

Ninth Circuit Gets the Message, Strikes Down Contribution Limits in Key State

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The U.S. Court of Appeals for the Ninth Circuit, which often upholds campaign finance laws enacted within its jurisdiction, reversed course this summer and invalidated Alaska's limits on individual contributions to candidates and PACs. The Ninth Circuit's decision came after the U.S. Supreme Court threw out an earlier ruling upholding the limits.

For decades, Alaska voters and legislators engaged in a tug-of-war over the amount that individuals may contribute to candidates. Ultimately, in 2006, voters set the limit on individual contributions to candidates and "groups," Alaska's term for a PAC, at \$500 per year. The law also capped the amount that a PAC could receive from non-Alaskans to \$3,000 per year, and limited the amount that a political party itself could contribute to a candidate.

In 2015, several Alaska voters and the Alaska Republican Party brought suit in federal court challenging all of these restrictions. After a seven-day bench trial, the district court upheld the restrictions in their entirety, finding that the laws were "closely drawn" to meet the "important state interest" of combating corruption and its appearance. In a November 2018 opinion, a Ninth Circuit panel affirmed the district court in most respects, although it invalidated the \$3,000 limit on contributions by non-residents. The Ninth Circuit's opinion, however, did not apply the U.S. Supreme Court's decision in *Randall v. Sorrell*, 548 U.S. 230 (2006), which had struck down Vermont's low-dollar limits on contributions. The three-judge panel reasoned that, because none of the opinions in *Randall* garnered the support of five Justices, the Ninth Circuit had no obligation to apply that precedent.

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The Supreme Court held otherwise the following year. In a November 2019 *per curiam* decision, the Court explained that, even though their rationales may have differed, a clear majority of the Justices who decided *Randall* believed that the contribution limits there were unconstitutionally low. In fact, as the Court annoyedly observed, 10 other circuits had applied *Randall* in the intervening years without any difficulty. The Court therefore vacated the earlier Ninth Circuit decision, flagging in its opinion several warning signs about Alaska's contribution limits. The Court, for example, noted that Alaska's limits were considerably lower than the lowest limit previously upheld by the Court – i.e., a \$1,075 limit for candidates for Missouri State Auditor in 1998. The Court also pointed out that Alaska's limits were not indexed for inflation, and that they were materially lower than the limits that existed in nearly every other state. Justice Ginsburg did write separately to note that she did not oppose the remand, although in her view the oil and gas industry's dominance in Alaska might warrant the Ninth Circuit still upholding the lower limits. But particularly given that her statement was not co-signed by any other Justice, the Ninth Circuit was clearly left with the impression that a majority of the Court thought its original opinion was in error.

Thus, in a July 31, 2021 opinion by Judge Consuelo Callahan, joined by Judge Carlos Bea, the Ninth Circuit concluded that the contribution limits by individuals and PACs did not survive First Amendment scrutiny. In its new analysis, the Court noted that the \$500 limit was so low that it precluded the ability of challengers to mount effective campaigns against incumbents, who already benefited from high name recognition by virtue of their existing position. Concerns about overcoming this advantage were particularly acute in Alaska, the Court noted, given that campaigning sometimes required flying from village to village to introduce oneself to voters. The Court also found fault with Alaska's anecdotal evidence about the potential risk of corruption from the oil and gas industry, which the majority found was not “significantly more serious a matter than elsewhere.”

As to the low limits on contributions to PACs, the Court found that the same sort of corruption risks that might support limits on direct contributions to candidates do not apply when individuals contribute to an independent actor. Thus, the Court invalidated that limit as well. As before, the Court upheld the limit on contributions by political parties to candidates and struck down the \$3,000 limit on contributions from non-residents.

After reaching its decision, the Ninth Circuit remanded the case back to the district court for entry of final judgment. Presumably, at some point in the not-too-distant future, Alaska legislators will amend the law to set new contribution limits ... this time, at a higher amount.