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## 01-29-1976 Justice Burger, Oral Summary

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1/29/76

- Buckley v. Valeo

## PROPOSED DRAFT - ORAL ARGUMENT SUMMARY.

I have the per curiam opinion and judgment to announce on behalf of the Court in No. 75-436 and No. 75-437, Buckley v. Valeo. The question before the Court in these cases involves the constitutionality of the Federal Election Campaign Act of 1971, as amended in 1974.

The Federal Election Campaign Act ~~places a series of limits~~ governing<sup>s</sup> financial aspects of campaigns for federal offices:

- (1) It limits contributions to candidates and committees.
- (2) It limits expenditures "relative to a clearly identified candidate."
- (3) It limits expenditures by a candidate from his personal or family funds.
- (4) It restricts overall general election and primary campaign expenditures.
- (5) The Act requires political committees to keep detailed records of contributions and expenditures, including the name and address of each individual contributing in excess of \$10, and his occupation and principal place of business if his contribution exceeds \$100.
- (6) Political committees must file quarterly reports with the Federal Election Commission disclosing the source of every contribution

exceeding \$100 and the recipient and purpose of every expenditure over \$100.

(7) Every individual or group, other than a candidate or political committee, making contributions or expenditures exceeding \$100 "other than by contribution to a political committee or candidate" must file a statement with the Commission.

(8) The Act creates an eight-member Commission with record-keeping, disclosure, and investigatory functions and with rule-making, adjudicatory, and enforcement powers.

(9) The Commission consists of two members appointed by the President pro tempore of the Senate, two by the Speaker of the House, and two by the President (all subject to confirmation by both Houses of Congress). It also includes the Secretary of the Senate and the Clerk of the House as ex officio non-voting members.

(10) Subtitle H of the Internal Revenue Code, as amended in 1974, provides for public financing of Presidential nominating conventions and general election and primary campaigns from a fund created by an optional check-off system under which each taxpayer may indicate approval of placing \$1.00 of tax revenue in the fund for the purposes of the Act. The resulting amount is allocated for funding of conventions and presidential election campaigns.

(11) Subtitle H establishes three categories of parties: (a) "major" parties, (b) "minor" parties, and (c) "new" parties. A primary candidate

for the Presidential nomination by a major political party who receives more than \$5,000 from private sources (counting only the first \$250 of each contribution) in each of at least 20 states is eligible for matching public funds.

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Appellants sought declaratory and injunctive relief against these statutory provisions on various constitutional grounds. The Court of Appeals, on certified questions from the District Court, upheld all but one of the statutory provisions. A three-judge District Court upheld the constitutionality of Subtitle H.

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I am authorized to announce on behalf of the Court the following judgment: the Court holds that this litigation presents an Art. III "case or controversy," since the complaint discloses that at least some of the appellants have a sufficient "personal stake" in a determination of the constitutional validity of each of the challenged provisions.

#### AS TO THE CONTRIBUTION AND EXPENDITURE LIMITATIONS

(1) The Court holds that the Act's contribution provisions are constitutional as appropriate legislative measures to deal with the reality and appearance of improper influence stemming from the dependence of candidates on large campaign contributions. The Court holds that the contribution limits do not directly impinge upon the rights of individual citizens and candidates to engage in political debate and discussion.

(2) The expenditure provisions, however, are violative of First Amendment guarantees and the Court holds them unconstitutional. Those provisions place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in political expression protected by the First Amendment.

#### AS TO THE DISCLOSURE PROVISIONS

The Court holds as follows:

(1) The Act's disclosure and recordkeeping provisions are a constitutional exercise of legislative power. They serve substantial governmental interests. It was reasonable for Congress to conclude that disclosure of contributions informs the public and serves a legitimate governmental interest in relation to the political processes.

(2) The disclosure provisions challenged here are not overbroad insofar as they apply to contributions to minor parties and independent candidates; Congress could appropriately conclude that a blanket exemption for minor parties was not warranted. Minor parties will be free to show a reasonable probability that compelled disclosure of contributors' names will subject them to threats or harassment as a result of disclosure.

(3) As narrowly construed by the Court's holding today, the Act's provision for disclosure by those who make independent contributions

and expenditures is also constitutional. In construing the provision, we limit its application to narrow and precise circumstances: (a) when contributions are either earmarked for political purposes or have been authorized by a candidate or his agent to be made to some person other than a candidate or political committee, and (b) when expenditures are made for a communication that expressly advocates the election or defeat of a clearly identified candidate. As construed, this provision is not unconstitutionally vague, nor does it constitute an unlawful prior restraint.

(4) The particular dollar thresholds chosen by Congress are related to the goals of the Act and constitute line-drawing of a kind within legislative power. Application of the recordkeeping and disclosure requirements to contributions of \$10 and \$100 is not overbroad on this record.

#### AS TO PUBLIC FINANCING PROVISIONS

The Court holds Subtitle H of the Internal Revenue Code constitutional. Congress, under the General Welfare Clause, has power to decide what expenditures will promote the general welfare and this Subtitle is a permissible congressional choice as a means to reform the electoral process. The Court holds also that the Subtitle does not violate the First Amendment; rather it represents an effort to use public money to facilitate and to enlarge public discussion and participation in the electoral process. Being less burdensome than ballot-access regulations and having been enacted in furtherance of vital governmental interests, the Subtitle

does not invidiously discriminate against minor and new parties in violation of the Due Process Clause of the Fifth Amendment. Finally the Court's invalidation of the spending-limit provisions of the Act does not render Subtitle H unconstitutional; the Subtitle is severable from such provisions.

AS TO THE FEDERAL ELECTION COMMISSION

The Commission's composition as to all but its investigatory and informative powers violates Art. II, § 2, cl. 2 to the extent that a majority of the voting members are appointed by the President pro tempore of the Senate and the Speaker of the House. Hence, although the Commission's past acts are accorded de facto validity and a stay is granted permitting it to function under the Act for not more than 30 days, the Commission, as presently constituted, is violative of constitutional limitations and it may exercise only such investigatory and other powers as are in the same category as Congress may delegate to one of its own committees.

Accordingly, the judgment of the Court of Appeals in 75-436 is affirmed in part and reversed in part; the judgment the District Court for the District of Columbia in 75-437 is affirmed.

Mr. Justice White, Mr. Justice Marshall, Mr. Justice Blackmun, Mr. Justice Rehnquist and I, have each filed separate opinions in which each has separately concurred in part and dissented in part from the opinion of the Court.

Mr. Justice Stevens took no part in the consideration or decision of these cases.