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Notes

FRIENDS OF GOVERNOR KEAN v. NEW JERSEY ELECTION LAW ENFORCEMENT COMMISSION: RE-EXAMINING THE SIGNIFICANT GOVERNMENTAL INTERESTS FURTHERED BY EXPENDITURE LIMITS IN THE POST-BUCKLEY ELECTORAL ENVIRONMENT

I. INTRODUCTION

Throughout the 1970s attempts were made to reform an electoral process which was increasingly dominated by party power brokers and large campaign contributors.¹ Arguably, such domination subverted the democratic processes upon which the nation had been founded. Those advocating reform sought an electoral process more responsive to, and dependent upon, the desires and contributions of the electorate-at-large.² These advocates of campaign finance reform were aided by the revelations of unlawful financing methods employed in the Nixon campaign during the Watergate scandal in 1973-74.³ Such shocking practices spurred Congress and many state legislatures to enact regulations designed to curb the spiraling costs of financing campaigns and to reduce the potential for abuse and corruption in the electoral process.⁴

These reforms often included five basic components. First, legislatures enacted statutes providing for public financing of certain campaigns, thereby capping election costs and eliminating the potentially corrupting influence of large donors.⁵ Second, limits were placed both upon the amount any individual or Political Action Committee (PAC)

1. See N. POLSBY, *CONSEQUENCES OF PARTY REFORM* 3-7 (1983). Polsby argues that the reform movement attempted to alter not only the manner in which elections were financed, but also the process by which party nominees were selected; both branches of reform, however, had the same ultimate purpose—to democratize the electoral process. *Id.* For another perspective describing how party nomination and campaign finance reforms have served to increase participation in the presidential election process, see R. WATSON & N. THOMAS, *THE POLITICS OF THE PRESIDENCY* 23-33 (1983).

2. See N. POLSBY, *supra* note 1, at 3-7.

3. *Id.* at 36-37. The financing practices of the 1972 Nixon campaign included both the virtual extortion of monies from potential contributors and the acceptance of illegal donations. Ewing, *The Legal Regulation of Campaign Financing in American Federal Elections*, 47 *CAMBRIDGE L.J.* 370, 388 (1988).

4. N. POLSBY, *supra* note 1, at 37. Polsby notes, however, that the Watergate scandal not only involved financing irregularities, but also far broader governmental concerns. *Id.* For a discussion of state legislative reforms enacted after Watergate, see F. SORAUF, *PARTY POLITICS IN AMERICA* 336-37 (5th ed. 1984).

5. See N. POLSBY, *supra* note 1, at 37-38; see also F. SORAUF, *supra* note 4, at 334.

could contribute to a particular candidate and also upon the total amount an individual could donate to all campaigns, parties or PACs per year.⁶ Third, limits were placed on the amount an individual or PAC could spend independent of official campaigns on behalf of particular candidates.⁷ Fourth, reformers mandated disclosure by candidates of all campaign contributions above a certain amount.⁸ Finally, maximum limits were set for total campaign expenditures by individual candidates.⁹

Courts, however, rejected many of these legislative devices.¹⁰ The United States Supreme Court has invalidated many of the aforementioned reforms as violative of constitutional guarantees of free speech and association.¹¹ This rejection has frustrated the legislative purpose of reducing the potential for abuse and corruption in the electoral process. Instead, judicial decisions have assisted the development of an electoral process which continues to grow increasingly fragmented, expensive and vulnerable to corruption.¹²

Given the United States Supreme Court's invalidation of certain campaign finance reforms as unconstitutional, the New Jersey Supreme Court had to decide in *Friends of Governor Kean v. New Jersey Election Law Enforcement Commission*¹³ whether the state election commission could allocate the independent expenditures of a legislative candidate on behalf of Governor Kean as an expense of the Governor's official campaign.¹⁴ The state legislature had delegated to the election commission the power to enforce campaign expenditure limits in the publicly financed

6. N. POLSBY, *supra* note 1, at 39; *see also* F. SORAUF, *supra* note 4, at 332.

7. *See* Ewing, *supra* note 3, at 389. Ewing explains that in federal finance reform legislation individuals, including PACs, were limited to \$1000 in independent spending. *Id.* at 388 & n.89, 389.

8. *See* N. POLSBY, *supra* note 1, at 39; *see also* F. SORAUF, *supra* note 4, at 334; Ewing, *supra* note 3, at 389-90.

9. *See* Ewing, *supra* note 3, at 389; *see also* N. POLSBY, *supra* note 1, at 39; F. SORAUF, *supra* note 4, at 332-33.

10. *See, e.g.*, Federal Election Comm'n v. National Conservative Political Action Comm., 470 U.S. 480 (1985) (limitation of independent expenditures by PACs on behalf of favored candidates violates first amendment free speech guarantee); Buckley v. Valeo, 424 U.S. 1 (1976) (per curiam) (contributory limits to candidates permissible to protect substantial state interest in maintaining electoral integrity, but limitation of expenditures by candidates or individuals acting independently violates first amendment guarantees).

11. *See* National Conservative PAC, 470 U.S. at 497-502; Buckley, 424 U.S. at 55-59.

12. For an examination of the detrimental effects on the electoral process due to judicial frustration of campaign finance reform, *see infra* notes 61-69, 81 & 122-55 and accompanying text.

13. 144 N.J. 33, 552 A.2d 612 (1989) (per curiam).

14. *Id.* at 36-37, 552 A.2d at 613-14. In 1981, the New Jersey Election Law Enforcement Commission (NJLEC) issued an advisory opinion which stated that such presumed allocative power would be used; by 1985, however, it had not promulgated an official regulation to that effect. *Id.* at 39, 552 A.2d at 615.

gubernatorial race.¹⁵ The court held that the commission's allocation of expenditures to Kean's campaign would exceed its legislatively granted authority where such spending was truly independent of Kean's own campaign.¹⁶ Moreover, the court stated that even if the legislature had granted the commission authority to allocate independent spending, such authority would likely violate the constitutional guarantee of free speech by unduly limiting the amount a legislative candidate may independently spend on behalf of another.¹⁷

This Note will discuss legislative attempts at campaign finance reform and describe their goals and purposes.¹⁸ This Note will also examine judicial reaction to those legislative reforms.¹⁹ Further, an examination of the *Friends of Kean* decision will show it to be consistent with prior United States Supreme Court decisions involving campaign finance legislation.²⁰ Finally, this Note will attempt to extrapolate the impact of *Friends of Kean* and other decisions involving campaign finance regulation on the current and future electoral processes.²¹

II. BACKGROUND

A. Federal Campaign Finance Reform—Legislative Enactments

The Federal Election Campaign Act of 1971²² allowed public financing of presidential elections in response to spiraling presidential election costs.²³ In 1972, however, the regulations implementing public financing had not yet been adopted and, as a result, the election between Richard Nixon and George McGovern remained privately financed at a cost of \$103 million (excluding the expenditures of those

15. For a discussion of the New Jersey Supreme Court's conclusions regarding the legislature's purposes in creating NJELEC to oversee the financing of the gubernatorial election, see *infra* notes 105-15 and accompanying text.

16. *Friends of Kean*, 114 N.J. at 37-39, 552 A.2d at 614-15. However, if spending was not truly independent, but rather was expended in coordination with a gubernatorial campaign, the New Jersey Supreme Court determined that NJELEC would have the authority to allocate such spending to the gubernatorial campaign. *Id.*

17. *Id.* at 39-40, 552 A.2d at 615. The New Jersey Supreme Court noted that the rationales of the *Buckley* and *National Conservative PAC* decisions were applicable in the case at bar. *Id.* at 40, 552 A.2d at 615.

18. For an examination of the methods, goals and purposes in legislative attempts at campaign finance reform, see *infra* notes 22-36 and accompanying text.

19. For an analysis of the judicial reaction to federal congressional finance legislation, see *infra* notes 37-81 and accompanying text.

20. For a detailed discussion of the New Jersey Supreme Court's decision in *Friends of Kean*, see *infra* notes 90-120 and accompanying text.

21. For a description of the effects which the judicial decisions have wrought on the electoral process, see *infra* notes 122-55 and accompanying text.

22. Pub. L. No. 92-225, 86 Stat. 3 (1972).

23. N. POLSBY, *supra* note 1, at 36-39.

who sought party nominations).²⁴ To finance expensive, media-dominated campaigns, Nixon and McGovern needed to attract large donors. For example, Clement Stone contributed over two million dollars to Nixon's campaign, while Stewart Mott gave over one million dollars to McGovern's losing effort.²⁵ Despite such escalating costs and potentially corrupting contributions during the 1972 campaign, the primary catalyst for campaign finance reform did not occur until numerous criminal financing tactics employed by the Nixon campaign were revealed during the Watergate scandal.²⁶

The 1974 amendments to the Federal Election Campaign Act²⁷ were Congress's response to the corruption and abuse of power uncovered by the Watergate investigation.²⁸ The underlying purposes of the amendments were: (1) to prevent the potential for corruption by large donors exerting undue influence on the electoral process and elected officeholders; (2) to limit the escalating costs of all federal election campaigns; and (3) to implement the administrative framework necessary for public financing of future presidential elections.²⁹ To accomplish these ends, Congress enacted six major provisions to reform the process of campaign financing.

First, the amendments limited to \$1000 the amount an individual could contribute to a particular candidate and limited to \$25,000 the total amount an individual could contribute to all candidates, PACs or parties per year.³⁰ Second, the amendments limited to \$5000 the amount a PAC could contribute to a particular candidate.³¹ Unlike indi-

24. See W. CROTTY, *AMERICAN PARTIES IN DECLINE* 117 (2d ed. 1984). The \$103 million figure also does not include expenditures made by parties on their nominee's behalf or the costs of nominating conventions or other sources of expenditures, which totaled \$425 million in 1972 alone. *Id.* at 118; see also F. SORAUF, *supra* note 4, at 318.

25. F. SORAUF, *supra* note 4, at 332. Stewart Mott also donated a similar amount to the losing 1968 McCarthy nomination campaign. *Id.* Thus, large contributions were integral components of campaign financing for candidates of both parties. See *id.*

26. For a discussion of the Watergate scandal as the primary impetus for reform, see *supra* notes 3-4 and accompanying text.

27. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974).

28. Ewing, *supra* note 3, at 388; see also N. POLSBY, *supra* note 1, at 36-39.

29. See SENATE COMM. ON RULES AND ADMINISTRATION, *FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974*, S. REP. NO. 689, 93d Cong., 2d Sess. 3, reprinted in 1974 U.S. CODE CONG. & ADMIN. NEWS 5587.

30. Federal Elections Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 101, 88 Stat. 1263 (1974). Section 101(b)(1) provided that "no person shall make contributions to any candidate with respect to any election for Federal office which, in the aggregate, exceed \$1000." *Id.* Section 101(b)(3) provided that "[n]o individual shall make contributions aggregating more than \$25,000 in any calendar year." *Id.*

31. *Id.* Section 101(b)(2) provided that "[n]o political committee (other than a principal campaign committee) shall make contributions to any candidate

viduals, however, PACs were not limited in the total amount they could contribute to all candidates per year.³² Third, the amendments capped the amount an individual or PAC could spend independently on behalf of favored candidates to \$1000.³³ Fourth, the amendments mandated that all federal candidates disclose those donors who had contributed in excess of \$100 to the campaign, and their respective amounts.³⁴ Fifth, the amendments limited federal candidates' total campaign expenditures to specific amounts.³⁵ Finally, the amendments created the Federal Election Commission (FEC) which implemented the rules necessary for public financing of future presidential elections.³⁶

B. *Judicial Reaction to Campaign Finance Reform Legislation*

1. *Buckley v. Valeo*

Before such federal reforms could take full effect and attain their stated purposes, they were challenged by numerous critics representing a wide range of political ideologies.³⁷ All of the critics (who included a presidential candidate, an incumbent United States Senator, a PAC, various state parties and the New York Civil Liberties Union) sought to maintain unrestricted financing or to keep governmental interference to a minimum.³⁸ These critics of reform legislation argued that legislatively imposed restrictions on campaign contributions were violative of the constitutional guarantees of free speech and association.³⁹ Similar

with respect to any election for Federal office which, in the aggregate, exceed \$5,000." *Id.*

32. *Id.* A total contributory limit on PACs is often proposed as a potential reform measure to curb current PAC dominance of the electoral financing process. *See also* Ewing, *supra* note 3, at 402.

33. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 101, 88 Stat. 1263, 1265 (1974). Section 101(e)(1) provided that "[n]o person may make any expenditure (other than an expenditure made by or on behalf of a candidate . . .) relative to a clearly identified candidate . . . which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds \$1,000." *Id.*

34. *See* Ewing, *supra* note 3, at 389-90.

35. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 101, 88 Stat. 1263, 1264 (1974). Section 101(c)(1)(A)-(E) sets maximum spending limits in all general and primary elections for President, Senator and Representative. *Id.*

36. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, § 310, 88 Stat. 1263, 1280 (1974); *see also* N. POLSBY, *supra* note 1, at 37-39.

37. *See* N. POLSBY, *supra* note 1, at 38-39.

38. F. SORAUF, *supra* note 4, at 333 (notable among reform challenges were Conservative (Party) Senator James Buckley, liberal ex-Senator Eugene McCarthy and the New York Civil Liberties Union); *see also* Ewing, *supra* note 3, at 391-92. Ewing explains that the arguments propounded by the critics of the reform measures were not accepted by the court of appeals which had validated the congressional enactments. *Id.*

39. *See* *Buckley v. Valeo*, 424 U.S. 1, 11 (1976) (per curiam). The first amendment provides that "Congress shall make no law . . . abridging the free-

arguments were developed with regard to regulations which set the maximum amount candidates or individuals could spend during a campaign.⁴⁰ The United States Supreme Court, by agreeing in part with these objections, dramatically altered the effect of campaign finance reform on the electoral process.⁴¹

In *Buckley v. Valeo*,⁴² the Court accepted some of the enacted reforms as a permissible use of legislative authority, yet objected to many of the amendment's critical provisions because they infringed upon the rights of free speech and association.⁴³ Specifically, the Court held it permissible for Congress to limit the maximum amount an individual could donate to a particular candidate and also the total amount the individual could contribute per year.⁴⁴ The *Buckley* decision recognized that these regulations served the important state interest of protecting the electoral process from corruption and the undue influence of large contributors over elected officials whom they supported.⁴⁵ Moreover, the Court deemed a regulation of contributions to be a minimal infringement on individual freedoms of speech and association.⁴⁶ The

dom of speech . . . or the right of the people peaceably to assemble" U.S. CONST. amend. I.

40. See F. SORAUF, *supra* note 4, at 333; see also Ewing, *supra* note 3, at 392.

41. See N. POLSBY, *supra* note 1, at 36-39.

42. 424 U.S. 1 (1976) (per curiam).

43. *Id.* at 43-44.

44. *Id.* at 35, 38.

45. *Id.* at 26-27. Recognizing the important state interests which contributory limits served, the Court stated:

It is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the \$1000 contribution limitation. Under a system of private financing of elections, a [non-wealthy] candidate . . . must depend on financial contributions from others . . . to conduct a successful campaign. . . . To the extent that large contributions are given to secure political *quid pro quo*'s from current and potential office holders, the integrity of our system of representative democracy is undermined. Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one.

Id.

For an additional judicial recognition of the governmental interest in preventing corruption or the appearance of corruption in the electoral process, see *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 788-89 & n.26 (1978).

46. *Buckley*, 424 U.S. at 28-29. The Court, noting that such limitations do not exclude other methods of political participation by individuals in the campaigns of candidates whom they support, explained:

The Act's \$1,000 contribution limitation focuses precisely on the problem of large campaign contributions—the narrow aspect of political association where the actuality and potential for corruption have been identified—while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources. Signifi-

Court similarly upheld regulations mandating the reporting of campaign contributions, again citing the governmental interest in freeing the electoral system from corruption and the minimal infringement on free speech and association.⁴⁷

Although the Court accepted the validity of regulations limiting an individual's contributions, it invalidated reform provisions aimed at curbing expenditures by candidates or individuals wholly independent of official campaigns.⁴⁸ The Court found that a candidate had a constitutional right to spend any amount of money in his attempt to get elected, be it his own or that which was donated to his campaign by others.⁴⁹ The *Buckley* Court viewed any limits on candidate spending as a severe restraint on both the quality and the quantity of a candidate's right to freedom of speech, and it found that no legitimate governmental interest existed to justify such a restriction.⁵⁰ The Court stated that

cantly, the Act's contribution limitations in themselves do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties.

. . . [T]he weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon First Amendment freedoms caused by the \$1,000 contribution ceiling.

Id. (footnote omitted).

47. *Id.* at 66-68. The Court did note, however, that such provisions would not be applicable for minor parties who could show that disclosures under the Act would subject their donors to recriminations from the government or private parties. *Id.* at 68-72.

48. *Id.* at 58-59.

49. *Id.* at 54-58.

50. *Id.* at 55-57. The Court, expressly distinguishing between regulating contributions, which served a substantial governmental interest, and regulating expenditures, which could not be similarly justified, stated:

No governmental interest that has been suggested is sufficient to justify the restriction on the quantity of political expression imposed by . . . campaign expenditure limitations. The major evil associated with rapidly increasing campaign expenditures is the danger of candidate dependence on large contributions. The interest in alleviating the corrupting influence of large contributions is served by the Act's contribution limitations and disclosure provisions

The interest in equalizing the financial resources of candidates competing for federal office is no more convincing a justification for restricting the scope of federal election campaigns. . . . There is nothing invidious, improper, or unhealthy in permitting such funds to be spent to carry the candidate's message to the electorate. Moreover, the equalization of permissible campaign expenditures might serve not to equalize the opportunities of all candidates but to handicap a candidate who lacked substantial name recognition or exposure of his views before the start of the campaign.

. . . In any event, the mere growth in the cost of federal election campaigns in and of itself provides no basis for governmental restrictions on the quantity of campaign spending and the resulting limitation on the scope of federal campaigns. The First Amendment denies government the power to determine that spending to promote one's polit-

the governmental interest served by campaign expenditure ceilings was the reduction of political campaign costs.⁵¹ Such an interest, however, provided no basis for the restrictions because, according to the Court, the government is not permitted either to define the scope of campaigns or delimit their expenditure levels.⁵² The Court stated that the first amendment "denies government the power to determine that spending to promote one's political views is wasteful, excessive or unwise."⁵³ The Court concluded that the limitation on individual and PAC contributions would adequately safeguard electoral integrity; therefore, further restrictions on expenditures were unnecessary and would not justify an invasion of free speech interests.⁵⁴

The *Buckley* decision also invalidated provisions restricting independent spending by individuals on behalf of candidates as violative of first amendment guarantees.⁵⁵ The Court found that the governmental interest in preventing corruption, or the appearance thereof, did not justify restrictions on independent spending.⁵⁶ Rejecting the argument that independent spending could circumvent the interests served by the individual contribution limits already upheld, the Court found that truly independent spending would be of limited assistance to a candidate's campaign.⁵⁷ Thus, unlike unregulated contributions, independent ex-

ical 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.

Id. (citations omitted).

51. *Id.* at 57.

52. *Id.*

53. *Id.*

54. *Id.* The Court noted, however, that if public funds were accepted for a campaign, expenditure limits would be valid as a right freely relinquished by candidates in exchange for a share of public money. *Id.* at 57 n.65.

55. *Id.* at 51.

56. *Id.* at 45.

57. *Id.* at 46-48. The Court, attempting to minimize the threat posed by unlimited independent expenditures on the integrity of the electoral process, claimed:

[T]he independent advocacy restricted by the provision does not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions. . . . [U]nlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent . . . undermines the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate

While the independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process, it heavily burdens core First Amendment expression. . . . Advocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First

penditures did not present the potential for improper quid pro quos by benefited candidates.⁵⁸ Contributions in the guise of "independent" spending, however, were still subject to the contributory limits and the penalties included for any violations of those limits.⁵⁹ In addition to finding that no substantial governmental interest was adequately served, the Court also noted that a limit on independent expenditures would burden first amendment expression more directly than contributory limitations.⁶⁰

The *Buckley* decision's detrimental effects on the electoral process were immediately discernible.⁶¹ The decision invalidated expenditure limits for all campaigns, except those publicly financed; thus, campaign costs continued to spiral without any restraint.⁶² As the Court permitted, numerous candidates have spent millions from personal resources to finance their own election campaigns, while others have been assisted by independent outside supporters who spent on behalf of particularly favored, or disfavored, candidates.⁶³

Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation.

. . . [T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment . . .

Id. at 46-49 (footnotes omitted).

58. *Id.* at 46-47.

59. *Id.* While invalidating the broad limitation on independent expenditures, the decision implied that a more specific restriction designed to prevent the circumvention of the contributory limits through supposed "independent" spending would pass constitutional muster. *Id.*

60. *See id.* at 47-48.

61. *See Ewing, supra* note 3, at 394-96. Ewing asserts that after the *Buckley* decision campaign costs escalated and the influence of special interest PACs increased. *Id.* Ewing shows that, on average, a House of Representatives campaign cost \$50,000 in 1974, \$150,000 in 1980 and increased another 48% in 1982. *Id.* at 394. Moreover, PAC donations amounted to 26% of all monies raised by successful congressional candidates in 1976, 28% in 1978 and 35% by 1982. *Id.* at 396.

62. *See W. CROTTY, supra* note 24, at 118. Crotty details the rising growth of expenditures in all elections after the Supreme Court invalidated important legislative reforms: from \$140 million in 1952, to \$200 million in 1964, to \$425 million in 1972 (just prior to the major reform enactments), to \$500 million in 1976, and exploding to \$1.2 billion in 1980. *Id.*

States that had adopted expenditure limits for all campaigns (such as New Jersey) found such restrictions nullified, except in those elections for which public financing had been adopted. *See Common Cause v. New Jersey Election Law Enforcement Comm'n*, 155 N.J. Super. 241, 382 A.2d 681 (App. Div. 1978).

63. *See W. CROTTY, supra* note 24, at 123-32. Crotty notes that Senator John Heinz (Republican, Pennsylvania) lent his 1976 senatorial campaign \$2.6 million from personal assets, won the election and joined a United States Senate that was comprised, in part, of 40 other millionaires. *Id.* at 124.

Crotty also notes the increasing amount of independent spending which began to proliferate in the electoral process after the *Buckley* decision. *Id.* at 126-27, 129-32. A single PAC, the National Congressional Club, spent \$7.8 million independently in 1980 to support Ronald Reagan and "New Right" senatorial

The *Buckley* decision's most important effect, however, is its widening of PAC influence within the electoral process.⁶⁴ Since *Buckley*, PACs have become the primary source of contributions to campaigns.⁶⁵ Candidates, in need of large sums of money to meet escalating campaign costs, look first to PACs rather than to individual contributors.⁶⁶ It is far easier for candidates to find PACs sympathetic to their ideological causes, or those simply seeking political leverage, who are willing to donate.⁶⁷ Moreover, because campaign finance reform did not place a total contributory limit on PACs as had been placed on individuals, PACs are permitted to donate to a greater number of candidates.⁶⁸ Thus, although reforms attempted to give individuals more influence in the financing process, such influence was usurped by PACs in the aftermath

candidates. *Id.* at 126-28. In 1982, the National Conservative Political Action Committee, another ideological PAC, spent \$3.2 million on behalf of "New Right" congressional candidates and/or against liberal incumbents. *Id.* at 129-31; see also F. SORAUF, *supra* note 4, at 322-23 (independent spending in 1980 presidential election totaled \$13.4 million, \$12 million of which was expended on behalf of Ronald Reagan).

64. See Ewing, *supra* note 3, at 395 (PACs' numbers rose from 1146 in 1976 to 4567 in 1987, 11 years after *Buckley*).

65. *Id.* at 396 ("[I]n 1986 . . . it was estimated that nearly half the Representatives got 50% or more of their money from PACs."). But see W. CROTTY, *supra* note 24, at 134 ("The chief source of funds remains individual contributions, although these have been in a steady decline since 1974, falling from about three-fourths of the total to something over one-half by 1980.").

66. See W. CROTTY, *supra* note 24, at 133. Crotty believes that the relative ease in which candidates can finance their campaigns through willing PACs make them far more attractive than soliciting individual donors, stating:

It is much easier for a candidate to court one of a series of wealthy PACs to acquire the money he or she needs to run an effective race. As the costs of campaigns continue to escalate, there is an attractiveness and economy to fund raising through direct appeals to sympathetic PACs. The PACs, in effect, help minimize one of the most time-consuming and unpleasant aspects of campaigning, raising the money necessary to run for elective office.

Id.

67. *Id.* Though PACs may ease the burdens on candidates in financing their campaigns, incumbent candidates who depend on PACs may become insulated from the constituents whom they are supposed to represent. See *id.* For a description of the increasingly symbiotic relationship between PACs and incumbent officeholders in the 1984 elections, see Jacob, *The Congressional Elections, in THE ELECTION OF 1984* 118-19 (M. Pomper ed. 1985).

68. W. CROTTY, *supra* note 24, at 133. Crotty points out that the legislation created an inherent incentive for candidates to finance their campaigns through PAC donations rather than seeking individual contributions, noting:

Another factor funneling money through the PACs into elections has been the \$1,000 limit on individual contributions to federal candidates. An individual is allowed to give \$5,000 to a multicandidate political committee (such as a PAC), and it appears that many wealthy donors prefer to take this route. . . . Whether it cuts down on the political access of the wealthy and their impact on the political system is less likely.

Id.

of the *Buckley* decision.⁶⁹

2. Federal Election Commission v. National Conservative Political Action Committee

The number of PACs contributing to campaigns exploded in *Buckley's* wake, inexorably changing the political environment.⁷⁰ Due to the PACs' expanding number and growing influence as a result of candidate dependence, the Supreme Court had to decide a number of cases after *Buckley* which served to define the relationship of PACs to the electoral process.⁷¹ Because PACs were relative newcomers to the electoral envi-

69. For a discussion of the increasing number of PACs and their growing dominance of the campaign finance process, see *supra* notes 64-68 and accompanying text. See also *infra* notes 122-23 & 139-44 and accompanying text.

70. For a discussion of the tremendous numerical growth of PACs in the wake of the United States Supreme Court decisions frustrating the purposes of campaign finance reform, see Ewing, *supra* note 3, at 395 (noting number of PACs increased from 1146 in 1976 to 4567 in 1987).

71. For example, in *California Medical Association v. Federal Election Commission*, 453 U.S. 182 (1981), the PAC of the California Medical Association challenged a requirement of the 1976 Amendments to the Federal Election Campaign Act which limited individual contributions to a PAC to \$5000 per person per year. *Id.* at 195. The amendments also subjected PACs to criminal penalties if the PAC knowingly accepted donations which exceeded an individual's limit. *Id.* at 185. The Court held that limits on individual contributions to PACs did not violate the first amendment speech and association guarantees. *Id.* at 197-99. Writing for a plurality, Justice Marshall stated:

If the First Amendment rights of a contributor are not infringed by limitations in the amount he may contribute to a campaign organization which advocates the views and candidacy of a particular candidate, the rights of a contributor are similarly not impaired by limits in the amount he may give to a multicandidate political committee, such as CALPAC, which advocates the views and candidacies of a number of candidates.

Id. at 197.

The Court found that the limit served the substantial governmental interest of maintaining the integrity of the electoral process by keeping it free of corruption, or the appearance thereof, so as to justify the minimal infringement upon individual rights exerted by the regulations. *Id.* at 197-99. Justice Marshall wrote:

We also disagree . . . that the contribution restriction . . . does not further the governmental interest in preventing the actual or apparent corruption of the political process. Congress enacted [the statutory restriction] to prevent circumvention of the very limitations on contributions that this Court upheld in *Buckley*. . . . If . . . Congress cannot prohibit individual and unincorporated associations from making unlimited contributions to multicandidate political committees . . . then both these contribution limitations could be easily evaded. . . . [A]n individual or association seeking to evade the \$1000 limit on contributions to candidates could do so by channelling funds through a multicandidate political committee. Similarly, individuals could evade the \$25,000 limit on aggregate annual contributions to candidates if they were allowed to give unlimited sums to multicandidate political committees, since such committees are not limited in the aggregate amount they may contribute in any year.

ronment, the Court's decisions further clarified the constitutional limitations on legislative regulation of PAC contributions and expenditures.⁷²

In *Federal Election Commission v. National Conservative Political Action Committee*,⁷³ the Court again rejected regulations limiting the independent expenditures of PACs on behalf of supported candidates.⁷⁴ The National Conservative Political Action Committee (NCPAC), along with other ideologically conservative PACs, had announced its intention, well prior to the presidential election of 1984, to further the reelection effort of President Ronald Reagan by independently spending large amounts on his behalf.⁷⁵ Such independent spending by the PACs would have

Id. at 197-98 (footnotes omitted).

Justice Marshall also noted that individuals were still free to independently spend unlimited sums to further the candidacies of whomever they desired to support. *Id.* at 195. Thus, the contributory limits on PACs did not violate first amendment prerogatives.

Similarly, the Court in *Federal Election Commission v. National Right to Work Committee*, limited individual contributions to PACs by strictly delimiting those individuals from whom a corporate PAC could solicit contributions. 459 U.S. 197, 209-10 (1982). The committee challenged a provision in the 1971 Federal Campaign Act which stated that a non-profit corporate PAC without capital stock could only solicit corporate stockholders and personnel for contributions. *Id.* at 204-06. The PAC claimed the statute violated the guarantee of freedom of association expounded in the first amendment and argued that the regulation be interpreted "elastically" to avoid impermissible interference with the constitutional right of association. *Id.* at 206-07.

In upholding the regulation, the Court stated that the restriction narrowly protected not only the governmental interest in preserving electoral integrity, but also the interests of potential donors to the PAC who might be unaware of the true purposes to which their contributions would be put. *Id.* at 207-08. Writing for the majority, Justice (presently Chief Justice) Rehnquist explained:

The first purpose . . . is to ensure that substantial aggregations of wealth amassed by . . . the corporate form . . . should not be converted into political "war chests" which could be used to incur political debts from legislators who are aided by the contributions. The second purpose of the provisions . . . is to protect the individuals who have paid money into a corporation or union for purposes other than the support of candidates from having the money used to support political candidates to whom they may be opposed.

We agree . . . that these purposes are sufficient to justify the regulation [We note] the importance of preventing both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption. . . .

We are . . . convinced that the statutory prohibitions and exceptions . . . considered are sufficiently tailored to these purposes to avoid undue restriction on the associational interest asserted

Id. (citation omitted).

72. See Ewing, *supra* note 3, at 387-88 (1971 Federal Election Campaign Act first legitimized role for PACs in electoral process).

73. 470 U.S. 480 (1985).

74. *Id.* at 500-01.

75. *Id.* at 483. PAC independent spending played a significant role in President Reagan's successful 1980 election campaign; Reagan benefitted from \$12 million in independent expenditures on his behalf in 1980, well over 90% of the

been in direct violation of the Presidential Election Campaign Fund Act, which expressly limited the independent spending of PACs on behalf of any particular candidate to \$1000.⁷⁶

The Court found that the regulation limiting PAC independent expenditures violated the first amendment.⁷⁷ In so doing, the majority noted that *Buckley* recognized a parallel right of individuals to spend independently, without limit, on behalf of favored candidates as part of the free speech guarantee.⁷⁸ The Court rejected the FEC argument that the absence of limits on PAC independent spending served as a corruptive influence upon the electoral process by minimizing the potential detrimental effects such independent spending might have on electoral integrity.⁷⁹ The Court stated that such an inconsequential threat to the

total amount of independent spending in the presidential election of that year. See F. SORAUF, *supra* note 4, at 322-23. The "independent" nature of such spending on Reagan's behalf was unsuccessfully challenged by the FEC, Common Cause and the Carter-Mondale Presidential Committee, who claimed that many independent spenders had close associations with earlier Reagan presidential efforts. See R. WATSON & N. THOMAS, *supra* note 1, at 87.

The spending, though on Reagan's behalf, was not made at the request of or in coordination with the official Reagan campaign. *National Conservative PAC*, 470 U.S. at 490. Any coordination with the Reagan campaign concerning such spending by NCPAC would subject the committee to the contributory limits validated in *Buckley v. Valeo*. 424 U.S. 1, 47 (1976) (per curiam).

76. *National Conservative PAC*, 470 U.S. at 491. The Court quoted the specific provisions of the Act as follows:

(1) . . . it shall be unlawful for any political committee which is not an authorized committee with respect to the eligible candidates of a political party for President and Vice President in a presidential election knowingly and willfully to incur expenditures to further the election of such candidates, which would constitute qualified campaign expenses if incurred by an authorized committee of such candidates, in an aggregate amount exceeding \$1,000.

Id. (quoting 26 U.S.C. § 9012(f) (1982)).

77. *Id.* at 501.

78. *Id.* at 494-96. Recounting the holding of *Buckley*, Justice Rehnquist elaborated:

We held in *Buckley* . . . that preventing corruption or the appearance of corruption are the only legitimate and compelling government interests . . . identified for restricting campaign finances. In *Buckley*, we struck down the FECA's limitation on individuals' independent expenditures because we found no tendency in such expenditures, uncoordinated with the candidate or his campaign, to corrupt or to give the appearance of corruption. For similar reasons, we also find . . . [the] limitation on independent expenditures by political committees to be constitutionally infirm.

Id. at 496-97.

79. *Id.* at 497-98. Rejecting the FEC argument that the restriction furthered the government's interest in electoral integrity, Justice Rehnquist continued:

It is contended that, because the PACs may by the breadth of their organizations spend larger amounts than the individuals in *Buckley*, the potential for corruption is greater. But precisely what the "corruption" may consist of we are never told with assurance. The fact that candi-

electoral process could not justify the infringement on free speech which a limitation of independent expenditures would impose on PACs and their contributors.⁸⁰

The *National Conservative PAC* decision fortified the enormous influence of PACs on the electoral process by permitting an unrestricted use of their growing resources. A PAC, though limited to \$5000 in donations to a particular candidate, could spend any amount it desired independently for that candidate, even if the candidate had accepted public financing.⁸¹

C. Campaign Reform Law at the State Level

1. New Jersey Campaign Reform Law

The federal government was not alone in enacting campaign reform legislation. By 1974, many states, including New Jersey, had already enacted some variant of campaign finance reform law.⁸² Approximately one-half of the state legislatures have now adopted contributory restrictions for state campaigns.⁸³ Moreover, after the revelations of Watergate, thirty states attempted to limit expenditures in state campaigns; after the *Buckley* decision, however, such statutes were invalidated.⁸⁴

New Jersey's attempt at campaign reform is illustrative of such state attempts. In 1973, New Jersey adopted the Campaign Contributions and Expenditures Reporting Act (CCERA).⁸⁵ As originally adopted,

dates and elected officials may alter or reaffirm their own positions on issues in response to political messages paid for by the PACs can hardly be called corruption, for one of the essential features of democracy is the presentation to the electorate of varying points of view.

Id.

80. *Id.* Downplaying the potential threat which uncurbed independent spending may engender, Justice Rehnquist concluded that whatever risk to electoral integrity existed was much too speculative to warrant the infringement upon individual free speech and association, explaining:

It is of course hypothetically possible here, as in the case of the independent expenditures forbidden in *Buckley*, that candidates may take notice of and reward those responsible for PAC expenditures by giving official favors to the latter in exchange for the supporting messages. But here, as in *Buckley*, the absence of prearrangement and coordination undermines the value of the expenditure to the candidate, and thereby alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate. On this record, such an exchange of political favors for uncoordinated expenditures remains a hypothetical possibility and nothing more.

Id. at 498.

81. For a discussion of the holding and rationale in *National Conservative PAC*, see *supra* notes 73-80 and accompanying text.

82. See F. SORAUF, *supra* note 4, at 336-37.

83. *Id.* All but North Dakota mandated disclosure of campaign donations and spending. *Id.* at 336.

84. *Id.*

85. N.J. STAT. ANN. § 19:44A (West 1989).

CCERA required the reporting of all campaign expenditures and contributors and set maximum limits upon expenditures by candidates in all state campaigns.⁸⁶ During the following year additional reforms were implemented, including a public financing scheme for the gubernatorial election.⁸⁷

The *Buckley* decision, which nullified much of the federal reform enactments, had similar implications for state legislation. In response to *Buckley*, the New Jersey legislature amended the CCERA to impose expenditure limits only on those gubernatorial candidates who had accepted money under the state's public financing scheme.⁸⁸ Such gubernatorial expenditure limits were at issue in *Friends of Governor Kean v. New Jersey Election Law Enforcement Commission*.⁸⁹

2. Friends of Governor Kean v. New Jersey Election Law Enforcement Commission

Friends of Kean arose during the 1985 election, in which the New Jersey electorate would select a governor and all assembly seats.⁹⁰ New Jersey had previously adopted a public financing scheme for its gubernatorial campaign with expenditure limits.⁹¹ To ensure that these spending limits were followed, the legislature created the New Jersey Election Law Enforcement Commission (NJELEC).⁹² Concomitant with the gubernatorial race, however, were legislative races not publicly financed, and thus not limited in the amounts which could be spent.⁹³ In such races, independent advertising by legislative candidates often linked their electoral efforts with that of their party's gubernatorial candidate.⁹⁴

In *Buckley* and *National Conservative PAC*, the United States Supreme Court held that limitations upon independent expenditures during campaigns by either individuals or PACs are violative of the constitutional

86. See *id.* §§ 19:44A-2, -7, -8.

87. See *id.* § 19:44A-27.

88. See *id.* §§ 19:44A-2, -3, -29.

89. 114 N.J. 33, 552 A.2d 612 (1989).

90. *Id.* at 36, 552 A.2d at 613. Thomas Kean, the incumbent Governor, was heavily favored to win reelection, as his opponent, Peter Shapiro, a surprise winner of the Democratic primary, was not widely known throughout the state.

91. *Id.* at 35, 552 A.2d at 613. By accepting public funds, a gubernatorial candidate limits the amount he or she may spend during the campaign. *Id.* For a discussion of the New Jersey legislation regarding campaign financing, see *supra* notes 85-88 and accompanying text.

92. *Friends of Kean*, 114 N.J. at 35, 552 A.2d at 613.

93. See Campaign Contributions and Expenditures Reporting Act, N.J. STAT. ANN. § 19:44A-2 (West 1989). Although the New Jersey legislature had originally imposed expenditure limits on all New Jersey elections, such limitations for non-publicly financed elections were repealed after the United States Supreme Court's decision in *Buckley*. *Id.* § 19:44A-3.

94. See *Friends of Kean*, 114 N.J. at 35, 552 A.2d at 613.

guarantees of free speech and association.⁹⁵ In *Friends of Kean*, the New Jersey Supreme Court similarly stated that any application by NJELEC of independent spending by an assembly candidate toward the expenditure limits of a publicly financed gubernatorial candidate infringed upon constitutional guarantees.⁹⁶ Although holding that the legislature did not grant the NJELEC the expressed or implied authority to allocate such spending,⁹⁷ the court explained that such authority, if granted, would violate the first amendment in light of *Buckley* and *National Conservative PAC*.⁹⁸

In a 1981 advisory opinion, NJELEC had stated that advertising expenditures by assembly candidates benefitting a gubernatorial candidate would circumvent the expenditure limits of the gubernatorial race.⁹⁹ Therefore, any money spent by legislative candidates that assisted a gubernatorial candidate would be allocated by NJELEC to the gubernatorial candidate and applied to that candidate's expenditure limits, even when the gubernatorial campaign had not authorized, or consented to, the independent spending on its behalf.¹⁰⁰ In 1985, Governor Kean's campaign and many Republican assembly candidates asked NJELEC to

95. For a discussion of *Buckley* and *National Conservative PAC*, see *supra* notes 42-69 & 73-81, respectively, and accompanying text.

96. *Friends of Kean*, 114 N.J. at 39-40, 552 A.2d at 615. The New Jersey Supreme Court recognized that the facts in the case before it were perhaps distinguishable from the decisions of the United States Supreme Court in *Buckley* and *National Conservative PAC*, yet the court concluded that the constitutional concerns expressed therein similarly necessitated the invalidation of the proposed NJELEC rule. *Id.*

97. *Id.* at 39, 552 A.2d at 615. Because the legislature had not intended to grant NJELEC this regulatory power, the New Jersey Supreme Court found that the agency could not promulgate a rule which would implement such a regulation in its overseeing of gubernatorial elections. *See id.* To imply such a power in the authorizing statute would not effectuate the probable intent of the legislators, who themselves could be adversely affected in their own election strategies. *See id.*

98. *Id.* at 39-40, 552 A.2d at 615.

99. *Id.* at 35-36, 552 A.2d at 613. The New Jersey Supreme Court described the content of the NJELEC advisory opinion as follows:

[N]ELEC decided to allocate to the gubernatorial candidate's expenditure limit a percentage of advertising expenditures made by a non-gubernatorial candidate of the same party that in certain ways mentioned or advocated the election of the gubernatorial candidate. . . . [S]ums of money spent by non-gubernatorial candidates—apparently even without a showing of prior knowledge, consent, authorization or control by the gubernatorial candidates—would be allocated to the gubernatorial candidates and charged against their expenditure limits as if the gubernatorial candidates spent the money themselves. The effect . . . would be to reduce, by that amount, the sum permitted to be spent on the gubernatorial candidate's own campaign.

Id.

100. *Id.* Although the advisory opinion was first issued in 1981 by NJELEC and reaffirmed by the commission in 1985, no rule had been promulgated implementing this allocative power in NJELEC. *See id.* at 36, 37 n.1, 552 A.2d at 613, 614 n.1.

reverse its 1981 advisory opinion, but NJELEC reaffirmed its prior decision.¹⁰¹ In response, the Kean campaign and the Republican candidates filed suit challenging NJELEC's interpretation of its own authority in policing the expenditure limits.¹⁰²

On appeal from the Appellate Division of the Superior Court, the New Jersey Supreme Court faced two primary issues. First, it addressed whether NJELEC possessed the legislatively granted authority to allocate independent spending to the Kean campaign and apply it to the expenditure limits set for the publicly financed gubernatorial race.¹⁰³ Second, assuming that such authority had been delegated to NJELEC, the court then examined whether the proposed regulation would be violative of the constitutional rights of assembly candidates to free speech and association.¹⁰⁴

The court held that the legislature did not intend to delegate such allocative power to NJELEC when such independent spending was neither coordinated nor authorized by the gubernatorial campaign.¹⁰⁵

101. *Id.* at 36, 552 A.2d at 613. With a popular Republican incumbent seeking reelection, it was advantageous for Republican assembly candidates to link their efforts with Kean's own at the top of the ticket.

102. *Id.* The Appellate Division of the Superior Court of New Jersey rejected NJELEC's interpretation of its authority, finding the allocation of independent expenditures by an assembly candidate on behalf of a gubernatorial campaign was a violation of NJELEC's own regulations. *Friends of Governor Kean v. New Jersey Election Enforcement Comm'n*, 203 N.J. Super. 523, 534, 497 A.2d 555, 561 (App. Div. 1985). The court stated that a NJELEC advisory opinion could not override regulations already duly adopted. *Id.* The New Jersey Administrative Code provides: "[I]ndependent expenditures shall not be deemed to be expenditures within the meaning of N.J.S.A. 19:44A-7 [which sets expenditure limits on the public findings of gubernatorial campaigns]. . . ." N.J. ADMIN. CODE tit. 19, § 25-15.28 (1986).

Appealing to the New Jersey Supreme Court, NJELEC argued that the court should decide the issue as if a regulation allowing allocative powers had been adopted, thereby ascertaining whether the legislature had delegated to NJELEC the power to allocate independent spending by an assembly candidate to a gubernatorial campaign's official spending total. *Friends of Kean*, 114 N.J. at 37 n.1, 552 A.2d at 614 n.1. The proposed regulation of NJELEC reads, in pertinent part, as follows:

[A]n expenditure on behalf of a gubernatorial candidate by another candidate of the same party running in the same election shall be deemed to be an expenditure within the meaning of N.J.S.A. 19:44A-7 [the section imposing campaign expenditure limits]. If the expenditure is on behalf of both the candidate making the expenditure and the gubernatorial candidate, it shall be allocated

Id.

103. *Friends of Kean*, 114 N.J. at 36-37, 552 A.2d at 613.

104. *Id.* at 37, 552 A.2d at 613-14.

105. *Id.* at 39, 552 A.2d at 615. The court rejected NJELEC's argument that the legislature intended to authorize regulatory powers over the independent spending of gubernatorial candidates which benefited a gubernatorial campaign in order to preserve the integrity of expenditure limits in publicly financed elections. *Id.* at 38, 552 A.2d at 614. The court did note, however, that some allocative power in NJELEC was authorized when the spending of assembly can-

The court found no legislative intent to give NJELEC the power to allocate truly independent spending by assembly candidates to the gubernatorial campaign and to apply such spending to the campaign's expenditure limits.¹⁰⁶ It did recognize, however, that the legislature created NJELEC to ascertain that mandated expenditure limits in the publicly financed gubernatorial race were observed.¹⁰⁷ Such limits, the court observed, could be evaded through coordinated strategies between assembly and gubernatorial candidates designed to disguise spending by the gubernatorial campaign through the spending of assembly candidates who were not bound to any spending limits.¹⁰⁸ Without NJELEC policing the financing of gubernatorial campaigns, such circumvention would defeat the purposes of expenditure limits.¹⁰⁹

While recognizing this legislative purpose, the court rejected the argument that the allocative powers of NJELEC extended to the independent spending by assembly candidates on behalf of Governor Kean when the Kean campaign had neither authorized nor consented to the independent spending.¹¹⁰ The court opined that the experience of legislators would discourage this grant of allocative authority to NJELEC.¹¹¹ Implicitly describing the long tradition of so-called "coat-tail" and "party line" appeals in campaigns, the court stated that legislators did not intend to prevent these appeals in their own campaigns.¹¹²

didates was coordinated with, or authorized by, the gubernatorial candidate's campaign. *Id.*

106. *Id.* at 38-39, 552 A.2d at 614-15.

107. *Id.*

108. *Id.* at 38, 552 A.2d at 614. Describing the legislature's intention when it created NJELEC, the court stated:

[NJ]ELEC contends that the regulation allocating expenditures of other candidates to the gubernatorial candidate is necessary to accomplish the legislative intent to limit gubernatorial campaign expenditures [T]he Legislature must have intended [NJ]ELEC to have the power to allocate *some* expenditures between or among candidates. Otherwise, gubernatorial candidates might circumvent the expenditure limit by conducting part of their campaigns through a non-limited candidate, thereby frustrating one of the purposes of the Act.

Id. (emphasis in original).

109. *Id.*

110. *Id.* The court stated: "[W]e cannot sanction [NJ]ELEC's course of action We do not believe that a statutory policy authorizing [NJ]ELEC to charge a *truly independent* and *uncontrolled* expenditure of another candidate against a gubernatorial candidate's account would have been enacted by the Legislature." *Id.* (emphasis in original).

111. *Id.* ("It is manifestly contrary to the expectations of legislators based on their own experience and on strong political tradition in this State.").

112. *Id.* Describing the longstanding traditional campaign appeals in New Jersey, the court elaborated:

When running for election in a year that features a gubernatorial candidate race, candidates for the Legislature of this State almost invariably support that gubernatorial candidate in their speeches, their brochures, their billboards, on radio and television, and in practically every other kind of advertisement. Whether out of self-interest, mere

If the power to allocate assembly candidate independent spending to the Governor's campaign was intended to be wielded by NJELEC, then legislative candidates would have to refrain from party line appeals in their own campaign ads or risk severely hampering the monies available to be spent by the gubernatorial candidate.¹¹³ Neither alternative, the court explained, could realistically effectuate the legislature's intent.¹¹⁴ To accept the argument of NJELEC would imply an intent to the legislature at odds with longstanding traditional electoral appeals and the political environment in which state elections were held.¹¹⁵

Moreover, it noted that even if such authorization had been intended by the legislature, such regulation would most likely violate the constitutional rights of free speech and association of assembly candidates to independently choose how to spend their funds.¹¹⁶ Noting the decisions of the United States Supreme Court in *Buckley* and *National Conservative PAC*, the court concluded that the proposed regulation would likely violate the constitutional right of legislative candidates to independently spend any amount on behalf of their supported candidate, even when the supported candidate's own expenditures are limited by public financing restrictions.¹¹⁷ The court found the proposed

habit, loyalty to the party, or political conviction, they all run, as a team, alongside their party's gubernatorial candidate, as a group committed to shared policies and to shared power.

Id.

Though traditional in campaigns, such "party line" and "coat-tail" appeals have been less effective in recent elections. See W. CROTTY, *supra* note 24, at 210-14, 224-26. For an analysis of the decline of party identification in the electorate which has decreased the effectiveness of such appeals, see generally Burnham, *American Politics in the 1970s: Beyond Party?*, in *THE AMERICAN PARTY SYSTEMS* 308 (W. Chambers & W. Burnham eds. 2d ed. 1975).

113. *Friends of Kean*, 114 N.J. at 38-39, 552 A.2d at 614. The court, recognizing that such regulations would affect the manner in which the legislators conducted their own campaigns, noted:

The legislators who voted for these laws not only know this tradition, they have actually been part of it. The idea that the advertisement linking a legislator's campaign to the head of the ticket would reduce the amount the gubernatorial candidate could spend would be regarded as an intolerable reading of the statute.

Id.

114. *Id.* at 39, 552 A.2d at 614-15. The court, noting the adverse effect such a regulation would engender in the manner in which either gubernatorial or assembly candidates would conduct their campaigns, concluded: "[I]f [NJ]ELEC's allocation regulation were upheld, this public-spirited law designed to finance the gubernatorial candidate's campaign could either cripple it or seriously alter the campaigns of legislative running-mates. The presumption of validity of the agency's allocation regulation dissolves when immersed in this political environment." *Id.*

115. *Id.*

116. *Id.* at 39-40, 552 A.2d at 615.

117. For a further discussion of the holdings and rationales of the *Buckley* and *National Conservative PAC* decisions, see *supra* notes 42-69 & 73-81, respectively, and accompanying text.

NJELEC rule similar to those statutes previously struck down by the United States Supreme Court which attempted to restrict the amount an individual or PAC could independently spend on behalf of their preferred candidate, even where the official expenditures of the candidate were limited by the strictures of spending limits placed on publicly financed campaigns.¹¹⁸

In so holding, the court expressly stated that NJELEC could exercise allocative power, but circumscribed its use. Such power could be wielded in cases where it was established that spending by legislative candidates on behalf of a gubernatorial candidate was not truly independent, but rather authorized or consented to by the gubernatorial campaign.¹¹⁹ Such regulatory measures by NJELEC, the court concluded, would effectuate the intent of the legislature and pass constitutional muster in light of previous United States Supreme Court decisions.¹²⁰

IV. ANALYSIS

In *Friends of Kean*, the Supreme Court of New Jersey followed the constitutional standards set by the United States Supreme Court in the *Buckley* and *National Conservative PAC* decisions by finding any restriction

118. *Friends of Kean*, 114 N.J. at 40, 552 A.2d at 615. The court compared previous United States Supreme Court decisions with the issue it faced:

Both holdings [in *Buckley* and *National Conservative PAC*] applied to independent expenditures made on behalf of any presidential candidate whose campaign is publicly financed and whose expenditures are statutorily limited to the amount of such financing. Although distinguishable on various grounds, the reasoning and the facts of those cases point strongly to the conclusion that the *de facto* restriction imposed by [NJ] ELEC's allocation rule on truly independent expenditures by legislators to elect their gubernatorial candidate would be similarly suspect.

Id.

119. *Id.* at 39, 552 A.2d at 615 ("While [NJ]ELEC is free under the statute to allocate expenses to a gubernatorial candidate who in fact controls another candidate's expenditures, the agency cannot charge a gubernatorial candidate with another candidate's truly independent expenditures.").

Two members of the court (Justices Handler and O'Hern), while concurring in the judgment due to the need for a decision prior to election day, would not have invalidated the regulation without a more detailed record to determine whether such expenditures on behalf of the Governor were truly independent. *Id.* at 40-41, 552 A.2d at 615.

120. *Id.* at 40, 552 A.2d at 615. Delineating the commission's proper authority, the court concluded:

[NJ]ELEC remains free to cope with subterfuge arising from joint funding of gubernatorial and legislative campaigns or similar concerted campaigning. The clear avenue for regulatory action available to [NJ]ELEC appears to be one directed at expenditures that are consented to or authorized by the gubernatorial candidate or that candidate's committee or an umbrella organization. We do not believe that there are serious constitutional questions that would arise from an appropriately drafted set of regulations along those lines.

Id.

on independent spending to be an impermissible infringement on free speech which could not be justified as a protection of a significant state interest.¹²¹ Through such decisions, the judiciary has created an opportunity for PACs and other monied parties, such as the assembly candidates in the New Jersey case, to defeat many of the primary purposes of campaign reform legislation to the detriment of the electoral process as a whole. This Note submits that both campaign expenditure and independent spending limitations serve legitimate governmental interests which would justify the resulting infringement on free speech and association in their application. These governmental interests are: (1) the interest in preserving electoral integrity; and (2) the interest in preserving an electoral system responsive to its constituents.

A. *The Governmental Interest in Preserving Electoral Integrity Through Spending Limits*

In light of the detrimental effects which unrestricted expenditures have had on the entire electoral process, the contention that no significant governmental interest would be served by legislation limiting campaign expenditures and independent spending which would justify the infringement of free speech and association rights is dubious and politically naive. In *Buckley's* wake, the influence of the electorate, as individual contributors with relatively equal voices fueling the electoral process, has been stifled, while the power of well-organized, wealthy, special interest PACs, which both donate and expend money to finance campaigns or candidates, has grown predominant.¹²² As candidates and incumbent officeholders grow increasingly dependent upon PAC campaign contributions and independent spending, it is not difficult to imagine that PAC campaign money buys PAC influence when candidates become officeholders. Therefore, the conclusion that PAC money has corrupted, or could potentially corrupt, the integrity of the electoral process is plausible given the current electoral environment.¹²³ Viewed from this perspective, the preservation of electoral and governmental

121. For discussions of the United States Supreme Court decisions in *Buckley* and *National Conservative PAC* and their applicability to the New Jersey case, see *supra* notes 42-69, 73-81, 118-20 and accompanying text.

122. For a description of the explosive growth in the number of PACs and their increasing dominance in the financing of campaigns, see *supra* notes 64-68 and accompanying text. See also *infra* notes 123 & 139-44 and accompanying text.

123. See W. CROTTY, *supra* note 24, at 134. Crotty indicates that PAC donations to candidates usually go to those who eventually emerge victorious and take office, which, in turn, results in political debts to repay to those who significantly assisted their effort. *Id.*; see also Ewing, *supra* note 3, at 396 (in 1982 elections, PACs provided winners with 35% of all money raised). PACs particularly are eager to donate to federal incumbents, who are overwhelmingly reelected, in order to retain their access to those in office. See Jacob, *supra* note 67, at 118-19 (80% of all PAC money went to federal incumbents in 1984).

integrity would appear to be a primary governmental interest sufficient to justify a limitation on independent and campaign expenditures.

The significant governmental interest of preserving electoral integrity was first used by the Court in *Buckley* to uphold the constitutional validity of limitations on the amount which PACs or individuals could contribute to a particular candidate and the total amount that an individual could contribute per year.¹²⁴ Notwithstanding the recognition of such a significant governmental interest, the Court insisted upon distinguishing between campaign contributions to a candidate and expenditures made by, or independently for, a candidate.¹²⁵ Although the essential purpose of each regulation was to preserve electoral integrity, the Court maintained that to limit the former is constitutional, but to limit the latter violates the first amendment because unlimited contributions pose a threat to electoral integrity but uncurbed spending does not.¹²⁶

Perhaps such distinctions were valid for campaigns prior to the 1974 amendments and the *Buckley* decision. In pre-1974 campaigns, total spending in most campaigns, when compared to today's figures, was reasonable.¹²⁷ Moreover, PACs were relative newcomers to the political process with little influence, and independent spending was minimal.¹²⁸ Today's electoral landscape is vastly different. The cost of campaigns has skyrocketed, and candidates are increasingly dependent upon both PAC contributions and independent spending by PACs or other monied individuals or groups to augment their own campaign efforts. Given such a vastly altered electoral environment after *Buckley*, it can be asserted that: (1) limits on independent spending by PACs serve a significant governmental interest in preserving electoral integrity by reducing the potential for political quid pro quos in exchange for such spending; and (2) limits on total campaign spending serve a related governmental interest by reducing the reliance of candidates on special interest PACs to finance their costly campaigns, thereby reducing the potential for undue influence by such groups at the expense of the public interest.

1. *Governmental Interest Served by Independent Spending Limits*

The Court has claimed that independent expenditures by individu-

124. For a discussion of the United States Supreme Court's upholding of federal contributory limits, see *supra* notes 44-46 and accompanying text.

125. For an examination of the United States Supreme Court's invalidation of federal limitations upon expenditures, see *supra* notes 48-60 and accompanying text.

126. For a delineation of the distinction between contributions and expenditures made by the United States Supreme Court in *Buckley*, see *supra* notes 48-60 and accompanying text.

127. See Green, *The 'All Consuming' War Chest*, Phila. Inquirer, Sept. 17, 1989, at C2, col. 2.

128. See Ewing, *supra* note 3, at 387-88 (1971 Federal Election Campaign Act legitimized role for PACs in electoral processes).

als or PACs are likely to be ineffective and thus of no potential corruptive influence on the benefited candidate.¹²⁹ Given the exorbitant amounts independently spent in the years after *Buckley*, such an assertion has no basis in the reality of today's electoral environment.¹³⁰ Indeed, common sense suggests that such large sums are spent because of their potential effectiveness. Because candidates are increasingly relying on independent spending to bolster their official efforts, the Court's depiction of independent spending as a virtually futile gesture with no potentially harmful effect on electoral integrity appears misguided.

In *National Conservative PAC*, the Court struck down limitations on PAC independent expenditures, and Justice (presently Chief Justice) Rehnquist minimized the potential for corruption in the absence of restrictions on independent spending.¹³¹ Calling the threat to electoral integrity "hypothetical," Justice Rehnquist implied that he would need to be shown "precisely what the 'corruption' may consist of" before acknowledging such a threat.¹³² As an example of such a potential threat, Justice Rehnquist described a scenario where "candidates may take notice of and reward those responsible for PAC expenditures by giving official favors to the latter in exchange for the supporting messages;" as long as such a threat remained only a hypothetical possibility, however, he would not recognize the threat to electoral integrity and would invalidate independent spending restrictions which infringed on free speech and association.¹³³

Much like the Watergate scandal exposed the threat to electoral integrity when contributions were not regulated, so too the current Lincoln Savings & Loan scandal, allegedly involving a bank official and several United States Senators, exposes the inherent threat of corruption and political quid pro quos when independent expenditures go unchecked. Charles Keating allegedly contributed sizeable amounts of money both directly to candidates and indirectly through their various state parties for the purported purpose of bankrolling a voter registration drive.¹³⁴ The bulk of such money was primarily donated to the par-

129. For a discussion of the *Buckley* decision's assertion that independent expenditures in unlimited amounts do not pose a corruptive threat to the electoral process, see *supra* notes 55-60 and accompanying text. For an examination of similar claims delineated in *National Conservative PAC*, see *supra* notes 74-81 and accompanying text.

130. For an interesting analysis of the amounts and effectiveness of PAC independent spending during the 1980 congressional elections, see Mann & Ornstein, *The Republican Surge in Congress*, in *THE AMERICAN ELECTIONS OF 1980* 263 (A. Ranney ed. 1981).

131. *National Conservative PAC*, 490 U.S. at 496-97.

132. *Id.* at 497-98.

133. *Id.*

134. See Barnes, *The Zillionaires Club*, *THE NEW REPUBLIC*, Jan. 29, 1990, at 25. Such indirect sources of contributions remain largely unregulated at present.

ties of states which also happened to have incumbent Senators up for reelection. As a result of such direct and indirect contributions, the Senators allegedly attempted to seek favors for Keating from federal administrative authorities.¹³⁵ Although the Keating case did not directly involve independent expenditures made on behalf of the Senators, it clearly illustrates the inherent potential for corruption and quid pro quos when large amounts of money may be spent indirectly on behalf of candidates or officeholders.

Although the Keating case may not directly satisfy Justice Rehnquist's request to "precisely show what the 'corruption' consists of" when independent expenditures remain unregulated, it does offer additional evidence that the threat to electoral integrity is both real and substantial when large amounts of money are available for candidates. Thus, as the role of independent spending in campaigns continues to grow, the concomitant threat to electoral integrity and potential for corruption also increases. Therefore, although a limitation on independent spending may not have served a significant governmental interest at the time of the *Buckley* decision, such a conclusion today, given the post-*Buckley* evolution of the electoral system, is suspect.

In contrast, the limitation of independent spending by assembly candidates, as seen in the *Friends of Kean* case, does not serve a substantial state interest, and, therefore, the decision in *Friends of Kean* is justified. Limiting independent spending by state legislative candidates will, in most cases, only tangentially preserve electoral integrity while eliminating the benign traditional campaign appeals linking the assembly candidate with the head of the ticket.¹³⁶ An assembly candidate's primary concern is in his own campaign, and any spending on behalf of another candidate would likely be minimal and primarily designed to further his own effort by inducing a party line appeal or coat-tail effect.¹³⁷ Thus, because no substantial state interest is served by such a regulation, the regulation violates first amendment freedoms.¹³⁸ Similar arguments, however, cannot be advanced by individuals or PACs in support of their continued freedom to spend independently in campaigns. Far from being an established electoral tradition, independent spending by PACs and individuals is a recent electoral phenomenon,

135. See Adams, *Now it's Broken*, THE NEW REPUBLIC, Nov. 13, 1989, at 17; see also Carlson, *\$1 Billion Worth of Influence*, TIME, Nov. 6, 1989, at 27; Morgenthau, *S&L Scandal's Biggest Blowout*, NEWSWEEK, Nov. 6, 1989, at 35.

136. For an examination of the New Jersey Supreme Court's conclusions regarding the legislators' intent when they created NJELEC, see *supra* notes 105-15 and accompanying text.

137. For a discussion of the electoral traditions of "party line" appeals and "coat-tail" effect voting, see *supra* notes 112-15 and accompanying text.

138. For a description of the effects which the allocation regulation of NJELEC would impose on the state campaigns, see *supra* notes 110-15 and accompanying text.

designed to circumvent the purposes of campaign finance reform law.¹³⁹

2. *Governmental Interest Served by Campaign Expenditure Limits*

The Court stated in *Buckley* that a limitation on contributions is all that is needed to preserve electoral integrity, and thus to regulate campaign expenditures would be an unnecessary infringement on free speech and association.¹⁴⁰ Again, such a distinction was made by the Court before the full effect of the 1974 amendments and the *Buckley* decision were discerned. The Court's distinction fails to consider both the spiraling costs of campaign financing and the dominance of PACs to finance such inflating costs. As the role of the individual contributor-constituent in the financing process continues to diminish, the corresponding potential for undue influence by special interest PACs over candidates continues to grow.

The *Buckley* Court flatly rejected the contention that a reduction in escalating campaign costs was a significant governmental interest which justified first amendment infringement.¹⁴¹ Yet, a limitation on campaign spending not only serves to level spending costs, but also seeks to diminish the potential for undue influence which wealthy, well-organized, special interest PACs may assert by dominating the financing of such increasingly expensive campaigns. The primary threat to governmental integrity is not the rising costs of campaigns, but rather the growing reliance by candidates on special interest PACs to finance their efforts in the wake of escalating campaign costs. The Court in *Buckley* did not foresee the dependence by candidates on PACs for campaign financing and thus failed to discern the potential for undue influence which such a relationship may encourage at the expense of the general public interest.¹⁴² Because a limitation on campaign expenditures would alleviate the potential for undue influence on elected officials by special interest PACs, a substantial governmental interest is served which may override first amendment guarantees.

Consequently, because contributory regulations alone have not protected the electoral process from corruption or the appearance of corruption and the electoral landscape has drastically changed since the *Buckley* decision, a limitation on both campaign and independent expenditures may be needed to protect the same interests which the permissible contributory limitations serve.¹⁴³ As candidates continue to

139. See Ewing, *supra* note 3, at 395-96. Ewing notes the proliferation of PACs after reform measures were adopted and subsequently limited by the *Buckley* decision, allowing candidates to finance ever-escalating campaign costs; the number of PACs has risen from 608 in 1974, to 1146 in 1976, to 2251 in 1980 and to 4576 in 1987. *Id.* at 395.

140. *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam).

141. *Id.* at 55, 57.

142. See *supra* notes 55-60 and accompanying text.

143. For an interesting analysis of the problems which arise in the regula-

rely upon independent spending on their behalf and PAC contributions to finance their campaigns, the potential threat of political quid pro quos in exchange for such financing grows ever more apparent.¹⁴⁴ Thus, much like contribution limits, a limitation on all types of expenditures would serve the governmental interest of reducing the current potential for corruption present in election campaigns.

B. *The Governmental Interest In Preserving Accountability to Constituents*

Although *Buckley* recognized that some of the expenditure limits contained in the 1974 amendments were intended to serve the same purposes as the valid contributory limits, the Court believed that the governmental interest in preserving electoral integrity was not adequately advanced to justify the expenditure limits.¹⁴⁵ It also found that such restrictions more directly infringed upon core first amendment freedoms.¹⁴⁶ Thus, because the *Buckley* and *National Conservative PAC* decisions could not discern any additional significant governmental interests served by the expenditure regulations to justify the greater infringement on speech, both held such limitations impermissible. Even if such a distinction between the degrees of speech infringement caused by contributory and expenditure limitations is valid, this Note contends that expenditure limits serve an additional governmental interest in preserving governmental and electoral accountability—an interest which contributory limits alone have failed to preserve in the years following *Buckley*.

Due to the invalidation of expenditure limits and the rise of PACs and their considerably expanding resources, the cost of the campaigns has continued to escalate. Spending, even in races limited by public financing, has dramatically increased as the influx of both PAC donations and independent expenditures have exploded. The very purpose of public financing—to set maximum spending caps in campaigns—is now easily circumvented through independent spending by outsiders which may not be applied to the statutory cap.¹⁴⁷ As a result, PACs now have seized the dominating influence over the electoral process which reform

tion of PAC independent expenditures, see generally Letherberry, *Rethinking Regulation of Independent Expenditures by PACs*, 35 CASE W. RES. 13 (1984).

144. See F. SORAUF, *supra* note 4, at 322-25; see also W. CROTTY, *supra* note 24, at 134; Ewing, *supra* note 3, at 396; Jacob, *supra* note 67, at 118-19.

145. *Buckley*, 424 U.S. at 45 (“Assuming . . . large independent expenditures pose the same dangers . . . [as] large contributions, [limiting independent expenditures does] not provide an answer that sufficiently relates to the elimination of those dangers.”).

146. See *id.* at 47-48 (“While the independent expenditure ceiling thus fails to serve any substantial governmental interest . . . it heavily burdens core First Amendment expression.”).

147. For an examination of the growth in total campaign spending in the aftermath of judicial frustration of campaign finance reform, see *supra* note 62 and accompanying text.

had attempted to re-direct to individuals.¹⁴⁸ If democratization of the campaign finance process was a primary goal of Congress, the Court's decisions have subverted this purpose. By voiding expenditure limitations, the Court has created an electoral process in which candidates are more dependent upon outsiders for campaign financing than upon the constituents whom they represent.¹⁴⁹

To attract both PAC contributions and independent spending on their behalf to meet spiraling campaign costs, candidates increasingly appeal to narrow, single-issue PACs. As a result, a candidate may channel his message within narrow confines to continue receiving PAC sources of money for the campaign.¹⁵⁰ Many federal incumbents now finance their campaigns primarily through PAC donations and not through money from the state or district which the officeholder represents.¹⁵¹ Thus, without spending limits, the concerns of individual constituents may grow increasingly irrelevant as candidates depend more heavily on special interest PACs to finance their election campaigns. In this manner, PAC dominance of the electoral process threatens to decrease the quality of representation by elected officials and to lessen their accountability to constituents.¹⁵² If spending could be controlled

148. For a discussion of the increasing propensity for candidates to finance their campaigns through PAC contributions and independent spending rather than individual contributors, see *supra* notes 63-68 and accompanying text.

149. For a description of the decreasing influence of individual contributors on the campaign financing process, see *supra* notes 63-68 and accompanying text. See generally Rich, *Campaign Finance Legislation: Equality and Freedom*, 20 COLUM. J.L. & SOC. PROBS. 409 (1986); Shockley, *Direct Democracy, Campaign Finance, and the Courts: Can Corruption, Undue Influence, and Declining Voter Confidence Be Found?*, 39 U. MIAMI L. REV. 377 (1985).

For an analysis of the developing relationships between PACs and candidates, especially those who are incumbent office holders, see *supra* notes 63-68, 122-23 & 139-44 and accompanying text.

150. See W. CROTTY, *supra* note 24, at 133-34. Crotty explains some recent attempts by PACs to flex their newly-found, and still growing, political muscle:

The decline of party influence in campaigns has paralleled the surge in importance of the PACs. As the parties have become less cohesive, PACs have become aggressive in funding campaigns, requiring prospective candidates to pledge support to issues critical to the PAC's constituency (from abortion to curbs on foreign trade), and even supplying media consultants and campaign managers for candidates they favor. In some cases, they have gone so far as to recruit their own candidates and then run their campaigns in primaries against the established party candidate, with whom they differed, or in general elections.

Id. at 134. For an examination of the relationship between political parties and campaign finance reform, see generally Nahra, *Political Parties and the Campaign Finance Laws: Dilemmas, Concerns and Opportunities*, 56 FORDHAM L. REV. 53 (1987).

151. See Ewing, *supra* note 3, at 396 (noting more than one-half of incumbent House members receive at least one-half of their financing from PACs).

152. See W. CROTTY, *supra* note 24, at 138-41. To illustrate the effect that PAC donations have upon candidates who are elected or already hold office, Crotty examined the relationship between chemical industry PAC donations and the votes of United States Senators who were the recipients of the chemical

in the electoral arena, then the role of the individual contributor in the campaign process may be preserved, thereby promoting accountability by officeholders to their constituencies.

Expenditure limits would also preserve an essential role for political parties in the electoral process. The rising influence of PACs in elections has largely been at the expense of party organizational vitality.¹⁵³ Political parties play an important stabilizing role on the political process. Indeed, Justice Powell stated that political parties serve a “variety of substantial governmental interests” which would “justify tangential burdening of First Amendment rights.”¹⁵⁴

Moreover, independent spending by PACs or individuals also decentralizes the campaign process and reduces the accountability of a candidate over actions done on his behalf by independent supporters.¹⁵⁵ A candidate may have no control over the words or conduct of his independent supporters. Given the amounts now spent on independent expenditures, especially those spent on widely seen media advertisements, such decentralization creates an electoral environment more personally rancorous and thus less constructive and issue-oriented. In this manner, expenditure limits would serve a substantial interest in preserving the accountability of the candidate for the campaign waged by his or her supporters.

V. CONCLUSION

The goals of campaign finance reform—including lower election costs, limitation and accountability in campaign contributions, candidate expenditures and independent spending by individuals and PACs, and an increase in influence of the electorate within the electoral process¹⁵⁶—have not been achieved, primarily due to constitutional restraints placed on such attempts by the judiciary.¹⁵⁷ Although the

PAC's largesse, on bills concerning environmental regulations. *Id.* at 138-39. Crotty concluded that “[t]here is a strong association between the chemical industry's PAC giving and the position of senators in opposing increased funding for and regulation of toxic waste dumping. Incumbent senators receiving the most funds cast a total of 89 percent of their votes in favor of the chemical industry's position.” *Id.* at 139.

153. See W. CROTTY, *supra* note 24, at 133-34. Crotty warns that while PACs are increasingly absorbing the financial roles once played by parties, PACs do not function, as parties had, as centralized structures which provide policy coherence and accountability. *Id.*

154. *Branti v. Finkel*, 445 U.S. 507, 527-28 (1980) (Powell, J., dissenting).

155. For an interesting analysis describing how PAC independent spending against liberal incumbent Senators in 1980 nearly backfired due to excessive mudslinging, but ultimately proved successful, see Mann & Ornstein, *supra* note 130, at 268-82.

156. For a discussion of the goals of financing reforms, see *supra* note 29 and accompanying text.

157. See Ewing, *supra* note 3, at 396 (asserting Supreme Court must assume partial responsibility for distortion of congressional intent by creating present

United States Supreme Court upheld a limitation on individual and PAC contributions to particular candidates, it objected to measures limiting campaign expenditures of non-publicly financed candidates and restrictions which limited the amount any individual or PAC could independently spend on behalf of favored candidates. As a result, the political environment in which elections are held has been radically altered, and campaign finance reform has been frustrated.

The judicial response to campaign finance reform has opened a Pandora's box to a chaotic electoral process. The growing influence of PACs and independent sources of spending will further escalate the costs of campaigns and the potential for corruption, while actually decreasing the influence of, and accountability to, the public-at-large. Officeholders and candidates aim their appeals to PACs first, while constituents' interests are deemphasized. Clearly, this end result was not intended by the advocates of reform. Given the constitutional protection afforded expenditures by the Supreme Court, it seems unlikely that any new finance reform law can right the unintended effects which the judiciary has created. A limitation on total PAC contributions to candidates could be circumvented easily through PAC independent expenditures. A similar result would follow if public financing of all elections was adopted. Thus, the increasing influence of PACs over an incredibly expensive electoral process, barring any reversals of opinion by the United States Supreme Court, will be a permanent fixture on the electoral landscape for the foreseeable future.

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electoral influence of special interest PACs). For an examination of the judicial reaction to federal campaign finance reform legislation, see *supra* notes 50-53, 55-56, 77-80 and accompanying text.

