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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

FEDERAL ELECTION COMMISSION *v.* COLORADO REPUBLICAN FEDERAL CAMPAIGN COMMITTEE

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

No. 00–191. Argued February 28, 2001– Decided June 25, 2001

In *Buckley* v. *Valeo*, 424 U. S. 1, 12–59, this Court held that the limitations on political campaign contributions in the Federal Election Campaign Act of 1971 were generally constitutional, but that the Act's limitations on election expenditures infringed political expression in violation of the First Amendment. Later cases have respected this line between contributing and spending. The distinction's simplicity is qualified, however, by the Act's provision for a functional, not formal, definition of "contribution," which includes "expenditures made by any person in cooperation, consultation, or concert, with . . . a candidate," 2 U. S. C. §441a(a)(7)(B)(i). Thus, expenditures coordinated with a candidate are contributions under the Act. The Federal Election Commission (FEC) originally took the position that any expenditure by a political party in connection with a federal election was presumed to be coordinated with the party's candidate. See, *e.g., Federal Election Comm'n* v. *Democratic Senatorial Campaign Comm.*, 454 U. S. 27, 28–29, n. 1. The FEC thus assumed that all expenditure limits imposed on political parties were, in essence, contribution limits and therefore constitutional. Such limits include §441a(d)(3), which imposes spending limits on national and state political parties with respect to United States Senate elections. In *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604 *(Colorado I)*, the spending limits in §441a(d)(3) (referred to as the Party Expenditure Provision), were held unconstitutional as applied to the independent expenditures of the Colorado Republican Federal Campaign Committee (Party) in connection with a senatorial campaign. The principal opinion ruled the payments "independent," rather than coordinated, expenditures under this Court's cases be-

cause the Party spent the money before selecting its own senatorial candidate and without any arrangement with potential nominees. *Id.,* at 613–614. The principal opinion remanded the Party's broader claim that all limits on a party's congressional campaign expenditures are facially unconstitutional and thus unenforceable even as to spending coordinated with a candidate. *Id.*, at 623–626. On remand, the District Court held for the Party on that claim, and a divided Tenth Circuit panel affirmed.

Held: Because a party's coordinated expenditures, unlike expenditures truly independent, may be restricted to minimize circumvention of the Act's contribution limits, the Party's facial challenge is rejected. Pp. 4–30.

(a) Political expenditure limits deserve closer scrutiny than contribution restrictions, *e.g., Buckley,* 424 U. S., at 14–23, because expenditure restraints generally curb more expressive and associational activity than contribution limits, *e.g., id.,* at 19–23, and because unlimited contributions are more clearly linked to political corruption than other kinds of unlimited political spending, at least where the spending is not coordinated with a candidate or his campaign. *E.g., id.,* at 47. Although the First Amendment line is easy to draw when it falls between independent expenditures by individuals or political action committees (PACs) without any candidate's approval and contributions in the form of cash gifts to candidates, see, *e.g., id.,* at 19–23, facts speak less clearly once the independence of the spending cannot be taken for granted. Congress's functional treatment of coordinated expenditures by individuals and nonparty groups like contributions prevents attempts to circumvent the Act through coordinated expenditures amounting to disguised contributions. *Id.*, at 47. *Buckley*, in fact, enhanced the significance of this functional treatment by striking down independent expenditure limits on First Amendment grounds while upholding limitations on contributions (by individuals and nonparty groups), as defined to include coordinated expenditures. *Id.*, at 23–59. *Colorado I* addressed the FEC's effort to stretch the functional treatment one step further. Because *Buckley* had treated some coordinated expenditures like contributions and upheld their limitation, the FEC's argument went, the Party Expenditure Provision should stand as applied to all party election spending, see, *e.g.,* 518 U. S., at 619–623. Holding otherwise, the principal opinion found that, because "independent" party expenditures are no more likely to serve corruption than independent expenditures by anyone else, there was no justification for subjecting party election spending across the board to the kinds of limits previously invalidated when applied to individuals and nonparty groups. See *id.,* at 616. But that still left the question whether the First Amendment allows coordi-

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nated election expenditures by parties to be treated functionally as contributions, the way coordinated expenditures by other entities are treated. The issue in this case is, accordingly, whether a party is in a different position from other political speakers, giving it a claim to demand a higher standard of scrutiny before its coordinated spending can be limited. Pp. 4–9.

(b) The Party's argument that its coordinated spending, like its independent spending, should be left free from restriction under the *Buckley* line of cases boils down to this: because a party's most important speech is aimed at electing candidates and is itself expressed through those candidates, any limit on party support for a candidate imposes a unique First Amendment burden. Limitation of any party expenditure coordinated with a candidate, the Party contends, is therefore a serious, rather than incidental, imposition on the party's speech and associative purpose, which justifies a stricter level of scrutiny than has been applied to analogous limits on individuals and nonparty groups. But whatever level of scrutiny is applied to such a limit, the Party argues, the burden on a party reflects a fatal mismatch between the effects of limiting coordinated party expenditures and the prevention of corruption or its appearance. In contrast, the Government's argument for characterizing coordinated spending like contributions goes back to *Buckley,* which, in effect, subjected limits on coordinated expenditures by individuals and nonparty groups to the same scrutiny it applied to limits on their cash contributions. The standard of scrutiny requires the limit to be closely drawn to match a sufficiently important interest, though the limit's dollar amount need not be fine tuned. See, *e.g., Buckley*, *supra,* at 25, 30. The Government develops this rationale a step further here, arguing that a party's coordinated spending should be limited not only because it is like a party contribution, but because giving a party the right to make unlimited coordinated expenditures would induce those wishing to support a nominee to contribute to the party in order to finance coordinated spending for that candidate, thereby increasing circumvention and bypassing the limits *Buckley* upheld. Pp. 9–12.

(c) Although each of the competing positions is plausible at first blush, evaluation of the arguments prompts rejection of the Party's claim to suffer a burden unique in any way that should make a categorical difference under the First Amendment. And the Government's contentions are ultimately borne out by evidence, entitling it to prevail in its characterization of party coordinated spending as the functional equivalent of contributions. Pp. 12–25.

(1) The Party's argument that unrestricted coordinated spending is essential to a party's nature because of its unique relationship with candidates, has been rendered implausible by nearly 30 years' history

under the Act. Since 1974, a party's coordinated spending in a given race has been limited by the provision challenged here (or its predecessor). It was not until the 1996 *Colorado I* decision that any spending was allowed above that amount, and since then only independent spending has been unlimited. Thus, the Party's claim that coordinated spending beyond the Act's limit is essential to its very function as a party amounts implicitly to saying that for almost three decades political parties have not been quite functional or have been functioning in systematic violation of the law. The Court cannot accept either implication. Pp. 13–15.

(2) There is a different weakness in the seemingly unexceptionable premise that parties are organized for the purpose of electing candidates, so that imposing on the way parties serve that function is uniquely burdensome. The fault here is a refusal to see how the power of money actually works in the political structure. Looking directly at a party's function in getting and spending money, it would ignore reality to think that the party role is adequately described by speaking generally of electing particular candidates. Parties are necessarily the instruments of some contributors, such as PACs, whose object is not to support the party's message or to elect party candidates, but rather to support a specific candidate for the sake of a position on one, narrow issue, or even to support any candidate who will be obliged to contributors. Parties thus perform functions more complex than simply electing their candidates: they act as agents for spending on behalf of those who seek to produce obligated officeholders. It is this party role, which functionally unites parties with other self-interested political actors, that the Party Expenditure Provision targets. Pp. 15–17.

(3) The Court agrees insofar as the Party suggests that its strong working relationship with candidates and its unique ability to speak in coordination with them should be taken into account in the First Amendment analysis. It is the accepted understanding that a party combines its members' power to speak by aggregating their contributions and broadcasting its messages more widely than its individual contributors generally could afford to do, and it marshals this power with greater sophistication than individuals generally could, using such mechanisms as speech coordinated with a candidate. Cf. *Colorado I*, *supra*, at 637. It does not, however, follow from a party's efficiency in getting large sums and spending intelligently that limits on a party's coordinated spending should be scrutinized under an unusually high standard. In fact, any argument from sophistication and power would cut both ways. On the one hand, one can seek the benefit of stricter scrutiny of a law capping party coordinated spending by emphasizing the heavy burden imposed by limiting the most

effective mechanism of sophisticated spending. And yet it is exactly this efficiency culminating in coordinated spending that (on the Government's view) places a party in a position to be used to circumvent contribution limits that apply to individuals and PACs, and thereby to exacerbate the threat of corruption and apparent corruption that those contribution limits are aimed at reducing. Pp. 17–19.

(4) The preceding question assumes that parties enjoy a power and experience that sets them apart from other political spenders. But in fact the assumption is too crude. Like a party, rich individual donors, media executives, and PACs have the means to speak loudly and the capacity to work in tandem with a candidate. Yet all of them are subject to the coordinated spending limits upheld in *Buckley*, *supra*, at 46–47. A party is also like some of these political actors in its right under *Colorado I* to spend money in support of a candidate without legal limit so long as it spends independently. A party is not, therefore, in a unique position, but is in the same position as some individuals and PACs. Pp. 19–20.

(5) Because the Party's arguments do not pan out, the Court applies to a party's coordinated spending limitation the same scrutiny it has applied to the other political actors, that is, scrutiny appropriate for a contribution limit, enquiring whether the restriction is "closely drawn" to match the "sufficiently important" government interest in combating political corruption. *E.g., Shrink Missouri*, *supra*, at 387–388. Pp. 20–21.

(d) Under that standard, adequate evidentiary grounds exist to sustain the coordinated spending limit for parties. Substantial evidence demonstrates how candidates, donors, and parties test the current law's limits, and it shows beyond serious doubt how those contribution limits would be eroded if inducement to circumvent them were enhanced by declaring parties' coordinated spending wide open. Under the Act, a donor is limited to $2,000 in contributions to one candidate in a given election cycle. The same donor may give as much as another $20,000 each year to a national party committee supporting the candidate. The evidence shows that what a realist would expect to occur has occurred. Donors give to the party with the tacit understanding that the favored candidate will benefit. Testimony shows that, although the understanding between donor and party may involve no definite commitment and may be tacit on the donor's part, the frequency of the practice and the volume of money involved has required parties to adopt tallying procedures to connect donors to candidates. If suddenly every dollar of spending could be coordinated with the candidate, the inducement to circumvent would almost certainly intensify. Pp. 21–25.

(e) The Party's attempts to minimize the threat of corruption by

circumvention are unavailing. Its claim that most contributions to parties are small, with negligible corrupting momentum to be carried through the party conduit, is unpersuasive given the evidence that, even under present law, substantial donations turn the parties into matchmakers whose special meetings and receptions give donors the chance to get their points across to the candidates. The fact that incumbent candidates give more excess campaign funds to parties than parties spend on coordinated expenditures does not defuse concern over circumvention; if party contributions were not used as a funnel from donors to candidates, there would be no reason for the tallying system described by the witnesses. Finally, the Court rejects the Party's claim that, even if there is a circumvention threat, the First Amendment demands a response better tailored to that threat than a limitation on coordinated spending. First, the Party's suggestion that better crafted safeguards are already in place in §441a(a)(8)– which provides that contributions that are earmarked or otherwise directed through an intermediary to a candidate are treated as contributions to the candidate– ignores the practical difficulty of identifying and directly combating circumvention when contributions go into a general party treasury and candidate-fundraisers are rewarded with something less obvious than dollar-for-dollar pass-throughs. Second, although the Party's call for replacing limits on parties' coordinated expenditures with limits on contributions to parties is based in part on reasoning in *Buckley*, *supra*, at 44, and *Colorado I, supra,* at 617, those cases ultimately turned on the understanding that the expenditures at issue were independent and therefore functionally true expenditures, whereas, here, just the opposite is true. Pp. 26–30.

213 F. 3d 1221, reversed.

SOUTER, J., delivered the opinion of the Court, in which STEVENS, O'CONNOR, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA and KENNEDY, JJ., joined, and in which REHNQUIST, C. J., joined as to Part II.