

No. 24-621

IN THE
Supreme Court of the United States

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, ET AL.,

PETITIONERS,

V.

FEDERAL ELECTION COMMISSION, ET AL.,

RESPONDENTS.

*On Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit*

**AMICUS CURIAE BRIEF OF THE LIBERTY
JUSTICE CENTER IN SUPPORT OF PETITIONERS**

Jeffrey Schwab
Counsel of Record
Reilly Stephens
Emily Rae
Duncan Crim
LIBERTY JUSTICE CENTER
7500 Rialto Blvd.
Suite 1-250
Austin, TX 78735
512-481-4400
jschwab@ljc.org
*Attorneys for Amicus Curiae
Liberty Justice Center*

August 28, 2025

QUESTION PRESENTED

Whether the limits on coordinated party expenditures in 52 U.S.C. § 30116 violate the First Amendment, either on their face or as applied to party spending in connection with “party coordinated communications” as defined in 11 C.F.R. § 109.37.

TABLE OF CONTENTS

QUESTION PRESENTED	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
INTEREST OF THE <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT.....	3
I. Media corporations are functionally allowed to make unlimited coordinated expenditures, while political parties face strict limitations on the same conduct.	3
II. Media corporations and political parties serve similar functions in elections.	5
III. Coordinated expenditure limits violate the First Amendment’s prohibition on speaker- based discrimination.....	7
CONCLUSION	12

TABLE OF AUTHORITIES

Cases

<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976).....	7, 9
<i>California Democratic Party v. Jones</i> , 530 U.S. 567 (2000).....	5
<i>Citizens United v. FEC</i> , 558 U.S. 310 (2010).....	1, 2, 4, 6, 7, 8, 9
<i>Colorado Republican Fed. Campaign Comm. v. FEC</i> , 518 U.S. 604 (1996).....	5, 6
<i>Eu v. San Francisco Cnty. Democratic Cent. Comm.</i> , 489 U.S. 214 (1989).....	6
<i>FEC v. Colorado Republican Fed. Campaign Comm.</i> , 533 U.S. 431 (2001).....	10
<i>First Nat’l Bank of Boston v. Bellotti</i> , 435 U.S. 765 (1978).....	2, 6, 7, 8, 9
<i>Illinois Liberty PAC v. Madigan</i> , 904 F.3d 463 (7th Cir. 2018).....	1
<i>Illinois State Bd. of Elections v. Socialist Workers Party</i> , 440 U.S. 173 (1979).....	5
<i>Janus v. AFSCME</i> , 138 S. Ct. 2448 (2018).....	1
<i>McConnell v. FEC</i> , 540 U.S. 93 (2003).....	4, 8
<i>Miami Herald Pub. Co. v. Tornillo</i> , 418 U.S. 241 (1974).....	2, 6, 11
<i>Mills v. Alabama</i> , 384 U.S. 214 (1966).....	2
<i>New York Times Co. v. Sullivan</i> , 376 U.S. 254 (1964).....	7, 8, 9
<i>Police Dept. of City of Chicago v. Mosley</i> , 408 U.S. 92 (1972).....	2, 7, 8, 9

<i>Randall v. Sorrell</i> , 548 U.S. 230 (2006).....	11
---	----

Statutes

52 U.S.C. § 30101(9)(A)	3, 4
52 U.S.C. § 30101(9)(B)	3
52 U.S.C. § 30104(3)	5
52 U.S.C. § 30116.....	3, 4
52 U.S.C. § 30118.....	3

Regulations

11 C.F.R. § 109.37.....	2
-------------------------	---

Other Authorities

<i>Defining the Press Exemption from Campaign Fi- nance Restrictions</i> , 129 Harv. L. Rev. 1384 (2016).....	2, 4
Eugene Volokh, <i>Freedom for the Press as an Industry, or for the Press as a Technology? From the Framing to Today</i> , 160 U. Pa. L. Rev. 459 (2012)	3, 9
Michael W. McConnell, <i>Reconsidering Citizens United as a Press Clause Case</i> , 123 Yale L.J. 412 (2013)	1, 4, 7, 8, 9

INTEREST OF THE *AMICUS CURIAE*¹

The Liberty Justice Center is a nonprofit, nonpartisan, public-interest litigation center that seeks to protect economic liberty, private property rights, free speech, and other fundamental rights. The Liberty Justice Center pursues its goals through strategic, precedent-setting litigation to revitalize constitutional restraints on government power and protections for individual rights. *See, e.g., Janus v. AFSCME*, 138 S. Ct. 2448 (2018). To that end, the Liberty Justice Center litigates cases around the country, including many cases addressing the constitutionality of campaign finance laws and regulations. *See, e.g., Illinois Liberty PAC v. Madigan*, 904 F.3d 463 (7th Cir. 2018); *Rio Grande Foundation v. Oliver*, (No. 24-2070, 10th Cir.); *Students for Life Action v. Jackley*, (No. 3:23-cv-03010, D.S.D.).

This case concerns amicus because the right to speak is fundamental, and that right applies equally to political parties as to all other citizens.

INTRODUCTION AND SUMMARY OF ARGUMENT

The current regulatory scheme grants nearly unlimited speech rights in the form of coordinated expenditures to media corporations while relegating political parties to a system of restrictions and disclosures for equivalent activity. *See* Michael W. McConnell, *Reconsidering Citizens United as a Press Clause Case*, 123 YALE L.J. 412, 418 (2013); *see also Defining the Press*

¹ Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than amicus funded its preparation or submission.

Exemption from Campaign Finance Restrictions, 129 HARV. L. REV. 1384, 1388–89 (2016). The law’s definition of coordinated expenditure is broad, encompassing the ability to endorse candidates, coordinate with them, broadcast information about them, or advocate on their behalf. Petitioners challenge the restrictions on the grounds that the limits on political parties’ coordinated expenditures violate the First Amendment.

The First Amendment was adopted to protect the right to engage in political speech, including discussion of candidates. *See generally Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241 (1974); *see also Mills v. Alabama*, 384 U.S. 214 (1966). Media corporations currently fully enjoy these speech rights—as they should—and often participate in what would be considered coordinated communications under 11 C.F.R. § 109.37 if conducted by a party. Meanwhile, political parties are heavily restricted from engaging in the same conduct.

In the election context, both media corporations and political parties serve the public interest in disseminating information. Both are essential to our constitutional democracy. Both inform voters about candidates. And both are speakers in the political field.

Therefore, both should be treated equally. Disparate treatment between these two types of speakers is presumptively unconstitutional under the First Amendment. *See generally Police Dept. of City of Chicago v. Mosley*, 408 U.S. 92 (1972); *see also First Nat’l Bank of Boston v. Bellotti*, 435 U.S. 765 (1978); *Citizens United v. FEC*, 558 U.S. 310 (2010). Additionally, this treatment distorts the political process, giving a disproportionate voice to media corporations and super PACs. This Court should restore equality in the realm

of political speech and remove the coordinated expenditure limits on political parties.

ARGUMENT

I. Media corporations are functionally allowed to make unlimited coordinated expenditures, while political parties face strict limitations on the same conduct.

Political parties face strict limitations on coordinated spending, while media corporations are exempt. Under the current campaign finance regime, “coordinated expenditures” are not permitted beyond certain dollar amounts by political parties and not permitted at all by non-media corporations. 52 U.S.C. § 30116; 52 U.S.C. § 30118. “Expenditures” are purchases or payments or any exchange of anything of value that has the purpose of “influencing any election for federal office.” 52 U.S.C. § 30101(9)(A). Coordinated expenditures are those expenditures “made in cooperation, consultation or concert with . . . a candidate” *Coordinated communications*, FEC, <https://www.fec.gov/press/resources-journalists/coordinated-communications/> (last visited Aug. 18, 2025).

However, expenditures do not include “[a]ny cost incurred in covering or carrying a news story, commentary, or editorial.” 52 U.S.C. § 30101(9)(B). This allowance covers virtually every communication by any media corporation concerning an election. See Eugene Volokh, *Freedom for the Press as an Industry, or for the Press as a Technology? From the Framing to Today*, 160 U. Pa. L. Rev. 459, 516 (2012) (noting that media corporations can and do “routinely engage” in coordinated speech).

This exception supersedes the restriction on “influencing an election for federal office” and allows media corporations to endorse candidates and perform other influential activities. *See id.*; *see also* 52 U.S.C. § 20101(9)(A)–(B). “Media companies can run procandidate editorials as easily as nonmedia corporations can pay for advertisements.” *See McConnell v. FEC*, 540 U.S. 93, 283 (2003) (Scalia, J., concurring), *overruled by Citizens United*, 558 U.S. 310. And “there is little doubt” that the editorials, commentary, and endorsements by media corporations affect elections and influence voters and candidates. *Id.* at 284.

While political parties are permitted to make independent expenditures, which are expenditures made without any consultation with the candidate, coordinated expenditures are considered contributions and are subject to strict regulation. *See, e.g.*, 52 U.S.C. § 30116(7)(C).

Media corporations are permitted to endorse candidates, perform interviews, provide airtime, and write favorable editorials and news stories, all with input from the candidates. They take these actions “while the voters are making up their minds,” having a huge impact on the election results. *McConnell*, *supra*, at 418; *see also McConnell v. FEC*, 540 U.S. at 284 (Scalia, J., concurring). Media corporations spend money on these actions to influence voters. *See McConnell v. FEC*, 540 U.S. at 284 (Scalia, J., concurring); *see also Defining the Press Exemption*, *supra*, at 1388–89 (noting that “CNN may air an editorial that endorses a candidate for federal office,” implying CNN is paying for their airtime). Moreover, broadcast media frequently advertise for their productions of these edi-

torials, interviews, and endorsements, resulting in further funds being spent on these influential activities. Even if the cost of these actions is relatively low, the standard for expenditure is “anything of value,” and positive media coverage is certainly valuable. 52 U.S.C. § 30101(9)(A).

Meanwhile, political parties face scrutiny and limitations. If a political party runs an ad for a candidate, it must report the ad and remain under strict dollar limits. *See* 52 U.S.C. § 30104(3). If it endorses a candidate, it must report the endorsement and stay under strict dollar limits. *Id.* And if it were to sponsor and televise a rally featuring a candidate, it would have to report the rally and remain under strict dollar limits. *Id.* It is hard to imagine any activity performed by media corporations in the election context that a political party is allowed to perform without limitation.

II. Media corporations and political parties serve similar functions in elections.

There is no meaningful difference between the political influence exerted by media corporations that coordinate with candidates and the political influence exerted by political parties that coordinate with candidates. Political parties serve many functions; one of the most important of which is disseminating information about candidates to persuade voters. *See Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 629, 630 (1996) (“*Colorado I*”) (Kennedy, J., concurring); *see also Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 186 (1979) (“As the records of such parties demonstrate, an election campaign is a means of disseminating ideas as well as

attaining political office.”) This dissemination is an essential function of political parties, which are in turn necessary to our representative democracy. *See California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000); *see also Colorado I*, 518 U.S. at 629, 630 (Kennedy, J., concurring). This political speech by parties has a significant influence on elections. *See Colorado I*, 518 U.S. at 627, 629, 630 (Kennedy, J., concurring).

Likewise, media corporations are “enormously powerful and influential in [their] capacity to manipulate” and engage in “advocacy journalism.” *Tornillo*, 418 U.S. at 248–49; *see also Bellotti*, 435 U.S. at 796–97 (Burger, C.J., concurring). However, unlike political parties that reflect the diverse voices of those they represent, media corporations often present their own political views. *Compare Tornillo*, 418 U.S. at 255, *with Colorado I*, 518 U.S. at 629 (Kennedy, J., concurring). This media view is an essential part of “informing and educating the public” and is protected by the First Amendment. *Bellotti*, 435 U.S. at 781–83.

The clear similarities between parties and media corporations, as well as their similar influence on elections, have been previously pointed out. *See Citizens United*, 558 U.S. at 391–92 (Scalia J., concurring) (analogizing parties to corporations generally). Parties and media corporations both work to persuade voters. Both seek to influence the public to elect their preferred candidates. Both speak about and advocate for policy changes. And both endorse candidates. *See Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989). This type of “[p]olitical speech is ‘indispensable to decisionmaking in a democracy’” regardless of the source. *Citizens United*, 558 U.S. at 349

(cleaned up). Both political parties and media corporations “use money amassed from the economic marketplace to fund [this] speech.” *Id.* at 351. While one “disseminate[s] ideas by way of a newspaper” and the other “give[s] lectures or speeches,” there is no difference in their “liberty [as] citizen[s] of the Republic.” *Bellotti*, 435 U.S. at 802 (Burger, C.J., concurring) (cleaned up). And whether it’s a party or a media corporation, there is no reason to believe that their influence over a candidate makes that candidate corrupt. *See Citizens United*, 558 U.S. at 359. Thus, media corporations and political parties serve substantially similar roles in the political process: informing and influencing the opinions of the public and candidates for office.

III. Coordinated expenditure limits violate the First Amendment’s prohibition on speaker-based discrimination.

It is impermissible favoritism for the government to allow unlimited political speech from media corporations while simultaneously restricting the political speech of similarly situated political parties. The purpose of the First Amendment is to encourage the wide dissemination of information from a variety of sources. *See New York Times Co. v. Sullivan*, 376 U.S. 254, 266 (1964). The public has the right to hear from various speakers and sources and choose for themselves what to listen to. *See Citizens United*, 558 U.S. 340–41. History, logic, and precedent make clear that the government cannot exclude an entire class of speakers from public discussion. *See id.* at 341; *see also Bellotti*, 435 U.S. at 784; *see also McConnell, supra*, at 431. This principle is particularly true in political speech, where

debate is meant to be “robust” and “wide-open.” *Buckley v. Valeo*, 424 U.S. 1, 14 (1976).

This Court has “frequently condemned such discrimination among different users of the same medium for expression.” *Mosley*, 408 U.S. at 96. “[T]he press does not have a monopoly on either the First Amendment or the ability to enlighten,” and does not get special rights to be the only voice disseminating political information. *Bellotti*, 435 U.S. at 782–83.

Restricting spending is restricting speech. *See Citizens United*, 558 U.S. at 339 (citing *Buckley*, 424 U.S. at 19); *see also McConnell v. FEC*, 540 U.S. at 254–55 (Scalia J., concurring in part and dissenting in part) (“It should be obvious, then, that a law limiting the amount a person can spend to broadcast his political views is a direct restriction on speech.”); *see also Mosley*, 408 U.S. at 94 (proposing that any restriction on expressive conduct is a restriction on speech) This violation of the First Amendment is even more “flagrant” when the discussion is about a candidate. *McConnell*, *supra*, at 424–25.

Here, the restrictions on coordinated expenditures directly contradict the First Amendment’s goal of encouraging the dissemination of information. *See Sullivan*, 376 U.S. at 266. Political parties offer a different perspective on important political issues, and voters have the right to hear that voice and decide for themselves whether it is more agreeable than the media’s voice. *See Citizens United*, 558 U.S. at 340–41. However, both the media and political parties use the same “medium for expression:” spending money on political campaigns. *Mosley*, 408 U.S. at 96. Not only do parties and the media use the same medium for their expression, but they also spend their money on similar

things, like express advocacy and advertising that references a candidate by name. *See Petition for a Writ of Certiorari* at 7, *Nat’l Republican Senatorial Comm. v. FEC*, No. 24-621 (U.S. 2024). There are some differences like expenditures on rallies, but “[i]t seems unlikely that . . . spending \$10,000 to print and mail campaign literature [is] constitutionally different from spending \$10,000 to organize a political rally.” Volokh, *supra*, at 518; *see also Pet.* at 7, *NRSC v. FEC*, No. 24-621 (U.S. 2024).

The government may not discriminate between speakers, especially political speakers, just because the favored speaker is a media corporation. *See Sullivan*, 376 U.S. at 266; *see also Mosley*, 408 U.S. at 96 (noting that the legislature is “disqualified” from selecting a single type of voice to speak on public issues). In light of history, logic, and precedent, the press clause is an insufficient justification for protecting the speech of media corporations and not also protecting the speech of political parties. *See Bellotti*, 435 U.S., at 782, 784; *see also Citizens United*, 558 U.S. at 341, 352; *see also McConnell*, *supra*, at 431. Singling out media companies for special speech rights “presents seemingly insurmountable historical and pragmatic difficulties.” *McConnell*, *supra*, at 431.

Moreover, the current regime grants a disproportionate level of control over political issues to the media and super PACs—control that rightfully belongs to the political committees. *See Buckley*, 424 U.S. at 57; *See Pet.* at 13, *NRSC v. FEC*, No. 24-621 (U.S. 2024). As a result, the parties are left with the meager leftovers. These super PACs have become an increasingly prevalent part of the political conversation, spending more than 40 times as much as the political parties’

coordinated spending. *See Brief of Amicus Curiae Senator Mitch McConnell in Support of Petitioners* at 22, 23, *NRSC v. FEC*, No. 24-621 (U.S. 2025).

FECA’s limits on political parties’ coordinated expenditures are an unacceptable abridgment of parties’ First Amendment rights. This Court has already acknowledged that the limits burden parties’ rights. *See FEC v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 450 n.11 (2001); *see also Pet.* at 7, 14, *NRSC v. FEC*, No. 24-621 (U.S. 2024). However, this Court has previously allowed the burden as a means of preventing corruption because coordinated expenditures are similar to contributions. *See Pet.* at 5, 6, *NRSC v. FEC*, No. 24-621 (U.S. 2024). The logic is that contributions run the most significant risk of corruption and restricting them restricts corruption.

The reality, however, is that these restrictions merely make it more difficult and more expensive for political parties to support their chosen candidates. *See Pet.* at 7, *NRSC v. FEC*, No. 24-621 (U.S. 2024); *see also Mitch McConnell Br.* at 12. They do not prevent corruption. *See Pet.* at 9, *NRSC v. FEC*, No. 24-621 (U.S. 2024); *see also Brief of Amici Curiae State of Ohio and 13 Other States in Support of Petitioners* at 20, *NRSC v. FEC*, No. 24-621 (U.S. 2025) (noting that, in over two dozen states that do not have these restrictions, there have been no instances of corruption in state elections).

“Party speech is inherently political” and entitled to First Amendment protection. *Ohio and 13 Other States Br.* at 2. Logically, this protection extends to the committees. And yet, the NRSC, as a subunit of the Republican Party, faces an even greater violation of its speech rights. The NRSC must get written permission

from the Republican Party before making any expenditures. *See Pet.* at 8, *NRSC v. FEC*, No. 24-621 (U.S. 2024). The NRSC then must share the total expenditure allowance with the main party. *See id.*

Furthermore, these restrictions on party speech are a new development in our constitutional history. *See Brief of Chamber of Commerce of the United States of America as Amicus Curiae in Support of Petitioners* at 13, *NRSC v. FEC*, No. 24-621 (U.S. 2025). From America’s earliest days, coordination of speech and spending was unlimited, “necessary,” and commonplace. *See id.* Thus, there was no disparity between the press and the party, especially because the press was the primary avenue for political spending. *See id.* Only in the last 50 years has Congress decided to restrict any form of coordinated expenditures, and now it does so unevenly.

The government may not respond by restricting everyone’s speech, including that of the media, as this further restriction would violate the press clause. *See Tornillo*, 418 U.S. at 258. The lesson from history is that neither limits on coordination between candidates and the media, nor restrictions on coordination between candidates and political parties, are permissible. “The First Amendment cannot tolerate” these expenditure limitations. *Randall v. Sorrell*, 548 U.S. 230, 264 (2006) (Kennedy, J., concurring) (cleaned up). Therefore, the solution to the government’s impermissible favoritism is to remove these restrictions on the speech of political parties.

CONCLUSION

Because the media is properly permitted to comment on political issues without restriction, and because political parties, like media organizations, communicate and advocate for public viewpoints, the First Amendment prohibits the government from favoring the media over political parties as speakers. Accordingly, governmental restrictions on coordinated expenditures by political parties cannot withstand constitutional scrutiny.

Respectfully submitted,

Jeffrey Schwab
Counsel of Record
Reilly Stephens
Emily Rae
Duncan Crim
LIBERTY JUSTICE CENTER
7500 Rialto Blvd.
Suite 1-250
Austin, TX 78735
512-481-4400
jschwab@ljc.org
Attorneys for Amicus Curiae
Liberty Justice Center

August 28, 2025