

SUPREME COURT INVALIDATES AGGREGATE CONTRIBUTION LIMITS

On April 2, 2014, the Supreme Court in *McCutcheon v. FEC*, struck down the biennial aggregate contribution limits, in effect since 1974, holding such limits are invalid under the First Amendment. Chief Justice Roberts, writing for the majority, noted that “[t]he Government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse.” 572 U.S. ___, Slip Op. at 15 (2014).

Federal law contains two types of limits on political contributions. The first are base limits, and limit the total amount of money an individual may give to a single candidate, political party or political committee (PAC). The second are aggregate limits, which cap the total amount an individual may give to campaigns, committees, parties, and PACs over a two year period. This aggregate limit is comprised of sublimits to candidates, and parties/PACs. The total aggregate limit for 2013/2014 is \$123,200.

Impact of *McCutcheon*

Prior to the Court’s decision, individuals were limited in the number of candidates, party committees, and other PACs which they could support with maximum contributions. For example, individuals could contribute the maximum amount of \$5,200 (primary and general combined) to only nine candidates over the two-year election cycle (\$48,600), and an additional \$74,600 to other PACs and party committees. Now, less influential Members of Congress and challengers can solicit donors who may have previously maxed out to nine party leaders and committee chairmen. Donors can now contribute the maximum amount to as many party committees as they choose. A trade association’s connected PAC can solicit and accept contributions from members regardless of how many other candidates, parties or PACs they may have already contributed to.

The Court’s ruling also has a practical impact on compliance and recordkeeping efforts. Legal advisors and accountants for a family office or high net worth individuals no longer have to create spreadsheets to keep track of confusing per-election, per-year, per cycle contributions. Advisors now only need to determine whether the donor has exceeded the base contribution limit for that campaign entity.

With no aggregate limit, there will likely be an increase in the use of, and size of, Joint Fundraising Committees (JFC), limited only by the JFC’s tolerance for paperwork. Like-minded Members of Congress can join together and raise money from more donors. A Presidential candidate could set up a JFC to raise money for his campaign, as well as for party organizations, and a large number of vulnerable incumbents.

A few local jurisdictions have aggregate contribution limits. Whether local jurisdictions repeal these aggregate contribution limits, or they are challenged through litigation, it is unlikely that they will continue in force for long.

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What McCutcheon Does Not Change

The base contribution limits to candidates, PACs and parties remains intact. Individuals may contribute up to \$2,600 per candidate per election. The amount that multicandidate PACs may contribute to candidates remains capped at \$5,000 per election. Corporate contributions to candidates are still prohibited. Independent expenditure PACs (Super PACs) may continue to receive unlimited contributions from individuals and corporations, and are prohibited from contributing to candidates.

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