

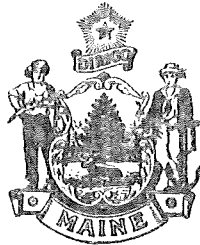
MAINE STATE LEGISLATURE

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STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
AUGUSTA, MAINE 04333

May 11, 1981

Honorable John N. Diamond
House of Representatives
Seat 46
State House
Augusta, ME 04333

Dear Representative Diamond:

You have requested our opinion concerning the constitutionality of L.D. 1150, An Act Relating to Referendum Campaign Reports and Finances. Section 2 of L.D. 1150 provides that no individual could contribute more than \$1,000 to any referendum campaign. Each political committee, other committee, corporation, or association would be limited to a maximum referendum campaign contribution of \$5,000. The Statement of Fact appended to the bill states that its purpose "is to prevent undue influence of referendum campaigns through excessive contributions from a single source."

The United States Supreme Court has upheld the constitutionality of provisions of the Federal Election Campaign Act which limit contributions to candidates for federal elective office by an individual or group to \$1,000 and by a political committee to \$5,000 to any single candidate per election. Buckley v. Valeo, 424 U.S. 1 (1976). The Supreme Court stated that:

"By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication." Buckley v. Valeo, supra, 424 U.S. at 20. ^{1/}

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The Supreme Court did invalidate, on First Amendment grounds, a portion of the Act which limited expenditures by political candidates on their own behalf.

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House of Representatives
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The Court concluded that the governmental interest in curtailing "the actuality and appearance of corruption resulting from large individual financial contributions," 424 U.S. at 26, was sufficiently important to "justify the limited effect upon First Amendment freedoms caused by the \$1,000 contribution ceiling." 424 U.S. at 29.

It should be emphasized that the United States Supreme Court has not issued a decision concerning the constitutionality of limitations on contributions to referendum campaigns. Therefore, the law in this area is not settled.^{2/} However, based on the rationale of Buckley v. Valeo, *supra*, we believe that the contribution limitations contained in L.D. 1150 would be legally defensible if enacted by the Legislature. We note that, in First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978), the Supreme Court invalidated on First Amendment grounds a Massachusetts law which prohibited corporations from spending any money for the purpose of influencing the public concerning certain referendum questions. There is some language in the Bellotti opinion which distinguishes regulation of "partisan candidate elections" from referendum campaigns. See 435 U.S. at 788, n. 26. However, the statute involved in Bellotti represented a complete prohibition on corporate expression, and the Supreme Court did not deal with the issue of whether any limitation on referendum campaign contributions would be unconstitutional.

To summarize, the law on this subject is unsettled, and thus, we cannot give an unqualified answer to your inquiry. However, in light of the existing precedent and the presumption of constitutionality accorded to legislative enactments, we believe reasonable arguments can be made to defend L.D. 1150 should it be enacted.

I hope this information is helpful. Please feel free to contact us if we can be of any further service.

Sincerely,


STEPHEN L. DIAMOND
Deputy Attorney General

SLD:mfe

^{2/} On February 23, 1981, the Supreme Court granted review of two cases concerning statutory limitations on campaign contributions. In one of these cases, Citizens Against Rent Control v. City of Berkeley, 27 Cal.3d 819, 614 P.2d 742, 167 Cal. Rptr. 84 (1980), the California Supreme Court upheld the constitutionality of a municipal ordinance which limits to \$250 the maximum contribution to committees formed to support or oppose local ballot measures. Decisions in these cases may help to clarify the law with respect to limitations on campaign contributions.