

Opinion: Dropping the second shoe on election spending

April 2, 2014, 5:31 PM Last updated: Wednesday, April 2, 2014, 5:31 PM
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The Record



AP Photo / Susan Walsh

Demonstrators gather outside the Supreme Court as the court heard arguments on campaign finance last fall.

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ON WEDNESDAY the five-man U.S. Supreme Court majority dropped the second shoe hard on the notion of political democracy. The first shoe was dropped four years ago in the Citizens United case, when the five men allowed unlimited spending even by business corporations to elect candidates to office so long as the expenditures were not coordinated with a candidate or political party.

This time the court, in the McCutcheon case opened the floodgates for the wealthy even further by holding that aggregate limits on political contributions directly to candidates violated the constitutional rights of the well-heeled.

(I use the gender of the conservative justices deliberately, since the three women on the court all dissented. The only other woman to ever sit on the court, the retired Sandra Day O'Connor, would almost surely have also dissented in this week's case based on her voting record.)

Until this week, the law allowed any individual to contribute a total of \$123,200 to candidates and parties over a two-year cycle. That was in addition to the unlimited contributions to Political Action Committees and other entities engaging in so-called "independent" expenditures. I say so-called independent expenditures because the definition of "independent" is so loose that it allowed Rick Perry's former campaign manager to resign and set up an "independent" PAC to "independently" operate to elect Rick Perry president.

But, obviously, a contribution limit of \$123,000 was far too restrictive in the eyes of the court majority.

The new ruling did not change the maximum contribution limit to individual federal candidates, which remains at \$2,600 per year, or the limits for each of the state and federal party committees.

But with the aggregate limits gone, a civic-minded citizen (or at least one with unlimited wealth) can now contribute up to \$3,628,000 per election cycle to support the candidates of their favored party.

That works as follows: \$2,262,000 to candidates for the House of Representatives, \$171,000 to 33 Senate candidates, \$1,000,000 to state party committees and \$194,000 to national party committees.

Now this might seem like an awful lot of work for Mr. Big to sit down and write out 435 checks to House candidates and 33 checks to Senate candidates, in addition to the individual checks to the proliferating party committees. But do not fret. They can actually write a single check for the \$3,628,000 to a joint committee established by the party and let the party distribute the funds in accordance with the legal formula.

But we are still not yet finished. Do not forget the political action committees. Yes, there is a limit of \$5,000 per year in contributions from any person to a PAC, but there is no limit to the number of PACs. So if there are 200 PACs favorable to one party's candidates, our lucky donor can send them each \$10,000 over the election cycle, for a grand total of \$2,000,000.

And, of course, there is little to prevent the dispensers of those funds to lavish them on the party's most needy candidates despite the individual contribution limits from any single donor.

And don't forget, this is all in addition to donations to groups making those so-called "independent expenditures."

This is what the free-spending five justices call free speech and democracy. And it is based on the notion that the only theory under which Congress can limit political contributions under the First Amendment is to prohibit what the justices call quid pro quo corruption, which is basically bribery.

How could massive financial support of one party's candidates for office possibly corrupt our democracy?

Why should the successful recipients of this largesse have any special obligation to their major financial backers? Why should they pay any more attention to the solicitations and needs of those folks than to those of any other constituent?

As former Congressman Barney Frank once commented, "Elected officials have to be the most ungrateful people in the world; they can spit in the eye of their benefactors."

Moreover, where do those justices get the idea that what they view as preventing corruption is the only value underlying the First Amendment? What about the notion of political equity? Once

upon a time, another Supreme Court said it was “one person, one vote.” Does that now boil down to “a million dollars, a million votes” — or the equivalent thereof?

