

## Money and Politics: THE FIRST AMENDMENT TO THE U.S. CONSTITUTION

*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. Passed by Congress September 25, 1789. Ratified December 15, 1791.*

To understand the current framework of campaign finance in the U.S. requires a basic understanding of the First Amendment, which protects freedom of speech, the press, and association. The First Amendment guarantees citizens' right to express and to be exposed to a wide range of opinions and views. It was intended to ensure a free exchange of ideas, whether spoken or written, even if the ideas are unpopular. It covers all kinds of expression (including non-verbal communications, such as sit-ins, art, and advertisements). The media, including print, television, radio and Internet, is free to distribute a wide range of news, facts, opinions and pictures. The amendment protects not only the speaker, but also the recipient of the information. The right to read, hear, see and obtain different points of view is a First Amendment right as well. The right to free speech is not absolute. The U.S. Supreme Court has ruled that the government sometimes may be allowed to limit speech. Historically, a fundamental distinction arose between the **content** of speech and the **means** whereby that speech is expressed.

A critical question of the last forty years is the issue of money and speech. While some maintain that "money is speech" and argue that limitations on money in politics unconstitutionally limit free speech, others ridicule the notion that money and speech are synonymous – that a billion-dollar corporation spending unlimited amounts in political campaigns can be the same as a single person speaking at a public meeting. However, the relationship of money and speech is not so black and white -- in either direction. In our current media-saturated society, it is clearly necessary to spend money to get one's views to the public for consideration. Thus government regulation of what a citizen running for political office can spend implicates the First Amendment in some fundamental way. On the other hand, it does seem strange to say that a special interest group can spend unlimited money buying a megaphone that drowns out the speech of others.

### ***Recent Interpretation of the First Amendment***

Today the Court asks three questions before deciding on any First Amendment restrictions: Is there significant or compelling governmental interest that justifies the limitation? Is the limitation appropriate or the least restrictive means of protecting that governmental interest? Does the limitation apply too broadly to situations where the governmental interest is not in play? The Court uses these tests when they consider limits to campaign financing.<sup>4</sup>

In *Buckley v. Valeo* (1974) the Supreme Court held that blocking "corruption or the appearance of corruption" is a fundamental governmental interest that justifies some limitations on First Amendment freedoms. The Court then examined whether the limitations passed by Congress in the Federal Election Campaign Act were the least restrictive or appropriate means.

In *Buckley* and subsequent cases, the Court set a number of fundamental holdings:

1. Spending limits on candidates are unconstitutional because there is no link between the spending of money by candidates and "quid pro quo" corruption.
2. Contribution limits are constitutional because the giving of money to political candidates can lead to corruption or the appearance of corruption.
3. Disclosure of both spending and contributions can be required because disclosure diminishes the opportunity for corruption and enables the public to evaluate candidates.
4. Independent, uncoordinated expenditures cannot be limited because there is no gift to the candidate that could be corrupting.
5. A variety of additional restrictions, such as contribution and solicitation limits on political parties, are acceptable as they prevent circumvention of contribution limits.

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