Volume 2, Chapter 10: Freedom of Speech and Press
Part III. The 1st Amendment and Limits on Political Campaigns
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McConnell v. Federal Election Commission
540 U.S. 93 (2003)

[Stevens and O'Connor, JJ., delivered the opinion of the Court with respect to BCRA Titles I and II, in which Souter, Ginsburg, and Breyer, JJ., joined. Rehnquist, C. J., delivered the opinion of the Court with respect to BCRA Titles III and IV, in which O'Connor, Scalia, Kennedy, and Souter, JJ., joined, in which Stevens, Ginsburg, and Breyer, JJ., joined except with respect to BCRA § 305, and in which Thomas, J., joined with respect to BCRA §§ 304, 305, 307, 316, 319, and 403(b). Breyer, J., delivered the opinion of the Court with respect to BCRA Title V, in which Stevens, O'Connor, Souter, and Ginsburg, JJ., joined. Scalia, J., filed an opinion 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. Thomas, J., filed an opinion 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, in which opinion Scalia, J., joined as to Parts I, II-A, and II-B. Kennedy, J., filed an opinion concurring in the judgment in part and dissenting in part with respect to BCRA Titles I and II, in which Rehnquist, C. J., joined, in which Scalia, J., joined except to the extent the opinion upholds new FECA § 323(e) and BCRA § 202, and in which Thomas, J., joined with respect to BCRA § 213. Rehnquist, C. J., filed an opinion dissenting with respect to BCRA Titles I and V, in which Scalia and Kennedy, JJ., joined. Stevens, J., filed an opinion dissenting with respect to BCRA § 305, in which Ginsburg and Breyer, JJ., joined.]

[Multiple actions, challenging constitutionality of Bipartisan Campaign Reform Act of 2002. . . .]

Justice Stevens and Justice O'Connor delivered the opinion of the Court with respect to BCRA Titles I and II. Justice Souter, Justice Ginsburg, and Justice Breyer join this opinion in its entirety.

[In *Buckley v. Valeo* (1976),] [w]e treated the limitations on candidate and individual expenditures as direct restraints on speech, but we observed that the contribution limitations, in contrast, imposed only "a marginal restriction upon the contributor's ability to engage in free communication."

We upheld all of the disclosure and reporting requirements in the Act that were challenged on appeal to this Court after finding that they vindicated three important interests: providing the electorate with relevant information about the candidates and their supporters; deterring actual corruption and discouraging the use of money for improper purposes; and facilitating enforcement of the prohibitions in the Act. In order to avoid an overbreadth problem, however, we placed the same narrowing construction on the term "expenditure" in the disclosure context that we had adopted in the context of the expenditure limitations. Thus, we construed the reporting requirement for persons making expenditures of more than $100 in a year "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate."

Three important developments in the years after our decision in *Buckley* persuaded Congress that further legislation was necessary to regulate the role that corporations, unions, and wealthy contributors play in the electoral process. As a preface to our discussion of the specific provisions of BCRA, we comment briefly on the increased importance of "soft money," the proliferation of "issue ads," and the disturbing findings of a Senate investigation into campaign practices related to the 1996 federal elections.

Soft Money

[P]rior to the enactment of BCRA, federal law permitted corporations and unions, as well as individuals who had already made the maximum permissible contributions to federal candidates, to contribute "nonfederal money"--also known as "soft money"--to political parties for activities intended to influence state or local elections.

As the permissible uses of soft money expanded, the amount of soft money raised and spent by the national political parties increased exponentially.

Many contributions of soft money were dramatically larger than the contributions of hard money permitted by FECA. . . . Moreover, the largest corporate donors often made substantial contributions to both parties. Such practices corroborate evidence indicating that many corporate contributions were motivated by a desire for access to candidates and a fear of being placed at a disadvantage in the legislative process relative to other contributors, rather than by ideological support for the candidates and parties.

Not only were such soft-money contributions often designed to gain access to federal candidates, but they were in many cases solicited by the candidates themselves. Candidates often directed potential donors to party committees and tax-exempt organizations that could legally accept soft money. . .

The solicitation, transfer, and use of soft money thus enabled parties and candidates to circumvent FECA's limitations on the source and amount of contributions in connection with federal elections.

Issue Advertising

In *Buckley* we construed FECA's disclosure and reporting requirements, as well as its expenditure limitations, "to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate." As a result of that strict reading of the statute, the use or omission of "magic words" such as

"Elect John Smith" or "Vote Against Jane Doe" marked a bright statutory line separating "express advocacy" from "issue advocacy." . . . The political parties . . . could not use soft money to sponsor ads that used any magic words, and corporations and unions could not fund such ads out of their general treasuries. So-called issue ads, on the other hand, not only could be financed with soft money, but could be aired without disclosing the identity of, or any other information about, their sponsors.

While the distinction between "issue" and express advocacy seemed neat in theory, the two categories of advertisements proved functionally identical in important respects. Both were used to advocate the election or defeat of clearly identified federal candidates, even though the so-called issue ads eschewed the use of magic words. . . Indeed, campaign professionals testified that the most effective campaign ads . . ., should, and did, avoid the use of the magic words. Moreover, the conclusion that such ads were specifically intended to affect election results was confirmed by the fact that almost all of them aired in the 60 days immediately preceding a federal election. Corporations and unions spent hundreds of millions of dollars of their general funds to pay for these ads, and those expenditures, like soft-money donations to the political parties, were unregulated under FECA. Indeed, the ads were attractive to organizations and candidates precisely because they were beyond FECA's reach, enabling candidates and their parties to work closely with friendly interest groups to sponsor so- called issue ads when the candidates themselves were running out of money.

While the public may not have been fully informed about the sponsorship of so-called issue ads, the record indicates that candidates and officeholders often were. . . . As with soft-money contributions, political parties and candidates used the availability of so-called issue ads to circumvent FECA's limitations, asking donors who contributed their permitted quota of hard money to give money to nonprofit corporations to spend on "issue" advocacy.

Senate Committee Investigation

In 1998 the Senate Committee on Governmental Affairs issued a six- volume report summarizing the results of an extensive investigation into the campaign practices in the 1996 federal elections. The report gave particular attention to the effect of soft money on the American political system, including elected officials' practice of granting special access in return for political contributions.

The report was critical of both parties' methods of raising soft money, as well as their use of those funds. It concluded that both parties promised and provided special access to candidates and senior Government officials in exchange for large soft-money contributions. . . .

In 1996 both parties began to use large amounts of soft money to pay for issue advertising designed to influence federal elections. The Committee found such ads highly problematic for two reasons. Since they accomplished the same purposes as express advocacy (which could lawfully be funded only with hard money), the ads enabled unions, corporations, and wealthy contributors to circumvent . . . [the] FECA. . . . Moreover, though ostensibly independent of the candidates, the ads were often actually coordinated with, and controlled by, the campaigns. The ads thus provided a means for evading FECA's candidate contribution limits.

The report also emphasized the role of state and local parties. [N]ational parties often made substantial transfers of soft money to "state and local political parties for 'generic voter activities' that in fact ultimately benefit[ed] federal candidates because the funds for all practical purposes remain[ed] under the control of the national committees." The report concluded that "[t]he use of such soft money thus allow[ed] more corporate, union treasury, and large contributions from wealthy individuals into the system."

II . . . . BCRA's central provisions are designed to address Congress' concerns about the increasing use of soft money and issue advertising to influence federal elections. Title I regulates the use of soft money by political parties, officeholders, and candidates. Title II primarily prohibits corporations and labor unions from using general treasury funds for communications that are intended to, or have the effect of, influencing the outcome of federal elections.

III. Title I is Congress' effort to plug the soft-money loophole. The cornerstone of Title I is new FECA § 323(a), which prohibits national party committees and their agents from soliciting, receiving, directing, or spending any soft money. . . .

The remaining provisions of new FECA § 323 largely reinforce the restrictions in § 323(a). [Section] 323(b) prevents the wholesale shift of soft-money influence from national to state party committees by prohibiting state and local party committees from using such funds for activities that affect federal elections. . . . [Section] 323(d) . . . . prohibit[es] political parties from soliciting and donating funds to tax-exempt organizations that engage in electioneering activities. . . . [Section] 323(e) restricts federal candidates and officeholders from receiving, spending, or soliciting soft money in connection with federal elections and limits their ability to do so in connection with state and local elections.. Finally, new FECA § 323(f) prevents circumvention of the restrictions on national, state, and local party committees by prohibiting state and local candidates from raising and spending soft money to fund advertisements and other public communications that promote or attack federal candidatesY

Plaintiffs mount a facial First Amendment challenge to new FECA § 323. . . .

A In *Buckley* 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.". . .

We have recognized that contribution limits may bear "more heavily on the associational right than on freedom to speak," since contributions serve "to affiliate a person with a candidate" and "enabl[e] like-minded persons to pool their resources," . . . The "overall effect" of dollar limits on contributions is "merely to require

candidates and political committees to raise funds from a greater number of persons." 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 (*Buckley'*s "closely drawn" scrutiny) 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. [It] . . . 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.

Plaintiffs contend that we must apply strict scrutiny to § 323 because many of its provisions restrict not only contributions but also the spending and solicitation of funds raised outside of FECA's contribution limits. But for purposes of determining the level of scrutiny, it is irrelevant that Congress chose in § 323 to regulate contributions on the demand rather than the supply side. . . . The relevant inquiry is whether the mechanism adopted to implement the contribution limit, or to prevent circumvention of that limit, burdens speech in a way that a direct restriction on the contribution itself would not. That is not the case here.

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.

Section 323 thus shows "due regard for the reality that solicitation is characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views." . The fact that party committees and federal candidates and officeholders must now ask only for limited dollar amounts or request that a corporation or union contribute money through its PAC in no way alters or impairs the political message "intertwined" with the solicitation. [R]ather than chill such solicitations . . . the restriction here tends to increase the dissemination of information by forcing parties, candidates, and officeholders to solicit from a wider array of potential donors. As with direct limits on contributions, therefore, § 323's spending and solicitation restrictions have only a marginal impact on political speech.

Finally, plaintiffs contend that the type of associational burdens that § 323 imposes are fundamentally different from the burdens that accompanied *Buckley's* contribution limits, and merit the type of strict scrutiny we have applied to attempts to regulate the internal processes of political parties. [But] . . . plaintiffs greatly exaggerate the effect of § 323, contending that it precludes *any* collaboration among national, state, and local committees of the same party in fundraising and electioneering activities. We do not read the provisions in that way. . . . Section 323 merely subjects a greater percentage of contributions to parties and candidates to FECA's source and amount limitations. *Buckley* has already acknowledged that such limitations "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates." The modest impact that § 323 has on the ability of committees within a party to associate with each other does not independently occasion strict scrutiny. None of this is to suggest that the alleged associational burdens imposed on parties by § 323 have no place in the First Amendment analysis; it is only that we account for them in the application, rather than the choice, of the appropriate level of scrutiny.

With these principles in mind, we apply the less rigorous scrutiny applicable to contribution limits to evaluate the constitutionality of new FECA § 323. Because the five challenged provisions of § 323 implicate different First Amendment concerns, we discuss them separately. We are mindful, however, that Congress enacted § 323 as an integrated whole to vindicate the Government's important interest in preventing corruption and the appearance of corruption.

New FECA § 323(a)'s Restrictions on National Party Committees

The main goal of § 323(a) is modest . . . it simply effects a return to the scheme that was approved in *Buckley* and that was subverted by the creation of the FEC's allocation regime . . . . Under that allocation regime, national parties were able to use vast amounts of soft money in their efforts to elect federal candidates. Consequently, as long as they directed the money to the political parties, donors could contribute large amounts of soft money for use in activities designed to influence federal elections. New § 323(a) is designed to put a stop to that practice.

1. *Governmental Interests Underlying New FECA § 323(a)*

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. [W]e [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." And because the First Amendment does not require Congress to ignore the fact that "candidates, donors, and parties test the limits of the current law," these interests have been sufficient to justify . . .contribution limits themselves [and] laws preventing the circumvention of such limits . . . .

The question for present purposes is whether large *soft-money* contributions to national party committees have a corrupting influence or give rise to the appearance of corruption. Both common sense and the ample record in these cases confirm Congress' belief that they do.

The evidence in the record shows that candidates and donors alike have in fact exploited the soft-money loophole. . . . 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.

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. . . . . To claim that such actions do not change legislative outcomes surely misunderstands the legislative process.

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 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."

Despite this evidence and the close ties that candidates and officeholders have with their parties, Justice Kennedy would limit Congress' regulatory interest *only* to the prevention of the actual or apparent *quid pro quo* corruption "inherent in" contributions made directly to, contributions made at the express behest of, and expenditures made in coordination with, a federal officeholder or candidate. Regulation of any other donation or expenditure--regardless of its size, the recipient's relationship to the candidate or officeholder, its potential impact on a candidate's election, its value to the candidate, or its unabashed and explicit intent to purchase influence--would, according to Justice Kennedy, simply be out of bounds. This crabbed view of corruption, and particularly of the appearance of corruption, ignores precedent, common sense, and the realities of political fundraising exposed by the record in this litigation.

Justice Kennedy’s interpretation of the First Amendment would render Congress powerless to address more subtle but equally dispiriting forms of corruption. Just as troubling to a functioning democracy as classic *quid pro quo* corruption is the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder. Even if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize. The best means of prevention is to identify and to remove the temptation. [S]oft-money contributions to political parties carry with them just such temptation.

Justice Kennedy likewise takes too narrow a view of the appearance of corruption. He asserts that only those transactions with "inherent corruption potential," which he again limits to contributions directly to candidates, justify the inference "that regulating the conduct will stem the appearance of real corruption." In our view, however, Congress is not required to ignore historical evidence regarding a particular practice or to view conduct in isolation from its context. To be sure, mere political favoritism or opportunity for influence alone is insufficient to justify regulation. As the record demonstrates, it is the manner in which parties have *sold* access to federal candidates and officeholders that has given rise to the appearance of undue influence. Implicit (and, as the record shows, sometimes explicit) in the sale of access is the suggestion that money buys influence. It is no surprise then that purchasers of such access unabashedly admit that they are seeking to purchase just such influence. It was not unwarranted for Congress to conclude that the selling of access gives rise to the appearance of corruption.

In sum, there is substantial evidence to support Congress' determination that large soft-money contributions to national political parties give rise to corruption and the appearance of corruption.

2. *New FECA § 323(a)'s Restriction on Spending and Receiving Soft Money*

Plaintiffs and The Chief Justice contend that § 323(a) is impermissibly overbroad because it subjects *all* funds raised and spent by national parties to FECA's hard-money source and amount limits, including, for example, funds spent on purely state and local elections in which no federal office is at stake. . . . As the record demonstrates, it is the close relationship between federal officeholders and the national parties, as well as the means by which parties have traded on that relationship, that have made all large soft-money contributions to national parties suspect.

Given this close connection and alignment of interests, large soft- money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders, regardless of how those funds are ultimately used.

This close affiliation has also placed national parties in a position to sell access to federal officeholders in exchange for soft-money contributions that the party can then use for its own purposes. . . . The Government's strong interests in preventing corruption, and in particular the appearance of corruption, are thus sufficient to justify subjecting all donations to national parties to the source, amount, and disclosure limitations of FECA.

3. *New FECA § 323(a)'s Restriction on Soliciting or Directing Soft Money*

Plaintiffs also contend that § 323(a)'s prohibition on national parties' soliciting or directing soft-money contributions is substantially overbroad. The reach of the solicitation prohibition, however, is limited. It bars only solicitations of soft money by national party committees and by party officers in their official capacities.

This limited restriction on solicitation follows sensibly from the prohibition on national committees' receiving soft money. The same observations that led us to approve the latter compel us to reach the same conclusion regarding the former. . . .

4. *New FECA § 323(a)'s Application to Minor Parties*

[P]laintiffs contend that § 323(a) is substantially overbroad and must be stricken on its face because it impermissibly infringes the speech and associational rights of minor parties such as the Libertarian National Committee, which, owing to their slim prospects for electoral success and the fact that they receive few large soft-money contributions from corporate sources, pose no threat of corruption comparable to that posed by the RNC and DNC. In *Buckley,* we rejected a similar argument. . . We have thus recognized that the relevance of the interest in avoiding actual or apparent corruption is not a function of the number of legislators a given party manages to elect. . . .

We add that nothing in § 323(a) prevents individuals from pooling resources to start a new national party. Only when an organization has gained official status, which carries with it significant benefits for its members, will the proscriptions of § 323(a) apply. Even then, a nascent or struggling minor party can bring an as-applied challenge if § 323(a) prevents it from "amassing the resources necessary for effective advocacy."

5. *New FECA § 323(a)'s Associational Burdens*

Finally, plaintiffs assert that § 323(a) is unconstitutional because it impermissibly interferes with the ability of national committees to associate with state and local committees. . . . The political parties assert that § 323(a) outlaws *any* participation in Victory Plans by RNC officers, including merely sitting down at a table and engaging in collective decisionmaking about how soft money will be solicited, received, and spent. Such associational burdens, they argue, are too great for the First Amendment to bear.

We are not persuaded by this argument because it hinges on an unnaturally broad reading of the terms "spend," "receive," "direct," and "solicit.". Nothing on the face of § 323(a) prohibits national party officers, whether acting in their official or individual capacities, from sitting down with state and local party committees or candidates to plan and advise how to raise and spend soft money. As long as the national party officer does not personally spend, receive, direct, or solicit soft money, § 323(a) permits a wide range of joint planning and electioneering activity. . . .

Given the straightforward meaning of this provision, Justice Kennedy is incorrect that "[a] national party's mere involvement in the strategic planning of fundraising for a state ballot initiative" or its assistance in developing a state party's Levin-money fundraising efforts risks a finding that the officers are in " 'indirect control' " of the state party and subject to criminal penalties. Moreover, § 323(a) leaves national party committee officers entirely free to participate, in their official capacities, with state and local parties and candidates in soliciting and spending hard money; party officials may also solicit soft money in their unofficial capacities.

Accordingly, we reject the plaintiffs' First Amendment challenge to new FECA § 323(a).

New FECA § 323(b)'s Restrictions on State and Local Party Committees

. . . Congress recognized that . . . BCRA's restrictions on national committee activity would rapidly become ineffective if state and local committees remained available as a conduit for soft-money donations. Section 323(b) is designed to foreclose wholesale evasion of § 323(a)'s anticorruption measures by sharply curbing state committees' ability to use large soft-money contributions to influence federal elections. The core of § 323(b) is a straightforward contribution regulation: It prevents donors from contributing nonfederal funds to state and local party committees to help finance "Federal election activity." The term "Federal election activity" encompasses four distinct categories of electioneering: (1) voter registration activity during the 120 days preceding a regularly scheduled federal election; (2) voter identification, get-out-the- vote (GOTV), and generic campaign activity that is "conducted in connection with an election in which a candidate for Federal office appears on the ballot"; (3) any "public communication" that "refers to a clearly identified candidate for Federal office" and "promotes," "supports," "attacks," or "opposes" a candidate for that office; and (4) the services provided by a state committee employee who dedicates more than 25% of his or her time to "activities in connection with a Federal election.". . . . All activities that fall within the statutory definition must be funded with hard money.

Section 323(b)(2), the so-called Levin Amendment, carves out an exception to this general rule. [T]he Levin Amendment allows state and local party committees to pay for certain types of federal election activity with an allocated ratio of hard money and "Levin funds"--that is, funds raised within an annual limit of $10,000 per person.

The scope of the Levin Amendment is limited . . . . First, state and local parties can use Levin money to fund only activities that fall within categories (1) and (2) of the statute's definition of federal election activity . . . .

Second, both the Levin funds and the allocated portion of hard money used to pay for such activities must be raised entirely by the state or local committee that spends them. . . . Furthermore, national committees, federal candidates, and federal officeholders generally may not solicit Levin funds on behalf of state committees, and state committees may not team up to raise Levin funds. They can, however, jointly raise the hard money used to make Levin expenditures.

1. *Governmental Interests Underlying New FECA § 323(b)*

We begin by noting that, in addressing the problem of soft-money contributions to state committees, Congress both drew a 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 alternate avenue for precisely the same corrupting forces.

* * *

[Section] 323(b) is narrowly focused on regulating contributions that pose the greatest risk of this kind of corruption: those contributions to state and local parties that can be used to benefit federal candidates directly. Further, these regulations all are reasonably tailored, with various temporal and substantive limitations designed to focus the regulations on the important anti-corruption interests to be served. We conclude that § 323(b) is a closely-drawn means of countering both corruption and the appearance of corruption.

Because voter registration, voter identification, GOTV, and generic campaign activity all confer substantial benefits on federal candidates, the funding of such activities creates a significant risk of actual and apparent corruption. Section 323(b) is a reasonable response to that risk. Its contribution limitations are focused on the subset of voter registration activity that is most likely to affect the election prospects of federal candidates: activity that occurs within 120 days before a federal election. And if the voter registration drive does not specifically mention a federal candidate, state committees can take advantage of the Levin Amendment's higher contribution limits and relaxed source restrictions. Similarly, the contribution limits . . . target only those voter identification, GOTV, and generic campaign efforts that occur "in connection with an election in which a candidate for a Federal office appears on the ballot.". Appropriately, in implementing this subsection, the FEC has categorically excluded all activity that takes place during the run-up to elections when no federal office is at stake. Furthermore, state committees can take advantage of the Levin Amendment's higher contribution limits to fund . . . activities that do not specifically mention a federal candidate. The prohibition on the use of soft money in connection with these activities is therefore closely drawn to meet the sufficiently important governmental interests of avoiding corruption and its appearance.

"Public communications" that promote or attack a candidate for federal office--the third category of "Federal election activity," § 301(20)(A)(iii)-- also undoubtedly have a dramatic effect on federal elections. Such ads were a prime motivating force behind BCRA's passage. . . . . [A]ny public communication that promotes or attacks a clearly identified federal candidate directly affects the election in which he is participating. The record on this score could scarcely be more abundant. Given the overwhelming tendency of public communications . . . to benefit directly federal candidates, we hold that application of § 323(b)'s contribution caps to such communications is also closely drawn to the anticorruption interest it is intended to address.

b. *Associational Burdens Imposed by the Levin Amendment*

Plaintiffs also contend that § 323(b) is unconstitutional because the Levin Amendment unjustifiably burdens association among party committees by forbidding transfers of Levin funds among state parties, transfers of hard money to fund the allocable federal portion of Levin expenditures, and joint fundraising of Levin funds by state parties. We recognize, as we have in the past, the importance of preserving the associational freedom of parties. But not every minor restriction on parties' otherwise unrestrained ability to associate is of constitutional dimension.

[W]e note that state and local parties can avoid these associational burdens altogether by forgoing the Levin Amendment option and electing to pay for federal election activities entirely with hard money. But in any event, the restrictions on the use, transfer, and raising of Levin funds are justifiable anticircumvention measures. . . . Given the delicate and interconnected regulatory scheme at issue here, any associational burdens imposed by the Levin Amendment restrictions are far outweighed by the need to prevent circumvention of the entire scheme.

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1. *New FECA § 323(d)'s Regulation of Solicitations*

The Government defends § 323(d)'s ban on solicitations to tax-exempt organizations engaged in political activity as preventing circumvention of Title I's limits on contributions of soft money to national, state, and local party committees. That justification is entirely reasonable. The history of Congress' efforts at campaign finance reform well demonstrates that "candidates, donors, and parties test the limits of the current law."

. . . Congress' concerns about circumvention are not merely hypothetical. . . . [since] national, state, and local parties already solicit unregulated soft-money donations to tax-exempt organizations for the purpose of supporting federal electioneering activity. . . . Given BCRA's tighter restrictions on the raising and spending of soft money, the incentives for parties to exploit such organizations will only increase.

Section 323(d)'s solicitation restriction is closely drawn to prevent political parties from using tax-exempt organizations as soft-money surrogates. Though phrased as an absolute prohibition, the restriction does nothing more

than subject contributions solicited by parties to FECA's regulatory regime, leaving open substantial opportunities for solicitation and other expressive activity in support of these organizations. . . .

* * *

2. *New FECA § 323(d)'s Regulation of Donations*

Section 323(d) also prohibits national, state, and local party committees from making or directing "any donatio[n]" to qualifying § 501(c) or § 527 organizations. The Government again defends the restriction as an anticircumvention measure. We agree insofar as it prohibits the donation of soft money. Absent such a restriction, state and local party committees could . . . rais[e] large sums of soft money to launder through tax-exempt organizations engaging in federal election activities. . . .

The prohibition does raise overbreadth concerns if read to restrict donations from a party's federal account. . . . Parties have many valid reasons for giving to tax-exempt organizations . . . . A complete ban on donations prevents parties from making even the "general expression of support" that a contribution represents. At the same time, prohibiting parties from donating funds already raised in compliance with FECA does little to further Congress' goal of preventing corruption or the appearance of corruption. . . .

The Government asserts that the restriction is necessary to prevent parties from leveraging their hard money to gain control over a tax-exempt group's soft money. Even if we accepted that rationale, it would at most justify a dollar limit, not a flat ban. Moreover, any legitimate concerns over capture are diminished by the fact that the restrictions set forth in §§ 323(a) and (b) apply not only to party committees, but to entities under their control.

These observations do not, however, require us to sustain plaintiffs' facial challenge to § 323(d)'s donation restriction. "When the validity of an act of the Congress is drawn in question, and ... a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Crowell v. Benson* (1932). Given our obligation to avoid constitutional problems, we narrowly construe § 323(d)'s ban to apply only to donations of funds not raised in compliance with FECA. . . . We have found no evidence that Congress was concerned about, much less that it intended to prohibit, donations of money already fully regulated by FECA. . . . [P]olitical parties remain free to make or direct donations of money to any tax-exempt organization that has otherwise been raised in compliance with FECA.

New FECA § 323(e)'s Restrictions on Federal Candidates and Officeholders

New FECA § 323(e) regulates the raising and soliciting of soft money by federal candidates and officeholders. It prohibits federal candidates and officeholders from "solicit[ing], receiv[ing], direct[ing], transfer[ing], or spend[ing]" any soft money in connection with federal elections.. It also limits the ability of federal candidates and officeholders to solicit, receive, direct, transfer, or spend soft money in connection with state and local elections.

Section 323(e)'s general prohibition on solicitations admits of a number of exceptions....

No party seriously questions the constitutionality of § 323(e)'s general ban on donations of soft money made directly to federal candidates and officeholders, their agents, or entities established or controlled by them. Even on the narrowest reading of *Buckley,* a regulation restricting donations to a federal candidate, regardless of the ends to which those funds are ultimately put, qualifies as a contribution limit subject to less rigorous scrutiny. Such donations have only marginal speech and associational value, but at the same time pose a substantial threat of corruption. By severing the most direct link between the soft-money donor and the federal candidate, § 323(e)'s ban on donations of soft money is closely drawn to prevent the corruption or the appearance of corruption of federal candidates and officeholders.

Section 323(e)'s restrictions on solicitations are justified as valid anticircumvention measures. Large soft-money donations at a candidate's or officeholder's behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder. . . .

Section 323(e) addresses these concerns while accommodating the individual speech and associational rights of federal candidates and officeholders. Rather than place an outright ban on solicitations to tax-exempt organizations, § 323(e)(4) permits limited solicitations of soft money. This allowance accommodates individuals who have long served as active members of nonprofit organizations in both their official and individual capacities. Similarly, §§ 323(e)(1)(B) and 323(e)(3) preserve the traditional fundraising role of federal officeholders by providing limited opportunities for federal candidates and officeholders to associate with their state and local colleagues through joint fundraising activities. Given these many exceptions, as well as the substantial threat of corruption or its appearance posed by donations to or at the behest of federal candidates and officeholders, § 323(e) is clearly constitutional. We accordingly uphold § 323(e) against plaintiffs' First Amendment challenge.

New FECA § 323(f)'s Restrictions on State Candidates and Officeholders

Section 323(f) generally prohibits candidates for state or local office, or state or local officeholders, from spending soft money to fund "public communications" . . . *i.e.,* a communication that "refers to a clearly identified candidate for Federal office ... and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office." Exempted from this restriction are communications made in connection with an election for state or local office which refer only to the state or local candidate or officeholder making the expenditure or to any other candidate for the same state or local office.

Section 323(f) places no cap on the amount of money that state or local candidates can spend on any activity. . . . [B]y regulating only contributions used to fund "public communications," § 323(f) focuses narrowly on those soft-money donations with the greatest potential to corrupt or give rise to the appearance of corruption of federal candidates and officeholders.

Plaintiffs [argue] . . . that soft-money contributions to state and local candidates for "public communications" do not corrupt or appear to corrupt federal candidates, ignores both the record in this litigation and Congress' strong interest in preventing circumvention of otherwise valid contribution limits. The proliferation of sham issue ads has driven the soft-money explosion. . . . . We will not upset Congress' eminently reasonable prediction that, with . . . other avenues no longer available, state and local candidates and officeholders will become the next conduits for the soft-money funding of sham issue advertising. We therefore uphold § 323(f) against plaintiffs' First Amendment challenge.

IV. Title II of BCRA, entitled "Noncandidate Campaign Expenditures," is divided into two subtitles: "Electioneering Communications" and "Independent and Coordinated Expenditures."

BCRA § 201's Definition of "Electioneering Communication"

The first section of Title II, § 201. . . coins a new term, "electioneering communication," to replace the narrowing construction of FECA's disclosure provisions adopted by this Court in *Buckley.* [T]hat construction limited the. . . disclosure requirement to communications expressly advocating the election or defeat of particular candidates. [T]he term "electioneering communication" is not so limited, but is defined to encompass any "broadcast, cable, or satellite communication" that

"(I) refers to a clearly identified candidate for Federal office;

"(II) is made within--

"(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or

"(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and

"(III) in the case of a communication which refers to a candidate other than President or Vice President, is targeted to the relevant electorate."

In addition to setting forth this definition, BCRA's amendments to FECA § 304 specify significant disclosure requirements for persons who fund electioneering communications. BCRA's use of this new term is not, however, limited to the disclosure context: . . . BCRA § 203 . . . restricts corporations' and labor unions' funding of electioneering communications. . . .

The major premise of plaintiffs' challenge to BCRA's use of the term "electioneering communication" is that *Buckley* drew a constitutionally mandated line between express advocacy and so-called issue advocacy, and that speakers possess an inviolable First Amendment right to engage in the latter category of speech. Thus, plaintiffs maintain, Congress cannot constitutionally require disclosure of, or regulate expenditures for, "electioneering communications" without making an exception for those "communications" that do not meet *Buckley's* definition of express advocacy.

That position misapprehends our prior decisions, for the express advocacy restriction was an endpoint of statutory interpretation, not a first principle of constitutional law. In *Buckley* [W]e concluded that the vagueness deficiencies could "be avoided only by reading § 608(e)(1) as limited to communications that include explicit words of advocacy of election or defeat of a candidate."We provided examples of words of express advocacy . . . [that] gave rise to what is now known as the "magic words" requirement.

We then considered disclosure provisions, which defined " 'expenditur[e].' " . . . "To insure that the reach" of the disclosure requirement was "not impermissibly broad, we construe[d] 'expenditure' for purposes of that section . . . to reach only funds used for communications that expressly advocate the election or defeat of a clearly identified candidate."

[A] plain reading of *Buckley* makes clear that the express advocacy limitation, in both the expenditure and the disclosure contexts, was the product of statutory interpretation rather than a constitutional command. [W]e nowhere suggested that a statute that was neither vague nor overbroad would be required to toe the same express advocacy line.

In short, the concept of express advocacy and the concomitant class of magic words were born of an effort to avoid constitutional infirmities. . . . [O]ur decisions in *Buckley* and *MCFL* were specific to the statutory language before us; they in no way drew a constitutional boundary that forever fixed the permissible scope of provisions regulating campaign-related speech.

Nor are we persuaded that the First Amendment 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. [T]he resulting advertisements are 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.

Finally we observe that [the] definition of "electioneering communication" raises none of the vagueness concerns that drove our analysis in *Buckley.* . . . [The term=s] components are both easily understood and objectively determinable. Thus, the constitutional objection that persuaded the Court in *Buckley* to limit FECA's reach to express advocacy is simply inapposite here.

BCRA § 201's Disclosure Requirements

[P]laintiffs challenge amended FECA § 304's disclosure requirements . . . .

We agree with the District Court that the important state interests that prompted the *Buckley* Court to uphold FECA's disclosure requirements . . . apply in full to BCRA. Accordingly, *Buckley* amply supports application of FECA § 304's disclosure requirements to the entire range of "electioneering communications." As the authors of

the District Court's *per curiam* opinion concluded. . . :

"The factual record demonstrates that the abuse of the present law not only permits corporations and labor unions to fund broadcast advertisements designed to influence federal elections, but permits them to do so while concealing their identities from the public. BCRA's disclosure provisions require these organizations to reveal their identities so that the public is able to identify the source of the funding behind broadcast advertisements influencing certain elections. Plaintiffs' disdain for BCRA's disclosure provisions is nothing short of surprising. Plaintiffs challenge BCRA's restrictions on electioneering communications on the premise that they should be permitted to spend corporate and labor union general treasury funds in the sixty days before the federal elections on broadcast advertisements, which refer to federal candidates, because speech needs to be 'uninhibited, robust, and wide-open.' Curiously, Plaintiffs want to preserve the ability to run these advertisements while hiding behind dubious and misleading names. . . . Given these tactics, Plaintiffs never satisfactorily answer the question of how 'uninhibited, robust, and wide-open' speech can occur when organizations hide themselves from the scrutiny of the voting public. Plaintiffs' argument for striking down BCRA's disclosure provisions does not reinforce the precious First Amendment values that Plaintiffs argue are trampled by BCRA, but ignores the competing First Amendment interests of individual citizens seeking to make informed choices in the political marketplace."

* * *

BCRA § 203's Prohibition of Corporate and Labor Disbursements for Electioneering Communications

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. . . .

Section 203 of BCRA extends this rule, which previously applied only to express advocacy, to all "electioneering communications". . . Thus, under BCRA, corporations and unions may not use their general treasury funds to finance electioneering communications, but they remain free to organize and administer segregated funds, or PACs, for that purpose. Because corporations can still fund electioneering communications with PAC money, it is "simply wrong" to view the provision as a "complete ban" on expression rather than a regulation. As we explained in *Beaumont:*

> "The PAC option allows corporate political participation without the temptation to use corporate funds for political influence, quite possibly at odds with the sentiments of some shareholders or members, and it lets the government regulate campaign activity through registration and disclosure . . . without jeopardizing the associational rights of advocacy organizations' members."

Rather than arguing that the prohibition on the use of general treasury funds is a complete ban that operates as a prior restraint, plaintiffs instead challenge the expanded regulation on the grounds that it is both overbroad and underinclusive. 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." Moreover, recent cases have recognized that certain restrictions on corporate electoral involvement permissibly hedge against " 'circumvention of [valid] contribution limits.' "

[P]laintiffs argue that the justifications that adequately support the regulation of express advocacy do not apply to significant quantities of speech encompassed by the definition of electioneering communications.

This argument fails to the extent that the 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.

We are therefore not persuaded that plaintiffs have carried their heavy burden of proving that amended FECA § 316(b)(2) is overbroad. Even if we assumed that BCRA will inhibit some constitutionally protected corporate and union speech, that assumption would not "justify prohibiting all enforcement" of the law unless its application to protected speech is substantial, "not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications." Far from establishing that BCRA's application to pure issue ads is substantial . . ., the record strongly supports the contrary conclusion.

Plaintiffs also argue that [the] segregated-fund requirement for electioneering communications is underinclusive because it does not apply to advertising in the print media or on the Internet. The records developed in this litigation and by the Senate Committee adequately explain the reasons for this legislative choice. Congress found that corporations and unions used soft money to finance a virtual torrent of televised election-related ads during the periods immediately preceding federal elections, and that remedial legislation was needed to stanch that flow of money. As we held in *Buckley,* "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind."

[T]he definition of electioneering [excludes] 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. [The Section'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."

We affirm the District Court's judgment to the extent that it upheld the constitutionality of FECA § 316(b)(2); to the extent that it invalidated any part of § 316(b)(2), we reverse the judgment.

BCRA § 214's Changes in FECA's Provisions Covering Coordinated Expenditures

FECA § 315(a)(7)(B)(i) long has provided that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate." Section 214(a) of BCRA creates a new FECA § 315(a)(7)(B)(ii) that applies the same rule to expenditures coordinated with "a national, State, or local committee of a political party." Sections 214(b) and (c) direct the FEC to repeal its current regulations and to promulgate new regulations dealing with "coordinated communications". . . . Subsection (c) provides that the new "regulations shall not require agreement or formal collaboration to establish coordination."

Plaintiffs do not dispute that Congress may apply the same coordination rules to parties as to candidates. They argue instead that new FECA § 315(a)(7)(B)(ii) and its implementing regulations are overbroad and unconstitutionally vague because they permit a finding of coordination even in the absence of an agreement. Plaintiffs point out that political supporters may be subjected to criminal liability if they exceed the contribution limits with expenditures that ultimately are deemed coordinated. Thus, they stress the importance of a clear definition of "coordination" and argue any definition that does not hinge on the presence of an agreement cannot provide the "precise guidance" that the First Amendment demands. As plaintiffs readily admit, that argument reaches beyond BCRA, calling into question FECA's pre-existing provisions governing expenditures coordinated with candidates.

We are not persuaded that the presence of an agreement marks the dividing line between expenditures that are coordinated . . . and expenditures that truly are independent. We repeatedly have struck down limitations on expenditures "made totally independently of the candidate and his campaign," on the ground that such limitations "impose far greater restraints on the freedom of speech and association" than do limits on contributions and coordinated expenditures while "fail[ing] to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process," . . .

[T]he rationale for affording special protection to wholly independent expenditures has nothing to do with the absence of an agreement and everything to do with the functional consequences of different types of expenditures. Independent expenditures "are poor sources of leverage for a spender because they might be duplicative or counterproductive from a candidate's point of view." By contrast, expenditures made after a "wink or nod" often will be "as useful to the candidate as cash." For that reason, Congress has always treated expenditures made "at the request or suggestion of" a candidate as coordinated. . . . [W]e cannot agree with the submission that new FECA § 315(a)(7)(B)(ii) is overbroad because it permits a finding of coordination or cooperation notwithstanding the absence of a pre-existing agreement.

Nor are we persuaded that the absence of an agreement requirement renders § 315(a)(7)(B)(ii) unconstitutionally vague. An agreement has never been required to support a finding of coordination with a candidate under § 315(a)(7)(B)(i), which refers to expenditures made "in cooperation, consultation, or concer[t] with, or at the request or suggestion of" a candidate. Congress used precisely the same language in new § 315(a)(7)(B)(ii) to address expenditures coordinated with parties. FECA's longstanding definition of coordination "delineates its reach in words of common understanding." Not surprisingly, therefore, the relevant statutory language has survived without constitutional challenge for almost three decades. Although that fact does not insulate the definition from constitutional scrutiny, it does undermine plaintiffs' claim that the language of § 315(a)(7)(B)(ii) is intolerably vague. Plaintiffs do not present any evidence that the definition has chilled political speech. . . . We conclude that FECA's definition of coordination gives "fair notice to those to whom [it] is directed," and is not unconstitutionally vague.

Chief Justice Rehnquist delivered the opinion of the Court with respect to BCRA Titles III and IV. Justice O'connor, Justice Scalia, Justice Kennedy, and Justice Souter join this opinion in its entirety. Justice Stevens, Justice Ginsburg, and Justice Breyer join this opinion, except with respect to BCRA § 305. Justice Thomas joins this opinion with respect to BCRA §§ 304, 305, 307, 316, 319, and 403(b).

BCRA § 318

BCRA § 318, which adds FECA § 324, prohibits individuals "17 years old or younger" from making contributions to candidates and contributions or donations to political parties. [P]laintiffs challenge the provision; they argue that § 318 violates the First Amendment rights of minors. We agree.

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. . . .

Justice Breyer delivered the opinion of the Court with respect to BCRA Title V. Justice Stevens, Justice O'Connor, Justice Souter, and Justice Ginsburg join this opinion in its entirety.

We consider here the constitutionality of § 504 of the Bipartisan Campaign Reform Act of 2002 (BCRA), [which] requires broadcasters to keep publicly available records of politically related broadcasting requests.[P]laintiffs . . . argue that § 504 imposes onerous administrative burdens, lacks any offsetting justification, and consequently violates the First Amendment. For similar reasons, the three judges on the District Court found BCRA § 504 unconstitutional on its face. We disagree, and we reverse that determination.

I. BCRA § 504's key requirements are the following:

(1) A "candidate request" requirement calls for broadcasters to keep records of broadcast requests "made by or on behalf of" any "legally qualified candidate for public office.".

(2) An "election message request" requirement calls for broadcasters to keep records of requests (made by anyone) to broadcast "message[s]" that refer either to a "legally qualified candidate" or to "any election to Federal office.".

(3) An "issue request" requirement calls for broadcasters to keep records of requests (made by anyone) to broadcast "message[s]" related to a "national legislative issue of public importance," or otherwise relating to a "political matter of national importance,"

II. BCRA § 504's "candidate request" requirements are virtually identical to those contained in a regulation that the Federal Communications Commission (FCC) promulgated as early as 1938 and which with slight modifications the FCC has maintained in effect ever since . . . Because we cannot, on the present record, find the longstanding FCC regulation unconstitutional, we likewise cannot strike down the "candidate request" provision in BCRA § 504; for the latter simply embodies the regulation in a statute, thereby blocking any agency attempt to repeal it.

III. BCRA § 504's "election message request" requirements call for broadcasters to keep records of requests (made by any member of the public) to broadcast a "message" about "a legally qualified candidate" or "any election to Federal office." Although these requirements are somewhat broader than the "candidate request" requirement, they serve much the same purposes. A candidate's supporters or opponents account for many of the requests to broadcast "message[s]" about a "candidate."

[R]ecordkeeping can help both the regulatory agencies and the public evaluate broadcasting fairness. . . .

[W]e cannot say that these requirements will impose disproportionate administrative burdens. . . . [T]he recordkeeping requirements do not reach significantly beyond other FCC recordkeeping rules. . . .If, as we have held, the "candidate request" requirements are constitutional, the "election message" requirements, which serve similar governmental interests and impose only a small incremental burden, must be constitutional as well.

IV. The "issue request" requirements call for broadcasters to keep records of requests (made by any member of the public) to broadcast "message [s]" about "a national legislative issue of public importance" or "any political matter of national importance." These recordkeeping requirements seem likely to help the FCC determine whether broadcasters are carrying out their "obligations to afford reasonable opportunity for the discussion of conflicting views on issues of public importance," and whether broadcasters are too heavily favoring entertainment, and discriminating against broadcasts devoted to public affairs. . . .

[P]laintiffs claim that the statutory language--"political matter of national importance" or "national legislative issue of public importance"--is unconstitutionally vague or overbroad. But that language is no more general than the language that Congress has used to impose other obligations upon broadcasters. . . .

Whether these requirements impose disproportionate administrative burdens is more difficult to say. On the one hand, the burdens are likely less heavy than many that other FCC regulations have imposed. . . .On the other hand, the burdens are likely heavier than those imposed by BCRA § 504's other provisions. . . .

The regulatory burden, in practice, will depend on how the FCC interprets and applies this provision. The FCC has adequate legal authority to write regulations that may limit, and make more specific, the provision's potential linguistic reach. It has often ameliorated regulatory burdens by interpretation in the past, and there is no reason to believe it will not do so here. . . . The parties remain free to challenge the provisions, as interpreted by the FCC in regulations, or as otherwise applied. Any such challenge will likely provide greater information about the provisions' justifications and administrative burdens. Without that additional information, we cannot now say that the burdens are so great, or the justifications so minimal, as to warrant finding the provisions unconstitutional on their face.

[P]laintiffs 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. We are willing to assume that the Constitution includes some form of protection against premature disclosure of campaign strategy--though, given the First Amendment interest in free and open discussion of campaign issues, we make this assumption purely for argument's sake. Nonetheless, even on that assumption we do not see how BCRA § 504 can be unconstitutional on its face.

For one thing, the 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. Finally, we today reject an analogous facial attack--premised on speculations of "advance disclosure"--on a similar BCRA provision. Thus, the "strategy disclosure" argument does not show that BCRA § 504 is unconstitutional on its face, but the plaintiffs remain free to raise this argument when § 504 is applied.

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.

This is a sad day for the freedom of speech. Who could have imagined that the . . . Court . . . 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.

To be sure, the legislation is evenhanded: It similarly prohibits criticism of the candidates who oppose Members of Congress in their reelection bids. But as everyone knows, this is an area in which evenhandedness is not fairness. If *all* electioneering were evenhandedly prohibited, incumbents would have an enormous advantage. . . .

. . .This litigation is about preventing criticism of the government.

Justice Thomas, concurring with respect to BCRA Titles III and IV, except for BCRA 3 11 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. Justice Scalia joins Parts I, II-A, and II-B of this opinion.

The First Amendment provides that "Congress shall make no law ... abridging the freedom of speech." Nevertheless, the Court today upholds what can only be described as the most significant abridgment of the freedoms of speech and association since the Civil War. With breathtaking scope, the Bipartisan Campaign Reform Act of 2002 (BCRA), directly targets and constricts core political speech, the "primary object of First Amendment protection." *Shrink Missouri* (THOMAS, J., dissenting).

In response to this assault on the free exchange of ideas and with only the slightest consideration of the appropriate standard of review or of the Court's traditional role of protecting First Amendment freedoms, the Court has placed its *imprimatur* on these unprecedented restrictions. The very "purpose of the First Amendment [is] to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail." Yet today the fundamental principle that "the best test of truth is the power of the thought to get itself accepted in the competition of the market," *Abrams v. U.S.* (Holmes, J., dissenting), is cast aside in the purported service of preventing "corruption," or the mere "appearance of corruption." . . .

I.-A. [A]t root, the *Buckley* Court was concerned that bribery laws could not be effectively enforced to prevent *quid pro quos* between donors and officeholders, and the only rational reading of *Buckley* is that it approved the $1,000 contribution ceiling on this ground. The Court then . . . proceeded to uphold a separate contribution limitation, using, as the only justification, the "prevent[ion][of] evasion of the $1,000 contribution limitation." The need to prevent circumvention of a limitation that was itself an anticircumvention measure led to the upholding of another significant restriction on individuals' freedom of speech.

The joint opinion now repeats this process. New [FECA] § 323(a) is intended to prevent easy circumvention of the (now) $2,000 contribution ceiling. . . . The joint opinion upholds § 323(a), in part, on the grounds that it had become too easy to circumvent the $2,000 cap by using the national parties as go-betweens.

And the remaining provisions of new FECA § 323 are upheld mostly as measures preventing circumvention of other contribution limits. . . . The joint opinion's handling of § 323(f) is perhaps most telling, as it upholds § 323(f) only because of "Congress' eminently reasonable *prediction* that ... state and local candidates and officeholders will become the next conduits for the soft-money funding of sham issue advertising." (emphasis added). That is, this Court upholds a third-order anticircumvention measure based on Congress' anticipation of circumvention of these second-order anticircumvention measures that might possibly, at some point in the future, pose some problem.

. . . Rather than permit this never-ending and self-justifying process, I would require that the Government explain why proposed speech restrictions are needed in light of actual Government interests, and, in particular, why the bribery laws are not sufficient.

I-B. But Title I falls even on the joint opinion's terms. This Court has held that "[t]he quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised." And three Members of today's majority have observed that "the opportunity for corruption" presented by "[u]nregulated 'soft money' contributions" is "at best, attenuated." *Colorado I* (opinion of Breyer, J., joined by O'Connor and Souter, JJ.). Such an observation is quite clearly correct. A donation to a political party is a clumsy method by which to influence a candidate, as the party is free to spend the donation however it sees fit, and could easily spend the money as to provide no help to the candidate. And, a soft-money donation to a party will be of even less benefit to a candidate, "because of legal restrictions on how the money may be spent." It follows that the defendants bear an especially heavy empirical burden in justifying Title I.

The evidence cited by the joint opinion does not meet this standard and would barely suffice for anything more than rational-basis review. . .

II. . . . Today's holding continues a disturbing trend: the steady decrease in the level of scrutiny applied to restrictions on core political speech. Although this trend is most obvious in the review of contribution limits, it has now reached what even this Court today would presumably recognize as a direct restriction on core political speech: limitations on independent expenditures.

II-C. I must now address an issue on which I differ from all of my colleagues: the disclosure provisions in BCRA § 201, now contained in new FECA § 304(f). 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.' " *McIntyre v. Ohio Elections Comm'n* (1995) (Thomas, J., concurring). 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 Court now backs away from this principle, allowing the established right to anonymous speech to be stripped away based on the flimsiest of justifications.

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." Of course, *Buckley* upheld the disclosure requirement on expenditures for communications using words of express advocacy based on this informational interest. And admittedly, *McIntyre* purported to distinguish *Buckley.* But the two ways *McIntyre* distinguished *Buckley*--one, that the disclosure of "an expenditure and its use, without more, reveals far less information [than a forced identification of the author of a pamphlet,]" and two, that in candidate elections, the "Government can identify a compelling state interest in avoiding the corruption that might result from campaign expenditures," --are inherently implausible. The first is simply wrong. . . . The second was outright rejected in *Buckley* itself, where the Court concluded that independent expenditures did not create any substantial risk of real or apparent corruption. Hence, the only reading of *McIntyre* that remains consistent with the principles it contains is that it overturned *Buckley* to the extent that *Buckley* upheld a disclosure requirement solely based on the governmental interest in providing information to the voters.

The right to anonymous speech cannot be abridged based on the interests asserted by the defendants. I would thus hold that the disclosure requirements of BCRA § 201 are unconstitutional. Because of this conclusion, the so- called advance disclosure requirement of § 201 necessarily falls as well.

II-D I have long maintained that *Buckley* was incorrectly decided and should be overturned. But, most of Title II should still be held unconstitutional even under the *Buckley* framework. Under *Buckley* and [*MCFL*] 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 . . . stat[es] 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. See, *e.g.,Free Speech Coalition* ("The Government may not suppress lawful speech as the means to suppress unlawful speech. Protected speech does not become unprotected merely because it resembles the latter. The Constitution requires the reverse"). 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. This principle clearly played a significant role in *Buckley* itself. . . . The express-advocacy line was drawn to ensure the protection of the "discussion of issues and candidates," not out of some strange obsession of the Court to create meaningless lines. And the joint opinion misses the point when it notes that "*Buckley*'s express advocacy line, in short, has not aided the legislative effort to combat real or apparent corruption." *Buckley* did not draw this line solely to aid in combating real or apparent corruption, but rather also to ensure the protection of speech unrelated to election campaigns.

* * *

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. . . . 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. . . . 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. . . . 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?

Hence, "the freedom of the press," described as "one of the greatest bulwarks of liberty," could be next on

the chopping block. Although today's opinion does not expressly strip the press of First Amendment protection, there is no principle of law or logic that would prevent the application of the Court's reasoning in that setting. The press now operates at the whim of Congress.

Justice Kennedy, concurring in the judgment in part and dissenting in part with respect to BCRA Titles I and II. The Chief Justice joins this opinion in its entirety. Justice Scalia joins this opinion except to the extent it upholds new FECA § 323(e) and BCRA § 202. Justice Thomas joins this opinion with respect to BCRA § 213.

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 (BCRA or Act) 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.

Today's decision upholding these laws purports simply to follow *Buckley,* and to abide by *stare decisis*, but the majority, to make its decision work, must abridge free speech where *Buckley* did not. *Buckley* did not authorize Congress to decide what shapes and forms the national political dialogue is to take. To reach today's decision, the Court surpasses *Buckley's* limits and expands Congress' regulatory power. In so doing, it replaces discrete and respected First Amendment principles with new, amorphous, and unsound rules, rules which dismantle basic protections for speech.

A few examples show how BCRA reorders speech rights and codifies the Government's own preferences for certain speakers. BCRA would have imposed felony punishment on Ross Perot's 1996 efforts to build the Reform Party [when Perot made an $8 million founding contribution to the Reform Party]. BCRA makes it a felony for an environmental group to broadcast an ad, within 60 days of an election, exhorting the public to protest a Congressman's impending vote to permit logging in national forests. BCRA escalates Congress' discrimination in favor of the speech rights of giant media corporations and against the speech rights of other corporations, both profit and nonprofit.

To the majority, all this is not only valid under the First Amendment but also is part of Congress' "steady improvement of the national election laws." We should make no mistake. It is neither. It is the codification of an assumption that the mainstream media alone can protect freedom of speech. It is an effort by Congress to ensure that civic discourse takes place only through the modes of its choosing. And BCRA is only the beginning, as its congressional proponents freely admit:

> "This is a modest step, it is a first step, it is an essential step, but it does not even begin to address, in some ways, the fundamental problems that exist with the hard money aspect of the system."

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.

I. TITLE I AND COORDINATION PROVISIONS

Until today's consolidated cases, the Court has accepted but two principles to use in determining the validity of campaign finance restrictions. First is the anticorruption rationale. The principal concern, of course, is the agreement for a *quid pro quo* between officeholders (or candidates) and those who would seek to influence them. The Court has said the interest in preventing corruption allows limitations on receipt of the *quid* by a candidate or officeholder, regardless of who gives it or of the intent of the donor or officeholder. Second, the Court has analyzed laws that classify on the basis of the speaker's corporate or union identity under the corporate speech rationale. The Court has said that the willing adoption of the entity form by corporations and unions justifies regulating them differently: Their ability to give candidates *quids* may be subject not only to limits but also to outright bans; their electoral speech may likewise be curtailed.

The majority today opens with rhetoric that suggests a conflation of the anticorruption rationale with the corporate speech rationale. The conflation appears designed to cast the speech regulated here as unseemly corporate speech. The effort, however, is unwarranted. . . . [T]he Title I soft money bans and the Title II coordination provisions do not draw distinctions based on corporate or union status. . . . [T]he focus must be on *Buckley's* anticorruption rationale and the First Amendment rights of individual citizens.

A. Constitutionally Sufficient Interest

In *Buckley,* the Court held that one, and only one, interest justified the significant burden on the right of association involved there: eliminating, or preventing, actual corruption or the appearance of corruption stemming from contributions to candidates. . . .

In parallel, *Buckley* concluded the expenditure limitations in question were invalid because they did not advance that same interest.

Thus, though *Buckley* subjected expenditure limits to strict scrutiny and contribution limits to less exacting review, it held neither could withstand constitutional challenge unless it was shown to advance the anticorruption interest. In these consolidated cases, unless *Buckley* is to be repudiated, we must conclude that the regulations further that interest before considering whether they are closely drawn or narrowly tailored. If the interest is not advanced, the regulations cannot comport with the Constitution, quite apart from the standard of review.

Buckley made clear . . . 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. . . .

Despite the Court's attempt to rely on language from cases like *Shrink Missouri* to establish that the standard defining corruption is broader than conduct that presents a *quid pro quo* danger, in those cases the Court in fact upheld limits on conduct possessing *quid pro quo* dangers, and nothing more. . . .

Placing *Buckley's* anticorruption rationale in the context of the federal legislative power yields the following rule: Congress' interest in preventing corruption provides a basis for regulating federal candidates' and officeholders' receipt of *quids,* whether or not the candidate or officeholder corruptly received them. Conversely, the rule requires the Court to strike down campaign finance regulations when they do not add regulation to "actual or apparent *quid pro quo* arrangements."

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. . . . The very aim of *Buckley's* standard . . . 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, however, 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.

The generic favoritism or influence theory articulated by the Court is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle. . . . We are left to defer to a congressional conclusion that certain conduct creates favoritism or influence.

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. . . . 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.*

[T]he Court today should not ask, as it does, whether some persons, even Members of Congress, conclusorily assert that the regulated conduct appears corrupt to them. Following *Buckley,* it should instead inquire whether the conduct now prohibited inherently poses a real or substantive *quid pro quo* danger, so that its regulation will stem the appearance of *quid pro quo* corruption.

1. New FECA §§ 323(a), (b), (d), and (f)

Sections 323(a), (b), (d), and (f) cannot stand because they do not add regulation to conduct that poses a demonstrable *quid pro quo* danger. They do not further *Buckley's* corruption interest.

When one recognizes that §§ 323(a), (b), (d), and (f) do not serve the interest the anticorruption rationale contemplates, Title I's entirety begins to look very much like an incumbency protection plan. That impression is worsened by the fact that Congress exempted its officeholders from the more stringent prohibitions imposed on party officials. Compare new FECA § 323(a) with new FECA § 323(e). Section 323(a) raises an inflexible bar against soft money solicitation, in any way, by parties or party officials. Section 323(e), in contrast, enacts exceptions to the rule for federal officeholders (the very centerpiece of possible corruption), and allows them to solicit soft money for various uses and organizations.

. . . The more lenient treatment accorded to incumbency-driven politicians than to party officials who represent broad national constituencies must render all the more suspect Congress' claim that the Act's sole purpose is to stop corruption.

The majority answers this charge by stating the obvious, that "§ 323(e) applies to both officeholders *and candidates.*" The controlling point, of course, is the practical burden on challengers. That the prohibition applies to both incumbents and challengers in no way establishes that it burdens them equally in that regard. Name recognition and other advantages held by incumbents ensure that as a general rule incumbents will be advantaged by the legislation the Court today upholds.

The Government identifies no valid anticorruption interest justifying §§ 323(a), (b), (d), and (f). The very nature of the restrictions imposed by these provisions makes one all the more skeptical of the Court's explanation of the interests at stake. These provisions cannot stand under the First Amendment.

B. Standard of Review

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. . . .

. . . *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. . . .

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. . . .

. . . *Buckley*. . . explained the lower standard of review by reference to the level of burden on associational rights, and it explained the need for a higher standard of review by reference to the higher burdens on both associational and speech rights. In light of *Buckley's* rationale, and in light of this Court's ample precedent affirming that burdens on speech necessitate strict scrutiny review, "closely drawn" scrutiny should be employed only in review of a law that burdens rights of association, and only where that burden is significant, not markedly greater. . . .

. . . If one is viewing BCRA through *Buckley's* lens, as the majority purports to do, one must conclude the Act creates markedly greater associational burdens than the significant burden created by contribution limitations and, unlike contribution limitations, also creates significant burdens on speech itself. . . . The Act entirely reorders the nature of relations between national political parties and their candidates, between national political parties and state and local parties, and between national political parties and nonprofit organizations.

The many and varied aspects of Title I's regulations impose far greater burdens on . . . associational rights . . . than do regulations that do no more than cap [contributions]. . . . The evidence shows that national parties have a long tradition of engaging in essential associational activities, . . . often with respect to elections that are not federal in nature. This strengthens the conclusion that the regulations now before us have unprecedented impact. . . .

Congress has undertaken this comprehensive reordering of association and speech rights in the name of enforcing 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. . . .

2. New FECA §§ 323(a), (b), (d), and (f)

Compared to the narrowly tailored effort of § 323(e), which addresses in direct and specific terms federal candidates' and officeholders' quest for dollars, these sections 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.

C. Coordination Provisions

1. Section 214(a) define[s], as hard money contributions to a political party, expenditures an individual makes in concert with the party. This provision, in my view, must fall. [I]ndividual 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.

This conclusion emerges not only from an analysis of Title I but also from *Colorado I.* There, . . . the Court concluded political parties had a constitutional right to engage in independent advocacy on behalf of a candidate. That parties can spend unlimited soft money on this activity follows by necessary implication. A political party's constitutional right to spend money on advocacy independent of a candidate is burdened by § 214(a) in a direct and substantial way. The statute commands the party to refrain from coordinating with an individual engaging in advocacy even if the individual is acting independently of the candidate.

Section 202 functions in a manner similar to the operation of § 214(a). It directs that when persons make "electioneering communications" in a coordinated fashion with a candidate or a party, the coordinated communication expense must be treated as a hard money contribution by the person to that candidate or party. Section 202 . . . must be judged under the anticorruption rationale because it does not distinguish according to corporate or union status, and it does not involve disclosure requirements. Section 202 simply limits the speech of all "persons."

Section 202 does satisfy *Buckley's* anticorruption rationale in one respect: It treats electioneering communications expenditures made by a person in coordination with a candidate as hard money contributions to that candidate. For many of the same reasons that § 323(e) is valid, § 202, in this single way, is valid: it regulates conduct that poses a *quid pro quo* danger--satisfaction of a candidate's request.

Insofar as § 202 regulates coordination with a political party, however, it suffers from the same flaws as § 214(a). . . .

II. TITLE II PROVISIONS

A. Disclosure Provisions

. . . I agree with the Court's judgment upholding the disclosure provisions contained in § 201 of Title II, with one exception.

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. . . .

B. BCRA § 203

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*, and silences political speech central to the civic discourse that sustains and informs our democratic processes. . . .

1. 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. 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 issues ads are preferred by almost all candidates. . . . 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.

The Government's use of the pejorative label should not obscure § 203's practical effect: It prohibits a mass communication technique favored in the modern political process for the very reason that it is the most potent. That the Government would regulate it for this reason goes only to prove the illegitimacy of the Government's purpose. The majority's validation of it is not sustainable under accepted First Amendment principles. The problem is that the majority uses *Austin,* a decision itself unfaithful to our First Amendment precedents, to justify banning a far greater range of speech. This has it all backwards. If protected speech is being suppressed, that must be the end of the inquiry.

The majority's holding cannot be reconciled with *First Nat. Bank of Boston v. Bellotti* (1978), which invalidated a Massachusetts law prohibiting banks and businesses from making expenditures "for the purpose of" influencing referendum votes on issues that do not "materially affect" their business interests. . . [The Court said] "To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it. . . ."

Bellotti similarly dismissed the argument that the prohibition was necessary to "protec[t] corporate shareholders" "by preventing the use of corporate resources in furtherance of views with which some shareholders may disagree." . . .

Austin turned its back on this holding, not because the *Bellotti* Court had overlooked the Government's interest in combating *quid pro quo* corruption, but because a new majority decided to recognize "a different type of corruption," *i.e.,* the same "corrosive and distorting effects of immense aggregations of wealth," found insufficient to sustain a similar prohibition just a decade earlier. Unless certain narrow exceptions apply, see *MCFL,* the prohibition extends even to nonprofit corporations organized to promote a point of view. Aside from its disregard of precedents, the majority's ready willingness to equate corruption with all organizations adopting the corporate form is a grave insult to nonprofit and for-profit corporations alike, entities that have long enriched our civic dialogue.

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.

Even after *Buckley* construed the statute then before the Court to reach only express advocacy, it invalidated limits on independent expenditures, observing that "[a]dvocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation." *Austin* defied this principle. It made the impermissible content-based judgment that commentary on candidates is less deserving of First Amendment protection than discussions of policy. In its haste to reaffirm *Austin* today, the majority refuses to confront this basic conflict between *Austin* and *Buckley.* It once more diminishes the First Amendment by ignoring its command that the Government has no power to dictate what topics its citizens may discuss.

. . . 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." "[E]lectioneering communications paid for with the general treasury funds of labor unions and corporations," the Government warns, "endea[r] those entities to elected officials in a way that could be perceived by the public as corrupting."

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. . . . [W]e cannot cede authority to the Legislature to do with the First Amendment as it pleases. Since *Austin* is inconsistent with the First Amendment, its extension diminishes the First Amendment even further. For this reason § 203 should be held unconstitutional.

2. Even under *Austin,* BCRA § 203 could not stand. All parties agree strict scrutiny applies; § 203, however, is far from narrowly tailored.

. . . What the law allows--permitting the corporation "to serve as the founder and treasurer of a different

association of individuals that can endorse or oppose political candidates"--"is not speech by the corporation."

Our cases recognize the practical difficulties corporations face when they are limited to communicating through PACs. The majority need look no further than *MCFL* for an extensive list of hurdles PACs have to confront. . . .

These regulations are more than minor clerical requirements. Rather, they create major disincentives for speech, with the effect falling most heavily on smaller entities that often have the most difficulty bearing the costs of compliance. Even worse, for an organization that has not yet set up a PAC, spontaneous speech that "refers to a clearly identified candidate for Federal office" becomes impossible, even if the group's vital interests are threatened by a piece of legislation pending before Congress on the eve of a federal election. Couple the litany of administrative burdens with the categorical restriction limiting PACs' solicitation activities to "members," and it is apparent that PACs are inadequate substitutes for corporations in their ability to engage in unfettered expression.

Even if the newly formed PACs manage to attract members and disseminate their messages against these heavy odds, they have been forced to assume a false identity while doing so. . . . A requirement that coerces corporations to adopt alter egos in communicating with the public is, by itself, sufficient to make the PAC option a false choice for many civic organizations. . . .

The majority can articulate no compelling justification for imposing this scheme of compulsory ventriloquism. If the majority is concerned about corruption and distortion of the political process, it makes no sense to diffuse the corporate message and, under threat of criminal penalties, to compel the corporation to spread the blame to its ad hoc intermediary.

For all these reasons, the PAC option cannot advance the Government's argument that the provision meets the test of strict scrutiny. . . .

Once we turn away from the distraction of the PAC option, the provision cannot survive strict scrutiny. [Section] 203 prohibits unions and corporations from funding from their general treasury any [“electioneering communication”]. . . .

The prohibition, with its crude temporal and geographic proxies, is a severe and unprecedented ban on protected speech. [S]uppose 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.

The group would want to refer to these Senators, either by name or by photograph, not necessarily because an election is at stake. . . . The ability to refer to candidates and officeholders is important because it allows the public to communicate with them on issues of common concern. Section 203's sweeping approach fails to take into account this significant free speech interest. Under any conventional definition of overbreadth, it fails to meet strict scrutiny standards. . . .

. . . Section 203 is a comprehensive censor: On the pain of a felony offense, the ad must not refer to a candidate for federal office during the crucial weeks before an election.

We are supposed to find comfort in the knowledge that the ad is banned under § 203 only if it "is targeted to the relevant electorate," defined as communications that can be received by 50,000 or more persons in the candidate's district. This Orwellian criterion, however, is analogous to a law, unconstitutional under any known First Amendment theory, that would allow a speaker to say anything he chooses, so long as his intended audience could not hear him. . . .

In defending against a facial attack on a statute with substantial overbreadth, it is no answer to say that corporations and unions may bring as- applied challenges on a case-by-case basis. When a statute is as out of bounds as § 203, our law simply does not force speakers to "undertake the considerable burden (and sometimes risk) of vindicating their rights through case- by-case litigation." *Virginia v. Hicks* (2003). If they instead "abstain from protected speech," they "har[m] not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." Not the least of the ill effects of today's decision is that our overbreadth doctrine, once a bulwark of protection for free speech, has now been manipulated by the Court to become but a shadow of its former self.

In the end the Government . . . cannot dispute the looseness of the connection between § 203 and the Government's proffered interest in stemming corruption. At various points . . . , 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. Neither strict scrutiny nor any other standard the Court has adopted to date permits outlawing speech on the ground that it might influence an election, which might lead to greater access to politicians by the sponsoring organization, which might lead to actual corruption or the appearance of corruption. Settled law requires a real and close connection between end and means. The attenuated causation the majority endorses today is antithetical to the concept of narrow tailoring.

5. Title II's vagueness and overbreadth demonstrate Congress' fundamental misunderstanding of the First Amendment. . . . 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. . . . 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.

CONCLUSION

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, dissenting with respect to BCRA Titles I and V. Justice Scalia and Justice Kennedy join this opinion in its entirety.

I. The issue presented by Title I is not . . . whether Congress can permissibly regulate campaign contributions to candidates. . . or seek to eliminate corruption in the political process. Rather, the issue is whether Congress can permissibly regulate much speech that has no plausible connection to candidate contributions or corruption to achieve those goals. 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 (per curiam).* Yet, the Court glosses over the breadth of the restrictions, characterizing Title I of BCRA as "do[ing] little more that 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 lynchpin of Title I, new FECA § 323(a), prohibits national political party committees from "solicit[ing]," "receiv[ing]," "direct[ing] to another person," and "spend[ing]" *any* funds not subject to federal regulation, even if those funds are used for nonelection related activities. . . . Certainly "infusions of money into [candidates'] campaigns," can be regulated, but § 323(a) does not regulate only donations given to influence a particular federal election; it regulates *all donations* to national political committees, no matter the use to which the funds are put.

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. . . . 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.

The Court fails to recognize that the national political parties are exemplars of political speech at all levels of government, in addition to effective fundraisers for federal candidates and officeholders. . . . Indeed, some national political parties exist primarily for the purpose of expressing ideas and generating debate.

[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. [U]nder any definition of "exacting scrutiny," the means chosen by Congress, restricting all donations to national parties no matter the purpose for which they are given or are used, are not "closely drawn to avoid unnecessary abridgment of associational freedoms."

Although these provisions are more focused on activities that may *affect* federal elections, there is scant evidence in the record to indicate that federal candidates or officeholders are corrupted or would appear corrupted by donations for these activities. Nonetheless, the Court concludes that because these activities *benefit* federal candidates and officeholders or prevent the circumvention of pre-existing or contemporaneously enacted restrictions,

it must defer to the " 'predictive judgments of Congress,' "

Yet the Court cannot truly mean what it says. 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. . . .[Congress] 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.

II. BCRA § 504 amends § 315 of the Communications Act to require broadcast licensees to maintain and disclose records of any *request* to purchase broadcast time that "is made by or on behalf of a legally qualified candidate for public office" or that "communicates a message relating to any political matter of national importance," including communications relating to "a legally qualified candidate," "any election to Federal office," and "a national legislative issue of public importance." This section differs from other BCRA disclosure sections because it requires *broadcast licensees* to disclose *requests* to purchase broadcast time rather than requiring *purchasers* to disclose their *disbursements* for broadcast time. See, *e.g.,* BCRA § 201. The Court concludes that § 504 "must survive a *facial* attack under any potentially applicable First Amendment standard, including that of heightened scrutiny." I disagree.

This section is deficient because of the absence of a sufficient governmental interest to justify disclosure of mere requests to purchase broadcast time, as well as purchases themselves. . . . An approach that simply focuses on whether the administrative burden is justifiable is untenable. Because § 504 impinges on core First Amendment rights, it is subject to a more demanding test than mere rational-basis review. The Court applies the latter by asking essentially whether there is any conceivable reason to support § 504.

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. . . .

. . . I fail to see any justification for BCRA § 504 in its entirety. Nor do I find persuasive the Court's and the Government's argument that pre-existing unchallenged agency regulations imposing similar disclosure requirements compel the conclusion that § 504 is constitutional and somehow relieve the Government of its burden of advancing a constitutionally sufficient justification for § 504.

As to the disclosure requirements involving "any political matter of national importance" under the new Communications Act § 315(e)(1)(B), the Government suggests that the disclosure enables viewers to evaluate the message transmitted. First, insofar as BCRA § 504 requires reporting of "request[s for] broadcast time" as well as actual broadcasts, it is not supported by this goal. Requests that do not mature into actual purchases will have no viewers, but the information may allow competitors or adversaries to obtain information regarding organizational or political strategies of purchasers. Second, even as to broadcasts themselves, in this noncandidate- related context, this goal is a far cry from the Government interests endorsed in *Buckley,* which were limited to evaluating and preventing corruption of federal candidates.

As to disclosure requirements with respect to candidates under the new Communications Act § 315(e)(1)(A), BCRA § 504 significantly overlaps with § 201. . . . While I recognize that there is this overlap, § 504 imposes a different burden on the purchaser's First Amendment rights: as noted above, § 201 is limited to *purchasers'* disclosure of *disbursements* for electioneering communications, whereas § 504 requires *broadcast licensees'* disclosure of *requests* for broadcast time by purchasers. Not only are the purchasers' requests, which may never result in an actual advertisement, subject to the disclosure requirements, but § 504 will undoubtedly result in increased costs of communication because the licensees will shift the costs of the onerous disclosure and recordkeeping requirements to purchasers. The Government fails to offer a reason for the separate burden and apparent overlap.

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. Justice Ginsburg and Justice Breyer join this opinion in its entirety. [Opinion omitted.]