No. 12-536

In The Supreme Court of the United States

SHAUN MCCUTCHEON
AND
REPUBLICAN NATIONAL COMMITTEE,

Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee.

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

BRIEF OF THE NATIONAL REPUBLICAN SENATORIAL COMMITTEE AND NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE SUPPORTING PLAINTIFFS-APPELLANTS

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CORPORATE DISCLOSURE

The National Republican Senatorial Committee and the National Republican Congressional Committee are both unincorporated associations, so no corporations are involved.

INTERESTS OF *AMICI CURIAE*[1]

Amici curiae are two national political party committees whose activities and methods of fundraising are directly impacted by the provisions of law at issue in this matter.

The National Republican Senatorial Committee ("NRSC") is the principal national political party committee focused on electing Republican candidates to the United States Senate. Members of the NRSC include all incumbent Republican Members of the United States Senate. The Chairman of the NRSC is elected every two years by the Republican Senate caucus, and members are appointed by the Senate Republican Conference Committee. The NRSC is registered with the Federal Election Commission ("FEC") as a "political committee," and is recognized by the FEC as a national political party committee.

The National Republican Congressional Committee ("NRCC") is the principal national political party committee focused on electing Republican candidates to the United States House of Representatives. Members of the NRCC include all incumbent Republican Members of the United States House of Representatives. The NRCC is governed by

[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members, or their counsel made a monetary contribution toward its preparation or submission. Counsel for the parties received timely notice of the intent to file this brief and have consented to its filing.

a Chairman and an Executive Committee composed of Republican members of the U.S. House of Representatives. The NRCC is registered with the FEC as a "political committee," and is recognized by the FEC as a national political party committee.

Both amici have participated in numerous campaign finance cases in the course of their respective histories, and both are subject to regulation as national political party committees by the FEC.[2]

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[2] *See, e.g.*, *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001) (National Republican Congressional Committee as *amicus curiae*); *Democratic Senatorial Campaign Comm. v. FEC,* 139 F.3d 951 (D.C. Cir. 1998) (National Republican Senatorial Committee as *amicus curiae*); *FEC v. National Republican Senatorial Comm.*, 966 F.2d 1471 (D.C. Cir. 1992).

SUMMARY OF ARGUMENT

The individual aggregate biennial contribution limits (the "aggregate limits") should be held unconstitutional. Based on this Court's precedent, there is no cognizable governmental interest that adequately justifies the imposition of the aggregate limits on either donors or the political committees that operate subject to those limits. The aggregate limits challenged in this litigation impose a severe burden on political parties, candidates, and donors without constitutional justification. The aggregate limits were never intended to serve an independent anti-corruption interest, nor have they operated in such fashion. Rather, the original aggregate limit was implemented as an anti-circumvention mechanism before the Federal Election Campaign Act of 1971 was amended in response to *Buckley v. Valeo*. The aggregate limits cannot withstand constitutional scrutiny in light of these post-*Buckley* amendments, the subsequent adoption of significant revisions to the overall structure of the aggregate limits, and the prohibition on non-federal fundraising activities by national political party committees.

In this brief, *amici* also note for the Court that the legal nature of a candidate's relationship with the national party committees is not shaped or ultimately controlled by the aggregate limits. Specifically, the party coordinated expenditure limitations and direct contribution limits from national party committees to their candidates are the operational limitations that shape that relationship. Additionally, while much has been made of the possibility of using candidate-to-

candidate contributions as a means of circumventing the base contribution limits to candidates, these candidate-to-candidate contributions are actually strictly limited, and existing anti-circumvention provisions eliminate the possibility of using such contributions as a means of circumventing the base limits.

Finally, as organizations with significant experience in joint fundraising, *amici* bring to the Court's attention the highly regulated process of creating and operating a joint fundraising committee. The extensive operational requirements of a joint fundraising committee are outlined in Federal Election Commission regulations, private agreements between the parties, and public disclaimers, all of which make plain that the base contributions limits to candidates must be strictly observed by a joint fundraising committee.

These several considerations demonstrate that the aggregate limits at issue here are not constitutionally justified, and should be held to violate the First Amendment.

ARGUMENT

I. THE AGGREGATE LIMITS ON CONTRIBUTIONS TO NATIONAL PARTY COMMITTEES IMPOSE A SEVERE AND UNCONSTITUTIONAL BURDEN

The Federal Election Campaign Act of 1971, as amended, ("FECA") provides that "[t]he term 'national committee' means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the [Federal Election] Commission." 2 U.S.C. § 431(14). The Republican and Democratic Parties each maintain three organizations that qualify as national party committees under FECA: the Republican National Committee ("RNC"); the Democratic National Committee ("DNC"); the National Republican Senatorial Committee ("NRSC"); the Democratic Senatorial Campaign Committee ("DSCC"); the National Republican Congressional Committee ("NRCC"); and the Democratic Congressional Campaign Committee ("DCCC").

Buckley v. Valeo, 424 U.S. 1, 38 (1976), upheld the original FECA's $25,000 aggregate federal funds contribution limit to all federal committees. This single aggregate limit had no application to non-federal (that is, state-regulated) funds, which national party committees later raised and spent. Following *Buckley*, Congress amended FECA to impose restrictions on earmarking contributions and include rules designed to prevent the proliferation of

affiliated committees, but nevertheless maintained the aggregate limit on federal funds contributions. *See* FECA Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475, 487-88 (1976). In 2002, the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81, 101-03 (2002) ("BCRA"), prohibited national party committees from raising and spending non-federal dollars altogether, and imposed the current aggregate limits.[3] After nearly a decade of operating under the aggregate limits, the impacted First Amendment rights of donors, candidates and political party committees are now squarely before this Court.

A. Taken Together, The Base Limits And Aggregate Limits Operate In A Manner That Unconstitutionally Infringes The First Amendment Rights Of Candidates, Political Parties, And Donors

During the 2013-2014 election cycle, an individual donor may contribute up to $32,400 per calendar year to a national party committee. 2

[3] Prior to the adoption of BCRA, all six national party committees of the Republican and Democratic parties regularly raised and spent non-federal dollars. Thus, while the base and aggregate limits restricted the amount of federal funds that the party committees could raise, they could still fund their non-federal activities with non-federal dollars that were not subject to the federal base and aggregate limits. Following BCRA's adoption, however, the national party committees were prohibited from raising or spending non-federal dollars for *any* activities, *see* 2 U.S.C. § 441i(a)(1), meaning that all party activities, whether federal or non-federal in nature, must be funded with strictly limited federal funds.

U.S.C. § 441a(a)(1)(B); Federal Election Commission Notice of Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 78 Fed. Reg. 8530, 8532 (Feb. 6, 2013) [hereinafter 2013 FEC Price Index Adjustments]. Under the base contribution limits, a party supporter *could* contribute a combined $97,200 per year to the three national committees of his or her preferred party or, conceivably, $194,400 to all six. The aggregate limits, however, prohibit this.

With the current aggregate limits in place, this same hypothetical party supporter is limited to contributing only $74,600 to *all* political party committees *and* political action committees (PACs) during the two-year, 2013-2014 election cycle. 2 U.S.C. § 441a(a)(3)(B); 2013 FEC Price Index Adjustments, 78 Fed. Reg. at 8532. If a donor wishes to support the national party committees to the fullest extent possible under the law, he or she must forego supporting *any* state party committees or PACs during the applicable two year period. The aggregate limits permit a donor to support one party's three national committees in equal amounts of approximately $24,866 per committee over two years, or approximately $12,433 per committee per year. A donor who wishes to support all three national party committees of either the Republican or Democratic Party, in roughly equal amounts, cannot come close to the allowable base limit as a result of the aggregate limits. Furthermore, as a result of this donor's support of the party's national committees, he or she is legally precluded from financially supporting any of the party's state committees, or any of the thousands of active independent PACs (excluding the so-called "Super

PACs" that make only independent expenditures, may not make contributions to candidates or parties, and which are funded by contributions that are not subject to either the base or aggregate limits).

The additional constraints that the aggregate limits place on a donor's ability to support the national party committees come at a serious cost. The three national committees serve very different functions. The NRSC, for instance, provides support and assistance to current and prospective Republican candidates for the U.S. Senate in areas of budget planning, election law compliance, fundraising, communications tools and messaging, research and strategy. The NRCC performs the same function for Republican candidates to the U.S. House of Representatives. The RNC serves yet a different function within the Republican Party – namely, it organizes the general management of the Republican Party, and promotes Republican candidates at all levels – including candidates for President, the U.S. House, the U.S. Senate, Governorships, and state legislatures. The RNC also expends considerable resources on voter registration and get-out-the-vote activities that benefit the Republican Party as a whole at the federal, state, and local levels. Thus, a donor is effectively forced to choose which of these vital aspects of the Party's operations to support. In addition, a donor who contributes to the three national party committees to the fullest extent possible under the aggregate limits may not contribute one penny to any of the 50 state party federal accounts, any of the local party committees that maintain federal accounts, or any of the independent federal PACs found throughout the nation. This result is generally inconsistent with the

notion that the First Amendment "was designed 'to secure the widest possible dissemination of information from diverse and antagonistic sources,' and 'to assume unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *See Buckley*, 424 U.S. at 49 (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 266, 269 (1964) (quoting *Associated Press v. U.S.*, 326 U.S. 1, 20 (1945), and *Roth v. U.S.*, 354 U.S. 476, 484 (1957))).

B. The Aggregate Limits Do Not Satisfy Or Serve Any Anti-Corruption Interest, And Serve Only An Anti-Circumvention Interest Already Comprehensively Met By Other Prohibitions And Restrictions

1. This Court has never held that aggregate limits serve any anti-corruption purpose unrelated to preventing circumvention

The litigants appear to dispute whether this Court has treated the aggregate limits as only an anti-circumvention device (as Plaintiffs-Appellants contend), or whether the Court has held that aggregate limits also serve an independent anti-corruption interest (as Defendant-Appellee contends). This Court's precedent supports Plaintiffs-Appellants' view. *See FEC v. Colo. Republican Fed. Campaign Comm.* (*Colorado II*), 533 U.S. 431, 461 (2001) (referring to "corruption by circumvention").

In *Buckley*, this Court upheld FECA's "overall $25,000 limitation on total contributions by an individual during any calendar year" as a means of preventing circumvention of the base limits on contributions to federal candidates. *Buckley*, 424 U.S. at 38. There is no suggestion in the Court's brief discussion of the aggregate limit that it served any anti-corruption purpose unrelated to the circumvention of "the basic individual contribution limitation." *Id.*

In an effort to cast the aggregate limits as broad anti-corruption devices that prevent corruption in their own right, both the FEC and supportive *amici* presented the District Court with a strained interpretation of this Court's holding in *California Medical Association v. FEC*, 453 U.S. 182 (1981). Both referred to language from Justice Marshall's opinion in *California Medical Association* which describes the aggregate limit as "serv[ing] the important governmental interests in preventing the corruption or appearance of corruption of the political process that might result if such contributions were not restrained." *Id.* at 195 (Marshall, J., plurality opinion), *quoted in* FEC's Opp'n to Pl.'s Mot. for Prelim. Inj. at 12-13, *McCutcheon v. FEC*, 893 F. Supp. 2d 133 (D.D.C. 2012) (No. 12-cv-1034); Mem. of Campaign Legal Ctr. and Democracy 21 as *Amici Curiae* in Opp'n to Pl.'s Mot. for a Prelim. Inj. at 15, *McCutcheon v. FEC*, 893 F. Supp. 2d 133 (D.D.C. 2012) (No. 12-cv-1034). Part III of Justice Marshall's opinion, from which the quoted language comes, was supported by only four Justices. Justice Blackmun joined Parts I, II, and IV of Justice Marshall's opinion, but did not join Part III. Thus, contrary to the representations

made to the District Court, a Supreme Court majority has never characterized the aggregate limit as an independent anti-corruption device in its own right.

2. The 1976 Amendments to FECA included comprehensive anti-circumvention protections that addressed the *Buckley* Court's concerns regarding earmarking without attribution and political committee affiliation and proliferation

The Court's reasoning in *Buckley* appears to rest on factors and possibilities that Congress subsequently considered and addressed. In response to *Buckley*, Congress adopted contribution limits for political parties and PACs, "anti-proliferation" provisions for political committees, earmarking disclosure requirements, and restrictions against contributing in the name of another – all designed to prevent circumvention of the base limits on contributions to candidates. *See* FECA Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475, 487-88 (1976). Since the enactment of these amendments, no genuine anti-corruption or anti-circumvention interest has existed to support the aggregate limit, which Congress nevertheless retained.

FECA now provides that "all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions *which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate*, shall be treated as

contributions from such person to such candidate." 2 U.S.C. § 441a(a)(8) (emphasis added). Existing law treats a contribution that is "in any way earmarked or otherwise directed through an intermediary or conduit" as a contribution from the original donor to the candidate that ultimately receives the "earmarked" or "directed" contribution. *Id.*

The political committees that the *Buckley* Court worried could funnel contributions to a particular candidate are political committees that today would be deemed "affiliated," either with that candidate, each other, or both, pursuant to 2 U.S.C. § 441a(a)(5). Section 441a(a)(5) provides that "all contributions made by political committees established or financed or maintained or controlled by any . . . person, or by any group of such persons, shall be considered to have been made by a single political committee . . . ." FEC regulations clarify that "all contributions made or received by more than one affiliated committee . . . shall be considered to be made or received by a single political committee." 11 C.F.R. § 110.3(a)(1). Accordingly, candidates and outside interest groups may no longer maintain the multiple political committees that the *Buckley* Court concluded could be used to circumvent the contribution limits to candidates.

3. Reviewing *Buckley* in light of the 1976 Amendments to FECA demonstrates no continuing constitutional justification for upholding the aggregate limits

The amended FECA does not allow an individual to "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." *Buckley*, 424 U.S. at 38. The possibility of circumvention that troubled the *Buckley* Court is now only possible if both a donor and political committee knowingly conspire to ignore and violate the anti-earmarking provisions of FECA, which would likely also yield a contribution in the name of another in violation of 2 U.S.C. § 441f. The "circumvention" this Court referenced in *Buckley* is best understood as the exploitation of a "loophole" in the law that permitted a donor to do indirectly what could not be done directly – namely, contribute more than $1,000 to a candidate simply by using political parties and/or political committees as intermediaries. A prophylactic measure was appropriate in those circumstances.

Now, however, the same act does not constitute exploiting a "loophole." Rather, that act is now treated as a knowing and willful violation of multiple provisions of the law. This behavior is no longer "circumvention" of the law's limitations, but rather, the outright disregard of the law by at least two involved parties. Under these changed circumstances, the aggregate limits do not serve the "anti-circumvention" purpose they once had.

Properly conceived and understood, the aggregate limits today serve two basic purposes, both of which are dubious: (1) to limit the possible extent to which a donor may knowingly violate other provisions of the law for the sake of making excessive contributions to candidates; and (2) to

prevent any one donor from contributing "too much" money to the political process. These purposes, of course, must be reconciled with the cognizable government interests that this Court has deemed sufficiently important to justify infringing the First Amendment rights of speech and association that citizens and organizations possess in this country.

In order to find the first purpose valid, the Court must conclude that redundant prophylactic measures are valid in the First Amendment context, and that the prophylaxis employed here actually serves its stated purpose (that is, it prevents circumvention of the candidate contribution limits). The 1976 Amendments to FECA rendered the aggregate limits superfluous and removed their constitutional justification. The aggregate limits do not directly or indirectly prevent any "circumvention" that is not already addressed and prevented by more precise and narrowly drawn provisions. An individual who wishes to circumvent the $2,600 per election limit on contributions to a federal candidate can do so only by conspiring with one or more political parties or PACs willing to serve as conduits in plain disregard of FECA's anti-earmarking provisions. The aggregate limits effectively place a $76,400 cap on the scope of this illegal conspiracy.

If this Court accepts the "prophylaxis upon prophylaxis" justification asserted by the government here, legislatures would be free to impose layer upon layer of regulation in a never-ending attempt to prevent people from knowingly violating the existing, core campaign finance laws. This Court has already rejected such legislation. *See*

FEC v. Wis. Right to Life, Inc., 551 U.S. 449, 479 (2007) (rejecting "a prophylaxis-upon-prophylaxis approach to regulating expression"). Furthermore, these redundant layers of regulation infringe the rights of the overwhelming majority of law abiding citizens for the sake of, perhaps, limiting the illegal activity of a much smaller number of citizens – a proposition this Court has previously rejected. *See Ashcroft v. Free Speech Coal.*, 535 U.S. 234, 255 (2002) ("The Government may not suppress lawful speech as the means to suppress unlawful speech."); *Bartnicki v. Vopper*, 532 U.S. 514, 529-30 (2001) ("The normal method of deterring unlawful conduct is to impose an appropriate punishment on the person who engages in it . . . . But it would be quite remarkable to hold that speech by a law-abiding [person] can be suppressed in order to deter conduct by a non-law-abiding third party.").

The second purpose noted above is an illegitimate "leveling the playing field" measure that cannot stand in light of this Court's recent precedent. *See Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. ____, 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."); *see also Citizens United v. FEC*, 558 U.S. 310, 349-56 (2010) (rejecting antidistortion rationale as valid governmental interest); *Davis v. FEC*, 554 U.S. 724, 741 (2008) (rejecting as legitimate governmental interest "level[ing] electoral opportunities"); *Austin v. Mich. State Chamber of Commerce*, 494 U.S. 652, 705 (1990) (Kennedy, J., dissenting) ("the notion that the government has a legitimate interest in

restricting the quantity of speech to equalize the relative influence of speakers on elections is antithetical to the First Amendment"). Whereas the base limits may serve an anti-corruption interest by preventing a donor from "corrupting" a candidate by contributing more than $2,600 per election, the aggregate limits do not prevent a donor from corrupting any identifiable candidate, party, or PAC. Rather, the only anti-corruption interest the aggregate limits can possibly serve is the purported interest in preventing a donor from corrupting the "democratic system" or "political system" as a whole, under the theory that the *total* amount that any one donor may contribute to all federal candidates, parties, and PACs must be limited. *See*, *e.g.*, FEC's Opp'n at 21, *McCutcheon*, 893 F. Supp. 2d 133 (No. 12-cv-1034) (asserting that without the aggregate limits, the "amount of money" that an individual could contribute "per election cycle" "could easily exert a corrupting influence on the democratic system"); Mem. of Campaign Legal Ctr. and Democracy 21 at 18, *McCutcheon*, 893 F. Supp. 2d 133 (No. 12-cv-1034) (faulting plaintiffs for "disregard[ing] the collective impact that up to 468 of such 'limited' contributions from a single donor will potentially have on the political system"). The District Court was correct in concluding that this line of argument "simply sweeps too broadly" because "if anything is clear, it is that contributing a large amount of money does not ipso facto implicate the government's anticorruption interest." *McCutcheon*, 893 F. Supp. 2d at 139. Once the broad notion that the aggregate limits prevent corruption of the "democratic system" or "political system" as a whole is rejected, all that remains is the realization

that this argument is simply a "leveling the playing field" rationale.[4]

The government's discussion of "massive" contributions reinforces this conclusion. The FEC sought to alarm the District Court by noting that the aggregate limits prevent a donor from contributing a combined $3.5 million to 468 federal candidates and 56 party committees during a two-year election cycle. *See* FEC's Opp'n at 20, *McCutcheon*, 893 F. Supp. 2d 133 (No. 12-cv-1034). The FEC calls this amount "massive" and asserts that "prevention of such 'huge' contributions thus falls squarely within the government's anti-corruption and anti-circumvention interests." *Id.* at 20-21. The $3.5 million figure, however, is a red herring. In the absence of the aggregate limits, no one could contribute $3.5 million to any one candidate, political party, or PAC. Rather, $3.5 million is an *aggregate* figure that must be split among (at least) 524 committees, none of which could receive in

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[4] In a May 2, 2013, open letter to Congress, *amici curiae* Campaign Legal Center and Democracy 21 made explicit that their support for the aggregate limits is premised on the constitutionally impermissible anti-distortion rationale. The letter urged Members of Congress not to raise or otherwise alter the aggregate limits, because "[t]he aggregate limit on individual giving is already far too high" and "[a]ny such increase or change would only serve to increase the access and influence of the wealthiest citizens in the country, at the expense of all other Americans." *See* Campaign Legal Center Press Release, *Reform Groups Urge Congress to Close Gaping Disclosure Loopholes* (May 2, 2013), http://www.campaignlegalcenter.org/index.php?option=com_content&view=article&id=2110:may-2-2013-reform-groups-urge-congress-to-close-gaping-disclosure-loopholes&catid=63:legal-center-press-releases&Itemid=61.

excess of its applicable base limit. The FEC never explains how $3.5 million, widely dispersed among hundreds of recipients in amounts at or below the existing base contribution limit, could actually "exert a corrupting influence on the democratic system." *Id.* at 21.

On April 19, 2013, the FEC reported that federal candidates, political parties, and PACs raised a total of $7,135,700,000, and spent $7,004,700,000, during the 2012 election cycle. *See* FEC Press Release, *FEC Summarizes Campaign Activity of the 2011-2012 Election Cycle* (Apr. 19, 2013), http://fec.gov/press/ press2013/20130419_2012-24m-Summary.shtml. Organizations that are not registered with the FEC (that is, persons other than political committees) reported an additional $300,400,000 in independent expenditures, bringing the total reported spending figure to $7,305,100,000. *Id.* $3.5 million is 0.048% of this sum. The nominally large figures routinely presented by proponents of strict contribution limits are far less remarkable when considered in context. What the FEC and supportive *amici* argued is that no donor *should be* permitted to inject a total of $3.5 million into the political system (even if that amount represents a tiny fraction of total election spending that is divided among hundreds of recipients). As this Court has previously recognized, this anti-distortion/leveling-the-playing-field rationale has no legitimate place in the American system.[5]

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[5] This argument also ignores the fact that individuals already inject $3.5 million or more into the American political system at the federal level. Last year, at least 10 individuals contributed more than $3.5 million to one or more FEC-regulated independent expenditure-only

This Court, having rejected the anti-distortion rationale in *Davis*, *Citizens United*, and *Arizona Free Enterprise Club PAC*, should take this opportunity to clear away another vestige of that now-discredited concept: the imposition of aggregate limits as an expression of disapproval of so-called "massive" contributions into the political system as a whole.

II. A NATIONAL PARTY COMMITTEE'S RELATIONSHIP WITH ITS CANDIDATES IS NOT SHAPED BY THE AGGREGATE LIMITS, AND OTHER PROVISIONS OF FECA GOVERN THE DIRECT INTERACTIONS OF PARTIES AND CANDIDATES

When a national party committee receives a contribution from a supporter, it is limited (both legally, but also as a practical matter) in how it may spend that contribution. Assuming the contribution was not earmarked, the national party might spend those funds in any of the following ways:

(1) Contribute the money to one or more federal candidates, subject to applicable contribution limits;
(2) Contribute the money to one or more federal political committees (PACs), subject to applicable contribution limits;

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committees ("Super PACs"). *See* Al Shaw & Kim Barker, *PAC Track: What and Where Are the Super PACs Spending?: Top Contributors To Super PACs*, ProPublica (Dec. 7, 2012), http://projects.propublica.org/pactrack/ #contributions=all.

(3) Transfer the money to a state or local committee of the same political party (not limited);

(4) Engage in coordinated expenditures on behalf of one or more of its candidates for office, subject to applicable party coordinated expenditure limits;

(5) Pay costs related to generic party voter identification and voter registration, get-out-the-vote efforts, and other voter education projects;

(6) Pay overhead, administration, staffing, and other organization/infrastructure costs; or

(7) Use the funds to make independent expenditures (unlimited).

The aggregate limits do not directly factor into any of these spending options, and none of these options represents a means of aiding and abetting the original contributor's circumvention of applicable contribution limits. In fact, such circumvention is prohibited by FECA's limitations on contributions and coordinated expenditures, as well as by provisions that require the proper attribution of earmarked contributions. Nor do the aggregate limits have any direct impact on the relationship of the NRSC and NRCC with their respective candidates for office. The aggregate limits serve only to reduce the overall amount that national party committees *could* raise insofar as the aggregate limits force donors to limit and apportion their contributions among party committees. With no other legal impediments in place, if the national party committees were able to raise more money from the limited universe of available donors, they

could, in theory, spend more on any of the categories listed above.

This does not, however, change the fact that other legal impediments abound. The level of support that a national party committee may provide its candidates is so strictly circumscribed and limited in other ways under existing law that removal of the aggregate limits would not have any significant effect on the financial relationship between the national parties and their candidates. Contrary to the suggestions of some, invalidation of the aggregate limits would *not* put national party committees in a position to facilitate circumvention of the contribution limits to candidates or other political committees.

A. A National Party Committee Is Limited In The Amount It May Contribute To A Candidate By A Direct Contribution Limit, Not By The Aggregate Limits

Federal law permits a national party committee to contribute a maximum of $5,000 per election to a U.S. House or Presidential candidate. 2 U.S.C. § 441a(a)(2)(A). A separate shared limit applies to U.S. Senate candidates, which allows the NRSC or DSCC, along with the national committee of a political party (that is, the RNC or DNC) to contribute up to $45,400 in the aggregate per campaign (not per election). *Id.* § 441a(h).

The NRCC could, under these limits, contribute a total of $5,000 per election to each of its

435 candidates each election cycle. Assuming each candidate faces a primary and general election, and ignoring run-off and special elections, this amounts to $4,350,000 every two years in direct contributions to candidates (or 0.06% of $7 billion). Regardless of how much money the NRCC can raise, it cannot contribute any more than this sum to its candidates.

The NRSC could, under its shared limits with the RNC, contribute up to $45,400 to each of its 100 Senate candidates that are up for election over a six-year period. This totals $4,540,000 every six years, and not more than $1,543,600 in a single election cycle in which 34 U.S. Senate seats are up for election (or 0.02% of $7 billion). Regardless of how much money the NRSC can raise, it cannot contribute any more than these sums over a six-year or two-year period, respectively.

Every national party committee raises substantially more than these totals, on both annual and biennial bases, even with the aggregate limits in place. The aggregate limits are not critical factors in a national party committee's decision to make contributions to as many of its candidates as it deems strategically wise, and invalidation of the aggregate limits would not – and could not under existing laws not challenged here – result in any national party committee making any contributions to candidates beyond what is currently permitted under existing law. A national party committee is simply not permitted to make unlimited contributions or transfers to its candidates.

A review of publicly available records for the last several election cycles shows that the U.S.

House and Senate committees of the Republican and Democratic Parties did not come close to contributing the allowable maximum to their candidates. In 2012, for example, the NRCC contributed $639,090 to candidates; the DCCC contributed $863,217 to candidates; the NRSC contributed $775,800 to candidates; and the DSCC contributed $646,500 to candidates.

These figures reflect strategic choices regarding the best use of a committee's funds. For example, even with unlimited resources on hand, a party committee might not contribute to an unknown challenger facing a popular incumbent who is almost certain to be reelected if it believes that $5,000 could be better spent elsewhere. The invalidation of the aggregate limits would not change this calculation, and would not result in any fundamental change to the political party-candidate relationship. Rather, it would simply expand the party committee's ability to amass resources that would then be available to fund activities that the committee already undertakes, and which are already permitted under existing law.

B. A National Party Committee Is Limited In The Amount It May Spend In Coordination With A Candidate By A Direct Limit On Party Coordinated Expenditures, And Not By The Aggregate Limits

In addition to the contributions that a national party committee may make directly to its candidates, described above, the national party

committee and a state party committee may both make limited coordinated expenditures in connection with the general election campaigns of their own candidates for Federal office. *See* 2 U.S.C. § 441a(d)(3)(A)-(B).

FECA grants coordinated party expenditure authority only to "the national party committee" (long interpreted to mean either the RNC or DNC) and each of the state party committees. By regulation, the FEC permits either the RNC/DNC or the state party committee to assign its party coordinated spending authority to another political party committee. *See* 11 C.F.R. § 109.33(a) ("The national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may assign its authority to make coordinated party expenditures authorized by 11 CFR 109.32 to another political party committee."). Party coordinated spending authority is routinely assigned by the RNC to both the NRSC (to spend on behalf of Republican Senate candidates) and the NRCC (to spend on behalf of Republican House candidates). *See* FEC Advisory Opinion 1986-31 ("DSCC also serves as the agent of the Democratic National Committee and state committees for purposes of making coordinated party expenditures in senatorial general election campaigns pursuant to 2 U.S.C. 441a(d)"). Thus, while the NRSC and NRCC are not granted statutory authority to engage in coordinated spending on behalf of their respective candidates, in practice, both routinely exercise this authority pursuant to FEC regulation, and this spending has become an important function of both committees.

The 2013 general election party coordinated expenditure limitation for a House of Representatives election is $46,600, except in states with only one representative, where the limit is $93,100. For Senate elections, the limit ranges from $93,100 to $2,682,000. 2013 FEC Price Index Adjustments, 78 Fed. Reg. at 8531

Accordingly, party committees are *not* free to support their own candidates with coordinated expenditures. There are strict limits on coordinated expenditures that a party may make on behalf of its candidates for office. *See Colorado II*, 533 U.S. at 465 (Thomas, J., dissenting) ("The Party Expenditure Provision, 2 USC § 441a(d)(3), severely limits the amount of money that a national or state committee of a political party can spend in coordination with its own candidates for the Senate or House of Representatives."). This Court upheld the party coordinated expenditure limits in *Colorado II* as a valid anti-circumvention measure that protects the base candidate contribution limits. *See Colorado II*, 533 U.S. at 465 ("[A] party's coordinated expenditures . . . may be restricted to minimize circumvention of contribution limits").

A review of public records demonstrates that the NRCC, DCCC, NRSC, and DSCC have not "maximized" their total possible party coordinated spending (assuming that authority is fully assigned by the RNC and DNC) in the last several election cycles. For example, in 2012, the NRCC spent $4,716,306 in coordinated party expenditures, while the NRSC spent $7,706,227. (The DCCC and DSCC spent $5,348,666 and $9,354,010, respectively.) With respect to U.S. House elections, the national

party committee and state party committee were authorized by FECA to spend a total of $20,474,400 each in 2012. *See* Federal Election Commission Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 77 Fed. Reg. 9925, 9926 (Feb. 21, 2012) [hereinafter 2012 FEC Price Index Adjustments].[6] With respect to U.S. Senate elections, each party's national party committee and state party committees were authorized by FECA to spend a total of $21,916,800 each in coordination with their Senate candidates in 2012. *Id.*

The party coordinated expenditure limits have nothing to do with the aggregate limits, and if the aggregate limits were held unconstitutional, parties could still make the exact same amount of coordinated expenditures on behalf of their own candidates. If more funds became available to national party committees with the aggregate limits removed, those committees *might* choose to further exercise their existing ability to make party coordinated expenditures. Removal of the aggregate limits, however, would not create or permit any opportunity for circumvention.

The District Court, nevertheless, found that the aggregate limits are "justified" as an anti-

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[6] In 2012, eight states had only one U.S. House Representative and the party coordinated expenditure limit for these elections was $91,200 each. The remaining 427 U.S. House elections were subject to a party coordinated spending limit of $45,600. In addition, the parties were permitted to spend $45,600 in connection with Delegate/Resident Commissioner elections in the District of Columbia, Puerto Rico, and four territories.

circumvention measure that somehow prevents party committees from engaging in improper coordinated expenditures with candidates. *McCutcheon*, 893 F. Supp. 2d at 140. The District Court speculated that party committees might use a joint fundraising committee to route a $500,000 contribution to a single committee's coffers to be spent on coordinated expenditures. *Id.* (internal citation omitted). In 2012, there were only 12 states where the NRSC could have lawfully made more than $500,000 in coordinated expenditures in support of a candidate, and no states where the NRCC could have done so. *See* 2012 FEC Price Index Adjustments, 77 Fed. Reg. at 9926.

As noted *infra* in Section III, a donor may not circumvent *any* base contribution limit by contributing to a joint fundraising committee, and what the District Court describes is a series of transactions that, aside from the dollar amount at issue, are all perfectly legal under existing law, and which do not even remotely resemble "circumvention" of the base contribution limits. Under current law, roughly the same result could be achieved with a currently legal $76,400 contribution to a joint fundraising committee consisting of a national party committee and five state party committees.

The District Court appears to presume, however, that if the dollar amount at issue is raised to $500,000, then the net effect of these various legal transactions becomes corrupting as a constitutional matter, and therefore subject to limitation. The District Court then concludes that a restriction is justified on the basis of the rejected "gratitude"

rationale (despite claiming not to do so). *See Citizens United*, 558 U.S. at 359 ("The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt . . . ."). In short, the District Court's analysis was both factually and constitutionally flawed.

C. Candidates May Not Contribute Funds To Other Candidates Without Limitation, And Candidate-To-Candidate Contributions Generally Originate From Small Numbers Of Officeholders

While national, state, and local committees of the same political party may freely transfer funds amongst themselves, *see* 2 U.S.C. § 441a(a)(4), candidates do not enjoy this same freedom.[7] Instead, one federal candidate committee is permitted to "support" another federal candidate with a contribution of no more than $2,000 per election. *Id.* § 432(e)(3)(B). Candidates cannot circumvent this $2,000 limit by utilizing multiple authorized committees, as "[a]ll authorized committees of the same candidate for the same election to Federal office are affiliated," 11 C.F.R. § 100.5(g)(1), and contributions to affiliated committees are aggregated for contribution limit purposes. *See* 2 U.S.C. § 441a(a)(5). Thus, candidate-to-candidate contributions are strictly limited and do not provide an avenue for circumventing contribution limits.

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[7] Federal candidates and officeholders may transfer unlimited campaign funds to federal and state party committees. *See* 2 U.S.C. § 439a(a)(4).

In addition, a contributor who gives to a candidate committee, but directs that his or her contribution then be transferred to another specified candidate, has "earmarked" that contribution. An "earmarked" contribution must be treated as a contribution from the donor to the candidate for whom the contribution was earmarked, and the intermediary committee must report the transaction on its own financial disclosure reports. *See id.* § 441a(a)(8).

Candidate-to-candidate contributions are not highly prevalent, and most originate from a small number of Congressional candidate committees. For example, during the 2012 election cycle, there were 2,756 reported contributions from one U.S. House candidate committee to another candidate committee in the FEC's databases. The sum value of these contributions was $3,651,202. However, 1,490 of these contributions, or approximately 54% of all reported candidate-to-candidate transfers, came from only 20 House Members. Fifty-five (55) House Members were responsible for 80% of all candidate-to-candidate contributions in the 2012 election cycle. (The figures from 2010 are very similar: 20 House Members made nearly 55% of all candidate-to-candidate contributions, and 47 House Members were responsible for 80% of all candidate-to-candidate contributions). Thus, while a nominally large sum is contributed by candidates to other candidates, a relatively small percentage of House Members is responsible for most of the giving; it is not a widespread practice that enables any circumvention of applicable limits.

One of *amici* Campaign Legal Center's and Democracy 21's imagined circumvention schemes posits that a donor "[w]ill contribute more modest sums to a large number of candidate committees that will pass on these funds to her favored candidates." Mem. of Campaign Legal Ctr. and Democracy 21 at 28, *McCutcheon*, 893 F. Supp. 2d 133 (No. 12-cv-1034). These *amici* claim that the aggregate limits "[e]nsur[e] that donors cannot route hundreds of contributions to their preferred candidates through other candidate committees." *Id.* at 29. Of course, this scenario would be illegal even without the aggregate limits in place: the existing conduit and earmarking provisions prevent it, and a massive conspiracy would be required to carry out what is imagined by *amici*. The end result of *amici*'s hypothetical could only be achieved legally if these hundreds of "other candidate committees" all *independently* concluded that it would be wise to transfer $2,000 to a certain candidate. If this somehow occurred, the initial donor is not part of the equation, meaning that donor poses no corruption threat.

III. JOINT FUNDRAISING COMMITTEES ARE NOT A MEANS OF CIRCUMVENTING CONTRIBUTION LIMITS

The District Court was persuaded that a viable anti-circumvention rationale existed in support of the aggregate limits insofar as those limits serve to prevent contributors from routing large contributions to one committee through an intermediary joint fundraising committee ("JFC"). *See McCutcheon*, 893 F. Supp. 2d at 140 ("[W]e

cannot ignore the ability of aggregate limits to prevent evasion of the base [contribution] limits"). The District Court erred, however, when it concluded that joint fundraising committees are a mechanism that can be used to circumvent contribution limits. The District Court supposed that "[a]n individual *might* . . . give half-a-million dollars in a single check to a joint fundraising committee," that "[t]he half-a-million dollar contribution *might* . . . find its way to a single [party] committee's coffers," that committee "*might* use the money for coordinated expenditures," and "[t]he candidate who knows the coordinated expenditure funding derives from that single large check at the joint fundraising event will know precisely where to lay the wreath of gratitude." *See id.* (emphasis added).

As explained below, a donor's contribution to a JFC is generally distributed among participating committees according to a default allocation formula, although a donor may also instruct that his or her funds be allocated differently, provided that allocation complies with all applicable contribution limits. A donor may not, however, contribute to a JFC with instructions for how proceeds should be subsequently transferred from one participant committee to another. Existing prohibitions against using conduits to contribute in the name of another, as well as the well-established legal consequences of "earmarking" a contribution, make this impossible to do legally. If a candidate or party committee transfers its joint fundraising proceeds to another party committee, those transfers must be the result of the candidate's or party committee's own independent judgment.

The District Court, however, conceives of JFCs as little more than a means of avoiding and evading the otherwise applicable contribution limits – a seriously flawed understanding that appears to derive from *amici* Campaign Legal Center and Democracy 21.[8] As entities with first-hand knowledge of the actual operations of JFCs, however, *amici* here can offer a more accurate and complete analysis of the nature and workings of those committees.

A. A Joint Fundraising Committee Is A Highly Regulated Method Of Fundraising That Permits A Donor To Efficiently Contribute To Multiple Political Committees Simultaneously

Contrary to what was suggested to the District Court, JFCs do not, and in the absence of the biennial aggregate individual contribution limits would not, allow for "multi-million dollar contributions" to any political committee in violation of any base limit. *See* Mem. of Campaign Legal Ctr. and Democracy 21 at 6, *McCutcheon*, 893 F. Supp. 2d 133 (No. 12-cv-1034). Depending on the identity of the participating committees, a JFC allows a donor to make multiple contributions of up to $2,600 per election to a federal candidate, multiple contributions of up to $5,000 per year to political action committees, multiple contributions of up to

[8] *See* Mem. of Campaign Legal Ctr. and Democracy 21 at 6-8, *McCutcheon*, 893 F. Supp. 2d 133 (No. 12-cv-1034).

$10,000 per year to state party committee federal accounts, and multiple contributions of up to $32,400 per year to national party committees via one check or credit card transaction.[9] There is absolutely no reason to be alarmed by Contributor A, who writes one check in the amount of $7,800 and presents that check to three candidates with the expectation that they split it evenly, as opposed to Contributor B who writes three separate checks for $2,600 to each of those same three candidates. Contributor A has *not* made a contribution of $7,800 to anyone. Rather, Contributor A has made three contributions of $2,600, just like Contributor B. The only difference is that Contributor A has written two fewer checks.

The FEC formally recognized JFCs in its 1983 regulations at 11 C.F.R. § 102.17, which "[s]ets forth the basic rules for conducting joint fundraising activities." FEC Transmittal of Regulations to Congress on Transfer of Funds; Collecting Agents, Joint Fundraising, 48 Fed. Reg. 26,296, 26,298 (June 7, 1983). These regulations, which have not been significantly amended since 1983, set forth extensive rules and procedures for any political committee wishing to raise funds jointly with another committee. JFCs are highly-regulated operations that are subject to pages of FEC requirements to ensure that (1) all contribution limits, source prohibitions, recordkeeping and reporting requirements are stringently observed, and (2) contributors are aware of exactly what the

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[9] Under existing law, the aggregate limits serve as a cap on JFCs insofar as an individual contributor to the committees participating in a JFC cannot contribute more than $123,200 during the 2013-2014 election cycle.

committee is and how their contributions will be divided.

A JFC consists of two or more participant committees engaged in activities to raise funds jointly. Participants usually establish a separate committee (that is, the JFC) to serve as the fundraising representative. 11 C.F.R. § 102.17(a)(1). This separate committee must register with the FEC, collect and maintain the same records, and file the same periodic financial disclosure reports as any other political committee. *Id.* § 102.17(a)(1), (c)(4).

JFC participants must "[e]nter into a written agreement," which "[s]hall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The formula shall be stated as the amount or percentage of each contribution received to be allocated to each participant." *Id.* § 102.17(c)(1).

Joint fundraising participants must also provide a detailed written notice with each solicitation of funds to inform potential donors of: (1) the names of the participant committees; (2) the allocation formula to be used to distribute proceeds; (3) a statement informing contributors that they are not required to adhere to the established allocation formula and may, instead, provide their own designation of funds (provided such designation complies with all applicable contribution limits); and (4) a statement informing contributors that the allocation formula may be altered if the a contributor makes a contribution that would exceed that contributor's limit to any given participant. *Id.* § 102.17(c)(2).

The JFC may then hold fundraising events, or raise funds by other methods, such as through direct mail or the Internet. "The fundraising representative and participating committees shall screen all contributions received to insure that the [contribution] prohibitions and limitations of 11 CFR parts 110 and 114 are observed." *Id.* § 102.17(c)(4)(i). Once the JFC receives contributions, those funds are deposited into the JFC's separate account, and gross proceeds are allocated among the committees according to the formula set forth in the written notice. If this "default" allocation results in a contributor exceeding a contribution limit, the funds are "reallocated," if permissible, to ensure that each contributor adheres to all applicable contribution limits. *See id.* § 102.17(c)(6)(i). If a contribution cannot be reallocated permissibly, the contribution is refunded to the donor. Under no circumstances may a contribution to a JFC lawfully result in an allocation that exceeds a donor's applicable contribution limit.

The JFC is required to file comprehensive financial activity reports with the FEC, disclosing all funds raised and disbursed. The participating committees must report their allocated gross proceeds and net distributions, including "[a] memo Schedule A itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a)." *Id.* § 102.17(c)(8)(i) – (ii). As of result of these dual filings, interested parties can easily see how much an individual contributor gave to a joint fundraising committee in total, as well as how that total amount was divided among the participants.

B. Joint Fundraising Committees Have Existed Since The Origin Of FECA, And Have Consistently And Historically Collected Contributions Up To The Applicable Limit For Each Participating Committee

JFCs are not a novel or recent creation; they are a long-accepted practice of which Congress is well aware. The FEC considered the permissibility of joint fundraising very early in its history in a series of Advisory Opinions issued in 1977. *See* Federal Election Commission Advisory Opinions 1977-08 (approving joint fundraising to retire outstanding campaign debt), 1977-14 (approving joint fundraising to retire outstanding campaign debt), 1977-23 (approving a joint fundraising effort consisting of 11 members of the "Freshman Republican Class of the 95th Congress") and 1977-61 (approving a joint fundraising committee consisting of a candidate committee and the Colorado State Democratic Central Committee); *see also* Federal Election Commission Advisory Opinion 1979-35 (approving joint fundraising effort between Democratic Senatorial Campaign Committee and "certain Democratic Senate candidates").

The earliest of these Advisory Opinions, issued April 20, 1977, makes clear that a contribution to a JFC has *always* been conceived of as multiple contributions aggregated into a single check, and subject to all applicable limits. *See* Advisory Opinion 1977-14 at 2 ("All persons making contributions to the Special Committee will be

regarded as making a contribution to the participating presidential campaigns; this means that an appropriate accounting system must be utilized to assure compliance with the contribution limits.").

Only more recently have JFCs become an object of scorn within the "campaign finance reform" community, which has transformed the JFC into a useful red herring. Publicly, "reformers" have crafted a narrative in which JFCs allow donors to exceed the otherwise applicable contribution limits, while serving as convenient opportunities for influence-peddling.[10] *Amici* Campaign Legal Center and Democracy 21 repeated some of this rhetoric in their brief to the District Court. *See, e.g.*, Mem. of Campaign Legal Ctr. and Democracy 21 at 6,

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[10] *See*, *e.g.*, Joseph Morton, *Kerrey, Dems Set Up Joint Fundraising Committee*, Omaha World-Herald (Apr. 11, 2012), http://www.omaha.com/article/20120410/NEWS01/120419949/0 ("Meredith McGehee, policy director at the Campaign Legal Center, said joint fundraising committees represent a way to quickly and conveniently get large donations in the door. She said the joint committees are rooted in the wink-and-a-nod understanding that while the bulk of the donations go to the state party, that money is ultimately intended to benefit the candidate in question. 'Everybody knows it's just a way of legally earmarking additional money for the candidate,' she said."); Alex Knott, *Politicians Create Record Number of Joint Fundraising Committees*, Roll Call (Sept. 17, 2010), http://www.rollcall.com/news/-49934-1.html ("In these situations, the candidate often gets recognition with the national party for the money he or she has raised in 'much the same way that bundlers get credit for how they raise contributions,' said Richard Hasen, a professor specializing in election law at Loyola Law School in Los Angeles. 'It's a way to gain stature in the party.'").

McCutcheon, 893 F. Supp. 2d 133 (No. 12-cv-1034) ("[D]onors are relieved of the logistical challenge of making separate contributions to an array of different committees, and instead can simply write one check to the joint fundraising entity and receive immediate recognition for their largesse."); *id*. at 6-7 (asserting that joint fundraising committees "[c]ombin[e] the allure of candidate access with higher-limit party committees").

In a more candid moment, however, one of the *amici*'s representatives acknowledged that JFCs are not actually tools of contribution limit circumvention and influence and access seeking. In 2010, the Campaign Legal Center's Paul Ryan said of JFCs, "The only thing that a joint fundraising committee allows is for one check to be written instead of multiple checks." Alex Knott, *Politicians Create Record Number of Joint Fundraising Committees*, Roll Call (Sept. 17, 2010), http://www.rollcall.com/news/-49934-1.html.

A JFC is nothing more than an administrative convenience, for both political committees and donors. The candidates and party committees that participate in a JFC may host fundraising events or direct mail campaigns together, thereby achieving fundraising cost savings and other efficiencies, while donors may make contributions to the participants without the burden of attending multiple events and/or writing a separate check to each participant. JFCs enable donors to exercise their constitutional and statutory rights efficiently; they do not permit *anyone* to exceed or evade any existing contribution limit. To the extent that anyone actually believes that JFCs create the "appearance" that candidates

and parties solicit unlawful amounts of money, or that donors contribute amounts above the contribution limits, that "appearance" is the product of an uninformed misunderstanding.

The question of what could theoretically – and illegally – be done is far different than what real-life, rational actors actually do. Our experience with JFCs goes beyond merely fretting about them, and in our considerable experience, neither candidates nor political parties have any interest in joint fundraising for the sake of helping donors evade campaign finance laws.

Broad prophylactic rules that infringe on First Amendment rights should not be upheld where they serve only to protect against highly improbable, and likely illegal, hypothetical situations dreamed up by interest groups. *See Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 392 (2000) ("[W]e have never accepted mere conjecture as adequate to carry a First Amendment burden"). Limitations on a citizen's First Amendment rights cannot be drawn to target the most outlandish hypotheticals that interest groups can conceive, especially where those interest groups have an interest in manufacturing the "appearance" of corruption that this Court has held can justify campaign finance regulation.

CONCLUSION

For the foregoing reasons, the provisions of 2 U.S.C. § 441a(a)(3) at issue in this matter should be declared unconstitutional and the decision of the United State District Court for the District of Columbia reversed.

Respectfully submitted,

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