

Commissioner Scott E. Thomas and Jeffrey H. Bowman

*Obstacles to Effective Enforcement of the Federal Election Campaign Act*

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Abstract by Rosy Lor

The Federal Election Commission (FEC) is the independent federal agency charged with enforcing the Federal Election Campaign Act (FECA), which regulates the campaign financing of elections to federal office. The authors note that throughout its existence, the FEC has been criticized for failing to provide strong and timely enforcement of the FECA. The authors argue, however, that the perceived deficiencies of the FEC can be attributed to budgetary constraints, an awkward enforcement process, and lower courts' interpretations of FECA provisions, which the U.S. Supreme Court has not yet clarified. In regards to interpretations of FECA provisions, the Supreme Court addressed the issues of "express advocacy" and "coordination" in *Buckley v. Valeo* but did not reach a definitive ruling on either issue, giving lower courts room for their own interpretations.

In *Buckley*, the Court ruled that the FECA's independent expenditure disclosure provisions only applied to funds used for communications that expressly advocated the election or defeat of a particular candidate. However, besides stating that express advocacy included communications containing "magic words," such as "vote for" and "vote against," the Court did not provide a clear test for determining what constituted express advocacy. In addition, the *Buckley* court upheld limits on contributions to federal candidates but held that similar limits on independent expenditures were unconstitutional. This particular ruling was coupled with the Court's warning against "coordination," where a donor could evade the *Buckley* ruling and contribute to a candidate by directly paying for an expense as an independent expenditure. The FEC has issued regulations defining "coordination" to address this concern. However, lower courts have ignored the FEC and created their own definitions. The authors illustrate the difficulties which the FEC faces in light of these unresolved issues through a discussion of *FEC v. Christian Coalition*, which involved both coordination and expressed advocacy issues.

In conclusion, the authors examine a PricewaterhouseCoopers LLP audit of the FEC, which had been undertaken at the request of the House and Senate Appropriations and House Oversight Committees. The report revealed that the FEC conducted disclosure and compliance activities in a non-partisan manner and found that the agency was a competently managed organization. The report, however, questioned whether the agency was adequately funded, in light of the dramatic increase of campaign finance activity, and made suggestions that the FEC could take, on its own, to improve operations. The authors note that the FEC cannot truly become more effective in enforcing the FECA without more funding, legislative reform of enforcement procedures, and clarification of court interpretations of the FECA.