

LEGISLATIVE TESTIMONY ON CAMPAIGN FINANCE REGULATION

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Thank you for allowing me to present testimony today. I am Jeffrey Jackson, Interim Dean and a Professor of Constitutional Law at Washburn University School of Law. My purpose in presenting this testimony is to provide some background on campaign finance regulation and its role in the United States.

At the outset, it's important to recognize that the Supreme Court's jurisprudence on campaign finance regulation makes an important distinction between the two types of spending: **Expenditures** on behalf of an issue or candidate, which cannot be regulated for the most part; and **Contributions** to a candidate directly, which can be regulated to protect the integrity of the political system.

1. Both Expenditures and Contributions are political speech that is protected by the First Amendment

No matter whether the spending that occurs is classified as an Expenditure or a Contribution, it is political speech that is protected by the First Amendment's Freedom of Speech Clause. The difference in regulation between the two classifications is because of the nature of their communications, the target audience of their communications, and their tendency to raise the issue of quid pro quo corruption.

2. Expenditures on behalf of an issue or candidate are generally not subject to regulation.

Expenditures are classified as "money a person or group can spend on political communications during a campaign." *Buckley v. Valeo*, 424 U.S. 1, 19 (1976). When a person or group spends money on behalf of an issue or candidate, that person is essentially "speaking" on behalf of the issue or candidate, and the intended audience of that speech is the general public. The speaker is telling the general public the speaker's views on the subject at hand, which is a quintessential First Amendment activity.

Expenditure limits are generally not subject to regulation and must pass strict scrutiny. This is because a limit on the money spent by a person or group on advocacy directly restricts the ability of the speaker to communicate the message and "necessarily reduces the quantity of expression by restricting the number of issues discuss, the depth of their exploration, and the size of the audience reached." *Buckley*, 424 U.S. at 19. Thus, government limiting the amount of money a person or group may spend on behalf of an issue or candidate is an infringement on Free Speech that can only be justified by the strictest scrutiny and is almost never justified.

3. Contributions directly to a candidate can be regulated.

The same rules do not apply, however, to contributions made directly to a candidate's campaign. In such a case, the money spent for the contribution is the "speech" and the intended recipient of the communication is the candidate. Whether the amount contributed is \$10 or \$1,000, the "message" communicated is essentially the same: I support you. As the Court stated in the per curiam opinion in *Buckley*, "[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." 424 U.S. at 20-21.

Because the message itself, the support of the candidate, is communicated regardless of the amount of money donated, limits on the amount do not change the message communicated or the person to whom it may be communicated in the same way that a limit on an expenditure on behalf of an issue or candidate would. Where a limit on expenditures would reduce a person's ability to communicate on a number of different issues or reduce the person's ability to communicate multiple times on a single issue, a limitation on a direct contribution to a candidate does not reduce the message of support. Rather, it "entails only a marginal restriction upon the contributor's ability to engage in free communication. *Id.* at 21.

This is not to say that every limitation on contributions is constitutional. Although the restriction on speech imposed by the limitation may only be "marginal," it is still a restriction on speech, and thus it must serve an important governmental purpose. Generally, the accepted governmental purpose for such contribution is the prevention of quid pro quo corruption or its appearance. *See Citizens United v. Federal Election Com'n*, 558 U.S. 310 (2010) (noting that such prevention is has been held to be sufficiently important to support contribution limits).

In addition, the limits imposed on campaign contributions must be narrowly drawn in relation to the interest. They cannot be so small as to harm the electoral process by preventing challengers from mounting effective campaigns. *Randall v. Sorrell*, 548 U.S. 230, 248-49 (2006). Contribution limits that are not narrowly drawn could "prove an obstacle to the very electoral fairness" they seek to promote. *Id.* at 249.

4. Contribution limits that are narrowly drawn provide a benefit to the electoral system

With these principles in mind, whether to have contribution limits, and the amount of such limits, is essentially a policy determination. However, it should be noted that such limits, narrowly drawn, can provide an important benefit to the electoral system by reducing the appearance and incidence of quid pro quo corruption. When a person or entity makes a large contribution directly to a political campaign, there is a danger that quid pro quo corruption will in fact arise. This is especially true where the contribution of that single person or entity provides the bulk of the candidate's war chest for the campaign. Such limits are on of the primary means available to combat improper influence on candidates. Further, even where there is no actual corruption, the appearance of corruption in such instances can damage the public's faith in the electoral system.

Conclusion

Both political expenditures on behalf of an issue or a candidate and political contributions directly to that candidate are protected political speech under the First Amendment. Because the expenditures on behalf of the issue or candidate are political speech directed to a wide audience, limits on such expenditures impact the quantity of speech available and are almost never justified. However, limits on direct political contributions are an important tool in the American electoral system for the prevention of quid pro quo corruption, and these limits, narrowly drawn, do not substantially impair the ability of the speaker to relate the message.