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NEWSLETTER

McCutcheon v. FEC Paves Way for New Challenges to Campaign Finance Laws Nationwide

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In one of the most highly publicized decisions of this Term, the Supreme Court in *McCutcheon v. Federal Election Commission* invalidated all aggregate limits on federal campaign contributions. Since the 1970s, federal law has capped the maximum amount of contributions that a citizen may make in an election; during the 2013-2014 election cycle, a person could contribute no more than $123,200 to all candidates and political committees. *McCutcheon* did away with that ceiling, while leaving in place the limits on contributions to individual candidates and groups (known as "base limits").

State Responses and New Challenges

The precise restriction at issue in *McCutcheon*, aggregate contribution limits, is fairly narrow. But both the Court's holding and its reasoning could mark the way for a new generation of campaign finance litigation. Foremost, the decision undercuts laws in more than one-fifth of the states. Numerous jurisdictions–including highly regulated New York and Wisconsin–have aggregate contribution limits in one form or another. (See Wiley Rein's April 2 alert, *Supreme Court Strikes Down Federal Aggregate Contribution Limits*, for a complete list.) A number of these states have already responded to *McCutcheon*. Maryland, for example, has advised that its aggregate contribution limit will not be enforced and that "a person may make an unlimited aggregate amount of total contributions, but not in excess of $4,000 to any one political committee." And on the same day *McCutcheon* was issued, Massachusetts authorities made clear that they "will no longer enforce the [Commonwealth's] $12,500 aggregate limit on the amount that an individual may contribute to all candidates." Finally, on May 14, 2014, the Connecticut State Elections Enforcement Commission, in Advisory Opinion 2014-3, indicated that it would not enforce the state's aggregate contribution limits in light of *McCutcheon*.

Other states have laws that may be susceptible to challenge indirectly. To give one example, Minnesota does not place a formal aggregate limit on an individual's contributions, but it regulates the other side of the coin, capping the sums that candidates can *receive* from certain contributors. In the wake of *McCutcheon*, a federal court has already preliminarily enjoined parts of that law. *Seaton v. Wiener*, No. 0:14-cv-01016 (D-Minn.).

A Preview of Cases to Come?

More broadly, *McCutcheon* is also significant because it reaffirms that state-level experience can bear on the validity of federal campaign finance laws under the First Amendment. At base, First Amendment scrutiny asks whether a speech restriction is necessary to serve a claimed governmental interest. And for the second time in five Terms, the Supreme Court has suggested that the absence of restrictions at the state level calls into question the need for those restrictions at the federal level. First in *Citizens United v. FEC*, the Court rejected the link between corporate independent expenditures and corruption, in part because "26 States do not restrict independent expenditures by for-profit corporations" and there was no showing that "these expenditures have corrupted the political process in those States."

The Court echoed this reasoning in *McCutcheon*; "[i]t would be especially odd to regard aggregate limits as essential to enforce base limits," the Court noted, "when state campaign finance schemes typically include base limits but not aggregate limits." Whether the Court will extend this analytic tool to other restrictions–bans on corporate contributions are the most obvious example–remains to be seen.