No. 24-621

In the Supreme Court of the United States

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, ET AL., PETITIONERS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' RESPONSE TO THE MOTION FOR LEAVE TO INTERVENE

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The Solicitor General, on behalf of the respondents, respectfully submits this response to the motion for leave to intervene filed by the Democratic National Committee, Democratic Senatorial Campaign Committee, and Democratic Congressional Campaign Committee. Respondents do not oppose intervention.

Petitioners challenge a statute, 52 U.S.C. 30116(d), that limits the amount of money that a political party may spend in an election campaign in coordination with a candidate. The en banc Sixth Circuit determined that this Court's decision in *FEC* v. *Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*) required it to uphold that statute, while recognizing that *Colorado II* has been undermined by later legal and factual developments. Although the government defended the statute below, it has filed a brief

urging this Court to grant certiorari and hold the challenged statute unconstitutional. Movants seek (Mot. 13-20) leave to intervene to defend the statute and the Sixth Circuit's judgment.

The decision whether to allow intervention on appeal is committed to the appellate court's discretion. See *Cameron* v. *EMW Women's Surgical Center, P.S.C.*, 595 U.S. 267, 278 (2022). Because no statute or rule prescribes a general standard to apply in exercising that discretion, this Court has looked for guidance to the "policies underlying" Federal Rule of Civil Procedure 24, which governs intervention in district court. *Cameron*, 595 U.S. at 277 (citation omitted). Relevant factors include the party's "'interest,'" "timeliness," and "prejudice" to the other litigants. *Id.* at 277, 279, 281 (citation omitted). The Court has applied a particularly demanding test for intervention in this Court, reserving that step for "rare" cases involving "extraordinary factors." Stephen M. Shapiro et al., *Supreme Court Practice* § 6.16(c), at 6-62 (11th ed. 2019).

Given those factors, the government does not oppose the motion for leave to intervene. Movants assert an adequate interest in this litigation, arguing (Mot. 14, 18) that invalidating the challenged statute would require them to "reshape their operations," "forfeit carefully developed tactical efficiencies," and deprive them of a competitive advantage over their electoral opponents in "our two-party system." The motion is timely; movants sought leave to intervene promptly after the government explained that it would no longer defend the challenged statute. Allowing intervention would not cause any unfair prejudice to the government or petitioners. Finally, petitioners' and respondents' alignment on the

question presented is the type of extraordinary factor that can justify intervention in this Court.

* * * * *

The petition for a writ of certiorari should be granted. The government does not oppose the motion for leave to intervene. If this Court denies leave, it should appoint an amicus curiae to defend the court of appeals' judgment. The government does not oppose movants' request, in the alternative, to participate in oral argument as amicus curiae and to divide argument with any amicus curiae appointed by the Court.

Respectfully submitted.

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Solicitor General

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