



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners
From: Jonathan Wayne, Executive Director
Date: May 22, 2014
Re: Enforceability of Maine's Aggregate Limit on Contributions to Candidates

This memo recommends issuing a statement at your May 28 meeting that in this election cycle the Maine Ethics Commission will not enforce the aggregate limit of \$25,000 on contributions from an individual to candidates for state office in a calendar year.

Contribution Limits in Maine Election Law

Base limits. In campaign finance regulation, the term “base limit” refers to a maximum amount that a donor may give to a **single** candidate or a noncandidate committee (*e.g.*, a political party or political action committee) over a defined time period. In Maine, for example, a donor may give up to \$375 per election to a legislative candidate or up to \$1,500 per election to a candidate for Governor. (21-A M.R.S.A. §§ 1015(1) &(2)) Maine does not restrict the amount that a donor may give to a political party, a political action committee, or a ballot question committee.

Aggregate limit. Some jurisdictions such as Maine have adopted an “aggregate limit,” which refers to the total amount that a donor may give to **multiple** candidates or committees. Maine law contains the following aggregate limit:

3. Aggregate contributions. No individual may make contributions to candidates aggregating more than \$25,000 in any calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner.

(21-A M.R.S.A. § 1015(3)) This limit applies only to individual donors who are giving to candidates for state office.

McCutcheon v. Federal Election Commission

In *McCutcheon v. Federal Election Commission*, the U.S. Supreme Court invalidated two aggregate limits in federal law. 134 S.Ct. 1434, 1442 (2014) Under those limits, a donor could give a combined total of \$48,600 to federal candidates in the 2013-2014 election cycle and a combined total of \$74,600 to noncandidate committees.

The Court reiterated its longstanding view that when an individual makes a political contribution to a candidate, the individual is exercising their right of political expression and their right to associate with a candidate. *Id.* The aggregate limits can have the effect of limiting the number of candidates and committees a donor can support during an election cycle. For example, as the Court observed, a donor could give \$5,200 to each of nine federal candidates but would be prevented from contributing to any other federal candidates during the election cycle – beyond the remaining \$1,800 that the donor could spend before reaching the \$48,600 cap. *Id.* at 1448. After the donor has reached that limit, the donor is denied “all ability to exercise his expressive and associational rights by contributing to someone who will advocate for his policy preferences.” *Id.* The Court viewed this as a “clear First Amendment harm[.]” *Id.*

The Court then analyzed the aggregate limits to determine whether they were “closely drawn” to achieve “sufficiently important governmental interests.” According to the plurality opinion, the only legitimate governmental interest for restricting contributions is to prevent *quid pro quo* corruption or the appearance of that type of corruption. *Id.* at 1450. The Court rejected the federal government’s arguments that aggregate limits prevent *quid pro quo* corruption and circumvention of the base limits. *Id.* at 1452-56. The Court ultimately concluded that the aggregate contribution limits “intrude without justification” on fundamental First Amendment activities. *Id.* at 1462.

Recommendation by Commission Staff

Maine’s aggregate limit operates in a way that is similar to the federal limits, even though its overall effect is less restrictive. Individuals can give no more than \$25,000 to Maine state candidates. This cap restricts the number of candidates to which an individual donor may contribute. A donor could give the base limit of \$375 to 33 legislative candidates in both the

primary and general elections (or to 66 candidates in one of those elections), but would have only \$250 available to donate to other state candidates in that election year before reaching the cap.

Because the Commission regulates First Amendment activity, it is under a duty to do so within the constitutional limits on government regulation as determined by the courts. Based on our analysis of the Supreme Court's ruling in *McCutcheon* and after consulting with the Commission's Counsel, the staff recommends adopting the attached policy statement at the May 28 meeting.

Thank you for your consideration of this agenda item.



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Policy Statement of the Maine Ethics Commission on Enforceability of Aggregate Contribution Limits

Maine Election Law contains two types of limitations on contributions to candidates

- Base limits, which are the maximum amounts that a donor may give to a single candidate per election.¹
- The aggregate limit, which states that in a calendar year an individual may contribute no more than a combined total of \$25,000 to Maine state candidates. (21-A M.R.S.A. § 1015(3))

In recent weeks, the Commission has received questions whether the aggregate limit continues to apply, in light of the decision by the U.S. Supreme Court in *McCutcheon v. Federal Election Commission*, 134 S.Ct. 1424 (2014). In the *McCutcheon* decision, the U.S. Supreme Court invalidated aggregate limits in federal law that imposed maximum amounts that a donor could give to federal candidates or noncandidate committees in a two-year election cycle. *Id.* at 1442.

The Commission has determined that it will not enforce the \$25,000 aggregate limit in 21-A M.R.S.A. § 1015(3) during 2014, unless and until it receives further guidance from the Maine Legislature or a court of competent jurisdiction. The Commission will continue to study the issues involved and may make a legislative proposal concerning 21-A M.R.S.A. § 1015(3) for the 127th Legislature.

The base limits continue to be in effect, and the Commission will enforce them. The Commission will also enforce the earmarking provision in 21-A M.R.S.A. § 1015(4), which is intended to prevent circumvention of the base limits. Under this statute, if a donor makes a contribution to an intermediary and directs the intermediary to give the money to a candidate, the contribution is considered to have been made by the original donor. Please call the Commission staff if you have any questions concerning this policy statement.

¹ These maximum amounts are set out in 21-A M.R.S.A. §§ 1015(1) & (2) and are posted at www.maine.gov/ethics.