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NEWSLETTER

State Campaign Finance Developments: Colorado, Illinois and Nebraska

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Colorado: Court Strikes Down Secretary of State's Campaign Finance Regulations

In an August 10, 2012, decision, the City and County of Denver District Court declared that the secretary of state exceeded his delegated authority in drafting several campaign finance regulations and invalidated these regulations. Specifically, the court invalidated rules imposing thresholds for Colorado activity before an organization was required to register as an issue committee or as a political committee. Similarly, the court invalidated regulations related to 527 political organizations that exempted certain such organizations from registration and reporting in Colorado.

By way of background, earlier this year, revised campaign finance regulations promulgated by the Colorado Secretary of State went into effect. Shortly after these regulations became effective, several independent groups filed suit challenging a number of the regulations. Following the court's August 10, 2012, decision, the Colorado Secretary of State's office announced that it intends to appeal this decision.

Illinois Responds to Court Decision Permitting Super PACs; Lifts Contribution Limits in Races with Significant Super PAC Activity

Illinois recently amended its campaign finance law, reacting to a federal court decision permitting Super PACs at the state level in Illinois. For a summary of the *Personal PAC v. McGuffage* decision, see "The Rise of State Super PACs," *Election Law News*, July 2012, available here.

Importantly, the amendment eliminates contribution limits for candidate campaign committees in races where independent expenditure spending surpasses $250,000 in the aggregate for statewide races and $100,000 in the aggregate for all other races. Once the threshold has been surpassed, the contribution limits for that race remain lifted for the remainder of the election cycle. The amendment also formally codifies Super PACs, which are referred to as independent expenditure committees, and clarifies that Super PACs may receive unlimited contributions from corporations and individuals. Independent expenditure committees remain subject to the same reporting requirements as other political action committees.

In addition to the Super PAC-related changes, the amendment permits political action committees that receive contributions from corporations, associations and labor organizations, or their committees, made through dues, levies or similar assessments to report the contributions in the aggregate from the organization or PAC. However, contributions from a single contributor that exceed $500 in a reporting period cannot be reported in the aggregate and must be itemized.

Nebraska: State Supreme Court Affirms Opinion Striking Down Aggregate Corporate Contribution Cap

Like several other states, Nebraska has a public financing system whereby candidates who agree to certain campaign finance limits are eligible for public funds. As part of that system, Nebraska law limited the aggregate amount of contributions that a candidate could receive from committees, corporations, unions, associations and political parties during an election period. This aggregate limit was 75 percent of the public finance limits for the office to which the candidate was seeking election.

Following the United States Supreme Court's decision striking down Arizona's public financing system in *Arizona Free Enterprise Club v. Bennett*, 131 S. Ct. 2806 (2011), the Nebraska attorney general determined that Nebraska's public financing system was likely to be unconstitutional. In his opinion, the attorney general also stated that Nebraska's provision limiting aggregate corporate contributions was not severable from the public financing regime and, thus, unenforceable.

Nebraska empowers its supreme court to review attorney general opinions finding that a state statute is unconstitutional. In its decision reviewing the opinion, the Nebraska Supreme Court, in *Nebraska v. Gale*, 284 Neb. 257 (2012), examined the public financing system and likewise found the public financing system to be unconstitutional. The court also examined the severability of the aggregate contribution limit and agreed with the attorney general that it was not severable. Therefore, the entire public financing—including the aggregate limit—was held unconstitutional.