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The Court Follows the Money

By THE EDITORIAL BOARD APRIL 2, 2014

The Supreme Court on Wednesday continued its crusade to knock down all barriers to the distorting power of money on American elections. In the court's most significant campaign-finance ruling since *Citizens United* in 2010, five justices voted to eliminate sensible and long-established contribution limits to federal political campaigns. Listening to their reasoning, one could almost imagine that the case was simply about the freedom of speech in the context of elections.

"There is no right more basic in our democracy," Chief Justice John Roberts Jr. wrote in the opening of his opinion for the court in *McCutcheon v. Federal Election Commission*, "than the right to participate in electing our political leaders."

But make no mistake, like other rulings by the Roberts court that have chipped away at campaign-finance regulations in recent years, the *McCutcheon* decision is less about free speech than about giving those few people with the most money the loudest voice in politics.

Congress passed laws in the wake of the Watergate scandal capping the amount an individual may contribute to any one federal candidate to \$5,200 per two-year election cycle, and also capped the total contributions to all candidates and political party committees for federal races at \$123,200. The limits were intended to prevent corruption or the appearance of corruption.

Five conservative members of the court agreed that the aggregate limits violated "the most fundamental First Amendment activities" a citizen may exercise. Four of them voted to leave the per-candidate limit in place, but Justice Clarence Thomas would have gone even further, striking down all contribution limits as unconstitutional.

As a result of Wednesday's ruling, an individual donor will now be able to contribute as much as \$3.6 million per election cycle (the sum of maximum donations to all national and state party committees and a party's presidential and Congressional candidates). This money can then be funneled to specific campaigns through the use of joint fund-raising committees, effectively nullifying the per-candidate limit. Chief Justice Roberts blithely rejected such a scenario as "speculation," and he ignored political reality by confining the meaning of corruption to instances of "quid pro quo," or the direct exchange of money for political favors.

But the interest of Congress in preventing political corruption has long been "far broader" than merely forbidding bribery, as Justice Stephen Breyer argued in dissent. It includes an interest in controlling influence over and access to politicians.

And the per-candidate cap on its own, Justice Breyer wrote, is no more than "a remnant incapable of dealing with the grave problems of democratic legitimacy that those laws were intended to resolve."

The real losers in the McCutcheon case are the vast majority of average Americans without barrels of cash to dump on elections. Even the now-invalidated aggregate caps were extremely high, and only very few contributors ever reached them. In 2012, 1,715 donors gave the maximum to political party committees, and 591 gave the maximum to candidates.

Thanks to Wednesday's decision, the interests of the very few wealthiest Americans — which differ significantly from those of most Americans — will now get even more outsize consideration by legislators. As former Senator Alan Simpson testified in an earlier campaign-finance case, "Who, after all, can seriously contend that a \$100,000 donation does not alter the way one thinks about — and quite possibly votes on — an issue?"

The court took pains to emphasize that the per-candidate limit remained intact, but that is a fig leaf when someone can write a check for millions to be used as party bosses see fit. Either way, it will not be long before the constitutionality of that limit, too, comes before the court.

When Chief Justice Roberts was named to the Supreme Court in 2005, he pledged to embody the "judicial restraint" so beloved, at least in name, by conservatives. Yet his court's campaign-finance rulings have determinedly eaten

away at the court's own precedents and decades of anticorruption efforts by members of Congress who, unlike the justices, understand intimately how money in politics actually works.

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A version of this editorial appears in print on April 3, 2014, on page A26 of the New York edition with the headline: The Court Follows the Money.

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