OFFICE OF CORPORATION COUNSEL

Date: April 8, 2014

To: Sup. Haas

cc: Members of IGR Committee
Jodi Mapp
Jamie Kuhn

From: Paul Bargren PB
Corporation Counsel

Re: *McCutcheon v. Federal Election Commission*

You asked for my assessment of the April 2, 2014, decision of the United States Supreme Court in *McCutcheon v. Federal Election Commission,* dealing with the constitutionality of campaign contribution limits.

While the decision with its concurrence and dissent run some 92 pages, the basic holdings are easily stated:

- Aggregate limits on the amount of money an individual or corporation can donate to multiple political candidates or causes during a given election cycle violate First Amendment rights of expression. Therefore, aggregate limits are no longer valid.

- However, laws setting "base limits" on the amount an individual or corporation can give to a particular candidate during a given cycle are justified as anti-corruption measures. Base limits remain enforceable.

The Court's rationale

Given the constitutional protections for free expression, the Court stated that the only justification for limiting campaign contributions is to "combat[ ] corruption…. We conclude, however, that the aggregate limits do little, if anything, to address that concern, while seriously restricting participation in the democratic process."

Large contributions to a single candidate might establish a corrupt *quid pro quo.* Therefore "base limits" are proper, the Court said. But that is the "only type of corruption that Congress may target" with contribution limits. "A restriction on *how many* candidates and committees an individual may support is hardly a 'modest restraint' on [First Amendment] rights. The

COURTHOUSE, ROOM 303 • 901 NORTH 9TH STREET • MILWAUKEE, WI 53233 • TELEPHONE: 414-278-4300 • FAX: 414-223-1283

Government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse."[1]

The Court rejected the Government's argument that aggregate limits also prevent *quid pro quo* corruption. "The difficulty is that once the aggregate limits kick in, they ban all contributions of *any* amount, even though Congress's selection of a base limit indicates its belief that contributions beneath that amount do not create a cognizable risk of corruption."

Interesting, only four of the nine justices joined in the opinion banning aggregate limits while upholding base limits. They were Chief Justice Roberts and Justices Scalia, Kennedy and Alioto. Justice Thomas concurred in that ruling but would have gone further and outlawed base limits as well. Dissenters were Justices Breyer, Ginsburg, Sotomayor and Kagan.

Effect in Wisconsin, Milwaukee County

Because the Court cast its decision in terms of the First Amendment of the US Constitution, it applies at all levels of government, including state and local government. Governments are no longer permitted to limit aggregate donations from one individual to multiple candidates. Only a donor's support for a given candidate or cause can be capped.

Available restrictions

While banning aggregate limits, the Court did identify other steps that governments could take to address potential corruption in campaign giving, in addition to "base limits":

- "Targeted restrictions on transfers among candidates and political committees." This would prevent situations where a single donor's contributions to a number of candidates were a front because the candidates then transferred all of those donations to a single recipient, exceeding the base limit.
- "Tighter earmarking rules." Restrictions can limit donations to an umbrella or issue group that are really a pretext for channeling support to an individual candidate in excess of the base limit.
- "Disclosure of contributions." The Court felt publicly disclosing contributions can "deter corruption by exposing large contributions and expenditures to the light of publicity."

[1] For convenience, quotations are from the syllabus.