

McCutcheon case could have big impact on national parties

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BY JEFF BRINDLE

Anytime now, the U.S. Supreme Court will render a decision in *McCutcheon v. FEC*. And while reformists may not like it, the high court is likely to allow national parties to raise far more money. That could strengthen them, and help reverse the flow of money from parties to independent groups.

The Federal Election Campaign Act (FECA) imposes overall limits on the amount an individual contributor can donate to federal candidates and national parties.

Termed aggregate limits, individuals can give no more than \$123,000 to federal candidates and committees during a two-year period. There is a limitation of \$74,600 to PACs and parties and \$48,000 to all candidates.

By the way, New Jersey law has never forced contributors to state, county or local candidates or parties to operate under aggregate limits. And there haven't been any repercussions.

Plaintiffs Shaun McCutcheon and the Republican National Committee are challenging these limits that cap the amount of money a group or individual can contribute.

They are doing so on First Amendment grounds.

Reformist groups supporting aggregate limits maintain the challenge is the latest in a series of legal attacks against post Watergate restrictions on campaign finance. In this they are correct.

Aggregate limits, they say, curb corruption in politics. If you limit how much money is spread around by one source, you limit their influence.

There is a problem with this logic, however. It fails to recognize that money will find its way into the electoral process somehow.

The approach taken by reformers since the 1972 enactment of FECA has been one of reducing the amount of money spent on politics, mostly by candidates and political parties.

Whether through banning corporate and labor union contributions and spending, imposing aggregate limits, or banning soft money to political parties in the Bipartisan Campaign Reform Act (BCRA) of 2002, the strategy has been to restrict financial activity by candidates and parties.

So what has been the result of this approach? Simply to lead to money flowing to anonymous independent organizations.

For example, between the enactment of BCRA and 2008, two years before *Citizens United*, the growth in independent expenditures increased by more than 1000 percent. At the same time spending by parties stalled and for a time even declined.

Certainly *Citizens United* magnified this trend. However, BCRA was the real catalyst for dynamic growth in outside group spending.

Aside from over a billion dollars spent by independent groups in the presidential election of 2012, there was a tremendous increase in independent spending in New Jersey last year.

Over \$42 million was spent by outside groups to influence the gubernatorial and legislative elections, as well as ballot questions. Compare this to the \$14 million spent by the big six party entities.

Clearly, something must be done to offset the outsized influence of unregulated independent groups and in turn click the reset button and strengthen the political parties and candidates.

A step in the right direction would be for the US Supreme Court to lift the aggregate limits challenged in *McCutcheon v. FEC*. This would send a signal that it is important for the Federal and State governments to take measures that will strengthen the parties and their candidates.

While I do not have a crystal ball my guess is that the Court will find aggregate limits to be unconstitutional.

Justice Kennedy normally serves as the swing vote. On campaign finance issues, *Austin v. Michigan Chamber of Commerce*, 1990; *Colorado Republican Federal Campaign Committee v. FEC*, 1996; and *Citizens United* to mention a few, he has found for the First Amendment.

This is a serious time in terms of campaign finance. All sides are concerned with establishing laws that build trust and confidence in the political and electoral processes.

For my mind a system strong on disclosure, strong on political parties, and one which allows candidates to better engage with voters is the way to go.

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.