



CAMPAIGN FINANCE: CONTRIBUTIONS, INDEPENDENT EXPENDITURES, AND DISCLOSURE

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CAMPAIGN FINANCE

- ▶ Contribution Limits
- ▶ Independent Expenditures
- ▶ Disclosure
- ▶ Public Financing

KEY TERMS

- ▶ Candidate
- ▶ Political Action Committee (PAC)
- ▶ Independent Expenditure
- ▶ Express Advocacy
- ▶ Issue Advocacy
- ▶ Electioneering Communication

BUCKLEY V. VALEO

424 U.S. 1 (1976)

- ▶ Contribution Limits [Upheld]
- ▶ Expenditure Limits [Struck Down]
- ▶ Disclosure [Upheld]
- ▶ Public Financing [Upheld]

EXPRESS ADVOCACY: “MAGIC WORDS”

Buckley v. Valeo, 424 U.S. 1 (1976):

[C]ommunications containing express words of advocacy of election or defeat, such as “vote for,” “elect,” “support,” “cast your ballot for,” “Smith for Congress,” “vote against,” “defeat,” or “reject.” [Footnote 52]

EXPRESS ADVOCACY: FUNCTIONAL EQUIVALENT

FEC v. Wisconsin Right to Life, 551 U.S.
449 (2007):

[S]usceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate.

CONTRIBUTION LIMITS

- ▶ Closely drawn scrutiny
 - ▶ Closely drawn to achieve sufficiently important government interest
- ▶ Prevention of actual or apparent *quid pro quo* corruption

CONTRIBUTION LIMITS

- ▶ Generally Upheld Unless ...
 - ▶ *Buckley v. Valeo*, 424 U.S. 1 (1976)
- ▶ Limits Too Low
 - ▶ *Randall v. Sorrell*, 548 U.S. 230 (2006)
- ▶ Aggregate Limits
 - ▶ *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014)

INDEPENDENT EXPENDITURES

- ▶ Strict scrutiny
 - ▶ Narrowly tailored to achieve compelling government interest
- ▶ Prevention of actual or apparent *quid pro quo* corruption

INDEPENDENT EXPENDITURES

- ▶ *Citizens United v. FEC*, 558 U.S. 310 (2010)
 - ▶ Ban on Corporate/Union Independent Expenditures [Struck Down]
 - ▶ Disclosure Requirements [Upheld]

DISCLOSURE

- ▶ Exacting scrutiny
 - ▶ Substantial relationship between law and sufficiently important government interest
- ▶ Providing information to electorate about election-related spending

DISCLOSURE

- ▶ Not limited to express advocacy or its functional equivalent
 - ▶ *Citizens United*, 558 U.S. 310 (2010)
- ▶ Burdens imposed by disclosure
- ▶ “Major purpose” of nominating or electing candidates

DISCLOSURE: EXAMPLES

▶ Upheld

- ▶ *Madigan* (7th Circuit, 2012)
- ▶ *VT Right to Life* (2nd Circuit, 2014)
- ▶ *Yamada* (9th Circuit, 2015)

▶ Struck Down

- ▶ *NM Youth Organized* (10th Circuit, 2010)
- ▶ *IA Right to Life* (8th Circuit, 2013)
- ▶ *Barland II* (7th Circuit, 2014)

CONCLUSION

- ▶ Independent Expenditures
 - ▶ Strict scrutiny
 - ▶ Prevention of *quid pro quo* corruption
- ▶ Contribution Limits
 - ▶ Closely drawn scrutiny
 - ▶ Prevention of *quid pro quo* corruption
- ▶ Disclosure
 - ▶ Exacting scrutiny
 - ▶ Provide information to electorate

QUESTIONS?

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