

Campaign Contributions as Freedom of Expression: A Comparative Study Between the United States and Germany

Authors : Kristof Lukas Heidemann

Abstract : In times of democratic backsliding in Western nations, restoring public trust in the electoral process ranks among the most urgent tasks on the public agenda. Addressing the role of money in politics is one major part of this effort; however, such an endeavor might affect the constitutional freedom of expression. Attempts to regulate political spending in the U.S. have in recent decades increasingly been overruled by the U.S. Supreme through an expansion of the protective umbrella of the First Amendment over campaign contributions by private organizations, especially in the decisions *Buckley v. Valeo* and *Citizens United v. FEC*. In Germany, on the other hand, this line of argumentation has so far not been submitted to the national Supreme Court. Given that voices calling for stricter and more transparent political financing laws in Germany are growing, it seems only a matter of time until the issue will have to be addressed by the country's judiciary as well. Therefore, this paper conducts a comparative analysis of the constitutional right to free expression in these two leading democracies to assess whether the problem of a lack of regulatory options to achieve stricter campaign spending laws due to constitutional restrictions will also arise in Germany. Although the list of forms of expression in the wording of Art. 5 of the German constitution is generally considered to be non-exhaustive, the investigation concludes that the subsumption of election campaign donations under it is not justifiable using recognized methods of interpretation, in particular concerning a systematic interpretation in light of the principle of equality in Art. 3 of the German constitution.

Keywords : comparative constitutional law, constitutional justice, constitutional law, election law, freedom of speech, fundamental rights, law reform

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