

A federal law prohibits individuals and corporations from making independent expenditures that support or oppose specific candidates for federal elective office. The purpose of the law is to prevent quid pro quo corruption in the federal government.

A steel manufacturer broadcast a television ad in support of a federal congressional candidate who favors placing tariffs on imported steel. The manufacturer has filed an action in federal district court that challenges the law's constitutionality.

Should the court uphold the law's constitutionality?

- A. No, because political speech cannot be banned or restricted as a categorical matter.
- B. No, because the law is not the least restrictive means to achieve the federal government's compelling interest in preventing quid pro quo corruption.
- C. Yes, because campaign expenditures are not speech protected by the First Amendment.
- D. Yes, because the law is closely drawn to serving the federal government's important interest in preventing quid pro quo corruption.

Explanation:

Campaign-finance restrictions

	Examples	Test
Contribution restrictions	<ul style="list-style-type: none">• Limit on amount of contribution to:<ul style="list-style-type: none">– single candidate– political candidates, parties & action committees combined• Increase of limit on amount of contribution to candidate when self-financed opponent exceeds certain spending amount	Intermediate scrutiny <ul style="list-style-type: none">• closely drawn/substantially related to important government interest
Expenditure restrictions	<ul style="list-style-type: none">• Limit on spending by:<ul style="list-style-type: none">– corporations or unions in support of or opposition to candidate– candidate on his/her own behalf	Strict scrutiny <ul style="list-style-type: none">• necessary/least restrictive means to achieve compelling government interest

Political speech, including campaign contributions and expenditures, is a core right protected by the **First Amendment (Choice C)**. However, this category of speech is still subject to government restrictions that satisfy the appropriate level of scrutiny (**Choice A**). Restrictions on **campaign expenditures** impose a substantial burden on political speech and must therefore survive **strict scrutiny**. This gives the government the nearly impossible burden of proving that its restriction is the **least restrictive means** to achieve a **compelling government interest**.

Here, the federal law prohibits individuals and corporations from making independent campaign expenditures that support or oppose a specific candidate for federal elective office. The government likely has a compelling interest in preventing quid pro quo corruption. However, this prohibition is not the least restrictive means to achieve that interest. For example, the government can require that the identity of the individual or corporation expending the money be disclosed. Therefore, the law is unconstitutional and the court should not uphold it.*

*Government restrictions that limit how much a candidate can spend on his/her own behalf are also unconstitutional. That is because the government's interest in preventing quid pro quo corruption or the appearance of it are absent when a candidate spends his/her own money.

(Choice D) A government restriction on campaign *contributions* must satisfy intermediate scrutiny—ie, the government must show that its restriction is closely drawn to serve an important government interest. However, this law restricts campaign *expenditures*, so the federal government must satisfy the more exacting strict scrutiny.

Educational objective:

The First Amendment protects political speech, including campaign contributions and expenditures. A government restriction on campaign expenditures is unconstitutional unless the government satisfies strict scrutiny by showing that the restriction is the least restrictive means to serve a compelling government interest.

References

- Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 360–61 (2010) (holding that limits on independent campaign expenditures made by corporations violate the First Amendment and are unconstitutional).
- 16A Am. Jur. 2d Constitutional Law § 489 (2020) (explaining the constitutionality of campaign finance regulations).