REDBOXING, REVERSE REDBOXING, AND *BUCKLEY*: LIMITING SUBVERSION OF THE FEC'S COORDINATION BAN WITHOUT VIOLATING THE FIRST AMENDMENT

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INTRODUCTION

Ron DeSantis had a problem. After winning reelection as governor of Florida, DeSantis had more than $80 million in his state campaign and political committee accounts—a massive war chest for a potential presidential candidate.[1] But campaign finance law prohibited him from transferring those funds to a candidate committee for his presidential campaign.[2]

The governor and his top allies devised a novel strategy. Generra Peck, who managed DeSantis's 2022 reelection bid in Florida and would soon become the first campaign manager for the governor's presidential campaign, selected the leadership for a Super PAC (political action committee) called "Never Back Down Inc."[3] The Super PAC and DeSantis's campaign committee "aimed to function as an integrated whole—built with the candidate's approval, advised by a single law firm, overseen by a

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[1] Michael Scherer, Hannah Knowles & Josh Dawsey, *Ron DeSantis Wanted to Change the Way Campaigns Were Funded. Then the Fights Started*, WASH. POST (Dec. 16, 2023), https://www.washingtonpost.com/politics/2023/12/16/desantis-super-pac-collapse/ [https://perma.cc/GT52-XWR4].

[2] *See Transfers Between a Candidate's Committees*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/making-disbursements/transfers/ [https://perma.cc/W6H9-8Q8L] (last visited Sep. 28, 2025) ("A candidate's authorized (federal) committee may not accept funds or assets transferred from a committee established by the same candidate for a nonfederal election campaign."); 11 C.F.R. § 300.62 (2026) (citing 52 U.S.C. § 30125(e)(1)(B)) ("A [candidate] . . . may solicit, receive, direct, transfer, spend, or disburse funds in connection with any non-Federal election, only in amounts and from sources that are consistent with State law, and that do not exceed [the Federal Election Campaign Act's ("FECA")] contribution limits or come from prohibited sources under [FECA].").

[3] Scherer, Knowles & Dawsey, *supra* note 1.

board that included DeSantis confidants[,] and seeded with $82.5 million that DeSantis had raised for his gubernatorial reelection."[4]

Like any traditional Super PAC, Never Back Down Inc. ran independent-expenditure advertisements supporting DeSantis and opposing his opponents.[5] But much of Never Back Down Inc.'s operation looked more like the work of a traditional campaign than the typical ad-buying support of a Super PAC. Through public posts on its consultants' website, Never Back Down Inc. gave the campaign debate advice, telling DeSantis to "take a sledgehammer" to primary opponent Vivek Ramaswamy and to "[a]ttack Joe Biden and the media 3-5 times."[6] The Super PAC funded Governor DeSantis's air travel,[7] organized ground game in early primary states like Iowa,[8] and solicited fundraising for DeSantis for President, the governor's campaign committee.[9]

These tactics are the newest evolution in a series of attempts by campaigns and parties to expand the impact of their allied Super PACs while staying within the letter of the laws and Federal Election Commission ("FEC") regulations governing Super PAC behavior. For roughly the first decade after *Citizens United v.*

[4] *Id.*

[5] *Never Back Down Inc.*, FED. ELECTION COMM'N, https://www.fec.gov/data/committee/C00834077/?cycle=2024&tab=spending [https://perma.cc/A67M-YECF] (last visited Dec. 12, 2025) (disclosing $32,387,000.40 in independent expenditures to support DeSantis, $5,096,664.76 in independent expenditures to oppose Nikki Haley, and $280,812.33 in independent expenditures to oppose Donald Trump).

[6] Jonathan Swan, Shane Goldmacher & Maggie Haberman, *Defend Trump and 'Hammer' Ramaswamy: DeSantis Allies Reveal Debate Strategy*, N.Y. TIMES (Aug. 24, 2023), https://www.nytimes.com/2023/08/17/us/politics/desantis-debate-strategy.html [https://perma.cc/WTA9-UN2V].

[7] Michael Scherer & Isaac Arndorf, *DeSantis Super PAC Shares Cost for Private Air Travel in Unusual Deal*, WASH. POST (Aug. 5, 2023), https://www.washingtonpost.com/politics/2023/08/05/desantis-plane-super-pac/ [https://perma.cc/Y6TT-73SQ].

[8] Shane Goldmacher, Jonathan Swan & Maggie Haberman, *DeSantis Allies' $200 Million Plan for Beating Trump*, N.Y. TIMES (May 24, 2023), https://www.nytimes.com/2023/05/24/us/politics/ron-desantis-2024-super-pac.html [https://perma.cc/T2WQ-488G].

[9] Jessica Piper & Sally Goldenberg, *The Super PAC Frenzy Redefining Campaign Operations*, POLITICO (June 25, 2023, at 07:00 ET), https://www.politico.com/news/2023/06/25/the-super-pac-frenzy-redefining-campaign-operations-00103483 [https://perma.cc/K2SF-K5HS].

Federal Election Commission,[10] these attempts primarily took the form of a strategy called "redboxing." Redboxing is a practice where campaigns (as well as political parties) provide messaging and targeting direction on their websites (often in literal red boxes, hence the name).[11] Allied Super PACs then take this information and run advertisements, advancing the campaign's preferred messages to the campaign's preferred audiences without using the campaign's funds.[12] The DeSantis strategies build on this in an example of what I call "reverse redboxing," an evolution of redboxing that puts third parties, not candidates, in the driver's seat.

Campaigns seek out ways to work closely with allied Super PACs because federal laws and regulations tightly restrict the sizes and sources of financial contributions that campaigns and parties can accept because of fears of corruption.[13] Super PACs, however, are allowed to raise unlimited money from unlimited sources.[14]

In an effort to prevent subversion of the campaign contribution limits, Congress codified 52 U.S.C. § 30116 (a)(7)(B)(i), which treats spending by Super PACs in "cooperation, consultation, or concert, with, or at the request or suggestion of" campaigns as contributions to the campaign.[15] Campaigns and

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[10] Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).

[11] Kaveri Sharma, Note, *Voters Need to Know: Assessing the Legality of Redboxing in Federal Elections*, 130 YALE L.J. 1898, 1905–08 (2021). Sharma's work on redboxing is discussed at length *infra*.

[12] *See* Gabriel Foy-Sutherland & Saurav Ghosh, *Coordination in Plain Sight: The Breadth and Uses of "Redboxing" in Congressional Elections*, 23 ELECTION L.J. 149, 153 (2024) ("Why do candidates and parties engage in redboxing? In short, to harness super PACs' spending power under a thin veneer of legality.") Redboxing is discussed in greater detail in Part III of this paper.

[13] *Contribution Limits*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/ [https://perma.cc/463P-DC26] (last visited Sep. 25, 2025).

[14] This is not directly established in statute, but instead by a combination of the Supreme Court's decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), the D.C. Circuit's decision in *SpeechNow.org v. Federal Election Commission*, 599 F.3d 686 (D.C. Cir. 2010), and FEC advisory opinions like FEC Advisory Op. 2010-11 (July 22, 2010).

[15] 52 U.S.C. § 30116 (a)(7)(B)(i) (2024); *see also* Buckley v. Valeo, 424 U.S. 1, 47 (1976) (per curiam), *superseded by statute*, Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81 (noting that this restriction exists to "prevent

their allied Super PACs resort to strategies like redboxing and reverse redboxing to get around this restriction.

Scholars and advocates have suggested regulating redboxing by defining commonly used terms as coordination and shifting the burden of proof from the person bringing an allegation of coordination to the party accused of the act. This Comment will analyze how the existing suggestions for regulation of redboxing raise serious First Amendment concerns and are ultimately ineffective at addressing the constantly-evolving practices being used.

Part I will describe the modern history of federal campaign finance law, including the Supreme Court's key campaign finance rulings. Particular attention will be paid to the legislative and legal debates over the Bipartisan Campaign Reform Act, which addressed practices from the late twentieth century that somewhat mirror modern redboxing and reverse redboxing. Understanding why key provisions of that legislation were held unconstitutional is helpful in understanding how the Supreme Court might treat the common suggestions for regulation of redboxing.

Part II will discuss how existing campaign finance law creates the appetite for campaigns and political parties to form symbiotic relationships with allied Super PACs. It will also discuss how the specific regulations drafted by the FEC to implement the restrictions on coordination encourages campaigns and Super PACs to resort to strategies like redboxing and reverse redboxing.

Part III will describe redboxing and reverse redboxing in greater detail. It will focus on the identifiable characteristics that allow campaigns, Super PACs, regulators, and other interested parties to identify the tactics. It will also contain detailed examples of both tactics in use during primaries in the 2022 election cycle: redboxing in the Democratic primary runoff for Texas's 28th Congressional District and reverse redboxing in the Republican primary for U.S. Senate in Ohio.

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attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions").

Part IV will discuss legal and regulatory regimes for handling redboxing and reverse redboxing. This part of the Comment will focus on the suggestions proposed by other scholars, namely adding common redboxing tactics to the definition of coordination and shifting the burden of proof in FEC complaints from the party alleging coordination to the party defending itself from the allegation. While the efficacy of these solutions with respect to redboxing has been somewhat examined by other scholarship, this Comment will discuss two areas that have been less well-examined: the efficacy of these solutions in addressing reverse redboxing and the First Amendment implications of these policy suggestions. I will particularly focus on why these suggestions create a candidate speech problem under the First Amendment if applied to reverse redboxing.

This Comment will conclude with a brief discussion of alternative regulatory frameworks that I believe more effectively address the root concerns of corruption without raising the same First Amendment issues as other common suggestions for limiting Super PAC conduct.

I. HISTORICAL BACKGROUND

To understand why redboxing and reverse redboxing exist and how the Supreme Court will likely respond to efforts to regulate the practices, it is critical to understand how modern campaign finance law developed through a series of legislative efforts (largely expanding the law) and Supreme Court precedents (largely reeling it in on First Amendment grounds). In this part, I will briefly discuss the Federal Election Campaign Act ("FECA") and *Buckley v. Valeo*, the first major federal campaign finance law and the first major challenge to such laws under the First Amendment, respectively. I will then discuss the Bipartisan Campaign Reform Act ("BCRA") and the First Amendment arguments around its passage through Congress. Finally, I will conclude by discussing the legal challenges to BCRA that ultimately saw key provisions overturned by the Court on First Amendment grounds.

A. FECA, Buckley *& the Roots of Campaign Finance Law*

FECA and its 1974 amendment created the skeleton of our modern campaign finance system.[16] Through FECA, Congress placed restrictions on political committees' abilities to receive contributions and make expenditures.[17] The Federal Election Commission ("FEC") was established to oversee the system.[18]

In 1976, the Supreme Court overturned most of FECA's expenditure limits in *Buckley v. Valeo*, writing:

> A restriction on the amount of money a person or group can spend on political communication during a campaign necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. . . . The expenditure limitations contained in the Act represent substantial . . . restraints on the quantity and diversity of political speech.[19]

For the *Buckley* court, a campaign finance restriction's impact on free speech was the critical factor in determining constitutionality. When money becomes political debate, it becomes subject to First Amendment protections.[20] *Buckley* draws this line at the moment the money is spent (generally by someone other than the donor) rather than the moment it is received.[21]

Buckley set forth a division between the way the Court evaluates expenditures and contributions that remains in place today. Under this framework, spending money is essentially always protected First Amendment speech, but donating money is speech only so far as it indicates what the Court called "the undifferentiated, symbolic act of contributing"—in other words, an endorsement of a candidate or cause.[22] According to the *Buckley* court's logic, that endorsement has the same speech value whether

[16] *See, e.g.*, *FEC Historical Timeline*, FED. ELECTION COMM'N, https://www.fec.gov/about/fec-historical-timeline/ [https://perma.cc/2RJ3-DJUB] (last visited Sep. 25, 2025).

[17] *Buckley*, 424 U.S. at 12–13.

[18] FED. ELECTION COMM'N, *supra* note 16.

[19] *Buckley*, 424 U.S. at 19.

[20] *Id.*

[21] *Id.* at 21 ("[T]he transformation of contributions into political debate involves speech by someone other than the contributor.").

[22] *Id.*

it comes with a $1 contribution or a $1 million contribution.[23] Thus, limits on the size of contributions to candidates or political committees were constitutional because they did not impact the speech underlying a contribution.

When a regulation created even a possibility of restricting candidate speech, however, the *Buckley* court viewed it with severe skepticism. Even though the Court was fine with the general idea of contribution limits, it struck down a limit on candidates contributing to their own campaigns.[24] The Court explained that "it is of particular importance that candidates have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day."[25]

Parts of *Buckley* have been superseded by statute,[26] but the decision's general principles—that spending is speech but donations are not and that protecting free speech, particularly candidate speech, should be prioritized—still govern the way the court's majority approaches campaign finance cases.[27]

B. The Fight over BCRA

After *Buckley*, there was a roughly twenty-year period where campaign finance law remained in a state of equilibrium. In the late twentieth Century, however, members of Congress began conversations about reforming the law that would lead to the Bipartisan Campaign Reform Act ("BCRA"), sweeping reform legislation passed in the early 2000s. Much of the debate around BCRA focused on the same First Amendment principles at issue in *Buckley*.

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[23] *See id.* ("The quantity of communication by the contributor does not increase perceptibly with the size of his contribution.")

[24] *Id.* at 51–54.

[25] *Id.* at 52–53.

[26] Congress passed new campaign finance laws after *Buckley* that replaced most of the laws the Court had found unconstitutional. *See* McConnell v. Fed. Election Comm'n, 540 U.S. 93 (2003), *overruled by*, Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010).

[27] The most recent major campaign finance case was *Federal Election Commission v. Cruz* in 2022; *Buckley* is repeatedly cited in both *Cruz*'s majority opinion and dissent. *See* Fed. Election Comm'n v. Cruz, 596 U.S. 289 (2022).

Although it contained a myriad of other provisions,[28] BCRA was intended primarily "to address Congress' concerns about the increasing use of soft money and issue advertising to influence federal elections."[29]

"Soft money" refers to funds not subject to FECA.[30] Because FECA applies only to federal campaign finance, donations made to political parties solely to influence state or local elections are not subject to federal contribution limits.[31] A series of FEC rulings allowed parties to use this money for a variety of purposes that indirectly supported federal candidates, including get-out-the-vote drives and issue advocacy that mentioned federal candidates without expressly advocating for their election or defeat.[32] The

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[28] BCRA's other provisions, among other things, limited candidates' ability to self-finance, required parties to choose between making independent expenditures or making coordinated expenditures for a given candidate in a given election cycle (commonly referred to as the "choice provision"), reformed the FEC's reporting process, increased criminal penalties for election law violations, and prohibited contributions from minors and foreign nationals. *See generally* Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107–155 (codified primarily in 52 U.S.C. §§ 30101–30146).

[29] *McConnell*, 540 U.S. at 132; see also *id.* at 129–32.
These concerns were the primary issues identified by a 1997–98 investigation into the 1996 federal elections conducted by the Senate Committee on Governmental Affairs. Both the majority report (written by committee Republicans and focused on the Clinton re-election campaign and other Democratic campaigns) and the minority report (written by committee Democrats and focused on Republican campaigns) agreed that soft money and issue advertising were concerns that the Senate should address. *See generally* S. REP. NO. 105-167 (1998).

[30] *McConnell*, 540 U.S. at 123.

[31] *Id.* at 122.

[32] *Id.* at 123–24.

> In 1977 the FEC promulgated a rule allowing parties to allocate their administrative expenses "on a reasonable basis" between accounts containing funds raised in compliance with FECA and accounts containing nonfederal funds, including corporate and union donations. 11 CFR § 102.6(a)(2). In advisory opinions issued in 1978 and 1979, the FEC allowed parties similarly to allocate the costs of voter registration and get-out-the-vote drives between federal and nonfederal accounts. FEC Advisory Op.1978–10; FEC Advisory Op.1979–17.
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> In 1990 the FEC clarified the phrase "on a reasonable basis" by promulgating fixed allocation rates. 11 CFR § 106.5 (1991). The regulations required the Republican National Committee (RNC) and Democratic National Committee (DNC) to pay for at least 60% of mixed-purpose activities (65% in

discussion of soft money is particularly relevant because it played a role similar to what reverse redboxing plays for some campaigns today. As outlined in greater detail in Part III, campaigns have long sought opportunities to use less restricted funds to absorb some of their costs and free up money for other purposes. Soft money played that role in the late 1990s; reverse redboxing does the same today.

"Issue advertising" refers to advertisements that were not subject to FECA's requirements because they avoided the use of specific words that would make them "expressly advocate the election or defeat of a clearly identified candidate."[33] Under the pre-BCRA regime, issue advertising could be funded by third-party groups operated by individuals, corporations, and labor unions without disclosing any sponsorship.[34]

BCRA addressed soft money by prohibiting national parties from soliciting, receiving, or directing to another person any contributions or transfers of funds not subject to the FECA—effectively taking them out of the soft money game altogether.[35] It addressed issue advertising in a more complicated manner, creating a new category of "electioneering communications"[36] and

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> Presidential election years) with funds from their federal accounts. § 106.5(b)(2). By contrast, the regulations required state and local committees to allocate similar expenditures based on the ratio of federal to nonfederal offices on the State's ballot, § 106.5(d)(1), which in practice meant that they could expend a substantially greater proportion of soft money than national parties to fund mixed-purpose activities affecting both federal and state elections.

Id. at 123 n.7 (citation omitted).

[33] *Id.* at 126 (quoting Buckley v. Valeo, 424 U.S. 1, 80 (1976) (per curiam), *superseded by statute*, Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81).

[34] *Id.* at 127–28.

[35] Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, § 323(a), 116 Stat. 81 (2002).

[36] BCRA defined "electioneering communication" as:

> [A]ny broadcast, cable, or satellite communication which— (I) refers to a clearly identified candidate for Federal office; (II) is made within . . . 60 days before a general, special, or runoff election for the office sought by the candidate; or . . . 30 days before a primary or preference election, or a

then prohibiting corporations and labor unions from funding such communications.[37]

While the majority of Americans in the early 2000s were broadly supportive of campaign finance reform focused on these issues,[38] there was opposition to BCRA from both the left and the right flanks, largely because of the concerns raised in *Buckley* about the constitutional implications of restricting political speech.

The American Civil Liberties Union ("ACLU") sent a letter to senators calling on them to vote against McCain-Feingold, which

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> convention or caucus of a political party that has authority to nominate a candidate, for the office sought by the candidate; and (III) . . . is targeted to the relevant electorate.

Id. § 201(f)(3)(A). The law provided exceptions for media coverage, debates, candidate ads and independent expenditures. *Id.* § 201(f)(3)(B).

[37] *Id.* § 203.

[38] A March 2001 poll by Gallup, in conjunction with CNN and USA Today, found that seventy-six percent of Americans favored "new federal laws limiting the amount of money that any individual or group can contribute to the national political parties." Campaign finance reform was a low priority issue for the majority of Americans, with a January 2001 poll finding it ranked nineteenth in importance out of twenty issues polled. However, it remained a major priority for McCain, who "forced the . . . issue in the Senate, and . . . even vowed to shut down all business of the Senate" if his namesake reform legislation was not passed within two weeks. David W. Moore, *Widespread Public Support for Campaign Finance Reform*, GALLUP (Mar. 20, 2001), https://news.gallup.com/poll/1885/widespread-public-support-campaign-finance-reform.aspx [https://perma.cc/9TXS-JF2J].
Opponents of the legislation were quick to point out the low level of importance Americans placed on the issue. Kentucky Republican Senator Mitch McConnell, for example, sarcastically praised McCain for forcing the issue to the floor:

> I congratulate the Senator from Arizona. We are all in the business of looking at public opinion. We know the American people are interested in the energy crisis; they are interested in education; they are interested in tax relief. They are not particularly interested in campaign finance reform. I have often said it ranks with static cling as one of the great concerns among the American people. Through the sheer tenacity of the senior Senator from Arizona, we are here today beginning a debate over the next 2 weeks on a subject of very little interest to the American people. I give him credit for his tenacity and aggressiveness in pushing this item forward on the floor of the Senate early in this new administration.

147 CONG. REC. 3858 (2001) (statement of Sen. Mitch McConnell).

it described as "a recipe for political repression."[39] The ACLU raised specific concerns about three things: (1) the First Amendment freedom of speech problems raised by the legislation's issue advocacy ban; (2) the First Amendment freedom of association problems raised by new restrictions on corporate speech; and (3) the crippling effect the legislation would have on the political party system.[40]

Both of Nebraska's Senators, Republican Chuck Hagel and Democrat Ben Nelson, opposed the bill on constitutional grounds, with Hagel sponsoring an alternative measure and Nelson telling CNN, "I certainly want campaign finance reform . . . I just wish [BCRA] would do it in a way that would stand up to a constitutional challenge."[41]

Hagel and Nelson's Senate colleague, Kentucky Republican Mitch McConnell, outlined the constitutional argument of BCRA's opponents thusly:

> The only way to get at the core of this problem, if Senators believe the influence of money and politics is so pernicious, is to change the First Amendment. . . . [Y]ou can't do most of these things as long as the First Amendment remains as it is.
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> . . . .
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> Barring such a wholesale repeal of constitutional freedom, a lot of what we are going to be doing in the next [two] weeks will probably fall well short of the constitutional mark. But I hope that Senators will take their responsibilities seriously

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[39] *Letter to the Senate in Opposition to the McCain-Feingold Bipartisan Campaign Finance Reform Act of 2001*, AM. C.L. UNION (Mar. 20, 2001), https://www.aclu.org/documents/letter-senate-opposition-mccain-feingold-bipartisan-campaign-finance-reform-act-2001 [https://perma.cc/T7SC-XKRR].

[40] *Id.*

[41] Ted Barrett & Dana Bash, *Campaign Finance Battle Moves to Senate*, CNN (Feb. 15, 2002, at 08:08 ET), https://www.cnn.com/2002/ALLPOLITICS/02/14/campaign.finance/ [https://perma.cc/CS9E-YF79]; *Campaign Finance Reform Takes Key Step Forward: After Killing Similar Measures the Last Two Years, Senate Approves McCain-Feingold Bill*, CNN (Apr. 3, 2001, at 16:25 ET), https://www.cnn.com/2001/fyi/news/04/03/campaign.finance/ [https://perma.cc/NA46-4RCF].

> and not just vote for anything, hoping the courts will at some point save us from ourselves.[42]

Although there was bipartisan opposition within the Senate, BCRA passed the chamber in early 2001—albeit without enough votes to overcome a potential filibuster.[43]

After the legislation cleared the Senate, efforts to turn BCRA into law initially stalled in the House of Representatives because of opposition from leadership, including Speaker Dennis Hastert.[44] After the Enron scandal in late 2001, however, BCRA's advocates in the House regained momentum.[45] House Democratic leadership and the bill's sponsors secured signatures for a discharge petition on a new version of the legislation and forced a floor vote in February 2002.[46] Back in the Senate, South Carolina Democrat Fritz Hollings, who opposed the 2001 version of BCRA, supported the new legislation and provided the crucial sixtieth vote to avoid a potential filibuster.[47]

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[42] 147 CONG. REC. 3859 (2001) (statement of Sen. Mitch McConnell).

[43] McCain-Feingold passed the Senate with fifty-nine votes, one short of the sixty-vote threshold needed for "cloture" in the Senate. *See* 147 CONG. REC. 5221–22 (2001). The legislation's opponents in the upper chamber declined to use the filibuster on the bill's initial passage, likely because they knew it faced additional opposition in the House and was likely to come back for an additional Senate vote—and an additional opportunity for a filibuster—before becoming law. *See also* CNN, *supra* note 41.

[44] *See, e.g.*, Marc J. Ambinder & Matthew Silverstein, *Shays-Meehan Faces Hurdles*, ABC NEWS (Jan. 25, 2002, at 13:10 CT), https://abcnews.go.com/Politics/story?id=121237&page=1 [https://perma.cc/D9G4-6TBH]. In the spring of 2001, Hastert said he would only bring the bill up for a vote in the House only "if several conditions we [sic] met. Proponents of the bill argued at the time that those conditions were too onerous."

[45] *Id.*

[46] *See* H.R. 2356, 107th Cong. (2002) (as passed by the House on Feb. 14, 2002). A discharge petition is a rarely-used procedural maneuver that allows any member of the House of Representatives to bring legislation up for a floor vote (superseding leadership's control over the calendar) with the signatures of a majority (218) of the chamber's 435 members. *Discharge Petitions*, CONG. INST., https://www.congressionalinstitute.org/112th-congress-house-floor-procedures-manual/xvi-discharge-petitions/ [https://perma.cc/7L7H-P2AG] (last visited Dec. 12, 2025).

[47] *Contrast* 147 CONG. REC. 5221–22 (2001) (fifty-nine votes in favor of BCRA and Hollings as a "nay" vote), *with* 148 CONG. REC. 3623 (2002) (sixty votes in favor of BCRA and Hollings as a "yea" vote). *See also* Barrett & Bash, *supra* note 41 ("Last year, the McCain-Feingold bill . . . was approved by 59 votes, one shy of the 60 needed to curtail a filibuster. But sources said South Carolina Democrat Ernest "Fritz" Hollings, who voted against the bill last year, will vote with supporters of the measure

President George W. Bush signed the bill into law on March 27, 2002, saying in a statement, "I believe that this legislation, although far from perfect, will improve the current financing system for Federal campaigns."[48] However, President Bush noted that he still had "serious constitutional concerns" about several provisions in the bill, including the limitations on individual soft-money contributions (as opposed to those by corporations or labor unions) and the issue advertising ban.[49] On those First Amendment questions, Bush said that he "expect[ed] that the courts [would] resolve these legitimate legal questions as appropriate under the law."[50]

C. McConnell *to* Citizens United*: Eroding Restrictions on Political Speech*

President Bush's concerns and expectations about BCRA's constitutionality would prove to be prescient. In a decade-long series of cases building on *Buckley*, the Supreme Court overturned various provisions of BCRA as unconstitutional restrictions on the First Amendment.

Senator McConnell led the first major legal challenge in *McConnell v. Federal Election Commission*.[51] The Supreme Court in *McConnell* largely upheld BCRA, overturning only a few minor provisions.[52] In later challenges to BCRA, however, the Supreme Court chipped away at more substantive provisions of the law.

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this time."). Hollings did not give a rationale for his flip from the Senate floor during the 2002 debate; in fact, he did not speak during that debate at all. *See generally* 148 CONG. REC. 3555–623 (2002).

The actual cloture vote was not as close as final passage since some opponents knew that with Hollings's support, passage was guaranteed. *Contrast* 148 CONG. REC. 3571–72 (sixty-eighty votes for cloture on BCRA), *with id.* at 3623 (sixty votes in favor of final passage). *See also id.* at 3571 (statement of Sen. Chuck Grassley, who spoke "to explain my opposition to [BCRA] but also to point out that I voted for cloture because it is quite obvious that we have reached closure on this bill, and we might as well get to final passage and move on").

[48] *President Signs Campaign Finance Reform Act*, THE WHITE HOUSE (Mar. 27, 2002), https://georgewbush-whitehouse.archives.gov/news/releases/2002/03/20020327.html [https://perma.cc/SVX8-DL7C].

[49] *Id.*

[50] *Id.*

[51] 540 U.S. 93 (2003).

[52] *Id.* at 224, 233, 246.

Each time, the Court cited the same First Amendment logic it first applied in *Buckley*.

In *Federal Election Commission v. Wisconsin Right To Life, Inc.*, the Court held that BCRA's limits on independent expenditures were unconstitutional as applied to advertisements that were arguably issue advocacy.[53] The Court used *Buckley*'s precedent to reaffirm its commitment to free speech except in the narrowest circumstances:

> [A]ppellants have shown what we have acknowledged at least since *Buckley*: that "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application." . . . [T]hat is not enough to establish that the ads can only reasonably be viewed as advocating or opposing a candidate in a federal election. . . . Discussion of issues cannot be suppressed simply because the issues may also be pertinent in an election. *Where the First Amendment is implicated, the tie goes to the speaker, not the censor*.[54]

The Court further built on this decision in *Citizens United*, which overturned BCRA's limitations on corporate political speech and described BCRA's effect as "an outright ban, backed by criminal sanctions."[55] While critics have framed the *Citizens United* decision as the Court's rejection of campaign finance law,[56] finding in favor of the government's pro-book banning position would have been a rejection of both *Buckley* and two centuries of First Amendment precedent.[57] Under BCRA, the Court wrote, each of the following would have been felonies:

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[53] Fed. Election Comm'n v. Wis. Right To Life, Inc., 551 U.S. 449, 480–82 (2007).

[54] *Id.* at 474 (emphasis added) (citations omitted).

[55] Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 337 (2010).

[56] Michael S. Kang, for example, declared that with the decision, "for all practical purposes campaign finance law as we knew it died." Michael S. Kang, *The End of Campaign Finance Law*, 98 VA. L. REV. 1, 2 (2012). Kang's critique is not unique among campaign finance academic scholarship; the vast majority of writers see the Roberts Court's anti-regulatory decisions as the unraveling of "meaningful checks on the influence of money" in politics. *Id.*

[57] During the March 24, 2009, oral arguments, Deputy Solicitor General Malcolm Stewart was asked if BCRA required the FEC to ban books in the run-up to elections if they criticized political candidates. Stewart answered that corporate publishers would not be able to spend their money publishing such a book.

> The Sierra Club runs an ad, within the crucial phase of [sixty] days before the general election, that exhorts the public to disapprove of a Congressman who favors logging in national forests; the National Rifle Association publishes a book urging the public to vote for the challenger because the incumbent U.S. Senator supports a handgun ban; and the American Civil Liberties Union creates a Web site telling the public to vote for a Presidential candidate in light of that candidate's defense of free speech.[58]

In striking down the corporate speech limits, the Court did not create a substantially different environment from the one that existed pre-BCRA. What did change that environment, however, was *SpeechNow.org v. FEC*.[59]

In *SpeechNow.org*, the D.C. Circuit found that there could be no contribution limits on independent expenditure-only committees.[60] The FEC incorporated this decision into its advisory opinions, such as Advisory Opinion 2010-11.[61] Together, this circuit court decision and FEC regulations created the idea of a Super PAC, something not directly addressed at the time in either the Supreme Court's precedent or statutory law.

II. THE POST-*CITIZENS UNITED* CAMPAIGN FINANCE FRAMEWORK

The campaign finance landscape that resulted from BCRA and the Supreme Court's decisions on its constitutionality have created both the appetite for campaigns to work closely with Super PACs and the incentives for them to resort to strategies like redboxing and reverse redboxing. In this part, I will further explain the contribution and expenditure limits that make allied Super PACs an invaluable tool for campaigns and the coordination

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Solicitor General Elena Kagan later clarified, saying that while that section of law did apply to books, the government would expect the Supreme Court to strike down such an action. *In Court, Government Drops Claim It Can Regulate Books*, REPS. COMM. FOR FREEDOM OF THE PRESS (Sep. 9, 2009), https://www.rcfp.org/court-government-drops-claim-it-can-regulate-books/ [https://perma.cc/9MQ8-P9MN].

[58] *Citizens United*, 558 U.S. at 337.

[59] SpeechNow.org v. Fed. Election Comm'n, 599 F.3d 686 (D.C. Cir. 2010).

[60] *Id.* at 696.

[61] Fed. Election Comm'n, Advisory Op. 2010-11 (July 22, 2010).

restrictions and enforcement dynamics that encourage them to resort to redboxing and reverse redboxing.

A. Limits on Contributions and Expenditures

There are four primary categories of political committees that file with the FEC: authorized candidate committees ("campaigns" or "candidates"), political party committees ("political parties" or "parties"), separate segregated funds, and nonconnected committees.[62] Within the category of nonconnected committees there are several unique types of political action committees, including multicandidate PACs, hybrid PACs, leadership PACs, and Super PACs, each of which is subject to unique regulations and restrictions.[63] For the purposes of this Comment, I will focus primarily on the regulations that apply to campaigns and Super PACs.

Compared to other types of filers, campaigns have more restrictions on their ability to accept contributions but more freedom to make disbursements.[64] This is consistent with the idea that campaign finance law exists to prevent "corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected to office."[65]

The Supreme Court in *Buckley* found that limiting the sources and amount of funds that candidates can take in serves a weighty interest because it mitigates the risk of corruption or distrust of the political process.[66] At the same time, the Court recognized the importance of protecting candidates' ability to make expenditures because "it is of particular importance that

[62] *See generally Help for Candidates and Committees: Guides*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/guides [https://perma.cc/9NBQ-F7SB] (last visited Sep. 25, 2025). In addition to these four primary categories, the FEC receives filings from various other groups including host committees, convention committees and inaugural committees.

[63] *See Help for Candidates and Committees: Political Action Committees*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/guides/?tab=political-action-committees [https://perma.cc/HZ7C-EM5K] (last visited Sep. 25, 2025).

[64] *Id.*

[65] Buckley v. Valeo, 424 U.S. 1, 25 (1976) (per curiam), *superseded by statute*, Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-155, 116 Stat. 81.

[66] *Id.* at 26–29.

candidates have the unfettered opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day."[67]

While *Buckley* was superseded by statute, these twin principles (limiting direct contributions to candidates to avoid the appearance of impropriety while protecting candidates' rights to political speech) have remained key guardrails for the Court's campaign finance jurisprudence.

Besides the prohibition on using campaign funds for personal expenses, disbursements by campaigns are effectively unrestricted.[68]

Contributions, on the other hand, are subject to very specific limits, with exact dollar amounts that are indexed every other year for inflation.[69] For each election, candidates can currently accept up to $3,500 from each individual donor who contributes, up to $2,000 from the campaign committee of each other federal candidate who contributes, and up to $5,000 from each multicandidate PAC that contributes.[70] Campaigns cannot take any funds from corporations or from Super PACs.[71]

On the other hand, Super PACs are not subject to contribution limits and are instead able to receive unlimited contributions from individuals, corporations, labor unions, and other committees.[72] This freedom exists because, in its First Amendment analyses, the Court has not been concerned about

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[67] *Id.* at 52–53.

[68] *Buckley* struck down Congress's attempt at limiting expenditures as a clear violation of the First Amendment. *Id.* at 19-20. Since then, reinstating similar limits has become the white whale for campaign finance reform advocates. *See, e.g.*, H.R.J. Res. 119, 119th Cong. (2025) (a proposed constitutional amendment that would, among other things, require Congress to enact legislation to "limit the amounts that candidates, their campaigns for the offices of Representative, Senator, President, or Vice President, and political parties may spend on such candidacies").

[69] FED. ELECTION COMM'N, *supra* note 13. There are, however, no limits on the overall amount a campaign can raise or the number of donors a campaign can have.

[70] *Id.*

[71] *Id.*

[72] *Registering as a Super PAC*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/filing-pac-reports/registering-super-pac/ [https://perma.cc/3ARJ-87JJ] (last visited Dec. 12, 2025).

Super PACs being the *subject* of undue influence from contributors.[73]

The gulf between the contributions that a campaign can accept and those that a Super PAC can accept makes it attractive for campaigns to work with Super PACs to advance their goals and gain access to more money—and therefore more capacity for political speech. Recognizing this temptation, however, Congress and the FEC have placed restrictions on the ability of campaigns and Super PACs to cooperate.[74] The existence of these restrictions, then, creates the temptation to work around them via redboxing and reverse redboxing.

B. De Facto Coordination Ban

While Super PACs cannot be the *subject* of undue influence, they can easily be used as tools to exert such influence. To avoid this, federal law prohibits direct contributions from Super PACs to campaigns.[75]

There is also the concern that Super PACs could be used to gain influence over candidates via *quid pro quo* (or alternatively, the appearance of *quid pro quo* and the resulting disintegration of public trust).[76] In effect, the worry is that Super PACs could spend in a way that would aid the candidate as much as a contribution but not actually involve transferring funds to a campaign.

To close this loophole, federal law provides that "expenditures made by any person [or PAC] in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate."[77] This language "prevent[s] attempts to circumvent [FECA and BCRA] through prearranged or coordinated expenditures amounting to disguised contributions."[78]

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[73] *Buckley*, 424 U.S. at 19-21; *see also* Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 357 (2010) ("[The] Court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.").

[74] 52 U.S.C. § 30116 (a)(7)(B)(i) (2014); 11 C.F.R. § 109.21 (2026).

[75] FED. ELECTION COMM'N, *supra* note 13.

[76] *Buckley*, 424 U.S. at 47.

[77] 52 U.S.C. § 30116 (a)(7)(B)(i) (2014).

[78] *Buckley*, 424 U.S. at 47.

Together with the total ban on Super PAC contributions to campaigns, treating coordination as a contribution creates a de facto ban on Super PAC coordination. However, neither the statute nor the Court have defined what coordination or coordinated expenditures look like when not made at the explicit request of a candidate. The FEC has filled this gap by promulgating rules for "coordinated communications" in 11 C.F.R. § 109.21:

> A communication is coordinated with a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing when the communication:
>
> (1) Is paid for, in whole or in part, by a person other than that candidate, authorized committee, or political party committee;
>
> (2) Satisfies at least one of the content standards in paragraph (c) of this section; and
>
> (3) Satisfies at least one of the conduct standards in paragraph (d) of this section.[79]

The content standards for coordination are broad, including all electioneering communications,[80] republishing of campaign materials, public communications that engage in express advocacy, and public communications that reference candidates or political parties within specific blackout periods.[81]

The conduct standards are more specific. Even without agreement or formal collaboration, a communication made by a third party satisfies the conduct standards when the candidate or political party:

1. Requests, suggests, or assents to the communication;[82]

2. Is materially involved in decisions about the strategy of the communication;[83]

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[79] 11 C.F.R. § 109.21 (2026).

[80] The FEC uses the definition of "electioneering communication" found in 11 C.F.R. § 100.29, which uses different language but is functionally identical to the definition used in BCRA. *See supra* note 36.

[81] 11 C.F.R. § 109.21(c) (2026).

[82] *Id.* § 109.21(d)(1).

3. Has a substantial discussion with the third party about campaign plans, projects, activities, or needs that are material to the communication before the communication is created, produced, or distributed.[84]

4. Shares a common vendor with the third party that then provides material information to the third party based on its relationship with the candidate or political party;[85] or

5. Previously employed the third party as an employee or independent contractor and the third party uses material information based on their relationship with the candidate or political party.[86]

The FEC regulations provide four key exceptions to the conduct standards.

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[83] The strategy decisions listed in this paragraph include all decisions regarding the communication's content; intended audience; means or mode; specific media outlet; timing or frequency, and; size, prominence, or duration. *Id.* § 109.21 (d)(2).

[84] *Id.* § 109.21(d)(3).

[85] To qualify, the common vendor must be a commercial vendor who provided the candidate or political party with one of the following services within the previous 120 days:

> (A) Development of media strategy, including the selection or purchasing of advertising slots;
>
> (B) Selection of audiences;
>
> (C) Polling;
>
> (D) Fundraising;
>
> (E) Developing the content of a public communication;
>
> (F) Producing a public communication;
>
> (G) Identifying voters or developing voter lists, mailing lists, or donor lists;
>
> (H) Selecting personnel, contractors, or subcontractors; or
>
> (I) Consulting or otherwise providing political or media advice.

Id. § 109.21(d)(4).

[86] *Id.* § 109.21(d)(5).

First, the material involvement, substantial discussion, common vendor, and former employee or independent contractor rules each contain exceptions for information obtained from a "publicly available source."[87]

Second, candidates and political parties can respond to inquiries about their legislative or policy issues without triggering any of the conduct standards, so long as they do not discuss campaign plans, projects, activities, or needs.[88]

Third, candidates can endorse other candidates and fundraise for other candidates and political committees without triggering any of the conduct standards.[89] This is commonly referred to as the "Special Guest Rule" because candidates supporting other candidates or committees are often listed as special guests on invitations to fundraising events.

Fourth, a safe harbor provision allows for commercial vendors or former employees to avoid triggering the conduct

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[87] *See id.* § 109.21(d)(2)–(5). The request or suggestion rule does not explicitly provide a "publicly available source" exception, but the FEC explained that it did not intend for the rule to apply to comments made in public forums:

> The "request or suggestion" conduct standard in paragraph (d)(1) is intended to cover requests or suggestions made to a select audience, but *not those offered to the public generally*. For example, a request that is posted on a web page that is available to the general public is a request to the general public and does not trigger the conduct standard in paragraph (d)(1), but a request posted through an intranet service or sent via electronic mail directly to a discrete group of recipients constitutes a request to a select audience and thereby satisfies the conduct standard in paragraph (d)(1). Similarly, a request in a public campaign speech or a newspaper advertisement is a request to the general public and is not covered, but a request during a speech to an audience at an invitation-only dinner or during a membership organization function is a request to a select audience and thereby satisfies the conduct standard in paragraph (d)(1).

Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 432 (Jan. 3, 2003) (emphasis added).

[88] 11 C.F.R. § 109.21(f) (2026).

[89] *Id.* § 109.21(g).

standards by establishing a firewall to prevent information from the candidate or political party from reaching employees providing services for a third party.[90]

While the coordination rule prevents the most egregious attempts at "disguised contributions," it leaves plenty of room for candidates, parties, and Super PACs to find workarounds. Many of those workarounds are the result of the FEC's unwillingness or inability to actually adjudicate and penalize violations of the coordination ban.[91]

The FEC and its six commissioners are responsible for overseeing the campaign finance system, promulgating regulations to implement those provisions of FECA and BCRA that have not been found unconstitutional, and enforcing compliance with federal election laws and regulations via civil sanctions.[92] Commissioners serve six-year terms and must be appointed by the President and confirmed by the Senate.[93] No more than three members of the commission may be members of the same political party.[94]

In order for the FEC to outlaw a practice or penalize a campaign or PAC, it must have four votes.[95] Because of partisan

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[90] *Id.* § 109.21(h). For the firewall to be sufficient, it must be described in a written policy distributed to all relevant employees and clients.

[91] Foy-Sutherland & Ghosh, *supra* note 12, at 167 n.59 ("According to the FEC's own assessment in 2019, the agency had never penalized anyone for illegal coordination in the nine years since *Citizens United*, and this does not appear to have changed since 2019.").

[92] 52 U.S.C. § 30106 (1986).

[93] *Id.*

[94] *Id.* In practice, the limitation on members from a given party means that the commission is always made up of three Democrat-aligned commissioners and three Republican-aligned commissioners. In the FEC's fifty-year history, only one commissioner, Steven T. Walther, has ever identified as anything other than a Democrat or Republican. Walther was a self-identified Independent but was nominated to fill a seat generally reserved for Democrats and voted largely with the Democratic members of the commission. *Leadership and Structure: All Commissioners*, FED. ELECTION COMM'N, https://www.fec.gov/about/leadership-and-structure/commissioners/ [https://perma.cc/2B9Z-DG6B] (last visited Sep. 25, 2025); *see also* Shane Goldmacher, *Democrats' Improbable New F.E.C. Strategy: More Deadlock Than Ever*, N.Y. TIMES (June 8, 2021), https://www.nytimes.com/2021/06/08/us/politics/fec-democrats-republicans.html [https://perma.cc/SK4D-Q6RJ] (describing Walther as one of the three "Democratic-aligned" commissioners).

[95] Ashley Lopez, *The Federal Election Commission Is Down to 2 Members. So Its Work Is at a Standstill*, NPR (Oct. 4, 2025, at 05:00 ET),

gridlock and vacancies, getting the votes of four commissioners has been a political (and at times mathematical) impossibility for the last several years.[96]

When the FEC does not outlaw a practice (whether caused by a lack of quorum, a tie, or an explicit approval of the practice), campaigns, parties, and Super PACs are quick to adopt the practice—even in instances where they were the complainant seeking its ban by the FEC.[97] Failure to do so might cause them to "operate at a disadvantage" compared to their opponents.[98]

III. WORKING AROUND RESTRICTIONS ON COORDINATION

On the campaign finance front, most of the efforts revolve around finding ways to get around the coordination ban and use more money—particularly, money that can be raised without being subject to restrictive contribution limits—in more ways. This is the philosophy underlying both redboxing and reverse redboxing.

The FEC divides campaign spending into seven broad categories (excluding donations, contributions to other candidates or committees, and transfers):[99]

1. Administration, salary, and overhead;[100]

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https://www.npr.org/2025/10/04/nx-s1-5559763/fec-no-quorum-campaign-finance [https://perma.cc/3UWM-VAX7].

[96] *Id.*; *see also* OFF. OF COMM'R ANN M. RAVEL, FED. ELECTION COMM'N, DYSFUNCTION AND DEADLOCK: THE ENFORCEMENT CRISIS AT THE FEDERAL ELECTION COMMISSION REVEALS THE UNLIKELIHOOD OF DRAINING THE SWAMP (2017).

[97] *See, e.g.*, Ally Mutnick, Jessica Piper & Madison Fernandez, *Senate Republicans to Save Millions of Dollars on Ads — Thanks to the FEC*, POLITICO (Oct. 10, 2024, at 20:07 ET), https://www.politico.com/news/2024/10/10/fec-joint-fundraising-committee-ads-00183356 [https://perma.cc/DPD7-UJNV] (describing the Democratic Senatorial Campaign Committee's ("DSCC") commitment to using joint fundraising ads after a DSCC complaint against Republicans for using the same tactic resulted in a party line tie vote and failed to outlaw the practice); *see also* Kang, *supra* note 56, at 34 (describing the immediate expansion of Super PAC activity in the wake of FEC deregulation to codify the *Citizens United* and *SpeechNow.org* decisions).

[98] Mutnick, Piper & Fernandez, *supra* note 97 (quoting DSCC spokesperson David Bergstein).

[99] *Disbursement Category Code Descriptions*, FED. ELECTION COMM'N, https://www.fec.gov/campaign-finance-data/disbursement-category-code-descriptions/ [https://perma.cc/MA4Q-79JJ] (last visited Dec. 12, 2025).

2. Travel;[101]
3. Fundraising;[102]
4. Advertising;[103]
5. Polling;[104]
6. Campaign materials;[105] and
7. Campaign events, including voter outreach efforts.[106]

By outsourcing some of these categories to parties, Super PACs, or other third parties, candidates and parties can maximize the use of contribution-limited campaign funds. Before BCRA, this was done via the soft money loophole, which allowed parties to spend unregulated money on voter outreach efforts, and via issue advertising, which allows third parties to spend money on advertising that does not directly advocate for or against the election of candidates. Today, redboxing and reverse redboxing allow Super PACs to absorb different costs to aid campaigns.

A. Redboxing

In redboxing, Super PACs assume the responsibility for some of a campaign's advertising expenses while the candidate retains control over media strategy.

Redboxing begins when a candidate places specific information in a separate area of their campaign website—often, a literal red box.[107] This information often includes not just

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[100] *Id.* These expenses include rent, salaries, postage, office supplies and equipment, filing fees, and legal and accounting expenses.

[101] *Id.* These expenses include airline tickets, reimbursements for use of private vehicles, and lodging and meals.

[102] *Id.* These expenses include fundraising consultants, as well as costs for fundraising events and materials.

[103] *Id.* These expenses include both production and placement for TV, digital, radio, and print advertising. Media strategy is often included in the costs of production.

[104] *Id.*

[105] *Id.* In addition to brochures, yard signs, buttons, etc., mass mailers are considered campaign materials.

[106] *Id.*

[107] Sharma, *supra* note 11, at 1910.

preferred messages, but preferred audiences and mediums.[108] Super PACs can then spend their funds to advance the candidate's preferred message to the candidate's preferred audience while the candidate "evade[s] the monetary and reputational costs of their political speech."[109] These ads are run as independent expenditures ("I.E.s") with the disclaimer that they are paid for by the Super PAC and "not authorized by any candidate or candidate's committee."[110]

While campaigns are constantly re-evaluating their redboxing strategies, traditional redboxes can still be identified by what Kavari Sharma deems "magic signals."[111] Sharma identifies a total of five of these signals:

1. A distinctly colored box;[112]

2. The phrase "Voters need to know" or similar state-specific language;[113]

3. Party committee microsites (standalone, single-subject websites separate from the party committee's primary site);[114]

4. Targeting information;[115] and

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108 *Id.* at 1914.

109 *Id.* at 1904; *see also* Foy-Sutherland & Ghosh, *supra* note 12, at 153 ("Why do candidates and parties engage in redboxing? In short, to harness super PACs' spending power under a thin veneer of legality.").

110 *Advertising and Disclaimers*, FED. ELECTION COMM'N, https://www.fec.gov/help-candidates-and-committees/advertising-and-disclaimers/ [https://perma.cc/23ZS-P8A3] (last visited Apr. 2, 2026).

111 Sharma, *supra* note 11, at 1908–09.

112 *Id.* at 1910. While the boxes on websites were originally either shaded or outlined in red (this is the origin of the term redboxing), modern campaigns use a variety of colors to demarcate language they desire to be picked up by a Super PAC.

113 *Id.* at 1900, 1911. Sharma cites both major party candidates in the 2018 Montana Senate election as examples of traditional redboxing. Democrat incumbent Jon Tester started his redbox with "AN IMPORTANT UPDATE: What Montanans need to know," while Republican challenger Matt Rosendale used "ALL MONTANANS NEED TO KNOW."

114 *Id.* at 1911–13. Both Republican and Democrat campaign committees often host their redboxes on specific microsites that aggregate information from races across the country. According to a political consultant interviewed by Sharma, "parties developed these microsites in response to super PAC complaints that monitoring multiple candidate websites daily was too time-consuming." *Id.* at 1912.

115 *Id.* at 1914.

5. Back-up documents and production elements.[116]

Not every redbox uses every signal, but "most have at least two signals that make these redboxes easily identifiable to [S]uper PACs."[117]

To understand redboxing, it helps to see it in action. The 2022 Democratic primary runoff in Texas's 28th Congressional District offers a great case study. Incumbent Congressman Henry Cuellar, one of the last House Democrats to oppose abortion,[118] faced a repeat challenge from progressive Jessica Cisneros.[119] Two years prior, Cuellar had managed less than 52% of the vote in his race against Cisneros.[120] In the interim, Cuellar's home had been raided by the FBI.[121]

Because of the district's rightward shift, House Democratic leadership saw protecting Cuellar as critical to holding their House majority.[122] Cisneros, however, had no shortage of support,

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[116] *Id.* at 1914–15.

[117] *Id.* at 1909.

[118] Alanna Durkin Richer & Sean Murphy, *Democratic US Rep. Henry Cuellar of Texas and His Wife are Indicted Over Ties to Azerbaijan*, ASSOCIATED PRESS (May 3, 2024, at 16:20 CT), https://apnews.com/article/henry-cuellar-texas-azerbaijan-ddb1dea393ba88d8d823557ec6c0d93a [https://perma.cc/E9P9-WJSH].

[119] David Ibañez & Kolten Parker, *Henry Cuellar, Jessica Cisneros Advance to Runoff for Congressional District 28*, KSAT (Mar. 2, 2022, at 17:37 CT), https://www.ksat.com/vote-2022/2022/03/01/election-results-2022-congress-us-rep-28-democrat-and-republican-primaries/ [https://perma.cc/N2MT-MLSL].

[120] *Id.*

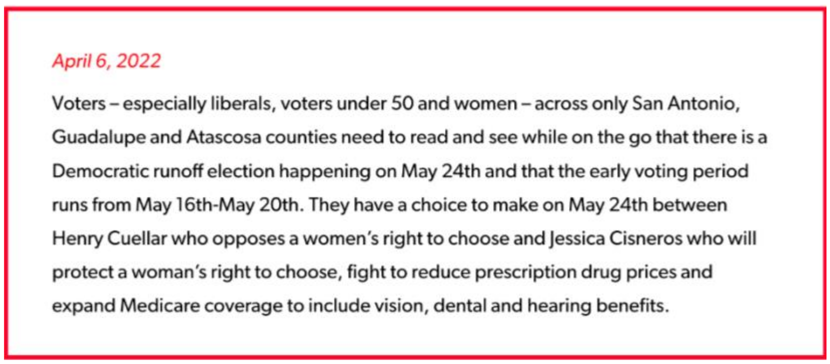
[121] *See* Durkin Richer & Murphy, *supra* note 118. Although at the time, Cuellar's attorney claimed that the Congressman was not the subject of an investigation, Cuellar and his wife would later be indicted for accepting bribes from the nation of Azerbaijan.

[122] House Majority Whip Jim Clyburn traveled to San Antonio to rally with Cuellar, while Speaker Nancy Pelosi and Majority Leader Steny Hoyer endorsed him despite complaints from the party's left flank. *See* Jack Crosbie, *Democrats Respond to Plan to Kill* Roe v. Wade *by Reaffirming Support for Anti-Abortion House Candidate*, ROLLING STONE (May 5, 2022), https://www.rollingstone.com/politics/politics-news/jim-clyburn-henry-cuellar-democrats-abortion-1348005/ [https://perma.cc/SK4D-Q6RJ].
Ultimately, the instincts of House Democratic leaders would prove to be correct—Cuellar managed to win reelection even as Republicans won a slim House majority. *See* Yvette Benavides, *Henry Cuellar Wins His Tenth Term Representing Texas' 28th Congressional District*, TEX. PUB. RADIO (Nov. 9, 2022, at 12:43 CT), tpr.org/government-politics/2022-11-09/henry-cuellar-wins-his-tenth-term-representing-texas-28th-congressional-district [https://perma.cc/VS8J-6MH9]; *2022 Election Results: Republicans Have Won the House, Regaining Control of the Chamber for the First Time Since 2018*, POLITICO, https://www.politico.com/2022-election/results/house/ [https://perma.cc/3TDL-L4BV] (Mar. 14, 2025, at 15:50 CT).

winning the endorsements of progressive leaders like Congresswoman Alexandria Ocasio-Cortez and Senators Bernie Sanders and Elizabeth Warren.[123] Cisneros also had substantial support from abortion advocacy groups like NARAL Pro-Choice America ("NARAL"),[124] which made her their first endorsed candidate of the 2022 cycle.[125]

In the March 1 primary election, neither candidate cleared the 50% threshold to clinch the nomination, resulting in a May 24 runoff election.[126]

On April 6, Cisneros placed a redbox on her website's Media Center page:


April 6, 2022

Voters – especially liberals, voters under 50 and women – across only San Antonio, Guadalupe and Atascosa counties need to read and see while on the go that there is a Democratic runoff election happening on May 24th and that the early voting period runs from May 16th-May 20th. They have a choice to make on May 24th between Henry Cuellar who opposes a women's right to choose and Jessica Cisneros who will protect a woman's right to choose, fight to reduce prescription drug prices and expand Medicare coverage to include vision, dental and hearing benefits.

Figure 1. Redbox from Jessica Cisneros for Congress[127]

The redbox featured three of Sharma's magic signals: the distinctly colored outline, a "voters need to know" phrase, and

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[123] Crosbie, *supra* note 122.

[124] The organization has since rebranded as "Reproductive Freedom for All." *History*, REPROD. FREEDOM FOR ALL, https://reproductivefreedomforall.org/about/history/ [https://perma.cc/9FDG-VSWH] (last visited Jan. 7, 2025). I will use NARAL for clarity and consistency, as it was the organization's name at the time.

[125] Press Release, NARAL, *NARAL Pro-Choice America, NARAL Pro-Choice America Endorses U.S. House Candidate Jessica Cisneros in Bid to Challenge Anti-Choice Rep. Henry Cuellar* (Sep. 15, 2021), https://reproductivefreedomforall.org/news/naral-pro-choice-america-endorses-jessica-cisneros-congress-texas/ [https://perma.cc/G7RV-M443].

[126] Ibañez & Parker, *supra* note 119.

[127] *Media Center*, JESSICA CISNEROS FOR CONG., https://web.archive.org/web/20220812094515/https://jessicacisnerosforcongress.com/media-center/ [https://perma.cc/7UTH-FMQX] (last visited Dec. 12, 2025) (on file with the Mississippi Law Journal).

targeting information that appeared within that phrase—in this case, targeting liberals, voters under fifty, and women in three counties via mail and digital advertising.[128]

Less than a month later, Super PACs responded to the call. On April 29, Women Vote, an arm of abortion advocacy group EMILY's List,[129] posted a thirty-second advertisement titled "TX-28 Decision Time" on one of its YouTube channels.

Figure 2. Advertisement from Women Vote[130]

Women Vote paid for the advertisement in partnership with NARAL, which announced it via press release.[131] According to

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[128] *Id.*

[129] *See About*, EMILY'S LIST, https://emilyslist.org/about/ [https://perma.cc/YZC3-UAU4] (last visited May 24, 2026) ("At EMILYs List, we work to elect Democratic pro-choice women up and down the ballot and across the country with a goal of fighting for our rights and our communities."); *Women Vote*, EMILY'S LIST, https://emilyslist.org/women-vote-emilys-list/ [https://perma.cc/YZC3-UAU4] (last visited May 24, 2026) ("Women Vote is the independent expenditure arm of EMILYs List that runs campaigns to educate, persuade, and mobilize women voters.").

[130] WOMENVOTEPROJECT, *TX-28 Decision Time*, at 0:15 (YouTube, Apr. 29, 2022), https://www.youtube.com/watch?v=EqWQESAdxJU [https://perma.cc/VP7J-UV4A] (on file with the Mississippi Law Journal).

[131] Memorandum from NARAL, *NARAL Launches New Ad, On-the-Ground Mobilization in TX-28 to Elect Jessica Cisneros and Unseat Rep. Cuellar in Texas Primary Runoff Election* (May 2, 2022), https://reproductivefreedomforall.org/news/memo-naral-launches-new-ad-on-the-ground-mobilization-in-tx-28-to-elect-jessica-cisneros-and-unseat-rep-cuellar-in-texas-primary-runoff-election/ [https://perma.cc/9L9Q-9W8X].

NARAL's press release, the advertisement was run on digital platforms—consistent with the campaign's request that voters "see [it] while on the go."[132] The advertisement included language that closely mirrored the redbox, such as "Jessica Cisneros will fight to protect our reproductive freedom and access to healthcare."[133] On its final screen, it showed that Election Day was Tuesday, May 24, and that Early Voting was May 16-20.[134]

While Cisneros ultimately lost the election, the support she received from NARAL allowed her to remain competitive in the race against a nearly twenty-year incumbent because she was able to allocate money elsewhere that otherwise would have gone to advertising expenses.

B. Identifying Reverse Redboxing

While traditional redboxing involves the Super PAC taking on advertising responsibilities from a candidate committee, reverse redboxing involves the Super PAC taking on other responsibilities traditionally carried out by the candidate committee, such as polling, campaign strategy, fundraising, travel, and events.

For several reasons, reverse redboxing rarely has the same kinds of magic signals as typical redboxing. With typical redboxing, the goal is to find an avenue for communication that is public enough to satisfy the FEC regulations, discrete enough to avoid confusing voters, and distinct enough to make it easy for Super PACs to locate and identify the request.[135] But when Super PACs are communicating with candidates, they generally only need to worry about the first prong. Because most voters' only interaction with Super PACs comes in the form of paid advertisements, there is little risk that public posts might confuse voters, and because Super PACs rarely maintain complicated websites or prolific social media accounts, there is little risk that public posts might get drowned out by the noise.

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[132] *Id.*
[133] WOMENVOTEPROJECT, *supra* note 130.
[134] *Id.*
[135] Sharma, *supra* note 11, at 1908–10.

If reverse redboxing has signals at all, they are less about the message and more about the formation and function of the Super PAC. Reverse redboxing generally involves (1) a single-race Super PAC (2) established shortly before the supported candidate announces (3) with a large initial contribution from a single source that (4) spends a significant percentage of its disbursements on non-I.E. expenses and (5) fills holes in the operation that the candidate otherwise would not have filled.

1. Single-Race Super PAC

Reverse redboxing almost never occurs with Super PACs that spend in multiple races. This is in part because of the high level of infrastructure needed for an outside entity to engage in reverse redboxing compared to its more typical counterpart. For a Super PAC to make I.E. advertisements supporting a candidate, it needs only video footage or pictures, an ad-maker, and money to place ads. With the right tools, a talented person can create ten of these ads in an afternoon. This makes it easy for Super PACs run by advocacy groups, industries, and party leadership to invest in a large number of races.

Investing in reverse redboxing tactics, like taking over a campaign's volunteer field operation or polling, requires substantially more infrastructure. In general, a multi-race Super PAC's resources are often better spent providing I.E. support to several campaigns rather than providing reverse redboxing-like support to a single campaign. On the rare occasions when multi-race Super PACs do invest in support such as door-to-door canvassing, it is generally a tactic used to bolster the candidate's pre-existing operations rather than to replace such operations.

2. Establishment Shortly Before the Supported Candidate Announces

In general, Super PACs seeking to engage in reverse redboxing are established before the supported candidate launches their campaign. This allows them to coordinate with the prospective candidate and outline the nature of their partnership without running afoul of the FEC's regulations.

The FEC's coordination rule found in 11 C.F.R. § 109.21 applies to coordination with "a candidate, an authorized committee, a political party committee, or an agent of any of the foregoing."[136] According to 11 C.F.R. § 100.3, a person only becomes a candidate when they receive aggregate contributions of at least $5,000 or make aggregate expenditures of at least $5,000.[137] A *potential* candidate (i.e., one who has not officially received or spent substantial money) is free to have conversations with a Super PAC about the division of labor in a reverse redboxing partnership, future methods of communication with the Super PAC, staffing for both the potential campaign and the Super PAC, and anything else they desire.

3. Large Initial Contribution From a Single Source

Most Super PACs engaged in reverse redboxing are created to solve the issue of a large donor or other source of money (such as a state campaign account) that cannot directly transfer the amount they would like to give to the candidate. The Super PAC in a reverse redboxing arrangement generally starts with a large influx of funding from this source. Depending on the race and the Super PAC, they may later raise significant funds from other donors or from the same source to supplement the initial seed money, but they begin with a large war chest rather than starting from scratch like most campaigns.

4. A Significant Percentage of Its Expenditures on Non-I.E. Expenses

Typical Super PAC behavior is focused almost entirely on I.E.s (both redboxed and done without any recommendation from the campaign). When a Super PAC makes a large investment in staffing, infrastructure, and other areas rather than advertisements, this is a strong indicator that it is seeking to absorb roles traditionally carried out by a campaign.

Since I.E.s require roughly the same infrastructure regardless of whether a Super PAC has a $5,000 ad budget or a $50 million ad budget, as the Super PAC's funding increases, the

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136 11 C.F.R. § 109.21 (2026).

137 *Id.* § 100.3(a)(1).

percentage of non-I.E. spending necessary to indicate that reverse redboxing might be occurring decreases proportionally.

Alone, these signals are not guarantees that a Super PAC is engaged in reverse redboxing, but when they are all present, it is likely that at least some of the traditional campaign responsibilities are being handled by the Super PAC instead.

In the case of DeSantis and Never Back Down Inc., all of these signals were present. The Super PAC was set up before DeSantis became a candidate for president and focused only on his presidential bid.[138] It was seeded by tens of millions of dollars from the same source (his state PAC).[139] And while it did run I.E. advertisements supporting DeSantis and attacking two of his primary opponents, Never Back Down Inc. spent two times as much on campaign infrastructure and canvassing as it spent on I.E.s.[140]

C. Reverse Redboxing in Action

Like typical redboxing, reverse redboxing is easier to understand via examples of it in use. If DeSantis's presidential bid is the most prominent example of reverse redboxing so far, J.D. Vance's 2022 Senate race in Ohio is the second. Vance "outsourced some of his Ohio Senate campaign's most basic operations" to an allied Super PAC.[141]

In early 2021, well before Vance ever announced his candidacy to replace retiring Senator Rob Portman, billionaire PayPal cofounder Peter Thiel gave $10 million to Super PAC Protect Ohio Values ("POV").[142] The Super PAC's website described itself this way:

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[138] Scherer, Knowles & Dawsey, *supra* note 1.

[139] *Id.*

[140] *Never Back Down Inc.*, FED. ELECTION COMM'N, https://www.fec.gov/data/committee/C00834077/?cycle=2024&tab=summary [https://perma.cc/Q8JF-VZS5] (last visited May 24, 2026) (showing $88,757,837.41 in operating expenditures and only $37,764,477.49 on independent expenditures); FED. ELECTION COMM'N, *supra* note 5.

[141] Shane Goldmacher, *The Little Red Boxes Making a Mockery of Campaign Finance Laws*, N.Y. TIMES (May 16, 2022), https://www.nytimes.com/2022/05/16/us/politics/red-boxes-campaign-finance-democrats.html [https://perma.cc/Q8JF-VZS5].

[142] Jessie Balmert, *Super PAC Supporting Potential Senate Candidate J.D. Vance Gets $10 Million Donation from PayPal Cofounder*, CIN. ENQUIRER, (Mar. 15, 2021, at

> We're a network of grassroots conservatives committed to electing a Senator who will stand for and defend Ohio's values in Washington, DC. We believe J. D. Vance is the right man for the job[,] and we are signing up supporters and raising funds to demonstrate a groundswell of support in the Buckeye State.[143]

By the time Vance officially announced his campaign on July 1, 2021, POV had already invested significant funds into polling and infrastructure. The Super PAC was polling as early as April 2021, and the early numbers were not good for Vance—in their first two months of polling, his polling hovered around 5%.[144] These numbers are public because POV posted them on a public blog hosted on Medium.com.[145]

The Super PAC regularly posted to Medium between July 2021 and Vance's May 2022 primary victory.[146] POV's Medium account went unnoticed by both the media and Vance's primary opponents until near the end of the cycle.[147] The staff of former Ohio Treasurer and primary opponent Josh Mandel discovered the Medium page only a few months before the primary and did not notify the media of its existence until just days before the election.[148]

Without context, some of the Medium posts could almost be mistaken for code talk:

13:32 ET), https://www.cincinnati.com/story/news/politics/elections/2021/03/15/super-pac-supporting-possible-ohio-senate-candidate-j-d-vance-gets-10-m-donation-peter-thiel/4700540001/ [https://perma.cc/4GET-8JDJ].

[143] *Id.*

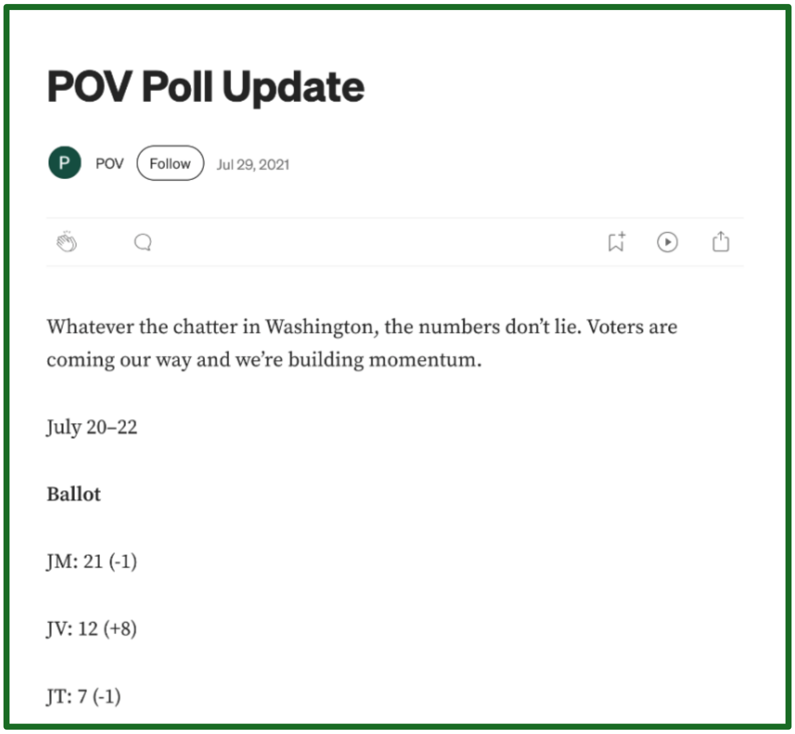
[144] POV (@protectohiovaluesforms), MEDIUM, *Momentum: A Research Update for Supporters* (Apr. 3, 2022), https://medium.com/@protectohiovaluesforms/momentum-1d8029d2148d [https://perma.cc/YB45-KBQD].

[145] Alex Isenstadt, *A Mole Hunt, a Secret Website and Peter Thiel's Big Risk: How J.D. Vance Won His Primary*, POLITICO (May 3, 2022, at 23:08 ET), https://www.politico.com/news/2022/05/03/jd-vance-win-ohio-primary-00029881 [https://perma.cc/JY7U-RXJD].

[146] POV (@protectohiovaluesforms), MEDIUM, https://medium.com/@protectohiovaluesforms [https://perma.cc/KV37-W33S] (last visited Dec. 12, 2025).

[147] Isenstadt, *supra* note 145.

[148] *Id.*



POV Poll Update

POV Follow Jul 29, 2021

Whatever the chatter in Washington, the numbers don't lie. Voters are coming our way and we're building momentum.

July 20–22

Ballot

JM: 21 (-1)

JV: 12 (+8)

JT: 7 (-1)

Figure 3. Blog Post from Protect Ohio Values[149]

For the right audience, however, the Medium posts were a treasure trove. They provided advanced polling, organic media tracking, and messaging advice to whatever interested parties happened upon the blog—primarily, of course, the Vance campaign and its allies.[150]

POV did not shy away from more traditional Super PAC roles like advertising; in fact, it spent most of its money running independent expenditure advertisements supporting Vance and

[149] POV (@protectohiovaluesforms), MEDIUM, *POV Poll Update* (July 29, 2021), https://medium.com/@protectohiovaluesforms/pov-poll-update-948b14d8caee [https://perma.cc/WPT5-S3DR]. "JM" is Mandel, "JV" is Vance, and "JT" is former Ohio Republican Party Chairwoman Jane Timken. The numbers next to each set of initials are ballot share, with change from the previous poll in parentheses.

[150] Isenstadt, *supra* note 145.

opposing Mandel, Vance's best-polling primary opponent.[151] But, as it outlined in a memo to key supporters later published in a Medium post, "in addition to fulfilling traditional Super PAC roles, POV [broke] new ground."[152]

The memo describes the extent of POV's investment in supporting Vance's bid before he even announced in three key ways. First, POV helped to vet and recruit staff for the campaign:

> When JD was investigating whether he wanted to run for office, POV began to build out a campaign-in-waiting. JD created an exploratory committee called the Ohio Values Project, which paid for a staffer and allowed him to travel, speak with potential donors, and make an informed choice about running. Operating independently, POV recruited, vetted, and hired staff who later joined JD as his candidacy approached. This helped his campaign save resources and get off to a quick start.[153]

Second, POV created video content supporting Vance's candidacy, allowing the campaign to focus on other aspects of the campaign launch:

> Before JD's July 1 announcement, we at POV sent crews to shoot b-roll of Middletown, to follow JD around several events in the Cincinnati area, and ultimately to cut together two videos.
>
> . . . .
>
> We had two film crews in place for JD's announcement rally.
>
> . . . .
>
> By handling the creation, distribution, and promotion of the hype and launch videos for JD, we allowed the nascent

[151] *Protect Ohio Values Pac (POV PAC)*, FED. ELECTION COMM'N https://www.fec.gov/data/committee/C00770495/?tab=spending&cycle=2022#independent-expenditures [https://perma.cc/377V-K6BL] (last visited May 25, 2026) (showing $14,699,531.70 in I.E.s to support Vance and $1,286,328.50 in I.E.s to oppose Mandel).

[152] POV (@protectohiovaluesforms), MEDIUM, *Breaking New Ground* (Oct. 4, 2021), https://medium.com/@protectohiovaluesforms/breaking-new-ground-da38fd904920 [https://perma.cc/C2DV-GM3S].

[153] *Id.*

> campaign apparatus to focus on his launch event and fundraising.[154]

And third, POV built a small dollar donor infrastructure on behalf of the campaign:

> Finally, in the month leading up to JD's launch, we began a large-scale small-dollar donor recruitment effort. Based on JD's message and skills as a communicator, we believed that we could nationalize the primary race. This would allow us to recruit a large cadre of small dollar supporters for his candidacy using Super PAC resources—something no organization has done successfully in a primary before.
>
> Initially, we worked to recruit an email list of prospective supporters. Once JD announced, we pushed these people to become donors while simultaneously taking on board increasingly aggressive prospecting responsibilities. Just based on our own metrics, JD will finish his first quarter as a candidate with several thousand grassroots donors, a genuinely unprecedented feat in a contested primary. These donors will help to close the gap with the other candidates in the race.[155]

In addition to their support before Vance announced his candidacy and the polling they supplied throughout the race, POV found more innovative ways to partner with the campaign, including co-hosting events under the Special Guest Rule,[156] recruiting attendees for events scheduled by the campaign, and bringing high-level data to the race via a unique three-way partnership between POV, the campaign, and a data science company:

> [W]e hired the data science company DeepRoot to build a series of models and segments around different issue concerns and messages. The campaign is also hiring DeepRoot to provide data services. The campaign will therefore be able to access the modeled universes POV has created, and POV will be able to access voter contact data uploaded into the

[154] *Id.*
[155] *Id.*
[156] See discussion of Special Guest Rule, *supra* Part II (B).

> database by the campaign. This arrangement allows POV to bring presidential-level targeting sophistication to JD's campaign without expecting the campaign to shoulder the cost of audience construction.[157]

When POV did engage in traditional Super PAC advertising, it was not aimed at redboxed messages or audiences selected by the campaign; in fact, the Super PAC was the one providing the direction on messaging and audience selection. In February 2022, a few months before the primary, POV provided instructions even more explicit than most redboxes:

> We would love to shoot a direct to camera ad with JD saying something like[:]
>
> "I was raised by my grandparents because my mother got addicted to opioids. Today, fentanyl pours over our border, poisoning our people. Joe Biden doesn't care. Career politicians in both parties just talk. Enough is enough. As your senator, I will declare the drug cartels terrorist organizations. Any country that refuses to accept deported illegals will lose its foreign aid. This is personal to me. I'm JD Vance and I approve this message because no kid should have to grow up without a mother."
>
> But we're the Super PAC, so we can't do that.
>
> . . . .
>
> . . . Again, if we could do a direct to camera ad like the one above, we would spend the money and put it on cable starting at the end of this month at a steady $80k per week burn at the candidate rates. But we don't have the ability to make such an ad.[158]

Shortly thereafter, Vance's campaign dropped an ad that would quickly draw attention for its opening line, "Are you a

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157 POV, *supra* note 152.

158 POV (@protectohiovaluesforms), MEDIUM, *The Next Step* (Feb. 16, 2022), https://medium.com/@protectohiovaluesforms/the-next-step-37794ddf2e8d [https://perma.cc/NAV5-F64H].

racist? Do you hate Mexicans?"[159] But while the ad's introduction was designed to be more controversial than POV's proposal, its actual content was strikingly similar. Vance, direct to camera, says in part: "Joe Biden's open border is killing Ohioans with more illegal drugs . . . pouring into this country. This issue is personal. I nearly lost my mother to the poison coming across our border. No child should grow up an orphan. I'm J.D. Vance and I approve this message."[160]

Like Never Back Down Inc., POV shows all four of the signals of a Super PAC engaged in reverse redboxing. As outlined above, the Super PAC was formed before Vance announced with the intention of only investing in one race, and it was seeded with a large initial contribution by Thiel.[161] According to its FEC filings, approximately 18% of its spending (just over $3.5 million) went to non-I.E. expenses.[162]

Ultimately, Vance's partnership with POV paid off. Thanks to the Super PAC's work, he was able to secure the endorsement of then-former President Donald Trump and prevailed in the May primary, taking nearly 10% more of the vote than his nearest competitor.[163] POV largely closed up shop after the primary, when more traditional Republican party apparatuses were available to help Vance cross the finish line and defeat Congressman Tim Ryan in the general election.[164]

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[159] Gustaf Kilander, *JD Vance Accused of Racism Over New Campaign Ad in Which He Asks 'Do You Hate Mexicans?'*, THE INDEP. (Apr. 6, 2022, at 10:24 CT), https://www.yahoo.com/news/jd-vance-accused-racism-over-152441634.html [https://perma.cc/E4G7-5JUD].

[160] JD VANCE FOR SENATE, *Are You a Racist?*, at 00:10 (YouTube, Apr. 5, 2022), https://youtu.be/K3qYJoSV0lI?si=ndKaoK2p-UPPV0UN [https://perma.cc/JPA7-KTA3] (on file with the Mississippi Law Journal).

[161] Balmert, *supra* note 142.

[162] *Protect Ohio Values PAC (POV PAC)*, FED. ELECTION COMM'N, https://www.fec.gov/data/committee/C00770495/?tab=summary&cycle=2022 [https://perma.cc/G89B-Z3GT] (last visited May 25, 2026) (showing $15,985,860.20 in I.E. spending compared to $3,524,682.60 in other disbursements and $1,092.77 in operating expenses).

[163] Isenstadt, *supra* note 145.

[164] POV (@protectohiovaluesforms), MEDIUM, *Thank You Ohio!* (May 4, 2022), https://medium.com/@protectohiovaluesforms/thank-you-ohio-852ac7d2611d [https://perma.cc/CW9E-9SCT].

IV. EVALUATING PROPOSED REGULATORY SOLUTIONS

For the past fifteen years, challenges to redboxing and reverse redboxing have been raised through complaints filed with the FEC alleging improper coordination. Many of these challenges are filed by campaign finance reform advocates through organizations like the Campaign Legal Center, which filed FEC complaints against both DeSantis and Vance.[165] In addition to the legal work, Campaign Legal Center Director of Federal Campaign Finance Reform, Saurav Ghosh, co-authored a paper with Gabriel Foy-Sutherland, a University of Chicago Ph.D. candidate, that appeared in *Election Law Journal* tracking the issue of redboxing.[166]

Both Foy-Sutherland and Ghosh's paper and Sharma's paper suggest that the FEC should pass more definitive regulations to prohibit redboxing and have settled on two primary goals: adding "magic signals" to the definition of coordination and shifting the burden of proof from those bringing an accusation of redboxing to the Super PAC.

At least two jurisdictions, the City of Philadelphia, Pennsylvania, and Allegheny County, Pennsylvania, have adopted local ordinances that offer examples of how these suggestions could operate. Although the structure of the ordinances varies slightly, the operative language of the two is practically identical. Rather than analyze abstract ideas of what a modified FEC regulation could look like if based on the suggestions of Sharma, Foy-Sutherland, and Ghosh, it is thus possible to analyze the actual text of the local ordinances that implement these suggestions and provide a "rough model" for federal reform.[167]

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[165] *See* Press Release, Campaign Legal Ctr., *Legal Center Files FEC Complaint Alleging Illegal Coordination between Ron DeSantis Campaign and Super PAC "Never Back Down"* (Dec. 18, 2023), https://campaignlegal.org/press-releases/campaign-legal-center-files-fec-complaint-alleging-illegal-coordination-between-ron [https://perma.cc/3H54-MLSD]; *CLC Files Complaint Alleging In-Kind Contribution Scheme by Protect Ohio Values PAC and JD Vance for Senate*, CAMPAIGN LEGAL CTR. (June 6, 2022), https://campaignlegal.org/document/clc-files-complaint-alleging-kind-contribution-scheme-protect-ohio-values-pac-and-jd-vance [https://perma.cc/WVF6-Q3XD]. While the Campaign Legal Center does occasionally file complaints against Democrats, it did not file one about the redboxing by Cisneros.

[166] Foy-Sutherland & Ghosh, *supra* note 12.

[167] *See, e.g.*, *id.* at 170:

For this analysis, I will use the language from Allegheny County, which considers expenditures to be coordination and thus in-kind contributions when:

> The person making the expenditures does so based on instructions received from the Candidate or Candidate Committee. A public communication by a Candidate or Candidate Committee will constitute such instructions only if
>
> The communication includes a suggestion that the electorate or segment thereof be made aware of information identified in the communication; and
>
> The communication suggests the manner in which the information should be presented, including (but not limited to) instances in which the communication includes a phrase such as "voters need to hear" or "voters need to see." Despite the presence of these factors, coordination will not be found if the person can demonstrate that they had an independent basis for making the expenditure.[168]

In particular, my analysis will focus on the language in §220-7(G)(2), which requires that the public communication "suggests the manner in which the information should be presented," offers the magic signals as evidence of such suggestion, and shifts the burden of proof from proving coordination to the person who made the expenditure.

Both Foy-Sutherland and Ghosh and Sharma touch on the efficacy of this kind of language when applied to typical redboxing and arrive at similar conclusions. They suggest that it may be imperfect, but that it will have at least some effect in curbing redboxing. In addition to putting campaigns and Super PACs on notice, Sharma argues that such a regulatory change might force them to "change up their signals, which will, in the short-term,

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A revised federal coordination law roughly modeled on the approach adopted in Philadelphia and Allegheny County would represent a sea change in the law and a significant boon to legal efforts aimed at curtailing coordination, as well as the resulting tide of special interest money underwriting (and potentially capturing) candidates and elected officials.

Id.

[168] ALLEGHENY, PA., CODE § 220-7 (2024); *see also* PHILA. BD. ETHICS REGULS. 1.36–1.37 (2024).

frustrate their ability to communicate plans and requests."[169] Foy-Sutherland and Ghosh are particularly optimistic about the burden shifting language, suggesting that it "prudently places the burden of proof on the party most capable of satisfying it" and eliminates the need for parties alleging coordination to conduct the "nearly impossible feat" of proving coordination.[170]

When applied to reverse redboxing, however, this language is not nearly as effective and raises unique constitutional issues.

A. Ineffectiveness Against Reverse Redboxing

On its face, this language does not prohibit communications made by the candidate in response to direction by the Super PAC. At a minimum, the language would need to be mirrored to change which party was the requester and which party was the responder (although as outlined below, a straight mirror of the language raises possible First Amendment issues).

Like the FEC's coordination rule in general, this regulatory language focuses only on coordinated *communications* even though the statute prohibits any coordinated *expenditures*.[171] As outlined above, much reverse redboxing involves different types of coordination besides advertisements and communications. In its language, this regulation draws a much narrower scope than it would need to if it was going to be an effective barrier against the reverse redboxing tactics used by Super PACs like Never Back Down Inc. and POV.

This language is also too reliant on the existence of magic signals. As Sharma suggests, it would be inconvenient, but fairly simple for Super PACs and candidates to change their signals if the regulatory language is too specific.[172] In a mirrored language scenario, I am not sure if a list of signals would provide the regulatory tools necessary to identify and stop reverse redboxing. The signals that I list above are most useful after the fact and might prove to be an inefficient tool for regulators to identify and stop reverse redboxing in real time.

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[169] Sharma, *supra* note 11, at 1947–48.
[170] Foy-Sutherland & Ghosh, *supra* note 12, at 169.
[171] 52 U.S.C. § 30116 (a)(7)(B)(i) (2014); 11 C.F.R. § 109.21 (2010).
[172] Sharma, *supra* note 11, at 1947–48.

The use of magic signals creates a minor First Amendment issue when applied to traditional redboxing as well. The Supreme Court has rejected intent-and-effect tests, so any FEC regulation needs to be intent-neutral.[173] But the magic words identified by the statute are not distinct enough to be penalized based on an intent-neutral test. If a candidate is asked about his opponent's position on state parks, it could be totally reasonable to respond with a statement like, "Mississippians need to know that my opponent voted against funding for state parks." Yet under the language used by these local regulations, the magic signals could be implicated if a third party runs ads about the opponent's voting record on the state park issue simply because the candidate said some magic words by accident. While this alone may not be sufficient to make the regulations unconstitutional, it should at least encourage regulators to tread lightly and prevent candidates from facing not only political consequences, but legal consequences, for bad phrasing.

B. Constitutionality to Address Reverse Redboxing under the First Amendment

While there are some real First Amendment concerns raised by regulating typical redboxing, regulating reverse redboxing raises a more pernicious concern because it would place the burden of regulation on candidates, not on Super PACs.

For coordination to occur, there must be two parties involved. One of them requests—or at a minimum assents to—the coordinated action, and the other responds by actually taking the coordinated action. Without *both*, there is no coordination. At worst, a redbox alone is merely a request for the Super PAC to take an illegal action.[174] For this reason, instead of focusing on the request, regulation of coordination focuses on the communication (or more broadly, the action) of the responding party.[175]

Applied to the reverse redboxing context, a tactic only becomes de facto coordination or reverse redboxing when the

[173] *See* Fed. Election Comm'n v. Wis. Right to Life, Inc., 551 U.S. 449, 467 (2007).

[174] *See* Sharma, *supra* note 11, at 1927–33.

[175] *Contrast* 11 C.F.R. § 109.21 (2010), *and* ALLEGHENY, PA., CODE § 220-10(G) (2024) (defining "coordinated communications"), *with* 52 U.S.C. § 30116 (a)(7)(B)(i) (2014) (prohibiting "coordinated expenditures").

candidate chooses to utilize the resources offered to it by a Super PAC. Typical redboxing, then, can be regulated in large part by limiting the speech or actions of Super PACs, but regulating reverse redboxing requires limiting the speech or actions of candidates.

For roughly fifty years, the Supreme Court has signaled hostility towards regulation of candidate speech. In *Buckley*, for example, the court wrote "it is of particular importance that candidates have the *unfettered* opportunity to make their views known so that the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day."[176]

For this reason, the idea that you could simply mirror the language suggested by scholars and incorporated by the City of Philadelphia and Allegheny County with the roles of the third party and the candidate interchanged is untenable. Doing so would have an incredible chilling effect on candidate speech.

Imagine a scenario in which Super PAC A makes a blog post saying that Candidate B should run an advertisement talking about her support for small businesses. If Candidate B later ran an advertisement talking about her support for small businesses, she would be violating federal law unless she could prove that she had planned that advertisement before the blog post was made.

In today's political environment, candidates are inundated with suggestions and requests to take positions on specific subjects from interest groups.[177] If a mirror image of the Allegheny County ordinances was enacted, every one of those suggestions would serve as a preemptive veto on candidate speech. In effect, these restrictions would not quiet the voices of Super PACs or interest groups but instead enable them to totally silence the voices of candidates.

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[176] Buckley v. Valeo, 424 U.S. 1, 52–53 (1976).

[177] *See, e.g.*, Jenna Buzzacco-Foerster, *An Inside Look at the Legislative Candidate Questionnaire Gauntlet*, FLA. POL. (June 8, 2016), https://floridapolitics.com/archives/212502-questionnaires-aim-measure-candidates/ [https://perma.cc/CGJ6-UMB8].

CONCLUSION

Under existing law, seeking to craft a regulatory scheme that adequately prohibits redboxing and reverse redboxing without infringing on the First Amendment rights of candidates—let alone the First Amendment rights of third-party groups—may be an impossibility.

Instead, I suggest that Congress, the courts, and the FEC look at alternative ways to relieve the pressure in the electoral system. If we cannot make partnership with Super PACs impossible, we can at least make it less desirable.

If the financial incentives were equal, candidates and political operatives from both sides of the aisle would much rather have full control within the campaign than outsourced to Super PACs.[178] There are at least two ways that this could be done.

The most extreme, but also likely the most effective, would be to allow for unlimited contributions to candidates, eliminating the need and role of Super PACs.[179] Libertarian scholars often pair this suggestion with mandatory disclosure rules, paraphrasing Justice Brandeis's famous statement that "sunlight is said to be the best of disinfectants; electric light the most efficient policeman."[180] This kind of reform might seem radical, but it seems to work just fine in a variety of states with different political climates.[181]

The second option would be to move toward parties replacing the role of Super PACs by allowing parties and their committees to coordinate directly with candidates and therefore lessen the appetite for Super PAC support.[182] The Supreme Court is currently considering a case that asks them to do just that.

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[178] ADVISORY OPINIONS: *The Illusion of Campaign Finance Reform* (Apple Podcasts, Dec. 11, 2025).

[179] *See, e.g.*, Adam G. Byrne, *Removing Direct Contribution Limits: Free Speech and Disclosure*, 36 CATO J. 625, 645 (2016).

[180] *Id.* at 636–37; *see also* Louis Brandeis, *What Publicity Can Do*, HARPER'S WEEKLY, Dec. 20, 1913, at 10.

[181] There are currently no state personal contribution limits in Alabama, Alaska, Iowa, Indiana, Nebraska, North Dakota, Oregon, Pennsylvania, Texas, Utah, and Virginia. *See* NAT'L CONF. OF STATE LEGISLATURES, STATE LIMITS ON CONTRIBUTIONS TO CANDIDATES: 2025–2026 ELECTION CYCLE (2025).

[182] While party committees cannot accept unlimited funds like Super PACs, they can still accept more than eighty-eight times as much from each individual donor as

The Supreme Court heard oral arguments in *National Republican Senatorial Committee v. FEC*, a case challenging the limits on coordination between candidate committees and political party committees, on December 9, 2025.[183] The case was brought in 2022 by the National Republican Senatorial Committee ("NRSC") and the National Republican Congressional Committee ("NRCC"), both of which operate as political party committees, as well as then-Senate candidate J.D. Vance and then-congressional candidate Steve Chabot.[184] In its decision, the Sixth Circuit suggested that it would have found for the plaintiffs based on the last twenty years of Supreme Court precedent were it not for the Supreme Court's decision in *Federal Election Commission v. Colorado Republican Federal Campaign Committee* ("*Colorado II*"),[185] which explicitly upheld the coordination restrictions between candidates and parties.[186] If the Court was to overturn *Colorado II* and return coordination abilities to the political parties, it could provide an alternative avenue for campaigns that would lessen the influence of Super PACs and the draw of redboxing and reverse redboxing.

It might seem counterintuitive to address the issue of Super PAC spending and the appearance of corruption in democracy by lessening the restrictions on campaign finance, but if the allure of redboxing and reversed redboxing is lessened, the end result will be more clarity for the public on who is behind each political communication. It might not do much to lower the amount of money in our politics, but it can do a lot to make the money that is

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federal candidates. Party committees can accept as much as $310,000 per year, while candidates are limited to just $3,500 per election. Derek Lawlor & Kimberly Railey, *FEC Raises Contribution Limits for 2025-2026*, COVINGTON: INSIDE POL. L. (Jan. 30, 2025), https://www.insidepoliticallaw.com/2025/01/30/fec-raises-contribution-limits-for-2025-2026/ [https://perma.cc/BE6R-5TCZ].

[183] Melissa Quinn, *Supreme Court Weighs Campaign Finance Limits in GOP-Backed Challenge*, CBS NEWS (Dec. 9, 2025, at 15:41 ET), https://www.cbsnews.com/news/supreme-court-campaign-finance-nrsc-v-fec/ [https://perma.cc/85F2-4GNG].

[184] Petition for Writ of Certiorari at 9, Nat'l Republican Senatorial Comm. v. Fed. Election Comm'n, No. 24-621 (U.S. Dec. 4, 2024) .

[185] 533 U.S. 431 (2001).

[186] Nat'l Republican Senatorial Comm. v. Fed. Election Comm'n, 117 F.4th 389, 398 (6th Cir. 2024).

there and any possible *quid pro quos* easier for the average voter to see and identify.