US Supreme Court strikes down limits on political contributions

John Burton
3 April 2014

The United States Supreme Court on Wednesday struck down a key provision of the 1974 Federal Election Campaign Act, a post-Watergate law that limits the aggregate amount one person can donate to federal political campaigns during each two-year election cycle.

Chief Justice John Roberts authored *McCutcheon v. Federal Election Commission*, joined by Associate Justices Antonin Scalia, Anthony Kennedy and Samuel Alito, overturning the 1976 decision in *Buckley v. Valeo* that upheld the same provision. The ruling, which goes into effect before the end of the month, removes the $123,000 limit in time for wealthy donors to pour hundreds of millions into the 2014 midterm elections.

Associate Justice Clarence Thomas provided the necessary fifth vote for striking down the law, writing separately to emphasize his view that all restraints on campaign finance should be eliminated.

In issuing its ruling, the Supreme Court reversed a federal district court that had upheld *Buckley v. Valeo* and ruled against the plaintiffs.

The case was staged by the Republican National Committee, Republican Senate Minority Leader Mitch McConnell of Kentucky, and a wealthy Alabama donor, Shaun McCutcheon. It was widely anticipated that the right-wing majority on the court would use the case to expand its efforts to remove all legal hindrances to oligarchic rule in America.

In 2010, the same five justices decided *Citizens United v. Federal Election Commission*, striking down another provision of federal election law and ruling that for-profit corporations are "persons" with free-speech rights to donate money to the supposedly "independent" committees, so-called "super PACs," that finance advertisements promoting or opposing candidates for public office.

In 2011, the same five justices struck down an Arizona law that provided matching funds to candidates who run against better financed opponents, claiming that the state's effort to "level the playing field" interfered with the free speech rights of those making donations.

Last summer, the same five justices gutted the Voting Rights Act of 1964, freeing state and local officials in historically discriminatory jurisdictions throughout the United States from "preclearance" rules, effectively giving them unfettered power to dilute votes through gerrymandering and suppress voting altogether, through voter ID laws, limits on early voting and similar measures.

What is particularly striking in yesterday's ruling is Roberts' open defense of oligarchy, the concentration of political power in the hands of the super-rich. Roberts rests his ruling on a false analogy between political contributions by wealthy donors and core political activities that should be protected by the free speech clause of the First Amendment to the US Constitution. In the process, he dismisses all concerns over bribes channeled to elected officials under the guise of campaign contributions and the ability of the financial and corporate elite to massively influence elections and further vitiate whatever remains of their democratic content.

"Many people," according to Roberts, "would be delighted to see fewer television commercials touting a candidate's accomplishments or disparaging an opponent's character. Money in politics may at times seem repugnant to some, but so too does much of what the First Amendment vigorously protects. If the First Amendment protects flag burning, funeral protests, and Nazi parades—despite the profound offense such

spectacles cause—it surely protects political campaign speech despite popular opposition."

Freedom of expression, especially political dissent, is a core democratic right. What most people find "repugnant" about large campaign contributions, however, is not the resulting plethora of political advertisements that saturate commercial television and radio during election cycles, as disgusting as that may be. What people find repugnant is the ever growing political influence of the very wealthy over elected officials—in a political system supposedly built on the core democratic principle of "one person, one vote."

The Supreme Court ruled in 1976 that preventing super-rich donors from buying undue political influence through campaign contributions justified aggregate contribution limits under the rubric of combating "the appearance of corruption." Now, however, that rationale has been declared an infringement of the big donors' rights to "free speech."

In *McCutcheon*, for the first time, the Supreme Court announced that campaign contribution limits must be targeted directly to "'quid pro quo' corruption," which Roberts describes as "a direct exchange of an official act for money," in other words, open bribery.

Embracing the interests of the oligarchs, who seek a government "of the rich, by the rich and for the rich," Roberts added: "We have said that government regulation may not target the general gratitude a candidate may feel toward those who support him or his allies, or the political access such support may afford." Spelling out his defense of de facto rule by the rich in even more blunt language, Roberts continued, "The possibility that an individual who spends large sums may garner 'influence over or access to' elected officials or political parties" cannot justify limitations on campaign contributions.

Summing up, Roberts wrote that "the concept that government may restrict the speech of some elements of our society"—that is, limit campaign contributions—"in order to enhance the relative voice of others"—meaning the vast majority of people, who do not have hundreds of thousands of dollars to pour into political campaigns every year in exchange for "gratitude" and "political access"—"is wholly foreign to the First Amendment."

Associate Justice Stephen Breyer's dissent, joined by the other three moderates, Associate Justices Ruth Bader Ginsburg, Sonia Sotomayor and Elena Kagan, reflects a growing concern among elements in the ruling class over the implications of the unprecedented concentration of wealth and the political influence of the small minority that controls it.

"Where enough money calls the tune, the general public will not be heard," Breyer wrote. That "can lead the public to believe that its efforts to communicate with its representatives or to help sway public opinion have little purpose. And a cynical public can lose interest in political participation altogether," he added.

Breyer refers to "political participation" within the two-party capitalist system. His reference to a "cynical public" reflects a wider concern that certain layers of the working population will draw revolutionary conclusions from their lack of political influence within the decaying institutions of bourgeois democracy.

Roberts' opinion leaves standing the "base limit" on what an individual can contribute to a specific campaign or political committee, currently $2,600 per candidate per election. In fact, the complaint in *McCutcheon* was crafted to leave that aspect of campaign finance law out of the controversy.

There is nothing about Roberts' reasoning, however, and the Supreme Court's broad endorsement of the "right" of the wealthy to purchase "gratitude" and "access" through political contributions to elected officials and candidates, that does not apply equally to striking down base limits as well.