The Burger Court Opinion Writing Database

Buckley v. Valeo

424 U.S. 1 (1976)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 4, 1975

MEMORANDUM TO THE CONFERENCE:

I have a memorandum from Mr. McGurn as follows:

Buckley v. Valeo 75-436

There is more press interest in Buckley v. Valeo than in any case since Fowler v. North Carolina, and almost any other since the U. S. v. Nixon.

May I have extra seats in the press area? (New York Times is requesting three seats, Baltimore Sun two, Time, Inc. two, etc.)

The press asks whether Buckley v. Valeo can be moved to Nov. 11 or the Orders List be moved to Tuesday, Nov. 11. I have told newsmen that Buckley v. Valeo cannot be moved from Nov. 10. Can the Orders List instead be issued on Tuesday? The advantage to the newsmen and to the Court is that informed reporters who know the Court's work will be available to cover both stories instead of the need for inexpert newsmen being drawn in. (Reporters who try to rush off a slapdash Orders List story will still be unable to give balanced coverage to the two sides in court for Buckley v. Valeo.)

I see no reason why we should not move the Orders List to Tuesday and absent dissent that will be done.

We can post a bulletin to that effect in the Press Room.

Regards,

WB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 12, 1975

MEMORANDUM TO THE CONFERENCE:

Just a reminder that we will meet in Conference following our sitting on Monday, November 17, to discuss the Buckley-Valeo case.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 17, 1975

Re: 75-436) Buckley v. Valeo
75-437) Buckley v. Valeo

Dear Potter and Lewis:

I will be engaged until about 4:00 p.m. today, but I will hold myself ready if both of you are available at that time to try to agree on the division of this case into five or six topics for possible separate assignment, as the Court of Appeals seems to have done. Otherwise, tomorrow will do.

Regards,

s/ WEB

Mr. Justice Stewart

Mr. Justice Powell ✓

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 18, 1975

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

Dear Lewis:

Since the Assignment form does not lend itself to dealing with an unusual case like this, or to our mode of handling it, please take this as an assignment of what we have designated as Part II in the attached "Drafting Outline."

Our modus operandi will be for the "drafting team" to develop its full draft before general circulation so that all Justices will see the entire package at once, rather than piecemeal. This will avoid having questions raised as to one part which are to be answered in another part. It will be essential to maintain flexibility within the drafting team as we go along, so as to leave no gaps, but also to avoid repetition.

Regards,

WEB

Mr. Justice Powell

November 18, 1975

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

DRAFTING OUTLINE

I. Statement of case, facts, issues and contentions C. J.

II. Disclosure provisions L F R

III. Public funding of primary and general election campaigns for President and Vice President Brennan

a. General power of Congress

b. Validity as to minor parties and independent candidates

c. Limitation on total expenditure

IV. Contribution and expenditure limitations Stewart

a. Individual and committee contributions

b. Individual expenditures

c. Candidate and family expenditures

d. Volunteer incidental expenses

e. Limitations on expenditures by candidates for House and Senate

V. Election Commission Rehnquist

a. Selection and composition

b. Regulations and advisory opinions

c. Veto power of Congress

d. Power to institute civil and criminal lawsuits

e. Power to strike from ballot

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 18, 1975

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

Dear Bill:

Since the Assignment form does not lend itself to dealing with an unusual case like this, or to our mode of handling it, please take this as an assignment of what we have designated as Part III in the attached "Drafting Outline."

Our modus operandi will be for the "drafting team" to develop its full draft before general circulation so that all Justices will see the entire package at once, rather than piecemeal. This will avoid having questions raised as to one part which are to be answered in another part. It will be essential to maintain flexibility within the drafting team as we go along, so as to leave no gaps, but also to avoid repetition.

Regards,

WEB

Mr. Justice Brennan

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

November 18, 1975

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

Our discussions at Conference brought unanimous agreement that the disposition of these appeals should have high priority and that, time being crucial, no one Justice should undertake this task. Justices Stewart, Powell and I agreed on a five-part outline and I have assigned the parts to a "drafting team" of Justices Brennan, Stewart, Powell, Rehnquist and myself. I have also invited Byron to write on Part V, which Bill Rehnquist will address initially. Naturally the part assigned was geared to the expressions of each Justice at Conference so that (with the variation as to Part V) each is writing in an area to which five or more Justices appear to be in agreement.

When the parts are "glued" into a tentatively acceptable whole, the draft will be circulated to all.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 1, 1975

Re: 75-436 - Buckley v. Valeo
75-437 - Buckley v. Valeo

Dear Byron:

Thank you for your memo of December 1 in the above case.

In light of this we will proceed along the lines agreed upon and in due course the "writing team" will present something on all points for consideration by the full Court.

Regards,

WEB

Mr. Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 17, 1975

Re: 75-436 - Buckley v. Valeo
75-437 - Buckley v. Valeo

MEMORANDUM TO:

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Powell
Mr. Justice Rehnquist

Enclosed is a "working" draft of the "preamble" to our proposed per curiam.

Obviously each part must be edited to fit the others.

This can be expanded or contracted as needed when we reach the editing stage.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 17, 1975

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

For what it is worth, I enclose a sheaf of papers received late today. If anyone desires to discuss it, 2:00 p.m. tomorrow will be the time.

Regards,

WEB

Enclosure

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 17, 1975

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

Enclosed is a motion received a short time ago. I suggest that we meet at 2 pm today to consider the matter since I see no point in acting without a full Conference.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 18, 1975

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

After receiving Potter's memorandum and draft I put my mind to the problem, and I think I would be willing to adopt the suggestion that I act on the application as Circuit Justice. If there are "five" who agree, I would add as the operative paragraph the following:

> After consultation with such of the Justices as were available, constituting a quorum of the Court, and considering the factors to be balanced and it appearing there exists substantial doubt as to the constitutional power of the Federal Election Commission to make the certifications referred to above (see U.S. Const., Art. II, § 2, cl. 2);
>
> IT IS ORDERED that the injunction for which application has been made be and it hereby is granted.

Washington, D.C.
December _____, 1975

Chief Justice as
Circuit Justice for the District
of Columbia Circuit

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 19, 1975

Re: Nos. 75-436 and 75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

I have Byron's request that his view be noted on any order which I would enter as Circuit Justice. He requests that my order carry a notation of his view.

I know of no basis or precedent for the order of an individual Circuit Justice to reflect a "dissenting" view. However, I can understand his posture in light of the "consultation" reference. If there is any precedent for Byron's suggestion, it is one I am unwilling to follow because the two concepts are mutually exclusive.

The matter will therefore remain as "pending" before the Conference unless four join me for Conference action today.

Justices Blackmun and Rehnquist have agreed with my December 18 memorandum.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 19, 1975

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

Since all hands will be available Monday, December 22, I suggest a Conference on the above at 10:00 a.m.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 22, 1975

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

Each of you now has the "work drafts" thus far submitted.

The two remaining sections will be in your hands soon.

I suggest that, addressing substance, not form, you indicate whether you are in general agreement or dissent.

This will enable a draft to be put together.

Obviously each of the parts must be reworked to fit the whole when we are ready to work on form.

Regards,

WEB

DRAFT
12/22/75

Re: Buckley case - A-550

An application to enjoin appellees from making certification pursuant to 26 U.S.C. 9036(a) for payments to finance campaign activities of certain candidates for nomination for election to be President of the United States and from making certification pursuant to 26 U.S.C. 9008(g) for payments to finance certain presidential nominating conventions, pending final disposition of the appeals in this Court, was received by the Chief Justice December 17, 1975, and after calling for a response he presented said ~~opinion~~ application to the Court.

Upon consideration of the said application for an injunction, and of the opposition thereto filed by the Solicitor General of the United States, December 1975, it is ordered that there being no majority to grant the injunction, the said application is denied.

The Chief Justice, Mr. Justice _____, Mr. Justice _____ and Mr. Justice _____ would grant the injunction. Mr. Justice Stevens took no part in the consideration or decision of this application.

FORM OF ORDER APPROVED _____

MONDAY, DECEMBER 22, 1975

ORDER IN PENDING CASE

75-436) BUCKLEY V. VALEO
)
75-437) BUCKLEY V. VALEO

An application to enjoin appellees from making certification pursuant to 26 U.S.C. 9036(a) for payments to finance campaign activities of certain candidates for nomination for election to be President of the United States and from making certification pursuant to 26 U.S. C. 9008(g) for payments to finance certain presidential nominating conventions, pending final disposition of the appeals in this Court, was received by the Chief Justice December 17, 1975, and after calling for a response he presented the said application to the Court.

Upon consideration of the said application for an injunction, and of the opposition thereto filed by the Solicitor General of the United States, December 17, 1975, it is ordered that there being no majority to grant the injunction, the said application is denied.

The Chief Justice, Mr. Justice Stewart, Mr. Justice Blackmun, and Mr. Justice Rehnquist would grant the injunction.

Mr. Justice Stevens took no part in the consideration or disposition of this application.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 29, 1975

PERSONAL AND CONFIDENTIAL

Re: 75-436 - Buckley v. Valeo
75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

I have Potter's memorandum of December 29, 1975, with his first draft of Part IV, and Lewis Powell's draft of Part II. These two sections will require more "dovetailing" than any other two parts, as I see it. There is a good case for Potter and Lewis to try to come up with new drafts that make Part II fit with Part IV. Byron and Bill have, as Potter noted, some chance of producing a larger segment acceptable to both.

I see less "dovetailing" between Bill Brennan's Part III and others, but anyone having comments can send them to Bill.

To be specific, I suggest we now proceed as follows:

1. That Potter and Lewis try another "run at their respective parts working together.

2. That Byron and Bill Rehnquist see if they can find additional common ground and give us another draft.

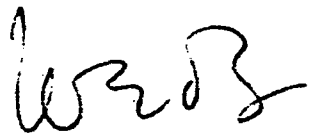
3. That anyone having thoughts on Part III feel free to give comments to Bill Brennan; I doubt his Part III can be dovetailed with other drafts in their present stage.

4. I will defer circulating any major revision of what we now call Part I until I see how much detail of the Act is in each final part. As I see it, each part must treat the sections of the statute it deals with.

When we have our next "round" I would think we would want to consider a new sequence not necessarily conforming to Parts I - V as presently designated. What is now Part I for present purposes may need no numbering at all.

May I suggest that for clarity each part keep its present numeral and use lettering (A, B, etc.) for major sub-parts and (1), (2), (3) for subdivision where needed. Others will be able to address specific comments more easily in this way.

Regards,



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 30, 1975

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

Tentative reactions to first work drafts circulated:

PART I: Statement of Facts and Contentions, Etc.

As my cover memo indicated, I will not circulate a revised version until after all "parts" are more or less final.

As to the submissions on Parts II, III, IV and V, the authors have done an exceptional job under great pressure and we now have the raw material at hand.

My observations, unfortunately, will be largely questions and only a small amount of solid conclusion.

As to the Part II work draft submitted by Lewis, I have the following comments, all tentative except when otherwise indicated.

(1) I am in complete agreement that the disclosure to the public is the soundest means of protecting the values and correcting the evils of large contributions and large expenditures -- the "buying" of public office and the undue influence of contributors. Nothing could be more wholesome and consistent with our tradition as an open society.

(2) I agree that line drawing is the business of legislatures, not judges. But this is not without limit. Were it not for Burroughs I would have great trouble going along with requiring contributors of $11 to disclose their names. The impact of this on "working persons" who desire to help a candidate who is unpopular with management (ranging from Wallace to McGovern), is bound to be "chilling" (much as I dislike that vague, all-embracing word). Or take a

member of the Teamsters' Union who wants to contribute $200 to Senator Kennedy or some candidates not loved by the Teamsters' Union leadership. I am troubled by how to "square" this with what we have said in the context of NAACP membership lists, for one example. Disclosure of a $100 contribution probably falls nearer to the power of legislators to do the line drawing, but I cannot put away a conviction that it will operate to stop some junior executives from contributing to Carter, McCarthy or McGovern if the "Boss" is on the Wallace, Reagan or Jackson finance committee. Certainly, not too many truckdrivers will contribute to someone out of favor with Jimmy Hoffa's successors.

Lewis recognizes this (at p. 10), recalling his own statement that "financial transactions can reveal much about a person's activities, associations and beliefs." (416 U.S., at 78). I accept fully Brandeis' proposition on "publicity . . . as a remedy," but that statement was not directed at de minimis items such as $10 or even $100 contributions. Given our new attitudes toward breaching what was once thought protected privacy (see Rose draft opinion), can we be so sure that the Teamsters' Union or General Motors will not be able to secure the $10 contribution lists under FOIA? In short, it will be too late to do a truck driver any good if he is left in doubt -- as I am -- that the $11 contribution will not come to the notice of Jimmy Hoffa's successors in office. I am not at rest here.

PART II (p. 13): Contributions to Minor Parties

I am concerned that we have not as yet, in this first draft, fully met the contentions as to the "depressant" impact on minor parties.

PART II (p. 23): § 434(e) Filing Statements of $100 Contributions, or More

My problem with the treatment is that I wonder if, to save the section, we do not "redraft" the statute. If the Court could not accept and find the narrow construction urged by the city in Talley v. California, I find it difficult to justify the result reached here.

PART II (p. 36): § 434(d) Exemption of Special Services to Incumbents

This is one of the examples of the preferred position the Act gives incumbents. However, I regard it as peripheral if not de minimis and could accept it as valid.

PART III: Public Financing

Here I seem to have little company in my doubts. That the scheme is a manifestation of the idea of recent years that we should let-the-government-do-it, is no doubt open to the answer that this is a policy argument. Public funding is a convenient way to finance election campaigns, and I think I could readily accept it on a constitutional basis if the dollar was added to the tax bill. Under the Act, the taxpayer simply tells IRS to give public money for political parties from the aggregate revenues received. I wonder if this is compatible with our political process as an enterprise of private volition? I agree that the scope of Congressional powers under the welfare clause is perhaps wider than anywhere except perhaps "war powers." I cannot escape the feeling that it is not the business of government to let private citizens "assign" tax revenues to finance political campaigns for anyone. If the government added $1 to each tax bill and act as a conduit to transfer the donor's money, it might be quite different.

The general welfare clause does not seem to me to embrace financing political activity from tax revenues as distinguished from providing public services to all people (i.e., maintenance of the actual electoral process). It might be within the purview of the general welfare clause to provide transportation to voting places for that is neutral if it is universal, but here the very conduct of the political contest is being financed by revenue belonging to all people, i.e., the government. Of course, the Act allows only some people to allocate funds from the public treasury. Since a long-time welfare recipient pays no tax, he is not allowed to "assign" government funds to political parties. Does it deny equal protection to let a taxpayer "get in this act" and deny the same right to the "permanent poor"? I cannot escape a feeling that it does. I doubt that I can join in the Part III result.

PART IV: Contribution and Expenditure Limitations.

B(1) Expenditure Limit: I agree generally with the treatment and conclusion that the expenditure limit violates constitutional guarantees.

B(2) Contribution Limit: I have some questions that need to be resolved as to the constitutionality of the contribution limit. Tenatively, it seems to me that most of the statements supporting a

holding of unconstitutionality of expenditure seem to apply with almost equal force to contributions. (I agree fully that the public disclosure provisions comport with the Court's First Amendment pronouncements of the past.) The draft analogizes (p. 15) contribution limits as one that "primarily effects the contributor's freedom to associate rather than his freedom of speech" and "entails only a marginal restriction upon free communication." But if we will not allow limits on spending, why can Congress curtail what we say is a "freedom to associate"? Is it an answer to say "But we do not totally curtail this 'right to associate,' we simply let Congress limit it"? Could Congress say that a "John Wayne" can lawfully attend only ten meetings of a McCarthy committee? As I see it, a "John Wayne" sitting on a candidate's platform in the TV frame or introducing the candidate would be worth a large amount with certain constituencies. Substitute Averell Harriman for John Wayne and Senator Jackson for McCarthy; or substitute Senator Kennedy for John Wayne. In short, if we analogize money contributions with "freedom to associate," which we say can be limited, how is it that other forms of "associations," as in the above hypotheticals, cannot be limited.

If I were George Wallace or Senator Jackson, I would rather have Senator Kennedy introduce me for a half-hour network TV speech than have his $100,000. Yet Stewart Mott, who would be a zero asset on TV, cannot lawfully pay the $100,000 tab for the same network speech. Somewhere in here there may lurk an equal protection issue as between "clods" with millions and notables like Averell Harriman and Senator Kennedy, (who have both millions and large political followings.) Each of these notables would do more for a candidate by sitting alongside him on one TV show than by contributing $100,000 to pay for the TV time.

The draft states "The Act's contribution ceilings affect only one means of associating with a candidate . . . ," but that may be the only effective "means of associating" for a verbally inarticulate or unknown fellow who has $100,000 to give to finance the network speech, or pay for a full page ad in every metropolitan daily. I question that Congress can make it unlawful for Stewart Mott to contribute $100,000 while a Harriman or Kennedy can "fertilize" the campaign of his candidate in other and better ways without money passing.

I have difficulty avoiding both First Amendment and Equal Protection problems to curtail the non-affluent candidate's money-raising, yet allow Rockefellers, Kennedys, Harrimans, et al. to spend

their own money freely. This is hardly "evenhanded." Is it less "free speech" to spend money received from others than to spend your own? I wonder if we are being entirely consistent? The enormous built-in advantages of incumbents is further enhanced when the challenger is restricted on both contributions and spending. This has some undertones of equal protection, the more so if the opponent is both incumbent and affluent. I get some "rich vs. poor" vibrations out of what we have had to say, in other contexts, but not totally irrelevant.

Much the same considerations work to the disadvantage of "new" parties. To single out Senator Buckley to illustrate the contrary is to use the rare exception to establish the validity of what seems to me to be a questionable generalization. Buckley was not a typical new or minor party man. He had a then powerful incumbent President helping him by battering Mr. Goodell, the nominal Republican, to say nothing of "Republican financing."

B(3) The $5,000 Committee Limit: There are only 16 lines devoted to this point and I am not sure it makes the case in this first draft. Here I have not come to rest.

I recapitulate as to specific provisions:

B(4) (p. 32) $500 Limit on Volunteer's Expenses: An "Averell Harriman's" right to tour the country lecturing and speaking for "Governor Reagan" seems to me to have some First Amendment problems we have not really overcome. I am not fully at rest.

B(5) (p. 34): This $25,000 "calendar year" limit may well be a "quite modest restraint" but to sustain it will require some distinguishing, if not overruling, of some of our prior rhetoric, if not law.

C(1) (p. 35) Expense Limit § 608(e)(1): On this part, I agree that § 608(e)(1) is unconstitutional but I have difficulty reconciling it with sustaining other restraints which seem equally to trespass constitutional limits.

C(2) (p. 37) $1,000 Limit Spent For "A Clearly Identified Candidate" § 608(e)(1): I agree generally (pp. 37-51), but again have difficulty reconciling it with other conclusions sustaining parts of the Act.

C(3) (p. 51) Expenditure Limit on Candidate From Personal or Family Resources § 608(a)(1): I agree with the conclusion but have difficulty with the idea that Stewart Mott or Senator Kennedy can spend

millions of personal money unrestricted by the Act, but Senator Jackson, who presumably has no such resources of his own, is restricted. (Equal protection via the First Amendment?) If Brandeis is correct (p. 52), that "public discussion is a political duty," a rich man has a better First Amendment going for him than those who must pay for their exercise of the First with other peoples' contributions. Why isn't the "dollar evil" sufficiently protected by public disclosure that Stewart Mott picks up the $100,000 tab for Eugene McCarthy's national network TV speech?

C(4) (p. 54) Limits on Campaign Expenditures § 608(c): I agree that § 608(c) is unconstitutional but, again, have difficulty reconciling the result with provisions of the Act sustained as valid. The "skyrocketing costs of election campaigns" is used here in a way that seems inconsistent with precisely arguments on the same subject supporting restraints of the Act; it seems also in conflict with Bill Brennan's Part III.

PART V:

I am in general agreement with Bill Rehnquist's approach, and I am hopeful a larger area of agreement will be reached by Byron and Bill.

Regards,

WEB

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 19, 1976

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

Enclosed is a typed draft of the introductory section, modified as to the contentions and description of the Court of Appeals opinion, since each section now deals with those areas.

I welcome any suggestions.

Regards,

WEB

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: JAN 19 1976

Recirculated: 1/

OPENING SECTION

No. 75-436
75-437

BUCKLEY v. VALEO, et. al

These appeals present constitutional challenges to the key provisions of the Federal Election Campaign Act of 1971, as amended in 1974.[1/]

The Court of Appeals, in sustaining the Act in large part against various constitutional challenges,[2/] viewed it as "by far the most comprehensive, reform legislation [ever] passed by Congress concerning the election of the President, Vice-President, and members of Congress". 519 F. 2d, at 831. The Act, summarized in broad terms, contains the following aspects: (a) political contributions are limited to $1,000 to one candidate, with an overall limitation of $25,000 in contributions by any contributor; campaign spending by candidates for various federal offices and for national convention costs by candidates for various federal offices and for national convention costs by political parties are subject to prescribed limits; (b) contributions and expenditures must be reported and, with one exception, made public; (c) a Federal Election Commission is established to oversee the administration and

---

1/ Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified in sections of 2, 18, 47 U.S.C.) as amended, Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 83 Stat. 1263 (1975) (codified in sections 2, 5, 18, 26, 47 U.S.C.)

2/ Buckley v. Valeo, 519 F. 2d 821 (CADC 1975)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 20, 1976

MEMORANDUM TO THE CONFERENCE

re: BUCKLEY v. VALEO

I have made various stylistic changes suggested by others as to the Introductory part.

I cannot accept one suggestion (from Bill Brennan) that we say only

> "Appellants also view the federal subsidy provisions of Subtitle H primarily as discriminatory in violation of the Fifth Amendment, since subsidies are denied or severely restricted as to certain parties and candidates."

Appellants explicitly attack Subtitle H of the Act on First and Fifth Amendment grounds, and as violative of the General Welfare Clause and they are entitled to have their contentions acknowledged, however each of us views them.

I therefore strongly suggest we let the opening part recite precisely what Appellants claim (See Pg. 145, Appellants' Brief), as follows:

> "Appellants also view the federal subsidy provisions of Subtitle H as violative of the General Welfare Clause, and as inconsistent with the First and Fifth Amendments."

This will make the sentence also reflect the way Bill Brennan treats these points in his part.

Regards,

WEB

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

Recirculated: JAN 20 1976

OPENING SECTION

No. 75-436
75-437

BUCKLEY v. VALEO, et. al

These appeals present constitutional challenges to the key provisions of the Federal Election Campaign Act of 1971, as amended in 1974.[1/]

The Court of Appeals, in sustaining the Act in large part against various constitutional challenges,[2/] viewed it as "by far the most comprehensive reform legislation [ever] passed by Congress concerning the election of the President, Vice-President, and members of Congress." 519 F. 2d, at 831. The Act, summarized in broad terms, contains the following provisions (a) individual political contributions are limited to $1,000 to any single candidate per election, with an overall annual limitation of $25,000 by any contributor; campaign spending by candidates for various federal offices

---

1/ Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3, as amended, Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 83 Stat. 1263. The pertinent portions of the Act are set forth in the Appendix to this opinion.

2/ 519 F. 2d 821 (CADC 1975).

To: Mr. Justice Brennan
Mr. Justice Stewart
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

Chief Justice

1:

JAN 21 1976

2d:

printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-436 AND 75-437

James L. Buckley et al., Appellants, 75-436 v. Francis R. Valeo, Secretary of the United States Senate, et al. — On Appeal from the United States Court of Appeals for the District of Columbia Circuit.

James L. Buckley et al., Appellants, 75-437 v. Francis R. Valeo, Secretary of the United States Senate, et al. — On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

PER CURIAM.

These appeals present constitutional challenges to the key provisions of the Federal Election Campaign Act of 1971, as amended in 1974.[1]

The Court of Appeals, in sustaining the Act in large part against various constitutional challenges,[2] viewed it as "by far the most comprehensive reform legislation

[1] Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3, as amended, Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 83 Stat. 1263. The pertinent portions of the Act are set forth in the Appendix to this opinion.

[2] — U. S. App. D. C. —, 519 F. 2d 821 (1975).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 27, 1976

Re: 75-436 - Buckley v. Valeo
75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

Late last evening having received the full printed text of the above I completed my concurrence-dissent which is enclosed in typed form.

I observed that on page 137 the paragraph under "conclusion" begins, "In brief, we sustain, etc..." My primary responsibilities are limited to the neutral introductory part of the Court's opinion and my separate opinion, but I hope I will not be faulted for suggesting consideration be given to substituting some other phrase for "In brief...", i.e., "Finally", or "In conclusion".

Regards,

WEB

Enclosure

WB

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: JAN 27 1976

Recirculated: _____

Mr. Chief Justice Burger, concurring in part and dissenting in part.

For reasons set forth more fully later, I dissent from those parts of the Court's holding sustaining the Act's provisions (a) for disclosure of small contributions, (b) for limitations on contributions, and (c) the provisions for public financing of Presidential campaigns. In my view, the Act's disclosure scheme is impermissibly broad and violative of the First Amendment as it relates to reporting $10.00 and $100.00 contributions. The contribution limitations infringe on First Amendment liberties and suffer from the same infirmities that the Court correctly sees in the expenditure ceilings. The Act's system for public financing of Presidential campaigns is, in my judgment, an impermissible intrusion by the government into the traditionally private political process.

More broadly, the Court's result does violence to the intent of Congress in this comprehensive scheme of campaign finance. By dissecting the Act bit by bit, and casting off vital parts, the Court fails to recognize that the whole of this Act is greater than the sum of its parts. Congress intended to regulate

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 28, 1976

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

The special session of the Court is now set for 10:00 a.m. on Friday. Thurgood must leave at noon and Potter has a "swearing in" commitment at the White House at 11:00 a.m. Both these commitments will be kept.

To clarify this matter and avoid the confusion of multiple commands, Mr. Cornio has instructions from me that time tables from law clerks are not controlling. Justices, not the law clerks, fix the time of hearings, and the time is now fixed.

Regards,

WEB

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: The Chief Justice

Circulated: _____

Recirculated: JAN 28 1976

Printed 1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January 30, 1976]

MR. CHIEF JUSTICE BURGER, concurring in part and dissenting in part.

For reasons set forth more fully later, I dissent from those parts of the Court's holding sustaining the Act's provisions (a) for disclosure of small contributions, (b) for limitations on contributions, and (c) for public financing of Presidential campaigns. In my view, the Act's disclosure scheme is impermissibly broad and violative of the First Amendment as it relates to reporting $10 and $100 contributions. The contribution limitations infringe on First Amendment liberties and suffer from the same infirmities that the Court correctly sees in the expenditure ceilings. The Act's system for public financing of Presidential campaigns is, in my

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 29, 1976

Re: 75-436 - Buckley v. Valeo
75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

Enclosed is a "first try" at an oral summary of the above case.

Since I am speaking for others, they are, more than usual, invited to comment.

Regards,

WEB

DRAFT
1/29/76 - Buckley v. Valeo

PROPOSED DRAFT - ORAL ~~ARGUMENT~~ SUMMARY.

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

The Federal Election Campaign Act ~~places a series of limits~~ governing financial aspects of campaigns for federal offices:

(1) It limits contributions to candidates and committees.

(2) It limits expenditures "relative to a clearly identified candidate."

(3) It limits expenditures by a candidate from his personal or family funds.

(4) It restricts overall general election and primary campaign expenditures.

(5) The Act requires political committees to keep detailed records of contributions and expenditures, including the name and address of each individual contributing in excess of $10, and his occupation and principal place of business if his contribution exceeds $100.

(6) Political committees must file quarterly reports with the Federal Election Commission disclosing the source of every contribution

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

March 22, 1976

Re: (75-436 - Buckley v. Valeo
(75-437 - Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

The enclosed was filed at 1:20 p.m. today.

It seems clear that there is no standing for the movant.

No other motions have been received.

Regards,

WEB

COVINGTON & BURLING
888 SIXTEENTH STREET, N. W.
WASHINGTON, D. C. 20006

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PETER J. NICKLES
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BINGHAM B. LEVERICH
ALLAN J. TOPOL
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JOHN G. LAYLIN
FONTAINE C. BRADLEY
EDWARD BURLING, JR.
JOEL BARLOW
J. HARRY COVINGTON
W. CROSBY ROPER, JR.
DANIEL M. GRIBBON
HARRY L. SHNIDERMAN
DON V. HARRIS, JR.
WILLIAM STANLEY, JR.
WEAVER W. DUNNAN
EDWIN M. ZIMMERMAN
JEROME ACKERMAN
HENRY P. SAILER
JOHN H. SCHAFER
ALFRED H. MOSES
JOHN LeMOYNE ELLICOTT
DAVID E. McGIFFERT
PHILIP R. STANSBURY
CHARLES A. MILLER
RICHARD A. BRADY
ROBERT E. O'MALLEY
EUGENE I. LAMBERT
JOHN VANDERSTAR
NEWMAN T. HALVORSON, JR.
HARVEY M. APPLEBAUM
MICHAEL S. HORNE
JONATHAN D. BLAKE
CHARLES E. BUFFON
ROBERT N. SAYLER
E. EDWARD BRUCE
DAVID N. BROWN
PAUL J. TAGLIABUE
ANDREW W. SINGER
DAVID H. HICKMAN

March 22, 1976

Honorable Michael Rodak, Jr.
Clerk, Supreme Court of the
United States
Washington, D.C. 20543

Re: Buckley v. Valeo
Nos. 75-436 and 75-437

Dear Mr. Rodak:

The Democratic National Committee (DNC) and seven Democratic candidates for that party's presidential nomination today filed a Motion for Leave To File Suggestion Amicus Curiae That Stay Be Extended in the above-captioned case, and an accompanying Suggestion. They request a further three-week extension of this Court's stay of its January 30 mandate respecting the Federal Election Commission (FEC). For the reasons stated in our February 26, 1976, Opposition to a similar request made by the non-governmental appellees, we oppose that suggestion.

We noted in February that neither the FEC nor the Department of Justice joined in requesting an extension of the Court's original stay. Today, not even the private appellees move for such an extension.

The DNC states that "passage of legislation by the Congress is imminent," Suggestion at 5. This is flatly incorrect. Debate in the Senate last week was intense and highly partisan, See 122 Cong. Rec. S 3515-3558 (daily ed. March 16, 1976); id., S 3676-3710 (daily ed. March 17, 1976); and id., S 3779-3812 (daily ed. March 18, 1976), and showed no signs of ending quickly. Rich, "Business, Labor Ties at Heart of Hill Battle on Election Unit," Washington

Post, March 22, 1976, p. A2, col. 5. The House has not even begun floor consideration of possible amendments. Even after action by both Houses (assuming no filibuster in the Senate), of course, there must be a conference to resolve any differences in the legislation passed by each, and then debate on the conference committee bill must occur. Finally of course, the President may choose to veto any legislation that emerges.

The bill currently before the Senate, S 3065, 94th Cong., 2nd Sess. (1976), does more than reconstitute the Federal Election Commission in a constitutional manner. President Ford has unequivocally stated his intention of vetoing such legislation:

> "With the 1976 election only nine months away, I do not believe this is the proper time to begin tampering with the campaign reform laws, and I will veto any bill that will create confusion and will invite further delay and litigation." Statement by President Ford, February 27, 1976. 12 Wkly. Comp. of Pres. Docs. 297-98 (March 1, 1976).

In February, the appellees argued that remedial legislation "is progressing rapidly through the Congress...." The appellees were wrong then (as subsequent events have demonstrated), and amici are wrong today (as current events are demonstrating).

We urged in February that this Court not become a direct participant in the legislative process. We noted that the request for a extension of the stay then before the Court might be only the first of a series. We urged the Court not to enter the political process by extending its initial stay.

We believe that the instant Motion for Leave to File and Suggestion ought to be rejected for those reasons, and the others stated at greater length in our February 26,

submission. We request that if the amici's Suggestion is circulated to the Court, this letter be circulated along with it.

Respectfully submitted,

Brice M. Clagett/JRB

Brice M. Clagett
John R. Bolton

Attorneys for Appellants

BMC:we

cc: All counsel

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

April 22, 1976

MEMORANDUM TO THE CONFERENCE:

For your information Governor Carter's campaign press officer asked that the Governor be allowed to hold a press conference after he, and other candidates, appear here to file papers of some kind on the Buckley v. Valeo matter. I had thought the case was terminated but there appears to be an effort to use the Court as a political forum. It appears that several candidates, and perhaps all, will be filing something here.

I have advised Mr. McGurn to respond by stating that no press conferences will be allowed in the Court or on the premises. Such an activity may not violate the "demonstration" statutes, but it is an obvious effort to involve the Court and exploit it as part of a political protest, valid in itself, but not on these premises. The Acting Marshal has been instructed accordingly.

Regards,

WEB

P. S. -- Mike Rodak now tells me that Governor Carter and some of the others have called to see if they may file motions to recall the mandate in Buckley v. Valeo. Obviously they have no standing since they were not parties to the litigation. Apparently this spurious motion is the peg on which they want to hang the press conference idea. It seems to me that Mike should simply either decline to let them file the papers on the ground they lack standing or lodge the motions subject to the Court's wishes.

No. 75-436

BUCKLEY v. VALEO

These appeals present constitutional challenges to the key provisions of the Federal Election Campaign Act of 1971, as amended in 1974.[1]

The Court of Appeals, in sustaining the Act in large part against various constitutional challenges,[2] viewed it as "by far the most comprehensive, reform legislation passed by Congress concerning the election of the President, Vice-President, and members of Congress". 519 F. 2d, at 831. The Act, summarized in broad terms, contains the following aspects: (a) political contributions are limited to $1,000 to one candidate with an overall limitation of $25,000 in contributions by any contributor; (b) a newly established Federal Election Commission is established; (c) campaign spending by candidates for various federal offices and for national

---

1/ Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified in sections of 2, 18, 47 U. S. C.) as amended, Federal Election Campaign Act Amendments of 1974, Pub. L. No. 930443, 83 Stat. 1263 (1975) (codified in sections 2, 5, 18, 26, 47 U. S. C.)

2/ Buckley v. Valeo, 519 F. 2d 821 (1975)

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 20, 1975

Dear Chief:

I understand there will be a Conference next Monday at 10 a.m. on the matter of the stay in the Federal Election Act cases. Meanwhile Walter Reed Hospital has sent word to me that they want me there at 10 o'clock next Monday for a minor operation on the urinary tract.

I have been very much interested in the Federal Election Act cases. I heard oral argument and have done alot of work on various aspects presented in the briefs. I did not attend the Court's Conference that dealt with the merits of the issues so I do not know where the various Brethren stand. I am preparing a memorandum on the cases--not so much on the merits of the issues tendered but on the various aspects of the role of a retired Justice under the 1937 Act by Congress.

The Walter Reed matter in which the urology department wants to see me next Monday is not one of emergency. It could wait and I shall at once try to have it rescheduled so I can attend the Conference when the stay in the Federal Election Act questions are up for discussion.

What I have to say is not of burning significance but it covers quite a few matters which I am sure the Brethren have not thought

through and the matter will be a recurring one over the years, so I'll be talking with you before the Conference on Monday.

There is one final matter I want to discuss that does not pertain to the Federal Election law but concerns a copyright case which we decided last Term. I refer to Williams & Wilkins v. United States, 420 US 376 which was argued on December 17, 1975 and our decision was handed down on February 25, 1975. At that time I was in the hospital but the decision bothered me. I was in the majority whose position was championed by Potter Stewart I believe. Lewis Powell took the other view and circulated a memorandum supporting his position. I was unhappy with the outcome so on July 28th I circulated from the hospital a memorandum expressing my doubts and pointing out that Congress was considering at least one bill which might have decided this case and that the matter should be rescheduled by the Court and the case put down for reargument. The Chief Justice responded in a note to me dated July 30, 1975. When I returned to Washington and resumed my various Court duties I forgot entirely about the matter but on December 19, 1975 the date of the luncheon in honor of our new Brother I mentioned the matter to Potter Stewart.

Our rule on petitions for rehearings bars a Judge who voted in the minority from making a motion to rehear a case. Nothing is

said one way or the other about a retired Justice who sat in the case probably because no question concerning it has been raised. I think the policy or the rule should preclude the retired Justice from moving for a rehearing. I see no reason to give him a greater perrogative in this regard than is given a regular member of the Court. But, if the Conference opens rehearings to retired Justices I suggest this copyright case would be a good place to start because I did move for it to be reargued before I became, or even thought of becoming, a retired Justice.

Yours faithfully,

W O Douglas
William O. Douglas

The Chief Justice

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Douglas, J.

Circulate: 30 JAN 76

Recirculate: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

Memorandum to the Conference from Mr. Justice Douglas.

In re Federal Election Campaign Act Cases

I discuss in this memorandum the merits of the Federal Election Campaign Act cases. I also discuss aspects of the status of a retired Justice under 28 U. S. C. §§ 294, 371.

There is apparently very little history concerning the statutes governing retired Justices, 28 U. S. C. §§ 294, 371.

They were originally part of a comprehensive plan FDR had to increase the number of Members of this Court by adding a new member wherever an existing Member of this Court reached 70 years of age. As

WJD

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 8,1975

MEMORANDUM TO: The Chief Justice
Mr. Justice Stewart
Mr. Justice Powell
Mr. Justice Rehnquist

RE: No. 75-436 - Buckley v. Valeo, et al.
75-437 - Buckley v. Valeo, et al.

Attached is my initial submission of Part III. As agreed this morning, circulation at this time is limited to the members of the "drafting team."

W.J.B.Jr.

WJB

BUCKLEY v. VALEO - Nos. 75-436, 75-437

Memorandum of Mr. Justice Brennan (Second draft) 12/15/75

III. PUBLIC FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS

A series of statutes[1] for the public financing of Presidential election campaigns produced the program now found in § 6096[2] and Subtitle H, §§ 9001-9042, of the Internal Revenue Code of 1954. Both the District Court and the Court of Appeals, 519 F. 2d at 878-887, sustained Subtitle H against a constitutional attack.[3] Appellants renew their challenge here, contending that the legislation violates the First and Fifth Amendments. We find no merit in their claims and affirm.

A. Summary of Subtitle H

Section 9006 establishes a Presidential Election Campaign Fund, financed from general revenues in the aggregate amount designated by individual taxpayers, under § 6096, who on their income tax returns may authorize payment to the Fund of one dollar of their tax liability in

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 22, 1975

RE: No A-550 - Buckley case

Dear Chief:

I agree.

Sincerely,

Bill

The Chief Justice

cc: The Conference

pp 1, 8, 15, 17, 21
23, 26, 27,
FN 5 (#7), FN 6
FN 10 (#15),
FN 10a (#16a),
FN 13, (#20a-a
FN 16, (#26a)
FN 20 (#32-a

BUCKLEY v. VALEO - Nos. 75-436, 75-437

Memorandum of Mr. Justice Brennan (Third draft) (1/2/76)

~~IV~~
~~III.~~ PUBLIC FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS

A series of statutes[1] for the public financing of Presidential election campaigns produced the program now found in § 6096[2] and Subtitle H, §§ 9001-9042, of the Internal Revenue Code of 1954. Both the District Court and the Court of Appeals, 519 F. 2d at 878-887, sustained Subtitle H against a constitutional attack.[3] Appellants renew their challenge here, contending that the legislation violates the First and Fifth Amendments. We find no merit in their claims and affirm.

A. Summary of Subtitle H

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 2, 1976

MEMORANDUM TO THE CONFERENCE

RE: Nos. 75-436 Buckley v. Valeo, et al.
75-437 Buckley v. Valeo, et al.

The following are my present views concerning the drafts that have been circulated.

Chief Justice: I agree with Potter's suggested additions to the introduction to the opinion. The dispelling of any doubt that we might be rendering an advisory opinion presents no difficulty, and any standing problems are taken care of by the explicit provisions of Sec. 437h. Since these questions are common to all segments of the opinion, their treatment in the introduction would make unnecessary any references to them in each segment.

I am troubled by the extensive summary of the Court of Appeals' opinion primarily because it necessarily highlights reasoning of that Court with which none of us agrees, and I think our opinion would therefore deal with the Court of Appeals arguments in the substantive

parts of the opinion. That approach would enhance the persuasiveness of the opinion as a whole, and accordingly I agree with Potter and Lewis that the treatment of the Court of Appeals' opinion in the introduction should be eliminated or greatly reduced.

Potter: I am still not at rest with the holding invalidating Sec. 608(e)(1). I have trouble with the proposition that the ineffectiveness of legislation establishes constitutional infirmity (pp. 43-44). Many laws are ineffective (including the Corrupt Practices Act of 1925), yet constitutional. Since the legislation substantially burdens First Amendment rights, a proper constitutional inquiry is whether Sec. 608(e)(1) as construed is sufficiently related to the identified congressional interests; but is an analysis of whether the statute works -- that is, whether it can be easily circumvented -- a matter of constitutional dimension? If Sec. 608(e)(1) is so easily evaded, then its burden on First Amendment rights is necessarily easy to avoid. Would not the proper analysis therefore limit scrutiny of the contribution limits to whether they are related to the congressional objective, without any inquiry whether the limits are effective? My concern might be less acute if the draft did not also limit the reach of the definition of contributions (p. 46 and note 42). I don't see why we should not hold that the definition of contributions should be read as expansively as the legislation will permit. If the Court decides not to do so, I'll probably write separately to that effect.

At conference I indicated that contrary to my pre-conference view that Sec. 608(e)(1) was constitutional, conference discussion pointed up a possible fatal vagueness in the section, particularly since criminal penalties are imposed for violations. Potter's proposed construction does not wholly cure the vice of vagueness in my view. (pp. 41-42); there remain a myriad of examples of its uncertain application even as so construed. Finally, I perceive some conflict between Potter's treatment of Sec. 608(e)(1) and Lewis's discussion of Sec. 434(e), as will later appear.

I also have some reservations about the treatment of O'Brien (pp. 6-10). It is difficult for me to understand why that case involved "speech-plus" and this one involves only "speech," and I am uncertain about whether there is any real difference between the applicable test in the two instances. It is also unclear to me how the balancing aspects of the test stated in O'Brien (391 U.S., at 377) differ from the overall approach in the draft opinion.

I presently adhere to my vote in conference to sustain the limits on expenditures by candidates from personal or family funds (pp. 51-54). Does not the discussion on page 53 denigrate the congressional interests underlying the excerpt from the Conference Report in note 50? If the "primary governmental interest served by the Act . . . does not support the limitation on the candidate's expenditure of his own personal or

family funds," because there is a lesser prospect of improper influence, then what interest justifies the application of contribution limits to members of the immediate family? Also, although I gather that Potter would adopt the interpretation in the Conference Report, are there not some ambiguities in the conferees' construction (e.g., meaning of "access").

Lastly, Potter's treatment of the contribution limits seems to me unnecessarily to downplay the invasion of First Amendment freedoms, rather than frankly to acknowledge the seriousness of the invasion but justify it by the compelling governmental interests supporting contribution limits.

Lewis: As this draft and Potter's are now written, there is a basic conflict between the treatment of Sec. 434(e) and Sec. 608(e)(1). I gather from a telephone conversation with Lewis on New Year's Eve that he and Potter intend to re-work their segments to eliminate this. I therefore offer these comments only to say what troubles me. Since the two sections are given conforming constructions, the reasons for sustaining Sec. 434(e) and invalidating Sec. 608(e)(1) should, I submit, be carefully and explicitly detailed. That is, if Sec. 608(e)(1) is both ineffective and overbroad, why is not the same true of Sec. 434(e) as construed? If the answer is that the congressional interests in the one instance are greater, or its invasion of First Amendment freedoms is lesser, should

not these circumstances be spelled out with as much precision as possible? As written, for example, I do not find in Lewis's draft any treatment of the ineffectiveness point. Again, if Sec. 608(e)(1) reaches beyond the anti-corruption purpose of Congress, doesn't Sec. 434(e) also? If yes, but the vital information value of disclosure nevertheless sustains Sec. 434(e), see p. 32, but not Sec. 608(e)(1), because not served by the latter, I would hope that the opinion would clearly highlight this distinction.

In addition, my doubts about the treatment of O'Brien and the vagueness of Sec. 608(e)(1) as construed carry over into this segment of the opinion, since the draft incorporates Potter's analysis in these respects.

WJB: I will incorporate Lewis's suggestion and "leave the door open." There may also be further stylistic changes.

Byron and Bill Rehnquist: I fully agree with Lewis as to these drafts. I would add, however, that Bill's memo of December 18, containing a paragraph on standing, creates some problems for me. It should be clear that Congress could give all voters standing, without violating Article III, just as it could override the judicial limitations recognized in Flast v. Cohen and Frothingham v. Mellon.

W.J.B.Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
STICE WM. J. BRENNAN, JR.

January 15, 1976

RE: Nos. 75-436 & 75-437 Buckley v. Valeo, et al.

Dear Lewis:

I agree with your Memorandum in the above "Reporting and Disclosure Requirements."

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: _____

Recirculated: 1/16/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

Memorandum of MR. JUSTICE BRENNAN.

IV. PUBLIC FINANCING OF PRESIDENTIAL ELECTION CAMPAIGNS

A series of statutes[1] for the public financing of Presi-

[1] The Presidential Election Campaign Fund Act of 1966, Pub. L. No. 89–909, §§ 301–305, 80 Stat. 1587, was the first. This Act also initiated the dollar check-off provision now contained in § 6096. The Act was suspended, however, by a 1967 provision barring any appropriations until Congress adopted guidelines for the distribution of money from the Fund. Pub. L. No. 90–206, § 5, 81 Stat. 58. In 1971 Congress added Subtitle H to the Internal Revenue Code. Pub. L. No. 92–178, § 801, 85 Stat. 562. Chapter 95 thereof provided public financing of general election campaigns for President;

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 19, 1976

RE: Nos. 75-436 & 437 - Buckley v. Valeo, et al.

Dear Potter:

I agree with your Memorandum in the above on "Contribution and Expenditure Limitations."

Sincerely,

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 19, 1976

RE: Nos. 75-436 and 437 - Buckley v. Valeo, et al.

Dear Bill:

I agree with your Memorandum in the above of January 17th on the Federal Election Commission.

Sincerely,

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 20, 1976

MEMORANDUM TO THE CONFERENCE

RE: No. 75-436 & 437 - Buckley v. Valeo , et al.

At the luncheon conference today Potter, Byron, Lewis and I agreed that substantially the attached should be added to Bill Rehnquist's section of the opinion. Because the four of us were of this view, Bill Rehnquist stated that he could acquiesce.

In light of our printing problems will each of you (save, of course, John) please promptly return to me your reaction.

W.J.B. Jr.

RE: Nos. 75-436 & 437 - Buckley v. Valeo, et al.

It is also our view that the invalidity of the method by which the members of the FEC have been selected should not affect the validity of the FEC's administrative actions and determinations to this date, including its administration of those provisions, upheld today, authorizing the public financing of federal elections. The past acts of the FEC are therefore accorded de facto validity, just as we have recognized should be the case with respect to legislative acts performed by legislators held to have been elected in accordance with an unconstitutional apportionment plan. Connor v. Williams, 404 U.S. 549, 550-551 (1972); Schaefer v. Thomson, 251 F. Supp. 450, 453 (Wyo. 1965), aff'd, 383 U.S. 269 (1966); Ryan v. Tinsley, 316 F. 2d 430-432 (CA 10), appeal dismissed and cert. denied, 375 U.S. 17 (1963); cf. Richmond v. United States, 422 U.s. 358, 389 (1975) (BRENNAN, J., dissenting). We also draw on the Court's practice in the apportionment and voting rights cases and stay the Court's judgment for a reasonable period not to exceed 30 days from this date to afford the Congress at least a brief opportunity to reconstitute the FEC or to adopt other valid enforcement mechanisms without interrupting enforcement of the provisions the Court sustains, allowing the present Commis-

sion in the brief interim to function de facto in accordance with the substantive provisions of the Act. Cf. Fortson v. Morris, 385 U.S. 231, 235 (1965); WMCA, Inc. v. Lomonzo, 377 U.S. 656, 675-676 (1964); Georgia v. United States, 411 U.S. 526, 541 (1973).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 26, 1976

MEMORANDUM TO THE CONFERENCE

RE: Nos. 75-436 & 437 Buckley v. Valeo, et al.

The printer advises that he will need at least 48 hours notice before the time scheduled to hand down the opinions. He advises it will take him two working days to print the number of corrected copies. I expect this means that each of us having responsibility for a Part should get his corrected copy to the printer as soon as possible. I understand that the law clerks committee hopes to have a corrected copy completed by the end of today.

In these circumstances I doubt that we can count on handing down the case, even if all separate writing is completed and printed, before Friday next, January 30. I think too that it will be easier for the printer if we are ready by Friday to announce at some hour in the afternoon rather than the usual 10:00 A.M.

W.J.B. Jr.

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: 1/30/76

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-436 AND 75-437

James L. Buckley et al., Appellants, 75-436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75-437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

PER CURIAM.

These appeals present constitutional challenges to the key provisions of the Federal Election Campaign Act of 1971, as amended in 1974.[1]

The Court of Appeals, in sustaining the Act in large part against various constitutional challenges,[2] viewed it as "by far the most comprehensive reform legislation

[1] Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3, as amended, Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 83 Stat. 1263. The pertinent portions of the Act are set forth in the Appendix to this opinion.

[2] — U. S. App. D. C. —, 519 F. 2d 821 (1975).

APPENDIX

TITLE 2. THE CONGRESS

CHAPTER 14—FEDERAL ELECTION CAMPAIGNS

§ 431. Definitions

When used in this chapter—

(a) "election" means—

(1) a general, special, primary, or runoff election;

(2) a convention or caucus of a political party held to nominate a candidate;

(3) a primary election held for the selection of delegates to a national nominating convention of a political party; and

(4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President;

(b) "candidate" means an individual who seeks nomination for election, to Federal office, whether or not such individual is elected, and, for purposes of this paragraph, an individual shall be deemed to seek nomination for election, or election, if he has—

(1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office; or

(2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office;

(c) "Federal office" means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States;

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 26, 1976

MEMORANDUM TO THE CONFERENCE

RE: No. 75-436 Buckley v. Valeo, et al.

Henry Putzel suggests changing the Buckley v. Valeo lineup at the end of the syllabus as indicated in the attached xerox copy. The revision is satisfactory to me, and I have so informed Henry. I think, however, that each Justice should report his view directly to Henry.

W.J.B.Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 17, 1975

No. 75-436, Buckley v. Valeo

Dear Chief,

I shall be departing Washington at 2:00 p. m. today, expecting to be back in town at approximately 12:30 p. m. tomorrow. I shall, therefore, not be available for a 2:00 p. m. conference, but could meet between now and 1:30 p. m., or any time after 1:00 p. m. tomorrow.

Sincerely yours,

P. S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 18, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 75-436, Buckley v. Valeo
No. 75-437, Buckley v. Valeo

Enclosed is a rough draft reflecting the view I expressed at the Conference this afternoon.

P.S.

12/18

PS draft

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1975

Nos. 75-436 and 75-437

JAMES L. BUCKLEY, ET AL.,

Appellants,

v.

FRANCIS R. VALEO, ET AL.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

The Appellants have made an application to the Chief Justice, as Circuit Justice for the District of Columbia Circuit, "pursuant to Rules 50 and 51 of this Court, for an injunction against appellees Federal Election Commission, Francis R.

FOOTNOTES

1. See 18 U.S.C. § 608(b)(1) set forth at note ___, supra.

An organization registered as a political committee under 2 U.S.C. § 443 for a period of not less than 6 months which has received contributions from at least 50 persons and made contributions to at least 5 candidates for federal office may give up to $5,000 to any candidate for any election. 18 U.S.C. § 608(b)(2), set forth at note ____, supra.

2. See 18 U.S.C. § 608(e), set forth at note ____, supra.

3. See 18 U.S.C. § 608(a), set forth at note ____, supra.

4. See 18 U.S.C. § 608(c), set forth at note ___, supra.

5. Article I, Section 4 of the Constitution grants Congress the power to regulate elections of members of the Senate and House of Representatives. See Smiley v. Holm, 285 U.S. 355; Ex Parte Yarbrough, 110 U.S. 651. Although the Court at one time indicated that party primary

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 22, 1975

Re: Buckley case, A-550.

Dear Chief,

I agree generally as to form with the proposed order you have circulated. Your draft is herewith returned with a minor suggestion noted in pencil.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 29, 1975

MEMORANDUM TO THE CONFERENCE

Re: Nos. 75-436 and 75-437 - Buckley v. Valeo

Over the week-end I read through the draft segments that have been circulated in the presumed order of their appearance in the final opinion, i.e., drafts of CJ, PS, LFP, WJB, WHR and BRW. Let me say at the outset that I agree with the results reached in each of the drafts, and basically with their substantive expositions.

My more specific tentative views are these:

CJ: The introduction was drafted without benefit of seeing most of the draft segments. Considering that you were "flying blind," so to speak, I think it is an admirable job. In view of the drafts that have now been circulated, I suggest the desirability of considering amending the draft to set out in some detail the statute itself, to discuss the facts and identify the parties, and to discuss the related questions of standing and why this is a case or controversy rather than a request for a supervisory opinion. (This would include material now appearing in footnote A of the LFP draft and on pages 6-10 of the WHR draft.) I would suggest that the detailed discussion of the Court of Appeals opinion, now appearing on pages 5-10, be eliminated or at least sharply reduced.

PS: I have already made some stylistic revisions and shall welcome suggestions and criticisms.

LFP: I think the primary problem is to dovetail this draft with those of WJB and PS. Although I found remarkably little repetitiousness, there is some, and I suggest that a good deal can be done at the cooperative law clerk level, to eliminate repetition, apparent inconsistencies, and differences in emphasis.

WJB: Here again, I think the primary problem is one of dovetailing, and I suggest the same approach as with the LFP draft. I have some problems of language and emphasis that I shall be glad to communicate directly to WJB or through our respective law clerks.

WHR-BRW: I would be very hopeful that these two authors can get together to produce a consolidated segment, because, while agreeing with each excellent draft, I think they have complementary strengths. In view of the inevitable length of the overall opinion, I suggest that much of the very interesting historical material now appearing on pages 19-29 of the WHR draft be eliminated, or at least relegated to footnotes. I should suppose that if these drafts are consolidated, the consolidated version would simply not deal with the one House veto question, and that Byron would set out his views on that issue in a separate opinion, which any of the rest of us would, of course, be free to join.

Happy New Year

PS,
I.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 8, 1976

Re: Buckley

Dear Lewis:

I have carefully reviewed the present draft opinion with the thought of incorporating your proposed addition regarding the corporate/union "loophole." I do not believe that the paragraph can appropriately be worked into the discussion of §608(e)(1) at page 44, because the corporate/union discussion, in my view, implicates a distinct concern -- that the Act's contribution limitations will not check the power of these groups but may even enhance that power relative to individual contributors because of the advantage reaped through the ability to proliferate committees and the additional expenditures permitted unions and corporations by §610 of the Act.

One way of incorporating your views regarding the Act's treatment of corporations and labor unions is to raise the question whether the Act's contribution limitations are unconstitutional because of the practical advantages of corporations and labor unions in forming political committees. While this option would spotlight the problems that trouble you, it would also lengthen an already long opinion and would ultimately lead to a conclusion upholding the constitutionality of the Act's treatment of corporations and labor unions.

I believe that any claim of invidious discrimination in favor of labor unions and corporations would fail because the Act provides the same opportunities to all membership organizations and corporations to communicate with their members

and stockholders regarding elections, to engage in nonpartisan registration and get-out-the-vote campaigns, and to form political committees subject to the higher $5,000 contribution limitation. Compare §§591(f)(4)(B), (C) with §610. It may well be as easy for the AMA or the ACLU to proliferate committees as it is for General Motors or the UAW. The major distinction between corporations and labor unions and other economic or political interest groups is the danger that contributions by employees or union members will be "voluntary" in only a technical or legalistic sense of the word. However, the decision in Pipefitters and the conforming limitations set forth in §610 eliminate the relevance of this distinction to the equal protection analysis. Finally, there is considerable force to the argument that the First Amendment protects the right of employees, stockholders, and union members to form and contribute to segregated funds just as it safeguards their right to join and financially assist other special interest groups and political parties.

Hardly!

Another approach would be to acknowledge candidly, in either text or footnote, that the Act's contribution limitations are only partial measures to reduce the principal sources of influence in federal elections. And to note that regardless of whatever measures are taken, organized interests will always play significant roles in the election process. This sort of treatment would not add up to much more than by-the-way dicta.

My guess is that either of these approaches would not satisfactorily express your special, focused concerns regarding the practical problem of corporate and labor union power under the Act. It is possible, therefore, that those concerns might best be exposed through a brief separate opinion by

[redacted]

Sincerely yours,

P.S.
L.

Mr. Justice Powell

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: _____

Recirculated: JAN 15 1976

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

Memorandum from MR. JUSTICE STEWART.

II. CONTRIBUTION AND EXPENDITURE LIMITATIONS

Central to the intricate statutory scheme adopted by Congress to regulate federal election campaigns, described in Part I, *supra*, are the restrictions on political contributions and expenditures. These restrictions apply broadly to all phases of and all participants in the election process. The major contribution and expenditure limitations in the Act prohibit individual citizens and most groups from contributing more than $25,000 in a single year or $1,000 to any single candidate for an elec-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 19, 1976

Re: Buckley, Nos. 75-436 & 75-437

Dear Bill,

This will confirm that I join your printed recirculation in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 19, 1976

Re: Buckley, Nos. 75-436 & 75-437

Dear Lewis,

This will confirm that I join your printed recirculation in this case.

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 19, 1976

Re: Buckley, Nos. 75-436 & 75-437

Dear Bill,

This will confirm that I join your printed recirculation in this case.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 21, 1976

Re: Buckley, Nos. 75-436 & 75-437

Dear Chief,

This will confirm that I join your printed recirculation in this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 29, 1976

Re: Nos. 75-436 and 75-437, Buckley v. Valeo

Dear Chief,

Insofar as your proposed oral announcement reports that part of the opinion and judgment for which I was responsible, it is fine. The other parts of your proposed oral announcement also seem entirely satisfactory to me, but I would defer to the views of those directly responsible for the respective parts.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

75-436

Supreme Court of the United States

Memorandum

11-10, 1975

Thurgood,

Why is Wenton

Pro hac vice?

BRW

He just got admitted to the state bar this year!!!

TM

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 1, 1975

Re: Nos. 75-436 and 75-437 — Buckley v. Valeo

Dear Chief:

I have now come to the conclusion that the election commissioners are officers of the United States within the meaning of Article II, Section 2, that their mode of appointment violated that provision and that the Commission is therefore illegally constituted. My tentative view that the statutory provisions respecting the Commission could be salvaged by accepting the assurance that civil enforcement powers would not be exercised and by considering the rule-making and advisory authority of the Commission as legislative functions not trenching on the domain of the executive would not write out to my satisfaction. That Congress, consistently with the separation of powers principle, may create a commission or agency to administer a statute free from day-to-day control by the President is not responsive to the constitutional requirement that except for those whose selection is otherwise provided for, all officers of the United States, whatever their function, are to be appointed by the President with the approval of the Senate unless in the case of inferior officers Congress vests the power to select in the President alone, the judiciary or a department head. It is the President, not Congress, who nominates judges although they are to have judicial, not executive, duties. And it is the President who must nominate the members of the independent agencies even though they perform what this Court has said are wholly legislative and judicial, rather than executive, functions. Humphrey's Executor v. United States, 295 U.S. 602 (1935). Perhaps the rule-making function of the Commission is legislative in nature and does not invade the President's veto power. The commissioners are nevertheless officers of the United States and their mode of appointment is controlled by the Appointment Clause of Article II.

I am, therefore, closer than I was to the views Bill Rehnquist expressed at Conference, and if my assignment was to write in defense of the Commission, that task should be undertaken by someone else.

I should add, however, that if the commissioners had been appointed in accordance with Article II, it is likely that I would not find constitutionally suspect the limited congressional veto of commission regulations which the statute provides. I am not wholly at rest on that question.

Sincerely,

The Chief Justice

Copies to the Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: White, J.

Circulated: 12-18-75

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

Memorandum of MR. JUSTICE WHITE.

I join the Court's answers, *ante*, at —, to the questions certified by the District Court relating to the composition and powers of the Federal Election Commission (FEC), *i. e.*, questions 8 (a), 8 (b), 8 (c), 8 (d) (with the qualifications stated *infra*, at —), 8 (e), and 8 (f). I also agree with much of the ~~others~~ Court's opinion, including the conclusion that the above-numbered questions are properly before us and ripe for decision.

The answers to the questions turn on whether the FEC is illegally constituted because its members were not selected in the manner required by Art. II, § 2, cl. 2, the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 19, 1975

Re: Nos. 75-436 & 75-437 - Buckley v. Valeo

Dear Chief:

I have indicated that I would not issue an injunction in this case at this time. Briefly, the reasons for this are as follows:

Any statute of Congress is presumptively valid, and it goes without saying that courts do not routinely issue a restraining order or preliminary injunction when complaints are filed seeking to enjoin the operation of a federal statute on constitutional grounds. Here, the Court of Appeals has refused to strike down the statute; and we have voted to sustain the statute in major respects, including the provision for public financing of primary and general election campaigns. If we anticipated sustaining the Act in all respects, clearly we would not now issue an injunction. Nor should we do so at this juncture simply because we expect to hold the Federal Election Commission to have been illegally constituted and incompetent to enforce the Act, including the public financing provisions at which the application for injunction is aimed.

When we ultimately announce our judgment that the public financing law is valid but may not be enforced by the Commission as it is now constituted, I would vote to hold the prior acts of the Commission to be de facto valid and would, if necessary, stay our judgment to give Congress a chance to provide a valid enforcement mechanism. Except for the method by which the officers enforcing it have been appointed, the law contemplating public financing is constitutionally valid. If the Commission were to be reconstituted or other valid procedures provided, the flaw would have been cured without interrupting the enforcement of those provisions which we shall sustain. The reapportionment cases, as well as the others, are ample precedent for not invalidating

past actions of an official body which we have held to have been elected under an invalid plan and to give legislative authorities at least a brief opportunity to put their house in order. Injury to the public interest in that way is avoided.

It is therefore difficult for me to join an injunction order whether or not it contains an explanatory word. It may be, of course, that Congress would scrap the financing scheme rather than to reconstitute the Commission or invent some other enforcement scheme. It is true that there is some nexus between the expenditure limits, which will be invalidated, and the public financing provisions; but the latter are in the main separate and apart from the rest of the statute and are financed by funds Congress already has in hand by way of taxpayer contributions. I could be wrong, but the odds heavily favor Congress saving at least this part of the new law. The chance that they will not does not warrant taking the serious step of suspending public funding simply because the Commission has been improperly appointed. Since we have the tools to avoid this, the injunction seems a gratuitous interference with federal legislation and with the progress of an election campaign in accordance with the congressional plan.

Sincerely,

The Chief Justice

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 19, 1975

Re: Nos. 75-436 & 75-437 - Buckley v. Valeo

Dear Chief:

If as Circuit Justice you enter the order you have suggested in your December 18 memo, and if the order continues to refer to consultation with other Justices, I request that at the foot of your order you note that Mr. Justice White would deny the application for injunction.

Sincerely,

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 19, 1975

Re: Nos. 75-436 & 75-437 - Buckley v. Valeo

Dear Potter:

If the draft you circulated on December 18 in this case becomes an order of the Court, please note at the foot thereof that Mr. Justice White would deny the application for injunction.

Sincerely,

Byron

Mr. Justice Stewart

Copies to Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 5, 1976

MEMORANDUM TO THE CONFERENCE

Re: Nos. 75-436 & 75-437 - Buckley v. Valeo

I would reject all challenges to the act now before us except with respect to the selection of the members of the Federal Election Commission.

The introductory statement of The Chief Justice is satisfactory.

I agree with the result reached by Lewis with respect to the disclosure provisions; but to the extent he expresses agreement with some parts of Potter's draft, I cannot join his present submission.

I agree with Potter that the contribution limits are valid and would also uphold the expenditure limits in their entirety. In this latter respect, therefore, I shall be in dissent.

I agree with Bill Brennan's treatment of the public financing provisions.

As I understand it Bill Rehnquist's submission re the election commission will become the Court's opinion. I shall join what I can and write separately what I must.

Regards,

Byron

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 16, 1976

MEMORANDUM TO THE CONFERENCE

Re: Nos. 75-436 & 75-437, Buckley v. Valeo

I have sent the attached concurrence and dissent to the printer. You will note that Part II, which is not included here, will be a somewhat truncated version of the previous circulation dealing with the FEC.

B.R.W.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: 1-16-76

Recirculated: _____

Nos. 75-436 & 75-437, Buckley v. Valeo

MR. JUSTICE WHITE, concurring in part and dissenting in part.

I concur in the Court's answers to certified questions 3(b), 3(c), 3(e), 3(f), 3(g), 3(h), 5, 6, 7(a), 7(b), 7(c), 7(d), 8(a), 8(b), 8(c), 8(d), 8(e), and 8(f). I dissent from the answers to certified questions 3(a), 3(d), and 4(a). I also join in Part IV of the Court's opinion and in much of Parts II-B, III, and V.

I

It is accepted that Congress has power under the Constitution to regulate the election of federal officers, including the President and the Vice President. This includes the authority to protect the elective processes against the "two great natural and historical enemies of all republics, open violence and insidious corruption." Ex parte Yarbrough, 110 U.S. 651, 657-658 (1884); for "if this government is anything more than a mere aggregation of delegated agents of other States and governments, each of which is superior to

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 20, 1976

Re: Nos. 75-436 and 437 — Buckley v. Valeo, et al.

Dear Bill:

I agree with your suggested addition as to the de facto status of the Commission.

Sincerely,

Byron

Mr. Justice Brennan

Copies to the Conference

pp 4, 6

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 1-20-76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

MR. JUSTICE WHITE, concurring in part and dissenting in part.

I concur in the Court's answers to certified questions 3 (b), 3 (c), 3 (e), 3 (f), 3 (g), 3 (h), 5, 6, 7 (a), 7 (b), 7 (c), 7 (d), 8 (a), 8 (b), 8 (c), 8 (d), 8 (e), and 8 (f). I dissent from the answers to certified questions 3 (a), 3 (d), and 4 (a). I also join in Part IV of the Court's opinion and in such of Parts II–B, III, and V.

I

It is accepted that Congress has power under the Constitution to regulate the election of federal officers, including the President and the Vice President. This includes the authority to protect the elective processes

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 5, 6, 11

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: 1-26-76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75-436 AND 75-437

James L. Buckley et al., Appellants, 75-436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75-437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

MR. JUSTICE WHITE, concurring in part and dissenting in part.

I concur in the Court's answers to certified questions 1, 2, 3 (b), 3 (c), 3 (e), 3 (f), 3 (h), 5, 6, 7 (a), 7 (b), 7 (c), 7 (d), 8 (a), 8 (b), 8 (c), 8 (d), 8 (e), and 8 (f). I dissent from the answers to certified questions 3 (a), 3 (d), and 4 (a). I also join in Part III of the Court's opinion and in much of Parts I-B, II, and IV.

II

It is accepted that Congress has power under the Constitution to regulate the election of federal officers, including the President and the Vice President. This includes the authority to protect the elective processes

75-436

Supreme Court of the United States

Memorandum

11-10, 1975

Thurgood,

Why is Wenton

Pro hac vice?

BRW

BRW

He just got admitted to the State bar this year!!!

TM

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 17, 1975

Re: 75-436 - Buckley v. Valeo
75-437 - Buckley v. Valeo

Dear Chief:

Unfortunately, I cannot attend tomorrow's conference on this case because I have a long standing engagement which requires me to be out of town all day Thursday and Friday.

I have gone over all of the papers now on file and my vote is to grant the injunction.

If a question comes up concerning requesting a response or other matter, I leave my vote with you on any other matter concerning the application as it now stands.

Sincerely,

T.M.

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 22, 1975

Re: No. A-550 - Buckley case

Dear Chief:

I agree with the proposed order.

Sincerely,

T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 19, 1976

MEMORANDUM TO THE CONFERENCE

Re: Nos. 75-436 and 75-437 -- Buckley v. Valeo

I agree with Lewis's circulation on the disclosure provisions, Bill Brennan's circulation on the public financing provisions, and Bill Rehnquist's circulation on the Commission. I agree with Potter's circulation on the contribution and expenditure limitations -- except the invalidation of section 608 (a), which limits the amount a candidate can spend from his personal funds and from family funds under his control.

T.M.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 20, 1976

Re: Nos. 75-436 and 437, Buckley v. Valeo

Dear Bill:

I agree with your suggested addition to Bill Rehnquist's section of the opinion.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Marshall

Circulated: _____

Recirculated: JAN 27 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

MR. JUSTICE MARSHALL, concurring in part and dissenting in part.

I join in all of the Court's opinion except Part I–C–2, which deals with § 608 (a) of the Act. That section limits the amount a candidate can spend from his personal funds, or family funds under his control, in connection with his campaigns during any calendar year. See *ante*, at 46 n. 57. The Court invalidates § 608 (a) as violative of the candidate's First Amendment rights. "[T]he First Amendment," the Court explains, "simply cannot tolerate § 608 (a)'s restriction upon the freedom of a candidate to speak without legislative limit on behalf of his own candidacy." *Ante*, at 48. I disagree.

To be sure, § 608 (a) affects the candidate's exercise

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

Pages of opinion

MR. JUSTICE MARSHALL, concurring in part and dissenting in part.

I join in all of the Court's opinion except that portion dealing with § 608 (a) of the Act. That section limits the amount a candidate can spend from his personal funds or family funds under his control in connection with his campaigns during any calendar year. See *ante,* at 39–40, n. 45. The Court invalidates § 608 (a) as violative of the candidate's First Amendment rights. "[T]he First Amendment," the Court explains, "simply cannot tolerate § 608 (a)'s restriction upon the freedom of a candidate to speak without legislative limit on behalf of his own candidacy." *Ante,* at 42. I disagree.

To be sure, § 608 (a) affects the candidate's exercise

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 19, 1975

Re: Nos. 75-436 and 75-437 - Buckley v. Valeo

Dear Chief:

I would agree with what is suggested in your memorandum of December 18.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 6, 1976

Re: Nos. 75-436/6 - Buckley v. Valeo

Dear Lewis:

I realize that all drafts are undergoing revision in the light of the correspondence that is being exchanged among members of the "writing team." I therefore shall refrain from final comment until later when the revised drafts are at hand. I write nowto you to raise only the following:

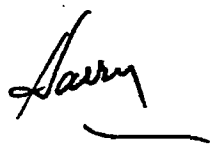
(1) I am on formal record in Pollard v. Roberts, 283 F. Supp. 248 (E.D. Ark. 1968), which, I believe, is not cited in your opinion. I regard that case as of some importance on the disclosure issue because it was early and because it was summarily affirmed here, 393 U.S. 14 (1968) (only Hugo would have noted probable jurisdiction). I am convinced that the 3-judge court's decision in Pollard was right, and I would adhere to it even now.

What concerns me specifically is the approach taken in your draft on pages 21-22. You suggest that in order to obtain protection from disclosure under the First Amendment, a party must show that it is unlikely to have any political success -- "the party is so lacking in political strength that it is unlikely to command any significant share of the votes." I suspect that the Republican Party of Arkansas, to which we gave protection in Pollard in its context, could not have met this test, being at that time in control of the State's governorship.

(2) Of course, I am not sure that Pollard requires that the Republican Party of Arkansas be protected from disclosure under the statute we are considering. My adherence to the result in Pollard, however, does give me pause to question whether the

standards set out on pages 21-22 are the correct ones. I believe they are dicta and they leave a number of questions hanging. Would the Republican Party in the South never obtain protection because nationally it is somewhat powerful? Is it logical or fair to require a political party, devoting itself out of court to the task of persuading its adherents of the possibility of success, to argue in court that there is no such possibility? I wonder whether we must attempt to decide all this now. We have been asked to strike the statute on its face. Clearly, it is not invalid on its face and I wonder whether we need to go beyond that. Do we need to say more than that the federal courts are open to a party to show that in a particular case the relevant constitutional standards entitle it to relief?

Sincerely,



Mr. Justice Powell

cc: The Conference

January 19, 1976

Re: Nos. 75-436/7 - Buckley v. Valeo

Dear Potter:

I write separately to you about an unimportant detail. This relates to the reference to the New York Times and the Washington Post on page 28. May I suggest that these are not the only newspapers in the United States. Could we not more appropriately say "in any major newspaper," with a reference, if you will, to note 9 on page 8. I make this suggestion because I think the Court sustains enough criticism, as it is, to the effect that we are provincially partial to the eastern press. It may, of course, be possible that your reference is confined because of what the record contains. I confess that I have not taken the time thoroughly to examine the record as to this detail.

Sincerely,

HAB

Mr. Justice Stewart

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 19, 1976

Re: Nos. 75-436/7 - Buckley v. Valeo

Dear Lewis:

Subject to what the "reconciliation" efforts may bring forth, I am in accord with your proposed Part II (III?) as circulated January 15. Specifically, I am in accord with the proposed answers to certified questions 7(a), (b), (c) and (d).

Sincerely,

Harry

Mr. Justice Powell

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 19, 1976

Re: Nos. 75-436/7 - Buckley v. Valeo

Dear Bill:

It is my understanding that the repeated use of the reference to "compelling governmental interests" (on pages 10, 11, 12, 20 and perhaps elsewhere) in your Part IV will be changed. I therefore find myself generally in accord with your Part IV as circulated January 16. I join the proposed answers to certified questions 5 and 6.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 19, 1976

Re: Nos. 75-436/7 - Buckley v. Valeo

Dear Bill:

It is my understanding that the repeated use of the reference to "compelling governmental interests" (on pages 10, 11, 12, 20 and perhaps elsewhere) in your Part IV will be changed. I therefore find myself generally in accord with your Part IV as circulated January 16. I join the proposed answers to certified questions 5 and 6.

Sincerely,

Harry

Mr. Justice Brennan

cc: The Conference

[note for Justice Brennan only]

Dear Bill:

On page 10 the jump citation to Lubin v. Panish is in error. I found it somewhat confusing, for the White citation, which immediately follows, has the same jump cite.

H.A.B.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 19, 1976

Re: Nos. 75-436/7 - Buckley v. Valeo

Dear Chief:

Your revision of the introductory section, circulated today, meets with my approval. I defer, however, to the members of the writing team with respect to details.

My own preference as to footnote 6 is to leave it as it is, rather than to decide the case only on the judgment of the Court of Appeals.

Sincerely,

Harry

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 19, 1976

Re: Nos. 75-436/7 - Buckley v. Valeo

Dear Potter:

For the moment, and subject to what the "reconciliation" efforts produce, I join division C of your Part II. This relates to expenditure limitations. I am not at rest with respect to division B and shall await any further writing in dissent as to it. I am, of course, in accord with such part of division A as is consistent with what I have said above. Furthermore, I specifically join your answers in note 55 to certified questions 3(a), (d), (e), (f) and (g), and 4(a). I reserve with respect to certified questions 3(b), (c) and (h).

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 19, 1976

Re: Nos. 75-436/7 - Buckley v. Valeo

Dear Bill:

Subject to what may be forthcoming from the "reconciliation team," I join your Part (V ?) as circulated January 17.

I also join the proposed answers to the several divisions of certified question 8.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 20, 1976

MEMORANDUM TO THE CONFERENCE

Re: Nos. 75-436/7 - Buckley v. Valeo

My initial reaction about the proposed addition to the WHR section of the opinion was in accord with Bill Rehnquist's letter of this morning. Inasmuch, however, as he now acquiesces in what was worked out by Bill Brennan, Potter, Byron and Lewis at lunch today, I, too, go along.

Harry

(file

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 1/21/76

Recirculated: _____

Nos. 75-436/7 - Buckley v. Valeo

MR. JUSTICE BLACKMUN, concurring in part and dissenting in part.

I am not persuaded that the Court makes, or indeed is able to make, a principled constitutional distinction between the contribution limitations, on the one hand, and the expenditure limitations, on the other, that are involved here. I therefore do not join Part IB of the Court's opinion or those portions of Part IA that are consistent with Part IB. As to those, I dissent.

I also dissent, accordingly, from the Court's responses to certified questions 3(b), (c), and (h). I would answer those questions in the affirmative.

I do join the remainder of the Court's opinion and its answers to the other certified questions.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 1/22/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

MR. JUSTICE BLACKMUN, concurring in part and dissenting in part.

I am not persuaded that the Court makes, or indeed is able to make, a principled constitutional distinction between the contribution limitations, on the one hand, and the expenditure limitations, on the other, that are involved here. I therefore do not join Part I–B of the Court's opinion or those portions of Part I–A that are consistent with Part I–B. As to those, I dissent.

I also dissent, accordingly, from the Court's responses to certified questions 3 (b), (c), and (h). I would answer those questions in the affirmative.

I do join the remainder of the Court's opinion and its answers to the other certified questions.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 17, 1975

No. 75-436/437 Buckley v. Valeo

Dear Chief:

As my trip plans require that I leave the Court at 1:00 p.m. on Thursday, I will not be able to attend the Conference on the application for a stay - rescheduled for 2:00 p.m. on Thursday.

I have reviewed the application, and am inclined to think that the equities are with the Appellants. To be sure, any action we take will be viewed as a "signal" of how the Court will decide the merits. If a stay (or "injunction") is granted, possibly it would be well to accompany it with a brief statement to the effect that in view of the complexity of the matter and the equities involved, we wish to preserve the status quo until the Court is able to reach a decision.

In short, and without the benefit of Conference discussion, I would be inclined to grant a stay.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 18, 1975

Nos. 75-436 and 75-437 Buckley v. Valeo

Dear Chief:

Supplementing my note to you of yesterday, and following Thurgood's example, I give you a general proxy for the Conference this afternoon.

I have tried to keep abreast of the various papers filed. There are indeed important interests and equities on both sides, and one can understand the concern of the presidential candidates in particular. I still incline to the view, however, that the balance of the equities favors a stay.

I assume, in this connection, that a majority of us think that the major conclusions in Bill Rehnquist's draft probably are correct. In any event, I do not wish to be noted - however the vote goes.

The papers filed this week (after we did not bring the case down on Tuesday) reemphasize the importance of our reaching a prompt decision. I will circulate a draft of my "chapter" early next week. If all of the drafts are in, perhaps the drafting team should meet early in the new year.

I will be in Richmond for only three days (Tuesday-Thursday) of Christmas week. I plan to return to the Court on Friday, December 26, and will be available thereafter.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 22, 1975

No. 75-436 Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

I circulate herewith a first draft of the "disclosure" section of our opinion.

You will observe that my draft is written on the assumption that it follows Potter's section dealing with contributions and expenditures.

L.F.P.

L.F.P., Jr.

ss

LFP

No. 75-436 Buckley v. Valeo
No. 75-437 Buckley v. Valeo

The disclosure provisions, 2 U.S.C. §§ 431-437, lie at the very heart of the statutory scheme under attack in this litigation. Unlike the limitations on contributions and expenditures in 18 U.S.C. § 608, the disclosure requirements are not challenged by appellants as per se unconstitutional restrictions on the exercise of First Amendment freedoms of speech and association. Indeed, appellants argue that "narrowly drawn disclosure requirements are the proper solution to virtually all the evils Congress sought to remedy. . . ."[1] The particular requirements embodied in FECA are attacked as overbroad - both in their application to minor-party and independent candidates and in their extension to contributions as small as $10 or $100. Appellants also challenge the provision for disclosure by those who make independent contributions and expenditures, 2 U.S.C. § 434(e), and the exemption from reporting of certain services rendered to incumbent Congressmen. § 434(d).

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 29, 1975

No. 75-436 Buckley v. Valeo

MEMORANDUM TO THE CONFERENCE:

Potter's memorandum to the Conference of December 29, reached me just as I was preparing to write one myself. In general, my views are in accord with his. Subject to what is said below, I am generally in accord with the drafts that have been circulated.

C.J.: In revising your fine "flying blind" draft in light of the substantive drafts now available, Potter has identified the obvious changes. I agree that the detailed discussion of the Court of Appeals opinion can be eliminated or greatly reduced, as much of this is repeated in the substantive sections.

WJB: I am generally in accord with the result. I may have some language suggestions that I will convey to Bill. My only substantive concern relates (as I indicated at Conference) to the allegations of invidious discrimination against new and minor parties. I would prefer saying that, on the record before us at this time, we cannot say that the Act is facially violative of equal protection, and leave the door open to the possibility of such a factual showing in a subsequent case.

PS: I am in substantive agreement, although I may have some language suggestions. Also, I will suggest the addition of a paragraph or two pointing out that although Congress attempted to justify § 608(e) as necessary to close loopholes, it left corporations and labor unions - at least in major part - free from the principal restrictions of the Act. I view this as a vastly larger loophole than any Congress undertook to close. The techniques identified and approved

by the Court in Pipefitters enable these aggregations of large resources to exert an immeasurably greater influence on government than individuals who seek to purchase ambassadorships or other political plums.

I also have the conviction that the overall effect of the Act, if not indeed a stimulus to its passage, is to benefit incumbent members of the Congress. Our invalidating of § 608(e) and the ceiling on overall campaign expenditures substantially ameliorates the Act's original disadvantaging of challengers. Perhaps we need say nothing more, although I would welcome at least a footnote in Potter's section recognizing the possible merit of appellant's argument in this respect and noting that our decision substantially blunts the force of appellant's argument.

WHR-BRW: I agree with Potter that a consolidation of the White/Rehnquist drafts would be desirable. They do indeed have complementary strengths. I personally like Bill Rehnquist's discussion of the constitutional convention which is thorough and scholarly even if a bit long. I am also impressed by Byron's analysis of the problem and definition of the holding, although I consider the result of the two memoranda to be essentially the same and I could join either one. Indeed, I think both are excellent drafts.

My one reservation (at the moment I think it is my only one of substance) relates to the "legislative veto" issue. I would prefer Potter's suggestion that we save this for another day. If we must address the issue, I am not yet persuaded by Byron's view.

Future Procedure: The greatest need for "dovetailing" the drafts is with those of WJB, PS and LFP. I agree that our three Chambers should go to work promptly with the view to harmonizing these drafts, and recirculating them to the Conference.

L.F.P., Jr.

ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 6, 1976

Buckley

Dear Potter:

You will recall my interest in including in our opinion a reference to the corporation union "loophole".

I enclose a single paragraph, together with notes, which I hope you will be willing to add to your draft at some appropriate place. It would fit, quite logically, at the end of the "ineffectiveness" discussion on page 44. The potential effectiveness of § 608(e) is diluted by the provisions that allow the tens of thousands of corporations and unions to contribute up to $5,000 to a particular candidate and in addition make the § 608(e) expenditures.

Indeed, the more I reflect on this Act the more discriminatory I find it to be with respect to individuals. The principal sources of influence in federal elections, as everyone knows, are the media, corporations and unions. Congress has left these three elements of society largely free to continue to exert a dominating influence. At the same time, the Act severely circumscribes the already limited role of most individual citizens in election campaigns. Moreover, despite my reluctant willingness to sustain all of the disclosure provisions, the limitations therein inevitably will deter small contributors from participating in the political process. The average citizen who gives $25 is likely to save his money rather than run the risk, as he will view it, of having his political preference publicized.

In any event, and returning to my point in writing, I would like your reaction to the enclosed draft.

Sincerely,

Mr. Justice Stewart

lfp/ss

1/8/76
7, 8 (moved to footnote), 9, 12, 13, 21 (moved to footnote), 22-23,
28, 33, 34, 37, 39 (moved to footnote), fn 8, fn 9, fn 11, fn 12, 1.
75-436 Buckley fn 14, fn 15, fn 17, fn 18, fn 19, fn 20
LFP, Jr. memo

The disclosure provisions, 2 U.S.C. §§ 431-437, lie at the heart of the statutory scheme under attack in this litigation. Unlike the limitations on contributions and expenditures in 18 U.S.C. § 608, the disclosure requirements are not challenged by appellants[A] as per se unconstitutional restrictions on the exercise of First Amendment freedoms of speech and association. Indeed, appellants argue that "narrowly drawn disclosure requirements are the proper solution to virtually all of the evils Congress sought to remedy. . . ."[1] The particular requirements embodied in the Act are attacked as overbroad - both in their application to minor-party and independent candidates and in their extension to contributions as small as $10 or $100. Appellants also challenge the provision for disclosure by those who make independent contributions and expenditures, 2 U.S.C. § 434(e), and the exemption from reporting of certain services to incumbent

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

Memorandum from MR. JUSTICE POWELL.

II. REPORTING AND DISCLOSURE REQUIREMENTS

The disclosure provisions, 2 U. S. C. §§ 431–437, lie at the heart of the statutory scheme under attack in this litigation. Unlike the limitations on contributions and expenditures in 18 U. S. C. § 608, the disclosure requirements are not challenged by appellants [1] as *per se* uncon-

[1] In 2 U. S. C. § 437h, Congress indicated its desire to provide for judicial review to the full extent permitted by Article III of the Constitution. See *infra*, at —. We must therefore decide whether appellants have alleged the "personal stake in the outcome

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 16, 1976

Buckley

Dear Potter:

I will join your January 15, draft of "Contribution and Expenditure Limitations".

I do have a suggestion but it will not affect my overall approval of your fine draft.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 19, 1976

Buckley

Dear Bill, Potter and Bill:

I have now had an opportunity to read the printed circulations of your respective Parts for the Court's opinion in the above case.

Subject to relatively minor comments that I may make to each of you (and which do not affect my basic approval), I write to confirm my willingness to join each of you.

This also will confirm that my clerk, Chris Whitman, will be available to serve on the "Clerks Committee" to harmonize stylistic and verbiage differences between the several Parts subject, of course, to review by each of us.

Sincerely,

L. Lewis

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Rehnquist

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 20, 1976

Nos. 75-436 and 437, Buckley v. Valeo

Dear Bill:

I agree with your suggested addition to Bill Rehnquist's section of the opinion.

I understand the Clerks' Committee has made stylistic changes that are acceptable.

Sincerely,

L. Lewis

Mr. Justice Brennan

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 22, 1976

No. 75-436 and 75-437 Buckley v. Valeo

Dear Chief:

I confirm, for your file, my approval of your introductory section.

Sincerely,

L

The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 26, 1976

MEMORANDUM TO THE CONFERENCE

Nos. 75-436 & 75-437 BUCKLEY v. VALEO, et al.

I note from Bill Brennan's memo that the target date is Friday, January 30th.

It is important to make that date if possible. The Act directs us to "expedite" this case. It sounds more "expeditious" for the record to show we brought the case down in January rather than February!

L.F.P., Jr.

LFP/gg

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 23, 1976

No. 75-436 and 75-437 Buckley v. Valeo

MR. JUSTICE POWELL, concurring.

I concur in the Court's denial of the petition to intervene. As these cases have been remanded to the Court of Appeals, jurisdiction to consider intervention of new parties at this time is vested in that court.

WHRehnquist:DRAFT:
December 12, 1975

Nos. 75-436 and 74-437

MEMORANDUM IN BUCKLEY V. VALEO

The 1974 Amendments to the FECA created an eight member Federal Election Commission, and vest in it substantial responsibility for administering the FECA and its amendments. The Secretary of the Senate and the Clerk of the House of Representatives are ex officio members of the Commission without right to vote. Two members are appointed by the President pro tempore of the Senate "upon the recommendations of the Majority Leader of the Senate and the Minority Leader of the Senate", 2 U.S.C. § 437(c)(A). Two more are to be appointed by the Speaker of the House of Representatives, likewise upon the recommendations of the respective majority and minority leaders of that House. The remaining two members are appointed by the President.

Each of the six voting members of the Commission must be confirmed by the majority of both Houses of Congress, and each of the three appointing authorities are forbidden to choose both of their appointees from the same political party.

The Commission is given powers which are both extensive and significant. We find it as unnecessary as we would think

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 16, 1975

MEMORANDUM TO THE "WRITING TEAM" IN No. 75-436 and No. 75-437 - Buckley v. Valeo

My circulation of last Friday did not deal with Certified Question 8(f) in the case, regarding the authority of the Federal Election Commission under § 9008 of the Internal Revenue Code to authorize expenditures of the national committee of a party in excess of enumerated limits. The reason I did not address this point in my memorandum was that my recollection was we had not discussed the point at all in Conference. I think it is apparent that the logical implication of what I have written is that the Commission, appointed as it is, could not constitutionally exercise the authority granted it under § 9008 of the Internal Revenue Code of 1954 any more than it could exercise the other grants of authority which my memo concludes are invalid.

Sincerely,

Copy to: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Powell

STYLISTIC CHANGES THROUGHOUT

L.F.P.

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: 1/17/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January —, 1976]

Memorandum from MR. JUSTICE REHNQUIST.

The 1974 Amendments to the FECA created an eight-member Federal Election Commission (FEC), and vest in it substantial responsibility for administering the FECA and its amendments. The question which we address in this portion of the opinion is whether, in view of the manner in which a majority of its members are appointed, FEC may under the Constitution exercise the powers conferred upon it.

Congress has conferred upon FEC primary and substantial power to administer and enforce FECA and its Amendments. We find it unnecessary to parse the complex statutory provisions in order to sketch the full

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 18, 1975

MEMORANDUM TO THE CONFERENCE

Re: Nos. 75-436 and 75-437 - Buckley v. Valeo

In consideration of some of the papers filed in connection with the application for an injunction in this case yesterday, I had occasion to go over once again my treatment of jurisdiction, standing, and ripeness found at pages 6 through 10 of my memorandum. I now propose to insert a new paragraph on page 9, after the sentence in the fifth line concluding with the words "Article III". That paragraph would read as follows:

> "We also note that while § 437h permits litigation of the constitutional issues in the case by the Commission and by the national committee of any political party, none of the actual plaintiffs appear to come within that description. But Congress in this section also authorized litigation of the constitutional issues by any voter, and several of the parties plaintiff qualify under that heading. We find it unnecessary to decide whether Congress might, consistently with Article III, confer standing upon voters to litigate the issues which we ultimately decide in this opinion, since we conclude that several of the parties plaintiff who are both voters and candidates do have the necessary standing.*/"

*/ Plaintiffs also asserted jurisdiction in the District Court based on 28 U.S.C. § 1331.

Sincerely,

WHR

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 18, 1975

Re: Nos. 75-436 and 75-437 - Buckley v. Valeo

Dear Chief:

I agree with the proposed order contained in your circulation of December 18th.

Sincerely,

The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 24, 1975

MEMORANDUM TO THE CONFERENCE

Re: Nos. 75-436 and 75-437 - Buckley v. Valeo

Herewith are my tentative reactions to the drafts thus far circulated:

C.J.: I think this is probably the hardest to organize, because decisions will have to be made as to how much of the facts, issues of standing and ripeness, and the like, should be treated here, and how much in the portions dealing with the substantive issues. I am content to leave the matter in your hands, Chief.

WJB: I agree with the basic thrust of your opinion, Bill, insofar as it holds up payment out of the public treasury for the expenses of a federal election campaign is permissible under the congressional spending authority. I disagree only with that part of your opinion which treats that the issues raised by the minor parties -- issues which you describe as based on the Fifth Amendment but with First Amendment overtones. Because I believe that the First Amendment should be applied more stringently to Congress than to the states, in view of its language, and because the states in actually conducting the elections seem to me to be faced with a sort of necessity of decision with respect to minor party ballot access which Congress is not

faced with in its optional determination to finance campaigns, I disagree with your resolution of some of these issues. I will write a very short and sketchy dissent, which I am confident will persuade no one who is not already persuaded.

LFP: I am in substantial agreement with your treatment of the issues of disclosure, Lewis.

BRW -- WHR: I think Byron and I are in substantial agreement on the validity of the Federal Election Commission. The reason that I would not decide the question of one House veto, which Byron would decide, is that it is not necessary to decide it in view of the resolution of the appointment issue, and I think it is a sufficiently doubtful and multi-faceted question that we should not express a view upon it before we are required to do so.

Merry Christmas and Happy New Year.

Sincerely,

WHR

75-436

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

Jan 6, 1976

Dear Harry —

Thurgood called me to tell me that I had failed to send to either you or Chief Justice in Buckley — Thus the circulation to you belatedly, yesterday. It was an oversight in our office, for which I am of course responsible — please accept my apologies —

Bill

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 20, 1976

Re: Nos. 75-436 & 75-437 - Buckley v. Valeo

Dear Bill:

As you indicated in your memorandum of January 20th, I acquiesce in the proposed language to be included in my portion of the opinion.

I suggest that in the third line from the bottom of the first page of the draft you submitted, there be added after the word FEC the words "by law", in order to make clear that the reconstitution must occur by legislation passed by Congress and signed by the President. Ordinarily I would not make any point of it, but since so much of that part of the opinion deals with what Congress may do and what the President may do that I think precision here is desirable. I have discussed this with Byron and he has led me to believe he agrees.

Sincerely,

WHR

Mr. Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 20, 1976

Re: Nos. 75-436 and 75-437 - Buckley v. Valeo

Dear Byron:

I have seen, expressing your views at the holding of invalidity as to the manner of selection of the FEC "should not affect the validity of the FEC's administrative actions and determinations to this date, and putting its administration of those proceedings, upheld today, authorizing the public financing of federal elections."

I think you may well be right under the cases, and while I think it entirely desirable that this view be expressed in a separate opinion, I do not think it would be wise for the Court to make a holding of this sort without the benefit of any argument or briefing. I would prefer to see the Court's opinion treat the matter by saying that all of these issues should be open to the Court of Appeals or the District Court on remand, reserving judgment as to what our decision on any particular fact situation should be. I think we have gone far enough in this case to give what amounts to almost an advisory opinion without carrying the matter still further and expressing views on a quite important question with respect to which we have never had the benefit of briefing or argument.

Sincerely,

Mr. Justice White

Copies to the Conference

DRAFT:WHRehnquist:1/20/76

Nos. 75-436 and 75-437 - Buckley v. Valeo

Mr. Justice Rehnquist, concurring part and dissenting in part.

I concur in Parts I, II, and IV of the Court's opinion. I concur in so much of Part III of the Court's opinion as holds that the public funding of the cost of a presidential election campaign is a permissible exercise of congressional authority under the power to tax and spend granted by Article I, but dissent from that part of Part III of the Court's opinion which holds that certain aspects of the statutory treatment of minor parties and independent candidates are constitutionally valid. I state as briefly as possible my reasons for so doing.

The limits imposed by the First and Fourteenth Amendments on governmental action may vary in their stringency depending on the capacity in which the government is acting. The government as proprietor, Adderley v. Florida, 385 U.S. 39 is, I believe, permitted to affect putatively protected interests in a manner in which it might do if simply

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 20, 1976

MEMORANDUM TO THE CONFERENCE

Re: Nos. 75-436 and 75-437 - Buckley v. Valeo

My typed draft, concurring and dissenting in part, which was circulated today, contains two errors. On page 1, bottom line, it should read, "interests in a manner in which it might not do if simply. . ." (Not was missing from my draft.) And on page 3, fourth line from the bottom, please remove "as".

Sincerely,

WHR

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 22, 1976

Re: Nos. 75-436 & 75-437 - Buckley v. Valeo

Dear Chief:

I agree with your draft of the introductory section of this opinion.

Sincerely,

The Chief Justice

Copies to the Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: JAN 28 1976

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Nos. 75–436 AND 75–437

James L. Buckley et al., Appellants, 75–436 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States Court of Appeals for the District of Columbia Circuit.
James L. Buckley et al., Appellants, 75–437 *v.* Francis R. Valeo, Secretary of the United States Senate, et al.	On Appeal from the United States District Court for the District of Columbia.

[January 30, 1976]

MR. JUSTICE REHNQUIST, concurring in part and dissenting in part.

I concur in Parts I, II, and IV of the Court's opinion. I concur in so much of Part III of the Court's opinion as holds that the public funding of the cost of a Presidential election campaign is a permissible exercise of congressional authority under the power to tax and spend granted by Art. I, but dissent from Subpart III–B–1 of the Court's opinion, which holds that certain aspects of the statutory treatment of minor parties and independent candidates are constitutionally valid. I state as briefly as possible my reasons for so doing.

The limits imposed by the First and Fourteenth Amendments on governmental action may vary in their

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 29, 1976

Re: No. 75-436 and No. 75-437 - Buckley v. Valeo

Dear Chief:

I have read over your proposed oral announcement in this case, and it is entirely agreeable to me. I would suggest that, if you agree, it be used only as the format for an oral announcement, and not be duplicated or released to the public in any written form. If it were, I fear that its six pages would soon come to supersede in the minds of lawyers and laymen alike the 130 page opinion that the Court has produced.

Sincerely,

WHR

The Chief Justice

Copies to the Conference

FYI - Conference, 2:00 p.m., 12/18/75

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 18, 1975

SUPPLEMENTAL MEMORANDUM FOR THE CHIEF JUSTICE

Subject: Buckley, et al. v. Valeo, A-550

1. Response to Application for Injunction.

2. Motion of Congressman Udall to Intervene.

3. Motion of Democratic National Committee for leave to file amicus curiae brief.

1. Response to Application: The SG, on behalf of the AG, and the FEC have filed a joint memorandum in opposition to the application for an injunction. They are joined by the other appellees.

Appellees argue that appellants have not demonstrated that they will suffer irreparable injury if an injunction is not granted. They contend that the payments sought to be enjoined will have no direct impact upon appellants. Eugene McCarthy, the only appellant seeking nomination or election, and appellant Libertarian Party, appellees note, have stated that they would not accept public financing.

Appellees argue that claims of injury to the political process is not enough and that the traditional rule is that individual litigants are entitled to a stay only if they show that its denial would inflict irreparable injury upon them personally.

Appellees answer appellants' argument that an injunction is necessary to preserve the Court's jurisdiction by noting that the certification at issue is but the first in a series which will be made under the Act.

Appellees urge that the public interest requires that the payments be made since most of the candidates for nomination have predicated their campaigns upon the assumption that the public financing provided for under the Act will be made. Absent the funds, serious and irreparable injury to the candidates and

to the public interest could occur by forcing one or more of the candidates out of the race, thereby denying the electorate the opportunity to make the fullest possible choice.

Discussion: Although I believe some question was raised in the CA and during oral argument, I am unaware of any serious standing issue that has been raised with respect to the public financing issue. Congress specifically gave the right of judicial review to "the national committee of any political party, or any individual eligible to vote. . . ." It would seem that the same "interest" sufficient to give this "standing" is sufficient enough interest to suffer irreparable injury if payments are made and, presumably, used in the election processes. Once disbursed, the funds will be applied to the various campaigns and the injury immediately and irreparably done. Even if the monies are subsequently recovered, the dramatic change in our political process and the momentary political advantage gained at the expense of public funds is the injury with which appellants are concerned. Moreover, the fact that Mr. McCarthy and the Libertarian Party have renounced public funds is not dispositive of any potential irreparable injury to them. At the least, their opponents would have the benefit of these funds, to the obvious political detriment of appellants.

The equities argument is advanced in all or nothing terms. What is at issue here is a relatively short postponement of funding, pending decision on the merits. (This would appear especially true with respect to the candidates. If appellants' estimates are accurate, it would be at least the first or second week of January before payments are made in any event.) Appellees do not make a compelling argument that they cannot get by for such a period. Any argument that the Parties or candidates have relied on the use of these funds must be considered in light of their sure knowledge of this case.

The constitutionality of the statute being sub judice, it would seem that compelling reasons for not maintaining the status quo must be shown. Appellees have not made a convincing showing.

2. Motion to Intervene: Congressman Udall has been advised by the FEC that he is qualified to receive federal matching funds. He expects to receive approximately $600,000. He claims irreparable injury if an injunction is granted in that he has relied on having the use of these funds for such political ventures as the Iowa presidential caucus scheduled for January 19 and the N. H. primary on February 24.

He claims that the application for injunction is a separate action concerning matters and parties not before the Court on the appeal. He argues that there has been no showing that the requested relief cannot be obtained below and that, as is regularly the case with injunctive actions, the USDC is the more appropriate forum for the evidentiary and fact-finding hearings that should be held. Congressman Udall's motion is opposed by appellants. They note that there is no authority to support such an intervention and that the Congressman's reference to the Fed. R. Civ. Proc. is inappropriate. They urge that allowing intervention would open the door to the approximately dozen or so other candidates. They note also that the Congressman has had ample notice of this action since its inception, having been notified by letter of one of the appellants on March 4, 1974. The letter specifically mentioned the possibility of a preliminary injunction.

3. Motion of Democratic National Committee, et al. to file an amici curiae brief in opposition to an injunction: In an essentially one page memorandum the DNC gets on the record in support of the position taken by the SG and the FEC. It states that it has entered into contracts and financial arrangements in reliance upon the availability of public funds and, in order to qualify for such funds, has neither solicited nor accepted private contributions to its Convention Committee. The various campaign committees for those seeking nomination have taken similar action. Amici urge that the effect of an injunction at this time will not be a preservation but a disruption of the political status quo.

James B. Ginty

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-1061

September Term, 1975
Civil Action No. 75-0001

MES L. BUCKLEY, United States
nator from the State of New York,
al.,
Plaintiffs

v.

norable FRANCIS R. VALEO, Secretary,
ited States Senate, et al.,
Defendants

NTER FOR PUBLIC FINANCING OF ELECTIONS
al., and JAMES C. CALAWAY of Houston,
xas,
Intervenors

Before: BAZELON, Chief Judge; WRIGHT, MCGOWAN, TAMM*, LEVENTHAL, ROBINSON, MacKINNON and WILKEY, Circuit Judges.

O R D E R

On consideration of the motion of intervenors Carter, et al. to arify that the Supreme Court's mandate permits the Federal Election mmission to make certifications for payment out of the Presidential imary Matching Payment Account, and for other relief, and on consideration the response of plaintiffs, and oral argument,

The Court is of the view that the judgments issued by the Supreme urt leave this Court without power to grant the relief sought by tervenors.

So ordered

Per Curiam

For the Court:

George A. Fisher

GEORGE A. FISHER
Clerk

ircuit Judge Tamm did not take part in the consideration or disposition of his matter.

Signatures

Yee	NB
CJ	
	WJB
PS	
	BRW
	TM
HAB	
	LFP
WHR	

Office of the Solicitor General
Washington, D.C. 20530

October 28, 1975

Honorable Michael Rodak, Jr.
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Buckley, et al. v. Valeo, et al.
(Nos. 75-436 and 75-437)

Dear Mr. Rodak:

Your letter of October 17, 1975, requested the parties in the above case to inform you of the names of counsel who will be arguing in the case, the order of argument, and the time allotted to each person. Subject to the approval of the Court, the parties have agreed as follows:

The arguments for appellants will be made by three counsel: Ralph K. Winter, Jr., Joel M. Gora, and Brice M. Clagett. The arguments for appellees will be made by four counsel: Deputy Solicitor General Daniel M. Friedman, Archibald Cox, Lloyd N. Cutler, and Ralph S. Spritzer.

The parties have agreed, as they did in the court of appeals, and subject to this Court's approval, to alternate the appellants' and appellees' arguments by subject matter, with both sides addressing each of three sets of issues before moving on to the next. In view of the number and complexity of the questions in the case, we believe that alternation will help to provide focus and to avoid duplication in the arguments.

The order, time, and subject matters of the arguments will be as follows:

1. Statement of the Case, Contribution and Expenditure Limits, and Disclosure

Appellants		Appellees	
Ralph K. Winter, Jr.	50 min.		
Joel M. Gora	15 min.		
		Daniel M. Friedman	30 min.
		Archibald Cox	30 min.

2. Public Financing

Appellants		Appellees	
Brice M. Clagett	25 min.	Lloyd N. Cutler	30 min.

3. Federal Election Commission

Appellants		Appellees	
Brice M. Clagett	30 min.	Ralph S. Spritzer	30 min.

Totals

Appellants		Appellees	
	120 min.		120 min.

Each counsel for appellants will inform the Marshal prior to the argument how much time he wishes to reserve for rebuttal.

Sincerely,

Robert H. Bork

Robert H. Bork
Solicitor General

[illegible] – [illegible] – [illegible]

WJB – OK – Substantial agreement

PS – Contributions + expenditures

(a) Strong speech elements in both – not enough to make the distinction between the two

(b) 608 (e) – not ones – broad

(c) Limitation on personal money of candidate – is OK – to equalize ability –

(d) O'Brien case is not clear

LFP –

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

Nos. 75-436 and 75-437

A-550

JAMES L. BUCKLEY, et al.,

Appellants,

v.

FRANCIS R. VALEO, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

AFFIDAVIT

Brice M. Clagett, being duly sworn, on oath deposes and says:

1. I am a member of the Bar of this Court and a member of the firm of Covington & Burling located at 888 Sixteenth Street, N.W., Washington, D.C. I am an attorney for Appellants in the above-captioned action.

2. On the afternoon of December 16, 1975, I received by hand delivery a letter from John G. Murphy, Jr., Esquire, General Counsel of the Federal Election Commission, a copy of which is attached hereto, stating that the Commission intended at its meeting of December 23, 1975, to certify to the Secretary of the Treasury that

FEDERAL ELECTION COMMISSION

1325 K STREET N.W.
WASHINGTON, D.C. 20463

December 16, 1975

Brice M. Clagett, Esq.
Covinton and Burling
888 16th Street, N.W.
Washington, D.C. 20006

Dear Mr. Clagett:

As I informed you in my letter dated November 17, 1975, the Federal Election Commission has received a report from its Office of Disclosure and Compliance establishing that the Democratic National Committee and Republican National Committee are eligible for convention financing under 26 U.S.C. §9008. At its meeting of December 23, 1975, the Commission intends to certify to the Secretary of the Treasury, under 26 U.S.C. §9008(b), that the Democratic National Committee should immediately receive $461,000, and that at the same time the Republican National Committee should receive $250,000, both payments to be made out of an account established by the Secretary for these purposes under 26 U.S.C. §9008(a). As I noted in my letter to you of November 17th, the National committees have been patiently awaiting these initial payments since July 1 of this year.

Since my last communication to you, the Commission has received numerous submissions by presidential primary candidates of both major parties, and has implemented an auditing schedule directed to determine the eligibility of these candidates for presidential primary matching fund payments under 26 U.S.C. §9037. It is the Commission's present intention to declare at its meeting of December 17, 1975, that at least three presidential candidates have satisfied the matching fund eligibility requirements of 26 U.S.C. §9033.

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1975

Nos. 75-436 and 75-437

A-550

JAMES L. BUCKLEY, et al.,

Appellants,

v.

FRANCIS R. VALEO, et al.,

Appellees.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED
STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MEMORANDUM IN SUPPORT OF
APPLICATION TO THE CHIEF JUSTICE FOR AN INJUNCTION

By the accompanying application appellants seek an injunction, under Rules 50 and 51 of this Court, restraining the Federal Election Commission ("FEC" or "Commission") and others from certifying to the Secretary of the Treasury ("the Secretary") under 26 U.S.C. § 9036(a) for payments to finance campaign activities of certain candidates for presidential nomination of a political party, and from certifying to the Secretary under 26 U.S.C. § 9008(g) for payments to finance certain presidential nominating conventions, pending entry of final judgment in this action. Appellants contend that immediate injunctive relief against the certification processes is clearly warranted under the unique and compelling cir-

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1975

Nos. 75-436 and 75-437

A-550

JAMES L. BUCKLEY, et al.,

Appellants,

v.

FRANCIS R. VALEO, et al.,

Appellees.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

APPLICATION TO THE CHIEF JUSTICE FOR AN INJUNCTION

Upon the pleadings and the accompanying affidavit of Brice M. Clagett, appellants James L. Buckley, et al., do hereby apply, pursuant to Rules 50 and 51 of this Court, for an injunction against appellees Federal Election Commission, Francis R. Valeo, and Edmund L. Henshaw, Jr., restraining them, their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise, from making certification

Sent to Conf 12/18 - FYI - Conference, 2 p.m., 12/18/75

Supreme Court of the United States
Washington, D. C. 20543

December 17, 1975

MEMORANDUM FOR THE CHIEF JUSTICE

Subject: Buckley, et al. v. Valeo, et al., A-550
(Application for Injunction)
Federal/civil

Appellants Buckley, et al. seek an injunction to prevent the "imminent" payment of $250,000 to the Republican National Committee and of $461,000 to the Democratic National Committee pursuant to 26 U.S.C. 9008. They also seek an injunction to prevent the payment of unspecified amounts to at least three presidential-nomination candidates pursuant to Chapter 96 of the IRC.

Facts: The Federal Election Commission (FEC) has advised counsel for appellants that on Tuesday, December 23, it will certify to the Secretary of the Treasury pursuant to 26 U.S.C. §§9036 and 9008(9) payments to three individuals who are seeking a political party's presidential nomination for their campaign expenses and to the two major parties for portions of their convention expenses. Payment to the parties must be made "promptly" and, according to a representative of the Secretary as set forth in counsel's affidavit, normally would be made by check within two or three days after receipt of the certification, but might be made within as short a time as two hours. Payments to the candidates will not be made prior to January 1 pursuant to 26 U.S.C. §§9032(6) and 9037(b), but that promptly after the certifications are received procedures would be instituted to make an account designation pursuant to 26 U.S.C. 9037(a) and that no more than a week, or two weeks at the outside, should be necessary to complete the designation process. Once a designation is made, payments will be made to the candidates immediately. The Secretary does not intend, as a condition of making payments under either type of certification, to require that the recipients agree to repay such funds or give security for repayment in the event that the statutory provisions for such payments should be held unconstitutional.

Contentions: On the merits, appellants would rely on their arguments made on appeal.

On the equities, appellants first argue that an injunction is necessarily directed to the certification of parties and candidates by FEC since in making payment the Secretary is performing a mere ministerial act, is not a party to this case and, consequently, is beyond the Court's jurisdiction.

Appellants assert that they will be irreparably injured by the payment of funds to their political opponents and that a subsequent decision favorable to appellants will be ineffectual as to those monies. They argue for maintenance of the status quo. They contend that the FEC, the parties and the candidates will not be injured by an injunction since the nominating conventions are not until the summer and the first primary is not scheduled until February 24. Appellants point out that whatever expenses that need be incurred now can be met by private funds or by loans against which, they note, public funds could eventually be applied. Appellants also assert that in any event injury to the national parties and to the candidates is irrelevant since they are not parties to this case and have not chosen to intervene.

Appellants make extensive argument for not requiring a bond.

Discussion: It would seem that when a case is sub judice, absent compelling reasons for not doing so, the status quo should be maintained. Such compelling reasons are not obvious here.

I do not doubt too seriously that the Court has the power to enjoin the Secretary from making payments. However, enjoining the FEC from certifying probably is more appropriate in any event.

There are no responses as of now. I understand, however, that at least one of the appellees intends to oppose the application.

James B. Ginty

Supreme Court of the United States
Washington, D. C. 20543

January 16, 1976

MEMORANDUM FOR THE CONFERENCE

Subject: Opinion of Federal Election Commission Regarding Application of Honorarium Limitation to Employees of the Federal Courts

Attached is a copy of a recent advisory opinion by the General Counsel of the Federal Election Commission regarding the application of the Federal Election Campaign Act's honorarium limitations, 18 U.S.C. 616, to Judges and employees of the Judicial Branch. In brief, the F.E.C. holds that the limitations of 18 U.S.C. 616 (not more than $1,000 for any single appearance, speech or article, or $15,000 in the aggregate for any calendar year) applies to Federal judges and judicial employees. The opinion of the F.E.C. is clearly broad enough to encompass members and employees of the Court. See footnotes 1, 5 and 7 and accompanying text.

The advisory opinion goes on to distinguish between honorariums and stipends and to provide guidance in several specific instances as to whether certain activities are likely to be subject to the provisions of 18 U.S.C. 616.

James B. Ginty

Attachment

CC: The Clerk
The Reporter of Decisions
The Marshal
The Librarian
Mr. Cannon
Mr. McGurn
Mr. Powers

FEDERAL ELECTION COMMISSION
1325 K STREET N.W.
WASHINGTON, D.C. 20463

9 JAN 1976

OC 1975-88

Carl H. Imlay, Esquire
General Counsel
Administrative Office of the
United States Courts
Supreme Court Building
Washington, D. C. 20544

Dear Mr. Imlay:

This letter is in response to your letter of November 19, 1975, requesting an opinion of counsel as to whether 18 U.S.C. §616 is applicable to Federal judges and if so, the effect of such coverage on various activities by judges. From subsequent conversations with your staff, it was learned that you also desire this opinion of counsel to discuss the applicability of 18 U.S.C. §616 to certain activities of the employees of the Federal courts. We regret the delay in responding to your communications.

It is generally provided in 18 U.S.C. §616 that:

> Whoever, while an elected or appointed officer or employee of any branch of the Federal Government--
>
> (1) accepts any honorarium of more than $1,000 (excluding amounts accepted for actual travel and subsistence expenses) for any appearance, speech, or article; or
>
> (2) accepts honorariums (not prohibited by paragraph (1) of this section) aggregating more than $15,000 in any calendar year;
>
> shall be fined not less than $1,000 nor more than $5,000.

BUCKLEY v. VALEO

Application for an Injunction

After the Conference on Thursday, PS circulated a proposed order granting the injunction because "there exists substantial doubt as to the constitutional power of the Federal Election Commission to make the certifications [for payments to finance campaign activities of candidates and for payments to finance nominating conventions] (see U.S. Const., Art.II, §2, cl.2)." The reference to the basis for the injunction was intended to make clear that the Court's concern is with the composition of the Commission rather than with the public financing provisions themselves. The reason for making [redacted] that clear is that Congress can, if it chooses, promptly provide for some other person or body to make the certifications so that the public financing scheme would not be frustrated during the pendency of the lawsuit. (If an injunction were granted with no explanation, the reasonable assumption would be that the Court had doubts about the whole public financing scheme, and [redacted] there would be no way for

CONSTITUTIONALITY OF THE FEDERAL ELECTION COMMISSION — DS

TENTATIVE CONFERENCE VOTE FROM TM'S NOTES

CJ: "Congress can appoint legislative commissions; Congress can do everything commission does. However, Congress has absolute control by veto, etc. Reverse."
WJB: "enforcement power of commission is under attack, but all they can do is refer to Attorney-General. Affirm."
PS: ____
BRW: "Spritzer's brief calls it, but we should strike down the right to bring a civil suit. Affirm."
TM: affirm.
HAB: reverse??
LFP: "close to affirming, but has same problems as BRW."
WHR: "Congress cannot act without the signature of the president. Reverse."

The opinions of WHR and BRW on the constitutionality of the FEC adopt different approaches. BRW starts from the premise that the FEC members are ~~xfx~~ "officers of the United States" as that term is used in the Appointments Clause of Article II of the Constitution. Since "officers of the United States" ~~xx~~ whose function it is to admiinister and enforce the law cannot be appointed by the Congress, BRW goes on to hold that the FEC is unconstitutionally constituted and strikes it down. WHR, on the other hand, indicates that, because of the way in which some of the FEC members are apponted (i.e. by ~~Congress~~ congressional leaders), they are not officers of the United States. He then examines each of the functions of the FEC and holds that all but one, because generally executive in nature, cannot be exercised by people who are not officers of the United States. As to the one exception - the investigative and informative powers of the Commission - he holds that because it is a legislative function the FEC members can constitutionally perform it.

We prefer WHR's approach. BRW's opinion suffers from a lack of analysis largely because his initial premise that FEC members are officers of the United States in essence decides the question

DISCLOSURE PROVISIONS - D5

TENTATIVE CONFERENCE VOTE: From TM's NOTES.
CJ: "chill outweighed by letting voters know who is involved; figures might be unwise, but affirm; doubt as to disclosure of $10 contributions."
WJB: doubt as to small parties and $10 provision; reverse.
PS: "disclosure within power of Congress; affirm"
BRW: affirm
TM: "reverse as to $10 contribution; not sure on other points."
HAB: "secrecy is the evil; affirm in theory but leave open the special cases such as small parties."
LFP: affirm
WHR: affirm

We have ~~only~~ one central problem with LFP's proposed opinion on the disclosure provisions of the FECA. Section 434(e) requires that all those who make expenditures over $100 "other than by contribution to a political committee or candidate" file a statement with the FEC. In order to avoid vagueness problems, LFP construes "expenditure" within §434(e) to reach only funds used "for communications that expressly advocate the election or defeat of an identifiable candidate." This definition is drawn directly from that used by PS in treating issues relating to §608(e)'s limitation on the making of independent expenditures. LFP holds that, even as he has construed it, §434(e) performs a legitimate governmental function in increasing the fund of public information as to who is making expenditures for whom and that this function is important enough to justify whatever first amendment infringement there is in §434(e).

LFP's analysis of §434(e) is, at least on the surface inconsistent with that of PS in dealing with §608(e). PS, using the identical narrow definition of "expenditure" to avoid vagueness, holds that the chances of evading §608(e) as construed (e.g. by saying "George McGovern is a great leader" without saying "Vote for George McGovern") are so great as to render §608(e) ineffective. According to PS, given §608(e)'s

CONFERENCE VOTES ON PROVISIONS TREATED BY PS:

I. Limitation on Contributions (PS Draft says Constitutional)

CJ: Unconstitutional?
WJB: Constitutional
PS: Constitutional
BRW: Constitutional
TM: Constitutional
HAB: Leaning to holding unconstitutional
LFP: Constitutional?
WHR: Constitutional

II. Limitatio n on Independent Expenditures -- §608(e)
(PS draft says Unconstitutional)

CJ: Unconstitutional
WJB: Constitutional -- these are really contributions; but there is a vagueness problem.
PS: Unconstitutional
BRW: Constitutional
TM: Constitutional
HAB: Unconstitutional
LFP: Unconstitutional
WHR: Unconstitutional

III. Limitation on Expenditures by Candidates from Personal Resources and Family Resources they control -- §608(a)(1).
(PS says Unconstitutional)

CJ: Doubts about it
WJB: Constitutional -- "Tail goes with the kite."
PS: Unconstitutional
BRW: Constitutional
TM: Closer to holding unconstitutional than constitutional
HAB: Unconstitutional
LFP: Unconstitutional
WHR: Unconstitutional

IV: Overall Candidate expenditure limitations
(PS draft says unconstitutional)

CJ:
WJB:
PS: Unconstitutional
BRW: Constitutional
TM: Constitutional
HAB: Unconstitutional
LFP: Unconstitutional
WHR: Unconstitutional

PS: CONTRIBUTION AND EXPENDITURE LIMITATIONS

RESULTS

While we disagree with much of PS's reasoning, we agree with his results -- except that KTB disagrees with his conclusion that the limitation in §608(a)(1) on expenditures by candidates from personal or family resources is unconstitutional. Section 608(a)(1) provides that a candidate for President or Vice President cannot spend more than $50,000 of his own money (or his family's money), a Senate candidate cannot spend more than $35,000 of his own money, and a House candidate cannot spend more than $25,000 of his own money. KTB believes that these limitations are constitutional, basically for the following reasons. The limitations serve the vital governmental interest of equalizing access to the political process. Without the limitations, Congressmen Heinz and Ottinger, Senator Kennedy, and Governor Rockefeller can spend unlimited funds from their personal and family fortunes; a citizen of modest means has little chance of winning against people with immediate access to such large sums of money. The Court approves the Act's limitation on

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

Nos. 75-436 and 75-437

JAMES L. BUCKLEY, ET AL., APPELLANTS,

v.

FRANCIS R. VALEO, ET AL., APPELLEES,

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION FOR LEAVE TO FILE SUGGESTION AMICI CURIAE THAT STAY BE EXTENDED

The movants are the Democratic National Committee and seven campaign committees of candidates for the Democratic Presidential nomination. Movants hereby respectfully move for leave to file the attached suggestion amici curiae. Attorneys for the appellees in the above case have indicated that they have no objection to the granting of this motion. Attorneys for the appellants have been advised that movants intended to file this motion with the Court, but did not indicate to movants' counsel whether they would object to the granting of the motion.

The interest of the Democratic National Committee and the aforementioned campaign committees in the instant matter arises from the immediate and irreparable injury which would result if the Court does not continue the stay of its judgment herein as it affects the authority of the Federal Election Commission to exercise certain powers granted to it under the Federal Election

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Appellees.

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APPELLANTS' MEMORANDUM RESPECTING A LETTER FROM SENATORS CANNON AND MANSFIELD TO THE CHIEF JUSTICE

Senator Howard W. Cannon, Chairman of the Senate Rules Committee, and Senator Mike Mansfield, Majority Leader of the Senate, yesterday sent a letter to the Chief Justice supporting the motion of private appellees for a further stay of this Court's judgment with respect to the Federal Election Commission. Appellants' counsel were apparently served after close of business yesterday. They were not notified informally beforehand that any such letter would be sent.

Appellants protest this action by Senators Cannon