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 OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF 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.

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Toward that end, Cato's Robert A. Levy Center for Constitutional Studies publishes books and studies about legal issues, conducts conferences, produces the annual *Cato Supreme Court Review*, and files *amicus* briefs in constitutional law cases. Cato has a long-standing interest in the protections of the First Amendment for freedom of speech and freedom of association. This case directly implicates these core constitutional rights, making it of central importance to Cato's mission.

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[1] Rule 37 statement: No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

Speech between a political party and its own candidates is at the center of the First Amendment. This case asks whether such speech can be criminalized. Under federal law, a party that coordinates with its own nominee when spending campaign funds (for more than a modest amount) faces criminal liability. That is an unconstitutional burden on the speech and association that the First Amendment was designed to protect, and it violates the rights of both parties and their candidates. The restrictions at issue do not prevent corruption; instead, they prevent parties and candidates from exercising their constitutional right to speak and work together.

Self-government in our constitutional republic rests on the exercise of our First Amendment rights. One manifestation of that exercise is the party system: Parties arose to enable coalitions of citizens to advocate their preferred policies and candidates. *See generally* RICHARD HOFSTADTER, THE IDEA OF A PARTY SYSTEM (1960). Parties thus provide a critical delivery system for political speech. "Modern democracy is unthinkable" without them. E.E. SCHATTSCHNEIDER, PARTY GOVERNMENT 1 (1942).

The Federal Election Campaign Act (FECA) creates two types of limits on speech and association that are at issue here. First, FECA regulates how much money individual donors can give to political party committees. 52 U.S.C. § 30116(a). Second, FECA

restricts the amount of "coordinated expenditures" made by parties on behalf of candidates running for federal office, with different restrictions that vary by state. § 30116(c)–(d).

These restrictions limit parties' coordinated spending to a small fraction of what a campaign requires.[2] They constrain parties from carrying out their core function: advancing the electoral prospects of their own candidates. Paradoxically, parties face their most stringent constraints precisely when they work in close cooperation with their own nominees.[3]

In a 2001, by a 5-4 vote, this Court upheld FECA's coordinated-expenditure limits. The Court reasoned that these limits were a reasonable method of avoiding corruption or undue influence on the political process.

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[2] In 2024, FECA capped a party's coordinated expenditures with a Senate candidate at amounts ranging from $123,600 in each of the eight least populated states to $3,772,100 in the most populous state. *Coordinated Party Expenditure Limits*, FED. ELECTION COMM'N., archived at https://perma.cc/25VD-83D9. For House candidates, the limits were $123,600 per candidate in single-representative states and $61,800 in all other states. *Id*. These limits are dwarfed by actual campaign needs: in the 2024 election cycle, candidate campaign committees spent an average of $5.06 million on Senate races and $1.17 million on House races. *See Statistical Summary of 24-Month Campaign Activity of the 2023–2024 Election Cycle*, FED. ELECTION COMM'N (April 23, 2025), https://tinyurl.com/m337348t.

[3] "Coordinated means 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) (2006).

FEC v. Colo. Republican Fed. Campaign Comm., 533 U.S. 431 (2001) (*Colorado II*).

Twenty-three years later, the Sixth Circuit determined that although the limits might be inconsistent with the First Amendment and recent Supreme Court precedent, they nonetheless must be upheld under *Colorado II*.

Nonetheless, the coordinated-expenditure limits at issue infringe upon First Amendment rights. Relationships between political parties and their candidates are necessarily codependent and symbiotic. Because FECA limits the parties' ability to support their nominees, the statute diminishes the agency and the effectiveness of both parties and candidates. Voters are therefore hindered (or entirely prevented) from receiving the information that parties and candidates seek to communicate. Such limits do not protect democracy—they obstruct the self-government the First Amendment is meant to secure.

Accordingly, *Colorado II*—which provides the foundation for these limits—should be overruled. Its reasoning is indefensible, and its holding has been almost entirely washed away by subsequent decisions. *Colorado II* stands today as an outlier built on faulty premises: It is propped up by doctrines that were misapplied at its inception and that, in light of this Court's recent decisions, are now outmoded.

The limits being challenged in this case are fatally flawed—not only because they impermissibly intrude

on constitutionally protected First Amendment activities, but also because they are demonstrably ineffective and counterproductive. Initially, they hobble political parties; ultimately, they hobble self-government. By weakening our political parties, they damage our politics. The restrictions rest on an idiosyncratic theory holding that coordination between parties and candidates is somehow corrupting. This Court should repudiate that theory and protect our First Amendment freedoms by reversing the decision below and overruling *Colorado II*.

ARGUMENT

I. THE RIGHTS OF POLITICAL SPEECH AND ASSOCIATION ARE FUNDAMENTAL TO DEMOCRATIC SELF-GOVERNMENT.

The First Amendment is the foundation of American democracy and republican self-government. The freedoms it protects drive policy and underlie civil society. Article I, Section 4, and Article II, Section 1 of the Constitution authorize Congress to regulate federal elections, but any such regulation must be consistent with the First Amendment, which broadly protects political expression to ensure the unfettered exchange of ideas and the advancement of preferred policies. *Roth v. United States*, 354 U.S. 476, 484 (1957). Campaign contributions and expenditures facilitate these processes and thus are vital to our democracy.

The First Amendment states: "Congress shall make no law . . . abridging the freedom of speech." U.S.

CONST. amend. I. Congress is thereby prohibited from shrinking or diminishing freedom of speech. The First Amendment was added to the Constitution to ensure free and robust political debate.[4] Free speech "is needed for republican government" and "informs voters about the conduct of elected officials, thereby helping voters to hold officials responsible at election time." John Samples, *Move to Defend: The Case against the Constitutional Amendments Seeking to Overturn* Citizens United, CATO INST. POLICY ANALYSIS NO. 724, at 2 (Apr. 23, 2013); *see Citizens United v. FEC*, 558 U.S. 310, 339 (2010).

"Political speech is the primary object of First Amendment protection and the lifeblood of a self-governing people,"[5] and it is impossible to separate speech from the money that facilitates it. The ability to *project* speech to others is as important as the ability to *produce* it. A writer would be unimpressed to learn that the First Amendment protects her words but not her access to the printing press and the internet. Notably, the Founders rejected England's "knowledge

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[4] It is well-settled that "the central purpose of the Speech and Press Clauses was to assure a society in which 'uninhibited, robust, and wide-open' public debate concerning matters of public interest would thrive, for only in such a society can a healthy representative democracy flourish." *Buckley v. Valeo,* 424 U.S. 1, 93 n.127 (1976) (citation omitted).

[5] *McCutcheon v. FEC*, 572 U.S. 185, 228 (2014) (Thomas, J., concurring) (quotations omitted); *see Citizens United*, 558 U.S. at 329 (political speech is "central to the meaning and purpose of the First Amendment").

taxes"—taxes that curtailed the circulation of political ideas—because they understood that suppressing a means of communication could be functionally equivalent to suppressing the substance of the speech itself. *See generally Grosjean v. American Press Co.*, 297 U.S. 233 (1936) (noting that this rejection informed the framing of the First Amendment); RANDALL P. BEZANSON, TAXES ON KNOWLEDGE IN AMERICA: EXACTIONS ON THE PRESS FROM COLONIAL TIMES TO THE PRESENT (1994) (detailing England's use of taxation as a means of press control). "Not a single justice of the United States Supreme Court who has voted in any of the more than a dozen cases involving the constitutionality of campaign finance regulations, regardless of which way he or she came out in the case, has *ever* embraced the position that money is not speech." Geoffrey R. Stone, *Is Money Speech?*, HUFFINGTON POST (Feb. 5, 2012).[6] "When an individual contributes money to a candidate . . . [t]he contribution 'serves as a general expression of support for the candidate and his views' and 'serves to affiliate a person with a candidate.'" *McCutcheon*, 572 U.S. at 203 (plurality opinion) (quoting *Buckley*, 424 U.S at 21–22). Restricting political contributions and expenditures "necessarily reduces the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." *Citizens United*, 558 U.S. at 339 (quoting *Buckley*, 424 U.S. at 19). Contributions

[6] Available at https://tinyurl.com/2msx3cck.

and expenditures facilitate this interchange of ideas and cannot be regulated as mere conduct unrelated to the underlying communicative act of making a contribution or expenditure. *See Buckley*, 424 U.S. at 16–17. Accordingly, this Court held in *Buckley* that spending money, whether in the form of contributions or expenditures, is a form of speech protected by the First Amendment. *Id.* at 23. It follows that "an attack upon the funding of speech is an attack upon speech itself." *McConnell v. FEC*, 540 U.S. 93, 253 (2003) (Scalia, J., concurring in part).

Additionally, this "Court has recognized a right to associate for the purpose of engaging in . . . speech." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984). Those who come together to form associations do not thereby lose their rights, whether those associations are political parties, unions, non-profit advocacy groups, private clubs, for-profit corporations, or any other form. *See Citizens United*, 558 U.S. at 342–43; *e.g.*, Ilya Shapiro & Caitlyn W. McCarthy, *So What If Corporations Aren't People?*, 44 J. MARSHALL L. REV. 701, 707–08 (2011). The First Amendment affords these organizations the same First Amendment protections as the individuals they comprise. *Citizens United*, 558 U.S. at 343.

It is axiomatic that "[t]he freedom of association protected by the First and Fourteenth Amendments includes partisan political organization." *Tashjian v. Republican Party*, 479 U.S. 208, 214 (1986); *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989)

(calling this statement of law "well settled"). "Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981) (quotation omitted).

In the realm of political campaigns, the freedoms of speech and association are inseparable:

> [T]he First Amendment safeguards an individual's right to participate in the public debate through political expression and political association. When an individual contributes money to a candidate, he exercises both of those rights: The contribution "serves as a general expression of support for the candidate and his views" and "serves to affiliate a person with a candidate."

McCutcheon, 572 U.S. at 203 (quoting *Buckley*, 424 U.S. at 21, 22).

The freedoms of speech and association are "fundamental and highly prized, and need breathing space to survive." *Gibson v. Fla. Legis. Investigation Comm.,* 372 U.S. 539, 544 (1963) (quotation omitted). They "are protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Id.* (quotation omitted).

The "First Amendment has its fullest and most urgent application precisely to the conduct of

campaigns for political office." *FEC v. Cruz*, 596 U.S. 289, 302 (2022) (quotation omitted). Restrictions on campaign donations impede robust political speech and thus rob our democracy of the vibrancy and dynamism it needs. Accordingly, "contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities." *Buckley*, 424 U.S. at 14; *McCutcheon*, 572 U.S. at 196.

II. THE LIMITS ON COORDINATED PARTY EXPENDITURES IN 52 U.S.C. § 30116 REQUIRE STRICT SCRUTINY BUT CANNOT SURVIVE EVEN LESS EXACTING SCRUTINY.

"[P]olitical speech must prevail against laws that would suppress it, whether by design or inadvertence." *Citizens United*, 558 U.S. at 340. The severe burden imposed by these limits on the fundamental right to political speech requires the application of strict scrutiny. However, even under a less exacting level of scrutiny, like the one applied in cases such as *Colorado II*, the limits fail to pass constitutional muster.

A. The Limits Place Extraordinary Burdens on Core Political Rights.

The limits of Section 30116 impose a heavy and pernicious burden on the fundamental First Amendment activities of political speech and association. When a party coordinates with its candidate in spending money to support his or her campaign, the law places steep limits on what the party can spend. Such limits both diminish every

party's ability to spread its message and curb the ability of citizens to amplify that message. And if the party wants to spend more than Section 30116 allows, the statute cuts the party off from its own candidate.

The barrier Section 30116 builds between candidates and their parties creates a unique burden on political speech because candidates and parties are "inextricably intertwined." *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 630 (1996) (*Colorado I*) (Kennedy, J., dissenting in part). "[I]t would be impractical and imprudent, to say the least, for a party to support its own candidates without some form of 'cooperation' or 'consultation.'" *Id.* The relationship between a party and its candidates is codependent and symbiotic. Parties recruit, support, and advance candidates who will implement the party's platform and principles. Candidates serve as both messengers and architects of party platforms, conveying established party positions while simultaneously shaping those positions through their own viewpoints and priorities. When voters select a candidate, they endorse the party's broader agenda.

"[A] party's public image is largely defined by what its candidates say and do." *Colorado II*, 533 U.S. at 469 (Thomas, J., dissenting). "Candidates are necessary to make the party's message known and effective, and vice versa." *Id.* Parties invest their institutional resources, expertise, and reputation in candidates who they believe will advance their principles once in office. "[A] party's success or failure depends in large part on

whether its candidates get elected. Because of this unity of interest, it is natural for a party and its candidate to work together and consult with one another during the course of the election." *Id.*

A statute that limits coordinated party expenditures dampens the capacity for the natural and necessary expressive cooperation that our system of self-government prizes. Such limits hamper this cooperation by severing the message from the messenger, forcing parties to speak either in isolation or not at all. Political parties are not external donors buying influence—rather, they are the vehicles through which candidates are nominated, supported, and made accountable to voters. In fact, Section 30116 creates a paradoxical situation in which political teammates must act as strangers, forced to operate in information silos that produce disjointed campaigns and confused messaging. *See* Pet. Cert. App. 223a.

These restrictions on coordination inhibit the associational rights that enable effective political speech. Parties spring from citizens who associate with one another to support preferred policies and candidates. They are part of the muscle and bone of our politics. When the law prevents parties from working closely with their candidates, it strikes at the heart of political association and severely diminishes the effectiveness of democratic expression. It "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 (explaining why a ban on the political parties' ability to endorse primary candidates and regulations on their internal affairs violated the political parties' free association rights).

B. These Restrictions on Political Speech Require Strict Scrutiny.

"Laws that burden political speech are subject to strict scrutiny . . . ." *Citizens United*, 558 U.S. at 340 (quotation omitted); *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734 (2011). As a fundamental First Amendment right, the ability of parties to coordinate and spend on their candidates deserves the highest protection and "must be strictly scrutinized." *Colorado I*, 518 U.S. at 640 (Thomas, J., dissenting in part). Indeed, "in both *McCutcheon* and *Cruz*, the Supreme Court went so far as to suggest that strict scrutiny may be the proper lens through which such restrictions are analyzed." Cert. Pet. App. 129a (Readler, J., dissenting) (citing *McCutcheon*, 572 U.S. at 199; *Cruz*, 596 U.S. at 305).

In *Buckley*, this Court first distinguished between campaign contributions and expenditures for First Amendment purposes. 424 U.S. at 19–22. Limitations on contributions receive "closely drawn" intermediate scrutiny. *McCutcheon*, 572 U.S. at 197 (quoting *Buckley*, 424 U.S. at 25). Limitations on independent expenditures trigger strict scrutiny, the most searching standard of review. *See* Cert. Pet. App. 21a (Thapar, J., concurring); *see also McCutcheon,* 572 U.S. at 186, 197; *Cruz*, 96 U.S. at 305. But under

Colorado II, limitations on coordinated party expenditures were treated as contributions and therefore subject to "closely drawn" scrutiny. 533 U.S. at 456. The rationale of these distinctions was grounded in the perceived risks of corruption, with "corruption" being defined to include undue influence. *Buckley*, 424 U.S. at 45–48, 58, 70; *Colorado II*, 533 U.S. at 441.

In hindsight, *Buckley*'s call for distinct levels of scrutiny for contributions and expenditures appears increasingly difficult to defend because "there is no constitutionally significant difference between [them]: Both forms of speech are central to the First Amendment." *Colorado I*, 518 U.S. at 640 (Thomas, J., dissenting in part). Donors contribute to parties and candidates to express support for certain policies and messages in the same way a candidate or party does. Whether an individual contributes to a candidate or spends directly to promote that candidate, both actions constitute political expression and association. *Id*. at 638. A contribution is simply an indirect expenditure that differs in form but not substance. *Id*. The impact on the amount and diversity of political speech coming from contributions and expenditures is identical. They "are simply 'two sides of the same First Amendment coin,' and . . . efforts to distinguish the two have produced mere 'word games' rather than any cognizable principle of constitutional law." *McCutcheon,* 572 U.S. at 231–32 (Thomas, J., concurring) (quoting *Buckley*, 424 U.S. at 241, 244

(Burger, C.J., dissenting in part)). Restricting contributions is essentially a back-door method of limiting expenditures because the amount a group or candidate can spend typically depends on how much donors can contribute. This framework "denigrates core First Amendment speech." *McCutcheon,* 572 U.S. at 228 (Thomas, J., concurring). *Buckley* itself recognized that both types of limits "operate in an area of the most fundamental First Amendment activities" and "implicate fundamental First Amendment interests." *Id*. (quoting *Buckley*, 424 U.S. at 14, 23). This Court should abandon *Buckley's* contribution-expenditure distinction: It has persistently been the target of well-grounded criticism, and its underlying logic has been repudiated.

Moreover, there is not "much difference between the real-world potential for corruption posed by each." Burt Neuborne, *The Supreme Court and Free Speech: Love and a Question*, 42 ST. LOUIS U. L.J. 789, 796–97 (1998). Indeed, there is little evidence that contribution limits meaningfully prevent corruption. The real corrupting influences operate entirely outside the campaign finance system. Lobbying expenditures, speaking fees, book deals, post-office employment opportunities, and business relationships with family members create far more potent avenues for quid pro quo arrangements than direct campaign contributions ever could. A politician faces far less corrupting pressure from campaign contributions than from, say, a spouse's business that is reliant on certain

regulatory decisions or the prospect of a consulting contract after leaving office.

In fact, contributions are usually just expressions of support for the policies and actions donors expect candidates to pursue in office. Donors back candidates who share their views; when those candidates win, donors expect them to act according to those views. "That is called democracy, not corruption." Joel M. Gora, *Free Speech, Fair Elections, and Campaign Finance Laws: Can They Coexist?*, 556 HOWARD L.J. 763, 779 (2013). Collapsing this legitimate, policy-driven responsiveness into "corruption" justifies subjecting contribution limits to watered-down scrutiny. That doctrinal shortcut enables sweeping restrictions on political speech without the compelling justification the First Amendment demands.

It is the people, not the federal government, who provide the chief protection against corruption because the people choose the politicians. *See* THE FEDERALIST NO. 55 (James Madison) (downplaying the importance of the number of members of the House of Representatives and emphasizing the importance of civic republican virtue to guard against tyranny).

Accordingly, this Court has recognized that "those who govern should be the *last* people to help decide who *should* govern." *McCutcheon*, 572 U.S. at 192 (emphasis in original). Yet campaign finance laws, while purporting to level the electoral playing field, actually entrench the advantages of incumbency by restricting the very resource that challengers need

most to compete effectively. Incumbents possess inherent advantages that no amount of regulation can touch: name recognition, established media relationships, constituent services that generate favorable coverage, and the ability to shape policy debates from positions of authority. Incumbents don't need to spend money to get people to pay attention to them. The very office they hold usually does that for them.

Challengers, by contrast, must introduce themselves to voters and communicate their message—tasks that require substantial financial resources. When campaign finance laws cap contributions and restrict fundraising mechanisms, they disproportionately handicap all the challengers who cannot rely on the advantages of incumbency. The result: Regulations that are ostensibly designed to prevent wealthy interests from "buying" elections end up helping incumbent politicians retain their seats without facing well-funded opposition.

Money, not campaign finance reform, helps level the playing field between challengers and incumbents. Lynn Vavreck, *A Campaign Dollar's Power Is More Valuable to a Challenger*, N.Y. TIMES (Oct. 7, 2014).[7] A survey of congressional elections from 1992 to 2012 found that "challengers who spent more money won

[7] Available at https://tinyurl.com/bdh3m9cj.

more often than those who spent less. The opposite was true for incumbents." *Id.*

Campaign finance law thus functions as more of an incumbent protection racket than an anti-corruption measure. Those in power benefit from restrictions that place systemic burdens on challengers. More precisely, those restrictions make it harder for challengers to acquire the resources needed to overcome the structural advantages of incumbency, while incumbents themselves require less money to maintain their positions. Ultimately, these reforms enervate the democratic process by making it far more difficult for voters to replace their representatives—regardless of incumbent performance or the changing preferences of the public. In 2024, 95 percent of incumbents nationwide were reelected.[8] This is not surprising. Incumbents are the ones drafting these laws. Indeed, in the aftermath of FECA's enactment, the ACLU labeled it an "Incumbent Protection Act." Gora, *supra*, at 791.

But even under *Buckley*'s framework, coordinated party expenditures warrant strict scrutiny because they are expenditures, not contributions. Parties and their candidates operate as a unified political enterprise during campaigns. They pursue the same electoral and policy goals. When a party spends in coordination with its candidate, it is not transferring

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[8] *Election Results, 2024: Incumbent Win Rates by State*, BALLOTPEDIA (Dec. 11, 2024), https://tinyurl.com/4mp444sm.

funds to an external recipient; it is directly financing its own joint campaign activity. Such spending is functionally indistinguishable from a candidate's own expenditures, and the two kinds of spending should receive the same constitutional protection. *Colorado I*, 518 U.S. at 630 (Kennedy, J., dissenting in part).

C. The Limits Fail "Closely Drawn" Scrutiny.

Under "closely drawn" scrutiny, a restriction may be sustained only if the government employs "means closely drawn to avoid unnecessary abridgement" of First Amendment rights to further "a sufficiently important interest." *McCutcheon*, 572 U.S. at 197. Any law that burdens electoral speech, even slightly, must be justified by a permissible interest. *Cruz*, 596 U.S. at 305. Thus, the government must "prove . . . that it is in fact pursuing a legitimate objective." *Id.*

"Government 'justification[s]' for interfering with First Amendment rights 'must be genuine, not hypothesized or invented *post hoc* in response to litigation.'" *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 n.8 (2022) (alteration in original) (quoting *United States v. Virginia*, 518 U.S. 515, 533 (1996)). This Court has "never accepted mere conjecture as adequate to carry a First Amendment burden." *McCutcheon*, 572 U.S. at 210 (quotation omitted); *Cruz*, 396 U.S. at 307. The government "must instead point to record evidence or legislative findings demonstrating the need to address a special problem." *Cruz*, 396 U.S. at 307 (quotation omitted). And there

is "only one permissible ground for restricting political speech: the prevention of 'quid pro quo' corruption or its appearance."[9] *Id.* at 305.

First, these limits do not appear to address such corruption. "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." *Colorado I*, 518 U.S. at 618. Indeed, the alleged problem does not seem to be an actual problem. *Cruz*'s demand for "actual evidence," 596 U.S. at 310, is not met. Although "at least 28 states largely give parties free rein to make coordinated expenditures on behalf of their state-level nominees," no evidence of corruption has emerged from this permissive regulatory approach in this context. Cert. Pet. App. 14a. This, despite decades of practice, *id.* at 30a (Thapar, J., concurring), and three months of discovery, *id.* at 5a (majority opinion).

And even if the FEC could point to rare, isolated instances, that would not justify this abridgment of core First Amendment rights. Such sporadic incidents would not reveal a "need to address a special problem." *Cruz*, 396 U.S. at 307. And even under "closely drawn"

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[9] Quid pro quo corruption is "a direct exchange of an official act for money." *McCutcheon*, 572 U.S. at 192. In another word, bribery.

scrutiny, the government must show that its restriction is "narrowly tailored" and proportionate to the problem it seeks to remedy. *McCutcheon*, 572 U.S. at 218 (quotation omitted). The burden imposed here is vastly disproportionate to the alleged problem. There is no "special problem" warranting such a sweeping restriction, particularly when the underlying misconduct—bribery—is already illegal.

The FEC rests its argument on a circumvention theory, hypothesizing that parties could be used to get around contribution limits. But this argument has already been rejected by this Court in *Cruz*, 596 U.S. at 306, and *McCutcheon*, 572 U.S. at 210. The strategy does

> not serve [the] function in any meaningful way. In light of the various statutes and regulations currently in effect, *Buckley*'s fear that an individual might contribute massive amounts of money to a particular candidate through the use of unearmarked contributions to entities likely to support the candidate is far too speculative.

McCutcheon, 572 U.S. at 210 (quotations omitted). To begin with, "few if any contributions to candidates will involve *quid pro quo* arrangements." *Citizens United*, 558 U.S. at 357. And the FEC offers no evidence that contributions to parties are being used to offer such arrangements to candidates. Thus, upon initial inspection, the "fear" here—that donors will use parties to launder bribes to get around the

contribution cap—should be small. But once all the other preventative measures are factored in, that "fear" should disappear entirely. Bribes are, of course, already outlawed, and so are earmarks (they are treated as contributions to the candidate they are earmarked on behalf of). 52 U.S.C. § 30116(a)(8). Meanwhile, the law also limits the amount that can be contributed to a party, § 30116(a)(1)(B), and to a candidate, § 30116(a)(1)(A). FECA even contains disclosure requirements, requiring parties to report their spending along with the names of donors and the amounts given.[10] § 30104(b). As *Cruz* noted, "[s]uch a prophylaxis-upon-prophylaxis approach . . . is a significant indicator that the regulation may not be necessary for the interest it seeks to protect." 596 U.S. at 306 (citing *McCutcheon*, 572 U.S. at 221). Thus, "the assertion of an anticorruption interest here" should be met "with a measure of skepticism," *id.*, requiring courts to be "particularly diligent in scrutinizing the law's fit," *McCutcheon*, 572 U.S. at 221. Accordingly, the FEC fails to provide a sufficiently important interest to justify the restriction.

Furthermore, these limits do not advance their theoretical rationale. The limits are worse than ineffective; they are counterproductive. Such restrictions not only help incumbents but also push more money into super PACs and special interest

[10] These requirements are now particularly effective because the internet allows instant and wide access to disclosures. *McCutcheon*, 572 U.S. at 224.

groups. But it is parties that attract more attention and are naturally more transparent, given their nature as public institutions with the purpose of garnering popular support, led by public figures. Parties are usually composed of officials directly elected to a committee or who are otherwise elected officials. Brief of Amici Curiae State of Ohio & 13 Other States in Support of Petitioners at 21–22, Nat'l Republican Senatorial Comm. v. FEC, No. 24-621 (U.S. Jan. 6, 2025). Thus, these limits severely burden political speech and association, fail to prevent corruption, inappropriately protect incumbents, and funnel money to far less transparent and accountable entities.

Therefore, because the government cannot provide a legitimate interest or demonstrate that the limits are closely drawn to further such an interest, the limits at issue do not survive "closely drawn" scrutiny.

III. THIS COURT SHOULD OVERRULE *COLORADO II*.

Colorado II was wrongly decided. It now stands as an anomaly among this Court's precedents. It permitted a significant abridgment of a fundamental First Amendment right using an incorrect level of scrutiny, which itself was misapplied. After *Colorado II*, this Court regularly issued decisions at variance with it. Neither history nor First Amendment jurisprudence supports the opinion, and maintaining

it will only create more confusion because courts and litigants will continue to rely on it.

Colorado II upheld a weighty burden on political speech that has proven to be inconsistent not only with modern doctrine but also with the entire history of First Amendment jurisprudence. This Court had "never [before] upheld an expenditure limitation against political parties." *Colorado II*, 533 U.S. at 475 (Thomas, J., dissenting). And since then, its reasoning has largely been washed away by subsequent decisions, leaving "a lone, largely obsolete precedent." Cert. Pet. App. 119a (Readler, J., dissenting).

The decision reduces parties to mere pass-through agents for donors, devoid of any genuine level of independence. *See Colorado II*, 533 U.S. at 450–52; Samuel Issacharoff, *Outsourcing Politics: The Hostile Takeover of Our Hollowed-Out Political Parties*, 54 HOUS. L. REV. 863 (2017). It treats money as inherently corrupting; its fundamental premise is that once a donation is made, the party replaces its own interests with those of the donor. *See Colorado II*, 533 U.S. at 452 ("[W]hether they like it or not, [parties] act as agents for spending on behalf of those who seek to produce obligated officeholders."). This conclusory reasoning collapses under the slightest inspection, because parties comprise an array of interests and donors. "Parties, as institutional actors, have organizational aims of their own—a critical insight . . . on the struggle for control among the competing constituencies of the party." Issacharoff, *supra*, at 863;

Colorado II, 533 U.S. at 473–74 (Thomas, J., dissenting). Parties include numerous members with diverse interests; their complex nature dilutes the influence of any single donor or issue. *Colorado I*, 518 U.S. at 647 (Thomas, J., dissenting in part). Parties strive for majoritarian success, and the broad coalitions they encourage make party campaign funds among "the cleanest money in politics." *Id*. (quotation omitted).

Part of *Colorado II*'s reasoning was based on the idea that political parties were the dominant force in American politics. 533 U.S. at 450. This was never a constitutionally permissible reason to restrict core political speech, and it has now become a dubious factual premise. Campaign finance laws have left parties weakened shells of their former selves, exacerbated by social and alternative media's ability to platform candidates without a party apparatus. Super PACs and outside groups now dominate American politics.[11] American political parties are arguably weaker than ever before.[12]

Colorado II also claimed that preventing "undue influence on an [officeholder's] judgment" was a legitimate government interest. 533 U.S. at 441. Both *McCutchen*, 572 U.S. at 207, and *Cruz*, 596 U.S. at 305,

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[11] *See generally* Issacharoff, *supra*.

[12] The "parties today have never been weaker." Sarah Isgur et al., *Restoring the Guardrails of Democracy Project: Report by Team Conservative*, Nat'l Const. Ctr. 13 (July 2022), archived at https://perma.cc/SV4C-ZPNM.

emphatically rejected this determination. 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. And this Court now requires the government to offer evidence or legislative findings of such corruption, justifying their restrictions. *Id.* at 307. *Colorado II* required no such evidence or legislative findings. Although the opinion in *Colorado II* purports to identify "substantial evidence," it did not. That supposed evidence was that "candidates, donors, and parties test the limits of the current law." 533 U.S. at 457. This is not the actual evidence that *Cruz* requires. Of course, donors, candidates, and parties regularly try to coordinate as much spending as they can under current law, but that is hardly evidence of quid pro quo corruption. Plenty of candidates and party operatives who operate in good faith have cooperation and teamwork as goals. They understand cooperation and teamwork as what they are supposed to do. *See Colorado I*, 518 U.S. at 630 (Kennedy, J., dissenting in part) (noting the statute's "stifling effect on the ability of the party to do what it exists to do").

The claim that "tallying" provided such evidence fails. "Tallying," as described in *Colorado II*, refers to a party's practice of tracking how much money a candidate helps raise for the party, with the tacit understanding that such efforts might influence later resource allocation. 533 U.S. at 458–59. Some candidates informed donors of this practice,

encouraging them to give to the party after reaching their personal contribution limit. *Id.* But an expectation that party funds might ultimately aid a favored candidate is not evidence of corruption. The party retains complete discretion over its spending, and donors have no control or direction over those funds. *McCutcheon*, 572 U.S. at 210–11. Nor does tallying entail any quid pro quo exchange of money.[13]

Colorado II also asserts that substantial donations turn the parties into matchmakers whose special meetings and receptions give donors the chance to get their points across to the candidates. But that is just access, not quid pro quo corruption. And it is not clear whether such access given to prominent individuals is avoidable anyway, or whether it is even a problem. *See* BRADLEY A. SMITH, UNFREE SPEECH: THE FOLLY OF CAMPAIGN FINANCE REFORM 60, 127, 129 (2001).

Not only is there no doctrinal or precedential support for *Colorado II,* but it is also unsupported by history or tradition. As Judge Bush exhaustively explained in his concurrence below, coordination restrictions have no historical analog. Cert. Pet. App. 46a–60a (Bush, J., concurring). Although there were no political parties at the time of the First Amendment's enactment, there were certainly plenty of political groups vigorously campaigning against one another. *Id*. at 48a–49a. And, moreover, it did not take

[13] The FEC did not identify "tallying" in its argument. Cert. Pet. App. 147a. (Readler, J., dissenting).

long for parties to spring up,[14] yet no such laws sprang up with them. *See* Cert. Pet. App. 56a–57a, 59a–62a. In fact, unsurprisingly, groups and individuals faced no restrictions on how much they could contribute to or spend on politics. *See id*. at 47a. The first campaign finance laws were passed in 1897 by a handful of states regulating corporate contributions.[15] Congress itself passed no major campaign finance law until the twentieth century, during the Progressive Era.[16] The limits at issue here were not enacted until the 1970s. "For nearly 200 years, this country had congressional elections without limitations on coordinated expenditures by political parties." *Colorado II*, 533 U.S. at 473 (Thomas, J., dissenting). "We have a constitutional tradition of political parties and their candidates engaging in joint First Amendment activity[.]" *Colorado I*, 518 U.S. at 630 (Kennedy, J., dissenting in part). The bottom line is that "there was no exception relevantly similar to the restriction at issue here that was understood to permit Congress to

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[14] "The formation of national political parties was almost concurrent with the formation of the Republic itself." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 574 (2000).

[15] SMITH, *supra*, at 23.

[16] CONGRESSIONAL RESEARCH SERVICE, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress* (R41542), Prepared by Sam R. Garrett, Sept. 12, 2023, https://www.congress.gov/crs-product/R41542.

abridge citizens' freedom to coordinate their speech." Cert. Pet. App. 46a (Bush, J., concurring).

This Court should not hesitate to overrule *Colorado II*. "[W]hen convinced of former error, [the Court] has never felt constrained to follow precedent." *Smith v. Allwright*, 321 U.S. 649, 665 (1944). When dealing with matters of constitutional law, the Court "freely exercise[s] its power to reexamine" decisions, *id.*, "plac[ing] a high value on" getting the matter right, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 264 (2022).[17] Indeed, "[t]his Court has not hesitated to overrule decisions offensive to the First Amendment (a fixed star in our constitutional constellation, if there is one)." *Janus v. AFSCME, Council 31*, 585 U.S. 878, 917 (2018) (quotation omitted).

Virtually no relevant reliance interest exists. The primary beneficiaries of *Colorado II* are incumbent politicians and outside spending groups like super PACs, which already thrive on existing campaign finance restrictions on parties and individuals.

Meanwhile, as long as *Colorado II* remains good law, courts will continue to rely on it to justify expansive restrictions on political speech. That is what the lower court did here, which itself demonstrates the decision's dire consequences. Less recently, the D.C. Circuit used *Colorado II* to approve the application of FECA's limits on contributions to national parties that

[17] *See also Ramos v. Louisiana*, 590 U.S. 83, 105–06 (2020).

come from deceased donors' bequests, despite the failure to identify a single quid pro quo exchange effected through a bequest. *Libertarian Nat'l Comm., Inc. v. FEC*, 924 F.3d 533, 543–44 (2019) (en banc); *id.* at 563 (Katsas, J., dissenting in part). *Colorado II* continues to provide cover for speech restrictions that lack any genuine anti-corruption justification, underscoring the need for this Court's intervention.

In short, *Colorado II* is an outlier case built on impermissible constitutional theories and factually dubious presumptions that stare decisis principles cannot save. This Court should overturn *Colorado II* and prevent any further damage.

IV. MAINTAINING THESE LIMITS WILL FURTHER DAMAGE DEMOCRATIC SELF-GOVERNMENT.

The First Amendment contains "the principle that the government may not interfere with an uninhibited marketplace of ideas." *303 Creative LLC v. Elenis*, 600 U.S. 570, 585 (2023) (quotations omitted). Because contribution, expenditure, and coordination limits necessarily reduce the quantity and quality of political speech, *Citizens United*, 558 U.S. at 339, they inhibit the marketplace of ideas.

Indeed, these coordination limitations and other campaign finance laws have hollowed out our political parties. *See Republican Nat'l Comm. v. FEC*, 698 F. Supp. 2d 150, 160 n.5 (D.D.C. 2010) (Kavanaugh, J.) People donate to parties because of the direct connection parties have to the candidates they

support. When that coordination is weakened, and when additional limits are placed on party fundraising through FECA and the Bipartisan Campaign Reform Act of 2002 (BRCA), super PACs and outside groups become dominant players, to the detriment of parties.

The major political parties may have raised $2.5 billion in the 2020 election cycle, Cert. Pet. App. 80a, but that is a small fraction of the $15.1 billion in total spent on federal races that year.[18] Even many scholars who support campaign finance laws recognize that our political parties are relatively weak, and that having weak parties damages our politics. *See generally, e.g.,* FRANCES MCCALL ROSENBLUTH & IAN SHAPIRO, RESPONSIBLE PARTIES: SAVING DEMOCRACY FROM ITSELF (2018).

As explained above, parties are critical to our republic and are naturally more transparent. But campaign finance laws have hamstrung the parties' ability to raise funds and coordinate with their own candidates. This regulatory thicket leaves the American electoral system without the political accountability that reformers claim to seek and that strong, coordinated parties have historically provided.[19] Political scientists broadly agree that stronger national parties benefit democracy by serving

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[18] *Cost of Election* (table), OPENSECRETS.ORG, https://tinyurl.com/2j35rjtc.

[19] *See* RAYMOND J. LA RAJA, SMALL CHANGE: MONEY, POLITICAL PARTIES, AND CAMPAIGN FINANCE REFORM 17 (2008).

as crucial intermediaries between citizens and government.[20] Parties help voters navigate candidate and policy choices, create accountability by challenging incumbent elites, and build coalitions that unite diverse interests.[21] Strong national parties can mobilize underrepresented groups around shared platforms and coordinate political activity across local, state, and federal levels.[22]

Campaign finance restrictions like these have also increased polarization, as parties generally have to worry about garnering majorities and maintaining diverse coalitions, while outside organizations often serve narrow special interests. *See generally* RAYMOND J. LA RAJA & BRIAN F. SCHAFFNER, CAMPAIGN FINANCE AND POLITICAL POLARIZATION: WHEN PURISTS PREVAIL (2015).

Meanwhile, the benefits to our politics that are supposed to come from these campaign finance laws appear to be microscopic or nonexistent. As explained in Section II.B., *supra*, not only do these laws fail to reduce quid pro quo corruption, they arguably produce a different kind of corruption through incumbency protection.

Campaign finance restrictions rest on a series of misconceptions. Money merely allows candidates and

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[20] *Id* at 2.

[21] *Id*.

[22] *Id*. at 2–3.

parties to get their messages out and raise their profiles. A money advantage does not equate to victory. Contributions exert far less influence on politicians than ideology and political demands, including constituent desires. SMITH, *supra*, at 55. For example, self-financed candidates typically fail at the ballot box, with defeat becoming increasingly likely the more they spend.[23] In many races, a money advantage seems to have no effect at all.[24] Donald Trump was heavily outspent in his two presidential victories.[25] Democrats outspent Republicans by a billion dollars in advertising in 2024,[26] yet failed to win the White House or either house of Congress.

Campaign spending is subject to diminishing marginal returns.[27] Each additional dollar spent yields progressively less impact than the last, particularly once candidates reach basic thresholds of voter awareness. This effect is especially pronounced for incumbents, who already possess name recognition

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[23] Suzanne Robbins, *Money in Elections Doesn't Mean What You Think It Does*, UF NEWS (Oct. 29, 2018), https://tinyurl.com/3b753z7h.

[24] *See* SMITH, *supra*, at 49.

[25] *2024 Presidential Race*, OPENSECRETS.ORG, https://www.opensecrets.org/2024-presidential-race (last visited Aug. 4, 2025); *2016 Presidential Race*, OPENSECRETS.ORG, https://www.opensecrets.org/pres16 (last visited Aug. 4, 2025).

[26] Alex Fitzpatrick & Kavya Beheraj, *Democrats Widen Spending Gap in Final Election Stretch*, AXIOS (Oct. 31, 2024), https://tinyurl.com/ycke68ve.

[27] SMITH, *supra*, at 49.

and media attention from holding office, making additional expenditures less valuable than they would be for unknown challengers.[28]

Voter perceptions tend to solidify at some point during campaigns, after which increased spending produces minimal persuasive effects.[29] Consequently, in high-spending races where both candidates have achieved voter recognition, marginal spending advantages become largely irrelevant to electoral outcomes. The real democratic problem is not that well-funded candidates "purchase" victories through excessive spending, but rather that underfunded candidates—typically challengers—lack sufficient resources to communicate their messages effectively and to establish their credibility with voters.

Money is helpful in elections—and far more helpful to challengers—but it is just one of many electoral factors. Incumbency is the most significant indicator of electoral success. And because these limits help incumbents, any supposed positive effect from them would be canceled out.

Our democracy would be strengthened by removing barriers that prevent candidates from raising and spending the resources needed to engage voters. The goal should be more political speech, not less.

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[28] *See id*.

[29] *See id*. at 49–50.

CONCLUSION

The First Amendment protects the right of citizens to join together through political parties to advocate for their chosen candidates and ideas. Coordinated party expenditures are not a loophole to be closed; rather, they are the central method parties use to fulfill their constitutionally protected role as engines of political expression and association. The limits imposed by 52 U.S.C. § 30116 weaken the institutions best positioned to inform and mobilize the electorate. They rest on an academic theory of corruption that this Court has already rejected. These restrictions strike at the heart of the most fundamental First Amendment activities, and the only defense made of them rests on an idiosyncratic understanding of corruption that rarely, if ever, occurs.

By striking down these limits, this Court would restore the robust, coordinated political advocacy the First Amendment demands. More political speech, particularly from accountable, transparent political parties, will strengthen—not weaken—our republic.

Accordingly, this Court should rule in favor of Petitioners and hold that coordinated party expenditure limits are unconstitutional.

Respectfully submitted,

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