Buckley v. Valeo (1976)

Buckley v. Valeo, legal case in which the U.S. Supreme Court on January 30, 1976, struck down provisions of the 1971 Federal Election Campaign Act (FECA)—as amended in 1974—that had imposed limits on various types of expenditures by or on behalf of candidates for federal office. The ruling nevertheless upheld FECA's limits on contributions to individual candidates and on aggregate contributions to multiple candidates by persons, groups, and political action committees (PACs). *Buckley* v. *Valeo* is significant for having introduced the notion that spending money on behalf of a candidate or a political party is a form of protected speech. It set the parameters of constitutionally permissible regulation of political campaigns in the United States for more than three decades.

BACKGROUND

The case arose in January 1975 when a coalition of plaintiffs that included Sen. James L. Buckley of New York filed suit in U.S. district court alleging, among other claims, that FECA's contribution and expenditure limitations violated the First Amendment guarantee of freedom of speech. The district court certified (requested resolution of) the constitutional questions to the U.S. Court of Appeals for the District of Columbia, which upheld almost all provisions of the law. The plaintiffs then appealed to the U.S. Supreme Court, which heard oral arguments.

OPINION

The court's per curiam (unsigned) opinion represented the views of varying majorities of the eight participating justices (Justice John Paul Stevens did not participate) on the specific questions presented. The court noted that, because modern political campaigns depend on mass media and require the raising and spending of money, the relationship between political communication and money assumes constitutional dimensions:

> *Virtually every means of communicating ideas in today's mass society requires the expenditure of money. The distribution of the humblest handbill or leaflet entails printing, paper, and circulation costs. Speeches and rallies generally necessitate hiring a hall and publicizing the event. The electorate's increasing dependence on television, radio and other mass media for news and information has made these expensive modes of communication indispensable instruments of effective political speech.*

The court considered that two aspects of First Amendment freedom were potentially impaired by FECA. First, limits on campaign expenditures by candidates and others represented "substantial, rather than merely theoretical, restraints on the quantity and diversity of political speech." Accordingly, limits on campaign expenditures were struck down as unconstitutional because they were direct limits on political speech.

Second, the court reasoned that making a contribution of money to a candidate, like joining a political party, served to affiliate a person with a candidate and to enable like-minded persons to pool their resources in furtherance of common political goals. Citing earlier Supreme Court decisions, the court asserted that the right of free association is a "basic constitutional freedom" (*Kusper* v. *Pontikes* [1973]) that is "closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society" (*Shelton* v. *Tucker* [1960]). "In view of the fundamental nature of the right to associate," the court concluded, "governmental 'action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny'" (*NAACP* v. *Patterson* [1958]).

Nevertheless, the *Buckley* court upheld FECA's limits on contributions, because the restraints on political speech were "marginal" in view of the fact that the contributor remained free to spend independently and to associate with candidates in other ways. Moreover, "the transformation of contributions into political debate involves speech by someone other than the contributor," viz., the candidate. The court concluded that a compelling governmental interest in the prevention of corruption or the appearance of corruption from large contributions justified these less-serious impairments of First Amendment activity.

Buckley v. *Valeo* substantially altered the campaign finance landscape envisaged by Congress. In addition to striking down limits on candidate expenditures, the decision also invalidated limits on independent spending (spending not coordinated with the candidate or his campaign) and limits on expenditures of candidates' personal funds. The *Buckley* court also found that FECA's overall goal of reducing the cost of election campaigns was impermissible: "The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise." The court did uphold expenditure limitations in the context of the public funding of presidential election campaigns, because candidates could voluntarily choose to limit their expenditures in return for public funds.

FECA purported to broadly regulate all independent spending in federal elections "relative to a clearly identified candidate." The *Buckley* court argued that "relative to" was so vague and overly broad that it would create an unconstitutional lack of notice to persons potentially affected by FECA. In order to avoid declaring the provision unconstitutional, the court held that it "must be construed to apply only to expenditures for communications that, in express terms advocate the election or defeat of a clearly identified candidate for federal office." Such express terms, the court suggested, include "vote for," "elect," "support," "cast your ballot for," "Smith for Congress," "vote against," "defeat," and "reject." The court considered that such precision was required to avoid "chilling" speech involving public discussion of political issues:

> *The distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application. Candidates, especially incumbents, are intimately tied to public issues involving legislative proposals and governmental actions. Not only do candidates campaign on the basis of their positions on various public issues, but campaigns themselves generate issues of public interest.*

The *Buckley* court also found that the Federal Election Commission (FEC), which had been established in 1974 to administer and enforce FECA, was improperly constituted in violation of the appointments clause of the U.S. Constitution (Article II, Section 2, clause 2), because members of the commission were not nominated by the president and confirmed by the Senate, as the appointments clause requires of all "Officers of the United States, whose Appointments are not herein otherwise provided for." Congress revised the FEC's appointment procedure soon after *Buckley* v. *Valeo* was issued.

CONSEQUENCES AND LATER DEVELOPMENTS

One important result of the decision was the freeing of independent "issue advocacy" advertisements from regulation as either contributions or expenditures, apart from reporting requirements: "So long as persons and groups eschew expenditures that, in express terms advocate the election or defeat of a clearly identified candidate, they are free to spend as much as they want to promote the candidate and his views." This in turn led to the greatly increased use of soft money (unregulated monies donated to political parties for general purposes) for carefully crafted television advertising that effectively advocated the election or defeat of candidates without doing so in "express terms." By 1996 both of the major parties were spending more soft money than hard money.

In 1976 Congress amended FECA to repeal the expenditure limits struck down by the *Buckley* court. Further statutory amendments were contained in the Bipartisan Campaign Reform Act (BCRA) of 2002, which also banned, among other things, the solicitation or receipt of soft money. The BCRA also expanded FECA's ban on corporate and union contributions and expenditures to include "electioneering communications" paid for with corporate or union general-treasury funds. (Electioneering communications were defined as broadcast political advertisements that refer clearly to a candidate and are made no more than 60 days before a general election or no more than 30 days before a primary election.) The Supreme Court upheld the latter provision in *McConnell* v. *Federal Election Commission* (2003) but struck it down in *Citizens United* v. *Federal Election Commission* (2010), which also overturned *Buckley* v. *Valeo*'s general endorsement of limits on independent expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate. Four years later, in *McCutcheon* v. *Federal Election Commission* (2014), the court also struck down FECA's aggregate-contribution limits, which the *Buckley* court had characterized as a "quite modest restraint upon protected political activity" and as "no more than a corollary of the basic individual contribution limitation that we have found to be constitutionally valid."