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Supreme Court Rewrites the Rules for Individual Campaign Contributions: *McCutcheon v. Federal Election Commission*

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On April 2, 2014, the Supreme Court of the United States rendered the *McCutcheon* decision, addressing the facial validity of Section 203 of the Bipartisan Campaign Reform Act of 2002 (the "BCRA"). This case involved a challenge by Shaun McCutcheon and the Republican National Committee to the constitutionality of the federal biennial aggregate campaign contribution limit of $123,200 for individuals contributing to federal candidates, political actions committees ("PACs") and political parties.

In a 5-4 decision written by Chief Justice Roberts, the US Supreme Court held the federal biennial limit for individual donors to be an impermissible restriction on political speech and the First Amendment right to participate in the democratic process. The majority opinion was joined by Justices Scalia, Kennedy and Alito with Justice Thomas concurring. Justice Thomas agreed that the aggregate limits are invalid under the First Amendment, but would overrule *Buckley v. Valeo*, 424 US 1 (1976), and subject BCRA's aggregate limits to strict scrutiny. Justice Breyer filed a dissenting opinion, in which Justices Ginsburg, Sotomayor, and Kagan joined. The Court found that the BCRA's $48,600 limitation on individual donors' biennial campaign contributions and the aggregate cap of $74,600 on donations to political parties were improper restrictions on individuals' constitutional right to free speech.

Unchanged under the Court's decision in *McCutcheon* are the federal contribution limits on individual donor contributions to individual candidates or candidate committees, PACs and party committees. For example, an individual donor may still only contribute $2,600 per candidate per election. What has changed is that individual donors may now contribute to as many candidates as they wish while complying with the $2,600 per candidate limit.

Massachusetts Implications

In response to the Court's ruling in *McCutcheon*, the Massachusetts Office of Campaign and Political Finance ("OCPF") quickly stated that it will no longer enforce the Commonwealth's $12,500 aggregate annual limit on what an individual may contribute to all candidates for state, county and local office. Similar to federal law, the OCPF will continue to enforce the Commonwealth's $500 limitation on individual donor contributions to any one state candidate. The OCPF is currently reviewing whether it should continue to enforce the $5,000 aggregate limit that an individual may contribute to political committees, as the federal statutes analyzed in *McCutcheon* differ substantially from the law of the Commonwealth. For now though, the OCPF has made it clear that donors may permissibly give up to $500 each year to every candidate running for office should they wish to do so, instead of limiting such contributions to a maximum of 25 state candidates as required under prior law.

It is likely that this decision will lead to the elimination of aggregate campaign contribution limits in other states, significant changes in how candidates and parties raise campaign funds and further legal efforts to eliminate campaign finance restrictions.

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Mintz Levin has been working with clients to analyze current practices and ensure compliance with the Court's decision. Future alerts and advisories will provide additional information as it emerges.

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