Excerpts From Supreme Court's Decision on Federal Election Campaign Act

Decision of The Court

WASHINGTON, Jan. 30—Following are excerpts from today's decision by the Supreme Court on the Federal Election Campaign Act, together with dissenting and concurring opinions:

These appeals present constitutional challenges to the key provisions of the Federal Election Campaign Act of 1971, as amended in 1974.

The Court of Appeals, in sustaining the Act in large part against various constitutional challenges, viewed it as "by far the most comprehensive reform legislation [ever] passed by Congress concerning the election of the President, Vice-President, and members of Congress." 519 F. 2d, at 831. The Act, summarized in broad terms, contains the following provisions: (a) individual political contributions are limited to $1,000 to any single candidate per election, with an overall annual limitation of $25,000 by any contributor; independent expenditures by individuals and groups "relative to a clearly identified candidate" are limited to $1,000 a year; campaign spending by candidates for various federal offices and spending for national conventions by political parties are subject to prescribed limits: (b) contributions and expenditures above certain threshold levels must be reported and publicly disclosed; (c) a system for public funding of Presidential campaign activities is established by Subtitle H of the Internal Revenue Code; and (d) a Federal Election Commission is established to administer and enforce the Act.

1. Contribution and Expenditure Limitations

It is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the $1,000 contribution limitation. Under a system of private financing of elections, a candidate lacking immense personal or family wealth must depend on financial contributions from others to provide the resources necessary to conduct a successful campaign. The increasing importance of the communications media and sophisticated mass mailing and polling operations to effective campaigning make the raising of large sums of money an ever more essential ingredient of an effective candidacy. To the extent that large contributions are given to secure political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined. Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one.

Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. In *Civil Service Comm'n vs. Letter Carriers, supro,* the Court found that the danger to "fair and effective government" posed by partisan political conduct on the part of Federal employees charged with administering the law was a sufficiently important concern to justify broad restrictions on the employees' right of partisan political association. Here, as there, Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical . . . if confidence in the system of representative government is not to be eroded to a disastrous extent."

Appellants contend that the contribution limitations must be invalidated because bribery laws and narrowly drawn disclosure requirements constitute a less restrictive means of dealing with "proven and suspected *quid pro quo* arrangements." But laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action. And while disclosure requirements serve the many salutary purposes discussed elsewhere in this opinion, Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.

The Act's $1,000 contribution limitation focuses precisely on the problem of large campaign contributions — the narrow aspect of political association where the actuality and potential for corruption have been identified—while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources. Significantly, the Act's contribution limitations in themselves do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties.

We find that, under the rigorous standard of review established by our prior decisions, the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon First Amendment freedoms caused by the $1,000 contribution ceiling.

Effect of Limitation

Section 608 (E)(1) proves that "(n)o person may make any expenditure . . . relative to a clearly identified candidate during a calendar year which, when added to all other expenditures made by such person during the year advocating the election or defeat of such candidate, exceeds $1,000." The plain effect of Sec. 608(E)(1) is to prohibit all

individuals, who are neither candidates nor owners of institutional press facilities, and all groups, except political parties and campaign organizations, from voicing their views "relative to a clearly identified candidate" through means that entail aggregate expenditures of more than $1,000 during a calendar year. The provision, for example, would make it a Federal criminal offense for a person or association to place a single one-quarter page advertisement "relative to a clearly identified candidate" in a major metropolitan newspaper.

While the independent expenditure ceiling . . . fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process, it heavily burdens core First Amendment expression. For the First Amendment right to "'speak one's mind . . . on all public institutions'" includes the right to engage in "'vigorous advocacy' no less than 'abstract discussion,'" New York Times Co. v. Sullivan, 376 U.S., at 269, quoting Bridges v. California, 314 U.S. 252,270 (1941), and NAACP v. Button, 371 U.S., at 429. Advocacy 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.

It is argued, however, that the ancillary governmental interest in equalizing the relative ability of individuals and groups to influence the outcome of elections serves to justify the limitation on express advocacy of the election or defeat of candidates imposed by Sec. 608 (3) (1)'s expenditure ceiling. But the concept that Government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed "to secure 'the widest possible dissemination of information from diverse and antagonistic sources,'" and "'to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people'" New York Times Co. v. Sullivan supra at 266 269 quoting Associated Press v. United States 326 U.S. 1, 20 (1945), and Roth v. United States, 354 U.S. at 484. 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. CF Foster R. Conf v. Noerr Motors, 365 U.S. 127, 139 (1961).

Section Held Unconstitutional

For the reasons stated, we conclude that Sec. 608 (3) (1)'s independent expenditure limitation is unconstitutional under the First Amendment.

The act also sets limits on expenditures by a candidate "from his personal funds, or the personal funds of his immediate family, in connection with his campaigns during any calendar year." Sec. 608 (A) (1). These ceilings vary from $50,000 for Presidential or Vice Presidential candidates to $35,000 for Senate candidates, and $25,000 for most candidates for the House of Representatives.

The ceiling on personal expenditures by candidates on their own behalf, like the limitations on independent expenditures contained in Sec. 608 (3) (1), imposes a substantial restraint on the ability of persons to engage in protected First Amendment 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.

Indeed, it is of particular importance that candidates have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on Election Day. Mr. Justice Brandeis' observation that in our country "public discussion is a political duty," Whitney V. California, 274 U. S. 357, 375 (1927) (concurring opinion) applies with special force to candidates for public office. Section 608 (A)'s ceiling on personal expenditures by a candidate in furtherance of his own candidacy thus clearly and directly interferes with constitutionally protected freedoms.

The ancillary interest in equalizing the relative financial resources of candidates competing for elective office, therefore, provides the sole relevant rationale for Section 608 (a)'s expenditure ceiling. That interest is clearly not sufficient to justify the provision's infringement of fundamental First Amendment rights. First, the limitation may fail to promote financial equality among candidates. A candidate who spends less of his personal resources on his campaign may nonetheless outspend his rival as a result of more successful fund-raising efforts. Indeed, a candidate's personal wealth may impede his efforts to persuade others that he needs their financial contributions or volunteer efforts to conduct an effective campaign. Second, and more fundamentally, the First Amendment simply cannot tolerate Sec. 608 (a)'s restriction upon the freedom of a candidate to speak without legislative limit on behalf of his own candidacy. We therefore hold that Sec. 608 (a)'s restrictions on a candidate's personal expenditures is unconstitutional.

Section 608 (c) of the act places limitations on over-all campaign expenditures by candidates seeeking nomination for election and election to Federal office.

No Justification Seen

No governmental interest that has been suggested is sufficient to justify the restriction on the quantity of political expression imposed by Sec. 608 (C)'s campaign expenditure limitations. The major evil associated with rapidly increasing campaign expenditures is the danger of candidate dependence on large contributions. The interest in alleviating the corrupting influence of large contributions is served by the act's contribution limitations and disclosure provisions rather than by Sec. 608 (c)'s campaign expenditure ceilings. The Court of Appeals' assertion that the expenditure restrictions are necessary to reduce the incentive to circumvent direct contribution limits is not persuasive.

There is no indication that the substantial criminal penalties for violating the contribution ceilings combined with the political repercussion of such violations will be insufficient to police the contribution provisions. Extensive reporting, auditing, and disclosure requirements applicable to both contributions and expenditures by political campaigns are designed to facilitate the detection of illegal contributions. Moreover, as the Court of Appeals noted, the act permits an officeholder or successful candidate to retain contributions in excess of the expenditure ceiling and to use these funds for "any other lawful purpose." 2 U.S. c. Sec. 439a. This provision undercuts whatever marginal role the expenditure limitations might otherwise play in enforcing the contribution ceilings.

The interest in equalizing the financial resources of candidates competing for Federal office is no more convincing a justification for restricting the scope of Federal election campaigns. Given the limitation on the size of outside contributions, the financial resources available to a candidate's campaign, like the number of volunteers recruited, will normally vary with the size and intensity of the candidate's support. There is nothing invidious, improper, or unhealthy in permitting such funds to be spent to carry the candidate's message to the electorate. Moreover, the equalization of missable campaign expenditures might serve not to equalize the opportunities of all candidates but to handicap a candidate who lacked substantial name recognition or exposure of his views before the start of the campaign.

The campaign expenditure ceilings appear to be designed primarily to serve the governmental interests in reducing the allegedly skyrocketing costs of political campaigns. Appellees and the Court of Appeals stressed statistics indicating that spending for Federal election campaigns increased almost 300 percent between 1952 and 1972 in comparison with a 57.6 percent rise in the Consumer Price Index during the same period. Appellants respond that during these years the rise in campaign spending lagged behind the percentage increase in total expenditures for commercial advertising and the size of the gross national product.

In any event, the mere growth in the cost of Federal election campaigns in and of itself provides no basis for governmental restrictions on the quantity of campaign spending and the resulting limitation on the scope of Federal campaigns. The First Amendment denies Government the power to determine that spending to promote one's political views is wasteful, excessive, or unwise. In the free society ordained by our Constitution it is not the Government but the people individually as citizens and candidates and collectively as associations and political committees—who must retain control over the quantity and range of debate on public issues in a political campaign.

For these reasons we hold that Sec. 608 (c) is constitutionally invalid.

II. Reporting and Disclosure Requirements.

The governmental interests sought to be vindicated by the disclosure requirements . . . fall into three categories. First, disclosure provides the electorate with information "as to where political campaign money comes from and how it is spent by the candidate" in order to aid the voters in evaluating those who seek Federal office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitates predictions of future performance in office.

Second, disclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. And, as we recognized in Burroughs v. United States, 290 U.S., at 548, Congress could reasonably conclude that full disclosure during an election campaign tends "to prevent the corrupt use of money to affect elections." In enacting these requirements it may have been mindful of Justice Brandeis' advice:

> "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."

Third, and not least significant,

record-keeping, reporting and disclosure requirements are an essential means of gathering the data necessary to detect violations of the contributions limitations described above.

The disclosure requirements, as a general matter, directly serve substantial governmental interests. In determining whether these interests are sufficient to justify the requirements we must look to the extent of the burden that they place on individual rights.

It is undoubtedly true that public disclosure of contributions to candidates and political parties will deter some individuals who otherwise might contribute. In some instances, disclosure may even expose contributors to harassment or retaliation. These are not insignificant burdens on individual right and they must be weighed carefully against the interests which Congress has sought to promote by this legislation. In this process, we note and agree with appellants' concession that disclosure requirements—certainly in most applications—appear to be the least restrictive means of curbing the evils of campaign ignorance and corruption that Congress found to exist. Appellants argue, however, that the balance tips against disclosure when it is required of contributors to certain parties and candidates.

We recognize that unduly strict requirements of proof could impose a heavy burden, but it does not follow that a blanket exemption for minor parties is necessary. Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a reasonable probability 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. The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations of public hostility may be sufficient. New parties that have no history upon which to draw may be able to offer evidence of reprisals and threats directed against individuals or organizations holding similar views.

In summary, we find no constitutional infirmities in the record-keeping, reporting, and disclosure provisions of the act.

III. Public Financing of Presidential Election Campaigns

Section 9006 establishes a Presidential election campaign fund, financed from general revenues in the aggregate amount designated by individual taxpayers, under Sec. 6096, who on their income tax returns may authorize payment to the fund of one dollar of their tax liability in the case of an individual return or two dollars in the case of a joint return. The fund consists of three separate accounts to finance (1) party nominating conventions, Sec. 9008 (A), (2) general election campaigns, Sec. 9006 (A), and (3) primary campaigns, Sec. 9037 (A).

Appellants insist that Chapter 95 falls short of constitutional requirement in that the provisions provide larger, and equal, sums to candidates of major parties, use prior vote levels as the sole criterion for pre-election funding, limit new-party candidates to post-election funds, and deny any funds to candidates of parties receiving less than 5 percent of the vote. These provisions, it is argued, are fatal to the validity of the scheme, because they work invidious discrimination against minor and new parties in violation of the Fifth Amendment. We disagree.

As conceded by appellants, the Constitution does not require Congress to treat all declared candidates the same for public financing purposes. As we said in Jenness v. Fortson, "There are obvious differences in kind between the needs and potentials of a political party with historically established support, on the one hand, and a new or small political organization on the other. . . .

"Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike, a truism well illustrated in Williams v. Rhodes, supra." 403 U.S., at 441-442. Since the Presidential elections of 1856 and 1860, when the Whigs were replaced as a major party by the Republicans, no third party has posed a credible threat to the two major parties in Presidential elections. Third parties have been completely incapable of matching the major parties' ability to raise money and win elections. Congress was of course aware of this fact of American life, and thus was justified in providing both major parties full funding and all other parties only a percentage of the major-party entitlement. Identical treatment of all parties, on the other hand, "would not only make it easy to raid the United States Treasury, it would also artificially foster the proliferation of splinter parties." 519 F. 2d, at 881. The Constitution does not require the Government to "finance the efforts of every nascent political group," American Party of Texas v. White, 415 U.S., at 794, merely because Congress chose to finance the efforts of the major parties.

Furthermore, appellants have made no showing that the election funding plan disadvantages nonmajor parties by operating to reduce their strength below that attained without any public financing. First, such parties are free to raise money from private sources, and by our holding today new parties are freed from any expenditure limits, although admittedly those limites may be a largely academic matter to them. But since any major-party candidate accepting public financing of a campaign voluntarily assents to a spending ceiling, other candidates will be able to spend more in relation to the major-party candidates.

The relative position of minor parties that do qualify to receive some public funds because they received 5 percent of the vote in the previous Presidential election is also enhanced. Public funding for candidates of major parties is intended as a substitute for private contributions; but for minor party candidates such assistance may be viewed as a supplement to private contributions since these candidates may continue to solicit private funds up to the applicable spending limit. Thus, we conclude that the general election funding system does not work an invidious discrimination against candidates of nonmajor parties.

Convention Funding

The foregoing analysis and reasoning sustaining general election funding apply in large part to convention funding under Chapter 95 and suffices to support our rejection of appellants' challenge to that provision. Funding of party conventions has increasingly been derived from large private contributions, see H. R. Rep. No. 93-1239, P. 14 (1974), and the governmental interest in elimnating this reliance is as vital as in the care of private contributions to individual candidates. The expenditure limitations on major parties participating in public financing enhance the ability of nonmajor parties to increase their spending relative to the major parties; further, in soliciting private contributions to finance conventions, parties are not subject to the $1,000 contribution limit pertaining to candidates. We therefore conclude that appellants' constitutional challenge to the provisions for funding nominating conventions must also be rejected.

Appellants' final challenge is to the constitutionality of Chapter 96, which provides funding of primary campaigns. They contend that these provisions are constitutionally invalid (1) because they do not provide funds for candidates not running in party primaries and (2) because the eligibility formula actually increases the influence of money on the electoral process. In not providing assistance to candidates who do not enter party primaries, Congress has merely chosen to limit at this time the reach of the reforms encompassed in Chapter 96.

The choice to limit matching funds to candidates running in primaries may reflect that concern about large private contribution) to candidates centered on primary races and that there is no historical evidence of similar abuses involving contributions to candidates who engage in petition drives to qualify for state ballots. Moreover, assistance to candidates and nonmajor parties forced to resort to petition drives to gain ballot access implicates the policies against fostering frivolous candidacies, creating a system of splintered parties, and encouraging unrestrained factionalism.

The eligibility requirements in Chapter 96 are surely not an unreasonable way to measure popular support for a candidate, accomplishing the objective of limiting subsidization to those candidates with a substantial chance of being nominated. Counting only the first $250 of each contribution for eligibility purposes requires candidates to solicit smaller contributions from a numerous group of people. Requiring the money to come from citizens of a minimum number of states eliminates candidates whose appeal is limited geographically. A President is elected not by popular vote, but by winning the popular vote in enough states to have a majority in the Electoral College.

We also reject as without merit appellants' argument that the matching formula favors wealthy voters and candidates. The thrust of the legislation is to reduce financial barriers and to enhance the importance of smaller contributions. Some candidates undoubtedly could raise large sums of money and thus have little need for public funds, but candidates with lesser fund-raising capabilities will gain substantial benefits from matching funds. In addition, one eligibility requirement for matching funds is acceptance of an expenditure ceiling, and candidates with little fund-raising ability will be able to increase their spending relative to candidates capable of raising large amounts in private funds.

For the reasons stated, we reject appellants' claims that subtitle H is facially unconstitutional.

IV. The Federal Election Commission

The 1974 amendments to the act created an eight-member Federal Election Commission, and vest in it primary and substantial responsibility for administering and enforcing the act. The question that we address in this portion of the opinion is whether, in view of the manner in which a majority of its members are appointed, the commission may under the Constitution exercise the powers conferred upon it.

The body in which this authority is reposed consists of eight members. The Secretary of the Senate and the Clerk of the House of Representatives are ex officio members of the commission without the right to vote. Two members are appointed by the President pro tempore of the Senate "upon the recommendations of the majority leader of the Senate and the minority leader of the Senate." Two more are to be appointed by the Speaker of the House of Representatives, likewise upon the rec-

a political campaign. It would appear to follow that the candidate with a substantial personal fortune at his disposal is off to a significant "head start." Of course, the less wealthy candidate can potentially overcome the disparity in resources through contributions from others. But ability to generate contributions may itself depend upon a showing of a financial base for the campaign or some demonstration of pre-existing support, which in turn is facilitated by expenditures of substantial personal sums. Thus the wealthy candidate's immediate access to a substantial personal fortune may give him an initial advantage that his less wealthy opponents can never overcome. . .

And even if the advantage can be overcome, the perception that personal wealth wins elections may not only discourage potential candidates without significant personal wealth from entering the political arena, but also undermine public confidence in the integrity of the electoral process. . .

The concern that candidacy for public office not become, or appear to become, the exclusive province of the wealthy assumes heightened significance when one considers the impact of Sec. 608 (b), which the Court today upholds. That provision prohibits contributions from individuals and groups to candidates in excess of $1,000, and contributions from political committees in excess of $5,000. While the limitations on contributions are neutral in the sense that all candidates are foreclosed from accepting large contributions, there can be no question that large contributions generally mean more to the candidate without a substantial personal fortune to spend on his campaign.

Large contributions are the less-wealthy candidate's only hope of countering the wealthy candidate's immediate access to substantial sums of money. With that option removed, the less-wealthy candidate is without the means to match the large initial expenditures of money of which the wealthy candidate is capable. In short, the limitations on contributions put a premium on a candidate's personal wealth.

In view of Sec. 608 (b)'s limitations on contributions, then Sec. 608 (a) emerges not simply as a device to reduce the natural advantage of the wealthy candidate, but as a provision providing some symmetry to a regulatory scheme that otherwise enhances the natural advantage of the wealthy. Regardless of whether the goal of equalizing access would justify a legislative limit on personal candidate expenditures standing by itself, I think it clear that the goal justifies Sec. 608 (a)'s limits when they are considered in conjunction with the remainder of the act. I therefore respectfully dissent from the Court's invalidation of Sec. 608 (a).

Rehnquist, J., Dissenting in Part

Congress, of course, does have an interest in not "funding hopeless candidacies with large sums of public money," and may for that purpose legitimately require "'some preliminary showing of a significant modicum of support,' Jenness v. Fortson, supra, at 448 as an eligibility requirement for public funds." But Congress in this legislation has done a good deal more than that. It has enshrined the Republican and Democratic Parties in a permanently preferred position, and has established requirements for funding minor party and independent candidates to which the two major parties are not subject. Congress would undoubtedly be justified in treating the Presidential candidates of the two major parties differently from minor party or independent Presidential candidates, in view of the long demonstrated public supports of the former.

But . . . I find it impossible to subscribe to the Court's reasoning that because no third party had posed a credible threat to the two major parties in Presidential elections since 1860, Congress may by law attempt to assure that this pattern will endure forever.

I would hold that, as to general election financing, Congress has not merely treated the two major parties differently from minor parties and independents, but has discriminated in favor of the former in such a way as to run afoul of the Fifth and First Amendments to the United States Constitution.

Burger, C. J., Dissenting in Part

For reasons set forth more fully later, I dissent from those parts of the Court's holding sustaining the act's provisions (a) for disclosure of small contributions, (b) for limitations on contributions, and (c) for public financing of Presidential campaigns. In my view, the act's disclosure scheme is impermissibly broad and violative of the First Amendment as it relates to reporting $10 and $100 contributions. The contribution limitations infringe on First Amendment liberties and suffer from the same infirmities that the Court correctly sees in the expenditure ceilings. The act's system for public financing of Presidential campaigns is, in my judgment, an impermissible intrusion by the Gov-

ernment into the traditionally private political process. . . .

More probably, the Court's result does violence to the intent of Congress in this comprehensive scheme of campaign finance. By dissecting the act bit by bit and casting off vital parts, the Court fails to recognize that the whole of this act is greater than the sum of its parts. Congress intended to regulate all aspects of Federal campaign finances, but what remains after today's holding leaves no more than a shadow of what Congress contemplated. I question whether the residue leaves a workable program.

White, J., Dissenting in Part

The judgment of Congress was that reasonably effective campaigns could be conducted within the limits established by the act and that the communicative efforts of these campaigns would not seriously suffer. In this posture of the case, there is no sound basis for invalidating the expenditure limitations, so long as the purposes they serve are legitimate and sufficiently substantial, which in my view they are.

In the first place, expenditure ceilings reinforce the contribution limits and help eradicate the hazard of corruption. The Court upholds the over-all limit of $25,000 on an individual's political contributions in a single election year on the ground that it helps reinforce the limits on gifts to a single candidate. By the same token, the expenditure limit imposed on candidates plays its own role in lessening the chance that the contribution ceiling will be violated.

Without limits on total expenditures, campaign costs will inevitably and endlessly escalate. Pressure to raise funds will constantly build and with it the temptation to resort in "emergencies" to those sources of large sums, who, history shows, are sufficiently confident of not being caught to risk flouting contribution limits. Congress would save the candidate from this predicament by establishing a reasonable ceiling on all candidates. This is a major consideration in favor of the limitation. It should be added that many successful candidates will also be saved from large, over-hanging campaign debts which must be paid off with money raised while holding public office and at a time when they are already preparing or thinking about the next campaign. The danger to the public interest in such situations is self-evident.

Besides backing up the contribution provisions, which are aimed at preventing untoward influence on candidates that are elected, expenditure limits have their own potential for preventing the corruption of Federal elections themselves.

For many years the law has required the disclosure of expenditures as well as contributions. As Burroughs indicates, the corrupt use of money by candidates is as much to be feared as the corrosive influence of large contributions. There are many illegal ways of spending money to influence elections. One would be blind to history to deny that unlimited money tempts people to spend it on whatever money can buy to influence an election. On the assumption that financing illegal activities is low on the campaign organization's priority list, the expenditure limits could play a substantial role in preventing unethical practices. There just wouldn't be enough of "that kind of money" to go around.

I have little doubt in addition that limiting the total that can be spent will ease the candidate's understandable obsession with fund-raising, and so free him and his staff to communicate in more places and ways unconnected with the fund-raising function.

There is nothing objectionable—indeed it seems to me a weighty interest in favor of the provision—in the attempt to insulate the political expression of Federal candidates from the influence inevitably exerted by the endless job of raising increasingly large sums of money. I regret that the Court has returned them all to the treadmill.

It is also important to restore and maintain public confidence in Federal elections. It is critical to obviate or dispel the impression that Federal elections are purely and simply a function of money, that Federal offices are bought and sold or that political races are reserved for those who have the facility — and the stomach — for doing whaatever it takes to bring together those interests, groups, and individuals that can raise or contribute large fortunes in order to prevail at the polls.

The ceiling on candidate expenditures represents the considered judgment of Congress that elections are to be decided among candidates none of whom has overpowering advantage by reason of a huge campaign war chest. At least so long as the ceiling placed upon the candidates is not plainly too low, elections are not to turn on the difference in the amounts of money that candidates have to spend. This seems an acceptable purpose and the means chosen a common sense way to achieve it. The Court nevertheless holds that a candidate has a constitutional right to spend unlimited amounts of money, mostly that of other people, in order to be elected. The holding perhaps is not that Federal candidates have the constitutional right to purchase their election, but many will so interpret the Court's conclusion in this case. I cannot join the Court in this respect.