No. 12-536

In the Supreme Court of the United States

SHAUN MCCUTCHEON, *et al.*,

Appellant,

v.

FEDERAL ELECTION COMMISSION,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION OF SENATOR MITCH MCCONNELL FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT AS *AMICUS CURIAE* AND FOR DIVIDED ORAL ARGUMENT

Pursuant to Rules 21 and 28 of the Rules of this Court, Senator Mitch McConnell respectfully seeks leave of this Court to participate in oral argument as *amicus curiae* and for divided oral argument.

The Court has granted argument on the following question: Do the Bipartisan Campaign Reform Act's aggregate limits on the total amount that an individual may contribute to all federal candidates, political party committees, and other political committees during a two-year federal election cycle under 2 U.S.C. §441a(a)(3)(A)-(B) violate the First Amendment?

Senator McConnell respectfully submits that he is uniquely qualified to address the Court's question. He served as lead Plaintiff and Appellant in *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003), and during his 30 years in the Senate has been the foremost

opponent of Congressional efforts to restrict speech about elections in the name of campaign finance reform. He is the former chairman and a current member of the Senate Rules and Administration Committee, which is the committee responsible for reviewing all proposed legislation related to federal elections. Now seeking re-election to his sixth term in the Senate, Senator McConnell is adversely impacted by the aggregate limit on individual contributions to candidates. Moreover, from 1997 to 2001, he served as Chairman of the National Republican Senatorial Committee, one of the national political party committees subject to the aggregate limit on individual contributions to political parties. As a Senator running for reelection with the support of the NRSC, Senator McConnell understands that contributions denied to him and to the NRSC by the aggregate limit may well go to independent groups that advocate positions with which he does not agree. Thus, Senator McConnell's multiple interests and his knowledge about the question the Court is considering would present the Court with a different viewpoint from that of Shaun McCutcheon, a private citizen, or the Republican National Committee.

In his *amicus* brief supporting appellants, Senator McConnell has anticipated many of the arguments asserted by the appellee. These arguments include the suggestions that a proliferation of political committees justifies the aggregate limit, that an additional criminal prohibition on the already illegal "channeling" of contributions is necessary and appropriate, and that the impetus for the aggregate limits was to fight the appearance of corruption rather than to "level the [campaign finance] playing field." Like appellants, but in more depth, Senator McConnell has also invited the Court to reconsider the "contribution-expenditure" distinction, especially as that distinction might bear upon this case.

In addition to *McConnell v. FEC*, Senator McConnell has participated extensively as an *amicus* in litigation to vindicate the First Amendment in the context of campaign finance

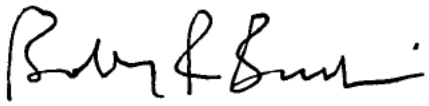
regulation. Among other cases, he submitted an *amicus* brief and argument to this Court in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), and *amicus* briefs in *Arizona Free Enter. Club's Freedom PAC v. Bennett*, 131 S. Ct. 2806 (2011), *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007), *Wisconsin Right to Life, Inc., v. FEC*, 546 U.S. 410 (2006), *Randall v. Sorrell*, 548 U.S. 230 (2006), and *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377 (2000).

This Court has granted divided argument and sometimes additional time for oral argument in many important cases in the federal election area. *See Citizens United v. Federal Election Comm'n*, 558 U.S. 310 (2010) (granting motion for divided argument by Senator McConnell in support of Citizens United even over Citizens United's objection, and also granting motion for divided argument by Senator John McCain and Solicitor General); *FEC v. Wisconsin Right to Life, Inc.*, 549 U.S. 1320 (2007) (Solicitor General's motion for divided argument granted); *FEC v. NRA Political Victory Fund*, 512 U.S. 1285 (1994) (motion of Solicitor General for leave to participate in oral argument as amicus curiae and for divided argument granted); *Federal Election Comm'n v. National Conservative Political Action Committee*, 469 U.S. 1015 (1984) (motion of Democratic National Committee for divided argument granted); *Common Cause v. Schmitt*, 452 U.S. 913 (1981) ("Motions of appellants for divided argument and for additional time for argument granted. A total of one and one-half hours is allotted for oral argument to be divided as follows: 25 minutes for Federal Election Commission; 20 minutes for Common Cause et al.; and 45 minutes for appellees."). In the *McConnell* case itself, this Court allocated four hours of oral argument time split among a large number of interested parties. *See McConnell v. FEC*, 539 U.S. 974 (2003).

Both appellants, the Republican National Committee and McCutcheon, support divided argument, with their counsel arguing for 20 minutes for appellants and Senator McConnell's counsel arguing for 10 minutes.

In the alternative, Senator McConnell respectfully suggests that the Court consider extending the time for oral argument in this important case from 60 to 80 minutes, to permit counsel for the FEC to have 40 minutes, to permit for counsel for appellants to have 30 minutes, and to permit Senator McConnell's counsel to present 10 minutes of argument on his behalf. Appellants also support his alternative.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of July 2013, I served a copy of the foregoing Motion for Divided Argument by e-mail and first-class mail on the following:

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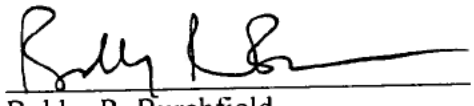

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