BACKGROUND ESSAY
Citizens United v. F.E.C., 2010

During his 2010 State of the Union address, President Barack Obama did something very few presidents have done: he openly challenged a Supreme Court ruling in front of both chambers of Congress and members of the Supreme Court of the United States. That ruling, *Citizens United* v. *F.E.C.* (2010), and the President's commentary on it, reignited passions on both sides of a century-long debate: to what extent does the First Amendment protect the variety of ways Americans associate with one another and the diverse ways we "speak," "assemble," and participate in American political life? It is this speech – political speech – that the Founders knew was inseparable from the very concept of self government.

Since the rise of modern "big business" in the Industrial Age, Americans have expressed concerns about the influence of corporations and other "special interests" in our political system. In 1910 President Teddy Roosevelt called for laws to "prohibit the use of corporate funds directly or indirectly for political purposes...[as they supply] one of the principal sources of corruption in our political affairs." Already having made such corporate contributions illegal with the Tillman Act of 1907, Roosevelt's speech nonetheless prompted Congress to amend this law to add enforcement mechanisms with the 1910 Federal Corrupt Practices Act. Future Congresses would enlarge the sphere of "special interests" barred from direct campaign contributions through – among others - the Hatch Act (1939), restricting the political campaign activities of federal employees, and the Taft-Hartley Act (1947), prohibiting labor unions from expenditures that supported or opposed particular federal candidates.

Collectively, these laws formed the backbone of America's campaign finance laws until they were replaced by the Federal Elections Campaign Acts (FECA) of 1971 and 1974. FECA of 1971 strengthened public reporting requirements of campaign financing for candidates, political parties and political committees (PACs). The FECA of 1974 added specific limits to the amount of money that could be donated to candidates by individuals, political parties, and PACs, and also what could be independently spent by people who want to talk about candidates. It provided for the creation of the Federal Election Commission, an independent agency designed to monitor campaigns and enforce the nation's political finance laws. Significantly, FECA left members of the media, including corporations, free to comment about candidates without limitation, even though such commentary involved spending money and posed the same risk of quid pro quo corruption as other independent spending.

In *Buckley v. Valeo (1976)*, however, portions of the FECA of 1974 were struck down by the Supreme Court. The Court deemed that restricting independent spending by individuals and groups to support or defeat a candidate interfered with speech protected by the First Amendment, so long as those funds were independent of a candidate or his/her campaign. Such restrictions, the Court held, unconstitutionally interfered with the speakers' ability to convey their message to as many people as possible. Limits on direct campaign contributions, however, were permissible and remained in place. The Court's rationale for protecting independent spending was not, as is sometimes stated, that the Court equated spending money with speech. Rather, restrictions on spending money for the purpose of engaging in political speech unconstitutionally interfered with the First Amendment-protected right to free speech. (The Court did mention that direct contributions to candidates could be seen as symbolic expression, but concluded that they were generally restrict-able despite that.)

The decades following *Buckley* would see a great proliferation of campaign spending. By 2002, Congress felt pressure to address this spending and passed the Bipartisan Campaign Finance Reform Act (BCRA). A key provision of the BCRA was a ban on speech that was deemed "electioneering communications" – speech that named a federal candidate within 30 days of a primary election or 60 days of a general election that was paid for out of a "special interest's" general fund (PACs were left

untouched by this prohibition). An immediate First Amendment challenge to this provision – in light of the precedent set in *Buckley* – was mounted in *McConnell v. F.E.C. (2003)*. But the Supreme Court upheld it as a restriction justified by the need to prevent both "actual corruption...and the appearance of corruption."

Another constitutional challenge to the BRCA would be mounted by the time of the next general election. Citizens United, a nonprofit organization, was primarily funded by individual donations, with relatively small amounts donated by for-profit corporations as well. In the heat of the 2008 primary season, Citizens United released a full-length film critical of then-Senator Hillary Clinton entitled *Hillary: the Movie*. The film was originally released in a limited number of theaters and on DVD, but Citizens United wanted it broadcast to a wider audience and approached a major cable company to make it available through their "On-Demand" service. The cable company agreed and accepted a $1.2 million payment from Citizens United in addition to purchased advertising time, making it free for cable subscribers to view.

Since the film named candidate Hillary Clinton and its On-Demand showing would fall within the 30-days-before-a-primary window, Citizens United feared it would be deemed an "electioneering communications" under the BCRA. The group mounted a preemptive legal challenge to this aspect of the law in late 2007, arguing that the application of the provision to *Hillary* was unconstitutional and violated the First Amendment in their circumstance. A lower federal court disagreed, and the case went to the Supreme Court in early 2010.

In a 5-4 decision, the Supreme Court ruled in *Citizens United v. F.E.C.* that: 1) the BCRA's "electioneering communications" provision did indeed apply to *Hillary* and that 2) the law's ban on corporate and union independent expenditures was unconstitutional under the First Amendment's speech clause. "Were the Court to uphold these restrictions," the Court reasoned, "the Government could repress speech by silencing certain voices at any of the various points in the speech process." *Citizens United v. F.E.C.* extended the principle, set 34 years earlier in *Buckley*, that restrictions on spending money for the purpose of engaging in political speech unconstitutionally burdened the right to free speech protected by the First Amendment.

Comprehension and Critical Thinking Questions

1. Summarize the ways in which various campaign finance laws have restricted the political activities of groups, including corporations and unions.
2. What was the main idea of the ruling in *Buckley v. Valeo*?
3. What political activity did the group Citizens United engage in during the 2008 primary election? How was this activity potentially illegal under the BCRA?
4. How did the Supreme Court rule in *Citizens United v. F.E.C.*? In what way is it connected to the ruling in *Buckley*?
5. Do you believe that the First Amendment should protect collective speech (i.e. groups, including "special interests") to the same extent it protects individual speech? Why or why not?
6. What if the government set strict limits on people spending money to get the assistance of counsel, or to educate their children, or to have abortions? Or what if the government banned candidates from traveling in order to give speeches? Would these hypothetical laws be unconstitutional under the reasoning the Court applied in *Buckley* and *Citizens United*? Why or why not?

DOCUMENT A: *FEDERALIST # 10*, JAMES MADISON, 1787

By a faction, I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adversed to the rights of other citizens, or to the permanent and aggregate interests of the community.

There are two methods of curing the mischiefs of faction: the one, by removing its causes; the other, by controlling its effects.

There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests.

It could never be more truly said than of the first remedy, that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be less folly to abolish liberty, which is essential to political life, because it nourishes faction, than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

[Because] the *causes* of faction cannot be removed...relief is only to be sought in the means of controlling its *effects*...If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote.

1. **How does James Madison define a faction?**
2. **What does Madison argue serves as a "check" on the influence various factions may have on society?**
3. **Would the Federalist Papers have been legal under the BCRA?**

Document B: Thomas Jefferson to Edward Carrington, 1787

I am persuaded myself that the good sense of the people will always be found to be the best army. They may be led astray for a moment, but will soon correct themselves. The people are the only censors of their governors: and even their errors will tend to keep these to the true principles of their institution. To punish these errors too severely would be to suppress the only safeguard of the public liberty. ... The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them....

If once they become inattentive to the public affairs, you and I, and Congress, and Assemblies, judges and governors shall all become wolves.

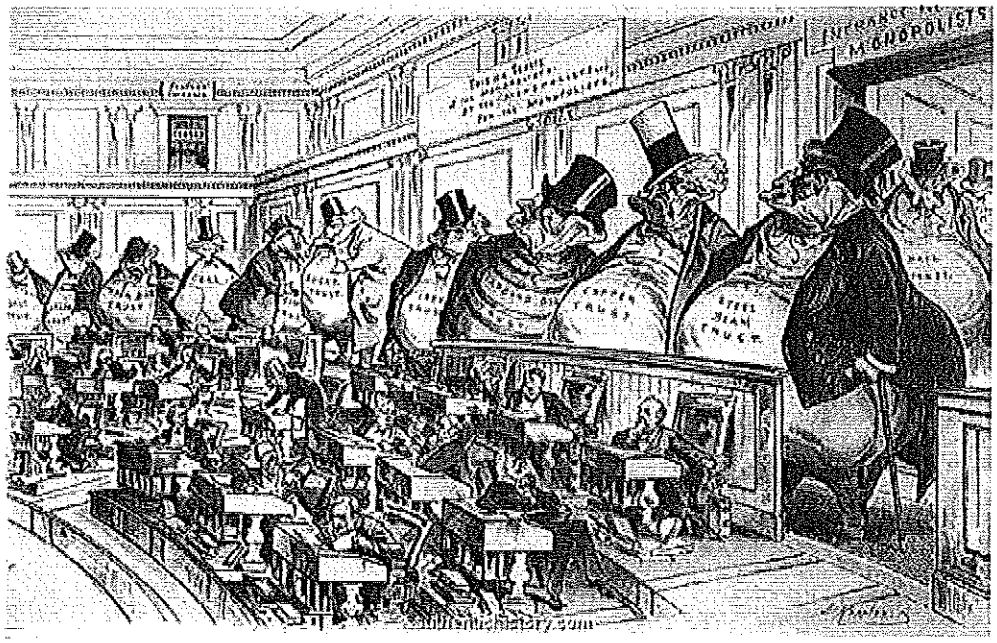
1. **What does Jefferson believe is "the basis of our governments"?**
2. **What does Jefferson believe is "the only safeguard of the public liberty"?**
3. **What does Jefferson seem to believe is a possible disadvantage of press freedom? Why does he find it acceptable?**
4. **What does Jefferson predict will happen if the people become inattentive to public affairs?**

Document C: The First Amendment, 1791

Congress shall make no law...abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

1. **Why did the Founders deem speech and assembly so vital to self-government?**
2. **List a variety of ways you see Americans "speak" and "assemble" in political life.**

Document D: "The Bosses of the Senate," Joseph Keppler, 1889



1. **How does this cartoon express the concern of "quid pro quo" corruption?**
2. **What is the significance of the closed door with the sign above it in the upper left hand corner of the cartoon?**
3. **Did Madison's assertion in *Federalist* 10 (Document A) – that the republican principle will serve as a check on the influence of factions – apply in the cartoon's time period? Does it apply today?**

Document E: New Nationalism Speech, Teddy Roosevelt, 1910

[O]ur government, National and State, must be freed from the sinister influence or control of special interests. Exactly as the special interests of cotton and slavery threatened our political integrity before the Civil War, so now the great special business interests too often control and corrupt the men and methods of government for their own profit. We must drive the special interests out of politics. ... [E]very special interest is entitled to justice, but not one is entitled to a vote in Congress, to a voice on the bench, or to representation in any public office. The Constitution guarantees protection to property, and we must make that promise good. But it does not give the right of suffrage to any corporation.

1. **What does Roosevelt mean by "special interests"?**
2. **How does this concept relate to Madison's definition of "faction"?**

Document F: *Buckley v. Valeo*, 1976

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...Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. The First Amendment affords the broadest possible protection to such political expression in order to assure unfettered exchange of ideas for the bringing about of political and social changes desired by the people...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. This is because virtually every means of communicating ideas in today's mass society requires the expenditure of money.

1. **Restate this excerpt from the *Buckley* ruling in your own words.**

Document G: Citizens United Mission Statement, 1988

Citizens United is an organization dedicated to restoring our government to citizens' control. Through a combination of education, advocacy, and grass roots organization, Citizens United seeks to reassert the traditional American values of limited government, freedom of enterprise, strong families, and national sovereignty and security. Citizens United's goal is to restore the founding fathers' vision of a free nation, guided by the honesty, common sense, and good will of its citizens...Citizens United has a variety of different projects that help it uniquely and successfully fulfill its mission. Citizens United is well known for producing high-impact, sometimes controversial, but always fact-based documentaries filled with interviews of experts and leaders in their fields.

1. **Do you believe James Madison would consider Citizens United a faction? Why or why not?**
2. **Is Citizens United an "assembly" of people seeking to engage in political "speech?" Why or why not?**

Because corporations can still fund electioneering communications with PAC money, it is 'simply wrong' to view the [BCRA] provision as a 'complete ban' on expression...

We have repeatedly sustained legislation aimed at 'the corrosive effects of immense aggregations of wealth that are accumulated with the help of the corporate form' ...[T]he government has a compelling interest in regulating advertisements that expressly advocate the election or defeat of a candidate for federal office...corporations and unions may finance genuine issue ads during those time frames by simply avoiding any specific reference to federal candidates, or...by paying for the ad from a segregated fund [PAC].

1. **Restate the *McConnell* opinion in your own words.**
2. **In your opinion, is the *McConnell* ruling consistent with the ruling in *Buckley* (Document F) in its interpretation of the First Amendment?**

The F.E.C. has adopted 568 pages of regulations, 1,278 pages of explanations and justifications for those regulations, and 1,771 advisory opinions since 1975. ... given the complexity of the regulations and the deference courts show to administrative determinations, a speaker who wants to avoid threats of criminal liability and the heavy costs of defending against F.E.C. enforcement must ask a governmental agency for prior permission to speak.

If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech. All speakers, including individuals and the media, use money amassed from the economic marketplace to fund their speech. The First Amendment protects the resulting speech.

At the founding, speech was open, comprehensive, and vital to society's definition of itself; there were no limits on the sources of speech and knowledge....By suppressing the speech of manifold corporations, both for-profit and nonprofit, the Government prevents their voices and viewpoints from reaching the public and advising voters on which persons or entities are hostile to their interests. Factions will necessarily form in our Republic, but the remedy of 'destroying the liberty' of some factions is 'worse than the disease' [*Federalist* 10]. Factions should be checked by permitting them all to speak, and by entrusting the people to judge what is true and what is false...

When Government seeks to use its full power, including the criminal law, to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful. The First Amendment confirms the freedom to think for ourselves.

The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy. By definition, an independent expenditure is political speech presented to the electorate that is not coordinated with a candidate. The fact that a corporation, or any other speaker, is willing to spend money to try to persuade voters presupposes that the people have the ultimate influence over elected officials.

Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers. Today, 30-second television ads may be the most effective way to convey a political message. Soon, however, it may be that Internet sources ... will provide citizens with significant information about political candidates and issues. Yet, [the BCRA] would seem to ban a blog post expressly advocating the election or defeat of a candidate if that blog were created with corporate funds. The First Amendment does not permit Congress to make these categorical distinctions based on the corporate identity of the speaker and the content of the political speech.

1. **Why does the Court say that current F.E.C. regulations results in citizens needing "permission to speak"?**
2. **Why does the Court say that "The First Amendment confirms the freedom to think for ourselves"?**
3. **The Court reasoned, "The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy." Do you agree? What effect, if any, does this ruling have on the republican principle of the United States government?**

DOCUMENT J: DISSENTING OPINION, *CITIZENS UNITED V. F.E.C.*, 2010

[In] a variety of contexts, we have held that speech can be regulated differentially on account of the speaker's identity, when identity is understood in categorical or institutional terms. The Government routinely places special restrictions on the speech rights of students, prisoners, members of the Armed Forces, foreigners, and its own employees.

Unlike our colleagues, the Framers had little trouble distinguishing corporations from human beings, and when they constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind. ... [M]embers of the founding generation held a cautious view of corporate power and a narrow view of corporate rights... and...they conceptualized speech in individualistic terms. If no prominent Framer bothered to articulate that corporate speech would have lesser status than individual speech, that may well be because the contrary proposition—if not also the very notion of "corporate speech"—was inconceivable.

On numerous occasions we have recognized Congress's legitimate interest in preventing the money that is spent on elections from exerting an 'undue influence on an officeholder's judgment' and from creating 'the appearance of such influence.' Corruption operates along a spectrum, and the majority's apparent belief that quid pro quo arrangements can be neatly demarcated from other improper influences does not accord with the theory or reality of politics....A democracy cannot function effectively when its constituent members believe laws are being bought and sold.

A regulation such as BCRA may affect the way in which individuals disseminate certain messages through the corporate form, but it does not prevent anyone from speaking in his or her own voice.

At bottom, the Court's opinion is thus a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding, and who have fought against the distinctive corrupting potential of corporate electioneering since the days of Theodore Roosevelt. It is a strange time to repudiate that common sense. While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.

1. **How does the reasoning in the dissenting opinion differ from that of the Majority (Document I)?**
2. **How would you evaluate the dissenters statement, "A democracy cannot function effectively when its constituent members believe laws are being bought and sold."**

The Framers didn't like corporations, the dissent concludes, and therefore it follows (as night the day) that corporations had no rights of free speech.

The lack of a textual exception for speech by corporations cannot be explained on the ground that such organizations did not exist or did not speak. To the contrary...both corporations and voluntary associations actively petitioned the Government and expressed their views in newspapers and pamphlets. For example: An antislavery Quaker corporation petitioned the First Congress, distributed pamphlets, and communicated through the press in 1790. The New York Sons of Liberty sent a circular to colonies farther south in 1766. And the Society for the Relief and Instruction of Poor Germans circulated a biweekly paper from 1755 to 1757.

The dissent says that when the Framers "constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind." That is no doubt true. All the provisions of the Bill of Rights set forth the rights of individual men and women—not, for example, of trees or polar bears. But the individual person's right to speak includes the right to speak in association with other individual persons. Surely the dissent does not believe that speech by the Republican Party or the Democratic Party can be censored because it is not the speech of "an individual American." It is the speech of many individual Americans, who have associated in a common cause, giving the leadership of the party the right to speak on their behalf. The association of individuals in a business corporation is no different—or at least it cannot be denied the right to speak on the simplistic ground that it is not "an individual American."

1. **Why does this Justice argue that the original understanding of the First Amendment does not allow for limitations on the speech of associations such as corporations and unions? Do you agree?**

ISSUE 3

Should America Adopt Public Financing of Political Campaigns?

YES: **Mark Green,** from *Selling Out: How Big Corporate Money Buys Elections, Rams Through Legislation, and Betrays Our Democracy* (Regan Books, 2002)

NO: **John Samples,** from "Taxpayer Financing of Campaigns," in John Samples, ed., *Welfare for Politicians? Taxpayer Financing of Campaigns* (Cato Institute, 2005)

ISSUE SUMMARY

YES: Political activist and author Mark Green sums up his thesis in the subtitle of his book, a work that urges adoption of public financing of election campaigns in order to make politics more honest and to reduce the dependency of elected officials on selfish interests.

NO: Cato Institute director and political scientist John Samples opposes public financing of candidates for public office because it does not achieve any of the goals of its advocates and it forces voters to underwrite the financing of candidates they do not support.

Approximately $4 billion was spent on the 2004 presidential and congressional elections, nearly $1 billion more than in the election four years earlier. It was the most expensive election in American history, but it will almost certainly be exceeded in 2008. Internet advertising has been added on to print, radio, television, and live campaigning, resulting not in altering how the money is spent but in adding to it.

This has occurred despite the efforts of Congress to regulate and restrict campaign expenditures. In 2000, Congress established disclosure requirements for nonparty political groups known as Section 527 organizations, which were not required to register with the Federal Elections Commission because their principle purpose was alleged to be something other than influencing federal elections. In 2002, the first important revision of federal campaign finance law in more than two decades, the Bipartisan Campaign Reform Act, was adopted. The following year, the U.S. Supreme Court upheld its major provisions: the elimination of party soft money and the regulation of candidate-specific issue

Kolb, *Protest and Opportunities: The Political Outcomes of Social Movements* (Campus Verlag, 2007); Michael Rabinder James, *Deliberative Democracy and the Plural Polity* (University Press of Kansas, 2004); Kevin Danaher, *Insurrection: Citizen Challenges to Corporate Power* (Routledge, 2003); David S. Meyers et al., eds., *Routing the Opposition: Social Movements, Public Policy, and Democracy* (University of Minnesota Press, 2005); Jeffrey M. Berry, *The New Liberalism: The Rising Power of Citizen Groups* (Brookings Institution, 1999); and *Battling Big Business: Countering Greenwash, Infiltration, and Other Forms of Corporate Bullying* (Common Courage Press, 2002). Recently, the pluralist view is being reworked into political process theory; see Andrew S. McFarland, *Neopluralism: The Evolution of Political Process Theory* (University Press of Kansas, 2004).

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advertising. Nevertheless, the presidential candidacies of President George W. Bush and Senator John Kerry inspired vaster contributions and expenditures in accordance with—and sometimes in circumvention of—the law.

What is wrong with this increased spending? A great deal, say those who believe that rampant spending on political campaigns discourages less prosperous citizens from seeking elective office, diverts office-holders from doing their jobs to seeking contributions and bending their convictions to conform to those of their contributors, exaggerates the political influence of special interests, and discourages would-be voters who conclude that money matters more than their votes.

Soft money is money that is contributed not to individual campaigns but to political parties, ostensibly for the purpose of "party-building" activities, such as get-out-the-vote drives. The Federal Election Commission (FEC), an agency created in 1974, began allowing this practice in 1978, and within a decade fund-raisers in both parties began to realize its usefulness as a way around existing contribution limits. Under then-existing law, "hard money" contributions (funds contributed directly to the campaigns of particular candidates) were limited to $1,000 per person for each candidate; the assumption was that no candidate can be "bought" for a mere $1,000. But unlimited soft money allowed wealthy donors and interest groups to contribute huge sums to the parties at dinners, coffees, and other such gatherings—thus subtly (or not-so-subtly) reminding them of who was buttering their bread. Another concern of those who supported the new law was what they saw as the misuse of "issue advocacy" during campaigns. Interest groups had been able to get around the legal limits on contributions by pouring millions of unregulated dollars into "attack" ads that did not explicitly ask people to vote for or against a candidate. Instead, they said something like "Call Senator Smith and tell him to stop supporting polluters."

The new law sought to plug these loopholes and to bring the existing system of federal campaign finance regulation up-to-date. Among its major provisions are the following:

- A ban on soft money contributions to the national political parties.
- An increase in hard money contribution limits. For example, limits to individual candidates were increased from $1,000 to $2,000 per candidate per election. The increase was meant to take inflation into account.
- Restrictions on the ability of corporations, labor unions, and other interest groups to run "issue ads" featuring the names or likenesses of candidates within 60 days of a general election and 30 days of a primary election.

Some critics of existing campaign finance methods believe that the recent changes do not go far enough. Mark Green, in the selection that follows, concludes that nothing less than public financing of campaigns and elections will serve the public interest and further democracy. Critics of public financing maintain that these changes in the law are contrary to democracy because they use public tax money to support views that many citizens oppose. One of these critics, John Samples, argues that the changes would have a negative effect on voter participation and would limit competition.

YES

Mark Green

Change, for Good

The evidence . . . makes it clear: our campaign finance system is broken, citizens of all persuasions want change, and successful alternatives exist.

The alibis of apologists—change helps incumbents; money is speech; money doesn't buy votes—are shallow and unpersuasive. So now the defenders of the status quo have shifted to political and free-market arguments. Voters don't really care, they say; or, as Mitch McConnell argued in 2000, they assert that no candidate has ever been elected or defeated on the issue of campaign reform, and thus it can be safely ignored. Yet McConnell's Senate nemesis, John McCain, made campaign finance reform the heart and soul of his electrifying 2000 presidential campaign. Only by vastly outspending McCain did George W. Bush squeak by him in a tight primary battle that was supposed to be a coronation—and not before soft money became a dinner-table conversation staple. That same year, Maria Cantwell believes, making campaign finance reform a centerpiece of her Washington State U.S. Senate race was a major reason for her squeaker of a victory.

Senators McCain and Cantwell ran against what big money buys for special interests—tax breaks and loopholes for big corporations, weakened environmental regulations for manufacturers, and price protections for drug companies. But they also ran against what those purchases cost Americans: higher taxes, more pollution, and expensive health care, respectively.

To be successful, a pro-democracy movement like campaign finance reform cannot be merely an abstract, good-government ideal. It must be tied to the issues that Americans care most about: affordable child care, education, health care, and housing; a clean environment and safe streets; and tax rates that are fair. Do we want children with lower rates of asthma? Then we need campaign finance reform. Do we want enough funds for smaller class sizes and qualified, well-paid teachers? Then we need campaign finance reform. Do we want seniors to have access to lifesaving medicine? Then we need campaign finance reform. Do we want to keep guns out of the hands of kids and criminals? Then we need campaign finance reform. . . .

Both Republicans and Democrats came to agree that the problem with welfare was not necessarily the result of bad people but of a very bad system that—by paying more if a recipient had no work and no husband—discouraged employment and marriage. Ditto campaign finance. The sin is the *system*. How

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else can we explain how such provably honorable people as John Glenn, Alan Cranston, and John McCain felt it necessary to go to bat for the likes of a big, sleazy contributor like Charles Keating?

A comprehensive campaign finance reform program is ideally suited to achieve the conservative goals on which our economy and society are built—competition, efficiency, accountability, open markets, and market integrity. Specifically, four reforms would restore our electoral democracy by elevating voters over donors: spending limits, public financing, a restructured enforcement agency, and free broadcast time and mailings.

Limits on campaign spending are an integral part of restoring our democracy; Congress understood this fact when it included expenditure limits in the 1971 and 1974 campaign finance laws. Furthermore, the experience of the last quarter century has taught us that without caps on campaign spending to complement contribution limits, money will always find ways back into the system. But as long as *Buckley v. Valeo* remains the law, the courts are likely to strike down any attempts to place limits on campaign spending.

The Court in *Buckley* concluded that expenditures did not raise the problem of corruption in the same way contributions did. The Court's conclusion is based on two critical errors: (1) subjecting expenditure limits to a higher standard than contribution limits, and (2) considering only the anticorruption rationale while dismissing the other interests.

Why should campaign expenditures be entitled to much greater constitutional protection than campaign contributions? Neither expenditures nor contributions actually are speech; both merely facilitate expressive activities. And the argument that contributions pose a greater danger of quid pro quo corruption than expenditures seems ridiculous on its face: Are we really to believe that a $2000 contribution to a candidate will create a greater sense of obligation than millions of dollars in independent expenditures for that candidate?

And what makes preventing quid pro quo corruption so much more important than any other governmental interest? Of course, it is unacceptable for public officials to sell votes, access, or influence to the highest bidder. Why? Not because of the quid pro quo–ness of it all; we exchange money for goods and services all the time in our daily lives. Rather, it is because the sale of our government undermines the most fundamental principles of our democracy: competitive elections, effective government, and—most important of all—the guarantee that our public officials answer to their true constituents, not a handful of wealthy benefactors. Quid pro quo arrangements are surely egregious violations of these democratic norms, but they are not the only ones. . . .

Until *Buckley* falls and a spending cap is found constitutional, funding limits can only be encouraged by offering public funds to candidates who voluntarily accept them. Only spending limits can end the arms race for campaign cash and reduce the power of war chests that incumbents build to scare off competition. And only the combination of spending limits and public funds can level the political playing field.

Spending limits that are set too high tend to favor incumbents, because few others can raise the resources to compete with them. Limits that are set too low, however, also favor incumbents, since challengers need to spend enough to overcome the natural advantages that accrue to incumbents through years of constituent service, free media, and use of the franking privilege. So the porridge must not be too hot or too cold. When weighing these two considerations, a third must also be taken into account: incumbents and the well-connected will not voluntarily join a public financing program if they feel its spending limits are significantly below what they could otherwise raise. If limits are too low, so too will be participation rates, and the program's purposes will be seriously compromised.

Of these three considerations, two point toward higher spending limits, which suggests that it is better to err on the side of caution. The average House winner spent $842,245 in 2000; the average candidate who challenged an incumbent spent just $143,685. In 1988, only 22 House campaigns hit the million-dollar mark; in 2000, the number reached 176. To control costs without discouraging participation or diminishing a challenger's ability to compete, House candidates should be held to inflation-adjusted spending limits of $900,000–$450,000 each for the primary and general election. A strong argument may be made that a $900,000 limit, which memorializes a level of spending that is about the current average, does not do enough to suppress campaign spending. But to undercut opponents who will use inadequate spending limits as an excuse to oppose reform, and to ensure that challengers can spend at significant levels, it is in the reform coalition's best interests to support limits around the current average cost of a winning campaign. By definition, this amount can't be too low or too high if it's the average amount it takes to win.

Senate candidates should be able to spend $1 million, plus fifty cents for each voting-age person in the state—which would come to about $8 million (for the primary and general election combined) in New York State, $7 million in Florida, $5 million in Ohio and Pennsylvania, and $2 million in Arkansas—or about one-fourth to one-half of what's recently been spent in these states. But in comparison to House contests, Senate races have higher profiles and receive significantly more media attention, making it harder for incumbents to dominate. Consequently, spending limits lower than current averages will protect challengers from the war chests that Senate incumbents can build over six years, and still ensure—because of free media coverage—that challengers will have ample opportunity to get their message out.

For instance, in Michigan's 2000 Senate race Debbie Stabenow spent $8 million in her victory over incumbent Senator Spencer Abraham, who spent $14.5 million. Under the spending-limit formula just outlined, both candidates would have been held to about $5 million. Similarly, in Pennsylvania, a $5 million limit would have helped challenger Ron Klink, who was outspent by nearly $10 million in his losing 2000 campaign against incumbent Senator Rick Santorum.

Separate limits for the primary and general election ensure that the winner of a hard-fought primary will not be placed at a disadvantage by facing

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a general-election opponent who suffered no primary challenge. To ensure equity, of course, candidates without primary election opponents should be allowed to spend up to the limit in the primary election period, although no public funds should be given to candidates without serious opponents, whether in primary or general elections.

A bonus provision Again, so long as *Buckley* is the constitutional standard, legislation cannot prevent the super-rich from spending tens of millions of dollars on their campaigns. We can, however, help their opponents by eliminating the spending limit. It is unfair to keep a lid on a non-rich candidate when his or her opponent effectively says the sky's the limit. . . .

The airwaves belong to us, the public. We provide broadcasters with federal licenses—for free—on the condition that they agree to serve "the public interest, convenience, and necessity." They have not lived up to their end of the bargain.

How have they gotten away with it? (You'll never guess.) The powerful broadcast industry vehemently opposes reforms affecting their bottom lines. The industry gave $6.8 million to candidates and parties in the presidential election year of 2000, with half coming in soft money. Their annual largesse has allowed them to skirt their public duty, and then some: despite a thirty-year-old law designed to hold down campaign ad rates, broadcasters routinely gouge candidates. When the Senate included a provision in McCain-Feingold to close the loophole that allows for such price gouging, the industry went on the attack, showering both parties with hard and soft money. Their efforts paid off: the House stripped the provision from Shays-Meehan and the loophole remains.

Why is the broadcast industry unwilling to live up to its public service obligations? In the 2000 elections, broadcasters pulled down revenue from political commercials that approached $1 billion. Reducing that revenue would mean cutting into profit margins that average between 30 and 50 percent. So it makes perfect business sense for the industry to invest a relatively minute amount in contributions to candidates and parties, because the payoff is astronomical. Dan O'Connor, the general sales manager of WSYT-TV in Syracuse, New York, put it this way: Ad buyers for candidates "call you up and say, 'Can you clear $40,000 [in TV ad time] next week?' It's like, 'What? Am I dreaming? Of course I can clear that!' And they send you a check in the mail overnight. It's like Santa Claus came to town. It's a beautiful thing."

Paul Taylor, executive director of the Alliance for Better Campaigns, a nonpartisan group that advocates for free airtime, sums up the scam this way: "Let's follow the bouncing ball. Our government gives broadcasters free licenses to operate on the public airwaves on the condition that they serve the public interest. During the campaign season, broadcasters turn around and sell access to these airwaves to candidates at inflated prices. Meanwhile, many candidates sell access to the government in order to raise special-interest money to purchase access to the airwaves. It's a wonderful arrangement for the broadcasters, who reap windfall profits from political campaigns. It's a good system for incumbents, who prosper in the big-dollar, high-ante political culture of paid speech. But it's a lousy deal for the rest of us."

Walter Cronkite, the iconic American newsman, is chairman of the Alliance for Better Campaigns. According to Cronkite, "In the land of free speech, we've permitted a system of 'paid speech' to take hold during the political campaigns on the one medium we all own—our broadcast airwaves. It's long past time to turn that around. Free airtime would help free our democracy from the grip of the special interests." That's the way it is, and even Senator Mitch McConnell, the self-described Darth Vader of campaign finance reform, agrees that the broadcasters are not giving the public a fair shake. And for the rest of the world, this is a no-brainer. "America is almost alone among the Atlantic democracies in declining to provide political parties free prime time on television during elections," writes historian Arthur Schlesinger Jr. "[If it did so], it could do much both to bring inordinate campaign costs under control and revitalize the political parties."

It's time for electronic consumers to negotiate a better deal with those we give free licenses to. Cronkite's alliance is pushing an innovative and market-based proposal—first discussed in a 1982 monograph from the Democracy Project, Independent Expenditures in Congressional Campaigns: The Electronic Solution—that would provide free broadcast vouchers to candidates and parties. Here's how it would work: Qualifying candidates who win their parties' nominations would receive vouchers for use in their general election campaigns. Candidates, particularly those from urban areas who don't find it cost-effective to advertise on television or radio, could trade their vouchers to their party in exchange for funds to pay for direct mail or other forms of communication. Parties, in turn, could use the vouchers themselves or give them to other candidates. The system creates a market for broadcast vouchers that, because of pricing incentives, ensures their efficient distribution.

A comprehensive campaign finance reform program should provide candidates with a right of access to the public airwaves. Until then, the alliance's voucher proposal should be restricted to those candidates who accept spending limits. Whether vouchers were used for airtime or exchanged for party monies for direct mail, candidates would report them as expenditures. Under such a system, spending limits would retain their integrity. The value of the vouchers should be set at $250,000 for House candidates and vary by population for Senate candidates, with candidates in midsize states receiving up to $2.5 million in vouchers. As in public financing, candidates should be required to reach contribution thresholds to qualify for vouchers.

One might argue that vouchers would simply encourage the proliferation of slickly produced thirty-second advertisements. Yet the reality, for better or worse, is that political commercials are part of elections in America, and there's little chance that will change. The voucher proposal bows to that reality, but it also offers hope: candidates who accept the vouchers should be required to feature their own voices in at least 50 percent of all their ads—whether paid for by vouchers, private contributions, or public funds. There is a growing public distaste for anonymous negative advertising, and candidates, given free access to the airwaves, should be held accountable for their ads.

And there are other ways to promote civic discourse. Cronkite's alliance has put forth a complement to its voucher proposal, called "Voters' Time," that

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would require broadcasters to air a minimum of two hours a week of candidate discussion in the month preceding every election. At least half of the programs would have to be aired in prime time or drive time, and the formats—debates, interviews, town hall meetings—would be of the broadcasters' choosing. A voters' time requirement is necessary, because broadcasters are airing less and less campaign news and candidate discourse.

In the 2000 election campaign, despite the closest presidential election in a generation, ABC, CBS, and NBC devoted 28 percent less time to campaign coverage than in 1988. In a nationwide survey conducted two days prior to the 2000 elections, more than half the population could not answer basic questions about Bush's and Gore's positions on the issues. There are many factors contributing to that result, but two of them—the domination of election by big money interests, and the unwillingness of the broadcast industry to be a part of the solution—can be cured.

Mandating free airtime for candidates and candidate discussion would appropriately hold broadcasters to a minimal standard of what it means, under the Federal Communications Commission Act, to serve "the public interest, convenience, and necessity." But this will require a committed Congress standing up to an unusually powerful industry, one that gives big contributions and confers access to voters via the airwaves.

At a minimum, two other useful methods of encouraging civic discourse and facilitating candidate communication should be part of any reform bill. First, candidates who accept public funds should be required to debate. Kentucky, New Jersey, Los Angeles, and New York City all require debates of publicly funded candidates. Especially when the public has invested its money in public campaigns, it deserves to see the candidates in public face-to-face meetings. In March 2000, Al Gore proposed that he and George W. Bush eliminate campaign television advertisements and instead hold issue debates twice a week until the elections. Bush declined, but a CBS News poll showed that voters responded positively, with 65 percent calling it a "good idea."

Second, cities like New York and Seattle mail a voters' guide to registered voters before elections. The guides include candidate statements and biographical information, as well as information on voting. New York City's guide costs fifty cents a copy to publish and mail, a bargain by any standard. The federal government should do the same. Or it could create and promote a Web-based guide to serve as a clearing-house for candidate and election information. Before voting, citizens could log on to the site, read statements for federal candidates, and find out information about their polling stations. In the age of information technology, demology, democracy should not be left behind.

John Samples

NO

Taxpayer Financing of Campaigns

Candidates and parties need money to fight election campaigns. In the United States, this money comes largely from individuals and groups, not the government, that is, the taxpayers. Some critics decry such private financing of politics. They argue that private donations advance special interests and corrupt politics and government. Some of them argue that government should ban private campaign contributions in favor of public financing. Since public funding comes from everyone, they reason, it actually comes from no one, thereby precluding the influence of private interests on public affairs. That argument has found few converts at the national level. States and cities have been more willing to experiment with taxpayer support for campaigns. . . .

Proponents claim government financing of campaigns servers the public interest in three ways: it advances the integrity of elections and lawmaking, promotes political equality, and fosters electoral competitiveness.

Corruption

The Supreme Court held in *Buckley v. Valeo* that the government has a compelling interest in preventing corruption or the appearance of corruption in campaigns and policymaking, an interest that may outweigh the First Amendment rights implicated in contributing to a political campaign. Allegations of corruption thus increase the probability that a law regulating campaign finance will pass constitutional muster.

Advocates of government financing claim the current system of largely private financing of campaigns fosters corruption (or its appearance) in several ways. They say campaign contributions buy favors from elected officials, the quid-pro-quo corruption noted in *Buckley*. Others say contributors receive favorable action on policies that attract little public attention and debate. Advocates also say private money fosters more subtle forms of favoritism; for example, members of Congress may allocate their time and effort in committees to help contributors. If private money corrupts, the advocates conclude, the private financing system should be abolished in favor of government financing.

In their contribution to this volume, Jeffrey Milyo and David Primo summarize the academic studies of Congress and campaign contributions, almost

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all of which provide little evidence to support allegations of corruption. Having surveyed the field, even Andrew Geddis, a supporter of government financing, concludes, "One obstacle is that various studies have failed to produce the sort of evidence of a strong correlation between campaign donations and a representative's public actions needed to back up suspicions of general quid pro quo understandings." Should we not have strong evidence to uproot our current system of campaign finance, especially when money is tied to the exercise of free speech?

If corruption involves using public power for private ends, government financing itself provides an example of corruption; after all, the program takes money from everyone and gives it to particular interests. One might counter with Richard Briffault's argument that government financing cannot be corrupt because tax revenue "comes from everyone, and thus, from no one in particular." But that leaves out an important part of the story. Tax money used to finance campaigns may come from everyone, but it goes predominantly, and is designed to go predominantly, to particular interests and groups within the American polity. Government subsidies for ethanol are no less corrupt because everyone pays for them and neither are government subsidies to particular candidates.

Equality

Some Americans contribute to political campaigns, but most do not. For advocates of government financing, these differences create intolerable inequalities that are "in sharp tension with the one person-one vote principle enshrined in our civic culture and our constitutional law. Public funding is necessary to bring our campaign finance system more in line with our central value of political equality." Similarly, Public Campaign, a leading organization advocating taxpayer financing, argues that private financing "violates the rights of all citizens to equal and meaningful participation in the democratic process." The principle of one person–one vote means "one man's vote in a congressional election is to be worth as much as another's" because assigning different weights to different votes in various House districts would violate Article 1, § 2 of the Constitution. The principle applies to state elections because of the equal protection clause of the 14th Amendment. Is one person–one vote thus "our central value of political equality"? A look at American institutions suggests otherwise.

The representation of states in the U.S. Senate assigns different weights to different votes in different states. Because the Electoral College also recognizes state representation, the election of the president also accords greater weight to votes in small states compared with those in large states. Moreover, the Supreme Court has not subjected judicial elections to the principle of one person–one vote.

One person–one vote applies only to voting. No American has a right to "equal and meaningful participation in the democratic process" if that means the whole of political life. In particular, the rights of association and speech set out in the First Amendment have been explicitly protected from government efforts to compel "equal . . . participation." In *Buckley*, the Supreme Court

noted that federal election law sought to equalize the influence of individuals and groups over the outcome of elections. The justices demurred:

> 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."

Far from being "our central value of political equality," equal participation remains "wholly foreign to the First Amendment."

Moreover, even if the government financed all campaigns, we would not have equal participation in elections. Proponents of government financing focus on one source of political inequality: money. They ignore all other sources of inequality such as a talent for speaking, the ability to write, good looks, media ownership and access, organizational ability, and so on. The proponents do not propose to restrain the many nonmonetary sources of influence perhaps because such talents are often found among the proponents of government financing of campaigns. The leveling impulse, they imply, should not restrict such political talents; only people with money should be excluded from political influence. Sometimes in public policy what is not regulated tells you more about a piece of legislation than what is covered. So it is with government financing of campaigns. . . .

Proponents of government financing argue that public subsidies will enable new candidates to run who would otherwise be excluded from the race. They argue the candidates who now obtain funding reflect the investment and consumption preferences of wealthy and conservative individuals. They believe contributions reproduce the inequalities of wealth in the economy and lead to a government that is unrepresentative of America. This argument depends crucially on the stereotypical image of "fat cat" contributors devoted to conservative causes. Large donors may be unrepresentative of the United States as a whole—they do have more money than the average American—but that does not mean they hold vastly different political views than most Americans. In fact, a recent study indicates large contributors often identify themselves as Democrats and as liberal on the issues. That should not be so surprising. In 1998, National Election Studies found that almost one-third of the richest Americans identified themselves as liberals.

Finally, we should be clear how extensive, intrusive, and dangerous a government financing system would be. Keep in mind that the goal of equalizing financial resources in an election requires extensive control and oversight of all electoral spending. The election authority must immediately know about all spending by privately financed candidates and every dollar laid out by any group participating in an election. Public Campaign's model legislation states that government-financed candidates must use a government-issued debit card that draws solely on funds in an account created by the government. Those who believe government usually acts benevolently will not worry about such extensive oversight and

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Competition

Over the past 40 years, the percentage of the vote an incumbent member of Congress receives simply for being an incumbent has risen from 2 percent to 6 or 7 percent. Similar increases in the advantages of incumbency have been observed in executive and legislature elections in the states. Advocates of government subsidies say the need to raise large sums to challenge an incumbent explains why incumbents are hard to challenge. Government financing, they say, would overcome this barrier to entry by giving challengers tax money leading to a more competitive system.

Much depends on who designs the system of government financing. Spending levels strongly influence the competitiveness of challengers to incumbents. If a challenger can spend enough to make his name and causes known, a government financing scheme might foster more competition. If legislatures enact the system, of course, incumbents will design and pass the law. They will be tempted to set spending limits low to favor their own reelections. For example, in 1997, Congress debated a government financing proposal that included spending caps: every challenger spending less than the proposed limits in Senate campaigns in 1994 and 1996 had lost; every incumbent spending less than the limits had won. Similarly, in the House, 3 percent of the challengers spending less than the proposed limits won in 1996, while 40 percent of the incumbents under the limits won.

Such legislative design issues may explain why government financing of campaigns has not *in fact* increased the competitiveness of elections. The leading study of government financing in the states concluded, "There is no evidence to support the claim that programs combining public funding with spending limits have leveled the playing field, countered the effects of incumbency, and made elections more competitive." Believing that government financing will increase competitiveness seems to be a triumph of hope over experience. . . .

Experience indicates that government financing tends to favor certain types of candidates. The political scientists Michael Malbin and Thomas Gais found sharp partisan differences in candidate participation. They studied gubernatorial elections in 11 states from 1993 to 1996 and found that 82 percent of Democratic candidates took taxpayer funding, while only 55 percent of Republican candidates participated. Their data on legislative elections in Minnesota and Wisconsin show a similar partisan divide. Malbin and Gais attribute these partisan variations to the libertarianism of Republicans: candidates who philosophically oppose government subsidies often do not accept them. In other words, government financing in practice provides an advantage to nonlibertarian candidates.

Full government financing of campaigns in Arizona and Maine tells a similar story. In the 2000 election in Arizona, 41 percent of Democratic candidates and 50 percent of Green Party candidates received public subsidies for their campaigns; 8 percent of Republicans accepted government money in the general election, while no candidates of the Libertarian Party took the subsidy.

In Maine's 2000 election, 43.4 percent of Democratic Party candidates chose government financing compared with 24 percent of Republicans.

Government financing of campaigns looks a lot like other political activity by individuals and groups that do not do well in private markets. Declining parts of the economy—say, small farmers and large steel mill owners—want government help to overcome their own mistakes or unfavorable economic changes. Similarly, candidates who have little appeal to voters and campaign contributors seek public subsidies (like farmers) and regulatory protections from competition (like steel mill owners).

Government subsidies for candidates, however, are crucially different from funding for ethanol. Government financing of campaigns takes money from taxpayers and gives it to a subset of all political candidates. For that reason, government financing seems either unnecessary or immoral. It is unnecessary if a taxpayer agrees with the candidate supported by the subsidy; the taxpayer may simply give the money directly to the candidate.

If, however, the taxpayer disagrees with the candidate, taxing him to support that candidate is immoral. An example will make clear the immorality of the policy. Imagine I had the power to force Nick Nyhart, the Executive Director of Public Campaign, to contribute to the Cato Institute, thereby supporting the writing and marketing of the very arguments against government financing you are reading right now. Such compulsion would strike most Americans as wrong. We think individuals should not be forced to support ideas that contravene their deepest commitments, whether those commitments are religious, social, or political. Government financing schemes, however, transfer money from taxpayers to political candidates and their campaigns. Inevitably they force liberals to support conservatives, Democrats to support Republicans, and vice versa.

Advocates of government financing of campaigns employ emotionally charged rhetoric at every turn. They implore us to "reform" the system to root out "corruption" and attain "clean elections." The reality of government financing belies this expansive rhetoric. Such proposals, especially the "clean elections" variant, simply transfer wealth from taxpayers to a preferred set of candidates and causes. That preferred set inevitably excludes candidates who believe forced transfers of wealth are immoral (such as Libertarians and Republican candidates with a libertarian outlook). Not surprisingly, government financing in the states has favored candidates of the left (such as Democrats and third parties like the Greens). For that reason, government financing of campaigns serves private goals through public means. Far from being a reform, government financing offers more "politics as usual," understood as the struggle to obtain special favors from government.

Those who wish to support the candidates and causes favored by government financing may do so now; they need only send their check to the candidate or cause they favor. Government financing forces all taxpayers to financially support candidates they would not otherwise support, candidates whose views they may find repugnant. On the question of government financing of campaigns, Thomas Jefferson should have the last word: "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical."

POSTS

Should Financing

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POSTSCRIPT

Should America Adopt Public Financing of Political Campaigns?

There are four ways in which a country can limit the influence of money in elections: by limiting the amount of money individuals and groups may contribute to a candidate, by limiting the amount of money that can be spent by or on behalf of a candidate, by providing free access to media for candidates and political parties and restricting paid political advertisements, and by public financing of elections. Most established democracies—Great Britain and Western Europe, Canada, Australia, New Zealand, Israel, and Japan—use several of these methods; some employ them all. The United States alone employs only one—restricting contributions to candidates—and allows independent expenditures.

Critics of campaign finance reform, ranging from libertarians to the American Civil Liberties Union, maintain that the government in a free society should not restrict an individual who is prepared to put his money where his mouth is. Supporters of reform argue that every one of the other cited democracies has a much larger turnout of its citizens in national elections, and they believe that this is because citizens believe that the process is fairer when one candidate cannot vastly outspend another.

The Supreme Court decision in *Buckley v. Valeo* in 1976 came down largely on the side of critics of reform, concluding that money is speech, that candidates could not be restricted in their expenditures (although contributors to their campaigns could be restricted), and that independent expenditures (that is, by persons or groups other than the candidates and party) could not be restricted. That decision has been the focus of political debate ever since.

The first major revision of federal campaign finance law in several decades was adopted in 2002 and upheld by the Supreme Court the following year. It eliminated so-called "soft money" expenditures by the political parties that had not counted as campaign expenses because they did not expressly endorse a candidate. New campaign strategies were adopted by the parties, resulting in record expenditures in the 2004 presidential and congressional elections.

The U.S. Supreme Court in 2006 struck down Vermont's strict limits on campaign contributions. Vermont's law, approved in 1997, was the toughest in the country with regard to setting limits on the amount individuals and parties may contribute to campaigns and, perhaps more significantly, on how much candidates may spend on their campaigns.

Complaints have been filed with the Federal Election Commission concerning the raising and spending of money by organizations claiming tax exemption as "political organizations," but refusing to register as "political

committees" subject to campaign finance law contribution limits, source prohibitions, and disclosure requirements. These organizations exist throughout the political spectrum. In 2006 and 2007, a number of these groups were fined for failing to abide by federal campaign finance laws during the 2004 election.

In June 2007, the Supreme Court held in *Federal Election Commission v. Wisconsin Right to Life* that the 2002 limitations on corporate and labor union funding of broadcast ads mentioning a candidate within 30 days of a primary or caucus or 60 days of a general election are unconstitutional as applied to ads susceptible of a reasonable interpretation other than as an appeal to vote for or against a specific candidate. Some election law experts believe that the new exception will render much of the law meaningless, while others believe that the new exception will be construed narrowly. The Federal Election Comission's interpretation and application of the new exception will determine the true scope and impact of the Court's decision.

Diana Dwyre and Victoria A. Farrar-Myers followed the course of campaign finance reform through Congress in *Legislative Labyrinth: Congress and Campaign Finance Reform* (Congressional Quarterly Press, 2001). The authors explored the impact of the president, interest groups, and the media, as well as the roles of congressional sponsors and opponents, providing insight into how Congress grapples with an issue of paramount importance to its members.

Most studies do not attempt to achieve objectivity, and tend to support extreme positions, as the titles of two books suggest. Darrell M. West strongly supports public finance in *Checkbook Democracy: How Money Corrupts Political Campaigns* (Northeastern University Press, 2000). In total opposition to reform, Bradley Smith offers a vigorous critique in *Unfree Speech: The Folly of Campaign Finance Reform* (Princeton University Press, 2001), contending that all restrictions on campaign contributions should be eliminated. In *Sold to the Highest Bidder: The Presidency from Dwight D. Eisenhower to George W. Bush* (Prometheus Books, 2002), Daniel M. Friedenberg contends that "money controls the actions of both the executive and legislative branches of our government on the federal and state levels."

The most comprehensive overall examination of the role of money in elections is in *The New Campaign Finance Sourcebook*, by Anthony Corrado, Thomas E. Mann, Daniel R. Ortiz, and Trevor Potter (Brookings Institution, 2005). The authors conclude that campaign finance reform will always be a work in progress, dealing with but never resolving the inherent problems of money in politics.