas, J., dissenting) (stating that "campaign finance laws are subject to strict scrutiny," and "under strict scrutiny, broad prophylactic caps on . . . giving in the political process are unconstitutional"); *Randall*, 548 U.S. at 266 (Thomas, J., joined by Scalia, J., concurring on the judgment) ("I adhere to my view that this Court erred in *Buckley* when it distinguished between contribution and expenditure limits.").

[10] In *Randall*, two Justices noted that the parties did not challenge the *Buckley* framework. 548 U.S. at 263 (Alito, J., concurring in part); *id.* at 264 (Kennedy, J., concurring in the judgment).

D. *Stare Decisis* Does Not Justify Adherence to the Unworkable and Ill-Advised Complaisant Review of Contribution Limits.

Stare decisis does not compel adherence to the "half-way house" of *Buckley*. In determining whether to follow the policy of *stare decisis*, this Court considers the workability of the prior decision, the age of the precedent, the reliance interests in the precedent, practical experience after the decision was handed down, and "of course, whether the decision was well reasoned." *Montejo v. Louisiana*, 556 U.S. 778, 792-93 (2009). But "*stare decisis* is neither an inexorable command, nor a mechanical formula of adherence to the latest decision, especially in constitutional cases." *Citizens United*, 558 U.S. at 377 (Roberts, C.J., concurring) (quotations omitted). Instead, it is a prudential policy that "promotes evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). This Court has a "considered practice" not to apply this policy "as rigidly in constitutional as in nonconstitutional cases," *Glidden Co. v. Zdanok*, 370 U.S. 530, 543 (1962), because "corrective action [in constitutional cases] through legislative action is practically impossible." *Payne*, 501 U.S. at 828 (citing *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 407 (1932) (Brandeis, J., dissenting)). Thus, "[t]his Court has not hesitated to overrule decisions offensive to the First Amendment." *Citizens United*, 558 U.S. at 363 (citation omitted).

Accordingly, *amicus* Senator Mitch McConnell urges the Court to reconsider the application of less rigorous scrutiny for contribution limits, and to accord full First Amendment protection to contributions by applying strict scrutiny to all contribution limits.

E. Even If the Court Does Not Reconsider "Closely Drawn" Scrutiny for All Contribution Limits, Strict Scrutiny Is Appropriate for Aggregate Limits.

As shown, the justification for lower scrutiny of contribution limits simply "does not wash." But even if this Court declines to revisit the use of "closely drawn" scrutiny for all contributions, it should apply strict scrutiny to the aggregate limits at issue here.

First, even without the aggregate limits, the individual contribution limits are sufficient to address concerns about *quid pro quo* corruption. Those limits prevent any contributor from making direct contributions to any candidate, political committee, or national or state party committee in an amount likely to cause actual or apparent corruption. The direct transaction with the candidate—the purported "money for political favors"—underlies both the contribution limits themselves and the First Amendment review of those limits. *See NCPAC*, 470 U.S. at 497 ("Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns."). As a result, the justification for an aggregate limit—however phrased—differs in a material sense from the justification for limits on direct contributions. *Cf.*

Jurisdictional Statement Appendix 10a ("Yet if anything is clear, it is that contributing a large amount of money does not *ipso facto* implicate the Government's anticorruption interest. The Government's assertion that large contributions 'could easily exert a corrupting influence on the democratic system' and would present 'the appearance of corruption that is "inherent in a scheme of large individual financial contributions"' simply sweeps too broadly.").

Second, the Court has explained that "the level of scrutiny is based on the importance of the 'political activity at issue' to effective speech or political association." *Beaumont*, 539 U.S. at 161. The effect of the aggregate limits is to prohibit association with additional candidates or political committees once the contributor reaches the aggregate limit. Even if a limit on the *amount* of money a contributor may give to a particular candidate is but a "marginal restriction" on the contributor's right to associate with *that* candidate, the aggregate limits go further. Once the contributor reaches the threshold through association with other candidates, the aggregate limits *prohibit association* with *additional* candidates. Thus, the aggregate limits do more than *restrict* association; they *prohibit* it outright, and should be reviewed under strict scrutiny. If so reviewed, the aggregate limits offend the First Amendment and must fall.

II. THE AGGREGATE LIMIT ON INDIVIDUAL CONTRIBUTIONS TO CANDIDATES OFFENDS THE FIRST AMENDMENT.

The aggregate limit on individual contributions to federal candidates has no legitimate purpose and cannot withstand even "closely drawn," much less strict, scrutiny. Section 441a(a)(3)(A) provides that, during each biennial election cycle, "no individual may make contributions aggregating more than—(A) [$46,200] in the case of contributions to candidates and the authorized committees of candidates." Congress has determined, in provisions not at issue here, that an individual may contribute up to $2,600 per election to any federal candidate without corrupting or appearing to corrupt that candidate. In compliance with that non-corrupting limit, the aggregate limit allows an individual to give full support, by contributing the maximum $5,200 ($2,600 each for primary and general elections), to only 17 federal candidates per election cycle. Support of *any* candidate at *any* level once the $48,600 level is reached is a crime, punishable by up to five years in prison. 2 U.S.C. § 437g(d)(1)(A)(i).

A. Section 441a(a)(3) Abridges the Rights of Speech and Association.

Once a contributor has exhausted the aggregate limit, Section 441a(a)(3) prohibits any further financial association with any other candidate. Recent decisions recognize that an outright prohibition on contributions does not pass even the complaisant standard of *Buckley*. In *Green Party of Connecticut v. Garfield*, 616 F.3d 189 (2d Cir. 2010), the Second Circuit upheld Connecticut's ban on political contributions by state

contractors because of a recent bribery scandal involving contractors, but struck down a ban on political contributions by lobbyists because "the recent corruption scandals had nothing to do with lobbyists," *id.* at 206, and a ban "cuts off even 'the symbolic expression of support evidenced by' a small contribution," *id.* (quotation omitted). Similarly, in *Lavin v. Husted*, 689 F.3d 543 (6th Cir. 2012), the Sixth Circuit struck down Ohio's ban on political contributions by Medicaid providers because the State lacked evidence that Medicaid providers had been involved in bribery, and "the contribution ban is not closely drawn." *Id.* at 548. In both decisions, the courts emphasized that an outright ban on contributions, and the speech and association that they represent, could not be deemed "closely drawn."

B. No Justification for the Aggregate Limit on Contributions to Candidates Can Salvage It.

It is true that the Court in *Buckley* upheld the then-existing $25,000 aggregate limit. But in *Buckley*, the aggregate limit had *not* "been separately addressed at length by the parties." 424 U.S. at 38. The Court upheld it as a "quite modest restraint upon protected political activity" which "serve[d] 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 contributions to the candidate's political party." *Id.* As Appellants point out, Congress has thoroughly addressed the concerns about evasion of the candidate

contribution limit in multiple ways.[11] First, the statutory earmarking provision attributes all earmarked contributions back to the earmarking contributor. 2 U.S.C. § 441a(a)(8). Second, Congress has limited the proliferation of contributions to affiliated committees. 2 U.S.C. § 441a(a)(7). Third, it has imposed limits on contributions to party committees. 2 U.S.C. § 441a(a)(1)(B), (D).

The aggregate limit on contributions to candidates serves no legitimate purpose. First, it does not prevent *quid pro quo* corruption. In response to a colleague's argument against raising the aggregate limit during legislative debate on BCRA, Senator Thompson responded "[n]o one person is receiving more than $2,500. *So you don't have a corruption issue.*" 147 Cong. Rec. 4585, 4631 (2001) (emphasis added). The very same reasoning undermines the entire aggregate limit.

Second, the Government's hypothesis that the aggregate limit prevents evasion of the contribution limit to individual candidates does not withstand analysis. Any "directly or indirectly" earmarked contributions channeled through one candidate or committee to another candidate is deemed a contribution to the designated candidate, 2 U.S.C. § 441a(a)(8), thus limiting the contributor to a single $2,600 contribution. In view of this earmarking provision, a contributor may do no more than *hope* his contributions to other candidates end up in the hands of his preferred candidate. It is, of course, unrealistic to

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[11] Brief for Appellant McCutcheon 41-43; Brief for Appellant RNC 19-24.

think that a contributor to numerous candidates could, without "directly or indirectly" saying anything, telepathically "will" those contributions into the hands of a single preferred candidate. Each candidate that received a $2,600 contribution from the individual would need to make independent decisions whether to keep the money for his or her own campaign, or transfer it to another candidate, and if so to which candidate.

Also, since *Buckley*, so-called "Super PACs" may now accept unlimited contributions from individuals for purposes of independent expenditures supporting a specific candidate.[12] During the 2012 election cycle, several candidates for President benefitted from such independent Super PACs. Restore Our Future raised and spent $142 million in support of Mitt Romney and against Barack Obama, Rick Santorum, and Newt Gingrich.[13] Priorities USA Action raised and spent $65.2 million in support of Barack Obama and against Mitt Romney.[14] Winning Our Future raised and spent $17 million in support of Newt Gingrich and against

[12] *See* Center for Responsive Politics, *Super PACs*, http://www.opensecrets.org/pacs/superpacs.php?cycle =2010 (last visited May 7, 2013).

[13] *See* Center for Responsive Politics, *Winning Our Future Independent Expenditures*, http://www.opensecrets.org/pacs/indexpend.php?strID=C00490045&cycle=2012 (last visited May 7, 2013).

[14] *See* Center for Responsive Politics, *Priorities USA Action Independent Expenditures*, http://www.opensecrets.org/pacs/indexpend.php?strID=C00495861&cycle=2012 (last visited May 7, 2013).

Mitt Romney and Barack Obama.[15] Whatever salutary effect the aggregate limit might have had at one time in limiting individuals from channeling contributions to benefit particular candidates, it is now clear that the aggregate limit has failed.

If the earmarking restriction were ineffective—which *amicus* doubts—contributors so inclined may already channel numerous $2,600 contributions through multiple candidate committees to a single preferred candidate, in full compliance with the $48,600 candidate aggregate limit and the $123,200 total aggregate limit. Without violating the aggregate limit—and setting aside the earmarking restriction—an unscrupulous contributor could channel to a preferred candidate *over 18 times* the maximum $2,600 candidate contribution through candidate committees, or by using political committees and parties *over 47 times* the $2,600 limit. Yet, apart from the wholly distinguishable and unpersuasive "tally program" example,[16] the Government has submitted *no*

[15] *See* Center for Responsive Politics, *Winning Our Future Independent Expenditures*, http://www.opensecrets.org/pacs/indexpend.php?strID=C00507525&cycle=2012 (last visited May 7, 2013).

[16] In its Motion To Dismiss or Affirm, the Government relied, as it has repeatedly over the years, upon the DSCC's "tally" program from two decades ago. Gov't Motion 18, 20. In August 1995, however, the DSCC entered a Conciliation Agreement, admitting that the tally program violated the earmarking provision (but not the aggregate limits). *In the Matter of Democratic Senatorial Campaign Committee, et al.*, MUR No. 3620 (Aug. 16, 1995), found at p. 687 of http://www.fec.gov/disclosure_data/mur/3620.pdf. The DSCC agreed to pay a $75,000 penalty, refund or forward the

evidence whatsoever that any such channeling of contributions *is* occurring or *has ever* occurred. This must mean either that the earmarking restriction *is effective*—as it was to stop the abusive "tally program"—or that contributors are *not* inclined to channel contributions through other entities to their preferred candidates. Absent evidence of a real problem, the aggregate limits must fail. *See Turner Broad. Sys. v. FCC*, 512 U.S. 622, 664 (1994) (Government bears the burden of proving "that the recited harms are real, not merely conjectural").

The Government has also suggested that some (but not all) candidates in "safe" districts sometimes transfer money to candidates in "competitive" districts. Gov't Motion 20. But this suggestion is a far cry from sufficient proof. A contributor wishing (without saying so) to channel multiple candidate contributions to a preferred candidate may or may not prefer a candidate in a competitive district. Further, each cycle there are many competitive districts,[17] so even if the contributor intended a transfer to a competitive race, the contributor would have only a slight chance that his

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designated contributions, engage in training programs for its staff, and use standard solicitation language. The FEC recently rescinded the Agreement because of the DSCC's compliance. Federal Election Commission, *MUR 3620 (Democratic Senatorial Campaign Committee) – Request to Modify Conciliation Agreement*, Agenda Doc. No. 12-79 (Nov. 9, 2012), *available at* http://www.fec.gov/agenda/2012/mtgdoc_ 1279.pdf.

[17] *See, e.g.*, The Cook Political Report, *2012 House Race Ratings for November 1, 2012*, http://cookpolitical.com/house/ charts/race-ratings/5084 (last visited May 7, 2013) (listing 65 House of Representative races as "competitive").

contribution would be transferred to the precise race he or she wanted. And the notion that *many* transferring candidates would independently choose to transfer the contributor's money to the *same* preferred candidate makes the suggestion wholly fanciful. Finally, it bears noting that any amounts transferred would be from the transferring committee's undifferentiated account containing all contributions received during the cycle, not just the single contribution from this unscrupulous contributor.

Also in its Motion To Dismiss or Affirm, the Government recites the dairy industry's funneling of contributions through "hundreds of committees in different States, 'which could then hold the money for the President's reelection campaign.'" Gov't Motion 2-3 (citing *Buckley v. Valeo*, 519 F.2d 821, 839, n.36 (D.C. Cir. 1975) (*per curiam*), *aff'd in part and rev'd in part*, 424 U.S. 1 (1976)). Congress has already addressed, in a more direct way, this threat of multiple committees affiliated with the same candidate. The $2,600 limit on contributions by an individual and the $5,000 limit on contributions by multicandidate political committees apply to contributions to "any candidate and [all] his authorized political committees." 2 U.S.C. §§ 441a(a)(1)(A), 441a(a)(2)(A) (emphasis added). The aggregate limit plays no role in addressing this concern because contributions to any and all committees of the same candidate are already subject to a single limit.

Although relying primarily on the evasion rationale, the Government obliquely acknowledges that the real purpose of the aggregate limit is to reduce the influence of large contributors. The Government quotes the legislative history from 1974, when the original

aggregate limit was enacted. Gov't Motion 2. There, Congressman Brandemas said the aggregate limit was intended to "curtail the influence of excessive political contributions by any single person." 120 Cong. Rec. 27, 224 (1974). The legislative history of BCRA also strongly suggests that "leveling the playing field" was at least one consideration behind this limit. *See* 147 Cong. Rec. 4585, 4625 (2001) (statement of Sen. Feingold) (criticizing a $100,000 aggregate limit as "a staggering sum to most people . . . this bill is about lessening the influence of money on politics. It is not about increasing it."); 147 Cong. Rec. 4585, 5198 (2001) (statement of Sen. Kerry) ("This increase [in the aggregate limits] simply enables the tiniest percentage of the population that currently contributes large contributions to contribute even more. This increase does nothing at all to increase the role the average voter plays in our election process.").

Since *Buckley*, it has been firmly established that "leveling the playing field" or equalizing speech is not a legitimate basis for campaign finance regulation. As the *Buckley* Court put it: "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." 424 U.S. at 48-49; *see also Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2825 (2011) ("We have repeatedly rejected the argument that the government has a compelling state interest in 'leveling the playing field' that can justify undue burdens on political speech"); *Citizens United*, 558 U.S. at 341; *Davis*, 554 U.S. at 741-42.

The Government suggests that "contribution limits, unlike expenditure limits, are not speech-equalization measures" because contributors remain free to spend independently to promote candidates. As the quotations from the legislative history show, however, Congress *did* view aggregate limits as "speech equalization measures." By limiting the total amount of direct candidate support any one individual can provide in any two year period, the aggregate limits certainly have that effect. And, as the Court has held for four decades, contributions contain an element of speech, meaning equalization is no more appropriate to justify contribution limits than it is to justify expenditure limits.

The Government next suggests that the concern is not with equalization, but with "improper influence" resulting from a single contributor making a large dollar value of contributions to different candidates. Gov't Motion 13. This is not, however, the "improper influence" of a direct contribution to a candidate, which might threaten *quid pro quo* corruption. Rather, it is the "improper influence" purportedly garnered by a large contributor from a grateful party establishment. This Court has now made clear that such "ingratiation" is not corruption and thus not sufficient to sustain a restraint on First Amendment freedoms. *Citizens United*, 558 U.S. at 360 ("Ingratiation and access, in any event, are not corruption.").

In short, it is far too late in the day for the Government to argue that any restriction on campaign speech or association may be justified by concerns about "too much money in politics" or "leveling the playing field." Yet, with the existing prophylaxis

against earmarked contributions, there can be no other justification for the aggregate limit on individual contributions to candidates. Accordingly, the $48,600 aggregate limit on contributions to candidate committees must fall.

III. AGGREGATE LIMITS ON INDIVIDUAL CONTRIBUTIONS TO NON-CANDIDATE POLITICAL COMMITTEES OFFEND THE FIRST AMENDMENT.

Section 441a(a)(3)(B) sets an aggregate limit of $74,600 "in the case of other contributions, of which not more than [$48,600] may be attributable to contributions to political committees which are not political committees of national political parties." An individual may contribute no more than $32,400 to any national political party in any calendar year. The aggregate *biennial* limit for individual contributions to all political committees is $74,600. This $74,600 limit encompasses individual contributions to *all six* national party committees, *all* state parties, and *all* unaffiliated political committees (including the separate segregated fund established by the contributor's employer).

This scheme means that an individual could give $64,800 ($32,400 multiplied by two) to a single national party committee over two years, and then have a total of only $9,800 in that election cycle to give to all other national party committees, any state party committees, any multi-candidate committee, and his or her employer's separate segregated fund. As shown (Part I above), strict scrutiny is appropriate, but these aggregate limits cannot pass even "closely drawn" scrutiny.

Multi-candidate political committees that are not party committees confront annual limits, not changed in four decades, of $5,000 on contributions they can *accept* from individuals, $5,000 on contributions they can *make* to candidates or other committees, and $15,000 on contributions they can *make* to national party committees. 2 U.S.C. §§ 441a(a)(1)(C); 441a(a)(2)(A), (C), (B). The notion that a contributor could "contribute massive amounts of money to a particular candidate" in increments of $5,000 when it is illegal to instruct or suggest that the political committee direct those funds is too speculative to warrant serious consideration.

A. The Aggregate Limit on Contributions to National Political Party Committees Is Not Closely Drawn To Serve Any Government Interest.

The risk of evasion—channeling "massive amounts" of money to individual candidates—is fanciful for donations to national political parties. The prohibition against earmarking is fully applicable to contributions made to such party committees, as demonstrated by the successful enforcement action against the DSCC's "tally program." *See* p. 27, n.16 above. Further, the Act ties together the coordinated expenditure limits of national and state political party committees for both Senate and House races. *See* 2 U.S.C. §§ 441a(d)(1), (3). For senatorial candidates, the statute further addresses the prospect of channeling by limiting contributions to $45,400 per Senate candidate by "any combination of [national party] committees." 2 U.S.C. § 441a(h). Congress expressly allows the separate national and state party committees to donate up to

$5,000 per calendar year to House candidates. *See* 2 U.S.C. §§ 441a(a)(2)(C), 441a(a)(5)(B). While theoretically possible for a state party to contribute to a House or Senate candidate in another state, the primary focus of most state parties is on candidates within their home states. The likelihood of indirect contributions through state parties on a large scale is quite small.[18] Thus, a contributor wishing to use national political party committees or state political party committees to evade the individual contribution limit will be sorely disappointed.

More fundamentally, each of those party committees has its own electoral priorities—House, Senate, Presidential, as well as state and local offices.[19] Without earmarking, it seems a wildly speculative investment to contribute money to numerous state parties on the mere hope that some substantial portion will end up with a single preferred candidate.

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[18] A review of the 2012 contributions of Republican and Democratic state party committees from California, Florida, Ohio, Pennsylvania, Texas, and Virginia revealed only one instance in which a state party contributed to a House candidate in another state. *See* FEC, *Candidate Committee Viewer*, http://www.fec.gov/finance/disclosure/candcmte_info.shtml (search "Ohio Republican Party," select "2012" from "Two-Year Period" dropdown menu, and follow "Contributions to Committees" hyperlink) (transfer of $5,000 by the Ohio Republican Party to Luke Messer for Congress, representing Indiana's 6th congressional district).

[19] BCRA requires use of funds subject to FECA's limits for a broad range of state electoral activity. 2 U.S.C. § 441i(b); *McConnell*, 540 U.S. at 161-62.

The Government has contended that, absent the aggregate limit, a contributor could make the maximum non-corrupting contributions to each of the affiliated party committees in a total amount of $3.5 million. Gov't Motion 13. Make no mistake: the concern is *not* about *channeling* contributions through these committees to a preferred candidate. The real concern is with the *raw amount of money* a single individual could contribute in the absence of the aggregate contribution. This attempt to justify the aggregate limit as a naked restraint on too much individual speech is an affront to the First Amendment. Even at this extreme, however, $3.5 million would be only about 0.1% of the $3.1 billion spent during the 2012 election cycle on federal elections.[20]

It is true, of course, that political party committees may transfer money among themselves, *see* 2 U.S.C. § 441a(a)(4), but such transfers do not materially increase the risks purportedly addressed by the aggregate limit. As shown above, *see supra* pp. 33-34, coordinated expenditure limits of all parties are tied together, as is the limit on contributions to Senate candidates. More fundamentally, however, a contributor to political party committees has no control over where the contribution ends up, as shown by the Government's lack of proof of channeling.

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[20] *See* Center for Responsive Politics, *2012 Overview Stats at a Glance*, http://www.opensecrets.org/overview/ (last visited May 7, 2013).

B. The Aggregate Limit on Contributions to Other Political Committees Is Not Closely Drawn To Serve Any Government Interest.

BCRA subdivides the aggregate limit for political committees by imposing a $48,600 biennial limit on contributions to political committees that are not national political parties. As shown (Part III.A. above), this subsidiary limit would be fully consumed if the contributor opted to give $74,600 in an election cycle to national party committees. Any further contribution to a state political party, his or her employer's separate segregated fund, or an unaffiliated political committee would be a crime.

Alternatively, if the contributor eschews contributions to national party committees, and donates up to the subsidiary limit of $48,600 applicable to political committees that are not national committees, the contributor will be forbidden from contributing to any other such committees. For example, if a contributor gave $5,000 per year to his or her employer's separate segregated fund ($10,000 over two years), $10,000 per year to his or her state political party ($20,000 over two years), and three donations of $5,000 apiece over a two year period to other multi-candidate political committees (totaling $15,000), the contributor would be very close to exhausting the subsidiary aggregate limit.

A politically active contributor with a passion for several issues such as low taxes, marijuana legalization, gun rights, fetal rights, health care, immigration reform, and national security will quickly

find the aggregate limit constraining. The right to associate with state and local party committees, issue-oriented political committees, and employer separate segregated funds is thus infringed, as is the ability of the contributor to have his or her voice fully heard as part of these groups. The aggregate limit also infringes the right of the political committees to receive the contributions and to convert those contributions into core political speech.

The Government argues that the greater number of political committees in existence today, and the greater ease in learning which candidates they support, make channeling contributions to candidates "even easier now than it was when *Buckley* was decided." Gov't Motion 12. Each of the two political committees cited as examples, however, support *scores* of candidates. In the 2012 cycle, NARAL announced support for 5 Senate and 36 House candidates and EMILY's List contributed to a total of 64 federal candidates. [21] This activity makes it impossible for a contributor to predict which candidate will benefit from his or her $5,000 contribution. Thus, the Government's best examples refute its argument.

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[21] *See* Press Release, NARAL Pro-Choice America, *NARAL Pro-Choice America PAC Announces New Endorsements in Key House, Senate Contests To End War on Women* (April 3, 2012), *available at* http://www.prochoiceamerica.orgelections/elections-press-releases/2012/pr04032012_pac-endorsements.html (last visited May 7, 2013); Center for Responsive Politics, *Emily's List: All Recipients*, http://www.opensecrets.org/orgs/recips.php?id=d0000 00113 (contributions to President Obama and 50 House and 13 Senate candidates) (last visited May 7, 2013).

CONCLUSION

For the reasons set forth above, and in the briefs of Appellants RNC and McCutcheon, *amicus* Senator McConnell urges the Court to revisit the bifurcated standard of review for contribution and expenditure limits, hold that strict scrutiny applies to both, and hold that all aggregate contribution limits in BCRA are invalid under the First Amendment.

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