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 WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

AMICUS BRIEF OF GEORGIA REPUBLICAN PARTY, INC., ALABAMA REPUBLICAN PARTY, AND REPUBLICAN PARTY OF TEXAS IN SUPPORT OF PETITIONERS

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INTERESTS OF AMICI CURIAE[1]

Amici curiae are state Republican parties. Each *amicus* nominates candidates for state office as provided by state law and have registered a federal political committee with the Federal Election Commission ("FEC") through which it makes contributions and expenditures relating to federal candidates and to otherwise influence federal elections. *Amici* work in their respective states to register voters, raise funds, support their candidates for public office, and promote free and fair elections. They seek to educate voters about their candidates and policy positions, as well as Republican party values.

Amici have a strong interest in working with the candidates they nominate to craft and convey their messages concerning freedom, the rule of law, lower taxes, and smaller government to the electorate more effectively. They wish to engage in substantial coordinated expenditures with their candidates for both federal and state office. Federal law, and in many cases state law, imposes substantial limits on such coordination.

Amici curiae include Georgia Republican Party, Inc., the Alabama Republican Party, and the Republican Party of Texas.

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[1] Pursuant to S. Ct. R. 37.6, amici curiae certify that no counsel for a party authored any part of this brief, and no person or entity other than the amici, their members, or their counsel made a monetary contribution to fund the brief's preparation or submission.

SUMMARY OF ARGUMENT

This Court should hold that all political party committees, specifically including state committees, have a fundamental First Amendment right to engage in coordinated spending with the candidates they nominate for public office.

1. The First Amendment broadly protects the relationship between a political party—particularly a state party—and its candidates. A political party has the constitutional right to choose its candidates, *California Democratic Party v. Jones*, 530 U.S. 567, 575 (2000); resolve disputes concerning the selection of those candidates, *O'Brien v. Brown*, 409 U.S. 1, 5 (1972) (per curiam); and have those candidates serve as their "standard bearers," *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989), and "ambassadors," *Jones*, 530 U.S. at 575. Because the First Amendment rights of free political expression and association permeate the unique relationship between a state political party and the candidates it nominates, they should have the right to coordinate their political speech during the campaign: the "critical juncture," *Tashjian v. Republican Party*, 479 U.S. 208, 214 (1986), at which the party attempts to "gain control of the machinery of . . . government by electing its candidates to public office." *Storer v. Brown*, 415 U.S. 724, 745 (1974).

Restrictions on coordinated expenditures between state parties and the candidates they nominate also

violate the First Amendment because they necessarily and impermissibly cause both entities to engage in different political speech than they would choose if unlimited coordination were permitted. *Jones*, 530 U.S. at 574, 579, 581-82; *see also Eu*, 489 U.S. at 231 n.21. Such restrictions likewise unconstitutionally impede a political party's ability to engage in "traditional party behavior, such as ensuring orderly internal party governance, maintaining party discipline in the legislature, and conducting campaigns." *Id*. at 581.

2. *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) ("*Colorado II*"), which upheld restrictions on party coordinated expenditures, is consistent with the past two decades of this Court's campaign finance jurisprudence. *Colorado II* was based on a sweepingly broad definition of "corruption" which included actual or apparent "undue influence on an officeholder's judgment." *Id*. at 441. In *Citizens United v. FEC*, 558 U.S. 310, 359-60 (2010), and its progeny, however, *see, e.g. FEC v. Ted Cruz for Senate*, 596 U.S. 289, 305 (2022), this Court has consistently reiterated "[t]he fact that speakers may have influence over or access to elected officials does not" constitute corruption. Contribution limits are constitutionally permissible only as a means to combat actual or apparent "quid pro quo corruption." *Citizens United*, 558 U.S. at 359.

Colorado II further justified limits on party coordinated expenditures as a means of preventing contributors from circumventing base limits on contributions to candidates. 553 U.S. at 446-47, 456.

The Court's subsequent ruling in *McCutcheon v. FEC*, 572 U.S. 185, 190 (2014) (plurality op.), however, explained why contributions to political committees do not raise valid circumvention concerns; nearly all of that reasoning applies with full force to contributions to state political party committees which use those funds to make coordinated expenditures. *See id.* at 200-01.

Finally, in *Colorado II,* the Court emphasized limits on coordinated expenditures had not prevented political parties from remaining the "dominant players" in the electoral process, "second only to the candidates themselves." 533 U.S. at 450. The rise of SuperPACs, which are constitutionally entitled to raise and spend unlimited amounts of money to subsidize independent expenditures, has rendered that observation anachronistic.

3. Many states restrict coordinated expenditures between state political parties and state candidates mirroring the Federal Election Campaign Act's ("FECA") limits on coordination with federal candidates. *See infra* pp. 23-25. State parties are particularly hampered by such restrictions since they frequently lack the resources of national party committees to ensure their expenditures remain fully independent of the candidates they nominate. Restrictions on coordination with federal candidates likewise make it difficult for a party to avoid duplicative, overlapping, and potentially even conflicting efforts to engage in "Federal election activity" such as voter registration drives and get-out-the-vote efforts, *see* 11 C.F.R. § 100.24(b)(1), (2)(iii),

which may be funded only through hard money contributions, 52 U.S.C. § 30125(b)(1). For these reasons, this Court's ruling in this case should expressly recognize the right of not only national party committees, but state party committees, as well, to engage in coordinated expenditures with candidates for office at all levels of government.

4. Finally, in the event this Court declines to invalidate the FECA's restrictions on party coordinated expenditures, *see* 52 U.S.C. § 30116(d)(1), (3), it should nevertheless hold the FEC's definition of that term is unconstitutionally overbroad, *see* 11 C.F.R. § 109.37(a)(3); *id*. § 109.21(d)(2)-(d)(3). Virtually any observations, commentary, or feedback from a candidate to a political party concerning nearly any aspect of a party's political communications is sufficient to trigger an allegation of coordination. The FEC has defined the concept of coordination so broadly in this context that the *Colorado II* Court's presumption such expenditures are "as useful to the candidate as cash" is simply false. 553 U.S. at 446.

ARGUMENT

I. THE RELATIONSHIP BETWEEN POLITICAL PARTIES AND THEIR CANDIDATES IS SUBJECT TO MAXIMUM FIRST AMENDMENT PROTECTION

The overall fabric of First Amendment precedent suggests state political party committees have a fundamental First Amendment right to coordinate election-related communications with their

candidates for offices at all levels of government. Accordingly, even if limits on campaign contributions and coordinated expenditures generally are subject only to exacting or intermediate scrutiny, *see Buckley v. Valeo*, 424 U.S. 1, 16-17 (1976) (per curiam), restrictions on coordination between political parties and candidates should trigger strict scrutiny and be invalidated.

1. The Supreme Court has long recognized "[t]he right to form a [political] party for the advancement of political goals." *Williams v. Rhodes*, 393 U.S. 23, 31 (1968); *see also Tashjian v. Republican Party*, 479 U.S. 208, 214 (1986) ("The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization."). The right "to associate with a political party of one's choice . . . for the common advancement of political beliefs" is among our most "basic constitutional freedom[s]." *Kusper v. Pontikes*, 414 U.S. 51, 56-57 (1973). This right of association extends not only to individual voters, but the political party itself. *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989) ("It is well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments."); *see, e.g.*, *Cousins v. Wigoda*, 419 U.S. 477, 487 (1975) (declaring both a political party "and its adherents enjoy a constitutionally protected right of political association").

One critical component of a political party's fundamental right of association is the right to nominate candidates for public office. The First

Amendment "reserves" a "special place for," and accords "special protection" to, the party's nomination process. *California Democratic Party v. Jones*, 530 U.S. 567, 575 (2000); *see Democratic Party of the United States v. Wisconsin* ex rel. *La Follette*, 450 U.S. 107, 121 (1981) ("A political party's choice among the various ways of determining the makeup of a State's delegation to the party's national convention is protected by the Constitution."). Nomination of candidates is "vital business" and a "task of supreme importance." *Cousins*, 419 U.S. at 489. A party's process for selecting its nominee "often determines the party's positions on the most significant public policy issues of the day." *Jones*, 530 U.S. at 575.[2]

Most fundamentally, "a political party has the right to . . . select a 'standard bearer who best represents the party's ideologies and preferences.'" *Eu*, 489 U.S. at 224 (quoting *Ripon Soc'y, Inc v. Nat'l Republican Party*, 525 F.2d 567, 601 (D.C. Cir. 1975) (Tamm, J., concurring)); *see also id.* at 229 ("Freedom of association also encompasses a political party's decisions about the identity and the process for electing its leaders."). This Court has recognized a party's nominees often determines the party's positions on critical public issues. *Jones*, 530 U.S. at 577. And once a party establishes its policy positions, "it is the nominee who becomes the party's ambassador to the general electorate in winning it

[2] A political party's First Amendment rights further extend to the internal processes it uses to resolve any disputes that may arise concerning the nomination of its candidates at political conventions. *See O'Brien v. Brown*, 409 U.S. 1, 5 (1972) (per curiam); *accord Cousins*, 419 U.S. at 490.

over to the party's views." *Id.*; *see also Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 372 (1997) (Stevens, J., dissenting) ("[A] party's choice of a candidate is the most effective way in which that party can communicate to the voters what the party represents and, thereby, attract voter interest and support.").

The pervasive protection the First Amendment accords to a political party's nomination of its "ambassador[s]" to the electorate must necessarily extend to cooperation and coordination between the party and those ambassadors during the ensuring general election campaign. An election is "the critical juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community." *Tashjian*, 479 U.S. at 216; *accord Jones*, 530 U.S. at 574. The "basic object of a political party" is to "help elect whichever candidates the party believes would best advance its ideals and interests." *Randall v. Sorrell*, 548 U.S. 230, 257-58 (2006); *see also Storer v. Brown*, 415 U.S. 724, 745 (1974) (explaining a political party's primary purpose "is typically to gain control of the machinery of state [and the federal] government by electing its candidates to public office"); *Colo. Republican Federal Campaign Comm.*, 518 U.S. 604, 615-16 (1995) ["*Colorado I*"] (recognizing political parties are responsible for the "practical democratic task" of "creating a government that voters can instruct and hold responsible for subsequent successes or failure").

To that critical end, "an election campaign is an effective platform for the expression of views on issues

of the day, and a candidate serves as a rallying point for like-minded citizens." *Anderson v. Celebrezze*, 460 U.S. 780, 788 (1983). The same compelling constitutional considerations that bar the government from interfering with a party's process for nominating a candidate apply with equal force to protect the party's efforts to coordinate its electoral message with the "ambassador" it selects. *Jones*, 530 U.S. at 575.

2. Restrictions on a political party's ability to coordinate its political messaging with the candidates it has nominated for public office directly impose substantial burdens on that party's fundamental First Amendment rights. Campaign speech "is at the core of our electoral process and of the First Amendment freedoms." *Williams*, 393 U.S. at 32. The First Amendment "has its fullest and most urgent application' to speech uttered during a campaign for public office." *Eu*, 489 U.S. at 223 (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)). Preventing candidates and political parties from coordinating their political expression "directly hampers the ability of a party to spread its message and hamstrings voters seeking to inform themselves about the candidates and the campaign issues." *Eu*, 489 U.S. at 223.

Restrictions on coordination are unconstitutional because they have "the likely outcome . . . of changing the parties' message" as well as that of the candidates. *Jones*, 530 U.S. at 574, 579, 581-82; *see also Eu*, 489 U.S. at 231 n.21 (holding the Constitution restricts the government's power to "color the parties' message and interfere with the parties' decisions as to the best

means to promote that message"). When a political party and the candidates it nominates wish to coordinate their political expression with each other to present a clear, consistent, maximally effective message to voters, governmental limits necessarily change the content of both the party's and its candidates' expression. Messaging that would otherwise be developed together must instead be generated independently, without input from each other.

These requirements undermine the consistency and efficacy of the resulting speech and prevent either speaker from conveying the same message, with the same content and conveying the same positions, that would have been possible through such coordination. Under these circumstances, even when a party's nominee is elected despite restrictions on coordination, "he will have prevailed by taking somewhat different positions—and . . . will continue to take somewhat different positions in order to be renominated" than if the nominee and party had freedom to communicate with each other regarding political messaging. *Jones*, 530 U.S. at 580.

In contrast, if a political party coordinates with a candidate, contribution limits regulate the amount of political expression in which the party may engage. It is "particularly egregious" for a State to "censor[] the political speech a political party shares with its members." *Id*.

Restrictions on coordination between political parties and candidates similarly impact voters'

constitutional rights. "[V]oters can assert their preferences only through candidates or parties or both." *Anderson*, 460 U.S. at 787. Voters frequently rely on a candidate's political party affiliation to guide them in exercising their fundamental constitutional right to vote.

> To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties play a role in the process by which voters inform themselves for the exercise of the franchise.

Tashjian, 479 U.S. at 220; *cf. Buckley*, 424 U.S. at 65-66 (recognizing the Government's important interest in ensuring voters have accurate information upon which to base their electoral decisions). Again, when the government limits the extent to which parties may coordinate political messaging with candidates, a party's label provides far less accurate information to voters because the political messaging of the party and candidate may differ in important ways. The less parties are permitted to coordinate their political expression with their candidates, the less meaningful the party's label becomes.

3. This Court has invalidated government restrictions that interfere with political parties' ability to engage in "traditional party behavior, such as ensuring orderly internal party governance, maintaining party discipline in the legislature, and

conducting campaigns." *Jones*, 530 U.S. at 581. Coordination limits undermine a political party's ability to "maintain party discipline" and "conduct[] campaigns." *Id*. Such limits reduce the "carrots" a party may offer to ensure the candidates it nominates remain consistent with the party's principles and platform. As in *Jones*, "[t]hat party nominees will be equally observant of internal party procedures and equally respectful of party discipline" when federal law impose strict restrictions on parties coordinating their political messaging with those candidates is "improbable." *Id*. Such limits likewise restrict a party's ability to campaign with its own candidates, squarely burdening the party's fundamental rights of political expression and association.

4. Similarly, in the context of Article III standing, the federal judiciary has recognized political parties and their nominees have a close, constitutionally significant relationship and their interests are inextricably intertwined. "[A] political party's interest in a candidate's success is not merely an ideological interest. Political victory accedes power to the winning party, enabling it to better direct the machinery of government toward the party's interests." *Texas Democratic Party v. Benkiser*, 459 F.3d 582, 587 (5th Cir. 2006); *see also Drake v. Obama*, 664 F.3d 774, 782-83 (9th Cir. 2011) ("[A] candidate ***or his political party*** has standing to challenge the inclusion of an allegedly ineligible rival on the ballot, on the theory that doing so hurts the candidate's or party's own chances of prevailing in the election." (emphasis added; quoting *Hollander v. McCain*, 566 F. Supp. 2d 63, 68 (D.N.H. 2008)); *Fulani v. Hogsett*, 917 F.2d

1028, 1030 (7th Cir. 1990). And this Court relied on the uniquely "close relationship" and "nexus" between national parties and federal officeholders in upholding the validity of the Bipartisan Campaign Reform Act's soft-money restrictions. *See McConnell v. FEC*, 540 U.S. 93, 154-55 (2003). The unity of interests between a political party and its candidates make restrictions on coordinating their political communications to help those candidates get elected is a substantial unconstitutional burden on the First Amendment rights of both.

II. THE FECA'S LIMITS ON COORDINATION BETWEEN POLITICAL PARTIES AND THE CANDIDATES THEY NOMINATE ARE INCONSISTENT WITH THIS COURT'S MOST RECENT HOLDINGS ON CAMPAIGN FINANCE LAW

In *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) ("*Colorado II*"), this Court rejected a facial challenge to the Federal Campaign Finance Act's ("FECA") restrictions on spending that political parties coordinate with their candidates. As the Sixth Circuit's en banc ruling recognized, the constitutional principles governing campaign finance law have changed dramatically over the two decades since *Colorado II*. *See Nat'l Republican Senatorial Comm. v. FEC*, 117 F.4th 389, 396-97 (6th Cir. 2024) (en banc); *see also* In re *Cao*, 619 F.3d 410, 431-32, 435 (5th Cir. 2010) (en banc). While that tribunal lacked the authority to overturn *Colorado II*, it is long past time for this Court to do so.

1. This Court's ruling in *Colorado II* rested on an unconstitutionally overbroad conception of "corruption" that this Court's subsequent precedents have squarely rejected. In *McCutcheon v. FEC*, this Court reaffirmed "any regulation" of political contributions may only "target . . . 'quid pro quo' corruption or its appearance." 572 U.S. 185, 192 (2014) (plurality op.); *accord Citizens United v. FEC*, 558 U.S. 310, 360 (2010). Seemingly consistent with this principle, *Colorado II* upheld the FECA's expenditure limits on political party committees as applied to coordinated expenditures on the grounds they were a closely tailored means of combatting corruption. 533 U.S. at 453 (holding coordinated expenditures between candidates and political parties "exacerbate the threat of corruption and apparent corruption that . . . contribution limits are aimed at reducing").

The *Colorado II* Court explained, however, that its reference to "corruption" included "not only . . . *quid pro quo* agreements, but also . . . undue influence on an officeholder's judgment, and the appearance of such influence." *Id.* at 441 (citing *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 388-89 (2000)). This interpretation was consistent with the Court's sweepingly broad understanding of corruption at the time. In *McConnell*, for example, the Court held the First Amendment allows the government to limit political contributions to prevent not only quid pro quo corruption, but also any appearance contributors might have "access" to, or "influence" over, government officials. 540 U.S. at 150. *McConnell* declared the "danger that officeholders will decide issues not on the merits or the desires of their

constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder," is "troubling to a functioning democracy." *Id.* at 153.

Several years, later, this Court decisively rejected the extensive conception of "corruption" upon which both *Colorado II* and *McConnell* were based. In the 2010 case *Citizens United*, 558 U.S. at 360, this Court declared, "Ingratiation and access . . . are not corruption." It elaborated, "The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt." *Id.* at 359; *see also id.* ("It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies" (quoting *McConnell*, 540 U.S. at 297 (opinion of Kennedy, J.))). *Citizens United* concluded the Government's "interest in preventing corruption or the appearance of corruption . . . was ***limited to quid pro quo corruption***." *Id.* at 359 (emphasis added).

The Court has consistently reaffirmed this holding in the years since, starting with its 2014 ruling in *McCutcheon*, 572 U.S. at 192 ("Any regulation must instead target what we have called 'quid pro quo' corruption or its appearance."); *accord FEC v. Ted Cruz for Senate*, 596 U.S. 289, 305 (2022) ("This Court has recognized ***only one permissible ground*** for restricting political speech: the prevention of 'quid pro quo' corruption or its appearance." (emphasis added)); *Thompson v. Hebdon*, 589 U.S. 1, 2 (2019) (per curiam) (explaining, under the Court's recent precedents, "the

type of state interest that justifies a First Amendment intrusion on political contributions" is "narrow[ly]" limited "to combating actual quid pro quo corruption or its appearance" (internal quotation marks omitted)). *McCutcheon* reiterated the "possibility that an individual"—or, by extension, an association of individuals such as a political party—"who spends large sums may garner 'influence over or access to' elected officials" is not a constitutionally valid basis for imposing contribution limits. 572 U.S. at 208. Nor may the Government "seek to limit the appearance of mere influence or access." *Id.*

Thus, the entire foundation of *Colorado II* is flatly inconsistent with modern campaign finance law. The *Colorado II* Court permitted Congress to restrict political parties' coordination with their candidates on the grounds such coordination may allow the party to exercise actual or apparent undue "influence" over an official's judgment. 533 U.S. at 441. Since such concerns are not a constitutionally valid basis for regulating political expression and association in the form of political contributions, *Colorado II* no longer remains good law.

2. Another rationale underlying *Colorado II* was limiting coordinated expenditures between candidates and political parties is necessary to "prevent[] attempts to circumvent the Act." *Id.* at 443 (quoting *Buckley*, 424 U.S. at 47); *id.* at 446, 456. The Court explained, "A party's right to make unlimited expenditures coordinated with a candidate would induce individual and other nonparty contributors to give to the party in order to finance coordinated

spending for a favored candidate beyond the contribution limits binding on them." *Id*. at 446. The Court added, "[I]ndividuals and nonparty groups who have reached the limit of direct contributions to a candidate [may] give to a party with the understanding that the contribution . . . will produce increased party spending for the candidate's benefit." *Id*. at 447.

Again, this reasoning is inconsistent with modern campaign finance law. *McCutcheon* already rejected concerns that people could circumvent contribution limits by "legally contribut[ing] massive amounts of money to a particular candidate through the use of unearmarked contributions to entities that are themselves likely to contribute to the candidate"—or, by extension, make coordinated expenditures with the candidate. 572 U.S. at 200 (internal quotation marks omitted).

While *McCutcheon* addressed potential circumvention through contributions to political action committees ("PACs"), the same reasoning applies to potential circumvention through political party committees. *McCutcheon* recognized base limits on the amount a person may contribute to the intermediary, whether PAC or political party committee, greatly reduces their ability to use that intermediary as a vehicle for circumvention. *Id*. at 200-01 (emphasizing FECA had been amended to "add[] limits on contributions to political committees"). "Because a donor's contributions to a political committee are now limited, a donor cannot flood the committee with 'huge' amounts of money so

that each contribution the committee makes is perceived as a contribution from him." *Id.*

The FECA permits an individual to give only $10,000 to a state political party committee's federal account and $44,300 to the general treasury of a national political party. 52 U.S.C. § 30116(a)(1)(B), (D); *id.* § 30116(a)(2)(B)-(C); Federal Election Comm'n, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Threshold Disclosure*, 90 Fed. Reg. 8,526, 8,528 (Jan. 30, 2025). Most states have far lower limits on contributions to state and local parties. *See* Nat'l Conference of State Legislatures, *State Limits on Contributions to Candidates: 2023-2024 Election Cycle* (May 2023), https://documents.ncsl.org/wwwncsl/Elections/Contribution-Limits-to-Candidates-2023-2024.pdf. These figures "hardly raise the specter of abuse." *McCutcheon*, 572 U.S. at 201. A political party would have to receive substantial contributions from a large number of people in order to make coordinated expenditures large enough to trigger concerns about exceeding the FECA's limits. The risk of circumvention is further reduced by the fact national and state party committees often have numerous competitive races among which they must spread their resources. Accordingly, the amount of a party coordinated expenditure on behalf of a particular candidate which could be meaningfully attributed to a person who contributed even the maximum amount to a federal or state political party committee is quite low.

McCutcheon further pointed out FEC regulations bar contributors from earmarking contributions for particular candidates. *Id*. The FEC has "define[d] earmarking broadly . . . . [It] construe[s] earmarking to include any designation, 'whether direct or indirect, express or implied, oral or written.'" *Id*. (quoting 11 C.F.R. § 110.6(b)(1)). Moreover, an individual who has contributed to a candidate may not also contribute to a PAC or political party committee if he or she knows the recipient will contribute or spend "a substantial portion" of that contribution for the same candidate in the same election. *Id*. (quoting 11 C.F.R. § 110.1(h)(2)). Thus, other far less burdensome provisions of federal campaign finance law already prevent circumvention of base limits through contributions to political party committees. Congress may not burden First Amendment rights by "stacking prophylaxis upon prophylaxis." *Id*. at 196 (quoting *Wisconsin Right to Life*, 551 U.S. 449, 479 (2007) (opinion of Roberts, C.J.)).

When a political party chooses to spend funds it receives in coordination with a candidate, "such action occurs at the [political party's] discretion—not the donor's." *Id*. at 211. Rather than a particular donor receiving credit for such spending, "the chain of attribution grows longer, and any credit must be shared among the various actors along the way." *Id*. Rather than contributing funds to a political party, a "rational donor" seeking to curry favor with a particular candidate would be far more likely to spend his money on independent expenditures for that candidate (either directly, or through a SuperPAC), "without the risk that [the political party] would

choose not to give to [that particular candidate] or that he would have to share credit with other contributors." *Id*. at 214. For these reasons, *McCutcheon* held "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*. at 210-11. Accordingly, a plaintiff's ability to circumvent base limits on contributions to candidates is insubstantial at best—and subject to further potential reduction by Congress should it choose to reduce the base limits for contributions to political party committees, *cf*. *Cal. Medical Ass'n v. FEC*, 453 U.S. 182, 198-99 (1981) (upholding constitutionality of limits on contributions to political committees). *Colorado II* completely overlooked these considerations, categorically overstating the risk of circumvention at every step of the process.

3. Third, *Colorado II* held the limits on party coordinated expenditures were not unconstitutionally burdensome because, although they had been in place since the FECA's adoption in 1976, "political parties are the dominant players, second only to the candidates themselves, in federal elections." 533 U.S. at 450; *see also id*. at 455 ("Despite decades of limitation on coordinated spending, parties have not been rendered useless."). This no longer remains the case. As early as the 2012 election, the "flow of money to Super PACs expressed a formal shift of power and activity from candidates and parties to outside groups that is likely to increase." Michael S. Kang, *The Year of the Super PAC*, 81 Geo. Wash. L. Rev. 1902, 1904 (2013).

According to the FEC, during the 2024 federal election cycle, federal candidates spent a total of approximately $8.1 billion. Federal Election Comm'n, *Statistical Summary of 24-Month Campaign Activity of the 2023-2024 Election Cycle* (Apr. 23, 2025), https://www.fec.gov/updates/statistical-summary-of-24-month-campaign-activity-of-the-2023-2024-election-cycle. All national, state, and local political party committees combined spent over $2.6 billion in connection with federal elections. *Id*. SuperPACs and hybrid *Carey* PACs,[3] in contrast, together spent $13 billion in connection with federal elections alone, eclipsing spending by all political parties and candidates combined. *Id*. Thus, *Colorado II*'s fundamental assumption—that political parties can remain the "dominant" force in the electoral systems despite restrictions on coordinated expenditures—is anachronistic and inaccurate.

For these reasons, *Colorado II* no longer remains good law. This Court should overturn that ruling and recognize the fundamental First Amendment right of political parties to engage in coordinated expenditures with the candidates they nominate. *See supra* Part I.

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[3] A hybrid *Carey* PAC is a political committee with a separate segregated non-contribution account. *See Carey v. FEC*, 791 F. Supp. 2d 121 (D.D.C. 2011). The committee's *Carey* account may accept unlimited contributions, but may be used only for independent expenditures. The committee may make political contributions out of its general account; contributions to that hard-money account are subject to the FECA's ordinary limits. *Id*.

III. THIS COURT SHOULD ENFORCE THE FUNDAMENTAL FIRST AMENDMENT RIGHT OF STATE POLITICAL PARTIES TO COORDINATE WITH CANDIDATES FOR OFFICE AT ALL LEVELS OF GOVERNMENT

Although this case was brought by the National Republican Senatorial Committee ("NRSC") and National Republican Congressional Committee ("NRCC"), national political party committees, this Court's ruling should expressly recognize state political party committees such as *amici* likewise have the fundamental right to engage in unlimited coordinated expenditures with their candidates for offices at all levels of government. The challenged provisions of the FECA limit the extent to which a state party's federal committee, such as the Georgia Republican Federal Campaign Committee, may coordinate with that party's federal candidates. *See* 52 U.S.C. § 30116(d)(1), (3).

Many state parties including the Georgia Republican Party, however, also face additional state-law restrictions on their ability to coordinate political messaging with the candidates they nominate for state office.[4] Numerous states specifically limit the amount state political parties may contribute—generally including in-kind contributions of goods and services—to candidates for state office in general

[4] Depending on the jurisdiction, state law may similarly regulate coordination involving candidates or party committees at the county or local levels.

elections.[5] Others instead subject state political party committees to the same contribution limits as other types of persons[6] or political committees.[7]

In most of these jurisdictions, expenditures which either a person in general[8] or a political party more specifically[9] coordinates with a candidate qualify as

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[5] *See, e.g.*, Ark. Code § 7-6-203(a)(1)(A)(ii)-(iv); Ark. Regs. R. 153-00-011, § 101(b); Alaska Stat. § 15.13.070(d); Conn. Gen. Stat. § 9-617(b)(1); Del. Code tit. 15, § 8010(b); Fla. Stat. § 106.08(2); Ga. Code §§ 21-5-41(a); Ga. R. & Regs. § 189-6-.04, Idaho Code § 67-6610A(2); Md. Elec. L. § 13-226(c)(1); Mich. Comp. L. §§ 169.252(3)-(4), 169.269(3)-(4); Minn. Stat. § 10A.27, subd. 2; Minn. Stat. § 211A.12(a); Mont. Code § 13-37-216(2), (4); Okla. Ethics Comm'n R. 2.32, at 68 (Nov. 1, 2022); S.C. Code Ann. § 8-13-1316(A); Tenn. Code Ann. § 2-10-306(a); Wash. Rev. Code § 29B.40.020(4)(a) (effective Jan. 1, 2026); *see also* R.I. Gen. L. 17-25-10.1(e).

[6] *See, e.g.*, Colo. Const. art. XXVIII, § 3(1), (3)(d); Colo. Code Regs. tit. 8, § 1505-6, R. 10.17.1(b); Haw. Rev. Stat. § 11-357(a); Mo. Const. art. VIII, §§ 23(3)(1)(a), 23(7)(19); Nev. Rev. Stat. §§ 294A.009(3), 294A.100(1).

[7] Me. Rev. Stat. tit. 21-A, § 1015(2-B).

[8] These states include state political parties within their definition of "person." *See, e.g.*, Haw. Rev. Stat. § 11-302; Wash. Rev. Code § 29B.10.400 (effective Jan. 1, 2026); *see also* Me. Rev. Stat. tit. 21-A, § 1001(3) (defining "person" to include, in relevant part, committees, associations, and other groups); Mont. Code § 13-1-101(32); Tenn. Code Ann. § 2-10-102(10)(A).

[9] *See, e.g.*, Del. Code tit. 15, § 8012(f); Mo. Ethics Comm'n, Op. No. 2002.07.106, at 3 (July 19, 2002), https://mec.mo.gov/Scanned/PDF/Opinions/347.pdf; *see also* R.I. Gen. L. § 17-25-23(1).

contributions to that candidate[10] and count against contribution limits. Some states embed this principle within their statutory definitions of "contribution."[11] Others, in contrast, appear to address the issue more implicitly by simply defining the term "independent expenditure" to exclude coordinated expenditures.[12] As a result of these measures, state political parties throughout the nation are hampered in their ability to craft political messages with their nominees for state as well as federal office.

Prohibitions on party coordinated expenditures impose substantial burdens on political parties' constitutionally protected activities. State parties generally devote substantial resources to party-

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[10] *See, e.g.*, Colo. Const. art. XXVIII, § 5(3); Colo. Rev. Stat. § 1-45-108(8); Haw. Rev. Stat. § 11-363(a); Me. Rev. Stat. tit. 21-A, § 1015(5); Md. Elec. L. § 13-249(a)(4)(i), (b)(1); Mont. Admin. R. 44.11.602(5); Okla. Ethics Comm'n R. 2.107(H), 2.108(H) (Nov. 1, 2022); Tenn. Code Ann. § 2-10-303(5); *see also* Ga. R. & Regs. § 189-6-.04; Mich. Comp. L. § 169.224c(1)(a); Minn. Stat. § 10A.01, subd. 4.

[11] *See, e.g.*, Conn. Gen. Stat. § 9-601a(a)(4), (b)(21); Mont. Code § 13-1-101(9)(a)(ii); Mont. Admin. R. 44.11.401(1)(e); Okla. Stat. tit. 21, § 187(4); Okla. Ethics Comm'n R. 2.2(6) (Nov. 1, 2022); Wash. Rev. Code § 29B.10.160(1)(b) (effective Jan. 1, 2026); *see also* Colo. Code Regs. tit. 8, § 1505-6, R. 1.5.3; Del. Code tit. 15, § 8002(8)(g); Mich. Comp. L. § 169.204(1), (3)(e); S.C. Code § 8-13-1300(7) (defining "contribution" to include "in-kind . . . expenditures").

[12] *See, e.g.*, Ark. Regs. R. 153-00-008, § 700(c); Alaska Stat. § 15.13.400(11); Idaho Code § 67-6602(11); Nev. Rev. Stat. § 294A.0077; S.C. Code § 8-13-1300(17)(b); *see also* Fla. Stat. § 106.011(12)(b).

building activities such as voter registration drives and get-out-the-vote efforts. Since such programs generally qualify as federal election activity, *see* 11 C.F.R. § 100.24(b)(1), (2)(iii), they may be financed only through state parties' limited, FECA-compliant "hard money" funds, 52 U.S.C. § 30125(b)(1). Prohibiting parties from coordinating such expenditures with candidates can result in wasteful, duplicative, and even conflicting efforts. Conversely, the lack of such coordination may also lead to systemic under-spending, making it less likely that qualified citizens will be registered to vote and exercise their fundamental constitutional right to cast a ballot.

State parties have an even greater interest than national party committees in coordinating with their federal and state candidates, however, since state parties actually nominate them. *See, e.g.*, Ga. Code § 21-2-151(a). Coordination limits nevertheless place substantially greater burdens on state parties. State parties' federal committees are subject to substantially lower federal contribution limits than national party committees. *Compare* 52 U.S.C. § 30116(a)(1)(D) (imposing $10,000 annual limit, not indexed for inflation, on contributions from individuals to state parties' federal accounts), *with* 52 U.S.C. § 30116(a)(1)(B); 90 Fed. Reg. at 8,528 (imposing inflation-adjusted $44,300 annual limit on contributions from individuals to national party committees' general treasuries). Unlike their national counterparts, state party committees cannot accept hundreds of thousands of dollars in additional funds through specialized, post-*McCutcheon* accounts. *Cf.* 52 U.S.C. § 30116(a)(1)(B), (a)(9)(A)-(C) (allowing

national party committees to accept additional contributions totaling up to nearly $400,000 per contributor each year across multiple "separate, segregated account[s]"). The majority of state parties are also subject to contribution limits under state campaign finance law for state and local elections, which are generally far lower than those the FECA establishes. *See* National Conf. of State Legislatures, *supra*.

In contrast with national party committees, state parties frequently work with candidates at all levels of government. They also fund voter registration drives and get-out-the-vote drives which, as noted above, generally qualify as "federal election activity" in even-numbered years and therefore may be financed only through FECA-complaint funds. Thus, state parties generally face far greater demands on their far more limited resources than national party committees. Accordingly, some state party committees are less able than national party committees to bear the costs associated with establishing quarantined independent expenditure operations with standalone staff in compartmentalized facilities. The record below explains how the NRSC has spent several million dollars to establish a separate, firewalled "independent expenditure unit" housed in "separate facilities" to prevent inadvertent coordination. *See* Petition for Writ of Certiorari ("Pet.") 197a, 200a, 219a-220a. State party committees often have less funding, fewer employees, and more limited infrastructure, making it far more burdensome to comply with the anti-coordination requirements of FECA and state-law analogues to avail themselves of

their full ration of protected political speech. Thus, this Court's ruling in this case should expressly recognize the right of not only national party committees, but state party committees, as well, to engage in coordinated expenditures with candidates for office at all levels of government.

IV. AT A MINIMUM, FEC REGULATIONS DEFINING "COORDINATION" ARE UNCONSTITUTIONALLY OVERBROAD AS APPLIED TO INTERACTIONS BETWEEN CANDIDATES AND THEIR POLITICAL PARTIES

Finally, *Colorado II* upheld the FECA's restrictions on party coordinated expenditures based on the "idea . . . that coordinated expenditures are as useful to the candidate as cash." *Colorado II*, 533 U.S. at 446; *id.* at 447 ("[C]oordinated spending is as effective as direct contributions in supporting a candidate."); *id.* at 464 ("There is no significant functional difference between a party's coordinated expenditure and a direct party contribution to the candidate . . . ."). Even if this Court were to conclude that principle is generally true, *but see supra* Part II, it is inaccurate as applied to broad swathes of the regulation the FEC adopted to define "coordination."

A party-funded communication regarding a federal election is deemed "coordinated" with a candidate if that candidate is "materially involved in decisions regarding" any single discrete aspect of that communication, including but not limited to its "content," "intended audience," "means or mode,"

"specific media outlet," "timing or frequency," or its "size," "prominence," or "duration." 11 C.F.R. § 109.37(a)(3); *id.* § 109.21(d)(2)(ii)-(vi). Taken at face value, a candidate's comment to party officials that a particular advertisement was focusing on irrelevant issues, appearing in an obscure venue voters seldom accessed, or was too small to be legible, could be enough to trigger coordination. Likewise, if a candidate engages in a "substantial discussion" about his "campaign plans, projects, [or] activities" with party officials, and the party takes such information into account when developing its political communications, such expenditures would likely be deemed coordinated, as well. 11 C.F.R. § 109.37(a)(3); *id.* § 109.21(d)(3). The FEC's common vendor regulations present yet another trap for the unwary, allowing communications to be deemed coordinated based solely on the actions of an outside vendor. 11 C.F.R. § 109.37(a)(3); *id.* § 109.21(d)(4)(iii). While some forms of coordination may truly provide candidates with the same benefits as cash, most of the conduct described in FEC regulations fall far short of that demanding benchmark. Accordingly, if this Court does not completely invalidate 52 U.S.C. § 30116(d)(1), (3), then at the very least it should declare most of 11 C.F.R. § 109.21 and 109.37 unconstitutionally overbroad as applied to coordinated expenditures by federal, state, or local political party committees.

CONCLUSION

For these reasons, this Court should REVERSE the judgment of the U.S. Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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