Supplementary Material

Chapter 11: The Contemporary Era—Democratic Rights/Free Speech/Campaign Finance

McConnell v. FEC, 540 U.S. 93 (2003)

Senator Mitch McConnell (Republican, Kentucky) was a vigorous opponent of campaign finance reform. The Senate majority leader when Republicans controlled that branch of Congress, McConnell fought hard to prevent the Bipartisan Campaign Reform Act of 2002 (BCRA) from becoming law. Sponsored by Senators Russell Feingold (Democrat, Wisconsin) and John McCain (Republican, Arizona), the BCRA act sought to close important loopholes that proponents of campaign finance reform believed plagued previous efforts to regulate the influence of money on elections. Reformers focused particularly on soft money, contributions to state and local political parties that can be used to mobilize voters for federal elections, and electoral communications sponsored by corporations, trade associations and unions. The BCRA declared that individuals and groups could not give more than $10,000 in soft money to state and local political parties, prohibited national parties from soliciting or using soft money, and forbade corporations, trade associations, and unions from sponsoring advertisements that mentioned specific candidates for federal office that were broadcast within sixty days of a federal election or thirty days of a primary election. McConnell and his political allies filed lawsuits against the Federal Elections Commission (FEC) within minutes after President Bush, with considerable reservations, signed the BCRA into law. Those suits claimed that the restrictions on soft money, the ban on electioneering communications, and other provisions of the BCRA violated the First Amendment. A three-judge panel declared most of the crucial provisions of the BCRA constitutional. McConnell appealed to the Supreme Court of the United States.

The Supreme Court by a 5–4 vote declared the soft money limits and bans on electioneering communications were constitutional. Justice Stevens's and Justice O'Connor's opinions for the Court on these issues asserted that the BCRA was a narrowly tailored means to prevent political corruption. How did the various opinions in McConnell *understand corruption? Who had the better of the argument?*[1] *What standards did the different judges use to determine whether the BCRA is sufficiently related to the end of preventing political corruption? How did the justices justify these different standards? Who had the better of the argument? The plaintiffs in McConnell included the National Rifle Association and the American Civil Liberties Union, while the bill was sponsored by a conservative Republican (McCain) and a very liberal Democrat (Feingold). The judicial voting, by comparison, was along ideological lines, with the more liberal justices voting to sustain and the more conservative justices voting to strike down the central provisions of the BCRA. What explains this difference in support for campaign finance reform?*

JUSTICE STEVENS and JUSTICE O'CONNOR delivered the opinion of the Court with respect to BCRA Titles I and II.

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In *Buckley v. Valeo* (1976) and subsequent cases, we have subjected restrictions on campaign expenditures to closer scrutiny than limits on campaign contributions. In these cases we have recognized that contribution limits, unlike limits on expenditures, "entai[l] only a marginal restriction upon the contributor's ability to engage in free communication." Because the communicative value of large

[1] For a good discussion of the constitutional meaning of corruption, see Deborah Hellman, "Defining Corruption and Constitutionalizing Democracy," *Michigan Law Review* 111 (forthcoming, 2013).

contributions inheres mainly in their ability to facilitate the speech of their recipients, we have said that contribution limits impose serious burdens on free speech only if they are so low as to "preven[t] candidates and political committees from amassing the resources necessary for effective advocacy." . . . Thus, a contribution limit involving even "'significant interference' " with associational rights is nevertheless valid if it satisfies the "lesser demand" of being "'closely drawn'" to match a "'sufficiently important interest.'"

Our treatment of contribution restrictions reflects more than the limited burdens they impose on First Amendment freedoms. It also reflects the importance of the interests that underlie contribution limits—interests in preventing "both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption." We have said that these interests directly implicate "'the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process.'" Because the electoral process is the very "means through which a free society democratically translates political speech into concrete governmental action," contribution limits, like other measures aimed at protecting the integrity of the process, tangibly benefit public participation in political debate. For that reason, when reviewing Congress' decision to enact contribution limits, "there is no place for a strong presumption against constitutionality, of the sort often thought to accompany the words 'strict scrutiny.'" The less rigorous standard of review we have applied to contribution limits . . . shows proper deference to Congress' ability to weigh competing constitutional interests in an area in which it enjoys particular expertise. It also provides Congress with sufficient room to anticipate and respond to concerns about circumvention of regulations designed to protect the integrity of the political process.

Like the contribution limits we upheld in *Buckley*, § 323's restrictions have only a marginal impact on the ability of contributors, candidates, officeholders, and parties to engage in effective political speech. Complex as its provisions may be, § 323, in the main, does little more than regulate the ability of wealthy individuals, corporations, and unions to contribute large sums of money to influence federal elections, federal candidates, and federal officeholders.

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For example, while § 323(a) prohibits national parties from receiving or spending nonfederal money, and § 323(b) prohibits state party committees from spending nonfederal money on federal election activities, neither provision in any way limits the total amount of money parties can spend. Rather, they simply limit the source and individual amount of donations. That they do so by prohibiting the spending of soft money does not render them expenditure limitations.

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The Government defends § 323(a)'s ban on national parties' involvement with soft money as necessary to prevent the actual and apparent corruption of federal candidates and officeholders. Our cases have made clear that the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits. We have not limited that interest to the elimination of cash-for-votes exchanges. . . . Thus, "[i]n speaking of 'improper influence' and 'opportunities for abuse' in addition to 'quid pro quo arrangements,' we [have] recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors."

Of "almost equal" importance has been the Government's interest in combating the appearance or perception of corruption engendered by large campaign contributions. Take away Congress' authority to regulate the appearance of undue influence and "the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance." . . .

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The evidence in the record shows that candidates and donors alike have in fact exploited the soft-money loophole, the former to increase their prospects of election and the latter to create debt on the part of officeholders, with the national parties serving as willing intermediaries. Thus, despite FECA's hard-money limits on direct contributions to candidates, federal officeholders have commonly asked donors to make soft-money donations to national and state committees "'solely in order to assist federal campaigns,'" including the officeholder's own. Parties kept tallies of the amounts of soft money raised by

each officeholder, and "the amount of money a Member of Congress raise[d] for the national political party committees often affect[ed] the amount the committees g[a]ve to assist the Member's campaign." Donors often asked that their contributions be credited to particular candidates, and the parties obliged, irrespective of whether the funds were hard or soft. National party committees often teamed with individual candidates' campaign committees to create joint fundraising committees, which enabled the candidates to take advantage of the party's higher contribution limits while still allowing donors to give to their preferred candidate. Even when not participating directly in the fundraising, federal officeholders were well aware of the identities of the donors: National party committees would distribute lists of potential or actual donors, or donors themselves would report their generosity to officeholders.

For their part, lobbyists, CEOs, and wealthy individuals alike all have candidly admitted donating substantial sums of soft money to national committees not on ideological grounds, but for the express purpose of securing influence over federal officials. . . . Particularly telling is the fact that, in 1996 and 2000, more than half of the top 50 soft-money donors gave substantial sums to both major national parties, leaving room for no other conclusion but that these donors were seeking influence, or avoiding retaliation, rather than promoting any particular ideology.

Plaintiffs argue that without concrete evidence of an instance in which a federal officeholder has actually switched a vote (or, presumably, evidence of a specific instance where the public believes a vote was switched), Congress has not shown that there exists real or apparent corruption. But the record is to the contrary. The evidence connects soft money to manipulations of the legislative calendar, leading to Congress' failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation. . . . More importantly, plaintiffs conceive of corruption too narrowly. Our cases have firmly established that Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing "undue influence on an officeholder's judgment, and the appearance of such influence." Many of the "deeply disturbing examples" of corruption cited by this Court in *Buckley* to justify FECA's contribution limits were not episodes of vote buying, but evidence that various corporate interests had given substantial donations to gain access to high-level government officials. Even if that access did not secure actual influence, it certainly gave the "appearance of such influence." The record in the present cases is replete with similar examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations.

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We [note] that, in addressing the problem of soft-money contributions to state committees, Congress both drew a conclusion and made a prediction. Its conclusion, based on the evidence before it, was that the corrupting influence of soft money does not insinuate itself into the political process solely through national party committees. Rather, state committees function as an alternative avenue for precisely the same corrupting forces. Indeed, both candidates and parties already ask donors who have reached the limit on their direct contributions to donate to state committees. There is at least as much evidence as there was in *Buckley* that such donations have been made with the intent—and in at least some cases the effect—of gaining influence over federal officeholders. Section 323(b) thus promotes an important governmental interest by confronting the corrupting influence that soft-money donations to political parties already have.

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Congress also made a prediction. Having been taught the hard lesson of circumvention by the entire history of campaign finance regulation, Congress knew that soft-money donors would react to § 323(a) by scrambling to find another way to purchase influence. It was "neither novel nor implausible," for Congress to conclude that political parties would react to § 323(a) by directing soft-money contributors to the state committees, and that federal candidates would be just as indebted to these contributors as they had been to those who had formerly contributed to the national parties. We "must accord substantial deference to the predictive judgments of Congress," particularly when, as here, those predictions are so firmly rooted in relevant history and common sense. Preventing corrupting activity from shifting wholesale to state committees and thereby eviscerating FECA clearly qualifies as an important governmental interest.

[The opinion then concluded that various provisions were sufficiently tailored to pass constitutional muster.]

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Finally, plaintiffs argue that Title I violates the equal protection component of the Due Process Clause of the Fifth Amendment because it discriminates against political parties in favor of special interest groups such as the National Rifle Association, American Civil Liberties Union, and Sierra Club. . . . We conclude that this disparate treatment does not offend the Constitution.

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Congress is fully entitled to consider the real-world differences between political parties and interest groups when crafting a system of campaign finance regulation. Interest groups do not select slates of candidates for elections. Interest groups do not determine who will serve on legislative committees, elect congressional leadership, or organize legislative caucuses. Political parties have influence and power in the Legislature that vastly exceeds that of any interest group. As a result, it is hardly surprising that party affiliation is the primary way by which voters identify candidates, or that parties in turn have special access to and relationships with federal officeholders. Congress' efforts at campaign finance regulation may account for these salient differences. Taken seriously, plaintiffs' equal protection arguments would call into question not just Title I of BCRA, but much of the pre-existing structure of FECA as well. We therefore reject those arguments.

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[With respect to the prohibitions on "electioneering communications], the First Amendment [does not] erects a rigid barrier between express advocacy and so-called issue advocacy. That notion cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad. Not only can advertisers easily evade the line by eschewing the use of magic words, but they would seldom choose to use such words even if permitted. And although the resulting advertisements do not urge the viewer to vote for or against a candidate in so many words, they are no less clearly intended to influence the election. Buckley's express advocacy line, in short, has not aided the legislative effort to combat real or apparent corruption, and Congress enacted BCRA to correct the flaws it found in the existing system.

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Since our decision in *Buckley*, Congress' power to prohibit corporations and unions from using funds in their treasuries to finance advertisements expressly advocating the election or defeat of candidates in federal elections has been firmly embedded in our law. The ability to form and administer separate segregated funds has provided corporations and unions with a constitutionally sufficient opportunity to engage in express advocacy. That has been this Court's unanimous view, and it is not challenged in this litigation.

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. . . Our consideration of plaintiffs' challenge is informed by our earlier conclusion that the distinction between express advocacy and so-called issue advocacy is not constitutionally compelled. In that light, we must examine the degree to which BCRA burdens First Amendment expression and evaluate whether a compelling governmental interest justifies that burden. The latter question—whether the state interest is compelling—is easily answered by our prior decisions regarding campaign finance regulation, which "represent respect for the 'legislative judgment that the special characteristics of the corporate structure require particularly careful regulation.'" We have repeatedly sustained legislation aimed at "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." . . .

. . . [T]he issue ads broadcast during the 30- and 60-day periods preceding federal primary and general elections are the functional equivalent of express advocacy. The justifications for the regulation of express advocacy apply equally to ads aired during those periods if the ads are intended to influence the voters' decisions and have that effect. The precise percentage of issue ads that clearly identified a candidate and were aired during those relatively brief preelection timespans but had no electioneering purpose is a matter of dispute between the parties and among the judges on the District Court.

Nevertheless, the vast majority of ads clearly had such a purpose. Moreover, whatever the precise percentage may have been in the past, in the future corporations and unions may finance genuine issue ads during those timeframes by simply avoiding any specific reference to federal candidates, or in doubtful cases by paying for the ad from a segregated fund.

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FECA § 304(f)(3)(B)(i) excludes from the definition of electioneering communications any "communication appearing in a news story, commentary, or editorial distributed through the facilities of any broadcasting station, unless such facilities are owned or controlled by any political party, political committee, or candidate." Plaintiffs argue this provision gives free rein to media companies to engage in speech without resort to PAC money. Section 304(f)(3)(B)(i)'s effect, however, is much narrower than plaintiffs suggest. The provision excepts news items and commentary only; it does not afford carte blanche to media companies generally to ignore FECA's provisions. The statute's narrow exception is wholly consistent with First Amendment principles. "A valid distinction . . . exists between corporations that are part of the media industry and other corporations that are not involved in the regular business of imparting news to the public." Numerous federal statutes have drawn this distinction to ensure that the law "does not hinder or prevent the institutional press from reporting on, and publishing editorials about, newsworthy events."

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Many years ago we observed that "[t]o say that Congress is without power to pass appropriate legislation to safeguard . . . an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self protection." We abide by that conviction in considering Congress' most recent effort to confine the ill effects of aggregated wealth on our political system. We are under no illusion that BCRA will be the last congressional statement on the matter. Money, like water, will always find an outlet. What problems will arise, and how Congress will respond, are concerns for another day. In the main we uphold BCRA's two principal, complementary features: the control of soft money and the regulation of electioneering communications.

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court with respect to BCRA Titles III and IV.

. . . Article III of the Constitution limits the "judicial power" to the resolution of "cases" and "controversies." One element of the "bedrock" case-or-controversy requirement is that plaintiffs must establish that they have standing to sue. On many occasions, we have reiterated the three requirements that constitute the "'irreducible constitutional minimum'" of standing. First, a plaintiff must demonstrate an "injury in fact," which is "concrete," "distinct and palpable," and "actual or imminent." Second, a plaintiff must establish "a causal connection between the injury and the conduct complained of—the injury has to be 'fairly trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] some third party not before the court.'" Third, a plaintiff must show the "'substantial likelihood' that the requested relief will remedy the alleged injury in fact."

§ 305 amended the Communications Act's requirements with respect to the lowest unit charge for broadcasting time. But this price is not available to qualified candidates until 45 days before a primary election or 60 days before a general election. Because Senator McConnell's current term does not expire until 2009, the earliest day he could be affected by § 305 is 45 days before the Republican primary election in 2008. This alleged injury in fact is too remote temporally to satisfy Article III standing. . . .

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FECA § 318 requires that certain communications "authorized" by a candidate or his political committee clearly identify the candidate or committee or, if not so authorized, identify the payor and announce the lack of authorization. . . . We think BCRA § 311's inclusion of electioneering communications in the FECA § 318 disclosure regime bears a sufficient relationship to the important governmental interest of "shed[ding] the light of publicity" on campaign financing. . . .

BCRA § 318 . . . prohibits individuals "17 years old or younger" from making contributions to candidates and contributions or donations to political parties. . .

Minors enjoy the protection of the First Amendment. Limitations on the amount that an individual may contribute to a candidate or political committee impinge on the protected freedoms of expression and association. When the Government burdens the right to contribute, we apply heightened scrutiny. We ask whether there is a "sufficiently important interest" and whether the statute is "closely drawn" to avoid unnecessary abridgment of First Amendment freedoms. The Government asserts that the provision protects against corruption by conduit; that is, donations by parents through their minor children to circumvent contribution limits applicable to the parents. But the Government offers scant evidence of this form of evasion. . . . Absent a more convincing case of the claimed evil, this interest is simply too attenuated for § 318 to withstand heightened scrutiny.

Even assuming, arguendo, the Government advances an important interest, the provision is overinclusive. The States have adopted a variety of more tailored approaches—e.g., counting contributions by minors against the total permitted for a parent or family unit, imposing a lower cap on contributions by minors, and prohibiting contributions by very young children. Without deciding whether any of these alternatives is sufficiently tailored, we hold that the provision here sweeps too broadly. . . .

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JUSTICE BREYER delivered the opinion of the Court with respect to BCRA Title V.

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. . . The FCC has consistently estimated that its "candidate request" regulation imposes upon each licensee an additional administrative burden of six to seven hours of work per year. That burden means annual costs of a few hundred dollars at most, a microscopic amount compared to the many millions of dollars of revenue broadcasters receive from candidates who wish to advertise. Perhaps for this reason, broadcasters in the past did not strongly oppose the regulation or its extension.

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The FCC has pointed out that "[t]hese records are necessary to permit political candidates and others to verify that licensees have complied with their obligations relating to use of their facilities by candidates for political office" pursuant to the "equal time" provision of 47 U.S.C. § 315(a). They also help the FCC determine whether broadcasters have violated their obligation to sell candidates time at the "lowest unit charge." As reinforced by BCRA, the "candidate request" requirements will help the FCC, the Federal Election Commission, and "the public to evaluate whether broadcasters are processing [candidate] requests in an evenhanded fashion," They will help make the public aware of how much money candidates may be prepared to spend on broadcast messages. And they will provide an independently compiled set of data for purposes of verifying candidates' compliance with the disclosure requirements and source limitations of BCRA and the Federal Election Campaign Act of 1971.

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The *McConnell* plaintiffs and THE CHIEF JUSTICE make one final claim. They say that the "issue request" requirement will force them to disclose information that will reveal their political strategies to opponents, perhaps prior to a broadcast. . . . [T]he statute requires disclosure of names, addresses, and the fact of a request; it does not require disclosure of substantive campaign content. For another, the statutory words "as soon as possible," would seem to permit FCC disclosure-timing rules that would avoid any premature disclosure that the Constitution itself would forbid. Further, the plaintiffs do not point to—and our own research cannot find—any specific indication of such a "strategy-disclosure" problem arising during the past 65 years in respect to the existing FCC "candidate request" requirement, where the strategic problem might be expected to be more acute.

JUSTICE SCALIA, concurring with respect to BCRA Titles III and IV, dissenting with respect to BCRA Titles I and V, and concurring in the judgment in part and dissenting in part with respect to BCRA Title II.

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This is a sad day for the freedom of speech. Who could have imagined that the same Court which, within the past four years, has sternly disapproved of restrictions upon such inconsequential forms of expression as virtual child pornography, *Ashcroft v. Free Speech Coalition* (2002), tobacco advertising, *Lorillard Tobacco Co. v. Reilly* (2001), dissemination of illegally intercepted communications, *Bartnicki v. Vopper* (2001), and sexually explicit cable programming, *United States v. Playboy Entertainment Group, Inc.* (2000), would smile with favor upon a law that cuts to the heart of what the First Amendment is meant to protect: the right to criticize the government. For that is what the most offensive provisions of this legislation are all about. We are governed by Congress, and this legislation prohibits the criticism of Members of Congress by those entities most capable of giving such criticism loud voice: national political parties and corporations, both of the commercial and the not-for-profit sort. It forbids pre-election criticism of incumbents by corporations, even not-for-profit corporations, by use of their general funds; and forbids national-party use of "soft" money to fund "issue ads" that incumbents find so offensive.

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[T]he present legislation targets for prohibition certain categories of campaign speech that are particularly harmful to incumbents. Is it accidental, do you think, that incumbents raise about three times as much "hard money"—the sort of funding generally not restricted by this legislation—as do their challengers? Or that lobbyists (who seek the favor of incumbents) give 92 percent of their money in "hard" contributions? . . . And is it mere happenstance, do you estimate, that national-party funding, which is severely limited by the Act, is more likely to assist cash-strapped challengers than flush-with-hard-money incumbents? Was it unintended, by any chance, that incumbents are free personally to receive some soft money and even to solicit it for other organizations, while national parties are not?

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It was said by congressional proponents of this legislation . . ., that since this legislation regulates nothing but the expenditure of money for speech, as opposed to speech itself, the burden it imposes is not subject to full First Amendment scrutiny; the government may regulate the raising and spending of campaign funds just as it regulates other forms of conduct. . . . Until today, however, that view has been categorically rejected by our jurisprudence. As we said in *Buckley v. Valeo* (1976), "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."

. . . In any economy operated on even the most rudimentary principles of division of labor, effective public communication requires the speaker to make use of the services of others. An author may write a novel, but he will seldom publish and distribute it himself. A freelance reporter may write a story, but he will rarely edit, print, and deliver it to subscribers. To a government bent on suppressing speech, this mode of organization presents opportunities: Control any cog in the machine, and you can halt the whole apparatus. License printers, and it matters little whether authors are still free to write. Restrict the sale of books, and it matters little who prints them. Predictably, repressive regimes have exploited these principles by attacking all levels of the production and dissemination of ideas. . . .

Division of labor requires a means of mediating exchange, and in a commercial society, that means is supplied by money. The publisher pays the author for the right to sell his book; it pays its staff who print and assemble the book; it demands payments from booksellers who bring the book to market. This, too, presents opportunities for repression: Instead of regulating the various parties to the enterprise individually, the government can suppress their ability to coordinate by regulating their use of money. What good is the right to print books without a right to buy works from authors? Or the right to publish newspapers without the right to pay deliverymen? The right to speak would be largely ineffective if it did not include the right to engage in financial transactions that are the incidents of its exercise.

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It should be obvious, then, that a law limiting the amount a person can spend to broadcast his political views is a direct restriction on speech. That is no different from a law limiting the amount a newspaper can pay its editorial staff or the amount a charity can pay its leafletters. It is equally clear that a limit on the amount a candidate can raise from any one individual for the purpose of speaking is also a direct limitation on speech. That is no different from a law limiting the amount a publisher can accept

from any one shareholder or lender, or the amount a newspaper can charge any one advertiser or customer.

Another proposition which could explain at least some of the results of today's opinion is that the First Amendment right to spend money for speech does not include the right to combine with others in spending money for speech. Such a proposition fits uncomfortably with the concluding words of our Declaration of Independence: "And for the support of this Declaration . . ., we mutually pledge to each other our Lives, our Fortunes and our sacred Honor." The freedom to associate with others for the dissemination of ideas—not just by singing or speaking in unison, but by pooling financial resources for expressive purposes—is part of the freedom of speech.

The last proposition that might explain at least some of today's casual abridgment of free-speech rights is this: that the particular form of association known as a corporation does not enjoy full First Amendment protection. Of course the text of the First Amendment does not limit its application in this fashion, even though "[b]y the end of the eighteenth century the corporation was a familiar figure in American economic life." Nor is there any basis in reason why First Amendment rights should not attach to corporate associations—and we have said so. In *First Nat. Bank of Boston v. Bellotti* (1978), we held unconstitutional a state prohibition of corporate speech designed to influence the vote on referendum proposals.

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. . . In the modern world, giving the government power to exclude corporations from the political debate enables it effectively to muffle the voices that best represent the most significant segments of the economy and the most passionately held social and political views. People who associate—who pool their financial resources—for purposes of economic enterprise overwhelmingly do so in the corporate form; and with increasing frequency, incorporation is chosen by those who associate to defend and promote particular ideas—such as the American Civil Liberties Union and the National Rifle Association, parties to these cases. Imagine, then, a government that wished to suppress nuclear power—or oil and gas exploration, or automobile manufacturing, or gun ownership, or civil liberties—and that had the power to prohibit corporate advertising against its proposals. To be sure, the individuals involved in, or benefited by, those industries, or interested in those causes, could (given enough time) form political action committees or other associations to make their case. But the organizational form in which those enterprises already exist, and in which they can most quickly and most effectively get their message across, is the corporate form. The First Amendment does not in my view permit the restriction of that political speech. And the same holds true for corporate electoral speech: A candidate should not be insulated from the most effective speech that the major participants in the economy and major incorporated interest groups can generate.

But what about the danger to the political system posed by "amassed wealth"? The most direct threat from that source comes in the form of undisclosed favors and payoffs to elected officials—which have already been criminalized, and will be rendered no more discoverable by the legislation at issue here. The use of corporate wealth (like individual wealth) to speak to the electorate is unlikely to "distort" elections—especially if disclosure requirements tell the people where the speech is coming from. The premise of the First Amendment is that the American people are neither sheep nor fools, and hence fully capable of considering both the substance of the speech presented to them and its proximate and ultimate source. If that premise is wrong, our democracy has a much greater problem to overcome than merely the influence of amassed wealth. Given the premises of democracy, there is no such thing as too much speech.

. . . It cannot be denied, however, that corporate (like noncorporate) allies will have greater access to the officeholder, and that he will tend to favor the same causes as those who support him (which is usually why they supported him). That is the nature of politics—if not indeed human nature—and how this can properly be considered "corruption" (or "the appearance of corruption") with regard to corporate allies and not with regard to other allies is beyond me. . . . Evil corporate (and private affluent) influences are well enough checked (so long as adequate campaign-expenditure disclosure rules exist) by the politician's fear of being portrayed as "in the pocket" of so-called moneyed interests. The incremental benefit obtained by muzzling corporate speech is more than offset by loss of the information and

persuasion that corporate speech can contain. That, at least, is the assumption of a constitutional guarantee which prescribes that Congress shall make no law abridging the freedom of speech.

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JUSTICE THOMAS, concurring with respect to BCRA Titles III and IV, except for BCRA §§ 311 and 318, concurring in the result with respect to BCRA § 318, concurring in the judgment in part and dissenting in part with respect to BCRA Title II, and dissenting with respect to BCRA Titles I, V, and § 311.

"[C]ampaign finance laws are subject to strict scrutiny" and thus Title I must satisfy that demanding standard even if it were (incorrectly) conceived of as nothing more than a contribution limitation. The defendants do not even attempt to defend Title I under this standard. . . . [I]t is unclear why "[b]ribery laws [that] bar precisely the quid pro quo arrangements that are targeted here" and "disclosure laws" are not "less restrictive means of addressing [the Government's] interest in curtailing corruption."

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The evidence cited by the joint opinion . . . would barely suffice for anything more than rational-basis review. The first category of the joint opinion's evidence is evidence that "federal officeholders have commonly asked donors to make soft-money donations to national and state committees solely in order to assist federal campaigns, including the officeholder's own But to the extent that donors and federal officeholders have collaborated so that donors could give donations to a national party committee "for the purpose of influencing any election for Federal office," the alleged soft-money donation is in actuality a regular "contribution" as already defined and regulated by FECA. Neither the joint opinion nor the defendants present evidence that enforcement of pre-BCRA law has proved to be impossible, ineffective, or even particularly difficult.

The second category is evidence that "lobbyists, CEOs, and wealthy individuals" have "donat[ed] substantial sums of soft money to national committees not on ideological grounds, but for the express purpose of securing influence over federal officials." Even if true (and the cited evidence consists of nothing more than vague allegations of wrongdoing), it is unclear why existing bribery laws could not address this problem. . . .

The third category is evidence characterized by the joint opinion as "connect [ing] soft money to manipulations of the legislative calendar, leading to Congress' failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation." But the evidence for this is no stronger than the evidence that there has been actual vote buying or vote switching for soft money. The joint opinion's citations to the record do not stand for the propositions that they claim. For instance, the McCain declaration does not provide any evidence of any exchange of legislative action for donations of any kind (hard or soft). . . . The evidence cited by the joint opinion is properly described as, "at best, [the Members of Congress'] personal conjecture regarding the impact of soft money donations on the voting practices of their present and former colleagues."

The joint opinion also places a substantial amount of weight on the fact that "in 1996 and 2000, more than half of the top 50 soft-money donors gave substantial sums to both major national parties," and suggests that this fact "leav[es] room for no other conclusion but that these donors were seeking influence, or avoiding retaliation, rather than promoting any particular ideology." But that is not necessarily the case. The two major parties are not perfect ideological opposites, and supporters or opponents of certain policies or ideas might find substantial overlap between the two parties. If donors feel that both major parties are in general agreement over an issue of importance to them, it is unremarkable that such donors show support for both parties. This commonsense explanation surely belies the joint opinion's too-hasty conclusion drawn from a relatively innocent fact.

. . . In *Austin v. Michigan Chamber of Commerce* (1990), the Court recognized a "different type of corruption" from the "'financial quid pro quo'": the "corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." The only effect, however, that the "immense aggregations" of wealth will have (in the context of independent expenditures) on an election

is that they might be used to fund communications to convince voters to select certain candidates over others. In other words, the "corrosive and distorting effects" described in Austin are that corporations, on behalf of their shareholders, will be able to convince voters of the correctness of their ideas. Apparently, winning in the marketplace of ideas is no longer a sign that "the ultimate good" has been "reached by free trade in ideas," or that the speaker has survived "the best test of truth" by having "the thought . . . get itself accepted in the competition of the market." It is now evidence of "corruption." This conclusion is antithetical to everything for which the First Amendment stands.

Because *Austin*' s definition of "corruption" is incompatible with the First Amendment, I would overturn *Austin* and hold that the potential for corporations and unions to influence voters, via independent expenditures aimed at convincing these voters to adopt particular views, is not a form of corruption justifying any state regulation or suppression. Without Austin's peculiar variation of "corruption," §§ 203 and 204 are supported by no compelling government interest.

. . .

I must now address an issue on which I differ from all of my colleagues: the disclosure provisions in BCRA § 201. . . . The "historical evidence indicates that Founding-era Americans opposed attempts to require that anonymous authors reveal their identities on the ground that forced disclosure violated the 'freedom of the press.'" Indeed, this Court has explicitly recognized that "the interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry," and thus that "an author's decision to remain anonymous . . . is an aspect of the freedom of speech protected by the First Amendment." . . .

The only plausible interest asserted by the defendants to justify the disclosure provisions is the interest in providing "information" about the speaker to the public. But we have already held that "[t]he simple interest in providing voters with additional relevant information does not justify a state requirement that a writer make statements or disclosures she would otherwise omit."

. . .

I have long maintained that *Buckley v. Valeo* (1976) was incorrectly decided and should be overturned. But, most of Title II should still be held unconstitutional even under the Buckley framework. Under *Buckley* . . . it is, or at least was, clear that any regulation of political speech beyond communications using words of express advocacy is unconstitutional. Hence, even under the joint opinion's framework, most of Title II is unconstitutional, as both the "primary definition" and "backup definition" of "electioneering communications" cover a significant number of communications that do not use words of express advocacy.

. . .

The joint opinion [states] that the express advocacy line "cannot be squared with our longstanding recognition that the presence or absence of magic words cannot meaningfully distinguish electioneering speech from a true issue ad." First, the presence of the "magic words" does differentiate in a meaningful way between categories of speech. Speech containing the "magic words" is "unambiguously campaign related," while speech without these words is not. Second, it is far from bizarre to suggest that (potentially regulable) speech that is in practice impossible to differentiate from fully protected speech must be fully protected. It is, rather, part and parcel of First Amendment first principles. In fact, First Amendment protection was extended to that fundamental category of artistic and entertaining speech not for its own sake, but only because it was indistinguishable, practically, from speech intended to inform. . . .

The chilling endpoint of the Court's reasoning is not difficult to foresee: outright regulation of the press. None of the rationales offered by the defendants, and none of the reasoning employed by the Court, exempts the press. "This is so because of the difficulty, and perhaps impossibility, of distinguishing, either as a matter of fact or constitutional law, media corporations from [nonmedia] corporations." Media companies can run procandidate editorials as easily as nonmedia corporations can pay for advertisements. Candidates can be just as grateful to media companies as they can be to corporations and unions. In terms of "the corrosive and distorting effects" of wealth accumulated by corporations that has "little or no correlation to the public's support for the corporation's political ideas," there is no distinction between a media corporation and a nonmedia corporation. Media corporations are

influential. There is little doubt that the editorials and commentary they run can affect elections. Nor is there any doubt that media companies often wish to influence elections. One would think that the *New York Times* fervently hopes that its endorsement of Presidential candidates will actually influence people. What is to stop a future Congress from determining that the press is "too influential," and that the "appearance of corruption" is significant when media organizations endorse candidates or run "slanted" or "biased" news stories in favor of candidates or parties? Or, even easier, what is to stop a future Congress from concluding that the availability of unregulated media corporations creates a loophole that allows for easy "circumvention" of the limitations of the current campaign finance laws?

JUSTICE KENNEDY, concurring in the judgment in part and dissenting in part with respect to BCRA Titles I and II.

The First Amendment guarantees our citizens the right to judge for themselves the most effective means for the expression of political views and to decide for themselves which entities to trust as reliable speakers. Significant portions of Titles I and II of the Bipartisan Campaign Reform Act of 2002 constrain that freedom. These new laws force speakers to abandon their own preference for speaking through parties and organizations. And they provide safe harbor to the mainstream press, suggesting that the corporate media alone suffice to alleviate the burdens the Act places on the rights and freedoms of ordinary citizens.

. . .

Our precedents teach, above all, that Government cannot be trusted to moderate its own rules for suppression of speech. The dangers posed by speech regulations have led the Court to insist upon principled constitutional lines and a rigorous standard of review. The majority now abandons these distinctions and limitations.

. . .

Buckley v. Valeo (1976) made clear, by its express language and its context, that the corruption interest only justifies regulating candidates' and officeholders' receipt of what we can call the "quids" in the quid pro quo formulation. The Court rested its decision on the principle that campaign finance regulation that restricts speech without requiring proof of particular corrupt action withstands constitutional challenge only if it regulates conduct posing a demonstrable quid pro quo danger.

. . .

The Court ignores these constitutional bounds and in effect interprets the anticorruption rationale to allow regulation not just of "actual or apparent quid pro quo arrangements," but of any conduct that wins goodwill from or influences a Member of Congress. It is not that there is any quarrel between this opinion and the majority that the inquiry since Buckley has been whether certain conduct creates "undue influence." On that we agree. The very aim of Buckley's standard, however, was to define undue influence by reference to the presence of quid pro quo involving the officeholder. The Court, in contrast, concludes that access, without more, proves influence is undue. Access, in the Court's view, has the same legal ramifications as actual or apparent corruption of officeholders. This new definition of corruption sweeps away all protections for speech that lie in its path.

. . .

Access in itself shows only that in a general sense an officeholder favors someone or that someone has influence on the officeholder. There is no basis, in law or in fact, to say favoritism or influence in general is the same as corrupt favoritism or influence in particular. By equating vague and generic claims of favoritism or influence with actual or apparent corruption, the Court adopts a definition of corruption that dismantles basic First Amendment rules, permits Congress to suppress speech in the absence of a quid pro quo threat, and moves beyond the rationale that is Buckley's very foundation.

. . .

Though the majority cites common sense as the foundation for its definition of corruption, in the context of the real world only a single definition of corruption has been found to identify political

corruption successfully and to distinguish good political responsiveness from bad—that is quid pro quo. Favoritism and influence are not, as the Government's theory suggests, avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness. Quid pro quo corruption has been, until now, the only agreed upon conduct that represents the bad form of responsiveness and presents a justiciable standard with a relatively clear limiting principle: Bad responsiveness may be demonstrated by pointing to a relationship between an official and a quid.

. . .

[I]ndependent party activity, which by definition includes independent receipt and spending of soft money, lacks a possibility for quid pro quo corruption of federal officeholders. This must be all the more true of a party's independent receipt and spending of soft-money donations neither directed to nor solicited by a candidate.

The Government's premise is also unsupported by the record before us. The record confirms that soft-money party contributions, without more, do not create quid pro quo corruption potential. As a conceptual matter, generic party contributions may engender good will from a candidate or officeholder because, as the Government says: "[A] Member of Congress can be expected to feel a natural temptation to favor those persons who have helped the 'team,' " Still, no Member of Congress testified this favoritism changed voting behavior.

Other aspects of the record confirm the Government has not produced evidence that Members corruptly favor soft-money donors to their party as a per se matter. Most testimony from which the Government would have the Court infer corruption is testimony that Members are rewarded by their parties for soliciting soft money. This says nothing about how Members feel about a party's soft-money donors from whom they have not solicited. . . .

. . .

It is common ground between the majority and this opinion that a speech-suppressing campaign finance regulation, even if supported by a sufficient Government interest, is unlawful if it cannot satisfy our designated standard of review. In *Buckley*, we applied "closely drawn" scrutiny to contribution limitations and strict scrutiny to expenditure limitations. Against that backdrop, the majority assumes that because *Buckley* applied the rationale in the context of contribution and expenditure limits, its application gives Congress and the Court the capacity to classify any challenged campaign finance regulation as either a contribution or an expenditure limit. . . .

. . . Title I's dynamics defy this facile, initial classification. Title I's provisions prohibit the receipt of funds; and in most instances, but not all, this can be defined as a contribution limit. They prohibit the spending of funds; and in most instances this can be defined as an expenditure limit. They prohibit the giving of funds to nonprofit groups; and this falls within neither definition as we have ever defined it. Finally, they prohibit fundraising activity; and the parties dispute the classification of this regulation (the challengers say it is core political association, while the Government says it ultimately results only in a limit on contribution receipts). . . . Despite the parties' and the majority's best efforts on both sides of the question, it ignores reality to force these regulations into one of the two legal categories as either contribution or expenditure limitations. Instead, these characteristics seem to indicate Congress has enacted regulations that are neither contribution nor expenditure limits, or are perhaps both at once.

Even if the laws could be classified in broad terms as only contribution limits, as the majority is inclined to do, that still leaves the question what "contribution limits" can include if they are to be upheld under *Buckley*. *Buckley*'s application of a less exacting review to contribution limits must be confined to the narrow category of money gifts that are directed, in some manner, to a candidate or officeholder. Any broader definition of the category contradicts Buckley's quid pro quo rationale and overlooks Buckley's language, which contemplates limits on contributions to a candidate or campaign committee in explicit terms.

. . .

. . . [P]roper application of the standard of review to regulations that are neither contribution nor expenditure limits (or which are both at once) can only be determined by reference to [*Buckley*'s] rationale. *Buckley*'s underlying rationale is this: Less exacting review applies to Government regulations that "significantly interfere" with First Amendment rights of association. But any regulation of speech or associational rights creating "markedly greater interference" than such significant interference receives strict scrutiny. . . .

. . .

The many and varied aspects of Title I's regulations impose far greater burdens on the associational rights of the parties, their officials, candidates, and citizens than do regulations that do no more than cap the amount of money persons can contribute to a political candidate or committee. The evidence shows that national parties have a long tradition of engaging in essential associational activities, such as planning and coordinating fundraising with state and local parties, often with respect to elections that are not federal in nature. This strengthens the conclusion that the regulations now before us have unprecedented impact. It makes impossible, moreover, the contrary conclusion—which the Court's standard of review determination necessarily implies—that BCRA's soft-money regulations will not much change the nature of association between parties, candidates, nonprofit groups, and the like. Similarly, Title I now compels speech by party officials. These officials must be sure their words are not mistaken for words uttered in their official capacity or mistaken for soliciting prohibited soft, and not hard, money. Few interferences with the speech, association, and free expression of our people are greater than attempts by Congress to say which groups can or cannot advocate a cause, or how they must do it.

Congress has undertaken this comprehensive reordering of association and speech rights in the name of enforcing contribution limitations. Here, however, as in Buckley, "[t]he markedly greater burden on basic freedoms caused by [BCRA's pervasive regulation] cannot be sustained simply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitations." BCRA fundamentally alters, and thereby burdens, protected speech and association throughout our society. Strict scrutiny ought apply to review of its constitutionality. Under strict scrutiny, the congressional scheme, for the most part, cannot survive. This is all but acknowledged by the Government, which fails even to argue that strict scrutiny could be met.

. . .

Section 323(e) is directed solely to federal candidates and their agents; it does not ban all solicitation by candidates, but only their solicitation of soft-money contributions; and it incorporates important exceptions to its limits (candidates may receive, solicit, or direct funds that comply with hard-money standards; candidates may speak at fundraising events; candidates may solicit or direct unlimited funds to organizations not involved with federal election activity; and candidates may solicit or direct up to $20,000 per individual per year for organizations involved with certain federal election activity (e.g., GOTV, voter registration)). These provisions help ensure that the law is narrowly tailored to satisfy First Amendment requirements. For these reasons, I agree § 323(e) is valid.

. . .

Compared to the narrowly tailored effort of § 323(e), which addresses in direct and specific terms federal candidates' and officeholders' quest for dollars, the [other] sections [of § 323(e),] cast a wide net not confined to the critical categories of federal candidate or officeholder involvement. They are not narrowly tailored; they are not closely drawn; they flatly violate the First Amendment; and even if they do encompass some speech that poses a regulable quid pro quo danger, that little assurance does not justify or permit a regime which silences so many legitimate voices in this protected sphere.

. . .

Section 214(a) amends FECA to define, as hard-money contributions to a political party, expenditures an individual makes in concert with the party. This provision, in my view, must fall. As the earlier discussion of Title I explains, individual contributions to the political parties cannot be capped in the soft-money context. Since an individual's soft-money contributions to a party may not be limited, it follows with even greater force that an individual's expenditure of money, coordinated with the party for activities on which the party could spend unlimited soft money, cannot be capped.

. . .

Section 213 unconstitutionally forces the parties to surrender one of two First Amendment rights. We affirmed that parties have a constitutionally protected right to make independent expenditures. I continue to believe, moreover, that even under *Buckley* a political party has a protected right to make coordinated expenditures with its candidates. Our well-established constitutional tradition respects the role parties play in the electoral process and in stabilizing our representative democracy. This role would be undermined in the absence of a party's ability to coordinate with candidates. Section 213's command that the parties abandon one First Amendment right or the other offends the Constitution even more than a command that a person choose between a First Amendment right and a statutory right.

. . .

Section 201's advance disclosure requirement—the aspect of the provision requiring those who have contracted to speak to disclose their speech in advance—is, in my view, unconstitutional. Advance disclosure imposes real burdens on political speech that post hoc disclosure does not. It forces disclosure of political strategy by revealing where ads are to be run and what their content is likely to be (based on who is running the ad). It also provides an opportunity for the ad buyer's opponents to dissuade broadcasters from running ads. Against those tangible additional burdens, the Government identifies no additional interest uniquely served by advance disclosure. If Congress intended to ensure that advertisers could not flout these disclosure laws by running an ad before the election, but paying for it afterwards, then Congress should simply have required the disclosure upon the running of the ad. Burdening the First Amendment further by requiring advance disclosure is not a constitutionally acceptable alternative.

. . .

The majority permits a new and serious intrusion on speech when it upholds § 203, the key provision in Title II that prohibits corporations and labor unions from using money from their general treasury to fund electioneering communications. The majority compounds the error made in *Austin v. Michigan Chamber of Commerce* (1990), and silences political speech central to the civic discourse that sustains and informs our democratic processes. . . . Instead of extending Austin to suppress new and vibrant voices, I would overrule it and return our campaign finance jurisprudence to principles consistent with the First Amendment.

The Government and the majority are right about one thing: The express-advocacy requirement, with its list of magic words, is easy to circumvent. The Government seizes on this observation to defend BCRA § 203, arguing it will prevent what it calls "sham issue ads" that are really to the same effect as their more express counterparts. Ante, at 684, 688–689. What the Court and the Government call sham, however, are the ads speakers find most effective. Unlike express ads that leave nothing to the imagination, the record shows that issue ads are preferred by almost all candidates, even though politicians, unlike corporations, can lawfully broadcast express ads if they so choose. It is a measure of the Government's disdain for protected speech that it would label as a sham the mode of communication sophisticated speakers choose because it is the most powerful.

. . .

Austin was the first and, until now, the only time our Court had allowed the Government to exercise the power to censor political speech based on the speaker's corporate identity. The majority's contrary contention is simply incorrect. . . . To be sure, *First National Bank of Boston v. Bellotti* (1978) concerns issue advocacy, whereas *Austin* is about express advocacy. This distinction appears to have accounted for the position of at least two Members of the Court. The distinction, however, between independent expenditures for commenting on issues, on the one hand, and supporting or opposing a candidate, on the other, has no First Amendment significance apart from *Austin*'s arbitrary line.

Austin was based on a faulty assumption. Contrary to Justice STEVENS' proposal that there is "vast difference between lobbying and debating public issues on the one hand, and political campaigns for election to public office on the other," there is a general recognition now that discussions of candidates and issues are quite often intertwined in practical terms. To abide by *Austin*'s repudiation of *Bellotti* on the ground that *Bellotti* did not involve express advocacy is to adopt a fiction. Far from providing a rationale for expanding *Austin*, the evidence in these consolidated cases calls for its reexamination. Just as arguments about immense aggregations of corporate wealth and concerns about

protecting shareholders and union members do not justify a ban on issue ads, they cannot sustain a ban on independent expenditures for express ads. . . .

. . .

I surmise that even the majority, along with the Government, appreciates these problems with Austin. That is why it invents a new justification. We are now told that "the government also has a compelling interest in insulating federal elections from the type of corruption arising from the real or apparent creation of political debts." This rationale has no limiting principle. Were we to accept it, Congress would have the authority to outlaw even pure issue ads, because they, too, could endear their sponsors to candidates who adopt the favored positions. Taken to its logical conclusion, the alleged Government interest "in insulating federal elections from . . . the real or apparent creation of political debts" also conflicts with Buckley. If a candidate feels grateful to a faceless, impersonal corporation for making independent expenditures, the gratitude cannot be any less when the money came from the CEO's own pocket. Buckley, however, struck down limitations on independent expenditures and rejected the Government's corruption argument absent evidence of coordination. . . .

. . .

The prohibition, with its crude temporal and geographic proxies, is a severe and unprecedented ban on protected speech. As discussed at the outset, suppose a few Senators want to show their constituents in the logging industry how much they care about working families and propose a law, 60 days before the election, that would harm the environment by allowing logging in national forests. Under § 203, a nonprofit environmental group would be unable to run an ad referring to these Senators in their districts. The suggestion that the group could form and fund a PAC in the short time required for effective participation in the political debate is fanciful. For reasons already discussed, moreover, an ad hoc PAC would not be as effective as the environmental group itself in gaining credibility with the public. Never before in our history has the Court upheld a law that suppresses speech to this extent.

. . .

In the end the Government and intervenor-defendants cannot dispute the looseness of the connection between § 203 and the Government's proffered interest in stemming corruption. At various points in their briefs, they drop all pretense that the electioneering ban bears a close relation to anticorruption purposes. Instead, they defend § 203 on the ground that the targeted ads "may influence," are "likely to influence," or "will in all likelihood have the effect of influencing" a federal election. The mere fact that an ad may, in one fashion or another, influence an election is an insufficient reason for outlawing it. I should have thought influencing elections to be the whole point of political speech.

. . .

Title II's vagueness and overbreadth demonstrate Congress' fundamental misunderstanding of the First Amendment. The Court, it must be said, succumbs to the same mistake. The majority begins with a denunciation of direct campaign contributions by corporations and unions. It then uses this rhetorical momentum as its leverage to uphold the Act. The problem, however, is that Title II's ban on electioneering communications covers general commentaries on political issues and is far removed from laws prohibiting direct contributions from corporate and union treasuries. The severe First Amendment burden of this ban on independent expenditures requires much stronger justifications than the majority offers.

The hostility toward corporations and unions that infuses the majority opinion is inconsistent with the viewpoint neutrality the First Amendment demands of all Government actors, including the Members of this Court. Corporations, after all, are the engines of our modern economy. They facilitate complex operations on which the Nation's prosperity depends. To say these entities cannot alert the public to pending political issues that may threaten the country's economic interests is unprecedented. Unions are also an established part of the national economic system. They, too, have their own unique insights to contribute to the political debate, but the law's impact on them is just as severe. The costs of the majority's misplaced concerns about the "corrosive and distorting effects of immense aggregations of wealth," moreover, will weigh most heavily on budget-strapped nonprofit entities upon which many of our citizens rely for political commentary and advocacy. These groups must now choose between staying on the sidelines in the next election or establishing a PAC against their institutional identities. PACs are a

legal construct sanctioned by Congress. They are not necessarily the means of communication chosen and preferred by the citizenry.

. . .

The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas. The civic discourse belongs to the people, and the Government may not prescribe the means used to conduct it.

. . .

The First Amendment commands that Congress "shall make no law . . . abridging the freedom of speech." The command cannot be read to allow Congress to provide for the imprisonment of those who attempt to establish new political parties and alter the civic discourse. Our pluralistic society is filled with voices expressing new and different viewpoints, speaking through modes and mechanisms that must be allowed to change in response to the demands of an interested public. As communities have grown and technology has evolved, concerted speech not only has become more effective than a single voice but also has become the natural preference and efficacious choice for many Americans. The Court, upholding multiple laws that suppress both spontaneous and concerted speech, leaves us less free than before. Today's decision breaks faith with our tradition of robust and unfettered debate.

CHIEF JUSTICE REHNQUIST, joined by JUSTICE SCALIA and JUSTICE KENNEDY, dissenting with respect to BCRA Titles I and V.

. . .

. . . Under our precedent, restrictions on political contributions implicate important First Amendment values and are constitutional only if they are "closely drawn" to reduce the corruption of federal candidates or the appearance of corruption. *Buckley v. Valeo* (1976) (per curiam). Yet, the Court glosses over the breadth of the restrictions, characterizing Title I of BCRA as "do[ing] little more than regulat[ing] the ability of wealthy individuals, corporations, and unions to contribute large sums of money to influence federal elections, federal candidates, and federal officeholders." Because, in reality, Title I is much broader than the Court allows, regulating a good deal of speech that does not have the potential to corrupt federal candidates and officeholders, I dissent.

. . .

The Court attempts to sidestep the unprecedented breadth of this regulation by stating that the "close relationship between federal officeholders and the national parties" makes all donations to the national parties "suspect." But a close association with others, especially in the realm of political speech, is not a surrogate for corruption; it is one of our most treasured First Amendment rights. The Court's willingness to impute corruption on the basis of a relationship greatly infringes associational rights and expands Congress' ability to regulate political speech. And there is nothing in the Court's analysis that limits congressional regulation to national political parties. In fact, the Court relies in part on this closeness rationale to regulate nonprofit organizations. Who knows what association will be deemed too close to federal officeholders next. When a donation to an organization has no potential to corrupt a federal officeholder, the relationship between the officeholder and the organization is simply irrelevant.

. . .

[p]olitical parties often foster speech crucial to a healthy democracy, and fulfill the need for like-minded individuals to ban together and promote a political philosophy. When political parties engage in pure political speech that has little or no potential to corrupt their federal candidates and officeholders, the Government cannot constitutionally burden their speech any more than it could burden the speech of individuals engaging in these same activities.

. . .

. . . Newspaper editorials and political talk shows benefit federal candidates and officeholders every bit as much as a generic voter registration drive conducted by a state party; there is little doubt that the endorsement of a major newspaper affects federal elections, and federal candidates and officeholders

are surely "grateful," for positive media coverage. I doubt, however, the Court would seriously contend that we must defer to Congress' judgment if it chose to reduce the influence of political endorsements in federal elections.

. . .

No doubt Congress was convinced by the many abuses of the current system that something in this area must be done. Its response, however, was too blunt. Many of the abuses described by the Court involve donations that were made for the "purpose of influencing a federal election," and thus are already regulated. Congress could have sought to have the existing restrictions enforced or to enact other restrictions that are "closely drawn" to its legitimate concerns. But it should not be able to broadly restrict political speech in the fashion it has chosen. Today's decision, by not requiring tailored restrictions, has significantly reduced the protection for political speech having little or nothing to do with corruption or the appearance of corruption.

. . .

Required disclosure provisions that deter constitutionally protected association and speech rights are subject to heightened scrutiny. When applying heightened scrutiny, we first ask whether the Government has asserted an interest sufficient to justify the disclosure of requests to purchase broadcast time. But the Government, in its brief, proffers no interest whatever to support § 504 as a whole.

. . .

The Government cannot justify, and for that matter, has not attempted to justify, its requirement that "request[s for] broadcast" time be publicized. On the record before this Court, I cannot even speculate as to a governmental interest that would allow me to conclude that the disclosure of "requests" should be upheld. Such disclosure risks, inter alia, allowing candidates and political groups the opportunity to ferret out a purchaser's political strategy and, ultimately, unduly burdens the First Amendment freedoms of purchasers.

JUSTICE STEVENS, dissenting with respect to § 305.

THE CHIEF JUSTICE, writing for the Court, concludes that the *McConnell* plaintiffs lack standing to challenge § 305 of the Bipartisan Campaign Reform Act of 2002 (BCRA) because Senator McConnell cannot be affected by the provision until "45 days before the Republican primary election in 2008." I am not persuaded that Article III's case-or-controversy requirement imposes such a strict temporal limit on our jurisdiction. By asserting that he has run attack ads in the past, that he plans to run such ads in his next campaign, and that § 305 will adversely affect his campaign strategy, Senator McConnell has identified a "concrete," "'distinct,'" and "actual" injury. . . .

. . .

I am convinced that "the important governmental interest of 'shed[ding] the light of publicity' on campaign financing" would suffice to support a legislative provision expressly requiring all sponsors of attack ads to identify themselves in their ads. That § 305 seeks to achieve the same purpose indirectly, by withdrawing a statutory benefit, does not render the provision any less sound.

. . . § 305 evenhandedly regulates speech based on its electioneering content. Although the section reaches only ads that mention opposing candidates, it applies equally to all such ads. Disagreement with one's opponent obviously expresses a "viewpoint," but § 305 treats that expression exactly like the opponent's response.