



Campaign Finance and Constitutional Law Basics

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Outline

1. Types of campaign finance laws
2. First Amendment limitations on campaign finance rules
3. Challenges and questions



1. Basic types of U.S. campaign finance laws (different federal/state/local laws)

- Expenditure limits (limiting how much money a person or entity *spends independently* supporting or opposing a candidate/also candidate spending limits)
- Contribution limits (limiting how much money a person or entity gives *to* a candidate/committee/party)
- Disclosure rules
- Public financing laws



2. First Amendment limitations on campaign finance rules (Supreme Court)

- U.S. Constitution's First Amendment protects freedom of speech and association
- Constitutional limits apply to federal, state, and local laws
- First Amendment balancing: compare infringement on rights of speech and association with government interests



Constitutional Scrutiny of Expenditure Limits

- Supreme Court has struck down expenditure limits, applied to individuals, corporations, and unions, in candidate and ballot campaigns (*Buckley, Bellotti, Citizens United*)
- Court has upheld expenditure limits applied against foreign entities (*Bluman*)
- Such laws are judged under “strict scrutiny” standard, which is toughest constitutional standard
- Government interest in promoting political equality impermissible under First Amendment.
- Corruption is a permissible interest, but connection between corruption and expenditure limits not close enough.



Constitutional Scrutiny of Contribution Limits

- Supreme Court has upheld individual contribution limits in candidate elections (*Buckley v. Valeo*)
- Court applies somewhat less strict “exacting scrutiny” and has found such limits justified by an interest in preventing corruption and the appearance of corruption
- Court has held that contribution limits that are too low (judged under a multifactor test) are unconstitutional (*Randall v. Sorrell, Thompson*)
- Court has held that contribution limits are impermissible in ballot measure campaigns because there is no candidate to corrupt (*CARC v. City of Berkeley*)
- Court has allowed ban on direct contributions by corporations to candidates; not weighed in on lobbyist bans, etc.



Constitutional Scrutiny of Disclosure Rules

- Supreme Court has upheld disclosure rules in candidate and ballot measure elections (*Buckley v. Valeo, Bellotti*)
- Court applies less strict “exacting scrutiny” and has found such limits justified by interests in preventing corruption, providing voters with information, and enforcing other laws.
- Court has held disclosure laws must exempt those who face harassment (*Brown*)
- Justices have expressed concerns about privacy and are reconsidering exacting scrutiny standard in case now before Court (*Doe v. Reed, AFP v. Becerra*)



Constitutional Scrutiny of Public Financing Laws

- Supreme Court upheld presidential public financing so long as participation is voluntary (*Buckley v. Valeo*)
- Court applied strict scrutiny to public financing law that provided extra matching funds to candidates facing wealthy opponents; Court struck down this matching provision (*Arizona Free Enterprise*)
- Court has not weighed in on public financing plans that provide multiple matching funds for small campaign contributions (e.g., NYC's 6-1 match)



3. Challenges and Questions

- Rise of Super PACs and other outside groups raise questions about effectiveness of limits and importance of rules against coordination with candidates
- Outside groups sometimes try to evade disclosure rules and Court may open constitutional means to do so
- Supreme Court Justices have changed, and majority may be more hostile to regulation in the future