National Republican Senatorial Commission v. Federal Election Commission

Nitika Reddy

117 F.4TH 389 (6TH CIR. 2024)

I. BACKGROUND

This case arises from a First Amendment challenge to the Federal Election Campaign Act's (FECA) limits on coordination between national political parties and their candidates.[1] Section 315 of FECA, codified at 52 U.S.C. § 30116(d), caps how much a party committee may spend in coordination with a candidate's campaign, even though the statute permits unlimited independent expenditures so long as the candidate is not involved.[2] The Federal Election Commission (FEC) enforces FECA's coordination limits.[3]

The plaintiffs, the National Republican Senatorial Committee, the National Republican Congressional Committee, Vice President J.D. Vance, and former Representative Steve Chabot, challenged these restrictions both facially and as applied to "party coordinated communications," a regulatory category that largely encompasses campaign advertising.[4] They argued that the limits prevent parties and candidates from coordinating core campaign messaging, force inefficient and duplicative spending, and undermine the traditional role political parties play in supporting their nominees through unified campaign strategies.[5] Because FECA requires constitutional challenges to its provisions to be certified directly to the court of appeals sitting en banc, the district court did not resolve the merits of the dispute.[6] Instead, it certified the question to the Sixth Circuit. The court of appeals was asked whether FECA's limits on coordinated party expenditures violate the First Amendment, either on their face or as applied.[7] That inquiry was shaped largely by the Supreme Court's decision in *FEC v. Colorado Republican*

1. Nat'l Republican Senatorial Comm. v. FEC, 117 F.4th 389, 395–98 (6th Cir. 2024) (en banc).
2. 52 U.S.C. § 30116(d); *see also* Citizens United v. FEC, 558 U.S. 310, 357-61 (2010).
3. *See id.*; *see also* 11 C.F.R. § 110.17.
4. NRSC v. FEC, 117 F.4th at 391-92.
5. *See id.* at 392-93.
6. *See id.*; *see also* 52 U.S.C. § 30110.
7. *NRSC*, 117 F.4th at 393.

Federal Campaign Committee ("*Colorado II*"), which had previously upheld the same statutory scheme.[8]

II. ANALYSIS

A. The Majority Opinion: Vertical Stare Decisis and the Limits of Lower-Court Authority

The en banc majority treated the case as one governed by judicial hierarchy.[9] The plaintiffs pressed the appeals court to reconsider the First Amendment doctrine in light of more recent cases, but the court declined to engage with them on the merits.[10] Instead, it held that the Supreme Court's decision in *Colorado II* directly controlled and foreclosed both the facial and as-applied challenges.[11] In *Colorado II*, the Supreme Court upheld FECA's coordinated party expenditure limits under the deferential "closely drawn" standard applicable to contribution limits, reasoning that coordinated expenditures functionally resemble direct contributions and may be restricted to prevent circumvention of base contribution limits.[12] The majority acknowledged that subsequent Supreme Court cases, most notably *Citizens United v. FEC*, *McCutcheon v. FEC*, and *FEC v. Ted Cruz for Senate*, have emphasized that only quid pro quo corruption or its appearance may justify restrictions on political speech.[13] Nevertheless, the court concluded that doctrinal tension alone does not permit lower courts to disregard binding precedent.[14]

The majority relied on vertical stare decisis to resolve the case.[15] Even where later cases appear to undermine an earlier decision's reasoning, lower courts must continue to apply controlling precedent until the Supreme Court expressly repudiates it.[16] Because *Colorado II* has not been overruled, the court treated it as binding precedent that foreclosed both the facial and as-applied challenges.[17] This approach allowed the court to resolve the facial challenge without reconsidering the constitutionality of coordinated expenditure limits in light of more recent First Amendment doctrine.[18] This also shaped the court's treatment of the as-applied challenge, which the

8. FEC v. Colo. Republican Fed. Campaign Comm. (Colorado II), 533 U.S. 431, 456-64 (2001).
9. *NRSC*, 117 F.4th at 394-96.
10. *See id.* at 395-97.
11. *See id.* at 396-97.
12. *Colorado II*, 533 U.S. at 456-65.
13. *See NRSC*, 117 F.4th at 395-96; *see also* Citizens United v. FEC, 558 U.S. 310, 359 (2010); McCutcheon v. FEC, 572 U.S. 185, 206-08 (2014); FEC v. Ted Cruz for Senate, 596 U.S. 289, 305-07 (2022).
14. *NRSC*, 117 F.4th at 394.
15. *See id.* at 394-97.
16. *See id.* at 396-97.
17. *See id.* at 391-92, 394.
18. *See id.* at 396-98.

majority rejected on the ground that it was too broad to fall within the narrow category of future challenges contemplated by *Colorado II*.[19]

B. The Concurrences: Competing Views on Constitutional Method and Campaign Finance

All of the concurring judges agreed that the plaintiffs could not prevail, but they did not agree on why the court should stop where it did.[20] Several of the concurrences reflect unease with *Colorado II*'s continued vitality, even as they ultimately adhered to it.[21] Judges Thapar and Bush both questioned whether *Colorado II* is still a comfortable fit with the Supreme Court's more recent campaign finance decisions.[22] Judge Thapar stressed that cases like *McCutcheon* and *Cruz* have narrowed the concept of corruption and weakened the anti-circumvention rationale that once supported limits on coordinated party spending.[23] In his view, those developments create real tension with *Colorado II*.[24] Even so, the concurring opinions emphasized that they were bound by *Colorado II*, even while expressing serious doubts about its consistency with modern First Amendment doctrine.[25] Since the Supreme Court has not overruled *Colorado II*, the concurring opinions likewise concluded that the court of appeals was not free to disregard it.[26]

Judge Bush wrote separately to raise greater concerns about the structure of First Amendment analysis itself.[27] His concurrence questioned the dependence on tiers of scrutiny that dominate modern campaign finance doctrine.[28] He suggested that coordinated party spending might look different if assessed under a more historically grounded approach, similar to the method the Supreme Court has adopted in other areas.[29] He did not apply that framework here. Instead, he emphasized that existing First Amendment doctrine continues to rely on scrutiny-based analysis and that lower courts remain bound by that framework unless and until the Supreme Court revisits it.[30]

Judges Stranch and Bloomekatz took the opposite view of the existing doctrine.[31] Their concurrences rejected the claim that *Colorado II* has been overtaken by later cases, while maintaining that existing doctrine still permits the coordination limits.[32] They also cautioned against importing post-*Bruen* historical analysis into the First Amendment context, warning that

19. *See id.* at 397-98.
20. *See* NRSC v. FEC, 117 F.4th at 398-443.
21. *See id.* at 398-421.
22. *NRSC*, 117 F.4th at 398-407 (Thapar, J., concurring); 409-15 (Bush, J., concurring dubitante).
23. *See id.* at 402 (Thapar, J., concurring).
24. *See id.* at 402-05 (Thapar, J., concurring); 409-15 (Bush, J., concurring dubitante).
25. *See id.* at 398-99 (Thapar, J., concurring).
26. *See id.*
27. *See id.* at 407-09 (Bush, J., concurring dubitante).
28. *See* NRSC v. FEC, 117 F.4th at 411 (Bush, J., concurring dubitante).
29. *See id.* at 400-02 (Bush, J., concurring dubitante).
30. *See id.* at 400-02 (Bush, J., concurring dubitante).
31. *NRSC*, 117 F.4th at 421-43 (Stranch & Bloomekatz, JJ., concurring).
32. *See id.* at 423-31 (Stranch, J., concurring); *id.* at 431-40 (Bloomekatz, J., concurring).

coordinated spending can function as a channel for donor influence.[33] From their perspective, abandoning *Colorado II* would risk destabilizing campaign finance doctrine rather than correcting it.[34]

C. *The Dissent: Doctrinal Obsolescence and a Merits-Based Rejection of Coordination Limits*

According to Judge Readler in his dissent, this case should have reached the merits and struck down FECA's coordinated party expenditure limits.[35] He criticized the majority for treating stare decisis as dispositive without contending with how much campaign finance doctrine has changed since *Colorado II* was decided.[36] The dissent focused on doctrine. Modern campaign finance cases, Judge Readler argued, recognize only the prevention of quid pro quo corruption, or its appearance, as a sufficiently important governmental interest.[37] *Colorado II*, by contrast, relied in part on a broader conception of corruption, including concerns about circumvention and forms of influence beyond quid pro quo arrangements.[38] In his view, the Supreme Court has since rejected that understanding in cases such as *Citizens United*, *McCutcheon*, and *Cruz*.[39] Under that narrower understanding of corruption, Judge Readler concluded that the coordination limits cannot be justified.[40]

Judge Readler also pointed to changes in both the statute and the political context.[41] Congress has amended FECA to allow unlimited coordinated spending for certain party activities, undercutting the claim that coordination is inherently corrupting.[42] At the same time, the rise of Super PACs and other outside spending groups has reduced the relative role of political parties in federal elections.[43] These developments, he argued, call into question *Colorado II*'s assumption that parties occupy a dominant position capable of facilitating corruption through coordination.[44]

Finally, the dissent rejected the government's effort to treat all coordinated activity as equivalent to direct contributions.[45] Coordination, Judge Readler emphasized, covers a wide range of conduct, much of which looks nothing like a party simply paying a candidates bills.[46] Applying *McCutcheon*, he concluded that the limits fail at both steps: (1) the government failed to identify a sufficiently important interest grounded in quid pro quo corruption, and (2) the limits were not closely drawn, given the

33. *See id.* at 426-29 (Stranch, J., concurring); *id.* at 436-40 (Bloomekatz, J., concurring).
34. *See id.* at 428-31 (Stranch, J., concurring); *id.* at 438-41 (Bloomekatz, J., concurring).
35. *See id.* at 443-45 (Readler, J., dissenting).
36. *See id.* at 445-47 (Readler, J., dissenting).
37. *See* NRSC v. FEC, 117 F.4th at 447-49 (Readler, J., dissenting).
38. *See Colorado II*, 533 U.S. at 456-57, 460-65; *see also NRSC*, 117 F.4th at 394-95 (Readler, J., dissenting).
39. *NRSC*, 117 F.4th at 448-50 (Readler, J., dissenting).
40. *See id.* at 450-52.
41. *See id.* at 452-54.
42. *See id.* at 452-53.
43. *See id.* at 452-54.
44. *See id.* at 454-55 (Readler, J., dissenting).
45. *See NRSC*, 117 F.4th. at 455-57 (Readler, J., dissenting).
46. *See id.* at 456-57.

availability of less restrictive alternatives such as disclosure requirements and contribution caps.[47]

D. Doctrinal Significance

The opinions do not resolve the underlying disagreement.[48] The majority treated the dispute as one governed by vertical stare decisis, insisting that *Colorado II* remains controlling unless the Supreme Court says otherwise.[49] The concurrences and dissent, however, revealed deep disagreement about whether *Colorado II* still fits within the Supreme Court's current campaign finance jurisprudence.[50] In that sense, the decision leaves the present framework in place and does not answer the harder questions raised.[51] As the Supreme Court has narrowed the concept of corruption to quid pro quo arrangements, the foundation of coordinated party expenditure limits appears increasingly uncertain.[52] Whether *Colorado II* remains consistent with modern First Amendment doctrine is a question the Sixth Circuit declined to resolve, instead treating itself as bound by existing precedent.[53]

III. CONCLUSION

The Sixth Circuit resolved the case on stare decisis grounds and not on First Amendment doctrine. Because the Supreme Court has not overruled *Colorado II*, here, the court concluded that it lacked authority to invalidate the coordinated party expenditure limits, even in light of subsequent decisions narrowing the permissible scope of campaign finance regulation.[54] The opinions in the case nonetheless expose growing strain in the Supreme Court's campaign finance framework. The majority's insistence on formal adherence to precedent contrasts markedly with the dissent's view that later cases have effectively displaced *Colorado II*'s understanding of corruption and coordination.[55] That disagreement indicates wider uncertainty about how lower courts should respond when Supreme Court doctrine evolves without express overruling. Although the decision leaves the coordinated expenditure limits intact, it does so on increasingly contested ground. Independent spending now plays a larger role in federal elections. Against that backdrop, *Colorado II* rests on uncertain footing.

47. *See id.* at 457-59.
48. *NRSC*, 117 F.4th at 394-459.
49. *See id.* at 395.
50. *See id.* at 398-459.
51. *See id.* at 397-98.
52. *See* e.g., *McCutcheon*, 572 U.S. at 206-08; *Ted Cruz*, 596 U.S. at 305-07.
53. *NRSC*, 117 F.4th at 394-95.
54. *See id.* at 396-97.
55. *See id.* at 396-98 (majority opinion); *see also id.* at 454 (Readler, J., dissenting).