

NLWJC - Kagan

Counsel - Box 033 - Folder 008

Campaign Finance [Folder 2][1]

THE WHITE HOUSE
WASHINGTON

DATE: 12/18/96

TO: *Wendy*

FROM: *Elena*
White House Counsel
Room 125, OEOB, x6-7901

- FYI
- Appropriate Action
- Let's Discuss
- Per Our Conversation
- Per Your Request
- Please Return
- Other

Party and coordination language – December 17 Draft

Section 301(9)(A)(2 U.S.C. 431(9)(A)) is amended by adding new paragraph (iii) as follows:

(9)(A) The term “expenditure” includes –

(iii) any communication that is made by a national, state, district or local committee of a political party, including any congressional campaign committee of a party, that refers to a clearly identified candidate for federal office.

Section 301(8)(A) (2 U.S.C. 431(8)(A)) is amended by adding new paragraphs (iii) and (iv) as follows:

(8)(A) The term “contribution” includes --

(iii) (aa) any [payment] made for a communication or anything of value that is made in coordination with a candidate. Payments made in coordination with a candidate include:

(1) payments made by any person in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to any [general or particular] understanding with a candidate, his authorized political committees, or their agents;

(2) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his authorized political committees, or their agents; or

(3) payments made based on information about the candidate’s plans, projects, or needs provided to the expending person by the candidate or the candidate’s agents;

(4) payments made by any person if, in the same election cycle, the person making the payment is or has been --

(I) authorized to raise or expend funds on behalf of the candidate or the candidate's authorized committees; or

(II) serving as a member, employee, or agent of the candidate's authorized committees in an executive or policymaking position.

(5) payments made by any person if the person making the payments has advised or counseled the candidate or the candidate's agents at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office.

(6) payments made by a person if the person making the payments retains the professional services of any individual or other person who has provided or is providing services in the same election cycle to the candidate in connection with the candidate's pursuit of nomination for election, or election, to Federal office, including any services relating to the candidate's decision to seek Federal office. For purposes of this clause, the term 'professional services' shall include any services (other than legal and accounting services solely for purposes of ensuring compliance with any Federal law) in support of any candidate's or candidates' pursuit of nomination for election, or election, to Federal office.

(bb). For purposes of this subparagraph, the person making the payment shall include any officer, director, employee or agent of such person, or any other entity established, financed or maintained by such person.

(cc). For purposes of this subparagraph, any coordination between a person and a candidate during an election cycle shall constitute coordination for the entire election cycle.

Section 315(a)(7) [2 U.S.C. 441a(a)(7)] is amended by revising paragraph (B) as follows:

(B) Expenditures made in coordination with a candidate, as described in section 301(8)(A)(iii), shall be considered to be contributions to such candidate and, in the case of limitations on expenditures, shall be treated as expenditures for purposes of this section.

Section 301 [2 U.S.C. 431] is amended by striking paragraph (17) and inserting the following:

(17) (A) The term "independent expenditure" means an expenditure that --

(i) contains express advocacy; and

(ii) is made without the participation or cooperation of, or without consultation of, or without coordination with a candidate or a candidate's representative, as defined in section 301(8)(A)(iii).

(B) Any expenditure or payment made in coordination with a candidate as defined in section 301(8)(A)(iii) is not an independent expenditure under paragraph (17).

Section 441a(d) is amended by adding new paragraphs as follows:

(4) Before a party committee may make coordinated expenditures in connection with a general election campaign for federal office in excess of \$5,000 pursuant to this subsection, it shall file with the Federal Election Commission a certification, signed by the treasurer, that it has not and will not make any independent expenditures in connection with that campaign for federal office. A party committee that determines to make coordinated expenditures pursuant to this subsection shall not make any transfers of funds in the same election cycle to, or receive any transfers of funds in the same election cycle from, any other party committee that determines to make independent expenditures in connection with the same campaign for federal office.

(5)(a) A political committee established and maintained by a national political party shall be considered to be in coordination with a candidate of that party if it has made any payment for a communication or anything of value in coordination with such candidate, as defined in section 301(8)(A)(iii), including but not limited to:

(i) it has made any coordinated expenditure pursuant to section 441a(d) on behalf of such candidate; or

(ii) it has made a contribution to, or made any transfer of funds to, such candidate;

or

(iii) it has participated in joint fundraising with such candidate, or in any way has solicited or received contributions on behalf of such candidate; or

(iv) it has provided in-kind services, polling data or anything of value to such candidate, or has communicated with such candidate or his agents, including pollsters, media consultants, vendors or other advisors, about advertising, message, allocation of resources, fundraising or other campaign related matters including campaign operations, staffing, tactics or strategy.

(b) For purposes of this subsection, all political committees established and maintained by a political party, including all national, state, district and local committees of that political party, and all congressional campaign committees, shall be considered to be a single political committee.

(c) For purposes of this subsection, any coordination during an election cycle between a political committee established and maintained by a political party and a candidate of that party shall constitute coordination during the entire election cycle.

Draft “express advocacy” language -- December 17

(A) Express Advocacy. The term “express advocacy” means:

(1) any communication that conveys a message that advocates the election or defeat of a clearly identified candidate for federal office by using expressions such as “vote for,” “elect,” “support,” “vote against,” “defeat,” “reject,” “vote pro-life” or “vote pro-choice” accompanied by a listing or picture of clearly identified candidates described as “pro-life” or “pro-choice”, “reject the incumbent,” or similar expressions, or

(2) any communication or series of communications that is made through any broadcasting station, newspaper, magazine, outdoor advertising facility or any other type of general public communication or political advertising, that involves an aggregate disbursement of \$10,000 or more, that refers to a clearly identified candidate for federal office, and that can be reasonably understood as conveying a message which advocates the election or defeat of such candidate, provided such communication or series of communications:

(a) is made within 30 days prior to a primary election or 60 days prior to a general election; or

(b) is made for the purpose of advocating the election or defeat of such candidate, as shown by one or more [objective] factors such as statements or actions by the person making the communication, or the targeting or placement of the communication, or the use by the person making the communication of polling, demographic or other similar data relating to the candidate’s campaign or election, or

(3) any communication that is made in coordination with a candidate, as defined in section 301(8)(A).

(B) Voting Records. The term “express advocacy” does not include the publication and distribution of a communication that is limited solely to providing information about votes by elected officials on legislative matters, that cannot be reasonably understood as conveying a message which advocates the election or defeat of a candidate, and that is not prepared or distributed in coordination with, or pursuant to any general or particular understanding with, a candidate as described in section 301(8)(A)(iii).

Party and coordination language – December 17 Draft

Section 301(9)(A)(2 U.S.C. 431(9)(A)) is amended by adding new paragraph (iii) as follows:

(9)(A) The term “expenditure” includes –

(iii) any communication that is made by a national, state, district or local committee of a political party, including any congressional campaign committee of a party, that refers to a clearly identified candidate for federal office.

Section 301(8)(A) (2 U.S.C. 431(8)(A)) is amended by adding new paragraphs (iii) and (iv) as follows:

(8)(A) The term “contribution” includes --

(iii) (aa) any [payment] made for a communication or anything of value that is made in coordination with a candidate. Payments made in coordination with a candidate include:

(1) payments made by any person in cooperation, consultation, or concert with, at the request or suggestion of, or pursuant to any [general or particular] understanding with a candidate, his authorized political committees, or their agents;

(2) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his authorized political committees, or their agents; or

(3) payments made based on information about the candidate’s plans, projects, or needs provided to the expending person by the candidate or the candidate’s agents;

(4) payments made by any person if, in the same election cycle, the person making the payment is or has been --

need to define payment

(I) authorized to raise or expend funds on behalf of the candidate or the candidate's authorized committees; or

(II) serving as a member, employee, or agent of the candidate's authorized committees in an executive or policymaking position.

(5) payments made by any person if the person making the payments has advised or counseled the candidate or the candidate's agents at any time on the candidate's plans, projects, or needs relating to the candidate's pursuit of nomination for election, or election, to Federal office, in the same election cycle, including any advice relating to the candidate's decision to seek Federal office.

(6) payments made by a person if the person making the payments retains the professional services of any individual or other person who has provided or is providing services in the same election cycle to the candidate in connection with the candidate's pursuit of nomination for election, or election, to Federal office, including any services relating to the candidate's decision to seek Federal office. For purposes of this clause, the term 'professional services' shall include any services (other than legal and accounting services solely for purposes of ensuring compliance with any Federal law) in support of any candidate's or candidates' pursuit of nomination for election, or election, to Federal office.

(bb). For purposes of this subparagraph, the person making the payment shall include any officer, director, employee or agent of such person, or any other entity established, financed or maintained by such person.

(cc). For purposes of this subparagraph, any coordination between a person and a candidate during an election cycle shall constitute coordination for the entire election cycle.

Section 315(a)(7) [2 U.S.C. 441a(a)(7)] is amended by revising paragraph (B) as follows:

(B) Expenditures made in coordination with a candidate, as described in section 301(8)(A)(iii), shall be considered to be contributions to such candidate and, in the case of limitations on expenditures, shall be treated as expenditures for purposes of this section.

Section 301 [2 U.S.C. 431) is amended by striking paragraph (17) and inserting the following:

(17) (A) The term "independent expenditure" means an expenditure that --

(i) contains express advocacy; and

(ii) is made without the participation or cooperation of, or without consultation of, or without coordination with a candidate or a candidate's representative, as defined in section 301(8)(A)(iii).

(B) Any expenditure or payment made in coordination with a candidate as defined in section 301(8)(A)(iii) is not an independent expenditure under paragraph (17).

Section 441a(d) is amended by adding new paragraphs as follows:

(4) Before a party committee may make coordinated expenditures in connection with a general election campaign for federal office in excess of \$5,000 pursuant to this subsection, it shall file with the Federal Election Commission a certification, signed by the treasurer, that it has not and will not make any independent expenditures in connection with that campaign for federal office. A party committee that determines to make coordinated expenditures pursuant to this subsection shall not make any transfers of funds in the same election cycle to, or receive any transfers of funds in the same election cycle from, any other party committee that determines to make independent expenditures in connection with the same campaign for federal office.

(5)(a) A political committee established and maintained by a national political party shall be considered to be in coordination with a candidate of that party if it has made any payment for a communication or anything of value in coordination with such candidate, as defined in section 301(8)(A)(iii), including but not limited to:

(i) it has made any coordinated expenditure pursuant to section 441a(d) on behalf of such candidate; or

(ii) it has made a contribution to, or made any transfer of funds to, such candidate;

or

(iii) it has participated in joint fundraising with such candidate, or in any way has solicited or received contributions on behalf of such candidate; or

(iv) it has provided in-kind services, polling data or anything of value to such candidate, or has communicated with such candidate or his agents, including pollsters, media consultants, vendors or other advisors, about advertising, message, allocation of resources, fundraising or other campaign related matters including campaign operations, staffing, tactics or strategy.

(b) For purposes of this subsection, all political committees established and maintained by a political party, including all national, state, district and local committees of that political party, and all congressional campaign committees, shall be considered to be a single political committee.

(c) For purposes of this subsection, any coordination during an election cycle between a political committee established and maintained by a political party and a candidate of that party shall constitute coordination during the entire election cycle.

12/19

Express advocacy

Can do more to regulate than to prohibit

Regulate

30-60 day scheme could be used for disclosure
get rid of "reasonable person" standard for disclosure
purpose

Prohibit

If for the purpose of influencing election

Draft "express advocacy" language -- December 10

(A) Express Advocacy. The term "express advocacy" means:

(1) any communication that conveys a message that advocates the election or defeat of a clearly identified candidate for federal office by using expressions such as "vote for," "elect," "support," "vote against," "defeat," "reject," "vote pro-life" or "vote pro-choice" accompanied by a listing or picture of clearly identified candidates described as "pro-life" or "pro-choice," "reject the incumbent," or similar expressions, or

try to do it generic since not particularly coming this way.

(2) any communication or series of communications that is made through any broadcasting station, newspaper, magazine, outdoor advertising facility or any other type of general public communication or political advertising, that involves an aggregate disbursement of \$10,000 or more, that refers to a clearly identified candidate for federal office, and that can be reasonably understood as conveying a message which advocates the election or defeat of such candidate, provided such communication or series of communications:

(a) is made within 30 days prior to a primary election or 60 days prior to a general election; or

(b) is made for the purpose of advocating the election or defeat of such candidate, as shown by one or more factors such as statements or actions by the person making the communication, or the targeting or placement of the communication, or the use by the person making the communication of polling, demographic or other similar data relating to the candidate's campaign or election, or

(3) any communication that is made in coordination with a candidate, as defined in section ____.

(B) Voting Records. The term "express advocacy" does not include the publication and distribution of a communication that is limited solely to providing information about votes by elected officials on legislative matters, that cannot be reasonably understood as conveying a message which advocates the election or defeat of a candidate, and that is not prepared or distributed in coordination with, or pursuant to any general or particular understanding with, a candidate as described in section 301(8)(A)(iii).

What Can Be Done Now

- ◆ Require disclosure of express advocacy expenditures
- ◆ Prohibit corporations and unions from expending general treasury funds for express advocacy
- ◆ Place limits on coordinated expenditures
- ◆ Place overall limit on individual campaign-related giving

What Cannot Be Done Now

- ◆ Limit "truly" independent expenditures
- ◆ Regulate issue advocacy

What We Want to Do

- ◆ Widen the boundaries of the "can do" categories to the maximum extent possible
- ◆ Challenge the assumptions that have produced the "cannot be done" categories

Tools

- ◆ Required analysis is compelling state interest/narrowly tailored means
- ◆ Buckley recognizes compelling interests in
 - preventing corruption and its appearance in the electoral process
 - providing voter information regarding support for a candidate
- ◆ Austin et. al. recognize compelling interest in
 - preventing the distorting and corrosive effect of accumulations of wealth in the state-created corporate form on the electoral process
- ◆ Possible additional compelling interests
 - understanding "access" to be an element of quid pro quo corruption
 - preventing corruption and its appearance in the legislative process (time spent fund raising, giving ear to monied interests, creating perception of process out of touch)

Common Cause Mtg -

1. Benefits of buying into system

1. Break on TV ads. [50% below lowest unit rate]
2. Full tab for non-compliant
3. Free mailing [McCain Feingold - reduced price]
4. Right to purchase ad adjacent to incl corp ad
5. Free time to political party - may only be spent on behalf of postprimary candidates

OLC

Express advocacy

Buckley magic words can't be all there is

1st + 4th Cir. Cases - less expansive [Maine case + other case]

9th Cir Case (Carter case) - more expansive

30/60 days

McCain - Feingold

Provisions focused on

1. Soft money - eliminate
2. limits on amt of state contributions

OLC Memo?

Constitutional ~~issues~~ questions?

3. Bundling [Emily's list]
Subj. to contribution limits

4. PAC Bans

Unconstitutional

Fall back

- * 5. Non-candidate expenditures

can't just limit expenditures (individual)
can limit controls

Coordinate expenditures - subj to contrib limits

A How do you define ind / coord exp if respect to parties
Colorado case

B. Express advocacy & issue advocacy

Unions & corps can't engage in express
advocacy

Disclosure req apply to ~~issues~~ express advocacy
only

Redefine these by statute

Buckley

1986

Supreme Court

December 13, 1996

MEMORANDUM FOR THE PRESIDENT

**FROM: JOHN HILLEY
PETER JACOBY
JIM WEBER**

SUBJECT: CAMPAIGN FINANCE REFORM

As part of a strategy to make campaign finance reform a reality, we have met with key Democratic Members of Congress, labor representatives, party representatives and a core negotiating group from the outside reformers during the past several weeks.

From these meetings it has become clear that seven key issues must be addressed before a Congressional and reform group consensus can be reached on legislation that we could recommend for your support. These issues include: 1) limiting party independent expenditures; 2) curbing spending on issue advocacy; 3) banning "soft" money; 4) contribution limits for individual PACs; 5) in-state and in-district fundraising proposals; 6) proposals to codify the Supreme Court's decision in Communications Workers of America v. Beck, and; 7) restrictions on campaign contributions by non-citizens. In preparation for a meeting with you early next week, please find below the background information on these key issues and a brief summary of our progress toward the resolution of each.

Limiting Party Independent Expenditures

Two issues have emerged as key to successfully passing campaign finance reform. The first is limiting the ability of state and national parties to make independent expenditures on behalf of their candidates for federal office. The second, discussed below, is limiting the ability of parties and outside groups to impact federal races through issue advocacy activities. Both issues are central to a fundamental concern for all Members of Congress -- the inability to accurately predict, and effectively respond to campaign spending by forces other than the political opponent. Without a way to limit, or at least anticipate, the amount of spending by outside groups and the opponent's party, Members are reluctant to adopt a spending limits regime (such as would be imposed by McCain-Feingold) that curbs their ability to respond to such spending.

This past June in Colorado Republican Federal Campaign Committee v. Federal Election Commission, the Supreme Court held that political parties may make independent expenditures on behalf of their candidates as long as those

expenditures are not made in coordination with the candidate. The decision overturned an FEC rule which had held that party activities by their nature were coordinated with candidates and therefore could be constitutionally limited under the Federal Election Campaign Act (FECA). The fallout from this ruling was felt almost immediately during the November elections. In several key races the Republican Senatorial Campaign Committee made large independent expenditures which greatly exceeded the contribution limits that would have been applicable if the FEC's coordinated expenditures standard had remained in place. Additionally, because these were independent expenditures under FECA they could expressly advocate the election or defeat of a clearly identifiable candidate. Finally, because FECA requires that independent expenditures be made with "hard" money (i.e. money raised and disclosed under FECA's contribution limits for individuals, PACs and parties) Democratic party officials were unable to respond in kind given the party's relative "hard" money disadvantage.

Consequently one goal of reform legislation, shared by the FEC, reformers and Democrats alike, is to broaden the definition of party coordination to limit the ability of parties to undertake independent expenditures. Legislative language to achieve this goal is currently being drafted.

Curbing Issues Advocacy Spending

As noted, Members of Congress, on both sides of the aisle, have become concerned about the impact of spending by third parties on their races. This concern is especially acute with respect to issue advocacy spending. In Buckley v. Valeo, the Supreme Court's 1976 landmark campaign finance decision, the Court held that the only independent expenditures that could be disclosed and regulated under FECA were those used for communications that "expressly advocate the election or defeat of a clearly identified candidate." (This definition has since been codified in FECA) In a footnote in Buckley the Court gave examples of words of express advocacy, including "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat" and "reject." The Court created this narrow definition to draw a clear distinction between "issue discussion" or issue advocacy which has strong First Amendment protections, and the candidate-oriented speech which is the focus of campaign finance laws.

Since 1976, Federal courts have generally held that unless the magic Buckley words are used in a political advertisement or activity, that activity is issue advocacy and therefore cannot be regulated under FECA. Consequently independent groups such as labor unions, the NRA, the Moral Majority, the Christian Coalition and others may use unlimited contributions from wealthy individuals, corporate treasuries or dues-paying members to fund issue advocacy campaigns during an election cycle. Perhaps the most publicized campaign of this nature was the \$35 million media campaign by the AFL-CIO earlier this year to

highlight the anti-family positions taken by Congressional Republicans. None of the union ads expressly advocated the election or defeat of these Members and were therefore issue ads outside the scope of FECA. Additionally, national and state party organizations may also run issue advocacy campaigns paid for by "soft" money contributions which, as discussed in more detail below, are by definition unlimited contributions from corporations, unions or individuals.

Reformers, Congressional Democrats, the FEC and reform-minded Republicans have all indicated a desire to expand the definition of express advocacy to include both the magic words test and a new test that would include campaign activities that, when taken as a whole, could only be interpreted by a reasonable person as advocating the election or defeat of a clearly identified candidate. This would have the effect of bringing a broader range of issue advocacy activities under FECA, thereby limiting the impact of unlimited donations on elections. We are currently reviewing legislative language that purports to achieve this goal.

Banning "Soft" Money

Every credible campaign finance reform initiative during the past several Congresses has contained provisions to ban "soft" money. Soft money is a term used for funds that are raised by state and national parties for party building activities, GOTV efforts, state elections and voter registration drives. Because soft money cannot be spent to directly benefit a federal candidate, it is unregulated by FECA and therefore is not subject to the Act's contribution limits or disclosure requirements. This allows parties to raise soft money in unlimited amounts directly from unions, corporate treasuries and wealthy individuals. Past reform efforts have generally sought to ban national parties from raising and spending soft money while strictly limiting state soft money spending to activities that would not influence a federal campaign.

Events during the November elections have renewed the interest of reformers in banning soft money while causing Democratic party leaders to rethink their past support of ban initiatives. The reformers' renewed zeal stems from the unprecedented levels of soft money raised and spent during this past cycle. Party leaders, however, argue that soft money, which was used extensively by the party to fund issue advocacy campaigns in competitive races, helped Democrats win in many races. Consequently, a resolution of this issue will hinge on an acceptable compromise which provides parties with some sort of new benefit, such as free television time or reduced mailing costs, to offset the loss of soft money resources.

We are currently reviewing legislative language banning soft money and have asked the Democratic leadership for their input on potential offsetting benefits.

Contribution Limits for Individual PACs

Campaign finance reform efforts in the past, including last year's McCain-Feingold bipartisan campaign finance reform bill, have generally proposed to eliminate all PACs from federal election campaigns. It appears, however, that Senators McCain and Feingold will concede that a PAC ban is unconstitutional and delete the ban from their reform proposal in the new Congress. Instead, the Senators' new proposal, which should be introduced on the first day of the new session, will likely lower the contribution limits for individual PACs giving to a federal candidate from the current \$5,000 per election (\$10,000 per cycle) to \$1,000 per election (\$2,000 per cycle).

Deletion of the PAC ban is favored by both Congressional Democrats and Republicans. However, in the House, where Members raise a high percentage of their contributions from PACs, House Democrats and Republicans will likely oppose the new \$1,000 contribution limit and insist on a significantly higher limit. The House Democratic leadership bill during the last Congress included a \$4,000 per election (\$8,000 per cycle) limit while the House Republican leadership bill lowered the current level to \$2,500 per year. Early indications from House Democrats are that they may accept a \$6,000 per cycle limit, if a contributing PAC is allowed to give up to \$5,000 in a primary election. In the Senate, individual PAC limits have been less controversial since many Senators raise the bulk of their contributions from individuals.

The outside reform groups may accept the deletion of the PAC ban from the McCain-Feingold legislation. It is unclear whether they will endorse a PAC limit higher than the \$1,000 per election level being contemplated by Senators McCain and Feingold. Because we believe that House passage of any campaign finance reform bill will hinge on preserving a substantial portion of the current individual PAC contribution level, we have urged the outside groups to support and ultimately persuade Senators McCain and Feingold to raise their proposed contribution limit.

In the past, you have endorsed legislation banning PACs. If the McCain-Feingold legislation does not contain a ban, it is our recommendation that you endorse a reduction in the current \$5,000 per election contribution level for individual PACs. We are researching the impact of each likely reduction to determine exactly what the new limit should be.

In-State and In-District Fundraising

The McCain-Feingold reform legislation from last Congress required a candidate to raise sixty percent of campaign funds in-state to qualify for the legislation's benefits, such as free television time. The measure also contained, however, a provision for small states which would allow the sixty percent threshold to be met by showing that sixty percent of a candidate's campaign *contributors*

resided in-state. While McCain-Feingold applied the in-state provision exclusively to Senate races, House Democrats greatly fear any reform that would require them to raise a majority of their funds either in-state or in-district. For their part, the outside reform groups do not place either in-state or in-district requirements high on their agenda. Consequently, we have asked House Democrats to consider whether an in-state requirement that can be met by showing that either sixty percent of contributions were raised in-state or sixty percent of contributors resided in-state would be acceptable.

Codifying the Supreme Court's Beck Decision

In 1988 the Supreme Court decided a landmark labor law case involving the limits on organized labor's ability to compel individual employee membership, and the rights of individual employees to limit a union's use of membership fees and dues. In Communication Workers of America v. Beck the Court held that a union may not, over the objections of *dues-paying nonmember employees*, expend funds collected from them on activities unrelated to collective bargaining activities. As a result of this decision, dues-paying nonmembers may demand a pro-rated return of union dues and fees earmarked for political activity.

Since 1988, Congressional Republicans have pursued efforts to codify the Beck decision. In doing so, however, Republicans have proposed extremely broad interpretations of the Supreme Court's decision, effectively seeking to gut organized labor's participation in the national electoral debate and disable internal union to member communications. The AFL-CIO and its affiliates oppose "codification" of Beck. Congressional Democrats seem, ironically, less energized. Many Hill Democrats appear willing to consider enacting a narrow codification.

Republicans are certain to press Beck issues in the upcoming congressional debate on campaign reform. While Senate Democrats may well filibuster unreasonable Beck provisions, the possibility exists that Republicans may be able to force through unacceptable Beck provisions which they would trumpet as "reform." Such a scenario could result in the choice of either signing a distinctly anti-labor bill or risk being attacked as opposed to reform.

As a result, we may consider whether to pre-empt the Republicans on Beck by including a narrow "codification" as a part of bipartisan reform legislation.

Prohibiting Non-Citizens from Contributing to Federal Campaigns

During the closing weeks of the campaign you publicly stated your support for banning federal campaign contributions from those who cannot vote. Banning non-citizen individuals from federal campaign giving is relatively easy to implement and it has widespread support on both sides of the Hill and on both sides of the

aisle. A more difficult question, both from a political perspective and as an implementation issue, is whether such a ban should apply to corporate PAC donations by the U.S. subsidiaries of foreign corporations.

Such a ban will be strongly opposed by companies with U.S. subsidiaries who will fear a diminution in their ability to petition the federal government. Additionally, determining which company is beneficially owned by a foreign interest could prove difficult as a matter of law and enforcement.

We are currently reviewing legislative language which purports to ban federal campaign contributions from both individuals and all foreign-owned entities.

cc: Vice President Gore
Leon Panetta
Erskine Bowles
Harold Ickes

*Expenditure limits of 608 not
unconstitutionally vague
if express advocacy is
not overbroad.*

46 L Ed 2d

Roy, petitioner, v

658, 96 S Ct 808.

ion for rehearing
s took no part in
n of this petition.

1022, 46 L Ed 2d

ffith, petitioner, v

658, 96 S Ct 808.

on for leave to file
ed. Mr. Justice Ste
e consideration or

3 926, 46 L Ed 2d

ton, applicant, v

658, 96 S Ct 1090.

ation for recall and
ted States Court of
ircuit, presented to
y him referred to
ice Stevens took no
or decision of this

[424 US 1]

JAMES L. BUCKLEY, et al., Appellants,

v

FRANCIS R. VALEO, Secretary of the United States Senate, et al. (No. 75-436)

JAMES L. BUCKLEY, et al., Appellants,

v

FRANCIS R. VALEO, Secretary of the United States Senate, et al. (No. 75-437)

424 US 1, 46 L Ed 2d 659, 96 S Ct 612

[Nos. 75-436 and 75-437]

Argued November 10, 1975. Decided January 30, 1976.

SUMMARY

An action against the Federal Election Commission and various government officials was instituted in the United States District Court for the District of Columbia by various individuals and groups, including federal officeholders, candidates, and political organizations, challenging the constitutionality of certain provisions of the Federal Election Campaign Act of 1971 (generally 2 USCS §§ 431 et seq., 18 USCS §§ 591 et seq.) and the provisions of Subtitle H of the Internal Revenue Code of 1954 (26 USCS §§ 9001 et seq.) for public financing of Presidential election campaigns. The principal statutes involved—attacked primarily as violating First Amendment speech and association rights and Fifth Amendment equal protection principles—(a) limit political contributions by individuals or groups to any single candidate for a federal elective office to \$1,000 (18 USCS § 608(b)(1)), limit contributions to any such candidate by political committees to \$5,000 (18 USCS § 608(b)(2)), and impose a \$25,000 annual limitation on total contributions by any contributor (18 USCS § 608(b)(3)); (b) limit independent expenditures by an individual or group advocating the election or defeat of a clearly identified candidate for federal office to \$1,000 per year (18 USCS § 608(e)(1)), set limits, depending on the office involved, on expenditures by a candidate for federal office during any calendar year (18 USCS § 608(a)(1)),

Briefs of Counsel, p 989, infra.

on Total
y Calen-

000 limi-
contribu-
ay make
for any
tains an
on total
lual dur-
8(b)(3). A
onnection
ered, for
n, to be
action is

gh the constitutionality
ision was drawn into
appellants, it has not
ely addressed at length
es. The overall \$25,000
impose an ultimate re-
n the number of candi-
nmittees with which an
ay associate himself by
ancial support. But this
t restraint upon pro-
al activity serves to pre-

: candidate, or an agent of the
orized or requested" the ex-
§§ 608(c)(2)(B)(ii), (e)(1); S Rep
§ (1974); HR Rep No. 93-1239,
a result, only travel that is
requested" by the candidate or
d involve incidental expenses
inst the volunteer's contribu-
the candidate's expenditure
3, *infra*. Should a person inde-
l across the country to partici-
aign, any unreimbursed travel
not be treated as a contribu-
pretation is not only consistent
te and the legislative history
ssary to avoid the administra-
t would be produced if each
candidate had to keep track of
on unsolicited travel in order
n the Act's contribution and
ilings and the reporting and
isions. The distinction between
and expenditures is also dis-
infra, and in Part II-C-2, *infra*.

vent evasion of the \$1,000 contribu-
tion limitation by a person who
might otherwise contribute massive
amounts of money to a particular
candidate through the use of unear-
marked contributions to political
committees likely to contribute to
that candidate, or huge contribu-
tions to the candidate's political
party. The limited, additional re-
striction on associational freedom
imposed by the overall ceiling is
thus no more than a corollary of the
basic individual contribution limita-
tion that we have found to be consti-
tutionally valid.

[424 US 39]

C. Expenditure Limitations

The Act's expenditure ceilings im-
pose direct and substantial re-
straints on the quantity of political
speech. The most drastic of the limi-
tations restricts individuals and
groups, including political parties
that fail to place a candidate on the
ballot,⁴⁴ to an expenditure of \$1,000
"relative to a clearly identified can-
didate during a calendar year."
§ 608(e)(1). Other expenditure ceil-
ings limit spending by candidates,
§ 608(a), their campaigns, § 608(c),
and political parties in connection
with election campaigns, § 608(f). It
is clear that a primary effect of
these expenditure limitations is to

44. See n 19, *supra*.

45. The same broad definition of "person"
applicable to the contribution limitations gov-
erns the meaning of "person" in § 608(e)(1).
The statute provides some limited exceptions
through various exclusions from the other-
wise comprehensive definition of "expendi-
ture." See § 591(f). The most important exclu-
sions are: (1) "any news story, commentary, or
editorial distributed through the facilities of
any broadcasting station, newspaper, maga-
zine, or other periodical publication, unless
such facilities are owned or controlled by any
political party, political committee, or candi-

restrict the quantity of campaign
speech by individuals, groups, and
candidates. The restrictions, while
neutral as to the ideas expressed,
limit political expression "at the
core of our electoral process and of
the First Amendment freedoms."
Williams v Rhodes, 393 US 23, 32,
21 L Ed 2d 24, 89 S Ct 5, 45 Ohio
Ops 2d 236 (1968).

1. The \$1,000 Limitation on Expenditures "Relative to a Clearly Identified Candidate"

Section 608(e)(1) provides that
"[n]o person may make any expendi-
ture . . . relative to a clearly identi-
fied candidate during a calendar
year which, when added to all other
expenditures made by such person
during the year advocating the elec-
tion or defeat or such candidate,
exceeds \$1,000."⁴⁵ The plain effect of
§ 608(e)(1) is to

[424 US 40]

prohibit all individu-
als, who are neither candidates nor
owners of institutional press facili-
ties, and all groups, except political
parties and campaign organizations,
from voicing their views "relative to
a clearly identified candidate"
through means that entail aggregate
expenditures of more than \$1,000
during a calendar year. The provi-
sion, for example, would make it a

date," § 591(f)(4)(A), and (2) "any communica-
tion by any membership organization or cor-
poration to its members or stockholders, if
such membership organization or corporation
is not organized primarily for the purpose of
influencing the nomination for election, or
election, of any person to Federal office,"
§ 591(f)(4)(C). In addition, the Act sets substan-
tially higher limits for personal expenditures
by a candidate in connection with his own
campaign, § 608(a), expenditures by national
and state committees of political parties that
succeed in placing a candidate on the ballot,
§§ 591(i), 608(f), and total campaign expendi-
tures by candidates, § 608(c).

federal criminal offense for a person or association to place a single one-quarter page advertisement "relative to a clearly identified candidate" in a major metropolitan newspaper.⁴⁶

[19a, 20a] Before examining the interests advanced in support of § 608(e)(1)'s expenditure ceiling, consideration must be given to appellants' contention that the provision is unconstitutionally vague.⁴⁷ Close examination of the

[424 US 41]

specificity of the statutory limitation is required where, as here, the legislation imposes criminal penalties in an area permeated by First Amendment interests. See *Smith v Goguen*, 415 US 566, 573, 39 L Ed 2d 605, 94 S Ct 1242 (1974); *Cramp v Board of Public Instruction*, 368 US 278, 287-288, 7 L Ed 2d 285, 82 S Ct 275 (1961); *Smith v California*, 361 US 147, 151, 4 L Ed 2d 205, 80 S Ct 215, 14 Ohio Ops 2d 459 (1959).⁴⁸ The test is whether the language of § 608(e)(1) affords the "[p]recision of regulation

[that] must be the touchstone in an area so closely touching our most precious freedoms." *NAACP v Button*, 371 US, at 438, 9 L Ed 2d 405, 83 S Ct 328.

The key operative language of the provision limits "any expenditure . . . relative to a clearly identified candidate." Although "expenditure," "clearly identified," and "candidate" are defined in the Act, there is no definition clarifying what expenditures are "relative to" a candidate. The use of so indefinite a phrase as "relative to" a candidate fails to clearly mark the boundary between permissible and impermissible speech, unless other portions of § 608(e)(1) make sufficiently explicit the range of expenditures

[424 US 42]

covered by the limitation. The section prohibits "any expenditure . . . relative to a clearly identified candidate during a calendar year which, *when added to*

46. Section 608(i) provides that any person convicted of exceeding any of the contribution or expenditure limitations "shall be fined not more than \$25,000 or imprisoned not more than one year, or both."

47. Several of the parties have suggested that problems of ambiguity regarding the application of § 608(e)(1) to specific campaign speech could be handled by requesting advisory opinions from the Commission. While a comprehensive series of advisory opinions or a rule delineating what expenditures are "relative to a clearly identified candidate" might alleviate the provision's vagueness problems, reliance on the Commission is unacceptable because the vast majority of individuals and groups subject to criminal sanctions for violating § 608(e)(1) do not have a right to obtain an advisory opinion from the Commission. See 2 USC § 437f (1970 ed Supp IV) [2 USCS § 437f]. Section 437f(a) of Title 2 [2 USCS § 437f(a)] accords only candidates, federal officeholders, and political committees the right to request advisory opinions and directs that the Commission "shall render an advisory opinion, in writing, within a reasonable time" concerning

specific planned activities or transactions of any such individual or committee. The powers delegated to the Commission thus do not assure that the vagueness concerns will be remedied prior to the chilling of political discussion by individuals and groups in this or future election years.

48. [20b] In such circumstances, vague laws may not only "trap the innocent by not providing fair warning" or foster "arbitrary and discriminatory application" but also operate to inhibit protected expression by inducing "citizens to 'steer far wider of the unlawful zone' . . . than if the boundaries of the forbidden areas were clearly marked." *Grayned v City of Rockford*, 408 US 104, 108-109, 33 L Ed 2d 222, 92 S Ct 2294 (1972), quoting *Baggett v Bullitt*, 377 US 360, 372, 12 L Ed 2d 377, 84 S Ct 1316 (1964), quoting *Speiser v Randall*, 357 US 513, 526, 2 L Ed 2d 1460, 78 S Ct 1332 (1958). "Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *NAACP v Button*, 371 US 415, 433 9 L Ed 2d 405, 83 S Ct 328 (1963).

the touchstone in an
touching our most
s." NAACP v But-
38, 9 L Ed 2d 405,

ive language of the
"any expenditure
a clearly identified
ough "expenditure,"
l," and "candidate"
e Act, there is no
ing what expendi-
ve to" a candidate.
definite a phrase as
candidate fails to
boundary between
and impermissible
other portions of
sufficiently explicit
nditures
US 42]

covered by
he section prohibits
... relative to a
candidate during a
rich, when added to

vities or transactions of
r committee. The powers
mission thus do not as-
ess concerns will be rem-
illing of political discus-
and groups in this or

h circumstances, vague
trap the innocent by not
ng" or foster "arbitrary
pplication" but also oper-
ted expression by induc-
far wider of the unlaw-
if the boundaries of the
vere clearly marked."
ckford, 408 US 104, 108-
2, 92 S Ct 2294 (1972),
illitt, 377 US 360, 372, 12
Ct 1316 (1964), quoting
7 US 513, 526, 2 L Ed 2d
2 (1958). "Because First
s need breathing space to
may regulate in the area
ecificity." NAACP v But-
3 9 L Ed 2d 405, 83 S Ct

BUCKLEY v VALEO

424 US 1, 46 L Ed 2d 659, 96 S Ct 612

all other expenditures . . . advocat-
ing the election or defeat of such
candidate, exceeds \$1,000." (Empha-
sis added.) This context clearly per-
mits, if indeed it does not require,
the phrase "relative to" a candidate
to be read to mean "advocating the
election or defeat of" a candidate.⁴⁹

But while such a construction of
§ 608(e)(1) refocuses the vagueness
question, the Court of Appeals was
mistaken in thinking that this con-
struction eliminates the problem of
unconstitutional vagueness alto-
gether. — US App DC, at —,
519 F2d, 853. For the distinction
between discussion of issues and can-
didates and advocacy of election or
defeat of candidates may often dis-
solve in practical application. Candi-
dates, especially incumbents, are im-
timately tied to public issues involv-
ing legislative proposals and govern-
mental actions. Not only do candi-
dates campaign on the basis of their
positions on various public issues,
but campaigns themselves generate
issues of public interest.⁵⁰ In an anal-
ogous

[424 US 43]

context, this Court in *Thomas v Col-
lins*, 323 US 516, 89 L Ed 430, 65 S
Ct 315 (1945), observed:

"[W]hether words intended and
designed to fall short of invitation
would miss that mark is a ques-
tion both of intent and of effect.

49. This interpretation of "relative to" a
clearly identified candidate is supported by
the discussion of § 608(e)(1) in the Senate
Report, S Rep No. 93-689, p 19 (1974), the
House Report, HR Rep No. 93-1239, p 7
(1974), the Conference Report, S Conf Rep No.
93-1237, pp 56-57 (1974), and the opinion of
the Court of Appeals, — US App DC, at
—, 519 F2d, at 852-853.

50. In connection with another provision
containing the same advocacy language ap-

No speaker, in such circum-
stances, safely could assume that
anything he might say upon the
general subject would not be un-
derstood by some as an invitation.
In short, the supposedly clear-cut
distinction between discussion,
laudation, general advocacy, and
solicitation puts the speaker in
these circumstances wholly at the
mercy of the varied understanding
of his hearers and consequently of
whatever inference may be drawn
as to his intent and meaning.

"Such a distinction offers no se-
curity for free discussion. In these
conditions it blankets with uncer-
tainty whatever may be said. It
compels the speaker to hedge and
trim." *Id.*, at 535, 89 L Ed 430, 65
S Ct 315.

See also *United States v Auto Work-
ers*, 352 US 567, 595-596, 1 L Ed 2d
563, 77 S Ct 529 (1957) (Douglas, J.,
dissenting); *Gitlow v New York*, 268
US 652, 673, 69 L Ed 1138, 45 S Ct
625 (1925) (Holmes, J., dissenting).

[19b] The constitutional deficien-
cies described in *Thomas v Collins*
can be avoided only by reading
§ 608(e)(1) as limited to communica-
tions that include explicit words of
advocacy of election or defeat of a
candidate, much as the definition of
"clearly identified" in § 608(e)(2) re-
quires that an explicit and unambi-
guous reference to the candidate ap-

pearing in § 608(e)(1), the Court of Appeals
concluded:

"Public discussion of public issues which also
are campaign issues readily and often un-
avoidably draws in candidates and their posi-
tions, their voting records and other official
conduct. Discussions of those issues, and as
well more positive efforts to influence public
opinion on them, tend naturally and inexor-
ably to exert some influence on voting at
elections." — US App DC, at —, 519 F2d,
at 875.

pear as part of the communication.⁵¹
This

[424 US 44]

is the reading of the provision suggested by the nongovernmental appellees in arguing that "[f]unds spent to propagate one's views on issues without expressly calling for a candidate's election or defeat are thus not covered." We agree that in order to preserve the provision against invalidation on vagueness grounds, § 608(e)(1) must be construed to apply only to expenditures for communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office.⁵²

[21a] We turn then to the basic First Amendment question—whether § 608(e)(1), even as thus narrowly and explicitly construed, impermissibly burdens the constitutional right of free expression. The Court of Appeals summarily held the provision constitutionally valid on the ground that "section 608(e) is a loophole-closing provision only" that is necessary to prevent circumvention of the contribution limitations. — US App DC, at —, 519 F2d, at 853. We cannot agree.

The discussion in Part I-A, *supra*, explains why the Act's expenditure limitations impose far greater restraints on the freedom of speech and association than do its contribution limitations. The markedly greater burden on basic freedoms caused by § 608(e)(1) thus cannot be

sustained simply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitations. Rather, the constitutionality of § 608(e)(1) turns on whether the governmental interests advanced in its support satisfy the exacting scrutiny applicable to limitations

[424 US 45]

on core First Amendment rights of political expression.

We find that the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify § 608(e)(1)'s ceiling on independent expenditures. First, assuming, *arguendo*, that large independent expenditures pose the same dangers of actual or apparent quid pro quo arrangements as do large contributions, § 608(e)(1) does not provide an answer that sufficiently relates to the elimination of those dangers. Unlike the contribution limitations' total ban on the giving of large amounts of money to candidates, § 608(e)(1) prevents only some large expenditures. So long as persons and groups eschew expenditures that in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views. The exacting interpretation of the statutory language necessary to avoid unconstitutional vagueness thus undermines the limitation's effectiveness as a loophole-closing provision by facilitating circumvention

*
51. Section 608(e)(2) defines "clearly identified" to require that the candidate's name, photograph or drawing, or other unambiguous reference to his identity appear as part of the communication. Such other unambiguous reference would include use of the candidate's initials (e.g., FDR), the candidate's nickname (e.g., Ike), his office (e.g., the President or the Governor of Iowa), or his status as a candidate (e.g., the Democratic Presidential nomi-

nee, the senatorial candidate of the Republican Party of Georgia).

52. This construction would restrict the application of § 608(e)(1) to communications containing express words of advocacy of election or defeat, such as "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," "reject."

making the effective-contribution-constitutions on interests satisfy the e to limi-

endment 1.

environmental corruption-uption is 608(e)(1)'s expenditures. That large pose the apparent ts as do (X1) does at suffi-nation of contribu-on the money to nts only) long as expendi-advocate a clearly e free to t to pro-is views. 1 of the sary to agueness tion's ef-sing pro-nvention

e Republi-

strict the unications cy of elec- "elect," Smith for "reject."

by those seeking to exert improper influence upon a candidate or officeholder. It would naively underestimate the ingenuity and resourcefulness of persons and groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted the restriction on express advocacy of election or defeat but nevertheless benefited the candidate's campaign. Yet no substantial societal interest would be served by a loophole-closing provision designed to check corruption that permitted unscrupulous persons and organizations to expend unlimited sums of money in order to obtain improper influence over candidates for elective office. Cf. *Mills v Alabama*, 384 US, at 220, 16 L Ed 2d 484, 86 S Ct 1434.

[22a] Second, quite apart from the shortcomings of § 608(e)(1) [424 US 46]

in preventing any abuses generated by

large independent expenditures, the independent advocacy restricted by the provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions. The parties defending § 608(e)(1) contend that it is necessary to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of paying directly for media advertisements or for other portions of the candidate's campaign activities. They argue that expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. Yet such controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act.⁵³ Section 608(b)'s [424 US 47]

contribution ceilings rather

53. [22b] Section 608(e)(1) does not apply to expenditures "on behalf of a candidate within the meaning of" § 608(c)(2)(B). The latter subsection provides that expenditures "authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate" are to be treated as expenditures of the candidate and contributions by the person or group making the expenditure. The House and Senate Reports provide guidance in differentiating individual expenditures that are contributions and candidate expenditures under § 608(c)(2)(B) from those treated as independent expenditures subject to the § 608(e)(1) ceiling. The House Report speaks of independent expenditures as costs "incurred without the request or consent of a candidate or his agent." HR Rep No. 93-1239, p 6 (1974). The Senate Report addresses the issue in greater detail. It provides an example illustrating the distinction between "authorized or requested" expenditures excluded from § 608(e)(1) and independent expenditures governed by § 608(e)(1):

"[A] person might purchase billboard advertisements endorsing a candidate. If he does so completely on his own, and not at the request or suggestion of the candidate or his agent's

[sic] that would constitute an 'independent expenditure on behalf of a candidate' under section 614(c) of the bill. The person making the expenditure would have to report it as such.

"However, if the advertisement was placed in cooperation with the candidate's campaign organization, then the amount would constitute a gift by the supporter and an expenditure by the candidate—just as if there had been a direct contribution enabling the candidate to place the advertisement, himself. It would be so reported by both." S Rep No. 93-689, p 18 (1974).

The Conference substitute adopted the provision of the Senate bill dealing with expenditures by any person "authorized or requested" to make an expenditure by the candidate or his agents. S Conf Rep No. 93-1237, p 55 (1974). In view of this legislative history and the purposes of the Act, we find that the "authorized or requested" standard of the Act operates to treat all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate as contributions subject to the limitations set forth in § 608(b).

than § 608(e)(1)'s independent expenditure limitation prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions. By contrast, § 608(e)(1) limits expenditures for express advocacy of candidates made totally independently of the candidate and his campaign. Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate. Rather than preventing circumvention of the contribution limitations, § 608(e)(1) severely restricts all independent advocacy despite its substantially diminished potential for abuse.

[23] While the independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming

[424 US 48]

the reality or appearance of corruption in the electoral process, it heavily burdens core

First Amendment expression. For the First Amendment right to "speak one's mind . . . on all public institutions" includes the right to engage in "'vigorous advocacy' no less than 'abstract discussion.'" *New York Times Co. v Sullivan*, 376 US, at 269, 11 L Ed 2d 686, 84 S Ct 710, 95 ALR2d 1412, quoting *Bridges v California*, 314 US 252, 270, 86 L Ed 192, 62 S Ct 190, 159 ALR 1346 (1941), and *NAACP v Button*, 371 US, at 429, 9 L Ed 2d 405, 83 S Ct 328. Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation.⁵⁴

[24, 25] It is argued, however, that the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections serves to justify the limitation on express advocacy of the election or defeat of candidates imposed by § 608(e)(1)'s expenditure ceiling. But the concept that government may restrict the speech of some elements of our society in

[424 US 49]

order to enhance the relative voice of others is wholly foreign to the First Amendment, which was

54. Appellees mistakenly rely on this Court's decision in *CSC v Letter Carriers*, as supporting § 608(e)(1)'s restriction on the spending of money to advocate the election or defeat of a particular candidate. In upholding the Hatch Act's broad restrictions on the associational freedoms of federal employees, the Court repeatedly emphasized the statutory provision and corresponding regulation permitting an employee to "[e]xpress his opinion as an individual privately and publicly on political subjects and candidates." 413 US, at 579, 37 L Ed 2d 796, 93 S Ct 2880, quoting 5 CFR § 733.111(a)(2). See 413 US, at 561, 568, 575-576, 37 L Ed 2d 796, 93 S Ct 2880. Although the Court "unhesitatingly"

found that a statute prohibiting federal employees from engaging in a wide variety of "partisan political conduct" would "unquestionably be valid," it carefully declined to endorse provisions threatening political expression. See *id.*, at 556, 579-581, 37 L Ed 2d 796, 93 S Ct 2880. The Court did not rule on the constitutional questions presented by the regulations forbidding partisan campaign endorsements through the media and speechmaking to political gatherings because it found that these restrictions did not "make the statute substantially overbroad and so invalid on its face." *Id.*, at 581, 37 L Ed 2d 796, 93 S Ct 2880.

designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources,'" and "'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *New York Times Co. v Sullivan*, supra, at 266, 269, 11 L Ed 2d 686, 84 S Ct 710, 95 ALR2d 1412, quoting *Associated Press v United States*, 326 US 1, 20, 89 L Ed 2013, 65 S Ct 1416 (1945), and *Roth v United States*, 354 US, at 484, 1 L Ed 2d 1498, 77 S Ct 1304, 14 Ohio Ops 2d 331. The First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion. Cf. *Eastern R. Conf. v Noerr Motors*, 365 US 127, 139, 5 L Ed 2d 464, 81 S Ct 523 (1961).⁵⁵

The Court's decisions in *Mills v Alabama*, 384 US 214, 16 L Ed 2d 484, 86 S Ct 1434 (1966), and *Miami Herald Publishing Co. v Tornillo*, 418 US 241, 41 L Ed 2d 730, 94 S Ct 2831 (1974), held that legislative restrictions on advocacy of the election or defeat of political candidates are wholly at odds with the guarantees of the First Amendment. In *Mills*, the Court addressed the question whether "a State, consistently with the United States Constitution, can make it a crime for the editor of a daily newspaper to write and publish an editorial *on election day* urging people to vote a certain way on issues submitted to them." 384 US, at 215, 23 L Ed 2d 371, 89 S Ct 1794 (emphasis in original). We held

55. Neither the voting rights cases nor the Court's decision upholding the Federal Communications Commission's fairness doctrine lends support to appellees' position that the First Amendment permits Congress to abridge the rights of some persons to engage in political expression in order to enhance the relative voice of other segments of our society.

Cases invalidating governmentally imposed wealth restrictions on the right to vote or file as a candidate for public office rest on the conclusion that wealth "is not germane to one's ability to participate intelligently in the electoral process" and is therefore an insufficient basis on which to restrict a citizen's fundamental right to vote. *Harper v Virginia Bd. of Elections*, 383 US 663, 668, 16 L Ed 2d 169, 86 S Ct 1079 (1966). See *Lubin v Panish*, 415 US 709, 39 L Ed 2d 702, 94 S Ct 1315 (1974); *Bullock v Carter*, 405 US 134, 31 L Ed 2d 92, 92 S Ct 849 (1972); *Phoenix v Kolodzieiski*, 399 US 204, 26 L Ed 2d 523, 90 S Ct 1990 (1970). These voting cases and the reapportionment decisions serve to assure that citizens are accorded an equal right to vote for their representatives regardless of factors of wealth or geography. But the principles that underlie invalidation of governmentally imposed restrictions on the franchise do not justify governmentally imposed restrictions on political expression. Democracy depends on

a well-informed electorate, not a citizenry legislatively limited in its ability to discuss and debate candidates and issues.

In *Red Lion Broadcasting Co. v FCC*, 395 US 367, 23 L Ed 2d 371, 89 S Ct 1794 (1969), the Court upheld the political-editorial and personal-attack portions of the Federal Communications Commission's fairness doctrine. That doctrine requires broadcast licensees to devote programing time to the discussion of controversial issues of public importance and to present both sides of such issues. *Red Lion* "makes clear that the broadcast media pose unique and special problems not present in the traditional free speech case," by demonstrating that "it is idle to posit an unabridgable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish." *Columbia Broadcasting v Democratic Comm.* 412 US 94, 101, 36 L Ed 2d 772, 93 S Ct 2080 (1973), quoting *Red Lion Broadcasting Co.*, supra, at 388, 23 L Ed 2d 371, 89 S Ct 1794. *Red Lion* therefore undercuts appellees' claim that § 608(e)(1)'s limitations may permissibly restrict the First Amendment rights of individuals in this "traditional free speech case." Moreover, in contrast to the undeniable effect of § 608(e)(1), the presumed effect of the fairness doctrine is one of "enhancing the volume and quality of coverage" of public issues. 395 US, at 393, 23 L Ed 2d 371, 89 S Ct 1794.

that "no test of reasonableness can save [such] a state law from invalidation as a violation of the First Amendment." *Id.*, at 220, 23 L Ed 2d 371, 89 S Ct 1794. Yet the prohibition of election-day editorials invalidated in *Mills* is clearly a lesser intrusion on constitutional freedom than a \$1,000 limitation on the amount of money any person or association can spend *during an entire election year* in advocating the election or defeat of a candidate for public office. More recently in *Tornillo*, the Court held that Florida could not constitutionally require a newspaper

[424 US 51]

to make space available for a political candidate to reply to its criticism. Yet under the Florida statute, every newspaper was free to criticize any candidate as much as it pleased so long as it undertook the modest burden of printing his reply.

56. The Act exempts most elements of the institutional press, limiting only expenditures by institutional press facilities that are owned or controlled by candidates and political parties. See § 591(f)(4)(A). But, whatever differences there may be between the constitutional guarantees of a free press and of free speech, it is difficult to conceive of any principled basis upon which to distinguish § 608(e)(1)'s limitations upon the public at large and similar limitations imposed upon the press specifically.

57. The \$35,000 ceiling on expenditures by candidates for the Senate also applies to candidates for the House of Representatives from States entitled to only one representative. § 608(a)(1)(B).

The Court of Appeals treated § 608(a) as relaxing the \$1,000-per-candidate contribution limitation imposed by § 608(b)(1) so as to permit any member of the candidate's immediate family—spouse, child, grandparent, brother, sister, or spouse of such persons—to contribute up to the \$25,000 overall annual contribution ceiling to the candidate. See — US App DC, at —, 519 F2d, at 854. The Commission has recently adopted a similar interpretation of the provision. See Federal Election Com-

See 418 US, at 256-257, 41 L Ed 2d 730, 94 S Ct 2381. The legislative restraint involved in *Tornillo* thus also pales in comparison to the limitations imposed by § 608(e)(1).⁵⁶

[21b] For the reasons stated, we conclude that § 608(e)(1)'s independent expenditure limitation is unconstitutional under the First Amendment.

2. Limitation on Expenditures by Candidates from Personal or Family Resources

The Act also sets limits on expenditures by a candidate "from his personal funds, or the personal funds of his immediate family, in connection with his campaigns during any calendar year." § 608(a)(1). These ceilings vary from \$50,000 for Presidential or Vice Presidential candidates to \$35,000 for senatorial candidates, and \$25,000 for most candidates for the House of Representatives.⁵⁷

mission, Advisory Opinion 1975-65 (Dec. 5, 1975), 40 Fed Reg 58393. However, both the Court of Appeals and the Commission apparently overlooked the Conference Report accompanying the final version of the Act which expressly provides for a contrary interpretation of § 608(a):

"It is the intent of the conferees that members of the immediate family of any candidate shall be subject to the contribution limitations established by this legislation. If a candidate for the office of Senator, for example, already is in a position to exercise control over funds of a member of his immediate family before he becomes a candidate, then he could draw upon these funds up to the limit of \$35,000. If, however, the candidate did not have access to or control over such funds at the time he became a candidate, the immediate family member would not be permitted to grant access or control to the candidate in amounts up to \$35,000, if the immediate family member intends that such amounts are to be used in the campaign of the candidate. The immediate family member would be permitted merely to make contributions to the candidate in amounts not greater than \$1,000 for each election involved." S Conf Rep No. 93-1237, p 58 (1974).

[424 US 60]
 II. REPORTING AND DISCLOSURE
 REQUIREMENTS

Unlike the limitations on contributions and expenditures imposed by 18 USC § 608 (1970 ed Supp IV) [18 USCS § 608], the disclosure requirements of the Act, 2 USC §§ 431 et seq. (1970 ed Supp IV)⁶⁸ [2 USCS §§ 431 et seq.], are not challenged by appellants as per se unconstitutional restrictions on the exercise of First Amendment freedoms of speech and association.⁶⁹ Indeed, appellants argue that "narrowly drawn disclosure requirements are the proper solution to virtually all of the evils Congress sought to remedy." Brief for Appellants 171. The particular requirements

[424 US 61]

embodied in the Act are attacked as overbroad—both in their application to minor-party and independent candidates and in their extension to contributions as small as \$11 or \$101. Appellants also challenge the provision for disclosure by those who make independent contributions and expenditures, § 434(e). The Court of Appeals found no constitutional infirmities in the provisions challenged

committees of political parties in connection with general election campaigns for federal office?

Answer: NO, as to the Fifth Amendment challenge advanced by appellants.

(f) Does § 9008 of the Internal Revenue Code of 1954 violate such rights, in that it limits the expenditures of the national committee of a party with respect to presidential nominating conventions?

Answer: NO, as to the Fifth Amendment challenge advanced by appellants.

(h) Does 18 USC § 608(b)(2) (1970 ed Supp IV) [18 USCS § 608(b)(2)] violate such rights, in that it excludes from the definition of "political committee" committees registered for less than the period of time prescribed in the statute?

Answer: NO.

4. Does any statutory limitation, or do the particular limitations in the challenged statutes, on the amounts that candidates for

here.⁷⁰ We affirm the determination on overbreadth and hold that § 434(e), if narrowly construed, also is within constitutional bounds.

The first federal disclosure law was enacted in 1910. Act of June 25, 1910, c 392, 36 Stat 822. It required political committees, defined as national committees and national congressional campaign committees of parties, and organizations operating to influence congressional elections in two or more States, to disclose names of all contributors of \$100 or more; identification of recipients of expenditures of \$10 or more was also required. §§ 1, 5-6, 36 Stat 822-824. Annual expenditures of \$50 or more "for the purpose of

[424 US 62]

influencing or controlling, in two or more States, the result of" a congressional election had to be reported independently if they were not made through a political committee. § 7, 36 Stat 824. In 1911 the Act was revised to include prenomination transactions such as those involved in conventions and primary campaigns. Act of Aug. 19, 1911,

elected federal office may expend in their campaigns violate the rights of one or more of the plaintiffs under the First or Ninth Amendment or the Due Process Clause of the Fifth Amendment?

(a) Does 18 USC § 608(c) (1970 ed Supp IV) [18 USCS § 608(c)] violate such rights, in that it forbids expenditures by candidates for federal office in excess of the amounts specified in 18 USC § 608(c) (1970 ed Supp IV) [18 § 608(c)]? [18 USCS § 608(c)]?

Answer: YES.

68. Unless otherwise indicated, all statutory citations in Part II of this opinion are to Title 2 of the United States Code, Supplement IV.

69. Appellants do contend that there should be a blanket exemption from the disclosure provisions for minor parties. See Part II-B-2, *infra*.

70. The Court of Appeals' ruling that § 437a is unconstitutional was not appealed. See n 7, *supra*.

§ 2, 37 Stat 26. See *United States v Auto Workers*, 352 US, at 575-576, 1 L Ed 2d 563, 77 S Ct 529.

Disclosure requirements were broadened in the Federal Corrupt Practices Act of 1925, (Title III of the Act of Feb. 28, 1925), 43 Stat 1070. That Act required political committees, defined as organizations that accept contributions or make expenditures "for the purpose of influencing or attempting to influence" the Presidential or Vice Presidential elections (a) in two or more States or (b) as a subsidiary of a national committee, § 302(c), 43 Stat 1070, to report total contributions and expenditures, including the names and addresses of contributors of \$100 or more and recipients of \$10 or more in a calendar year. § 305(a), 43 Stat 1071. The Act was upheld against a challenge that it infringed upon the prerogatives of the States in *Burroughs v United States*, 290 US 534, 78 L Ed 484, 54 S Ct 287 (1934). The Court held that it was within the power of Congress "to pass appropriate legislation to safeguard [a Presidential] election from the improper use of money to influence the result." *Id.*, at 545, 78 L Ed 484, 54 S Ct 287. Although the disclosure requirements were widely circumvented,⁷¹ no further attempts were made to tighten them until 1960, when the Senate passed a bill that would have closed some existing loopholes. S 2436, 106 Cong Rec 1193. The attempt aborted because no similar effort was made in the House.

71. Past disclosure laws were relatively easy to circumvent because candidates were required to report only contributions that they had received themselves or that were received by others for them with their knowledge or consent. § 307, 43 Stat 1072. The data that were reported were virtually impossible to use because there were no uniform rules for the compiling of reports or provisions for

The Act presently under review replaced all prior disclosure laws. Its primary disclosure provisions impose reporting obligations on "political committees" and candidates. "Political committee" is defined in § 431(d) as a group of persons that receives "contributions" or makes "expenditures" of over \$1,000 in a calendar year. "Contributions" and "expenditures" are defined in lengthy parallel provisions similar to those in Title 18, discussed

[424 US 63]

above.⁷² Both definitions focus on the use of money or other objects of value "for the purpose of . . . influencing" the nomination or election of any person to federal office. §§ 431(e)(1), (f)(1).

Each political committee is required to register with the Commission, § 433, and to keep detailed records of both contributions and expenditures, §§ 432(c), (d). These records must include the name and address of everyone making a contribution in excess of \$10, along with the date and amount of the contribution. If a person's contributions aggregate more than \$100, his occupation and principal place of business are also to be included. § 432(c)(2). These files are subject to periodic audits and field investigations by the Commission. § 438(a)(8).

Each committee and each candi-

requiring corrections and additions. See Redish, *Campaign Spending Laws and the First Amendment*, 46 NYUL Rev 900, 905 (1971).

72. See Part I, *supra*. The relevant provisions of Title 2 are set forth in the Appendix to this opinion, *infra*, at 144 et seq., 46 L Ed 2d 759.

under review
are laws. Its
ions impose
"political
ates. "Politi-
l in § 431(d)
at receives
s "expendi-
a calendar
d "expendi-
ngthy paral-
to those in

Both defi-
of money or
for the pur-
the nomina-
y person to
, (f)(1).

ittee is re-
the Commis-
detailed rec-
ions and ex-
). These rec-
e name and
king a contri-
, along with
the contribu-
ributions ag-
J, his occupa-
of business
d. § 432(c)(2).
t to periodic
gations by the

each candi-

ditions. See Red-
ws and the First
900, 905 (1971).

relevant provi-
in the Appendix
et seq., 46 L Ed

date also is required to file quarterly reports. § 434(a). The reports are to contain detailed financial information, including the full name, mailing address, occupation, and principal place of business of each person who has contributed over \$100 in a calendar year, as well as the amount and date of the contributions. § 434(b). They are to be made available by the Commission "for public inspection and copying." § 438(a)(4). Every candidate for federal office is required to designate a "principal campaign committee," which is to receive reports of contributions and expenditures made on the candidate's behalf from other political committees and to compile and file these reports, together with its own statements, with the Commission. § 432(f).

Every individual or group, other than a political committee or candidate, who makes "contributions" or "expenditures" of over \$100 in a calendar year "other than

[424 US 64]

by contri-
bution to a political committee or candidate" is required to file a statement with the Commission. § 434(e). Any violation of these recordkeeping and reporting provisions is punishable by a fine of not more than \$1,000 or a prison term of not more than a year, or both. § 441(a).

A. General Principles

Unlike the overall limitations on contributions and expenditures, the

disclosure requirements impose no ceiling on campaign-related activities. But we have repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment. E. g., *Gibson v Florida Legislative Comm.* 372 US 539, 9 L Ed 2d 929, 83 S Ct 889; *NAACP v Button*, 371 US 415, 9 L Ed 2d 405, 83 S Ct 328; *Shelton v Tucker*, 364 US 479, 5 L Ed 2d 231, 81 S Ct 247; *Bates v Little Rock*, 361 US 516, 4 L Ed 2d 480, 80 S Ct 412; *NAACP v Alabama*, 357 US 449, 2 L Ed 2d 1488, 78 S Ct 1163.

[30] We long have recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest. Since Alabama we have required that the subordinating interests of the State must survive exacting scrutiny.⁷³ We also have insisted that there be a "relevant correlation"⁷⁴ or "substantial relation"⁷⁵ between the governmental interest and the information required to be disclosed. See *Pollard v Roberts*, 283 F Supp 248, 257 (ED Ark) (three-judge court), *affd*, 393 US 14, 21 L Ed 2d 14, 89 S Ct 47 (1968) (per

[424 US 65]

curiam). This type of scrutiny is necessary even if any deterrent effect on the exercise of First Amendment rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure. *NAACP*

73. *NAACP v Alabama*, 357 US, at 463, 2 L Ed 2d 1488, 78 S Ct 1163. See also *Gibson v Florida Legislative Comm.* 372 US 539, 546, 9 L Ed 2d 929, 83 S Ct 889 (1963); *NAACP v Button*, 371 US, at 438, 9 L Ed 2d 405, 83 S

Ct 328; *Bates v Little Rock*, 361 US, at 524, 4 L Ed 2d 480, 80 S Ct 412.

74. *Id.*, at 525, 4 L Ed 2d 480, 80 S Ct 412.

75. *Gibson v Florida Legislative Comm.*, *supra*, at 546, 9 L Ed 2d 929, 83 S Ct 889.

v Alabama, supra, at 461, 2 L Ed 2d 1488, 78 S Ct 1163. Cf. *Kusper v Pontikes*, 414 US, at 57-58, 38 L Ed 2d 260, 94 S Ct 303.

Appellees argue that the disclosure requirements of the Act differ significantly from those at issue in Alabama and its progeny because the Act only requires disclosure of the names of contributors and does not compel political organizations to submit the names of their members.⁷⁶

As we have seen, group association is protected because it enhances "[e]ffective advocacy." *NAACP v Alabama*, supra, at 460, 2 L Ed 2d 1488, 78 S Ct 1163. The right to join together "for the advancement of beliefs and ideas," *ibid.*, is diluted if it does not include the right to pool money through contributions, for funds are often essential if "advocacy" is

[424 US 66]

to be truly or optimally "effective." Moreover, the invasion of privacy of belief may be as great when the information sought concerns the giving and spending of money as when it concerns the joining of organizations, for "[f]inancial transactions can reveal much about a person's activities, associations, and beliefs." *California Bankers Assn. v Shultz*, 416 US 21, 78-79, 39

L Ed 2d 812, 94 S Ct 1494 (1974) (Powell, J., concurring). Our past decisions have not drawn fine lines between contributors and members but have treated them interchangeably. In *Bates*, for example, we applied the principles of Alabama and reversed convictions for failure to comply with a city ordinance that required the disclosure of "dues, assessments, and contributions paid, by whom and when paid." 361 US, at 518, 4 L Ed 2d 480, 80 S Ct 412. See also *United States v Rumely*, 345 US 41, 97 L Ed 770, 73 S Ct 543 (1953) (setting aside a contempt conviction of an organization official who refused to disclose names of those who made bulk purchases of books sold by the organization).

The strict test established by Alabama is necessary because compelled disclosure has the potential for substantially infringing the exercise of First Amendment rights. But we have acknowledged that there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the "free functioning of our national institutions" is involved. *Communist Party v Subversive Activities Control Bd.* 367 US 1, 97, 6 L Ed 2d 625, 81 S Ct 1357 (1961).

The governmental interests sought to be vindicated by the disclosure

76. The Court of Appeals held that the applicable test for evaluating the Act's disclosure requirements is that adopted in *United States v O'Brien*, 391 US 367, 20 L Ed 2d 672, 88 S Ct 1673 (1968), in which "'speech' and 'nonspeech' elements [were] combined in the same course of conduct." *Id.*, at 376, 20 L Ed 2d 672, 88 S Ct 1673. *O'Brien* is appropriate, the Court of Appeals found, because the Act is directed toward the spending of money, and money introduces a nonspeech element. As the discussion in Part I-A, supra, indicates, *O'Brien* is inapposite, for money is a neutral element not always associated with speech

but a necessary and integral part of many, perhaps most, forms of communication. Moreover, the *O'Brien* test would not be met, even if it were applicable. *O'Brien* requires that "the governmental interest [be] unrelated to the suppression of free expression." 391 US, at 377, 20 L Ed 2d 672, 88 S Ct 1673. The governmental interest furthered by the disclosure requirements is not unrelated to the "suppression" of speech insofar as the requirements are designed to facilitate the detection of violations of the contribution and expenditure limitations set out in 18 USC § 608 (1970 ed Supp IV) [18 USCS § 608].

1 S Ct 1494 (1974) (curing). Our past of drawn fine lines itors and members them interchangeably for example, we ap es of Alabama and ons for failure to ity ordinance that losure of "dues, as- contributions paid, en paid." 361 US, 1 480, 80 S Ct 412. States v Rumely, 3d 770, 73 S Ct 543 de a contempt con- ganization official disclose names of bulk purchases of organization).

established by Ala- because compelled potential for sub- ng the exercise of : rights. But we d that there are erests sufficiently eigh the possibility particularly when ng of our national olved. Communist ve Activities Con- 97, 6 L Ed 2d 625,

al interests sought by the disclosure

integral part of many, communication. More- ould not be met, even O'Brien requires that rest [be] unrelated to expression." 391 US, 2, 88 S Ct 1673. The urthered by the discl- not unrelated to the h insofar as the re- d to facilitate the de- the contribution and set out in 18 USC [18 USCS § 608].

BUCKLEY v VALEO

424 US 1, 46 L Ed 2d 659, 96 S Ct 612

requirements are of this magnitude. They fall into three categories. First, disclosure provides the electorate with information "as to where political campaign money comes from and how it is spent by the candidate"⁷⁷ in order to aid the voters in evaluating those

[424 US 67]

who seek federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity.⁷⁸ This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return.⁷⁹ And, as we recognized in *Burroughs v United States*, 290 US, at 548, 78 L Ed 484, 54 S Ct 287. Congress could reasonably conclude that full disclosure during an election campaign tends "to prevent the corrupt use of money to affect elections." In enacting these requirements it may

have been mindful of Mr. Justice Brandeis' advice:

"Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."⁸⁰

Third, and not least significant, recordkeeping, reporting,

[424 US 68]

and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contribution limitations described above.

The disclosure requirements, as a general matter, directly serve substantial governmental interests. In determining whether these interests are sufficient to justify the requirements we must look to the extent of the burden that they place on individual rights.

It is undoubtedly true that public disclosure of contributions to candidates and political parties will deter some individuals who otherwise might contribute. In some instances, disclosure may even expose contributors to harassment or retaliation. These are not insignificant burdens on individual rights, and they must be weighed carefully against the interests which Congress has sought to promote by this legislation. In this process, we note and agree with appellants' concession⁸¹ that disclosure requirements—certainly in most applications—appear to be the least

77. HR Rep No. 92-564, p 4 (1971).

78. Ibid.; S Rep No. 93-689, p 2 (1974).

79. We have said elsewhere that "informed public opinion is the most potent of all restraints upon misgovernment." *Grosjean v American Press Co.* 297 US 233, 250, 80 L Ed 660, 56 S Ct 444 (1936). Cf. *United States v Harriss*, 347 US 612, 625, 98 L Ed 989, 74 S

Ct 808 (1954) (upholding disclosure requirements imposed on lobbyists by the Federal Regulation of Lobbying Act, Title III of the Legislative Reorganization Act of 1946, 60 Stat 839).

80. L. Brandeis, *Other People's Money* 62 (National Home Library Foundation ed (1933)).

81. See *supra*, at 60, 46 L Ed 2d 711.

restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist.⁸² Appellants argue, however, that the balance tips against disclosure when it is required of contributors to certain parties and candidates. We turn now to this contention.

B. Application to Minor Parties and Independents

Appellants contend that the Act's requirements are overbroad insofar as they apply to contributions to

[424 US 69]

minor parties and independent candidates because the governmental interest in this information is minimal and the danger of significant infringement on First Amendment rights is greatly increased.

1. Requisite Factual Showing

In Alabama the organization had "made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members [had] exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility," 357 US, at 462, 2 L Ed 2d 1488, 78 S Ct 1163, and the State was unable to show that the disclosure it sought had a "substantial bearing" on the issues it sought to clarify, *id.*, at 464, 2 L Ed 2d 1488, 78 S Ct 1163. Under those circumstances, the Court held that "whatever interest the State may have in

[disclosure] has not been shown to be sufficient to overcome petitioner's constitutional objections." *Id.*, at 465, 2 L Ed 2d 1488, 78 S Ct 1163.

[31a] The Court of Appeals rejected appellants' suggestion that this case fits into the Alabama mold. It concluded that substantial governmental interests in "informing the electorate and preventing the corruption of the political process" were furthered by requiring disclosure of minor parties and independent candidates, — US App DC, at —, 519 F2d, at 867, and therefore found no "tenable rationale for assuming that the public interest in minority party disclosure of contributions above a reasonable cut-off point is uniformly outweighed by potential contributors' associational rights," *id.*, at —, 519 F2d at 868. The court left open the question of the application of the disclosure requirements to candidates (and parties) who could demonstrate injury of the sort at stake in Alabama. No record of harassment on a similar scale was found in this case.⁸³ We agree with the Court

[424 US 70]

of Appeals' conclusion that Alabama is inapposite where, as here, any serious infringement on First Amendment rights brought about by the compelled disclosure of contributors is highly speculative.

It is true that the governmental interest in disclosure is diminished

82. Post-election disclosure by successful candidates is suggested as a less restrictive way of preventing corrupt pressures on officeholders. Delayed disclosure of this sort would not serve the equally important informational function played by pre-election reporting. Moreover, the public interest in sources of campaign funds is likely to be at its peak during the campaign period; that is the time when improper influences are most likely to be brought to light.

83. Nor is this a case comparable to *Pollard v Roberts*, 283 F Supp 248 (ED Ark) (three-judge court), *affd* 393 US 14, 15 L Ed 2d 545, 86 S Ct 684 (1968), in which an Arkansas prosecuting attorney sought to obtain, by a subpoena duces tecum, the records of a checking account (including names of individual contributors) established by a specific party, the Republican Party of Arkansas.

when the contribution in question is made to a minor party with little chance of winning an election. As minor parties usually represent definite and publicized viewpoints, there may be less need to inform the voters of the interests that specific candidates represent. Major parties encompass candidates of greater diversity. In many situations the label "Republican" or "Democrat" tells a voter little. The candidate who bears it may be supported by funds from the far right, the far left, or any place in between on the political spectrum. It is less likely that a candidate of, say, the Socialist Labor Party will represent interests that cannot be discerned from the party's ideological position.

The Government's interest in deterring the "buying" of elections and the undue influence of large contributors on officeholders also may be reduced where contributions to a minor party or an independent candidate are concerned, for it is less likely that the candidate will be victorious. But a minor party sometimes can play a significant role in an election. Even when a minor-party candidate has little or no chance of winning, he may be encouraged by major-party interests in order to divert votes from other major-party contenders.⁸⁴

[424 US 71]

We are not unmindful that the

damage done by disclosure to the associational interests of the minor parties and their members and to supporters of independents could be significant. These movements are less likely to have a sound financial base and thus are more vulnerable to falloffs in contributions. In some instances fears of reprisal may deter contributions to the point where the movement cannot survive. The public interest also suffers if that result comes to pass, for there is a consequent reduction in the free circulation of ideas both within⁸⁵ and without⁸⁶ the political arena.

[31b] There could well be a case, similar to those before the Court in Alabama and Bates, where the threat to the exercise of First Amendment rights is so serious and the state interest furthered by disclosure so insubstantial that the Act's requirements cannot be constitutionally applied.⁸⁷ But no appellant in this case has tendered record evidence of the sort proffered in Alabama. Instead, appellants primarily rely on "the clearly articulated fears of individuals, well experienced in the political process." Brief for Appellants 173. At best they offer the testimony

[424 US 72]

of several minor-party officials that one or two persons refused to make contributions

84. See Developments in the Law—Elections, 88 Harv L Rev 1111, 1247 n 75 (1975).

85. See Williams v Rhodes, 393 US 23, 32, 21 L Ed 2d 24, 89 S Ct 5, 45 Ohio Ops 2d 236 (1968) ("There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms"); Sweezy v New Hampshire, 354 US 234, 250-251, 1 L Ed 2d 1311, 77 S Ct 1203 (1957) (plurality opinion).

86. Cf. Talley v California, 362 US 60, 64-65, 4 L Ed 2d 559, 80 S Ct 536 (1960).

87. Allegations made by a branch of the Socialist Workers Party in a civil action seeking to declare the District of Columbia disclosure and filing requirements unconstitutional as applied to its records were held to be sufficient to withstand a motion to dismiss in Doe v Martin (DC, No. 75-0083 Oct. 20, 1975) (three-judge court). The District of Columbia provisions require every political committee to keep records of contributions of \$10 or more and to report contributors of \$50 or more.

because of the possibility of disclosure.⁸⁸ On this record, the substantial public interest in disclosure identified by the legislative history of this Act outweighs the harm generally alleged.

2. Blanket Exemption

[32a] Appellants agree that "the record here does not reflect the kind of focused and insistent harassment of contributors and members that existed in the NAACP cases." *Ibid.* They argue, however, that a blanket exemption for minor parties is necessary lest irreparable injury be done before the required evidence can be gathered.

Those parties that would be sufficiently "minor" to be exempted from the requirements of § 434 could be defined, appellants suggest, along the lines used for public-financing purposes, see Part III-A, *infra*, as those who received less than 25% of the vote in past elections. Appellants do not argue that this line is constitutionally required. They suggest as an alternative defining "minor parties" as those that do not qualify for automatic ballot access under state law. Presumably, other criteria, such as current political strength (measured by polls or petition), age, or degree of organization, could also be used.⁸⁹

The difficulty with these sugges-

tions is that they reflect only a party's past or present political strength and

[424 US 73]

that is only one of the factors that must be considered. Some of the criteria are not precisely indicative of even that factor. Age,⁹⁰ or past political success, for instance, may typically be associated with parties that have a high probability of success. But not all long-established parties are winners—some are consistent losers—and a new party may garner a great deal of support if it can associate itself with an issue that has captured the public's imagination. None of the criteria suggested is precisely related to the other critical factor that must be considered, the possibility that disclosure will impinge upon protected associational activity.

An opinion dissenting in part from the Court of Appeals' decision concedes that no one line is "constitutionally required."⁹¹ It argues, however, that a flat exemption for minor parties must be carved out, even along arbitrary lines, if groups that would suffer impermissibly from disclosure are to be given any real protection. An approach that requires minor parties to submit evidence that the disclosure requirements cannot constitutionally be applied to them offers only an illusory

88. For example, a campaign worker who had solicited campaign funds for the Libertarian Party in New York testified that two persons solicited in a Party campaign "refused to contribute because they were unwilling for their names to be disclosed or published." None of the appellants offers stronger evidence of threats or harassment.

89. These criteria were suggested in an opinion concurring in part and dissenting in part from the decision below. — US App DC, at — n 1, 519 F2d, at 907 n 1 (Bazelon, C.J.).

90. Age is also underinclusive in that it would presumably leave long-established but unpopular parties subject to the disclosure requirements. The Socialist Labor Party, which is not a party to this litigation but has filed an amicus brief in support of appellants, claims to be able to offer evidence of "direct suppression, intimidation, harassment, physical abuse, and loss of economic sustenance" relating to its contributors. Brief for Socialist Labor Party as Amicus Curiae 6. The Party has been in existence since 1877.

91. — US App DC, at —, 519 F2d, at 907 n 1 (Bazelon, C.J.).

ct only a par-
tical strength

of the factors
d. Some of the
ely indicative
Age,⁹⁰ or past
nstance, may
l with parties
ability of suc-
ng-established
some are con-
ew party may
f support if it
with an issue
public's imagi-
criteria sug-
elated to the
that must be
ility that dis-
pon protected

g in part from
decision con-
e is "constitu-
argues, how-
tion for minor
ed out, even
if groups that
sibly from dis-
ven any real
ach that re-
to submit evi-
sure require-
ionally be ap-
ply an illusory

lusive in that it
g-established but
to the disclosure
st Labor Party,
litigation but has
port of appellants,
vidence of "direct
arassment, physi-
omic sustenance"
Brief for Socialist
rae 6. The Party
1877.

—, 519 F2d, at

BUCKLEY v VALEO

424 US 1, 46 L Ed 2d 659, 96 S Ct 612

safeguard, the argument goes, be-
cause the "evils" of "chill and har-
assment . . . are largely incapable of
formal proof."⁹² This dissent ex-
pressed its concern that a minor
party, particularly a

[424 US 74]

new party, may
never be able to prove a substantial
threat of harassment, however real
that threat may be, because it would
be required to come forward with
witnesses who are too fearful to con-
tribute but not too fearful to testify
about their fear. A strict require-
ment that chill and harassment be
directly attributable to the specific
disclosure from which the exemption
is sought would make the task even
more difficult.

We recognize that unduly strict
requirements of proof could impose a
heavy burden, but it does not follow
that a blanket exemption for minor
parties is necessary. Minor parties
must be allowed sufficient flexibility
in the proof of injury to assure a fair
consideration of their claim. The evi-
dence offered need show only a rea-
sonable probability that the com-
pelled disclosure of a party's contrib-
utors' names will subject them to
threats, harassment, or reprisals
from either Government officials or
private parties. The proof may in-
clude, for example, specific evidence
of past or present harassment of
members due to their associational
ties, or of harassment directed
against the organization itself. A
pattern of threats or specific mani-
festations of public hostility may be
sufficient. New parties that have no
history upon which to draw may be
able to offer evidence of reprisals
and threats directed against individ-

uals or organizations holding similar
views.

[32b] Where it exists the type of
chill and harassment identified in
Alabama can be shown. We cannot
assume that courts will be insensi-
tive to similar showings when made
in future cases. We therefore con-
clude that a blanket exemption is
not required.

C. Section 434 (e)

Section 434(e) requires "[e]very
person (other than a political com-
mittee or candidate) who makes con-
tributions

[424 US 75]

or expenditures" aggregat-
ing over \$100 in a calendar year
"other than by contribution to a
political committee or candidate" to
file a statement with the Commis-
sion.⁹³ Unlike the other disclosure
provisions, this section does not seek
the contribution list of any associa-
tion. Instead, it requires direct dis-
closure of what an individual or
group contributes or spends.

In considering this provision we
must apply the same strict standard
of scrutiny, for the right of associa-
tional privacy developed in Alabama
derives from the rights of the orga-
nization's members to advocate their
personal points of view in the most
effective way. 357 US, at 458, 460, 2
L Ed 2d 1488, 78 S Ct 1163. See also
NAACP v Button, 371 US, at 429-
431, 9 L Ed 2d 405, 83 S Ct 328;
Sweezy v New Hampshire, 354 US,
at 250, 1 L Ed 2d 1311, 77 S Ct 1203.

Appellants attack § 434(e) as a di-
rect intrusion on privacy of belief, in
violation of Talley v California, 362
US 60, 4 L Ed 2d 559, 80 S Ct 536

92. Id., at —, 519 F2d, at 909. See also
Developments in the Law—Elections, 88 Harv
L Rev 1111, 1247-1249 (1975).

93. See Appendix to this opinion, infra, at
160, 46 L Ed 2d 768.

(1960), and as imposing "very real, practical burdens . . . certain to deter individuals from making expenditures for their independent political speech" analogous to those held to be impermissible in *Thomas v Collins*, 323 US 516, 89 L Ed 430, 65 S Ct 315 (1945).

1. The Role of § 434(e)

The Court of Appeals upheld § 434(e) as necessary to enforce the independent-expenditure ceiling imposed by 18 USC § 608(e)(1) (1970 ed Supp IV) [18 USCS § 608(e)(1)]. It said:

"If . . . Congress has both the authority and a compelling interest to regulate independent expenditures under section 608(e), surely it can require that there be disclosure to prevent misuse of the spending channel." — US App DC, at —, 519 F2d, at 869.

We have found that § 608(e)(1) unconstitutionally infringes
[424 US 78]

upon First Amendment rights.⁹⁴ If the sole function of § 434(e) were to aid in the enforcement of that provision, it would no longer serve any governmental purpose.

[33] But the two provisions are not so intimately tied. The legislative history on the function of § 434(e) is bare, but it was clearly intended to stand independently of § 608(e)(1). It was enacted with the general disclosure provisions in 1971 as part of the original Act,⁹⁵ while § 608(e)(1) was part of the 1974 amendments.⁹⁶

94. See Part I-C-1, *supra*.

95. § 305, 86 Stat 16.

96. 88 Stat 1265.

97. S Rep No. 92-229, p 57 (1971).

Like the other disclosure provisions, § 434(e) could play a role in the enforcement of the expanded contribution and expenditure limitations included in the 1974 amendments, but it also has independent functions. Section 434(e) is part of Congress' effort to achieve "total disclosure" by reaching "every kind of political activity"⁹⁷ in order to insure that the voters are fully informed and to achieve through publicity the maximum deterrence to corruption and undue influence possible. The provision is responsive to the legitimate fear that efforts would be made, as they had been in the past,⁹⁸ to avoid the disclosure requirements by routing financial support of candidates through avenues not explicitly covered by the general provisions of the Act.

2. Vagueness Problems

In its effort to be all-inclusive, however, the provision raises serious problems of vagueness, particularly treacherous where, as here, the violation of its terms carries criminal penalties⁹⁹ and fear of incurring these sanctions

[424 US 77]

may deter those who seek to exercise protected First Amendment rights.

Section 434(e) applies to "[e]very person . . . who makes contributions or expenditures." "Contributions" and "expenditures" are defined in parallel provisions in terms of the use of money or other valuable assets "for the purpose of . . . influencing" the nomination or election of

98. See n 71, *supra*.

99. Section 441(a) provides: "Any person who violates any of the provisions of this subchapter shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

re provisions, ble in the ended contribu- mitations in- ndments, but nt functions. of Congress' l disclosure" d of political sure that the med and to the maxi- ruption and e. The provi- he legitimate be made, as ast,⁹⁹ to avoid ents by rout- of candidates xplicitly cov- visions of the

all-inclusive, raises serious particularly here, the vio- ries criminal of incurring

ter those who oted First

s to "[e]very contributions ontributions" ve defined in terms of the valuable as- . . . influenc- or election of

sa: "Any person ovisions of this t more than \$1,- han one year, or

BUCKLEY v VALEO

424 US 1, 46 L Ed 2d 659, 96 S Ct 612

candidates for federal office.¹⁰⁰ It is the ambiguity of this phrase that poses constitutional problems.

[34] Due process requires that a criminal statute provide adequate notice to a person of ordinary intelligence that his contemplated conduct is illegal, for "no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." *United States v Harriss*, 347 US, 612, 617, 98 L Ed 989, 74 S Ct 808. See also *Papachristou v City of Jacksonville*, 405 US 156, 31 L Ed 2d 110, 92 S Ct 839 (1972). Where First Amendment rights are involved, an even "greater degree of specificity" is required. *Smith v Goguen*, 415 US, at 573, 39 L Ed 2d 605, 94 S Ct 1242. See *Grayned v City of Rockford*, 408 US 104, 109, 33 L Ed 2d 222, 92 S Ct 2294 (1972); *Kunz v New York*, 340 US 290, 95 L Ed 280, 71 S Ct 312 (1951).

There is no legislative history to guide us in determining the scope of the critical phrase "for the purpose of . . . influencing." It appears to have been adopted without comment from earlier disclosure Acts.¹⁰¹ Congress "has voiced its wishes in [most] muted strains," leaving us to draw upon "those common-sense assumptions that must be made in determining direction without a compass." *Rosado v Wyman*, 397 US 397, 412, 25 L Ed 2d 442, 90 S Ct 1207 (1970). Where the constitutional requirement of definiteness is at stake, we have the further obligation to construe the statute,

[424 US 78]

if that can be

done consistent with the legisla- ture's purpose, to avoid the shoals of vagueness. *United States v Harriss*, supra, at 618, 98 L Ed 989, 74 S Ct 808; *United States v Rumely*, 345 US, at 45, 97 L Ed 770, 73 S Ct 543.

In enacting the legislation under review Congress addressed broadly the problem of political campaign financing. It wished to promote full disclosure of campaign-oriented spending to insure both the reality and the appearance of the purity and openness of the federal election process.¹⁰² Our task is to construe "for the purpose of . . . influencing," incorporated in § 434(e) through the definitions of "contributions" and "expenditures," in a manner that precisely furthers this goal.

In Part I we discussed what constituted a "contribution" for purposes of the contribution limitations set forth in 18 USC § 608(b) (1970 ed Supp IV) [18 USCS § 608(b)].¹⁰³ We construed that term to include not only contributions made directly or indirectly to a candidate, political party, or campaign committee, and contributions made to other organizations or individuals but earmarked for political purposes, but also all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate. The definition of "contribution" in § 431(e) for disclosure purposes parallels the definition in Title 18 almost word for word, and we construe the former provision as we have the latter. So defined, "contributions" have a sufficiently close relationship to the goals of the Act, for

100. §§ 431(e), (f). See Appendix to this opinion, infra, at 145-149, 46 L Ed 2d 759.

101. supra, at 61-63, 46 L Ed 2d 711.

102. S Rep No. 92-96, p 33 (1971); S Rep No. 93-689, pp 1-2 (1974).

103. See n 53, supra.

they are connected with a candidate or his campaign.

When we attempt to define "expenditure" in a similarly narrow way we encounter line-drawing problems of the sort we faced in 18 USC § 608(e)(1) (1970 ed

[424 US 79]

Supp IV) [18 USCS § 608(e)(1)]. Although the phrase, "for the purpose of . . . influencing" an election or nomination, differs from the language used in § 608(e)(1), it shares the same potential for encompassing both issue discussion and advocacy of a political result.¹⁰⁴ The general requirement that "political committees" and candidates disclose their expenditures could raise similar vagueness problems, for "political committee" is defined only in terms of amount of annual "contributions" and "expenditures,"¹⁰⁵ and could be interpreted to reach groups engaged purely in issue discussion. The lower courts have construed the words "political committee" more narrowly.¹⁰⁶ To fulfill the purposes of the Act they need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate. Expenditures of candidates and of "political committees" so construed can be assumed to fall within

the core area sought to be addressed by Congress. They are, by definition, campaign related.

But when the maker of the expenditure is not within these categories—when it is an individual other than a candidate or a group other than a "political committee"¹⁰⁷—the

[424 US 80]

relation of the information sought to the purposes of the Act may be too remote. To insure that the reach of § 434(e) is not impermissibly broad, we construe "expenditure" for purposes of that section in the same way we construed the terms of § 608(e)—to reach only funds used for communications that expressly advocate¹⁰⁸ the election or defeat of a clearly identified candidate. This reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate.

[35] In summary, § 434(e) as construed imposes independent reporting requirements on individuals and groups that are not candidates or political committees only in the following circumstances: (1) when they make contributions earmarked for political purposes or authorized or requested by a candidate or his agent, to some person other than a

104. See Part I-C-1, *supra*.

105. Section 431(d) defines "political committee" as "any committee, club, association, or other group of persons which receives contributions or makes expenditures during a calendar year in an aggregate amount exceeding \$1,000."

106. At least two lower courts, seeking to avoid questions of unconstitutionality, have construed the disclosure requirements imposed on "political committees" by § 434(a) to be nonapplicable to nonpartisan organizations. *United States v National Comm for Impeachment*, 469 F2d 1135, 1139-1142 (CA2 1972); *American Civil Liberties Union v Jennings*, 366 F Supp 1041, 1055-1057 (DC 1973) (three-judge court), vacated as moot sub nom

Staats v American Civil Liberties Union, 422 US 1030, 45 L Ed 2d 686, 95 S Ct 2646 (1975). See also — US App DC, at — n 112, 519 F2d, at 863 n 112.

107. Some partisan committees—groups within the control of the candidate or primarily organized for political activities—will fall within § 434(e) because their contributions and expenditures fall in the \$100-to-\$1,000 range. Groups of this sort that do not have contributions and expenditures over \$1,000 are not "political committees" within the definition in § 431(d); those whose transactions are not as great as \$100 are not required to file statements under § 434(e).

108. See n 52, *supra*.

addressed
definition,

of the ex-
these cate-
individual
or a group
committee"¹⁰⁷

information
of the Act
ensure that
impermiss-
"expendi-
section in
strued in
each only
ations that
election or
fied candi-
ected pre-
t is unam-
mpaign of
ate.

e) as con-
nt report-
duals and
lidates or
n the fol-
when they
arked for
orized or
e or his
er than a

Union, 422
2646 (1975).
n 112, 519

es—groups
or primar-
s—will fall
ntributions
0-to-\$1,000
not have
ver \$1,000
in the defi-
ansactions
required to

BUCKLEY v VALEO

424 US 1, 46 L Ed 2d 659, 96 S Ct 612

candidate or political committee, and (2) when they make expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate.

Unlike 18 USC § 608(e) (1) (1970 ed Supp IV) [18 USCS § 608(e)(1)], § 434(e) as construed bears a sufficient relationship to a substantial governmental interest. As narrowed, § 434(e), like § 608(e)(1), does not reach all partisan discussion for it only requires disclosure of those expenditures that expressly advocate a particular election result. This might have been fatal if the only purpose of § 434(e)

[424 US 81]

were to stem corruption or its appearance by closing a loophole in the general disclosure requirements. But the disclosure provisions, including § 434(e), serve another, informational interest, and even as construed § 434(e) increases the fund of information concerning those who support the candidates. It goes beyond the general disclosure requirements to shed the light of publicity on spending that is unambiguously campaign-related but would not otherwise be reported because it takes the form of independent expenditures or of contributions to an individual or group not itself required to report the names of its contributors. By the same token, it is not fatal that § 434(e) encompasses purely independent expenditures uncoordinated with a particular candidate or his agent. The corruption potential of these expenditures may be significantly different, but the informational interest can be as strong as it is in coordinated spending, for disclosure helps voters to define more of the candidates' constituencies.

109. [36b] Of course, independent contributions and expenditures made in support of the campaigns of candidates of parties that have been found to be exempt from the general

[36a] Section 434(e), as we have construed it, does not contain the infirmities of the provisions before the Court in *Talley v California*, 362 US 60, 4 L Ed 2d 559, 80 S Ct 536 (1960), and *Thomas v Collins*, 323 US 516, 89 L Ed 430, 65 S Ct 315 (1945). The ordinance found wanting in *Talley* forbade all distribution of handbills that did not contain the name of the printer, author, or manufacturer, and the name of the distributor. The city urged that the ordinance was aimed at identifying those responsible for fraud, false advertising, and libel, but the Court found that it was "in no manner so limited." 362 US, at 64, 4 L Ed 2d 559, 80 S Ct 536. Here, as we have seen, the disclosure requirement is narrowly limited to those situations where the information sought has a substantial connection with the governmental interests sought to be advanced. *Thomas* held unconstitutional a prior restraint in the form of a registration requirement for labor organizers.

[424 US 82]

The Court found the State's interest insufficient to justify the restrictive effect of the statute. The burden imposed by § 434(e) is no prior restraint, but a reasonable and minimally restrictive method of furthering First Amendment values by opening the basic processes of our federal election system to public view.¹⁰⁹

D. Thresholds

Appellants' third contention, based on alleged overbreadth, is that the monetary thresholds in the record-keeping and reporting provisions lack a substantial nexus with the claimed governmental interests, for the amounts involved are too low

disclosure requirements because of the possibility of consequent chill and harassment would be exempt from the requirements of § 434(e).

3RD CASE of Level 1 printed in FULL format.

FEDERAL ELECTION COMMISSION v. MASSACHUSETTS CITIZENS FOR
LIFE, INC.

No. 85-701

SUPREME COURT OF THE UNITED STATES

479 U.S. 238; 107 S. Ct. 616; 1986 U.S. LEXIS 26; 93 L. Ed.
2d 539; 55 U.S.L.W. 4067October 7, 1986, Argued
December 15, 1986, Decided

PRIOR HISTORY: [***1]

APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

DISPOSITION: 769 F.2d 13, affirmed.

SYLLABUS: Section 316 of the Federal Election Campaign Act (FECA) prohibits corporations from using treasury funds to make an expenditure "in connection with" any federal election, and requires that any expenditure for such purpose be financed by voluntary contributions to a separate segregated fund. Appellee is a nonprofit, nonstock corporation, whose purpose is to foster respect for human life and to defend the right to life of all human beings, born and unborn, through educational, political, and other forms of activities. To further this purpose, it has published a newsletter that has been distributed to contributors and to noncontributors who have expressed support for the organization. In September 1978, appellee prepared and distributed a "Special Edition" exhorting readers to vote "pro-life" in the upcoming primary elections in Massachusetts, listing the candidates for each state and federal office in every voting district in the State, and identifying each one as either supporting or opposing appellee's views. While some 400 candidates were listed, the photographs of only [***2] 13 were featured, all of whom were identified as favoring appellee's views. The publication was prepared by a staff that had prepared no regular newsletter, was distributed to a much larger audience than that of the regular newsletter, most of whom were members of the general public, and was financed by money taken from appellee's general treasury funds. A complaint was filed with appellant Federal Election Commission (FEC) alleging that the "Special Edition" violated @ 316 as representing an expenditure of funds from a corporate treasury to distribute to the general public a campaign flyer on behalf of certain political candidates. After the FEC determined that there was probable cause to believe that appellee had violated the statute, the FEC filed a complaint in Federal District Court, seeking a civil penalty and other relief. The District Court granted appellee's motion for summary judgment, holding that @ 316 did not apply to appellee but that if it did it was unconstitutional as a violation of the First Amendment. The Court of Appeals held that the statute applied to appellee and as so applied was unconstitutional.

Held: The judgment is affirmed.

JUSTICE BRENNAN delivered [***3] the opinion of the Court as to Parts I, II, III-B, and III-C, concluding that:

Express advocacy
includes - vote
pro life w/ pictures
of candidates.

Uncons. to be a
non-profit corp
from advocacy

in
express
advocacy

479 U.S. 238, *; 107 S. Ct. 616, **;
1986 U.S. LEXIS 26, ***3; 93 L. Ed. 2d 539

1. Appellee's publication and distribution of the "Special Edition" violated @ 316. Pp. 245-251.

(a) There is no merit to appellee's contention that preparation and distribution of the "Special Edition" does not fall within @ 316's definition of "expenditure" as the provision of various things of value "to any candidate, campaign committee, or political party or organization, in connection with any election," especially since the general definitions section of the FECA broadly defines "expenditure" as including provision of anything of value made "for the purpose of influencing any election for Federal office." Moreover, the legislative history clearly confirms that @ 316 was meant to proscribe expenditures in connection with an election. That history makes clear that Congress has long regarded it as insufficient merely to restrict payments made directly to candidates or campaign organizations. Pp. 245-248.

(b) An expenditure must constitute "express advocacy" in order to be subject to @ 316's prohibition. Here, the publication of the "Special Edition" constituted "express advocacy," since it represented [***4] express advocacy of the election of particular candidates distributed to members of the general public. Pp. 248-250.

(c) Appellee is not entitled to the press exemption under the FECA reserved for any news story, commentary, or editorial distributed through any "periodical publication," since even assuming that appellee's regular newsletter is exempt under this provision, the "Special Edition" cannot be considered comparable to any single issue of the newsletter in view of the method by which it was prepared and distributed. Pp. 250-251.

2. Section 316's restriction of independent spending is unconstitutional as applied to appellee, for it infringes protected speech without a compelling justification for such infringement. The concern underlying the regulation of corporate political activity -- that organizations that amass great wealth in the economic marketplace not gain unfair advantage in the political marketplace -- is absent with regard to appellee. Appellee was formed to disseminate political ideas, not to amass capital. It has no shareholders or other persons having a claim on its assets or earnings, but obtains its funds from persons who make contributions to further [***5] the organization's political purposes. It was not established by a business corporation or a labor union, and its policy is not to accept contributions from such entities. Pp. 256-265.

JUSTICE BRENNAN, joined by JUSTICE MARSHALL, JUSTICE POWELL, and JUSTICE SCALIA, concluded in Part III-A that the practical effect of applying @ 316 to appellee of discouraging protected speech is sufficient to characterize @ 316 as an infringement on First Amendment activities. As a corporation, appellee is subject to more extensive requirements and more stringent restrictions under the FECA than it would be if it was not incorporated. These include detailed recordkeeping and disclosure obligations, the requirement of a complex and formalized organization, and a limitation on whom can be solicited for contributions, all of which create a disincentive for such an organization to engage in political speech. Pp. 251-256.

JUSTICE O'CONNOR, agreeing that @ 316 is unconstitutional as applied to appellee's conduct at issue, concluded that the significant burden on appellee comes not from the statute's disclosure requirements that appellee must

479 U.S. 238, *; 107 S. Ct. 616, **;
1986 U.S. LEXIS 26, ***5; 93 L. Ed. 2d 539

satisfy, but from the additional organizational restraints [***6] imposed upon it by the statute. These restraints do not further the Government's informational interest in campaign disclosure and cannot be justified by any of the other interests identified by the FEC. Pp. 265-266.

COUNSEL: Charles N. Steele argued the cause for appellant. With him on the briefs was Richard B. Bader.

Francis H. Fox argued the cause for appellee. With him on the brief was E. Susan Garsh. *

* Roger M. Witten, William T. Lake, Carol F. Lee, and Archibald Cox filed a brief for Common Cause as amicus curiae urging reversal.

Briefs of amici curiae urging affirmance were filed for the American Civil Liberties Union et al. by Marjorie Heins, Burt Neuborne, and Jack Novik; for the Catholic League for Religious and Civil Rights by Steven Frederick McDowell; for the Chamber of Commerce of the United States by Judith K. Richmond, Stephen A. Bokat, Robin S. Conrad, and Jan W. Baran; for the Home Builders Association of Massachusetts by Wayne S. Henderson; for the National Rifle Association of America by James J. Featherstone and Richard E. Gardiner; and for Joseph M. Scheidler et al. by Edward R. Grant and Maura K. Quinlan.

Jane E. Kirtley, David Barr, Nancy H. Hendry, J. Laurent Scharff, and Bruce W. Sanford filed a brief for the Reporters Committee for Freedom of the Press et al. as amici curiae. [***7]

JUDGES: BRENNAN, J., announced the judgment of the Court and delivered the opinion for a unanimous Court with respect to Parts I and II, an opinion of the Court with respect to Parts III-B and III-C, in which MARSHALL, POWELL, O'CONNOR, and SCALIA, JJ., joined, and an opinion with respect to Part III-A, in which MARSHALL, POWELL, and SCALIA, JJ., joined. O'CONNOR, J., filed an opinion concurring in part and concurring in the judgment, post, p. 265. REHNQUIST, C. J., filed an opinion concurring in part and dissenting in part, in which WHITE, BLACKMUN, and STEVENS, JJ., joined post, p. 266. WHITE, J., filed a separate statement, post, p. 271.

OPINIONBY: BRENNAN

OPINION: [*241] [**619] JUSTICE BRENNAN announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, III-B, and III-C, and an opinion with respect to Part III-A, in which JUSTICE MARSHALL, JUSTICE POWELL, and JUSTICE SCALIA join.

The questions for decision here arise under @ 316 of the Federal Election Campaign Act (FECA or Act), 90 Stat. 490, as renumbered and amended, 2 U. S. C. @ 441b. The first question is whether appellee Massachusetts Citizens for Life, Inc. (MCFL), a nonprofit, nonstock [***8] corporation, by financing certain activity with its treasury funds, has violated the restriction on independent spending contained in @ 441b. That section prohibits corporations from using treasury funds to make an expenditure "in connection with" any federal election, and requires that any expenditure for such purpose be financed by voluntary contributions to a separate segregated fund. If appellee has violated @ 441b, the next question is whether application of that section to MCFL's conduct is

479 U.S. 238, *241; 107 S. Ct. 616, **619;
1986 U.S. LEXIS 26, ***8; 93 L. Ed. 2d 539

constitutional. We hold that the appellee's use of its treasury funds is prohibited by @ 441b, but that @ 441b is unconstitutional as applied to the activity of which the Federal Election Commission (FEC or Commission) complains.

I

A

MCFL was incorporated in January 1973 as a nonprofit, nonstock corporation under Massachusetts law. Its corporate purpose as stated in its articles of incorporation is:

"To foster respect for human life and to defend the right to life of all human beings, born and unborn, through educational, political and other forms of activities and in [*242] addition to engage in any other lawful act or activity for which corporations may be organized. [***9] . . ." App. 84.

MCFL does not accept contributions from business corporations or unions. Its resources come from voluntary donations from "members," and from various fundraising activities such as garage sales, bake sales, dances, raffles, and picnics. The corporation considers its "members" those persons who have either contributed to the organization in the past or indicated support for its activities. n1

- - - - -Footnotes- - - - -

n1 MCFL concedes that under this Court's decision in FEC v. National Right to Work Committee, 459 U.S. 197 (1982), such a definition does not permit it to solicit contributions from such persons for use by a separate segregated fund established under the Act. That case held that in order to be considered a "member" of a nonstock corporation under the Act, one must have "some relatively enduring and independently significant financial or organizational attachment" to the corporation. Id., at 204.

- - - - -End Footnotes- - - - -

Appellee has engaged in diverse educational and legislative activities [***10] designed to further its agenda. It has organized an [**620] ecumenical prayer service for the unborn in front of the Massachusetts Statehouse; sponsored a regional conference to discuss the issues of abortion and euthanasia; provided speakers for discussion groups, debates, lectures, and media programs; and sponsored an annual March for Life. In addition, it has drafted and submitted legislation, some of which has become law in Massachusetts; sponsored testimony on proposed legislation; and has urged its members to contact their elected representatives to express their opinion on legislative proposals.

MCFL began publishing a newsletter in January 1973. It was distributed as a matter of course to contributors, and, when funds permitted, to noncontributors who had expressed support for the organization. The total distribution of any one issue has never exceeded 6,000. The newsletter was published irregularly from 1973 through 1978: three times in 1973, five times in 1974, eight times

479 U.S. 238, *242; 107 S. Ct. 616, **620;
1986 U.S. LEXIS 26, ***10; 93 L. Ed. 2d 539

in 1975, eight times in 1976, five times in 1977, and four times in 1978. Id., at 88. [*243] Each of the newsletters bore a masthead identifying it as the "Massachusetts Citizens [***11] for Life Newsletter," as well as a volume and issue number. The publication typically contained appeals for volunteers and contributions and information on MCFL activities, as well as on matters such as the results of hearings on bills and constitutional amendments, the status of particular legislation, and the outcome of referenda, court decisions, and administrative hearings. Newsletter recipients were usually urged to contact the relevant decisionmakers and express their opinion.

B

In September 1978, MCFL prepared and distributed a "Special Edition" prior to the September 1978 primary elections. While the May 1978 newsletter had been mailed to 2,109 people and the October 1978 newsletter to 3,119 people, more than 100,000 copies of the "Special Edition" were printed for distribution. The front page of the publication was headlined "EVERYTHING YOU NEED TO KNOW TO VOTE PRO-LIFE," and readers were admonished that "[no] pro-life candidate can win in November without your vote in September." "VOTE PRO-LIFE" was printed in large bold-faced letters on the back page, and a coupon was provided to be clipped and taken to the polls to remind voters of the name of the "pro-life" candidates. [***12] Next to the exhortation to vote "pro-life" was a disclaimer: "This special election edition does not represent an endorsement of any particular candidate." Id., at 101.

To aid the reader in selecting candidates, the flyer listed the candidates for each state and federal office in every voting district in Massachusetts, and identified each one as either supporting or opposing what MCFL regarded as the correct position on three issues. A "y" indicated that a candidate supported the MCFL view on a particular issue and an "n" indicated that the candidate opposed it. An asterisk was placed next to the names of those incumbents who had made [*244] a "special contribution to the unborn in maintaining a 100% pro-life voting record in the state house by actively supporting MCFL legislation." While some 400 candidates were running for office in the primary, the "Special Edition" featured the photographs of only 13. These 13 had received a triple "y" rating, or were identified either as having a 100% favorable voting record or as having stated a position consistent with that of MCFL. No candidate whose photograph was featured had received even one "n" rating.

The "Special Edition" [***13] was edited by an officer of MCFL who was not part of the staff that prepared the MCFL newsletters. The "Special Edition" was mailed free of charge and without request to 5,986 contributors, and to 50,674 others whom MCFL regarded as sympathetic to the organization's purposes. The Commission asserts that the remainder of the 100,000 issues were placed in public areas for general distribution, but MCFL insists that no copies were made available to the general [**621] public. n2 The "Special Edition" was not identified on its masthead as a special edition of the regular newsletter, although the MCFL logotype did appear at its top. The words "Volume 5, No. 3, 1978" were apparently handwritten on the Edition submitted to the FEC, but the record indicates that the actual Volume 5, No. 3, was distributed in May and June 1977. The corporation spent \$ 9,812.76 to publish and circulate the "Special Edition," all of which was taken from its general treasury funds.

479 U.S. 238, *244; 107 S. Ct. 616, **621;
1986 U.S. LEXIS 26, ***13; 93 L. Ed. 2d 539

-Footnotes-

n2 The FEC submitted an affidavit from a person who stated that she obtained a copy of the "Special Edition" at a statewide conference of the National Organization for Women, where a stack of about 200 copies were available to the general public. App. 174.

-End Footnotes-

[***14]

A complaint was filed with the Commission alleging that the "Special Edition" was a violation of @ 441b. The complaint maintained that the Edition represented an expenditure of funds from a corporate treasury to distribute to the general public a campaign flyer on behalf of certain political candidates. The FEC found reason to believe that such a [*245] violation had occurred, initiated an investigation, and determined that probable cause existed to believe that MCFL had violated the Act. After conciliation efforts failed, the Commission filed a complaint in the District Court under @ 437g(a)(6)(A), seeking a civil penalty and other appropriate relief.

Both parties moved for summary judgment. The District Court granted MCFL's motion, holding that: (1) the election publications could not be regarded as "expenditures" under @ 441b(b)(2); (2) the "Special Edition" was exempt from the statutory prohibition by virtue of @ 431(9)(B)(i), which in general exempts news commentary distributed by a periodical publication unaffiliated with any candidate or political party; and (3) if the statute applied to MCFL, it was unconstitutional as a violation of the First Amendment. 589 F.Supp. 646, 649 (Mass. 1984). [***15]

On appeal, the Court of Appeals for the First Circuit held that the statute was applicable to MCFL, but affirmed the District Court's holding that the statute as so applied was unconstitutional. 769 F.2d 13 (1985). We granted certiorari, 474 U.S. 1049 (1986), and now affirm.

II

We agree with the Court of Appeals that the "Special Edition" is not outside the reach of @ 441b. First, we find no merit in appellee's contention that preparation and distribution of the "Special Edition" does not fall within that section's definition of "expenditure." Section 441b(b)(2) defines "contribution or expenditure" as the provision of various things of value "to any candidate, campaign committee, or political party or organization, in connection with any election . . ." (emphasis added). MCFL contends that, since it supplied nothing to any candidate or organization, the publication is not within @ 441b. However, the general definitions section of the Act contains a broader definition of "expenditure," including within that term the provision of anything of value [*246] made "for the purpose of influencing any election for Federal office. . . ." 2 U. S. C. @ 431(9)(A)(i) (emphasis added). Since the language of the statute does not alone resolve the issue, we must look to the legislative history of @ 441b to determine the scope of the term "expenditure."
n3

-Footnotes-

479 U.S. 238, *246; 107 S. Ct. 616, **621;
1986 U.S. LEXIS 26, ***16; 93 L. Ed. 2d 539

n3 MCFL argues that the definition in the general definitions section is not as broad as it appears, for @ 431(9)(B)(v) says that nothing shall be considered an "expenditure" under @ 431 that would not be regarded as such under @ 441b(b). Therefore, MCFL argues, the definition of expenditure under @ 431 necessarily incorporates @ 441b's restriction of that term to payments to a candidate. It is puzzling, however, why @ 431 would in one subsection purport to define an expenditure as a payment made for the purpose of influencing an election and in another subsection eliminate precisely that type of activity from the ambit of its definition. The answer may lie in the fact that @ 441b(b)(2) says that expenditures "include" payments to a candidate, a term that indicates that activities not specifically enumerated in that section may nonetheless be encompassed by it. In any event, the need for such speculation signals that the language of the statute is not on its face dispositive.

- - - - -End Footnotes- - - - -
[***17]

[**622] That history clearly confirms that @ 441b was meant to proscribe expenditures in connection with an election. We have exhaustively recounted the legislative history of the predecessors of this section in prior decisions. See *Pipefitters v. United States*, 407 U.S. 385, 402-409 (1972); *United States v. Automobile Workers*, 352 U.S. 567, 570-587 (1957). This history makes clear that Congress has long regarded it as insufficient merely to restrict payments made directly to candidates or campaign organizations. The first explicit expression of this came in 1947, when Congress passed the Taft-Hartley Act, ch. 120, @ 304, 61 Stat. 136, 159, as amended, 18 U. S. C. @ 610 (1970 ed.), the criminal statute prohibiting corporate contributions and expenditures to candidates. The statute as amended forbade any corporation or labor organization to make a "contribution or expenditure in connection with any election . . ." for federal office. The 1946 Report of the House Special Committee to Investigate Campaign Expenditures explained the rationale for the amendment, noting that it would undermine the basic objective of @ 610 [***18]

"if it were assumed that the term 'making any contribution' related only to the donating of money directly to a candidate, and excluded the vast expenditures of money in the activities herein shown to be engaged in extensively. Of what avail would a law be to prohibit the contributing direct to a candidate and yet permit the expenditure of large sums in his behalf?" H. R. Rep. No. 2739, 79th Cong., 2d Sess., 40, quoted in *Automobile Workers*, supra, at 581.

During the legislative debate on the bill, Senator Taft was asked whether @ 610 permitted a newspaper published by a railway union to put out a special edition in support of a political candidate, or whether such activity would be considered a political expenditure. The Senator replied: "If it were supported by union funds contributed by union members as union dues it would be a violation of the law, yes. It is exactly as if a railroad itself, using its stockholders' funds, published such an advertisement in the newspaper supporting one candidate as against another. . . ." 93 Cong. Rec. 6436-6437 (1947).

United States v. CIO, 335 U.S. 106 (1948), narrowed the scope of this prohibition, [***19] by permitting the use of union funds to publish a special edition of the weekly *CIO News* distributed to union members and

479 U.S. 238, *247; 107 S. Ct. 616, **622;
1986 U.S. LEXIS 26, ***19; 93 L. Ed. 2d 539

purchasers of the issue. In *Automobile Workers*, supra, however, we held that a union was subject to indictment for using union dues to sponsor political advertisements on commercial television. Distinguishing *CIO*, we stated that the concern of the statute "is the use of corporation or union funds to influence the public at large to vote for a particular candidate or a particular party." 352 U.S., at 589.

The Federal Election Campaign Act enacted the prohibition now found in @ 441b. This portion of the Act simply ratified the existing understanding of the scope of @ 610. See [*248] *Pipefitters*, supra, at 410-411. Representative Hansen, the sponsor of the provision, declared:

"The effect of this language is to carry out the basic intent of section 610, which is to prohibit the use of union or corporate funds for active electioneering directed at the general public on behalf of a candidate in a Federal election." 117 Cong. Rec. 43379 (1971).

The Representative concluded:

"The net [***20] effect of the amendment, therefore, is to tighten and clarify the provisions of section 610 of title 18, United States Code, and to codify the case law." Ibid. n4

[**623] Thus, the fact that @ 441b uses the phrase "to any candidate . . . in connection with any election," while @ 610 provided "in connection with any primary election," is not evidence that Congress abandoned its restriction, in force since 1947, on expenditures on behalf of candidates. We therefore find no merit in MCFL's argument that only payments to a candidate or organization fall within the scope of @ 441b.

- - - - -Footnotes- - - - -

n4 See also 117 Cong. Rec. 43381 (1971) (remarks of Rep. Hays); id., at 43383-43385 (remarks of Rep. Thompson); id., at 43388-43389 (remarks of Reps. Steiger and Gude).

- - - - -End Footnotes- - - - -

Appellee next argues that the definition of an expenditure under @ 441b necessarily incorporates the requirement that a communication "expressly advocate" the election of candidates, and that its "Special Edition" does not constitute express advocacy. The argument [***21] relies on the portion of *Buckley v. Valeo*, 424 U.S. 1 (1976), that upheld the disclosure requirement for expenditures by individuals other than candidates and by groups other than political committees. See 2 U. S. C. @ 434(c). There, in order to avoid problems of overbreadth, the Court held that the term "expenditure" encompassed "only funds used for communications that expressly advocate the election or defeat of a clearly identified [*249] candidate." 424 U.S., at 80 (footnote omitted). The rationale for this holding was:

479 U.S. 238, *249; 107 S. Ct. 616, **623;
1986 U.S. LEXIS 26, ***21; 93 L. Ed. 2d 539

"[The] distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various issues, but campaigns themselves generate issues of public interest." Id., at 42 (footnote omitted).

We agree with appellee that this rationale requires a similar construction of the more intrusive provision that directly regulates [***22] independent spending. We therefore hold that an expenditure must constitute "express advocacy" in order to be subject to the prohibition of @ 441b. We also hold, however, that the publication of the "Special Edition" constitutes "express advocacy."

Buckley adopted the "express advocacy" requirement to distinguish discussion of issues and candidates from more pointed exhortations to vote for particular persons. We therefore concluded in that case that a finding of "express advocacy" depended upon the use of language such as "vote for," "elect," "support," etc., Buckley, supra, at 44, n. 52. Just such an exhortation appears in the "Special Edition." The publication not only urges voters to vote for "pro-life" candidates, but also identifies and provides photographs of specific candidates fitting that description. The Edition cannot be regarded as a mere discussion of public issues that by their nature raise the names of certain politicians. Rather, it provides in effect an explicit directive: vote for these (named) candidates. The fact that this message is marginally less direct than "Vote for Smith" does not change its essential nature. The Edition [***23] goes beyond issue discussion to express electoral advocacy. The disclaimer of endorsement cannot negate this fact. The "Special Edition" thus falls [*250] squarely within @ 441b, for it represents express advocacy of the election of particular candidates distributed to members of the general public.

Finally, MCFL argues that it is entitled to the press exemption under 2 U. S. C. @ 431(9)(B)(i) reserved for

"any news story, commentary, or editorial distributed through the facilities of any . . . newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate."

MCFL maintains that its regular newsletter is a "periodical publication" within this definition, and that the "Special Edition" should be regarded as just another issue in the continuing newsletter series. The legislative history on the press exemption [**624] is sparse; the House of Representatives' Report on this section states merely that the exemption was designed to

"make it plain that it is not the intent of Congress in the present

479 U.S. 238, *250; 107 S. Ct. 616, **624;
1986 U.S. LEXIS 26, ***23; 93 L. Ed. 2d 539

legislation to limit or burden in any way the first amendment freedoms of the press [***24] or of association. [The exemption] assures the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns." H. R. Rep. No. 93-1239, p. 4 (1974).

We need not decide whether the regular MCFL newsletter is exempt under this provision, because, even assuming that it is, the "Special Edition" cannot be considered comparable to any single issue of the newsletter. It was not published through the facilities of the regular newsletter, but by a staff which prepared no previous or subsequent newsletters. It was not distributed to the newsletter's regular audience, but to a group 20 times the size of that audience, most of whom were members of the public who had never received the newsletter. No characteristic of the Edition associated it in any way with the normal MCFL publication. The MCFL [*251] masthead did not appear on the flyer, and, despite an apparent belated attempt to make it appear otherwise, the Edition contained no volume and issue number identifying it as one in a continuing series of issues.

MCFL protests that determining the scope of the press exemption by reference to such factors inappropriately focuses [***25] on superficial considerations of form. However, it is precisely such factors that in combination permit the distinction of campaign flyers from regular publications. We regard such an inquiry as essential, since we cannot accept the notion that the distribution of such flyers by entities that happen to publish newsletters automatically entitles such organizations to the press exemption. A contrary position would open the door for those corporations and unions with in-house publications to engage in unlimited spending directly from their treasuries to distribute campaign material to the general public, thereby eviscerating @ 441b's prohibition. n5

- - - - -Footnotes- - - - -

n5 Nor do we find the "Special Edition" akin to the normal business activity of a press entity deemed by some lower courts to fall within the exemption, such as the distribution of a letter soliciting subscriptions, see FEC v. Phillips Publishing Co., 517 F.Supp. 1308, 1313 (DC 1981), or the dissemination of publicity, see Reader's Digest Assn. v. FEC, 509 F.Supp. 1210 (SDNY 1981).

- - - - -End Footnotes- - - - -

[***26]

In sum, we hold that MCFL's publication and distribution of the "Special Edition" is in violation of @ 441b. We therefore turn to the constitutionality of that provision as applied to appellee.

III

A

Independent expenditures constitute expression "'at the core of our electoral process and of the First Amendment freedoms.'" Buckley, 424 U.S., at 39 (quoting Williams v. Rhodes, 393 U.S. 23, 32 (1968)). See also FEC v. National Conservative Political Action Committee, 470 U.S. 480, 493 (1985) (NCPAC) (independent expenditures "produce speech at the core of the First

479 U.S. 238, *251; 107 S. Ct. 616, **624;
1986 U.S. LEXIS 26, ***26; 93 L. Ed. 2d 539

Amendment"). We must therefore [*252] determine whether the prohibition of @ 441b burdens political speech, and, if so, whether such a burden is justified by a compelling state interest. Buckley, supra, at 44-45.

The FEC minimizes the impact of the legislation upon MCFL's First Amendment rights by emphasizing that the corporation remains free to establish a separate segregated fund, composed of contributions earmarked for that purpose by the donors, that may be used for unlimited campaign spending. However, the corporation is [***27] not free to use its general funds for campaign advocacy purposes. While that is not an absolute restriction on speech, it is a substantial one. Moreover, even to speak [**625] through a segregated fund, MCFL must make very significant efforts.

If it were not incorporated, MCFL's obligations under the Act would be those specified by @ 434(c), the section that prescribes the duties of "[every] person (other than a political committee)." n6 Section 434(c) provides that any such person that during a year makes independent expenditures exceeding \$ 250 must: (1) identify all contributors who contribute in a given year over \$ 200 in the aggregate in funds to influence elections, @ 434(c)(1); (2) disclose the name and address of recipients of independent expenditures exceeding \$ 200 in the aggregate, along with an indication of whether the money was used to support or oppose a particular candidate, @ 434(c)(2)(A); and (3) identify any persons who make contributions over \$ 200 that are earmarked for the purpose of furthering independent expenditures, @ 434(c)(2)(C). All unincorporated organizations whose major purpose is not campaign advocacy, but who occasionally make independent [***28] expenditures [*253] on behalf of candidates, are subject only to these regulations.

- - - - -Footnotes- - - - -

n6 In Buckley v. Valeo, 424 U.S. 1 (1976), this Court said that an entity subject to regulation as a "political committee" under the Act is one that is either "under the control of a candidate or the major purpose of which is the nomination or election of a candidate." Id., at 79. It is undisputed on this record that MCFL fits neither of these descriptions. Its central organizational purpose is issue advocacy, although it occasionally engages in activities on behalf of political candidates.

- - - - -End Footnotes- - - - -

Because it is incorporated, however, MCFL must establish a "separate segregated fund" if it wishes to engage in any independent spending whatsoever. @@ 441b(a),(b)(2)(C). Since such a fund is considered a "political committee" under the Act, @ 431(4)(B), all MCFL independent expenditure activity is, as a result, regulated as though the organization's major purpose is to further the election of candidates. [***29] This means that MCFL must comply with several requirements in addition to those mentioned. Under @ 432, it must appoint a treasurer, @ 432(a); ensure that contributions are forwarded to the treasurer within 10 or 30 days of receipt, depending on the amount of contribution, @ 432(b)(2); see that its treasurer keeps an account of every contribution regardless of amount, the name and address of any person who makes a contribution in excess of \$ 50, all contributions received from political committees, and the name and address of any person to whom a disbursement is made regardless of amount, @ 432(c); and preserve receipts for all

479 U.S. 238, *253; 107 S. Ct. 616, **625;
1986 U.S. LEXIS 26, ***29; 93 L. Ed. 2d 539

disbursements over \$ 200 and all records for three years, @@ 432(c),(d). Under @ 433, MCFL must file a statement of organization containing its name, address, the name of its custodian of records, and its banks, safety deposit boxes, or other depositories, @@ 433(a),(b); must report any change in the above information within 10 days, @ 433(c); and may dissolve only upon filing a written statement that it will no longer receive any contributions nor make disbursements, and that it has no outstanding debts or obligations, @ 433(d)(1).

Under @ 434, MCFL must [***30] file either monthly reports with the FEC or reports on the following schedule: quarterly reports during election years, a pre-election report no later than the 12th day before an election, a postelection report within 30 days after an election, and reports every 6 months during nonelection years, @@ 434(a)(4)(A), (B). These reports must contain information regarding the amount of cash on [*254] hand; the total amount of receipts, detailed by 10 different categories; the identification of each political committee and candidate's authorized or affiliated committee making contributions, and any persons making loans, providing rebates, refunds, dividends, or interest or any other offset to operating expenditures in an aggregate amount over \$ 200; the total amount of all disbursements, detailed by 12 different categories; the names of all authorized or affiliated committees to whom expenditures aggregating over \$ 200 have been made; persons to whom loan [**626] repayments or refunds have been made; the total sum of all contributions, operating expenses, outstanding debts and obligations, and the settlement terms of the retirement of any debt or obligation. @ 434(b). [***31] In addition, MCFL may solicit contributions for its separate segregated fund only from its "members," @@ 441b(b)(4)(A), (C), which does not include those persons who have merely contributed to or indicated support for the organization in the past. See FEC v. National Right to Work Committee, 459 U.S. 197, 204 (1982).

It is evident from this survey that MCFL is subject to more extensive requirements and more stringent restrictions than it would be if it were not incorporated. These additional regulations may create a disincentive for such organizations to engage in political speech. Detailed record-keeping and disclosure obligations, along with the duty to appoint a treasurer and custodian of the records, impose administrative costs that many small entities may be unable to bear. n7 Furthermore, such duties require a far more complex [*255] and formalized organization than many small groups could manage. Restriction of solicitation of contributions to "members" vastly reduces the sources of funding for organizations with either few or no formal members, directly limiting the ability of such organizations to engage in core political speech. It is not [***32] unreasonable to suppose that, as in this case, an incorporated group of like-minded persons might seek donations to support the dissemination of their political ideas and their occasional endorsement of political candidates, by means of garage sales, bake sales, and raffles. Such persons might well be turned away by the prospect of complying with all the requirements imposed by the Act. Faced with the need to assume a more sophisticated organizational form, to adopt specific accounting procedures, to file periodic detailed reports, and to monitor garage sales lest nonmembers take a fancy to the merchandise on display, it would not be surprising if at least some groups decided that the contemplated political activity was simply not worth it. n8

479 U.S. 238, *255; 107 S. Ct. 616, **626;
1986 U.S. LEXIS 26, ***32; 93 L. Ed. 2d 539

n7 It is true that we acknowledged in Buckley, supra, that, although the reporting and disclosure requirements of the Act "will deter some individuals who otherwise might contribute," id., at 68, this is a burden that is justified by substantial Government interests. Id., at 66-68. However, while the effect of additional reporting and disclosure obligations on an organization's contributors may not necessarily constitute an additional burden on speech, the administrative costs of complying with such increased responsibilities may create a disincentive for the organization itself to speak. [***33]

n8 The fact that MCFL established a political committee in 1980 does not change this conclusion, for the corporation's speech may well have been inhibited due to its inability to form such an entity before that date. Furthermore, other organizations comparable to MCFL may not find it feasible to establish such a committee, and may therefore decide to forgo engaging in independent political speech.

- - - - -End Footnotes- - - - -

Thus, while @ 441b does not remove all opportunities for independent spending by organizations such as MCFL, the avenue it leaves open is more burdensome than the one it forecloses. The fact that the statute's practical effect may be to discourage protected speech is sufficient to characterize @ 441b as an infringement on First Amendment activities. In Freedman v. Maryland, 380 U.S. 51 (1965), for instance, we held that the absence of certain procedural safeguards rendered unconstitutional a State's film censorship program. Such procedures were necessary, we said, because, as a practical matter, without them "it may prove too burdensome to seek review of the censor's [***34] determination." Id., at 59. [*256] Speiser v. Randall, 357 U.S. 513 (1958), reviewed a state program under which taxpayers applying for a certain tax exemption bore the burden of proving that they did not advocate the overthrow of the United States and would not support a foreign government against this country. We noted: "In practical operation, therefore, [**627] this procedural device must necessarily produce a result which the State could not command directly. It can only result in a deterrence of speech which the Constitution makes free." Id., at 526. The same may be said of @ 441b, for its practical effect on MCFL in this case is to make engaging in protected speech a severely demanding task. n9

- - - - -Footnotes- - - - -

n9 The Commission relies on Regan v. Taxation With Representation, 461 U.S. 540 (1983), in support of its contention that the requirement that independent spending be conducted through a separate segregated fund does not burden MCFL's First Amendment rights. Regan, however, involved the requirement that a nonprofit corporation establish a separate lobbying entity if contributions to the corporation for the conduct of other activities were to be tax deductible. If the corporation chose not to set up such a lobbying arm, it would not be eligible for tax-deductible contributions. Such a result, however, would infringe no protected activity, for there is no right to have speech subsidized by the Government. Id., at 545-546. By contrast, the activity that may be discouraged in this case, independent spending, is core political speech under the First Amendment.

- - - - -End Footnotes- - - - -

[***35]

B

When a statutory provision burdens First Amendment rights, it must be justified by a compelling state interest. *Williams v. Rhodes*, 393 U.S., at 31; *NAACP v. Button*, 371 U.S. 415, 438 (1963). The FEC first insists that justification for @ 441b's expenditure restriction is provided by this Court's acknowledgment that "the special characteristics of the corporate structure require particularly careful regulation." *National Right to Work Committee*, supra, at 209-210. The Commission thus relies on the long history of regulation of corporate political activity as support for the application of @ 441b to MCFL. Evaluation of the Commission's [*257] argument requires close examination of the underlying rationale for this longstanding regulation.

We have described that rationale in recent opinions as the need to restrict "the influence of political war chests funneled through the corporate form," *NCPAC*, 470 U.S., at 501; to "eliminate the effect of aggregated wealth on federal elections," *Pipefitters*, 407 U.S., at 416; to curb the political influence of "those who [***36] exercise control over large aggregations of capital," *Automobile Workers*, 352 U.S., at 585; and to regulate the "substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization," *National Right to Work Committee*, 459 U.S., at 207.

This concern over the corrosive influence of concentrated corporate wealth reflects the conviction that it is important to protect the integrity of the marketplace of political ideas. It acknowledges the wisdom of Justice Holmes' observation that "the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market. . . ." *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., joined by Brandeis, J., dissenting).. n10

- - - - -Footnotes- - - - -

n10 While this market metaphor has guided congressional regulation in the area of campaign activity, First Amendment speech is not necessarily limited to such an instrumental role. As Justice Brandeis stated in his discussion of political speech in his concurrence in *Whitney v. California*, 274 U.S. 357, 375 (1927):

"Those who won our independence believed that the final end of the State was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means."

- - - - -End Footnotes- - - - -

[***37]

Direct corporate spending on political activity raises the prospect that resources amassed in the economic marketplace may be used to provide an unfair advantage in the political marketplace. Political "free trade" does not

479 U.S. 238, *257; 107 S. Ct. 616, **627;
1986 U.S. LEXIS 26, ***37; 93 L. Ed. 2d 539

necessarily require that all who participate in the political marketplace do so with exactly equal resources. See NCPAC, supra (invalidating [*258] limits on independent spending by political committees); [**628] Buckley, 424 U.S., at 39-51 (striking down expenditure limits in 1971 Campaign Act). Relative availability of funds is after all a rough barometer of public support. The resources in the treasury of a business corporation, however, are not an indication of popular support for the corporation's political ideas. They reflect instead the economically motivated decisions of investors and customers. The availability of these resources may make a corporation a formidable political presence, even though the power of the corporation may be no reflection of the power of its ideas.

By requiring that corporate independent expenditures be financed through a political committee expressly established to engage in campaign [***38] spending, @ 441b seeks to prevent this threat to the political marketplace. The resources available to this fund, as opposed to the corporate treasury, in fact reflect popular support for the political positions of the committee. Pipefitters, supra, acknowledged this objective of @ 441b in noting the statement of Representative Hansen, its sponsor, that the "'underlying theory'" of this regulation "'is that substantial general purpose treasuries should not be diverted to political purposes,'" and that requiring funding by voluntary contributions would ensure that "'the money collected is that intended by those who contribute to be used for political purposes and not money diverted from another source.'" 407 U.S., at 423-424 (quoting 117 Cong. Rec. 43381 (1971)). n11 See also Automobile Workers, supra, at 582 [*259] (Congress added proscription on expenditures to Corrupt Practices Act "to protect the political process from what it deemed to be the corroding effect of money employed in elections by aggregated power"). The expenditure restrictions of @ 441b are thus meant to ensure that competition among actors [***39] in the political arena is truly competition among ideas.

- - - - -Footnotes- - - - -

n11 While business corporations may not represent the only organizations that pose this danger, they are by far the most prominent example of entities that enjoy legal advantages enhancing their ability to accumulate wealth. That Congress does not at present seek to regulate every possible type of firm fitting this description does not undermine its justification for regulating corporations. Rather, Congress' decision represents the "careful legislative adjustment of the federal electoral laws, in a 'cautious advance, step by step,'" to which we have said we owe considerable deference. FEC v. National Right to Work Committee, 459 U.S. 197, 209 (1982) (quoting NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 46 (1937)).

- - - - -End Footnotes- - - - -

Regulation of corporate political activity thus has reflected concern not about use of the corporate form per se, but about the potential for unfair deployment of wealth for political purposes. [***40] n12 Groups such as MCFL, however, do not pose that danger of corruption. MCFL was formed to disseminate political ideas, not to amass capital. The resources it has available are not a function of its success in the economic marketplace, but its popularity in the political marketplace. While MCFL may derive some advantages from its corporate form, those are advantages that redound to its benefit as a

479 U.S. 238, *259; 107 S. Ct. 616, **628;
1986 U.S. LEXIS 26, ***40; 93 L. Ed. 2d 539

political organization, not as a profit-making enterprise. In short, MCFL is not the type of "traditional [corporation] organized for economic gain," NCPAC, supra, at 500, that has been the focus of regulation of corporate political activity.

- - - - -Footnotes- - - - -

n12 The regulation imposed as a result of this concern is of course distinguishable from the complete foreclosure of any opportunity for political speech that we invalidated in the state referendum context in First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978).

- - - - -End Footnotes- - - - -

National Right to Work Committee does not support the inclusion [***41] of MCFL within @ 441b's restriction on direct independent spending. That case upheld the application to a nonprofit corporation of a different provision of @ 441b: the limitation on who can be solicited for contributions to a political committee. However, the political activity at issue in that case was contributions, as the committee had [**629] been established for the purpose of making direct contributions to political candidates. 459 U.S., at 200. We have consistently held that restrictions on contributions require less compelling [*260] justification than restrictions on independent spending. NCPAC, 470 U.S. 480 (1985); California Medical Assn. v. FEC, 453 U.S. 182, 194, 196-197 (1981); Buckley, supra, at 20-22.

In light of the historical role of contributions in the corruption of the electoral process, the need for a broad prophylactic rule was thus sufficient in National Right to Work Committee to support a limitation on the ability of a committee to raise money for direct contributions to candidates. The limitation on solicitation in this case, however, means that nonmember [***42] corporations can hardly raise any funds at all to engage in political speech warranting the highest constitutional protection. Regulation that would produce such a result demands far more precision than @ 441b provides. Therefore, the desirability of a broad prophylactic rule cannot justify treating alike business corporations and appellee in the regulation of independent spending.

The Commission next argues in support of @ 441b that it prevents an organization from using an individual's money for purposes that the individual may not support. We acknowledged the legitimacy of this concern as to the dissenting stockholder and union member in National Right to Work Committee, 459 U.S., at 208, and in Pipefitters, 407 U.S., at 414-415. But such persons, as noted, contribute investment funds or union dues for economic gain, and do not necessarily authorize the use of their money for political ends. Furthermore, because such individuals depend on the organization for income or for a job, it is not enough to tell them that any unhappiness with the use of their money can be redressed simply by leaving the corporation or the union. It was thus [***43] wholly reasonable for Congress to require the establishment of a separate political fund to which persons can make voluntary contributions.

This rationale for regulation is not compelling with respect to independent expenditures by appellee. Individuals who contribute to appellee are fully aware of its political purposes, and in fact contribute precisely because they support [*261] those purposes. It is true that a contributor may not be

479 U.S. 238, *261; 107 S. Ct. 616, **629;
1986 U.S. LEXIS 26, ***43; 93 L. Ed. 2d 539

aware of the exact use to which his or her money ultimately may be put, or the specific candidate that it may be used to support. However, individuals contribute to a political organization in part because they regard such a contribution as a more effective means of advocacy than spending the money under their own personal direction. Any contribution therefore necessarily involves at least some degree of delegation of authority to use such funds in a manner that best serves the shared political purposes of the organization and contributor. In addition, an individual desiring more direct control over the use of his or her money can simply earmark the contribution for a specific purpose, an option whose availability does not depend on the applicability [***44] of @ 441b. Cf. @ 434(c)(2)(C) (entities other than political committees must disclose names of those persons making earmarked contributions over \$ 200). Finally, a contributor dissatisfied with how funds are used can simply stop contributing.

The Commission maintains that, even if contributors may be aware that a contribution to appellee will be used for political purposes in general, they may not wish such money to be used for electoral campaigns in particular. That is, persons may desire that an organization use their contributions to further a certain cause, but may not want the organization to use their money to urge support for or opposition to political candidates solely on the basis of that cause. This concern can be met, however, by means far more narrowly tailored and less burdensome than @ 441b's restriction on direct expenditures: simply requiring [**630] that contributors be informed that their money may be used for such a purpose.

It is true that National Right to Work Committee, supra, held that the goal of protecting minority interests justified solicitation restrictions on a nonprofit corporation operating a political committee [***45] established to make direct contributions to candidates. As we have noted above, however, the Government enjoys greater latitude in limiting contributions [*262] than in regulating independent expenditures. Supra, at 259-260. Given a contributor's awareness of the political activity of appellee, as well as the readily available remedy of refusing further donations, the interest protecting contributors is simply insufficient to support @ 441b's restriction on the independent spending of MCFL.

Finally, the FEC maintains that the inapplicability of @ 441b to MCFL would open the door to massive undisclosed political spending by similar entities, and to their use as conduits for undisclosed spending by business corporations and unions. We see no such danger. Even if @ 441b is inapplicable, an independent expenditure of as little as \$ 250 by MCFL will trigger the disclosure provisions of @ 434(c). As a result, MCFL will be required to identify all contributors who annually provide in the aggregate \$ 200 in funds intended to influence elections, will have to specify all recipients of independent spending amounting to more than \$ 200, and will be bound to identify all persons [***46] making contributions over \$ 200 who request that the money be used for independent expenditures. These reporting obligations provide precisely the information necessary to monitor MCFL's independent spending activity and its receipt of contributions. The state interest in disclosure therefore can be met in a manner less restrictive than imposing the full panoply of regulations that accompany status as a political committee under the Act.

479 U.S. 238, *262; 107 S. Ct. 616, **630;
1986 U.S. LEXIS 26, ***46; 93 L. Ed. 2d 539

Furthermore, should MCFL's independent spending become so extensive that the organization's major purpose may be regarded as campaign activity, the corporation would be classified as a political committee. See Buckley, 424 U.S., at 79. As such, it would automatically be subject to the obligations and restrictions applicable to those groups whose primary objective is to influence political campaigns. In sum, there is no need for the sake of disclosure to treat MCFL any differently than other organizations that only occasionally engage in independent spending on behalf of candidates.

[*263] Thus, the concerns underlying the regulation of corporate political activity are simply absent with regard to MCFL. The dissent is surely [***47] correct in maintaining that we should not second-guess a decision to sweep within a broad prohibition activities that differ in degree, but not kind. Post, at 268-269. It is not the case, however, that MCFL merely poses less of a threat of the danger that has prompted regulation. Rather, it does not pose such a threat at all. Voluntary political associations do not suddenly present the specter of corruption merely by assuming the corporate form. Given this fact, the rationale for restricting core political speech in this case is simply the desire for a bright-line rule. This hardly constitutes the compelling state interest necessary to justify any infringement on First Amendment freedom. While the burden on MCFL's speech is not insurmountable, we cannot permit it to be imposed without a constitutionally adequate justification. In so holding, we do not assume a legislative role, but fulfill our judicial duty -- to enforce the demands of the Constitution.

C

Our conclusion is that @ 441b's restriction of independent spending is unconstitutional as applied to MCFL, for it infringes protected speech without a compelling justification for such infringement. We [***48] acknowledge the legitimacy of Congress' concern that organizations that amass great wealth in the economic marketplace not gain unfair advantage in the political marketplace.

[**631] Regardless of whether that concern is adequate to support application of @ 441b to commercial enterprises, a question not before us, that justification does not extend uniformly to all corporations. Some corporations have features more akin to voluntary political associations than business firms, and therefore should not have to bear burdens on independent spending solely because of their incorporated status.

In particular, MCFL has three features essential to our holding that it may not constitutionally be bound by @ 441b's [*264] restriction on independent spending. First, it was formed for the express purpose of promoting political ideas, and cannot engage in business activities. If political fundraising events are expressly denominated as requests for contributions that will be used for political purposes, including direct expenditures, these events cannot be considered business activities. This ensures that political resources reflect political support. Second, it has no shareholders [***49] or other persons affiliated so as to have a claim on its assets or earnings. This ensures that persons connected with the organization will have no economic disincentive for disassociating with it if they disagree with its political activity. n13 Third, MCFL was not established by a business corporation or a labor union, and it is its policy not to accept contributions from such entities. This prevents such corporations from serving as conduits for the type of direct spending that

479 U.S. 238, *264; 107 S. Ct. 616, **631;
1986 U.S. LEXIS 26, ***49; 93 L. Ed. 2d 539

creates a threat to the political marketplace.

-Footnotes-

n13 This restriction does not deprive such organizations of "members" that can be solicited for donations to a separate segregated fund that makes contributions to candidates, a fund that, under our decision in National Right to Work Committee, must be established by all corporations wishing to make such candidate contributions. National Right to Work Committee requires that "members" have either a "financial or organizational attachment" to the corporation, 459 U.S., at 204 (emphasis added). Our decision today merely states that a corporation that does not have persons affiliated financially must fall outside @ 441b's prohibition on direct expenditures if it also has the other two characteristics possessed by MCFL that we discuss in text.

-End Footnotes-

[***50]

It may be that the class of organizations affected by our holding today will be small. That prospect, however, does not diminish the significance of the rights at stake. Freedom of speech plays a fundamental role in a democracy; as this Court has said, freedom of thought and speech "is the matrix, the indispensable condition, of nearly every other form of freedom." Palko v. Connecticut, 302 U.S. 319, 327 (1937). Our pursuit of other governmental ends, however, may tempt us to accept in small increments a loss that would [*265] be unthinkable if inflicted all at once. For this reason, we must be as vigilant against the modest diminution of speech as we are against its sweeping restriction. Where at all possible, government must curtail speech only to the degree necessary to meet the particular problem at hand, and must avoid infringing on speech that does not pose the danger that has prompted regulation. In enacting the provision at issue in this case, Congress has chosen too blunt an instrument for such a delicate task.

The judgment of the Court of Appeals is

Affirmed.

CONCURBY: O'CONNOR (In Part); REHNQUIST (In Part)

CONCUR: JUSTICE O'CONNOR, concurring [***51] in part and concurring in the judgment.

I join Parts I, II, III-B, and III-C, and I concur in the Court's judgment that @ 316 of the Federal Election Campaign Act (Act), 2 U. S. C. @ 441b, is unconstitutional as applied to the conduct of appellee Massachusetts Citizens for Life, Inc. (MCFL), at issue in this case. I write separately, however, because I am concerned that the Court's discussion of the Act's disclosure requirements may be read as moving away from the teaching of Buckley v. Valeo, 424 U.S. 1 (1976); see ante, at 254-255. In Buckley, the Court was concerned not only with the chilling effect of reporting and disclosure requirements on an organization's contributors, 424 U.S., at 66-68, but also with the potential burden of disclosure [**632] requirements on a group's own speech. Id., at 74-82. The Buckley Court concluded that disclosure of a group's independent campaign expenditures serves the important governmental interest of

479 U.S. 238, *265; 107 S. Ct. 616, **632;
1986 U.S. LEXIS 26, ***51; 93 L. Ed. 2d 539

"[shedding] the light of publicity" on campaign financing, thereby helping voters to evaluate the constituencies of those who seek federal office. *Id.*, at 81. [***52] As a result, the burden of disclosing independent expenditures generally is "a reasonable and minimally restrictive method of furthering First Amendment values by opening the basic processes of our federal election system to public view." *Id.*, at 82.

[*266] In my view, the significant burden on MCFL in this case comes not from the disclosure requirements that it must satisfy, but from the additional organizational restraints imposed upon it by the Act. As the Court has described ante, at 253-255, engaging in campaign speech requires MCFL to assume a more formalized organizational form and significantly reduces or eliminates the sources of funding for groups such as MCFL with few or no "members." These additional requirements do not further the Government's informational interest in campaign disclosure, and, for the reasons given by the Court, cannot be justified by any of the other interests identified by the Federal Election Commission. Although the organizational and solicitation restrictions are not invariably an insurmountable burden on speech, see, e. g., *FEC v. National Right to Work Committee*, 459 U.S. 197 (1982), [***53] in this case the Government has failed to show that groups such as MCFL pose any danger that would justify infringement of its core political expression. On that basis, I join in the Court's judgment that @ 441b is unconstitutional as applied to MCFL.

DISSENTBY: REHNQUIST (In Part)

DISSENT: CHIEF JUSTICE REHNQUIST, with whom JUSTICE WHITE, JUSTICE BLACKMUN, and JUSTICE STEVENS join, concurring in part and dissenting in part.

In *FEC v. National Right to Work Committee*, 459 U.S. 197, 209-210 (1982) (NRWC), the Court unanimously endorsed the "legislative judgment that the special characteristics of the corporate structure require particularly careful regulation." I continue to believe that this judgment, as reflected in 2 U. S. C. @ 441b, is constitutionally sound and entitled to substantial deference, and therefore dissent from the Court's decision to "second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared." *Id.*, at 210. Though I agree that the expenditures in this case violated the terms of @ 441b, and accordingly join Part I and II of the Court's opinion, I cannot accept the conclusion that [***54] the statutory provisions are unconstitutional [*267] as applied to appellee Massachusetts Citizens for Life (MCFL).

As the Court recognizes, the segregated fund requirements of @ 441b are simply a contemporary chapter in the "long history of regulation of corporate political activity." Ante, at 256. See NRWC, supra, at 208-209; *United States v. Automobile Workers*, 352 U.S. 567, 570-584 (1957). In approving this sort of regulation, our decisions have found at least two legitimate concerns arising from corporate campaign spending. First, @ 441b and its predecessors were enacted to rid the political process of the corruption and appearance of corruption that accompany contributions to and expenditures for candidates from corporate funds. See NRWC, supra, at 207-208; *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 788, n. 26 (1978); *Automobile Workers*, supra, at 570-575. Second, such regulation serves to protect the interests of individuals who pay money into a corporation or union for purposes other than the support of candidates for public office. See NRWC, supra, at 208; [***55] Pipefitters

479 U.S. 238, *267; 107 S. Ct. 616, **632;
1986 U.S. LEXIS 26, ***55; 93 L. Ed. 2d 539

v. United States, 407 U.S. 385, 414-415 (1972); United States v. CIO, 335 U.S. 106, 113 (1948). In light of the "special advantages that the State confers on the corporate form," FEC v. National Conservative Political Action Committee, 470 U.S. 480, 495 (1985) (NCPAC), we have considered these dangers sufficient to justify restrictions on corporate political activity. See also California Medical Assn. v. FEC, 453 U.S. 182, 201 (1981).

The Court, rejecting the "teachings of our earlier decisions," NRWC, supra, at 210, and the judgment of Congress, n1 confidently concludes that these dangers are not [*268] present here. "Groups such as MCFL," the Court assures us, do not pose "the potential for unfair deployment of wealth for political purposes." Ante, at 259. Because MCFL was formed to disseminate political ideas, we are told, the money it spends -- at least in the form of independent expenditures -- reflects the political ideas for which it stands without the threat or appearance of corruption. Ante, at 258-260. [***56] Nor does the Court find any need to protect the interests of contributors to MCFL by requiring the establishment of a separate segregated fund for its political expenditures. Individual contributors can simply withhold their contributions if they disagree with the corporation's choices; those who continue to give will be protected by requiring notice to them that their money might be used for political purposes. Ante, at 261-262.

- - - - -Footnotes- - - - -

n1 It is, of course, clear that Congress intended @ 441b to apply to corporations like MCFL. The section makes it unlawful for "any corporation . . . to make a contribution or expenditure in connection with" certain federal elections. 2 U. S. C. @ 441b(a) (emphasis added). Other provisions of the statutory scheme make clear that corporations "without capital stock" are within the regulatory sphere. See @ 441b(b)(4)(C). This is accordingly not a case of statutory construction, but rather one in which the Court rejects the judgment of Congress that such regulation is appropriate. Cf. United States v. CIO, 335 U.S. 106 (1948).

- - - - -End Footnotes- - - - -

[***57]

I do not dispute that the threat from corporate political activity will vary depending on the particular characteristics of a given corporation; it is obvious that large and successful corporations with resources to fund a political war chest constitute a more potent threat to the political process than less successful business corporations or nonprofit corporations. It may also be that those supporting some nonbusiness corporations will identify with the corporations' political views more frequently than the average shareholder of General Motors would support the political activities of that corporation. These distinctions among corporations, however, are "distinctions in degree" that do not amount to "differences in kind." Buckley v. Valeo, 424 U.S. 1, 30 (1976) (per curiam). Cf. NCPAC, supra, at 498-499. As such, they are more properly drawn by the Legislature than by the Judiciary. See Buckley, supra, at 30. Congress expressed its judgment in @ 441b that the threat posed by corporate political activity warrants a prophylactic measure applicable to all [*269] groups that organize in the corporate form. [***58] Our previous cases have expressed a reluctance to fine-tune such judgments; I would adhere to that counsel here.

479 U.S. 238, *269; 107 S. Ct. 616, **633;
1986 U.S. LEXIS 26, ***58; 93 L. Ed. 2d 539

I would have thought the distinctions drawn by the Court today largely foreclosed by our decision in NRWC, supra. We considered there the requirement of @ 441b(b)(4)(C) that separate segregated funds solicit only from "members." The corporation whose fund was at issue was not unlike MCFL -- a nonprofit corporation without capital stock, formed to educate the public on an issue of perceived public significance. See NRWC, 459 U.S., at 199-200. We were asked to adopt a broad definition of members because the solicitations involved "would neither corrupt officials nor coerce members of the corporation holding minority political views. . . ." Id., at 206. [**634] We had no difficulty concluding that such an approach was unnecessary and that the judgment of Congress to regulate corporate political activity was entitled to "considerable deference." Id., at 209. Most significantly, we declined the invitation to modify the statute to account for the characteristics of different corporations: [***59] "While @ 441b restricts the solicitation of corporations and labor unions without great resources, as well as those more fortunately situated, we accept Congress' judgment that it is the potential for such influence that demands regulation. Nor will we second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared." Id., at 210. We saw no reason why the governmental interest in preventing both actual corruption and the appearance of corruption could not "be accomplished by treating unions, corporations, and similar organizations differently from individuals." Id., at 210-211.

The distinction between corporate and noncorporate activity was not diminished in NCPAC, supra, where we found fatally overbroad the \$ 1,000 limitation in 26 U. S. C. @ 9012(f) on independent expenditures by "political committees." Our conclusion rested in part on the fact that @ 9012(f) regulated [*270] not only corporations but rather "indiscriminately [lumped] with corporations any 'committee, association or organization.'" NCPAC, 470 U.S., at 500. NCPAC accordingly [***60] continued to recognize what had been, until today, an acceptable distinction, grounded in the judgment of the political branch, between political activity by corporate actors and that by organizations not benefiting from "the corporate shield which the State [has] granted to corporations as a form of quid pro quo" for various regulations. Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 300 (1981) (REHNQUIST, J., concurring). n2

- - - - -Footnotes- - - - -

n2 Only once have we found unconstitutional a regulation that restricted only corporate political activity. First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978). As we noted in FEC v. National Right to Work Committee, 459 U.S. 197, 210, n. 7 (1982), our decision in Bellotti did not consider the validity of laws, like @ 441b, aimed at the threat of corruption in candidate elections. See Bellotti, supra, at 788, n. 26.

- - - - -End Footnotes- - - - -

The Court explains the decisions in NRWC and [***61] NCPAC by reference to another distinction found in our decisions -- that between contributions and independent expenditures. See Buckley, supra, at 19-23. This is admittedly a distinction between the facts of NRWC and those of NCPAC, but it does not warrant a different result in view of our longstanding approval of limitations on corporate spending and of the type of regulation involved here. The

479 U.S. 238, *270; 107 S. Ct. 616, **634;
1986 U.S. LEXIS 26, ***61; 93 L. Ed. 2d 539

distinction between contributions and independent expenditures is not a line separating black from white. The statute here -- though involving independent expenditures -- is not nearly so drastic as the "wholesale restriction of clearly protected conduct" at issue in NCPAC, supra, at 501. It regulates instead the form of otherwise unregulated spending. A separate segregated fund formed by MCFL may use contributions it receives, without limit, on political expenditures. n3 As the Court correctly [*271] notes, the regulation of @ 441b is not without burdens, but it remains wholly different in character from that which we condemned in NCPAC. In these circumstances, I would defer to the congressional judgment that [***62] corporations are a distinct category with respect to which this sort of regulation is constitutionally permissible. n4

- - - - -Footnotes- - - - -

n3 Because the corporation itself may use its own treasury money to pay the fund's administrative costs and to solicit contributions to the fund, 2 U. S. C. @ 441b(b)(4), every dollar of those contributions is available for political purposes.

n4 The statutory scheme at issue in this case does not require us to consider the validity of a direct and absolute limitation on independent expenditures by corporations.

- - - - -End Footnotes- - - - -

[**635] The basically legislative character of the Court's decision is dramatically illustrated by its effort to carve out a constitutional niche for "[groups] such as MCFL." Ante, at 259. The three-part test gratuitously announced in today's dicta, ante, at 263-264, adds to a well-defined prohibition a vague and barely adumbrated exception certain to result in confusion and costly litigation. If we sat as a council of revision to modify legislative judgments, I would hesitate [***63] to join the Court's effort because of this fact alone. But we do not sit in that capacity; we are obliged to leave the drawing of lines in cases such as this to Congress if those lines are within constitutional bounds. Believing that the Act of Congress in question here passes this test, I dissent from the Court's contrary conclusion.

JUSTICE WHITE, while joining THE CHIEF JUSTICE's opinion, adheres to his dissenting views expressed in Buckley v. Valeo, 424 U.S. 1 (1976), First National Bank v. Bellotti, 435 U.S. 765 (1978), and FEC v. National Conservative Political Action Committee, 470 U.S. 480 (1985).