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Narrow Application of Buckley v. Valeo: Is Campaign Finance Reform Possible in the Eighth Circuit, The

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The Narrow Application of *Buckley v. Valeo*: Is Campaign Finance Reform Possible in the Eighth Circuit?

*Russell v. Burris*

I. INTRODUCTION

Federal campaign finance reform has been a hot topic as of late, from the recent debates of the McCain-Feingold bill in Congress to the investigation of alleged violations in connection with the 1996 presidential election. The issue of campaign finance reform is of equal importance on the state level. A majority of states have been reforming their campaign finance laws since 1990. However, these reforms have not avoided constitutional challenges.

The Eighth Circuit has been particularly harsh when reviewing challenges to state campaign finance reform. This has led to a limited number of alternatives for the states to employ when reforming their campaign finance laws. The Eighth Circuit's decision in *Russell v. Burris* is another decision which solidifies the Eighth Circuit's stance on campaign finance reform and greatly reduces the available options for states.

II. FACTS AND HOLDING

This dispute arose after Initiated Act I ("Act I" or "the Act"), which amended the existing Arkansas campaign contribution laws, was passed by Arkansas voters on November 5, 1996. Prior to the Act, individuals, corporations, unions, political action committees (PACs), and other groups were permitted to contribute a maximum of one thousand dollars to a candidate per election. "Act I made substantial changes to Arkansas' campaign contribution law."
Under Act I, a "statewide candidate" was not permitted to accept a contribution in excess of three hundred dollars per election from any person.\(^9\) All other offices, including Arkansas Supreme Court Justices and appellate judges, were limited to accepting contributions of no more than one hundred dollars per election from any person.\(^10\) The Act also created a "small donor" PAC\(^11\) that was allowed to contribute up to twenty-five hundred dollars to a candidate per election.\(^12\) PACs, by definition, are "persons" under the Act and therefore subject to the one hundred dollar and three hundred dollar contribution limits.\(^13\) The Act also limited the total annual contributions a person could make to an independent expenditure committee to five hundred dollars.\(^14\) Finally, Act

\(^9\) Id. The amended statute provided that:

It shall be unlawful for any candidate for the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or for any person acting on the candidate’s behalf, to accept campaign contributions in excess of three hundred dollars ($300) per election from any person.

\(^10\) Id. at 1214-15 n.2 (quoting ARK. CODE ANN. § 7-6-203(a)(2) (Michie Supp. 1997)).

\(^11\) Russell, 978 F. Supp. at 1215. The amended statute provided:

It shall be unlawful for any candidate for any public office, except the office of Governor, Lieutenant Governor, Secretary of State, Treasurer of State, Auditor of State, Attorney General, and Commissioner of State Lands, or for any person acting on the candidate’s behalf, to accept campaign contributions in excess of one hundred dollars ($100) per election from any person.

\(^12\) Id. at 1215 n.3 (quoting ARK. CODE ANN. § 7-6-203(a)(1) (Michie Supp. 1997)).


A “small donor political action committee” means any person who: (A) Receives contributions from one or more individuals in order to make contributions to candidates; (B) Does not accept any contribution or cumulative contributions in excess of twenty-five dollars ($25) from any individual in any calendar year; and (C) Is registered pursuant to Arkansas Code 7-6-215 prior to making contributions to candidates. “Small donor political action committee” shall not include an organized political party, the candidate’s own committee, or an exploratory committee.

\(^14\) Id. at 1215 n.5 (quoting ARK. CODE ANN. § 7-6-201(12) (Michie Supp. 1997)).

12. Russell, 978 F. Supp. at 1214. The amended statute provided: However, an organized political party as defined in Arkansas Code 7-1-101(1) and a small donor political action committee may contribute up to two thousand five hundred dollars ($2500) to each candidate per election. Id. at 1215 n.4 (quoting ARK. CODE ANN. § 7-6-203(d) (Michie Supp. 1997)).

13. Russell, 978 F. Supp. at 1215 (quoting ARK. CODE ANN. § 7-6-201(1) (Michie Supp. 1997)).

14. Russell, 978 F. Supp. at 1215. The amended statute provided: “An Independent expenditure committee may not accept any contribution or cumulative contributions in excess of five hundred dollars ($500) in value from any person in any
I conferred the right to “municipalities, counties, and townships” to set lower campaign contribution limits than those set by the Act.\(^\text{15}\)

This cause of action was brought by three individuals (Kent Ingram, William R. Austin, and Ron Russell) and a registered Arkansas PAC (Associate Industries of Arkansas Political Action Committee).\(^\text{16}\) Ingram was a repeated campaign contributor, businessman, former senator, and an officer of the State Chamber PAC who wanted to continue making campaign contributions at the former limits.\(^\text{17}\) Austin was a businessman and officer of Associate Industries of Arkansas Political Action Committee (AIAPAC) who was interested in making contributions in excess of the Act I limits.\(^\text{18}\) Russell was the Executive Vice-President of the Arkansas Chamber of Commerce, a former mayor, and an officer of both the State Chamber PAC and AIAPAC who desired to contribute amounts in excess of the Act I limits.\(^\text{19}\) AIAPAC was an approved PAC that wanted to be subject to the same limitations as a small donor PAC so that it could make contributions of twenty-five hundred dollars.\(^\text{20}\) The AIAPAC and State Chamber PAC were private, non-profit organizations that worked together “to continually enhance the economic climate in Arkansas.”\(^\text{21}\)

The defendants were the chairman of the Arkansas Ethics Commission (AEC), along with the other members of AEC, sued in their official capacities.\(^\text{22}\) AEC was the agency charged with the administration of Arkansas’s campaign finance laws.\(^\text{23}\) Citizens for Clean Government (Citizens), a coalition of organizations that was the major proponent of Act I, intervened as a defendant in the suit.\(^\text{24}\)

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calender year.” \textit{Id.} at 1215-16 n.7 (quoting ARK. CODE ANN. § 7-6-203(k) (Michie Supp. 1997)).

15. \textit{Russell}, 978 F. Supp. at 1216. The amended statute provided:
Authority of Local Jurisdictions Municipalities, counties and townships shall have the authority to establish: reasonable limitations on the time periods candidates for local office shall be allowed to solicit contributions; limits on contributions to local candidates at amounts lower than those set by state law; and voluntary campaign expenditure limits for candidates seeking election to their respective governing bodies.

\textit{Id.} at 1216 n.9 (quoting ARK. CODE ANN. § 7-6-224 (Michie Supp. 1997)).


17. \textit{Id.}
18. \textit{Id.}
19. \textit{Id.}
20. \textit{Id.}


23. \textit{Id.}
24. \textit{Id.}
The plaintiffs asserted that Act I violated their First Amendment rights to freedom of political speech and freedom of association by limiting campaign contributions to candidates to one hundred dollars and three hundred dollars, by authorizing local jurisdictions to set lower limits, and by limiting contributions to independent expenditure committees to five hundred dollars.25 The plaintiffs also challenged Arkansas’s annual two hundred dollar per individual contribution limit to PACs.26 Finally, the plaintiffs alleged a violation of the Fourteenth Amendment, arguing that restricting PACs to a contribution of one hundred dollars or three hundred dollars while allowing small donor PACs to contribute twenty-five hundred dollars denied them equal protection.27

The district court first held that the plaintiffs lacked standing to challenge the Act’s provision limiting contributions to independent expenditure committees because the plaintiffs could not produce evidence that they had ever contributed to an independent expenditure committee.28 The court also held that the plaintiff’s mere desire to contribute to an independent expenditure committee in the future was not sufficient to create standing.29 The court then found that the plaintiffs’ challenge to the Act’s provision empowering local jurisdictions to set their own contribution limits was not ripe for adjudication.30 The district court then proceeded to consider the plaintiffs’ remaining claims.31

In considering the plaintiffs’ attack on Act I, the court applied the test set forth in Buckley v. Valeo32 and subsequently modified by the Eighth Circuit in Carver v. Nixon.33 In applying the test, the court declared the three hundred dollar contribution limit to statewide candidates unconstitutional,34 upheld the Act’s one hundred dollar contribution limit to non-statewide offices,35 upheld the

25. Id.
26. Id. This limit was not set forth by Act I but was established by a ballot initiative in 1990. Id. at 1216-17.
28. Id.
29. Id.
30. Id. at 1218 (explaining no local jurisdiction had yet set a lower contribution level).
31. Id. at 1218-28.
33. 72 F.3d 633, 635-44 (8th Cir. 1995).
34. Russell v. Burris, 978 F. Supp. 1211, 1223 (E.D. Ark. 1997), aff’d in part, rev’d in part, 146 F.3d 563 (8th Cir. 1998), cert. denied, 119 S. Ct. 1040 (1999). The court found the previous limit of $1,000 was not large enough to give Arkansas a “compelling interest necessary to justify further limiting contributions in the ‘statewide races.’” Id. at 1222. The court included the offices of Supreme Court Justice and Court of Appeals Judge in the category of statewide offices. Id.
35. Id. at 1223-24. However, the court found that the $100 limit was unconstitutional as to the offices of Arkansas Supreme Court Justice and Arkansas Court
two hundred dollar pre-Act I limit for PACs,36 and held that the Act’s twenty-five hundred dollar contribution for “small donor” PACs did not violate the Fourteenth Amendment.37 Finally, the court held that the unconstitutional provisions were severable and that the remaining provisions of Act I remained intact.38 All parties appealed the decision of the district court.39

The Eighth Circuit affirmed in part and reversed in part the decision of the district court.40 The Eighth Circuit affirmed the district court’s finding that the plaintiffs lacked standing to challenge the limitation on contributions to independent expenditure committees.41 The Eighth Circuit also affirmed the district court’s decision that the three hundred dollar limit for statewide candidates was unconstitutional,42 but reversed the district court by holding that the one hundred dollar limit for non-statewide candidates was unconstitutional as well.43 The Eighth Circuit also reversed the district court by finding that the two hundred dollar pre-Act I limit for PACs was unconstitutional,44 and by holding that the provision allowing small donor PACs to contribute twenty-five hundred dollars while limiting other PACs to two hundred dollars was unconstitutional.45 Finally, the Eighth Circuit affirmed the district court’s decision holding that the Act’s provision empowering local jurisdictions to set their own campaign contribution limits was not ripe for adjudication.46

of Appeals Judge because these officials are elected in statewide elections and are “subject to more stringent restrictions in solicitation than other candidates.” Id. at 1224.

36. Id. at 1225. The court, while sympathetic to the PACs, held that the limit was constitutional, taking into consideration the negligible impact the $200 limit has had in allowing PACs to “amass[] the resources necessary for effective advocacy.” Id. at 1225 (quoting Buckley v. Valeo, 424 U.S. 1, 21 (1976)).

37. Id. at 1227. The court compared the various restrictions placed on both approved PACs and “small donor” PACs and found that approved PACs were not significantly more burdened than “small donor” PACs. Id. However, the court noted that even had approved PACs been more burdened, the State would be justified by a “compelling interest in avoiding actual or apparent corruption.” Id.

38. Id. at 1229.


40. Id. at 573.

41. Id. at 567.

42. Id. at 571 (citing Carver v. Nixon, 72 F.3d 633, 641-42 (8th Cir. 1995), cert. denied 518 U.S. 1033 (1996)).

43. Id.


45. Id. at 572.

46. Id. at 573.
III. LEGAL BACKGROUND

A. Introduction

In 1971, amid the aftermath of the Watergate scandal, Congress enacted the Federal Election Campaign Act (FECA). FECA limited contributions to candidates for federal office by an individual or group to one thousand dollars, by a PAC to five thousand dollars, and by a political party to twenty-five thousand dollars. FECA also limited campaign expenditures by individuals and groups to one thousand dollars and limited expenditures by candidate from personal funds to various amounts depending on the office sought. Finally, FECA required record-keeping and filing of campaign finance information and established the Federal Election Commission. FECA was supplemented in 1974 by amendments to the Internal Revenue Code which provided public funding for certain presidential candidates. FECA was challenged in 1975 as violating the First Amendment. The challengers appealed the case to the Supreme Court in 1975, and the Court issued its opinion regarding FECA in Buckley v. Valeo in 1976.

B. Buckley v. Valeo and Its Progeny

In 1976, the Supreme Court delivered a lengthy opinion in Buckley v. Valeo, upholding some provisions of FECA while striking down others. The Supreme Court immediately distinguished between campaign contributions and campaign expenditures. Regarding expenditures, the Court stated that "a restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression..."
by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached.\(^{58}\) In contrast, the Court found that:

a limitation upon the amount that any one person or group may contribute entails only a marginal restriction upon the contributor’s ability to engage in free communication. A contribution serves as a general expression of support for a candidate and his views but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor’s support for the candidate. A limitation on the amount of money a person may give to candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor’s freedom to discuss candidates and issues.\(^{59}\)

However, while the Court distinguished the two, it recognized “fundamental First Amendment interests” in both campaign expenditures and campaign contributions.\(^{60}\) Since the restrictions imposed by FECA implicated First Amendment freedoms of speech and association, the Court employed the closest scrutiny.\(^{61}\) In applying this strict scrutiny standard, the Court announced the following two-pronged test: FECA’s limitations on First Amendment speech and associational rights may be upheld only if the government can demonstrate (1) a sufficiently important interest, and (2) that the means to protect that interest have been “closely drawn to avoid unnecessary abridgment of associational freedoms.”\(^{62}\)

The primary interest of Congress in limiting campaign contributions was “the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates’ positions and on their actions if elected to office.”\(^{63}\) The Court found this interest to be a legitimate justification for limiting contributions to one thousand dollars under FECA.\(^{64}\) The Court noted that candidates depend on

\(^{58}\) Id. at 19.

\(^{59}\) Id. at 20-21.

\(^{60}\) Buckley v. Valeo, 424 U.S. 1, 23 (1976).

\(^{61}\) Id. at 25 (quoting NAACP v. Alabama ex rel Patterson, 357 U.S. 449, 460-61 (1958)).


\(^{63}\) Id. at 25.

\(^{64}\) Id. at 25-26.
contributions from others to run their campaigns and that "the integrity of our system of representative democracy is undermined" by quid pro quo contributions.65 The Court stated that while it is very difficult to verify corrupt practices, "the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one."66 The Court went on to observe that the effect of the appearance of corruption on the public was "of almost equal concern as the danger of actual quid pro quo arrangements."67

After determining that the first prong of the test had been met, the Court proceeded to determine whether the limitation on contributions had been narrowly tailored to effectuate the government's interests.68 The Supreme Court found that the one thousand dollar limitation on contributions focused specifically on the issue of large campaign contributions and did not significantly impair the potential for meaningful political debate.69 The Court stated that "[FECA's] contribution limitations in themselves do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties."70

While it was argued that the limits were unrealistically low, the Court noted that it had "no scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000."71 The Court further noted that "such distinctions in degree become significant only when they can be said to amount to differences in kind."72 Therefore, the Supreme Court upheld the one thousand dollar limitation on contributions by individuals and subsequently upheld the contribution limitations on PACs, the limitations on volunteers' incidental expenses, and the twenty-five thousand dollar limitation on total annual contributions by individuals.73

The Court next considered the limitations on campaign expenditures.74 The Court deemed limitations upon expenditures to be "direct and substantial restraints on the quantity of political speech."75 Because of the greater restraints on freedom of speech and association imposed by expenditure limitations, the Court found that the governmental interest in preventing corruption and the appearance of corruption was insufficient to justify the limitations.76

66. Id. at 27.
67. Id.
68. Id. at 27-29.
69. Id. at 28-29.
71. Id. at 30 (quoting Buckley v. Valeo, 519 F.2d 821 (D.C. Cir. 1975)).
73. Id. at 30, 35-36, 37, 38.
74. Id. at 39-60.
76. Id. at 45.

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Government argued that there was a secondary governmental interest in limiting expenditures: to equalize the ability of different individuals to influence the outcome of elections. The Court rejected this argument as well, finding that "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." Because the Court could find no compelling governmental interests sufficient to justify the limitations on expenditures, it struck down all such limitations.

The Supreme Court in Buckley determined the First Amendment gauge of campaign finance regulation, requiring the government to establish a compelling interest in order to limit contributions and expenditures. However, the Court did not require the Government to show actual harm, but allowed the Government to simply theorize the harm. While the Court found the interest of preventing corruption and the appearance of corruption to be compelling for limiting contributions, the Court did not find that interest to be sufficient for limiting expenditures. The Court also required the Government to show that the means employed were narrowly tailored to meet those interests. However, the Court could not invalidate limitations as being too low unless those limitations amounted to a difference in kind, as opposed to a difference in degree.

Since Buckley, several Supreme Court cases have revisited the issue of campaign finance reform. However, the 1985 Supreme Court case of FEC v.

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77. Id. at 48.
78. Id. at 48-49.
79. Id. at 51, 54, 58.
82. See supra notes 56-60 and accompanying text
83. See supra notes 67-72 and accompanying text.
84. See supra notes 64-66 and accompanying text.
NCPAC first revisited and clarified the two-pronged test set out in Buckley. In that case, the Supreme Court reaffirmed Buckley and held not only that the governmental interest in preventing corruption or the appearance of corruption was a compelling interest for restricting campaign finances, but also that it was the only compelling interest. The modification of the test set forth in Buckley served to place more stringent conditions on the government's ability to regulate campaign finance because the government may now set forth just one interest as a reason for regulating campaign finance. Further narrow interpretations of the Buckley test appear in the decisions of the Eighth Circuit.

C. Eighth Circuit Decisions Further Restricting Buckley

The Eighth Circuit has handed down several decisions, relying on Buckley, that make the test for restricting campaign contributions even more stringent. Two such major decisions from the Eighth Circuit that created more obstacles for states to clear in enacting campaign finance regulations are Day v. Holohan and Carver v. Nixon.

In Day, the Eighth Circuit struck down two Minnesota statutory provisions that limited both individual campaign expenditures and contributions to political committees to one hundred dollars. The Eighth Circuit applied the Buckley test in making this determination, stating that the statute may be upheld "if the state can show that [the statute] is narrowly drawn to serve a compelling state interest." The court followed Buckley and NCPAC to state that the only compelling governmental interest in limiting campaign contributions is preventing corruption or the appearance of corruption. The court found that Minnesota met this prong of the test and proceeded to determine whether the second prong of the test had been met. In applying the second prong of the Buckley test, the court imposed a more stringent standard. The court determined that the limit was not narrowly tailored to achieve the state's interest in preventing corruption and the appearance of corruption. The Eighth Circuit

87. Id. at 496-97.
88. See infra notes 89-102 and accompanying text.
89. 34 F.3d 1356 (8th Cir. 1994).
90. 72 F.3d 633 (8th Cir. 1995).
91. See Day, 34 F.3d at 1366.
92. Id. at 1361.
93. Id. at 1365.
94. See Day v. Holohan, 34 F.3d 1356, 1365 (8th Cir. 1994).
95. Id. at 1360-61, 1366.
96. Id. at 1366.
compared the Minnesota limit to the one thousand dollar limit upheld in *Buckley*. In this comparison, the Eighth Circuit adjusted the Minnesota limit for inflation to find that a limit of one hundred dollars in 1976 would have amounted to $40.60 in 1994, which was approximately four percent of the limit approved in *Buckley*. The court found that this limit was "too low to allow meaningful participation in protected political speech and association, and thus [was] not narrowly tailored to serve the state’s legitimate interest in protecting the integrity of the political system." Therefore, by adjusting Minnesota’s limit for inflation, the court imposed a more stringent application of the *Buckley* test. After *Day*, by adjusting a challenged statutory limit for inflation and comparing it to the limits set forth in *Buckley*, the Eighth Circuit made it much easier for a court to declare contribution limits unconstitutional.

In *Carver*, the Eighth Circuit supplemented *Buckley* with an even more stringent application of the test. While *NCPAC* stated that the only compelling governmental interest for restricting campaign contributions was to prevent corruption and the appearance of corruption, a state only needed to speculate the harms, not prove that they existed. In *Carver*, however, the court pronounced that a government must do more than postulate a compelling interest, but rather "must demonstrate that the recited harms are real... and that the regulation will in fact alleviate these harms in a direct and material way." This creates yet another impediment to states enacting campaign finance regulations. After *Day* and *Carver*, a state must prove a compelling state interest and that the means are narrowly tailored to address those interests. A state must also take into consideration an adjustment for inflation in determining whether the means are narrowly tailored.

IV. INSTANT DECISION

A. Standing

In *Russell v. Burris*, the Eighth Circuit first considered whether the plaintiffs had standing to bring the suit. The trial court determined that the plaintiffs had standing to bring suit on all challenged provisions of the Act

97. *Id.*

98. *Id.*

99. *Id.*


101. *See supra* text accompanying note 81.


104. *Id.*
except for the provision regarding independent expenditure committees. The court limited its review to that provision. The court applied the test set forth in Boyle v. Anderson to find that the plaintiffs lacked standing to challenge the provisions concerning independent expenditure committees. The plaintiffs failed to meet the first element of the test, which required the plaintiffs to show that they "suffered an 'injury in fact,' ... [that] must be concrete, particularized, and either actual or imminent." The plaintiffs could not produce any evidence that they had contributed to an independent expenditure committee in the past or that, but for the limitations imposed by Act I, they would contribute to one in the future. The court therefore held that the plaintiffs lacked standing as to the provision concerning independent expenditure committees.

B. Standard of Review

The Eighth Circuit then considered the standard of review for the challenged provisions of the Act. The court stated that because the government may only limit free speech to the degree necessary to prevent specific harms, any attempts to do so are subject to strict scrutiny. They applied the two-pronged Buckley test as modified in Carver, observing that the state must establish a "compelling interest and means closely drawn to avoid unnecessary abridgment of associational freedoms."

105. Id. at 566.
106. 68 F.3d 1093 (8th Cir. 1995). A plaintiff must show that (1) they have suffered a concrete injury, (2) the injury was caused by the challenged conduct, and (3) redress for the injury is likely. Id. at 1100-01.
109. Id. at 567.
110. Id. at 567-68.
111. Id. at 567 (citing Carver v. Nixon, 72 F.3d 633, 636 (8th Cir. 1995), cert. denied, 518 U.S. 1033 (1996)). Citizens, the intervenor-defendant, argued for a more lenient standard because the Act included a public subsidy scheme, as well as limits on contributions. Russell, 146 F.3d at 567. Citizens relied on Buckley for this proposition, but the Court distinguished Buckley in that Buckley's public subsidy scheme was optional while Arkansas' Act I was not. Id. Citizens also argued for a more lenient standard due to an opinion by three justices in Colorado Republican Federal Campaign Committee, which employed a weighing test. Id. (citing Colorado Republican Federal Campaign Comm. v. Federal Election Comm'n, 518 U.S. 604, 616, 618 (1996)). The Court found this so called weighing test to be no more than a "restatement" of the Buckley test. Russell, 146 F.3d at 568. Finally, Citizens argued for a more lenient standard in light of a Supreme Court case which dealt with candidates who may appear on a party's ballot. Id. Again the Court distinguished this case and refused to apply a more lenient standard. Id.
112. Id. at 567 (citing Carver, 72 F.2d at 636).
The court recognized that the only compelling interest that a government may have in restricting First Amendment speech is to prevent actual corruption or the appearance of corruption. Drawing from Carver, the court concluded that a "state may abridge political speech in the form of campaign contributions only to address the reality or perception of undue influence or corruption attributable to large contributions." The court then proceeded to determine whether the challenged provisions of Act I could withstand the scrutiny of this test.

C. Individual Campaign Contribution Limits

The court first examined Act I's provisions limiting campaign contributions from individuals to three hundred dollars for specified statewide offices and one hundred dollars for all other statewide offices. The court held that the state failed to prove the existence of actual or perceived corruption due to large campaign contributions and that the provisions were narrowly tailored to speak to those issues. The defendants failed to produce any evidence of actual corruption due to large contributions; the court limited its inquiry to whether the defendants proved "a reasonable person could perceive, on the basis of the evidence presented at trial, that such contributions make for undue influence or spawn corruption."

Although the defendants presented several different incidents in an attempt to prove corruption, the court concluded they were insufficient to establish perceived corruption. The defendants first introduced evidence of a state representative who received $2,700 in contributions from different entities in the tobacco industry. The court found that it was unreasonable to believe that corruption was occurring because the contributions did not cause the representative to change his vote and because a public official ordinarily votes in a manner that pleases his contributors. The court further found that the

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114. Id. at 568.
115. Id.
116. Id.
117. Id.
119. Id. at 569-70.
120. Id. at 569.
121. Id. The Court noted that all contributions could be banned if it were reasonable to presume corruption when an official voted in ways to please his or her contributors, except contributions from the official's adversaries which would result in a "patent absurdity." Id.
The defendants' objections were unrelated to the size of the contributions received by the representative because he did not receive any contributions in excess of one thousand dollars. The court found that amount too low to produce a perception of corruption.

The defendants next submitted evidence of a state representative who received twenty-two thousand dollars from various sources at a fund-raiser. The representative received no more than one thousand dollars from any contributor and there was no evidence that these were quid pro quo arrangements. The Eighth Circuit again found that the defendants were not focusing on the size of the contributions but on the identity of the contributors. The court concluded that this evidence was also insufficient to show that a reasonable person would presume corruption due to large contributions.

Finally, the defendants offered evidence of contributions from "real estate interests." Once again, the court found that the defendants were focusing on the identity of the contributors and not on the size of the contributions. Because of the foregoing reason and the fact that there was no evidence that any members of the Little Rock city government received any contributions in excess of the one thousand dollar limit nor any evidence that the members changed their political behavior after the contributions, the court found this evidence insufficient to conclude that there could be a reasonable perception of corruption due to large contributions.

The Eighth Circuit then declared that, while the government could not prove a compelling state interest, the Act's contribution limits were too low to allow any substantial participation in free speech and association. The court compared the contribution limits in the Act with those in Buckley. The court cited Day, noting that inflation had greatly decreased the value of the dollar since Buckley was decided in 1976. The Court determined that the dollar amount

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122. This was the contribution limit prior to the enactment of Act I. See supra note 7 and accompanying text.
124. Id. at 570.
125. Id.
126. Id. Some of these contributions came from lobbyists who lived outside of the Representative's district. Id.
127. Id.
129. Id.
130. Id.
131. Id.
132. Id. at 570-71.
upheld in *Buckley* would be worth about twenty-five hundred dollars today when adjusted for inflation.\textsuperscript{134} The court then analyzed the Act’s limits to determine whether or not they differed in kind from *Buckley’s* limits.\textsuperscript{135}

After adjusting for inflation, the court found the Act’s one hundred dollar and three hundred dollar contribution limits to be roughly four percent and twelve percent of the *Buckley* limit, respectively.\textsuperscript{136} The court noted that the limits struck down in *Day* were four percent of the *Buckley* limit and those struck down in *Carver* were two percent to six percent of the limit upheld in *Buckley*.\textsuperscript{137} The Eighth Circuit then held that the Act’s contribution limits amounted to a difference in kind from those upheld in *Buckley* and were therefore unconstitutionally low.\textsuperscript{138}

Finally, the court found that even if the state had a compelling interest to prevent actual or perceived corruption, the Act’s limits were not narrowly tailored to serve those interests.\textsuperscript{139} The court stated that Act I was both underinclusive and overinclusive because it limited the free speech of all contributors without regard to the defendants’ concerns.\textsuperscript{140}

### D. Political Action Committees

The next two provisions that the court examined related to PACs. The first provision analyzed by the court was enacted in 1990, prior to the Act, and prohibited individuals from contributing more than two hundred dollars per year to a single PAC.\textsuperscript{141} The court again addressed the issue of whether the provision was enacted with a compelling state interest in mind and whether those limits were narrowly tailored to serve the governmental interest.\textsuperscript{142}

In *California Medical Association*, the Supreme Court upheld a five thousand dollar limitation on contributions by individuals to PACs.\textsuperscript{143} The *Russell* court found Arkansas’ two hundred dollar limitation to be only five percent of the five thousand dollar limitation, even without adjusting for inflation.\textsuperscript{144} The court also found that the risk of quid pro quo arrangements was

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\textsuperscript{134} Id.

\textsuperscript{135} Id.

\textsuperscript{136} Id. at 571.

\textsuperscript{137} Id.


\textsuperscript{139} Id.

\textsuperscript{140} Id.

\textsuperscript{141} Id. See supra note 26 and accompanying text.

\textsuperscript{142} Russell, 146 F.3d at 571.


\textsuperscript{144} Russell, 146 F.3d at 571.
not as significant in this context because a PAC holds no legislative power.\textsuperscript{145} The court then concluded that the two hundred dollar limit was too low because it did not allow individuals to exercise their political rights to any meaningful level and was therefore unconstitutional.\textsuperscript{146}

The second provision concerning PACs allowed small donor PACs to contribute twenty-five hundred dollars to a candidate while a normal PAC could only contribute one thousand dollars.\textsuperscript{147} The defendants argued that the difference in treatment between small donor PACs and normal PACs was justified because small donor PACs could only accept contributions of twenty-five dollars, while normal PACs could accept larger contributions.\textsuperscript{148} However, the reasoning of the defendants was not accepted by the court because it reaffirmed the proposition that the only compelling interest in limiting campaign contributions is to prevent actual or perceived corruption.\textsuperscript{149}

The court asserted that a small donor PAC’s ability to contribute twenty-five hundred dollars would produce a greater risk of quid pro quo agreements than a one thousand dollar contribution from a normal PAC.\textsuperscript{150} Given this danger, the court found that this provision of the Act had not been narrowly tailored to meet the state’s compelling interest of preventing actual and perceived corruption and was therefore unconstitutional.\textsuperscript{151}

\textbf{E. Reasonable Limitations on Contributions and Expenditures}

The final provision of the Act challenged by the plaintiffs was one that permitted local governments to establish "'reasonable limitations'” on both contributions and expenditures.\textsuperscript{152} This provision did not set any specific limits on contributions or expenditures but merely gave local governments the power to set their own limits.\textsuperscript{153} Because no local government had exercised this

\begin{footnotesize}
\begin{enumerate}
\item[145.] Id.
\item[146.] Id.
\item[147.] Id. The limit for PAC contributions to candidates returned to $1,000 because the Court struck down the $100 and $300 limitations. See supra text accompanying notes 116-37.
\item[148.] Russell v. Burris, 146 F.3d 563, 572 (8th Cir. 1998), cert. denied, 119 S. Ct. 1040 (1999). Note that the $200 limit on contributions to PACs was found to be unconstitutional. See supra text accompanying notes 138-43.
\item[149.] Russell, 146 F.3d at 572.
\item[150.] Id.
\item[151.] Id. The Court also justified striking down this provision as it violated equal protection concerns because a normal PAC was more burdened than a "small donor" PAC in that normal PACs could only contribute $1,000 to a candidate while a "small donor" PAC could contribute $2,500. Id.
\item[152.] Id.
\end{enumerate}
\end{footnotesize}
power, the court declined to assess its constitutionality, stating that the issue was not ripe for adjudication.\footnote{154}

\section*{F. Severability}

After invalidating several provisions of the Act, the court still had to determine whether the remainder of Act I could stand or if it was invalidated in its entirety.\footnote{155} As severability is a matter of state law,\footnote{156} the court looked to \textit{U.S. Term Limits, Inc. v. Hill}\footnote{157} and applied its two part test.\footnote{158} In applying the test, a court must consider "(1) whether a single purpose is meant to be accomplished by the act, and (2) whether the sections of the act are interrelated and dependent upon each other."\footnote{159} In applying this test, the court determined that no single purpose would be disrupted by its ruling and upheld the remaining provisions of Act I.\footnote{160}

\section*{V. Comment}

The impact of the Eighth Circuit's decision in \textit{Russell} has had an immediate effect on Missouri's campaign finance laws. In \textit{Shrink Missouri Government PAC v. Adams},\footnote{161} the Eastern District of Missouri upheld Missouri's contribution limits of $1,075 dollars, $525 dollars, and $275 dollars.\footnote{162} The plaintiffs appealed that decision, and following the Eighth Circuit's decision in \textit{Russell}, filed a motion seeking an injunction pending the appeal.\footnote{163}

In an opinion granting the injunction, the Eighth Circuit essentially made the invalidation of Missouri's contribution limits a foregone conclusion.\footnote{164} The

\begin{thebibliography}{99}
\item 154. \textit{Id.} at 573.
\item 155. \textit{Id.}
\item 156. \textit{Id.} (citing Leavitt v. Jane L., 518 U.S. 137, 139 (1996)).
\item 159. \textit{Id.} (citing \textit{U.S. Term Limits, Inc.}, 872 S.W.2d at 357).
\item 160. \textit{Id.}
\item 162. \textit{Id.} at 735. The challenged limits varied depending on the office sought. \textit{Id.}
\item 163. \textit{See Shrink Mo. Gov't}, 151 F.3d at 763.
\item 164. In addition to the decision granting the injunction, nothing in oral arguments, which were held on August 21, 1998, made the appellees feel that the 8th Circuit would decide any differently. Telephone Interview with James R. Layton, Assistant Attorney General of Missouri (Sept. 30, 1998). Mr. Layton also stated that this was the first case where he had written a petition for certiorari prior to a decision. \textit{Id.} At that time, they planned to either immediately file for an en banc hearing with the Missouri Supreme
\end{thebibliography}
court looked to four factors to determine whether to grant the injunction: (1) the probability of winning on the merits; (2) the chance that irreversible harm would occur if no injunction was granted; (3) whether other parties would be injured if an injunction was issued; and (4) whether the public would be injured by the injunction. In considering the first element of the test, the Eighth Circuit stated that "in view of ... prior case law" and the Russell decision, there was a "strong likelihood that appellants will prevail when the case is heard on the merits." The court was concerned that the state had not proven the existence of actual or perceived corruption and that the limits were narrowly tailored to meet those problems. The court also found that the contribution limits were "dramatically lower" than the one thousand dollar limit upheld in Buckley when adjusted for inflation. The Eighth Circuit ordered that the appellees be enjoined from enforcing the limits "pending a final decision by [the Eighth Circuit] on the merits of this case." Despite the plea by the State of Missouri, Supreme Court Justice Clarence Thomas refused to reinstate Missouri’s campaign contribution limits.

On November 30, 1998, the Eighth Circuit handed down its final decision regarding the merits of the case. The court struck down all of Missouri’s campaign contribution limits, including the limit for statewide offices, despite the fact that it is higher than the federal limit. Citing Russell, the court insisted that the State “has the burden of showing that any limits it places on campaign contributions are narrowly tailored to serve the State’s compelling interest in addressing proven ‘real or perceived undue influence or corruption attributable to large political contributions.'”

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165. Shrink Mo. Gov’t, 151 F.3d at 764 (citing Dataphase Sys., Inc. v. C L Sys., Inc., 640 F.2d 109 (8th Cir. 1981)).
166. Id.
167. Id.
169. Id. at 765. The 8th Circuit briefly concluded that the remaining three factors of the test had been met. Id. at 764-65.
171. Shrink Mo. Gov’t, 151 F.3d at 763.
172. Id. at 523.
174. Id. (quoting Russell v. Burris, 146 F.3d 563, 568 (8th Cir. 1998), cert. denied, 119 S. Ct. 1040 (1999)).
The court first considered whether the State had produced sufficient evidence to prove its compelling interest in preventing actual or perceived corruption.\textsuperscript{175} The Eighth Circuit concluded that the State failed to "adduce sufficient evidence even to show that there exists a genuine issue of material fact regarding its alleged interest."\textsuperscript{176} The court then proceeded to observe that, even if the State had proven a compelling interest, the State was not able to show that the limits were "narrowly tailored to serve that interest."\textsuperscript{177} The court again followed Russell and Day and adjusted the Missouri limits for inflation to show that they differed in kind from the limits upheld in Buckley.\textsuperscript{178}

Given the imposing obstacles put in place by the Eighth Circuit in Day and Carver and recently solidified in Russell and Shrink, the states will be hard-pressed to enact campaign finance laws that will pass muster. One available option, although unattractive for the states, is to set contribution limits high enough to equal the Buckley limit, while taking inflation into account. This would amount to contribution limits of approximately twenty-five hundred dollars.\textsuperscript{179} However, states would still need to prove the existence of actual corruption or a perception of corruption. This was not difficult in 1972 with the multi-million dollar contributions occurring in connection with the presidential campaign,\textsuperscript{180} but it is likely to prove more difficult in modern times. Short of that, states will need to come up with creative and innovative ways to regulate campaign contributions.

The Eighth Circuit has been stringent in applying the Buckley test to campaign contribution limits. Its practice of adjusting contribution limits for inflation has made it easy to find contribution limits unconstitutional.\textsuperscript{181} In so doing, the Eighth Circuit has called the federal limits into question. The Shrink case is the only case in the nation that has challenged and struck down contribution limits which equal the current federal limit.\textsuperscript{182} As it currently stands, the federal limit on contributions to a candidate is one thousand dollars.\textsuperscript{183}

\begin{footnotes}
\item[175.] \textit{Id.} at 521-22.
\item[176.] \textit{Id.} at 522. The State relied on an affidavit from a state senator in an attempt to prove actual or perceived corruption. \textit{Id.}
\item[177.] \textit{Id.}
\item[178.] \textit{Id.} at 523.
\item[179.] \textit{Russell v. Burris,} 146 F.3d 563, 570 (8th Cir. 1998), cert. denied, 119 S. Ct. 1040 (1999).
\item[181.] \textit{See generally Russell,} 146 F.3d at 563; Day v. Holahan, 34 F.3d 1356 (8th Cir. 1994), cert. denied, 513 U.S. 1127 (1995).
\item[182.] \textit{Jo Mannies, Judge Will Weigh Request to Temporarily Block Limits on Campaign Contributions} (published Mar. 4, 1998) <http://archives.postnet.com/8625657f006b74fe/562e50b071e825be862565f600661d3/c6e6e8ae202e5b69862565be005a40c0?opendocument>.
\item[183.] \textit{See supra} text accompanying notes 55-83; \textit{see also} 2 U.S.C. § 608(b) (1994).
\end{footnotes}
According to the Eighth Circuit, the one thousand dollar limit upheld in *Buckley* would be worth twenty-five hundred dollars today when adjusted for inflation.\(^{184}\) Therefore, the *Buckley* limit today amounts to only approximately forty percent of what it was in 1976.\(^{185}\)

By striking down the Missouri campaign contribution limits, the Eighth Circuit made the *Shrink* case a prime candidate for the U.S. Supreme Court to issue a decision regarding campaign finance regulation. The fact that a limit higher than the current federal limit was struck down makes the case particularly appealing. On January 25, 1999, the Supreme Court granted certiorari to hear the case.\(^{186}\) However, it is unclear how the Supreme Court will decide the issue.

Although the Supreme Court granted certiorari to hear the *Shrink* case, it declined the companion petition of Missouri legislator Joan Bray.\(^{187}\) In her petition, Bray asked the Court to go beyond the standard in *Buckley* and create more stringent campaign finance regulations.\(^{188}\) This may be an indication that the Supreme Court is unwilling to reconsider its decision in *Buckley*.

Recent decisions by the Court also provide little indication of how it will decide this case. In 1996, the Supreme Court reviewed *Colorado Republican Federal Campaign Committee*, which concerned the issue of whether Congress could limit independent expenditures by political parties.\(^{189}\) In that case, the Supreme Court found the regulation to be unconstitutional in a plurality opinion which "raise[d] more issues than it answer[ed]."\(^{190}\) The Justices split into four

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The current statutes on federal campaign contributions contain no provisions adjusting the limit for inflation.


185. *Id.* *See also* Craig M. Engle et al., *Buckley Over Time: A New Problem With Old Contribution Limits*, 24 J. LEGIS. 207, 213 (1998) (stating that a $1,000 limit today would have been worth approximately $320 in 1976).


factions and demonstrated a tremendous difference of opinion on campaign finance issues.\textsuperscript{191}

In oral arguments in the case of \textit{Buckley v. American Constitutional Law Foundation},\textsuperscript{192} the Court demonstrated that it may follow the Eighth Circuit's requirement that a state prove the existence of actual or perceived corruption. During oral arguments, the Justices repeatedly asked the Colorado Attorney General whether the state could provide evidence of fraud.\textsuperscript{193} However, in its decision, the Court did not employ a strict scrutiny standard in striking down ballot-initiative restrictions.\textsuperscript{194} While this case concerns ballot-initiative restrictions, it shows that the Supreme Court is cognizant of a proof requirement when restricting campaign-related activities.

The Court's position on the Eighth Circuit's practice of adjusting limits for inflation is less clear. In \textit{Buckley v. Valeo}, the Court upheld the contribution limits despite the fact that the limits were not indexed for inflation.\textsuperscript{195} While Congress has the power to amend FECA and raise these limits, it has yet to do so.\textsuperscript{196} The 105th Congress attempted to reform campaign finance laws with the McCain-Feingold bill, but this bill died in the Senate after getting through the House.\textsuperscript{197}

The Supreme Court decided \textit{Buckley} twenty-two years ago. Because of the difficulty that campaign finance reform has had in Congress,\textsuperscript{198} now is a good time to settle the issue. By granting certiorari, the Supreme Court now has the opportunity to redefine the standard for campaign finance regulations and end the woes of campaign finance reform that have recently plagued our nation.

\textsuperscript{191} \textit{See id.} at 65. Justices Breyer, O'Connor, and Souter applied a straightforward \textit{Buckley} analysis to find the law unconstitutional. \textit{Id.} Justices Stevens and Ginsberg held that Congress could limit the expenditures because Congress could presume that the expenditures were coordinated with a candidate. \textit{Id.} Justices Kennedy, Rehnquist, and Scalia found that the First Amendment prohibited limitations on expenditures, without differentiating between coordinated expenditures and independent expenditures. \textit{Id.} at 65-66. Finally, Justice Thomas wrote a stirring opinion stating that the distinction between contributions and expenditures should be abandoned, with regulations on both being prohibited by the First Amendment. \textit{Id.} at 66.


\textsuperscript{193} \textit{See Mauro, supra note 192.}

\textsuperscript{194} \textit{See generally Buckley, 119 S. Ct. 636 (1999)}

\textsuperscript{195} \textit{See Engle et al., supra note 185, at 208.}

\textsuperscript{196} \textit{See Engle et al., supra note 185, at 208-09.}

\textsuperscript{197} \textit{FOR THE RECORD: Role Call Report, WASH. POST, Sept. 17, 1998, at V08.}

\textsuperscript{198} \textit{See CORRADO & ORTIZ, supra note 2, at 337 (commenting on George Bush's veto of 1992 campaign finance legislation); supra text accompanying note 197 (commenting on McCain-Feingold bill dying in the Senate).}
VI. CONCLUSION

The Eighth Circuit’s decisions in *Russell*, and more recently in *Shrink*, have left no doubt as to where it stands on the issue of campaign finance reform. By requiring that a state prove actual or perceived corruption and by adjusting statutory limits for inflation, the Eighth Circuit has made it nearly impossible for a state to enact any meaningful limits on campaign contributions. Currently, Arkansas’s campaign contribution limit for persons is one thousand dollars and Missouri has no campaign contribution limits due to the Eighth Circuit’s stringent standards.

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