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Skadden

# Political Law Alert

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## Recent Campaign Finance Developments in Montana and Before the FEC

### Ninth Circuit Reinstates Montana's Low Campaign Contribution Limit

On October 23, 2017, the Federal Court of Appeals for the Ninth Circuit reversed a 2016 district court decision striking down Montana's dollar limits on contributions to candidates. Specifically, the Ninth Circuit found that Montana's limits are closely drawn to further the state's interest in preventing actual or perceived *quid pro quo* corruption. The result is that Montana election candidates are once more subject to the low dollar limits described below, instead of much higher limits in place since the 2016 decision.

Effective October 23, 2017, contributions from an individual or a political action committee (PAC) are subject to the following limits per election (the primary and general are treated as separate elections as long as the candidate is opposed in the primary):

- $660 to governor/lieutenant governor (jointly);
- $330 per candidate for other statewide offices, including Supreme Court justice candidates; and
- $170 per candidate for all other state or local offices, including district judge.

These limits will be inflation-adjusted for the 2018 cycle. The ban on corporate contributions to candidates remains unchanged. Contributions from corporations, PACs and individuals to PACs and parties are permissible and unlimited, though a recipient party or PAC may not use corporate contributions to contribute to candidates.

The appellees have petitioned for rehearing *en banc*.

### FEC Fines Federal Contractor for Super PAC Contribution

Earlier this fall, the Federal Election Commission (FEC) in Matter Under Review (MUR) 7099 imposed a $34,000 civil penalty on a construction company for violating the ban on federal contractor contributions. The company contributed $200,000 to a federal independent expenditure-only committee (super PAC) in 2015 and received a refund in 2016.

The penalty is significant as it demonstrates a limitation of the Supreme Court's holding in the 2010 Citizens United case, which allowed corporations to contribute unlimited amounts to super PACs. That holding, however, did not necessarily cover the federal election law's ban on contributions by federal contractors and federally chartered

organizations. The FEC has previously applied analysis in enforcement matters premised on the application of the federal contractor ban to super PAC contributions, but has not found reason to believe actual violations occurred and thus has not imposed penalties. See FEC MUR 6403. In 2014, the FEC dismissed an enforcement action against Chevron Corporation and its subsidiary, a federal contractor, finding that the federal contractor and the non-contracting corporate parent were separate and distinct legal entities, and, as a result, the parent was not prohibited under the contractor ban from making contributions to super PACs. Subsequently, the federal contractor ban was unanimously upheld by the D.C. Circuit in 2015, without reference to its application to super PAC contributions.

Prior to the current MUR, the FEC had made clear that super PAC contributions by federal contractors may be prohibited, but some questions remained unanswered regarding the FEC's appetite for imposing penalties for such contributions. In light of the MUR, companies that have previously or are currently seeking federal contracts should take note of the FEC's willingness to impose penalties and should ensure adequate controls are in place to prevent a violation. The same also should be true of federally chartered organizations.

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