

United States Senate

REPUBLICAN POLICY COMMITTEE

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How Campaign "Reform" Might Have Turned Out

Thankfully, the Constitution Stands in the Way

Sometimes we forget how campaign finance "reform" might have turned out. We forget, for example, that **the 92nd Congress and Common Cause, to name but two, wanted to put persons *in jail* if they or their organization made independent expenditures of more than \$1,000 "to further the election" of any candidate for the presidency!** The law applied only to the campaigns of those presidential candidates who accept federal campaign dollars -- but, of course, every major presidential campaign takes federal dollars.

This extraordinary provision of law was contained in the Presidential Election Campaign Fund Act, 26 U.S.C. 9012(f) (1994 ed.), and the Supreme Court eventually held it unconstitutional with seven justices agreeing that the law violated the First Amendment. *Federal Election Commission v. National Conservative Political Action Committee*, 470 U.S. 480 (1985). Five years earlier, however, the Court was not so sure; only four justices agreed that the provision was unconstitutional. See, *Common Cause v. Schmitt*, 455 U.S. 129 (1982), *equally divided court of 8 participating justices affirming* 512 F.Supp. 489 (1980).

The 1985 case got started when the Democratic National Committee and leading members of that party learned that the **National Conservative Political Action Committee (NCPAC) and the Fund for a Conservative Majority (FCM, also a PAC) were going to raise and spend large sums of money to commit political speech by calling independently for the reelection of President Ronald Reagan. This so enraged the Democrats that they sued.** They wanted NCPAC and FCM restricted to a thousand bucks each. Needless to say, in a vast Republic of 250 million persons, \$1,000 doesn't buy much television time. That was the Democrats' point, of course; they didn't like what the PACs had to say, and they certainly didn't want the PACs to have the opportunity to say it effectively. **When the FEC got wind that too much speech was about to be committed, they joined the lawsuit.** The Democrats and the FEC were turned down flat, the Supreme Court saying:

"There can be no doubt that the expenditures at issue in this case produce speech at the core of the First Amendment. We said in *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)

(per curiam):

The Act's contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities. Discussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution. **The First Amendment affords the broadest protection to such political expression in order 'to assure [the] unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'** *Roth v. United States*, 354 U.S. 476, 484 (1957). . . . This no more than reflects our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.' *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

The PACs in this case, of course, are not lone pamphleteers or street corner orators in the Tom Paine mold; they spend substantial amounts of money in order to communicate their political ideas through sophisticated media advertisements. And of course the criminal sanction in question is applied to the expenditure of money to propagate political views, rather than to the propagation of those views unaccompanied by the expenditure of money. But for purposes of presenting political views in connection with a nationwide Presidential election, **allowing the presentation of views while forbidding the expenditure of more than \$1,000 to present them is much like allowing a speaker in a public hall to express his views while denying him the use of an amplifying system.** The Court said in *Buckley v. Valeo*, 424 U.S. at 19:

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

We also reject the notion that the PACs' form of organization or method of solicitation diminishes their entitlement to First Amendment protection. **The First Amendment freedom of association is squarely implicated in these cases.** National Conservative Political Action Committee (NCPAC) and Fund for a Conservative Majority (FCM) are **mechanisms by which large numbers of individuals of modest means can join together in organizations which serve to '[amplify] the voice of their adherents.'**

Buckley v. Valeo, 424 U.S. at 22; *NAACP v. Alabama*, 357 U.S. 449, 460 (1958); *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 295-296 (1981). It is significant that in 1979-1980 approximately 101,000 people contributed an average of \$75 each to NCPAC and in 1980 approximately 100,000 people contributed an average of \$25 each to FCM." *Federal Election Commission v. National Conservative Political Action Committee*, *supra* at 493-94 (edited lightly) (emphasis added).