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James Demarest Secor III

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Campaign Finance Reform in North Carolina: An Act to Limit Campaign Expenditures and to Strengthen Public Financing of Political Campaigns¹

Candidates for public office have engaged in controversial campaign practices, in particular the spending of money to influence voters, since the days of George Washington.² This early link between expenditures and pursuit of public office has remained a constant in American politics, with greater amounts being spent each year in federal and state elections.³ The trend has reached North Carolina, where the state's gubernatorial candidates in the 1988 election together spent close to \$10 million during the campaign, making it by far the most expensive race in North Carolina history.⁴

In an effort to curb these extraordinary expenditures and to prevent less wealthy candidates from being precluded from participating in the electoral process, the North Carolina General Assembly ratified Chapter 1063, An Act To Limit Campaign Expenditures And To Strengthen Public Financing Of Political Campaigns.⁵ The Act, which will become effective January 1, 1992,⁶ establishes a publicly-financed campaign fund for candidates for the offices of Governor and Council of State,⁷ and sets spending limits for those who choose to use the public funds.⁸

With this new statute, North Carolina expands significantly upon its existing legislation in the area of campaign reform.⁹ Campaign reform measures

1. Act of July 7, 1988, ch. 1063, 1988 N.C. Sess. Laws 466 (to be codified at N.C. GEN. STAT. §§ 163-278.46 to -278.57) [hereinafter Campaign Expenditure Act].

2. Note, *Constitutional Law: Campaign Finance Reform and the First Amendment—All the Free Speech Money Can Buy*, 39 OKLA. L. REV. 729, 729 (1986). George Washington, for example, while seeking a seat in the Virginia House of Burgesses in 1767, distributed approximately 160 gallons of liquor to the 391 voters in his district. This averages more than a quart and a half of liquor per eligible voter. *Id.*

3. For example, the total amount spent by the Republican and Democratic candidates in the 1860 presidential election was \$150,000. In 1980 the presidential candidates' combined expenditures exceeded \$58 million. H. ALEXANDER, *FINANCING POLITICS: MONEY, ELECTIONS, AND POLITICAL REFORM* 7 (3d ed. 1984).

4. Durham Sun, Nov. 1, 1988, at A3, col. 1. This figure represented a dramatic increase over the expenditures by the two candidates in the 1984 gubernatorial campaign, which totaled \$7.6 million. *Id.*

5. Act of July 7, 1988, ch. 1063, 1988 N.C. Sess. Laws 466 (to be codified at N.C. GEN. STAT. §§ 163-278.46 to -278.57).

6. *Id.* § 5 (to be codified at N.C. GEN. STAT. § 163-278.45). Although funds will begin to be collected via a special provision on the 1988 state tax return forms, actual distribution of funds collected will not take place until the elections beginning in 1992. *Id.*

7. Act of July 7, 1988, ch. 1063, § 1, 1988 N.C. Sess. Laws 466, 466 (to be codified at N.C. GEN. STAT. § 163-278.47). The Council of State includes the Lieutenant Governor, Secretary of State, Auditor, Treasurer, Attorney General, Superintendent of Public Instruction, Commissioner of Agriculture, Commissioner of Labor, and the Commissioner of Insurance. *See* N.C. GEN. STAT. § 147-3 (1987).

8. Act of July 7, 1988, ch. 1063, 1988 Sess. Laws 467 (to be codified at N.C. GEN. STAT. § 163-278.48). Currently, it is constitutional to place expenditure limits only on those accepting public funding for campaigns. The Constitution does not place limits on candidates not using public funds. *See infra* notes 50-52 and accompanying text.

9. *See infra* notes 76-83 and accompanying text.

range from disclosure requirements and contribution and expenditure limitations to public financing for candidates. They have been enacted to different extents by all fifty states and the federal government.¹⁰ The goals of these reform efforts, which will be discussed more fully later in this Note,¹¹ are basically to reduce the potential for corruption of candidates, eliminate the advantage that wealthy candidates have over less wealthy opponents, increase political participation at all levels, and improve the quality of the electoral process by changing campaigning from personal media contests to competitions of ideas.¹²

Despite these worthy objectives, campaign reform legislation, particularly those enactments that restrict campaign contributions and expenditures, raises important constitutional concerns and is reviewed with strict scrutiny by the United States Supreme Court. The Court in *Buckley v. Valeo*,¹³ the leading case in the area of campaign finance reform, recognized that "[d]iscussion of public issues and debate on the qualifications of candidates are integral to the operation of the system of government established by our Constitution."¹⁴ Such discussion was necessary, the Court reasoned, because "the ability of the citizenry to make informed choices among candidates for office is essential, for the identities of those who are elected will inevitably shape the course that we follow as a nation."¹⁵ Given its importance, political debate and discussion deserve the most stringent first amendment protection.¹⁶ Attempts by reformers to regulate the financial aspects of political campaigning can intrude upon this "area of the most fundamental First Amendment activities"¹⁷ in two ways. First, campaign funding bears a direct relation to the amount of speech in which a candidate can engage. Reform measures that attempt to regulate or restrict campaign financing can impinge on the freedom of political speech to the extent that they "reduc[e] the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached."¹⁸ Second, reform efforts can impede "protected associational freedoms" since "[m]aking a contribution, like joining a political party, serves to affiliate a person with a candidate."¹⁹ In light of these constitutional concerns, the Supreme Court has refused to uphold campaign finance reform statutes absent a showing of a "compelling state interest" to justify the burdens placed on first amendment

10. For a discussion of the different campaign reform techniques employed by the states, see *infra* notes 55-75 and accompanying text.

11. See *infra* notes 115-129 and accompanying text.

12. See generally Note, *supra* note 2, at 741-46 (discussing objectives of campaign finance reform).

13. 424 U.S. 1 (1976).

14. *Id.* at 14.

15. *Id.* at 14-15.

16. *Id.* at 14; see *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971) ("it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the conduct of campaigns for political office"); *Mills v. Alabama*, 384 U.S. 214, 218 (1966) ("there is practically universal agreement that a major purpose of . . . [the First] Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates").

17. *Buckley*, 424 U.S. at 14.

18. *Id.* at 19.

19. *Id.* at 22.

freedoms.²⁰

This Note briefly examines the history of federal and state campaign reform in the United States, evaluates the approach adopted by the North Carolina General Assembly for dealing with campaign finance problems, and analyzes the current state of the law in this area. The Note concludes that the new North Carolina statute marks a significant step toward democratizing the state electoral process and reducing the potential for undue influence when candidates rely solely on private contributions to finance their campaigns. The Note also observes that although further reform may be necessary to combat remaining problems in the campaign process, future efforts must be preceded by careful study in order to document the compelling state interests necessary to justify additional reform.

I. OVERVIEW OF THE NEW NORTH CAROLINA STATUTE

North Carolina's new Campaign Expenditure Act²¹ supplements existing state legislation that requires disclosure of campaign finances and imposes ceilings on campaign contributions.²² The new statute is significant because it marks the state's first attempt to provide public funding directly to candidates for political office. Funds will be collected on a voluntary basis from taxpayers to whom the state owes income tax refunds.²³ Any contributions made in this manner will qualify as tax deductions under state law.²⁴

Actual distribution of the monies to candidates will first take place during the 1992 election year.²⁵ Funds will be distributed to eligible candidates for the

20. See, e.g., *id.* at 55 (campaign expenditure ceilings imposed on all candidates declared invalid because of insufficient governmental interest justifying such restrictions); *id.* at 26, 29 (limits on size of private campaign contributions upheld because of important state interest in eliminating corruption and appearance of corruption); *Republican Nat'l Comm. v. Federal Election Comm'n*, 487 F. Supp. 280, 284-85 (S.D.N.Y.) (expenditure limits placed on candidates accepting public funding declared valid because justified by compelling interests in increasing competitive debate of issues and reducing corruptive influence of large contributions), *aff'd mem.*, 445 U.S. 955 (1980). One commentator has questioned whether *Buckley* and subsequent cases dealing with campaign finance reform have consistently applied strict scrutiny as the standard of review. Nicholson, *Political Campaign Expenditure Limitations and the Unconstitutional Condition Doctrine*, 10 HASTINGS CONST. L.Q. 601, 607-12 (1983). The *Buckley* Court, however, early in its opinion, refused to treat the campaign finance regulation issue as it would a symbolic speech case and implicitly rejected the argument that a lesser standard of review should be applied. *Id.* at 607 (citing *Buckley*, 424 U.S. at 16-17). Moreover, given the particularly important first amendment interest implicated by this type of legislation, see *supra* text accompanying notes 13-19, strict scrutiny is the most appropriate standard of review. On this point the *Buckley* Court stated clearly that "exacting scrutiny [is] applicable to limitations on core First Amendment rights of political expression." *Buckley*, 424 U.S. at 44-45.

21. Act of July 7, 1988, ch. 1063, 1988 N.C. Sess. Laws 466 (to be codified at N.C. GEN. STAT. §§ 163-278.46 to -278.57).

22. See *infra* notes 80-83 and accompanying text.

23. Act of July 7, 1988, ch. 1063, § 2, 1988 N.C. Sess. Laws 466, 470 (to be codified at N.C. GEN. STAT. § 105-163.16(f)). State income tax return forms, beginning with the taxable year 1988, will include a new provision enabling these taxpayers to designate that either all or part of their refund be paid into a new candidates financing fund. *Id.* § 5, 1988 N.C. Sess. Laws at 471.

24. *Id.* § 2, 1988 N.C. Sess. Laws at 470 (to be codified at N.C. GEN. STAT. § 105-163.16(f)). Taxpayers cannot earmark their contributions for a particular candidate, however.

25. *Id.* § 5, 1988 N.C. Sess. Laws at 471 (to be codified at N.C. GEN. STAT. § 163-278.45).

offices of Governor and Council of State²⁶ on a one-to-one basis matching each dollar of private contributions received by the candidate.²⁷ As a condition to accepting these public funds, candidates must agree to use these funds only for campaign expenditures,²⁸ to abide by established total campaign expenditure limits, and to submit to a postelection audit of their campaign accounts.²⁹ Candidates accepting public financing who violate any of the provisions of the new statute are subject to civil and criminal penalties.³⁰

II. HISTORY OF FEDERAL AND STATE CAMPAIGN REFORM

A. Federal Legislation

For a hundred years after the Civil War, Congress attempted to regulate campaign financing with a variety of legislation.³¹ These early federal efforts culminated with the passage of the Presidential Election Campaign Fund Act of 1971³² and the Federal Election Campaign Act of 1971³³ and its important 1974 amendments.³⁴ The Presidential Election Campaign Fund Act established a

26. *Id.* § 1, 1988 N.C. Sess. Laws at 466-67 (to be codified at N.C. GEN. STAT. § 163-278.47(a)).

27. *Id.*, § 1, 1988 N.C. Sess. Laws at 467 (to be codified at N.C. GEN. STAT. § 163-278.50(b)).

28. *Id.* (to be codified at N.C. GEN. STAT. § 163-278.49).

29. *Id.* (to be codified at N.C. GEN. STAT. § 163-278.47(c)(1), (c)(3)).

30. *Id.*, § 1, 1988 N.C. Sess. Laws at 469 (to be codified at N.C. GEN. STAT. §§ 163-278.52 to -278.53).

31. One of the first congressional attempts to regulate campaign financing was the Naval Appropriations Act of 1867, which made it illegal for government employees to solicit contributions for "political purposes" from workers in the nation's navy yards. Ch. 172, § 3, 14 Stat. 489, 492 (1867). This measure was later bolstered by the Civil Service Reform Act of 1883, which prohibited federal employees from soliciting or receiving political contributions from other federal employees. Ch. 27, § 11, 22 Stat. 403, 406 (1883). A more significant development occurred in 1907 during Theodore Roosevelt's administration with the passage of the Tillman Act. Ch. 420, 34 Stat. 864 (1907) (current version at 2 U.S.C. § 441b (1982)). Underlying the Act's passage was congressional recognition of the potential for influence peddling by corporations with large amounts of money to contribute to political candidates. The Tillman Act was designed to eliminate this problem by barring corporations from making any contributions to election campaigns. *Id.* The War Labor Disputes Act of 1943 later prohibited labor organizations from making contributions in connection with any federal election. Ch. 144, § 9, 57 Stat. 163, 167-68 (1943), *repealed by* Act of May 11, 1976, Pub. L. No. 94-283, § 201, 90 Stat. 459, 496 (1976) (current version at 2 U.S.C. § 441b (1982)). Another major legislative enactment was the Federal Corrupt Practices Act of 1925, ch. 368, § 301, 43 Stat. 1070, *repealed by* Act of February 7, 1972, Pub. L. No. 92-225, § 405, 86 Stat. 20 (1972), which required detailed disclosure of campaign contributions and expenditures by candidates for Congress and imposed ceilings on campaign spending. *Id.* §§ 305, 309. Unless the laws of the candidate's state provided otherwise, aggregate expenditure limits per campaign for Senators and Representatives were \$10,000 and \$2,500 respectively. *Id.* § 309(b)(1). The purpose of disclosure requirements is to inform the public about the monetary influences on the candidates, thereby reducing the likelihood that candidates will exchange political favors for large private contributions. *See* H. ALEXANDER, *supra* note 3, at 19. Campaign spending ceilings are, among other things, designed to prevent great disparities in spending between candidates. *See* Buckley v. Valeo, 424 U.S. 1, 54-55 (1976). In 1939 Congress passed the Hatch Act, ch. 410, 53 Stat. 1147 (1939), which was amended in 1940 to limit to \$5,000 the aggregate amount of contributions an individual could make in one calendar year to a single candidate for federal office. Ch. 640, § 13(a), 54 Stat. 767, 770 (1940) (current version at 2 U.S.C. § 441(a)(1)(A) (1982)).

32. Pub. L. No. 92-178, 85 Stat. 562 (1971) (codified as amended at 26 U.S.C. §§ 9001-13 (1982)).

33. Pub. L. No. 92-225, 86 Stat. 3 (1972) (codified as amended at 2 U.S.C. § 431-56 (1982)).

34. Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263 (1974) (codified as amended in scattered sections of 2 U.S.C.).

system of public funding for presidential election campaigns.³⁵ The Federal Election Campaign Act (FECA) and its 1974 amendments provided for the following: (1) institution of detailed disclosure requirements for contributions received and monies spent;³⁶ (2) limitation of individual contributions to \$1,000 to any single candidate per election with an overall limitation of \$25,000 per year by any contributor;³⁷ (3) limitation of contributions by political committees other than principal campaign committees to amounts not exceeding \$5,000;³⁸ (4) limitation of independent expenditures by individuals and groups made "relative to a clearly identified candidate";³⁹ and (5) establishment of campaign expenditure ceilings for all candidates regardless of whether they used the public financing program.⁴⁰

B. Constitutional Challenges to Campaign Reform Legislation

In 1976, the constitutionality of the FECA provisions was challenged in *Buckley v. Valeo*.⁴¹ Specifically, the *Buckley* Court considered the first amendment problems raised by the various campaign reform provisions.⁴² As for the contribution disclosure requirements in FECA, the Court recognized that these "can seriously infringe on privacy of association and belief guaranteed by the First Amendment"⁴³ because knowledge that there will be compelled disclosure may inhibit the contributor's desire to exercise associational rights through political contributions. The Court, however, decided to uphold these requirements because they served two important interests. First, with knowledge of who is giving financial support to a candidate's campaign, voters can more fully evaluate the candidate and can identify the interests to which the candidate will be most responsive.⁴⁴ Second, the disclosure requirements deter corruption "by

35. Pub. L. No. 92-178, § 801, 85 Stat. at 567 (codified as amended at 26 U.S.C. § 9006 (1982)). The Act was also significant because it made it a crime for any "political committee" to expend more than \$1,000 in the aggregate "to further the election" of a candidate accepting public financing of his campaign. *Id.* (codified at 26 U.S.C. § 9012(f)(1) (1982) and declared unconstitutional in *Federal Election Comm'n v. National Conservative PAC*, 470 U.S. 480, 500-01 (1985)). "The term 'political committee' means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local public office." *Id.* (codified at 26 U.S.C. § 9002(9) (1982)).

36. Pub. L. No. 92-225, § 304, 86 Stat. at 14 (codified as amended at 2 U.S.C. § 434 (1982)).

37. Pub. L. No. 93-443, § 101(a), 88 Stat. at 1263, *repealed by* Act of May 11, 1976, Pub. L. No. 94-283, § 201(a), 90 Stat. 459, 496 (current version at 2 U.S.C. § 441(a)(1), (3) (1982)).

38. *Id.*, *repealed by* Act of May 11, 1976, Pub. L. No. 94-283, § 201(a), 90 Stat. 459, 496 (current version at 2 U.S.C. § 441(a)(2) (1982)).

39. *Id.* at 1265. Individual contributions are funds sent directly by a person or group to the candidate or her campaign committee to be spent as the candidate or her committee see fit. Independent expenditures differ in that these are monies that are not contributed to the candidate, but rather are spent directly and independently by the individual or group on behalf of the candidate to further her campaign.

40. *Id.* at 1264.

41. 424 U.S. 1 (1976).

42. See *supra* notes 13-20 and accompanying text for a discussion of the first amendment concerns raised by campaign finance legislation.

43. *Buckley*, 424 U.S. at 64.

44. *Id.* at 66-67.

exposing large contributions and expenditures to the light of publicity.”⁴⁵

Addressing the amount limits on individual contributions, the Court held that although these limits restricted the quantity of political expression, they were constitutionally permissible because they were necessary to further the state's interest in combating “*quid pro quo*” corruption of political officeholders.⁴⁶ The Court did not, however, view the limits on independent expenditures made by an individual on behalf of a candidate as having the same inhibiting effect on corruption, and held that in the absence of such a compelling state interest the ceilings on independent expenditures were constitutionally infirm.⁴⁷

The *Buckley* Court also struck down limitations placed on the amount the candidate or his family could personally contribute to his own campaign. The Court stated that these limitations “impose[d] a substantial restraint on the ability of persons to engage in protected First Amendment expression.”⁴⁸ The interest in equalizing the relative financial resources of the candidates, the Court declared, was “clearly not sufficient to justify the provision's infringement of fundamental First Amendment rights.”⁴⁹ In addition, the *Buckley* Court held that while it was lawful to impose total expenditure limits on candidates accepting public funds,⁵⁰ those provisions that placed ceilings on candidates who chose *not* to receive public financing were “substantial and direct restrictions on the ability of candidates . . . to engage in protected political expression.”⁵¹ The Court held that there was no governmental interest sufficient to justify these impediments to free speech and, therefore, that the expenditure limitations violated the first amendment.⁵²

Subsequently, in 1985 the Court in *Federal Election Commission v. National Conservative PAC*⁵³ declared unconstitutional those portions of the Presidential Election Campaign Fund Act of 1971 that limited independent expenditures by political action committees (PACs) on behalf of candidates receiving public financing.⁵⁴ The results in *Buckley* and *National Conservative PAC* are alarming because they permit unlimited campaign expenditures by wealthy candidates not using public funds as well as allow these candidates to make use of their personal

45. *Id.* at 67 (citing S. REP. NO. 689, 93d Cong., 2nd Sess. 2, reprinted in 1974 U.S. CODE CONG. & ADMIN. NEWS 5587, 5588).

46. *Buckley*, 424 U.S. at 26.

47. *Id.* at 47-48, 51.

48. *Id.* at 52.

49. *Id.* at 54. For a discussion of the use of personal wealth in financing political campaigns, see *infra* note 121 and accompanying text.

50. *Buckley*, 424 U.S. at 57 n.65, 108.

51. *Id.* at 58-59.

52. *Id.* at 55. The Court stated that unlike the contribution limitations, the total expenditure limits did nothing to “alleviat[e] the corrupting influence of large contributions.” *Id.* The Court also held that the ancillary interests “in equalizing the financial resources of candidates competing for federal office” and in “reducing the allegedly skyrocketing costs of political campaigns” through the spending ceilings were not sufficient to justify the constitutional harm. *Id.* at 56-57. *But see* Republican Nat'l Comm. v. Federal Election Comm'n, 487 F. Supp. 280, 285 (S.D.N.Y.) (upholding expenditure limitations on those accepting public funding precisely because they reduce *quid pro quo* corruption), *aff'd mem.*, 445 U.S. 955 (1980).

53. 470 U.S. 480 (1985).

54. *Id.* at 500-01 (holding 26 U.S.C. 9012(f) (1982) to be unconstitutional).

and family wealth, without restriction, to finance their own campaigns. These decisions also allow special interest PACs to make unlimited independent expenditures on behalf of political candidates, thereby increasing the likelihood of influence peddling by such groups.

C. State Legislation

In addition to the federal legislative efforts, the states have been active in establishing systems of campaign finance reform.⁵⁵ Even though states have long required campaign financing disclosures,⁵⁶ a renewed interest in state campaign reform developed in the early 1970s. During this decade almost every state made significant changes in its election laws.⁵⁷ Although there is a noticeable lack of uniformity in the approaches followed by the states in their reform efforts, there is some similarity in the methods used.⁵⁸ In general, state legislatures have employed five basic legislative tools: disclosure requirements; contribution limits; contribution restrictions on business, labor, political action committees (PACs), banks, and savings and loan institutions; bipartisan election commissions; and public financing for campaigns.⁵⁹

Statutes mandating disclosure of contributions and expenditures now exist in some form in all fifty states.⁶⁰ These requirements are similar from state to state, the primary difference being the threshold amount at which disclosure becomes necessary.⁶¹ Twenty-seven states have established individual campaign contribution limits with ceilings varying widely depending on the state office being sought.⁶² Sixteen states limit contributions from corporate entities and another twenty prohibit corporate contributions altogether.⁶³ Similarly, eighteen states have established ceilings for union contributions and ten states do not permit unions to give any money to candidates.⁶⁴ Twenty-two states limit the amount that PACs may contribute to candidates.⁶⁵ Banks and savings and loan

55. In the 1890s many states passed laws requiring candidates for state office and their political committees to disclose contribution amounts and their sources as well as recording campaign expenditures and identifying the recipients of these funds. *United States v. International Union of United Auto Workers*, 352 U.S. 567, 570-71 (1957) (discussing history of campaign reform legislation). As the Supreme Court once stated, "The theory behind these laws was that the spotlight of publicity would discourage corporations from making political contributions and would thereby end their control over party policies." *Id.* at 571. These publicity laws for the most part "either became dead letters or were found to be futile," *id.*, and more effective legislation became necessary.

56. *See supra* note 55.

57. H. ALEXANDER, *supra* note 3, at 163.

58. H. ALEXANDER, *supra* note 3, at 163.

59. *See generally* H. ALEXANDER, *supra* note 3, at 163-82 (discussing techniques employed in state campaign reform efforts).

60. H. ALEXANDER, *supra* note 3, at 163.

61. H. ALEXANDER, *supra* note 3, at 163-64. For example, Alabama requires itemized disclosure of all contributions in excess of \$10. ALA. CODE § 17-22-10 (1975). In Louisiana, however, the reporting threshold for major office candidates is \$500. LA. REV. STAT. ANN. § 18:1495.4(C)(1)(a) (West Supp. 1989).

62. J. PALMER & E. FEIGENBAUM, CAMPAIGN FINANCE LAW 88 Chart 2-A (1988) (published by the Federal Election Commission).

63. *Id.*

64. *Id.*

65. *Id.*

institutions are prohibited from making campaign contributions in twenty-one states and are subject to amount restrictions in another fourteen.⁶⁶ In addition, bipartisan election committees have been created by statute in at least thirty states.⁶⁷ In most states commission members are appointed by the governor and function as politically independent overseers of the election process.⁶⁸

State public funding of election campaigns is available now in twenty-two states, including North Carolina.⁶⁹ These funds are distributed either to political parties or individual candidates.⁷⁰ The two methods of collecting funds that are used most prevalently are tax checkoffs and tax surcharges.⁷¹ The tax checkoff system, which neither increases tax liability nor decreases the amount of any refund, enables taxpayers, on their tax returns, to designate that money from their taxes, usually one dollar for a single filer and two dollars for a joint return, be put in a public campaign fund.⁷² The tax surcharge method, on the other hand, increases tax liability by one or two dollars and the taxpayer is generally permitted to indicate which political party is to receive her money.⁷³ Three states that provide public funding—Florida, Maryland, and Indiana—use neither the tax checkoff nor tax surcharge method. Florida and Maryland subsidize candidates directly with money from the states' general revenue accounts.⁷⁴ Indiana, on the other hand, has instituted a unique approach by providing funding from monies collected from the fees paid for personalized license plates.⁷⁵

III. NORTH CAROLINA'S NEW CAMPAIGN EXPENDITURE ACT

A. *Prior North Carolina Reforms*

A noteworthy early legislative effort in North Carolina was the Corrupt Practices Act of 1931.⁷⁶ This Act required an itemized statement of contributions and expenditures,⁷⁷ established contribution and expenditure limits in primary elections,⁷⁸ and prohibited corporations from making campaign

66. *Id.*

67. H. ALEXANDER, *supra* note 3, at 171.

68. H. ALEXANDER, *supra* note 3, at 171.

69. J. PALMER & E. FEIGENBAUM, *supra* note 62, at chart 4.

70. H. ALEXANDER, *supra* note 3, at 174.

71. H. ALEXANDER, *supra* note 3, at 173. 19 of the states providing public funding employ one of these two methods of raising the necessary funds. J. PALMER & E. FEIGENBAUM, *supra* note 62, at chart 4.

72. H. ALEXANDER, *supra* note 3, at 173-74. The average participation rate among taxpayers in states using the checkoff system is 20%. *Id.* at 174.

73. H. ALEXANDER, *supra* note 3, at 174. Taxpayer participation in states with a tax surcharge system is considerably lower than in states with the checkoff method, *id.* at 176, probably because the surcharge method increases tax liability.

74. FLA. STAT. ANN. § 106.32 (West Supp. 1989); MD. ELEC. CODE ANN. art. 33, § 31-4 (1983).

75. IND. CODE ANN. § 9-7-5.5-8(a)(1) (Burns 1987).

76. Act of May 4, 1931, ch. 348, 1931 N.C. Sess. Laws 438. See generally Note, *A Survey of Statutory Changes in North Carolina in 1931*, 9 N.C.L. REV. 347, 371-73 (1931) (discussing the provisions of the Act).

77. Act of May 4, 1931, ch. 348, § 7, 1931 N.C. Sess. Laws 438, 440.

78. *Id.* § 9(9).

contributions.⁷⁹ The 1931 Act was later replaced by the Campaign Financial Regulation Act, which became effective in 1974,⁸⁰ the chief provisions of which also dealt with financial disclosure and contribution restrictions.⁸¹ Also of importance was the Campaign Election Fund Act of 1975,⁸² which marked North Carolina's first attempt at state funding for political campaigns.⁸³

B. *The New Campaign Expenditure and Public Financing Act*

It was out of this legislative background that the new North Carolina campaign finance reform statute arose.⁸⁴ The initial bill⁸⁵ was introduced in the House of Representatives by Representative Walter B. Jones, Jr. in May 1987,⁸⁶ and, after extensive amendment, was ratified by the general assembly in July 1988.⁸⁷

Section 163-278.46 of the Campaign Expenditure Act⁸⁸ states that a North Carolina Candidates Financing Fund is to be created and administered by the State Board of Elections. Money for the fund will be contributed by taxpayers through a new section on the state income tax return form.⁸⁹ Taxpayers to

79. *Id.* § 9(15).

80. Act of April 11, 1974, ch. 1272, § 1, 1973 N.C. Sess. Laws 438, 438-50 (codified at N.C. GEN. STAT. §§ 163-278.6 to -278.35 (1987)).

81. *E.g.*, N.C. GEN. STAT. § 163-278.13(a) (1987) (limiting amount any individual or political committee may contribute to candidate in a single election to \$4,000).

82. Ch. 775, 1975 N.C. Sess. Laws 1099 (codified at N.C. GEN. STAT. § 105-159.1 (1985)).

83. N.C. GEN. STAT. § 105-159.1 (1985) creates a tax checkoff system to finance the North Carolina Political Parties Financing Fund, which provides money on a pro rata basis to state political parties. In order for a party to be eligible to receive funding it must have received at least 10% of the vote cast for governor in the last preceding state general election. *Id.* at § 105-159.1(a).

The funds collected are distributed on a pro rata basis to the eligible parties according to their respective party voter registration totals within the state. *Id.* No political party with less than 1% of the total number of registered voters in the state is allowed to receive money from the fund. *Id.*

84. Act of July 7, 1988, ch. 1063, 1988 N.C. Sess. Laws 466 (to be codified at N.C. GEN. STAT. §§ 163-278.46 to -278.57).

85. H.B. 1124, Reg. Sess. (1987).

86. JOURNAL OF THE HOUSE OF REPRESENTATIVES OF THE GENERAL ASSEMBLY OF THE STATE OF NORTH CAROLINA 435-36 (1st Sess. 1987).

87. JOURNAL OF THE SENATE OF THE GENERAL ASSEMBLY OF THE STATE OF NORTH CAROLINA 205 (2nd Sess. 1987). The most important of these amendments was to remove entirely the sections of the bill that provided for public financing of campaigns for state senate and house of representatives and to delete the relevant expenditure limits attached to these provisions. Senate Committee on Election Laws, Committee Meeting Minutes of June 30, 1988 (1988) (on file at Legislative Office Building, Raleigh, North Carolina). Concern that there would be inequities in financial remuneration among candidates running in different districts due to the variance in campaign costs in each district appears to be one reason that the provisions for financing legislative candidates were struck. *Id.* In addition, it was felt that any attempt to establish a formula for each district would be inappropriate at this time since substantial redistricting is scheduled to take place in 1991 following the decennial census in 1990. (Telephone interview with Donald Kemp of Common Cause (Feb. 22, 1989)). Other important changes included the following: (1) further reduction of the expenditure limits for candidates for Governor and Council of State who received public funds; (2) removal of special limitations on the amount a candidate could raise from PACs and himself or his family to qualify for matching funds; and (3) stiffening of civil and criminal penalties for misuse of public campaign funds. Senate Committee on Election Laws, Committee Meeting Minutes of June 30, 1988.

88. Act of July 7, 1988, ch. 1063, § 1, 1988 N.C. Sess. Laws 466, 466 (to be codified at N.C. GEN. STAT. § 163-278.46).

89. *Id.* § 2, 1988 N.C. Sess. Laws at 470 (to be codified at N.C. GEN. STAT. § 105-163.16(f)).

whom the state owes refunds may voluntarily contribute all or part of their refund to the candidates fund.⁹⁰ Any contribution made pursuant to this statute qualifies as a tax deduction under state law.⁹¹ The taxpayer cannot earmark his contribution for a particular candidate, however.

Section 163-278.47(a) and (c)⁹² sets forth the eligibility requirements to obtain public financing. The candidate must file an application by June 15 of the election year. In addition, the candidate must have opposition on the ballot in the general election, must agree to abide by the expenditure limitations stated in section 163-278.48,⁹³ must raise qualifying matching contributions equal to five percent of the expenditure limit, and must submit to a post-election audit of the campaign account.

Section 163-278.48⁹⁴ establishes campaign expenditure limits for candidates applying for and receiving public funding. One justification for these limits, limits which the *Buckley* Court held constitutional,⁹⁵ is to prevent wealthy candidates from using public funds as a base from which to spend even higher sums.⁹⁶ The expenditure limit for gubernatorial candidates set forth in section 163-278.48 is equal to one dollar multiplied by the number of votes for governor in the last general election in which there was more than one candidate for governor. For Council of State offices other than governor, the limit is fifty cents multiplied by the number of votes for governor. Based on previous voting figures, this would place the limit at approximately \$2,174,000 per gubernatorial candidate,⁹⁷ well below the nearly \$5 million spent by each candidate in the 1988 election.⁹⁸ The spending limit for those seeking Council of State offices would be approximately \$1,087,000 per candidate.⁹⁹

Section 163-278.50(a)-(b)¹⁰⁰ governs the distribution of funds. A candidate receiving money from the candidates' fund will be entitled to matching (dollar-for-dollar) funds for qualifying contributions that she has received privately

90. *Id.*

91. *Id.*

92. Act of July 7, 1988, ch. 1063, § 1, 1988 N.C. Sess. Laws 466, 466-67 (to be codified at N.C. GEN. STAT. § 163-278.47(a),(c)).

93. See *infra* notes 94-99 and accompanying text.

94. Act of July 7, 1988, ch. 1063, § 1, 1988 N.C. Sess. Laws 466, 467 (to be codified at N.C. GEN. STAT. § 163-278.48).

95. *Buckley v. Valeo*, 424 U.S. 1, 57 n.65, 108 (1976).

96. See Note, *Federal Campaign Finance Laws and the First Amendment*: Federal Election Commission v. National Conservative Political Action Committee, 7 U. BRIDGEPORT L. REV. 409, 412-13 n.19 (1986).

97. The total number of votes cast in the 1988 general election for governor was 2,174,149. Durham Sun, Nov. 9, 1988, at C4, col. 1. At \$1 per vote the limit would be approximately \$2,174,000 per candidate for governor.

98. See *supra* note 4 and accompanying text.

99. Using the voting figures in note 97, the 2,174,149 votes multiplied by \$.50 per vote equals approximately \$1,087,000. The initial house bill actually provided for much higher total expenditure limits. H. B. 1124, Reg. Sess. (1987). The bill, as given to the Senate, called for respective limits of \$2.00 and \$1.50 multiplied by the number of votes cast for governor. *Id.* Using these numbers, each candidate for governor and Council of State would have been entitled to spend up to approximately \$4.35 million and \$3.26 million respectively.

100. Act of July 7, 1988, ch. 1063, § 1, 1988 N.C. Sess. Laws 466, 467 (to be codified at N.C. GEN. STAT. § 163-278.50(a)-(b)).

from political committees or individuals.¹⁰¹ The maximum amount that a candidate can receive in public matching funds, however, is limited to one-half the expenditure limits set forth in section 163-278.48.¹⁰² For example, using the estimated limits calculated above, each candidate for Governor and Council of State would receive up to one-half of these estimated limits—a maximum of \$1,087,000 and \$543,500 respectively. The actual amount received will, of course, depend on the amount of matching private contributions raised. Section 163-278.50(c) controls reporting requirements for those seeking public funding.¹⁰³ Candidates must file itemized reports of contributions and expenditures with the Board of Elections in August and September before the general election.¹⁰⁴

Section 163-278.52¹⁰⁵ establishes the civil penalties for falsely reporting matching private contributions or for exceeding the statutory spending limits. The offending candidate will be fined an amount equal to the amount at issue with an additional penalty of ten percent of that amount.

Section 163-278.53¹⁰⁶ sets forth the criminal penalties for violations of the Act. These penalties can be imposed on “[a]ny individual, person, candidate, political committee, or treasurer who willfully and intentionally violates any of the provisions of this Article.”¹⁰⁷ All offenders will be guilty of a Class J felony, punishable by up to three years imprisonment, or a fine, or both.¹⁰⁸

Section 163-278.54 mandates that the candidate keep a complete record of money received from the candidates fund and all subsequent expenditures and that an itemized report be filed sixty days after the general election.¹⁰⁹ This section further provides that the State Board of Elections conduct an audit of the sixty-day report to ensure that the candidate has complied fully with all requirements.¹¹⁰ Section 163-278.55¹¹¹ requires that all monies received from the candidates fund still unspent ninety days after the election are to be returned to the candidates fund. Because some legislators in the general assembly questioned whether the funding system would be supported by the state’s taxpayers, the legislation was enacted on a trial basis.¹¹² Accordingly, the Act requires the

101. *Id.* (to be codified at N.C. GEN. STAT. § 163-278.50(b)).

102. *Id.* See *supra* notes 94-99 and accompanying text.

103. Act of July 7, 1988, ch. 1063, § 1, 1988 N.C. Sess. Laws 466, 467-68 (to be codified at N.C. GEN. STAT. § 163-278.50(c)).

104. *Id.*

105. *Id.*, § 1, 1988 N.C. Sess. Laws at 469 (to be codified at N.C. GEN. STAT. § 163-278.52).

106. *Id.* (to be codified at N.C. GEN. STAT. § 163-278.53).

107. *Id.*

108. See N.C. GEN. STAT. § 14-1.1(a)(10) (1986).

109. Act of July 7, 1988, ch. 1063, § 1, 1988 N.C. Sess. Laws 466, 469-70 (to be codified at N.C. GEN. STAT. § 163-278.54(a)-(b)).

110. *Id.*, § 1, 1988 N.C. Sess. Laws at 470 (to be codified at N.C. GEN. STAT. § 163-278.54(c)).

111. *Id.* (to be codified at N.C. GEN. STAT. § 163-278.55).

112. Senate Committee on Election Laws, Committee Meeting Minutes of June 30, 1988. Existing provisions in North Carolina for funding political parties through an income tax checkoff system, see *supra* note 83, have not had much support. H. ALEXANDER & J. FRUTIG, PUBLIC FINANCING OF STATE ELECTIONS: A DATA BOOK AND ELECTION GUIDE TO PUBLIC FUNDING OF POLITICAL PARTIES AND CANDIDATES IN SEVENTEEN STATES 179 (1982). The participation rate has averaged only about 7% of all North Carolina taxpayers. *Id.* During the first five years the

Board of Elections to prepare a report for the general assembly concerning the growth of the candidates fund by May 15, 1991.¹¹³ The general assembly will determine at that time if sufficient money has accumulated in the fund to warrant proceeding with the campaign financing provisions of the Act. If the amount available is insufficient to proceed, the money in the fund will be transferred to the state's general revenue fund.¹¹⁴

IV. GOALS OF CAMPAIGN FINANCE REFORM

Campaign reform statutes such as North Carolina's new Act are directed at achieving a number of important goals. In particular, these statutory efforts seek to: 1) diminish the potential for corruption in political office; 2) minimize the appearance of corruption and impropriety; 3) reduce the advantages of the wealthy and thereby democratize the electoral process; 4) increase political participation at all levels; and 5) improve the quality of the election process by changing campaigns from media contests to competitions of ideas.¹¹⁵

Providing candidates with the alternative of public funding can reduce substantially their need to engage in the solicitation of private contributions from individuals and PACs. As a result, it is possible to "minimiz[e] the influence of money as a *quid pro quo* for certain action by a politician."¹¹⁶ This diminishes manipulation or "undue influence"¹¹⁷ by well-financed outside sources and, in turn, reduces political corruption. Even if the actual effect on political corruption is indeterminable, public funding, when combined with limits on the size of private contributions and strict financial disclosure requirements—a combination that now exists in North Carolina¹¹⁸—will, at the very least, combat the *appearance* of corruption and impropriety and thereby increase waning public confidence in the electoral process.¹¹⁹

Another important function of public funding is that it reduces the advantage held by wealthy candidates. It provides less wealthy opponents, who previously may have been discouraged from running for office for purely financial reasons, with an increased level of monetary support for their campaigns.¹²⁰ Reducing the wealthy candidates' advantage results in two important benefits.

political party fund was in operation, the largest total annual amount checked off for the fund by the taxpayers was \$259,689. *Id.* at 191.

113. Act of July 7, 1988, ch. 1063, § 4, 1988 N.C. Sess. Laws 466, 471.

114. *Id.*

115. See generally Note, *supra* note 2, at 741-46 (discussing objectives of campaign reform legislation).

116. Moore & La Belle, *Public Financing Of Elections: New Proposals To Meet New Obstacles*, 13 FLA. ST. U.L. REV. 863, 883 (1985).

117. Nicholson, *supra* note 20, 625-30 (discussing problem of undue influence in the political process and available measures for preventing it).

118. E.g., Act of July 7, 1988, ch. 1063, § 1, 1988 N.C. Sess. Laws 466, 466 (to be codified at N.C. GEN. STAT. § 168-276.46) (providing for public funding of governor and Council of State candidates); N.C. GEN. STAT. § 163-278.13 (1987) (placing limits on the dollar amount of campaign contributions); *Id.* § 163-278.8 (1987) (requiring detailed disclosure of contributions received and expenditures made).

119. See Note, *supra* note 2, at 741-43.

120. See Note, *supra* note 2, at 743-44.

First, it democratizes the electoral process and our government by making it more representative of the various interests and groups in our society. Public funding ensures that candidates from all stations of life will have the opportunity to run for public office and that these positions of power will not be filled by only the wealthier classes.¹²¹ Second, after reducing the advantage of the wealthy, election victories will perhaps turn less on financial status and more on competence. Public funding should increase the number of able candidates for public office and increase the likelihood that the most qualified, not merely the most affluent, candidates will fill these important positions.

Diminishing the influence of wealth on the outcome of elections will raise not only political participation at the candidate level, but also should have a similar impact at the grassroots level as well. Opening the electoral process to all candidates and not merely those best able to finance their campaigns should help alleviate "the increasing cynicism and alienation of the general public" that has caused voter turnout to plummet.¹²² Moreover, an additional benefit of the expenditure limits imposed on those accepting public funding is that they create an economic incentive to use more volunteers at the grassroots campaign level, further increasing interest and participation in the electoral process.¹²³

Finally, the campaign reform statutes are designed to improve the quality of political campaigning and to change the character of the electoral process from a personal media contest to a competition of ideas.¹²⁴ With expenditure limits placed on those candidates who receive public funding, campaign budgets will have to be streamlined. A logical result of such budget trimming is that mass media blitz campaigns no longer will be possible at the level of recent campaigns. With this reduction in the quantity of mass media advertising, the quality of campaign messages should increase as candidates spend available media funds on only the most important and substantive issues involved.¹²⁵ Interestingly, the Supreme Court in *Buckley* struck down spending limits on candidates not accepting public funds because the Court believed these limits "restrict[ed] the number of issues discussed, [and] the depth of their exploration."¹²⁶ This is

121. See H. ALEXANDER, *supra* note 3, at 25-29 (discussing connection between wealth and success in obtaining political office). On the federal level, in 1983 23 senators and 19 representatives had assets in excess of \$1 million. *Id.* at 28. In the 1978 congressional elections, a total of 58 candidates personally contributed or loaned at least \$100,000 to their own election campaigns. *Id.* at 27. In 1982, one candidate spent \$6.9 million from personal funds in his campaign. *Id.* Large sums have also been spent in pursuit of state offices. For example, Governor John D. Rockefeller, IV of West Virginia spent over \$11.5 million of his own money in a reelection bid in 1980. *Id.* In the 1988 governor's race in North Carolina, Democratic candidate Bob Jordan made a loan of \$300,000 from his own funds to his campaign to buy television time during the last week before the election. The Durham Sun, Nov. 1, 1988, at A3, col. 2.

122. Note, *supra* note 2, at 746 (citing Packwood, *Campaign Finance, Communication and the First Amendment*, 10 HASTINGS CONST. L.Q. 745, 783-84 (1983)).

123. Girard, *Campaign Finance Reform in California*, 10 HASTINGS CONST. L.Q. 567, 595-96 (1983).

124. See Note, *supra* note 2, at 744-45.

125. Friedlander, Louis & Laufer, *The New York City Campaign Finance Act*, 16 HOFSTRA L. REV. 345, 350 (1988) ("candidates bound by expenditure limits are compelled to adopt a more efficient, economical, and *quality-conscious* approach to campaigning") (emphasis added).

126. *Buckley v. Valeo*, 424 U.S. 1, 19 (1976).

not necessarily the case, however. As one commentator observed,

In actual practice, the amount of money spent may determine the quantity of speech, but it bears no relationship to the depth or quality of the discussion. In fact, the effect may be precisely the inverse; as more money becomes available, media advertisements tend to become "slicker" and more superficial.¹²⁷

In addition, by substituting public for private funding, the reforms will reduce the need of the candidates to engage in private fundraising. The "'great drain on [the candidates'] time and energies' required by fundraising"¹²⁸ will be reduced, and the candidates may put this additional free time to much better use by "providing competitive debate of the issues for the electorate."¹²⁹

V. CAMPAIGN REFORM IN NORTH CAROLINA: IS THERE ROOM FOR IMPROVEMENT?

With the addition of the new Campaign Expenditure Act, North Carolina now has a comprehensive system for regulating the most significant problems in political campaigning. This system consists of a combination of legislation that requires detailed disclosure of contributions received and expenditures made, establishes limits on the dollar amount of contributions from individuals and PACs, and provides public financing for candidates for the state's highest offices.¹³⁰ One shortcoming that should be addressed is the Act's failure to extend the public financing provisions and expenditure limits to general assembly candidates. This omission is significant because the costs of state legislative campaigns have in recent years increased more rapidly than other types of races¹³¹ and because there has been a general pattern of winning candidates outspending their losing rivals.¹³² A practical reason, however, for not extending the financ-

127. Note, *supra* note 2, at 744-45. The concern here is that higher spending may actually produce "negative" campaigning, "anticandidate assaults that lower the quality of political debate and increase the disillusionment of voters." *Id.* at 745.

128. Republican Nat'l Comm. v. Federal Election Comm'n, 487 F. Supp. 280, 284 (S.D.N.Y.), *aff'd mem.*, 445 U.S. 955 (1980) (quoting S. REP. NO. 689, 93d Cong., 2d Sess. 5-6, *reprinted in* 1974 U.S. CODE CONG. & ADMIN. NEWS 5587, 5591-92).

129. *Id.*

130. *E.g.*, Act of July 7, 1988, ch. 1063, § 1, 1988 N.C. Sess. Laws 466, 466 (to be codified at N.C. GEN. STAT. § 163-276.46 (providing for public funding of governor and Council of State candidates); N.C. GEN. STAT. § 163-278.13 (1987) (placing limits on the dollar amount of campaign contributions); *id.* § 163-278.8 (requiring detailed disclosure of contributions received and expenditures made).

131. Jones, *Financing State Elections*, in *MONEY AND POLITICS IN THE UNITED STATES: FINANCING ELECTIONS IN THE 1980S* 172, 174 (M. Malbin ed. 1984). For example, the cost of legislative campaigns in California in 1980 increased by 71% over the costs in the 1978 election year. This jump occurred despite an increase of 1,248% and 1,427% respectively for state senate and house seats between 1958 and 1978. *Id.*

132. *Id.* at 177. One must be careful, however, to avoid assuming that large expenditures are always necessarily harmful and undesirable. To the extent that large expenditures reflect broad-based, political-financial support of a large number of constituents, they are perfectly consistent with our representative form of democratic government. Moreover, large expenditures are beneficial to the electoral process because they can be used to increase the quantity of campaign information reaching the electorate about the candidates and important issues. As one commentator has reasoned, "[c]ampaign spending . . . should be considered the tuition the American people must spend for their education on the issues." H. ALEXANDER, *supra* note 3, at 196.

ing provisions to legislative candidates at this time is that any formula for distributing funds among the different districts would be upset by the redistricting plans scheduled for 1991.¹³³ Once the redistricting takes place, this deficiency in the statutory scheme should be remedied.

This aside, the North Carolina campaign reform legislation appears to go as far as the United States Supreme Court will currently permit. Because of the important Supreme Court decisions in *Buckley v. Valeo*¹³⁴ and *Federal Election Commission v. National Conservative PAC*,¹³⁵ state legislatures are unable constitutionally to address the remaining problems of rising campaign expenditures by candidates not accepting public funding, the unlimited use of personal finances by wealthy candidates, and the large independent expenditures made on a candidate's behalf by well-financed, special-interest PACs. A brief examination of the Court's decision not to permit legislation directed at combating these problems is instructive in determining the limits of future reform.

The 1974 amendments to the Federal Election Campaign Act (FECA)¹³⁶ established total expenditure limits for campaigns by all candidates for the offices of President, Vice President, Senator, and Representative regardless of whether they accepted public funding.¹³⁷ The Supreme Court in *Buckley* struck down these restrictions because they limited the quantity of the candidates' political expression without serving a compelling state interest.¹³⁸ Specifically, the Court held that these limitations did nothing to combat *quid pro quo* corruption, since this problem was addressed by FECA's disclosure and contribution limitation provisions.¹³⁹ Two other potential state interests were recognized in *Buckley*: equalizing financial resources of candidates and reducing the rapidly increasing costs of political campaigns.¹⁴⁰ The Court, however, found neither of these interests sufficient to justify the expenditure ceilings.¹⁴¹

There is some basis for challenging the continuing validity of the *Buckley* Court's holding on this issue. In *Republican National Committee v. Federal Election Commission*¹⁴² a federal district court faced a challenge to the total expenditure ceilings placed on candidates accepting public funding under the Presidential Election Campaign Fund Act.¹⁴³ The district court found no first amendment violation here because the Fund Act merely provided a candidate with "an additional funding alternative which he or she would not otherwise have."¹⁴⁴ The district court went further, however, stating that even if there

133. See *supra* note 87.

134. 424 U.S. 1 (1976) (discussed *supra* at notes 41-52 and accompanying text).

135. 470 U.S. 480 (1985) (discussed *supra* at notes 53-54 and accompanying text).

136. Pub. L. No. 93-443, § 101, 88 Stat. 1263, 1264, *repealed by* Act of May 11, 1976, Pub. L. No. 94-283, § 201(a), 90 Stat. 459, 496.

137. *Id.*

138. *Buckley*, 424 U.S. at 55.

139. *Id.*

140. *Id.* at 56-57.

141. *Id.*

142. 487 F. Supp. 280 (S.D.N.Y.), *aff'd mem.*, 445 U.S. 955 (1980).

143. *Id.* at 282-83.

144. *Id.* at 285 (emphasis removed).

was an infringement of first amendment rights, "the burden attributable to the [expenditure] limits imposed . . . is fully justified by the compelling state interests."¹⁴⁵ The "compelling state interests" were to reduce the time required for fundraising, thus leaving candidates more time to engage in competitive debate,¹⁴⁶ and to avoid creating "unhealthy" *quid pro quo* obligations between candidates and their private contributors.¹⁴⁷ What is interesting is that the compelling interest argument accepted by the district court in *Republican National Committee*, which ties expenditure limits to a reduction in *quid pro quo* corruption, was specifically rejected by the *Buckley* Court which held that expenditure limitations played no role in reducing corruption.¹⁴⁸ Despite this inconsistency, *Republican National Committee*, on appeal, was summarily affirmed by the Supreme Court.¹⁴⁹ From this one may infer that there has been a change in attitude regarding the state interest in overall expenditure limits.

The question remains whether these ceilings would necessarily improve the electoral system if placed on all candidates regardless of whether they accept public funds. The advantages of such limits, simply stated, are that they may improve the quality of campaign messages,¹⁵⁰ reduce fundraising burdens, prevent gross disparities in spending among candidates,¹⁵¹ and reduce the potential for corruption by limiting the incentive to get around contribution limits.¹⁵² The disadvantages of expenditure limits are that they often hurt challengers who usually must spend more to overcome the advantage of the better-known incumbent opponents.¹⁵³ In addition, "expenditure limits [on candidates] tend to trigger independent expenditures [by private third parties] and thus to diminish accountability for the uses of campaign money."¹⁵⁴ There are also difficulties in establishing limits among legislative candidates, given the variance in the cost of campaigning from district to district.¹⁵⁵

Large expenditures, when properly used, can also perform an educative function.¹⁵⁶ As greater amounts are spent, more information concerning the qualifications of the candidates should reach the electorate. Moreover, if contribution limits are in place preventing large contributions by any single individual or group, a candidate's ability to raise large numbers of smaller contributions to

145. *Id.*

146. *Id.* at 284.

147. *Id.* at 285.

148. *Buckley*, 424 U.S. at 55-56.

149. 445 U.S. 955 (1980).

150. See *supra* notes 124-129 and accompanying text.

151. Girard, *supra* note 123, at 595.

152. Girard, *supra* note 123, at 595 n.2.

153. H. ALEXANDER, *supra* note 3, at 189.

154. H. ALEXANDER, *supra* note 3, at 189. Dr. Alexander uses the 1980 presidential election to illustrate this point. *Id.* at 124-30, 189. In the general election, both candidates accepted statutory public funding. *Id.* at 124. As a condition to these monies, both candidates were, under federal law, limited to spending the amount received in public financing and were prohibited from accepting any private contributions. *Id.* The limits imposed on the candidates sparked third party independent spending which cannot be legally limited under *Buckley*. Independent expenditures on behalf of President Reagan totalled \$10.6 million. *Id.* at 125.

155. See *supra* note 87.

156. H. ALEXANDER, *supra* note 3, at 196.

boost her campaign expenditures may not be undesirable. It may merely reflect pluralistic support by a large number of voters. Such an expression of support is entirely consistent with our system of representative democracy and our recognition of the sanctity of first amendment political expression. In short, what is needed is further empirical study at the state level of the large amounts of money being spent by candidates to determine if total expenditure limits would still serve compelling state interests.

Although evidence appears to exist concerning the inequitable influence of a candidate's personal wealth on political success,¹⁵⁷ enough perhaps to change the Supreme Court's mind on the constitutional validity of restrictions on a candidate's personal contributions to his own campaign, the same cannot be said definitively of independent expenditures by PACs. Commentators in the area of campaign finance reform differ on the effect of PAC expenditures. Some observers have concluded that these independent expenditures by well-financed PACs result in a disproportionate influence on the decisions of political officeholders.¹⁵⁸ Others argue that the influence of PACs may be overstated¹⁵⁹ and that PACs may actually have a positive influence by increasing dissemination of information to the voters¹⁶⁰ and by ensuring democratic representation of the competing interests in society. As with proposals for expenditure limits, additional state election research on the influence of PACs is needed before this controversy can be resolved.¹⁶¹ Unfortunately, at this time, when research and further study are needed most, the ability to conduct such studies is being diminished in state after state by budget and personnel cuts in the state agencies created to collect and monitor data on the campaign process.¹⁶²

The new North Carolina Campaign Expenditure Act, when combined with existing campaign reform statutes, provides an impressive system for reducing the potential for political corruption and for giving less wealthy candidates a greater opportunity to compete for political office. Although further reform may be necessary in the areas of expenditure limitations, ceilings on personal contributions from wealthy candidates to their own campaigns, and limits on the independent expenditures of PACs, the North Carolina legislative efforts go as far as the United States Supreme Court currently allows. This should not, however, mark the end of campaign and electoral reform efforts in North Carolina, but should rather mark a starting point for further reform. As a first step, adequate funding and political support should be provided to ensure that remaining problems will be studied thoroughly. Such study is important because persuading the Supreme Court that further reform is both necessary and constitutional, particularly in the three areas noted above, will require careful docu-

157. See *supra* note 121. Use of personal or family wealth to boost campaign expenditures clearly does not reflect broad-based, political-financial support.

158. Jones, *supra* note 131, at 187.

159. H. ALEXANDER, *supra* note 3, at 101.

160. Latus, *Assessing Ideological PACs: From Outrage to Understanding*, in *MONEY AND POLITICS IN THE UNITED STATES: FINANCING ELECTIONS IN THE 1980s* 142, 167 (M. Malbin ed. 1984).

161. See Jones, *supra* note 131, at 187.

162. Jones, *supra* note 131, at 209-10.

mentation of the compelling state interests in further regulation. Once compelling interests can be established, the general assembly should move forward and experiment with additional campaign reform measures even if such measures will likely provoke renewed constitutional debate on this issue. As Justice Brandeis once stated, "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."¹⁶³ North Carolina, as a state with a comprehensive campaign regulation system in place and the political leadership to direct further reform efforts, is particularly well-suited to become such a laboratory.

JAMES DEMAREST SECOR, III

163. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).