

## **Constitutional Issues Surrounding Campaign Contributions and Expenditures**

On April 23, 2021, University of Cincinnati College of Law Professor Chris Bryant and University of Cincinnati College of Law student Evan Gildenblatt presented to the Cincinnati Economic Development Reform Panel regarding the constitutional law issues surrounding campaign contributions and expenditures.

There are three primary U.S. Supreme Court cases relevant for our consideration - *Buckley v. Valeo*, 424 U.S. 1 (1976), *Citizens United v. FEC*, 558 U.S. 310 (2010) and *McCutcheon v. FEC*, 572 U.S. 185 (2014). These cases are summarized below.

*Buckley v. Valeo*, 424 U.S. 1 (1976) covered in large part, the constitutionality of the Federal Election Campaign Act of 1974. In particular, *Buckley* removed limits on campaign expenditures since limits on expenditures were deemed a severe infringement of free speech. Additionally, *Buckley* upheld limits on campaign contributions because limits on contributions are only a marginal burden on the freedom of speech. Last, *Buckley*, upheld disclosures on both expenditures and contributions by validating the Federal Election Campaign Act's 1974 amendment requirement.

In 2010, the U.S. Supreme Court decided *Citizens United v. FEC*, 558 U.S. 310 (2010) which concerns expenditures and not campaign contributions. In its decision, the Supreme Court determined the government cannot prohibit the restriction of independent expenditures of corporations to express advocacy. Campaign finance regulations are unconstitutional unless they target "quid pro quo" corruption. In 2002, Congress enacted broader prohibition on electioneering broadcasting.

Last, in 2014, the U.S. Supreme Court decided *McCutcheon v. FEC*, 572 U.S. 185 (2014) and found aggregate limits imposed under 2 U.S.C.S. § 441a(a)(3) on amounts individuals could contribute to candidates and political committees violated the First Amendment because they restricted the fundamental right to participate in the political process while doing little, if anything, to target "quid pro quo" corruption or its appearance in campaign financing.

## **Whistle Blower**

Ohio Rev. Code 4113.52 provides whistleblower protections (*see* <https://codes.ohio.gov/ohio-revised-code/section-4113.52>) which extend to the report of wrong doing related to development and related activities in the City of Cincinnati. Additionally, the City of Cincinnati's municipal code (C.M.C. 308-79) provides protections for City employees who report suspected wrongdoing.

Accordingly, the Panel recommends a confidential whistleblower hotline be established for any person to report any unethical conduct, inappropriate request or demand from any public servant, elected or otherwise. There is a hotline/whistleblower program in Ohio, and there are also numerous whistleblower programs at the federal level, including through the Department of Justice's Office of the Inspector General (*see* <https://oig.justice.gov/hotline/whistleblower-protection>). These programs typically protect federal employees and federal contractors that report wrongdoing.

The Panel recommends that this confidential whistleblower hotline be incorporated into the City's Internal Audit Department's hotline which currently is available for both citizens and employees to report suspected wrongdoing. While this hotline does allow callers to choose not to disclose their identity, an anonymous report is harder to investigate. If a caller elects to disclose their identity, then their name becomes a public record. Additional measures are required to ensure the City's Internal Audit department's hotline is better utilized and publicized.

The link to the City's hotline website is available at: <https://www.cincinnati-oh.gov/manager/internal-audit/internal-audit-fraud-hotline/>.