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SUPREME COURT OF THE UNITED STATES

Nos. 02–1674, 02–1675, 02–1676, 02–1702, 02–1727, 02–1733, 02–1734; 02–1740, 02–1747, 02–1753, 02–1755, AND 02–1756

MITCH MCCONNELL, UNITED STATES SENATOR, ET AL., APPELLANTS
02–1674 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

NATIONAL RIFLE ASSOCIATION, ET AL., APPELLANTS
02–1675 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

FEDERAL ELECTION COMMISSION, ET AL., APPELLANTS
02–1676 *v.*
MITCH MCCONNELL, UNITED STATES SENATOR, ET AL.;

JOHN MCCAIN, UNITED STATES SENATOR, ET AL., APPELLANTS
02–1702 *v.*
MITCH MCCONNELL, UNITED STATES SENATOR, ET AL.;

REPUBLICAN NATIONAL COMMITTEE, ET AL., APPELLANTS
02–1727 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

NATIONAL RIGHT TO LIFE COMMITTEE, INC., ET AL., APPELLANTS
02–1733 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

AMERICAN CIVIL LIBERTIES UNION, APPELLANTS
02–1734 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

VICTORIA JACKSON GRAY ADAMS, ET AL., APPELLANTS
02–1740 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

RON PAUL, UNITED STATES CONGRESSMAN, ET AL., APPELLANTS
02–1747 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

CALIFORNIA DEMOCRATIC PARTY, ET AL., APPELLANTS
02–1753 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ET AL., APPELLANTS
02–1755 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

CHAMBER OF COMMERCE OF THE UNITED STATES, ET AL., APPELLANTS
02–1756 *v.*
FEDERAL ELECTION COMMISSION, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[December 10, 2003]

JUSTICE STEVENS and JUSTICE O'CONNOR delivered the opinion of the Court with respect to BCRA Titles I and II.*

The Bipartisan Campaign Reform Act of 2002 (BCRA), 116 Stat. 81, contains a series of amendments to the Federal Election Campaign Act of 1971 (FECA), 86 Stat. 11, as amended, 2 U. S. C. A. §431 *et seq.* (main ed. and Supp. 2003), the Communications Act of 1934, 48 Stat. 1088, as

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*JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER join this opinion in its entirety.

amended, 47 U. S. C. A. §315, and other portions of the United States Code, 18 U. S. C. A. §607 (Supp. 2003), 36 U. S. C. A. §§510–511, that are challenged in these cases.[1] In this opinion we discuss Titles I and II of BCRA. The opinion of the Court delivered by THE CHIEF JUSTICE, *post,* p. ___, discusses Titles III and IV, and the opinion of the Court delivered by JUSTICE BREYER, *post*, p. ___, discusses Title V.

I

More than a century ago the "sober-minded Elihu Root" advocated legislation that would prohibit political contributions by corporations in order to prevent "'the great aggregations of wealth, from using their corporate funds, directly or indirectly,'" to elect legislators who would "'vote for their protection and the advancement of their interests as against those of the public.'" *United States* v. *Automobile Workers,* 352 U. S. 567, 571 (1957) (quoting E. Root, Addresses on Government and Citizenship 143 (R. Bacon & J. Scott eds. 1916)). In Root's opinion, such legislation would "'strik[e] at a constantly growing evil which has done more to shake the confidence of the plain people of small means of this country in our political institutions than any other practice which has ever obtained since the foundation of our Government.'" 352 U. S., at 571. The Congress of the United States has repeatedly enacted legislation endorsing Root's judgment.

BCRA is the most recent federal enactment designed "to purge national politics of what was conceived to be the

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[1] The parties to the litigation are described in the findings of the District Court. 251 F. Supp. 2d 176, 221–226 (DC 2003) *(per curiam).* For the sake of clarity, we refer to the parties who challenged the law in the District Court as the "plaintiffs," referring to specific plaintiffs by name where necessary. We refer to the parties who intervened in defense of the law as the "intervenor-defendants."

pernicious influence of 'big money' campaign contributions." *Id.,* at 572. As Justice Frankfurter explained in his opinion for the Court in *Automobile Workers*, the first such enactment responded to President Theodore Roosevelt's call for legislation forbidding all contributions by corporations "'to any political committee or for any political purpose.'" *Ibid.* (quoting 40 Cong. Rec. 96 (1906)). In his annual message to Congress in December 1905, President Roosevelt stated that "'directors should not be permitted to use stockholders' money'" for political purposes, and he recommended that "'a prohibition'" on corporate political contributions "'would be, as far as it went, an effective method of stopping the evils aimed at in corrupt practices acts.'" 352 U. S., at 352. The resulting 1907 statute completely banned corporate contributions of "money . . . in connection with" any federal election. Tillman Act, ch. 420, 34 Stat. 864. Congress soon amended the statute to require the public disclosure of certain contributions and expenditures and to place "maximum limits on the amounts that congressional candidates could spend in seeking nomination and election." *Automobile Workers, supra*, at 575–576.

In 1925 Congress extended the prohibition of "contributions" "to include 'anything of value,' and made acceptance of a corporate contribution as well as the giving of such a contribution a crime." *Federal Election Comm'n* v. *National Right to Work Comm.,* 459 U. S. 197, 209 (1982) (citing Federal Corrupt Practices Act, 1925, §§301, 313, 43 Stat. 1070, 1074). During the debates preceding that amendment, a leading Senator characterized "'the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions'" as "'one of the great political evils of the time.'" *Automobile Workers, supra*, at 576 (quoting 65 Cong. Rec. 9507–9508 (1924)). We upheld the amended statute against a constitutional challenge, observing that "[t]he power of Congress to

protect the election of President and Vice President from corruption being clear, the choice of means to that end presents a question primarily addressed to the judgment of Congress." *Burroughs* v. *United States,* 290 U. S. 534, 547 (1934).

Congress' historical concern with the "political potentialities of wealth" and their "untoward consequences for the democratic process," *Automobile Workers*, *supra*, at 577–578, has long reached beyond corporate money. During and shortly after World War II, Congress reacted to the "enormous financial outlays" made by some unions in connection with national elections. 352 U. S., at 579. Congress first restricted union contributions in the Hatch Act, 18 U. S. C. §610,[2] and it later prohibited "union contributions in connection with federal elections . . . altogether." *National Right to Work, supra*, at 209 (citing War Labor Disputes Act (Smith-Connally Anti-Strike Act), ch. 144, §9, 57 Stat. 167). Congress subsequently extended that prohibition to cover unions' election-related expenditures as well as contributions, and it broadened the coverage of federal campaigns to include both primary and general elections. Labor Management Relations Act, 1947

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[2] The Hatch Act also limited both the amount political committees could expend and the amount they could receive in contributions. Act of July 19, 1940, ch. 640, 54 Stat. 767. Senator Bankhead, in offering the amendment from the Senate floor, said:

"'We all know that money is the chief source of corruption. We all know that large contributions to political campaigns not only put the political party under obligation to the large contributors, who demand pay in the way of legislation, but we also know that large sums of money are used for the purpose of conducting expensive campaigns through the newspapers and over the radio; in the publication of all sorts of literature, true and untrue; and for the purpose of paying the expenses of campaigners sent out into the country to spread propaganda, both true and untrue.'" *United States* v. *Automobile Workers,* 352 U. S. 567, 577–578 (1957) (quoting 86 Cong. Rec. 2720 (1940)).

(Taft-Hartley Act), 61 Stat. 136. See *Automobile Workers, supra*, at 578–584. During the consideration of those measures, legislators repeatedly voiced their concerns regarding the pernicious influence of large campaign contributions. See 93 Cong. Rec. 3428, 3522 (1947); H. R. Rep. No. 245, 80th Cong., 1st Sess. (1947); S. Rep. No. 1, 80th Cong., 1st Sess., pt. 2 (1947); H. R. Rep. No. 2093, 78th Cong., 2d Sess. (1945). As we noted in a unanimous opinion recalling this history, Congress' "careful legislative adjustment of the federal election laws, in a 'cautious advance, step by step,' to account for the particular legal and economic attributes of corporations and labor organizations warrants considerable deference." *National Right to Work,* 352 U. S., at 209 (citations omitted).

In early 1972 Congress continued its steady improvement of the national election laws by enacting FECA, 86 Stat. 3. As first enacted, that statute required disclosure of all contributions exceeding $100 and of expenditures by candidates and political committees that spent more than $1,000 per year. *Id.*, at 11–19. It also prohibited contributions made in the name of another person, *id.,* at 19, and by Government contractors, *id.,* at 10. The law ratified the earlier prohibition on the use of corporate and union general treasury funds for political contributions and expenditures, but it expressly permitted corporations and unions to establish and administer separate segregated funds (commonly known as political action committees, or PACs) for election-related contributions and expenditures. *Id.*, at 12–13.[3] See *Pipefitters* v. *United States,* 407 U. S. 385, 409–410 (1972).

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[3] As a general rule, FECA permits corporations and unions to solicit contributions to their PACs from their shareholders or members, but not from outsiders. 2 U. S. C. §§441b(b)(4)(A), (C); see *Federal Election Comm'n* v. *National Right to Work Comm.,* 459 U. S. 197, 198–199, and n. 1 (1982).

As the 1972 presidential elections made clear, however, FECA's passage did not deter unseemly fundraising and campaign practices. Evidence of those practices persuaded Congress to enact the Federal Election Campaign Act Amendments of 1974, 88 Stat. 1263. Reviewing a constitutional challenge to the amendments, the Court of Appeals for the District of Columbia Circuit described them as "by far the most comprehensive . . . reform legislation [ever] passed by Congress concerning the election of the President, Vice-President and members of Congress." *Buckley* v. *Valeo*, 519 F. 2d 821, 831 (1975) (en banc) *(per curiam)*.

The 1974 amendments closed the loophole that had allowed candidates to use an unlimited number of political committees for fundraising purposes and thereby to circumvent the limits on individual committees' receipts and disbursements. They also limited individual political contributions to any single candidate to $1,000 per election, with an overall annual limitation of $25,000 by any contributor; imposed ceilings on spending by candidates and political parties for national conventions; required reporting and public disclosure of contributions and expenditures exceeding certain limits; and established the Federal Election Commission (FEC) to administer and enforce the legislation. *Id.*, at 831–834.

The Court of Appeals upheld the 1974 amendments almost in their entirety.[4] It concluded that the clear and compelling interest in preserving the integrity of the electoral process provided a sufficient basis for sustaining the substantive provisions of the Act. *Id.*, at 841. The

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[4]The court held that one disclosure provision was unconstitutionally vague and overbroad. *Buckley* v. *Valeo*, 519 F. 2d 821, 832 (CADC 1975) (en banc) *(per curiam)* (invalidating 2 U. S. C. §437a (1970 ed., Supp. V)). No appeal was taken from that holding. *Buckley* v. *Valeo*, 424 U. S. 1, 10, n. 7 (1976) *(per curiam)*.

court's opinion relied heavily on findings that large contributions facilitated access to public officials[5] and described methods of evading the contribution limits that had enabled contributors of massive sums to avoid disclosure. *Id.*, at 837–841.[6]

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[5] The Court of Appeals found:

"Large contributions are intended to, and do, gain access to the elected official after the campaign for consideration of the contributor's particular concerns. Senator Mathias not only describes this but also the corollary, that the feeling that big contributors gain special treatment produces a reaction that the average American has no significant role in the political process." *Buckley*, 519 F. 2d, at 838 (footnotes omitted).

The court also noted:

"Congress found and the District Court confirmed that such contributions were often made for the purpose of furthering business or private interests by facilitating access to government officials or influencing governmental decisions, and that, conversely, elected officials have tended to afford special treatment to large contributors. *See* S. Rep. No. 93–689, 93d Cong., 2d Sess. 4–5; Findings I, ¶¶108, 110, 118, 170." *Id.*, at 838, n. 32.

Citing further evidence of corruption, the court explained:

"The disclosures of illegal corporate contributions in 1972 included the testimony of executives that they were motivated by the perception that this was necessary as a 'calling card, something that would get us in the door and make our point of view heard,' *Hearings before the Senate Select Comm. on Presidential Campaign Activities*, 93d Cong., 1st Sess. 5442 (1973) (Ashland Oil Co.—Orin Atkins, Chairman) or 'in response to pressure for fear of a competitive disadvantage that might result,' *id.* at 5495, 5514 (American Airlines—George Spater, former chairman); *see* Findings I, ¶105. The record before Congress was replete with specific examples of improper attempts to obtain governmental favor in return for large campaign contributions. *See* Findings I, ¶¶159–64." *Id.*, at 839, n. 37.

[6] The court cited the intricate scheme of the American Milk Producers, Inc., as an example of the lengths to which contributors went to avoid their duty to disclose:

"Since the milk producers, on legal advice, worked on a $2500 limit per committee, they evolved a procedure, after consultation in November 1970 with Nixon fund raisers, to break down [their $2 million

The Court of Appeals upheld the provisions establishing contribution and expenditure limitations on the theory that they should be viewed as regulations of conduct rather than speech. *Id.*, at 840–841 (citing *United States* v. *O'Brien,* 391 U. S. 367, 376–377 (1968)). This Court, however, concluded that each set of limitations raised serious—though different—concerns under the First Amendment. *Buckley* v. *Valeo*, 424 U. S. 1, 14–23 (1976) *(per curiam)*. We treated the limitations on candidate and individual expenditures as direct restraints on speech, but we observed that the contribution limitations, in contrast, imposed only "a marginal restriction upon the contributor's ability to engage in free communication." *Id.*, at 20–21. Considering the "deeply disturbing examples" of corruption related to candidate contributions discussed in the Court of Appeals' opinion, we determined that limiting contributions served an interest in protecting "the integrity of our system of representative democracy." *Id.*, at 26–27. In the end, the Act's primary purpose—"to limit the actuality and appearance of corruption resulting from large individual financial contributions"—provided "a constitutionally sufficient justification for the $1,000 contribution limitation." *Id.,* at 26.

We prefaced our analysis of the $1,000 limitation on expenditures by observing that it broadly encompassed every expenditure "'relative to a clearly identified candidate.'" *Id.*, at 39 (quoting 18 U. S. C. §608(e)(1) (1970 ed.,

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donation] into numerous smaller contributions to hundreds of committees in various states which could then hold the money for the President's reelection campaign, so as to permit the producers to meet independent reporting requirements without disclosure." *Id.,* at 839, n. 36.

The milk producers contributed large sums to the Nixon campaign "in order to gain a meeting with White House officials on price supports." *Ibid.*

Supp. IV)). To avoid vagueness concerns we construed that phrase to apply only to "communications that in express terms advocate the election or defeat of a clearly identified candidate for federal office." 424 U. S., at 42–44. We concluded, however, that as so narrowed, the provision would not provide effective protection against the dangers of *quid pro quo* arrangements, because persons and groups could eschew expenditures that expressly advocated the election or defeat of a clearly identified candidate while remaining "free to spend as much as they want to promote the candidate and his views." *Id.*, at 45. We also rejected the argument that the expenditure limits were necessary to prevent attempts to circumvent the Act's contribution limits, because FECA already treated expenditures controlled by or coordinated with the candidate as contributions, and we were not persuaded that independent expenditures posed the same risk of real or apparent corruption as coordinated expenditures. *Id.*, at 46–47. We therefore held that Congress' interest in preventing real or apparent corruption was inadequate to justify the heavy burdens on the freedoms of expression and association that the expenditure limits imposed.

We upheld all of the disclosure and reporting requirements in the Act that were challenged on appeal to this Court after finding that they vindicated three important interests: providing the electorate with relevant information about the candidates and their supporters; deterring actual corruption and discouraging the use of money for improper purposes; and facilitating enforcement of the prohibitions in the Act. *Id.*, at 66–68. In order to avoid an overbreadth problem, however, we placed the same narrowing construction on the term "expenditure" in the disclosure context that we had adopted in the context of the expenditure limitations. Thus, we construed the reporting requirement for persons making expenditures of more than $100 in a year "to reach only funds used for

communications that expressly advocate the election or defeat of a clearly identified candidate." *Id.*, at 80 (footnote omitted).

Our opinion in *Buckley* addressed issues that primarily related to contributions and expenditures by individuals, since none of the parties challenged the prohibition on contributions by corporations and labor unions. We noted, however, that the statute authorized the use of corporate and union resources to form and administer segregated funds that could be used for political purposes. *Id.*, at 28–29, n. 31; see also n. 3, *supra*.

Three important developments in the years after our decision in *Buckley* persuaded Congress that further legislation was necessary to regulate the role that corporations, unions, and wealthy contributors play in the electoral process. As a preface to our discussion of the specific provisions of BCRA, we comment briefly on the increased importance of "soft money," the proliferation of "issue ads," and the disturbing findings of a Senate investigation into campaign practices related to the 1996 federal elections.

Soft Money

Under FECA, "contributions" must be made with funds that are subject to the Act's disclosure requirements and source and amount limitations. Such funds are known as "federal" or "hard" money. FECA defines the term "contribution," however, to include only the gift or advance of anything of value "made by any person for the purpose of influencing any election for *Federal* office." 2 U. S. C. §431(8)(A)(i) (emphasis added). Donations made solely for the purpose of influencing state or local elections are therefore unaffected by FECA's requirements and prohibitions. As a result, prior to the enactment of BCRA, federal law permitted corporations and unions, as well as individuals who had already made the maximum permissible contributions to federal candidates, to contribute "nonfed-

eral money"—also known as "soft money"—to political parties for activities intended to influence state or local elections.

Shortly after *Buckley* was decided, questions arose concerning the treatment of contributions intended to influence both federal and state elections. Although a literal reading of FECA's definition of "contribution" would have required such activities to be funded with hard money, the FEC ruled that political parties could fund mixed-purpose activities—including get-out-the-vote drives and generic party advertising—in part with soft money.[7] In 1995 the FEC concluded that the parties could also use soft money to defray the costs of "legislative advocacy media advertisements," even if the ads mentioned the name of a federal candidate, so long as they did not expressly advocate the candidate's election or defeat. FEC Advisory Op. 1995–25.

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[7] In 1977 the FEC promulgated a rule allowing parties to allocate their administrative expenses "on a reasonable basis" between accounts containing funds raised in compliance with FECA and accounts containing nonfederal funds, including corporate and union donations. 11 CFR §102.6(a)(2). In advisory opinions issued in 1978 and 1979, the FEC allowed parties similarly to allocate the costs of voter registration and get-out-the-vote drives between federal and nonfederal accounts. FEC Advisory Op. 1978–10; FEC Advisory Op. 1979–17. See 251 F. Supp. 2d, at 195–197 *(per curiam)*.

In 1990 the FEC clarified the phrase "on a reasonable basis" by promulgating fixed allocation rates. 11 CFR §106.5 (1991). The regulations required the Republican National Committee (RNC) and Democratic National Committee (DNC) to pay for at least 60% of mixed-purpose activities (65% in presidential election years) with funds from their federal accounts. §106.5(b)(2). By contrast, the regulations required state and local committees to allocate similar expenditures based on the ratio of federal to nonfederal offices on the State's ballot, §106.5(d)(1), which in practice meant that they could expend a substantially greater proportion of soft money than national parties to fund mixed-purpose activities affecting both federal and state elections. See 251 F. Supp. 2d, at 198–199 *(per curiam)*.

As the permissible uses of soft money expanded, the amount of soft money raised and spent by the national political parties increased exponentially. Of the two major parties' total spending, soft money accounted for 5% ($21.6 million) in 1984, 11% ($45 million) in 1988, 16% ($80 million) in 1992, 30% ($272 million) in 1996, and 42% ($498 million) in 2000.[8] The national parties transferred large amounts of their soft money to the state parties, which were allowed to use a larger percentage of soft money to finance mixed-purpose activities under FEC rules.[9] In the year 2000, for example, the national parties diverted $280 million—more than half of their soft money—to state parties.

Many contributions of soft money were dramatically larger than the contributions of hard money permitted by FECA. For example, in 1996 the top five corporate soft-money donors gave, in total, more than $9 million in non-federal funds to the two national party committees.[10] In the most recent election cycle the political parties raised almost $300 million—60% of their total soft-money fund-raising—from just 800 donors, each of which contributed a minimum of $120,000.[11] Moreover, the largest corporate donors often made substantial contributions to both parties.[12] Such practices corroborate evidence indicating that many corporate contributions were motivated by a desire for access to candidates and a fear of being placed at a

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[8] 1 Defs. Exhs., Tab 1, Tbl. 2 (report of Thomas E. Mann, Chair & Sr. Fellow, Brookings Institution (hereinafter Mann Expert Report)); 251 F. Supp. 2d, at 197–201 *(per curiam).*

[9] Mann Expert Report 26; 251 F. Supp. 2d, at 441 (Kollar-Kotelly, J.).

[10] *Id.,* at 494 (Kollar-Kotelly, J.).

[11] Mann Expert Report 24.

[12] In the 2000 election cycle, 35 of the 50 largest soft-money donors gave to both parties; 28 of the 50 gave more than $100,000 to both parties. Mann Expert Report Tbl. 6; see also 251 F. Supp. 2d, at 509 (Kollar-Kotelly, J.); *id.*, at 785, n. 77 (Leon, J.).

disadvantage in the legislative process relative to other contributors, rather than by ideological support for the candidates and parties.[13]

Not only were such soft-money contributions often designed to gain access to federal candidates, but they were in many cases solicited by the candidates themselves. Candidates often directed potential donors to party committees and tax-exempt organizations that could legally accept soft money. For example, a federal legislator running for reelection solicited soft money from a supporter by advising him that even though he had already "contributed the legal maximum" to the campaign committee, he could still make an additional contribution to a joint program supporting federal, state, and local candidates of his party.[14] Such solicitations were not uncommon.[15]

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[13] A former chief executive officer of a large corporation explained:

"Business and labor leaders believe, based on their experience, that disappointed Members, and their party colleagues, may shun or disfavor them because they have not contributed. Equally, these leaders fear that if they refuse to contribute (enough), competing interests who do contribute generously will have an advantage in gaining access to and influencing key Congressional leaders on matters of importance to the company or union." App. 283, ¶9 (declaration of Gerald Greenwald, United Airlines (hereinafter Greenwald Decl.)).

Amici Curiae Committee for Economic Development and various business leaders attest that corporate soft-money contributions are "coerced and, at bottom, wholly commercial" in nature, and that "[b]usiness leaders increasingly wish to be freed from the grip of a system in which they fear the adverse consequences of refusing to fill the coffers of the major parties." Brief for Committee for Economic Development et al. as *Amici Curiae* 28.

[14] See 251 F. Supp. 2d, at 480 (Kollar-Kotelly, J.); *id.*, at 842 (Leon, J.).

[15] See *id.*, at 479–480 (Kollar-Kotelly, J.); *id.*, at 842–843 (Leon, J.). One former party official explained to the District Court:

"'Once you've helped a federal candidate by contributing hard money to his or her campaign, you are sometimes asked to do more for the candidate by making donations of hard and/or soft money to the na-

The solicitation, transfer, and use of soft money thus enabled parties and candidates to circumvent FECA's limitations on the source and amount of contributions in connection with federal elections.

Issue Advertising

In *Buckley* we construed FECA's disclosure and reporting requirements, as well as its expenditure limitations, "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." 424 U. S., at 80 (footnote omitted). As a result of that strict reading of the statute, the use or omission of "magic words" such as "Elect John Smith" or "Vote Against Jane Doe" marked a bright statutory line separating "express advocacy" from "issue advocacy." See *id.*, at 44, n. 52. Express advocacy was subject to FECA's limitations and could be financed only using hard money. The political parties, in other words, could not use soft money to sponsor ads that used any magic words, and corporations and unions could not fund such ads out of their general treasuries. So-called issue ads, on the other hand, not only could be financed with soft money, but could be aired without disclosing the identity of, or any other information about, their sponsors.

While the distinction between "issue" and express advocacy seemed neat in theory, the two categories of advertisements proved functionally identical in important respects. Both were used to advocate the election or defeat of clearly identified federal candidates, even though the so-called issue ads eschewed the use of magic words.[16]

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tional party committees, the relevant state party (assuming it can accept corporate contributions), or an outside group that is planning on doing an independent expenditure or issue advertisement to help the candidate's campaign.'" *Id.*, at 479 (Kollar-Kotelly, J.).

[16] *Id.*, at 532–537 (Kollar-Kotelly, J.); *id.*, at 875–879 (Leon, J.). As

Little difference existed, for example, between an ad that urged viewers to "vote against Jane Doe" and one that condemned Jane Doe's record on a particular issue before exhorting viewers to "call Jane Doe and tell her what you think."[17] Indeed, campaign professionals testified that the most effective campaign ads, like the most effective commercials for products such as Coca-Cola, should, and did, avoid the use of the magic words.[18] Moreover, the conclusion that such ads were specifically intended to affect election results was confirmed by the fact that almost all of them aired in the 60 days immediately preceding a federal election.[19] Corporations and unions spent hundreds of millions of dollars of their general funds to pay for these ads,[20] and those expenditures, like soft-money dona-

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the former chair of one major advocacy organization's PAC put it, "'[i]t is foolish to believe there is any practical difference between issue advocacy and advocacy of a political candidate. What separates issue advocacy and political advocacy is a line in the sand drawn on a windy day.'" *Id.,* at 536–537 (Kollar-Kotelly, J.) (quoting Tanya K. Metaksa, Opening Remarks at the American Assn. of Political Consultants Fifth General Session on "Issue Advocacy," Jan. 17, 1997, p. 2); 251 F. Supp. 2d, at 878–879 (Leon, J.) (same).

[17] *Id.,* at 304 (Henderson, J., concurring in judgment in part and dissenting in part); *id.*, at 534 (Kollar-Kotelly, J.); *id.*, at 875–879 (Leon, J.).

[18] It is undisputed that very few ads—whether run by candidates, parties, or interest groups—used words of express advocacy. *Id.,* at 303 (Henderson, J.); *id.*, at 529 (Kollar-Kotelly, J.); *id.*, at 874 (Leon, J.). In the 1998 election cycle, just 4% of candidate advertisements used magic words; in 2000, that number was a mere 5%. App. 1334 (report of Jonathan S. Krasno, Yale University, & Frank J. Sorauf, University of Minnesota, pp. 53–54 (hereinafter Krasno & Sorauf Expert Report); see 1 Defs. Exhs., Tab 2, pp. 53–54).

[19] 251 F. Supp. 2d, at 564, and n. 6 (Kollar-Kotelly, J.) (citing report of Kenneth M. Goldstein, University of Wisconsin-Madison, App. A, Tbl. 16; see 3–R Defs. Exhs., Tab 7); Tr. of Oral Arg. 202–203; see also 251 F. Supp. 2d, at 305 (Henderson, J.).

[20] The spending on electioneering communications climbed dramati-

tions to the political parties, were unregulated under FECA. Indeed, the ads were attractive to organizations and candidates precisely because they were beyond FECA's reach, enabling candidates and their parties to work closely with friendly interest groups to sponsor so-called issue ads when the candidates themselves were running out of money.[21]

Because FECA's disclosure requirements did not apply to so-called issue ads, sponsors of such ads often used misleading names to conceal their identity. "Citizens for Better Medicare," for instance, was not a grassroots organization of citizens, as its name might suggest, but was instead a platform for an association of drug manufacturers.[22] And "Republicans for Clean Air," which ran ads in the 2000 Republican Presidential primary, was actually an organization consisting of just two individuals—brothers who together spent $25 million on ads supporting their favored candidate.[23]

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cally during the last decade. In the 1996 election cycle, $135 to $150 million was spent on multiple broadcasts of about 100 ads. In the next cycle (1997-1998), 77 organizations aired 423 ads at a total cost between $270 and $340 million. By the 2000 election, 130 groups spent over an estimated $500 million on more than 1,100 different ads. Two out of every three dollars spent on issue ads in the 2000 cycle were attributable to the two major parties and six major interest groups. *Id.,* at 303–304 (Henderson, J.) (citing Annenberg Public Policy Center, Issue Advertising in the 1999–2000 Election Cycle 1–15 (2001) (hereinafter Annenberg Report); see 38 Defs. Exhs., Tab 22); 251 F. Supp. 2d, at 527 (Kollar-Kotelly, J.) (same); *id.*, at 879 (Leon, J.) (same).

[21] *Id.,* at 540 (Kollar-Kotelly, J.) (quoting internal AFL-CIO Memorandum from Brian Weeks to Mike Klein, "Electronic Buy for Illinois Senator," (Oct. 9, 1996), AFL-CIO 005244); 251 F. Supp. 2d, at 886 (Leon, J.) (same).

[22] The association was known as the Pharmaceutical Research and Manufacturers of America (PhRMA). *Id.*, at 232 *(per curiam).*

[23] *Id.*, at 232–233. Other examples of mysterious groups included "Voters for Campaign Truth," "Aretino Industries," "Montanans for Common Sense Mining Laws," "American Seniors, Inc.," "American

While the public may not have been fully informed about the sponsorship of so-called issue ads, the record indicates that candidates and officeholders often were. A former Senator confirmed that candidates and officials knew who their friends were and "sometimes suggest[ed] that corporations or individuals make donations to interest groups that run 'issue ads.'"[24] As with soft-money contributions, political parties and candidates used the availability of so-called issue ads to circumvent FECA's limitations, asking donors who contributed their permitted quota of hard money to give money to nonprofit corporations to spend on "issue" advocacy.[25]

Senate Committee Investigation

In 1998 the Senate Committee on Governmental Affairs issued a six-volume report summarizing the results of an extensive investigation into the campaign practices in the 1996 federal elections. The report gave particular attention to the effect of soft money on the American political system, including elected officials' practice of granting special access in return for political contributions.

The committee's principal findings relating to Democratic Party fundraising were set forth in the majority's report, while the minority report primarily described

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Family Voices," App. 1355 (Krasno & Sorauf Expert Report 71–77), and the "Coalition to Make our Voices Heard," 251 F. Supp. 2d, at 538 (Kollar-Kotelly, J.). Some of the actors behind these groups frankly acknowledged that "'in some places it's much more effective to run an ad by the 'Coalition to Make Our Voices Heard' than it is to say paid for by 'the men and women of the AFL–CIO.'" *Ibid.* (Kollar-Kotelly, J.) (quoting report of David B. Magleby, Brigham Young University 18–19 (hereinafter Magleby Expert Report), App. 1484–1485).

[24] 251 F. Supp. 2d, at 518–519 (Kollar-Kotelly, J.).

[25] *Id.,* at 478–479 (Kollar-Kotelly, J.) (citing declaration of Robert Hickmott, Senior V. P., Smith-Free Group, ¶8 (hereinafter Hickmott Decl.); see 6–R Defs. Exhs., Tab 19, ¶8).

Republican practices. The two reports reached consensus, however, on certain central propositions. They agreed that the "soft money loophole" had led to a "meltdown" of the campaign finance system that had been intended "to keep corporate, union and large individual contributions from influencing the electoral process."[26] One Senator stated that "the hearings provided overwhelming evidence that the twin loopholes of soft money and bogus issue advertising have virtually destroyed our campaign finance laws, leaving us with little more than a pile of legal rubble."[27]

The report was critical of both parties' methods of raising soft money, as well as their use of those funds. It concluded that both parties promised and provided special access to candidates and senior Government officials in exchange for large soft-money contributions. The Committee majority described the White House coffees that rewarded major donors with access to President Clinton,[28] and the courtesies extended to an international businessman named Roger Tamraz, who candidly acknowledged that his donations of about $300,000 to the DNC and to state parties were motivated by his interest in gaining the Federal Government's support for an oil-line project in the Caucasus.[29] The minority described the promotional

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[26] S. Rep. No. 105–167, vol. 4, p. 4611 (1998) (hereinafter 1998 Senate Report); 5 *id.,* at 7515.

[27] 3 *id.,* at 4535 (additional views of Sen. Collins).

[28] 1 *id.,* at 41–42, 195–200. The report included a memorandum written by the DNC finance chairman suggesting the use of White House coffees and "overnights" to give major donors "quality time" with the President, and noted that the guests accounted for $26.4 million in contributions. *Id.*, at 194, 196.

[29] 2 *id.,* at 2913–2914, 2921. Despite concerns about Tamraz's background and a possible conflict with United States foreign policy interests, he was invited to six events attended by the President. *Id.*, at 2920–2921. Similarly, the minority noted that in exchange for Michael

materials used by the RNC's two principal donor programs, "Team 100" and the "Republican Eagles," which promised "special access to high-ranking Republican elected officials, including governors, senators, and representatives."[30] One fundraising letter recited that the chairman of the RNC had personally escorted a donor on appointments that "'turned out to be very significant in legislation affecting public utility holding companies'" and made the donor "'a hero in his industry.'"[31]

In 1996 both parties began to use large amounts of soft money to pay for issue advertising designed to influence federal elections. The Committee found such ads highly problematic for two reasons. Since they accomplished the same purposes as express advocacy (which could lawfully be funded only with hard money), the ads enabled unions, corporations, and wealthy contributors to circumvent protections that FECA was intended to provide. Moreover, though ostensibly independent of the candidates, the ads were often actually coordinated with, and controlled by, the campaigns.[32] The ads thus provided a means for evading FECA's candidate contribution limits.

The report also emphasized the role of state and local parties. While the FEC's allocation regime permitted national parties to use soft money to pay for up to 40% of the costs of both generic voter activities and issue advertising, they allowed state and local parties to use larger

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Kojima's contribution of $500,000 to the 1992 President's Dinner, he and his wife had been placed at the head table with President and Mrs. Bush. Moreover, Kojima received several additional meetings with the President, other administration officials, and United States embassy officials. 4 *id.,* at 5418, 5422, 5428.

[30] The former requires an initial contribution of $100,000, and $25,000 for each of the next three years; the latter requires annual contributions of $15,000. 5 *id.,* at 7968.

[31] *Id.*, at 7971.

[32] 1 *id.,* at 49; 3 *id.,* at 3997–4006.

percentages of soft money for those purposes.[33] For that reason, national parties often made substantial transfers of soft money to "state and local political parties for 'generic voter activities' that in fact ultimately benefit[ed] federal candidates because the funds for all practical purposes remain[ed] under the control of the national committees." The report concluded that "[t]he use of such soft money thus allow[ed] more corporate, union treasury, and large contributions from wealthy individuals into the system."[34]

The report discussed potential reforms, including a ban on soft money at the national and state party levels and restrictions on sham issue advocacy by nonparty groups.[35] The majority expressed the view that a ban on the raising of soft money by national party committees would effectively address the use of union and corporate general treasury funds in the federal political process only if it required that candidate-specific ads be funded with hard money.[36] The minority similarly recommended the elimination of soft-money contributions to political parties from individuals, corporations, and unions, as well as "reforms addressing candidate advertisements masquerading as issue ads."[37]

II

In BCRA, Congress enacted many of the committee's proposed reforms. BCRA's central provisions are designed to address Congress' concerns about the increasing use of soft money and issue advertising to influence federal elections. Title I regulates the use of soft money by politi-

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[33] *Id.*, at 4466.
[34] *Ibid.*
[35] *Id.*, at 4468–4470, 4480–4481, 4491–4494.
[36] *Id.*, at 4492.
[37] 6 *id.,* at 9394.

cal parties, officeholders, and candidates. Title II primarily prohibits corporations and labor unions from using general treasury funds for communications that are intended to, or have the effect of, influencing the outcome of federal elections.

Section 403 of BCRA provides special rules for actions challenging the constitutionality of any of the Act's provisions. 2 U. S. C. A. §437h note (Supp. 2003). Eleven such actions were filed promptly after the statute went into effect in March 2002. As required by §403, those actions were filed in the District Court for the District of Columbia and heard by a three-judge court. Section 403 directed the District Court to advance the cases on the docket and to expedite their disposition "to the greatest possible extent." The court received a voluminous record compiled by the parties and ultimately delivered a decision embodied in a two-judge *per curiam* opinion and three separate, lengthy opinions, each of which contained extensive commentary on the facts and a careful analysis of the legal issues. 251 F. Supp. 2d 176 (2003). The three judges reached unanimity on certain issues but differed on many. Their judgment, entered on May 1, 2003, held some parts of BCRA unconstitutional and upheld others. 251 F. Supp. 2d 948.

As authorized by §403, all of the losing parties filed direct appeals to this Court within 10 days. 2 U. S. C. A. §437h note. On June 5, 2003, we noted probable jurisdiction and ordered the parties to comply with an expedited briefing schedule and present their oral arguments at a special hearing on September 8, 2003. 539 U. S. ___. To simplify the presentation, we directed the parties challenging provisions of BCRA to proceed first on all issues, whether or not they prevailed on any issue in the District Court. *Ibid.* Mindful of §403's instruction that we expedite our disposition of these appeals to the greatest extent possible, we also consider each of the issues in order.

Accordingly, we first turn our attention to Title I of BCRA.

III

Title I is Congress' effort to plug the soft-money loophole. The cornerstone of Title I is new FECA §323(a), which prohibits national party committees and their agents from soliciting, receiving, directing, or spending any soft money. 2 U. S. C. A. §441i(a) (Supp. 2003).[38] In short, §323(a) takes national parties out of the soft-money business.

The remaining provisions of new FECA §323 largely reinforce the restrictions in §323(a). New FECA §323(b) prevents the wholesale shift of soft-money influence from national to state party committees by prohibiting state and local party committees from using such funds for activities that affect federal elections. 2 U. S. C. A. §441i(b). These "Federal election activit[ies]," defined in new FECA §301(20)(A), are almost identical to the mixed-purpose activities that have long been regulated under the FEC's pre-BCRA allocation regime. 2 U. S. C. A. §431(20)(A). New FECA §323(d) reinforces these soft-money restrictions by prohibiting political parties from soliciting and donating funds to tax-exempt organizations that engage in electioneering activities. 2 U. S. C. A. §441i(d). New FECA §323(e) restricts federal candidates and officeholders from receiving, spending, or soliciting soft money in connection with federal elections and limits their ability to do so in connection with state and local elections. 2 U. S. C. A. §441i(e). Finally, new FECA

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[38] The national party committees of the two major political parties are: the Republican National Committee (RNC); the Democratic National Committee (DNC); the National Republican Senatorial Committee (NRSC); the National Republican Congressional Committee (NRCC); the Democratic Senatorial Campaign Committee (DSCC); and the Democratic Congressional Campaign Committee (DCCC). 251 F. Supp. 2d, at 468 (Kollar-Kotelly, J.).

§323(f) prevents circumvention of the restrictions on national, state, and local party committees by prohibiting state and local candidates from raising and spending soft money to fund advertisements and other public communications that promote or attack federal candidates. 2 U. S. C. A. §441i(f).

Plaintiffs mount a facial First Amendment challenge to new FECA §323, as well as challenges based on the Elections Clause, U. S. Const., Art. I, §4, principles of federalism, and the equal protection component of the Due Process Clause. We address these challenges in turn.

A

In *Buckley* and subsequent cases, we have subjected restrictions on campaign expenditures to closer scrutiny than limits on campaign contributions. See, *e.g., Federal Election Comm'n* v. *Beaumont,* 539 U. S. ___, ___ (2003) (slip op., at 14); see also *Nixon* v. *Shrink Missouri Government PAC,* 528 U. S. 377, 387–388 (2000); *Buckley*, 424 U. S., at 19. In these cases we have recognized that contribution limits, unlike limits on expenditures, "entai[l] only a marginal restriction upon the contributor's ability to engage in free communication." *Id.,* at 20; see also, *e.g., Beaumont*, *supra,* at ___ (slip op., at 14); *Shrink Missouri*, *supra,* at 386–388. In *Buckley* we said that:

> "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 the 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 organiza-

> tion 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." 424 U. S., at 21 (footnote omitted).

Because the communicative value of large contributions inheres mainly in their ability to facilitate the speech of their recipients, we have said that contribution limits impose serious burdens on free speech only if they are so low as to "preven[t] candidates and political committees from amassing the resources necessary for effective advocacy." *Ibid.*

We have recognized that contribution limits may bear "more heavily on the associational right than on freedom to speak," *Shrink Missouri*, *supra*, at 388, since contributions serve "to affiliate a person with a candidate" and "enabl[e] like-minded persons to pool their resources," *Buckley*, 424 U. S., at 22. Unlike expenditure limits, however, which "preclud[e] most associations from effectively amplifying the voice of their adherents," contribution limits both "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 allow associations "to aggregate large sums of money to promote effective advocacy." *Ibid.* The "overall effect" of dollar limits on contributions is "merely to require candidates and political committees to raise funds from a greater number of persons." *Id.,* at 21–22. Thus, a contribution limit involving even "'significant interference'" with associational rights is nevertheless valid if it satisfies

the "lesser demand" of being "'closely drawn'" to match a "'sufficiently important interest.'" *Beaumont*, *supra*, at ___ (slip op., at 15) (quoting *Shrink Missouri*, *supra*, at 387–388).[39]

Our treatment of contribution restrictions reflects more than the limited burdens they impose on First Amendment freedoms. It also reflects the importance of the interests that underlie contribution limits—interests in preventing "both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption." *National Right to Work,* 459 U. S., at 208; see also *Federal Election Comm'n* v. *Colorado Republican Federal Campaign Comm.,* 533 U. S. 431, 440–441 (2001) *(Colorado II).* We have said that these interests directly implicate "'the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process.'" *National Right to Work, supra*, at 208 (quoting *Automobile Workers,* 352 U. S., at 570). Because the electoral process is the very "means through which a free society democratically translates political speech into concrete governmental action," *Shrink Missouri*, 528 U. S., at 401 (BREYER, J., concurring), contribution limits, like other measures aimed at protecting the integrity of the process, tangibly benefit public participation in political debate. For that

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[39] JUSTICE KENNEDY accuses us of engaging in a sleight of hand by conflating "unseemly corporate speech" with the speech of political parties and candidates, and then adverting to the "corporate speech rationale as if it were the linchpin of the litigation." *Post*, at 7 (opinion concurring in part and dissenting in part). This is incorrect. The principles set forth here and relied upon in assessing Title I are the same principles articulated in *Buckley* and its progeny that regulations of contributions to candidates, parties, and political committees are subject to less rigorous scrutiny than direct restraints on speech—including "unseemly corporate speech."

reason, when reviewing Congress' decision to enact contribution limits, "there is no place for a strong presumption against constitutionality, of the sort often thought to accompany the words 'strict scrutiny.'" *Id.*, at 400 (BREYER, J., concurring). The less rigorous standard of review we have applied to contribution limits (*Buckley*'s "closely drawn" scrutiny) shows proper deference to Congress' ability to weigh competing constitutional interests in an area in which it enjoys particular expertise. It also provides Congress with sufficient room to anticipate and respond to concerns about circumvention of regulations designed to protect the integrity of the political process.

Our application of this less rigorous degree of scrutiny has given rise to significant criticism in the past from our dissenting colleagues. See, *e.g.*, *Shrink Missouri*, 528 U. S., at 405–410 (KENNEDY, J., dissenting); *id.*, at 410–420 (THOMAS, J., dissenting); *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n,* 518 U. S. 604, 635–644 (1996) *(Colorado I)* (THOMAS, J., dissenting). We have rejected such criticism in previous cases for the reasons identified above. We are also mindful of the fact that in its lengthy deliberations leading to the enactment of BCRA, Congress properly relied on the recognition of its authority contained in *Buckley* and its progeny. Considerations of *stare decisis*, buttressed by the respect that the Legislative and Judicial Branches owe to one another, provide additional powerful reasons for adhering to the analysis of contribution limits that the Court has consistently followed since *Buckley* was decided. See *Hilton* v. *South Carolina Public Railways Comm'n,* 502 U. S. 197, 202 (1991).[40]

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[40] Since our decision in *Buckley*, we have consistently applied less rigorous scrutiny to contribution restrictions aimed at the prevention of corruption and the appearance of corruption. See, *e.g.*, 424 U. S., at 23–36 (applying less rigorous scrutiny to FECA's $1,000 limit on individual

Like the contribution limits we upheld in *Buckley*, §323's restrictions have only a marginal impact on the ability of contributors, candidates, officeholders, and parties to engage in effective political speech. *Beaumont*, 539 U. S., at ___ (slip op., at 14). Complex as its provisions may be, §323, in the main, does little more than regulate the ability of wealthy individuals, corporations, and unions to contribute large sums of money to influence federal elections, federal candidates, and federal officeholders.

Plaintiffs contend that we must apply strict scrutiny to §323 because many of its provisions restrict not only contributions but also the spending and solicitation of funds raised outside of FECA's contribution limits. But for purposes of determining the level of scrutiny, it is irrelevant that Congress chose in §323 to regulate contributions on the demand rather than the supply side. See, *e.g.*, *National Right to Work, supra,* at 206–211 (upholding a provision restricting PACs' ability to solicit funds). The relevant inquiry is whether the mechanism adopted to implement the contribution limit, or to prevent circumvention of that limit, burdens speech in a way that a direct

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contributions to a candidate and FECA's $5,000 limit on PAC contributions to a candidate); *id.*, at 38 (applying less rigorous scrutiny to FECA's $25,000 aggregate yearly limit on contributions to candidates, political party committees, and political committees); *California Medical Assn.* v. *Federal Election Comm'n,* 453 U. S. 182, 195–196 (1981) (plurality opinion) (applying less rigorous scrutiny to FECA's $5,000 limit on contributions to multicandidate political committees); *National Right to Work*, 459 U. S., at 208–211 (applying less rigorous scrutiny to antisolicitation provision buttressing an otherwise valid contribution limit); *Colorado II*, 533 U. S. 431, 456 (2001) (applying less rigorous scrutiny to expenditures coordinated with a candidate); *Federal Election Comm'n* v. *Beaumont,* 539 U. S.___, ___ (2003) (slip op., at 14–15) (applying less rigorous scrutiny to provisions intended to prevent circumvention of otherwise valid contribution limits).

restriction on the contribution itself would not. That is not the case here.

For example, while §323(a) prohibits national parties from receiving or spending nonfederal money, and §323(b) prohibits state party committees from spending nonfederal money on federal election activities, neither provision in any way limits the total amount of money parties can spend. 2 U. S. C. A. §§441i(a), (b) (Supp. 2003). Rather, they simply limit the source and individual amount of donations. That they do so by prohibiting the spending of soft money does not render them expenditure limitations.[41]

Similarly, the solicitation provisions of §323(a) and §323(e), which restrict the ability of national party committees, federal candidates, and federal officeholders to solicit nonfederal funds, leave open ample opportunities for soliciting federal funds on behalf of entities subject to FECA's source and amount restrictions. Even §323(d), which on its face enacts a blanket ban on party solicitations of funds to certain tax-exempt organizations, nevertheless allows parties to solicit funds to the organizations' federal PACs. 2 U. S. C. A. §441i(d). As for those organizations that cannot or do not administer PACs, parties remain free to donate federal funds directly to such organizations, and may solicit funds expressly for that purpose. See *infra*, at 72–73 (construing §323(d)'s restriction on donations by parties to apply only to donations from a party committee's nonfederal or soft-money account). And as with §323(a), §323(d) places no limits on other means of endorsing tax-exempt organizations or any restrictions on solicitations by party officers acting in their individual

[41] Indeed, Congress structured §323(b) in such a way as to free individual, corporate, and union donations to state committees for *nonfederal* elections from federal source and amount restrictions.

capacities. 2 U. S. C. A. §§441i(a), (d).

Section 323 thus shows "due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views." *Schaumburg* v. *Citizens for a Better Environment,* 444 U. S. 620, 632 (1980). The fact that party committees and federal candidates and officeholders must now ask only for limited dollar amounts or request that a corporation or union contribute money through its PAC in no way alters or impairs the political message "intertwined" with the solicitation. Cf. *Riley* v. *National Federation of Blind of N. C., Inc.,* 487 U. S. 781, 795 (1988) (treating solicitation restriction that required fundraisers to disclose particular information as a content-based regulation subject to strict scrutiny because it "necessarily alter[ed] the content of the speech"). And rather than chill such solicitations, as was the case in *Schaumburg*, the restriction here tends to increase the dissemination of information by forcing parties, candidates, and officeholders to solicit from a wider array of potential donors. As with direct limits on contributions, therefore, §323's spending and solicitation restrictions have only a marginal impact on political speech.[42]

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[42] JUSTICE KENNEDY's contention that less rigorous scrutiny applies only to regulations burdening political association, rather than political speech, misreads *Buckley*. In *Buckley*, we recognized that contribution limits burden both protected speech and association, though they generally have more significant impacts on the latter. 424 U. S., at 20–22. We nevertheless applied less rigorous scrutiny to FECA's contribution limits because neither burden was sufficiently weighty to overcome Congress' countervailing interest in protecting the integrity of the political process. See *Nixon* v. *Shrink Missouri Government PAC*, 528 U. S. 377, 388 (2000) ("While we did not [in *Buckley*] attempt to parse [the] distinctions between the speech and association standards of scrutiny for contribution limits, we did make it clear that those restrictions bore more heavily on the associational right than on [the] freedom

Finally, plaintiffs contend that the type of associational burdens that §323 imposes are fundamentally different from the burdens that accompanied *Buckley*'s contribution limits, and merit the type of strict scrutiny we have applied to attempts to regulate the internal processes of political parties. *E.g.*, *California Democratic Party* v. *Jones,* 530 U. S. 567, 573–574 (2000). In making this argument, plaintiffs greatly exaggerate the effect of §323, contending that it precludes *any* collaboration among national, state, and local committees of the same party in fundraising and electioneering activities. We do not read the provisions in that way. See *infra*, at 51–52. Section 323 merely subjects a greater percentage of contributions to parties and candidates to FECA's source and amount limitations. *Buckley* has already acknowledged that such limitations "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." 424 U. S., at 22. The modest impact that §323 has on the ability of committees within a party to associate with each other does not independently occasion strict scrutiny. None of this is to suggest that the alleged associational burdens imposed on parties by §323 have no place in the First Amendment analysis; it is only that we account for them in the application, rather than the choice, of the appropriate level of scrutiny.[43]

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to speak. We consequently proceeded on the understanding that a contribution limitation surviving a claim of associational abridgment would survive a speech challenge as well, and we held the standard satisfied by the contribution limits under review." (citation omitted)). It is thus simply untrue in the campaign finance context that all "burdens on speech necessitate strict scrutiny review." *Post*, at 29.

[43] JUSTICE KENNEDY is no doubt correct that the associational burdens imposed by a particular piece of campaign-finance regulation may at times be so severe as to warrant strict scrutiny. *Ibid.* In light of our interpretation of §323(a), however, see *infra,* at 46–47, §323 does not

With these principles in mind, we apply the less rigorous scrutiny applicable to contribution limits to evaluate the constitutionality of new FECA §323. Because the five challenged provisions of §323 implicate different First Amendment concerns, we discuss them separately. We are mindful, however, that Congress enacted §323 as an integrated whole to vindicate the Government's important interest in preventing corruption and the appearance of corruption.

New FECA §323(a)'s Restrictions on National Party Committees

The core of Title I is new FECA §323(a), which provides that "national committee[s] of a political party . . . may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act." 2 U. S. C. A. §441i(a)(1) (Supp. 2003). The prohibition extends to "any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, or maintained, or controlled by such a national committee." §441(a)(2).

The main goal of §323(a) is modest. In large part, it simply effects a return to the scheme that was approved in *Buckley* and that was subverted by the creation of the FEC's allocation regime, which permitted the political parties to fund federal electioneering efforts with a combination of hard and soft money. See *supra*, at 11–13, and

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present such a case. As JUSTICE KENNEDY himself acknowledges, even "*significant* interference" with "protected rights of association" are subject to less rigorous scrutiny. *Beaumont*, 539 U. S., at _____ (slip op., at 15); see *post*, at 28. There is thus nothing inconsistent in our decision to account for the particular associational burdens imposed by §323(a) when applying the appropriate level of scrutiny.

n. 7. Under that allocation regime, national parties were able to use vast amounts of soft money in their efforts to elect federal candidates. Consequently, as long as they directed the money to the political parties, donors could contribute large amounts of soft money for use in activities designed to influence federal elections.[44] New §323(a) is designed to put a stop to that practice.

1. *Governmental Interests Underlying New FECA §323(a)*

The Government defends §323(a)'s ban on national parties' involvement with soft money as necessary to prevent the actual and apparent corruption of federal candidates and officeholders. Our cases have made clear that the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits. We have not limited that interest to the elimination of cash-for-votes exchanges. In *Buckley*, we expressly rejected the argument that antibribery laws provided a less restrictive alternative to FECA's contribution limits, noting that such laws "deal[t] with only the most blatant and specific attempts of those with money to influ-

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[44] The fact that the post-1990 explosion in soft-money spending on federal electioneering was accompanied by a series of efforts in Congress to clamp down on such uses of soft money (culminating, of course, in BCRA) underscores the fact that the FEC regulations permitted more than Congress, in enacting FECA, had ever intended. See J. Cantor, Congressional Research Service Report for Congress: Campaign Finance Legislation in the 101st Congress (1990) (9 bills seeking to limit the influence of soft money introduced); J. Cantor, CRS Report for Congress: Campaign Finance Legislation in the 102nd Congress (1991) (10 such bills introduced); J. Cantor, CRS Report for Congress: Campaign Finance Legislation in the 103rd Congress (1993) (16 bills); J. Cantor, CRS Report for Congress: Campaign Finance Legislation in the 104th Congress (1996) (18 bills); see also 251 F. Supp. 2d, at 201–206 *(per curiam)* (discussing legislative efforts to curb soft money in 105th and subsequent Congresses).

ence government action." 424 U. S., at 28. Thus, "[i]n speaking of 'improper influence' and 'opportunities for abuse' in addition to '*quid pro quo* arrangements,' we [have] recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors." *Shrink Missouri*, 528 U. S., at 389; see also *Colorado II*, 533 U. S., at 441 (acknowledging that corruption extends beyond explicit cash-for-votes agreements to "undue influence on an officeholder's judgment").

Of "almost equal" importance has been the Government's interest in combating the appearance or perception of corruption engendered by large campaign contributions. *Buckley*, *supra*, at 27; see also *Shrink Missouri, supra,* at 390; *Federal Election Comm'n* v. *National Conservative Political Action Comm.,* 470 U. S. 480, 496–497 (1985). Take away Congress' authority to regulate the appearance of undue influence and "the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance." *Shrink Missouri*, 528 U. S., at 390; see also *id.*, at 401 (BREYER, J., concurring). And because the First Amendment does not require Congress to ignore the fact that "candidates, donors, and parties test the limits of the current law," *Colorado II*, 533 U. S., at 457, these interests have been sufficient to justify not only contribution limits themselves, but laws preventing the circumvention of such limits, *id.*, at 456 ("[A]ll Members of the Court agree that circumvention is a valid theory of corruption").

"The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty or the plausibility of the justification raised." *Shrink Missouri, supra,* at 391. The idea that large contributions to a national party can corrupt or, at the very least, create the appearance of corruption of federal candidates and officeholders is neither

novel nor implausible. For nearly 30 years, FECA has placed strict dollar limits and source restrictions on contributions that individuals and other entities can give to national, state, and local party committees for the purpose of influencing a federal election. The premise behind these restrictions has been, and continues to be, that contributions to a federal candidate's party in aid of that candidate's campaign threaten to create—no less than would a direct contribution to the candidate—a sense of obligation. See *Buckley*, *supra,* at 38 (upholding FECA's $25,000 limit on aggregate yearly contributions to a candidate, political committee, and political party committee as a "quite modest restraint . . . to prevent evasion of the $1,000 contribution limitation" by, among other things, "huge contributions to the candidate's political party"). This is particularly true of contributions to national parties, with which federal candidates and officeholders enjoy a special relationship and unity of interest. This close affiliation has placed national parties in a unique position, "whether they like it or not," to serve as "agents for spending on behalf of those who seek to produce obligated officeholders." *Colorado II*, *supra,* at 452; see also *Shrink Missouri*, *supra,* at 406 (KENNEDY, J., dissenting) ("[Respondent] asks us to evaluate his speech claim in the context of a system which favors candidates and officeholders whose campaigns are supported by *soft money, usually funneled through political parties*" (emphasis added)). As discussed below, rather than resist that role, the national parties have actively embraced it.

The question for present purposes is whether large *soft-money* contributions to national party committees have a corrupting influence or give rise to the appearance of corruption. Both common sense and the ample record in these cases confirm Congress' belief that they do. As set forth above, *supra*, at 11–13, and n. 7, the FEC's allocation regime has invited widespread circumvention of FECA's

limits on contributions to parties for the purpose of influencing federal elections. Under this system, corporate, union, and wealthy individual donors have been free to contribute substantial sums of soft money to the national parties, which the parties can spend for the specific purpose of influencing a particular candidate's federal election. It is not only plausible, but likely, that candidates would feel grateful for such donations and that donors would seek to exploit that gratitude.[45]

The evidence in the record shows that candidates and donors alike have in fact exploited the soft-money loophole, the former to increase their prospects of election and the latter to create debt on the part of officeholders, with the national parties serving as willing intermediaries. Thus, despite FECA's hard-money limits on direct contributions to candidates, federal officeholders have commonly asked donors to make soft-money donations to national and state committees "solely in order to assist federal campaigns," including the officeholder's own. 251 F. Supp. 2d, at 472 (Kollar-Kotelly, J.) (quoting declaration of Wade Randlett, CEO, Dashboard Technology ¶¶6–9 (hereinafter Randlett Decl.), App. 713–714); see also 251 F. Supp. 2d, at 471–473, 478–479 (Kollar-Kotelly, J.); *id.*, at 842–843 (Leon, J.). Parties kept tallies of the amounts of soft money raised by each officeholder, and "the amount of

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[45] JUSTICE KENNEDY contends that the plurality's observation in *Colorado I* that large soft-money donations to a political party pose little threat of corruption "establish[es] that" such contributions are not corrupting. *Post*, at 17–18 (citing *Colorado I*, 518 U. S. 604, 616, 617–618 (1996)). The cited dictum has no bearing on the present case. *Colorado I* addressed an entirely different question—namely, whether Congress could permissibly limit a party's independent expenditures—and did so on an entirely different set of facts. It also had before it an evidentiary record frozen in 1990—well before the soft-money explosion of the 1990's. See *Federal Election Comm'n* v. *Colorado Republican Fed. Campaign Comm.*, 839 F. Supp. 1448, 1451 (Colo. 1993).

money a Member of Congress raise[d] for the national political committees often affect[ed] the amount the committees g[a]ve to assist the Member's campaign." *Id.*, at 474–475 (Kollar-Kotelly, J.). Donors often asked that their contributions be credited to particular candidates, and the parties obliged, irrespective of whether the funds were hard or soft. *Id.*, at 477–478 (Kollar-Kotelly, J.); *id.*, at 824, 847 (Leon, J.). National party committees often teamed with individual candidates' campaign committees to create joint fundraising committees, which enabled the candidates to take advantage of the party's higher contribution limits while still allowing donors to give to their preferred candidate. *Id.*, at 478 (Kollar-Kotelly, J.); *id.*, at 847–848 (Leon, J.); see also App. 1286 (Krasno & Sorauf Expert Report (characterizing the joint fundraising committee as one "in which Senate candidates in effect rais[e] soft money for use in their own races")). Even when not participating directly in the fundraising, federal officeholders were well aware of the identities of the donors: National party committees would distribute lists of potential or actual donors, or donors themselves would report their generosity to officeholders. 251 F. Supp. 2d, at 487–488 (Kollar-Kotelly, J.) ("[F]or a Member not to know the identities of these donors, he or she must actively avoid such knowledge, as it is provided by the national political parties and the donors themselves"); *id.*, at 853–855 (Leon, J.).

For their part, lobbyists, CEOs, and wealthy individuals alike all have candidly admitted donating substantial sums of soft money to national committees not on ideological grounds, but for the express purpose of securing influence over federal officials. For example, a former lobbyist and partner at a lobbying firm in Washington, D. C., stated in his declaration:

"'You are doing a favor for somebody by making a

> large [soft-money] donation and they appreciate it. Ordinarily, people feel inclined to reciprocate favors. Do a bigger favor for someone—that is, write a larger check—and they feel even more compelled to reciprocate. In my experience, overt words are rarely exchanged about contributions, but people do have understandings.'" *Id.,* at 493 (Kollar-Kotelly, J.) (quoting declaration of Robert Rozen, partner, Ernst & Young ¶14; see 8–R Defs. Exhs., Tab 33).[46]

Particularly telling is the fact that, in 1996 and 2000, more than half of the top 50 soft-money donors gave substantial sums to *both* major national parties, leaving room for no other conclusion but that these donors were seeking influence, or avoiding retaliation, rather than promoting any particular ideology. See, *e.g.,* 251 F. Supp. 2d, at 508–510 (Kollar-Kotelly, J.) (citing Mann Expert Report Tbls.

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[46] Other business leaders agreed. For example, the chairman of the board and CEO of a major toy company explained:

"'Many in the corporate world view large soft money donations as a cost of doing business. . . . I remain convinced that in some of the more publicized cases, federal officeholders actually appear to have sold themselves and the party cheaply. They could have gotten even more money, because of the potential importance of their decisions to the affected business.'" 251 F. Supp. 2d, at 491 (Kollar-Kotelly, J.) (quoting declaration of Alan G. Hassenfeld, CEO, Hasbro, Inc., ¶16; see 6–R Defs. Exhs., Tab 17).

Similarly the chairman emeritus of a major airline opined:

"'Though a soft money check might be made out to a political party, labor and business leaders know that those checks open the doors of the offices of individual and important Members of Congress and the Administration. . . . Labor and business leaders believe—based on experience and with good reason—that such access gives them an opportunity to shape and affect governmental decisions and that their ability to do so derives from the fact that they have given large sums of money to the parties.'" 251 F. Supp. 2d, at 498 (Kollar-Kotelly, J.) (quoting Greenwald Decl. ¶12, App. 283–284, ¶10); 251 F. Supp. 2d, at 858–859 (Leon, J.) (same).

5–6); 251 F. Supp. 2d, at 509 ("'Giving soft money to both parties, the Republicans and the Democrats, makes no sense at all unless the donor feels that he or she is buying access.'" (quoting declaration of former Sen. Dale Bumpers ¶15, App. 175)).[47]

The evidence from the federal officeholders' perspective is similar. For example, one former Senator described the influence purchased by nonfederal donations as follows:

> "'Too often, Members' first thought is not what is right or what they believe, but how it will affect fund-raising. Who, after all, can seriously contend that a $100,000 donation does not alter the way one thinks about—and quite possibly votes on—an issue? . . . When you don't pay the piper that finances your campaigns, you will never get any more money from that piper. Since money is the mother's milk of politics, you never want to be in that situation.'" 251 F. Supp. 2d, at 481 (Kollar-Kotelly, J.) (quoting declaration of former Sen. Alan Simpson ¶10 (hereinafter Simpson

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[47] Even more troubling is evidence in the record showing that national parties have actively exploited the belief that contributions purchase influence or protection to pressure donors into making contributions. As one CEO explained:

"'[I]f you're giving a lot of soft money to one side, the other side knows. For many economically-oriented donors, there is a risk in giving to only one side, because the other side may read through FEC reports and have staff or a friendly lobbyist call and indicate that someone with interests before a certain committee has had their contributions to the other side noticed. They'll get a message that basically asks: 'Are you sure you want to be giving only to one side? Don't you want to have friends on both sides of the aisle?' If your interests are subject to anger from the other side of the aisle, you need to fear that you may suffer a penalty if you don't give. . . . [D]uring the 1990's, it became more and more acceptable to call someone, saying you saw he gave to this person, so he should also give to you or the person's opponent.'" *Id.*, at 510 (Kollar-Kotelly, J.) (quoting Randlett Decl. ¶12, App. 715); 251 F. Supp. 2d, at 868 (Leon, J.) (same).

Decl.), App. 811); 251 F. Supp. 2d, at 851 (Leon, J.) (same).

See also *id.*, at 489 (Kollar-Kotelly, J.) ("'The majority of those who contribute to political parties do so for business reasons, to gain access to influential Members of Congress and to get to know new Members." (quoting Hickmott Decl., Exh. A, ¶46)). By bringing soft-money donors and federal candidates and officeholders together, "[p]arties are thus necessarily the instruments of some contributors whose object is not to support the party's message or to elect party candidates across the board, but rather to support a specific candidate for the sake of a position on one narrow issue, or even to support any candidate who will be obliged to the contributors." *Colorado II*, 533 U. S., at 451–452.

Plaintiffs argue that without concrete evidence of an instance in which a federal officeholder has actually switched a vote (or, presumably, evidence of a specific instance where the public believes a vote was switched), Congress has not shown that there exists real or apparent corruption. But the record is to the contrary. The evidence connects soft money to manipulations of the legislative calendar, leading to Congress' failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation. See, *e.g.*, 251 F. Supp. 2d, at 482 (Kollar-Kotelly, J.); *id.*, at 852 (Leon, J.); App. 390–394 (declaration of Sen. John McCain ¶¶5, 8–11 (hereinafter McCain Decl.)); App. 811 (Simpson Decl. ¶10) ("Donations from the tobacco industry to Republicans scuttled tobacco legislation, just as contributions from the trial lawyers to Democrats stopped tort reform"); App. 805 (declaration of former Sen. Paul Simon ¶¶13–14). To claim that such actions do not change legislative outcomes surely misunderstands the legislative process.

More importantly, plaintiffs conceive of corruption too narrowly. Our cases have firmly established that Con-

gress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing "undue influence on an officeholder's judgment, and the appearance of such influence." *Colorado II*, *supra*, at 441. Many of the "deeply disturbing examples" of corruption cited by this Court in *Buckley,* 424 U. S., at 27, to justify FECA's contribution limits were not episodes of vote buying, but evidence that various corporate interests had given substantial donations to gain access to high-level government officials. See *Buckley*, 519 F. 2d, at 821, 839–840, n. 36; nn. 5–6, *supra.* Even if that access did not secure actual influence, it certainly gave the "appearance of such influence." *Colorado II*, *supra*, at 441; see also 519 F. 2d*,* at 838.

The record in the present case is replete with similar examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations. See 251 F. Supp. 2d, at 492–506 (Kollar-Kotelly, J.). As one former Senator put it:

> "'Special interests who give large amounts of soft money to political parties do in fact achieve their objectives. They do get special access. Sitting Senators and House Members have limited amounts of time, but they make time available in their schedules to meet with representatives of business and unions and wealthy individuals who gave large sums to their parties. These are not idle chit-chats about the philosophy of democracy. . . . Senators are pressed by their benefactors to introduce legislation, to amend legislation, to block legislation, and to vote on legislation in a certain way.'" *Id.*, at 496 (Kollar-Kotelly, J.) (quoting declaration of former Sen. Warren Rudman ¶7 (hereinafter Rudman Decl.), App. 742); 251 F. Supp. 2d, at 858 (Leon, J.) (same).

So pervasive is this practice that the six national party

committees actually furnish their own menus of opportunities for access to would-be soft-money donors, with increased prices reflecting an increased level of access. For example, the DCCC offers a range of donor options, starting with the $10,000-per-year Business Forum program, and going up to the $100,000-per-year National Finance Board program. The latter entitles the donor to bimonthly conference calls with the Democratic House leadership and chair of the DCCC, complimentary invitations to all DCCC fundraising events, two private dinners with the Democratic House leadership and ranking members, and two retreats with the Democratic House leader and DCCC chair in Telluride, Colorado, and Hyannisport, Massachusetts. *Id.*, at 504–505 (Kollar-Kotelly, J.); see also *id.*, at 506 (describing records indicating that DNC offered meetings with President in return for large donations); *id.*, at 502–503 (describing RNC's various donor programs); *id.*, at 503–504 (same for NRSC); *id.*, at 500–503 (same for DSCC); *id.*, at 504 (same for NRCC). Similarly, "the RNC's donor programs offer greater access to federal office holders as the donations grow larger, with the highest level and most personal access offered to the largest soft money donors." *Id.*, at 500–503 (finding, further, that the RNC holds out the prospect of access to officeholders to attract soft-money donations and encourages officeholders to meet with large soft-money donors); accord, *id.*, at 860–861 (Leon, J.).

Despite this evidence and the close ties that candidates and officeholders have with their parties, JUSTICE KENNEDY would limit Congress' regulatory interest *only* to the prevention of the actual or apparent *quid pro quo* corruption "inherent in" contributions made directly to, contributions made at the express behest of, and expenditures made in coordination with, a federal officeholder or candidate. *Post*, at 8–10, 15. Regulation of any other donation or expenditure—regardless of its size, the recipi-

ent's relationship to the candidate or officeholder, its potential impact on a candidate's election, its value to the candidate, or its unabashed and explicit intent to purchase influence—would, according to JUSTICE KENNEDY, simply be out of bounds. This crabbed view of corruption, and particularly of the appearance of corruption, ignores precedent, common sense, and the realities of political fundraising exposed by the record in this litigation.[48]

JUSTICE KENNEDY'S interpretation of the First Amendment would render Congress powerless to address more subtle but equally dispiriting forms of corruption. Just as troubling to a functioning democracy as classic *quid pro quo* corruption is the danger that officeholders will decide

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[48] In addition to finding no support in our recent cases, see, *e.g.*, *Colorado II*, 533 U. S., at 441 (defining corruption more broadly than *quid pro quo* arrangements); *Shrink Missouri*, 528 U. S., at 389 (same), JUSTICE KENNEDY's contention that *Buckley* limits Congress to regulating contributions to a candidate ignores *Buckley* itself. There, we upheld FECA's $25,000 limit on aggregate yearly contributions to candidates, *political committees*, and *party committees* out of recognition that FECA's $1,000 limit on candidate contributions would be meaningless if individuals could instead make "huge contributions to the candidate's political party." 424 U. S., at 38. Likewise, in *California Medical Assn.* v. *Federal Election Comm'n,* 453 U. S. 182 (1981), we upheld FECA's $5,000 limit on contributions to multicandidate political committees. It is no answer to say that such limits were justified as a means of preventing individuals from using parties and political committees as pass-throughs to circumvent FECA's $1,000 limit on individual contributions to candidates. Given FECA's definition of "contribution," the $5,000 and $25,000 limits restricted not only the source and amount of funds available to parties and political committees to make candidate contributions, but also the source and amount of funds available to engage in express advocacy and numerous other noncoordinated expenditures. If indeed the First Amendment prohibited Congress from regulating contributions to fund the latter, the otherwise-easy-to-remedy exploitation of parties as pass-throughs (*e.g.*, a strict limit on donations that could be used to fund candidate contributions) would have provided insufficient justification for such overbroad legislation.

issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder. Even if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize. The best means of prevention is to identify and to remove the temptation. The evidence set forth above, which is but a sampling of the reams of disquieting evidence contained in the record, convincingly demonstrates that soft-money contributions to political parties carry with them just such temptation.

JUSTICE KENNEDY likewise takes too narrow a view of the appearance of corruption. He asserts that only those transactions with "inherent corruption potential," which he again limits to contributions directly to candidates, justify the inference "that regulating the conduct will stem the appearance of real corruption." *Post*, at 14.[49] In our view, however, Congress is not required to ignore historical evidence regarding a particular practice or to view conduct in isolation from its context. To be sure, mere political favoritism or opportunity for influence alone is insufficient to justify regulation. *Post*, at 12–14. As the record demonstrates, it is the manner in which parties have *sold* access to federal candidates and officeholders that has given rise to the appearance of undue influence. Implicit (and, as the record shows, sometimes explicit) in the sale of access is the suggestion that money buys influ-

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[49] At another point, describing our "flawed reasoning," JUSTICE KENNEDY seems to suggest that Congress' interest in regulating the appearance of corruption extends only to those contributions that actually "create . . . corrupt donor favoritism among . . . officeholders." *Post*, at 16. This latter formulation would render Congress' interest in stemming the appearance of corruption indistinguishable from its interest in preventing actual corruption.

ence. It is no surprise then that purchasers of such access unabashedly admit that they are seeking to purchase just such influence. It was not unwarranted for Congress to conclude that the selling of access gives rise to the appearance of corruption.

In sum, there is substantial evidence to support Congress' determination that large soft-money contributions to national political parties give rise to corruption and the appearance of corruption.

kmayer

Stop Reading Here

2. *New FECA §323(a)'s Restriction on Spending and Receiving Soft Money*

Plaintiffs and THE CHIEF JUSTICE contend that §323(a) is impermissibly overbroad because it subjects *all* funds raised and spent by national parties to FECA's hard-money source and amount limits, including, for example, funds spent on purely state and local elections in which no federal office is at stake.[50] *Post*, 2–5 (REHNQUIST, C. J., dissenting). Such activities, THE CHIEF JUSTICE asserts, pose "little or no potential to corrupt . . . federal candidates or officeholders." *Post,* at 5 (dissenting opinion). This observation is beside the point. Section 323(a), like the remainder of §323, regulates *contributions,* not activities. As the record demonstrates, it is the close relationship between federal officeholders and the national parties, as well as the means by which parties have traded on that relationship, that have made all large soft-money contributions to national parties suspect.

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[50] In support of this claim, the political party plaintiffs assert that, in 2001, the RNC spent $15.6 million of nonfederal funds (30% of the nonfederal amount raised that year) on purely state and local election activity, including contributions to state and local candidates, transfers to state parties, and direct spending. See Tr. of Oral Arg. 102–103 (statement of counsel Bobby R. Burchfield); 251 F. Supp. 2d, at 336–337 (Henderson, J.); *id.*, at 464–465 (Kollar-Kotelly, J.); *id.*, at 830 (Leon, J.).

BCRA §201's Definition of "Electioneering Communication"

The first section of Title II, §201, comprehensively amends FECA §304, which requires political committees to file detailed periodic financial reports with the FEC. The amendment coins a new term, "electioneering communication," to replace the narrowing construction of FECA's disclosure provisions adopted by this Court in *Buckley*. As discussed further below, that construction limited the coverage of FECA's disclosure requirement to communications expressly advocating the election or defeat of particular candidates. By contrast, the term "electioneering communication" is not so limited, but is defined to encompass any "broadcast, cable, or satellite communication" that

> "(I) refers to a clearly identified candidate for Federal office;
> "(II) is made within—
> "(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or
> "(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and
> "(III) in the case of a communication which refers to a candidate other than President or Vice President, is targeted to the relevant electorate." 2 U. S. C. A. §434(f)(3)(A)(i) (Supp. 2003).[73]

New FECA §304(f)(3)(C) further provides that a communi-

[73] BCRA also provides a "backup" definition of "electioneering communication," which would become effective if the primary definition were "held to be constitutionally insufficient by final judicial decision to support the regulation provided herein." 2 U. S. C. A. §434(f)(3)(A)(ii). We uphold all applications of the primary definition and accordingly have no occasion to discuss the backup definition.

cation is "'targeted to the relevant electorate'" if it "can be received by 50,000 or more persons" in the district or State the candidate seeks to represent. 2 U. S. C. A. §434(f)(3)(C).

In addition to setting forth this definition, BCRA's amendments to FECA §304 specify significant disclosure requirements for persons who fund electioneering communications. BCRA's use of this new term is not, however, limited to the disclosure context: A later section of the Act (BCRA §203, which amends FECA §316(b)(2)) restricts corporations' and labor unions' funding of electioneering communications. Plaintiffs challenge the constitutionality of the new term as it applies in both the disclosure and the expenditure contexts.

The major premise of plaintiffs' challenge to BCRA's use of the term "electioneering communication" is that *Buckley* drew a constitutionally mandated line between express advocacy and so-called issue advocacy, and that speakers possess an inviolable First Amendment right to engage in the latter category of speech. Thus, plaintiffs maintain, Congress cannot constitutionally require disclosure of, or regulate expenditures for, "electioneering communications" without making an exception for those "communications" that do not meet *Buckley*'s definition of express advocacy.

That position misapprehends our prior decisions, for the express advocacy restriction was an endpoint of statutory interpretation, not a first principle of constitutional law. In *Buckley* we began by examining then-18 U. S. C. §608(e)(1) (1970 ed., Supp. IV), which restricted expenditures "'relative to a clearly identified candidate,'" and we found that the phrase "'relative to'" was impermissibly vague. 424 U. S., at 40–42. We concluded that the vagueness deficiencies could "be avoided only by reading §608(e)(1) as limited to communications that include explicit words of advocacy of election or defeat of a candi-

date."[74] *Id.*, at 43. We provided examples of words of express advocacy, such as "'vote for,' 'elect,' 'support,' . . . 'defeat,' [and] 'reject,'" *id.*, at 44, n. 52, and those examples eventually gave rise to what is now known as the "magic words" requirement.

We then considered FECA's disclosure provisions, including 2 U. S. C. §431(f) (1970 ed., Supp. IV), which defined "'expenditur[e]'" to include the use of money or other assets "'for the purpose of . . . influencing'" a federal election. *Buckley,* 424 U. S., at 77. Finding that the "ambiguity of this phrase" posed "constitutional problems," *ibid.,* we noted our "obligation to construe the statute, if that can be done consistent with the legislature's purpose, to avoid the shoals of vagueness," *id.*, at 77–78 (citations omitted). "To insure that the reach" of the disclosure requirement was "not impermissibly broad, we construe[d] 'expenditure' for purposes of that section in the same way we construed the terms of §608(e)—to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." *Id.*, at 80 (footnote omitted).

Thus, a plain reading of *Buckley* makes clear that the express advocacy limitation, in both the expenditure and the disclosure contexts, was the product of statutory interpretation rather than a constitutional command.[75] In narrowly reading the FECA provisions in *Buckley* to avoid

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[74] We then held that, so construed, the expenditure restriction did not advance a substantial government interest, because independent express advocacy did not pose a danger of real or apparent corruption, and the line between express advocacy and other electioneering activities was easily circumvented. Concluding that §608(e)(1)'s heavy First Amendment burden was not justified, we invalidated the provision. *Buckley,* 424 U. S., at 45–48.

[75] Our adoption of a narrowing construction was consistent with our vagueness and overbreadth doctrines. See *Broadrick,* 413 U. S., at 613; *Grayned,* 408 U. S., at 108–114.

problems of vagueness and overbreadth, we nowhere suggested that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line. Nor did we suggest as much in *MCFL,* 479 U. S. 238 (1986), in which we addressed the scope of another FECA expenditure limitation and confirmed the understanding that *Buckley*'s express advocacy category was a product of statutory construction.[76]

In short, the concept of express advocacy and the concomitant class of magic words were born of an effort to avoid constitutional infirmities. See *NLRB* v. *Catholic Bishop of Chicago,* 440 U. S. 490, 500 (1979) (citing *Murray* v. *Schooner Charming Betsy*, 2 Cranch 64, 118 (1804)). We have long "rigidly adhered" to the tenet "'never to formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied,'" *United States* v. *Raines,* 362 U. S. 17, 21 (1960) (citation omitted), for "[t]he nature of judicial review constrains us to consider the case that is actually before us," *James B. Beam Distilling Co.* v. *Georgia,* 501 U. S. 529, 547 (1991) (Blackmun, J., dissenting). Consistent with that principle, our decisions in *Buckley* and *MCFL* were specific to the statutory language before us; they in no way drew a constitutional boundary that forever fixed the permissible scope of provisions regulating campaign-related speech.

Nor are we persuaded, independent of our precedents, that the First Amendment erects a rigid barrier between

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[76] The provision at issue in *MCFL*—2 U. S. C. §441b (1982 ed.)—required corporations and unions to use separate segregated funds, rather than general treasury moneys, on expenditures made "'in connection with'" a federal election. *MCFL,* 479 U. S., at 241. We noted that *Buckley* had limited the statutory term "'expenditure'" to words of express advocacy "in order to avoid problems of overbreadth." 479 U. S., at 248. We held that "a similar *construction*" must apply to the expenditure limitation before us in *MCFL* and that the reach of 2 U. S. C. §441b was therefore constrained to express advocacy. 479 U. S., at 249 (emphasis added).

express advocacy and so-called issue advocacy. That notion cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad. See *Buckley, supra*, at 45. Indeed, the unmistakable lesson from the record in this litigation, as all three judges on the District Court agreed, is that *Buckley*'s magic-words requirement is functionally meaningless. 251 F. Supp. 2d, at 303–304 (Henderson, J.); *id.*, at 534 (Kollar-Kotelly, J.); *id.*, at 875–879 (Leon, J.). Not only can advertisers easily evade the line by eschewing the use of magic words, but they would seldom choose to use such words even if permitted.[77] And although the resulting advertisements do not urge the viewer to vote for or against a candidate in so many words, they are no less clearly intended to influence the election.[78] *Buckley*'s

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[77] As one major-party political consultant testified, "'it is rarely advisable to use such clumsy words as "vote for" or "vote against."'" 251 F. Supp. 2d, at 305 (Henderson, J.) (quoting declaration of Douglas L. Bailey, founder, Bailey, Deardourff & Assoc., 1–2, App. 24, ¶3). He explained: "'All advertising professionals understand that the most effective advertising leads the viewer to his or her own conclusion without forcing it down their throat.'" 251 F. Supp. 2d, at 305 (Henderson, J.). Other political professionals and academics confirm that the use of magic words has become an anachronism. See *id.*, at 531 (Kollar-Kotelly, J.) (quoting declaration of Raymond D. Strother, Pres., Strother/Duffy/Strother ¶4, 9 Defs. Exhs., Tab 40); see Unsealed Pp. Vol., Tab 7); App. 1334–1335 (Krasno & Sorauf Expert Report)); see also 251 F. Supp. 2d, at 305 (Henderson, J.); *id.*, at 532 (Kollar-Kotelly, J.); *id.*, at 875–76 (Leon, J.).

[78] One striking example is an ad that a group called "Citizens for Reform" sponsored during the 1996 Montana congressional race, in which Bill Yellowtail was a candidate. The ad stated:

"Who is Bill Yellowtail? He preaches family values but took a swing at his wife. And Yellowtail's response? He only slapped her. But 'her nose was not broken.' He talks law and order . . . but is himself a convicted felon. And though he talks about protecting children, Yellowtail failed to make his own child support payments—then voted against

express advocacy line, in short, has not aided the legislative effort to combat real or apparent corruption, and Congress enacted BCRA to correct the flaws it found in the existing system.

Finally we observe that new FECA §304(f)(3)'s definition of "electioneering communication" raises none of the vagueness concerns that drove our analysis in *Buckley*. The term "electioneering communication" applies only (1) to a broadcast (2) clearly identifying a candidate for federal office, (3) aired within a specific time period, and (4) targeted to an identified audience of at least 50,000 viewers or listeners. These components are both easily understood and objectively determinable. See *Grayned* v. *City of Rockford,* 408 U. S. 104, 108–114 (1972). Thus, the constitutional objection that persuaded the Court in *Buckley* to limit FECA's reach to express advocacy is simply inapposite here.

BCRA §201's Disclosure Requirements

Having rejected the notion that the First Amendment requires Congress to treat so-called issue advocacy differently from express advocacy, we turn to plaintiffs' other concerns about the use of the term "electioneering communication" in amended FECA §304's disclosure provisions. Under those provisions, whenever any person makes disbursements totaling more than $10,000 during any calendar year for the direct costs of producing and airing electioneering communications, he must file a statement with the FEC identifying the pertinent elections and all persons sharing the costs of the disbursements. 2 U. S. C. A. §§434(f)(2)(A), (B), and (D) (Supp.

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child support enforcement. Call Bill Yellowtail. Tell him to support family values." 5 1998 Senate Report 6305 (minority views).

The notion that this advertisement was designed purely to discuss the issue of family values strains credulity.

preceding subsection, §315(a)(7)(B), which states more generally that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of" a candidate or party will constitute contributions. 2 U. S. C. §§441a(a)(7)(B)(i)–(ii). In *Buckley* we construed the statutory term "expenditure" to reach only spending for express advocacy. 424 U. S., at 40–43, and n. 52 (addressing 18 U. S. C. §608(e)(1) (1970 ed., Supp. IV), which placed a $1,000 cap on expenditures "'relative to a clearly identified candidate'"). BCRA §202 pre-empts a possible claim that §315(a)(7)(B) is similarly limited, such that coordinated expenditures for communications that avoid express advocacy cannot be counted as contributions. As we explained above, see *supra*, at 83–86, *Buckley*'s narrow interpretation of the term "expenditure" was not a constitutional limitation on Congress' power to regulate federal elections. Accordingly, there is no reason why Congress may not treat coordinated disbursements for electioneering communications in the same way it treats all other coordinated expenditures. We affirm the judgment of the District Court insofar as it held that plaintiffs had advanced "no basis for finding Section 202 unconstitutional." 251 F. Supp. 2d, at 250.

BCRA §203's Prohibition of Corporate and Labor Disbursements for Electioneering Communications

Since our decision in *Buckley*, Congress' power to prohibit corporations and unions from using funds in their

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"(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party. . . ." 2 U. S. C. A. §441a(a)(7)(C).

treasuries to finance advertisements expressly advocating the election or defeat of candidates in federal elections has been firmly embedded in our law. The ability to form and administer separate segregated funds authorized by FECA §316, 2 U. S. C. A. §441b (main ed. and Supp. 2003), has provided corporations and unions with a constitutionally sufficient opportunity to engage in express advocacy. That has been this Court's unanimous view,[86] and it is not challenged in this litigation.

Section 203 of BCRA amends FECA §316(b)(2) to extend this rule, which previously applied only to express advocacy, to all "electioneering communications" covered by the definition of that term in amended FECA §304(f)(3), discussed above. 2 U. S. C. A. §441b(b)(2) (Supp. 2003).[87] Thus, under BCRA, corporations and unions may not use their general treasury funds to finance electioneering communications, but they remain free to organize and

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[86] We have explained:

"The statutory purpose of §441b . . . is to prohibit contributions or expenditures by corporations or labor organizations in connection with federal elections. 2 U. S. C. §441b(a). The section, however, permits some participation of unions and corporations in the federal electoral process by allowing them to establish and pay the administrative expenses of 'separate segregated fund[s],' which may be 'utilized for political purposes.' 2 U. S. C. §441b(b)(2)(C). The Act restricts the operations of such segregated funds, however, by making it unlawful for a corporation to solicit contributions to a fund established by it from persons other than its 'stockholders and their families and its executive or administrative personnel and their families.' 2 U. S. C. §441b(b)(4)(A)." *National Right to Work,* 459 U. S., at 201–202.

[87] The amendment is straightforward. Prior to BCRA, FECA §316(a) made it "unlawful . . . for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with" certain federal elections. 2 U. S. C. §441b(a) (2000 ed.). BCRA amends FECA §316(b)(2)'s definition of the term "contribution or expenditure" to include "any applicable electioneering communication." 2 U. S. C. A. §441b(b)(2) (Supp. 2003).

administer segregated funds, or PACs, for that purpose. Because corporations can still fund electioneering communications with PAC money, it is "simply wrong" to view the provision as a "complete ban" on expression rather than a regulation. *Beaumont*, 539 U. S., at ___, ___ (slip op., at 15). As we explained in *Beaumont:*

> "The PAC option allows corporate political participation without the temptation to use corporate funds for political influence, quite possibly at odds with the sentiments of some shareholders or members, and it lets the government regulate campaign activity through registration and disclosure, see [2 U. S. C.] §§432–434, without jeopardizing the associational rights of advocacy organizations' members." *Id.*, at ___ (slip op., at 16) (citation omitted).

See also *Austin* v. *Michigan Chamber of Commerce,* 494 U. S. 652, 658 (1990).

Rather than arguing that the prohibition on the use of general treasury funds is a complete ban that operates as a prior restraint, plaintiffs instead challenge the expanded regulation on the grounds that it is both overbroad and underinclusive. Our consideration of plaintiffs' challenge is informed by our earlier conclusion that the distinction between express advocacy and so-called issue advocacy is not constitutionally compelled. In that light, we must examine the degree to which BCRA burdens First Amendment expression and evaluate whether a compelling governmental interest justifies that burden. *Id.,* at 657. The latter question—whether the state interest is compelling—is easily answered by our prior decisions regarding campaign finance regulation, which "represent respect for the 'legislative judgment that the special characteristics of the corporate structure require particularly careful regulation.'" *Beaumont*, *supra*, at ___ (slip op., at 8) (quoting *National Right to Work,* 459 U. S., at 209–210).

We have repeatedly sustained legislation aimed at "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." *Austin, supra*, at 660; see *Beaumont, supra*, at ___ (slip op., at 7–8); *National Right to Work, supra*, at 209–210. Moreover, recent cases have recognized that certain restrictions on corporate electoral involvement permissibly hedge against "'circumvention of [valid] contribution limits.'" *Beaumont*, *supra*, at ___ (slip op., at 7) (quoting *Colorado II,* 533 U. S., at 456, and n. 18.)

In light of our precedents, plaintiffs do not contest that the Government has a compelling interest in regulating advertisements that expressly advocate the election or defeat of a candidate for federal office. Nor do they contend that the speech involved in so-called issue advocacy is any more core political speech than are words of express advocacy. After all, "the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office," *Monitor Patriot Co.* v. *Roy,* 401 U. S. 265, 272 (1971), and "[a]dvocacy 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." *Buckley,* 424 U. S., at 48. Rather, plaintiffs argue that the justifications that adequately support the regulation of express advocacy do not apply to significant quantities of speech encompassed by the definition of electioneering communications.

This argument fails to the extent that the issue ads broadcast during the 30- and 60-day periods preceding federal primary and general elections are the functional equivalent of express advocacy. The justifications for the regulation of express advocacy apply equally to ads aired during those periods if the ads are intended to influence

the voters' decisions and have that effect. The precise percentage of issue ads that clearly identified a candidate and were aired during those relatively brief preelection time spans but had no electioneering purpose is a matter of dispute between the parties and among the judges on the District Court. See 251 F. Supp. 2d, at 307–312 (Henderson, J.); *id.*, at 583–587 (Kollar-Kotelly, J.); *id.*, at 796–798 (Leon, J.). Nevertheless, the vast majority of ads clearly had such a purpose. Annenberg Report 13–14; App. 1330–1348 (Krasno & Sorauf Expert Report); 251 F. Supp. 2d, at 573–578 (Kollar-Kotelly, J.); *id.*, at 826–827 (Leon, J.). Moreover, whatever the precise percentage may have been in the past, in the future corporations and unions may finance genuine issue ads during those time frames by simply avoiding any specific reference to federal candidates, or in doubtful cases by paying for the ad from a segregated fund.[88]

We are therefore not persuaded that plaintiffs have

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[88] As JUSTICE KENNEDY emphasizes in dissent, *post*, at 44–45, we assume that the interests that justify the regulation of campaign speech might not apply to the regulation of genuine issue ads. The premise that apparently underlies JUSTICE KENNEDY's principal submission is a conclusion that the two categories of speech are nevertheless entitled to the same constitutional protection. If that is correct, JUSTICE KENNEDY must take issue with the basic holding in *Buckley* and, indeed, with our recognition in *First Nat. Bank of Boston* v. *Bellotti,* 435 U. S. 765 (1978), that unusually important interests underlie the regulation of corporations' campaign-related speech. In *Bellotti* we cited *Buckley*, among other cases, for the proposition that "[p]reserving the integrity of the electoral process, preventing corruption, and 'sustain[ing] the active, alert responsibility of the individual citizen in a democracy for the wise conduct of the government' are interests of the highest importance." 435 U. S., at 788–789 (citations and footnote omitted). "Preservation of the individual citizen's confidence in government," we added, "is equally important." *Id.*, at 789. BCRA's fidelity to those imperatives sets it apart from the statute in *Bellotti*—and, for that matter, from the Ohio statute banning the distribution of anonymous campaign literature, struck down in *McIntyre* v. *Ohio Elections Comm'n,* 514 U. S. 334 (1995).

carried their heavy burden of proving that amended FECA §316(b)(2) is overbroad. See *Broadrick* v. *Oklahoma,* 413 U. S. 601, 613 (1973). Even if we assumed that BCRA will inhibit some constitutionally protected corporate and union speech, that assumption would not "justify prohibiting all enforcement" of the law unless its application to protected speech is substantial, "not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications." *Virginia* v. *Hicks,* 539 U. S. ___, ___ (2003) (slip op., at 5–6). Far from establishing that BCRA's application to pure issue ads is substantial, either in an absolute sense or relative to its application to election-related advertising, the record strongly supports the contrary conclusion.

Plaintiffs also argue that FECA §316(b)(2)'s segregated-fund requirement for electioneering communications is underinclusive because it does not apply to advertising in the print media or on the Internet. 2 U. S. C. A. §434(f)(3)(A) (Supp. 2003). The records developed in this litigation and by the Senate Committee adequately explain the reasons for this legislative choice. Congress found that corporations and unions used soft money to finance a virtual torrent of televised election-related ads during the periods immediately preceding federal elections, and that remedial legislation was needed to stanch that flow of money. 251 F. Supp. 2d, at 569–573 (Kollar-Kotelly, J.); *id*., at 799 (Leon, J.); 3 1998 Senate Report 4465, 4474–4481; 5 *id.,* at 7521–7525. As we held in *Buckley,* "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." 424 U. S., at 105 (internal quotation marks and citations omitted). One might just as well argue that the electioneering communication definition is underinclusive because it leaves advertising 61 days in advance of an election entirely unregulated. The record amply justifies Congress' line drawing.

In addition to arguing that §316(b)(2)'s segregated-fund requirement is underinclusive, some plaintiffs contend that it unconstitutionally discriminates in favor of media companies. FECA §304(f)(3)(B)(i) excludes from the definition of electioneering communications any "communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate." 2 U. S. C. A. §434(f)(3)(B)(i) (Supp. 2003). Plaintiffs argue this provision gives free rein to media companies to engage in speech without resort to PAC money. Section 304(f)(3)(B)(i)'s effect, however, is much narrower than plaintiffs suggest. The provision excepts news items and commentary only; it does not afford *carte blanche* to media companies generally to ignore FECA's provisions. The statute's narrow exception is wholly consistent with First Amendment principles. "A valid distinction . . . exists between corporations that are part of the media industry and other corporations that are not involved in the regular business of imparting news to the public." *Austin,* 494 U. S., at 668. Numerous federal statutes have drawn this distinction to ensure that the law "does not hinder or prevent the institutional press from reporting on, and publishing editorials about, newsworthy events." *Ibid.* (citations omitted); see, *e.g.*, 2 U. S. C. §431(9)(B)(i) (exempting news stories, commentaries, and editorials from FECA's definition of "expenditure"); 15 U. S. C. §§1801–1804 (providing a limited antitrust exemption for newspapers); 47 U. S. C. §315(a) (excepting newscasts, news interviews, and news documentaries from the requirement that broadcasters provide equal time to candidates for public office).[89]

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[89] In a different but somewhat related argument, one set of plaintiffs

We affirm the District Court's judgment to the extent that it upheld the constitutionality of FECA §316(b)(2); to the extent that it invalidated any part of §316(b)(2), we reverse the judgment.

BCRA §204's Application to Nonprofit Corporations

Section 204 of BCRA, which adds FECA §316(c)(6), applies the prohibition on the use of general treasury funds to pay for electioneering communications to not-for-profit corporations.[90] Prior to the enactment of BCRA,

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contends that political campaigns and issue advocacy involve press activities, and that BCRA therefore interferes with speakers' rights under the Freedom of the Press Clause. U. S. Const., Amdt. 1. We affirm the District Court's conclusion that this contention lacks merit.

[90] The statutory scheme is somewhat complex. In its provision dealing with "Rules Relating to Electioneering Communications," BCRA §203(c)(2) (adding FECA §316(c)(2)) makes a blanket exception for designated nonprofit organizations, which reads as follows:

"Exception

"Notwithstanding paragraph (1), the term 'applicable electioneering communication' does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of Title 26) made under section 434(f)(2)(E) or (F) of this title if the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 1101(a)(20) of Title 8). For purposes of the preceding sentence, the term 'provided directly by individuals' does not include funds the source of which is an entity described in subsection (a) of this section." 2 U. S. C. A. §441b(c)(2) (Supp. 2003).

BCRA §204, however, amends FECA §316(c) to exclude "targeted communications" from that exception. New FECA §316(c)(6) states that the §316(c)(2) exception "shall not apply in the case of a targeted communication that is made by an organization described" in §316(b)(2). 2 U. S. C. A. ¶441b(c)(6)(A). Subparagraph (B) then defines the term "targeted communication" for the purpose of the provision as including all electioneering communications. The parties and the judges on the District Court have assumed that amended FECA §316(c)(6) completely canceled the exemption for nonprofit corporations

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

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NATIONAL RIFLE ASSOCIATION, ET AL., APPELLANTS
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RON PAUL, UNITED STATES CONGRESSMAN, ET AL., APPELLANTS
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CALIFORNIA DEMOCRATIC PARTY, ET AL., APPELLANTS
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CHAMBER OF COMMERCE OF THE UNITED STATES, ET AL., APPELLANTS
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ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[December 10, 2003]

JUSTICE SCALIA, concurring with respect to BCRA Titles III and IV, dissenting with respect to BCRA Titles I and V, and concurring in the judgment in part and dissenting in part with respect to BCRA Title II.

With respect to Titles I, II, and V: I join in full the dissent of THE CHIEF JUSTICE; I join the opinion of JUSTICE KENNEDY, except to the extent it upholds new §323(e) of the Federal Election Campaign Act of 1971 (FECA) and §202 of the Bipartisan Campaign Reform Act of 2002 (BCRA) in part; and because I continue to believe that *Buckley* v. *Valeo,* 424 U. S. 1 (1976) *(per curiam),* was wrongly decided, I also join Parts I, II–A, and II–B of the opinion of JUSTICE THOMAS. With respect to Titles III and IV, I join THE CHIEF JUSTICE's opinion for the Court.

Because these cases are of such extraordinary importance, I cannot avoid adding to the many writings a few words of my own.

This is a sad day for the freedom of speech. Who could have imagined that the same Court which, within the past four years, has sternly disapproved of restrictions upon such inconsequential forms of expression as virtual child pornography, *Ashcroft* v. *Free Speech Coalition,* 535 U. S. 234 (2002), tobacco advertising, *Lorillard Tobacco Co.* v. *Reilly,* 533 U. S. 525 (2001), dissemination of illegally intercepted communications, *Bartnicki* v. *Vopper,* 532 U. S. 514 (2001), and sexually explicit cable programming, *United States* v. *Playboy Entertainment Group, Inc.,* 529 U. S. 803 (2000), would smile with favor upon a law that cuts to the heart of what the First Amendment is meant to protect: the right to criticize the government. For that is what the most offensive provisions of this legislation are all about. We are governed by Congress, and this legislation prohibits the criticism of Members of Congress by those entities most capable of giving such criticism loud voice: national political parties and corporations, both of the commercial and the not-for-profit sort. It forbids pre-election criticism of incumbents by corporations, even not-for-profit corporations, by use of their general funds; and forbids national-party use of "soft" money to fund "issue ads" that incumbents find so offensive.

To be sure, the legislation is evenhanded: It similarly prohibits criticism of the candidates who oppose Members of Congress in their reelection bids. But as everyone knows, this is an area in which evenhandedness is not fairness. If *all* electioneering were evenhandedly prohibited, incumbents would have an enormous advantage. Likewise, if incumbents and challengers are limited to the same quantity of electioneering, incumbents are favored. In other words, *any* restriction upon a type of campaign speech that is equally available to challengers and incum-

bents tends to favor incumbents.

Beyond that, however, the present legislation *targets* for prohibition certain categories of campaign speech that are particularly harmful to incumbents. Is it accidental, do you think, that incumbents raise about three times as much "hard money"—the sort of funding generally *not* restricted by this legislation—as do their challengers? See FEC, 1999–2000 Financial Activity of All Senate and House Campaigns (Jan. 1, 1999–Dec. 31, 2000) (last modified on May 15, 2001), http://www.fec.gov/press/051501congfinact/tables/allcong2000.xls (all Internet materials as visited Dec. 4, 2003, and available in Clerk of Court's case file). Or that lobbyists (who seek the favor of incumbents) give 92 percent of their money in "hard" contributions? See U. S. Public Interest Research Group (PIRG), The Lobbyist's Last Laugh: How K Street Lobbyists Would Benefit from the McCain-Feingold Campaign Finance Bill 3 (July 5, 2001), http://www.pirg.org/democracy/democracy.asp?id2=5068. Is it an oversight, do you suppose, that the so-called "millionaire provisions" raise the contribution limit for a candidate running against an individual who devotes to the campaign (as challengers often do) great personal wealth, but do not raise the limit for a candidate running against an individual who devotes to the campaign (as incumbents often do) a massive election "war chest"? See BCRA §§304, 316, and 319. And is it mere happenstance, do you estimate, that national-party funding, which is severely limited by the Act, is more likely to assist cash-strapped challengers than flush-with-hard-money incumbents? See A. Gierzynski & D. Breaux, The Financing Role of Parties, in Campaign Finance in State Legislative Elections 195–200 (J. Thompson & S. Moncrief eds. 1998). Was it unintended, by any chance, that incumbents are free personally to receive some soft money and even to solicit it for other organizations, while national parties are not? See new FECA

§§323(a) and (e).

I wish to address three fallacious propositions that might be thought to justify some or all of the provisions of this legislation—only the last of which is explicitly embraced by the principal opinion for the Court, but all of which underlie, I think, its approach to these cases.

(a) Money is Not Speech

It was said by congressional proponents of this legislation, see 143 Cong. Rec. 20746 (1997) (remarks of Sen. Boxer), 145 Cong. Rec. S12612 (Oct. 14, 1999) (remarks of Sen. Cleland), 147 Cong. Rec. S2436 (Mar. 19, 2001) (remarks of Sen. Dodd), with support from the law reviews, see, *e.g.*, Wright, Politics and the Constitution: Is Money Speech?, 85 Yale L. J. 1001 (1976), that since this legislation regulates nothing but the expenditure of money for speech, as opposed to speech itself, the burden it imposes is not subject to full First Amendment scrutiny; the government may regulate the raising and spending of campaign funds just as it regulates other forms of conduct, such as burning draft cards, see *United States* v. *O'Brien,* 391 U. S. 367 (1968), or camping out on the National Mall, see *Clark* v. *Community for Creative Non-Violence,* 468 U. S. 288 (1984). That proposition has been endorsed by one of the two authors of today's principal opinion: "The right to use one's own money to hire gladiators, [and] to fund 'speech by proxy,' . . . [are] property rights . . . not entitled to the same protection as the right to say what one pleases." *Nixon* v. *Shrink Missouri Government PAC,* 528 U. S. 377, 399 (2000) (STEVENS, J., concurring). Until today, however, that view has been categorically rejected by our jurisprudence. As we said in *Buckley,* 424 U. S., at 16, "this Court has never suggested that the dependence of a communication on the expenditure of money operates itself to introduce a nonspeech element or to reduce the exacting scrutiny required by the First Amendment."

Our traditional view was correct, and today's cavalier attitude toward regulating the financing of speech (the "exacting scrutiny" test of *Buckley*, see *ibid.*, is not uttered in any majority opinion, and is not observed in the ones from which I dissent) frustrates the fundamental purpose of the First Amendment. In any economy operated on even the most rudimentary principles of division of labor, effective public communication requires the speaker to make use of the services of others. An author may write a novel, but he will seldom publish and distribute it himself. A freelance reporter may write a story, but he will rarely edit, print, and deliver it to subscribers. To a government bent on suppressing speech, this mode of organization presents opportunities: Control any cog in the machine, and you can halt the whole apparatus. License printers, and it matters little whether authors are still free to write. Restrict the sale of books, and it matters little who prints them. Predictably, repressive regimes have exploited these principles by attacking all levels of the production and dissemination of ideas. See, *e.g.*, Printing Act of 1662, 14 Car. II, c. 33, §§1, 4, 7 (punishing printers, importers, and booksellers); Printing Act of 1649, 2 Acts and Ordinances of the Interregnum 245, 246, 250 (punishing authors, printers, booksellers, importers, and buyers). In response to this threat, we have interpreted the First Amendment broadly. See, *e.g.*, *Bantam Books, Inc.* v. *Sullivan,* 372 U. S. 58, 65, n. 6 (1963) ("The constitutional guarantee of freedom of the press embraces the circulation of books as well as their publication . . .").

Division of labor requires a means of mediating exchange, and in a commercial society, that means is supplied by money. The publisher pays the author for the right to sell his book; it pays its staff who print and assemble the book; it demands payments from booksellers who bring the book to market. This, too, presents opportunities for repression: Instead of regulating the various

parties to the enterprise individually, the government can suppress their ability to coordinate by regulating their use of money. What good is the right to print books without a right to buy works from authors? Or the right to publish newspapers without the right to pay deliverymen? The right to speak would be largely ineffective if it did not include the right to engage in financial transactions that are the incidents of its exercise.

This is not to say that *any* regulation of money is a regulation of speech. The government may apply general commercial regulations to those who use money for speech if it applies them evenhandedly to those who use money for other purposes. But where the government singles out money used to fund speech as its legislative object, it is acting against speech as such, no less than if it had targeted the paper on which a book was printed or the trucks that deliver it to the bookstore.

History and jurisprudence bear this out. The best early examples derive from the British efforts to tax the press after the lapse of licensing statutes by which the press was first regulated. The Stamp Act of 1712 imposed levies on all newspapers, including an additional tax for each advertisement. 10 Anne, c. 18, §113. It was a response to unfavorable war coverage, "obvious[ly] . . . designed to check the publication of those newspapers and pamphlets which depended for their sale on their cheapness and sensationalism." F. Siebert, Freedom of the Press in England, 1476–1776, pp. 309–310 (1952). It succeeded in killing off approximately half the newspapers in England in its first year. *Id.*, at 312. In 1765, Parliament applied a similar Act to the Colonies. 5 Geo. III, c. 12, §1. The colonial Act likewise placed exactions on sales and advertising revenue, the latter at 2s. per advertisement, which was "by any standard . . . excessive, since the publisher himself received only from 3 to 5s. and still less for repeated insertions." A. Schlesinger, Prelude to Independence: The Newspaper War on Britain,

1764–1776, p. 68 (1958). The founding generation saw these taxes as grievous incursions on the freedom of the press. See, *e.g.*, 1 D. Ramsay, History of the American Revolution 61–62 (L. Cohen ed. 1990); J. Adams, A Dissertation on the Canon and Feudal Law (1765), reprinted in 3 Life and Works of John Adams 445, 464 (C. Adams ed. 1851). See generally *Grosjean* v. *American Press Co.,* 297 U. S. 233, 245–249 (1936); Schlesinger, *supra,* at 67–84.

We have kept faith with the Founders' tradition by prohibiting the selective taxation of the press. *Minneapolis Star & Tribune Co.* v. *Minnesota Comm'r of Revenue,* 460 U. S. 575 (1983) (ink and paper tax); *Grosjean*, *supra* (advertisement tax). And we have done so whether the tax was the product of illicit motive or not. See *Minneapolis Star & Tribune Co., supra*, at 592. These press-taxation cases belie the claim that regulation of money used to fund speech is not regulation of speech itself. A tax on a newspaper's advertising revenue does not prohibit anyone from saying anything; it merely appropriates part of the revenue that a speaker would otherwise obtain. That is even a step short of totally prohibiting advertising revenue—which would be analogous to the total prohibition of certain campaign-speech contributions in the present cases. Yet it is unquestionably a violation of the First Amendment.

Many other cases exemplify the same principle that an attack upon the funding of speech is an attack upon speech itself. In *Schaumburg* v. *Citizens for a Better Environment,* 444 U. S. 620 (1980), we struck down an ordinance limiting the amount charities could pay their solicitors. In *Simon & Schuster, Inc.* v. *Members of N. Y. State Crime Victims Bd.,* 502 U. S. 105 (1991), we held unconstitutional a state statute that appropriated the proceeds of criminals' biographies for payment to the victims. And in *Rosenberger* v. *Rector and Visitors of Univ. of Va.,* 515 U. S. 819 (1995), we held unconstitu-

tional a university's discrimination in the disbursement of funds to speakers on the basis of viewpoint. Most notable, perhaps, is our famous opinion in *New York Times Co.* v. *Sullivan,* 376 U. S. 254 (1964), holding that paid advertisements in a newspaper were entitled to full First Amendment protection:

> "Any other conclusion would discourage newspapers from carrying 'editorial advertisements' of this type, and so might shut off an important outlet for the promulgation of information and ideas by persons who do not themselves have access to publishing facilities—who wish to exercise their freedom of speech even though they are not members of the press. The effect would be to shackle the First Amendment in its attempt to secure 'the widest possible dissemination of information from diverse and antagonistic sources.'" *Id.*, at 266 (citations omitted).

This passage was relied on in *Buckley* for the point that restrictions on the expenditure of money for speech are equivalent to restrictions on speech itself. 424 U. S., at 16–17. That reliance was appropriate. If denying protection to paid-for speech would "shackle the First Amendment," so also does forbidding or limiting the right to pay for speech.

It should be obvious, then, that a law limiting the amount a person can spend to broadcast his political views is a direct restriction on speech. That is no different from a law limiting the amount a newspaper can pay its editorial staff or the amount a charity can pay its leafletters. It is equally clear that a limit on the amount a candidate can *raise* from any one individual for the purpose of speaking is also a direct limitation on speech. That is no different from a law limiting the amount a publisher can accept from any one shareholder or lender, or the amount a newspaper can charge any one advertiser or customer.

(b) Pooling Money is Not Speech

Another proposition which could explain at least some of the results of today's opinion is that the First Amendment right to spend money for speech does not include the right to combine with others in spending money for speech. Such a proposition fits uncomfortably with the concluding words of our Declaration of Independence: "And for the support of this Declaration, . . . we mutually pledge to each other our Lives, *our Fortunes* and our sacred Honor." (Emphasis added.) The freedom to associate with others for the dissemination of ideas—not just by singing or speaking in unison, but by pooling financial resources for expressive purposes—is part of the freedom of speech.

> "Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *NAACP* v. *Button*, 371 U. S. 415, 431 (1963) (internal quotation marks omitted).

> "The First Amendment protects political association as well as political expression. The constitutional right of association explicated in *NAACP* v. *Alabama,* 357 U. S. 449, 460 (1958), stemmed from the Court's recognition that '[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.' Subsequent decisions have made clear that the First and Fourteenth Amendments guarantee '"freedom to associate with others for the common advancement of political beliefs and ideas,"' . . . ." *Buckley, supra,* at 15.

We have said that "implicit in the right to engage in activities protected by the First Amendment" is "a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts* v. *United States Jaycees,* 468 U. S. 609, 622 (1984). That "right to associate . . . in pursuit" includes the right to pool financial resources.

If it were otherwise, Congress would be empowered to enact legislation requiring newspapers to be sole proprietorships, banning their use of partnership or corporate form. That sort of restriction would be an obvious violation of the First Amendment, and it is incomprehensible why the conclusion should change when what is at issue is the pooling of funds for the most important (and most perennially threatened) category of speech: electoral speech. The principle that such financial association does not enjoy full First Amendment protection threatens the existence of all political parties.

(c) Speech by Corporations Can Be Abridged

The last proposition that might explain at least some of today's casual abridgment of free-speech rights is this: that the particular form of association known as a corporation does not enjoy full First Amendment protection. Of course the text of the First Amendment does not limit its application in this fashion, even though "[b]y the end of the eighteenth century the corporation was a familiar figure in American economic life." C. Cooke, Corporation, Trust and Company 92 (1951). Nor is there any basis in reason why First Amendment rights should not attach to corporate associations—and we have said so. In *First Nat. Bank of Boston* v. *Bellotti,* 435 U. S. 765 (1978), we held unconstitutional a state prohibition of corporate speech designed to influence the vote on referendum proposals. We said:

> "[T]here is practically universal agreement that a

> major purpose of [the First] Amendment was to protect the free discussion of governmental affairs. 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." *Id.*, at 776–777 (internal quotation marks, footnotes, and citations omitted).

In *NAACP* v. *Button, supra*, at 428–429, 431, we held that the NAACP could assert First Amendment rights "on its own behalf, . . . though a corporation," and that the activities of the corporation were "modes of expression and association protected by the First and Fourteenth Amendments." In *Pacific Gas & Elec. Co.* v. *Public Util. Comm'n of Cal.*, 475 U. S. 1, 8 (1986), we held unconstitutional a state effort to compel corporate speech. "The identity of the speaker," we said, "is not decisive in determining whether speech is protected. Corporations and other associations, like individuals, contribute to the 'discussion, debate, and the dissemination of information and ideas' that the First Amendment seeks to foster." And in *Buckley*, 424 U. S. 1, we held unconstitutional FECA's limitation upon independent corporate expenditures.

The Court changed course in *Austin* v. *Michigan Chamber of Commerce*, 494 U. S. 652 (1990), upholding a state prohibition of an independent corporate expenditure in support of a candidate for state office. I dissented in that case, see *id.*, at 679, and remain of the view that it was error. In the modern world, giving the government power to exclude corporations from the political debate enables it

effectively to muffle the voices that best represent the most significant segments of the economy and the most passionately held social and political views. People who associate—who pool their financial resources—for purposes of economic enterprise overwhelmingly do so in the corporate form; and with increasing frequency, incorporation is chosen by those who associate to defend and promote particular ideas—such as the American Civil Liberties Union and the National Rifle Association, parties to these cases. Imagine, then, a government that wished to suppress nuclear power—or oil and gas exploration, or automobile manufacturing, or gun ownership, or civil liberties—and that had the power to prohibit corporate advertising against its proposals. To be sure, the individuals involved in, or benefited by, those industries, or interested in those causes, could (given enough time) form political action committees or other associations to make their case. But the organizational form in which those enterprises already *exist*, and in which they can most quickly and most effectively get their message across, is the corporate form. The First Amendment does not in my view permit the restriction of that political speech. And the same holds true for corporate electoral speech: A candidate should not be insulated from the most effective speech that the major participants in the economy and major incorporated interest groups can generate.

But what about the danger to the political system posed by "amassed wealth"? The most direct threat from that source comes in the form of undisclosed favors and payoffs to elected officials—which have already been criminalized, and will be rendered no more discoverable by the legislation at issue here. The use of corporate wealth (like individual wealth) to speak to the electorate is unlikely to "distort" elections—*especially* if disclosure requirements *tell* the people where the speech is coming from. The premise of the First Amendment is that the American

people are neither sheep nor fools, and hence fully capable of considering both the substance of the speech presented to them and its proximate and ultimate source. If that premise is wrong, our democracy has a much greater problem to overcome than merely the influence of amassed wealth. Given the premises of democracy, there is no such thing as *too much* speech.

But, it is argued, quite apart from its effect upon the electorate, corporate speech in the form of contributions to the candidate's campaign, or even in the form of independent expenditures supporting the candidate, engenders an obligation which is later paid in the form of greater access to the officeholder, or indeed in the form of votes on particular bills. Any *quid-pro-quo* agreement for votes would of course violate criminal law, see 18 U. S. C. §201, and actual payoff *votes* have not even been claimed by those favoring the restrictions on corporate speech. It cannot be denied, however, that corporate (like noncorporate) allies will have greater access to the officeholder, and that he will tend to favor the same causes as those who support him (which is usually *why* they supported him). That is the nature of politics—if not indeed human nature—and how this can properly be considered "corruption" (or "the appearance of corruption") with regard to corporate allies and not with regard to other allies is beyond me. If the Bill of Rights had intended an exception to the freedom of speech in order to combat this malign proclivity of the officeholder to agree with those who agree with him, and to speak more with his supporters than his opponents, it would surely have said so. It did not do so, I think, because the juice is not worth the squeeze. Evil corporate (and private affluent) influences are well enough checked (so long as adequate campaign-expenditure disclosure rules exist) by the politician's fear of being portrayed as "in the pocket" of so-called moneyed interests. The incremental benefit obtained by muzzling corporate speech is

more than offset by loss of the information and persuasion that corporate speech can contain. That, at least, is the assumption of a constitutional guarantee which prescribes that Congress shall make no law abridging the freedom of speech.

But let us not be deceived. While the Government's briefs and arguments before this Court focused on the horrible "appearance of corruption," the most passionate floor statements during the debates on this legislation pertained to so-called attack ads, which the Constitution surely protects, but which Members of Congress analogized to "crack cocaine," 144 Cong. Rec. S868 (Feb. 24, 1998) (remarks of Sen. Daschle), "drive-by shooting[s]," *id.,* at S879 (remarks of Sen. Durbin), and "air pollution," 143 Cong. Rec. 20505 (1997) (remarks of Sen. Dorgan). There is good reason to believe that the ending of negative campaign ads was the principal attraction of the legislation. A Senate sponsor said, "I hope that we will not allow our attention to be distracted from the real issues at hand—how to raise the tenor of the debate in our elections and give people real choices. No one benefits from negative ads. They don't aid our Nation's political dialog." *Id.,* at 20521–20522 (remarks of Sen. McCain). He assured the body that "[y]ou cut off the soft money, you are going to see a lot less of that [attack ads]. Prohibit unions and corporations, and you will see a lot less of that. If you demand full disclosure for those who pay for those ads, you are going to see a lot less of that . . . ." 147 Cong. Rec. S3116 (Mar. 29, 2001) (remarks of Sen. McCain). See also, *e.g.*, 148 Cong. Rec. S2117 (Mar. 20, 2002) (remarks of Sen. Cantwell) ("This bill is about slowing the ad war. . . . It is about slowing political advertising and making sure the flow of negative ads by outside interest groups does not continue to permeate the airwaves"); 143 Cong. Rec. 20746 (1997) (remarks of Sen. Boxer) ("These so-called issues ads are not regulated at all and mention candidates

by name. They directly attack candidates without any accountability. It is brutal. . . . We have an opportunity in the McCain-Feingold bill to stop that . . ."); 145 Cong. Rec. S12606–S12607 (Oct. 14, 1999) (remarks of Sen. Wellstone) ("I think these issue advocacy ads are a nightmare. I think all of us should hate them. . . . [By passing the legislation], [w]e could get some of this poison politics off television").

Another theme prominent in the legislative debates was the notion that there is too much money spent on elections. The first principle of "reform" was that "there should be less money in politics." 147 Cong. Rec. S3236 (Apr. 2, 2001) (remarks of Sen. Murray). "The enormous amounts of special interest money that flood our political system have become a cancer in our democracy." 148 Cong. Rec. S2151 (Mar. 20, 2002) (remarks of Sen. Kennedy). "[L]arge sums of money drown out the voice of the average voter." 148 Cong. Rec. H373 (Feb. 13, 2002) (remarks of Rep. Langevin). The system of campaign finance is "drowning in money." *Id.,* at H404 (remarks of Rep. Menendez). And most expansively:

> "Despite the ever-increasing sums spent on campaigns, we have not seen an improvement in campaign discourse, issue discussion or voter education. More money does not mean more ideas, more substance or more depth. Instead, it means more of what voters complain about most. More 30-second spots, more negativity and an increasingly longer campaign period." 148 Cong. Rec. S2150 (Mar. 20, 2002) (remarks of Sen. Kerry).

Perhaps voters do detest these 30-second spots—though I suspect they detest even more hour-long campaign-debate interruptions of their favorite entertainment programming. Evidently, however, these ads *do persuade* voters, or else they would not be so routinely used by sophisti-

cated politicians of all parties. The point, in any event, is that it is not the proper role of those who govern us to judge which campaign speech has "substance" and "depth" (do you think it might be that which is least damaging to incumbents?) and to abridge the rest.

And what exactly are these outrageous sums frittered away in determining who will govern us? A report prepared for Congress concluded that the total amount, in hard and soft money, spent on the 2000 federal elections was between $2.4 and $2.5 billion. J. Cantor, CRS Report for Congress, Campaign Finance in the 2000 Federal Elections: Overview and Estimates of the Flow of Money (2001). *All* campaign spending in the United States, including state elections, ballot initiatives, and judicial elections, has been estimated at $3.9 billion for 2000, Nelson, Spending in the 2000 Elections, in Financing the 2000 Election 24, Tbl. 2–1 (D. Magleby ed. 2002), which was a year that "shattered spending and contribution records," *id.*, at 22. Even taking this last, larger figure as the benchmark, it means that Americans spent about half as much electing all their Nation's officials, state and federal, as they spent on movie tickets ($7.8 billion); about a fifth as much as they spent on cosmetics and perfume ($18.8 billion); and about a sixth as much as they spent on pork (the nongovernmental sort) ($22.8 billion). See U. S. Dept. of Commerce, Bureau of Economic Analysis, Tbl. 2.6U (Col. AS; Rows 356, 214, and 139), http://www.bea.doc.gov/bea/dn/206u.csv. If our democracy is drowning from this much spending, it cannot swim.

* * *

Which brings me back to where I began: This litigation is about preventing criticism of the government. I cannot say for certain that many, or some, or even any, of the Members of Congress who voted for this legislation did so not to produce "fairer" campaigns, but to mute criticism of

their records and facilitate reelection. Indeed, I will stipulate that all those who voted for the Act believed they were acting for the good of the country. There remains the problem of the Charlie Wilson Phenomenon, named after Charles Wilson, former president of General Motors, who is supposed to have said during the Senate hearing on his nomination as Secretary of Defense that "what's good for General Motors is good for the country."* Those in power, even giving them the benefit of the greatest good will, are inclined to believe that what is good for them is good for the country. Whether in prescient recognition of the Charlie Wilson Phenomenon, or out of fear of good old-fashioned, malicious, self-interested manipulation, "[t]he fundamental approach of the First Amendment . . . was to assume the worst, and to rule the regulation of political speech 'for fairness' sake' simply out of bounds." *Austin*, 494 U. S., at 693 (SCALIA, J., dissenting). Having abandoned that approach to a limited extent in *Buckley*, we abandon it much further today.

We will unquestionably be called upon to abandon it further still in the future. The most frightening passage in the lengthy floor debates on this legislation is the following assurance given by one of the cosponsoring Senators to his colleagues:

> "This is a modest step, it is a first step, it is an essential step, but it does not even begin to address, in some ways, the fundamental problems that exist with the hard money aspect of the system." 148 Cong. Rec. S2101 (Mar. 20, 2002) (statement of Sen. Feingold).

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*It is disillusioning to learn that the fabled quote is inaccurate. Wilson actually said: "[F]or years I thought what was good for our country was good for General Motors, and vice versa. The difference did not exist." Hearings before the Senate Committee on Armed Services, 83d Cong., 1st Sess., 26 (1953).

The system indeed. The first instinct of power is the retention of power, and, under a Constitution that requires periodic elections, that is best achieved by the suppression of election-time speech. We have witnessed merely the second scene of Act I of what promises to be a lengthy tragedy. In scene 3 the Court, having abandoned most of the First Amendment weaponry that *Buckley* left intact, will be even less equipped to resist the incumbents' writing of the rules of political debate. The federal election campaign laws, which are already (as today's opinions show) so voluminous, so detailed, so complex, that no ordinary citizen dare run for office, or even contribute a significant sum, without hiring an expert advisor in the field, can be expected to grow more voluminous, more detailed, and more complex in the years to come—and always, always, with the objective of reducing the excessive amount of speech.