



INSIDER NJ

BEGINNING OF THE END FOR CONTRIBUTION LIMITS?

BY JEFF BRINDLE ▪ April 3, 2017 1:56pm

An obscure federal campaign finance case argued with little fanfare last month has the potential to upend the structure of campaign finance law at both the federal and state levels.

On Wednesday, March 29, 2017, an *en banc* panel of the District of Columbia Appeals Court heard oral arguments in *Holmes v Federal Election Commission (FEC)*.

The 11-member Court considered a challenge to a provision in the Federal Election Campaign Act (FECA) that restricts individuals from giving more than \$2,700 to federal candidates in the primary and \$2,700 in the general election.

Laura Holmes and Paul Jost, the plaintiffs in the case, are being represented by Center for Competitive Politics, which generally opposes campaign finance regulations. Yet the plaintiffs claim that they are not challenging contribution limits *per se*. Their legal beef is only with the provision that limits contributions on a per-election basis rather than an election cycle basis.

The plaintiffs say they prefer not to make contributions to any candidates in primary elections. Yet they still want to be able to contribute the same amount to the overall election as others who do.

In other words, they would like to see a \$5,400 election cycle limit rather than limits of \$2,700 in the primary and another \$2,700 in the general election.

The rationale is that the current system provides an advantage to a candidate- usually an incumbent- that is unopposed in the primary. That candidate can just bank his or her \$2,700 primary donation and

then transfer it to the general election account, effectively turning it into a \$5,400 contribution for the general election.

Holmes and Jost believe that an election cycle limit totaling two times \$2,700, or \$5,400, would even things out for candidates opposed in a primary.

As contributors, it would put them at par with those who gave \$2,700 in the primary and had their donation rolled over and combined with their \$2,700 contribution in the general election.

Holmes and Jost believe that the current law violates their First Amendment rights.

Despite the plaintiffs' claim to the contrary, there is concern among some individuals and reformist groups that this challenge is merely a stalking horse for eliminating contribution limits altogether, or at least a first step toward that end.

"This is a seemingly minor case that could have major implications for campaign finance regulation," said Noah Lindell of the Campaign Legal Center in a March 27 analysis of the case.

While the D.C. Court of Appeals and subsequently the U.S. Supreme Court could use the case to upend contribution limits, their doing so would seem doubtful.

There is an undeniable strategy on the part of certain interests to rid the system of all campaign finance regulation, including contribution limit. But it seems to me that contribution limits are safe.

There is ample precedent for contribution limits, dating back to *Buckley v. Valeo* in 1976, which, though ruling expenditure limits unconstitutional, found contribution limits constitutional as long as they are reasonable.

If the Supreme Court ultimately does hold in favor of the plaintiffs, however, it would upend the structure of campaign finance law both at the federal level and in the states.

"If successful, cases like *Holmes* would make it very difficult for legislatures to design campaign finance laws at all. That, in the end, is what the groups bringing these lawsuits want. But if courts follow precedent, then these organizations will not succeed," said Lindell of Campaign Legal Center.

It certainly would have implications for New Jersey's campaign finance law.

The State's statute mirrors federal law, in that individuals are permitted to contribute \$2,600 in the primary and a separate \$2,600 in the general election.

Further complicating the issue in New Jersey is the fact that candidates can form joint committees, allowing double, sometimes quadruple the \$2,600 contribution to the committee.

If the Supreme Court sided with Holmes and Jost, and New Jersey's law subsequently was challenged and struck down, an individual would be able to give \$20,800 in the general election to a four-person joint committee.

A finding in the Holmes case that the separate limits are unconstitutional would not only greatly complicate the State's campaign finance law but would upend decades of tradition. It also would remove from the Legislature its ability to structure campaign finance law in the manner it seems fit.

Hopefully, the courts will deny Holmes and Jost their wish for election-cycle contribution limits. By doing so, the Court would refrain from legislating from the bench in terms of Congress' and the State Legislatures' historic role of crafting the structure of campaign finance law that applies federally as well as throughout the states.

Jeff Brindle is the Executive Director of the New Jersey Election Law Enforcement Commission.

The opinions presented here are his own and not necessarily those of the Commission.