



The Buck *Buckley* Campaign

When big money is speech, then speech is no longer free.

On January 30, 1976, the Supreme Court of the United States issued the infamous *Buckley v. Valeo* ruling that struck down campaign finance reforms intended to reduce the undue influence of wealthy interests on election outcomes. By wrongly equating big money in politics with free speech, the Court has blocked reforms to our electoral process that would let ordinary Americans determine who runs for office, who wins elections, and what issues dominate the agenda.

The Buck *Buckley* Campaign

The state Public Interest Research Groups (PIRGs) have launched the Buck *Buckley* Campaign to educate citizens about core campaign finance reform issues and to build support for overturning the *Buckley v. Valeo* decision. Our goal is not to forge a consensus in the reform movement behind a particular policy or a particular short-term strategy, but rather to raise a united voice that *Buckley* must go.

The Buck *Buckley* Campaign will create a rising tide to lift all the boats in the reform movement. Not only will it build momentum for a long-term strategy of reversing *Buckley*, it will deflate the arguments of anti-reformers that *any* form of campaign finance reform, ranging from a soft money ban to public financing proposals, is an infringement of free speech. Moreover, it will buttress efforts to fight defensive legal battles and keep the courts from further expanding *Buckley* in the wrong direction. The time has come for citizens to stand up for what is right and to guarantee government of the people, by the people, and for the people.

What the *Buckley v. Valeo* Supreme Court ruling said

The *Buckley* decision is complex, reflecting a compromise among Supreme Court justices. The opinion was written anonymously — a rare occurrence. While a majority of justices supported each aspect of the ruling, only three justices accepted the ruling as a whole.

At its core, the *Buckley* decision ruled that since spending money allows people to communicate a political message, money in politics deserves First Amendment protection as free speech. The Court acknowledged that it is

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sometimes appropriate to limit speech (just as we prohibit yelling “fire” in a crowded theater), but that there must be a compelling reason to justify the restrictions. The Court recognized that Congress did have a compelling interest in avoiding certain types of corruption and the appearance of corruption, but said that reducing the disproportionate influence of special interests on election outcomes was not a compelling enough reason to limit money in politics.

Through this strained logic, the Court was able to reach a compromise that allowed limits on contributions from individuals and political action committees, but rejected limits on spending and limits on the use of a candidate’s personal wealth. The latter, reasoned the *Buckley* Court, posed no risk of *quid pro quo* corruption that could cause politicians to sell their votes.

What’s wrong with the *Buckley* ruling?

The *Buckley* decision contains two fatal errors in logic. The first is the equation of unlimited spending with freedom of speech. The First Amendment was designed to ensure that citizens can hear all points of view and engage in effective self-government. While censorship threatens free speech, so does a voice so loud that it drowns out the voices of others. This is why, in most democratic forums — ranging from debates on the floor of Congress, to town hall meetings, to arguments before the Supreme Court — each side limits the time they will speak to ensure that others can be heard. By protecting big money as free speech, the Court ensured that a few wealthy citizens will speak much more than others, and that those without money will have little or no speech at all — violating the key principle of the First Amendment.

The Court’s second error was to define corruption



Who is James Buckley?

James Lane Buckley was elected U.S. Senator from New York in 1970 as a member of the Conservative Party. He won a three-way race with a plurality of 38 percent, defeating Republican incumbent Charles Goodell and Democrat Richard Ottinger. Mr. Buckley had previously run in 1968 and received 16 percent of the vote while spending little on his campaign. In his successful 1970 race, Mr. Buckley spent \$1.8 million dollars – an astounding sum at the time. However, during televised debates he agreed that campaign spending should be limited.

But, after Congress passed legislation in 1974 that set mandatory spending limits for congressional campaigns, Senator Buckley challenged the law in court. The eventual Supreme Court ruling, *Buckley v. Valeo*, rejected spending limits and has caused subsequent courts to throw out a host of important campaign finance laws passed at the state and local level.

James Buckley lost his race for re-election as well as a 1980 U.S. Senate race in his home state of Connecticut. He went on to become a federal judge.

too narrowly, missing the ways that spending limits and limits on candidate's use of personal wealth protect the electoral process. The *Buckley* court focused only on one form of corruption, called *quid pro quo* corruption, which occurs when a politician literally sells their vote in exchange for a contribution. As with bribery, this certainly is one way in which the process of representative democracy can be distorted.



quid pro quo corruption

Unfortunately the Court overlooked a second form of corruption, a wholesale *political* corruption that occurs when politicians gain office in a manner that does not truly reflect the support of their constituents. Unlike the current Supreme Court, the framers of the Constitution were well aware of the danger of this systemic political corruption, and John Adams cautioned Americans to take care to prevent it when electing legislatures:

The principal difficulty lies, and the greatest care should be employed, in constituting this representative assembly. It should be in miniature an exact portrait of the people at large. It should think, feel, reason and act like them...

Great care should be taken to effect this, and to prevent unfair, partial and corrupt elections.

- John Adams, 1776
Thoughts on Government

Corrupt elections can occur when people stuff ballot boxes, intimidate others from voting, or charge a poll tax to discourage low-income voters. Under these circumstances, election results may not reflect the will of the people, because the election process itself is corrupted even if officials do not engage in any *quid pro quo* selling of votes once in office.

Likewise, disproportionate spending in political campaigns distorts the electoral process and leads to unrepresentative results. When citizens hear from one point of view significantly more than another, public opinion is distorted. If a politician cannot win election without spending huge sums of money to

overpower an opponent, it is questionable whether or not they deserve to be in office. In the 1998 elections for the House of Representatives, the candidate who spent the most money won 95 percent of the time. Do these elections reflect the will of the voters, or the will of the fewer than one percent of citizens who give the majority of campaign contributions? When spe-

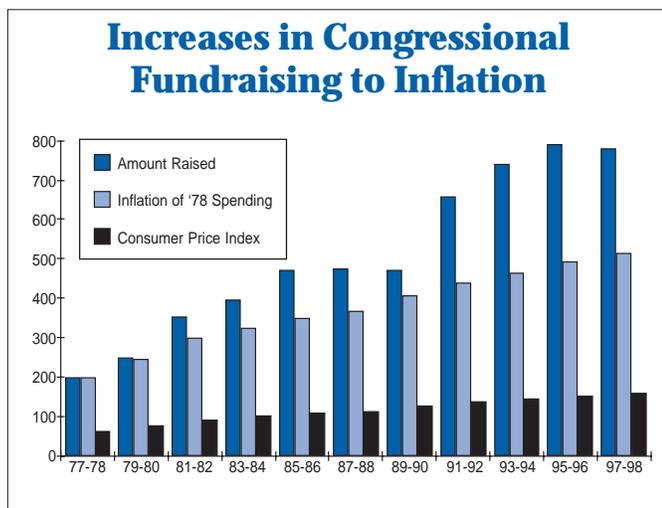


wholesale *political* corruption

cial interests can determine who runs for office and who wins elections, they have little need to extract *quid pro quo* promises from politicians who are predisposed toward protecting the interests of their donors.

The ramifications of the *Buckley* ruling

Spending in congressional campaigns has skyrocketed well beyond the rate of inflation since the *Buckley* decision, as shown in this chart:



This explosion of campaign money has come from wealthy interests, not ordinary citizens. In 1976, one in three dollars raised by candidates came from ordinary citizen contributions of under \$100; by 1996 the amount was down to an estimated one in ten dollars raised.

The *Buckley* ruling affects more than limits on candidate spending. *Buckley* also prohibits limits on the use of a candidate's personal wealth in a campaign. Wealthy candidates have an undue advantage and often force their opponents to raise funds from special interests at a furious pace. As of 1998, at least 96 out of 535 members of Congress are millionaires. Federal courts have used the *Buckley* precedent to strike down an Oregon law that prohibited candidates from accepting contributions from donors that live outside of their district. Courts have also used *Buckley* to strike down contribution limits for ballot question campaigns and state laws banning corporate contributions to ballot question campaigns. When wealthy interests dominate ballot initiative campaigns, citizens lose control of a process that was designed to help combat corruption in the legislature.

One need not favor all of the reform provisions that the courts have invalidated in order to support overturning the *Buckley* decision. Believing that state and local governments should be able to experiment and tailor reasonable reform policies without undue interference from federal courts is enough to realize that *Buckley* stands in the way. Any reform whose goal is to reduce the undue influence of wealthy special interests on election outcomes will run smack into *Buckley's* misguided logic that leveling the political playing field among citizens is not a valid reason to limit money in politics.

Can't we leave this up to the courts?

The federal courts have at times been brave defenders of the people's liberty, striking down many laws that infringe upon the freedoms guaranteed in the Bill of Rights. However, at other times the courts have failed. No federal court struck down the 1798 Alien and Sedition Act that prohibited criticism of the federal government. During the 1950s, the Supreme Court failed to reign in the inquisitions of Senator McCarthy. In both of these instances, liberty was restored only when citizens organized politically.

The courts have also issued many rulings that were simply wrong. In 1857, the Supreme Court upheld slavery in the *Dred Scott* decision, one of the lowest points in the history of the Court. At the turn of the 20th century, courts were striking down women's suffrage, minimum wage laws, child labor laws, and laws to protect working families by limiting the workweek to 60 hours.

Supreme Court decisions have been reversed more than 200 times. Prominent examples include decisions to uphold separate but equal education and to enforce the poll tax that kept poor and minority citi-

zens from voting. Reversals do not come easily; citizens must organize political movements that are too strong for even unelected judges to ignore.

How can the *Buckley* ruling be reversed?

There are many ways that Supreme Court rulings can be changed and it is not obvious which will provide the best vehicle to reverse the *Buckley* ruling. Most routes involve the checks and balances built into the Constitution and seek to prod the legislative or executive branches into checking the power of a judiciary that has strayed from the intentions of the Bill of Rights.

✓ **Current Justices could decide that *Buckley* was wrong on its merits.** In the case *Brown v. Board of Education*, the Supreme Court reversed its previous rulings because the Justices no longer believed that separate education could indeed really be equal. Currently, three members of the Supreme Court (Breyer, Ginsberg, and Stevens) have suggested that *Buckley* should be reversed or modified to allow for more reform. As Justice Stevens put it, "Money is property, it is not speech." Conversely, Justices Thomas and Scalia would strike down even the contribution limits that *Buckley* upheld. Justice Kennedy's statements indicate that he thinks the *Buckley* compromise is flawed, but at this time it is not clear if he would repeal all limits or allow more comprehensive reforms to take place. All in all, six of the nine current Justices have stated that *Buckley* needs to be changed, but there is no consensus on how to change it. The best way for reformers to proceed under this option is to pass new laws that could provide test cases for the courts to use as a basis for reconsidering *Buckley*.

✓ **The makeup of the Court could change.** If the existing justices cannot be persuaded to reverse *Buckley*, it is possible that the addition of just one or two justices who favored changing *Buckley* in either direction could make a critical difference. The views of future presidents and members of the Senate as they consider Court nominations could be critical in deciding *Buckley's* fate.

✓ **Other branches could pressure the Courts.** The country faced a true constitutional crisis during the Great Depression when the Supreme Court repeatedly threw out a host of New Deal reforms. When President Franklin Delano Roosevelt was unable to persuade the Court to accept the New Deal, which had been thoroughly debated and

embraced by the voters via several congressional elections, Roosevelt threatened to pack the Court by adding additional Justices. As Congress was on the brink of considering Roosevelt's court packing plan, the Court relented and began approving various New Deal reforms. Reformers could perhaps find similar methods for pressuring the courts to reconsider their views on campaign finance reform.

✓ **The people, via Congress and the states, could enact a constitutional amendment.** In 1964, the United States passed the Twenty-fourth Amendment to abolish the federal poll tax, overturning previous Supreme Court decisions. The Supreme Court then turned around and abolished the poll tax for state elections in 1966. Senators Ernest Hollings (D-SC) and Arlen Specter (R-PA) have introduced an amendment in the U.S. Senate that would overturn the *Buckley* decision by authorizing the states and Congress to set mandatory limits on campaign contributions and spending, and Representatives LaTourette (R-OH) and Moran (D-VA) introduced a similar amendment in the House in 1997.

None of these strategies for reversing *Buckley* will succeed absent a groundswell of support demonstrating that citizens, leaders, and scholars have considered the decision and wholeheartedly reject it.



Join the Buck Buckley Campaign

✓ You can demonstrate support for reversing *Buckley* by adding your name to the list of citizens who support the Buck Buckley statement. By taking a stand, ordinary citizens will regain control of our elections as ultimately the court of public opinion will prevail.

To learn more about the Buck Buckley Campaign, contact:

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Buck *Buckley* Statement

In its 1976 decision, *Buckley v. Valeo*, the United States Supreme Court misinterpreted the First Amendment to protect unlimited spending in political campaigns. The Court equated money with speech and allowed limits on campaign contributions only when narrowly drawn to prevent *quid pro quo* corruption or the appearance of *quid pro quo* corruption. The courts have struck down important campaign finance reforms that they believed did not serve that limited purpose.

The decision failed to recognize the corrosive effect of big money on elections, creating a wholesale corruption that extends beyond *quid pro quo* transactions where votes are traded for contributions. *Buckley* also failed to recognize other legitimate state interests that justify limiting money in politics, such as preserving the integrity of our republican form of government, restoring public confidence in government, and ensuring all citizens a more equal opportunity to participate in the political process. By allowing a few citizens to purchase much more speech than others, *Buckley* did more to undermine free speech, full public discourse, and self-government than it did to protect these principles of the First Amendment.

We, the undersigned, believe that the *Buckley* decision is wrong and should be overturned.

NAME _____

SIGNATURE _____ DATE _____

OFFICE/AFFILIATION _____

ADDRESS _____

CITY _____ STATE _____ ZIP _____

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