

Free Speech: More versus Equal

by John Patrick Quigley

“C ongress shall make no law . . . abridging the freedom of speech . . .” United States Constitution, First Amendment. The U. S. Supreme Court’s most recent decision on freedom of speech is McCutcheon et al. v. Federal Election Commission, 134 S. Ct. 1434 (2014), KF101.A3S9 and Westlaw, which ruled on the constitutionality of political finance law. All page references below are to this case.

The Federal Election Campaign Act of 1971 (FECA)

This statute and its amendments are codified at 2 U.S.C.A. 431 et seq., KF62.5.W45 and Westlaw. It established two types of limits on campaign contributions. Base limits restrict how much money a donor may contribute to each candidate or committee; aggregate limits restrict how much money a donor may contribute in total.

Buckley v. Valeo

424 U. S. 1, KF101.A3S9 and Westlaw. This 1976 case was the first Supreme Court case to rule on FECA, holding that FECA’s base limits were constitutional because they prevented corruption or the appearance of corruption. Then the court upheld the aggregate limits because they prevented circumvention of the base limits.

McCutcheon

McCutcheon had contributed to several political candidates and committees, each contribution being within the base limits of FECA and the total being within the aggregate limit. He wanted to contribute to additional politicians and political committees, but was precluded from doing so by the aggregate limit. The District Court, following the guidelines of Buckley, held that the aggregate limit was constitutional. 893 F. Supp. 2d 133 (2012), KF105.F452 and Westlaw. McCutcheon appealed directly to the Supreme Court, which reversed the lower Court’s judgment.

The Plurality Opinion

This ruling opinion was delivered by Chief Justice Roberts, joined by Justices Scalia, Kennedy, and Alito, with concurrence by Justice Thomas. The plurality opinion opens with: “The right to participate in democracy through political contributions is protected by the First Amendment . . .”. McCutcheon, Id. at p. 1441. (It compares that right with flag burning, funeral protests, and Nazi parades, which the Constitution “vigorously protects.”) “... [B]ut that right is not absolute. Congress may regulate campaign contributions to protect against corrup-

(Continued on page 2)

Neighborhood Scout

by Elizabeth Harmon

Neighborhood Scout is a statistical website that can be useful for people relocating to another city, county or state; for those considering the purchase of a home; or for general research. The site combines statistics with general facts and data on crime, public schools, and real estate. By entering an address, city, or state in the space indicated on the opening page of the site, a map of the designated area is displayed. The desirability of an area is highlighted by varying shades of blue on the map. Located above the map are an *Overview*, *Public Schools*, *Appreciation Rates*, and *Crime Rates* tabs that are links to facts and figures about the place requested. Under the *Public Schools* tab there is a “Best Neighborhood for Education” list located to the left of the map; under the *Crime Rates* tab the viewer will find a “Safest Neighborhood” list.

Statistics are presented and also compared to overall state and national averages. For instance if a user chooses the options *Public Schools* and *Crime Rates* for: Santa Ana - it will show that the city has 60 schools in its district with an average of 26 students per classroom (the state average is 24). Their “Crime Index” rating is 31, which means it is safer than 31% of the cities in the United States {out of 100, which is the safest} compared to: Irvine – that has 35 schools with an average of 28 students per classroom. Their “Crime Index” rating is 50 compared to: Laguna Beach - that has 4 schools with an average of 23 students per classroom. Their “Crime Index” rating is 31 compared to: Anaheim – that has 22 schools with an average of 26 students per classroom. Their “Crime Index” is 21 compared to: Napa – that has 36 schools with an average of 24 students per classroom. Their “Crime Index” rating is 36.

(Continued on page 2)

IN THIS ISSUE:

Ask a Librarian	4
Eviction Info	3
Looking at the Web	3
What's Going On	4

Neighborhood Scout*(Continued from page 1)*


San Jose compares to Anaheim with a “Crime Index” rating of 21.

Other informative and interesting facts are available on the website:

The top 100 most dangerous cities in the United States - East St. Louis, Illinois with a “Crime Index” score of zero is the #1 most dangerous, according to the website.

The top 100 safest cities in the United States – Franklin, Massachusetts with a “Crime Index” score of 92 is #1 most safest.

The top 100 Best Performing Public Schools in the United States – #1 is William B. Travis Academy, Dallas, Texas and the top 100 Worst Performing Public Schools - #1 is School of Leadership High School in Chicago, Illinois.

There is more in-depth material that is available but only by subscribing to *Neighborhood Scout*. Still, there is plenty of free information for anyone interested in the demographics of states, cities, and neighborhoods in the United States. www.neighborhoodscout.com 

Free Speech*(Continued from page 1)*

tion or the appearance of corruption...” Ibid. The Plurality restricted that protection to cases of quid pro quo (Latin meaning “something for something”, or, in criminal law, bribery).

There was no issue about the FELA base limits meeting that requirement. But for aggregate limits, the plurality ruled that the Buckley ruling no longer met the requirement. Its strongest argument was that circumvention was unlikely due to subsequent legislation, regulation and cases, each of which is identified and discussed. Further permissible legislation and regulation is suggested at *Id.*, p. 1459.


The Future of the First Amendment and Political Finance Legislation

Justice Breyer filed a dissenting opinion, which was joined by Justices Ginsburg, Sotomayor, and Kagan. Its most significant objection was that the *quid pro quo* definition of corruption or the appearance of corruption was too narrow and not supported by precedent, saying that it should be broader to include undue influence. *Id.*, p. 1470. The dissent objects that the plurality effectively overturns Buckley. Justice Thomas, in his separate opinion *concurring* with the plurality, seems to agree and criticizes the plurality for chipping away at the footings of Buckley without overruling it. *Id.*, p. 1464. (Which would strike down base limits as well as aggregate limits.)

Reference was made by both the plurality and dissent to Citizens United v. Federal Election Commission, 130 S. Ct. 876 (2010), KF101.A3S9. It struck down restrictions on political contributions by corporations and unions, just as this case strikes down restrictions on the amount of contributions by the rich, which the dissent views as an ominous trend against political funding restrictions. The dissent contributes to the fiction that Citizens treats corporations as people (“[I]t can be read to require federal law to treat corporations and trade unions like individuals...” McCutcheon, *Id.*, p. 1471). Citizens was reviewed in the March 2010 Transcript, which is available on the Internet at www.ocpll.org/transcript/transcript_2010_05.pdf. The opinion by Justice Kennedy emphasized that the First Amendment pertains to speech, not speakers, and goes on to say: “*The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened government and a necessary means to protect it.... The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration.*” [Emphasis added.]

At the beginning of his opinion, Chief Justice Roberts states that the Government may not “regulate contributions simply to reduce the amount of money in politics, or to restrict the political participation of some in order to enhance the relative influence of others.” *Id.*, p. 1441. Although not necessary to the decision, it exposes the real issue. Because for free speech, as for income and other freedoms, the issue between Conservatives and Progressives is between maximization and what Progressives view as fairness, or More Versus Equality.

So what does this have to do with the Constitution? Progressives are prone to “balance” free speech against other legitimate Government concerns, like political finance reform. Conservatives feel that free speech, being a First Amendment Constitutional right, deserves greater weight, such as what past Progressives gave to “expressive conduct” like flag burning and nude dancing. Progressives don’t want to discredit those rulings, and Conservatives are too conservative to overrule them. So both sides engage in opinions crammed with long sentences, multiple distinctions, Latin phrases, and high-powered words like prophylaxis upon prophylaxis (no, it’s not a laxative). Such opinions are understandable only to lawyers, not to the general citizenry. That is why they lose their legitimacy, and the public is distracted by demonizing the rich.

Justice Thomas’s opinions might be an exception, because he’s not hesitant to overrule prior decisions which he regards as illogical. But even he might object if the narrowest definition of “abridging speech” was applied to political financing. For a fuller analysis, although Progressively slanted and complicated, see First Amendment Law in a Nutshell, KF4770.B37 2008, especially pages 1 through 6 and 260 through 274. 

Eviction Self-Help *by Mora Prestinary*

Due to the large numbers of patrons asking for eviction assistance, we provide the following information:

WORKSHOPS - at the Court

HOW TO ANSWER AN UNLAWFUL DETAINER (EVICTIONS)

North Justice Center
Self-Help Center, 3d Floor, Room 360
1275 Berkeley Ave.
Fullerton, CA 92832
Monday, Wednesday, & Thursday 9:30 AM

THE EVICTION PROCESS: AN OVERVIEW FOR LANDLORDS

Central Justice Center
Self-Help Center, Room G-100
700 Civic Center Dr. West
Santa Ana, CA 92701
2d Friday of the month, 8 AM

BOOKS - in the Law Library

California Tenants' Rights
California Landlord's Law Book: Evictions
California Landlord Law Book: Rights & Responsibilities

Full-Text of the above listed titles is available on the database "EBSCO Legal Information Reference Center" through the Library's website www.ocpll.org/databases.html

ONLINE

California Courts Online Self-Help Center www.courts.ca.gov/selfhelp-housing.htm
California Dept. of Consumer Affairs www.dca.ca.gov/publications/landlordbook/index.shtml



Looking at the Web

by Mora Prestinary



Supreme Court of the United States: Cases:

www.supremecourt.gov

[McCutcheon et al. v. Federal Election Commission](#), 134 S. Ct. 1434 (2014),

Docket : 12-536 www.supremecourt.gov/opinions/13pdf/12-536_e1pf.pdf

Legal Information Institute : First Amendment

www.law.cornell.edu/constitution/billofrights

EBSCO Legal Information Reference Center: Self-Help, Full-Text books database available through the Library's website: www.ocpll.org/databases.html



WHAT'S GOING ON

New!

Any member of the California Bar may now join the library. An attorney whose residence or office is outside of Orange County may join with a one-time deposit of \$200. All other borrowing rules and fines apply.

Photo Identification and California Bar card are required to register. Photo ID: A California driver's license or an ID card issued by the DMV. If no driver's license or ID card has been issued by the DMV, a registrant may use a current Passport, or other government issued ID together with proof of a current address.

ask a
librarian

by Lu Nguyen

Q

Do you have briefs online?

A

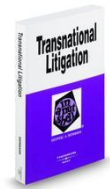
Yes, on Westlaw the Library has subscribed to the "Briefs" database, which includes selected briefs from all federal courts, the 50 states, the District of Columbia, and the Courts of Puerto Rico.

Selected briefs and petitions for California covers:
Supreme Court - 2000 to current date
Court of Appeals - 1998 to current
Selected Criminal merit brief coverage is from 1986 to current.

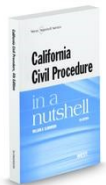
The Los Angeles County Law Library is scanning their collection of California appellate briefs to provide free web access. Dates of coverage is from 2008 to current. Searchable by docket number. See the Library's website at:
<http://briefs.lalawlibrary.org/research/default.aspx>.



Our summer display is on West's Academic's Nutshell Books. There are far too many of these books to put in a display,



but we have published a bibliography, and they are all available on Westlaw, as well as to check out of the Library. Their stated purpose is to introduce attorneys to unfamiliar law, but their generalized approach is also excellent for students. This series of books contains many more titles than West's "Black Letter" series written for students. The only Nutshell specifically on California law is *California Civil Procedure in a Nutshell*, KFC995.S56 2012, in the Main Reading Room.



The Library will be
Closed:



July 4th & July 5th, 2014

Orange County Public Law Library

Monday-Thursday	8 am - 6 pm
Friday	8 am - 5 pm
Saturday	9 am - 5 pm

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