

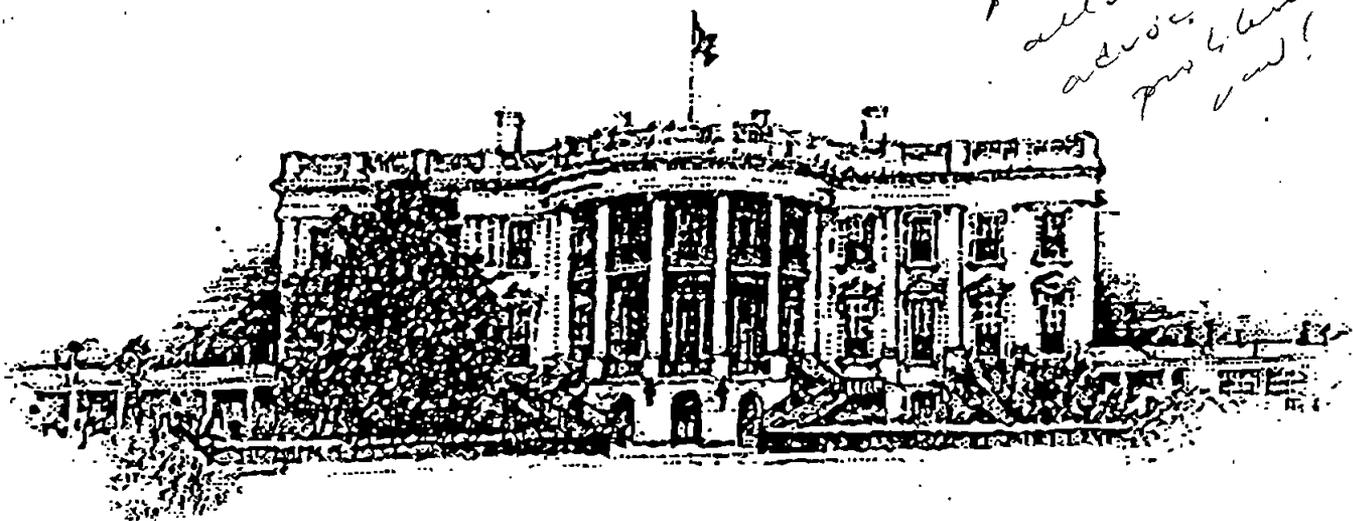
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**Counsel - Box 035 - Folder 002**

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## Proposing an amendment to the Constitution relative to contributions and expenditures intended to affect elections for Federal, State, and local office. (Introduced in the Senate)

SJ 18 IS

104th CONGRESS

1st Session

S. J. RES. 18

Proposing an amendment to the Constitution relative to contributions and expenditures intended to affect elections for Federal, State, and local office.

**IN THE SENATE OF THE UNITED STATES**

January 17 (legislative day, JANUARY 10), 1995

Mr. HOLLINGS (for himself, Mr. SPECTER, Mrs. KASSEBAUM, Mr. CAMPBELL, and Mr. EXON) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

### JOINT RESOLUTION

Proposing an amendment to the Constitution relative to contributions and expenditures intended to affect elections for Federal, State, and local office.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein),*

### SECTION 1. CONTRIBUTIONS AND EXPENDITURES IN FEDERAL ELECTIONS.

The following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

**Article--**

**SECTION. 1.** Congress shall have power to set reasonable limits on expenditures made in support of or in opposition to the nomination or election of any person to Federal office.

**SECTION. 2.** Each State shall have power to set reasonable limits on expenditures made in support of or in opposition to the nomination or election of any person to State office.

**SECTION. 3.** Each local government of general jurisdiction shall have power to set reasonable limits on expenditures made in support of or in opposition to the nomination or election of any person to office in that government. No State shall have power to limit the power established by this section.

**SECTION. 4.** Congress shall have power to implement and enforce this article by appropriate legislation.

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**Proposing an amendment to the Constitution to permit the Congress to limit contributions and expenditures in elections for Federal office. (Introduced in the Senate)**

SJ 47 IS

104th CONGRESS

2d Session

S. J. RES. 47

Proposing an amendment to the Constitution to permit the Congress to limit contributions and expenditures in elections for Federal office.

**IN THE SENATE OF THE UNITED STATES**

**January 25, 1996**

Mr. BRADLEY introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

**JOINT RESOLUTION**

Proposing an amendment to the Constitution to permit the Congress to limit contributions and expenditures in elections for Federal office.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:*

**Article—**

**SECTION 1. The Congress shall have the power to set limits on expenditures made by, in support of, or in opposition to the nomination or election of any person to Federal office.**

**SECTION 2. The Congress shall have the power to set limits on contributions by individuals or entities by, in support of, or in opposition to the nomination or election of any person to Federal office.**

**SECTION 3. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.**

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**Proposing an amendment to the Constitution of the United States  
relating to contributions and expenditures intended to affect  
elections. (Introduced in the Senate)**

SJ 48 IS

104th CONGRESS

2d Session

S. J. RES. 48

Proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

**IN THE SENATE OF THE UNITED STATES**

**January 26, 1996**

Mr. SPECTER (for himself and Mr. HOLLINGS) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

**JOINT RESOLUTION**

Proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:*

**Article--**

**'SECTION 1. Congress shall have power to set reasonable limits on campaign expenditures by, in support of, or in opposition to, any candidate in any primary or other election for Federal office.**

**'SECTION 2. The States shall have power to set reasonable limits on campaign expenditures by, in support of, or in opposition to, any candidate in any primary or other election for State or local office.**

**'SECTION 3. Congress shall have power to implement and enforce this article by appropriate legislation.'**

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## Proposing an amendment to the Constitution of the United States to permit the Congress to limit expenditures in elections for Federal office. (Introduced in the House)

HJ 97 IH

104th CONGRESS

1st Session

H. J. RES. 97

Proposing an amendment to the Constitution of the United States to permit the Congress to limit expenditures in elections for Federal office.

**IN THE HOUSE OF REPRESENTATIVES**

**June 22, 1995**

Mr. DINGELL introduced the following joint resolution; which was referred to the Committee on the Judiciary

### JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States to permit the Congress to limit expenditures in elections for Federal office.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission for ratification:*

**Article —**

**'The Congress shall have authority to limit expenditures in elections for Federal office.'**

## Syllabus

COMMUNICATIONS WORKERS OF AMERICA ET AL. v.  
BECK ET AL.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR  
THE FOURTH CIRCUIT

No. 86-637. Argued January 11, 1988—Decided June 29, 1988

Section 8(a)(3) of the National Labor Relations Act (NLRA) permits an employer and a union to enter into an agreement requiring all employees in the bargaining unit to pay union dues as a condition of continued employment, whether or not the employees become union members. Petitioner Communications Workers of America (CWA) entered into a collective-bargaining agreement that contains a union-security clause under which all represented employees who do not become union members must pay the union "agency fees" in amounts equal to the dues paid by union members. Respondents, bargaining-unit employees who chose not to become union members, filed this suit in Federal District Court, challenging CWA's use of their agency fees for purposes other than collective bargaining, contract administration, or grievance adjustment (hereinafter "collective-bargaining" activities). They alleged that expenditure of their fees on activities such as organizing the employees of other employers, lobbying for labor legislation, and participating in social, charitable, and political events violated CWA's duty of fair representation, § 8(a)(3), and the First Amendment. The court concluded that CWA's collection and disbursement of agency fees for purposes other than collective-bargaining activities violated the associational and free speech rights of objecting nonmembers, and granted injunctive relief and an order for reimbursement of excess fees. The Court of Appeals, preferring to rest its judgment on a ground other than the Constitution, ultimately concluded, *inter alia*, that the collection of nonmembers' fees for purposes unrelated to collective bargaining violated CWA's duty of fair representation.

*Held:*

1. The courts below properly exercised jurisdiction over respondents' claims that exactions of agency fees beyond those necessary to finance collective-bargaining activities violated the judicially created duty of fair representation and respondents' First Amendment rights. Although the National Labor Relations Board (Board) had primary jurisdiction over respondents' § 8(a)(3) claim, cf. *San Diego Building Trades Council v. Garmon*, 359 U. S. 236, the courts below were not precluded from deciding the merits of that claim insofar as such a decision was necessary

to the disposition of respondents' duty-of-fair-representation challenge. Federal courts may resolve unfair labor practice questions that emerge as collateral issues in suits brought under independent federal remedies. Respondents did not attempt to circumvent the Board's primary jurisdiction by casting their statutory claim as a violation of CWA's duty of fair representation. Instead, the necessity of deciding the scope of § 8(a)(3) arose because CWA and its copetitioner local unions sought to defend themselves on the ground that the statute authorizes the type of union-security agreement in issue. Pp. 742-744.

2. Section 8(a)(3) does not permit a union, over the objections of dues-paying nonmember employees, to expend funds collected from them on activities unrelated to collective-bargaining activities. Pp. 744-762.

(a) The decision in *Machinists v. Street*, 367 U. S. 740—holding that § 2, Eleventh of the Railway Labor Act (RLA) does not permit a union, over the objections of nonmembers, to expend agency fees on political causes—is controlling, for § 8(a)(3) and § 2, Eleventh are in all material respects identical. Their nearly identical language reflects the fact that in both Congress authorized compulsory unionism only to the extent necessary to ensure that those who enjoy union-negotiated benefits contribute to their cost. Indeed, Congress, in 1951, expressly modeled § 2, Eleventh on § 8(a)(3), which it had added to the NLRA by the Taft-Hartley Act only four years earlier, and emphasized that it was extending to railroad labor the same rights and privileges of the union shop that were contained in the Taft-Hartley Act. Pp. 744-747.

(b) Section 8(a)(3) was intended to correct abuses of compulsory unionism that had developed under "closed shop" agreements and, at the same time, to require, through union-security clauses, that nonmember employees pay their share of the cost of benefits secured by the union through collective bargaining. These same concerns prompted Congress' later amendment of the RLA. Given the parallel purpose, structure, and language of § 8(a)(3) and § 2, Eleventh, both provisions must be interpreted in the same manner. Only the most compelling evidence would support a contrary conclusion, and petitioners have not proffered such evidence here. Pp. 747-754.

(c) Petitioners claim that the union-security provisions of the RLA and NLRA should be read differently in light of the different history of unionism in the regulated industries—that is, the tradition of voluntary unionism in the railway industry prior to the 1951 amendment of the RLA and the history of compulsory unionism in NLRA-regulated industries prior to 1947. Petitioners contend that because agreements requiring the payment of uniform dues were not among the specific abuses Congress sought to remedy in the Taft-Hartley Act, § 8(a)(3) cannot plausibly be read to prohibit the collection of fees in excess of those

necessary to cover the costs of collective bargaining. This argument is unpersuasive because the legislative history of § 8(a)(3) shows that Congress was concerned with numerous and systemic abuses of the closed shop and therefore resolved to ban the closed shop altogether; to the extent it permitted union-security agreements at all, Congress was guided—as it was in its later amendment of the RLA—by the principle that those enjoying the benefits of union representation should contribute their fair share to the expense of securing those benefits. Moreover, it is clear that Congress understood its actions in 1947 and 1951 to have placed the respective regulated industries on an equal footing insofar as compulsory unionism was concerned. Pp. 754-756.

(d) The fact that in the Taft-Hartley Act Congress expressly considered proposals regulating union finances but ultimately placed only a few limitations on the collection and use of dues and fees, and otherwise left unions free to arrange their financial affairs as they saw fit, is not sufficient to compel a broader construction of § 8(a)(3) than that accorded § 2, Eleventh in *Street*. The legislative history of § 8(a)(3) shows that Congress was concerned with the dues and rights of union members, not the agency fees and rights of nonmembers. The absence, in such legislative history, of congressional concern for the rights of nonmembers is consistent with the view that Congress understood § 8(a)(3) to afford nonmembers adequate protection by authorizing the collection of only those fees necessary to finance collective-bargaining activities. Nor is there any merit to the contention that, because unions had previously used members' dues for a variety of purposes in addition to collective-bargaining agreements, Congress' silence in 1947 as to the uses to which unions could put nonmembers' fees should be understood as an acquiescence in such union practices. Pp. 756-761.

(e) *Street* cannot be distinguished on the theory that the construction of § 2, Eleventh was merely expedient to avoid the constitutional question—as to the use of fees for political causes that nonmembers find objectionable—that otherwise would have been raised because the RLA (unlike the NLRA) pre-empts state laws banning union-security agreements and thus nonmember fees were compelled by "governmental action." Even assuming that the exercise of rights permitted, though not compelled, by § 8(a)(3) does not involve state action, and that the NLRA and RLA therefore differ in such respect, nevertheless the absence of any constitutional concerns in this case would not warrant reading the nearly identical language of § 8(a)(3) and § 2, Eleventh differently. Pp. 761-762.

800 F. 2d 1280, affirmed.

BRENNAN, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, MARSHALL, and STEVENS, JJ., joined, and in Parts I and II of which BLACKMUN, O'CONNOR, and SCALIA, JJ., joined. BLACKMUN, J., filed an opinion concurring in part and dissenting in part, in which O'CONNOR and SCALIA, JJ., joined, *post*, p. 763. KENNEDY, J., took no part in the consideration or decision of the case.

*Laurence Gold* argued the cause for petitioners. With him on the briefs were *Thomas S. Adair*, *James Coppess*, and *George Kaufmann*.

*Edwin Vieira, Jr.*, argued the cause for respondents. With him on the brief was *Hugh L. Reilly*.\*

JUSTICE BRENNAN delivered the opinion of the Court.

Section 8(a)(3) of the National Labor Relations Act of 1935 (NLRA), 49 Stat. 452, as amended, 29 U. S. C. § 158(a)(3), permits an employer and an exclusive bargaining representative to enter into an agreement requiring all employees in the bargaining unit to pay periodic union dues and initiation fees as a condition of continued employment, whether or not the employees otherwise wish to become union members. Today we must decide whether this provision also permits a union, over the objections of dues-paying nonmember employees, to expend funds so collected on activities unrelated to collective bargaining, contract administration, or grievance adjustment, and, if so, whether such expenditures violate the union's duty of fair representation or the objecting employees' First Amendment rights.

\**David M. Silberman* filed a brief for the American Federation of Labor and Congress of Industrial Organizations as *amicus curiae* urging reversal.

Briefs of *amici curiae* urging affirmance were filed for the Landmark Legal Foundation by *Jerald L. Hill* and *Mark J. Bredemeier*; for the Pacific Legal Foundation et al. by *Ronald A. Zumbryn* and *Anthony T. Caso*; and for Senator *Jesse Helms* et al. by *Thomas A. Farr*, *W. W. Taylor, Jr.*, and *Robert A. Valois*.

*Solicitor General Fried*, *Deputy Solicitor General Cohen*, *Norton J. Come*, and *Linda Sher* filed a brief for the United States as *amicus curiae*.

## I

In accordance with § 9 of the NLRA, 49 Stat. 453, as amended, 29 U. S. C. § 159, a majority of the employees of American Telephone and Telegraph Company and several of its subsidiaries selected petitioner Communications Workers of America (CWA) as their exclusive bargaining representative. As such, the union is empowered to bargain collectively with the employer on behalf of all employees in the bargaining unit over wages, hours, and other terms and conditions of employment, § 9(a), 29 U. S. C. § 159(a), and it accordingly enjoys "broad authority . . . in the negotiation and administration of [the] collective bargaining contract." *Humphrey v. Moore*, 375 U. S. 335, 342 (1964). This broad authority, however, is tempered by the union's "statutory obligation to serve the interests of all members without hostility or discrimination toward any," *Vaca v. Sipes*, 386 U. S. 171, 177 (1967), a duty that extends not only to the negotiation of the collective-bargaining agreement itself but also to the subsequent enforcement of that agreement, including the administration of any grievance procedure the agreement may establish. *Ibid.* CWA chartered several local unions, copetitioners in this case, to assist it in discharging these statutory duties. In addition, at least in part to help defray the considerable costs it incurs in performing these tasks, CWA negotiated a union-security clause in the collective-bargaining agreement under which all represented employees, including those who do not wish to become union members, must pay the union "agency fees" in "amounts equal to the periodic dues" paid by union members. Plaintiffs' Complaint ¶ 11 and Plaintiffs' Exhibit A-1, 1 Record. Under the clause, failure to tender the required fee may be grounds for discharge.

In June 1976, respondents, 20 employees who chose not to become union members, initiated this suit challenging CWA's use of their agency fees for purposes other than collective bargaining, contract administration, or grievance adjustment

(hereinafter "collective-bargaining" or "representational" activities). Specifically, respondents alleged that the union's expenditure of their fees on activities such as organizing the employees of other employers, lobbying for labor legislation, and participating in social, charitable, and political events violated petitioners' duty of fair representation, § 8(a)(3) of the NLRA, the First Amendment, and various common-law fiduciary duties. In addition to declaratory relief, respondents sought an injunction barring petitioners from exacting fees above those necessary to finance collective-bargaining activities, as well as damages for the past collection of such excess fees.

The District Court concluded that the union's collection and disbursement of agency fees for purposes other than bargaining unit representation violated the associational and free speech rights of objecting nonmembers, and therefore enjoined their future collection. 468 F. Supp. 93 (Md. 1979). Applying a "clear and convincing" evidentiary standard, the District Court concluded that the union had failed to show that more than 21% of its funds were expended on collective-bargaining matters. App. to Pet. for Cert. 119a. The court ordered reimbursement of all excess fees respondents had paid since January 1976, and directed the union to institute a recordkeeping system to segregate accounts for representational and noncollective-bargaining activities. *Id.*, at 125a, 108a-109a.

A divided panel of the United States Court of Appeals for the Fourth Circuit agreed that respondents stated a valid claim for relief under the First Amendment, but, preferring to rest its judgment on a ground other than the Constitution, concluded that the collection of nonmembers' fees for purposes unrelated to collective bargaining violated § 8(a)(3). 776 F. 2d 1187 (1985). Turning to the specific activities challenged, the majority noted that the District Court's adoption of a "clear and convincing" standard of proof was improper, but found that for certain categories of expenditures, such

as lobbying, organizing employees in other companies, and funding various community services, the error was harmless inasmuch as the activities were indisputably unrelated to bargaining unit representation. The majority remanded the case for reconsideration of the remaining expenditures, which the union claimed were made in connection with valid collective-bargaining activities. Chief Judge Winter dissented. *Id.*, at 1214. He concluded that § 8(a)(3) authorized exaction of fees in amounts equivalent to full union dues, including fees expended on nonrepresentational activities, and that the negotiation and enforcement of agreements permitting such exactions was private conduct incapable of violating the constitutional rights of objecting nonmembers.

On rehearing, the en banc court vacated the panel opinion and by a 6-to-4 vote again affirmed in part, reversed in part, and remanded for further proceedings. 800 F. 2d 1280 (1986). The court explained in a brief *per curiam* opinion that five of the six majority judges believed there was federal jurisdiction over both the § 8(a)(3) and the duty-of-fair-representation claims, and that respondents were entitled to judgment on both. Judge Murnaghan, casting the deciding vote, concluded that the court had jurisdiction over only the duty-of-fair-representation claim; although he believed that § 8(a)(3) permits union-security clauses requiring payment of full union dues, he concluded that the collection of such fees from nonmembers to finance activities unrelated to collective bargaining violates the union's duty of fair representation. All six of these judges agreed with the panel's resolution of the specific allocations issue and accordingly remanded the action. Chief Judge Winter, joined by three others, again dissented for the reasons set out in his earlier panel dissent.

The decision below directly conflicts with that of the United States Court of Appeals for the Second Circuit. See *Price v. Auto Workers*, 795 F. 2d 1128 (1986). We granted certiorari to resolve the important question concerning the

validity of such agreements, 482 U. S. 904 (1987), and now affirm.

## II

At the outset, we address briefly the jurisdictional question that divided the Court of Appeals. Respondents sought relief on three separate federal claims: that the exaction of fees beyond those necessary to finance collective-bargaining activities violates §8(a)(3); that such exactions violate the judicially created duty of fair representation; and that such exactions violate respondents' First Amendment rights. We think it clear that the courts below properly exercised jurisdiction over the latter two claims, but that the National Labor Relations Board (NLRB or Board) had primary jurisdiction over respondents' §8(a)(3) claim.

In *San Diego Building Trades Council v. Garmon*, 359 U. S. 236 (1959), we held that "[w]hen an activity is arguably subject to §7 or §8 of the [NLRA], the States as well as the federal courts must defer to the exclusive competence of the [Board] if the danger of state interference with national policy is to be averted." *Id.*, at 245 (emphasis added). A simple recitation of respondents' §8(a)(3) claim reveals that it falls squarely within the primary jurisdiction of the Board: respondents contend that, by collecting and using agency fees for nonrepresentational purposes, the union has contravened the express terms of §8(a)(3), which, respondents argue, provides a limited authorization for the collection of only those fees necessary to finance collective-bargaining activities. There can be no doubt, therefore, that the challenged fee-collecting activity is "subject to" §8.

While the five-judge plurality of the en banc court did not explain the basis of its jurisdictional holding, the panel majority concluded that because courts have jurisdiction over challenges to union-security clauses negotiated under §2, Eleventh of the Railway Labor Act (RLA), 64 Stat. 1238, 45 U. S. C. §152, Eleventh, which is in all material respects identical to §8(a)(3), there must be a parity of federal juris-

diction over §8(a)(3) claims. Unlike the NLRA, however, the RLA establishes no agency charged with administering its provisions, and instead leaves it to the courts to determine the validity of activities challenged under the Act. The primary jurisdiction of the NLRB, therefore, cannot be diminished by analogies to the RLA, for in this regard the two labor statutes do not parallel one another. The Court of Appeals erred, then, to the extent that it concluded it possessed jurisdiction to pass directly on respondents' §8(a)(3) claim.

The court was not precluded, however, from deciding the merits of this claim insofar as such a decision was necessary to the disposition of respondents' duty-of-fair-representation challenge. Federal courts may resolve unfair labor practice questions that "emerge as collateral issues in suits brought under independent federal remedies," *Connell Construction Co. v. Plumbers*, 421 U. S. 616, 626 (1975), and one such remedy over which federal jurisdiction is well settled is the judicially implied duty of fair representation. *Vaca v. Sipes*, 386 U. S. 171 (1967). This jurisdiction to adjudicate fair-representation claims encompasses challenges leveled not only at a union's contract administration and enforcement efforts, *id.*, at 176-188, but at its negotiation activities as well. *Ford Motor Co. v. Huffman*, 345 U. S. 330 (1953). Employees, of course, may not circumvent the primary jurisdiction of the NLRB simply by casting statutory claims as violations of the union's duty of fair representation. Respondents, however, have done no such thing here; rather, they claim that the union failed to represent their interests fairly and without hostility by negotiating and enforcing an agreement that allows the exaction of funds for purposes that do not serve their interests and in some cases are contrary to their personal beliefs. The necessity of deciding the scope of §8(a)(3) arises because *petitioners* seek to defend themselves on the ground that the statute authorizes precisely this type of agreement. Under these circumstances, the Court of Ap-

peals had jurisdiction to decide the §8(a)(3) question raised by respondents' duty-of-fair-representation claim.<sup>1</sup>

### III

Added as part of the Labor Management Relations Act, 1947, or Taft-Hartley Act, §8(a)(3) makes it an unfair labor practice for an employer "by discrimination in regard to hire or tenure of employment . . . to encourage or discourage membership in any labor organization." 29 U. S. C. §158(a)(3). The section contains two provisos without which all union-security clauses would fall within this otherwise broad condemnation: the first states that nothing in the Act "preclude[s] an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein" 30 days after the employee attains employment, *ibid.*; the second, limiting the first, provides:

"[N]o employer shall justify any discrimination against an employee for nonmembership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure . . . to tender the periodic

<sup>1</sup>The courts below, of course, possessed jurisdiction over respondents' constitutional challenges. Whether or not the NLRB entertains constitutional claims, see *Florida Gulf Coast Building & Construction Trades Council (Edward J. DeBartolo Corp.)*, 273 N. L. R. B. 1431, 1432 (1985) (Board "will presume the constitutionality of the Act [it] administer[s]"); *Handy Andy, Inc.*, 228 N. L. R. B. 447, 452 (1977) (Board lacks the authority "to determine the constitutionality of mandatory language in the Act"); see also *Johnson v. Robison*, 415 U. S. 361, 368 (1974) ("Adjudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies"); cf. *NLRB v. Catholic Bishop of Chicago*, 440 U. S. 490, 495-499 (1979) (reviewing Board's history of determining its jurisdiction over religious schools in light of Free Exercise Clause concerns), such claims would not fall within the Board's primary jurisdiction.

dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." *Ibid.*

Taken as a whole, §8(a)(3) permits an employer and a union<sup>2</sup> to enter into an agreement requiring all employees to become union members as a condition of continued employment, but the "membership" that may be so required has been "whittled down to its financial core." *NLRB v. General Motors Corp.*, 373 U. S. 734, 742 (1963). The statutory question presented in this case, then, is whether this "financial core" includes the obligation to support union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment. We think it does not.

Although we have never before delineated the precise limits §8(a)(3) places on the negotiation and enforcement of union-security agreements, the question the parties proffer is not an entirely new one. Over a quarter century ago we held that §2, Eleventh of the RLA does not permit a union, over the objections of nonmembers, to expend compelled agency fees on political causes. *Machinists v. Street*, 367 U. S. 740 (1961). Because the NLRA and RLA differ in certain crucial respects, we have frequently warned that decisions construing the latter often provide only the roughest of guidance when interpreting the former. See, e. g., *Street, supra*, at 743; *First National Maintenance Corp. v. NLRB*, 452 U. S. 666, 686, n. 23 (1984). Our decision in *Street*, however, is far more than merely instructive here: we believe it is controlling, for §8(a)(3) and §2, Eleventh are in all material respects identical.<sup>3</sup> Indeed, we have previously described

<sup>2</sup>Section 8(b)(2) makes it unlawful for unions "to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3)," 29 U. S. C. §158(b)(2); accordingly, the provisos to §8(a)(3) also allow unions to seek and enter into union-security agreements.

<sup>3</sup>Section 2, Eleventh provides, in pertinent part:

"Notwithstanding any other provisions of this chapter, or of any other statute or law of the United States, or Territory thereof, or of any State, any carrier or carriers as defined in this chapter and a labor organization or

the two provisions as "statutory equivalent[s]," *Ellis v. Railway Clerks*, 466 U. S. 435, 452, n. 13 (1984), and with good reason, because their nearly identical language reflects the fact that in both Congress authorized compulsory unionism only to the extent necessary to ensure that those who enjoy union-negotiated benefits contribute to their cost. Thus, in amending the RLA in 1951, Congress expressly modeled § 2, Eleventh on § 8(a)(3), which it had added to the NLRA only four years earlier, and repeatedly emphasized that it was extending "to railroad labor the same rights and privileges of the union shop that are contained in the Taft-Hartley Act." 96 Cong. Rec. 17055 (1951) (remarks of Rep. Brown).<sup>4</sup> In

labor organizations duly designated and authorized to represent employees in accordance with the requirements of this chapter shall be permitted—

"(a) to make agreements, requiring, as a condition of continued employment, that within sixty days following the beginning of such employment, or the effective date of such agreements, whichever is later, all employees shall become members of the labor organization representing their craft or class: *Provided*, That no such agreement shall require such condition of employment with respect to employees to whom membership is not available upon the same terms and conditions as are generally applicable to any other member or with respect to employees to whom membership was denied or terminated for any reason other than the failure of the employee to tender the periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership." 45 U. S. C. § 152, Eleventh.

Although § 2, Eleventh allows termination of an employee for failure to pay "periodic dues, initiation fees, and assessments (*not including fines and penalties*)," the italicized language was added to the RLA only because some railway unions required only nominal dues, and financed their organizing activities through monthly assessments; having added "assessments" as a proper element of agency fees, Congress simply clarified that the term did not refer, as it often did in the parlance of other industries, to fines or penalties. See *Machinists v. Street*, 367 U. S., at 766. In addition, § 2, Eleventh pre-empts state laws that would otherwise ban union shops. This difference, however, has no bearing on the types of union-security agreements that the statute permits, and thus does not distinguish the union shop authorization of § 2, Eleventh from that of § 8(a)(3). See also S. Rep. No. 2262, 81st Cong., 2d Sess., 3 (1950) ("[T]he terms [the bill] are substantially the same as those of the Labor-Management

these circumstances, we think it clear that Congress intended the same language to have the same meaning in both statutes.

## A

Both the structure and purpose of § 8(a)(3) are best understood in light of the statute's historical origins. Prior to the enactment of the Taft-Hartley Act of 1947, 61 Stat. 140, § 8(3) of the Wagner Act of 1935 (NLRA) permitted majority unions to negotiate "closed shop" agreements requiring employers to hire only persons who were already union members.

Relations Act"); H. R. Rep. No. 2811, 81st Cong., 2d Sess., 4 (1950) (the bill allows unions "to negotiate agreements with railroads and airlines of a character permitted in the case of labor organizations in the other large industries of the country"); 96 Cong. Rec. 15737 (1950) (remarks of Sen. Hill) ("The bill . . . is designed merely to extend to employees and employers subject to the [RLA] rights now possessed by employees and employers under the Taft-Hartley Act"); *id.*, at 15740 (remarks of Sen. Lehman) ("The railroad brotherhoods should have the same right that any other union has to negotiate for the union shop"); *id.*, at 16267 (remarks of Sen. Taft) ("[T]he bill inserts in the railway mediation law almost the exact provisions . . . of the Taft-Hartley law"); *id.*, at 17049 (remarks of Rep. Beckworth) (the bill permits railway unions "to bring about agreements with carriers providing for union shops, a principle enacted into law in the Taft-Hartley bill"); *id.*, at 17055 (remarks of Rep. Biemiller) ("[T]he provision . . . gives to railway labor the right to bargain for the union shop just as any other labor group in the country may do"); *id.*, at 17056 (remarks of Rep. Bennett) ("The purpose of the bill is to amend the [RLA] to give railroad workers . . . the same right to enjoy the benefits and privileges of a union-shop arrangement that is now accorded to all workmen in most other types of employment"); *ibid.* (remarks of Rep. Heselton) ("[T]his bill primarily provides for the same kind of treatment of railroad and airline employees as is now accorded employees in all other industries under existing law"); *id.*, at 17059 (remarks of Rep. Harris) ("The fundamental proposition involved in the bill [is to extend] the national policy expressed in the Taft-Hartley Act regarding the lawfulness of . . . the union shop . . . to . . . railroad and airline labor organizations"); *id.*, at 17061 (remarks of Rep. Vursell) ("This bill simply extends to the railroad workers and employers the benefit of this provision now enjoyed by all other laboring men under the Taft-Hartley Act").

See *Algoma Plywood Co. v. Wisconsin Employment Relations Board*, 336 U. S. 301, 307-311 (1949). By 1947, such agreements had come under increasing attack, and after extensive hearings Congress determined that the closed shop and the abuses associated with it "create[d] too great a barrier to free employment to be longer tolerated." S. Rep. No. 105, 80th Cong., 1st Sess., 6 (1947) (S. Rep.), Legislative History of Labor Management Relations Act, 1947 (Committee Print compiled for the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare), p. 412 (1974) (Leg. Hist.). The 1947 Congress was equally concerned, however, that without such agreements, many employees would reap the benefits that unions negotiated on their behalf without in any way contributing financial support to those efforts. As Senator Taft, one of the authors of the 1947 legislation, explained, "the argument . . . against abolishing the closed shop . . . is that if there is not a closed shop those not in the union will get a free ride, that the union does the work, gets the wages raised, then the man who does not pay dues rides along freely without any expense to himself." 93 Cong. Rec. 4887 (1947), Leg. Hist. 1422.<sup>5</sup> Thus, the Taft-Hartley Act was

This sentiment was repeated throughout the hearings and lengthy debate that preceded passage of the bill. See, e. g., 93 Cong. Rec. 3557 (1947), Leg. Hist. 740 (remarks of Rep. Jennings) (because members of the minority "would get the benefit of that contract made between the majority of their fellow workmen and the management . . . it is not unreasonable that they should go along and contribute dues like the others"); 93 Cong. Rec. 3558, Leg. Hist. 741 (remarks of Rep. Robison) ("If [union-negotiated] benefits come to the workers all alike, is it not only fair that the beneficiaries, whether the majority or the minority, contribute their equal share in securing these benefits?"); 93 Cong. Rec. 3837, Leg. Hist. 1010 (remarks of Sen. Taft) ("[T]he legislation, 'in effect, . . . say[s], that no one can get a free ride in such a shop. That meets one of the arguments for a union shop. The employee has to pay the union dues"; S. Rep., at 6, Leg. Hist. 412 ("In testifying before this Committee, . . . leaders of organized labor have stressed the fact that in the absence of [union-security] provisions many employees sharing the benefits of what unions are able to ac-

"intended to accomplish twin purposes. On the one hand, the most serious abuses of compulsory unionism were eliminated by abolishing the closed shop. On the other hand, Congress recognized that in the absence of a union-security provision 'many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share of the cost.'" *NLRB v. General Motors Corp.*, 373 U. S., at 740-741 (quoting S. Rep., at 6, Leg. Hist. 412).

The legislative solution embodied in § 8(a)(3) allows employers to enter into agreements requiring all the employees in a given bargaining unit to become members 30 days after being hired as long as such membership is available to all workers on a nondiscriminatory basis, but it prohibits the mandatory discharge of an employee who is expelled from the union for any reason other than his or her failure to pay initiation fees or dues. As we have previously observed, Congress carefully tailored this solution to the evils at which it was aimed:

"Th[e] legislative history clearly indicates that Congress intended to prevent utilization of union security agreements for any purpose other than to compel payment of union dues and fees. Thus Congress recognized the validity of unions' concerns about 'free riders,' i. e., employees who receive the benefits of union representation but are unwilling to contribute their *fair share* of financial support to such union, and gave unions the power to contract to meet *that problem* while withholding from unions the power to cause the discharge of employees for any other reason." *Radio Officers v. NLRB*, 347 U. S. 17, 41 (1954) (emphasis added).

comply by collective bargaining will refuse to pay their share of the cost"). See also H. R. Rep. No. 245, 80th Cong., 1st Sess., 80 (1947) (H. R. Rep.), Leg. Hist. 371 ("[Closed shop] agreements prevent nonunion workers from sharing in the benefits resulting from union activities without also sharing in the obligations").

Indeed, "Congress' decision to allow union-security agreements *at all* reflects its concern that . . . the parties to a collective bargaining agreement be allowed to provide that there be no employees who are getting the benefits of union representation without paying for them." *Oil Workers v. Mobil Oil Corp.*, 426 U. S. 407, 416 (1976) (emphasis added).

This same concern over the resentment spawned by "free riders" in the railroad industry prompted Congress, four years after the passage of the Taft-Hartley Act, to amend the RLA. As the House Report explained, 75 to 80% of the 1.2 million railroad industry workers belonged to one or another of the railway unions. H. R. Rep. No. 2811, 81st Cong., 2d Sess., 4 (1950). These unions, of course, were legally obligated to represent the interests of all workers, including those who did not become members; thus nonunion workers were able, at no expense to themselves, to share in all the benefits the unions obtained through collective bargaining. *Ibid.* Noting that the "principle of authorizing agreements for the union shop and the deduction of union dues has now become firmly established as a national policy for all industry subject to the Labor Management Relations Act of 1947," the House Report concluded that "[n]o sound reason exists for continuing to deny to labor organizations subject to the Railway Labor Act the right to negotiate agreements with railroads and airlines of a character permitted in the case of labor organizations in the other large industries of the country." *Ibid.*

In drafting what was to become § 2, Eleventh, Congress did not look to § 8(a)(3) merely for guidance. Rather, as Senator Taft argued in support of the legislation, the amendment "inserts in the railway mediation law almost the exact provisions, so far as they fit, of the Taft-Hartley law, so that the conditions regarding the union shop and the check-off are carried into the relations between railroad unions and the rail-

roads." 96 Cong. Rec. 16267 (1950).<sup>4</sup> This was the universal understanding, among both supporters and opponents, of the purpose and effect of the amendment. See n. 4, *supra*. Indeed, railroad union representatives themselves proposed the amendment that incorporated in § 2, Eleventh, § 8(a)(3)'s prohibition against the discharge of employees who fail to obtain or maintain union membership for any reason other than nonpayment of periodic dues; in offering this proposal the unions argued, in terms echoing the language of the Senate Report accompanying the Taft-Hartley Act, that such a prohibition "remedies the alleged abuses of compulsory union membership . . . , yet makes possible the elimination of the 'free rider' and the sharing of the burden of maintenance by all of the beneficiaries of union activity." Hearings on H. R. 7789 before the House Committee on Interstate and Foreign Commerce, 81st Cong., 2d Sess., 253 (1950).

In *Street* we concluded "that § 2, Eleventh contemplated compulsory unionism to force employees to share the costs of negotiating and administering collective agreements, and the costs of the adjustment and settlement of disputes," but that Congress did not intend "to provide the unions with a means for forcing employees, over their objection, to support political causes which they oppose." 367 U. S., at 764. Construc-

<sup>4</sup> Although Senator Taft qualified his comparison by explaining that the provisions of the Taft-Hartley law were incorporated into the RLA "so far as they fit," this qualification merely reflected the fact that the laws were not identical in all respects, their chief difference inhering in their pre-emptive effect, or lack thereof, on all state regulation of union-security agreements. See n. 3, *supra*. This difference, of course, does not detract from the near identity of the provisions insofar as they confer on unions and employers authority to enter into union-security agreements, nor does it in any way undermine the force of Senator Taft's comparison with respect to this authority. Indeed, Taft himself explained that he initially "objected to some of the original terms of the bill, but when the [bill's] proponents agreed to accept amendments which made the provisions *identical* with the Taft-Hartley law," he decided to support the law. 96 Cong. Rec. 16267 (1950) (emphasis added).

ing the statute in light of this legislative history and purpose, we held that although § 2, Eleventh on its face authorizes the collection from nonmembers of "periodic dues, initiation fees, and assessments . . . uniformly required as a condition of acquiring or retaining membership" in a union, 45 U. S. C. § 152, Eleventh (b) (emphasis added), this authorization did not "vest [t]he unions with unlimited power to spend exacted money." 367 U. S., at 768. We have since reaffirmed that "Congress' essential justification for authorizing the union shop" limits the expenditures that may properly be charged to nonmembers under § 2, Eleventh to those "necessarily or reasonably incurred for the purpose of performing the duties of an exclusive [bargaining] representative." *Ellis v. Railway Clerks*, 466 U. S., at 447-448. Given the parallel purpose, structure, and language of § 8(a)(3), we must interpret that provision in the same manner.<sup>7</sup> Like § 2, Eleventh,

<sup>7</sup> We note that the NLRB, at least for a time, also took the position that the uniform "periodic dues and initiation fees" required by § 8(a)(3) were limited by the congressional concern with free riders to those fees necessary to finance collective-bargaining activities. In *Teamsters Local No. 959*, 167 N. L. R. B. 1042, 1045 (1967), the Board explained:

"[T]he right to charge 'periodic dues' granted unions by the proviso to Section 8(a)(3) is concerned exclusively with the concept that those enjoying the benefits of collective bargaining should bear their fair share of the costs incurred by the collective-bargaining agent in representing them. But it is manifest that dues that do not contribute, and are not intended to contribute, to the cost of operation of a union in its capacity as collective-bargaining agent cannot be justified as necessary for the elimination of 'free riders.'"

The Board, however, subsequently repudiated that view. See *Detroit Mailers Union No. 40*, 192 N. L. R. B. 951, 952 (1971).

Notwithstanding this unequivocal language, the dissent advises us, *post*, at 767, n. 5, that we have misread *Teamsters Local*. Choosing to ignore the above-quoted passage, the dissent asserts that the Board never "embraced . . . the view," *post*, at 767, n. 5, that "periodic dues and initiation fees" are limited to those that finance the union in its capacity as collective-bargaining agent, because in *Teamsters Local* itself the Board concluded that the dues in question "were actually 'special purpose funds,' and were thus "'assessments' not contemplated by the proviso to § 8(a)(3)." *Post*, at 767, n. 5

§ 8(a)(3) permits the collection of "periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership" in the union,<sup>8</sup> and like its counterpart in the RLA, § 8(a)(3) was designed to remedy the inequities posed by "free riders" who would otherwise unfairly profit from the

(quoting *Teamsters Local*, *supra*, at 1044). This observation, however, avails the dissent nothing; obviously, once the Board determined that the dues were not used for collective-bargaining purposes, the conclusion that they were not dues within the meaning of § 8(a)(3) followed automatically. Under the dissent's reading, had the union simply built the increase into its dues base, rather than initially denominating it as a "special assessment," it would have been entitled to exact the fees as "periodic dues" and spend them for precisely the same purposes without running afoul of § 8(a)(3). The Board made entirely clear, however, that it was the *purpose* of the fee, not the manner in which it was collected, that controlled, and thus explained that "[m]onies collected for a credit union or building fund even if regularly recurring, as here, are obviously not 'for the maintenance of the [union] as an organization, but are for a 'special purpose' and could be terminated without affecting the continued existence of [the union] as the bargaining representative.'" *Teamsters Local*, *supra*, at 1045 (emphasis added). Finally, the dissent's portrayal of *Teamsters Local* as part of an unbroken string of consistent Board decisions on the issue is belied by the dissenting statement in *Detroit Mailers*, in which member Jenkins, who joined the decision in *Teamsters Local*, charged that the Board had ignored the clear holding of that earlier case. 192 N. L. R. B., at 952-953.

<sup>8</sup> Construing both § 8(a)(3) and § 2, Eleventh as permitting the collection and use of only those fees germane to collective bargaining does not, as petitioners seem to believe, read the term "uniform" out of the statutes. The uniformity requirement makes clear that the costs of representational activities must be borne equally by all those who benefit; without this language, unions could conceivably establish different dues rates both among members and between members and nonmembers, and thereby apportion the costs of collective bargaining unevenly. Indeed, the uniformity requirement inures to the benefit of dissident union members as well, by ensuring that if the union discriminates against them by charging higher dues, their failure to pay such dues cannot be grounds for discharge. See § 8(b)(2), 29 U. S. C. § 158(b)(2) (making it an unfair labor practice for a union "to cause or attempt to cause an employer to discriminate against an employee . . . with respect to whom membership in [the union] has been denied or terminated on some ground other than [the] failure to tender the periodic dues and initiation fees uniformly required") (emphasis added).

Taft-Hartley Act's abolition of the closed shop. In the face of such statutory congruity, only the most compelling evidence could persuade us that Congress intended the nearly identical language of these two provisions to have different meanings. Petitioners have not proffered such evidence here.

## B.

## (1)

Petitioners claim that the union-security provisions of the RLA and NLRA can and should be read differently in light of the vastly different history of unionism in the industries the two statutes regulate. Thus they note that in *Street* we emphasized the "long-standing tradition of voluntary unionism" in the railway industry prior to the 1951 amendment, and the fact that in 1934 Congress had expressly endorsed an "open shop" policy in the RLA. 367 U. S., at 750. It was this historical background, petitioners contend, that led us to conclude that in amending the RLA in 1951, Congress "did not completely abandon the policy of full freedom of choice embodied in the 1934 Act, but rather made inroads on it for the limited purpose of eliminating the problems created by the 'free rider.'" *Id.*, at 767. The history of union security in industries governed by the NLRA was precisely the opposite: under the Wagner Act of 1935, all forms of compulsory unionism, including the closed shop, were permitted. Petitioners accordingly argue that the inroads Congress made in 1947 on the policy of compulsory unionism were likewise limited, and were designed to remedy only those "carefully defined" abuses of the union shop system that Congress had expressly identified. Brief for Petitioners 42. Because agreements requiring the payment of uniform dues were not among these specified abuses, petitioners contend that § 8(a) cannot plausibly be read to prohibit the collection of fees in excess of those necessary to cover the costs of collective bargaining.

We find this argument unpersuasive for several reasons. To begin with, the fact that Congress sought to remedy "the most serious abuses of compulsory union membership," S. Rep., at 7, Leg. Hist. 413, hardly suggests that the Taft-Hartley Act effected only limited changes in union-security practices. Quite to the contrary, in *Street* we concluded that Congress' purpose in amending the RLA was "limited" precisely because Congress did not perceive voluntary unionism as the source of widespread and flagrant abuses, and thus modified the railroad industry's open shop system only to the extent necessary to eliminate the problems associated with "free riders." That Congress viewed the Wagner Act's regime of compulsory unionism as seriously flawed, on the other hand, indicates that its purposes in overhauling that system were, if anything, far less limited, and not, as petitioners and the dissent contend, equally circumspect. Not surprisingly, therefore—and in stark contrast to petitioners' "limited inroads" theory—congressional opponents of the Taft-Hartley Act's union-security provisions understood the Act to provide only the most grudging authorization of such agreements, permitting "union-shop agreement[s] only under limited and administratively burdensome conditions." S. Rep., pt. 2, p. 8, Leg. Hist. 470 (Minority Report). That understanding comports with our own recognition that "Congress' decision to allow union-security agreements at all reflects its concern that . . . the parties to a collective bargaining agreement be allowed to provide that there be no employees who are getting the benefits of union representation without paying for them." *Oil Workers v. Mobil Oil Corp.*, 426 U. S., at 416 (emphasis added). Congress thus did not set out in 1947 simply to tinker in some limited fashion with the NLRA's authorization of union-security agreements. Rather, to the extent Congress preserved the status quo, it did so because of the considerable evidence adduced at congressional hearings indicating that "such agreements promoted stability by eliminating 'free riders,'" S. Rep., at 7,

Leg. Hist. 413, and Congress accordingly "gave unions the power to contract to meet *that problem* while withholding from unions the power to cause the discharge of employees for any other reason." *Radio Officers v. NLRB*, 347 U. S., at 41 (emphasis added). We therefore think it not only permissible but altogether proper to read § 8(a)(3), as we read § 2, Eleventh, in light of this animating principle.

Finally, however much union-security practices may have differed between the railway and NLRA-governed industries prior to 1951, it is abundantly clear that Congress itself understood its actions in 1947 and 1951 to have placed these respective industries on an equal footing insofar as compulsory unionism was concerned. Not only did the 1951 proponents of the union shop propose adding to the RLA language nearly identical to that of § 8(a)(3), they repeatedly insisted that the purpose of the amendment was to confer on railway unions precisely the same right to negotiate and enter into union-security agreements that all unions subject to the NLRA enjoyed. See n. 4, *supra*. Indeed, a subtheme running throughout the comments of these supporters was that the inequity of permitting "free riders" in the railroad industry was especially egregious in view of the fact that the Taft-Hartley Act gave exclusive bargaining representatives in all other industries adequate means to redress such problems. It would surely come as a surprise to these legislators to learn that their efforts to provide these same means of redress to railway unions were frustrated by the very historical disparity they sought to eliminate.

(2)

Petitioners also rely on certain aspects of the Taft-Hartley Act's legislative history as evidence that Congress intended to permit the collection and use of full union dues, including those allocable to activities other than collective bargaining. Again, however, we find this history insufficient to compel a

broader construction of § 8(a)(3) than that accorded § 2, Eleventh in *Street*.

First and foremost, petitioners point to the fact that Congress expressly considered proposals regulating union finances but ultimately placed only a few limitations on the collection and use of dues and fees, and otherwise left unions free to arrange their financial affairs as they saw fit. In light of this history and the specific prohibitions Congress did enact, petitioners argue that there is no warrant for implying any further limitations on the amount of dues equivalents that unions may collect or the manner in which they may use them. As originally passed, § 7(b) of the House bill guaranteed union members the "right to be free from unreasonable or discriminatory financial demands of" unions. Leg. Hist. 176. Similarly, § 8(c) of the bill, the so-called "bill of rights for union members," H. R. Rep., at 31, Leg. Hist. 322, set out 10 protections against arbitrary action by union officers, one of which made it an unfair labor practice for a union to impose initiation fees in excess of \$25 without NLRB approval, or to fix dues in amounts that were unreasonable, nonuniform, or not approved by majority vote of the members. *Id.*, at 53. In addition, § 304 of the bill prohibited unions from making contributions to or expenditures on behalf of candidates for federal office. *Id.*, at 97-98. The conferees adopted the latter provision, see *Pipefitters v. United States*, 407 U. S. 385, 405 (1972), and agreed to a prohibition on "excessive" initiation fees, see § 8(b)(5), 29 U. S. C. § 158(b)(5), but the Senate steadfastly resisted any further attempts to regulate internal union affairs. Referring to the House provisions, Senator Taft explained:

"[T]he Senate conferees refused to agree to the inclusion of this subsection in the conference agreement since they felt that it was unwise to authorize an agency of the Government to undertake such elaborate policing of the internal affairs of unions as this section contemplated . . . . In the opinion of the Senate conferees the language

which protected an employee from losing his job if a union expelled him for some reason other than nonpayment of dues and initiation fees, uniformly required of all members, was considered sufficient protection." 93 Cong. Rec. 6443 (1947), Leg. Hist. 1540.

Petitioners would have us infer from the demise of this "bill of rights" that Congress "rejected . . . general federal restrictions on either the dues equivalents that employees may be required to pay or the uses to which unions may put such dues-equivalents," and that aside from the prohibition on political expenditures Congress placed no limitations on union exactions other than the requirement that they be equal to uniform dues. Brief for Petitioners 39-40 (quoting Brief for United States as *Amicus Curiae* 19). We believe petitioners' reliance on this legislative compromise is misplaced. The House bill did not purport to set out the rights of nonmembers who are compelled to pay union dues, but rather sought to establish a "bill of rights for union members" vis-à-vis their union leaders. H. R. Rep., at 31, Leg. Hist. 322 (emphasis added). Thus, §8(c) of the House bill sought to regulate, among other things, the ability of unions to fine, discipline, suspend, or expel members; the manner in which unions conduct certain elections or maintain financial records; and the extent to which they can compel contributions to insurance or other benefit plans, or encumber the rights of members to resign. Leg. Hist. 52-56. The debate over these provisions focused on the desirability of Government oversight of internal union affairs, and a myriad of reasons having nothing whatever to do with the rights of nonmembers accounted for Congress' decision to forgo such detailed regulation. In rejecting any limitation on dues, therefore, Congress was not concerned with restrictions on "dues-equivalents," but rather with the administrative burdens and

potential threat to individual liberties posed by Government regulation of purely internal union matters."

It simply does not follow from this that Congress left unions free to exact dues equivalents from nonmembers in any amount they please, no matter how unrelated those fees may be to collective-bargaining activities. On the contrary, the complete lack of congressional concern for the rights of nonmembers in the debate surrounding the House "bill of rights" is perfectly consistent with the view that Congress understood §8(a)(3) to afford nonmembers adequate protection by authorizing the collection of only those fees necessary to finance collective-bargaining activities: because the amount of such fees would be fixed by their underlying purpose—defraying the costs of collective bargaining—Congress would have every reason to believe that the lack of any limitations on union dues was entirely irrelevant so far as the rights of nonmembers were concerned. In short, we think it far safer and far more appropriate to construe §8(a)(3) in light of its legislative justification, *i. e.*, ensuring that nonmembers who obtain the benefits of union representation can be made to pay for them, than by drawing inferences from Congress' rejection of a proposal that did not address the rights of nonmembers at all.

Petitioners also deem it highly significant that prior to 1947 unions "rather typically" used their members' dues for a "variety of purposes . . . in addition to meeting the . . . costs of collective bargaining," *Retail Clerks v. Schermerhorn*, 373 U. S. 746, 754 (1963), and yet Congress, which was presumably well aware of the practice, in no way limited the

\*See, *e. g.*, H. R. Rep., at 76-77, Leg. Hist. 367-368 (Minority Views) (charging that Government regulation was essentially impossible; that the encroachment on the rights of voluntary organizations such as unions was "without parallel"; and that such regulation invited harassment by rival unions and employers, and ultimately complete governmental control over union affairs).

uses to which unions could put fees collected from nonmembers. This silence, petitioners suggest, should be understood as congressional acquiescence in these practices. The short answer to this argument is that Congress was equally well aware of the same practices by railway unions, see *Street*, 367 U. S., at 767 ("We may assume that Congress was . . . fully conversant with the long history of intensive involvement of the railroad unions in political activities"); *Ellis*, 466 U. S., at 446 ("Congress was adequately informed about the broad scope of union activities"), yet neither in *Street* nor in any of the cases that followed it have we deemed Congress' failure in § 2, Eleventh to prohibit or otherwise regulate such expenditures as an endorsement of fee collections unrelated to collective-bargaining expenses. We see no reason to give greater weight to Congress' silence in the NLRA than we did in the RLA, particularly where such silence is again perfectly consistent with the rationale underlying § 8(a)(3): prohibiting the collection of fees that are not germane to representational activities would have been redundant if Congress understood § 8(a)(3) simply to enable unions to charge nonmembers only for those activities that actually benefit them.

Finally, petitioners rely on a statement Senator Taft made during floor debate in which he explained how the provisos of § 8(a)(3) remedied the abuses of the closed shop. "The great difference [between the closed shop and the union shop]," the Senator stated, "is that [under the union shop] a man can get a job without joining the union or asking favors of the union. . . . The fact that the employee has to pay dues to the union seems to me to be much less important." 93 Cong. Rec. 4886 (1947), Leg. Hist. 1422. On its face, the statement—made during a lengthy legislative debate—is somewhat ambiguous, for the reference to "union dues" could connote "full union dues" or could as easily be a shorthand method of referring to "collective-bargaining-related dues." In any event, as noted above, Senator Taft later described § 2, Eleventh as "almost the exact provisions . . . of the Taft-Hartley law," 96 Cong.

Rec. 16267 (1950), and we have construed the latter statute as permitting the exaction of only those dues related to representational activities. In view of Senator Taft's own comparison of the two statutory provisions, his comment in 1947 fails to persuade us that Congress intended virtually identical language in two statutes to have different meanings.

## (3)

We come then to petitioners' final reason for distinguishing *Street*. Five years prior to our decision in that case, we ruled in *Railway Employees v. Hanson*, 351 U. S. 225 (1956), that because the RLA pre-empts all state laws banning union-security agreements, the negotiation and enforcement of such provisions in railroad industry contracts involves "governmental action" and is therefore subject to constitutional limitations. Accordingly, in *Street* we interpreted § 2, Eleventh to avoid the serious constitutional question that would otherwise be raised by a construction permitting unions to expend governmentally compelled fees on political causes that nonmembers find objectionable. See 367 U. S., at 749. No such constitutional questions lurk here, petitioners contend, for § 14(b) of the NLRA expressly preserves the authority of States to outlaw union-security agreements. Thus, petitioners' argument runs, the federal pre-emption essential to *Hanson's* finding of governmental action is missing in the NLRA context, and we therefore need not strain to avoid the plain meaning of § 8(a)(3) as we did with § 2, Eleventh.

We need not decide whether the exercise of rights permitted, though not compelled, by § 8(a)(3) involves state action. Cf. *Steelworkers v. Sadlowski*, 457 U. S. 102, 121, n. 16 (1982) (union's decision to adopt an internal rule governing its elections does not involve state action); *Steelworkers v. Weber*, 443 U. S. 193, 200 (1979) (negotiation of collective-bargaining agreement's affirmative-action plan does not involve state action). Even assuming that it does not, and

that the NLRA and RLA therefore differ in this respect, we do not believe that the absence of any constitutional concerns in this case would warrant reading the nearly identical language of § 8(a)(3) and § 2, Eleventh differently. It is, of course, true that federal statutes are to be construed so as to avoid serious doubts as to their constitutionality, and that when faced with such doubts the Court will first determine whether it is fairly possible to interpret the statute in a manner that renders it constitutionally valid. *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U. S. 568 (1988); *Crowell v. Benson*, 285 U. S. 22, 62 (1932). But statutory construction may not be pressed "to the point of disingenuous evasion," *United States v. Locke*, 471 U. S. 84, 96 (1985) (quoting *George Moore Ice Cream Co. v. Rose*, 289 U. S. 373, 379 (1933)), and in avoiding constitutional questions the Court may not embrace a construction that "is plainly contrary to the intent of Congress." *DeBartolo, supra*, at 575. In *Street*, we concluded that our interpretation of § 2, Eleventh was "not only 'fairly possible' but entirely reasonable," 367 U. S., at 750, and we have adhered to that interpretation since. We therefore decline to construe the language of § 8(a)(3) differently from that of § 2, Eleventh on the theory that our construction of the latter provision was merely constitutionally expedient. Congress enacted the two provisions for the same purpose, eliminating "free riders," and that purpose dictates our construction of § 8(a)(3) no less than it did that of § 2, Eleventh, regardless of whether the negotiation of union-security agreements under the NLRA par-takes of governmental action.

## IV

We conclude that § 8(a)(3), like its statutory equivalent, § 2, Eleventh of the RLA, authorizes the exaction of only those fees and dues necessary to "performing the duties of an exclusive representative of the employees in dealing with the

employer on labor-management issues." *Ellis*, 466 U. S., at 448. Accordingly, the judgment of the Court of Appeals is

*Affirmed.*

JUSTICE KENNEDY took no part in the consideration or decision of this case.

JUSTICE BLACKMUN, with whom JUSTICE O'CONNOR and JUSTICE SCALIA join, concurring in part and dissenting in part.

I agree that the District Court and the Court of Appeals properly exercised jurisdiction over respondents' duty-of-fair-representation and First Amendment claims, and that the National Labor Relations Board had primary jurisdiction over respondents' claim brought under § 8(a)(3) of the National Labor Relations Act of 1935, 49 Stat. 452, as amended, 29 U. S. C. § 158(a)(3). I also agree that the Court of Appeals had jurisdiction to decide the § 8(a)(3) question raised by respondents' duty-of-fair-representation claim.<sup>1</sup> I therefore join Parts I and II of the Court's opinion.

My agreement with the majority ends there, however, for I cannot agree with its resolution of the § 8(a)(3) issue. Without the decision in *Machinists v. Street*, 367 U. S. 740 (1961), involving the Railway Labor Act (RLA), the Court could not reach the result it does today. Our accepted mode of resolving statutory questions would not lead to a construction of § 8(a)(3) so foreign to that section's express language and legislative history, which show that Congress did not intend to limit either the amount of "agency fees" (or what the majority labels "dues-equivalents") a union may collect under a union-security agreement, or the union's expenditure of such funds. The Court's excessive reliance on *Street* to reach a

<sup>1</sup> Like the majority, I do not reach the First Amendment issue raised below by respondents, and therefore similarly do not address whether a union's exercise of rights pursuant to § 8(a)(3) involves state action. See *ante*, at 761.

contrary conclusion is manifested by its unique line of reasoning. No sooner is the language of § 8(a)(3) intoned, than the Court abandons all attempt at construction of *this* statute and leaps to its interpretation over a quarter century ago of another statute enacted by a different Congress, a statute with a distinct history and purpose. See *ante*, at 744-745. I am unwilling to offend our established doctrines of statutory construction and strain the meaning of the language used by Congress in § 8(a)(3), simply to conform § 8(a)(3)'s construction to the Court's interpretation of similar language in a different later-enacted statute, an interpretation which is itself "not without its difficulties." *Aboud v. Detroit Board of Education*, 431 U. S. 209, 232 (1977) (characterizing the Court's decision in *Street*). I therefore dissent from Parts III and IV of the Court's opinion.

## I

As the Court observes, "we have never before delineated the precise limits § 8(a)(3) places on the negotiation and enforcement of union-security agreements." *Ante*, at 745. Unlike the majority, however, I think the issue is an entirely new one. I shall endeavor, therefore, to resolve it in accordance with our well-settled principles of statutory construction.

## A

As with any question of statutory interpretation, the starting point is the language of the statute itself. Section 8(a)(3) makes it unlawful for an employer to "discriminat[e] in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization." 29 U. S. C. § 158(a)(3). Standing alone, this proscription, and thus § 8(b)(2)'s corollary proscription,<sup>2</sup> effectively would outlaw union-security agreements. The proscription, however, is qualified by two provisos. The first, which appeared initially in § 8(a)(3) of the

<sup>2</sup>Section 8(b)(2) makes it unlawful for a union "to cause or attempt to cause an employer" to violate § 8(a)(3). 29 U. S. C. § 158(b)(2).

NLRA as originally enacted in 1935, 49 Stat. 452, generally excludes union-security agreements from statutory condemnation by explaining that

"nothing in [the NLRA] or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization . . . to require as a condition of employment membership therein . . . if such labor organization is the representative of the employees as provided in section 159(a) of this title . . . ." § 8(a)(3), 29 U. S. C. § 158(a)(3).

The second proviso, incorporated in § 8(a)(3) by the Taft-Hartley Amendments of 1947, 61 Stat. 141,<sup>3</sup> circumscribes the first proviso's general exemption by the following limitations:

"[N]o employer shall justify any discrimination against an employee for nonmembership in a labor organization . . . if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership."

The plain language of these statutory provisions, read together, permits an employer and union to enter into an agreement requiring *all* employees, as a condition of continued employment, to pay uniform periodic dues and initiation fees.<sup>4</sup> The second proviso expressly allows an employer to terminate any "employee," pursuant to a union-security agreement permitted by the first proviso, if the employee

<sup>3</sup>The Taft-Hartley Act also amended the first proviso to prohibit the application of a union-security agreement to an individual until he has been employed for 30 days. See 29 U. S. C. § 158(a)(3).

<sup>4</sup>This reading, of course, flows from the fact that "membership" as used in the first proviso, means not *actual* membership in the union, but rather "the payment of initiation fees and monthly dues." *NLRB v. General Motors Corp.*, 373 U. S. 734, 742 (1963).

fails "to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership" in the union. 29 U. S. C. § 158(a)(3). The term "employee," as statutorily defined, includes any employee, without regard to union membership. See 29 U. S. C. § 152(3). Union-member employees and nonunion-member employees are treated alike under § 8(a)(3).

"[W]e assume 'that the legislative purpose is expressed by the ordinary meaning of the words used.'" *American Tobacco Co. v. Patterson*, 456 U. S. 63, 68 (1982), quoting *Richards v. United States*, 369 U. S. 1, 9 (1962). The terms "dues" and "fees," as used in the proviso, can refer to nothing other than the regular, periodic dues and initiation fees paid by "voluntary" union members. This was the apparent understanding of the Court in those decisions in which it held that § 8(a)(3) permits union-security agreements. See *NLRB v. General Motors Corp.*, 373 U. S. 734, 736 (1963) (approving a union-security proposal that would have conditioned employment "upon the payment of sums equal to the initiation fee and regular monthly dues paid by the union members"); *Retail Clerks v. Schermerhorn*, 373 U. S. 746, 753 (1963) (upholding agreement requiring nonmembers to pay a "service fee [which] is admittedly the exact equal of membership initiation fees and monthly dues"). It also has been the consistent view of the NLRB,<sup>5</sup> "the agency en-

<sup>5</sup>See, e. g., *In re Union Starch & Refining Co.*, 87 N. L. R. B. 779, (1949), enf'd, 186 F. 2d 1008 (CA7), cert. denied, 342 U. S. 815 (1951); *Detroit Mailers Union No. 40*, 192 N. L. R. B. 951, 951-952 (1971). In *Detroit Mailers*, the Board explained:

"Neither on its face nor in the congressional purpose behind [§ 8(a)(3)] can any warrant be found for making any distinction here between dues which may be allocated for collective-bargaining purposes and those earmarked for institutional expenses of the union. . . . [D]ues collected from members may be used for a variety of purposes, in addition to meeting the union's costs of collective bargaining.' Unions 'rather typically' use their membership dues 'to do those things which the members authorized the union to do in their interest and on their behalf.' By virtue of Sec-

trusted by Congress with the authority to administer the NLRA." *Edward J. DeBartolo Corp. v. Florida Gulf Coast Building & Construction Trades Council*, 485 U. S. 568, 574 (1988). The provisos do not give any employee, union member or not, the right to pay less than the full amount of regular dues and initiation fees charged to all other bargaining-unit employees.

tion 8(a)(3), such dues may be required from an employee under a union-security contract so long as they are periodic and uniformly required and are not devoted to a purpose which would make their mandatory extraction otherwise inimical to public policy." *Id.*, at 952, quoting *Retail Clerks v. Schermerhorn*, 373 U. S., at 753-754 (internal quotations omitted).

The United States, appearing here as *amicus curiae*, maintains that position in this case.

Contrary to the Court's suggestion, the NLRB has not embraced and then "repudiated" the view that, for purposes of § 8(a)(3), "periodic dues and initiation fees" mean only "those fees necessary to finance collective-bargaining activities." *Ante*, at 752, n. 7. *Teamsters Local No. 959*, 167 N. L. R. B. 1042 (1967), does not demonstrate otherwise. In *Teamsters Local*, the NLRB held that "working dues" designated to fund a union building program and a credit union were actually "assessments" not contemplated by the proviso to § 8(a)(3). *Id.*, at 1044. The Board found that the union itself regarded the levy as a "temporary assessment," clearly distinct from its "regular dues." *Ibid.* Moreover, because the financing for the programs was constructed in such a way that the union treasury might never have received 90% of the moneys, the Board concluded that the "working dues" were actually "special purposes funds," and that "the support of such funds cannot come from 'periodic dues' as that term is used in § 8(a)(3)." *Ibid.* In *Detroit Mailers*, the NLRB distinguished such assessments from "periodic and uniformly required" dues, which, in its view, a union is not precluded from demanding of nonmembers pursuant to § 8(a)(3). 192 N. L. R. B., at 952.

While the majority credits an interpretation of *Teamsters Local* propounded by a dissenting member of the Board in *Detroit Mailers*, *ante*, at 752-753, n. 7, I prefer to take the Board's word at face value: *Teamsters Local* did not create "controlling precedent" endorsing the view of § 8(a)(3) enunciated by the Court today. 192 N. L. R. B., at 952. Significantly, the majority cannot cite one case in which the Board has held that uniformly required, periodic dues used for purposes other than "collective bargaining" are not dues within the meaning of § 8(a)(3).

The Court's conclusion that § 8(a)(3) prohibits petitioners from requiring respondents to pay fees for purposes other than those "germane" to collective bargaining, contract administration, and grievance adjustment simply cannot be derived from the plain language of the statute. In effect, the Court accepts respondents' contention that the words "dues" and "fees," as used in § 8(a)(3), refer not to the periodic amount a union charges its members but to the portion of that amount that the union expends on statutory collective bargaining.<sup>6</sup> See Brief for Respondents 17-20. Not only is this reading implausible as a matter of simple English usage, but it is also contradicted by the decisions of this Court and of the NLRB interpreting the section. Section 8(a)(3) does not speak of "dues" and "fees" that employees covered by a

<sup>6</sup>The Court's insistence that it has not changed the meaning of the term "uniform," see *ante*, at 753, n. 8, misses the point. The uniformity requirement obviously requires that the union can collect from nonmembers under a union-security agreement only those "periodic dues and initiation fees" collected equally from its members. But this begs the question: what "periodic dues and initiation fees"? It is the meaning of those terms which the Court misconceives.

Under our settled doctrines of statutory construction, were there any ambiguity in the meaning of § 8(a)(3)—which there is not—the Court would be constrained to defer to the interpretation of the NLRB, unless the agency's construction were contrary to the clear intent of Congress. *Chevron U. S. A. Inc. v. National Resources Defense Council, Inc.*, 467 U. S. 837, 842-843, and n. 9 (1984). Although the Court apparently finds such ambiguity, it fails to apply this doctrine. By reference to a narrow view of congressional "purpose" gleaned from isolated statements in the legislative history, and in reliance upon this Court's interpretation of another statute, the Court constructs an interpretation that not only finds no support in the statutory language or legislative history of § 8(a)(3), but also contradicts the Board's settled interpretation of the statutory provision. The Court previously has directed: "Where the Board's construction of the Act is reasonable, it should not be rejected merely because the courts might prefer another view of the statute." *Pattern Makers v. NLRB*, 473 U. S. 95, 114 (1985), quoting *Ford Motor Co. v. NLRB*, 441 U. S. 488, 497 (1979). Here, the only apparent motivation for holding that the Board's interpretation of § 8(a)(3) is impermissible, is the Court's view of *another* statute.

union-security agreement may be required to tender to their union representative; rather, the section speaks only of "the periodic dues and the initiation fees *uniformly required as a condition of acquiring or retaining membership*" (emphasis added). Thus, the section, by its terms, defines "periodic dues" and "initiation fees" as those dues and fees "uniformly required" of all members, not as a portion of full dues. As recognized by this Court, "dues collected from members may be used for a variety of purposes, in addition to meeting the union's costs of collective bargaining. Unions rather typically use their membership dues to do those things which the members authorize the union to do in their interest and on their behalf." *Retail Clerks v. Schermerhorn*, 373 U. S., at 753-754 (internal quotations omitted). By virtue of § 8(a)(3), such dues may be required from *any* employee under a union-security agreement. Nothing in § 8(a)(3) limits, or even addresses, the purposes to which a union may devote the monies collected pursuant to such an agreement.<sup>7</sup>

## B

The Court's attempt to squeeze support from the legislative history for its reading of congressional intent contrary to the plain language of § 8(a)(3) is unavailing. As its own discussion of the relevant legislative materials reveals, *ante*, at 747-750, there is no indication that the 1947 Congress intended to limit the union's authority to collect from nonmembers the same periodic dues and initiation fees it collects from members. Indeed, on balance, the legislative history rein-

<sup>7</sup>The Court's answer to the absolute lack of evidence that Congress intended to regulate such expenditures is no answer at all: the Court simply reiterates that in *Machinists v. Street*, 367 U. S. 740 (1961), it did not give weight to congressional silence in the RLA on this issue. See *ante*, at 760. The point, however, is *not* that the Court should give weight to Congress' silence in the NLRA; the point is that the Court must find *some* support in the NLRA for its proposition. Congress' silence simply highlights that there is no support for the Court's interpretation of the 1947 Congress' intent.

forces what the statutory language suggests: the provisos neither limit the uses to which agency fees may be put nor require nonmembers to be charged less than the "uniform" dues and initiation fees.

In *Machinists v. NLRB*, 362 U. S. 411 (1960), the Court stated:

"It is well known, and the legislative history of the 1947 Taft-Hartley amendments plainly shows, that § 8(a)(3)—including its proviso—represented the Congressional response to the competing demands of employee freedom of choice and union security. Had Congress thought one or the other overriding, it would doubtless have found words adequate to express that judgment. It did not do so; it accommodated both interests, doubtless in a manner unsatisfactory to the extreme partisans of each, by drawing a line it thought reasonable. It is not for the administrators of the Congressional mandate to approach either side of that line grudgingly." *Id.*, at 418, n. 7.

The legislative debates surrounding the adoption of § 8(a)(3) in 1947, show that in crafting the proviso to § 8(a)(3), Congress was attempting "only to 'remedy the most serious abuses of compulsory union membership . . .'" *NLRB v. General Motors Corp.*, 373 U. S., at 741, quoting from the legislative history. The particular "abuses" Congress identified and attempted to correct were two: the closed shop, which "deprives management of any real choice of the men it hires" and gives union leaders "a method of depriving employees of their jobs, and in some cases [of] a means of securing a livelihood in their trade or calling, for purely capricious reasons," S. Rep. No. 105, 80th Cong., 1st Sess., 6 (1947) (S. Rep.), Legislative History of the Labor Management Relations Act, 1947 (Committee Print compiled for the Subcommittee on Labor of the Senate Committee on Labor and Public Welfare), p. 412 (1974) (Leg. Hist.); and those union shops in which the union sought to obtain indirectly the same

result as that obtained through a closed shop by negotiating a union-shop agreement and maintaining a "closed" union where it was free to deny membership to an individual arbitrarily or discriminatorily and then compel the discharge of that person because of his nonmembership, 93 Cong. Rec. 3836-3837, 4193, 4885-4886 (1947), Leg. Hist. 1010, 1096-1097, 1420-1421 (remarks of Sen. Taft); 93 Cong. Rec. 4135, Leg. Hist. 1061-1062 (remarks of Sen. Ellender). Senator Taft, the chief sponsor of the Senate bill, in arguing against an amendment to proscribe all forms of union-security agreements, stated that it was unwise to outlaw union-security agreements altogether "since there had been for such a long time so many union shops in the United States, [and] since in many trades it was entirely customary and had worked satisfactorily," and that therefore the appropriate approach was to "meet the problem of dealing with the abuses which had appeared." 93 Cong. Rec. 4885, Leg. Hist. 1420." "Con-

\* See also, *e. g.*, 93 Cong. Rec. 3837 (1947), Leg. Hist. 1010 (remarks of Sen. Taft) ("[B]ecause the union shop has been in force in many industries for so many years . . . to upset it today probably would destroy relationships of long standing and probably would bring on more strikes than it would cure").

Despite a legislative history rife with unequivocal statements to the contrary, the Court concludes that the 1947 Congress did not set out to restrict union-security agreements in a "limited fashion." *Ante*, at 755. Quite apart from the Court's unorthodox reliance on representations of those opposed to the Taft-Hartley amendments, the majority's observation that "Congress viewed the Wagner Act's regime of compulsory unionism as seriously flawed," *ibid.*, begs the question. The perceived flaws were embedded in the closed-shop system, not the union-shop system. Thus, as is characteristic of the majority's opinion, its comparison to the RLA, under which there was no closed-shop system, is beside the point. See *ibid.* Congress was aware that under the NLRA, "the one system [the closed shop] ha[d] led to very serious abuses and the other system [the union shop] ha[d] not led to such serious abuses." 93 Cong. Rec. 4886 (1947), Leg. Hist. 1421 (remarks of Sen. Taft). Accordingly, Congress banned closed shops altogether, but it made only limited inroads on the union-shop system that had been in effect prior to 1947, carefully describing its limitations on such agreements. H. R. Rep. No. 245, 80th Cong.,

gress [also] recognized that in the absence of a union-security provision 'many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share of the cost.'" *NLRB v. General Motors Corp.*, 373 U. S., at 740-741, quoting S. Rep., at 6, Leg. Hist. 412.

Congress' solution was to ban the closed shop and to permit the enforcement of union-shop agreements as long as union membership is available "on the same terms and conditions" to all employees, and mandatory discharge is required only for "nonpayment of regular dues and initiation fees." S. Rep., at 7, 20, Leg. Hist. 413, 426. Congress was of the view, that, as Senator Taft stated, "[t]he fact that the employee will have to pay dues to the union seems . . . to be much less important. The important thing is that the man will have the job." 93 Cong. Rec. 4886 (1947), Leg. Hist. 1422. "[A] man can get a job with an employer and can continue in that job if, in effect, he joins the union and pays the union dues.

"If he pays the dues without joining the union, he has the right to be employed." 93 Cong. Rec. 4886 (1947), Leg. Hist.

1st Sess., 9 (1947), Leg. Hist. 300; S. Rep., at 6-7, Leg. Hist. 412-413. It could not be clearer from the legislative history that in enacting the proviso to § 8(a)(3), Congress attempted to deal only with specific abuses in the union-shop system, only the "actual problems that ha[d] arisen." 93 Cong. Rec. 4886 (1947), Leg. Hist. 1421 (remarks of Sen. Taft); accord, 93 Cong. Rec. 3836-3837 (1947), Leg. Hist. 1010-1011 (remarks of Sen. Taft). Congress' philosophy was that it had "to decree either an open shop or an open union. [I]t decreed an open union . . . [which would] permit the continuation of existing relationships, and [would] not violently tear apart a great many long-existing relationships and make trouble in the labor movement; and yet at the same time it [would] meet the abuses which exist." 93 Cong. Rec. 4886 (1947), Leg. Hist. 1420 (remarks of Sen. Taft). Union-security agreements requiring the payment of uniform periodic dues and standard initiation fees were not among the specified abuses. There was no testimony regarding problems arising from such arrangements. Indeed, the subtext of the entire debate was that such arrangements were acceptable. The Court's suggestion to the contrary is simply untenable.

1421-1422. There is no serious doubt that what Congress had in mind was a situation in which the nonmember employee would "pay the same dues as other members of the union." 93 Cong. Rec. 4272 (1947), Leg. Hist. 1142 (remarks of Sen. Taft); accord, 93 Cong. Rec. 3557 (1947), Leg. Hist. 740 (remarks of Sen. Jennings) (members of the minority "should go along and contribute dues like the others"). In their financial obligations, therefore, these employees were "in effect," union members, and could not be discharged pursuant to a union-security agreement as long as they maintained this aspect of union "membership." This solution was viewed as "tak[ing] care" of the free-rider issue. 93 Cong. Rec. 4887 (1947), Leg. Hist. 1422 (remarks of Sen. Taft).

Throughout the hearings and lengthy debate on one of the most hotly contested issues that confronted the 1947 Congress, not once did any Member of Congress suggest that § 8(a)(3) did not leave employers and unions free to adopt and enforce union-security agreements requiring all employees in the bargaining unit to pay an amount equal to full union dues and standard initiation fees. Nor did anyone suggest that § 8(a)(3) affected a union's expenditure of such funds.

Indeed, the legislative history indicates that Congress affirmatively declined to place limitations on either the amount of dues a union could charge or the uses to which it could put these dues. The Court dismisses as irrelevant the fact that Congress expressly rejected the House proposal that would have empowered the NLRB to regulate the "reasonableness" of union dues and expenditures. The Court finds meaningful the fact that "[t]he House bill did not purport to set out the

"The Senate Report explained: Congress "did not desire to limit the labor organization with respect to either its selection of membership or expulsion therefrom. But [it] did wish to protect the employee in his job if unreasonably expelled or denied membership. The tests provided by the amendment are based upon facts readily ascertainable and do not require the employer to inquire into the internal affairs of the union." S. Rep., at 20, Leg. Hist. 426.

rights of *nonmembers* who are compelled to pay union dues, but rather sought to establish a 'bill of rights for union members' vis-à-vis their union leaders. H. R. Rep., at 31, Leg. Hist. 322 (emphasis added).” *Ante*, at 758. But this is a distinction without a difference. Contrary to the Court’s view, Congress viewed this proposal as directly related to § 8(a)(3); Congress clearly saw the nonmembers’ interests in this context as being represented by union members.” Thus, Senator Taft explained the Senate conferees’ reasons for refusing to accept the provisions in the House bill:

“In the opinion of the Senate conferees[,] the language which protected an employee from losing his job if a union expelled him for some reason other than nonpayment of dues and initiation fees, uniformly required of all members, was considered sufficient protection.” 93 Cong. Rec. 6443 (1947), Leg. Hist. 1540.

Congress’ decision, in the course of the well-documented Senate-House compromise, not to place any general federal restrictions on the levels or uses of union dues,” indicates

“The Court appears to believe that Congress intended § 8(a)(3) to protect the interests of individual nonmembers in the uses to which the union puts their moneys. See *ante*, at 759. It could not be clearer, however, that Congress did not have this in mind at all. As Senator Taft explained to his colleague who complained that requiring a man to join a union he does not wish to join (pursuant to § 8(a)(3)) was no less restrictive than a closed shop: in enacting § 8(a)(3), Congress was not trying “to go into the broader fields of the rights of particular persons.” 93 Cong. Rec. 4886 (1947), Leg. Hist. 1421.

The only “rights” protected by the § 8(a)(3) provisos are workers’ employment rights. As the legislative debates reflect, Congress was principally concerned with insulating workers’ jobs from capricious actions by union leaders. “The purpose of the union unfair labor practice provisions added to § 8(a)(3) was to ‘preven[t] the union from inducing the employer to use the emoluments of the job to enforce the union’s rules.’” *Pattern Makers v. NLRB*, 473 U. S., at 126 (dissenting opinion), quoting *Seaford v. NLRB*, 394 U. S. 423, 429 (1969).

“Congress placed only one limitation on the uses which can be made of union dues. “[W]ith little apparent discussion or opposition,” the Senate

that it did not intend the provisos to limit the uses to which agency fees may be put.

The Court invokes what it apparently sees as a single-minded legislative purpose, namely, the eradication of a “free-rider” problem, and then views the legislative history through this narrow prism. The legislative materials demonstrate, however, that, contrary to the impression left by the Court, Congress was not guided solely by a desire to eliminate “free riders.” The 1947 Congress that carefully crafted § 8(a)(3) was focusing on a quite different problem—the most serious abuses of compulsory unionism. As the majority observes, “Congress carefully tailored [its] solution to the evils at which it was aimed.” *Ante*, at 749. In serving its purpose, Congress went only so far in foreclosing compulsory unionism. It outlawed closed shops altogether, but banned unions from using union-security provisions only where those provisions exact more than the initiation fees and “periodic dues” uniformly required as conditions of union

conferees adopted the House bill’s prohibition limiting what unions may spend from dues money on federal elections. *Pipefitters v. United States*, 407 U. S. 385, 405 (1972). In § 304 of the Labor Management Relations (Taft-Hartley) Act, 61 Stat. 159–160, which is now incorporated in the Federal Election Campaign Act of 1976, 90 Stat. 490, 2 U. S. C. § 441b(a), Congress made it unlawful for a union “to make a contribution or expenditure in connection with” certain political elections, primaries, or political conventions.

The Senate conferees also agreed with the House that some safeguard was needed to prevent unions from charging new members exorbitant initiation fees that effectively “close” the union, thereby “frustrat[ing] the intent of [§ 8(a)(3)].” 93 Cong. Rec. 6443 (1947), Leg. Hist. 1540 (remarks of Sen. Taft). Hence, § 8(b)(5) was added to the final bill, which makes it an unfair labor practice for a union which has negotiated a union-security agreement to require initiation fees that the NLRB “finds excessive or discriminatory under all the circumstances.” 29 U. S. C. § 158(b)(5). The Senate passed § 8(b)(5) only after receiving assurances from Senator Taft that it would not allow the NLRB to regulate union expenditures. See 93 Cong. Rec. 6859 (1947), Leg. Hist. 1623 (stressing that the provision “is limited to initiation fees and does not cover dues”).

membership. Otherwise, it determined that the regulation of union-security agreements should be left to specific federal legislation and to the legislatures and courts of the several States.<sup>12</sup> Congress explicitly declined to mandate the kind of particularized regulation of union dues and fees which the Court attributes to it today.

## II

By suggesting that the 1947 Congress was driven principally by a desire to eradicate a "free-rider" problem, the Court finds the means not only to distort the legislative justification for § 8(a)(3) and to ignore the provision's plain language, but also to draw a controlling parallelism to § 2, Eleventh of the RLA, 64 Stat. 1238, 45 U. S. C. § 152. As mistaken as the Court is in its view of Congress' purpose in enacting § 8(a)(3), the Court is even more mistaken in its reliance on this Court's interpretation of § 2, Eleventh in *Machinists v. Street*, 367 U. S. 740 (1961).

The text of § 8(a)(3) of the NLRA is, of course, very much like the text of the later enacted § 2, Eleventh of the RLA. This similarity, however, does not dictate the conclusion that the 1947 Congress intended § 8(a)(3) to have a meaning identical to that which the 1951 Congress intended § 2, Eleventh to have. The Court previously has held that the scope of the RLA is not identical to that of the NLRA and that courts should be wary of drawing parallels between the two stat-

<sup>12</sup> "It was never the intention of the [NLRA] . . . to preempt the field in this regard so as to deprive the States of their powers to prevent compulsory unionism." H. R. Conf. Rep. 510, 80th Cong., 1st Sess., 60 (1947), Leg. Hist. 561. Accordingly, Congress added § 14(b) to the final bill, which, as enacted, expressly preserves the authority of the States to regulate union-security agreements, including the use of funds collected from employees pursuant to such an agreement. See *Retail Clerks v. Schermhorn*, 373 U. S., at 751-752. Many States in fact have imposed limitations on the union-security agreements that are permitted in their jurisdictions. See 2 C. Morris, *The Developing Labor Law* 1391-1392 (2d ed. 1983).

utes. See, e. g., *First National Maintenance Corp. v. NLRB*, 452 U. S. 666, 686, n. 23 (1981); *Railroad Trainmen v. Jacksonville Terminal Co.*, 394 U. S. 369, 383 (1969). Thus, parallels between § 8(a)(3) and § 2, Eleventh, "like all parallels between the NLRA and the Railway Labor Act, should be drawn with the utmost care and with full awareness of the differences between the statutory schemes." *Chicago & N. W. R. Co. v. Transportation Union*, 402 U. S. 570, 579, n. 11 (1971). Contrary to the majority's conclusion, *ante*, at 750, the two provisions were not born of the "same concern[s]"; indeed, they were born of competing concerns. This Court's interpretation of § 2, Eleventh, therefore, provides no support for construing § 8(a)(3) in a fashion inconsistent with its plain language and legislative history.<sup>13</sup>

The considerations that enabled the Court to conclude in *Street*, 367 U. S., at 750, that it is "fairly possible" and "entirely reasonable" to read § 2, Eleventh to proscribe union-security agreements requiring uniform payments from all bargaining-unit employees are wholly absent with respect to § 8(a)(3). In *Street*, the Court stressed the fact that from 1926, when the RLA was first enacted, until 1951 when § 2, Eleventh assumed its present form, that Act prohibited all forms of union security and declared a "policy of complete freedom of choice of employees to join or not to join a union." *Ibid.* By 1951, however, Congress recognized "the expenses and burdens incurred by the unions in the administration of the complex scheme of the [RLA]." 367 U. S., at 751. The purpose advanced for amending the RLA in 1951 to authorize union-security agreements for the first time was "the elimi-

<sup>13</sup> The dissent in the original panel decision in this case appropriately observed: "If the legislative purposes behind § 8(a)(3) and § 2, Eleventh were identical, one would expect that [this] Court in *Street* would have looked to the NLRA for guidance in interpreting § 2, Eleventh. The *Street* opinion, however, does not significantly rely on or discuss either the NLRA or § 8(a)(3). Instead, it focuses on the distinctive features of the railroad industry and the Railway Labor Act in construing § 2, Eleventh." 776 F. 2d 1187, 1220 (CA4 1985).

nation of the 'free riders.'" 367 U. S., at 761. Given that background, the Court was persuaded that it was possible to conclude that "Congress did not completely abandon the policy of full freedom of choice embodied in the . . . Act, but rather made inroads on it for the limited purpose of eliminating the problems created by the 'free rider.'" *Id.*, at 767.

The NLRA does not share the RLA's underlying policy, which propelled the Court's interpretation of § 2, Eleventh in *Street*. Indeed, the history of the NLRA points in the opposite direction: the original policy of the Wagner Act was to permit all forms of union-security agreements, and such agreements were commonplace in 1947. Thus, in enacting § 8(a)(3), the 1947 Congress, unlike the 1951 Congress, was not making inroads on a policy of full freedom of choice in order to provide "a specific response," *id.*, at 751, to a particular problem facing unions. Rather, the 1947 amendments to § 8(a)(3) were designed to make an inroad into a pre-existing policy of the absolute freedom of private parties under federal law to negotiate union-security agreements. It was a "limited" inroad, responding to carefully defined abuses that Congress concluded had arisen in the union-security agreements permitted by the Wagner Act. The 1947 Congress did not enact § 8(a)(3) for the "same purpose" as did the 1951 Congress in enacting § 2, Eleventh. Therefore, contrary to the Court's conclusion, *ante*, at 762, the latter purpose, "eliminating 'free riders,'" does *not* dictate our construction of § 8(a)(3), regardless of its impact on our construction of § 2, Eleventh.

In order to overcome this inevitable conclusion, the Court relies on remarks made by a few Members of the Congress in enacting the 1951 amendments to § 2, Eleventh of the RLA, which the Court contends show that the 1951 Congress viewed those amendments as identical to the amendments that had been made to § 8(a)(3) of the NLRA in 1947. See *ante*, at 756; see also *ante*, at 746, and n. 4. But even assuming the Court's view of the legislative history of § 2, Elev-

enth is correct (and the legislative materials do not obviously impart the message the Court receives<sup>10</sup>), it does not provide support for the Court's strained reading of § 8(a)(3). Its only possible relevance in this case is to evidence the 1951 Congress' understanding of a statute that particular Congress did not enact. The relevant question here, however, is what the 1947 Congress intended by the statute that *it* enacted. "[I]t is well settled that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one.'" *Russello v. United States*, 464 U. S. 16, 26 (1983), quoting *Jefferson County Pharmaceutical Assn. v. Abbott Laboratories*, 460 U. S. 150, 165, n. 27 (1983), in turn quoting *United States v. Price*, 361 U. S. 304, 313 (1960). See also *United States v. Clark*, 445 U. S. 23, 33, n. 9 (1980). It

<sup>10</sup>The Court overstates the clarity of what was said about § 8(a)(3) when § 2, Eleventh was amended in 1951. As the Court's recitation of various statements reflects, the extent to which the 1951 Congress saw itself engrafting onto the RLA terms *identical*, in all respects, to the terms of § 8(a)(3) is uncertain. See *ante*, at 746-747, n. 4. The remarks are only general comments about the similarity of the NLRA union-security provisions, rather than explicit comparisons of § 8(a)(3) with the provisions of the RLA. For example, Senator Taft explained: "In effect, the bill inserts in the railway mediation law *almost the exact provisions, so far as they fit*, of the Taft-Hartley law, so that the conditions regarding the union shop and the check-off are carried into the relations between railroad unions and the railroads." 96 Cong. Rec. 16267 (1950) (emphasis added). See also, *e. g.*, H. R. Rep. No. 2811, 81st Cong., 2d Sess., 4 (1950) (§ 2, Eleventh allows agreements "of a character" permitted in § 8(a)(3)); 96 Cong. Rec. 17049 (1951) (remarks of Rep. Beckworth) (§ 2, Eleventh extends to railroads "a principle" embodied in § 8(a)(3)). Especially when it is remembered that Congress was *extending* to unions in the railroad industry the authority to enter into agreements for which they previously had *no* authority, whereas the 1947 Congress had rescinded authorization for certain kinds of union-security agreements, the import of these statements is ambiguous. To borrow a phrase from the majority, I "think it far safer and far more appropriate to construe § 8(a)(3) in light of its" language and legislative history, "than by drawing inferences from" ambiguous statements made by Members of a later Congress in enacting a different statute. *Ante*, at 759.

would "surely come as a surprise" to the legislators who enacted § 8(a)(3) to learn that, in discerning their intent, the Court listens not to their voices, but to those of a later Congress. *Ante*, at 756. Unlike the majority, I am unwilling to put the 1951 legislators' words into the 1947 legislators' mouths.

The relevant sources for gleaning the 1947 Congress' intent are the plain language of § 8(a)(3), and, at least to the extent that it might reflect a clear intention contrary to the plain meaning of the statute, the legislative history of § 8(a)(3). Those sources show that the 1947 Congress did not intend § 8(a)(3) to have the same meaning the Court has attributed to § 2, Eleventh of the RLA. I therefore must disagree with the majority's assertion that the Court's decision in *Street* is "controlling" here. See *ante*, at 745.

### III

In sum, I conclude that, in enacting § 8(a)(3) of the NLRA, Congress did not intend to prohibit union-security agreements that require the tender of full union dues and standard union initiation fees from nonmember employees, without regard to how the union expends the funds so collected. In finding controlling weight in this Court's interpretation of § 2, Eleventh of the RLA to reach a contrary conclusion, the Court has not only eschewed our well-established methods of statutory construction, but also interpreted the terms of § 8(a)(3) in a manner inconsistent with the congressional purpose clearly expressed in the statutory language and amply documented in the legislative history. I dissent.

## FOREIGN CONTRIBUTIONS BAN

\_\_\_\_. Section 319(b) of FECA (2 USC § 441e(b)) is amended to read as follows:

"(b) As used in this section, the term 'foreign national' means--

(1) any individual who is not a citizen of the United States;

(2) any person other than an individual which is a foreign principal as such term is defined by section 611(b) of title 22;

(3) any corporation which is a foreign subsidiary;

(4) any partnership of which the rights to governance, or in which the majority of the ultimate beneficial ownership or interests, are held or controlled, directly or indirectly, by individuals who are not citizens of the United States; and

(5) any person other than an individual, a corporation or a partnership, whose activities are directly or indirectly supervised, directed, controlled, financed or subsidized in whole or major part by a foreign principal as such term is defined by

section 611(b) of title 22.

For purposes of this subsection (b), the term 'foreign subsidiary' shall mean any corporation (i) the ultimate beneficial ownership of which is held or controlled, directly or indirectly, by individuals who are not citizens of the United States or (ii) a majority of the total combined voting power of all classes of stock of which is ultimately held or controlled, directly or indirectly, by individuals who are not citizens of the United States."

# Common Cause

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JOHN GARDNER  
*Founding Chairman*

DATE 1/13 TIME 4:07 PAGES TO FOLLOW \_\_\_\_\_

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FAX TO Jim Weber

ORGANIZATION The White House

PHONE \_\_\_\_\_ FAX 456-7964

FROM Don Sumner

PHONE \_\_\_\_\_

PLEASE NOTIFY RECIPIENT PROMPTLY.

MESSAGE

Jim - This is the soft money language we discussed - from last year's Smith-Shoppe-Meehan bill. Call if you have questions.  
Don

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1 **Subtitle B—Provisions Relating to**  
2 **Soft Money of Political Parties**

3 SEC. 211. SOFT MONEY OF POLITICAL PARTIES.

4 Title III of the Federal Election Campaign Act of  
5 1971 (2 U.S.C. 431 et seq.) is amended by adding at the  
6 end the following new section:

7 "SOFT MONEY OF POLITICAL PARTIES

8 "SEC. 325. (a) A national committee of a political  
9 party, including the national congressional campaign com-  
10 mittees of a political party, and any officers or agents of  
11 such party committees, shall not solicit or receive any con-  
12 tributions, donations, or transfers of funds, or spend any  
13 funds, not subject to the limitations, prohibitions, and re-  
14 porting requirements of this Act. This subsection shall  
15 apply to any entity that is established, financed, main-  
16 tained, or controlled by a national committee of a political  
17 party, including the national congressional campaign com-  
18 mittees of a political party, and any officers or agents of  
19 such party committees.

20 "(b)(1) Any amount expended or disbursed by a  
21 State, district, or local committee of a political party, dur-  
22 ing a calendar year in which a Federal election is held,  
23 for any activity which might affect the outcome of a Fed-  
24 eral election, including but not limited to any voter reg-  
25 istration and get-out-the-vote activity, any generic cam-

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1 paign activity, and any communication that identifies a  
2 Federal candidate (regardless of whether a State or local  
3 candidate is also mentioned or identified) shall be made  
4 from funds subject to the limitations, prohibitions and re-  
5 porting requirements of this Act.

6       “(2) Paragraph (1) shall not apply to expenditures  
7 or disbursements made by a State, district or local com-  
8 mittee of a political party for—

9           “(A) a contribution to a candidate other than  
10 for Federal office, provided that such contribution is  
11 not designated or otherwise earmarked to pay for ac-  
12 tivities described in paragraph (1);

13           “(B) the costs of a State or district/local politi-  
14 cal convention;

15           “(C) the non-Federal share of a State, district  
16 or local party committee’s administrative and over-  
17 head expenses (but not including the compensation  
18 in any month of any individual who spends more  
19 than 20 percent of his or her time on activity during  
20 such month which may affect the outcome of a Fed-  
21 eral election). For purposes of this provision, the  
22 non-Federal share of a party committee’s adminis-  
23 trative and overhead expenses shall be determined by  
24 applying the ratio of the non-Federal disbursements  
25 to the total Federal expenditures and non-Federal

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1 disbursements made by the committee during the  
2 previous presidential election year to the committee's  
3 administrative and overhead expenses in the election  
4 year in question:

5 "(D) the costs of grassroots campaign mate-  
6 rials, including buttons, bumper stickers, and yard  
7 signs, which materials solely name or depict a State  
8 or local candidate; or

9 "(E) the cost of any campaign activity con-  
10 ducted solely on behalf of a clearly identified State  
11 or local candidate, provided that such activity is not  
12 a get out the vote activity or any other activity cov-  
13 ered by paragraph (1).

14 "(3) Any amount spent by a national, State, district  
15 or local committee or entity of a political party to raise  
16 funds that are used in whole or in part to pay the costs  
17 of any activity covered by paragraph (1) shall be made  
18 from funds subject to the limitations, prohibitions, and re-  
19 porting requirements of this Act. This paragraph shall  
20 apply to any entity that is established, financed, main-  
21 tained, or controlled by a State, district or local committee  
22 of a political party or any agent or officer of such party  
23 committee in the same manner as it applies to that com-  
24 mittee.

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1       “(c) No national, State, district or local committee  
2 of a political party shall solicit any funds for or make any  
3 donations to any organization that is exempt from Federal  
4 taxation under section 501(c) of the Internal Revenue  
5 Code of 1986.

6       “(d)(1) No candidate for Federal office, individual  
7 holding Federal office, or any agent of such candidate or  
8 officeholder, may solicit or receive (A) any funds in con-  
9 nection with any Federal election unless such funds are  
10 subject to the limitations, prohibitions and reporting re-  
11 quirements of this Act; (B) any funds that are to be ex-  
12 pended in connection with any election for other than a  
13 Federal election unless such funds are not in excess of  
14 the amounts permitted with respect to contributions to  
15 Federal candidates and political committees under section  
16 315(a)(1) and (2), and are not from sources prohibited  
17 from making contributions by this Act with respect to elec-  
18 tion for Federal office. This paragraph shall not apply to  
19 the solicitation or receipt of funds by an individual who  
20 is a candidate for a non-Federal office if such activity is  
21 permitted under State law for such individual's non-Fed-  
22 eral campaign committee.

23       “(2)(A) No candidate for Federal office or individual  
24 holding Federal office may directly or indirectly establish,  
25 maintain, finance or control any organization described in

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1 section 501(c) of the Internal Revenue Code of 1986 if  
2 such organization raises funds from the public.

3 "(B) No candidate for Federal office or individual  
4 holding Federal office may raise funds for any organiza-  
5 tion described in section 501(c) of the Internal Revenue  
6 Code of 1986 if the activities of the organization include  
7 voter registration or get-out-the-vote campaigns.

8 "(C) For purposes of this paragraph, an individual  
9 shall be treated as holding Federal office if such individ-  
10 ual—

11 "(i) holds a Federal office; or

12 "(ii) holds a position described in level I of the  
13 Executive Schedule under 5312 of title 5, United  
14 States Code."

15 SEC. 212. REPORTING REQUIREMENTS.

16 (a) REPORTING REQUIREMENTS.—Section 304 of the  
17 Federal Election Campaign Act of 1971 (2 U.S.C. 484)  
18 is amended by adding at the end the following new sub-  
19 section:

20 "(d) POLITICAL COMMITTEES.—(1) A political com-  
21 mittee other than a national committee of a political party,  
22 any congressional campaign committee of a political party,  
23 and any subordinate committee of either, to which section  
24 325(b)(1) applies shall report all receipts and disburse-  
25 ments.

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1       “(2) Any political committee other than the commit-  
2       tees of a political party shall report any receipts or dis-  
3       bursements that are used in connection with a Federal  
4       election.

5       “(3) If a political committee has receipts or disburse-  
6       ments to which this subsection applies from any person  
7       aggregating in excess of \$200 for any calendar year, the  
8       political committee shall separately itemize its reporting  
9       for such person in the same manner as required in sub-  
10      section (b)(3)(A), (5), or (6).

11      “(4) Reports required to be filed under this sub-  
12      section shall be filed for the same time periods required  
13      for political committees under subsection (a).”.

14      (b) REPORTS BY STATE COMMITTEES.—Section 304  
15      of the Federal Election Campaign Act of 1971 (2 U.S.C.  
16      434), as amended by subsection (a), is further amended  
17      by adding at the end the following new subsection:

18      “(e) FILING OF STATE REPORTS.—In lieu of any re-  
19      port required to be filed by this Act, the Commission may  
20      allow a State committee of a political party to file with  
21      the Commission a report required to be filed under State  
22      law if the Commission determines such reports contain  
23      substantially the same information.”.

24      (c) OTHER REPORTING REQUIREMENTS.—

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1 (1) AUTHORIZED COMMITTEES.—Section  
2 304(b)(4) of the Federal Election Campaign Act of  
3 1971 (2 U.S.C. 434(b)(4)) is amended—

4 (A) by striking “and” at the end of sub-  
5 paragraph (H);

6 (B) by inserting “and” at the end of sub-  
7 paragraph (I); and

8 (C) by adding at the end the following new  
9 subparagraph:

10 “(J) in the case of an authorized commit-  
11 tee, disbursements for the primary election, the  
12 general election, and any other election in which  
13 the candidate participates.”

14 (2) NAMES AND ADDRESSES.—Section  
15 304(b)(5)(A) of the Federal Election Campaign Act  
16 of 1971 (2 U.S.C. 434(b)(5)(A)) is amended—

17 (A) by striking “within the calendar year”;

18 and

19 (B) by inserting “, and the election to  
20 which the operating expenditure relates” after  
21 “operating expenditure”.

22 SEC. 213. BUILDING FUND EXCEPTION TO THE DEFINITION  
23 OF THE TERM “CONTRIBUTION”.

24 Section 301(8)(B) of the Federal Election Campaign  
25 Act of 1971 (2 U.S.C. 431(8)(B)) is amended—

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- 1 (1) by striking out clause (viii); and  
2 (2) by redesignating clauses (ix) through (xiv)  
3 as clauses (viii) through (xiii), respectively.

4 **Subtitle C—Soft Money of Persons**  
5 **Other Than Political Parties**

6 **SEC. 221. SOFT MONEY OF PERSONS OTHER THAN POLITI-**  
7 **CAL PARTIES.**

8 Section 304 of the Federal Election Campaign Act  
9 of 1971 (2 U.S.C. 434), as amended by section 212(a)  
10 and (c), is further amended by adding at the end the fol-  
11 lowing new subsection:

12 “(f) **ELECTION ACTIVITY OF PERSONS OTHER THAN**  
13 **POLITICAL PARTIES.**—(1)(A)(i) If any person to which  
14 section 325 does not apply makes (or obligates to make)  
15 disbursements for activities described in section 325(b)(1)  
16 in excess of \$2,000, such person shall file a statement—

17 “(I) within 48 hours after the disbursements  
18 (or obligations) are made; or

19 “(II) in the case of disbursements (or obliga-  
20 tions) that are required to be made within 20 days  
21 of the election, within 24 hours after such disburse-  
22 ment (or obligations) are made.

23 “(ii) An additional statement shall be filed each time  
24 additional disbursements aggregating \$2,000 are made (or  
25 obligated to be made) by a person described in clause (i).

46 L Ed 2d

Roy, petitioner, v

658, 96 S Ct 808.

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[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.

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ancial support. But this  
t restraint upon pro-  
al activity serves to pre-

candidate, or an agent of the  
authorized or requested" the ex-  
§§ 608(c)(2)(B)(ii), (e)(1); S Rep  
3 (1974); HR Rep No. 93-1239,  
a result, only travel that is  
requested" by the candidate or  
id involve incidental expenses  
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the candidate's expenditure  
3, *infra*. Should a person inde-  
l across the country to partici-  
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ssary to avoid the administra-  
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isions. The distinction between  
and expenditures is also dis-  
*infra*, and in Part II-C-2, *infra*.

## BUCKLEY v VALEO

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

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,<sup>44</sup> to an expenditure of \$1,000  
"relative to a clearly identified candi-  
date 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 Expendi-  
tures "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."<sup>45</sup> 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.<sup>46</sup>

[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.<sup>47</sup> 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).<sup>48</sup> 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

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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).

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... 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.<sup>49</sup>

But while such a construction of § 608(e)(1) refocuses the vagueness question, the Court of Appeals was mistaken in thinking that this construction eliminates the problem of unconstitutional vagueness altogether. — US App DC, at —, 519 F2d, 853. For 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 public issues, but campaigns themselves generate issues of public interest.<sup>50</sup> In an analog

[424 US 43]

context, this Court in Thomas v Collins, 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 question 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 circumstances, safely could assume that anything he might say upon the general subject would not be understood 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 security for free discussion. In these conditions it blankets with uncertainty 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 Workers, 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). *capitulum*

[19b] The constitutional deficiencies described in Thomas v Collins can be avoided only by reading § 608(e)(1) as limited to communications that include explicit words of advocacy of election or defeat of a candidate, much as the definition of "clearly identified" in § 608(e)(2) requires that an explicit and unambiguous 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 unavoidably draws in candidates and their positions, 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 inexorably to exert some influence on voting at elections." — US App DC, at —, 519 F2d, at 875.

pear as part of the communication.<sup>51</sup>  
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.<sup>52</sup>

[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."

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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.<sup>53</sup> 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.<sup>54</sup>

[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.

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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).<sup>55</sup>

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 Kolodziecki*, 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 unbridgeable 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

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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).<sup>56</sup>

[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.<sup>57</sup>

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)<sup>68</sup> [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.<sup>69</sup> 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.<sup>70</sup> 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

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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,<sup>71</sup> 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.<sup>72</sup> 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.

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 contribution 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.<sup>73</sup> We also have insisted that there be a "relevant correlation"<sup>74</sup> or "substantial relation"<sup>75</sup> 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

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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.<sup>76</sup>

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].

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## 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"<sup>77</sup> 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.<sup>78</sup> 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.<sup>79</sup> 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."<sup>80</sup>

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' concession<sup>81</sup> 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.<sup>82</sup> 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.<sup>83</sup> 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.

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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.<sup>84</sup>

[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 within<sup>85</sup> and without<sup>86</sup> 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.<sup>87</sup> 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.<sup>88</sup> 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.<sup>89</sup>

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,<sup>90</sup> 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."<sup>91</sup> 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.).

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safeguard, the argument goes, be-  
cause the "evils" of "chill and har-  
assment . . . are largely incapable of  
formal proof."<sup>92</sup> 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.<sup>93</sup> 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  
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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 76]

upon First Amendment rights.<sup>94</sup> 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,<sup>95</sup> while § 608(e)(1) was part of the 1974 amendments.<sup>96</sup>

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"<sup>97</sup> 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,<sup>98</sup> 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 penalties<sup>99</sup> 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."

candidates for federal office.<sup>100</sup> 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.<sup>101</sup> 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 legislature'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.<sup>102</sup> 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)].<sup>103</sup> 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.

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

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

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.<sup>104</sup> 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,"<sup>105</sup> and could be interpreted to reach groups engaged purely in issue discussion. The lower courts have construed the words "political committee" more narrowly.<sup>106</sup> 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"<sup>107</sup>—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 advocate<sup>108</sup> 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.

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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.<sup>109</sup>

#### 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. 4067

October 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:

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 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

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. [\*\*\*16] 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 [\*247] 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.

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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

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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.

479 U.S. 238, \*256; 107 S. Ct. 616, \*\*627;  
1986 U.S. LEXIS 26, \*\*\*34; 93 L. Ed. 2d 539

- - - - -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

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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."

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[\*\*\*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.

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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

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"[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*

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v. United [\*\*633] 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.

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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).

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[\*\*\*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.

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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

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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.

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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

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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

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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.

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[\*\*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).