Skadden POLITICAL LAW ALERT

April 17, 2014
2014 Edition, Issue XII

If you have any questions regarding the matters discussed in this memorandum, please call one of the following representatives in the Political Law Group (Washington, D.C. office) or your regular Skadden contact.

Kenneth A. Gross
Partner | 202.371.7007
kenneth.gross@skadden.com

Ki P. Hong
Partner | 202.371.7017
ki.hong@skadden.com

Matthew Bobys
Counsel | 202.371.7739
matthew.bobys@skadden.com

Melissa Miles
Counsel | 202.371.7836
melissa.miles@skadden.com

Patricia Zweibel
Counsel | 202.371.7089
patricia.zweibel@skadden.com

Rachel Applestein
Associate | 202.371.7511
rachel.applestein@skadden.com

Shayla Parker
Associate | 202.371.7534
shayla.parker@skadden.com

Charles Ricciardelli
Associate | 202.371.7573
charles.ricciardelli@skadden.com

Tyler Rosen
Associate | 202.371.7035
tyler.rosen@skadden.com

Tanya Sehgal
Associate | 202.371.7636
tanya.sehgal@skadden.com

Kelvin Reese
Head Political Reports Analyst
202.371.7498
kelvin.reese@skadden.com

Recent Developments in Aggregate State Contribution Limits After Supreme Court's Decision in *McCutcheon v. FEC*

On April 2, 2014, the U.S. Supreme Court issued its decision in *McCutcheon v. FEC*, striking down the aggregate limits imposed on individual contributions under federal law. Although this decision cannot necessarily be read to automatically strike down all aggregate limits that may exist under various state laws, it does raise a serious question regarding their constitutionality. (For a more detailed discussion of the Court's decision, see our prior mailing, attached.) Recognizing this concern, the states of Maryland and Massachusetts have voluntarily decided to not implement their aggregate limits while the aggregate limits in Minnesota and Wisconsin are being challenged in court. Further, the attorney general for the District of Columbia asked the City Council to repeal the district's aggregate contribution limit.

Maryland

On April 11, 2014, the Maryland Board of Elections issued guidance, approved by the state assistant attorney general, declaring the state's aggregate campaign contribution limit imposed on federal PACs, individuals and corporations unconstitutional and unenforceable. Previously, federal PACs, individuals and corporations were limited to an aggregate of $10,000 per four-year election cycle. Now, federal PACs, individuals and corporations are only subject to a $4,000 contribution limit per state, county or Baltimore city candidate, political party committee or PAC per four-year election cycle. Pursuant to Maryland House Bill 1499, discussed in our May 8, 2013, mailing, this $4,000 limit will increase to $6,000 on January 1, 2015. State PACs were not subject to any aggregate contribution limit, and will continue to be limited to $6,000 per candidate, political party committee or PAC per four-year election cycle.

Massachusetts

On April 2, 2014, following the Supreme Court's decision in *McCutcheon*, the Massachusetts Office of Campaign and Political Finance (OCPF) announced that the state will no longer enforce its $12,500 annual aggregate contribution limit imposed on individuals to state and local candidates. OCPF explained that it is still considering the $5,000 annual aggregate limit that an individual may contribute to state and local party committees associated with a single state political party and will determine whether this provision is enforceable after further reviewing the Supreme Court's decision. OCPF did not discuss whether it is also assessing the enforceability of the $5,000 annual aggregate limit imposed on contributions from state PACs to all state and local party committees associated with a single state political party. As of now, individuals and state PACs may contribute $500 per state or local candidate or PAC, and an aggregate of $5,000 to state and local party committees per calendar year.

Wisconsin

On February 13, 2014, a federal district court judge issued a stay of proceedings in the case of *Young v. Vocke* until after the Supreme Court decided *McCutcheon*. The case challenges the constitutionality of Wisconsin's $10,000 annual aggregate limit imposed on contributions from

(continued on next page)

individuals to all state and local candidates, committees and political parties. The case does not challenge other, non-aggregate campaign contribution limits imposed on individuals and PACs. The parties have not yet notified the court whether they want to continue proceedings after *McCutcheon*.

Minnesota

On April 9, 2014, in the wake of *McCutcheon*, a complaint was filed in federal district court in the case of *Seaton v. Wiener* that challenges a restriction under Minnesota law that limits contributions to certain state and legislative candidates once those candidates have raised an aggregate threshold amount of money from particular contributors ("special sources"). These special sources include lobbyists, political committees or political funds, associations not registered with the Campaign Finance Board and individuals who contribute an amount more than one-half of which the individual is legally allowed to contribute during the election cycle ("large contributors"). Once a candidate has raised the threshold amount, individuals wishing to give are effectively limited to less than half the applicable contribution limit in order to avoid becoming a large contributor. The complaint alleges that these provisions violate the First Amendment. The complaint does not challenge the usual limits on contributions from individuals and PACs to candidates per two-year period.

District of Columbia

On April 15, 2014, District of Columbia Attorney General Irvin Nathan issued a statement before the District of Columbia City Council requesting that the council consider repealing the district's aggregate contribution limit. Currently, district law prohibits individuals, corporations and PACs from making any contribution in any one election for mayor, chairman of the council, each member of the council and each member of the State Board of Education (including primary and general elections, but excluding special elections), which when combined with all other contributions made by that person in that election to candidates and political committees exceeds $8,500. The district Office of Campaign Finance interprets this aggregate limit to exclude contributions to political parties and committees. The attorney general stated that because of *McCutcheon*, the district's law is likely unconstitutional. He asked that the City Council consider repealing the law to "avoid unnecessary complexities and costs to the district of having the now-suspect district law aggregate caps challenged and likely struck down by the courts." The attorney general stopped short of saying that the district's aggregate limits are unenforceable, and thus the limit should be treated as enforceable until further action occurs.