

Date of Hearing: June 10, 2014

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING
Paul Fong, Chair
HR 37 (Wieckowski) – As Amended: June 4, 2014

SUBJECT: Campaign contributions.

SUMMARY: States the Assembly's disagreement with the United States (US) Supreme Court's decision in McCutcheon v. Federal Election Commission (2014) No. 12-536 (McCutcheon). Specifically, this resolution:

- 1) Makes the following findings and declarations:
 - a) The US Supreme Court's decision in Citizens United v. Federal Election Commission (2010) 558 U.S. 310 (Citizens United) upset longstanding precedent limiting the political influence of corporations and unions.
 - b) The US Supreme Court's decision in McCutcheon further eviscerates our nation's campaign finance laws by overturning nearly 40 years of law upholding aggregate limits on campaign contributions.
 - c) Aggregate contribution limits restrict the total amount of money a donor may contribute to all federal candidates and other political committees in an election cycle.
 - d) In holding that aggregate contribution limits are invalid under the First Amendment, McCutcheon creates a legal loophole that allows an individual donor to contribute millions of dollars to political parties and individual candidates.
 - e) The US Supreme Court has long recognized that campaign finance laws are necessary not only to eliminate quid pro quo corruption in elections by preventing the direct exchange of money for official action, but also to curtail undue influence by wealthy donors.
 - f) The democratic process depends on unfettered communication between the people and their elected representatives so that the government may act in response to prevailing public opinion.
 - g) Campaign finance laws that allow limitless contributions subvert this political process by enabling the voices of the few to override the collective voice of the many.
 - h) Removing aggregate contribution limits also engenders an appearance of corruption that undermines the public's faith in government.
- 2) States the Assembly's respectful disagreement with the majority opinion and decision of the US Supreme Court in McCutcheon.
- 3) Calls upon the US Congress to restore constitutional rights and fair elections to all people, not merely to those who can afford it.

FISCAL EFFECT: None

COMMENTS:

1) Purpose of the Resolution: According to the author:

Many citizens and scholars have been troubled by the influence that special interest groups and individuals have through using contributions to purchase access and influence to legislative channels. Since the challenge on FECA's regulations on the basis of free speech in *Buckley v. Valeo*, the Supreme Court held that regulations dealing with money in politics can raise First Amendment concerns; yet all regulations are not *per se* unconstitutional.

Recently, the United States Supreme Court decision in *McCutcheon v. Federal Election Commission* on April 2, 2014 further eviscerates our [nation's] campaign finance laws by overturning nearly 40 years of law upholding aggregate limits on campaign contributions since the ruling in *Buckley v. Valeo*. Aggregate contribution limits restrict the total amount of money a donor may contribute to all federal candidates and other political committees in an election cycle. Prior to the *McCutcheon* decision, individuals were limited to aggregate contributions of \$48,600 to all candidates, plus \$74,600 to all PACs and parties. Accordingly, anyone wishing to donate the maximum \$5,200 per candidate would be constrained to nine candidates before encountering the combined limit. In *McCutcheon*, the Supreme Court overturned the aggregate ceilings because they did not advance the anti-corruption rationale underlying campaign finance laws. In holding that aggregate contribution limits are invalid under the First Amendment, *McCutcheon v. Federal Election Commission* creates a legal loophole that allows an individual donor to contribute millions of dollars to political parties and individual candidates. The United States Supreme Court has long recognized that campaign finance laws are necessary not only to eliminate quid pro quo corruption in elections by preventing the direct exchange of money for official action, but also to curtail undue influence by wealthy donors.

Yet, this plurality is not being upheld. Per the dissenting opinion of the Supreme Court in the *McCutcheon v. Federal Election Commission*, "in the absence of limits on aggregate political contributions, donors can and likely will find ways to channel millions of dollars to parties and to individual candidates, producing precisely the kind of 'corruption' or 'appearance of corruption' that previously led the Court to hold aggregate limits constitutional." As a result, these potential channels of access can layout an opportunity for circumvention by creating huge loopholes that will aid the production of special access and corruption. In removing aggregate limits, the Supreme Court ruling has undermined what remained of campaign finance reform.

2) McCutcheon v. Federal Election Commission: In April of this year, the US Supreme Court issued its decision in McCutcheon, a case concerning a federal law restricting the aggregate amount that a donor may contribute in total to all federal candidates and committees in an

election cycle.

Federal campaign finance law contains two types of contribution limits. The first, referred to as "base limits," cap the amount that a donor can give to a candidate, a political party, or a political action committee (PAC) that makes contributions to candidates (for instance, a donor is prohibited from making contributions to a federal candidate totaling more than \$5,200 per election cycle—\$2,600 for the primary election, and \$2,600 for the general election). The Supreme Court's decision did not address these limits, which are similar to contribution limits that are in place in the Political Reform Act.

The second type of contribution limits are aggregate limits, which cap the total amount that an individual donor can contribute in an election cycle. The aggregate limits permit an individual to contribute a total of \$48,600 to federal candidates and a total of \$74,600 to other political committees (political parties and PACs) in each two-year election cycle. The base limits and the aggregate limits work in tandem, so a donor would be unable to give the maximum \$5,200 contribution to more than nine different federal candidates in an election cycle.

It was these second type of limits—aggregate limits—that were at issue in McCutcheon. The Supreme Court, on a 5-4 ruling, struck down the aggregate limits, finding that the limits impermissibly burden individuals' "expressive and associational rights" because they limit the number of candidates that a donor can support. Chief Justice Roberts' opinion rejected arguments that the aggregate limits served an important function in preventing corruption. By contrast, the dissenting justices argued that the court's ruling applied an unreasonably narrow definition of corruption, and maintained that the aggregate limits serve an important role in limiting undue influence by campaign donors.

California does not have aggregate limits of the type that were struck down by the court in McCutcheon, though local jurisdictions in California are free to adopt their own campaign ordinances, and at least one (the City of Los Angeles) has aggregate limits that are similar to the aggregate limits that were struck down by the McCutcheon court.

- 3) Related Legislation: SB 1272 (Lieu), which is also being heard in this committee today, places an advisory question on the November 4, 2014 statewide general election ballot asking voters whether Congress should propose, and the Legislature should ratify, an amendment or amendments to the US Constitution to overturn Citizens United and other applicable judicial precedents, to allow the full regulation or limitation of campaign contributions and spending.

AJR 1 (Gatto), which is pending in the Senate Judiciary Committee, petitions Congress to call for a federal constitutional convention for the purpose and hope of solely amending the US Constitution with a single amendment to limit "corporate personhood" for purposes of campaign finance and political speech and declare that money does not constitute speech.

- 4) Previous Legislation: AJR 22 (Wieckowski & Allen), Resolution Chapter 69, Statutes of 2012, called upon the US Congress to propose and send to the states for ratification a constitutional amendment that would overturn Citizens United.

REGISTERED SUPPORT / OPPOSITION:

Support

California Common Cause

Opposition

None on file.

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