The Burger Court Opinion Writing Database

California Medical Association v. Federal Election Commission

453 U.S. 182 (1981)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

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

CHAMBERS OF
THE CHIEF JUSTICE

June 8, 1981

RE: 79-1952 California Medical Association v. FEC

MEMORANDUM TO THE CONFERENCE:

In this case my reservations led me to ask Bill Brennan to assign. I am now persuaded to join the dissent.

Regards,

WEB

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 27, 1981

RE: No. 79-1952 California Medical Association v. F.E.C.
No. 79-2006 Barrentine v. Arkansas-Best

Dear Chief:

Thurgood has agreed to write for the Court in No. 79-1952 California Medical Association v. F.E.C. and I'll try my hand at No. 79-2006 Barrentine v. Arkansas-Best.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 11, 1981

RE: No. 79-1952 California Medical Assn. v. FEC.

Dear Thurgood:

Please join me.

Like John, I too prefer not to decide whether political groups may invoke Sec. 437(h). I too would vote to grant review in Bread Political Action Committee.

Sincerely,

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 27, 1981

Re: No. 79-1952, California Medical Assoc. v. FEC

Dear Lewis and Bill,

I shall be glad to try my hand at a separate opinion, expressing the view that the provisions of 2 U.S.C. § 437h are inapplicable in the circumstances of this case.

Sincerely yours,

P.S.

Justice Powell
Justice Rehnquist

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 5, 1981

Re: No. 79-1952, California Medical Assoc.
v. Federal Election Comm.

Dear Thurgood,

I expect in due course to circulate a dissenting opinion, which will disagree not on the merits but on the jurisdictional issue.

Sincerely yours,

P.S.

Justice Marshall

Copies to the Conference

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

1st DRAFT

Circulated: 11 MAY 1981

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-1952

California Medical Association et al., Appellants, *v.* Federal Election Commission et al.

On Appeal from the United States Court of Appeals for the Ninth Circuit.

[May —, 1981]

JUSTICE STEWART, dissenting.

In § 437g of the Federal Election Campaign Act, Congress created an elaborate system for the enforcement of the Act. That system may be summarized as follows:

If the Commission becomes aware of a possible violation of the Act, it must notify the person responsible for the violation (who is referred to in the Act as the respondent). 2 U. S. C. § 437g (a)(2). After investigating the possible violation, the Commission must notify the respondent of any recommendation made by the Commission's general counsel that the Commission decide whether there is probable cause to believe that the respondent has violated, or is about to violate, the Act. If the Commission determines that there is probable cause, it must attempt, for at least 30 but not more than 90 days, "to correct or prevent such violation by informal methods of conference, conciliation, and persuasion . . . ." 2 U. S. C. § 437g (a)(4)(A)(i). (If the probable cause determination is made within 45 days before an election, the Commission need seek conciliation for only 15 days. 2 U. S. C. § 437g (a)(4)(A)(ii).) If conciliation fails, the Commission may institute a civil action for relief in an appropriate United States district court. 2 U. S. C. § 437g (a)(6)(A). Any judgment of that court may be appealed to the appropriate court of appeals, and the judg-

p. 1

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

2nd DRAFT

Circulated: _____

Recirculated: 13 MAY 1981

SUPREME COURT OF THE UNITED STATES

No. 79-1952

California Medical Association et al., Appellants, *v.* Federal Election Commission et al.

On Appeal from the United States Court of Appeals for the Ninth Circuit.

[May —, 1981]

JUSTICE STEWART, with whom JUSTICE POWELL and JUSTICE REHNQUIST join, dissenting.

In § 437g of the Federal Election Campaign Act, Congress created an elaborate system for the enforcement of the Act. That system may be summarized as follows:

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P.1

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

3rd DRAFT

From: Mr. Justice Stewart

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 79-1952

Recirculated: 28 JUN 1981

California Medical Association et al., Appellants, *v.* Federal Election Commission et al.	On Appeal from the United States Court of Appeals for the Ninth Circuit.

[May —, 1981]

JUSTICE STEWART, with whom THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE REHNQUIST join, dissenting.

In § 437g of the Federal Election Campaign Act, Congress created an elaborate system for the enforcement of the Act. That system may be summarized as follows:

If the Commission becomes aware of a possible violation of the Act, it must notify the person responsible for the violation (who is referred to in the Act as the respondent). 2 U. S. C. § 437g (a)(2). After investigating the possible violation, the Commission must notify the respondent of any recommendation made by the Commission's general counsel that the Commission decide whether there is probable cause to believe that the respondent has violated, or is about to violate, the Act. If the Commission determines that there is probable cause, it must attempt, for at least 30 but not more than 90 days, "to correct or prevent such violation by informal methods of conference, conciliation, and persuasion . . . ." 2 U. S. C. § 437g (a)(4)(A)(i). (If the probable cause determination is made within 45 days before an election, the Commission need seek conciliation for only 15 days. 2 U. S. C. § 437g (a)(4)(A)(ii).) If conciliation fails, the Commission may institute a civil action for relief in an appropriate United States district court. 2 U. S. C. § 437g (a)(6)(A). Any judgment of that court may be appealed to the appropriate court of appeals, and the judg-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 7, 1981

Re: 79-1952 - California Medical Assn. v. Federal Election Comm'n.

Dear Thurgood,

Please join me.

Sincerely yours,

Justice Marshall

Copies to the Conference

cpm

5 MAY 1981

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79–1952

California Medical Association et al., Appellants, v. Federal Election Commission et al.	On Appeal from the United States Court of Appeals for the Ninth Circuit.

[May —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case we consider whether provisions of the Federal Election Campaign Act, 2 U. S. C. § 431 *et seq.*, limiting the amount an unincorporated association may contribute to a multicandidate political committee violate the First Amendment or the equal protection component of the Fifth Amendment. Concluding that these contribution limits are constitutional, we affirm the judgment of the Court of Appeals for the Ninth Circuit.

I

The California Medical Association (CMA) is a not-for-profit unincorporated association of approximately 25,000 doctors residing in California. In 1976, CMA formed the California Medical Political Action Committee (CALPAC). CALPAC is registered as a political committee with the Federal Election Commission, and is subject to the provisions of the Federal Election Campaign Act relating to multicandidate political committees.[1] One such provision, 2 U. S. C.

[1] Under the Act, a political committee is defined to include "any committee . . . which receives contributions aggregating in excess of $1,000 during a calender year or which makes expenditures aggregating in excess of $1,000 during a calender year." 2 U. S. C. § 431 (4). A "multicandi-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 5, 1981

MEMORANDUM TO THE CONFERENCE

Today I have circulated a draft opinion in California Medical Association v. Federal Election Commission, 79-1952. I wish to call your attention to a problem regarding a case held for this decision. As you know, the action in this case was filed under 2 U.S.C. §437h, the special provision of the Federal Election Campaign Act that provides for extremely expedited review of constitutional challenges to the statute. By its terms, §437h may be used by the Federal Election Commission, the national committee of a political party, or any voter eligible to vote for President. There is a split in the circuits, however, over whether other persons and entities not named in §437h may nonetheless invoke its special review provisions. This question presents no problem in this case, since two of the appellants are individual voters eligible to vote in federal elections, and therefore fall within the express terms of §437h. Accordingly, the opinion in its present form leaves undecided the issue of whether groups and entities not listed in §437h may nonetheless invoke its special review provisions. See opinion at note 6.

However, a case being held for this opinion, Bread Political Action Committee v. Federal, 80-1481, raises this issue directly. In that case, none of the plaintiffs were among the three groups enumerated in §437h. The Commission moved to dismiss their action for lack of standing, but the CA7 concluded that the special judicial review provision of §437h were nonetheless available to any person or group that could satisfy the constitutional requirements of Article III. The Commission has moved before this Court to dismiss the appeal for lack of standing. I call this to the attention of the Conference for the purpose of determining whether there is any strong sentiment that we decide in the course of this opinion the issue of what individual or groups may invoke §437h.

Sincerely,

T.M.

pp. 2, 14

7 MAY 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79–1952

California Medical Association et al., Appellants, v. Federal Election Commission et al.	On Appeal from the United States Court of Appeals for the Ninth Circuit.

[May —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case we consider whether provisions of the Federal Election Campaign Act, 2 U. S. C. § 431 *et seq.*, limiting the amount an unincorporated association may contribute to a multicandidate political committee violate the First Amendment or the equal protection component of the Fifth Amendment. Concluding that these contribution limits are constitutional, we affirm the judgment of the Court of Appeals for the Ninth Circuit.

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new footnote 13

13 MAY 1981

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79–1952

California Medical Association et al., Appellants, *v.* Federal Election Commission et al.	On Appeal from the United States Court of Appeals for the Ninth Circuit.

[May —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

In this case we consider whether provisions of the Federal Election Campaign Act, 2 U. S. C. § 431 *et seq.*, limiting the amount an unincorporated association may contribute to a multicandidate political committee violate the First Amendment or the equal protection component of the Fifth Amendment. Concluding that these contribution limits are constitutional, we affirm the judgment of the Court of Appeals for the Ninth Circuit.

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The California Medical Association (CMA) is a not-for-profit unincorporated association of approximately 25,000 doctors residing in California. In 1976, CMA formed the California Medical Political Action Committee (CALPAC). CALPAC is registered as a political committee with the Federal Election Commission, and is subject to the provisions of the Federal Election Campaign Act relating to multicandidate political committees.[1] One such provision, 2 U. S. C.

[1] Under the Act, a political committee is defined to include "any committee . . . which receives contributions aggregating in excess of $1,000 during a calender year or which makes expenditures aggregating in excess of $1,000 during a calender year." 2 U. S. C. § 431 (4). A "multicandi-

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 29, 1981

Postpone

MEMORANDUM TO THE CONFERENCE

Re: Cases held for 79-1952 California Medical Association v. Federal Election Commission

80-1481 Bread Political Action Committee v. Federal Election Commission.

This appeal involves a constitutional challenge to 2 U.S.C. §441b(b)(4)(D), the provision of the Federal Election Campaign Act which regulates the solicitation activities of trade associations and their segregated political funds. Specifically, the challenged section permits a trade association or its political fund to solicit contributions from the stockholders and executive and administrative personnel of its member corporations and their families provided that such solicitation has been approved by the member corporation and the member corporation has not approved a solicitation by any other trade association for the same calendar year. Appellants are three trade associations who brought this action pursuant to 2 U.S.C. §437h, claiming that §441b(b)(4)(D) violated their First and Fifth Amendment rights by unduly restricting the scope of permissible solicitations. The CA7 rejected these claims, concluding that the provision was narrowly tailored to meet an overriding governmental interest in protecting the integrity of the election process.

While the substantive issue posed by this case is not a major one, the case does present an important and unresolved jurisdiction question. As previously noted, this action was brought pursuant to the special expedited review provisions of §437h. That section, by its terms, is available only to "the Commission, the national committee of any political party, or any individual eligible to vote." Appellants here are trade associations, and thus do not fall within the potential plaintiffs enumerated in §437h. Consequently the Commission moved in the court below to dismiss the action. The CA7 nonetheless concluded that any person, group or entity having constitutional standing could invoke §437h. This conclusion is directly contrary to that reached by the CADC. See Martin Tractor v. Federal Election Commission, 627 F.2d. 375, cert. denied sub nom. National Chamber Alliance for Politics v. Federal Election Commission (1980). The issue was expressly left open by our decision in California Medical Association v. FEC, slip op. at 4 n.6., but in light of its substantial and recurring nature, and the Commission's pending motion to dismiss appellants' appeal, I will vote to postpone.

There is no conflict with CADC; it reserved the question. Nonetheless, this is an appeal; I think CA7 is wrong [illegible]

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: JUN 22 1981

Recirculated: _____

No. 79-1952 - California Medical Association v. FEC

JUSTICE BLACKMUN, concurring in part and concurring in the judgment.

I join Parts I, II, and IV of JUSTICE MARSHALL's opinion for the Court.

I write separately, however, to note my view of appellants' First Amendment claims. Part III of the opinion appears to rest on the premise that the First Amendment test to be applied to contribution limitations is different from the test applicable to expenditure limitations. I do not agree with that proposition. Although I dissented in part in Buckley v. Valeo, 424 U.S. 1, 290 (1976), I am willing to accept as binding the Court's judgment in that case that the contribution limitations challenged there were constitutional. Id., at 23-38. But it does not follow that I must concur in the plurality conclusion today, ante, at 12-13, that political contributions are not entitled to full First Amendment protection. It is true that there is language in Buckley that might suggest that conclusion, see, e.g., 424 U.S., at 20-23, and it was to such language that I referred when I suggested in my dissent that the Court had failed to make a principled constitutional distinction between expenditure and contribution limitations. Id., at 290. At the same time, however, Buckley states that "contribution and expenditure limitations both implicate fundamental First Amendment

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

1st PRINTED DRAFT

Circulated: _____

Recirculated: JUN 23 1981

SUPREME COURT OF THE UNITED STATES

No. 79-1952

California Medical Association et al., Appellants, *v.* Federal Election Commission et al.	On Appeal from the United States Court of Appeals for the Ninth Circuit.

[June —, 1981]

JUSTICE BLACKMUN, concurring in part and concurring in the judgment.

I join Parts I, II, and IV of JUSTICE MARSHALL's opinion for the Court.

I write separately, however, to note my view of appellants' First Amendment claims. Part III of the opinion appears to rest on the premise that the First Amendment test to be applied to contribution limitations is different from the test applicable to expenditure limitations. I do not agree with that proposition. Although I dissented in part in *Buckley* v. *Valeo*, 424 U. S. 1, 290 (1976), I am willing to accept as binding the Court's judgment in that case that the contribution limitations challenged there were constitutional. *Id.*, at 23–38. But it does not follow that I must concur in the plurality conclusion today, *ante*, at 12–13, that political contributions are not entitled to full First Amendment protection. It is true that there is language in *Buckley* that might suggest that conclusion, see, *e. g.*, 424 U. S., at 20–23, and it was to such language that I referred when I suggested in my dissent that the Court had failed to make a principled constitutional distinction between expenditure and contribution limitations. *Id.*, at 290. At the same time, however, *Buckley* states that "contribution and expenditure limitations both implicate fundamental First Amendment interests," *id.*,

January 28, 1981

79-1952 California Medical v. FEC

Dear Potter:

I note with appreciation that you will try your hand at a separate opinion in the above case.

Sincerely,

Mr. Justice Stewart

lfp/ss

cc: Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 7, 1981

79-1952 California Medical Assoc. v. Federal Election Comm.

Dear Thurgood:

I will await Potter's dissent in this case.

Sincerely,

L. Lewis

Mr. Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 12, 1981

79-1952 California Medical Assoc. v. Federal Election Comm.

Dear Potter:

Please add my name to your dissent.

Sincerely,

L. Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 12, 1981

Re: No. 79-1952 California Medical Assoc. v. Federal Election Comm.

Dear Potter:

Please join me in your dissent.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 8, 1981

Re: 79-1952 - California Medical Assn. v. FEC

Dear Thurgood:

Please join me in your opinion.

Responding to your letter of May 5, 1981, I would prefer not to decide whether political groups may invoke § 437(h) in this opinion. I am inclined to think that question is sufficiently difficult to justify having the Bread Political Action Committee case argued.

Respectfully,

John

Justice Marshall

Copies to the Conference