

December 9, 2015

An Open Letter to Conservatives: Why Party Coordinated Limits Should Be Repealed

Recently some members of the Freedom Caucus in Congress and other conservative leaders have expressed opposition to a proposal by Senate Majority Leader Mitch McConnell to repeal the 1970's limits on the funds that political parties can spend in coordination with their candidates. The concern seems to be that the provision might provide an advantage for the "establishment."

We believe that this analysis is incorrect as a matter of law and destructive as a matter of principle. Contrary to some fears, the amendment does not apply to party spending in primary elections, only in the general election. Coordinated party primary spending is still sharply restricted. In response to this clear provision of the law, some have noted that Federal Election Commission regulations allow coordinated expenditures for the general election to be made at any time—even before the primary. But this rule, which stems from FEC advisory opinions in the mid-1980s, arose from circumstances in which parties ran ads critical of the opposing party's incumbent. Of course ads criticizing the opposition incumbent are general election expenditures, regardless of when made. However, expenditures for ads that take sides in a contested primary are still primary election expenditures, and still limited.

Equally important, however, we believe that this opposition to repeal is contrary to First Amendment principles that conservatives have traditionally valued, and to our overarching goals of eliminating unconstitutional regulation and promoting good public policy.

Conservatives have long fought against government restrictions on campaign speech, or so-called "campaign finance reform." During that time, those of us who believe the First Amendment should preclude such speech restrictions have consistently advocated the repeal of the coordinated party expenditure limits.

We agree with John Bolton when he said, "Your view of the applicability of the First Amendment and what is permissible political speech ... is a litmus test of your belief in freedom... and I have no hesitancy in saying that to those who continue to favor regulation."

For years we, as conservatives, have held ourselves out as advocates of freedom, including the freedom of speech protected by the First Amendment. We have recognized that a core reason that campaign finance laws should be held unconstitutional is that they are used to limit the political speech of the rivals of those writing the laws. Usually, that means they are used against us.

We cannot imagine that any true constitutional conservative would support a new law limiting speech by political parties in order to weaken those who they see as their occasional political rivals. Yet what is the difference between that and opposing repeal of limits on speech by political parties in order to do just that? Either way, one ends up supporting a limit we believe is unconstitutional, imposed on the parties in order to strengthen "our side" in political debate.

Although conservative opponents say they want more thorough deregulation, opposition is not based on a realistic hope that opposing it will produce legislation that deregulates further. Quite the contrary, there is currently no political support for removing campaign coordination rules pertaining to Super PACs and other non-connected committees. It is this current bit of proposed legislation to promote vital First Amendment rights, or nothing.

The government has no business limiting the speech between a party and its candidates. As Justice Clarence Thomas said in his dissent in *FEC v. Colorado Republican Federal Campaign Committee* (2001), the limit on party coordination stifles the parties' ability to do what parties exist to do: "it is natural for a party and its candidate to work together and consult with one another during the course of the election." This rider would finally lift a restriction that conservatives have long fought to lift.

Again, as noted above, the proposal does not change the rules for primary elections. Those rules limit parties (like other multi-candidate committees) to \$5000 in combined contributions and coordinated expenditures for any candidate in a primary.

Moreover, the proposal will benefit conservatives and Freedom Caucus members who face tougher general elections, because conservatives, more than liberals, rely on paid media and campaigning to reach the public, while liberals often benefit from friendly media and the ready-made support of labor organizations in their districts and states. Financial support from our stronger party organizations can help level the playing field.

The proposed repeal of party general election coordination limits will enhance First Amendment rights that are so vital to our nation. That the proposal is not as comprehensive as we would like is *not* a reason to oppose it. That it might benefit the "establishment," itself a highly dubious proposition, is an unprincipled reason to oppose it.

To those who have opposed McConnell's proposal, we strongly urge you to reconsider your opposition. We hope that, on further reflection, you will agree that there really is no defensible principle in such opposition; there is not even a tactical principle aimed at ultimately securing a better bill. We must not support retention of a statute we believe is *unconstitutional* based on the suspicion that repeal of that statute weakens the political power of "our side."

To those who have not yet taken a position, we urge you to support the repeal of what is an unconstitutional law, and remove this impermissible restriction on the First Amendment.

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