



## *Maneke law column*

# Missourians support ethics regulations in politics but will the courts?

## *Missouri Ethics Commission case could be heard before U.S. Supreme Court*

**W**ithin the next few days, the U.S. Supreme Court will be deciding whether to hear a matter involving the Missouri Ethics Commission's (MEC) appeal to that Court of the 8th Circuit Court of Appeal's holding that upheld the right of a political action committee to transfer funds to another political action committee. This decision is of great importance to citizens in this state who voted to approve this restriction several years ago in an effort to clean up their government.

The case involved actions taken by a group, including the Free and Fair Election Fund, Missourians for Worker Freedom, American Democracy Alliance, Herzog Services, Inc., Farmers State Bank, Missouri Electric Cooperatives (doing business as Association of Missouri Electric Cooperatives), Association of Missouri Electric Cooperatives, PAC; David Klindt; Legends Bank; and John Elliott. This group constituted the original plaintiffs in a case filed against the MEC arising from their unhappiness over the amendment to the Missouri Constitution now known as Article VIII, Section 23, that limits the transfer of funds between political action committees.

The petition to the U.S. Supreme Court by the MEC notes that the language in Section 23 was adopted in an effort "...to curtail the appearance of corruption caused by large campaign contributions and to give voters confidence that they can determine who is behind each campaign or message. Missouri voters passed this law following public outcry after years of nearly unfettered spending in Missouri political campaigns."

The MEC focused its request for the U.S. Supreme Court to take up this appeal under the theory that such a prohibition on the transfer of funds

must overcome "exacting" scrutiny, under First Amendment guidelines established in prior U.S. Supreme Court case law. The MEC believes this principal does survive such scrutiny based upon the foundation set out in the Missouri Constitution, and because the language "is closely drawn to serve important state interests: reducing the fact and appearance of public corruption, promoting election transparency, and avoiding the circumvention of contribution limits."

The plaintiffs named above, in their lawsuit, said the First Amendment's "exacting scrutiny" required in such cases did not permit this restriction in the Constitution to stand. The federal district court that heard their petition issued a permanent injunction prohibiting the MEC from enforcing the provisions of Amendment 2 relating to the transfer of campaign committee funds. And the 8th Circuit Court of Appeals, which heard the MEC's appeal, upheld the injunction barring the Commission from enforcing the prohibition on political action committees receiving contributions from other political action committees, holding the provision "does little, if anything, to further" Missouri's anti-corruption interests.

In its petition for the U.S. Supreme Court to take up this issue, the MEC cites, among other sources, an editorial in the St. Louis Post Dispatch supporting the Amendment's passage and a story by political reporter Jason Rosenbaum on the website stpublicradio.org which detailed the public support for the Amendment. And it points out that there is a split among federal appellate court circuits as to whether prohibitions of fund transfers among state political action committees (PAC) advances state interests.

The brief filed by the MEC claims that while sophisticated politicians and political groups can identify the flow of funds from one PAC to another, and how that impacts issues and influences candidates, the average voter is unable to identify those trends because of the lack of transparency. This leads to "actual and apparent quid pro quo corruption," the brief alleged.

It cited numerous other examples of how Missouri's law compares with other states' efforts to ensure transparency in campaign contributions.

After this brief was filed, the group of plaintiffs first waived their right to file a response. But after the MEC's brief was considered in the "conference" on February 22, where members of the Supreme Court consider whether to take up a petition for writ (the process by which cases are considered by the Court and a determination is made which will be accepted for argument before that Court), a request was made by the Court for a response to be filed.

It is somewhat rare for a party to waive their right to file a response and even rarer for the Court under those circumstances to order a response to be filed. These factors clearly indicate an interest by the Court in the issues raised by the MEC. It does not necessarily mean the Court will take this case, but Missouri's eyes are watching what will happen after the second conference which is scheduled for April 18.



**Jean Maneke,**  
is MPA's Legal Hotline attorney.  
Contact her at (816) 753-9000;  
jmaneke@manekelaw.com.