



Skadden POLITICAL LAW ALERT

April 2, 2014
2014 Edition, Issue XI

If you have any questions regarding the matters discussed in this memorandum, please call one of the following representatives in the Political Law Group (Washington, D.C. office) or your regular Skadden contact.

Kenneth A. Gross
Partner | 202.371.7007
kenneth.gross@skadden.com

Ki P. Hong
Partner | 202.371.7017
ki.hong@skadden.com

Matthew Bobys
Counsel | 202.371.7739
matthew.bobys@skadden.com

Melissa Miles
Counsel | 202.371.7836
melissa.miles@skadden.com

Patricia Zweibel
Counsel | 202.371.7089
patricia.zweibel@skadden.com

Rachel Applestein
Associate | 202.371.7511
rachel.applestein@skadden.com

Shayla Parker
Associate | 202.371.7534
shayla.parker@skadden.com

Charles Ricciardelli
Associate | 202.371.7573
charles.ricciardelli@skadden.com

Tyler Rosen
Associate | 202.371.7035
tyler.rosen@skadden.com

Tanya Sehgal
Associate | 202.371.7636
tanya.sehgal@skadden.com

Kelvin Reese
Head Political Reports Analyst
202.371.7498
kelvin.reese@skadden.com

Supreme Court Strikes Down Federal Aggregate Limits on Campaign Contributions

On April 2, 2014, the U.S. Supreme Court issued its decision in *McCutcheon v. FEC*, striking down the aggregate limits imposed on individual contributions under federal law. The 5-4 opinion held that the individual aggregate limits under federal law are invalid under the First Amendment because they do not serve the only permissible government objective in restricting political speech: combatting *quid pro quo* corruption or the appearance of it. Prior to the decision, the Court largely had upheld contribution limits since *Buckley v. Valeo*.

In *McCutcheon*, the Court addressed the constitutionality of the \$123,200 biennial aggregate limit on contributions from individuals under federal law. The Bipartisan Campaign Reform Act (BCRA) imposed two levels of contribution limits in federal elections: base limits and aggregate limits. Under the base limits for the 2013-2014 election cycle, which are still in effect, an individual may contribute up to \$2,600 per election to a candidate (\$5,200 total for the primary and general elections); \$32,400 per year to a national party committee; \$10,000 per year to the federal accounts of a state or local party committee; and \$5,000 per year to a political action committee (PAC). In addition to these base limits, BCRA imposed an aggregate limit, which was \$123,200 for the 2013-2014 election cycle. Of this \$123,200 total, an individual could contribute no more than \$48,600 to all federal candidates; and \$74,600 to all federal PACs, national parties, and federal accounts of state parties, of which no more than \$48,600 could go to federal PACs and federal accounts of state parties. In yesterday's decision, the Court did not strike down the base limits, only the aggregate limits.

The Court previously had upheld aggregate limits in *Buckley v. Valeo* as constitutional, despite their restriction on speech, because they prevented circumvention of the base limit and thus, corruption. In *McCutcheon*, however, the Court found that aggregate limits in place under BCRA are not closely drawn to avoid unnecessary abridgment of associational freedoms. Specifically, the Court found that there are numerous federal restrictions now in place that prevent campaign contributions from giving rise to *quid pro quo* corruption including limits on contributions to PACs, regulations prohibiting earmarking, "more targeted" anti-circumvention measures and anti-proliferation rules.

This opinion has no impact on federal PAC contributions because federal PACs are not subject to an aggregate limit. Further, the opinion did not address the legality of corporate contributions and thus, the federal corporate contribution prohibition still applies.

The short-term effect of yesterday's decision likely will not be dramatic, since very few individuals max out at the \$123,200 level. We expect to see an increase in joint fundraisers encouraging large donors to give without the aggregate limitation. However, the long-term effect may be more significant; *McCutcheon* is the first notable Supreme Court case striking down contribution limits (as opposed to limits on independent expenditures). Further, state

(continued on next page)

This memorandum is provided by Skadden, Arps, Slate, Meagher & Flom LLP and its affiliates for educational and informational purposes only and is not intended and should not be construed as legal advice. This memorandum is considered advertising under applicable state laws.

laws imposing aggregate limits could be in jeopardy. Additional challenges at the state level are likely. Currently, several jurisdictions impose aggregate limits on individual, PAC and/or corporate contributions.

You can read the opinion here: http://www.supremecourt.gov/opinions/13pdf/12-536_e1pf.pdf.