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Coordination Limits on Political Parties Violate the Constitution – *National Republican Senatorial Committee v. Federal Election Commission*

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Highlights

- Federal limits on coordinated expenditures by political parties to support their candidates violate the First and Fourteenth Amendments.
- By limiting the speech and associational rights of political parties, federal law interferes with the primary purpose of those parties – to support their candidates.
- If the Supreme Court fails to declare this limitation unconstitutional, Congress should void the law and restore the liberty and freedom of the political process.

> In no country in the world has the principle of association been more successfully used, or more unsparingly applied…than in America….[I]n the exercise of political association…the partisans of an opinion may unite in electoral bodies, and choose delegates to represent them….In America, the liberty of association for political purposes is unbounded.
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> Alexis de Tocqueville,
> *Democracy in America* (1835)

Executive Summary

Federal campaign finance laws that Congress enacted to limit the ability of political parties to directly support and coordinate with their candidates violate both the free speech and associational rights of the candidates, their political organizations, and the individual American citizens who unite to support those candidates and parties. Congress's restrictive boundaries on the liberty of association and speech violate the First and Fourteenth Amendments.

In *National Republican Senatorial Committee v. Federal Election Commission*,[2] the U.S. Supreme Court has the ability to reverse a prior erroneous decision that upheld these campaign laws and restore "the liberty of association for political purposes" that de Tocqueville so admired. If it fails

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[2] National Republican Senatorial Committee v. Federal Election Commission, Case No. 24-621 (U.S.).

This paper can be found here: [website link]

to do, Congress should amend federal law and restore the liberty and freedom to engage in political speech, action, and association that de Tocqueville considered one of this nation's greatest attributes.

Introduction – Federal Election Campaign Act

The Federal Election Campaign Act of 1971, as amended in 1974 (FECA), implemented a series of changes in the laws governing congressional and presidential campaigns. It created the Federal Election Commission (FEC) to civilly enforce the law, while reserving criminal prosecution to the Department of Justice, and applied a multitude of restrictions and limits on the raising and spending of campaign funds.[3] Among the changes was a limit on how much a political party can spend in coordination with its candidates (i.e., with their involvement) to support the candidates' run for office.

Under 52 U.S.C. § 30116 (d)(2) and (3), the maximum amount a party can spend in coordination with its candidate for the presidency, the Senate, and the House of Representatives in states with only one House member is calculated by multiplying the voting age population[4] of the U.S. or the state (depending on the office) by two cents. For candidates running for the House of Representatives in states with multiple members, the limit has been increased from the original amount of $10,000 based on cost-of-living increases from the consumer price index.

The FEC updates the dollar limits annually based on these formulas. As of 2025, the limits ranged from $127,200 to $3,946,100 for Senate candidates. In states with only one member of the House, the limit is $127,200, while for House candidates in states with multiple members, the limit is $63,000 per candidate.[5] The coordination limit that was in effect for the 2024 presidential election was $32,392,200.[6]

There are numerous other limitations on contributions in federal law. For example, in the 2025-2026 election cycle, the amount an individual can contribute to a national political party is $44,300, while the amount an individual can contribute to a federal candidate is $3,500 per election (i.e., $3,500 for a primary election and another $3,500 for the general election if the candidate wins the primary and advances to the general election).[7]

It is important to note that the political party spending limits in the FECA originally applied to all spending by political parties, whether that spending was in coordination with the candidate or independent of the candidate. However, in 1996 in *Colorado Republican Federal Campaign Committee v. FEC*, the Supreme Court concluded that the First Amendment prohibits limiting the amount of *independent* expenditures a political party can spend on behalf of its candidates.[8] Political parties, the Court determined, have the "same right" as any individual "to make unlimited independent expenditures" to support political candidates.[9]

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[3] 52 U.S.C. § 30101 *et seq*.
[4] Using the voting age population as a beginning basis for this formula instead of the eligible citizen age population to reach those who may vote results in obvious inaccuracies given that the voting age population contains many ineligible voters, including aliens who are banned from voting in federal elections and felons in states that remove their ability to vote upon conviction.
[5] "Coordinated party expenditure limits adjusted for 2025," Federal Election Commission, https://www.fec.gov/updates/coordinated-party-expenditure-limits-adjusted-for-2025/.
[6] "Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold," Federal Election Commission, 89 Fed. Reg. 5534 (Jan. 29, 2024).
[7] "Contribution limits for 2025-2026," Federal Election Commission (Jan. 30, 2025) https://www.fec.gov/updates/contribution-limits-for-2025-2026/. .
[8] 518 U.S. 604 (1996).
[9] *Id*. at 618.

This holding was in line with the Court's seminal decision on the constitutionality of the FECA, *Buckley v. Valeo,* which was issued 50 years ago on January 30, 1976.[10] In *Buckley*, the Court held that campaign finance restrictions operate "in an area of the most fundamental First Amendment activities" and can only survive constitutional challenge if they protect the electoral system from the appearance and reality of corruption. Those First Amendment activities that are protected include both "political association as well as political expression."[11]

Under that principle, the Court decided that limiting contributions was acceptable because that prevents bribery of candidates to vote in particular ways if they are elected. In other words, it prevents *quid pro quo* corruption, which the Court said undermines "the integrity of our system of representative democracy."[12]

Limiting the amount that an individual can contribute directly to a specific candidate does not limit speech since the FECA did not limit the overall amount of contributions a candidate can receive from multiple individual contributors. The contribution limit "merely" requires "candidates and political committees to raise funds from a greater number of persons."[13]

Or so reasoned the Supreme Court.

Limitations on expenditures, however, as opposed to limitations on direct contributions to candidates and political parties, do not meet the standard outlined in the *Buckley* decision. As the Court said, a "restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number issues discussed, the depth of their exploration, and the size of the audience reached."[14]

Thus, Congress cannot generally impose limitations on political spending. Restricting spending would be tantamount to rationing speech since it requires funding to engage in political speech and activity protected by the First Amendment, whether it is renting a ballroom at a hotel for a candidate to speak to supporters; creating and mailing campaign material to potential voters that illustrate the candidate's opinions on public policy; or creating and broadcasting television and radio ads in which a candidates espouses his views to the public.

While the Court threw out limits on *independent* expenditures by political parties in 1996, in a second case also arising out of Colorado in 2001, the Court in *FEC v. Colorado Republican Federal Campaign Committee* upheld the constitutionality of the limits on *coordinated* expenditures by political parties.[15] In a 5-to-4 decision by Justice David Souter, the majority misapplied the distinction between contribution and expenditure limitations outlined in *Buckley* to assert that coordinated political party expenditures on behalf of candidates are "the functional equivalent of contributions" to the candidates and that invalidating the limits in the FECA would circumvent the limit on how much a political party can contribute directly to a candidate.[16] That limit for a party committee currently stands at $5,000 per candidate per election.[17]

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[10] 424 U.S. 1 (1976).
[11] *Id.* at 14-23. The Court cited its opinion in NAACP v. Alabama, 357 U.S. 449, 460 (1958), where it recognized that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association."
[12] *Buckley*, 424 U.S. at 26-27.
[13] *Buckley*, 424 U.S. at 22.
[14] *Buckley*, 424 U.S. at 19.
[15] 533 U.S. 431 (2001).
[16] *Id.* at 447.
[17] 52 U.S.C. § 30116(a)(2)(A)

The FEC has promulgated complex regulations to determine when a political party is coordinating with a candidate. A coordinated expenditure is spending "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee."[18] There is a lengthy definition of what constitutes a "coordinated communication" with many different qualifying conditions, including both "content standards" and "conduct standards," all of which may bring a particular expenditure within the coordinated spending limit.[19]

These regulations require detailed review and analysis for a political party to determine whether its speech and political advocacy is acceptable First Amendment activity or a possible civil or criminal violation of federal law with potentially severe consequences and penalties. They constitute an onerous burden on political activity protected by the First Amendment.

National Republican Senatorial Committee v. FEC

In 2022, the National Republican Senatorial Committee (NRSC) along with other challengers, including then-Senator JD Vance, filed suit against the Federal Election Commission over the coordinated expenditure party limitation that the Supreme Court had upheld in 2001, although there have been various amendments to the FECA since then. The NRSC, in an effort to convince the Court to overturn that precedent, argued that the limitation was unconstitutional on its face and as applied because it severely burdens political speech in violation of the First Amendment and does not further any legitimate government objective.

As the NRSC points out in its brief to the Supreme Court, a "political party exists to get its candidates elected" and it is "only natural that a party would want to consult with its candidate before expressing support for his election."[20] That is the way our political system and political parties operated for the first 200 years of our history until Congress decided to prohibit political parties from working with the party's candidates, one of the most bizarre – and unconstitutional – developments in the history of our democratic republic.

Furthermore, the NRSC argued that "no one seriously claims that parties are trying to bribe their candidates."[21] Therefore, since the *Buckley* rationale justifying regulatory restrictions that avoid corruption or the appearance of corruption could not apply, "the government has been forced to rely on a *quid pro quo*-by-circumvention defense – namely, that the limits will somehow prevent donors from laundering bribes to candidates *through* the political parties."[22] This despite the fact that individuals contributing to political parties have no control over how those parties spend those contributions, not to mention the fact that individuals are also limited in the amount that they can contribute to political parties.

Since the two Colorado decisions, the Supreme Court has narrowed its views on what type of campaign restrictions are acceptable under the First Amendment. As it reiterated in 2014 in *McCutcheon v. FEC*, the protection of "the First Amendment has its fullest and most urgent application" to "the conduct of campaigns for political office."[23] In fact, in *McCutcheon*, the Court

[18] 11 CFR 109.20.
[19] 11 CFR 109.21.
[20] Brief for Petitioners (August 21, 2025), p. 1.
[21] *Id*.
[22] *Id*.
[23] McCutcheon v. FEC, 572 U.S. 185, 191-192 (2014).

tossed out the *quid pro quo*-by-circumvention principle that was used in the earlier Colorado decision to justify the party coordination limits.

The Court also emphasized that Congress cannot impose regulations on campaigns "simply to reduce the amount of money in politics, or to restrict the political participation of some in order to enhance the relative influence of others."[24] Neither of those reasons justifies violating the First Amendment.

In fact, the Court pointed out the inherent problems with those objectives, which are constantly cited by so-called reformers to try to justify restrictions on candidates, political parties, and citizens in the conduct of election campaigns:

> Many people might find those latter objectives attractive: They would be delighted to see fewer television commercials touting a candidate's accomplishments or disparaging an opponent's character. Money in politics may at times seem repugnant to some but so too does much of what the First Amendment vigorously protects. If the First Amendment protects flag burning, funeral protests, and Nazi parades – despite the profound offense such spectacles cause – its surely protects political campaign speech despite popular opposition.[25]

McCutcheon involved the aggregate limits that the FECA imposed on the amount that an individual can contribute to federal candidates and committees. In the 2011-2012 election cycle, the limit on the amount an individual could contribute to a single federal candidate was $2,500, while the total aggregate amount an individual could give to all candidates was $46,200. Thus, if someone like Sean McCutcheon wanted to give the maximum of $2,500 to each political candidate he was supporting, he could only give donations to 18 candidates, with a little leftover for a 19th candidate. There was a similar aggregate limit of $70,800 in contributions that could be made by Sean McCutcheon to all political parties and political action committees combined, with a base limit of $30,800 that could be contributed to a national party committee.[26]

In tossing out these aggregate limits, the Supreme Court noted that the "intricate regulatory scheme" that the FEC had put in place since *Buckley* "limits the opportunities for circumvention of the base limits via 'unearmarked contributions to political committees likely to contribute' to a particular candidate." While the base limits – the limits on individual contributions – serve the "permissible objective of combating corruption," the Court held that the aggregate limits do not:

> We conclude, however, that the aggregate limits do little, if anything, to address that concern, while seriously restricting participation in the democratic process. The aggregate limits are therefore invalid under the First Amendment.[27]

The idea that donors to political party committees could circumvent the base limits on contributions to candidates through their contributions to the political parties, over which they have no supervisory control, makes no sense. The base limit on the amount donors could give to each party organization in the 2011-2012 election cycle was only $30,800 while the aggregate limit to all party and committee organizations was $70,800.

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[24] *Id*. at 191.
[25] *Id*. at 191.
[26] "Summary," McCutcheon v. FEC, Federal Election Commission, https://www.fec.gov/legal-resources/court-cases/mccutcheon-et-al-v-fec/.
[27] McCutcheon, 572 U.S. at 193.

Yet according to the FEC, the Democrat federal, state, and local party committees raised a total of $610.4 million during that election cycle. All of the Republican party committees raised $660.1 million.[28] The maximum a donor could contribute to these parties was just a drop in the bucket in comparison to the amounts the parties were raising and spending, and it was obvious that the "circumvention" argument, based on the supposed control individual contributors have over how a party committee spends its money, was ludicrous.

It certainly did not justify violating the First Amendment rights of political contributors or the candidates and political parties with which they associate under the closely drawn scrutiny that must be applied to such campaign laws.

In this case, the Sixth Circuit ruled against the challengers because it concluded that the Supreme Court's decision in the second Colorado case in 2001, which upheld the limits on coordinated expenditures, controlled.[29] However, as Judge Amul Thapar noted in a concurring opinion, the 2001 decision "is an outlier in" the Court's "First Amendment jurisprudence."[30]

The Sixth Circuit noted that "'at least 28 states largely give parties free rein to make coordinated expenditures on behalf of their state-level nominees' and that no evidence of corruption has materialized." This was indeed "telling," said the Sixth Circuit, although it was still up to the Supreme Court to decide whether "any changes in understanding about the impact of coordinated political party expenditures on the risk of corruption raise a question" about the legitimacy of the limits on coordinated expenditures.[31]

Interestingly, Judge Chad Readler in his dissent argued that there was no need to get further clarification from the high court. He wrote that in defending the coordinated expenditure limits, the FEC "points to a lone, largely obsolete precedent." Measured by the "rigorous standard of review" applied by the Supreme Court, "the coordinated expenditure limits fail to honor First Amendment guarantees." Under such circumstances, Readler said, the appeals court "may not turn back the jurisprudential clock some two decades to save an undeniably infirm law." Readler would have reached the merits of the case and declared the limits unconstitutional.[32]

Conclusion

As the Institute for Free Speech and the Manhattan Institute correctly said in their amicus brief in the Supreme Court, the "limit on coordinated party expenditures fights a problem that no one can prove exists." Moreover, the "First Amendment does not allow the government to limit political speech based on 'mere conjecture.'"[33]

The claim used to justify these limits was mere conjecture – that contributors to political parties would use those donations to circumvent the limits on individual contributions to candidates. But as stated above, half of the states have no limits on coordinated expenditures for candidates in

[28] "FEC Summarizes 21-Month Campaign Activity of the 2012 Election Cycle," Federal Election Commission (Jan. 30, 2013); https://www.fec.gov/updates/fec-summarizes-21-month-campaign-activity-of-the-2012-election-cycle/.
[29] 117 F. 4th 380 (6th Cir. 2024).
[30] *NRSC*, No. 24-3501 slip op. at 13 (Thapar, J. concurring).
[31] *Id.*, slip op. at 9-10.
[32] *Id.*, slip op. at 79.
[33] *NRSC*, Case No. 24-621, Brief of Institute for Free Speech and the Manhattan Institute as Amici Curiae Supporting Petitioners, p. 3 (citing McCutcheon v. FEC, 572 U.S. 185, 210 (2014)).

state elections and the FEC's "own expert could not identify a single example of a donor using the party as a conduit to circumvent the individual contribution limits to further a *quid pro quo*."[34]

As Advancing American Freedom says in its amicus brief filed on behalf of itself and 16 other individuals and associations:

> The right to freely speak, and freely associate, strike at the heart of human freedom. These freedoms are not forfeited merely because the speaker is a group associating as a political party. Such a content-based and identity-based rule runs contrary to the basic rights the First Amendment protects, allowing the government to force some people or speech outside of that Amendment's protective umbrella.[35]

The sole purpose of political parties is to find, assist, support, and elect the candidates that the members of that political party believe best represent their opinions, beliefs, and views on politics, culture, government, and every issue with which elected representatives deal. Limiting the ability of political associations to support their candidates violates basic First Amendment rights in one of the most fundamental and important areas of our republic – the democratic process.

The Supreme Court should declare this federal statute unconstitutional. If it fails to do so, Congress should void the limits placed on political parties to do what they are supposed to do in accordance with the objectives of their members – elect their candidates.

[34] *Id.* at 5-6.
[35] *NRSC*, Case No. 24-621, Brief of Amici Curiae Advancing American Freedom et al., p. 7.