SUPREME COURT OF THE UNITED STATES

Nos. 02–1674, 02–1675, 02–1676, 02–1702, 02–1727, 02–1733, 02–1734; 02–1740, 02–1747, 02–1753, 02–1755, AND 02–1756

MITCH MCCONNELL, UNITED STATES SENATOR, ET AL., APPELLANTS
02–1674 v.
FEDERAL ELECTION COMMISSION, ET AL.;

NATIONAL RIFLE ASSOCIATION, ET AL., APPELLANTS
02–1675 v.
FEDERAL ELECTION COMMISSION, ET AL.;

FEDERAL ELECTION COMMISSION, ET AL., APPELLANTS
02–1676 v.
MITCH MCCONNELL, UNITED STATES SENATOR, ET AL.;

JOHN MCCAIN, UNITED STATES SENATOR, ET AL., APPELLANTS
02–1702 v.
MITCH MCCONNELL, UNITED STATES SENATOR, ET AL.;

REPUBLICAN NATIONAL COMMITTEE, ET AL., APPELLANTS
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NATIONAL RIGHT TO LIFE COMMITTEE, INC., ET AL., APPELLANTS
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AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS, ET AL., APPELLANTS
02–1755 *v.*
FEDERAL ELECTION COMMISSION, ET AL.;

CHAMBER OF COMMERCE OF THE UNITED STATES, ET AL., APPELLANTS
02–1756 *v.*
FEDERAL ELECTION COMMISSION, ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[December 10, 2003]

JUSTICE KENNEDY, concurring in the judgment in part and dissenting in part with respect to BCRA Titles I and II.*

The First Amendment guarantees our citizens the right to judge for themselves the most effective means for the expression of political views and to decide for themselves which entities to trust as reliable speakers. Significant portions of Titles I and II of the Bipartisan Campaign Reform Act of 2002 (BCRA or Act) constrain that freedom.

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*THE CHIEF JUSTICE joins this opinion in its entirety. JUSTICE SCALIA joins this opinion except to the extent it upholds new FECA §323(e) and BCRA §202. JUSTICE THOMAS joins this opinion with respect to BCRA §213.

These new laws force speakers to abandon their own preference for speaking through parties and organizations. And they provide safe harbor to the mainstream press, suggesting that the corporate media alone suffice to alleviate the burdens the Act places on the rights and freedoms of ordinary citizens.

Today's decision upholding these laws purports simply to follow *Buckley* v. *Valeo,* 424 U. S. 1 (1976) *(per curiam)*, and to abide by *stare decisis*, see *ante*, at 27 (joint opinion of STEVENS and O'CONNOR, JJ. (hereinafter Court or majority)); but the majority, to make its decision work, must abridge free speech where *Buckley* did not. *Buckley* did not authorize Congress to decide what shapes and forms the national political dialogue is to take. To reach today's decision, the Court surpasses *Buckley*'s limits and expands Congress' regulatory power. In so doing, it replaces discrete and respected First Amendment principles with new, amorphous, and unsound rules, rules which dismantle basic protections for speech.

A few examples show how BCRA reorders speech rights and codifies the Government's own preferences for certain speakers. BCRA would have imposed felony punishment on Ross Perot's 1996 efforts to build the Reform Party. Compare Federal Election Campaign Act of 1971 (FECA) §§309(d)(1)(A), 315(a)(1)(B), and 323(a)(1) (prohibiting, by up to five years' imprisonment, any individual from giving over $25,000 annually to a national party), with Spending By Perot, The Houston Chronicle, Dec. 13, 1996, p. 43 (reporting Perot's $8 million founding contribution to the Reform Party). BCRA makes it a felony for an environmental group to broadcast an ad, within 60 days of an election, exhorting the public to protest a Congressman's impending vote to permit logging in national forests. See BCRA §203. BCRA escalates Congress' discrimination in favor of the speech rights of giant media corporations and against the speech rights of other corporations, both profit and nonprofit. Compare BCRA §203, with *Austin* v. *Michigan Chamber of Commerce,* 494 U. S. 652, 659–660 (1990) (first sanctioning this type of discrimination).

To the majority, all this is not only valid under the First Amendment but also is part of Congress' "steady improvement of the national election laws." *Ante*, at 6. We should make no mistake. It is neither. It is the codification of an assumption that the mainstream media alone can protect freedom of speech. It is an effort by Congress to ensure that civic discourse takes place only through the modes of its choosing. And BCRA is only the beginning, as its congressional proponents freely admit:

> "This is a modest step, it is a first step, it is an essential step, but it does not even begin to address, in some ways, the fundamental problems that exist with the hard money aspect of the system." 148 Cong. Rec. S2101 (Mar. 20, 2002) (statement of Sen. Feingold).

Id., at S2097 (statement of Sen. Wellstone) ("[P]assing this legislation . . . will whet people's appetite for more"); *id.,* at S2101 (statement of Sen. Boxer) ("[T]his bill is not the be-all or the end-all, but it is a strong start"); *id.,* at S2152 (statement of Sen. Corzine) ("[T]his should not and will not be the last time campaign finance reform is debated on the Senate floor. We have many more important campaign finance issues to explore"); *id.,* at S2157 (statement of Sen. Torricelli) ("Make [BCRA] the beginning of a reform, not the end of reform"); *id.,* at H442 (Feb. 13, 2002) (statement of Rep. Doggett) ("Mr. Chairman, if [BCRA] has any defect, it is that it does too little, not too much").

Our precedents teach, above all, that Government cannot be trusted to moderate its own rules for suppression of speech. The dangers posed by speech regulations have led the Court to insist upon principled constitutional lines and a rigorous standard of review. The majority now abandons these distinctions and limitations.

With respect, I dissent from the majority opinion upholding BCRA Titles I and II. I concur in the judgment as to BCRA §213 and new FECA §323(e) and concur in the judgment in part and dissent in part as to BCRA §§201, 202, and 214.

I. TITLE I AND COORDINATION PROVISIONS

Title I principally bans the solicitation, receipt, transfer and spending of soft money by the national parties (new FECA §323(a), 2 U. S. C. A. §441i(a) (Supp. 2003)). It also bans certain uses of soft money by state parties (new FECA §323(b)); the transfer of soft money from national parties to nonprofit groups (new FECA §323(d)); the solicitation, receipt, transfer, and spending of soft money by federal candidates and officeholders (new FECA §323(e)); and certain uses of soft money by state candidates (new FECA §323(f)). These provisions, and the other provisions with which this opinion is principally concerned, are set out in full, see Appendix, *infra*. Even a cursory review of the speech and association burdens these laws create makes their First Amendment infirmities obvious:

> Title I bars individuals with shared beliefs from pooling their money above limits set by Congress to form a new third party. See new FECA §323(a).
>
> Title I bars national party officials from soliciting or directing soft money to state parties for use on a state ballot initiative. This is true even if no federal office appears on the same ballot as the state initiative. See new FECA §323(a).
>
> A national party's mere involvement in the strategic planning of fundraising for a state ballot initiative risks a determination that the national party is exercising "indirect control" of the state party. If that determination is made, the state party must abide by federal regulations. And this is so even if the federal

> candidate on the ballot, if there is one, runs unopposed or is so certain of election that the only voter interest is in the state and local campaigns. See new FECA §323(a).
>
> Title I compels speech. Party officials who want to engage in activity such as fundraising must now speak magic words to ensure the solicitation cannot be interpreted as anything other than a solicitation for hard, not soft, money. See *ibid.*
>
> Title I prohibits the national parties from giving any sort of funds to nonprofit entities, even federally regulated hard money, and even if the party hoped to sponsor the interest group's exploration of a particular issue in advance of the party's addition of it to their platform. See new FECA §323(d).
>
> By express terms, Title I imposes multiple different forms of spending caps on parties, candidates, and their agents. See new FECA §§323(a), (e), and (f).
>
> Title I allows state parties to raise quasi-soft money Levin funds for use in activities that might affect a federal election; but the Act prohibits national parties from assisting state parties in developing and executing these fundraising plans, even when the parties seek only to advance state election interests. See new FECA §323(b).

Until today's consolidated cases, the Court has accepted but two principles to use in determining the validity of campaign finance restrictions. First is the anticorruption rationale. The principal concern, of course, is the agreement for a *quid pro quo* between officeholders (or candidates) and those who would seek to influence them. The Court has said the interest in preventing corruption allows limitations on receipt of the *quid* by a candidate or officeholder, regardless of who gives it or of the intent of the donor or officeholder. See *Buckley*, 424 U. S., at 26–

27, 45–48; *infra*, at 7–10. Second, the Court has analyzed laws that classify on the basis of the speaker's corporate or union identity under the corporate speech rationale. The Court has said that the willing adoption of the entity form by corporations and unions justifies regulating them differently: Their ability to give candidates *quids* may be subject not only to limits but also to outright bans; their electoral speech may likewise be curtailed. See *Austin,* 494 U. S., at 659–660; *Federal Election Comm'n* v. *National Right to Work Comm.,* 459 U. S. 197, 201–211 (1982).

The majority today opens with rhetoric that suggests a conflation of the anticorruption rationale with the corporate speech rationale. See *ante*, at 3–6 (hearkening back to, among others, Elihu Root and his advocacy against the use of corporate funds in political campaigning). The conflation appears designed to cast the speech regulated here as unseemly corporate speech. The effort, however, is unwarranted, and not just because money is not *per se* the evil the majority thinks. Most of the regulations at issue, notably all of the Title I soft money bans and the Title II coordination provisions, do not draw distinctions based on corporate or union status. Referring to the corporate speech rationale as if it were the linchpin of the case, when corporate speech is not primarily at issue, adds no force to the Court's analysis. Instead, the focus must be on *Buckley*'s anticorruption rationale and the First Amendment rights of individual citizens.

A. Constitutionally Sufficient Interest

In *Buckley,* the Court held that one, and only one, interest justified the significant burden on the right of association involved there: eliminating, or preventing, actual corruption or the appearance of corruption stemming from contributions to candidates.

> "It is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of cor-

> ruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the $1,000 contribution limitation." 424 U. S., at 26.

See also *ibid.* (concluding this corruption interest was sufficiently "significant" to sustain "closely drawn" interference with protected First Amendment rights).

In parallel, *Buckley* concluded the expenditure limitations in question were invalid because they did not advance that same interest. See *id.,* at 47–48 ("[T]he independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming the reality or appearance of corruption in the electoral process"); see also *id.,* at 45, 46.

Thus, though *Buckley* subjected expenditure limits to strict scrutiny and contribution limits to less exacting review, it held neither could withstand constitutional challenge unless it was shown to advance the anticorruption interest. In these consolidated cases, unless *Buckley* is to be repudiated, we must conclude that the regulations further that interest before considering whether they are closely drawn or narrowly tailored. If the interest is not advanced, the regulations cannot comport with the Constitution, quite apart from the standard of review.

Buckley made clear, by its express language and its context, that the corruption interest only justifies regulating candidates' and officeholders' receipt of what we can call the "*quids*" in the *quid pro quo* formulation. The Court rested its decision on the principle that campaign finance regulation that restricts speech without requiring proof of particular corrupt action withstands constitutional challenge only if it regulates conduct posing a demonstrable *quid pro quo* danger:

> "To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of repre-

> sentative democracy is undermined." *Id.,* at 26–27.

See also *id.,* at 45 ("[A]ssuming, *arguendo,* that large independent expenditures pose the same dangers of actual or apparent *quid pro quo* arrangements as do large contributions . . ."). That *Buckley* rested its decision on this *quid pro quo* standard is not a novel observation. We have held this was the case:

> "The exception [of contribution limits being justified under the First Amendment] relates to the perception of undue influence of large contributions to a *candidate:* 'To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined.'" *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley,* 454 U. S. 290, 297 (1981) (quoting *Buckley, supra,* at 26–27).

See also *Federal Election Comm'n* v. *Beaumont*, 539 U. S. ___ (2003) (furthering this anticorruption rationale by upholding limits on contributions given directly to candidates); *Nixon* v. *Shrink Missouri Government PAC,* 528 U. S. 377 (2000) (same).

Despite the Court's attempt to rely on language from cases like *Shrink Missouri* to establish that the standard defining corruption is broader than conduct that presents a *quid pro quo* danger, see *ante*, at 43, n. 48, in those cases the Court in fact upheld limits on conduct possessing *quid pro quo* dangers, and nothing more. See also *infra*, 12. For example, the *Shrink Missouri* Court's distinguishing of what was at issue there and *quid pro quo*, in fact, shows only that it used the term *quid pro quo* to refer to actual corrupt, vote-buying exchanges, as opposed to interactions that possessed *quid pro quo* potential even if innocently undertaken. Thus, the Court said:

> "[W]e spoke in Buckley of the perception of corruption

> 'inherent in a regime of large individual financial contributions' to candidates for public office . . . as a source of concern "almost equal" to *quid pro quo* improbity." 528 U. S., at 390 (citations omitted).

Thus, the perception of corruption that the majority now asserts is somehow different from the *quid pro quo* potential discussed in this opinion, was created by an exchange featuring *quid pro quo* potential—contributions directly to a candidate.

In determining whether conduct poses a *quid pro quo* danger the analysis is functional. In *Buckley*, the Court confronted an expenditure limitation provision that capped the amount of money individuals could spend on any activity intended to influence a federal election (*i.e.*, it reached to both independent and coordinated expenditures). See 424 U. S., at 46–47. The Court concluded that though the limitation reached both coordinated and independent expenditures, there were other valid FECA provisions that barred coordinated expenditures. Hence, the limit at issue only added regulation to independent expenditures. On that basis it concluded the provision was unsupported by any valid corruption interest. The conduct to which it added regulation (independent expenditures) posed no *quid pro quo* danger. See *ibid.*

Placing *Buckley*'s anticorruption rationale in the context of the federal legislative power yields the following rule: Congress' interest in preventing corruption provides a basis for regulating federal candidates' and officeholders' receipt of *quids*, whether or not the candidate or officeholder corruptly received them. Conversely, the rule requires the Court to strike down campaign finance regulations when they do not add regulation to "actual or apparent *quid pro quo* arrangements." *Id.,* at 45.

The Court ignores these constitutional bounds and in effect interprets the anticorruption rationale to allow regulation not just of "actual or apparent *quid pro quo* arrangements," *ibid.,* but of any conduct that wins goodwill from or influences a Member of Congress. It is not that there is any quarrel between this opinion and the majority that the inquiry since *Buckley* has been whether certain conduct creates "undue influence." See *ante*, at 40–41. On that we agree. The very aim of *Buckley*'s standard, however, was to define undue influence by reference to the presence of *quid pro quo* involving the officeholder. The Court, in contrast, concludes that access, without more, proves influence is undue. Access, in the Court's view, has the same legal ramifications as actual or apparent corruption of officeholders. This new definition of corruption sweeps away all protections for speech that lie in its path.

The majority says it is not abandoning our cases in this way, but its reasoning shows otherwise:

> "More importantly, plaintiffs conceive of corruption too narrowly. Our cases have firmly established that Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing 'undue influence on an officeholder's judgment, or the appearance of such influence.' [*Federal Election Comm'n* v. *Colorado Republican Federal Campaign Comm.,* 533 U. S. 431, 441 (2001) *(Colorado II)*]. Many of the 'deeply disturbing examples' of corruption cited by this Court in *Buckley* to justify FECA's contribution limits were not episodes of vote buying, but evidence that various corporate interests had given substantial donations to gain access to high-level government officials. Even if that access did not secure actual influence, it certainly gave the 'appearance of such influence.' *Colorado II*, *supra*, at 441; see also [*Buckley* v. *Valeo,* 519 F. 2d 821, 838 (CADC 1975)].
>
> "The record in the present case is replete with

> similar examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations. See [251 F. Supp. 2d 176, 492–506 (DC 2003) (Kollar-Kotelly, J.)]." *Ante,* at 40–41.

The majority notes that access flowed from the regulated conduct at issue in *Buckley* and its progeny, then uses that fact as the basis for concluding that access peddling by the parties equals corruption by the candidates. That conclusion, however, is tenable only by a quick and subtle shift, and one that breaks new ground: The majority ignores the *quid pro quo* nature of the regulated conduct central to our earlier decisions. It relies instead solely on the fact that access flowed from the conduct.

To ignore the fact that in *Buckley* the money at issue was given to candidates, creating an obvious *quid pro quo* danger as much as it led to the candidates also providing access to the donors, is to ignore the Court's comments in *Buckley* that show *quid pro quo* was of central importance to the analysis. See 424 U. S., at 26–27, 45. The majority also ignores that in *Buckley*, and ever since, those party contributions that have been subject to congressional limit were not general party-building contributions but were only contributions used to influence particular elections. That is, they were contributions that flowed to a particular candidate's benefit, again posing a *quid pro quo* danger. And it ignores that in *Colorado II*, the party spending was that which was coordinated with a particular candidate, thereby implicating *quid pro quo* dangers. In all of these ways the majority breaks the necessary tether between *quid* and access and assumes that access, all by itself, demonstrates corruption and so can support regulation. See also *ante*, at 47 ("[L]arge soft-money donations to national party committees are likely to buy donors preferential access to federal officeholders no matter the ends to which their contributions are eventually put").

Access in itself, however, shows only that in a general sense an officeholder favors someone or that someone has influence on the officeholder. There is no basis, in law or in fact, to say favoritism or influence in general is the same as corrupt favoritism or influence in particular. By equating vague and generic claims of favoritism or influence with actual or apparent corruption, the Court adopts a definition of corruption that dismantles basic First Amendment rules, permits Congress to suppress speech in the absence of a *quid pro quo* threat, and moves beyond the rationale that is *Buckley*'s very foundation.

The generic favoritism or influence theory articulated by the Court is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle. Any given action might be favored by any given person, so by the Court's reasoning political loyalty of the purest sort can be prohibited. There is no remaining principled method for inquiring whether a campaign finance regulation does in fact regulate corruption in a serious and meaningful way. We are left to defer to a congressional conclusion that certain conduct creates favoritism or influence.

Though the majority cites common sense as the foundation for its definition of corruption, see *ante,* at 35, 43, in the context of the real world only a single definition of corruption has been found to identify political corruption successfully and to distinguish good political responsiveness from bad—that is *quid pro quo*. Favoritism and influence are not, as the Government's theory suggests, avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness. Q*uid pro quo* corruption has been, until now, the only agreed upon conduct that represents the bad form of responsiveness and presents a justiciable standard with a relatively clear limiting principle: Bad responsiveness may be demonstrated by pointing to a relationship between an official and a *quid*.

The majority attempts to mask its extension of *Buckley* under claims that BCRA prevents the appearance of corruption, even if it does not prevent actual corruption, since some assert that any donation of money to a political party is suspect. See *ante*, at 40–42. Under *Buckley*'s holding that Congress has a valid "interest in stemming the reality or appearance of corruption," 424 U. S., at 47–48, however, the inquiry does not turn on whether some persons assert that an appearance of corruption exists. Rather, the inquiry turns on whether the Legislature has established that the regulated conduct has inherent corruption potential, thus justifying the inference that regulating the conduct will stem the appearance of real corruption. *Buckley* was guided and constrained by this analysis. In striking down expenditure limits the Court in *Buckley* did not ask whether people thought large election expenditures corrupt, because clearly at that time many persons, including a majority of Congress and the President, did. See *id.,* at 25 ("According to the parties and *amici*, the primary interest served . . . by the Act as a whole, is the prevention of corruption and the appearance of corruption"). Instead, the Court asked whether the Government had proved that the regulated conduct, the expenditures, posed inherent *quid pro quo* corruption potential. See *id.,* at 46.

The *Buckley* decision made this analysis even clearer in upholding contribution limitations. It stated that even if actual corrupt contribution practices had not been proved, Congress had an interest in regulating the appearance of corruption that is "inherent in a regime of large individual financial contributions." *Id.,* at 27 (discussing contributions to candidates). See also *id.,* at 28, 30. The *quid pro quo* nature of candidate contributions justified the conclusion that the contributions pose inherent corruption potential; and this in turn justified the conclusion that their regulation would stem the appearance of real corruption.

From that it follows that the Court today should not ask, as it does, whether some persons, even Members of Congress, conclusorily assert that the regulated conduct appears corrupt to them. Following *Buckley*, it should instead inquire whether the conduct now prohibited inherently poses a real or substantive *quid pro quo* danger, so that its regulation will stem the appearance of *quid pro quo* corruption.

1. New FECA §§323(a), (b), (d), and (f)

Sections 323(a), (b), (d), and (f), 2 U. S. C. A. §§441i(a), (b), (d), and (f) (Supp. 2003), cannot stand because they do not add regulation to conduct that poses a demonstrable *quid pro quo* danger. They do not further *Buckley*'s corruption interest.

The majority, with a broad brush, paints §323(a) as aimed at limiting contributions possessing federal officeholder corruption potential. From there it would justify §323's remaining provisions as necessary complements to ensure the national parties cannot circumvent §323(a)'s prohibitions. The broad brush approach fails, however, when the provisions are reviewed under *Buckley*'s proper definition of corruption potential.

On its face §323(a) does not regulate federal candidates' or officeholders' receipt of *quids* because it does not regulate contributions to, or conduct by, candidates or officeholders. See BCRA §101(a) (setting out new FECA §323(a): National parties may not "solicit, receive, or direct to another person . . . or spend any [soft money]").

The realities that underlie the statute, furthermore, do not support the majority's interpretation. Before BCRA's enactment, parties could only use soft money for a candidate's "benefit" (*e.g.*, through issue ads, which all parties now admit may influence elections) independent of that candidate. And, as discussed later, §323(e) validly prohibits federal candidate and officeholder solicitation of soft money party donations. See *infra*, at 31. Section 323(a), therefore, only adds regulation to soft money party donations not solicited by, or spent in coordination with, a candidate or officeholder.

These donations (noncandidate or officeholder solicited soft money party donations that are independently spent) do not pose the *quid pro quo* dangers that provide the basis for restricting protected speech. Though the government argues §323(a) does regulate federal candidates' and officeholders' receipt of *quids*, it bases its argument on this flawed reasoning:

> (1) "[F]ederal elected officeholders are inextricably linked to their political parties," Brief for Appellees/Cross Appellants FEC et al. in No. 02–1674 et al., p. 21; cf. *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n,* 518 U. S. 604, 626 (1996) *(Colorado I)* (KENNEDY, J., concurring in judgment and dissenting in part).
>
> (2) All party receipts must be connected to, and must create, corrupt donor favoritism among these officeholders.
>
> (3) Therefore, regulation of party receipts equals regulation of *quids* to the party's officeholders.

The reasoning is flawed because the Government's reliance on reasoning parallel to the *Colorado I* concurrence only establishes the first step in its chain of logic: that a party is a proxy for its candidates generally. It does not establish the second step: that as a proxy for its candidates generally, *all* moneys the party receives (not just candidate solicited-soft money donations, or donations used in coordinated activity) represent *quids* for all the party's candidates and officeholders. The Government's analysis is inconsistent with what a majority of the Justices, in different opinions, have said.

JUSTICE THOMAS' dissent in *Colorado II*, 533 U. S., at 476–477, taken together with JUSTICE BREYER's opinion announcing the judgment of the Court in *Colorado I*, rebuts the second step of the Government's argument. JUSTICE THOMAS demonstrated that a general party-candidate corruption linkage does not exist. As he pointed out:

> "The dearth of evidence [of such corruption] is unsurprising in light of the unique relationship between a political party and its candidates: 'The very aim of a political party is to influence its candidate's stance on issues and, if the candidate takes office or is reelected, his votes.' If coordinated expenditures help achieve this aim, the achievement 'does not . . . constitute "a subversion of the political process."'" *Colorado II, supra,* at 476–477 (citations omitted).

JUSTICE BREYER reached the same conclusion about the corrupting effect general party receipts could have on particular candidates, though on narrower grounds. He concluded that independent party conduct lacks *quid pro quo* corruption potential. See *Colorado I,* 518 U. S., at 617–618; *id.,* at 617 ("If anything, an independent [party] expenditure made possible by a $20,000 donation, but controlled and directed by a party rather than the donor, would seem less likely to corrupt than the same (or a much larger) independent expenditure made directly by that donor"); *id.,* at 616 ("[T]he opportunity for corruption posed by [soft money] contributions is, at best, attenuated" because they may not be used for the purposes of influencing a federal election under FECA).

These opinions establish that independent party activity, which by definition includes independent receipt and spending of soft money, lacks a possibility for *quid pro quo* corruption of federal officeholders. This must be all the more true of a party's independent receipt and spending of soft money donations neither directed to nor solicited by a candidate.

The Government's premise is also unsupported by the record before us. The record confirms that soft money party contributions, without more, do not create *quid pro quo* corruption potential. As a conceptual matter, generic party contributions may engender good will from a candidate or officeholder because, as the Government says: "[A] Member of Congress can be expected to feel a natural temptation to favor those persons who have helped the 'team,'" Brief for Appellees/Cross-Appellants FEC et al. in No. 02–1674 et al., p. 33. Still, no Member of Congress testified this favoritism changed voting behavior.

The piece of record evidence the Government puts forward on this score comes by way of deposition testimony from former Senator Simon and Senator Feingold. See 251 F. Supp. 2d 176, 482 (DC 2003) (Kollar-Kotelly, J.). Senator Simon reported an unidentified colleague indicated frustration with Simon's opposition to legislation that would benefit a party contributor on the grounds that "'we've got to pay attention to who is buttering our bread'" and testified he did not think there was any question "'this'" (*i.e.*, "donors getting their way") was why the legislation passed. See App. 805. Senator Feingold, too, testified an unidentified colleague suggested he support the legislation because "'they [*i.e.*, the donor] just gave us [*i.e.*, the party] $100,000.'" 251 F. Supp. 2d, at 482 (Kollar-Kotelly, J.).

That evidence in fact works against the Government.

These two testifying Senators expressed disgust toward the favoring of a soft money giver, and not the good will one would have expected under the Government's theory. That necessarily undercuts the inference of corruption the Government would have us draw from the evidence.

Even more damaging to the Government's argument from the testimony is the absence of testimony that the Senator who allegedly succumbed to corrupt influence had himself solicited soft money from the donor in question. Equally, there is no indication he simply favored the company with his vote because it had, without any involvement from him, given funds to the party to which he belonged. This fact is crucial. If the Senator himself had been the solicitor of the soft money funds in question, the incident does nothing more than confirm that Congress' efforts at campaign finance reform ought to be directed to conduct that implicates *quid pro quo* relationships. Only if there was some evidence that the officeholder had not solicited funds from the donor could the Court extrapolate from this episode that general party contributions function as *quids*, inspiring corrupt favoritism among party members. The episode is the single one of its type reported in the record and does not seem sufficient basis for major incursions into settled practice. Given the Government's claim that the corrupt favoritism problem is widespread, its inability to produce more than a single instance purporting to illustrate the point demonstrates the Government has not fairly characterized the general attitudes of Members towards soft money donors from whom they have not solicited.

Other aspects of the record confirm the Government has not produced evidence that Members corruptly favor soft money donors to their party as a *per se* matter. Most testimony from which the Government would have the Court infer corruption is testimony that Members are rewarded by their parties for soliciting soft money. See i*d.,* at 438–521 (Kollar-Kotelly, J.). This says nothing about how Members feel about a party's soft money donors from whom they have not solicited. Indeed, record evidence on this point again cuts against the Government:

> "'As a Member of the Senate Finance Committee, I experienced the pressure first hand. On several occasions when we were debating important tax bills, I needed a police escort to get into the Finance Committee hearing room because so many lobbyists were crowding the halls, trying to get one last chance to make their pitch to each Senator. Senators generally knew which lobbyist represented the interests of which large donor. I was often glad that I limited the amount of soft money fundraising I did and did not take PAC contributions, because it would be extremely difficult not to feel beholden to these donors otherwise.'" *Id.,* at 482 (testimony of former Senator Boren; see 6–R Defs. Exhs., Tab 8, ¶8).

Thus, one of the handful of Senators on whom the Government relies to make its case candidly admits the pressure of appeasing soft money donors derives from the Members' solicitation of donors, not from those donors' otherwise giving to their party.

In light of all this, §323(a) has no valid anticorruption interest. The anticircumvention interests the Government offers in defense of §§323(b), (d), and (f) must also fall with the interests asserted to justify §323(a). Any anticircumvention interest can be only as compelling as the interest justifying the underlying regulation.

None of these other sections has an independent justifying interest. Section 323(b), for example, adds regulation only to activity undertaken by a state party. In the District Court two of the three judges found as fact that particular state and local parties exist primarily to participate in state and local elections, that they spend the majority of their resources on those elections, and that their voter registration and Get Out The Vote (GOTV) activities, in particular, are directed primarily at state and local elections. See 251 F. Supp. 2d, at 301–302 (Henderson, J., concurring in judgment in part and dissenting in part); *id.,* at 837–840 (Leon, J.). These findings, taken together with BCRA's other, valid prohibitions barring coordination with federal candidates or officeholders and their soft money solicitation, demonstrate that §323(b) does not add regulation to conduct that poses a danger of a federal candidate's or officeholder's receipt of *quids*.

Even §323(b)'s narrowest regulation, which bans state party soft money funded ads that (1) refer to a clearly identified federal candidate, and (2) either support or attack any candidate for the office of the clearly mentioned federal candidate, see new FECA §301(20)(A)(iii), fails the constitutional test. The ban on conduct that by the statute's own definition may serve the interest of a federal candidate suggests to the majority that it is conduct that poses *quid pro quo* danger for federal candidates or officeholders. Yet, even this effect—considered after excising the coordination and candidate-solicited funding aspects elsewhere prohibited by BCRA §§202 and 214(a) and new FECA §323(a)—poses no danger of a federal candidate's or officeholder's receipt of a *quid*. That conduct is no different from an individual's independent expenditure referring to and supporting a clearly identified candidate—and this poses no regulable danger.

Section 323(d), which governs relationships between the national parties and nonprofit groups, fails for similar reasons. It is worth noting that neither the record nor our own experience tells us how significant these funds transfers are at this time. It is plain, however, that the First Amendment ought not to be manipulated to permit Congress to forbid a political party from aiding other speakers whom the party deems more effective in addressing discrete issues. One of the central flaws in BCRA is that Congress is determining what future course the creation of ideas and the expression of views must follow. Its attempt to foreclose new and creative partnerships for speech, as illustrated here, is consistent with neither the traditions nor principles of our Free Speech guarantee, which insists that the people, and not the Congress, decide what modes of expression are the most legitimate and effective.

The majority's upholding §323(d) is all the more unsettling because of the way it ignores the Act as Congress wrote it. Congress said national parties "shall not solicit any funds for, or make or direct any donations to" §501(c) nonprofit organizations that engage in federal election activity or to §527 political committees. The Court, however, reads out the word "any" and construes the words "funds" and "donations" to mean "soft money funds" and "soft money donations." See *ante*, at 72 ("This construction is consistent with the concerns animating Title I, whose purpose is to plug the soft-money loophole"). The Court's statutory amendment may be consistent with its anti-soft-money rationale; it is not, however, consistent with the plain and unavoidable statutory text Congress has given us. Even as construed by the Court, moreover, it is invalid.

The majority strains to save the provision from what must seem to it an unduly harsh First Amendment. It does so by making a legislative determination Congress chose not to make: to prefer hard money to soft money within the construct of national party relationships with nonprofit groups. Congress gave no indication of a preference to regulate either hard money or soft in this context. Rather, it simply proscribed all transfers of money between the two organizations and all efforts by the national parties to raise any money on the nonprofit groups' behalf. The question the Court faces is not which part of a text to sever and strike, but whether Congress can prohibit such transfers altogether. The answer, as the majority recognizes, is no. See *ante*, at 71 ("[P]rohibiting parties from donating funds already raised in compliance with FECA does little to further Congress' goal of preventing corruption or the appearance of corruption of federal candidates and officeholders").

Though §323(f) in effect imposes limits on candidate contributions, it does not address federal candidate and officeholder contributions. Yet it is the possibility of federal officeholder *quid pro quo* corruption potential that animates *Buckley*'s rule as it relates to Acts of Congress (as opposed to Acts of state legislatures). See 424 U. S., at 13 ("The constitutional power of Congress to regulate federal elections is well established").

When one recognizes that §§323(a), (b), (d), and (f) do not serve the interest the anticorruption rationale contemplates, Title I's entirety begins to look very much like an incumbency protection plan. See J. Miller, Monopoly Politics 84–101 (1999) (concluding that regulations limiting election fundraising and spending constrain challengers more than incumbents). That impression is worsened by the fact that Congress exempted its officeholders from the more stringent prohibitions imposed on party officials. Compare new FECA §323(a) with new FECA §323(e). Section 323(a) raises an inflexible bar against soft money solicitation, in any way, by parties or party officials. Section 323(e), in contrast, enacts exceptions to the rule for federal officeholders (the very centerpiece of possible corruption), and allows them to solicit soft money for various uses and organizations.

The law in some respects even weakens the regulation of federal candidates and officeholders. Under former law, officeholders were understood to be limited to receipt of hard money by their campaign committees. See 2 U. S. C. §§431, 441a (setting out the pre-BCRA FECA regime).

BCRA, however, now allows them and their campaign committees to receive soft money that fits the hard money source and amount restrictions, so long as the officeholders direct that money on to other nonfederal candidates. See new FECA §323(e)(1)(B). The majority's characterization of this weakening of the regime as "tightly constrain[ing]" candidates, *ante,* at 73, n. 70, is a prime example of its unwillingness to confront Congress' own interest or the persisting fact that the regulations violate First Amendment freedoms. The more lenient treatment accorded to incumbency-driven politicians than to party officials who represent broad national constituencies must render all the more suspect Congress' claim that the Act's sole purpose is to stop corruption.

The majority answers this charge by stating the obvious, that "§323(e) applies to both officeholders *and candidates*." *Ante*, at 78, n. 72. The controlling point, of course, is the practical burden on challengers. That the prohibition applies to both incumbents and challengers in no way establishes that it burdens them equally in that regard. Name recognition and other advantages held by incumbents ensure that as a general rule incumbents will be advantaged by the legislation the Court today upholds.

The Government identifies no valid anticorruption interest justifying §§323(a), (b), (d), and (f). The very nature of the restrictions imposed by these provisions makes one all the more skeptical of the Court's explanation of the interests at stake. These provisions cannot stand under the First Amendment.

2. New FECA §323(e)

Ultimately, only one of the challenged Title I provisions satisfies *Buckley*'s anticorruption rationale and the First Amendment's guarantee. It is §323(e). This provision is the sole aspect of Title I that is a direct and necessary regulation of federal candidates' and officeholders' receipt of *quids*. Section 323(e) governs "candidate[s], individual[s] holding Federal office, agent[s] of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office." 2 U. S. C. A. §441i(e) (Supp. 2003). These provisions, and the regulations that follow, limit candidates' and their agents' solicitation of soft money. The regulation of a candidate's receipt of funds furthers a constitutionally sufficient interest. More difficult, however, is the question whether regulation of a candidate's solicitation of funds also furthers this interest if the funds are given to another.

I agree with the Court that the broader solicitation regulation does further a sufficient interest. The making of a solicited gift is a *quid* both to the recipient of the money and to the one who solicits the payment (by granting his request). Rules governing candidates' or officeholders' solicitation of contributions are, therefore, regulations governing their receipt of *quids*. This regulation fits under *Buckley*'s anticorruption rationale.

B. Standard of Review

It is common ground between the majority and this opinion that a speech-suppressing campaign finance regulation, even if supported by a sufficient Government interest, is unlawful if it cannot satisfy our designated standard of review. See *ante*, at 24–27. In *Buckley*, we applied "closely drawn" scrutiny to contribution limitations and strict scrutiny to expenditure limitations. Compare 424 U. S., at 25, with *id.,* at 44–45. Against that backdrop, the majority assumes that because *Buckley* applied the rationale in the context of contribution and expenditure limits, its application gives Congress and the Court the capacity to classify any challenged campaign finance regulation as either a contribution or an expenditure limit. Thus, it first concludes Title I's regulations are contributions limits and then proceeds to apply the lesser scrutiny.

> "Complex as its provisions may be, §323, in the main, does little more than regulate the ability of wealthy individuals, corporations, and unions to contribute large sums of money to influence federal elections, federal candidates, and federal officeholders." *Ante,* at 28.

Though the majority's analysis denies it, Title I's dynamics defy this facile, initial classification.

Title I's provisions prohibit the receipt of funds; and in most instances, but not all, this can be defined as a contribution limit. They prohibit the spending of funds; and in most instances this can be defined as an expenditure limit. They prohibit the giving of funds to nonprofit groups; and this falls within neither definition as we have ever defined it. Finally, they prohibit fundraising activity; and the parties dispute the classification of this regulation (the challengers say it is core political association, while the Government says it ultimately results only in a limit on contribution receipts).

The majority's classification overlooks these competing characteristics and exchanges *Buckley*'s substance for a formulaic caricature of it. Despite the parties' and the majority's best efforts on both sides of the question, it ignores reality to force these regulations into one of the two legal categories as either contribution or expenditure limitations. Instead, these characteristics seem to indicate Congress has enacted regulations that are neither contribution nor expenditure limits, or are perhaps both at once.

Even if the laws could be classified in broad terms as only contribution limits, as the majority is inclined to do, that still leaves the question what "contribution limits" can include if they are to be upheld under *Buckley*. *Buck-*

ley's application of a less exacting review to contribution limits must be confined to the narrow category of money gifts that are directed, in some manner, to a candidate or officeholder. Any broader definition of the category contradicts *Buckley*'s *quid pro quo* rationale and overlooks *Buckley*'s language, which contemplates limits on contributions to a candidate or campaign committee in explicit terms. See 424 U. S., at 13 (applying less exacting review to "contribution . . . limitations in the Act prohibit[ing] individuals from contributing more than $25,000 in a single year or more than $1,000 to any single candidate for an election campaign"); *id.,* at 45 ("[T]he contribution limitations' [apply a] total ban on the giving of large amounts of money to candidates"). See also *id.,* at 20, 25, 28.

The Court, it must be acknowledged, both in *Buckley* and on other occasions, has described contribution limits due some more deferential review in less than precise terms. At times it implied that donations to political parties would also qualify as contributions whose limitation too would be subject to less exacting review. See *id.,* at 23–24, n. 24 ("[T]he general understanding of what constitutes a political contribution[:] Funds provided to a candidate or political party or campaign committee either directly or indirectly through an intermediary constitute a contribution"). See also *Federal Election Comm'n* v. *Beaumont*, 539 U. S., at ___ (2003) (slip op., at 14) ("'[C]ontributions may result in political expression if spent by a candidate or an association'").

These seemingly conflicting statements are best reconciled by reference to *Buckley*'s underlying rationale for applying less exacting review. In a similar, but more imperative, sense proper application of the standard of review to regulations that are neither contribution nor expenditure limits (or which are both at once) can only be determined by reference to that rationale.

Buckley's underlying rationale is this: Less exacting review applies to Government regulations that "significantly interfere" with First Amendment rights of association. But any regulation of speech or associational rights creating "markedly greater interference" than such significant interference receives strict scrutiny. Unworkable and ill advised though it may be, *Buckley* unavoidably sets forth this test:

> "Even a '"significant interference" with protected rights of political association' may be sustained if the State demonstrates [1] a sufficiently important interest and [2] employs means closely drawn to avoid unnecessary abridgment of associational freedoms. *Cousins* v. *Wigoda*, [419 U. S. 477, 488 (1975)]; *NAACP* v. *Button,* [371 U. S. 415, 438 (1963)]; *Shelton* v. *Tucker* [364 U. S. 479, 488 (1960)]." 424 U. S., at 25.
>
> "The markedly greater burden on basic freedoms [referring to 'the freedom of speech and association'] caused by [expenditure limits] thus cannot be sustained simply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitations. Rather, the constitutionality of [the expenditure limits] turns on whether the governmental interests advanced in its support satisfy the exacting scrutiny applicable to limitations on core First Amendment rights of political expression." *Id.,* at 44–45.†

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†See also *Federal Election Commission* v. *Beaumont*, 539 U. S. ___, ___ (2003) (slip op., at 14) ("[T]he basic premise we have followed in setting First Amendment standards for reviewing political financial restrictions [is that] the level of scrutiny is based on the importance of the 'political activity at issue' to effective speech or political association"); *California Democratic Party* v. *Jones*, 530 U. S. 567, 582 (2000)

The majority, oddly enough, first states this standard with relative accuracy, but then denies it. Compare:

> "The relevant inquiry [in determining the level of scrutiny] is whether the mechanism adopted to implement the contribution limit, or to prevent circumvention of that limit, burdens speech in a way that a direct restriction on the contribution itself would not," *ante*, at 28–29, with:
>
> "None of this is to suggest that the alleged associational burdens imposed on parties by §323 have no place in the First Amendment analysis. It is only that we account for them in the application, rather than the choice, of the appropriate level of scrutiny." *Ante*, at 31.

The majority's attempt to separate out how burdens on speech rights and burdens on associational rights affect the standard of review is misguided. It is not even true to *Buckley*'s unconventional test. *Buckley*, as shown in the quotations above, explained the lower standard of review by reference to the level of burden on associational rights, and it explained the need for a higher standard of review by reference to the higher burdens on both associational and speech rights. In light of *Buckley*'s rationale, and in light of this Court's ample precedent affirming that burdens on speech necessitate strict scrutiny review, see 424 U. S., at 44–45 ("[E]xacting scrutiny [applies] to limitations on core First Amendment rights of political expression"), "closely drawn" scrutiny should be employed only in review of a law that burdens rights of association, and only where that burden is significant, not markedly

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("We can think of no heavier burden on a political party's associational freedom. Proposition 198 is therefore unconstitutional unless it is narrowly tailored to serve a compelling state interest").

greater. Since the Court professes not to repudiate *Buckley*, it was right first to say we must determine how significant a burden BCRA's regulations place on First Amendment rights, though it should have specified that the rights implicated are those of association. Its later denial of that analysis flatly contradicts *Buckley*.

The majority makes *Buckley*'s already awkward and imprecise test all but meaningless in its application. If one is viewing BCRA through *Buckley*'s lens, as the majority purports to do, one must conclude the Act creates markedly greater associational burdens than the significant burden created by contribution limitations and, unlike contribution limitations, also creates significant burdens on speech itself. While BCRA contains federal contribution limitations, which significantly burden association, it goes even further. The Act entirely reorders the nature of relations between national political parties and their candidates, between national political parties and state and local parties, and between national political parties and nonprofit organizations.

The many and varied aspects of Title I's regulations impose far greater burdens on the associational rights of the parties, their officials, candidates, and citizens than do regulations that do no more than cap the amount of money persons can contribute to a political candidate or committee. The evidence shows that national parties have a long tradition of engaging in essential associational activities, such as planning and coordinating fundraising with state and local parties, often with respect to elections that are not federal in nature. This strengthens the conclusion that the regulations now before us have unprecedented impact. It makes impossible, moreover, the contrary conclusion—which the Court's standard of review determination necessarily implies—that BCRA's soft money regulations will not much change the nature of association between parties, candidates, nonprofit groups, and the like. Similarly, Title I now compels speech by party officials. These officials must be sure their words are not mistaken for words uttered in their official capacity or mistaken for soliciting prohibited soft, and not hard, money. Few interferences with the speech, association, and free expression of our people are greater than attempts by Congress to say which groups can or cannot advocate a cause, or how they must do it.

Congress has undertaken this comprehensive reordering of association and speech rights in the name of enforcing contribution limitations. Here, however, as in *Buckley*, "[t]he markedly greater burden on basic freedoms caused by [BCRA's pervasive regulation] cannot be sustained simply by invoking the interest in maximizing the effectiveness of the less intrusive contribution limitations." *Id.,* at 44–45. BCRA fundamentally alters, and thereby burdens, protected speech and association throughout our society. Strict scrutiny ought apply to review of its constitutionality. Under strict scrutiny, the congressional scheme, for the most part, cannot survive. This is all but acknowledged by the Government, which fails even to argue that strict scrutiny could be met.

1. New FECA §323(e)

Because most of the Title I provisions discussed so far do not serve a compelling or sufficient interest, the standard of review analysis is only dispositive with respect to new FECA §323(e). As to §323(e), 2 U. S. C. A. §441i(e) (Supp. 2003), I agree with the Court that this provision withstands constitutional scrutiny.

Section 323(e) is directed solely to federal candidates and their agents; it does not ban all solicitation by candidates, but only their solicitation of soft money contributions; and it incorporates important exceptions to its limits (candidates may receive, solicit, or direct funds that comply with hard money standards; candidates may speak at fundraising events; candidates may solicit or direct unlimited funds to organizations not involved with federal election activity; and candidates may solicit or direct up to $20,000 per individual per year for organizations involved with certain federal election activity (*e.g.*, GOTV, voter registration)). These provisions help ensure that the law is narrowly tailored to satisfy First Amendment requirements. For these reasons, I agree §323(e) is valid.

2. New FECA §§323(a), (b), (d), and (f)

Though these sections do not survive even the first test of serving a constitutionally valid interest, it is necessary as well to examine the vast overbreadth of the remainder of Title I, so the import of the majority's holding today is understood. Sections 323(a), (b), (d), and (f), 2 U. S. C. A. §§441i(a), (b), (d), and (f) (Supp. 2003), are not narrowly tailored, cannot survive strict scrutiny, and cannot even be considered closely drawn, unless that phrase is emptied of all meaning.

First, the sections all possess fatal overbreadth. By regulating conduct that does not pose *quid pro quo* dangers, they are incursions on important categories of protected speech by voters and party officials.

At the next level of analytical detail, §323(a) is overly broad as well because it regulates all national parties, whether or not they present candidates in federal elections. It also regulates the national parties' solicitation and direction of funds in odd-numbered years when only state and local elections are at stake.

Likewise, while §323(b) might prohibit some state party conduct that would otherwise be undertaken in conjunction with a federal candidate, it reaches beyond that to a considerable range of campaign speech by the state parties on nonfederal issues. A state or local party might want to say: "The Democratic slate for state assembly opposes President Bush's tax policy . . . . Elect the Republican slate to tell Washington, D. C. we don't want higher taxes." Section 323(b) encompasses this essential speech and prohibits it equally with speech that poses a federal officeholder *quid quo pro* danger.

Other predictable political circumstances further demonstrate §323(b)'s overbreadth. It proscribes the use of soft money for all state party voter registration efforts occurring within 120 days of a federal election. So, the vagaries of election timing, not any real interest related to corruption, will control whether state parties can spend nonfederally regulated funds on ballot efforts. This overreaching contradicts important precedents that recognize the need to protect political speech for campaigns related to ballot measures. See generally *Citizens Against Rent Control*, 454 U. S. 290 (1981); *First Nat. Bank of Boston* v. *Bellotti,* 435 U. S. 765 (1978).

Section 323(b) also fails the narrow tailoring requirement because less burdensome regulatory options were available. The Government justifies the provision as an attempt to stop national parties from circumventing the soft money allocation constraints they faced under the prior FECA regime. We are told that otherwise the national parties would let the state parties spend money on their behalf. If, however, the problem were avoidance of allocation rates, Congress could have made any soft money transferred by a national party to a state party subject to the allocation rates that governed the national parties' similar use of the money.

Nor is §323(d) narrowly tailored. The provision, proscribing any solicitation or direction of funds, prohibits the parties from even distributing or soliciting regulated money (*i.e.*, hard money). It is a complete ban on this category of speech. To prevent circumvention of contribution limits by imposing a complete ban on contributions is to burden the circumventing conduct more severely than the underlying suspect conduct could be burdened.

By its own terms, the statute prohibits speech that does not implicate federal elections. The provision prohibits any transfer to a §527 organization, irrespective of whether the organization engages in federal election activity. This is unnecessary, as well, since Congress enacted a much narrower provision in §323(a)(2) to prevent circumvention by the parties via control of other organizations. Section 323(a)(2) makes "any entity that is directly or indirectly . . . controlled by" the national parties subject to the same §323(a) prohibitions as the parties themselves. 2 U. S. C. A. §441i (Supp. 2003).

Section 323(f), too, is not narrowly tailored or even close to it. It burdens a substantial body of speech and expression made entirely independent of any federal candidate. The record, for example, contains evidence of Alabama Attorney General Pryor's reelection flyers showing a picture of Pryor shaking hands with President Bush and stating: "Bush appointed Pryor to be Alabama cochairman of the George W. Bush for President campaign." A host of circumstances could make such statements advisable for state candidates to use without any coordination with a federal candidate. Section 323(f) incorporates no distinguishing feature, such as an element of coordination, to ensure First Amendment protected speech is not swept up within its bounds.

Compared to the narrowly tailored effort of §323(e), which addresses in direct and specific terms federal candidates' and officeholders' quest for dollars, these sections cast a wide net not confined to the critical categories of federal candidate or officeholder involvement. They are not narrowly tailored; they are not closely drawn; they flatly violate the First Amendment; and even if they do encompass some speech that poses a regulable *quid pro quo* danger, that little assurance does not justify or permit a regime which silences so many legitimate voices in this protected sphere.

C. Coordination Provisions

Other BCRA Title II sections require analysis alongside the provisions of Title I, for they, too, are regulations that principally operate within the ambit of *Buckley*'s anticorruption principle. BCRA §§202 and 214 are two of these provisions. They involve the Act's new definition of coordination. BCRA §213 is another. It institutes a new system in which the parties are forced to choose between two different types of relationships with their candidates.

1.

I agree with the majority that §§214(b) and (c) do not merit our review because they are not now justiciable. See *ante*, at 118. I disagree, however, with the majority's view that §214(a), §214's sole justiciable provision, is valid. Nor can I agree that §202 is valid in its entirety.

Section 214(a) amends FECA to define, as hard money contributions to a political party, expenditures an individual makes in concert with the party. See *ante*, at 114. This provision, in my view, must fall. As the earlier discussion of Title I explains, individual contributions to the political parties cannot be capped in the soft money context. Since an individual's soft money contributions to a party may not be limited, it follows with even greater force that an individual's expenditure of money, coordinated with the party for activities on which the party could spend unlimited soft money, cannot be capped.

This conclusion emerges not only from an analysis of Title I but also from *Colorado I*. There, JUSTICE BREYER's opinion announcing the judgment of the Court concluded political parties had a constitutional right to engage in independent advocacy on behalf of a candidate. 518 U. S. 604 (1996). That parties can spend unlimited soft money on this activity follows by necessary implication. A political party's constitutional right to spend money on advocacy independent of a candidate is burdened by §214(a) in a direct and substantial way. The statute commands the party to refrain from coordinating with an individual engaging in advocacy even if the individual is acting independently of the candidate.

Section 202 functions in a manner similar to the operation of §214(a). It directs that when persons make "electioneering communications," see new FECA §304(f)(3), 2 U. S. C. A. §434(f)(3) (Supp. 2003), in a coordinated fashion with a candidate or a party, the coordinated communication expense must be treated as a hard money contribution by the person to that candidate or party. The trial court erroneously believed it needed to determine whether §304's definition of electioneering communications was itself unconstitutional to assess this provision. While a statutory definition may lead to an unconstitutional result under one application, it may lead to a constitutional result under another. Compare *infra*, at 35–36; *infra*, at 38, with *infra*, at 63–66. It is unhelpful to talk in terms of the definition being unconstitutional or constitutional when the only relevant question is whether, as animated by a substantive prohibition, here §202, the definition leads to unconstitutional results. The other Title II provisions that employ §304's electioneering communication definition are analyzed below, within the context of the corporate speech rationale and the disclosure provisions. Section 202, however, must be judged under the anticorruption rationale because it does not distinguish according to corporate or union status, and it does not involve disclosure requirements. Section 202 simply limits the speech of all "persons."

Section 202 does satisfy *Buckley*'s anticorruption rationale in one respect: It treats electioneering communications expenditures made by a person in coordination with a candidate as hard money contributions to that candidate. For many of the same reasons that §323(e) is valid, §202, in this single way, is valid: it regulates conduct that poses a *quid pro quo* danger—satisfaction of a candidate's request.

Insofar as §202 regulates coordination with a political party, however, it suffers from the same flaws as §214(a). Congress has instructed us, as much as possible, to sever any infirm portions of statutory text from the valid parts, see BCRA §401. Following that instruction, I would uphold §202's text as to its candidate coordination regulation (the first clause of new FECA §315(a)(7)(C)(ii), 2 U. S. C. A. §441a(a)(7)(C)(ii) (Supp. 2003), but rule invalid its text that applies the coordination provision to political parties.

This provision includes an "advance contracts" aspect as well. That aspect of the provision, on its own, would be invalid, for many of the reasons discussed below with respect to the advance disclosure requirements embodied in BCRA §§201 and 212. See *infra*, at 38–39.

2.

The final aspect of BCRA that implicates *Buckley*'s anticorruption rationale is §213, the forced choice provision. The majority concludes §213 violates the Constitution. I agree and write on this aspect of the case to point out that the section's unlawfulness flows not from the unique contours of the statute that settle how much political parties may spend on their candidate's campaign, see *ante*, at 109–113, but from its raw suppression of constitutionally protected speech.

Section 213 unconstitutionally forces the parties to surrender one of two First Amendment rights. We affirmed that parties have a constitutionally protected right to make independent expenditures in *Colorado I*. I continue to believe, moreover, that even under *Buckley* a political party has a protected right to make coordinated expenditures with its candidates. See *Colorado II*, 533 U. S., at 466–482 (THOMAS, J., dissenting). Our well-established constitutional tradition respects the role parties play in the electoral process and in stabilizing our representative democracy. "There can be little doubt that the emergence of a strong and stable two-party system in this country has contributed enormously to sound and effective government." *Davis* v. *Bandemer*, 478 U. S. 109, 144–145 (1986) (O'CONNOR, J., concurring in judgment). This role would be undermined in the absence of a party's ability to coordinate with candidates. Cf. *Colorado I*, *supra,* at 629 (parties can "give effect to their views only by selecting and supporting candidates") (KENNEDY, J., concurring in judgment and dissenting in part). Section 213's command that the parties abandon one First Amendment right or the other offends the Constitution even more than a command that a person choose between a First Amendment right and a statutory right.

II. TITLE II PROVISIONS

A. Disclosure Provisions

BCRA §201, which requires disclosure of electioneering communications, including those coordinated with the party but independent of the candidate, does not substantially relate to a valid interest in gathering data about compliance with contribution limits or in deterring corruption. Contra, *ante*, at 89. As the above analysis of Title I demonstrates, Congress has no valid interest in regulating soft money contributions that do not pose *quid pro quo* corruption potential. In the absence of a valid basis for imposing such limits the effort here to ensure compliance with them and to deter their allegedly corrupting effects cannot justify disclosure. The regulation does substantially relate to the other interest the majority details, however. See *ibid.* This assures its constitutionality. For that reason, I agree with the Court's judgment upholding the disclosure provisions contained in §201 of Title II, with one exception.

Section 201's advance disclosure requirement—the aspect of the provision requiring those who have contracted to speak to disclose their speech in advance—is, in my view, unconstitutional. Advance disclosure imposes real burdens on political speech that *post hoc* disclosure does not. It forces disclosure of political strategy by revealing where ads are to be run and what their content is likely to be (based on who is running the ad). It also provides an opportunity for the ad buyer's opponents to dissuade broadcasters from running ads. See Brief for Plaintiffs-Appellants/Cross-Appellees National Right to Life Committee, Inc., et al. in No. 02–1733 et al., pp. 44–46, and nn. 42–43. Against those tangible additional burdens, the Government identifies no additional interest uniquely served by advance disclosure. If Congress intended to ensure that advertisers could not flout these disclosure laws by running an ad before the election, but paying for it afterwards, see *ante*, at 93–94, then Congress should simply have required the disclosure upon the running of the ad. Burdening the First Amendment further by requiring advance disclosure is not a constitutionally acceptable alternative. To the extent §201 requires advance disclosure, it finds no justification in its subordinating interests and imposes greater burdens than the First Amendment permits.

Section 212, another disclosure provision, likewise incorporates an advance disclosure requirement. The plaintiffs challenge only this advance disclosure requirement, and not the broader substance of this section. The majority concludes this challenge is not ripe. I disagree.

The statute commands advance disclosure. The FEC has issued a regulation under §212 that, by its terms, does not implement this particular requirement. See 68 Fed. Reg. 404, 452 (2003) (to be codified at 11 CFR §109.10(c)(d)). Adoption of a regulation that does not implement the statute to its full extent does not erase the statutory requirement. This is not a case in which a statute is ambiguous and the agency interpretation can be relied upon to avoid a statutory obligation that is uncertain or arguable. The failure of the regulation at this point to require advance disclosure is of no moment. Contra, 251 F. Supp. 2d, at 251 *(per curiam)*. The validity of §212 is an issue presented for our determination; it is ripe; and the advance disclosure requirement, for the reasons given when discussing the parallel provision under §201, is unconstitutional. Contra, *ante*, at 106 (declining to address the ripeness question in light of the majority's rejection of the challenge to advance notice in §201).

B. BCRA §203

The majority permits a new and serious intrusion on speech when it upholds §203, the key provision in Title II that prohibits corporations and labor unions from using money from their general treasury to fund electioneering communications. The majority compounds the error made in *Austin* v. *Michigan Chamber of Commerce,* 494 U. S. 652 (1990), and silences political speech central to the civic discourse that sustains and informs our democratic processes. Unions and corporations, including nonprofit corporations, now face severe criminal penalties for broadcasting advocacy messages that "refe[r] to a clearly identified candidate," 2 U. S. C. A. §431(20)(A)(iii) (Supp. 2003), in an election season. Instead of extending *Austin* to suppress new and vibrant voices, I would overrule it and return our campaign finance jurisprudence to principles consistent with the First Amendment.

1.

The Government and the majority are right about one thing: The express-advocacy requirement, with its list of magic words, is easy to circumvent. The Government seizes on this observation to defend BCRA §203, arguing it will prevent what it calls "sham issue ads" that are really to the same effect as their more express counterparts. *Ante,* at 78, 85–87. What the Court and the Government call sham, however, are the ads speakers find most effective. Unlike express ads that leave nothing to the imagination, the record shows that issues ads are preferred by almost all candidates, even though politicians, unlike corporations, can lawfully broadcast express ads if they so choose. It is a measure of the Government's disdain for protected speech that it would label as a sham the mode of communication sophisticated speakers choose because it is the most powerful.

The Government's use of the pejorative label should not obscure §203's practical effect: It prohibits a mass communication technique favored in the modern political process for the very reason that it is the most potent. That the Government would regulate it for this reason goes only to prove the illegitimacy of the Government's purpose. The majority's validation of it is not sustainable under accepted First Amendment principles. The problem is that the majority uses *Austin*, a decision itself unfaithful to our First Amendment precedents, to justify banning a far greater range of speech. This has it all backwards. If protected speech is being suppressed, that must be the end of the inquiry.

The majority's holding cannot be reconciled with *First Nat. Bank of Boston* v. *Bellotti,* 435 U. S. 765 (1978), which invalidated a Massachusetts law prohibiting banks and business corporations from making expenditures "for the purpose of" influencing referendum votes on issues that do not "materially affect" their business interests. *Id.*, at 767. *Bellotti* was decided in the face of the same arguments on which the majority now relies. Corporate participation, the Government argued in *Bellotti*, "would exert an undue influence on the outcome of a referendum vote." *Id.*, at

789. The influence, presumably, was undue because "immense aggregations of wealth" were facilitated by the "unique state-conferred corporate structure." *Austin*, 494 U. S., at 660. With these "state-created advantages," *id.*, at 659, corporations would "drown out other points of view" and "destroy the confidence of the people in the democratic process." *Bellotti*, 435 U. S., at 789. *Bellotti* rejected these arguments in emphatic terms:

> "To be sure, corporate advertising may influence the outcome of the vote; this would be its purpose. But the fact that advocacy may persuade the electorate is hardly a reason to suppress it: The Constitution 'protects expression which is eloquent no less than that which is unconvincing.' *Kingsley Int'l Pictures Corp.* v. *Regents*, 360 U. S., at 689. . . . '[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment. . . .' *Buckley*, 424 U. S., at 48–49." *Id.,* at 790–791.

Bellotti similarly dismissed the argument that the prohibition was necessary to "protec[t] corporate shareholders" "by preventing the use of corporate resources in furtherance of views with which some shareholders may disagree." *Id.,* at 792–793. Among other problems, the statute was overinclusive:

> "[It] would prohibit a corporation from supporting or opposing a referendum proposal even if its shareholders unanimously authorized the contribution or expenditure. . . . Acting through their power to elect the board of directors or to insist upon protective provisions in the corporation's charter, shareholders normally are presumed competent to protect their own interests. . . . [M]inority shareholders generally have access to the judicial remedy of a derivative suit to challenge corporate disbursements . . . . Assuming,

> *arguendo*, that protection of shareholders is a 'compelling' interest under the circumstances of this case, we find 'no substantially relevant correlation between the governmental interest asserted and the State's effort' to prohibit appellants from speaking." *Id.*, at 794–795.

See also *Abood* v. *Detroit Bd. of Ed.,* 431 U. S. 209 (1977) (providing analogous protections to union members).

Austin turned its back on this holding, not because the *Bellotti* Court had overlooked the Government's interest in combating *quid pro quo* corruption, but because a new majority decided to recognize "a different type of corruption," *Austin*, 494 U. S., at 660, *i.e.,* the same "corrosive and distorting effects of immense aggregations of wealth," *ibid.,* found insufficient to sustain a similar prohibition just a decade earlier. Unless certain narrow exceptions apply, see *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.,* 479 U. S. 238 (1986) *(MCFL),* the prohibition extends even to nonprofit corporations organized to promote a point of view. Aside from its disregard of precedents, the majority's ready willingness to equate corruption with all organizations adopting the corporate form is a grave insult to nonprofit and for-profit corporations alike, entities that have long enriched our civic dialogue.

Austin was the first and, until now, the only time our Court had allowed the Government to exercise the power to censor political speech based on the speaker's corporate identity. The majority's contrary contention is simply incorrect. Contra, *ante,* at 96–97 ("Since our decision in *Buckley*, Congress' power to prohibit corporations and unions from using funds in their treasuries to finance advertisements expressly advocating the election or defeat of candidates in federal elections has been firmly embedded in our law"). I dissented in *Austin*, 494 U. S., at 695, and continue to believe that the case represents an indefensible departure from our tradition of free and robust debate. Two of my colleagues joined the dissent, including a member of today's majority. *Ibid.* (O'CONNOR and SCALIA, JJ.). See also *id.,* at 679 (SCALIA, J., dissenting).

To be sure, *Bellotti* concerns issue advocacy, whereas *Austin* is about express advocacy. This distinction appears to have accounted for the position of at least two members of the Court. See 494 U. S., at 675–676 (Brennan, J., concurring) ("The Michigan law . . . prohibits corporations from using treasury funds only for making independent expenditures in support of, or in opposition to, any candidate in state elections. A corporation remains free . . . to use general treasury funds to support an initiative proposal in a state referendum" (citation omitted)); *id.*, at 678 (STEVENS, J., concurring) ("[T]here is a vast difference between lobbying and debating public issues on the one hand, and political campaigns for election to public office on the other"). The distinction, however, between independent expenditures for commenting on issues, on the one hand, and supporting or opposing a candidate, on the other, has no First Amendment significance apart from *Austin*'s arbitrary line.

Austin was based on a faulty assumption. Contrary to JUSTICE STEVENS' proposal that there is "vast difference between lobbying and debating public issues on the one hand, and political campaigns for election to public office on the other," *ibid.*, there is a general recognition now that discussions of candidates and issues are quite often intertwined in practical terms. See, *e.g.,* Brief for Intervenor-Defendants Senator John McCain et al. in No. 02–1674 et al., p. 42 ("'[The] legal . . . wall between issue advocacy and political advocacy . . . is built of the same sturdy material as the emperor's clothing. Everyone sees it. No one believes it'" (quoting the chair of the Political Action Committee (PAC) of the National Rifle Association (NRA))). To abide by *Austin*'s repudiation of *Bellotti* on the ground that *Bellotti* did not involve express advocacy is to adopt a fiction. Far from providing a rationale for expanding *Austin*, the evidence in these consolidated cases calls for its reexamination. Just as arguments about immense aggregations of corporate wealth and concerns about protecting shareholders and union members do not justify a ban on issue ads, they cannot sustain a ban on independent expenditures for express ads. In holding otherwise, *Austin* "forced a substantial amount of political speech underground" and created a species of covert speech incompatible with our free and open society. *Nixon* v. *Shrink Missouri Government PAC,* 528 U. S., at 406 (KENNEDY, J., dissenting).

The majority not only refuses to heed the lessons of experience but also perpetuates the conflict *Austin* created with fundamental First Amendment principles. *Buckley* foresaw that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application," 424 U. S., at 42; see also *id.*, at 45. It recognized that "'[p]ublic discussion of public issues which also are campaign issues readily and often unavoidably draws in candidates and their positions, their voting records and other official conduct.'" *Id.*, at 42, n. 50. Hence, "'[d]iscussions of those issues, and as well more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections.'" *Ibid.* In glossing over *Austin*'s opposite—and false—assumption that express advocacy is different, the majority ignores reality and elevates a distinction rejected by *Buckley* in clear terms.

Even after *Buckley* construed the statute then before the Court to reach only express advocacy, it invalidated limits on independent expenditures, observing that "[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." 424 U. S., at 48. *Austin* defied this principle. It made the impermissible content-based judgment that commentary on candidates is less deserving of First Amendment protection than discussions of policy. In its haste to reaffirm *Austin* today, the majority refuses to confront this basic conflict between *Austin* and *Buckley*. It once more diminishes the First Amendment by ignoring its command that the Government has no power to dictate what topics its citizens may discuss. See *Consolidated Edison Co. of N. Y.* v. *Public Serv. Comm'n of N. Y.,* 447 U. S. 530 (1980).

Continued adherence to *Austin*, of course, cannot be justified by the corporate identity of the speaker. Not only does this argument fail to account for *Bellotti*, 435 U. S., at 777 ("The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual"), but *Buckley* itself warned that "[t]he First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion." 424 U. S., at 49; see also *id.*, at 48–49; *Police Dept. of Chicago* v. *Mosley,* 408 U. S. 92 (1972). The exemption for broadcast media companies, moreover, makes the First Amendment problems worse, not better. See *Austin*, 494 U. S., at 712 (KENNEDY, J., dissenting) ("An independent ground for invalidating this statute is the blanket exemption for media corporations. . . . All corporations communicate with the public to some degree, whether it is their business or not; and communication is of particular importance for nonprofit corporations"); see also *id.*, at 690–691 (SCALIA, J., dissenting) ("Amassed corporate wealth that regularly sits astride the ordinary channels of information is much more likely to produce the New Corruption (too much of one point of view) than amassed corporate wealth that is generally busy making money elsewhere"). In the end the majority can supply no principled basis to reason away *Austin*'s anomaly. *Austin*'s errors stand exposed, and it is our duty to say so.

I surmise that even the majority, along with the Government, appreciates these problems with *Austin*. That is why it invents a new justification. We are now told that "the government also has a compelling interest in insulating federal elections from the type of corruption arising from the real or apparent creation of political debts." Brief for Appellees/Cross-Appellants FEC et al. in No. 02–1674 et al., p. 88. "[E]lectioneering communications paid for with the general treasury funds of labor unions and corporations," the Government warns, "endea[r] those entities to elected officials in a way that could be perceived by the public as corrupting." See 251 F. Supp. 2d, at 622–623 (Kollar-Kotelly, J.) (stating the Government's position).

This rationale has no limiting principle. Were we to accept it, Congress would have the authority to outlaw even pure issue ads, because they, too, could endear their sponsors to candidates who adopt the favored positions. Taken to its logical conclusion, the alleged Government interest "in insulating federal elections from . . . the real or apparent creation of political debts" also conflicts with *Buckley*. If a candidate feels grateful to a faceless, impersonal corporation for making independent expenditures, the gratitude cannot be any less when the money came from the CEO's own pocket. *Buckley*, however, struck down limitations on independent expenditures and rejected the Government's corruption argument absent evidence of coordination. See 424 U. S., at 51. The Government's position would eviscerate the line between expenditures and contributions and subject both to the same "complaisant review under the First Amendment." *Federal Election Committee* v. *Beaumont*, 539 U. S., at ___ (slip op., at 14). Complaisant or otherwise, we cannot cede authority to the Legislature to do with the First Amendment as it pleases. Since *Austin* is inconsistent with the

First Amendment, its extension diminishes the First Amendment even further. For this reason §203 should be held unconstitutional.

2.

Even under *Austin*, BCRA §203 could not stand. All parties agree strict scrutiny applies; §203, however, is far from narrowly tailored.

The Government is unwilling to characterize §203 as a ban, citing the possibility of funding electioneering communications out of a separate segregated fund. This option, though, does not alter the categorical nature of the prohibition on the corporation. "[T]he corporation *as a corporation* is prohibited from speaking." *Austin*, 494 U. S., at 681, n. (SCALIA, J., dissenting). What the law allows—permitting the corporation "to serve as the founder and treasurer of a different association of individuals that can endorse or oppose political candidates"—"is not speech by the corporation." *Ibid.*

Our cases recognize the practical difficulties corporations face when they are limited to communicating through PACs. The majority need look no further than *MCFL,* 479 U. S. 238, for an extensive list of hurdles PACs have to confront:

> "Under [2 U. S. C.] §432 [(1982 ed.)], [MCFL] must appoint a treasurer, §432(a); ensure that contributions are forwarded to the treasurer within 10 or 30 days of receipt, depending on the amount of contribution, §432(b)(2); see that its treasurer keeps an account of every contribution regardless of amount, the name and address of any person who makes a contribution in excess of $50, all contributions received from political committees, and the name and address of any person to whom a disbursement is made regardless of amount, §432(c); and preserve receipts for all disbursements over $200 and all records for three years, §§432(c), (d). Under §433, MCFL must file a state-

ment of organization containing its name, address, the name of its custodian of records, and its banks, safety deposit boxes, or other depositories, §§433(a), (b); must report any change in the above information within 10 days, §433(c); and may dissolve only upon filing a written statement that it will no longer receive any contributions nor make disbursements, and that it has no outstanding debts or obligations, §433(d)(1).

"Under §434, MCFL must file either monthly reports with the FEC or reports on the following schedule: quarterly reports during election years, a preelection report no later than the 12th day before an election, a postelection report within 30 days after an election, and reports every 6 months during nonelection years. §§434(a)(4)(A), (B). These reports must contain information regarding the amount of cash on hand; the total amount of receipts, detailed by 10 different categories; the identification of each political committee and candidate's authorized or affiliated committee making contributions, and any persons making loans, providing rebates, refunds, dividends, or interest or any other offset to operating expenditures in an aggregate amount over $200; the total amount of all disbursements, detailed by 12 different categories; the names of all authorized or affiliated committees to whom expenditures aggregating over $200 have been made; persons to whom loan repayments or refunds have been made; the total sum of all contributions, operating expenses, outstanding debts and obligations, and the settlement terms of the retirement of any debt or obligation. §434(b). In addition, MCFL may solicit contributions for its separate segregated fund only from its 'members,' §§441b(b)(4)(A), (C), which does not include those persons who have merely contributed to or indicated support for the organization in the past." *Id.,* at 253–254.

These regulations are more than minor clerical requirements. Rather, they create major disincentives for speech, with the effect falling most heavily on smaller entities that often have the most difficulty bearing the costs of compliance. Even worse, for an organization that has not yet set up a PAC, spontaneous speech that "refers to a clearly identified candidate for Federal office" becomes impossible, even if the group's vital interests are threatened by a piece of legislation pending before Congress on the eve of a federal election. See Brief for Appellants Chamber of Commerce of the United States et al. in No. 02–1756 et al., p. 37. Couple the litany of administrative burdens with the categorical restriction limiting PACs' solicitation activities to "members," and it is apparent that PACs are inadequate substitutes for corporations in their ability to engage in unfettered expression.

Even if the newly formed PACs manage to attract members and disseminate their messages against these heavy odds, they have been forced to assume a false identity while doing so. As the American Civil Liberties Union (ACLU) points out, political committees are regulated in minute detail because their primary purpose is to influence federal elections. "The ACLU and thousands of other organizations like it," however, "are not created for this purpose and therefore should not be required to operate as if they were." Reply Brief for Appellant ACLU in No. 02–1734 et al., p. 15. A requirement that coerces corporations to adopt alter egos in communicating with the public is, by itself, sufficient to make the PAC option a false choice for many civic organizations. Forcing speech through an artificial "secondhand endorsement structure . . . debases the value of the voice of nonprofit corporate speakers . . . [because] PAC's are interim, ad hoc organizations with little continuity or responsibility." *Austin*, 494 U. S., at 708–709 (KENNEDY, J., dissenting). In contrast, their sponsoring organizations "have a continuity, a stability, and an influence" that allows "their members and the public at large to evaluate their . . . credibility." *Id.,* at 709.

The majority can articulate no compelling justification for imposing this scheme of compulsory ventriloquism. If the majority is concerned about corruption and distortion of the political process, it makes no sense to diffuse the corporate message and, under threat of criminal penalties, to compel the corporation to spread the blame to its ad hoc intermediary.

For all these reasons, the PAC option cannot advance the Government's argument that the provision meets the test of strict scrutiny. See, *e.g., id.*, at 657–660; *MCFL,* 479 U. S. 238; see also *United States* v. *Playboy Entertainment Group, Inc.,* 529 U. S. 803, 826 (2000) ("When the purpose and design of a statute is to regulate speech by reason of its content, special consideration or latitude is not accorded to the Government merely because the law can somehow be described as a burden rather than outright suppression").

Once we turn away from the distraction of the PAC option, the provision cannot survive strict scrutiny. Under the primary definition, §203 prohibits unions and corporations from funding from their general treasury any broadcast, cable, or satellite communication which—

> "(I) refers to a clearly identified candidate for Federal office;
>
> "(II) is made within—
>
> "(aa) 60 days before a general, special, or runoff election for the office sought by the candidate; or
>
> "(bb) 30 days before a primary or preference election, or a convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and
>
> "(III) in the case of a communication which refers to a

> candidate for an office other than President or Vice President, is targeted to the relevant electorate." 2 U. S. C. A. §434f(3)(A)(i) (Supp. 2003).

The prohibition, with its crude temporal and geographic proxies, is a severe and unprecedented ban on protected speech. As discussed at the outset, suppose a few Senators want to show their constituents in the logging industry how much they care about working families and propose a law, 60 days before the election, that would harm the environment by allowing logging in national forests. Under §203, a nonprofit environmental group would be unable to run an ad referring to these Senators in their districts. The suggestion that the group could form and fund a PAC in the short time required for effective participation in the political debate is fanciful. For reasons already discussed, moreover, an ad hoc PAC would not be as effective as the environmental group itself in gaining credibility with the public. Never before in our history has the Court upheld a law that suppresses speech to this extent.

The group would want to refer to these Senators, either by name or by photograph, not necessarily because an election is at stake. It might be supposed the hypothetical Senators have had an impeccable environmental record, so the environmental group might have no previous or present interest in expressing an opinion on their candidacies. Or, the election might not be hotly contested in some of the districts, so whatever the group says would have no practical effect on the electoral outcome. The ability to refer to candidates and officeholders is important because it allows the public to communicate with them on issues of common concern. Section 203's sweeping approach fails to take into account this significant free speech interest. Under any conventional definition of overbreadth, it fails to meet strict scrutiny standards. It forces electioneering communications sponsored by an environmental group to contend with faceless and nameless opponents and consign their broadcast, as the NRA well puts it, to a world where politicians who threaten the environment must be referred to as "'He Whose Name Cannot Be Spoken.'" Reply Brief for Appellants NRA et al. in No. 02–1675 et al., p. 19.

In the example above, it makes no difference to §203 or to the Court that the bill sponsors may have such well-known ideological biases that revealing their identity would provide essential instruction to citizens on whether the policy benefits them or their community. Nor does it make any difference that the names of the bill sponsors, perhaps through repetition in the news media, have become so synonymous with the proposal that referring to these politicians by name in an ad is the most effective way to communicate with the public. Section 203 is a comprehensive censor: On the pain of a felony offense, the ad must not refer to a candidate for federal office during the crucial weeks before an election.

We are supposed to find comfort in the knowledge that the ad is banned under §203 only if it "is targeted to the relevant electorate," defined as communications that can be received by 50,000 or more persons in the candidate's district. See 2 U. S. C. A. §434(f)(3)(C) (Supp. 2003). This Orwellian criterion, however, is analogous to a law, unconstitutional under any known First Amendment theory, that would allow a speaker to say anything he chooses, so long as his intended audience could not hear him. See *Kleindienst* v. *Mandel,* 408 U. S. 753, 762–765 (1972) (discussing the "First Amendment right to receive information and ideas" (internal quotation marks omitted)). A central purpose of issue ads is to urge the public to pay close attention to the candidate's platform on the featured issues. By banning broadcast in the very district where the candidate is standing for election, §203 shields information at the heart of the First Amendment from precisely those citizens who most value the right to make a responsible judgment at the voting booth.

In defending against a facial attack on a statute with substantial overbreadth, it is no answer to say that corporations and unions may bring as-applied challenges on a case-by-case basis. When a statute is as out of bounds as §203, our law simply does not force speakers to "undertake the considerable burden (and sometimes risk) of vindicating their rights through case-by-case litigation." *Virginia* v. *Hicks*, 539 U. S. ___, ___ (2003) (slip op., at 5). If they instead "abstain from protected speech," they "har[m] not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas." *Ibid.* Not the least of the ill effects of today's decision is that our overbreadth doctrine, once a bulwark of protection for free speech, has now been manipulated by the Court to become but a shadow of its former self.

In the end the Government and intervenor-defendants cannot dispute the looseness of the connection between §203 and the Government's proffered interest in stemming corruption. At various points in their briefs, they drop all pretense that the electioneering ban bears a close relation to anticorruption purposes. Instead, they defend §203 on the ground that the targeted ads "may influence," are "likely to influence," or "will in all likelihood have the effect of influencing" a federal election. See Brief for Appellees/Cross-Appellants FEC et al. in No. 02–1674 et al., pp. 14, 24, 84, 92–93, 94; Brief for Intervenor-Defendants Senator John McCain et al. in No. 02–1674 et al., pp. 42–43. The mere fact that an ad may, in one fashion or another, influence an election is an insufficient reason for outlawing it. I should have thought influencing elections to be the whole point of political speech. Neither strict scrutiny nor any other standard the Court has adopted to date permits outlawing speech on the ground that it might influence an election, which might lead to greater access to politicians by the sponsoring organization, which might lead to actual corruption or the appearance of corruption. Settled law requires a real and close connection between end and means. The attenuated causation the majority endorses today is antithetical to the concept of narrow tailoring.

3.

As I would invalidate §203 under the primary definition, it is necessary to add a few words about the backup provision. As applied in §203, the backup definition prohibits corporations and unions from financing from their general treasury funds

> "any broadcast, cable, or satellite communication which promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate) and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate." 2 U. S. C. A. §434f(3)(A)(ii) (Supp. 2003).

The prohibition under the backup has much of the same imprecision as the ban under the primary definition, though here there is even more overbreadth. Unlike the primary definition, the backup contains no temporal or geographic limitation. Any broadcast, cable, or satellite communications—not just those aired within a certain blackout period and received by a certain segment of the population—are prohibited, provided they "promote," "support," "attack," or "oppose" a candidate. There is no showing that such a permanent and ubiquitous restriction meets First Amendment standards for the relationship between means and ends.

The backup definition is flawed for the further reason that it is vague. The crucial words—"promotes," "support," "attack," "oppose"—are nowhere defined. In this respect the backup is similar to the provision in the Federal Election Campaign Act that *Buckley* held to be unconstitutionally vague. Cf. 424 U. S., at 39–44 ("'No 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 statutory phrase "suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate" cannot cure the overbreadth or vagueness of the backup definition. Like other key terms in the provision, these words are not defined. The lack of guidance presents serious problems of uncertainty. If "plausible" means something close to "reasonable in light of the totality of the circumstances," speakers will be provided with an insufficient degree of protection and will, as a result, engage in widespread self-censorship to avoid severe criminal penalties.

Given the statute's vagueness, even defendants' own experts disagree among themselves about whether specific ads fall within the prohibition. Hence, people "of common intelligence must necessarily guess at [the backup definition's] meaning and differ as to its application," *Connally* v. *General Constr. Co.,* 269 U. S. 385, 391 (1926). For these reasons, I would also invalidate the ban on electioneering communication under the backup definition.

4.

Before concluding the analysis on Title II, it is necessary to add a few words about the majority's analysis of §204. The majority attempts to minimize the damage done under §203 by construing §204 (the Wellstone Amendment) to incorporate an exception for *MCFL*-type corporations. See *MCFL,* 479 U. S. 238. Section 204, however, does no such thing. As even the majority concedes, the provision "does not, on its face, exempt *MCFL* organizations from its prohibition." *Ante,* at 105. Although we normally presume that legislators would not deliberately enact an unconstitutional statute, that presumption is inapplicable here. There is no ambiguity regarding what §204 is intended to accomplish. Enacted to supersede the Snowe-Jeffords Amendment that would have carved out precisely this exception for *MCFL* corporations, §204 was written to broaden BCRA's scope to include issue-advocacy groups. See, *e.g.*, App. to Brief for Appellants NRA et al. in No. 02–1675 et al., pp. 65a, 67a (Sen. Wellstone) ("[I]ndividuals with all this wealth" will "make their soft money contributions to these sham issue ads run by all these . . . organizations, which under this loophole can operate with impunity" to run "poisonous ads." I have an amendment that . . . make[s] sure . . . this big money doesn't get [through]"). Instead of deleting the Snowe-Jeffords Amendment from the bill, however, the Wellstone Amendment was inserted in a separate section to preserve severability.

Were we to indulge the presumption that Congress understood the law when it legislated, the Wellstone Amendment could be understood only as a frontal challenge to *MCFL*. Even were I to agree with the majority's interpretation of §204, however, my analysis of Title II remains unaffected. The First Amendment protects the right of all organizations, not just a subset of them, to engage in political speech. See *Austin*, 494 U. S., at 700–701 (KENNEDY, J., dissenting) ("The First Amendment does not permit courts to exercise speech suppression authority denied to legislatures").

5.

Title II's vagueness and overbreadth demonstrate Congress' fundamental misunderstanding of the First Amendment. The Court, it must be said, succumbs to the same mistake. The majority begins with a denunciation of direct campaign contributions by corporations and unions. It then uses this rhetorical momentum as its leverage to uphold the Act. The problem, however, is that Title II's ban on electioneering communications covers general commentaries on political issues and is far removed from laws prohibiting direct contributions from corporate and union treasuries. The severe First Amendment burden of this ban on independent expenditures requires much stronger justifications than the majority offers. See *Buckley, supra*, at 23.

The hostility toward corporations and unions that infuses the majority opinion is inconsistent with the viewpoint neutrality the First Amendment demands of all Government actors, including the members of this Court. Corporations, after all, are the engines of our modern economy. They facilitate complex operations on which the Nation's prosperity depends. To say these entities cannot alert the public to pending political issues that may threaten the country's economic interests is unprecedented. Unions are also an established part of the national economic system. They, too, have their own unique insights to contribute to the political debate, but the law's impact on them is just as severe. The costs of the majority's misplaced concerns about the "corrosive and distorting effects of immense aggregations of wealth," *Austin, supra*, at 660, moreover, will weigh most heavily on budget-strapped nonprofit entities upon which many of our citizens rely for political commentary and advocacy. These groups must now choose between staying on the sidelines in the next election or establishing a PAC against their institutional identities. PACs are a legal construct sanctioned by Congress. They are not necessarily the means of communication chosen and preferred by the citizenry.

In the same vein the Court is quite incorrect to suggest that the mainstream press is a sufficient palliative for the novel and severe constraints this law imposes on the political process. The Court should appreciate the dynamic contribution diverse groups and associations make to the intellectual and cultural life of the Nation. It should not permit Congress to foreclose or restrict those groups from participating in the political process by constraints not applicable to the established press.

CONCLUSION

The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas. The civic discourse belongs to the people and the Government may not prescribe the means used to conduct it.

The First Amendment commands that Congress "shall make no law . . . abridging the freedom of speech." The command cannot be read to allow Congress to provide for the imprisonment of those who attempt to establish new political parties and alter the civic discourse. Our pluralistic society is filled with voices expressing new and different viewpoints, speaking through modes and mechanisms that must be allowed to change in response to the demands of an interested public. As communities have grown and technology has evolved, concerted speech not only has become more effective than a single voice but also has become the natural preference and efficacious choice for many Americans. The Court, upholding multiple laws that suppress both spontaneous and concerted speech, leaves us less free than before. Today's decision breaks faith with our tradition of robust and unfettered debate.

For the foregoing reasons, with respect, I dissent from the Court's decision upholding the main features of Titles I and II.

APPENDIX TO OPINION OF KENNEDY, J.

BCRA §101(a), 116 Stat. 81, which sets forth new FECA §323, 2 U. S. C. A. §441i (Supp. 2003), provides:

"SEC. 323. SOFT MONEY OF POLITICAL PARTIES.

"(a) NATIONAL COMMITTEES.—

"(1) IN GENERAL.—A national committee of a political party (including a national congressional campaign committee of a political party) may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) APPLICABILITY.—The prohibition established by paragraph (1) applies to any such national committee, any officer or agent acting on behalf of such a national committee, and any entity that is directly or indirectly established, financed, maintained, or controlled by such a national committee.

"(b) STATE, DISTRICT, AND LOCAL COMMITTEES.—

"(1) IN GENERAL.—Except as provided in paragraph (2), an amount that is expended or disbursed for Federal election activity by a State, district, or local committee of a political party (including an entity that is directly or indirectly established, financed, maintained, or controlled by a State, district, or local committee of a political party and an officer or agent acting on behalf of such committee or entity), or by an association or similar group of candidates for State or local office or of individuals holding State or local office, shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) APPLICABILITY.—

"(A) IN GENERAL.—Notwithstanding clause (i) or (ii) of section 301(20)(A), and subject to subparagraph (B), paragraph (1) shall not apply to any amount expended or disbursed by a State, district, or local committee of a political party for an activity described in either such clause to the extent the amounts expended or disbursed for such activity are allocated (under regulations prescribed by the Commission) among amounts—

"(i) which consist solely of contributions subject to the limitations, prohibitions, and reporting requirements of this Act (other than amounts described in subparagraph (B)(iii)); and

"(ii) other amounts which are not subject to the limitations, prohibitions, and reporting requirements of this Act (other than any requirements of this subsection).

"(B) CONDITIONS.—Subparagraph (A) shall only apply if—

"(i) the activity does not refer to a clearly identified candidate for Federal office;

"(ii) the amounts expended or disbursed are not for the costs of any broadcasting, cable, or satellite communication, other than a communication which refers solely to a clearly identified candidate for State or local office;

"(iii) the amounts expended or disbursed which are described in subparagraph (A)(ii) are paid from amounts which are donated in accordance with State law and which meet the requirements of subparagraph (C), except that no person (including any person established, financed, maintained, or controlled by such person) may donate more than $10,000 to a State, district, or local committee of a political party in a calendar year for such expenditures or disbursements; and

"(iv) the amounts expended or disbursed are made solely from funds raised by the State, local, or district committee which makes such expenditure or disbursement, and do not include any funds provided to such committee from—

"(I) any other State, local, or district committee of any State party,

"(II) the national committee of a political party (including a national congressional campaign committee of a political party),

"(III) any officer or agent acting on behalf of any committee described in subclause (I) or (II), or

"(IV) any entity directly or indirectly established, financed, maintained, or controlled by any committee described in subclause (I) or (II).

"(C) PROHIBITING INVOLVEMENT OF NATIONAL PARTIES, FEDERAL CANDIDATES AND OFFICEHOLDERS, AND STATE PARTIES ACTING JOINTLY.—Notwithstanding subsection (e) (other than subsection (e)(3)), amounts specifically authorized to be spent under subparagraph (B)(iii) meet the requirements of this subparagraph only if the amounts—

"(i) are not solicited, received, directed, transferred, or spent by or in the name of any person described in subsection (a) or (e); and

"(ii) are not solicited, received, or directed through fundraising activities conducted jointly by 2 or more State, local, or district committees of any political party or their agents, or by a State, local, or district committee of a political party on behalf of the State, local, or district committee of a political party or its agent in one or more other States.

"(c) FUNDRAISING COSTS.—An amount spent by a person described in subsection (a) or (b) to raise funds that are used, in whole or in part, for expenditures and disbursements for a Federal election activity shall be made from funds subject to the limitations, prohibitions, and reporting requirements of this Act.

"(d) TAX-EXEMPT ORGANIZATIONS.—A national, State, district, or local committee of a political party (including a national congressional campaign committee of a political party), an entity that is directly or indirectly established, financed, maintained, or controlled by any such national, State, district, or local committee or its agent, and an officer or agent acting on behalf of any such party committee or entity, shall not solicit any funds for, or make or direct any donations to—

"(1) an organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) and that makes expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); or

"(2) an organization described in section 527 of such Code (other than a political committee, a State, district, or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

"(e) FEDERAL CANDIDATES.—

"(1) IN GENERAL.—A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office, or an entity directly or indirectly established, financed, maintained or controlled by or acting on behalf of 1 or more candidates or individuals holding Federal office, shall not—

"(A) solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act; or

"(B) solicit, receive, direct, transfer, or spend funds in connection with any election other than an election for Federal office or disburse funds in connection with such an election unless the funds—

"(i) are not in excess of the amounts permitted with respect to contributions to candidates and political committees under paragraphs (1), (2), and (3) of section 315(a); and

"(ii) are not from sources prohibited by this Act from making contributions in connection with an election for Federal office.

"(2) STATE LAW.—Paragraph (1) does not apply to the solicitation, receipt, or spending of funds by an individual described in such paragraph who is or was also a candidate for a State or local office solely in connection with such election for State or local office if the solicitation, receipt, or spending of funds is permitted under State law and refers only to such State or local candidate, or to any other candidate for the State or local office sought by such candidate, or both.

"(3) FUNDRAISING EVENTS.—Notwithstanding paragraph (1) or subsection (b)(2)(C), a candidate or an individual holding Federal office may attend, speak, or be a featured guest at a fundraising event for a State, district, or local committee of a political party.

"(4) PERMITTING CERTAIN SOLICITATIONS.—

"(A) GENERAL SOLICITATIONS.—Notwithstanding any other provision of this subsection, an individual described in paragraph (1) may make a general solicitation of funds on behalf of any organization that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code (or has submitted an application for determination of tax exempt status under such section) (other than an entity whose principal purpose is to conduct activities described in clauses (i) and (ii) of section 301(20)(A)) where such solicitation does not specify how the funds will or should be spent.

"(B) CERTAIN SPECIFIC SOLICITATIONS.—In addition to the general solicitations permitted under subparagraph (A), an individual described in paragraph (1) may make a solicitation explicitly to obtain funds for carrying out the activities described in clauses (i) and (ii) of section 301(20)(A), or for an entity whose principal purpose is to conduct such activities, if—

"(i) the solicitation is made only to individuals; and

"(ii) the amount solicited from any individual during any calendar year does not exceed $20,000.

"(f) STATE CANDIDATES.—

"(1) IN GENERAL.—A candidate for State or local office, individual holding State or local office, or an agent of such a candidate or individual may not spend any funds for a communication described in section 301(20)(A)(iii) unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act.

"(2) EXCEPTION FOR CERTAIN COMMUNICATIONS.—Paragraph (1) shall not apply to an individual described in such paragraph if the communication involved is in connection with an election for such State or local office and refers only to such individual or to any other candidate for the State or local office held or sought by such individual, or both."

BCRA §101(b), adds a definition of "federal election activity" to FECA §301, 2 U. S. C. A. §431(20) (Supp. 2003), which provides as follows:

"(20) FEDERAL ELECTION ACTIVITY.—

"(A) IN GENERAL.—The term 'Federal election activity' means—

"(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;

"(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);

"(iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

"(iv) services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

"(B) EXCLUDED ACTIVITY.—The term 'Federal election activity' does not include an amount expended or disbursed by a State, district, or local committee of a political party for—

"(i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii);

"(ii) a contribution to a candidate for State or local office, provided the contribution is not designated to pay for a Federal election activity described in subparagraph (A);

"(iii) the costs of a State, district, or local political convention; and

"(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office."

Title 2 U. S. C. A. §§441b(a) and (b)(1)–(2) (Supp. 2003), as amended by BCRA §203, provide:

"(a) It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

"(b)(1) For the purposes of this section the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

"(2) For purposes of this section and section 79*l*(h) of Title 15, the term "contribution or expenditure" includes a contribution or expenditure, as those terms are defined in section 431 of this title, and also includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section or for any applicable electioneering communication, but shall not include (A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock."