

## COMMENT

## Buying an Audience: Justifying the Regulation of Campaign Expenditures that Buy Access to Voters

This Comment suggests a new constitutional approach to the regulation of political expenditures. The approach pushes beyond the question of whether political expenditures are more like “speech” or more like “property”<sup>1</sup> and instead focuses on which types of expenditures fit into each category. Some expenditures, but not all, are necessary to create speech. These “speech-enabling” expenditures cannot be meaningfully disentangled from the communication they make possible. Other expenditures, however, provide something of value aside from the speech itself as an incentive for individuals to listen to the speech. The classic example is expenditures on advertising, which reach listeners or viewers because they wish to consume the content with which the advertising is packaged. These “audience-buying” expenditures function as property and consequently deserve less protection. Courts should uphold campaign finance regulations that are closely tailored to protecting speech-enabling expenditures while regulating audience-buying expenditures in order to enhance political equality.

Individuals and organizations with access to financial resources to buy advertising can offer audiences an attractive exchange: viewers need not pay for television programs they wish to watch because they also watch the commercials packaged along with them. Advertisers usually do not pay their audience directly, but instead pay intermediary media organizations, which in turn offer audiences content they value. Though indirect, this method of providing an incentive is functionally the same as offering a DVD with entertaining content or anything else the audience values as an incentive to view the advertisement. Unlike those who can afford to advertise, those with fewer resources can reach only those who are interested in receiving their

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1. See, e.g., *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 398 (2000) (Stevens, J., concurring).

message without such an additional incentive. They can earn an audience, but not buy one.

This Comment accepts the need for incentives to encourage the public to tune in to a larger number or greater variety of political messages than they otherwise would. It suggests, however, that courts should give the legislative branch leeway to design regulatory frameworks for such incentives—frameworks that would enhance political equality without compromising the First Amendment’s core protection of expenditures necessary to engage in political speech.

Without advocating that all messages should receive equal attention regardless of their relative value, popularity, or speakers’ intensity of feeling, campaign finance reform proponents rightly suggest that government intervention regarding political expenditures is necessary to preserve political equality.<sup>2</sup> These advocates generally fail, however, to distinguish among different kinds of political expenditures. They therefore present proposals that inevitably require difficult tradeoffs among the constitutional interests in individual autonomy, robust debate, and political equality. Reformers can reduce the tension between these interests by exempting from new regulation speech-enabling expenditures required for basic acts of expression and focusing instead on reducing the political inequality produced by unequal ability to expend money on buying an audience.

## I. PAST ATTEMPTS TO BALANCE CONSTITUTIONAL INTERESTS IN CAMPAIGN FINANCE DECISIONS

From the moment the Supreme Court struck down campaign expenditure limits in *Buckley v. Valeo*<sup>3</sup> to today, judicial opinions and academic scholarship have criticized *Buckley* for equating money with speech.<sup>4</sup> This critique has not persuaded a majority of the Court, which in several recent decisions has continued to apply strict scrutiny to campaign finance regulations on First Amendment grounds.<sup>5</sup> Indeed, few reformers would defend the proposition that political expenditures and First Amendment rights are totally unrelated. Unless reformers are willing to defend the constitutionality of a law limiting a

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2. See *infra* Part II.

3. 424 U.S. 1 (1976).

4. E.g., *Shrink Mo. Gov’t PAC*, 528 U.S. at 398 (Stevens, J., concurring); J. Skelly Wright, *Politics and the Constitution: Is Money Speech?*, 85 YALE L.J. 1001 (1976).

5. *Davis v. FEC*, 128 S. Ct. 2759 (2008); *FEC v. Wis. Right to Life, Inc. (WRTL)*, 127 S. Ct. 2652 (2007); *Randall v. Sorrell*, 548 U.S. 230, 248 (2006).

campaign's total expenditures to a single dollar, they must come up with a principled basis for distinguishing expenditures that deserve First Amendment protections from those that do not.

In the absence of such a principle for distinguishing between expenditures that should be treated as property and expenditures that should be treated as speech, the Court has created odd compromises among the “competing constitutionally protected interests”<sup>6</sup> of free speech, equality, and democracy. After *Buckley* held that contribution limits burden constitutional interests less severely than total expenditure limits, the Supreme Court has tended to focus on the form and level of regulation instead of the nature of the expenditures that would be regulated. The Court inquires into whether expenditures are made in coordination with campaigns or independently<sup>7</sup> and whether contribution limits are high enough for “effective campaigning” or are “too low and too strict.”<sup>8</sup> These distinctions seem artificial because the questions of who contributes or spends money and in what amounts seem tangential to the question of whether the spending impinges on fundamental rights or democratic values.<sup>9</sup>

The Supreme Court's most recent major campaign finance cases, *Randall v. Sorrell*,<sup>10</sup> *FEC v. Wisconsin Right to Life, Inc. (WRTL)*,<sup>11</sup> and *FEC v. Davis*,<sup>12</sup> demonstrate that these artificial distinctions are unstable and are beginning to erode. Prior to these cases, the Supreme Court had never found any contribution limits to be “too low”; it had rejected a facial challenge to the Bipartisan Campaign Reform Act's (BCRA) limitation on “electioneering communications” by independent groups; and it had given Congress significant latitude to offer incentives for candidates to accept public funding.<sup>13</sup> In *Randall*, however, the plurality struck down Vermont's contribution limits for placing too heavy a burden on society's interest in competitive and adequately funded elections.<sup>14</sup> In *WRTL*, the Court held that independently

6. *Shrink Mo. Gov't PAC*, 528 U.S. at 402 (Breyer, J., concurring).

7. See *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 615-16 (1996).

8. *Randall*, 548 U.S. at 248.

9. See, e.g., *Shrink Mo. Gov't PAC*, 528 U.S. at 414-18 (Thomas, J., dissenting).

10. 548 U.S. at 248.

11. 127 S. Ct. 2652 (2007).

12. 128 S. Ct. 2759 (2008).

13. *McConnell v. FEC*, 540 U.S. 93, 190-94 (2003).

14. 548 U.S. at 261 (“[T]he Act burdens First Amendment interests by threatening to inhibit effective advocacy by those who seek election, particularly challengers; its contribution

run political advertisements that were not the “functional equivalent of express advocacy”—a category it defined narrowly—were exempt from BCRA’s limitations.<sup>15</sup> In *Davis*, the Court struck down the “Millionaire’s Amendment,” which raised contribution limits for opponents of self-financing candidates, holding that the law would “impermissibly burden” the self-financing candidate’s First Amendment rights.<sup>16</sup> While the Court has not yet accepted Justice Thomas’s libertarian view of the First Amendment in campaign finance,<sup>17</sup> these cases have significantly narrowed the possibilities for meaningful campaign finance regulation.<sup>18</sup> In the wake of these decisions, campaign finance reformers must identify a new method for distinguishing between protected expenditures and expenditures that can be regulated. Without such a method, unregulated expenditures by independent groups could quickly overtake regulated spending by candidates,<sup>19</sup> even if the public financing system is significantly improved.

## II. RECONCILING POLITICAL EQUALITY AND THE FIRST AMENDMENT

The debate over campaign finance regulation often centers on two important constitutional disputes. First, campaign finance reforms are often justified as necessary to enhance political equality,<sup>20</sup> which despite the absence

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limits mute the voice of political parties; they hamper participation in campaigns through volunteer activities . . .”).

15. 127 S. Ct. at 2667 (applying the category “only if the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate”).
16. 128 S. Ct. at 2771.
17. *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 418 (2000) (Thomas, J., dissenting) (arguing that contribution limits are, like expenditure limits, objectionable because, “[b]y depriving donors of their right to speak through the candidate . . . [they] relegate donors’ points of view to less effective modes of communication”).
18. Eliza Newlin Carney, *Campaign Finance Laws Under Siege: In a Series of Recent Cases, The Roberts Court Has Favored Deregulation*, NATIONALJOURNAL.COM, July 28, 2008, [http://www.nationaljournal.com/njonline/rg\\_20080728\\_5842.php](http://www.nationaljournal.com/njonline/rg_20080728_5842.php).
19. See *WRTL*, 127 S. Ct. at 2667 (holding that such expenditures cannot be limited if they stop short of the “functional equivalent of express advocacy”).
20. See, e.g., BRUCE ACKERMAN & IAN AYRES, *VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE* 13 (2002); Richard L. Hasen, *Clipping Coupons for Democracy: An Egalitarian/Public Choice Defense of Campaign Finance Vouchers*, 84 CAL. L. REV. 1, 6 (1996) (advocating “egalitarian pluralism” in which “each person has roughly equal political capital regardless of preexisting disparities in wealth, education, celebrity, ability, or other attributes”); Frank Pasquale, *Reclaiming Egalitarianism in the Political Theory of Campaign Finance Reform*, 2008 U. ILL. L. REV. 599, 600, 642-57; David A. Strauss, *Corruption, Equality*

of explicit constitutional language, the Supreme Court has acknowledged as a “fundamental principle of representative government in this country.”<sup>21</sup> Proponents of reform argue that because one purpose of politics is to contest how much economic equality we will tolerate in our society, existing economic inequalities cannot play too great a role in politics.<sup>22</sup> Allowing individuals who have more resources to pay their fellow citizens for the opportunity to persuade them gives these individuals just such an advantage.

Second, reformers generally acknowledge that political equality is in tension with a view of the First Amendment that requires completely unfettered political expenditures,<sup>23</sup> but dispute whether that is the proper interpretation of the First Amendment. They advance a collectivist, listener-focused conception of the First Amendment advocated by Alexander Meiklejohn.<sup>24</sup> This collectivist conception finds the First Amendment’s purpose not in “individual self-actualization, but rather the preservation of democracy . . . as a means or instrument of collective self-determination” that “allows people to vote intelligently and freely, aware of all the options and in possession of all the relevant information.”<sup>25</sup> This view contrasts markedly with a conception of the First Amendment that focuses on individual autonomy and emphasizes the role speaking plays in providing democratic legitimacy by giving citizens a feeling of “authorship” in collective decisionmaking and the

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*and Campaign Finance Reform*, 94 COLUM. L. REV. 1369, 1369-70, 1382-83 (1994); Cass Sunstein, *Political Equality and Unintended Consequences*, 94 COLUM. L. REV. 1390, 1392 (1994).

21. *Reynolds v. Sims*, 377 U.S. 533, 560-61 (1964).
22. See ACKERMAN & AYRES, *supra* note 20, at 13 (“If the deliberations of democratic citizens are crucial in the legitimation of market inequality, we cannot allow market inequalities to have an overwhelming impact on these deliberations.”); Edward B. Foley, *Equal-Dollars-Per-Voter: A Constitutional Principle of Campaign Finance*, 94 COLUM. L. REV. 1204, 1204 (1994) (arguing that “permitting wealthy citizens to use their wealth in electoral politics biases the electoral process in favor of their political objectives” and contradicts the premise “that the electoral process should not be affected by whatever distribution of wealth exists in society at election time”).
23. For a defense of such a view, see BRADLEY A. SMITH, *UNFREE SPEECH: THE FOLLY OF CAMPAIGN FINANCE REFORM* (2001).
24. Meiklejohn argues that the First Amendment protects speech not for the benefit of speakers, but to ensure listeners’ access to information and argument so that they can engage in the “voting of wise decisions.” ALEXANDER MEIKLEJOHN, *FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT* 25 (1948).
25. Owen M. Fiss, *Free Speech and Social Structure*, 71 IOWA L. REV. 1405, 1409-10 (1986).

“warranted conviction that they are engaged in the process of determining their own fate.”<sup>26</sup>

This Comment does not attempt to resolve either of these theoretical disputes among competing constitutional priorities. Instead, it advocates an approach that acknowledges the importance of each. Regulating expenditures that buy an audience while exempting speech-enabling expenditures would allow reformers to promote political equality while maintaining open access to information and minimizing encroachments on individuals’ autonomy and feeling of authorship in collective decisionmaking.

To understand why, it will be helpful to investigate how this theoretical dispute plays out in the Supreme Court’s campaign finance jurisprudence. Beginning with *Buckley’s* famous rejection of equality as adequate grounds for campaign finance regulation,<sup>27</sup> the Court has viewed political expenditures as a means for disseminating ideas and ensuring “unfettered” discourse, stating that the First Amendment “was designed to secure the widest possible dissemination of information from diverse and antagonistic sources” and “to assure unfettered interchange of ideas.”<sup>28</sup> The Court did not address, and perhaps did not imagine, the possibility that campaign finance regulations could be designed to allow unlimited “dissemination” and “interchange” of ideas to those interested in hearing them, while equalizing only expenditures that buy an audience of less interested listeners as well. More recently, in *Randall v. Sorrell*, opponents of campaign finance limits demonstrated an understanding that their claims are strongest when applied to expenditures required to enable acts of speech or association. They focused their arguments—with much success—on exactly such uses of money, arguing that

Vermont’s expenditure limits are an unprecedented, direct restraint on candidate speech. Once these low expenditure limits are exhausted, a candidate may not drive to the village green to address a rally, may not return the phone call from a reporter at the local newspaper, and may not call a neighbor to urge her to get out to vote. This Court has never

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26. Robert Post, *Equality and Autonomy in First Amendment Jurisprudence*, 95 MICH. L. REV. 1517, 1523-24 (1997) (reviewing OWEN FISS, *LIBERALISM DIVIDED: FREEDOM OF SPEECH AND THE MANY USES OF STATE POWER* (1996)); see Robert Post, *Meiklejohn’s Mistake: Individual Autonomy and the Reform of Public Discourse*, 64 U. COLO. L. REV. 1109, 1111-13 (1993).

27. *Buckley v. Valeo*, 424 U.S. 1, 48-49 (1976) (stating that the First Amendment prevents government from restricting “the speech of some elements of our society in order to enhance the relative voice of others”).

28. *Id.* at 49 (citations omitted).

allowed the government to prohibit candidates from communicating this sort of relevant information during a campaign.<sup>29</sup>

The plaintiffs convinced the Court to strike down limits on how much campaigns can spend—on advertising, administrative costs, or other large expenses—by focusing on the much tinier expenditures citizens must make to be able to participate politically, such as payments for a phone call, a postage stamp, or the fuel to attend a rally. Money does indeed fuel citizens' efforts to participate in politics in all of the small ways that reform opponents cited. But regulations need not limit that participation in order to address advertising expenditures, which continue to comprise a large proportion of campaign spending<sup>30</sup> and contribute significantly to political inequality.

Campaign finance reformers should find a way to accommodate the Court's hostility to regulations that limit the core political acts of speaking, listening, or associating,<sup>31</sup> while honing in on advertisement expenditures, which indirectly implicate First Amendment interests but are not necessary for the speech to exist. By exempting expenditures needed to effectuate First Amendment activity—staff, polling, or other media production costs, for example—reformers will take the most difficult conflicts, in which guaranteeing political equality arguably would infringe on core First Amendment activities, off the table. Campaign regulations that instead exclusively target paid advertising would ameliorate First Amendment concerns and enhance citizens' opportunities to participate meaningfully and equally in politics in a manner that more appropriately balances constitutional interests. Perhaps such compromise would also make the reforms more likely to survive Supreme Court review.

### III. BUYING AN AUDIENCE

The practice of buying an audience is not an invention rooted solely in the modern media age. As long as people have provided food or other free gifts at

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29. Transcript of Oral Argument at 5, *Randall v. Sorrell*, 548 U.S. 320 (2006) (No. 04-1528).

30. OpenSecrets.org Center for Responsive Politics, Presidential Expenditures, <http://www.opensecrets.org/preso8/expenditures.php?cycle=2008> (last visited Oct. 17, 2008) (calculating media expenditures at more than one-third of total expenditures in the 2008 presidential campaign cycle).

31. See Robert Post, *Reconciling Theory and Doctrine in First Amendment Jurisprudence*, 88 CAL. L. REV. 2353, 2373 (2000) (arguing that courts give priority to the speaker-focused, participatory theory of democracy and therefore “will not implement the doctrinal implications of other theories when they are inconsistent with the participatory approach”).

events (from political meetings to promotions of time-share condominiums), they have been offering extrinsic incentives for others to listen to their speech. The evolution of the Internet and other technologies, however, have dramatically reduced the cost of creating messages in various media and distributing the message to nearly everyone who might wish to receive it. Once someone signs up for an organization's e-mail list or regularly reads its website, the marginal cost of reaching that person is small or nonexistent. Although there is not yet a public access television channel for every candidate or interest group to broadcast its message for free, there is YouTube.<sup>32</sup>

Barring individuals from making the relatively modest expenditures necessary to create a message and make it accessible to others on YouTube, a public access channel, or their own website would certainly infringe core First Amendment interests. On the other hand, when speakers choose to pay to place their message as an advertisement on other websites, where people will view it as a byproduct of their interest in those websites' other content, that additional expenditure provides an incentive external to the value the audience believes the message itself holds.<sup>33</sup> Such an additional expenditure is not a necessary predicate of the speech. For that reason, legislators should be given leeway to strike a different balance when regulating paid advertising.

#### IV. BUYING AN AUDIENCE VIOLATES DEMOCRATIC PRINCIPLES

Elected leaders are, at least in some ways, agents of voters. As a result, these leaders' decisions to sell access to those seeking to influence them violate their proper role and betray the public trust. This principal-agent problem may appear to be inapplicable to voters, who presumably can represent their own interests when deciding what incentives to accept, which messages to listen to, and how to vote. If decisions are compromised because voters accept bribes to

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32. Technological innovation has a dramatic potential to enhance the ability of individuals or organizations with minimal resources to create and disseminate speech. No matter how great the proliferation of blogs, video-sharing websites, and other forms of media, however, any inequality in the ability of speakers to buy an audience that persists will continue to affect political discourse, both on the Internet and in traditional media.
  33. It is not always possible to distinguish perfectly whether a particular expenditure is "speech-enabling" or "buys an audience." Hiring a talented actor for one's commercial may increase the message's effectiveness because the actor explains the idea more clearly or because viewers are less likely to change the channel as they believe the actor will make the commercial entertaining, even if they doubt they will find the message worthwhile. Legislatures need not define the exact contours of the grey areas to pass regulations that target areas clearly outside of it, particularly those aimed at the price of placing an advertisement after it is created.

hear particular messages that might bias their decisions, a libertarian might argue, then we should allow voters to decide whether the value of the bribe is great enough to offset the effects of that bias.

This libertarian argument should be rejected because a vote is not solely an instrument for serving a voter's own interests. Our laws against vote buying demonstrate that the right to vote is not a license to do with one's vote whatever one might choose.<sup>34</sup> Voters should not be allowed to abrogate their duty to help determine what is best for the populace, even if they would like to do so in exchange for some private benefit. As Pamela Karlan explains,

[T]he right to vote is not given to an individual solely for his or her own benefit. And if voting is in part a delegation of power from the community, as well as a mechanism for delegating popular sovereignty to public officials, then prohibiting voters from selling their votes resembles prohibiting officials from selling their offices. Voters also occupy a position of public trust, and their votes are thus not simply *theirs* to sell.<sup>35</sup>

If voters serve as agents for one another, then allowing others to buy access to them is just as problematic as allowing them to buy access to legislators.

Reform skeptics, such as Kathleen M. Sullivan, question whether “political finance sufficiently resembles voting as to be regulable by the equality norms that govern voting” or if, as the *Buckley* Court analogized, “political finance more resembles political speech than voting.”<sup>36</sup> In support of the second view, Sullivan argues that “speakers generally have equal rights to be free of government censorship, but not to command the attention of other listeners. . . . [L]egislative restrictions on political speech may not be predicated on the ground that the political speaker will have too great a communicative impact.”<sup>37</sup> It is certainly true that speakers do not have equal rights to “command the attention of listeners,” if that phrase implies that listeners must give all speakers or all ideas equal attention, regardless of merit. Speakers should, however, have equally limited ability to purchase the

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34. See Richard L. Hasen, *Vote Buying*, 88 CAL. L. REV. 1323, 1325 (2000).

35. Pamela S. Karlan, *Not by Money but by Virtue Won? Vote Trafficking and the Voting Rights System*, 80 VA. L. REV. 1455, 1466 (1994).

36. Kathleen M. Sullivan, *Political Money and Freedom of Speech*, 30 U.C. DAVIS L. REV. 663, 672 (1997).

37. *Id.* at 673.

attention of listeners when those listeners do not believe a speaker's message itself is worthy of their attention.

Given this understanding of the role of voters, political advertising is different from typical advertising for consumer products, which is more loosely regulated, in one key respect. Advertisements for consumer products may lead individuals to make poor consumer choices, but we permit them to make their own decisions in this context. When individuals consume media with political advertising, however, they receive all of the benefits, but few of the costs. If the "bribe" of free content causes them to consume messages that are less reliable, relevant, or unbiased than they otherwise would, the resulting harm to their decision-making abilities is a public harm that spreads beyond their own personal welfare. Unregulated political advertising, therefore, provides individuals with disproportionate incentives to listen and respond politically to those who have succeeded in the economic marketplace, irrespective of whether they would otherwise find it worthwhile to give their arguments a hearing. If the negative externalities of a polluting industry justify governmental intervention, so too do the effects of allowing potential voters to sell their attention to the speakers who can pay the largest bribe.

In comparison to expenditures that enable speech, expenditures that buy an audience should be regulated more stringently. There is widespread concern over the problematic practice of using campaign donations or gifts to "buy access" to elected leaders.<sup>38</sup> If those advocating one side of an issue have greater access to public officials, as those who make larger contributions generally do,<sup>39</sup> this additional access increases their potential to influence legislative outcomes.<sup>40</sup> While legal regulations already partially restrict those who might

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38. See, e.g., Timothy K. Kuhner, *The Separation of Business and State*, 95 CAL. L. REV. 2353, 2362 (2007); Gajan Retnasaba, *Do Campaign Contributions and Lobbying Corrupt? Evidence from Public Finance*, 2 J.L. ECON. & POL'Y 145, 161 (2006) (arguing that "charging for access is in itself a form of corruption," because "[s]electively awarding or denying access to the ear of government on the basis of payments is surely a misuse of public office for private gain"); see also Honest Leadership and Open Government Act of 2007, Pub. L. No. 110-81, 121 Stat. 735 (strengthening the federal bans on gifts, meals, and travel financed by lobbyists in response to the concerns heightened by various lobbyist-related scandals).
39. Laura I. Langbein, *Money and Access: Some Empirical Evidence*, 48 J. POL. 1052 (1986) (finding that congressional representatives tended to spend more time with larger campaign contributors, holding other statistical variables constant).
40. Empirical studies have shown that there is some evidence that contributions affect legislative outcomes. See, e.g., Richard L. Hall, *Equalizing Expenditures in Congressional Campaigns: A Proposal*, 6 ELECTION L.J. 145, 160 (2007) ("[A] little access can go a long way, depending on the group's lobbying strategy. Access often gives a group or individual or industry the opportunity to subsidize the legislative effort of busy members on issues where member and group have coincident interests."); Thomas Stratmann, *Some Talk: Money in Politics. A*

wish to buy access to legislators, less attention has been devoted to the same dynamic as it pertains to those who buy an audience with voters. If elected leaders should get information from those they believe to be best informed or most representative, rather than listening to those who pay them (or their campaigns) the most, potential voters who elect those leaders should be seen as having the same obligation.

Not all Americans will voluntarily tune in to C-SPAN. Providing incentives to listen to political speech performs an important public function by encouraging citizens who otherwise would tune out political debate to acquire at least some knowledge relevant to their role as potential voters as a byproduct of consuming other media content. The method for determining which messages to subsidize and to what extent, however, must reflect our society's bedrock principle of political equality. An approach to political expenditures that allows those who control more resources to have more influence over the extent to which various messages are subsidized violates this principle. Instead, government structures should be established to supply these incentives, but on a more equal basis, as befits a democracy in which all citizens are presumed to be equally important.

## CONCLUSION

Alexander Meiklejohn famously argued that the First Amendment's central purpose was to ensure not that "everyone shall speak, but that everything worth saying shall be said."<sup>41</sup> This Comment has advocated a different ideal: everyone shall be able to speak and to listen to speech they find worthwhile, but everyone shall also have a more equal ability to pay to be heard. Limiting citizens' ability to provide one another with incentives to hear political speech does not violate the First Amendment or compromise individual autonomy as long as citizens can decide what they will say and which speech they would like to hear. Allowing citizens to direct some form of public subsidy to certain

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*(Partial) Review of the Literature*, 124 PUB. CHOICE 135, 144, 146 (2005). Even the judgment of medical experts, whose level of relevant education certainly exceeds that of the average voter, can be affected by such techniques. See Michael G. Ziegler, Pauline Lew & Brian C. Singer, *The Accuracy of Drug Information from Pharmaceutical Sales Representatives*, 273 JAMA 1296 (1995) (documenting that physicians are influenced by pharmaceutical company seminars that promote particular medications, despite previous knowledge and opportunities to obtain sponsor-free medical information).

41. MEIKLEJOHN, *supra* note 24, at 25.

ideas,<sup>42</sup> in order to provide incentives to other citizens to hear ideas that they might not have considered and that their fellow citizens think are important, would also further democratic and egalitarian interests. This need for some method of government subsidization, however, does not require that everyone be free to put all of their money to any political use they desire. Instead, when money is used to provide an incentive to attend to a particular political message, rather than as the necessary means for creating a message or making it accessible, the expenditure should be subject to regulation in the interest of political equality.

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42. See, e.g., ACKERMAN & AYRES, *supra* note 20 (advancing the “Patriot Dollars” proposal); Hasen, *supra* note 20, at 6.

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