Public Affairs Council

Member Briefing: *NRSC v. FEC*

July 8, 2026

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Overview of the Case

- *Nat'l Republican Senatorial Comm. v. Fed. Elec. Comm'n*, decided June 30, 2026
- The Supreme Court held in a 6-3 decision authored by Justice Kavanaugh that limits on coordinated party expenditures were unconstitutional, violating the First Amendment's guarantee of free speech
- This decision invalidated a provision of FECA that was in place for over 50 years
  – The Court's decision overruled a 2001 case addressing the same issue, *Colorado Republican Federal Campaign Committee v. FEC* ("*Colorado II*"), which previously upheld the limits
- At a high level, the challengers argued that party committees and candidates would have worked together to spend money in support of the candidates' campaigns, but that federal law limited the amount of coordination in which they could engage
  – The limits, they argued, restricted both the parties' and candidates' free speech because, in their absence, they would have made more coordinated expenditures

The Parties to the Lawsuit

- Party Committee Plaintiffs: National Republican Senatorial Committee (NRSC) and National Republican Campaign Committee (NRCC)
  - Notably, not the Republican National Committee (RNC)
    - National senatorial and congressional committees have separate contribution limits from the principal party committee but were required to be assigned coordinated spending authority from the RNC under FEC regulations
- Candidate Plaintiffs: Senator (now-Vice President) J.D. Vance; Former-Representative Steve Chabot (OH-01)
- Named Defendants: The Federal Election Commission and its Commissioners
  - The FEC defended the provision in the District Court and Sixth Circuit, but the Solicitor General declined to defend the constitutionality of the provision in the Supreme Court
    - The Supreme Court appointed *amicus* counsel to argue the limits were constitutional
- Intervenors: The Democratic National Committee (DNC), Democratic Senatorial Campaign Committee (DSCC), and the Democratic Congressional Campaign Committee (DCCC) were allowed to participate in briefing and argument to defend the limits

The Challenged Coordinated Party Expenditure Limits

- 52 U.S.C. § 30116(d) limited the amount of money political party committees can spend *in coordination with* candidates.
  - These limits placed restrictions on the extent and manner in which parties could spend funds but did not affect fundraising
- The coordinated party expenditure limits were tied to voting-age population, resulting in uniform limits in House races but varying amounts in Senate races depending on the state
  - For Senate nominees, the 2026 limits ranged from $130,600 to $4,071,800, depending on each state's voting age population (VAP)
    - *E.g.*, a political party committee could make coordinated expenditures up to $2,483,800 in an election cycle to support its candidate in Florida, but only spend up to $620,400 to support its candidate in Wisconsin
  - For House nominees in states with only one representative (*e.g.*, Delaware, Wyoming), the limit was $130,600
  - For House nominees in all other states, the limit was $65,300

Buckley v. Valeo: Situating Coordinated Expenditures

- Contributions vs. Expenditures
- *Buckley* acknowledged that coordinated expenditures more closely resembled contributions than independent expenditures:
  - “Prearranged or coordinated expenditures amounting to disguised contributions” are “treated as contributions”
  - “The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments . . .”
- *Buckley* suggested that coordinated spending limits were subject to less rigorous scrutiny than independent spending limits, which it invalidated

Colorado II: The Limits Were Constitutional

- *Colorado II* continued *Buckley*'s logic and upheld the coordinated party expenditure limits, noting that "there is no significant functional difference between a party's coordinated expenditure and a direct party contribution to the candidate"
  - The limits restricted coordinated party expenditures that were as useful to the candidates as cash and were tailor-made to undermine contribution limits and corrupt candidates
- The Court embraced an "anti-circumvention" rationale to uphold these limits
  - Donors' contributions directly to candidates may be limited to reduce *quid pro quo* corruption
  - Donors may give larger sums to parties so that the parties use those funds to support candidates
  - Coordinated party expenditure limits prevent donors from giving to parties as a workaround to use those larger sums for the benefit of candidates
- The Court found substantial evidence demonstrating "how candidates, donors, and parties test the limits of the current law, and it shows beyond serious doubt how contribution limits would be eroded if inducement to circumvent them were enhanced by declaring parties' coordinated spending wide open"

The *NRSC* Decision

- The Court issued a straightforward and focused opinion
  - The majority addresses only the challenged coordination limits
  - The majority does not cast doubt on contribution limits or other coordination limits
- Coordinated party expenditure limits "are disproportionate and are not necessary and narrowly tailored for the circumvention interest it seeks to protect"
- Continued focus on *quid pro quo* corruption
  - The majority makes clear that Congress' restrictions on campaign finance may only target actual and apparent bribery
  - Past cases before McCutcheon (like *Colorado II*) conveyed a broader conception of corruption that included access and undue influence
  - Congress is not permitted to legislate with the aim of reducing wasteful and excessive campaign spending

The *NRSC* Decision

- Concerns about circumventing candidate contribution limits were not enough here
  - Corruption is less plausible where, as here, the donor must cede control of the funds when giving to a party that itself determines where to spend the money
    - *E.g.*, even if a donor wanted to contribute to the NRSC to obtain official action from a certain Senator, the donor would have no guarantee those party funds would support that particular candidate

The *NRSC* Decision

- The limits were "disproportionate" or not "narrowly tailored" because other parts of FECA are sufficient to reduce corruption without limiting coordinated party expenditures

1. Party Base Limits: contributions to parties are already limited to reduce corruption
   - Individuals may contribute $44,300 per year to national party committees (including, *e.g.*, the RNC, NRSC, NRCC, and their Democratic counterparts) and $10,000 to state parties
   - PACs may contribute $15,000 per year to national party committees and $5,000 to state parties
2. Earmarking: contributions to parties intended to be used to support particular candidates should be captured by FECA's earmarking provision
   - Donors directing, expressly or impliedly, party contributions for use with a candidate should be treated as a contribution to that candidate under 52 U.S.C. § 30116(a)(8) and 11 C.F.R. §110.6(b)(1)
3. Disclosure: contributions to parties and ensuing party coordinated expenditures are publicly disclosed in FEC filings and widely available on the internet

The *NRSC* Decision

- Parties' relative political power has diminished since 2001
  - Donors can still contribute unlimited funds to super PACs, which can make unlimited independent expenditures
  - In 2024, super PACs raised over $15.7 billion, as compared to $2.7 billion by political parties
  - Limits on party coordination place a bigger burden on party/candidate speech considering this landscape

The *NRSC* Dissent

- Justice Kagan, joined by Justices Sotomayor and Jackson, would have adhered to *Colorado II*
  - The evidence of corruption before the limits around Watergate demonstrates the need for the limits to reduce corruption
  - A focus on joint fundraising: JFCs (headed by specific candidates) can raise approximately half a million dollars for various political party committees, and now, the party can use those funds with candidates' input or control
  - The majority is wrong that earmarking and disclosure work to prevent corruption
    - Only obvious and clumsy attempts to pass money through parties to candidates will be detected – joint fundraising already effectively attributes party funds to particular candidates
    - Disclosure will not reveal *quid pro quo* dealing and cannot deter it
  - Permitting unlimited coordination will entice malicious donors to give large sums to the party to use as leverage over candidates who benefit from party spending
- Justice Kagan scoffs at the majority opinion in that it is based partly on party committee power relative to super PACs and other outside groups – "but surely, that is rich . . . I can think of a couple of more obvious decisions" that created the modern campaign finance system (citing *Citizens United* and *SpeechNow*)

Effects on Party Spending, Campaign Finance Strategies, and Corporate Political Engagement

- In general, the decision does not affect how much individuals and PACs may contribute to political party committees, but it significantly alters how parties may use the funds they raise from those sources

<u>Party Fundraising and Spending Dynamics Immediately Affected</u>

- On party fundraising, presumably very little will change
  - Party contribution limits do **<u>not</u>** change as a result of the decision
    - <u>Individuals</u>: $44,300 per year to national party general operating accounts; $10,000 per year to state party federal accounts
    - <u>PACs</u>: $15,000 per year to national party general operating accounts; $5,000 per year to state party federal accounts
  - Donors may be more enticed to give to party committees, knowing that they can coordinate with candidates without limit but the same contribution caps remain in place unlike outside groups
    - Whether this occurs remains to be seen

Effects on Party Spending, Campaign Finance Strategies, and Corporate Political Engagement

<u>Expect to See Closer Party/Candidate Relationships</u>

- *NRSC* leaves little of *Colorado I*'s independent spending framework
  - Prior to NRSC, parties could make:
    1. coordinated expenditures up to the specified limits (*Colorado II*), <u>*and*</u>
    2. unlimited independent expenditures (*Colorado I*)
  - Party committees do not have separate accounts for independent expenditures (not subject to limits) and coordinated expenditures (subject to limits)
  - Parties may choose not to make any independent expenditures going forward
    - Without an enforceable limit, there is little to no downside to coordinating with a candidate on the nature and purpose of party spending to support candidates
      - Now, coordinating or not, the money comes from the party's general operating account subject to the base limits
    - NRSC and NRCC claimed coordinating made their spending more efficient and effective

Effects on Party Spending, Campaign Finance Strategies, and Corporate Political Engagement

Identify Political Parties’ New Advantages

- Lowest Unit Rates
  - FCC rules require that in certain designated periods, legally qualified candidates are entitled to pay the cheapest rate offered to commercial advertisers for the same class and amount of time
  - Parties making *independent* expenditures did not qualify for the rate
  - However, parties do qualify for the rate when making *coordinated* expenditures because the ad is made in coordination with a candidate who would qualify
- Party Firewall Units
  - Party committees will likely disband their “firewall units” that ensured independent spending remained independent of candidates

Effects on Party Spending, Campaign Finance Strategies, and Corporate Political Engagement

Understand Political Parties' Existing Practices Reenergized

- Transfers between party committees
  - The parties have already indicated they will likely shift funds between their national committees (*e.g.*, between the DNC, DSCC, and DCCC) to leverage each's contribution limits and maximize coordinated spending's impact
  - State parties are even more likely to transfer funds from their federal accounts to national party committees to maximize coordinated spending's impact
- Continued growth of the use of joint fundraising committees
  - Candidates and parties will be likely to encourage contributions to JFCs, given that:
    1. JFCs can simultaneously raise funds for various party committees (including federal accounts of state party committees) that can be transferred under one roof for coordinated spending
    2. Candidates can encourage the party to make more coordinated expenditures on their behalf when responsible for raising party funds

Future Legal and Political Developments

Consider the Broader Political Landscape

- Partisan Disparities
  - Republicans have a competitive advantage in raising money through the party apparatus
  - Democrats have a competitive advantage in raising money through candidates
  - The *NRSC* decision is likely to offset candidates’ fundraising advantages where the party can pick up the tab on campaign expenses

Future Legal and Political Developments

Opportunities for Future Legal Challenges

- In campaign finance law, successful challenges often serve as an impetus for future cases
- Challenges to state law restrictions on party coordinated spending are inevitable
- Future challenges to other spenders' coordination limits? Not so fast
  - The Court's reasoning largely applies to parties exclusively
  - Parties cannot corrupt candidates, while individuals, PACs, and super PACs likely can when making contribution-equivalent coordinated expenditures
  - Coordinating with candidates is core to party speech while not necessarily true of individuals, PACs, and super PACs
- Future challenges to party limits may follow
  - Parties may next challenge limits on contributions to them
    - Easing party spending restrictions is only one component of the alleged disadvantages relative to super PACs
    - Fundraising disparities with outside groups are likely to persist notwithstanding *NRSC*

Future Legal and Political Developments

<u>Pay-to-Play Implications</u>

- The *NRSC* decision does not change pay-to-play laws
- For covered associates subject to the restrictions in SEC Rule 206(4)-5, MSRB Rule G-37, etc., we have long advised against contributing to state party committees
  - This includes joint fundraising committees with state party committee participants
- When contributing to national party committees, we seek assurance letters stating a limited amount of the funds may be used to support covered candidates, such as a Governor running for the Senate

Questions?

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