

A chance to shine a light on campaign contributions: Opinion

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By Jeff Brindle

The U.S. Supreme Court is set to hear arguments Oct. 8 in its eighth major campaign finance case since John Roberts became chief justice in 2005.

Called *McCutcheon vs. FEC*, the lawsuit is aimed at scrapping federal “aggregate” contribution limits that have existed since the 1970s. The suit was filed by James Bopp, an Indiana attorney and free speech activist who has waged a crusade against campaign finance laws for more than a

decade.

Aggregate limits are separate from regular contribution limits that apply to candidates, parties and political action committees. They put an overall cap on the amount a group or individual can give to candidates, parties or PACs during a two-year election cycle.

Unless the high court eliminates contribution limits altogether, which seems unlikely given the court’s own precedents, the case should have little impact in New Jersey except in federal races.

The Garden State has never imposed aggregate restrictions on its contributors. At least one state that has them, Wisconsin, is facing a *McCutcheon*-style legal challenge.

Supporters of the challenge to aggregate limits view it as the latest in a wave of legal assaults that have seriously eroded post-Watergate campaign finance restrictions aimed at curbing corruption in politics. But they seem to be ignoring a major potential upside — shifting campaign money from independent groups that often operate in secret back to political parties, which are transparent and accountable.

Under the Federal Election Campaign Act, an individual, within regular contribution limits, can in the aggregate contribute no more than \$123,200 to federal candidates and committees during a two-year election cycle. Of that amount, individuals are limited to \$74,600 to PACs and parties and \$48,600 to all candidates.

Plaintiffs Shaun McCutcheon and the Republican National Committee are challenging the aggregate limits on First Amendment grounds.

What the Supreme Court will decide after the October arguments is anyone's guess. Its recent campaign finance rulings have seen the court lift restrictions on spending by independent groups while at the same time strongly endorsing disclosure. The majority's concern about free speech rights suggests it might upend the aggregate limits. On the other hand, the Supreme Court, including during the Roberts era, has historically supported contribution limits for candidates and parties.

At the risk of raising the ire of fellow regulators and well-intended reformers, I personally hope the Supreme Court takes the former position and eliminates the aggregate limits.

My concern is more with the corrosive influence over the electoral process by independent, often anonymous groups, rather than by political parties and candidates that are infinitely more accountable and subject to strict disclosure laws.

Since McCain-Feingold banned soft money to national parties in 2002, party receipts have essentially been stagnant, while independent spending exploded from \$198 million in 2004 to \$1.038 billion in 2012.

With McCutcheon, the U.S. Supreme Court has an opportunity to slow this trend, if not to reverse it completely, and strengthen the political party system.

Experience in New Jersey, which has never had aggregate limits, is that those limits are less important if all candidates and committees are required to disclose their contributions. Disclosure alone can be a powerful deterrent against abusive practices.

In an amici brief filed with the U.S. Supreme Court, the Campaign Legal Center makes the case for keeping federal aggregate limits. In a news release, the center warned "that invalidation of the limits would herald a return to the abuses of 'soft money' era that were outlawed by the McCain-Feingold Act and held corruptive by the Supreme Court in 2003." Perhaps legislation could be passed to stiffen penalties for party officials caught committing abuses that led to the soft money ban.

Ending aggregate limits and strengthening political parties might not put the independent group genie back in the bottle, but it would go far toward pushing them in that direction.

A healthy political party system, though not perfect, would be far and away better than the wild west system we see now, compliments of unfettered, unaccountable and often irresponsible independent outside groups.

Jeff Brindle is the executive director of the New Jersey Election Law Enforcement Commission. The opinions presented here are his own and not necessarily those of the commission.

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