

# MAINE STATE LEGISLATURE

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AUGUSTA, MAINE 04333

February 20, 1979

Honorable Harold Silverman  
Maine Senate  
State House  
Augusta, Maine 04333

Dear Senator Silverman:

You have asked whether the State may constitutionally prevent non-residents from contributing to candidates for federal offices elected from within the State. Our answer is that, in view of certain provisions of the Federal Election Campaign Act of 1974, as amended, a state may not attempt to regulate contributions to candidates for federal office.

The general rule regarding the power of the states to regulate federal elections was stated by the United States Supreme Court in United States v. Classic, 313 U.S. 299 (1941):

"[T]he states are authorized by the constitution to legislate on the subject [of Congressional elections] to the extent that Congress has not restricted state action by the exercise of its powers to regulate elections under [the Constitution]." Id. at 315.

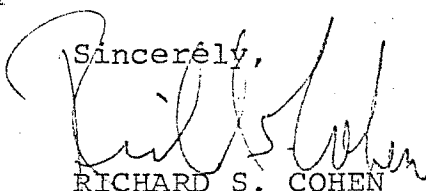
In 1974, the Congress chose to exercise this power by enacting the Federal Election Campaign Act, section 101 of which sets forth a comprehensive set of limitations on contributions to candidates for federal office by individuals and political organizations. Moreover, in section 104 of the Act, the Congress specified that the provisions of the Act "relating to elections and political activities, supercede

and preempt any provisions of state law with respect to federal office." 88 Stat. 172.\* The constitutionality of the Act's limitations on contributions has been sustained by the United States Supreme Court. Buckly v. Valeo, 424 U.S. 1, 23-38 (1976). It is clear, therefore, that the states may not legislate in this area.

In view of this conclusion, there is no necessity for discussing the more complicated questions of whether a state law regulating contributions of non-residents to candidates for federal offices would violate the First Amendment of the United States Constitution (freedom of speech and association), the first clause of the second sentence of the Fourteenth Amendment (privileges and immunities), or the third clause of the second sentence of the Fourteenth Amendment (equal protection).

I hope this answers your question. Please feel free to contact me if I can be of any further service.

Sincerely,

  
RICHARD S. COHEN  
Attorney General

RSC/ec

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\* The provisions of the Act regarding contributions originally appeared at 18 U.S.C. § 608, but were amended and moved to 2 U.S.C. § 441a in the Federal Election Campaign Act Amendments of 1976. Although no statement as to preemption of state laws appears in the 1976 Act, there is no reason to suppose that Congress intended to change its intention that such laws be preempted.