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THE CHANGING STANDARDS OF CAMPAIGN FINANCE REGULATION: THE REAL IMPACT OF *MCCUTCHEON v. FEC*

*Hannah Dunn**

I. INTRODUCTION

The Federal Election Campaign Act of 1971 (FECA), as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA), sets forth a variety of limits on financial campaign contributions “[t]o promote fair practices in the conduct of election campaigns,”¹ including dollar limitations on contributions and expenditures.² However, a recent Supreme Court case decided that limits on how much an individual may contribute in the aggregate are invalid under the First Amendment.³ Previously, the Supreme Court had generally upheld campaign finance controls as constitutionally proper to prevent corruption.⁴ While the Supreme Court has struck down some limitations on independent expenditures by individuals, the Court has also upheld individual contribution limits as constitutionally valid.⁵ Legislative limits such as FECA have been viewed as “sufficient and proper [for] . . . the prevention of corruption.”⁶

In 2014, the Supreme Court continued down a recent path of diversion from previous support of contribution limits⁷ in

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1. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended in scattered sections of the U.S. Code).

2. 2 U.S.C. § 441a (2006).

3. *McCutcheon v. FEC*, 134 S. Ct. 1434, 1442 (2014).

4. Michael A. Rosenhouse, Annotation, *Validity, Construction, and Application of Campaign Finance Laws—Supreme Court Cases*, 19 A.L.R. FED. 2D 1, §§ 2, 10 (2007).

5. *Buckley v. Valeo*, 424 U.S. 1, 29 (1976) (per curiam).

6. Rosenhouse, *supra* note 4, at § 2.

7. *See Citizens United v. FEC*, 558 U.S. 310 (2010).

*McCutcheon v. FEC*⁸ by striking down the aggregate limits on campaign contributions set forth by 2 U.S.C. § 441a (“§ 441a”) (limiting individual donors to an overall total of \$123,000 to candidates, national party committees, and certain political committees) as a First Amendment violation.⁹ The base limits in § 441a (limiting donors to \$2,600 per candidate), which were not challenged, remain in effect.¹⁰

This Comment argues that although the Supreme Court should not have struck down the aggregate limits on individual campaign contributions in *McCutcheon*, the decision is unlikely to have a substantial practical impact on campaign finance—however, the decision has lasting legal implications. Part II of this Comment provides a roadmap of *McCutcheon*’s journey to the Supreme Court, and Part III outlines campaign finance regulation’s historical background. Part IV examines how the Court came to its conclusion. Part V discusses why the Court should have upheld the aggregate limits but contrasts the likelihood of little to no practical impact with a potentially substantial legal effect. Lastly, Part VI addresses the possible consequences of a significant legal impact and the future of campaign finance regulation.

II. STATEMENT OF THE CASE

A. Facts

In the 2011–2012 election and in compliance with the base limits, Shaun McCutcheon contributed “a total of \$33,088 to 16 different federal candidates” and “a total of \$27,328 to several noncandidate political committees.”¹¹ McCutcheon wanted to donate additional money to other candidates and various political committees but was prevented from doing so by both the aggregate limit on candidate contributions and the aggregate limit on contributions to political committees.¹² McCutcheon alleged that he plans to continue making similar contributions in the future and wants to donate “at least \$60,000 to various candidates and \$75,000

8. 134 S. Ct. 1434 (2014).

9. *Id.* at 1442.

10. *Id.*

11. *Id.* at 1443.

12. *Id.*

to non-candidate political committees” in the 2013–2014 election.¹³ Moreover, Republican National Committee (RNC) would like to receive McCutcheon’s desired contributions as well as donations from other “similarly situated individuals.”¹⁴

B. Procedural History

McCutcheon and the RNC filed a complaint with the U.S. District Court for the District of Columbia in June 2012, arguing that the aggregate limits set forth under § 441a unconstitutionally violated the First Amendment.¹⁵ McCutcheon and the RNC moved for a preliminary injunction against enforcement of the aggregate limits, which was met by the FEC’s motion to dismiss the case.¹⁶ The district court granted the FEC’s motion to dismiss, concluding the aggregate limits were proper under the First Amendment because they “prevented evasion of the base limits.”¹⁷ More specifically, the court determined that although it was unlikely that many separate entities would conspire to pool donation resources for a single donor’s benefit, “such a scenario [was] ‘not hard to imagine.’”¹⁸ Therefore, the district court saw the aggregate and base limits as a “coherent system rather than . . . individual limits,” thus rejecting the constitutional challenge to the aggregate limits.¹⁹ McCutcheon and the RNC then directly appealed to the Supreme Court to challenge the aggregate limits’ constitutionality.²⁰

III. HISTORICAL FRAMEWORK

The First Amendment protects an individual’s right to participate in the democratic process through political contributions.²¹ However, that right is not absolute. Spurred by beliefs that “aggregated capital unduly influence[s] politics” and “concern with the ‘political potentialities of wealth’ and their ‘untoward consequences for the democratic process,’”²² Congress

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 1443–44.

19. *Id.* at 1444.

20. *Id.*

21. U.S. CONST., amend. I, § 2.

22. Rosenhouse, *supra* note 4, at § 2.

enacted legislation such as FECA to curb opportunities for corruption by placing limits and enforcing regulations on campaign finance.²³

These limits, as amended by BCRA, allowed individuals to contribute a maximum of \$2,600 per election to any given candidate; \$32,400 per year to a national party committee; \$10,000 per year to a state or local party committee; and \$5,000 per year to a political action committee (“PAC”).²⁴ Section 441a(a) outlined two types of campaign contribution limits: “base limits,” and “aggregate limits.”²⁵ The former controls how much money an individual may donate to a particular candidate or committee, and the latter controls how much money an individual may donate in total to any and all candidates and committees.²⁶ The U.S. Supreme Court has, in the past, recognized limits on campaign contributions as constitutionally protected to limit corruption. In *Buckley v. Valeo*,²⁷ the Supreme Court found “the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify” contribution limits²⁸ and upheld restrictions set forth by BCRA on contributions beyond federal limits²⁹ in *McConnell v. FEC*.³⁰ More recently, the Supreme Court has moved away from the protection of contribution limits and engaged in a string of decisions that chip away at the foundation of regulated campaign finance. In *Citizens United v. FEC*,³¹ a ban on independent corporate expenditures was struck down as an unconstitutional suppression of speech.³² And, as stated above, in *McCutcheon*, the aggregate limits imposed by § 441a were found invalid under the First Amendment.³³

23. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended in scattered sections of the U.S. Code).

24. *McCutcheon*, 134 S. Ct. at 1442.

25. Federal Election Campaign Act of 1971.

26. *McCutcheon*, 134 S. Ct. at 1443.

27. *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam).

28. *Id.* at 29.

29. *Id.*

30. 540 U.S. 93 (2003), *overruled in part by* *Citizens United v. FEC*, 558 U.S. 310 (2010).

31. 558 U.S. 310 (2010).

32. *Id.* at 310.

33. *McCutcheon v. FEC*, 134 S. Ct. 1434, 1442 (2014).

IV. THE COURT'S REASONING

Chief Justice Roberts wrote the plurality opinion of the Court and was joined by Justices Scalia, Kennedy, and Alito.³⁴ Justice Thomas filed a concurring opinion, and Justice Breyer wrote a dissenting opinion in which Justices Ginsburg, Sotomayor, and Kagan joined.³⁵ Chief Justice Roberts's opinion emphasized the importance of the basic right to participate in democracy and that the First Amendment protects political participation by way of political contribution.³⁶ The decision acknowledges that campaign contributions may be limited to "protect against corruption or the appearance of corruption," however regulations must specifically target "*quid pro quo*" corruption (recognized as a "direct exchange of an official act for money").³⁷ The statute at issue in *McCutcheon* involves aggregate limits as well as base limits, the latter of which the Court has "previously upheld as serving the permissible objective of combating corruption."³⁸ Here, the Court recognized that the aggregate limits also serve an anti-corruption function by "preventing circumvention of the base limits," but aggregate limits ultimately do not adequately solve that issue while simultaneously limiting an individual's political participation.³⁹

The Court rejected the FEC's argument that the aggregate limits are constitutionally valid because the limits work to prevent circumvention of the base limits, pointing out that legislative measures against circumvention enacted since the *Buckley* decision have only increased and strengthened.⁴⁰ Furthermore, the Court found the argument that "an individual 'might contribute massive amounts of money to a particular candidate through the use of un earmarked contributions' to entities likely to support the candidate" speculative and unconvincing—the Court has long found "mere conjecture" inadequate to fulfill a "First Amendment burden."⁴¹ Because the statute could not effectively further the governmental interest in preventing circumvention of the base limits

34. *Id.* at 1440.

35. *Id.*

36. *Id.* at 1440–41.

37. *Id.* at 1441.

38. *Id.* at 1442.

39. *Id.*

40. *Id.* at 1446.

41. *Id.* at 1452.

nor *quid pro quo* corruption, it “impermissibly restrict[ed] participation in the political process.”⁴² Ultimately, the Court concluded that the interest in preventing corruption is extremely important to the democratic process, but this interest is limited to *quid pro quo* corruption, and limits that do not address this interest restrict citizens’ First Amendment rights.⁴³

V. ANALYSIS

A. Aggregate Limits Are Not Constitutionally Invalid

The Supreme Court should not have struck down the aggregate limits on campaign contributions enacted by § 441a. Previously, the Court has upheld limits as a constitutionally valid way to prevent corruption associated with campaign contributions.⁴⁴ *McCutcheon* held that there is no constitutional justification for preventing a wealthy individual from giving the maximum possible donation to any and all candidates desired, asserting that as long as each donation stays within the still-in-place individual limits, it is unlikely any individual candidate will be unjustly influenced by financial contributions.⁴⁵ But this argument is unpersuasive. As Paul Smith points out, “there remains no justification for regulation even if all of these donations are packaged so that a single multi-member check is handed to a senior member of Congress, and even if the check buys the donor the right to meet and socialize with the party’s senior leadership regularly.”⁴⁶ Chief Justice Roberts addressed this problem within *McCutcheon*’s opinion, allowing that “when donors furnish widely distributed support within all applicable base limits, all members of the party . . . may benefit, and the leaders of the party or cause may feel particular gratitude.”⁴⁷ However, rather than recognizing this problem as a situation ripe for corruption, Roberts

42. *Id.* at 1457.

43. *Id.* at 1461–62.

44. *See, e.g.*, *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam); *Cal. Med. Ass’n v. FEC*, 453 U.S. 182 (1981); *FEC v. Beaumont*, 539 U.S. 146 (2003); *McConnell v. FEC*, 540 U.S. 93 (2003), *overruled in part by* *Citizens United v. FEC*, 558 U.S. 310 (2010).

45. *See McCutcheon*, 134 S. Ct. at 1448–49.

46. Paul Smith, *Symposium: McCutcheon Opens the Door to Massive Party Spending, But Four Justices Continue to Push Back Forcefully*, SCOTUSBLOG (Apr. 3, 2014, 12:20 PM), <http://www.scotusblog.com/2014/04/symposium-mccutcheon-opens-the-door-to-massive-party-contributions-but-four-justices-continue-to-push-back-forcefully/>.

47. *McCutcheon*, 134 S. Ct. at 1461.

considers it a normality of the political process, “in which party members join together to further common political beliefs, and citizens can choose to support a party because they share some, most, or all of those beliefs.”⁴⁸

In *McConnell*, the Court found limits on “soft money”⁴⁹ donations to be constitutionally valid because large soft-money donations could potentially give an individual donor undue political influence.⁵⁰ In the *McCutcheon* dissent, Justice Breyer highlights the inconsistency between the decision in *McConnell* and *McCutcheon*, noting that despite no concrete “evidence of bribery or vote buying in exchange for donations of nonfederal money,” the record showed massive soft-money contributions “enabled wealthy contributors to gain disproportionate ‘access to federal lawmakers’ and the ability to ‘influence legislation.’”⁵¹ In *McConnell*, this was substantial evidence to demonstrate constitutional validity of soft-money limits,⁵² in contrast with the narrow definition of corruption in the *McCutcheon* decision, requiring actual occurrences of *quid pro quo* corruption.⁵³

B. The Practical Impact of *McCutcheon*

Setting aside whether *McCutcheon* was decided correctly, the decision is unlikely to have a substantial practical impact. Critics of the *McCutcheon* decision feared that “*Buckley* itself is on the chopping board” and that soon enough the court will do away with all campaign contribution limits, bringing forth unlimited and unrestricted campaign contribution.⁵⁴ This argument is unconvincing for several reasons. First, *McCutcheon* did not overturn *Buckley*—the Court expressly notes this within the decision, stating that the issues of *Buckley* were not at issue in *McCutcheon*.⁵⁵ Second, donors could

48. *Id.*

49. Money other than “hard money”—“contributions made for the purpose of influencing an election for federal office.” *McConnell*, 540 U.S. at 93 (2003).

50. *Id.* at 145.

51. *McCutcheon*, 134 S. Ct. at 1469–70 (Breyer, J., dissenting) (citations omitted).

52. *McConnell*, 540 U.S. at 145.

53. *McCutcheon*, 134 S. Ct. at 1438.

54. Mark E. Elias & Jonathan S. Berkon, *After McCutcheon*, 127 HARV. L. REV. F. 373, 373 (2014).

55. *McCutcheon*, 134 S. Ct. at 1445.

already dodge the aggregate limits through super PAC donations⁵⁶—although the aggregate limits did present an obstacle, *McCutcheon*'s decision has merely made what was already somewhat possible easier to execute. Third, the impact of a *McCutcheon*-like decision has been seen elsewhere—i.e., the aftermath of *Citizens United*⁵⁷ as well as the removal of aggregate limits at the state level.⁵⁸ Lastly, Shaun McCutcheon is arguably the exception, rather than the rule—it is unlikely that there is a large pool of similarly situated individuals.⁵⁹

1. The Problem of Super PACs

In 2010, the political process saw the rise of the “‘Super PAC’—a political action committee legally entitled to raise donations in unlimited amounts.”⁶⁰ *Citizens United* set forth the Supreme Court's holding that independent expenditures do not create the same opportunities for corruption (or appearance of corruption) as identified in *Buckley*.⁶¹ A Super PAC “makes independent expenditures expressly supporting or opposing candidates for federal office, but does not make any contributions to federal candidates.”⁶² While both PACs and Super PACs have the ability to spend without restriction, Super PACs additionally can accept unlimited contributions “from individuals, corporations, and unions.”⁶³

Despite its differences from an ordinary PAC, the Super PAC's political power and linkage to certain candidates and parties cannot be denied. In 2010, the highest-spending Super PACs were “broadly ideological, partisan, or connected to traditional interest groups.”⁶⁴ The 2011–2012 election cycle saw a radical shift, in which almost all leading Super PACs focused on support for a specific candidate “or

56. Sean Sullivan, *Everything You Need to Know About McCutcheon v. FEC*, WASH. POST (Apr. 2, 2014), <http://www.washingtonpost.com/blogs/the-fix/wp/2013/10/08/supreme-court-takes-up-the-sequel-to-citizens-united/>.

57. Jan Baran, *Symposium: McCutcheon and the Future of Campaign Finance Regulations*, SCOTUSBLOG (Apr. 4, 2014, 2:59 PM), <http://www.scotusblog.com/2014/04/symposium-mccutcheon-and-the-future-of-campaign-finance-regulation/>.

58. Elias & Berkon, *supra* note 54, at 377.

59. Baran, *supra* note 57.

60. Richard Briffault, *Super PACs*, 96 MINN. L. REV. 1644, 1644 (May 2012).

61. *Id.* at 1645.

62. *Id.* at 1646.

63. *Id.* at 1647.

64. *Id.* at 1675.

were formed at the behest of party leaders.”⁶⁵ Although *McCutcheon* certainly makes it easier for an individual to donate larger amounts to a variety of candidates, before the decision it would have arguably been possible through donations to a Super PAC as well. As Robert K. Kelner (“Kelner”) points out, “Major donors never stopped writing big checks after McCain-Feingold [FECA]. They just wrote them to unregulated outside groups . . . and other . . . political vehicles.”⁶⁶

Thus, *McCutcheon* is not likely to have the staggering impact warned by critics.⁶⁷ Even if individuals began donating on a massive scale, it is unlikely that they will “materially” impact the “relative advantage held by unregulated outside groups.”⁶⁸ It is the Super PACs’ troubling and rising power that holds the potential to drastically alter the landscape of campaign finance.⁶⁹ *McCutcheon* is, as Kelner puts it, a mere “ripple on the campaign finance pond, not a tsunami.”⁷⁰

2. Prior Occurrences

a. *The Lackluster Impact of Citizens United*

Those who see *McCutcheon* as a death knell for campaign finance regulation may have forgotten that such a decision is not a novel occurrence. *Citizens United* struck down limits on corporate campaign spending,⁷¹ a decision for which “the Court [took] a brutal battering in the court of public opinion.”⁷² Described as an “astonishingly naïve decision”⁷³ that was a “shocking instance of judicial overreach,”⁷⁴ some predicted it would “unleash up to \$1 trillion in corporate money for attack ads in the next election

65. *Id.*

66. Robert K. Kelner, *The Practical Consequences of McCutcheon*, 127 HARV. L. REV. F. 380, 384 (2014).

67. Elias & Berkon, *supra* note 54, at 373.

68. Kelner, *supra* note 66, at 384.

69. *See id.* at 386.

70. *Id.*

71. *Citizens United*, 130 S. Ct. 876, 911 (2010).

72. Joel Gora, *Symposium: McCutcheon v. FEC and the Fork in the Road*, SCOTUSBLOG (Aug. 15, 2013, 10:18 AM), <http://www.scotusblog.com/2013/08/symposium-mccutcheon-v-fec-and-the-fork-in-the-road/>.

73. E.J. Dionne, Jr., Op-Ed., *A Bipartisan Push to Clean Up the Supreme Court’s Mess*, WASH. POST, Mar. 8, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/07/AR2010030702679.html>.

74. *Id.*

cycle.”⁷⁵ While undoubtedly a departure from previous judicial precedent, the *Citizens United* decision yielded a relatively minor practical impact.⁷⁶ In fact, while the amount of money spent in subsequent elections did rise, it did not do so more rapidly than it had in preceding elections.⁷⁷ Thus, the “stampede” of money President Obama predicted in his 2010 State of the Union address to result from the *Citizens United* decision failed to materialize.⁷⁸ Radical Supreme Court decisions do not always garner radical results—just because *McCutcheon* is a dramatic change does not mean it will bring forth immediate dramatic change.

b. Limits at the State Level

Following on the heels of the *McCutcheon* decision, officials in Maryland and Massachusetts “have announced that they would not enforce their states’ aggregate limits.”⁷⁹ The decision also influenced Wisconsin to stop enforcing its aggregate limit—previously, donors in Wisconsin could only contribute an overall total of \$10,000 per year to “all registered Wisconsin committees (including candidates, parties, and PACs) . . . but did not separately limit what [an] individual could contribute to a party committee or PAC.”⁸⁰ The 2011 and 2012 recall elections in Wisconsin reported high numbers from outside-group spending,⁸¹ showing that the aggregate limits merely forced restricted donors to get creative. Marc E. Elias and Jonathan S. Berkon predict that the change in Wisconsin law “will give the parties a chance to regain their influence” through in-state donors no longer restricted by aggregate limits,⁸² rather than bring in a mass influx of unlimited and corruptive contributions.

75. Jon Talton, *Supreme Court’s Momentous Decision Will Derail Any Financial Reform*, SEATTLE TIMES (Jan. 21 2010, 10:05 AM), http://blogs.seattletimes.com/jontalton/2010/01/21/supreme_courts_momentous_decis/.

76. Baran, *supra* note 57.

77. *Id.*

78. *Id.*

79. Maryland and Massachusetts are two of the twelve states that have similar aggregate limits in place. Elias & Berkon, *supra* note 54, at 377.

80. *Id.* at 378.

81. *See id.*

82. *Id.*

3. Shaun McCutcheon: One of a Very Few of a Kind

McCutcheon wrote checks to sixteen candidates in the 2012 election before hitting the aggregate limit while lamenting his inability to write checks to an additional ten candidates he wished to support and, as Jan Baran puts it, “had the charming patriotic habit of making his checks payable in the amount of \$1776”⁸³—it cannot be denied that McCutcheon is a unique individual. Beyond his contribution idiosyncrasies, however, is the fact that McCutcheon (and fellow like-minded donors) make up a very small population of individuals—extraordinarily wealthy and willing to spread that wealth around to a large number of candidates. The dissent in *McCutcheon* lays out a diabolical hypothetical in which individuals “contribute to every candidate and every committee . . . thereby dispens[ing] over \$3 million in contributions.”⁸⁴ It is unlikely that McCutcheon-esque donors will give to more candidates than previously to make a substantial impact, and the *McCutcheon* decision will likely result only in a modest increase in “funding in a system that during 2011–2012 saw \$7.2 billion raised and spent.”⁸⁵

Since the Court’s ruling in *McCutcheon*, only 310 donors have surpassed the aggregate limits previously in place.⁸⁶ Overall, the donors gave \$50.2 million—\$11.6 million more than permitted pre-*McCutcheon*.⁸⁷ While \$11.6 million is no figure to scoff at, when viewed in relation to an overall funding system capable of raising \$7.2 billion,⁸⁸ it is nothing more than a drop in a bucket. While the *McCutcheon* decision is recent enough that contribution data remains unavailable, *McCutcheon* will result in only minor changes in overall contributions.⁸⁹ Donors responded to earlier limitations and regulations on contributions by funneling money through Super PACs⁹⁰—while the money stays consistent, the channels change.

83. Baran, *supra* note 57.

84. *Id.*

85. *Id.*

86. Chris Cillizza, *How McCutcheon Has Already Changed Campaign Finance, in 1 Chart*, WASH. POST (Sep. 2, 2014), www.washingtonpost.com/blogs/the-fix/wp/2014/09/02/how-mccutcheon-has-already-changed-campaign-finance-in-1-chart/.

87. *Id.*

88. Baran, *supra* note 57.

89. And, perhaps instances of decreased contributions to Super PACs and other less-regulated political vehicles.

90. See Sullivan, *supra* note 56.

C. *The Legal Impact of McCutcheon*

As discussed above, *McCutcheon*'s practical impact will be minor. The legal implications of the decision, however, may pose more serious consequences.

The decision in *McCutcheon* is another⁹¹ step down a new path for the Court—one that is steadily overturning forty years of national policy and thirty-eight years of judicial precedent.⁹² Since *Buckley* in 1976, the Court has “consistently upheld the constitutionality of federal contribution limits.”⁹³ The *Buckley* Court characterized aggregate limits as “modest restraint”⁹⁴ appropriate for the purpose of curbing financial corruption, while the *McCutcheon* Court found no constitutional basis for such limits.⁹⁵

Such a departure from precedent raises questions about the decision's legal impact. While the Court upheld individual and base limits, future plaintiffs will likely challenge those limits. What was considered constitutionally kosher in 1976 has become constitutionally invalid today.⁹⁶ While this is perhaps an overly dramatic snowball effect argument, it is possible that the Court will continue to chip away at campaign regulation until very little or no regulation remains.

VI. CONCLUSION

While *McCutcheon* should not have struck down the aggregate limits set forth by § 441a, the decision in practical terms likely left current campaign finance law unchanged. Super PAC donations already existed as an avenue around the aggregate limits, and a large cohort of political supporters with the resources and donation ambitions of Shaun McCutcheon most likely does not exist.⁹⁷ However, *McCutcheon* represents another step taken by the Supreme Court toward less and less regulation of campaign finance,⁹⁸

91. See, e.g., *Citizens United v. FEC*, 130 S. Ct. 876 (2010).

92. See Fred Wertheimer, *The McCutcheon Case: Consequences If SCOTUS Strikes Down Overall Contribution Limits*, HUFFINGTON POST (Feb. 25, 2014, 4:55 PM), www.huffingtonpost.com/fred-wertheimer/the-mccutcheon-v-fec-case-sotus_b_4849278.html.

93. *Id.*

94. *Buckley v. Valeo*, 424 U.S. 1, 38 (1976) (per curiam).

95. *McCutcheon v. FEC*, 134 S. Ct. 1434, 1442 (2014).

96. *Id.* at 1465 (Breyer, J., dissenting).

97. See Baran, *supra* note 57.

98. See Wertheimer, *supra* note 92.

highlighting its likely substantial legal impact. As Supreme Court decisions move away from *Buckley* and toward *McCutcheon*, the standard of actively regulating campaign finance grows dimmer and may one day completely vanish. Corruptive campaign finance strategies serve no valid purpose in the political process and must be eliminated. While *McCutcheon* may seem innocuous in terms of practical impact, the legal precedent it reinforces could drastically alter the political landscape.

