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 United States Court of Appeals for the Sixth Circuit

BRIEF FOR *AMICUS CURIAE* REPUBLICAN GOVERNORS ASSOCIATION IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST[1]

The Republican Governors Association (RGA) is a Washington, D.C.-based 527 organization founded in 1961. Members of the RGA include U.S. state and territorial Republican governors. For the past six decades, the RGA has helped elect Republican governors and provided them the resources to govern effectively.

The RGA has both an acute interest in and first-hand knowledge of the impact that the Federal Election Campaign Act's limitations on coordinated party expenditures can have on campaigns for national office. RGA members frequently go on to run for national office and therefore are subject to FECA's limitations. The RGA and its members likewise have first-hand experience with all the different ways in which the States regulate coordinated party expenditures for state and local offices. The RGA is therefore uniquely situated to explain how the States have approached coordinated party expenditures, and whether such restrictions are necessary to prevent *quid pro quo* corruption or its appearance.

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[1] Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

The Federal Election Campaign Act (FECA) severely restricts how much political parties can spend on their own campaign advertising if done in cooperation with the candidates they support. That is a blatant restriction on core political speech. In *FEC v. Colorado Republican Federal Campaign Committee* (*Colorado II*), 533 U.S. 431 (2001), a 5-4 majority upheld those restrictions on core political speech on the theory that they are necessary to prevent would-be bribers from circumventing FECA's limits on individual-to-candidate contributions by laundering their contributions through political parties, who would then coordinate their expenditures with the candidate. But as Chief Judge Sutton recognized in the decision below, the majority's reasoning in *Colorado II*—which "was unsound even at that time," FEC.Br.34—is in significant tension with modern campaign-finance doctrine. JA.717-18.

While that is reason enough to revisit *Colorado II*, it is not the only one. It is not just the law that has left *Colorado II* behind. The facts have too. Indeed, decades of experience have now shown that *Colorado II*'s concern about corruption by circumvention is far more hypothetical than real. More than half the States in the country give parties free rein to coordinate expenditures with the candidates that they support. So do most of the States that impose limits on how much individuals can contribute directly to candidates. Yet "[d]espite having decades to look for" examples of corruption by circumvention in those States, and despite the discovery that it sought and received in this case, the government below cited

virtually no evidence that would-be bribers are skirting individual contribution limits by funneling bribes through political parties in exchange for benefits, JA.738-39, which the government now acknowledges. FEC.Br.14-15, 31. That is hardly surprising. States that give free rein to parties to coordinate expenditures have numerous other ways to deter would-be bribers—including by imposing limits on how much donors can contribute to political parties and restricting donors from earmarking those contributions for specific uses or candidates. That the government was able to identify next to no evidence of corruption by circumvention in those States strongly suggests that those prophylactic measures work as intended. And it strongly supports the conclusion that the same prophylactic measures imposed by FECA are more than sufficient to prevent the sort of corruption that concerned the majority in *Colorado II*. This Court should overrule *Colorado II* and restore the First Amendment freedoms that "are integral to … the system of government established by our Constitution." *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam).

ARGUMENT

I. Restrictions On Coordinated Party Expenditures Severely Burden Core Political Speech And Distort The Political Process.

"The First Amendment embodies a 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Colo. Republican Fed. Campaign Comm. v. FEC* (*Colorado I*), 518 U.S. 604, 629 (1996) (plurality

op.) (Kennedy, J., concurring in judgment and dissenting in part). It "is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of each of us, … in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests." *McCutcheon v. FEC*, 572 U.S. 185, 203 (2014) (plurality op.).

Those principles and values are at their zenith in the context of political speech. After all, "a self-governing people depends upon the free exchange of political information." *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 411 (2000) (Thomas, J., dissenting). "And that free exchange should receive the most protection when it matters the most—during campaigns for elective office." *Id.* It is, therefore, no wonder that members of the Court have repeatedly affirmed that "laws targeting political speech are the principal object of the First Amendment guarantee." *FEC v. Wis. Right to Life, Inc.* (*WRTL*), 551 U.S. 449, 494 (2007) (Scalia, J., concurring in part and concurring in judgment); *see also Colorado II*, 533 U.S. at 465 (Thomas, J., dissenting) (similar); *Citizens United v. FEC*, 558 U.S. 310, 339-40 (2010) (similar); *McCutcheon*, 572 U.S. at 191-92 (similar). That is why, in discussing FECA's contribution and expenditure limitations, the Court noted that the Act "operate[s] in an area of the most fundamental First Amendment activities," and that "it can hardly be doubted that the constitutional guarantee has its fullest and most urgent application precisely to the

conduct of campaigns for political office." *Buckley*, 424 U.S. at 14-15.

The Act's restrictions on coordinated expenditures "severely burden[]" political speech. FEC.Br.3. Political parties "exist to advance their members' shared political beliefs." *Colorado I*, 518 U.S. at 629 (Kennedy, J., concurring in judgment and dissenting in part). They perform that function by selecting and supporting candidates "who best represent[] the party's ideologies and preferences." *Democratic Party of Cal. v. Jones*, 530 U.S. 567, 575 (2000). Those candidates in turn "become[] the party's ambassador to the general electorate in winning it over to the party's views." *Id.* Coordination between the party and the candidate is therefore critical "to make the party's message known and effective, and vice versa." *Colorado I*, 518 U.S. at 629 (Kennedy, J., concurring in judgment and dissenting in part). That is why "[w]e have a constitutional tradition of political parties and their candidates engaging in joint First Amendment activity." *Id.* at 630. By restricting a party's right to consult with its candidates before spending money on political speech, FECA's coordinated expenditure limits undermine that constitutional tradition and "forc[e] political parties to choose between speech and efficacy in every campaign in every election cycle." FEC.Br.3.

Making matters worse, FECA's limits on coordinated party expenditures have the practical effect of putting a thumb on the scale in favor of incumbent candidates. Incumbents have far less of a need to rely on coordination with the party to get their message across to voters. Incumbents begin elections

with many advantages over challengers, including advantages in campaign financing. Incumbents typically receive far more in individual and PAC contributions than challengers. *See* FEC, *Congressional Candidate Table 1: House and Senate Financial Activity From January 1, 2023 through December 31, 2024* (Mar. 17, 2025), https://perma.cc/V3G5-LGLE (showing contributions from individuals in the 2024 election); FEC, *PAC Table 2: PAC Contributions to Candidates January 1, 2023 through December 31, 2024* (Mar. 14, 2025), https://perma.cc/PZ5Y-MUUH (PAC contributions). A challenger hoping to unseat an incumbent will therefore depend on the strong support of her political party in a way that the incumbent will not. Because the "parties are the most likely to give to challengers," restrictions on coordinated party spending serve as "an incumbent protection rule." JA.251 (emphasis omitted). But this Court has repeatedly emphasized that "those who govern should be the *last* people to help decide who *should* govern." *McCutcheon*, 572 U.S. at 192. Indeed, "history demonstrates that the most significant effect of election reform has been not to purify public service, but to protect incumbents." *Colorado I*, 518 U.S. at 644 n.9 (Thomas, J., concurring in judgment and dissenting in part).

FECA's limits on coordinated party expenditures distort the political process in other ways as well. As petitioners aptly explain, those limits have had the practical effect of shifting political spending to Super PACs. Pet.Br.24, 48. The key advantage of political parties in competing for political donations is their "unique ability to speak in coordination with" their "candidates." *Colorado II*, 533 U.S. at 453. But

FECA's limits on coordinated party expenditures eliminate that advantage. "As a result, candidates and donors have flocked to Super PACs, which can raise unlimited funds for independent expenditures." Pet.Br.48. Indeed, "Super PACs are seen to be moving in the direction of assuming most of the functions of parties" today. JA.246 n.45. That includes not only campaign ads, but "on-the-ground political operations" too, as "FECA's limits on coordinated communications do not apply to door-to-door canvassing activities undertaken by Super PACs." JA.842.

That shift has led to heightened polarization, which is unsurprising given the differing goals of PACs and political parties. PACs and Super PACs, which are often organized to highlight specific issues or candidates that share a group's view on specific issues, "tend to prioritize broad policy change" and strategically contribute to more ideologically extreme, like-minded candidates with hopes of "expand[ing] the number of legislators who support their" more extreme views. Raymond J. La Raja & Brian Schaffner, *Campaign Finance and Political Polarization: When Purists Prevail* 66 (Univ. of Michigan Press 2015) (emphasis omitted). Political parties, by contrast, prioritize "winning elections" and "seeking control of government against rivals." *Id.* Because of that focus, "there's less idealism" in the political parties than in outside groups. *Id.* at 67. That in turn means that parties typically "prefer to support moderate candidates" whose "views are closest to those of the median voter" and thus "will be most competitive in a general election." *Id.* at 23.

Experience in the States confirms that limits on coordinated-party expenditures contribute to polarization. State-level campaign-finance data from 1990 through 2010 demonstrate that "[p]arties tend to favor moderates, while issue groups" like many PACs and Super PACs "give more to extremists." *Id.* at 26, 72. And studies of that data have confirmed that "states that have more 'party-centered' campaign finance laws tend to have less polarized legislatures than those that impose significant constraints on the amounts and means through which the political parties can support candidates." R. Pildes, *Romanticizing Democracy, Political Fragmentation, and the Decline of American Government*, 124 Yale L.J. 804, 837 (2014). In States that place no restrictions on coordination between parties and candidates, candidates rely more on the party, reducing reliance on (and influence from) other donors, including PACs, who tend to favor more ideological candidates. *See* La Raja, *Campaign Finance* 79-80. Such States typically have less polarized legislatures. *See id.* at 95-107. By contrast, States that place greater limits on coordination between parties and candidates typically have more polarized legislatures. *See id.* at 111.

II. State Experience Confirms That *Colorado II*'s Corruption-By-Circumvention Concern Is More Hypothetical Than Real.

1. Given the exceptionally important First Amendment values at stake, this Court has repeatedly explained in recent years that there is "only one permissible ground for restricting political speech: the prevention of '*quid pro quo*' corruption or its

appearance." *FEC v. Cruz*, 596 U.S. 289, 305 (2022); *see also McCutcheon*, 572 U.S. at 207. The government has never provided a tenable theory for why it needs to limit coordinated party expenditures to prevent *quid pro quo* corruption or its appearance, and it now admits that it does not have one. *See* FEC.Br.14, 23-31. And rightly so, as it makes little sense to think that parties are bribing their own candidates with campaign contributions. "Political parties and their candidates are 'inextricably intertwined' in the conduct of an election." *Colorado II*, 533 U.S. at 469 (Thomas, J., dissenting). And should the candidate be elected, "[t]he very aim of [his] political party is to influence … his votes." *Colorado I*, 518 U.S. at 646 (Thomas, J., concurring in judgment and dissenting in part). Any influence a party exerts over its candidates and elected officials, therefore, "is not corruption; [it] is successful advocacy of ideas in the political marketplace and representative government in a party system." *Id.*

The government thus principally defended the limits in the courts below on the theory that they are necessary to prevent would-be bribers from circumventing FECA's limits on individual contributions to candidates by laundering their bribes through political parties who coordinate with candidates on the donor's behalf. But there have always been strong reasons to "greet the assertion of an anticorruption interest here with a measure of skepticism." *Cruz*, 596 U.S. at 306. As this Court has repeatedly explained, "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." *McCutcheon*, 572 U.S. at 210.

That risk is even more miniscule given the "quintuple prophylactic statutory scheme" that already addresses those concerns, including limits on contributions to political parties and restrictions on earmarking. JA.739. Indeed, FECA's restrictions on coordinated party expenditures are so disconnected from preventing *quid pro quo* corruption that the government now acknowledges that the restrictions do not actually serve that interest. FEC.Br.22-27. Instead, the obvious purpose of the restrictions is "to limit the amount of money spent on campaigns." FEC.Br.39. But this Court has made clear time and again that "limiting the amount of money in politics" is an "impermissible objective." *Cruz*, 596 U.S. at 313; *see also Colorado I*, 518 U.S. at 618 (plurality op.) ("[T]his Court's opinions suggest that 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.").

Even setting that aside, whatever the merits of concerns about corruption by circumvention in theory, experience in the States demonstrates that those concerns are unfounded in practice. This Court has emphasized in a variety of First Amendment contexts that, when it comes to restrictions on speech, the government must "do more than 'simply posit the existence of the disease sought to be cured.'" *Cruz*, 596 U.S. at 307. "It must instead point to 'record evidence

or legislative findings' demonstrating the need to address a special problem." *Id.*; *see also Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 799 (2011) (explaining that the government "must specifically identify an 'actual problem' in need of solving"). "[A]necdote[s] and supposition" do not suffice. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 822 (2000).

In the campaign-finance context in particular, this Court has repeatedly looked to the experience of the States to determine whether restrictions on political speech are necessary to prevent *quid pro quo* corruption or its appearance. *Cruz*, 596 U.S. at 307 (citing *Citizens United*, 558 U.S. at 357; *McCutcheon*, 572 U.S. at 209 n.7). After all, when "States do not impose" particular campaign-finance restrictions, the "absence" of evidence of the specific "*quid pro quo* corruption" at issue is a telltale sign that the concern is too speculative to support restrictions on core political speech. *Id.*

Here, experience in the States squarely contradicts the contention that coordinated-party-expenditure limits are necessary to prevent donors from corrupting elected officials by circumventing individual-to-candidate contribution limits. *See Colorado II*, 533 U.S. at 457. More than half of the States "give parties free rein to make coordinated expenditures on behalf of their state-level nominees." JA.722. At least 17 States place few if any limits on how parties coordinate with their candidates while simultaneously capping what individual donors can contribute to candidates. Twelve of those States permit unlimited party-to-candidate contributions for various offices and elections while limiting the amount

that individual donors can contribute to those candidates. *See* Cal. Gov't Code §85301; 10 Ill. Comp. Stat. 5/9-8.5(b); Kan. Stat. Ann. §25-4153(a);[2] Ky. Rev. Stat. §§121.150(6), 121.015(3); La. Stat. §18:1505.2(H)(1)(a), (b); N.J. Stat. Ann. §19:44A-29; N.J. Admin. Code §19:25-11.2; N.Y. Elec. Law §14-114(1), (3); N.C. Gen. Stat. §163-278.13(a), (h); S.D. Codified Laws §§12-27-7, 12-27-8; Vt. Stat. tit. 17, §2941(a)(1)-(3); Wis. Stat. §§11.1101(1), 11.1104(5); Wyo. Stat. §22-25-102(a), (c), (j). Two expressly permit parties to engage in unlimited coordinated expenditures with candidates while limiting individual-to-candidate and party-to-candidate contributions. *See* Ariz. Rev. Stat. §§16-911(B)(4)(b), 16-912(A), 16-915(A); W. Va. Code §§3-8-5c(a), 3-8-9b(a). The other three States allow parties to engage in unlimited coordination via in-kind contributions while placing limits on how much individuals can contribute to those candidates. *See* 970 Mass. Code Regs. 1.04(12) & n.11; N.M. Stat. Ann. §1-19-34.7(A)-(B), (J); Ohio Rev. Code Ann. §3517.102(B)(1)(a)(i)-(iii), (6).

If limits on coordinated party expenditures were truly necessary to prevent would-be bribers from laundering contributions through political parties, then one would expect evidence of such bribes in the States that allow coordinated party expenditures

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[2] Kansas limits party-to-candidate contributions in contested primaries but allows unlimited party-to-candidate contributions otherwise. *See* Kan. Stat. Ann. §25-4153(e). And while party-to-candidate contributions are capped in contested primaries, the party can seemingly still engage in unlimited coordinated expenditures during those contested primaries. *See id.* §25-4153(f).

while capping how much individuals can contribute to candidates.[3] Those state regimes are precisely the kind that the government warned about in *Colorado II*, where it argued (and a majority of the Court agreed) that "[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." 533 U.S. at 446. But the fear that donors will launder bribes through political parties absent limitations on coordinated party expenditures has not borne out in practice. Indeed, the government now agrees that many States largely give parties free rein to make coordinated expenditures on behalf of their state-level nominees, and "no one has identified even a single case in which a donor in one of those States has used a political party to launder bribes to a candidate." FEC.Br.31.

Take New York, for example. New York caps individual contributions to gubernatorial candidates at $9,000 for the general election.[4] N.Y. Elec. Law §14-114(1)(c). But it places no limits on how much parties can contribute to those same candidates during the general election. *Id.* §14-114(3). Under that regime, a

[3] The States that allow unlimited individual-to-candidate contributions are not likely to experience corruption by circumvention because a would-be briber would have little need to use the political party to funnel its bribe. It could simply bribe the candidate through a direct contribution.

[4] Unless otherwise noted, all limitation amounts referenced in this brief represent the respective limits reflected in statute as of the date of drafting and do not reflect updates by state election regulators for things like inflation.

donor could theoretically circumvent the individual-to-candidate contribution limit by funneling contributions through a political party and having the party coordinate with the candidate according to the donor's interests. But the government's own expert conceded below that he is "not aware" of any examples "of quid pro quo routing through a party" in New York. Dist.Ct.Dkt.41-4 at 166.

The same is true even in States with much lower individual contribution limits (and therefore even greater incentives to circumvent those limits by laundering money through the party). Massachusetts, Kentucky, Vermont, West Virginia, Kansas, and New Jersey have some of the lowest individual-to-candidate contribution limits in the country for gubernatorial candidates. *See* Mass. Gen. Laws ch. 55, §7A(a)(1) ($1,000 per calendar year); Ky. Rev. Stat. §121.150(6) ($4,000 per cycle (primary and general) indexed for inflation every odd-numbered year); Vt. Stat. tit. 17, §2941(a)(3)(A)(i) ($4,000 per cycle); W. Va. Code §3-8-5c(a)(1) ($5,600 per cycle); Kan. Stat. Ann. §25-4153(a)(1) ($8,000 per cycle); N.J. Stat. Ann. §19:44A-29(a) ($9,800 per cycle). At the same time, four of these States allow unlimited party-to-candidate contributions (at least for general elections). *See* Kan. Stat. Ann. §25-4153(a), (e), (f); Ky. Rev. Stat. §§121.150(6), 121.015(3); Vt. Stat. tit. 17, §2941(a)(3)(B); N.J. Stat. Ann. §19:44A-29; N.J. Admin. Code §19:25-11.2. Massachusetts allows unlimited coordination between parties and candidates through in-kind contributions. 970 Mass. Code Regs. 1.04(12) & n.11. And West Viriginia expressly exempts parties from coordinated expenditure limits for gubernatorial general elections.

W. Va. Code §3-8-9b(a). Just as in New York, donors in these States could theoretically skirt individual contribution limits and seek to bribe candidates by contributing to political parties in exchange for official action. Yet the government did not identify a single instance of that sort of corruption in any of these States.

2. The lack of evidence of corruption by circumvention is not for lack of trying. The parties engaged in three months of discovery in the district court so that the government could look for examples. JA.713. Yet despite all that discovery, and "[d]espite having decades to look" for evidence of rampant corruption, the government briefing below cited no examples where donors took advantage of party-candidate coordination to funnel bribe money through political parties. JA.738-39. In fact, the government's expert conceded that "coordinated expenditures d[id] not feature prominently" in any of the examples that the government cited in the courts below. JA.57.

As for the purported examples of corruption by circumvention cited by the government below, many are "simply instances of 'influence' or 'access' that fall short of quid-pro-quo corruption," JA.738-39 n.2—i.e., the "direct exchange of an official act for money." *McCutcheon*, 572 U.S. at 192. For instance, the briefing below highlighted "Samuel Bankman-Fried's alleged attempts to obtain a favorable regulatory environment using donations made to the DNC, DSCC, and DCCC." CA6.Dkt.38 at 41. And it cited instances where Republican donors ramped up contributions when legislators were considering tax cuts in 2017. *Id.* But those examples reflect at most

an attempt to garner "greater influence with or access to" a political party, "not the type of *quid pro quo* corruption the Government may target." *Cruz*, 596 U.S. at 307-08. Indeed, "a substantial and legitimate reason … to make a contribution to[] one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors." *McConnell v. FEC*, 540 U.S. 93, 297 (2003) (plurality op.) (Kennedy, J., concurring in part and dissenting in part). While the "line between *quid pro quo* corruption and general influence may seem vague at times," the "distinction must be respected in order to safeguard basic First Amendment rights." *McCutcheon*, 572 U.S. at 209.

Other examples are similarly flawed. Indeed, many of the examples cited below lack any evidence of payments "made in return for an explicit promise or undertaking by the official to perform or not to perform an official act," and are instead entirely consistent with the normal give and take of campaign interactions. *McCormick v. United States*, 500 U.S. 257, 272-73 (1991). For example, the briefing below mentioned President Obama's decision to nominate George Tsunis to an ambassadorship position. CA6.Dkt.38 at 40-41. But while Tsunis contributed to President Obama's campaign and the Illinois Democratic Party, the government cited no evidence that President Obama promised to appoint Tsunis in exchange for contributions. The briefing below also described efforts by Roger Tamraz to influence "decisions of the National Security Council concerning energy policies" through contributions to "Democratic Party committees." *Id.* But the FEC's proposed findings concluded that the contributions were "not

ultimately successful," as the National Security Council "opposed" Tamraz's efforts. JA.417-18.

Other examples involved "only campaign-finance law violations, not quid-pro-quo corruption." JA.738-39 n.2. For instance, the briefing below pointed to an article in the Hartford Courant detailing a Connecticut grand jury investigation into whether Governor Dannel Malloy's 2014 campaign "illegally used contributions from state contractors made into the party's account to make … expenditures on behalf of the campaign." CA6.Dkt.38 at 42. It also pointed to a New York Daily News article detailing how Mayor Bill de Blasio allegedly "worked with donors and candidates for the state Senate to circumvent campaign donation limits by having excessive candidate contributions routed through county committees and the State Democratic Campaign Committee." *Id.* It pointed to an article published by a "climate accountability" advocacy group in the Louisiana Illuminator accusing "Democratic Party leaders" of "funneling thousands of dollars from utility companies to the campaign of a fossil fuel-friendly candidate who ran for reelection on the state's utility regulatory committee." *Id.* at 43; *see* S. Sneath, *Louisiana Democratic Party 'Utility' Donations to Climate Candidate's Challenger*, La. Illuminator (Jan. 25, 2023), https://perma.cc/Z2WD-83NH. It highlighted accusations that Massachusetts State Senator Ryan Fattman funneled money from his campaign through the Republican State Committee to another candidate's campaign. CA6.Dkt.38 at 43. And it pointed to a situation where Wisconsin Assembly candidate Adam Steen allegedly arranged for donors to circumvent contribution limits by having

them give contributions to various party committees. *Id.* While those examples detail potential violations of state campaign finance laws, none amounts to *quid pro quo* corruption. And most did not lead to prosecution or enforcement actions, suggesting that the accused "were not guilty—a possibility that [the government did] not entertain" below. *McCutcheon*, 572 U.S. at 217.

Even in examples that did involve *quid pro quo* corruption, none involved the specific corruption-by-circumvention concern that supposedly animates FECA's restrictions on coordinated party expenditures. While the cases of Jack Abramoff, Bob Ney, and Robert Menendez involved *quid pro quos* between elected officials and donors, *see* CA6.Dkt.38 at 41, there is little indication that coordinated party expenditures and party-candidate coordination played any role in those alleged schemes. To be sure, the government alleged that Abramoff contributed $10,000 to the NRCC at Ney's request. JA.431-32. But the government's cited source confirms that the contribution was not funneled to Ney for his own campaign to avoid individual contribution limits but rather was requested to help Ney meet his fundraising quota, and in turn keep his position as chairman of a House committee. *See* Dist.Ct.Dkt.39-16 at 2. And while the government's briefing below highlighted evidence that Menendez's staff solicited a contribution from a donor to the New Jersey Democratic State Committee and that the donor also contributed to various other state-level party committees, it did not suggest that the party ever coordinated use of those funds with Menendez in furtherance of the donor's bribery schemes. *See* Dist.Ct.Dkt.43 at 48-49. In

other words, both examples are missing a critical step: coordination between the party and the candidate.

Still other examples involved alleged corruption that would not be possible under other prophylactic measures that now exist to prevent corruption by circumvention. For example, the government repeatedly pointed below to President Nixon's reversal of the Department of Agriculture policy, which was allegedly prompted by the dairy industry's contributions to Nixon's reelection campaign via money funneled through the RNC. CA6.Dkt.38 at 40. But that example pre-dates FECA and would be foreclosed multiple times over today by FECA's base limits, earmarking limitation, and disclosure requirements. *See* 52 U.S.C. §§30101(8)(A)(i), 30104(b), 30116(a)(1)(A), (8). The briefing below also pointed to an example in which an Ohio school-board member allegedly helped a construction company secure a government contract in exchange for a contribution to the county-level Democratic Party that was earmarked for the candidate's campaign ads. CA6.Dkt.38 at 42. But again, that sort of corruption by circumvention would not be possible under rules restricting earmarking.[5]

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[5] Judge Stranch's concurrence in the judgment also pointed to plea agreements in Wisconsin and Ohio, JA.799-800, but those examples involve unavailable or disputed facts about the defendant's conduct. *See In re Disciplinary Proc. Against Chvala*, 730 N.W.2d 648, 649 (Wis. 2007); *United States v. Finley*, No. 2:15-cr-148 (S.D. Ohio 2015), Dkts.3, 22 (information and judgment). And even crediting those examples, two instances over the course of multiple decades does not present the kind of evidence needed to restrict core political speech. *Cruz*, 596 U.S. at 307-08.

III. State Experience Confirms That Other Prophylactic Measures Are More Than Sufficient To Prevent Corruption By Circumvention.

1. It is no surprise that the government was unable to find widespread corruption by circumvention at the federal or state level. As petitioners aptly explain, FECA already has a "quintuple prophylactic statutory scheme" that works to strongly discourage would-be bribers. Pet.Br.21. States that give parties free rein to coordinate with candidates have similar prophylaxes that likewise strongly discourage would-be bribers. The absence of examples of corruption by circumvention in those States illustrates that those prophylaxes are working. And they are a powerful indication that FECA's own "quintuple prophylactic statutory scheme" is more than sufficient to prevent corruption by circumvention as well.

To start, like FECA, *see* 52 U.S.C. §30116(a)(1)(A), many States limit how much individuals can contribute directly to candidates. *See, e.g.*, Ariz. Rev. Stat. §16-912(A); Cal. Gov't Code §85301(a)-(d); 10 Ill. Comp. Stat. 5/9-8.5(b)(i); Kan. Stat. Ann. §25-4153(a); Ky. Rev. Stat. §121.150(6); La. Stat. §18:1505.2(H)(1)(a); Mass. Gen. Laws ch. 55, §7A(a)(1); N.J. Stat. Ann. §§19:44A-11.3(a), 19:44A-29(a); N.J. Admin. Code §19:25-11.2; N.M. Stat. Ann. §1-19-34.7(A)-(B); N.Y. Elec. Law §14-114(1); N.C. Gen. Stat. §163-278.13(a); Ohio Rev. Code Ann. §3517.102(B)(1)(a)(i)-(iii); S.D. Codified Laws §§12-27-7(1), 12-27-8(1); Vt. Stat. tit. 17, §2941(a)(1)(A)(i), (2)(A)(i); (3)(A)(i); W. Va. Code §3-8-5c(a)(1); Wis. Stat.

§11.1101(1); Wyo. Stat. §22-25-102(c). That is itself "a prophylactic measure … because few if any contributions to candidates will involve *quid pro quo* arrangements." *McCutcheon*, 572 U.S. at 221.

To prevent donors from circumventing the donor-to-candidate contribution limits, many States (again like FECA) also limit how much individuals can contribute to political parties. *See, e.g.*, 10 Ill. Comp. Stat. 5/9-8.5(c)(i) ($10,000 per election cycle for individuals); W. Va. Code §3-8-5c(b) ($10,000 per calendar year); Kan. Stat. Ann. §25-4153(d)(1), (3) (per calendar year limit of $35,000 individual-to-state party committee; $10,000 individual-to-other party committee). Those limits accord with *Colorado I*'s observation that legislative bodies that "conclude that the potential for evasion of the individual contribution limits [is] a serious matter" can "change the … limitations on contributions to political parties." *Colorado I,* 518 U.S. at 617 (plurality op.)

To further prevent circumvention, many States that do not limit coordinated expenditures restrict (as FECA does) donors from earmarking contributions to political parties for specific purposes or candidates. Some States prohibit earmarking altogether. *See, e.g.*, Ariz. Rev. Stat. §16-918; W. Va. Code §3-8-5c(b). Others treat an earmarked transaction as a contribution to the candidate subject to the base contribution limits. *See, e.g.*, Kan. Stat. Ann. §25-4153(a); N.M. Stat. Ann. §1-19-34.7(D); Wyo. Stat. §22-25-102(c), (f).

Regardless of the exact way that earmarked contributions are handled, these earmarking restrictions prevent would-be-bribers from

circumventing the base contribution limits and corrupting candidates through a political party. After all, if a donor cannot earmark donations to a political party for particular uses or particular candidates, the donor must "by law cede control over the funds," meaning that any subsequent routing to a specific candidate would occur at the party's "discretion—not the donor's." *McCutcheon*, 572 U.S. at 211; *see also* JA.672 (noting that "[w]hen the NRSC and the NRCC engage in coordinated expenditures" they "retain final approval over how such monies will be spent"). "[P]arty committees, at day's end, are rational actors" who "desire to maximize their election victories and achieve functioning legislative majorities." JA.850, 852. Thus, once the money is in the party's control, it is far more likely that the party will spend the contribution on "close races" regardless of the donor's preference. JA.855; *see also* JA.676 (NRSC noting it focuses on "competitive Senate races"). And because close races tend to draw more money than other races, any party (or contributor) spending will be "significantly diluted" by other contributors, diminishing the potential for corruption. *McCutcheon*, 572 U.S. at 212. That makes "[a] donation to a political party … a clumsy method by which to influence a candidate" if one were so inclined. *McConnell*, 540 U.S. at 269 (Thomas, J., concurring in part and dissenting in part).[6]

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[6] The *Colorado II* majority expressed skepticism about the effectiveness of earmarking provisions, asserting that they "would reach only the most clumsy attempts to pass contributions through to candidates." 533 U.S. at 462. The Court, however, never discussed the FEC regulations, which "define earmarking broadly," *McCutcheon*, 572 U.S. at 201, to include "a designation,

In the unlikely event that (a) a donor wants to bribe a candidate, *but see McCutcheon*, 572 U.S. at 221, (b) the individual-to-party contribution limit is large enough to allow bribe-sized contributions, (c) the donor evaded an earmarking provision, and (d) the donor somehow persuaded the party to use the funds according to her preferences, most States set yet another safeguard. They, again like FECA, require political parties to report their spending as well as their donors' names and donation amounts. *See, e.g.*, Ariz. Rev. Stat. §§16-907(D), (G)-(H), 16-926; Cal. Gov't Code §§82013, 84211; 10 Ill. Comp. Stat. 5/9-6, 5/9-7, 5/9-10; Kan. Stat. Ann. §§25-4148, 25-4148d; Ky. Rev. Stat. §121.180(2); La. Stat. §§18:1483(17), 18:1484(3), 18:1491.6, 18:1491.7(B); N.J. Stat. Ann. §§19:44A-8, 19:44A-11.8; N.Y. Elec. Law §14-102; N.C. Gen. Stat. §§163-278.8, 163-278.11, 163-278.12; S.D. Codified Laws §12-27-24; Vt. Stat. tit. 17, §§2963, 2964; W. Va. Code §§3-8-5, 3-8-5a; Wis. Stat. §11.0304; Wyo. Stat. §22-25-106. Those disclosure rules offer "a particularly effective means of arming the voting public with information" and offer "robust protections against corruption." *McCutcheon*, 572 U.S. at 224. That has only become truer since *Colorado II*, "given the Internet." *Id.* "Because massive quantities of information can be accessed at the click of a mouse, disclosure is effective to a degree not possible at the

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instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee." 11 C.F.R. §110.6(b)(1).

time *Buckley*, or even *McConnell* [or *Colorado II*], was decided." *Id.*

Finally, if a donor were to make it through all those prophylaxes, anti-bribery laws serve as an additional measure to address corruption-by-circumvention concerns. *See, e.g.*, *Colorado I*, 518 U.S. at 643 (Thomas, J. concurring in judgment and dissenting in part). Many States (like the federal government) utilize anti-bribery and anti-corruption laws to thwart corrupt actors. *See, e.g.*, Ariz. Rev. Stat. §§13-2601 to -2606; Kan. Stat. Ann. §§21-6001, 21-6003; N.C. Gen. Stat. §§14-217, 14-218; S.D. Codified Laws §§22-12A-1 to -2, -4 to -7, -11, -13; W. Va. Code §§61-5A-1 to -11. To the extent that *Buckley* rejected the efficacy of federal anti-bribery laws, *see* 424 U.S. at 27-28, 30, Congress is free to make them more robust, as those laws are plainly a "less restrictive means of addressing [the government's] interest in curtailing corruption." *Shrink Mo.*, 528 U.S. at 428 (Thomas, J., dissenting). At the very least, the government needs to explain why such laws are ineffective before it restricts core political speech. *See McConnell*, 540 U.S. at 269 (Thomas, J., concurring in part and dissenting in part).

2. Many States that give parties free rein to coordinate expenditures with candidates include some (if not all) of these other prophylaxes in their respective campaign-finance regimes. Those States, therefore, supply "counterfactual world[s] in which [coordinated-party-expenditure] limits do not exist," *McCutcheon*, 572 U.S. at 219.

West Virginia is particularly instructive. Like FECA, West Virginia places relatively strict limits on

individual-to-candidate and party-to-candidate contributions. W. Va. Code §3-8-5c(a)(1). The State further imposes a $10,000 per calendar year limit on individual-to-party contributions. *Id.* §3-8-5c(b). Those contributions to parties cannot be earmarked, and the law makes clear that any donor attempts to earmark are not binding on the party recipient of the contribution. *Id.* West Virginia also requires parties to keep detailed records of their contributors and to report that information at regular intervals to proper officials. *Id.* §§3-8-5, 3-8-5a, 3-8-5b. And for good measure, West Virginia (like federal law) statutorily proscribes bribery and other corrupt practices, which works as an additional preventive measure to deter and punish would-be bribers. *See* W. Va. Code §§61-5A-1 to -11.

The only material difference between the federal and West Virginia campaign-finance regimes for purposes of this case is their respective treatment of coordinated-party expenditures. West Virginia, like FECA, says that "a coordinated expenditure is considered to be a contribution and is subject to all requirements for contributions contained in this article." *Id.* §3-8-9a(a); *accord* 52 U.S.C. §30116(a)(7)(B)(i)-(ii). But a separate provision provides that "[n]otwithstanding the provisions of §3-8-9a" (the coordinated-expenditure restriction), "the state committee of a political party … may make coordinated expenditures in any amount with the general election campaign of the candidate for each of the following offices: Governor, Attorney General, … State Senate, and House of Delegates." W. Va. Code §3-8-9b(a).

In short, West Virginia contains all the same prophylaxes as FECA (and federal law) except for the coordinated party expenditure limits. It therefore provides a perfect counterfactual example of what federal election integrity might look like were federal-level parties free to coordinate expenditures with their candidates. The absence of any examples of *quid pro quo* by circumvention corruption in the State strongly suggests that the many other prophylaxes that federal law already imposes are more than sufficient to prevent corruption by circumvention in federal elections.

Arizona provides another helpful, and slightly different, example. Arizona has individual-to-candidate and party-to-candidate contribution limits, Ariz. Rev. Stat. §§16-912(A), 16-915(A); it also restricts a donor's ability to earmark a contribution, *id.* §16-918, and requires parties to keep records of all contributions and produce them to officials upon request. *Id.* §§16-907(D), (G)-(H), 16-926. Finally, Arizona law prohibits bribery and other corrupt practices. Ariz. Rev. Stat. §§13-2601 to -2606.

Arizona's regime differs from the federal regime in two ways that are relevant here. First, like West Virginia (and unlike FECA), Arizona expressly permits political parties to engage in unlimited coordinated-party expenditures by carving out those expenditures from the definition of contributions. Ariz. Rev. Stat. §16-911(B)(4)(b). Arizona also does not limit individual-to-party contributions, *id.* §16-912(B). A would-be briber would theoretically be incentivized to try to corrupt a candidate or official by laundering money through political parties. Yet the

government presented no evidence of such corruption in its briefing below. As with West Virginia, this strongly suggests that the other prophylaxes Arizona uses are working, and that coordinated-party-expenditure limits are unnecessary.

Other permutations abound—and all point to the same conclusion: The absence of coordinated-party-expenditure limits do not lead to corruption by circumvention. Kansas, for example, has individual-to-candidate and individual-to-party contribution limits, Kan. Stat. Ann. §25-4153(a), (d), earmarking restrictions, *see id.* §25-4153(a), disclosure requirements, *id.* §§25-4148(b), 25-4148c, 25-4148d, and laws that criminalize bribery and other corrupt acts. Kan. Stat. Ann. §§21-6001, 21-6003. But Kansas does not limit party coordination with candidates; it permits parties to make unlimited contributions in general elections and uncontested primaries, *see* Kan. Stat. Ann. §25-4153(e), and makes clear that a coordinated party expenditure does not "constitute a contribution." *Id.* §25-4153(f). Yet the briefing below points to no evidence of donors funneling money through Kansas's political parties to try and corrupt candidates.

South Dakota utilizes a regime that allows for unlimited party-candidate coordination without an earmarking provision but with other prophylactic measures. *See* S.D. Codified Laws §§12-27-7(1), 12-27-8(1) (individual-to-candidate contribution limits); 12-27-10(1) (individual-to-party contribution limits); 12-27-24 (disclosure requirements); S.D. Codified Laws §§22-12A-1 to -2, -4 to -7, -11, -13 (bribery laws). But even without limits on earmarking and coordinated-

party expenditures, the briefing below pointed to no evidence of corruption by circumvention in South Dakota.

North Carolina goes one step further in that its prophylaxes largely consist of individual-to-candidate limitations, N.C. Gen. Stat. §163-278.13(a), disclosure requirements, *id.* §§163-278.8, 163-278.11, 163-278.12, 163-278.12C, and anti-bribery or anti-corruption laws. *See, e.g.*, N.C. Gen. Stat. §§14-217, 14-218. That the government still did not muster any evidence of corruption by circumvention using political parties in North Carolina yet again proves that bribery laws and disclosure requirements suffice to "punish and deter the corrupt conduct the Government seeks to prevent under FECA." *Colorado I*, 518 U.S. at 643 (Thomas, J., concurring in judgment and dissenting in part). At the very least, the lack of evidence of corruption by circumvention in North Carolina demonstrates that FECA's coordinated-party-expenditure limits are an unnecessary burden on parties' core political speech.

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In short, at least 17 States that limit individual contributions to candidates give parties free rein to coordinate expenditures with those same candidates. "Despite having decades to look" for examples of corruption by circumvention in those States, JA.738-39, the government below presented barely any evidence of any corruption at all, let alone widespread corruption by circumvention that undermines public faith in our electoral system. The prevalence of state campaign-finance regimes that give parties free rein to engage in coordinated expenditures on behalf of

their state-level nominees, coupled with the lack of evidence that the absence of limits on coordinated party expenditures has fostered *quid pro quo* circumvention corruption, fatally undermines any claim that coordinated-party-expenditure limits are a "closely drawn" means of addressing corruption-by-circumvention concerns. *Buckley,* 424 U.S. at 25. In reality, FECA's coordinated-party-expenditure limits are a superfluous prophylaxis-upon-prophylaxis that abridge far more First Amendment activity than the Constitution permits.

IV. Coordinated Party Expenditure Limits Violate Political Parties' Rights In Numerous States And Create Practical Burdens At The Federal And State Levels.

The First Amendment violations created by FECA's coordinated-party-expenditure limits suffice to justify holding them unconstitutional. But there are (at least) two other reasons why this Court should conclude that they must be excised from campaign-finance regulation regimes.

1. If FECA's coordinated-party-expenditure limits violate the First Amendment, then the federal government has been unconstitutionally curtailing core political speech for decades. And if that is true of the federal government, then many States have been acting unconstitutionally as well, since several States also place limits on coordinated party expenditures. Holding the federal coordinated-party-expenditure limits unconstitutional would therefore have the additional benefit of vindicating the First Amendment in those States as well.

States that limit coordinated party expenditures do not all do so in precisely the same way. Unlike FECA, which contains separate provisions addressing party-to-candidate contributions and coordinated party expenditures, *see* 52 U.S.C. §30116(a)(2)(A), (c), (h) (base limits); *id.* §30116(d) (party expenditures), many States that limit coordinated party expenditures for state-level parties treat those expenditures as direct contributions from the party and apply the party-to-candidate limits accordingly. *See, e.g.*, Mont. Code Ann. §13-1-101(12)(a)(ii); Okla. Stat. Ann. tit. 21, §187(4). Others do so by indicating that coordinated expenditures will not be treated as independent expenditures—and thus impliedly count towards contribution limits. *See, e.g.*, Ark. Code Ann. §7-6-201(11); Fla. Stat. Ann. §106.011(12)(b); S.C. Code Ann. 8-13-1300(17). But regardless of the precise mechanism, restrictions on a state party's ability to coordinate with its candidates burden core First Amendment activity for all the same reasons that FECA's coordinated-party-expenditure limits do. Holding that FECA's limits on coordinated party expenditures are unconstitutional thus would go a long way to fixing the longstanding and severe First Amendment violations in offending States as well.

2. In addition to the constitutional injuries that FECA and various state regimes create, coordinated-party-expenditure limits at any level impose numerous practical restraints and problems for candidates and parties. For starters, as the *Colorado II* dissenters highlighted more than two decades ago, "break[ing the] link between the party and its candidate … impose[s] 'additional costs and burdens to promote the party message.'" 533 U.S. at 470

(Thomas, J., dissenting). As party petitioners have attested, the "desire to avoid entanglement with an FEC enforcement action by accidentally flouting the coordinated party expenditure limits" has forced them to erect "'firewalls' between the main operations of the committees and their self-styled 'independent expenditure units'" including by spending funds to pay for "separate facilities and employees for their [independent expenditure] units to avoid cross over between the units and those committee officials that might engage in coordinated expenditures." JA.677-78. Both party petitioners expressed "that they would put such funding toward other uses … if they did not feel compelled to create the [independent expenditure] units" to comply with FECA. JA.678. Even the FEC's experts in *Colorado II* acknowledged that forcing parties to act primarily through independent expenditures is not efficient as it "requires the party committee to stay at a safe distance from the candidate and the candidate's campaign plan and strategies." Dist.Ct.Dkt.36-2 at 45 (Expert Report of Frank J. Sorauf & Jonathan S. Krasno in *Colorado II*).

Limits on party-candidate collaboration also "create voter confusion" and may "undermine the candidate that the party sought to support." *Colorado II*, 533 U.S. at 470 (Thomas, J. dissenting). As the FEC's expert testified below, "from the standpoint of a voter … [parties and candidates] are … a big blur," so it is "probably fair" to say that "most constituents don't realize … there are differences between the party and the candidate." JA.682-83 (quoting Dist.Ct.Dkt.42-1 (Krasno deposition testimony)). Accordingly, parties engaging in independent expenditures might "disseminate advertisements that are unhelpful to, if

not entirely disfavored by, the candidate the party supports." Pet.Br.16. Making matters worse, voters might misattribute those messages to the candidate. A recent example is illustrative. Former Colorado Senator Cory Gardner objected to the content of a television advertisement from the NRSC during the 2020 election. Senator Gardner publicly stated that he "would not have personally run the ad" and called on the NRSC's independent expenditure unit to stop running it. Caitlyn Kim, *Sen. Cory Gardner Asks GOP Group to Remove Political Ad About Firestone Home Explosion*, CPR News (July 22, 2020), https://perma.cc/8TUM-BFN4. Yet both the Senator and the NRSC were powerless to ameliorate the confusion. Once Senator Gardner made his request, the NRSC had no choice but to continue running the advertisement, as acquiescence to the Senator's request could have constituted prohibited coordination.

In short, FECA's coordinated-party-expenditure limits have imposed substantial burdens on the exercise of the First Amendment in federal elections since their inception. And there is little reason to believe that the burdens and inefficiencies they impose are limited to federal candidates. The reality is that state-level parties and candidates face these same obstacles when operating in States that limit party-candidate coordination.

In Georgia, for example, the state Republican party contributed only $14,000 to Governor Kemp's 2022 re-election campaign. *See* Ga. Code Ann. §21-5-41(a)(1), (3) (statutory limit of $5,000 per primary and general election); Georgia Ethics Comm'n,

Contribution Limits, https://perma.cc/3CVP-6SPR (last visited August 27, 2025) (noting $7,600 limit per primary and general race for 2022 election); Georgia Gov't Transparency and Campaign Fin. Comm'n, *Brian Kemp June 30, 2019 Campaign Contribution Disclosure Report* 11 (July 8, 2019), https://perma.cc/8SA7-PNGZ (noting $7,000 contribution from the Georgia Republican Party for both the primary and general elections). After that, Governor Kemp and the state party could no longer work together on his re-election. It is astonishing that, in a campaign that raised over $19 million in contribution proceeds, *see* Georgia Gov't Transparency and Campaign Fin. Comm'n, *Brian Kemp January 31, 2022 Campaign Contribution Disclosure Report* 2 (Feb. 7, 2022), https://perma.cc/4W5Z-ED7P, the state party could contribute less than 0.08% of that support. And the Georgia Republican Party did not even spend the maximum amount permitted, likely for fear of accidentally transgressing a limit if an unexpected cost became known later. *Cf.* JA.684 (noting that NRSC "regularly makes the risk assessment that it is best to forego spending the full amount of any assigned coordinated spending authority" for this reason).

* * *

In sum, holding FECA's coordinated-party-expenditure limits unconstitutional will remedy First Amendment injuries at both the federal and the state level—and in the process remove practical obstacles and inefficiencies from campaigns. The Court should remedy once and for all the constitutional violation that *Colorado II* created.

CONCLUSION

For the foregoing reasons, this Court should hold FECA's coordinated-party-expenditure limits unconstitutional.

Respectfully submitted,

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