Partial Dissent/Partial Concurrence of Chief Justice Burger in the Case of *Buckley v. Valeo*

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In 1976 the Supreme Court rejected major portions of the Federal Election Campaign Act of 1971 and its 1974 amendments with the statement that "the First Amendment requires the invalidation of the Act's independent expenditure ceiling, its limitation on a candidate's expenditures from his own personal funds, and its ceiling on overall campaign expenditures, since those provisions place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate. . . . The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government, but the people—individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign."

The Court found acceptable, however, limits on contributions. Chief Justice Burger, however, disagreed, in what has become a famous and prescient dissent.

For reasons set forth more fully later, I dissent from those parts of the Court's holding sustaining the statutory 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 contributions in excess of $10 and $100. The contribution limitations infringe on First Amendment liberties and suffer from the same infirmities that the Court correctly sees in the expenditure ceilings. The 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. [424 U.S. 1, 236] Congress intended to regulate all aspects of federal campaign finances, but what remains after today's holding leaves no more than a shadow of what Congress contemplated. I question whether the residue leaves a workable program.

DISCLOSURE PROVISIONS

Disclosure is, in principle, the salutary and constitutional remedy for most of the ills Congress was seeking to alleviate. I therefore agree fully with the broad proposition that public disclosure of contributions by individuals and by entities—particularly corporations and labor unions—is an effective means of revealing the type of political support that is sometimes coupled with expectations of special favors or rewards. That disclosure impinges on First Amendment rights is conceded by the Court, ante, at 64–66, but given the objectives to which disclosure is directed, I agree that the need for disclosure outweighs individual constitutional claims.

Disclosure is, however, subject to First Amendment limitations which are to be defined by looking to the relevant public interests. The legitimate public interest is the elimination of the appearance and reality of corrupting influences. Serious dangers to the very processes of government justify disclosure of contributions of such dimensions reasonably thought likely to purchase special favors. These fears have been at the root of the Court's prior decisions upholding disclosure requirements, and I therefore have no disagreement, for example, with *Burroughs v. United States*, 290 U.S. 534 (1934).

The Court's theory, however, goes beyond permissible limits. Under the Court's view, disclosure serves broad informational purposes, enabling the public to be fully informed on matters of acute public interest. Forced disclosure of one aspect of a citizen's political activity [424 U.S. 1, 237], under this analysis, serves the public right to know. This open-

ended approach is the only plausible justification for the otherwise irrationally low ceilings of $10 and $100 for anonymous contributions. The burdens of these low ceilings seem to me obvious, and the Court does not try to question this. With commendable candor, the Court acknowledges:

"It is undoubtedly true that public disclosure of contributions to candidates and political parties will deter some individuals who otherwise might contribute." Ante, at 68.

Examples come readily to mind. Rank-and-file union members or rising junior executives may now think twice before making even modest contributions to a candidate who is disfavored by the union or management hierarchy. Similarly, potential contributors may well decline to take the obvious risks entailed in making a reportable contribution to the opponent of a well-entrenched incumbent. This fact of political life did not go unnoticed by the Congress:

"The disclosure provisions really have in fact made it difficult for challengers to challenge incumbents." 120 *Cong. Rec.* 34392 (1974) (remarks of Sen. Long).

See *Pollard v. Roberts*, 283 F. Supp. 248 (ED Ark.), aff'd per curiam, 393 U.S. 14 (1968).

The public right to know ought not be absolute when its exercise reveals private political convictions. Secrecy, like privacy, is not per se criminal. On the contrary, secrecy and privacy as to political preferences and convictions are fundamental in a free society. For example, one of the great political reforms was the advent of the secret ballot as a universal practice. Similarly, the enlightened labor legislation of our time has enshrined the secrecy of choice of a bargaining representative for [424 U.S. 1, 238] workers. In other contexts, this Court has seen to it that governmental power cannot be used to force a citizen to disclose his private affiliations, *NAACP v. Button*, 371 U.S. 415 (1963), even without a record reflecting any systematic harassment or retaliation, as in *Shelton v. Tucker*, 364 U.S. 479 (1960). For me it is far too late in the

day to recognize an ill-defined "public interest" to breach the historic safeguards guaranteed by the First Amendment.

We all seem to agree that whatever the legitimate public interest in this area, proper analysis requires us to scrutinize the precise means employed to implement that interest. The balancing test used by the Court requires that fair recognition be given to competing interests. With respect, I suggest the Court has failed to give the traditional standing to some of the First Amendment values at stake here. Specifically, it has failed to confine the particular exercise of governmental power within limits reasonably required.

"In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom." *Cantwell v. Connecticut*, 310 U.S. 296, 304 (1940).

"Unduly" must mean not more than necessary, and until today, the Court has recognized this criterion in First Amendment cases:

"In the area of First Amendment freedoms, government has the duty to confine itself to the least intrusive regulations which are adequate for the purpose." *Lamont v. Postmaster General*, 381 U.S. 301, 310 (1965) (BRENNAN, J., concurring).

Similarly, the Court has said:

"[E]ven though the governmental purpose be legitimate [424 U.S. 1, 239] and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgment must be viewed in the light of less drastic means for achieving the same basic purpose." *Shelton v. Tucker*, supra, at 488.

In light of these views, it seems to me that the threshold limits fixed at $10 and $100 for anonymous contributions are constitutionally impermissible on their face. As the Court's opinion notes, ante, at 83, Congress gave little or no thought, one way or the other, to these limits, but rather lifted figures out of a 65-year-old statute. As we are all painfully aware, the 1976 dollar is not what it used to be and is surely not the dollar of 1910. Ten dollars in 1976 will, for example, purchase

only what $1.68 would buy in 1910. United States Dept. of Labor, *Handbook of Labor Statistics* 1975, p. 313 (Dec. 1975). To argue that a 1976 contribution of $10 or $100 entails a risk of corruption or its appearance is simply too extravagant to be maintained. No public right to know justifies the compelled disclosure of such contributions, at the risk of discouraging them. There is, in short, no relation whatever between the means used and the legitimate goal of ventilating possible undue influence. Congress has used a shotgun to kill wrens as well as hawks. [424 U.S. 1, 240]

In saying that the lines drawn by Congress are "not wholly without rationality," the Court plainly fails to apply the traditional test:

"Precision of regulation must be the touchstone in an area so closely touching on our most precious freedoms." *NAACP v. Button*, 371 U.S. 415, 438 (1938).

See, e. g., *Aptheker v. Secretary of State*, 378 U.S. 500 (1964); *United States v. Robel*, 389 U.S. 258 (1967); *Lamont v. Postmaster General*, supra. The Court's abrupt departure from traditional standards is wrong; surely a greater burden rests on Congress than merely to avoid "irrationality" when regulating in the core area of the First Amendment. Even taking the Court at its word, the particular dollar amounts fixed by Congress that must be reported to the Commission fall short of meeting the test of rationality when measured by the goals sought to be achieved.

Finally, no legitimate public interest has been shown in forcing the disclosure of modest contributions that are the prime support of new, unpopular, or unfashionable political causes. There is no realistic possibility that such modest donations will have a corrupting influence especially on parties that enjoy only "minor" status. Major parties would not notice them; minor parties need them. Furthermore, as the Court candidly recognizes, ante, at 70, minor parties and new parties tend to be sharply ideological in character, and the public can readily discern where such parties stand, without resorting to the indirect device of recording the names of financial supporters. To hold, as the Court has,

that privacy must sometimes yield to congressional investigations of alleged subversion, is quite different from making domestic political [424 U.S. 1, 241] partisans give up privacy. Cf. *Eastland v. United States Servicemen's Fund*, 421 U.S. 491 (1975). In any event, the dangers to First Amendment rights here are too great. Flushing out the names of supporters of minority parties will plainly have a deterrent effect on potential contributors, a consequence readily admitted by the Court, ante, at 71, 83, and supported by the record.

I would therefore hold unconstitutional the provisions requiring reporting of contributions of more than $10 and to make a public record of the name, address, and occupation of a contributor of more than $100.

CONTRIBUTION AND EXPENDITURE LIMITS

I agree fully with that part of the Court's opinion that holds unconstitutional the limitations the Act puts on campaign expenditures which "place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate." Ante, at 58–59. Yet when it approves similarly stringent limitations on contributions, the Court ignores the reasons it finds so persuasive in the context of expenditures. For me contributions and expenditures are two sides of the same First Amendment coin.

By limiting campaign contributions, the Act restricts the amount of money that will be spent on political activity [424 U.S. 1, 242]—and does so directly. Appellees argue, as the Court notes, that these limits will "act as a brake on the skyrocketing cost of political campaigns," ante, at 26. In treating campaign expenditure limitations, the Court says that the "First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise." Ante, at 57. Limiting contributions, as a practical matter, will limit expenditures and will put an effective ceiling on the amount of political activity and debate that the Government will permit to take

place. The argument that the ceiling is not, after all, very low as matters now stand gives little comfort for the future, since the Court elsewhere notes the rapid inflation in the cost of political campaigning. Ante, at 57.

The Court attempts to separate the two communicative aspects of political contributions—the "moral" support that the gift itself conveys, which the Court suggests is the same whether the gift is $10 or $10,000, and the [424 U.S. 1, 243] fact that money translates into communication. The Court dismisses the effect of the limitations on the second aspect of contributions: "[T]he transformation of contributions into political debate involves speech by someone other than the contributor." Ante, at 21. On this premise—that contribution limitations restrict only the speech of "someone other than the contributor"—rests the Court's justification for treating contributions differently from expenditures. The premise is demonstrably flawed; the contribution limitations will, in specific instances, limit exactly the same political activity that the expenditure ceilings limit, and at least one of the "expenditure" [424 U.S. 1, 244] limitations the Court finds objectionable operates precisely like the "contribution" limitations.

The Court's attempt to distinguish the communication inherent in political contributions from the speech aspects of political expenditures simply "will not wash." We do little but engage in word games unless we recognize that people—candidates and contributors—spend money on political activity because they wish to communicate ideas, and their constitutional interest in doing so is precisely the same whether they or someone else utters the words.

The Court attempts to make the Act seem less restrictive by casting the problem as one that goes to freedom of association rather than freedom of speech. I have long thought freedom of association and freedom of expression were two peas from the same pod. The contribution limitations of the Act impose a restriction on certain forms of associational activity that are for the most part, as the Court recognizes, ante, at 29, harmless in fact. And the restrictions are hardly incidental

in their effect upon particular campaigns. Judges are ill-equipped to gauge the precise impact of legislation, but a law that impinges upon First Amendment rights requires us to make the attempt. It is not simply speculation to think that the limitations on contributions will foreclose some candidacies. The limitations will also alter the nature of some electoral contests drastically. [424 U.S. 1, 245]

At any rate, the contribution limits are a far more severe restriction on First Amendment activity than the sort of "chilling" legislation for which the Court has shown such extraordinary concern in the past. See, e. g., *Cohen v. California*, 403 U.S. 15 (1971); see also cases reviewed in *Miller v. California*, 413 U.S. 15 (1973); *Redrup v. New York*, 386 U.S. 767 (1967); *Memoirs v. Massachusetts*, 383 U.S. 413 (1966). If such restraints can be justified at all, they must be justified by the very strongest of state interests. With this much the Court clearly agrees; the Court even goes so far as to note that legislation cutting into these important interests must employ "means closely drawn to avoid unnecessary abridgment of associational freedoms." Ante, at 25.

After a bow to the "weighty interests" Congress meant to serve, the Court then forsakes this analysis in one sentence: "Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption . . . ." Ante, at 28. In striking down the limitations on campaign expenditures, the Court relies in part on its conclusion that other means—namely, disclosure and contribution ceilings—will adequately serve the statute's aim. It is not clear why the same analysis is not also appropriate in weighing the need for contribution ceilings in addition to disclosure requirements. Congress may well be [424 U.S. 1, 246] entitled to conclude that disclosure was a "partial measure," but I had not thought until today that Congress could enact its conclusions in the First Amendment area into laws immune from the most searching review by this Court.

Finally, it seems clear to me that in approving these limitations on contributions the Court must rest upon the proposition that "pooling"

money is fundamentally different from other forms of associational or joint activity. But see ante, at 66. I see only two possible ways in which money differs from volunteer work, endorsements, and the like. Money can be used to buy favors, because an unscrupulous politician can put it to personal use; second, giving money is a less visible form of associational activity. With respect to the first problem, the Act does not attempt to do any more than the bribery laws to combat this sort of corruption. In fact, the Act does not reach at all, and certainly the contribution limits do not reach, forms of "association" that can be fully as corrupt as a contribution intended as a quid pro quo—such as the eleventh-hour endorsement by a former rival, obtained for the promise of a federal appointment. This underinclusiveness is not a constitutional flaw, but it demonstrates that the contribution limits do not clearly focus on this first distinction. To the extent Congress thought that the second problem, the lesser visibility of contributions, required that money be treated differently from other forms of associational activity, disclosure laws are the simple and wholly efficacious answer; they make the invisible apparent.

PUBLIC FINANCING

I dissent from Part III sustaining the constitutionality of the public financing provisions of Subtitle H.

Since the turn of this century when the idea of Government [424 U.S. 1, 247] subsidies for political campaigns first was broached, there has been no lack of realization that the use of funds from the public treasury to subsidize political activity of private individuals would produce substantial and profound questions about the nature of our democratic society. The Majority Leader of the Senate, although supporting such legislation in 1967, said that "the implications of these questions . . . go to the very heart and structure of the Government of the Republic." The Solicitor General in his amicus curiae brief states that "the issues involved here are of indisputable moment." He goes on to express his view that public financing will have "profound effects in the way

candidates approach issues and each other." Public financing, he notes, "affects the role of the party in campaigns for office, changes the role of the incumbent government vis-a-vis all parties, and affects the relative strengths and strategies of candidates vis-a-vis each other and their party's leaders."

The Court chooses to treat this novel public financing of political activity as simply another congressional appropriation whose validity is "necessary and proper" to Congress' power to regulate and reform elections and primaries, relying on *United States v. Classic*, 313 U.S. 299 (1941), and *Burroughs v. United States*, 290 U.S. 534 (1934). No holding of this Court is directly in point, because no federal scheme allocating public funds in a comparable manner has ever been before us. The uniqueness of the plan is not relevant, of course, to whether Congress has power to enact it. Indeed, I do not question the power of Congress to regulate elections; nor do I [424 U.S. 1, 248] challenge the broad proposition that the General Welfare Clause is a grant, not a limitation, of power. *M'Culloch v. Maryland*, 4 Wheat. 316, 420 (1819); *United States v. Butler*, 297 U.S. 1, 66 (1936).

I would, however, fault the Court for not adequately analyzing and meeting head on the issue whether public financial assistance to the private political activity of individual citizens and parties is a legitimate expenditure of public funds. The public monies at issue here are not being employed simply to police the integrity of the electoral process or to provide a forum for the use of all participants in the political dialogue, as would, for example, be the case if free broadcast time were granted. Rather, we are confronted with the Government's actual financing, out of general revenues, a segment of the political debate itself. As Senator Howard Baker remarked during the debate on this legislation:

"I think there is something politically incestuous about the Government financing and, I believe, inevitably then regulating, the day-to-day procedures by which the Government is selected . . . .

"I think it is extraordinarily important that the Government not

control the machinery by which the public expresses the range of its desires, demands, and dissent." 120 *Cong. Rec.* 8202 (1974).

If this "incest" affected only the issue of the wisdom of the plan, it would be none of the concern of judges. But, in my view, the inappropriateness of subsidizing, from general revenues, the actual political dialogue of the people—the process which begets the Government itself—is as basic to our national tradition as the separation of church and state also deriving from the First Amendment, see *Lemon v. Kurtzman*, 403 U.S. 602, 612 (1971); *Walz v. Tax Comm'n*, 397 U.S. 664, 668-669 (1970), [424 U.S. 1, 249] or the separation of civilian and military authority, see *Orloff v. Willoughby*, 345 U.S. 83, 93-94 (1953), neither of which is explicit in the Constitution but both of which have developed through case-by-case adjudication of express provisions of the Constitution.

Recent history shows dangerous examples of systems with a close, "incestuous" relationship between "government" and "politics"; the Court's opinion simply dismisses possible dangers by noting that:

"Subtitle H is a congressional effort, not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." Ante, at 92–93.

Congress, it reassuringly adds by way of a footnote, has expressed its determination to avoid such a possibility. Ante, at 93 n. 126. But the Court points to no basis for predicting that the historical pattern of "varying measures of control and surveillance," *Lemon v. Kurtzman*, supra, at 621, which usually accompany grants from Government will not also follow in this case. Up to now, the Court has always been extraordinarily sensitive, when dealing with First Amendment rights, to the risk that the "flag tends to follow the dollars." Yet, here, where Subtitle H specifically requires the auditing of records of political parties and candidates by Government inspectors, the Court shows [424 U.S. 1, 250] little sensitivity to the danger it has so strongly condemned in other contexts. See, e.g., *Everson v. Board of Education*, 330 U.S. 1 (1947).

Up to now, this Court has scrupulously refrained, absent claims of invidious discrimination, from entering the arena of intraparty disputes concerning the seating of convention delegates. *Graham v. Fong Eu*, 403 F. Supp. 37 (ND Cal. 1975), summarily aff'd, 423 U.S. 1067 (1976); *Cousins v. Wigoda*, 419 U.S. 477 (1975); *O'Brien v. Brown*, 409 U.S. 1 (1972). An obvious underlying basis for this reluctance is that delegate selection and the management of political conventions have been considered a strictly private political matter, not the business of Government inspectors. But once the Government finances these national conventions by the expenditure of millions of dollars from the public treasury, we may be providing a springboard for later attempts to impose a whole range of requirements on delegate selection and convention activities. Does this foreshadow judicial decisions allowing the federal courts to "monitor" these conventions to assure compliance with court orders or regulations?

Assuming, arguendo, that Congress could validly appropriate public money to subsidize private political activity, it has gone about the task in Subtitle H in a manner which is not, in my view, free of constitutional infirmity. I do not question that Congress has "wide discretion in the manner of prescribing details of expenditures" in some contexts, *Cincinnati Soap Co. v. United States*, 301 U.S. 308, 321 (1937). Here, however, Congress has not itself appropriated a specific sum to attain the ends of the Act but has delegated to a limited group [424 U.S. 1, 251] of citizens—those who file tax returns—the power to allocate general revenue for the Act's purposes—and of course only a small percentage of that limited group has exercised the power. There is nothing to assure that the "fund" will actually be adequate for the Act's objectives. Thus, I find it difficult to see a rational basis for concluding that this scheme would, in fact, attain the stated purposes of the Act when its own funding scheme affords no real idea of the amount of the available funding.

I agree with MR. JUSTICE REHNQUIST that the scheme approved by the Court today invidiously discriminates against minor parties. Assuming, arguendo, the constitutionality of the overall scheme, there

is a legitimate governmental interest in requiring a group to make a "preliminary showing of a significant modicum of support." *Jenness v. Fortson*, 403 U.S. 431, 442 (1971). But the present system could preclude or severely hamper access to funds before a given election by a group or an individual who might, at the time of the election, reflect the views of a major segment or even a majority of the electorate. The fact that there have been few drastic realignments in our basic two-party structure in 200 years is no constitutional justification for freezing the status quo of the present major parties at the expense of such future political movements. Cf. discussion, ante, at 73. When and if some minority party achieves majority status, Congress can readily deal with any problems that arise. In short, I see grave risks in legislation, enacted by incumbents of the major political parties, which distinctly disadvantages minor parties or independent candidates. This Court has, until today, been particularly cautious when dealing with enactments that tend to perpetuate those who control legislative power. See *Reynolds v. Sims*, 377 U.S. 533, 570 (1964).

I would also find unconstitutional the system of [424 U.S. 1, 252] matching grants which makes a candidate's ability to amass private funds the sole criterion for eligibility for public funds. Such an arrangement can put at serious disadvantage a candidate with a potentially large, widely diffused—but poor—constituency. The ability of a candidate's supporters to help pay for his campaign cannot be equated with their willingness to cast a ballot for him. See *Lubin v. Panish*, 415 U.S. 709 (1974); *Bullock v. Carter*, 405 U.S. 134 (1972).

I cannot join in the attempt to determine which parts of the Act can survive review here. The statute as it now stands is unworkable and inequitable.

I agree with the Court's holding that the Act's restrictions on expenditures made "relative to a clearly identified candidate," independent of any candidate or his committee, are unconstitutional. Ante, at 39-51. Paradoxically the Court upholds the limitations on individual contributions, which embrace precisely the same sort of expenditures "rel-

ative to a clearly identified candidate" if those expenditures are "authorized or requested" by the "candidate or his agents." Ante, at 24 n. 25. The Act as cut back by the Court thus places intolerable pressure on the distinction between "authorized" and "unauthorized" expenditures on behalf of a candidate; even those with the most sanguine hopes for the Act might well concede that the distinction cannot be maintained. As the Senate Report on the bill said:

"Whether campaigns are funded privately or publicly . . . controls are imperative if Congress is to enact meaningful limits on direct contributions. Otherwise, wealthy individuals limited to a $3,000 direct contribution [$1,000 in the bill as finally enacted] could also purchase one hundred thousand [424 U.S. 1, 253] dollars' worth of advertisements for a favored candidate. Such a loophole would render direct contribution limits virtually meaningless." S. Rep. No. 93-689, p. 18 (1974).

Given the unfortunate record of past attempts to draw distinctions of this kind, see ante, at 61-62, it is not too much to predict that the Court's holding will invite avoidance, if not evasion, of the intent of the Act, with "independent" committees undertaking "unauthorized" activities in order to escape the limits on contributions. The Court's effort to blend First Amendment principles and practical politics has produced a strange offspring.

Moreover, the Act—or so much as the Court leaves standing—creates significant inequities. A candidate with substantial personal resources is now given by the Court a clear advantage over his less affluent opponents, who are constrained by law in fund-raising, because the Court holds that the "First Amendment cannot tolerate" any restrictions on spending. Ante, at 59. Minority parties, whose situation is difficult enough under an Act that excludes them from public funding, are prevented from accepting large single-donor contributions. At the same time the Court sustains the provision aimed at broadening the base of political support by requiring candidates to seek a greater number of small contributors, it sustains the unrealistic disclosure thresholds of

$10 and $100 that I believe will deter those hoped-for small contributions. Minor parties must now compete for votes against two major parties whose expenditures will be vast. Finally, the Act's distinction between contributions in money and contributions in services remains, with only the former being subject to any limits. As Judge Tamm put it in dissent from the Court of Appeals' opinion:

"[T]he classification created only regulates certain [424 U.S. 1, 254] types of disproportional influences. Under section 591 (e) (5), services are excluded from contributions. This allows the housewife to volunteer time that might cost well over $1000 to hire on the open market, while limiting her neighbor who works full-time to a regulated contribution. It enhances the disproportional influence of groups who command large quantities of these volunteer services and will continue to magnify this inequity by not allowing for an inflation adjustment to the contribution limit. It leads to the absurd result that a lawyer's contribution of services to aid a candidate in complying with FECA is exempt, but his first amendment activity is regulated if he falls ill and hires a replacement." 171 U.S. App. D.C. 172, 266, 519 F.2d 821, 915 (1975).

One need not call problems of this order equal protection violations to recognize that the contribution limitations of the Act create grave inequities that are aggravated by the Court's interpretation of the Act.

The Court's piecemeal approach fails to give adequate consideration to the integrated nature of this legislation. A serious question is raised, which the Court does not consider: when central segments, key operative provisions, of this Act are stricken, can what remains function in anything like the way Congress intended? The incongruities are obvious. The Commission is now eliminated, yet its very purpose was to guide candidates and campaign workers—and their accountants and lawyers—through an intricate statutory maze where a misstep can lead to imprisonment. All candidates can now spend freely; affluent candidates, after today, can spend their own money without limit; yet, contributions for the ordinary [424 U.S. 1, 255] candidate are severely restricted in amount—and small contributors are deterred. I cannot believe that

Congress would have enacted a statutory scheme containing such incongruous and inequitable provisions.

Although the statute contains a severability clause, 2 U.S.C. 454 (1970 ed., Supp. IV), such a clause is not an "inexorable command." *Dorchy v. Kansas*, 264 U.S. 286, 290 (1924). The clause creates a rebuttable presumption that "'eliminating invalid parts, the legislature would have been satisfied with what remained.'" *Welsh v. United States*, 398 U.S. 333, 364 (1970) (Harlan, J., concurring, quoting from *Champlin Rfg. Co. v. Commission*, 286 U.S. 210, 235 (1932)). Here just as the presumption of constitutionality of a statute has been overcome to the point that major proportions and chapters of the Act have been declared unconstitutional, for me the presumption of severability has been rebutted. To invoke a severability clause to salvage parts of a comprehensive, integrated statutory scheme, which parts, standing alone, are unworkable and in many aspects unfair, exalts a formula at the expense of the broad objectives of Congress.

Finally, I agree with the Court that the members of the Federal Election Commission were unconstitutionally appointed. However, I disagree that we should give blanket de facto validation to all actions of the Commission undertaken until today. The issue is not before us and we cannot know what acts we are ratifying. I would leave this issue to the District Court to resolve if and when any challenges are brought.

In the past two decades the Court has frequently [424 U.S. 1, 256] spoken of the broad coverage of the First Amendment, especially in the area of political dialogue:

"[T]o assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people," *Roth v. United States*, 354 U.S. 476, 484 (1957);

and:

"[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs . . . [including] discussions of candidates . . .," *Mills v. Alabama*, 384 U.S. 214, 218 (1966);

and again:

"[I]t can hardly be doubted that the constitutional guarantee [of the First Amendment] has its fullest and most urgent application precisely to the conduct of campaigns for political office." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971).

To accept this generalization one need not agree that the Amendment has its "fullest and most urgent application" only in the political area, for others would think religious freedom is on the same or even a higher plane. But I doubt that the Court would tolerate for an instant a limitation on contributions to a church or other religious cause; however grave an "evil" Congress thought the limits would cure, limits on religious expenditures would most certainly fall as well. To limit either contributions or expenditures as to churches would plainly restrict "the free exercise" of religion. In my view Congress can no more ration political expression than it can ration religious expression; and limits on political or religious contributions and expenditures effectively curb expression in both areas. There are many prices we pay for the freedoms secured by the First Amendment; the risk of undue [424 U.S. 1, 257] influence is one of them, confirming what we have long known: Freedom is hazardous, but some restraints are worse.