

## ***The Enduring Legacy of Buckley v. Valeo***

January 30, 2026, marked the 50th anniversary of the Supreme Court's landmark decision in *Buckley v. Valeo*. To commemorate the anniversary, the Institute for Free Speech convened a virtual panel to reflect on the history of the case and its enduring legacy. Moderated by Kim Strassel of the Wall Street Journal, the panel discussion featured the insights of Bradley A. Smith, Joel Gora, and Eugene Volokh.

*(Note: The transcript was automatically generated. Please excuse any typos or transcription inaccuracies.)*

**Kim Strassel:** In a year of some important birthdays for the US, here's another one. Fifty years ago this month—on January 30th, 1976 to be precise—the Supreme Court issued a seminal decision, *Buckley v. Valeo*.

It ranks as one of the most important free speech decisions in the history of the country. Arguably much more than the one that gets all the attention when we talk, in particular, about campaign finance issues: *Citizens United*.

*Buckley* paved the way, even as it struck a critical blow for political free speech, which makes it particularly worthy of some meditation and honor. And that is my welcome to this very special panel discussion, which is presented by the [Institute for Free Speech](#) to help commemorate the 50th Buckley anniversary.

This discussion is, in fact, part of a broader anniversary project that includes an [essay series](#) the institute is publishing in partnership with the [Volokh Conspiracy](#), which provides a perfect opening to introduce the participants.

I'm Kim Strassel, a member of the Editorial Board of the *Wall Street Journal*, and joining me here are the real experts.

We have Brad Smith, the founder and chairman of the Institute for Free Speech, the former chairman of the Federal Election Commission. He's one of the nation's foremost experts on campaign finance, law, and political speech.

Joel Gora is a professor of law at Brooklyn Law School and a former attorney for the American Civil Liberties Union. While at the ACLU, Joel argued *Buckley v. Valeo* before the Supreme Court.

Eugene Volokh is a legal scholar who is the Thomas M. Seible Senior Fellow at the Hoover Institution at Stanford University and the co-founder of the very popular legal blog which I read all the time, the Volokh Conspiracy.

So, let's just start here, and welcome to all of you. Thank you so much for being here. Let's lay some groundwork and explain why we're doing this, why this decision and this anniversary are so relevant. Brad, you recently wrote a piece for the Wall Street Journal with a pretty striking headline. It certainly made me stop and want to read it. It said the 1976 Supreme Court decision that saved democracy. That's a pretty big claim. Explain that to everyone.

**Bradley Smith:** Yeah. So, as you pointed out, nowadays everybody focuses on *Citizens United*. But I

think people who are in the know, who study this area, whether they're practitioners or lawyers or scholars, know that, really, *Citizens United* to a very substantial extent is simply following the principles of *Buckley v. Valeo*.

And, for 30 years before *Citizens United*, it was *Buckley v. Valeo* that was the whipping boy of campaign finance reform movement. And even now, knowledgeable people in that movement are pretty frank about saying that overruling *Citizens United* won't accomplish what we really want. We really have to overrule *Buckley*.

So, what is it that that *Buckley* did that leaves me to make such a bold claim? *Buckley* did address the 1974 amendments to the Federal Election Campaign Act, and it had a couple of key points. It's a very it's a massive decision. It's well over 200 pages in the US reporters. It's one of the longest ever. It's an important and administrative law case, which people often overlook.

But, just focusing on the core campaign finance holdings. If we were to just cut it down to its bare essentials, it said Congress can limit contributions directly to candidates and parties and political committees that are made for the purpose of electing people to office in order to prevent corruption or its appearance.

But, at the same time, the Supreme Court struck down limitations on expenditures. what people could spend, either what candidates could spend or what groups and individuals could spend separately, independently from the candidates. And, to me it's this latter holding that is really the heart and soul of *Buckley* and what leads me to make that strong statement in the *Journal*. If you think about what the law did, the law limited candidates to spending no more than—well, it had different limits for US Senate and for president so on. But, to give you an idea, for a US House seat, it was \$70,000.

Now, at the time, that was not nearly enough to campaign for an open seat or for a challenger to unseat an incumbent. Even if we had adjusted it for inflation, today it would be about \$400,000. Still not nearly enough. But, you know, because people think that's a lot of money, but remember, we're talking about communicating to congressional districts now that have almost 800,000 people in them, right?

And, so, you've got this very low expenditure threshold that that congressmen or candidates for Congress would have had. Even more importantly was the provisions on independent spending. The law said that you could not spend over \$1,000 "relative to" a candidate, and this would apply to any group.

So, example, for example, the National Rifle Association, Planned Parenthood, the NAACP, the ACLU, just any of these groups, \$1,000. And remember, none of these limits were adjusted for inflation. We could say "maybe Congress would have adjusted them." So, I emphasize they were totally inadequate even at the time.

But what's even more important is they weren't adjusted for inflation in the law. Many of the portions of that law that survived *Buckley* 50 years later have never been adjusted for inflation. Congress and the reformers have no interest in doing that. So, you would have had a \$1,000 limit on what these groups or individuals could spend.

Now, think about that. that doesn't buy you probably I would guess a three-inch single column ad

in the *New York Times* today in the *Sunday Times*. I know that it buys you basically about one 30-second spot on *Wheel of Fortune* in a midsize market like Flint or like Richard Nixon's legendary Peoria where everybody wants to go.

And so essentially what they were doing was cutting out of political debate in the United States. Unions, trade associations, advocacy groups like the Sierra Club or the Chamber of Commerce. All of these groups would have been barred from talking about anything quote "relative to a candidate."

So, it's not even just advocating their election or defeat, but what you could say about things. And all of, therefore, the political debate would have been funneled through the mainstream media, which was exempt, remember, from the law—as if the mainstream media would never have a partisan agenda or anything like that that they might pursue. It's just inconceivable!

And the end result, therefore, as I say, would have been a political system that would really been a non-political system. That the American people in the groups and organizations they belong to as individuals would have been told, you sit there on the sidelines. You let these candidates talk with the little bit of money we give them. And then you listen to what these handful of people in the press report, and that's your democracy. And then you do get to go vote, but you're totally restricted.

If they don't talk about what you want to talk about, tough cookies. You know, you can't force that issue to the agenda. If you think a viewpoint's not being represented, you're out of luck. If you think the media is slanted one way or the other, doesn't matter. You can't really say anything.

And so that's why I make that bold claim. To me, that would not be a democracy at all. And that's why I say that *Buckley* really, through its ruling on expenditures that you could not prevent people from spending their own money to talk about the political candidates and issue they cared about, really saved American democracy.

**Kim Strassel:** Yeah. I mean, it's a terrifying thought, the world you described there, of what it would look like. I mean, just to clarify, too, would you say that this was the first decision the Supreme Court ever made that really recognized that money is a fundamental aspect of speech?

**Bradley Smith:** In any clear way. I mean, the Court had touched on it in certain other cases, both campaign finance and some others, without ever really specifically addressing it. And it's worth to just to elaborate for a second, and maybe Gene or Joel will want to add more, but just the point you know a lot of people their initial reaction, I think it's very normal, which is money is not speech—money is money, speech is speech. But we know that if you limit money being spent to facilitate a constitutional right, you infringe on that constitutional right.

So, if we said "sure, you're entitled to a lawyer, but you're not allowed to pay one," that would be a problem. If we said, you know, "you can practice your religion, but you can't spend any money to build or maintain churches, to buy hymnals, to pay pastors," we would all recognize that that infringed on the right to practice religion. And you could go through almost any of our rights under the Constitution and think about it in those terms. And I think the Court recognized that, that the right to free speech—again, you talk just a basic congressional district, 800,000 people—you know, if you're going to have that right have any meaning, you have to be able to communicate to a large group. And that does require some expenditure of money.

**Kim Strassel:** Joel, I want to ask you, it isn't always the case that in a panel like this, you get an actual man who was on the scene, but you were actually that man on the scene. You argued this in front of the Supreme Court. Can you lay out for us some background on how this case evolved, how we got to the point where we had this challenge, but then also the case itself, its path to the Supreme Court, because my understanding that a lot of lower court judges were pretty hostile to some of the challengers here. It wasn't necessarily clear we'd get this result.

**Joel Gora:** Right. Well, thank you. First of all, I've been privileged to work on First Amendment issues since I was a summer law intern for the ACLU a long time ago. And, so, for me, it is such an honor to be on a panel with such First Amendment giants as Gene and Brad and such a wonderful journalist exercising another part of the First Amendment panoply of rights as you. So, I really am so proud to be here.

I think, let me spend a moment on an origin story, because a lot of people ask me, the ACLU, it's a liberal group. Why were you challenging all these campaign finance reforms? Well, here's the answer. Four years before *Buckley*, Congress passed the Federal Election Campaign Act, the original one of 1971, and its approach was trying to deal with the fact that the '68 presidential election had a lot of television ads.

And you may remember there was a journalist who wrote a book called *The Selling of the President*, and the theory was presidents were being sold on TV like cornflakes, and we had to do something about that, and we had to get more disclosure. So, those were the two focuses of that law. Number one, disclosure—if anybody had spent any money to influence the outcome of an election over a certain amount.

Number two—and this is hard to believe they thought this made sense—they came up with what I called a “Rube Goldberg device.” They were trying to limit not all expenditure but media expenditures. They were trying to get those ads off of television. So, what they said was, all candidates for federal office are subject to limits on how much they can spend on media advertising. Number one. Number two, anybody outside, any individual or group that wants to spend money supporting or opposing that candidate has to get permission from the opponent of that candidate that it wouldn't violate that opponent's spending limit to have money going out favoring the opponent and disfavoring the candidate.

**Kim Strassel:** That's crazy!

**Joel Gora:** It is crazy! So, you ran an ad that a small group of left-wingers from the Upper West Side of Manhattan put together some money. I think it was about \$40,000, and they ran a turgid, dense, technical legal two-page ad in May of 1972 when Nixon was running for reelection, attacking him, saying that he was a war criminal for bombing Cambodia, urging the impeachment of Richard Nixon and putting up an honor roll of those five members of Congress who had voted for impeachment.

You would have thought they would have gotten a medal for that. I mean, here they are, citizens using their own funds to speak out in an ad in a newspaper criticizing the government. Wow. Instead of getting a medal, they got a visit from the government.

The federal government said, “Maybe you haven't heard about this new Federal Election

Campaign Act.” But, number one, before you can run an ad like this again in the future, you have to file a report as a political committee. You have to disclose to everyone who gives you more than \$100 a year for funding. Things of that kind.

And, by the way, you have to get the permission of George McGovern, Nixon’s opponent, and some unnamed candidates running against the five members of Congress that your expenditure that helps them does not cause them to go over their media limit.

And, by the way, if you don’t do that, the *New York Times* cannot run your advertisement, cannot accept your advertisement. And, if they do, they may go to jail. Well, these people when the government showed up, they came to the ACLU and they said, “What’s going on here?” And we said, “What’s going on here? We can’t imagine such a law.” Because we really weren’t paying much attention. There were a lot of other issues in the early ‘70s. We weren’t paying much attention, to our dismay.

So, the along came the law. This group is sued by the government, the United States versus the National Committee for Impeachment. This is all in the summer of 1972, and the district court just proforma gave the government the injunction—told them they couldn’t speak, they couldn’t run ads, nothing.

Well, we were involved, and we took it to the Second Circuit, and I believe the *Times* filed a brief supporting us, but they didn’t in one of the other cases, and what we said was you can’t have this. It both violates the First Amendment, it violates associational privacy. You can’t have it.

And the Second Circuit said, you’re absolutely right. It makes no sense. And, by the way, issue groups like you should be free under the First Amendment to criticize politicians without being ensnared in all of the campaign finance laws that they had just enacted. And then we find we filed the ACLU’s own suit because we wanted to run an ad condemning Nixon and praising his congressional opponents.

And we took to the *Times*, and they said, “Sorry, you we can’t run it unless you go out and get all this approval. We know the Second Circuit said it’s okay, but that’s only one court and we can’t take a chance.” So, we filed suit. *ACLU v. Jennings*, fall of 1972, and we got a three-judge court in Washington, DC to say you’re absolutely right that this Rube Goldberg mechanism is a classic prior restraint. The government says you can’t speak unless you got a bunch of people’s permission and, number two, the disclosure requirements should not be applied against nonpartisan issue groups like the ACLU.

We said “great, oh, we won we don’t have to worry about it.” Well, later in the in the decade came Watergate. Watergate actually was happening while the litigation was happening but unrelated. Watergate comes along. It increases, and Nixon finally is driven from office in ‘74, and that lit the fuse under the people that have been trying to get campaign finance reform for decades to come up with a law that was just sweeping.

We called it “the mothership” because the original law was just about media advertising. It said you needed permission. This law basically said you couldn’t do it if it would cost more than \$1,000. This was really worse. All expenditures on politics were limited. Candidates, parties, independents, ACLU, etc. And, plus, more rigid disclosure, plus an extra disclosure provision to get issue groups like the ACLU that ran box scores. Plus public funding for the first time, but targeted only available

primarily to the two major parties. And, finally, to enforce all of this new systemic regulation of free speech and of democracy, a Federal Election Commission, the majority of whose members were picked by the House and Senate.

And I have to say, one of my one of my fantasies is somebody one day is going to say, “Hey, the incumbents who run for office are writing the rules for how they get to run for office and what their challengers have to do.” That’s just the worst conflict of interest. It would be like having the home team write all the rules and pick all the umps.

So, we joined ACLU and others joined a strange bedfellows coalition and it involved Senator Eugene McCarthy on the left and Senator James Buckley of New York on the right, and they were kind of the poster people for how they use access to contributions that were now illegal to spend money that was now illegal, on the one hand, to knock off a sitting president in ’68 because of the war in Vietnam.

In the case of Buckley, to be I think the first third party candidate to be elected to the Senate from New York, and they said we could not have done this anymore because of the draconian restrictions of this statute. So, you had terrible spending limits, and they also applied to the ACLU because, as Brad pointed out, “any person” included a group who spent more than \$1,000 in an entire year “relative to” a candidate could not spend any more.

So, it was a one-shot deal. You had your ad and that was it. Number two, the disclosure in the new law was worse. Plus, they put in an extra section to target the ACLU. Plus, as we said before, it was the fox guarding the chicken coop.

So, we put this coalition together and we wanted it to say, look, this is bipartisan. This is nonpartisan. This is people across the political spectrum who disagree on everything else except for the fact that this law is terrible. And we said it was a throwback to the alien and sedition laws of 1790, whatever they were.

And, so, we filed suit. It was all really quite exciting. You have to imagine I’d worked on a lot of First Amendment cases, Pentagon Papers case, stuff like that in the mid-70s, but this is heavy stuff. And a group was put together. Our counsel, our lead counsel was Professor Ralph Winter, who went on to become a great federal judge. Bryce Claget, who’s a huge partner at Coington Berling, and I don’t know whether this has come to your attention, a fellow named John Bolton. You might have heard of him more recently. He was one of the counsel.

And it and it was kind of like David and Goliath. We sort of felt we’re the true outsiders and the establishment has come together and basically tried to shut down political speech with respect to democracy, and we’re the only voices who can try. So we filed this suit, and we had six months.

Oh, Buckley put a provision in—this is all in the weeds—but ’74, post-Watergate, Nixon’s gone, let’s do it statute was called the FCA amendments of 1974. But as I said, that was the mothership. Those are all of the huge provisions that were so expansive and so restrictive. And, so, Buckley got a provision put in that any challenges to that law would have to be heard by an en banc federal court immediately. So, we filed suit. We had six months of discovery and all that stuff. And we had an argument in the en banc DC circuit in Washington.

Again, very impressive stuff. All the judges and all the attendants and politicians, everything really

exciting. We got into the argument, and we kind of felt, at the end of the day, it was like a three-hour argument that we were kind-of not being heard, that we really weren't getting a hearing that because most of the judges were kind of asking us very hard questions, more hard than they had to, only a few judges seemed to be concerned with the total restriction of free speech.

So, the case argued in June. In July, or whatever later that summer, I was on vacation in L.A., where I grew up with my family, and my mom says "there's a fellow on the phone named John Bolton who wants to talk to you." I said great. So, he said the decision came down from the circuit. I said, "Great. What did they say?" He said, "You won, and we lost." I said "What does that mean?" He said, "The only thing they struck down was the disclosure provision against the

ACLU and all the issue groups. Everything else, they swept the board and they won all of the other things."

The court upheld everything and basically deferred, deferred, deferred. So, at that point, we had to go to the Supreme Court, and we did, and we filed our papers in the Supreme Court. The Court certainly treated it as the kind of special case you talked about. It set aside the whole day for argument. I don't know how often the court has done that, but it's a rare thing to do.

And the courtroom was packed with Senator Ted Kennedy and all the famous politicians. It's really heavy stuff. And, so, we started the argument. Professor Winter argued against the limits. I argued against the excessive disclosure. Bryce Claget argued against both the commission and the public funding. And there were prominent people on the other side. Former Assistant Attorney General Archibald Cox represented the government on spending. A top government lawyer, Daniel Friedman, represented the government on disclosure. And Wilbert Cutler Pickering represented the law on campaign finance, and a professor named Ralph Spitzer, I believe, represented the government on the commission, and the argument went for the whole afternoon.

But when we took the break for lunch, and we were down in the cafeteria, we were almost giddy, because we said, "For the first time in this case, we feel like we're getting a fair hearing. We feel that the judges are just as interested in how the government can justify this as they are interested in how we should be striking at that." So, we came away from the day cautiously optimistic.

I don't want to monopolize our wonderful conversation here. So, I'm going to let somebody else want to talk about the decision. I've got some views on it myself, but I feel like I'm engaging in a filibuster.

**Kim Strassel:** No, can I just say, like I think a lot of people, they hear the words campaign finance and they think dry. That was the most colorful and animating description of a Supreme Court case. I wish I'd been there.

**Joel Gora:** I might say one other thing to monopolize the one of the kind of subtext for us ACLU types was again, how can the ACLU be challenging this reform law? And, so, we had to spend a lot of time convincing the people were sort of on our side. I'm not sure we did a very good job of it, but we were making the point that all the different people of whatever political persuasion were harmed and limited by this. And it was David and Goliath, and Goliath was the government, and it was laying out all the rules for the battle, and that's just wrong.

**Kim Strassel:** Well, I think that's a really important point to make that the nonpartisan, across-the-

aisle nature of this, because that was a coalition that held up for many decades, too. We've seen some splintering of it, I think, unfortunately, in more recent years, but it was very important to the cause of free speech the players that all got together and were involved there.

Eugene, let's talk a little bit about those holdings, the decision itself. Walk us through what some of the, in your mind, most important and major holdings were of that. But then also, this was not a perfect decision by any stretch. There have certainly been some real legal critiques of *Buckley*, too. So, talk about a few of those that have come about.

**Eugene Volokh:** Sure. So, it's a very long decision, and there are parts of it that have to do, for example, with the structure of the Federal Election Commission and limits on the legislative role in appointments of members of the commission. I'm going to set that aside. Let's just focus on the key points as a general matter.

*Buckley* said that independent expenditures are broadly protected by the First Amendment. Again, not because money is speech, but, as Brad pointed out, restricting the spending of money for speech is a restriction on speech, just like restricting the spending of money on a private education would interfere with parents' rights to privately educate their kids. Not because money is an education, but because money is necessary to get educated.

So, as a general matter, restrictions on candidates' spending of their own money is constitutionally protected. Restrictions on it are unconstitutional. Likewise, caps on total spending by a campaign are unconstitutional because those caps would necessarily diminish the amount of speech that the campaign can engage in. At the same time, it generally upheld contribution limits. It suggested that contribution limits, if they're too low, might be unconstitutional.

But a contribution limit of, at the time, \$1,000 is generally permissible, in part because contributions were seen—and this is actually one of the things that people quarrel with the decision about—as more likely to corrupt candidates and independent expenditures as less likely to corrupt candidates. So, because of this potential corruptive effect, contributions could be quite considerably limited.

The Court also generally upheld various kinds of disclosure limits, but that's all a more complicated matter, which I'm happy to leave to others talking about this more broadly in the rest of the conversation. As a theoretical matter, the Court recognized or decided several broad points. One is that there is a very important government interest in preventing corruption, and that can justify by interference with what would otherwise be potentially protected activity of contributing to a candidate to support.

But there is no adequate government interest here in just trying to equalize people's resources and equalize the amount of speech that is spent on, say, both sides of a campaign. So, that's the big picture. Now, I actually, as it happens, am somebody who is the very rare person who actually agrees with *Buckley* on both the expenditure and contribution side. Generally, lots of people think that *Buckley* got it wrong as independent expenditures, and it should have upheld not necessarily a thousand cap, but more broadly recognized the power to cap independent expenditures.

A considerable number of people think they got it wrong on contributions because both expenditures and contributions should be fully protected. I actually think this line is a sensible line, but because the other panelists are pretty broad supporters at least of a right to engage in

independent expenditures, I wanted to make sure I highlighted the other side's argument.

So, what I want to flag is a couple of important objections that people have made. One is that, in fact, limiting—or the argument is—that limiting the speech of some in order to maintain a kind of equality and debate is actually a sensible thing, and something that the government ought to be able to do within limits to be sure. Again, that's actually not my view, but I do think it's an important point that needs to be aired.

And one way of reflecting that is in many important decision-making processes in many important contexts, that's exactly what we do, right? In court, we try to be pretty scrupulous about making sure that both sides have time to speak and both sides have similar opportunities for the jury to listen to them.

Now, we don't cap the amount of money people spend for lawyers. So, that could be an argument in favor of similar protection for expenditures, but we do at least make sure that there is time and we don't allow one person because they have a very good lawyer to be able to speak for many hours, whereas the other person we're charging them by the by the minute to speak in court, and we only get to speak for 15 minutes.

We think that's not a good judicial process. Likewise, if we put on a debate, just as either private organizers or, say, a university puts on a debate on some subject, we'd probably expect them to invite people from both sides and give them equal time.

So, the argument would be that this is something that is important in order for the public to be able to make sensible decisions, just as it's important for a jury to hear amply and more or less equally from both sides, just as it is important for people listening to a debate who want to be informed to hear equally from both sides. Likewise, it's important for the public to be able to do that in this other very important decision-making context. So that's one version of the account.

There's another version which says, look, we're not going to get perfect equality in this respect. And maybe too much would be lost by trying to get perfect equality. Maybe it isn't fair to say to people, you can't buy a one-page ad in the newspaper. That's too much of a burden on your speech. And maybe also it means if you can't spend enough money, then people just won't hear enough about this.

But maybe there should be limits—not \$1,000. How about a million dollars? Maybe it isn't right in a democracy to have people who have millions or billions of dollars be able to spend all of this money in order to affect public debate when the other side may not be as well funded. So maybe we can't have perfect equality. Maybe we shouldn't even try to have perfect equality. But maybe we should be able to limit it, albeit with higher limits.

Although, of course, an interesting question is how a court is going to decide what's too much and what's too little—incidentally, something the court has had to do with regard to the caps on contributions.

A second concern has to do with bribery, but also with its flip side, which is essentially a form of extortion. So the worry is that indeed contributions and even independent expenditures are means for people to buy politicians. "Buy" is kind of a conclusory term, but let's say to buy access to politicians. Maybe it's the rare politician who will say, yes, I'll vote your way because you spent

all of this money. But it's also the rare politician who will say, I'm going to ignore the fact that you spent all this money to support me and the prospect that you might spend all this money to support me in the next election. I'm just going to completely ignore it when I'm making my decisions.

At the very least, presumably, the politician will take a phone call from a big donor, a big independent spender, where they wouldn't take a phone call from a random citizen. That's just human nature. I think there's little doubt that there's some degree of this kind of extra influence. And the question is, is it fair in a democracy?

We all agree that outright bribery—here's money if you vote my way—is something that should be criminalized. I think almost all on the call would agree about that. But is it really that different when somebody, again, by spending and having the prospect of the next election cycle spending a lot of money, gets access? As I think there is evidence that they do get extra access—to politicians or even at least to the politicians' staffers and others.

But the flip side against the extortion point is: imagine you're a businessman. Someone calls you up and says, would you donate money to this campaign? They don't have to say, and if you don't donate money, then the candidate will vote for some law that is bad for you. But there's always that worry, right? If you're someone who understands the way human nature operates, you know that if you say no, then if the candidate is elected, at least they'll be a little bit ill-disposed toward you.

Maybe not certain, maybe not for everyone, but there is this worry. Isn't it just safer when you get this call to say, "Sure, I'll write you the check"? And that's true particularly for contributions, but the same could be true with regard to independent expenditures.

If somebody says "we are independent of this candidate, but we're strong supporters of this candidate and we'd like to think you are too—can you donate \$10,000 to this?" And the candidate has every prospect of being elected. Again, the businessman might say, if I say no, am I certain that it won't get back to the candidate? No, I'm actually pretty confident that it will get back to the candidate.

I remember talking to somebody who was a federal employee and barred from contributing to political campaigns, that particular class of federal employee. And I asked, this isn't a joke or anything—aren't you upset about this limit on your First Amendment rights? And he said, "I'm delighted by this limit on my First Amendment rights because this way when all my buddies are running for office and call and ask me for money, I can say, 'Oh, I wish I could support you, but I can't. I'm not allowed to.'"

And this was something where this person, again, was kind of joking but not totally joking. He was talking just about social pressure. It's hard to say no to a friend who asks you for money for his political campaign. But I think the concern is even more serious when you have economic interests that will be in front of that person.

So those, I think, are very serious concerns. And on balance, I think that the decision in Buckley is perhaps the best way of dealing with these concerns and the free speech concerns that we can find. But it is quite imperfect in many ways—again, maybe because life is imperfect—and I just want to make sure that we aired these very serious concerns.

**Kim Strassel:** Well, I know I think that's very, very helpful because it helps explain some of the thought process that may have gone into those who came up with some of these restrictions in the first place, as faulty in my mind as they were, but what animates people.

Brad, just to sort of round this out before we go back and talk about a few more specifics of the *Buckley* decision. But how has the case or the decision overall helped to shape jurisprudence since then, and how did it lead to cases like *Citizens United*?

**Bradley Smith:** Well, that's a great question that I think we should address, but I do want to take a moment to address the objections that I think Gene has raised very straightforwardly. And I think those objections are right. And, by the way, I think I can probably speak for Joel here and for Eugene in saying that most of us on the pro-deregulatory side, if you will, would not belittle these kinds of concerns about money and politics.

Americans hate money and politics. It strikes them intuitively as contrary to the idea that we're all equal. The possibilities for corruption are there. So these are real concerns. We could go into great detail about the objections to the objections and point out that money doesn't always work the way people think.

But my simple, basic argument would be this: the First Amendment is there largely to keep government from making these kinds of decisions about who has spoken too much, who has spoken too little, and how much is just enough in the public arena of politics. And it's there precisely because we don't really trust government to do that fairly.

For one thing, they have a vested interest. As you pointed out earlier, members of Congress have a vested interest in how the FEC acts and what the rules are. We've seen that when limits are set on spending in races, they're almost always set at a level where incumbents have a clear advantage over challengers, because there's extensive political science evidence showing that challenger spending matters much more than incumbent spending.

Incumbents have free media, free attention, name recognition, and so on in advance. And if you boil it down to this, the argument that we can't allow government to do this is the Federal Election Campaign Act itself. As I say, we know what government will do if given this power. And how do we know that? Because they did that.

As Joel and I suggested, they put a \$1,000 limit on what anybody could spend, not even adjusted for inflation over the years. When the internet first emerged in the late 1990s and began to be used as a campaign device, reform groups argued vigorously—as did certain members of Congress—that those of us on the FEC (and I was on the FEC in the early 2000s) had to regulate this internet thing. We couldn't have people saying whatever they wanted and going off all over the place.

Remember, when *Buckley* was decided, you had three television networks and a handful of national newspapers and news magazines. They didn't want the broad discussion that could come through the internet or elsewhere.

So in other words, if you view the First Amendment as something that says we don't trust government—if we trusted government, we'd give them all this power—maybe it would make

things better, but we don't trust it. And if you want the reason why we shouldn't trust it, we can just look at what government has done when it was given that power before *Buckley* said, "No, you can't do some of these things."

So to get to the question of how *Buckley* shaped things going forward, it's had a number of jurisprudential effects. One of the key ones goes to something Gene noted earlier: a lot of people want restrictions as an egalitarian measure. And again, in my mind, what we don't want is government deciding who's spoken too much, who's spoken too little, and who needs to be heard more. I think that's wrong.

But it does strike Americans deeply, on first impression, that we should all be equal. And that argument was taken off the table by *Buckley*. So what we've had for many years is reformers trying to impose egalitarian rules, but doing so under the guise of corruption. As a result, the entire jurisprudence becomes a little bit strange.

One of the cases that *Citizens United* overruled was *Austin v. Michigan Chamber of Commerce*. That case really stood out from *Buckley*. I think even most people who don't like *Buckley* admit that *Austin* didn't really follow it, even though it claimed it did.

*Austin* claimed it did by saying, "Well, we're talking about a different kind of corruption—the corruption that comes when somebody has more money than someone else and therefore more access," as opposed to what *Buckley* was talking about, which was exchanges of legislative favors for campaign contributions.

So you had a strange jurisprudence that *Citizens United* essentially corrected by reinforcing the idea that *Austin* was wrong—that by corruption, we mean corruption: exchanges of votes. And while many people are interested in equality as a goal, that's not what the First Amendment allows.

As a practical matter, the Court's support for contribution limits—by the way, Gene has made a very good point over the years that has largely convinced me the Court got it right there, at least as a jurisprudential matter, if not necessarily as a policy matter—has produced another effect.

With contributions limited but expenditures unlimited, and contribution limits not keeping up with inflation (let alone the growth of political spending), candidates find it increasingly difficult to raise the money they need to campaign. They're unlimited in what they can spend, but limited in how they can raise it.

As one candidate famously said about running for president, it's like trying to fill a swimming pool with a teaspoon. You can only get small amounts of money from each donor. That takes up enormous amounts of candidate time, and then reform groups come in and say, "Isn't it terrible they spend all their time raising money?" without recognizing that this is a direct consequence of their own policies.

So *Citizens United* followed quite straightforwardly from *Buckley*: if people have a right to spend their money on speech, that right applies to corporations as well. Corporations are part of American political life. They're made up of people—shareholders, employees, officers, and directors.

And as Justice Scalia pointed out in his concurrence in *Citizens United*, many of the plaintiffs in *Buckley* were corporations. They were incorporated entities.

One final thought, slightly aside from your question: what's interesting about *Citizens United* is that we haven't seen for-profit corporations pouring vast sums into elections. Instead, the primary beneficiaries have been nonprofit groups—the Sierra Club and others—that previously were limited in what they could spend directly from their corporate treasuries. Even after *Buckley*, they could talk about issues related to candidates, but if they expressly advocated voting for or against a candidate, they were restricted.

For-profit corporations still account for a very small share of total political spending. Since *Buckley*, that figure has varied between about 1.5% and 6% of total spending in election cycles. So there are empirical realities that complicate the arguments about why *Buckley* supposedly got it wrong. Concerns about corporate dominance, for example, aren't always borne out. They're empirical questions.

**Kim Strassel:** I'm glad you gave those statistics. It's funny. I put me in the category—I'm probably like a category of very, very few people that, to the extent as we've talked about that money facilitates speech, and given that political speech is so vital to the health of our nation, I love seeing enormous spending figures in elections.

**Bradley Smith:** You know, nobody ever complains about their side spending. People who agree with Elon Musk tend not to be terribly upset by him spending a lot of money, or if they agree with George Soros, they think “yeah, he's definitely got the right to do that! What about Musk, by the way?”

But it's the guy on the other side that people really think is not good. And that just points out that, very often times, the people who are spending what we consider to be the big money actually are giving voice to many people who otherwise would not have it, who would not be able to spend a lot of money on their own and reach many people.

**Kim Strassel:** That's right. The pooling of resources is so important to getting ideas out. Since we're talking about some aspects of this holding and its legacy, and since you've been bringing up, Brad, this vital question about the thorny nature of government getting involved in the business of deciding who can say what and when and where and how—I'm going to throw this out there.

I don't know which one of you wants to take it up, but another critique of *Buckley* from some is that it upheld the provision on mandatory spending disclosure. Now, it trimmed it back a little bit by making this distinction between express advocacy versus issue advocacy, but one of its legacies is a lot of conversation in the ensuing years over the “magic words” tests and other things. Who wants to kind of talk about that aspect of the decision?

**Joel Gora:** Well, I think I'll volunteer because I was the guy who argued against the disclosure provisions in the Supreme Court, fresh from my victory on the disclosure provisions against the ACLU in the circuit court. I think the argument was a little bit . . . I had to walk a fine line, because we were not opposed to disclosure, period. We didn't take a sort of pure libertarian view that the government has no business in finding out any of this stuff.

What we said was the limits are terrible because they're direct restraints, but disclosure can be a

direct restraint, too. And, so, the disclosure laws are too deep and too wide. They're down to \$101. Nobody takes your phone call for a \$101 contribution, even in 1976. And they were so wide that all the minor parties and all of those independent groups who spent money to advocate all of them were treated as though they were General Motors, and the price for associational privacy was just too great to bear.

So, what we said was we think there is a place for what we now call smart disclosure—namely, large contributions to major party candidates—but, beyond that, there should be no disclosure or minimal disclosure. You can find out if some company's employees are giving a lot of money to a member of Congress candidate by asking how many donors from a certain company and how much the average amount is without saying who the names of those people are.

Now, back in the day when we were challenging all this discourse, I mean this was lifeblood to controversial cause organizations. I found myself looking back at two NAACP cases in the 50s and early 60s, cases where the southern states after the *Brown* decision on school integration, were basically trying to shut down the NAACP and keep it from implementing the *Brown* case. And, so, one thing was to say as they did in Alabama, "Oh, wait a second. You're a corporation, and you're a foreign corporation. You're from New York for God's sakes! So, in order to operate here, you have to give us a list of all your members and contributors and officers."

Now, will harm befall them? That's not our business. We're not hurting them. We're just requiring a list of a corporation. And, in that case, *NAACP v. Alabama* 1957, I think, Justice Harlan, sort of a conservative, although he was a great free speech guy on so many issues, Justice Harlan basically said the First Amendment not only protects free speech, it protects freedom of association.

And, in this modern world of 75 years ago, an individual voice is limited. And the way that people amplify their voices is by joining with like-minded others. And, so, therefore, freedom of speech includes the right to join with others to amplify your speech. That was so important.

And, number two, things which will restrict that. Now that we've called this freedom association speech, things that will restrict that, like getting your house attacked and things like that, because you gave 50 bucks to the NAACP, have to be limited unless the government has the most compelling reason for doing so. So, it was a corporate speech case and it was an associational privacy anti-disclosure case.

The other case was Virginia said the NAACP can't have lawyers on their staff because they're not a law firm, and corporations can't practice law. And the Supreme Court said, "Please, we understand what you're doing here." Corporations, that's fine. That's one thing. But they're using litigation to speak. That is speech. And, if you're going to interfere with your use of lawyers and the corporate staff because they're corporations, you, too, better have an extremely compelling reason.

So, again, the point of it is—and we in *Buckley*, we use the *NAACP v. Alabama* case as the cutting edge of our argument—that, just as you should not have to disclose if there was no purpose in the civil rights movement context, you should not have to disclose if there was no real purpose in the campaign finance context.

And, on that, we kind of got a split decision. As you pointed out, the Court limited that speech by independents, which could be subject to regulation, to express advocacy. It then said you can't ban it, but you can at least disclose it. But then the ACLU said "okay we're home free. We're not a

partisan organization. We don't urge the election defeat. We criticize them until the cows come home. But now we're protected by that."

And the other thing the Court did was to basically carve out what became called the "Socialist Workers Party exemption." If you were a really small controversial party, even though you might make a small difference on the election, but you could show harm from people being associated with you, you don't have to disclose. And they said it in *Buckley*, but there was nobody that fit that bill. But six years later, in one of the lawsuits that we spawned out of that, the Socialist Workers Party was given a constitutional exemption from campaign finance disclosure both of money coming in and expenditures.

So, the Court really took freedom from disclosure very seriously. So again, I call it a win and a loss. We lost the heart of it, namely contributions as small as \$101 to a candidate, whether major- or minor-party candidates. And the Court said that was indeed a low amount. That would be at least \$800 today.

They eventually raised the threshold to \$200, but that's still the equivalent of about \$25 in 1976. And the other thing is that, in the 1970s, all government documents were on yellow paper in manila folders in file cabinets. You know where they are today.

So I tell some of my students, if you want to have fun, dial up the Federal Election Commission, put in "employer: Brooklyn Law School," and you will see how many of your professors and others affiliated with the law school have contributed, how much, and to whom, if it's more than \$200 in a year. And it's kind of interesting to see how that plays out.

I think the low level of disclosure at the state level—many states, New York included, disclose at \$100—is a kind of political voyeurism that serves no good purpose. You can find out how many people from a company contribute, and in what amounts, without identifying those people.

I just think that's one of those things that, if I were king, I would knock out in a minute. I would have disclosure at a level that would get Senator Schumer to answer my call. I don't know exactly how much that is, but I know it when I see it—and it's not \$100.

So again, we got half a loaf. We saved the ACLU and all issue groups through express advocacy. We saved the Socialist Workers Party and other controversial parties through the Socialist Workers Party exemption. But we lost everyday disclosure, and I just think that's really bad.

**Bradley Smith:** I just want to emphasize what that means to like actual people. I mean, if you're a person going in for a job interview, the guy sitting opposite you, while you're sitting there talking to them, could look up your campaign disclosures real quickly and knock you out. Your neighbors can look it up in this day and age when we find a lot of political violence and threats, for very low contributors who, as Jill says, are not really influencing.

They're not the guys who are making politicians drop all their other business to pick up the phone. And I think some people need to realize that that's there and it's there now in today's society.

**Joel Gora:** I have to say, I'm reminded, if you go back to *Buckley v. Valeo*, the vote against limits was 7 to 1. And, if Justice Douglas hadn't been forced off the Court at exactly that time, it would

have been 8 to 1, because he was furious about all the limits. Apparently, he wrote drafts of opinions striking everything down. So, it would have been 8 to 1.

And the only person who supported limits on contributions and expenditures was Justice White, who had a deep political experience with President Kennedy's campaign and made some of the very good points that Eugene is making—that you have to limit expenditures so you limit the money chase of contributions and all that kind of stuff. But he was the only one.

Chief Justice Burger was the ACLU card-carrying member on that case. He wrote a dissent, which basically agreed with everything we said in the briefs. And what he said about disclosure was that the middle-level business executive who wants to support a Democratic candidate, or the labor union official who wants to support a Republican candidate, is not going to do it. If they give more than \$100, their name is going down on a list, and their adversaries at work and others are going to find that out.

And, in a society which has too often embraced cancel culture, as Brad points out, you're sitting there in an interview, the person is dialing your name and the FEC, and now they know what your politics are. I just can't believe we still tolerate that.

**Kim Strassel:** Yeah. I mean, that's all I was going to say is that for all I admire the courageous findings in *Buckley v. Valeo*, I think this is a provision that has aged the most poorly. It did not seem to expect the world that we live in now, where you can have instantaneous disclosure.

And as a reporter who has written deeply about the growing intimidation tactics that happen in politics continually, I've come to actually find *NAACP v. Alabama* one of my favorite cases. And I've actually been thrilled to see that the Court, after decades of somewhat ignoring the precedent of that case, has of late been taking disclosure more seriously—and the threats of disclosure.

**Joel Gora:** I'm sorry. I just want to say one other thing. I agree with everything you just said, and that *Americans for Prosperity* case you're referring to is such an important case on protecting disclosure. It troubles me—and Brad knows for sure—that a lot of the groups challenging disclosure laws have tried to get the Supreme Court's attention on the issues we're talking about. And I think that in one case after another over the last four or five years, the Court has sort of had a blind spot. For whatever reason, they haven't been willing to get into it, and so we have to suffer a Kafkaesque kind of world on disclosure.

**Eugene Volokh:** Can I ask a quick question? I totally appreciate these arguments. I think the concern that people will be deterred from donating by fear of social retaliation, economic retaliation, or even criminal retaliation in some situations is a serious concern.

At the same time, it is a pretty common argument of those who want to have pretty broad rights to spend and broad rights to contribute to say something like this: yes, we appreciate that there's a risk of corruption, but the right way of dealing with the risk of corruption is not suppressing speech. The right way is more speech. The right way is disclosure. Instead of presuming that a large contribution to someone is corrupting, we should allow it, but then have it publicized so that voters can decide for themselves.

And I take it Joel's response is, okay, that's true, but there's got to be a material risk, and not just at the \$100 level. I think that's probably right. But Joel, what would be your threshold? Where would you say that, notwithstanding the First Amendment rights to speak and to associate—

excuse me—and to do so anonymously without required disclosure, it is permissible to require disclosure as to certain kinds of independent expenditures or contributions?

Past this point, it's okay. And by the way, one possible answer is maybe it's different for a presidential campaign than for a House district campaign or for a small state legislative district. But where roughly would you draw those lines?

**Joel Gora:** You know, one reason you're one of my heroes, Gene, is that you always beautifully state both sides of the argument.

**Eugene Volokh:** It's my job.

**Joel Gora:** Well, it's my job too, but I'm afraid the advocate in me sometimes overcomes the academic in me. In any event, I guess the answer is what I gave before, to paraphrase Justice Potter Stewart: when you see it, you know it.

Pick a level that will get the attention of a politician, and it's not \$100. It's kind of like when I was teaching the *Rucho* gerrymander case, and I think it was Justice Kagan in her dissent who said we may have a hard time figuring out a standard for what kind of gerrymander violates the Constitution, but this one clearly is over the line.

I would take that kind of approach here. With multimillion-dollar congressional campaigns, I would think at least \$10,000, maybe \$5,000, maybe even \$1,000—we're negotiating here—but certainly not the equivalent of \$50. I mean, it really punishes people for no purpose. It's almost a violation of rational basis review, I think, as well as stronger First Amendment concerns.

**Eugene Volokh:** So it's an interesting point. You might say, let's look at the amount spent in the race—the typical race—and then perhaps have some percentage threshold.

It may differ for a state legislative race where there could be just 10,000 voters in a particular district, than for a California Senate race, which of course, because of the tens of millions of voters, could cost much more.

**Joel Gora:** You know, I think in a way you could use the equivalent of a ballot-access standard. If you have to have 5% of the signatures in the community to get on the ballot, maybe you have to give 5% of the candidate's annual budget in order to have to disclose that. Would you use that kind of numerical standard?

**Eugene Volokh:** If I were a candidate, the question would be: at what point do I notice a contribution? It would be well below 5%.

**Joel Gora:** Well, it depends. It depends what the race is. President?

**Kim Strassel:** Okay. You know what? You guys are not going to settle this today. Although the wonderful thing is, there's progress being made here. Imagine how much would get done if all of us were in charge, right?

You know, before we actually do run out of time, before I have Brad have a final question, I do want to touch on one more aspect of this case, which you mentioned, Eugene. I bring it up in part

because I think it was actually really important. It got a lot more attention at the time than it gets now when we think about *Buckley v. Valeo*.

I also bring it up because it's kind of back on the news scene in a different way. That was the provision in which the Supreme Court held that Congress could not appoint the members of this new body, the Federal Election Commission. And it was a very important separation-of-powers holding, also, in my mind, a real check on the growing administrative state we had in the 1960s and 1970s in Washington.

Of course, this issue about independent agencies and presidential appointment power is coming back up again before the Court, given some of Donald Trump's recent firings of independent agency officials. But tell us a little bit about that aspect of the decision.

**Eugene Volokh:** So the federal Constitution provides in the Appointments Clause that the President shall appoint various officers—executive officers and judicial officers. It does allow judges to appoint certain officers too. I believe they appoint federal public defenders in some places. They may appoint clerks of court and various other things.

But it does not provide for appointment by Congress, by individual members of Congress, or by Congress as a body. That's just a power that is not vested in the legislature.

Now, of course, that's a general rule. We see some exceptions. There are officers of Congress who are appointed by Congress, and staffers can be hired by Congress. But what the Court has quite reasonably said is that those are officials who don't exercise executive or judicial power under the Constitution.

If an officer exercises executive power, that officer has to be appointed by the President. There is, of course, a controversy now pending before the Court about removal—whether the President has unlimited authority to remove—but on appointment, the text is pretty clear that it's only the President, setting aside judges in certain situations, who can appoint officers.

So, the Court said that the Federal Election Commission was not merely an advisory body. I believe the Civil Rights Commission is an example—please cut this if I'm wrong—of a body that is seen as purely advisory, and therefore appointments by Congress are permissible. But the Federal Election Commission was an executive body, and its members could not be appointed by Congress.

Interestingly, unlike the Bill of Rights provisions, which, with very few exceptions, apply to states, the separation-of-powers provisions in the federal Constitution generally do not apply to states. Different states have very different approaches. Some states elect judges. Many states elect judges in some measure. The federal system does not.

Many states have a plural executive. My own state, California, separately elects the governor, the attorney general, and various other officials. And there are many states in which members of commissions are appointed in part by the state legislature. California is one of them.

I don't think that's just a weird blue-state thing. My sense is that this is not uncommon. It's not the only way of running a railroad. States have very different approaches to many aspects of separation of powers.

But under the federal Constitution, it seems pretty clear that Congress can't appoint members of any agency that has real executive authority, as opposed to being purely advisory.

**Kim Strassel:** Another reason to celebrate *Buckley v. Valeo*, because, as we were discussing earlier with counterfactuals, it's terrifying to think of Congress running around naming all the people for all of these agencies. So, we can be happy about that.

**Eugene Volokh:** Right. Right. But not so terrifying that states just all recoil from that. They do. States do have state legislators appoint the agencies, and the skies haven't fallen. I mean, maybe in California they have fallen.

**Kim Strassel:** I was going to say—I don't know if I would point to California, but anyway...

**Eugene Volokh:** I just happen to know this, but this is not uncommon throughout the country!

**Kim Strassel:** Okay, Brad, kind of finish us out here by talking about the future of campaign finance reform because, obviously, the advocates of more campaign finance limits have not disappeared. We continue to have this discussion. They also recognize that *Citizens United*, those who truly are in the know alone, is not the boogeyman here, and many of them are still gunning for *Buckley* if they ever had that day. Is *Buckley* on solid ground? What are the odds of the courts changing course here?

**Bradley Smith:** Sure. It's a great question. Let me say first, I think the short-term battle that we'll continue to see is over disclosure, actually, because that's the part that *Buckley* was less definite on. It trimmed the disclosure law way back but left it, as Joel says, down into very small amounts. And the courts have not been very good about following the leads, the hints, the spirit of *Buckley*.

The Supreme Court hasn't been aggressive in policing it. When the Supreme Court has stepped in, it has stepped in to protect small donors from disclosure—*Americans for Prosperity* is the case that Joel mentioned, and *McIntyre v. Ohio Elections Commission*, where the Court said you can't demand disclosure of small donors and ballot initiatives and so on.

But that's a big issue. And very frankly, the pro-regulatory camp seeks to use disclosure not just to uncover patterns of corruption or let voters know who the big donors are, but in the hopes that it will cut back on the amount of speech completely, either by intimidating people or simply through the bureaucracy of it.

One of the things I noticed on the FEC is that you can tell a campaign it can't take contributions from a corporation or over \$1,000, and your average treasurer can handle that without much difficulty. But when you ask them to worry about disclosure forms and filling those out for a large campaign with tens of thousands of donors, it is a big mess, and it really burdens small campaigns and local campaigns.

Most states have this kind of law. So you have races for village council, township trustee, county commissioner, and so on. And oftentimes candidates in those races decide it's too much hassle to take small contributions from people. The candidate will just pay the \$3,000 they're going to spend running for office. And that cuts people out of politics at the most basic level, where we first start figuring out how it works, how you compromise, and how you work as a team. I think it's been very unhealthy.

But that's the big showdown area now. And I think in the end we'll probably end up with something like a common-law approach that Joel hinted at. We'll say, "That's clearly too low," and then we'll say, "That's clearly okay," and we'll land somewhere in between. The people who take the firm approach that it's none of the government's business will not win out, but nor will the people who keep pressing first-dollar disclosure win in the long run either.

In terms of *Buckley* more generally, it's 50 years old now, and that's why this is an important anniversary. Obviously, people continue to go after it. The Court can overturn 50-year-old precedents. It recently overturned *Roe v. Wade* when it was about 50 years old. So there's always that possibility.

But I think we're on pretty solid ground against the kind of regulation that would be so over the top, because we've seen what Congress did, and we've seen what states have done in the years since. Courts have struck those things down. They don't put a cap of a million dollars, to use Gene's approach.

I've always said that if the cap were a million dollars, I might not agree that it should be capped, but it probably also wouldn't have become my life's work fighting against this. It would be a more manageable thing. But we've seen what legislators will do. And I think we're reaching the point where the Court is simply not going to revisit *Buckley's* core holdings.

It may allow more regulation depending on the makeup of the Court. It may swing back and forth at the margins. But I'm hopeful—cautiously optimistic—that if we ever reach a point where *Buckley* is overruled, our democracy will already be in very serious trouble, because people will see that we just can't say nobody can spend more than \$1,000 to communicate their views about politics.

**Kim Strassel:** Well, I'm going to take that hopeful view. And you're right—this is a very important anniversary. It's such an important issue. That's why I want to thank you, Eugene, Brad, and Joel, for all the work you've done on this over the years and for your time here today explaining it so well. I want to thank everyone who listened. If you're tuned in, it's because you care about the body politic. And, of course, we want to thank the Institute for Free Speech for putting this on.