

9th Circuit Upholds Montana's Candidate Contribution Limits; Commissioner Immediately Reinstates Lower Contribution Limits

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In the latest chapter of the ongoing *Lair v. Motl* litigation, the U.S. Court of Appeals for the Ninth Circuit, in a 2-1 decision issued on October 23, upheld Montana's limits on contributions to candidates. In response, Montana's Commissioner of Political Practices immediately reinstated the lower contribution limits at issue in the litigation.

As we reported last year, the U.S. District Court for the District of Montana struck down Montana's candidate contribution limits. On appeal, the key issues before the Ninth Circuit focused on (1) whether Montana had adequately proven a "sufficiently important state interest" in imposing candidate contribution limits, and (2) whether Montana's contribution limits are "closely drawn" to the state's interest.

The district court held that Montana had not proven a "sufficient important state interest" – that is, preventing *quid pro quo* corruption or its appearance – because the state had offered only evidence of alleged *quid pro quo* transactions that were rejected. The Ninth Circuit disagreed, explaining that "Montana need not show any completed *quid pro quo* transactions to satisfy its burden." Instead, "all Montana must do is show a 'threat' or 'risk' of actual or apparent corruption" that is "not illusory" or is "more than 'mere conjecture.'" The Ninth Circuit held that Montana met this "low bar" by offering evidence of attempted *quid pro quo* transactions.

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The Ninth Circuit also disagreed with the district court's holding that Montana's contribution limits were not "closely drawn" to an important state interest. First, the Ninth Circuit disagreed with the district court's holding that the limits do not "narrowly focus" on the state's anti-corruption interest. The contribution limits were enacted through a ballot measure, and the stated purpose of the ballot measure was to prevent "[m]oney from special interests and the wealthy" from "drowning out the voice of regular people." The district found that the stated purpose of the contribution limits – equalizing political speech – demonstrated that the limits did not "narrowly focus" on preventing actual or perceived *quid pro quo* corruption. The Ninth Circuit acknowledged that a state interest in equalizing political speech cannot support campaign contribution limits under Supreme Court precedent, but explained that courts should evaluate whether the "actual content and effect" of the contribution limits – not the underlying voter intent – "narrowly focus" on combatting *quid pro quo* corruption or its appearance. The Ninth Circuit found that the contribution limits narrowly focused on preventing corruption because the limits targeted only the top 10% of contributions and placed the most restrictive limits on direct contributions to candidates.

Second, the Ninth Circuit disagreed with the lower court's holding that Montana's contribution limits were too low to allow candidates to amass sufficient funds to wage an effective campaign. In reaching this conclusion, the Ninth Circuit cited evidence that only 15% of donors to 2010 house and senate races were "maxed out" donors, demonstrating that the contribution limit has not dramatically impacted candidate fundraising. The Ninth Circuit also considered Montana's overall contribution limit, explaining that the system did not unduly favor incumbents over challengers and preserved the ability of political parties to financially support their candidates at much higher limits.

Last week, the plaintiffs filed a petition for rehearing en banc with the Ninth Circuit. The plaintiffs' counsel, however, indicated to the press that they have not ruled out appealing to the Supreme Court in the future. Regardless, the *Lair v. Motl* litigation is far from over, and donors should take care to follow the correct contribution limits.