Additional Materials
Other Business
April 30, 2014

April 29, 2014

The Honorable Paul LePage
Office of the Governor
1 State House Station
Augusta, ME 04333

Re: Maine Aggregate Limit Statute Likely Unconstitutional under *McCutcheon*

Dear Governor LePage:

With the 2014 elections rapidly approaching, we urge you to take quick action to respond to the U.S. Supreme Court's decision in *McCutcheon v. FEC*,[1] in order to ensure that Maine does not continue to violate its citizens' First Amendment rights. In that case, plaintiff Shaun McCutcheon challenged the federal aggregate limit imposed on contributions by individuals to candidate campaigns, political parties, and political committees under the Bipartisan Campaign Reform Act of 2002. The Court ruled that the limit was unconstitutional under the First Amendment.

Maine has an essentially identical requirement in its campaign finance laws, which we believe is almost certainly unconstitutional under the *McCutcheon* ruling.[2] As Chief Justice Roberts noted in the opinion for the Court, "An aggregate limit on *how many* candidates and committees an individual may support through contributions is not a 'modest restraint' at all. The Government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse."[3]

Two states have already recognized the applicability of *McCutcheon* to their own aggregate limits. For example, on the day of the *McCutcheon* ruling, the Massachusetts Office of Campaign and Political Finance (OCPF) announced that it "will no longer enforce the $12,500 aggregate limit on the amount that an individual may contribute to all candidates. In regard to the $5,000 aggregate limit that an individual may contribute to party committees, OCPF is currently reviewing the ruling in more detail."[4] Shortly thereafter, the Maryland State Board of Elections announced that "[t]he [Maryland] Attorney General has advised that based on the

[1] *McCutcheon v. Federal Election Comm'n*, 572 U.S. __ (2014).
[2] ME. REV. STAT. ANN., Tit. 21–A, § 1015(3).
[3] *McCutcheon* at 15 (Roberts, C.J. for the plurality).
[4] "OCPF's statement on today's Supreme Court decision, McCutcheon vs. FEC," Massachusetts Office of Campaign and Political Finance. Retrieved on April 24, 2014. Available at: http://www.ocpf.net/releases/statement.pdf (April 2, 2014).

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pronouncement in the *McCutcheon* decision, the aggregate contribution limit in [Maryland] Election Law Article § 13-226(b)(2) is unconstitutional and may not be enforced."[5]

Now is the time for Maine to proactively apply this Supreme Court decision.

To ensure compliance with the First Amendment to the United States Constitution, Maine should repeal ME. REV. STAT. ANN., Tit. 21–A, § 1015(3) as soon as possible.

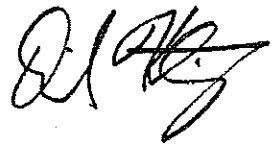
Until the law is repealed or otherwise amended in order to comply with the Court's ruling, we urge the Attorney General and other state officials who have responsibility to enforce the state's campaign finance laws to immediately announce that this law will no longer be enforced.

If Maine fails to either amend or repeal this statute to conform to the Court's ruling, it risks a lawsuit. CCP has provided pro bono representation in similar situations, and would strongly consider doing so here as well. Such legal action would cost the state money defending the case, and would distract the Attorney General's office from other important legal work. Additionally, if the state chooses to defend the law in court, it is probable that the state will have to pay substantial legal fees to successful plaintiffs.

Most importantly, by taking this action to implement the Court's ruling, you and other officials will be upholding your Oath of Office by supporting and defending the Constitution of the United States and protecting the First Amendment rights of the constituents you represent and serve.

I have enclosed a memo by our Legal Director Allen Dickerson, which provides additional details on why we believe Maine's statute is unconstitutional. Our staff would be pleased to assist you in your efforts to bring your campaign finance law into compliance with the Court's ruling, or to answer any questions you may have on the ruling and its application in Maine.

Sincerely,



David Keating
President

[5] "Contribution Limits," Maryland State Board of Elections. Retrieved on April 24, 2014. Available at: http://elections.maryland.gov/campaign_finance/documents/aggregate_limits_04112014_final.pdf (April 11, 2014).