

Supreme Court of the United States

DAVIS

v.

FEDERAL ELECTION COMMISSION

Argued April 22, 2008.

Decided June 26, 2008.

Justice ALITO delivered the opinion of the Court in which Justice STEVENS, Justice SOUTER, Justice GINSBURG, and Justice BREYER joined as to Part II.

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Section 319(a) of the Bipartisan Campaign Reform Act of 2002 (BCRA), part of the so-called “Millionaire’s Amendment,” fundamentally alters this scheme when, as a result of a candidate’s expenditure of personal funds, the “opposition personal funds amount” (OPFA) exceeds \$350,000. . . . When a candidate’s expenditure of personal funds causes the OPFA to pass the \$350,000 mark (for convenience, such candidates will be referred to as “self-financing”), a new, asymmetrical regulatory scheme comes into play. The self-financing candidate remains subject to the limitations noted above, but the candidate’s opponent (the “non-self-financing” candidate) may receive individual contributions at treble the normal limit (*e.g.*, \$6,900 rather than the current \$2,300), even from individuals who have reached the normal aggregate contributions cap, and may accept coordinated party expenditures without limit. . . .

. . . Section 319(b) thus requires self-financing candidates to make three types of disclosures. . . .

A non-self-financing candidate and the candidate’s committee face less extensive disclosure requirements. . . .

B

Appellant Jack Davis was the Democratic candidate for the House of Representatives from New York’s 26th Congressional District in 2004 and 2006. In both elections, he lost to the incumbent. In his brief, Davis discloses having spent \$1.2 million, principally his own funds, on his 2004 campaign. He reports spending \$2.3 million in 2006, all but \$126,000 of which came from personal funds. His opponent in 2006 spent no personal funds. Indeed, although the OPFA calculation provided the opportunity for Davis’ opponent to raise nearly \$1.5 million under § 319(a)’s asymmetrical limits, Davis’ opponent adhered to the normal contribution limits.

Davis' 2006 candidacy began in March 2006, when he filed with the FEC a "Statement of Candidacy" and, in compliance with § 319(b), declared that he intended to spend \$1 million in personal funds during the general election. Two months later, in anticipation of this expenditure and its § 319 consequences, Davis filed suit against the FEC, requesting that § 319 be declared unconstitutional and that the FEC be enjoined from enforcing it during the 2006 election.

After Davis declared his candidacy but before he filed suit, the FEC's general counsel notified him that it had reason to believe that he had violated § 319 by failing to report personal expenditures during the 2004 campaign. The FEC proposed a conciliation agreement under which Davis would pay a substantial civil penalty. Davis responded by agreeing to toll the limitations period for an FEC enforcement action until resolution of this suit.

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II

. . . The FEC argues that Davis' appeal fails to present a constitutional case or controversy because Davis lacks standing and because his claims are moot. We address each of these issues in turn.

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. . . To qualify for standing, a claimant must present an injury that is concrete, particularized, and actual or imminent; fairly traceable to the defendant's challenged behavior; and likely to be redressed by a favorable ruling.

The District Court held, and the parties do not dispute, that Davis possesses standing to challenge the disclosure requirements of § 319(b). . . .

The fact that Davis has standing to challenge § 319(b) does not necessarily mean that he also has standing to challenge the scheme of contribution limitations that applies when § 319(a) comes into play. . . .

In light of these principles, the FEC argues that Davis lacks standing to attack § 319(a)'s asymmetrical limits. When Davis commenced this action, his opponent had not yet qualified for the asymmetrical limits, and later, when his opponent did qualify to take advantage of those limits, he chose not to do so. Accordingly, the FEC argues that § 319(a) did not cause Davis any injury.

. . . As noted above, the injury required for standing need not be actualized. A party facing prospective injury has standing to sue where the threatened injury is real, immediate, and direct. Davis faced such an injury from the operation of § 319(a) when he filed suit. Davis had declared his candidacy and his intent to spend more than \$350,000 of personal funds in the general election campaign whose onset was rapidly approaching. Section 319(a) would shortly burden his expenditure of personal funds by allowing his opponent to receive contributions on more favorable terms, and there was no indication that his opponent would forgo that opportunity. . . . In these circumstances, we conclude that Davis faced the requisite injury from § 319(a) when he filed suit and has standing to challenge that provision's asymmetrical contribution scheme.

B

The FEC's mootness argument also fails. . . . [In *Wisconsin Right to Life*] we rejected the FEC's claim of mootness, finding that the case “fit comfortably within the established exception to mootness for disputes capable of repetition, yet evading review.” That “exception applies where ‘(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration; and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.’”

. . . Similarly, in this case despite BCRA's mandate to expedite and Davis' request that his case be resolved before the 2004 general election season commenced, Davis' case could not be resolved before the 2006 election concluded, demonstrating that his claims are capable of evading review.

. . . Here, the FEC conceded in its brief that Davis' § 319(a) claim would be capable of repetition if Davis planned to self-finance another bid for a House seat. Davis subsequently made a public statement expressing his intent to do so. As a result, we are satisfied that Davis' facial challenge is not moot.

III

We turn to the merits of Davis' claim that the First Amendment is violated by the contribution limits that apply when § 319(a) comes into play. . . . Davis contends that § 319(a) unconstitutionally burdens his exercise of his First Amendment right to make unlimited expenditures of his personal funds because making expenditures that create the imbalance has the effect of enabling his opponent to raise more money and to use that money to finance speech that counteracts and thus diminishes the effectiveness of Davis' own speech.

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If § 319(a) simply raised the contribution limits for all candidates, Davis' argument would plainly fail. This Court has previously sustained the facial constitutionality of limits on discrete and aggregate individual contributions and on coordinated party expenditures. At the same time, the Court has recognized that such limits implicate First Amendment interests and that they cannot stand unless they are “closely drawn” to serve a “sufficiently important interest,” such as preventing corruption and the appearance of corruption. When contribution limits are challenged as too restrictive, we have extended a measure of deference to the judgment of the legislative body that enacted the law. But we have held that limits that are too low cannot stand.

There is, however, no constitutional basis for attacking contribution limits on the ground that they are too high. . . . Consequently, if § 319(a)'s elevated contribution limits applied across the board, Davis would not have any basis for challenging those limits.

B

Section 319(a), however, does not raise the contribution limits across the board. . . . We have never upheld the constitutionality of a law that imposes different contribution limits for candidates who are competing against each other, and we agree with Davis that this scheme impermissibly burdens his First Amendment right to spend his own money for campaign speech.

In *Buckley*, we soundly rejected a cap on a candidate's expenditure of personal funds to

finance campaign speech. . . .

. . . While BCRA does not impose a cap on a candidate's expenditure of personal funds, it imposes an unprecedented penalty on any candidate who robustly exercises that First Amendment right. Section 319(a) requires a candidate to choose between the First Amendment right to engage in unfettered political speech and subsection to discriminatory fundraising limitations. . . .

The resulting drag on First Amendment rights is not constitutional simply because it attaches as a consequence of a statutorily imposed choice. In *Buckley*, we held that Congress “may engage in public financing of election campaigns and may condition acceptance of public funds on an agreement by the candidate to abide by specified expenditure limitations” even though we found an independent limit on overall campaign expenditures to be unconstitutional. But the choice involved in *Buckley* was quite different from the choice imposed by § 319(a). In *Buckley*, a candidate, by forgoing public financing, could retain the unfettered right to make unlimited personal expenditures. Here, § 319(a) does not provide any way in which a candidate can exercise that right without abridgment. Instead, a candidate who wishes to exercise that right has two choices: abide by a limit on personal expenditures or endure the burden that is placed on that right by the activation of a scheme of discriminatory contribution limits. The choice imposed by § 319(a) is not remotely parallel to that in *Buckley*.

Because § 319(a) imposes a substantial burden on the exercise of the First Amendment right to use personal funds for campaign speech, that provision cannot stand unless it is “justified by a compelling state interest.” No such justification is present here.

The burden imposed by § 319(a) on the expenditure of personal funds is not justified by any governmental interest in eliminating corruption or the perception of corruption. . . .

The Government maintains that § 319(a)'s asymmetrical limits are justified because they “level electoral opportunities for candidates of different personal wealth.” Our prior decisions, however, provide no support for the proposition that this is a legitimate government objective.

The argument that a candidate's speech may be restricted in order to “level electoral opportunities” has ominous implications because it would permit Congress to arrogate the voters' authority to evaluate the strengths of candidates competing for office. . . .

Finally, the Government contends that § 319(a) is justified because it ameliorates the deleterious effects that result from the tight limits that federal election law places on individual campaign contributions and coordinated party expenditures. These limits, it is argued, make it harder for candidates who are not wealthy to raise funds and therefore provide a substantial advantage for wealthy candidates. . . .

. . . If the normally applicable limits on individual contributions and coordinated party contributions are seriously distorting the electoral process, if they are feeding a “public perception that wealthy people can buy seats in Congress,” and if those limits are not needed in order to combat corruption, then the obvious remedy is to raise or eliminate those limits. But the unprecedented step of imposing different contribution and coordinated party expenditure limits on candidates vying for the same seat is antithetical to the First Amendment.

IV

The remaining issue that we must consider is the constitutionality of § 319(b)'s disclosure requirements. “[W]e have repeatedly found that compelled disclosure, in itself, can seriously

infringe on privacy of association and belief guaranteed by the First Amendment.” As a result, we have closely scrutinized disclosure requirements [T]here must be “a ‘relevant correlation’ or ‘substantial relation’ between the governmental interest and the information required to be disclosed,” and the governmental interest “must survive exacting scrutiny.” That is, the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.

The § 319(b) disclosure requirements were designed to implement the asymmetrical contribution limits provided for in § 319(a), and as discussed above, § 319(a) violates the First Amendment. In light of that holding, the burden imposed by the § 319(b) requirements cannot be justified, and it follows that they too are unconstitutional.

Justice STEVENS, with whom Justice SOUTER, Justice GINSBURG, and Justice BREYER join as to Part II, concurring in part and dissenting in part.

. . . In a thorough and well-reasoned opinion, the District Court held that because the Millionaire's Amendment does not impose any burden whatsoever on the self-funding candidate's freedom to speak, it does not violate the First Amendment, and because it does no more than diminish the unequal strength of the self-funding candidate, it does not violate the equal protection component of the Fifth Amendment. I agree completely with the District Court's opinion, specifically its adherence to our decision in *McConnell v. Federal Election Comm'n*, 540 U.S. 93 (2003). . . .

I

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Justice White firmly disagreed with the *Buckley* Court's holding on expenditure limitations, explaining that such regulations should be analyzed, not as direct restrictions on speech, but rather as akin to time, place, and manner regulations, which will be upheld “so long as the purposes they serve are legitimate and sufficiently substantial.” Although I did not participate in the Court's decision in *Buckley*, I have since been persuaded that Justice White—who maintained his steadfast opposition to *Buckley*'s view of expenditure limits was correct. Indeed, it was *Buckley* that represented a break from 65 years of established practice, as well as a probable departure from the views of the Framers of the relevant provisions of the Constitution itself.

In my view, a number of purposes, both legitimate and substantial, may justify the imposition of reasonable limitations on the expenditures permitted during the course of any single campaign. . . .

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II

Even accepting the *Buckley* Court's holding that expenditure limits as such are uniquely incompatible with the First Amendment, it remains my firm conviction that the Millionaire's

Amendment represents a good-faith attempt by Congress to regulate, within the bounds of the Constitution, one particularly pernicious feature of many contemporary political campaigns.

It cannot be gainsaid that the twin rationales at the heart of the Millionaire's Amendment—reducing the importance of wealth as a criterion for public office and countering the perception that seats in the United States Congress are available for purchase by the wealthiest bidder—are important Government interests. . . .

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But Davis cannot show that the Millionaire's Amendment causes him-or any other self-funding candidate-any First Amendment injury whatsoever. The Millionaire's Amendment quiets no speech at all. . . . Enhancing the speech of the millionaire's opponent, far from contravening the First Amendment, actually advances its core principles. . . . And the self-funding candidate's ability to engage meaningfully in the political process is in no way undermined by this provision.

Even were we to credit Davis' view that the benefit conferred on the self-funding candidate's opponent burdens the self-funder's First Amendment rights, the purposes of the Amendment surely justify its effects. . . .

Indeed, we have long recognized the strength of an independent governmental interest in reducing both the influence of wealth on the outcomes of elections, and the appearance that wealth alone dictates those results. In case after case, we have held that statutes designed to protect against the undue influence of aggregations of wealth on the political process—where such statutes are responsive to the identified evil—do not contravene the First Amendment.

Although the focus of our cases has been on aggregations of corporate rather than individual wealth, there is no reason that their logic—specifically, their concerns about the corrosive and distorting effects of wealth on our political process—is not equally applicable in the context of individual wealth. . . .

Minimizing the effect of concentrated wealth on our political process, and the concomitant interest in addressing the dangers that attend the perception that political power can be purchased, are, therefore, sufficiently weighty objectives to justify significant congressional action. And, not only was Congress motivated by proper and weighty goals in crafting the Millionaire's Amendment, the details of the scheme it devised are genuinely responsive to the problems it identified. . . . Rather, the self-funder's opponent may avail himself of the enhanced contribution limits only until parity is achieved, at which point he becomes again ineligible for contributions above the normal maximum.

It seems uncontroversial that “there is no good reason to allow disparities in wealth to be translated into disparities in political power. A well-functioning democracy distinguishes between market processes of purchase and sale on the one hand and political processes of voting and reason-giving on the other.” In light of that clear truth, Congress' carefully crafted attempt to reduce the distinct advantages enjoyed by wealthy candidates for congressional office does not offend the First Amendment.

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Justice GINSBURG, with whom Justice BREYER joins, concurring in part and dissenting in part.

Agreeing with the Court that appellant Jack Davis has standing and that this case is not moot, I join Part II of the Court's opinion. On the merits, however, I part ways with the Court. The District Court's careful and persuasive opinion, as I see it, correctly concluded that the provisions challenged in this case are entirely consistent with *Buckley v. Valeo*, 424 U.S. 1 (1976), and all other relevant decisions of this Court. I therefore join Part II of JUSTICE STEVENS' opinion.

I resist joining other portions of JUSTICE STEVENS' opinion, however, to the extent that they address *Buckley's* distinction between expenditure and contribution limits and, correspondingly, *Buckley's* holding that expenditure limits impose “direct quantity restrictions on political communication.” Appellee Federal Election Commission has not asked us to overrule *Buckley*; consequently, the issue has not been briefed. Convinced that the challenged statute encounters no constitutional shoal under our precedents, I would leave reconsideration of *Buckley* for a later day and case.