

Federal Case Could Upend New Jersey's Campaign Finance Law

BY JEFF BRINDLE • 12/12/17 4:31pm

On Nov. 28, the U.S. Court of Appeals for the District of Columbia ruled that limits on individual contributions to candidates for a single election are constitutional.

Laura Holmes and Paul Jost, a married couple from Florida, challenged a provision in the Federal Election Campaign Act (FECA) that limits contributions by individuals to \$2,700 in the primary and \$2,700 in the general election.

As noted in [a previous column in Observer](#), in New Jersey, "The state's statute specific to this issue mirrors federal law." In other words, individuals in New Jersey are permitted to contribute \$2,600 in the primary and a separate \$2,600 in the general election.

Therefore, a contrary ruling declaring the federal structure unconstitutional would have affected New Jersey's campaign finance law. It still might, if the U.S. Supreme Court takes up the case and finds for Holmes and Jost.

Their challenge centered on the argument that, under federal law, candidates who are not opposed in the primary are allowed to "bank" election contributions for general election purposes.

According to the plaintiffs, "banking," or rolling over \$2,600 to the general election, allows a candidate to spend \$5,200 in the general election. This, they say, gives an unfair advantage to an unopposed candidate over an opponent who was engaged in a competitive contest.

Holmes and Jost, while not challenging contribution limits per se, maintain that it is a violation of their First Amendment rights to bar them from contributing \$5,200, or two times \$2,600, to a candidate in the general election.

In other words, the plaintiffs were calling for contribution limits based on an election-cycle standard rather than a per-election basis.

The Appeals Court rejected "plaintiffs' invitation to upend the per-election structure of FECA's base limits on individual contributions to candidates."

In referencing the U.S. Supreme Court's bow to Congress in establishing contribution limits in general, the Appeals Court stated, "we conclude the same is true of Congress' intertwined choice of the time frame in which that amount may be contributed."

Despite the fact that the 11-judge D.C. Court upheld FECA's per-election contribution limit basis, the case may well be appealed and taken up by the U.S. Supreme Court.

Bradley Smith, a former FEC member and free speech advocate, said the election-cycle contribution split clearly favors incumbents, who often face little primary opposition and simply roll their primary contributions into their general election campaign kitties.

“Campaign finance laws often raise difficult questions about the intersection of free speech and elections, but not every case is a tough one. Some laws are just plain dumb and unfair, no matter what your views on campaign finance,” said Smith in an April 10, 2017, op-ed column in the Washington Examiner. His group, Center for Competitive Politics, represents the Holmes and Jost.

Opponents say the case could be a trojan horse to try to unravel contribution limits entirely, or at least push the courts closer to that point.

“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, 2017, analysis of the case.

If the Supreme Court does take up the case, how it will rule is anyone’s guess. It could defer to Congress and, as in *Buckley v. Valeo* (1976), to precedent. Conversely, a newly constituted conservative-leaning court could find the per-election contribution limit structure in violation of First Amendment rights.

If the high court were to reverse the Appeals Court it would not only upend the federal per-election contribution limit structure but New Jersey’s structure as well.

New Jersey’s statute is in many ways identical to federal law. Individuals are permitted to contribute \$2,600 in the primary and \$2,600 in the general. Moreover, candidates in New Jersey are permitted to carry over campaign funds into the next election cycle.

Where the state’s statute differs from the federal model is in the fact that candidates are allowed to form joint committees, permitting double — sometimes triple — the \$2,600 contribution to an individual candidate committee.

If the U.S. Supreme Court were to find federal per-election contribution limits unconstitutional, New Jersey’s per-election basis would similarly be deemed in violation of the First Amendment.

Candidates would have to establish election-cycle committees rather than separate committees applicable to the primary and general elections.

A contribution limit of \$5,200 per cycle would apply to single candidate committees with multiples of that figure applying to joint candidate committees.

A variation of this concept already applies to political parties and political action committees (PACs). Contribution limits apply to these entities on a per-year, rather than per-election, basis.

If the U.S. Supreme Court accepts the case, it certainly is preferred that it rule against Holmes and Jost. To do so would help to maintain stability in the campaign finance system. However, if the court were to rule in favor of the plaintiffs, it would not be the end of the world.

The same rules of transparency, record-keeping, permissible uses of campaign funds, and reporting would apply, and the integrity of contribution limits would continue to be protected. In some ways an election-cycle structure may make matters simpler and more straightforward, and perhaps more fair.

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.