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NEWSLETTER

Federal Courts Rule Against Missouri, Pennsylvania Campaign Contribution Restrictions

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Two federal courts recently ruled against state campaign contribution restrictions. In one case, Missouri's ban on PAC-to-PAC contributions was again held to be unconstitutional on appeal. In the other case, Pennsylvania's ban on contributions from gaming interests was struck down. The decisions illustrate the constant push and pull of campaign finance laws, with legislators and voters attempting to enact more stringent restrictions and courts often finding that such laws go beyond what is constitutionally permissible.

In the Missouri case, a panel of the U.S. Court of Appeals for the Eighth Circuit upheld a federal district court judge's ruling last year that Missouri's ban on state political action committees (PACs) receiving contributions from other PACs is unconstitutional. The challenged provision was one of several that Missourians voted to enact in 2016 as an amendment to their state constitution. The district court had ruled that substantial portions of the 2016 amendment were impermissible under the First Amendment of the U.S. Constitution, but only the PAC-to-PAC contribution ban was at issue in the appeal sought by the Missouri Ethics Commission (MEC).

The MEC defended the PAC-to-PAC contribution ban as necessary to prevent circumvention of Missouri's contribution limits, which restrict individuals and PACs to giving no more than $2,600 per election to candidates for state office. Missouri argued that without the ban on PAC-to-PAC contributions, individuals would be able to direct more than the $2,600 amount to particular candidates "by laundering [funds] through a series of PACs that [the individual] controls." (Missouri does not limit the amount that an individual may give to any

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particular PAC.)

The Eighth Circuit panel found this argument to be unconvincing for several reasons. First, the panel faulted the MEC for failing to provide any "real-world examples" of PACs being used to engage in this type of circumvention. Second, the panel noted that donors could exceed the contribution limits simply by contributing directly to a number of PACs with the expectation that those PACs would support particular candidates of the donor's choice, as opposed to channeling a single contribution from one PAC to another.

Lastly, the panel noted that the type of circumvention the MEC purported to be concerned about is otherwise prohibited under Missouri law. As in most jurisdictions, Missouri prohibits what is commonly known as "making a contribution in the name of another" or "straw contributions." In other words, channeling a contribution from one PAC to another PAC with the ultimate goal of having the contribution reach a particular candidate to evade contribution limits is already otherwise illegal in Missouri.

In the 2014 U.S. Supreme Court case *McCutcheon v. FEC*, the Federal Election Commission had raised a similar anti-circumvention argument to justify a limit on the total amount that individuals may contribute to all federal candidates, political party committees, and PACs during a biennial period. The Supreme Court held that this "prophylaxis-upon-prophylaxis" rationale was an insufficient basis for regulating campaign contributions. Applying this holding in *McCutcheon*, the Eighth Circuit panel also found that Missouri's anti-circumvention justification for its PAC-to-PAC contribution ban was insufficient.

In a publication last month, the MEC noted that it "is considering whether or not to appeal" the Eighth Circuit's decision. While the deadline for seeking *en banc* review by the entire Eighth Circuit has passed, the MEC has until December 9, 2018, to ask the Supreme Court to consider an appeal.

In the Pennsylvania case, a federal district court judge invalidated the state's ban on campaign contributions from individuals who are applying for or who hold gaming licenses, or who are "principals" or "key employees" of gaming licensees or license applicants. (Corporate contributions are already prohibited in Pennsylvania.) In 2009, the Pennsylvania state Supreme Court had declared the state's ban to be impermissible under the state constitution because the state had failed to provide a sufficient justification for the law. In response, the state legislature amended the statute's preamble to explain that the ban on contributions from gaming interests was intended "to prevent corruption and the appearance of corruption that may arise when political campaign contributions and gaming ... are intermingled."

However, the federal judge held that simply because the legislature declared the state had a problem with political corruption in the gaming industry did not make it so. The judge faulted the state for offering "neither actual instances of corruption in Pennsylvania, nor any studies done to determine if pervasive corruption exists" in the state's gaming industry. As in the Missouri ruling, the judge cited to the U.S. Supreme Court's *McCutcheon* holding, but this time for the proposition that the U.S. Constitution does not permit Pennsylvania to ban campaign contributions based on "mere conjecture."

Pennsylvania has appealed the district court judge's decision to the U.S. Court of Appeals for the Third Circuit.

The rulings on the Missouri and Pennsylvania laws reflect the trend in recent years of federal courts taking a hard look at campaign contribution restrictions, as *Election Law News* has reported previously. Under the U.S. Supreme Court's framework, such laws must further a "sufficiently important" governmental interest and be "closely drawn" to impose no more of a burden on the constitutional right to make contributions than is necessary.

Other states, such as New Jersey and Louisiana, similarly ban campaign contributions from gaming interests, while several more states ban campaign contributions from a broader universe of regulated industries, such as insurance companies and public utilities. Many more states and municipalities ban or restrict contributions from government contractors (so-called "pay-to-play" laws). The recent court decisions do not necessarily mean that these other states' laws also will be found unconstitutional. However, these rulings are a reminder that states with such laws must have good justifications for them and may not rely merely on conjectural and attenuated claims about preventing corruption.