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August 3, 2007

Tom Simon, Clerk
Supreme Court of Missouri
207 West High Street
Jefferson City, Missouri 65101

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Thomas F. Simon
CLERK, SUPREME COURT

Re: James Trout, Appellant/Cross-Respondent v. State of Missouri,
et al., Respondents/Cross-Appellants, Missouri Supreme Court
No. SC88476

Dear Mr. Simon:

In response to this Court's July 19, 2007 request, Appellant/Cross-Respondent Trout submits this letter brief addressing the effect of the invalidity of Section 130.032 (Supp. 2006) on campaign contributions accepted by candidates from January 1, 2007, the date H.B. 1900 became effective, to the date of this Court's decision.¹ It is well established in Missouri that an unconstitutional statute is void *ab initio*. The only exception is where there has been reasonable good faith reliance on the statute's validity and resulting injustice. Here, there can be no reasonable good faith reliance on the validity of Section 130.032 (Supp. 2006) and thus, the normal rule applies. Trout urges this Court to follow the normal rule and reject both the request of the Ethics Commission to apply the exception to some candidates and as well as the request of the MRSC to apply it to all.

¹ The Missouri Republican State Committee (MRSC) has abused this Court's invitation by injecting a lengthy diatribe on why the Court should re-examine its decision regarding severability of the blackout period from repeal of contribution limits. The rules of appellate procedure allow parties, not amicus, to file motions for rehearing. *See* Missouri Supreme Court Rule 84.17(a)(1). This Court did not request additional briefing on the subject of severability. MRSC's unauthorized request for rehearing should be disregarded. In addition, Rule 84.17 provides that "[r]eargument of issues determined by the court will be disregarded." MRSC's arguments should be summarily rejected for this reason as well.

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BACKGROUND

Prior to H.B.1900, Section 130.032 imposed limitations on the amount of contributions a candidate could accept. H.B. 1900 repealed and reenacted that section, removing campaign contribution limits but imposing a ban on contributions from the first Wednesday after the first Monday in January through the first Friday after the second Monday of May of each year. A virtually identical statute was struck down in 1996 as violating the First Amendment. *Shrink Missouri Government PAC v. Maupin*, 922 F. Supp. 1413 (E.D. Mo. 1996).

H.B. 1900 was signed into law with an effective date of January 1, 2007. The next day, on January 2, 2007, Trout filed his petition for declaratory judgment and injunctive relief, challenging H.B. 1900 *en toto* under Mo. Const. Art. III, §§21 and 23, and also challenging Section 130.032 as enacted in H.B. 1900. On January 8, 2007, the circuit court of Cole County issued a temporary restraining order, finding that Trout established a likelihood of success on the merits regarding the unconstitutionality of Section 130.032 and enjoining its enforcement. The circuit court noted: "It is puzzling that in enacting H.B. 1900, the Missouri General Assembly has made no effort to correct the deficiencies identified by Judge Limbaugh in *Shrink* but rather has enacted a contribution ban that in all substantive respects is identical to the bill passed by the general assembly in 1994." Temporary Restraining Order at 2. As the trial court also pointed out, there are no reported decisions holding that a black-out period of this nature is constitutionally acceptable. *Id.* The circuit court entered its judgment on March 28, 2007, finding the contribution ban in Section 130.032 unconstitutional and permanently enjoining its enforcement.

On July 19, 2007, this Court determined that both the repeal and reenactment of Section 130.032 are void. As expressed by the Court, the issue is whether the legislature would have eliminated the campaign contribution limits without the unconstitutional black-out period. The Court stated:

The course of this legislation makes clear that the campaign contribution limits would not have been repealed without the coterminous enactment of the black-out period. That the two provisions were inseparably connected and dependent upon each other is conclusively proven by the fact that the Senate amendment to decouple the provisions failed. Conversely, the failure of that amendment conclusively disproves respondents' allegation that the General Assembly would have abolished campaign contribution limits even in the absence of the

unconstitutional black-out period. Thus, under section 1.140, the subsection 130.032.2 black-out period cannot be severed from the repeal of the campaign contribution limits in the other provisions of section 130.032, and because the black-out period was declared invalid ... the repeal of the campaign contribution limits is also invalid.

Slip Op. at 7.² The result is that the version of Section 130.032 prior to H.B. 1900 remains in effect. As enacted by H.B. 1900, Section 130.032 (Supp. 2006) is void from its effective date of January 1, 2007. Candidates should return amounts accepted in excess of the pre-H.B. 1900 contribution limits for the reasons set forth below.

LEGAL ANALYSIS

1. The Rule: An Unconstitutional Law “is no law” at all.

“An unconstitutional statute is no law and confers no rights. This is true from the date of its enactment, and not merely from the date of the decision so branding it.” *State ex rel. Miller v. O’Malley*, 117 S.W.2d 319, 324 (Mo. 1938)(en banc)(citations omitted). Acts taken under authority of an unconstitutional statute similarly are void. *See, e.g., O’Reilly v. City of Hazelwood*, 850 S.W.2d 96, 99-100 (Mo. banc 1993); *Nixon v. City of Oregon*, 77 S.W.3d 107, 108 (Mo. App. 2002); *Levinson v. City of Kansas City*, 43 S.W.3d 312, 320-21 (Mo. App. 2001). This rule is well grounded in principles of separation of powers. Giving effect to an unconstitutional law – even for a short period of time – places the court in the position of a participant in the unconstitutional act. Because an unconstitutional law is no law, to hold that it

² Among other patently incorrect arguments, the MRSC criticizes the Court for consulting the history of H.B. 1900’s enactment. *See* MRSC Letter at 8-9. In determining legislative intent, this Court clearly can and should consider official journals of the House and Senate. *See, e.g., Bullington v. State*, 459 S.W.2d 334, 338 (Mo. 1970). MRSC also complains that the Court misinterpreted the history of H.B. 1900. *See* MRSC Letter at 6-8. MRSC’s analogy to a customer ordering pie ala mode is ridiculously flawed. The General Assembly was presented with a choice to repeal contribution limits without the black-out period, and rejected that choice. This action does not raise a mere inference but expresses a decision, as this Court properly recognized. MRSC’s speculations about the purposes behind the black-out period versus repeal of contribution limits are wholly unsupported and also beside the point.

has an effect is for the judicial branch to step into the shoes of the legislature and enact a law where none exists. This Court should not disregard the general rule except for the most compelling of reasons.

2. Limited Exception: Good Faith and Reasonable Reliance Resulting in Injustice.

There is but one exception to the well-established rule that an unconstitutional statute is void *ab initio* – when it causes injustice to persons who have acted in good faith and reasonable reliance upon a statute later found unconstitutional. *See State ex rel. Public Defender Comm'n v. County Court of Greene County*, 667 S.W.2d 409, 413 (Mo. banc 1984). For example, in *State ex rel. Cardinal Glennon Memorial Hospital v. Gaertner*, 583 S.W.2d 107, 118 (Mo. banc 1979), this Court held Chapter 538, RSMo to be unconstitutional. One statute within that chapter, Section 538.020, provided a means of tolling the statute of limitations for medical malpractice claims pending review by the Professional Liability Review Board. From the effective date of Chapter 538 until the date of the decision, claims against health care providers had been submitted under that chapter in reliance on the protection of the tolling provision of Section 538.030. Without the tolling provision, these claimant's causes of action would be cut off, denying their fundamental right to access the courts. The Court held that because these claimants reasonably and in good faith relied on the tolling protection, the provision should apply through the date of its decision. *Id.* at 118.

A person *does not* reasonably rely upon an unconstitutional statute, however, if he has notice that it is under constitutional attack. *See Nike IHM, Inc. v. Zimmerman*, 122 S.W.3d 615, 622 (Mo. App. 2003). In *Akin v. Missouri Gaming Commission*, 956 S.W.2d 261 (Mo. banc 1997), this Court held that Section 313.800.1(16) defining "Mississippi River" and "Missouri River" conflicted with Mo. Const. Art. III, §39(e) and thus was invalid. The Court rejected a request that its decision operate only prospectively in order to preserve licenses issued to gaming corporations prior to the decision. At stake were millions of dollars in capital investment by casinos and hundreds of jobs of innocent employees. The Court, however, found: "[S]ince this suit was filed before licenses were issued ... [the gaming corporations] do not meet the threshold for prospective only application because that cannot 'reasonably and in good faith' rely upon [the unconstitutional statute]." *Id.* at 265.

Both the Ethics Commission and *amicus* MRSC completely ignore the issue of reasonable good faith reliance, focusing instead on the "injustice" prong of the test for exception. As the Court made clear in *Akin*, however,

reasonable good faith reliance is the “threshold” requirement. It is neither necessary nor productive to speculate about harms and inconvenience that might occur under various scenarios, all of which depends on facts not in evidence or before this Court. The lack of reasonable good faith reliance is dispositive. No person could have reasonably and in good faith relied on Section 130.032 as enacted by H.B. 1900 because there was ample notice that it would be found invalid.

First, the black-out provision did not deviate in material respect from a statute that *already* had been found unconstitutional. *See Shrink Missouri Government PAC v. Maupin*, 922 F. Supp. 1413 (E.D. Mo. 1996); Temporary Restraining Order at 2. The ruling in *Shrink* was by no means obscure or unknown to Missourians. It was issued by federal Judge Limbaugh of the United States District Court for the Eastern District of Missouri. Judge Limbaugh’s opinion was well-reasoned and unequivocal. It had been a reported decision for more than a decade at the time H.B. 1900 was enacted. There is no opinion of any court anywhere in the country that could arguably be interpreted to have overruled or changed the result in that case. In *Akin*, the casinos’ notice that a law might be unconstitutional was sufficient to negate good faith reliance. The facts here are even stronger as there was no doubt that the law was unconstitutional.

At minimum, every incumbent candidate for the General Assembly is charged with knowledge of the *Shrink* decision as a matter of law. *See State ex rel Broadway-Washington Association, Ltd. v. Manners*, 186 S.W.3d 272, 275 (Mo. banc 2006)(“The General Assembly is presumed to legislate with knowledge of existing law”); *Greenbriar Hills Country Club v. Director of Revenue*, 47 S.W.3d 346, 352 (Mo. banc 2001)(same); *Scruggs v. Scruggs*, 161 S.W.3d 383, 391 (Mo. App. 2005)(“The legislature is presumed to know the existing case law when it enacts a statute”).³ It was not reasonable for any candidate (and particularly incumbent candidates for the General Assembly) to rely on the validity of Section 130.032 (Supp. 2006) in light of the *Shrink* decision.

Second, it was not reasonable for anyone to assume that Section 130.032 (Supp. 2006) was valid in light of the instant litigation. Trout filed this action—which challenged the whole of H.B. 1900—one day after H.B.

³ To the extent injustice comes into play (*see infra*, section 4), it would be manifestly unjust to allow incumbents who enacted, a Governor who signed and an Attorney General who defended the clearly unconstitutional statute to enjoy its benefits.

1900 became effective. The filing of this action was well publicized. The fact that the suit was filed (before contributions were accepted) put candidates on notice that Section 130.032 (Supp. 2006) was under challenge. *Akin*, 956 S.W.2d at 265.

Third, no person can claim surprise that Section 130.032 was invalid in its entirety. It has long been true in Missouri that when a statute is repealed and reenacted, the new section being substituted for the old, and the new section is found unconstitutional, the repealing clause is likewise invalid and the old section remains in force. *Missouri Ins. Co. v. Morris*, 255 S.W.2d 781, 782 (Mo. banc 1953). *See also State ex rel. SSM Health Care St. Louis v. Neill*, 78 S.W.3d 140, 143 (Mo. banc 2002). Every citizen is presumed to know the law. *Taylor v. St. Louis National Life Ins. Co.*, 181 S.W. 8, 11 (Mo. 1915); *Fredrick v. Bensen Aircraft Corp.*, 436 S.W.2d 765, 770 (Mo. App. 1968). For all these reasons, no candidate reasonably relied on the validity of Section 130.032 (Supp. 2006).

Worthy of special note is the even more clear lack of reasonable reliance by candidates – both incumbents and challengers -- for state offices who accepted contributions during the legislative session. As enacted by H.B. 1900, Section 130.032 prohibits candidates for the office of state representative, state senator and statewide elected office from accepting contributions during the legislative session, which began on January 3, 2007 (the first Wednesday after the first Monday in January) and ended on May 18 (the first Friday after the second Monday in May). Candidates who accepted *any* contribution during this period—regardless of amount—did not rely on the constitutionality of Section 130.032.

To the contrary, candidates accepting contributions during the black-out period were relying on this very lawsuit, the circuit court's January 8, 2007 temporary restraining order, and the likely *unconstitutionality* of the statute. There is no question that these candidates knew of Trout's lawsuit and the circuit court's order, or they would not have accepted any contributions during the otherwise prohibited period. These candidates took a calculated risk. It is incredible that any candidate for state office could at once act in reliance on Trout's lawsuit by receiving contributions in excess of the limits during the legislative session and at the same time attempt to keep those same contributions by claiming unawareness that Trout's challenge to all of H.B. 1900 was still pending.

Pure and simple, candidates who accepted unlimited contributions after January 1, 2007 did so under risk that Section 130.032 as enacted by H.B. 1900

would be declared invalid. There was no reasonable good faith reliance and thus, no exception to the rule that the statute was void *ab initio*, constituting no law at all.

3. Legislative Intent.

Also and importantly, this Court found that the black-out provision could not be severed from the repeal of the campaign contribution limits for the very reason that the General Assembly would not have accepted one without the other: “The course of this legislation makes clear that the campaign contribution limits would not have been repealed without the coterminous enactment of the black-out period.” Slip Op. at 7. This conclusion is manifestly correct. At no point during the legislative process was unlimited fundraising uncoupled from the black-out period. It would be not be proper for this Court to substitute its will for that of the legislature. Since January 1, 2007, candidates have been accepting unlimited campaign contributions. Since January 2, 2007, H.B. 1900 as a whole and the reenacted Section 130.032 have been under attack. The circuit court enjoined enforcement of the black-out period on January 8, 2007. Since that time, candidates have been accepting unlimited contributions without the black-out period. This situation is exactly what the General Assembly *did not approve*. To allow candidates to retain contributions in excess of the limits intended by the General Assembly to apply absent the black-out period would be to legislate by judicial fiat.

4. Resulting Injustice.

As discussed above, the lack of reasonable good faith reliance (as well as clear legislative intent) is dispositive on the question of whether Section 130.032 (Supp. 2006) can be given any effect. To the extent equities play any role in the analysis, however, they clearly fall on the side of requiring candidates to return contributions in excess of the limit in effect prior to the enactment of H.B. 1900. To hold otherwise would unfairly and impermissibly penalize persons who did not declare candidacy prior to the date of this Court’s decision.

The Equal Protection clause of the Missouri and Federal Constitutions requires that laws operate alike upon similarly situated persons. Mo. Const. Art. I, §2; U.S. Const. amend. XIV. If the law affects a fundamental right, strict scrutiny applies to determine whether the statute accomplishes a compelling state interest and is narrowly tailored to accomplish that purpose. See *In re Marriage of Woodson*, 92 S.W.3d 780, 784 (Mo. banc 2003); *In re Norton*, 123 S.W.3d 170, 173 (Mo. banc 2003).

“It is well established that the right to free speech (including political speech) ... [is a] fundamental activit[y] protected by the First Amendment. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution ... [t]he First Amendment protects political association as well as political expression.” *Shrink*, 922 F. Supp. at 1417 (internal quotation omitted); *Buckley v. Baleo*, 424 U.S. 1, 14-15 (1975). Contribution restrictions “could have a severe impact on political dialog if the limitations prevented candidates from amassing the resources necessary for effective advocacy.” *Id.* at 1419 (quoting *State of Florida v. Dodd*, 561 So.2d 263, 264 (Fla. 1990); *Buckley*, 424 U.S. at 21.

Under Missouri law, persons wishing to run for office need not file until a specified deadline, which at this juncture is months away. *See Mo. Rev. Stat. §115.349*. Persons who do so after this Court’s July 19 decision are subject to the contribution limits of the pre-H.B. 1900 Section 130.032. There is no state interest, much less a compelling (or even a legitimate) state interest, in imposing limits on these candidates (most likely challengers) but not on candidates who declared early (most likely incumbents). Doing so clearly places a significant disadvantage upon later-declared candidates’ ability to communicate ideas and debate issues as opposed to those who amassed a war chest with unlimited contributions (based on a statute under challenge from its inception), which in turn impinges upon the rights of the public to engage in political debate and discussion. Subjecting some candidates but not others to contribution limits would produce a classification without any state interest. *See, e.g., Martin v. Schmalz*, 713 S.W.2d 22, 25 (Mo. App. 1986)(statutory amendment must apply retroactively or equal protection violation would ensue).

Both the Ethics Commission and the MRSC advance principles pertaining to the prospective vs. retroactive application of a judicial decision. *See Sumners v. Sumners*, 701 S.W.2d 720; *Trans UCC, Inc. v. Director of Revenue*, 808 S.W.2d 374 (Mo. banc 1991). These principles apply only in the case of a judicial decision that announces a new rule by overruling clear past precedent. *Sumners*, 701 S.W.2d at 724. Here, there is no decisional change from past precedent to implicate retroactive application. *See, e.g., Contel of Missouri, Inc. v. Director of Revenue*, 863 S.W.2d 928, 930 (Mo. App. 1993); *Nike IHM*, 122 S.W.3d at 621. Indeed, this Court’s ruling relied squarely on prior precedent and did not even modify any previous decisions, much less overturn them. Even assuming the *Sumners* three-part test applies, however, it supports “retroactive” application of the Court’s decision.

The first *Summers* factor is not present. As noted, the Court's decision in this case has not established a new principle by overruling clear past precedent. 701 S.W.2d at 724. The second *Summers* factor is whether the purpose and effect of the newly announced rule will be enhanced or retarded by retroactive application. *Id.* The Court's decision in this case gives effect to the legislature's intent that candidates be free to accept unlimited contributions only if precluded from accepting contributions during the legislative session. Permitting candidates to retain unlimited contributions without the black-out period would directly contravene that intent. The third *Summers* factor is the degree to which parties may have relied on the old rule and the hardship to parties denied the benefit of the new rule. *Id.* In this context, the reliance must have been justifiable. *Id.* at 723, 725. H.B. 1900 and Section 130.032 have been under constitutional attack since the day after they were enacted, and no candidate could reasonably have relied on the validity thereof. *See Akin*, 956 S.W.2d at 265.

By contrast, persons who declare their candidacy after July 19, 2007 will be subject to contribution limits. The hardship to these persons of campaigning under constraints not applicable to other candidates is clear and of constitutional significance. The parade of horrors advanced by MRSC and implied by the ethics commission's request that this Court make the decision retroactive as to some candidates but not others, is no more than hyperbole. The Ethics Commission can and should send out notices directing candidates to return excessive contributions. Persons who fail to do so within the time allowed are "subject" to a surcharge (Section 130.032.7) but the Ethics Commission can decide whether to pursue sanctions (*see* Section 105.961). As reported in a 2003 Kansas City Star article, the Ethics Commission has compromised assessment amounts where there was "confusion" as to what the law permitted, and accepted installment payments of the lowered amount to reduce the payment burden. *See* August 2, 2003 Kansas City Star Article, attached hereto. The Ethics Commission has exercised its discretion with hardships in mind in the past and there is no reason to think that it will not do so again. This Court need not and should not consider events that may or may not come to pass. These issues will be addressed in due course under facts and circumstances that cannot be presumed at this juncture.

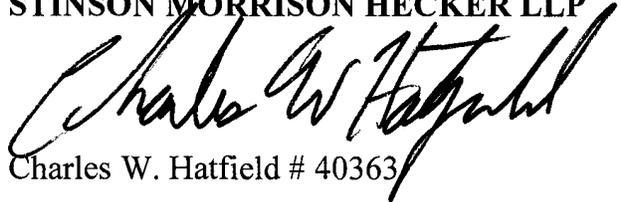
CONCLUSION

The MRSC boldly represents that Trout "is the only party before this Court" and that somehow, this Court's decision is not binding upon others. *See* MRSC Letter at 12. As MRSC well knows, the Ethics Commission also is a party to this action. The Ethics Commission is charged with administration

of the campaign finance laws. That body plainly is bound by the circuit court's judgment and this Court's decision—as are those who are regulated by it. MRSC's position is like saying that a decision to which the Department of Revenue is a party is not binding on taxpayers. That position is absurd. Providing instruction to the Ethics Commission will facilitate orderly administration and finality. For all the reasons addressed above, Section 130.032 (RSMo. 2006) was no law does and was invalid from the date of its enactment. The Court should direct the Ethics Commission to instruct persons who accepted campaign contributions under the invalid statute to return to each contributor that amount exceeding the limit in effect under Section 130.032 prior to January 1, 2007.

Sincerely yours,

STINSON MORRISON HECKER LLP

A handwritten signature in black ink, appearing to read "Charles W. Hatfield". The signature is written in a cursive, flowing style.

Charles W. Hatfield # 40363

Enclosure

cc: Alana M. Barragan-Scott
James R. Layton
Luann V. Madsen
Harvey M. Tettlebaum

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Section: METRO

Missouri GOP to pay penalty \$60,000 sum part of campaign-finance dispute settlement

STEVE KRASKE

Settling a campaign-finance dispute, the Missouri Republican Party has agreed to pay the state Ethics Commission \$60,000, the largest assessment in commission history.

The penalty is five times larger than the previous record of \$12,100 levied against the House Republican Campaign Committee in 2001.

"This sets up something that people will look at and say in the future, 'Let's be careful not to do this,' " said Bob Connor, the commission's executive director.

Republicans reacted with a statement from party consultant John Hancock.

"Although recent court decisions have been in our favor, we have decided that it is financially prudent to end the expensive legal proceedings and move forward," he said. "We believe that ultimately the courts would have vindicated our position."

The party admitted no wrongdoing, Hancock noted.

"The cost of continuing this litigation simply made no sense."

Democrats took a different view.

"It just shows that Republicans will do anything to win an election at all costs, including blatantly violating the law," said state party spokesman Michael Kelley.

The agreement ends a case that began with the 1998 elections. The central question: Can the state of Missouri enforce its limits on how much money the state's political parties can give to candidates?

The answer was affirmed through numerous court cases, including two before the U.S. Supreme Court, especially a 2001 ruling that upheld Missouri's political-party donation limits.

The case the commission settled Friday involved what the commission called "nonallowable excess contributions" from the state party to two 1998 candidates.

The commission said Charles **Pierce**, the Republican candidate for state auditor, received \$122,750 in excessive party donations, while Eric **Zahnd**, now the Platte County prosecutor who was a state Senate candidate that year, received \$59,875 in excessive donations.

Both candidates lost - **Pierce** to Democrat Claire McCaskill and **Zahnd** to Democrat Sidney Johnson.

The commission gave the two 10 days to return the funds. When neither did, the commission began its action.

Under the settlement, **Pierce** and **Zahnd** must pay \$5,000 each to the commission.

The commission's \$60,000 assessment against the state Republican Party must be paid in three \$20,000 allotments spread over the next year.

Pierce could not be reached for comment.

Zahnd said the state GOP opted to settle because attorneys' fees had become too burdensome.

"We always said there would never be any fines in this case, and there are no fines because we did nothing wrong," **Zahnd** said. "I'm pleased to move forward."

Zahnd complained that the commission ignored the same problems with Democratic Party contributions.

But a commission spokesman said several Democrats had agreed to repay excessive donations from the party. In a few other cases, the Democratic candidates contended that expenses were made on their behalf without their knowledge. Those expenditures fell into a different category, the spokesman said, and no action was taken.

Zahnd said money left over in his 1998 campaign account would cover most of his \$5,000 assessment.

The state Republican Party remains liable for the entire \$182,625 that it made in excessive donations to **Pierce** and **Zahnd**. But only \$60,000 will need to be paid. The remainder will be waived as long as the GOP makes the three payments on time and ceases making illegal party donations over the next year.

"Today's agreement ... shows that tough enforcement and steep costs will come to those who ignore them," said Attorney General Jay Nixon, a Democrat, who serves as commission attorney. "That sends a clear and important message to candidates as we move into the new election cycle."

The ongoing legal battle over Missouri's donation limits last decade resulted in a legal loophole that allowed Missouri's two parties to pour record amounts of cash into the 2000 elections.

One study showed that political party committees gave 40 percent of the money spent on Missouri Senate races that year, about double the 1998 total.

The commission began enforcing party-giving limits again in 2002. The limits, adjusted for inflation every two years, now stand at \$11,675 for statewide

candidates, such as governor and attorney general; \$5,850 for state Senate contenders; and \$2,925 for state representative candidates.

By law, the parties also can give equal amounts in in-kind donations, which are services parties typically provide candidates, such as polling and phone-bank soliciting.

Connor said the commission agreed to the \$60,000 assessment, in part, because confusion existed in 1998 over exactly what the law stipulated. At the time, a court injunction had temporarily removed individual donation limits. The state GOP insisted that the court action also extended to party contribution limits.

The key was not the dollar amount, Connor said.

"Compliance with the law is what our agency is for," he said.

To reach Steve Kraske, political correspondent, call (816) 234-4312 or send e-mail to skraske@kcstar.com.

---- INDEX REFERENCES ----

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