

## SYMPOSIUM

### *MCCONNELL V. FEC:* UNDERSTANDING THE DECISION AND ITS IMPLICATIONS

#### FOREWORD

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On May 2, 2003, the United States District Court for the District of Columbia released its decision in *McConnell v. FEC*,<sup>1</sup> adjudging the constitutionality of the Bipartisan Campaign Reform Act.<sup>2</sup> In four opinions stretching 1638 pages, the three judges considering the case created more legal questions than they answered. In a symposium that took place on May 15, 2003, legal scholars, political scientists, and other campaign finance experts convened at the University of Pennsylvania Law School to explain and critique the various opinions in the case. Selected remarks from that “live” symposium appear in the pages that follow.

The first panel of lawyers and law professors attempted to explain the court’s decision. Speaking on that panel were Professor Richard Briffault, Vice Dean and Joseph P. Chamberlain Professor of Legislation at Columbia Law School; Trevor Potter, former Commissioner and Chairman of the Federal Election Commission, Chair and General Counsel of the Campaign Legal Center, and Member of the law firm Caplin & Drysdale; and Robert F. Bauer, the Office Managing Partner and Chair of the Political Law Group in the Washington, D.C. office of Perkins Coie.

The second panel, which was chaired by Professor Roy A. Schotland of Georgetown University Law Center, critiqued the decision. The following law professors appeared on that panel: Burt Neuborne, John Norton Pomeroy Professor of Law and Legal Director of the Brennan Center for Justice at New York University School of Law; Daniel R. Ortiz, John Allan Love Professor of Law at the University of

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<sup>1</sup> 251 F. Supp. 2d 176 (D.D.C.) (three-judge court), *prob. juris. noted*, 123 S. Ct. 2268 (2003) (mem.).

<sup>2</sup> Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81.

Virginia School of Law; Spencer Overton, Associate Professor at The George Washington University Law School; and myself.

The third and final panel considered both the potential implications of the decision and the ways that judges and opposing sides used political science evidence. The panel consisted of political scientists, including two who served as expert witnesses on opposing sides of the case. Appearing on that panel were Michael J. Malbin, Executive Director of the Campaign Finance Institute and Professor of Political Science at the State University of New York at Albany; Robin Kolodny, Associate Professor of Political Science at Temple University; Jonathan Krasno, Lecturer at Yale University and Expert Witness for the Federal Election Commission; and Ray LaRaja, Assistant Professor of Political Science at the University of Massachusetts at Amherst and Expert Witness for Plaintiffs.

The authors and the staff of the *Journal of Constitutional Law* edited the remarks reprinted here in order to produce this volume as the United States Supreme Court hears the case on September 8, 2003. As a result, subsequent legal developments, such as the district court's stay of its own decision<sup>3</sup> and relevant Supreme Court opinions issued after the district court released its decision, may or may not be reflected in the edited remarks. We hope that those watching this case as the Supreme Court considers it will find this volume useful and that those who later read this volume will view it as a snapshot in time of the legal thinking on campaign finance in the period immediately preceding the release of the Supreme Court's decision in the most important campaign finance decision since *Buckley v. Valeo*.<sup>4</sup>

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<sup>3</sup> *McConnell v. FEC*, 253 F. Supp. 2d 18 (D.D.C. 2003) (mem.).

<sup>4</sup> 424 U.S. 1 (1976) (per curiam).