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Political Law Update

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McCutcheon v. FEC: Aggregate Contribution Limits Unconstitutional

On April 2, 2014, in *McCutcheon* v. FEC (No. 12-536), the U.S. Supreme Court struck down as unconstitutional federal limits on aggregate individual contributions to federal candidate campaigns, political party committees and PACs. Writing for a 5-4 majority, Chief Justice Roberts held that the First Amendment rights of donors are violated by the federal individual aggregate contribution limit. As a result of the decision, aggregate contribution limits in eight other states (including Wisconsin) are extremely likely to also be considered unconstitutional and unenforceable.[1]

Key points about the *McCutcheon* decision for you to consider:

- **Base contribution limits remain untouched.** *McCutcheon* does not address base campaign contribution limits to candidates, political parties and PACs. Those contribution limits remain in place. "This case does not involve any challenge to the base limits, which we have previously upheld as serving the permissible objective of combatting corruption." (p. 3)

- **Source restrictions were not addressed in McCutcheon.** Under federal and Wisconsin campaign finance law, corporations are strictly prohibited from making campaign contributions and those prohibitions remain in place after *McCutcheon*.

- **Candidates, political parties and PACs finally win.** Recent U.S. Supreme Court decisions have resulted in greater First Amendment rights for independent third-party organizations. *McCutcheon* is a victory for candidates, political parties and PACs in that it will allow them to seek out more contributions. Donors who previously had "maxed out" under aggregate limits will now be allowed to contribute to more candidates, political party committees and PACs. And, political party committees and candidates can stop competing against each other to be the first to get to major donors before they "maxed out" under aggregate contribution limits.

- **More money will be disclosed and subject to regulation.** Contributions made to candidates, political parties and PACs are subject to federal and state disclosure laws. Accordingly, by allowing more contributions to be made to these committees, a greater amount of money will be subject to regulation and publicly disclosed.

- **The Supreme Court continues to endorse disclosure requirements.** Continuing a theme expressed in *Citizens United*, the Supreme Court states that "disclosure of

[1] 38 of the 50 states have contribution limits. Of those, eight states also have aggregate contribution limits: Connecticut, Maine, Maryland, Massachusetts, New York, Rhode Island, Wisconsin and Wyoming. See McCutcheon at p. 21, fn.7.

contributions minimizes the potential for abuse of the campaign finance system." (p. 35) "[D]isclosure often represents a less restrictive alternative to flat bans on certain types or quantities of speech." (p. 36) "Today, given the Internet, disclosure offers much more robust protections against corruption." (p. 36)

- **The Supreme Court continues to make very clear that any attempts to limit political speech will be highly disfavored.** "The First Amendment is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us,…in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests. As relevant here, the First Amendment safeguards an individual's right to participate in the public debate through political expression and political association. When an individual contributes money to a candidate, he exercises both of those rights: The contribution serves as a general expression of support for the candidate and his views and serves to affiliate a person with a candidate." (p. 14, internal quotations and citations omitted)

Pre-*McCutcheon* Aggregate Contribution Limits

Existing law on aggregate contribution limits prior to *McCutcheon* that are now unconstitutional include:

Federal – Prior to *McCutcheon*, federal campaign finance law imposed a biennial aggregate individual contribution limit. Under that limit, *all* contributions—including any contribution to a federal candidate, political party or PAC—made by an individual to influence federal elections could not exceed $123,200 during a two-year election cycle and was further limited by recipient: $48,600 to all federal candidate committees and $74,600 to all national party committees, federal PACs and federal accounts of state and local political party committees. Of the $74,600, no more than $48,600 could be contributed to state and local party committees and PACs.

Wisconsin – Under existing Wisconsin campaign finance law, there is a $10,000 aggregate limit on *all* of the political contributions made by an individual to state and local candidates and other political committees in any calendar year – regardless of the recipient of the contribution.

There is no statutory contribution limit on how much an individual may give to a Wisconsin PAC. Instead, an individual contribution to a PAC had been subject to the state's $10,000 annual aggregate contribution limit on all individual contributions to Wisconsin political committees. Accordingly, in practice, there was a $10,000 annual limit on individual contributions to a Wisconsin PAC but it will not exist post-*McCutcheon*.

If you have questions on the *McCutcheon* decision or would like to discuss further the effect on current law, please contact Mike Wittenwyler at mwittenwyler@gklaw.com or 608.284.2616.