HOW TO WIN ELECTIONS AND INFLUENCE POLITICIANS, OR WHY DITCHING THE ANTI-CORRUPTION INTEREST COULD IMPROVE OUR POLITICS

JESSICA FURST JOHNSON[*] & ANDREW PARDUE[†]

Through decades of fluctuation in campaign finance jurisprudence, there has been one consistent strand. Since the Supreme Court first weighed the constitutionality of the Federal Election Campaign Act (FECA)[1] in *Buckley v. Valeo*, generations of Justices have agreed that "limit[ng] the actuality and appearance of corruption resulting from large individual financial contributions" is a sufficiently important governmental interest to justify limiting political contributions to candidates and party committees.[2] Even as successive attempts to restrict political spending in other ways have been invalidated as violations of the First Amendment, the government's interest in combatting corruption via contribution limits has remained unquestioned.

But there is an inherent flaw in identifying "corruption or the appearance thereof" as the primary governmental interest supporting contribution limits. In adopting this standard, the Court has tied the permissible degree of regulation to a moving target. Corruption is an amorphous problem that manifests in different ways in different eras in response to changes in law, technology, and the practice

[*] Partner and Co-Chair of Political Law Practice, Lex Politica. The views expressed in this essay do not necessarily reflect the views of the authors' employers or their clients.

[†] Deputy General Counsel, National Republican Senatorial Committee (NRSC).

1. Federal Election Campaign Act of 1971, 52 U.S.C. § 30101 *et seq.*

2. 424 U.S. 1, 26 (1976).

of politics. When FECA was enacted, it may have been reasonable to assume that wealthy individuals primarily attempted to influence politics via large, direct contributions to political candidates, but this is no longer true. Barred by FECA from giving directly to federal candidates in excess of statutory limits, donors have not withdrawn from politics entirely; instead, their dollars have migrated to outside groups over which candidates and party committees are legally prohibited from exercising control.

The migration of money from candidates and parties to Super PACs and "dark money" nonprofit organizations has transformed our politics in several ways. First, in order to meaningfully communicate their message with a well-funded operation, candidates must allocate an immense amount of time to fundraising and proportionally reduce the time allocated to other, more substantive aspects of their representational role. Capping the amount an individual can contribute to a candidate has not reduced the total amount of money in politics, it has only *increased* the time candidates must dedicate to fundraising. Contribution limits have forced candidates to spend substantial time seeking smaller amounts from a larger universe of donors, while Super PACs can fund a multimillion-dollar media plan with a single phone call.

Second, this shift has changed the types of candidates who can compete. Since *Buckley*,[3] candidates have been entitled to spend an unlimited amount of their own money on their campaigns, but in a pre-FECA world, an enterprising young candidate with no personal wealth needed only impress a handful of wealthy donors to attract the funding necessary to expand their national profile.[4] Today, by contrast, while self-funding candidates have proliferated on both sides of the aisle,[5] contribution limits have made it harder for candidates with lower net worths to mount credible campaigns.

---

3. *Id.* at 52-54.

4. *See, e.g.*, ROBERT A. CARO, THE YEARS OF LYNDON JOHNSON: MEANS OF ASCENT 123–24 (1990).

5. Albert Serna Jr., *Self-Funded Candidates Put More Than $166 Million Into Their Own Campaigns*, OPENSECRETS (May 16, 2024),

Finally, this shift has reduced the influence of political parties and increased the influence of outside organizations. At first blush, that may seem like a positive, democracy-enhancing development; parties are hardly popular,[6] in large part because they are slower to respond to changes in public opinion than more nimble political entrepreneurs who are not beholden to the national party superstructure. But parties play an essential role in the American political system because they have a single goal: building coalitions broad enough to win elections among diverse constituencies. Outside groups do not share the same goal because they do not face the same democratic pressures. A Super PAC is never required to face voters directly or assemble a durable coalition that lasts for longer than a single election.

All these changes may be worth it if contribution limits had successfully increased public confidence in the political system, but they have not. In a recent poll, 86% of respondents agreed with the following sentiment expressed by President Trump in his first inaugural address: "A small group in the nation's capital has reaped the rewards of government while the people have borne the cost."[7] This is a workable definition of "corruption," and it resonates across the political spectrum because it is rooted in a nonpartisan concern that the government elevates select private interests over the public interest. Nevertheless, federal contribution limits have had the perverse effect of redirecting the lion's share of political spending towards the most powerful and least democratically accountable actors in our political system. If we want elected officials to be more responsive to voters, then we should relieve candidates of the increasing burden of fundraising and allow them to spend

---

https://www.opensecrets.org/news/2024/05/self-funded-candidates-put-166-million-in-campaigns/.

6. Ariel Edwards Levy, *CNN Poll: Democratic Party's Favorability Drops to a Record Low*, CNN (Mar. 16, 2025), https://www.cnn.com/2025/03/16/politics/cnn-poll-democrats/index.html [https://perma.cc/MN33-VYU8].

7. Hart Rsch. Assocs. / Pub. Op. Strategies, *NBC News/Wall Street Journal Survey* (Feb. 18-22, 2017), https://www.wsj.com/public/resources/documents/17057NBCWSJFebruary2017Poll.pdf [https://perma.cc/P2TC-4WKY].

more time fulfilling their primary function representing the interests of their constituents.

I. HISTORY OF THE "ANTI-CORRUPTION" INTEREST

When Congress first enacted federal contribution limits in 1974, the problem of corruption was top of mind. Like many 1970s legal reforms, the precipitating event was a Nixon administration scandal—although in this case, not Watergate. Congress was instead concerned about the little-remembered I.T.T. affair, in which the Justice Department settled an antitrust case against a telecommunications company "on relatively favorable terms to the company shortly after I.T.T. had pledged up to $400,000 to support the 1972 Republican National Convention."[8] I.T.T. was not the only company that obtained official favors in exchange for the generosity it showed the Nixon reelection campaign. After McDonald's CEO Ray Kroc contributed $250,000 laundered through various committees, the President's Cost of Living Council reversed its previous decision and approved a requested price increase for the Quarter Pounder.[9]

Given this sordid history of pay-to-play, it is understandable that one of the primary governmental interests motivating the imposition of contribution limits was "the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office."[10] But even "a sufficiently important interest" must be paired with "means closely

8. *The Nation: Reopening ITT*, TIME (Nov. 12, 1973), https://time.com/archive/6877759/the-nation-reopening-itt/ [https://perma.cc/XB8Q-MK4U].

9. Ciara Torres-Spelliscy, *Justices Should Think of Quarter Pounders in Latest Money in Politics Case*, BRENNAN CTR. FOR JUST. (Sept. 24, 2013), https://www.brennancenter.org/our-work/analysis-opinion/justices-should-think-quarter-pounders-latest-money-politics-case [https://perma.cc/UPY8-NCGV].

10. Buckley v. Valeo, 424 U.S. 1, 25 (1976).

drawn to avoid unnecessary abridgement of associational freedoms" for a challenged law to survive "heightened scrutiny."[11] The Court determined in *Buckley v. Valeo* that contribution limits satisfied this test, but that even a valid interest in preventing corruption failed to justify FECA's cap on independent expenditures based upon the factual record before the Court.[12]

For the purposes of this essay, *Buckley* is significant for two reasons. First, *Buckley* recognized that both contributions and expenditures constitute forms of political speech protected by the First Amendment.[13] Although this idea remains contested within the legal academy, it is basically accepted within the federal judiciary. However, the Court also drew a "line between contributing and spending," with limitations on the former "generally constitutional" and "justified by the anti-corruption interest" while limits on the latter were impermissible.[14] This dichotomy has contributed to what some commentators have aptly deemed the "hydraulic" effect of campaign finance reform. "[P]olitical money, like water, has to go somewhere," and "[t]he price of apparent containment may be uncontrolled [] damage elsewhere."[15]

Second, in invalidating FECA's independent expenditure limits, the Court used conditional language. Based upon the facts available in 1976, the Court reasoned that independent expenditures did "not *presently* appear to pose dangers of real or apparent corruption," leaving open a path to arguing that independent advocacy *could* pose such dangers in a case presenting different facts.[16] But if changes in the political landscape can support greater regulation of

---

11. *Id.*

12. *Id.* at 46 (emphasis added).

13. *See id.* at 16–25 ("the primary First Amendment problem raised by the Act's contribution limitations is their restriction of one aspect of the contributor's freedom of political association").

14. *Id.* at 27; *see also* FEC v. Colo. Republican Fed. Campaign Comm., 533 U.S. 431, 437 (2001).

15. Samuel Issacharoff & Pamela S. Karlan, *The Hydraulics of Campaign Finance Reform*, 77 TEX. L. REV. 1705, 1713 (1999).

16. *Buckley*, 424 U.S. at 46 (emphasis added). Note however that even a "sufficiently important" government interest in combatting corruption can still be defeated if the regulation at issue is not "closely drawn" to advance that interest. *Id.* at 25.

political speech, then they could also undermine the strength of the government's interest in limiting contributions. Otherwise, FECA would function as a kind of perpetual regulatory floor, and changes in the facts on the ground could always be used to justify greater regulation of political speech but never less.

Since *Buckley*, the Court has toyed with a variety of other suggested governmental interests that could have supported restrictions on political speech but ultimately rejected each.[17] Today, "the prevention of '*quid pro quo*' corruption or its appearance" remains the "only [] permissible ground for restricting political speech."[18]

However, there are hints that the Court has grown skeptical that "anti-corruption" is some kind of magic word that the government can invoke to justify *any* restriction on contributions. The Court has narrowed its conception of corruption, explaining that "[t]he fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt,"[19] and therefore laws may *not* target "the general gratitude a candidate may feel toward those who support him or his allies, or the political access such support may afford."[20] The Court has also invalidated statutory prohibitions that exemplify a "prophylaxis-upon-prophylaxis approach," meaning the kind of regulation layered on top of existing individual contribution limits and disclosure requirements that "may not be necessary for the interest it seeks to protect."[21]

Most significantly, the Court has finally acknowledged something that has always been true. "[F]ew if any contributions to candidates will involve *quid pro quo* arrangements" because such practices "would be covered by bribery laws," rendering the existing

17. *See, e.g.*, McCutcheon v. FEC, 572 U.S. 185, 191 (2014) (reducing the amount of money in politics); Ariz. Free Enter. Club's Freedom Club PAC v. Bennett, 564 U.S. 721, 749–50 (2011) (equalizing electoral opportunities); Citizens United v. FEC, 558 U.S. 310, 359–60 (2010) (limiting general influence of a contributor over an elected official).

18. FEC v. Ted Cruz for Senate, 142 S. Ct. 1638, 1652 (2022).

19. *Citizens United*, 558 U.S. at 359.

20. *McCutcheon*, 572 U.S. at 192.

21. *Ted Cruz for Senate*, 142 S. Ct. at 1653.

contribution limits mostly "preventative."[22] Hence, the government is left with a strong interest in combatting the kinds of "real" *quid pro quo* corruption already outlawed by federal bribery law, and a more limited interest in combatting "apparent" corruption to the extent that such regulations do not target a candidate's "general gratitude" towards their supporters or represent a "prophylaxis-upon-prophylaxis approach."

II. PROBLEMS WITH THE "ANTI-CORRUPTION" INTEREST

The astute reader may have already noticed a problem: contribution limits were not necessary to prevent recurrence of the Nixon fundraising scandals, because much of the underlying conduct was already illegal. Corporate contributions to federal candidates have been prohibited since Congress enacted the Tillman Act in 1907.[23] A ban on "straw donations"—contributions given in the name of another person—was included in the original 1971 version of FECA and governed for most of the 1972 campaign.[24] Bribery is specifically mentioned in the Constitution as a basis for impeaching and removing the President, Vice President, and "all civil officers of the United States," and bribery of Members of Congress has been specifically criminalized since at least 1962.[25] In fact, many of the key players involved in illegal fundraising for the 1972 Nixon campaign were sent to prison for accepting illegal corporate contributions or failing to disclose lawful individual contributions—prosecutions that would have happened whether or not Congress decided to later enact contribution limits.[26]

---

22. *Citizens United*, 558 U.S. at 357.
23. *Id.* at 394 (2010) (Stevens, J., concurring in part and dissenting in part) (citing 34 Stat. 864, ch. 420).
24. *See* 52 U.S.C. § 30122 (effective Feb. 7, 1972).
25. U.S. CONST. art. II, § 4; *see generally* 18 U.S.C. § 201.
26. *Stans Pleads Guilty to Violating Campaign Law*, S.F. CHRON. (Mar. 13, 1975), http://jfk.hood.edu/Collection/White%20Materials/Watergate/Watergate%20Items%2020229%20to%2020569/Watergate%2020477.pdf [https://perma.cc/57YZ-TW7K].

From the day it was signed into law, FECA has been tilting at windmills. The law was touted as necessary to assuage public concerns about political corruption, even though most of the Nixon campaign's suspect fundraising activity was already illegal and prosecuted under existing law. Hence, FECA's contribution limits were always aimed more at "the appearance of corruption" than the reality thereof. Nevertheless, the *Buckley* Court determined that this was not a problem for the constitutional validity of the statute because legislators could lawfully target "real or *imagined* coercive influence of large financial contributions," even if they produced no evidence demonstrating that their ostensible "anti-corruption" measures would have any corruption-reducing effect.[27]

The Court's recognition of Congress's authority to restrict political speech to address imaginary coercive influence raises obvious problems. First, it is unclear what kinds of evidence of corruption—if any—may justify Congress's enactment of a new restriction on political speech. The Court seems to require very little, as demonstrated by *Buckley*'s unsupported claim that corruption is "inherent in a system permitting unlimited financial contributions" even under a mandatory disclosure regime.[28] *Buckley*'s diagnosis presupposes the cure: if corruption is "inherent" when political contributions are not limited, then the only cure for corruption must be contribution limits. This is means-end analysis, not constitutional interpretation.

In addition to the circular legal reasoning, the Court's consistent affirmation of the government's strong interest in imposing limits on contributions to candidates and parties has had a perverse effect when paired with the Court's simultaneous rejection of attempts to limit independent expenditures. Distinguishing between contributions and expenditures makes a certain amount of sense. "Limits on independent expenditures" do indeed "have a chilling effect extending well beyond the Government's interest in preventing *quid pro quo* corruption," and are therefore unconstitutional.[29] But legal

27. Buckley v. Valeo, 424 U.S. 1, 25 (1976) (emphasis added).
28. *Id.* at 28.
29. Citizens United, 558 U.S. 310, 357 (2010).

and factual developments over the last five decades have eroded the strength of the government's anti-corruption interest in limiting individual contributions. The change can be summed up in two acronyms: BCRA and IEOPC.

Once upon a time, party committees were allowed to accept not only "hard money"—i.e., funds subject to federal contribution limits and source limitations—but also "soft money," which was the moniker used to describe funds exceeding federal limits (including contributions from corporations and labor unions) that could be used by "political parties for activities intended to influence state or local elections" and also partially utilized for "mixed-purpose activities" that were "intended to influence both federal and state elections."[30] As the amount of soft money in politics "increased exponentially" throughout the 1990s, rising from 16% of major-party spending in 1992 to 42% in 2000, the public became concerned that "many corporate contributions were motivated by a desire for access to candidates . . . rather than by ideological support for the candidates and parties."[31] In other words, voters feared that corporations were using the party organizations to exert improper influence over candidates. Unnerved by this "appearance of corruption," Congress enacted the Bipartisan Campaign Reform Act of 2002 (BCRA) "to plug the soft-money loophole."[32] With one avenue for exerting political influence now closed, donors rushed to find other outlets where their money could still have an effect—and those funding streams soon merged into a raging river pouring into IEOPCs.

While independent expenditures have always existed as a distinct category of political spending, IEOPCs—independent-expenditure-only political committees, better known as "Super PACs"—arose out of a pair of 2010 judicial decisions. In *Citizens United v. FEC*, the Supreme Court held as a matter of law that "independent expenditures, including those made by corporations, do

30. McConnell v. FEC, 540 U.S. 93, 122–23 (2003).
31. *Id.* at 124–25.
32. *Id.* at 133.

not give rise to corruption or the appearance of corruption."[33] Applying that holding, the D.C. Circuit held in *SpeechNow.org v. FEC* that there is no anti-corruption interest in limiting contributions to entities that *only* fund independent expenditures but do not contribute directly to candidates.[34] These decisions effected a tectonic shift in the landscape of political fundraising, with Super PAC spending increasing from $62 million in the 2010 midterm elections to more than $1.3 billion in 2022.[35] The increase has been even more pronounced in presidential cycles, with Super PAC spending surpassing $2.6 billion in 2024.[36]

One might expect that candidates would rejoice at this surge of political spending, but the response has been decidedly mixed. To wit, even the *Buckley* Court suggested that "[u]nlike contributions, [] independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive."[37] A donor funding independent expenditures also gets less bang for each of their bucks, because Super PACs and other outside groups do not enjoy the lower rates for TV advertising that are guaranteed to candidates.[38]

Based upon the theory that "[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate,"[39] the FEC

---

33. 558 U.S. at 357.

34. 599 F.3d 686, 689 (D.C. Cir. 2010).

35. OpenSecrets, *2022 Outside Spending, by Super PAC*, https://www.opensecrets.org/outside-spending/super_pacs/2022?chrt=2010&disp=O&type=S.

36. *Id.*

37. Buckley v. Valeo, 424 U.S. 1, 47 (1976).

38. Fed. Commc'ns Comm'n, *FACT SHEET: FCC Political Programming Rules* (Aug. 18, 2022), https://www.fcc.gov/sites/default/files/political_programming_fact_sheet.pdf.

39. *Id.*

prohibits candidates and Super PACs from coordinating their public or electioneering communications.[40] However, the formal restrictions on coordination between candidates and Super PACs have not actually prevented campaigns from conveying information to the constellation of outside groups supporting them. Instead, the restriction has led to a bizarre song and dance in which campaign operatives speak through the media, post content online, and even join forces to fundraise, all without formally "coordinating" with supportive Super PACs. And thanks to disclosure requirements, any candidate who is curious about which donors seeded the Super PAC that spent big in his primary election can easily verify that information by viewing the PAC's public reports on fec.gov after the next reporting deadline. The candidate could even send a note to Super PAC donors thanking them for their generosity (which, in and of itself, would not be considered a coordinated communication).

What's more, restrictions on coordination have also impaired the ability of candidates to exert quality control over fundraising that is conducted in their name but without their involvement. Some Super PACs amount to little more than personal enrichment schemes for their vendors. These "scam PACs" deceive donors by purporting to support a particular candidate or cause, when in reality they are mostly plowing the money they raise from unsuspecting donors into successive rounds of fundraising for the PAC itself and payments to preferred vendors.[41] In addition to the obvious harms they inflict upon the donors that they trick into contributing, Scam PACs also hurt candidates and parties in at least two ways: (1) they deprive campaigns of needed oxygen by stealing small-dollar contributions that would otherwise be given to the campaign,

---

40. *See* 11 C.F.R. § 109.21 (2025); *see also Coordinated communications*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/coordinated-communications/ [https://perma.cc/Z84V-9JZB].

41. Maia Cook, *How "Scam PACs" Line Their Pockets by Deceiving Political Donors*, OPENSECRETS (Aug. 18, 2023), https://www.opensecrets.org/news/2023/08/how-scam-pacs-line-their-pockets-by-deceiving-political-donors/ [https://perma.cc/PQJ8-DQ4M].

and (2) they then spend those funds on activities that do not even pretend to boost the campaign.

It is important to remember that the relevant government interest is not in contribution limits *per se*, but in reducing "the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions."[42] If this brief history has demonstrated nothing else, it should illustrate that those who wish to influence politicians are capable of reading new laws and adjusting their behavior accordingly. Legislative efforts to clamp down on specific types of campaign financing have not reduced the overall amount of money sloshing through the American political system or eliminated opportunities for wealthy interests to influence elections. Instead, contribution limits have succeeded only in diverting funds towards the least democratically accountable actors, Super PACs that are set up to air attack ads in a single election cycle before they fade into the ether as mysteriously as they first appeared. At the same time, contribution limits have increased the amount of time that candidates must spend chasing dollars while failing to shield candidates from information about the identities of their biggest benefactors.

The shape of corruption has changed since the 1970s, and federal contribution limits are no longer responsive to corruption as it exists today. The structure of FECA is now riddled with holes in the wake of repeated judicial invalidations of its component parts, and it is reasonable to ask, as Chief Justice Burger pondered in the wake of *Buckley*, "whether the residue leaves a workable program."[43]

III. LIKELY CONSEQUENCES OF ABANDONING THE "ANTI-CORRUPTION" INTEREST

These authors are not the first to suggest that FECA's contribution limits are inadequately tailored towards their anti-corruption goal. Chief Justice Burger criticized the *Buckley* majority for failing

42. *Buckley*, 424 U.S. at 27.
43. *Id.* at 236 (Burger, C.J., concurring in part and dissenting in part).

to recognize that "freedom of association and freedom of expression [a]re two peas from the same pod," and that "[w]e do little but engage in word games unless we recognize that people . . . spend money on political activity because they wish to communicate ideas, and their constitutional interest in doing so is precisely the same whether they or someone else utters the words."[44] Justice Blackmun similarly expressed doubt "that the Court makes, or indeed is able to make, a principled constitutional distinction between" contribution and expenditure limits.[45] And Justice Thomas has repeatedly highlighted judicial inconsistency in this area, noting that the Court correctly recognized that "limiting the amount of money a person may give to a candidate *does* impose a direct restraint on his political communication" when evaluating aggregate contribution limits in *McCutcheon* but criticizing the majority for failing to apply the same logic to direct contribution limits.[46]

But even if this analysis is correct as a matter of constitutional interpretation, it is fair to consider the likely consequences of our proposal before eliminating federal contribution limits entirely. For at least three reasons, it is unlikely that judicial invalidation of contribution limits will transport us back to the world of pay-to-play: (1) federal law still criminalizes *quid pro quo* bribery, which should be investigated and prosecuted whether or not federal contribution limits exist;[47] (2) many States have eliminated contribution limits without ushering in a deluge of corruption; and (3) eliminating contribution limits will reduce the burden of fundraising and free candidates to focus on issues of broader interest to their constituents.

The question of bribery has already been addressed, and to the extent that concerns about corruption are concerns about *quid pro quo* bribery, the elimination of contribution limits will have no effect. It is and will remain a federal crime to offer or give anything of value to a public official to influence that person's official acts.[48]

---

44. *Id.* at 244.
45. *Id.* at 290 (Blackmun, J., concurring in part and dissenting in part).
46. *McCutcheon*, 572 U.S. at 231 (Thomas, J., concurring in the judgment).
47. *See* McDonnell v. United States, 579 U.S. 550, 574 (2016).
48. 18 U.S.C. § 201(b)(1).

To the extent that supporters of current law fear that it could be difficult to prove bribery in the context of political fundraising, "[i]t might be that [] guilty knowledge c[an] not be shown because the donors [a]re not guilty."[49]

As of 2025, twelve States imposed no contribution limits on individual contributions to at least some categories of candidates.[50] All twelve States enforce a more *laissez-faire* campaign finance regime than the federal system, and yet none of these States are hellholes of governmental corruption. In fact, a 2020 analysis of federal public corruption convictions found that the three district courts with the highest number of convictions since 1976 were each located in states that enforce strict limits on political contributions.[51] Even measured on a per capita basis to control for the possibility that corruption convictions increase with population, only two of the "no limits" states are among the ten most corrupt jurisdictions.[52]

Correlation does not imply causation, and this essay should not be read to insinuate that contribution limits *invite* public corruption. But justifying restrictions on political speech remains the burden of the regulator, and the lack of correlation between *laissez-faire* campaign finance regimes and incidence of political corruption undermines the argument that contribution limits are necessary to prevent corruption. Not only are limits unnecessary to achieve this goal, but the state-level evidence indicates that they are frequently not even sufficient. Further, contra those who claim that a relaxation of contribution limits will asymmetrically benefit a single po-

---

49. *McCutcheon*, 572 U.S. at 217.

50. Nat'l Conf of State Legislatures, *State Limits on Contributions to Candidates: 2025-2026 Election Cycle* (May 2025), https://documents.ncsl.org/wwwncsl/Elections/State-Limits-on-Contributions-to-Candidates-2025-2026.pdf.

51. DICK SIMPSON ET AL., ANTI-CORRUPTION REPORT #12: CHICAGO STILL THE CORRUPTION CAPITAL 2 (Feb. 17, 2020), https://pols.uic.edu/wp-content/uploads/sites/273/2020/02/Corruption.Rpt_12.Complete.pdf [https://perma.cc/CT3V-Y9MK] (identifying the Northern District of Illinois, Central District of California, and Southern District of New York as the leaders).

52. *Id.* at 4 (Pennsylvania was sixth, and Virginia seventh).

litical party, the partisan environments of the "no limits" States differ drastically, running the gamut from conservative Nebraska to competitive Pennsylvania to liberal Oregon.

But even if eliminating contribution limits will not ensure dominance by a single party, it will still meaningfully change our politics. First, it will allow candidates to hop off what has been pejoratively called "the congressional fundraising treadmill."[53] The amount of money that candidates must now raise simply to remain competitive is mind-boggling. In the 117th Congress, the average freshman Member raised $3,900 *per day*.[54] For Members in competitive races, the daily average rose to $7,200.[55] A system that requires candidates to spend significant time fundraising is a system that benefits incumbents of both parties and disadvantages outsiders of all stripes. And of course, "[h]ours spent dialing for dollars are hours diverted away from lawmakers' legislative and oversight responsibilities,"[56] as well as from their most important duty: interacting with their constituents so they can better represent those voters' interests in Washington.

Second, the elimination of contribution limits will level the playing field. "[C]andidates with personal fortunes [are] free to contribute to their own campaigns as much as they like," under the theory that it is impossible for a candidate to corrupt himself with his own money.[57] That's true if one narrowly defines corruption as *quid pro quo*, but, as discussed above, the myopic focus on avoiding corruption in this way undermines Madison's objective of creating a political system "derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it."[58] Our campaign finance regime actively impedes progress towards that goal.

---

53. Amisa Ratliff, *The Congressional Fundraising Treadmill*, ISSUE ONE (Feb. 10, 2023), https://issueone.org/articles/the-congressional-fundraising-treadmill-2022-election/ [https://perma.cc/4QBG-5GYM].

54. *Id.*

55. *Id.*

56. *Id.*

57. Buckley v. Valeo, 424 U.S. 1, 244 n.10 (Burger, C.J., concurring in part and dissenting in part).

58. THE FEDERALIST NO. 39 (James Madison).

Candidates forced by law to raise money in smaller increments must spend more time attempting to raise money from a broader universe of people. For people who lack political connections or have full-time jobs or family obligations that restrict the time they can spend campaigning, this is an impossible task, and "[i]t is not simply speculation to think that the limitations on contributions will foreclose some candidacies."[59] It is hard to claim victory in the fight against big money in politics if our campaign finance regime has created a Congress increasingly populated by self-funders.

Finally, a world without contribution limits will be one in which candidates and parties raise more money than they currently do—*a lot* more money. Although the elimination of contribution limits could theoretically attract new money into politics, it is more likely that it will incentivize a rerouting of contributions away from Super PACs and into candidate and party coffers. After all, the sole reason for giving to a Super PAC rather than to the candidate the Super PAC supports is to increase the amount the donor can lawfully give and thereby increase the donor's impact on the targeted race. But if the donor can contribute any amount to their favorite candidate, who is the person best situated to win the election in which that candidate is running, then why give to a Super PAC at all?

This redirection of funding streams would cultivate a political culture that is more accountable to the people. Candidates stand for election; Super PACs do not. If candidates can raise money in larger increments and spend less time dialing for dollars, then they will have more time to learn about their constituents' priorities. This would benefit voters, who would be represented by someone with stronger community ties, as well as the candidates themselves, because responsiveness to voter concerns remains a surefire path to political victory.[60] Plus, if a candidate does a poor job representing

---

59. *Buckley*, 424 U.S. at 244 (Burger, C.J., concurring in part and dissenting in part).

60. Eli Yokley, *Since Trump, Voters Have Become More Likely to See the GOP as Caring About Them*, MORNING CONSULT (Sept. 25, 2023), https://pro.morningconsult.com/analysis/gop-working-class-survey [https://perma.cc/6MLZ-2MTZ].

their constituents and addressing their concerns, then voters can always punish them at the ballot box. Voters have no electoral recourse against Super PACs or other outside groups that swoop in and out of districts leaving only negative advertising in their wake.

IV. AN INTERMEDIATE STEP? PARTY COORDINATED EXPENDITURE LIMITS

Nevertheless, courts will likely be reluctant to invalidate contribution limits wholesale. If so, striking down party coordinated expenditure limits could be a more limited way to test this essay's hypothesis.

First, a brief explanation. "Party coordinated expenditure limits" refer to statutory restrictions that limit the amount of money that national, state, and local party committees can legally spend in coordination with their general election candidates. Once a party committee reaches the applicable cap in a given race, it can no longer coordinate its paid advertising efforts with that candidate. Instead, any future party-funded advertising effort must be conducted independently of the candidate, much like a Super PAC. This necessitates the creation of party "IE Units" that are housed in separate facilities, staffed by different personnel, and barred from coordinating their messaging with staff in party headquarters. Needless to say, this duplicative effort is expensive and wastes donor dollars in the name of fighting corruption.

The government has identified two interests supporting these limits: (1) "prevent[ing] a party from corrupting its own candidates;" and (2) "prevent[ing] donors from circumventing donor-to-candidate limits."[61] The first interest is, admittedly, perplexing. How can a party "corrupt" its own candidates? The limits on coordinated spending only apply to the *general election* campaign, meaning that parties are not legally prohibited from picking favorites in primary elections (where the party may arguably hold more sway over voters) or from endorsing specific policy positions and encouraging candidates running for the party's nomination to do the

61. NRSC v. FEC, 117 F.4th 389, 402 (6th Cir. 2024) (Thapar, J., concurring).

same. Party coordinated limits only ensure that the parties matter less during the time when their assistance matters most.

The second interest may appear facially plausible, but also withers upon closer review. Sure, a wealthy donor who has contributed the maximum legal amount to their favorite candidate *could* take advantage of the party's higher limits and redirect their contributions accordingly, but any political lawyer who recommended this approach to giving would not serve their client very well. Currently, the FEC caps individual contributions to candidates at $3,500 per election and contributions to national party committees at $44,300 per year, with separate limits applicable to separate accounts that are devoted to specific purposes.[62] Assuming that the donor gives the maximum to the candidate, giving to the national party sextuples their impact. Not terrible, but this still pales in comparison to the impact of giving to a Super PAC supporting the same candidate, where the donor is limited only by the size of their own pocketbook. Moreover, federal law treats contributions that are earmarked for the benefit of a particular candidate as direct contributions to that candidate even if they are conduited through another committee, meaning that a donor's legal control over their contribution to a party committee ends the second they part with the money.[63]

The Supreme Court is currently reviewing a First Amendment challenge to the coordinated limits.[64] The Court previously evaluated the limits in *FEC v. Colorado Republican Federal Campaign Committee* and held that the limits were justified not only by an interest in preventing "*quid pro quo* agreements . . . but also [] undue influence on an officeholder's judgment, and the appearance of such influence."[65] That rationale should sound familiar because it's the

---

62. A separate combined limit of $10,000 per year applies to the federal accounts of state and local party committees. FED. ELECTION COMM'N, CONTRIBUTION LIMITS FOR 2025-2026, https://www.fec.gov/resources/cms-content/documents/contribution-limits-chart-2025-2026.pdf [https://perma.cc/TA9T-K8MN].

63. 52 U.S.C. § 30116(a)(8).

64. No. 24-621, NRSC v. FEC. One co-author of this essay is counsel in the case, and the other is in-house counsel for one of the petitioners.

65. 533 U.S. 431, 441 (2001).

same capacious definition of "corruption" that was later rejected in *Citizens United*.[66] This raises the question whether the *Colorado* decision has become a "zombie precedent" that is "technically still on the books, but whose logic has been discredited by the 'court of history.'"[67]

If the Supreme Court overturned *Colorado*, invalidating the party coordinated limits while leaving individual contribution limits otherwise intact, parties would immediately become more attractive vehicles for contributions. This would likely draw some funding away from Super PACs (although the effect would be less pronounced than in the scenario where contribution limits are invalidated *in toto*). Parties would also gain more influence over their candidates' messaging strategy because they would be permitted to coordinate on all aspects of general election advertising.

Most importantly, candidates would begin to look more towards parties than outside groups for support, which would have a salutary effect on their political strategy. As discussed *supra*, a candidate who is even partially relieved from the burdens of fundraising is a candidate who has more time to spend with voters. If candidates believe that responsiveness to voters is likelier to result in political victory than responsiveness to deep-pocketed Super PAC donors, then they will adjust their strategy and messaging accordingly. Candidates respond to incentives; we simply need to present them with better ones.

CONCLUSION

In 1974, the governmental interest in combatting corruption through individual contribution limits may have seemed as sensible as buying a Ford Pinto. Five decades of experience, developments in political gamesmanship, and a sea change in campaign finance law have redirected funding away from candidates and

---

66. Citizens United v. FEC, 558 U.S. 310, 359 (2010); McCutcheon v. FEC, 572 U.S. 185, 192 (2014).

67. *NRSC v. FEC*, 117 F.4th at 446 (Readler, J., dissenting) (quoting Trump v. Hawaii, 585 U.S. 667, 710 (2018)).

parties and towards Super PACs, revealing the antiquated nature of FECA's approach.

At the time that BCRA took effect in November 2002, Americans were evenly divided in their satisfaction with "the ways things are going in the United States."[68] More than two decades later, we are united only in our dissatisfaction, with less than a quarter of Americans reporting that they are content with the status quo.[69] That change is not entirely attributable to contribution limits, but it is inherently bound up with the malign state of American politics that our federal campaign finance regime has helped produce. At oral arguments in *NRSC v. FEC*, Justice Sotomayor expressed the opinion that "every time we interfere with the congressional design [of FECA] we make matters worse."[70] She's right, but that is a reason for the Court to return to the drawing board and reconsider its holding in *Buckley*, not to wash its hands of the mess it has made.

The Supreme Court has held that the First Amendment prevents Congress from capping independent expenditures.[71] Given that, reformers can either continue fighting an uphill battle to overturn *Citizens United* or focus their efforts on making Super PACs and other unaccountable outside groups less attractive vehicles for political contributions. We contend that it is necessary to reject the policy preferences of campaign finance reformers to achieve their primary goal: creating a political system that is more responsive to the concerns of the average voter. Recognizing that contribution limits no longer serve the government's interest in combatting corruption is an important first step.

---

68. *Satisfaction With the United States*, GALLUP, https://news.gallup.com/poll/1669/general-mood-country.aspx.

69. *Id.*

70. No. 24-621, *NRSC v. FEC*, Tr. Of Oral Arg. 24.

71. Further, although the Supreme Court did not review the D.C. Circuit's *SpeechNow* decision approving unlimited contributions to Super PACs on the merits, it declined to grant certiorari, thereby implicitly affirming the reasoning of the lower court. *See* Keating v. FEC, 562 U.S. 1003 (2010).