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Federal Election Commission v. Colorado Republican Federal Campaign Committee (2001)

Answering the question that was left conspicuously unresolved in *Colorado Republican Federal Campaign Committee v. Federal Election Commission,* 518 U.S. 604 (1996) (Colorado I), the U.S. Supreme Court in *Federal Election Commission v. Colorado Republican Federal Campaign Committee,* 533 U.S. 431 (2001) (Colorado II), determined that the provision of the Federal Election Campaign Act (FECA) pertaining to "party-coordinated spending" did not unconstitutionally deprive political parties of their First Amendment right to support candidates. Whereas the Court in Colorado I found the FECA provision limiting a party's "independent" expenditures to be unconstitutional, this follow-up case involved only those party expenditures made in "coordination" with a candidate.

Accepting the government's argument that expenditures coordinated between parties and candidates were effectively "contributions"—allowing for increased regulation within the framework established by *Buckley v. Valeo,* 424 U.S. 1 (1976)—the majority (the plurality and dissenters from Colorado I) upheld the FECA provision. Writing for the Court, Justice David H. Souter emphasized the "reality" of the world of campaign finance, asserting that without restrictions of this sort, donors could and would use the parties as a conduit to funnel contributions to particular candidates, thereby increasing the potential for corruption and inappropriate influence in the political system. Restrictions on the financial ties among donors, parties, and candidates were therefore essential to preserve the spirit of the *Buckley* decision and maintain the integrity of the political process.

Writing with the customary vigor he has brought to campaign finance cases, Justice Clarence Thomas, expressing the frustrations of the dissenters, chastised the majority on several grounds. In his view, the Court not only had failed to apply strict scrutiny, but it also was essentially punishing political parties for doing their job. Candidates and parties had to be "inextricably intertwined," in other words, and the institutional structure and resources of these associations were *designed* to influence campaigns and underwrite individuals running for election. Absent any evidence of actual harm or corruption (beyond the conjecture and assumptions accepted by the majority), Justice Thomas urged, parties should be free to spend (or "speak") as they see fit. Moreover, he offered, though joined by only two of the three other dissenters on this particular point, the time had come to revisit and overrule the "contribution" and "expenditure" distinction at the heart of *Buckley* itself.

What made Colorado II such an interesting case was that the sentiments expressed by the majority and dissenters depicted competing theoretical expectations of the political process and captured the complexity of the larger campaign finance debate. At the heart of the reasoning on both sides was serious division as to the place and purpose of party organizations in the U.S. political system, as well as differences over such intangibles as public perceptions and human nature. Justice Souter's "corruption-by-conduit" argument, for example, emphasized the systemic and imprecise nature of such abuse, while underscoring the inherently evasive, "nudge, nudge, wink, wink" nature of "coordinated" expenditures, whereas Justice Thomas's dissent portrayed a scenario wherein the vast sums of money exchanged between, and expended by, parties and candidates implied nothing more than a healthy and right-functioning political process. Which vision will ultimately prevail? With three dissenters willing to overrule *Buckley,* and with multiple Supreme Court vacancies likely in the near future, the debate in Colorado II could forecast major changes in the U.S. system of financing election campaigns.

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See also: Buckley v. Valeo; McConnell v. Federal Election Commission.

FURTHER READING

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