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,

AND

DEMOCRATIC NATIONAL COMMITTEE, ET AL.,

Intervenor-Respondents.

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

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether the limits on coordinated party expenditures in 52 U.S.C. § 30116 violate the First Amendment, either on their face or as applied to party spending in connection with "party coordinated communications" as defined in 11 C.F.R. § 109.37.

PARTIES TO THE PROCEEDING

Petitioners National Republican Senatorial Committee (NRSC), National Republican Congressional Committee (NRCC), former Senator James David (J.D.) Vance, and former Representative Steven Joseph Chabot were the plaintiffs below.

Respondents Federal Election Commission (FEC), Dara Lindenbaum, Shana M. Broussard, and James E. Trainor, III, were the defendants below. Allen Joseph Dickerson, Sean J. Cooksey, and Ellen L. Weintraub were also defendants below, but they are no longer in office.

Intervenor-respondents Democratic National Committee (DNC), Democratic Senatorial Campaign Committee (DSCC), and Democratic Congressional Campaign Committee (DCCC) were granted leave to intervene in this Court on June 30, 2025.

RULE 29.6 STATEMENT

Neither the NRSC nor the NRCC has a parent corporation. Neither is publicly held, and no publicly held corporation owns 10% or more of either's stock.

STATEMENT OF RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *NRSC v. FEC*, No. 24-3051 (6th Cir.), judgment entered on September 5, 2024;
- *NRSC v. FEC*, No. 22-cv-639 (S.D. Ohio), question certified on January 19, 2024.

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INTRODUCTION

A political party exists to get its candidates elected. It is therefore only natural that a party would want to consult with its candidate before expressing support for his election. And for nearly the first 200 years of our history, parties and candidates were free to work together toward their unified goal of winning elections. Yet in the Federal Election Campaign Act (FECA), Congress built a wall of separation between party and candidate. Under FECA, party committees can speak in favor of a candidate only if they avoid cooperation with him or his campaign beyond the limited confines set by Congress. In particular, 52 U.S.C. § 30116(d) severely restricts parties' spending in coordination with their own candidates, including on party advertisements that account for a candidate's input.

Since their inception, these "coordinated party expenditure limits" have been a form of speech rationing in search of a rationale. Given that they were enacted to "reduc[e]" what incumbents saw "as wasteful and excessive campaign spending" by political parties, the government has spent decades casting about for a way to recharacterize them as an anticorruption measure. *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 618 (1996) (*Colorado I*) (plurality). But because no one seriously claims that parties are trying to bribe their candidates, the government has been forced to rely on a *quid pro quo*-by-circumvention defense—namely, that the limits will somehow prevent donors from laundering bribes to candidates *through* the political parties. This Court, however, squarely rejected the identical theory in *McCutcheon v. FEC*, 572 U.S. 185, 211 (2014) (plurality), which helps explain why the government has finally abandoned it.

Writing for an en banc majority below, Chief Judge Sutton did not dispute any of this. In fact, he suggested these speech limits might not have survived Sixth Circuit review were that court "faced with a clear playing field." JA721. The majority below nevertheless upheld them as constitutional, believing this case to be controlled by *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*).

In doing so, the majority agreed that in the 24 years since that decision, this Court "has tightened the free-speech restrictions on campaign finance regulation," "tension has emerged" between *Colorado II* and "later decisions," and the "terrain" of campaign finance has "changed, most notably with 2014 amendments" to the limits and "the rise of unlimited spending by political action committees." JA711, 719. But viewing itself as hemmed in by *Colorado II*, the majority felt bound to apply that case's "deferential form of review." JA721.

This Court has a freer hand. Its numerous intervening precedents have already sapped *Colorado II* of any force, and the decision does not apply to the challenges here in any event. In rejecting a facial challenge to the limits as they stood in 2001, *Colorado II* did not hold that they would be constitutional forever, even if later amended. And in 2014, Congress did alter § 30116(d) in a significant way, allowing unlimited coordinated party spending on activities such as "election-recount lawsuits." JA737. As Judge Thapar noted, these new exceptions, which raise the same theoretical "bribery risk" as any other form of coordinated spending, "flatly undermine[]" any donor-circumvention rationale that might have existed in 2001. JA737-38.

Faced "with a different statute" today, this Court should, as it did in *McCutcheon,* hold that this facial challenge to the "limits *currently* in place" is "not controll[ed]" by a case reviewing "a different statutory regime." 572 U.S. at 200, 203 (emphasis added). At the very least, it should agree that *Colorado II*'s rejection of a facial challenge to the 2001 limits does not foreclose an as-applied challenge to the current ones. In fact, *Colorado II* expressly left open the door to an "as-applied challenge," such as one involving coordinated spending beyond the mere "payment of the candidate's bills." 533 U.S. at 456 n.17. That describes the as-applied challenge here, which concerns coordinated political *advertising*, dubbed "party coordinated communications" by 11 C.F.R. § 109.37. This Court therefore can reverse without reconsidering *Colorado II*.

If *Colorado II* does shield these speech caps from the Constitution, however, this Court should excise that anomaly from its First Amendment doctrine. That 5-4 aberration was egregiously wrong the day it was decided, and developments both in the law and on the ground in the 24 years since have only further eroded its foundations. And far from some historical curio safely tucked away in a dusty volume of the U.S. Reports, the decision "lies about like a loaded weapon ready for the hand of any authority" that seeks to limit political speech in the future. *Korematsu v. United States*, 323 U.S. 214, 246 (1944) (Jackson, J., dissenting). In the meantime, *Colorado II* has caused donors to send their funds elsewhere, fueling the rise of narrowly focused "super 'PACs'" and an attendant "fall of political parties' power," which has helped fuel a spike in polarization and fragmentation across the board. JA721.

All this has led even otherwise stalwart defenders of campaign-finance regulation to call for the end to the limits here. *See, e.g.*, Weiner & Vandewalker, BRENNAN CTR. FOR JUSTICE, *Stronger Parties, Stronger Democracy: Rethinking Reform* 14-15 (2015). And on the other side of the scales, the only proffered reliance interest is intervenors' stake in the continued suppression of the speech of their political opponents—not exactly a fixed star in the *stare decisis* constellation.

Accordingly, to the extent *Colorado II* remains relevant, it is only as a "'legal last-man-standing'" this Court should "knock down." JA720. Doing so would vindicate the core principle that Congress cannot abridge "the political speech a political party shares with its members"—"speech which is 'at the core of our electoral process and of the First Amendment freedoms.'" *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 222-24 (1989).

OPINIONS BELOW

The Sixth Circuit's decision (JA709-863) is reported at 117 F.4th 389. The district court's order certifying the question presented (JA615-708) is reported at 712 F. Supp. 3d 1017.

JURISDICTION

The Sixth Circuit entered its judgment on September 5, 2024. Petitioners filed a timely petition for certiorari on December 4, 2024. This Court granted review on June 30, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

The constitutional and statutory provisions at issue are reproduced at Pet. App. 248a-70a.

STATEMENT OF THE CASE

A. Legal background

1. In 1972, Congress passed FECA to restrict fundraising and spending in federal political campaigns. 52 U.S.C. § 30101 *et seq*. As amended in 1974, the Act imposes a host of inflation-indexed limits on the funds party committees may receive and spend for the purpose of influencing a federal election.

On the front end, FECA restricts how much money party committees may *receive* by imposing base contribution limits on the amounts that individuals and other political committees may contribute. 52 U.S.C. § 30116(a)(1)(B), (c)(1). Presently, the base limit on individual contributions to the national party committees is $44,300 per year. FEC, *Contribution Limits for 2025-2026* (*Base Limits*).

On the back end, FECA caps how much party committees may *give* by subjecting them to base limits on contributions to federal candidates. 52 U.S.C. § 30116(a)(2)(A), (c)(1). Currently, a party committee may give only $5,000 per election. *Base Limits*. By comparison, a single individual may give up to $3,500 per election. *Id.* A national party committee and its Senate committee, however, may together contribute up to $62,000 to a Senate candidate's campaign, instead of a total of $10,000 ($5,000 per committee). *Id.*

Finally, FECA's "Party Expenditure Provision" purports to cap "*all* party expenditures" supporting federal candidates. *Colorado I*, 518 U.S. at 621; *see* 52 U.S.C. § 30116(d). That includes "coordinated" party expenditures (those "made with input from the candidate the party supports") or "independent" ones (those "spent without input from the candidate"). JA715-16.

Under this provision, the amount parties can spend in support of their candidates varies significantly depending on the state and office sought. For presidential, Senate, and at-large House races, the limits are calculated by multiplying by two cents the voting-age population of the United States or the state, depending on the office. 52 U.S.C. § 30116(d)(2)-(3). The FEC updates the limits annually based on this formula. For all other House races, Congress set a limit of $10,000, which is also increased annually based on the Cost-of-Living Adjustment. *Id.* § 30116(d)(3)(B). The limits today range from $127,200 to $3,946,100 for Senate candidates, and from $63,600 to $127,200 for House candidates. FEC, *Coordinated Party Expenditure Limits*.

2. In two decisions arising out of Colorado, this Court confronted whether an earlier version of the Party Expenditure Provision (then codified at 2 U.S.C. § 441a(d)) was unconstitutional. In the first (*Colorado I*), the Court concluded that the First Amendment gives party committees the "same right" as others "to make unlimited independent expenditures" in support of their candidates. 518 U.S. at 618. It therefore held that "the Party Expenditure Provision as applied" to a party's *independent* expenditures violated the First Amendment. *Id.* at 613.

In the sequel (*Colorado II*), the Court rejected a facial challenge urging that the Party Expenditure Provision could not be applied to a party's *coordinated* expenditures, either. 533 U.S. at 437. Writing for a five-Justice majority, Justice Souter applied the dichotomy between contribution limits and expenditure limits from *Buckley v. Valeo*, 424 U.S. 1 (1976), and treated coordinated party expenditures "as the functional equivalent of contributions." 533 U.S. at 447.

The majority then held that FECA's limits on these expenditures survived *Buckley*'s "'closely drawn'" test for "contribution limit[s]," which asks "whether the restriction is 'closely drawn' to match … the 'sufficiently important' government interest in combating political corruption." *Id.* at 456. In so holding, the majority did not claim the limits were necessary to prevent "*quid pro quo* arrangements and similar corrupting relationships between candidates and parties themselves." *Id.* at 456 n.18. Instead, it concluded that they were a justified response to "the risk of corruption (and its appearance) through circumvention of valid contribution limits" by donors. *Id.* at 456. In upholding the limits on this theory, the majority defined "corruption" "not only as *quid pro quo* agreements, but also as undue influence on an officeholder's judgment." *Id.* at 441.

Justice Thomas—joined by Chief Justice Rehnquist in part and Justices Scalia and Kennedy in full—dissented. *Id.* at 465-82. The four dissenters contended the limits fail even "closely drawn" scrutiny because there is no evidence "that coordinated expenditures by parties give rise to corruption," *id.* at 474, and because "better tailored alternatives" are available to prevent any potential corruption in any event, *id.* at 481.

3. The upshot of the *Colorado* decisions is that party committees today can make only *independent* expenditures in support of their candidates without limit. But in doing so, they must be careful to avoid the FEC's expansive view of what qualifies as a "coordinated" expenditure—any payment for influencing a federal election that is "made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or a political party committee." 11 C.F.R. § 109.20(a).

Coordinated party expenditures therefore include party payments of *any* expense made in coordination with a candidate or campaign, down to renting a rally venue, hiring fundraising consultants, or reimbursing a candidate's travel bills. They also include payments made in connection with so-called "party coordinated communications." *Id.* § 109.37. In general, these communications are any form of general public political advertising paid for by a party committee and coordinated with a candidate or campaign that expressly advocates the election or defeat of a clearly identified federal candidate. *Id.* § 109.37(a)(2)(ii); *see id.* § 100.2. Yet the term also captures party communications lacking express advocacy, such as a coordinated ad that just references a candidate within certain timeframes before the general election. *Id.* § 109.37(a)(2)(i), (iii).

Given this expansive understanding of coordinated party expenditures, party committees have generally sought to comply with § 30116(d) by creating separate "independent expenditure units," firewalled from the party's main operations, to engage in public advocacy campaigns independent of both the committee and the candidates. JA677. That approach is more expensive and far less effective than working with the candidates themselves. JA678. The limits therefore impede party committees' ability "to unify their political message" with their candidates, "increase their costs, create redundancies, and discourage them from communicating effectively with their candidates and spending money efficiently to support them." JA712. Thus, as even *Colorado II* acknowledged, "limiting coordinated expenditures imposes some burden on parties' associational efficiency." 533 U.S. at 450 n.11.

A party committee wishing to engage in coordinated spending, however, must comply with § 30116(d). That provision strips some party committees—including NRSC and NRCC (the Committees)—of the right to make any of their *own* coordinated expenditures. Instead, it lets only the Republican National Committee (RNC) and state party committees make these expenditures (up to the limits). 52 U.S.C. § 30116(d)(1)-(3); *see* 11 C.F.R. § 109.32. If the Committees want to make any coordinated expenditures, they must first get permission—a written assignment of spending authority—from the RNC or the state party committee in the candidate's home state. 11 C.F.R. § 109.33; *see* JA675-77. Even then, they must comply with the scope of the assignment and the limits in § 30116(d).

4. In 2014, Congress amended § 30116(d) to increase the size of permissible coordinated party expenditures—but only for certain purposes—by adding three exceptions to the limits. 52 U.S.C. § 30116(d)(5). FECA now allows donors to contribute up to triple the general base limit—currently $132,900 (as opposed to $44,300) for individuals—into special accounts of the national party committees for (1) "presidential nominating convention[s]," (2) a party's "headquarters buildings," and (3) "preparation for and the conduct of election recounts and contests and other legal proceedings." *Id.* § 30116(a)(1)(B), (9). Section 30116(d) exempts "expenditures made from any of th[ese] accounts" from its limits on coordinated spending, except for a $20-million cap on all convention spending. *Id.* § 30116(d)(5), (a)(9)(A). Today, the national party committees therefore can and do use their legal-proceedings accounts to pay for a vast array of candidate and campaign legal costs without limit. *See* JA677.

B. Procedural history

1. In 2022, petitioners—the NRSC, NRCC, then-candidate J.D. Vance, and then-Representative Steve Chabot—brought facial and as-applied challenges to the coordinated party expenditure limits as they stand today. They proceeded under 52 U.S.C. § 30110, which provides that the district court "immediately shall certify all questions of constitutionality" of FECA to the relevant en banc court of appeals.

Following discovery at the FEC's request, the district court certified the question presented to the en banc Sixth Circuit. JA659. In doing so, it ruled that petitioners satisfied both Article III and § 30110, JA622-28, and raised a non-frivolous question, JA628-34. As to the latter, the court explained that "even assuming *Colorado II* governs," the "change in the legal landscape" since 2001 made these challenges "arguably meritorious." JA633. Specifically, this Court had "narrowed the justifications" available "to defend [the] limits" and Congress had "altered" § 30116(d) by adding new "exceptions." *Id.* Finally, after wading through "voluminous proposed findings of fact," JA824, the district court made 178 paragraphs of findings "to serve as the record in this case," JA670; *see* JA661-708.

2. A majority of the en banc Sixth Circuit answered the question presented in the negative based on *Colorado II*. JA726.

Writing for a 10-judge majority, Chief Judge Sutton first explained that while former Representative Chabot's claim might be moot, the "claims of the party committees and Senator Vance remain live, which is all that matters when it comes to our authority to address" the question presented. JA713.

Turning to the merits, the majority agreed that "the law and facts have changed since" *Colorado II*. JA733. It identified "several ways" in which this Court's more recent cases "create tension with *Colorado II*'s reasoning": (1) a recognition that "the prevention of *quid pro quo* corruption" is the "only" basis "for restricting political speech"; (2) a requirement of "actual evidence that a spending restriction will reduce *quid pro quo* corruption"; and (3) a reinvigoration of "the closely drawn test, emphasizing that this rigorous test demands narrow tailoring." JA718-19 (cleaned up). The majority also observed that the exceptions added in 2014 could render § 30116(d) fatally "underinclusive," and that "political campaigns and political spending have materially changed in the last two decades." JA721. It nevertheless concluded that the "deferential review" applied in *Colorado II* required it to reject the facial and as-applied challenges here. JA711.

Judge Thapar (joined by Judges Kethledge, Murphy, and Nalbandian) concurred to explain why FECA's "limits on party-coordinated speech fail even" *Buckley*'s "'closely drawn'" test, as they neither "advance a 'sufficiently important' government interest" nor are "'closely drawn' to that interest." JA732. He nevertheless agreed that petitioners could not prevail in lower courts due to *Colorado II*, an "outlier" decision "out of step with modern doctrine." JA726, 733. Instead, it was this "Court's job to overrule its precedents." JA742.

Judge Bush concurred *dubitante*, explaining that *Colorado II* conflicts with this Court's "recent decisions" as well as "history and tradition." JA745.

Concurring in the judgment, Judge Stranch (joined by Judges Moore and Clay in full and Judges Davis and Bloomekatz in part) criticized the majority for acknowledging that "doctrinal, statutory, and factual changes undermine *Colorado II*." JA792. She also offered a defense of the limits on the merits. JA793-820. Judge Bloomekatz (joined by Judge Davis) wrote to clarify that she agreed with Judge Stranch solely on *stare decisis* grounds. JA822.

Judge Readler dissented, reasoning that in light of intervening cases that "have entirely displaced" *Colorado II*'s reasoning, "the changed statutory regime," and *Colorado II*'s reservation of "a future as-applied challenge," that "obsolete precedent" did not prevent the Sixth Circuit from reviewing the limits under current First Amendment doctrine. JA826-27, 839, 844. Applying that framework, Judge Readler concluded that these "limits on political speech fail the 'closely drawn' standard." JA863.

3. After petitioners sought this Court's review, the government agreed that § 30116(d)'s limits violate the First Amendment. This Court granted certiorari, appointed an amicus to defend the statute, and allowed three Democratic party committees to intervene.

SUMMARY OF ARGUMENT

I. FECA's coordinated party expenditure limits plainly violate the First Amendment under current doctrine. They abridge core political speech and cannot withstand any available form of scrutiny.

A. All agree the limits burden the speech and associational rights of political parties to at least some extent. They therefore trigger intermediate scrutiny at a minimum, if not strict scrutiny. Accordingly, their defenders must at least prove that the limits (1) prevent *quid pro quo* corruption and (2) are a narrowly tailored way of doing so. They cannot show either.

B. The coordinated party expenditure limits do not even seek to stave off *quid pro quo* corruption. Instead, Congress enacted them to reduce what it deemed unseemly amounts of campaign spending by party committees. That is why the limits—which purport to constrain even a party's *independent* expenditures—use a convoluted formula keyed to the office sought and voting-age population of the state, which have nothing to do with the risk of bribery. Because speech restrictions must be backed by genuine justifications, the limits cannot be defended on new grounds today.

Even if the limits' defenders were free to contrive *post hoc* justifications for these speech caps now, it would do them no good. The government below did not claim that the limits were necessary to prevent *parties* from bribing their own candidates with coordinated speech on the campaign trail. Understandably so, for one of the key functions of a political party is to make sure that its candidates will vote the party's platform once in office.

Instead, the FEC below claimed that the limits were necessary to thwart *donors* from bribing candidates by using the parties as conduits for their schemes. But only three judges below could bring themselves to endorse that far-fetched position, and for good reason. The same *quid pro quo*-by-circumvention theory failed over a decade ago in *McCutcheon*, and age has not improved it. Notably, FECA imposes at least *five* prophylaxes against such schemes, leading any rational donor to take his money to a Super PAC with no contribution limits rather than risk schemes that face criminal prosecution. Confirming this logic, the FEC could not unearth any evidence of a donor smuggling a bribe to a candidate through a party's coordinated spending. All this may be why FECA permits parties to engage in unlimited coordinated spending in a variety of areas, including their candidates' legal fees. These inexplicable gaps in the enforcement scheme confirm that the remaining limits do not prevent *quid pro quos*.

C. Even if the limits served a permissible objective, they are not a narrowly tailored response to the threat of bribery schemes, as their underinclusivity confirms. Moreover, Congress could have used several less burdensome alternatives before rationing the core political speech of the parties, such as reducing the amount that donors can contribute to the parties in the first place. That measure would at least be keyed to the right target, the *donor* seeking to buy off a candidate, not the *party* he wants to use to effectuate his scheme.

II. Given all this, the majority's only ground for upholding the limits was that *Colorado II* gave lower courts no other choice. Whether or not that was correct in light of the strong limits of vertical *stare decisis*, this Court does not remained shackled by that 2001 ruling.

A. *Colorado II* has no relevance to this case. Because that 2001 decision is irreconcilable with this Court's subsequent decisions, it has already been effectively overruled. And even if it could somehow climb out of its coffin, it still would be distinguishable from this case twice over. For one, while *Colorado II* rejected a facial challenge to an earlier version of the limits, Congress amended that law in 2014 to allow unlimited coordinated spending in certain areas, such as a candidate's legal fees. This Court is therefore confronted with a different—and far more underinclusive—statute today from the one it considered in 2001. And for another, *Colorado II* reserved the possibility of an as-applied challenge involving a party's own speech like the one here.

B. If this Court concludes that *Colorado II* controls, however, it should overrule that outdated decision. *Colorado II* was grievously wrong from the outset, and as even the majority below noted, both "the law and facts" have left it far behind. JA711. In the interim, it has distorted both the law and the political process, emboldening speech regulators and encouraging donors to turn away from parties and toward Super PACs as an outlet for their political activity. The result is a more polarized process in which the mediating institution of political parties has been supplanted by less-restricted and less-accountable speakers. And *Colorado II* has produced no cognizable reliance interests at all, let alone ones that could outweigh these legal and practical harms.

ARGUMENT

I. THE COORDINATED PARTY EXPENDITURE LIMITS VIOLATE THE FIRST AMENDMENT.

As the majority below all but admitted, FECA's coordinated party expenditure limits are dead on arrival under this Court's recent campaign-finance precedents. Those limits strike precisely where "the First Amendment 'has its fullest and most urgent application'"—namely, "'the conduct of campaigns for political office'"—and they cannot survive any applicable level of scrutiny. *McCutcheon*, 572 U.S. at 191-92.

A. The limits severely burden speech.

The First Amendment commands that "Congress shall make no law … abridging the freedom of speech." U.S. Const. Amend. I. Yet the limits here do just that by sharply restricting "political parties from spending money on campaign advertising with input from the party's candidate for office." JA711.

That is no small matter. The point of a political party, as opposed to a debating society, is to get its candidates elected. And to do that effectively, a party must be able to consult with its candidates as they work toward their shared goal. Otherwise, it runs the risk that it "will disseminate advertisements that are unhelpful to, if not entirely disfavored by, the candidate the party supports." JA682 (cleaned up). Thus, by rationing the amount of political speech available to a party in consultation with its candidates, the limits have a "stifling effect on the ability of the party to do what it exists to do." *Colorado I*, 518 U.S. at 630 (Kennedy, J., concurring in the judgment). They are the "equivalent of prohibiting communication between a coach and quarterback late in a tied game." JA848.

It is therefore common ground that the limits impose at least "some burden" on political parties' speech and associational rights. *Colorado II*, 533 U.S. at 450 n.11; *see id.* at 453; *supra* at 8. Every judge below agreed on that. *See, e.g.*, JA712, 806, 743, 848, 682-88.

Because "there is no doubt that the law does burden First Amendment electoral speech," the government "'bears the burden of proving the constitutionality'" of the limits. *FEC v. Cruz*, 596 U.S. 289, 305 (2022) (quoting *McCutcheon*, 572 U.S. at 210). It cannot do so under any relevant level of scrutiny. While *Buckley* subjected campaign-finance limits to strict or "'closely drawn'" scrutiny based on the restriction at issue, this Court's recent decisions have seen no need to "parse the differences between the two standards." *McCutcheon*, 572 U.S. at 199; *see Cruz*, 596 U.S. at 305. That is because even under closely drawn scrutiny, the challenged law still must (1) further "the permissible objective of preventing *quid pro quo* corruption" and (2) be "'narrowly tailored'" to achieve that limited goal. Section 30116(d) cannot survive either prong of that test, let alone the demands of strict scrutiny, the appropriate standard here. *See infra* at 42.

B. The limits do not further a legitimate objective.

To survive "'closely drawn' scrutiny," § 30116(d)'s defenders "must prove at the outset that it is in fact pursuing a legitimate objective." *Cruz*, 596 U.S. at 305. And on that front, there is "only one permissible ground for restricting political speech: the prevention of '*quid pro quo*' corruption or its appearance"—*i.e.*, "the direct exchange of money for official acts." *Id.* at 305, 309. This requirement alone is fatal to § 30116(d).

1. To start, as *Colorado I* pointed out, "Congress wrote the Party Expenditure Provision not so much because of a special concern about the potentially 'corrupting' effect of party expenditures, but rather for the constitutionally insufficient purpose of reducing what it saw as wasteful and excessive campaign spending." 518 U.S. at 618. Indeed, the desire to limit money in politics is the only tenable explanation for that provision's complex formula, which results in *different* limits for candidates based on the office sought and voting-age population of the relevant state. Had Congress truly feared that coordinated party spending could be used for bribes, it would have modeled § 30116(d) on the *uniform* base limits, which presume any party contribution over $5,000 poses a risk, whether to a Senate candidate in Pennsylvania or one in California. *See McCutcheon*, 572 U.S. at 221.

Instead, Congress allowed a party to spend under $1.4 million in coordination with its Pennsylvania Senate candidate but nearly $4 million with its California one. *See supra* at 6. That framework makes no sense if Congress had thought that coordinated party expenditures above a certain threshold posed a risk of bribery; no one seriously thinks the purity of politicians tracks state lines.

But it makes perfect sense if Congress had the "impermissible objective of simply limiting the amount of money in politics." *Cruz*, 596 U.S. at 313. Specifically, Congress thought that it was appropriate for parties to spend more on Senate races than House races, more on at-large districts than other House seats, and more on the states with larger populations than those with smaller ones. Only that belief can explain the complex speech rationing here.

Confirming the point, § 30116(d)'s intricate formula purports to cover *all* party expenditures, whether coordinated or independent. That § 30116(d) today limits only *coordinated* party expenditures is the product solely of this Court's intervention, not congressional design. *See Colorado I*, 518 U.S. at 613. Section 30116(d) on its face therefore reflects "Congress' desire to limit *all* party expenditures when it passed the 1974 amendment," including independent ones. *Id.* at 621. Even though a party committee's "independent expenditures" pose little "danger" of being "given as a quid pro quo," Congress sought to restrict them through a state-by-state and office-by-office scheme. *Buckley*, 424 U.S. at 47. That only underscores that § 30116(d)'s true target was not *quid pro quo* corruption, but what incumbents saw as undue quantities of campaign spending. And because "justifications for interfering with First Amendment rights must be genuine, not hypothesized or invented *post hoc* in response to litigation," § 30116(d) cannot be propped up by a new theory now. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022) (cleaned up).

2. Even if revisionist history were an option, there is no tenable theory for why the limits are "necessary to prevent *quid pro quo* corruption." *Cruz*, 596 U.S. at 310. Tellingly, the FEC below did not rely on the traditional justification for limits on coordinated expenditures—namely, that such payments "are functionally equivalent to direct contributions to a candidate" and hence pose the same risk of "quid-pro-quo corruption." JA734; *see Buckley*, 424 U.S. at 46-47. Nor did *Colorado II*. 533 U.S. at 456 n.18. In other words, no one today seriously claims that the *parties* are trying to bribe their *candidates* with campaign contributions.

Wisely so, for as Judge Thapar observed, "it doesn't make any sense to think of a party as 'corrupting' its candidates." JA734; *see* JA849-51. That is because the "very aim of a political party is to influence its candidate's stance on issues and, if the candidate takes office or is reelected, his votes." *Colorado I*, 518 U.S. at 646 (Thomas, J., concurring in the judgment). When a candidate votes to implement his party's platform after it spent money to get him elected, that is not "corruption," but "representative government in a party system." *Id.* Given our "constitutional tradition of political parties and their candidates engaging in joint First Amendment activity"—and their "practical identity of interests" in an election—coordinated *party* spending "bears little resemblance" to coordinated spending by others. *Id.* at 629-30 (Kennedy, J., concurring in the judgment).

That is why no one could reasonably contend that the NRSC or DSCC would commit "bribery" by conditioning their coordinated expenditures in a senator's reelection campaign on his support for or opposition to a Republican-sponsored tax bill. If the senator breaks ranks, the party committee would be under no obligation to bankroll his reelection. And that is why FECA treats all coordinated expenditures by individuals and other political committees as contributions subject to the base limits, 52 U.S.C. § 30116(a)(7)(B), but frees party committees to engage in coordinated expenditures up to arbitrary caps significantly above the base limits, *id.* § 30116(d). If Congress thought coordinated party expenditures inherently "pose similar dangers" to "contributions," it would have tried to treat *all* of them "as contributions," as opposed to using the complex formula of § 30116(d). *Buckley*, 424 U.S. at 46.

3. Instead, the FEC defended the limits below on another theory *Colorado II* did not embrace—that they are necessary to prevent "would-be bribers" from "circumventing donor-to-candidate contribution limits" through a scheme in which they "funnel[]" their bribes through "a political party" JA735-36; *see infra* at 35, 43. In other words, the argument is that a donor will launder his contributions to a candidate *through* the party in exchange for official action.

This Court, however, rejected the same theory in *McCutcheon*. There, as here, the Court confronted caps on spending that *itself* did not risk bribery—namely, the aggregate limits on the total amount a donor could give to all candidates and committees. *See* 572 U.S. at 210. There, as here, the limits' defenders consequently retreated to arguing that the caps were needed to "prevent circumvention of the base limits." *Id.* And there, as here, the fear was that without the extra limits, a donor could evade the base limits by routing additional gifts through *other* "entities likely to support the candidate." *Id.* This Court recognized, however, that such a threat was "far too speculative" to justify a cap on political speech, as "there is not the same risk of *quid pro quo* corruption or its appearance when money flows through independent actors to a candidate, as when a donor contributes to a candidate directly." *Id.* The *quid pro quo*-by-circumvention theory here fails for the same reasons it failed in *McCutcheon*.

a. To start, it is implausible that a donor seeking to engage in such a Rube Goldberg bribery plot would use a party committee to do so, as he would run into at least a "quintuple prophylactic statutory scheme." JA739. That alone shows the limits are regulatory overkill. *Cruz*, 596 U.S. at 306.

As an initial matter, the base limits that apply to individual donors "themselves are a prophylactic measure," as "'few if any contributions to candidates will involve *quid pro quo* arrangements.'" *McCutcheon*, 572 U.S. at 221. And FECA's *other* prophylaxes make it inconceivable that the donor could effectively evade the base limits by laundering a bribe to a candidate through contributions to a party committee.

Consider how such a bribery scheme would work. At the outset, the candidate and donor must agree that the candidate will take an official act if the donor makes a certain contribution. But to funnel that money through "a party committee," the donor would first have to "cede control over the funds," meaning any routing of the funds to a candidate would occur at the party's "discretion—not the donor's." *Id.* at 211; *see* JA672, 250-51. Yet once in the party's hands, the funds will likely be spent on "close races" regardless of "donor preference." JA852; *see* JA251-52. And as those races attract the most money, that spending "will be significantly diluted," thereby diminishing the donor's "salience." *McCutcheon*, 572 U.S. at 212; *see* JA855.

To launder a bribe through a party committee, the donor therefore would have to convince the party to violate FECA's earmarking rule, which *already* forbids such circumvention by applying the base contribution limits to funds that are "in any way earmarked or otherwise directed through an intermediary or conduit" to a federal candidate. 52 U.S.C. § 30116(a)(8). So, if "a donor gives money to a party committee but directs the party committee to pass the contribution along to a particular candidate, then the transaction is treated as a contribution from the original donor to the specified candidate." *McCutcheon*, 572 U.S. at 194.

Moreover, FEC regulations "define earmarking broadly," *id.* at 201—sweeping in any "designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. § 110.6(b)(1). A donor thus may not "even *imply* that he would like his money to be recontributed to" his chosen candidate. *McCutcheon*, 572 U.S. at 212. The bribery scheme thus would "flagrantly violate" existing campaign finance laws. JA741 n.3.

Even if a corrupt donor could convince a party committee to flout the anticircumvention law, he would run into still further barriers. For example, FECA caps a donor's total contribution to the party at $44,300, an amount Congress views as sufficiently restrictive to prevent *quid pro quos*. *See supra* at 5; JA736-37. And even then, the donation will be publicly disclosed at fec.gov, tipping off third-party watchdogs that routinely monitor FEC disclosures in the event the candidate takes an official act for the donor's benefit. 52 U.S.C. § 30104(b); *see McCutcheon*, 572 U.S. at 224. Finally, it bears emphasizing that this entire scheme would be a crime, subjecting the donor and candidate to up to 15 years in prison. 18 U.S.C. § 201.

It is only if all the above fails that § 30116(d)'s limits on party coordinated spending kick in as yet another supposed hedge against donor bribes. JA737. As Judge Thapar put it, this "prophylaxis-upon-prophylaxis-upon-prophylaxis-upon-prophylaxis-upon-prophylaxis approach is a significant indicator that the regulation may not be necessary for the interest it seeks to protect." *Id.* (cleaned up); *see Cruz*, 596 U.S. at 306.

Rather than try to navigate this pyramid of prophylaxes, donors have simply turned to a "a far better vehicle for influencing a candidate"—"Super PACs." JA856. While Super PACs cannot coordinate with a candidate, their donors often "let it be known who they are helping, and in what amounts." *Id.* Accordingly, as this Court noted in *McCutcheon,* there should be "fewer cases of conduit contributions" to "parties" today, because donors seeking to influence "officials will no longer need to attempt to do so through conduit contribution schemes," but can just "make unlimited contributions to Super PACs." 572 U.S. at 214 n.9 (quoting congressional testimony of Acting Assistant Attorney General). Indeed, it is "hard to believe that a rational actor would" try to skirt the base limits through criminal contributions to a party committee when he could instead lawfully spend "unlimited funds on independent expenditures" supporting a candidate via a Super PAC. *Id.* at 213-14.

b. The record bears out the sensible conclusion that § 30116(d)'s limits are entirely unnecessary to prevent *quid pro quos*-by-circumvention. To defend these prophylactic speech caps, the government must identify "'record evidence or legislative findings' demonstrating the need to address a special problem." *Cruz*, 596 U.S. at 307. Legislative findings are out (as Congress passed § 30116(d) to reduce money in politics), and record evidence does not come close to filling the hole. To prove that the limits are "necessary to prevent" the feared bribery schemes, the FEC had to come forward with proof of "*quid pro quo* corruption in this context"—namely, that a donor had laundered a bribe to a candidate *through party coordinated spending*. *Cruz*, 596 U.S. at 307; *see* JA738. It failed to do so.

Not for lack of trying. Even after nearly 50 years of enforcing § 30116(d), the FEC still had to seek "discovery" into whether coordinated party spending has "furthered *quid pro quo* arrangements." JA39. And even that search turned up dry. "[N]othing in the certified record"—almost 180 paragraphs of findings by the district court—revealed "quid pro quo corruption" linked to coordinated party spending. JA857; *see* JA659-708.

Instead, the FEC on appeal had to resort to "newspaper articles and items it submitted unsuccessfully to the district court." JA857. And even those "disallowed items"—which came with "serious hearsay problems" and "were not tested through discovery *here*"—did not fit the bill. *Id.*; JA648-49. The FEC's expert conceded that he knew of no instance "where there has been any sort of quid pro quo corruption related to coordinated party expenditures," which explains why these payments did "not feature prominently" in his "examples" of supposed "corruption." JA57, 298. While he dismissed the fact that bribes "involving coordinated federal expenditures have not been more common" as evidence that "the current regulations are working," the First Amendment requires more. JA57-58. The proponent of a speech restriction bears the burden of proving that "'experience under the present law confirms a serious threat of abuse,'" *McCutcheon*, 572 U.S. at 219, not "'simply posit the existence of the disease sought to be cured,'" *Cruz*, 596 U.S. at 307.

Moreover, the FEC's lack of evidence did not stem from the challenges of marshalling proof from a "counterfactual world" where parties are free to fully cooperate in getting their candidates elected. *McCutcheon*, 572 U.S. at 219. To the contrary, the FEC had plenty of laboratories to test its circumvention hypothesis.

Almost 30 of them, in fact. As the en banc Sixth Circuit observed, "'at least 28 states largely give parties free rein to make coordinated expenditures on behalf of their state-level nominees,'" yet "'no evidence of corruption has materialized'" in those locations. JA722; *see* C.A. First Br. 35 n.4 (collecting citations). This Court has often "found the absence of such evidence significant," as it confirms that a prophylactic speech restriction at the federal level is far from essential. *Cruz*, 596 U.S. at 307 (collecting cases).

Even under FECA itself, the government had plenty of places to search for bribes involving coordinated party spending, if they existed. It could have looked for them in connection with political advertising within § 30116(d)'s limits, which in some races can stretch into the millions. *Supra* at 6. It could have looked at coordinated party spending on political advocacy not subject to any federal limit, such as on certain get-out-the vote (GOTV) activities or campaign materials. 52 U.S.C. § 30101(8)(B)(ix), (xi), (9)(B)(viii), (ix). And it could have looked at the unlimited coordinated party spending in areas Congress has allowed since 2014, such as candidate legal fees. *Id.* § 30116(d)(5).

If even the "current system" under federal law poses "dangers" of three-way bribery schemes, as the FEC's expert claimed, then these numerous pockets of unrestricted spending should have provided a useful testing ground for an anticircumvention theory. JA302. Yet even that expert could not identify "one example[]" of "any sort of quid pro quo corruption related to coordinated party expenditures," including in these areas. JA298; *see* JA328-32. Accordingly, the majority below could not deny the FEC's lack of "sufficient evidence of corruption"—a notable understatement. JA719.

Many of the concurring and dissenting judges below were even more pointed. Judge Thapar, for example, concluded that the FEC's examples were largely "not up to spec," as they failed to allege that "the parties in question had coordinated expenditures with the allegedly corrupt candidate" or that any "quid-pro-quo corruption" had occurred in the first place. JA738 & n.2; *see also* JA857-58. In fact, after scouring the FEC's examples, he found "only one case" he thought even came "close" to supporting a *quid pro quo*-by-circumvention theory. JA738-39. Specifically, in 2007, "an Ohio school-board member allegedly helped a construction company secure a $96,000 government contract" in exchange for the company's "$6,000 earmarked contribution to the county-level Democratic Party," which "*allegedly*" then "used $4,850 of that money to pay for the board member's campaign ads." JA739.

Setting aside that this episode rests on allegation and not evidence, the "earmarking" rule "disarm[s]" it. *McCutcheon*, 572 U.S. at 211. The donor's $6,000 bribe in that case was "earmarked" for the candidate. JA739. But any party committee that routed a $6,000 earmarked bribe to a federal candidate in excess of the $3,500 base limit—whether via coordinated spending or otherwise—would be in "transparent violation of the earmarking rule[]." *McCutcheon*, 572 U.S. at 215 (rejecting example that "relies on illegal earmarking"); *see supra* at 22-23. This case therefore at most supports FECA's earmarking rule, not the extra prophylaxis of § 30116(d). And in all events, "this lone example" of alleged corruption in a local school-board election—one that "federal anti-bribery laws address[]"—"is a rather thin reed on which to hinge a nationwide limit on parties' core political speech." JA739.

At bottom, the evidence supporting § 30116(d)'s limits amounts to, at most, "'mere conjecture' supported by 'a handful of media reports and anecdotes.'" JA858 (quoting *Cruz*, 596 U.S. at 307). That is a "meager" foundation for "restrictions on 'the most fundamental First Amendment activities'—the right of candidates for political office" and their political parties "to make their case to the American people." *Cruz*, 596 U.S. at 310.

c. Evidentiary failings aside, FECA's "nonsensical exceptions to the spending limits" offer another reason to reject an "anti-circumvention rationale." JA738-39. A law's "'underinclusive'" nature can be fatal even under "intermediate scrutiny," *NIFLA v. Becerra*, 585 U.S. 755, 773-74 (2018), as the delta between a restriction's supposed purpose and its actual reach can "raise 'doubts about whether the government is in fact pursuing the interest it invokes'" or "reveal that a law does not actually advance" that interest, *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 448-49 (2015). That is the case here. As even the majority below admitted, FECA's "exemptions" indicate that § 30116(d)'s limits do "too little for First Amendment purposes." JA721.

To start, while FECA sharply restricts parties' coordinated payments on *campaign advertisements*, it has long allowed them to make unlimited coordinated expenditures on *campaign activities*. For example, state and local party committees may freely spend in coordination with their presidential candidates when it comes to "voter registration" and "get-out-the-vote activities." 52 U.S.C. § 30101(8)(B)(xi), (9)(B)(ix). The same is true for "campaign materials" distributed by volunteers, whether brochures, bumper stickers, or yard signs. *Id.* § 30101(8)(B)(ix), (9)(B)(viii).

"Because voter registration, voter identification, GOTV, and generic campaign activity all confer substantial benefits on federal candidates," a party's coordinated "funding of such activities" should, at least under an anticircumvention theory, pose "a significant risk of actual and apparent corruption." *McConnell v. FE*C, 540 U.S. 93, 168 (2003). Yet Congress left such coordinated political advocacy entirely unregulated.

And FECA's categories of unfettered coordinated party expenditures have only grown over time. In 2014, Congress freed the parties to engage in unlimited coordinated spending on presidential nominating conventions, party infrastructure, and candidate legal fees—all from accounts with base-contribution limits three times higher than those for general operating accounts. 52 U.S.C. § 30116(a)(1)(B), (9), (d)(5). And those exceptions are significant. The parties often use the legal-proceedings exception, for example, with petitioners defraying hundreds of thousands in campaign legal fees in the 2022 election alone. JA677.

This "flatly undermines" any "anti-circumvention arguments." JA737. As Judge Thapar recognized, no one can seriously claim that "funneling money to a candidate's election-night recount," for instance, poses "less of a bribery risk than funneling money to his advertisements." *Id.* Likewise, payments for nominating conventions are just a form of "coordinated advertising expenses," as the "whole point" of such spectacles is to "advertise" a specific candidate to voters. JA860. And in all events, because "money is fungible," the exempted payments would still "free up other funds" for a candidate's campaigning, *Knox v. SEIU*, 567 U.S. 298, 317 n.6 (2012), making them just "as useful to the candidate as cash," *Colorado II*, 533 U.S. at 446.

There is no good explanation for this Swiss-cheese strategy of checking *quid pro quos*-by-circumvention. If anything, because contributions to these specific accounts are both larger and cabined to specific purposes (and hence more easily identifiable), they are arguably even *more* susceptible to three-way conduit schemes.

Section 30116(d)'s limits are therefore no different from the unconstitutional cap on independent expenditures that this Court confronted in *Buckley*. There, as here, the restriction's champions defended it as "'a loophole-closing provision'" needed "to prevent circumvention of the contribution limitations." 424 U.S. at 44. Without this cap, they urged, donors would evade the contribution limits by "paying directly" for a candidate's "media advertisements." *Id.* at 46. This Court rejected that argument, explaining that even if one assumed that risk existed, the challenged limit did "not provide an answer that sufficiently relates to the elimination of those dangers" because it "prevents only some large expenditures." *Id.* at 45. So too here.

To be sure, "the First Amendment imposes no freestanding 'underinclusiveness limitation'"; not every exception is fatal. *Williams-Yulee*, 575 U.S. at 440. But here, Congress declined to regulate areas "that affect[] its stated interest *in a comparable way*." *Id.* at 451. As the FEC's own *amici* below proclaimed, the 2014 amendment "dramatically increased the amount of money that can flow through party committees to benefit donors' preferred candidates." CLC C.A. Br. 21. Given "Congress' judgment" that such funds do not "unduly imperil anticorruption interests, it is hard to imagine how" limiting *other* payments "can be regarded as serving anticorruption goals." *Davis v. FEC*, 554 U.S. 724, 741 (2008).

C. The limits are not narrowly tailored.

In any event, even if § 30116(d)'s limits actually sought to prevent *quid pro quos*, they still would "fail to pass muster" under "the 'closely drawn' prong." JA740. While this requirement is somewhat less exacting than "strict scrutiny," it remains a "'rigorous'" one. *McCutcheon*, 572 U.S. at 199. Notably, it demands that § 30116(d)'s defenders show the law is "'narrowly tailored'" to achieving the goal of checking bribery schemes, even if it is not "'the least restrictive means'" of doing so. *McCutcheon*, 572 U.S. at 218; *see Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 609-10 (2021) (explaining that *McCutcheon* "confirm[s]" that under intermediate scrutiny, a law "must be narrowly tailored to the interest it promotes, even if it is not the least restrictive means of achieving that end"). And this Court must be "particularly diligent in scrutinizing the law's fit" where, as here, it adopts a "'prophylaxis-upon-prophylaxis approach.'" *McCutcheon*, 572 U.S. at 221; *see supra* at 21-23.

Yet § 30116(d)'s limits are "poorly tailored" to any asserted interest in foreclosing bribery through "circumvention." *McCutcheon*, 572 U.S. at 218. For one, their "underinclusiveness" forecloses any "claim of narrow tailoring." *Catholic Charities Bureau, Inc. v. Wis. Lab. & Indus. Rev. Comm'n*, 605 U.S. 238, 253 (2025); *see supra* at 28-30. The "disconnect" between the limits' "stated purpose" and their "actual scope" not only calls into question whether they actually serve an anti-bribery interest, but also whether they are "sufficiently drawn to achieve it." *NIFLA*, 585 U.S. at 773-74; *see* JA859-60. Given this "substantial mismatch," the limits cannot come close to being narrowly tailored. *McCutcheon*, 572 U.S. at 199.

For another, "there are multiple alternatives available" that would further an "anticircumvention interest, while avoiding 'unnecessary abridgment' of First Amendment rights." *Id.* at 221. Three readily come to mind.

First, given that the *quid pro quo*-by-circumvention theory here hinges on FECA's "fundraising disparity" between the candidate-contribution limits ($3,500) and party-contribution limits ($44,300), "the solution is simple: just lower the party-contribution limits." JA741. In fact, the FEC's own expert agreed that this fix would reduce the "danger of quid pro quo corruption." JA61; *see* JA298-99. That solution would also better address any circumvention concerns by targeting "the delinquent actor"—*the donor* seeking to evade the base contribution limits—rather than *the party's* speech. *McCutcheon*, 572 U.S. at 222. And as Judge Thapar noted, it would also "pose a smaller First Amendment burden" on parties as a whole, as "spending limits 'impose far greater restraints … than contribution limits'" for individuals. JA742 (quoting *Buckley*, 424 U.S. at 44). In fact, even a variety of "donors" may prefer that solution as well—namely, the ones who care more about "seeing their preferred party gain a majority" than "any particular candidate." JA862.

Second, the "earmarking" rule "already prohibit[s]" any "agreements to circumvent the base limits," whether explicit or "implicit." *McCutcheon*, 572 U.S. at 222-23. That remains true for "a donor attempting to circumvent the base contribution limits through party committee contributions," JA861, so that any *quid pro quo* laundered through a party already "violate[s] the Act's earmarking rules," JA741 n.3.

The FEC below offered no good reason why this existing alternative is insufficient, and if it is, why the government could not "strengthen" it. *McCutcheon*, 572 U.S. at 223. Even if the existing *statutory* "earmarking provision does not define 'the outer limits of acceptable tailoring,'" the government could still issue "tighter" earmarking *regulations*, especially "in concert with other measures." *Id.* Or, as the FEC's expert suggested, the government could ensure the existing "earmarking" rules are rigorously "enforced." JA341. These possibilities confirm that there are "alternative approaches available" that could prevent *quid pro quos* through "circumvention." *McCutcheon*, 572 U.S. at 223.

Third, FECA's "disclosure" requirements provide "a less restrictive alternative" to § 30116(d)'s "ceiling on speech." *Id.*; *see* JA737, 861. Given that contributions to, and coordinated expenditures by, the parties are readily accessible to the public through the internet, it is unclear why § 30116(d)'s additional prophylaxis is necessary. *McCutcheon*, 572 U.S. at 223-24. If anything, the limits here only "encourage the movement of money away from entities subject to disclosure" and toward those less exposed to public scrutiny. *Id.* at 224; *see* JA248.

Ultimately, the limits "(1) punish parties for a government-created fundraising disparity, (2) target the wrong actor for anti-corruption purposes, and (3) pose a greater First Amendment burden than comparable" alternatives would. JA742. They are therefore no more "'narrowly tailored'" than the aggregate limits held unconstitutional in *McCutcheon*. 572 U.S. at 218.

II. *COLORADO II* CANNOT SAVE THE LIMITS.

Understandably, the majority below made no attempt to defend the challenged limits under current doctrine. Instead, it just held that *Colorado II* shielded the limits from lower-court scrutiny. But neither that decision, properly understood, nor *stare decisis* can salvage these speech restrictions as they stand today.

A. *Colorado II* does not control this case.

Start with the relevance of *Colorado II*. In light of this Court's later precedents repudiating that decision's reasoning, it has no force today. And even if that anomaly had any life left in it, it still would not control here. In rejecting a facial challenge to the limits as they stood nearly a quarter century ago, *Colorado II* did not purport to resolve whether a *different* statutory scheme—let alone its *application* to coordinated political advertising—would comply with the First Amendment. Thus, the question here is not whether to apply *Colorado II*, but whether to extend it. The First Amendment allows only one answer—an emphatic no.

1. This Court has already abandoned *Colorado II* and its "deferential review" of limits on speech. JA711. While the fact that intervening cases have undermined an earlier decision is often part of the *stare decisis* inquiry, sometimes the clash between past and prior precedent is so obvious that no further work is necessary. Specifically, when "it is impossible to harmonize" an older decision with a more recent one, the earlier "'must be regarded as retaining no vitality.'" *Herrera v. Wyoming*, 587 U.S. 329, 342 (2019); *see, e.g.*, *Kennedy*, 597 U.S. at 534 (explaining that it was already "'apparent' that this Court long ago abandoned" *Lemon v. Kurtzman*, 403 U.S. 602 (1971)).

That is the case here. As even the majority below noted, with considerable understatement, this Court's "recent decisions create tension with *Colorado II*'s reasoning" in "several ways." JA718.

First, since 2001, this Court has repeatedly clarified that there is "only one permissible ground for restricting political speech: the prevention of '*quid pro quo*' corruption or its appearance." *Cruz*, 596 U.S. at 305 (quoting *McCutcheon*, 572 U.S. at 207); *accord Citizens United v. FEC*, 558 U.S. 310, 359 (2010). "Even on this basic starting point, however, *Colorado II* is out of step with modern doctrine." JA733. Rather than asking if the limits do anything to prevent bribes, *Colorado II* rested on the premise that the FEC had an interest in combatting "corruption … understood not only as *quid pro quo* agreements, but also as undue influence on an officeholder's judgment." 533 U.S. at 441.

That concern over preventing undue influence explains much of the decision's reasoning. For instance, in justifying the limits as an anti-"circumvention" measure, *Colorado II* explained that their goal was "to combat the corrupting influence of large contributions," not *quid pro quos*. *Id.* at 456 n.18. Similarly, when it came to "evidence" of "corruption by circumvention," the Court did not point to any bribery scandals, but to the fact that "substantial donations turn the parties into matchmakers whose special meetings and receptions give the donors the chance to get their points across to the candidates." *Id.* at 461. And *Colorado II* brushed aside the "earmarking provision" as a viable alternative on the premise that it would not reach "the corrosive effects" of "'understandings'" about the "'interests particular donors are seeking to promote.'" *Id.* at 462.

Since then, however, this Court has squarely held that the government "may not seek to limit" the risk "that an individual who spends large sums may garner 'influence over or access to' elected officials or political parties" under the First Amendment. *McCutcheon*, 572 U.S. at 208 (quoting *Citizens United*, 558 U.S. at 359); *accord Cruz*, 596 U.S. at 307-09. As even the *McCutcheon* dissenters acknowledged, that ruling contradicted "*Colorado II*[]," which "upheld [the] limits … because it found they thwarted corruption and its appearance, again understood as including 'undue influence' by wealthy donors," not only "'*quid pro quo* agreements.'" 572 U.S. at 239-40 (Breyer, J., dissenting); *see also Citizens United,* 558 U.S. at 447 (Stevens, J., dissenting in part) (noting *Colorado II* reached "beyond … *quid pro quo* relationships").

Second, this "Court's recent campaign-finance decisions … demand 'actual evidence' that a spending restriction will reduce '*quid pro quo* corruption or its appearance.'" JA718-19 (quoting *Cruz*, 596 U.S. at 310). *Colorado II*, however, identified no evidence that the limits would achieve that goal, as opposed to preventing a "donor's influence" from being "multiplied." 533 U.S. at 460 n.23; *see id.* at 477 n.8 (Thomas, J., dissenting) (noting the district court found that "there was no evidence of corruption"). Instead, after noting the "difficulty of mustering evidence" of any "abuse," *Colorado II* merely surmised that "the inducement to circumvent would almost certainly intensify" if the limits on coordinated party spending were lifted. *Id.* at 457, 460 (majority). All this is why the FEC had to seek "discovery" in this case in order to (unsuccessfully) fish for evidence of "quid pro quo corruption" now. JA857; *see* JA39.

Third, since *Colorado II*, this "Court has strengthened the 'closely drawn' test, emphasizing that this 'rigorous' test demands 'narrow tailoring.'" JA719 (quoting *McCutcheon*, 572 U.S. at 197, 199, 218) (alteration omitted); *see Bonta*, 594 U.S. at 609-10. Yet as the majority below observed, *Colorado II* "made no mention of narrow tailoring and seemed to disavow it," JA719—even in the face of the dissent's charge that "better tailored alternatives" were available. 533 U.S. at 481 (Thomas, J., dissenting). Instead, the decision "afforded Congress significant deference," concluding "Congress was 'entitled to its choice' among different approaches …, and that 'unskillful tailoring' isn't enough to invalidate a restriction." JA740 (quoting *Colorado II*, 533 U.S. at 463 n.26, 465).

But to meet "the narrow tailoring requirement," the government "is not free to enforce *any*" law "that furthers its interests"; instead, it must "demonstrate its need" for its desired measure "in light of any less intrusive alternatives." *Bonta*, 594 U.S. at 612-13; *see McCutcheon*, 572 U.S. at 221-23 (deeming the aggregate limits insufficiently tailored given the availability of "multiple alternatives"). In relieving the government from that burden, *Colorado II* overlooked that "it remains [the] role" of *this Court*, not *Congress*, "to decide whether a particular legislative choice is constitutional." *Cruz*, 596 U.S. at 313.

In short, it is impossible to reconcile the analysis in *Colorado II* with this Court's subsequent reasoning in cases such as *Citizens United*, *McCutcheon*, and *Cruz*. That means "this case is controlled by" those later decisions, not *Colorado II*. *Herrera*, 587 U.S. at 337.

2. Even if *Colorado II* still had a pulse, it would have nothing to say about the facial challenge here. In rejecting a facial challenge to the limits as they stood in 2001, *Colorado II* did not hold they would *always* comply with the First Amendment, no matter what Congress did in the future. Indeed, it could not have done so. "Otherwise, statutory amendments would be shielded from review so long as the revised law retained some semblance to a prior version." JA840. That would transform *stare decisis* from a doctrine meant to advance the rule of law into a license for Congress to evade it.

McCutcheon proves the point. Even though *Buckley* had upheld "the aggregate limit" on an individual's contributions to candidates and committees "in place" in 1976, this Court explained that this holding did "not control" a facial challenge to the aggregate limits as they stood in 2014, as they were part of a "different statutory regime." 572 U.S. at 200. And the key change had not been to the aggregate limits themselves, which had just shifted from a $25,000 total cap in 1976 to a $123,200 total cap in 2014. *Id.* at 194, 196.[1] Rather, it was that other "statutory safeguards against circumvention have been considerably strengthened since *Buckley*," making the extra prophylaxis of the aggregate limits "particularly heavy-handed." *Id.* at 200. Because this Court was "confronted with a different statute," it concluded that a "challenge to the system of aggregate limits currently in place" deserved this Court's "plenary consideration." *Id.* at 203.

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[1] The aggregate limits in 2014 divided that total into $48,600 to candidates and $74,600 to committees, but nothing in *McCutcheon* turned on that wrinkle. 572 U.S. at 194.

The same is true here. As with new safeguards, new exceptions can alter the First Amendment calculus. *See, e.g.*, *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 224-25 & nn.1-2, 234 (1987). The 2014 carveouts—which freed the parties to pursue unlimited coordinated spending on things such as candidate legal fees—therefore produced at least a meaningfully "different statutory regime," if not an unlawful one. *McCutcheon*, 572 U.S. at 200; *see supra* at 29-30.

The majority below did not deny that the 2014 amendment could show that the remaining limits pursue their "policy target in underinclusive ways." JA721. It nevertheless hewed closely to *Colorado II*, questioning whether "changes to a statute" could ever allow "a *lower court* to reach a different outcome from an earlier Supreme Court decision." JA722 (emphasis added). But as Judge Thapar emphasized, *this Court* "has held that changes in statutes … can justify *its* departure from past precedents," as "*McCutcheon*" shows. JA742-43. Petitioners' facial challenge therefore warrants this Court's "plenary consideration," just like the one in *McCutcheon*. 572 U.S. at 203.

3. So does their as-applied challenge. *Colorado II* expressly left open the possibility of a future "as-applied challenge" targeting the limits' application to a "party's own speech," as opposed to mere "payment of the candidate's bills." 533 U.S. at 456 n.17. That describes the as-applied challenge here to a tee. In contesting the limits' coverage of "party coordinated communications," the Committees seek the freedom to run their own ads while still obtaining input from the candidates. That is miles away from a party committee "simply reimbursing its candidate for campaign expenses," such as a candidate's travel bills. JA845.

While the majority below agreed that "*Colorado II* left open" the door for *some* as-applied challenges, it thought the decision foreclosed *this* one given its "breadth." JA723-24. Because "roughly 97%" of the Committees' current independent expenditures go to "'political advertising,'" the majority reasoned that accepting this challenge would "leave little" activity for *Colorado II* to cover. JA725; *see* JA679-82.

Courts, however, "do not resolve unspecified as-applied challenges in the course of resolving a facial attack," even if the later challenge covers "the 'vast majority' of a statute's applications." *FEC v. Wisconsin Right To Life, Inc.*, 551 U.S. 449, 476 n.8 (2007) (opinion of Roberts, C.J.). Instead, the rejection of a facial challenge stands only for the proposition that a statute has "at least some" lawful applications, so "future" courts should not "read any more into" such a decision than that. *United States v. Rahimi*, 602 U.S. 680, 713 (2024) (Gorsuch, J., concurring).

Such caution is particularly warranted here given *Colorado II*'s own reasoning. After recognizing that the 2001 limits reached "a spectrum of activity" ranging from "no more than payment of the candidate's bills" to expenditures for "the party's own speech," the Court rejected a facial challenge just because the party there had not identified "what proportion of the spending falls in one category or the other, or otherwise [laid] the groundwork for its facial overbreadth claim." 533 U.S. at 445, 456 n.17. Given that *Colorado II* eschewed any attempt to quantify § 30116(d)'s supposedly lawful applications, it makes little sense to have the scope of that decision turn on a numbers game.

B. *Colorado II* should be overruled

If *Colorado II* remains controlling, however, it should be overruled. The "*stare decisis* considerations most relevant here … all weigh in favor" of doing so. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 407 (2024). And as *stare decisis* "applies with perhaps least force of all to decisions that wrongly denied First Amendment rights," it is past time to cast this relic aside. *Janus v. AFSCME*, 585 U.S. 878, 917 (2018).

1. To start, *Colorado II* was "poorly reasoned" even under First Amendment doctrine back in 2001. *Id.* at 918. As the four dissenters observed, the majority in *Colorado II* was able to uphold the limits under the "closely drawn" test only by discarding the "evidentiary requirement" of *Buckley* and its progeny and dismissing "better tailored alternatives." 533 U.S. at 474, 481 (Thomas, J., dissenting).[2] Because *Colorado II* was "inconsistent with the decisions that came before it," replacing that aberration with a return to *Buckley* would in fact "better serve[] the values of *stare decisis*." *Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 231 (1995); *see Citizens United*, 558 U.S. at 379 (Roberts, C.J., concurring) (decision that "departed from the robust protections" given to "political speech in … earlier cases" should be overruled).

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[2] That assessment is shared even by those otherwise sympathetic to campaign-finance regulation. As one scholar put it, *Colorado II* resulted in "jurisprudential incoherence" by indulging in "the fiction" that it was applying "the *Buckley* standard" while it "reduced the evidentiary burden" and "relaxed the level of scrutiny." Hasen, Buckley *Is Dead, Long Live* Buckley*: The New Campaign Finance Incoherence of* McConnell v. Federal Election Commission, 153 U. PA. L. REV. 31, 32 & n.7 (2004); *see id.* at 42-45.

More fundamentally, *Colorado II* plainly erred in concluding that closely drawn scrutiny rather than strict scrutiny applies here in the first place. *Buckley*'s exception for contribution limits "denigrates core First Amendment speech and should be overruled." *McCutcheon*, 572 U.S. at 228 (Thomas, J., concurring in the judgment). Instead, strict scrutiny should govern *all* campaign-finance restrictions, contribution limits included. *See Colorado II*, 533 U.S. at 465-66 (Thomas, J., dissenting); *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 405-10 (2000) (Kennedy, J., dissenting).

At a minimum, "party coordinated spending" should not be treated as "contributions" under *Buckley*'s dichotomy. *Colorado II*, 533 U.S. at 447; *see id.* at 468-74 (Thomas, J., dissenting). *Buckley* excluded contribution limits from strict scrutiny on the premise that they impose "little direct restraint" on political speech because they do "not in any way infringe the contributor's freedom to discuss candidates and issues." 424 U.S. at 21. Even if that were true about contribution limits in general, it is "fanciful" to say that about FECA's limits on coordinated party spending, as they "constrain[] the party in advocating its most essential positions and pursuing its most basic goals." *Colorado I*, 518 U.S. at 630 (Kennedy, J., concurring in the judgment); *see also California Democratic Party v. Jones*, 530 U.S. 567, 575 (2000) (emphasizing First Amendment's "special protection" for political parties).

2. Original failings aside, developments in the law and the facts in the decades since *Colorado II* have "'eroded' the decision's 'underpinnings' and left it an outlier among" this Court's "First Amendment cases." *Janus*, 585 U.S. at 924.

a. Start with the law. Even if it were possible to make peace between *Colorado II* and the trilogy of *Citizens United*, *McCutcheon*, and *Cruz*, that 2001 decision would still sit uneasily with those more recent precedents. *See supra* at 34-37. The majority below itself agreed that this "Court's recent decisions create tension with *Colorado II*'s reasoning" across "several" fronts; it just thought the "absolute" nature of "vertical *stare decisis*" created a first-in-time rule. JA718-20 (cleaned up). But *Colorado II* is an "outlier" in "First Amendment jurisprudence generally," whether looking backwards to *Buckley* or forwards to *McCutcheon* and its ilk. JA726. Culling this "'anomaly'" from this Court's cases would therefore only bring "greater coherence" to the law. *Janus*, 585 U.S. at 926; *see Citizens United*, 558 U.S. at 355 (overruling campaign-finance "aberration").

Moreover, because "the need to prevent actual or apparent *quid pro quo* corruption" was "not part of" *Colorado II*'s "*reasoning*"—even if its defenders now use that theory to prop up its "*result*"—the "case for reaffirming" would require "radically reconceptualizing" its foundations. *Citizens United*, 558 U.S. at 383-84 (Roberts, C.J., concurring). That would transform *stare decisis* from "a doctrine of preservation" into one of "transformation," freeing this Court to embrace "new principles of constitutional law solely for the purpose of rationalizing its past errors." *Id.* That is no recipe for the "'principled and intelligible' development" of First Amendment doctrine. *Id.* at 385. Instead, the fact that *Colorado II* would have to be rewritten to retain it only "underscores its weakness as a precedent." *Id.* at 382-83.

b. Like its doctrinal underpinnings, the "factual" foundations for *Colorado II* have crumbled as well. *Janus*, 585 U.S. at 924. Even the majority below agreed on that, noting that the relevant facts "have materially changed in the last two decades." JA721. For example, *Colorado II* suggested Congress adopted the limits because it was "concerned with circumvention of contribution limits." 533 U.S. at 457 n.19. That claim was at odds with text and history in 2001, but it is even less plausible today given the underinclusivity injected into § 30116(d) by the 2014 amendment. *Id.* at 475 & n.5 (Thomas, J., dissenting); *see supra* at 29-30.

Moreover, *Colorado II* assumed that the "'political parties are dominant players … in federal elections,'" with their "sophistication and power" putting them in a particularly good "position to be used to circumvent contribution limits." 533 U.S. at 450, 453. Whether true or not in 2001, that view "has a quaint ring to it" today. JA721. The year after *Colorado II*, Congress reduced the parties' power by passing the Bipartisan Campaign Reform Act of 2002 (BCRA), which banned them from raising or spending "soft money"—funds raised by parties outside the Act's limits on source and amount for party-building activities. *McConnell*, 540 U.S. at 123-24. Yet "'[i]nstead of getting money out of politics, BCRA simply transferred power away from the political parties'" by causing donors to send funds elsewhere. JA842 (brackets omitted). Thus, by 2010, it was already clear that "[t]he current mix of statutes, regulations, and court decisions has left a campaign finance system that reduces the power of political parties as compared to outside groups." *RNC v. FEC*, 698 F. Supp. 2d 150, 160 n.5 (D.D.C. 2010) (Kavanaugh, J.), *aff'd*, 561 U.S. 1040 (2010).

And that year saw the official arrival of Super PACs, whose "ability to raise unlimited sums of money from individuals for independent expenditures" made them "a far better vehicle" for donors. JA856. In fact, Super PACs raised nearly $400 million more than the parties did in 2023 alone. *Id.* And while party contributions to candidates have barely budged since 2004, non-party independent expenditures (including by Super PACs) have shot up by over 114 times during that period. JA246-47.

"Rapid changes in technology," *Citizens United*, 558 U.S. at 364, have also undercut *Colorado II*—a case from "when the internet was 'still more of a prototype than a finished product.'" *Free Speech Coal., Inc. v. Paxton*, 145 S. Ct. 2291, 2313 (2025). The "rise of low-cost social media," for example, has left parties with less institutional force. Issacharoff, *Democracy's Deficits*, 85 U. CHI. L. REV. 485, 490 (2018); *see* JA721-22. And while *Colorado II* apparently did not view "disclosure laws" as adequate "alternatives," that is because it was decided in the days of dial-up internet. 533 U.S. at 481 (Thomas, J., dissenting). Even by 2014, disclosure had become "effective to a degree not possible at the time *Buckley*, or even *McConnell*, was decided," as "massive quantities of information can be accessed at the click of a mouse." *McCutcheon*, 572 U.S. at 224.

3. *Colorado II* has also led to "significant negative jurisprudential" and "real-world consequences"—yet another strike against it in the *stare decisis* calculus. *Ramos v. Louisiana*, 590 U.S. 83, 122 (2020) (Kavanaugh, J., concurring). Far from an esoteric decision of interest only to a subset of lawyers, *Colorado II*—and its errors—go to the heart of our political system.

a. On the law, the lingering presence of *Colorado II* and its "deferential review" threatens other political speech. JA711. The lower court in *McCutcheon*, for instance, relied on *Colorado II* to uphold the aggregate limits this Court would later deem unconstitutional. 893 F. Supp. 2d 133, 140-41 (D.D.C. 2012). And even in the wake of *McCutcheon*, lower courts have continued to invoke *Colorado II* to prop up campaign-finance limits outside the context of coordinated party spending. The D.C. Circuit, for instance, used it to justify an application of FECA's contribution limits to donations from the dead, even though the government could "not point to even a single *quid pro quo* exchange … allegedly effected through a bequest." *Libertarian Nat'l Comm., Inc. v. FEC*, 924 F.3d 533, 563 (D.C. Cir. 2019) (en banc) (Katsas, J., dissenting in part); *see id.* at 544 (majority). So even as *Colorado II* has become more anomalous, it remains no less dangerous.

And carried "to its logical endpoint," *Colorado II* threatens the First Amendment further still. *Citizens United*, 558 U.S. at 382 (Roberts, C.J., concurring). In blessing a restriction on core political expression using an anticircumvention theory untethered to either evidence or a legitimate government interest, *Colorado II* offers a roadmap to speech regulators of every stripe. Because "there will always be behavior" at the "edges" of a law that are "easily characterized as 'circumventing'" it, "speech regulation will again expand to cover new forms of 'circumvention,' only to spur supposed circumvention of the new regulations, and so forth." *McConnell*, 540 U.S. at 268-69 (opinion of Thomas, J.). Overruling *Colorado II* would help ensure such never-ending cycles remain a thing of the past.

b. The real-world costs of *Colorado II* are at least as severe as its jurisprudential ones. By allowing the limits to persist, *Colorado II* has served to curtail the most "basic" freedom "in our democracy" for decades — "the right to participate in electing our political leaders." *McCutcheon*, 572 U.S. at 191. And it has done so to "not just any speaker, but political parties," JA825, which play a "unique role" in our "constitutional tradition," *Colorado I*, 518 U.S. at 629-30 (Kennedy, J., concurring in the judgment). Given that "[r]epresentative democracy" in our Nation "is unimaginable without the ability of citizens to band together in promoting among the electorate candidates who espouse their political views"—which helps explain why political parties are nearly as old as "the Republic itself"—this abridgement of speech cries out for correction. *Jones*, 530 U.S. at 574.

Doing so would rectify not only a severe First Amendment violation, but a severe distortion of the political process. Because the "parties are the most likely to give to challengers"—as they will always spend some money "to help challengers in pursuit of majorities"—the limits serve as "an incumbent protection rule." JA251 (emphasis omitted). Yet "those who govern should be the *last* people to help decide who *should* govern." *McCutcheon*, 572 U.S. at 192. Moreover, the key advantage of political parties in competing for donations is their "unique ability to speak in coordination with" their "candidates." *Colorado II*, 533 U.S. at 453. Yet "once the interaction between party and candidate was limited" by *Colorado II*, the parties "no longer" had an edge. Issacharoff, *Outsourcing Politics: The Hostile Takeover of Our Hollowed-Out Political Parties*, 54 HOUS. L. REV. 845, 864-65 (2017).

As a result, candidates and donors have flocked to Super PACs, which can raise unlimited funds for independent expenditures. JA239. In fact, "'Super PACs are seen to be moving in the direction of assuming most of the functions of parties'" today. JA246 n.45. That includes not only campaign ads, but even "on-the-ground political operations," as "FECA's limits on coordinated communications do not apply to door-to-door canvassing activities undertaken by Super PACs." JA842; *see, e.g.*, Schleifer, *Elon Musk and His Super PAC Face Their Crucible Moment*, N.Y. TIMES (Nov. 4, 2024) (noting Trump campaign "outsourced much of [its] on-the-ground effort" to Musk's Super PAC, which "knocked on about 10 million doors").

This shift has led only to heightened polarization, as confirmed by the fact that states with "limits on party-candidate coordination" are more likely to have "polarized legislatures." JA220-21. Given these effects, even strong supporters of campaign-finance regulation favor scuttling the "exceptionally harmful" limits here. JA222; *see, e.g.*, Pildes & Bauer, *The Supreme Court, the Political Parties, and the SuperPACs*, ELECTION LAW BLOG (June 24, 2025) ("[U]nlike most campaign-finance" issues, "this is one where even many in the political reform community support an end to the limits.") (collecting authorities).

4. Finally, "[n]o serious reliance interests" are at stake. *Citizens United*, 558 U.S. at 365. Unlike in cases where entities "have acted" on the basis of a decision "to conduct transactions," *Colorado II* has "prevented" parties and candidates "from acting" in an area at the heart of the First Amendment. *Id.*

If "it would be unconscionable to permit free speech rights to be abridged in perpetuity" even to preserve certain "contract provisions," there is no basis for allowing this infringement on core First Amendment freedoms to persist. *Janus*, 585 U.S. at 927. Indeed, the *only* reliance interest posited in this case is that intervenors have structured their campaign strategies around § 30116(d)'s speech caps to give them a "tactical" advantage over their political opponents. DNC Mot. 14. But the fact that intervenors "have been trained to comply with" these restrictions "is hardly a basis for retaining" a constitutional distortion that harms all political parties. *Montejo v. Louisiana*, 556 U.S. 778, 793 (2009). While intervenors "obviously may continue" to "abstain" from coordinated spending if they "*wish*[]" to do so, they have no legitimate interest in suppressing the speech of their competitors in perpetuity. *Id.*

CONCLUSION

This Court should reverse the judgment below.

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