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SUPREME COURT STRIKES DOWN OVERALL CONTRIBUTION LIMITS

With its decision today in *McCutcheon v. FEC*, the Supreme Court took another major step to reshape American campaign finance law. The Court struck down the biennial aggregate contribution limits, in place since 1974, as an unconstitutional burden on First Amendment rights. In this alert, we describe today's ruling, as well its immediate impact on the 2014 and 2016 election cycles.

Federal campaign finance law has traditionally placed two types of limits on the amount that an individual may contribute to a candidate's campaign, a political party, or a PAC. The first are the limits on how much an individual may give to a particular candidate's campaign (currently $2,600 per election), a political party (currently $32,400 per year to a national party committee and $10,000 per year to state and local party committees for a particular party in a single state), and a PAC ($5,000 per year). The second is the overall biennial limit on how much an individual may contribute to all candidate committees, political parties, and PACs combined during a two-year federal election cycle (currently $123,200). The biennial limit was somewhat confusing, for it contained sublimits as well: an individual could give no more than $48,600 to all candidate committees and no more than $74,600 to all political parties and PACs, of which no more than $48,600 could go to state parties and PACs.[1]

Because of today's decision, those overall limits on federal political contributions no longer exist.

The Practical Effect of the Biennial Limit

Most donors never come close to the contribution limits for a particular candidate committee, political party, or PAC. For wealthy donors active in politics, however, the biennial limit had increasingly become a real constraint on giving. For example, until today an individual could only "max out" (*i.e.*, give the maximum permissible contribution in both the primary and general election cycle) to nine candidates in a two-year election period before bumping into the per-candidate biennial sublimit. The last presidential cycle saw an increasing number of joint fundraising events that took many donors close to the top of the sublimits. Politically active individuals who gave frequently would often find themselves (or their lawyers) constructing spreadsheets to track the per-election, per-year, and per-cycle limits that applied to their giving.

The Immediate Effect of *McCutcheon v. FEC*

Today's decision has removed one compliance burden on wealthy political donors: there is no longer a legal restriction on how much they can give overall to candidate committees, political parties, and PACs during a two-year election cycle. "The 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," wrote Chief Justice Roberts in the controlling opinion. The per-candidate, per-party committee, and per-PAC limits remain in place. Thus, while a donor may still give no more than $2,600 per election to any particular candidate committee, there is no limit on the number of candidate committees to which that donor can "max out."

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[1] While PACs have limits on the amount they can give to a particular candidate's campaign, political party, or another PAC, there was no overall annual or per-cycle limit on how much PACs can give.

The Court today made clear its current view that "[s]pending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder's official duties, does not give rise to . . . *quid pro quo* corruption. Nor does the possibility that an individual who spends large sums may garner 'influence over or access to' elected officials or political parties."

The Effect of *McCutcheon* on the 2014 and 2016 Cycles

High net worth individuals are now an even more productive source for fundraising. *Citizens United v. FEC* increased their role in politics, and *McCutcheon* will accelerate that trend. The difference here is that, unlike with Super PACs, elected politicians are able to request the contributions directly from the high net worth donor. One major effect of today's decision will be the expansion of Joint Fundraising Committees (JFCs) as a tool. JFCs are created by candidate committees, party committees, and/or PACs to raise money together. They have the advantage of allowing donors to bundle together their contributions to several entities in a single check. The most commonly recognized examples are the presidential JFCs. For example, the JFC "Romney Victory" could accept up to $75,800, with $2,500 going to the Romney campaign's primary account, $2,500 to the campaign's general account, $30,800 to the RNC, and the remaining $40,000 to state Republican parties. The "Obama Victory Fund 2012" had a similar contribution formula.

After today's decision, we expect to see the emergence of large "Super JFCs" that will have many candidate participants. These Super JFCs will be able accept very large contributions in a single check. For high net worth individuals, this means they will be able to write fewer checks than before, but now with much greater impact.

Going forward, we expect today's decision will increase the political power of Members of Congress who have a strong relationship with high net worth donors. We also expect it to increase the influence of major donors. Congressional leaders, Committee Chairs, and those with similar organizational power in Congress may be able to earn the loyalty of less influential Members by including them in a JFC for which the leader or Chair is soliciting contributions. But it will also allow power to collect around any Member who can command a national or regional base of wealthy donors, such as a prominent Tea Party or environmental advocate.

Whether these massive "Super JFCs" become permanent fixtures; how they interact with independent but allied Super PACs; and whether this speeds or slows the weakening of political party structures is yet to be seen. But politics is entrepreneurial, so we will be keeping a close eye on how this change in the law leads to a change in the practice of political fundraising.

Finally, we note that while today's decision does not directly strike down the overall contribution limits under the law of some *states*, with respect to state and local level elections, it is highly likely that the courts will deem those state laws imposing overall limits to be unconstitutional as well. As in the aftermath of *Citizens United*, however, we expect that some state election agencies will seek to resist that inevitable consequence of today's decision, and there will be a period of uncertainty at the state level until legal challenges are brought.

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