

SELF-FUNDED CAMPAIGNS AND THE CURRENT (LACK OF?) LIMITS ON CANDIDATE CONTRIBUTIONS TO POLITICAL PARTIES

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INTRODUCTION

Federal campaign finance law currently prohibits individuals from donating more than \$35,500 per year to national political party committees.¹ Yet, in March 2020, former New York City Mayor Michael Bloomberg gave \$18 million to the DNC.² How was he able to do this? The answer is simple: Mayor Bloomberg donated his \$18 million not as an individual, but as a presidential candidate.³ Under federal campaign finance regulation, candidate committees may transfer their funds “without limitation” to party committees.⁴ Normally, this is not an issue, as most candidates raise their campaign funds through outside contributions that are already subject to existing campaign finance limits.⁵ But when a candidate self-funds their campaign—as Mayor Bloomberg did⁶—they are seemingly able to evade the limits on individual contributions to political parties.

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1. Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 85 Fed. Reg. 9772, 9774 (Feb. 13, 2020); Contribution Limits for 2019–2020 Federal Elections, FEC, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits> [<https://perma.cc/FD8B-ZRSY>] (last visited May 20, 2020).

2. Mark Niquette, Michael Bloomberg Campaign Transfers \$18 Million to DNC to Beat Trump, Bloomberg (Mar. 20, 2020), <https://www.bloomberg.com/news/articles/2020-03-20/bloomberg-campaign-transfers-18-million-to-dnc-to-beat-trump> [<https://perma.cc/5W3Z-TH7G>].

3. See Ali Vitali & Stephanie Ruhle, Michael Bloomberg Launches 2020 Presidential Bid, NBC News (Nov. 24, 2019), <https://www.nbcnews.com/politics/2020-election/michael-bloomberg-launches-2020-presidential-bid-n1090216> [<https://perma.cc/32Q2-UASZ>].

4. 11 C.F.R. § 113.2(c) (2020) (“[F]unds in a campaign account . . . [m]ay be transferred without limitation to any national, State, or local committee of any political party . . .”).

5. See, e.g., 52 U.S.C. § 30116(a)(1)(A) (2018) (limiting the amount individuals can donate to federal candidates).

6. See Nicholas Wu, Michael Bloomberg’s Campaign Was the Most Expensive Self-Funded Campaign in History, USA Today (Mar. 4, 2020), <https://www.usatoday.com/story/news/politics/elections/2020/03/04/michael-bloomberg-most-expensive-self-funded-campaign/4952458002> [<https://perma.cc/X5E2-EZ2L>] (last updated Mar. 5, 2020).

Now dubbed the “Bloomberg loophole” by critics,⁷ some argue that such a loophole does not truly exist within the statutory text of the Federal Election Campaign Act (FECA), and have issued a rulemaking petition urging the FEC to amend its regulations to better reflect “the spirit of the law.”⁸ In response, the FEC stated in June 2020 that it will consider the merits of the petition, which could ultimately result in a rulemaking proceeding to close the loophole.⁹ This is, however, far from a guarantee, due to both the current political makeup of FEC commissioners¹⁰ and the ambiguous nature of these laws.¹¹ Furthermore, with the FEC constantly losing quorum,¹² it remains unknown just how long it could take to get an answer from the Agency. Thus, for the foreseeable future, this anomaly in federal campaign finance law leaves open a dangerous opportunity for self-funded candidates to flex their wealth in exchange for favors from political parties and their candidates.

Accordingly, this Piece calls for an unambiguous legislative solution to fill in the gap that allows this loophole to endure, under which self-funded candidates would be permitted to contribute only as much of their

7. See Brendan Fischer, Close the Bloomberg Big Money Loophole, Campaign Legal Ctr. (Mar. 26, 2020), <https://campaignlegal.org/update/close-bloomberg-big-money-loop-hole> [<https://perma.cc/SY4E-6PTV>] (“This apparently accidental loophole is one that the [FEC] and Congress both have the power to close, and they should.”).

8. Letter from Michael Boos, Exec. Vice President & Gen. Couns., Citizens United and Citizens United Found., to Lisa J. Stevenson, Acting Gen. Couns., FEC 2–4 (Apr. 8, 2020), <https://sers.fec.gov/fosers/showpdf.htm?docid=410512> [<https://perma.cc/6DQD-G5MY>].

9. See Rulemaking Petition: Transfers from Candidate’s Authorized Committee, 85 Fed. Reg. 39,098, 39,098 (June 18, 2020).

10. See Michelle Ye Hee Lee, Senate Confirms Trump Appointee to Federal Election Commission, Restoring Panel’s Voting Quorum for First Time Since August, Wash. Post (May 19, 2020), https://www.washingtonpost.com/politics/senate-confirms-trump-appointee-to-federal-election-commission-restoring-panels-voting-quorum-for-the-first-time-since-august/2020/05/19/de94796c-99e4-11ea-ac72-3841fcc9b35f_story.html (on file with the *Columbia Law Review*) (noting that recent FEC appointee James E. “Trey” Trainor III “has pushed for less regulation of money in politics”).

11. See, e.g., Fischer, *supra* note 7 (“So why is a candidate’s personal spending on their own campaign, which is otherwise an ‘expenditure,’ treated as a ‘contribution’? Because the FEC has advised candidates to disclose personal funds in the ‘contribution’ section of campaign finance reports.”); see also *infra* notes 63–68 and accompanying text.

12. See, e.g., Kate Ackley, FEC Set to Lose Its Quorum Again, Roll Call (June 26, 2020), <https://www.rollcall.com/2020/06/26/fec-set-to-lose-its-quorum-again> [<https://perma.cc/LZ29-47TR>] (noting that Commissioner Caroline Hunter planned to depart the FEC in July 2020, less than two months following Commissioner Trainor’s appointment); see also Arit John, The Federal Agency that Enforces Campaign Finance Laws Can’t Even Meet. Why?, L.A. Times (Aug. 5, 2020), <https://www.latimes.com/politics/story/2020-08-05/federal-election-commission-campaign-finance-enforcement> (on file with the *Columbia Law Review*) (“The FEC has lacked a quorum only three times since it began operating in 1975: during a six-month period in 2008, from late August 2019 to May 2020, and from July 4, 2020, to the present.”).

personal funds to a political party as currently allowed for a regular individual under existing limits. Part I briefly overviews federal campaign finance law, focusing on the limits on individual contributions to party committees and the arguable lack of limits on candidate committee contributions to party committees. Part II discusses the growing prominence of self-funded campaigns in U.S. politics and the threat of quid pro quo corruption that such campaigns pose under existing regulation. Finally, Part III discusses the merits of the rulemaking petition issued to the FEC to close the Bloomberg loophole, proposes a legislative amendment to FECA as a robust prophylactic solution, and addresses the constitutionality and political consequences of limiting the amount that self-funded candidates may donate to political parties.

I. THE LAW AND RATIONALE BEHIND CURRENT CONTRIBUTION LIMITS

This Part provides an overview of the current state of federal campaign finance law—and the rationales behind the existing laws—focusing particularly on limits on contributions to political parties. Section I.A overviews the general constitutional framework for campaign finance law that the Supreme Court established in *Buckley v. Valeo*. Section I.B then elaborates further on the law and rationale behind the limits on individual contributions to political parties. Finally, section I.C discusses the current state of limits on candidate committee contributions to political parties and different interpretations of existing law pertaining to said limits.

A. *The Buckley Framework*

The general framework for campaign finance law in the United States traces back to 1976, to the Supreme Court's seminal case *Buckley v. Valeo*.¹³ In *Buckley*, the Court determined the constitutionality of the FECA Amendments of 1974,¹⁴ which limited (1) the amount that individuals and organizations could contribute (i.e., donate) to political candidates and parties,¹⁵ and (2) the amount of expenditures, both independent or coordinated,¹⁶ that individuals and organizations could make in support of a candidate for federal office.¹⁷ The government justified both limits under

13. 424 U.S. 1 (1976).

14. See *id.* at 6.

15. See Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, sec. 101(a), 88 Stat. 1263, 1263-64, amended by Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, sec. 112, § 320(a), 90 Stat. 475, 486-88 (codified as amended at 52 U.S.C. § 30116(a) (2018)).

16. The difference between “independent” and “coordinated” expenditures is that “coordinated” expenditures are made “in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate.” *Buckley*, 424 U.S. at 78.

17. Federal Election Campaign Act Amendments of 1974 sec. 101(a), 88 Stat. at 1265, repealed by Federal Elections Campaign Act Amendments of 1976 sec. 112, 90 Stat. at 486, 489 (omitting the subsection on expenditure limits from where it was originally included in the 1974 FECA Amendments).

a governmental interest in “the prevention of corruption and the appearance of corruption,” namely quid pro quo arrangements.¹⁸

The *Buckley* Court ultimately found the limits on independent expenditures to be unconstitutional on First Amendment grounds.¹⁹ The Court, however, upheld the contribution limits—including coordinated expenditure limits²⁰—despite their implication of “fundamental First Amendment interests.”²¹ The Court reviewed the contribution limits under what is now known as “*Buckley* scrutiny,”²² holding that the limits needed to be “closely drawn” to a “sufficiently important” governmental interest to pass constitutional muster.²³ Applying this standard, the Court found the government’s interest in fighting the “actuality and appearance” of quid pro quo corruption to be sufficiently important.²⁴ Moreover,

18. See *Buckley*, 424 U.S. at 25–26 (“[T]he Act’s primary purpose [is] to limit the actuality and appearance of corruption resulting from large individual financial contributions . . .”). The government also put forth two “ancillary” interests: equalizing “the relative ability of all citizens to affect the outcome of elections,” and equalizing the playing field for all candidates. See *id.* The Court, however, rebuked these interests, finding neither convincing enough to justify any contribution or expenditure limits. See *id.* at 48–49 (“[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment . . .”). Thus, the *Buckley* Court analyzed the constitutionality of contribution and expenditure limits predominantly through the lens of FECA’s “primary purpose”: preventing corruption and the appearance of corruption. See *id.* at 25–26.

19. See *id.* at 143. The Court found that the 1974 FECA Amendments’ expenditure limits, in limiting independent expenditures, “impose[d] far greater restraints on the freedom of speech and association than [did] its contribution limitations.” *Id.* at 44. Accordingly, the Court reviewed the expenditure limits under “exacting scrutiny,” comparable to today’s strict scrutiny. See J. Robert Abraham, Note, Saving *Buckley*: Creating a Stable Campaign Finance Framework, 110 Colum. L. Rev. 1078, 1083 (2010) (citing *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 347 (1995)). Under this “exacting scrutiny,” the Court found that the government’s anticorruption interest could not justify the 1974 FECA Amendments’ limits on independent expenditures, reasoning that independent expenditures present little opportunity for quid pro quo given that, by definition, “independent” spending lacks coordination. See *Buckley*, 424 U.S. at 47.

20. See *Buckley*, 424 U.S. at 46 (“[C]ontrolled or coordinated expenditures are treated as contributions rather than expenditures under the Act.”).

21. *Id.* at 23.

22. See, e.g., *Fed. Election Comm’n v. Colo. Republican Fed. Campaign Comm. (Colo. Republican II)*, 533 U.S. 431, 466 (2001) (Thomas, J., dissenting) (“*Buckley* scrutiny has meant that restrictions on contributions by individuals and political committees do not violate the First Amendment so long as they are ‘closely drawn’ to match a ‘sufficiently important’ government interest . . .”); Nathaniel Persily & Kelli Lammie, Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law, 153 U. Pa. L. Rev. 119, 126 (2004) (“[C]ontribution restrictions are subject to less-than-strict scrutiny (sometimes called ‘*Buckley* scrutiny’).” (footnote omitted)).

23. See *Buckley*, 424 U.S. at 25. The Court applied a less strict standard than it did for expenditure limits because the quantity of a contribution does not alter the perceptibility of the contributor’s “general expression of support for [a] candidate and his views.” *Id.* at 21; see also *supra* note 19. In other words, “The political speech at issue is the act of contributing, rather than the amount of the contribution.” Abraham, *supra* note 19, at 1082.

24. See *Buckley*, 424 U.S. at 26–27.

the Court found that the limits were closely drawn enough to avoid an unnecessary abridgement of First Amendment associational rights.²⁵

The *Buckley* Court thus left U.S. campaign finance law with the following framework: Independent expenditure limits are subject to strict scrutiny, and are generally considered unconstitutional.²⁶ On the other hand, contribution limits—including coordinated expenditure limits—are reviewed under the less strict *Buckley* scrutiny, under which a limit must be “closely drawn” to a “sufficiently important” governmental interest.²⁷ Post-*Buckley*, the Court has found only one interest to be sufficiently important enough to justify contribution limits: quid pro quo corruption.²⁸ Accordingly, for limits on political contributions or coordinated expenditure to be deemed constitutional in a post-*Buckley* world, they must serve a governmental interest in combatting the actuality or appearance of quid pro quo corruption.

B. *Limits on Individual Contributions to Political Parties*

FECA imposes dollar limits on the amount an individual may contribute to both national and state/local party committees,²⁹ and gives the FEC the exclusive authority to promulgate regulations to civilly enforce such limits.³⁰ As of 2020, the FEC allows individuals to contribute annually a maximum of \$35,500 to a national party committee,³¹ and \$10,000

25. See *id.* at 28–29 (noting that the limits “do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties”).

26. See Abraham, *supra* note 19, at 1085 (“[T]he Court has repeatedly upheld limits on contributions while rejecting limits on political expenditures.”).

27. See *Buckley*, 424 U.S. at 25.

28. See *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 227 (2014) (plurality opinion) (“The Government has a strong interest, no less critical to our democratic system, in combatting corruption and its appearance. We have, however, held that this interest must be limited to a specific kind of corruption—*quid pro quo* corruption” (italics in original)). The Court emphasized, however, that contribution limits can be prophylactic measures taken in anticipation of future corruption rather than simply measures reactive to previous and ongoing corruption. See *id.* at 221 (“[R]estrictions on direct contributions are preventative” (quoting *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 357 (2010))).

29. See 52 U.S.C. § 30116(a)(1)(B)–(D) (2018).

30. See *id.* § 30106(b)(1).

31. Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 85 Fed. Reg. 9772, 9774 (Feb. 13, 2020); Contribution Limits for 2019–2020 Federal Elections, *supra* note 1. An individual may also contribute an additional \$106,500 annually to separate national party committee accounts used for (1) “the presidential nominating convention,” (2) “election recounts and contests and other legal proceedings,” and (3) “national party headquarters buildings.” *Id.* (allowing individuals to contribute up to \$319,500 annually if they max out contributions to all three accounts). Because such additional contributions are limited to those three specific purposes, rather than to party spending that could directly benefit a particular candidate or electoral race, the risk of corruption is low. See *Libertarian Nat’l Comm., Inc. v. Fed. Election Comm’n*, 317 F. Supp. 3d 202, 230–31 (D.D.C. 2018) (“Congress could have permissibly concluded

combined to both state/local party committees.³² While the contribution limit to state/local party committees is a fixed amount, the contribution limit to national party committees is indexed to increase in odd-numbered years to account for inflation.³³

These limits have withstood *Buckley* scrutiny. In *McConnell v. FEC*, for instance, the Supreme Court stated, “The idea that large contributions to a national party can corrupt or, at the very least, create the appearance of corruption of federal candidates and officeholders is neither novel nor implausible.”³⁴ The Court referred to political parties as “agents for spending on behalf of those who seek to produce obligated officeholders,”³⁵ highlighting specific examples of party donors reporting their “generosity” to party nominees with the “express purpose” of securing influence over them.³⁶ The *McConnell* Court concluded that “large soft-money contributions to national political parties give rise to corruption and the appearance of corruption.”³⁷

More recently, the D.C. Circuit upheld the limit on individual contributions to national party committees last year in *Libertarian National Committee, Inc. v. FEC*.³⁸ In this case, the Libertarian National Committee (LNC) challenged the contribution limit when a deceased party member had left over \$200,000 to be donated to the LNC upon his passing.³⁹ Unlike the *McConnell* Court, the D.C. Circuit explicitly recognized a risk of quid pro quo corruption within large individual contributions to political parties.⁴⁰ The D.C. Circuit explained that large individual contributions create an incentive for party committees to “limit the risk” of the revocation of such contributions.⁴¹ Accordingly, the party committee, its candidates, or its officeholders might “grant political favors” to individuals

that contributions to a political party that directly benefit a particular candidate or can be spent directly on a particular election contest pose an especially acute risk warranting a lower dollar limit.”). Accordingly, this Piece excludes the additional \$319,500 limit from its purview.

32. Contribution Limits for 2019–2020 Federal Elections, *supra* note 1.

33. 52 U.S.C. § 30116(c)(1)(B)(i).

34. 540 U.S. 93, 144 (2003).

35. *Id.* at 145 (quoting *Colo. Republican II*, 533 U.S. 431, 452 (2001)).

36. See *id.* at 145–47 (“Even when not participating directly in the fundraising, federal officeholders were well aware of the identities of the donors: National party committees would distribute lists of potential or actual donors, or donors themselves would report their generosity to officeholders.”).

37. *Id.* at 154.

38. 924 F.3d 533, 553 (D.C. Cir. 2019).

39. See *id.* at 536–37.

40. Compare *id.* at 542 (“The risk of quid pro quo corruption does not disappear merely because the transfer of money occurs after a donor’s death.”), with *McConnell*, 540 U.S. at 152–53 (“Justice Kennedy would limit Congress’ regulatory interest *only* to the prevention of the actual or apparent *quid pro quo* corruption . . . Justice Kennedy’s interpretation . . . would render Congress powerless to address more subtle but equally dispiriting forms of corruption.” (italics in original)).

41. See *Libertarian Nat’l Comm.*, 924 F.3d at 542.

contributing large sums of money to the political party “in the hopes of preventing the individual from revoking” future contributions.⁴² The D.C. Circuit’s decision thus reinforced the constitutionality of limits on individual contributions to political parties, finding such limits to fit within the Supreme Court’s framework of quid pro quo corruption.

C. *The (Lack of?) Limits on Candidate Contributions to Political Parties*

Unlike individual contributions, contributions by candidate committees to party committees are currently unregulated by the FEC. Rather, 11 C.F.R. § 113.2 explicitly states that “funds in a campaign account . . . [m]ay be transferred without limitation to any national, State, or local committee of any political party.”⁴³ Accordingly, it would appear that there are no legal barriers preventing self-funded candidates from donating unlimited amounts of money to political parties. Unfortunately (or perhaps fortunately), it is a little more complicated than that.

To begin, in 2002, Congress passed the Bipartisan Campaign Reform Act (BCRA),⁴⁴ of which Title 1 had the express purpose of getting “soft money” out of party committee fundraising and spending.⁴⁵ Title 1 of BCRA thus amended FECA to include the limits on individual contributions to party committees that exist today.⁴⁶ BCRA contained a few key exceptions though, most notably exceptions for how candidate committees can spend their money.⁴⁷ These exceptions are codified in 52 U.S.C. § 30114, the statutory companion of 11 C.F.R. § 113.2. There are, nevertheless, key discrepancies between the statutory language of BCRA and current FEC regulations: Whereas 11 C.F.R. § 113.2 broadly states that “funds in a campaign account . . . [m]ay be transferred without limitation to any [political party],”⁴⁸ 52 U.S.C. § 30114 more narrowly states that “[a] contribution accepted by a candidate . . . may be used . . . for transfers, without limitation, to a [political party].”⁴⁹ While this difference in language may seem small, it could make all the difference in the world when it comes to self-funded candidates, and draws into question whether current FEC regulation properly reflects and enforces FECA’s statutory provisions relating to candidate committee contributions.

As the Campaign Legal Center explains in its June 2020 letter to the FEC, “A candidate’s personal funds expended in support of their

42. See *id.*

43. 11 C.F.R. § 113.2(c) (2020).

44. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81.

45. See *id.* sec. 101.

46. For background information on limits on individual contributions to party committees, see *supra* section I.B.

47. See Bipartisan Campaign Reform Act sec. 301, § 313, 116 Stat. at 95–96.

48. 11 C.F.R. § 113.2(c).

49. 52 U.S.C. § 30114(a)(4) (2018) (emphasis added).

campaign are not ‘contribution[s] accepted by a candidate.’”⁵⁰ Rather, the Supreme Court and the FEC have both historically referred to self-funded spending by candidates as “expenditures” rather than “contributions.”⁵¹ Thus, according to critics of the Bloomberg loophole,⁵² because 52 U.S.C. § 30114 only explicitly permits “contributions accepted by a candidate” to be transferred without limitation to party committees, as opposed to also including “expenditures” in its language, self-funded portions of a candidate committee’s funds are not subject to this “without limitation” exception. Instead, critics assert that a candidate’s committee is prohibited by statute from transferring the candidate’s personal funds to a party committee, citing Title 1 of BCRA’s bar on political parties receiving any funds “not subject to the limitations, prohibitions, and reporting requirements” of FECA.⁵³ In other words, because candidates’ personal funds have historically been regarded as “expenditures” rather than “contributions,”⁵⁴ and because candidates’ personal funds are not subject to any FECA limits,⁵⁵ critics of the Bloomberg loophole believe that the FEC’s current lack of regulatory limits on self-funded candidates’ contributions to national party committees⁵⁶ does not align with what BCRA’s statutory provisions were intended to prevent: political parties receiving unregulated “soft money” donations.⁵⁷ Using this argument, Citizens United petitioned the FEC in April 2020 to issue a rulemaking decision to close the loophole.⁵⁸

This textually driven argument, while certainly full of merit, has its weaknesses. For one, while the FEC has at times referred to a candidate’s spending of personal funds as “expenditure,”⁵⁹ the Agency currently requires candidates to report any spending of personal funds as “in-kind

50. Letter from Brendan M. Fischer & Tony Dechario, Campaign Legal Ctr., to Lisa J. Stevenson, Acting Gen. Couns., FEC 2 (June 19, 2020), <https://campaignlegal.org/sites/default/files/2020-06/6-19-20%20CLC%20comments%20AOR%202020-03.pdf> [<https://perma.cc/43PT-VZD3>] (alteration in original).

51. See *Buckley v. Valeo*, 424 U.S. 1, 51–54 (1976) (“The ceiling on personal *expenditures* by candidates on their own behalf . . . imposes a substantial restraint on the ability of persons to engage in protected First Amendment expression.” (emphasis added)); 11 C.F.R. § 110.10 (“[C]andidates for Federal office may make unlimited *expenditures* from personal funds . . .” (emphasis added)). For an explanation on the difference between “expenditures” and “contributions,” see *supra* notes 15–17 and accompanying text.

52. See *supra* note 7 and accompanying text.

53. 52 U.S.C. § 30125(a)(1); see also Letter from Brendan M. Fischer & Tony Dechario to Lisa J. Stevenson, *supra* note 50, at 3.

54. See *supra* note 51.

55. See *Buckley*, 424 U.S. at 51–54 (striking down such a limit as unconstitutional).

56. See 11 C.F.R. § 113.2(c).

57. See Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-555, sec.101, 116 Stat. 81, 82.

58. See Letter from Michael Boos to Lisa J. Stevenson, *supra* note 8, at 2–3 (“While Bloomberg’s transfer may fall within the letter of the regulation governing transfers of candidate funds to national political party committees[,] it certainly does not fall within the spirit of the law.”). For more information on this, see *infra* section III.A.

59. See, e.g., 11 C.F.R. § 110.10.

contribution[s] from the candidate to [their] committee.”⁶⁰ This suggests that the FEC perhaps harbors some uncertainty about whether spending of personal funds can simply be regarded as expenditures.⁶¹ At the very least, the FEC seems to recognize that independent expenditures and spending of personal funds are not perfectly comparable, given the former involves no coordination with a candidate’s committee whereas the latter is made “on behalf of the [candidate’s] committee” (hence referring to them as “in-kind contributions”).⁶²

Moreover, BCRA’s statutory provisions themselves seem a bit more ambiguous than perhaps some critics of the Bloomberg loophole suggest.⁶³ For one, BCRA prohibits national party committees only from receiving money “not subject to the limitations, prohibitions, *and* reporting requirements” of FECA.⁶⁴ While the use of “and” in this provision might suggest it should be treated as a conjunctive list, “limitations” and “prohibitions” are two separate things in campaign finance law.⁶⁵ For example, individual contributions by U.S. citizens are subject to limitations, not prohibitions, and contributions by foreign nationals are strictly prohibited, not limited.⁶⁶ Thus, “limitations, prohibitions, and reporting requirements” could very well be interpreted as a disjunctive list, meaning only one part needs to be satisfied rather than all three.⁶⁷ In such a case, a candidate committee would not be prohibited from transferring the candidate’s personal funds to a national party committee under BCRA, since personal funds are subject to reporting requirements.⁶⁸

60. Candidate Committees, FEC, <https://transition.fec.gov/rad/candidates/FEC-ReportsAnalysisDivision-CandidateCommittees.shtml#candidateinkinds> [<https://perma.cc/TM9V-23L2>] (last visited Aug. 25, 2020) (emphasis added).

61. But see Fischer, *supra* note 7 (describing this as nothing more than “reasonable guidance” to keep a campaign’s books in order).

62. Candidate Committees, *supra* note 60.

63. Even Citizens United admits this in its petition to the FEC. See Letter from Michael Boos to Lisa J. Stevenson, *supra* note 8, at 4 (“[52 U.S.C. § 30114’s] statutory language is [at best] ambiguous as to whether funds derived from a candidate’s personal funds are subject to transfer without limitation to a . . . party committee.”).

64. 52 U.S.C. § 30125(a)(1) (2018) (emphasis added).

65. See, e.g., Who Can and Can’t Contribute, FEC, <https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/who-can-and-cant-contribute> [<https://perma.cc/K9JG-ZCH8>] (last visited Aug. 25, 2020) (treating limitations and prohibitions as two separate constraints on contributions).

66. See *id.*

67. See *Gustafson v. Alloyd Co.*, 513 U.S. 561, 574 (1995) (“[T]he Court will avoid a reading [of a statute] which renders some words altogether redundant.”). But see Abbe R. Gluck & Lisa Schultz Bressman, *Statutory Interpretation from the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 *Stan. L. Rev.* 901, 934–36 (2013) (finding that most congressional staffers do not always consciously avoid redundancy).

68. See Candidate Committees, *supra* note 60 (“In addition to reporting [the candidate’s expenditure of personal funds on behalf of the committee] on Schedule A if it

Finally, BCRA's legislative history suggests no intent to limit self-funded candidates from transferring funds to political parties. Indeed, one of the few mentions of candidate committees during Congress's discussion of BCRA came from Senator Russ Feingold—one of the chief sponsors of BCRA—who stated simply that “[t]he language continues to allow candidates to use excess campaign funds for transfers to a national, State or local committee of a political party. It is the intent of the authors that—as is the case under current law—such transfers be permitted without limitation.”⁶⁹ Perhaps Congress merely neglected to anticipate self-funded candidates using their candidate committees to donate millions of dollars in personal funds to a party committee. That itself, however, is telling. Overall, it remains unclear whether BCRA's amendments to FECA place any concrete statutory limits on self-funded candidates' ability to donate unlimited funds to the political party of their choice.

Two facts, however, are clear. First, regardless of statutory ambiguities, current FEC regulations allow self-funded candidates to transfer funds “without limitation” to party committees.⁷⁰ This explains why Mayor Bloomberg, the individual, can only donate \$35,500 to the DNC in any given year,⁷¹ but Mayor Bloomberg, the former presidential candidate, could transfer \$18 million from his campaign funds to the DNC in March 2020.⁷² Second, in failing to write a categorically clear provision limiting such transfers of candidates' personal funds to party committees, Congress left the door wide open for self-funded candidates to abuse the system and exercise undue influence over our political parties. Part II discusses this issue in detail, and explains how a lack of clear limits on self-funded candidates transferring their funds to political parties creates one of the greatest opportunities for quid pro quo corruption in modern-day U.S. politics.

II. SELF-FUNDED CANDIDATES, POLITICAL PARTIES, AND THE THREAT OF QUID PRO QUO

There are no limits on how much personal funding a candidate may use to support their own campaign.⁷³ Consequently, under current FEC regulations, a self-funded candidate may pour as much of their own money as they please into their committee, and subsequently transfer an unlimited amount of that self-funded money to a party committee. This Part discusses the growing prevalence of self-funded candidates in federal elections,

exceeds the \$200 itemization threshold for the election cycle, the committee must also itemize it on Schedule B for Operating Expenditures.”).

69. 148 Cong. Rec. 3605 (2002) (statement of Sen. Feingold).

70. See 11 C.F.R. § 113.2(c) (2020) (“[F]unds in a campaign account . . . [m]ay be transferred without limitation to any national, State, or local committee of any political party.”).

71. See Contribution Limits for 2019–2020 Federal Elections, *supra* note 1.

72. See Niquette, *supra* note 2.

73. See *Buckley v. Valeo*, 424 U.S. 1, 51–54 (1976) (holding such limits to be unconstitutional).

and the potential for corruption that exists when self-funded candidates can use their candidacy to give a party committee limitless amounts of money. Section II.A briefly overviews the rise of self-funded candidates in federal elections. Section II.B discusses how the lack of limits on candidate committee contributions to party committees produces a threat of quid pro quo corruption between a self-funded candidate and a political party or party-member candidate.

A. *The Rise of Self-Funded Candidates*

Self-funded campaigns become more prevalent and influential with each passing election year.⁷⁴ For instance, in 2002—the year Congress passed BCRA—there were twenty-two major⁷⁵ self-funded candidates for federal offices who spent a combined total of \$54,056,504 of their own money, an average of approximately \$2,457,000 per candidate.⁷⁶ In 2018, however, forty-one major self-funded candidates spent a combined total of \$240,250,850 of their own money, an average of approximately \$5,860,000 per candidate.⁷⁷ In other words, self-funded candidates on average contributed more than double of their money to their campaigns in 2018 than they did in 2002.⁷⁸ Furthermore, the 2020 presidential election marked the first U.S. presidential election to have three self-funded candidates running in a major-party primary.⁷⁹ Mayor Bloomberg's campaign

74. See Richard Briffault, *Davis v. FEC: The Roberts Court's Continuing Attack on Campaign Finance Reform*, 44 *Tulsa L. Rev.* 475, 479 (2009) (“There is . . . evidence that the rise of self-funded candidates has made it more difficult for non-wealthy candidates to compete.”).

75. This Piece defines a “major” self-funded candidate as one who spent at least \$1 million of their own money in support of their campaign. The reason for this is that Open Secrets only lists candidates who spent more than \$1 million of their own money on its 2018 “Top Self-Funding Candidates” page. See *infra* note 77.

76. See Top Self-Funding Candidates: 2002, Open Secrets, <https://www.opensecrets.org/overview/topself.php?cycle=2002> [<https://perma.cc/K7HR-XLAG>] (last visited May 21, 2020).

77. See Top Self-Funding Candidates: 2018, Open Secrets, <https://www.opensecrets.org/overview/topself.php?cycle=2018> [<https://perma.cc/6F82-UXQP>] (last visited May 21, 2020).

78. This remains largely true even when accounting for inflation: \$2,457,000 in 2002 would be equivalent to approximately \$3,430,000 in 2018, which is still only 58.5% of the approximate \$5,860,000 spent on average per major self-funded candidate in 2018. See Inflation Calculator, U.S. Inflation Calculator, <https://www.usinflationcalculator.com> [<https://perma.cc/7XNM-H227>] (last visited Sept. 18, 2020); see also *supra* note 77 and accompanying text.

79. See Julie Bykowicz, *Bloomberg Joins Eclectic List of Self-Funding Presidential Candidates*, *Wall St. J.* (Nov. 30, 2019), <https://www.wsj.com/articles/bloomberg-joins-eclectic-list-of-self-funding-presidential-candidates-11575090001> (on file with the *Columbia Law Review*) (noting how Michael Bloomberg, Tom Steyer, and John Delaney were all self-funded Democratic candidates). Additionally, at least two other well-known billionaires—Mark Cuban and Howard Schultz—strongly considered running for President in 2020. See Shawn Langlois, *President Mark Cuban? The Billionaire Isn't Ruling Out Entering the 2020 Race*, *Mkt. Watch* (Apr. 13, 2020), <https://www.marketwatch.com/story/president-mark->

itself broke the record for the most expensive self-funded campaign in U.S. history, spending well over half a billion dollars on ads alone.⁸⁰ Overall, the numbers indicate that self-funded candidates are on the rise in the United States.

Still, some commentators question the actual extent to which self-funded candidates impact the U.S. electoral system, noting that self-funded candidates tend to lose their elections despite their enormous financial resources.⁸¹ Mayor Bloomberg's expensive campaign, for instance, ultimately netted him a grand total of one primary win: American Samoa.⁸² As the next section shows, however, the influence of self-funded candidates extends far beyond whether they actually manage to become an officeholder.

B. *Self-Funded Candidates and Quid Pro Quo*

When self-funded candidates can transfer an unlimited amount of their campaign funds to party committees, opportunities abound for said self-funded candidates to enter into quid pro quo arrangements with a party committee or its candidates. There is, after all, a reason why federal campaign finance law caps individual contributions to national party committees at \$35,500 per year.⁸³ If a self-funded candidate promises to contribute millions of dollars to a political party by funneling the money through their candidate committee, then, as the D.C. Circuit warns, this could cause the party to “grant political favors” to the self-funded candidate to ensure that they fulfill their promised contribution.⁸⁴ One could imagine such political favors to include, for example, giving the self-

cuban-the-billionaire-isnt-ruling-out-entering-the-2020-race-2020-04-12 [https://perma.cc/KX54-6H7X]; Emily Stewart, Former Starbucks CEO Howard Schultz's Lurking Presidential Bid, Explained, Vox (Jan. 28, 2019), https://www.vox.com/policy-and-politics/2019/1/28/18200565/howard-schultz-starbucks-2020-independent-60-minutes [https://perma.cc/4REN-77ML].

80. Wu, *supra* note 6.

81. See, e.g., Joe Albanese, Failure of Campaign Self-Funders Highlights Once Again that Money Doesn't Buy Elections, Inst. for Free Speech (Mar. 20, 2017), https://www.ifs.org/blog/failure-of-campaign-self-funders-highlights-once-again-that-money-doesnt-buy-elections [https://perma.cc/TU4A-DEBH]; Niv M. Sultan, Self-Funded Candidates Lose Big (Except When They Don't), Open Secrets (Mar. 15, 2017), https://www.opensecrets.org/news/2017/03/self-funded-candidates [https://perma.cc/6RD6-Z6B6].

82. See Lauren Egan, Bloomberg Notches First Win—In American Samoa, 6,000 miles from U.S. Mainland, NBC New Projects, NBC News (Mar. 3, 2020), https://www.nbcnews.com/politics/2020-election/bloomberg-notches-first-win-american-samoa-6000-miles-u-s-n1148811 [https://perma.cc/LRD3-Y97R].

83. See *supra* notes 34–42 and accompanying text. Similarly, individual contributions to state/local party committees are capped at a combined \$10,000 per year. Contribution Limits for 2019–2020 Federal Elections, *supra* note 1.

84. See *Libertarian Nat'l Comm., Inc. v. Fed. Election Comm'n*, 924 F.3d 533, 542 (D.C. Cir. 2019) (noting the potential for a quid pro quo arrangement between a political party and an individual who promises to donate a portion of their estate to said party).

funded candidate influence over the party's platform,⁸⁵ or changing debate rules to allow the self-funded candidate to participate in a primary debate.⁸⁶

There is also the threat of "conduit" corruption, in which a self-funded candidate uses their ability to transfer unlimited funds to a political party to gain political favors from that party's other candidates.⁸⁷ The "prototypical example" of conduit corruption is when "donations to state and national parties . . . serve as a means for circumvent[ing] the limits on contributions between donors and candidates."⁸⁸ Hence, while a self-funded candidate can only contribute a maximum of \$4,800 to another candidate under the current contribution limits,⁸⁹ they could indirectly donate additional money to said candidate by giving money to the candidate's party, which could then give that money directly to the candidate—the party acts as a "conduit" for the self-funded candidate's money to flow to other candidates.

Conduit contributions to party committees by self-funded candidates can be immensely problematic, as limits on coordinated party expenditure are much higher than the limits on individual and candidate committee contributions. A party committee, for instance, can spend up to \$51,900 in coordinated expenditure to support a nominee for a House of Representatives seat.⁹⁰ Thus, if a self-funded candidate transfers \$18 million of their personal funds to a party committee, they have effectively donated enough to max out coordinated party expenditure for party nominees in 346 House races—a massive influence. Moreover, a party committee can currently

85. See, e.g., Daniel Strauss, Michael Bloomberg Expands Influence Network Within Democratic Party, *Guardian* (May 2, 2020), <https://www.theguardian.com/us-news/2020/may/02/michael-bloomberg-expands-influence-network-within-democratic-party> [<https://perma.cc/Q5J3-NGRX>] ("But the rapid expansion of Bloomberg-connected groups and operatives around Washington also suggests Bloomberg intends to hold a seat at the table among the most influential Democratic party leaders, albeit one outside of elected office.").

86. See, e.g., Janell Ross, Rule Change by Democrats Could Help Bloomberg, *NBC News* (Feb. 13, 2020), <https://www.nbcnews.com/news/nbcblk/rule-change-democrats-could-help-bloomberg-n1136081> [<https://perma.cc/ZU5K-BB8J>].

87. See *Libertarian Nat'l Comm.*, 924 F.3d at 542 (noting the potential for a quid pro quo arrangement between a political party's candidates/officeholders and an individual who promises to donate a portion of their estate to said party).

88. Nabil Ansari, Note, Judicial Standards for the Anti-Circumvention Rationale in Campaign Finance, 19 *N.Y.U. J. Legis. & Pub. Pol'y* 417, 418 n.5 (2016) (citing *Colo. Republican II*, 533 U.S. 431, 447 (2001)).

89. The self-funded candidate could donate \$2,800 in their individual capacity and \$2,000 through their candidate committee. See Contribution Limits for 2019–2020 Federal Elections, *supra* note 1.

90. Coordinated Party Expenditure Limits, *FEC*, <https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/coordinated-party-expenditures/coordinated-party-expenditure-limits> [<https://perma.cc/KJZ2-SNGP>] (last visited May 22, 2020). This limit increases to \$103,700 in states with only one representative. *Id.*

spend up to \$26,464,700 in coordinated expenditure to support its presidential nominee.⁹¹ If said presidential nominee wanted to help their nominating party raise such money through individual contributions, they would need to reach out to at least 746 individuals.⁹² If, however, a self-funded candidate has the proper means to foot the bill, said presidential nominee might circumvent the individual contribution limits by simply asking the self-funded candidate to transfer the entirety of the \$26,464,700 from the self-funded candidate's committee to their party.⁹³ Such a system creates massive potential for "corruption by circumvention,"⁹⁴ with party nominees avoiding existing contribution limits by entering into arrangements with self-funded candidates, granting them political favors in exchange for the self-funded candidate's multimillion dollar conduit contribution to their nominating party.

As it stands, federal campaign finance law offers no clear prophylactic measures to prevent such quid pro quo corruption from occurring.⁹⁵ Accordingly, as the next Part suggests, Congress should consider passing a legislative solution to combat quid pro quo arrangements between self-funded candidates and political parties and their candidates.

III. IN SEARCH OF CLEAR LIMITS

In light of the opportunities for quid pro quo corruption Part II discusses, this Part overviews both regulatory and legislative solutions to definitively close any gap in federal campaign finance law currently allowing self-funded candidates to transfer unlimited funds to political parties. Section III.A covers the regulatory solution, namely the rulemaking petition taken up by the FEC in June 2020,⁹⁶ but concludes that such a solution is neither guaranteed nor optimal. Section III.B then lays out a legislative solution, under which self-funded candidates would be explicitly subject to limits when contributing to party committees. Section III.C then addresses two concerns that may arise under such a solution: (1) whether it is constitutional, and (2) whether limiting contributions to political parties in general is sound campaign finance policy.

91. *Id.*

92. And this would only be if said 746 individuals could contribute the maximum amount of \$35,500. See Contribution Limits for 2019–2020 Federal Elections, *supra* note 1. Otherwise, the number would be even higher.

93. *Cf. Colo. Republican II*, 533 U.S. at 460 ("If a candidate could arrange for a party committee to foot his bills . . . the number of donors necessary to raise \$1,000,000 could be reduced from 500 . . . to 46 . . .").

94. *Id.* at 461.

95. See *supra* section I.C.

96. Rulemaking Petition: Transfers from Candidate's Authorized Committee, 85 Fed. Reg. 39,098 (June 18, 2020).

A. *The Looming FEC Rulemaking Decision*

In April 2020, Citizens United issued a rulemaking petition to the FEC to close the regulatory loophole that currently allows self-funded candidates to donate their personal funds to political parties “without limitation.”⁹⁷ As section I.C discusses, their argument is largely textual, claiming that current FEC regulation does not fully align with and enforce FECA’s statutory language covering candidate committee contributions as amended by BCRA.⁹⁸ Accordingly, Citizens United—and other critics of the Bloomberg loophole—have asked the FEC to amend 11 C.F.R. § 113.2 to limit the ability to transfer a candidate’s personal funds to party committees.⁹⁹ Since then, the FEC has taken up the petition,¹⁰⁰ and if the Agency finds the petition has merit, “it may begin a rulemaking proceeding” that could close the loophole.¹⁰¹

There are, however, many reasons why attempting to close the Bloomberg loophole through the FEC rulemaking process is a less-than-ideal route. First, there is no guarantee that the FEC will even be able to engage in the rulemaking process any time soon. The Agency can barely maintain a quorum of commissioners these days,¹⁰² and even when new commissioners are appointed, many (mainly Republicans) tend to be anti-campaign finance regulation.¹⁰³ And even if the FEC could reach (and maintain) quorum in the near future, there would still be many good-faith arguments that Citizens United’s petition lacks merit.¹⁰⁴ Second, even if the FEC ultimately found that the petition had merit and issued a rulemaking decision closing the Bloomberg loophole, a future FEC could

97. See Letter from Michael Boos to Lisa J. Stevenson, *supra* note 8, at 4; see also 11 C.F.R. § 113.2(c) (2020) (“[F]unds in a campaign account . . . [m]ay be transferred without limitation to any national, State, or local committee of any political party.”). There is, of course, an irony in Citizens United spearheading an effort to expand federal campaign finance regulation. See *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 372 (2010) (striking down BCRA’s Title II restrictions on independent expenditures for electioneering communications by unions and corporations, an outcome desired by petitioner Citizens United).

98. For an overview of this argument, see *supra* notes 50–58 and accompanying text.

99. See Letter from Michael Boos to Lisa J. Stevenson, *supra* note 8, at 4; Letter from Brendan M. Fischer & Tony Dechario to Lisa J. Stevenson, *supra* note 50, at 1.

100. See Rulemaking Petition: Transfers from Candidate’s Authorized Committee, 85 Fed. Reg. at 39,098.

101. See *id.* at 39,099.

102. See Ackley, *supra* note 12 (losing quorum in July 2020); Brian Naylor, *As FEC Nears Shutdown, Priorities Such as Stopping Election Interference on Hold*, NPR (Aug. 30, 2019), <https://www.npr.org/2019/08/30/755523088/as-fec-nears-shutdown-priorities-such-as-stopping-election-interference-on-hold> [<https://perma.cc/6EEH-QFL7>] (losing quorum in August 2019); see also John, *supra* note 12 (describing how the FEC has lost quorum twice over the last two years, while only losing quorum once between 1975 and 2018).

103. See, e.g., Lee, *supra* note 10 (noting that recently appointed FEC Chair James E. “Trey” Trainor III “has pushed for less regulation of money in politics”).

104. See *supra* notes 59–69 and accompanying text.

easily overturn such a regulatory fix.¹⁰⁵ For these reasons, the next section suggests pursuing a more stable legislative solution that would set clear and fair limits on contributions from self-funded candidates' committees to party committees.

B. *A Legislative Solution*

The most rational legislative solution would be to simply subject self-funded candidates' committees to the same contribution limit that individuals face when contributing to party committees: \$35,500 for national committees and \$10,000 for state/local committees.¹⁰⁶ There must, however, be some nuance applied within this solution. For instance, very few self-funded campaigns receive 100% of their funds from their candidate's own pocketbook.¹⁰⁷ Thus, it would not make sense to subject 100% of a self-funded candidate's funds to a contribution limit if the candidate's own money accounts for, say, only 80% of their funds. In such a scenario, the other 20% of the candidate's funds would have been raised mostly through contributions from other individuals and PACs, meaning these funds would have already been subjected to other contribution limits.¹⁰⁸ Running this hypothetical 20% through an additional contribution limit if the self-funded candidate transfers funds to a party committee would be contrary to the policy goals of previous legislation such as BCRA, which sought to only target money given to party committees that had not yet been subject to existing "limitations, prohibitions, and reporting requirements."¹⁰⁹ Accordingly, this Piece recommends a legislative solution that imposes limits on only the self-funded portions of a candidate committee's overall funds.

The clearest way to do this would be to amend 52 U.S.C. § 30114(a)(4) to read as follows (with the suggested amendment in italics):

(a) 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—

...

105. Cf. *Hy-Brand Indus. Contractors, Ltd.*, 365 N.L.R.B. No. 156, 1–2 (Dec. 14, 2017) (involving a Trump-era NLRB overturning a decision made only two years prior by an Obama-era NLRB), vacated for procedural reasons, 366 N.L.R.B. No. 26 (Feb. 26, 2018).

106. Price Index Adjustments for Expenditure Limitations and Lobbyist Bundling Disclosure Threshold, 85 Fed. Reg. 9772, 9774 (Feb. 13, 2020); Contribution Limits for 2019–2020 Federal Elections, *supra* note 1.

107. See *Top Self-Funding Candidates: 2018*, *supra* note 77 (indicating that each of the forty-one major self-funded federal candidates in 2018 raised at least some of their funds from sources other than themselves).

108. See 52 U.S.C. § 30116(a)(1)(A) (2018) (individual contribution limits); *id.* § 30116(a)(2)(A) (PAC contribution limits).

109. See *id.* § 30125(a)(1).

(4) for transfers, without limitation, to a national, State, or local committee of a political party, *except for personal funds used by the candidate or individual in support of their own candidacy or activities as a holder of Federal office, which shall be subject to the dollar limits set forth in subsections 30116(a)(1)(B)–(D) . . .*¹¹⁰

To illustrate how this solution would work, imagine Candidate A’s committee raised \$50 million in funds, with \$49 million of the funds coming from Candidate A’s own money and \$1 million coming from contributions from other individuals. Currently, if Candidate A sought to transfer funds to Party X’s national committee, they could transfer all \$50 million.¹¹¹ Under this Piece’s proposed legislation, however, they could only transfer a maximum of \$1,035,500. The \$1 million raised through individual donations would remain free from any limits, since these funds would have already been subjected to existing contribution limits.¹¹² The self-funded \$49 million, in contrast, would be subject to the same limits individuals currently face when contributing to party committees.¹¹³

C. Considerations Against the Proposed Limits

This section engages with two likely critiques of the legislative solution proposed in the previous section (though such concerns could equally apply to a regulatory solution). Section III.C.1 responds to potential concerns over the constitutionality of the proposed solution. Section III.C.2 addresses arguments made by some campaign finance scholars in favor of loosening restrictions on contributions to political parties.

1. *The Constitutionality of the Proposed Limit.* — Some commentators may have legitimate concerns that today’s Supreme Court would strike down a limit on candidate committee contributions to party committees as unconstitutional. While the *McConnell* Court upheld limits on individual contributions to party committees,¹¹⁴ it did so “on constitutional bases beyond the prevention of quid pro quo corruption.”¹¹⁵ At the time of *McConnell*, as Professor Michael Kang states, “[P]arty committees themselves had never been understood . . . to be legally capable of engaging in the type of quid pro quo exchanges that triggered the government’s anti-corruption interest.”¹¹⁶ Consequently, given that the post-*McConnell* Court

110. See *id.* §§ 30114(a)(4), 30116(a)(1)(B)–(D) (setting limits on individual contributions to national, state, and local party committees).

111. See *supra* notes 70–72 and accompanying text.

112. See Contribution Limits for 2019–2020 Federal Elections, *supra* note 1 (capping individual contributions to candidate committees at \$2,800 per election).

113. See 52 U.S.C. § 30116(a)(1)(B)–(D).

114. See *McConnell v. Fed. Election Comm’n*, 540 U.S. 93, 154 (2003) (“[T]here is substantial evidence . . . that large soft-money contributions to national political parties give rise to corruption and the appearance of corruption.”).

115. Michael S. Kang, *The Brave New World of Party Campaign Finance Law*, 101 *Cornell L. Rev.* 531, 545 (2016).

116. *Id.*

has declared the prevention of quid pro quo corruption to be the only governmental interest sufficiently important enough to constitutionally justify contribution limits,¹¹⁷ some may argue that limits on contributions to party committees do not satisfy the Court's modern, stringent standards.

There are, however, strong reasons to believe that such a limit would still withstand constitutional scrutiny even under today's Roberts Court. For one, the Court has never clearly stated that contributions to political parties could never exist within its quid pro quo framework; rather, this conclusion has simply been implied through the Court's failure to explicitly extend its understanding of quid pro quo corruption to cover such contributions.¹¹⁸ If anything, the D.C. Circuit's recent decision in *Libertarian National Committee, Inc. v. FEC* recognizing the potential for quid pro quo arrangements between individuals and political parties¹¹⁹—which the Court declined to review on certiorari¹²⁰—suggests that the Court's definition of quid pro quo corruption may not be so uncompromising as to categorically exclude all contributions to political parties.¹²¹ And though it may be difficult to prove the existence of such arrangements, this will have no bearing on the constitutionality of the proposed limits since the Court recognizes contribution limits as prophylactic measures.¹²² Nevertheless, even if the strictest definition of quid pro quo corruption were applied, the proposed limit should still be deemed constitutional because the limit would also target quid pro quo arrangements between self-funded candidates and other candidates formed through conduit contributions to political parties.¹²³

117. See *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 227 (2014) (plurality opinion) (“We have, however, held that this interest must be limited to a specific kind of corruption—*quid pro quo* corruption . . .” (italics in original)); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 359 (2010) (“When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption.” (italics in original)).

118. See Kang, *supra* note 115, at 545 (“Rather than extend quid pro quo corruption to cover the intuitive case against soft money, the Court instead applied its novel theory of undue influence to uphold the federal prohibition.”).

119. See 924 F.3d 533, 542 (D.C. Cir. 2019) (“The risk of quid pro quo corruption . . . could cause that party . . . ‘to grant political favors to the individual . . .’” (quoting *Libertarian Nat'l Comm., Inc. v. Fed. Election Comm'n*, 317 F. Supp. 3d 202, 247 (D.D.C. 2018))); see also *supra* notes 38–42 and accompanying text.

120. *Libertarian Nat'l Comm., Inc. v. Fed. Election Comm'n*, 140 S. Ct. 569 (2019).

121. But see *McCutcheon*, 572 U.S. at 211 (plurality opinion) (“For those reasons, the risk of *quid pro quo* corruption is generally applicable only to ‘the narrow category of money gifts that are directed, in some manner, to a candidate or officeholder.’” (italics in original) (quoting *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 310 (2003) (Kennedy, J., concurring in part))).

122. See *Citizens United*, 558 U.S. at 357 (“[R]estrictions on direct contributions are preventative, because few if any contributions to candidates will involve *quid pro quo* arrangements.” (italics in original)).

123. See *supra* notes 87–94 and accompanying text; see also *Colo. Republican II*, 533 U.S. 431, 464 (2001) (“There is no significant functional difference between a party's

2. *The Political Consequences of the Proposed Limit.* — Regardless of constitutionality, some experts warn that imposing stricter limits on contributions to political parties is simply bad policy, namely in that such limits fuel political polarization.¹²⁴ As Professor Raymond La Raja states, “[T]he middle ground of American politics . . . become[s] increasingly difficult to locate, as parties refuse to compromise for fear of losing the support of the key ideological factions that provide them with small donations in bulk.”¹²⁵ This Piece recognizes such criticisms, but does not see them as particularly damning against the call for limiting the amount a self-funded candidate can give to a political party. First off, whether limits on contributions to party committees actually correlate with political polarization is far from conclusive.¹²⁶ Moreover, even if such limits did result in more polarization, whether this is an undesirable outcome is a matter of ideological preference. While some may prefer for political parties to be more influenced by the centrist, liberal leanings of big donors, others yearn for the radicalization of their party to achieve what they believe to be true progress.¹²⁷ Accordingly, this Piece respectfully acknowledges but refrains from engaging in this debate.

CONCLUSION

When Congress passed BCRA in 2002, it changed federal campaign finance law for the better. Failing to set clear limits on self-funded candidates transferring personal funds to party committees, however, has resulted in a dangerous regulatory loophole ripe for exploitation. When self-funded candidates can use their candidacy as a pipeline to channel unlimited money to political parties, opportunities for the candidate to

coordinated expenditure and a direct party contribution to the candidate . . .”); cf. *Ognibene v. Parkes*, 671 F.3d 174, 195 n.21 (2d Cir. 2011) (“*Citizens United* never doubted the government’s strong interest in preventing quid pro quo corruption or materially questioned the ability of corporations to serve as conduits for circumventing valid contributions limits.” (internal quotation marks omitted) (quoting *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 640 F.3d 304, 318 (8th Cir. 2011), *aff’d in part and rev’d in part*, 692 F.3d 864 (8th Cir. 2012))).

124. See, e.g., Raymond J. La Raja, *Small Change: Money, Political Parties, and Campaign Finance Reform* 156 (2008).

125. *Id.*

126. See Anthony J. Gaughan, *Trump, Twitter, and the Russians: The Growing Obsolescence of Federal Campaign Finance Law*, 27 *S. Cal. Interdisc. L.J.* 79, 118–19 (2017) (arguing that limits on contributions to candidates, as opposed to limits on contributions to parties, are more likely to contribute to polarization).

127. See, e.g., Eric Alterman, *Why Liberals Need Radicals—And Vice Versa, Democracy* (Winter 2015), <https://democracyjournal.org/magazine/35/why-liberals-need-radicals-and-vice-versa> [<https://perma.cc/YW3Y-3HZH>] (“[L]iberals have too frequently shown a willingness to grow overly comfortable with the conservative part of that equation. They need to be shaken up occasionally, and reminded why it is they are making all these necessary compromises in pursuit of the vision that animated them in the first place.”).

engage in quid pro quo arrangements with a political party and its nominees will naturally arise. Therefore, Congress should pass legislation limiting the dollar amount a self-funded candidate may contribute to party committees. Until then, wealthy citizens will be free to buy influence simply by announcing, "I am running for public office."