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Developments Regarding Aggregate Contribution Limits

In the aftermath of the U.S. Supreme Court's decision in *McCutcheon v. FEC*, striking down the aggregate limits imposed on individual contributions under federal law, several jurisdictions also have taken steps to address aggregate limits. (For a more detailed discussion of the Court's decision, see our prior [mailing](#) from April 2, 2014.) Specifically, Connecticut, Kentucky, Maine and New York, as well as Los Angeles, recently announced they will no longer enforce their aggregate limits on individual contributors. The Massachusetts Office of Campaign and Political Finance clarified its position on the state's aggregate contribution limit to party committees. In Minnesota, a judge temporarily blocked enforcement of the state's unique system of aggregate limits; in Wisconsin, a federal district court judge signed an order enforcing a stipulation stating that Wisconsin's annual aggregate limit on individual campaign contributions is unconstitutional. For ease of reference, we also have included the jurisdictions that we previously wrote about in our April 17, 2014, mailing that had developments regarding their aggregate limits.

Connecticut

On May 14, 2014, the Connecticut State Elections Enforcement Commission issued Advisory Opinion 2014-03 stating that it will no longer enforce the state's individual aggregate contribution limit. Previously, individuals were limited to an aggregate of \$30,000 to certain state and local candidates and committees per election campaign. The commission did not address the \$100,000 aggregate contribution limit to all candidates imposed on PACs per election campaign. Thus, the aggregate limit imposed on PAC contributions still applies.

District of Columbia

As discussed in our previous mailing, 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 a 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 other 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.

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Kentucky

On June 5, 2014, the Kentucky Registry of Election Finance issued Advisory Opinion 2014-3 in which it announced that in light of *McCutcheon*, the state's annual aggregate limit on contributions from individuals to permanent committees and contributing organizations is no longer enforceable. Previously, the state imposed a \$1,500 annual aggregate contribution limit from PACs and individuals to all permanent committees and contributing organizations. In the opinion, the registry announced that this aggregate limit is no longer enforceable against individual contributors. The registry interpreted the limit to instead apply on a per committee basis so individuals may now contribute up to \$1,500 annually to any registered permanent committee. The registry did not address whether the aggregate limit still applies to contributions from PACs.

Los Angeles, California

On April 17, 2014, based on advice from the Los Angeles city attorney, the Los Angeles Ethics Commission adopted a resolution explaining that the city's aggregate contribution limits will no longer be enforced against contributors in city or Los Angeles Unified School District (LAUSD) Board of Education elections. Previously, city law prohibited a person from making contributions to all city candidates in connection with a single election for an elected city office in excess of an aggregate amount that changed based on the number of City Council and city-wide offices appearing on the ballot. Additionally, the city law also prohibited a person from making contributions to all LAUSD candidates in connection with a single election for a Board of Education office in excess of an aggregate amount that changed based on the number of Board of Education offices appearing on the ballot. The Ethics Commission stated that these provisions were similar to the provision at issue in *McCutcheon*, and thus, are no longer enforceable. The commission stated that the contribution limits imposed on a single person to a single candidate is still valid.

Maine

On June 2, 2014, the Maine Ethics Commission issued a Policy Statement announcing that the commission will no longer enforce the state's aggregate contribution limit. Prior to this announcement, individuals were limited to contributing \$25,000 in the aggregate in a year to candidates. The commission stated that without further guidance from the state's legislature or judiciary, it will not enforce the aggregate limit.

Maryland

As discussed in our previous mailing, 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

As discussed in our previous mailing, 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. In that announcement, OCPF said it was still considering the enforceability of the state's \$5,000 annual aggregate limit that an individual may contribute to state and local party committees associated with a single state political party. Recently, on June 2, 2014, OCPF announced that it will continue to enforce the \$5,000 annual aggregate limit. The OCPF decided to continue to enforce the \$5,000 limit because it determined that the federal laws overturned in *McCutcheon* differed substantially from Massachusetts law.

Minnesota

As discussed in our previous mailing, 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 effectively are limited to less than half the applicable contribution limit in order to avoid becoming a large contributor. The complaint alleges that these provisions as they apply to individual "large contributors" violate the First Amendment. Recently, on May 19, 2014, the federal district court in Minnesota issued a temporary restraining order and preliminary injunction in *Seaton v. Wiener* preventing the state from enforcing the challenged restriction. The court found that in light of *McCutcheon*, the plaintiffs in *Seaton* are likely to prevail on their constitutional claim. As a result, the court enjoined the state from enforcing the restriction with respect to individual "large contributors." The order did not address whether the restriction above still applies to other types of special sources, such as PACs and lobbyists.

New York

On May 22, 2014, the New York State Board of Elections voted to stop enforcing the state's \$150,000 aggregate contribution limit to all state and local candidates, parties and PACs imposed on individuals in any calendar year. After a discussion in executive session, the board orally announced that based on the Supreme Court's decision in *McCutcheon*, it will no longer enforce the aggregate limit as applied to individuals. Please note, however, that we have not been able to confirm that the board necessarily extends this decision to the \$150,000 aggregate limit as it applies to LLCs. We are in the process of confirming this.

Wisconsin

On May 22, 2014, a federal district judge in the Eastern District of Wisconsin issued an order in *Young v. Vocke* permanently enjoining the state from enforcing its aggregate contribution limit. In that case, the plaintiffs challenged the constitutionality of Wisconsin's \$10,000 annual aggregate limit imposed on contributions from individuals to all state and local candidates, committees and political parties. The case did not challenge other, non-aggregate campaign contribution limits imposed on individuals and PACs. As discussed in our previous mailing, 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*. After *McCutcheon*, the parties entered a stipulation agreeing to this injunction. Following the issuance of the order, the Wisconsin Government Accountability Board released a statement explaining that, pursuant to the court's order, it will no longer enforce the aggregate annual limit. Due to these developments, individual contributions to Wisconsin parties and PACs are now unlimited.