No. 00-191

In the Supreme Court of the United States

FEDERAL ELECTION COMMISSION, PETITIONER

v.

COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE PETITIONER

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QUESTION PRESENTED

Whether a political party has a First Amendment right to make unlimited campaign expenditures in coordination with the party's congressional candidates, notwithstanding the limits on such coordinated expenditures imposed by the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-53a) is reported at 213 F.3d 1221. The opinion of the district court (Pet. App. 54a-91a) is reported at 41 F. Supp. 2d 1197. An earlier opinion of this Court in this case (Pet. App. 92a-142a) is reported at 518 U.S. 604. An earlier opinion of the court of appeals (Pet. App. 143a-162a) is reported at 59 F.3d 1015. An earlier opinion of the district court (Pet. App. 163a-180a) is reported at 839 F. Supp. 1448.

JURISDICTION

The judgment of the court of appeals was entered on May 5, 2000. The petition for a writ of certiorari was filed on August 3, 2000, and was granted on October 10, 2000. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The First Amendment to the United States Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. Section 441a(d) of Title 2, United States Code, provides in pertinent part:

> (d) Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office
>
> (1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.
>
> * * * * *
>
> (3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section); or

(ii) $20,000; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

STATEMENT

1. This case involves the application of the Federal Election Campaign Act of 1971 (FECA or Act), 2 U.S.C. 431 *et seq.*, to the campaign spending of political parties. The Act imposes limits on contributions to candidates for federal office. Individuals may contribute no more than $1000 to any federal candidate, and multicandidate political committees[1] no more than $5000, with respect to any election. 2 U.S.C. 441a(a)(1)(A) and (2)(A).

Since its decision in *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam), this Court has recognized a "fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to the candidate to be spent on his

[1] A multicandidate political committee is "a political committee which has been registered under [2 U.S.C. 433] for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office." 2 U.S.C. 441a(a)(4); see 11 C.F.R. 100.5(e)(3).

campaign." *FEC* v. *National Conservative PAC* (*NCPAC*), 470 U.S. 480, 497 (1985); see also *FEC* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 259-260 (1986) ("We have consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending."); *Nixon* v. *Shrink Mo. Gov't PAC*, 120 S. Ct. 897, 903-904 (2000). In *Buckley*, the Court upheld the FECA's limitations on contributions, finding that they serve a compelling government interest in "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." 424 U.S. at 25; see *id.* at 23-38. The Court struck down the Act's restrictions on independent expenditures, however, reasoning that "[t]he absence of prearrangement and coordination of an [independent] 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." *Id.* at 47; see *id.* at 39-59.

The instant case involves a category of payments commonly known as "coordinated expenditures," see *Buckley*, 424 U.S. at 46, which involve direct interaction with the candidate (or his agents) but do not involve a transfer of funds to the candidate himself. The 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." 2 U.S.C. 431(9)(A)(i). The Act provides that "expenditures made by any person in cooperation, consultation, or concert, with" a candidate or her agents "shall be considered to be a contribution to such candidate." 2 U.S.C.

441a(a)(7)(B)(i).[2] See *Buckley*, 424 U.S. at 46 ("expenditures controlled by or coordinated with the candidate and his campaign * * * are treated as contributions rather than expenditures under the Act"); *NCPAC*, 470 U.S. at 492 (coordinated expenditures "are considered 'contributions' under the FECA").

The FECA authorizes the national and state committees of a "political party" to make coordinated expenditures on behalf of their federal candidates well in excess of the contribution limits that apply to other entities. 2 U.S.C. 441a(d)(1); see H.R. Conf. Rep. No. 1057, 94th Cong., 2d Sess. 59 (1976) ("but for [Section 441a(d)], these expenditures would be covered by the contribution limitations stated in [Section 441a(a)(1) and (2)]"). The term "political party" is defined to mean "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization." 2 U.S.C. 431(16). In elections for the United States Senate, Section 441a(d) initially authorized each national or state party committee to expend the greater of $20,000 or two cents multiplied by the voting age population of the State in which the election is held. 2 U.S.C. 441a(d)(3)(A).[3]

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[2] "[I]ndependent expenditure[s]," by contrast, are defined as "expenditure[s] by a person expressly advocating the election or defeat of a clearly identified candidate which [are] made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which [are] not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate." 2 U.S.C. 431(17).

[3] As construed by the Federal Election Commission, Section 441a(d) permits a state party committee to make coordinated expenditures up to the limits set out in Section 441a(d)(2) and (3) in addition to the $5000 that can be contributed directly to the candidate. See 11 C.F.R. 110.7(b)(3); FEC Advisory Op. 1985-14, 2 Fed. Election Camp. Fin. Guide (CCH)

That limit is periodically adjusted for inflation. 2 U.S.C. 441a(c). By 1996, the coordinated party expenditure limit for the Senate election in Colorado had increased to approximately $171,000. C.A. App. 332. If a state party committee chooses not to make the coordinated expenditures that Section 441a(d) permits, it may assign its right to do so to a designated agent, such as a national committee of the party. See *FEC* v. *Democratic Senatorial Campaign Comm.* (*DSCC*), 454 U.S. 27, 31-43 (1981).

2. The instant case arises out of an enforcement action filed by petitioner Federal Election Commission (FEC or Commission) against respondent Colorado Republican Federal Campaign Committee.[4] The gravamen of the enforcement action was that respondent's payment for an advertisement attacking the voting record of Tim Wirth—at that time a candidate for the Democratic nomination for United States Senator—was an "expenditure" within the meaning of the FECA. Pet. App. 144a-145a, 164a-166a. Under the FEC's interpretation of the statute, that expenditure was conclusively presumed to be coordinated with the Republican Party's candidate for the Senate, on the theory that political party committees were deemed to be "incapable of making

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¶ 5819, at 11,186 n.5 (May 30, 1985). Thus, if a party committee's coordinated expenditures exceeded the limits established by Section 441a(d)(2) and (3), the excess expenditure could be treated, up to the amount of $5000, as an in-kind contribution falling within the limitations of 2 U.S.C. 441a(a)(2).

[4] The Commission is an independent agency charged with the administration, interpretation, and civil enforcement of the FECA. See 2 U.S.C. 437c(b)(1), 437d(a) and (e), 437f, 437g. Congress has authorized the FEC to "formulate policy" under the Act, 2 U.S.C. 437c(b)(1); to institute investigations of possible violations of the Act, 2 U.S.C. 437g(a)(1) and (2); to initiate civil actions in the United States district courts to obtain judicial enforcement of the Act, 2 U.S.C. 437d(a)(6); and to initiate actions in the federal courts to determine the constitutionality of any provision of the Act, 2 U.S.C. 437h.

'independent' expenditures in connection with the campaigns of their party's candidates." *DSCC*, 454 U.S. at 28-29 n.1; see Pet. App. 105a-106a. Because respondent had previously assigned its entire Section 441a(d) coordinated expenditure authority to the National Republican Senatorial Committee, the FEC found probable cause to believe that respondent had violated the FECA limits on coordinated expenditures. *Id.* at 147a-148a.

Respondent contested the enforcement action. It also asserted a counterclaim, arguing that Section 441a(d)(3) is facially violative of the First Amendment. The district court dismissed the enforcement action, holding that the payment at issue was not subject to the FECA limits because it was not made "in connection with" any federal election. See Pet. App. 166a, 171a-180a. The court declined to address respondent's First Amendment challenge. *Id.* at 166a, 180a. The court of appeals reversed, holding that the payment was subject to (and violative of) the FECA cap on party coordinated expenditures, and that the cap was constitutional. *Id.* at 143a-144a, 149a-162a.

3. This Court reversed, sustaining respondent's challenge to the FEC's enforcement action while declining to adjudicate respondent's counterclaim. Pet. App. 92a-142a (518 U.S. 604) (*Colorado I*).

a. Three Justices concluded that the payment in question was properly regarded as an "independent" rather than a "coordinated" expenditure because the Chairman of the Colorado Republican Party had approved the advertisement and had consulted only with party officials. See Pet. App. 98a-100a (518 U.S. at 613-614) (Breyer, J., joined by O'Connor and Souter, JJ.). The plurality noted that under *Buckley*, restrictions on independent campaign expenditures are presumptively violative of the First Amendment. *Id.* at 100a-101a. The plurality found no justification for subjecting political parties to restrictions on independent spending that

could not constitutionally be imposed upon other entities. *Id.* at 101a-105a. The plurality rejected the government's contention that expenditures made by a political party in support of its candidates can be conclusively presumed to be coordinated. *Id.* at 105a-110a.

The plurality declined to consider the argument, raised in respondent's counterclaim, that the FECA limits on political party expenditures are unconstitutional even as applied to expenditures that are in fact coordinated with the candidate. See Pet. App. 110a-114a. The plurality explained that neither the parties' briefs nor the opinions of the lower courts had focused on that question. *Id.* at 111a. It also observed that because many party coordinated expenditures are "virtually indistinguishable from simple contributions (compare, for example, a donation of money with direct payment of a candidate's media bills)," *ibid.*, "a holding on in-fact coordinated party expenditures necessarily implicates a broader range of issues than may first appear, including the constitutionality of party contribution limits," *id.* at 112a. In the plurality's view, the difficulty of the constitutional question, and the parties' failure to focus on it, "provide[d] a reason for this Court to defer consideration of the broader issues until the lower courts have reconsidered the question." *Id.* at 113a.

b. Four Justices would have struck down the FECA limits on party expenditures even as applied to expenditures that are in fact coordinated with the candidate. See Pet. App. 114a-119a (518 U.S. at 626-631) (Kennedy, J., joined by Rehnquist, C.J., and Scalia, J., concurring in the judgment and dissenting in part); Pet. App. 119a-140a (518 U.S. at 631-648) (Thomas, J., joined in part by Rehnquist, C.J., and Scalia, J., concurring in the judgment and dissenting in part). Two Justices would have upheld the Commission's enforce-

ment action. Pet. App. 140a-142a (518 U.S. at 648-650) (Stevens, J., joined by Ginsburg, J., dissenting).[5]

4. The case was remanded to the district court for further consideration of respondent's counterclaim. That counterclaim asserted that "the First Amendment forbids the government to limit [respondent's] coordinated expenditures. The FEC's attempts and intent to impose or enforce any limit on such coordinated expenditures are unconstitutional, unlawful, and void." J.A. 23. The district court granted respondent's motion for summary judgment and declared the FECA limits on party expenditures unconstitutional. Pet. App. 54a-91a.

a. The district court held that respondent had standing to challenge the FECA limits on party coordinated expenditures, see Pet. App. 69a-72a, and that respondent's claims were ripe for judicial review, see *id.* at 72a-74a. The court also held that Section 441a(d)'s application to coordinated expenditures was severable from its application (previously invalidated by this Court in *Colorado I*) to independent expenditures. See *id.* at 74a-76a. The district court explained that the "FECA contains a strong severability provision," *id.* at 74a (citing 2 U.S.C. 454), and it found "no evidence that Congress would have rejected [Section 441a(d)] as it applies to coordinated expenditures in the absence of a limit on independent expenditures," *id.* at 75a.

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[5] After this Court's decision in *Colorado I*, the Commission initiated a rulemaking and sought public comments to consider, *inter alia*, possible criteria for determining when spending by parties is coordinated. See Independent Expenditures and Party Committee Expenditure Limitations, 62 Fed. Reg. 24,367 (1997) (proposing revisions to 11 C.F.R. Pts. 100, 104, 109, 110). Although that part of the rulemaking had been held in abeyance pending ongoing litigation, the Commission solicited further public comments in December 1999. 64 Fed. Reg. 68,951-68,952, 68,955-68,956. The FEC has not yet proposed a final rule on that subject.

b. On the merits, the district court stated that "[t]he only permissible purpose for limitations on campaign expenditures is to prevent corruption or the appearance thereof." Pet. App. 79a. The court concluded that the FEC had failed to demonstrate a sufficient danger of actual or perceived corruption to justify the statutory limits on party coordinated expenditures. The court explained:

> [A] political party functions to promote political ideas and policy objectives over time and through elected officials. Given the purpose of political parties in our electoral system, a political party's decision to support a candidate who adheres to the [party's] beliefs is not corruption. Conversely, a party's refusal to provide a candidate with electoral funds because the candidate's views are at odds with party positions is not an attempt to exert improper influence. A candidate who does not wish to toe the party line is not excluded from participation in the political process or even in the party process. The FEC offers factual allegations which suggest that one party or the other withheld, or attempted to withhold, campaign funds from a candidate who expressed viewpoints or campaign tactics contrary to those thought preferable by the party. The court regards those as instances of the party and the candidate exercising their First Amendment rights. A party that refuses to fund a candidate who engages in what the party deems as undesirable campaign tactics is not reflecting corruption or the appearance of corruption.

Id. at 87a-88a (citation omitted). The district court entered a declaratory judgment "that the Party Expenditure Provision, 2 U.S.C.A. § 441a(d) (West 1997), is unconstitutional and cannot be enforced against [respondent]." *Id.* at 91a.

5. The court of appeals affirmed. Pet. App. 1a-53a.

a. The court of appeals acknowledged that "corruption or the appearance thereof are constitutionally sufficient justifications" for limits on coordinated campaign spending. Pet. App. 12a-13a. The court stated, however, that to establish the validity of Section 441a(d), "the FEC in this case must show that political parties through their spending authority corrupt or appear to corrupt the electoral process." *Id.* at 13a. The court expressed the view that

> [t]he opportunity for corruption or its appearance is greatest when the political spending is motivated by economic gain. * * * [P]olitical parties are diverse entities, one step removed from the candidate, and they exist for noneconomic reasons. Much like an advocacy group, a party functions "to disseminate political ideas, not to amass capital. The resources it has available are not a function of its success in the economic marketplace, but its popularity in the political marketplace."

Ibid. (quoting *Massachusetts Citizens for Life*, 479 U.S. at 259). The court of appeals also stated that "[f]rom the birth of this republic into the 21st century, political parties have provided the principal forum for political speech and the principal means of political association." *Id.* at 13a.

The court of appeals held that the Commission had failed to establish a constitutionally sufficient justification for Section 441a(d)'s restrictions on coordinated party spending in federal campaigns. The court stated that "the premise of [the FEC's] theory, namely that political parties can corrupt the electoral system by influencing their candidates' positions, gravely misunderstands the role of political parties in our democracy." Pet. App. 20a. It explained that

> [p]olitical parties today represent a broad-based coalition of interests, and there is nothing pernicious about this coalition shaping the views of its candidates. Parties are simply too large and too diverse to be corrupted by any

> one faction. Evidence in the record demonstrates that the parties' hard money comes from individual donors who give, on average, less than $40 * * *.
>
> Even if, as the FEC contends, party leaders subvert the greater will of the rank-and-file membership, we trust the members to replace their leaders. It is true that political parties have been involved in wrongdoing, dating back to the Tammany Hall machine. However, the electoral and litigation processes have always managed to right these wrongs. Given the importance of political parties to the survival of this democracy, we reject the notion that a party's influence over the positions of its candidates constitutes a subversion of the political process.

Id. at 21a-22a (internal quotation marks omitted).

The court of appeals also rejected the FEC's contention that the limits on party coordinated expenditures are a permissible means of preventing circumvention of other FECA contribution limits. The court stated that "[v]igilant enforcement of [2 U.S.C.] § 441a(a)(8)," which provides that contributions earmarked for a candidate shall be treated as contributions to the candidate himself, "is a more appropriate and direct means to safeguard the integrity of the individual contribution limits." Pet. App. 23a. The court of appeals concluded that the challenged FECA provision "constitutes a significant interference with the First Amendment rights of political parties," *id.* at 24a (internal quotation marks omitted), and that "[t]he FEC has not demonstrated * * * that coordinated spending by political parties corrupts, or creates the appearance of corrupting, the electoral process," *id.* at 25a.

b. Chief Judge Seymour dissented. Pet. App. 26a-53a. She stated that the panel majority had "create[d] a special category for political parties based on its view of their place

in American politics, a view at odds with history and with legislation drafted by politicians." *Id.* at 26a. She also expressed the view that the panel majority had "require[d] an improperly demanding level of proof from the FEC to support a contribution limit the Supreme Court has told us is presumably justified." *Id.* at 37a.

Chief Judge Seymour explained that Section 441a(d) reflected Congress's effort to balance competing interests by "permitting [parties] to make coordinated expenditures on behalf of their federal candidates far in excess of the limits imposed on others," Pet. App. 38a, without leaving party expenditures wholly unconstrained. See *id.* at 38a-39a. She found "no support in the Constitution, [the FECA], or Supreme Court authority for the majority's notion that political parties are entitled to favored treatment when assessing a contribution limit that impacts their associational rights." *Id.* at 40a. She also observed that "[t]he FEC's position voices long-standing Congressional concerns that have animated the history of efforts to reform federal election financing, many of which were addressed to the evils arising from large contributions to political parties that put the parties in political debt to the donors, debts which were often paid by the parties' candidates." *Id.* at 44a. Chief Judge Seymour concluded that "*[a]s a matter of common sense, it is difficult to credit the bald assertion that politicians do not understand the role political parties play in American politics.* Moreover, the majority is not at liberty to substitute its judgment for that of Congress on how best to balance the need to promote the role of political parties and to combat its potential for corruption." *Id.* at 50a (footnote omitted).

SUMMARY OF ARGUMENT

I. In *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam), this Court upheld the FECA's limits on contributions to

candidates for federal office. Under the Act, a coordinated expenditure made in support of a federal candidate is treated as a contribution. In enacting 2 U.S.C. 441a(d), Congress sought to facilitate the parties' performance of their distinctive functions by authorizing party committees to make coordinated expenditures that would otherwise exceed the Act's limitations on contributions to candidates. Respondent's facial challenge to the Act's limitations on party coordinated expenditures can succeed only if those limitations are unconstitutional even as applied to coordinated expenditures that are the functional and constitutional equivalent of direct contributions to federal candidates. Because this Court has previously sustained the FECA's contribution limits against First Amendment challenge, and because the Act allows political parties to make much larger coordinated expenditures than other political committees, the FECA limits on party spending are presumptively constitutional.

II. Large coordinated expenditures by political party committees pose essentially the same risks of corruption as similar expenditures by other entities. Congress could reasonably conclude that large party-coordinated expenditures, like large campaign contributions generally, may be used to exert influence over legislators' behavior while in office. A candidate assisted by party-coordinated expenditures may, once elected or re-elected, be induced to take actions favorable to the individuals or political action committees who have contributed funds to the party, thereby in effect using the party as a conduit to evade the FECA limits on contributions to candidates. Alternatively, the candidate may be induced to favor the private interests or policy preferences of the party leaders who control the coordinated expenditures.

Even when individual party leaders conscientiously seek to use the influence generated by large coordinated expenditures not to advance their own interests or those of indi-

vidual contributors, but to further the interests of the membership as a whole, Congress may legitimately choose to limit the extent to which large infusions of money may be used to achieve the party's objectives. Congress has reasonably concluded that the undue influence of large campaign contributions upon public policy is inherently subversive of democratic governance, regardless of the donor's motives. That judgment underlies the FECA contribution limits generally (whose application has never depended upon the motivation of the donor), and it is no less applicable to political parties.

III. Political parties have no favored constitutional status that would entitle them to an exemption from the spending limitations that apply to other potential donors. The Framers distrusted political parties and sought to devise governmental structures that would curtail their influence. Although the right to form and operate a political party is one aspect of the freedom of speech and association protected by the First Amendment, the Framers did not intend to create *special* privileges or incentives for partisan activity. The drafting and ratification history of the Constitution therefore provides no support for respondent's contention that the First Amendment entitles political parties to an exemption from the coordinated spending limits that apply to other voluntary associations.

Under the FECA, the distinguishing feature of a political party (as opposed to other organizations that endorse candidates for federal office and spend money in their support) is that the candidate is officially identified, on the ballot, as the party's nominee. Such official recognition on the ballot cannot plausibly be thought to expand the party's First Amendment rights by eliminating Congress's authority to impose coordinated spending limits that are validly applied to non-party political committees. To the contrary, when a political party assumes an official role in the State's electoral

machinery, it is typically subject to *greater* constraints than a political organization acting in a purely private capacity.

In enacting Section 441a(d), Congress sought to balance competing objectives by permitting parties to play an important role in federal campaigns without leaving party spending wholly unconstrained. That legislative judgment is entitled to substantial deference, particularly in light of Congress's intimate familiarity with the workings of our political system. Respondent's First Amendment claim would inappropriately restrict the authority of the federal and state governments to define and limit the role of the parties vis-à-vis other participants in ongoing public policy debates.

ARGUMENT

I. BECAUSE THIS COURT HAS PREVIOUSLY SUSTAINED THE FECA'S CONTRIBUTION LIMITS AGAINST FIRST AMENDMENT CHALLENGE, AND BECAUSE THE ACT ALLOWS POLITICAL PARTIES TO MAKE MUCH LARGER COORDINATED EXPENDITURES THAN OTHER POLITICAL COMMITTEES, THE FECA LIMITS ON PARTY SPENDING ARE PRESUMPTIVELY CONSTITUTIONAL

A. This Court Has Repeatedly Recognized The Authority Of Congress And The State Legislatures To Limit Monetary Contributions To Candidates For Public Office, Including Expenditures Made In Coordination With The Candidate

In *Buckley* v. *Valeo*, 424 U.S. 1 (1976) (per curiam), this Court sustained Congress's determination that bribery and public disclosure laws were not a sufficient response to the threat of electoral corruption, and "that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions." *Id.* at 28; see also *id.* at 30 ("Congress was justified in concluding that the

interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated."). The Court in *Buckley* upheld both the $1000 limit on individual contributions imposed by the FECA and the Act's $5000 limit on contributions by a political committee to a single candidate. *Id.* at 58. The Court has since repeatedly referred, with evident approval, to the *Buckley* Court's holding that reasonable contribution limits are a constitutionally permissible means of preventing actual or apparent electoral corruption. See *FEC* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 259-260 (1986); *FEC* v. *National Right to Work Comm.*, 459 U.S. 197, 208 (1982); *California Med. Ass'n* v. *FEC*, 453 U.S. 182, 196-197 & n.16 (1981) (plurality opinion). Most recently, the Court in *Nixon* v. *Shrink Missouri Government PAC*, 120 S. Ct. 897 (2000), relied on *Buckley* in upholding Missouri's $1000 limit (adjusted for inflation) on contributions by individuals or political committees to candidates for statewide office. See *id.* at 903-910.

The FECA provides that "expenditures made by any person in cooperation, consultation, or concert, with" a candidate or her agents "shall be considered to be a contribution to such candidate." 2 U.S.C. 441a(a)(7)(B)(i); see *Buckley*, 424 U.S. at 46 ("controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act"); *FEC* v. *National Conservative PAC (NCPAC)*, 470 U.S. 480, 492 (1985) (coordinated expenditures "are considered 'contributions' under the FECA"). That provision serves to "prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions." *Buckley*, 424 U.S. at 47; see *id.* at 46 (noting that donors might otherwise "avoid[] the contribution limitations by the simple expedient of paying directly for media advertisements or for other portions of the candidate's campaign activities"). Thus, the general

rule—which neither respondent nor the courts below have questioned in its application to persons other than political parties—is that a coordinated expenditure in support of a candidate for federal office is both statutorily and constitutionally indistinguishable from a direct payment of money to the candidate's campaign.

B. The FECA Permits Political Parties To Make Coordinated Expenditures In Support Of Their Candidates In Amounts Much Greater Than The Contribution Limits That Apply To Other Donors

As the dissenting judge in the court of appeals explained, Congress "recognize[d] the role political parties play in American politics and accorded them special treatment by permitting them to make coordinated expenditures on behalf of their federal candidates far in excess of the limits imposed on others." Pet. App. 38a (Seymour, C.J., dissenting). The effect of 2 U.S.C. 441a(d) is not to impose special disadvantages on political parties. Rather, Section 441a(d) facilitates the parties' performance of their distinctive functions by authorizing state and national party committees to make coordinated expenditures that would otherwise exceed the Act's limitations on contributions to candidates.

The Act generally prohibits any "multicandidate political committee" from making contributions in excess of $5000 to any candidate for federal office. 2 U.S.C. 441a(a)(2)(A). Section 441a(d)(1) provides, however, that, "[n]otwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions," a national or state political party "may make expenditures in connection with the general election campaign of candidates for Federal office," subject to the monetary limits set forth in Section 441a(d)(2) and (3). The Conference Report accompanying the 1976 FECA amendments explains:

> This limited permission allows the political parties to make contributions in kind by spending money for certain functions to aid the individual candidates who represent the party during the election process. Thus, but for this subsection [Section 441a(d)], these expenditures would be covered by the contribution limitations stated in subsections (a)(1) and (a)(2) of this provision.

H.R. Conf. Rep. No. 1057, 94th Cong., 2d Sess. 59 (1976). As adjusted for inflation, the coordinated party expenditure limit for the 1996 Senate election in Colorado was approximately $171,000. See p. 6, *supra*.[6]

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[6] The Presidential Election Campaign Fund Act, 26 U.S.C. 9001 *et seq.*, authorizes federal funding for presidential candidates who satisfy the statutory criteria. Under the Act, federal funds are paid directly to the candidate. 26 U.S.C. 9006(b). An earlier proposal to provide campaign funds to the political parties rather than to the candidates was changed so as to ensure, *inter alia*, that "a national committee of a political party will not be able to use control of a large Federal payment as a weapon to dictate party policies and strategies to * * * candidates and potential candidates." S. Rep. No. 714, 90th Cong., 1st Sess. 15 (1967).

Under the FECA, the national committee of a political party is permitted to make coordinated expenditures in support of its presidential candidate in an amount (two cents times the voting age population of the United States, adjusted for inflation, see 2 U.S.C. 441a(c), 441a(d)(2)) much greater than the contribution limits applicable to other donors. The court of appeals declined to address the constitutionality of the FECA limit on party coordinated expenditures in presidential campaigns. See Pet. App. 4a n.1.

C. Respondent Asserts A First Amendment Right To Make Unlimited Coordinated Expenditures In Support Of Its Federal Candidates, Including Coordinated Expenditures That Are Functionally And Constitutionally Indistinguishable From Direct Monetary Contributions

Respondent's counterclaim asserted that "the First Amendment forbids the government to limit [respondent's] coordinated expenditures. The FEC's attempts and intent to impose or enforce any limit on such coordinated expenditures are unconstitutional, unlawful, and void." J.A. 23; see J.A. 24 (requesting "[a] declaratory judgment pursuant to 28 U.S.C. § 2201 that [respondent] has the right to make unlimited expenditures from lawfully received contributions in support of its candidates for federal office, and that any limits that FECA purports to impose are invalid and void."). The district court agreed, entering a declaratory judgment "that the Party Expenditure Provision, 2 U.S.C.A. § 441a(d) (West 1997), is unconstitutional and cannot be enforced against [respondent]." Pet. App. 91a. The court of appeals affirmed, holding that "§ 441a(d)(3)'s limit on party spending is not closely drawn to the recognized governmental interest but instead constitutes an unnecessary abridgment of First Amendment freedoms." *Id.* at 25a-26a (internal quotation marks omitted). Thus, the effect of the court of appeals' decision is that respondent's coordinated expenditures in support of candidates for federal office are subject to no FECA limitation whatever.

The concept of a "coordinated expenditure" covers a variety of financial arrangements between a candidate and her supporters, many of which are functionally and constitutionally indistinguishable from direct contributions to candidates for federal office. Respondent's own expert stated, with respect to the national parties' coordinated expenditures, that "[t]he predominant approach is to provide

candidates with the funding needed to broadcast their messages or post letters to selected voters within their districts." J.A. 209. The Court in *Buckley* recognized the need "to prevent would-be contributors from avoiding the contribution limitations by the simple expedient of paying directly for media advertisements or for other portions of the candidate's campaign activities." 424 U.S. at 46. Citing *Buckley*, the plurality in *Colorado I* observed that "many [coordinated] expenditures are * * * virtually indistinguishable from simple contributions (compare, for example, a donation of money with direct payment of a candidate's media bills)." Pet. App. 111a; see also *id.* at 112a (noting that "a holding on in-fact coordinated party expenditures necessarily implicates a broader range of issues than may first appear, including the constitutionality of party contribution limits").

This Court has not attempted to define the full range of circumstances under which a campaign expenditure may properly be treated as "coordinated." The instant case, however, involves solely a facial challenge, in which respondent successfully requested a declaratory judgment that it "has the right to make unlimited expenditures from lawfully received contributions in support of its candidates for federal office, and that any limits that FECA purports to impose are invalid and void." J.A. 24. Respondent is not entitled to that relief unless the FECA limits on party coordinated expenditures are unconstitutional even as applied to expenditures that are the functional equivalent of direct contributions.[7]

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[7] Even in a First Amendment challenge,

> [f]acial invalidation "is, manifestly, strong medicine" that "has been employed by the Court sparingly and only as a last resort." *Broadrick* v. *Oklahoma*, 413 U.S. 601, 613 (1973); see also *FW/PBS, Inc.* v. *Dallas*, 493 U.S. 215, 223 (1990) (noting that "facial challenges to legislation are generally disfavored"). To prevail, [the plaintiff] must

Thus, the question in this case is whether political parties are constitutionally entitled to a *blanket* exemption from the limits on coordinated campaign spending—squarely upheld by this Court in *Buckley*—that apply to all other entities, including other political committees. For the reasons set forth below, party committees have no such constitutional right. We explain in Part II that large coordinated expenditures by political parties pose essentially the same risks of corruption as similar expenditures by other entities. We explain in Part III that political parties do not enjoy a favored constitutional status that would entitle them to an exemption from generally applicable spending limits.[8]

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demonstrate a substantial risk that application of the provision will lead to the suppression of speech. See *Broadrick*, *supra*, at 615.

NEA v. *Finley*, 524 U.S. 569, 580 (1998). The FECA statutory limit on party coordinated expenditures "contemplates a number of indisputably constitutional applications." *Id.* at 584.

[8] As the district court correctly held (Pet. App. 74a-76a), Section 441a(d)'s application to coordinated expenditures is severable from its application (previously invalidated by this Court in *Colorado I*) to independent expenditures. The FECA provides that "[i]f any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the Act and the application of such provision to other persons and circumstances shall not be affected thereby." 2 U.S.C. 454. There is, moreover, nothing remotely anomalous about a statutory scheme in which political parties are permitted to make unlimited independent expenditures but are subject to dollar limits on their coordinated campaign spending. To the contrary, that is precisely the regime to which individuals and non-party political committees are subject as a result of this Court's decisions in *Buckley* and its progeny. See pp. 3-4, *supra*. In the court of appeals, respondent abandoned the contention that Section 441a(d)'s application to coordinated expenditures cannot be severed from its application to independent spending. See Pet. App. 8a n.3.

II. UNLIMITED COORDINATED EXPENDITURES BY POLITICAL PARTIES IN SUPPORT OF FEDERAL CANDIDATES WOULD CREATE A SUBSTANTIAL RISK OF ACTUAL OR APPARENT CORRUPTION

As the Court explained in *Shrink Missouri*,

> [i]n speaking of "improper influence" and "opportunities for abuse" in addition to "*quid pro quo* arrangements," [the Court has] recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors. These were the obvious points behind [the Court's] recognition that the Congress could constitutionally address the power of money "to influence governmental action" in ways less "blatant and specific" than bribery.

120 S. Ct. at 905 (quoting *Buckley*, 424 U.S. at 28). It is reasonable to assume that large coordinated expenditures by political parties, like large campaign contributions generally, may be used to exert influence over legislators' behavior while in office. Indeed, the Court in *FEC* v. *Democratic Senatorial Campaign Comm. (DSCC)*, 454 U.S. 27 (1981), observed that "effective use of party resources in support of party candidates may encourage candidate loyalty and responsiveness to the party." *Id.* at 42; see also *Alaska* v. *Alaska Civil Liberties Union*, 978 P.2d 597, 626 (Alaska 1999) ("The natural tendency of successful candidates who receive unlimited contributions from a party would be to reduce independent consideration of issues and adhere to positions taken by the party itself."), cert. denied, 120 S. Ct. 1156 (2000). In enacting Section 441a(d), Congress evidently concluded that the use of campaign spending as a means of party discipline, if kept within acceptable bounds, would have salutary rather than corrosive effects. That

determination does not undermine Congress's judgment that *unlimited* party coordinated expenditures pose the same danger—*i.e.*, the risk of actual or perceived "improper influence" (*Shrink Mo.*, 120 S. Ct. at 905) based on financial largesse—as unrestricted campaign contributions by individuals or non-party committees.

The court of appeals did not question the proposition that party coordinated expenditures may be used as a means of influencing a legislator's performance of her official responsibilities. The court concluded, however, that because the essential function of parties is to facilitate the election of candidates who will implement the party's platform—a function that necessarily involves efforts to influence the behavior of the candidate once he has been elected to office—the exercise of such influence through coordinated spending cannot properly be regarded as a form of "corruption." See Pet. App. 22a ("Given the importance of political parties to the survival of this democracy, we reject the notion that a party's influence over the positions of its candidates constitutes a subversion of the political process.") (internal quotation marks omitted).

The court of appeals' analysis underestimates the potential for abuse inherent in large-scale spending by political parties, and it misconceives the underlying justification for contribution limits generally. The premise of the FECA contribution caps is not that a private person's "influence" with government officials is per se illegitimate. Rather, the premise is that such influence should not be based on large infusions of *money*. That judgment applies with full force to coordinated expenditures directed by political party officials.[9]

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[9] As the Court noted in *Buckley*, the FECA's contribution limits were originally based in part on two purposes—the desire "to mute the voices of affluent persons and groups in the election process and thereby to equalize

A. Large Party Coordinated Expenditures May Be Used To Circumvent The FECA Limits On Individual Contributions To Candidates, And Thereby To Advance The Interests Of The Party's Major Donors

Party-coordinated expenditures often serve as a conduit to channel contributions from individuals or political action committees, to the benefit of particular candidates. If party committees were permitted to make unlimited coordinated expenditures, this use of the party as a conduit would facilitate evasion of other FECA contribution limits, and raise precisely the same potential for corruption that those limits were designed to avoid. Thus, an individual or political action committee that has already contributed the maximum $1000 or $5000 directly to the candidate could contri-

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the relative ability of all citizens to affect the outcome of elections," 424 U.S. at 25-26, and the belief that "the ceilings may to some extent act as a brake on the skyrocketing cost of political campaigns and thereby serve to open the political system more widely to candidates without access to sources of large amounts of money," *id.* at 26—in addition to the prevention of actual and perceived corruption. The Court in *Buckley* held that those purposes did not constitute compelling governmental interests that could justify the Act's restrictions on independent expenditures. *Id.* at 55-57. The Court concluded, however, that "[i]t is unnecessary to look beyond the Act's primary purpose—to limit the actuality and appearance of corruption resulting from large individual financial contributions—in order to find a constitutionally sufficient justification for the $1,000 contribution limitation." *Id.* at 26.

Shortly after *Buckley* was decided, Congress amended and reenacted the FECA, including Section 441a(d)'s provisions dealing specifically with campaign expenditures by political parties. See Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475. Thus, whatever combination of factors may have initially motivated Congress to limit party expenditures, Congress chose to retain those limits after this Court's decision in *Buckley* circumscribed the constitutionally permissible objectives that could justify such caps.

bute additional amounts to one or more party committees,[10] and could in various ways communicate the expectation that all or part of those sums would be used for coordinated expenditures in support of the candidate. When the candidate is aware of the nexus between the contribution to the party and the party-coordinated expenditures,[11] that sequence of payments creates the very danger that the underlying limits on contributions to candidates are intended to prevent—*i.e.*, the fact or appearance of "improper influence" resulting

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[10] Although an individual can contribute no more than $1000 per election to a candidate for federal office, she can contribute up to $5000 to a multicandidate political committee operated by a state political party, and up to $20,000 to a political committee operated by a national political party. 2 U.S.C. 441a(a)(1)(A)-(C). A political action committee can contribute no more than $5000 per election directly to a candidate for federal office. 2 U.S.C. 441a(a)(2)(A). Such an organization can contribute additional sums of up to $15,000 to a political committee established by a national political party, and up to $5000 to a state political party committee. 2 U.S.C. 441a(a)(2)(B) and (C).

[11] As the district court recognized, evidence submitted by the FEC in this case indicates that "party committees keep track of the Member of Congress who is responsible for contributions to the campaign committees," and that "[m]any, although not all, Members of Congress raise money on behalf of the party from contributors who have already given the maximum permissible amount to the individual candidate's campaign." Pet. App. 65a. The evidence further indicates that "the parties take into consideration the fund-raising efforts of candidates in deciding allocations of campaign funds," and that "[c]andidates in need of funding do request assistance and attempt to lobby those with control over allocations." *Id.* at 66a. See also *id.* at 46a (Seymour, C.J., dissenting) ("Senators are expected to encourage their major donors, who have maximized their contribution to the candidate, to make contributions to the state or national party, which in turn gives the candidates money for their campaigns."); J.A. 165-166, 246-247, 274-275; C.A. App. 457, 635.

from payments to "politicians too compliant with the wishes of large contributors." *Shrink Mo.*, 120 S. Ct. at 905.[12]

The pertinent legislative history reflects congressional concern about the potential corruptive effects of campaign spending by political parties—and, in particular, the danger that large party contributions could be used as a means of

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[12] As early as 1924, one Senate leader explained that

> "one of the great political evils of the time is the apparent hold on political parties which business interests and certain organizations seek and sometimes obtain by reason of liberal campaign contributions. Many believe that when an individual or association of individuals makes large contributions for the purpose of aiding candidates of political parties in winning the elections, they expect, and sometimes demand, and occasionally, at least, receive, consideration by the beneficiaries of their contributions which not infrequently is harmful to the general public interest. It is unquestionably an evil which ought to be dealt with, and dealt with intelligently and effectively."

United States v. *United Auto. Workers*, 352 U.S. 567, 576-577 (1957) (quoting 65 Cong. Rec. 9507-9508 (1924) (statement of Sen. Robinson)). As the dissenting judge below recognized, the current FECA limits on party coordinated expenditures reflect "long-standing Congressional concerns that have animated the history of efforts to reform federal election financing, many of which were addressed to the evils arising from large contributions to political parties that put the parties in political debt to the donors, debts which were often paid by the parties' candidates." Pet. App. 44a (Seymour, C.J., dissenting).

Of course, the means by which party leaders can influence the official behavior of their candidates in office have changed considerably since the beginning of this century. In an era when the party's nominees were chosen by the leadership rather than through primary elections, those leaders possessed a greater ability to dictate the behavior of elected officials. But as the passage quoted above makes clear, the danger at which Section 441a(d) is in part directed—*i.e.*, that party leaders will use whatever methods of influence are available to induce elected officials to take positions favorable to the party's major donors—is a matter of longstanding concern.

evading statutory limits on individual donations. That concern was expressed during Senate debate in 1973 on a predecessor bill to the one finally enacted in 1974. Senator Mathias explained:

> We have controlled the line which runs from the individual to the candidate to a $3,000 limit. We have controlled or limited the flow from a political committee to a candidate to $5,000. We have limited or controlled the line which flows from an individual to a political party to $100,000.
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> But what this amendment really goes to is one of the areas which is not controlled, and that is from the party to the candidate. That, of course, is a wide open avenue. An [individual] who could contribute $100,000 to a party could well envision that that money, by some arrangement, would be directed to a candidate. Such arrangements are not unknown. They may be informal, but earmarking would be possible. This amendment would prevent that kind of indirect contribution of $100,000 to a single candidate by a single contributor. I think it is a loophole which needs to be looked at very carefully.

119 Cong. Rec. 26,321 (1973).[13] Senators Kennedy and Pastore observed, based on their prior experience as legislators,

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[13] The amendment to which Senator Mathias referred was offered by Senator Stevenson (see 119 Cong. Rec. at 26,320) and would have had the effect of subjecting party committees to the same spending limits as other political committees. See *id.* at 26,321 (Senator Stevenson states that the amendment would "have the effect of equalizing the amount to party political committees and all other political committees"). The bill ultimately enacted in 1974 permits political parties to make substantially larger coordinated expenditures in support of federal candidates than other political committees are allowed to make. See 2 U.S.C. 441a(d); pp. 5-6, 18-19, *supra*. The FECA also places lower limits on individual con-

that through unspoken understandings donors could achieve the result that Senator Mathias described—*i.e.*, using the party as a conduit for large contributions to candidates without any explicit earmarking of funds. See *id.* at 26,323, 26,323-26,324. Although the provisions ultimately enacted in 1974 differed in some respects from those debated during the previous year (see note 13, *supra*), the 1973 debate casts significant light on the interests that Section 441a(d) was intended to serve.

The court of appeals acknowledged (Pet. App. 22a) that "if an individual used the party as a conduit to channel money to specified candidates, this would certainly threaten the integrity of the individual contribution limit." The court suggested (*id.* at 23a), however, that concerns regarding the possible circumvention of other FECA limits could adequately be addressed through "[v]igilant enforcement of [2 U.S.C.] § 441a(a)(8)," which provides that contributions "earmarked or otherwise directed through an intermediary or conduit" shall be treated as contributions to the candidate herself. This Court has previously recognized, however, that the earmarking provision of Section 441a(a)(8) does not provide a complete response to the danger that contributions to political committees may be used to evade the FECA limits on contributions to candidates.

Thus, in *Buckley*, the Court upheld the FECA's $25,000 annual aggregate limit on individual contributions, despite the fact that it imposed "an ultimate restriction upon the number of candidates and committees with which an individual may associate himself by means of financial support." 424 U.S. at 38. The Court explained that the $25,000 aggregate limit was "a corollary of the basic individual contribution limitation" that restricts the possibility of evasion "by a

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tributions to candidates and to political parties than the predecessor bill discussed by Senator Mathias. See 2 U.S.C. 441a(a)(1).

person who might otherwise contribute massive amounts of money to a particular candidate through the use of unearmarked contributions to political committees likely to contribute to that candidate, or huge contributions to the candidate's political party." *Ibid.* The Court employed a similar analysis in *California Medical Ass'n*, where it upheld the $5000 limit on contributions to political committees, see 2 U.S.C. 441a(a)(1)(C), as a reasonable means of preventing circumvention of the limits on contributions to candidates. The plurality explained that if contributions to political committees were unrestricted, "an individual or association seeking to evade the $1,000 limit on contributions to candidates could do so by channelling funds through a multicandidate political committee." 453 U.S. at 198. The plurality found it "clear that this provision is an appropriate means by which Congress could seek to protect the integrity of the contribution restrictions upheld by this Court in *Buckley*." *Id.* at 199. Justice Blackmun similarly "conclude[d] that contributions to multicandidate political committees may be limited to $5,000 per year as a means of preventing evasion of the limitations on contributions to a candidate or his authorized campaign committee upheld in *Buckley*." *Id.* at 203 (Blackmun, J., concurring). Those decisions refute the court of appeals' suggestion (see Pet. App. 23a) that "[v]igilant enforcement of § 441a(a)(8)" is the only constitutionally

permissible means of preventing the use of intermediaries to circumvent the individual contribution limits.[14]

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[14] As the dissenting judge in the court of appeals observed, "[t]he record [in this case] * * * reveals that although earmarking funds for a particular candidate is illegal, this prohibition is circumvented through 'understandings' regarding what donors give what amounts to the party, which candidates are to receive what funds from the party, and what interests particular donors are seeking to promote." Pet. App. 46a (Seymour, C.J., dissenting). A former official of the Democratic Senatorial Campaign Committee (DSCC) explained that "[t]he Senators who solicited the money for the DSCC could not promise that the money would be used directly in support of their own or another particular campaign, because earmarking contributions was prohibited. However, that did not mean that Senators who raised money could not be assured that they would get a significant return from their efforts. There appeared to be an understanding between the DSCC and the Senators that the amount of money they received from the DSCC was related to how much they raised for the Committee." J.A. 165-166; see J.A. 166 (same former official states that "[p]eople often contribute to party committees because they have given the maximum amount to a candidate, and want to help the candidate indirectly by contributing to the party"). Another individual who had served first as a Democratic Party official and then as National Finance Director for Tim Wirth's 1986 Senate campaign explained that the DSCC employed a "tally system," which he described as "an informal agreement between the DSCC and the candidates' campaigns that if you help the DSCC raise contributions, we will turn around and help your campaign." J.A. 246. He stated that during the 1986 Senate race, "[w]e also told contributors who had made the maximum allowable contribution to the Wirth campaign but who wanted to do more that they could raise money for the DSCC so that we could get our maximum § 441a(d) allocation from the DSCC." J.A. 247. Senator Wirth himself stated, "[w]hen I solicited contributions for the state party, in effect I solicited funds for my election campaign. I understood that the solicitees who made contributions to the party almost always did so because they expected that the contributions would support my campaign one way or another, and for the most part they expected I would remember their contributions." J.A. 273. A former campaign aide to Senator Wyche Fowler explained that "[i]n raising money for the DSCC, we mostly went back to contributors who had already given the maximum allowable

Under current federal law, moreover, an individual may donate unlimited amounts of so-called "soft money" to political parties. See Pet. App. 102a. Because "soft money" cannot lawfully be spent to influence federal elections, the party cannot (even under the court of appeals' decision) use those donations to make coordinated expenditures on behalf of candidates for federal office. Large soft money donations may, however, be used to induce the party to make large coordinated expenditures with funds acquired from other ("hard money") sources.[15] Those coordinated expenditures may in turn be used to induce elected officials to look favorably upon the soft money donor. The FECA limits on party coordinated expenditures serve to break that chain, thereby helping to prevent circumvention of the statutory limits on individual contributions to candidates.

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contribution to Mr. Fowler's campaign. While we were not able to tell these contributors that the money could come back directly to help us, we knew that this was part of the effort to demonstrate our viability to the DSCC, to show that we were worthy of their help. In that way the money contributed was certainly an indirect help to Mr. Fowler." C.A. App. 457. Former Senator Paul Simon testified in his deposition that "[t]he tally system is a way of contributing that does not violate the law [against earmarking] but comes close to violating the law. * * * They always made clear that this is not just automatic, so no one could say if Tom Smith contributed $5,000 to the DSCC, that was a way of laundering it coming to Paul Simon, but you knew that if you got your tally, even though you might be in a safe seat, you would get your money." *Id.* at 635.

[15] One former Democratic Party official explained that "[i]f people start giving $50,000, $100,000, or $500,000 to a party committee, even if that is soft money, they would probably expect a greater voice in how that money was spent and what they would want in return. It is unrealistic to think that if I give you a check for $500,000, I will not expect you to make the largest possible contribution to my favorite candidate who can do the most for my legislative concerns." J.A. 260.

B. Large Coordinated Expenditures May Be Used To Advance The Interests Of The Individual Party Officials Who Control The Disposition Of Party Funds

"In the nature of things, a [party] committee must act through its employees and agents." *DSCC*, 454 U.S. at 33. Even when party funds are raised from a large number of contributors, the record in this case indicates that small groups of party officials may have de facto control over the manner in which those funds are spent. See J.A. 164 (former Executive Director of the Democratic Senatorial Campaign Committee (DSCC) explains that during his tenure, the DSCC's three-member Executive Committee "basically made the decisions as to how to distribute the money"). As a result, candidates who benefit from large coordinated expenditures may feel indebted not to the party as an abstract entity, but to the individual party officials who cause those expenditures to be made. Party leaders may thereby acquire the ability to induce the candidates (once elected or re-elected) to take actions favorable to the leaders' own private interests or policy preferences.[16]

There is no reason to believe that political party officials are immune from the corrupting temptations and self-interest of other persons. To the contrary, history demonstrates

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[16] The two major parties' senatorial campaign committees have traditionally been headed by incumbent Senators chosen by the parties' Senate leadership. See J.A. 163-164, 246, 249, 252, 253, 262-263, 275-276; C.A. App. 486. As the DSCC's former Executive Director explained, "[t]aking away the limits on coordinated expenditures would result in a fundamental transferal of power to certain individual Senators." J.A. 168. Reasonable people may disagree regarding the appropriate balance between leadership control and individual discretion within a legislative body. But party leaders within the legislature cannot plausibly claim a constitutional *right* to utilize large coordinated expenditures in support of other candidates as a means of strengthening their control.

that individual officials of political organizations are particularly well-situated to exert a corrupting influence upon candidates and officeholders in order to advance their private interests. See generally, *e.g.*, *Rutan* v. *Republican Party of Ill.*, 497 U.S. 62, 88 n.4 (1990) (Stevens, J., concurring). The court of appeals acknowledged that "political parties have been involved in wrongdoing, dating back to the Tammany Hall machine," but it concluded (without citation) that "the electoral and litigation processes have always managed to right these wrongs." Pet. App. 22a. The propriety of the FECA's coordinated expenditure limits does not depend, however, on proof that without such limits electoral abuses would permanently go unchecked. Nor does it depend on proof that party officials will typically utilize their control over party funds to advance a personal agenda. The Court in *Buckley* assumed "that most large contributors do not seek improper influence over a candidate's position or an officeholder's action." 424 U.S. at 29. The Court nevertheless sustained the $1000 limit on individual contributions, explaining that it is "difficult to isolate suspect contributions," and that "Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated." *Id.* at 30; see *National Right to Work Comm.*, 459 U.S. at 210 (Court will not "second-guess a legislative determination as to the need for prophylactic measures where corruption is the evil feared").

C. Congress May Impose Reasonable Contribution Limits In Order To Reduce The Influence Of Money On The Behavior Of Elected Officials, Regardless Of The Motivation Of The Donor

As the foregoing analysis indicates, large party coordinated expenditures may be used to induce elected officials to

favor the private interests either of the party's major contributors or of individual party officers. Use of coordinated expenditures to achieve those ends is a paradigmatic example of the "improper influence" (*Shrink Mo.*, 120 S. Ct. at 905) that the FECA contribution limits are intended to prevent. But the validity of Section 441a(d) does not ultimately depend upon the likelihood of such blatant abuses. Even when individual party leaders conscientiously seek to further the interests and values of the membership as a whole, Congress may legitimately choose to limit the extent to which large infusions of *money* may be used to achieve those objectives.

As the Court explained in *Shrink Missouri*,

> [i]n speaking of "improper influence" and "opportunities for abuse" in addition to "*quid pro quo* arrangements," [the Court has] recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors. These were the obvious points behind [the Court's] recognition that the Congress could constitutionally address the power of money "to influence governmental action" in ways less "blatant and specific" than bribery.

120 S. Ct. at 905 (quoting *Buckley*, 424 U.S. at 28). Congress's authority to "address the power of money 'to influence governmental action'" (*ibid.*) does not depend on the motivation of the donor. The wealthy individual who pays a large sum as an explicit *quid pro quo* for a legislator's vote is guilty of bribery, whether the payor has a pecuniary or similar tangible interest in the passage or defeat of the proposed legislation, or instead is motivated solely by ideological concerns. With respect to methods "less 'blatant and specific' than bribery" (*ibid.*), Congress has similarly concluded that the undue influence of large campaign

contributions upon public policy is inherently subversive of democratic governance, regardless of the donor's motives.

In explaining its conclusion that party coordinated expenditures are unlikely to have corruptive effects, the court of appeals stated that

> [t]he opportunity for corruption or its appearance is greatest when the political spending is motivated by economic gain. * * * [P]olitical parties are diverse entities, one step removed from the candidate, and they exist for noneconomic reasons. Much like an advocacy group, a party functions "to disseminate political ideas, not to amass capital."

Pet. App. 13a (quoting *Massachusetts Citizens for Life*, 479 U.S. at 259). The distinction drawn by the court of appeals has no basis in law. Neither the text of the FECA nor this Court's precedents suggest that the applicability or constitutional status of the Act's coordinated expenditure limits turns on whether the overall character of the contributing organization, or its motive in making a specific expenditure, is economic in nature.[17]

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[17] One commentator explains:

> FECA's dollar limits on individual and PAC contributions apply equally to donations by advocacy organizations or ideologically-minded individuals as to organizations and individuals with economic agendas for giving. The Supreme Court has never suggested that ideological contributions are constitutionally immune from dollar limitation. There is thus no basis in the Supreme Court's campaign finance jurisprudence for [the court of appeals'] determination [in this case] that restrictions on party contributions are subject to more stringent scrutiny because parties are ideological organizations–-even if it is assumed that the parties are primarily ideological organizations.

Richard Briffault, *The Political Parties and Campaign Finance Reform*, 100 Colum. L. Rev. 620, 664 (2000).

The court of appeals' reliance on *Massachusetts Citizens for Life* is wholly misplaced. The Court in that case relied on the distinctive attributes of a particular corporate entity—including the fact that the organization "was formed for the express purpose of promoting political ideas, and cannot engage in business activities," 479 U.S. at 264—as a basis for holding that the organization was constitutionally entitled to make *independent* campaign expenditures. Of course, under this Court's decision in *Colorado I*, party committees are similarly free to make unlimited independent expenditures in support of their candidates for federal office. But nothing in *Massachusetts Citizens for Life* suggests that an organization's "political" (as opposed to "economic") orientation entitles it to a constitutional exemption from the FECA limits on *coordinated* campaign spending. To the contrary, the Court in *Massachusetts Citizens for Life* specifically distinguished its prior decision in *National Right to Work Committee* on the ground that "the political activity at issue in that case was contributions," and it observed that the Court "ha[s] consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending." 479 U.S. at 259-260.

The court of appeals also stated that "[p]olitical parties today represent a broad-based coalition of interests, and there is nothing pernicious about this coalition shaping the views of its candidates." Pet. App. 21a; see *id.* at 22a ("we reject the notion that a party's influence over the positions of its candidates constitutes a subversion of the political process") (internal quotation marks omitted). The court was surely correct in stating that political parties may legitimately seek to influence the official behavior of their members. There is no inconsistency, however, between that principle and the imposition of reasonable coordinated spending limits.

The justification for imposing contribution limits upon individuals or non-party political committees is not that persons outside the government should be prevented from exerting "influence" over federal policy. To the contrary, individuals have a constitutional right "to petition the Government for a redress of grievances," U.S. Const. Amend. I, and "to engage in association for the advancement of beliefs and ideas," *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958); see also *NCPAC*, 470 U.S. at 498 ("The fact that candidates and elected officials may alter or reaffirm their own positions on issues in response to political messages paid for by the PACs can hardly be called corruption, for one of the essential features of democracy is the presentation to the electorate of varying points of view."). The FECA limits on contributions made by individuals and non-party political committees reflect Congress's judgment that a legislator's conduct should not be affected by an actual or anticipated infusion of *money*—not a suspicion of private influence per se. That judgment is no less applicable to political parties than to other potential donors.[18]

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[18] As Justice Thomas explained in his separate opinion in *Colorado I*, "[t]he very aim of a political party is to influence its candidate's stance on issues and, if the candidate takes office or is reelected, his votes." Pet. App. 138a (518 U.S. at 646). It does not follow, however, that a political party is incapable of "corrupting" its candidates. No one (to our knowledge) suggests, for example, that a party committee has a constitutional right to offer money as an explicit *quid pro quo* for a legislator's vote on a particular measure. Although the party's *objective* of influencing the official behavior of its candidates is wholly legitimate, the federal bribery laws validly limit the *means* by which that objective may be achieved. Cf. Thomas F. Burke, *The Concept of Corruption in Campaign Finance Law*, 14 Const. Comm. 127, 138 (1997) ("The reason we make bribery illegal is that we don't want officials to be affected by monetary considerations, not that we have a particular animus against deal-making."). The congressional policy judgment reflected in Section 441a(d)—*i.e.*, that a party

III. POLITICAL PARTIES HAVE NO FAVORED CONSTITUTIONAL STATUS THAT WOULD ENTITLE THEM TO AN EXEMPTION FROM THE SPENDING LIMITATIONS THAT APPLY TO OTHER POTENTIAL DONORS

In deciding how to exercise his official responsibilities, a Member of Congress will be influenced by a wide variety of considerations. Those will include the Member's own moral and political values and her independent perception of the public interest; the views of her constituents; the beliefs of prominent persons (*e.g.*, major employers, union leaders, newspaper publishers and editors) within the State or district; and the preferences of party leaders. Neither history nor precedent suggests that political party committees have a favored constitutional status that would entitle them to utilize a mode of influence—large coordinated expenditures in support of candidates for federal office—that other participants in the public dialogue are forbidden to employ.

A. The Framers Distrusted Political Parties And Did Not Intend To Vest Them With Any Favored Constitutional Status

"Partisan politics bears the imprimatur only of tradition, not the Constitution." *Elrod* v. *Burns*, 427 U.S. 347, 369 n.22 (1976) (plurality opinion). Commenting on the political beliefs of such men as Washington, Adams, Madison, Hamilton, and Jefferson, the historian Richard Hofstadter has written: "If there was one point of political philosophy upon which these men, who differed on so many things, agreed quite readily, it was their common conviction about the baneful effects of the spirit of party." Richard Hofstadter, *The Idea of a Party System* 3 (1970). The Framers "equated parties

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committee should have only a limited ability to use coordinated campaign expenditures as a *means* of influencing its members—is similarly valid.

with divisiveness, disruption, and conspiracy against government. The Constitution had not anticipated parties and had made no provision for their existence. In the *Federalist* papers Madison had stressed the argument that the Constitution would, in fact, control 'the violence of faction.'" Noble E. Cunningham, Jr., "The Jeffersonian Republican Party," in 1 *History of U.S. Political Parties* 240 (A. Schlesinger ed., 1973); see The Federalist No. 10, at 77 (J. Madison) (Clinton Rossiter ed., 1961).

Any reference to the Framers' distrust of political parties is subject to at least two important caveats. First, although the Framers were concerned about the potentially deleterious effects of parties, they did not seek to suppress partisan activity directly. Rather, recognizing that direct suppression of parties would entail unacceptable threats to liberty,[19] they sought instead to devise governmental structures that would have the practical effect of curtailing the parties' influence. As one eminent political scientist has explained:

> [T]he Convention at Philadelphia produced a constitution with a dual attitude: it was proparty in one sense and antiparty in another. The authors of the Constitution refused to suppress the parties by destroying the funda-

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[19] Thus, Madison acknowledged that one possible "method[] of removing the causes of faction" was to "destroy[] the liberty which is essential to its existence." The Federalist No. 10, *supra*, at 78. Madison vigorously opposed that approach, however, explaining:

> It could never be more truly said than of [that] remedy that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency.

Ibid.

> mental liberties in which parties originate. They or their immediate successors accepted amendments that guaranteed civil rights and thus established a system of party tolerance, i.e., the right to agitate and to organize. This is the proparty aspect of the system. On the other hand, the authors of the Constitution set up an elaborate division and balance of powers within an intricate governmental structure designed to make parties ineffective. It was hoped that the parties would lose and exhaust themselves in futile attempts to fight their way through the labyrinthine framework of the government, much as an attacking army is expected to spend itself against the defensive works of a fortress. This is the antiparty part of the constitutional scheme.

E.E. Schattschneider, *Party Government* 7 (1942) (footnotes omitted).

Second, notwithstanding the Framers' philosophical objections to political parties, partisan activity has been an important feature of American political life for nearly all of the Nation's history. "The formation of national political parties was almost concurrent with the formation of the Republic itself." *California Democratic Party* v. *Jones*, 120 S. Ct. 2402, 2408 (2000); see Cunningham, *supra*, at 240 ("In a single decade, then, the nonparty conditions which had existed when Washington took office had been replaced by a two party system"); Hofstadter, *supra*, at 4 (although "[t]he Founding Fathers had inherited a political philosophy which * * * denied the usefulness of parties and stressed their dangers," the Framers "deeply believed in the necessity of checks on power, and hence in freedom for opposition, and were rapidly driven, in spite of their theories, to develop a party system.").

Thus, the historical evidence amply supports this Court's repeated holdings (see, *e.g.*, *California Democratic Party*,

120 S. Ct. at 2408; *Tashjian* v. *Republican Party of Conn.*, 479 U.S. 208, 214 (1986)) that the freedom of speech and association protected by the First Amendment encompasses the right to form and operate a political party. The question in the instant case, however, is whether the First Amendment entitles political parties not only to exist and to advocate, but also to an exemption from the coordinated spending limits that apply to other organizations, including organizations whose principal function is political advocacy. The drafting and ratification history of the Constitution provides no support for that proposition. The Framers regarded political parties as an inevitable feature of a free society, but they did not intend to create special privileges or incentives for partisan activity.

As we explain above, the evil at which the FECA spending limits are directed is not private influence per se, but influence exerted through financial largesse. Respondent asserts a constitutional right not simply to exert "influence over the positions of its candidates" (Pet. App. 22a), but to employ a *means* of influence that is forbidden to other participants in the political fray. Reasonable people may surely believe that the stability and efficacy of the federal government will be increased if elected officials are encouraged, in balancing the demands of competing constituencies (see p. 39, *supra*), to display primary loyalty to the party leadership. But the Framers clearly did not intend to enshrine that preference in the Constitution.

B. The Formal Role Of Political Parties In The States' Electoral Process Has Traditionally Been Treated As A Ground For Increased State Regulation, Not As A Basis For Heightened First Amendment Protection

The FECA defines the term "political party" to mean "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization." 2 U.S.C. 431(16). Thus, under the Act, the distinguishing feature of a political party (as opposed to other organizations that endorse candidates for federal office and spend money in their support) is that the candidate is officially identified, on the ballot, as the party's nominee.

The modern practice, in Colorado and among the States generally, is that the major political parties are entitled by law to have their nominees placed upon the ballot, and the candidates are identified on the ballot by party affiliation.[20]

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[20] One commentator explains that the States typically "grant[] preferential ballot access to the nominees of political parties, thereby making party nomination a kind of 'feeder' into the state's official political system. Every state grants access to the general election ballot to the nominees of political parties that satisfy certain conditions, conditions that typically differ from those that independent candidates must satisfy." Laurence H. Tribe, *American Constitutional Law* § 13-23, at 1121 (2d ed. 1988). Under Colorado law, the nominees of all "political parties" are placed on the ballot for all "partisan elections." Colo. Rev. Stat. Ann. § 1-5-404(1) (West Supp. 1996); see *id.* § 1-1-104(23.6) (West Supp. 1996) (defining the term "partisan election" to mean "an election in which the names of the candidates are printed on the ballot along with their affiliations"). All elections for federal office conducted in Colorado are "partisan elections." *Id.* § 1-4-502(1) (1973 & West Supp. 1996). The term "political party" is defined to mean "any political organization whose candidate at the last preceding gubernatorial election received at least ten percent of the total gubernatorial vote cast." *Id.* § 1-1-104(25) (West Supp. 1996). Colorado law also es-

But nothing in the Constitution mandates that approach. Consistent with the Constitution, the States might choose instead to make ballot access contingent for all candidates on the submission of a particular number of signatures. The States might also decide that candidates should be listed on the ballot by name alone, without reference to party or other group affiliation. Under such a system, individuals would retain their First Amendment right to associate for the purpose of endorsing and supporting particular candidates or slates of candidates. But the identification of the candidate with the association on the ballot itself—the feature that (under the FECA) distinguishes political parties from other advocacy groups—is the product of state discretion rather than constitutional command.

Neither logic nor precedent suggests that a State's decision to give an organization official recognition on the ballot expands the organization's First Amendment rights by eliminating Congress's authority to impose coordinated spending limits that are validly applied to non-party political committees.[21] To the contrary, when a political party assumes an official role in the State's electoral machinery, it is typically subject to *greater* constraints than a political organization acting in a purely private capacity. This Court has held that "when a State prescribes an election process that gives a special role to political parties," the parties'

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tablishes a petition procedure for placing on the ballot the names of "[c]andidates for partisan public offices * * * who do not wish to affiliate with a political party," *id.* § 1-4-802(1) (West Supp. 1996), and provides for write-in voting as well, see *id.* § 1-4-1101 (West Supp. 1996).

[21] Of course, respondent could in theory propose a definition of "political party" other than that contained in the FECA, and could contend that political parties (so defined) are constitutionally entitled to an exemption from the coordinated expenditure limits that apply to other donors. But neither respondent nor the courts below have suggested an alternative method of distinguishing a "party" from a non-party political committee.

conduct may for certain purposes be attributed to the State itself, thereby subjecting the parties to constitutional requirements that would not apply to wholly private actors. *California Democratic Party*, 120 S. Ct. at 2407. More generally, the "States have a major role to play in structuring and monitoring the election process, including primaries," *id.* at 2406, and in performing that responsibility the State has significant latitude to regulate the political parties' internal decisionmaking processes. The Court has "considered it 'too plain for argument,' for example, that a State may require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion." *Id.* at 2407 (quoting *American Party of Tex.* v. *White*, 415 U.S. 767, 781 (1974)).[22]

Notwithstanding their involvement with the State's electoral machinery, political parties retain a significant private character, and a corresponding right to invoke the guarantees of the Constitution. This Court has squarely rejected "the proposition that party affairs are public affairs, free of First Amendment protections." *California Democratic Party*, 120 S. Ct. at 2407. As we emphasize above, however, the FECA restrictions at issue in this case do not impose special restrictions on a party's efforts to support its nominees, but instead permit party-coordinated expenditures in amounts substantially greater than the limits that apply to

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[22] In considering constitutional challenges to state ballot-access restrictions, the Court has similarly recognized that the States have significant (though not unlimited) discretion to impose reasonable limits in order to prevent voter confusion and preserve the stability of its political system. See, *e.g.*, *Timmons* v. *Twin Cities Area New Party*, 520 U.S. 351, 357-370 (1997); *Norman* v. *Reed*, 502 U.S. 279, 288-296 (1992); *Munro* v. *Socialist Workers Party*, 479 U.S. 189, 193-199 (1986); *Anderson* v. *Celebrezze*, 460 U.S. 780, 786-806 (1983); *Storer* v. *Brown*, 415 U.S. 724, 728-746 (1974); *Jenness* v. *Fortson*, 403 U.S. 431, 434-442 (1971); *Williams* v. *Rhodes*, 393 U.S. 23, 30-35 (1968).

other donors. Respondent claims not merely a First Amendment right to engage in political association and advocacy, but a First Amendment right to a complete exemption from the campaign spending limits that apply (and that have been upheld by this Court as applied) to other would-be donors. Because the quasi-official status of political parties has traditionally been regarded as a justification for *increased* regulation of their affairs (in comparison to those of other advocacy groups), respondent's theory is unsupported by this Court's precedents.

State regulation of the party nominating process, like the FECA limits on party coordinated expenditures, has historically served to reduce the power of the party hierarchy and to promote candidate responsiveness to a broader constituency. "The Progressive Era laws that shifted control over nominations from party committees and conventions to primaries constituted an effort to reduce the influence of party organizations over party candidates, presumably reflecting the notion that candidates (and elected officials) would embrace different positions on issues of public importance if they were less beholden to party officials." Richard Briffault, *Campaign Finance, the Parties, and the Court*, 14 Counts. Comm. 91, 117 (1997). If the First Amendment permits the States to pursue that objective by imposing rules on party governance that have no counterpart with respect to other political associations, Congress can surely subject the parties to spending limits that are similar in kind to (and less stringent than) the caps that apply to political committees generally.

C. Legislative Judgments Regarding The Appropriate Balance Between The Maintenance Of A Vigorous Party System And The Prevention Of Corruption Are Entitled To Substantial Deference

As the dissenting judge in the court of appeals observed, "determining which measures suitably balance the nurture of political parties and the prevention of their use as tools of corruption is a matter for the legislative rather than the judicial process." Pet. App. 39a (Seymour, C.J., dissenting); see also *id.* at 50a ("*As a matter of common sense, it is difficult to credit the bald assertion that politicians do not understand the role political parties play in American politics.*"); *Shrink Mo.*, 120 S. Ct. at 912 (Breyer, J., concurring) ("Where a legislature has significantly greater institutional expertise, as, for example, in the field of election regulation, the Court in practice defers to empirical legislative judgments."); cf. *FEC* v. *National Right to Work Comm.*, 459 U.S. 197, 209 (1982) (Congress's "careful legislative adjustment of the federal electoral laws * * * to account for the particular legal and economic attributes of corporations and labor organizations warrants considerable deference").

By vesting political parties with a preferred constitutional status, respondent would disable Congress and the States from imposing limits on the parties' campaign spending.[23]

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[23] In *Missouri Republican Party* v. *Lamb*, 227 F.3d 1070 (8th Cir. 2000), a divided panel of the Eighth Circuit recently held that a state-law limitation on cash and in-kind contributions by political parties to candidates violates the party's First Amendment rights. The court rejected Missouri's contention that the contribution limit serves to prevent actual or apparent political corruption, stating that "it is not easy to see how a party could 'corrupt' one of its own candidates, since, on account of their general unity of purpose, they are committed, in the main, to the same aims and principles." *Id.* at 1073. The court relied in part on the Tenth Circuit's decision in the instant case. See *id.* at 1072, 1073. The dissenting

Although this Court has recognized the substantial public and governmental interest in the effective functioning of our current two-party system, see, *e.g.*, *Timmons* v. *Twin Cities Area New Party*, 520 U.S. 351, 366-367 (1997); *Davis* v. *Bandemer*, 478 U.S. 109, 144-145 (1986) (O'Connor, J., concurring), federal and state legislatures have traditionally enjoyed significant latitude to determine how that interest is best effectuated and how it is appropriately balanced against competing objectives. Acceptance of respondent's constitutional argument, by contrast, would sharply restrict legislative authority to define and limit the appropriate role of the parties vis-à-vis other participants in the political fray.[24]

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judge would have upheld the law on the ground that "contributions made by a political party are no different than contributions made by individuals or other groups." *Id.* at 1077 (John R. Gibson, J., concurring and dissenting). He concluded that "[b]ecause Missouri's limits on cash contributions that a party may make to a candidate are closely drawn to meet a sufficiently important governmental interest, they do not violate the First Amendment." *Ibid.*

[24] One commentator explains:

> In essence, the question of whether party committee coordinated spending raises a danger of parties corrupting candidates is really a question of how much or how little potential for influence parties ought to be allowed to have over their candidates' campaigns—and whether Congress or the Court should decide this. Certainly, elected officials seem to be in a much better position to consider and combine the multiple and often conflicting values of candidate autonomy, party responsibility, voter participation, and the potential for parties to serve as conduits for special interest influence. Elected officials are more likely to understand the impact of the campaign finance laws on the political process and the interaction of party spending with other campaign finance laws and governance generally.

Briffault, *Campaign Finance, the Parties, and the Court*, 14 Const. Comm. at 118-119. Professor Briffault notes that "there is no reason to believe that elected officials are likely to be hostile to party interests," since "[t]he vast majority of elected federal and state officials are elected on party lines and nearly all carry major party labels." *Id.* at 119. He

With respect to federal elections, Congress has specifically addressed the subject of campaign spending by political parties and has attempted to draw an appropriate balance between competing objectives. See 2 U.S.C. 441a(d). Recognizing the distinctive role that political parties have come to play in our system of government, Congress has authorized party committees to make coordinated expenditures in amounts much greater than the limits that apply to other donors. Congress has declined, however, to leave party campaign spending wholly unconstrained. Because an Act of Congress comes to this Court with a presumption of constitutionality; because the Court has already upheld against First Amendment challenge the more stringent coordinated spending limits applicable to non-party organizations; and because Members of Congress are neither ignorant of the practical needs of political parties nor hostile to their interests, that legislative judgment should be sustained.

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acknowledges the existence of "considerable scholarly support for a party-centered campaign finance system as a step toward creating a more 'responsible' two-party system, with attendant benefits for government performance and responsiveness." *Id.* at 118. He concludes, however, that "[a] party-centered system might very well be a good idea. But it would be a major departure from past and present practice. And it is hard to believe that the decision whether to have a party-centered or candidate-centered system is a question of constitutional law, to be decided by the Supreme Court, rather than a preeminently political question to be decided by Congress." *Id.* at 120.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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