

FEC v. National Conservative PAC, 470 U.S. 480 (1985)

By a vote of seven-to-two, the U.S. Supreme Court ruled as unconstitutional a section of the Presidential Election Campaign Fund Act. The unconstitutional section prohibited independent political action committee expenditures on behalf of a candidate in excess of \$1000 when the candidate had accepted public financing for his or her campaign.

Justice William H. Rehnquist authored the majority opinion. He first argued that the type of speech engaged in by independent political action committees was protected speech. He argued that given the size of the stage in presidential elections, limiting expenditures was, in effect, limiting speech. “Allowing the presentation of views while forbidding the expenditure of more than \$1000 to present them is like allowing a speaker a public hall to express his views while denying him the use of an amplifying system” (*National Conservative PAC* at 493).

Given that the speech is entitled to protection, Justice Rehnquist then turns to whether the governmental interest justified the circumvention of the speech. The government justified the regulation in order to prevent corruption, both realized and perceived. Justice Rehnquist argued that, as demonstrated by the record, the risk is merely hypothetical. Moreover, even if the potential was real, the regulation is overbroad as it affected both “multimillion dollar warchests” and informal discussion groups.

This case continued the development of the Court’s campaign finance jurisprudence as applied to political action committees (PACs). In *California Medical Association v. FEC*, 453 U.S. 182 (1981), the Court held that while contributions made by a corporation or labor union cannot be limited, contributions made by unincorporated associations can be regulated. Justice Rehnquist distinguished *National Conservative PAC* from *California Medical Association* by

arguing that the former dealt with the expenditures made by PACs while the latter dealt with contributions to PACs.

Justices Byron R. White and Thurgood Marshall dissented. Justice White's comprehensive dissent took issue with *Buckley v. Valeo*, 424 U.S. 1 (1976), the foundational precedent for the case. Justice White also argued that as a precedent *Buckley* is ultimately irrelevant because Congress had acted in the narrowest manner possible to protect the public financing of elections. Justice Marshall's dissent, in addition to joining the bulk of Justice White's, repudiated his previous support of *Buckley*.

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See Also:

Buckley v. Valeo, FEC v. National Right to Work Committee, Citizens Against Rent Control v. Berkeley, McConnell v. FEC

Further Reading:

La Forge, Amanda S. "The Toothless Tiger – Structural, Political, and Legal Barriers to Effective FEC Enforcement: An Overview and Recommendations." *American University Administrative Law Journal*: 352-383 (Spring 1996).