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Political Campaign Contributions and Congress: A Legal Primer

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SUMMARY

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Political Campaign Contributions and Congress: A Legal Primer

To help curb corruption in the political process and safeguard First Amendment rights to freedom of speech and association, Congress has enacted laws that regulate political campaign contributions. These laws include political patronage and campaign finance laws.

Federal political patronage laws serve to protect federal employees—including congressional staff—from being required to make campaign contributions as a condition of employment. These criminal laws include a prohibition on Members of Congress, congressional candidates, and congressional staff from knowingly soliciting federal office campaign contributions from another such officer, employee, or person receiving compensation for services from money derived from the U.S. Treasury. Similarly, federal law prohibits congressional staff from making contributions to a Member of Congress who is the staffer's employer. Members of Congress and congressional staff are also prohibited from discharging, demoting, or promoting, or threatening to do so, another congressional employee for making or failing to make a campaign contribution to candidates for federal, state, and local office. Relating to federal workspace, federal law prohibits any person from soliciting or receiving a donation of money or other thing of value in connection with a federal, state, or local election from anyone located in federal workspace. In support of the policy underlying such laws, the Supreme Court has determined that, with the exception of policymaking and confidential government positions, personnel decisions made solely on the basis of political party association violate employee First Amendment rights to freedom of speech and association.

Federal campaign finance laws regulate campaign contributions made to congressional candidates by establishing limits, source restrictions, and disclosure requirements. The Federal Election Campaign Act (FECA) defines a contribution to include money or anything of value that is made for the purpose of influencing any federal election. A contribution can be distinguished from an expenditure in that a contribution involves giving money to an entity, such as a candidate's campaign committee, while an expenditure involves spending money directly for advocacy of the election or defeat of a candidate. For knowing and willful violations of FECA, criminal penalties may be imposed.

Campaign Contribution Limits

Contribution limits refer to how much a donor can contribute as well as *how* they can contribute. Contribution limits include specific limits on how much money individuals may contribute to a congressional candidate, which are known as base limits. In the current 2019-2020 federal election cycle, an individual can contribute up to $2,800, per election, to a candidate. These limits are periodically adjusted for inflation in odd-numbered years. FECA also provides for related restrictions, including the ban on contributions made through a conduit; the ban on converting campaign contributions for personal use; and the treatment of communications a donor makes in coordination with a candidate or party as contributions. The Supreme Court has generally upheld the constitutionality of these restrictions to protect against quid pro quo corruption and its appearance. Although the Court has generally upheld reasonable base limits, the Court has struck down FECA's aggregate limits, which capped the total amount of money a donor could contribute to all candidates, parties, and political committees; limits on contributions to candidates whose opponents self-finance; and limits on contributions by minors. In addition, based on Supreme Court precedent, an appellate court ruling provided the legal underpinning for the establishment of super political action committees (super PACs), ruling that limits on contributions to groups that make only independent expenditures are unconstitutional.

Campaign Contribution Source Restrictions

FECA contains several bans, referred to as source restrictions, on *who* may make campaign contributions. Source restrictions include the ban on corporate and labor union campaign contributions directly from their treasury funds—although the Supreme Court has held that limits on corporate and labor union independent spending are unconstitutional, the Court has upheld limits on contributions. Source restrictions also include the ban on federal contractor contributions—known as the "pay-to-play" prohibition—and the ban on foreign national contributions.

Campaign Contribution Disclosure Requirements

Under FECA, candidate campaign committees must register with the Federal Election Commission (FEC) and comply with disclosure requirements. Such requirements include filing periodic reports that include the total amount of all contributions received, and the identity, address, occupation, and employer of any person who contributes more than $200 during a calendar year. The Supreme Court has generally upheld the constitutionality of disclosure requirements as substantially related to the governmental interest of safeguarding the integrity of the electoral process by promoting transparency and accountability.

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To help curb corruption in the political process and safeguard First Amendment rights to freedom of speech and association, Congress has enacted laws that regulate political campaign contributions.[1] For example, federal political patronage laws serve to protect federal employees—including congressional staff—from being required to make campaign contributions as a condition of employment.[2] In support of the policy underlying such laws, the Supreme Court has determined that, with the exception of policymaking and confidential government positions, personnel decisions made solely on the basis of political party association violate employee First Amendment rights to freedom of speech and association.[3] Moreover, federal campaign finance law sets forth a complex set of limits, restrictions, and requirements on campaign contributions made to congressional candidates.[4] The Supreme Court has generally upheld the constitutionality of these regulations in order to maintain the integrity of the democratic process by protecting against quid pro quo corruption and its appearance.[5] Essentially, quid pro quo corruption involves "a direct exchange of an official act for money."[6]

In the midst of the 2020 federal election cycle, this report outlines select federal laws that regulate political campaign contributions relevant to Members of Congress, congressional candidates, and congressional staff. First, the report addresses four federal political patronage laws that restrict the soliciting, receiving, and making of campaign contributions based on employment or federal workspace. Then, the report examines several federal campaign finance laws that regulate campaign contributions, focusing on limits, source restrictions, and disclosure requirements. Integrated throughout, the report also assesses court rulings that have a significant impact on the constitutionality or regulatory scope of the law. The report concludes with a review of key constitutional considerations should Congress decide to enact legislation that would further regulate campaign contributions. For convenient reference, the **Appendix** sets forth the text of the prominent federal statutes discussed throughout the report.

Political Patronage Laws[7]

In certain circumstances relating to federal employment status or workspace, federal criminal laws prohibit Members of Congress and congressional staff from soliciting, receiving, and

[1] Federal law broadly defines a "contribution" to include money or anything of value given for the purpose of influencing an election for federal office. *See* 52 U.S.C. § 30101(8)(A).

[2] *See infra* "Political Patronage Laws" section of this report.

[3] *See, e.g.*, Elrod v. Burns, 427 U.S. 347, 372 (1976) (plurality opinion) (determining that dismissal of employees for lack of political loyalty unconstitutionally burdens employee free speech rights), discussed *infra* "Political Patronage Laws" section of this report.

[4] *See infra* "Campaign Finance Laws" section of this report.

[5] *See, e.g.*, Buckley v. Valeo, 424 U.S. 1, 27 (1976) (holding that both the reality and appearance of corruption as a result of large campaign contributions was a sufficiently compelling interest to warrant infringements on First Amendment liberties "to the extent that large contributions are given to secure a quid pro quo from [a candidate]"), discussed *infra* § Campaign Contribution Limits and Related Restrictions. For discussion of the Supreme Court's campaign finance jurisprudence, see CRS Report R43719, *Campaign Finance: Constitutionality of Limits on Contributions and Expenditures*, by L. Paige Whitaker.

[6] McCutcheon v. Fed. Election Comm'n, 572 U.S. 185, 192 (2014), discussed *infra* "Campaign Contribution Limits Held Unconstitutional" section of this report.

[7] This portion of the report focuses on four federal political patronage laws. For discussion of other related criminal laws, see CRS Report R45479, *Bribery, Kickbacks, and Self-Dealing: An Overview of Honest Services Fraud and Issues for Congress*, by Michael A. Foster and CRS Report R41930, *Mail and Wire Fraud: A Brief Overview of Federal Criminal Law*, by Charles Doyle.

making campaign contributions.[8] These statutes are often referred to as political patronage laws because they prohibit government employees from inducing or rewarding partisan political activity.[9] As observed by the U.S. Department of Justice (DOJ), patronage crimes occur most frequently when one political party is dominant, but under threat from credible opposition, and in jurisdictions where other types of public corruption occur and are tolerated.[10]

In a line of cases beginning in the 1970s, the Supreme Court has generally held that, with the exception of policymaking and confidential government positions, personnel decisions made solely on the basis of partisan association or loyalty violate employees' First Amendment rights to freedom of speech and association.[11] For example, in *Elrod v. Burns*, a plurality of the Court determined that the dismissal of employees for lack of political loyalty is "tantamount to coerced belief," thereby burdening employee free speech rights.[12] Further, the plurality concluded that asserted government interests in support of patronage do not justify that burden because they are not the least restrictive means to achieve those interests.[13] Later, the Court in *Rutan v. Republican Party of Illinois* extended that reasoning to patronage hiring decisions.[14] According to the Court, much like patronage dismissals, patronage hiring also burdens employee rights to freedom of speech and association under the First Amendment.[15]

Prohibition on Soliciting Campaign Contributions

Federal criminal law prohibits Members of Congress, congressional candidates, and congressional staff, among other federal employees, from knowingly soliciting federal office campaign contributions from another such officer, employee, or person receiving compensation for services from money derived from the U.S. Treasury.[16] This prohibition is limited to contributions made to influence federal elections and does not extend to contributions for state

[8] 18 U.S.C. §§ 602, 603, 606, 607.

[9] Political patronage has been described as "the right to select key personnel and to reward the party 'faithful.'" Branti v. Finkel, 445 U.S. 507, 529 (Powell, J., dissenting); *see also* Richard L. Hasen, *An Enriched Economic Model of Political Patronage and Campaign Contributions: Reformulating Supreme Court Jurisprudence*, 14 CARDOZO L. REV. 1311, 1311 (1993) (quoting Martin Tolchin & Susan Tolchin, TO THE VICTOR ...: POLITICAL PATRONAGE FROM THE CLUBHOUSE TO THE WHITE HOUSE 55 (1971)) (defining political patronage as "the allocation of the discretionary favors of government in exchange for political support.").

[10] U.S. DEP'T OF JUSTICE, FEDERAL PROSECUTION OF ELECTION OFFENSES 3 (8th ed. 2017) [hereinafter *DOJ Manual*] https://www.justice.gov/criminal/file/1029066/download.

[11] *See* Elrod v. Burns, 427 U.S. 347, 372 (1976) (plurality opinion) (acknowledging a need for "government efficiency and effectiveness," but concluding that political patronage dismissals are not the least restrictive way to achieve that goal); Branti v. Finkel, 445 U.S. 507, 516 (1980) (rejecting the argument that *Elrod v. Burns* should be interpreted as prohibiting only dismissals resulting from an employee's failure to capitulate to political coercion). *See also* Rutan v. Republican Party of Illinois, 497 U.S. 62, 64 (1990) (announcing that "[t]o the victor belong only those spoils that may be constitutionally obtained.")

[12] *Elrod*, 427 U.S. at 355 (citing Buckley v. Valeo, 424 U.S. 1, 19 (1976))

[13] *See id.* at 369.

[14] 497 U.S. 62, 74-76 (1990).

[15] *See id.* at 77.

[16] 18 U.S.C. § 602(a). The statute expressly exempts from the prohibition any activity of an employee, as defined in 5 U.S.C. § 7322(1), which generally includes employees in the executive branch of the federal government, other than the Government Accountability Office, or a position within the competitive service that is not in an Executive agency, but does not include a member of the uniformed services or an individual employed or holding office in the government of the District of Columbia or any employee of the U.S. Postal Service or the Postal Regulatory Commission, unless that activity is prohibited under provisions of the Hatch Act at 5 U.S.C. §§ 7323 or 7324. For discussion of the Hatch Act, see CRS In Focus IF11512, *The Hatch Act: A Primer*, by Whitney K. Novak.

and local elections.[17] According to the legislative history, Congress intended that for a solicitation to violate this prohibition, "it must be actually known" by the solicitor that the person being solicited is a federal employee, and therefore, "[m]erely mailing to a list [that] will no doubt contain names of federal employees is not a violation."[18] DOJ has interpreted this prohibition not to apply to federal employees soliciting *voluntary* contributions from other non-subordinate federal employees, but cautions that contributions solicited from a subordinate are not considered voluntary.[19] Although DOJ interpretation of the law does not constitute binding precedent, it appears to inform DOJ prosecutorial decisions.[20]

The Supreme Court has upheld the constitutionality of the statutory predecessor to this prohibition on soliciting contributions.[21] According to the Court, Congress has the authority to prevent its officers and employees from engaging in or being subjected "to pressure for money for political purposes."[22] Moreover, the Court has observed that the prohibition serves to shield public servants "against exactions through fear of personal loss."[23]

Prohibition on Making Campaign Contributions

In a similar vein, federal criminal law prohibits congressional staff, among other federal employees, from making contributions to a Member of Congress who is the staffer's "employer or employing authority."[24] Similar to the prohibition on soliciting contributions, the law applies only to contributions for federal office.[25]

Prohibition on Intimidating to Secure Campaign Contributions

Federal criminal law also prohibits Members of Congress and congressional staff from discharging, demoting, or promoting, or threatening to do so, another congressional employee for making or failing to make "any contribution of money or other valuable thing for any political purpose."[26] DOJ has interpreted this law to encompass "coerced donations of anything of value (including services)" to candidates for federal, state, and local office.[27] In the view of the Criminal Division of DOJ, this prohibition is not intended, however, to restrict a Member of

[17] 18 U.S.C. § 602(a)(4) (providing that it is a violation "to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 (FECA) [52 U.S.C. § 30101(8)]"). As discussed *infra* "Campaign Finance Laws" section of this report, FECA defines a contribution to include "any gift, subscription, loan, advance, or deposit of money or anything of value" that is made "for the purpose of influencing any election for Federal office" or a payment that is made for compensation of personal services that are rendered to a political committee free of charge. 52 U.S.C. § 30101(8)(A)(i), (ii).

[18] H.R. REP. NO. 96-422, at 25 (1970).

[19] *See DOJ Manual*, *supra* note 10, at 102.

[20] The *DOJ Manual* states that "[i]t addresses how the Department handles all federal election offenses" and "summarizes the Department's policies, as well as key legal and investigative considerations, related to the investigation and prosecution of election offenses." *Id.* at 1.

[21] *See* U.S. v. Wurzbach, 280 U.S. 396, 399 (1930).

[22] *Id.* at 398.

[23] Ex parte Curtis, 106 U.S. 371, 373-374 (1882) ("A feeling of independence under the law conduces to faithful public service, and nothing tends more to take away this feeling than a dread of dismissal.")

[24] 18 U.S.C. § 603.

[25] *Id.*

[26] *Id.* § 606.

[27] *See DOJ Manual*, *supra* note 10, at 104.

Congress from considering political factors, such as ideology, when employing staff who perform policymaking or confidential duties.[28]

Prohibition on Soliciting or Receiving Campaign Contributions in Federal Workspace

Relating to federal workspace, federal criminal law prohibits any person from soliciting or receiving a donation of money or other thing of value in connection with a federal, state, or local election from anyone located within a room or building in which federal employees are engaged in official duties.[29] Although the prohibition covers the legislative branch of government, it specifically exempts a campaign contribution received in a Member of Congress's congressional office so long as certain criteria are met. First, the solicitation must not direct the contributor to mail or deliver the contribution to the congressional office, and second, within seven days of receipt, the office must transfer the contribution to a FECA-regulated political committee.[30]

DOJ has interpreted this law to apply to contribution solicitations received through the mail, as well as in person.[31] However, according to DOJ, most infringements of this prohibition, involved computer-generated direct mail campaigns that inadvertently sent fundraising solicitations to prohibited federal workplaces.[32] DOJ has indicated that prosecution in such instances is "unlikely" and will generally prompt a request to remove federal government addresses from the relevant mailing lists.[33] Nonetheless, DOJ cautions that prosecutable violations of this prohibition may arise when solicitations of campaign contributions are considered "shakedowns" of federal employees or in cases of "systematic refusal or failure to comply with" requests to remove addresses of federal properties from mailing lists.[34]

Penalties

DOJ enforces the four political patronage laws outlined above. Violators of the prohibitions on soliciting, making, and intimidating to secure political contributions may be fined under the federal criminal code,[35] or imprisoned not more than three years, or both.[36] Violators of the

[28] *See id.* ("In the Criminal Division's view, Section 606 was not intended to prohibit the consideration of political factors (such as ideology) in the hiring, firing, or assignment of the small category of federal employees who perform policymaking or confidential duties for the President or Members of Congress. In the executive branch, these senior officials either hold jobs on Schedule C of the excepted service, which by law may be offered or terminated on the basis of such factors, or hold direct presidential appointments and by statute serve at the President's pleasure. Section 606 does, however, protect all federal officials, including senior policymakers, from being forced by job-related threats or reprisals to donate to political candidates or causes.").

[29] 18 U.S.C. § 607(a)(1). In the Bipartisan Campaign Reform Act of 2002 (BCRA), Congress clarified that the prohibition is not limited to campaign funds for federal office, but also applies to the solicitation and receipt of campaign funds for state and local elections. P.L. 107-155, Title III, § 302, 116 Stat. 96 (2002).

[30] 18 U.S.C. § 607(b).

[31] *See DOJ Manual, supra* note 10, at 105 (citing U.S. v. Thayer, 209 U.S. 39 (1908) (holding that the statutory predecessor to 18 U.S.C. § 607 applies to a written solicitation sent by mail)).

[32] *See DOJ Manual, supra* note 10, at 107.

[33] *Id.*

[34] *Id.* at 106-107.

[35] 18 U.S.C. § 3571.

[36] *Id.* §§ 602(a)(4), 603(a), 606.

prohibition on soliciting or receiving campaign contributions may be fined up to $5,000, imprisoned as long as three years, or both.[37]

Campaign Finance Laws[38]

In addition to political patronage laws discussed above, federal campaign finance law regulates campaign contributions made to congressional candidates by establishing limits, source restrictions, and disclosure requirements. The Federal Election Campaign Act (FECA)[39] defines a *contribution* to include "any gift, subscription, loan, advance, or deposit of money or anything of value" made "for the purpose of influencing any election for Federal office" or a payment made for compensation of personal services that are rendered to a political committee[40] free of charge.[41] A contribution can be distinguished from an *expenditure* in that a contribution involves giving money to an entity, such as a candidate's campaign committee, while an expenditure involves spending money directly to advocate for the election or defeat of a candidate.[42]

Campaign Contribution Limits and Related Restrictions

FECA provides specific limits on how much individuals can contribute to a congressional candidate.[43] In the current 2019-2020 federal election cycle, an individual can contribute up to $2,800, per election, to a candidate.[44] Therefore, an individual can contribute up to $5,600, per candidate, per two-year election cycle, for both the primary and general elections. These limits are adjusted for inflation in odd-numbered years.[45] Moreover, FECA prohibits cash contributions that, in the aggregate, exceed $100.[46] **Table 1**, below, outlines the major federal campaign contribution limits applicable to the 2019-2020 cycle.

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[37] *Id.* § 607(a)(2)

[38] For a discussion of campaign finance policy, see CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett.

[39] Codified, as amended, at 52 U.S.C. §§ 30101-30145.

[40] *Id.* § 30101(4).

[41] *Id.* § 30101(8)(A)(i), (ii). According to regulations promulgated under FECA, individuals are permitted to volunteer services to a campaign without it constituting a campaign contribution on the condition that the individual is not compensated by anyone else. If the individual is compensated, however, with the exception of certain legal and accounting services, the services generally will constitute an in-kind contribution under FECA. However, the regulations specify that no compensation will be considered paid to any employee under the following conditions: "(a) Paid on an hourly or salaried basis. If an employee is paid on an hourly or salaried basis and is expected to work a particular number of hours per period, no contribution results if the employee engages in political activity during what would otherwise be a regular work period, provided that the taken or released time is made up or completed by the employee within a reasonable time. (b) Paid on commission or piecework basis. No contribution results where an employee engages in political activity during what would otherwise be normal working hours if the employee is paid on a commission or piecework basis, or is paid only for work actually performed and the employee's time is considered his or her own to use as he or she sees fit. (c) Vacation or earned leave time. No contribution results where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time." 11 C.F.R. §§ 100.74, 100.54.

[42] 52 U.S.C. § 30101(9)(A)(i), (ii).

[43] *Id.* § 30116(a).

[44] *See* Fed. Election Comm'n, "Contribution Limits for 2019-20 Federal Elections," available at https://www.fec.gov/resources/cms-content/documents/contribution_limits_chart_2019-2020.pdf (last visited Aug. 14, 2020).

[45] 52 U.S.C. § 30116(a).

[46] *Id.* § 30123.

Table 1. Major Federal Contribution Limits, 2019-2020

(see table notes below for additional information)

	Recipient			
Contributor	**Principal Campaign Committee**	**Multicandidate Committee (most PACs, including leadership PACs)**	**National Party Committee (DSCC; NRCC, etc.)**	**State, District, Local Party Committee**
Individual	$2,800 per election[a]	$5,000 per year	$35,500 per year[a] *Additional $106,500 limit for each special party account*[a,b]	$10,000 per year (combined limit)
Principal Campaign Committee	$2,000 per election	$5,000 per year	Unlimited transfers to party committees	Unlimited transfers to party committees
Multicandidate Committee (most PACs, including leadership PACs)[c]	$5,000 per election	$5,000 per year	$15,000 per year *Additional $45,000 limit for each special party account*[b]	$5,000 per year (combined limit)
State, District, Local Party Committee	$5,000 per election (combined limit)	$5,000 per year (combined limit)	Unlimited transfers to party committees	Unlimited transfers to party committees
National Party Committee	$5,000 per election	$5,000 per year	Unlimited transfers to party committees	Unlimited transfers to party committees

Source: Table 1 in CRS Report R41542, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress*, by R. Sam Garrett, adapted from FEC, "Contribution Limits for 2019-2020 Federal Elections," https://www.fec.gov/resources/cms-content/documents/contribution_limits_chart_2019-2020.pdf (last visited Aug. 14, 2020).

Notes: The table assumes that leadership political action committees (PACs)[47] would qualify for multicandidate status. The original source, noted above, includes additional information and addresses non-multicandidate PACs (which are relatively rare). The national party committee and the national party Senate committee (e.g., the Democratic National Committee (DNC) and the Democratic Senatorial Campaign Committee (DSCC), or the Republican National Committee (RNC) and the National Republican Senatorial Committee (NRSC)) share a combined 2019-2020 per-candidate limit of $49,600 per six-year cycle. This limit is adjusted biennially for inflation.

a. These limits are adjusted biennially for inflation.

b. National party committees may accept these contributions for separate accounts for (1) presidential nominating conventions; (2) recounts and other legal compliance activities; and (3) party buildings. For additional discussion, see CRS Report R43825, *Increased Campaign Contribution Limits in the FY2015 Omnibus Appropriations Law: Frequently Asked Questions*, by R. Sam Garrett.

c. *Multicandidate committees* are those that have been registered with the FEC (or, for Senate committees, the Secretary of the Senate) for at least six months; have received federal contributions from more than 50 people; and (except for state parties) have made contributions to at least five federal candidates. *See* 11 C.F.R. § 100.5(e)(3). In practice, most PACs attain this status automatically over time.

[47] FECA generally defines a "leadership PAC" as a political committee that is established or controlled by a federal office candidate or officeholder, but is not a candidate committee or political party committee. *Id.* § 30104(i)(8)(B).

The Supreme Court has generally upheld the constitutionality of FECA's contribution limits against First Amendment free speech challenges. In the landmark ruling *Buckley v. Valeo*, the Court determined that contribution limits will be upheld if the government can demonstrate that they are a "closely drawn" means of achieving a "sufficiently important" governmental interest.[48] Unlike expenditure limits, which reduce the amount of an individual's or group's expression, the Court opined, contribution limits involve "little direct restraint" on the speech of a contributor.[49] Although the Court acknowledged that a contribution limit restricts an aspect of a contributor's freedom of association, that is, his or her ability to support a candidate, the Court nonetheless determined that a contribution limit still permits symbolic expressions of support and does not infringe on a contributor's freedom to speak about candidates and issues.[50] Reasonable contribution limits, the Court announced, still permit people to engage in independent political expression, associate by volunteering on campaigns, and assist candidates by making limited contributions.[51] Regarding whether a contribution limit is closely drawn, the Court reasoned that it was relevant to examine the *amount* of the limit.[52] Limits that are too low could significantly impede a candidate or political committee from amassing the necessary resources for effective communication.[53] The Court concluded, however, that the FECA contribution limit at issue in *Buckley* would not negatively affect campaign funding.[54]

On the other hand, the *Buckley* Court determined that because they impose a substantial restraint on speech and association, expenditure limits are subject to strict scrutiny, requiring that they be narrowly tailored to serve a compelling governmental interest.[55] Specifically, under the First Amendment, the Court determined that expenditure limits restrict the amount of money a candidate can spend on communications, thereby reducing the number and depth of issues discussed and the size of the audience reached.[56] Such restrictions, the Court determined, are not justified by an overriding governmental interest. That is, because expenditures do not involve money flowing directly to the benefit of a candidate's campaign fund, the risk of quid pro quo corruption does not exist.[57] Further, the Court in *Buckley* rejected the government's asserted interest in equalizing the relative resources of candidates, and in reducing the overall costs of campaigns.[58] Based on a similar premise, the Court rejected the government's interest in limiting a wealthy candidate's ability to draw upon personal wealth to finance his or her campaign, and struck down a law limiting expenditures from personal funds, reasoning that when a candidate self-finances, the risk of corruption is lessened because his or her dependence on outside contributions is reduced.[59]

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[48] 424 U.S. at 25.

[49] *Id.* at 21.

[50] *See id.* at 21, 24.

[51] *See id.* at 28-29.

[52] *See id.* at 21.

[53] *See id.*

[54] *See id.* (determining that there was no indication that the subject contribution limitations "would have any dramatic adverse effect on the funding of campaigns and political associations").

[55] *See id.* at 23.

[56] *See id.*

[57] *See id.*

[58] *See id.* at 53.

[59] *See id.*

In the years since, the Court has applied the doctrinal framework of *Buckley* to uphold what it considers reasonable campaign contribution limits, while invalidating limits it determines are too low to allow a candidate to amass necessary resources for effective campaigning. For example, in *Nixon v. Shrink Missouri Government PAC*, the Court upheld a state law imposing limits on contributions made to candidates running for state office.[60] While observing that contribution limits must be closely drawn to a sufficiently important interest, the Court announced that the *amount* of the limitation "need not be 'fine tuned.'"[61] In contrast, in *Randall v. Sorell*, in a plurality opinion, the Court invalidated a Vermont law that provided that individuals, parties, and political committees were limited to contributing $400 to certain state candidates, per two-year election cycle, without providing for inflation adjustment.[62] While unable to reach consensus on a single opinion, six Justices agreed that Vermont's contribution limits violated First Amendment free-speech guarantees. The plurality opinion written by Justice Breyer, joined by two other Justices, determined that the contribution limits in *Randall* were substantially lower than limits the Court had previously upheld, as well as limits in effect in other states, and that they were not narrowly tailored.[63] The opinion also concluded that the limits substantially restricted candidates, particularly challengers, from being able to raise the funds necessary to run a competitive campaign; impeded parties from getting their candidates elected; and deterred individual citizens from volunteering on campaigns (because the law counted certain volunteer expenses toward a volunteer's individual contribution limit).[64]

In 2019, the Supreme Court, in *Thompson v. Hebdon*,[65] clarified that when considering whether a contribution limit is too low to survive a First Amendment challenge, reviewing courts should apply the test articulated by the plurality in *Randall.* The *Thompson* Court vacated a U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) opinion that had upheld an Alaska law limiting to $500 per year the amount that an individual can contribute to a candidate or an outside group other than a political party.[66] In an unsigned opinion, the Court held that the Ninth Circuit erred by not applying the "precedent" established by the plurality opinion in *Randall*, and remanded the case.[67] According to the Court, a contribution limit will evidence the "danger signs" of being unconstitutionally low if it is "substantially lower" than limits previously upheld by the Court or in effect in other states, and is not adjusted for inflation.[68]

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[60] 528 U.S. 377 (2000).

[61] *Id.* at 387-88 (quoting *Buckley*, 424 U.S. at 30, n. 3).

[62] 548 U.S. 230, 262 (2006).

[63] *See id.* at 261.

[64] *See id.* at 253, 259-60. The opinion agreed with the district court "that the Act's contribution limits 'would reduce the voice of political parties' in Vermont to a 'whisper.'" *Id.* at 259 (quoting Landell v. Sorrell, 118 F. Supp. 2d 459, 487 (D. Vt. 2000)).

[65] 140 S. Ct. 348 (2019) (per curiam).

[66] *See id.* at 349-51.

[67] *Id.* at 350-51.

[68] *Id.* This decision has prompted at least one commentator to argue that while the Supreme Court's ruling in *Randall* was partially based on an assumption that low contribution limits hinder competition in elections generally, and the campaigns of challengers specifically, empirical data belies that assumption. *See* Ciara Torres-Spelliscy, *The Supreme Court Is Killing Contribution Limits Softly; A Few Years from Now They Likely Will Be Dead*, HARV. L. REV. BLOG, (Dec. 29, 2019), https://blog.harvardlawreview.org/the-supreme-court-is-killing-contribution-limits-softly-a-few-years-from-now-they-likely-will-be-dead/.

Treatment of Loans

As mentioned above, FECA expressly defines contributions to include loans made to campaign committees, but exempts from this definition loans that are made from banks, so long as they are made in compliance with applicable law and "in the ordinary course of business."[69] Further, the act specifies that a bank loan to a campaign committee must be evidenced by a written instrument, ensuring repayment on a date certain or in accordance with an amortization schedule, and subject to the lending institution's "usual and customary interest rate."[70] However, the outstanding balance of other loans made to a campaign—for example, personal loans—is considered a campaign contribution.[71] Therefore, the amount of unpaid loans, coupled with other contributions made by an individual to a given candidate or committee, cannot exceed the applicable contribution limit.[72] A loan is considered a contribution until it is fully repaid.[73]

Prohibition on Campaign Contributions Made in the Name of Another: "Straw Donor" or Conduit Ban

In one of the most frequently violated provisions of federal campaign finance law,[74] FECA prohibits contributions made by one person "in the name of another person," and bans candidates from knowingly accepting such contributions.[75] This "straw donor" prohibition serves to prevent an individual, who has already contributed the maximum amount to a given candidate, from circumventing contribution limits by giving money to someone else to contribute to that same candidate.[76] Regulations promulgated under FECA further specify that a corporation is prohibited from reimbursing employees for their campaign contributions through a bonus, expense account, or other form of compensation.[77] Moreover, as discussed below, FECA provides for specific penalties for knowing and willful violations of this provision.[78]

Prohibition on Converting Campaign Contributions for Personal Use

FECA also prohibits a candidate from converting campaign funds for personal use.[79] The act considers a contribution as converted to personal use if it "is used to fulfill any commitment, obligation, or expense … that would exist irrespective of the candidate's" campaign or duties as a federal officeholder.[80] Examples of such expenses include home mortgage, rent, or utility payments; clothing purchases; non-campaign-related car expenses; country club memberships;

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[69] 52 U.S.C. § 30101(8)(B)(vii).

[70] *Id.* § 30101(8)(B)(vii)(II), (III).

[71] 11 C.F.R. § 100.52(b).

[72] *Id.* § 100.52(b)(2).

[73] *Id.*

[74] *See DOJ Manual*, *supra* note 10, at 141.

[75] 52 U.S.C. § 30122.

[76] *See* United States v. O'Donnell, 608 F.3d 546, 549 (9th Cir. 2010), *cert. denied*, 563 U.S. 929 (2011). (observing that straw donor contributions "facilitate attempts by an individual (or campaign) to thwart disclosure requirements and contribution limits").

[77] 11 C.F.R. §114.5(b)(1).

[78] *See infra* "Penalties" section of this report.

[79] 52 U.S.C. § 30114(b).

[80] *Id.* § 30114(b)(2).

vacations; household food; tuition payments; admission to sporting events, concerts, theater performances, or other entertainment not associated with a campaign; and health club fees.[81]

In a 2018 advisory opinion, the FEC determined that a candidate may use campaign funds to pay for child care expenses if they are incurred as "a direct result of … campaign activity."[82] The FEC reasoned that paying for these expenses would comply with FECA because "they would not exist irrespective" of the campaign.[83]

Coordinated Communications Treated As Campaign Contributions

If an outside group makes a political advertisement or otherwise issues a communication in coordination with a candidate's campaign or political party, it may be treated as an in-kind contribution under FECA.[84] Like other contributions, coordinated communications are subject to FECA regulation, including limits and source restrictions, which are discussed in the next section of the report.[85] Specifically, FECA provides that a communication will be considered "coordinated" if it is made "in cooperation, consultation or concert, with, or at the request or suggestion of" the candidate or a party.[86] By contrast, FECA defines an *independent expenditure* to mean an expenditure by an individual or group who expressly advocates the election or defeat of a clearly identified candidate that "is not made in concert or cooperation with or at the request or suggestion of" the candidate or a party.[87]

The regulatory line between coordinated communications and independent expenditures is based on Supreme Court precedent. In various rulings, the Court has determined that the First Amendment does not allow any limits on expenditures that are made independently of a candidate or party because the money is deployed to advance a political point of view separate from a candidate's viewpoint. In other words, the Court has explained, without coordination or "prearrangement" with a candidate, not only is the value of an expenditure decreased, but so is "the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate."[88] Accordingly, the Court has reasoned that independent expenditures do not raise heightened governmental interests in regulation.[89] As the Court has emphasized, the "constitutionally significant fact" of an independent expenditure is the absence of coordination between the candidate and the source of the expenditure,[90] and the independence of such spending is easily distinguishable when it is made "without any candidate's approval (or wink or nod)."[91]

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[81] 52 U.S.C. § 30114(b)(2); 11 C.F.R. §113.1(g).

[82] Fed. Election Comm'n Advisory Opinion (AO) 2018-06.

[83] *Id*. at 3.

[84] 11 C.F.R. §109.21(b). This portion of the report contains a summary discussion of what constitutes coordination under federal campaign finance law. For further information see FECA regulations and the FEC webpage, *Coordinated Communications*, available at https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/coordinated-communications/ (last visited Aug. 17, 2020). *See also* CRS Report RS22644, *Coordinated Party Expenditures in Federal Elections: An Overview*, by R. Sam Garrett and L. Paige Whitaker.

[85] 52 U.S.C. § 30116(a)(7)(B)(i),(ii).

[86] *Id*. § 30116(a)(7)(B)(i),(ii).

[87] *Id*. § 30101(17).

[88] *Citizens United*, 558 U.S. 310, 357 (2010) (citing *Buckley*, 424 U.S. at 47).

[89] *See Buckley*, 424 U.S. 1, 47 (1976); Fed. Election Comm'n v. Nat'l Conservative Political Action Comm. (NCPAC), 470 U.S. 480 (1985)); Colorado Republican Fed. Campaign Comm. v. Fed. Election Comm'n (Colorado I), 518 U.S. 604, 617 (1996).

[90] *See Colorado I*, 518 U.S. at 617.

[91] Fed. Election Comm'n v. Colorado Republican Fed. Campaign Comm. (Colorado II), 533 U.S. 431, 442 (2001).

Hence, individuals, political parties, political action committees (PACs), super PACs,[92] and other organizations can engage in unlimited independent expenditures. Furthermore, as a result of the Court's ruling in *Citizens United v. Federal Election Commission*,[93] corporations and labor unions have a constitutionally protected right to engage in unlimited independent expenditures directly from their revenue funds or general treasuries and are not required to establish a PAC in order to conduct such spending.[94]

As summarized below, regulations promulgated under FECA set forth specific criteria establishing when a communication by an organization will be considered coordinated with a candidate or a party and thereby treated as a campaign contribution.[95] Specifically, the regulations set forth a three-pronged test whereby if three standards—payment, content, and conduct—are met, a communication will be considered coordinated.

Payment. In general, the regulations provide that the "payment" prong is met if the communication "[i]s paid for, in whole or in part, by a person other than that candidate, authorized [candidate] committee, or political party."[96]

Content. The "content" prong addresses the subject and timing of a communication. The content standard does not require that a communication contain express advocacy (i.e., expressly advocating the election or defeat of a clearly identified candidate, using terms such as "vote for," "elect," or "vote against").[97] Generally, the regulations provide that the content standard is met if a communication is

- an electioneering communication, defined to include a broadcast, cable, or satellite communication that refers to a federal candidate, made within 60 days of a general election or 30 days of a primary;[98]
- a public communication that distributes or republishes, at least in part, candidate campaign materials, with certain exceptions;
- a public communication "that expressly advocates ... election or defeat of a clearly identified candidate or its "functional equivalent"; or
- a public communication that, among other things, refers to a candidate or party and, for House or Senate elections, is disseminated within 90 days before a primary or general election or, for presidential and vice presidential elections, is disseminated within 120 days before a primary or nominating convention or caucus.[99]

Conduct. The "conduct" prong addresses interactions between the person paying for the communication and the relevant candidate or party. Generally, the regulations specify that the conduct standard is met if

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[92] *See infra* "Limits on Campaign Contributions to Super PACs" section of this report.

[93] 558 U.S. 310 (2010).

[94] *See id.* at 337-39. ("A PAC is a separate association from the corporation. So the PAC exemption from § 441b's expenditure ban, § 441b(b)(2), does not allow corporations to speak. Even if a PAC could somehow allow a corporation to speak—and it does not—the option to form PACs does not alleviate the First Amendment problems with § 441b."). *Id.* at 337.

[95] 11 C.F.R § 109.21.

[96] *Id.* § 109.21(a).

[97] *Id.* § 109.21(c).

[98] 52 U.S.C. § 30104(f)(3)); 11 C.F.R. §100.29.

[99] 11 C.F.R §§ 109.21(c), 109.23.

- the communication is created at the "request or suggestion of" a candidate or party, or at the suggestion of the funder of the communication and the candidate or party assents to the suggestion;
- the candidate or party is "materially involved" in decisions regarding the communication;
- the communication is created after "substantial discussions" between the funder of the communication and the candidate or party;
- the funder of the communication employs a "common vendor," who meets certain criteria, (including having developed a media strategy for the candidate or a party during the prior 120 days), to create the communication; or
- a person who has been an employee or independent contractor of a candidate or party during the previous 120 days uses or conveys certain information to the funder of the communication.[100]

Exceptions or "Safe Harbors." FECA regulations also set forth several "safe harbors" exempting communications from being deemed coordinated. A sampling of these safe harbors are summarized below.

- *Endorsements and Solicitations*. A public communication in which a federal candidate endorses or solicits funds for another federal or nonfederal candidate is not considered coordinated, unless it "promotes, supports, attacks, or opposes" the endorsing candidate or another candidate running for the same office.[101]
- *Firewalls*. The "conduct" standards are not met if the commercial vendor, former employee, or political committee enter into and comply with a firewall policy. The policy must meet certain requirements, including a prohibition on the flow of information between individuals providing services for the funder of the communication and individuals providing services to the candidate or the candidate's opponent or a party. The firewall policy must be in writing and distributed to all relevant employees, consultants, and clients.[102]
- *Publicly Available Information*. If information material to the creation of a communication was obtained from a publicly available source, the other "conduct" standards are not met, unless the communication was made at the "request or suggestion" of a candidate or party, or at the suggestion of the funder of the communication and the candidate or party assents to the suggestion.[103]
- *Legislative Inquiries.* A candidate's or party's response to an inquiry about its position on a legislative or policy issue does not meet the "conduct" standard, unless such communication involves the campaign's plans, projects, activities, or needs.[104]

[100] *Id*. § 109.21(d).

[101] *Id*. § 109.21 (g).

[102] *Id*. § 109.21(h).

[103] *Id*. § 109.21(d).

[104] *Id*. § 109.21(f).

Campaign Contribution Limits Held Unconstitutional

Through a series of cases, the Supreme Court has invalidated several provisions of FECA as unconstitutional under the First Amendment.[105] As discussed below, these FECA provisions established aggregate contribution limits, limits on contributions to candidates whose opponents significantly self-finance, and limits on contributions by minors. Furthermore, in a ruling that provided the legal underpinning for the establishment of super PACs, an appellate court ruled that limits on contributions to groups that make only independent expenditures are unconstitutional.[106] Should Congress decide to enact legislation that further regulates campaign contributions, these rulings provide guidance as to the constitutional bounds reviewing courts may apply to such limits.

Aggregate Limits on Campaign Contributions

In contrast to the base contribution limits depicted in **Table 1** above, until the Supreme Court's 2014 ruling in *McCutcheon v. Federal Election Commission*,[107] FECA also provided for limits on the amount of money a donor could contribute in total to all candidates, parties, and political committees.[108] These limits are known as *aggregate* contribution limits. In *McCutcheon*, the Supreme Court held that aggregate contribution limits are unconstitutional under the First Amendment.[109] Characterizing them as an "outright ban" on further contributions once the aggregate amount has been reached, the Court determined that they violate the First Amendment by infringing on political expression and association rights, without furthering the governmental interest of preventing quid pro quo corruption or its appearance.[110]

Notably, it was in *McCutcheon* that the Court announced that the prevention of "'quid pro quo' corruption or its appearance" is the only legitimate governmental interest for restricting campaign contributions.[111] In reviewing prior decisions, the Court noted that it has consistently rejected campaign finance regulation based on other governmental objectives, such as goals to "level the playing field," "level electoral opportunities," or "equaliz[e] the financial resources of candidates."[112] Furthermore, while acknowledging that the Court's campaign finance jurisprudence has not always discussed the concept of corruption clearly and consistently, and that the line between quid pro quo corruption and general influence may sometimes seem vague, the *McCutcheon* Court held that efforts to ameliorate "influence over or access to" elected officials or political parties do not constitute a permissible governmental interest.[113] Although

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[105] *See infra* "Aggregate Limits on Campaign Contributions"; "Limits on Campaign Contributions to Candidates Whose Opponents Self-Finance"; and "Limits on Campaign Contributions Made by Minors" sections of this report.

[106] *See infra* "Limits on Campaign Contributions to Super PACs" section of this report.

[107] 572 U.S. 185 (2014). For discussion of the policy impact of *McCutcheon*, see CRS Report R43334, *Campaign Contribution Limits: Selected Questions About McCutcheon and Policy Issues for Congress*, by R. Sam Garrett.

[108] 52 U.S.C. § 30116(a)(3).

[109] *See McCutcheon*, 572 U.S. at 227 ("For the reasons set forth, we conclude that the aggregate limits on contributions do not further the only governmental interest this Court accepted as legitimate in *Buckley*. They instead intrude without justification on a citizen's ability to exercise the most fundamental First Amendment activities.") (citations and internal quotation marks omitted).

[110] *Id*. at 204.

[111] *Id*. at 192 (citing Citizens United v. Fed. Election Comm'n, 558 U.S. at 359). The Court explained that "[t]he hallmark of corruption is the financial quid pro quo: dollars for political favors." *Id*. (quoting Fed. Election Comm'n v. Nat'l Conservative Political Action Comm., 470 U.S. at 480, 497 (1985)).

[112] *Id*. at 207.

[113] *Id*. at 208.

McCutcheon did not expressly adopt a stricter standard of review, its announcement that the prevention of quid pro quo corruption or its appearance is the only constitutionally permissible justification for imposing campaign contribution limits may constrain policy options in this area.

Limits on Campaign Contributions to Candidates Whose Opponents Self-Finance

In *Davis v. Federal Election Commission*,[114] the Supreme Court held that a statute establishing a series of staggered increases in contribution limits for candidates whose opponents significantly self-finance their campaigns violates the First Amendment because the penalty imposed on expenditures of personal funds is not justified by the compelling governmental interest of lessening corruption or its appearance.[115] Enacted as part of Bipartisan Campaign Reform Act of 2002 (BCRA), the invalidated provision of law is known as the "Millionaire's Amendment."[116] The Millionaire's Amendment provided a complex statutory formula (using limits that were in effect at the time the Court considered *Davis*) requiring that if a candidate for the House of Representatives spent more than $350,000 of personal funds during an election cycle, the individual contribution limits applicable to her opponent would increase up to three-fold (from $2,300 to $6,900, per election, based on limits in-place at the time). Similarly, for Senate candidates, a separate provision generally raised individual contribution limits for a candidate whose opponent exceeded a designated threshold level of personal campaign funding based on the number of eligible voters in the state.[117] For both House and Senate candidates, the increased contribution limits were eliminated when parity in spending was reached between the two candidates.

While acknowledging the long history of jurisprudence upholding the constitutionality of individual contribution limits, the Court emphasized its definitive rejection of any limits on a candidate's expenditure of personal funds to finance campaign speech.[118] The Court reasoned that limits on a candidate's right to advocate for his or her own election are not justified by the compelling governmental interest of preventing corruption—instead, the use of personal funds actually lessens a candidate's reliance on outside contributions and thereby counteracts coercive pressures and risks of abuse that contribution limits seek to avoid.[119] While conceding that the Millionaire's Amendment did not directly impose a limit on a candidate's expenditure of personal funds, the Court concluded that it impermissibly required a candidate to make a choice between the right of free political expression and being subjected to discriminatory contribution limits, and created a fundraising advantage for his or her opponents.[120] In contrast, if the law had simply increased the contribution limits for all candidates—both the self-financed candidate as well as the opponent—the Court opined that it would have passed constitutional muster.[121] Intrinsically,

[114] 554 U.S. 724 (2008).

[115] *See id.* at 740, 744.

[116] P.L. 107-155, § 319(a), 116 Stat. 81 (2002) (codified at 52 U.S.C. § 30117(a)) (establishing increased contribution limits for House candidates whose opponents significantly self-finance their campaigns).

[117] *Id.* at § 304 (codified at 52 U.S.C. § 30116(i)) (establishing increased contribution limits for Senate candidates whose opponents significantly self-finance their campaigns).

[118] *Davis*, 554 U.S. at 738.

[119] *See id.* In response to the FEC's argument that the statute's "asymmetrical limits" are justified because they level the playing field for candidates of differing personal wealth, the Court explained that its campaign finance precedent offers no support for this rationale serving as a compelling governmental interest. *Id.* at 741.

[120] *See id.*

[121] *See id.* at 737.

candidates have different strengths based on factors such as personal wealth, fundraising ability, celebrity status, or a well-known family name, and by attempting to level electoral opportunities, the Court reasoned, Congress is deciding which candidate strengths should be allowed to affect an election.[122] And using election law to influence voters' choices, the Court warned, is a "dangerous business."[123]

Limits on Campaign Contributions Made by Minors

In *McConnell v. Federal Election Commission*,[124] the Court unanimously invalidated as unconstitutional under the First Amendment a BCRA provision prohibiting individuals age 17 or younger from making contributions to candidates and political parties.[125] Reasoning that minors enjoy First Amendment protection and that contribution limits impinge on such rights, the Court determined that the prohibition was not closely drawn to serve a sufficiently important government interest.[126]

In response to the government's assertion that such a prohibition protects against corruption by conduit—that is, parents donating through their minor children to circumvent contribution limits—the Court saw little evidence to support the existence of this type of evasion.[127] Furthermore, the Court postulated that such circumvention of contribution limits may be deterred by the FECA provision prohibiting contributions in the name of another person, discussed above, and the knowing acceptance of contributions made in the name of another person.[128] Even assuming that a sufficiently important interest could be provided in support of the prohibition, the Court determined that the prohibition was over inclusive.[129] While observing that various states have adopted more tailored approaches to address this issue—for example, by counting contributions by minors toward the total permitted for a parent or family unit, imposing a lower cap on contributions by minors, and prohibiting contributions by very young children—the Court expressly declined to decide whether any such alternatives would pass muster.[130]

Limits on Campaign Contributions to Super PACs

Providing the legal underpinning for the creation of super PACs, the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) in 2010 held that limits on contributions to groups making only independent expenditures are unconstitutional.[131] Relying on the *Citizens United*[132] Court's holding that independent expenditures do not give rise to corruption, the D.C. Circuit, in

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[122] *See id.*

[123] *Id.*

[124] 540 U.S. 93 (2003).

[125] *See id.* at 232 (invalidating P.L. 107-155, § 318, (codified at 52 U.S.C. § 30126)).

[126] *See id.* at 231-32 (citing Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 511-513 (1969); *Buckley*, 424 U.S. at 20-22).

[127] *See id.*

[128] *See id.*

[129] *See id.* at 232.

[130] *See id.*

[131] *See* SpeechNow.org v. Fed. Election Comm'n, 599 F.3d 686 (D.C. Cir. 2010), *cert. denied*, Keating v. Fed. Election Comm'n, 562 U.S. 1003 (2010).

[132] *See Citizens United*, 558 U.S. at 310 (2010) ("[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent ... alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate." *Citizens United*, 558 U.S. at 345 (quoting *Buckley*, 424 U.S. at 47).

SpeechNow.org v. Federal Election Commission,[133] concluded that campaign contributions to groups making only independent expenditures similarly do not give rise to corruption.[134] In *Citizens United*, the Court relied, in part, on its determination in *Buckley* that the "absence of prearrangement and coordination of an expenditure" mitigates the risk that expenditures lead to quid pro quo corruption, and therefore, they cannot be limited.[135] Accordingly, the D.C. Circuit reasoned that the government does not have an anticorruption interest in limiting contributions to groups that make only independent expenditures, and concluded that FECA contribution limits are unconstitutional as applied to such groups.[136] These groups have come to be known as super PACs or Independent Expenditure-only Committees.[137]

Since *SpeechNow* was decided, the FEC has issued advisory opinions providing guidance about the establishment and administration of super PACs. For example, the FEC concluded that a corporation that is exempt from tax under Section 501(c)(4) of the Internal Revenue Code may establish and administer a political committee that makes only independent expenditures, and may accept unlimited contributions from individuals.[138] The FEC confirmed that such committees may also accept unlimited contributions from corporations, labor unions, and political committees, in addition to individuals.[139] The FEC also determined, however, that when fundraising for super PACs, federal candidates, officeholders, and party officials are subject to FECA fundraising restrictions.[140] That is, in contrast to others, federal candidates, officeholders, and party officials can solicit a maximum of $5,000 in contributions from individuals and federal PACs.

Campaign Contribution Source Restrictions

Referred to as source restrictions, federal campaign finance law contains several bans on *who* may make contributions to congressional candidates. As discussed below, FECA prohibits contributions by corporations and labor unions from their general treasuries; federal government contractors; and foreign nationals.[141]

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[133] 599 F.3d 686 (D.C. Cir. 2010), *cert. denied*, Keating v. Fed. Election Comm'n, 562 U.S. 1003 (2010).

[134] *See id.* at 694-95.

[135] *Citizens United,* 558 U.S. at 357. ("Unlike contributions, such independent expenditures may well provide little assistance to the candidate's campaign and indeed may prove counterproductive. The absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate.") (citing *Buckley*, 424 U.S. at 47).

[136] *See SpeechNow.org.*, 599 F. 3d at 694-96. *See also,* Carey v. Fed. Election Comm'n, 791 F. Supp. 2d 121 (D.D.C. 2011) (enjoining the FEC from enforcing contribution limits against a nonconnected PAC—*i.e.*, a PAC unaffiliated with a corporation or union—for its independent expenditures, as long as the PAC maintained a bank account for its unlimited contributions separate from its account subject to limits; proportionally paid related administrative costs; and complied with the applicable monetary limits of hard money contributions).

[137] For further discussion, see CRS Report R42042, *Super PACs in Federal Elections: Overview and Issues for Congress*, by R. Sam Garrett.

[138] Fed. Election Comm'n AO 2010-09.

[139] Fed. Election Comm'n AO 2010-11.

[140] Fed. Election Comm'n AO 2011-12.

[141] *See infra* "Prohibition on Corporate and Labor Union Campaign Contributions: PAC Required"; "Prohibition on Federal Contractor Campaign Contributions: "Pay-to-Play" Ban"; and "Prohibition on Foreign National Campaign Contributions" sections of this report.

Prohibition on Corporate and Labor Union Campaign Contributions: PAC Required

FECA prohibits contributions by corporations and labor unions from their own funds or "general treasuries."[142] Candidates, however, may accept contributions from separate segregated funds or political action committees (PACs) that are established and administered by such entities.[143] Although in *Citizens United*, the Supreme Court invalidated the federal ban on corporate treasury funding of independent expenditures, it did not affect the ban on corporate *contributions* to candidates and parties.[144]

Providing the most recent precedent on this restriction, in *Federal Election Commission v. Beaumont*, the Court in 2003 upheld the constitutionality of the prohibition on corporations making direct campaign contributions from their general treasuries in connection with federal elections.[145] As a threshold matter, the Court observed that in prior campaign finance cases, it has determined that limits on contributions are more clearly justified under the First Amendment than limits on expenditures.[146] The Court also noted that large, unlimited contributions can threaten "political integrity," necessitating restrictions in order to counter corruption or its appearance.[147] Regarding corporations specifically, the Court determined that the corporate structure requires careful regulation to counter the "misuse of corporate advantages."[148] Further, the Court cautioned that without the corporate contribution ban, corporate employees and shareholders could be "induce[d] to circumvent" their individual contribution limits by funneling money through the corporation.[149] Accordingly, the *Beaumont* Court reaffirmed the constitutionality of the prohibition on corporations making direct treasury contributions in connection with federal elections.[150]

Prohibition on Federal Contractor Campaign Contributions: "Pay-to-Play" Ban

Another type of source restriction—known as a "pay-to-play" prohibition—bans federal office candidates from accepting or soliciting contributions from federal government contractors.[151] Pay-to-play laws generally serve to restrict officials from conditioning government contracts or benefits on political support in the form of campaign contributions to the controlling political party or public officials. This FECA prohibition applies at any time between the earlier of the start

[142] 52 U.S.C. § 30118(a).

[143] *Id.* § 30118(b)(2)(C). FECA prohibits such PACs from soliciting contributions beyond a restricted class set forth in the statute, including, for corporate PACs, their stockholders and families and executive or administrative personnel and their families; and for labor union PACs, their members and families. *Id.* § 30118(b)(4)(A), (B).

[144] 558 U.S. 310 (2010). For further discussion of *Citizens United*, see CRS Report R45320, *Campaign Finance Law: An Analysis of Key Issues, Recent Developments, and Constitutional Considerations for Legislation*, by L. Paige Whitaker, at 19-21.

[145] *See* Fed. Election Comm'n v. Beaumont, 539 U.S. 146, 163 (2003).

[146] *See id.* at 155-56 ("As we said in *Colorado Republican*, 'limits on contributions are more clearly justified by a link to political corruption than limits on other kinds of ... political spending are.'") (quoting *Colorado II*, 533 U.S. at 440-41)).

[147] *Id.* at 154-55.

[148] *Id.* at 155.

[149] *Id.* (quoting *Colorado II*, 533 U.S. at 457).

[150] *See id.* at 163 (determining that "the regulatory burdens on PACs, including restrictions on their ability to solicit funds, [do not] render[] a PAC unconstitutional as an advocacy corporation's sole avenue for making political contributions.")

[151] 52 U.S.C. § 30119(a).

of contract negotiations or when the requests for proposals are sent out, and the termination of negotiations or completion of contract[152] performance, whichever is later.[153] FECA regulations further specify that the ban on contractor contributions applies to the assets of a partnership that is a federal contractor, but permits individual partners to make contributions from personal assets.[154] The ban also applies to the business, personal, and other assets under the control of individuals and sole proprietors who are federal contractors, although the spouses and employees of these contractors may make contributions from their personal funds.[155] As with corporate direct or "treasury fund" contributions, FECA provides an exception to the ban on government contractor contributions that permits candidates to accept contributions from PACs that are established and administered by corporations or labor unions contracting with the government.[156]

In 2015, a unanimous en banc U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) upheld the ban on individual federal government contractors making contributions to candidates, parties, and traditional PACs.[157] The court's ruling did not address the law as applied to federal government contractors that are corporations or other entities, that make independent expenditures, or that make contributions to super PACs.[158] The 11-judge court held that the law comported with both the First Amendment and the equal protection component of the Fifth Amendment.[159] Applying the standard of review for contribution limits articulated by the Supreme Court in *Buckley*, the D.C. Circuit held that the federal ban is a "closely drawn" means of serving the "sufficiently important" government interest of guarding against quid pro quo corruption and its appearance, and protecting merit-based administration of federal contracts.[160] Further, the court held that the ban is closely drawn to the government's interests because it does not restrict contractors from engaging in other types of political engagement, including fundraising or campaigning.[161] The number of convictions for pay-to-play infractions, dating back to when the ban was first enacted in 1940,[162] justifies its continued existence, according to the

[152] The term contract includes "[a] sole source, negotiated, or advertised procurement." 11 C.F.R. §115.1(c)(1).

[153] 11 C.F.R. § 115.1(b).

[154] *Id*. § 115.4.

[155] *Id*. § 115.5.

[156] 52 U.S.C. § 30119(b).

[157] *See* Wagner v. Fed. Election Comm'n, 793 F.3d 1 (D.C. Cir. 2015), *cert. denied sub nom*. Miller v. Fed. Election Comm'n, 136 S. Ct. 895 (2016).

[158] *See id*. at 3-4.

[159] *See id*. at 32-33.

[160] *Id*. at 21-26.

[161] *See id*. at 25.

[162] Congress originally adopted the prohibition in 1940 amendments to the Hatch Act, PUB. L. NO. 76-753, § 5(a), 54 Stat. 772 (1940). Federal procurement contract laws and regulations generally stress competitive selection of vendors and attempt to protect the federal procurement and contracting process from political or partisan influences. For example, when using "simplified acquisition procedures," contract officers are instructed to "obtain supplies and services from the source whose offer is the most advantageous to the Government," 48 C.F.R. § 13.104; when using sealed bidding, the contract is to be made with a "responsible bidder whose bid ... will be most advantageous to the Government, considering only price and the price-related factors," *Id*. § 14.408-1(a)); and when using contracting by negotiation "cost or price" plays a "dominant role" in source selection, but other "tradeoff" factors, such as "the risk of unsuccessful contract performance," may properly be weighed to determine "the best interest of the Government" in a contract, *Id*. §§ 15.101, 15.101-1, 15.101-2, 15.304. Contracts may not be awarded on the basis of personal or political favoritism, and all potential contractors should be treated "with complete impartiality and with preferential treatment for none," *Id*. §§ 1.102-2(c)(3), 3.101-1. General ethical standards in the executive branch similarly note that an executive official is to "act impartially and not give preferential treatment to any private organization or individual." 5 C.F.R. § 2635.101(b)(8).

D.C. Circuit, because the risk of quid pro quo corruption and its appearance has not dissipated. According to the D.C. Circuit, this suggests that if the ban were no longer in effect, "more money in exchange for contracts would flow through the same channels already on display."[163] In 2016, the Supreme Court declined to hear an appeal of the ruling.[164]

Prohibition on Foreign National Campaign Contributions

FECA generally prohibits foreign nationals from donating or spending money in connection with any federal, state, or local election.[165] For the purposes of this prohibition, a foreign national is defined to include a foreign government, a foreign political party, and a foreign citizen, excepting those holding dual U.S. citizenship and those admitted as lawful permanent residents of the United States (i.e., "green card" holders).[166] Specifically, the law prohibits foreign nationals from "directly or indirectly" making a contribution or donation of money "or other thing of value" in connection with any U.S. election, or making a promise to do so, either expressly or implied. The law also prohibitions foreign nationals from making a contribution or donation to a political party.[167] Furthermore, as with other coordinated expenditures, this ban on contributions includes any communication that a foreign national makes in coordination with a candidate's campaign or political party, which would be treated as an in-kind contribution.[168] In addition, FECA expressly prohibits a candidate from soliciting, accepting, or receiving contributions from foreign nationals.[169]

FECA regulations further specify that foreign nationals are prohibited from directing or participating in the decision making process of entities involved in U.S. elections, including decisions regarding the making of contributions, donations, expenditures, or disbursements in connection with any U.S. election or decisions concerning the administration of a political committee.[170] In a series of advisory opinions, the FEC has provided specific guidance for compliance with the restrictions on foreign nationals. For example, the FEC has determined that a U.S. corporation that is a subsidiary of a foreign corporation may establish a PAC that makes contributions to federal candidates as long as the foreign parent does not finance any contributions either directly or through a subsidiary, and no foreign national participates in PAC operations and decision making, including regarding campaign contributions.[171]

In 2012, the Supreme Court summarily affirmed a three-judge federal district court panel ruling that upheld the constitutionality of the prohibition on foreign nationals making campaign contributions and independent expenditures.[172] In *Bluman v. Federal Election Commission*, a

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[163] *See Wagner,* 793 F.3d at 18. ("More recent evidence confirms that human nature has not changed since corrupt quid pro quos and other attacks on merit-based administration first spurred the development of the present legislative scheme. Of course, we would not expect to find—and we cannot demand—continuing evidence of large-scale quid pro quo corruption or coercion involving federal contractor contributions because such contributions have been banned since 1940."). *Id*. at 14.

[164] *See* Miller v. Fed. Election Comm'n, 136 S. Ct. 895 (2016).

[165] 52 U.S.C. § 30121(a).

[166] *Id*. § 30121(b)(2).

[167] *Id*. § 30121(a)(2).

[168] *See supra* "Coordinated Communications Treated As Campaign Contributions" section of this report.

[169] 52 U.S.C. § 30121(a)(1)(C).

[170] *Id*. § 110.20(i).

[171] *See* Fed. Election Comm'n AOs 2009-14; 2006-15; 2000-17; 1995-15; 1992-16; 1990-08; and 1985-03.

[172] *See* Bluman v. Fed. Election Comm'n, 800 F. Supp. 2d 281 (D.D.C. 2011), *summ. aff'd,* 565 U.S. 1104 (2012).

federal district court held that for the purposes of First Amendment analysis, the United States has a compelling interest in limiting foreign citizen participation in American democratic self-government, thereby preventing foreign influence over the U.S. political process.[173] A key element of a national political community, the court observed, is that "foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government."[174] The district court in *Bluman* interpreted the ban on independent expenditures to apply only to foreign nationals engaging in express advocacy and not issue advocacy.[175] In other words, under the court's interpretation, foreign nationals remain free to engage in "speaking out about issues or spending money to advocate their views about issues."[176] As to the parameters of express advocacy, the district court defined the term as an expenditure for "express campaign speech" or its "functional equivalent," meaning that it "is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[177]

Campaign Contribution Disclosure Requirements

Under FECA, candidate campaign and other political committees must register with the FEC[178] and comply with disclosure requirements.[179] Such requirements include filing periodic reports disclosing the total amount of all contributions received, and the name, address, occupation, and employer of any person who contributes more than $200 during a calendar year.[180]

The Supreme Court has generally upheld the constitutionality of disclosure requirements as substantially related to the governmental interest of safeguarding the integrity of the electoral process by promoting transparency and accountability.[181] In *Buckley*, the Court identified three governmental interests justifying FECA disclosure requirements.[182] First, the Court determined, disclosure serves an informational interest by providing the electorate with information as to the source of campaign money, how it is spent, and "the interests to which a candidate is most likely to be responsive."[183] Second, the Court stated that disclosure serves to deter corruption and its appearance by uncovering large contributions and expenditures "to the light of publicity," observing that voters with information regarding a candidate's highest donors are better able to detect "post-election special favors" by an officeholder in exchange for the contributions.[184]

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[173] *Id*. at 288. The court in *Bluman* did not ultimately decide which type of scrutiny to apply because the statute in dispute involves both the First Amendment and national security, as well as limits on both contributions and expenditures. Therefore, the court assumed for the sake of argument that it should apply a "strict scrutiny" analysis (which requires that a statute be narrowly tailored to serve a compelling governmental interest), and found that the prohibition at issue passed muster even under that level of scrutiny. *Id*. at 285.

[174] *Id*.

[175] *See id*. at 290.

[176] *Id*. at 290.

[177] *Id*. at 284-85 (citing Fed. Election Comm'n v. Wisconsin Right to Life, Inc., 551 U.S. 449, 456, 469-70 (2007)).

[178] 52 U.S.C. § 30103.

[179] *Id*. § 30104.

[180] *Id*. §§ 30104(b)(3), 30101(13).

[181] *See, e.g.*, *Buckley*, 424 U.S. at 68-84; *Citizens United*, 558 U.S. at 366-371; Doe v. Reed, 561 U.S. 186 (2010).

[182] *See Buckley*, 424 U.S. at 66-68.

[183] *Id*. at 66-67.

[184] *Id*. at 67.

Third, the Court identified disclosure requirements as an essential method of detecting violations to refer to law enforcement.[185]

Expanding on its holding in *Buckley*, the Court in *Citizens United* upheld FECA's disclosure requirements for electioneering communications as applied to a political movie and broadcast advertisements promoting the movie.[186] Citing *Buckley*, the Court determined that while they may burden the ability to speak, disclosure requirements "impose no ceiling on campaign-related activities" and "do not prevent anyone from speaking."[187] Accordingly, the Court evaluated the requirements under a standard of "exacting scrutiny," a less-rigorous standard than the "strict scrutiny" standard the Court has used to evaluate restrictions on campaign spending.[188] Exacting scrutiny requires a "substantial relation" between the disclosure requirement and a "sufficiently important" government interest.[189] Holding that the "informational interest alone is sufficient to justify" the disclosure requirements at issue in the case, the Court did not evaluate the anticorruption and law enforcement interests that it had identified in *Buckley*.[190] In response to the argument that disclosure requirements could deter donations to an organization because donors may fear retaliation once their identity becomes known, the Court stated that such requirements would be unconstitutional as applied to an organization where there was a reasonable probability that its donors would be subject to threats, harassment, or reprisals.[191]

Penalties

Generally, federal campaign finance law may penalize both the contributor for making an unlawful contribution as well as the federal office candidate for receiving an improper contribution, and provides for both civil and criminal penalties.[192] For civil penalties, violators may be subject to fines that are based on the value of the illegal contribution.[193] For criminal penalties, FECA provides that any person who "knowingly and willfully" commits a violation of any provision of the act that involves the making, receiving, or reporting of any contribution, donation, or expenditure of $25,000 or more per calendar year shall be fined under the federal criminal code[194] or imprisoned for not more than five years, or both.[195] If the amount involved is $2,000 or more per calendar year, but is less than $25,000, the act provides for a fine under the federal criminal code,[196] or imprisonment for not more than one year, or both.[197]

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[185] *See id.* at 66-68.

[186] *See Citizens United*, 558 U.S. at 366-371.

[187] *Id.* at 366 (quoting *Buckley*, 424 U.S. at 64).

[188] *See id.* at 366-67.

[189] *Id.*

[190] *Id.* at 369.

[191] *See id.* at 370; NAACP v. Alabama, 357 U.S. 449, 462-63 (1958).

[192] In addition to the penalties discussed, FECA provides specific penalties for violations of 52 U.S.C. § 30118(b)(3), the prohibition against coerced contributions to certain PACs, and 52 U.S.C. § 30124, the prohibition on fraudulent misrepresentation of campaign authority.

[193] 52 U.S.C. § 30109(a),

[194] 18 U.S.C. § 3571.

[195] 52 U.S.C. § 30109(d)(1)(A)(i).

[196] 18 U.S.C. § 3571.

[197] 52 U.S.C. § 30109(d)(1)(A)(ii).

FECA provides for heightened penalties for certain knowing and willful violations of the prohibition on contributions made by one person "in the name of another person,"[198] as discussed earlier in this report.[199] In addition to the possibility of fines being imposed, for violations of this provision involving amounts over $10,000 per calendar year, but less than $25,000, violators could be subject to imprisonment for not more than two years.[200]

In most instances, DOJ initiates the prosecution of criminal violations under FECA, but the law also authorizes the FEC to refer apparent violations to DOJ for criminal prosecution under certain circumstances.[201] Specifically, the FEC may make referrals to DOJ if, by an affirmative vote of four, it determines that there is probable cause of a knowing and willful violation of FECA involving a contribution or expenditure aggregating over $2,000 during a calendar year, the FEC may refer the parent violation to the U.S. Attorney General.[202] In such instances, the FEC is not required to attempt to correct or prevent such violation.[203]

Constitutional Considerations for Policy Options

Should Congress decide to enact legislation that further regulates campaign contributions, the Supreme Court's campaign finance jurisprudence provides guidance as to the constitutional bounds reviewing courts may apply. As discussed, the Court has invalidated contribution limits in both federal and state law, including

- individual, party, and political committee contribution limits that the Court deemed to be unreasonably low;[204]
- limits on how much money a donor may contribute in total to all candidates, parties, and political committees, i.e., "aggregate limits";[205]

[198] *Id.* § 30122.

[199] *See supra* "Prohibition on Campaign Contributions Made in the Name of Another: "Straw Donor" or Conduit Ban" section of this report.

[200] 52 U.S.C. § 30109(d)(1)(D).

[201] According to a 2015 media report, since 2008, the FEC had referred no campaign finance enforcement cases to DOJ for criminal prosecution, and prior to that, such referrals were infrequent. *See* Kenneth P. Doyle, *FEC Rarely Votes to Refer Criminal Cases to Justice*, Bloomberg BNA Daily Report for Executives (July 29, 2015), http://www.bna.com/fec-rarely-votes-n17179934048.

[202] 52 U.S.C. § 30109(a)(5)(C). In addition, FECA provides that the FEC may make referrals to DOJ if, by an affirmative vote of four, it determines that there is probable cause of a knowing and willful violation of the Presidential Election Campaign Fund Act, codified at 26 U.S.C. § 9001 et seq., or the Presidential Primary Matching Payment Account Act, codified at *id.* § 9031 et seq.

[203] *Id.* § 30109(a)(5)(C).

[204] *See Randall*, 548 U.S. at 262 (invalidating a Vermont law that included a limit of $400 on individual, party, and political committee contributions to certain state candidates, per two-year election cycle, without providing for inflation adjustment); Thompson, 140 S. Ct. 350-51 (vacating an appellate court ruling that upheld an Alaska law limiting to $500 per year the amount that an individual can contribute to a candidate or an outside group other than a political party). *See supra* "Campaign Contribution Limits and Related Restrictions" section of this report.

[205] *See McCutcheon*, 572 U.S. at 218 (invalidating FECA's aggregate contribution limits). *See supra* "Aggregate Limits on Campaign Contributions" section of this report.

- a series of staggered increases in contribution limits applicable to candidates whose opponents significantly self-finance their campaigns;[206] and
- a prohibition on campaign contributions by minors age 17 or younger.[207]

More broadly, and perhaps most instructive for Congress in evaluating further policy options, the Court has stated unequivocally that the only legitimate justification for limiting campaign contributions is avoiding quid pro quo candidate corruption or its appearance.[208] Hence, the Court has signaled that the likelihood of contribution limits being upheld increases to the degree that Congress can demonstrate that the limits are narrowly tailored to serve this governmental interest. In contrast, while acknowledging that Congress may seek to accomplish other "well intentioned" policy goals—such as lessening influence over or access to elected officials, decreasing the costs of campaigns, and equalizing financial resources among candidates—the Court has announced that such interests will *not* serve to justify contribution limits.[209] As the Court reiterated in *McCutcheon*, when enacting laws that limit speech, the government bears the burden of proving the constitutionality of such restrictions.[210]

As discussed in earlier sections of this report, traditionally, the Court has subjected contribution limits to less rigorous scrutiny under the First Amendment than expenditure limits, and therefore, with some significant exceptions, the Court has generally upheld such limits.[211] Some commentators have argued that the Supreme Court in *McCutcheon* may have signaled a willingness in future cases to evaluate contribution limits under a stricter standard of review than it has in the past.[212] Should the Court decide to apply a stricter level of scrutiny to contribution limits in future cases, legislation providing for enhanced contribution limits would be less likely to survive constitutional challenges. Furthermore, a stricter standard of review could likewise result in successful challenges to *existing* contribution limits, including the limits on individual contributions to candidates and parties.

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[206] *See Davis,* 554 U.S. at 740 (invalidating FECA's limits on contributions to candidates whose opponents significantly self-finance). *See supra* "Limits on Campaign Contributions to Candidates Whose Opponents Self-Finance" section of this report.

[207] *See McConnell,* 540 U.S. at 232. *See supra* "Limits on Campaign Contributions Made by Minors" section of this report.

[208] *See McCutcheon,* 572 U.S. at 192 (citing Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 359 (2010)).

[209] *Id.* at 207-08.

[210] *See McCutcheon,* 572 U.S. at 210 (citing U.S. v. Playboy Entm't Grp., Inc., 529 U.S. 803, 816 (2000)).

[211] *See supra* "Campaign Contribution Limits and Related Restrictions" section of this report.

[212] *See* Richard Briffault, *The Uncertain Future of the Corporate Contribution Ban,* 49 VAL. U. L. REV. 397, 398 (2015) (stating that *McCutcheon* "subtly ratcheted up the Court's standard of review of contribution restrictions"); Robert Yablon, *Campaign Finance Reform Without Law,* 103 IOWA L. REV. 185, 201 (2017) (characterizing the Supreme Court in *McCutcheon* as "nudg[ing] the governing standard in the direction of strict scrutiny"). *See also* James Bopp, Jr., Randy Elf, and Anita Y. Milanovich, *Symposium: Money In Politics: The Good, the Bad, and the Ugly: Article and Speech: Contribution Limits After McCutcheon v. FEC,* 49 VAL. U.L. REV. 361, 389 (2015) (maintaining that "[b]ecause of *McCutcheon*, key circuit court decisions that previously upheld limits on direct contributions to candidates are no longer legally sound").

Appendix. Reference List of Federal Statutes

18 U.S.C. § 602. Solicitation of political contributions.

(a) It shall be unlawful for-(1) a candidate for the Congress; (2) an individual elected to or serving in the office of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress; (3) an officer or employee of the United States or any department or agency thereof; or (4) a person receiving any salary or compensation for services from money derived from the Treasury of the United States; to knowingly solicit any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 from any other such officer, employee, or person. Any person who violates this section shall be fined under this title or imprisoned not more than 3 years, or both.

(b) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Regulatory Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

18 U.S.C. § 603. Making political contributions.

(a) It shall be unlawful for an officer or employee of the United States or any department or agency thereof, or a person receiving any salary or compensation for services from money derived from the Treasury of the United States, to make any contribution within the meaning of section 301(8) of the Federal Election Campaign Act of 1971 to any other such officer, employee or person or to any Senator or Representative in, or Delegate or Resident Commissioner to, the Congress, if the person receiving such contribution is the employer or employing authority of the person making the contribution. Any person who violates this section shall be fined under this title or imprisoned not more than three years, or both.

(b) For purposes of this section, a contribution to an authorized committee as defined in section 302(e)(1) of the Federal Election Campaign Act of 1971 shall be considered a contribution to the individual who has authorized such committee.

(c) The prohibition in subsection (a) shall not apply to any activity of an employee (as defined in section 7322(1) of title 5) or any individual employed in or under the United States Postal Service or the Postal Regulatory Commission, unless that activity is prohibited by section 7323 or 7324 of such title.

18 U.S.C. § 606. Intimidation to secure political contributions.

Whoever, being one of the officers or employees of the United States mentioned in section 602 of this title, discharges, or promotes, or degrades, or in any manner changes the official rank or compensation of any other officer or employee, or promises or threatens so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose, shall be fined under this title or imprisoned not more than three years, or both.

18 U.S.C. § 607. Place of solicitation.

(a) Prohibition.-(1) In general.-It shall be unlawful for any person to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election from a person who is located in a room or building occupied in the discharge of official duties by an officer or employee of the United States. It shall be unlawful for an individual who is an officer or

employee of the Federal Government, including the President, Vice President, and Members of Congress, to solicit or receive a donation of money or other thing of value in connection with a Federal, State, or local election, while in any room or building occupied in the discharge of official duties by an officer or employee of the United States, from any person. (2) Penalty.-A person who violates this section shall be fined not more than $5,000, imprisoned not more than 3 years, or both.

(b) The prohibition in subsection (a) shall not apply to the receipt of contributions by persons on the staff of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress or Executive Office of the President, provided, that such contributions have not been solicited in any manner which directs the contributor to mail or deliver a contribution to any room, building, or other facility referred to in subsection (a), and provided that such contributions are transferred within seven days of receipt to a political committee within the meaning of section 302(e) of the Federal Election Campaign Act of 1971.

52 U.S.C. § 30114. Use of contributed amounts for certain purposes.

(a) Permitted uses

A contribution accepted by a candidate, and any other donation received by an individual as support for activities of the individual as a holder of Federal office, may be used by the candidate or individual-

(1) for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual;

(2) for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office;

(3) for contributions to an organization described in section 170(c) of title 26;

(4) for transfers, without limitation, to a national, State, or local committee of a political party;

(5) for donations to State and local candidates subject to the provisions of State law; or

(6) for any other lawful purpose unless prohibited by subsection (b) of this section.

(b) Prohibited use

(1) In general

A contribution or donation described in subsection (a) shall not be converted by any person to personal use.

(2) Conversion

For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including-(A) a home mortgage, rent, or utility payment; (B) a clothing purchase; (C) a noncampaign-related automobile expense; (D) a country club membership; (E) a vacation or other noncampaign-related trip; (F) a household food item; (G) a tuition payment; (H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and (I) dues, fees, and other payments to a health club or recreational facility.

(c) Restrictions on use of campaign funds for flights on noncommercial aircraft

(1) In general

Notwithstanding any other provision of this Act, a candidate for election for Federal office (other than a candidate who is subject to paragraph (2)), or any authorized committee of such a candidate, may not make any expenditure for a flight on an aircraft unless-(A) the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules; or (B) the candidate, the authorized committee, or other political committee pays to the owner, lessee, or other person who provides the airplane the pro rata share of the fair market value of such flight (as determined by dividing the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size by the number of candidates on the flight) within a commercially reasonable time frame after the date on which the flight is taken.

(2) House candidates

Notwithstanding any other provision of this Act, in the case of a candidate for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, an authorized committee and a leadership PAC of the candidate may not make any expenditure for a flight on an aircraft unless-(A) the aircraft is operated by an air carrier or commercial operator certificated by the Federal Aviation Administration and the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority and the flight is required to be conducted under air carrier safety rules; or (B) the aircraft is operated by an entity of the Federal government or the government of any State.

(3) Exception for aircraft owned or leased by candidate

(A) In general

Paragraphs (1) and (2) do not apply to a flight on an aircraft owned or leased by the candidate involved or an immediate family member of the candidate (including an aircraft owned by an entity that is not a public corporation in which the candidate or an immediate family member of the candidate has an ownership interest), so long as the candidate does not use the aircraft more than the candidate's or immediate family member's proportionate share of ownership allows.

(B) Immediate family member defined

In this subparagraph (A), the term "immediate family member" means, with respect to a candidate, a father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law.

(4) Leadership PAC defined

In this subsection, the term "leadership PAC" has the meaning given such term in section 30104(i)(8)(B) of this title.

52 U.S.C. § 30118. Contributions or expenditures by national banks, corporations, or labor organizations.

(a) In general

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political

office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization, to make a contribution or expenditure in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section, or any officer or any director of any corporation or any national bank or any officer of any labor organization to consent to any contribution or expenditure by the corporation, national bank, or labor organization, as the case may be, prohibited by this section.

(b) Definitions; particular activities prohibited or allowed

(1) For the purposes of this section the term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(2) For purposes of this section and section 79l(h) of title 15,1 the term "contribution or expenditure" includes a contribution or expenditure, as those terms are defined in section 30101 of this title, and also includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a national or State bank made in accordance with the applicable banking laws and regulations and in the ordinary course of business) to any candidate, campaign committee, or political party or organization, in connection with any election to any of the offices referred to in this section or for any applicable electioneering communication, but shall not include (A) communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject; (B) nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families, or by a labor organization aimed at its members and their families; and (C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(3) It shall be unlawful-

(A) for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in any commercial transaction;

(B) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee of the political purposes of such fund at the time of such solicitation; and

(C) for any person soliciting an employee for a contribution to such a fund to fail to inform such employee, at the time of such solicitation, of his right to refuse to so contribute without any reprisal.

(4)(A) Except as provided in subparagraphs (B), (C), and (D), it shall be unlawful-

(i) for a corporation, or a separate segregated fund established by a corporation, to solicit contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families, and (ii) for a labor organization, or a

separate segregated fund established by a labor organization, to solicit contributions to such a fund from any person other than its members and their families.

(B) It shall not be unlawful under this section for a corporation, a labor organization, or a separate segregated fund established by such corporation or such labor organization, to make 2 written solicitations for contributions during the calendar year from any stockholder, executive or administrative personnel, or employee of a corporation or the families of such persons. A solicitation under this subparagraph may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residence and shall be so designed that the corporation, labor organization, or separate segregated fund conducting such solicitation cannot determine who makes a contribution of $50 or less as a result of such solicitation and who does not make such a contribution.

(C) This paragraph shall not prevent a membership organization, cooperative, or corporation without capital stock, or a separate segregated fund established by a membership organization, cooperative, or corporation without capital stock, from soliciting contributions to such a fund from members of such organization, cooperative, or corporation without capital stock.

(D) This paragraph shall not prevent a trade association or a separate segregated fund established by a trade association from soliciting contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders or personnel to the extent that such solicitation of such stockholders and personnel, and their families, has been separately and specifically approved by the member corporation involved, and such member corporation does not approve any such solicitation by more than one such trade association in any calendar year.

(5) Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

(6) Any corporation, including its subsidiaries, branches, divisions, and affiliates, that utilizes a method of soliciting voluntary contributions or facilitating the making of voluntary contributions, shall make available such method, on written request and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby, to a labor organization representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates.

(7) For purposes of this section, the term "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary, rather than hourly, basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(c) Rules relating to electioneering communications

(1) Applicable electioneering communication

For purposes of this section, the term "applicable electioneering communication" means an electioneering communication (within the meaning of section 30104(f)(3) of this title) which is made by any entity described in subsection (a) of this section or by any other person using funds donated by an entity described in subsection (a) of this section.

(2) Exception

Notwithstanding paragraph (1), the term "applicable electioneering communication" does not include a communication by a section 501(c)(4) organization or a political organization (as defined in section 527(e)(1) of title 26) made under section 30104(f)(2)(E) or (F) of this title if

the communication is paid for exclusively by funds provided directly by individuals who are United States citizens or nationals or lawfully admitted for permanent residence (as defined in section 1101(a)(20) of title 8). For purposes of the preceding sentence, the term "provided directly by individuals" does not include funds the source of which is an entity described in subsection (a) of this section.

(3) Special operating rules

(A) Definition under paragraph (1)

An electioneering communication shall be treated as made by an entity described in subsection (a) if an entity described in subsection (a) directly or indirectly disburses any amount for any of the costs of the communication.

(B) Exception under paragraph (2)

A section 501(c)(4) organization that derives amounts from business activities or receives funds from any entity described in subsection (a) shall be considered to have paid for any communication out of such amounts unless such organization paid for the communication out of a segregated account to which only individuals can contribute, as described in section 30104(f)(2)(E) of this title.

(4) Definitions and rules

For purposes of this subsection-

(A) the term "section 501(c)(4) organization" means-

(i) an organization described in section 501(c)(4) of title 26 and exempt from taxation under section 501(a) of such title; or

(ii) an organization which has submitted an application to the Internal Revenue Service for determination of its status as an organization described in clause (i); and

(B) a person shall be treated as having made a disbursement if the person has executed a contract to make the disbursement.

(5) Coordination with title 26

Nothing in this subsection shall be construed to authorize an organization exempt from taxation under section 501(a) of title 26 to carry out any activity which is prohibited under such title.

(6) Special rules for targeted communications

(A) Exception does not apply

Paragraph (2) shall not apply in the case of a targeted communication that is made by an organization described in such paragraph.

(B) Targeted communication

For purposes of subparagraph (A), the term "targeted communication" means an electioneering communication (as defined in section 30104(f)(3) of this title) that is distributed from a television or radio broadcast station or provider of cable or satellite television service and, in the case of a communication which refers to a candidate for an office other than President or Vice President, is targeted to the relevant electorate.

(C) Definition

For purposes of this paragraph, a communication is "targeted to the relevant electorate" if it meets the requirements described in section 30104(f)(3)(C) of this title.

52 U.S.C. § 30119. Contributions by Government contractors.

(a) Prohibition

It shall be unlawful for any person-

(1) who enters into any contract with the United States or any department or agency thereof either for the rendition of personal services or furnishing any material, supplies, or equipment to the United States or any department or agency thereof or for selling any land or building to the United States or any department or agency thereof, if payment for the performance of such contract or payment for such material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress, at any time between the commencement of negotiations for and the later of (A) the completion of performance under; or (B) the termination of negotiations for, such contract or furnishing of material, supplies, equipment, land, or buildings, directly or indirectly to make any contribution of money or other things of value, or to promise expressly or impliedly to make any such contribution to any political party, committee, or candidate for public office or to any person for any political purpose or use; or

(2) knowingly to solicit any such contribution from any such person for any such purpose during any such period.

(b) Separate segregated funds

This section does not prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, any separate segregated fund by any corporation, labor organization, membership organization, cooperative, or corporation without capital stock for the purpose of influencing the nomination for election, or election, of any person to Federal office, unless the provisions of section 30118 of this title prohibit or make unlawful the establishment or administration of, or the solicitation of contributions to, such fund. Each specific prohibition, allowance, and duty applicable to a corporation, labor organization, or separate segregated fund under section 30118 of this title applies to a corporation, labor organization, or separate segregated fund to which this subsection applies.

(c) "Labor organization" defined

For purposes of this section, the term "labor organization" has the meaning given it by section 30118(b)(1) of this title.

52 U.S.C. § 30121. Contributions and donations by foreign nationals

(a) Prohibition

It shall be unlawful for-

(1) a foreign national, directly or indirectly, to make-

(A) a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a Federal, State, or local election;

(B) a contribution or donation to a committee of a political party; or

(C) an expenditure, independent expenditure, or disbursement for an electioneering communication (within the meaning of section 30104(f)(3) of this title); or

(2) a person to solicit, accept, or receive a contribution or donation described in subparagraph (A) or (B) of paragraph (1) from a foreign national.

(b) "Foreign national" defined

As used in this section, the term "foreign national" means-

(1) a foreign principal, as such term is defined by section 611(b) of title 22, except that the term "foreign national" shall not include any individual who is a citizen of the United States; or

(2) an individual who is not a citizen of the United States or a national of the United States (as defined in section 1101(a)(22) of title 8) and who is not lawfully admitted for permanent residence, as defined by section 1101(a)(20) of title 8.

52 U.S.C. § 30122. Contributions in name of another prohibited.

No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person.

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