No. 12-536

In the Supreme Court of the United States

SHAUN MCCUTCHEON, ET AL., APPELLANTS

v.

FEDERAL ELECTION COMMISSION

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

BRIEF FOR THE APPELLEE

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QUESTION PRESENTED

Whether the three-judge district court correctly rejected appellants' constitutional challenge to the federal statutory limits on the aggregate amounts that an individual may contribute to all federal candidates, political parties, and other political committees in a single election cycle, 2 U.S.C. 441a(a)(3).

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OPINION BELOW

The opinion of the three-judge district court granting appellee's motion to dismiss (J.S. App. 1a-17a) is reported at 893 F. Supp. 2d 133.

JURISDICTION

The order and final judgment of the three-judge district court was entered on September 28, 2012. A notice of appeal was filed on October 9, 2012, and the jurisdictional statement was filed on October 26, 2012. This Court noted probable jurisdiction on February 19, 2013. The jurisdiction of this Court rests on Section 403(a)(3) of the Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 113-114.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED

The relevant constitutional provisions, statutes, and regulations are reprinted in an appendix to this brief. App., *infra*, 1a-21a.

STATEMENT

1. For more than 70 years, federal law has generally limited the amounts that individuals may contribute to political candidates, political-party committees, and non-party political committees for the purpose of influencing elections for federal office. Both Congress and this Court have recognized that such limits are an important tool in combating corruption and the appearance of corruption in federal politics. See, *e.g.*, *Buckley* v. *Valeo*, 424 U.S. 1, 27 (1976) (per curiam). Since 1974, federal law has included both (a) base limits on the amount an individual may contribute to particular entities and (b) aggregate limits on the total amount of an individual's contributions. This Court has upheld both against constitutional challenges. *Id.* at 23-35, 38.

a. Amendments to the Hatch Act enacted in 1940, Act of July 19, 1940, ch. 640, § 4, 54 Stat. 770, prohibited the "pernicious political activity" of "directly or indirectly" making "contributions in an aggregate amount in excess of $5,000, during any calendar year" to "any candidate for an elective Federal office" or to "any committee or other organization engaged in furthering, advancing, or advocating the nomination or election of any candidate for any such office or the success of any national political party." The provision's sponsor stated that it was common knowledge that "large contributions to political campaigns * * * put the political party under obligation to the large contributors, who demand pay in the way of legislation." 86 Cong. Rec. 2720 (1940)

(statement of Sen. Bankhead). He expressed his hope that the new provision would help to "bring about clean politics and clean elections." *Ibid.*

The 1940 limit proved "ineffective," however, "because its vague wording permitted it to be interpreted not as an overall limit on an individual's contributions, but as one applying only to contributions made to one committee." Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* 66 (1988). Individuals regularly circumvented the limitation by routing contributions in excess of $5000 through multiple committees that supported the same candidate. *Ibid.*; see Louise Overacker, *Presidential Campaign Funds* 36 (1978); *id.* at 42-43 (summarizing spending in the 1944 elections and concluding that "the 'sky was the limit'" for "generous, determined donors"); see also, *e.g.*, Herbert E. Alexander, *Financing Politics: Money, Elections and Political Reform* 86 (1976) (*Financing Politics*) (listing the number of individuals who contributed $10,000 or more in each election cycle from 1952 through 1972, along with the total amounts of their contributions); David W. Adamany & George E. Agree, *Political Money: A Strategy for Campaign Financing in America* 45 (1975) (*Political Money*) (observing that 21 members of a single family contributed $1.8 million in the 1968 elections, an average of more than $85,000 each). Contributors could also give amounts above $5000 to state and local political-party committees, which were exempt from contribution limitations. *Fletcher's Opinion on the Application of Hatch Act*, N.Y. Times, Aug. 4, 1940, at 2.

b. In the early 1970s, Congress substantially overhauled the campaign-finance laws, first by enacting the Federal Election Campaign Act of 1971 (FECA), Pub. L.

No. 92-225, 86 Stat. 3, and then, in the wake of the Watergate scandal, by enacting the Federal Election Campaign Act Amendments of 1974 (1974 FECA Amendments), Pub. L. No. 93-443, 88 Stat. 1263. The concerns that informed the debates on the new campaign-finance laws included concerns that the Hatch Act's $5000 contribution limit was being "routinely circumvented"; that "parties and candidates alike" were "rely[ing] extensively on a few big givers to meet their expanded needs"; and that the best estimates were "that 90 percent of the money raised for political campaigns c[ame] from 1 percent of the contributors." 117 Cong. Rec. 43,410 (1971) (statement of Rep. Abzug); see *id.* at 28,811 (statement of Sen. Prouty) ("[A]n individual can give $5,000 to many separate committees supporting the same candidate."); *id.* at 29,306 (statement of Sen. Pastore) ("The question has been raised time and time again that the trouble was not with the $5,000 limitation, but the idea that you can multiply that $5,000 by many different committees.").

A 1974 congressional report identified multiple instances in which contributions to numerous separate entities had been made at the request of a particular candidate. For example, the dairy industry had avoided then-existing reporting requirements by dividing a $2,000,000 contribution to President Nixon among hundreds of committees in different States, "which could then hold the money for the President's reelection campaign." *Final Report of the Select Committee on Presidential Campaign Activities*, S. Rep. No. 981, 93d Cong., 2d Sess. 615 (1974) (*Final Report*). Shortly thereafter, President Nixon "circumvented and interfered with" the "legitimate functions of the Agriculture Department" by reversing a decision unfavorable to the

dairy industry, and Attorney General John Mitchell (who was also President Nixon's campaign manager) halted a grand-jury investigation of the milk producers' association. *Id.* at 701, 1184, 1205, 1209; see Richard Reeves, *President Nixon: Alone in the White House* 309 (2001) (noting the Secretary of Agriculture's estimate that President Nixon's actions cost the government "about $100 million"). On another occasion, a presidential aide promised an ambassadorship to a particular individual in return for "a $100,000 contribution, which was to be split between 1970 Republican senatorial candidates designated by the White House and [President] Nixon's 1972 campaign." *Final Report* 492. That arrangement was not unique. *Id.* at 501 (describing a similar arrangement with someone else); see *id.* at 493-494 (listing substantial contributions by ambassadorial appointees); see also *Political Money* 39-41 (collecting instances of large contributors "giving and getting"); *Financing Politics* 124-126 (describing contributions that gave the appearance of *quid pro quo* corruption and may have raised "suspicio[ns] about * * * large campaign gifts").

Informed by those findings, the 1974 FECA Amendments included tighter limits on contributions by individuals. The amended law imposed a $1000 base limit on an individual's contributions to any single candidate seeking federal office (or seeking party nomination for such an office), or to a committee controlled by that candidate, with respect to any given election (or set of elections within a single calendar year). § 101(a), 88 Stat. 1263. The amended law also imposed a $25,000 aggregate limit on all contributions by an individual, whether to candidates or other entities, within a single calendar year (with contributions in non-election years

counting towards the limit for the year in which the next election occurred). *Ibid.*

In *Buckley* v. *Valeo*, *supra*, this Court rejected First Amendment challenges to both the base limit and the aggregate limit. 424 U.S. at 23-38. The Court found that the base limit permissibly furthered the government's interest in limiting corruption and the appearance of corruption. *Id.* at 23-35. The Court further concluded that the aggregate limit validly "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.* at 38.

c. In 1976, Congress enacted "additional contribution limitations * * * intended to be coextensive with the scope of the $25,000 limitation on contributions by an individual." 122 Cong. Rec. 12,199 (May 3, 1976) (statement of Rep. Hays). In particular, Congress imposed an annual limit of $20,000 on contributions to "political committees established and maintained by a national political party" and an annual limit of $5000 on contributions to any single non-party political committee (commonly known as a "PAC"). Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283 § 112, 90 Stat. 487. Congress also reenacted the $25,000 aggregate limit. *Ibid.* Without that aggregate limit, an individual could, for example, have contributed $5000 each to multiple political committees, which in turn could each have contributed to a candidate, including a candidate to whom the individual himself had already given the maximum contribution of $1000.

Through the use of so-called "soft money," however, candidates and parties were able "to circumvent FECA's limitations on the source and amount of contributions in connection with federal elections." *McConnell* v. *FEC*, 540 U.S. 93, 126 (2003), overruled in part on other grounds by *Citizens United* v. *FEC*, 558 U.S. 310 (2010). Soft money consisted of contributions to political parties that were ostensibly for the purpose of influencing state or local elections, and thus fell outside FECA's contribution limits, which applied only to federal elections. *McConnell*, 540 U.S. at 122-123. As it became clear that activities funded with soft money—such as get-out-the-vote drives, generic party advertising, and even advertisements that mentioned the name of a federal candidate—benefited federal candidates, "the amount of soft money raised and spent by the national political parties increased exponentially," reaching nearly half a billion dollars in 2000. *Id.* at 124. Contributions of soft money "were in many cases solicited by the candidates themselves." *Id.* at 125. It was "not uncommon," for example, for legislators facing reelection to urge supporters who had already contributed the maximum allowable amount to the legislator's campaign to make additional soft-money contributions. *Ibid.*

A 1998 Senate Report determined that "the 'soft money loophole' had led to a 'meltdown' of the campaign finance system that had been intended 'to keep corporate, union and large individual contributions from influencing the electoral process.'" *McConnell*, 540 U.S. at 129 (quoting S. Rep. No. 167, 105th Cong., 2d Sess. 4611, 7515). As this Court later explained, "evidence connect[ed] soft money to manipulations of the legislative calendar, leading to Congress' failure to enact, among other things, generic drug legislation, tort re-

form, and tobacco legislation." *Id.* at 149-150. According to former Senator Paul Simon, for example, Federal Express obtained favorable labor-related legislation "not on the merits of the legislation, but just because they had been big contributors," who had given $1.4 million to incumbents and almost $1 million in soft money during the election cycle preceding the vote. *McConnell* v. *FEC*, 251 F. Supp. 2d 176, 482 (D.D.C.) (Kollar-Kotelly, J.), aff'd in part, rev'd in part, 540 U.S. 93 (2003). One Senator emphasized that "we've got to pay attention to who is buttering our bread," and Senator Feingold testified that a colleague urged him to support the legislation because "they just gave us $100,000." *Ibid.*

d. In 2002, Congress passed the Bipartisan Campaign Reform Act of 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81. One of BCRA's "central provisions" closed the soft-money loophole by amending FECA to prohibit national party committees from soliciting or spending soft money and to prohibit state and local party committees from using soft money for federal election activity. *McConnell*, 540 U.S. at 132-134. In conjunction with the soft-money ban, Congress also restructured and increased FECA's contribution limits, including the aggregate contribution limit, and provided for certain automatic future adjustments to account for inflation. BCRA §§ 102, 307, 116 Stat. 86-87, 102-103. Those changes were intended, at least in part, to provide additional lawful avenues for contributions to candidates and party committees, thereby reducing incentives for contributors to make donations through back-door channels. See 148 Cong. Rec. 3615 (Mar. 20, 2002) (statement of Sen. Feinstein) ("The soft money ban will work because we came to a reasonable compromise with re-

gard to raising some of the existing hard money contribution limits by modest amounts, and indexing those limits for inflation."). Concern remained, however, that the limits be maintained at a level that would not allow "large amounts of money to be channeled directly to individual candidates." 147 Cong. Rec. 4634 (Mar. 27, 2001) (statement of Sen. Schumer).

In its current form, and as inflation-adjusted for the 2013-2014 election cycle, FECA's base contribution limits permit an individual to contribute up to $2600 per election (counting primary and general elections separately) to "any candidate and his authorized political committees"; up to $32,400 per year to "the political committees established and maintained by a national political party"; up to $10,000 per year to "a political committee established and maintained by a State committee of a political party"; and up to $5000 per year to "any other political committee." 2 U.S.C. 441a(a)(1)(A)-(D); 2 U.S.C. 441a(c)(1); *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, 78 Fed. Reg. 8530, 8532 (Feb. 6, 2013); see 11 C.F.R. 100.2 (definition of "election"). FECA's aggregate contribution limits, inflation-adjusted for the 2013-2014 election cycle, permit an individual to contribute a total of $123,200 per election cycle. 2 U.S.C. 441a(a)(3)(A) and (B); 78 Fed. Reg. at 8532. An individual can contribute $48,600 to candidates for federal office and their authorized political committees, 2 U.S.C. 441a(a)(3)(A); 78 Fed. Reg. at 8532, and can contribute another $74,600 to non-candidate entities—*i.e.*, national political-party committees, state political-party committees, and non-party political committees—so long as no more than $48,600 of that amount is given to state political parties or non-

party political committees. 2 U.S.C. 441a(a)(3)(B); 78 Fed. Reg. at 8532.

2. Appellants are Shaun McCutcheon and the Republican National Committee (RNC), a national committee of the Republican Party. J.S. App. 1a, 4a-5a. McCutcheon alleges that he would like to make, and the RNC alleges that it would like to receive, contributions that are within FECA's base limits but that would (in combination with other contributions made by McCutcheon) exceed FECA's aggregate limits. *Id.* at 4a-5a. In particular, McCutcheon alleges that during the 2011-2012 election cycle he contributed a total of $33,088 to 16 different federal candidates and wished to contribute $1776 apiece to 12 more candidates. *Ibid.* Those additional contributions would have brought his total candidate contributions to $54,400, which would have exceeded FECA's then-current aggregate limit on such contributions by $8200. *Ibid.*[1]

McCutcheon also alleges that he wished to contribute $25,000 to each of three national political committees established and maintained by the Republican Party: the RNC, the National Republican Senatorial Committee (NRSC), and the National Republican Congressional Committee (NRCC). J.S. App. 5a. Those contributions would have brought his total contributions to non-candidate recipients—which included a $20,000 contribution to the Alabama Republican Party and a $2000 contribution to the Senate Conservatives Fund (a non-party political committee)—to $97,000. That amount would have exceeded FECA's then-current aggregate

[1] For the 2011-2012 election cycle, the aggregate limit on contributions to candidates was $46,200, and the aggregate limit on contributions to non-candidate recipients was $70,800. 76 Fed. Reg. 8368, 8369-8370 (Feb. 14, 2011).

limit on contributions to non-candidate entities by $26,200. *Ibid*; see p. 10 n.1, *supra*. McCutcheon additionally alleges a desire to make a similar pattern of contributions in future election cycles. J.S. App. 5a.

3. Appellants filed suit in the United States District Court for the District of Columbia, raising First Amendment challenges to FECA's aggregate contribution limits. J.S. App. 1a, 4a-6a. A three-judge district court—convened pursuant to Section 403(a) of BCRA—denied appellants' request for a preliminary injunction and granted the government's motion to dismiss. *Id.* at 1a-17a.

As an initial matter, the district court rejected appellants' argument that the aggregate contribution limits are subject to strict scrutiny. J.S. App. 6a-9a. The district court recognized that although this Court has applied strict scrutiny to expenditure limits, which restrict the amounts that can be spent directly on political speech, it has not applied strict scrutiny to contribution limits, which instead restrict the sums that can be given to support others' political activity. *Id.* at 6a (citing, *inter alia*, *Arizona Free Enter. Club's Freedom Club PAC* v. *Bennett*, 131 S. Ct. 2806, 2817 (2011)). Rather, the Court has held that contribution limits are "valid as long as they satisfy 'the lesser demand of being closely drawn to match a sufficiently important interest.'" *Ibid.* (quoting *McConnell*, 540 U.S. at 136). The Court has found that less stringent standard to be appropriate because contribution limits "primarily implicate the First Amendment rights of association, not expression, and contributors remain able to vindicate their associational interests in other ways." *Id.* at 8a (citing *Buckley*, 424 U.S. at 22, 28). The district court applied that less stringent standard here, observing that FECA's aggre-

gate limits "do not regulate money injected directly into the nation's political discourse; the regulated money goes into a pool from which another entity draws to fund its advocacy." *Id.* at 9a (citing *California Med. Ass'n* v. *FEC*, 453 U.S. 182, 195-196 (1981) (plurality opinion)).

In applying the governing standard to the aggregate limits at issue here, the district court explained that this Court has identified two important governmental interests that can justify contribution limits: (1) "preventing corruption or the appearance of corruption"; and (2) "preventing circumvention of contribution limits imposed to further [the government's] anti-corruption interest." J.S. App. 9a (citing *Buckley*, 424 U.S. at 26-27, 38). The district court reasoned that, because appellants had not challenged the base contribution limits (*e.g.*, the now-$2600 per election limit on contributions to candidates), the court could "assume [those base limits] are valid expressions of the government's anticorruption interest." *Id.* at 11a. "[T]hat being so," the court concluded, "we cannot ignore the ability of aggregate limits to prevent evasion of the base limits." *Ibid.*

The district court explained that, in *Buckley*, this Court had upheld the aggregate contribution limit in the then-current version of FECA as "no more than a corollary of the basic individual contribution limitation that [the Court had] found to be constitutionally valid." J.S. App. 11a (quoting *Buckley*, 424 U.S. at 38). The district court drew additional support for the constitutionality of the current aggregate contribution limits from this Court's decision in *FEC* v. *Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*), which upheld FECA's restrictions on party expenditures that are coordinated with a candidate. The district court noted, *inter alia*, that the decision in *Colorado II*

had rested largely on the Court's concern that contributions to one entity (a political party) could be used effectively to circumvent the base limits on contributions to another (an individual candidate). J.S. App. 12a (citing *Colorado II*, 533 U.S. at 459). The district court reasoned that the aggregate contribution limits here prevent similar circumvention, which might otherwise occur through schemes such as transfers of contributions between different party committees, with the funds eventually spent in coordination with a single candidate. *Id.* at 12a-13a. The district court stated that it would "follow [this] Court's lead and conceive of the contribution limits as a coherent system" that includes both base limits and aggregate limits, "rather than merely a collection of individual limits stacking prophylaxis on prophylaxis," as appellants contended. *Id.* at 13a.

The district court also rejected appellants' arguments that FECA's aggregate contribution limits are too low. J.S. App. 13a-15a. The district court cited several decisions of this Court for the proposition that "[i]t is not the judicial role to parse legislative judgment about what limits to impose." *Id.* at 13a (citing *Randall* v. *Sorrell*, 548 U.S. 230, 248 (2006) (plurality opinion); *Colorado II*, 533 U.S. at 466; *Nixon* v. *Shrink Mo. Gov't PAC*, 528 U.S. 377, 387-388 (2000); *Buckley*, 424 U.S. at 30). It further explained, *inter alia*, that "individuals remain able to volunteer, join political associations, and engage in independent expenditures." *Id.* at 15a.

SUMMARY OF ARGUMENT

In *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam), this Court upheld Congress's authority to impose aggregate limits on individual political contributions in order to prevent circumvention of the base limits on contributions to particular candidates, parties, and polit-

ical committees. The aggregate contribution limits in the current version of FECA are not distinguishable in any relevant respect from the aggregate contribution limit that *Buckley* upheld. The holding of *Buckley* thus controls this case, and this Court should adhere to it.

I. The Court in *Buckley* declined to apply strict scrutiny under the First Amendment to either base contribution limits or aggregate contribution limits. The Court recognized that limits on contributions, in contrast to limits on expenditures for direct advocacy, impose only "a marginal restriction upon the contributor's ability to engage in free communication." *Buckley*, 424 U.S. at 20-21. The Court also recognized that contributions are only one way among many in which an individual can exercise his associational rights. *Id.* at 22. The Court concluded that contribution limits, including aggregate contribution limits, are constitutional so long as the government "demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." *Id.* at 25.

Appellants' arguments for strict scrutiny of the aggregate contribution limits at issue here cannot be reconciled with *Buckley*. The burdens imposed by the current aggregate contribution limits are indistinguishable in both kind and degree from the aggregate limit the Court in *Buckley* upheld against a similar First Amendment challenge. *Buckley*'s distinction between regulation of contribution limits and regulation of expenditure limits has provided the structure for constitutional review of campaign-finance laws for nearly 40 years. This Court has expressly reaffirmed it, and Congress has relied upon it, as have numerous state legisla-

tures. Its reasoning remains sound, and overruling it now would disserve important principles of *stare decisis*.

II. In upholding FECA's then-current aggregate contribution limit against a First Amendment challenge, the *Buckley* Court explained that "this quite modest restraint upon protected political activity" was "no more than a corollary" of the base limit on contributions to candidates that the Court had determined to be a permissible anti-corruption measure. 424 U.S. at 38. The Court explained that the aggregate limit "serve[d] to prevent evasion" of that base limit "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." *Ibid.* Under the current statutory regime as well, a contributor could potentially funnel massive amounts of money to a favored candidate or set of candidates if the aggregate limits were held to be unconstitutional. The contributor could give $5000 to each of an unlimited number of political committees, each of which could then give money directly or indirectly to particular candidates. 2 U.S.C. 441a(a)(1)(A) and (C). On top of that, the contributor could also give more than $3.6 million to party candidates and to state and national party committees, much of which could be used to support a specific candidate or set of candidates. 2 U.S.C. 439a(a)(4); 441a(a)(1)(B) and (D), (a)(2)(A), (a)(4). Indeed, even if the money were not funneled to a specific candidate or set of candidates, the solicitation and contribution of multi-million dollar sums to support a party's electoral slate (which could be conveyed to a joint funding committee in a single check) can

cause precisely the sort of actual and apparent corruption that Congress is empowered to prevent.

None of Congress's post-*Buckley* amendments to FECA undermines the role of aggregate contribution limits in reducing actual and apparent corruption of the political process. The statutory modifications highlighted by appellants—such as base limits on contributions to political committees and restrictions on affiliated political committees—would not preclude a contributor from carrying out the schemes that FECA's original aggregate contribution limit was intended to prevent. Appellants' other arguments, such as the contention that Congress has no interest in regulating an individual's total contributions so long as each contribution is below the applicable base limit, are analytically unsound and would have applied equally to the aggregate contribution limit upheld in *Buckley*.

ARGUMENT

Appellants do not challenge the constitutionality of FECA's base limits on an individual's contributions to particular candidates, party committees, or other political committees. They instead contend that, notwithstanding the constitutionality of those base limits as anti-corruption measures, the First Amendment prohibits Congress from imposing any limit whatever on the aggregate amount of an individual's contributions. That contention is foreclosed by *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam), which held that FECA's aggregate contribution limit is a permissible legislative effort "to prevent evasion" of the base limits. *Id.* at 38.

Appellants cannot meaningfully distinguish the aggregate limits in their current form from the aggregate limit upheld in *Buckley*. They instead seek to relitigate *Buckley*. Appellants directly challenge *Buckley*'s cen-

tral holding that contribution limits are subject to less exacting First Amendment scrutiny than are expenditure limits. And they attack FECA's current aggregate limits on grounds that would necessarily have invalidated the aggregate limit the *Buckley* Court found to be constitutional. Accepting appellants' contentions, and striking down FECA's aggregate limits on campaign contributions, would disserve fundamental principles of *stare decisis*, would be wrong as an original matter, and would invite into the political process the serious harms that the aggregate limits are designed to prevent.

I. THIS COURT SHOULD ADHERE TO *BUCKLEY*'S HOLDING THAT AGGREGATE CONTRIBUTION LIMITS ARE NOT SUBJECT TO STRICT SCRUTINY

A core tenet of this Court's campaign-finance jurisprudence is that "contributions lie closer to the edges than to the core of political expression." *FEC* v. *Beaumont*, 539 U.S. 146, 161 (2003). The Court therefore has consistently treated contribution limits, including aggregate contribution limits, "as merely 'marginal' speech restrictions subject to relatively complaisant review under the First Amendment." *Ibid.* Appellants offer no reason to abandon nearly four decades of well-settled law by applying strict scrutiny for the first time in this case.

A. The Court In *Buckley* Declined To Apply Strict Scrutiny To Contribution Limits, Including Aggregate Contribution Limits

In *Buckley*, this Court upheld the constitutionality of various contribution limits in the 1974 version of FECA, including the base limit of $1000 on contributions by an individual to a candidate and the aggregate limit of $25,000 on total contributions by an individual in any

calendar year. 424 U.S. at 23-38. The Court held that limits on contributions, unlike limits on expenditures, are not subject to strict scrutiny under the First Amendment. Compare, *e.g.*, *id.* at 24-25, with *id.* at 52-54. Under that approach, limitations on contributions are constitutional so long as the government "demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." *Id.* at 25.

The Court in *Buckley* explained that, "[b]y contrast with a limitation upon expenditures for political expression, 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 20-21. That is because "the transformation of contributions into political debate involves speech by someone other than the contributor." *Id.* at 21. While the contribution itself "serves as a general expression of support for the candidate and his views," it "does not communicate the underlying basis for the support," and 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." *Ibid.* Furthermore, although contribution limits "impinge on protected associational freedoms" by "limit[ing] one important means of associating with a candidate or committee," they do not preclude other means of association, and they "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates." *Id.* at 22.

The Court in *Buckley* reviewed FECA's $25,000 aggregate contribution limit under the lesser standard of

scrutiny applicable to contribution limits, rather than the strict scrutiny applicable to expenditure limits. 424 U.S. at 38. The Court's discussion of the aggregate contribution limit appeared in the section of the opinion entitled "Contribution Limitations," *id.* at 23, 38; the Court consistently referred to the limit as a restriction on "contribution[s]" or on "contributing," see, *e.g.*, *id.* at 7, 13, 34 n.40, 38, 58; and the Court discussed the First Amendment implications of the limit in terms of "associational freedom" rather than freedom of expression, *id.* at 38. At no point did the Court suggest that strict scrutiny should apply.

B. Appellants' Arguments For Applying Strict Scrutiny To Aggregate Contribution Limits Cannot Be Squared With *Buckley*

1. Notwithstanding *Buckley*, the RNC contends (Br. 7-14) that the aggregate contribution limits at issue in this case should be reviewed under a strict-scrutiny standard. That argument is misconceived. Each of the two distinctions the RNC posits between aggregate contribution limits and base contribution limits was equally present in *Buckley*, and neither justifies subjecting the former to more demanding scrutiny than the latter.

First, the RNC asserts (Br. 8) that aggregate contribution limits and base contribution limits "have different justifications." That is not so. The *Buckley* Court described the aggregate limit as a "corollary" of a base limit that "serves to prevent evasion" of that base limit. 424 U.S. at 38. The Court thus recognized that aggregate contribution limits are designed to further the same ultimate anti-corruption objective as limits on contributions to particular federal candidates.

Second, the RNC asserts (Br. 9) that, "while base limits restrict how much one may contribute to particular [entities], aggregate limits restrict how many such entities one may support at the full-base-limit amount" (emphasis omitted). The RNC's focus on how many contributions an individual can make "at the full-base-limit amount" is misplaced. The Court explained in *Buckley* that "[a]t most, the size of the contribution provides a very rough index of the intensity of the contributor's support." 424 U.S. at 21. Rather, because "[t]he quantity of communication by the contributor does not increase perceptibly with the size of his contribution," the expressive value of a contribution "rests solely on the undifferentiated, symbolic act of contributing." *Ibid.* Under the current FECA framework, as at the time of *Buckley*, an individual can engage in the "symbolic act of contributing" to as many entities as he wishes.

Indeed, McCutcheon has not alleged in this case that he wished to contribute the full base-limit amount to any additional candidate or political committee. J.S. App. 4a-5a. Because McCutcheon's total contributions to candidates in the 2011-2012 election cycle were $13,112 less than the applicable aggregate limit, he could have contributed an additional $1092 to each of the 12 additional candidates that he allegedly wished to support. *Id.* at 4a-5a; p. 10 & n.1, *supra*.[2] McCutcheon does not suggest that the additional $684 he wished to contribute to each of those candidates would have meaningfully enhanced the candidate's electoral prospects or ability to communicate his message. To the contrary, McCut-

[2] McCutcheon also did not reach the limit on contributions to non-candidate entities, and thus could have made more of those contributions as well. J.S. App. 4a-5a; pp. 10-11 & n.1, *supra*.

cheon asserts that even a contribution at the full base-limit amount "is likely to be only a small—potentially even miniscule—fraction of the recipient's overall assets." Br. 51. Rather, McCutcheon simply wishes to place on each contribution check a number (1776) that is of particular significance to him and to this Nation. His inability to utilize that additional symbolism, over and above the "symbolic act of contributing" (*Buckley*, 424 U.S. at 21), is of marginal First Amendment significance.

Unlike expenditure limits, and like base contribution limits, aggregate contribution limits do not "reduce the total amount of money potentially available to promote political expression." *Buckley*, 424 U.S. at 22. Instead, they "merely * * * require candidates and political committees to raise funds from a greater number of persons" and "compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression." *Ibid.* Aggregate contribution limits therefore do not seek to level the political playing field or correct for any possible distorting effects of speech on the electorate. In no sense do aggregate limits "reduce the greater potential voice of affluent persons and well-financed groups," who "remain free to spend unlimited sums directly to promote candidates and policies they favor in an effort to persuade voters." *Id.* at 26 n.26.

An individual's ability to influence public debate through means other than contributions to candidates and parties is even greater now than it was when *Buckley* was decided. Under the D.C. Circuit's recent decision in *SpeechNow.org* v. *FEC*, 599 F.3d 686 (en banc), cert. denied, 131 S. Ct. 553 (2010), an individual is constitutionally entitled not only to spend as much as he

desires on his own campaign-related speech, but also to donate unlimited sums to advocacy groups that make only "independent expenditures," which are not coordinated with a candidate or a political party. See *id.* at 696; see also 2 U.S.C. 431(17) (defining "independent expenditure"). During the 2011-2012 election cycle, McCutcheon spent more than $300,000 in support of two independent-expenditure-only PACs (commonly known as "super PACs") that he established. See FEC, *Transaction Query By Individual Contributor*, http://www.fec.gov/finance/disclosure/norindsea.shtml (last visited July 17, 2013). One of those super PACs spent nearly $135,000 supporting and opposing candidates. See FEC, *Committees And Candidates Supported/Opposed: Conservative Action Fund*, http://query.nictusa.com/cgi-bin/com_supopp/C00496505 (last visited July 17, 2013).[3]

McCutcheon was entirely free to spend even more on his independent-advocacy endeavors had he wished to. Nor would federal law have restricted McCutcheon from donating his time and energy to assist and associate with electoral candidates. See *Buckley*, 424 U.S. at 22. As was true when *Buckley* was decided, FECA in its current form expressly excludes volunteer work from the definition of "contribution." *Id.* at 183; 2 U.S.C.

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[3] Some of appellants' amici suggest (see, *e.g.*, Cato Inst. Amicus Br. 14-15) that court decisions invalidating certain limits on donations to advocacy groups give such groups a fundraising advantage over candidates, and that this disparity should be remedied through more demanding First Amendment scrutiny of limits on contributions to candidates. That suggestion is misguided. Advocacy groups can as easily support a candidate as oppose a candidate; contributions to candidates present corruption concerns that contributions to advocacy groups do not; and Congress is not required to level the playing field to assure that candidates (or parties) can raise the same amount of money as advocacy groups.

431(8)(B)(i). Advances in communication technology—including cheaper long-distance telephone calls, the invention of the Internet, and the rise of social media—make volunteering for and participating in geographically distant campaigns much easier now than it was when *Buckley* was decided.

2. McCutcheon does not explicitly endorse the RNC's view that *Buckley* would permit courts to scrutinize aggregate contribution limits more closely than base contribution limits. He contends (Br. 24-31), however, that aggregate contribution limits are uniquely burdensome. His arguments—which, to a significant extent (see, *e.g.*, *id.* at 24-26), proceed from the erroneous premise that aggregate contribution limits restrict the number of entities to which an individual can contribute—are misconceived.

McCutcheon contends (Br. 28-31) that aggregate contribution limits burden First Amendment rights by creating competition within a single political party for a contributor's dollars. The Court in *Buckley*, however, rejected the proposition that "merely * * * requir[ing] candidates and political committees to raise funds from a greater number of persons" would "have any dramatic adverse effect on the funding of campaigns and political associations." 424 U.S. at 21-22. Nor does McCutcheon offer any reason to suppose that FECA's aggregate contribution limit will induce candidates and committees within a single political party to compete for permissible contributions by disparaging each other in a way that muddles the party's message. To the contrary, by authorizing candidates and party committees to contribute to each other, see 2 U.S.C. 439a(a)(4); 441a(a)(1)(B) and (D), (a)(2)(A), (a)(4), federal campaign-finance law estab-

lishes much greater incentives to intra-party cooperation than to destructive internecine competition.

McCutcheon also contends (Br. 25-26) that aggregate contribution limits are especially burdensome because contributions "are the only realistic way to meaningfully and publicly demonstrate support for, associate with, and assist a variety of candidates and state parties" in different parts of the country. See also RNC Br. 13. As discussed above, however, aggregate contribution limits do not preclude a contributor from contributing to as many candidates, parties, and other committees as he desires. They instead limit only the average amount of the contributions when a particular donor wishes to support so many recipients that he cannot contribute the full base-limit amount to all of them. See pp. 20-21, *supra*; *Buckley*, 424 U.S. 21, 38.

McCutcheon's reliance (Br. 26-28) on *Davis* v. *FEC*, 554 U.S. 724 (2008), and *Arizona Free Enterprise Club's Freedom Club PAC* v. *Bennett*, 131 S. Ct. 2806 (2011) (*AFECFCP*), is likewise misplaced. In both of those decisions, the Court invalidated laws that sought to level the playing field by allowing a candidate's opponents to receive more money (either through contributions or public financing) when expenditures in support of a candidate (either by the candidate himself or by independent advocacy groups) reached a certain level. *Davis*, 554 U.S. at 728-732; *AFECFCP*, 131 S. Ct. at 2813. The constitutional burden the Court identified in each case was that the laws effectively penalized independent expenditures, and the laws were thus subject to strict scrutiny. *Davis*, 554 U.S. at 737-744; *AFECFCP*, 131 S. Ct. at 2816-2824. The restrictions at issue here, by contrast, are on contributions rather than expenditures—a type of restriction this Court has long viewed as "less

onerous" and warranting "a lower level of scrutiny." *AFECFCP*, 131 S. Ct. at 2817.[4]

C. Appellants Provide No Sound Reason To Overrule *Buckley*'s Longstanding Distinction Between Contribution Limits And Expenditure Limits

Appellants alternatively suggest (*e.g.*, RNC Br. 14, McCutcheon Br. 32 & n.17) that the Court should overrule *Buckley* and subject all contribution limits to strict scrutiny. That suggestion contravenes sound principles of *stare decisis* and has little to recommend it as a matter of First Amendment law.

1. In the nearly four decades since *Buckley*, this Court has consistently reaffirmed the foundational distinction between expenditure limits (which are subject to strict scrutiny) and contribution limits (which are not). See, *e.g.*, *AFECFCP*, 131 S. Ct. at 2817; *Davis*, 554 U.S. at 737; *McConnell* v. *FEC*, 540 U.S. 93, 134-138 (2003), overruled in part on other grounds by *Citizens United* v. *FEC*, 558 U.S. 310 (2010); *Beaumont*, 539 U.S. at 161-162; *FEC* v. *Colorado Republican Fed. Campaign Committee*, 533 U.S. 431, 440 (2001); *Nixon* v. *Shrink Mo. Gov't PAC*, 528 U.S. 377, 386-388 (2000); *FEC* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 259-260 (1986). That distinction reflects the "fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to the candidate to be

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[4] Other decisions on which McCutcheon relies likewise did not address contribution restrictions. See *Tashjian* v. *Republican Party of Conn.*, 479 U.S. 208 (1986) (restriction on open primaries); *FEC* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) (restriction on corporate independent expenditures).

spent on his campaign." *FEC* v. *National Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985).

Contrary to the RNC's suggestion (Br. 13), neither *Citizens Against Rent Control* v. *City of Berkeley*, 454 U.S. 290 (1981), nor *Randall* v. *Sorrell*, 548 U.S. 230 (2006), suggests that strict scrutiny would apply to contribution limits in the context of federal-candidate elections. In *Citizens Against Rent Control*, the Court recognized that restrictions on contributions to committees that support state ballot measures affect First Amendment rights differently than do the restrictions on contributions for federal-candidate elections at issue in *Buckley* and here. 454 U.S. at 296-297. In *Randall*, where the Court held that particular state limits on contributions to candidates were unconstitutionally low, the plurality opinion applied the First Amendment framework set forth in *Buckley*. 548 U.S. at 241-242, 246-247. This Court has never viewed either decision as applying strict scrutiny to contribution limits, or as undermining "the careful line that *Buckley* drew to distinguish limits on contributions to candidates from limits on independent expenditures on speech." *Citizens United*, 558 U.S. at 379 (Roberts, C.J., concurring).

2. The rationale for that "careful line" is as sound now as it was when *Buckley* was decided. Particularly because individuals and corporations can now spend unlimited amounts on independent speech in support of favored candidates, contribution limits continue to leave "communication significantly unimpaired." *Shrink Mo. Gov't PAC*, 528 U.S. at 387. Compared to such independent expenditures, or to other direct activities such as speaking or volunteering on a candidate's behalf, the expressive value of a contribution—which funds someone else's speech—is limited. See, *e.g.*, *McConnell*, 540

U.S. at 135. And while a contribution "serves as a general expression of support for the candidate and his views, * * * [t]he quantity of communication by the contributor does not increase perceptibly with the size of his contribution." *Buckley*, 424 U.S. at 21.

This Court's post-*Buckley* precedents have also recognized other reasons, in addition to "the limited burdens they impose on First Amendment freedoms," for declining to apply strict scrutiny to contribution limits. *McConnell*, 540 U.S. at 136. The Court's longstanding approach "reflects the importance of the interests that underlie contribution limits—interests in preventing 'both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption.'" *Ibid.* (quoting *FEC* v. *National Right to Work Comm.*, 459 U.S. 197, 208 (1982)). "Because the electoral process is the very means through which a free society democratically translates political speech into concrete governmental action, contribution limits, like other measures aimed at protecting the integrity of the process, tangibly benefit public participation in political debate." *Id.* at 137 (internal quotation marks and citation omitted). Applying a "less rigorous standard of review" both "shows proper deference to Congress' ability to weigh competing constitutional interests in an area in which it enjoys particular expertise" and "provides Congress with sufficient room to anticipate and respond to concerns about circumvention of regulations designed to protect the integrity of the political process." *Ibid.*

Less stringent scrutiny of contribution limits is also appropriate because such limits are analogous to other anti-corruption measures of unquestioned constitution-

ality. Federal law contains "an intricate web of regulations, both administrative and criminal, governing the acceptance of gifts and other self-enriching actions by public officials." *United States* v. *Sun-Diamond Growers*, 526 U.S. 398, 409 (1999). Executive Branch officials, for example, are barred (subject to limited exceptions) from soliciting or receiving any gift "[g]iven because of the employee's official position." 5 C.F.R. 2635.202(a)(2). Such restrictions serve to prevent actual and apparent corruption of the federal work force and to ensure that federal officers and employees bear undivided loyalty to their public employer. See, *e.g.*, *Crandon* v. *United States*, 494 U.S. 152, 165 (1990).

The anti-corruption rationale for limits on campaign contributions, accepted by this Court in *Buckley* and its progeny, closely resembles the long-accepted bases for more sweeping restrictions on the receipt by public officials of payments and gifts from persons outside the government. See *Shrink Mo. Gov't PAC*, 528 U.S. at 390. Outside the context of electoral campaign contributions, it is uncontroversial that persons who wish to register their approval of official actions cannot do so by giving money to federal personnel. The existing FECA regime is not a unique constraint on the use of money to express political views or achieve political objectives, but instead represents a pragmatic effort to achieve goals like those that underlie federal anti-corruption and conflict-of-interest laws, while allowing federal candidates to obtain the funds needed to wage vigorous electoral campaigns. Federal campaign-finance laws balance those objectives by allowing contributions far in excess of the (essentially *de minimis*) value of the gifts federal officials can otherwise receive, subject to the

condition (see 2 U.S.C. 439a) that the funds not be converted to personal use.

To be sure, contribution limits could impede political speech if they were set so low as to "prevent[] candidates and political committees from amassing the resources necessary for effective advocacy." *Buckley*, 424 U.S. at 21; see *Randall*, 548 U.S. at 248 (plurality opinion); *Shrink Mo. Gov't PAC*, 528 U.S. at 397. Appellants do not contend, however, that either the FECA contribution limits generally, or the limits on aggregate contributions in particular, are likely to have that effect. Any such contention would be implausible, since federal candidates spent more than $3 billion, and parties more than $2 billion, in the 2012 election cycle. FEC, *2011-2012 Election Cycle: Total Disbursements by Entity Type*, http://www.fec.gov/law/2012TDbyEntity.shtml (last visited July 17, 2013).

3. In any event, "[w]hether or not" the Court today "would agree with" *Buckley*'s "reasoning and its resulting rule" in the first instance, "principles of *stare decisis* weigh heavily against overruling it now." *Dickerson* v. *United States,* 530 U.S. 428, 443 (2000). Although "*stare decisis* is not an inexorable command, * * * even in constitutional cases, the doctrine carries such persuasive force that [the Court has] always required a departure from precedent to be supported by some special justification." *Ibid.* (internal quotation marks and citations omitted). If "mere demonstration that [an] opinion was wrong" were sufficient to justify overruling it, the doctrine of *stare decisis* "would be no doctrine at all." *Hubbard* v. *United States,* 514 U.S. 695, 716 (1995) (Scalia, J., concurring in part and concurring in the judgment).

Overruling *Buckley* now would severely disrupt the considerable reliance interests that have accrued over

the last four decades. The outcome of a number of this Court's important campaign-finance precedents would be cast into doubt. See, *e.g.*, *Beaumont*, 539 U.S. at 162 (observing that the contribution/expenditure dichotomy "is the only practical way to square two leading cases," *National Right to Work Comm.*, *supra* and *Massachusetts Citizens for Life Inc.*, *supra*); see also *McConnell*, 540 U.S. at 138 n.40 (citing cases applying "less rigorous" scrutiny to contribution limits). Congress and state legislatures, which have enacted numerous campaign-finance laws in reliance on *Buckley*, would no longer have any assurance that those laws are constitutional. See, *e.g.*, *McConnell*, 540 U.S. at 137 (observing that "in its lengthy deliberations leading to the enactment of BCRA, Congress properly relied on the recognition of its authority contained in *Buckley* and its progeny"); National Conference of State Legislatures, *Contribution Limits: An Overview*, http://www.ncsl.org/legislatures-elections/elections/campaign-contribution-limits-overview.aspx (last visited July 17, 2013) (reporting that 46 States have some form of contribution limits). And legislatures and lower courts would have little practical guidance about how to proceed going forward. See *Hubbard*, 514 U.S. at 714 (opinion of Stevens, J.) (observing that *stare decisis* "has special force when legislators or citizens have acted in reliance on a previous decision, for in th[at] instance overruling the decision would * * * require an extensive legislative response") (internal quotation marks and citation omitted).

Appellants identify no justification for such massive upheaval in this important area of law. This Court's repeated reliance on *Buckley* has not only reinforced *Buckley*'s centrality but also demonstrated its workabil-

ity. Ten years ago, this Court concluded that *stare decisis*, "buttressed by the respect that the Legislative and Judicial Branches owe to one another, provide * * * powerful reasons for adhering to the analysis of contribution limits that the Court has consistently followed since *Buckley* was decided." *McConnell*, 540 U.S. at 137-138; see *Randall*, 548 U.S. at 243-246 (opinion of Breyer, J., joined by Roberts, C.J.) (likewise relying on *stare decisis* in respect to *Buckley*'s distinction between contributions and expenditures). Since *McConnell*, an additional decade of judicial and legislative reliance on this Court's decision in *Buckley* has reinforced that conclusion.

II. THIS COURT SHOULD ADHERE TO *BUCKLEY*'S HOLDING THAT AGGREGATE CONTRIBUTION LIMITS ARE CONSTITUTIONAL

Buckley controls not only the level of scrutiny that should apply in this case, but also the result of its application. The aggregate contribution limits in the current version of FECA cannot be distinguished in any meaningful way from the aggregate contribution limit upheld in *Buckley*.

A. The Court In *Buckley* Upheld FECA's Base And Aggregate Contribution Limits As Valid Measures To Help Prevent Actual And Apparent Corruption

Applying the reduced degree of scrutiny appropriate to contribution limits, the Court in *Buckley* rejected First Amendment challenges to both the base and aggregate contribution limits in the then-current version of FECA. 424 U.S. at 23-38. The Court held that the contribution limits permissibly furthered the important governmental interests of preventing "the actuality and appearance of corruption resulting from large individual

financial contributions." *Id.* at 26 (discussing base limits); see *id.* at 38 (finding aggregate limits to be "no more than a corollary" of the base limits); see also *McConnell*, 540 U.S. at 298 (Kennedy, J., concurring in the judgment in part and dissenting in part) (observing that *Buckley* recognized Congress's "interest in regulating the appearance of corruption that is 'inherent in a regime of large individual financial contributions'") (quoting *Buckley*, 424 U.S. at 27).

The Court specifically identified two "weighty interests * * * sufficient to justify" the then-current $1000 limit on individual contributions to candidates. *Buckley*, 424 U.S. at 29. First, the limit reduced the opportunity for individuals to use large contributions "to secure a political *quid pro quo* from current and potential office holders." *Id.* at 26. While acknowledging that "the scope of such pernicious practices can never be reliably ascertained," the Court observed that "the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one." *Id.* at 27. The Court also recognized that "the integrity of our system of representative democracy is undermined" by such corrupt arrangements. *Id.* at 26-27.

Second, and "[o]f almost equal concern," the limit reduced "the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." *Buckley*, 424 U.S. at 27. The Court recognized that "the reality or appearance of corruption" would be "inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed." *Id.* at 28. "Congress," the Court reasoned, "could legitimately conclude that the avoidance of the appearance of

improper influence is * * * critical, if confidence in the system of representative Government is not to be eroded to a disastrous extent." *Id.* at 27 (internal quotation marks, ellipsis, and citation omitted). The base contribution limits furthered that goal by "focus[ing] precisely on the problem of large campaign contributions—the narrow aspect of political association where the actuality and potential for corruption have been identified—while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources." *Id.* at 28.

Turning to the $25,000 aggregate contribution limit, the Court found this "limited, additional restriction on associational freedom" to be "no more than a corollary of the basic individual contribution limitation" that the Court had "found to be constitutionally valid." *Buckley*, 424 U.S. at 38. The Court recognized that the "overall $25,000 ceiling does impose an ultimate restriction upon the number of candidates and committees with which an individual may associate himself by means of financial support." *Ibid.* It concluded, however, that "this quite modest restraint upon protected political activity serves 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." *Ibid.*

B. FECA's Current Aggregate Contribution Limits Serve The Same Important Purposes As The Aggregate Contribution Limit Upheld In *Buckley*

Appellants in this case raise a very particularized challenge to FECA's current aggregate contribution limits. They do not dispute that FECA's base limits on contributions to candidates, party committees, and other political committees are permissible measures to combat corruption and the appearance of corruption. See *AFECFCP*, 131 S. Ct. at 2825 ("Limiting contributions * * * is the primary means we have upheld to combat corruption."). They also do not dispute the general proposition—reaffirmed after *Buckley*—that the government's interests in combating corruption and its appearance can be "sufficient to justify not only contribution limits themselves, but laws preventing the circumvention of such limits." *McConnell*, 540 U.S. at 144; see *Colorado II*, 533 U.S. at 456 ("[A]ll Members of the Court agree that circumvention is a valid theory of corruption."); see, *e.g.*, RNC Br. 16; McCutcheon Br. 40. And they do not expressly renew in this Court the challenge they raised in the district court to the precise dollar amounts of the aggregate contribution limits in the current version of FECA. Compare J.S. ii (raising that issue in a separate question presented), with RNC Br. i (failing to do so); McCutcheon Br. i (same).[5]

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[5] The RNC adverts to this argument in passing (*e.g.*, Br. 55 & n.43), but makes no sustained attempt to support it. In any event, the argument lacks merit for reasons explained in the government's motion to dismiss or affirm. See Mot. to Dismiss or Affirm 21-24. This Court has "ordinarily * * * deferred to the legislature's determination of" exact dollar figures for contribution limits, recognizing that a "legislature is better equipped to make such empirical judgments" based on legislators' "particular expertise in matters related to the costs

Rather, appellants' basic argument is that no conceivable level of aggregate contribution limits in the current version of FECA could be justified as a constitutionally valid anti-corruption or anti-circumvention measure. *Buckley* forecloses that contention. Without a ceiling on aggregate contributions, contributors now could do exactly what the *Buckley*-era aggregate limit permissibly prevented: "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." 424 U.S. at 38.

1. A particularly effective circumvention technique, both when *Buckley* was decided and today, would be to contribute money to many different entities, each of which could then make its own contribution to the candidate. The individual could contribute up to $5000 apiece to numerous non-party political committees, 2 U.S.C. 441a(a)(1)(C), which could each in turn contribute at least $2600 during the primary, and another $2600 during the general election, to a single candidate, 2

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and nature of running for office." *Randall*, 548 U.S. at 248 (plurality opinion) (internal quotation marks and citation omitted); see, *e.g.*, *Davis*, 554 U.S. at 737 ("When contribution limits are challenged as too restrictive, we have extended a measure of deference to the judgment of the legislative body that enacted the law."). The Court has, in particular, rejected the proposition that *Buckley* "set a minimum constitutional threshold for contribution limits," explaining that "the dictates of the First Amendment are not mere functions of the Consumer Price Index." *Shrink Mo. Gov't PAC*, 528 U.S. at 396-397. Rather, an otherwise-permissible contribution limit will be set aside as unduly low only if its practical effect is "to impede the ability of candidates to 'amas[s] the resources necessary for effective advocacy.'" *Id.* at 397 (quoting *Buckley*, 424 U.S. at 21). Appellants do not and could not plausibly contend that the aggregate contribution limits at issue here have that effect. See p. 29, *supra*.

U.S.C. 441a(a)(1)(A) and (2)(A) (multicandidate political committees can contribute $5000 per candidate per election); 78 Fed. Reg. at 8532; see 2 U.S.C. 431(11). The political committee could also route the funds to the candidate's benefit more indirectly, by contributing to party or non-party committees that could then make their own contributions to the candidate. 2 U.S.C. 441a(a)(1)(B)-(D); 78 Fed. Reg. at 8532 (political committees can contribute $32,400 apiece to each national-party committees, $10,000 apiece to each state party committee, and $5000 apiece to other non-party political committees); 2 U.S.C. 441a(a)(2)(B)-(C) (multicandidate political committees can contribute $15,000 apiece to national-party political committees, and $5000 to other political committees).

The use of political committees as conduits for contributions to candidates is even easier now than it was when *Buckley* was decided. First, more than five times as many political committees exist today as in 1976. FEC, *PAC Count—1974 to Present*, Jan. 2013, http://www.fec.gov/press/summaries/2011/2011paccount.shtml (listing 1146 political committees as of Dec. 31, 1976, and 6331 as of Jan. 1, 2013). Second, it is much simpler today than in 1976 to determine which political committees are "likely to contribute to" a particular candidate, *Buckley*, 424 U.S. at 38, since many committees provide that information on their websites. See, *e.g.*, American Legacy PAC, *Who We Support*, http://www.americanlegacypac.org/who-we-support (last visited July 17, 2013) (listing one federal candidate for 2013 election cycle and one federal candidate for 2014 election cycle); Young Americans for Liberty, *YAL PAC*, http://www.yaliberty.org/pac (last visited July 17, 2013) (listing 12 candidates for 2012 election cycle). A donor's

ability to use committees as conduits in this way would be limited only by his own resources and the number of such committees that support candidates he wishes to support—and such committees can be expected to proliferate further in number if aggregate contribution limits are invalidated.

2. Even putting non-party committees to one side, an individual could still contribute a "massive" (*Buckley*, 424 U.S. at 38) $3,628,000 in a single two-year election cycle to entities affiliated with a single party: $2,262,000 to candidates for the House of Representatives ($2600 to each of 435 candidates at both the primary and general-election stages); $171,600 to Senate candidates ($2600 to each of 33 candidates at both the primary and general-election stages); $1,000,000 to state party committees ($10,000 per year to each of 50 committees); and $194,400 to national party committees ($32,400 per year to each of three committees). 2 U.S.C. 441a(a)(1)(A)-(D); 78 Fed. Reg. at 8532. Indeed, as the district court observed (J.S. App. 12a), the contributor could accomplish much of this with a single check. Candidates, the national party committees, and their state party affiliates could simply form a "joint fundraising committee," which could then receive a lump-sum contribution of hundreds of thousands or millions of dollars to be parceled out in base-limit-compliant pieces to the various party-affiliated entities. See *ibid.*; see, *e.g.*, 11 C.F.R. 102.6(b)-(c), 102.17.

These entities would then have considerable discretion to funnel most or all of this money to a narrow set of candidates. National and state party committees, for example, can each contribute $5000 apiece to candidates. 2 U.S.C. 441a(a)(2)(A) and (4); see 11 C.F.R. 110.3(b)(3). Those committees can also each direct additional

amounts towards coordinated expenditures, *i.e.*, expenditures made "in cooperation, consultation, or concert with" a candidate's campaign. 2 U.S.C. 441a(a)(7)(B)(i); see 2 U.S.C. 441a(d)(3). This Court has found "no significant functional difference between a party's coordinated expenditure and a direct party contribution to the candidate," and it has treated coordinated expenditures like contributions for constitutional purposes. *Colorado II*, 533 U.S. at 464; see *id.* at 447-465. In the current election cycle, the coordinated expenditure limits for national and state party committees allow for $46,600 in coordinated expenditures on behalf of each House candidate in States with more than one representative, and between $93,100 and $2,682,200 (depending on state population) in coordinated expenditures on behalf of each Senate candidate (or House candidate in States with a single representative). 2 U.S.C. 441a(d)(3); 78 Fed. Reg. at 8531-8532.

Candidates themselves can contribute up to $2600 apiece per election to other candidates (2 U.S.C. 441a(a)(1)(A); 78 Fed. Reg. at 8532), and the authorized campaign committee of each candidate can contribute another $2000. 2 U.S.C. 432(e)(3)(B). Appellants do not appear to dispute that such transfers take place, and FEC data show that candidates in "safe" districts regularly contribute campaign funds to candidates in their party who face more difficult elections. See generally FEC, *Detailed Files About Candidates, Parties and Other Committees*, http://www.fec.gov/finance/disclosure/ftpdet.shtml (last visited July 17, 2013); FEC, *Disclosure Data Catalog*, http://www.fec.gov/data/DataCatalog.do?cf=downloadable (last visited July 17, 2013). In particular, FEC data reveal that in the 2011-2012 election cycle, federal candidates collectively con-

tributed more than $11 million to other federal candidates, including 77 transactions totaling $104,268 to Rep. Louise Slaughter (New York's 25th District); 71 transactions totaling $100,500 to Rep. John Tierney (Massachusetts's 6th District); 76 transactions totaling $100,106 to former Rep. Francisco Raul Canseco (Texas's 23rd District); 59 transactions totaling $97,799 to Sen. Joe Donnelly (Indiana); 78 transactions totaling $97,500 to Rep. Kathy Hochul (New York's 26th District); 73 transactions totaling $94,500 to former Rep. Betty Sutton (Ohio's 13th District); and 71 transactions totaling $93,500 to former Rep. Mark Critz (Pennsylvania's 12th District). Officeholders today have additionally established hundreds of "leadership PACs" dedicated to spending funds in support of their colleagues, which raised more than $138 million in the 2011-2012 election cycle, and to which candidate committees themselves can contribute. FEC, *2012 Leadership PACs and Sponsors*, http://www.fec.gov/data/Leadership.do?format=html&election_yr=2012 (last visited July 17, 2013).

Candidates can also transfer funds without limit to national and state party committees. 2 U.S.C. 439a(a)(4); 11 C.F.R. 113.2(c). Those party committees can in turn transfer funds without limit among each other, 2 U.S.C. 441a(a)(4), and then potentially use the funds for candidate contributions or for coordinated expenditures. See *McConnell*, 540 U.S. at 124 (noting transfers from national to state parties); *id.* at 161 ("BCRA's restrictions on national committee activity would rapidly become ineffective if state and local committees remained available as a conduit."); *FEC* v. *Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 30 (1981) (describing system of state parties giving national parties control over state party's spending).

3. A system in which an individual can provide millions of dollars—potentially in response to direct solicitations from the President and Members of Congress—to finance parties and their candidates would substantially replicate the Watergate-era and soft-money systems that resulted in well-documented instances of actual or apparent corruption and circumvention of existing law. See *Buckley*, 424 U.S. at 26-27 & n.28; *McConnell*, 540 U.S. at 129-131, 145-152. Political candidates and parties could become increasingly dependent on the largesse of a small number of donors willing to underwrite the cost of campaigns. As *Buckley* recognized, "public awareness the opportunities for abuse inherent" in such a regime would have a disastrous effect on the public's confidence in our system of representative government. 424 U.S. at 27.

Congress is entitled to conclude that an individual who makes contributions of a magnitude that the aggregate limits would currently prevent might acquire actual or perceived "improper influence," *Buckley*, 424 U.S. at 27, over a party's elected officials, regardless of how the money is spent. As the aforementioned practices of candidate-to-candidate contributions and leadership PACs illustrate, a candidate's political prospects are intertwined with the prospects of his party and its other candidates. An improper arrangement between a contributor and a candidate can thus involve not only contributions to the candidate himself, but also contributions to his party or to other party candidates. For example, the Senate Report accompanying the 1974 FECA Amendments detailed how contributors were promised ambassadorships in return for contributions not just to the President, but to the President's favored Senate candidates as well. *Final Report* 492, 501. Simi-

larly, large soft-money donations to national and state parties have directly affected legislative outcomes in areas such as generic-drug regulation, tort reform, tobacco regulation, and labor relations. See *McConnell*, 540 U.S. at 149-150; pp. 7-8, *supra*.

In upholding the ban on soft-money contributions, the Court in *McConnell* recognized that the "close connection" and "alignment of interests" between candidates and parties meant that "soft-money contributions to national parties [were] likely to create actual or apparent indebtedness on the part of federal officeholders, regardless of how those funds [were] ultimately used." 540 U.S. at 155; see *id.* at 155-156. A single donor's large aggregate contributions to a political party and the party's candidates could be expected to give rise to similar indebtedness. Indeed, "there is no meaningful separation between the national party committees and the public officials who control them," because the "national committees of the two major parties are both run by, and largely composed of, federal officeholders and candidates." *Id.* at 155 (internal quotation marks and brackets omitted).

The principle that payments made to a surrogate may have the same corruptive effect as payments made directly to a federal official is a fundamental tenet of many federal anti-corruption and conflict-of-interest laws. The federal criminal prohibition against the payment and receipt of bribes and illegal gratuities, for example, encompasses payments made to a third party designated by the relevant federal official, so long as the requisite connection between the payment and official action is present. See 18 U.S.C. 201(b)(1). Ethics regulations for Executive Branch employees likewise provide that the "gift[s]" subject to the regulatory restrictions include

gifts "[g]iven to any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee." 5 C.F.R. 2635.203(f)(2). Senate Rule 35(b)(2)(A) is to the same effect. The evident premise of all those prohibitions is that a federal officer or employee will feel a natural affinity of interests with an organization with which he is closely affiliated. Congress is entitled to reach that same conclusion with respect to candidates for federal office (many of whom are already incumbent officeholders).

4. The absence of aggregate contribution limits would also enable and encourage contributors to give money to candidates and parties irrespective of whether the recipients' ideology aligns with the contributor's. See *McConnell*, 540 U.S. at 148 (noting frequency with which particular donors made soft-money contributions to both parties, "leaving room for no other conclusion but that these donors were seeking influence, or avoiding retaliation, rather than promoting any particular ideology"). Some lobbyists have acknowledged that they currently rely on the aggregate limits to avoid "shakedown[s]" for contributions. Kevin Bogardus, *Lobbyists Fear Shakedown If Supreme Court Lifts Campaign Contributions Cap*, The Hill, Feb. 26, 2013, http://thehill.com/business-a-lobbying/284817-lobbyists-fear-shakedown-if-court-lifts-campaigncap#ixzz2M23oRhX0. Without any aggregate limits, donors could feel pressured not only to contribute more to the candidates and parties they favor, but also to hedge their bets by contributing to competing candidates and parties as well. See *ibid.* (describing comments of a former FEC chairman that removing the aggregate contribution limits would allow donors to contribute $32,400 apiece to all

three national committees of each major party). The current aggregate limits are the only measure that prevents, for example, an individual from contributing the full base limit, in both the primary and general elections, to each of the 51 members of the powerful House Appropriations Committee (a total contribution of $265,200). See U.S. House of Representatives, Committee on Appropriations, *Full Committee Members*, http://appropriations.house.gov/about/members (last visited July 17, 2013).

C. *Buckley* Forecloses Appellants' Challenge To The Aggregate Limits In The Current Version of FECA

Appellants contend that post-*Buckley* amendments to FECA have undermined the original justification for the statute's aggregate contribution limit. That argument is unpersuasive, and appellants' remaining arguments are inconsistent with *Buckley*.

1. *The current version of FECA has not changed in any relevant way from the version considered in* Buckley

Appellants do not explicitly argue that the Court in *Buckley* erred in upholding the aggregate contribution limit in effect at that time. They instead contend that the overall statutory scheme has changed so substantially since 1976 that the justification on which *Buckley* relied to uphold that limit no longer applies. That argument is misconceived.

a. The RNC notes (Br. 22) that, after *Buckley*, Congress prohibited candidates from putting campaign funds to personal use. But the *Buckley* Court's conclusion that FECA's aggregate contribution limit was constitutional did not depend on the possibility that candidates could use campaign funds for personal expenses. See 424 U.S. at 38. And, by accepting the validity of the

current base contribution limits, appellants effectively concede that a contribution to a candidate has the potential to cause actual or apparent corruption even if the candidate cannot convert the funds to personal use.

b. Appellants contend (RNC Br. 39-41; McCutcheon Br. 42-43, 49-50) that the government's anti-corruption and anti-circumvention interests are adequately protected by FECA's "earmarking" provision, 2 U.S.C. 441a(a)(8). Under that provision, a contribution to one entity (*e.g.*, a political committee) earmarked for transfer to a second entity (*e.g.*, a candidate) is treated as a contribution to that second entity for purposes of the original contributor's base contribution limits (*e.g.*, the $2600 limit on contributions to a particular federal candidate). *Ibid.* FECA's earmarking provision, however, already existed when *Buckley* was decided. 424 U.S. at 190 (appendix reproducing 18 U.S.C. 608(b)(6)); see *id.* at 23-24 (discussing earmarking). The Court in *Buckley* specifically recognized that aggregate limits serve the permissible interest of preventing circumvention of the base limits "through the use of *unearmarked* contributions." *Id.* at 38 (emphasis added).

Appellants' argument is also foreclosed by this Court's decision in *Colorado II*, which rejected the contention that the earmarking provision constitutes "the outer limit of acceptable tailoring" in support of the government's anti-corruption and anti-circumvention interests. 533 U.S. at 462. The Court in *Colorado II* explained that such a contention "ignores the practical difficulty of identifying and directly combating circumvention under actual political conditions," which can include various informal ways for political-party contributors to indicate how they want their money spent, and which make circumvention "very hard to trace."

Ibid.; see *id.* at 459 (describing "tally system," through which political parties helped channel funds from contributors to candidates while avoiding formal earmarking).[6]

Before BCRA's restrictions on soft money were enacted, contributors frequently "create[d] debt on the part of officeholders" through massive donations to parties, notwithstanding anti-earmarking laws and the absence of any formal mechanism for assuring that a particular contribution would benefit a particular candidate. *McConnell*, 540 U.S. at 146. Even without earmarking, contributors can accurately determine how their contributions will be used. Party committees, like other political committees, frequently focus on particular candidates. For example, more than 96% of the nearly $210,000 in coordinated expenditures by the Democratic Party of New Mexico in 2012 was in support of a single candidate, and the entirety of the $334,604 in coordinated expenditures by the Missouri Democratic State Committee in 2012 was in support of a single candidate.[7] Even in contexts where contributions are not

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[6] Contrary to the RNC's assertion (Br. 41-42), the FEC has not conceded that such tallying lacks corrupting potential. The RNC relies on a three-sentence letter sent by the FEC to the Democratic Senatorial Campaign Committee (DSCC) in 2012, following up on an FEC enforcement action from the 1990s. To resolve that enforcement action, the DSCC admitted that its use of a tally system violated an FEC regulation (11 C.F.R. 110.6(c)(2)), paid a fine, and entered into a conciliation agreement. Conciliation Agreement, *In re DSCC* (Aug. 21, 1995). The letter cited by the RNC simply acknowledged that the DSCC had "fulfilled its obligations" under the conciliation agreement. See Letter from Jin Lee, Attorney, FEC, to Mark Elias and Jonathan Berkon, Perkins Coie LLP (Nov. 19, 2012).

[7] See Democratic Party of N.M., *Report of Receipts and Disbursements* 4, 219-220, Apr. 8, 2013, http://images.nictusa.com/pdf/488/

made directly to federal candidates, "federal officeholders [have been] well aware of the identities of the donors." *McConnell*, 540 U.S. at 147.

c. Appellants observe (*e.g.*, RNC Br. 21-22, 32-33; McCutcheon Br. 42) that the current version of FECA prohibits a single entity from evading contribution limits by creating or controlling multiple affiliated political committees. 2 U.S.C. 441a(a)(5); 11 C.F.R. 100.5(g). That prohibition forecloses what would otherwise be a particularly easy and effective means of circumventing the limits on contributions to any particular political committee. In the discussion upholding FECA's aggregate contribution limit in 1976, however, the Court in *Buckley* did not allude to the possibility that a single entity might create multiple political committees, much less suggest that the prevention of that risk was the sole justification for the aggregate limit. See 424 U.S. at 38. *Buckley's* concern with "unearmarked contributions to political committees likely to contribute to [a favored] candidate" exists regardless of whether the committees are created by the same entity or by different entities. *Ibid.* And FECA does not limit the number of political committees that may exist. As previously discussed, see pp. 36-37, *supra*, the current proliferation of committees, along with the simplicity of researching and contacting them, makes it quite easy for individual donors to identify committees that are likely to contribute to a particular candidate. If an individual gives the maxi-

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13961253488/13961253488.pdf; Missouri Democratic State Comm., *Report of Receipts and Disbursements* 4, 70, May 13, 2013, http://images.nictusa.com/pdf/727/13962195727/13962195727.pdf; see also Democratic Congressional Campaign Comm., *Red To Blue 2012*, http://www.dccc.org/pages/redtoblue (last visited July 17, 2013) (identifying specific candidates for support).

mum contribution of $5000 to each of 100 non-party political committees, and one-fifth of that money is passed on to a favored candidate, that candidate will receive nearly 20 times the maximum amount the individual could give to the candidate directly.

d. Appellants contend (*e.g.*, RNC Br. 17, 34-36; McCutcheon Br. 41) that the government's anti-corruption and anti-circumvention interests are adequately protected by base limits that did not exist when *Buckley* was decided. The version of FECA in effect in 1976 imposed base limits on contributions to candidates, see 424 U.S. 23-36 (upholding the constitutionality of those limits), but it did not include the current limits on contributions to party committees or to other political committees. The addition of these further base limits, however, does not in itself prevent the harm at which the aggregate contribution limits are directed, namely, the possibility that someone could "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.* at 38.

Such a scheme would not have been significantly easier to carry out when *Buckley* was decided than it is to carry out now. Even at the time of *Buckley*, FECA limited the amounts that political committees—including party committees—could contribute to political candidates (to $1000 or $5000 per election, depending on the particular type of committee). See 424 U.S. at 23 (explaining that $1000 limit on contributions to candidates applied to, *inter alia*, any "committee" or "association") (citation omitted); *id.* at 35 (explaining that certain political committees could contribute up to $5000); *id.* at 182, 187, 189 (reproducing relevant provisions). A contribu-

tor seeking to implement the scheme described in *Buckley* would thus have had to divide his money among many different political committees (potentially both party and non-party committees) to ensure that the targeted candidate would indeed receive the desired amounts. The Court nevertheless recognized the government's interest in restricting such a scheme through the use of aggregate contribution limits.

The current version of FECA limits not only the amounts that party and non-party political committees can contribute to candidates, see 2 U.S.C. 441a(a)(1)(A) and (2)(A), but also the amounts that individuals can contribute to such committees ($32,400 for national-party committees, $10,000 for state party committees, and $5000 for other political committees). 2 U.S.C. 441a(a)(1)(B)-(D); 78 Fed. Reg. 8532. Although those additional base limits may reduce circumvention of the base limits on contributions to candidates in certain ways, see *California Med. Ass'n* v. *FEC*, 453 U.S. 182, 198 n.18 (1981) (plurality opinion), they do not make the scheme described in *Buckley* materially harder to execute. The success of such a scheme does not depend on the ability to contribute vastly more to a political committee than a political committee itself can contribute to the candidate. Rather, it depends on the ability of contributors to find various conduits through which unearmarked funds can reach a candidate. Notwithstanding the intervening enactment of limits on contributions to particular committees, donors can find suitable conduits as easily, or more easily, now than they could at the time of *Buckley*.

This Court's decision in *California Medical Association* v. *FEC*, *supra*, confirms that aggregate limits and limits on contributions to particular political committees

can coexist under the First Amendment. In that case, the Court upheld the constitutionality of a $5000 limit on contributions by an individual or an unincorporated association to a particular type of political committee, known as a "multicandidate political committee," that receives contributions from more than 50 people and contributes to five or more candidates. 453 U.S. at 184-185 & n.1 (citing 2 U.S.C. 441a(a)(4)). A plurality of the Court reasoned that, if a contributor could give unlimited amounts to a multicandidate political committee, he could circumvent both the $1000 limit on individual contributions to candidates (because the multicandidate political committees could contribute up to $5000 to a candidate) and the $25,000 limit on aggregate contributions (because the multicandidate political committee was not subject to any aggregate limit). *Id.* at 198 (plurality opinion). Justice Blackmun's concurrence contained similar reasoning. *Id.* at 203 (Blackmun, J., concurring in part and concurring in the judgment) (agreeing that the limit on contributions to multicandidate committees could be upheld on anti-circumvention grounds, and analogizing the limit to "the $25,000 limitation on total contributions in a given year that *Buckley* held to be constitutional"). A majority of the Court thus recognized that aggregate limits can operate in tandem with limits on contributions to political committees, and that Congress is not required to choose between the two.

2. *Appellants' challenges to FECA's aggregate contribution limits cannot be reconciled with* Buckley

Because the current FECA framework is indistinguishable in all relevant respects from the FECA framework addressed in *Buckley*, this Court's decision upholding FECA's aggregate contribution limit remains

controlling. Appellants' criticisms of FECA's present aggregate contribution limits would have applied equally to the aggregate contribution limit at issue in *Buckley*.

a. Appellants repeatedly contend (*e.g.*, RNC Br. 20, 33, 36; McCutcheon Br. 37, 51-52) that Congress has effectively disavowed any interest in preventing a scheme of the sort described in *Buckley*, in which unearmarked funds contributed to numerous entities are funneled to a particular candidate. In appellants' view, Congress has "made the judgment" that a contribution to a single entity within the base limit (*e.g.*, a contribution to a political-party committee up to $32,400) presents no "cognizable" risk of corruption. RNC Br. 36. They further assert that, because "[d]oing something posing zero *cognizable* risk multiple times does not increase the risk," Congress can have no valid interest in limiting the number of contributions up to the base limit a particular individual can make. *Ibid.* Appellants also make the related argument that Congress has "asserted no * * * concern" about the possibility that a funneling scheme might be carried out through the transfer of contributions between various party entities, because it has not enacted a specific law restricting such transfers. *Id.* at 20.

Appellants' arguments are flawed. First, it could just as easily have been argued in *Buckley* that base limits and the absence of transfer restrictions operated to disavow any congressional interest in preventing funneling schemes. The Court nevertheless upheld the aggregate limit as a reasonable means of preventing individual donors from funneling outsized contributions to candidates through the use of intermediaries. 424 U.S. at 38. Congress's decision to address such schemes in one way (aggregate contribution limits) rather than in an-

other (say, limits on transfers) does not cast doubt on Congress's interest in addressing them.

Second, Congress's choice of applicable base limits on contributions to candidates and other entities does not reflect any implicit determination that contributions below those limits pose no risk whatever of corruption or circumvention. Rather, FECA's base limits reflect Congress's effort to balance competing objectives, enabling individuals to legitimately influence elections while reducing the opportunities for actual and apparent corruption. See, *e.g.*, *Buckley*, 424 U.S. at 26 (noting that "the Act's primary purpose [is] to *limit* the actuality and appearance of corruption") (emphasis added). One of the factors Congress presumably considered in setting the base limits was the existence (and constitutionality) of "corollary" aggregate contribution limits, *id.* at 38, that would work in combination with the base limits. Congress also presumably relied on the existence of aggregate contribution limits as a factor in deciding not to regulate certain types of transfers.

b. Appellants characterize the aggregate contribution limits as an impermissible "prophylaxis-upon-prophylaxis" (RNC Br. 30-31) and argue that they are not sufficiently tailored (McCutcheon Br. 55-61). These contentions are incorrect and inconsistent with *Buckley*.

In characterizing FECA's aggregate limits as a "prophylaxis-on-prophylaxis," appellants assume that the base contribution limits are simply a prophylactic measure against bribery-like *quid pro quo* arrangements with public officials. See RNC Br. 27 n.18; McCutcheon Br. 61. The Court in *Buckley* observed, however, that because bribery laws reach "only the most blatant and specific attempts" to corrupt public officials with money, those laws do not fully vindicate the gov-

ernment's anti-corruption interests. 424 U.S. at 28; see *McConnell*, 540 U.S. at 143 (noting that the Court in *Buckley* "expressly rejected the argument that anti-bribery laws provided a less restrictive alternative to FECA's contribution limits"); *Shrink Mo. Gov't PAC*, 528 U.S. at 389 ("In speaking of 'improper influence' and 'opportunities for abuse' in addition to '*quid pro quo* arrangements,' [the Court in *Buckley*] recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors."). The decision on which the RNC relies for the proposition that a "prophylaxis-upon-prophylaxis approach" is unconstitutional, *FEC* v. *Wisconsin Right to Life, Inc.*, 551 U.S. 449, 479 (2007) (opinion of Roberts, C.J.), involved expenditure restrictions that, unlike the contribution restrictions at issue here, limited direct political speech and were subject to strict scrutiny. See *ibid.*; *id.* at 455-457.

McCutcheon's overbreadth argument (Br. 55-61) cannot be squared with *Buckley*, which rejected an analogous overbreadth challenge to the base contribution limits. The Court in *Buckley* assumed *arguendo* "that most large contributors do not seek improper influence over a candidate's position or an officeholder's action." 424 U.S. at 29. The Court concluded, however, that this assumption did not "undercut the validity of the $1,000 contribution limitation." *Id.* at 29-30. "Not only is it difficult to isolate suspect contributions," the Court explained, "but, more importantly, Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated." *Id.* at 30.

The "corollary" aggregate contribution limits, which the Court in *Buckley* likewise found constitutional, serve the same salutary purposes. *Id.* at 38.

c. Appellants contend (RNC Br. 29; McCutcheon Br. 44-48) that FECA's aggregate contribution limits cannot be upheld because the government has failed to provide sufficient "actual evidence" to establish the need for them. As McCutcheon acknowledges (Br. 46), however, the "quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised." *Shrink Mo. Gov't PAC*, 528 U.S. at 391. The justification for the aggregate contribution limits at issue here is neither novel nor implausible, but is instead the same justification the Court deemed sufficient in *Buckley*. See *ibid.* ("*Buckley* demonstrates that the dangers of large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible."); see also *ibid.* ("*Buckley*'s evidentiary showing exemplifies a sufficient justification for contribution limits."); *McConnell*, 540 U.S. at 165 (explaining that Congress has "been taught the hard lesson of circumvention by the entire history of campaign finance regulation").

Furthermore, not only the Watergate-era and soft-money-era abuses previously discussed, see pp. 4-5, 7-8, 40-41, *supra*, but also more recent events, demonstrate the need for regulation that deters *quid pro quo* exchanges in which an officeholder solicits contributions not only to himself, but also to other entities. In 2005, Wisconsin Senate Majority Leader Chuck Chvala pleaded guilty to two felonies, following criminal charges that he solicited contributions to a variety of candidates and political committees in return for political favors. See

Steven Walters & Patrick Marley, *Chvala Pleads Guilty To 2 Felonies*, Milwaukee J. Sentinel, Oct. 26, 2005, at A1; Steve Schultze & Richard P. Jones, *Chvala Charged With Extortion*, Milwaukee J. Sentinel, Oct. 18, 2002, at A1; see also Jodi Wilgoren, *Leader Charged With Extortion and Misconduct*, N.Y. Times, Oct. 18, 2002, at A24. In 2006, former federal lobbyist Jack Abramoff pleaded guilty to corruption-related charges after evidence surfaced that he had, *inter alia*, directed contributors to make three separate contributions (totaling $32,000) to a congressman and political committees in return for the congressman's acquiescence in inserting language into a bill. James V. Grimaldi & Susan Schmidt, *Lawmaker From Ohio Subpoenaed in Abramoff Case*, Washington Post, Nov. 5, 2005, at A4; Dep't of Justice, *Former Lobbyist Jack Abramoff Pleads Guilty to Charges Involving Corruption, Fraud Conspiracy, and Tax Evasion* (Jan. 3, 2006), http://www.justice.gov/opa/pr/2006/January/06_crm_002.html. And in 2010, former House Majority Leader Tom DeLay was found guilty following charges that he, *inter alia*, circumvented state law by using his political committee and the RNC as conduits to funnel $190,000 from several contributors to seven Texas state candidates. James C. McKinley, Jr., *DeLay Convicted in Donation Case by a Texas Jury*, N.Y. Times, Nov. 25, 2010, at A26. Although these particular schemes were eventually discovered and punished, such schemes are not always easy to detect, and Congress thus has strong reasons to limit a donor's ability to contribute large sums at a candidate's or officeholder's request.

d. In addition to asserting facial challenges to BCRA's aggregate contribution limits, the RNC argues (*e.g.*, Br. 32 & n.24, 42 & n.33) that the aggregate limit on contributions to non-candidate political committees is

unconstitutional as applied to contributions received by national party committees.[8] In rejecting a facial challenge to the then-existing aggregate limit, however, the Court in *Buckley* specifically recognized Congress's interest in preventing parties from serving as conduits for large contributions. 424 U.S. at 38. *Buckley*'s conclusion on that point was reinforced by this Court's subsequent decision in *Colorado II*, which rejected the argument that contributions to political parties have no potential for corruption or circumvention of other campaign-finance laws. The Court recognized that, "whether they like it or not, [parties] act as agents for spending on behalf of those who seek to produce obligated officeholders." 533 U.S. at 452; see *McConnell*, 540 U.S. at 146 (observing that parties served as "willing intermediaries" for soft-money contributions). Congress thus has at least as much interest in regulating aggregate contributions to parties as it does in regulating aggregate contributions to other types of entities.[9]

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[8] Unlike the single aggregate contribution limit upheld in *Buckley*, the current aggregate contribution limits are broken into separate categories for different types of contributions. See pp. 9-10, *supra*. That modification provides no basis for avoiding the binding force of *Buckley*'s holding that an aggregate limit is constitutional. As the Court recognized in *Buckley*, the undifferentiated $25,000 limit had the purpose and effect of limiting total contributions to parties, candidates, and political committees. 424 U.S. at 38. It is irrelevant that Congress now pursues the same objectives through multiple aggregate contribution limits, rather than through a single aggregate cap.

[9] The RNC argues (Br. 52-53) that, if the aggregate limit (currently $74,600 per election cycle) on contributions to non-candidate committees is held invalid as applied to the contributions received by national parties, the subsidiary limit (currently $48,600) on contributions to other non-candidate committees is inseverable and therefore should be struck down as well. BCRA's severability clause forecloses that contention. That clause states that the invalidation of "any provision

e. Appellants suggest (RNC Br. 44; McCutcheon Br. 38-39) that aggregate contribution limits constitute an impermissible attempt to equalize the amount of speech on different sides of a political campaign. But the Court in *Buckley* recognized that contribution limits, unlike expenditure limits, are not speech-equalization measures. 424 U.S. at 25-26 & n.26. "Contribution limitations alone," the Court explained, "would not reduce the greater potential voice of affluent persons and well-financed groups, who would remain free to spend unlimited sums directly to promote candidates and policies they favor in an effort to persuade voters." *Id.* at 26 n.26. Contribution limits, including aggregate contribution limits, are instead an effort to curtail corruption and the appearance of corruption stemming from outsized campaign contributions. *Id.* at 23-38. Because FECA's current aggregate contribution limits further that purpose in precisely the same way as the aggregate contribution limit at issue in *Buckley*, appellants' challenge to those limits lacks merit.

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of [BCRA] * * * , or the application of a provision * * * to any person or circumstance," does not affect the validity of other provisions or applications of BCRA. BCRA § 401, 116 Stat. 112; 2 U.S.C. 454 note.

CONCLUSION

The judgment of the district court should be affirmed.

Respectfully submitted.

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APPENDIX

1. The First Amendment provides in pertinent part:

Congress shall make no law * * * abridging freedom of speech.

2. 2 U.S.C. 431(11) provides:

Definitions

* * * * *

(11) The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

3. 2 U.S.C. 441a provides in pertinent part:

Limitations on contributions and expenditures

(a) Dollar limits on contributions

(1) Except as provided in subsection (i) of this section and section 441a-1 of this title, no person shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $2,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $25,000;

(C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed $5,000; or

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.

(2) No multicandidate political committee shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of

the next even-numbered year, no individual may make contributions aggregating more than—

(A) $37,500, in the case of contributions to candidates and the authorized committees of candidates;

(B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.

(4) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party. For purposes of paragraph (2), the term "multicandidate political committee" means a political committee which has been registered under section 433 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be

considered to have been made by a single political committee, except that (A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fund raising efforts; (B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and (C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office if (i) such transfer is not made when the candidate is actively seeking nomination or election to both such offices; (ii) the limitations contained in this Act on contributions by persons are not exceeded by such transfer; and (iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of title 26. In any case in which a corporation and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for pur-

poses of the limitations provided by paragraph (1) and paragraph (2).

(6) The limitations on contributions to a candidate imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

(7) For purposes of this subsection—

(A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate;

(B)(i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate;

(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and

(iii) the financing by any person of the dissemination, distribution, or republication, in whole

or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for purposes of this paragraph; and[1]

(C) if—

(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 434(f)(3) of this title); and

(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party; and

(D) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of

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[1] So in original. The word "and" probably should not appear.

such party for election to the office of President of the United States.

(8) For purposes of the limitations imposed by this section, 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. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

* * * * *

(c) Increases on limits based on increases in price index

(1)(A) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period.

(B) Except as provided in subparagraph (C), in any calendar year after 2002—

(i) a limitation established by subsections (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) of this

section shall be increased by the percent difference determined under subparagraph (A);

(ii) each amount so increased shall remain in effect for the calendar year; and

(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(C) In the case of limitations under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h) of this section, increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(2) For purposes of paragraph (1)—

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means—

(i) for purposes of subsections (b) and (d) of this section, calendar year 1974; and

(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h) of this section, calendar year 2001.

(d) Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2), (3), and (4) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e) of this section). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section); or

(ii) $20,000; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

(4) INDEPENDENT VERSUS COORDINATED EXPENDITURES BY PARTY.—

(A) IN GENERAL.—On or after the date on which a political party nominates a candidate, no committee of the political party may make—

(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 431(17) of this title) with respect to the candidate during the election cycle; or

(ii) any independent expenditure (as defined in section 431(17) of this title) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with re-

spect to the candidate during the election cycle.

(B) APPLICATION.—For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

(C) TRANSFERS.—A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

(e) Certification and publication of estimated voting age population

During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age population of the United States, of each State, and of each congressional district as of the first day of July next preceding the date of certification. The term "voting age population" means resident population, 18 years of age or older.

(f) Prohibited contributions and expenditures

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

* * * * *

(h) Senatorial candidates

Notwithstanding any other provision of this Act, amounts totaling not more than $35,000 may be contributed to a candidate for nomination for election, or for election, to the United States Senate during the year in which an election is held in which he is such a candidate, by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees.

4. 78 Fed. Reg. 8530 (Feb. 6, 2013) provides:

FEDERAL ELECTION COMMISSION

[Notice 2013–03]

Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold

AGENCY: Federal Election Commission.

ACTION: Notice of adjustments to contribution and expenditure limitations and lobbyist bundling disclosure threshold.

SUMMARY: As mandated by provisions of the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"), the Federal Election Commission ("FEC" or "the Commission") is adjusting certain contribution and expenditure limitations and the lobbyist bundling disclosure threshold set forth in the Act, to index the amounts for inflation. Additional details appear in the supplemental information that follows.

DATES: *Effective Date:* The effective date for the limitation at 2 U.S.C. 441a(a)(1)(A) is November 7, 2012. The effective date for the limitations at 2 U.S.C. 434(i)(3)(A), 441a(a)(1)(B), 441a(a)(3), 441a(d) and 441a(h) is January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth S. Kurland, Information Division, 999 E Street NW., Washington, DC 20463; (202) 694–1100 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.,* coordinated party expenditure limits (2 U.S.C. 441a(d)(2) and (3)(A), (B)), certain contribution limits (2 U.S.C. 441a(a)(1)(A) and (B), (a)(3) and (h)), and the disclosure threshold for contributions bundled by lobbyists (2 U.S.C. 434(i)(3)(A)) are adjusted periodically to reflect changes in the consumer price index. *See* 2 U.S.C. 434(i)(3) and 441a(c)(1), and 11 CFR 109.32 and 110.17(a), (f). The Commission is publishing this notice to announce the adjusted limits and disclosure threshold.

Coordinated Party Expenditure Limits for 2013

Under 2 U.S.C. 441a(c), the Commission must adjust the expenditure limitations established by 2 U.S.C. 441a(d) (the limits on expenditures by national party committees, state party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office) annually to account for inflation. This expenditure limitation is increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 1974).

1. Expenditure Limitation for House of Representatives in States with More Than One Congressional District

Both the national and state party committees have an expenditure limitation for each general election held to fill a seat in the House of Representatives in states with more than one congressional district. This limitation also applies to those states and territories that elect individuals to the office of Delegate or Resident Commissioner.[2] The formula used to calculate the expenditure limitation in such states multiplies the base figure of $10,000 by the difference in the price index (4.65647), rounding to the nearest $100. *See* 2 U.S.C. 441a(c)(1)(B) and 441a(d)(3)(B), and 11 CFR 109.32(b) and 110.17. Based upon this formula, the expenditure limitation for 2013 general elections for House candidates in these states is $46,600.

2. Expenditure Limitation for Senate and for House of Representatives in States With Only One Congressional District

Both the national and state party committees have an expenditure limitation for a general election held to fill a seat in the Senate or in the House of Representatives in states with only one congressional district. The formula used to calculate this expenditure limitation considers not only the price index but also the

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[2] Currently, these states are the District of Columbia, the Commonwealth of Puerto Rico, and the territories of American Samoa, Guam, the United States Virgin Islands and the Northern Mariana Islands. *See http://www.house.gov/representatives/*.

voting age population ("VAP") of the state. The VAP of each state is published annually in the **Federal Register** by the Department of Commerce. 11 CFR 110.18. The general election expenditure limitation is the greater of: The base figure ($20,000) multiplied by the difference in the price index, 4.65647 (which totals $93,100); or $0.02 multiplied by the VAP of the state, multiplied by 4.65647. Amounts are rounded to the nearest $100. *See* 2 U.S.C. 441a(c)(1)(B) and 441a(d)(3)(A), and 11 CFR 109.32(b) and 110.17. The chart below provides the state-by-state breakdown of the 2013 general election expenditure limitation for Senate elections. The expenditure limitation for 2013 House elections in states with only one congressional district[3] is $93,100.

[3] Currently, these states are: Alaska, Delaware, Montana, North Dakota, South Dakota, Vermont and Wyoming. *See http://www.house.gov/representatives/.*

SENATE GENERAL ELECTION
EXPENDITURE LIMITS—2013 ELECTIONS

State	Voting age population (VAP)	VAP x .02 x the price index (4.65647)	Senate expenditure limit (the greater of the amount in column 3 or $93,100)
Alabama.....	3,697,617	$344,400	$344,400
Alaska.....	544,349	50,700	93,100
Arizona.....	4,932,361	459,300	459,300
Arkansas.....	2,238,250	208,400	208,400
California.....	28,801,211	2,682,200	2,682,200
Colorado.....	3,956,224	368,400	368,400
Connecticut.....	2,796,789	260,500	260,500
Delaware.....	712,042	66,300	93,100
Florida.....	15,315,088	1,426,300	1,426,300
Georgia.....	7,429,820	691,900	691,900
Hawaii.....	1,089,302	101,400	101,400
Idaho.....	1,169,075	108,900	108,900
Illinois.....	9,811,190	913,700	913,700
Indiana.....	4,945,857	460,600	460,600
Iowa.....	2,351,233	219,000	219,000
Kansas.....	2,161,601	201,300	201,300
Kentucky.....	3,362,177	313,100	313,100
Louisiana.....	3,484,090	324,500	324,500
Maine.....	1,063,274	99,000	99,000
Maryland.....	4,540,763	422,900	422,900
Massachusetts.....	5,244,729	488,400	488,400

Michigan.....	7,616,490	709,300	709,300
Minnesota.....	4,102,991	382,100	382,100
Mississippi.....	2,239,593	208,600	208,600
Missouri.....	4,618,513	430,100	430,100
Montana.....	783,161	72,900	93,100
Nebraska.....	1,392,120	129,600	129,600
Nevada.....	2,095,348	195,100	195,100
New Hampshire.....	1,045,878	97,400	97,400
New Jersey.....	6,838,206	636,800	636,800
New Mexico.....	1,571,096	146,300	146,300
New York.....	15,307,107	1,425,500	1,425,500
North Carolina.....	7,465,545	695,300	695,300
North Dakota.....	545,020	50,800	93,100
Ohio.....	8,880,551	827,000	827,000
Oklahoma.....	2,877,457	268,000	268,000
Oregon.....	3,038,729	283,000	283,000
Pennsylvania.....	10,024,150	933,500	933,500
Rhode Island.....	833,818	77,700	93,100
South Carolina.....	3,643,633	339,300	339,300
South Dakota.....	629,185	58,600	93,100
Tennessee.....	4,962,227	462,100	462,100
Texas.....	19,073,564	1,776,300	1,776,300
Utah.....	1,967,315	183,200	183,200
Vermont.....	502,060	46,800	93,100
Virginia.....	6,329,130	589,400	589,400
Washington.....	5,312,045	494,700	494,700
West Virginia.....	1,471,372	137,000	137,000
Wisconsin.....	4,408,841	410,600	410,600
Wyoming.....	440,922	41,100	93,100

Limitations on Contributions by Individuals, Non-Multicandidate Committees and Certain Political Party Committees Giving to U.S. Senate Candidates for the 2013–2014 Election Cycle

The Act requires inflation indexing to: (1) The limitations on contributions made by persons under 2 U.S.C. 441a(a)(1)(A) (contributions to candidates) and 441a(a)(1)(B) (contributions to national party committees); (2) the biennial aggregate contribution limitations applicable to individuals under 2 U.S.C. 441a(a)(3); and (3) the limitation on contributions made to U.S. Senate candidates by certain political party committees at 2 U.S.C. 441a(h). *See* 2 U.S.C. 441a(c). These contribution limitations are increased by multiplying the respective statutory contribution amount by 1.29668, the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 2001). The resulting amount is rounded to the nearest multiple of $100. *See* 2 U.S.C. 441a(c) and 11 CFR 110.17(b). Contribution limitations shall be adjusted accordingly:

Statutory provision	Statutory amount	2013–2014 Limit
2 U.S.C. 441a(a)(1)(A)…	$2,000……..	$2,600.
2 U.S.C. 441a(a)(1)(B)…	$25,000……	$32,400.
2 U.S.C. 441a(a)(3)(A)…	$37,500…….	$48,600.
2 U.S.C. 441a(a)(3)(B)…	$57,500 (of which no more than $37,500 may be attributable to contributions to political committees that are not political committees of national political parties).	$74,600 (of which no more than $48,600 may be attributable to contributions to political committees that are not political committees of national political parties).
2 U.S.C. 441a(h)……..…	$35,000…….	$45,400.

The increased limitation at 2 U.S.C. 441a(a)(1)(A) is to be in effect for the two-year period beginning on the first day following the date of the general election in the preceding year and ending on the date of the next regularly scheduled election. Thus the $2,600 figure above is in effect from November 7, 2012, to November 4, 2014. The limitations under 2 U.S.C. 441a(a)(1)(B), 441a(a)(3)(A) and (B), and 441a(h), shall be in effect beginning January 1st of the odd-numbered year and ending on December 31st of the next even-numbered year. Thus the new contribution limitations under 2 U.S.C. 441a(a)(1)(B), 441a(a)(3)(A) and (B), and

441a(h) are in effect from January 1, 2013, to December 31, 2014. *See* 11 CFR 110.17(b)(1).

Lobbyist Bundling Disclosure Threshold for 2013

The Act requires certain political committees to disclose contributions bundled by lobbyists/registrants and lobbyist/registrant political action committees once the contributions exceed a specified threshold amount. The Commission must adjust this threshold amount annually to account for inflation. The disclosure threshold is increased by multiplying the $15,000 statutory disclosure threshold by 1.13887, the difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period (calendar year 2006). The resulting amount is rounded to the nearest multiple of $100. *See* 2 U.S.C. 434(i)(3)(A) and (B), 441a(c)(1)(B) and 11 CFR 104.22(g). Based upon this formula ($15,000 × 1.13887), the lobbyist bundling disclosure threshold for calendar year 2013 is $17,100.

On behalf of the Commission.

Dated: January 31, 2013.

Ellen L. Weintraub,
Chair, Federal Election Commission.

[FR Doc. 2013–02520 Filed 2–5–13; 8:45 am]

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