

No. 12-536

In The
Supreme Court of the United States

SHAUN McCUTCHEON AND THE REPUBLICAN NATIONAL
COMMITTEE,

Plaintiffs-Appellants,

v.

FEDERAL ELECTION COMMISSION,

Defendant-Appellee.

*On Appeal From The United States District Court For
The District of Columbia*

**BRIEF AMICUS CURIAE OF
PROFESSOR LAWRENCE LESSIG IN
SUPPORT OF APPELLEE**

DOUGLAS T. KENDALL

ELIZABETH B. WYDRA*

**Counsel of Record*

DAVID H. GANS

CONSTITUTIONAL

ACCOUNTABILITY

CENTER

1200 18th St., NW, Ste 501

Washington, D.C. 20036

(202) 296-6889

elizabeth@theusconstitution.org

Counsel for Amicus Curiae

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	5
I. THE CONSTITUTION’S TEXT, HISTORY, AND STRUCTURE REFLECT THE FRAMERS’ BROAD INTEREST IN PREVENTING THE APPEARANCE AND REALITY OF CORRUPTION	5
A. In Drafting The Constitution, The Framers Were Keenly Concerned With Preventing Both “Dependence Corruption” And <i>Quid Pro Quo</i> Corruption	5
B. The Text Of The Constitution Provides Specific Restrictions Designed To Limit Temptations And Opportunities For Corruption In Government.....	11
C. The Constitution’s Structure Was Designed To Erect “Every Practicable Obstacle” Against Corruption	15

II. CONSTITUTIONAL AMENDMENTS HAVE
EXPANDED PROTECTION AGAINST
CORRUPTION21

III. COURT PRECEDENT REFLECTS THE
FRAMERS' UNDERSTANDING THAT THE
GOVERNMENT HAS BROAD AUTHORITY
TO COMBAT CORRUPTION26

CONCLUSION 32

TABLE OF AUTHORITIES

	Page
<u>Cases</u>	
<i>Arizona v. Inter Tribal Council</i> , 133 S. Ct. 2247 (2013)	8, 19
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976)	<i>passim</i>
<i>Citizens United v. Fed. Election Comm'n</i> , 558 U.S. 310 (2010)	3, 5, 23, 27
<i>Ex Parte Yarbrough</i> , 110 U.S. 651 (1884)	27
<i>Fed. Election Comm'n v. Nat'l Conservative PAC</i> , 470 U.S. 480 (1985)	28
<i>McConnell v. Fed. Election Comm'n</i> , 540 U.S. 93 (2003)	5, 11, 28, 30
<i>Stromberg v. California</i> , 283 U.S. 359 (1931)	22
<u>Constitutional Provisions and Legislative Materials</u>	
U.S. CONST. art. I, § 2, cl. 2	14
U.S. CONST. art. I, § 3	23
U.S. CONST. art. I, § 3, cl. 3	14
U.S. CONST. art. I, § 4, cl. 1	19

TABLE OF AUTHORITIES—continued

	Page
U.S. CONST. art. I, § 6, cl. 2	11
U.S. CONST. art. I, § 9, cl. 8	13
U.S. CONST. art. II, § 1, cl. 5.....	15
U.S. CONST. art. II, § 2, cl. 2.....	17
U.S. CONST. amend. I.....	23
U.S. CONST. amend. XXVII.....	27
120 CONG. REC. (1974)	30
Sen. Joseph Bristow, <i>The Direct Election of Senators</i> , in CONGRESSIONAL SERIAL SET ISSUE 6177 (U.S. G.P.O. 1912)	25, 26
<u>Books, Articles and Miscellaneous</u>	
18 Op. Off. Legal Counsel 13 (1994)	13
AKHIL REED AMAR, <i>THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION</i> (1998).....	22, 26
Zachary S. Brugman, <i>The Bipartisan Promise of 1776: The Republican Form and its Manner of Election</i> (2012)	20
THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE CONSTITUTION (ELLIOT'S DEBATES) (Jonathan Elliot ed.) (1836) ..	2, 6, 19, 20

TABLE OF AUTHORITIES—continued

	Page
THE RECORDS OF THE FEDERAL CONVENTION OF 1787 (Max Farrand ed. 1966).....	<i>passim</i>
Lisa Hill, <i>Adam Smith and the Theme of Corruption</i> , 68 REV. POL. 636 (2006)	14
Lawrence Lessig, <i>A Reply to Professor Hasen</i> , 126 HARV. L. REV. 61 (2013)	14
LAWRENCE LESSIG, <i>REPUBLIC, LOST</i> (2011).....	11, 14
DAVID ROBERTSON, <i>DEBATES AND OTHER PROCEEDINGS OF THE CONVENTION OF VIRGINIA</i> (2d ed. 1805) (1788)	13
THE FEDERALIST PAPERS (Clinton Rossiter ed. 2003).....	<i>passim</i>
Ralph A. Rossum, <i>The Irony of Constitutional Democracy: Federalism, The Supreme Court, and the Seventeenth Amendment</i> , 36 SAN DIEGO L. REV. 671 (1999).....	22, 23
James D. Savage, <i>Corruption and Virtue at the Constitutional Convention</i> , 56 J. POL. 174 (1994)	6, 7, 9
Zephyr Teachout, <i>The Anti-Corruption Principle</i> , 94 CORNELL L. REV. 341 (2009)	7, 18

TABLE OF AUTHORITIES—continued

	Page
John Joseph Wallis, <i>The Concept of Systematic Corruption in American History</i> , in CORRUPTION AND REFORM: LESSONS FROM AMERICA'S ECONOMIC HISTORY (Edward L. Glaeser & Claudia Goldin eds. 2006)	9

INTEREST OF *AMICUS CURIAE*¹

Lawrence Lessig is Professor of Law at Harvard Law School and Director of the Edmond J. Safra Foundation Center for Ethics. He teaches constitutional law and institutional ethics, and his scholarship has analyzed corruption, the Constitution, and Court precedent. Professor Lessig is the author of *REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS—AND A PLAN TO STOP IT* (2011) and dozens of law review articles on constitutional law, including *What an Originalist Would Understand “Corruption” to Mean*, *CAL. L. REV.* (forthcoming 2013).

Professor Lessig’s recent research into the Founders’ conception of “corruption,” which includes a catalogue of the instance and context of each use of the word “corruption” during the Founding debates, is the core of this brief.

**INTRODUCTION AND
SUMMARY OF ARGUMENT**

Appellant McCutcheon and the Republican National Committee (collectively “McCutcheon”) contend that the federal aggregate contribution limits impose substantial burdens on First

¹ The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amicus* states no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae* or his counsel made a monetary contribution to the brief’s preparation or submission.

Amendment freedoms and cannot be justified by any constitutionally legitimate interest, and in particular, by the interest in avoiding corruption. McCutcheon Br. at 34-48. McCutcheon's argument, however, depends upon a modern understanding of the term "corruption," in sharp conflict with the term's original meaning.

The Framers viewed corruption as one of the greatest threats to government. They considered anti-corruption measures essential to an enduring republican system of government. As George Mason warned his fellow delegates at the Constitutional Convention, "if we do not provide against corruption, our government will soon be at an end." 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, 392 (Max Farrand ed. 1966) ("FARRAND'S RECORDS"). Thus, in drafting the Constitution, the Framers sought to ensure that "corruption was more effectually guarded against, in the manner this government was constituted, than in any other that had ever been formed." 4 DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 302 (Jonathan Elliot ed. 1836) (Pinckney).

The Framers had a very specific conception of the term "corruption" in mind, one at odds with McCutcheon's more modern understanding of that term. For the Framers, "corruption" predicated of institutions as well as individuals, and when predicated of institutions, was often constituted by an "improper dependence." Having seen, for example, the English Parliament corrupted by its dependence on the King, the Framers crafted the

Constitution to avoid such improper dependencies. In the case of the House in particular, they sought an institution “dependent on the people alone,” THE FEDERALIST NO. 52, at 294 (Madison) (Clinton Rossiter ed. 1961). Any conflicting dependence—such as upon foreign patrons—would “corrupt” that intended dependence, and in turn threaten to corrupt the nation’s fledgling republican institutions.

Amicus’s review of Framing-era usage of the word “corruption”—catalogued in the Appendix, which serves as a companion to the online interactive database <http://ocorruption.tumblr.com>, and submitted to this Court for the first time—demonstrates that the need to prevent such “dependence corruption” dominated the discussions of “corruption” over the adoption and ratification of the Constitution. This research establishes that (1) the Framers’ dominant concern was the corruption of the institutions of government, not individuals; (2) the Framers recognized that democratic institutions could be corrupted through developing conflicting dependencies, as they had in England; and (3) corruption of individual officeholders by bribery or other forms of *quid pro quo* corruption was a real, but secondary, concern.

This historically more complete conception of corruption is perfectly consistent with this Court’s precedents, including *Citizens United v. FEC*, 558 U.S. 310 (2010), and fully supports the constitutionality of the federal aggregate contribution limits challenged here. The aggregate limits, which permit an individual to make a total

of \$123,200 in contributions in each two-year election cycle (\$48,600 to candidates and \$74,600 to political parties and non-party political committees), play a necessary role in securing a government free from corrupting dependence on high-dollar donors. By preventing massive hard money contributions to candidates and their political parties, the aggregate limits aim to prevent the very sort of improper dependence on outside forces that the Framers wrote the Constitution to check.

Since *Buckley v. Valeo*, 424 U.S. 1 (1976), it has been settled law that the government has broad leeway to regulate campaign contributions, including by establishing aggregate contribution limits, to limit opportunities for corruption. While the limited burden on the freedom of speech in this case counsels intermediate scrutiny at most, any level of First Amendment scrutiny should take into account that the government's interest in combating real and apparent corruption is deeply rooted in the Constitution's text, history, and structure. *Amicus* respectfully submits that Congress's aggregate contribution limits serve this long-established, anti-corruption interest by diminishing candidates' and political parties' dependence on high-dollar donors, reducing opportunities for individual corruption, and restoring public trust in government.

ARGUMENT

I. THE CONSTITUTION'S TEXT, HISTORY, AND STRUCTURE REFLECT THE FRAMERS' BROAD INTEREST IN PREVENTING THE APPEARANCE AND REALITY OF CORRUPTION.

Under established law, the government's interest in preventing the appearance and reality of corruption is properly implemented by imposing limits on campaign contributions, direct money transfers that pose the gravest risk of corruption. *See Buckley*, 424 U.S. at 26; *McConnell v. FEC*, 540 U.S. 93, 143-44 (2003); *Citizens United*, 558 U.S. at 357; *see also* FEC Br. at 17-19, 26-28, 31-33. The text, history, and structure of the Constitution provide strong support for a broad interest that justifies contribution limits—both on the size and aggregate total amount—in order to prevent corruption.

A. In Drafting The Constitution, The Framers Were Keenly Concerned With Preventing Both “Dependence Corruption” And *Quid Pro Quo* Corruption.

Corruption was a core concern that informed much of the Framers' design of the Constitution. Alexander Hamilton explained that in drafting the Constitution, “[n]othing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption.” THE FEDERALIST No. 68, at 380. Because the Framers

understood that “[t]hese most deadly adversaries of republican government” could be “expected to make their approaches from more than one quarter,” *id.*, they designed the Constitution to include as many protections against corruption as possible. “[T]here was near unanimous agreement [among the delegates at the convention] that corruption was to be avoided, that its presence in the political system produced a degenerative effect, and that the new Constitution was designed in part to insulate the political system from corruption.” James D. Savage, *Corruption and Virtue at the Constitutional Convention*, 56 J. POL. 174, 181 (1994).

The Framers viewed the American Revolution as a fresh start from the corruption they saw as endemic to government in England. *See* 1 FARRAND’S RECORDS 380 (“I admire many parts of the British constitution and government, but I detest their corruption.”) (Mason). In their view, the core problem in England was that Parliament was not dependent on the people because of its conflicting dependence on the King. The King’s power to select a large number of members from “rotten boroughs” and to dole out patronage appointments corrupted the House of Commons, preventing it from serving as the voice of the people. *See* 2 DEBATES IN THE SEVERAL STATE CONVENTIONS 264 (explaining that this “dependence on [the King]” was “the true source of the corruption which has so long excited the severe animadversion of zealous politicians and patriots”) (Hamilton).

Because of their experiences with England, a central preoccupation of the Framers was ensuring that the democratic components of the new republic they were creating would be dependent on the people alone. To achieve this goal, they both limited opportunities for corruption and provided the federal government with powers adequate to stamp out any new forms of corruption that might arise. Indeed, the decision to hold a Constitutional Convention separate from the ordinary processes established under the Articles of Confederation was in part a reaction to the perceived corruption of state legislatures. *See* 2 FARRAND'S RECORDS 288 ("What led to the appointment of this Convention? The corruption & mutability of the Legislative Councils of the States.") (Mercer).

James Madison's notes of the Constitutional Convention record that 15 delegates used the term "corruption" no fewer than 54 times, and seven of the most prominent delegates, including Madison, Gouverneur Morris, George Mason, and James Wilson, accounted for the vast majority of those usages. Savage, 56 J. POL. at 177. Corruption was an express topic of concern on almost a quarter of the days that the members convened. Zephyr Teachout, *The Anti-Corruption Principle*, 94 CORNELL L. REV. 341, 352 (2009).

But in speaking of "corruption," the Framers thought in institutional terms. Corruption "referred 'less to the actions of individuals' than to the general moral health of the body politic judged according to 'distributions of wealth and power, relationships between leaders and followers, the

source of power, and the moral right of rulers to rule.” Lisa Hill, *Adam Smith and the Theme of Corruption*, 68 REV. POL. 636, 636-37 (2006). The corruption the Framers were concerned about was, like the corruption Adam Smith criticized, “more of a systemic problem” than an individual one. *Id.* at 650. Hence, one of the Framers’ primary concerns in writing the Constitution was to ensure that the critical institutions of the new federal government—in particular the House of Representatives and the President—were “dependent upon the people alone.” THE FEDERALIST NO. 52, at 294 (Madison). *See also Arizona v. Inter Tribal Council*, 133 S. Ct. 2247, 2258 (2013) (quoting Madison). As their experiences in England taught them, the Framers knew that avoiding conflicting dependencies that would compromise the nation’s new republican institutions was critical to preventing corruption.

The Framers were well aware that “[i]n republics, persons elevated from the mass of the community by the suffrages of their fellow-citizens to stations of great pre-eminence and power may find compensations for betraying their trust.” THE FEDERALIST NO. 22, at 117 (Hamilton). In line with first principles of republican government, the answer to this endemic problem was to create a system of government, dependent on “the great body of the people” and “not [on] an inconsiderable proportion or a favored class of it,” THE FEDERALIST NO. 39, at 209 (Madison), in which “every practical obstacle should be opposed to cabal, intrigue, and corruption.” THE FEDERALIST NO. 68, at 380 (Hamilton).

The Framers were not detached from the rough and tumble world of politics, and they approached the problems of corruption with a real-world understanding of political systems and their potential to either foster or restrain corruption. “When the delegates spoke of corruption at the convention they did so in a manner that reflected classical republican concerns about dependency, cabals, patronage, unwarranted influence, and bribery.” Savage, 56 J. POL. at 181.

But among these various “classical republican concerns,” some were more prominent than others. Empirical evidence from the debates over the adoption and ratification of the Constitution demonstrate that the Framers were more “concerned” with institutional, rather than individual corruption, and that improper “dependence” was most familiar type of institutional corruption.

The Appendix to this brief collects every use of the term “corruption” within the standard Framing-era documents. Of the 325 usages identified, in more than half—57% of cases—the Framers were discussing corruption of institutions, not individuals. By contrast, discussion of *quid pro quo corruption* was rare—only six instances, all of them focused on corruption of individuals. See Appendix at 23a. No doubt these two types of corruption were related. “By eliminating systematic corruption, they hoped to mitigate the problems of venal corruption as well.” John Joseph Wallis, *The Concept of Systematic Corruption in*

American History, in CORRUPTION AND REFORM: LESSONS FROM AMERICA'S ECONOMIC HISTORY 23, 25 (Edward L. Glaeser & Claudia Goldin eds., 2006). But whether or not related, they were still distinct.

As the Appendix shows, while the Framers understood that corruption could arise from acts of *quid pro quo* corruption by officeholders, it could also arise when government institutions had an improper, conflicting dependence. In at least 29 instances, the Framers spoke of corruption in exactly this way—five times the frequency of discussion of *quid pro quo* corruption. See Appendix at 21a-23a. Thus, the historical record demonstrates that the Framers understood the term “corruption” was not limited to instances of *quid pro quo* corruption, and was not ordinarily predicated of individuals, as opposed to institutions.

As explained below, the Framers' concern about corruption resulted in several distinct constitutional restrictions designed to reduce temptations and opportunities for corruption among public officials and block influences that would tend to compromise a “dependen[cy] on the people alone.” THE FEDERALIST No. 52, at 294 (Madison). In addition, the Framers kept in mind their goal of discouraging corruption when designing the structure of the three branches of the federal government and the Constitution's system of representative democracy.

B. The Text Of The Constitution Provides Specific Restrictions Designed To Limit Temptations And Opportunities For Corruption In Government.

Whether or not a public official or an institution of government was actually tainted by a corrupting force, the public might reasonably question whether their representatives' loyalty remained with the public interest. Accordingly, the Framers did more than simply criminalize bribery of public officials—they wrote into the Constitution specific provisions that would prevent actual and apparent dependence as well as *quid pro quo* corruption. For the Framers, the “best means of prevention” was “to identify and to remove the temptation.” *McConnell*, 540 U.S. at 153.

The Ineligibility and Emoluments Clause. The Constitution provides that “[n]o Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time.” U.S. CONST. art. I, § 6, cl. 2. This constitutional restriction reflects the Framers' deep anxiety that legislators' temptation to secure future employment might cloud their duty to act in the public interest. “The core corruption the Framers wanted to avoid was Parliament's loss of independence from the Crown because the king had showered members of Parliament with offices and perks that few would have had the strength to resist.” LAWRENCE

LESSIG, *REPUBLIC, LOST* 19 (2011). At the Convention, the delegates explained that this provision would “preserv[e] the Legislature as pure as possible, by shutting the door against appointments of its own members to offices, which was one source of its corruption.” 1 FARRAND’S RECORDS 386 (Rutledge). The Framers did not want members of Congress to develop a conflicting dependency on the Executive Branch.

The delegates’ decision that an express constitutional “precaution ag[ainst] intrigue was necessary” stemmed from their observations of the British experience, “where men got into Parl[iament] that they might get offices for themselves or their friends. This was the source of the corruption that ruined their Gov[ernment].” 1 FARRAND’S RECORDS 376 (Butler). George Mason supported the exclusion “as a corner stone in the fabric” of the Constitution and was “for shutting the door at all events ag[ainst] corruption,” particularly in light of the “venality and abuses” that took place in this regard in Great Britain. *Id.* During ratification debates over the Constitution, James McHenry explained that the purpose of the provision was “to avoid as much as possible every motive for Corruption.” James McHenry, *Speech before the Maryland House of Delegates* (Nov. 29, 1787), in 3 FARRAND’S RECORDS 148.

The Foreign Gifts Clause. The Constitution also mandates that “no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever,

from any King, Prince, or foreign State.” U.S. CONST. art. I, § 9, cl. 8. This constitutional restriction, designed to ensure that officers were not dependent upon foreign kings, was a reaction to several instances between the Revolution and the Convention when American diplomats received valuable gifts from foreign dignitaries.² By reaching more broadly than simply outlawing bribery, these restrictions served as prophylactic measures that also targeted the appearance of corruption.

Describing these foreign gifts and the public debate that followed, Edmund Randolph explained during the ratification debates in Virginia that “[i]t was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states.” DAVID ROBERTSON, DEBATES AND OTHER PROCEEDINGS OF THE CONVENTION OF VIRGINIA 330 (2d ed. 1805) (1788). These foreign gifts to prominent Americans in the 1780s were not considered *quid pro quo* corruption—Congress would surely not have allowed the diplomats to retain the gifts otherwise—but the gifts

² In 1780, U.S. Ambassador to France Arthur Lee received from King Louis XVI of France a portrait of the King set in diamonds atop a gold snuff box. See Applicability of Emoluments Clause to Employment of Gov. Employees by Foreign Public Univ., 18 Op. O.L.C. 13, 16 n.4 (1994). Lee turned the gift over to Congress, which resolved that he could keep it. *Id.* In 1785, Benjamin Franklin received a similar gift from the King of France, which Congress also allowed him to keep. *Id.* At the same time, Congress also allowed Secretary of Foreign Affairs John Jay to keep a gift of a horse from the King of Spain. *Id.*

nonetheless sent the wrong message to the American people, thus creating an appearance of corruption. Moreover, the Framers wanted to exclude “foreign influence” that could compromise the government’s independence (or, more precisely, the government’s intended dependence on the American people). See Lawrence Lessig, *A Reply to Professor Hasen*, 126 HARV. L. REV. F. 61, 70 (2013) (“The Framers didn’t want a Congress that was a farm league for the French Riviera.”). Indeed, the Framers had seen how the British government had become dependent on gifts from the French crown, “even if there was no clear quid pro quo tied to the gifts.” LESSIG, *REPUBLIC, LOST*, at 19.

Eligibility Requirements for Elected Office. The Constitution’s restrictions on candidates for elected office were designed to serve a gate-keeping function against possible sources of corruption. Beginning with Congress, the Constitution requires that a Representative or Senator must “be an Inhabitant of that State in which he shall be chosen.” U.S. CONST. art. I, § 2, cl. 2; *id.* at § 3, cl. 3. This residency requirement was a response to the fear that wealthy non-residents would purchase elected office. George Mason explained that “[i]f residence be not required, Rich men of neighbouring States, may employ with success the means of corruption in some particular district and thereby get into the public Councils after having failed in their own State.” 2 FARRAND’S RECORDS 218. Representatives were also required to be “seven Years a Citizen,” U.S. CONST. art. I, § 2, cl. 2, and Senators “nine Years a Citizen,” U.S. CONST.

art. I, § 3, cl. 3, because of concern over foreign intrigue.

The Constitution's eligibility requirements for President are even more stringent, reflecting the Framers' concern that this office was particularly susceptible to corruption. James Madison thought that because the Presidency "was to be administered by a single man . . . corruption was more within the compass of probable events." 2 FARRAND'S RECORDS 66. Building on this concern, the Constitution requires that the President be "a natural born Citizen," and have "been fourteen Years a Resident within the United States." U.S. CONST. art. II, § 1, cl. 5.

For all of the provisions described above, the Framers went beyond merely prohibiting bribery and treason, and instead created rules designed to prevent even the appearance of corruption or the loss of independence that could potentially arise from foreign gifts, a plum administrative position, or a foreign-born President. Even without any direct evidence of corruption in the fledgling national government, the Framers determined that these broad prophylactic measures were sufficiently important to include in our Nation's charter.

C. The Constitution's Structure Was Designed To Erect "Every Practicable Obstacle" Against Corruption.

While the structure of American constitutional democracy was obviously inspired by

more than just anti-corruption ideals, many of the central features of our republican government were, in fact, significant anti-corruption measures. These measures sought to ensure that the people's representatives remained as independent from corrupting forces as possible—"dependent on the people alone." THE FEDERALIST No. 52, at 294 (Madison).

For example, the Framers devised an innovative system of checks and balances to prevent the appearance and reality of corruption as well as to establish separation of powers and enhance policy outcomes. *See generally* THE FEDERALIST No. 51 (explaining the need for checks and balances) (Madison). Responding to the fear that it would be possible to "purchase the guardians of the people," James Madison explained that "[t]he improbability of such a mercenary and perfidious combination of the several members of government, standing on as different foundations as republican principles will well admit, and at the same time accountable to the society over which they are placed, ought alone to quiet this apprehension." THE FEDERALIST No. 55, at 313. The delegates' belief that multiple, overlapping structures were necessary to cabin possible corruption was particularly evident in their discussion of the veto power,³ the treaty power,⁴ and the appointment power.⁵

³ James Madison believed that the power of the veto would allow the President to check "the Great & the wealthy who in the course of things will necessarily compose [t]he Legislative body." 2 FARRAND'S RECORDS 52. But even as the veto could serve as a check against corruption in coordinate branches,

Elections were also a central part of the Framers' anti-corruption constitutional design. Drawing on the experience of England, where “the

the delegates understood that a legislative override was also necessary to keep the veto power from itself becoming a tool of corruption. The delegates thus reduced the number of Senators needed to override a veto from three-quarters to two-thirds, for “[i]f $\frac{3}{4}$ be required, a few Senators having hopes from the nomination of the President to offices, will combine with him and impede proper laws.” *Id.* at 586 (Gerry).

⁴ The Constitution provides that the President “shall have Power . . . to make Treaties,” but limits this power by requiring that the President obtain “the Advice and Consent of the Senate.” U.S. CONST. art. II, § 2, cl. 2. Even with this check in place, the delegates recognized “the danger of putting the essential rights of the Union in the hands of so small a number as a majority of the Senate, representing perhaps, not one fifth of the people.” 2 FARRAND’S RECORDS 548 (Gerry). Fearing that “[t]he Senate will be corrupted by foreign influence,” *id.*, the delegates increased the ratification threshold from a simple majority to “two thirds of the Senators present.” U.S. CONST. art. II, § 2, cl. 2.

⁵ The Constitution provides that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint” certain executive officials and members of the federal judiciary. U.S. Const. art. II, § 2, cl. 2. The Framers gave the appointment power to the President because, in part, they believed that he would “have fewer personal attachments to gratify than a body of men who may each be supposed to have an equal number; and will be so much the less liable to be misled by the sentiments of friendship and of affection.” THE FEDERALIST NO. 76, at 424 (Hamilton). But they also gave to the Senate the power to give its “Advice and Consent” as a “check upon a spirit of favoritism in the President,” one that “would tend greatly to prevent the appointment of unfit characters from,” among other things, “family connection” or “personal attachment.” *Id.* at 425.

electors [we]re so corrupted by the representatives, and the representatives so corrupted by the Crown,” THE FEDERALIST No. 41, at 227-28 (Madison), the Framers wanted to avoid financial dependency of one branch of government upon another and make certain both branches were dependent on the people alone. *See* Teachout, 94 CORNELL L. REV. at 362-63. To achieve that goal, Article I, § 2 provides that “the House of Representatives shall be composed of Members chosen every second Year by the People of the several States,” a provision Madison called the “fundamental article of republican government.” THE FEDERALIST NO. 52, at 294.

Thus, as Madison explained, the House would have “an immediate dependence on, and an intimate sympathy with, the people. Frequent elections are unquestionably the only policy by which this dependence and sympathy can be effectually secured.” *Id.* at 295. The Framers ensured that Congress would be “dependent on the people alone,” *id.* at 294, by providing for elections “FREELY by the WHOLE BODY of the people every SECOND YEAR.” THE FEDERALIST NO. 41, at 228 (Madison); *see* THE FEDERALIST No. 57, at 319 (“Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States.”) (Madison).

To give effect to these fundamental principles, the Framers gave to Congress the power to regulate the “Times, Places, and Manner of holding Elections” for Congress, U.S. Const. art. I, § 4, cl. 1, a broad, comprehensive power over all the mechanics of federal elections. *See Inter Tribal Council*, 133 S. Ct. at 2253-54. The Framers granted to Congress the power to establish uniform ground rules for federal elections “to prevent corruption or undue influence,” 2 DEBATES IN THE SEVERAL STATE CONVENTIONS 535 (M’Kean), and to ensure that Congress would be dependent on the people alone, not factions in the states that might seek to “mould their regulations as to favor the candidates they wished to succeed.” 2 FARRAND’S RECORDS 241 (Madison); *see* 3 DEBATES IN THE SEVERAL STATE CONVENTIONS 11 (observing that “the power of Congress to make the times of elections uniform in all the states, will destroy of the continuance of any cabal”) (Nicholas). The Elections Clause gave Congress the power to guarantee the integrity of federal elections and prevent new forms of corruption from undermining the Constitution’s promise that the government would be “dependent on the people alone.” *Inter Tribal*, 133 S. Ct. at 2258 (quoting THE FEDERALIST NO. 52).

Finally, the Framers’ decision to select the President through the Electoral College was expressly intended to limit “the danger of cabal and corruption.” 2 FARRAND’S RECORDS 500 (Mason). Alexander Hamilton explained that if the President were “appointed by the Legislature” the executive “would be tempted to make use of corrupt influence

to be continued in office.” *Id.* at 524; *see* 2 FARRAND’S RECORDS 31, 404 (Morris). Hamilton later added that “the executive should be independent for his continuance in office on all but the people themselves,” otherwise he might “be tempted to sacrifice his duty to his complaisance for those whose favor was necessary to” obtain reelection. THE FEDERALIST No. 68, at 412. The delegates’ solution was to select the President through the Electoral College, which, James Wilson explained, was “as nearly home to the people as is practicable.” 2 DEBATES IN THE SEVERAL STATE CONVENTIONS 512.

The Framers debated and rejected a proposal that would have permitted the Senate to break a deadlock in the Electoral College, concluding that “[r]eferring the appointment to the Senate lays a certain foundation for corruption & aristocracy,” by establishing a “change in the mode of appointing the President which makes him dependent on the Senate.” 2 FARRAND’S RECORDS 512, 524 (Williamson). James Wilson urged defeat of the proposal, observing that because of his “dependence on them,” “the President will not be the man of the people as he ought to be, but the Minion of the Senate.” *Id.* at 522, 523. This dependency on the Senate, rather than the people, would corrupt the Presidency. *See* Zachary S. Brugman, *The Bipartisan Promise of 1776: The Republican Form and its Manner of Election* 33 (2012) (available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2192705) (discussing the “many Framing fears that the President’s dependence on the Senate for election would result in corruption”). Thus, as

Hamilton observed, the Framers refused to make “the appointment of the President to depend on any preexisting bodies of men who might be tampered with beforehand to prostitute their votes; but they have referred it in the first instance to an immediate act of the people of America, to be exerted in the choice of persons for the temporary and sole purpose of making the appointment.” THE FEDERALIST NO. 68, at 381.

In sum, the Framers of the Constitution created a constitutional system that reflects a broad interest in combating actual and apparent political corruption. The anti-corruption principle at the Constitution’s core bolsters the government’s argument that Congress’ reasonable aggregate contribution limits are justified by the government’s need to prevent real and apparent corruption of the political process. *See* FEC Br. at 31-42, 51-55.

II. CONSTITUTIONAL AMENDMENTS HAVE EXPANDED PROTECTION AGAINST CORRUPTION.

Just as the federal government has attempted to create new political safeguards against ever-evolving threats to the integrity of elections and government through regulation and legislation, *see* FEC Br. at 2-9, generations of Americans have added to the Framers’ original constitutional protections against corruption through the amendment process.

First Amendment. The most obvious example of an anti-corruption amendment is the

First Amendment, which shields the voice of the people and the pen of the press from government censorship, allowing for healthy criticism and transparency in politics. In adding the Amendment to the Constitution, the Framers were mindful of the “special structural role of freedom of speech in a representative democracy.” AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 25 (1998). “The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.” *Stromberg v. California*, 283 U.S. 359, 369 (1931). To make sure that Congress was dependent on the people, the First Amendment not only protects “freedom of speech, or of the press” but also guarantees “the right of the people . . . to petition the Government for a redress of grievances.” U.S. CONST. amend. I. Accordingly, while the First Amendment protects individual rights, it also serves as a bulwark against corruption and self-dealing incumbents.

Given the First Amendment’s historic role in enabling Americans to stand up to corrupt and wrongheaded officials and policies, it is important that Congress’ regulation of campaign contributions not encroach upon the anti-corruption principles of the First Amendment. Significantly, the federal law at issue here places no limits on the amount of money individuals can spend on campaign advocacy and only modest limits on the amount individuals may give to candidates, parties,

and political action committees, allowing an individual to contribute a total of \$123,200 in each two year-election cycle. FEC Br. at 9, 21-23. It does not “deprive” anyone “of the right to use speech to strive to establish worth, standing, and respect for the speaker’s voice.” *Citizens United*, 558 U.S. at 340-41. It does not erect a “ban on speech,” nor does it “repress speech by silencing certain voices.” *Id.* at 339. On the contrary, the generous limits here ensure the kind of robust electoral debate the Framers viewed as critical, while also striking out at the kind of dependence corruption the Framers wrote the Constitution to prevent. *See Buckley*, 424 U.S. at 28-29.

Seventeenth Amendment. At the Founding, state legislatures were vested with the power to choose Senators for the people. U.S. Const. art. I, § 3. Because of this fact, as well as the body’s smaller size and less frequent elections, there was concern at the Convention that “the Senate will be more likely to be corrupt than the H. of Reps.” 2 FARRAND’S RECORDS 279 (Randolph). Indeed, the Framers insisted that revenue bills originate in the House because the Senate “should . . . have less to do with money matters.” *Id.* In the event of corruption in the Senate, the Framers depended on “the House of Representatives, with the people on their side, . . . to bring back the Constitution to its primitive form and principles.” THE FEDERALIST NO. 63, at 358 (Madison).

More than a century later, in adding the Seventeenth Amendment to the Constitution, the American people decreed a structural change was

necessary: the Senate, too, must be dependent on the people alone. This change reflected the American people's concern that the Senate had been corrupted by its dependence on state legislatures. The Seventeenth Amendment was ratified in 1913 following a number of public corruption scandals in the Senate that shook the confidence of the Nation. In perhaps the most infamous case, Senator William A. Clark of Montana confessed to making a "personal disbursement" of more than \$140,000 to Montana state legislators. He was forced to resign his seat in 1899 after a unanimous Senate committee report called for his expulsion. Ralph A. Rossum, *The Irony of Constitutional Democracy: Federalism, The Supreme Court, and the Seventeenth Amendment*, 36 SAN DIEGO L. REV. 671, 707 (1999). Senator William Lorimer of Illinois was actually expelled by the Senate in 1912 after reports that four state legislators had been bribed to change their vote on his behalf. *Id.* Between 1866 and 1900, there were nine Senate investigations of alleged bribery in Senate elections. *Id.* During the 58th Congress (1903-05), fully ten percent of the Senate was either on trial or subjected to legislative investigation. *Id.*

In the wake of these appalling instances of corruption, many believed that a structural change was necessary. In 1911, in response to these scandals, Senator Joseph Bristow of Kansas proposed an amendment to the Constitution requiring that Senators be "elected by the people."⁶

⁶ Sen. Joseph Bristow, *The Direct Election of Senators*, in CONGRESSIONAL SERIAL SET ISSUE 6177 (U.S. G.P.O. 1912).

His focus was reining in the corruption of the Senate by corporate interests:

With the development during recent times of the great corporate interests of the country, and the increased importance of legislation relating to their affairs, they have tenaciously sought to control the election of Senators friendly to their interests. The power of these great financial and industrial institutions can be very effectively used in the election of Senators by legislatures, and they have many times during recent years used that power in a most reprehensible and scandalous manner. They have spent enormous amounts of money in corrupting legislatures to elect to the Senate men of their own choosing.⁷

The concerns of the Framers of the Seventeenth Amendment over corruption and improper dependence on the states were similar to many of the concerns held by the delegates at the Constitutional Convention. *See, e.g.*, 1 FARRAND'S RECORDS 140 ("If the national legislature are appointed by the state legislatures, demagogues and corrupt members will creep in.") (Gerry).

Twenty-seventh Amendment. The Twenty-seventh Amendment, which prohibits any law varying the compensation of members of Congress

⁷ *Id.*

from taking effect “until an election of representatives shall have intervened,” U.S. CONST. amend. XXVII, began its constitutional journey as the Second Amendment proposed by the First Congress. AMAR, BILL OF RIGHTS, at 17-19. The proposal was designed “to limit the ability of Congressmen to line their own pockets at public expense.” *Id.* at 18. While the measure failed to garner enough state support in the 1790s when it was first introduced, it was ratified in 1992 as the Twenty-seventh Amendment—another example of constitutional design seeking to restrain government self-dealing and corruption.

These three Amendments demonstrate that a broad government interest in combating actual and apparent corruption is a thread that runs through American democracy from the Founding to the present.

III. COURT PRECEDENT REFLECTS THE FRAMERS’ UNDERSTANDING THAT THE GOVERNMENT HAS BROAD AUTHORITY TO COMBAT CORRUPTION.

Consistent with the constitutional text, history, and structure discussed above, this Court has long recognized the compelling nature of the government’s interest in preventing both corruption and the appearance of corruption. Over a century ago, the Court observed that “[i]n a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by

popular elections, the temptations to control these elections . . . by corruption is a constant source of danger.” *Ex Parte Yarbrough*, 110 U.S. 651, 666 (1884).

This Court has repeatedly “sustained limits on direct contributions in order to ensure against the reality or appearance of corruption.” *Citizens United*, 558 U.S. at 357. Consistent with the Constitution’s text and history, this Court has recognized that government may regulate campaign contributions in order to reduce opportunities for corruption and prevent candidates and officeholders from becoming dependent on high dollar donors. As *Citizens United* recognized, even though “few if any contributions to candidates will involve *quid pro quo* arrangements,” regulation of campaign contributions is “preventative,” *id.*, ensuring that candidates are not influenced to act “by the prospect of financial gain to themselves or infusions of money into their campaigns.” *FEC v. Nat’l Conservative PAC*, 470 U.S. 480, 497 (1985). The essential point is that even where “actual corrupt contribution practices ha[ve] not been proved, Congress ha[s] an interest in regulating the appearance of corruption that is ‘inherent in a regime of large individual financial contributions.’” *McConnell*, 540 U.S. at 298 (Kennedy, J., concurring in part and dissenting in part) (quoting *Buckley*, 424 U.S. at 27). Indeed, the Constitution itself contains a number of similar prophylactic protections to ensure a government “dependent on the people alone.” THE FEDERALIST NO. 52, at 294 (Madison).

Consistent with these anti-corruption first principles, this Court in *Buckley* held that the First Amendment permits the federal government to limit the size and aggregate amount of contributions in federal elections. The Court held that Congress was “surely entitled to conclude” that “contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.” *Buckley*, 424 U.S. at 28. The *Buckley* Court held that the aggregate contribution limits were necessary to make the basic scheme of contribution limits effective, describing them as “no more than a corollary of the basic individual contribution limitation that we have found constitutionally valid.” *Id.* at 38.

Given the overriding constitutionally-based interest in ensuring a system of federal elections free from corrupting influences and dependencies, Congress did not have to permit an individual to make an unlimited number of campaign contributions, but could impose a “quite modest restraint” on total aggregate contributions “to prevent evasion of the \$1,000 contribution limitation by a person who might otherwise contribute massive amounts 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.*

The aggregate contribution limitations challenged by McCutcheon, which are simply an updated version of the \$25,000 limit upheld in *Buckley*, are plainly constitutional efforts to prevent corruption. The aggregate limits continue to serve a critical role in Congress' effort to regulate large campaign contributions to "deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions." *Buckley*, 424 U.S. at 28. Congress properly concluded that aggregate limits play a necessary role in securing a Congress free from corrupting dependence on high-dollar donors. That judgment is strongly supported by the Constitution's text and history, which recognized such improper dependence as a root form of corruption.

McCutcheon argues that the aggregate limits are no longer necessary in light of recent changes to the federal campaign finance laws, *see* McCutcheon Br. at 34-48, but these arguments blinker reality. As the district court noted, if the aggregate limits did not exist, "an individual might, for example, give half-a-million dollars in a single check to a joint fundraising committee comprising a party's presidential candidate, the party's national party committee, and most of the party's state party committees." *McCutcheon v. FEC*, 893 F. Supp. 2d 133, 140 (C.D.D.C. 2012); *see id.* at 135-36 ("[A]n individual might contribute \$3.5 million to one party and its affiliated committees in a single election cycle."). Without aggregate limits, huge hard money contributions of the sort federal campaign finance laws were designed to prevent

would likely return. The result would be increased dependence on an even tinier group of donors willing to bankroll campaigns. McCutcheon's argument turns the Constitution, which was designed to prevent such improper dependence, on its head.

Under *Buckley*, "the inquiry turns on whether the Legislature has established that the regulated conduct has inherent corruption potential, thus justifying the inference that regulating the conduct will stem the appearance of real corruption." *McConnell*, 540 U.S. at 297-98 (Kennedy, J., concurring in part and dissenting in part). Here it has. Congress enacted aggregate contribution limits to "curtail the influence of excessive political contributions by any single person," 120 Cong. Rec. 27,224 (1974), finding "multiple instances in which contributions to numerous separate entities had been made at the request of a particular candidate." FEC Br. at 4. Absent these limits, individuals could, as they did before the passage of the contributions limits upheld in *Buckley*, "contribute massive amounts 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." *Buckley*, 424 U.S. at 38; see FEC Br. at 35-43.

Aggregate contribution limits thus continue to serve the essential function of ensuring the integrity of federal elections. By limiting the ability of individuals to make massive political contributions to candidates and political parties,

aggregate contribution limits check both actual and apparent 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, and prevent an unhealthy dependence on high-dollar donors. In this respect, aggregate limits help ensure a system of financing federal elections dependent on “the great body of the people” and “not [on] an inconsiderable proportion or a favored class of it,” THE FEDERALIST NO. 39, at 209 (Madison).

* * *

Anti-corruption principles are a core element of the Constitution’s text, history, and structure, with overlapping constitutional provisions designed to serve as a bulwark against insidious corruption. These principles translate into a strong governmental interest in combating real and apparent corruption in politics and government — including the corruption of individuals, vis-à-vis quid pro quo corruption, and the corruption of institutions, vis-à-vis improper dependence. Consistent with the anti-corruption principles that shaped the design of the Constitution, the Court should uphold the power of the federal government to establish aggregate limits on campaign contributions to combat corruption.

CONCLUSION

For the foregoing reasons, the Court should affirm the judgment of the district court.

Respectfully submitted,

Douglas T. Kendall
Elizabeth B. Wydra*
**Counsel of Record*
David H. Gans
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1200 18th Street, NW, Suite 501
Washington, D.C. 20036 (202)
296-6889
elizabeth@theusconstitution.org

Counsel for Amicus Curiae

July 2013

APPENDIX

**Catalogue of Use of “Corruption” In
Founding Constitutional Debates¹**

This appendix catalogues the instances in which the word “corruption” was used in debates about the creation and ratification of the Constitution, grouped by type of corruption referenced. It is a companion to an online, interactive database, located at <http://ocorruption.tumblr.com>, which contains the full quotes as well as links to the original source so that the quote may be viewed in context. This appendix also explains the methodology and sources used to create the catalogue and database, and summarizes the results.

Sources

- The Library of Congress online archives of Max Farrand’s *The Records of the Federal Convention of 1787*² and Jonathan Elliot’s *The Debates in the Several State Conventions on the Adoption of the Federal Constitution*³.
- ConSource’s⁴ online version of *The Federalist Papers*⁵, together with their archives of Anti-

¹ This appendix and the online database were compiled with the research assistance of Dennis Courtney and Zach D’Amico.

² <http://memory.loc.gov/ammem/amlaw/lwfr.html>. All URLs in this document refer to the versions accessed on July 1, 2013.

³ <http://memory.loc.gov/ammem/amlaw/lwed.html>

⁴ <http://www.consource.org/>

Federalist and Pro-Federalist writings⁶, and records of the state ratification debates⁷.

- Letters, newspaper articles, and other printed matter from the “Commentaries on the Constitution” section⁸ of the digital edition of the Documentary History of the Ratification of the Constitution⁹.

Methodology

Each source was searched for all uses of variants of the word “corrupt” (e.g. “corruption,” “corrupted,” etc.). Each usage was read in context and categorized as either referring primarily to corruption of an *individual*, or to corruption of an *entity*¹⁰. Repeated uses within the same discussion were counted and categorized only once, unless the sense of usage

5

<http://consource.org/library/?type=document&topics=&collections=the-federalist-papers&deep=&sort=date>

6

<http://consource.org/library/?type=document&topics=&collections=anti-federalist-and-pro-federalist-papers&deep=&sort=date>

7

<http://consource.org/library/?type=document&topics=&collections=state-ratification-debates&deep=&sort=date>

8

<http://rotunda.upress.virginia.edu/founders/default.xqy?keys=RNCN-print-03&mode=TOC>

⁹ <http://rotunda.upress.virginia.edu/founders/RNCN.html>

¹⁰ Two classes of references were excluded from the collection: uses of the term in statutory language specific to attainder (“corruption of blood”), and descriptions of moral decline unrelated to any government function (e.g. general “corruption of public morals”).

changed. Each usage was reviewed separately by two parties, and in the case of difficult or ambiguous entries, the two worked, through discussion and further research, to establish a classification.

Uses of “corruption” were also flagged if they located corruption in an “improper dependence” of one thing on another, either explicitly or implicitly, or if a “quid pro quo” exchange was clearly implicated. Although these themes are suggested in many quotations, tags were not applied unless they were unambiguously present.

Summary statistics

Of 325 recorded usages, 56% (183) referred to corruption of an entity, while 44% (142) spoke of corruption of an individual. There were 5 mentions of “quid pro quo” corruption, and 29 mentions of “improper dependence” corruption. All “quid pro quo” usages referred to individual corruption. On the other hand, only 9 of 29 (31%) references to “improper dependence” corruption located that corruption in an individual, with 20 of those 29 (69%) references speaking of corruption of an entity.

If one classifies references by the branch of government that is hosting the corruption, most usages discuss corruption of the legislative branch. Of these, about half, but fewer than half, refer to “individual” corruption.

Instances of “Corruption” Usage, Grouped By Type of
Corruption Referenced, Date, and Speaker

Entity Corruption

02/27/1783 James Madison
04/20/1787 John Adams
05/28/1787 Charles Pinckney
05/28/1787 Charles Pinckney
06/01/1787 James Wilson (notes of Rufus King)
06/06/1787 Alexander Hamilton
06/07/1787 John Dickinson (notes of Rufus King)
06/09/1787 Elbridge Gerry (notes of James Madison)
06/16/1787 James Wilson (notes of James Madison)
06/18/1787 Alexander Hamilton (notes of Rufus King)
06/18/1787 Alexander Hamilton (notes of James
Madison)
06/18/1787 Alexander Hamilton (notes of James
Madison)
06/19/1787 James Madison (notes of Robert Yates)
06/20/1787 John Lansing (notes of James Madison)
06/22/1787 George Mason (notes of Robert Yates)

Entity Corruption (continued)

06/22/1787 Nathaniel Gorham (notes of Robert Yates)

06/22/1787 Alexander Hamilton (notes of Robert Yates)

06/22/1787 Pierce Butler (notes of Robert Yates)

06/23/1787 James Wilson (notes of James Madison)

06/23/1787 George Mason (notes of James Madison)

06/23/1787 John Rutledge (notes of James Madison)

06/23/1787 Pierce Butler (notes of John Lansing)

06/26/1787 Letter in the Philadelphia Independent Gazetteer

06/28/1787 James Madison

07/06/1787 John Dickinson (notes of James Madison)

07/10/1787 Elbridge Gerry (notes of James Madison)

07/17/1787 Gouverneur Morris

07/17/1787 James Wilson

07/17/1787 George Mason

07/19/1787 Edmund Randolph (notes of James Madison)

07/25/1787 James Madison

08/07/1787 James Madison (notes of Rufus King)

08/08/1787 Nathaniel Gorham (notes of James Madison)

08/13/1787 Elbridge Gerry

Entity Corruption (continued)

08/13/1787 Edmund Randolph (notes of James Madison)

08/14/1787 John Mercer (notes of James Madison)

08/14/1787 Gouverneur Morris (notes of James Madison)

08/14/1787 Edmund Randolph (notes of James Madison)

08/14/1787 Hugh Williamson (notes of James Madison)

08/14/1787 George Mason

08/17/1787 Elbridge Gerry (notes of James Madison)

08/23/1787 Edmund Randolph

08/24/1787 Gouverneur Morris (notes of James Madison)

08/24/1787 Roger Sherman (notes of James Madison)

08/29/1787 James Madison

09/04/1787 Gouverneur Morris (notes of James Madison)

09/04/1787 James Wilson (notes of James Madison)

09/04/1787 George Mason (notes of James Madison)

09/05/1787 Hugh Williamson (notes of James Madison)

09/07/1787 James Madison

Entity Corruption (continued)

09/08/1787 Gouverneur Morris (notes of James Madison)

09/08/1787 Alexander Hamilton (notes of James Madison)

09/08/1787 Elbridge Gerry (notes of James Madison)

09/12/1787 George Mason

09/17/1787 Benjamin Franklin (notes of James Madison)

09/28/1787 Tench Coxe

09/29/1787 Curtius

10/05/1787 Centinel I

10/10/1787 Federal Farmer III

10/17/1787 Caesar II

10/18/1787 Pelatiah Webster

10/20/1787 Louis Guillaume Otto

10/24/1787 Centinel II

10/25/1787 Newport Herald

11/02/1787 Alexander Hamilton

11/08/1787 Pelatiah Webster

11/15/1787 Cincinnatus III - to James Wilson, Esquire

11/20/1787 George Staunton (via Thomas Lee Shippen)

Entity Corruption (continued)

11/21/1787 Alexander Hamilton

11/22/1787 James Madison

11/28/1787 Federal Republican - Review of the
Constitution

11/29/1787 Luther Martin

11/29/1787 James McHenry

12/04/1787 John Smilie (notes of Anthony Wayne)

12/04/1787 James Wilson (notes of Thomas Lloyd)

12/05/1787 William Findley (notes of James Wilson)

12/06/1787 John Smilie

12/07/1787 James Madison

12/11/1787 James Wilson (notes of Thomas Lloyd)

12/11/1787 James Wilson (notes of Thomas Lloyd)

12/12/1787 Benjamin Rush (in newspaper report)

12/14/1787 Alexander Hamilton

12/14/1787 Alexander Hamilton

12/18/1787 Minority dissent of the Pennsylvania
Convention

12/20/1787 Thomas Jefferson

12/24/1787 Timothy Pickering

12/31/1787 Thomas Jefferson

12/31/1787 Isaac Stearns

01/09/1788 John Brown Cutting

Entity Corruption (continued)

01/16/1788 John Taylor (notes of Theophilus Parson)
01/16/1788 Charles Pinckney
01/16/1788 Charles Pinckney
01/18/1788 James Madison
01/19/1788 James Madison
01/21/1788 John Taylor (notes of Theophilus Parson)
01/23/1788 James Madison
02/04/1788 Thomas Thacher
02/13/1788 James Madison
02/19/1788 James Madison
02/26/1788 John Trumbull
02/27/1788 James Madison
02/27/1788 Marcus II - Norfolk and Portsmouth
Journal
03/01/1788 James Madison
03/01/1788 James Madison
03/01/1788 James Madison
03/01/1788 James Madison
03/05/1788 John Jay
03/05/1788 John Jay
03/07/1788 Alexander Hamilton
03/08/1788 Alexander Hamilton

Entity Corruption (continued)

03/08/1788 Alexander Hamilton

03/12/1788 Alexander Hamilton

03/12/1788 Alexander Hamilton

03/21/1788 Alexander Hamilton

03/29/1788 James Freeman to Theophilus Lindsey

04/01/1788 Alexander Hamilton

04/16/1788 A Farmer

04/30/1788 Address to New York, Virginia
Conventions

05/02/1788 Federal Farmer - Letters to the
Republican

05/02/1788 Federal Farmer - Letters to the
Republican

05/02/1788 Federal Farmer - Letters to the
Republican

05/02/1788 Federal Farmer - Letters to the
Republican

05/02/1788 Federal Farmer - Letters to the
Republican

05/02/1788 Federal Farmer - Letters to the
Republican

05/02/1788 Federal Farmer - Letters to the
Republican

05/05/1788 Pierce Butler

Entity Corruption (continued)

05/10/1788 Nathan Dane
06/03/1788 George Nicholas
06/05/1788 James Madison
06/05/1788 Richard Lee
06/07/1788 Edmund Randolph
06/07/1788 Edmund Randolph
06/07/1788 Edmund Randolph
06/10/1788 Edmund Randolph
06/11/1788 William Grayson
06/11/1788 William Grayson
06/11/1788 George Mason
06/11/1788 George Mason
06/11/1788 George Mason
06/11/1788 William Grayson
06/12/1788 Patrick Henry
06/13/1788 William Grayson
06/13/1788 John Tyler
06/14/1788 Edmund Pendleton
06/17/1788 Edmund Randolph
06/21/1788 Alexander Hamilton (notes of John
McKesson)
06/21/1788 Melancton Smith (notes of John
McKesson)

Entity Corruption (continued)

06/21/1788 Alexander Hamilton (notes of John McKesson)

06/21/1788 Melancton Smith (notes of John McKesson)

06/21/1788 Alexander Hamilton (notes of John McKesson)

06/23/1788 John Jay (notes of John McKesson)

06/23/1788 Robert Livingston (notes of John McKesson)

06/24/1788 Richard Harison (notes of John McKesson)

06/24/1788 John Lansing (notes of Francis Childs)

06/24/1788 Edmund Randolph

06/24/1788 Robert Livingston (notes of John McKesson)

06/24/1788 Gilbert Livingston (notes of John McKesson)

06/25/1788 George Clinton (notes of John McKesson)

06/25/1788 James Innes

06/27/1788 Melancton Smith (notes of John McKesson)

06/27/1788 Robert Livingston (notes of John McKesson)

06/30/1788 Samuel Jones (notes of John McKesson)

Entity Corruption (continued)

07/01/1788 Timothy Bloodworth

07/02/1788 Gilbert Livingston (notes of John McKesson)

07/02/1788 Alexander Hamilton (notes of John McKesson)

07/03/1788 Nathan Dane

07/05/1788 Samuel Jones (notes of Richard Harison)

07/07/1788 Samuel Jones (notes of Richard Harison)

07/25/1788 William Davie

07/26/1788 William Davie

07/30/1788 William Lenoir

06/01/1789 Brutus III

06/08/1789 Brutus IV

06/08/1789 Brutus IV

07/16/1789 Henry Gibbs

08/19/1789 James Madison

01/18/1798 Albert Gallatin

01/23/1798 William Findley

12/24/1799 James Madison

01/23/1800 Abraham Baldwin

12/25/1802 Gouverneur Morris

02/24/1815 Gouverneur Morris

03/20/1816 Rufus King

Individual Corruption

10/02/1778 George Mason
05/23/1783 Daniel Carroll
05/30/1783 George Mason
06/04/1787 Pierce Butler (notes of Rufus King)
06/06/1787 Elbridge Gerry (notes of Yates and King)
06/06/1787 James Madison
06/18/1787 Alexander Hamilton (notes of James Madison)
06/23/1787 George Mason (notes of Robert Yates)
07/18/1787 James Madison
07/19/1787 Gouverneur Morris (notes of James Madison)
07/19/1787 Hugh Williamson (notes of James Madison)
07/20/1787 George Mason (notes of James Madison)
07/20/1787 Gouverneur Morris (notes of James Madison)
07/20/1787 Gouverneur Morris (notes of James Madison)
07/20/1787 James Madison
08/08/1787 George Mason (notes of James Madison)
08/09/1787 James Wilson (notes of James McHenry)
08/23/1787 Nathaniel Gorham
09/03/1787 George Mason (notes of James Madison)

Individual Corruption (continued)

09/06/1787 Alexander Hamilton
09/07/1787 Pierce Butler (notes of James Madison)
09/12/1787 Elbridge Gerry (notes of James Madison)
09/12/1787 Pennsylvania Gazette
10/17/1787 A Democratic Federalist
10/18/1787 A Citizen of Philadelphia - Remarks
11/01/1787 An Old Whig V
11/02/1787 Alexander Hamilton
11/20/1787 Thomas Lee Shippen
11/22/1787 James Madison
11/28/1787 Federal Republican - Review of the
Constitution
11/29/1787 James McHenry
11/29/1787 Luther Martin
11/29/1787 Luther Martin
12/03/1787 A Landholder V
12/03/1787 John Smilie (notes of James Wilson)
12/04/1787 James Wilson (notes of Thomas Lloyd)
12/04/1787 James Wilson (notes of Thomas Lloyd)
12/10/1787 Thomas McKean (notes of Thomas Lloyd)
12/11/1787 James Wilson (notes of Thomas Lloyd)
12/14/1787 Alexander Hamilton

Individual Corruption (continued)

12/14/1787 Alexander Hamilton

12/14/1787 Alexander Hamilton

12/18/1787 Minority dissent of the Pennsylvania
Convention

12/24/1787 Poplicola - Boston Gazette

01/05/1788 Samuel Osgood

01/09/1788 Tamony - Virginia Independent Chronicle

01/12/1788 James Madison

01/16/1788 Charles Pinckney

01/16/1788 John Rutledge

01/21/1788 Boston Gazette and the Country Journal

01/21/1788 Martin Kingsley (notes of Theophilus
Parson)

01/23/1788 Philadelphiensis VIII

01/31/1788 Aristides - Remarks on the Proposed Plan

01/31/1788 Aristides - Remarks on the Proposed Plan

01/31/1788 Aristides - Remarks on the Proposed Plan

02/02/1788 Mercy Warren

02/06/1788 Samuel Stillman

02/13/1788 James Madison

02/13/1788 James Madison

02/20/1788 Marcus I - Norfolk and Portsmouth
Journal

Individual Corruption (continued)

02/26/1788 Centinel XVI
03/08/1788 Alexander Hamilton
03/08/1788 Alexander Hamilton
03/12/1788 Alexander Hamilton
03/18/1788 Alexander Hamilton
03/19/1788 Alexander Hamilton
03/20/1788 Brutus XV
03/21/1788 Alexander Hamilton
03/26/1788 Alexander Hamilton
04/01/1788 Alexander Hamilton
04/15/1788 John Dickinson
04/28/1788 George Washington
05/01/1788 Address of minority of Maryland
Convention
05/02/1788 Federal Farmer - Letters to the
Republican
05/02/1788 Federal Farmer - Letters to the
Republican
05/02/1788 Federal Farmer - Letters to the
Republican
05/02/1788 Federal Farmer - Letters to the
Republican
05/02/1788 Federal Farmer - Letters to the
Republican

Individual Corruption (continued)

05/02/1788 Federal Farmer - Letters to the
Republican

05/02/1788 Federal Farmer - Letters to the
Republican

06/05/1788 Patrick Henry

06/07/1788 Edmund Randolph

06/07/1788 Patrick Henry

06/07/1788 Francis Corvin

06/09/1788 Patrick Henry

06/09/1788 Patrick Henry

06/10/1788 John Marshall

06/10/1788 James Monroe

06/10/1788 James Monroe

06/11/1788 George Mason

06/11/1788 James Madison

06/12/1788 William Grayson

06/12/1788 Patrick Henry

06/13/1788 George Mason

06/13/1788 Edmund Randolph

06/13/1788 Patrick Henry

06/13/1788 Patrick Henry

06/13/1788 William Grayson

06/14/1788 Patrick Henry

Individual Corruption (continued)

06/17/1788 Edmund Randolph

06/17/1788 Edmund Randolph

06/18/1788 James Monroe

06/18/1788 James Monroe

06/20/1788 Melancton Smith (notes of John
McKesson)

06/21/1788 Melancton Smith (notes of John
McKesson)

06/21/1788 William Grayson

06/21/1788 John Williams (notes of John McKesson)

06/23/1788 John Jay (notes of John McKesson)

06/23/1788 Robert Livingston (notes of John
McKesson)

06/23/1788 Richard Harison (notes of John
McKesson)

06/24/1788 John Lansing (notes of Francis Childs)

06/24/1788 Alexander Hamilton (notes of Francis
Childs)

06/25/1788 Melancton Smith (notes of John
McKesson)

06/25/1788 Robert Livingston (notes of John
McKesson)

06/27/1788 Alexander Hamilton (notes of John
McKesson)

Individual Corruption (continued)

07/02/1788 John Lansing (notes of John McKesson)

07/02/1788 Richard Harison (notes of John
McKesson)

07/02/1788 John Lansing (notes of John McKesson)

07/02/1788 Alexander Hamilton (notes of John
McKesson)

07/02/1788 George Clinton (notes of John McKesson)

07/03/1788 Nathan Dane

07/05/1788 Alexander Hamilton

07/05/1788 Alexander Hamilton

07/05/1788 Alexander Hamilton

07/05/1788 Alexander Hamilton

07/25/1788 James Iredell

07/28/1788 Timothy Bloodworth

07/28/1788 Samuel Spencer

07/28/1788 James Iredell

07/28/1788 James Iredell

07/28/1788 James Iredell

07/30/1788 William Lenoir

06/08/1789 Brutus IV

07/05/1789 Cato V

08/13/1789 Fisher Ames

08/19/1789 Roger Sherman

Individual Corruption (continued)

12/21/1798 James Madison

02/21/1805 Joseph Hopkinson

03/01/1821 William Smith

08/23/1823 James Madison

03/18/1824 Rufus King

11/17/1830 James Madison

Improper Dependence — Explicit

07/19/1787 Gouverneur Morris (notes of James Madison)

09/08/1787 Gouverneur Morris (notes of James Madison)

03/12/1788 Alexander Hamilton

Improper Dependence — Implicit

07/17/1787 Gouverneur Morris

07/20/1787 George Mason (notes of James Madison)

07/20/1787 Gouverneur Morris (notes of James Madison)

08/24/1787 Gouverneur Morris (notes of James Madison)

Improper Dependence — Implicit (continued)

09/04/1787 Gouverneur Morris (notes of James Madison)

09/29/1787 Curtius

10/05/1787 Centinel I

11/02/1787 Alexander Hamilton

11/22/1787 James Madison

11/29/1787 Luther Martin

12/04/1787 James Wilson (notes of Thomas Lloyd)

12/10/1787 Thomas McKean (notes of Thomas Lloyd)

12/11/1787 James Wilson (notes of Thomas Lloyd)

12/18/1787 Minority dissent of the Pennsylvania Convention

12/24/1787 Timothy Pickering

01/16/1788 Charles Pinckney

03/21/1788 Alexander Hamilton

04/28/1788 George Washington

06/05/1788 James Madison

06/24/1788 Richard Harison (notes of John McKesson)

07/26/1788 William Davie

07/28/1788 James Iredell

06/01/1789 Brutus III

06/08/1789 Brutus IV

Improper Dependence — Implicit (continued)

06/08/1789 Brutus IV

03/20/1816 Rufus King

Quid-Pro-Quo Corruption

08/08/1787 George Mason (notes of James Madison)

11/29/1787 Luther Martin

01/21/1788 Boston Gazette and the Country Journal

06/13/1788 George Mason

07/25/1788 James Iredell