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Coordinated Party Expenditures in Federal Elections: An Overview

R. Sam Garrett
Analyst in American National Government
Government and Finance Division

L. Paige Whitaker
Legislative Attorney
American Law Division

Summary

A provision of federal campaign finance law, codified at 2 U.S.C. § 441a(d), allows political party committees to make expenditures on behalf of their general election candidates for federal office and specifies limits on such spending. These "coordinated party expenditures" are important not only because they provide financial support to campaigns, but also because parties and campaigns may explicitly discuss how the money is spent. Although they have long been the major source of direct party financial support for campaigns, coordinated expenditures have recently been overshadowed by independent expenditures. S. 1091 (Corker) and H.R. 3792 (Wamp), introduced in the 110th Congress, would eliminate existing limits on coordinated party expenditures. Those who support limits on coordinated party expenditures argue that the caps reduce potential corruption and the amount of money in politics. Opponents maintain that they and are antiquated, particularly because political parties may make unlimited independent expenditures supporting their candidates. The Senate Rules and Administration Committee held a hearing on coordinated party expenditures in April 2007, but the topic has not received additional legislative attention during the 110th Congress. This report will be updated as events warrant.

What Are Coordinated Party Expenditures?

Federal campaign finance law provides political parties with three major options for providing financial support to House, Senate, and presidential candidates: (1) direct contributions, (2) coordinated expenditures, and (3) independent expenditures. With *direct contributions*, parties give money (or in the case of in-kind contributions, financially valuable services) to individual campaigns, but such contributions are subject to strict limits; most party committees are limited to direct contributions of $5,000 per

candidate, per election.[1] Since the 1996 *Colorado I* Supreme Court ruling (discussed below), parties may make *independent expenditures*, which are not limited, on anything allowable by law, but may not coordinate those expenses with candidates. *Coordinated expenditures*[2] allow parties (notwithstanding other provisions in the law regulating contributions to campaigns) to buy goods or services on behalf of a campaign, and to discuss those expenditures with the campaign. Candidates may request that parties make coordinated expenditures, and may request specific purchases, but parties may not give this money directly to campaigns. Because parties are the spending agents, they (not candidates) report their coordinated expenditures to the FEC.

Coordinated party expenditures are subject to limits based on office sought, state, and voting-age population (VAP). Exact amounts are determined by formula.[3] State party committees may authorize their national counterparts to make party-coordinated expenditures on their behalf (or vice versa). This common practice effectively doubles the amount of coordinated expenditures parties can make. Assuming such an agreement between state and national parties exists, limits for Senate candidates in 2008, adjusted for inflation, range from $168,200 in states with the smallest VAPs to approximately $4.6 million in California. Similarly, in 2008, parties can make up to $84,200 in coordinated expenditures in support of each House candidate in multi-district states, and $168,200 in support of House candidates in single-district states.[4] Parties may also make coordinated expenditures on behalf of presidential candidates (limited to $19.2 million per party in 2008).

Brief Overview of Relevant Supreme Court Precedent

Buckley v. Valeo.[5] In its 1976 decision *Buckley v. Valeo*,[6] the Supreme Court considered the constitutionality of the Federal Election Campaign Act of 1971 (FECA),[7] striking down expenditure limitations, while upholding reasonable contribution limitations. Most notably, the *Buckley* Court determined that the spending of money, whether in the form of contributions or expenditures, is a form of "speech" protected by

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[1] 2 U.S.C. § 441a(a).

[2] Federal Election Commission (FEC) regulations define "coordinated" as "cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee." 11 CFR § 109.20.

[3] Senate limits are based primarily on VAP, whereas House limits are based primarily on a flat allocation. Specifically, the limits for Senate candidates and House candidates in single-district states are the greater of 2 cents multiplied by the VAP, adjusted for inflation, or $20,000, adjusted for inflation. The limit for House candidates in multi-district states is $10,000 (the 1974 base amount) plus adjustments for inflation, which have greatly increased the current limits over base amounts. *See* 2 U.S.C. § 441a(d)(3).

[4] 2 U.S.C. §§ 441a(d)(3), 441a(c).

[5] For further discussion of Buckley and Colorado I and II, see CRS Report RL30669, *Campaign Finance Regulation Under the First Amendment: Buckley v. Valeo and Its Supreme Court Progeny*, by L. Paige Whitaker.

[6] 424 U.S. 1 (1976).

[7] 2 U.S.C. § 431 *et seq.*

the First Amendment. However, according to the Court, contributions and expenditures invoke different degrees of First Amendment protection.[8] Recognizing contribution limitations as one of the FECA's "primary weapons against the reality or appearance of improper influence" on candidates by contributors, the Court found that these limits "serve the basic governmental interest in safeguarding the integrity of the electoral process."[9] On the other hand, the Court determined that FECA's expenditure limits on individuals, political action committees (PACs), and candidates impose "direct and substantial restraints on the quantity of political speech" and are not justified by an overriding governmental interest.[10]

Colorado I and II. In *Colorado Republican Federal Campaign Committee v. Federal Election Commission (Colorado I)*,[11] the Supreme Court found that FECA's "Party Expenditure Provision"[12] was unconstitutionally enforced against a party's funding of radio "attack ads" directed against a likely opponent in a federal senatorial election. Specifically, this case concerned the constitutionality of the party expenditure limit as applied to expenditures for radio ads by the Colorado Republican Party (CRP) that attacked the likely Democratic Party candidate in the 1986 U.S. Senate election.[13] The Court's ruling turned on whether CRP's ad purchase was an "independent expenditure," a "campaign contribution," or a "coordinated expenditure."[14] The Court found that the CRP's ad purchase was an independent expenditure deserving constitutional protection. "Independent expenditures," the Court held, do not raise heightened governmental interests in regulation because the money is deployed to advance a political point of view "independent" of a candidate's viewpoint and, therefore, cannot be limited.[15]

The Court's opinion in *Colorado I* was limited to the constitutionality of the application of FECA's "Party Expenditure Provision,"[16] to an *independent* expenditure by the Colorado Republican Party (CRP). Later, in *FEC v. Colorado Republican Federal Campaign Committee (Colorado II)*,[17] the Court considered a facial challenge[18] to the constitutionality of the limit on *coordinated* party spending. In *Colorado II,* the Supreme Court ruled that a political party's coordinated expenditures, unlike genuine independent

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[8] Buckley, 424 U.S. at 24.

[9] *Id.* at 59.

[10] *Id.* at 39.

[11] 518 U.S. 604 (1996).

[12] 2 U.S.C. § 441a(d)(3).

[13] *See* Colorado I, 518 U.S. at 612.

[14] *Id.* at 614, 615, 618, 622-623.

[15] *Id.* at 614-615, *citing* Federal Election Comm'n v. National Conservative Political Action Committee (NCPAC), 479 U.S. 238 (1985).

[16] 2 U.S.C. §441a(d)(3).

[17] 533 U.S. 431 (2001).

[18] Generally, when a statute is challenged "facially," a plaintiff is arguing that under all circumstances, the statute operates unconstitutionally. By contrast, an "as-applied" challenge involves a plaintiff arguing that a statute is unconstitutional as applied to the facts of a particular case or to a party.

expenditures, may be constitutionally limited in order to minimize circumvention of FECA contribution limits.

McConnell v. FEC.[19] In *McConnell v. FEC*,[20] the U.S. Supreme Court upheld key portions of the Bipartisan Campaign Reform Act of 2002 (BCRA) against facial constitutional challenges.[21] The Court, however, struck down BCRA's requirement that political parties choose between making coordinated or independent expenditures after nominating a candidate,[22] finding that it burdens the right of parties to make unlimited independent expenditures.[23]

Recent Financial Overview and Analysis

S. 1091 (Corker) and H.R. 3792 (Wamp), introduced in the 110th Congress, would eliminate existing caps on coordinated party expenditures. On April 18, 2007, the Senate Committee on Rules and Administration held a hearing on S. 1091; it has not received additional action thus far. H.R. 3792 was introduced on October 10, 2007; it has not received additional action. The two bills are identical except for a provision in H.R. 3792 that specifies an effective date following the 2008 elections. S. 1091 does not specify an effective date.

Although coordinated expenditures played a large role in party financial activity throughout the 1970s and 1980s, recent elections suggest that party reliance on coordinated expenditures is changing. As **Table 1** shows, although the *Colorado I* decision permitted parties to make unlimited independent expenditures during and after the 1996 cycle, those expenditures remained relatively modest through 2002. From 1996-2002, total party coordinated expenditures outpaced independent expenditures — often by large amounts. In 2004 and 2006, however, party spending shifted dramatically, with far more total independent expenditures than coordinated expenditures. In 2004, the two major parties made more than four times in independent expenditures what they did in coordinated expenditures. That allocation of resources continued in 2006, with the two parties making more than six times in independent expenditures than they did in coordinated expenditures. Specifically, during the 2006 election cycle, both parties made a total of more than $223.7 million in independent expenditures, compared with slightly less than $35 million in coordinated expenditures. As the table also shows, at various points since 1996, each major party has outspent the other in party coordinated expenditures. For the most part, however, Democrats and Republicans have allocated similar amounts to coordinated party expenditures.

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[19] For further discussion of McConnell, see CRS Report RL32245, *Campaign Finance Law: A Legal Analysis of the Supreme Court Ruling in McConnell v. FEC*, by L. Paige Whitaker.

[20] 540 U.S. 93 (2003).

[21] P.L. 107-155.

[22] Codified at 2 U.S.C. § 315(d)(4).

[23] McConnell, 540 U.S. at 217.

Table 1. National Party Coordinated and Independent Expenditures

Election Cycle	Coordinated Expenditures			Independent Expenditures		
	Democrat	Republican	Total	Democrat	Republican	Total
1996	$22,576,000	$30,959,151	$53,535,151	$1,495,090	$10,026,541	$11,521,631
1998	18,643,156	15,696,145	34,339,301	1,489,707	263,646	1,753,353
2000	20,989,872	29,598,965	50,588,837	2,310,175	1,556,802	3,866,977
2002	7,057,291	15,951,023	23,008,314	1,701,292	1,944,116	3,645,408
2004	33,113,799	29,101,396	62,215,195	176,491,696	88,032,382	264,524,078
2006	20,694,359	14,156,926	34,851,285	108,100,265	115,646,387	223,746,652

Source: Federal Election Commission, Party Financial Activity Summarized for the 2006 Election Cycle, March 7, 2007.

Note: Individual party totals include expenditures from the Democratic National Committee, Democratic Senatorial Campaign Committee, Democratic Congressional Campaign Committee, and state and local Democratic committees; and Republican National Committee, National Republican Senatorial Committee, National Republican Congressional Committee, and state and local Republican committees, as reflected in the FEC data.

In terms of overall fundraising, the two major parties are now closer to parity than they historically have been. As **Figure 1** (below) shows, local, state, and national Republican party committees have accumulated more receipts than their Democratic counterparts since 1990, as has generally occurred since at least the 1970s. Although Republican party committees still maintain a financial advantage, Democrats fared far better in overall fundraising in 2004 and 2006 than they had during any other period shown in the figure. By 2006, Democratic party committees raised 80% as much as Republicans, although that amount fell slightly from the 2004 number (87%). On their own, these do not suggest particular outcomes if caps on party coordinated expenditures were lifted, but they do indicate that one party may not necessarily have a major total financial advantage over the other if the caps are lifted in the near future.

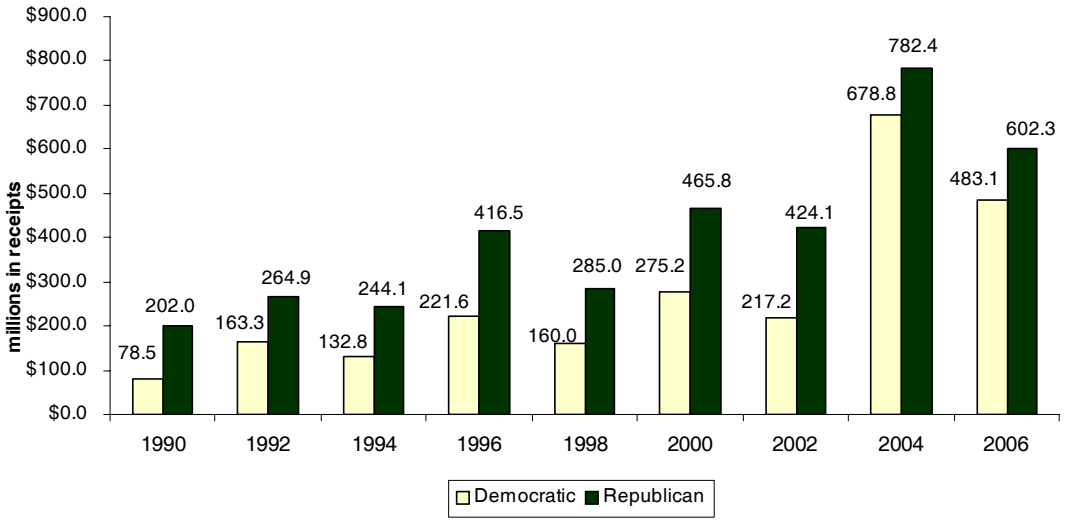
For those who support lifting the caps on coordinated party expenditures, current limits impinge on parties' abilities to communicate with their candidates once parties meet their coordinated spending limits. Unrestricted *coordinated* party expenditures could shift party spending away from *independent* expenditures, although each option would retain unique characteristics. Parties might continue to choose independent expenditures if they wish to distance campaigns from what many political professionals and some candidates view as necessary, but politically unpopular, purchases (e.g., for political advertising attacking opponents).[24] On the other hand, coordinated expenditures would be more attractive for parties wishing to communicate freely with campaigns about

[24] On relationships between campaign actors, *see* David A. Dulio, *For Better or Worse? How Political Consultants are Changing Elections in the United States* (Albany: State University of New York Press, 2004); Paul S. Herrnson, *Congressional Elections: Campaigning at Home and in Washington* (Washington: Congressional Quarterly Press, 2004); and Robin Kolodny, *Pursuing Majorities: Congressional Campaign Committees in American Politics* (Norman, OK: University of Oklahoma Press, 1998).

direct financial support. Those expenditures could strengthen arguably weakening ties between parties and campaigns.

Proponents of limits on party coordinated expenditures contend that the caps reduce the amount of money in politics. They also potentially prevent circumvention of individual contribution limits by donors who may seek to indirectly support campaigns by making contributions to political parties. (However, it should be noted that FECA already restricts "earmarked" contributions.[25]) For those who generally support regulating political money, lifting the caps on party-coordinated expenditures would likely be objectionable on principle, could appear to undercut similar regulatory efforts adopted since the 1970s, and could go against public sentiment generally favoring limiting the amount of money in politics.

Figure 1. Total Receipts of Democratic and Republican Party Committees



Note: Reflects federal account activity (i.e., hard money) of political party committees at national, state, and local levels. While soft money represented a large share of party receipts through the 2002 election cycle (after which it was banned by BCRA), the respective parties raised comparable levels of soft money in most of the election cycles between 1992 and 2002; hence, the inclusion of soft money receipts in this figure would not greatly affect the relative overall fundraising ratios of the two parties. (On soft money, see U.S. Federal Election Commission, *Party Committees Raise Over $1 Billion in 2001-2002*, press release, Mar. 20, 2003.) National committees include the Democratic and Republican National Committees, the Democratic and Republican Senatorial Committees, the Democratic Congressional Campaign Committee, and the National Republican Congressional Committee.

Source: U.S. Federal Election Commission, *Party Financial Activity Summarized for the 2006 Election Cycle*, press release, March 7, 2007.

[25] 2 U.S.C. §441a(a)(8).