

Constitutional Restrictions on Campaign Finance Regulation

CONTENTS

INTRODUCTION Daniel R. Ortiz 63

DOCUMENTS

- 3.1 Buckley v. Valeo, 424 U.S. 1 (1976) 67
- 3.2 First National Bank of Boston v. Bellotti, 435 U.S. 765 (1978) 78
- 3.3 Austin v. Michigan State Chamber of Commerce, 494 U.S. 652 (1990) 82
- 3.4 Colorado Republican Federal Campaign Committee v. Federal Election Commission, 116 S.Ct. 2309 (1996) 87

Constitutional Restrictions on Campaign Finance Regulation

INTRODUCTION BY DANIEL R. ORTIZ

One would search the Constitution in vain for any mention of “campaign finance,” let alone “contributions,” “expenditures,” “soft money,” or any of the other specialized terms in the campaign finance vocabulary. Yet despite this silence, the U.S. Supreme Court has firmly and repeatedly held that the Constitution greatly limits what Congress and the states can do. Believing that campaign finance regulations restrict political expression and so implicate the First Amendment, which says only that “Congress shall make no law . . . abridging the freedom of speech,” the Court has subjected them to searching review.

In *Buckley v. Valeo* (424 U.S. 1 [1976]; document 3.1), the first and most important of the campaign finance cases, the Supreme Court created a framework that still guides analysis in this area. *Buckley* concerned a challenge to many of the 1974 amendments to the Federal Election Campaign Act (document 2.9). The challengers attacked, among other things, the amendments’ limitations on various forms of election spending. In deciding this group of challenges, the Court distinguished between contributions and expenditures—a distinction that, although widely criticized at the time (and since), has remained the most important feature of the legal landscape.

As defined by *Buckley* and the later cases, a contribution represents money completely given over to another entity, whether to a party, candidate campaign, or political action committee (PAC). In other words, the donor retains no control over the use of the money; the entity receiving it decides how it

will be spent. An expenditure, on the other hand, represents money controlled and spent directly by the spender. It may be spent on someone else’s behalf, of course, and usually is, but the spender makes all the decisions over its use. If the spender should coordinate its use with a campaign, however, it will be treated as a contribution.

In *Buckley*, the Supreme Court found that these two different forms of campaign spending reflected quite different First Amendment concerns. In the Court’s view, contributions conveyed only the fact that a donor supports a candidate, not why the donor supports him or her. As a result, Congress could broadly limit these contributions. So long as Congress did not restrict contributions so severely that it starved campaigns or blocked the basic signal of support, Congress had great freedom to regulate. By contrast, the Court found that regulating expenditures raised more serious First Amendment concerns. Since, to the Court’s mind, expenditures (unlike contributions) did convey *why* a spender supports or opposes a candidate, limiting them would necessarily restrict the quantity and quality of political discourse. The Court therefore subjected expenditure limitations to the most searching constitutional review. Finding no governmental interest sufficient to justify them, the Court struck them down.

This finding that no sufficient state interest justified limiting individual expenditures has greatly shaped this whole area of law. In fact, this one small part of the discussion in *Buckley* has by itself doomed many reform proposals. In upholding in-

dividual contribution limitations, the Court said that Congress could somewhat burden political expression in the name of preventing “corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates’ positions and on their actions if elected to office.” This interest was strong enough to justify some expressive burdens. But the Court thought that expenditures posed a much more remote and speculative danger of quid pro quo corruption. This same goal—no matter how weighty in general—could not therefore justify expenditure limitations.

Congress had to find an interest more directly related to expenditures, and it did: “to equalize the relative ability of [individuals and groups] to affect the outcome of elections.” The Court, however, found this interest troubling too—this time for a different reason. Although such equalization might well bear a direct relationship to expenditure limitations, the equalization goal itself was faulty. It was constitutionally impermissible. As the Court put it: “the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.” This stinging rejection of equality concerns has made the First Amendment an insurmountable bar to many forms of campaign finance regulation. Congress, of course, can still regulate campaign finance, but it can do so only in the pursuit of other goals. But these permissible goals, particularly preventing corruption, cannot accomplish all the work reformers typically want.

One other move in *Buckley* has greatly shaped law in this area: the Court’s emphasis on the need for clear rules. Worried that vagueness in some of the Federal Election Campaign Act’s definitions might lead citizens to steer clear of speech that would be constitutionally permitted, the Court found it necessary to interpret these statutory provisions quite specifically. Moreover, since the clear, sharp definitions had to avoid any potential con-

stitutional problems in application, the Court “erred” on the side of free expression. As a result, the Court narrowed the statute’s coverage quite dramatically. For example, the Court interpreted the Act’s central provision limiting “any expenditure . . . relative to a clearly identified candidate” to require mention of “explicit words of advocacy of election or defeat,” such as “vote for,” “elect,” “vote against,” and “defeat.” Requiring these magic words protected free speech, to be sure. But requiring them also meant that much spending clearly intended to benefit or harm particular candidates would escape regulation.

The next major case in this area, *First National Bank of Boston v. Bellotti* (435 U.S. 765 [1978]; document 3.2), followed *Buckley* by two years. It asked whether a state could treat corporations differently. That is, could a state prohibit corporations from making expenditures, even though under *Buckley* it could not prohibit individuals from doing so? The Court answered no: a state could bar neither individual nor corporate expenditures. But the Court’s holding was limited by the facts of the case: *Bellotti* concerned a *referendum*, not a *candidate* election. Since a corporation cannot seek a quid pro quo from a ballot measure, the Court held, states did not need to ban corporate expenditures in referendum elections to prevent the one type of corruption *Buckley* had identified as a constitutionally permissible concern.

Not until 1986 did the Court begin to address the issue *Bellotti* left open: the extent to which government could regulate corporate expenditures in *candidate* elections. In two cases, *Federal Election Commission v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) (*MCFL*; see document 7.4) and *Austin v. Michigan State Chamber of Commerce* (494 U.S. 652 [1990]; document 3.3), the Court developed some complex rules. In *MCFL*, which is discussed extensively in the excerpts from *Austin*, the Federal Election Commission (FEC) sued Massachusetts Citizens for Life (MCFL), a nonprofit corporation organized to oppose abortion. The FEC

claimed that by spending directly from its treasury to publish and widely distribute a list of candidates for state and federal office who supported its views MCFL had made an illegal corporate expenditure. The Court disagreed. At least as applied to “ideological,” noneconomic corporations like MCFL, the federal prohibition against spending from the corporate treasury violated the First Amendment. The Court left open the question of whether the First Amendment similarly barred prohibiting expenditures by everyday “business” corporations.

In *Austin*, the Court took up this larger question. The Michigan Chamber of Commerce challenged a Michigan state law prohibiting corporations from making expenditures in support of state candidates. Although the Supreme Court found that the prohibition burdened expressive activity and thus needed a “compelling state interest” to withstand constitutional scrutiny, the state law passed muster. The surprise lay in the compelling interest the Court found at work: preventing corruption or the appearance of corruption. *Buckley*, of course, had held this interest compelling. Indeed, it found it the only permissible interest at work there. But *Buckley* had also found this interest insufficiently related to expenditures to justify their restriction. Why was corruption now sufficiently related to expenditures?

The difference sprang from a change in the notion of corruption. The *Austin* Court radically expanded it. Instead of covering just the danger of a quid pro quo—the exchange of spending in an election for later support on legislation—corruption grew to include “the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.” Corporate expenditures, the Court found, definitely pose the danger of corruption in this broader sense. The problem, though, as Justice Antonin Scalia argued forcefully in his dissent, is that this change undermines a critical feature of *Buckley*. Such a broad interpretation of corruption effectively rehabilitates

the equalization rationale rejected in *Buckley* as “wholly foreign to the First Amendment.” *Austin* seems to say that in some cases Congress may legislate to equalize, just so long as it describes itself as doing something else. At the very least this move introduces great tension and some confusion into the jurisprudence.

The most recent campaign finance case, *Colorado Republican Federal Campaign Committee v. Federal Election Commission* (116 S. Ct. 2309 [1996]; document 3.4), considered the extent to which the First Amendment allows Congress to regulate political party spending on behalf of or against candidates. Because the Court splintered four ways, the case raises more issues than it answers. It also reveals the great differences of opinion over fundamental questions still present after all these years. Justice Stephen G. Breyer, joined by Justices Sandra Day O’Connor and David H. Souter, decided the case in such a way as to avoid the important First Amendment issue entirely. Finding (despite a presumption to the contrary) that the political party’s expenditures were truly independent of its candidates, Justice Breyer held that a straightforward application of *Buckley* barred their limitation. However, he left open the question of whether the First Amendment would bar limiting party expenditures that were actually coordinated with a candidate.

By contrast, Justice John Paul Stevens together with Justice Ruth Bader Ginsberg held that Congress could limit this type of party expenditure. Congress and the FEC, they thought, could reasonably presume that party expenditures like this were not truly independent and could constitutionally regulate them as coordinated spending. Justice Anthony M. Kennedy, with Chief Justice William H. Rehnquist and Justice Scalia, came to exactly the opposite legal conclusion. They held that the First Amendment prevents Congress from limiting party spending on behalf of or against candidates, even when the expenditures are actually coordinated. They found no meaningful difference between party spending coordinated with a candidate and

the candidate's own spending, and, since *Buckley* barred limiting the latter, they believed it should bar limiting the former as well.

Justice Clarence Thomas's opinion proved the most provocative. He found the limit unconstitutional on two different grounds. First, together with Chief Justice Rehnquist and Justice Scalia, Justice Thomas found that regulating party expenditures on behalf of or against candidates failed to prevent corruption—the single goal that *Buckley* had held permissible. Party spending on behalf of a candidate, he argued, represents about the least corrupting form of political spending there can be. Second, in a part of the opinion representing his own views only, Justice Thomas argued that the Court should discard *Buckley*'s central distinction between contributions and expenditures. Believing that expenditures and contributions promote the same kinds of political expression and that Congress has no better reason for regulating one than the other, he would prohibit limitations on both.

The *Colorado Republican* case represents a troubling last word on the constitutionality of campaign

finance regulation. Although the case did answer the narrowest possible construction of the question before it, it left unsettled the larger issue of whether Congress could regulate political party expenditures actually coordinated with the party's candidates. Even more important, the Court's deep fragmentation of opinion as to first principles created much uncertainty about the future of campaign finance reform. It is now somewhat less clear than before which reforms will pass constitutional muster.

There is also now some question as to the Court's capacity to guide in this area. In the earlier cases, the justices disagreed but they at least produced majority opinions whose reasoning bound and guided lower courts. In the *Colorado Republican* case, however, disagreement ran so deep that an authoritative majority opinion proved impossible to reach. Are the justices still capable of laying down rules, as in *Buckley*, or only of producing widely disharmonious individual opinions that provide little general guidance for the future? Few areas of modern constitutional law have produced such confusion.

In 1974, Congress extensively amended the Federal Election Campaign Act (document 2.9). The amendments, among other things, tightened disclosure requirements and limited contributions and expenditures in federal elections, provided public financing for presidential general and, to a lesser extent, primary elections, and created the Federal Election Commission to administer and enforce most federal campaign finance requirements. The major provisions of the law were quickly challenged and the Supreme Court ruled on them in the following case. Because the case is so long, exceeding 290 pages in the official reports, it has been heavily excerpted and includes only that portion discussing contribution and expenditure limitations. It is the shadow of this part of the opinion that stretches so far over subsequent cases.

PER CURIAM.

[This case] present[s] constitutional challenges to the key provisions of the Federal Election Campaign Act . . . as amended in 1974.

[The chief provisions provide that] . . . individual political contributions are limited to \$1,000 to any single candidate per election, with an overall annual limitation of \$25,000 by any contributor; independent expenditures by individuals and groups “relative to a clearly identified candidate” are limited to \$1,000 a year; [and] campaign spending by candidates for various federal offices and spending for national conventions by political parties are subject to prescribed limits. . . .

I. CONTRIBUTION AND EXPENDITURE LIMITATIONS

...

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.

...

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.¹ 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," would appear to exclude all citizens and groups except candidates, political parties, and the institutional press from any significant use of the most effective modes of communication. 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 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. 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. 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. The overall effect of the Act's contribution 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.

1. Being free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline. (Back.)

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. . . .

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.

B. Contribution Limitations

1. The \$1,000 Limitation on Contributions by Individuals and Groups to Candidates and Authorized Campaign Committees. Section 608 (b) provides, with certain limited exceptions, that "no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed \$1,000." The statute defines "person" broadly to include "an individual, partnership, committee, association, corporation or any other organization or group of persons." The limitation reaches a gift, subscription, loan, advance, deposit of anything of value, or promise to give a contribution, made for the purpose of influencing a primary election, a Presidential preference primary, or a general election for any federal office. The \$1,000 ceiling applies regardless of whether the contribution is given to the candidate, to a committee authorized in writing by the candidate to accept contributions on his behalf, or indirectly via earmarked gifts passed through an intermediary to the candidate. The restriction applies to aggregate amounts contributed to the candidate for each election—with primaries, runoff elections, and general elections counted separately and all Presidential primaries held in any calendar year treated together as a single election campaign.

Appellants contend that the \$1,000 contribution ceiling unjustifiably burdens First Amendment freedoms, employs overbroad dollar limits, and discriminates against candidates opposing incumbent officeholders and against minor-party candidates in violation of the Fifth Amendment. We address each of these claims of invalidity in turn.

(a). As the general discussion in Part I-A, *supra*, indicated, the primary First Amendment problem raised by the Act's contribution limitations is their restriction of one aspect of the contributor's freedom of political association.

...

Appellees argue that the Act's restrictions on large campaign contributions are justified by three governmental interests. According to the parties and *amici*, the primary interest served by the limitations and, indeed, by the Act as a whole, is the prevention of corruption and the appearance of corruption

spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office. Two "ancillary" interests underlying the Act are also allegedly furthered by the \$1,000 limits on contributions. First, the limits serve to mute the voices of affluent persons and groups in the election process and thereby to equalize the relative ability of all citizens to affect the outcome of elections. Second, it is argued, the ceilings may to some extent act as a brake on the skyrocketing cost of political campaigns and thereby serve to open the political system more widely to candidates without access to sources of large amounts of money.

It is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the \$1,000 contribution limitation. Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign. The increasing importance of the communications media and sophisticated mass-mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy. To the extent that large contributions are given to secure political *quid pro quo's* from current and potential office holders, the integrity of our system of representative democracy is undermined. Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one.

Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. . . . Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent."

Appellants contend that the contribution limitations must be invalidated because bribery laws and narrowly drawn disclosure requirements constitute a less restrictive means of dealing with "proven and suspected *quid pro quo* arrangements." But laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action. And while disclosure requirements serve the many salutary purposes discussed elsewhere in this opinion, Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.

The Act's \$1,000 contribution limitation focuses precisely on the problem of large campaign contributions—the narrow aspect of political association where the actuality and potential for corruption have been identified—while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources. Significantly, the Act's contribution limitations in themselves do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties.

We find that, under the rigorous standard of review established by our prior decisions, the weighty

interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon First Amendment freedoms caused by the \$1,000 contribution ceiling.

...

C. Expenditure Limitations

The Act's expenditure ceilings impose direct and substantial restraints on the quantity of political speech. The most drastic of the limitations restricts individuals and groups, including political parties that fail to place a candidate on the ballot to an expenditure of \$1,000 "relative to a clearly identified candidate during a calendar year." Other expenditure ceilings limit spending by candidates, their campaigns, and political parties in connection with election campaigns. It is clear that a primary effect of these expenditure limitations is to 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."

1. The \$1,000 Limitation on Expenditures "Relative to a Clearly Identified Candidate." Section 608 (e) (1) provides that "No person may make any expenditure . . . relative to a clearly identified candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds \$1,000." The plain effect of § 608 (e) (1) is to prohibit all individuals, who are neither candidates nor owners of institutional press facilities, 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 provision, for example, would make it a 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.

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. Close examination of the specificity of the statutory limitation is required where, as here, the legislation imposes criminal penalties in an area permeated by First Amendment interests. . . .

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 covered by the limitation. The section prohibits "any expenditure . . . relative to a clearly identified candidate during a calendar year which, *when added to all other expenditures . . . advocating the election or defeat of such candidate, exceeds \$1,000.*" (Emphasis added.) This context clearly permits, 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.

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. 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. In an analogous context, this Court in *Thomas v. Collins*, 323 U.S. 516 (1945) observed:

Whether words intended and designed to fall short of invitation would miss that mark is a question both of intent and of effect. 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.

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 appear as part of the communication. This 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.²

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 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 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

2. 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.” (Back)

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 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.

Second, quite apart from the shortcomings of § 608 (e) (1) 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. Section 608 (b)'s contribution ceilings rather 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.

While the independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process, it heavily burdens core First Amendment expression. . . . 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.

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

...

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.

The ceiling on personal expenditures by candidates on their own behalf, like the limitations on independent expenditures contained in § 608 (e) (1), imposes a substantial restraint on the ability of persons to engage in protected First Amendment expression. The candidate, no less than any other person, has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election and the election of other candidates. Indeed, it is of particular importance that candidates have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates’ personal qualities and their positions on vital public issues before choosing among them on election day. . . . Section 608 (a) ’s ceiling on personal expenditures by a candidate in furtherance of his own candidacy thus clearly and directly interferes with constitutionally protected freedoms.

The primary governmental interest served by the Act—the prevention of actual and apparent corruption of the political process—does not support the limitation on the candidate’s expenditure of his own personal funds. As the Court of Appeals concluded: “Manifestly, the core problem of avoiding undisclosed and undue influence on candidates from outside interests has lesser application when the monies involved come from the candidate himself or from his immediate family.” Indeed, the use of personal funds reduces the candidate’s dependence on outside contributions and thereby counteracts the coercive pressures and attendant risks of abuse to which the Act’s contribution limitations are directed.

The ancillary interest in equalizing the relative financial resources of candidates competing for elective office, therefore, provides the sole relevant rationale for § 608 (a) ’s expenditure ceiling. That interest is clearly not sufficient to justify the provision’s infringement of fundamental First Amendment rights. First, the limitation may fail to promote financial equality among candidates. A candidate who spends less of his personal resources on his campaign may nonetheless outspend his rival as a result of more successful fundraising efforts. Indeed, a candidate’s personal wealth may impede his efforts to persuade others that he needs their financial contributions or volunteer efforts to conduct an effective campaign. Second, and more fundamentally, the First Amendment simply cannot tolerate § 608 (a) ’s restriction upon the freedom of a candidate to speak without legislative limit on behalf of his own candidacy. We therefore hold that § 608 (a) ’s restriction on a candidate’s personal expenditures is unconstitutional.

3. Limitations on Campaign Expenditures. Section 608 (c) places limitations on overall campaign expenditures by candidates seeking nomination for election and election to federal office.

...

No governmental interest that has been suggested is sufficient to justify the restriction on the quantity of political expression imposed by § 608 (c)'s campaign expenditure limitations. The major evil associated with rapidly increasing campaign expenditures is the danger of candidate dependence on large contributions. The interest in alleviating the corrupting influence of large contributions is served by the Act's contribution limitations and disclosure provisions, rather than by § 608 (c)'s campaign expenditure ceilings. The Court of Appeals' assertion that the expenditure restrictions are necessary to reduce the incentive to circumvent direct contribution limits is not persuasive. There is no indication that the substantial criminal penalties for violating the contribution ceilings, combined with the political repercussion of such violations, will be insufficient to police the contribution provisions. Extensive reporting, auditing, and disclosure requirements applicable to both contributions and expenditures by political campaigns are designed to facilitate the detection of illegal contributions. Moreover, as the Court of Appeals noted, the Act permits an officeholder or successful candidate to retain contributions in excess of the expenditure ceiling and to use these funds for "any other lawful purpose." This provision undercuts whatever marginal role the expenditure limitations might otherwise play in enforcing the contribution ceilings.

The interest in equalizing the financial resources of candidates competing for federal office is no more convincing a justification for restricting the scope of federal election campaigns. Given the limitation on the size of outside contributions, the financial resources available to a candidate's campaign, like the number of volunteers recruited, will normally vary with the size and intensity of the candidate's support. There is nothing invidious, improper, or unhealthy in permitting such funds to be spent to carry the candidate's message to the electorate. Moreover, the equalization of permissible campaign expenditures might serve not to equalize the opportunities of all candidates but to handicap a candidate, who lacked substantial name recognition or exposure of his views before the start of the campaign.

The campaign expenditure ceilings appear to be designed primarily to serve the governmental interests in reducing the allegedly skyrocketing costs of political campaigns. . . . [However,] the mere growth in the cost of federal election campaigns in and of itself provides no basis for governmental restrictions on the quantity of campaign spending and the resulting limitation on the scope of federal campaigns. The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution, it is not the government but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.

For these reasons we hold that § 608 (c) is constitutionally invalid.

...

DISSENT: MR. CHIEF JUSTICE [Warren E.] BURGER, concurring in part and dissenting in part.

...

CONTRIBUTION AND EXPENDITURE LIMITS

I agree fully with that part of the Court's opinion that holds unconstitutional the limitations the Act puts on campaign expenditures which "place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate." Yet when it approves similarly stringent limitations on contributions, the Court ignores the reasons it finds so persuasive in the context of expenditures. For me contributions and expenditures are two sides of the same First Amendment coin.

By limiting campaign contributions, the Act restricts the amount of money that will be spent on political activity—and does so directly. Appellees argue, as the Court notes, that these limits will "act as a brake on the skyrocketing cost of political campaigns." In treating campaign expenditure limitations, the Court says that the "First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise." Limiting contributions, as a practical matter, will limit expenditures and will put an effective ceiling on the amount of political activity and debate that the Government will permit to take place. The argument that the ceiling is not, after all, very low as matters now stand gives little comfort for the future, since the Court elsewhere notes the rapid inflation in the cost of political campaigning.

The Court attempts to separate the two communicative aspects of political contributions—the "moral" support that the gift itself conveys, which the Court suggests is the same whether the gift is \$10 or \$10,000, and the fact that money translates into communication. The Court dismisses the effect of the limitations on the second aspect of contributions: "[T]he transformation of contributions into political debate involves speech by someone other than the contributor." On this premise—that contribution limitations restrict only the speech of "someone other than the contributor"—rests the Court's justification for treating contributions differently from expenditures. The premise is demonstrably flawed; the contribution limitations will, in specific instances, limit exactly the same political activity that the expenditure ceilings limit, and at least one of the "expenditure" limitations the Court finds objectionable operates precisely like the "contribution" limitations.

The Court's attempt to distinguish the communication inherent in political contributions from the speech aspects of political expenditures simply "will not wash." We do little but engage in word games unless we recognize that people—candidates and contributors—spend money on political activity because they wish to communicate ideas, and their constitutional interest in doing so is precisely the same whether they or someone else utters the words.

...

MR. JUSTICE [Byron] WHITE, concurring in part and dissenting in part.

...

The . . . limitations on contributions and expenditures are challenged as invalid abridgments of the right of free speech protected by the First Amendment. I would reject these challenges. . . . I am . . . in agreement with the Court's judgment upholding the limitations on contributions. I dissent, however,

from the Court's view that the expenditure limitations of 18 U.S.C. §§ 608 (c) and (e) violate the First Amendment.

...

In the interest of preventing undue influence that large contributors would have or that the public might think they would have, the Court upholds the provision that an individual may not give to a candidate, or spend on his behalf if requested or authorized by the candidate to do so, more than \$1,000 in any one election. This limitation is valid although it imposes a low ceiling on what individuals may deem to be their most effective means of supporting or speaking on behalf of the candidate—i. e., financial support given directly to the candidate. The Court thus accepts the congressional judgment that the evils of unlimited contributions are sufficiently threatening to warrant restriction regardless of the impact of the limits on the contributor's opportunity for effective speech and in turn on the total volume of the candidate's political communications by reason of his inability to accept large sums from those willing to give.

...

It would make little sense to me, and apparently made none to Congress, to limit the amounts an individual may give to a candidate or spend with his approval but fail to limit the amounts that could be spent on his behalf. Yet the Court permits the former while striking down the latter limitation. No more than \$1,000 may be given to a candidate or spent at his request or with his approval or cooperation; but otherwise, apparently, a contributor is to be constitutionally protected in spending unlimited amounts of money in support of his chosen candidate or candidates.

...

After *Buckley* (document 3.1), several large questions remained unsettled, most notably, the extent to which the First Amendment restricted regulation of corporate and labor spending on campaigns. In *Bellotti*, the Supreme Court took up this issue in the context of a referendum (not a candidate) election.

MR. JUSTICE [Lewis F.] POWELL Jr. delivered the opinion of the Court.

...

I

[A Massachusetts statute prohibits] . . . corporations, from making contributions or expenditures “for the purpose of . . . influencing or affecting the vote on any question submitted to the voters, other than one materially affecting any of the property, business or assets of the corporation.” The statute further specifies that “[no] question submitted to the voters solely concerning the taxation of the income, property or transactions of individuals shall be deemed materially to affect the property, business or assets of the corporation.” . . .

Appellants[, several national banking associations and banking corporations,] wanted to spend money to publicize their views on a proposed constitutional amendment that was to be submitted to the voters as a ballot question at a general election on November 2, 1976. The amendment would have permitted the legislature to impose a graduated tax on the income of individuals.

...

III

The court below framed the principal question in this case as whether and to what extent corporations have First Amendment rights. We believe that the court posed the wrong question. The Constitution often protects interests broader than those of the party seeking their vindication. The First Amendment, in particular, serves significant societal interests. The proper question therefore is not whether corporations “have” First Amendment rights and, if so, whether they are coextensive with those of natural

persons. Instead, the question must be whether [the statute] abridges expression that the First Amendment was meant to protect. We hold that it does.

A

The speech proposed by appellants is at the heart of the First Amendment's protection.

...

If the speakers here were not corporations, no one would suggest that the State could silence their proposed speech. It is the type of speech indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual. The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.

...

The question in this case, simply put, is whether the corporate identity of the speaker deprives this proposed speech of what otherwise would be its clear entitlement to protection. We turn now to that question.

...

[Footnote in original: . . . In cases where corporate speech has been denied the shelter of the First Amendment, there is no suggestion that the reason was because a corporation rather than an individual or association was involved. . . .]

...

C

We . . . find no support in the First or Fourteenth Amendment, or in the decisions of this Court, for the proposition that speech that otherwise would be within the protection of the First Amendment loses that protection simply because its source is a corporation that cannot prove, to the satisfaction of a court, a material effect on its business or property. The "materially affecting" requirement is not an identification of the boundaries of corporate speech etched by the Constitution itself. Rather, it amounts to an impermissible legislative prohibition of speech based on the identity of the interests that spokesmen may represent in public debate over controversial issues and a requirement that the speaker have a sufficiently great interest in the subject to justify communication.

[The Massachusetts statute] permits a corporation to communicate to the public its views on certain referendum subjects—those materially affecting its business—but not others. It also singles out one kind of ballot question—individual taxation—as a subject about which corporations may never make

their ideas public. The legislature has drawn the line between permissible and impermissible speech according to whether there is a sufficient nexus, as defined by the legislature, between the issue presented to the voters and the business interests of the speaker.

In the realm of protected speech, the legislature is constitutionally disqualified from dictating the subjects about which persons may speak and the speakers who may address a public issue. If a legislature may direct business corporations to “stick to business,” it also may limit other corporations—religious, charitable, or civic—to their respective “business” when addressing the public. Such power in government to channel the expression of views is unacceptable under the First Amendment. Especially where, as here, the legislature’s suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people, the First Amendment is plainly offended. Yet the State contends that its action is necessitated by governmental interests of the highest order. We next consider these asserted interests.

IV

The constitutionality of [the statute’s] prohibition of the “exposition of ideas” by corporations turns on whether it can survive the exacting scrutiny necessitated by a state-imposed restriction of freedom of speech. Especially where, as here, a prohibition is directed at speech itself and the speech is intimately related to the process of governing, “the State may prevail only upon showing a subordinating interest which is compelling.” Even then, the State must employ means “closely drawn to avoid unnecessary abridgment.”

... Appellee ... advances two principal justifications for the prohibition of corporate speech. The first is the State’s interest in sustaining the active role of the individual citizen in the electoral process and thereby preventing diminution of the citizen’s confidence in government. The second [, discussion of which is omitted,] is the interest in protecting the rights of shareholders whose views differ from those expressed by management on behalf of the corporation. However weighty these interests may be in the context of partisan candidate elections, they either are not implicated in this case or are not served at all, or in other than a random manner, by the prohibition in [the statute].

A

Preserving the integrity of the electoral process, preventing corruption, and “[sustaining] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government” are interests of the highest importance. ...

Appellee advances a number of arguments in support of his view that these interests are endangered by corporate participation in discussion of a referendum issue. They hinge upon the assumption that such participation would exert an undue influence on the outcome of a referendum vote, and—in the end—destroy the confidence of the people in the democratic process and the integrity of government. According to appellee, corporations are wealthy and powerful and their views may drown out other points of view. If appellee’s arguments were supported by record or legislative findings that corporate advocacy threatened imminently to undermine democratic processes, thereby denigrating rather than serving First Amendment interests, these arguments would merit our consideration. But there has been

no showing that the relative voice of corporations has been overwhelming or even significant in influencing referenda in Massachusetts or that there has been any threat to the confidence of the citizenry in government.

Nor are appellee's arguments inherently persuasive or supported by the precedents of this Court. Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue. To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: The Constitution "protects expression which is eloquent no less than that which is unconvincing." We noted only recently that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment. . . ." *Buckley [v. Valeo]*. Moreover, the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate. But if there be any danger that the people cannot evaluate the information and arguments advanced by appellants, it is a danger contemplated by the Framers of the First Amendment.

...

In *Austin*, the Supreme Court again directly faced the question raised in *Bellotti* (document 3.2): to what extent does the First Amendment restrict government regulation of corporate and labor spending in elections? This time, however, the issue arose in the context of a candidate election, not an issue referendum, and the Supreme Court issued some clear guidance.

JUSTICE [Thurgood] MARSHALL delivered the opinion of the Court.

...

I

Section 54(1) of the Michigan Campaign Finance Act prohibits corporations from making contributions and independent expenditures in connection with state candidate elections. The issue before us is only the constitutionality of the State's ban on independent expenditures. The Act defines "expenditure" as "a payment, donation, loan, pledge, or promise of payment of money or anything of ascertainable monetary value for goods, materials, services, or facilities in assistance of, or in opposition to, the nomination or election of a candidate." An expenditure is considered independent if it is "not made at the direction of, or under the control of, another person and if the expenditure is not a contribution to a committee." The Act exempts from this general prohibition against corporate political spending any expenditure made from a segregated fund. A corporation may solicit contributions to its political fund only from an enumerated list of persons associated with the corporation.

The Chamber, a nonprofit Michigan corporation, challenges the constitutionality of this statutory scheme. The Chamber comprises more than 8,000 members, three-quarters of whom are for-profit corporations. The Chamber's general treasury is funded through annual dues required of all members. Its purposes, as set out in the bylaws, are to promote economic conditions favorable to private enterprise; to analyze, compile, and disseminate information about laws of interest to the business community and to publicize to the government the views of the business community on such matters; to train and educate its members; to foster ethical business practices; to collect data on, and investigate matters of, social, civic, and economic importance to the State; to receive contributions and to make expenditures for political purposes and to perform any other lawful political activity; and to coordinate activities with other similar organizations.

In June 1985 Michigan scheduled a special election to fill a vacancy in the Michigan House of Representatives. Although the Chamber had established and funded a separate political fund, it sought to use its general treasury funds to place in a local newspaper an advertisement supporting a specific candidate. As the Act made such an expenditure punishable as a felony, the Chamber brought suit in District Court for injunctive relief against enforcement of the Act, arguing that the restriction on expenditures is unconstitutional under both the First and the Fourteenth Amendments.

...

II

To determine whether Michigan's restriction on corporate political expenditures may constitutionally be applied to the Chamber, we must ascertain whether it burdens the exercise of political speech and, if it does, whether it is narrowly tailored to serve a compelling state interest. Certainly, the use of funds to support a political candidate is "speech"; independent campaign expenditures constitute "political expression 'at the core of our electoral process and of the First Amendment freedoms.'" The mere fact that the Chamber is a corporation does not remove its speech from the ambit of the First Amendment.

A

This Court concluded in *FEC v. Massachusetts Citizens for Life, Inc.* (*MCFL*); document 7.4] that a federal statute requiring corporations to make independent political expenditures only through special segregated funds burdens corporate freedom of expression. The Court reasoned that the small nonprofit corporation in that case would face certain organizational and financial hurdles in establishing and administering a segregated political fund. For example, the statute required the corporation to appoint a treasurer for its segregated fund, keep records of all contributions, file a statement of organization containing information about the fund, and update that statement periodically. In addition, the corporation was permitted to solicit contributions to its segregated fund only from "members," which did not include persons who merely contributed to or indicated support for the organization. These hurdles "impose[d] administrative costs that many small entities [might] be unable to bear" and "create[d] a disincentive for such organizations to engage in political speech."

Despite the Chamber's success in administering its separate political fund Michigan's segregated fund requirement still burdens the Chamber's exercise of expression because "the corporation is not free to use its general funds for campaign advocacy purposes." The Act imposes requirements similar to those in the federal statute involved in *MCFL*: a segregated fund must have a treasurer and its administrators must keep detailed accounts of contributions and file with state officials a statement of organization. In addition, a nonprofit corporation like the Chamber may solicit contributions to its political fund only from members, stockholders of members, officers or directors of members, and the spouses of any of these persons. Although these requirements do not stifle corporate speech entirely, they do burden expressive activity. Thus, they must be justified by a compelling state interest.

B

The State contends that the unique legal and economic characteristics of corporations necessitate some regulation of their political expenditures to avoid corruption or the appearance of corruption. State law

grants corporations special advantages—such as limited liability, perpetual life, and favorable treatment of the accumulation and distribution of assets—that enhance their ability to attract capital and to deploy their resources in ways that maximize the return on their shareholders’ investments. These state-created advantages not only allow corporations to play a dominant role in the Nation’s economy, but also permit them to use “resources amassed in the economic marketplace” to obtain “an unfair advantage in the political marketplace.” As the Court explained in *MCFL*, the political advantage of corporations is unfair because

The resources in the treasury of a business corporation . . . 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.

We therefore have recognized that “the compelling governmental interest in preventing corruption support[s] the restriction of the influence of political war chests funneled through the corporate form.”

The Chamber argues that this concern about corporate domination of the political process is insufficient to justify a restriction on independent expenditures. Although this Court has distinguished these expenditures from direct contributions in the context of federal laws regulating individual donors it has also recognized that a legislature might demonstrate a danger of real or apparent corruption posed by such expenditures when made by corporations to influence candidate elections. Regardless of whether this danger of “financial quid pro quo” corruption may be sufficient to justify a restriction on independent expenditures, Michigan’s regulation aims at a different type of corruption in the political arena: the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas. The Act does not attempt “to equalize the relative influence of speakers on elections”; rather, it ensures that expenditures reflect actual public support for the political ideas espoused by corporations. We emphasize that the mere fact that corporations may accumulate large amounts of wealth is not the justification for § 54; rather, the unique state-conferred corporate structure that facilitates the amassing of large treasuries warrants the limit on independent expenditures. Corporate wealth can unfairly influence elections when it is deployed in the form of independent expenditures, just as it can when it assumes the guise of political contributions. We therefore hold that the State has articulated a sufficiently compelling rationale to support its restriction on independent expenditures by corporations.

...

III

The Chamber contends that even if the Campaign Finance Act is constitutional with respect to for-profit corporations, it nonetheless cannot be applied to a nonprofit ideological corporation like a chamber of commerce. In *MCFL*, we held that the nonprofit organization there had “features more akin to voluntary political associations than business firms, and therefore should not have to bear burdens on independent spending solely because of [its] incorporated status.” In reaching that conclusion, we

enumerated three characteristics of the corporation that were “essential” to our holding. Because the Chamber does not share these crucial features, the Constitution does not require that it be exempted from the generally applicable provisions of § 54(1).

The first characteristic of Massachusetts Citizens for Life, Inc., that distinguished it from ordinary business corporations was that the organization “was formed for the express purpose of promoting political ideas, and cannot engage in business activities.” Its articles of incorporation indicated that its purpose was “[t]o 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 all of the organization’s activities were “designed to further its agenda.” MCFL’s narrow political focus thus “ensure[d] that [its] political resources reflect[ed] political support.”

In contrast, the Chamber’s bylaws set forth more varied purposes, several of which are not inherently political. For instance, the Chamber compiles and disseminates information relating to social, civic, and economic conditions, trains and educates its members, and promotes ethical business practices. Unlike MCFL’s, the Chamber’s educational activities are not expressly tied to political goals; many of its seminars, conventions, and publications are politically neutral and focus on business and economic issues. The Chamber’s president and chief executive officer stated that one of the corporation’s main purposes is to provide “service to [its] membership that includes everything from group insurance to educational seminars, and . . . litigation activities on behalf of the business community.” The Chamber’s nonpolitical activities therefore suffice to distinguish it from MCFL in the context of this characteristic.

We described the second feature of MCFL as the absence of “shareholders 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.” Although the Chamber also lacks shareholders, many of its members may be similarly reluctant to withdraw as members even if they disagree with the Chamber’s political expression, because they wish to benefit from the Chamber’s nonpolitical programs and to establish contacts with other members of the business community. The Chamber’s political agenda is sufficiently distinct from its educational and outreach programs that members who disagree with the former may continue to pay dues to participate in the latter. . . . Thus, we are persuaded that the Chamber’s members are more similar to shareholders of a business corporation than to the members of MCFL in this respect.

The final characteristic upon which we relied in *MCFL* was the organization’s independence from the influence of business corporations. On this score, the Chamber differs most greatly from the Massachusetts organization. MCFL was not established by, and had a policy of not accepting contributions from, business corporations. Thus it could not “serv[e] as [a] condui[t] for the type of direct spending that creates a threat to the political marketplace.” In striking contrast, more than three-quarters of the Chamber’s members are business corporations, whose political contributions and expenditures can constitutionally be regulated by the State. As we read the Act, a corporation’s payments into the Chamber’s general treasury would not be considered payments to influence an election, so they would not be “contributions” or “expenditures,” and would not be subject to the Act’s limitations. Business corporations therefore could circumvent the Act’s restriction by funneling money through the Chamber’s general treasury. Because the Chamber accepts money from for-profit corporations, it could, absent application of § 54(1), serve as a conduit for corporate political spending. In sum, the Chamber does not possess the features that would compel the State to exempt it from restriction on independent political expenditures.

IV

The Chamber also attacks § 54(1) as underinclusive because it does not regulate the independent expenditures of unincorporated labor unions. Whereas unincorporated unions, and indeed individuals, may be able to amass large treasuries, they do so without the significant state-conferred advantages of the corporate structure; corporations are “by far the most prominent example of entities that enjoy legal advantages enhancing their ability to accumulate wealth.” The desire to counterbalance those advantages unique to the corporate form is the State’s compelling interest in this case; thus, excluding from the statute’s coverage unincorporated entities that also have the capacity to accumulate wealth “does not undermine its justification for regulating corporations.”

Moreover, labor unions differ from corporations in that union members who disagree with a union’s political activities need not give up full membership in the organization to avoid supporting its political activities. Although a union and an employer may require that all bargaining unit employees become union members, a union may not compel those employees to support financially “union activities beyond those germane to collective bargaining, contract administration, and grievance adjustment.” *Communications Workers [of America] v. Beck*, 487 U.S. 735 (1988). An employee who objects to a union’s political activities thus can decline to contribute to those activities, while continuing to enjoy the benefits derived from the union’s performance of its duties as the exclusive representative of the bargaining unit on labor-management issues. As a result, the funds available for a union’s political activities more accurately reflects members’ support for the organization’s political views than does a corporation’s general treasury. Michigan’s decision to exclude unincorporated labor unions from the scope of § 54(1) is therefore justified by the crucial differences between unions and corporations.

...

VI

Michigan identified as a serious danger the significant possibility that corporate political expenditures will undermine the integrity of the political process, and it has implemented a narrowly tailored solution to that problem. By requiring corporations to make all independent political expenditures through a separate fund made up of money solicited expressly for political purposes, the Michigan Campaign Finance Act reduces the threat that huge corporate treasuries amassed with the aid of favorable state laws will be used to influence unfairly the outcome of elections. The Michigan Chamber of Commerce does not exhibit the characteristics identified in *MCFL* that would require the State to exempt it from a generally applicable restriction on independent corporate expenditures. . . .

In its prior cases, the Supreme Court had mostly considered the constitutionality of government restrictions on candidate and private party spending. In *Colorado Republican Federal Campaign Committee*, the Court had to consider the extent to which Congress and the FEC can regulate political party spending on behalf of candidates. The result was a very splintered opinion.

JUSTICE [Stephen G.] BREYER announced the judgment of the Court and delivered an opinion, in which JUSTICE [Sandra Day] O'CONNOR and JUSTICE [David H.] SOUTER join.

[Section 441a(d)(3) of the Federal Election Campaign Act limits political party expenditures in senatorial campaigns. Before both the 1986 Democratic primary and Republican convention, the Colorado Republican Federal Campaign Committee bought radio ads attacking one of the Democratic primary candidates. The State Democratic Party complained that the purchase exceeded the Republican Party limits under the Act and the Federal Election Commission charged a violation.]

...

II

The summary judgment record indicates that the expenditure in question is what this Court in *Buckley* [v. *Valeo*, 424 U.S. 1 (1976)] called an "independent" expenditure, not a "coordinated" expenditure that other provisions of FECA treat as a kind of campaign "contribution." . . .

So treated, the expenditure falls within the scope of the Court's precedents that extend First Amendment protection to independent expenditures. Beginning with *Buckley*, the Court's cases have found a "fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to the candidate to be spent on his campaign." This difference has been grounded in the observation that restrictions on contributions impose "only a marginal restriction upon the contributor's ability to engage in free communication," because the symbolic communicative value of a contribution bears little relation to its size and because such limits leave "persons free to engage in independent political expression, to associate actively through volunteering their

services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources.” At the same time, reasonable contribution limits directly and materially advance the Government’s interest in preventing exchanges of large financial contributions for political favors.

In contrast, the Court has said that restrictions on independent expenditures significantly impair the ability of individuals and groups to engage in direct political advocacy and “represent substantial . . . restraints on the quantity and diversity of political speech.” And at the same time, the Court has concluded that limitations on independent expenditures are less directly related to preventing corruption, since “the absence of prearrangement and coordination of an expenditure with the candidate 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.”

Given these established principles, we do not see how a provision that limits a political party’s independent expenditures can escape their controlling effect. A political party’s independent expression not only reflects its members’ views about the philosophical and governmental matters that bind them together, it also seeks to convince others to join those members in a practical democratic task, the task of creating a government that voters can instruct and hold responsible for subsequent success or failure. The independent expression of a political party’s views is “core” First Amendment activity no less than is the independent expression of individuals, candidates, or other political committees.

We are not aware of any special dangers of corruption associated with political parties that tip the constitutional balance in a different direction. When this Court considered, and held unconstitutional, limits that FECA had set on certain independent expenditures by political action committees, it reiterated Buckley’s observation that “the absence of prearrangement and coordination” does not eliminate, but it does help to “alleviate,” any “danger” that a candidate will understand the expenditure as an effort to obtain a “quid pro quo.” The same is true of independent party expenditures.

...

We therefore believe that this Court’s prior case law controls the outcome here. We do not see how a Constitution that grants to individuals, candidates, and ordinary political committees the right to make unlimited independent expenditures could deny the same right to political parties. . . .

DISSENT: JUSTICE [John Paul] STEVENS, with whom JUSTICE [Ruth Bader] GINSBURG joins, dissenting.

In my opinion, all money spent by a political party to secure the election of its candidate for the office of United States Senator should be considered a “contribution” to his or her campaign. . . .

I am persuaded that three interests provide a constitutionally sufficient predicate for federal limits on spending by political parties. First, such limits serve the interest in avoiding both the appearance and the reality of a corrupt political process. A party shares a unique relationship with the candidate it sponsors because their political fates are inextricably linked. That interdependency creates a special danger that the party—or the persons who control the party—will abuse the influence it has over the candidate by virtue of its power to spend. The provisions at issue are appropriately aimed at reducing that threat. . . .

Second, these restrictions supplement other spending limitations embodied in the Act, which are likewise designed to prevent corruption.

Individuals and certain organizations are permitted to contribute up to \$1,000 to a candidate. Since the same donors can give up to \$5,000 to party committees if there were no limits on party spending, their contributions could be spent to benefit the candidate and thereby circumvent the \$1,000 cap. . . .

Finally, I believe the Government has an important interest in leveling the electoral playing field by constraining the cost of federal campaigns. As Justice [Byron] White pointed out in his opinion in *Buckley*, “money is not always equivalent to or used for speech, even in the context of political campaigns.” It is quite wrong to assume that the net effect of limits on contributions and expenditures—which tend to protect equal access to the political arena, to free candidates and their staffs from the interminable burden of fund-raising, and to diminish the importance of repetitive 30-second commercials—will be adverse to the interest in informed debate protected by the First Amendment.

...

JUSTICE [Anthony M.] KENNEDY, with whom THE CHIEF JUSTICE [William H. Rehnquist] and JUSTICE [Antonin] SCALIA join, concurring in the judgment and dissenting in part.

...

The First Amendment embodies a “profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.” Political parties have a unique role in serving this principle; they exist to advance their members’ shared political beliefs. . . .

We have a constitutional tradition of political parties and their candidates engaging in joint First Amendment activity; we also have a practical identity of interests between the two entities during an election. Party spending “in cooperation, consultation, or concert with” a candidate therefore is indistinguishable in substance from expenditures by the candidate or his campaign committee. We held in *Buckley* that the First Amendment does not permit regulation of the latter and it should not permit this regulation of the former. Congress may have authority, consistent with the First Amendment, to restrict undifferentiated political party contributions which satisfy the constitutional criteria we discussed in *Buckley*, but that type of regulation is not at issue here.

...

JUSTICE [Clarence] THOMAS, concurring in the judgment and dissenting in part, with whom THE CHIEF JUSTICE and JUSTICE SCALIA join in Parts I and III.

...

I would reject the framework established by *Buckley v. Valeo* for analyzing the constitutionality of campaign finance laws and hold that § 441a(d)(3)’s limits on independent and coordinated expenditures fail strict scrutiny. But even under *Buckley*, [these limits] cannot stand, because the anti-corruption

rationale that we have relied upon in sustaining other campaign finance laws is inapplicable where political parties are the subject of such regulation.

...

II

A

Critical to JUSTICE BREYER's reasoning is the distinction between contributions and independent expenditures that we first drew in *Buckley v. Valeo*. Though we said in *Buckley* that controls on spending and giving "operate in an area of the most fundamental First Amendment activities," we invalidated the expenditure limits of FECA and upheld the Act's contribution limits. The justification we gave for the differing results was this: "The expenditure limitations . . . represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech," whereas "limitations upon the amount that any one person or group may contribute to a candidate or political committee entail only a marginal restriction upon the contributor's ability to engage in free communication." This conclusion was supported mainly by two assertions about the nature of contributions: first, though contributions may result in speech, that speech is by the candidate and not by the contributor; and second, contributions express only general support for the candidate but do not communicate the reasons for that support. Since *Buckley*, our campaign finance jurisprudence has been based in large part on this distinction between contributions and expenditures.

In my view, the distinction lacks constitutional significance, and I would not adhere to it. . . . Contributions and expenditures both involve core First Amendment expression because they further the "discussion of public issues and debate on the qualifications of candidates . . . integral to the operation of the system of government established by our Constitution." When an individual donates money to a candidate or to a partisan organization, he enhances the donee's ability to communicate a message and thereby adds to political debate, just as when that individual communicates the message himself. Indeed, the individual may add more to political discourse by giving rather than spending, if the donee is able to put the funds to more productive use than can the individual. The contribution of funds to a candidate or to a political group thus fosters the "free discussion of governmental affairs," just as an expenditure does. Giving and spending in the electoral process also involve basic associational rights under the First Amendment. As we acknowledged in *Buckley*, "effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." Political associations allow citizens to pool their resources and make their advocacy more effective, and such efforts are fully protected by the First Amendment. If an individual is limited in the amount of resources he can contribute to the pool, he is most certainly limited in his ability to associate for purposes of effective advocacy. And if an individual cannot be subject to such limits, neither can political associations be limited in their ability to give as a means of furthering their members' viewpoints. As we have said, "any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents."

Turning from similarities to differences, I can discern only one potentially meaningful distinction between contributions and expenditures. In the former case, the funds pass through an intermediary—

some individual or entity responsible for organizing and facilitating the dissemination of the message—whereas in the latter case they may not necessarily do so. But the practical judgment by a citizen that another person or an organization can more effectively deploy funds for the good of a common cause than he can ought not deprive that citizen of his First Amendment rights. Whether an individual donates money to a candidate or group who will use it to promote the candidate or whether the individual spends the money to promote the candidate himself, the individual seeks to engage in political expression and to associate with likeminded persons. A contribution is simply an indirect expenditure; though contributions and expenditures may thus differ in form, they do not differ in substance. . . .

In sum, unlike the *Buckley* Court, I believe that contribution limits infringe as directly and as seriously upon freedom of political expression and association as do expenditure limits. The protections of the First Amendment do not depend upon so fine a line as that between spending money to support a candidate or group and giving money to the candidate or group to spend for the same purpose. In principle, people and groups give money to candidates and other groups for the same reason that they spend money in support of those candidates and groups: because they share social, economic, and political beliefs and seek to have those beliefs affect governmental policy. I think that the *Buckley* framework for analyzing the constitutionality of campaign finance laws is deeply flawed. Accordingly, I would not employ it. . . .

III

Were I convinced that the *Buckley* framework rested on a principled distinction between contributions and expenditures, which I am not, I would nevertheless conclude that § 441a(d)(3)'s limits on political parties violate the First Amendment. Under *Buckley* and its progeny, a substantial threat of corruption must exist before a law purportedly aimed at the prevention of corruption will be sustained against First Amendment attack. Just as some of the monetary limits in the *Buckley* line of cases were held to be invalid because the government interest in stemming corruption was inadequate under the circumstances to justify the restrictions on speech, so too is § 441a(d)(3) invalid.

The Government asserts that the purpose of § 441a(d)(3) is to prevent the corruption of candidates and elected representatives by party officials. The Government does not explain precisely what it means by “corruption,” however; the closest thing to an explanation the Government offers is that “corruption” is “the real or imagined coercive influence of large financial contributions on candidates’ positions and on their actions if elected to office.” We so defined corruption in *Buckley* for purposes of reviewing ceilings on giving or spending by individuals, groups, political committees (PACs), and candidates. But we did not in that case consider the First Amendment status of FECA’s provisions dealing with political parties.

As applied in the specific context of campaign funding by political parties, the anti-corruption rationale loses its force. What could it mean for a party to “corrupt” its candidate or to exercise “coercive” influence over him? The very aim of a political party is to influence its candidate’s stance on issues and, if the candidate takes office or is reelected, his votes. When political parties achieve that aim, that achievement does not, in my view, constitute “a subversion of the political process.” For instance, if the Democratic Party spends large sums of money in support of a candidate who wins, takes office, and then implements the Party’s platform, that is not corruption; that is successful advocacy of ideas in the political marketplace and representative government in a party system. . . .

The structure of political parties is such that the theoretical danger of those groups actually engaging in *quid pro quos* with candidates is significantly less than the threat of individuals or other groups doing so. American political parties, generally speaking, have numerous members with a wide variety of interests features necessary for success in majoritarian elections. Consequently, the influence of any one person or the importance of any single issue within a political party is significantly diffused. For this reason, . . . campaign funds donated by parties are considered to be some of “the cleanest money in politics.” And, as long as the Court continues to permit Congress to subject individuals to limits on the amount they can give to parties, and those limits are uniform as to all donors, there is little risk that an individual donor could use a party as a conduit for bribing candidates.

In any event, the Government, which bears the burden of “demonstrating that the recited harms are real, not merely conjectural,” has identified no more proof of the corrupting dangers of coordinated expenditures than it has of independent expenditures. And insofar as it appears that Congress did not actually enact § 441a(d) (3) in order to stop corruption by political parties “but rather for the constitutionally insufficient purpose of reducing what it saw as wasteful and excessive campaign spending,” the statute’s ceilings on coordinated expenditures are as unwarranted as the caps on independent expenditures.

In sum, there is only a minimal threat of “corruption,” as we have understood that term, when a political party spends to support its candidate or to oppose his competitor, whether or not that expenditure is made in concert with the candidate. Parties and candidates have traditionally worked together to achieve their common goals, and when they engage in that work, there is no risk to the Republic. To the contrary, the danger to the Republic lies in Government suppression of such activity. Under *Buckley* and our subsequent cases, § 441a(d) (3)’s heavy burden on First Amendment rights is not justified by the threat of corruption at which it is assertedly aimed.

...

To conclude, I would find § 441a(d) (3) unconstitutional not just as applied to petitioners, but also on its face. . . .