CONTROLLING LEGAL PRINCIPLES

Free Exercise Clause Decision – The "Contemplation of Justice"
Buckley v. Valeo, 424 U.S. 1 (1976)

On plenary review, a majority of the Court of Appeals rejected, for the most part, appellants' constitutional attacks. The court found "a clear and compelling interest," 171 U.S.App.D.C. at 192, 519 F.2d at 841, in preserving the integrity of the electoral process. On that basis, the court upheld, with one exception, [Footnote 7] the substantive provisions of the Act with respect to contributions, expenditures, and disclosure. It also sustained the constitutionality of the newly established Federal Election Commission. The court concluded that, notwithstanding the manner of selection of its members and the breadth of its powers, which included nonlegislative functions, the Commission is a constitutionally authorized agency created to perform primarily legislative functions. [Footnote 8]

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The provisions for public funding of the three stages of the Presidential selection process were upheld as a valid exercise of congressional power under the General Welfare Clause of the Constitution, Art. I, § 8.

In this Court, appellants argue that the Court of Appeals failed to give this legislation the critical scrutiny demanded under accepted First Amendment and equal protection principles. In appellants' view, limiting the use of money for political purposes constitutes a restriction on communication violative of the First Amendment, since virtually all meaningful political communications in the modern setting involve the expenditure of money. Further, they argue that the reporting and disclosure provisions of the Act unconstitutionally impinge on their right to freedom of association. Appellants also view the federal subsidy provisions of Subtitle H as violative of the General Welfare Clause, and as inconsistent with the First and Fifth Amendments. Finally, appellants renew their attack on the Commission's composition and powers.

At the outset, we must determine whether the case before us presents a "case or controversy" within the meaning of Art. III of the Constitution. Congress may not, of course, require this Court to render opinions in matters which are not "cases or controversies." Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, 300 U. S. 240-241 (1937). We must therefore decide whether appellants have the "personal stake in the outcome of the controversy" necessary to meet the requirements of Art. III. Baker v. Carr, 369 U. S. 186, 369 U. S. 204 (1962). It is clear that Congress, in enacting

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2 U.S.C. § 437h (1970 ed., Supp. IV), [Footnote 9] intended to provide judicial review to the extent permitted by Art. III. In our view, the complaint in this case demonstrates that at least some of the appellants have a sufficient "personal stake" [Footnote 10] in a determination of the constitutional validity of each of the challenged provisions to present

"a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts."

Aetna Life Ins. Co. v. Haworth, supra at 300 U. S. 241. [Footnote 11]

A. General Principles

The Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest protection to such political expression in order "to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people." Roth v. United States, 354 U. S. 476, 354 U. S. 484 (1957). Although First Amendment protections are not confined to "the exposition of ideas," Winters v. New York, 333 U. S. 507, 333 U. S. 510 (1948),

"there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates. . . ."

Mills v. Alabama, 384 U. S. 214, 384 U. S. 218 (1966). This no more than reflects our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," New York Times Co. v. Sullivan, 376 U. S. 254, 376 U. S. 270 (1964). In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates

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for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in Monitor Patriot Co. v. Roy, 401 U. S. 265, 401 U. S. 272 (1971),

"it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."

The First Amendment protects political association as well as political expression. The constitutional right of association explicated in NAACP v. Alabama, 357 U. S. 449, 357 U. S. 460 (1958), stemmed from the Court's recognition that

"[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association."

Subsequent decisions have made clear that the First and Fourteenth Amendments guarantee "freedom to associate with others for the common advancement of political beliefs and ideas,'" a freedom that encompasses "`[t]he right to associate with the political party of one's choice.'" Kusper v. Pontikes, 414 U. S. 51, 414 U. S. 56, 414 U. S. 57 (1973), quoted in Cousins v. Wigoda, 419 U. S. 477, 419 U. S. 487 (1975).

It is with these principles in mind that we consider the primary contentions of the parties with respect to the Act's limitations upon the giving and spending of money in political campaigns. Those conflicting contentions could not more sharply define the basic issues before us. Appellees contend that what the Act regulates is conduct, and that its effect on speech and association is incidental, at most. Appellants respond that contributions and expenditures are at the very core of political speech, and that the Act's limitations thus constitute restraints on First Amendment liberty that are both gross and direct.

In upholding the constitutional validity of the Act's contribution and expenditure provisions on the ground

that those provisions should be viewed as regulating conduct, not speech, the Court of Appeals relied upon United States v. O'Brien, 391 U. S. 367 (1968). See 171 U.S.App.D.C. at 191, 519 F.2d at 840. The O'Brien case involved a defendant's claim that the First Amendment prohibited his prosecution for burning his draft card because his act was "symbolic speech'" engaged in as a "`demonstration against the war and against the draft.'" 391 U.S. at 391 U. S. 376. On the assumption that "the alleged communicative element in O'Brien's conduct [was] sufficient to bring into play the First Amendment," the Court sustained the conviction because it found "a sufficiently important governmental interest in regulating the nonspeech element" that was "unrelated to the suppression of free expression" and that had an "incidental restriction on alleged First Amendment freedoms . . . no greater than [was] essential to the furtherance of that interest." Id. at 391 U. S. 376-377. The Court expressly emphasized that O'Brien was not a case

"where the alleged governmental interest in regulating conduct arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful."

Id. at 391 U. S. 382.

We cannot share the view that the present Act's contribution and expenditure limitations are comparable to the restrictions on conduct upheld in O'Brien. The expenditure of money simply cannot be equated with such conduct as destruction of a draft card. Some forms of communication made possible by the giving and spending of money involve speech alone, some involve conduct primarily, and some involve a combination of the two. Yet this Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment. See Bigelow v. Virginia, 421 U. S. 809,

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421 U. S. 820 (1975); New York Times Co. v. Sullivan, supra at 376 U. S. 266. For example, in Cox v. Louisiana, 379 U. S. 559 (1965), the Court contrasted picketing and parading with a newspaper comment and a telegram by a citizen to a public official. The parading and picketing activities were said to constitute conduct "intertwined with expression and association," whereas the newspaper comment and the telegram were described as a "pure form of expression" involving "free speech alone," rather than "expression mixed with particular conduct." Id. at 379 U. S. 563-564.

Even if the categorization of the expenditure of money as conduct were accepted, the limitations challenged here would not meet the O'Brien test because the governmental interests advanced in support of the Act involve "suppressing communication." The interests served by the Act include restricting the voices of people and interest groups who have money to spend and reducing the over-all scope of federal election campaigns. Although the Act does not focus on the ideas expressed by persons or groups subject to its regulations, it is aimed in part at equalizing the relative ability of all voters to affect electoral outcomes by placing a ceiling on expenditures for political expression by citizens and groups. Unlike O'Brien, where the Selective Service System's administrative interest in the preservation of draft cards was wholly unrelated to their use as a means of communication, it is beyond dispute that the interest in regulating the alleged "conduct" of giving or spending money "arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful." 391 U.S. at 391 U. S. 382.

Nor can the Act's contribution and expenditure limitations be sustained, as some of the parties suggest, by reference to the constitutional principles reflected in such

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decisions as Cox v. Louisiana, supra; Adderley v. Florida, 385 U. S. 39 (1966); and Kovacs v. Cooper, 336 U. S. 77 (1949). Those cases stand for the proposition that the government may adopt reasonable time, place, and manner regulations, which do not discriminate among speakers or ideas, in order to further an important governmental interest unrelated to the restriction of communication. See Erznoznik v. City of Jacksonville, 422 U. S. 205, 422 U. S. 209 (1975). In contrast to O'Brien, where the method of expression was held to be subject to prohibition, Cox,

Adderley, and Kovacs involved place or manner restrictions on legitimate modes of expression -- picketing, parading, demonstrating, and using a sound truck. The critical difference between this case and those time, place, and manner cases is that the present Act's contribution and expenditure limitations impose direct quantity restrictions on political communication and association by persons, groups, candidates, and political parties in addition to any reasonable time, place, and manner regulations otherwise imposed. [Footnote 17]

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A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. [Footnote 18] This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio, and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.

The expenditure limitations contained in the Act represent substantial, rather than merely theoretical, restraints on the quantity and diversity of political speech. The $1,000 ceiling on spending "relative to a clearly identified candidate," 18 U.S.C. § 608(e)(1) (1970 ed., Supp. IV), would appear to exclude all citizens and groups except candidates, political parties, and the institutional press [Footnote 19] from any significant use of the most

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effective modes of communication. [Footnote 20] Although the Act's limitations on expenditures by campaign organizations and political parties provide substantially greater room for discussion and debate, they would have required restrictions in the scope of a number of past congressional and Presidential campaigns [Footnote 21] and would operate to constrain campaigning by candidates who raise sums in excess of the spending ceiling.

By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication.

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A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. [Footnote 22] A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way

infringe the contributor's freedom to discuss candidates and issues. While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.

Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy. There is no indication, however, that the contribution limitations imposed by the Act would have any dramatic adverse effect on the funding of campaigns and political associations. [Footnote 23] The over-all effect of the Act's contribution

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ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression.

The Act's contribution and expenditure limitations also impinge on protected associational freedoms. Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals. The Act's contribution ceilings thus limit one important means of associating with a candidate or committee, but leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates. And the Act's contribution limitations permit associations and candidates to aggregate large sums of money to promote effective advocacy. By contrast, the Act's $1,000 limitation on independent expenditures "relative to a clearly identified candidate" precludes most associations from effectively amplifying the voice of their adherents, the original basis for the recognition of First Amendment protection of the freedom of association. See NAACP v. Alabama, 357 U.S. at 357 U. S. 460. The Act's constraints on the ability of independent associations and candidate campaign organizations to expend resources on political expression "is simultaneously an interference with the freedom of [their] adherents," Sweezy v. New Hampshire, 354 U. S. 234, 354 U. S. 250 (1957) (plurality opinion). See Cousins v.

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Wigoda, 419 U.S. at 419 U. S. 487-488; NAACP v. Button, 371 U. S. 415, 371 U. S. 431 (1963).

In sum, although the Act's contribution and expenditure limitations both implicate fundamental First Amendment interests, its expenditure ceilings impose significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions.

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 [Footnote 99] and fear of incurring these sanctions

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

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 U. S. 612, 347 U. S. 617 (1954). See also Papachristou v. City of Jacksonville, 405 U. S. 156 (1972). Where First Amendment rights are involved, an even "greater degree of specificity" is required. Smith v. Goguen, 415 U.S. at 415 U. S. 573. See Grayned v. City of Rockford, 408 U. S. 104, 408 U. S. 109 (1972); Kunz v. New York, 340 U. S. 290 (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. [Footnote 101] Congress "has voiced its wishes in [most] muted strains," leaving us to draw upon "those common sense assumptions that must be made in determining direction without a compass." Rosado v. Wyman, 397 U. S. 397, 397 U. S. 412 (1970). Where the constitutional requirement of definiteness is at stake, we have the further obligation to construe the statute,

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if that can be done consistent with the legislature's purpose, to avoid the shoals of vagueness. United States v. Harriss, supra at 347 U. S. 618; United States v. Rumely, 345 U.S. at 345 U. S. 45.

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. [Footnote 102] Our task is to construe "for the purpose of . . . influencing," incorporated in § 434(e) through the definitions of "contributions" and "expenditures," in a manner that precisely furthers this goal.

In 424 U. S. we discussed what constituted a "contribution" for purposes of the contribution limitations set forth in 18 U.S.C. § 608(b) (1970 ed., Supp. IV). [Footnote 103] We construed that term to include not only contributions made directly or indirectly to a candidate, political party, or campaign committee, and contributions made to other organizations or individuals but earmarked for political purposes, but also all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate. The definition of "contribution" in § 431(e), for disclosure purposes, parallels the definition in Title 18 almost word for word, and we construe the former provision as we have the latter. So defined, "contributions" have a sufficiently close relationship to the goals of the Act, for 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

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of the sort we faced in 18 U.S.C. § 608(e)(1) (1970 ed., Supp. IV). 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. [Footnote 104] The general requirement that "political committees" and candidates disclose their expenditures could raise similar vagueness problems, for "political committee" is defined only in terms of amount of annual "contributions" and "expenditures," [Footnote 105] and could be interpreted to reach groups engaged purely in issue discussion. The lower courts have construed the words "political committee" more narrowly. [Footnote 106] To fulfill the purposes of the Act, they need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate. Expenditures of candidates and of "political committees," so construed, can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign-related.

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

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-- the 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 [Footnote 108] 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.

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 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 U.S.C. § 608(e)(1) (1970 ed., Supp. IV), § 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)

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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.

Section 434(e), as we have construed it, does not contain the infirmities of the provisions before the Court in Talley v. California, 362 U. S. 60 (1960), and Thomas v. Collins, 323 U. S. 516 (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 U.S. at 362 U. S. 64. 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.

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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. [Footnote 109]

D. Thresholds

THERE IS OVER 150 Pages left in this Opinion and it is hard to find: The Laws of Understanding

HENCEFORTH