

No. 24-621

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IN THE

**Supreme Court of the United States**

NATIONAL REPUBLICAN SENATORIAL COMMITTEE,

ET AL.,

*Petitioners,*

v.

FEDERAL ELECTION COMMISSION, ET AL.,

*Respondents,*

AND

DEMOCRATIC NATIONAL COMMITTEE, ET AL.,

*Intervenor-Respondents.*

**On Writ Of Certiorari To The United States  
Court Of Appeals For The Sixth Circuit**

**JOINT APPENDIX (VOLUME I OF II)**

**(Pages 1–370)**

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(continued from front cover)

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
CINCINNATI DIVISION**

National Republican Senatorial  
Committee, National Republican  
Congressional Committee,  
James David Vance, Steven  
Joseph Chabot,

*Plaintiffs,*

v.

No. 1:22-cv-00639

Federal Election Commission,  
Allen J. Dickerson, in his official  
capacity as a Commissioner and  
the Chair of the Federal Election  
Commission, Dara Lindenbaum,  
in her official capacity as a  
Commissioner and the Vice  
Chair of the Federal Election  
Commission, and Shana M.  
Broussard, Sean J. Cooksey,  
James E. Trainor III, and  
Ellen L. Weintraub, each in their  
official capacity as a  
Commissioner of the Federal  
Election Commission,

*Defendants.*

**COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF**

Plaintiffs	National	Republican	Senatorial
Committee	(NRSC),	National	Republican
Congressional	Committee	(NRCC),	James David

(“J.D.”) Vance, and Steven (“Steve”) Joseph Chabot, allege as follows:

### INTRODUCTION

1. Plaintiffs, the Republican Party’s national senatorial and congressional committees and two of their general election nominees for federal office, bring this action to protect the most fundamental of rights in our democratic form of government: “the right to participate in electing our political leaders.” *McCutcheon v. FEC*, 572 U.S. 185, 191 (2014) (plurality opinion). Political parties’ expression of support for their candidates, particularly in the context of an election, is “core” First Amendment activity entitled to the most robust constitutional protection. *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 222 (1989). Yet the federal campaign finance laws severely restrict political party committees from doing what the First Amendment entitles them to do: fully associate with and advocate for their own candidates for federal office.

2. The First Amendment commands that “Congress shall make no law . . . abridging the freedom of speech.” But the Federal Election Campaign Act (FECA) abridges the political speech of party committees by strictly limiting how much of their own money they can spend to influence federal elections in cooperation—or “coordination”—with their candidates. In particular, section 315(d) of FECA, Pub. L. 94-283, 90 Stat. 475 (1976) (codified at 52 U.S.C. § 30116(d)), imposes severe limitations on how much money party committees can spend on such so-called “coordinated party expenditures” to support their general election nominees in addition to the minimal direct financial

contributions allowed under FECA. 52 U.S.C. § 30116(d)(1)–(3); *see FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 443–45 (2001) (*Colorado II*); 11 C.F.R. § 109.20 (defining “coordinated”). The limits on coordinated party expenditures even restrict how much money party committees can cooperatively spend on their political advertising and other general public communications, which the FEC defines as “party coordinated communication[s].” 11 C.F.R. § 109.37.

3. For the two major political parties, only the Republican National Committee and Democratic National Committee and individual state party committees have any authority to make coordinated party expenditures up to the limits under 52 U.S.C. § 30116(d). 52 U.S.C. § 30116(d)(1)–(3); *see* 11 C.F.R. § 109.32 (“What are the coordinated party expenditure limits?”). The national senatorial and congressional committees of the two major parties do not have separate limits under 52 U.S.C. § 30116(d). 52 U.S.C. § 30116(d)(1)–(3). In fact, if the NRSC and NRCC want to make coordinated party expenditures in support of Republican senatorial or congressional nominees under 52 U.S.C. § 30116(d), the FEC requires that they first obtain permission from the Republican National Committee or the state party committee in the nominee’s home state through an express assignment of coordinated spending authority, and then may only make such expenditures up to the applicable spending limit. *See* 11 C.F.R. § 109.33. Absent an assignment, the NRSC and NRCC cannot engage in coordinated party expenditures with their candidates at all, unless that spending falls within



FECA's severely low limits on direct candidate contributions. 52 U.S.C. § 30116(a)(2)(A), (h).

4. Congress imposes these limits on political party committee spending prophylactically; FECA's base contribution limits already strictly limit how much money any one donor may contribute to a particular candidate or party committee. *Id.* § 30116(a)(1).

5. Congress's imposition of these prophylactic limits is selective speech rationing. Congress limits only some coordinated expenditures by party committees made for the purpose of influencing a federal election—namely, those rising above a certain monetary threshold that, in general, is tied to nothing but the voting-age population and cost of living in a given state. *See id.* § 30116(d)(2)–(3); 11 C.F.R. § 109.32(a)(2), (b)(2). Moreover, Congress expressly exempts certain coordinated payments that party committees may make to benefit their candidates, such as spending on mailed political advertisements disseminated using volunteers, 52 U.S.C. § 30101(8)(B)(ix), (9)(B)(viii), and payments related to recounts, contests, and other “legal proceedings,” *id.* § 30116(a)(9), (d)(5).

6. The harm to the core First Amendment-protected activities of political parties and their candidates flowing from FECA's limits on coordinated party expenditures is substantial. “Not only do such limits inhibit party committees' ability to spend their money effectively, they also make grassroots organizing more difficult.” Ian Vandewalker & Daniel I. Weiner, *Stronger Parties, Stronger Democracy: Rethinking Reform*, Brennan Center for Justice, at 14 (Sept. 16, 2015). And this harm has only grown starker in recent

years as the rise of spending by Super PACs and other outside groups—which, unlike party committees, can engage in unlimited fundraising to influence voters—has diminished the parties’ role in the political landscape. *Id.*

7. Given the significant and unjustified burdens they place on core First Amendment activities, FECA’s limits on coordinated expenditures by political party committees are unconstitutional and should have been scuttled long ago.

8. In *Colorado II*, however, the Supreme Court upheld the limits on coordinated party expenditures on the incorrect premise that all coordinated expenditures by political party committees may be treated as the functional equivalent of “contributions” to candidates, as if they were no different from coordinated expenditures made by any other entity, and therefore could be restricted to prevent circumvention of FECA’s base contribution limits. 533 U.S. at 464–65.

9. *Colorado II* was wrongly decided and has since been undercut by changed factual circumstances and more recent Supreme Court decisions that undermine its anticircumvention rationale. Under the Supreme Court’s intervening precedents, the severe burden inflicted on political parties by FECA’s limits on coordinated party expenditures cannot survive any appropriate level of constitutional scrutiny.

10. Accordingly, FECA’s limits on political party coordinated expenditures should be held unconstitutional *in toto* or, at minimum, as applied to expenditures on party coordinated communications, as defined under 11 C.F.R. § 109.37. Plaintiffs thus

bring this action for declaratory relief establishing that FECA's limits on coordinated party expenditures, including those under 52 U.S.C. § 30116(d), violate the First Amendment, and for injunctive relief prohibiting enforcement of limits on coordinated party expenditures.

### **JURISDICTION AND VENUE**

11. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331, 2201, and 2202, as well as 52 U.S.C. § 30110, under which the question of the constitutionality of FECA's coordinated party expenditure limits, including those under 52 U.S.C. § 30116(d), should be immediately certified to the United States Court of Appeals for the Sixth Circuit for consideration en banc.

12. Venue is proper in this Court under 52 U.S.C. § 30110 and 28 U.S.C. § 1391(e) because the Federal Election Commission is an entity of the United States; one or more Plaintiffs resides in this District; and Plaintiffs J.D. Vance and Steve Chabot are running federal campaigns in this District.

### **PARTIES**

13. The NRSC is a national committee, as defined by 52 U.S.C. § 30101(14), and the Republican Party's senatorial campaign committee with its principal place of business at 425 2nd Street N.E., Washington, D.C. 20002. The NRSC is the only national political party committee exclusively devoted to electing Republican candidates to the U.S. Senate from across the United States, including in Ohio. Each election cycle, including in 2022, in addition to making direct contributions, the NRSC makes coordinated party expenditures in support of Republican nominees for

the U.S. Senate across the country using coordinated spending authority assigned to it by the Republican National Committee or state party committees. NRSC wants to make coordinated party expenditures to the maximum extent permissible under the U.S. Constitution. To avoid a violation of coordinated party expenditure limits, each election cycle, the NRSC also incurs the expense and inconvenience of establishing a segregated Independent Expenditure (IE) Unit to make independent expenditures in support of the Republican Party's nominees for the U.S. Senate.

14. The NRCC is a national committee, as defined by 52 U.S.C. § 30101(14), and the Republican Party's congressional campaign committee with its principal place of business at 320 First Street S.E., Washington, D.C. 20003. The NRCC is the only national political party committee exclusively devoted to electing Republican candidates to the U.S. House of Representatives from across the United States, including from Ohio's 16 congressional districts. Each election cycle, including in 2022, in addition to making direct contributions, the NRCC makes coordinated party expenditures in support of Republican nominees for the U.S. House of Representatives across the country using coordinated spending authority assigned to it by the Republican National Committee or state party committees. The NRCC wants to make coordinated party expenditures to the maximum extent permissible under the U.S. Constitution. To avoid a violation of coordinated party expenditure limits, each election cycle, the NRCC also incurs the expense and inconvenience of establishing a segregated IE Unit to make independent expenditures

in support of the Republican Party's nominees for the U.S. House of Representatives.

15. James David ("J.D.") Vance is the 2022 Republican nominee for the U.S. Senate in Ohio and is eligible to vote in any election for the office of the President of the United States. In 2022, candidate Vance has participated in coordinated party expenditures, and he wants to do so to the maximum extent permissible under the U.S. Constitution.

16. Steven ("Steve") Joseph Chabot is the sitting U.S. Congressman and 2022 Republican nominee for the U.S. House of Representatives from Ohio's First Congressional District and is eligible to vote in any election for the office of the President of the United States. In 2022, candidate Chabot has participated in coordinated party expenditures, and he wants to do so to the maximum extent permissible under the U.S. Constitution.

17. The Federal Election Commission ("FEC") was established by 52 U.S.C. § 30106 and is an independent federal agency headquartered in Washington, D.C. charged with administering and enforcing the provisions of FECA, including the provisions challenged in this action. The FEC has exclusive jurisdiction with respect to the civil enforcement of FECA.

18. Defendant Allen J. Dickerson is a Commissioner and the Chair of the FEC. As a Commissioner, he is responsible for administering and enforcing FECA. He is sued in his official capacity.

19. Defendant Dara Lindenbaum is a Commissioner and the Vice Chair of the FEC. As a Commissioner, she is responsible for administering

and enforcing FECA. She is sued in her official capacity.

20. Defendant Shana M. Broussard is a Commissioner of the FEC. As a Commissioner, she is responsible for administering and enforcing FECA. She is sued in her official capacity.

21. Defendant Sean J. Cooksey is a Commissioner of the FEC. As a Commissioner, he is responsible for administering and enforcing FECA. He is sued in his official capacity.

22. Defendant James E. Trainor III is a Commissioner of the FEC. As a Commissioner, he is responsible for administering and enforcing FECA. He is sued in his official capacity.

23. Defendant Ellen L. Weintraub is a Commissioner of the FEC. As a Commissioner, she is responsible for administering and enforcing FECA. She is sued in her official capacity.

### **STANDING**

24. Plaintiffs have standing to challenge the constitutionality of FECA's coordinated party expenditure limits, including those under 52 U.S.C. § 30116(d). The coordinated party expenditure limits under FECA subject Plaintiffs to civil and criminal penalties for noncompliance, *see* 52 U.S.C. § 30109(d), and therefore prohibit Plaintiffs from engaging in coordinated party expenditures that they otherwise would engage in, including coordinated party expenditures above the statutory limits. Plaintiffs therefore are suffering injuries in fact that are fairly traceable to FECA's coordinated party expenditure limits, including those under 52 U.S.C. § 30116(d), and the Court can redress their injuries by declaring those

limits unconstitutional and enjoining Defendants from enforcing them.

25. When “the plaintiff is himself an object of the action,” “there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561–62 (1992).

26. Coordinated party expenditure limits, including those under 52 U.S.C. § 30116(d), injure Plaintiffs. The limits cap both the amount of money a political party committee can spend in cooperation with its candidates and the amount of cooperative support a party’s candidates can accept from the party committee.

27. In 2022 and beyond, in addition to direct contributions to candidates, the NRSC and NRCC each want to make coordinated party expenditures without advance permission to do so from other party committees and in amounts exceeding FECA’s coordinated party expenditure limits in races for federal office across the country, including in Ohio; but they cannot do so because of FECA’s coordinated party expenditure limits, including those under 52 U.S.C. § 30116(d).

28. The NRSC has contributed to J.D. Vance the maximum amount it may directly contribute to the general election campaign of a Senate candidate. 52 U.S.C. § 30116(h).

29. Under 11 C.F.R. § 109.33, the NRSC has been assigned some, but not all, of the Republican National Committee’s and Ohio Republican state party committee’s authority to make coordinated party

expenditures under 52 U.S.C. § 30116(d)(3) in connection with the 2022 general election for U.S. Senate in Ohio. The NRSC has spent up to the maximum amount of coordinated party expenditure authority that has been assigned to it in support of J.D. Vance's 2022 general election campaign for the U.S. Senate.

30. The NRSC wants to make additional coordinated expenditures in support of J.D. Vance's candidacy for the U.S. Senate that would be subject to and in excess of FECA's coordinated party expenditure limits, and candidate Vance wants to participate in such coordinated party expenditures with the NRSC.

31. But for FECA's coordinated party expenditure limits, the NRSC would make additional coordinated expenditures in support of J.D. Vance's candidacy for the U.S. Senate, and candidate Vance would participate in such coordinated party expenditures.

32. Because of FECA's coordinated party expenditure limits, as in past election cycles, the NRSC has again incurred the expense and inconvenience of creating a segregated IE Unit to make independent expenditures in support of 2022 Republican nominees for the U.S. Senate across the country.

33. The IE Unit that the NRSC has been forced to create has caused it to waste time and resources. For example, advertisements bought by the IE Unit cannot qualify for the lowest-unit rates on the purchase of television broadcasting time and the IE Unit rents separate office space and employs separate staff and vendors redundant to the NRSC's general operation.



34. The NRCC has contributed to Steve Chabot the maximum amount a political party committee may directly contribute to the general election campaign of a U.S. House of Representatives candidate. 52 U.S.C. § 30116(a)(2)(A).

35. Under 11 C.F.R. § 109.33, the NRCC has been assigned some, but not all, of the Republican National Committee's and Ohio Republican state party committee's authority to make coordinated party expenditures under 52 U.S.C. § 30116(d)(3) in connection with a 2022 general election for U.S. House of Representatives in Ohio. The NRCC has spent up to the maximum amount of coordinated party expenditure authority that has been assigned to it in support of Steve Chabot's 2022 general election campaign for the U.S. House of Representatives.

36. The NRCC wants to make additional coordinated expenditures in support of Steve Chabot's candidacy for the U.S. House of Representatives that would be subject to and in excess of FECA's coordinated party expenditure limits, and candidate Chabot wants to participate in such coordinated party expenditures with the NRCC.

37. But for FECA's coordinated party expenditure limits, the NRCC would make additional coordinated expenditures in support of Steve Chabot's candidacy for the U.S. House of Representatives, and candidate Chabot would participate in such coordinated party expenditures.

38. Because of FECA's coordinated party expenditure limits, as in past election cycles, the NRCC has again incurred the expense and inconvenience of creating a segregated IE Unit to

make expenditures in support of 2022 Republican nominees for the U.S. House of Representatives across the country.

39. The IE Unit that the NRCC has been forced to create has caused it to waste time and resources. For example, advertisements bought by the IE Unit cannot qualify for the lowest-unit rates on the purchase of television broadcasting time and the IE Unit rents office space and employs separate staff and vendors redundant to the NRCC's general operation.

40. Absent the judicial relief requested in this lawsuit, the NRSC and NRCC face investigation and potential liability if they engage in the desired or intended core First Amendment activities described above in excess of FECA's coordinated party expenditure limits and thus are being chilled from engaging in those activities and exercising their First Amendment rights.

41. Plaintiffs want to conduct substantially similar activity to that described above in the future, and there is a strong likelihood that the current situation and chilling effect will recur because of the recurring nature of elections; the continued existence, missions, and intended activities of Plaintiffs; and the recurrence of public and congressional debate on public issues.

42. Absent the judicial relief requested in this lawsuit, Candidate Vance faces investigation and potential liability if he engages in the desired or intended core First Amendment activities described above in excess of FECA's coordinated party expenditure limits and thus is being chilled from

engaging in those activities and exercising his First Amendment rights.

43. At this time, in addition to his 2022 candidacy, Candidate Vance intends to run for federal office again in the future. He wants to engage in core First Amendment activities in excess of FECA's coordinated party expenditure limits, including those under 52 U.S.C. § 30116(d), when he does so.

44. Absent the judicial relief requested in this lawsuit, Candidate Chabot faces investigation and potential liability if he engages in the desired or intended core First Amendment activities described above in excess of FECA's coordinated party expenditure limits and thus is being chilled from engaging in those activities and exercising his First Amendment rights.

45. At this time, in addition to his 2022 candidacy, Candidate Chabot intends to run for federal office again in the future. He wants to engage in core First Amendment activities in excess of FECA's coordinated party expenditure limits, including those under 52 U.S.C. § 30116(d), when he does so.

46. The loss of First Amendment rights, however brief, results in irreparable harm, and there is no adequate alternative remedy at law to injunctive relief.

## **LEGAL BACKGROUND**

### **Political Contributions and Expenditures Under FECA**

47. FECA regulates federal political "contributions" and "expenditures."

48. FECA defines a "contribution" to include "any gift, subscription, loan, advance, or deposit of money

or anything of value made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i); *see* 11 C.F.R. § 100.52. Contributions thus may be made through either direct financial support to a candidate, campaign, or party committee or indirect in-kind payments for goods or services on behalf of a candidate, campaign, or party committee. *See, e.g.*, 11 C.F.R. § 100.52 (“[T]he term anything of value includes all in-kind contributions.”).

49. FECA similarly defines an “expenditure” to include “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A)(i); *see* 11 C.F.R. § 100.111.

50. In the ordinary course, an “expenditure[] made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate” or his campaign is deemed to be an in-kind contribution to such candidate. 52 U.S.C. § 30116(a)(7)(B)(i); *see* 11 C.F.R. § 109.20.

51. Since *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court has treated limits on political contributions and expenditures differently under the First Amendment. While *Buckley* recognized that “contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities,” it concluded that each encroaches on protected First Amendment interests to a different degree. *Id.* at 14.

52. Specifically, the Court subjected expenditure limits to “the exacting scrutiny applicable to limitations on core First Amendment rights of political

expression” and held that such limits are constitutional only if they “promote[] a compelling interest and [are] the least restrictive means to further the articulated interest.” *Id.* at 44–45; *McCutcheon*, 572 U.S. at 197.

53. By contrast, the Court held that contribution limits are constitutional so long as the government “demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms.” *Buckley*, 424 U.S. at 25.

54. Under *Buckley*, political expenditures cannot be limited, but FECA imposes strict limits on the amounts of monetary and in-kind contributions that may be lawfully made to federal candidates and political party committees by individuals, political committees, and other sources. *See generally* 52 U.S.C. § 30116 (“Limitations on contributions and expenditures”). FECA’s statutory contribution limits are often referred to as “base limits.” *McCutcheon*, 572 U.S. at 221 (plurality opinion).

55. The base limit on individual contributions to a federal candidate currently stands at \$2,900 per election for the 2021–2022 election cycle. 52 U.S.C. § 30116(a)(1)(A); *see* FEC, Contribution limits, <https://bit.ly/3ID8W7N> (last visited Nov. 3, 2022).

56. FECA also contains an earmarking rule that limits federal candidate contributions from individual donors. Under that rule, “all contributions made by a person . . . [that] are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C.

§ 30116(a)(8). FEC regulations further provide that “[a]ll contributions by a person made on behalf of or to a candidate, including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate.” 11 C.F.R. § 110.6(a).

57. The FEC has defined the term “earmarked” to mean a donor’s “designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate’s authorized committee.” *Id.* § 110.6(b). “If, for example, a donor gives money to a party committee but directs the party committee to pass the contribution along to a particular candidate, then the transaction is treated as a contribution from the original donor to the specified candidate” and is subject to the candidate base limit (*i.e.*, \$2,900). *McCutcheon*, 572 U.S. at 194 (plurality opinion).

**FECA’s Limits on Party Committees:  
Direct Candidate Contributions,  
Coordinated Party Expenditure Limits,  
and Independent Expenditures**

58. Political party committees maintain a general operating bank account from which they can make contributions and expenditures “for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(8)(A)(i), (9)(A)(i). During the 2021–2022 election cycle, the base limit on individual donor contributions is \$36,500 per year to the general operating accounts of the national party committees and \$10,000 per year to the general operating accounts

of any state, district, and local party committees. *See* FEC, Contribution limits, *supra*.

59. Under FECA, political party committees have three primary options for providing financial support to federal candidates from their general operating accounts: (1) direct contributions, (2) coordinated party expenditures, and (3) independent expenditures.

60. In general, FECA imposes a base \$5,000 limit per election on direct or in-kind contributions from a political party committee to a federal candidate, 52 U.S.C. § 30116(a)(2)(A), while a national party committee and its senatorial campaign committee may contribute up to \$51,200 combined per campaign to each candidate for the U.S. Senate in 2022, *id.* § 30116(h).

61. In addition to the contribution limits, the national and state political party committees may also make limited amounts of coordinated expenditures in cooperation with their general election candidates. *Id.* § 30116(d)(1)–(3); 11 C.F.R. § 109.30 (“Political party committees may . . . make coordinated party expenditures in connection with the general election campaign of a candidate, subject to the limits and other provisions in this subpart.”). Unlike direct contributions, title to money spent on coordinated expenditures remains with the party committee, not with the candidate, and the party committee, not the candidate, ultimately decides how and for what purpose the money will be spent.

62. The coordinated party expenditure limits under 52 U.S.C. § 30116(d) are based on office sought, state, and voting-age population and are adjusted annually for inflation. In the 2022 election cycle, the limits for

House nominees are \$55,000 in states with more than one representative and \$109,900 in states with only one representative; the limits for Senate nominees range from a low of \$109,900 to a high of \$3,348,500, depending on the state's voting-age population. *See* 11 C.F.R. § 109.32; *see also* FEC, Coordinated party expenditure limits, <https://bit.ly/3DcUySP> (last visited Nov. 3, 2022).

63. FECA has been understood not to authorize any coordinated party expenditures by the senatorial or congressional campaign committees of the national party (*e.g.*, the NRSC or NRCC) in excess of the base contribution limits; however, by regulation, the national party or a state party committee may assign all or a portion of its coordinated spending authority to them. *See* 11 C.F.R. §109.33 (“The national committee of a political party and a State committee of a political party . . . may assign its authority to make coordinated party expenditures authorized by 11 CFR 109.32 to another political party committee.”).

64. In simple terms, the coordinated party expenditure limits under 52 U.S.C. § 30116(d) apply to any “expenditures” made by the party in “coordination” with a general election candidate. FEC regulations define the term “coordinated” to mean “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.” *Id.* § 109.20(a).

65. Traditionally, coordinated party expenditures under 52 U.S.C. § 30116(d) have primarily consisted of expenditures on so-called “party coordinated communication[s].” *See id.* § 109.37.



66. In general, a party coordinated communication is any form of general public political advertising—including ads disseminated “by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public,” or “placed for a fee on another person’s Web site,” *id.* § 100.26—paid for by party committee and coordinated with a candidate or campaign that expressly advocates for the election or defeat of a clearly identified federal candidate. *Id.* The term, however, also captures communications that may lack express advocacy, including coordinated communications made by the party that (i) simply republish campaign materials prepared by a candidate, the candidate’s authorized committee, or an agent of any of the foregoing or (ii) merely reference a candidate for President within 120 days of the general election or a candidate for the Senate or House within 90 days of the general election and which are disseminated in the candidate’s jurisdiction. *Id.*

67. Yet Congress selectively and expressly permits political party committees to pay for certain advertising in full coordination with their general election nominees without limit. Under FECA, for example, if a state or local party committee produces a mass mailing that expressly advocates for the party’s nominee, and that mailer is produced or delivered with a requisite level of volunteer involvement as defined by FEC regulation, then the costs of the mailer are deemed exempt from treatment as either contributions or expenditures, even if made in coordination with the supported candidate. 52 U.S.C. § 30101(8)(B)(ix), (9)(B)(viii). Absent this volunteer

involvement, however, the same mail piece would be subject to FECA's contribution and coordinated party expenditure limits.

68. Moreover, a political party committee can avoid making party coordinated communications by engaging in *independent* expenditures, which are expenditures expressly advocating for the election or defeat of a federal candidate that are "not made in concert or cooperation with or at the request or suggestion of [any] candidate," campaign, or their agents. *See id.* § 30101(17); 11 C.F.R. § 100.16.

69. Traditionally, however, all party committee spending has been presumed coordinated with the party's supported candidate. *See, e.g., FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 28–29 n.1 (1981) ("Party committees are considered incapable of making 'independent' expenditures in connection with the campaigns of their party's candidates."); *see also* FEC Advisory Op. 1985-14 (DCCC), at 7 ("Party political committees are incapable of making independent expenditures.").

70. Accordingly, to ensure the independence of their general election public advertising campaigns and therefore avoid making unintended party coordinated communications, the party committees have traditionally used "firewalls" to establish segregated IE Units to operate separately from the party's main operation, and therefore independently of any candidates.

71. IE Units are expensive and redundant. To ensure compliance with party coordinated expenditure limits, the party committee IE Unit must "rent and furnish an office, hire staff, and pay other

administrative costs” that “duplicate many of the functions already being undertaken by other party offices.” *Colorado II*, 533 U.S. at 470 (Thomas, J., dissenting). And because IE Units cannot coordinate their activities with candidates, the public advertisements they pay for cannot qualify as candidate uses, and thus do not receive lowest-unit rates on the purchase of television broadcasting time. *FEC v. Colo. Republican Fed. Campaign Comm.*, 41 F. Supp. 2d 1197, 1210 (D. Colo. 1999).

72. Moreover, in “[e]stablishing and maintaining independence,” party committee IE Units “tend[] to create voter confusion and to undermine the candidate that the party sought to support.” *Colorado II*, 533 U.S. at 470 (Thomas, J., dissenting). Voters generally view candidates as intimately connected with their parties and do not understand or draw meaningful distinctions between advertisements that are made independent of a candidate or made in coordination with, and thus attributable to, a candidate.

### **National Party Committee Accounts and Selective Coordinated Payment Limits**

73. In 2014, Congress created three new types of segregated accounts for national party committees to raise and spend funds for specific designated purposes. See Consolidated and Further Continuing Appropriations Act, Pub. L. No. 113-235, div. N, § 101, 128 Stat. 2130, 2772–73 (2014) (codified at 52 U.S.C. § 30116(a)(1)(B), (a)(9)). The base limit on individual donor contributions to these accounts is currently \$109,500, three times higher than the limit for contributions to the national party committees’

general accounts. *See id.*; FEC, Contribution limits, *supra*.

74. One of those new accounts is a “legal proceedings” account, which national party committees may establish to be “used to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.” 52 U.S.C. § 30116(a)(9)(C).

75. Payments from the legal proceedings account may be made in full coordination with—*i.e.*, “cooperation, consultation or concert with, or at the request or suggestion of”— a candidate or campaign. 11 C.F.R. § 109.20(a). And Congress expressly provided that party committee payments from the legal proceedings account are *not* subject to the coordinated party expenditure limits under 52 U.S.C. § 30116(d). 52 U.S.C. § 30116(d)(5).

76. The legislative history of the act providing for this type of account suggests that a higher limit on contributions to the account is appropriate because payments from the account “are not for the purpose of influencing Federal elections.” 160 Cong. Rec. S6814 (daily ed. Dec. 13, 2014) (statement of Senator Reid); 160 Cong. Rec. H9286 (daily ed. Dec. 11, 2014) (statement of Congressman Boehner). But, in fact, spending on “election recounts and litigation” commonly has an “influence on elections”; after all, such efforts “resolve whether an actual candidate wins or loses a particular election.” *Libertarian Nat’l Comm., Inc. v. FEC*, 924 F.3d 533, 555 (D.C. Cir. 2019) (Griffith, J., concurring in part and dissenting in part).

### ***Colorado I and II***

77. In *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996) (*Colorado I*), the Supreme Court held that FECA’s limits on party expenditures under 52 U.S.C. § 30116(d) (formerly 2 U.S.C. § 441a(d)) were unconstitutional as applied to expenditures made independently, without coordination with any federal candidate, reasoning that those limits failed the exacting scrutiny applicable to expenditure limits. *Id.* at 615–18. The Justices disagreed, however, whether to address the constitutionality of the limits with respect to coordinated party expenditure limits. *See, e.g., id.* at 623–26; *id.* at 626–30 (Kennedy, J., concurring in the judgment and dissenting in part, joined by Chief Justice Rehnquist and Justice Scalia); *id.* at 631–48 (Thomas, J., concurring in the judgment and dissenting in part, joined by Chief Justice Rehnquist and Justice Scalia as to Parts I and III).

78. In *Colorado II*, the Court considered the constitutionality of 52 U.S.C. § 30116(d)’s limits on coordinated party expenditures. In a five-to-four decision, the majority concluded that “party coordinated spending” is “the functional equivalent of contributions” and thus subject to the “closely drawn” test for contribution limits. 533 U.S. at 447, 456. The majority therefore addressed whether coordinated party expenditure limits were justified “on the theory that unlimited coordinated spending by a party raises the risk of corruption (and its appearance) through circumvention of valid contribution limits.” *Id.* at 456.

79. The *Colorado II* majority upheld coordinated party expenditure limits as a broad prophylactic

measure to address the “corrosive effects” of money in politics, *id.* at 462, concluding that the government has a sufficiently important interest in preventing “corruption (and its appearance),” including through circumvention of the base contribution limits, to justify campaign finance restrictions. *Id.* at 456. In doing so, the majority adopted a broad notion of “corruption” encompassing not only “*quid pro quo* agreements, but also . . . undue influence on an officeholder’s judgment,” *id.* at 441, as well as “the corrupting influence of large contributions to candidates from individuals and nonparty groups,” *id.* at 456 n.18.

80. The *Colorado II* majority further rejected the claim “that unlimited coordinated spending is essential to the nature and functioning of parties,” premised on the Court’s acceptance of the idea that “political parties are dominant players, second only to the candidates themselves, in federal elections.” *Id.* at 450 (quoting Brief for Paul Allen Beck et al. as *Amici Curiae* at 5–6, *Colorado II*, 533 U.S. 431, (No. 00-191)).

81. Four Justices dissented in *Colorado II*, rejecting the majority’s rationale for upholding FECA’s limits on coordinated party expenditures. *See id.* at 465 (Thomas, J., dissenting, joined by Justice Scalia and Justice Kennedy in full and by Chief Justice Rehnquist as to Part II). The dissenting Justices reasoned that limits on coordinated party expenditures should be subjected to “strict scrutiny,” which the party expenditure limits under 52 U.S.C. § 30116(d) necessarily fail, because political speech “is the lifeblood of a self-governing people.” *Id.* at 465–66. The dissenting justices explained that the rationale for the Court’s prior distinction between contributions

and expenditures (that contribution limits only marginally limit speech) should not extend to coordinated expenditures. *See id.* at 466–67. Indeed, “far from being a mere marginal restraint on speech,” the dissenting Justices concluded, coordinated party expenditure limits “restrict[] the party’s most natural form of communication; . . . preclude[] parties from effectively amplifying the voice of their adherents[:] and [have] had a stifling effect on the ability of the party to do what it exists to do.” *Id.* at 471 (internal quotation marks and citation omitted). Moreover, even under the “closely drawn” standard applied by the *Colorado II* majority, the dissenting Justices determined both that FECA’s coordinated party expenditure limits do not prevent corruption and that “there are better tailored alternatives for addressing . . . corruption,” such as government enforcement of FECA’s earmarking rule. *Id.* at 481; *see id.* at 474–82.

**Subsequent Developments and Precedent  
Have Confirmed That *Colorado II* Was  
Wrongly Decided**

82. Circumstances in the political “marketplace” have changed considerably since *Colorado II* and the rationales underlying the majority’s reasoning have eroded. In particular, the idea that “unlimited coordinated spending is essential to the nature and functioning of parties” that the *Colorado II* Court rejected, 533 U.S. at 450, has become more evident following the rise of Super PACs, whose ability to fundraise without limit has diminished the parties’ dominance in the political landscape compared to 2001. *See* Robert F. Baur, *The Parties’ Struggles in the Political “Market”: Can Regulation Solve This*

*Problem—Should It, and if so, How?*, 54 Hous. L. Rev. 881, 899 (2017) (“[I]t is widely accepted [that the advent of Super PACs] has been damaging to the political parties, and some Super PACs are seen to be moving in the direction of assuming most of the functions of parties, including not only expensive on-air appeals but also the ‘ground game’ conducted to motivate voters to appear at the polls.”).

83. More important, since *Colorado II*, the Supreme Court has refined its campaign finance jurisprudence generally and the “closely drawn” test in particular.

84. The Supreme Court has clarified that the only form of “corruption” Congress may address through the campaign finance laws is a “specific type of corruption—‘*quid pro quo*’ corruption.” *McCutcheon*, 572 U.S. at 207 (plurality opinion); see *FEC v. Cruz*, 142 S. Ct. 1638, 1652 (2022) (“This Court has recognized only one permissible ground for restricting political speech: the prevention of ‘*quid pro quo*’ corruption or its appearance.”); *Ariz. Free Enter. Club’s Freedom Club PAC v. Bennett*, 564 U.S. 721, 751 (2011) (emphasizing that the Court’s campaign finance “case law is concerned” only with “*quid pro quo* corruption”).

85. By contrast, the Court has “denied attempts to reduce the amount of money in politics, to level electoral opportunities by equalizing candidate resources, and to limit the general influence a contributor may have over an elected official.” *Cruz*, 142 S. Ct. at 1652 (citations omitted). Congress similarly may not “target[] as corruption the general, broad-based support of a political party.” *McCutcheon*, 572 U.S. at 225. “However well intentioned such



proposals may be, the First Amendment . . . prohibits such attempts to tamper with the ‘right of citizens to choose who shall govern them.’” *Cruz*, 142 S. Ct. at 1652 (quoting *McCutcheon*, 572 U.S. at 227 (plurality opinion)).

86. The Supreme Court has also made clear that the “closely drawn” test triggers a “rigorous” review of campaign finance restrictions—one requiring “narrow[] tailor[ing]” to “achieve” the government’s goal of preventing *quid pro quo* corruption. *McCutcheon*, 572 U.S. at 197, 199, 218 (plurality opinion). Or, as the Supreme Court put it recently, “[w]here exacting scrutiny applies, the challenged requirement must be narrowly tailored to the interest it promotes.” *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2384 (2021). For a law to survive this test, the government must demonstrate “its need for” that requirement “in light of any less intrusive alternatives.” *Id.* at 2386.

87. Courts must “be particularly diligent in scrutinizing the law’s fit” when the law goes beyond FECA’s base contribution limits and layers overlapping campaign finance restrictions “on top, ostensibly to prevent circumvention of the base limits,” *McCutcheon*, 572 U.S. at 221, just as FECA’s limits on coordinated party expenditures do.

88. Indeed, “[s]uch a prophylaxis-upon-prophylaxis approach . . . is a significant indicator that the regulation may not be necessary for the interest it seeks to protect.” *Cruz*, 142 S. Ct. at 1653 (citing *McCutcheon*, 572 U.S. at 221 (plurality opinion)); see also *Bennett*, 564 U.S. at 752 (“In the face of [the State’s] contribution limits [and] strict disclosure

requirements . . . it is hard to imagine what marginal corruption deterrence could be generated by [an additional measure].”).

89. This intervening Supreme Court precedent makes clear that, by any standard, *Colorado II* is no longer good law and that limits on coordinated party expenditures are unconstitutional.

### **CLAIMS FOR RELIEF**

#### **Violation of the First Amendment Coordinated Party Expenditure Limits Violate the First Amendment to the U.S. Constitution**

90. Plaintiffs hereby reallege and incorporate by reference each of the foregoing allegations as if set forth herein.

91. Plaintiffs challenge the constitutionality of limits on coordinated party expenditures, including those under 52 U.S.C. § 30116(d), which implicate political parties’ fundamental First Amendment interests to participate in electing our political leaders and the corresponding right to associate with others in those activities.

92. Prevention of *quid pro quo* corruption, or the appearance of such corruption, is the only constitutionally sufficient justification for contribution limits. *Cruz*, 142 S. Ct. at 1652.

93. The Supreme Court has made clear that “[c]ampaign finance restrictions that pursue other objects . . . impermissibly inject the Government ‘into the debate over who should govern.’ And those who govern should be the *last* people to help decide who

*should* govern.” *McCutcheon*, 572 U.S. at 192 (emphasis in original) (citation omitted).

94. Coordinated expenditures made by political party committees are not the functional equivalent of contributions and there is no evidence that coordinated expenditures by the political parties in excess of the limits on coordinated party expenditures set by Congress would give rise to *quid pro quo* corruption or its appearance.

95. Limits on coordinated party expenditures do not survive constitutional scrutiny, whether strict scrutiny or the Supreme Court’s “closely drawn” test is applied, because the limits do not further the permissible governmental interest in preventing *quid pro quo* corruption or its appearance and there is a substantial mismatch between the government’s stated objective and the means selected to achieve it.

96. More appropriately drawn or tailored alternatives to limits on coordinated party expenditures exist for combatting (nonexistent) *quid pro quo* corruption or its appearance.

97. FECA’s selective approach to regulating coordinated spending by political party committees further demonstrates that FECA’s limits on coordinated party expenditures are not closely drawn or narrowly tailored to prevent (nonexistent) *quid pro quo* corruption or its appearance.

98. No serious reliance interests in coordinated party expenditure limits are at stake because parties have been prevented from acting by (as opposed to having acted in conformance with) an existing legal rule. *See Citizens United v. FEC*, 558 U.S. 310, 365 (2010).

99. Because the government lacks a cognizable interest in restricting the expenditures of political parties and more appropriately tailored alternatives to coordinated party expenditure limits exist to prevent (nonexistent) *quid pro quo* corruption or its appearance, any coordinated party expenditure limits, including those under 52 U.S.C. § 30116(d), violate the First Amendment’s guarantees of freedom of speech and freedom to associate with others. U.S. Const. amend. I.

**Violation of the First Amendment  
Coordinated Party Expenditures Limits  
Violate the First Amendment to the U.S.  
Constitution  
As Applied to Expenditures on Party  
Coordinated Communications**

100. Plaintiffs hereby reallege and incorporate by reference each of the foregoing allegations as if set forth herein.

101. Plaintiffs further challenge the constitutionality of the application of FECA’s limits on coordinated party expenditures, including those under 52 U.S.C. § 30116(d), to expenditures made by political party committees on “party coordinated communication[s]” as defined under 11 C.F.R. § 109.37.

102. The government lacks a cognizable interest in restricting party committee expenditures on party coordinated communications and more appropriately tailored alternatives to coordinated party expenditure limits exist to prevent (nonexistent) *quid pro quo* corruption or its appearance based on such expenditures.

103. Accordingly, the application of limits on coordinated party expenditures, including those under 52 U.S.C. § 30116(d), to party coordinated communications violates the First Amendment's guarantees of freedom of speech and freedom to associate with others. U.S. Const. amend. I.

### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully pray for the following relief:

- a. A declaratory judgment that any limits on political party coordinated expenditures, including those under 52 U.S.C. § 30116(d), violate the First Amendment to the United States Constitution, including as applied to party coordinated communications, and are therefore unenforceable;
- b. an order permanently enjoining the FEC, its officers, agents, servants, and employees from enforcing limits on political party coordinated expenditures, including those under 52 U.S.C. § 30116(d), against Plaintiffs and their intended activities;
- c. costs and attorney's fees pursuant to any applicable statute or authority; and
- d. any other relief the Court in its discretion deems just and appropriate.

November 4, 2022

Respectfully submitted,

s/ Thomas Conerty

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## INTRODUCTION

Plaintiffs' motion to certify a constitutional question to the *en banc* Court of Appeals is premature and should be denied. Applicable precedent makes clear that such certification would be appropriate only after the development of a factual record sufficient for an appellate response through a reasonable discovery period, and then a determination by this Court that any proposed question merits certification through the special judicial review procedure plaintiffs invoke.

More than two decades ago, the Supreme Court upheld the limits that Congress placed on expenditures political parties may make in coordination with each of their federal candidates, under the provision now set forth in 52 U.S.C. § 30116. *See FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001) ("*Colorado II*"). The *Colorado II* Court reaffirmed that the longstanding distinction established in *Buckley v. Valeo*, 424 U.S. 1 (1974), between coordinated and independent expenditures applied to spending by political parties. *See Colorado II*, 533 U.S. at 464. The Court then upheld the party coordinated expenditure limits on their face, explaining that "[t]here is no significant functional difference between a party's coordinated expenditure and a direct party contribution to the candidate," *id.*, and that removing such limits would pose a danger of corruption or its appearance, *id.* at 464-65.

Despite this established precedent, plaintiffs seek to have these longstanding limits stricken from the Federal Election Campaign Act ("FECA"), and if necessary, to have *Colorado II* itself overruled. They have challenged the constitutionality of the provisions

on their face, and in the alternative as applied to a subset of expenditures known as party coordinated communications, as defined in an FEC regulation, 11 C.F.R. § 109.37. Invoking FECA's special judicial review provision at 52 U.S.C. § 30110, plaintiffs now seek to "immediately" certify a question as to whether these limits are constitutional to the *en banc* Court of Appeals. (See generally Pls' Mem. of Law in Supp. of Mot. to Certify Question to En Banc Court of Appeals (Docket No. 21, PageID## 218-262) ("Pls.' Mem.").)

Contrary to plaintiffs' claims, however, certification of any question at this time would be premature. As explained below, such certification would be inappropriate in the absence of any discovery, a factual record developed by this Court that is sufficient for appellate consideration of plaintiffs' constitutional claims, and briefing on the appropriateness of plaintiffs' proposed question in light of a complete record. It is well established that section 30110 imposes three essential duties on a district court: (1) the court must develop a factual record by making findings of fact, (2) the district court must determine whether the constitutional challenges are frivolous or insubstantial, and (3), upon completing the first two functions, the court should certify any nonfrivolous questions along with that record to the *en banc* court of appeals. See *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 192 n.14 (1981).

Currently, even though plaintiffs' request for certification relies to a significant extent on factual assertions, the only evidence supporting it is the handful of self-serving declarations and limited other material they have submitted, which defendant Federal Election Commission ("FEC" or "Commission")



has had no opportunity to test. Nor has the Commission had the opportunity to take crucial discovery on plaintiffs' allegations, or otherwise develop a record to support its position that the challenged restrictions — which actually permit political parties to make coordinated expenditures well above otherwise applicable contribution limits — impose no undue burden, but do serve to deter corruption and its appearance. As such, the Court simply does not at this time have a complete basis to determine what findings of fact should be made, let alone whether any question is appropriate for certification to the *en banc* Court of Appeals. That reasonable discovery take place prior to any certification is even more important where, as here, the Supreme Court has already upheld the challenged provisions on their face and plaintiffs explicitly seek to have that authority overruled.

The Commission therefore suggests that the parties should be permitted to submit a joint scheduling report with their positions regarding a discovery period, to be followed by the submission of proposed findings of fact and briefing to assist the Court in determining what question, if any, should be certified to the Sixth Circuit Court of Appeals sitting *en banc*. Plaintiffs' request for immediate certification is premature and should be denied without prejudice.

## **BACKGROUND**

### **I. THE FEDERAL ELECTION CAMPAIGN ACT'S ALLOWANCE OF COORDINATED PARTY EXPENDITURES BEYOND THE OTHERWISE APPLICABLE CONTRIBUTION LIMITS**

The instant case involves a category of payments commonly known as “coordinated party expenditures.” See *Buckley*, 424 U.S. at 36. In *Buckley*, the Supreme Court held that the limitations on political campaign contributions in FECA were generally constitutional, but that the statute’s limitations on election expenditures infringed political expression in violation of the First Amendment. *Id.* at 59. FECA defines “expenditure” to include “any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.” 52 U.S.C. § 30101(9)(A). FECA also provides that “expenditures made by any person in cooperation, consultation, or concert, with” a federal candidate or her agents “shall be considered to be a contribution to such candidate,” but under a unique provision, the statute permits political parties to engage in such expenditures in excess of their otherwise applicable contribution limits. *Id.* at § 30116(d); 11 C.F.R. § 109.37; see also *Buckley*, 424 U.S. at 46 (“expenditures controlled by or coordinated ...)

\* \* \*

[T]he issues are too important to be resolved in haste. It seems inevitable that not only this court but the Supreme Court itself will have to address these issues. We will both benefit by the parties fleshing out the record with any evidence they and the district court deem relevant to the issues’ resolution and by the district court’s resolution of the legal issues in the first instance.

*FEC v. Colo. Republican Fed. Campaign Comm.*, 96 F.3d 471, 473 (10th Cir. 1996). When the case reached the Supreme Court a second time, the Court made ample use of the factual record that had been developed on remand. *See generally Colorado II*, 533 U.S. at 457-60. Given that plaintiffs' complaint here raises similar challenges to the same provisions at issue in the *Colorado* cases, record development permitting the obtaining of similar material is necessary.

**B. After Making Findings of Fact Based on a Sufficient Record, the District Court Must Determine Whether Any Constitutional Questions Warrant Certification**

As explained above, the Supreme Court has made clear that district courts play an important gatekeeping role in determining whether to certify constitutional questions to the appellate courts, explaining that district courts should only certify questions under section 30110 when the issues presented are not frivolous or insubstantial. *Cal. Med.*, 453 U.S. at 192 n.14. Plaintiffs assert that the question they now present for certification “easily qualifies as non- frivolous” (Pls.’ Mot. at 18, PageID# 241), and in support they provide several declarations and other material to the court purporting to support their “undisputed” factual assertions. (*See generally* Docket Nos. 19-1 – 19-5, PageID## 173-214.)

Yet the Commission should be permitted to address these threshold certification standards only after developing a record including through discovery. Indeed, plaintiffs’ own factual submissions demonstrate the prematurity of their certification

motion. Among other things, plaintiffs' declarations make allegations regarding the effect of FECA's coordinated party expenditure limits on plaintiffs' speech, whether contributions have furthered *quid pro quo* arrangements, the amounts of various expenditures, plaintiffs' desire to exceed the current limits, and the alleged burden the limits place on plaintiffs, which are all issues that are appropriate for discovery. (See, e.g., Decl. of Jason Thielman ("Theilman Decl.") ¶ 20, PageID# 179 ("Creating and maintaining an [independent expenditure ("IE")] unit to avoid any violation of coordination rules and the coordinated party expenditure limits has imposed substantial burdens on the NRSC"); *id.* ¶ 21, PageID# 179 ("The NRSC spent nearly \$38 million in total to operate its IE unit, including nearly \$1.2 million alone on rent and furnishings, staffing costs, and consultants"); Decl. of James David Vance ("Vance Decl.") ¶ 12, PageID# 196 ("My campaign committee will continue to bear the burdens and costs imposed by the coordinated party expenditure limits").) The Commission has not had the opportunity to seek written discovery or depose plaintiffs' witnesses on these issues, many of which are within plaintiffs' exclusive knowledge. Without this critical process, the Commission cannot be expected to fully respond as to how the challenged provisions actually affect plaintiffs, or to take a position on whether their activities support a certification-worthy claim. It would be equally imprudent for the appellate court to assess the burden and constitutionality of the plaintiffs'

challenges without a full factual understanding of plaintiffs' activities.<sup>3</sup>

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<sup>3</sup> This includes discovery in several areas related to the Court's jurisdiction. Plaintiff Chabot is reported to have stated out of court that he will not run for federal office in the future. Discovery will assist the Court in determining whether Chabot could suffer any injury from the challenged restrictions that could be redressed by this Court sufficient for standing to pursue his claims and whether his claims are moot. *See Cal. Med.*, 453 U.S. at 192 n.14. In addition, the NRSC and NRCC reported spending less than the maximum amount permitted by FECA in coordinated party expenditures on behalf of the two plaintiff candidates in the 2022 election. (Answer ¶¶ 29, 35, Docket No. 24, PageID## 281-82.) For those two elections that are the focus of plaintiffs' case, discovery will aid in verifying the amount of spending authorizations provided by other party committees, reasons that the maximum amounts of coordinated party expenditures may not have been spent by any party committee, and whether the limits at issue did in fact operate to prevent additional coordinated spending. These areas of inquiry bear on the standing of all plaintiffs. The Commission should be permitted to take discovery on jurisdiction for

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
CINCINNATI DIVISION**

NATIONAL	)	
REPUBLICAN	)	
SENATORIAL	)	
COMMITTEE, <i>et al.</i> ,	)	
Plaintiffs,	)	Civ. No. 22-639 (DRC)
v.	)	
FEDERAL ELECTION	)	DECLARATION OF
COMMISSION, <i>et al.</i> ,	)	JONATHAN KRASNO
Defendants.	)	

**DECLARATION OF JONATHAN KRASNO**

1. My name is Jonathan Krasno.
2. I am a Professor of Political Science at Binghamton University in Binghamton, New York.
3. I have been retained as a testifying expert by the Federal Election Commission in this matter. I am being compensated at a rate of \$300 per hour.
4. A copy of my current CV is attached, which includes a list of the publications I have authored.
5. Also attached is a copy of the expert report I have written for this litigation. It includes a complete statement of my opinions regarding this case and the basis and reasons for those opinions. In forming my opinions in this case, I have considered the Plaintiffs' Complaint for Declaratory and Injunctive Relief. Further, I have reviewed and considered publicly available data, previous expert reports, and political science scholarship, which are referenced in my report, and my knowledge of the field.

6. In the past four years, I have not testified as an expert at trial or by deposition.

7. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'Jon Krasno', written over a horizontal line.

Jonathan Krasno

Executed this 15th day of September, 2023

Unlimited Party Coordinated Expenditures and Quid  
Pro Quo Corruption

Jonathan S. Krasno  
Binghamton University

I. Qualifications

I am a Professor of Political Science at Binghamton University (SUNY) where I have taught since 2003. Prior to that, I was an adjunct professor (Political Science) at Yale, Senior Policy Analyst at the Brennan Center for Justice at NYU School of Law, and an Assistant Professor of Politics at Princeton University. I earned my MA and PhD from University of California, Berkeley and my BA from the University of Wisconsin-Madison. I have published a book, a monograph, and 30 articles in journals and edited volumes.

Some of my earliest research – in the late 1980s while still in graduate school – addressed the impact of campaign spending leading naturally to examination of the regulation of campaign financing, a topic I have gone on to research throughout my career. That research brought me to the attention of litigants, and I have subsequently served as an expert witness in a series of federal and state cases: *Federal Election Commission (FEC) v. Colorado Republican Federal Campaign Committee* (1997, known and referred to below as *Colorado Republican II*), *McConnell v. FEC* (2002), *Cao v. FEC* (2009), *Service Employees International Union et al. v. Fair Political Practices Commission of California* (1997 & 2000), *Missouri Republican Party et. al. v. Lamb* (2000), and *Zimmerman v. City of Austin* (2015).



Especially since political parties were and remain central players in all aspects of campaigns including campaign finance, my work with Frank Sorauf is relevant here. Sorauf, an emeritus professor and former Dean at the University of Minnesota now deceased, was renowned for his work on US political parties before turning his attention to campaign finance later in his career.

We worked together on a number of projects, notably including an expert report for the Federal Election Commission in *Colorado Republican II*. The relevance of that report is obvious since the current litigation seeks to overturn the Supreme Court's decision in that case, directly labelling it "wrongly decided" (para 9 at page 4).

In all of the cases where I have agreed to be an expert witness, I have testified for governments in defense of their campaign finance statutes. I have done so out of the belief informed by my research that sensible regulation of campaign financing may promote the integrity and health of the electoral system and government in a variety of important ways, including protecting it from potential corruptive influence of campaign contributions on public policy or what is frequently called quid pro quo corruption. While it may be tempting to examine a single part of a statute under a microscope, campaign finance systems are *systems* whose different parts operate together in concert. Experience shows that altering an element of the campaign finance system can have repercussions throughout.

In the current litigation I have been asked by the FEC to review my previous reports, especially my work on

*Colorado Republican II*, to see how their relevant conclusions hold up in light of more recent jurisprudence by the Supreme Court, and to evaluate the plaintiffs' claims applying my research and acquired knowledge of campaign financing.

## II. Revisiting *Colorado Republican II*

As I noted, I have personal history in many of the key issues in dispute here having been an expert in *Colorado Republican II* with Prof. Sorauf. The Supreme Court views actual corruption or its appearance as legal justification for regulating campaign finance. In recent jurisprudence, however, the Court has narrowed or refined its focus from "corruption" with the arguably broad range of unsavory practices encompassed by that term to "quid pro quo corruption" or some sort of exchange of campaign contributions for an official favor, usually policy. In my original expert report Sorauf and I concluded that there was clear potential corruptive potential from unlimited coordinated expenditures created by combination of their much high contribution limits relative to candidates and the (in many ways resulting) ways parties raise funds that are exacerbated by political parties' historic reputation for corruption.

The parties' historic reputation by itself for selling access and opportunity to influence policy is arguably an insufficient basis for justifying regulation, at least insofar as it leads to credible appearance of some sort of impropriety as opposed to credible opportunities for and/or appearance of quid pro quo corruption. But that historical reputation by itself was never the sole reason to conclude that existing limits on coordinated

expenditures were and are an essential part of the regulatory structure to minimize the potential for corruption however it is defined. Reexamination of my 1997 report with Sorauf reveals two key elements of that analysis that remain equally relevant today as applied toward quid pro corruption rather than corruption without adjectives. Indeed, I reach the same conclusion today that I reached in 1997 that eliminating the now nearly 50-year-old limits on coordinated expenditures would introduce exactly the sort of risks of corruption that today's Court has agreed may be combatted.

The first element to consider is the simple fact that statutory limits on financial contributions to parties are many times higher than the limits on contributions to candidates. This was the case in 1997 and remains true today. To get a sense of the disparity, the FEC's website provides the following limits for the 2023-4 election cycle for individual donors:<sup>1</sup>

Individuals to candidates – \$3,300 per election or \$6,600 for primary + general election combined.

Individuals to the general accounts of party committees (from which coordinated expenditures are made) – \$10,000 per year (state/district/local) + \$41,300 (national) per year or \$51,300 per year. Over a two-year election cycle this equals \$102,600.

Even this account understates parties' regulatory advantage because I have restricted party money to

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<sup>1</sup> See <https://www.fec.gov/help-candidates-and-committees/taking-receipts-political-party/contribution-limits-partycommittees/>.

dollars that can be spent on coordinated expenditures, excluding the substantial contributions they may accept for other purposes. That parsing still leaves a pair of party committees each able to accept 15+ times more money from an individual donor during the current cycle than a candidate committee may accept. Those lower limits on contributions to candidates have been upheld repeatedly since 1976 because of the protection they provide against potential quid pro quo corruption arising from donors giving extremely large sums of money to the campaigns of present and/or future policymakers in zealous pursuit of dollars to fuel their election efforts.

Beyond the appreciation for the valuable role parties play in our electoral system, another reason for that disparity between parties and candidates that has been made is that parties are not candidates and are not themselves policymakers, therefore lowering the potential for quid pro quo arrangements between donations and policy favors. This is wishful thinking bordering on denialism. Setting aside all the ways that parties are central actors in US politics, the parties' legislative campaign committees (LCC), the term of art for organizations like the National Republican Senatorial Committee and National Republican Congressional Committee dedicated to electing members of either party to a particular legislative body who are two of the plaintiffs here, were founded by sitting members of Congress and are run by sitting members of Congress.<sup>2</sup>

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<sup>2</sup> For a history of the congressional campaign committees see Kolodny 1998. LCCs exist in nearly every state legislature as

While the other two plaintiffs here – Sen. Vance and Rep. Chabot – are donors to and recipients of support from the relevant LCCs in their party caucuses or the equivalent of normal shareholders, those organizations are run by actual policymakers who take these duties very seriously. Many chairs of the party LCCs have used their experiences as springboard to attain leadership positions within their party including the present Majority and Minority Leaders of the Senate, both of whom began their rises within their party following successful stints as chairs of its LCC.<sup>3</sup> The idea that money donated to parties is given to functionaries isolated somehow from the actual policymakers who are in a position to deliver the sort of quid pro quo deals that are so problematic ignores the reality that the functionaries in many cases, including this one, are actual policymakers. Federal law strictly limits the amount of money these policymakers may accept for their own campaign, while allowing them to raise much more for parties despite the clear evidence of career incentives in raising this money.<sup>4</sup>

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well, thus the generic term Legislative Campaign Committee and are also controlled by party caucuses.

<sup>3</sup> Sen. McConnell was chair of NRSC from 1997 to 2001 and became Republican Whip in 2003; Sen. Schumer was chair of the Democratic Senatorial Campaign Committee from 2005 to 2009, becoming Vice Chair of the Senate Democratic Caucus in 2007 and Chair of the Senate Democratic Policy Committee in 2011.

<sup>4</sup> There is ample evidence of fundraising prowess affects congressional careers. As early as the late 1970s there were reports that campaign donations helped a member win chairmanship of an important subcommittee over another member with greater seniority

This background about how the LCCs are managed is not the only factor relevant to the issue of the potential harm created by removing limits on coordinated expenditures. The second element which carries over from my earlier look at coordinated expenditures is how the LCCs raise money from large donors. The answer is quite simple: in concert with candidates themselves. My 1997 and 2003 reports in *Colorado Republican II* and in *McConnell v. FEC* (also with Sorauf) are replete with examples drawn from the depositions of party officials about how fundraising is done. From the very start parties have understood that events that bring donors into direct contact with elected officials, especially elected officials with specific positions in areas of concern to these contributors (e.g. members of a particular committee with jurisdiction in a domain of interest like energy policy or agriculture) were invaluable. Backbench members of Congress attract less donor interest than do members with top standing in their committee or subcommittee or party. Both parties have advertised programs bringing donors at various levels into closer and closer contact with more and more influential policymakers. And, to make these sorts of arrangements even more explicit, parties and candidates have created specific agreements about

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(<https://www.nytimes.com/1979/02/04/archives/two-conflicts-of-interest.html>). Today many members of Congress have leadership PACs and virtually all contribute to their party's LCC (see Herrnson et al. 2019). More to the point, however, chairmanships of the LCCs are usually contested because of their perceived value as a steppingstone within each party (which can vary depending on election outcomes) and for the exposure to each party's largest donors.

sharing revenue from the so-called “tally system” to the joint fundraising committees which have become even more commonplace in the last 20+ years. As I explain below, the process of coordinating the expenditure of this money makes officeholders key decisionmakers in directing the disposition of the funds they have raised through their party’s LCC.

The bottom line is that the existing high limits on party fundraising already have created a situation that Congress and the Court have attempted to prevent where sitting members of Congress are directly soliciting donors for contributions much, much larger than they could accept for their own campaign committees. The distinction is that this money is for their parties and not their own campaign committees. That is not a very comforting distinction given close connection between candidates and LCCs, the world of joint fundraising committees and, as I will discuss below, the mechanics of coordination. The existing limits on parties’ coordinated expenditures is the only piece in place which keeps the system somewhat in check. Removing it would leave a situation where candidates, especially incumbent policymakers, would have an easy end-run around existing contribution limits. Without limits on coordinated expenditures, candidates could and undoubtedly would use LCCs to solicit exceptionally large donations directly from donors so long as the money is directed to a party account over which the candidate exercises complete or large control, effectively destroying the existing campaign finance system. Regardless of how one feels about the status quo, replacing it with a system where individual contribution limits to candidates are multiplied from \$6,600 to (at least) \$102,600 would

clearly create key elements in the sort of quid pro quo corruption scenario that Congress and the Court have agreed that campaign finance law should and must combat.

### III. Are Coordinated Expenditures Expenditures?

In its seminal 1976 decision in *Buckley v. Valeo* the Court made a crucial distinction between money received by campaigns, “contributions,” and money spent by campaigns, “expenditures.” The former involved things of immediate value given to benefit existing and/or future policymakers, so the Court reasoned that the dangers of corruption were immediate enough to allow Congress to regulate their size. The Court concluded that the same logic did not apply to the latter; expenditures did not involve the same direct gift of resources so fraught with potential dangers while they did implicate the First Amendment. The bottom line is that over the last 50 years the state of the law has more or less been that governments may regulate contributions but not expenditures (unless campaigns agree to accept regulation in exchange for other considerations).

The plaintiffs here appear to rely strongly on this principle coupled with the turn of phrase made by the drafters of the 1974 Amendment to the Federal Election Campaign Act, “coordinated expenditures,” to maintain that expenditures may not be regulated. Period. This is misleading for multiple reasons.

To begin with, the bill drafters in 1974 certainly could not have anticipated the Court’s future decision and the momentousness of their word choice. Should the adjective they chose do the work here or should the noun? It is evident that coordinated expenditures



were a separate category from all the other transactional devices in the 1974 bill which included, among other things, contributions to candidates, parties, and PACs from individuals, parties and PACs, expenditures by candidates, and independent expenditures by what were essentially PACs. That is, Congress had already filled in the main categories addressed by the *Buckley* Court.

What made and still makes coordinated expenditures different from the two other types of expenditures in the statute, campaign spending by candidates and independent expenditures, is the adjective “coordinated.” Campaign spending is done by campaign operatives and hierarchy. Numerous articles or stories or books about campaigns tell of the unsolicited advice offered by donors, the ideas sent to campaign headquarters, emailed to officials, shared with reporters, served up by reporters themselves. The general accepted wisdom is that successful campaigns tune out this background noise and stick to their own plans.<sup>5</sup> Independent expenditures are by design walled off from the campaign itself as a way to safeguard against corruption. The *Buckley* Court reasoned that a candidate who did not coordinate with group X in their campaign on her behalf was less susceptible to corruptive influences. Others have contended that a candidate would not know even know when a group was spending in a race.

Coordinated expenditures are the polar opposite, money spent in consultation with a candidate’s campaign. In practice, this can boil down to money

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<sup>5</sup> See for instance Plouffe 2010.

spent by the candidate on behalf of the party where the candidate manages the purchases and passes the bills to the party committee. This is vastly different than the other sorts of expenditures the *Buckley* Court considered, the limits on which it overturned in 1976. Functionally, it is closer to a contribution than to an expenditure.

It hardly seems surprising that the limits on coordinated expenditures should have been repeatedly upheld over the last half century for the word coordinated has a specific meaning that distinguishes these transactions from other expenditures. Perhaps ironically, the plaintiffs underscore this very point by repeatedly calling attention to the different rules governing independent and coordinated expenditures. They are exactly right to maintain the two are different, wrong to insist that a wording choice made in 1974 makes them fundamentally the same.

To give a sense of how empirical political scientists like myself have understood coordinated expenditures long before *Colorado Republican II*, my first research project on campaign finance while a graduate student in the 1980s explored the effect of campaign spending by congressional candidates on election outcomes. That research grew out of research conducted by other political scientists in the 1970s.<sup>6</sup> All of us collected campaign spending data from the FEC and all of us coded coordinated expenditures as *candidate spending*, no different than a gift received and spent by the candidate herself. Given what was and is known about how that money is raised and spent it is a

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<sup>6</sup> See Green and Krasno 1988 and Jacobson 1978.

decision that I do not question. By contrast, I would not treat parties' independent expenditures in the same way in empirical models.

Earlier I noted two key features of the status quo which make unlimited coordinated expenditures dangerous for their potential to create the opportunities for quid pro quo corruption: the much higher limits on contributions to parties and the practices of how parties and candidates / officeholders work together to raise funds for parties. Underlying these is the plain reality of the adjective "coordination." Not only is this money that candidates can and do raise through parties which is earmarked for their campaigns, the law permits candidates' campaign committees to work with or even instead of the party in directing how this money is spent. The idea that placing the party in between the donor and the campaign somehow insulates any potential quid pro quo relationship between donor and candidate is immediately negated by observation.

#### IV. The History and Role of Political Parties

It is perhaps tempting to imagine that the preceding forecast is too grim or hyperbolic. One reason suggested by some scholars of US parties in previous litigation is that parties in the process of collecting vast sums of money from multiple donors function to essentially launder these dollars, obscuring their sources from their ultimate recipients. This strikes me as wildly implausible in light the size of the donations involved and officeholders' control of the party committees. Furthermore, the involved accounting system including things like joint fundraising committees defeats the whole notion that

the corruptive potential of large donations can be resolved because they can somehow be forgotten by their recipients.

To go back a step further, much of the history of US parties has been tied up in exactly the sort of quid pro quo corruption scandals that Congress has hoped to eliminate or minimize with existing law. This is certainly true of local political machines from storied examples like Tammany Hall in New York City, the Daley Machine in Chicago, the Nassau County (NY) Republicans, and many, many more which depended on patronage, kickbacks, and outright bribery to cement their power and enrich / incentivize their leaders. Multiple political scandals in US history have had parties at their center, including episodes like Teapot Dome or Watergate where there were financial components including allegations of outright bribery, the ultimate quid pro quo.<sup>7</sup> These sorts of episodes are not limited to the distant past; as noted in earlier expert reports, both *parties* have frequently accused their counterparts of quid pro quo corruption if not outright bribery whether it be sleepovers in the Lincoln Bedroom during the Clinton Administration, accusations about the government funding received by the energy company Solyandra during the Obama administration, or claims that the Trump tax bill was a straight pay off to large donors who would cut off support to the party if it were not passed.<sup>8</sup>

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<sup>7</sup> See Epstein 1989 on US parties and efforts to regulate them.

<sup>8</sup> There are multiple news articles on each of these episodes; for brevity I limit this to one citation per episode. For Lincoln Bedroom see <https://www.cnn.com/ALLPOLITICS/1997/02/25/clinton.money/>;

I could go on and on, but the point is that going back to the 19th century reformers have focused attention on curbing the corruptive abuses of parties. Those concerns have certainly not abated in the 21st century especially given the legal arrangements that favor large financial flows into parties. Indeed, the state of Ohio itself has endured several recent corruption scandals that implicate political parties or party officials in the last two decades including:

Former Assembly Speaker Larry Householder and former Ohio Republican Chair Matthew Borges were sentenced to 20 and 5 years in prison in 2023 respectively for masterminding a bribery scheme that involved nearly \$61 million in bribes to secure a \$1 billion bailout for nuclear plant.<sup>9</sup>

“Coingate.” In 2005, sitting Governor Robert Taft was charged and eventually pleaded no contest to an array of financial violations involving his interactions with Tom Noe, a major GOP contributor. Noe, a rare coin dealer, sold the state on investing in rare coins – one of a series of high-risk investments made by Ohio’s Bureau of Workman’s Compensation Fund to businesses tied to large Republican contributors. Many of these investments did not pan out for the Compensation Fund, but the coin investment was

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for Solyandra see <https://www.latimes.com/nation/la-na-solyandra-donor-20110917-story.html>; for Trump tax cut see <https://www.nbcnews.com/politics/elections/passing-gop-tax-bill-hard-selling-it-voters-may-be-n830836>.

<sup>9</sup> See <https://www.justice.gov/usao-sdoh/pr/jury-convicts-former-ohio-house-speaker-former-chair-ohio-republican-party>.

particularly notable because few of the purchased coins appear to have been delivered to the state.<sup>10</sup>

Former Cuyahoga County (Cleveland) Supervisor and Democratic County Chair Jimmy Dimora was sentenced to 29 years in prison in 2012 for racketeering, bribery, and other charges. Dimora was the most prominent of dozens of officials charged in this sweeping investigation.<sup>11</sup>

Former US Rep Bob Ney pleaded guilty was sentenced to 2.5 years in prison in 2007 for his involvement in a bribery scheme involving Indian lands. A half dozen other officials also served jailtime from this episode which sprang from the work of Jack Abramoff, a major GOP donor.<sup>12</sup>

One objection to his brief history is coordinated expenditures do not feature prominently in the examples of (quid pro quo) corruption to which I have quickly alluded. From my perspective, that should be taken as a triumph of the existing legal regime which imposes fairly generous limits on their magnitude. After all, we know that parties display no natural resistance to quid pro quo corruption and that under the current system big donors can make contributions to party committees that policymakers control. The fact that scandals specifically involving coordinated federal expenditures have not been more common

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<sup>10</sup> See <https://www.toledoblade.com/coingate>.

<sup>11</sup> See <https://archives.fbi.gov/archives/cleveland/press-releases/2012/former-cuyahoga-county-commissioner-jimmy-dimora-convicted-of-racketeering>.

<sup>12</sup> See [https://www.justice.gov/archive/opa/pr/2007/January/07\\_crm\\_027.html](https://www.justice.gov/archive/opa/pr/2007/January/07_crm_027.html).

suggests that the current regulations are working as intended.

#### V. How Parties have Fared Under the Current Regime

While the plaintiffs are never very explicit on this point, there is a hint of an argument that I have encountered frequently in past litigation that the current arrangement, especially following Court decisions that have deregulated other parts of the system but not parties, that the political parties themselves are losing their central place in US politics. This is categorically false and based on a very selective reading of just some of the evidence.

Political scientists generally describe parties as having three manifestations or guises: in the electorate (i.e. party identification), in government (e.g. party caucuses in legislatures) and as organizations. There is little doubt that US parties in the electorate and in government are both at or near historically high levels. Surveys show rising percentages of respondents identify as Democrats or Republicans (especially with partisan “leaners” included) with increasing percentages of strong partisans. While a generation ago there was some fear of “dealignment,” Americans disassociating themselves from the party system, there is now concern of excessive partisanship or polarization extending even to choices people are making in where to live.<sup>13</sup>

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<sup>13</sup> For discussion of dealignment see Wattenberg 1998. For the resurgence of partisanship see Stonecash 2005. Partisanship’s resurgence is so dramatic that some researchers have found its effects far beyond the voting booth, see Tam Cho et al. 2012.

Similarly, by the various ways in which scholars measure party in government, US parties are faring historically well. While most citizens decry partisanship in legislatures, most political scientists see it as an essential ingredient for policymaking (i.e. presidents rely on legislative majorities to pass their programs) and for accountability.<sup>14</sup> One simple example of this observed change is party cohesion in legislative voting. The US Congress was generally the outlier body in studies of national legislatures for its relatively low levels of party cohesion in the past. Today's Congresses now "enjoy" much higher levels of party discipline, though there remains debate over the causal explanation fueling this development.<sup>15</sup>

That leaves party organization. When Sorauf and I examined the depositions about the Colorado Republican party, a partner to the NRCC in coordinated expenditures, we found a party that was little more than a pass-through for federal dollars on their way to vendors. We saw the same thing in 2000 when examining the deposition evidence about the Missouri Republican Party in *Missouri Republican Party v. Lamb*. It came as no surprise. The history of US political party organization is vastly uneven with strong state or local organizations rising and falling, usually due to patronage opportunities coupled with leadership.<sup>16</sup> The national party organizations,

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<sup>14</sup> For a review of scholars' positions on parties see Stokes 1999.

<sup>15</sup> See Layman et al. 2006, Krehbiel 1993.

<sup>16</sup> See Sorauf 1984.



especially the LCCs, were always weak – lacking both money and labor.<sup>17</sup>

That changed – dramatically – at least in dollars with the passage of the current campaign finance law in 1974. In less than a decade following its passage, each party’s LCCs receipts increased tenfold – the NRCC and NRSC growing from \$14 million in 1976 to \$140 million in 1984, with the Democratic committees going from \$195,000 to \$19 million.<sup>18</sup> Neither side could possibly maintain that pace and the Democrats proceeded to close the gap. In the 2021-2 cycle the pair of Republican LCCs reported \$539 million in total receipts (including money raised for independent expenditures) and the pair of Democratic LCCs reported nearly \$660 million.<sup>19</sup> Clearly the parties have the financial capacity to spend more money in some specific set of races.

No one can look at how the national LCCs, definitely including the NRSC and NRCC, have fared under the current campaign finance law without concluding that they have prospered beyond their wildest dreams prior to its passage. There is a straightforward causal explanation because that law already favors political parties in substantial ways, including the much higher limits on the contributions they may accept.

## VI. Final thoughts

I first encountered and carefully considered the argument to eliminate limits on party coordinated

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<sup>17</sup> See Kolodny 1998.

<sup>18</sup> See Carson and Jacobson 2023, pg 92.

<sup>19</sup> These figures come from <https://www.opensecrets.org/political-parties>, an organization which analyzes and publicizes FEC data.

expenditures more than 25 years ago. At the time, the proposal seemed transparently opposed to the core anti-corruption purpose of campaign finance regulation as stated by the *Buckley* Court. Subsequently the Court has become more tightly focused on quid pro quo corruption as opposed to a more general version, but eliminating the limits on coordinating still creates exactly the same obvious and inherent conflict. Given that a) parties can already money in much larger chunks than can candidates, b) that candidates already work with parties to raise money often with the expectation that it will be directed to their own campaign, and c) that the adjective “coordinated” means that candidates exercise some if not total control over the how this money is spent (making it more like a contribution), it is obvious that unlimited coordinated expenditures create the environment for quid pro quo corruption to take root and flourish.

A simple counterfactual might help illustrate this point. The plaintiffs here are asking for both higher contribution limits to parties and no limits on coordinated expenditures rather than higher contribution limits with some limits on coordinated expenditures. But if any limits on coordinated expenditures are so offensive, an alternative would be to sacrifice the higher limits on contributions to parties. That is, if parties lived by the same rules as do candidates – no donations above \$6,600 from an individual, etc. – then it would be easier to view their spending, even their coordinated expenditures, as posing less danger of quid pro quo corruption. I think everyone knows that this is a deal that parties would never make for the whole game here is predicated on

their fundraising advantages. If those advantages were abandoned, I have little doubt their appetite for unlimited coordinated expenditures would diminish. That, in turn, reveals what is really at stake here: not allowing parties to spend more money, but allowing candidates and parties to work together to raise money outside the statutory limits on candidates that are in place to minimize quid pro quo corruption.

**POLITICAL PARTY COMMITTEES AND**  
**COORDINATED SPENDING**

Frank J. Sorauf, University of Minnesota  
Jonathan S. Krasno, Princeton University

We write this memorandum because we believe that political science has something to say about the central issues in this case. As specialists in American government and politics, we have thought or written about a good many of them: the nature of political parties and their role in a democracy, recent developments specifically in the American parties, the realities and regulation of campaign finance in America, the importance of public perceptions and judgments about political life, and the whole complex of issues suggested by terms such as influence and corruption.

To present our views as systematically as possible, we have grouped them in six main headings. We begin in Part I with the evolving definition of corruption and its appearances. Part II deals with the issue of influence and the potential for corruption in the money of PACs and individuals that flows through party committees and into the campaigns. Part III treats the same issue in presidential campaigns. In Part IV we examine the perceptions of American adults about these transactions and thus we look at the question of the “appearances” of corruption. Part V summarizes our views about the nature of the party committees involved in the funding of campaigns and, moreover, the impact of that funding on the parties themselves. Finally, in Part VI we project the likely consequences of declaring invalid the limits the Federal Election

Campaign Act of 1971, as amended, (FECA) now places on party coordinated spending in campaigns.

Very briefly put, we believe that political parties as funders of campaigns have at least as great a potential for corrupting the representational processes in this country as do PACs and major individual contributors. Indeed, we believe there is substantial reason to think their capacity for corrupting is even greater.

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in the words of Justice Breyer, “a ‘compelling’ governmental interest in assuring the electoral system’s legitimacy.”<sup>9</sup>

## II.) The Parties’ Potential for Corrupting

The American public widely concedes the corrupting potential of PAC contributions. That judgment underlies the upholding of legislated limits on their contributions to candidates, parties, and other PACs. Many scholars and observers, however, have been reluctant to come to similar conclusions about the contributions and spending of political party committees. Such reluctance dominates the amicus curiae brief of a group of political scientists in the appeal of this case to the Supreme Court in 1995.<sup>10</sup> Indeed, they argue that money in passing through a political party is somehow purified of the interests and demands of the original source and is, therefore,

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<sup>9</sup> *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 116 S. Ct. 2309 at p. 2313.

<sup>10</sup> *Brief Amicus Curiae* of the Committee for Party Renewal, submitted in *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, No. 95-489, October Term 1995.

benign in its effect .on the candidate who receives it or benefits from it. In the words of their brief:

As a source of campaign funds, American parties probably constitute the cleanest money in politics. Recognizing that political parties are large aggregators of many contributions diffuses any real or perceived undue influence that might arise from a financial contribution... Parties are too large and too diverse to be controlled by any special interest. The old rule of sanitary engineers applies: the solution to pollution is dilution.<sup>11</sup>

We believe that position needs to be examined thoroughly.

The purification argument rests on two grand assumptions. First it assumes that in accepting and processing a contribution the party removes the name and identity of the contributor from it. It simply becomes “party money.” Second it assumes a single, vast, monolithic political party with a single, well-articulated program or platform. The goals, programs, and interests of that monolithic party then attach to the party’s contributions or spending in the campaign. We take up those two assumptions, in order, in this section.

Does the party purify the interested money it receives by removing the label of its origin? In passing through party hands is it mixed with all manner of funds and their sources and thus become anonymous money? Through the process, moreover, does the party function as a political alchemist, transmuting base

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<sup>11</sup> *Ibid.*, pp. 16-17.

interests into more noble, more widely held political goals? We doubt that they do: Certainly the conclusion ought not to be taken on faith.

In reality the identities of major contributors to party committees are not secret, hidden, or obliterated, on the contrary, the parties go to great pains to make sure that legislators and other public officials know exactly who donates substantial sums of money. The events at the Super Bowl, Snowmass, and Palm Springs of which Peter Stone writes are very much to the point. Contributors to party committees are widely recruited for donor clubs; both the Colorado Republican party and the six national party committees all have exclusive clubs, membership in which is open only to major contributors. The advertised reward for giving more is the opportunity to meet with leading congressional and administration officials, particularly in progressively smaller groups. Some of these meetings occur in fundraising events where the presence of various officials is the main drawing card for contributors. Other encounters occur after the election when parties organize retreats for donors and officeholders to come together for the express purpose of establishing friendships and lines of communication.

One aspect of the whole fund-raising nexus called "tallying" exemplifies the close and complex relationships among donor, party committee, and officeholder. Much of the fundraising for the congressional legislative campaign committees (LCCs) is done by the Members of Congress themselves; thus they know donors because they recruit and solicit them. As the Hickmott, Simon, and Wirth

declarations make clear,<sup>12</sup> at least one of the Senate party committees, the DSCC, assigned fundraising quotas to incumbents up for reelection, and apparently kept careful “tallies” of the Senators’ fundraising successes and failures.

Moreover, legislators are most likely to raise money for their parties from the same sources who contribute to their own campaigns. In fact, they return especially to sources who have already given the maximum amount given by law. So, former Senator Wirth notes:

In this fundraising, I often solicited money to the DSCC from individuals or Political Action Committees (PACs) who already had “maxed” (contributed to my campaign committee the maximum amount allowed by federal law). I did so because as I remember, individual solicitees were allowed by law to contribute \$20,000 to the DSCC in a calendar year, whereas they were allowed to contribute to my campaign only \$1,000 each for the primary election and the general election.<sup>13</sup>

In any event, such a system of systematic credit-taking for party fundraising can hardly guarantee anonymity for the contributors to the party committee.

Second, the purification argument assumes a single, vast, monolithic political party with a single, well-articulated program or platform. In the reality of contemporary campaign finance, however, we have specific party committees, parts or fragments of the

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<sup>12</sup> Declarations of Robert Hickmott (April 8, 1997), Senator Paul Simon (May 3, 1997), and Senator Timothy Wirth (May 5, 1997).

<sup>13</sup> *Ibid*, par. 9.



political party, raising and spending money. In the campaigns for Congress and the majority of state legislatures, it is the legislative campaign committees (the LCCs) that are the chief party financiers of legislative candidacies. In the Congress they are the two party committees in the House (the Democratic Congressional Campaign Committee, or DCCC, and the National Republican Congressional Committee, or NRCC) and the two in the Senate (the Democratic Senatorial Campaign Committee, or DSCC, and the National Republican Senatorial Committee, or NRSC). In the states the LCCs are either similarly named party committees or the party caucuses or leaders acting in their capacities as LCCs.

As representatives of the political party, or simply as one of its parts, the LCC has two salient characteristics. First, it has virtually no ties to the grassroots or constituency party or to its party activists. It has little or no concern for local party organizations or for the platforms the local partisans construct as convention delegates in the states or nation. The LCCs are the creatures only of legislative party members and are responsible only to them.

Moreover, the LCCs have a set of political interests quite separate from those of the broader political party. LCCs exist to win elections, to maximize the number of their partisans in the legislative chamber and, above all, to win or maintain control of the chamber and the powers of the majority legislative party. Their concern for the rest of the party ticket is limited, and they accept any party platform only at their own convenience and discretion. Indeed, in at least one state, New York, they have intervened in local party primaries, even in opposition to the choice or

endorsement of the local party. Writes the chief observer of New York legislative campaign committees:

Traditional party leaders perceive these new units to be unconcerned with augmenting party membership, supporting the ticket, or aiding institutional support activities. The two camps do share a concern for winning state legislative elections and controlling a majority caucus, but that is about all. We may be hard pressed to distinguish LCCs in New York as little more than independent consulting firms working for the benefit of the legislative caucus and its leadership.<sup>14</sup>

For the campaign contributor, whether PAC or individual, the LCC also has special qualities. LCCs are usually closely allied with, even dominated by party leadership in the legislative chamber. With a contribution to an individual legislative candidate, a contributor may achieve access to a single legislator. A contribution to an LCC, however, may bring access to a legislative party's entire agenda and ultimately to the votes of some or all of a party caucus. As an experienced Washington fund-raiser has put it.:

If you want to get to know Members of Congress, it is more efficient to write a \$15,000 check to the DSCC and to get the opportunity to meet them at our various events than it would be to write fifteen \$1,000 checks to fifteen Senators, or Senators and candidates.<sup>15</sup>

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<sup>14</sup> Daniel Shea, *Transforming Democracy* (Albany: State University of New York Press, 1995), p. 112.

<sup>15</sup> Declaration of Robert Hickmott (April 8, 1997), p. 10.

Even more, a contribution to an LCC brings the likelihood of two- fold gratitude – gratitude from the party and its legislative leadership, and gratitude from the candidate or candidates who ultimately receive the support.

In fact, so intertwined may be the relationship of the contributor and the LCC that the two identities may merge. In his book on the DCCC stewardship of Tony Coelho of California, Brooks Jackson recounts at some length the rise of a Texas real estate baron and major contributor, Thomas Gaubert, to the position of Finance Chairman of the DCCC. If Members do not know the policy agendas of contributors from the donor events, they surely learn them from donors who are also raising money for them.<sup>16</sup>

The supporters of stronger political parties may urge that the LCCs are usefully augmenting party power in American legislatures. That may well be true, but we ought to be clear about the purposes for which they contribute in campaigns. Virtually all scholarship on the allocation decisions of LCCs finds that they support candidates primarily for electoral reasons – a chance to win a seat, the danger of losing a seat – rather than for their fidelity to a party program.<sup>17</sup> It may even be the case that party campaign funds are used to promote the goals and interests of the LCC and its leadership. On occasion

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<sup>16</sup> *Honest Graft* (New York: Knopf, 1988), chapter 14.

<sup>17</sup> See, for example, Frank J. Sorauf and Scott A. Wilson, "Campaigns and Money: A Changing Role for the Political Parties?" in L. Sandy Maisel, ed. *The Parties Respond: Changes in the American Party System* (Boulder: Westview, 1990), pp. 187-203.

they may even honor the interests of the chair of the LCC. In 1996, for example, when Senator Alfonse D'Amato, Republican from New York was chair of the NRSC, the Committee funneled more than \$2.5 million from the Committee's non-federal account to Republican gubernatorial and state legislative candidates in D'Amato's own state. At least some of the original donors, apparently, did not know the funds were going into the Committee's non-federal account.<sup>18</sup> In the same year's election, Representative Martin Frost, chair of the DCCC, sent \$2.7 million in DCCC funds to his home state of Texas.<sup>19</sup>

The examples so far have come from congressional politics, but in fact the acme of LCC power has been reached not in the Congress but in the states. The reports from and books about several of them are cautionary tales of the enormous power of party money to dominate and even corrupt the states' electoral and representative processes.

Daniel Shea's study of New York state's LCCs is at its best in detailing LCC relationships with the rest of the party structure and in explicating the special nature of the LCC.<sup>20</sup> He details the implications of LCC maturity in the states and presents what can be considered a future scenario as LCCs mature in other states and in the Congress. As for the implications of

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<sup>18</sup> Leslie Wayne, "D'Amato Converted Donations To Help New York Candidates," *New York Times* (February 18, 1997), p. 1.

<sup>19</sup> Ron Hutcheson, *Fort Worth Star-Telegram* (April 8, 1997), p. 3.

<sup>20</sup> *Transforming Democracy* (Albany: State University of New York Press, 1995).

LCC growth for party funding of campaigns, Shea observes:

Unfortunately, LCC maturation may represent as many, and perhaps more, harmful possibilities than positive developments. For one thing, these units may compete for resources. Conceivably more damaging than candidate-centered campaigns, contributors might find the biggest bang for the buck with LCCs. And why not; these units are extensions of caucus leadership, the very group that controls the flow of legislation. If one is interested in influencing policy or gaining favor with decision makers, it would be irrational to send money to TPO leaders [traditional party organization leaders) rather than to LCC officials.... It should also be kept in mind that ices will do little or nothing to recruit candidates and foster competition in districts where their party is badly outnumbered.<sup>21</sup>

In sum, the Shea book is a 200-page essay on the theme that party committees within the same party often work at cross purposes.

Illinois offers an example of the LCC in all its glory – in raising money, in disbursing money to candidates, and in relating all of that to control of legislative business; Kent Redfield portrays that experience in detail.<sup>22</sup> Approximately 50 percent of the money spent in state legislative campaigns passes through the hands of the four party leaders in the legislature and the LCCs they control. PACs contribute far greater

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<sup>21</sup> *Ibid*, p. 174.

<sup>22</sup> *Cash Clout* (Springfield: U. of Illinois at Springfield, 1995).

sums to them than directly to candidates, testifying perhaps to the greater “political value”, the greater policy “clout”, of contributions to the LCCs. For their part the four party leaders choose to spend the funds they have on a relatively small number of competitive, “targeted” races.

In other words, Illinois is the classic case of the triumph of the alliance between legislative leadership and the LCC in a regulatory environment that requires only modest disclosure of legislative campaign finance. Redfield’s conclusions about Illinois are worth quoting at length:

...the fundraising and campaign activity of the legislative leaders has changed the nature of the [Illinois] legislature more than any other factor.... The interest group community in Illinois generally regards contributing to leaders as both a prudent and a highly efficient way of gaining influence. Smart, ambitious legislative leaders, using the power of their offices to benefit from the unrestricted campaign finance system and the willing cooperation of interest groups have created campaign organizations that raise large sums of money and assure sophisticated, highly effective campaigns for candidates running in competitive, targeted races. Candidates who are elected with substantial leadership support go to the legislature with allegiances and obligations that are not easily turned aside.<sup>23</sup>

So, four party leaders in Illinois, acting as their two parties’ LCCs, collect the money, allocate the money to

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<sup>23</sup> *Ibid.*, p.151.

campaigns, and define (by targeting) the extent of competition in legislative races. It is the key to their vast control of legislative agendas and accomplishment.

At some point in the development of an LCC, whether in the states or in the Congress, its success in campaigns and its alliance with majority control of the legislative chamber tips the balance of power in the contributor-solicitor relationship to the soliciting LCC. Some lobbyists and PAC managers have always complained that both incumbent Members and the party campaign committees in Congress have pursued contributors too vigorously and that the problem in the relationship was not bribery but extortion.<sup>24</sup> As the sums raised in 1996 rose sharply over 1994 levels, so did the complaints about the repeated demands on contributors. Many focused on the House Republican leadership and the NRCC; wrote one veteran Washington reporter in 1997:

Republican leaders, in fact, have spent the last 2 1/2 years shaking the money tree with a vigor that impresses even old Washington hands.

GOP chieftains have not only demanded that political action committees give more to Republicans but also instructed the PACs to end the common practice of hedging their bets by giving to Democrats as well. Republicans have made lists of who's naughty and who's nice among donors. They have even

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<sup>24</sup> See for example, Center for Responsive Politics, *PACs on PACs: The View from the Inside* (Washington, D.C., 1988). Brooks Jackson in *Honest Graft* (New York: Knopf, 1988) also recounts the new aggressiveness in fundraising that Rep. Tony Coelho brought to the DCCC in the early 1980s; see especially chap. 14.

criticized the GOP's traditional cash cow – the business community – for not doing enough....

When it comes to strong-arm fund-raising, many lobbyists say the trailblazer was a Democrat: Former Rep. Tony Coelho of California, as chairman of the Democratic Congressional Campaign Committee in the 1980s, was infamous for his hardball drive to get PACs to give more to Democrats....

The National Republican Congressional Committee prepared a report for all GOP members on how much every PAC gave to each party in 1993-94. Each PAC was ranked as “friendly,” “neutral” or “unfriendly.” Critics decried the list as a blatant effort to intimidate PACs into giving more to the GOP.<sup>25</sup>

What a party leadership or campaign committee does, of course, the individual party Members will feel freer to do.

Similarly, in the development of an LCC there also comes a time when the success of the LCC tips the balance of power in the funder-candidate relationship to the LCC as funder. Whatever may have been the case at the time of the adoption of the FECA, by the later 1990s party committees routinely put conditions, often severe and controlling ones, on their contributions to and coordinated spending on behalf of candidates. They may, for example, contribute or spend so that a candidate will hire a specific campaign consultant or take a specific public speaking course or develop media ads on a specific policy theme. In fact, many of the more robust LCCs have field staffs whose

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<sup>25</sup> Janet Hook, “PACs Felt Heavy Republican Pressure to Donate,” *Los Angeles Times* (April 27, 1997).



job it is to assess the candidate's campaign and to recommend steps to bolster or improve it.

In sum, the picture that emerges is one of party committees, especially the LCCs, with a very substantial potential for magnifying and augmenting the influence of contributors. At the same time they easily become the servants of the narrow goals of a legislative party and its leadership, once they achieve a certain prominence in funding legislative campaigns they build an impressive potential for coaxing contributors, for disciplining individual legislators, for picking candidates and managing campaigns, and even for determining where the competitive campaigns for legislative seats will be waged.

### III) *The National Committees and the Presidential Campaign*

Great changes in American politics have transformed the national committees – the DNC and the RNC – in little more than a generation. Weak and underfunded 35 years ago, and often reduced to begging for funds from affluent state committees, they now are the powerful peak organizations of the national party hierarchies. Nothing testifies more eloquently to their revival, and to the concomitant decline of state party committees, than their regular transfers of money, both hard and soft, to state parties. The DNC and RNC together transferred \$140.6 million to state and local party committees in the 1995-96 election cycle. Their frequent “renting” of state party spending authority via agency agreements speaks to the same point; approximately two-

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Political Party Committees and Coordinated  
Expenditures in *Cao v. FEC*

Jonathan Krasno Binghamton University

I. Introduction

I write this report out of the belief that my own and other political scientists' empirical research speaks directly to the central issues raised in *Cao v. FEC*. I use the word "empirical" to draw attention to the factual nature of my remarks below. While I will discuss various theoretical perspectives on political parties and forecast the effect of removing the limits on coordinated expenditures, for the most part this report will focus squarely on the empirical record of how parties behave, how the limits on coordinated expenditures affect them and political candidates, and how the limits on coordinated expenditures fit into the broader system of financing campaigns.

On the latter point, it is important to note at the outset that parties have been strongly advantaged by the system of financing campaigns. They can accept larger contributions than can political candidates or political action committees (PACs), the two other main players identified by the Federal Election Campaign Act and its amendments (FECA). They can offer candidates *far* more support than can PACs or individuals, the other donors in the system who, unlike parties, are limited to the amount they may contribute to a candidate – \$4,800 for individuals and \$10,000 for PACs in 2010 (the combined amount for

the primary and general election).<sup>1</sup> Only parties can go beyond their contribution limits (\$10,000) to coordinate additional spending with the candidate, in most cases another \$87,300 of spending (as of 2009). The record shows that the national committees especially, like the Republican National Committee (RNC), are much bigger players in political campaigns today than they were in 1976 when the current system was created. Taking a single aspect of that system out of that context misses the larger story about how political parties have prospered under the very regulations under challenge here.

I come to this litigation with a fairly substantial background relevant to many of the claims made by Representative Cao, the RNC, and the Republican Party of Louisiana (LA-GOP), along with significant experience in much of the litigation that precedes it. Writing with Professor Frank Sorauf, Regents' Professor of Political Science (emeritus) at the University of Minnesota-Twin Cities, I contributed an expert report for the defendants in *Colorado II* (Sorauf and Krasno 1997) arguing for the constitutionality of the limits on parties' coordinated expenditures under review here. In addition, Professor Sorauf and I were also

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whereby candidates, usually incumbents, would raise money for the party and, in return, be credited by the party for their contribution. Several years later, in *McConnell v. FEC* we wrote about another innovation,

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<sup>1</sup> These contributions may be monetary, in-kind, or coordinated with the candidate, although in practice they are very nearly always monetary.

joint fundraising committees, where candidates and parties held joint events with the first dollars of each donor's contribution counting toward the candidate's (hard-money) limit and the excess dollars going toward the party (as soft money). Joint fundraising committees still exist, except they now deal only with hard money. In both setups, the situation is fundamentally the same in two important respects. Candidates team up with parties to route "excess" donations to organizations supporting them. Parties, for their part, make certain that candidates know which donors are going beyond the existing contribution limits to help out, knowledge which is an essential element in any discussion of potential influence.

The last point is worth special attention. In *Colorado II* one of the key arguments for eliminating the limits on parties' coordinated spending was that parties operated as a sort of cleansing mechanism effectively disguising the source of donations. So, while a candidate might know the names or keep a list of each donor who gives her the maximum amount, the argument went that it would be impossible for her to do the same with money that comes from the parties. Parties have many, many more donors than does any individual congressional candidate, and since they collect the checks themselves, it is plausible that a candidate might not know who is contributing to them. In fact, however, Sorauf and I found that just the opposite is true, that parties go to pains to insure that candidates know exactly who donates to them. Parties do so for the very simple reason that political candidates are effective fundraisers. Candidates are the rallying points for the party. Once Sens. McCain

and Obama emerged as their parties' eventual nominees, receipts to the RNC and DNC rose considerably as McCain and Obama supporters began contributing to them. Parties understand this well; their fundraising events often offer feature members of Congress as draws, and they explicitly offer donors the opportunity to meet and get to know various officials.<sup>3</sup>

The deep involvement of political candidates in political parties' fundraising is a major element in the Supreme Court's *different* decisions in *Colorado I* and *Colorado II*. In the former, the Court held that parties could make expenditures independently of candidates, while in the second it upheld limits on coordinated expenditures. The difference is clearly in the distinction between the words "independent" and "coordinated." The legal standards for expenditures to be "independent" force candidates and parties to keep some distance from one another. Candidates may still help their parties raise money, but they are very deliberately walled off from any campaign that the party mounts independently on their behalf. To give a sense of how serious that separation can be, one of the more controversial independent expenditures during the 2006 election cycle was an ad aired by the National Republican Congressional Committee in New York's 24<sup>th</sup> District.<sup>4</sup> Faced with angry demands

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<sup>3</sup> Examples of such events are legion. See Sorauf and Krasno (1997).

<sup>4</sup> The ad criticized the Democratic candidate, a local district attorney, for calling a phone sex line while traveling on business even though the call was an obvious misdial – it lasted under a minute and the candidate immediately dialed an almost identical

from the Republican candidate, local newspapers, and voters to withdraw the ad, Rep. Thomas Reynolds (R-NY), the chairman of the National Republican Congressional Committee (NRCC), could only answer that he had had nothing to do with it, telling Tim Russert that the “chairman of the committee doesn’t know what the IE’s (independent expenditures are) actually producing...”<sup>5</sup> In other words, the leader of the NRCC was walled off from his own committee’s activities to insure that the legal requirements for “independence” were maintained.

By contrast, as the name implies, party leaders and candidates are closely involved with each other in coordinating expenditures. Given the existing limits on their size, coordinated expenditures are rarely used for TV ads (since economies of scale apply) and so frequently are used to pay for polling or other services, and to underwrite some of the costs of grassroots campaigning such as rent on campaign offices. The latter set of actions in particular brings the parties and candidates in very close contact with each other. While desirable on many grounds, this collaboration raises fears that candidates, donors, and parties could use parties to circumvent the contribution limits in FECA. The record of fundraising practices like tallying and joint fundraising committees suggests that these fears are entirely justified. It is for this

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number, which turned out to be the NYS Department of Corrections. (cite news report)

<sup>5</sup> See Meet the Press transcript for Nov. 5, 2006 at <http://www.msnbc.msn.com/id/15488330/page/4/>. The incident and Reynolds’ response received a great deal of coverage in the local media, as well.

reason that the same Court that struck down limits on independent expenditures in *Colorado I* sustained limits on coordinated expenditures in *Colorado II* several years later.

#### B. Party building

On p. 2-3 of their Second Amended Verified Complaint for Declaratory and Injunctive Relief (hereafter “Complaint”), the plaintiffs in Cao argue that the limits on parties do not “allow (them) to fulfill their historic and important role in our democratic republic.” This claim leads to an important debate that figured heavily in *Colorado II*, *Missouri Republican Party v. Lamb*, and in *McConnell v. FEC* over the impact of various regulations on political parties themselves. The health of the parties matters because political parties are vitally important institutions. Schattschneider famously wrote that “(t)he political parties created democracy and modern democracy is unthinkable without them.” Political scientists are basically unanimous in viewing parties as the essential democratic institution.<sup>6</sup> Thus, any regulation that weakens them actually could pose a serious threat to democracy itself.

I am naturally sympathetic to this point of view, but actually assessing the health of party organizations turns out to be more complicated than it may at first seem. The plaintiffs’ position in the three cases I cite in the paragraph above could neatly be summarized as arguing that parties’ health is directly related to their

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<sup>6</sup> The plaintiffs note a brief from *Colorado II* (Complaint, p. 9) that makes a similar point, and goes on to list a number of additional ways beyond campaign financing in which current law advantages political parties.

finances. In other words, party organizations that raise more and spend more are stronger than are party organizations that raise and spend less money. Given the realities of modern campaigns with their high cost and the array of services offered by the campaign industry, this perspective makes obvious sense.

The problem with this view is that parties are ongoing enterprises. While candidates may come and go, parties endure. Thus, many candidates must essentially start from scratch when they declare for office, constructing a campaign apparatus from the ground up. Money makes this task much easier for many – but not all – of the things they need are available for purchase. Party organizations like the RNC and LA-GOP do not cease operations between elections precisely to insure that they do not have to start from the beginning with each campaign. At least in theory, those ongoing party organizations are made up of a mixture of professionals, activists, and volunteers. For example, local party organizations in Binghamton, NY where I live maintain storefront headquarters downtown as well as intermittent relationships with student groups and some faculty as part of their grassroots outreach. This continuing organizational presence is an essential part of parties’ “historical” identity and essential to performing their “role” in American politics. Among the latter, for instance, parties are thought to be socializing institutions that help bring citizens into the political system, serve as an outlet for their political energy by recruiting them to work in campaigns, and help mobilize voters. A party made up solely of professionals or subcontractors falls far short of that “historical” model.



There is, to be fair, an important distinction to be made between the various types of party organizations. One of the ramifications of American federalism is a plethora of party organizations generally representing federal, state, and local officeholders. Thus, as I note below, the RNC was formed (imitating an earlier move by the Democrats) in the 19<sup>th</sup> century to organize Republicans' presidential nominating conventions, thereby facilitating Republican presidential campaigns. The RNC has continued to be overwhelmingly interested in presidential races. For their part, state and local parties generally focus on the top-of-the-ticket races in their locale. For example, the famous Cook County Democratic machine was dedicated to electing the mayor of Chicago and various aldermen, giving passing attention to gubernatorial or presidential races (Rakove 1975). The Cook County example illustrates a potential gap in the system for legislative candidates, who are elected locally but serve in federal and state legislatures, and who are usually found somewhat below the top of the ballot. Congressional Democrats and Republicans formed "legislative campaign committees" (LCCs) in the 19<sup>th</sup> century, but they remained fairly moribund until passage of current campaign finance laws over 30 years ago. Their revival as fundraising powerhouses, in turn, helped spur the spread of LCCs to a number of states.<sup>7</sup>

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<sup>7</sup> Sorauf and Krasno note a series of distinctions between LCCs and "traditional party organizations" (Mayhew 2006) like LA-GOP, including their narrow focus on a single candidate rather than the whole ticket.

That is not to say, of course, that money is unimportant to parties, only that it is not the sole measure of their health.<sup>8</sup> Alongside money is their organizational presence in a locale fueled by a combination of paid employees and, more likely, activists and other party members. The attention and energy of party members, in particular, would allow parties to try to mount the sort of grassroots campaign to mobilize voters that has been shown to be the most effective way to increase turnout (Gerber and Green 2000). What is clear, however, from my work with Sorauf in *Colorado II* and in *Missouri Republican Party v. Lamb*, two cases where the lead plaintiffs were Republican state parties, is that money does not buy organizational capacity. In *Colorado II* the state party had a professional director (a congressional staffer who was recruited and ultimately paid by the national committees despite having no background in Colorado politics), a headquarters, and was awash with money coming in from the LCC. Despite all of these resources, it tried and *failed* to do a series of basic things such as establish a newsletter for dues paying members of the state party, or organize a volunteer phone bank. Republicans in Missouri, several years later, exhibited the identical pattern. In both cases, the party eventually paid outside vendors to provide services that the party itself could not manage to organize.

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<sup>8</sup> V.O. Key, for instance, in his classic study *Southern Politics in State and Nation* (1949) devotes one chapter (of 31) to campaign finance. Naturally, the amounts of money involved were vastly smaller than today.

I have no similar information about the LA-GOP or its presence in the historically Democratic 2<sup>nd</sup> District. Nonetheless, the lesson from Colorado and Missouri remains valid: money does not insure a party's health or organizational capacity. Parties that only raise (or accept transfers from other party committees, as occurred with Colorado's Republican party during the period in question in the 1990s) and spend money, doing none of the traditional work of politics themselves, are neither strong nor capable of fulfilling their historic role.

One irony of this situation is that the limits on coordinated expenditures actually help state parties like LA-GOP in several ways. While reasonably high, the limits on coordinated expenditures are, depending on the locale, usually low enough to rule out the most expensive aspect of campaigns: TV ads. Media tracking data show that very few of parties' commercials are aired as coordinated expenditures (e.g. Krasno and Seltz 2000), a pattern confirmed by the documents produced by the plaintiffs in this case.<sup>9</sup> As a result, parties and candidates have coordinated on other parts of the campaign, starting with some of the most basic organizational requirements like renting office space or distributing door hangers and brochures. Unlike TV ads which are produced and placed by outside contractors, some portion of the coordinated spending under the current arrangement has the potential to encourage parties to develop

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<sup>9</sup> According to a document titled, "Louisiana CD 2 - General Election - December 6, 2008: Coordinated Spending Tracker," the RNC spent on mail, a radio spot, hanger and election materials, GOTV calls, and a consultant.

resources and skills that would serve them well in the future across a series of races. Office space can attract more organizational activity. Volunteers recruited with a candidate could be a building block for the parties to construct a network of activists. And so on. If healthier parties do more than receive and write checks, limiting coordinated expenditures surely has the potential to nudge parties in the direction of increasing their own grassroots presence and organizational capacity in order reap a bigger bang for coordinated bucks.

Second, the separate allowances for coordinated expenditures by national committees and state parties, could help state parties acquire more support from national committees in some circumstances. While state parties, like LA-GOP, usually sign agency agreements giving their spending allotments to deep-pocketed national committees, this is not always the case. A state party with greater resources or more organizational capacity could insist on doing its own spending, or even acquire the national committee's allowance. In that case the national committees have incentive to invest in states where they foresee competitive races looming.<sup>10</sup> Even the need to acquire an agency agreement puts the national committees into a business relationship that would otherwise not exist with state parties. Granted it is subtle, but where one committee reports receipts of \$427.6 million

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<sup>10</sup> Something like this occurred in Colorado and in other states in the 1990s where accounting games (to maximize the use of soft money) led national committees to help states do things like hire paid executive directors. As I note above, paid staff is not by itself a sign of a strong party (e.g. Cotter et al. 1989), but it can be helpful.

in 2007-8 (the RNC) versus the other's \$2.4 million (LA-GOP<sup>11</sup>), the current limits put them on equal footing and force them to work together.

C. Forecasting the impact of eliminating the limits on coordinated expenditures

My report in *Colorado II* with Sorauf includes a section forecasting the consequences of removing the limits on parties' coordinated spending. I return to those predictions to see how they hold up more than ten years later, and to understand how the logic behind them applies to specific claims in *Cao*.

Our main expectation, writing in the aftermath of *Colorado I*, is that unregulated coordinated expenditures would quickly supplant independent expenditures as the vehicle of choice for parties seeking to spend more on behalf of a candidate. The reasons why are fairly simple, especially in retrospect. As I note above, insuring that expenditures are made independently of candidates requires parties to erect barriers separating decision makers from candidates' campaigns. This is less than ideal for party committees for many reasons. It is inefficient (adding at least another layer of organization), inconvenient, frustrating to party leadership that desires more input into their organization's activities, and potentially counterproductive if a party committee, usually located in Washington, mistakenly chooses a theme

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<sup>11</sup> The figure for the RNC comes from the Federal Election Commission's website; the figure for LA-GOP comes from a document, "Republican State Committee Bylaws & Meeting Minutes," found on their website.

that offends local sentiment.<sup>12</sup> There are also financial consequences to distancing themselves from candidates, rather than working with them to raise money for the party and ultimately (through processes like tallying) for the candidates themselves. Of course, the more intimately the candidates are involved in a party's efforts to help them, the greater the potential for corruption.

This prediction was borne out in a different way than we imagined, with the rise of "issue advocacy" rather than coordinated expenditures. The latter, of course, remained limited following *Colorado II* – just as parties were concluding that they could use hard and soft money to fund unlimited commercials (mostly) criticizing or (less often) praising a congressional candidate in the days before an election.<sup>13</sup> Like coordinated expenditures, "issue advocacy" required far fewer administrative hurdles than did independent expenditures since the communications involved were supposedly about issues rather than electioneering, a view entirely at odds with reality. As a result of their convenience coupled with the ability to use soft money, "issue advocacy" immediately overshadowed independent expenditures. Party committees spent just over \$4 million on independent expenditures in House elections in the four election cycles from 1996 to 2002 immediately following *Colorado II* versus several

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<sup>12</sup> See fn. 4.

<sup>13</sup> There is, of course, a large literature on issue advocacy and its use in political campaigns, including a number of expert reports in *McConnell v. FEC* (see Krasno and Sorauf 2003, Green 2003, Mann 2003, Goldstein 2003).

hundred million dollars on issue advocacy during the same period.<sup>14</sup>

More telling is that once Congress acted to rein in parties' "issue advocacy" in the Bipartisan Campaign Reform Act of 2002 (BCRA), the parties turned immediately back to independent expenditures. Spending on independent expenditures skyrocketed to \$73 million in 2004 and \$154 million in 2006 on House elections. Given this record, there can be little doubt that independent expenditures would quickly be replaced by coordinated expenditures should the latter become available to serve the same purpose. That transition, as I argue above, would have important adverse ramifications for the potential for corruption by giving candidates a direct stake and say in the disposition of potentially millions of dollars raised outside their campaign committee.

It is notable, too, that the main "purpose" or use for independent expenditures in the current system, as with "issue advocacy" in the elections just prior to BCRA, is media (usually television) advertising.<sup>15</sup> This is an especially relevant consideration in evaluating Cao because of the groundwork the

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<sup>14</sup> Parties' spending on "issue advocacy" is more difficult to determine, since it was not reported directly to the Federal Election Commission as were other expenditures. Media tracking data from 1998 to 2002 shows parties spending well over \$300 million on air time alone for issue ads in the top 75 media markets (Krasno and Goldstein 2002, Goldstein 2003).

<sup>15</sup> For example, \$713,526 of the \$761,526 the independent expenditures reported by the RNC in 2006 went for "media buy" or "media production." In theory some of this may have gone for radio advertising, but in practice expenditures on television dwarf radio.

plaintiffs lay for exceptions for unlimited coordinated spending for “lobbying” and for the parties’ “own speech.” Both of these items consist largely or entirely of media advertising; advertising is one of the main techniques of grassroots advertising, and the speech that RNC claims as its “own” is a radio script. Either exception would effectively destroy any remaining limits on coordinated expenditures, since history shows that parties and candidates will strive to adapt any available technique to the needs of the campaign. In short, any exception that allowed parties and candidates to coordinate on media would ultimately, and probably immediately, result in behavior indistinguishable from electioneering.

For example, consider an exception for lobbying. The second item on the plaintiffs’ list of topics in the Complaint (p. 12) on which they claim to have intended to lobby Rep. Jefferson was ethics reform. But no ethics legislation was awaiting floor action for months before the December, 2008 election, and Rep. Jefferson did not serve on any committees with jurisdiction over any ethics legislation.<sup>16</sup> There was, however, an important ethics angle to Rep. Cao’s campaign to defeat Rep. Jefferson, a natural development given the swirl of investigations surrounding Jefferson and his aides. So an ad supposedly ginning up support for ethics reform (i.e. “grassroots lobbying”) by reminding viewers of

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<sup>16</sup> Some sort of bill on legislative ethics had almost certainly been introduced in the previous 23 months of the 111<sup>th</sup> Congress, and thus was awaiting action. But the same can be said of virtually any subject, since thousands of bills are introduced each session, with only a fraction making it to the floor of the House or Senate.



Jefferson's transgressions and demanding higher standards would have served no immediate legislative purpose, but an obvious political one. That hypothetical spot would be entirely consistent with numerous "issue ads" from 1998 to 2002. History shows that parties and candidates, driven by electoral competition, always push against the boundaries of campaign finance regulations. Either of the exceptions suggested here would quickly be exploited by the campaigns, effectively rendering moot any limits on coordinated expenditures and thus overturning *Colorado II*.

There is another aspect to coordinated expenditures beyond their sheer convenience for party committees: the control of campaigns. Party committees already exert some influence on many campaigns by offering advice, services, and fundraising help, and through their ties to many private consultants (e.g. Hamburger 2000, Sidlow 2003). What would happen if they were able to use their vast resources to intervene directly in the operations of a campaign? Leon Billings, a veteran operative at the Democratic Senatorial Campaign Committee and a witness in *Colorado II*, provides the likely answer:

If the limits on coordinated expenditures are removed, a party committee would be able to tell a candidate, "We are going to give you \$2 million or \$4 million for your Senate race. We are also going to tell you who is going to staff your Senate race. We are going to tell you what to say and what to do. We are going to take control."... What is going to change, if you have unlimited party expenditures, is that party leaders who control this process would be more beholden to

their contributors than is now the case, their power to make things happen would increase. (quoted in Sorauf and Krasno 1997)

Billings' prediction has already come true in at least one congressional campaign, the 2002 race in Colorado's 7th District, studied by political scientist Daniel Smith (2004, p. 198):

Both the Beauprez and Feeley campaigns were financed, albeit indirectly, by their respective national parties. But the money came with strings attached. Accompanying the staggering amount of outside money supplied by the NRCC and the DCCC were their tightly orchestrated campaign plans. The parties' external influence had the dual effect of distorting the local issues the two candidates initially had touted and inflaming the candidates' campaign rhetoric, making it more personal and spiteful. More worrisome, the parties' outside money contributed to the widening disconnect between the constituents residing in the district and the candidates who tirelessly campaigned to represent them.

In 2002 the outside money was mainly soft money, and the parties' major expenditures were for media advertising that in turn ended up defining the campaign. As I note below, parties now spend well upwards of \$1 million apiece for independent expenditures in the handful of races they deem most competitive, enough to exert control of their operations.

It is worth pointing out as well that the sort of arrangement envisioned by Billings and observed by Smith already exists in at least several states where

powerful legislative leaders control a major share of campaign resources. In New York, for example, the parties' legislative campaign committees play a disproportionate role in determining which races merit funding and occasionally intervene to run the campaign themselves by forcing candidates to hire consultants recommended by the committees and by holding funding hostage to the parties' campaign plan (Shea 1995). The result of this centralized control of campaigns is both detrimental to electoral competition (as I argue further below), frequently dispiriting to local parties and activists, undoubtedly somewhat confusing to voters, and increases the potential for contributors to seek undue influence on legislators including party leaders.

### III. New issues

#### A. The circumstances in Louisiana's 2nd District

The plaintiffs' argument about the restrictive effect of the limits on coordinated expenditures includes a series of statements about the historical activities of party committees, their intended actions in the absence of limits on coordinated expenditures, and their need to coordinate these activities with the candidate. From my standpoint as a student of parties and campaigns, virtually all of this account, from the assertions about parties' mission to the list of activities chilled by the statutory limits, directly conflicts with historical accounts of parties, their mission, and their pattern of behavior in congressional elections. Furthermore, as an expert on campaign financing, I would argue that all of these activities could still be engaged in in various ways through the

current system. In the following three subsections I briefly expand on those points.

1. The nature of parties and their “historic” role

The plaintiffs make several assertions about the nature of political parties in general, and the RNC and LA-GOP in particular, on p. 8-9 of the Complaint. The key passage comes from the respondents’ brief in *Colorado II*:

Political parties are voluntary associations formed to support candidates and promote policies.

In conjunction with the list of intended actions that follow, the clear impression is that parties are simultaneously interested in winning elections and in policy. This is misleading.

It is true that there are some parties, like the Libertarians or Greens, that exist to express their supporters’ views, not win elections. The Republicans and Democrats, however, are not like those parties. So Schattschneider (1941) defined “(a) political party as an organized attempt to get control of government.” Operating from an entirely different theoretical perspective, Downs takes an identical view – and further argues that parties adopt policy positions to attract voters, nothing more. Even scholars like Key (1964) or Eldersveld (1964) who provide a richer description of parties, often in an effort to distinguish them from interest groups, emphasize the importance of winning. This makes perfect historical sense. Parties that make a habit of coming in second or worse in election after election often have trouble functioning and even surviving.

Downs' view that parties' policy positions are entirely malleable is more debatable. It is true that parties' positions do change, but that is not always the result of a direct effort to appeal to voters. For example, changes in the

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
CINCINNATI DIVISION**

NATIONAL REPUBLICAN  
SENATORIAL COMMITTEE,  
*et al.*,

Plaintiffs,

v.

FEDERAL ELECTION  
COMMISSION, *et al.*,

Defendants.

No 1:22-cv-639

Hon. Douglas R. Cole

**PLAINTIFF NATIONAL REPUBLICAN  
CONGRESSIONAL COMMITTEE'S FIRST  
OBJECTIONS AND RESPONSES TO  
DEFENDANT'S FIRST SET OF DISCOVERY  
REQUESTS**

Pursuant to Federal Rules of Civil Procedure 26, 33, 34, 36, and Southern District of Ohio Local Rule 26.1, Plaintiff National Republican Congressional Committee ("NRCC") hereby provides objections and responses to Defendant Federal Election Commission's First Set of Discovery Requests, dated September 8, 2023 (the "Requests").

**PRELIMINARY STATEMENTS**

1. The NRCC has responded to the Requests as it interprets and understands them. If Defendant subsequently asserts an interpretation of any of the

Requests that differs from the NRCC's understanding, the NRCC reserves the right to supplement or amend its objections or responses.

2. These responses are based on information currently known to the NRCC and are provided without prejudice to the NRCC's right to produce or rely on any subsequently discovered facts, contentions, or documents that the NRCC may later learn of, recall, or discover. The ...

\* \* \*

The NRCC incorporates its General Objections and Objections to Instructions and Definitions as stated above. The NRCC specifically objects to Interrogatory No. 3 because the phrase "maximum possible party coordinated expenditure amounts authorized by the Federal Election Campaign Act in support of Chabot" in Request for Admission No. 3 is vague and ambiguous. The NRCC further objects to Interrogatory No. 3 because it seeks information or materials equally or more readily available to Defendant through other means, including through review of public disclosure reports filed with Defendant. Lastly, the NRCC objects to Interrogatory No. 3 because it requests legal conclusions and to the extent it seeks attorney mental impressions or discovery of legal arguments, all of which fall outside the scope of Fed. R. Civ. P. 36(a)(1)(A).

Subject to and without waiving the foregoing objections, the NRCC states that the NRCC was assigned \$105,000 in coordinated spending authority in connection with the race for Ohio's 1st Congressional District, representing the entirety of the Ohio Republican Party's coordinated spending

authority and all but \$5,000 of the RNC's authority for the race—an amount which the RNC did not assign to the NRCC out of concern for compliance with the coordinated party expenditure limits in the event of an unexpected cost becoming known after the election. The NRCC spent \$103,000 of the coordinated spending authority assigned to it, similarly reserving the remainder to ensure compliance with the coordinated party expenditure limits in the event of an unexpected cost becoming known after the election.

**INTERROGATORY NO. 4:**

*Identify all public communications the NRCC coordinated in the 2022 election cycle referencing Chabot or his opponent, including a description of the conduct constituting coordination as to each responsive communication.*

**RESPONSE TO INTERROGATORY NO. 4:**

The NRCC incorporates its General Objections and Objections to Instructions and Definitions as stated above. The NRCC specifically objects to Interrogatory No. 4 because it seeks information or materials equally or more readily available to Defendant through other means, including through review of public disclosure reports filed with Defendant. The NRCC further objects to the extent Interrogatory No. 4 calls for the production of any documents or information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.



Subject to and without waiving the foregoing objections, the NRCC states that its coordinated party communications with Chabot in 2022 consisted of a television advertisement targeting voters in Ohio's 1st Congressional District, in the Cincinnati market, supporting Chabot's election and opposing the election of his opponent, Greg Landsman. The advertisement, which aired in September 2022, featured a testimonial from a woman identified as a Cincinnati resident explaining why she would be voting against Landsman and his agenda.

As to the conduct constituting coordination, the NRCC states that agents of Chabot's campaign requested or suggested the use of a draft television script and media plan to NRCC staff for use in a coordinated party communication, and the NRCC utilized the services of common vendor for the production and distribution of the advertisement. Approval of the advertisement script, copy, media plan, and decision to pay for the advertisement were all at the sole discretion and authority of the NRCC and its staff. The Chabot campaign paid for a further distribution of the advertisement over and above what the NRCC could pay consistent with its budgeting under the coordinated party expenditure limits.

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... privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, the NRCC states that coordinated spending, unlike independent spending, is efficient and effective,

as it allows the party to spend its resources on a unified message with its candidates. The party coordinated expenditure limits, however, compel party committees and their candidates to limit interactions to avoid potentially violating the limits and risking FEC enforcement. This leads to less collaboration between the party and candidate on not only the most effective form of political speech—public political advertising—but other key aspects of winning elections, including the sharing of donor and other contacts lists that can be central toward pro-candidate grassroots mobilization efforts.

**INTERROGATORY NO. 10:**

*Describe in detail how the limits on coordinated party expenditures “burden[]” “core First Amendment activities.” (Compl. ¶ 7).*

**RESPONSE TO INTERROGATORY NO. 10:**

The NRCC incorporates its General Objections and Objections to Instructions and Definitions as stated above. The NRCC objects to Interrogatory No. 10 to the extent it calls for legal conclusions or discovery of legal arguments or disclosure of protected attorney mental impressions outside the scope of Fed. R. Civ. P. 36(a)(1)(A). The NRCC also objects to Interrogatory No. 10 because it is duplicative of a majority of the other Interrogatories, which seek more detailed specifics on the First Amendment burdens suffered by the NRCC under the coordinated party expenditure limits. The NRCC further objects to Interrogatory No. 10 to the extent it calls for the production of any documents or information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or

common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, the NRCC states that limits on coordinated party expenditures restrict political party committees from fully associating with and advocating for their own candidates for federal office. It does so by strictly limiting how much of their own money political party committees can spend in cooperation, or “coordination,” with their general election candidates to influence federal elections, thereby inhibiting parties’ core political speech and associational activities, particularly their ability to work cooperatively with their nominees to amplify their voice in competitive electoral races. Through coordinated party expenditures, a party committee pays for goods or services—typically related to party coordinated communications—in coordination with a candidate, but the party committee does not give any money directly to the candidate or campaign and never cedes control or ownership of any of its funds. While the supported nominee or campaign typically will suggest or recommend how the party committee should spend its money, or merely assent to a proposal originating from the party committee, the party committee retains ultimate control over its funds and authority to decide whether and how to spend its money in support of the nominee.

Yet FECA strips the NRCC of the right to make any of its own coordinated party expenditures in support of Republican House nominees beyond the minimal

direct contributions otherwise allowed. The NRCC cannot engage in coordinated party expenditures with Republican nominees for the House of Representatives unless it first obtains express permission from the RNC or the state party committee in a nominee's home state to spend pursuant to that committee's limit. Seeking these assignments diverts time and resources away from other NRCC activities, the assignments sought are not always granted, and at times the assignment process becomes so protracted that it can interfere with the NRCC's budgeting and other general election planning. Even when assignments are made, the assigning committee often prophylactically withholds some portion of its coordinated party expenditure authority to ensure compliance with the strict coordinated party expenditure limits and avoid entanglement in an enforcement action. Similarly, the NRCC regularly foregoes spending the full amount of any assigned coordinated spending authority on party speech, reserving a portion to ensure the NRCC's compliance with the coordinated party expenditure limits in the event of an unexpected cost becoming known after the election.

To avoid the threat of enforcement, the NRCC also can, and each election cycle does, engage in additional advertising campaigns supporting Republican House nominees by making independent expenditures. The FEC's regulations on what may constitute "coordination," particularly in the context of party committees, are expansive and far from clear. So to avoid becoming entangled in an enforcement action, the NRCC has created and maintained a fire-walled IE unit, and it intends to implement an IE unit again

in connection with 2024 general election House races if the coordinated party expenditure limits remain in place.

Creating and maintaining an IE unit to avoid any violation of coordination rules and the coordinated party expenditure limits has imposed substantial burdens on the NRCC. The IE unit is a separate entity from the main NRCC operation, meaning the NRCC's leadership cannot control the IE unit's messaging or spending decisions. Yet the IE unit must be funded using the same limited money in the NRCC's general operating account available for other NRCC efforts intended to influence federal election. At the same time, to ensure full independence from candidates and the party's main operation, the NRCC has had to use its limited operating funds to retain vendors redundant to the NRCC's general operation, rent separate office space, and employ additional staff on behalf of its IE unit. Moreover, unlike party coordinated communications, independent expenditure advertisements run by the NRCC's IE unit are, by definition, not candidate-sponsored advertisements, meaning advertising time purchased by the IE unit cannot qualify for the lowest-unit rates on the purchase of television broadcasting time under the Federal Communication Commission's rules. The lack of coordination on independent expenditures can also result in the party disseminating advertisements that are unhelpful to, if not entirely disfavored by, the candidate the party supports, and such ads can be confusing to voters, who often do not recognize a distinction between a party's general operation, its IE unit, or the supported candidate.

FECA's coordinated party expenditure limits also have placed the NRCC and other party committees at a substantial disadvantage in securing contributions compared to Super PACs. Unlike party committees, Super PACs can raise unlimited amounts of contributions, including from corporations and other sources barred from contributing to the NRCC. The activities of Super PACs, however, must be entirely independent of candidates and campaigns, so the parties' one competitive advantage over Super PACs lies in their ability to work closely with their candidates. The coordinated party expenditure limits compromise this one advantage, leading many donors to look to contribute to Super PACs instead of party committees on the belief that contributions to Super PACs will have a greater impact than contributions to party committees.

In future election cycles, the NRCC desires to make coordinated party expenditures, including for party coordinated communications, in excess of FECA's coordinated party expenditure limits, and without any assignment of authority from any other party committee, to support Republican House candidates across the country. The NRCC would make coordinated party expenditures, including for party coordinated communications, in excess of FECA's coordinated party expenditure limits but for the existence of those limits and the real threat of FEC enforcement action, investigation, and liability, and potential criminal prosecution for violating the limits. The NRCC also would not incur the burden and expense of operating IE units in order to avoid becoming entangled in FEC enforcement action alleging prohibited coordination with House

candidates if not for the coordinated party expenditure limits.

But as long as the coordinated party expenditure limits remain in force, the NRCC will not make coordinated party expenditures, including for party coordinated communications, in excess of FECA's coordinated party expenditure limits, and will be compelled to spend in accordance with those limits and establish burdensome IE units to engage in express advocacy beyond those limits.

**INTERROGATORY NO. 11:**

*Describe in detail the expenses NRCC incurred in seeking and being assigned coordinated spending authority by the Republican National Committee and/or the Ohio Republican Party in 2022.*

**RESPONSE TO INTERROGATORY NO. 11:**

The NRCC incorporates its General Objections and Objections to Instructions and Definitions as stated above. The NRCC also objects to Interrogatory No. 11 to the extent it calls for information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
CINCINNATI DIVISION**

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, <i>et</i> <i>al.</i> ,  <div style="text-align: center;">Plaintiffs,</div>  <div style="text-align: center;">v.</div>  FEDERAL ELECTION COMMISSION, <i>et al.</i> ,  <div style="text-align: center;">Defendants.</div>		No. 1:22-cv-639  Hon. Douglas R. Cole
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**PLAINTIFF NATIONAL REPUBLICAN  
SENATORIAL COMMITTEE’S FIRST  
OBJECTIONS AND  
RESPONSES TO DEFENDANT’S  
FIRST SET OF  
DISCOVERY REQUESTS**

Pursuant to Federal Rules of Civil Procedure 26, 33, 34, 36, and Southern District of Ohio Local Rule 26.1, Plaintiff National Republican Senatorial Committee (“NRSC”) hereby provides objections and responses to Defendant Federal Election Commission’s First Set of Discovery Requests, dated September 8, 2023 (the “Requests”).

**PRELIMINARY STATEMENTS**

1. The NRSC has responded to the Requests as it interprets and understands them. If Defendant



subsequently asserts an interpretation of any of the Requests that differs from the NRSC's understanding, the NRSC reserves the right to supplement or amend its objections or responses.

2. These responses are based on information currently known to the NRSC and are provided without prejudice to the NRSC's right to produce or rely on any subsequently discovered facts, contentions, or documents that the NRSC may later learn of, recall, or discover. The responses are based on the NRSC's (i) reasonable search of facilities and files that could ...

\* \* \*

... coordinated party expenditures, it strips committees like the NRSC of any right to make their own coordinated party expenditures. The NRSC thus was not "authorized by the Federal Election Campaign Act" to make *any* coordinated party expenditures in support Vance in 2022. Rather, by FEC regulation, if the NRSC wishes to make any coordinated party expenditures with a Republican Senate candidate, it must first obtain a written assignment from the RNC or the Republican state party committee in the candidate's home state permitting the NRSC to do so under that committee's coordinated party expenditure limit. In 2022, the NRSC was assigned \$1,991,800.00 in coordinated spending authority in connection with the Ohio Senate race, representing the entirety of the Ohio Republican Party's coordinated spending authority and all but \$25,000 of the RNC's authority for the race—an amount which the RNC did not assign to the NRSC out of concern for compliance with the coordinated party expenditure limits in the event of an unexpected cost becoming known after the election.

The NRSC spent the full amount of the \$1,991,800 in coordinated spending authority assigned to it in connection with Vance's 2022 general election campaign.

**INTERROGATORY NO. 4:**

*Identify all public communications the NRSC coordinated in the 2022 election cycle referencing Vance or his opponent, including a description of the conduct constituting coordination as to each responsive communication.*

**RESPONSE TO INTERROGATORY NO. 4:**

The NRSC incorporates its General Objections and Objections to Instructions and Definitions as stated above. The NRSC specifically objects to Interrogatory No. 4 because it seeks information or materials equally or more readily available to Defendant through other means, including through review of public disclosure reports filed with Defendant. The NRSC further objects to the extent Interrogatory No. 4 calls for the production of any documents or information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, the NRSC states that its coordinated party communications with Vance in 2022 consisted of: is (i) a television advertisement run in Ohio in or around August 2022 featuring Vance and his family and supporting Vance's candidacy; (ii) live and automated

get-out-the-vote telephone made calls to Ohio voters shortly before Election Day supporting Vance's candidacy; and (iii) get-out-the-vote text messages, sent peer-to-peer to Ohio voters shortly before Election Day, supporting Vance's candidacy.

As to the conduct constituting coordination, the NRSC states that after Vance became the Republican Party's nominee in Ohio, NRSC staff consulted with staff from Vance's campaign about the ability to make limited coordinated party expenditures in support of Vance during the general election. Subsequently, with respect to the coordinated television advertisement, agents of Vance's campaign requested or suggested the use of a draft television script to NRSC staff for use in a coordinated party communication, and the NRSC utilized the services of a common vendor for the production and distribution of the advertisement. Approval of the advertisement and the decision to pay for it were all made at the sole discretion and authority of the NRSC and its staff.

With respect to the coordinated telephone calls and coordinated peer-to-peer text messages, the conduct constituting coordination involved NRSC staff suggesting to Vance's campaign staff further coordinated activities, consistent with the applicable coordinated party expenditure limits, in the lead up to Election Day, and Vance's campaign staff assenting to those suggestions. NRSC staff discussed the messaging of these communications with agents of Vance's campaign, but approval of these communications and decision to pay for them also were all at the sole discretion and authority of the NRSC and its staff.

**INTERROGATORY NO. 5:**

*Describe in detail all activities the NRSC would have coordinated in the 2022 election cycle but did not coordinate due to the NRSC's concern that the activities would be unlawful under the Federal Election Campaign Act.*

**RESPONSE TO INTERROGATORY NO. 5:**

The NRSC incorporates its General Objections and Objections to Instructions and Definitions as stated above. The NRSC specifically objects to Interrogatory No. 5 because it calls for speculation about a hypothetical situation under a counterfactual legal framework, in which the NRSC would have arranged and carried out its activities differently. It is simply unknowable how candidate coordination that did not occur may have altered the NRSC's activities and resource allocation. The NRSC also objects to Interrogatory No. 5 to the extent it calls for the production of any documents or information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, the NRSC states that the party coordinated expenditure limits compel party committees and their candidates to limit interactions to avoid potentially violating the limits and risking FEC enforcement. This leads to less collaboration between the party and candidate on not only the form of political speech

perceived to be most important for driving voter turnout—public political advertising—but other key aspects of winning elections, including the sharing of donor and other contacts lists that can be central to grassroots mobilization efforts. In 2022, if not for the coordinated party expenditure limits and real threat of FEC enforcement action, investigation, and liability, and potential criminal prosecution for violating the limits, the NRSC would have worked in greater cooperation with its Republican Senate nominees to make more efficient and effective use of party resources in support of their campaigns. In particular, the NRSC would have worked with Senate nominees on a greater number of coordinated public communication advertisements supporting their campaigns, which as candidate-sponsored advertisements would have qualified for the lowest-unit rates on the purchase of television broadcasting time under the Federal Communication Commission’s rules.

For example, the NRSC’s fire-walled unit for making independent expenditures (“IE unit”) spent over \$34 million on independent expenditures in support of 2022 Republican Senate nominees, mostly on television advertising. Without the coordinated spending limits in place, these resources would have been allocated toward more coordinated party communications. These communications would have allowed the NRSC to receive its candidates’ input on how best to utilize the party’s resources to win elections in their home states and would have saved the NRSC millions in additional costs because its independent advertisements did not qualify for the lowest- unit charge.

**INTERROGATORY NO. 6:**

*Describe in detail the types of activities the NRSC collaborated with federal candidates, including but not limited to collaboration meeting the coordination conduct standards of 11 C.F.R. § 109.37(a)(3), for the 2022 election cycle.*

**RESPONSE TO INTERROGATORY NO. 6:**

\* \* \*

... IE unit advertisements can be confusing to voters, who often do not recognize a meaningful distinction between a party committee's general operation, its IE unit, or the supported candidate.

**INTERROGATORY NO. 9:**

*Describe in detail how the limits on coordinated party expenditures "inhibit party committees' ability to spend their money effectively" and "make grassroots organizing more difficult." (Compl. ¶ 6).*

**RESPONSE TO INTERROGATORY NO. 9:**

The NRSC incorporates its General Objections and Objections to Instructions and Definitions as stated above. The NRSC specifically objects to Interrogatory No. 9 to the extent it calls for legal conclusions. The NRSC also objects to Interrogatory No. 9 to the extent it calls for information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, the NRSC states that coordinated spending, unlike independent spending, is efficient and effective, as it allows the party to spend its resources on a unified message with its candidates. The party coordinated expenditure limits, however, compel party committees and their candidates to limit interactions to avoid potentially violating the limits and risking FEC enforcement. This leads to less collaboration between the party and candidate on not only the most effective form of political speech—public political advertising—but other key aspects of winning elections, including the sharing of donor and other contacts lists that can be central toward pro-candidate grassroots mobilization efforts.

**INTERROGATORY NO. 10:**

*Describe in detail how the limits on coordinated party expenditures “burden[]” “core First Amendment activities.” (Compl. ¶ 7).*

**RESPONSE TO INTERROGATORY NO. 10:**

The NRSC incorporates its General Objections and Objections to Instructions and Definitions as stated above. The NRSC objects to Interrogatory No. 10 to the extent it calls for legal conclusions or discovery of legal arguments or disclosure of protected attorney mental impressions outside the scope of Fed. R. Civ. P. 36(a)(1)(A). The NRSC also objects to Interrogatory No. 10 because it is duplicative of a majority of the other Interrogatories, which seek more detailed specifics on the First Amendment burdens suffered by the NRSC under the coordinated party expenditure limits. The NRSC further objects to Interrogatory No. 10 to the extent it calls for the production of any documents or

information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, the NRSC states that limits on coordinated party expenditures restrict political party committees from fully associating with and advocating for their own candidates for federal office. It does so by strictly limiting how much of their own money political party committees can spend in cooperation, or “coordination,” with their general election candidates to influence federal elections, thereby inhibiting parties’ core political speech and associational activities, particularly their ability to work cooperatively with their nominees to amplify their voice in competitive electoral races. Through coordinated party expenditures, a party committee pays for goods or services—typically related to party coordinated communications—in coordination with a candidate, but the party committee does not give any money directly to the candidate or campaign and never cedes control or ownership of any of its funds. While the supported nominee or campaign typically will suggest or recommend how the party committee should spend its money, or merely assent to a proposal originating from the party committee, the party committee retains ultimate control over its funds and authority to decide whether and how to spend its money in support of the nominee.



Yet FECA strips the NRSC of the right to make any of its own coordinated party expenditures in support of Republican Senate nominees beyond the minimal direct contributions otherwise allowed. The NRSC cannot engage in coordinated party expenditures with Republican nominees for the Senate unless it first obtains express permission from the RNC or the state party committee in a nominee's home state to spend pursuant to that committee's limit. Seeking these assignments diverts time and resources away from other NRSC activities, the assignments sought are not always granted, and at times the assignment process becomes so protracted that it can interfere with the NRSC's budgeting and other general election planning. Even when assignments are made, the assigning committee often prophylactically withholds some portion of its coordinated party expenditure authority to ensure compliance with the strict coordinated party expenditure limits and avoid entanglement in an enforcement action. Similarly, while the NRSC often chooses to spend the full amount of any coordinated party expenditure authority assigned to it in the most competitive of Senate races, it regularly makes the risk assessment that it is best to forego spending the full amount of any assigned coordinated spending authority on party speech and reserve a portion to ensure the NRSC's compliance with the coordinated party expenditure limits in the event of an unexpected cost becoming known after the election.

To avoid the threat of enforcement, the NRSC also can, and each election cycle does, engage in additional advertising campaigns supporting Republican Senate nominees by making independent expenditures. The FEC's regulations on what may constitute

“coordination,” particularly in the context of party committees, are expansive and far from clear. So to avoid becoming entangled in an enforcement action, the NRSC has created and maintained a fire-walled IE unit, and it intends to implement an IE unit again in connection with 2024 general election Senate races if the coordinated party expenditure limits remain in place.

Creating and maintaining an IE unit to avoid any violation of coordination rules and the coordinated party expenditure limits has imposed substantial burdens on the NRSC. The IE unit is a separate entity from the main NRSC operation, meaning the NRSC’s leadership cannot control the IE unit’s messaging or spending decisions. Yet the IE unit must be funded using the same limited money in the NRSC’s general operating account available for other NRSC efforts intended to influence federal election. At the same time, to ensure full independence from candidates and the party’s main operation, the NRSC has had to use its limited operating funds to retain vendors redundant to the NRSC’s general operation, rent separate office space, and employ additional staff on behalf of its IE unit. Moreover, unlike party coordinated communications, independent expenditure advertisements run by the NRSC’s IE unit are, by definition, not candidate-sponsored advertisements, meaning advertising time purchased by the IE unit cannot qualify for the lowest-unit rates on the purchase of television broadcasting time under the Federal Communication Commission’s rules. The lack of coordination on independent expenditures can also result in the party disseminating advertisements that are unhelpful to, if not entirely disfavored by, the

candidate the party supports, and such ads can be confusing to voters, who often do not recognize a distinction between a party's general operation, its IE unit, or the supported candidate.

FECA's coordinated party expenditure limits also have placed the NRSC and other party committees at a substantial disadvantage in securing contributions compared to Super PACs. Unlike party committees, Super PACs can raise unlimited amounts of contributions, including from corporations and other sources barred from contributing to the NRSC. The activities of Super PACs, however, must be entirely independent of candidates and campaigns, so the parties' one competitive advantage over Super PACs lies in their ability to work closely with their candidates. The coordinated party expenditure limits compromise this one advantage, leading many donors to look to contribute to Super PACs instead of party committees on the belief that contributions to Super PACs will have a greater impact than contributions to party committees.

In future election cycles, the NRSC desires to make coordinated party expenditures, including for party coordinated communications, in excess of FECA's coordinated party expenditure limits, and without any assignment of authority from any other party committee, to support Republican Senate candidates across the country. The NRSC would make coordinated party expenditures, including for party coordinated communications, in excess of FECA's coordinated party expenditure limits but for the existence of those limits and the real threat of FEC enforcement action, investigation, and liability, and potential criminal prosecution for violating the limits.

The NRSC also would not incur the burden and expense of operating IE units in order to avoid becoming entangled in FEC enforcement action alleging prohibited coordination with Senate candidates if not for the coordinated party expenditure limits.

But as long as the coordinated party expenditure limits remain in force, the NRSC will not make coordinated party expenditures, including for party coordinated communications, in excess of FECA's coordinated party expenditure limits, and will be compelled to spend in accordance with those limits and establish burdensome IE units to engage in express advocacy beyond those limits.

**INTERROGATORY NO. 11:**

*Describe in detail the expenses NRSC incurred in seeking and being assigned coordinated spending authority by the Republican National Committee and/or the Ohio Republican Party in 2022.*

**RESPONSE TO INTERROGATORY NO. 11:**

The NRSC incorporates its General Objections and Objections to Instructions and Definitions as stated above. The NRSC also objects to Interrogatory No. 11 to the extent it calls for information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, the NRSC states that NRSC staff had to

devote time to attend meetings at the RNC and engage in follow-up discussions with RNC staff, as well as communications with Ohio Republican Party leadership, requesting assignments of coordinated spending authority for the 2022 Ohio Senate race, forcing the NRSC to divert valuable party resources away from other activities. Furthermore, the NRSC's budget and planning processes in regard to the 2022 Senate general election in Ohio were disrupted as the NRSC awaited the RNC to conclude its deliberations on whether to assign any coordinated authority and, if so, how much to assign. That decision was not finalized until June 2022, a month after the primary election and several months after the NRSC had first requested coordinated party ...

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
CINCINNATI DIVISION**

NATIONAL REPUBLICAN	)	
SENATORIAL	)	
COMMITTEE, <i>et al.</i>	)	Civ. No. 22-639 (DRC)
Plaintiffs,	)	
v.	)	DECLARATION
FEDERAL ELECTION	)	
COMMISSION, <i>et al.</i> ,	)	
Defendants.	)	

**DECLARATION OF PAUL C. CLARK, II, PH.D.**

1. My name is Paul C. Clark II, Ph.D. I am a Disclosure Business Architect at the Federal Election Commission (“FEC” or “Commission”). I am personally familiar with the Commission’s reporting requirements, and I have personal knowledge regarding the contents of the Commission’s database, including information regarding the receipts, coordinated expenditures, and independent expenditures of national, state, and local political party committees.

2. The Commission’s disclosure database was created and is maintained by the Commission pursuant to its statutory duties under the Federal Election Campaign Act (“FECA”). *See* 52 U.S.C. § 30112. The information in the database is drawn from reports filed with the Commission. I am also familiar with how this data is summarized and reported on the Commission’s website. The Commission’s current database includes, *inter alia*,

information supplied by national, state, and local political party committees in their FEC reports.

3. I have reviewed the records in the Commission's database regarding receipts and disbursements of the national party committees for the Republican and Democratic parties. The Republican national party committees are: the Republican National Committee ("RNC"), the National Republican Congressional Committee ("NRCC"), and the National Republican Senatorial Committee ("NRSC"). The Democratic national party committees are: the Democratic National Committee ("DNC"), the Democratic Congressional Campaign Committee ("DCCC"), and the Democratic Senatorial Campaign Committee ("DSCC"). I have also reviewed figures in the Commission's database regarding receipts and disbursements of all Republican and Democratic state and local party committees. The information set forth below is either derived from the disclosure data summaries on the Commission's website or from queries I made of the Commission's disclosure database. Aggregate totals for the national party committees of the parties have not been adjusted to reflect any transfers among the national committees of each party.

4. The following tables contain figures representing the total receipts of the national committees of the Republican and Democratic parties through the 2000 election cycle, as well as the national committees' soft money receipts for the 2000 and 2002 election cycles. "Hard money" consists of funds intended for use in conjunction with federal elections that must be raised from sources and in amounts permissible under the Federal Election Campaign Act.

**Table 1 - Republican National Party Committee Receipts**

		<b>RNC</b>	<b>NRSC</b>	<b>NRCC</b>	<b>Total</b>
2021-2022	Hard Money	\$335,196,209	\$250,044,900	\$289,314,711	\$874,555,819
2019-2020	Hard Money	\$890,538,963	\$338,263,383	\$280,911,947	\$1,509,714,293
2017-2018	Hard Money	\$324,836,805	\$151,570,520	\$205,775,914	\$682,183,238
2015-2016	Hard Money	\$343,371,200	\$138,376,518	\$170,601,976	\$652,349,694
2013-2014	Hard Money	\$194,861,133	\$128,278,255	\$153,488,122	\$476,627,511
2011-2012	Hard Money	\$390,216,923	\$117,045,860	\$155,724,615	\$662,987,398
2009-2010	Hard Money	\$196,336,723	\$112,299,230	\$133,779,119	\$442,415,072
2007-2008	Hard Money	\$427,558,780	\$94,424,743	\$118,324,769	\$640,308,292
2005-2006	Hard Money	\$176,300,642	\$88,812,388	\$243,007,143	\$508,120,173
2003-2004	Hard Money	\$185,719,502	\$78,980,487	\$392,413,402	\$657,113,391



		<b>RNC</b>	<b>NRSC</b>	<b>NRCC</b>	<b>Total</b>
2001-2002	Hard Money	\$170,099,094	\$59,161,387	\$123,615,586	\$602,908,687
	Soft Money	\$113,928,997	\$66,426,117	\$69,677,506	
1999-2000	Hard Money	\$212,798,761	\$51,475,156	\$97,314.513	\$61 9,744,718
	Soft Money	\$166,207,843	\$44,652,709	\$47,295,736	

**Table 2: Democratic National Party Committee Receipts**

		<b>DNC</b>	<b>DSCC</b>	<b>DCCC</b>	<b>Total</b>
2021-2022	Hard Money	\$306,790,180	\$296,838,737	\$362,967,111	\$966,596,028
2019-2020	Hard Money	\$491,727,344	\$303,883,335	\$345,784,504	\$1,141,395,183
2017-2018	Hard Money	\$175,769,640	\$148,698,958	\$296,422,428	\$620,891,026
2015-2016	Hard Money	\$354,610,726	\$179,800,229	\$220,891,388	\$755,302,343
2013-2014	Hard Money	\$163,319,917	\$168,323,305	\$206,791,993	\$538,435,215
2011-2012	Hard Money	\$290,440,506	\$145,906,977	\$183,843,039	\$620,190,522
2009-2010	Hard Money	\$224,457,439	\$129,543,443	\$163,896,053	\$517,896,935
2007-2008	Hard Money	\$260,111,670	\$162,791,453	\$176,204,625	\$599,107,747
2005-2006	Hard Money	\$130,821,245	\$121,376,964	\$13 9,994,3 78	\$392,192,586
2003-2004	Hard Money	\$404,352,291	\$88,659,299	\$93,236,178	\$586,247,767
2001-2002	Hard Money	\$67,497,257	\$48,391,653	\$46,436,093	\$408,386,152
	Soft Money	\$94,564,827	\$95,049,520	\$56,446,802	
1999-2000	Hard Money	\$123,997,509	\$40,488,666	\$48,394,476	\$469,864,075
	Soft Money	\$136,563,419	\$63,717, 982	\$56,702,023	

5. The following tables contain figures representing the party coordinated expenditures made by the national committees of the Republican and Democratic parties and the number of electoral races in which those expenditures were made for the last five election cycles.

**Table 3 - Republican National Party Committee Coordinated Expenditures**

	<b>RNC</b>		<b>NRSC</b>		<b>NRCC</b>		<b>Total</b>
	Amount Spent	Number of Races	Amount Spent	Number of Races	Amount Spent	Number of Races	Amount Spent
2021-2022	\$5,415	2	\$15,569,046	17	\$8,301,208	80	\$23,875,668
2019-2020	\$25,386,039	4	\$9,758,976	14	\$5,547,921	58	\$40,692,936
2017-2018	\$341,526	3	\$8,810,888	14	\$5,348,454	55	\$14,500,869
2015-2016	\$20,319,784	2	\$13,259,973	13	\$3,598,162	39	\$37,177,919
2013-2014	\$199,551	17	\$7,623,816	17	\$3,714,598	61	\$11,537,965

**Table 4- Democratic National Party Committee Coordinated Expenditures**

	<b>DNC</b>		<b>DSCC</b>		<b>DCCC</b>		<b>Total</b>
	Amount Spent	Number of Races	Amount Spent	Number of Races	Amount Spent	Number of Races	Amount Spent
2021-2022	\$713,637	1	\$8,868,220	8	\$6,217,284	87	\$15,799,140
2019-2020	\$17,122,902	1	\$15,326,918	15	\$7,316,666	121	\$39,766,486

	<b>DNC</b>		<b>DSCC</b>		<b>DCCC</b>		<b>Total</b>
	Amount Spent	Number of Races	Amount Spent	Number of Races	Amount Spent	Number of Races	Amount Spent
2017-2018	\$824,997	3	\$10,398,495	19	\$6,853,757	82	\$18,077,249
2015-2016	\$22,816,872	1	\$8,308,996	13	\$3,612,999	41	\$34,738,867
2013-2014	\$1,146,764	3	\$3,604,804	19	\$2,938,747	44	\$7,690,315

6. The following tables contain figures representing the party independent expenditures made by the national committees of the Republican and Democratic parties and the number of electoral races in which those expenditures were made for the last five election cycles.

**Table 5 - Republican National Party Committee Independent Expenditures**

	<b>RNC</b>		<b>NRSC</b>		<b>NRCC</b>		<b>Total</b>
	Amount Spent	Number of Races	Amount Spent	Number of Races	Amount Spent	Number of Races	Amount Spent
20212022	\$1,177,166	1	\$34,061,638	10	\$87,126,725	36	\$122,365,529
20192020	\$7,120,919	1	\$120,644,240	12	\$80,680,072	37	\$208,445,231
20172018	\$4,261,893	6	\$3 5,649,899	10	\$74,348,844	42	\$114,260,636

	RNC		NRSC		NRCC		Total
2015-2016	\$321,531	1	\$39,172,191	10	\$73,601,651	29	\$113,095,373
2013-2014	\$0	0	\$39,598,830	11	\$65,284,545	39	\$104,883,375

**Table 6 - Democratic National Party Committee Independent Expenditures**

	DNC		DSCC		DCCC		Total
	Amount Spent	Number of Races	Amount Spent	Number of Races	Amount Spent	Number of Races	Amount Spent
2021-2022	\$0	0	\$49,445,273	6	\$96,432,378	45	\$145,877,651
2019-2020	\$0	0	\$91,241,902	8	\$90,830,223	53	\$182,072,126
2017-2018	\$0	0	\$29,621,184	7	\$84,632,373	62	\$114,253,557
2015-2016	\$0	0	\$60,421,908	8	\$80,378,630	33	\$140,800,538
2013-2014	\$0	0	\$54,597,217	12	\$68,817,280	84	\$123,414,497

7. A large portion of national party committee independent expenditures are devoted to various forms of media and public communication. Independent expenditures by national party committees are reported to the FEC with an associated “Purpose” indicated. The following tables indicate both the dollar value of independent expenditures made by national party committees that is reported and categorized as “MEDIA” or “MEDIA BUY,” and the percentage of all independent expenditures this category constitutes for the relevant committee.

**Table 7 - Republican National Party Committee “MEDIA” Independent Expenditures**

	RNC		NRSC		NRCC	
	Amount Spent	% of all IES	Amount Spent	% of all IEs	Amount Spent	% of all IEs
20212022	\$597,356	50.7%	\$34,061,638	100%	\$87,126,725	100%
20192020	\$1,907,900	26.8%	\$120,644,240	100%	\$80,680,072	100%
20172018	\$849,462	19.9%	\$35,567,217	99.8%	\$74,315,096	99.9%
20152016	\$237,518	73.9%	\$39,172,194	100%	\$71,052,165	96.5%
20132014	\$0	N/A	\$39,498,665	99.7%	\$63,621,844	97.5%

**Table 8 - Democratic National Party Committee “MEDIA” Independent Expenditures**

	DNC		DSCC		DCCC	
	Amount Spent	% of all IEs	Amount Spent	% of all IEs	Amount Spent	% of all IEs
20212022	\$0	N/A	\$32,770,338	66.3%	\$96,432,378	100%
20192020	\$0	N/A	\$91,241,902	100%	\$90,651,175	99.8%
20172018	\$0	N/A	\$29,621,184	100%	\$83,081,375	98.2%
20152016	\$0	N/A	\$60,452,428	100%	\$77,616,260	96.6%
20132014	\$0	N/A	\$54,597,220	100%	\$68,628,397	99.7%

8. The following table contains figures representing contributions to candidate committees by national party committees of the Republican and Democratic parties for the last five election cycles.

**Table 9 - Republican National Party Contributions to Candidate Committees**

	RNC	NRSC	NRCC	Total
20212022	\$13,000	\$1,042,800	\$440,000	\$1,495,800
20192020	\$30,000	\$816,057	\$405,000	\$1,251,057

20172018	\$52,214	\$663,600	\$305,312	\$1,021,126
20152016	\$179,839	\$483,000	\$150,000	\$812,839
20132014	\$39,000	\$533,112	\$57,200	\$629,312

**Table 10 - Democratic National Party Contributions to Candidate Committees**

	<b>DNC</b>	<b>DSCC</b>	<b>DCCC</b>	<b>Total</b>
20212022	\$0	\$512,000	\$740,842	\$1,252,842
20192020	\$0	\$694,400	\$726,539	\$1,420,939
20172018	\$8,838	\$331,800	\$460,346	\$800,984
20152016	\$5,000	\$608,400	\$388,218	\$1,001,618
20132014	\$0	\$718,400	\$460,480	\$1,178,880

9. The following tables contain figures representing the total number of congressional candidates on behalf of whom the Republican and Democratic party committees (national and state/local committees) made coordinated party expenditures and the number of candidates for whom the coordinated expenditures were near to (within 5 percent) or reached



the candidate's respective limit for the 2022<sup>1</sup> and 2020<sup>2</sup> election cycles. The tables also contain figures

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<sup>1</sup> For the calendar year 2022, the Act allowed a political party's national and state committees (including subordinate state committees) to each coordinate spending with a House of Representatives candidate up to \$55,000 in states with more than one congressional district and \$ 109,000 in states with only one congressional district; and a Senate candidate in a range from \$109,000 to \$3,348,500, depending on the state. 52 U.S.C. § 30116(d)(3); Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 87 Fed. Reg. 5822, 5822-23 (Feb. 2, 2022). The states currently with one Congressional district are: Alaska, Delaware, North Dakota, South Dakota, Vermont, and Wyoming.

For the calendar year 2021, the Act allowed a political party's national and state committees (including subordinate state committees) to each coordinate spending with a House of Representatives candidate up to \$52,500 in states with more than one congressional district and \$105,000 in states with only one congressional district; and a Senate candidate in a range from \$105,000 to \$3,210,000. depending on the state. 52 U.S.C. § 30116(d)(3); Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold. 86 Fed. Reg. 7867, 7867-69 (Feb. 2, 2021).

<sup>2</sup> For the calendar year 2020, the Act allowed a political party's national and state committees (including subordinate state committees) to each coordinate spending with a House of Representatives candidate up to \$51,900 in states with more than one congressional district and \$103,700 in states with only one congressional district; and a Senate candidate in a range from \$103,700 to \$3,175,100, depending on the state. 52 U.S.C. § 30116(d)(3); Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 85 Fed. Reg. 9772, 9773-74 (Feb. 20, 2020).

For the calendar year 2019, the Act allowed a political party's national and state committees (including subordinate state committees) to each coordinate spending with a House of Representatives candidate up to \$50,900 in states with more than

representing the total number of Republican and Democratic congressional candidates for the 2022 and 2020 election cycles, and the percentage of candidates receiving coordinated expenditures and the percentage of candidates for whom the coordinated expenditures were near to or reached the candidate's respective limit for those election cycles. The tables indicate the number and percentage of candidates on behalf of whom the committees made aggregate expenditures within 5 percent of the limit for the candidate's race and the number and percentage of candidates on behalf of whom the committees made aggregate expenditures that equaled the limit for the candidate's race.

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one congressional district and \$101,900 in states with only one congressional district; and a Senate candidate in a range from \$101,900 to \$3,113,400, depending on the state. 52 U.S.C. § 30116(d)(3); Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold. 84 Fed. Reg. 2504, 2504-05 (Feb. 7, 2019).

**Table 11 - Party Coordinated Expenditures in 2022 House and Senate Races\***

	Total Number of Candidates**	Number of Candidates Receiving Coordinated Expenditures	Number of Candidates Receiving Total Coordinated Expenditures within 5% of Limit	Number of Candidates Receiving Total Coordinated Expenditures Equal to the Limit
Republican Committees	484	126 (26%)	74 (15%)	8 (2%)
Democratic Committees	473	128 (27%)	5 (1%)	6 (1%)

**Table 12 - Party Coordinated Expenditures in 2020 House and Senate Races\***

	Total Number of Candidates**	Number of Candidates Receiving Coordinated Expenditures	Number of Candidates Receiving Total Coordinated Expenditures	Number of Candidates Receiving Total Coordinated Expenditures
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			within 5% of Limit	Equal to the Limit
Republican Committees	454	103 (23%)	36 (8%)	5 (1%)
Democratic Committees	472	164 (35%)	10 (2%)	6 (1%)

\* The figures presented in the tables for candidates receiving total coordinated expenditures within 5% of the limit and equal to the limit include candidates with reported coordinated expenditures in excess of the limit for their congressional race.

\*\* The total number of party candidates running in the general election is not equal to the total number of congressional races, as some races include more than one candidate from the same party while in other races candidates run unopposed.

10. The following tables contain information regarding the specific candidates on behalf of whom the Republican and Democratic party committees made coordinated expenditures that were near to (within 5 percent) or reached the candidates' respective limits for the 2022 and 2020 election cycles. The tables indicate the candidate's name, the state and district in which the candidate was running, and the total amount of coordinated expenditures that the

party committees (national and state/local committees) made on behalf of the candidate during the election cycle.

**Table 13 - 2022 Congressional Races in which Republican Committees Made Coordinated Expenditures Between 5% of the Limit and Equal to the Limit\***

State	Distri ct	Candidate Name	Total Coordinated Expenditures
ARIZONA	SEN	MASTERS. BLAKE	\$1,199,200
FLORIDA	SEN	RUBIO, MARCO	\$3,698,622
GEORGIA	SEN	WALKER, HERSCHEL MR.	\$1,783,118
NEVADA	SEN	LAXALT, ADAM	\$512,385
NORTH CAROLINA	SEN	BUDD, THEODORE P	\$1,700,000
NORTH DAKOTA	SEN	HOEVEN, JOHN	\$208,099
OHIO	SEN	VANCE, J D	\$1,991,800
PENNSYLVANIA	SEN	OZ. MEHMET DR	\$2,237.000
WISCONSIN	SEN	JOHNSON. RON HAROLD MR.	\$980.500
ARIZONA	02	CRANE, ELI	\$103,000
ARIZONA	04	COOPER, KELLY	\$103,000

State	Distri ct	Candidate Name	Total Coordinated Expenditures
ARIZONA	06	CISCOMANL JUAN	\$103,000
ARIZONA	06	SCHWEIKERT, DAVID S.	\$103,000
CALIFORNIA	03	KILEY, KEVIN	\$103,000
CALIFORNIA	09	PATTI, THOMAS	\$103,000
CALIFORNIA	13	DUARTE, JOHN	\$103,000
CALIFORNIA	22	VALADAO, DAVID	\$103,000
CALIFORNIA	26	JACOBS, MATTHEW	\$105,000
CALIFORNIA	27	GARCIA, MICHAEL	\$103,000
CALIFORNIA	40	KIM, YOUNG	\$105,000
CALIFORNIA	41	CALVERT, KEN	\$105,000
CALIFORNIA	45	STEEL, MICHELLE	\$103,000
CALIFORNIA	47	BAUGH, SCOTT	\$103,000
CALIFORNIA	49	MARYOTT, BRIAN L MR	\$103,000
COLORADO	08	KIRKMEYER. BARBARA	\$103,000
CONNECTICUT	05	LOGAN, GEORGE S	\$102,775
FLORIDA	13	PAULINA LUNA, ANNA	\$103,000
FLORIDA	15	LEE, LAUREL MRS.	\$103,000

<b>State</b>	<b>Distri ct</b>	<b>Candidate Name</b>	<b>Total Coordinated Expenditures</b>
FLORIDA	27	SALAZAR, MARIA ELVIRA	\$103,000
ILLINOIS	06	PEKAU, KEITH	\$103,000
ILLINOIS	13	DEERING, REGAN	\$103,000
ILLINOIS	17	KING, ESTHER JOY	\$103,000
IOWA	01	MILLER-MEEKS, MARIANNETTE JANE	\$103,000
IOWA	02	ARENHOLZ, ASHLEY HINSON	\$103,000
IOWA	03	NUNN, ZACH	\$103,000
KANSAS	03	ADKINS, AMANDA	\$103,000
MAINE	02	POLIQVIN. BRUCE	\$105,000
MICHIGAN	03	GIBBS, JOHN	\$103,000
MICHIGAN	04	HUIZENGA, WILLIAM P	\$103,000
MICHIGAN	07	BARRETT, THOMAS MORE	\$103,000
MICHIGAN	08	JUNGE, PAUL	\$103,000
MICHIGAN	10	JAMES, JOHN	\$103,000
MINNESOTA	01	FINSTAD, BRAD**	\$203,000

<b>State</b>	<b>Distri ct</b>	<b>Candidate Name</b>	<b>Total Coordinated Expenditures</b>
MINNESOTA	02	KISTNER. TYLER	\$103,000
MISSOURI	02	WAGNER, ANN L.	\$105,064
MONTANA	01	ZINKE, RYAN K	\$104,191
NEBRASKA	02	BACON, DONALD J	\$103,000
NEVADA	01	ROBERTSON, MARK	\$103,000
NEVADA	03	BECKER, APRIL	\$103,000
NEVADA	04	PETERS. SAMUEL JAMES MR	\$103,000
NEW HAMPSHIRE	01	LEAVITT, KAROLINE	\$103,000
NEW JERSEY	07	KEAN, THOMAS H. JR.	\$103,000
NEW MEXICO	02	HERRELL, STELLA YVETTE	\$103,000
NEW MEXICO	03	MARTINEZ JOHNSON, ALEXIS	\$103,000
NEW YORK	19	MOLINARO, MARCUS J.**	\$203,000
NEW YORK	01	NICK, LALOTA	\$103,000
NEW YORK	02	GARBARINO, ANDREW	\$103,000



<b>State</b>	<b>Distri ct</b>	<b>Candidate Name</b>	<b>Total Coordinated Expenditures</b>
NEW YORK	03	DEVOLDER-SANTOS, GEORGE ANTHONY	\$103,000
NEW YORK	04	DESPOSITO, ANTHONY P	\$103,000
NEW YORK	17	LAWLER, MICHAELVINCENT	\$103,000
NEW YORK	18	SCHMITT, COLIN J	\$103,000
NEW YORK	22	WILLIAMS, BRANDON MCDONALD	\$103,000
NORTH CAROLINA	13	HINES, ROBERT NICHOLAS	\$106,707
OHIO	01	CHABOT, STEVE	\$103,000
OHIO	09	MAJEWSKI, J R	\$103,000
OHIO	15	CAREY, MIKE	\$104,800
OREGON	04	SKARLATOS, ALEK	\$126,521
OREGON	05	CHAVEZ-DEREMER, LORI	\$141,997
OREGON	06	ERICKSON, MIKE	\$103,000
PENNSYLVANIA	01	FITZPATRICK, BRIAN	\$103,000
PENNSYLVANIA	07	SCHELLER, LISA	\$103,000

State	District	Candidate Name	Total Coordinated Expenditures
PENNSYLVANIA	08	BOGNET, JIM	\$103,000
PENNSYLVANIA	17	SHAFFER, JEREMY	\$103,000
RHODE ISLAND	02	FUNG, ALLAN	\$103,000
TEXAS	34	FLORES, MAYRA NOHEMI**	\$196,000
TEXAS	15	DE LA CRUZ, MONICA	\$103,000
TEXAS	28	GARCIA, CASSANDRA	\$103,000
VIRGINIA	02	KIGGANS, JENNIFER	\$103,000
VIRGINIA	07	VEGA, YESLI	\$103,000
VIRGINIA	10	CAO, HUNG	\$102,975
WASHINGTON	03	KENT, JOSEPH	\$105,000
WASHINGTON	08	LARKIN, MATT MR	\$103,000

**Table 14 - 2022 Congressional Races in which Democratic Committees Made Coordinated Expenditures Between 5% of the Limit and Equal to the Limit\***

State	District	Candidate Name	Total Coordinated Expenditures
ARIZONA	SEN	KELLY, MARK	\$1,240,000

State	District	Candidate Name	Total Coordinated Expenditures
GEORGIA	SEN	WARNOCK, RAPHAEL	\$1,704,529
NEW HAMPSHIRE	SEN	HASSAN, MARGARET WOOD	\$239,000
WISCONSIN	SEN	BARNES, MANDELA	\$1,010,800
MARYLAND	01	MIZEUR, HEATHER RENAY	\$105,080
NEBRASKA	02	VARGAS, ANTHONY	\$121,002
NEW MEXICO	01	STANSBURY, MELANIE**	\$197,970
NEW YORK	18	RYAN, PATRICK**	\$190,095
NEW YORK	17	MALONEY, SEAN PATRICK	\$106,150
PENNSYLVANIA	12	LEE, SUMMER	\$105,000
TEXAS	34	GONZALEZ, VICENTE**	\$125,000

**Table 15 -2020 Congressional Races in which Republican Committees Made Coordinated Expenditures Between 5% of the Limit and Equal to the Limit\***

State	District	Candidate Name	Total Coordinated Expenditures
ARIZONA	SEN	MCSALLY, MARTHA**	\$1,124,292
COLORADO	SEN	GARDNER, CORY	\$881,043

State	District	Candidate Name	Total Coordinated Expenditures
GEORGIA	SEN	LOEFFLER, KELLY**	\$1,629,998
MICHIGAN	SEN	JAMES, JOHN	\$1,584,004
SOUTH CAROLINA	SEN	GRAHAM, LINDSEY O.	\$957,681
ARKANSAS	02	HILL, JAMES FRENCH	\$101,900
CALIFORNIA	25	GARCIA, MICHAEL**	\$282,930
ILLINOIS	13	DAVIS, RODNEY L	\$97,800
ILLINOIS	17	KING, ESTHER JOY	\$97,800
IOWA	01	ARENHOLZ, ASHLEY HINSON	\$98,800
IOWA	02	MILLER-MEEKS, MARI ANNETTE JANE	\$98,800
KANSAS	02	LATURNER, JAKE	\$97,800
KENTUCKY	06	BARR, GARLAND ANDY	\$97,800
MAINE	02	CRAFTS, DALE	\$97,800
MICHIGAN	03	MEIJER, PETER MR.	\$98,800
MICHIGAN	06	UPTON, FREDERICK STEPHEN	\$98,800

State	District	Candidate Name	Total Coordinated Expenditures
MICHIGAN	11	ESSHAK1, ERIC	\$98.800
MINNESOTA	01	HAGEDORN, JAMES	\$98.800
MINNESOTA	03	QUALLS, KENDALL	\$98,800
MINNESOTA	07	FISCHBACH, MICHELLE	\$97.800
MISSOURI	02	WAGNER, ANN L.	\$469,025
NEVADA	03	RODIMER, DAN	\$98,725
NEW HAMPSHIRE	01	MOWERS, MATT	\$98,795
NEW JERSEY	02	VAN DREW, JEFF MR	\$98,800
NEW JERSEY	07	KEAN, THOMAS H. JR.	\$98,800
NEW MEXICO	02	HERRELL, STELLA YVETTE	\$98,800
NEW YORK	27	JACOBS, CHRISTOPHER L.**	\$121,160
NEW YORK	01	ZELDIN, LEE MICHAEL	\$98,800
NEW YORK	02	GARBARINO, ANDREW	\$98.800
NEW YORK	11	MALLIOTAKIS, NICOLE	\$98.800
NEW YORK	22	TENNEY, CLAUDIA	\$98.800

State	District	Candidate Name	Total Coordinated Expenditures
NEW YORK	24	KATKO, JOHN M	\$98,800
OHIO	01	CHABOT, STEVE	\$98,800
OKLAHOMA	05	BICE, STEPHANIE	\$97,769
PENNSYLVANIA	01	FITZPATRICK, BRIAN	\$98,800
PENNSYLVANIA	07	SCHELLER, LISA	\$98,000
PENNSYLVANIA	08	BOGNET, JIM	\$98,796
PENNSYLVANIA	10	PERRY, SCOTT	\$98,800
PENNSYLVANIA	17	PARNELL, RICHARD SEAN	\$98,172
SOUTH CAROLINA	01	MACE, NANCY	\$147,800
UTAH	04	OWENS, BURGESS	\$97,800
WISCONSIN	07	TIFFANY, TOM	\$98,915

**Table 16 - 2020 Congressional Races in which Democratic Committees Made Coordinated Expenditures Between 5% of the Limit and Equal to the Limit\***

State	District	Candidate Name	Total Coordinated Expenditures
ARIZONA	SEN	KELLY, MARK**	\$1,137,900

State	District	Candidate Name	Total Coordinated Expenditures
COLORADO	SEN	HICKENLOOPER, JOHN W.	\$903,248
IOWA	SEN	GREENFIELD, THERESA	\$503,421
MICHIGAN	SEN	PETERS, GARY	\$1,537,851
MINNESOTA	SEN	SMITH, TINA	\$888,000
MISSISSIPPI	SEN	ESPY, MICHAEL	\$472,400
SOUTH CAROLINA	SEN	HARRISON, JAIME	\$812,400
CALIFORNIA	25	SMITH, CHRISTY**	\$169,110
FLORIDA	26	MUCARSEL-POWELL, DEBBIE	\$132,550
GEORGIA	07	BOURDEAUX, CAROLYN	\$97,932
IOWA	03	AXNE, CINDY	\$101,145
MISSOURI	02	SCHUPP, JILL DARLYNE	\$100.090
MONTANA	00	WILLIAMS, KATHLEEN	\$190,158
NEW JERSEY	02	KENNEDY, AMY	\$100,535
TEXAS	22	KULKARNI, SRI PRESTON	\$101.028

State	District	Candidate Name	Total Coordinated Expenditures
WISCONSIN	03	KIND, RONALD JAMES	\$122,394

\* The figures presented in the tables for candidates receiving total coordinated expenditures between 5% of the limit and equal to the limit include candidates with reported coordinated expenditures in excess of the limit for their congressional race.

\*\* Candidate ran in both a special election and the general election during the election cycles and therefore had two separate coordinated expenditure limits. However, it is not always possible to determine which election the coordinated expenditures were made in connection with so the total amount of coordinated expenditures for the cycle is provided in the table.

11. The below tables contain, for most U.S. Senate races in which the incumbent either lost the election or received less than 60 percent of the vote in races in 2020 and 2022, the amount of party (national, state, and local) contributions to those candidates and their opponents' campaign committees.



**Table 17 - Examples of Party Contributions in Competitive 2022 U.S. Senate Campaigns**

State	Incumbent Senator	Senator's Party Contributions	Challenger	Challenger's Party <sup>7</sup> Contributions
Arizona	Mark Kelly	\$51,200	Blake Masters	\$56,400
Colorado	Michael Bennet	\$1,000	Joe O'Dea	\$51,200
Connecticut	Richard Blumenthal	\$0	Leora Levy	\$53,700
Florida	Marco Rubio	\$52,200	Vai Demings	\$0
Georgia	Raphael Warnock	\$55,761	Herschel Walker	\$16,550
Illinois	Tammy Duckworth	\$0	Kathy Salvi	\$10,000
Indiana	Todd Young	\$1,091	Thomas McDermott	\$5,750
Iowa	Chuck Grassley	\$51,200	Michael Franken	\$11,964

State	Incumbent Senator	Senator's Party Contributions	Challenger	Challenger's Party <sup>7</sup> Contributions
Nevada	Catherine Cortez Masto	\$56,200	Adam Laxalt	\$61,700
New Hampshire	Maggie Hassan	\$56,775	Don Bolduc	\$4,700
New York	Chuck Schumer	\$0	Joe Pinion	\$10,500
North Dakota	John Hoeven	\$5,000	Katrina Christiansen	\$750
Oregon	Ron Wyden	\$0	Joe Rae Perkins	\$0
Washington	Patty Murray	\$51,238	Tiffany Smiley	\$66,114
Wisconsin	Ron Johnson	\$60,000	Mandela Barnes	\$51,200

**Table 18 - Examples of Party Contributions in Competitive 2020 U.S. Senate Campaigns**

<b>State</b>	<b>Incumbent Senator</b>	<b>Senator's Party Contributions</b>	<b>Challenger</b>	<b>Challenger's Party Contributions</b>
Alabama	Doug Jones	\$0	Tommy Tuberville	\$47,350
Arizona (special)	Martha McSally	\$47,582	Mark Kelly	\$0
Colorado	Cory Gardner	\$53,568	John Hickenlooper	\$49,600
Delaware	Chris Coons	\$0	Lauren Witzke	\$5,600
Georgia	David Perdue	\$0	Jon Ossoff	\$64,474
Georgia (special)	Kelly Loeffler	\$44,600	Raphael Warnock	\$54,953
Illinois	Dick Durbin	\$750	Mark Curran	\$250
Iowa	Joni Ernst	\$45,850	Theresa Greenfield	\$75,328

<b>State</b>	<b>Incumbent Senator</b>	<b>Senator's Party Contributions</b>	<b>Challenger</b>	<b>Challenger's Party Contributions</b>
Kentucky	Mitch McConnell	\$3,857	Amy McGrath	\$39,209
Louisiana	Bill Cassidy	\$44,600	Adrian Perkins, Champ Edwards	\$49,600
Maine	Susan Collins	\$50,136	Sara Gideon	\$10,730
Michigan	Gary Peters	\$2,500	John James	\$0
Minnesota	Tina Smith	\$0	Jason Lewis	\$3,200
Mississippi	Cindy Hyde-Smith	\$0	Mike Espy	\$1,700
Montana	Steve Daines	\$51,050	Steve Bullock	\$8,425
New Hampshire	Jeanne Shaheen	\$0	Corky Messner	\$300
New Jersey	Cory Booker	\$0	Rik Mehta	\$0
North Carolina	Thom Tillis	\$0	Cal Cunningham	\$54,600

<b>State</b>	<b>Incumbent Senator</b>	<b>Senator's Party Contributions</b>	<b>Challenger</b>	<b>Challenger's Party Contributions</b>
Oregon	Jeff Merkley	\$5,000	Joe Rae Perkins	\$7,629
South Carolina	Lindsey Graham	\$44,800	Jaime Harrison	\$53,338
Texas	John Cornyn	\$45,100	MJ Hegar	\$54,600
Virginia	Mark Warner	\$0	Daniel Gade	\$7,250

12. The tables below contain examples of the amounts party (national, state, and local) contributions to candidates for the U.S. House of Representatives in 2020 and 2022.

**Table 19 - Examples of Party Contributions to House Candidates in 2022 Election**

<b>State</b>	<b>District</b>	<b>Candidate</b>	<b>Party Contributions</b>
New York	10	Brian Robinson	\$30,000
Mississippi	4	Steven Palazzo	\$26,000
Ohio	12	William Balderson	\$25,808
New York	19	Marcus Molinaro	\$25,130
Iowa	1	Christina, Bohannon	\$24,268

**Table 20 - Examples of Party Contributions to House Candidates in 2020 Election**

State	District	Candidate	Party Contributions
Georgia	5	John Lewis	\$43,493
Florida	20	Alcee Hastings	\$35,500
New York	11	Nicole Malliotakis	\$22,500
Virginia	7	Abigail Spanberger	\$22,350
Michigan	6	Jon Hoadley	\$22,000

13. The following are tables of Republican and Democratic national party committees' total spending for the 2020 and 2022 election cycles.

**Table 21 - Republican National Party Committee Total Spending**

	RNC	NRSC	NRCC	Total
2021-2022	\$401,421,967	\$256,279,028	\$285,469,165	\$943,170,160
2019-2020	\$833,510,910	\$331,349,455	\$284,917,646	\$1,449,778,011

**Table 22 - Democratic National Party Committee Total Spending**

	<b>DNC</b>	<b>DSCC</b>	<b>DCCC</b>	<b>Total</b>
2021-2022	\$315,027,836	\$298,027,976	\$367,701,788	\$980,757,601
2019-2020	\$461,488,365	\$300,284,035	\$330,435,309	\$1,092,207,709

14. The following tables are Republican and Democratic national party committees' operating expenditures for the last five election cycles. "Operating expenditures" in this context are all "hard money" expenditures that are not classified as either Independent Expenditures, Coordinated Expenditures or Contributions. Operating expenditures include a variety of committee operating expenses such as rent, personnel, overhead and other day-to-day costs of running the committee.

**Table 23 - Republican National Party Committee Operating Expenditures**

	<b>RNC</b>	<b>NRSC</b>	<b>NRCC</b>
2021-2022	\$297,715,634	\$154,257,232	\$130,377,109
2019-2020	\$546,846,526	\$137,295,329	\$149,460,532
2017-2018	\$253,942,594	\$71,446,922	\$78,623,676
2015-2016	\$217,442,732	\$58,513,703	\$54,823,485

2013-2014	\$148,867,663	\$60,926,350	\$59,562,849
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**Table 24- Democratic National Party Committee Operating Expenditures**

	<b>DNC</b>	<b>DSCC</b>	<b>DCCC</b>
2021-2022	\$220,468,912	\$151,381,249	\$198,353,141
2019-2020	\$302,318,566	\$127,278,859	\$163,832,297
2017-2018	\$112,703,188	\$52,403,942	\$140,590,090
2015-2016	\$160,275,670	\$71,850,226	\$89,409,634
2013-2014	\$113,582,566	\$68,549,935	\$88,946,834

15. With respect to party spending on races for the U.S. House of Representatives (direct contributions, coordinated expenditures and independent expenditures), the Republican national parties spent approximately half their money in 11 districts in 2022 and 12 districts in 2020, and the Democratic national parties spent approximately half their money in 17 districts in 2022 and 18 districts in 2020.

16. I have reviewed the records in the Commission's database regarding campaign disbursements by Democratic and Republican congressional candidates during the 2022 and 2020 election cycles. In the 2022 cycle, candidates for the U.S. House of Representatives spent a combined total of \$1.93 billion, while candidates for the Senate spent a combined total



of \$1.65 billion. In the 2020 cycle, candidates for the U.S. House of Representatives spent a combined total of \$1.75 billion, while candidates for the Senate spent a combined total of \$1.95 billion.

17. I have reviewed the records in the Commission’s database regarding campaign activity by plaintiff James David (“J.D.”) Vance during the 2022 election cycle. The following table contains figures representing the total amount of receipts and disbursements by Vance’s campaign committee, as well as the amount of independent and coordinated party expenditures made on his behalf, during the 2022 election cycle. The amount of total receipts includes campaign contributions and loans.

**Table 25 - Senator Vance’s Campaign Activity During the 2022 Election Cycle**

	<b>2022 Election Cycle</b>
Total Receipts(including campaign contributions)	\$15,900,422
Campaign Contributions	\$14,500,422
Total Disbursements	\$15,459,113
Independent Expenditures	\$0 in favor of Vance
	\$0 against opponent Tim Ryan
Coordinated Expenditures	\$1,991,800

**Table 26 - Party Committee Contributions to Senator Vance's 2022 Campaign**

<b>Party Committee</b>	<b>Contribution</b>
NRSC	\$51,200
Lake County Republican Party	\$500
Republican Party of Florida	\$5,000
<b>Total Party Contributions</b>	<b>\$56,700</b>

18. I have reviewed the records in the Commission's database regarding campaign activity by plaintiff Steven Joseph Chabot during the 2022 election cycle. The following table contains figures representing the total amount of receipts and disbursements by Chabot's campaign committee, as well as the amount of independent and coordinated party expenditures made on his behalf, during the 2022 election cycle. The amount of total receipts includes campaign contributions and loans.

**Table 27 - Representative Chabot's Campaign Activity During the 2022 Election Cycle**

	<b>2022 Election Cycle</b>
Total Receipts(including campaign contributions)	\$2,234,659
Campaign Contributions	\$2,234,659

	<b>2022 Election Cycle</b>
Total Disbursements	\$2,246,582
Independent Expenditures	\$0 in favor of Chabot
	\$ 1,849.629 against opponent Greg Landsman
Coordinated Expenditures	\$103,000

**Table 28 - Party Committee Contributions to Representative Chabot's 2022 Campaign**

<b>Party Committee</b>	<b>Contribution</b>
NRCC	\$5,000
<b>Total Party Contributions</b>	<b>\$5,000</b>

19. The following table contains figures representing the total hard money receipts of all Republican and Democratic state and local party committees for the last five full election cycles.

**Table 29 - All State and Local Party Committee Receipts**

	<b>Republican Committees</b>	<b>Democratic Committees</b>	<b>Total</b>
2021-2022	\$244,430,946	\$440,556,460	\$488,861,892
2019-2020	\$560,859,122	\$662,831,271	\$1,121,718,244
2017-2018	\$205,114,861	\$327,992,371	\$410,229,722
2015-2016	\$317,045,586	\$547,451,981	\$634,091,172
2013-2014	\$189,752,802	\$272,480,105	\$379,505,604

20. The following table contains figures representing the total hard money receipts of all Republican and Democratic party committees (national, state, and local committees), not including monies transferred among those committees.

**Table 30 - Receipts by All Republican and Democratic Party Committees**

	<b>Republican Committees</b>	<b>Democratic Committees</b>	<b>Total</b>
2021-2022	\$1,118,986,765	\$1,407,152,487	\$2,526,139,253
2019-2020	\$2,070,573,415	\$1,804,226,453	\$3,874,799,868
2017-2018	\$887,298,099	\$948,883,397	\$1,836,181,496
2015-2016	\$969,395,280	\$1,302,754,324	\$2,272,149,605

	<b>Republican Committees</b>	<b>Democratic Committees</b>	<b>Total</b>
2013-2014	\$666,380,313	\$810,915,320	\$1,477,295,633

21. The following tables contain figures representing the candidate contributions, party coordinated expenditures, and independent expenditures made by all Republican and Democratic state and local party committees for the last five full election cycles.

**Table 31 - Republican State and Local Party Contributions, Coordinated Expenditures, and Independent Expenditures**

	<b>Contributions</b>	<b>Independent Expenditures</b>	<b>Coordinated Expenditures</b>
2021-2022	\$287,868	\$1,869,953	\$2,016,400
2019-2020	\$210,782	\$836,283	\$5,593,006
2017-2018	\$374,828	\$3,928,535	\$3,438,234
2015-2016	\$416,098	\$154,402	\$2,024,501
2013-2014	\$503,686	\$462,910	\$3,029,175

**Table 32 - Democratic State and Local Party Contributions, Coordinated Expenditures, and Independent Expenditures**

	<b>Contributions</b>	<b>Independent Expenditures</b>	<b>Coordinated Expenditures</b>
2021-2022	\$502,820	\$657,576	\$2,161,515
2019-2020	\$388,270	\$1,340,203	\$855,204
2017-2018	\$732,206	\$211,495	\$1,851,003
2015-2016	\$1,420,477	\$436,991	\$2,866,405
2013-2014	\$246,842	\$233,767	\$5,462,275

22. The following tables contain figures representing the party contributions, coordinated expenditures, and independent expenditures made by all Republican and Democratic committees (national, state, and local) for the last five full election cycles.

**Table 33 - Coordinated Expenditures by All Republican and Democratic Committees**

	<b>Republican Committees</b>	<b>Democratic Committees</b>	<b>Total</b>
2021-2022	\$25,892,069	\$17,960,656	\$43,852,724
2019-2020	\$46,285,942	\$40,621,690	\$86,907,632

2017-2018	\$17,939,103	\$19,928,252	\$37,867,354
2015-2016	\$39,202,420	\$37,605,272	\$76,807,692
2013-2014	\$14,567,139	\$13,152,590	\$27,719,729

**Table 34- Independent Expenditures by All Republican and Democratic Committees**

	<b>Republican Committees</b>	<b>Democratic Committees</b>	<b>Total</b>
2021-2022	\$124,235,482	\$146,535,227	\$270,770,709
2019-2020	\$209,281,514	\$183,412,329	\$392,693,843
2017-2018	\$118,189,171	\$114,465,052	\$232,654,223
2015-2016	\$113,249,775	\$141,237,529	\$254,487,304
2013-2014	\$105,346,285	\$123,648,264	\$228,994,549

**Table 35- Contributions by All Republican and Democratic Committees**

	<b>Republican Committees</b>	<b>Democratic Committees</b>	<b>Total</b>
2021-2022	\$1,783,668	\$1,755,663	\$3,539,331
2019-2020	\$1,461,839	\$1,809,209	\$3,271,048

2017-2018	\$1,395,954	\$1,533,190	\$2,929,144
2015-2016	\$1,228,936	\$2,422,095	\$3,651,031
2013-2014	\$1,132,999	\$1,425,722	\$2,558,721

23. According to FEC records, between January 1,2009 through December 31,2022, Republican and Democratic state and local party committees registered with the Commission have received a total of \$42,636,070 in Levin funds receipts and made a combined total of \$43,380,090 in Levin funds disbursements.

24. The following table compares national party committee receipts for 2020 (the most recent two-year election cycle that includes a Presidential election) against those for 1992, reflecting both the actual total receipts and the total receipts adjusted for inflation.<sup>1</sup>

**Table 36 - Republican National Party Committee Receipts**

		<b>RNC</b>	<b>NRSC</b>	<b>NRCC</b>	<b>Total</b>
1991-1992 (actual)	Hard Money	\$85,447,469	\$73,810,640	\$3 5,272,672	\$194,530,78 1

<sup>1</sup> The inflation adjusted numbers were calculated using the inflation calculator provided on the Federal Reserve Bank of Minneapolis's website using the years 1976 and 2020, <https://www.minneapolisfed.org/about-us/monetary-policy/inflation-calculator> (last visited Nov. 9,2023).



		<b>RNC</b>	<b>NRSC</b>	<b>NRCC</b>	<b>Total</b>
	Combined with Soft Money	\$121,384,41 4	\$82,874,807	\$41,348,993	\$245,608,21 4
1991-1992 (inflation adjusted)	Hard Money	\$157,605,59 9	\$136,141,77 6	\$65,059,512	\$358,806,88 7
	Combined with Soft Money	\$223,890,34 5	\$152,860,39 2	\$76,267,125	\$453,017,86 3
2019-2020	Hard Money	\$890,538,96 3	\$338,263,38 3	\$280,911,94 7	\$1,509,714, 293
Inflation- Adjusted Comparison	Hard Money	565%	248%	432%	421%
	Combined	398%	221%	368%	333%

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**Table 37 - Democratic National Party Committee Receipts**

		<b>DNC</b>	<b>DSCC</b>	<b>DCCC</b>	<b>Total</b>
1991-1992 (actual)	Hard Money	\$65,790,724	\$25,450,835	\$12,815.844	\$104,057,40 3
	Combined with Soft Money	\$97,146,800	\$26,016,946	\$17,184,824	\$140,348,57 0

		<b>DNC</b>	<b>DSCC</b>	<b>DCCC</b>	<b>Total</b>
1991-1992 (inflation adjusted)	Hard Money	\$121,349,253	\$46,943,393	\$23,638,486	\$191,931,131
	Combined with Soft Money	\$179,184,706	\$47,987,570	\$31,696,954	\$258,869,230
2019-2020	Hard Money	\$491,727,344	\$303,883,335	\$345,784,504	\$1,141,395,183
Inflation- Adjusted Comparison	Hard Money	405%	647%	1463%	595%
	Combined	274%	633%	1091%	441%

25. The following tables contain figures representing the races in which party independent expenditures were made by the national senatorial committees of the Republican and Democratic parties in the last election cycle.

**Table 38 - NRSC and DSCC Independent Expenditures in Selected 2021-22 Senate Races**

State	Candidate (Support or Oppose)	NRSC Spending	DSCC Spending
Arizona	Kelly	\$9,906,548.83	
	Masters		\$9,587,534.44
Georgia	Walker		\$5,643,647.24
	Warnock	\$5,447,376.78	\$603,409.82
Nevada	Cortez-Masto	\$3,705,229.87	
	Laxalt		\$6,681,174.07
New Hampshire	Hassan	\$2,924,676.00	
	Bolduc		\$3,871,731.48
	Morse		\$174,345.08
	Smith		\$174,345.06
North Carolina	Beasley	\$6,333,575.50	
Pennsylvania	Fetterman	\$2,782,079.27	\$876,448.79
	Oz		\$2,417,075.58
Wisconsin	Barnes	\$2,827,083.46	

<b>State</b>	<b>Candidate (Support or Oppose)</b>	<b>NRSC Spending</b>	<b>DSCC Spending</b>
	Johnson		\$3,345,877.48
<b>Total Spent</b>		\$33,926,569.71	\$33,375,589.04

26. Pursuant to 28 U.S.C. § 1746.1 declare under penalty of perjury that the foregoing is true and correct.

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Paul C. Clark, II, Ph.D.  
Disclosure Business Architect  
FEDERAL ELECTION  
COMMISSION  
1050 First Street, NE  
Washington, DC 20463  
(202) 694-1250

Executed on November 15, 2023.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
NEW ORLEANS DIVISION**

ANH "JOSEPH" CAO,	)	
REPUBLICAN NATIONAL	)	Civil Action No.
COMMITTEE, AND	)	1:08CV4887
REPUBLICAN PARTY OF	)	SECTION C. DIVISION 5
LOUISIANA,	)	
	)	JUDGE HELEN G.
Plaintiffs,	)	BERRIGAN
	)	
V.	)	CHIEF MAGISTRATE
FEDERAL ELECTION	)	JUDGE
COMMISSION,	)	ALMA L. CHASEZ
	)	
Defendant.	)	

**DECLARATION OF MARTIN MEEHAN**

1. My name is Martin Meehan. I worked in government service for almost 30 years, and was employed in political positions for much of that time period. I was a Congressman from the 5 Congressional District of Massachusetts for 14 years, between 1993 and 2007. I am a member of the Democratic Party. Since July 1, 2007, I have been the Chancellor of the University of Massachusetts, Lowell.

2. While in Congress, I was a co-sponsor of the House version of the Bipartisan Campaign Reform Act ("BCRA").

3. Our system of campaign finance has limited individual contributions to campaigns for 35 years. This limitation is a part of a vital effort to eliminate actual or perceived corruption in our government.

4. During my time in Congress, I had numerous opportunities to witness the ways in which political parties can influence our political system.

5. The ultimate goal of a political party is to get as many party members as possible into elective office, and in doing so to increase voting and party activity by average party members. The party does this by developing principles on public policy matters the party stands for, and then by finding candidates to run for the various political offices who represent those principles for the party. When the party finds its candidates, it tries to raise money to try to get the party's candidates the resources they need to get their message out to voters.

6. I am not aware of any occasions on which the Democratic Party, at the federal or state level, has sought to lobby an opposing party's Members of Congress through the use of expenditures coordinated with a candidate.

7. In my experience, parties do not generally engage in grassroots lobbying, GOTV activity, voter identification, or voter registration, for any purpose other than to assist in their efforts to elect party members to public office.

8. Party fundraising serves as a mechanism for major donors to get special access to lawmakers. Office holders and candidates know who the major donors to their parties are.

9. Members of Congress raise money for the national party committees. At the request of the party, Members of Congress call prospective donors from lists provided by the party to ask them to participate in party events, such as Democratic Congressional

Campaign Committee (“DCCC”) dinners or the Democratic National Committee (“DNC”) dinners. These lists typically consist of persons who have contributed to the Democratic Party in the past.

10. Party leaders also ask a Member to call his or her own “maxed out” donors - those who have contributed to that Member the maximum amount of “hard money” allowed under the Federal Election Campaign Act - in order to request further donations to the Party.

11. The DCCC has asked Members to contribute specific amounts from their campaign funds toward the DCCC’s effort to elect Democrats to the House. I consider these contributions to be DCCC annual dues. For example, in 1998 the basic amount requested was \$5,000, but the amounts the DCCC has asked Members to contribute may vary depending on the status of the Member. For example, those in the Party leadership, such as the Steering Committee leadership, Chief Deputy Whips, and Ranking Members of Committees may be asked to give more than others. Members in “safe” seats or who are unopposed are asked to give more than those in “competitive” races.

12. As a Congressman, I helped the DCCC, the DNC and the Massachusetts Democratic Party raise more than \$300,000 in the two elections cycles prior to my resignation from office.

13. In fundraising for the coordinated campaign of the Massachusetts Democratic Party, I signed onto invitations to political fundraisers. I also made fundraising phone calls to active Democrats to ask them to participate in a given event or coordinated campaign. The state party in Massachusetts would



provide a coordinated campaign plan and ask Members to try to raise money to implement it.

14. Although candidates want to help their party, I believe candidates also expect that their fundraising efforts for the party will be reciprocated if they ever need help through contributions, party coordinated expenditures, and/or independent expenditures.

15. In the 1999-2000 election cycle, the Massachusetts State Democratic Committee's federal fund made \$62,108 in coordinated expenditures on my behalf.

16. When my state or national party made coordinated expenditures on my behalf, my campaign staff or I was involved in deciding how money would be spent; drafting and approving the script of ads; deciding when and where ads would be run; and ensuring the content of any communications were consistent with my campaign message.

17. The party coordinated expenditures run on my behalf assisted my campaign because they freed other campaign funds to be spent in other ways, furthered my campaign message, and made me able to reach more voters more frequently than I otherwise could have. They functioned as contributions to my campaign.

18. The current campaign finance system has not prevented candidates or parties from amassing the resources necessary for successful advocacy.

19. To overturn or weaken party coordinated expenditure limits would likely lead to circumvention of contribution limits by individuals and PACs. That is because contributors can give far more to the parties, which can in turn use those funds to support the

contributors' favored candidates, as long as they are not formally earmarked. To remove or weaken the current limits would provide a strong incentive for parties to expand the use of coordinated expenditures to help candidates. That would encourage at least the appearance of corruption by providing a way for influence-seeking contributors to effectively give favored candidates far more financial support than they can today.

20. If a candidate or her staff drafts or collaborates on the script of an ad that the party pays for, it benefits the candidate's campaign, regardless of whether the resulting ad reflects the party's own view's. Indeed, if a party financed a \$1 million ad campaign of that kind, it would be the equivalent of a \$1 million contribution to the candidate.

21. Similarly, if candidates or their campaign staffs collaborate with the party to decide when or where the party will run an ad, it benefits the candidate's campaign.

22. If candidates or their campaign staffs collaborate with the party to decide which media outlet to use to run a party ad, it benefits the candidate's campaign.

23. If candidates or their campaign staffs request or suggest that their party create, produce or distribute a particular communication, it benefits the candidate's campaign.

24. Often, especially after a particularly difficult primary election, a candidate may not have enough resources to run the most expensive ads - television advertising during the last week or so of the general election. Not being on the air during the last days of a

campaign may, in a close election, make the difference between electoral success or defeat. When a party can run coordinated expenditures to ensure the candidate's name and image are on television during that crucial time, this benefits the candidate's campaign and may even make the difference between election or defeat.

25. If a party's coordinated voter identification, registration, or GOTV efforts were directed only towards a portion of a Senate candidate's state or a House candidate's district—for instance, only to particular zip codes with high numbers of potentially supportive voters—such efforts would benefit the candidate's campaign.

26. If a party's coordinated voter identification, registration, or GOTV efforts were directed towards a House candidate's district and additional geographic areas—perhaps because a particular media market included multiple House districts—such efforts would benefit the candidate's campaign.

27. I believe that “issue ads” by party committees are designed to and do affect the outcomes of elections, that they are designed to elect or defeat candidates, and that they drive up the costs of elections. My constituents in Massachusetts expressed to me their concern about the impact of “issue ads” on federal politics, it was the parties' use of candidate-focused “issue ads” in federal election campaigns that, in part, led Congress to pass the party soft money restrictions in BCRA.

28. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.



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Martin Meehan

Executed on this 26 day of August, 2009

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
CINCINNATI DIVISION**

NATIONAL REPUBLICAN  
SENATORIAL COMMITTEE,  
*et al.*,

Plaintiffs,

v.

FEDERAL ELECTION  
COMMISSION, *et al.*,

Defendants.

No. 1:22-cv-639

Hon. Douglas R.  
Cole

**PLAINTIFF JAMES DAVID VANCE’S FIRST  
OBJECTIONS AND RESPONSES  
TO DEFENDANT’S FIRST SET OF DISCOVERY  
REQUESTS**

Pursuant to Federal Rules of Civil Procedure 26, 33, 34, 36, and Southern District of Ohio Local Rule 26.1, Plaintiff James David Vance (“Vance”) hereby provides objections and responses to Defendant Federal Election Commission’s First Set of Discovery Requests, dated September 8, 2023 (the “Requests”).

**PRELIMINARY STATEMENTS**

1. Vance has responded to the Requests as he interprets and understands them. If Defendant subsequently asserts an interpretation of any of the Requests that differs from Vance’s understanding, Vance reserves the right to supplement or amend his objections or responses.

2. These responses are based on information currently known to Vance and are provided without prejudice to Vance's right to produce or rely on any subsequently discovered facts, contentions, or documents that Vance may later learn of, recall, or discover. The responses are based on Vance's (i) reasonable search of facilities and files that could reasonably be expected to contain responsive information and (ii) inquiries of staff or representatives who could reasonably be expected to possess responsive information.

\* \* \*

*Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, Vance states that he is a 39-year-old, incumbent, first-term Senator who has filed a Form 2 (Statement of Candidacy) with the FEC disclosing his intent to be a federal candidate in Ohio's 2028 Senate election. Moreover, as reflected on the periodic disclosures filed with Defendant, Vance and the Vance campaign have been raising contributions designated for the 2028 elections.

**INTERROGATORY NO. 3:**

*Identify the content of the activity and the conduct constituting coordination, for all coordinated expenditures in which Vance participated in connection with the NRSC in the 2022 election cycle, including but not limited to those described in paragraph 15 of the Complaint.*

**RESPONSE TO INTERROGATORY NO. 3:**

Vance incorporates his General Objections and Objections to Instructions and Definitions as stated above. Vance specifically objects to Interrogatory No. 3 as vague and ambiguous, particularly the phrase “participated in connection with the NRSC,” and because it seeks information or materials equally or more readily available to Defendant through other means, including through review of public disclosure reports filed with Defendant. Vance further objects to the extent Interrogatory No. 3 calls for the production of any documents or information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int’l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, Vance states that he understands the content of the 2022 coordinated party expenditures paid for by the NRSC consisted of: (i) a television advertisement run in Ohio in or around August 2022 featuring Vance and his family and supporting Vance’s candidacy; (ii) live and automated get-out-the-vote telephone made calls to Ohio voters shortly before Election Day supporting Vance’s candidacy; and (iii) get-out-the-vote text messages, sent peer-to-peer to Ohio voters shortly before Election Day, supporting Vance’s candidacy.

As to conduct, Vance states that he understands from campaign staff that after Vance became the

nominee in Ohio, NRSC staff consulted with Vance campaign staff about the ability to make limited coordinated party expenditures in support of Vance. Subsequently, with respect to the coordinated television advertisement, agents of the Vance campaign requested or suggested the use of a draft television script to NRSC staff for use in a coordinated party communication, and the NRSC utilized the services of a common vendor for the production and distribution of the advertisement. Vance understands that approval of the advertisement and the decision to pay for it were all made at the sole discretion and authority of the NRSC and its staff.

With respect to the coordinated telephone calls and coordinated peer-to-peer text messages, Vance understands from campaign staff that the conduct constituting coordination involved agents of the Vance campaign assenting to the NRSC's suggestions for further coordinated activities, consistent with the applicable coordinated party expenditure limits, in the lead up to Election Day. Vance understand that NRSC staff discussed the messaging of these communications with agents of the Vance campaign, but approval of these communications and decision to pay for them also were all at the sole discretion and authority of the NRSC and its staff.

**INTERROGATORY NO. 4:**

*Identify the additional coordinated expenditures NRSC would make in support of Vance that would be subject to and in excess of the coordinated party expenditure limits, as described in paragraphs 30 and 31 of the Complaint.*



**RESPONSE TO INTERROGATORY NO. 4:**

Vance incorporates his General Objections and Objections to Instructions and Definitions as stated above. Vance specifically objects to Interrogatory No. 4 because it calls for speculation about a hypothetical situation under a counterfactual legal framework, as well as the hypothetical spending decisions of another political committee over which Vance has no control. Vance also objects to Interrogatory No. 4 to the extent it calls for the production of any documents or information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, Vance states that he understands from his campaign staff that in 2022, the coordinated party expenditure limits caused his campaign staff to limit their interactions with the Republican Party, particularly on matters relating to the party's public advertising in support of his campaign, to ensure his campaign committee and the party did not run afoul of the limits on coordinated party expenditures. If not for the coordinated party expenditure limits, Vance and his campaign would desire to work in greater cooperation with the NRSC, as well as other committees of the Republican Party, to make more efficient and effective use of party resources in support of Vance's campaign. In particular, Vance would like to work with his party in furtherance of a greater

number of coordinated public communication advertisements supporting his campaign, similar to those that were made in coordination with the NRSC in 2022.

**INTERROGATORY NO. 5:**

*Describe in detail your role in seeking, requesting, accepting, agreeing to, and/or otherwise engaging in coordinated expenditures with the NRSC.*

**RESPONSE TO INTERROGATORY NO. 5:**

Vance incorporates his General Objections and Objections to Instructions and Definitions as stated above. Vance specifically objects to Interrogatory No. 5 because the information requested is duplicative of Interrogatory No. 3 and to the extent it calls for the production of any documents or information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, as described in response to Interrogatory No. 3, Vance states that he understands from his campaign staff that NRSC staff consulted with Vance's campaign staff about how the NRSC should spend its money on certain public advertising—including a television advertisement, automated telephone calls, and peer-to-peer text messages—to best support Vance's candidacy, but the NRSC retained ultimate control over its funds and authority

to decide whether and how to spend its money in support of Vance's candidacy.

**INTERROGATORY NO. 6:**

*Describe in detail any requirement(s) or condition(s) that accompanied the NRSC's engaging in coordinated expenditures in support of Vance.*

**RESPONSE TO INTERROGATORY NO. 6:**

Vance incorporates his General Objections and Objections to Instructions and Definitions as stated above. Vance specifically objects to Interrogatory No. 6 because "requirement(s)" and "condition(s)" are vague and undefined terms. Vance further objects to Interrogatory No. 6 to the extent it calls for the production of any documents or information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 454-59; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, Vance states that he understands from his campaign staff that the NRSC imposed conditions over the general timing for making any coordinated communications with the national party committee, consistent with the NRSC's budgeting for the 2022 election cycle. Additionally, the NRSC required that it have ultimate control over its funds and authority to decide whether and how to spend its money in support of Vance's candidacy, including final review and approval of any advertisements.

**INTERROGATORY NO. 7:**

*Explain your knowledge of the source(s) of the NRSC's funding that it used to engage in coordinated expenditures in support of Vance.*

**RESPONSE TO INTERROGATORY NO. 7:**

Vance incorporates his General Objections and Objections to Instructions and Definitions as stated above. Vance specifically objects to Interrogatory No. 7 because it seeks information or materials equally or more readily available to Defendant through other means, including through review of public disclosure reports filed with Defendant. Vance further objects to Interrogatory No. 7 to the extent it calls for the production of any documents or information protected from disclosure by the attorney-client privilege, the work product doctrine, legislative privilege, the joint-defense or common-interest privilege, or any other applicable privilege or immunity, including the First Amendment. *Int'l Action Ctr.*, 207 F.R.D. at 3; *Wyoming*, 208 F.R.D. at 45459; *Wood*, 370 U.S. at 394-95; *Perry*, 591 F.3d at 1163.

Subject to and without waiving the foregoing objections, Vance states that he had no knowledge of the NRSC's sources of funding used to engage in coordinated expenditures in support of Vance.

**INTERROGATORY NO. 8:**

*Describe in detail each injury you claim to have suffered as a result of the party coordinated expenditure limits as described in the Complaint.*

**RESPONSE TO INTERROGATORY NO. 8:**

Vance incorporates his General Objections and Objections to Instructions and Definitions as stated

above. Vance specifically objects to Interrogatory No. 8 to the extent it calls for legal conclusions or seeks information protected by attorney-client privilege or the work product doctrine.

Subject to and without waiving the foregoing objections, Vance states that, because of the statutory coordinated party expenditure limits and the risk of enforcement for a violation of those limits, he and his campaign have been and are chilled from engaging in coordination with his political party in excess of the limits, as Vance and his campaign otherwise would intend to do. Vance has been advised and understands that the FEC's regulations on what may constitute "coordination," particularly in the context of party committees, are expansive and far from clear. He also understands from his campaign staff that complying with these regulations is burdensome and, during the 2022 election cycle, caused his campaign staff to limit their interactions with the NRSC and other committees of the Republican Party, particularly on matters relating to the party's public advertising in support of his campaign, to ensure his campaign committee and the party did not violate the limits on coordinated party expenditures. Furthermore, in a future federal campaign, Vance would desire for his party to make coordinated party expenditures, including for party coordinated communications, with his campaign in excess of FECA's coordinated party expenditure limits on behalf of his future candidacy. But as long as the coordinated party expenditure limits remain in force, Vance's campaign will not engage in coordinated party expenditures with the political party, including for party coordinated

communications, in excess of the coordinated party expenditure limits.

**INTERROGATORY NO. 9:**

*Describe in detail how changed factual circumstances in the political landscape since the Supreme Court's decision in *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001) ("Colorado II") have changed any burden on candidates' speech specifically imposed by the limits on coordinated party expenditures.*

**RESPONSE TO INTERROGATORY NO. 9:**

Vance incorporates his General Objections and Objections to Instructions and Definitions as stated above. Vance specifically objects to Interrogatory No. 9 because the phrasing "changed factual circumstances in the political landscape... have changed any burden on candidates' speech specifically imposed by the limits on coordinated party expenditures" is vague and ambiguous, leaving Vance to speculate about what information would be responsive. Vance further objects to Interrogatory No. 9 to the extent it calls for legal conclusions or seeks information protected by attorney-client privilege or the work product doctrine.

Subject to and without waiving the foregoing objections, Vance states that he understands the "political landscape" to have changed dramatically since 2001, imposing new burdens on parties and their aligned candidates. The rise of Super PACs, which can fundraise without any limit so long as their activities remain independent of candidates and party committees, has diminished the parties' dominance in the political landscape compared to 2001. As a result,

more and more of the spending in competitive races—including the 2022 Ohio Senate race—is on independent expenditures made by Super PACs and other outside groups, where the candidate and his associated political party committees cannot coordinate on the messaging, content, or intended audience of the communication.

**INTERROGATORY NO. 10:**

*Identify each person (other than counsel) who participated in, or provided items or information for, the preparation of your responses to these discovery requests. With respect to each such person, identify the specific request, and state whether the person participated in preparing the response, or provided items or information.*

**RESPONSE TO INTERROGATORY NO. 10:**

Vance incorporates his General Objections and Objections to Instructions and Definitions as stated above. Vance specifically objects to Interrogatory No. 10 to the extent it calls for legal conclusions or attorney work product.

Subject to and without waiving the foregoing objections, Vance states that Vance participated in the preparation of each of these responses, and that Jordan Wiggins (Vance Campaign Manager) and Jai Chabria (Managing Director, MAD Global Strategy) provided items or information for the preparation of responses to Interrogatory Nos. 3-7. The NRSC also provided items or information responsive to these requests.

**From:** Justine Jaenisch [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN =FAFC83CF9E8E4E4398C3F02D07CABS75-JUSTINE JAE]  
**Sent:** 9/8/2022 3:28:33 PM  
**To:** Jon Conradi [JConradi@fpl.com]; Theresa Winegar [twinegar@nrcc.org]; Scott Luginbill [sluginbill@nrcc.org]  
**Subject:** RE: [EXTERNAL] Chabot First TV Ad/Coordinated

Thank you, Jon! I will get that processed and paid hopefully today.

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**From:** Jon Conradi <JConradi@fpl.com>  
**Sent:** Thursday, September 8, 2022 11:21 AM  
**To:** Theresa Winegar <twinegar@NRCC.org>; Scott Luginbill <sluginbill@NRCC.org>; Justine Jaenisch <jjaenisch@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/Coordinated

Theresa and Justine,

See attached invoice for the coordinated TV.

Let me know if any questions or if you need anything else.

Thanks!

-Jon

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**From:** Jon Conradi <JConradi@fp1.com>  
**Date:** Wednesday, September 7, 2022 at 6:20 PM



**To:** Theresa Winegar <twinegar@NRCC.org>,  
Scott Luginbill <sluginbill@NRCC.org>,  
Justine Jaenisch <jjaenisch@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/  
Coordinated

Excellent news! Yes, will circle back with that.

Thanks!

-Jon

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**From:** Theresa Winegar <twinegar@NRCC.org>  
**Date:** Wednesday, September 7, 2022 at 6:18 PM  
**To:** Scott Luginbill <sluginbill@JNICK.org>,  
Jon Conradi <JConradi@fp1.com>, Justine  
Jaenisch <jjaenisch@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/  
Coordinated

Conradi - we are good-to-go here! Can you please  
send an invoice for \$103,000 to Justine, cc'ed here.

Thank you!

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**From:** Scott Luginbill <sluginbill@NRCC.org>  
**Sent:** Tuesday, September 6, 2022 11:11 AM

**RPP\_0000061**

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**To:** Jon Conradi <JConradi@fp1.com>;  
Theresa Winegar <twinegar@NRCC.org>  
**Subject:** RE: [EXTERNAL] Chabot First TV Ad/  
Coordinated

Good stuff.

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**From:** Jon Conradi <JConradi@fp1.com>  
**Sent:** Tuesday, September 6, 2022 9:31 AM  
**To:** Scott Luginbill <sluginbill@NRCC.org>;  
Theresa Winegar <twinegar@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/  
Coordinated

She is a nurse practitioner with the University of Cincinnati College of Medicine - we did a scan of her social and web presence and didn't find any flags.

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**From:** Scott Luginbill <sluginbill@NRCC.org>  
**Date:** Monday, September 5, 2022 at 10:54 AM  
**To:** Jon Conradi <JConradi@fp1.com>, Theresa Winegar <twinegar@NRCC.org>  
**Subject:** RE: [EXTERNAL] Chabot First TV Ad/  
Coordinated

Blair McChesney, we feel confident using her as a 3rd party? No vetting flags?

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**From:** Jon Conradi <JConradi@fp1.com>  
**Sent:** Friday, September 2, 2022 6:13 PM  
**To:** Theresa Winegar <twinegar@NRCC.org>;  
Scott Luginbill <sluginbill@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/  
Coordinated

Theresa and Scott,

See here the produced second spot (attached is a substantiation grid):

<https://fp1strategies.box.com/s/a7r44uIh9ckrm0royxe5txwozw3ghqt>

Also reattached is the latest media plan. This starts on September 21 and will need to ship by noon on the 20<sup>th</sup>.

Let me know if any questions or if anything else you need to get this approved for the TV coordinated.

Thanks and have a great weekend!

-Jon

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**From:** Theresa Winegar <twinegar@NRCC.org>  
**Date:** Wednesday, August 31, 2022 at 9:25 AM  
**To:** Jon Conradi <JConradi@fp1.com>, Scott Luginbill <sluginbill@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/ Coordinated

agreed. Super weak and full of shit - we hit it already this AM

<https://www.nrcc.org/2022/08/31/landsman-lies-in-first-tv-ad/>

**RPP\_0000062**

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**From:** Jon Conradi <JConradi@fp1.com>  
**Sent:** Wednesday, August 31, 2022 9:23:20 AM  
**To:** Scott Luginbill <sluginbill@NRCC.org>; Theresa Winegar <twinegar@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/ Coordinated

Landsman's first ad here: <https://youtu.be/195Hmm1Ug-0>

Feels pretty weak. Combo of positive and defensive right outta the gate. Burns a line on police anticipating that being our hit - when we're hitting him on taxes and inflation.

Sent from my iPhone

On Aug 30, 2022, at 1:39 PM, Jon Conradi <JConradi@fp1.com> wrote:

Theresa,

Good catching up this morning. See attached the updated media plan that shows the NRCC coordinated for the second spot and also flight dates so you can see when we'll have traffic changes.

Also, don't have the details yet, but hearing Landsman broadcast buys starting to roll in ... starting tmrw ... glad we got up!

Let me know if any questions on the media plan.

Thanks!

-Jon

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**From:** Scott Luginbill <sluginbill@NRCC.org>  
**Date:** Tuesday, August 30, 2022 at 9:35 AM  
**To:** Jon Conradi <JConradi@fp1.com>, Theresa Winegar <twinegar@NRCC.org>  
**Subject:** RE: [EXTERNAL] Chabot First TV Ad/ Coordinated

LFG!

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**From:** Jon Conradi <JConradi@fp1.com>  
**Sent:** Tuesday, August 30, 2022 9:33 AM  
**To:** Theresa Winegar <twinegar@NRCC.org>  
**Cc:** Scott Luginbill <sluginbill@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/  
Coordinated

Fyi:

<https://spectrumnews1.com/oh/columbus/news/2022/08/29/chabot-first-tv-ad-competitive-house-race>

Sent from my iPhone

On Aug 29, 2022, at 12:43 PM, Theresa Winegar  
<twinegar@nrcc.org> wrote:

**RPP\_0000063**

I will call you at 10AM - sending a calendar invite now! Thank you.

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**From:** Jon Conradi <JConradi@fp1.com>  
**Sent:** Monday, August 29, 2022 12:27 PM  
**To:** Theresa Winegar <twinegar@NRCC.org>  
**Cc:** Scott Luginbill <sluginbill@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/  
Coordinated

Ok sounds good. Sure thing, here are windows I'm open tmrw if there's a time that works best for you:

9:30-10:30; 11:30-12; 1-2; 2:30-4:30; after 5

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**From:** Theresa Winegar <twinegar@NRCC.org>  
**Date:** Monday, August 29, 2022 at 12:16 PM  
**To:** Jon Conradi <JConradi@fp1.com>  
**Cc:** Scott Luginbill <sluginbill@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/  
Coordinated

Hey Jon,

Thanks for following up, was just working on this on my end - this is going to be too tight of a turnaround on our end it looks like. Let's please plan for coordinated with the next spot.

Do you have time to circle up tomorrow for a few minutes by phone?

Let me know - thank you!

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**From:** Jon Conradi <JConradi@fp1.com>  
**Sent:** Monday, August 29, 2022 11:54:05 AM  
**To:** Theresa Winegar <twinegar@NRCC.org>  
**Cc:** Scott Luginbill <sluginbill@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/  
Coordinated

Just wanted to check back on the TV coordinated as we'd need spot approval and a wire by noon tmrw to ship for a Wednesday start.

Would be great if doable, but if it's too tight a turnaround on this one we can get going with the campaign-only and work on coordinated for the next spot with more lead time.

Just let me know!

Thank you!

-Jon

---

**From:** Theresa Winegar <twinegar@lNRCC.org>  
**Date:** Friday, August 26, 2022 at 5:47 PM  
**To:** Jon Conradi <JConradi@fp1.com>  
**Cc:** Scott Luginbill <sluginbill@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/  
Coordinated

**RPP\_0000064**

Thank you!

---

**From:** Jon Conradi <JConradi@fp1.com>  
**Sent:** Friday, August 26, 2022 5:22 PM  
**To:** Theresa Winegar <twinegar@NRCC.org>  
**Cc:** Scott Luginbill <sluginbill@NRCC.org>  
**Subject:** Re: [EXTERNAL] Chabot First TV Ad/  
Coordinated

Finally got, see public link here:

[https://youtu.be/f4zE\\_gPbgiM](https://youtu.be/f4zE_gPbgiM)

---

**From:** Jon Conradi <JConradi@fp1.com>  
**Date:** Friday, August 26, 2022 at 11:29 AM  
**To:** Theresa Winegar <twinegar@nrcc.org>  
**Cc:** Scott Luginbill <sluginbill@nrcc.org>

**Subject:** Re: [EXTERNAL] Chabot First TV Ad/  
Coordinated

I was told I'd have it by mid-day today, will send as soon as the link is up!

Sent from my iPhone

On Aug 26, 2022, at 11:28 AM, Theresa Winegar <twinegar@nrcc.org> wrote:

Thanks Jon - will circle back ASAP.

Do you have updated b roll in the public domain you can shoot me a link for?

Thanks very much!

---

**From:** Jon Conradi <JConradi@fp1.com>  
**Sent:** Friday, August 26, 2022 9:35 AM  
**To:** Theresa Winegar <twinegar@NRCC.org>;  
Scott Luginbill <sluginbill@NRCC.org>  
**Subject:** [EXTERNAL] Chabot First TV Ad/  
Coordinated

Theresa and Scott,

Hope you're having a great week! I wanted to ask if it may be possible to get approval for NRCC coordinated dollars for the start of our TV program next Wed, 8/31.

See attached our media plan that would reflect the coordinated. This gets us out at an earlier start date. I think the survey results emphasized the importance of us getting up early to start defining the race as a



choice on pocketbook issues and help with the negative info flow.

See here the produced spot:  
<https://fp1strategies.box.com/s/nm2mxpyufhrdoga3hkktok7cc29w9hn3>. Attached is a grid with substantiation.

Our plan is to have this first contrast with Steve to camera, then straight negative on inflation/taxes from a mom, then straight negative on inflation/taxes from a small business owner, then close with another contrast on pocketbook issues from a mom.

**RPP\_0000065**

If possible to get the coordinated on this first spot that'd be hugely appreciated - just let me know and I can get an invoice generated, or if any questions.

Thank you!

-Jon

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WARNING: This email originated outside of the NRCC. DO NOT CLICK links or attachments unless you recognize the sender and know the content is safe.

**RPP\_0000066**

**To:** Jai Chabria[jchabria@madglobalstrategy.com]  
**Cc:** Ryan Dollar[rdollar@nrsc.org]; Louisa Brooks[lbrooks@nrsc.org]  
**From:** Stu Sandler[ssandler@nrsc.org]  
**Sent:** Mon 8/1/2022 7:12:18 PM (UTC)  
**Subject:** Re: Vance - "Ohio Story" - Music Options

<b>REDACTED - PRIVILEGE</b>
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**From:** Jai Chabria <jchabria@madglobalstrategy.com>  
**Date:** Thursday, July 28, 2022 at 3:30 PM  
**To:** Stu Sandler <ssandler@nrsc.org>  
**Subject:** FW: Vance - "Ohio Story" - Music Options  
FYI  
As I mentioned, music is being mixed.

---

**From:** Rob Hennings <rob@mhmediadc.com>  
**Date:** Thursday, July 28, 2022 at 3:25 PM  
**To:** Jordan Wiggins <jwiggins@jdvance.com>, Jai Chabria <jchabria@madglobalstrategy.com>  
**Cc:** Mike Bautista <mike@mhmediadc.com>, Cathryn Kaiser <cathryn@mhmediadc.com>, Miles Martin <miles@mhmediadc.com>, Larry McCarthy <mccarthy@mhmediadc.com>  
**Subject:** Re: Vance - "Ohio Story" - Music Options

Jordan and Jai,

Here are the current cuts of the :30 and the :60  
with the NRSC 100% Disclaimer:

**Ohio Story :30 v13**

<https://www.dropbox.com/s/slpe8y24er7utb9/Vance%20Ohio%20Story%2030%2020220728%20MB%20v13%20NRSC%20100.mp4>

**Ohio Story :60 v14**

<https://www.dropbox.com/s/ugswlby0rsmtcnx/Vance%20Ohio%20Story%2060%2020220728%20MB%20v14%20NRSC%20100.mp4>

Notes:

1. We swapped out that one image as requested - I think the new image of Usha & JD works well;
2. These do NOT have a final audio mix, but these versions are fine for reviews/approvals;
3. I left some of the dirt/grain in some of the older photos - it just felt more authentic.

Rob

**RPP\_0000361**

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This page is blank.

**RPP\_0000362**

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**To:** Stu Sandler[ssandler@nrsc.org]  
**Cc:** Ryan Dollar[rdollar@nrsc.org]; Louisa Brooks[lbrooks@nrsc.org]  
**From:** Jai Chabria[jchabria@madglobalstrategy.com]  
**Sent:** Mon 8/1/2022 8:21 :34 PM (UTC)

**Subject:** Re: Vance - "Ohio Story" - Music Options  
[https://www.dropbox.com/s/tghOg9xjgozy7gx/PENDING%20FINAL%20APPROVAL JDV-22-TV-10H%20Ohio%20Story 1080.mp4?dl=0](https://www.dropbox.com/s/tghOg9xjgozy7gx/PENDING%20FINAL%20APPROVAL%20JDV-22-TV-10H%20Ohio%20Story%201080.mp4?dl=0)

For your approval

614.226.8841

@jchabria

---

**From:** Stu Sandler <ssandler@nrsc.org>  
**Sent:** Monday, August 1, 2022 3:12:18 PM  
**To:** Jai Chabria <jchabria@madglobalstrategy.com>  
**Cc:** Ryan Dollar <rdollar@nrsc.org>; Louisa Brooks <lbrooks@nrsc.org>  
**Subject:** Re: Vance - "Ohio Story" - Music Options

<b>REDACTED - PRIVILEGE</b>
-----------------------------

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**From:** Jai Chabria <jchabria@madglobalstrategy.com>  
**Date:** Thursday, July 28, 2022 at 3:30 PM  
**To:** Stu Sandler <ssandler@nrsc.org>  
**Subject:** FW: Vance - "Ohio Story" - Music Options  
FYI-

As I mentioned, music is being mixed.

---

**From:** Rob Hennings <rob@mhmediadc.com>  
**Date:** Thursday, July 28, 2022 at 3:25 PM

**To:** Jordan Wiggins <jwiggins@jdvance.com>, Jai Chabria <jchabria@madglobalstrategy.com>  
**Cc:** Mike Bautista <mike@mhmediadc.com>, Cathryn Kaiser <cathryn@mhmediadc.com>, Miles Martin <miles@mhmediadc.com>, Larry McCarthy <mccarthy@mhmediadc.com>  
**Subject:** Re: Vance - "Ohio Story" - Music Options  
Jordan and Jai,

Here are the current cuts of the :30 and the :60 with the NRSC 100% Disclaimer:

**Ohio Story :30 v13**

<https://www.dropbox.com/s/s1pe8y24er7utb9/Vance%20Ohio%20Story%2030%2020220728%20MB%20v13%20NRSC%20100.mp4>

**Ohio Story :60 v14**

<https://www.dropbox.com/s/ugswlby0rsmtcnx/Vance%20Ohio%20Story%2060%2020220728%20MB%20v14%20NRSC%20100.mp4?dl=0>

Notes:

**RPP 0000363**

1. We swapped out that one image as requested - I think the new image of Usha & JD works well;
2. These do NOT have a final audio mix, but these versions are fine for reviews/approvals;
3. I left some of the dirt/grain in some of the older photos - it just felt more authentic.

Rob

**RPP 0000364**

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From: Stu Sandler [ssandler@nrsc.org]  
Sent: 8/1/2022 11:02:41 PM  
To: Jordan Wiggins [jwiggins@jdvance.com]  
CC: Kejgan [kegan@flexpointmedia.com]; Jai [jchabria@madglobalstrategy.com]  
Subject: Re: Invoice for Vance placement  
Received. Will process.

---

**From:** Jordan Wiggins <jwiggins@jdvance.com>  
**Date:** Monday, August 1, 2022 at 5:59 PM  
**To:** Stu Sandler <ssandler@nrsc.org>  
**Cc:** Kejgan <kegan@flexpointmedia.com>, Jai <jchabria@madglobalstrategy.com>  
**Subject:** Invoice for Vance placement  
Stu -

Attached is the invoice pending your approval. I've added our media buyer Kegan on here if you have any questions.

Thank you,  
Jordan

--

Jordan Wiggins  
JD Vance for Senate  
810.656.5510

**RPP 0000365**

<b>REDACTED - PRIVILEGE</b>
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From: **Jordan Wiggins** <jwiggins@jdvance.com>  
Date: Wed, Jul 6, 2022 at 7:47 AM  
Subject: Vance Script  
To: Stu Sandler <Ssandler@nrsc.org>  
Stu -

Please see below. We made a few adjustments during the filming but this is the base line.

**USHA:**

Our family's story ... is an *Ohio* story.  
My husband, JD, grew up in Middletown.  
His mom struggled with addiction. His dad wasn't there.  
He was raised by his Mamaw.  
...and served as a Marine in Iraq.  
We met in school - and I fell in love with him.  
He's an incredible father.  
JD shared *his* family's story in *Hillbilly Elegy*.  
And JD wants for Ohio...what Ohio *gave* him.  
A fighting chance.

**JD VANCE:**

I'm JD Vance and I approve this message.  
NRSC ALT: I'm candidate JD Vance and I approve this message.  
Radio ALT: I'm JD Vance, candidate for US Senate, and I approve this message.

--



Jordan Wiggins  
JD Vance for Senate  
810.656.5510

**RPP\_0000366**

**USHA:**

Our family's story ... is an *Ohio* story.  
My husband, JD, grew up in Middletown.  
His mom struggled with addiction. His dad wasn't there.  
He was raised by his Mamaw.  
...and served as a Marine in Iraq.  
We met in school - and I fell in love with him.  
He's an incredible father.  
JD shared *his* family's story in *Hillbilly Elegy*.  
And JD wants for Ohio...what Ohio gave him.  
A fighting chance.

**JD VANCE:**

I'm JD Vance and I approve this message.  
NRSC ALT: I'm candidate JD Vance and I approve this message.  
Radio ALT: I'm JD Vance, candidate for US Senate, and I approve this message.

**RPP 0000367**

<b>REDACTED - PRIVILEGE</b>
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From: **Kegan Beran** <kegan@flexpointmedia.com>  
Date: Mon, Aug 1, 2022 at 6:04 PM

Subject: Re: Invoice for Vance placement  
To: Stu Sandler <ssandler@nrsc.org>  
Cc: Jai <jchabria@madglobalstrategy.com>, Jordan Wiggins <jwiggins@jdvance.com>

Thanks Stu. We're locked an loaded with buys.  
Appreciate your help.

On Mon, Aug 1, 2022 at 7:02 PM Stu Sandler <ssandler@nrsc.org> wrote:

Received. Will process.

---

**From:** Jordan Wiggins <jwiggins@idvance.com>  
**Date:** Monday, August 1, 2022 at 5:59 PM  
**To:** Stu Sandler <ssandler@nrsc.org>  
**Cc:** Kejgan <kegan@flexpointmedia.com>, Jai <jchabria@madglobalstrategy.com>  
**Subject:** Invoice for Vance placement

Stu -

Attached is the invoice pending your approval. I've added our media buyer Kegan on here if you have any questions.

Thank you,  
Jordan

--

Jordan Wiggins  
JD Vance for Senate  
810.656.5510

--

Kegan Beran

**RPP 0000368**

**FlexPoint Media**  
**@FlexPointMedia**  
Cell - 614-586-3862  
Office- 202-417-2274  
**@Kegan\_r**

**RPP 0000369**



RPP\_0000370

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
CINCINNATI DIVISION**

<p>NATIONAL REPUBLICAN SENATORIAL COMMITTEE, <i>et al.</i>,                                  Plaintiffs,                                  v. FEDERAL ELECTION COMMISSION, <i>et al.</i>,                                  Defendants.</p>	<p>No. 1:22-cv-639 Hon. Douglas R. Cole</p>
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**EXPERT REPORT OF RAYMOND J. LA RAJA**

## I. QUALIFICATIONS

My name is Raymond J. La Raja, I am over the age of 18, and I suffer no disability that would preclude me from giving this expert report.

I am a professor of political science at the University of Massachusetts, Amherst, where I have taught since 2002 and served as an Associate Dean for the past three years. My research and teaching focus on American political parties, elections, and campaign finance. I received my bachelor's degree from Harvard University in 1987, and a Master in Public Policy from Harvard's Kennedy School of Government in 1992. I was also a Coro Fellow in Public Affairs in 1988 in California, where I gained political experience through internships for a labor union, the public affairs division of a Fortune 500 company, a not-for-profit organization, and a congressional campaign.

I began studying campaign finance and political parties as a graduate student at the University of California, Berkeley, where I earned my Ph.D. in political science in 2001. My doctoral dissertation, entitled "American Political Parties in the Era of Soft Money," examined how political parties spent non-federal funds (so-called "soft money") during the 1990s.

Based on my research, I have published four books, two of which have been specifically about the impact of campaign finance laws on American political parties: *Small Change: Money, Political Parties and Campaign Finance Reform* (2008),<sup>1</sup> and *Campaign*

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<sup>1</sup> Raymond J. La Raja, *Small Change: Money, Political Parties, and Campaign Finance Reform* (Univ. of Michigan Press 2008).

*Finance and Political Polarization: When Purists Prevail* (2015).<sup>2</sup> The 2015 book, which I co-wrote, won the American Political Science Association's prestigious 2016 Virginia Gray Award, awarded to the best book on U.S. state politics or policy published in the preceding three calendar years. The opinions I offer in this report emerge from these two books, as well as at least a dozen peer-reviewed articles I have written about the dynamics of campaign finance in the United States. I have also contributed a featured co-authored article to *The Atlantic* (2019) describing the parlous state of American political parties, and the consequences for U.S. politics.

I have been a past President of the Political Organizations and Parties Section of the American Political Science Association (2015-2017), co-founder and past co-editor of *The Forum: A Journal of Applied Research in Contemporary Politics*, and co-founder and co-director of the UMass Poll, which regularly conducts national surveys on U.S. politics. I also served for many years on the Academic Advisory Board for the *Campaign Finance Institute*, a Washington, D.C., non-partisan think tank for evaluating and recommending policies related to campaign finance. Based on my doctoral dissertation research, I previously authored an expert report on behalf of the plaintiffs in *McConnell v. Federal Election Commission*, Civ. No. 02-874 (D.D.C. 2002).

Finally, I have served on several committees organized by academics to address issues in the

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<sup>2</sup> Raymond J. La Raja & Brian F. Schaffner, *Campaign Finance and Political Polarization: When Purists Prevail* (Univ. of Michigan Press 2015).

campaign finance system, contributing, for example, to the Bipartisan Policy Center's major report, *The State of Campaign Finance in the U.S.* (2018).<sup>3</sup> Most recently I was asked to serve on the steering committee of a national task force led by Ned Foley (The Ohio State University), Larry Diamond (Stanford University), and Richard Pildes (NYU) aimed at making electoral reform recommendations to improve political representation and governing. In this task force, I also lead a working group of intellectually diverse scholars on matters of campaign finance reform.

My academic record, publications, and work experience are detailed further in a copy of my curriculum vitae which is attached at the end of this document as Exhibit A.

## II. SCOPE OF ENGAGEMENT

I have been retained by Jones Day on behalf of their clients, plaintiffs National Republican Senatorial Committee ("NRSC"), National Republican Congressional Committee ("NRCC"), Senator James David Vance, and former Congressman Steven Chabot, to provide my expert opinions on the activities and importance of political parties to American democracy and how campaign finance reforms—particularly the Federal Election Campaign Act's ("FECA") limits on coordinated expenditures by political parties in support of their candidates, 52 U.S.C. § 30116(d)—

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<sup>3</sup> Nathaniel Persily, Robert F. Bauer & Benjamin L. Ginsberg, *Campaign Finance in the United States: Assessing an Era of Fundamental Change* 34 (Bipartisan Policy Center 2018), available at <https://bipartisanpolicy.org/report/the-state-of-campaign-finance>.



have undermined and weakened political parties. I also have been asked to review and opine on the opinions expressed in the expert report submitted on September 15, 2023, by Professor Johnathan Krasno, the expert for defendant Federal Election Commission (“FEC”). I have been retained and am being compensated for this work at the rate of \$800 per hour. I will receive the same amount regardless of the outcome of this litigation or the substance of my opinions.

In reaching my opinions set forth below, I have relied on data from the FEC, Campaign Finance Institute, Adam Bonica (Stanford University), and OpenSecrets; my own prior research, books, and other publications regarding campaign finance and political parties; the political science literature, including the various sources cited herein; filings in this case, including declarations from the NRSC’s and NRCC’s Executive Directors submitted by plaintiffs; and certain media reports.

### **III. THE FRAGILE PLACE OF POLITICAL PARTY COMMITTEES IN U.S. DEMOCRACY TODAY**

It is an understatement to say that political parties are important to democracy. They are indeed essential. I doubt any political scientist could conceive how our mass democracy could function without them.<sup>4</sup> In fact,

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<sup>4</sup> On this point, see E. E. Schattschneider, *Party Government*, American Government in Action Series (Transaction Publishers 2009) (1942).

recent work makes a strong argument that when parties are weak “democracies die.”<sup>5</sup>

But American political parties have become very weak, even though partisanship in the electorate is strong.<sup>6</sup> While parties vote more uniformly in Congress than in previous eras, the many recent obstacles in passing budgets to avoid government closure is evidence that collective action in government has been undermined due to the state of our weak political parties.

A key component of this weakness is that parties have lost much of their capacity to shape elections through their control over financial resources. As a result of the campaign finance laws, parties have become nothing but one among many committees in an increasingly fragmented marketplace.<sup>7</sup> This fragmentation gives unusual power to narrow interests and extremist candidates backed by unique “Super PACs” (independent expenditure-only committees) and an army of small donors who are

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<sup>5</sup> Steven Levitsky & Daniel Ziblatt, *How Democracies Die* (Crown 2018).

<sup>6</sup> Julia Azari, *Weak Parties and Strong Partisanship Are a Bad Combination*, Vox (Nov. 3, 2016), <https://www.vox.com/mischiefs-of-faction/2016/11/3/13512362/weak-parties-strong-partisanship-bad-combination>.

<sup>7</sup> See Richard H. Pildes, *Romanticizing Democracy, Political Fragmentation, and the Decline of American Government*, 124 Yale L.J. 804, 809 (2015) (describing “the external diffusion of political power away from the political parties as a whole and the internal diffusion of power away from the party leadership to individual party members and officeholders”).

unreflective of the American electorate.<sup>8</sup> In other words, as I will describe below, parties have become diminished actors in the campaign environment, competing with an array of lightly regulated single-issue groups that lack the accountability of parties because they are neither transparent nor rooted in institutions of government.<sup>9</sup>

Among the many problems of the prevailing campaign finance system is that parties lack the capacity to work closely and collaboratively with their own candidates, especially on public advertising campaigns—perceived as the most valuable form of political speech. Instead, if they wish to engage robustly in advocacy for their candidates, they increasingly must do so through independent expenditures, establishing administratively costly firewalled units that amount to separate entities divorced from the party’s main operation. This causes an unnatural and inefficient separation in party activity from candidate campaigns: the parties are forced to operate like interest groups, disrupting their natural association and identity of interests with their

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<sup>8</sup> Zachary Albert & Raymond La Raja, *Small Donors in US Elections*, 35 *Politique Américaine* 15 (2020), available at <https://doi.org/10.3917/polam.035.0015>.

<sup>9</sup> See generally Samuel Issacharoff, *Outsourcing Politics: The Hostile Takeover of Our Hollowed-out Political Parties*, 54 *Hous. L. Rev.* 845, 845-80 (2017); La Raja & Schaffner, *supra* note 2; Cory Manento, *Party Crashers: Interest Groups as a Latent Threat to Party Networks in Congressional Primaries*, 27 *Party Politics* 137, 137-48 (2021); Stan Oklobdzija, *Dark Parties: Unveiling Nonparty Communities in American Political Campaigns*, *American Political Science Review* 1, 1-22 (April 5, 2023).

own candidates and losing out on the strategically effective benefits of close communications with them—not to mention, lower costs available for candidate-sponsored advertising. My colleagues who study politics in other established democracies are perplexed when I explain to them that American political parties must declare their independence from their own candidates if they wish to support them vigorously in elections. Political parties and candidates are inextricably bound together in ways that promote collective action and mutual accountability. Separating them through such a highly unusual arrangement defies common sense and undermines coherent electoral politics.

At the federal level, the problem has its roots in a series of “good government” reforms to the campaign finance system starting with Congress’s 1974 amendments to FECA, which I will discuss momentarily. The combination of such anti-party reforms and court decisions has pushed money and clout away from political parties and into non-transparent, unaccountable venues, increased the influence of wealthy interests, and rendered the situation more difficult for parties to manage their brand by providing robust support to their candidates. This has become increasingly true over the last two decades, following Congress’s enactment of the Bipartisan Campaign Reform Act of 2002, commonly referred to as “McCain-Feingold” after the bill’s sponsors, which removed soft money from the political parties. These anti-party reforms have institutionalized pathologies in the electoral system, in which parties must set up independent operations to robustly advocate for their candidates. As a

consequence, contrary to Professor Krasno's claim, since the 1974 campaign finance reforms, the political parties (including plaintiffs NRSC and NRCC) have done anything but "prosper[] beyond their wildest dreams."

#### **IV. WHY POLITICAL SCIENTISTS ARE STRONG SUPPORTERS OF POLITICAL PARTIES**

The most important feature of political parties in a mass democracy is that they allow for accountable collective action via elections. In the classic formulation, a party creates a policy agenda with its activists and officials; candidates link themselves to this agenda when bearing the party label (with variations depending on the local context); parties mobilize voters based on their policies and candidates; and once in office, the party pursues its agenda. If the party fails to deliver, they lose seats and majorities. In a two-party system this compels them to rethink their policies and strategies in response to the preferences of a broad electorate.

A political party can only act responsibly when legislative leaders have the resources necessary to punish and reward party members to help forge coalitions on legislation that supports the party's brand. When parties build a consensus and act on it, the voters can connect their votes to policies pushed by the parties. According to Stanford University political scientist Morris Fiorina, "[t]he only way collective responsibility has ever existed, and can exist given our institutions, is through the agency of the political party; in American politics, responsibility requires

cohesive parties.”<sup>10</sup> Fiorina’s description is the ideal, but it is farther from reality than it should be thanks to many anti-party electoral reforms. In the realm of campaign finance reform, the significant constraints on political party resources and the ability of parties to work closely with their candidates has rendered them less able to shape their identities and forge collective action.

One of the most prominent analysts of political parties, Julia Azari, a political scientist at Marquette University, worries that parties have little influence over candidates and officeholders because they do not have as much to offer them. I agree. Most critically, this means the party elites cannot coordinate to advance the best quality candidates, or hold together coalitions in the task of governing. As Azari writes: “The defining characteristic of our moment is that parties are weak while partisanship is strong.... The [p]arties have been stripped (in part by their own actions) of their ability to coordinate and bargain....bargaining breaks down when no one has anything that anyone else wants.”<sup>11</sup> In a recent column in *The New York Times* by Thomas Edsall, Yphtach Lelkes, a political scientist at the University of Pennsylvania, also attributed the divisiveness and polarization in the U.S. to weak political parties. Like Azari, Lelkes says, “while partisanship is very strong, parties are very weak. Models show that when parties are strong, and leaders can impose discipline on their members, the parties will converge on the median

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<sup>10</sup> Morris P. Fiorina, *The Decline of Collective Responsibility in American Politics*, 109 *Daedalus* 25, 26 (1980).

<sup>11</sup> Azari, *supra* note 6.

voter, who is far more moderate than the median politician.”<sup>12</sup>

Many other top experts agree with my opinion that party organizations are too weak for the tasks before them. As noted earlier, for more than a year I have been a member of a steering committee for a national task force of experts to recommend electoral reforms. The academics who comprise the task force are leading political scientists and legal scholars, with perspectives across the ideological spectrum. We have different preferences on the mix of reforms, but one theme stands out clearly: scholars overwhelming believe the political parties need to be strengthened in the U.S. system, ranging from changes to candidate nominations to campaign finance, in addition to other institutional shifts.

## **V. HOW CAMPAIGN FINANCE REFORMS HAVE UNDERMINED AND WEAKENED POLITICAL PARTIES**

As mentioned at the outset, I have written two books that illustrate how campaign finance reforms have undermined the functioning of political parties and how party-centered rules improve the political system. The first book, *Small Change: Money, Political Parties and Campaign Finance Reform* (2008), predicted how the soft-money reforms in McCain-Feingold would deteriorate functional relationships between national and state parties,

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<sup>12</sup> Thomas Edsall, Opinion, *A Perfect Storm for the Ambitious, Extreme Ideologue*, N.Y. Times (Sept. 20, 2023), (quoting Lelkes, <https://www.nytimes.com/2023/09/20/opinion/populism-polarization-trump-europe.html>).

weaken the parties relative to narrowly based advocacy groups, and lead to immense spending by non-party groups with opaque sounding names.<sup>13</sup> Regrettably, these predictions all turned out to be true.

In removing party soft money, McCain-Feingold made it more difficult for political parties to perform vital integrative functions. Instead of encouraging parties, candidates, and allied groups to campaign collectively in elections, the laws give these groups incentives to campaign independently of each other. This dynamic stimulates a kind of fragmented campaigning that reduces political accountability, allowing candidates to distance themselves from the negative campaigns waged against their opponents by political parties or interest groups. It also allowed interest groups, such as Swift Boat Veterans for Truth or MoveOn.org, to influence electoral outcomes in their own right, even though most of the public has no idea what these groups stand for and who supports them.

While it is constitutional and perfectly reasonable—indeed vital to democratic politics—for political groups to criticize or show support for government leaders, the electoral system would benefit to the degree that rules encouraged diverse partisans to form coalitions and pool resources under the banner of a political party. Such arrangements would nurture a politics of compromise rather than factional confrontation, while providing the voters with a relatively clear understanding of the policy differences between the major parties. Instead, we have a system that abets polarization between the parties because political

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<sup>13</sup> La Raja, *supra* note 1.



factions—often amorphous and transient—have strong incentives to mobilize adherents on hot-button issues and force candidates to focus on narrowly-based moral agendas.

Today more than ever, existing American campaign finance laws, which limit how much political parties and candidates can work together, have encouraged the parties to institutionalize the practice of independent campaigning. In other words, parties run campaigns separately and in parallel with candidates. This strategy allows candidates to benefit from party campaigns while claiming they cannot control what the party does. Thus, the bonds of accountability have become weaker in the U.S. campaign finance system through laws that limit party and candidate coordination. While the weak condition of American political parties relative to those in other democracies cannot be attributed solely to campaign finance laws, these regulations have played no small part in preventing parties from becoming more robust institutions, mainly by unrealistically limiting the size of political contributions and their capacity to work closely with their own candidates.

My second book on campaign finance and parties, *Campaign Finance and Political Polarization: When Purists Prevail* (2015), sought to understand whether campaign finance laws in the American states might be contributing to polarization.<sup>14</sup> The basic premise was that states with laws constraining the political parties—including limits on party-candidate coordination—were more likely to result in polarized

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<sup>14</sup> La Raja & Schaffner, *supra* note 2.

legislatures compared to states with laws allowing parties to robustly support their candidates. My co-author, Brian Schaffner, and I viewed the parties as relatively pragmatic players in the political system who look to recruit candidates who reflect the preferences of the district as a way of maximizing the chances of winning the seat. In contrast, we viewed activist groups and their donors as seeking out ideologues to push their issues, even if at odds with the representation of the district.

Our analysis showed that political parties are indeed more likely to provide financial support to moderate candidates in competitive seats, and further, American states with party-supportive laws tend to be less polarized. We do not attribute polarization simply to money in politics, but we believe it sustains and accelerates these trends. The book's conclusion is that financially strong party committees, unfettered from restrictions on candidate financial support, are able to temper excessive polarization and help their party build broader coalitions to win elections.

I have also written more than a dozen articles on related subjects. One article, *Why Super PACs: How the American Party System Outgrew the Campaign Finance System* (2013), explains how campaign finance laws have been squeezing money and power from political parties precisely at a time of heightened stakes for control of the U.S. Congress.<sup>15</sup> In this context, the limits on party spending in the form of coordinated expenditures (from the 1974 reforms)

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<sup>15</sup> Raymond J. La Raja, *Why Super PACs: How the American Party System Outgrew the Campaign Finance System*, 10 *The Forum* 91 (2013).

proved to be exceptionally harmful and ungenerous, especially as the cost of elections mounted. Partisans had strong incentives to coordinate and organize in pursuit of majorities. But, following the court decisions in *Citizens United v. FEC*, 558 U.S. 310, 360 (2010), and *Speechnow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), the significant restrictions on the political parties—both the base limits on contributions to parties and on the parties’ financial support of their candidates through contributions and party coordinated expenditures—incentivized partisans to create Super PACs, which lack the fundraising constraints. “Given the favorable regulatory status of non-party organizations compared to party organizations,” I wrote, “it is not surprising that partisans are putting more reliance on campaign vehicles such as Super PACs.”<sup>16</sup> My research for this article found a declining importance of political parties in financing elections beginning with the 2004 elections, in the wake of McCain-Feingold, as non-party spending on media had begun surging. This has only become starker over the last decade.<sup>17</sup> The consequences have been a fragmented campaign environment with multiple committees (mostly unrecognizable among the public), diminished accountability, and increased campaign costs.

There are many scholars who share my views about how the campaign finance laws are anti-party. Nathaniel Persily, a top expert on election law and law professor at Stanford University, concurs that the current campaign finance system “move(s) money

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<sup>16</sup> *Id.* at 101.

<sup>17</sup> *Id.* at 101-02.

from accountable actors, the political parties, to unaccountable groups.” As Persily puts it, “The parties are accountable not only because of more stringent contribution disclosure requirements but also by their role in actual governance with their ties to congressional and executive branch officials and their involvement with legislative decision making.”<sup>18</sup> Another top expert, Sam Issarachoff, explains how parties have lost the ability to control critical organizational functions, leaving many partisans to instead “buy not make” essential party activities. He writes, “in the absence of the coordinating role of the party, politics becomes more atomized, rhetoric hardens, and governance becomes more complicated.”<sup>19</sup> I agree.

Even the progressive reform organization, The Brennan Center for Justice, has rightfully acknowledged in the aftermath of the McCain-Feingold reforms, which they championed, that more attention should be paid to the health of political parties in our campaign finance system. In a blog post they wrote that “the rise of powerful independent organizations has weakened political parties, leading to circumvention of campaign finance regulation and fewer points of entry into the political process by the party faithful.”<sup>20</sup> They followed up with a report

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<sup>18</sup> Thomas B. Edsall, Opinion, *For \$200, a Person Can Fuel the Decline of Our Major Parties*, N.Y. Times (Aug. 30, 2023) (quoting Nathaniel Persily), <https://www.nytimes.com/2023/08/30/opinion/campaign-finance-small-donors.html>.

<sup>19</sup> Issacharoff, *supra* note 9, at 846.

<sup>20</sup> Brennan Center for Justice, *The Two Trends that Matter for Party Politics* (Dec. 9, 2014),

linking stronger parties to stronger democracy, although they did not go far enough in recommending removing many of the chief burdens on party finances, including low limits on coordinated expenditures.<sup>21</sup>

## **VI. WHY FECA'S LIMITS ON COORDINATED PARTY EXPENDITURES BURDEN POLITICAL PARTY COMMITTEES**

In my view there is little doubt that limits on coordinated expenditures impose a severe burden on political party committees and their candidates. Restricting the parties' ability to coordinate with their candidates is not only "a parody of what parties are about in most democracies, but encourages inefficient use of resources (hence ever-more money is needed), legal gamesmanship, and diminished political accountability."<sup>22</sup> The parties are limited to investing only a small fraction of funds in efficient and effective coordinated advocacy with their candidates, even in the most competitive races. To compensate for this, they must operate independently from their own candidates—or sit back and watch unaccountable outside groups do so—which is detrimental to a well-functioned party system. Regrettably, the limits on party-candidate coordination are unnecessary, since less intrusive restrictions already address any

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<https://www.brennancenter.org/our-work/analysis-opinion/two-trends-matter-party-politics>.

<sup>21</sup> Ian Vandewalker & Daniel I. Weiner, *Stronger Parties, Stronger Democracy: Rethinking Reform*, Brennan Center for Justice 14 (Sept. 16, 2015), <https://www.brennancenter.org/our-work/research-reports/stronger-parties-stronger-democracy-rethinking-reform>.

<sup>22</sup> La Raja, *supra* note 15, at 103.

potential for *quid pro quo* corruption—the only concern justifying campaign finance regulation. Let me take up each of these points.

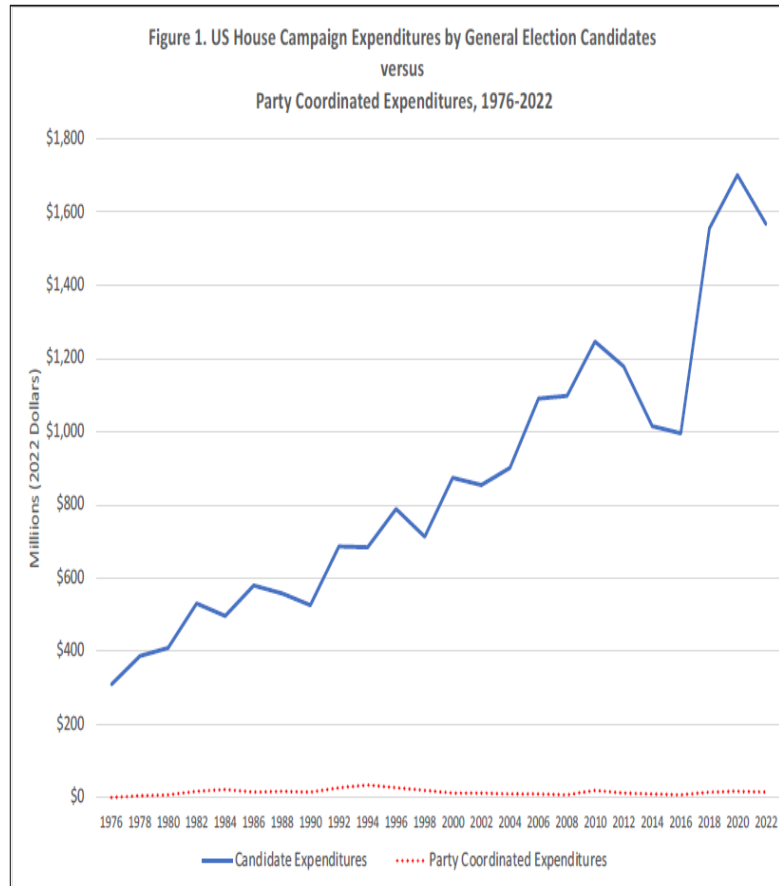
**A. The value of allowable coordinated party expenditures is extremely low relative to the increasing cost of election campaigns.**

The amount that parties can spend in coordination with their candidates has always been unreasonably low relative to the actual costs of campaigns. By my estimate coordinated party expenditures in House races have never exceeded 1% of total expenditures by general election candidates. To be sure, parties do not invest coordinated expenditures in every race—that would be a waste of money. But the staggering difference between party outlays for coordinated expenditures and candidate expenditures should provide some perspective on the relatively small sums controlled by the party committees.

Figure 1 illustrates the small part played by coordinated party expenditures in House elections. It shows spending for general election candidates versus party coordinated spending, both adjusted for inflation (the number of total candidates in any given year has not fluctuated much). Keep in mind that candidate expenditures are hardly the entire sum of what is spent in the most competitive contests, with millions coming from Super PACs and other independent groups as well. In the 2022 elections, House candidates spent more than \$1.5 billion. The sum of coordinated party expenditures in that cycle was just \$15.8 million—which is less than they spent as far back as 1982 when the parties spent the equivalent of \$18.2 million in 2022 dollars.

It is remarkable that the sum of coordinated party expenditures has not increased significantly during a period of intense competition for majority control of Congress, when election costs have soared. This fact suggests clearly that FECA's severe limits on coordinated party spending have made this otherwise most effective form of candidate support less useful than alternatives such as party independent spending or reliance on allied partisans to spend through Super PACs. Without the party coordinated expenditure limits in place, however, there is no doubt that party committees would cease to engage in these less efficient, more costly independent expenditures.

One problem is that campaign spending growth has significantly outpaced the inflation rate adjustments made by the FEC for coordinated expenditures. Between 1976 and 2022 (the years for which I have data from the Campaign Finance Institute), the average rate of increase in campaign spending each cycle by House candidates increased by as much 18%. In contrast, the average increase in the inflation rate for the 2-year cycle has been 7.8% using the CPI. In short, even with inflation adjustments that the FEC applies to limits on coordinated party expenditures, the limits have hardly kept pace with the rising cost of House elections.



The Senate elections tell a parallel story about the highly constrained amounts of coordinated party expenditures. [Figure 2](#) shows a similar graph as the previous one, but adds other forms of party support, including party contributions and independent spending. Once again, the steep rise in candidate spending for Senate races is clear. In inflation-adjusted terms, Senate general election candidates spent \$1.316 billion in 2022 compared to \$196 million in 1976. Clearly, the campaign world has changed. At



the same time coordinated party expenditures have typically made up about 5% of combined total of candidate and coordinated party expenditures. Note how the amount of party contributions barely registers in Figure 2. The most significant support that party committees have provided has been in the form of less effective, inefficient independent expenditures, which they have relied on since the early 2000s, after McCain-Feingold prevented them from using soft money. Even here, independent expenditures made up 22% of combined candidate and party spending at the high point in 2008, and just 5% in 2022.

To drill down further, I looked at the statistics from the FEC for candidates who received coordinated spending in the most recent 2022 elections. Keep in mind that, for the two major parties, only the Republican National Committee (“RNC”) and Democratic National Committee (“DNC”) and the state party committees in each relevant state are allowed to make coordinated party expenditures for House and Senate races. Each of those committees, however, may, by FEC regulation, assign its authority to another party committee. 11 C.F.R. § 109.33. As I understand it, the RNC has historically given the party’s Senate and House national committees near majority control over coordinated expenditures for their relevant races—although not always because these committees occasionally have different priorities.<sup>23</sup> The assignment rules—and the need to

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<sup>23</sup> Ben Karmisar, *Trump Primary Threats Could Put RNC in a Bind*, The Hill (Aug. 8, 2017), <https://thehill.com/homenews/campaign/347724-trump-primary-threats-could-put-rnc-in-a-bind>.

ask another committee for permission to coordinate with their candidates—obviously add a layer of complexity to making coordinated party expenditures for committees like the NRSC and NRCC.

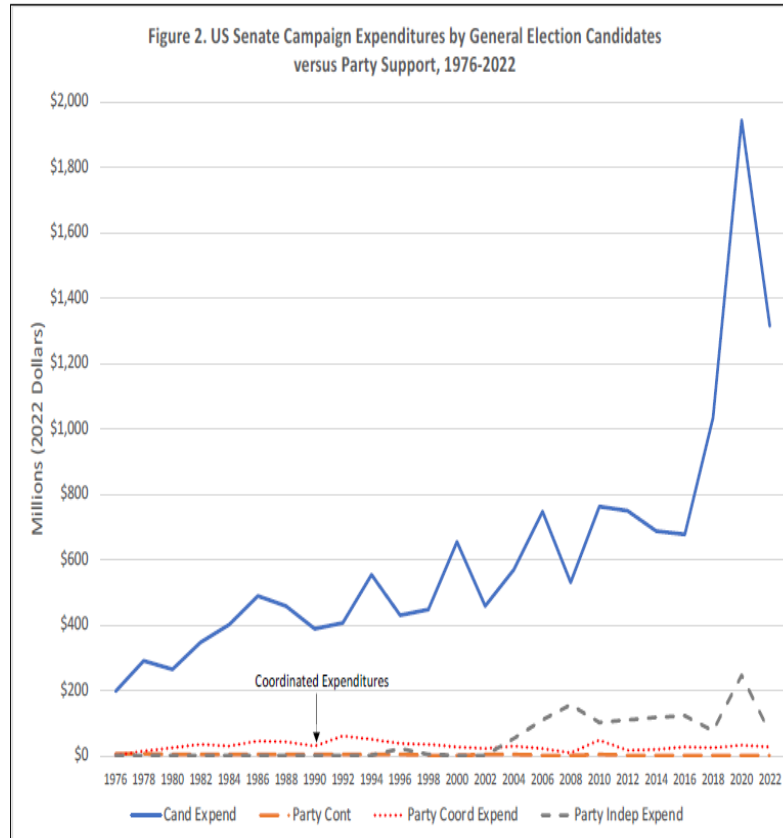


Table 1 shows the amounts of coordinated party expenditures for Republican Senate candidates in 2022, based on reporting data available on the FEC's website. The Republican Party, with the NRSC as its primary actor, allocated coordinated expenditures in 21 Senate contests. In 10 high-stakes contests, the party spent 94% or more of the maximum coordinated

limit—in 4 of the contests, including the Ohio Senate race, it spent up to 97-99% of limit. As this shows, even in the most competitive of races, the parties often fall just shy of reaching the limit due to compliance concerns. They regularly reserve some portion of their coordinated authority in the event of unanticipated campaign expenses coming up post-election that need to be deemed coordinated to ensure legal compliance and thus avoid FEC or other enforcement actions.

Table 1. Republican Party Coordinated Expenditures in 2022 Senate Elections

State	Coordinated Expenditures NRSC	Coordinated Expenditures Other Party (EEC)	Coordinated Limit	Percent of Limit Used	Campaign General Operating Expenditures	Total Campaign and Coordinated Expenditures	Coordinated as % of Total Expenditures in General Election
Pennsylvania	\$2,237,000	\$0	\$2,262,000	<b>99%</b>	\$30,543,095	\$32,780,095	7%
Ohio	\$1,991,800	\$0	\$2,016,800	<b>99%</b>	\$12,281,410	\$14,273,210	14%
Georgia	\$1,783,118	\$0	\$1,819,200	<b>98%</b>	\$55,346,166	\$57,129,284	3%
Wisconsin	\$957,996	\$22,504	\$1,015,800	<b>97%</b>	\$10,900,099	\$11,880,599	8%
Arizona	\$1,199,200	\$0	\$1,244,800	<b>96%</b>	\$11,594,769	\$12,793,969	9%
Florida	\$3,475,000	\$223,622	\$3,845,200	<b>96%</b>	\$46,222,205	\$49,920,827	7%
Nevada	\$512,385	\$0	\$537,600	<b>95%</b>	\$14,148,568	\$14,660,954	3%
North Dakota	\$0	\$208,099	\$219,800	<b>95%</b>	\$3,665,564	\$3,873,663	65%
North Carolina	\$1,700,000	\$0	\$1,813,400	<b>94%</b>	\$9,876,656	\$11,576,656	15%

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Iowa	\$505,44	\$0	\$540,00	<b>94%</b>	\$7,441,6	\$7,947,1	6%
	4		0		85	28	
New Hampshire	\$185,00	\$0	\$249,00	<b>74%</b>	\$3,250,4	\$3,435,4	5%
	0		0		43	43	
Missouri	\$0	\$517,81	\$1,051,600	<b>49%</b>	\$3,642.8	\$4,160,6	12%
		9			74	93	
Washington	\$625,00	\$1,600	\$1,332,800	<b>47%</b>	\$15,101,605	\$15,728,205	4%
Colorado	\$175,45	\$125,00	\$1,004,200	<b>30%</b>	\$6,831.6	\$7,132,0	4%
	0	0			31	81	
Connecticut	\$162,50	\$0	\$632,20	<b>26%</b>	\$1,491,3	\$1,653,8	10%
	0		0		95	95	
Utah	\$30,000	\$61,971	\$525,60	<b>17%</b>	\$5,814,9	\$5,906,8	2%
			0		13	84	
Vermont	\$15,000	\$0	\$219,80	<b>7%</b>	\$324,53	\$339,53	4%
			0		8	8	
Alabama	\$0	\$18,262	\$861,20	<b>2%</b>	\$1,618,1	\$1,636,4	1%
			0		85	47	
Arkansas	\$6,720	\$0	\$510,60	<b>1%</b>	\$2,142,4	\$2,149,1	0%
			0		29	49	
Indiana	\$0	\$11,340	\$1,147,200	<b>1%</b>	\$5,717,3	\$5,728,7	0%
					71	11	
Kentucky	\$0	\$7,362	\$768,00	<b>1%</b>	\$10,368,0	\$10,375,0	0%
			0		050	412	
	<b>\$15,561</b>	<b>\$1,197,</b>			<b>\$258,32</b>	<b>\$275,08</b>	<b>6%</b>
	<b>,613</b>	<b>579</b>			<b>3,651</b>	<b>2,843</b>	

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**Data Source: Federal Election Commission<sup>24</sup>**

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<sup>24</sup> FEC Campaign Finance Data, 2021-2022 Disbursements for Party Coordinated Expenditures (all spenders), <https://www.fec.gov/data/party-coordinated-expenditures> (Republican Senate candidates filtered); FEC, Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 87 Fed. Reg. 5,822, 5,822-23 (Feb. 2, 2022) (listing 2022 coordinated party expenditure limits); Line 17 Operating Expenditures Made by House or Senate Committees, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00230482&committee](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00230482&committee)

Illustrating how limited the parties' role has become under these limits, for all 21 of these 2022 Senate contests, the Republican Party's coordinated party expenditures made up only 6% of the total of all campaign post-primary operating expenditures and

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id=C00473371&committee id=C00482984&committee id=C00614776&committee id=C00620518&committee id=C00783142&committee id=C00784165&committee id=C00787135&committee id=C00787853&committee id=C00795930&two year transaction period=2022&min date=05%2F04%2F2022&max date=12%2F31 %2F2022&line number=F3-17 (Budd, Grassley, Hoeven, Johnson, Laxalt, Masters, Oz, Rubio, Vance, and Walker);  
[https://www.fec.gov/data/disbursements/?data type=processed&committee id=C00459255&committee id=C00473 827&committee id=C00476317&committee id=C00711010&committee id=C00775015&committee id=C007767 65&committee id=C00781443&committee id=C00791186&committee id=C00804377&committee id=C0080969 9&two year transaction period=2022&min date=05%2F04%2F2022&max date=12%2F31%2F2022&line number=F3-17 \(Bolduc, Boozman, Britt, Lee, Levy, Malloy, O'Dea, Schmitt, Smiley, and Young\);](https://www.fec.gov/data/disbursements/?data type=processed&committee id=C00459255&committee id=C00473 827&committee id=C00476317&committee id=C00711010&committee id=C00775015&committee id=C007767 65&committee id=C00781443&committee id=C00791186&committee id=C00804377&committee id=C0080969 9&two year transaction period=2022&min date=05%2F04%2F2022&max date=12%2F31%2F2022&line number=F3-17 (Bolduc, Boozman, Britt, Lee, Levy, Malloy, O'Dea, Schmitt, Smiley, and Young);)  
[https://www.fec.gov/data/disbursements/?data type=processed&committee id=C00496075&two year transaction period=2022&min date=05%2F04%2F2022&max date=12%2F31%2F2022&line number=F3-17 \(Paul\).](https://www.fec.gov/data/disbursements/?data type=processed&committee id=C00496075&two year transaction period=2022&min date=05%2F04%2F2022&max date=12%2F31%2F2022&line number=F3-17 (Paul).) Where available, I computed general election operating expenditures for each committee by filtering those disbursements designated as "G2022" in the data. When such designations were not available, I derived the total by filtering for disbursements made the day after the relevant primary election through the end of 2022. For Georgia (Walker), the operating expenditure figure also includes spending toward the general election runoff. For Florida (Rubio), the figure includes all 2021-2022 spending by the campaign, since Florida canceled its Republican primary election. All referenced data last accessed October 12, 2023.

party coordinated expenditures. In the 10 high-stakes contests where the NRSC spent 94% or more of the party's coordinated expenditure authority, the party's coordinated expenditures exceeded 9% of total party/candidate campaign spending *in only 4 of the races*. At the top end, in North Carolina, party coordinated spending reached 15% of total; at the low end, in Georgia and Nevada, it did not exceed 3%. As for the Democratic Party, with the DSCC taking the lead, the party spent over \$8.7 million on 17 Senate candidates,<sup>25</sup> whose campaigns collectively spent almost \$452 million on general election operating expenditures.<sup>26</sup> That means that coordinated party

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<sup>25</sup> FEC Campaign Finance Data, 2021-2022 Disbursements for Party Coordinated Expenditures (all spenders), <https://www.fec.gov/data/party-coordinated-expenditures> (Democratic Senate candidates filtered) (last accessed Oct. 12, 2023).

<sup>26</sup> FEC Campaign Finance Data, 2021-2022 Disbursements for Line 17 Operating Expenditures, <https://www.fec.gov/data/disbursements/?data>  
 type=processed&committee id=C00257642&committee  
 id=C00696526&committee id=C00726018&committee  
 id=C00736876&committee id=C00765164&committee  
 id=C00777771&committee id=C00777904&committee  
 id=C00784959&committee id=C00802959&committee  
 id=C00810754&two year transaction period=2022&line  
 number=F3-17 (Barnes, Beasley, Busch Valentine, Christiansen,  
 Kelly, Murray, Padilla, Ryan, and Warnock);  
<https://www.fec.gov/data/disbursements/?data>  
 type=processed&committee id=C00308676&committee  
 id=C00346312&committee id=C00540732&committee  
 id=C00573 758&committee id=C00574889&committee  
 id=C00588772&committee id=C00726018&committee  
 id=C007658 00&two year transaction period=2022&line  
 number=F3-17 (Duckworth, Hassan, Fetterman, Schatz,  
 Schumer, Van Hollen, McDermott, and Wyden). As above, where

expenditures by the Democratic Party amounted to less than 2% of total campaign expenditures (candidate and coordinated party) for 2022 Democratic general election Senate candidates. In 2022, the Republican Senate candidates raised much less than their Democratic rivals and, by necessity, depended more heavily on independent expenditures to remain competitive.<sup>27</sup>

As it pertains specifically to plaintiff Vance, the Republican nominee in Ohio’s 2022 Senate election, his campaign spent over \$12 million in operating expenditures after the May 3, 2022 primary election, according to FEC reporting data. The party used practically the maximum of its allowable coordinated expenditures at \$1,999,800, with the NRSC spending the full authority it had been assigned by the RNC. Even still, in sum, the party covered only 14% of the combined candidate and party coordinated expenditures in the general election period—which, notably, was the second highest percentage for any of the Republican Senate candidates in 2022. Vance did

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available, I determined the total general election operating expenditures for each committee by filtering disbursements designated as “G2022”—except in the case of Georgia (Warnock), which also accounts for general election runoff operating expenditures. When such designations were not available in the data, I derived the total by filtering for disbursements starting the day after the relevant primary election through the end of 2022. All referenced data last accessed October 12, 2023.

<sup>27</sup> Taylor Giorno, “Midterm spending spree”: Cost of 2022 federal elections tops \$8.9 billion, a new midterm record, OpenSecrets (Feb. 7, 2023), <https://www.opensecrets.org/news/2023/02/midterms-spending-sprees-cost-of-2022-federal-elections-tops-8-9-billion-a-new-midterm-record>.

not raise as much in the general election as competitive Republican candidates in other states, even though he faced a Democratic candidate who reported spending more than \$61 million on general election operating expenditures from his own campaign. Given the constraints on NRSC financing with low contribution limits and coordinated spending limits, the balance of financing in support of Vance was, by necessity, through independent expenditures, primarily issued by an outside Super PAC called the Senate Leadership Fund, which had publicly announced a significant investment on advertising in the race.<sup>28</sup>

Coordinated spending in the November 2022 House general election races tells a similar story of a party bumping up against low limits on a broader scale. The NRCC spent very close to the 2022 aggregate party coordinated limit for House elections (\$110,000) in several races, spending \$98,000 or more in 76 general election contests.<sup>29</sup> The NRCC spent at least \$103,000 in 67 of the general election contests, including in Ohio's Congressional District 1 for plaintiff Chabot. Again, because of the strictness of the coordinated

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<sup>28</sup> Andrew J. Tobias, *National Republican group plans massive ad buy boosting J.D. Vance, signaling deepening GOP focus on Ohio's Senate race*, Cleveland.com (Aug. 19, 2022), <https://www.cleveland.com/news/2022/08/national-republican-group-plans-massive-ad-buy-boosting-jd-vance-signaling-deepening-gop-focus-on-ohios-senate-race.html>.

<sup>29</sup> FEC Campaign Finance Data, 2021-2022 Disbursements for Party Coordinated Expenditures (NRCC), [https://www.fec.gov/data/party-coordinated-expenditures/?committee\\_id=C00075820&cycle=2022](https://www.fec.gov/data/party-coordinated-expenditures/?committee_id=C00075820&cycle=2022) (last accessed Oct. 12, 2023).



party expenditure limits and real threat of enforcement for violating the limits, the amounts of coordinated spending often come up just shy of the limit to reserve funds for compliance.

In all, the NRCC spent roughly 94% of the Republican Party's total coordinated authority in 68 general election House races in 2022, including in each of the 10 most expensive contests, as reported by OpenSecrets: Virginia District 7, California District 47, Texas District 28, Michigan District 7, Oregon District 6, Pennsylvania District 7, Nevada District 3, New Hampshire District 1, and Washington District 8.<sup>30</sup> Yet, focusing in on those 10 races, we see how much the coordinated party expenditure limits constrain the parties from meaningfully helping their candidates with coordinated expenditures in critical contests. In these 10 contests, per FEC reporting data, Republican candidates spent \$24.6 million on general election operating expenditures compared to just over \$1.0 million in coordinated party expenditures—meaning coordinated party expenditures made up just 4% of this combined campaign spending.<sup>31</sup>

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<sup>30</sup> Most Expensive Races, OpenSecrets, <https://www.opensecrets.org/elections-overview/most-expensive-races?housespentcycle=2022&display=allcandsout&senatespentcycle=2022>.

<sup>31</sup> FEC Campaign Finance Data, 2021-2022 Disbursements for Line 17 Operating Expenditures, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00499392&committee\\_id=C00722892&committee\\_id=C00780049&committee\\_id=C00793976&committee\\_id=C00798322&committee\\_id=C00499392&committee\\_id=C00769414&committee\\_id=C00784884&committee\\_id=C00797282&committee\\_id=C00799684&committee](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00499392&committee_id=C00722892&committee_id=C00780049&committee_id=C00793976&committee_id=C00798322&committee_id=C00499392&committee_id=C00769414&committee_id=C00784884&committee_id=C00797282&committee_id=C00799684&committee)

In the competitive U.S. House race in Ohio's Congressional District 1, the combined Republican candidate general election operating and party spending came to just \$1.8 million,<sup>32</sup> of which less than 6% was party coordinated spending, \$103,000.<sup>33</sup> An additional \$4,300,055 was spent on independent expenditures supporting Chabot or opposing his opponent, Greg Landsman, including \$1,849,629 by

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id=C00809178&two year transaction period=2022&line number=F3-17 (Barrett, Baugh, Becker, Erickson, Garcia, Larkin, Leavitt, Scheller, Valadao, and Vega). As above, where available, total general election operating expenditures for each committee were determined by filtering disbursements designated as "G2022" in the data. When such designations were not available in the data, I derived the total by filtering for disbursements beginning the day after the relevant primary election through the end of 2022. All referenced data last accessed October 12, 2023.

<sup>32</sup> FEC Campaign Finance Data, 2021-2022 Disbursements for Line 17 Operating Expenditures by Steve Chabot for Congress, [https://www.fec.gov/data/disbursements/?data\\_type=processed&committee\\_id=C00301838&two year transaction period=2022&line number=F3-17](https://www.fec.gov/data/disbursements/?data_type=processed&committee_id=C00301838&two year transaction period=2022&line number=F3-17) (figure derived from for each committee's data for "G2022" disbursements); FEC Campaign Finance Data, 2021-2022 Disbursements for Party Coordinated Expenditures for Steve Chabot, [https://www.fec.gov/data/party-coordinated-expenditures/?candidate\\_id=H8OH01043&cycle=2022](https://www.fec.gov/data/party-coordinated-expenditures/?candidate_id=H8OH01043&cycle=2022). All referenced data last accessed October 12, 2023.

<sup>33</sup> As in every other race in states with more than a single Congressman, the total coordinated party expenditure limit for the Ohio District 1 contest was \$110,000 – \$55,000 each to the RNC and Ohio Republican Party. The RNC assigned the NRCC \$50,000 of its authority, reserving the remainder to ensure compliance, and the state party assigned the NRCC its full limit. The NRCC, as it did in over 60 other races, reserved an additional portion out of its own compliance concerns.

the NRCC's firewalled unit and another \$2,349,644 million by the Congressional Leadership Fund, which is a Super PAC dedicated to supporting Republican House candidates.<sup>34</sup> With all that campaign money in support of the Republican candidate, the party's coordinated expenditures of \$103,000—the most effective way of working with their candidates—amounted to less than 1.7% of total support for Chabot's general election candidacy.

**B. The coordinated party expenditure limits undermine the relationship between the parties and their candidates.**

Clearly, the parties are not able to take advantage of working closely with their candidates because the coordinated party expenditure limits prevent them from having much of an impact in such costly campaigns. Parties instead rely much more on independent expenditures, whether their own or those made by allied outside groups such as Super PACs. I worry about parties having to spend independently from candidates for all the reasons I mentioned previously in this report. It loosens the candidate-party linkages that are naturally part of this

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<sup>34</sup> FEC Campaign Finance Data, 2021-2022 Independent Expenditures Opposing Greg Landsman, [https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&cycle=2022&is\\_notice=false&most\\_recent=true&candidate\\_id=H20H01194&support\\_oppose\\_indicator=O](https://www.fec.gov/data/independent-expenditures/?data_type=processed&cycle=2022&is_notice=false&most_recent=true&candidate_id=H20H01194&support_oppose_indicator=O) (last accessed Oct. 12, 2023); FEC Campaign Finance Data, 2021-2022 Independent Expenditures Supporting Steve Chabot, [https://www.fec.gov/data/independent-expenditures/?data\\_type=processed&cycle=2022&is\\_notice=false&most\\_recent=true&candidate\\_id=H80H01043&support\\_oppose\\_indicator=S](https://www.fec.gov/data/independent-expenditures/?data_type=processed&cycle=2022&is_notice=false&most_recent=true&candidate_id=H80H01043&support_oppose_indicator=S) (last accessed Oct. 12, 2023).

association, and creates unnecessary inefficiencies and additional administrative and compliance costs. In the absence of coordination, independent expenditures are not always very effective and are not preferred by candidates “who have no control at all over how the money is spent. Indeed, although well intentioned, such spending can sometimes backfire” and be counterproductive.<sup>35</sup> Moreover, unlike Super PACs, the parties cannot raise money in unlimited sums, even for their independent expenditures, putting them at a substantial fundraising disadvantage with Super PACs and other non-party groups that have no such restrictions. This disadvantage is all the more heightened when the parties’ true competitive advantage over Super PACs—the ability coordinate with campaigns—is restricted.

Campaign finance expert, Professor Diana Dwyre of Chico State University, in her section on the political parties for the Bipartisan Policy Center’s major report on the U.S. campaign finance system, suggested that parties were in a precarious situation. As she wrote, “The extent to which the parties are able to count on these network allies to pursue the parties’ goals may contribute to how successfully the parties adapt to a campaign finance landscape that has left them with less financial clout than non-party campaign finance

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<sup>35</sup> Diana Dwyre, *Political Parties and Campaign Finance What Role Do the National Parties Play?*, Prepared for the Campaign Finance Task Force Conference 37 (Bipartisan Policy Center April 21, 2017) (revised May 2017), <https://bipartisanpolicy.org/download/?file=/wp-content/uploads/2019/05/Political-Parties-and-Campaign-Finance-What-Role-Do-the-National-Parties-Play.-Diana-Dwyre.-Diana-Dwyre.pdf>.

actors.” She then mentioned the possibility of a “reexamination” of the restrictions on party coordinated spending, in light of *McCutcheon v. FEC*, 572 U.S. 185 (2014), and the now clearer understanding of what constitutes “corruption” justifying campaign finance regulation (*i.e.*, *quid pro quo* corruption), which calls into serious doubt any “notion that parties can act as ‘corrupt conduits’ through which interested money can influence lawmakers’ policy decisions.”<sup>36</sup> Dwyre stated, “Such a shift in opinion would potentially put parties on more of a level playing field with nonparty groups, which may increase the number of competitive races as both parties would have more resources to pursue majority status.”<sup>37</sup> I agree with Dwyre’s assessment.

**C. There are less restrictive alternatives to prevent *quid pro quo* corruption.**

An objection of the FEC and its expert is that political parties will serve definitively as conduits if they have no limits on how much they can support their candidates, which would increase the potential for *quid pro quo* between candidates and donors. There are several problems with the claim.

First, the parties themselves are highly constrained by FECA’s base contributions limits. The fact that the party committee must raise money in small increments is alone a prophylactic against *quid pro quo* corruption (which is rare through party committees to begin with). Tacking on a double prophylactic to limit how a party can then spend such

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<sup>36</sup> *Id.* at 41.

<sup>37</sup> *Id.* at 40-41.

funds once in the door is over the top—especially when it restricts an institution as important to our political system as the parties from doing what they are intended to do. In my opinion, this is overregulation of the worst kind. For no clear reason, the law infringes on the associational rights of a vital civic organization whose purpose is to recruit candidates committed to party policies, inform and mobilize the public, and organize the government in the national interest all to the detriment of our democracy.

Second, the FEC already can monitor against potential corruption through party financing by enforcing FECA's anti-earmarking rules. The anti-circumvention approach of using low contribution limits to parties and tightly capped coordinated party expenditures, both to avoid the potential for corruption, imposes many costs on associational rights and healthy party organizing, with minimal benefits. As my co-author and I wrote in our 2015 book:

The anti-circumvention approach leads to a “whack-a-mole” dynamic in which regulators keep adding new statutes in a vain attempt to close new loopholes as they crop up. We think a better strategy would be to simply enforce rules that prohibit donors from earmarking contributions to the party. This would mean that donors could not tell the party where they want their contribution to be spent and that candidates could not legally compel the party to turn over funds on the basis of a claim that

particular donations were intended for themselves.<sup>38</sup>

This remains true.

In my view, no restrictions should be imposed on party support of candidates at all. Political parties should be permitted to help their candidates as much as desired with direct contributions or in-kind support. Among several reasons, this advances a positive dynamic toward attenuating polarization, because parties tend to target moderate candidates in closely contested districts. Not only will this dynamic help finance more moderates (who better reflect the district or state), but it will encourage the financing of challengers to face incumbents. The leadership that controls a legislative party has powerful incentives to finance challengers and moderates. In 2015 we wrote, “We would not think it unreasonable if parties could provide at least half of candidate resources for a political campaign.”<sup>39</sup> I still believe this to be true.

This is also an appropriate time to again reference my recent work with a national task force of election law experts. As noted, I lead the working group on campaign finance, where we took a vote in May 2023 (which I documented on google surveys) about support for various recommendations. The group of 10 scholars overwhelmingly favored unburdening parties from many campaign finance restrictions. For example, 10 of 10 favored a significant increase in contributions limits to political parties; and 7 of 10

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<sup>38</sup> La Raja & Schaffner, *supra* note 2, at 141.

<sup>39</sup> *Id.* at 137-38.

avored *removing* limits on coordinated party expenditures, including myself.

## VII. MY REBUTTAL OF THE OPINIONS OF PROFESSOR KRASNO

Let me turn to address directly Professor Krasno's opinions in support of restricting party coordinated expenditures. In his report, Professor Krasno did not follow his own lesson to view the campaign finance system holistically. He writes, "While it may be tempting to examine a single part of a statute under a microscope, campaign finance systems are *systems* whose different parts operate together in concert. Experience shows that altering an element of the campaign finance system can have repercussions throughout." Precisely so. When viewing the campaign finance system as a "system," we observe significant changes over time that call for reconsideration of old regulations. More critically, we can see the distortions created by disabling political parties from working in coordination with their candidates.

These distortions not only undermine the vital functions of the parties, as I explained above, but also create an electoral environment that is fragmented, less transparent, and less accountable. It is perhaps more surprising, given his stature in the profession, that Professor Krasno fails to acknowledge how party committees remain the singular institution most likely to address pathologies of polarization, fragmentation, and weak accountability. Instead, he prefers to unearth well-known—but tired—narratives of party malfeasance, drawing on the long-gone patronage days of Tammany Hall in the manner of a



Frank Capra classic. I do not pretend that political parties have followed the Rule of Saint Benedict. I do believe, however, that American democracy is more threatened by the weakness of political parties than the probability of them engaging in *quid pro quo* corruption, as apparently suggested by Professor Krasno. The marketplace for campaigns has changed dramatically, as I indicated above, and yet Professor Krasno is adamant that party committees must continue to dispense support to candidates with a spoon while competitors avail themselves to backhoes.

Below I set out Professor Krasno's main points as I see them, along with my rebuttals to each.

**A. Professor Krasno claims that political parties are doing great—they're not.**

As already mentioned, Professor Krasno's oddest claim about the political parties is that "they have prospered beyond their wildest dreams" under the current campaign finance regime. His reference point is the 1960s and 1970s when Democrats had large majorities in Congress, the parties were less ideologically sorted, and candidates relied on the "personal vote" to win elections as much as the party label. Times have changed significantly. The electoral stakes cannot be compared. Today, the parties have very different platforms, and most importantly, Congress has experienced insecure majorities for the past 20-plus years.<sup>40</sup> This is an era of heightened collective mobilization. And yet the parties are still operating under rules established in 1974 during the

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<sup>40</sup> Frances E. Lee, *Insecure Majorities: Congress and the Perpetual Campaign* (Univ. of Chicago Press 2016).

candidate-centered era.<sup>41</sup> The subsequent McCain-Feingold reforms in 2002 doubled down on anti-party rules by taking away soft money. Only the Supreme Court's *McCutcheon* decision in 2014 gave the political parties some reprieve by striking down the aggregate limits on the amount an individual could give to political committees in a cycle, meaning that political parties did not have to compete with candidates and other committees for the same donors.

As evidence for party strength, Professor Krasno cites the strength of partisan identification among the electorate and party unity in casting votes in Congress. However, partisan strength in the *electorate* has little to do with the health of political party *organizations*. Moreover, the party-in government has found it very difficult to maintain its brand and hold together coalitions, even when members largely agree on issues. Professor Julia Azari has argued convincingly that a major problem with U.S. democracy is that partisanship is strong while party organizations are weak.<sup>42</sup> This means that parties struggle to perform the necessary bargaining and negotiating that is necessary in large coalitions. Recent brinksmanship in Congress among Republicans to pass a budget and support a Speaker of the House suggests as much. Kevin McCarthy was compelled to vacate his House Speaker position by a small faction, even though 96% of the Republican conference preferred that he be the Speaker.<sup>43</sup> To the degree party leadership controls

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<sup>41</sup> La Raja, *supra* note 15.

<sup>42</sup> Azari, *supra* note 6.

<sup>43</sup> Kevin, Freking, *These 8 Republicans Stood Apart to Remove Kevin McCarthy as House Speaker*, Associated Press,

resources they have greater capacity to broker deals and challenge renegades who threaten the party coalition.<sup>44</sup>

To give a sense for the party committees' diminishing role relative to other sources of campaign funds, Figure 3 shows where resources are coming into House and Senate campaigns from different political committees, including political parties, traditional PACs, and independent expenditure committees. Party committee contributions and expenditures (primarily independent expenditures) increased after 2002's McCain-Feingold. Yet PAC contributions exceed these amounts. Importantly, the biggest change has been the non-party independent expenditures going from \$14.7 million in 2004 to \$1.678 billion in 2020—or more than 114 times the amount that existed 16 years earlier. Make no mistake, many of these groups are challenging the party on recruitment, issue agendas, and financing of different candidates.<sup>45</sup> Research shows that many of these outside groups comprise distinct networks of funders, most of whom are little known to the American public.<sup>46</sup>

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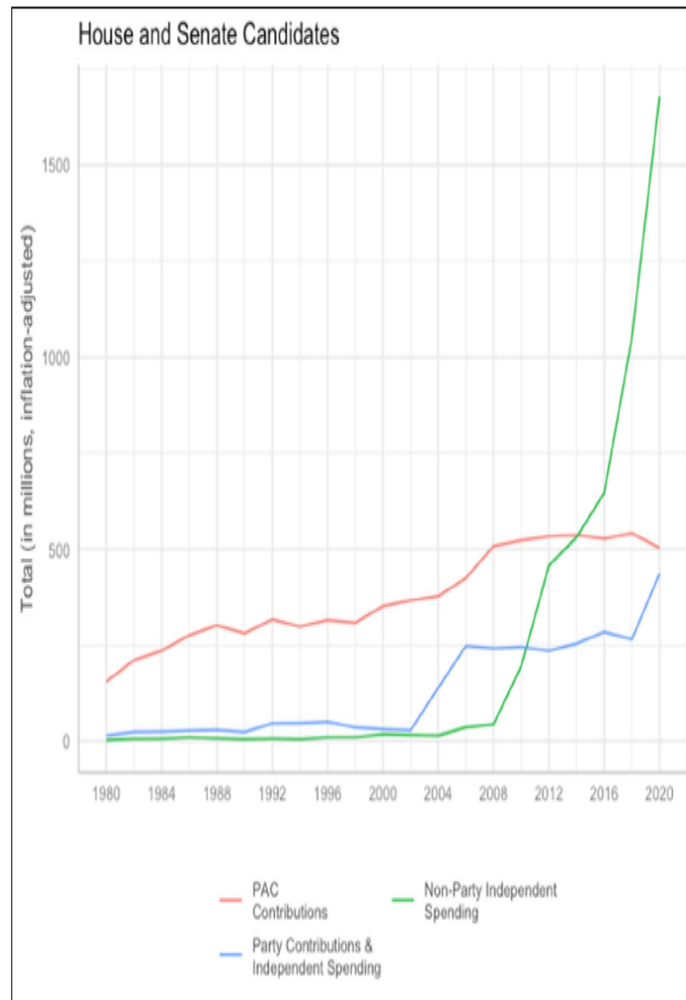
(Oct. 4 2023), <https://apnews.com/article/kevin-mccarthy-republican-lawmakers-house-opponents-33c7d984964916f29d548b5b1dfe508b>.

<sup>44</sup> La Raja & Schaffner, *supra* note 2, at 143.

<sup>45</sup> See, e.g., Robert F. Bauer, *The Parties' Struggles in the Political "Market,"* 54 Hous. L. Rev. 881, 899 (2017) ("Super PACs are seen to be moving in the direction of assuming most of the functions of parties ....").

<sup>46</sup> Manento, *supra* note 9; Oklobdzija, *supra* note 9.

Figure 3. Contributions and Spending in Support of U.S. House and Senate Elections, 1990-2020



Data Source: Adam Bonica 2023.<sup>47</sup>

<sup>47</sup> Adam Bonica. 2023. Database on Ideology, Money in Politics, and Elections: Public version 3.0 [Computer file].

As lead author Nathaniel Persily wrote in the Bipartisan Policy Center report on campaign finance, “At both the federal and state level, an increasing share of money in the campaign finance system has moved away from traditional party organizations and candidates, who are most directly accountable to voters, toward entities that are less directly accountable to the electorate and that are required to disclose less about their connections to campaigns and their ultimate source of funding.”<sup>48</sup>

Professor Krasno may argue that parties are taking advantage of independent spending, just like everyone else. I do not agree, however, with placing parties in the same regulatory context as other groups because of their unique role in the political system. And by compelling party committees to spend independently if they want to robustly advocate for their candidates means that the parties must sacrifice advantages, such as lower cost advertising. But most critically, spending independently to advocate for their candidates means parties must work inefficiently to win elections, without direct communications with their own candidates about plans, strategies, or messaging.

**B. Professor Krasno claims that undoing the coordinated expenditure limits would be an end run around FECA’s contribution limits—it wouldn’t.**

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Stanford, CA: Stanford University Libraries.  
<https://data.stanford.edu/dime>.

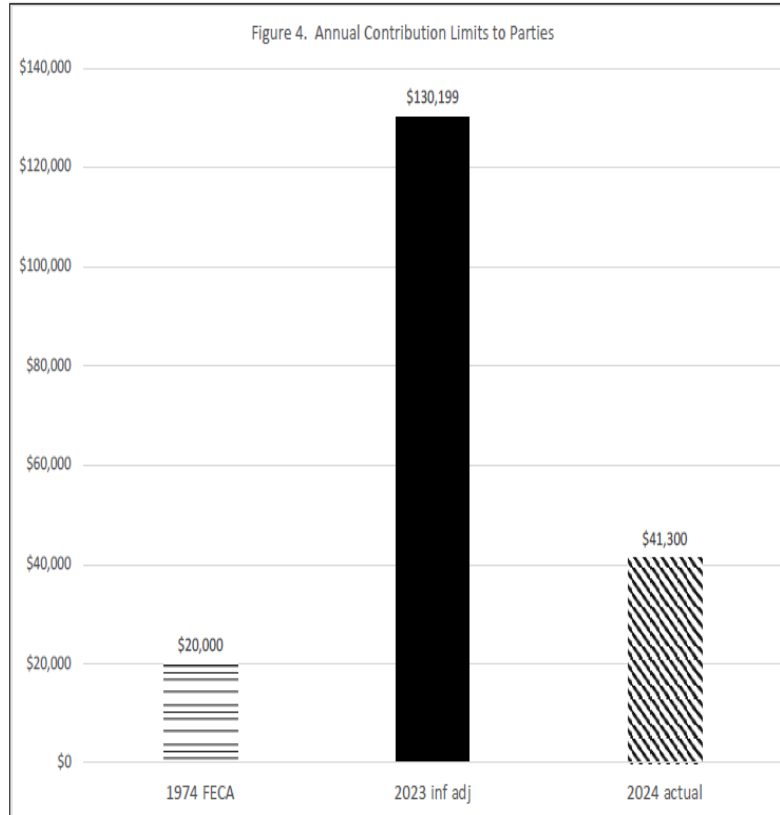
<sup>48</sup> Persily et al., *supra* note 3, at 34.

I have several points in response to Professor Krasno's assertion that lifting coordinated party expenditure limits would lead to an end run around FECA's base contribution limits.

**1. *Party committees' base contribution limits are lower today than under the 1974 FECA amendments.*** Professor Krasno suggests that party committees have high contribution limits, which will make them runaway conduits for candidate fundraising. In fact, contribution limits on political parties for election funds are lower today than in 1974 when Congress passed the FECA amendments. In other words, the prophylactic against so-called corruption and earmarking to candidates has rarely been tighter. Figure 4 illustrates this. In 1974 the law imposed an annual \$20,000 cap on individual contributions. Critically, these were not indexed to inflation. Because if they were, an individual contribution today should be \$130,199, using the CPI-inflator. Instead, based on McCain-Feingold, parties are stuck with a limit—presently \$41,300 per calendar year—that is more than three times less, in inflation adjusted terms, than what parties faced back in that first election in 1976. Put another way, \$41,300 today would have meant facing a limit of roughly \$7,192 (instead of \$20,000) as the parties were gearing up for the 1976 elections.<sup>49</sup>

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<sup>49</sup> I adjusted the value of \$41,300 on January 2023, the amount set at start of the current election cycle, to reflect what that value would be on January 1975, the start of the election 1976 cycle, using the CPI inflation calculator at the Bureau of Labor Statistics, <https://data.bls.gov/cgi-bin/cpicalc.pl>.



**2. *Party officials have control and final say over the use of party funds.*** Political parties are partners with candidates. Candidates may raise funds jointly with the parties, but at the end of the day parties decide how best to use their money for the collective benefit of the party. The party committee making the expenditure, not any candidate, ultimately controls how and for what purpose it spends its money. The stakes are not for just one candidate but for the collective in pursuit of majorities, which means the party uses its funds where and how it deems it can best make the most difference. There

is abundant evidence that political parties are the most efficient users of resources, channeling it to likely competitive races.<sup>50</sup>

Parties also uniquely tend to help challengers in pursuit of majorities.<sup>51</sup> Incumbents would prefer to hoard this money for their own benefit, but parties urge them to contribute to the party so they can re-channel it to close races. (One reason parties rely on incumbents is because parties face low contribution limits, which paradoxically intensifies officeholders' interactions with large donors and PACs). The challenge for party leadership is to ensure the party does not waste its money. *In my view, the current very low limits on coordinated contributions are akin to an incumbent protection rule, given that parties are the most likely to give to challengers.*

Professor Krasno makes it appear as though the party committees are simply empty vessels for candidates to raise money through for themselves. This argument, however, is clearly undermined when you see how parties do, in fact, spend money differently than candidates and other groups. Sometimes the party makes decisions that are at odds with candidates. In 2022 the NRSC made late-term allocation decisions about funding in some battleground states that the candidates and their

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<sup>50</sup> Paul S. Herrnson, *Party Campaigning in the 1980s* (Harvard Univ. Press 1988); David M. Cantor & Paul S. Herrnson, *Party Campaign Activity and Party Unity in the U. S. House of Representatives*, 22(3) *Legislative Studies Quarterly* 393 (1997); La Raja & Schaffner, *supra* note 2.

<sup>51</sup> Herrnson, *Party Campaigning in the 1980s*, *supra* note 50; La Raja & Schaffner, *supra* note 2.



consultants in those states did not like.<sup>52</sup> Professionals at the NRSC did this because they did not think it was strategically wise or efficient, based on financial considerations, to continue investing in some races, despite candidate pleas.<sup>53</sup> This happened on the Democratic side as well in the 2022 U.S. Senate race in Ohio.<sup>54</sup> Whether the candidates had any role in helping raise that money or not, the party makes these decisions with an eye toward benefiting the entire party. Without the collective mechanism of the party, much money would be wasted on incumbents who do not have difficult races. The party gets the team to work together, despite individual self-interest in keeping campaign funds.

**C. Professor Krasno claims that parties are known for being “corrupt”—not so.**

**1. *There is little evidence of quid pro quo corruption through parties.*** A vexing problem in debates about corruption is that some invoke a very inexact definition. This is true of Professor Krasno’s report, which describes corruption as the following: “the potential for contributions to politicians as candidates to exert undue influence on these politicians as elected officials.” Few phrases are as indeterminate in the study of politics as “undue influence.” What marker tells us when a contribution

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<sup>52</sup> Natalie Allison, *GOP slashes ads in key Senate battlegrounds*, Politico (Aug. 15, 2022), <https://www.politico.com/news/2022/08/15/gop-slashes-ads-in-key-senate-battlegrounds-00051969>.

<sup>53</sup> *Id.*

<sup>54</sup> Tobias, *supra* note 28.

exerts undue influence? Political scientists tend to point to three factors that shape congressional votes: constituency preferences, candidate beliefs and the party. Beyond these, the findings are less robust. And most importantly, we have not been able to find a pattern of votes for money.

At the federal level there is little evidence of *quid pro quo* corruption for campaign finance, especially in the face of FECA's already restrictive base contribution limits. In a widely cited meta-analysis of PAC contributions by Ansolabehere, de Figueiredo, and Snyder (2003), the scholars found that "the evidence that campaign contributions lead to a substantial influence on votes is rather thin. Legislators' votes depend almost entirely on their own beliefs, and the preferences of their votes and their party. Contributions explain a miniscule fraction of the variation in voting behavior in the U.S. Congress. Members of Congress care foremost about winning reelection."<sup>55</sup> There is some research that suggests that some donors may get access to legislators, although there are plenty of null findings.<sup>56</sup>

In any event, as the Supreme Court has acknowledged, "ingratiation and access" are not *quid pro quo* corruption. *McCutcheon*, 572 U.S. at 192 (plurality opinion) (quoting *Citizens United*, 558 U.S.

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<sup>55</sup> Stephen Ansolabehere, John M. de Figueiredo & James M. Snyder, *Why Is There So Little Money in U.S. Politics?*, 17 *The Journal of Economic Perspectives* 105, 116 (2003).

<sup>56</sup> See Joshua L. Kalla & David E. Broockman, *Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment*, 60 *Am. J. of Pol. Sci.* 545 (2016) (listing papers with null findings).

at 360). Rather, I understand *McCutcheon*, in particular, to say that “corruption” must be more narrowly defined as *quid pro quo*—i.e., “dollars for political favors”—for it to have substantive meaning and to be sufficiently weighty to justify campaign finance restrictions. *Id.*

Professor Krasno contends that we have not found *quid pro quo* corruption because the limits on coordinated party expenditures are working. After listing his examples of political corruption, he then writes: “One objection to his brief history is coordinated expenditures do not feature prominently in the examples of (quid pro quo) corruption to which I have quickly alluded. From my perspective, this should be taken as a triumph of the existing legal regime which imposes fairly generous limits on their magnitude.” I do not think this speculative argument, which lacks any evidence, justifies limiting the associational rights of political parties and their candidates. It entirely ignores that other, less restrictive campaign finance rules already combat corruption, including the base contribution limits and anti-earmarking rule. Indeed, I am dubious that the coordinated limits make any difference. And I am not aware of there being any evidence of greater occurrences of *quid pro quo* corruption through the party system (which, to repeat myself, is rare in all events) from the several American states that allow parties to support their candidates without limit.

**2. *The linkage between campaign finance regulation and public confidence in government is weak.*** Professor Krasno argues, referring to the Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), that “faith in the political system depends on the

perception that the system is not corrupt.” And that “Campaign finance laws, including the limits on parties’ coordinated expenditures ... have been upheld because they serve to instill confidence in the system by minimizing, if not completely preventing, this type of corruption.” Again, this is an open-ended understanding of corruption—not *quid pro quo*—but even so, a pair of top scholars have put to rest the argument about the linkage between campaign finance laws, perceptions of corruption and confidence in government.

In the book *Campaign Finance and American Democracy: What the Public Really Thinks and Why It Matters* (2020), Professors Jeffrey Milyo (University of Missouri) and David Primo (University of Rochester) illustrate, with reams of data on public opinion, that campaign finance laws in the American states make *no difference* on levels of trust in government.<sup>57</sup> They write: “*There is no scientific evidence that campaign finance reforms actually increase public trust in government.*”<sup>58</sup> Milyo and Primo did not look directly at laws with limits on parties, but one of their ‘regimes’ included states with no restrictions of fundraising and spending. These include states like Virginia, whose citizens may have no less trust than in states with tight restrictions on campaign finance laws. If anything, Milyo and Primo attribute growing mistrust to other factors, including polarization of the parties—

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<sup>57</sup> David M. Primo & Jeffrey D. Milyo, *Campaign Finance and American Democracy: What the Public Really Thinks and Why It Matters* (Univ. of Chicago Press 2020) (emphasis in original).

<sup>58</sup> *Id.* at 160.

which, as my research shows, would be attenuated if parties controlled more resources to support quality candidates and deter extremists.

**3. Voters favor imposing fewer restrictions on parties than other groups.** In my own research, I have found that citizens, in fact, are much more likely to allow parties to support their candidates with high or no limits than other groups. My co-author and I asked the public, “To what extent do you think various groups should be allowed to contribute to political candidates?” We showed them four groups: political parties, advocacy groups, labor unions, and businesses. The response choices were (1) Not at all; (2) Should be allowed to contribute a small (but limited) amount; (3) Should be allowed to contribute a large (but limited) amount; (4) Should be allowed unlimited contributions. Our findings show that voters are most willing to grant parties greater freedom to support candidates robustly. For each of the non-party groups, just 30% said either no limits or allow large contributions. But for political parties, 45% of respondents said *no limits or high contribution limits*, a difference of 15 percentage points.<sup>59</sup> That finding is notable given how much the electorate generally dislikes money in politics, with many giving the unrealistic answer that they do not want *any* groups to give campaign contributions.

## VIII. CONCLUSION

To recap as briefly as possible: The burdens imposed on political parties in supporting their

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<sup>59</sup> See La Raja & Schaffner, *supra* note 2, at 158 (with figures).

candidates through coordinated party expenditures are (a) detrimental to a well-functioning party system and associational rights, and (b) not necessary to prevent *quid pro quo*, especially given the other, less restrictive prophylactic measures in the law. Limiting coordination between a party and candidate makes little sense, and the prevailing limits on coordinated party spending are woefully low, especially in consideration of the intense incentives for partisan mobilization, the increasing cost of elections, and the growing fragmentation of political campaigns.

The constraints on parties for working closely with their candidates imperil their vitality. In the current moment, contrary to Professor Krasno's assertions, the political parties *are* weak, which threatens our democracy. There is no evidence that the coordinated party expenditure limits deter *quid pro quo* corruption, but they *do* burden the parties' First Amendment rights and associational activities. I say this with sincere urgency, because I believe the *quid pro quo* potential from allowing parties to coordinate with their candidates fully—if there is any—is far less of a threat to American democracy than the weakened state of political parties to which those limits have contributed. Weak political parties lack sufficient collective mechanisms, including working directly with candidates in campaigns, to be able to manage a large coalition and defend the party brand. Beyond the constitutional principle is the institutional imperative of allowing political parties to perform their integrative functions and advance policies based on their adherents' views of the national interest.

The testimony of Professor Krasno in his report does not stand up to the basic facts on the ground, let alone

the plentiful research on the state of political parties and the contemporary dynamics of U.S. campaign finance. We need to rethink our election laws, and seemingly dubious (legally) and deleterious anti-party rules like FECA's coordinated party expenditure limits are exactly where we must focus our attention.

s/ Raymond J. La Raja      October 13, 2023  
Raymond J. La Raja

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
CINCINNATI DIVISION**

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NATIONAL REPUBLICAN  
SENATORIAL COMMITTEE, et al.

Plaintiffs

vs.

Case No 1:22-CV-639

FEDERAL ELECTION  
COMMISSION, et al.

Defendants

\*\*\*\*\*

Deposition of:

PROFESSOR JONATHAN KRASNO

Appearing Remotely via Zoom from:

Binghamton, New York

Taken on:

October 26, 2023

09:25 a.m. EST

Stenographic Reporter:

Kelliann D. Linberg, RPR, Notary Public

Appearing Remotely from Geauga County, Ohio

\* \* \*



{Due to the need for this deposition to take place remotely, parties were asked to stipulate that the court reporter may swear in the witness over the videoconference.}

MR. CROSLAND: Yes.

MR. WEIMAN: Yes.

PROFESSOR JONATHAN KRASNO, of lawful age, called for examination, as provided by the Ohio Rules of Civil Procedure, being by me first duly sworn, remotely, as hereinafter certified, deposed and said as follows:

EXAMINATION OF PROFESSOR JONATHAN KRASNO. BY MR. CROSLAND:

Q. Good morning. Do you go by – would you prefer Professor Krasno – I know you have a Ph.D. – Dr. Krasno? Is there a preference?

A. Not doctor.

Q. Not doctor? Okay. I will call you Professor.

A. Okay.

Q. Well, good morning. My name is Stewart Crosland. With me this morning is Jessie Wynn, who is my colleague. We are both with the law firm of Jones Day.

We represent the Plaintiffs in Federal Court Action Style: National Republican Senatorial Committee v Federal Election Commission. Our clients in this case are the National Republican Senatorial Committee, or you may hear me refer to them as the NRSC; National Republican Congressional Committee, which you may hear me refer to as the NRCC – I assume you are

familiar with those terms – Senator J.D. Vance of Ohio, and former Congressman from Ohio, Stephen Chabot.

You understand you are appearing in connection with that case this morning?

A. Yes.

Q. Okay. Generally, do you understand this case is challenging the constitutionality of the party expenditure limits of the Federal Election Campaign Act, which are codified, Act 52 USC 30016(d), correct?

MR. WEIMAN: Objection. Compound.

Q. You can answer.

MR. WEIMAN: You can answer.

A. I understand that this is about the limits on coordinated expenditures.

Q. Okay. You were designated as the expert witness for Defendant, Federal Election Commission, correct?

A. Yes.

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involved in, you know, political function, et cetera, et cetera, et cetera.

So, as I said, very few people like me are not true believers in the – sort of the notion that parties are essential actors.

Q. Let me show you another document real quick. This will be Exhibit 3.

(Exhibit 3 was marked for identification.)

Q. Do you recognize this document?

A. Yes, I do. It is my declaration in the Cao case, which I think was 2009.

Q. I think that sounds about right. I knew it was late – early 2000s. 2009/2010, I think, roughly.

So, real quick on this. I am going to scroll down to Page 6 of the report. Can you read into the record this (indicating), the highlighted portion?

A. Do you want me to read that out loud?

Q. Yes, please, into the record.

A. Sure. “The health of the parties matters because political parties are vitally important institutions. Schattschneider famously wrote that, ‘The political parties created democracy, and modern democracy is unthinkable without them.’ Political scientists are, basically, unanimous in viewing parties as the essential democratic institution. Thus, any regulation that weakens them, actually could pose a serious threat to democracy itself”.

Q. And this was your report in Cao which, as you stated earlier, had very similar issues to this case, correct?

A. Yes. By the way, the quote that is in there is the quote that I paraphrased a few seconds ago.

Q. Thank you for clarifying that. Do you still agree – you still agree with this point in the Cao Report?

A. I do.

Q. Would you agree with me that a candidate often is identified by party affiliation throughout the election and on the ballot?

A. I do.

Q. Do you believe that a party’s public image is largely defined by what its candidates say during the electoral process?

A. Yes.

Q. Would you agree that a primary goal of a political party is to win elections so that the party's candidate can take office to enact the party's prevailing party platform?

A. I agree with the first part of that. I am not quite sure that I agree, necessarily, with the second part of that.

Q. Okay. Can you flesh out why on the second part?

A. Well, so, the disagreement about the second part of that – so – and this gets to this business that Schattschneider is also responsible for, which is this notion of responsible party government. Parties are about gaining power, right? But Schattschneider also argued that parties are frequently not about having a kind of coherent platform beyond the gaining of the power part.

And as a result, we have lots of different examples over time where, you know, the pursuit of power becomes the thing that is the most important thing. And part of what he advocated for, you know, back in the 1940's and early 1950's – and this is something Professor LaRaja writes about in his declaration – the responsible party government business is this idea that the parties themselves are supposed to become kind of ideologically coherent blocks. But they hadn't been up to that point, and it is not clear that they are any more ideologically coherent blocks where they have, like, set policy agendas.

They are, essentially, coalitions. And, so, there is real difference of opinion among political scientists about whether we want rigidly, you know, ideologically coherent political parties with policy –

with clear policy goals and so forth. They are coalitions.

So, yes, I do think that parties are defined by their candidates, but their candidates are polyglot, and, you know, whether you're democrat or republican, it is sort of hard to say with a, sort of, specific sense, like, what either set of the parties mean. So –

Q. Well, I'm not using that. When a party is running, though, they are going to run on policy issues, and I understand that there could be differences of opinion. But, generally, within the party structure, there is going to be, sort of, a cogent, unifying message, generally, correct?

A. I am going to tell you that I live in a district where the current republican incumbent congressman is as far as he could possibly be from the new Republican Speaker of the House on many different issues. So, he is absolutely not going to agree that – his version of what his party means is different than what the republicans, and the republicans over it, is about what that is.

Q. So, but his policy positions are probably largely determined by what would get him elected in that district; is that correct?

A. That's exactly right. So, the reason I agree with the first half of your statement is, yes, they are about winning, but the idea that – that the parties themselves represent this kind of straightforward, coherent programmatic block, is not something that political scientists generally believe is true.

Q. Okay. Understood. So, but I would guess, in terms of issues, I am not – you agree they are not the

same as, sort of, a special interest group? They are generally about winning elections for their team?

A. Yes, that is correct.

Q. But when they are in power, their goal is to enact legislation that will keep them in power, generally speaking? Or, policies?

A. Their goal is to remain in power, I think. And, so, Anthony Downs, who was a very famous economist who made his mark entirely within political science, described policy as, essentially, a tool for politics, right? And I don't think that most political

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MR. CROSLAND: Yeah. Okay. No, no, no. Make sure there is no fire.

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(Off the record, 10:10 - 10:35 a.m.)

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BY MR. CROSLAND:

Q. We are on the record.

A. So, your questioning jogged my memory, and since we were on an extended break, I started looking back through my records, and I was on that LA – excuse me – the Louisiana GOP case. That was the year after Cao, or – I can't remember the year now, right.

But somehow or other, I got those two mixed up. So, it was a case about soft money, and I completely forgot about it. And, so, I want to clarify that and apologize for forgetting, and ask to just clarify the record.

So, now, the good news here, and I thank you, is that I get to revise my C.V., twice.

Q. I mean, as far as I recall, they are pretty similar cases, so I can understand. So, thanks for clarifying. That's helpful.

Okay. So, we were talking about the role of parties before we took our break. Just sort of picking back up where we were. I think this is a fair summary: Would you agree a party's success or failure depends, in large part, not entirely, on whether its candidates get elected?

A. Yes.

Q. So, in that vein, would you agree with me that the political parties and candidates who choose to bear their labels have a unified interest when it comes to winning elections?

A. Yes.

Q. Would you agree that when a party spends money cooperatively with its candidate, it's generally doing so in the hope that the candidate will be elected?

A. Yes.

Q. Taking campaign finance principles out of it, because we are going to get into the more specific. Just thinking over the history of political parties and some of your experience and knowledge in the field, is the natural inclination for a party and its candidates to work cooperatively towards their goal of winning elections?

A. Yes.

Q. In your experience, do you think the American public generally knows that party committees are limited in how much they work directly with their candidates, especially at the federal level

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the legislative committees?

A. Yes.

Q. Okay. And that's the only way in which, to your knowledge, the NRSC, or NRCC folks can really then – can spend any coordinated authority under this statutory purpose, correct?

A. Yes. You have illuminated this, yes.

Q. How do you generally understand the mechanics of coordinated party expenditures to operate?

MR. WEIMAN: Objection. Vague. You can answer.

A. So, the way they operate is that the parties, essentially, spend money on behalf of candidates in consultation with the candidates, and in some cases, this is essentially done, more or less, through the candidates' own campaign. That is, the candidates purchase a service and pass the bills on to the parties themselves. And in some cases, you know, the parties say, we would like to do X, Y, or Z, what do you all think? And they do – they make these decisions together.

So, you can see this in campaign finance reports. You can see this in declarations that I have observed in previous court cases where, you know, people have sort of outlined this in different sorts of ways.

Q. You understand that when making coordinated party expenditures, no money is ever given to the candidate for his or her campaign, correct?

A. That's correct, but if – if – if we agree that we would like to do X, or Y, or Z, and the bill is going to



be, essentially, paid by, you know, party committee X or Y, it doesn't really matter whether the money is received by the campaign. If you just pass the bill on, that's how this operates.

Q. But that would generally require some sort of upfront agreement to work on some project that's going to need work, correct?

A. Right, but these are – either this is a – it's a small world of campaign operatives and campaign vendors. And, so, this – it doesn't require a lot of – a lot of extensive paperwork. You know, there is a pollster who is going to provide services to a campaign, and there is the understanding that an LCC is going to pay the bills for this.

You know, it is a phone call to just confirm that this is how it is going to work, and that's how it works.

Q. But going back to the point. I mean, ultimately, it's the party's decision whether to pay or not?

A. Well, I don't think that's what coordination means. Coordination means it is a joint decision and it's – the party is not operating as a solo actor here. If you are the party and I'm the candidate, and we are coordinating, you are not in charge.

Q. Well, who has control over the money sitting in a party account?

A. Well, that – that largely depends on how that money got there, right? If I hosted a fundraiser – if there was a fundraiser that you hosted that I am the star attraction to, I would argue, and most people whose declarations I've read in the past would agree, I exercise a lot of control over that account, in large part, because if the people who are giving money are

large donors, they will not be happy if their donations aren't doing the things they expect their donations to do.

Q. We'll come back to that point because I think that's a major point you are making in your report, and I want to revisit that. But I guess I am just focusing on the mechanics – sheer mechanics of the money, and then whose account it is in, and who has that control.

Because as far back as 1975 in an FEC Advisory Opinion, the FEC wrote, "A direct donation of money to a candidate is not the same as an expenditure in connection with the general election campaign of a candidate" – referenced in this statutory provision. "In one case, the candidate acquires exclusive use of the monies in question; in the other, the ... party" – it said state party there for that, using our website – "although it may consult with the candidate as to how to spend the funds, has control over how the monies are used."

Is that consistent with your understanding –

MR. WEIMAN: I object on the ground that the witness hasn't had an opportunity to review that opinion. You may answer.

MR. CROSLAND: Okay.

A. Well, sure, but I don't – I resist the notion of how literal this sounds. Control is not really control here. That is, there is this notion of coordination and agreement about what we are going to do with this money together. If we are not coordinating, then it is not coordinated.

Q. But if the party doesn't think it is a worthwhile expense, would they spend it

A. Maybe not. But if they agreed to already do it, then there would be a big problem. So, to go back to the example that I used a few minutes ago, if a party candidate agreed to coordinate where the party is going to pick up, either, the polling expenses of the campaign, and the party changes its mind and basically says to the pollster, We are not going to pay that bill, what happens? The pollster stops doing polls. The pollster stops getting its bills paid.

I mean, there are a lot of downstream consequences to that kind of decision which makes it pretty difficult to renege on an agreement. So –

Q. But wouldn't you agree, under that hypothetical, if the party did that, then it's – if the candidate told the pollster to go do it, it would either be – it would be a contract issue, either between the candidate and the pollster, or the party and the pollster?

MR. WEIMAN: Objection.

A. Well, that's exactly right. And part of the problem is –

MR. WEIMAN: Objection. Excuse me for just a second. Just want to object to that as being asked and answered, and the witness has stated the extent of his knowledge on this. So far, it calls for speculation beyond that.

MR. CROSLAND: Okay. Well, I think we were just talking about – going through a hypothetical, so I am not sure what was happening.

A. Well, the – you and I are disagreeing about the extent to which parties are independent actors in the context of coordination, and I am going to stick with

this position that I've had, that is, they are not as independent as all of that.

Q. To your understanding, the money that's spent on coordinated party expenditures has to come from the general operating account of the party, correct?

A. Yes.

Q. Which is the account we talked about, which has the 41,300 annual limit, correct?

A. Yes.

Q. Are you generally familiar with – that coordinated expenditures also apply to coordinated public advertising advocacy campaigns?

A. Yes.

Q. Are you specifically familiar with the FEC's regulations on party coordinated communications?

A. I think I am.

Q. What's your understanding of the type of

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MR. WEIMAN: Objection.

A. Again, there was some – there was some of that sentiment around at the time, and the Court ruled that unconstitutional. But they ruled the other part of this, either that was sort of directed towards, you know, a prophylactic against corruption, to be constitutional.

Q. That was with respect to contributions, as you recall?

A. Well, yes. So, they did distinguish between contribution and expenditures, correct, but as I pointed out in my declaration, there is a very blurry

line here, so – with respect to coordinated expenditures.

Q. In preparing your report here, or in Colorado II, did you examine whether there were examples of expenditures by political parties being used to achieve any quid pro quo corruption prior to 1974?

A. That would have been impossible to do because there is no comprehensive record of campaign finance having been collected. So, prior to 1974, there was not really a regime in which campaign finance data was collected. There was a couple of scholars who were sort of collecting what sort of data was available and filling in gaps as best we could, but we didn't really have good data.

So, there was some scandals, but we were dealing with, kind of, a lawless environment. There would have been no real need to use parties in that way, but there are plenty of examples, locally, you know, throughout the country of parties being at the center of political corruption scandals.

Q. Okay. So, one more sort of background question. Are you familiar with the special, segregated party accounts created – I think it's almost been nine years – by the 2015 Appropriations Bill?

A. Yes. So, in addition to the money that people can give to political parties for election year activities, they can also give money to parties for things like building headquarters and stuff like that. I can't recall offhand how many of these segregated funds there are, but I know there are a couple of them.

Q. Does it sound right that the RNC and DNC each have a convention account, a segregated account, along with a building headquarters account you

mentioned, and then a legal proceedings account? And, then, the NRSC and NRCC – just focusing on the republican side – each have only the legal proceedings and headquarters account? Does that sound correct?

A. I think that is actually – that's right. I – funny, I don't know why, I blanked on the conventions and, of course, legal proceedings.

Q. Yeah. And the convention account, obviously, was created –

A. Why we are here today, right? Legal proceedings.

Q. Legal proceeding. And you understand that those allow the parties to raise three times the limits imposed on the general operating account?

A. I – I know that there are separate segregated funds. I haven't actually focused on what the limits are, so –

Q. Okay. I will represent, the current limit is 123,900 per year. Are you aware that Congress, in passing that, expressly excluded the limitations under the coordinated expenditure, what we'll call, the coordinated expenditure provision, 300116(d), as well as contribution limits for expenditures made from this account – let me restate that – excluded expenditures made from this account from those limitations, are you aware?

A. I'm not 100% certain I understand the question, but I understand that Congress established these segregated accounts, and the segregated accounts are for purposes of political parties and their party centric activities. And that, as far as I understand it, these don't really go down to the benefit of specific

candidates. You can correct me if that's wrong, but I think that's right, except to the extent that conventions are about specific candidates.

Q. Well – so, 30116(d) is still up on the screen, and (d)5 says, “Limitations contained in Paragraphs 2, 3, and 4” – which would be these (indicating). I am just showing you the specific – “of this subsection, shall not apply to expenditures made from any of the accounts described in Subsection (a)9.” Now, I can show you (a)9 if you'd like. (A)9 is the subsection that establishes the coordinated – or, these segregated accounts. Were you familiar with this carve out?

A. So, what you are saying is, that the segregated accounts are not a part of the coordinated expenditures?

Q. Right.

A. So, that part I am familiar with, yes.

Q. Okay. So, I understood it to mean in that, expenditures that are probably made from that can be coordinated without tying into this, correct?

MR. WEIMAN: Objection, vague. You can answer.

A. I guess so. Yes. So, I know that, for example, the party – you know, that the presidential nominees will coordinate for the purpose of their conventions, that's true. But we are not here to talk about that. I don't know –

Q. Were you aware that party committees are routinely focusing on – for example, when Trump was president, the Republican National Committee paid federal legal bills, apparently, to this – per public reporting – using this account?

A. We are all familiar with that, yes.

Q. And it did not count against the contribution limits or the coordinated party expenditure, correct?

A. Yes, I am.

Q. All right. So, because of the limits on coordinated spending, and particularly, we talked a little about the advocacy and the idea of party coordinated communications earlier, it compelled – those limitations often compelled party committees to make, quote/unquote, expenditures, when they want to engage in certain activities in excess of the limits, correct?

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to.

Q. Thanks fair. So, in Colorado – your Colorado II report, though, you say you were taking – you were viewing record evidence under .... {audio distortion}.

(Reporter asked for repeat due to audio distortion).

In connection with your Colorado II report, you were reviewing the record evidence under a different view of the meaning of corruption?

A. We were viewing it under a broader meaning of corruption. So, I recall that, that Frank was a – one of the half dozen most noted and important political party scholars – American political party scholars in existence, and the notion that political parties were kind of a cleansing force in American politics struck him, struck me, struck many of the people that, you know, we talked to at the time about this, as completely wrong and ahistorical.



And, so, that is – that is true. So, we assessed that argument, you know, under the kind of understanding of what corruption meant at that point. But if I look back and kind of narrow the aperture to a more focused version of corruption, it doesn't really change anything. That is, I would, potentially, not use a few of the examples that I might have used in 19, what was it, 97. But a bunch of those other examples would survive because they involve straightforward quid pro quo corruption.

Q. All right. So, what record evidence of actual quid pro quo corruption, or evidence relating to coordinated party expenditures did you see in Colorado II?

A. I would beg your pardon and say that I am not really – I am – in 1997, we were talking – I mean, that was a long time ago –

Q. I understand.

A. – many years, 30 years ago. For the purposes of this case, you know, I went back and looked and did a small little section on this. And, you know, if you are willing, I'd much rather talk about your more current examples than the 1997 examples.

Q. Yeah. I just want to flesh out Colorado II in and of itself, as much as we can, and the record evidence that was presented in that case.

A. I'm sorry. My memory is much less reliable as to the exact examples that we cited. So, the idea that political parties – the argument that – that people were making – people in my circle were making in 1997, were that – the direct quote was, The solution pollution is dilution, and that if we route a lot of money to political parties, it would be robbed of the identity

of the donors, and political parties could, essentially, clean – well, essentially, they would operate like a money laundering service.

It didn't seem plausible, and, you know, in 1997, we were 10 years from the fall of the Daley Political Machine, which was a political party operation which was deeply involved in graft and corruption and policy things. So, almost in every place where there was a local political machine, whether it was the Daley Democrats or the Nassau County Republicans, it was money that was routed through a – a local political party for the purposes of controlling some sort of policy thing.

So, I can't recall, genuinely, whether we were – whether we used many national examples because there were so many local examples at the time. But those were two, I know, that we mentioned.

Q. And you reference a couple of those in this report, so we will come back to this. I am just trying to understand exactly – the lens you were putting Colorado – what ended up being Colorado II – through when you were analyzing the record evidence in that case. You know, I control – ran a control app through – I'll put it back up here – which is Exhibit 4, your Colorado report.

And quid pro quo corruption is only referenced twice. The word, access, is said 27 times, and the word, influence – and the word, influence, appeared 19 times. Does that seem consistent with the way you were approaching it? That you would have –

A. Well, the word, quid pro quo, wouldn't have come up very often at all because that was not really the coin of the realm in 1997.

Q. It would have been the coin of the realm in Buckley, right? I mean, it had been the original approach taken by the Supreme Court, and then it started to take on –

A. But it was part of a broader texture of – excuse me.

It was part of a broader fabric of how corruption was thought of at the time. So, we didn't think of corruption as narrowly focused on quid pro quo corruption. We thought of it as quid pro quo corruption being at the center of the – the sort of, like, the most focused part of a web of, you know, sort of corruptive types of arrangements that then extended on.

And, so, we wrote in that spirit. But as I said, had we been – had we been instructed, or had we understood this differently in 1997, we would have, you know, been more careful and more focused on this notion of quid pro quo corruption, and we would have found it.

Q. Yeah, let me come back to that. All right.

And on that point, starting at Page 4, can you read into the record, starting at, Obviously, and we are going to go down to – kind of a long one – down to here (indicating). So, if it is too hard for you to read, I am happy to read it.

A. Well, let's see how my reading skills go. You want me to start with, Obviously?

Q. Obviously.

A. "Obviously, corruption includes such specific illegalities as explicit quid pro quo bribery. But bribery is not the most serious ethical problem in

today's campaign finance. In virtually any arena of policy making today, the public's concerns center on undue political influence, or at least the opportunity for undue influence.

"In campaign finance, its concerns focus on the reciprocity resulting from the contribution of large sums of money. These contributions provide opportunities to influence policy making well beyond the opportunities available to individuals or groups who do not make large contributions.

"The nub of the problem is in the unequal access to policy makers. And it is precisely that access that candidates and parties increasingly and explicitly offer in meetings, briefings, retreats, weekends, dinners, receptions and coffee klatches for their major contributors."

Q. You can stop there.

All right. Just to be clear, we are talking about access here, right? Another problem is unequal access. It's how you were given –

A. That's what we wrote in 1997, yes.

Q. Okay. So, you just said a minute ago, and I don't, unfortunately, remember the exact quote, but that you would have found quid pro quo corruption in reviewing the record evidence from 1997?

A. Well, we did, but we also said that in the context of, sort of, the broader fabric of what we took to be the doctrine at the time, we thought this was a – this was a large concern.

Q. When you say you did, though, what – what did you find that would have been evidence of quid pro quo corruption?

A. Well, I mentioned two examples, right? So, again, I gave – I'll give you an example, and sort of a silly one. But my first job out of graduate school was teaching at Princeton. It is one of the few correct things in my C.V., apparently.

And I had a couple of students tell me that – that in order to get summer jobs, you know, on Long Island in Nassau County, their parents had to be signed up, you know, to be part of the Nassau County Republican Party, right? And, so, that's not – I mean, I didn't ask them about donations, but there are all these other newspaper reports as well; that is, the party itself was shaking down donors and making and controlling policy.

We know this from lots, and lots, and lots of stories about the Daley Political Machine, the two examples, right? I am trying to get to the way back machine of 1997. So, we know that the way local parties that were patronage based, and all this other stuff, operated is, that they collected money and they used the party as the conduit. And they offered policy often, you know, contracting, and so on and so forth, as their – as their method for staying in office.

So, probably – you know, I haven't gone back to look at this, but if you – if you even – if you look at VO Key Southern Politics, written in 1948 about democratic political machines that operated throughout the south, I suspect you'd find evidence of a version of the same sorts of things.

So, there was lots of evidence of quid pro quo corruption. Frank and I were writing about a different – we were writing about a broader class of

phenomenon of which quid pro quo corruption was at the center.

Q. Were there any examples at the federal level of quid pro quo corruption through the parties?

A. In 1997, that we introduced in this –

Q. Following – following – particularly after FECA was enacted, the 1974 Agreement.

A. I can't recall what we did. So, there are these – there was a series of accusations around the Clinton Administration where they were routing money in the context of the '96 presidential campaign, right, the fundraisers that they were running. And, so, I – to be honest, there was so much, kind of, Clinton news, that the fundraising parts of this were sort of – I'm sort of drawing a blank about this – but there were definitely campaign finance related accusations here.

I mean, this was one of the things that – sort of the Buddhist Temple allegations about Al Gore and the fundraising that he did in '96. There was certainly fundraising problems involving the Nixon Campaign in 1972, which was one of the things that gave rise to the 1974 amendments, and he ended up raising some of that money through the Republican National Committee. But I don't recall, you know, all the specifics.

Q. Was any – was there any evidence of corruption through – have you seen any evidence of corruption through coordinated expenditures at any level?

A. Well, so – so, the problem with that question is it becomes a little bit more difficult. So, the parties can act as a conduit for money, but the question is, how

does this work? So, there is an example that I gave in my report about Representative Ney of Ohio.

And in looking back at this, because Professor LaRaja criticized me here; you know, I realized in looking back at the report, that part of the thing that he was convicted for, or pled guilty for, whatever the correct term is, is money that he had directed to the NRCC from an Indian tribe that donated to him. So, I don't know what ended up happening to that money, the complaint doesn't say, but I do know that he directed money to the NRCC. And, so, he used the party as a conduit in some respect.

As it happens, I am from Wisconsin – well, as you can see, I'm from Wisconsin, from my C.V. And there is an astonishing political scandal that took place there where the leader of the state party – or, excuse me, the state senate – the democratic leader of the state senate – so this is a bipartisan thing – Chuck Chvala ended up going to prison for routing money through the Democratic State Senate LCC in – for direct – in return for direct favors. And it was alleged in the criminal complaint that he pled guilty for it.

So, do I know that the mechanism by which that money was distributed was through a coordinated expenditure? I don't know. But I do know that we see examples of people using parties as – using the higher contribution limits to parties as mechanisms to collect money and, therefore, using parties as conduits to collect higher, larger amounts of money than they would have otherwise been able to collect.

Q. Are you familiar with FECA's anti-earmarking rule?

A. I am.

Q. And that it prohibits using the party committee, or any other committee, as a conduit?

A. I am aware that there is such a rule, and I am aware that that rule has proven to be virtually unenforceable, and unenforced.

Q. Why do you say that?

A. Well, because we know that there have been formal ways in which the parties have circumvented that by things like the tally system that – so often that I wrote about it in 1997. Joint fundraising committees we wrote about in 2002, and which still exist, that are – or joint fundraising agreements, which are direct ways in which you would circumvent a – a kind of a non-coordination type of thing.

Q. Let's – sorry. Go ahead, finish up.

A. But even if we did away with those kind of explicit agreements, the idea of a lack of coordination – and I read this in Professor LaRaja's report – is impossible with large dollar donations.

So, if I am a candidate and I have a fundraiser that's in one, you know, banquet hall of a hotel for a set of donors who are giving me, you know, \$3,300, and across the hall, the party committee is having another fundraiser, and I just lead the troop of donors from one event to the other, which is completely possible, and almost certainly does occur; how in the world is – could any coordination rule circumvent or prohibit the understanding of what the heck is going on there?

Q. All right. We need to un-package that.

So, you got a little ahead of where I want to be. But let's talk about this fundraising idea.



So, you mention the tally system which was discussed in Colorado II and is in your report. Can you explain that to me?

A. Well, I – the tally system was sort of this idea that candidates would raise money for parties and they would have a – kind of an allocation – they would have a – kind of a – what was it? A kind of a fundraising goal, and they would meet their fundraising goal, and the parties would keep track of this.

And, so, that with the amount of money that they raised, the thing that they did for the party would be noted, and so the party would keep track as, sort of, an individual level. So, you know, if I'm a candidate, most likely an incumbent, the party would note how I was doing and what I was bringing in.

So, part of it might be direct donations I would make to the party, but the other part of it is that, you know, the way parties market themselves is by – you know, particularly the large donors, is by having events that have policy makers as the, you know, the guest. So, when there is an event that has me as, you know, the guest of honor, the tally is that, you know, we raised \$100,000. That goes on my – that goes on my account.

Q. So, the tally system, let's just stick with that for a second and we'll talk about the fundraising event in general. The tally system was at the DSCC as you recall, right?

A. I don't actually recall where the tally system was, but if you say so.

Q. Well, just so I understand it, it was assessing money raised into the party committee and keeping

track of how much was attributable to X or Y member, but, ultimately, wasn't it – that was just one consideration, among many, in assessing viability of individual members, correct?

A. Well, I think that the question about viability is the right way to think about it. It is about their ability to call on the party resources.

Q. Isn't it done to deliver resources to the party?

A. Well, but also to make demands of the party because they have contributed to the party.

Q. Well, where does that come out of the tally system? Because the tally system is tracking how much is income, correct? So, I don't – I guess I have a hard time – I understand it as an access point, but I don't understand it as a quid pro quo issue, because you have an individual who is being tracked and they brought in X, Y, Z amount of money, but where is the quid pro quo there?

A. Well, the idea here is that if I brought \$1,000,000 into the party, then I have – I have a right to expect that the party is going – and I want \$1,000,000 for my campaign, or I want a lot of money back for my campaign, the party is going to go beyond, sort of – the expectation is they are going to pony up. This goes back to this thing that you and I were sort of tussling about earlier about coordination, who is in control.

The candidates have a lot of say in all of this, which is why when I raise \$1,000,000, particularly in large chunks from large donors, that's where the quid pro quo thing really does become a problem.

Q. All right. So, if I understand you correctly, the idea is, if you are a top fundraiser for the party, you are going to get more party support; is that fair?

A. Yeah, that is fair.

Q. Does that bear out in reality?

A. So, let's be careful about this. There are a lot of top fundraisers for the party who are top fundraisers because they have no electoral demands and no electoral needs, but they are well placed in order to be – to raise funds.

So, Kevin McCarthy is a really good example of this. Nancy Pelosi is a really good example of this, right? They have no reason to, you know, demand a lot of party funds.

So, they are not getting money from the party for their own – for their own things, but they still have – for their own campaigns. But Chuck Chvala, the guy I was mentioning, the former State Senator of Wisconsin that I was mentioning, when he was State Democratic Seat, he was raising money for the party and trading favors, but not using the money on his own campaign. He was using the money in order to forward a wider set of concerns.

Q. Okay.

A. But there was definitely quid pro quo corruption.

Q. All right. Contribution limits are designed to be a prophylaxis against quid pro quo, correct?

A. That is correct.

Q. And we already talked about this, but a candidate can raise money for the party up to the limits under the act, correct?

A. That is correct.

Q. And even after the BCRA reforms, which were significant reforms, that remains true?

A. That is true.

Q. So, if I hear you correctly, the concern is not diverting money towards your own – you are concerned with, not necessarily diverting money into your own hands, but potential quid pro quo arising from sheer fundraising for the party; is that correct?

A. I –

Q. Let me break that down. If I understood the example you gave where you said the gentleman was in the State Seat in Wisconsin and was raising money for the party, and you used Kevin McCarthy, you are concerned about quid pro quo corruption tied to simply the ask for a hard money contribution from the party?

A. Right. So, the party – so, the fundamental problem here is that the hard money limits on parties are more than 15 times higher than the hard money limits – or, at least 15 times higher than the hard money limits on candidates, right? And, so, this kind of illustrates what the issue is; that is, if candidates are doing most of the asking, right, so the head of the NRCC and the DSCC, these are all sitting members of Congress, they are all political candidates, they are all policy makers.

So, let's make it a little bit less loaded. Let's go to the DNC and the RNC. These are just pure functionaries. Jamie Harrison and Ronna McDaniels; their ability to raise funds depends on their ability to bring policy makers front and center to help them raise funds. That's how this works, right?

And the idea here is that if I'm a member of Congress and I am raising funds for myself, and I am limited to \$3300 per election, \$6600 in total, and the point of that limit is that that's the point – that's the limit where Congress and the courts have agreed is appropriate, where we don't want to go above that for the purposes of potential quid pro quo corruption, then, suddenly, I can say to a set of donors, give me \$80,000 or \$100,000 every year, but send it to this group of people who will, potentially, send it back to me, that's a different arrangement.

And it fundamentally means that I'm raising much more money from, essentially, the same group of people who just gave me \$6600. That's problematic, and it's especially problematic if you remove all limits on coordinated expenditures because that means that you are, potentially, blowing up the original \$6600 limit because now I can go off and I can get \$100,000 from all the people I would like to get \$100,000 from.

That's the corrupt – that is the quid pro quo corruption issue here. So –

Q. Okay. Let's –

A. And that's the limits on – on contributions. And it also enacts a limit on – on how much money the party can give. It is a pretty substantial limit on both cases, but the two operate in concert so that, you know, parties get a big benefit from these large contribution limits. But they can't go so far as to put candidates in this position where they can just blow off and ignore, willy-nilly, the individual contribution limits.

Q. All right. So, we got to breakdown a lot of that. You agree with me that a candidate can appear at an

event for the party, a fundraiser party, correct? Within the limits?

A. Yes.

Q. So, where do you fundamentally see the risk of quid pro quo corruption arising from them – because what I am understanding, and you tell me where I am wrong, please – that you see an inherent risk in that occurring, and then fundraising for the party at a higher limit than what they are able to fundraise for themselves. I mean, the party is subsequently allowed to support them?

A. So, let me use an example from Professor LaRaja's declaration to sort of illustrate my point. He makes this argument that if political parties were able to do more coordinated expenditures, have unlimited coordinated expenditures, the kind of impasse that just ended with the Speaker of the House problems might not have occurred because the party could use it's financial ability to punish – to punish problem makers and to enforce coalitions, right?

Q. Uh-huh.

A. So, think about what that means for a second, right? That sounds great in the context of how we understand, maybe – well, depending on, you know, your political context, you take that. But what happened in Wisconsin is that the party leader used that ability – literally the same thing – used that ability to sell policy favors, like tax breaks for Group X, and blocking, you know, policy that was – that Group Y wanted, in exchange for larger contributions, you know, from Group Y, so that he could distribute more money to other democrats in the caucus in order to win more seats.

That is quid pro quo corruption, and it is quid pro quo corruption exactly of the sort that Professor LaRaja says is what we want to have because we want a party leader who can raise a lot of money and then spend it to get the kind of people that he wants to be elected to do the things that he needs to have done.

Q. Look, I don't know the situation in Wisconsin, so I cannot talk about that intelligently. But, if you are the party leader – so, you wanted to keep it simple and stick with the RNC and DNC, but we can talk about the LCCs, and should.

Is it quid pro quo corruption to do what Professor LaRaja is talking about, to have more money coming in the door that you control and say, hey, we are not going to spend this on your campaign if you are not getting in line with the party's agenda?

A. Well, so, what if a party – what if the party leader was saying that the party's agenda is my agenda?

Q. Can a party corrupt it's own candidate?

A. Why not?

Q. Well, earlier you said they had a shared interest, right, so –

A. Well – excuse me. They have an interest in seeking power, but we have had corrupt party leaders before, and the idea – and, by the way, I should point out that one of the arguments that people – that the people who made – who toppled Representative McCarthy made when they toppled Representative McCarthy is that they said he was corrupt and he had no principles.

Q. But that word gets thrown around, politically, all the time, correct?

A. Right. And they said he had no principles other than promoting himself.

Q. Okay. But does that not feed in – whether you agree or disagree with that, does that not feed into exactly what Professor LaRaja is talking about in terms of parties losing power to keep – because most – and I think he said it a number – most of the party did not support ousting the speaker, correct? And we are going to talk about this again later, but –

A. Well, we can, but – but think about what – what we are saying here; that for most of the time of – most of the last 30 years that I have been engaged in this endeavor, people have been at great pains to make the argument that parties seek victories and they don't use their money to enforce a point of view on candidates, because to enforce a point of view on candidates would be to walk down the primrose path to quid pro quo corruption; that is, in order to get this done or that done.

So, for example, there were these widespread reports that were backed up by a lot of campaign finance data that prior to the passage of the, what was it, the 2017 Tax Bill, a lot of large donors said that if they don't pass the tax bill, they were going to stop donating. There was a donor in Texas who said, The piggy bank is closed until you pass the tax bill, and then talk to me when the tax bill is passed.

So, if you are a – if you are a candidate who says, Well, I think cutting taxes now is a bad idea because the deficit is too large, and the party says, we will punish you financially if you don't go along (indicating),



that's – and it is a fairly narrow margin, right? This is – this is kind of a problematic example, but it is exactly the example that he suggests is an acceptable position for the party.

And, by the way, a super unpopular piece of legislation. Did not –

Q. Why is it problematic for the party committee to try and ensure the coalition and keep coalitions together? What is the quid pro quo there? I guess I am not understanding. Because the donors –

A. Well, so, the quid pro quo there is fairly – is fairly simple. That is, we – the idea here is that parties are not supposed to be using their financial ability to help determine outcomes. The argument has always been – and you see it in LaRaja's report as well – the argument has always been that parties function in order to win majorities.

And that means that in my district, the republican is more moderate, and in the district three districts over, the republican is more conservative, and in four districts over, the democrat is, you know, super lefty, and the one just south of that, you know, is a conservative democrat, right?

Q. Okay.

A. And that is something that is seen as an asset because the parties are being – are adaptable to the demands of the districts. Okay, well, that's fine. But if the electorate in those districts says, we prefer X, or Y, or Z, that's fine. But when parties use their financial muscle to do something else, that opens the door to a set of donors coming in and saying, well, we need something else.

There is an interesting historical analogy here about – what is it? I can't remember the amendment. Is it the 19th Amendment? The amendment that led to the popular election of U.S. senators.

There are a bunch of reasons for a popular election of the U.S. Senators, and one of them is that a lot of the state legislators found that they were being taken over by big interests who were not interested in the state's business. They wanted to control those legislators in order to control the election of U.S. Senators. And they were desperate to get out of the business.

It puts parties into kind of this role where, you know, you see how – if you want to use money to control things and to control votes and to enforce a kind of – a party discipline, that's – that's the pro quo, and the quid is the party money. Where does the party money come from? It comes from somewhere, why not from rich person A or B.

Q. So, is rich person A or B putting encumbrances on that money, in your example, or is it just the party doing it on their –

A. Yes.

Q. Okay.

A. Yes, it absolutely – this was the – this was literally – literally the story about – whether you believe it or not – but this was the reporting around the republican – around the tax bill in 2017.

Q. Well, even in our reporting – and, first, I mean, I don't know the veracity of what they were saying, but as I understood it, those were people saying that if

they don't engage in the tax cut, I am not going to support the Republican Party, correct?

A. Right, but there was also a bunch of studies that were done that showed that – almost immediately after the bill passed, there was a flood of donations into republican committees.

Q. But there is no evidence that that was tied specifically to any arrange – because we talked about quid pro quo, earlier, required a specific arrangement, right? And this would be, Oh, I like what you did, I am supporting this?

A. That's exactly right.

Q. And you think that's inherently corrupt?

A. I am saying that that – the idea that you set parties up to be a vehicle, and you introduce the argument that parties should be in the business of using their financial ability to punish candidates for their views and for taking positions on things, that is exactly the thing that – for the entire sweep of my entire 25 year career, or whatever, as an expert witness, everyone has taken pains to argue against parties that were doing it. I was shocked to see it.

Q. We'll come back to that point and flesh

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A. Yes.

Q. And if you were to tie a request for government action to a contribution, within the limits, that would be governed by a different law, correct?

A. I'm sorry. I misunderstand. I don't really –

Q. So, if I gave a max out contribution of 41,300 to the party committee and said, Hey, I want you to do something to get my son a job in government, that somehow fell within an actual corrupt bargain, like you are thinking about? That wouldn't be a violation of FECA? That would be a bribery violation, correct?

MR. WEIMAN: Objection. That calls for a legal conclusion.

Q. You can answer.

A. I – I think that that's correct, but I'm not an expert on that.

Q. Okay. Did you consider, in drafting your report and preparing your report, the effects of bribery laws on the quid pro quo corruption?

A. I'm not an expert on bribery laws.

Q. Did you – we talked about it a little bit, but did you consider the anti-earmarking rule and its effect?

A. Yes.

Q. And your conclusion was it's not effective?

A. Yes.

Q. And what's that based on, that conclusion?

A. What are we at? Approximately 50 years of history.

Q. But you state specifically in – so, let's unpackage that. You state specifically in your report the fact that – quote: The fact that scandals specifically involving coordinated federal expenditures have not been more common, suggests that the current regulations are working as intended.”

So, first, about more common; do you know of any?

A. So, with every example of federal politicians, like, you know, Representative Ney, Bob Menendez in his first indictment, actually the ones that resulted in, what was it, a hung jury if I recall correctly, had actually instructed some money be routed to, I think it was, the New Jersey Democratic Party. So, it is another sort of example of parties being used as a conduit.

We have examples of parties being used in these corruption cases, but what I don't have, because, you know, I – no one has this kind of bird's-eye view of this, is this sort of, like, direct access to the conversation where Menendez turns around to the New Jersey Democratic Party or – or goes to the NRCC and says, okay, Here's how this money comes back, or this is what we do with it.

I mean, I didn't see that in any – I didn't have access to the main charging documents or anything and so I don't know. I only get to observe the first part of that.

Q. Okay. But you are saying – but you have no – the Bob Menendez case didn't, to your knowledge, involve coordinated party expenditures?

A. I don't know how that – how that money ended up resolving itself. I just have this strong suspicion that it ended up resolving itself to Bob Menendez's benefit.

Q. Okay. So, one thing we've talked about is, in your mind – or, you say in your report that the existing limits on party coordinated expenditures is the only piece in place which keeps the system somewhat in check; is that correct?

A. Yes.

Q. You agree with that opinion?

A. I do agree with myself, yes.

Q. Okay. Can you explain to me how that works, in your mind, where in some races we have got upwards of \$5,000,000, when you combine the totals that can be spent in coordinated expenditures, why we haven't seen an example of quid pro quo corruption through this system?

A. So, one reason is, of course, we don't get to observe everything that happens. So, I can't promise you that nothing bad has ever occurred. This is, you know, very much like the IRS audit system.

It's usually – when bad stuff comes to our attention, it is because of something extraordinary that sort of forces it to our attention. So, I can't say for a fact that there is no corruption. I am just saying I don't know of any.

What – what I mean by the idea is that the limits on coordinated expenditures means that there's a limit on the way in which candidates have an incentive to use the higher contribution limits to parties to their own advantage. And that, by itself, then makes this less – this end-around around the – their individual contribution limits less important and less desirable to them.

The other thing I will point out in a – in a kind of an obvious way, where – where contribution limits – where coordinated expenditure limits are really high is where the states are really big and the – you know, the campaigns are really big as well. So, you know, to raise \$5,000,000 is probably where the candidates are spending 60 or \$80,000,000, you know? I don't know.

So, it would be interesting to see – I don't have the wherewithal to do it. It's always a fairly difficult, kind of, investigation. Usually when we find examples of corruption, it is because people have been really bad at hiding their activities.

Q. Okay. Could you – you can't think of one example where, under the current system – let's just stay on the current – with the current limits in place, where there has been any sort of quid pro quo corruption related to coordinated party expenditures, correct?

A. I can think of – like I said, I can show examples where candidates – where officials who have, in fact, pled guilty to corruption, quid pro quo corruption, have admitted to using party committees for their larger contribution limits to route money as part of their corrupt schemes.

Q. But not in support of their candidacies, correct?

A. In the case of Chvala, that's correct. But in the case of Ney, I do not know.

Q. Have you examined whether the base limits had prevented coordinated party expenditures from being used to achieve quid pro quo corruption?

A. I don't think so, and I don't think they do.

Q. You don't think –

A. I think, as I – as I pointed out in the conclusion to my – to my report, there is a fairly straightforward, you know, tradeoff here which would lead me to, you know, withdraw my objections to the coordinated expenditure limits; and that is, to move the base limits to exactly where they are for candidates. It would, essentially, double the candidate limits, but I could

live with that. What I think is unacceptable is limits that are 15 times higher, or more, for parties than candidates.

Q. So, the problem is in the math?

A. Yeah, the base – the argument, the idea that base limits are so much higher for candidate – for parties than they are for candidates, and the candidates, themselves, are the ones who are doing those – the prime draws and doing the main work of raising the money, that’s where the quid pro quo corruption comes in.

Q. And I do want to talk about the fundraising, but just while we are on this point, if Congress elected to – do you think that would be a more – sorry, strike that.

Do you think that would be – if the lower limits were in place, would you just not object to it, or would you think that would be a more natural system?

A. Would that be a more what system?

Q. A more natural system where the party committee could then work fully with the candidate?

MR. WEIMAN: Objection. Vague.

Q. Based on your history, your experience with parties and the role, the interplay between them and their candidate.

A. I am not quite sure what natural means, but I’d really have fewer objections. I probably would not object.

Q. We talked earlier about the role of parties and their candidates, right, and that there is sort of an inherent identity interest, and there is a motivation to work together, correct?



A. Yes, there is a motivation for them to – for both of them to see the candidate get elected.

Q. Okay. So, what I am trying to get at is, looking holistically at history, if the limits were lowered, as you said, to the same number, would you think that is a more natural order of things than the system that is in place currently that keeps them divided?

MR. WEIMAN: Objection. Vague.

A. Yeah. You know, I am not entirely certain I know how to answer that question in the concept of naturalness. In the context of corruption, I understand what Congress is trying to do in helping parties become more robust.

It is an interesting thing to understand this, particularly in the context of the objections that Professor LaRaja raises, but in 1974 – to my report – in 1974, when FECA was passed, we were, what, 100 years or so into the DNC and the RNC and the LCCs existing at the federal level, I mean, plus or minus a couple decades in all of these things. And throughout that entire time period, those national party organizations were – to say that they were decrepit is, I think, completely fair.

There was a book published about the national party, the DNC and RNC, by Cornelius Cotter, who is an important party scholar entitled – let me see – *Politics Without Power*. And, so, those committees were just like shells. They kind of were nothing.

And, so, I think that Congress imagined that if you wanted to give those party committees the wherewithal to become something, you want to give them higher limits to do stuff, and they really shot up and took off. And I stand by the line that I use in my

report, They succeeded beyond their wildest dreams, because they absolutely did. And it is not because I am comparing, you know, 2023 to 1964.

It could be 1864 and 1924, it doesn't matter. The entire sweep, you know, from the moment FECA was passed, the parties started benefitting, and, okay, that's fine. The question is, having benefitted at that level from the higher contribution limits, that was unimaginable in the context of 1974, and what does that mean for the quid pro quo corruption that might become a part of our federal parties?

And that wasn't something that could possibly be imagined in 1974 because those things were just – they weren't even – it was like saying the leaf pile outside of my house, you know, has a corrupting impact. How could that possibly be?

Q. But you are only talking about the LCCs in that context, not the DNC and RNC?

A. All of them, right? All of them were – all of the national party committees were just kind of nothing burgers in the sense. So, if you think about the DNC and the RNC, they were captive to the state and local party organizations.

Q. Which had a lot money?

A. Nobody had a lot of money. Money was not the coin of the realm in this – but, yes. But one of the things that – that happens is that – that the parties began to take advantage of this money raising thing, and people began to focus on the money raising thing, then money becomes a bigger issue.

So, you know, fast forward 10 years, 20 years, 30 years, 50 years later. The parties are, you know, a half

a billion dollar enterprises, and they're awash with money, and they become the focus of how a lot of – the money is concentrated in politics.

And it's not – it's a – there is reason to be cautious about how this all plays out. So, I would favor – I mean, I – if you want to have – if you want to have your cake, you can't eat it, too.

What I mean by that is, to raise limits, you can't have, you know – in my view, you can't have unlimited coordinated expenditures. Or if you want to have unlimited coordinated expenditures, then you have got to give up the base limit – the much higher base limits.

But I don't think you can have both because both in combination causes a gigantic problem. And I'm sorry for going on for so long.

Q. What I am still having a hard time is, why isn't that inherent in the current system?

A. Why isn't? Well, so, there are dangers in the current system, I agree. But – but the combination of the base limits with the limits on coordinated expenditures provides some level of breaking. And if you remove the limits on coordinated expenditures, it would mean that you would blow past the limits entirely.

So, you know, if I were a candidate running for office and I had a set of donors who wanted to give me more than \$6600, some of them could give money to my political party with the understanding that it would be returned to me, or I would benefit for that from coordinated expenditures.

Q. What do you base that point on? Is that your fundraising context?

A. Yes. Yes, because – because the – my party and I would do a fundraiser, and I would appear at it and maybe, you know, another couple of important people from my party would appear with me to just sort of seal the deal, and they would talk about what a great guy I am and how they are looking forward to helping me, and how the money we raise tonight will help me get elected. That's the script at these fundraisers, right?

And – and at a certain point, once I hit the limit, the ability of, like, the next \$6600 donor or something to say I want to do that, too, that kind of ends. But if there is not a limit on that, then I just keep on doing it over, and, over, and over again.

Q. No limit on which side?

A. On how the money – on the coordinated expenditures.

Q. Do you have any example of a fundraising event where it has been stated, specifically, this money the party raises is going to be spent, earmarked for purposes of spending on my campaign?

A. Well, for one thing, I am not a big enough donor to go to those events, but we have lots of examples of things like – you know, things like that where people, you know, say, Well, we are – they are so excited to be here, you know, so and so is such a great candidate, we are raising money for this, or that, or something else, and we are looking forward to, you know, working so hard to get so and so elected.

Q. So, isn't that – that's natural for a party to say, right, they need the money to help get their candidates elected? It's not saying, though, your money will be spent for so and so, correct?

A. But remember what we are talking about here. We are talking about people who are – if I’m a 40, or 80, or \$100,000 donor and I am writing a check that large and it is an event that, you know, I have given the max to Krasno and I’m a big Krasno supporter, and my spouse has given the max to Krasno, and we go to this event, I actually – and I write a gigantic check, and my boss writes a gigantic check, it is – there is no empirical evidence to suggest that this is not going to go to the campaign where we expect it to go to, right?

Now, that is not to say that when Nancy Pelosi goes off and raises money for the democrats, or Mitch McConnell goes off and raises money for the republicans, that, you know, that they are raising money for themselves. But remember the Chuck Chvala example. Chvala is not raising money for himself, but he is offering direct policy favors through the auspices of the party to direct donors.

So, if you read the Chvala charging documents – so, remember, right, I come from Wisconsin and I worked for a state legislator in Wisconsin in the State Senate, so I don’t remember if I ever met Chuck Chvala, but I certainly saw him in the hallways during the year that I worked there. So, this kind of rang a bell for me back when – when he was indicted.

He had cattle calls where he called lobbyists into his office when he was majority leader of the State Senate, and instructed them to write checks to the Democratic Senate Campaign Committee, or whatever it was called, I mean, their version of the LCC. And he said, you know, if you don’t do this, I won’t pass this bill, or I will pass that bill.

Q. Okay. So, let’s un-package that a little bit.

MR. WEIMAN: Stewart, if I can just cut in for a minute.

You know, we have gone for about – I think we are over two hours now since our last break. I think it might be a good time, maybe, to take a few minutes –

MR. CROSLAND: Yeah. Do you want to take a break? I think we are probably –

MR. WEIMAN: Professor Krasno, would it be helpful for you to take a break?

THE WITNESS: You want to – as long as it's a timed break so I can get lunch or something.

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AFTERNOON SESSION, 1:06 p.m.

CONTINUED EXAMINATION OF PROFESSOR JONATHAN KRASNO BY MR. CROSLAND:

Q. Professor Krasno, before we took our break, you kind of went through two sort of discreet hypotheticals about, sort of, your notion of corruption here. One of them was the one based on the Wisconsin matter, right, with – what's the name of the officeholder you referenced?

A. Charles Chvala.

Q. And that –

A. Would you like me to –

Q. Can you spell that for the record?

A. Yes, it is C-H-V-A-L-A.

Q. That is hard to spell.

So, as I understood it from earlier, you mentioned that he was seeking money to the party committee in return for political policy favors, correct?

A. Yes. And he was convicted.

Q. But none of that was tied to his campaign, correct?

A. None of that was tied to his campaign. He was from the same city.

Q. Okay. And he was convicted of some sort of bribery charge?

A. Yes. There was several different charges, but bribery was a part of it.

Q. Would you agree that at the federal level, that would be illegal?

A. Yeah, quid pro quo is illegal, yes.

Q. Even if they solicited money within the contribution limits?

A. Yes.

Q. All right. And, then, the other example we talked about was the Candidate Krasno event for the party, fundraising for the party where you, as the candidate, would have been the featured guest, and you were mentioning folks who per – punitively maxed out to your campaign, correct? Attended, right?

A. Yes.

Q. Under the current system as it exists, there is nothing – that event could happen the same way, correct? You could attend the event and give money up to the maximum limit to the party committee, correct?

A. That is correct.

Q. Now, the only thing – but if they earmarked it for your campaign, for specifically spending on the campaign, that would be impermissible, correct?

A. Well, yeah, but there is a kind of a handshake and a nod and a wink, but, right. There is an understanding of what's going on.

Q. What do you base that on, the hand and the wink idea?

A. Well, I mean, there are various reports of how fundraising happens. So, you know, there are candidate declarations I have read in previous litigation, there are press reports, there are, you know, books that – that I have read. There is pure common sense about this.

So, when – when these large dollar donation events happen, what occurs is that, you know, they – there are events that actually generate receipts. We know who gave and when they gave and what the event was associated with. So, there is an event, a banquet, or maybe not a banquet, but a small dinner for my campaign which has – you know, which raises a half a million dollars from, you know, 30 or 40 different donors.

That's a that discreet thing. We know what happened, and we know who gave. It is a recorded thing.

And, so, the idea that – that my participation in that event is unimportant or unconnected to what occurred in that event, is not – really not – not really a plausible scenario. So, this is particularly, you know, important to understand in the context of what a legislative LCC is – well, sorry, that's redundant. What an LCC is.

Because an LCC is, essentially, a cooperative, in some respects, in that, it's controlled by a party caucus. And a party caucus is, by definition, a set of office holders, you know, members of – elected officials,



members of the caucus. So, you know, they are all elected officials, they are all part of Congress.

You know, some of them might be – some of them might be committee chairmen or party – or chairwomen – or ranking members, or, you know, party officials. Some of them might be back benchers. But the idea is that they are all, in some respects, in a position to offer quid pro quo's at some level.

Q. All right. So, let me just finish out the hypothetical, though. You said your participation would be the notion that it's disconnected, I understood, but the reason they ask officeholders to attend these events is because they are the sort of Washington D.C. equivalent of celebrity for these events, right? And for the party, if you divorce the candidate from the party, what are the donors supporting, correct?

A. Right.

Q. But there is no – in that scenario we are talking about, if you are – there is no specific agreement that the money is going to be spent on the candidate, correct?

A. Well, so, specific and explicit, and all these other things, I mean, I think there are – depending on the circumstances, there could be – there could be a kind of implicit expectation that this is what this is for; that is, Hey, you know, great you could come. Krasno is a great candidate. Real excited. Going to raise a lot of money tonight, and we are looking forward to helping him get elected.

What does that say to you?

Q. Well, so, that's inherent in the current system, though, correct?

A. Right. It is inherent in the current system, but the difference between the current system and a system which says that that event can be replicated over, and over, and over again means that that – we just replicate that event over, and over, and over again.

Q. Well, the event can only be replicated for the same donors up to the contribution limit?

A. That's right, but it also suggests that if what we are doing, in the absence of a set of limits on coordinated expenditures, is that we are no longer in a position where we are raising money in \$6600 chunks, but we now can focus on raising money in the 80,000 or 100,000 chunks, or however it is you want to think about this, right?

Because the party limits have now substituted for the individual limits. And if we can do that sometimes, that can be problematic, and it can give certain donors the potential for quid pro quo corruption, I do not deny that. It makes me less than happy.

But if we do that over, and over, and over again, it just multiplies that potential, and that is really a dangerous situation. So, let's think about this in a different context, which is not me as candidate, but let's imagine I'm a party leader, like Chuck Chvala or, you know, Hakeem Jeffries, or Mike Johnson. Well, now I am under intense pressure to raise a ton of money for my party. What am I doing now?

Q. What does that have to do with coordinated limits, though?

A. Well, because if I'm – if I'm in a position where what I can do is raise all this money and then spend it directly by giving money to people who then owe me their – I can literally say to somebody, Hey, I can write you a \$5,000,000 check, as the party leader, and I am about to do that, but I am going to need this in return.

Q. But, yet, we don't see examples of that happening where limits are in place?

A. We don't.

Q. And the only way that that be can illegal in this situation, just going back to our hypothetical, the event, whether you are the candidate or you have somebody else attending, the only way it's impermissible is if there is some sort of designation that it is spent specific for that purpose, correct?

A. If there is a limit on – on the size of that check that can be written.

Q. Another way to put it: Do you agree with me that giving to the party committee, generally, for its general operations, even if you, aspirationally, hope it is going to be spent on a candidate, is permissible as long as it's within the limits?

A. It is permissible as long as it's within the limits, yes.

Q. And that's not quid pro quo corruption?

A. It is not quid pro quo corruption.

Q. Okay. So, LCCs. I just want to chat about that. And you kind of got into some of this while we were talking there.

Your report talks about the chairmanships, particularly of Senators McConnell and Schumer. I think McConnell was '97 through 2001, and Schumer

was 2005 to 2009. Can you sort of flesh out what you were driving at there in your report?

A. Well, yeah. So, the idea here is that the raising of money and the distributing of money, and the helping of the getting of the elected of the members – I apologize for that terrible grammar, but deliberate – is by itself part of a – is an asset to individual members as they gain, you know, sort of a foothold within the party. And it makes them influential.

So, there is a policy question here about what you want a party to be. And it sort of goes more broadly to the kind of stuff that LaRaja – Professor LaRaja kind of writes about in and out – and takes various sides on in his – in his declaration. We want a party that's responsible, that takes a kind of – takes a position that enhances accountability.

But if you put yourself in this position where fundraising becomes the coin of the realm where people are rewarded within a party structure because of their ability to raise money, then that's not what he is writing about.

Q. Okay. So, you are talking about money coming into the party, correct?

A. Yeah.

Q. Which is, again, subject to the contribution limits?

A. Well, that's right, but the thing about this is, the two work hand in hand. So, again, go back to – that – I looked up the page number on our break. The very bottom of Page 28 of Professor LaRaja's declaration where he says, well, you know, If the parties had the ability to spend more money on

candidates, they could, you know, punish dissenters and enforce coalitions and blah, blah, blah, blah.

Well, okay, if that's how – if that's how that works out, that sounds perfectly fine. But there is no guarantee that that's how that works out. And – and when you put yourself – when you create a situation where the asset that party leaders have isn't the asset that party leaders traditionally have had, which is the ability to create coalitions to anticipate what members need, to understand how to bridge divides, but rather the ability to disburse campaign money, that's a different set of assets.

So, nobody in my line of work who teaches congress courses has ever said, what we really need in the Congress is the ability of the party leader to spend more money to enforce party discipline. Sam Rayburn, or Lyndon Johnson, or – well, I am trying to think of a good example – or – you know, sort of storied party leaders are not – legislative leaders are not valued for their ability to offer – to leverage people with campaign dollars.

Q. All right. Let me jump to that then. We are talking about a different scenario now in this current environment, right, and in the examples you just gave. And I think the point that is being made, and I do want to come back to this, but while we are talking about it, is that the parties have, particularly since 2001, have waned in their ability to do – to compete in this market. Do you disagree with that?

A. Kind of. I think that they face different sets of competitors, but they haven't really waned. They are still massively important. So, one of the things that doesn't come up in Professor LaRaja's declaration is

something that's probably even more important, which is that the rise of the internet has allowed candidates direct access to individual donors in ways that was unimaginable, say, 10 years ago.

So, if – if I were running for Congress – if I were running for Congress 20 years ago, the first thing I would have to do is go down to Washington and meet with party officials and hope to get their blessing, and I would still be doing that if I was running for Congress today. But I would also be working on trying to get some sort of viral campaign ad up on YouTube, and so forth, because there are lots of examples of people who have raised a \$1,000,000 online outside of the party structure.

And that has actually changed the game, pretty substantially, in ways that are different than anything that he writes about.

Q. All right. Let's come back to that. I want to finish out our corruption discussion in general.

All right. Fundraising and the LCCs. So, you were talking about McConnell, Schumer and that. Can you just sort of summarize – so, your ultimate goal here in the report is to explain that – to explain what with regard to the LCCs?

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A. Presumably.

Q. And they would draw attention because of their notoriety, correct?

A. Yes.

Q. And you see no problem with – but do you think there is a difference between having Senator McConnell, in terms of a threat, versus somebody else?

A. Well, that really depends, right? So, you know the chairman of an important committee that's, you know, dealing with a specific bill of interest to a specific audience, sure. I mean, there are certainly issues here. This is – the idea of quid pro quo is inherent in the entire campaign finance regime. That's why we have contribution limits.

Q. A limit – but a risk of quid pro quo, correct?

A. Right. Right.

Q. And we limit the money coming in for it?

A. That's right.

Q. And we limit the ability to circumvent those through the anti-earmark limits, which I know you don't think works –

A. Well, there is no reason to believe that they work because they have never worked.

Q. But you'd agree with me, even under the current system, if somebody came in and said, Hey, I want you to spend this contribution on Krasno's campaign, that would be a violation of the earmark if they did –

MR. WEIMAN: Objection. Calls for a legal conclusion.

A. So, what I say to you is, I will refer back to Professor LaRaja's report, which is that he – he and his co-author called for enforcement of this provision, which by implication, means it hasn't been enforced. I mean, I don't think that it's enforceable, but the reality of the situation is, we are 49 years into this, or whatever, and I don't see any evidence that this has ever happened.

So, I don't – and I – and I have lots of reasons to believe that it couldn't happen.

Q. What is, "it"?

A. The enforcement of the earmark provision, the anti-earmark provision.

Q. But do you have any evidence that anybody is earmarking money to be spent on their coordinated expenditures for their campaign?

A. Not in a, sort of, formal way in which you outlined it, no. But people are far more sophisticated than to say something that direct.

Q. Explain that to me a little more.

A. So, think about the example I used about the 2017 tax bill. There is this donor who goes public saying, the piggy bank is closed, you know, I and my fellow donors will start making donations as soon as the – the Republican Congress passes the tax bill.

Most of the time, people don't say stuff like that out loud because those are the sorts of things that are wildly impolitic and you don't say them out loud. Other people didn't say them. There is just this one person, as far as I can tell, you know, from looking into it. So –

Q. There is – again, we talked about this. But there is nothing improper with expressing that unless you go and make – reach an agreement with an officeholder, correct? Again, saying I am not going to support such and such group unless they do X and Y, without having some sort of agreement between you, is not impermissible?

A. That's right. So, until that rises to the level of an explicit agreement, if you do X, I will do Y. But my



point is that – that most people are not so naive as to – to state something that is potentially incriminating out loud. They – of course, well, it's great to be at your fundraiser, I hope this helps you. You know, I am really looking forward to, you know – to seeing how this campaign works out, blah, blah, blah.

And that's how this works. I think the thing is – is pretty clear. Also, remember, if we are dealing with really large, maxed out donors, these are not – these are, very frequently, people who are repeat donors. And, so, the idea that – that somebody who has, you know, given a number of donations would be disappointed in their expectation, is not a plausible scenario.

They have done business with a committee, there is an expectation about how their contribution will be treated. If they are disappointed, there is a big loss.

Q. But that's – sorry.

So, that would be – that's true regardless of coordinated expenditures, correct?

A. So, again, I – we keep on going back and forth with this.

Q. Yes. I am just trying –

A. This offers – a limit offers some opportunity for this kind of arrangement to occur –

Q. Let me stop you –

A. A system without limits offers an unlimited opportunity for this kind of arrangement to occur, and that is, fundamentally, a different type of thing.

Q. All right. I think we can agree. Let's see if we can reach an agreement here. If – to circumvent the

limits now, regardless of the coordinated limits, it requires some sort of agreement that the money be spent on behalf of the candidate, correct?

MR. WEIMAN: Objection. Calls for a legal conclusion.

Q. Or do you think giving to the parties is inherently circumventing the limits?

A. So, it is not inherent, but it depends on the context. So, I have given you a couple different contexts; one is, the Charles Chvala context where the party leader literally solicits contributions to the party in exchange for quid pro quo that he uses to help other people get elected to office, not himself.

It actually happened. We know it happened. He went to jail. This is not ancient history. This is relatively recent history, 10, 12 years ago.

The other example is something that is more anecdotal, but we know from, sort of, constant fundraising, that people give at these events with the expectation that the money that they give will be – sometimes will be directed in a certain way, right? So, it is not an either or. Like, when Kevin McCarthy, when he was, you know, house speaker, went out and raised money for the NRCC, he wasn't necessarily saying, this money is going to help Candidate X or Y, he was saying, this is going to help House Republicans.

Okay.

But that actually brings us back into Chvala land where, what you get to do with that, that could potentially become problematic depending on how you act. But setting that aside for a second, sometimes you have situations where a candidate could then turn

around and say, you know, Hey, I know you have maxed out, but if you come to this fundraiser, you can give money to the party, and that will help me out because they are going to spend this money on my behalf – they'll probably spend this money on my behalf.

Do I have specific examples of this yet? I do not know. But I do know we have all sorts of declarations and sort of examples from fundraisers where people have gone to fundraisers with the expectation that they are giving money to people to help – the party to help particular candidates.

Q. And that's just their belief?

A. Well, it is a belief that is borne out because we have seen them spending money.

Q. Okay.

A. So, I can't say that it is my check that is being used, because it goes into a general fund, but what difference does it make?

Q. Well, the difference I think – so, I guess this is back to my original question. It seems to me you see inherent problems with the parties receiving money at all, correct?

A. No. I see that there is a problem that can emerge if you combine the higher base limits with no limits on coordinated expenditures at all. That's what I believe.

Q. But you don't see that in the current system, and you don't have any evidence of it happening in the current system?

MR. WEIMAN: Objection. Compound question. You may answer.

A. All right. So, there are parts of the current system that give me concern, but it's the current system, and we can observe it and it seems to be functioning. I think that taking off an important component of that current system, which I judge to be key to its function, raises enormous risks that I am not willing to sign off on.

Q. Still just trying to understand the risks, how it is different. So, your concern is with the donor who attends an event, thinks their money is going to be spent, but if they are all able to spend more uncoordinated than they currently are, you see a greater risk of corruption there than if they are able to spend \$2,000,000?

A. So, if you can do this over, and over, and over, and over again – again, we have sort of had this conversation, so I'm –

Q. Yes, I am still trying to figure out what "this" is, because we are talking two different things, right? There is the money comes in subject to contribution limits, and then there is the decision – and the only way my contribution, as I understand it under the rules, is that you can – to circumvent, is if I direct money to be spent on behalf of a candidate, correct?

A. We – the word, direct, I think is farther than I am willing to go. There is an implicit understanding about how this works. So, let me go back to what I said, I think, several times before.

If I am a candidate for office and I have solicited a bunch of large donors to give me \$6600, the current limit, and then a bunch of those people say to me, boy, we'd like to do more to help you out, and I say, you know what you can do, you can give money to my party

and that will help. And they say, how do we do that? And I say, there is a fundraiser coming up, come to that, or just write a check directly to this, blah blah, blah, and so on and so forth.

And I alert, you know, whoever, that they should look out for these checks. So, you know, if the checks are big enough, they won't really need any big alert because the donors will probably contact them directly. But if that – if I do that in a relatively small scale, \$100,000, \$200,000, \$1,000,000, whatever it is, that poses one level of risk. But if I do that at a larger scale of \$2,000,000, \$3,000,000, \$5,000,000, that poses a higher level of risk.

Now, I understand at an individual level, and individual donors, the risk is the same. But what I have done for myself is I basically said, you know, I am going to just start – stop raising money at \$6600 chunks. I am just going to start raising money at much higher chunks.

And that is exactly what the system is designed not to do. There is a carve out, or a limited number of exceptions for that in the way coordinated expenditures work, it's turned out to work that way. We are living with that, and it's been, apparently, okay. But I am not convinced that it won't be okay otherwise.

The second scenario is the thing that, I think, bizarrely enough, LaRaja opens the door to in ways that I find just astonishing; that party leaders are going to put themselves in this position where they are just going to be distributing gigantic amounts of money and enforcing things that they want to enforce, and this is going to be good for the system as a whole.

And there is an actual example of this in Wisconsin. A literal and actual example of this in Wisconsin, which is tied up in bribery.

Q. All right. I just want to get the principles down. So, if you go to the event, and you said the individual donors, but you go and you solicit your maxed out donors, nothing stops anybody from soliciting \$5,000,000 currently, correct?

A. Right.

MR. WEIMAN: Objection. Asked and answered.

Q. So, how do you get the linkage to it being a violation of the contribution limits, to the candidate?

A. So, the contribution limits and the coordinated expenditure limits are working in tandem here; that is, Congress sets the contribution limits. They are not at issue here. What's at issue here is the coordinated expenditure limits.

But because the contribution limits are so much higher than contribution limits on what Professor LaRaja refers to as the other accountable players of the system, we would effectively be substituting these much higher limits for those limits.

Q. And when you talk about the limits, we are talking about the 41,300 limit versus the 3,300 limit, correct?

A. Yes. And that really sort of understates what the difference is because times 2 or times 6, right? So, again, the problem here is that if you get – if you repeat this over, and over, and over again on behalf of the candidate, then –

Q. And I'm sorry I keep asking this question, but when we talk about repeat "this" over, and over, and over again, the 41,300 –

A. If I as a candidate see that my party, I can raise – I can work with my party to raise money, have my party spend – to work with me on a coordinated expenditure project, which we will call it, to support

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chatting with them.

Like I said, they operate in kind of a fog of war. But there is a lot of – they are beholdng to the people that give them money.

Q. So, now we are talking about the donors?

A. Well, the big donors, yes. Like, they are not beholdng to me. I don't give anybody \$100,000. I don't have \$100,000 to give.

Q. Beholdng in what sense?

A. Well, that is answerable; that is, if you keep this deposition going for another week or two, I will have \$100,000 to give, and, you know, we can test this hypothesis. But if I were a large donor, then the question about what I expect for my money is a question that the people who are receiving the money are paying a lot of attention to. When I give \$25 to somebody, they are like, oh, thank you very much, now onto the next \$25 check.

Q. But they don't know where their money goes?

A. Where my \$25 check goes? I certainly don't know where –

Q. Or any donor?

A. The \$100,000 donors know where their money goes.

Q. What do you base that on? In the 100,000 –

A. I base that on their own reports.

Q. Okay. By \$100,000 donor, you mean – you recognize, again, that there is a 41,300 limit for the contribution limits –

A. Well, we're allowed to give money to state parties, and this is times – over a two-year period, et cetera, so - so, okay, fine. In my report, I point out that the effective limit over a two-year period is a little over \$100,000. We are splitting hairs here.

Q. But, again, they are giving with the expect – with the hope that the money is going to be spent the way – but they have no control over it once it is in the hands of the party?

MR. WEIMAN: Objection. Asked and answered. You may answer.

A. Blake said what I have to say about that.

Q. Can you say it again?

A. So, they don't have control, but they do have expectations and –

Q. That's close enough.

A. And what comes with expectation is the knowledge that they are important assets to the committee, if they are large donors and they are repeat donors, and they can not be trifled with.

Q. You mention joint fundraising committees, and we've talked about them a little bit. Can you explain how you think those operate?



A. Well, those were – those are agreements where monies that are raised in – that, committees operate together to raise money together and share the proceeds.

Q. And you think that they are inherently – let me strike that.

In your opinion, is the fact that LCCs engage in fundraising in concert with candidates sufficient to prove quid pro quo corruption?

A. No. There has to be a – a quo to prove quid pro quo corruption. But this shows that there is what we have been talking about for the last, I don't know how long, candidates raise money with parties and they know what parties – you know, what the parties are doing and how these races are done.

Q. Again, what do you base them knowing what the parties are doing off?

A. Because they are partners with the parties. So, when I enter into an arrangement with my LCC to raise money with the party, we are actually operating together. And, so, the idea that – that, somehow or other, they are sort of like two pockets that are kind of unconnected in a pair of pants.

Q. On the incoming. But how does joint fundraising relate to the ultimate spending of the money?

A. Again, it's going to vary on the circumstance. But, usually, when these things are done and the candidates are working with parties to raise money, the thing that's getting people in the door is the ability to write – to work – to help a campaign in two separate – in a different way.

So, if – if you are a candidate, why would you enter into a joint fundraising agreement?

Q. For efficiencies, right?

A. What's the efficiency?

Q. Where you can – yeah, I should be asking you the questions. I will phrase it as a question.

The whole point of them is to raise money in one large chunk from a single donor, right, at an event, so they can write one check rather than having to distribute the checks, and it is pulling it out of prior precedent from the FEC?

A. Yeah, but the thing about this is if you're a candidate, what's the efficiency in that? The efficiency in that is if you have an expectation that some of the party's share of that check is going to come back to you; otherwise, there is no efficiency at all.

Q. What are you basing that on?

A. Well, I am basing that on testimony about people said joint fundraising worked for them.

Q. Well, when you say come back – sorry. Let me ask it this way. When you say, come back to you, you mean specifically come back to you, or the party –

A. That is – that is, parties will make expenditures on your behalf. Or, parties will take actions on your behalf.

Q. But that's not necessarily true because you said it's context driven by who the member is, in your mind?

A. Yeah, but that – that – so, I should walk that back a little. I haven't looked at this for a very long time, but I would be very surprised, for example, if a member who is not in any kind of electoral danger is

dealing – is creating a joint fundraising committee. What would be the point?

So, for example, Nancy Pelosi, when she was raising money for the democrats, probably wasn't doing it with a joint fundraising committee because she doesn't need the money in her campaign.

Q. What if they are doing it to benefit the party?

A. Well, then there wouldn't be a joint fundraising committee.

Q. Why not? Why wouldn't she just take the money?

A. For her campaign?

Q. For her campaign. For her leadership PAC.

A. Maybe she would do it for her leadership PAC, but, again, that kind of stuff I suspect mostly happened for candidates who were raising money for their own campaigns. So, I would have to go back and take a look, but I think that most of that was about – was a combination of – it is a combination of candidate campaigns and party committees.

Q. But you haven't looked – in preparing this report, you didn't look back at examples of joint fundraising committees?

A. No, I did not. I have not looked at that.

Q. Do you believe the existence of joint fundraising committees is alone sufficient to justify coordinated party expenditure funds?

A. Alone? No, I think it is part of – it's part of a larger argument that I have made.

Q. So, even though it is legal to fundraise together for hard money contributions, you have concerns that

the joint effort to fundraise, raises concerns of quid pro quo corruption?

MR. WEIMAN: Objection. Misstates testimony. You may answer.

A. I am not sure I really understand the question. So, let me just state, again, for the record, I don't believe that the – the earmarking provisions that are in the current law have ever been enforced and are, in fact, enforceable. And the fact that – that fact doesn't mean that the current system is irredeemable and broken, but it means that if we were to eliminate the current limits on coordinated expenditures, we would be creating a danger that I am not willing to accept.

Q. And, ultimately, just to repeat myself, your biggest concern is with the dollar value, the contributions coming into the party committees, correct?

A. It is the combination of the two.

Q. At the risk of repeating myself. But you are fine with the limits on coordinated expenditures as they exist today, but the idea of undoing them, somehow would raise your concerns?

A. Undoing them in the context of the high base limits on parties raises my concerns, yes. If we were to change the base limits on parties to make them equal to the base limits on candidates, then I would have to rethink that position because I am not sure I would have the same concerns. So, it is the two things in concert which are the issue, not one thing, but both things.

Q. Sorry to ask, but I do want to follow up on a couple points, and we'll get to the last thing.

Summarizing today, are you aware of any examples of quid pro quo arrangements at the federal level arising from hard money contributions made to party committees?

MR. WEIMAN: Objection. Asked and answered.

A. So, I think that – as Mr. Weiman pointed out, we talked about several instances of corruption where individuals who either pled guilty to quid pro quo corruption, as part of their scheme, routed money through party committees. Or in the case of Senator Menendez, you know, there was a hung jury, so he is not – his guilt is undetermined in this case.

But what – what I am unable to determine in either of those cases is whether the ultimate disposition of that money from, you know, the NRCC, which is where Representative Ney had this money sent, what ended up happening to it, right, because I don't know.

And it wasn't part – it wasn't charged with part of the criminal case, and I don't have a way of, sort of, determining that. What I've argued is that parties, because of the higher base limits, represent a kind of potential conduit. And if you were to remove the limits on coordinated expenditures, that the advantages, or the, sort of the attraction of that conduit would be magnified substantially, and that would massively increase the potential for quid pro quo corruption.

Q. Okay. As we discussed, the parties may receive three times the amount of general operating contributions into those segregated accounts that we discussed today, correct?

A. Correct.

Q. Are you aware of any examples of quid pro quo in the context of those accounts?

A. I haven't thought about it because it is beyond the context of this engagement. I know there were allegations around some of the convention spending in – or maybe it was the inauguration spending in 2016 or – in 2016. I am not sure that – that would not be part of this segregated funds, so I would have to think about that. It hasn't been part of this engagement, so I haven't thought about it very deeply.

Q. Okay. In preparing your report, did you examine whether there were any examples – we have talked about state issues – but any examples of coordinated party expenditures being – on behalf of a candidate being used as a basis for quid pro quo corruption?

A. I'm sorry. Could you repeat that?

Q. Yeah. Where – in the states, have you seen any examples where money was routed to the party for purposes of spending on behalf of the candidate in their arrangement?

MR. WEIMAN: Objection. Asked and answered. You can answer.

A. I am not sure I understand the question. So, you are talking about federal money –

Q. No, no, no. State law, state money. An example of money being used, diverted through the party for spending on a person's campaign in exchange for policy favors.

MR. WEIMAN: I will just renew that objection. Asked and answered as well.

A. Well, the Chvala example doesn't involve his personal campaign, but it did involve the campaigns of other people, and it's a pretty extraordinary thing because there was a lot of corruption. And, so, he used the state's – the Democratic State Senate Committee in a pretty extraordinary way. I mean, he had lobbyists and, I think, a Native American tribe, et cetera, writing checks directly in excess of what they could have given any candidate, to the Wisconsin Democratic U.S. Senate Campaign Committee.

And he explicitly said, if you do this, I will do that, and those things were done. So, Wisconsin doesn't have a category for coordinated expenditures. That's not a part of Wisconsin's Campaign Finance Law. But – but, yeah, I mean, I think that, by any reasonable definition, that's an example that fits almost perfectly. The example –

Q. But the money wasn't spent on his campaign, correct?

A. The money was not spent on his campaign, but the money was solicited by a party leader for a party committee in exchange for a direct quid pro quo, a series of quid pro quo's.

Q. Which we agreed would be illegal in any circumstance?

MR. WEIMAN: Objection. Calls for a legal conclusion.

A. I – I don't know. I guess that's – it was a violation of a bunch of different laws.

Q. Are you aware that several states give the parties – party committees in the states free reign to

make coordinated expenditures or direct contributions to their state level nominees?

A. I am aware that there is a vast variety of different arrangements in the states.

Q. And New York is one of them, right?

A. I think that New York is one of them.

Q. And you are in New York?

A. I am absolutely in New York. Our system is somewhat in flux, so it's a little hard to keep up.

Q. Are you aware of anybody directing money through the party for use in their campaign in exchange for policy favor, in New York?

A. So, New York is – is – is a very complicated example because we have had at least two party leaders, or three, be convicted, and several of them go to jail, for different corruption things. It is so unclear, but they do not appear to have used the party as their mechanism.

But they – but they – part of the issue with New York is that the campaign finance law has allowed, sort of, such a tight control over party – over campaign resources, that we have a particular type of politics in the state that has been kind of disastrous for both republicans and democrats in the state. So, we have virtually no competition and it is not a healthy situation.

Q. But to summarize, you are not aware of any quid pro quo being routed through the party for spending on that candidate's campaign?

A. I'm not aware of quid pro quo routing through a party. I – unfortunately, the state seems to have so



many – so many avenues for quid pro quo's that the party hasn't been the preferred avenue.

Q. All right. So, let's try to make this the last topic we are going to get into. So, some of this we have discussed. Let's get you – (indicating) can you see this again?

A. Yes.

Q. Okay. Early in your report, and I think this language has been in several reports. You state, "While it may be attempting to examine a single part of a statute under a microscope, campaign finance systems are systems whose different parts operate together in concert. Experience shows that altering an element of the campaign finance system can have repercussions throughout." And you believe that, correct?

A. I do.

Q. Believe strongly in that?

A. I do.

Q. Would you say that the Federal Campaign Finance System has undergone significant alterations since 1974?

MR. WEIMAN: Objection. Vague.

A. Yes.

Q. Would you agree that the system has changed significantly since 2001?

MR. WEIMAN: Objection. Vague. You can answer.

A. I do think it has.

Q. And in 1997, when you wrote your report, those changes include passage of BCRA in 2002, correct?

A. Yes.

Q. And then subsequent court decisions that have altered the landscape, such as: Wisconsin Right to Life, Citizens United, and SpeechNow Network, right?

A. Yes.

Q. In preparing your report, did you examine how the rise of the super PACs have affected political party

A. I certainly contemplated it. I don't think I would say examined is the verb I would have chosen.

Q. Did you do any comparative analysis with regard to spending or fundraising?

A. Again, I would say I contemplated it. I did not examine.

Q. Do you believe the changes in the system since 2001 have had major negative repercussions for political party organizations at the federal level?

A. I think it is complex, but – well, a little bit. Major, no.

Q. Do you think the parties are weaker now than they were in 2001?

A. Well, so, I want to sort of define our terms here. They have less money relative to other players than they did in 2001, but I don't think they are weaker. One of the reasons I don't think they are weaker is they are more salient than they were in 2001.

So, you know, let's understand that political parties are not a single thing, like their bank accounts. You know, I mention this in several of my other earlier declarations, but it is worth repeating, political

scientists like me talk about parties in three different, sort of, manifestations:

In the electorate, in government, and in organizations.

In the electorate, parties are much stronger. There is stronger partisanship by any measure than you would want, than you would choose, today than there was in 2001. And Professor LaRaja concedes that.

In government, they are also stronger just by – sort of, like, the messiness of the Speakership fight, because by any measure, again, than you would want, party voting scores are much higher, and party coalitions are much more cohesive than they were in 2001.

So, while there are fractures in the republican coalition, the reality of the situation is, is that as he himself concedes, party unity scores and parties in government are much stronger. And if you were to ask me, as a, kind of a general matter, or if you were to ask party scholars like, you know, Frank or Leon Epstein, who is Frank's professor, and mine, and former President of the American Political Science Association, sort of, like, what part of parties sort of matter the most, well, I think organization and – excuse me.

I think parties in the electorate and in government are the things they probably focus on. Then, there is party organization. And, okay, so, parties have less money relative to super PACs, which didn't exist in 2001, but they also have – continue to raise more money. They continue to be incredibly important financial players. They continue to be, organizationally, extremely important.

And, so, if you think about Professor LaRaja's report for a second, he says, you know, we need to have stronger organization, but we also need to have parties with better control over nominations, or this, or that, or something else. Money is just a tiny little part of it. And I don't even stipulate that parties are much weaker. They are weaker in one particular area viewed in one particular way.

Q. So, just to summarize, you think the party organizations are weak?

A. No, no. So, again, this is the thing that I really want to – I am glad you asked me this. Party organization – and this goes back to some of the things that Professor LaRaja talked about.

You don't really want to talk about organization. You want to talk about organization in terms of capacity, right? Capacity to do stuff, to get people out in the streets, to knock on doors, to get out the vote, or things like that, right?

By any measure, those organizations are stronger today than they were before. Well, how do we know? Well, one of reasons we know is I got canvassed three times in the last two weeks because I happen to live in – I live in New York where there are – we have these weird off year elections, and there is a city council race in my district.

Q. And a couple points. You were canvassed by the party?

A. So, the party itself actually does a coordinated campaign. And, so, I've been canvassed by the party canvassers and by candidate canvassers.

Q. And that's different than a normal election cycle you think?

A. I am saying that this is different than it was 20 years ago when I wouldn't have been canvassed ever, right? Because you can read about how campaigns were conducted 20 years ago. Parties didn't have this capacity. They didn't do this kind of stuff. And you can look at campaign finance reports, by the way, and see the same sorts of things.

So, part of the thing here is that – is that, if you only look at parties through a single lens, which is, how do parties compare to one other group of people, they have lost ground. But if you look at it more holistically, which is, what are parties actually doing, and how have parties advanced, and how have parties developed their organizations and so forth, they are actually expanding and doing better today than they were 20 years ago.

So, one of the weird things about this particular argument is that when – remember, Frank Sorauf was a party scholar, and he got into this because he was interested in parties. One of the things that we argued about back in 1997, and again in 2002, was that parties are more than their financial receipts, they are about their ability to do stuff.

And, frequently, when parties are used as piggy banks, this has the perverse effect of making them less capable of doing things because all they do is write checks to outside vendors. And this is what we want as a kind of investment in parties as organizations, and on-the-ground operations, and blah, blah, blah. There is more evidence of this today than there was in 2001.

Q. So, let's un-package that. With the canvassers in your area, were they for a federal race or a personal race?

A. Oh, no, no. They are all for local races.

Q. Local races?

A. Yeah.

Q. In terms of the party organization at the federal level, you think they are still – they are stronger now than they were, even pre BCRA?

\* \* \*

And I think that if you frame this in that way, in that kind of narrow way, you would convince a bunch of people. If you framed it in a different way, probably convince a lot of different people.

Q. One of the organizations that discussed the weakening of the party is the Brennan Center for Justice. Are you aware of that?

A. Yes. So, I saw those quotes. I had nothing to do with the Brennan Center since I left them. I would have to see that in a broader context.

I think that it is naive, if that's what their position is. So, you know, part of the thing that I will say about this, and part of what I say in response to Professor LaRaja is, you know, look, if you view the parties as a solution to what you perceive as a problem with super PACs, then I don't really see how that is going to work.

That is, you could double or triple the money that parties raise and spend, but that doesn't mean the super PACs are going to go away, or that they couldn't respond by doubling or tripling the amount of money that they raise, because they still have certain advantages here, and there are certain reasons for,

you know, donors to go in that direction, unless you completely eliminate the base limits on parties like – you know, like super PACs.

Q. But the one advantage – the one advantage parties do have, you would agree, is the ability to coordinate with their candidates, correct?

A. Well, there is a second advantage, which is that they – they represent, sort of, associations of policy makers, which is where the quid pro quo corruption problem comes up.

Q. What's the advantage there, I guess, having –

A. Well, when I give money to a super PAC, I don't get to meet, you know, Representative X or Representative – or Senator Y, who have, you know, some direct influence on a policy of importance to me. But if I give money to a political party, I might be – I might do it in the context of an event which advertises itself as, I get to sit at a table with those two people.

Q. Are you aware that other FEC presidents, and advisory opinions, that candidates may participate in fundraising events for super PACs as long as they only solicit up to \$100 limits?

A. Yeah, but that's the thing. That is, if I'm going to be writing a \$1,000,000 check to a super PAC, then, you know, how does that really work out, right? So, a party offers a much more – like I said, a party is a – because the party is more – the central importance of a party, all the things I said at the beginning about how party identification is important and how party in government is important, parties have this big advantage as a potential collector of money, but that's only in the context of, you know, all of those base limits being removed. But that's not the issue here.

So, again, I don't see a scenario in which you can, as the Brennan – as that quote from the Brennan Center seems to imply, and as Professor LaRaja writes, you can combat the position of super PACs by eliminating the coordinated expenditures – limits on coordinated expenditures, right? I think that's naive.

And I think the downside of that is a dramatic increase for the potential for quid pro quo corruption. There is very little upside and a lot of downside to that prescription.

(Exhibit 6 was marked for identification.)

Q. So, this is Exhibit 6. This is from the Brennan Center for Justice: Stronger Parties, Stronger Democracy, Rethinking Reform.

General argument is about strengthening the parties in light of chief circumstances in the last couple decades. So, Page 14 is the language I think you are referring to that's probably in the complaint, which I know you've reviewed. One of the recommendations is to, Lift or Eliminate Limits on How Much Parties Can Contribute to Their Own Candidates, Including Limits on Coordinated Spending.

They note if you are going to do that, then they want tighter enforcement of rules around it, such as earmarking. Is your conclusion that this – if you want to read it, let me know. But, basically – here, I will give you a minute to look.

A. (Reviewing.)

Yeah. So, let me put it this way, I had no contact with the Brennan Center for Justice since I no longer – since I stopped working there.



Q. Okay.

A. I do not endorse this view. I think that this is naive, and the people who wrote this did not think this through.

Q. So, let me read one sentence and see what you thought of it.

“Freeing party organizations from restrictions on coordinated spending, which is often defined according to legal standards that can be difficult to interpret and apply, could also alleviate a significant administrative compliance burden. And because all money spent would still have been raised pursuant to hard money limits, the additional corruption and misalignment risks would be small.”

You disagree with that?

A. I do. Because it is a two-step here. There is a combination.

Q. What’s the second step?

A. Well, because if you read at the very beginning, The principal justification for such (Reporter asked for witness to repeat slower).

A. I’m sorry. It’s the last sentence of the second paragraph.

“The principal justification for such measures is that they are necessary to prevent party committees from being used by others, such as individuals or PACs, to circumvent candidate contribution limits”.

Well, I think that that’s true. I think that Professor LaRaja introduces another reason to be concerned, which is that – that party leaders can themselves use party accounts in ways that are

essentially quid pro quo corruption. That is, they can use that control of these accounts to demand votes.

Q. That's different, though, correct, than donors circumventing contribution limits?

A. Right. I believe I said that. That is, I think both of those things are reasons, and reasonable reasons, to be concerned about that.

And the only thing that you can argue in response to the first, but not the second, is this earmarking business which I think is fanciful and improbable. So, Professor LaRaja accuses me of engaging in hypotheticals. This is the ultimate hypothetical, a provision which has never been enforced, will suddenly be enforced 50 years after the – 49 years after the fact.

Q. I don't know if it has been enforced or not, specifically, but –

A. Well, so –

Q. The Supreme Court's relied on it previously, correct?

A. So, let me – let me be a little less blunt about it: A provision that has never been meaningfully and – meaningfully enforced in such a sweeping way as these authors, and Professor LaRaja, would like to see it enforced in order to make this reform usable.

Q. If it were enforced that way, would that relieve your concerns?

A. It would not.

Q. Why?

A. Because of what Professor LaRaja actually introduces.

Q. The notion of party control is what you're driving at?

A. Right. So – so, think about this for a second. An expert witness arguing in favor of this has said that what could happen if a party controls its finances, is that a party leader could use party finances to demand votes for party members. That is actually a quid and a pro and a quo.

(Exhibit 7 was marked for identification.)

Q. Speaking of that issue, have you seen this article from the other week from Politico. “Everything is Just Stuck. No Matter What Happens to Jim Jordan, the Next Speaker Is In For a World of Trouble”?

A. Yep.

Q. You read this?

A. I don't know if I – hold on. Yes, I have seen this article. You know, it is so funny. I sent an email to Ian Ward objecting to this article.

I do not know what – to what Matthew Green is referring, but he is wrong about party unity and party voting scores being down over the last two decades. And from there, it gets much worse.

\* \* \*

convention, decide to give up on, essentially, the closed party system of insiders determining who the nomination – who will be the nominee.

And, so, they move toward this system which ends up resulting in a series of primaries and caucuses. So, by 1972, this is what we have. And that's the thing that people have sort of been lamenting ever since, including, by the way, the leader of this was Professor LaRaja's dissertation adviser, this guy that I

mentioned was one of my professors at Berkley, he literally wrote the book called, The Consequences of Party Reform, by Nelson Polsby.

So, that part I understand. But the rest of it I don't understand at all because they are not talking about anything that ever existed. It is true that parties once controlled nominations, but none of the rest of it ever existed.

Q. And I know you reviewed our complaint, and you cited Bob Bauer. You're pretty familiar with Bob Bauer?

A. Yes, a leading democratic campaign lawyer. And I don't know how he – election lawyer. Excuse me.

Q. And he mentioned that the super PACs are beginning to displace the parties in a bunch of their operational capacity in weakening the parties in that sense. Do you have reason to object to that?

A. Well, I have reason to be concerned about the rise of super PACs. I think, in this respect, I agree with Professor LaRaja and, you know, with everyone who shares this perspective. I – I don't have any reason to believe this particular prescription has anything to do with changing that balance of power.

Q. You don't think that if parties could coordinate with their candidates without limit, it would improve their standing in the current market?

A. Not in any sort of appreciable way.

MR. CROSLAND: All right. That's all I have.

MR. WEIMAN: Can we take a 15-minute break?

THE WITNESS: Okay with me.

— — — — —  
(Off the record.)  
— — — — —

EXAMINATION OF PROFESSOR  
JONATHAN KRASNO  
BY MR. WEIMAN:

Q. Professor Krasno, I just wanted to touch on a couple of topics here, first being with the Professor Milyo book that came up earlier and the survey that was discussed. I just want to confirm whether you had an opportunity to review that in particular, that survey?

A. No. I am aware of the book. I am aware of

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even though your inquiry here was limited to coordinated expenditures, you – part of what informed your opinion on that is your overall understanding as an academic in the broader campaign finance system that raises general doctrine assumptions?

A. That is correct.

Q. There were a few times where a question was asked today where it appeared you might have wanted to discuss something different or related to the question at hand. Is there anything else that you believe would help you – would help in understanding the conclusions in your report that you didn't have a chance to say today?

A. Well, I think I have had an opportunity to say it. There is a, kind of a misconception that I hope doesn't come through, that I am making an argument

against parties. I am actually, in my view, making an argument for parties.

I think parties have done well under this sort of campaign finance laws. I think that you can see this in a variety of different ways, including, you know, the non-financial ways, but also including the financial ways. And the idea of this sort of change in the system introduces danger to the system, but also danger to parties that, quite frankly, are not worth it.

So, that's not – that's not, bizarrely enough, you know, kind of a legal opinion in the sense of what I was tasked to deal with in my declaration, which is focused on the dangers of the possibilities of quid pro quo corruption, which I think are real and something that the courts and judges should pay attention to.

But for people who are concerned about, you know, the prospects and routing for stronger parties, I think that this is – if this is how they expect to get it, I am afraid that they will be sorely disappointed in this particular path.

Q. When you say “it” you mean?

A. Stronger parties.

Q. Stronger parties. As a result of striking down limits on coordinated party expenditures?

A. Right.

MR. WEIMAN: Those are all the questions that I have.

MR. CROSLAND: No redirect.

MR. WEIMAN: Great. We'd like to give him an opportunity to review it and sign.

(Deposition was concluded at 3:30 p.m.)

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**TRANSCRIPT OF PROCEEDINGS**

NATIONAL REPUBLICAN	)	
SENATORIAL	)	
COMMITTEE, et al.,	)	
Plaintiffs,	)	
v.	)	Case No.: 1:22-
	)	cv-639
FEDERAL ELECTION	)	
COMMISSION, et al.,	)	
Defendants.	)	

Deposition of: RAYMOND J. LA RAJA

Pages: 1 through 76

Place: Washington, D.C.

Date: October 30, 2023

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**P R O C E E D I N G S**

(9:01 a.m.)

MS. WARD: Good morning. Ms. Brown, if you can please swear the witness.

THE COURT REPORTER: Good morning, sir. Can you please raise your right hand?

Whereupon,

RAYMOND J. LA RAJA

having been duly sworn, was called as a witness and was examined and testified as follows:

MS. WARD: Good morning, Professor La Raja. My name is Shaina Ward, and I'm an attorney with the Federal Election Commission.

I just wanted to ask, to make sure I'm using the right title for you, would you prefer Professor or Mr. or any other title?

THE WITNESS: Professor's good. Thank you.

MS. WARD: Okay. I'll go with Professor.

So, Professor La Raja, this deposition is being taken in connection with a civil action, National Republican Senatorial Committee, et al. versus Federal Election Commission in the United States District Court for the Southern District of Ohio. And do you understand that you are being deposed in regards to the case I mentioned above?

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most definitely. And, again, I'll just say what I said previously, there's been declines among all our institutions: media, certainly, again, my institution of a university, higher ed, churches. So it's pretty much across the board, regrettably,.

Q Would you agree with the statement that the goal of political parties is to maintain or pursue power? A goal?

A Well, I think the goal of – you're saying the goal of – well, I will agree with this. I'm going to qualify what you're saying. I would agree that parties are organized to try to take control of government to pursue what they think is in the national interest. That's exactly – that's a democratic system. It would not function if parties didn't perform that.

Q Would you agree that there are different coalitions within a political party?

A Most certainly, especially in the United States. The parties are made up of coalitions.

Q And these coalitions can have different messages, is that right?

A Certainly, they do have – they have different reasons for joining that coalition and they want to pursue different messages, yes.

Q Different policy goals as well?

A Certainly, different members, different factions have different policy goals.

Q And different views on party aims, like the ultimate aim of the party?

A That's a very broad question. I mean, you know, in order for them to get their goals, the party has to

usually win or at least have sufficient power to make compromises with the other major party. So, if you're part of the coalition, yes, you want to see your party win.

Q Would you agree that parties are affected by the interests of some contributors, such as Political Action Committees, or PACs?

A They're affected by members of their coalition, which could include the organizations that set up PACs to help their candidates win elections. If I want — if somebody believes in raising taxes for redistribution, they might set up a PAC to help candidates who believe that.

Q Would you agree that a goal or objective of PACs is to support a specific candidate or a specific interest?

A I would make it much broader. PACs have a variety of strategies. Some of them support multiple

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the candidate have the same goal of winning the election and doing so under the party banner, under the party label.

Q Is there any evidence that coordinated party expenditure limits have burdened parties?

A Well, I think my report is largely about that. I mean, one of the biggest points I make in the report is that spending has risen tremendously in elections with non-party entities, and yet the amount that parties can spend in coordination with their candidates has not gone up. Has not -- I should say, relatively speaking, has been small in comparison and getting smaller.

Q I'm sorry. Can you repeat that last part? You said it's –

A What I'm saying is the burden is the parties can't participate – the campaign finance system has changed and the parties cannot participate robustly in competing with these non-party groups. So I showed, if you want to look at the report again, I showed you, I gave you a few examples to demonstrate that, how much spending is out there compared to what is party coordinated expenditures. And I also added in party independent expenditures, and it still doesn't match up to what is being forwarded to races today.

Q Is it your position that party committees are currently not able to amass the resources necessary to be effective advocates?

A No. My position is parties are doing the best that they can, but they're falling behind, and that's not a good thing. I mean, it's not as if the parties are just saying, oh, well, we're not going to be active. They're trying. But they're definitely falling behind.

Q But they do have some resources, right?

A Of course, they have resources.

Q And would you agree that political parties have more receipts than they did say at the time of *Colorado Republican 2*, let's say 30 years ago, 20 years ago?

A Inflation-adjusted terms, maybe they do still. But the question – but I want to get to the point of your question I think is that the entire terrain of elections has changed since then. Now Congress is on a knife edge between who's going to win. The stakes for elections are much higher. And non-party groups have advantages that the parties don't have. And what I'm

seeing is that the parties are either treading water or going under. So that's my concern compared to what was going on during Colorado.

Q Would you agree that the limits on the coordinated party expenditures have not rendered parties useless?

A I'm sorry. Repeat that, Ms. Ward, again.

Q Sure. Would you agree then that the limits on coordinated party expenditures have not rendered the parties useless?

A Yeah. The parties are not useless. The parties are still important. So I want to make that clear. The issue is they cannot robustly support their candidates with such limited coordinated expenditures.

Q What do you mean by "robust"?

A I feel that the parties should be providing a much higher percentage of sums to help their candidates. You know, more than 15 percent and certainly more than 5 percent. I would like to see them providing as much as 50 percent of their funds.

Q If coordinated party expenditure limits were lifted, how would you expect party finances to compare with outside groups?

A It would still be below what other groups are spending, but at least the parties would not be constrained from using their funds to work closely with their candidates, okay? So that's important right there. And it would make the parties also a more important player because people who support the party will say, oh, the parties can help their candidates more closely now, and so they might get more money from donors.

Q The party committees are choosing not to spend up to the limit in many races, is that right?

A Yes, in some races.

Q If they are not using the authority that they have, then is that really evidence that they're burdened?

A Well, some races – MR. CROSLAND: Objection. Hold on. Objection. Legal conclusion. Calls for a legal conclusion.

Go ahead, Ray.

THE WITNESS: So I don't understand Mr. Crosland's objection because, for some reason, every now and then I get cut off. So I should just answer the question?

MR. CROSLAND: Yes, answer. You can answer.

THE WITNESS: Okay. So, if I recall the question correctly, – I would ask you, Ms. Ward, to please repeat the question.

BY MS. WARD:

Q Sure. If party committees are choosing not to spend up to the limit in many races, what evidence then is there that they are burdened in your opinion?

A Well, they're probably not sure they should spend up to the limit, one, because those races are not competitive, and so why would they waste money there? Sometimes they give for other reasons, of course, but usually they don't. And they realize that coordinated expenditures just doesn't make as much sense for that race perhaps than, you know, spending heavily in other ways. It really depends on the race probably.

Q So, in your view, that shows the burden on political parties?

A There is a burden on the political parties. I feel that a political party's first choice would be to spend as much as possible in coordination with their candidates. That's what they would like to do. They can't do that, so they have to think of innovative ways to support their candidates, which innovative ways which I think are very suboptimal for the entire political system, and that includes spending money independently.

Q In your view, have super PACs been

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elections, which gave a small slice of the partisan electorate a choice in picking a nominee. There's been laws that have been struck down, but there have been laws that prevent, like in California, that prevented the party from organizing itself the way it wanted to organize itself. And then, generally, there's been a move kind of – yeah, let me stop there. That's good. Those are sufficient at this point.

Q There's nothing else you would add on that point?

A I think there's been a cultural change among educated elites that they don't need parties and they aren't going to be part, among some culturally, and among – and the ones who – and so they've, you know, set up a lot of advocacy organizations to accomplish their goals. But, as I said, they tend to be educated and wealthier.

Q Would you say that party financing of coordinated advertising creates stronger party organizations?

A I think it gives parties more leverage in an electoral system that's highly fragmented and dominated by super PACs, yes.

Q What if the party committees are just paying for ads created by candidates and otherwise have little to no organization or operation?

A May I ask, is there data on that?

Q I'm asking the questions.

A Okay. So –

Q Would you say there's data?

A I don't know. There might be. I'd like to ask some of my colleagues if they've seen it. You know, I'm not – yeah, I just don't know empirically how valid that is. On occasion, I wouldn't be surprised if that happens, and the parties almost act like a seal of approval, like, all right, that looks like a good campaign ad, let's go with it. Other times I can imagine someone at the party saying that's not going to help us. So I can see it going either way. And that's precisely the role of the party, is to make collective decisions. What's good for one individual candidate might not necessarily be good for the party brand. So I can see some quality control regardless of who's actually designing the ad.

Q But you haven't studied any data related to this, is that right?

A I haven't seen any data related to who's actually doing the ads. I'd love to see it.

Q You state in your report that parties rely



\* \* \*

A Yeah. Yeah.

Q Okay. And it's Figure 3 with state contributions and spending in support of U.S. House and Senate elections 1990 to 2020. Figure 3 here. Does this chart here include issue ads?

A Well, if they weren't – if the data were not collected by the Federal Election Commission, then no. So, yeah, this only includes data from the Federal Election Commission.

Q Okay. So you have PAC contributions, non-party independent spending, and party contributions and independent spending. But to just clarify your question – or, I'm sorry, to clarify your answer, it does not include issue ads or you're not sure if it includes issue ads?

A It includes campaign spending. I mean, issue ads are a different category, so it does not include that.

Q Would you agree that an objective of the coordinated party expenditure limit is to limit corruption?

A That was an intended aim, I think.

Q I apologize, my screen froze for a moment there. Would you agree that there are examples of corruption through history between candidates and political parties?

A Yes.

Q And that parties have been in quid pro quo scandals in the past, correct?

A When you say past, I mean, we can go back to Andrew Jackson. Yes.

Q I just want to ask if you're aware of some particulars. Are you aware of the party fundraising aspect of Watergate, how money, campaign money was raised and distributed in regards to that scandal?

A Yeah, I'm familiar with the Watergate scandal.

Q Are you familiar with the Daley Machine cited in Professor Krasno's report out of Chicago?

A I am familiar with the Daley Machine, yes.

Daley, yeah, the former Mayor of Chicago. Yes.

Q Correct. And what about the National County Republicans also mentioned in Professor Krasno's report?

A Yes, I'm familiar.

Q And what about the Chvala example? It's spelled C-H-V-A-L-A, Wisconsin Senate Majority Leader. Are you familiar with that?

A That one I'm less familiar with. I didn't follow that as closely.

Q Would you agree that there was sufficient danger of corruption to limit the coordinated party expenditure limits in 1997? Which was at the time of *Colorado Republican 2*.

A I don't think so. I don't agree with that.

Q And why is that?

A I just, I don't think the kind of quid pro quo corruption that we're talking about is not the – is not what's happening. I just don't think that's happening.

Q And when you say you don't think that's happening, what is that based on?

A I haven't seen that kind of quid pro quo corruption. The examples you gave, first of all, you know, it doesn't have anything to do with coordinated expenditures, and do I think that, you know, people gave money to the party sometimes get access, yes. But I don't see how raising the coordinated spending limits increases corruption.

Q And just to clarify, when you say you don't see how, is it because you haven't yourself seen examples of that or haven't studied those examples?

A I haven't seen an example involving the party committees accused of quid pro quo corruption. And for that matter, Professor Krasno did not give an example of where that happens.

Q Would you agree that there is an important interest in preventing both corruption and the appearance of corruption, though?

A So I want to first qualify that by separating out the campaign finance issues from this. I do think there's an interest in preventing corruption and having people behave in ways that induce trust as much as possible. I don't think the campaign finance laws with coordinated expenditure limits does that.

Q And why is that?

A Because I don't see what the problem is. I mean, there's ways other than a limit on coordinated expenditures to prevent what folks like Professor Krasno worry about. And that's contribution limits of the parties. It's preventing earmarking. I think it's way overdone to also limit how they can coordinate with their candidates. And as I said in my report, I think the problem with weak parties is more

dangerous to the republic than Professor Krasno's speculations about corruption being prevented.

Q How do parties typically coordinate with the candidates?

A They've decided mostly on what kind of advertising they want to do together.

Q And who usually is in control of that process would you say?

A I think it's like any partnership. It's jointly engagement of the candidate's committee, the candidate, and the party committee and its professionals.

Q And what sorts of issues do they consult about together?

A Most basically is this a good ad, will it be effective.

Q And so, with respect to the ad, who usually drafts the text? Like, who's in control of that process?

A The consultants usually hired by then candidate, who, by the way, the consultants are usually part of a stable of party consultants that they recommend to candidates who are running for office.

Q Would you agree that large coordinated expenditures could be used to advance the interests of individual party officials who control how funds are disposed?

A How do you define interests?

Q Well, how would you define it?

\* \* \*

their district so much. And so the parties line up more clearly on different ends. And some of them, not just

on different ends but, like, extreme ends, and that's a concern and I would like to see the party leaders be able to kind of challenge some of the more extreme elements of their coalitions.

Q I mentioned earlier or, I'm sorry, I asked earlier if you were aware of some examples where parties had been in quid pro quo scandals in the past. Are you aware of the party aspect of the Bob Nay scandal?

A Yes.

Q And what about the Menendez one from 2017 and I guess also more recently?

A Well, the Menendez one, he wasn't convicted in that instance, as I recall.

Q The indictment itself, are you familiar with it?

A Yes, I'm aware of that while he – okay.

So, yeah, I've heard of the other ones, yes. Go ahead.

Q Have you researched any of them?

A No. I've read them in the newspapers and in some cases read blogs that go into more depth.

Q Did any of those that I mentioned now or earlier serve as a basis or part of your report prepared for this case?

A No, because, when I looked at them, I said these are clear cases of bribery. We have bribery laws on the books. And I don't see the need for a coordinated expenditure limit to prevent what those corrupt people were doing.

Q We talked earlier about independent expenditures. The question that I have is, how do

parties rely more on independent expenditures made through outside groups?

A How do parties rely more on independent expenditures from outsiders. Well, the parties run their own independent expenditure committees. Is that what you're referring to?

Q Correct. But you said earlier that they rely on these independent expenditures made through outside groups, and so how does that happen?

A So there are groups that certainly support party candidates who aren't officially part of the party committees, and so they do benefit them. Again, it's not a good situation for the reasons I mentioned, lack of accountability, lack of transparency, difficulties of actually working closely with candidates, all those reasons.

**BEFORE THE FEDERAL ELECTION  
COMMISSION**

<b>In the Matter of</b>  <b>Nixon Campaign Fund</b> <b>and</b> <b>John C. Lanham, as</b> <b>treasurer</b>	) ) ) ) ) ) )	       <b>MUR 4831</b> <b>MUR 5274</b>
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**GENERAL COUNSEL'S REPORT #7**

**I. ACTIONS RECOMMENDED;**

Accept the attached Conciliation Agreement with the Nixon Campaign Fund and John C. Lanham, as treasurer; take no further action with respect to the Democratic Senatorial Campaign Committee and Andrew Grossman, as treasurer, and close the file and approve the appropriate letters.

**II. DISCUSSION**

**A. NCF CONCILIATION AGREEMENT**

**Page 2 deleted**

## **B. THE DEMOCRATIC SENATORIAL CAMPAIGN COMMITTEE**

This matter involves two other Respondents, the Democratic Senatorial Campaign Committee (the “DSCC”) and the Missouri Democratic State Committee (the “MDSC”). As previously noted, the MDSC executed a conciliation agreement and the file has been closed with respect to this respondent. With respect to the DSCC, this Office found no evidence that the committee accepted and failed to report or forward earmarked contributions for Nixon and, therefore, we recommend that no further action be taken against it and the file be closed. During the course of the Commission’s investigation in these matters, this Office subpoenaed documents regarding the DSCC’s relationship with the NCF and records for fifty-two DSCC contributors who had previously given to Nixon. None of the contribution checks were annotated “Nixon.” Discovery established that the DSCC “tallied” contributions raised by candidates.<sup>2</sup> Nine of the fifty-two contributions had been tallied to Nixon and all nine of them were made prior to the solicitation activity investigated in these matters. Sixteen contributions were tallied to other candidates. The remainder were not tallied to any candidate. Most of the tallied contributions were accompanied by

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<sup>2</sup> Tallying is not synonymous with earmarking. Tallying is the practice of tracking funds raised by specific candidates. In making its decision on the level of financial support it will provide candidates, the DSCC considers the tally along with other factors, such as the closeness of the race, the financial ability of the candidate to raise his own funds and the candidate’s support for DSCC fundraising in the past. See First General Counsel’s Report in MUR 3620, September 9, 1994, at 1-2.



correspondence from the contributors that clearly set out their understanding of the tally program and their intent that the funds be used by the DSCC at the DSCC's discretion. These documents support the DSCC's assertion that it was engaged in a legitimate tally program and that it did not accept contributions earmarked for Nixon.

### III. RECOMMENDATIONS

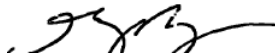
1. Accept the attached Conciliation Agreement with the Nixon Campaign Fund and John C. Lanham, as treasurer;
2. Take no further action against the Democratic Senatorial Campaign Committee, and Andrew Grossman, as treasurer;
3. Approve the appropriate letters; and
4. Close the file with respect to all respondents in MURs 4831 and 5274.

10/10/03

Date



Lawrence H. Norton  
General Counsel



Gregory R. Baker  
Acting Associate General Counsel



Peter G. Blumberg  
Acting Associate General Counsel



Beth N. Mizuno  
Attorney

**BEFORE THE FEDERAL ELECTION  
COMMISSION**

<b>In the Matter of</b>	)	
<b>Missouri Democratic</b>	)	
<b>State Committee and</b>	)	<b>MUR 4831</b>
<b>Michael Kelley, as</b>	)	<b>MUR 5274</b>
<b>Treasurer</b>	)	

**CONCILIATION AGREEMENT**

Matter Under Review 4831 was initiated by a signed, sworn, and notarized complaint by ‘5 John Hancock, Executive Director of the Missouri Republican Party. Matter Under Review 5274 was initiated by the Federal Election Commission (“Commission”), pursuant to information ascertained in the normal course of carrying out its supervisory responsibilities. An investigation was conducted and the Federal Election Commission (“Commission”) found probable cause to believe that the Missouri Democratic State Committee and Michael Kelley, as treasurer (“the Respondent” or “the MDSC”), accepted contributions earmarked for Missouri Senate candidate Jeremiah “Jay” Nixon (“Nixon”) and failed to report or forward the contributions in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. §§ 102.8(a), 110.6(b)(2)(iii) and 110.6(c)(1). In addition, the Commission found probable cause to believe that the MDSC violated 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.7(b)(2) by making excessive coordinated expenditures for the Nixon Campaign Fund.

NOW, THEREFORE, the Commission and the Respondent, having duly entered into conciliation

pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as follows:

I. The Commission has jurisdiction over the MDSC and the subject matter of this proceeding, and this agreement has the effect of an agreement entered pursuant to 2 U.S.C. § 437g(a)(4)(A)(i).

II. The MDSC has had a reasonable opportunity to demonstrate that no action should be taken in this matter.

III. The MDSC enters voluntarily into this agreement with the Commission.

IV. The pertinent facts in this matter are as follows:

1. The MDSC is a political committee within the meaning of 2 U.S.C. § 431(4).

2. Michael Kelley is the treasurer of the MDSC.

#### Earmarked Contributions

3. Section 441a(a)(8) of Title 2 of the U.S. Code and 11 C.F.R. § 110.6(c)(1) require a committee that receives contributions earmarked for a candidate or candidate committee to report the original source of the contribution and the intended recipient committee to the Commission and to the intended recipient committee. 2 U.S.C. § 441a(a)(8), 11 C.F.R. § 110.6(c)(1).

4. Section 110.6(b)(2)(iii) of Title 11 of the Code of Federal Regulations requires a committee that receives contributions earmarked for a candidate or candidate committee, to forward the contribution to the candidate or the committee. 11 C.F.R. § 110.6(b)(2)(iii).

5. Between August and November 1998, the MDSC accepted 17 contributions totaling \$19,285 that

bore indicia of earmarking for Nixon or his principal campaign committee, the Nixon Campaign Fund ("NCF").

6. Some of the earmarked contributions consisted of checks, the memo lines of which were annotated, "Nixon," "Nixon-Win," "J. Nixon Fund," "Jay Nixon Campaign Contribution" and "Nixon, not for Skelton or Danner." In two instances, contributors enclosed their contributions with letters stating that their contributions were "to aid in" the Nixon campaign or instructing the MDSC to spend the money on Nixon. Two of the contribution checks were originally written to the NCF, but deposited by the MDSC. Several checks were attached to NCF campaign materials. The MDSC deposited all of the earmarked contributions into a bank account, which it then used to fund coordinated expenditures for Nixon pursuant to 2 U.S.C. § 441a(d).

#### Excessive Coordinated Expenditures

7. National and state party political committees may make expenditures in connection with the general election campaigns of candidates for federal office subject to certain limits. 2 U.S.C. § 441a(d)(1); 11 C.F.R. § 110.7(b). For Senatorial candidates, such committees may not make expenditures in excess of the greater of two cents multiplied by the voting age population of the state or \$20,000. 2 U.S.C. § 441a(d)(3)(A); 11 C.F.R. § 110.7(b)(2)(i). A national party committee may make these expenditures through a designated agent, including state and subordinate party committees. 11 C.F.R. § 110.7(a)(4).

8. The term "expenditures" includes any purchase, payment, distribution, loan, advance, deposit, or gift of

money or anything of value, made by any person for the purpose of influencing any election for Federal office. 2 U.S.C. §431 (9)(A)(i).

9. Only expenditures that are “coordinated” between a party and a candidate are subject to the Section 441a(d) limitations. Expenditures made by any person in cooperation, consultation or concert, with, or at the request or suggestion of, a candidate, his or her authorized political committees, or their agents shall be considered to be a contributions to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i).

10. The MDSC could have made coordinated expenditures for Nixon of \$260,140 pursuant to 2 U.S.C. § 441a(d)(3)(A). It was also allowed to contribute \$5,000 to the NCF pursuant to 2 U.S.C. § 441a(a)(2)(A). In addition, the Democratic Senatorial Campaign Committee (“DSCC”) authorized the MDSC to use \$79,000 of the DSCC’s expenditure limitation. The MDSC could thus have spent a total of \$344,140 on Nixon. The MDSC, however, made coordinated expenditures for Nixon in the amount of \$372,840. Thus, it made excessive coordinated expenditures for Nixon of \$28,700.

11. The MDSC contends that the expenditures at issue were authorized after the fact by the DSCC, which transferred \$40,000 in coordinated expenditure authority to the MDSC on May 25, 1999. The MDSC contends that at all times, it and the DSCC remained within their combined coordinated expenditure limit.

V. The MDSC received contributions earmarked for Nixon that it failed to report to the Op Commission or the NCF in violation of 2 U.S.C. § 441a(a)(8) and 11 C.F.R. § 110.6(c)(1).

VI. The MDSC did not forward the earmarked contributions to the NCF in violation of 11 C.F.R. § 110.6(b)(2)(iii).

VII. The MDSC made excessive coordinated expenditures for Nixon in violation of 2 U.S.C. § 441a(a)(2)(A) and 11 C.F.R. § 110.7(b)(2).

VIII. The MDSC contends that it did not knowingly or willfully violate 2 U.S.C. §§ 441a(a)(8) and 441a(a)(2)(A) or 11 C.F.R. §§ 110.6(b)(2)(iii), 110.6(c)(1) or 110.7(b)(2).

IX. The MDSC will pay a civil penalty to the Federal Election Commission in the amount of \$16,000.

X. The MDSC will cease and desist from violating 2 U.S.C. §§ 441a(a)(8) and 441a(d)(3)(A) and 11 C.F.R. §§ 110.6(b)(2)(iii), 110.6(c)(1), and 110.7(b)(2)(i).

XI. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

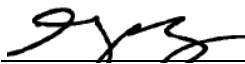
XII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

XIII. The MDSC shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement(s) contained in this agreement and to so notify the Commission.

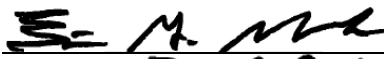
XIV. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or by agents of either party, that is not contained in this written agreement shall be enforceable.

FOR THE COMMISSION:

Lawrence H. Norton  
General Counsel

BY:  10/8/03  
Gregory R. Baker  
Acting Associate General  
Counsel Date

FOR THE MISSOURI  
DEMOCRATIC STATE  
COMMITTEE:

 2 Oct. 2003  
(Name) Brian G. Sroback  
(Position) General Counsel Date