

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

SUPREME COURT OF THE UNITED STATES

**DKT/CASE NO.** 81-776  
**TITLE** TED W. BROWN ET AL., Appellant,  
v.  
SOCIALIST WORKERS '74 CAMPAIGN COMMITTEE (OHIO), ET A  
**PLACE** Washington, D. C.  
**DATE** October 4, 1982  
**PAGES** 1 - 53



(202) 628-9300  
440 FIRST STREET, N.W.  
WASHINGTON, D.C. 20001

1 IN THE SUPREME COURT OF THE UNITED STATES

2 - - - - - x

3 TED W. BROWN ET AL., :

4 Appellants, :

5 v. : No. 81-776

6 SOCIALIST WORKERS '74 CAMPAIGN :

7 COMMITTEE (OHIO), ET AL. :

8 - - - - - x

9 Washington, D.C.

10 Monday, October 4, 1982

11           The above-entitled matter came on for oral  
12 argument before the Supreme Court of the United States  
13 at 11:12 o'clock a.m.

14

15 APPEARANCES:

16 GARY ELSON BROWN, ESQ., Assistant Attorney General of  
17 Ohio, Columbus, Ohio; on behalf of the Appellants.

18 THOMAS D. BUCKLEY, JR., ESQ., Cleveland, Ohio; on  
19 behalf of the Appellees.

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C O N T E N T S

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
GARY ELSON BROWN, ESQ., on behalf of the Appellant	3
THOMAS D. BUCKLEY, JR., ESQ., on behalf of the Appellees	25
GARY ELSON BROWN, ESQ., on behalf of the Appellant - rebuttal	49



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments  
next in Brown against the Socialist Workers Campaign  
Committee.

Mr. Brown, I think you may proceed whenever you  
are ready.

ORAL ARGUMENT OF GARY ELSON BROWN, ESQ.,  
ON BEHALF OF THE APPELLANT

MR. BROWN: Mr. Chief Justice, and may it  
please the Court, this case involves the  
constitutionality of the provisions of Ohio's Campaign  
Expense Reporting Act, which requires campaign  
committees to file reports setting forth various  
information concerning their receipt and expenditure of  
campaign funds.

This case was initiated in 1974 by various  
Socialist Workers Party candidates and their campaign  
committees along with several unnamed persons who  
claimed to have made contributions to or received  
expenditures from those campaign committees.

A temporary restraining order was entered soon  
after this case was filed, and it enjoined the  
application of the disclosure provisions of the Ohio law  
to the Socialist Workers Party candidates and their  
committees throughout the pendency of this action.



1           The case was tried in February of 1981, and on  
2 June 25, 1981, a three-judge panel held that the  
3 disclosure provisions of Ohio Revised Code Sections  
4 3517.10 and 3517.11 are unconstitutional as applied to  
5 the Socialist Workers Party and the class represented by  
6 the individual appellees in that case.

7           It is our position in this case that the  
8 district court erred in so holding because it misapplied  
9 the test established by this Court in Buckley versus  
10 Valeo in 1976.

11           QUESTION: Is this just a factual argument then?

12           MR. BROWN: Absolutely not, Your Honor. It is  
13 a matter of applying the law of the case in Buckley  
14 versus Valeo.

15           QUESTION: To the facts.

16           MR. BROWN: We are going to have to apply the  
17 facts to the law.

18           QUESTION: But you don't claim the court used  
19 the wrong standard, legal standard.

20           MR. BROWN: Absolutely not. We think the  
21 Buckley test is most acceptable. We think the district  
22 court in applying the facts in this case to the Buckley  
23 test misapplied the Buckley test.

24           QUESTION: Is this a question then, a mixed  
25 question of fact and law?

1           MR. BROWN: It is one of those cases where it  
2 is a mixed question of fact and law because --

3           QUESTION: Can we independently arrive at it,  
4 or do we have to find that the court was clearly  
5 erroneous?

6           MR. BROWN: No, I don't -- you don't have to  
7 dispute any of the court's factual findings. What I am  
8 asking you to do is find that the court applied this  
9 Court's Buckley standard improperly. It is a mixed  
10 question of law and fact. Obviously, the Buckley test  
11 itself requires a mixed law and fact consideration, Your  
12 Honor.

13           Specifically, and this is our primary point in  
14 this case, specifically, the evidence presented in the  
15 district court did not demonstrate a reasonable  
16 probability that the disclosure of the names of  
17 contributors to Socialist Worker Party candidates in  
18 Ohio and the disclosure of the names of persons  
19 receiving funds from SWP candidates' campaign committees  
20 would subject those contributors or recipients of  
21 expenditures to threats, harassment, or reprisals, which  
22 is what this Court said to look for in Buckley versus  
23 Valeo.

24           QUESTION: The district court says, concludes,  
25 I infer from these historical facts which he has found,

1 which you don't dispute, or nobody disputes about, I  
2 infer or predict that there would be reprisal or some  
3 injury in the future if there is disclosure. Now, you  
4 say that is not a factual finding. Is that it?

5 MR. BROWN: That is an application of this  
6 Court's standards to the facts in the case.

7 QUESTION: Well, it is a finding. He says, I  
8 find that there would be injury.

9 MR. BROWN: That is correct, but that is the  
10 bottom line question.

11 QUESTION: Well, is that --

12 MR. BROWN: Coming out of Buckley versus  
13 Valeo. It is the application of this Court's Buckley  
14 test --

15 QUESTION: Well, I know, but there are a lot of  
16 bottom line findings that are still facts.

17 QUESTION: Did I understand you to say that  
18 there is no evidence to support any such finding as that?

19 MR. BROWN: We are saying that the record  
20 considered as a whole does not support the finding made  
21 by the district court in this case. As we go through  
22 our discussion of the case, I will further explain why I  
23 think the totality if the evidence does not support that  
24 finding.

25 In this case, despite joining unnamed John Doe



1 plaintiffs who allegedly contributed to or received  
2 campaign funds from the Socialist Worker Party  
3 candidates, the appellees failed to produce any  
4 evidence, any evidence in the district court of any  
5 actual or threatened harassment of a single contributor  
6 or recipient of campaign expenditures in Ohio.

7         Additionally, and this, Justice White, is the  
8 biggest problem we have with the evidence, additionally,  
9 the vast majority of the evidence introduced by the  
10 appellees in this case pertained to historical past  
11 activities of agencies of the federal government over  
12 which the State of Ohio has absolutely no control.

13         Moreover, the activities of these federal  
14 agencies took place irrespective of and in the absence  
15 of Ohio's campaign expense reporting law. There is no  
16 cause and effect relationship between our Act and the  
17 conduct and the misconduct of the FBI. Of the 127  
18 exhibits admitted into evidence at trial on this case,  
19 121 of those exhibits pertained solely to FBI activities  
20 which were discontinued, which were discontinued in  
21 1971. This case went to trial in 1981.

22         Our position is that this FBI conduct and  
23 misconduct may not be irrelevant as a matter of law, but  
24 it is of no material appropriate value certainly in  
25 1981, especially in view of the --

1 QUESTION: Did you put on any evidence to say  
2 that it wouldn't happen again?

3 MR. BROWN: Yes, we did, Your Honor. We cited  
4 --

5 QUESTION: What kind of evidence was that?

6 MR. BROWN: We cited the Oregon case which  
7 contained references to affidavits --

8 QUESTION: I mean you know what the FBI is  
9 going to do next year?

10 MR. BROWN: I have a good feeling of what the  
11 FBI is not going to do next year.

12 QUESTION: That wasn't my question. My  
13 question was, do you know what the FBI is going to do  
14 tomorrow?

15 MR. BROWN: No, Your Honor. I don't know  
16 that. I doubt if the FBI knows that.

17 QUESTION: I assume so. I assume so.

18 MR. BROWN: Okay.

19 QUESTION: General Brown, you mentioned the age  
20 of the evidence. The opinion indicates the temporary  
21 restraining order had been filed on something like  
22 February 7th, 1975. The case wasn't tried until -- am I  
23 correct on that?

24 MR. BROWN: 1981. That's correct, Your Honor.

25 QUESTION: What happened during those six

1 years?

2 MR. BROWN: I wasn't trial counsel, so I can't  
3 say with certainty what happened, but I think originally  
4 the TRO was entered on the premise that the case would  
5 be rapidly tried, and for various reasons, just like any  
6 lawsuit, it did not get rapidly tried.

7 QUESTION: Well, not just like any lawsuit, I  
8 hope. Six years with a TRO outstanding?

9 MR. BROWN: We have had several cases in our  
10 office that took that long, Your Honor. I guess that is  
11 why I said that.

12 QUESTION: Did they even convert it to a  
13 preliminary injunction?

14 MR. BROWN: It was never converted. The  
15 original TRO entered in this case in and of itself by  
16 the original trial court was rather strange in that the  
17 court entered a TRO during the pendency of the action  
18 which would not expire until the case was decided by a  
19 three-judge panel which hadn't even been empaneled yet.

20 QUESTION: Well, that is clearly a violation of  
21 civil rules, if you would want to challenge it. You  
22 can't enter a temporary restraining order and say it  
23 extends for months and months.

24 MR. BROWN: I certainly don't disagree with  
25 that, Justice Rehnquist. Like I said, I didn't file --



1 for appeal. I wasn't trial counsel.

2 QUESTION: Was that done at the behest of  
3 opposing counsel?

4 MR. BROWN: Yes, they requested the temporary  
5 restraining order. I don't know whether they requested  
6 it for the entire pendency of the action or not, but  
7 even if they did, I think it would be a violation of  
8 civil rules. I agree with that.

9 QUESTION: Was it ever challenged on that  
10 ground, that the temporary restraining order was  
11 improperly --

12 MR. BROWN: My predecessors in this case never  
13 challenged that, Your Honor.

14 QUESTION: They gave them total relief for six  
15 years.

16 MR. BROWN: They most certainly did. I do  
17 believe --

18 QUESTION: I guess the state really couldn't  
19 have been terribly upset about it, if they let it sit  
20 for six years.

21 MR. BROWN: Well, the state is now terribly  
22 upset about it.

23 QUESTION: Now it is upset.

24 MR. BROWN: They didn't know at the time it was  
25 going to take six years. I imagine that it was

1 tolerated through time on the premise that the case  
2 would be decided much more rapidly than it was.

3 QUESTION: I suppose the character of that  
4 order might have some relationship to the fact there is  
5 no evidence of any threats or harassment since 1975, or  
6 the people would be in contempt.

7 MR. BROWN: It has some relationship to no  
8 threats or harassments -- because we weren't listing  
9 their identities, but it certainly doesn't detract from  
10 my argument that the FBI evidence is very, very stale  
11 and of no future probative value, which is my major  
12 evidentiary argument, and which I think is the key to  
13 this case.

14 Justice Marhsal, you asked me about what the  
15 FBI was going to do tomorrow, and I can't stand here and  
16 tell you that, but the Senate empaneled a select  
17 committee to study intelligence operations --

18 QUESTION: Do you know what the Senate is going  
19 to do tomorrow?

20 MR. BROWN: I don't know what the Senate is  
21 going to do tomorrow, but I do know that the Senate  
22 committee found --

23 QUESTION: They are gone right now, you know.

24 MR. BROWN: I do know, Justice Marshal, that  
25 the Senate found that the FBI did terminate its conduct

1 and its misconduct vis-a-vis the Socialist Workers Party  
2 and its candidates and its party members in 1971.

3 QUESTION: Did the Senate say, and the FBI will  
4 never do it again?

5 MR. BROWN: No. The FBI has --

6 QUESTION: Well, I don't understand what your  
7 answer is. I asked you, could you predict what the FBI  
8 was going to do in the future. That is my question.

9 MR. BROWN: Justice Marshal, I --

10 QUESTION: The only truthful answer could  
11 possibly be, you don't know.

12 MR. BROWN: That is correct.

13 QUESTION: Is there any evidence in this record  
14 that suggests any resumption of that kind of activity  
15 over the last ten years?

16 MR. BROWN: No, there is no evidence in this  
17 record to suggest resumption of the Cointelpro Program,  
18 which was the FBI's disruption and harassment program,  
19 which was specifically addressed to the Socialist  
20 Workers Party, directed to the Socialist Workers Party,  
21 and in the Oregon case there were affidavits submitted  
22 by the FBI which said that they had discontinued that  
23 program. Since that time, Congress, recognizing that  
24 the FBI and other intelligence agencies have a tendency  
25 during times of stress in this country to get out of



1 hand, has enacted legislation which will further  
2 preclude the probability, not the possibility, I  
3 understand that, but the probability of future programs  
4 like this being started in this country.

5           So, my answer is, no, I can't predict what is  
6 possible, but I can predict, Justice Marhal, what is  
7 probable, and it is not probable --

8           QUESTION: You could have answered that 15  
9 minutes ago.

10          MR. BROWN: Okay. I'm sorry.

11           In our case, if reference to the FBI and the  
12 multitude of its real or alleged improprieties were to  
13 be deleted from this case, it is our position that there  
14 would be nothing left of the evidence introduced by the  
15 appellees in the district court but a small collection  
16 of isolated and unrelated incidents of verbal and  
17 illegal physical abuse directed toward Socialist Worker  
18 Party members, candidates, and party headquarters around  
19 the country, along with a very limited number of  
20 employment terminations, which had more to do with  
21 inappropriate behavior on the job than with political  
22 beliefs or even political conduct.

23          QUESTION: Mr. Brown, the Ohio statute requires  
24 two things, as I understand it, one a disclosure of  
25 contributions, contributors, names of contributors --

1           MR. BROWN: In certain instances, not all of  
2 them.

3           QUESTION: -- and secondly, disclosure of  
4 payment of expenditures to other people.

5           MR. BROWN: That is correct, Justice O'Connor.

6           QUESTION: Was there any evidence in the record  
7 about the effect of requiring disclosure of the payments  
8 of expenditures to others, as opposed to evidence of  
9 harassment of members of the party, which presumably  
10 might include contributors?

11          MR. BROWN: Justice O'Connor, there is not one  
12 thread of evidence in this record presented by the  
13 appellees which showed any harassment of any recipient  
14 of an expenditure.

15          MR. BROWN: Did the state argue that there was  
16 a difference in the two categories, and say, well, maybe  
17 you have evidence going to contributors, but you have  
18 none insofar as the expenditure requirement is concerned?

19          MR. BROWN: That argument was made. We sort of  
20 got caught off guard by the trial court's decision in  
21 this case. We thought it was going to go just to  
22 contributors. The trial court's decision, the  
23 injunction decision ultimately, the unconstitutionality  
24 as applied decision went to both contributors and  
25 expenditures, but as I read the Buckley test, the

1 Buckley case, there isn't a word in that case about  
2 recipients of expenditures being exempted from the  
3 disclosure requirements of a state or the federal  
4 statute.

5 QUESTION: Do you think the state's interest is  
6 different as between disclosure of expenditures and  
7 disclosure of contributors?

8 MR. BROWN: No, I don't think the state's  
9 interest is really different. Ohio's statute is not  
10 exactly like the federal statute. Ohio has no  
11 limitations on the amount that can be contributed to any  
12 given candidate's campaign. Ohio did not originally  
13 have or does not have limitations on the amount of  
14 expenditures a candidate can make. Ohio's Act is the  
15 least restrictive means of regulating the electoral  
16 process in this manner, Justice O'Connor.

17 We simply say, let the people know how  
18 candidates raise their money. Let the electorate know  
19 how they spend their money. And we feel that will deter  
20 actual corruption, will deter the appearance of  
21 corruption and impropriety, and will give the electorate  
22 an informed basis upon which to make rational judgments  
23 at the ballot box. That is the least restrictive means  
24 available to regulate this area of the electoral  
25 process.



1           Another thing about the evidence presented in  
2 this case, it certainly doesn't establish that there is  
3 any causal relationship between the disclosure  
4 requirement from which the appellees seek exemption and  
5 the harassment they claim will occur if compliance is  
6 required. There is absolutely no evidence of this in  
7 the case. Obviously, Ohio's disclosure statute is  
8 supported by the same public policy arguments as which  
9 supported the Federal Campaign Election Act, which this  
10 Court addressed in Buckley versus Valeo. Those are  
11 very, very important public interests, and the Ohio  
12 statute is no different in that sense from the federal  
13 Act, and this Court was asked to grant blanket  
14 exemptions for minority parties from the disclosure  
15 provisions of the federal Act, and this Court did not  
16 see fit to do so.

17           QUESTION: Mr. Brown, do you think the language  
18 in Buckley is addressed to any sort of harassment or  
19 bothering that might result from the fact of disclosure  
20 of persons of the statute or is it addressed more  
21 particularly to harassment that would be perpetrated by  
22 the entity, governmental entity requiring disclosure?

23           MR. BROWN: Well, as I read the Buckley test,  
24 Your Honor, it creates a very -- a reasonably loose  
25 standard. It doesn't only go to harassment which could

1 be caused by the government, the state government. It  
2 also goes to harassment which could be brought forth by  
3 private citizens, for example, if that is responsive to  
4 your question.

5 QUESTION: Yes. The Buckley statement as I  
6 read it is based on some of the earlier cases like NAACP  
7 versus Alabama, and NAACP versus Button.

8 MR. BROWN: That's correct, and the Burrells  
9 case in 1934. The major distinction, and I think this  
10 is very notable and should be brought out in this  
11 argument, is, NAACP versus Alabama was a case which  
12 enunciated a general First Amendment principle.  
13 However, the state interest underlying or involved in  
14 NAACP versus Alabama was in no measure comparable to the  
15 state interest involved in this case or in the Buckley  
16 case. It was a mere discovery dispute in NAACP versus  
17 Alabama, versus a piece of reform legislation directed  
18 at the electoral process in our case and in the Buckley  
19 case. There is a very important distinction there.

20 One of the other things brought out in this  
21 Court's opinion in the Buckley case which we would like  
22 to address is the discussion of a minor party's impact  
23 on the election process in any given state. This Court  
24 said that a minor party's impact on elections -- when it  
25 addressed that issue, it looked to whether or not minor

1 parties were likely to win in any given election. We  
2 think that that focus is a little bit misdirected. It  
3 is more than just whether or not a minor party is likely  
4 to win an election. It is more -- the true question  
5 concerns a minor party's potential impact on the outcome  
6 of any given election.

7           If it has that impact, it is more than just a  
8 mere minor party that appears on the ballot, has no  
9 impact, and goes away. In Ohio, for example, in the  
10 1974 gubernatorial election, one of the plaintiffs in  
11 this case, Nancy Brown Laser, ran for governor in Ohio  
12 as the Socialist Worker Party candidates. Nancy Brown  
13 Laser received 95,000 votes in Ohio's 1974 gubernatorial  
14 election. Jim Rhodes beat the other candidate, the  
15 other major party candidate, John Gilligan, by 13,500  
16 votes in Ohio's 1974 gubernatorial election.

17           Obviously, Nancy Laser had a very important  
18 impact on the outcome of our gubernatorial election. If  
19 a mere 12 percent of the people who voted for this  
20 minority party candidate, 12 percent of the minority  
21 party candidate's votes, if those would have been  
22 switched to John Gilligan, he would have been governor  
23 instead of Jim Rhodes, who won by 13,500 votes. A minor  
24 party can have more impact on elections than just  
25 winning the election. We think that is an important

1 thing to take into consideration in this case.

2 Another example of that is the Ford-Carter  
3 Presidential race in 1976. In Ohio, Carter beat Ford by  
4 11,000 votes, and yet there were three minority groups  
5 which pulled more than the vote differential between the  
6 two major candidates. McCarthy got 58,000. The  
7 American Independent candidate got 16,000, and  
8 collectively, the other independent candidates got  
9 26,000 votes. Minority parties have an impact.

10 QUESTION: Mr. Brown, can I back you up just a  
11 minute? What relationship in time was there with this  
12 95,000 vote for this woman and the revival of this  
13 case?

14 MR. BROWN: And the revival of this case?

15 QUESTION: Yes, sir.

16 MR. BROWN: Well, it was a 1974 election, and  
17 this case was filed in 1974. At that time, there was a  
18 TRO entered which did not allow the people of the state  
19 of Ohio to know where Nancy Brown Laser's money was  
20 coming from. Now, as far as the revival of the case in  
21 1981, it is six years later, I mean, if that is your  
22 question, Justice Marshal.

23 QUESTION: I mean, I gather from what you say  
24 that you don't see any connection to it. I am not  
25 blaming you for it one way or the other. I don't see



1 how we can connect it if it is that far apart.

2 MR. BROWN: It is not a matter of connecting so  
3 much as a matter of arguing to this Court that a  
4 minority party is more than just a winner and a loser.  
5 It impacts on elections. I bring that example out to  
6 show you that it did it in Ohio.

7 QUESTION: General Brown, may I follow up on a  
8 question Justice O'Connor asked you a bit ago about the  
9 difference between the disclosure requirement with  
10 respect to contributions on the one hand and  
11 expenditures on the other? In your reply brief, you say  
12 there is nothing to support the order insofar as it  
13 relates to expenditures, as I understand the second  
14 point of your reply brief.

15 MR. BROWN: That is basically correct.

16 QUESTION: I didn't understand you to make that  
17 argument in your opening brief, and I am just wondering,  
18 was that squarely argued to the district court, that  
19 distinction between the two?

20 MR. BROWN: I don't know that it was squarely  
21 argued. I did not present the argument. In reviewing  
22 the case, it appears that the appellees requested that  
23 relief and the state of Ohio disputed it, so in that  
24 sense I think it was --

25 QUESTION: But did they dispute it in the sense

1 of saying, there isn't enough evidence to support any  
2 relief, and over and above that, there is absolutely no  
3 evidence on the expenditure part of it, which seems to  
4 me might well have been argued below. I am just -- It  
5 seems to me there is some force to your argument, but I  
6 am just wondering if the district court had a fair  
7 opportunity to --

8 QUESTION: Well, were there trial briefs?

9 MR. BROWN: There were post-trial briefs filed  
10 in this case, and it was argued --

11 QUESTION: You must have them. Was it argued  
12 in the briefs?

13 MR. BROWN: Yes. It was argued generally. It  
14 wasn't argued as specifically as I argued it in this  
15 reply brief.

16 QUESTION: In your reply brief it is set out  
17 very --

18 MR. BROWN: In the post-trial briefs filed  
19 after the trial, yes, that was generally argued, that  
20 the statute is neither unconstitutional --

21 QUESTION: Post-trial before decision.

22 MR. BROWN: Correct. Yes.

23 QUESTION: Well, at the trial stage, where the  
24 burden is on the plaintiffs to prove each and every  
25 element of their complaint, and they are seeking to

1 strike down two different statutory sections, I suppose  
2 the burden is on the trial court if he is going to find  
3 for the plaintiffs to consider whether each one of those  
4 sections is unconstitutional.

5 MR. BROWN: That is the trial court's burden.

6 QUESTION: The law is presumed constitutional  
7 until someone presents a sufficient case to convince the  
8 court that it isn't.

9 MR. BROWN: In this case, the trial court went  
10 through the evidence vis-a-vis contributors, and at the  
11 end of the trial court decision, it said, based upon the  
12 totality of the evidence adduced at trial, we conclude  
13 that the statute is unconstitutional as applied to the  
14 SWP Party, both vis-a-vis contributions and  
15 expenditures. There was no independent analysis in the  
16 trial court's decision on expenditures, Justice  
17 Rehnquist.

18 The quote I just referred to appears on Page --  
19 Appendix Page A-29 of our jurisdictional statement,  
20 which is part of the trial court's decision.

21 QUESTION: But I think there is a stronger  
22 statement on A-27, at the bottom of the page. The  
23 finding itself relates only to contributions. I mean, I  
24 would have thought you would have cited that.

25 MR. BROWN: I may have missed that, Your Honor.

1           QUESTION: It says that it establishes in Ohio  
2 public disclosure that a person is a member of or has  
3 made a contribution which create a reasonable  
4 probability of harassment. But there is nothing about  
5 expenditures.

6           MR. BROWN: That's right. I referred to the  
7 court's conclusion where it found the statute  
8 unconstitutional as applied.

9           QUESTION: The judgment itself you are  
10 referring to.

11          QUESTION: Mr. Brown, there was no  
12 determination as to facial validity, was there?

13          MR. BROWN: No determination as to facial  
14 validity?

15          QUESTION: Yes.

16          MR. BROWN: There was in the sense that the  
17 appellees in this case in their complaint asked that the  
18 statute be declared unconstitutional on its face, and  
19 the trial court refused to do that. I think in that  
20 sense there was a finding of facial unconstitutionality,  
21 because the plaintiffs had asked for it, and it was  
22 denied.

23          QUESTION: Specifically?

24          MR. BROWN: It is not referenced, but it is a  
25 matter of fact it was denied, and the appellees had



1 asked for it in their complaint, Justice Blackmun.

2           One of the other points we want to make in our  
3 oral argument is, we want to clear up a misconception  
4 contained numerous times in the appellees' brief  
5 regarding the issue of anonymity. Anonymity in Ohio for  
6 political contributions is not illegal. It is not a  
7 dirty word. As a matter of fact, it is recognized in  
8 our Campaign Reporting Act. For example, Revised Code  
9 Section 3517.13(f) allows up to \$100 in cash  
10 contributions to be given to any particular candidate.  
11 There is no prohibition on giving these anonymously.

12           Revised Code Section 3517.10(b)(4)(E) provides  
13 for the giving of \$25 contributions at any specific  
14 social or fundraising event, and again, contrary to the  
15 allegations contained in the appellees' brief, the law  
16 does not require someone to attend that social function  
17 or that fundraising event merely because they donated  
18 the \$25. So, again, there is another example of  
19 anonymous contributions.

20           And thirdly, and perhaps more importantly,  
21 Revised Code Section 3517.10(c) specifically recognizes  
22 anonymous contributions in Ohio politics and details how  
23 they are to be reported by political candidates.

24           Your Honor, I see a light is on. I think I  
25 would like to reserve the remaining five minutes, Your

1 Honors, for rebuttal. Thank you.

2 CHIEF JUSTICE BURGER: Very well.

3 Mr. Buckley.

4 ORAL ARGUMENT OF THOMAS D. BUCKLEY, JR., ESQ.,

5 ON BEHALF OF THE APPELLEES

6 MR. BUCKLEY: Mr. Chief Justice, and may it  
7 please the Court, this case is about the right to  
8 exercise First Amendment freedom of association by  
9 contributing to the Socialist Workers Party election  
10 campaigns in Ohio without having the fact of that  
11 financial association or tie with the Socialist Worker  
12 Party candidates disclosed to the public.

13 The three-judge court applied the law for the  
14 cases like this that this Court announced in 1976 in  
15 Buckley against Valeo, and found that under the First  
16 Amendment, the Socialist Workers Party campaigns in Ohio  
17 were exempt from the Ohio disclosure law. The  
18 three-judge court found on the totality of the  
19 circumstances that there was a reasonable probability  
20 that compelled disclosure of the contributors' names  
21 would lead to threats, reprisals, or harassment from  
22 either government officials or private parties.

23 QUESTION: What evidence is there in the record  
24 to support that?

25 MR. BUCKLEY: The facts in this case, Your

1 Honor -- we take exception to the Attorney General's  
2 statement of the facts in the case. The Attorney  
3 General, in dealing with the facts in the case -- Let me  
4 begin with the most recent evidence and work back. In  
5 the one-year period before trial, the record shows that  
6 22 members of the Socialist Workers Party were fired  
7 because they belonged to the Socialist Workers Party.  
8 In the state of Ohio, four people lost their jobs  
9 because they were members of the Socialist Workers  
10 Party. In Ohio, there were about 60 Socialist Workers  
11 Party members. If you translate that 7 percent into  
12 major party proportions, it means thousands of  
13 Democrats, thousands of Republicans would lose their  
14 jobs annually in Ohio on account of their political  
15 associations.

16           We showed that there were bullets fired at a  
17 Socialist Workers Party headquarters while people were  
18 exiting from a speech that was given at that place.

19           QUESTION: Was this in Ohio?

20           MR. BUCKLEY: The bullets, Your Honor, were in  
21 Pittsburgh, not in Ohio.

22           QUESTION: Well, do you think that evidence in  
23 other states is uniformly transferrable to Ohio?

24           MR. BUCKLEY: Your Honor, the evidence from  
25 other states -- there is no reason to suppose that

1 attitudes in Ohio, we think, are any less hostile  
2 towards Socialist Workers Party adherents than they are  
3 anywhere else.

4           We had in Ohio, within the year, a threat from  
5 the Nazis that if a somewhat similar event would take  
6 place in Ohio, the Nazis would be there and they would  
7 kill people. Now, the police were called in, and there  
8 was no violence, but that event in Ohio took place under  
9 police protection.

10           QUESTION: Where do we find that in the  
11 record? Don't disturb your argument. Let us know  
12 later. Let me know later.

13           MR. BUCKLEY: All right.

14           QUESTION: How far is Pittsburgh from the Ohio  
15 line?

16           MR. BUCKLEY: Pittsburgh is about 50 or 60  
17 miles from the Ohio line, Justice Blackmun. It is  
18 closer to Cleveland than it is Columbus, where this case  
19 was tried.

20           There were other incidents in the last year as  
21 well. At the place where the shots were fired, people  
22 scrawled KKK on the outside of the Socialist Workers  
23 Party offices. Campaign literature was first turned  
24 into the shape of a cross and set on fire and a  
25 candidate's automobile was also set on fire.



1           Now, with respect to this most recent evidence,  
2 the state says that all it amounts to is isolated,  
3 unrelated incidents, as if these things were bolts out  
4 of the blue and took place in a vacuum. It is as if  
5 they were a bunch of coincidences. To view them that  
6 way is to ignore or deny that hostility to communist  
7 ideology in this country is pervasive, and to suggest  
8 that these things are unusual or unrelated denies the  
9 reality of the attitudes that are common in this country.

10           QUESTION: Would it be appropriate to draw any  
11 inferences or base findings on the proposition that  
12 within, I guess, about five years or six three  
13 Presidents have been either shot or shot at? Two of  
14 them shot at, or attempted assaults on them with  
15 firearms, and one actually struck. I am just  
16 wondering. Can we draw any inferences from that?

17           MR. BUCKLEY: Well --

18           QUESTION: Or is there a general inference that  
19 there are a certain percentage of abnormal people in a  
20 large country like this who will do abnormal things?

21           MR. BUCKLEY: Well, some of the Presidents have  
22 lost their jobs, too, Mr. Justice Stevens.

23           QUESTION: I am putting my question to you  
24 about three attempts on Presidents' lives in just recent  
25 years.

1           MR. BUCKLEY: Well, the causes for events like  
2 that -- when the shots were fired at the Socialist  
3 Workers Party meeting place, there wasn't any -- no one  
4 prominent in that sense was present. The fire was  
5 directed at people whose names were not necessarily  
6 known to anybody. The shots were fired on account of  
7 what those people stood for.

8           QUESTION: Why do you suppose the efforts were  
9 made on three occasions -- if you go back 20 years, it  
10 would be five or six occasions -- on Presidents and  
11 Presidential candidates? Can you really draw an  
12 inference from that except that there is a certain  
13 percentage of abnormal people at large?

14          MR. BUCKLEY: Well, Your Honor, I think you can  
15 draw the inference that with respect, say, to the  
16 abnormal people, they are going to be directing their  
17 fire at people such as the Socialist Workers Party in  
18 inordinate numbers, since they are --

19          QUESTION: Or candidates for President.

20          MR. BUCKLEY: They may be directing their fire  
21 at candidates for President, or Presidents.

22          QUESTION: Or to leaders of other kinds,  
23 leaders of groups which some abnormal people find  
24 objectionable.

25          MR. BUCKLEY: Well, Your Honor, these people

1 aren't leaders. They would like to be leaders, but they  
2 receive very few votes, and nevertheless attract plenty  
3 of -- more than their share, if we were to look at it  
4 that way, of violence.

5 MR. BUCKLEY: Your point would be, I suppose,  
6 that they attract more violence than similarly situated  
7 Republicans and Democrats.

8 MR. BUCKLEY: Yes, Your Honor. That would be  
9 our point.

10 QUESTION: Well, that is hardly borne out by  
11 the records, is it?

12 MR. BUCKLEY: Yes, Your Honor. That is borne  
13 out by the record.

14 QUESTION: The three attempts on Republican  
15 Presidents and successful activities towards the  
16 Democratic candidates and one President. Frankly, you  
17 lose me on your point.

18 MR. BUCKLEY: The targets here were not as  
19 prominent as the victims of those Republican and  
20 Democratic attacks, those major party victims. They  
21 were nobodies compared to people who were attacked, and  
22 when we -- the violence in this case, I have only  
23 described the violence in a one-year period, only the  
24 violence in a one-year period. There is more violence  
25 than that. That was just the one-year period.

1           The Socialist Workers Party offices were  
2 attacked in 1978 in Chicago, and they have been attacked  
3 in California, San Diego and Los Angeles as well.

4           The state says that the evidence from before --

5           QUESTION: Mr. Buckley, the offices, I take it,  
6 would be attacked quite apart from any disclosure  
7 requirement. I mean, there is a certain -- a party  
8 chooses to make itself public in a certain sense, open  
9 streetfront offices, campaign headquarters, and it  
10 doesn't require any statutory disclosure for people to  
11 know if you are conducting any sort of a campaign to  
12 know where your campaign headquarters are.

13           QUESTION: None at all, Your Honor. There is  
14 no connection between the disclosure statute and knowing  
15 where the Socialist Workers Party office is located.  
16 When it comes to evidence of harassment or threats or  
17 reprisals on account of disclosure, we have very little  
18 evidence of that. The reason -- We have some evidence  
19 from 1973, after 1971, when harassment was supposed to  
20 have stopped.

21           In 1973, the FBI looked up and found out that  
22 some individual had contributed \$10 to a Socialist  
23 Workers Party campaign, had displayed a poster in favor  
24 of the Socialist Workers Party and had recommended that  
25 people vote either for the Socialist Workers Party or



1 for somebody else. The FBI confronted that person, told  
2 that person that they knew what he was up to, and they  
3 were going to keep an eye on him in the future.

4           The reason there is so little evidence, direct  
5 evidence, is that there hasn't been any disclosure to  
6 speak of. There has been no disclosure in this case,  
7 and the Socialist Workers Party has prevailed in six  
8 courts or administrative tribunals around the country  
9 when they have made the same sort of case that we are  
10 making right here.

11           QUESTION: Of course, in a sense, it was  
12 something that you brought about yourself. I mean, if  
13 you had wanted evidence and thought it would be  
14 forthcoming by application of the disclosure statute,  
15 you could have refrained from asking for the temporary  
16 restraining order over a period of six years.

17           MR. BUCKLEY: Well, Your Honor, in Buckley  
18 against Valeo, we think that that opinion invited  
19 exactly this sort of a lawsuit to be brought when there  
20 was evidence based upon past or present harassment of  
21 members, and it doesn't require that there be a direct  
22 cause and effect relationship.

23           QUESTION: Why do you say it doesn't require it  
24 to be a direct cause and effect relationship? Is there  
25 anything in Buckley against Valeo that says that?

1           MR. BUCKLEY: Well, it talks about flexibility  
2 in proof, evidence of --

3           QUESTION: That still doesn't go to what it is  
4 you are trying to prove.

5           MR. BUCKLEY: It would require people to be  
6 harassed, to expose themselves in this First Amendment  
7 area to dangerous consequences on account of --

8           QUESTION: How would you produce evidence of  
9 harassment other than showing that somewhere there has  
10 been the fact of harassment?

11          MR. BUCKLEY: Well, we do have some evidence of  
12 harassment, that 1973 incident, and there is another one  
13 in the record as well in which the Government Accounting  
14 Office gave people some trouble when they -- That is in  
15 Exhibit 129, both those episodes, Your Honor.

16          QUESTION: Do you think that we could -- well,  
17 what do you think our standard of review is in this case?

18          MR. BUCKLEY: The clearly erroneous standard  
19 applies here, Your Honor. This is a factual  
20 determination.

21          QUESTION: What is the factual determination,  
22 that there will -- it is a prediction?

23          MR. BUCKLEY: That there is a reasonable  
24 probability that if names are disclosed, it will subject  
25 the people to threats, harassment, or reprisals. It is

1 a probability. Whether or not there is a real risk  
2 involved in that -- in making disclosure.

3 QUESTION: That certainly isn't a historical  
4 fact finding. I mean, that is about the future. It is  
5 a prediction.

6 MR. BUCKLEY: It is based upon historical  
7 facts.

8 QUESTION: Well, it may be. It is an inference  
9 about what will happen in the future from historical  
10 facts.

11 MR. BUCKLEY: It is not just a foreboding. On  
12 account of historical facts, one can draw the conclusion  
13 that there is a reasonable probability, which is a  
14 factual determination. And that is what the three  
15 judges from Ohio found on the basis of --

16 QUESTION: So you think we can't disagree with  
17 the inferences the three-judge court drew unless we find  
18 the inference is clearly erroneous.

19 MR. BUCKLEY: Your Honor, what we --

20 QUESTION: We can't make an -- you submit that  
21 we can't make an independent judgment --

22 MR. BUCKLEY: Well, Your Honor --

23 QUESTION: -- based on the historical facts as  
24 to what the future might hold.

25 MR. BUCKLEY: Rule 52 says that the findings in

1 matters like this of the trial court should not be set  
2 aside unless they are clearly erroneous. Now, the  
3 record, we think, is so powerful and overwhelming that  
4 even if the court were to conduct the trial de novo, in  
5 effect, on the record evidence, this Court would verify  
6 the decision that the trial court made, but Rule 52, the  
7 Pullman Standard case last year, we think, is  
8 appropriate and applies here.

9 QUESTION: Mr. Buckley, was there any evidence  
10 in the record as to the effect on disclosure of  
11 expenditures?

12 MR. BUCKLEY: There is no evidence in the  
13 record on expenditures either, Your Honor, because with  
14 no disclosure --

15 QUESTION: Well, there is some limited  
16 evidence, is your argument, as to the effect on  
17 contributors, but is there any at all on the  
18 expenditures?

19 MR. BUCKLEY: There is none at all on  
20 expenditures as such, but in that connection, we think  
21 that the considerations when it comes to disclosure of  
22 who gets the money, where the disbursements go, are very  
23 similar to the considerations that go into the  
24 contributors' names.

25 QUESTION: Well, don't you think they are



1 really quite different? For instance, there might be a  
2 disclosure of expenditure of where you get printing  
3 done? Don't you think it is much less likely that there  
4 would be harassment of a commercial printer who was paid  
5 to do a job than there would be of a contributor to a  
6 cause?

7           MR. BUCKLEY: I don't think so, Your Honor, and  
8 the case of Peter Zenger comes to mind in that  
9 connection. Peter Zenger was a printer, not a  
10 politician, and Peter Zenger was put on trial on account  
11 of what appeared in that journal in New York. So that  
12 is a good example of where campaign money goes.

13           QUESTION: Wouldn't even you concede that the  
14 case of Peter Zenger is somewhat remote in time and  
15 place, though?

16           MR. BUCKLEY: It is remote in time and place,  
17 but I think it is appropriate nevertheless, Your Honor.

18           QUESTION: He wasn't doing commercial printing,  
19 either. He was printing things he wanted to say, was he  
20 not? I mean, I assume your client is going to go out  
21 and hire some printer or some billboard or some office  
22 or something like that. I am not sure they are all in  
23 the same class as Peter Zenger.

24           MR. BUCKLEY: Well, a good deal of what  
25 appeared in Peter Zenger's journal was published

1 anonymously. It appeared as advertisements that  
2 everybody could translate into the politics of the time,  
3 and the people who published anonymously weren't put on  
4 trial.

5           QUESTION: Mr. Buckley, would you concede that  
6 the state might have conceivably even a greater interest  
7 in requiring disclosure of expenditures than  
8 contributions in an effort to discourage the payment of  
9 bribes or buying votes, or something of that kind?

10           MR. BUCKLEY: I wouldn't see that that is any  
11 greater interest, Your Honor. It is an interest that  
12 one can discern, but I don't think it is any greater  
13 than the interests that support contribution  
14 disclosures.

15           The historical evidence, so-called. The state  
16 says that the evidence that the FBI stopped harassment  
17 of the Socialist Workers Party in 1971, the record -- I  
18 have already referred to one incident in the record from  
19 1973, when the FBI harassed somebody. In 1976 -- they  
20 also say in their reply brief that the black bag jobs by  
21 the FBI stopped in 1966. There is evidence in our  
22 record of a burglary committed by an FBI informant on a  
23 Socialist Workers Party office in 1976. The FBI file in  
24 Cleveland comes right down to 1978, with hostility  
25 toward the Socialist Workers Party, evidence from the

1 1978 document.

2 QUESTION: Did the district court in its  
3 opinion rely on, for instance, the 1978 document?

4 MR. BUCKLEY: Well, it relied on the totality  
5 of the circumstances, Your Honor.

6 QUESTION: Well, it mentions several pieces of  
7 evidence specifically, as I recall. Did it mention  
8 that?

9 MR. BUCKLEY: It does not mention that, Your  
10 Honor. It says, however, that -- in the jurisdictional  
11 statement at the top of Page 814, it says that, "The  
12 political views of the SWP are unpopular with many  
13 Americans, and plaintiffs have offered substantial  
14 evidence of both governmental and private hostility  
15 toward and harassment of SWP members and supporters."  
16 And then at the end it says it relies on the totality of  
17 the circumstances.

18 The first sentence that I read is the preface  
19 for the rest of the few pages of findings of fact, where  
20 there are specific references.

21 QUESTION: But it is true that in an equity  
22 case decided as of the time the judgment is entered and  
23 as of this moment, is it not true that there is not one  
24 iota of evidence that the FBI or any other government  
25 agency is doing anything against them?

1 MR. BUCKLEY: Well, Your Honor, that's --

2 QUESTION: Is it or is it not true? If it is  
3 true, give it, and let me hear it.

4 MR. BUCKLEY: It's -- Let me answer you this  
5 way, Your Honor.

6 QUESTION: No, no, you will answer my question  
7 yes or no.

8 MR. BUCKLEY: There is an inference that  
9 federal hostility toward the Socialist Workers Party  
10 continues. The FBI announced in 1976 that its internal  
11 security investigation of the Socialist Workers Party  
12 was at an end, the internal security aspects of it. The  
13 record is filled with references to other U.S. federal  
14 agencies who have had a long-standing interest in the  
15 Socialist Workers Party. The military intelligence  
16 agencies. The Defense Supply Construction Center, part  
17 of the military intelligence. The Immigration and  
18 Naturalization Service. The Secret Service. There is  
19 no evidence in the record that they ever stopped. There  
20 is no evidence that they continue, either, but one would  
21 have thought since the FBI made an announcement that it  
22 was closing down its investigation in 1976 that there  
23 would be a similar announcement with respect to other  
24 agencies.

25 QUESTION: Even if they haven't been engaging



1 in any such activity?

2 MR. BUCKLEY: Well, the record shows that they  
3 were investigating, they had an interest and were  
4 investigating the Socialist Workers Party, and the  
5 evidence comes all the way down to the fall -- to a few  
6 months before trial, actually. The U.S. Navy caused  
7 three of the firings to take place in New York. So that  
8 was federal hostility within a few months of the trial,  
9 in New York.

10 There is plenty of evidence in the record as  
11 well with respect to private hostility toward the  
12 Socialist Workers Party. Some of the firings were  
13 obviously the result of private hostility. There is  
14 also evidence that people would contact -- voluntarily  
15 contact the FBI and volunteer their services as  
16 informants. There is evidence that the FBI was able to  
17 recruit a network of contacts at 21 colleges and  
18 universities in the vicinity of Cleveland to keep an eye  
19 on the Socialist Workers Party to see what they were  
20 doing and were not doing.

21 QUESTION: Mr. Buckley, supposing that in a  
22 Presidential year, there is a very hotly fought battle  
23 between the Republican candidate and the Democratic  
24 candidate for President, and let's say in a particular  
25 Congressional district in Ohio the thing is even more

1 hot, and it is just a very bitter, hostile rivalry, with  
2 a lot of rockthrowing, things you don't ordinarily see  
3 in strictly major party campaigns, but this is a little  
4 bit different.

5           Do you suppose that either the Republican  
6 candidate or the Democratic candidate or the Republican  
7 Party or the Democratic could come in and make a showing  
8 under those circumstances that they ought not to be  
9 required to disclose?

10           MR. BUCKLEY: Well, Your Honor, it might  
11 theoretically be possible. It is hard to imagine the  
12 circumstances in which that would take place. In  
13 Buckley, the Court said that minor parties could get an  
14 exemption. Now, there are places and circumstances, I  
15 suppose, in which a Democrat hasn't won or a Republican  
16 hasn't won in 100 years, and perhaps one could generate  
17 out of that sort of background a minor party  
18 characterization.

19           QUESTION: Well, what about Pollard against  
20 Roberts?

21           MR. BUCKLEY: Justice Blackmun, there is no  
22 question but that the --

23           QUESTION: That was a Republican candidate.

24           MR. BUCKLEY: That was a Republican. The  
25 Republicans were the people whose campaign contributions

1 would have been revealed in Pollard against Roberts were  
2 it not for the decision in Pollard against Roberts.

3 QUESTION: I just don't want you to give up so  
4 easily.

5 MR. BUCKLEY: Let me explain why this case took  
6 so long to get here. It was filed in 1974. The parties  
7 gave the temporary restraining order classwide effect  
8 throughout. It was by agreement of the parties. The  
9 thing on file was a temporary restraining order. The  
10 parties gave it a classwide effect. But the reason why  
11 it was delayed was because Buckley against Valeo was in  
12 the -- was working its way up toward the Supreme Court,  
13 and there was then a lengthy battle with the FBI over  
14 discovery of the FBI records from Cleveland.

15 After those records were finally revealed in a  
16 highly excised form, we stopped fighting the FBI and  
17 took what they gave us in that excised form and moved  
18 forward fairly promptly toward trial.

19 CHIEF JUSTICE BURGER: We will resume there at  
20 1:00 o'clock, counsel.

21 (Whereupon, at 12:00 o'clock noon, the Court  
22 was recessed, to resume at 1:00 p.m. of the same day.)

23

24

25





1 does it, counsel? Wouldn't some people feel differently  
2 about someone who took a printing job from the Socialist  
3 Workers Party as simply a commercial deal, or a landlord  
4 who rented premises to them, that he was in the business  
5 of renting to anyone who came along, as opposed to  
6 someone who voluntarily contributed? He wasn't in the  
7 business of contributing. He chose the Socialist  
8 Workers Party.

9 MR. BUCKLEY: But, Your Honor, the people who  
10 become landlords for the Socialist Workers Party  
11 deliberately choose to deal with them, and they might  
12 very well not want it to be known that that is where  
13 they were making their money. The same for the printers.

14 QUESTION: Well, I suppose any landlord  
15 deliberately chooses, but do you think it is exactly the  
16 same sort of choice as making a voluntary contribution  
17 to a political party?

18 MR. BUCKLEY: I suggest that it would be  
19 harmful to many people if it were known that they were  
20 making their money by dealing with the Marxist  
21 ideologists.

22 QUESTION: Supposing the Hilton Hotel rented a  
23 room for a meeting. Do you think they would get bombed  
24 for that?

25 MR. BUCKLEY: We have no evidence, Your Honor,

1 that the Hilton --

2 QUESTION: That is exactly the point. There is  
3 no evidence one way or the other.

4 MR. BUCKLEY: We do have evidence, not about  
5 the Hilton, Your Honor, but that the FBI did harass SWP  
6 landlords in the past, not because they were discovered  
7 to be landlords on account of the disclosure laws, but  
8 because they found it out some other way, and they  
9 discovered that neighbors and friends were --

10 QUESTION: Well, your argument about  
11 contributors, though, is that the Socialist Workers  
12 Party will be damaged because contributors will be put  
13 off. You won't get your contributions. Isn't that  
14 right? This is the party's interest.

15 MR. BUCKLEY: It is a party's interest, Your  
16 Honor, but there are other kinds of --

17 QUESTION: Well, I know, but whose interests  
18 are you representing here, the Socialist Workers Party?

19 MR. BUCKLEY: The Socialist Workers Party,  
20 their contributors, and people who have received --

21 QUESTION: All right, their contributors, but  
22 the only reason you can represent the contributors is  
23 because it might cool them off to have their names  
24 disclosed. Do you think there is the same argument with  
25 respect to expenditures, that the party won't be able to

1 find people to take the money?

2 MR. BUCKLEY: Yes, Your Honor. When it comes  
3 to --

4 QUESTION: You mean, you can't find a landlord,  
5 or you can't find -- of course, everybody is going to  
6 know who your landlord is.

7 MR. BUCKLEY: There are other kinds -- even  
8 with respect to --

9 QUESTION: You can't rent a hotel room? You  
10 can't find any secretaries to work for you?

11 MR. BUCKLEY: It would deter such people, Your  
12 Honor, but there are other kinds of recipients as well.  
13 I've got Exhibit F from the record here.

14 QUESTION: Printers? You can't find a printer  
15 to print for you? Because they may be harassed?

16 MR. BUCKLEY: You would reduce the number of  
17 printers, Your Honor. I think that seems quite -- it is  
18 quite likely that the number of printers that would be  
19 available -- This shows other kinds of recipients of  
20 funds, not in the order of magnitude of landlords and  
21 printers. It shows people getting \$20, \$7, \$23, amounts  
22 like that to pay for Xerox, postage, such things as  
23 that. These are the people who do the legwork for the  
24 campaign, little people.

25 QUESTION: Who do you pay to get the postage?

1 The United States Post Office, aren't you?

2 MR. BUCKLEY: Well, you pay somebody to go and  
3 buy that, Your Honor, and that is what -- you have to  
4 say, to whom paid, and the purpose of the expenditure.  
5 Now, there are other people --

6 QUESTION: Do you buy stamps through a  
7 middleman?

8 MR. BUCKLEY: That's correct, Your Honor,  
9 because the -- it says here -- There are other people  
10 who are named here. Central National Bank is listed as  
11 a recipient for service charges. Other sorts of  
12 recipients would be people whose carfare was  
13 reimbursed. Expenses in connection with the campaign  
14 such as that.

15 In Buckley, this Court suggested that one could  
16 qualify for an exemption from disclosure if the party  
17 came forward with proof similar to the proof in NAACP  
18 against Alabama. Our case is very similar to NAACP  
19 against Alabama. There was violence against people in  
20 NAACP against Alabama, and it was violence principally,  
21 not exclusively, against leaders in the NAACP. Reverend  
22 Shuttlesworth is mentioned twice. Martin Luther King is  
23 mentioned. Another person who is not famous but who had  
24 made speeches is mentioned by name as having been  
25 assaulted.



1 QUESTION: I had a suit for \$6 million. They  
2 didn't mention me either.

3 (General laughter.)

4 MR. BUCKLEY: There was evidence of government  
5 hostility in the state of Alabama. There is evidence of  
6 government hostility in this case, and there was some  
7 evidence --

8 QUESTION: Any evidence of hostility from the  
9 state of Ohio?

10 MR. BUCKLEY: Very little, Your Honor, but  
11 there is some. The lieutenant governor made a request  
12 to the FBI in one situation about a member of the Young  
13 Socialist Alliance, and it shows at another point that  
14 the FBI was working with the Cleveland Police  
15 Department, but there isn't that much. And in NAACP,  
16 there is some evidence, but not as much evidence as  
17 there is in this case, of economic reprisal. When it  
18 comes to people being fired we have in this case a  
19 substantial amount of evidence coming right down to the  
20 time of trial, and the cases are quite comparable.

21 In my remaining minutes, I would like to deal  
22 with one other argument that is in the appellant's  
23 brief, the nominating petition argument, so-called. To  
24 get on the ballot in Ohio, Socialist Workers Party  
25 candidates have to collect signatures on nominating

1 petition --

2 CHIEF JUSTICE BURGER: Your time has expired,  
3 Mr. Buckley. You have covered that in your brief, I am  
4 sure.

5 MR. BUCKLEY: Thank you.

6 CHIEF JUSTICE BURGER: Do you have anything  
7 further, Mr. Brown?

8 ORAL ARGUMENT OF GARY ELSON BROWN, ESQ.,  
9 ON BEHALF OF THE APPELLANTS - REBUTTAL

10 MR. BROWN: Chief Justice, and if it please the  
11 Court, we just have a couple of brief points we would  
12 like to make on rebuttal in regard to two specific cases  
13 which have been previously decided in this country.

14 One of them is the Paul Young case involving  
15 the Socialist Workers Party. In that case, the  
16 Socialist Workers Party lost. The district court  
17 required the Socialist Workers Party to disclose the  
18 identity of its contributors and the recipients of its  
19 expenditures, yet in this case, the SWP has presented no  
20 evidence of any harassment in Oregon, despite the fact  
21 that they present extensive other evidence of nationwide  
22 problems in the evidence in their case.

23 Again, I think they could have presented direct  
24 evidence on the question regarding potential harassment  
25 of contributors or expenditure recipients out of the

1 Oregon situation if there had been any harassment,  
2 threats, or reprisals.

3           The other case we would like to refer to  
4 briefly is the FEC versus Hall Tiner case, which Mr.  
5 Buckley just brought to the Court's attention in his  
6 letter this week. That case involves the Communist  
7 Party rather than the Socialist Workers Party, but that  
8 case is a very telling case, because the evidence there  
9 showed, and incidentally, the Court created an exemption  
10 for the Communist Party in the FEC case, and the  
11 evidence in that case showed that there are numerous  
12 federal statutes currently subjecting members of the  
13 Communist Party to both civil disabilities and criminal  
14 liability.

15           Secondly, membership can cause a naturalized  
16 citizen to have his citizenship revoked. The evidence  
17 also showed that in many states it is currently illegal  
18 to be a member of the communist party.

19           Fourth, contributors to the Communist Party are  
20 proscribed by many state statutes throughout the  
21 country, and most importantly, there was evidence in the  
22 form of an affidavit by the Assistant Director of the  
23 FBI that even though the Cointelpro, the harassment  
24 program of the FBI, even though the Cointelpro Program  
25 was terminated in 1971, the Communist Party of the

1 United States is currently under active surveillance.

2           That is very distinguishable from this case,  
3 where the government has testified that there is no  
4 longer any Cointelpro Programs vis-a-vis the Socialist  
5 Workers Party. They are not under active surveillance  
6 in this country.

7           QUESTION: Mr. Brown, time-wise, where does the  
8 line of demarcation come? Suppose the FBI had announced  
9 last week that it was terminating? Is the case any  
10 different?

11           MR. BROWN: Justice Blackmun, there is no way  
12 for me to stand here and say there is a definite way to  
13 draw that time line. A three-judge panel or trial court  
14 or this Court has to bring its experience to bear on  
15 that question, but last week is a far cry, ten or eleven  
16 years ago, and the issue coming out of the Buckley  
17 versus Valeo test is the future reasonable probability  
18 that disclosure is going to result in threats,  
19 reprisals, or harassment. If it just ceased last week,  
20 I think that would be a different case than we have  
21 here, where it ceased eleven years ago.

22           QUESTION: Well, suppose it is three years  
23 ago.

24           MR. BROWN: Well, like I say, there is no way  
25 to definitely draw the line, but the further you go back



1 into the past, the less likely it has any current  
2 probative value.

3 QUESTION: So your position is that it has to  
4 be unreasonable here.

5 MR. BROWN: I don't understand about have to be  
6 unreasonable, Your Honor.

7 QUESTION: The conclusions of the three-judge  
8 court have to be unreasonable on the evidence that was  
9 submitted. If it is eleven years ago, it is  
10 unreasonable.

11 MR. BROWN: That's correct. There is no doubt  
12 about that.

13 QUESTION: If it was three years ago --

14 MR. BROWN: If it was three years ago, I would  
15 stand here and say it was probably still unreasonable.  
16 Last week, I would be much less prone to say that.

17 Your Honor, in closing, I think clearly in  
18 consideration of this matter, the district court  
19 incorrectly applied the standards set forth by this  
20 Court in Buckley versus Valeo by failing to require the  
21 Socialist Workers Party to properly establish that a  
22 reasonable probability in the future of threats,  
23 reprisals, or harassment to contributors or recipients  
24 of expenditures would result from their compliance with  
25 the disclosure requirements of our statute.

1           Thank you, Your Honor.

2           CHIEF JUSTICE BURGER: Thank you, gentlemen.

3 The case is submitted.

4           (Whereupon, at 1:06 p.m., the case in the  
5 above-entitled matter was submitted.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

Ted W. Brown Et Al., Appellants, v. Socialist Workers '74 Campaign Committee (Ohio), et al. No. 81-776

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY Reene Hammond