[](https://advance.lexis.com/api/shepards?id=urn:contentItem:7XW4-F4R1-2NSF-C1C1-00000-00&category=initial&context=1000516)   WarningAs of: December 20, 2023 12:06 AM Z

# [*Buckley v. Valeo*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-B270-003B-S4B9-00000-00&context=1000516)

Supreme Court of the United States

November 10, 1975, Argued ; January 30, 1976 [[1]](#footnote-1)\*

No. 75-436.

**Reporter**

424 U.S. 1 \*; 96 S. Ct. 612 \*\*; 46 L. Ed. 2d 659 \*\*\*; 1976 U.S. LEXIS 16 \*\*\*\*; 76-1 U.S. Tax Cas. (CCH) P9189

BUCKLEY ET AL. v. VALEO, SECRETARY OF THE UNITED STATES SENATE, ET AL.

**Subsequent History:** **[\*\*\*\*1]** As Amended.

**Opinion**

PER CURIAM.

These appeals present constitutional challenges to the key provisions of the Federal Election Campaign Act of 1971, (Act) and related provisions of the Internal Revenue Code of 1954, all as amended in 1974.

**[\*\*\*]** The statutes at issue summarized in broad terms, contain the following provisions: (8a) individual political contributions are limited to $ 1,000 to any single candidate per election, with an overall annual limitation of $ 25,000 by any contributor; independent expenditures by individuals and groups "relative to a clearly identified candidate" are limited to $ 1,000 a year; campaign spending by candidates for various federal offices and spending for national conventions by political parties are subject to prescribed limits; (b) contributions and expenditures above certain threshold levels must be reported and publicly disclosed; (c) a system for public funding of Presidential campaign activities is established . . . and (d) a Federal Election Commission is established to administer and enforce the legislation.

[ \*\*\*]

I. CONTRIBUTION AND EXPENDITURE LIMITATIONS

The intricate statutory scheme adopted by Congress to regulate federal election campaigns includes restrictions on political contributions and expenditures that apply broadly to all phases of and all participants in the election process. The major contribution and expenditure limitations in the Act prohibit individuals from contributing more than $ 25,000 in a single year or more than $ 1,000 to any single candidate for an election campaignand from spending more than $ 1,000 a year "relative to a clearly identified candidate." Other provisions restrict a candidate's use of personal and family resources in his campaign and limit the overall amount that can be spent by a candidate in campaigning for federal office.

The constitutional power of Congress to regulate federal elections is well established and is not questioned by any of the parties in this case. [[2]](#footnote-2)16 Thus, the criticalconstitutional questions presented here go not to the basic power of Congress to legislate in this area, but to whether the specific legislation that Congress has enacted interferes with [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) freedoms. . . .

A. General Principles

The Act's contribution and expenditure limitations operate in an area of the most fundamental [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) 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)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J5Y0-003B-S270-00000-00&context=1000516)*. Although [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) protections are not confined to "the exposition of ideas," *[Winters v. New York, 333 U.S. 507, 510 (1948)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JST0-003B-S460-00000-00&context=1000516)*, "there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs,… of course includ[ing] discussions of candidates…." *[Mills v. Alabama, 384 U.S. 214, 218 (1966)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G4G0-003B-S33N-00000-00&context=1000516)*. 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)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GWF0-003B-S50C-00000-00&context=1000516)*. In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation. As the Court observed in *[Monitor Patriot Co. v. Roy, 401 U.S. 265, 272 (1971)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DRB0-003B-S488-00000-00&context=1000516)*, "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office."

[\*\*\*]

It is with these principles in mind that we consider the primary contentions of the parties with respect to the Act's limitations upon the giving and spending of money in political campaigns. Those conflicting contentions could not more sharply define the basic issues before us. Appellees contend that what the Act regulates is conduct, and that its effect on speech and association is incidental at most. Appellants respond that contributions and expenditures are at the very core of political speech, and that the Act's limitations thus constitute restraints on [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) liberty that are both gross and direct.

In upholding the constitutional validity of the Act's contribution and expenditure provisions on the groundthat those provisions should be viewed as regulating conduct not speech, the Court of Appeals relied upon *[United States v. O'Brien, 391 U.S. 367 (1968)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FJ90-003B-S0HN-00000-00&context=1000516)*. See U.S. App. D.C., at , *[519 F.2d, at 840](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-2N70-0039-M4S4-00000-00&context=1000516)*. The O'Brien case involved a defendant's claim that the [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) prohibited his prosecution for burning his draft card because his act was "'symbolic speech'" engaged in as a "'demonstration against the war and against the draft.'" *[391 U.S. at 376](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FJ90-003B-S0HN-00000-00&context=1000516)*. On the assumption that "the alleged communicative element in O'Brien's conduct [was] sufficient to bring into play the [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516)," the Court sustained the conviction because it found "a sufficiently important governmental interest in regulating the nonspeech element" that was "unrelated to the suppression of free expression" and that had an "incidental restriction on alleged [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) freedoms… no greater than [was] essential to the furtherance of that interest." *[Id., at 376-377](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FJ90-003B-S0HN-00000-00&context=1000516)*. The Court expressly emphasized that O'Brien was not a case "where the alleged governmental interest in regulating conduct arises in some measure because the communication allegedly integral to the conduct is itself thought to be harmful." *[Id., at 382](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FJ90-003B-S0HN-00000-00&context=1000516)*.

We cannot share the view that the present Act's contribution and expenditure limitations are comparable to the restrictions on conduct upheld in O'Brien. The expenditure of money simply cannot be equated with such conduct as destruction of a draft card. Some forms of communication made possible by the giving and spending of money involve speech alone, some involve conduct primarily, and some involve a combination of the two. Yet 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516). See *[Bigelow v. Virginia, 421 U.S. 809,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BJH0-003B-S21W-00000-00&context=1000516)* [***[\*17]*** *820 (1975)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BJH0-003B-S21W-00000-00&context=1000516); *[New York Times Co. v. Sullivan, supra, at 266](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GWF0-003B-S50C-00000-00&context=1000516)*. For example, in *[Cox v. Louisiana, 379 U.S. 559 (1965)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRF0-003B-S2KT-00000-00&context=1000516)*, the Court contrasted picketing and parading with a newspaper comment and a telegram by a citizen to a public official. The parading and picketing activities were said to constitute conduct "intertwined with expression and association," whereas the newspaper comment and the telegram were described as a "pure form of expression" involving "free speech alone" rather than "expression mixed with particular conduct." *[Id., at 563-564](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRF0-003B-S2KT-00000-00&context=1000516)*.

Even if the categorization of the expenditure of money as conduct were accepted, the limitations challenged here would not meet the O'Brien test because the governmental interests advanced in support of the Act involve "suppressing communication." The interests served by the Act include restricting the voices of people and interest groups who have money to spend and reducing the overall scope of federal election campaigns. Although the Act does not focus on the ideas expressed by persons or groups subjected to its regulations, it is aimed in part at equalizing the relative ability of all voters to affect electoral outcomes by placing a ceiling on expenditures for political expression by citizens and groups. Unlike O'Brien, where the Selective Service System's administrative interest in the preservation of draft cards was wholly unrelated to their use as a means of communication, it is beyond dispute that the interest in regulating the alleged "conduct" of giving or spending money "arises in some measure because the communication allegedly integralto the conduct is itself thought to be harmful." *[391 U.S. at 382](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FJ90-003B-S0HN-00000-00&context=1000516)*.

Nor can the Act's contribution and expenditure limitations be sustained, as some of the parties suggest, by reference to the constitutional principles reflected in such decisions as *[Cox v. Louisiana, supra](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRF0-003B-S2KT-00000-00&context=1000516)*; *[Adderley v. Florida, 385 U.S. 39 (1966)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G1R0-003B-S187-00000-00&context=1000516)*; and *[Kovacs v. Cooper, 336 U.S. 77 (1949)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JRB0-003B-S2PP-00000-00&context=1000516)*. Those cases stand for the proposition that the government may adopt reasonable time, place, and manner regulations, which do not discriminate among speakers or ideas, in order to further an important governmental interest unrelated to the restriction of communication. See *[Erznoznik v. City of Jacksonville, 422 U.S. 205, 209 (1975)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BGP0-003B-S1X2-00000-00&context=1000516)*. In contrast to O'Brien, where the method of expression was held to be subject to prohibition, Cox, Adderley, and Kovacs involved place or manner restrictions on legitimate modes of expression -- picketing, parading, demonstrating, and using a soundtruck. The critical difference between this case and those time, place and manner cases is that the present Act's contribution and expenditure limitations impose direct quantity restrictionson political communication and association by persons, groups, candidates, and political parties in addition to any reasonable time, place, and manner regulations otherwise imposed.

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. [[3]](#footnote-3)18 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.

The expenditure limitations contained in the Act represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech. The $1,000 ceiling on spending "relative to a clearly identified candidate," [*18 U.S.C. § 608 (e)(1) (1970 ed., Supp. IV)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516), would appear to exclude all citizens and groups except candidates, political parties, and the institutional pressfrom any significant use of the most effective modes of communication. Although the Act's limitations on expenditures by campaign organizations and political parties provide substantially greater room for discussion and debate, they would have required restrictions in the scope of a number of past congressional and Presidential campaigns and would operate to constrain campaigning by candidates who raise sums in excess of the spending ceiling.

By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication. 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 his 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 organization 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 expressionif 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.

Given the important role of contributions in financing political campaigns, contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy. There is no indication, however, that the contribution limitations imposed by the Act would have any dramatic adverse effect on the funding of campaigns and political associations. [[4]](#footnote-4)23 The overall effect of the Act's contribution ceilings is merely to require candidates and political committees to raise funds from a greater number of persons and to compel peoplewho would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression.

The Act's contribution and expenditure limitations also impinge on protected associational freedoms. Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals. The Act's contribution ceilings thus limit one important means of associatingwith a candidate or committee,but 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 the Act's contribution limitations permit associations and candidates to aggregate large sums of money to promote effective advocacy.  By contrast, the Act's $ 1,000 limitation on independent expenditures "relative to a clearly identified candidate" precludes most associations from effectively amplifying the voice of their adherents, the original basis for the recognition of [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) protection of the freedom of association.  See *[NAACP v. Alabama, 357 U.S. at 460](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J2N0-003B-S55G-00000-00&context=1000516)*. The Act's constraints on the ability of independent associations and candidate campaign organizations to expend resources on political expression "is simultaneously an interference with the freedom of [their] adherents," *[Sweezy v. New Hampshire, 354 U.S. 234, 250 (1957)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J620-003B-S29K-00000-00&context=1000516)* (plurality opinion). See *Cousins v.*  [*Wigoda, 419 U.S. at 487-488*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-C5F0-003B-S4GW-00000-00&context=1000516); *[NAACP v. Button, 371 U.S. 415, 431 (1963)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H620-003B-S3N1-00000-00&context=1000516)*.

In sum, although the Act's contribution and expenditure limitations both implicate fundamental [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) interests, its expenditure ceilings impose significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions.

B. Contribution Limitations

1. The $ 1,000 Limitation on Contributions by Individuals and Groups to Candidates and Authorized Campaign Committees

*[Section 608 (b)](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516)* provides, with certain limited exceptions, that "no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed $ 1,000." The statute defines "person" broadly to include "an individual, partnership, committee, association, corporation or any other organization or group of persons." [*§ 591 (g)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H010-00000-00&context=1000516). The limitation reaches a gift, subscription, loan, advance, deposit of anything of value, or promise to give a contribution, made for the purpose of influencing a primary election, a Presidential preference primary, or a general election for any federal office.[[5]](#footnote-5)24[*§§ 591 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H010-00000-00&context=1000516), [*(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H010-00000-00&context=1000516). The$ 1,000 ceiling applies regardless of whether the contribution is given to the candidate, to a committee authorized in writing by the candidate to accept contributions on his behalf, or indirectly via earmarked gifts passed through an intermediary to the candidate.[*§§ 608 (b)(4)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516), [*(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516). The restriction applies to aggregate amounts contributed to the candidate for each election -- with primaries, run-off elections, and general elections counted separately and all Presidential primaries held in any calendar year treated together as a single election campaign. [*§ 608 (b)(5)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516).

Appellants contend that the $ 1,000 contribution ceiling unjustifiably burdens [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) freedoms, employs overbroad dollar limits, and discriminates against candidates opposing incumbent officeholders and against minor-party candidates in violation of the [*Fifth Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T3X2-8T6X-731X-00000-00&context=1000516). We address each of these claims of invalidity in turn.

(a)

. . . the primary [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) problem raised by the Act's contribution limitations is their restriction of one aspect of the contributor's freedom of political association. The Court's decisions involving associational freedoms establish that the right of association is a "basic constitutional freedom," that is "closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a freesociety." [citations omitted].  In view of the fundamental nature of the right to associate, governmental "action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny." *[NAACP v. Alabama, supra, at 460-461](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J2N0-003B-S55G-00000-00&context=1000516)*. Yet, it is clear that "[n]either the right to associate nor the right to participate in political activities is absolute." *[CSC v. Letter Carriers, 413 U.S. 548, 567 (1973)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CSF0-003B-S24V-00000-00&context=1000516)*. Even a "significant interference' with protected rights of political association" may be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms. *[Cousins v. Wigoda, supra, at 488](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-C5F0-003B-S4GW-00000-00&context=1000516)*; *[NAACP v. Button, supra, at 438](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H620-003B-S3N1-00000-00&context=1000516)*; *[Shelton v. Tucker, supra, at 488](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HMH0-003B-S4B1-00000-00&context=1000516)*.

Appellees argue that the Act's restrictions on large campaign contributions are justified by three governmentalinterests. According to the parties and amici, the primary interest served by the limitations and, indeed, by the Act as a whole, is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office. Two "ancillary" interests underlying the Act are also allegedly furthered by the $ 1,000 limits on contributions. First, the limits serve to mute the voices of affluent persons and groups in the election process and thereby to equalize the relative ability of all citizens to affect the outcome of elections. [[6]](#footnote-6)26 Second, it is argued, the ceilings may to some extent act as a brake on the skyrocketing cost of political campaigns and thereby serve to open the political system more widely to candidates without access to sources of large amounts of money. [[7]](#footnote-7)27

[9][10A]It is unnecessary to look beyond the Act's primary purpose -- to limit the actuality and appearance of corruption resulting from large individual financial contributions -- in order to find a constitutionally sufficient justification for the $ 1,000 contribution limitation. Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign. The increasing importance of the communications media and sophisticated mass-mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy. To the extent that large contributions are given to secure political quid pro quo's from current and potential office holders, the integrity of our system of representative democracy is undermined. Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one.

Of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. In *[CSC v. Letter Carriers, supra](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CSF0-003B-S24V-00000-00&context=1000516)*, the Court found that the danger to "fair and effective government" posed by partisan political conduct on the part of federal employees charged with administering the law was a sufficiently important concern to justify broad restrictions on the employees' right of partisan political association. Here, as there, Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical… if confidence in the system of representative Government is not to be eroded to a disastrous extent." *[413 U.S. at 565](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CSF0-003B-S24V-00000-00&context=1000516)*.

Appellants contend that the contribution limitations must be invalidated because bribery laws and narrowly drawn disclosure requirements constitute a less restrictive means of dealing with "proven and suspected quid pro quo arrangements." But laws making criminalthe giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action. And while disclosure requirements serve the many salutary purposes discussed elsewhere in this opinion, Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.

The Act's $ 1,000 contribution limitation focuses precisely on the problem of large campaign contributions -- the narrow aspect of political association where the actuality and potential for corruption have been identified -- while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources. Significantly, the Act's contribution limitations in themselves do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties.

We find that, under the rigorous standard of review established by our prior decisions, the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) freedoms caused by the $ 1,000 contribution ceiling.

[\*\*\*]

(c)

Apart from these [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) concerns, appellants argue that the contribution limitations work such an invidious discrimination between incumbents and challengers that the statutory provisions must be declared unconstitutional on their face. In considering this contention, it isimportant at the outset to note that the Act applies the same limitations on contributions to all candidates regardless of their present occupations, ideological views, or party affiliations. Absent record evidence of invidious discrimination against challengers as a class, a court should generally be hesitant to invalidate legislation which on its face imposes evenhanded restrictions.

There is no such evidence to support the claim that the contribution limitations in themselves discriminate against major-party challengers to incumbents. Challengers can and often do defeat incumbents in federal elections. [[8]](#footnote-8)34 Major-party challengers in federal elections are usually men and women who are well known and influential in their community or State. Often such challengers are themselves incumbents in important local, state, or federal offices. Statistics in the record indicate that major-party challengers as well as incumbents are capable of raising large sums for campaigning.[[9]](#footnote-9)35Indeed, a small but nonetheless significant number of challengers have in recent elections outspent their incumbent rivals.[[10]](#footnote-10)36 And, to the extent that incumbents generally are more likely than challengers to attract very large contributions, the Act's $ 1,000 ceiling has the practical effect of benefiting challengers as a class. [[11]](#footnote-11)37 Contrary to the broad generalization drawn by the appellants, the practical impact of the contribution ceilings in any given election will clearly depend upon the amounts in excess of the ceilings that, for various reasons, the candidatesin that election would otherwise have received and the utility of these additional amounts to the candidates. To be sure, the limitations may have a significant effect on particular challengers or incumbents, but the record provides no basis for predicting that such adventitious factors will invariably and invidiously benefit incumbents as a class. [[12]](#footnote-12)38 Since the danger of corruption and the appearance of corruption apply with equal force to challengers and to incumbents, Congress had ample justification for imposing the same fundraising constraints upon both.

[\*\*\*]

In view of these considerations, we conclude that the impact of the Act's $ 1,000 contribution limitation on major-party challengers and on minor-party candidates does not render the provision unconstitutional on its face.

[\*\*\*]

C. Expenditure Limitations

The Act's expenditure ceilings impose direct and substantial restraints on the quantity of political speech. The most drastic of the limitations restricts individuals and groups, including political parties that fail to place a candidate on the ballot, to an expenditure of $ 1,000 "relative to a clearly identified candidate during a calendar year." [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516).  Other expenditure ceilings limit spending by candidates, [*§ 608 (a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516), their campaigns, [*§ 608 (c)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516), and political parties in connection with election campaigns, [*§ 608 (f)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516). It is clear that a primary effect of these expenditure limitations is to restrict the quantity of campaign speech by individuals, groups, and candidates. The restrictions, while neutral as to the ideas expressed, limit political expression "at the core of our electoral**[\*\*\*\*66]** process and of the [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) freedoms." *[Williams v. Rhodes, 393 U.S. 23, 32 (1968)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-FFB0-003B-S49C-00000-00&context=1000516)*.

1. The $ 1,000 Limitation on Expenditures "Relative to a Clearly Identified Candidate"

*[Section 608 (e)(1)](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516)* provides that "[n]o person may make any expenditure… relative to a clearly identified candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds $ 1,000."The plain effect of [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) to prohibit all individuals, who are neither candidates nor owners of institutional press facilities, and all groups, except political parties and campaign organizations, from voicing their views "relative to a clearly identified candidate" through means that entail aggregate expenditures of more than $ 1,000 during a calendar year. The provision, for example, would make it a federal criminal offense for a person or association to placea single one-quarter page advertisement "relative to a clearly identified candidate" in a major metropolitan newspaper.

Before examining the interests advanced in support of [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516)'s expenditure ceiling, consideration must be given to appellants' contention that the provision is unconstitutionally vague. Close examination of the specificity of the statutory limitation is required where, as here, the legislation imposes criminal penalties in an area permeated by [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) interests. See *[Smith v. Goguen, 415 U.S. 566, 573 (1974)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CDM0-003B-S3KY-00000-00&context=1000516)*;*[Cramp v. Board of Public Instruction, 368 U.S. 278, 287-288 (1961)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HCY0-003B-S1KH-00000-00&context=1000516)*;*[Smith v. California, 361 U.S. 147, 151 (1959)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HVM0-003B-S1PB-00000-00&context=1000516)*.[[13]](#footnote-13)48 The test is whether the language of [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) affords the "[p]recision of regulation [that] must be the touchstone in an area so closely touching our most precious freedoms.

[20B]

The key operative language of the provision limits "any expenditure… relative to a clearly identified candidate." Although "expenditure," "clearly identified," and "candidate" are defined in the Act, there is no definition clarifying what expenditures are "relative to" a candidate. The use of so indefinite a phrase as "relative to" a candidate fails to clearly mark theboundary between permissible and impermissible speech, unless other portions of [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) make sufficiently explicit the range of expenditures covered by the limitation. The section prohibits "any expenditure… relative to a clearly identified candidate during a calendar year which, when added to all other expenditures… advocating the election or defeat of such candidate, exceeds $ 1,000."  (Emphasis added.) This context clearly permits, if indeed it does not require, the phrase "relative to" a candidate to be read to mean "advocating the election or defeat of" a candidate.

But while such a construction of [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) refocuses the vagueness question, the Court of Appeals was mistaken in thinking that this construction eliminates the problem of unconstitutional vagueness altogether. *[171 U.S. App. D.C., at 204, 519 F. 2d, at 853](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-2N70-0039-M4S4-00000-00&context=1000516)*. For 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. In an analogous context, this Court in *[Thomas v. Collins, 323 U.S. 516 (1945)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-K110-003B-S53F-00000-00&context=1000516)*, observed:

"[W]hether words intended and designed to fall short of invitation would miss that mark is a question both of intent and of effect. No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation. In short, the supposedly clear-cut distinction between discussion, laudation,  general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.

"Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim." *[Id., at 535](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-K110-003B-S53F-00000-00&context=1000516)*.

See also *[United States v. Auto Workers, 352 U.S. 567, 595-596 (1957)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J770-003B-S34N-00000-00&context=1000516)* (Douglas, J., dissenting); *[Gitlow v. New York, 268 U.S. 652, 673 (1925)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H050-003B-7146-00000-00&context=1000516)* (Holmes, J., dissenting).

The constitutional deficiencies described in Thomas v. Collins can be avoided only by reading [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) as limited to communications that include explicit words of advocacy of election or defeat of a candidate, much as the definition of "clearly identified" in [*§ 608 (e)(2)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) requires that an explicit and unambiguous reference to the candidate appear as part of the communication.[[14]](#footnote-14)51 This is the reading of the provision suggested by the nongovernmental appellees in arguing that "[f]unds spent to propagate one's views on issues without expressly calling for a candidate's election or defeat are thus not covered." We agree that in order to preserve the provision against invalidation on vagueness grounds, [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) 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.[[15]](#footnote-15)52

We turn then to the basic [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) question -- whether [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) even as thus narrowly and explicitly construed, impermissibly burdens the constitutional right of free expression. The Court of Appeals summarily held the provision constitutionally valid on the ground that "[*section 608 (e)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) is a loophole-closing provision only" that is necessary to prevent circumvention of the contribution limitations. *[171 U.S. App. D.C., at 204, 519 F. 2d, at 853](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-2N70-0039-M4S4-00000-00&context=1000516)*. We cannot agree.

The discussion in Part I-A, supra, explains why the Act's expenditure limitations impose far greater restraints on the freedom of speech and association than do its contribution limitations. The markedly greater burden on basic freedoms caused by [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) thus cannot be sustainedsimply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitations. Rather, the constitutionality of [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) turns on whether the governmental interests advanced in its support satisfy the exacting scrutiny applicable to limitations on core [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) rights of political expression.

We find that the governmental interest in preventing corruption and the appearance of corruption is inadequate to justify [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516)'s ceiling on independent expenditures. First, assuming, arguendo, that large independent expenditures pose the same dangers of actual or apparent quid pro quo arrangements as do large contributions, [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) does not provide an answer that sufficiently relates to the elimination of those dangers. Unlike the contribution limitations' total ban on the giving of large amounts of money to candidates, [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) prevents only some large expenditures. 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. The exacting interpretationof the statutory language necessary to avoid unconstitutional vagueness thus undermines the limitation's effectiveness as a loophole-closing provision by facilitating circumvention by those seeking to exert improper influence upon a candidate or officeholder.  It would naively underestimate the ingenuity and resourcefulness of persons and groups desiring to buy influence to believe that they would have much difficulty devising expenditures that skirted the restriction on express advocacy of election or defeat but nevertheless benefited the candidate's campaign. Yet no substantial societal interest would be served by a loophole-closing provision designed to check corruption that permitted unscrupulous persons and organizations to expend unlimited sums of money in order to obtain improper influence over candidates for elective office.

Second, quite apart from the shortcomings of [*§ 608 (e)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) (1) in preventing any abuses generated by large independent expenditures, the independent advocacy restricted by the provision does not presently appear to pose dangersof real or apparent corruption comparable to those identified with large campaign contributions. The parties defending [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) contend that it is necessary to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of paying directly for media advertisements or for other portions of the candidate's campaign activities. They argue that expenditures controlled by or coordinated with the candidate and his campaign might well have virtually the same value to the candidate as a contribution and would pose similar dangers of abuse. Yet such controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act.[[16]](#footnote-16)53 [*Section 608 (b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516)'s contribution ceilings rather than [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516)'s independent expenditure limitation prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions. By contrast, [*§ 608(e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) limits expenditures for express advocacy of candidates made totally independently of the candidate and his campaign. Unlike contributions, such independent expenditures may well provide little assistance tothe candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate. Rather than preventing circumvention of the contribution limitations, [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) severely restricts all independent advocacy despite its substantially diminished potential for abuse.

While the independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming  the reality or appearance of corruption in the electoral process, it heavily burdens core [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) expression. For the [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) right to "'speak one's mind… on all public institutions'" includes the right to engage in "'vigorous advocacy' no less than 'abstract discussion.'" *[New York Times Co. v. Sullivan, 376 U.S. at 269](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GWF0-003B-S50C-00000-00&context=1000516)*, quoting *[Bridges v. California, 314 U.S. 252, 270 (1941)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5S10-003B-7539-00000-00&context=1000516)*, and *[NAACP v. Button, 371 U.S. at 429](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H620-003B-S3N1-00000-00&context=1000516)*. Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) than the discussion of political policy generally or advocacy of the passage or defeat of legislation.

It is argued, however, that the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections serves to justify the limitation on express advocacy of the election or defeat of candidates imposed by [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516)'s expenditure ceiling. But the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516), which was designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources,'" and "'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.'" *[New York Times Co. v. Sullivan, supra, at 266, 269](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GWF0-003B-S50C-00000-00&context=1000516)*, quoting *[Associated Press v. United States, 326 U.S. 1, 20 (1945)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JYW0-003B-S44D-00000-00&context=1000516)*, and *[Roth v. United States, 354 U.S. at 484](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J5Y0-003B-S270-00000-00&context=1000516)*. The [*First Amendment's*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) protection against governmental abridgment of free expression cannot properly be made to dependon a person's financial ability to engage in public discussion.  Cf. *[Eastern R. Conf. v. Noerr Motors, 365 U.S. 127, 139 (1961)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HKX0-003B-S43T-00000-00&context=1000516)*.

[\*\*\*]

For the reasons stated, we conclude that *[§ 608 (e)(1)](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516)*'s independent expenditure limitation is unconstitutional under the [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516).

**End of Document**

1. [↑](#footnote-ref-1)
2. 16Article I, § 4, of the Constitution grants Congress the power to regulate elections of members of the Senate and House of Representatives.  See *[Smiley v. Holm, 285 U.S. 355 (1932)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CY90-003B-73RM-00000-00&context=1000516)*; *[Ex parte Yarbrough, 110 U.S. 651 (1884)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HRW0-003B-H335-00000-00&context=1000516)*. Although the Court at one time indicated that party primary contests were not "elections" within the meaning of Art. I, § 4, *[Newberry v. United States, 256 U.S. 232 (1921)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-4J60-003B-H395-00000-00&context=1000516)*, it later held that primary elections were within the Constitution's grant of authority to Congress.  *[United States v. Classic, 313 U.S. 299 (1941)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-64R0-003B-70N6-00000-00&context=1000516)*. The Court has also recognized broad congressional power to legislate in connection with the elections of the President and Vice President. *[Burroughs v. United States, 290 U.S. 534 (1934)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-C9N0-003B-71G9-00000-00&context=1000516)*. See Part III, infra. [↑](#footnote-ref-2)
3. 18Being free to engage in unlimited political expression subject to a ceiling on expenditures is like being free to drive an automobile as far and as often as one desires on a single tank of gasoline. [↑](#footnote-ref-3)
4. 23Statistical findings agreed to by the parties reveal that approximately 5.1% of the $ 73,483,613 raised by the 1,161 candidates for Congress in 1974 was obtained in amounts in excess of $ 1,000. In 1974, two major-party senatorial candidates, Ramsey Clark and Senator Charles Mathias, Jr., operated large-scale campaigns on contributions raised under a voluntarily imposed $ 100 contribution limitation. [↑](#footnote-ref-4)
5. 24The Act exempts from the contribution ceiling the value of all volunteer services provided by individuals to a candidate or a political committee and excludes the first $ 500 spent by volunteers on certain categories of campaign-related activities. [*§§ 591 (e)(5) (A)-(D)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H010-00000-00&context=1000516). See infra, at 36-37.

   The Act does not define the phrase -- "for the purpose of influencing" an election -- that determines when a gift, loan, or advance constitutes a contribution. Other courts have given that phrase a narrow meaning to alleviate various problems in other contexts. The use of the phrase presents fewer problems in connection with the definition of a contribution because of the limiting connotation created by the general understanding of what constitutes a political contribution. Funds provided to a candidate or political party or campaign committee either directly or indirectly through an intermediary constitute a contribution. In addition, dollars given to another person or organization that are earmarked for political purposes are contributions under the Act. [↑](#footnote-ref-5)
6. 26Contribution limitations alone would not reduce the greater potential voice of affluent persons and well-financed groups, who would remain free to spend unlimited sums directly to promote candidates and policies they favor in an effort to persuade voters. [↑](#footnote-ref-6)
7. 27Yet, a ceiling on the size of contributions would affect only indirectly the costs of political campaigns by making it relatively more difficult for candidates to raise large amounts of money. In 1974, for example, 94.9% of the funds raised by candidates for Congress came from contributions of $ 1,000 or less, see n. 23, supra. Presumably, some or all of the contributions in excess of $ 1,000 could have been replaced through efforts to raise additional contributions from persons giving less than $ 1,000. It is the Act's campaign expenditure limitations, [*§ 608(c)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516), not the contribution limits, that directly address the overall scope of federal election spending. [↑](#footnote-ref-7)
8. 34In 1974, for example, 40 major-party challengers defeated incumbent members of the House of Representatives in the general election. Four incumbent Senators were defeated by major-party challengers in the 1974 primary and general election campaigns. [↑](#footnote-ref-8)
9. 35In the 1974 races for the House of Representatives, three of the 22 major-party candidates exceeding the combined expenditure limits contained in the Act were challengers to incumbents and nine were candidates in races not involving incumbents. The comparable 1972 statistics indicate that 14 of the 20 major-party candidates exceeding the combined limits were nonincumbents. [↑](#footnote-ref-9)
10. 36In 1974, major-party challengers outspent House incumbents in 22% of the races, and 22 of the 40 challengers who defeated House incumbents outspent their opponents. In 1972, 24% of the major-party challengers in senatorial elections outspent their incumbent opponents. The 1974 statistics for senatorial contests reveal substantially greater financial dominance by incumbents. [↑](#footnote-ref-10)
11. 37Of the $ 3,781,254 in contributions raised in 1974 by congressional candidates over and above a $ 1,000-per-contributor limit, almost twice as much money went to incumbents as to major-party challengers. [↑](#footnote-ref-11)
12. 38Appellants contend that the Act discriminates against challengers, because, while it limits contributions to all candidates, the Government makes available other material resources to incumbents. See n. 33, supra. Yet, taking cognizance of the advantages and disadvantages of incumbency, there is little indication that the $ 1,000 contribution ceiling will consistently harm the prospects of challengers relative to incumbents. [↑](#footnote-ref-12)
13. 48In such circumstances, vague laws may not only "trap the innocent by not providing fair warning" or foster "arbitrary and discriminatory application" but also operate to inhibit protected expression by inducing "citizens to 'steer far wider of the unlawful zone… than if the boundaries of the forbidden areas were clearly marked.'" *[Grayned v. City of Rockford, 408 U.S. 104, 108-109 (1972)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-D5C0-003B-S27T-00000-00&context=1000516)*, quoting *[Baggett v. Bullitt, 377 U.S. 360, 372 (1964)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GVF0-003B-S47K-00000-00&context=1000516)*, quoting *[Speiser v. Randall, 357 U.S. 513, 526 (1958)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J2N0-003B-S55H-00000-00&context=1000516)*. "Because [*First Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T2X2-D6RV-H374-00000-00&context=1000516) freedoms need breathing space to survive, government may regulate in the area only with narrow specificity." *[NAACP v. Button, 371 U.S. 415, 433 (1963)](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-H620-003B-S3N1-00000-00&context=1000516)*. [↑](#footnote-ref-13)
14. 51*[Section 608 (e)(2)](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516)* defines "clearly identified" to require that the candidate's name, photograph or drawing, or other unambiguous reference to his identity appear as part of the communication. Such other unambiguous reference would include use of the candidate's initials (e.g., FDR), the candidate's nickname (e.g., Ike), his office (e.g., the President or the Governor of Iowa), or his status as a candidate (e.g., the Democratic Presidential nominee, the senatorial candidate of the Republican Party of Georgia). [↑](#footnote-ref-14)
15. 52This construction would restrict the application of [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) to communications 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," "reject." [↑](#footnote-ref-15)
16. 53*[Section 608 (e)(1)](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516)* does not apply to expenditures "on behalf of a candidate within the meaning of [*§ 608 (c)(2)(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516)." The latter subsection provides that expenditures "authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate" are to be treated as expenditures of the candidate and contributions by the person or group making the expenditure. The House and Senate Reports provide guidance in differentiating individual expenditures that are contributions and candidate expenditures under [*§ 608 (c)(2)(B)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) from those treated as independent expenditures subject to the [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) ceiling. The House Report speaks of independent expenditures as costs "incurred without the request or consent of a candidate or his agent." H.R. Rep. No. 93-1239, p. 6 (1974). The Senate Report addresses the issue in greater detail. It provides an example illustrating the distinction between "authorized or requested" expenditures excluded from [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516) and independent expenditures governed by [*§ 608 (e)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516):

    "[A] person might purchase billboard advertisements endorsing a candidate. If he does so completely on his own, and not at the request or suggestion of the candidate or his agent's [sic] that would constitute an 'independent expenditure on behalf of a candidate' under section 614(c) of the bill. The person making the expenditure would have to report it as such.

    "However, if the advertisement was placed in cooperation with the candidate's campaign organization, then the amount would constitute a gift by the supporter and an expenditure by the candidate -- just as if there had been a direct contribution enabling the candidate to place the advertisement, himself. It would be so reported by both." S. Rep. No. 93-689, p. 18 (1974).

    The Conference substitute adopted the provision of the Senate bill dealing with expenditures by any person "authorized or requested" to make an expenditure by the candidate or his agents. S. Conf. Rep. No. 93-1237, p. 55 (1974). In view of this legislative history and the purposes of the Act, we find that the "authorized or requested" standard of the Act operates to treat all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate as contributions subject to the limitations set forth in [*§ 608 (b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H01K-00000-00&context=1000516). [↑](#footnote-ref-16)