No. 24-621

IN THE

Supreme Court of the United States

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, ET AL.,

Petitioners,

v.

FEDERAL ELECTION COMMISSION, ET AL.

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITIONERS' RESPONSE TO THE MOTION OF THE DNC, DSCC, AND DCCC FOR LEAVE TO INTERVENE

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Shortly after petitioners filed their reply, movants (the Democratic National Committee, Democratic Senatorial Campaign Committee, and Democratic Congressional Campaign Committee) sought leave to intervene as respondents or to participate in oral argument as amici curiae. Movants never asked for petitioners' position on the motion before filing it, so petitioners respectfully submit this response to inform the Court of their views.

While petitioners are puzzled by movants' sudden aversion to a ruling that would restore the basic First Amendment freedoms of *all* party committees, they do not oppose either of their requests.[*] Petitioners defer to the Court's judgment as to whether to appoint a disinterested amicus to defend the judgment below, allow movants to intervene (or participate in oral argument as amici), or both. *See, e.g.*, *United States v. Windsor*, 570 U.S. 744 (2013) (hearing from intervenor and court-appointed amicus addressing jurisdiction).

Petitioners do, however, oppose movants' improper attempt to pass a brief in opposition through their motion to intervene. *See* Mot. 2. Putting aside the fact that movants' arguments against review come too late, they lack merit. Instead, they only confirm the need for this Court's review.

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[*] *See, e.g.*, DNC Br. 15, *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604 (1996) (No. 95-489), 1996 WL 72347 ("Parties have not only an inherent need, but also a unique associational right, to communicate and coordinate with their candidates. Limiting the ability of parties to communicate with their own leaders, including candidates, burdens the right of the party to 'identify the people who constitute the association.'").

First, movants insist that the "First Amendment has not changed since 2001," Mot. 2, when the Court upheld an earlier version of the limits on coordinated party expenditures in *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*). That misses the point. The First Amendment, of course, has not changed since 1791, but over the past two decades, this Court's precedents have returned to the proper understanding of that provision with respect to limits on political speech. *Colorado II* cannot be squared with those intervening precedents, and movants do not even try to do so. *See* Pet. 26-27; U.S. Br. 13-16.

Second, movants note that "both en banc courts of appeals" to have touched on the question presented—the Sixth Circuit in this case and the Fifth Circuit in *In re Cao*, 619 F.3d 410 (5th Cir. 2010) (en banc)—have rejected constitutional challenges to the limits. Mot. 2. But that only underscores why this Court must act now. So long as *Colorado II* remains on the books, no circuit court will dare break rank, especially if this Court denies review in this case after the government has confessed error. *See* Pet. 34; U.S. Br. 19.

Third, movants claim that they have "relied on" *Colorado II* in making decisions about campaign spending. Mot. 2. But the same could be said about *any* restriction on political speech—petitioners no less than respondents have "fine-tuned" their electoral activities to "comply with FECA's existing regulatory landscape." Mot. 14; *see* Pet. 6-8. Yet that compelled "fine-tuning" only shows the unconstitutional burdens placed on all party committees. In any event, this Court has never treated the fact that "parties have been prevented from acting" effectively in the political

arena—and instead have been forced to adapt to a speech-restrictive environment—as a "serious reliance interest[]." *Citizens United v. FEC*, 558 U.S. 310, 365 (2010); *see* Pet. 29; U.S. Br. 18. And to the extent that the challenged limits on parties have given some political speakers a "tactical" advantage over others, as movants suggest, that distortion only confirms the need for further review. Mot. 14; *see* Pet. 30-32; U.S. Br. 15-16, 18. This Court should grant the petition.

CONCLUSION

Petitioners do not oppose the motion to intervene as respondents or to participate in oral argument as amici curiae.

June 6, 2025

Respectfully submitted,

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