



Aggregate and Proportional Limits in the States: Have they Reduced Corruption or Promoted Better Government?

By Matt Nese

Issue

On April 2, 2014, the Supreme Court issued its decision in *McCutcheon v. Federal Election Commission*.¹ In that case, plaintiff Shaun McCutcheon challenged the overall limits imposed on federal giving by individuals to candidate campaigns, political parties, and political action committees (PACs) instituted as part of 2002's Bipartisan Campaign Reform Act. These aggregate limits are separate from the base individual contribution limits enforced in some manner by the federal government and 44 states on contributions to candidates, political parties, and/or PACs. In the Court's 5-4 decision, it invalidated the federal aggregate limit on political giving as unconstitutional under the First Amendment.

Much hysteria has been spun by those favoring greater regulation of political speech about the need for aggregate limits to prevent corruption or the appearance thereof and to promote "good" government.²

Just 19 states impose aggregate or proportional limits in varying forms on the overall amount individuals or groups may contribute to the candidates and causes of their choice. Nine of these states have aggregate limit regulations similar to the federal statute struck down as unconstitutional in *McCutcheon*. These nine states are: Connecticut, Kentucky, Maine, Maryland, Massachusetts, New York, Rhode Island,

Wisconsin, and Wyoming.³ The other ten states have aggregate-like proportional limit regulations that differ in varying degrees from the federal provision ruled unconstitutional by the Supreme Court. The ten states with proportional limit provisions are: Alaska, Arizona, Florida, Hawaii, Indiana, Louisiana, Minnesota, Montana, South Carolina, and Tennessee.⁴ By contrast, the other 31 states do not impose any kind of aggregate limits on what individuals or groups may contribute.

As the states are the "laboratories of democracy," we look to their experience to examine the allegations of those who favor aggregate and proportional limits and argue that such limits are essential to curbing corruption and promoting "good" government.

Corruption Analysis

In response to the vocal chorus of complaints that aggregate or proportional limits safeguard against corruption or the appearance thereof, it's helpful to compare the 19 states with some type of aggregate limits with existing corruption data on those states. Comparing corruption data to the 19 states with aggregate or proportional limits allows us to evaluate their proponents' claim that aggregate limits are necessary to prevent corruption or the appearance of corruption.

The corruption rate used represents the total convictions for corruption charges from 2001 to 2010 per 10,000 government employees.⁵ This includes con-

1 *McCutcheon v. FEC*, No. 12-536 (2014).

2 For an example, please see: Fred Wertheimer, "Supreme Court Could Create System of Legalized Bribery in Washington Depending on its Decision in *McCutcheon* Case," Democracy 21. Retrieved on July 8, 2014. Available at: <http://www.democracy21.org/inside-the-courts/press-releases-inside-the-courts/fred-wertheimer-op-ed-supreme-court-could-create-system-of-legalized-bribery/> (February 21, 2013).

3 Matt Nese, "State Aggregate Limits and Proportional Bans under *McCutcheon*: Likely Unconstitutional or Highly Vulnerable," Center for Competitive Politics' Issue Review. Retrieved on July 8, 2014. Available at: <http://bit.ly/1oyDdFK> (July 2014).

4 *Ibid.*

5 We use the corruption rate per 10,000 government employees, rather than the corruption rate per



| Aggregate Limit and Proportional Ban States | | | | | |
|---|----------|-------------------------------|----------|------------------------|----------|
| Low Corruption (<3.0) | | Medium Corruption (3.0 - 5.0) | | High Corruption (5.0+) | |
| State | Rate | State | Rate | State | Rate |
| <i>South Carolina</i> | 1.5 | <i>Indiana</i> | 3.2 | <i>Tennessee</i> | 6.0 |
| <i>Minnesota</i> | 1.6 | Maine | 3.3 | <i>Florida</i> | 6.1 |
| <i>Wyoming</i> | 2.2 | <i>Hawaii</i> | 3.5 | <i>Alaska</i> | 6.1 |
| <i>Wisconsin</i> | 2.8 | Rhode Island | 3.7 | <i>Montana</i> | 6.5 |
| | | New York | 3.9 | <i>Kentucky</i> | 8.5 |
| | | Connecticut | 4.1 | <i>Louisiana</i> | 10.5 |
| | | <i>Arizona</i> | 4.2 | | |
| | | Maryland | 4.4 | | |
| | | Massachusetts | 4.7 | | |
| Total | 4 | Total | 9 | Total | 6 |

victions against federal, state, and local officials.⁶ The rate is calculated using annual data from the U.S. Department of Justice Public Integrity section, which specializes in investigating and prosecuting public officials who engage in corrupt activities, and includes a ten-year window to account for lengthy trials.⁷

100,000-person population, to control for the discrepancy between states' populations and the sizes of their governments. Data on the number of government employees in each state is calculated from annual reports by the U.S. Bureau of Labor Statistics, which tracks the number of federal, state, and local employees in each state. Retrieved on July 8, 2014. Federal employee data may be accessed at: <http://www.bls.gov/cew/ew10table7.pdf>; state employee data may be accessed at: <http://www.bls.gov/cew/ew10table8.pdf>; and local employee data may be accessed at: <http://www.bls.gov/cew/ew10table9.pdf> (November 14, 2011).

6 It is worth noting that this corruption data includes federal, state, and local convictions, rather than isolating corruption at the state level. Because all levels of government are extensively intertwined, and public officials often move among the various levels of government, the political culture of a state is treated here as a relatively homogenous single entity at the federal, state, and local level. In Illinois, for example, between 2002 and 2008, a member of Congress and former State Representative was elected Governor (Rod Blagojevich); a State Senator became a U.S. Senator, and then President (Barack Obama); and a man who started his career as Commissioner of the Cook County Board of Tax Appeals was elected Lieutenant Governor, and then Governor (Pat Quinn).

7 This is a common methodology for calculating corruption rates. Corruption rates for 17 of the 19 states were calculated by the GOVERNING Institute using data from the U.S. Department of Justice (DOJ), U.S. Bureau of Labor Statistics (BLS), and the U.S. Census Bureau. We calculate corruption rates for Alaska and Hawaii by applying the GOVERNING Institute's methodology to the same DOJ and BLS data. Mike Maciag, "Which States Have the Highest Public Corruption Convictions?" The GOVERNING Institute.

To categorize a state's corruption level, we divide states into three categories: "Low Corruption States" (those with a conviction rate of less than 3.0); "Medium Corruption States" (those with a rate between 3.0 and 5.0); and "High Corruption States" (those with rates of 5.0 or higher).⁸ States represented in italics have proportional limits.

Based on the rankings, it's doubtful that states with aggregate limits in any form can be claimed to safeguard against corruption or the appearance of corruption. Of the 19 states that impose aggregate limits of some type on political giving, 15 are classified as having either "Medium" or "High" corruption. Furthermore, the two most corrupt states, Louisiana and Kentucky, both impose aggregate contribution limits.⁹ By contrast, 8 of the 10 least corrupt states lack aggregate limits (Oregon, Kansas, Washington, Nebraska, Utah, New Hampshire, Idaho, and Iowa).¹⁰

At best, the distribution of corruption levels among the aggregate limit and proportional limit states is random, casting doubt on the claims of the speech regulatory community that aggregate limits can be characterized as successfully preventing either corruption or the appearance thereof.

Good Governance Analysis

Likewise, the vocal boasting that aggregate or proportional limits lead to "good" government can be analyzed by comparing these states with a reputable measure of how well states are governed. One of the more respected evaluations of how well a state's government is operated is conducted by the Pew Center on the States.¹¹ Pew's rankings attempt to measure the "best governed" states on relatively neutral criteria, and offer the best basis for assessing any relationship

Retrieved on July 8, 2014. Data may be accessed at: <http://www.governing.com/blogs/by-the-numbers/state-public-corruption-convictions-data.html> (March 23, 2012).

8 These corruption rate categories were chosen because they divide the 50 states into three roughly equal groupings. Please see Issue Analysis 5: Matt Nese and Luke Wachob, "Do Lower Contribution Limits Decrease Public Corruption?," Center for Competitive Politics' Issue Analysis 5. Retrieved on July 8, 2014. Available at: http://www.campaign-freedom.org/wp-content/uploads/2013/08/2013-08-01_Issue-Analysis-5_Do-Lower-Contribution-Limits-Decrease-Public-Corruption1.pdf (August 2013).

9 *Ibid*, p. 2.

10 *Ibid*.

11 "Grading the States 2008 Report," The Pew Center on the States. Retrieved on July 8, 2014. Available at: http://www.pewstates.org/uploadedFiles/PCS_Assets/2008/Grading-the-States-2008.pdf (March 3, 2008).

| Aggregate Limit and Proportional Ban States | | | | | |
|---|----------|-----------------------|-----------|----------------|----------|
| Above Average | | Average | | Below Average | |
| State | Grade | State | Grade | State | Grade |
| <i>Indiana</i> | B | Kentucky | B- | <i>Montana</i> | C+ |
| Maryland | B | <i>Minnesota</i> | B- | <i>Hawaii</i> | C+ |
| <i>Louisiana</i> | B | <i>Tennessee</i> | B- | Maine | C |
| | | <i>South Carolina</i> | B- | Massachusetts | C |
| | | <i>Florida</i> | B- | <i>Alaska</i> | C |
| | | <i>Arizona</i> | B- | Rhode Island | C- |
| | | Connecticut | B- | | |
| | | New York | B- | | |
| | | Wyoming | B- | | |
| | | Wisconsin | B- | | |
| Total | 3 | Total | 10 | Total | 6 |

between aggregate contribution limits and overall government performance.

To categorize the quality of a state's government, we classified states as "Above Average," "Average," and "Below Average."¹² States represented in italics have proportional limits. Based on Pew's rankings, it's difficult to characterize states with aggregate limits as having anything resembling "good" government.

The distribution of the 19 states with aggregate limits of some sort is skewed, with most earning "Average" and "Below Average" scores. Only 3 (Indiana, Maryland, and Louisiana) receive "Above Average" grades from Pew, while 10 earn "Average" grades, and 6 earn "Below Average" grades.

By contrast, the 9 best-governed states according to Pew do not have aggregate limits (Utah, Virginia, Washington, Georgia, Missouri, Michigan, Texas, Delaware, and Nebraska).¹³ Additionally, states with no limits at all on individual giving to candidates fare just as well in Pew's governance rankings. Of the 12 states with no such limits, 7 earn "Above Average" grades from Pew (Utah, Virginia, Missouri, Texas, Nebraska, Indiana, and Iowa), including the top two states in

12 A value between 0 and 12 was given to each state's four management area grades, with an F receiving a 0, a D- 1 point, and so on, with an A+ receiving the maximum 12 points. States were then ranked according to this new score. Ties were then broken by assigning 1 point to variables receiving a "strength" rating, 0 for "mid-level," and -2 for "weakness."

13 Matt Nese and Luke Wachob, "Do Lower Contribution Limits Produce 'Good' Government?," Center for Competitive Politics' Issue Analysis 6. Retrieved on July 8, 2014. Available at: http://www.campaignfreedom.org/wp-content/uploads/2013/10/2013-10-08_Issue-Analysis-6_Do-Lower-Contribution-Limits-Produced-Good-Government1.pdf (October 2013).

the rankings, Utah and Virginia.¹⁴ By contrast, 4 of the 6 worst governed states in the country have aggregate limits (Rhode Island, Alaska, Massachusetts, and Maine).¹⁵

It's difficult to dispute the data that states without aggregate limits of some kind on overall political giving fare significantly better in terms of the quality of their governance than those states that impose such limits. Based on Pew's scores, it cannot be concluded that aggregate limits produce "good" government.

Conclusion

Given that states with aggregate or proportional contribution limits are not any less corrupt than those states without aggregate limits (and arguably more so), and that aggregate limit states are generally worse governed than those states which do not impose aggregate limits, perhaps it's unsurprising that 31 states choose not to levy an aggregate limit on their citizens' ability to support and associate with the candidates and causes of their choice.

In fact, on April 11, 2013, Arizona Governor Jan Brewer (R) signed House Bill 2593 into law, which raised existing state contribution limits on the amount individuals and PACs may give to candidate campaigns and eliminated Arizona's aggregate limits on contributions from individuals and PACs to statewide and legislative candidates (though the bill left intact the state's aggregate limit on candidate receipts from political party committees), freeing these entities to contribute up to the limit for as many candidates as they wish.¹⁶

Based on the outcome in *McCutcheon*, the aggregate limits in these 19 states are likely to be challenged, and many may be struck down as unconstitutional. In any event, state policymakers and the public can be assured that these aggregate limits only stifled speech while failing both to prevent corruption or the appearance of corruption and to produce better government.

14 *Ibid*, p. 2.

15 *Ibid*.

16 "House Summary: 4/15/2013 AsTransmittedtoGovernor," Arizona State Legislature. Retrieved on July 8, 2014. Available at: http://www.azleg.gov/legtext/51leg/1r/summary/h.hb2593_04-15-13_astransmittedtogovernor.pdf (April 15, 2013).



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