Florida Law Review

Volume 28 | Issue 2 Article 7

January 1976

Florida's Campaign Finance Law: A Restoration of the Public's Confidence

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elimination of state and local consideration of the siting of a nuclear plant in Polk County may result in NRC decisions based on information that the state is in a better position to analyze. Similarly, state data collected pursuant to the turnover agreement with the AEC may best be analyzed at the state level.

The threat of protracted state hearings arising from an unsophisticated examination of the dangers of radiation could cause reasonable concern in the nuclear industry, but significant delays caused by public involvement in hearings have not materialized.[170] The need for public understanding of both the hazards and the benefits of nuclear power may present another important reason to encourage additional exposure in state hearings of such issues.[171] These policy considerations seem to favor a coordination of federal and state roles in the siting of nuclear power plants.[172]

In summary, there is no evidence of any congressional intent to preempt any part of a state role in the siting of nuclear power plants in either the text or the legislative history of the amended Atomic Energy Act. Courts should not infer congressional intent to preempt a field without clear evidence of the existence of such a purpose. Until Congress decides to clarify the respective roles of the NRC and the states, the Atomic Energy Act should be construed to give state authorities concurrent control over the location of nuclear reactors, including the authority to consider issues related to hazards posed by radiation.

ELIAS N. CHOTAS

FLORIDA'S CAMPAIGN FINANCE LAW: A RESTORATION OF THE PUBLIC'S CONFIDENCE?

A growing loss of confidence by voters in the American electoral system, demonstrated by the apathetic response to elections of recent years, has been attributed to the tremendous amounts of money spent in campaigns.[1] Every year, more money is required to win an election. The effects of these sky-

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regulate resultant safety hazards. 42 U.S.C. §2092 (1970); 10 C.F.R. §40.1 (1975). The Bureau of Mines may only investigate and conduct safety-related research. 30 U.S.C. §187 (1970). See *Selected Materials, supra* note 27, at 395.

170. See *1975 Hearings, supra* note 19, at 12-16, 78-79.

171. See Green, *Public Participation in Nuclear Power Plant Licensing: The Great Delusion*, 15 WM. & MARY L. REV. 503 (1974). Public confusion over such issues may be substantially eliminated by the proposed consolidation of state-NRC hearing procedures. See note 141 *supra* and accompanying text.

172. The need for state-federal coordination in siting and the value of consolidation of the necessary federal contacts into one agency for better coordination at the federal level is emphasized in NRC, PROCEEDINGS OF THE 1975 FEDERAL-STATE CONFERENCE ON POWER PLANT SITING (July 1975).

1. *See, e.g.*, Adamany, *Money in American Politics — The Costs of Campaigning*, 21-2 VITAL ISSUES 1 (1971); Note, *Campaign Finance Reform: Pollution Control for the Smoke-Filled Rooms?*, 23 CASE W. RES. L. REV. 631 (1972).

rocketing costs have been the elimination of some candidates lacking great personal wealth or wealthy supporters and the enhancement of the potential for corruption of financially-pressed candidates by large contributors. This potential for corruption has several facets. Heavily contributing persons and groups expect the recipient candidate to reward their generosity with political favors.[2] At the same time, the candidate's dependency on wealthy donors to furnish the requisite large campaign fund causes the candidate to feel that he owes those donors special favors and access.[3] Further, the pressure on the candidate to cultivate large contributors requires a great deal of his personal time and effort, which detracts from the time he can spend campaigning.[4]

In the last two decades, Congress and almost all the states have passed laws regulating campaign financing.[5] Analyzing these laws, commentators have delineated the following four legislative goals: stemming the rising costs of campaigns;[6] maximizing the distribution to the public of information about the candidates;[7] equalizing the opportunity of every aspirant to political office;[8] and reducing the potential for corruption by large contributors.[9] Theoretically, a law that achieves these four goals would be considered an ideal regulation of a privately or publicly financed[10] electoral system.

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2. Roady, *Ten Years of Florida's "Who Gave It — Who Got It" Law*, 27 LAW & CONTEMP. PROB. 434, 439-40 (1962) (large contributors expect not only favorable legislation to their business, but also political prestige and special social invitations). *See also Hearings on S. 23 et al. Before the Subcomm. on Privileges and Elections of the Senate Comm. on Rules and Administration*, 93d Cong., 1st Sess. 236, 262-64 (1973) [hereinafter cited as *Hearings*]; Note, *supra* note 1, at 635-36.

3. "For too long great and decent individuals running for public office have been forced to pander to large contributors, to degrade themselves, to ingratiate themselves with the rich, and to place heavy demands on their friends, to behave in a manner which not only humiliated themselves, not only compromised the office they sought but which was inconsistent with the basic tenets of good government." *Hearings*, *supra* note 2, at 236 (remarks of Basil Patterson, Vice-Chairman, Democratic Nat'l Comm.).

4. Buckley v. Valeo, 519 F.2d 821, 837-38 (D.C. Cir. 1975).

5. All but four states — Alaska, Delaware, Idaho, and Rhode Island — regulate campaign financing. The citations are collected and statutes compared in COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES 42-47 (1974-75).

6. *See, e.g.*, Roady, *supra* note 2, at 434; STAFF OF THE FLORIDA HOUSE COMMITTEE ON ELECTIONS, CAMPAIGN SPENDING IN FLORIDA LEGISLATIVE POLITICS, SUMMARY (Comm. Print 1973).

7. *See, e.g.*, Fleishman, *Freedom of Speech and Equality of Political Opportunity: The Constitutionality of the Federal Election Campaign Act of 1971*, 51 N.C. L. REV. 389, 456 (1973); Rosenthal, *Campaign Financing and the Constitution*, 9 HARV. J. LEGIS. 359, 360 (1972).

8. *See, e.g.*, Fleishman, *supra* note 7; Roady, *supra* note 2, at 441. *Cf.* note 21 *infra* and accompanying text.

9. *See, e.g., Hearings, supra* note 2, at 236; Biden, *Public Financing of Elections: Legislative Proposals and Constitutional Questions*, 69 NW. U.L. REV. 1, 2-6 (1974).

10. Public financing of elections is increasingly praised as the most effective means of accomplishing these four goals. *See, e.g.*, T. SCHWARTZ, PUBLIC FINANCING OF ELECTIONS: A CONSTITUTIONAL DIVISION OF THE WEALTH 87-88 (1975); Biden, *supra* note 9; FLORIDA HOUSE COMMITTEE ON ELECTIONS, *supra* note 6, pt. III. However, an extensive discussion of the topic is beyond the scope of this work. The Presidential Election Campaign Fund Act, 26 U.S.C. §6096 (1970), *as amended*, 26 U.S.C.A. §§6096, 9001 *et seq.* (1975), provides public funds for federal candidates through a voluntary income tax check-off system.

Whether public financing is feasible or desirable in Florida, however, cannot be considered

In 1951, the Florida legislature set the pace of reform for other states by passing a campaign finance law,[11] which was replaced in 1973 with an even more comprehensive act.[12] This note discusses the pressures that led to legislative reform and then analyzes the effectiveness of the new Florida law. The contribution limitations, expenditure limitations, disclosure requirements, and enforcement provisions are described separately, focusing on the extent to which they achieve the four stated goals and on their constitutional implications. Contained within this description is an analysis of the validity and desirability of the four goals themselves. Suggestions for further reform appear throughout the text and are appended in the form of a legislative proposal.

THE PROBLEM — RISING COSTS

The increasing cynicism of the electorate arises from a popular conviction that the candidate with the most money will win. Validity may be added to this popular conviction by a number of statistical studies that have demonstrated the increasing importance of a well-filled campaign chest to the candidates in modern elections. In the 1970 campaigns for seats in the Florida House of Representatives, the 82 winning candidates spent over $556,000; in the same races in 1972, 109 winning candidates spent approximately twice as much.[13] Data concerning the Florida Democratic gubernatorial primaries show that the average cost-per-vote in 1956 of $ .63[14] rose to $ .79 in 1974.[15] In the same primaries, the average expenditure-per-candidate rose from $112,000[16] to $167,000.[17] This trend of rising costs in Florida is consistent with the

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in terms of the federal approach. Public financing in Florida may be prohibitively expensive simply because of administrative costs for a staff and computers; moreover, to these funds must be added the sums disbursed to the candidates. Since Florida has no personal income tax from which additional revenue could be voluntarily derived, public campaign financing could not be easily added to the state budget. In addition, the impact of public financing is unclear as to whether more candidates would participate, whether voter interest would increase, and whether there would be less corruption. The availability of free money might, in fact, encourage corruption and fraud. On balance, public financing may not promote the goals of campaign finance laws sufficiently to justify the additional effort and expense.

A final question that leaves the legislative future of public financing seriously in doubt is whether the voters want such a law. An informal poll conducted in 1974 by the Florida Democratic Party indicated that only 25% of the sample responded favorably to public financing. Interview with John French, former Staff Director of the Florida House Committee on Elections, in Tallahassee, Oct. 28, 1975. This committee drafted the Florida Campaign Finance Act.

11. Fla. Laws 1951. ch. 51-26819 at 631, *codified as* FLA. STAT. §99.161 (1951).

12. FLA. STAT. §§106.011 *et seq.* (1975).

13. The winning candidates spent $1,162,000. FLORIDA HOUSE COMMITTEE ON ELECTIONS, *supra* note 6, pt. I, Table I. Thus, in 1970, the winning candidates spent an average of approximately $6,780 and in 1972, an average of approximately $10,650. See also note 21 *infra.*

14. Roady, *supra* note 2, at 435. *See also* Note, *Campaign Spending Regulation: Failure of the First Step,* 8 HARV. J. LEGIS. 640, 642 (1971).

15. A. MORRIS, THE FLORIDA HANDBOOK 537-41 (1975-76).

16. Roady, *supra* note 2, at 443.

17. MORRIS, *supra* note 15, at 537-41.

national trend. The total amount of money spent in all elections in the United States rose from $155 million in 1956 to $400 million in 1972.[18]

Many reasons have been advanced to explain these rising costs. In addition to the obvious effects of inflation,[19] modern public relations and advertising techniques based on a massive use of the electronic communications media contribute significantly to the rising costs.[20] This massive use of media is based on the theory that the candidate with the most money can buy the most advertising through which he may project his desired image and thereby attract the most voters.[21] Higher costs also result from increases in population, which expand the electorate and provide greater competition from more candidates.[22] Because of this increased competition, more money must often be spent by a candidate just to achieve individual recognition.[23] Increased campaign expenses may also arise from the decline of political party organizations accompanied by the emergence of voter independence.[24] One commentator has blamed short terms of office for causing incumbents to spend constantly to ensure their re-election.[25]

The rising cost of campaigns poses a dual threat to a democratic system. The difficulty encountered by a non-wealthy candidate in waging an effective campaign violates the democratic premise that every person should have an equal opportunity to participate in the political process.[26] In addition, the

18. *See* Fleishman, *supra* note 7. at 392 n.16 and accompanying text; Note, *supra* note 1, at 631-34.

19. Roady, *supra* note 2, at 443.

20. Note, *supra* note 1, at 631-34.

21. Empirical data supports this conviction to some degree. FLORIDA HOUSE COMMITTEE ON ELECTIONS, *supra* note 6, pt. I, at 6; Roady, *supra* note 2, at 435. Neither of these studies, however, found complete consistency. While the Elections Committee reported that 63% of the winning candidates outspent their opponents in 1970, the figure rose to 71% in 1972. Roady found that the candidate with the most money won but that the order of finish among the winner's opponents was not dependent on the amount of money they spent. The correlation of money and success has also been challenged with the contention that there is a point of diminishing returns. "Legislators and judges have often agreed that 'excessive' campaign expenditures are harmful. It is difficult, however, to evaluate the influence exerted on the voter by the tremendous sums poured into political propaganda. . . . [B]eyond a certain point money spent to reach the electorate may not produce an intelligent response; too much propaganda might in fact dull voter interest in elections." Note, *Statutory Regulation of Political Campaign Funds,* 66 HARV. L. REV. 1259, 1259-60 (1953). The same observation was made by Roady, *supra* note 2, at 434, but he concluded that candidates are still "reluctant to leave any stone unturned."

22. Adamany, *supra* note 1, at 2.

23. Note, *supra* note 14, at 643-44.

24. Adamany, *supra* note 1, at 2.

25. COMMITTEE FOR ECONOMIC DEVELOPMENT, FINANCING A BETTER ELECTION SYSTEM 18 (Comm. Print 1968). The authors hypothesize that a Congressman, holding office for only two years, feels an immediate need to begin campaigning for re-election. As a result, he spends for a longer period of time and at an increasing rate in order to maintain a high profile.

26. "The goal of enriching the electoral system, through broadening the base of citizen influence and reducing inequities in the opportunities of candidates and their supporters to persuade the electorate, is a worthy one; it is not only consistent with but indispensable to the attainment of the most fundamental purposes of the Constitution." Rosenthal, *supra* note 7, at 360.

need for large amounts of money places pressure on the non-wealthy candidate to seek out wealthy contributors[27] who may expect legislative benefits "more equal" than those obtained by the average constituent. Over the years, numerous scandals have resulted from the inability of some candidates and public officials to resist the pressure created by the need for campaign funds. While Florida citizens were shocked in 1948 by revelations of gangster money permeating the gubernatorial election,[28] those events pale in comparison to the nation's suffering under the impact of "Watergate" with respect to campaign financing and corruption.[29]

Legislation against corrupt practices has existed in Florida since 1913,[30] but the success with which it has been enforced has varied.[31] In 1951 public pressure resulting from the rising costs of campaigns and the 1948 disclosures of political corruption led to the passage of the "Who gave it — Who got it" law,[32] section 99.161 of the Florida Statutes.[33] Section 99.161 added the following three significant provisions to the existing laws:[34] limits on individual contributions, requirements that the campaign treasurer authorize all expenditures on the candidate's behalf, and reports from the candidate on all his contributions and expenditures.[35] Because of these provisions, section 99.161 received high praise for its potential to reduce corruption.[36]

THE FLORIDA CAMPAIGN FINANCE ACT OF 1973

In 1973, section 99.161 was repealed and replaced by a comprehensive

27. Biden, *supra* note 9, at 2-5. The author, a freshman United States Senator from Delaware, recounts his own experiences of this pressure during his campaign in 1974.

28. Roady, *supra* note 2, at 436.

29. "Beyond any doubt, the year-long revelations of Watergate demonstrate the insidious influence of private money in American politics. When some of the most distinguished corporations in the Nation confess to crimes involving blatant violations of the existing Federal election laws, we begin to understand the irresistible pressures that are corrupting our national life. If 1972 was unique at all in campaign financing, it was unique only in the unscrupulous intensity and efficiency with which the contributions were so successfully solicited." *The Question of Federal Financing of National Election Campaigns: Pro & Con*, CONG. DIGEST 48 (February 1974) (remarks of Senator Kennedy).

30. FLA. STAT. §104.061 (1975).

31. Roady, *supra* note 2, at 436-37.

32. *Id.* This name for the 1951 Florida law was coined by Roady to refer to the law's disclosure requirements.

33. Fla. Laws 1951, ch. 51-26819, at 631, *codified as* FLA. STAT. §99.161 (1951).

34. Existing laws dated from 1897 and consisted of a prohibition of corporate contributions, Fla. Laws 1897, ch. 97-4538, *codified as* FLA. STAT. §104.091 (1951); corrupt practices sanctions, FLA. STAT. §104.061 (1975) (originally enacted as Fla. Laws 1913, ch. 13-6470, §3, at 268); and a specific designation of items on which campaign funds could be spent, Fla. Laws 1951, ch. 51-26870, §3, at 837, *codified as* FLA. STAT. §99.172 (1951). Section 99.172 originated in Fla. Laws 1913, ch. 13-6470, §1, at 268, to apply to all elections. Sections 99.172 and 104.091 were repealed by the Florida Campaign Finance Act, Fla. Laws 1973, ch. 73-128, at 210. The corrupt practices statute, §104.061, is still in force.

35. Fla. Laws 1951, ch. 51-26819, §§2, 7, 8, at 632-35. *See also* Andrews, *Regulation of Campaign Expenditures*, 27 FLA. B.J. 15 (1953).

36. *See, e.g.*, Fleishman, *supra* note 7, at 451; Roady, *supra* note 2, at 445; Note, *Campaign Spending Controls Under the Federal Election Campaign Act of 1971*, 8 COLUM. J. LAW & SOC. PROB. 285, 295 (1972).

new law known as the Florida Campaign Finance Act of 1973[37] (Florida Act). The new Act revised the former provisions relating to contribution limits, campaign treasurers' responsibilities, and disclosure procedures, and added sections on definitions, expenditure limits,[38] and enforcement procedures. As a result of these additions, the candidate can more clearly understand his duties concerning his campaign funds and thus may comply with them more easily.[39] To the degree to which the Florida Act achieves the four goals[40] of an ideal campaign finance law, the Act clearly represents an important step toward the ultimate objective of restoring public confidence in the integrity of the electoral system, but public confidence could be further restored by additional revision of certain provisions.

LIMITATIONS ON CONTRIBUTIONS

Maximum limits on campaign contributions minimize the potential for corruption by large donors by simply eliminating large donations. No person or political committee is permitted to make contributions or loans aggregating more than $1,000 to any candidate running for office or to any political committee supporting or opposing an issue or candidate to be voted on in the state.[41] The first primary, second primary, and general election are treated as separate elections, which raises the individual contributor's potential maximum to $3,000 in one election year.[42]

The definition of "person" includes both individuals and combinations of individuals having collective capacity.[43] A "political committee" is a combination of two or more individuals having as its purpose the support or opposition of any candidate, issue, or political party and which, for that purpose, accepts contributions or makes expenditures of more than $500 in a calendar year.[44] The Florida Act broadly defines "contribution" as a "gift, subscription, conveyance, deposit, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in

37. FLA. STAT. §§106.011 *et seq.* (1975) (originally enacted as Fla. Laws 1973, ch. 73-128, at 210).

38. Fla. Laws 1913, ch. 13-6470, at 268, placed limits on total expenditures, but these limitations were repealed by Fla. Laws 1949, ch. 49-25273, at 637, as unenforceable. Roady, *supra* note 2, at 436.

39. Stiff penalties for violations are provided in each section of the Florida Act, as compared to being in a separate chapter, FLA. STAT. §104.27 (1971), prior to 1973. The penalties encompass civil fines as well as criminal penalties. See text accompanying notes 231-235 *infra.*

40. See text accompanying notes 6-9 *supra.*

41. FLA. STAT. §106.08(1) (1975). This $1,000 limit actually applies to candidates in any election for office that is not statewide, including candidates for municipal office. OP. ATT'Y GEN. FLA. 074-263 (1974). The limit is extended to $3,000 for candidates for statewide office, including United States Senator, and for political committees participating in statewide elections. FLA. STAT. §106.08(1)(c), (d) (1975).

42. FLA. STAT. §106.08(1) (1975).

43. *Id.* §106.011(7).

44. *Id.* §106.011(2). "Political committee" does not include committees of continuous existence, as defined in FLA. STAT. §106.04 (1975), or political parties regulated by FLA. STAT. §103 (1975). "Corporations regulated by [FLA. STAT. §§607, 613, 617 (1975)] are not political

any form, made for the purpose of influencing the results of an election."[45] This definition includes transfers from one political committee to another and payments by an independent third person to one who provides goods or services to a candidate without charge.[46] Whether the meaning of "contribution" encompasses loans is not clear,[47] but since the limitations imposed on both contributions and loans are the same,[48] the distinction is insignificant. A simple amendment adding "loan" to the definition of "contribution" would solve this problem.[49]

The Florida Act carries over the provision from the previous finance law[50] requiring any contribution received less than five days prior to the election to be returned to the contributor.[51] Placing a final date on the opportunity to contribute ensures that the candidate has adequate time to process and report all contributions.[52] Thus, the public receives the candidate's last pre-election report the day before the election[53] and may judge for itself the influence of various contributors.

Exceptions to Limitations

The Florida Act's contribution limits do not cover several sources of valuable "contributions." First, the Florida Act does not limit the candidate's use of his personal funds.[54] Although this exception does not impede the

committees if their political activities are limited to contributions to candidates or political committees from corporate funds and if no contributions are received by such corporations." FLA. STAT. §106.011(2) (1975). Apparently, these entities are excluded because the contribution and reporting requirements applicable to them differ slightly from the general rules.

Committees of continuous existence are subjected by §106.04(5) to the same contribution limits enumerated in §106.08(1). (Political parties may make unlimited contributions, but these must be reported by the recipient. FLA. STAT. §106.29(4).) The definition of "person" expressly includes corporations, FLA. STAT. §106.011(7); thus, a regular business corporation is limited by §106.08(1). Committees of continuous existence file reports at the same time as candidates for less than statewide office, FLA. STAT. §106.04(4), but do not have to use authorization vouchers required of ordinary political committees for all expenditures. Political parties need only file once a month after the date on which the candidate qualifies rather than twice a month or more. FLA. STAT. §106.29(1). Business corporations do not file reports at all.

45. FLA. STAT. §106.011(3) (1975).

46. *Id.* §§106.011(3)(b), (c).

47. The general descriptive terms of FLA. STAT. §§106.011(3)(a), see text accompanying note 45 *supra*, can reasonably be interpreted to include loans. However, two other sections expressly add language pertaining to loans. Section 106.05 requires a detailed statement from the treasurer listing persons "contributing or *providing*" funds (emphasis added) to accompany all deposits. Section 106.08(1) states: "No person . . . shall make contributions . . . in moneys, material, or supplies *or by way of loan*, in excess. . . ." (emphasis added). If "contribution" included loans, these phrases would be unnecessary. Nevertheless, these phrases could be read either way and may have been added to emphasize legislative intent.

48. See note 47 *supra*.

49. See APPENDIX §1 *infra*.

50. Fla. Laws 1951, ch. 51-26819, §4(b), at 634, *codified as* FLA. STAT. §99.161(4)(b) (1951).

51. FLA. STAT. §106.08(2) (1975).

52. Roady, *supra* note 2, at 438.

53. FLA. STAT. §106.07(1) (1975).

54. *Id.* §106.08(1).

contribution limits' effect on special interest groups, it does nothing to further the goal of equal financing for all candidates. The wealthy candidate has a great advantage because he can bring in substantial amounts of cash at the outset of his campaign to hire the best staff, make deposits on prime media spots, and plan his overall campaign.[55]

An alternative solution to the problem of this disparity would be to place the same limits on candidates as on other contributors; however, the United States Supreme Court has found this limitation to be an unconstitutional infringement of the candidate's right of access to the political system.[56] Although the Florida Act allows the candidate to contribute without limit, family members appear to be governed by the regular limits. By not including family contributions within the exception, the Florida Act may have attempted to minimize the disparity between wealthy and poor candidates since it is often not the candidate but his family who is wealthy.[57]

A second potentially valuable source of unlimited contributions is the use of volunteers' services. The value of "services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee" is not included as a contribution.[58] Travel expenses incurred by the volunteer in rendering his services are probably excluded, although other incidental expenses may not be.[59] Essentially, this exception permits people to contribute their time, but not their money, without restriction. The candidate is saved from computing the value of the time given by his campaign workers and can obtain an especially valuable asset if the volunteer has a particularly useful skill.[60] An example would be a volunteer who is an accountant. The Florida Act requires extensive reporting of all incoming and outgoing funds. Payments by a candidate to an

55. *See* Buckley v. Valeo, 519 F.2d 821, 854 (D.C. Cir. 1975).

56. The Federal Election Campaign Act, 18 U.S.C.A. §608(a)(1) (1975), attempted to attain the goal of equalizing wealthy and poor candidates by placing a relatively high total on the amount a candidate could contribute to himself but permitting the candidate's family to contribute a part or all of this total. Thus, a wealthy candidate could collect only so much money from his relatives before he reached his maximum, but the poorer candidate could rely on all of his relatives to contribute varying amounts unhindered by the regulation limitations.

In Buckley v. Valeo, 96 S. Ct. 612 (1976), however, the Supreme Court held that any limitation on the candidate's personal contributions would be unconstitutional. In reaching its conclusion, the Court reasoned that the use of personal funds reduced the potential for corruption and that equalizing wealthy and poor candidates impinged on the individual candidate's right of free expression. "The candidate, no less than any other person, has a First Amendment right to engage in the discussion of public issues and vigorously and tirelessly to advocate his own election and the election of other candidates." *Id.* at 651. The Supreme Court also noted that the Court of Appeals and the Federal Elections Commission had improperly construed the meaning of §608(a)(1); Congress actually had intended that family members be limited to the regular contribution limits unless the funds were given to the candidate before he became a candidate. *Id.* at 650 n.57.

57. *See generally* Note, *supra* note 36, at 308-09.

58. FLA. STAT. §106.011(3)(c) (1975).

59. OP. ATT'Y GEN. FLA. 052-22 (1952), construing Fla. Laws 1951, ch. 51-26819, §2, at 632, *codified as* FLA. STAT. §99.161(2) (1951), a similar provision imposing contribution limits.

60. Buckley v. Valeo, 519 F.2d 821, 915 (D.C. Cir. 1975) (Tamm, J., dissenting).

accountant who prepares these reports must be counted toward the expenditures limit.[61] Yet, if that accountant volunteered his services to prepare the reports, such a "contribution" would seem to be excepted under the Florida Act. Similarly, a celebrity who volunteers his time on behalf of a candidate could be giving time worth much more than $1,000 on the commercial market and many times that in publicity for the candidate.

The Federal Election Campaign Act[62] (Federal Act), which regulates federal elections in a similar manner as does the Florida Act, contains a similar section regarding volunteers. The Federal Act, however, expressly excepts all incidental expenses incurred by the volunteers, such as expenditures for food and beverages furnished at a party given by the volunteer for the candidate.[63] Abuse of this exception for incidental expenditures is avoided by placing a maximum cumulative limit of $500 on such expenses; expenses above $500 are counted as contributions to the candidate.[64] Although both the federal and Florida provisions require picayune accounting details concerning contributions and expenditures, the Federal Act is less burdensome administratively since it does not regulate volunteers' expenses until they become significant. Most volunteers probably will never reach the reporting limit. An amendment to the Florida Act, employing the federal approach, would clearly be an improvement.[65]

Despite the value the candidate may receive in the above situations, the allowance of unlimited volunteers' services does not particularly offend any of the goals of campaign finance legislation. Of course, the volunteer system could be abused if the volunteers expected post-election favors or if an organization, such as a union, commanded its entire membership to "volunteer" for a particular candidate.[66] Despite these potentials for abuse, an inquiry into each volunteer's motives is impractical. Ideally, the number and quality of the volunteers a candidate receives reflects his popularity and support.[67]

A third source of unlimited funds is political parties that may contribute as much as they desire to their own candidates.[68] The only limits placed on the parties are the same as those placed on the candidates' personal funds: limits on the candidates' total expenditures. Again, however, little concern about the possibility of corruption is justified because support from a party seems as innocuous as support from personal funds. While the language of the

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61. OP. ATT'Y GEN. FLA. 074-252 (1974).

62. Pub. L. No. 92-225, 86 Stat. 3 (codified in scattered sections of 2, 18, 47 U.S.C. (Supp. I 1972)), *as amended*, Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (codified in scattered sections of 2, 5, 18, 26, 27, 47 U.S.C.A. (1975)).

63. 18 U.S.C.A. §591(e)(5) (1975).

64. Buckley v. Valeo, 519 F.2d 821, 856 (D.C. Cir. 1975).

65. See APPENDIX §1 *infra*.

66. CONG. DIGEST, *supra* note 29, at 49.

67. Buckley v. Valeo, 96 S. Ct. 612, 652-53 (1976).

68. FLA. STAT. §106.08(1) (1975) excepts political party contributions from the contribution limits. This exception *may* be qualified by §106.29(4), which refers to unlimited contributions in the general election. The latter section, however, does not appear exclusive in its application. See note 69 *infra*.

Florida Act seems to allow a political party to favor one of its candidates with unlimited funds in the primaries,[69] the Act expressly contemplates party expenditures that do not directly benefit one candidate. Under sections 106.021(4) and 106.10(4), an expenditure made for the purchase of media advertising jointly endorsing six or more candidates is not counted as a contribution or expenditure for any of those candidates. By implication, an expenditure for fewer than six candidates would have to be allocated among them.

Loopholes — Past and Present

One problem that arose under the former law appears to have been solved by the new Florida Act. The old law defined a "candidate" merely as a person who had announced his candidacy.[70] In *Ervin v. Capitol Weekly Post*,[71] certain persons bought advertising to encourage a former governor to run again for that office. The Attorney General of Florida brought an action to enjoin such advertising under a section of the law providing that no money could be spent for campaign purposes prior to the time the candidate announced his candidacy or qualified.[72] The *Ervin* court denied the relief sought on the ground that the former governor was not a "candidate" within the meaning of the statute,[73] noting:

> It may well be that the members of the Legislature did not visualize an active advertising campaign by numerous citizens to induce an individual to become a candidate. If this be assumed it does not give the Courts the power to add to the statute . . . . This argument may be fortified by a consideration of the fact that the Legislature did fix a date far in advance of the primary elections by which each person to be voted upon must qualify as a candidate . . . .[74]

The *Ervin* holding suggested that a person could make unlimited expenditures urging a candidacy, as long as the candidate was not formally recognized. The Florida Act broadly defines "candidate" as any person who has filed his qualification papers, accepted contributions, made expenditures, "or given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination or election to public office in

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69. *Id. Compare* the pertinent language of §106.08(1): "The contribution limits provided . . . shall not apply to contributions made by political parties regulated by chapter 103 or to amounts contributed . . . ." *with* the pertinent language of §106.29(4): "[T]he contribution of funds by one executive committee to another, to established party organizations for legitimate party or campaign purposes, or to individual candidates of that party in general elections in amounts exceeding [the limits] shall not be prohibited, but all such contributions shall be recorded. . . ."

70. Fla. Laws 1951, ch. 51-2870, §3, at 837 *repealed*, Fla. Laws 1965, ch. 65-378, §1, at 1298.

71. 97 So. 2d 464 (Fla. 1957).

72. Fla. Laws 1955, ch. 55-29936, §1, at 897, *codified as* FLA. STAT. §99.161(4) (1955).

73. 97 So. 2d at 469-70.

74. *Id.* at 469.

this state."[75] Additionally, another provision prohibits virtually all expenditures "directly or indirectly in furtherance of any candidacy" prior to the time the candidate files the papers necessary to qualify for office.[76] These two provisions preclude the recurrence of the *Ervin* situation or other evasion of the contribution limits by supporting a "non-candidate."

Although the new act closes one loophole, contribution limits might still be circumvented by the use of independent committees. Because the Florida Act sets no limits on total political contributions[77] or on the number of committees supporting the same candidate to which one person can contribute, a single contributor could give $1,000 each to numerous committees supporting his candidate and numerous committees opposing his candidate's opponent.[78] Despite this potential evasion of the limits, the chance of its occurrence and the actual threat of corruption seem remote. Even though the candidate's reports would not reflect the real sources of all the contributions, the committees' reports would. Adverse publicity resulting from disclosure, combined with the inconvenience of channeling many small contributions to different committees, would probably discourage the potential multiple contributor. Since committees are similarly limited to a $1,000 contribution per candidate, no individual political committee can exert much financial influence.[79] A simpler, more direct way of avoiding the application of the contribution limits would be for the interested contributor to make independent expenditures supporting the favored candidate. Despite the avoidance of contribution

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75. FLA. STAT. §106.011(1) (1975). This definition has been construed to include *any* office filled by the voters of this state; thus, it excludes only presidential and vice-presidential candidates. OP. ATT'Y GEN. FLA. 074-23 (1974).

76. FLA. STAT. §106.15(1) (1975).

77. *See* 18 U.S.C.A. §608(b)(3) (1975), providing that no individual shall make contributions aggregating more than $25,000 in any calendar year.

78. An example may clarify this evasion device: Candidates *X* and *Y* are running against each other for the state legislature. Contributor wishes to give as much as possible to *X*. Under FLA. STAT. §106.08(1), Contributor may give $1,000 to *X*, $1,000 each to Committees *A, B, C, etc.* (all of whose purpose is to "Elect *X*") and $1,000 each to Committees *1, 2, 3, etc.* (all of whose purpose is to "Stop *Y*"). Although Committees *A, B, C, etc.* could not contribute more than $1,000 each to *X* under §106.08, the Florida Act contains no explicit provisions regulating "anti-issue" committees such as the "Stop *Y*" committees.

79. Another provision in the Florida Act may also discourage evasion of limits via multiple committees. Section 106.08(3), carried over from Fla. Laws 1955, ch. 55-29936, §1, *codified as* FLA. STAT. §99.161(4) (1955), prohibits any person from making a contribution in support of a candidate or issue, "through or in the name of another, directly or indirectly." This language has not been interpreted in Florida but appears to eliminate the problem of "earmarking." This is a device through which a contributor gives money to a committee supporting a number of candidates but specifies the candidate to whom he wants the money to go, which circumvents limits on his direct contributions. Fleishman, *supra* note 4, at 432. The Federal Act contains a specific provision that earmarked contributions shall be treated as contributions to the candidate. 18 U.S.C.A. §608(b)(6) (1975). The Federal Act also has a provision similar to the Florida Act's §106.08(3), but it is more narrowly drawn to prohibit only the fraudulent use of another's name in contributing. 18 U.S.C.A. §614 (1975). The language of the Florida statute is broad enough to cover both of these occurrences, but its breadth also results in ambiguity.

limits that this scheme allows, a federal act that limited independent expenditures was held unconstitutional by the Supreme Court.[80]

Constitutional Implications

The general concept of limitations on contributions has long been questioned by commentators because of possible constitutional impediments. Strict constructionists contend that contribution limits impinge on first amendment rights of free speech and association by impeding the contributor's ability to communicate with others as he wishes.[81] Proponents of the limitations argue that a balancing approach is tenable.

> [The right to communicate freely and the right to be heard] are not absolute, and determination of the constitutionality of restrictions upon them requires a weighing of the interest sacrificed against the goals and values sought to be achieved. . . . Campaign contributions serve primarily to pay for seeking to persuade the electorate. . . . Spending money is not the same as speech-making, even if the former may foster the latter. . . . Both speaking and spending may be protected by the first amendment; but the degree of protection accorded need not necessarily be held to be identical.[82]

Contribution limits have not been directly challenged in the Florida courts, but their constitutionality has recently been settled by the Supreme Court. In *Buckley v. Valeo*,[83] Senator James Buckley and others sued the Secretary of the Senate and a number of other federal officials.[84] The plaintiffs were seeking a declaratory judgment on the constitutionality of the key provisions of the Federal Act[85] relating to limitations on and disclosure of contributions and expenditures and to the public financing of presidential campaigns. On appeal to the Supreme Court, Senator Buckley and his colleagues first argued that "contributions and expenditures are at the very core of political speech, and that the [Federal] Act's limitations thus constitute restraints on First Amendment liberty that are both gross and direct."[86] The Court replied:

> [A] limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal

80. Buckley v. Valeo, 96 S. Ct. 612, 640, 647 (1976). The Federal Act had attempted to deal with this situation by placing a $1,000 limit on direct contributions to the candidate and another $1,000 limit on the expenditures an individual may make on the candidate's behalf without the candidate's authorization. 18 U.S.C.A. §608(b)(4), (e)(1) (1975). See text accompanying notes 119-146 *infra*.

81. *See, e.g.*, S. REP. No. 93-310, 93d Cong., 1st Sess. 47-48 (1973) (views of Senator Claiborne Pell); Ferman, *Congressional Control on Campaign Financing: An Expansion or Contraction of the First Amendment?*, 22 AM. U.L. REV. 1, 8-12 (1972).

82. Rosenthal, *supra* note 7, at 372-73.

83. 96 S. Ct. 612 (1976), *aff'g in part, rev'g in part* 519 F.2d 821 (D.C. Cir. 1975).

84. A full identification of the parties is made in the Circuit Court opinion, 519 F.2d at 834 n.4.

85. See text accompanying note 62 *supra*.

86. Buckley v. Valeo, 96 S. Ct. 612, 633 (1976).

> restriction upon the contributor's ability to engage in free communication. . . . The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing.[87]

The appellants next contended that the underlying purpose of contribution limits could have been achieved with less interference with first amendment rights by using "less drastic means,"[88] such as disclosure and reporting requirements.[89] The Court rejected this argument because Congress had passed contribution limits after determining that reporting requirements alone would not be adequate protection against the undue influence of large contributors.[90] Those limits are a matter of legislative discretion and within congressional power.[91] With the precedent set by the *Buckley* opinion[92] and the legislative intent underlying the Florida Act,[93] there is ample evidence to conclude that the Florida Act's contribution limits are constitutional.

Limitations on Expenditures

The Florida Act defines an "expenditure" as a "purchase, payment, distribution, loan, advance, or gift of money or anything of value made for the purpose of influencing the results of an election."[94] Modeled in theory on the Federal Act,[95] section 106.10 sets the maximum amount a candidate may spend for each primary and general election for each office.[96] For example,

87. *Id.* at 635.

88. The doctrine of "less drastic means" was derived from Shelton v. Tucker, 364 U.S. 479 (1960), wherein the Court said: "In a series of decisions this Court has held that, even though the governmental purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved. The breadth of legislative abridgement must be viewed in the light of less drastic means for achieving the same purpose." *Id.* at 488.

89. Buckley v. Valeo, 96 S. Ct. 612, 639 (1976).

90. *Id.* at 640.

91. *Id.* Congressional power to regulate first amendment rights to a certain degree is well-established. *See, e.g.*, Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969); United States v. Harriss, 347 U.S. 612 (1954); United States v. Classic, 313 U.S. 299 (1941). The exercise of legislative discretion in ascertaining the amount at which to set contribution limits is a greater problem than legislative power. The limits must be low enough not to suggest undue influence yet high enough that the candidate will not waste the large amount of time required to raise funds by collecting only small amounts. *See generally* American Enterprise Institute, Campaign Finances — Two Views of the Political and Constitutional Implications (1971); Congress Watch, Statement on S. 372 and Proposed Amendments (Comm. Print 1973).

92. *See also* Smith v. Ervin, 64 So. 2d 166, 169-70 (Fla. 1953). See text accompanying notes 124-126 *infra*.

93. See Florida House Committee on Elections, *supra* note 6, at Summary; Roady, *supra* note 2, at 436-37.

94. Fla. Stat. §106.011(4) (1975).

95. Interview with John French, *supra* note 10.

96. Fla. Stat. §106.10(2) makes these limits inapplicable to candidates for the United States Congress or Senate as long as the Federal Act applies to them. *See also* 18 U.S.C.A. §608(c)(1) (1975). The law in Florida prior to 1973, Fla. Laws 1953, ch. 53-28156, §13, at

a candidate for the state senate may spend $25,000 for the first primary, $15,000 for the second primary, and $25,000 for the general election.[97] Limits on expenditures reduce, or at least stabilize, the cost of campaigning and ensure that the ability to run successfully for political office will no longer be heavily dependent on a large campaign purse.[98]

In order to ensure uniformity in the required reports, the Florida Act sets forth procedures whereby all expenditures, "directly or indirectly made or received in furtherance of the candidacy of any person,"[99] must be channeled through a primary campaign depository[100] and authorized on a voucher form by the campaign treasurer.[101] The vouchers must state the amount of funds authorized, the nature of the goods or services to be received for that consideration, and that such amount will not exceed the permissible expenditure limits.[102] The person receiving the authorization voucher must certify its validity and then present it to the campaign depository for payment.[103] Although this procedure seems complex, it was found to be a necessary means of implementing the reporting provisions.[104]

Certain types of expenditures are particularly restricted under the Florida Act. The maximum amount a candidate may pay for advertising is the lowest local rate available to any commercial advertiser; this limitation results from the fact that the Florida Act limits the amount owners of mass media facilities are permitted to charge a "candidate for state or county public office."[105] A candidate may not pay for polls or surveys, and a person may not solicit funds from a candidate for polls or surveys, unless conducted under the candidate's direct supervision or that of a professional polling organization hired by him.[106] Finally, until a candidate has qualified for office, no person, candidate, political party, or political committee, "directly or indirectly in

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566, *codified as* FLA. STAT. §99.172 (1953), did not limit expenditures as does §106.10 but specifically designated the items on which campaign funds could be spent, *e.g.*, radio advertising, travel, etc. This enumeration was originally part of Fla. Laws 1913, ch. 13-6470, §1, at 268, and applied only to primary elections but was amended by the 1953 Session Law, *id.*, to apply to all elections. This specific designation was probably dropped in 1973 because it was no longer practical to list all the goods and services on which campaign funds could justifiably be spent.

97. FLA. STAT. §106.10(1)(c) (1975).

98. *See, e.g.*, FLORIDA HOUSE COMMITTEE ON ELECTIONS, *supra* note 6, pt. 1, at 6; Fleishman, *supra* note 7, at 457; Roady, *supra* note 2, at 441.

99. FLA. STAT. §106.021(4) (1975).

100. *Id.* §§106.11, .13. Petty cash expenditures for less than $20, which are not used to buy media advertising, do not need to be channeled through a primary campaign depository or authorized by the campaign treasurer. *Id.* §106.12.

101. *Id.* §106.14. A similar provision under the old law, Fla. Laws 1951, ch. 51-26819, §7, at 634, *codified as* FLA. STAT. §99.161(7) (1951), was upheld in Schaal v. Race, 135 So. 2d 252 (2d D.C.A. Fla. 1961) (a provider of advertising services pursuant to an *oral* contract was denied recovery in his suit for payment).

102. FLA. STAT. §106.11(1) (1975).

103. *Id.* §106.11(2).

104. Schaal v. Race, 135 So. 2d 252, 255-58 (2d D.C.A. Fla. 1961), *citing* Smith v. Ervin, 64 So. 2d 166, 170 (Fla. 1953). See text accompanying note 124 *infra*.

105. FLA. STAT. §106.16 (1975).

106. *Id.* §106.17.

furtherance of any candidacy," is permitted to advertise in printed or electronic media or to rent an auditorium for a political speech.[107]

Some expenditures appear to be excepted from the limitations imposed by the Florida Act. For instance, incidental expenditures made by volunteers in rendering their services do not appear to be counted as expenditures under the Florida Act.[108] Similarly, a future candidate may incur travel, incidental, and limited campaign expenses prior to qualifying for office without it being counted toward his expenditure limitations.[109] But any reimbursement of the candidate or volunteers from campaign funds would probably be an expenditure since it would come from the campaign depository or petty cash.[110]

Excess Contributions

The Florida Act provides that contributions to the candidates in excess of the allowable expenditure limitations escheat to the state.[111] This provision takes on added significance in view of the problems concerning the constitutionality of the expenditure limitations. The Florida Act seems to contemplate that part of the total contributions collected within the expenditure limits may not be spent by the time the campaign ends because it requires periodic reporting of unexpended balances.[112] The Act fails, however, to prescribe what the candidate, whether elected, may do with the funds that do not escheat but are not actually expended.

This question of the candidate's disposal of funds contributed in excess of his actual expenditures arose under the previous Florida law.[113] Under that law, the attorney general opined that since the campaign was over, the excess funds could be withdrawn on "the candidate's certification that he is unopposed and is withdrawing the funds for his own personal use."[114] He reiterated this opinion just after the Florida Act was passed but emphasized that he was still dealing with the prior law and did not intend to "pass upon

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107. *Id.* §106.15. See also text accompanying notes 71-76 *supra.* Although "candidate" is broadly defined, this section narrowly defines candidate for purposes of media expenditures.

108. See text accompanying notes 58-64 *supra.*

109. The former law, Fla. Laws 1955, ch. 55-29936, §1, at 897, *codified as* FLA. STAT. §99.172 (1955), expressly permitted pre-qualification travel and incidental expenditures. The Florida Act merely prohibits significant advertising expenditures. FLA. STAT. §106.15 (1975). Since the limits imposed by §106.10 apply only to *candidates,* the minimal expenditures permitted prior to qualifying for office would not be subject to the limitations.

110. See note 100 *supra* and accompanying text.

111. FLA. STAT. §106.10(3) (1975).

112. *Id.* §106.07(5).

113. OP. ATT'Y GEN. FLA. 072-307 (1972). This Opinion, however, dealt with a situation in which a candidate wished to hold present contributions for future campaign expenses. The Attorney General expressly refused to opine whether funds could be used solely for personal purposes but found that nothing in the law actually prohibited such use. The issue of campaign funds in excess of expenditure limits never arose under the previous law since that law contained no such limits.

114. See note 113 *supra.*

any questions that might arise or exist under the 1973 revision of the Code."[115]

Despite the attorney general's disclaimer, the new Act would likely receive a similar interpretation. Return of the excess funds would be difficult. Since all incoming funds are mingled for purposes of disbursements, it would be impractical, if not impossible, to determine whose contributions were unspent. Pro rata division would be so nominal as to be meaningless. By requiring these excess funds to be reported until the account is empty, the Florida Act implies that they will be reduced over time.[116] Although the statute does not prescribe any means for this reduction, any official or charitable purpose would seem an appropriate and reasonable use.[117] An express provision to this effect should be added to the Florida Act.[118]

Limitations on Expenditures — Constitutional Implications

Limitations on expenditures have not escaped criticism on constitutional grounds.[119] A citizen's first amendment rights of free speech and association are impinged on when expenditure limitations prevent him from communicating his political views to the public to the full extent of his ability. Similarly, the public loses its right to benefit from a full discussion of the issues. Although expenditure limits are not entirely new to Florida,[120] the specific issue of their constitutionality has not been dealt with by the Florida courts. Two provisions of the Florida Act requiring close constitutional scrutiny are the requirement of treasurer authorization for all expenditures and the expenditure limits themselves. The Florida supreme court's reasoning in an early case would suggest a conclusion that these two provisions would be valid,[121] but the *Buckley* decision commands a different result.

Non-Candidate Expenditures

Under the Florida Act[122] and its predecessor statute,[123] no expenditure may be made by either the candidate or an unconnected third person without

115. OP. ATT'Y GEN. FLA. 073-221 (1973).

116. FLA. STAT. §106.07(5) requires supplemental statements to be filed after the election showing unexpended funds. "Such supplemental statements shall be filed every sixty days until the account shows no unexpended balance of contributions." *Id.* This seems to create a presumption that these funds will *somehow* be spent.

117. Public policy would suggest that candidates not be permitted to use funds for personal purposes. Such permission could lead to individuals qualifying for candidacy with the primary intent to raise, but not spend, funds in their campaign. *But see* note 114 *supra* and accompanying text.

118. See APPENDIX §3 *infra.*

119. *See, e.g.,* Fleishman, *supra* note 7, at 452-55; Sterling, *Control of Campaign Spending: The Reformers' Paradox,* 59 A.B.A.J. 1148 (1973).

120. Expenditure limitations were enacted in Florida as part of its 1913 legislation, but these were repealed in 1949. See note 38 *supra.*

121. Smith v. Ervin, 64 So. 2d 166 (Fla. 1953). See text accompanying notes 124-126 *infra.*

122. Fla. Stat. §106.021(4) (1975).

123. Fla. Laws 1951, ch. 51-26819, §4, at 633, *codified as* FLA. STAT. §99.161(4) (1951).

the authorization of the candidate's campaign treasurer. A suit brought under the prior law challenged the constitutionality of this provision. In *Smith v. Ervin*,[124] the owner of a radio station, who wished to give free time in the furtherance of a particular candidacy, asserted that his rights of free speech and a free press were abridged by the requirement that he had to obtain the treasurer's permission.[125] The court cited the chancellor's opinion in stating:

> I cannot see where the issue of free speech is involved at all, even if it is, the Legislature was justified in invoking the police power to put a curb on this evergrowing evil [of financial influence and "self-serving segments in our system"]. *Without discussing the details, this law does not prohibit anyone from making a speech advocating the candidacy of a candidate. The only thing that it does is to require that the contribution shall be had upon the authorization of that candidate or his duly appointed agent . . . .*[126]

Thus, the effect of this statute is that no person, regardless of the extent of his disassociation from the candidate, may provide any form of financial support for that candidacy without the prior approval of the candidate's agent, the campaign treasurer.[127] Clearly, this veto power over others' ability to communicate is highly suspect. The fact that such an abridgment of free speech is affected by a private individual is of no significance since the power is given by a state statute.[128] The *Smith* court's failure to analyze the constitutional issues is readily apparent from the language quoted above.[129] The court deferred to a legislative judgment concerning the potential for corruption without studying the possibility of other undesirable effects.

The Federal Act provided the potential contributor with an alternative to obtaining prior authorization. Any person may spend up to $1,000 with respect "to a clearly identified candidate" without needing the candidate's approval,[130] but a person who makes an expenditure without the candidate's authorization must report directly to the Federal Elections Commission all

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124, 64 So. 2d 166 (Fla. 1953).

125. The possibility that the *Smith* decision was limited only to broadcasters, who represent a unique media, Red Lion Broadcasting Co. v. FCC, 395 U.S. 367, 380-81 (1969), was negated by the existence of a companion newspaper case, Ervin v. Finlay, 64 So. 2d 175 (Fla. 1953). In *Finlay*, plaintiff newspaper owner presented the same question as *Smith*. The Florida supreme court disposed of his suit in the same manner as *Smith*, citing *Smith* as authority.

126. Smith v. Ervin, 64 So. 2d 166, 170 (Fla. 1953) (emphasis added).

127. The only instance when the treasurer's approval is not required is when a committee or political party makes an expenditure for the "purpose of jointly endorsing six or more candidates." FLA. STAT. §106.021(4) (1975). No part of such an expenditure is attributable to any of the candidates either. *Id.* §106.10(4). By reverse implication, a group expenditure for less than six candidates must be allocated.

128. *See generally* Rosenthal, *supra* note 7, at 390-91.

129. The dissent was equally lax in its analysis. After quoting the chancellor's findings on this very point of constitutionality, the dissent ignored the issue and dwelled on whether the authorization-of-payment form constituted legal tender. *See* 64 So. 2d at 171-75.

130. 18 U.S.C.A. §608(e)(1) (1975).

amounts spent in excess of $100.[131] Expenditures made *with* the candidate's authorization are limited by the $1,000 contribution limit[132] and also must be reported by the candidate as part of his total expenditure allowance.[133] Allowing at least some independent expenditures is inherently less offensive to first amendment freedoms than the proscriptions of the Florida Act, and it still ensures that all significant expenditures are disclosed.

In *Buckley*, the appellants contended that the federal provision that limits independent expenditures was unconstitutionally vague and impermissibly burdensome on the right of free expression.[134] In response the Court held that as long as the provision was construed to apply only to expenditures that advocate, in explicit terms, the election or defeat of a clearly identified candidate,[135] the provision would not be invalidated for vagueness.[136] Thus, the provision was construed so as not to affect any expenditures relating only to campaign issues.[137]

On the question of whether the $1,000 limit on independent expenditures was constitutional, the Supreme Court found no governmental interest supporting the limit that could pass "the exacting scrutiny applicable to limitations on core First Amendment rights of political expression."[138] The Circuit Court of Appeals for the District of Columbia had upheld this provision as a device to prevent circumvention of the contribution limitations.[139] In reversing that holding, the Supreme Court said that the limits on independent expenditures were so ineffective in preventing corruption or the appearance of corruption that they could not be upheld against the constitutional rights being impinged.[140] Under the Court's construction of the statute,[141] the provision limiting independent expenditures could be easily circumvented by a contributor who simply avoided any express reference to a candidate. Furthermore, "[a]dvocacy of the election or defeat of candidates for federal office is no less entitled to protection under the First Amendment than the discussion of political policy generally or advocacy of the passage or defeat of legislation."[142]

The *Buckley* decision also criticized the validity of the goal of equalizing the ability of all persons to influence the outcome of elections. As construed by the Court, the first amendment does not permit the limitation of some in-

131. 2 U.S.C.A. §434(e) (1975). This provision was found to be constitutional in Buckley v. Valeo, 96 S. Ct. 612, 662-64 (1976). See text accompanying notes 205-212 *infra*.
132. 18 U.S.C.A. §608(b)(4) (1975).
133. 2 U.S.C.A. §434(b)(9) (1975).
134. Buckley v. Valeo, 96 S. Ct. 612, 645-47 (1976).
135. The Federal Act defines "clearly identified" as meaning "(i) the candidate's name appears; (ii) a photograph or drawing of the candidate appears; or (iii) the identity of the candidate is apparent by unambiguous reference . . . ." 18 U.S.C.A. §608(e)(2)(A) (1975).
136. Buckley v. Valeo, 96 S. Ct. 612, 646-47 (1976).
137. *Id.*
138. *Id.* at 647.
139. Buckley v. Valeo, 519 F.2d 821, 853 (D.C. Cir. 1975).
140. Buckley v. Valeo, 96 S. Ct. 612, 647 (1976).
141. See note 135 *supra* and accompanying text.
142. *Id.* at 648.

dividuals' expression "in order to enhance the relative voice of others."[143] The Court recognized that a democratic system of government depends on the widest possible discussion of diverse ideas.[144] Therefore, the "First Amendment's protection against governmental abridgement of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion."[145]

While the federal provision limited only the *amount* an individual could spend independently, the Florida Act prohibits any unauthorized independent expenditures. Clearly, the reasoning employed by the Supreme Court in *Buckley* to strike down limits on independent expenditures would apply to the Florida Act's requirement of prior authorization for all expenditures. The Florida Act should be amended to conform to the principles enunciated in the *Buckley* decision.[146]

Candidates Expenditures

Limitations on expenditures promote the two goals of stabilizing the total cost of an election and of equalizing the maximum financial opportunity of the candidates to communicate with the voters. A third goal, reduction of the potential for corruption, is not significantly affected. Also, spending limits are antithetical to the fourth objective — disseminating the maximum amount of information to the public — since restrictions "on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached."[147] The issue concerning the limitations on candidates' expenditures is whether the governmental goals furthered by expenditure limitations are sufficiently important to constitute a permissible infringement of the first amendment right of free expression.

In testing the constitutionality of the Federal Act's limits on candidate expenditures,[148] the *Buckley* Court concluded not only that the constitutional

143. *Id.* at 649.

144. *Id.* at n.55. The Court noted that the fairness doctrine, upheld in Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969), which requires that both sides of controversial issues be presented, could be distinguished from the instant limitations because the former applied only to the inherently limited area of broadcast media. *Cf.* Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974) (striking down Florida's right-to-reply law, which applied to newspapers' criticisms of political candidates).

145. *Id.*

146. See APPENDIX §2 *infra.*

147. Buckley v. Valeo, 96 S. Ct. 612, 634-35 (1976).

148. The Federal Act, 18 U.S.C.A. §608(c) (1975), allowed each candidate, as a limit on campaign expenditures, a choice between an absolute amount or an amount proportioned to the number of persons of voting age in his district. The Congressional history of this section does not clearly explain the allowance of this choice. The Bureau of the Census can, with general accuracy, determine the voting age population of each district. A choice of limits seems to have been offered as the result of uncertainty in determining the correlation between expenditure ceilings and the candidate's ability to reach all the voters. The number of persons of voting age is only one relevant factor. The use of an absolute

interest outweighed the legislative goals but also that the goals themselves were unconstitutional.[149] Stabilizing rising campaign costs is not sufficient justification for legislative action.

> The First Amendment denies government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the government but the people . . . who must retain control over the quantity and range of debate on public issues in a political campaign.[150]

The Supreme Court also attacked another goal of expenditure limitations — to equalize all the candidates' financial ability to influence the voters.[151] Since the funds available to a candidate merely reflect the extent of his support, the Court emphasized that "[t]here is nothing invidious, improper, or unhealthy in permitting such funds to be spent to carry the candidate's message to the electorate."[152] In addition, political commentators have noted that placing maximums on the amount of money candidates may spend fails to equalize the candidates' influence on the voters. So many non-monetary factors compose a candidate's attraction or vote-getting potential that equalizing funds does nothing but accentuate the other factors. Such factors as his public reputation, physical appearance, intelligence, issue association, and campaign organization figure prominently in the candidate's likelihood of success with the electorate.[153] Furthermore, expenditure limits do not ensure equal opportunities in collecting contributions. The ability to raise funds may depend on the candidate's potential to win as perceived by contributors. "Likely winners can raise more money than likely losers."[154]

Another reason that limiting expenditures does not equalize candidate influence is the impact of timing. Although the amount of funds received is important, the time at which funds are received may be critical to a campaign's success. Expenditure limits maximize the total campaign effort but do not prevent the candidate with initial financial support from planning his campaign strategy with the foreknowledge of how much he has to spend. If he is confident of his support, he can plan the times at which to spend his money. Large amounts of money are necessary at the outset of a campaign to hire a top professional organization, to reserve the best times for media advertisements, and to begin traveling. The candidate with initial financial

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amount was based on actual amounts spent by candidates on mass media, which hypothetically reaches all the population. U.S. CODE CONG. & AD. NEWS 92d Cong., 2d Sess. 1808 (1972) (views of Prouty, Griffin, *et al.*). Another section, 18 U.S.C.A. §608(d) (1975), provides for readjustment of both choices each January to reflect rises in the Consumer Price Index (published monthly by the Bureau of Labor Statistics) over the base period of 1974. The Florida Act's expenditure limitations, §106.10, are set at absolute amounts that are subject to effective diminution through inflation.

149. Buckley v. Valeo, 96 S. Ct. 612, 652-53 (1976).
150. *Id.* at 653.
151. Buckley v. Valeo, 96 S. Ct. 612, 652-53 (1976); Rosenthal, *supra* note 7, at 377.
152. Buckley v. Valeo, 96 S. Ct. 612, 652-53 (1976).
153. CONG. DIGEST, *supra* note 29, at 47, 49; Fleishman, *supra* note 7, at 459.
154. Fleishman, *supra* note 7, at 459.

support has a significant advantage over the one who must "pound the pavement" to start the flow of contributions because the former can present his message to the voters sooner and more efficiently.[155] In striking down the expenditure limits, the *Buckley* Court recognized that the candidate who begins as an "underdog" due to lack of public recognition, an unimpressive personal image, or haphazard organization could counteract these initial disadvantages by an extensive, but costly media campaign.[156]

Similarly, an incumbent candidate has certain advantages over the challenger. These include name recognition, continuous publicity of his official acts, and staff and office subsidies. Even though none of these may be intentionally used to assist his re-election campaign, the carry-over effect is unavoidable.[157] Possibly as a result of such advantages, 88 percent of the members of the 93d Congress running for re-election in 1974 were re-elected.[158] If a challenger is well-financed, he can use his funds to overcome the incumbent's natural advantages. On the other hand, the court of appeals in *Buckley* suggested that expenditure limits served to offset an incumbent's usual ability to raise larger sums than the challenger.[159] The Supreme Court observed, however, that the effect of the $1,000 contribution limit will vary in any given election[160] and that the total of contributions usually demonstrates support for the candidate.[161]

In discussing expenditure limitations, the *Buckley* opinion considered all four of the goals that were suggested as representing an ideal campaign finance law. The Court found that the right of free expression contained in the first amendment precluded legislative concern about the total costs of elections or the amount any candidate wished to spend to communicate with the voters,[162] two of the goals. The third goal, maximizing the distribution of information to the public, received implicit support by the Court's protection of the "unfettered interchange of ideas."[163] Theoretically, any reduction in available information inhibits the ability of the voter to be informed completely and choose accordingly. However, some political analysts have suggested that campaign advertising is ineffective because the public is saturated by it[164] and because the average voter is not sufficiently interested in the elections to analyze all the information he receives.[165] After evaluating these three goals, the *Buckley* Court returned to the goal mentioned throughout their opinion as the primary concern.

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155. Buckley v. Valeo, 519 F.2d 821, 854 (D.C. Cir. 1975).

156. 96 S. Ct. at 653. *See also* FLORIDA HOUSE COMMITTEE ON ELECTIONS, *supra* note 6; Adamany, *supra* note 1, at 3.

157. Note, *supra* note 36 at 306-07. For a specific list of the advantages that a Congressman in office receives, see *id.* at 306.

158. UNITED STATES BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1975, 446 (1975).

159. Buckley v. Valeo, 519 F.2d 821, 861 (D.C. Cir. 1975).

160. Buckley v. Valeo, 96 S. Ct. 612, 641 (1976).

161. *Id.* at 652.

162. See text accompanying notes 148-152 *supra*.

163. Buckley v. Valeo, 96 S. Ct. 612, 632 (1976).

164. See note 21 *supra*.

165. Interview with John French, *supra* note 10.

> 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 rather than by . . . campaign expenditure ceilings.[166]

In light of the criticisms contained in the *Buckley* holding, the Florida Act's expenditure limitations must be repealed.[167]

The Disclosure and Reporting Provisions

The disclosure and reporting provisions of the Florida Act are substantially similar to provisions contained in the former law. Each candidate and political committee must appoint a campaign treasurer, who may appoint a certain number of deputy treasurers.[168] He must also designate a primary campaign depository, which can be any bank authorized to do business in Florida.[169] A secondary depository may be established in each county where an election will be held in which the candidate is participating.[170] After the treasurer and depository have been designated, a candidate or political committee is eligible to receive contributions and make expenditures.[171] No contribution may be made on behalf of a candidate or committee unless approved by the treasurer.[172]

The treasurer must record[173] and report[174] the name, address, occupation, place of business, and amount and date of money received or spent for every contributor or recipient of an expenditure. If the contribution is less than $100, the occupation and place of business of the contributor may be omitted from the report.[175] Reports disclosing similar information must also be filed for campaign loans and proceeds from fund raising sales and events.[176] Finally, there is an all-inclusive clause that requires reporting each "contribution, rebate, refund, or other receipt not otherwise listed . . . ."[177] One exception to the Florida Act's stringent reporting requirements, however, may be cash contributions of less than $100. Under section 106.09, a form containing all the required information must accompany cash contributions exceeding $100, but that section does not specify any requirements for contributions

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166. Buckley v. Valeo, 96 S. Ct. 612, 652 (1976).
167. See Appendix §6 *infra*.
168. Fla. Stat. §106.021 (1975).
169. *Id.*
170. *Id.*
171. *Id.* §106.021(3).
172. *Id.* §106.021(4).
173. *Id.* §106.06.
174. *Id.* §106.07.
175. *Id.* §106.07(4)(a).
176. *Id.* §106.07(4)(d).
177. *Id.* §106.07(4)(e). Committees of continuous existence, as defined in §106.04, and political parties, affected by §106.29, have essentially the same reporting requirements. See note 44 *supra*.

of $100 or less nor does it appear to refer to the regular reporting section.[178] Probably, though, the amount and date must be reported in order to ensure accurate totals. An amendment would be helpful in clarifying the treasurer's responsibility to report these lesser contributions.[179] Also, to achieve the goal of relatively full disclosure, the $100 floor should be lowered.[180]

Campaign reports must be filed quarterly up to the 40th day before the election in which the candidate seeks nomination or election to office, thereafter, on the Monday of each week.[181] Unopposed candidates must file reports also, but only at the quarterly periods and on the Monday before the election.[182] A final report listing the total contributions and expenditures for the campaign is due 45 days after the election. If there are unexpended funds or outstanding debts, additional status reports must be made periodically.[183]

Dependency of Disclosure on Public Concern

The reports required by the Florida Act are open to public inspection.[184] Since the average citizen lacks the time and ability to exercise this right, the press must play a vital role in analyzing these reports vigorously and accurately.[185] The press summary and dissemination of this information enables the voters to detect special interests that have channeled their gifts through many varied contributions.[186] When the disclosure requirements first appeared in the 1951 law, the press was praised for its reporting.[187] Now, however, the press may be less enthusiastic because the novelty of disclosure may have worn off and the sheer mass of data makes the information practically incomprehensible.[188] As a result, the public has a responsibility to make disclosure effective by demanding a rigorous analysis of the candidates' reports by the news media.

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178. Thus, it appears a contributor could give ten $100 cash contributions and remain anonymous.

179. See text accompanying notes 205-212 *infra*. See also APPENDIX §§3, 5 *infra*.

180. *Id.*

181. FLA. STAT. §106.07(1) (1975).

182. *Id.* The prior law, Fla. Laws 1951, ch. 51-26819, §8(e), at 636, originally exempted unopposed candidates from the obligation to file reports, but this exemption was dropped by Fla. Laws 1970, ch. 70-133, §2, at 457.

183. FLA. STAT. §106.07(5) (1975). The statute lends no guidance on the means by which these balances or debts may be reduced. See note 116 *supra* and accompanying text.

184. FLA. STAT. §106.07(2) (1975).

185. Failure by the press to analyze the reports properly is especially misleading. In the Interview with John French, *supra* note 10, Mr. French gave an example: In a particular election, a political reporter discovered that three different banking interests had contributed the maximum $1,000 to one candidate. The resulting newspaper story reported the three contributions as a lump sum amount representing that "banking interests" were supporting this candidate. The implication that this candidate might be disposed to certain legislation favoring banks was incorrect since, in actuality, the three interests were in conflict with each other and each was attempting to neutralize the effect of the others.

186. Congress Watch, *supra* note 91, at 3; Roady, *supra* note 2, at 438-39.

187. Roady, *supra* note 2, at 438-39.

188. See notes 212-215 *infra* and accompanying text.

Constitutional Implications

The constitutionality of disclosure provisions has been attacked in several contexts and consistently upheld. In *Burroughs v. United States*,[189] the petitioners asserted that the reporting requirements of the Federal Corrupt Practices Act of 1925[190] were beyond the congressional power to regulate the elections.[191] The Court upheld the disclosure provisions as a valid exercise of congressional power to protect elections from the "corrupt use of money."[192] In a subsequent ease, the disclosure required by the Federal Regulation of Lobbying Act[193] was challenged as an infringement on the constitutional rights of free speech, press, and the right to petition for redress of grievances.[194] The Supreme Court stated that "full realization of the American ideal of government by elected representatives depends to no small extent on [the people's] ability to properly evaluate such pressures."[195] These cases were among the authorities cited in the *Buckley* decision upholding the Federal Act's disclosure and reporting provisions.[196]

The *Buckley* Court found that the governmental interests served by disclosure were sufficiently important to outweigh the possibility of infringement on the rights of privacy of association and belief guaranteed by the first amendment.[197] Three interests were delineated. First, disclosure reveals any special interests that support a candidate, and assists the voters in determining the candidate's political philosophy. Second, by exposing large contributions, the disclosure requirements "deter actual corruption and avoid the appearance of corruption."[198] Finally, disclosure and reporting requirements provide "an essential means of gathering the data necessary to detect violations of the contribution limitations."[199]

The appellants in *Buckley* also contested the disclosure requirements by arguing that disclosure discourages contributors to minority parties or unpopular causes because the potential contributors fear retaliation from their employers, the winning party, the general public, or others. Although they upheld the disclosure law, the Court did recognize the possibility of greater infringement of those contributors' freedom of association.[200] The appellants' argument was weakened, however, by the lack of any evidence showing that the disclosure requirement had actually injured a contributor or discouraged a significant number of potential contributors.[201] Nevertheless, the Court did

189. 290 U.S. 543 (1934).
190. 2 U.S.C. §§241 *et seq.* (1970).
191. U.S. CONST. art. II, §1.
192. 290 U.S. at 548.
193. 2 U.S.C. §§261 *et seq.* (1970).
194. United States v. Harriss, 347 U.S. 612 (1954).
195. *Id.* at 625.
196. Buckley v. Valeo, 96 S. Ct. 612, 657-58 (1976).
197. *Id.*
198. *Id.* at 657.
199. *Id.* at 658.
200. *Id.* at 657. *See also* Emerson, *Freedom of Association and Freedom of Expression*, 74 YALE L.J. 1 (1964).
201. Buckley v. Valeo, 96 S. Ct. 612, 659-60 (1976).

not reject this argument entirely. If a contributor to a minority party or unpopular cause can demonstrate in a future case that a "reasonable probability [exists] that the compelled disclosure of a party's contributors' names will subject them to threats, harassment or reprisals from either government officials or private parties," an exemption from the disclosure requirements would be appropriate.[202]

In dicta, the Florida supreme court has concluded that the former disclosure statute[203] was valid.

> The only thing [this law] does is to require that that contribution . . . shall be reported by the candidate or his treasurer and become part of the public reports. Otherwise, how could the elector ever tell who was behind this candidate or that; and the Legislature chose the only way by which the contributions to campaigns could be policed. . . .[204]

Today, the Florida Act provides for full disclosure and public inspection. In contract, the Federal Act requires neither record-keeping of contributions of ten dollars or less nor disclosure of persons who make contributions of less than $100.[205] While records of contributions over ten dollars are kept, reports to the Federal Elections Commission are required only for amounts of $100 or more.[206] By requiring that only contributions of $100 or more be reported and that only these contribution records may be made public,[207] the Federal Act effects a compromise between an increasing recognition of the right of privacy and the usefulness of disclosure.[208] The significant differences between the disclosure requirements of the Florida Act and the Federal Act provisions would probably prevent *Buckley* from lending any supportive authority to the Florida law. By failing to recognize any right of privacy, the Florida Act's disclosure provisions may be more vulnerable to a constitutional attack.

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202. *Id.* at 661.

203. Fla. Laws 1970, ch. 70-133, at 457, *codified as* FLA. STAT. §99.161(8) (1971). However, this section was never cited in the opinion.

204. State v. Ervin, 64 So. 2d 166, 170 (Fla. 1953) (quoting the chancellor's opinion).

205. 2 U.S.C.A. §432(c) (1975).

206. *Id.* §434(b). In this respect, the Federal Act differs slightly from the Federal Corrupt Practices Act, 2 U.S.C. §241 (1970). The latter applies to *all* contributions but neither act provides for public inspection of these records.

207. 2 U.S.C.A. §438(a)(4) (1975).

208. The court of appeals in Buckley v. Valeo, 519 F.2d 821 (D.C. Cir. 1975), found that: "These audit provisions neither explicitly nor implicitly authorize disclosure by the Commission of contribution records. Consequently, the confidential status of those records precludes any claim of real or threatened injury to plaintiffs' First Amendment interests arising from public disclosure. . . . In this case, the legislature dispensed with routine reporting of contributions of $100 or less—an exemption that reaches a large percentage of contributions, permits substantial participation by those concerned with political privacy, and provides elbow room for parties to raise substantial funds from modest contributions. In view of these considerations, we have no basis for holding that this approach by the legislature to the complex problems involved in drawing the line exceeded the bounds of reasonable latitude." *Id.* at 864-65. In affirming the court's finding, the Supreme Court echoed the lower court's language. 96 S. Ct. at 665. *See also* Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U. L. REV. 900, 930-31 (1971).

The vast majority of contributors in Florida give $50 or less.[209] Although a 1961 study found the chilling effect of disclosure to be minimal, it concluded that such an effect did exist.[210] Placed in a constitutional perspective, the Florida Act would benefit greatly from the use of "less drastic means."[211] Setting a floor, such as ten dollars, below which only the *amount* of the contribution must be reported, would probably be a constitutionally satisfactory approach since no one giving less than ten dollars can exert undue influence.[212] A floor also reduces the amount of paperwork, which in turn alleviates some of the problems of accounting and disclosure for the candidates, elections commission staff, and public.[213] "Disclosure of all contributions would serve no useful purpose; in fact, the surest way to impair the value of disclosure requirements would be to compel the collection of data so massive as to baffle the investigator or newspaperman."[214] Indeed, the former staff director of the House committee that drafted the Florida Act has pointed out that news coverage of contributions is incomplete and inaccurate now because of the difficulty in sifting through the reports.[215]

THE ENFORCEMENT PROVISIONS

Although the contribution and expenditure limitations and reporting provisions of the Florida Act are designed to enable the public to ascertain the total costs of running a campaign and the degree to which special interests are exerting their influence, these provisions are ineffective without stringent enforcement procedures. The establishment of such procedures was one of the primary purposes of the Florida Act[216] and probably the most significant addition to the old law.

The enforcement of these provisions is the function of three separate bodies within the Department of State. The Division of Elections prescribes the forms on which all the required information is to be filed, publishes summaries and analyses of that information, and investigates alleged violations of the law.[217] The Division is further empowered to issue subpoenas

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209. Roady, *supra*, note 2, at 440.

210. *Id.*

211. See note 88 *supra*.

212. See APPENDIX §3 *infra*.

213. *Hearings*, *supra* note 2, at 80-81; The Washington Post, Sept. 15, 1975, at A22, col. 3-5; U.S. NEWS & WORLD REPORT, Feb. 21, 1972, at 42-45. *Cf.* Roady, *supra* note 2, at 445-46.

214. Rosenthal, *supra* note 7, at 406.

215. Interview with John French, *supra* note 10. See also note 180 *supra* and accompanying text. Even an avid proponent of campaign finance legislation, Senator Metcalf, wryly observed: "[T]he complexities of [the Federal Act] suggest that the least of the worries of those seeking office should be defeat at the polls. Where the greater risk lies today is in winning—and then having to devote the bulk of one's time for the next two to six years to continuing analysis of campaign laws and regulations." 121 CONG. REC. §15547 (daily ed. Sept. 9, 1975).

216. FLORIDA HOUSE COMMITTEE ON ELECTIONS, *supra* note 6, at Summary.

217. FLA. STAT. §106.22 (1975).

and render advisory opinions on the various provisions of the Florida Act.[218] Any citizen of the state may file a sworn complaint with the Division alleging a violation,[219] but a criminal penalty is imposed on anyone who knowingly files a false complaint.[220] The Division must initiate its investigation within 72 hours of the time the complaint is made and "report its findings to the Department of State for further action."[221] If the Department of State decides there is a sufficient basis for the allegation, it convenes the Elections Commission for further proceedings.[222]

The Elections Commission, a seven-member body created by the Florida Act, functions as a sort of grand jury.[223] The Elections Commission must begin hearings within 72 hours of convening to determine if probable cause exists to believe that a violation of the Act has occurred and to recommend disposition of the case.[224] These proceedings are held in closed session and penalties are imposed for disclosure.[225] If the Elections Commission finds probable cause, the case is then turned over to the Department of Legal Affairs for the appropriate legal action.[226]

Although the purpose of separating these enforcement functions was to create a system of checks and balances,[227] this separation appears unnecessarily inefficient in the utilization of the State's resources. The Elections Commission and Department of Legal Affairs must wait for cases to filter through the Division of Elections before they can act. With the variety of duties the Division has,[228] it cannot devote enough time to investigations to avoid bottlenecks. An alternative method is exemplified by the Federal Elections Commission, which performs the same duties as the Florida Division of Elections *and* Florida Elections Commission.[229] Federal investigators can follow a case

218. *Id.* §106.23.

219. *Id.* §106.25(1).

220. *Id.* §106.25(5).

221. *Id.* §106.25(1).

222. FLA. STAT. §106.25(2) reads, in pertinent part: "Whenever, in the judgment of the Department of State, any candidate . . . has engaged in any act or practice which constitutes a violation of this chapter . . . the Department of State shall convene the Elections Commission. . . ."

223. Six of these members are appointed by the governor with cabinet approval from lists submitted by the two major political parties in the state. They serve four-year terms and may succeed themselves. The six submit a list of persons from whom the governor appoints a Commission Chairman. FLA. STAT. §106.24(1).

224. FLA. STAT. §106.25(3) (1975).

225. *Id.* §106.25(4).

226. *Id.* §106.27.

227. Interview with John French, *supra* note 10.

228. These duties are enumerated in FLA. STAT. §106.22 (1975).

229. The *Buckley* decision held that the commingling of informative, investigative, and administrative powers in one body, the Federal Elections Commission, would not violate the separation of powers doctrine but, as that body is presently chosen, *exercise* of all of those powers would violate the appointments clause of the Constitution. U.S. CONST. art. II, §2, cl. 2. That clause requires the Executive to appoint all officers of the United States; under the Federal Act, 2 U.S.C.A. §437(c)(a)(1) (1975), the President pro tempore of the Senate and the Speaker of the House of Representatives appointed four of the six voting members of the Commission. 96 S. Ct. at 687-93.

A similar commingling of powers in the Florida Elections Commission would not en-

from the initial complaint to the commencement of legal action. If enacted in Florida, such a system would also eliminate the dual probable cause hearings, the first of which is so ambiguous as to be meaningless and is yet another obstacle in the bottleneck preventing efficient enforcement.[230]

The Florida Act provides stringent penalties for violations. Any candidate, committee chairman, or treasurer who knowingly and willfully accepts an illegal contribution, makes an illegal expenditure, or fails to report or falsely reports any required information may be subject to criminal and civil penalties. Section 106.19 makes such an act punishable as a misdemeanor in the first degree[231] and by a fine equal to three times the amount involved in the illegal act, payable to the state's general revenue. In addition, a candidate convicted of violating these provisions may have his name taken off the ballot prior to the election, may be refused his certificate of election, or may have his certificate rescinded.[232] An office thus vacated would be filled by a special election or appointment.[233] If a corporation is found guilty of a violation, it may be fined up to $10,000 and, if incorporated in Florida, ordered to be dissolved.[234] Actions for violations of the Florida Act must be commenced within two years from the date of violation.[235]

Several amendments to the penalties provided by the Florida Act would effectuate better enforcement. First, the list of persons to whom the sanctions apply fails to include persons who make political expenditures but are unconnected with a campaign. Abuses by these persons would be just as severe as any violation by a candidate and should be subject to the same penalties. Application of the law to these persons could be achieved by a simple amendment.[236] Second, the Florida Act's penalties are absolute and thus seem unduly stringent. An official who feels that an alleged violation is de minimis may not pursue the investigation.[237] The Federal Act provides for discretion in the amounts of fines[238] and allows the Federal Elections Commission to "endeavor to correct such violation by informal methods of conference, conciliation, and persuasion"[239] before resorting to legal action. The

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counter the constitutional problem raised in *Buckley*. While the Florida Constitution has a somewhat similar appointments clause, art. IV, §1(a), the Florida Act, in accordance with the appointments clause, assigns to the governor the power to appoint all members of the Commission. See note 223 *supra*.

230. See APPENDIX §8 *infra*.

231. If the chairman of the executive committee of a political party or treasurer of a committee of continuous existence is guilty of any of the sanctioned acts, his violation is a third degree felony. FLA. STAT. §§106.04(4)(d), .29(2) (1975).

232. FLA. STAT. §106.18 (1975).

233. *See* FLA. STAT. §§106.18 ,106.21, 114.01(8), 114.04, 100.101, 100.111 (1975).

234. FLA. STAT. §§106.08(4), 607.271(b) (1975). A corporation, however, may be able to assert ultra vires as a defense. *Id.* §607.021 (1975).

235. *Id.* §106.28 (1975).

236. *Id.* §7.

237. *See Hearings, supra* note 2, at 67 (Statement of Phillip S. Hughes, Director, Office of Federal Elections).

238. 18 U.S.C.A. §608(i) (1975).

239. 2 U.S.C.A. §437g(a)(5) (1975).

addition of this discretion to the Florida Act would promote the exercise of sanctions against candidates accused of only minor violations.[240]

The tripartite system established by the Florida Act represents a practical means of enforcing the contribution and expenditure limitations and disclosure requirements. However, a more efficient distribution of the functions of the three bodies would substantially improve the overall procedure. By placing the primary responsibility for receiving and investigating complaints of alleged violations on the Elections Commission, the Florida Act would ensure no duplication of efforts or waste of resources. The Division of Elections would receive and analyze campaign finance reports, the Elections Commission would investigate complaints, and the Department of Legal Affairs would prosecute violations. This allocation of duties also preserves the Florida Act's intent to provide a system of internal checks and balances. Such a distribution of functions, with provisions for the type of discretion allowed by the Federal Act, would form a more comprehensible and effective mode of enforcement.

CONCLUSION

The rising costs of political campaigns, resulting from inflation, greater use of expensive media, and more competition, have led to a belief on the part of the public that only the wealthy or well-connected candidates can be successful. At the same time, the need for substantial campaign funds has resulted in numerous scandals, which causes the public to doubt further the integrity of the electoral system and the persons who hold office. Regulation of campaign financing that limits any one interest's influence and discloses to the public the multitude of financial influences on the election is viewed as a panacea for growing public cynicism.

The Florida Campaign Finance Act of 1973 attempted to meet these goals. The Florida Act sets limits on contributions and expenditures and requires full public disclosure of the sources and uses of these funds. It also provides a system by which to enforce compliance and penalize violations. Although the constitutionality of the Florida law has not yet been tested, the Supreme Court, in *Buckley v. Valeo*, upheld the contribution limits and disclosure provisions of the Federal Election Campaign Act but declared unconstitutional the expenditure limitations. The constitutional right of free expression so strongly reaffirmed in *Buckley* requires that the expenditure limits imposed on candidates and noncandidates by the Florida Act be repealed.

Furthermore, a close scrutiny of the Florida law reveals the desirability of certain amendments in the interest of clarity. Suggestions for these amendments, made throughout this note, are appended in the form of a legislative proposal. Some provisions are added to supplement the sections pertaining to contributions. For example, the contribution limits should apply, after a reasonable point, to the amount of incidental expenditures incurred by volunteers while rendering services. Another provision allows the candidate

240. See APPENDIX §7 *infra*.

or political committee to use unexpended contributions for any reasonable purpose. The disclosure requirements could be improved by two amendments. The *Buckley* decision recognized the value of the privacy accorded to small contributors by the threshold that the Federal Act places on its reporting requirements; a threshold of a $10 contribution to trigger the reporting requirements is suggested for the Florida Act. Second, since expenditures by noncandidates for political objectives may not be limited, a requirement that noncandidates report their expenditures directly to the Elections Commission would implement more effectively the purposes of disclosure. Another amendment making the penalties for violations discretionary and placing primary investigatory responsibilities upon the Elections Commission would make enforcement easier and more efficient. Of the several goals sought to be achieved by ideal campaign finance regulation, only the desire to reduce the potential of corruption by large contributors can be achieved realistically and constitutionally. With certain amendments to its present contribution limits, disclosure requirements, and enforcement procedures, the Florida Campaign Finance Act will play a leading role in restoring public confidence in the integrity of the state electoral system.

JOHN H. MOYNAHAN, JR.

APPENDIX

CODING: Roman type indicates no changes; underlined type indicates deletions; italicized type indicates additions.

A BILL

An Act relating to campaign financing; amending various subsections of the Florida Campaign Finance Act of 1973 (Fla. Stat. §§106.011 *et seq.* (1973)); repealing §106.10 relating to limitations on campaign expenditures; revising §§106.24-106.27 relating to the respective powers and duties of the division of elections and elections commission.

Be it enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of §106.011, Florida Statutes, is amended to read:

106.011 Definitions—As used in this chapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

(3) "Contribution" means:

(a) A gift, subscription, conveyance, deposit, payment, *loan*, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made *with the campaign treasurer's authorization* for the purpose of influencing the results of an election.

(b) . . .

(c) . . .

Notwithstanding the foregoing meanings of "contribution," the word shall not be construed to include the services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee *or the value of any expenditures by any such individual volunteer incurred in rendering services to that candidate or political committee except to the extent that the aggregate of those expenditures exceeds $100.*

Section 2. Subsection (4) of §106.021, requiring authorization by the campaign treasurer of all contributions and expenditures, is repealed.

Section 3. Section 106.07, Florida Statutes, is amended as follows:

106.07 Reports; certification and filing

(1) Each campaign treasurer designated by a candidate or political committee pursuant to §106.021 shall file regular reports of all contributions received and all expenditures made by or on behalf of such candidate or political committee, *except those expenditures made without the treasurer's authorization pursuant to §106.07(4).* Reports shall be filed on the first Monday . . . .

(2) . . .

(3) . . .

(4) Any person other than a candidate or political committee who makes an expenditure in excess of ten dollars ($10) without the authorization of a campaign treasurer shall report that expenditure to the elections commission within seven (7) days from the time the expenditure was made. Such report shall contain the same information required under §106.07(5).

(4) *Renumbered as (5).* (5) Each report required by this section shall contain the following information:

(2) The full name, residence, if any, mailing address, occupation, and principal place of business, if any, of each person who has made one or more contributions to or for such committee or candidate within the reporting period, together with the amount and date of such contributions. However, if the contribution is less than one hundred dollars ($100) *ten dollars ($10),* the occupation and principal place of business of the contributor need not be listed, and only the name, residence, if any, and mailing address is necessary *only the amount and date of such contribution need be listed;*

(b) . . .

(c) . . .

(d) . . .

(e) . . .

(f) . . .

(g) . . .

(h) . . .

(i) . . .

(j) . . .

(k) . . .

(5) *Renumbered as (6).* (6) A final report shall be filed forty-five days after the last election in a given election year in which a candidate or political committee participates. If such final statement shows an unexpected balance of contributions, the campaign treasurer of the candidate or political committee shall file . . . and an additional supplemental statement shall be filed every sixty days until the account shows no unexpended balance of contributions. *Any unexpended balance of contributions shall accrue to the candidate or political committee to be lawfully used for any official or charitable purpose.* If such final statement shows . . . .

(6) *Renumbered as (7).*

(7) *Renumbered as (8).*

Section 4. Subsection (1) of §106.08, Florida Statutes, is amended as follows:

106.08 Contributions; limitations on

(1) *(a)* No person or political committee shall make contributions to any candidate or political committee in this state, in moneys, material, or supplies or by way of loan, in excess of the following amounts:

(a) through (f) *Renumbered as 1 through 6.*

(1) (b) The contribution limits provided in paragraphs (a) *1* through (f) *6* shall not apply to contributions made by political parties regulated by chapter 103, Florida Statutes, *or to expenditures made directly by any political committee for obtaining time, space, or services in or by any communications media for the purpose of jointly endorsing six or more candidates.* The limitations provided by this subsection *(a)* shall apply to each election in which a candidate or political committee participates. . . .

Section 5. Section 106.09, Florida Statutes, is amended as follows:

106.09 Receipts for cash contributions

(1) No person shall make a cash contribution in excess of one hundred dollars ($100) *ten dollars ($10)* unless the contribution is accompanied by a contribution statement on a form approved by the Division of Elections *Elections Commission*. Such statement shall contain the following information:

(a) ...
(b) ...
(c) ...
(d) ...
(e) ...
(f) ...

(2) It shall be the duty of each candidate or each political committee to furnish in triplicate the form described in subsection (1) to each person contributing cash in excess of one hundred dollars ($100) *ten dollars ($10)*. One copy. . . .

(3) ...

Section 6. Section 106.10, Florida Statutes, relating to limitations on expenditures, is repealed.

Section 7. Section 106.19, Florida Statutes, is amended as follows:

106.19 Violations by candidates, political committees, campaign treasurer

(1) Any candidate, campaign treasurer or deputy treasurer of any candidate, or committee chairman, vice-chairman, campaign treasurer, or deputy treasurer of any political committee, *or any other person* who knowingly and willfully:

(a) ...
(b) ...
(c) ...
(d) *Repealed.*
(e) *Renumbered as (d).*

shall be guilty of a misdemeanor of the first degree and punished as provided in §775.082 and §775.083.

(2) Any candidate, campaign treasurer, or deputy treasurer or any chairman or vice-chairman of any political committee, *or any other person*, who violates paragraphs (a), (b), (d), or through (d) of subsection (1) shall *may* be subject to a civil penalty *up to an amount* equal to three (3) times the amount involved in the illegal act.

Section 8. Sections 106.24 through 106.27, Florida Statutes, are amended as follows:

106.24 Florida elections commission; membership; powers; duties

(1) ...
(2) ...

(3) The Commission shall convene at the call of its chairman or at the call of the Department of State. The presence of five members is required to constitute a quorum . . . .

(4) ...

106.25 Reports of alleged violations to department of state *Elections Commission*; disposition of findings

(1) Any citizen of the state having information of any violation of this chapter may file a sworn complaint with the division of elections *chairman of the Elections Commission*, with a copy being filed with the chairman of the Elections Commission *Division of Elections. For purposes of this subsection, the Division of Elections shall be deemed a "citizen of the state" with regard to information of possible violations obtained from its audits and investigations of reports received pursuant to §106.22.* If the complaint alleges violations by a candidate for federal, state or legislative office, including all judicial offices, by a political committee supporting any such candidate, by the state executive committee of any political party, or by a political committee advocating the acceptance or rejection of an issue to be voted upon in a statewide election, the division *Commission* shall investigate the allegations contained in the complaint and report its findings to the department of state for further action as provided in subsection (2). If the complaint alleges violations by a candidate for any other office chosen at an election, by any political committee supporting such a candidate, by any county executive committee advocating the acceptance or rejection of an issue voted upon on less than a statewide basis, the Division *Commission* shall forward

a copy of the complaint to the state attorney for the judicial circuit in which the alleged violation occurred. If the complaint alleges violations in a campaign in which the incumbent state attorney is a candidate, the Division of Elections *Commission* shall investigate the allegations and report its findings to the Department of State for further action as provided in subsection (2). It shall be the duty of a state attorney receiving a complaint pursuant to this subsection promptly and thoroughly to investigate the allegations contained therein and to file a full report of the investigation and proposed disposition of the complaint with the Division of Elections *Commission. If the Commission determines, after investigation, that there is reason to believe that any person has engaged, or is about to engage in any acts or practices which constitute a violation of this Act, the Commission may endeavor to correct such violation by informal methods of conference, conciliation, and persuasion. If the Commission fails to correct the violation through informal methods,* when the results of the investigation indicate that a violation of the chapter has occurred, the state attorney may immediately proceed with such civil and criminal actions provided by this chapter as are justified by the facts of the situation. Each complaint received by the *Division Commission* shall be kept confidential until such time as the Department of State *Commission* concludes that disposition of such complaint has occurred pursuant to this chapter, at which time such complaint and all relevant reports and recommendations shall become matters of public record. The Division *Commission* shall initiate appropriate investigative or referral action on each complaint within seventy-two (72) hours (Saturdays, Sundays, and legal holidays excluded). Nothing contained in this subsection shall be deemed to preclude the Division of Elections *Commission* from investigating any possible violations of this chapter that come to its knowledge other than by means of a sworn complaint.

(2) *Repealed.*

(3) *Repealed.*

(2) The Commission shall hold hearings in the manner provided by this chapter to determine if probable cause exists to believe that a violation of this chapter has occurred. The Commission is specifically required to hear any allegation relating to any currently serving public official regarding his utilization of public or private funds to further his future candidacy prior to the time period prescribed in §106.15 or regarding any violations of §106.19.

(4) *Renumbered as 106.26(12).*

(5) *Renumbered as (3).*

106.251 Reports of alleged violations to Department of Legal Affairs; investigations; disposition of findings.

Repealed.

106.26 Powers of commission; rights and responsibilities of parties; findings by commission

(1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) ...

(8) ...

(9) ...

(10) ...

(11) ...

(12) All proceedings of the Commission dealing with consideration of alleged violations shall be in closed session attended only by those persons, including the attorney or attorneys for the party allegedly violating this chapter, necessary to the transaction of the affairs of the commission. Any person who discloses any testimony, finding, or other transactions of the Commission occurring in closed session except as provided herein or unless ordered to do so by a court of competent jurisdiction shall be guilty of a misdemeanor in the first degree and punished as provided in §775.082 or §775.083.

(12) *Renumbered as (13).*

(13) *Renumbered as (14).*