Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Campaign Finance: Supreme Court Scheduled to Consider Constitutionality of Coordinated Party Expenditure Limits

September 3, 2025

The Supreme Court is scheduled to once again consider the constitutionality of a federal campaign finance law. In *National Republican Senatorial Committee (NRSC) v. Federal Election Commission (FEC)*, the Court has been asked to evaluate whether the First Amendment to the Constitution prohibits a federal law that limits coordinated political party expenditures. This federal law and the relevant FEC regulations governing political party expenditures that are coordinated with a federal candidate are known as the "coordinated party expenditure limits." The en banc U.S. Court of Appeals for the Sixth Circuit (Sixth Circuit) upheld the limits, determining that the 2001 Supreme Court decision in *FEC v. Colorado Republican Federal Campaign Committee* (known as *Colorado II* to distinguish it from a similarly named case on party expenditures decided earlier), which reached the same conclusion, is binding precedent. Nonetheless, the Sixth Circuit characterized the holding in *Colorado II* as "questionable," emphasizing that the Supreme Court's recent campaign finance decisions have applied a different approach when evaluating the constitutionality of such laws. The NRSC appealed the Sixth Circuit's ruling, and the Supreme Court is scheduled to hear oral argument during its October 2025 term. After prevailing in its defense of the coordinated party expenditure limits in the appellate court, the federal government in a "rare" instance is now arguing before the Supreme Court that the limits are constitutionally invalid.

This Legal Sidebar begins by providing background on federal campaign finance law relevant to the *NRSC v. FEC* dispute, focusing on the coordinated party expenditure limits and the Supreme Court ruling in *Colorado II* that upheld the constitutionality of the limits. It then discusses the Sixth Circuit ruling and the pending appeal to the Supreme Court. The Sidebar concludes with considerations for Congress.

Federal Campaign Finance Law, Coordinated Party Expenditure Limits, and the Supreme Court: Background

Under the Federal Election Campaign Act (FECA), which regulates federal campaign finance, political parties can financially support congressional and presidential candidates in three primary ways: by making contributions, independent expenditures, and coordinated party expenditures. Coordinated party

Congressional Research Service
https://crsreports.congress.gov
LSB11358

expenditures are expenditures made by political parties in coordination with (i.e., with input from) federal candidates. Such expenditures mostly fund campaign advertising, i.e., party coordinated communications. A provision of FECA, codified at 52 U.S.C.§ 30116(d), establishes the coordinated party expenditure limits, which apply in general elections. In 2025, the limits, which the FEC adjusts for inflation each year, range from $127,200 to $3,946,100 for Senate candidates, depending on the state's voting age population; $127,200 for House candidates in states with one representative; and $63,600 in states with more than one representative. For information on the federal regulation of campaign contributions and independent expenditures, and related Supreme Court rulings, see this CRS report.

In its 2001 *Colorado II* decision, the Supreme Court upheld the facial constitutionality of FECA's coordinated party expenditure limits. According to the Court in *Colorado II*, coordinated party expenditures have "no significant functional difference" from contributions made by a party directly to a candidate, and the Court had earlier held that contribution limits are generally constitutional. The Court explained that contribution limits "are more clearly justified by a link to political corruption" than expenditure limits are. Therefore, instead of applying the "closer scrutiny" applicable to expenditure limits, the Court applied the less rigorous standard of constitutional review applicable to campaign contribution limits, which asks "whether the restriction is 'closely drawn' to match ... the 'sufficiently important' government interest in combatting corruption." In contrast with "truly" independent expenditures, the Court determined that a political party's coordinated expenditures may be constitutionally limited to minimize circumvention of FECA's contribution limits.

NRSC v. FEC

In *NRSC v. FEC*, the challengers—the senatorial and congressional committees of the Republican Party, along with then-Senator JD Vance and former Representative Steve Chabot (as federal office candidates)—sued the FEC, arguing that the coordinated party expenditure limits found in 52 U.S.C.§ 30116 violate the First Amendment. The challengers also argued that the Supreme Court's 2001 ruling in *Colorado II* is no longer binding because of subsequent Supreme Court precedent, exemptions to the limits that Congress added in 2014, and "the rise of unlimited spending by political action committees." In accordance with a provision of FECA, the U.S. District Court for the Southern District of Ohio certified the following constitutional question presented in this case to the en banc Sixth Circuit: "Do the limits on coordinated party expenditures in § 315 of the Federal Election Campaign Act of 1971, as amended, 52 U.S.C. § 30116, violate the First Amendment, either on their face or as applied to party spending in connection with 'party coordinated communications' as defined in 11 C.F.R. § 109.37?" (Generally, an as-applied challenge seeks to prove that a statute is unconstitutional as applied to a particular party or set of circumstances, whereas a facial challenge seeks to prove that all applications of a statute are unconstitutional.)

A majority of the en banc Sixth Circuit upheld the coordinated party expenditure limits both on their face and as applied to coordinated campaign advertising. According to the Sixth Circuit, the "key reality" is that the Supreme Court has not overruled *Colorado II* and that, therefore, the court is required to follow that precedent and deny the challengers' claims.

While upholding the facial constitutionality of the limits, the Sixth Circuit acknowledged that the challengers made "fair points" regarding how the federal campaign finance landscape has changed since the Supreme Court's 2001 ruling in *Colorado II* and that such change may call into question whether *Colorado II* was binding. For example, the Sixth Circuit observed that the Supreme Court's recent campaign decisions have created a "tension" between the constitutional reasoning undergirding those rulings and the reasoning of the *Colorado II* decision. As the Sixth Circuit explained, the Supreme Court's decisions in *McCutcheon v. FEC* (2014) and *FEC v. Ted Cruz for Senate* (2022) required the government to produce "actual evidence" that an expenditure limit will lessen "*quid pro quo* corruption or its

appearance." Further, the Sixth Circuit recognized that these more recent Supreme Court decisions compelled lower courts to apply a "strengthened," "closely drawn" standard of review, requiring that expenditure limits be "narrowly tailored" to prevent quid pro quo corruption. In contrast, the Sixth Circuit remarked that the Supreme Court in *Colorado II* "seemed to disavow" a requirement of narrow tailoring. Notwithstanding this "shift[]" in the Court's campaign finance jurisprudence, the Sixth Circuit concluded that it was bound to follow the *Colorado II* precedent because the Court has never overruled that decision.

The Sixth Circuit also acknowledged the challengers' argument that Congress added exemptions to the law in 2014 and that those exemptions "radically altered [FECA's] nature and structure," changing the analysis of whether the law is narrowly tailored to the governmental interest of preventing quid pro quo corruption. The court explained that if the *Colorado II* precedent did not apply in this case, it "could appreciate how these new exemptions might affect the analysis." Under a stricter standard of review, the court conceded that the 2014-enacted exemptions could make the law unconstitutionally underinclusive, showing that the challenged limits do "too little for First Amendment purposes." Nonetheless, the Sixth Circuit emphasized that *Colorado II*—where the Supreme Court applied "a deferential form of review in upholding these precise provisions, refusing to invalidate the limits due to 'unskillful tailoring'"—is the controlling precedent.

Further, the Sixth Circuit agreed with the challengers that the campaign finance ecosystem has "materially changed" since 2001, citing increased spending by super PACs (political action committees) and "the fall of political parties' power to the advent of social media." The court even suggested that the Supreme Court's assumption in *Colorado II* that "political parties are dominant players ... in federal elections" may have a "quaint ring to it." Reiterating the precedential dictates of *Colorado II*, the Sixth Circuit cautioned that "any new assessment" of the coordinated party expenditure limits based on statutory changes or a different campaign finance environment is in the province of the Supreme Court, not the lower courts.

The Sixth Circuit rejected the as-applied challenge to the coordinated party expenditure limits. The court determined that the *Colorado II* precedent allowed for certain as-applied challenges to be raised in the future—namely, claims involving specific expenditures that were not coordinated. In such as-applied challenges, the Sixth Circuit explained, the *Colorado I* precedent (where the Court invalidated FECA's limits on party expenditures as applied to a Colorado political party's specific independent expenditures) would apply, and, accordingly, the limits would be held unconstitutional in particular circumstances. In contrast, the Sixth Circuit noted that the challengers in this case did not restrict their as-applied challenge to specific expenditures but instead challenged the limits "as applied to the political advertising addressed in 11 C.F.R. § 109.37," which encompasses a broad range of ads. The court reasoned that if it were to grant such a broad as-applied claim, the effect would be to ignore the logic of *Colorado II*, resulting in that decision covering "little if any" coordinated expenditures.

Appeal to the Supreme Court

The challengers appealed to the Supreme Court, arguing again that the coordinated party expenditure limits violate the First Amendment because they fail even a "closely drawn" standard of review. Further, the challengers maintained that the *Colorado II* precedent has been "eroded" by the Supreme Court's more recent campaign finance rulings and should be overruled. In response, after prevailing in its defense of the coordinated party expenditure limits in the Sixth Circuit, the federal government is now arguing before the Supreme Court that the limits are constitutionally invalid. Specifically, the Solicitor General of the United States stated that despite the Department of Justice's "longstanding policy of defending challenged federal statutes ... this is the rare case that warrants an exception" because the coordinated party expenditure limits "violate[] core First Amendment rights."

On June 30, the Supreme Court agreed to hear *NRSC v. FEC* during its October 2025 term. The question presented to the Court is: "Whether the limits on coordinated party expenditures in 52 U.S.C. § 30116

violate the First Amendment, either on their face or as applied to party spending in connection with 'party coordinated communications' as defined in 11 C.F.R. § 109.37."

In view of the federal government's decision to no longer defend the constitutionality of the coordinated party expenditure limits, on July 1, the Supreme Court asked attorney Roman Martinez to brief and argue the case, as amicus curiae, in support of the Sixth Circuit ruling. The Court also granted the Democratic National Committee (DNC), along with the senatorial and congressional committees of the Democratic Party (collectively, the "Democratic Party Committees"), permission to intervene. The Democratic Party Committees argued that they are "well suited to fill the void created by the Solicitor General's refusal to defend" the law because they have a "direct stake" in the outcome of the case.

On August 21, the challengers and the federal government filed briefs addressing the merits in this case. In sum, the challengers argue that the coordinated party expenditure limits violate the First Amendment because, while "severely burden[ing]" free speech, they do not further the governmental interest of avoiding quid pro quo corruption and are not narrowly tailored. The challengers also contend that the Supreme Court's 2001 ruling in *Colorado II* does not control here because the Court has subsequently rejected the "deferential" standard of constitutional review that was applied in that case. Even if *Colorado II* is still binding precedent, the challengers maintain that it is distinguishable from this case because the legal landscape of federal campaign finance law has changed since 2001, including Congress's 2014-enacted exemptions to the coordinated party expenditure limits. For reasons similar to those proffered by the challengers, the government likewise asserts that the coordinated party expenditure limits are prohibited by the First Amendment and that the Supreme Court's decision in *Colorado II* either does not control in this case or should be overruled. According to the government, the Supreme Court's subsequent campaign finance rulings have "eroded" the reasoning undergirding *Colorado II*, and in similar, prior cases, the "Court has overruled decisions that wrongly withheld fundamental constitutional rights and conflicted with earlier or later cases." (To date, the court-appointed amicus curiae and the intervenor, the Democratic Party Committees, have not yet filed briefs on the merits, which are due to the Court on September 29, 2025.)

Considerations for Congress

A Supreme Court ruling in *NRSC* could be consequential for the system of federal campaign finance during the 2026 congressional midterm elections and beyond. For example, one media report predicts that if the coordinated party expenditure limits are overturned, party groups could "pour unlimited amounts into ads in competitive races across the country, making it easier for campaigns to benefit from that spending." As the media report explained, coordinated party expenditures are often used to buy television advertising, which is less expensive when bought in concert with a candidate's campaign, so if the limits are eliminated, political parties "would dramatically accelerate their purchase of ad time." Further, Senator Mitch McConnell, chairman of the Senate Committee on Rules and Administration (which has jurisdiction over campaign finance law), argued in an amicus brief supporting the challengers that the limits restrict "the parties' most effective means of influencing elections." In contrast, in its motion to intervene, the Democratic Party Committees argued that invalidation of the coordinated party expenditure limits would require them to "substantially" change their operations and would result in a loss of their "carefully developed tactical efficiencies" across the country.

As a case of constitutional interpretation, a Supreme Court ruling in *NRSC* may provide guidance regarding the constitutional parameters of campaign finance legislation going forward should Congress choose to enact legislation. For example, the Court could clarify the appropriate standard of constitutional review for the coordinated party expenditure limits, adopting either a stricter standard of review than it applied in *Colorado II* or the less rigorous "closely drawn" standard of review that it typically applies to contribution limits. The Court could also reject what one Sixth Circuit judge described as the "

ahistorical, tiers-of-scrutiny approach," whereby contribution limits and expenditure limits are afforded different levels of scrutiny, and instead adopt the "two-step inquiry" looking to historical tradition that is used under the Second Amendment. In any circumstance, legislation proposing to amend FECA in response to *NRSC* may be analyzed to consider whether it comports with the Court's interpretation of the First Amendment. If the Court rules that the coordinated party limits are unconstitutional, lawmakers might consider introducing a proposed constitutional amendment to overturn the effects of the decision. (By way of example, following the Supreme Court's 2010 ruling in *Citizens United v. FEC*, some Members of Congress introduced proposed constitutional amendments in response to that ruling.)

Author Information

L. Paige Whitaker
Legislative Attorney

Disclaimer