

# Is Citizens United Just the Beginning?

By [Donald Scarinci](#)

As it kicked off a new term, the U.S. Supreme Court did not shy away from controversy. Its first case, *McCutcheon v. Federal Election Commission*, could have significant implication for campaign finance reform.

The case revolves around aggregate contribution limits to federal candidates and political committees. Under [federal campaign finance restrictions](#), individuals cannot donate more than \$117,000 over a two-year election cycle. This includes \$46,200 to a candidate for federal office and \$70,800 to other entities, of which no more than \$46,200 may go to non-national-party committees (state parties and political action committees).

While the Court's *Citizens United* decision held that the limits on independent campaign spending by unions and corporations violated their First Amendment free speech rights, it reasoned that campaign contributions were a constitutional way to limit political corruption. However, the same five justices that ruled against campaign finance reform could do so again.

In *McCutcheon v. Federal Election Commission*, plaintiffs Shaun McCutcheon and the Republican National Committee (RNC) argue that the current bicentennial limits are unconstitutionally low and not supported by a sufficient governmental interest under the First Amendment. Meanwhile, the Federal Election Commission (FEC) maintains that the limits are necessary to prevent wealthy individuals asserting undue influence on elections.

Much of the discussion during oral arguments was focused on how the contribution limits play out in real world politics. "Less than 500 people can fund the whole shooting match," Solicitor General Donald Verrilli argued. "There is a very real risk both that the government will be run of, by and for those 500 people and that the public will perceive that the government is being run of, by and for those 500 people."

Many of the court's conservative justices seemed unpersuaded. "What troubles me about your argument," Justice Samuel Alito stated, "is what I see are wild hypotheticals that ... lack any empirical support."

As is the case in many high profile cases, the justices' questioning was not limited to the attorneys. Justices Ruth Bader Ginsburg and Antonin Scalia even got into it. "Whose expression is at stake when most people couldn't even come near the limit?" asked Ginsburg. Scalia sarcastically responded, "I assume a law that only prohibits the speech of two percent of the country is okay."

Ginsburg, however, has a very valid point. While McCutcheon and the RNC argue that the current rules impede everyday Americans' First Amendment rights to back the candidate of their choosing, only 646 donors approached the current limits during the last election cycle.

From the oral arguments alone, it is difficult to discern whether the Court is poised to open the floodgates once again. Most concerning, several of the justices appear to see the erosion of campaign finance reform as a foregone conclusion in the wake of *Citizens United*. As in, we have already dismissed the risk of corruption for one type of political spending, what's the harm in doing it again?

For a more detailed discussion of the legal precedent preceding *McCutcheon*, please see [“What’s on Deck: Campaign Finance Restrictions Again Take Center Stage”](#) on the Scarinci Hollenbeck Constitutional Law Reporter.

*Donald Scarinci is a managing partner at Lyndhurst, N.J. based law firm [Scarinci Hollenbeck](#). He is also the editor of the [Constitutional Law Reporter](#) and [Government and Law](#) blogs.*

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