No. 24-621

IN THE

Supreme Court of the United States

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, et al.,

Petitioners,

v.

FEDERAL ELECTION COMMISSION, et al.,

Respondents,

and

DEMOCRATIC NATIONAL COMMITTEE, et al.,

Intervenor-Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR INTERVENOR-RESPONDENTS DNC, DSCC, AND DCCC

MARC E. ELIAS
Counsel of Record
DAVID R. FOX
JACOB D. SHELLY
OMEED ALERASOOL
JULIANNA D. ASTARITA
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW,
Suite 400
Washington, DC 20001
(202) 968-4490
eliasm@elias.law

QUESTION PRESENTED

Whether the Court should overrule *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001), and prohibit any limit on the amount of campaign spending that political parties may coordinate with candidates.

RULE 29.6 DISCLOSURE STATEMENT

I, Marc E. Elias, counsel for DNC, DSCC, and DCCC and a member of the Bar of this Court, certify that DNC, DSCC, and DCCC have no parent corporation, and that no publicly held company owns 10% or more of their stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES AND REGULATIONS

OTHER AUTHORITIES

INTRODUCTION

Every party committee, like every other person and group, enjoys a First Amendment right to engage in unlimited speech—financed by unlimited spending—to support favored candidates. If a party believes that voters should hear a positive message about a candidate, it can broadcast that praise on every billboard, social media platform, website, and television station that accepts political advertising. If the party believes that voters should hear a negative message about a favored candidate's opponent, it can spread that message too. And if the party is unsure which message will be most effective, it can spend all it wants on polling, focus groups, and analytics to fine-tune its independent messaging strategy.

Parties also enjoy the ability to provide candidates with unlimited strategic advice. Party officials and staff can—and regularly do—converse with candidates to share institutional expertise about how to maximize the chance of victory. And parties have broad freedom to construct, maintain, and improve the national infrastructure necessary to mobilize enduring political majorities.

This case is about something different: not whether parties can share their own views with the electorate, not whether parties can share their own views with candidates, and not whether parties can pursue their unique functions, but whether the Constitution guarantees parties an unlimited right—unique among political bodies—to subsidize the campaign expenses of federal candidates. It does not. The Constitution allows Congress to regulate parties' "coordinated expenditures" just as it allows Congress to regulate their direct contributions.

The Court has held for decades that coordinated expenditures are functionally equivalent to contributions, and that contributions pose a genuine danger of real and apparent *quid pro quo* corruption. The Court's decision in *FEC v. Colorado Republican Federal Campaign Committee* (*Colorado II*), 533 U.S. 431, 464–65 (2001), represents nothing more than a straightforward application of those longstanding core principles.

The basis for *Colorado II* remains rock solid. None of the incremental developments in campaign finance law that Petitioners emphasize undermine the twin pillars supporting *Colorado II*—(1) that candidate contributions are subject to reasonable limits, and (2) that coordinated expenditures are constitutionally equivalent to contributions. Parties' right to make hundreds of thousands or even millions of dollars of coordinated expenditures per candidate represents a unique advantage in the political landscape, not a unique restriction. There is no constitutional basis for Petitioners' demand that the Court convert that limited right into an unlimited one.

If the Court overrules *Colorado II* and authorizes unlimited party coordinated expenditures, it will fundamentally reshape the campaign finance regime. Most directly, the use of joint fundraising committees (JFCs) together with *McCutcheon*'s elimination of aggregate contribution limits allow individual donors to contribute hundreds of thousands of dollars to committees named after a single federal candidate, all of which can then be transferred to a single party committee and—if *Colorado II* is overruled—spent to cover candidate-requested expenses without limit. The potential for actual or apparent corruption is obvious. And if this gambit becomes legal, parties will face extraordinary competitive pressure to assume an ever-growing share of candidates' expenses, starving parties of the resources needed for long-term, party-building activities.

Further, if parties are constitutionally entitled to engage in unlimited coordinated expenditures, there will be no basis to prevent them from making unlimited contributions, too. After all, the Court has recognized for decades that they amount to the same thing. And if parties can make unlimited coordinated expenditures—and, perhaps, by logical extension, contributions—the Court will be hard-pressed to explain why other political groups with a similar interest in supporting their favored candidates cannot do the same. The Constitution does not calibrate the specific privileges afforded to different types of political groups. The inevitable result will be to undermine *Buckley* and the entire modern campaign finance system.

The First Amendment does not require that result. The Sixth Circuit correctly applied settled precedent, and the Court should affirm.

STATEMENT

I. Legal Background

Donors have four main mechanisms to spend money in support of federal candidates: they can contribute to (i) a candidate's principal campaign committee; (ii) a political action committee that makes independent expenditures (Super PAC); (iii) a traditional political action committee (PAC); or (iv) a political party committee. Within this array, political party committees enjoy unique advantages because of their combination of high contribution limits *and* favorable coordinated expenditure rules.

The most direct way for an individual to support a candidate is to contribute money to the candidate's principal campaign committee. Because this transfer of funds creates the greatest risk of *quid pro quo* corruption, *see Buckley v. Valeo*, 424 U.S. 1, 26–29 (1976), it is subject to the tightest limits: currently, individual donors may contribute no more than $3,500 per election to each federal candidate, *see* 52 U.S.C. § 30116(a)(1)(A).[1] Reflecting the fungibility of different kinds of contributions, the limit applies to the *value* of the contribution, regardless of its form. Thus, a $1,000 check to the candidate's committee (*i.e.*, a monetary contribution), a donation of $1,000-worth of laptops for campaign staff (*i.e.*, an in-kind contribution), and payment of a candidate's $1,000

[1] Many contribution limits are indexed to inflation each election cycle.

invoice from an advertising agency (*i.e.*, a coordinated expenditure) would all count equally towards the limit. *See id.* § 30101(8)(A); *see also id.* § 30116(a)(7)(B)(i) (defining coordinated expenditures).

At the other end of the spectrum, a donor may contribute unlimited funds to a Super PAC that supports a candidate through unlimited independent expenditures, which are not coordinated with a candidate's campaign committee. *See Citizens United v. FEC*, 558 U.S. 310, 365 (2010); *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010).

A traditional multi-candidate PAC is a middle option. An individual may contribute $5,000 per year to each such PAC, and the PAC may contribute up to $5,000 per election to each candidate for federal office. 52 U.S.C. § 30116(a)(1)(C), (2)(A). Any expenditure by the PAC that is coordinated with the campaign committee is treated as a contribution and subject to that limit. *Id.* § 30116(a)(7)(B)(i).

The fourth option—political party committees—combines the features of the previous three. Like candidate committees, party committees work hand-in-glove with the candidate. Party committees recruit, train, advise, and strategize with candidates, and they are often led by high-ranking officeholders who are candidates themselves. *See McConnell v. FEC*, 540 U.S. 93, 155 (2003), *overruled on other grounds by Citizens United*, 558 U.S. at 310. Like Super PACs, party committees may make unlimited independent expenditures in support of a candidate. *See Colorado*

Republican Fed. Campaign Comm. v. FEC (*Colorado I*), 518 U.S. 604, 608 (1996). And like traditional PACs, party committees may contribute $5,000 per election to each candidate for federal office, except that the national committee and senatorial campaign committee of each party may contribute up to $62,000 combined per cycle to each Senate candidate. *See* 52 U.S.C. § 30116(a)(2)(A), (c), (h).[2]

Contributions to committees established by national parties are subject to much higher limits than contributions to ordinary PACs. Individual donors may give $44,300 per year to each such committee, 52 U.S.C. § 30116(a)(1)(B). This cap is tripled for contributions earmarked for presidential nominating conventions, party headquarters, and legal proceedings. *See id.* § 30116(a)(9). A single individual can therefore contribute over $1 million every year across a party's national committee accounts. *See* JA808–09 (Stranch, J., concurring in the judgment) (citing Br. of *Amici Curiae* Campaign Legal Ctr. & CREW at 22–27). Individuals can also contribute $10,000 per year to each state party's federal account. 52 U.S.C. § 30116(a)(1)(D). And there are no limits on party committees' ability to transfer federal money to other party committees. *See* 52

[2] At the national level, each party may maintain a national committee, a House campaign committee, and a Senate campaign committee. *See* 11 C.F.R. § 110.1(c)(2). Although this discussion focuses on national-level committees, federal law also regulates contributions to and from state parties for purposes of influencing federal elections. *See Contribution limits*, FEC, https://perma.cc/BQD6-MVHY (last accessed Sep. 26, 2025).

U.S.C. § 30116(a)(4); 11 C.F.R. §§ 102.6(a)(1)(ii), 110.3(c)(1). A donor can therefore write a single million-dollar check to a "joint fundraising committee" that solicits maximum donations on behalf of a variety of cooperating national and state party committees that often then "transfer these funds to a single party committee, arming that committee with a war chest to unleash on the headlining candidate's race." JA809.

Parties have yet another special advantage. Alone among political committees, they may engage in coordinated expenditures with candidates in amounts that far exceed the otherwise applicable contribution limits. For the 2026 election cycle, the national party committee and each state party committee may separately coordinate between $63,600 and $127,200 with each House candidate (with the higher figure reserved for at-large districts), and between $127,200 and $3,946,100 with each Senate candidate (with figures ranging based on each state's voting-age population). *See* 52 U.S.C. § 30116(d)(3); 11 C.F.R. § 109.32.[3] The national committee and state parties can—and as a matter of course, do—transfer their coordinated expenditure authority for House and Senate races to the party's House and Senate

[3] *See Coordinated party expenditure limits*, FEC, https://perma.cc/SHM3-HVQL. There is no presidential election in 2026, but the coordinated party expenditure limit for presidential elections in 2024 was $32,392,200. *See Coordinated party expenditure limits adjusted for 2024*, FEC, https://perma.cc/495G-TNSR.

campaign committees, respectively. *See* 11 C.F.R. § 109.33(a); JA674–75.

In practice, these coordinated expenditures overwhelmingly involve "party coordinated communications," where the party pays for advertising requested by the candidate. *See* 11 C.F.R. § 109.37. Often candidate committees produce advertising materials and then ask the party to pay for their distribution. *See* JA673 (district court finding); JA052–53 (expert testimony); JA187 (party promising to pay invoice for candidate-generated advertising); JA202 (same); Dkt. No. 36-11 at 8 (party official testifying, "We pretty much let the campaign take the lead in how the [coordinated] money was spent. ... They would send us their bills for the agreed upon amount, and we would pay them.").

II. Procedural History

In 2022, Petitioners filed this case to challenge the coordinated party expenditure limits in the Federal Election Campaign Act (FECA) as a violation of the First Amendment, both on their face and as applied to "party coordinated communications," a regulatory category. JA029–32; *see* 11 C.F.R. § 109.37. The district court certified the constitutional challenge to the en banc Sixth Circuit. *See* JA659; 52 U.S.C. § 30116.

Writing for a ten-judge majority, Chief Judge Sutton held that this Court "asked and answered [Petitioners'] same question in *Colorado II*" and upheld the coordinated party expenditure limits in full. JA717. Rejecting Petitioners' argument that doctrinal development and subsequent statutory amendments and factual developments weakened *Colorado II*'s application, the court explained that "[a]ny shifts in reasoning do not shift the precedential terrain from our vantage point," JA719, and that factual and statutory changes "simply do not suffice to alter the verdict," JA721. It noted that the en banc Fifth Circuit had also "unanimously agreed that *Colorado II* would control facial challenges to these provisions." JA723 (citing *In re Cao*, 619 F.3d 410, 431–32, 435 (5th Cir. 2010) (en banc)). And the Sixth Circuit held that Petitioners' as-applied claim covered "roughly 97% of the committees' expenditures" and was therefore effectively indistinguishable from the failed facial challenge. JA725. Several judges concurred to urge this Court to revisit *Colorado II*, while others concurred to argue that it remains good law. JA727–822. Judge Readler alone dissented, arguing that *Colorado II* no longer controlled. JA823.

After Petitioners sought certiorari, and with the Federal Election Commission lacking the quorum needed to take any position in the case, the Department of Justice abandoned the executive branch's longstanding defense of the coordinated party expenditure limits. The Court granted intervention to allow the Democratic National Committee, DSCC, and DCCC to defend *Colorado II*, and also appointed an *amicus curiae* to defend the judgment below.

SUMMARY OF ARGUMENT

I. The Court lacks jurisdiction. Intervenors agree with the appointed *amicus* that the NRCC and NRSC are not eligible to sue under 52 U.S.C. § 30110 because they are not "the national committee of any political party" as defined in the statute, and that Petitioner Chabot's and Vance's claims are moot because they are not current candidates for any federal office.

II. *Colorado II* was a correct, well-reasoned decision grounded in two fundamental principles first set out almost fifty years ago in *Buckley v. Valeo*, 424 U.S. 1 (1976): Congress may impose reasonable limits on campaign contributions, and coordinated expenditures are functionally identical to and can be regulated as contributions. The bases for those rules apply fully to parties, and the coordinated party expenditure limits Congress has imposed are appropriately tailored.

A. An unbroken line of precedent beginning with *Buckley* holds that Congress may impose reasonable contribution limits because they only moderately burden speech and prevent actual and apparent *quid pro quo* corruption.

Contribution limits impose "only a marginal restriction" on contributors' speech because the expressive content of a contribution—"a general expression of support for the candidate and his views"—is not meaningfully impaired by a restriction on the contribution's size. *Buckley*, 424 U.S. at 20–21. And while the candidate's spending of the contribution is also expression, it is *the candidate's* expression, not the contributor's. *Id.* at 21–22. Contribution limits do not meaningfully impair candidate speech unless they are so low as to prevent adequate fundraising. *Id.*

The Court has never retreated from these principles, nor from the conclusion that "the actuality and appearance of corruption resulting from large individual financial contributions" provides a "constitutionally sufficient justification" for contribution limits. *Id.* at 26.

B. The Court's recognition that coordinated expenditures are practically and constitutionally equivalent to contributions has an equally long pedigree. FECA has always treated "controlled or coordinated expenditures ... as contributions rather than expenditures" for purposes of campaign finance regulation. *Id.* at 46. The Court has repeatedly upheld that treatment, explaining that such expenditures often will be 'as useful to the candidate as cash'" and "'virtually indistinguishable from [a] simple contributio[n].'" *McConnell*, 540 U.S. at 221–22 (alterations in original) (quoting *Colorado II*, 533 U.S. at 444–45). And the Court's decisions invalidating restrictions on *independent* expenditures have carefully distinguished them from the *coordinated* expenditures at issue here. *Citizens United*, 558 U.S. at 346.

C. The validity of the coordinated party expenditure limits upheld in *Colorado II* follows directly from those unchallenged premises. In arguing otherwise, Petitioners and Federal Respondents fundamentally mistake the role of the coordinated party expenditure limits in the campaign finance system. They are a unique *benefit* to parties, not a unique drawback—parties are the only political entity that can make coordinated expenditures with candidates in excess of the applicable contribution limit. That benefit appropriately recognizes and accommodates parties' unique role in the political system, while avoiding serious practical and constitutional problems that would flow from allowing parties alone to engage in unlimited coordinated expenditures.

D. The coordinated party expenditure limits are also appropriately tailored to prevent *quid pro quo* corruption and the appearance thereof. The evidence at the time of *Colorado II* showed that unlimited coordinated party expenditures would erode contribution limits, and the evidence supporting that conclusion has grown since.

III. The relevant *stare decisis* considerations weigh in favor of preserving *Colorado II*: it was correct when decided; no subsequent developments warrant a change; it has engendered significant reliance; and any change should be left to Congress.

A. None of the post-*Colorado II* developments in campaign finance doctrine has undermined the pillars of its holding—that reasonable contribution limits are lawful and that coordinated expenditures are contributions. *Colorado II* included only a passing reference to the since-abrogated undue influence theory of corruption, only to support the stillunquestioned conclusion that reasonable contribution limits are valid. And no subsequent decision has questioned the legal premise that coordinated expenditures may be regulated as contributions.

B. The factual premises underlying *Colorado II* similarly remain unchanged. Congress's 2014 tripling of the contribution limits for three special-purpose segregated accounts and exemption of those accounts from the coordinated party expenditure limits has only rendered the challenged limits better tailored, by exempting spending that Congress concluded was particularly unlikely to raise corruption concerns. Congress's 2002 ban on federal party committees raising "soft money" for state and local races has nothing to do with *Colorado II*. And the increased use of joint fundraising committees after *McCutcheon* only increases the need for the coordinated party expenditure limits, as parties can now accept six- or seven-figure checks from individual donors and transfer those funds to a single national party committee to spend in support of a single candidate.

C. Overruling *Colorado II* threatens to upend the carefully crafted campaign finance regulatory structure. Parties, candidates, and every other actor in this system have come to rely on Congress's allowance for moderate coordinated expenditures between parties and candidates, as upheld in *Colorado II*. These include broadcasters, whose business models must account for the candidate committee spending that qualifies for lowest unit rates. The need to protect the long-term strategic and financial planning of these actors, and the corresponding chaos that would ensue if *Colorado II* is overturned, cautions strongly against revisiting the decision.

D. Finally, Petitioners' arguments reflect policy preferences that are better left for Congress to consider than for the judicial branch to require. Congress is free to repeal the limits at issue in this case and may consider whether to strengthen political parties relative to other political associations, how to do so effectively, and what consequences doing so would have.

IV. Petitioners' as-applied challenge is a misplaced sleight of hand. The record below demonstrates that the "party coordinated communications" covered by the as-applied challenge constitute 97 percent of all party coordinated expenditures and raise the same issues as the facial challenge.

ARGUMENT

I. The Court lacks jurisdiction.

Intervenors agree with the appointed *amicus* that the Court lacks jurisdiction because there is no party with live, ripe claims that is entitled to pursue this case under 52 U.S.C. § 30110. As the *amicus* explains, while the NRSC and NRCC might loosely be described as "national committees"—and DSCC and DCCC, too, have sometimes described themselves in that way—they are not "*the* national committee of [a] political party" as FECA defines that term. 52 U.S.C. § 30110 (emphasis added); *see also id.* § 30101(14). As a result, they are not entitled to invoke Section 30110. Intervenors further agree that Petitioners Chabot and Vance no longer have live claims because Petitioner Chabot has retired, and Petitioner Vance is not an active candidate for any political office. The Court therefore lacks jurisdiction.

II. *Colorado II* was correct and well-reasoned.

Colorado II follows directly from two settled principles of campaign finance law: Congress may regulate campaign contributions, and coordinated expenditures are the functional equivalent of contributions and may be regulated as contributions. *Colorado II* correctly held that those principles apply to political parties just as they apply to any other group, and that the federal limits on coordinated expenditures by parties are "'closely drawn' to match a 'sufficiently important interest.'" *Colorado II*, 533 U.S. at 446 (quoting *Nixon v. Shrink Mo. PAC*, 528 U.S. 377, 387–88 (2000)).

A. Congress may regulate campaign contributions.

Since *Buckley*, the Court has consistently held that contribution limits impose "only a marginal restriction" on First Amendment rights. *McConnell*, 540 U.S. at 134 (quoting *Buckley*, 424 U.S. at 20). And the Court has consistently held that such limits can be justified to prevent "'*quid pro quo*' corruption or its appearance." *FEC v. Cruz*, 596 U.S. 289, 305 (2022).

The Court cannot overrule *Colorado II* without calling these basic principles into question.

1. Contribution limits impose only moderate burdens on speech.

The Court has held for almost 50 years that contribution limits impose "only a marginal restriction" on contributors' ability to express their political views." *Buckley*, 424 U.S. at 20. They do not restrict the contributor from "presenting both facts and opinions to the public" by funding their own speech. *Citizens United*, 558 U.S. at 355. They restrict only the *transfer* of funds to candidates—a transfer that "serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support." *Buckley*, 424 U.S. at 21.

The Court has therefore long held that a contribution's communicative content "does not increase perceptibly with the size of [the] contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing." *Id.* Larger contributions of course enable more speech *by candidates* "if spent ... to present views to the voters." *Id.* But that spending involves candidate speech, not contributor speech. *Id.* And contribution limits impose a meaningful burden on candidate speech "only if they are so low as to 'preven[t] candidates and political committees from amassing the resources necessary for effective advocacy.'" *McConnell*, 540 U.S. at 135 (quoting *Buckley*, 424 U.S. at 21). Otherwise, although contribution limits "require candidates ... to raise funds from a greater number of persons," *id.* at 136, they do not restrict the content or quantity of candidate speech.

Based on these principles, the Court has consistently held that contribution limits are valid if they satisfy the "lesser demand" of being "closely drawn to match a sufficiently important interest," *McConnell*, 540 U.S. at 136 (quotation modified). The Court first adopted this approach in *Buckley*. 424 U.S. at 25. It has reiterated it countless times in the decades since. *See, e.g.*, *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 194 (1981) (following this approach in upholding contribution limits for PACs); *FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197, 208–209 (1982) (same in upholding regulations of corporate or union contributions); *Shrink Mo. PAC*, 528 U.S. at 377 (same in upholding Missouri state-law limits); *FEC v. Beaumont*, 539 U.S. 146, 161 (2003) (same in upholding corporate contribution ban as applied to nonprofit advocacy corporations); *McConnell*, 540 U.S. 135–36 (same in upholding the Bipartisan Campaign Reform Act (BCRA) contribution limits). And when the Court has invalidated other aspects of campaign finance law, it has done so by distinguishing them from contribution limits. *See, e.g.*, *Citizens United*, 558 U.S. at 359; *Cruz*, 596 U.S. at 306.

It has therefore "been plain ever since *Buckley* that contribution limits would more readily clear the hurdles before them" than would independent expenditure limits. *Shrink Mo. PAC*, 528 U.S. at 387. "[R]estrictions on political contributions have been treated as merely 'marginal' speech restrictions subject to relatively complaisant review under the First Amendment, because contributions lie closer to the edges than to the core of political expression," *Beaumont*, 539 U.S. at 161,[4] and because of the "limited burdens they impose on First Amendment freedoms," *McConnell*, 540 U.S. at 136.

The Court has hewed to these principles even when it has struck down particular contribution limits. In holding Vermont's state-law contribution limits unconstitutional, the Court emphasized the extremely low monetary limit ($113.91 per 2-year election cycle), which distinguished Vermont's law from the "consistently upheld contribution limits in other statutes." *Randall v. Sorrell*, 548 U.S. 230, 246–47, 250, 253–261 (2006) (Breyer, J., joined by Roberts, C.J., and, in relevant part, Alito, J.). And when the Court held Congress could not impose aggregate contribution limits on top of discrete committee contribution limits, the Court reiterated that contribution limits in general do not "in any way infringe [upon] the contributor's freedom to discuss candidates and issues." *McCutcheon v. FEC*, 572 U.S. 185, 197 (2014) (plurality op.).

---

[4] Although *Beaumont* cites *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), *see* 539 U.S. at 160–63, it ultimately relied on an anti-circumvention rationale that survives *Austin*'s overruling. *See Thalheimer v. City of San Diego*, 645 F.3d 1109, 1124–25 (9th Cir. 2011), *overruled on other grounds*, 941 F.3d 1195 (9th Cir. 2019); *Green Party of Conn. v. Garfield*, 616 F.3d 189, 199 (2d Cir. 2010).

Despite blithely asserting that contribution limits should be subject to strict scrutiny, *see* Pet. Br. 42, Petitioners cannot and do not meaningfully dispute any of the analysis in this foundational law, and they do not ask the Court to overrule this unbroken line of precedent.

2. Contribution limits are justified to prevent actual and apparent *quid pro quo* corruption.

The Court has also long held that "the prevention of corruption and the appearance of corruption" is "a 'sufficiently important' governmental interest" to justify contribution limits. *Citizens United*, 558 U.S. at 345. This rule, too, traces to *Buckley*, which held that "the integrity of our system of representative democracy is undermined" if "large contributions are given to secure a political *quid pro quo*," and that "the appearance of corruption stemming from public awareness of the opportunities for abuse" was of "almost equal concern." 424 U.S. at 26–27.

The Court has repeatedly reaffirmed this rule in the decades since. *See, e.g.*, *Cal. Med. Ass'n*, 453 U.S. at 197 (relying on "the governmental interest in preventing the actual or apparent corruption of the political process"); *Nat'l Right to Work Comm.*, 459 U.S. at 209 (same); *Shrink Mo. PAC*, 528 U.S. at 390 (same); *Beaumont*, 539 U.S. at 155 (same); *McConnell*, 540 U.S. at 136 (same). As the Court put it in *Shrink Missouri*, "the dangers of large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible" and do not require a particularly large amount of supporting evidence. 528 U.S. at 391.

Recent decisions have never questioned the constitutional sufficiency of preventing actual or apparent *quid pro quo* corruption. In 2014, eight justices confirmed that targeting *quid pro quo* corruption or its appearance remains a valid aim of campaign finance regulation. *See McCutcheon*, 572 U.S. at 192 (plurality op.); *id.* at 235 (Breyer, J., dissenting) (arguing for more expansive definition of corruption). And in *Cruz*, the Court reaffirmed that the "one permissible ground for restricting political speech [is] the prevention of '*quid pro quo*' corruption or its appearance." *Cruz*, 596 U.S. at 305.

Indeed, the Court has *never* held a reasonable contribution limit unconstitutional. It upheld the original FECA candidate committee limits in *Buckley*, 424 U.S. at 26–29, the PAC limits in *California Medical*, 453 U.S. at 197, the BCRA limits in *McConnell*, 540 U.S. at 138, and Missouri's state-law limits in *Shrink Missouri*, 528 US. at 397. It even upheld flat bars on corporate contributions in *Beaumont*, 539 U.S. at 149, and *National Right to Work*, 459 U.S. at 208. As this precedent makes clear, contribution limits present no serious constitutional question as long as they are not too stingy.

B. Coordinated expenditures are functionally identical to contributions and may be regulated as such.

The second pillar supporting *Colorado II* is the recognition that coordinated expenditures are effectively contributions and can be regulated as such. This second pillar is just as strong as the first.

From the creation of the modern campaign finance system, Congress has always treated coordinated expenditures as contributions. 52 U.S.C. § 30116(a)(7)(B)(i); *see* P.L. 94–283, 94th Cong., 2nd Sess., 90 Stat 475 (May 11, 1976). It did so by providing that "expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate." 52 U.S.C. § 30116(a)(7)(B)(i).

The Court has repeatedly upheld this treatment. The Court recognized in *Buckley* that "controlled or coordinated expenditures are treated as contributions rather than expenditures under the Act." *Buckley*, 424 U.S. at 46 & n.53. It held in *McConnell* that "Congress has always treated expenditures made 'at the request or suggestion of' a candidate as coordinated" because "expenditures made after a 'wink or nod' often will be 'as useful to the candidate as cash'" and "'virtually indistinguishable from [a] simple contributio[n].'" *McConnell*, 540 U.S. at 221–22 (first quoting 2 U.S.C. § 441a(a)(7)(B)(i) and then quoting *Colorado II*, 533 U.S. at 442, 446) (alterations in original).

Moreover, in invalidating restrictions on independent expenditures, the Court has repeatedly distinguished them from coordinated expenditures and emphasized that the latter remain subject to regulation. As Justice Scalia explained in *Wisconsin Right to Life,* "[n]o one seriously believes that *independent* expenditures could possibly give rise to *quid-pro-quo* corruption without being subject to regulation as *coordinated* expenditures." *FEC v. Wis. Right to Life*, 551 U.S. 449, 490 n.4 (2007) (Scalia, J., concurring in part). And the Court emphasized in *Citizens United* that the corporate independent expenditures at issue were "[b]y definition ... not coordinated with a candidate." *Citizens United*, 558 U.S. at 360.

The consistent treatment of coordinated expenditures as contributions is well-founded. As one former Congressman explained, if the party paid for a candidate's million-dollar advertising campaign, "it would be the equivalent of a $1 million contribution to the candidate." JA173. And in many instances, "the candidate manages the purchases and passes the bills to the party committee," making coordinated expenditures "closer to a contribution than to an expenditure." JA052–53.

In sum, the party coordinated expenditure limits that Petitioners challenge are properly treated as contributions because, like any coordinated expenditures, they are just as useful to a candidate as cash. *Colorado II* was on firm ground in so holding, and neither Petitioners nor Federal Respondents make any meaningful argument otherwise.

C. The party coordinated expenditure limits are not fundamentally different.

For Petitioners and Federal Respondents to prevail in arguing that the party coordinated expenditure limits are unconstitutional, they would need to show that these limits are so different from other contribution limits that have been repeatedly upheld as to require a different result. They make no such showing.

At the outset, their challenge runs headlong not only into *Colorado II*, but also into *Colorado I* and *McConnell*, each of which rejected attacks on the coordinated party expenditure limits. In *Colorado I*, the Court granted certiorari to consider whether the coordinated party expenditure limits violated the First Amendment "either facially or as applied," but it then held the limits unconstitutional only as applied to independent expenditures. *Colorado I*, 518 U.S. at 613. In doing so, it emphasized that the Court's "prior cases have permitted regulation of similarly coordinated expenditures by individuals and other political groups." *Id.* at 624. In *Colorado II*, the Court then squarely upheld the facial validity of the coordinated party expenditure limits. 533 U.S. at 437. And in *McConnell*, the Court invalidated a provision of BCRA that would have forced parties to choose between making independent and coordinated expenditures—a decision that would have been unnecessary if the coordinated limits were themselves unconstitutional. *McConnell*, 540 U.S. at 217–19.

Petitioners and the Federal Respondents offer far too little to overcome this precedent. They argue that coordinated party expenditure limits impede political parties' core functions, but this argument overstates the limits' effects and mistakes a unique benefit for a unique burden. Eliminating the coordinated party expenditure limits would weaken parties, not strengthen them.

1. Coordinated party expenditure limits are a benefit that enhances, not impedes, political parties' core functions.

Many of a party's most important functions do not implicate the coordinated party expenditure limits or are exempted from them. These functions include deciding on a platform, setting up headquarters, developing messaging, recruiting candidates, hosting conventions, registering supporters, encouraging voter turnout, distributing certain campaign materials, fundraising, and protecting its supporters' voting rights.

Those activities lie at the core of political parties' status as parties, and to ensure that parties can engage in them unimpeded—even where coordination with candidates might be necessary—Congress exempted many of them from both contribution and coordinated party expenditure limits. *See, e.g.*, 52 U.S.C. § 30116(d)(5), (a)(9) (tripling limit on contributions for headquarters, conventions, and legal proceedings and exempting those accounts from coordinated party expenditure limits); *id.* § 30101(8)(B)(xi), (9)(B)(ix) (exempting certain state and local party voter registration and get-out-the-vote activities from coordinated party expenditure limits); *id.* § 30101(8)(B)(ix), (9)(B)(viii) (exempting campaign materials distributed by state and local party volunteers from coordinated party expenditure limits).

Parties also exercise a critical candidate-nominating function. By federal statute, that nominating function is the defining feature of political parties that distinguishes them from other political organizations or interest groups. 52 U.S.C. § 30101(16). Parties therefore have unique rights related directly to that nominating process. *See Cal. Democratic Party v. Jones*, 530 U.S. 567, 568 (2000) (holding that a state could not require party to permit non-party members to vote in the party's primary elections because "the First Amendment reserves a special place, and accords a special protection, for [a party's candidate-selection] process"). But the coordinated party expenditure limits do not impair a party's nomination-related rights.

Parties also have an important electioneering role, and that role *is* regulated by the coordinated party expenditure limits. But the regulation is eminently reasonable. Like anyone else, parties are free to engage in as much of their own, independent expenditures and expression as they want.

Colorado I, 518 U.S. at 618. Party leaders and staff are also free to provide candidates with strategic and policy advice, assist with fundraising, and offer myriad other forms of assistance without implicating the contribution and expenditure limits at all. *See* 11 C.F.R. § 106.1(c)(1).

Unlike anyone else, parties are *also* free to engage in substantial coordinated expenditures—the coordinated party expenditure limits "greatly exceed the contribution limits that apply to other donors." *McConnell*, 540 U.S. at 188. Parties are therefore uniquely empowered to subsidize more candidate speech than any other group in American politics.

This special treatment is good policy. Intervenors share Petitioners' fondness for parties, and Congress reasonably accommodated the need for substantial coordination between parties and candidates by adopting the challenged limits. Those limits—and the regulatory exemptions for general "personnel, ... fundraising, and other day-to-day costs of political committees" not made on behalf of or directly attributable to a candidate, 11 C.F.R. 106.1(c)(1)—give parties room to work closely with candidates on many issues. And by exempting independent expenditures, they impose no cap at all on the party's own speech.

What the challenged limits bar is unlimited coordinated subsidies by parties to candidates. But no one in American politics can offer that. And parties do not stand alone in "exist[ing] to get [their] candidates elected." Pet. Br. 1. Many traditional PACs and Super

PACs have the same ultimate purpose—some even support party slates for House and Senate, just like Petitioners.[5] But while Petitioners contend that "Super PACs are seen to be moving in the direction of assuming most of the functions of parties," Pet. Br. 48 (quoting JA246 n.45), Super PACs cannot engage in coordinated expenditures at all. Those "functions of parties" that Petitioners say Super PACs are assuming, then, must be ones that do not require coordinated expenditures. The comparison to Super PACs therefore does nothing to support granting parties even more coordinated expenditure authority, as Petitioners demand.

Petitioners are also wrong to say that the Constitution treats candidates and parties as inseparable. Quite the opposite. The Constitution does not mention parties at all. Unlike in other countries, Americans vote for candidates, not party lists; the Constitution has no system of party control;

[5] *See Congressional Leadership Fund*, https://congressionalleadershipfund.org ("The super PAC dedicated to electing Republicans to the House of Representatives."); *Senate Leadership Fund*, https://senateleadershipfund.org (according to Senate Majority Leader John Thune, "Senate Majority Fund is the leading organization dedicated to ... maintaining and growing the **Senate Republican Majority**.") (emphasis in original).

and parties cannot expel members from power.[6] The Framers were famously suspicious of parties. *See, e.g.*, George Washington, *Farewell Address to the People of the U.S. of America* 8 (A. Boyd Hamilton publ. Sept. 17, 1797); 2 *Debates in the State Conventions* 10 (Fisher Ames) (excerpt Jan. 15, 1788). Parties are political factions, and the Constitution was structured to *prevent* factional control. *See, e.g.*, *Debates in the State Conventions* 320 (Hamilton) (excerpt June 25, 1788). If Petitioners prevail and officeholders come to depend on the largesse of coordinated party expenditures, the independent judgment on which the Framers wagered the health of our democracy will be endangered.

Nor have the coordinated party expenditure limits meaningfully weakened parties. "[T]he [Republican] Party's claim that coordinated spending beyond the limit imposed by the Act is essential to its very function as a party amounts implicitly to saying that for almost [six] decades political parties have not been functional." *Colorado II*, 533 U.S. at 449. That assertion is just as wrong today as it was in 2001. Both

[6] *Contrast, e.g.*, Philippines Const. art. VI, § 5 (providing that up to twenty percent of the House of Representatives "be elected through a party-list system"); Sweden Const. art. VII (granting legislative seats proportionally to parties receiving at least four percent of national vote); S. Afr. Const. ch. IV, art. 47(3)(c) ("A person loses membership of the National Assembly if that person ... ceases to be a member of the party that nominated that person as a member of the Assembly."); Bangladesh Const. pt. V, ch. I, art. 70 (requiring a member of parliament to "vacate his seat" if he "votes in Parliament against [his] party").

major parties are setting fundraising records, supporting their nominees, and advancing their platforms, all under the challenged limits.

The argument that the coordinated party expenditure limits have favored other political groups like Super PACs at the expense of parties is also entirely illogical. *E.g.*, Pet. Br. 45, 48. Super PACs cannot engage in *any* coordinated expenditures with candidates, so the comparatively generous coordinated party expenditure limits cannot explain why, as Petitioners claim, "candidates and donors have flocked to Super PACs." *Id.* at 48. Rather, Super PACs' regulatory advantage is their ability to receive unlimited contributions from each donor. Pet. Br. 48. But even Petitioners do not argue that the contribution limits for parties (which total more than $1 million per donor per year across all of a party's state and national committees) are unconstitutionally low. Rather, Petitioners suggest Congress could lower them further still, *see id.* at 32—medicine that is sure to weaken parties relative to Super PACs, not strengthen them.

2. Eliminating coordinated expenditure limits would weaken parties.

The fact that Congress's allowance for *some* coordinated expenditures advantages party committees does not imply that parties would benefit from authorizing *unlimited* coordinated expenditures. Quite the contrary—eliminating the cap would jeopardize core party functions.

Because party committees can amass greater financial resources than most candidate committees, candidates in close elections inevitably ask that party committees amplify their speech and cover their bills. But every dollar spent funding a candidate's advertisement or campaign expense is a dollar not spent on party-building, so the allowance for coordinated expenditures trades parties' short-term interests against their enduring party-building responsibilities.

By capping coordinated expenditures, current law ensures that parties do more than merely subsidize candidate speech. Eliminate that cap, however, and party committees will risk becoming glorified fundraisers for select candidates, as ever-growing shares of their resources are sucked into the vortex of electioneering in the closest races.

It is no rebuttal to observe that party committees could choose to harbor their resources for unique institutional priorities. Electoral competition is a collective action problem. Both major parties may prefer to spend their money on long-term party-building activities, but they will each face strong short-term pressure to try to advantage their candidates in the next election. Neither party can unilaterally forfeit that advantage, so the equilibrium will have major parties funneling ever-greater sums toward swing-district and swing-state candidates and forgoing traditional party functions.

Eliminating the challenged limits would therefore trigger the very party decline that Petitioners say they want to avoid. If parties become pass-through entities for funding candidate speech, other outside political committees that remain restricted from coordinated electioneering will increasingly take over "on-the-ground political operations" like door-to-door canvassing that form the heart of parties' community organizing and party building functions. Pet. Br. 48. And given the exigency of controlling government, the small number of tipping-point contests will vacuum an ever-larger share of campaign dollars. Party committees may become little more than mega-donors to a few favored candidates—hardly parties at all.

3. Petitioners do not articulate a constitutional basis to cabin unlimited coordinated expenditures to party committees.

Perhaps worse, if the Court recognizes a right for parties to engage in unlimited coordinated expenditures, Petitioners offer no constitutional basis for limiting that right only to coordinated expenditures, or only to parties. Accepting Petitioners' arguments would therefore imperil the entire campaign finance system, and ultimately weaken, rather than strengthen, parties by taking away their special advantage in coordinated expenditures.

First, any decision invalidating parties' coordinated expenditure limits would call into question the existing limits on parties' *contributions* to candidates. If parties have the right to spend unlimited sums to pay candidate bills, it is hard to see why they should not have the right to transfer the same unlimited funds for candidates to spend directly.

Second, any such decision would call into question the application of contribution limits to coordinated expenditures by PACs. If any organization that exists to elect candidates can claim a constitutional right to coordinate unlimited expenditures with those candidates, then traditional PACs and even Super PACs will claim that right too. And these PACs will surely demand the right to make unlimited transfers to candidates directly, as well.

Third, FECA's "canonical regulation" limiting individual contributions to candidates would itself be in substantial jeopardy. JA776 (Stranch, J., concurring in the judgment). At a minimum, any time a donor reaches the contribution limit for a given candidate, that donor could create a Super PAC for the stated purpose of electing the candidate and thereby gain—by Petitioners' logic—the right to engage in coordinated expenditures for that candidate. Whether or not the individual contribution limits remain formally in force, they would impose no actual limit on the monetary support individuals could provide to candidates.

Beyond severely escalating the risks of *quid pro quo* corruption, *see Buckley*, 424 U.S. at 26–27, this cascade of deregulation would prove disastrous for party committees, which would lose their comparative advantage in the fundraising landscape. As *Colorado II* recognized, parties' ability to make coordinated expenditures in excess of ordinary contribution limits represents a "special privilege," 533 U.S. at 455—an accommodation properly afforded by Congress in recognition of parties' special electoral status. Transforming that calibrated statutory privilege into an unlimited constitutional right would severely undermine the entire campaign finance system and risk forfeiting parties' advantage entirely.

D. This Court correctly held that coordinated party expenditure limits are properly tailored.

Petitioners contest the tailoring of the coordinated party expenditure limits, but that also fails. As this Court has explained—and as Petitioners accept—Congress was not required to employ "the least restrictive means" in this context because "a means narrowly tailored to achieve the desired object" is sufficient; the Constitution requires "a fit that is not necessarily perfect, but reasonable." *McCutcheon*, 572 U.S. at 218 (quoting *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989)). The coordinated party expenditure limits are well suited to the task.

This Court's longstanding acceptance of reasonable contribution limits reduces "[t]he quantum of empirical evidence needed to satisfy heightened judicial scrutiny." *Shrink Mo. PAC*, 528 U.S. at 391. The Court has held for decades that contribution limits are appropriate to prevent actual and perceived *quid pro quo* corruption, and that coordinated expenditures are equivalent to contributions. *See supra* Sections II.A, B. By the time of *Colorado II*, experience "show[ed] beyond serious doubt" that contribution limits would be eroded by unlimited coordinated party expenditures. 533 U.S. at 457. The Court pointed to evidence of informal, tacit understandings between donors and parties to direct funds to particular candidates, and reasoned that "if a candidate could be assured that donations through a party could result in funds passed through to him," that candidate would have a "strong incentive" not just to direct donors to the party "but to promote circumvention" in order to save time cultivating potential donors. *Id.* at 460. There is therefore a risk that parties might "act as agents for spending on behalf of those who seek to produce obligated officeholders." *Id.* at 434.

Since then, the evidence has only grown. In 2010, RNC officials admitted that "they themselves have already taken steps to circumvent the Act's individual donor contribution limits." *In re Cao*, 619 F.3d at 428. And a former Republican Congressman testified that he "personally suggested to donors who had given the maximum amount to his campaign that they could also contribute to the party." *Id.* These incidents more than satisfy the quantum of evidence required to justify the limits on coordinated party expenditures.

The alternatives proposed by Petitioners and Federal Respondents are either confused or inadequate to protect the interest in preventing corruption or its appearance. Petitioners first advocate equal coordinated party expenditure limits on every Senate race. Pet. Br. 18. But Congress's choice to tailor the Senate limits based on state population figures is reasonable because population provides a good proxy for relative campaign costs. JA805 (Stranch, J., concurring in the judgment). And this Court has refused to second-guess legislative determinations of appropriate contribution limits provided only that they are not "so low as to impede the ability of candidates to" raise adequate money. *Shrink Mo. PAC*, 528 U.S. at 397. Petitioners do not make that showing, and they could not possibly do so with spending on congressional races setting new records in every election cycle.[7]

Second, Petitioners argue that the regulation of coordinated party expenditure limits in addition to donor contribution limits, earmarking restrictions, and disclosure requirements will "lead[] any rational donor to take his money to a Super PAC." Pet. Br. 14. But no rational donor would do any such thing, because as explained above, the coordinated party expenditure limits are a unique privilege of parties that Super PACs do not share, while both types of committees are equally free to engage in independent expenditures. Super PACs are *less* able to coordinate with candidates than parties, so a donor who prizes

---

[7] NRCC Fundraising Overview, OpenSecrets, available at https://www.opensecrets.org/political-parties/NRCC/2024/summary (last accessed Sep. 22, 2025) (in each cycle since 2014, exceeding either fundraising, spending, or both, of prior cycle); NRSC Fundraising Overview, OpenSecrets, available at https://www.opensecrets.org/political-parties/NRSC/2024/summary (last accessed Sep. 22, 2025) (same).

coordination would always donate to a party committee first.

Finally, Federal Respondents propose that "the government could enforce laws regulating earmarking" of party contributions for the benefit of specified candidates. FEC Br. 32. But Federal Respondents *are* the government officials charged with enforcing FECA's earmarking ban, *see* 52 U.S.C. § 30106(b)(1), and they give no indication how their efforts could be improved. The earmarking ban is insufficient to protect Congress's anticorruption interests because it can "reach only the most clumsy attempts to pass contributions through to candidates" and "ignores the practical difficulty of identifying and directly combating circumvention under actual political conditions." *Colorado II*, 533 U.S. at 462. The same goes for the "disclosure requirements" and all of the other prophylaxes that Petitioners and Federal Respondents highlight, *see* FEC Br. 33; Pet. Br. 23, none of which would serve to disclose or prevent actual corruption, or reduce the public's reasonable concern that uncapped contributions enable it.

III. *Stare decisis* considerations weigh strongly in favor of following *Colorado II*.

Stare decisis is the bedrock of our common-law legal system. "'[I]t is an established rule to abide by former precedents,' to 'keep the scale of justice even and steady, and not liable to waver with every new judge's opinion.'" *Ramos v. Louisiana*, 590 U.S. 83, 116 (2020) (Kavanaugh, J., concurring in part) (quoting 1 W. Blackstone, Commentaries on the Laws of England 69 (1765)). Without a general expectation that the holdings of prior cases will be applied to future cases, there is no law at all. *See Vasquez v. Hillery*, 474 U.S. 254, 265 (1986). "[T]he doctrine of *stare decisis* always requires 'reasons that go beyond mere demonstration that the overruled opinion was wrong,' for 'otherwise the doctrine would be no doctrine at all.'" *Ramos*, 590 U.S. at 120 (Kavanaugh, J., concurring in part) (quoting *Hubbard v. United States*, 514 U.S. 695, 716 (1995) (Scalia, J., concurring in part and concurring in judgment)).

This Court has identified four considerations that guide whether to overturn even precedent deemed "egregiously wrong." *Id.* at 121 (Kavanaugh, J., concurring in part). First, the challenged decision's "consistency with other related decisions," *Janus v. AFSCME, Council 31*, 585 U.S. 878, 917 (2018), and any "disruptive effect on other areas of the law," *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 266–68 (2022). Second, factual changes. *Id.* Third, the "absence of concrete reliance" and problems with "the 'workability' of the rules [] imposed on the country." *Id.* at 266–68. And fourth, the Court's proper constitutional role and the need to reserve quintessential policy decisions for legislative decisionmakers. *See, e.g.*, *Allen v. Milligan*, 599 U.S. 1, 39 (2023); *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 462 (2015) (recognizing that even if prior decision "relied on an economic misjudgment, Congress is the right entity to fix it").

Colorado II was correct and well-reasoned. That alone is enough to affirm the judgment of the Sixth Circuit. But even if members of this Court would not reach *Colorado II*'s "reasoning and its resulting rule" "in the first instance, the principles of *stare decisis* weigh heavily against overruling it now." *Dickerson v. United States*, 530 U.S. 428, 443 (2000).

A. Subsequent cases remain consistent.

Petitioners and Federal Respondents claim that subsequent caselaw undermines *Colorado II*, but their mischaracterizations and selective quotations are insufficient to warrant overruling this venerable precedent. Much of their argument is a rehash of their merits objections. *See* Pet. Br. 36–37; *supra* Section II.D (refuting arguments). And where they attempt to develop a novel argument, asserting that *McCutcheon* introduced a radical new First Amendment analysis, they are wrong.

Federal Respondents cherry-pick from the *dissent* in *McCutcheon* to claim that *Colorado II* rested on an invalid interest in mitigating undue influence, rather than on the legitimate interest in preventing *quid pro quo* corruption and its appearance. *See* FEC Br. 36–37. But the only role that the "undue influence" rationale played in *Colorado II* was to buttress the still-uncontroversial conclusion that "limits on contributions [and coordinated expenditures] are more clearly justified ... than limits on other kinds of unlimited political spending." *See Colorado II*, 533 U.S. at 441. And while *McCutcheon* narrowed the constitutionally relevant form of corruption to *quid* *pro quo* corruption alone, *McCutcheon* reaffirmed *Buckley*'s holding that contribution limits are less constitutionally problematic than other campaign finance restrictions. 572 U.S. at 207–09. *McCutcheon* does nothing to undermine *Colorado II*'s conclusion that contribution and coordinated expenditure limits merit less constitutional scrutiny than independent expenditure limits.

In any event, *quid pro quo* corruption was central to *Colorado II*. The Court explained that "coordinated expenditures are as useful to the candidate as cash, and that such 'disguised contributions' might be given 'as a *quid pro quo* for improper commitments from the candidate.'" *Colorado II*, 533 U.S. at 446 (quoting *Buckley*, 424 U.S. at 47). And in distinguishing coordinated from independent expenditures, it explained that "[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent ... alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Id.* at 464 (quoting *Buckley*, 424 U.S. at 47). *Colorado II*'s analysis, then, is perfectly consistent with the *quid pro quo*-only formulation of corruption later adopted by this Court.

Petitioners and Federal Respondents further claim that *McCutcheon* undermined *Colorado II*'s unanimous consensus "that circumvention is a valid theory of corruption." 533 U.S. at 456; *see* Pet. Br. 19–22; FEC Br. 37–38. But the $25,000 aggregate limit at issue in *McCutcheon* functioned effectively as a constitutionally disfavored expenditure limit, not as a less-suspect contribution limit. The aggregate limit restricted "*how many* candidates and committees an individual may support through contribution," and thereby "den[ied] the individual all ability to exercise his expressive and associational rights" in a way that individual contribution limits do not. *McCutcheon*, 572 U.S. at 204. The per-candidate coordinated party expenditure limits, in contrast, do not prevent any contributor from contributing to as many candidates and parties as they would like to support. They restrict only the degree to which parties—unique among political actors—may coordinate expenditures with candidates in excess of the usual contribution limits.

B. The relevant facts remain consistent.

The Court has held that "far-reaching systemic and structural changes" could justify departing from a prior decision. *South Dakota v. Wayfair*, 585 U.S. 162, 184 (2018) (quoting *Direct Mktg. Ass'n v. Brohl*, 575 U.S. 1, 18 (2015) (Kennedy, J., concurring)). Major factual changes, such as the advent of the Internet or other "[r]apid changes in technology," may undermine the core premises of a decision. *See Citizens United*, 558 U.S. at 364. But here, no factual changes have rendered the reasoning of *Colorado II* erroneous. Petitioners make no showing to that effect.

The FECA amendments that Petitioners highlight as the biggest factual change, *see* Pet. Br. 15, 39, in fact strengthened the tailoring of the coordinated party expenditure limits. In 2014, Congress increased contribution limits to party committees for three types of special-purpose segregated accounts—those used for party headquarters; quadrennial conventions; and recounts, election contests, and other legal proceedings—and exempted spending on those activities from coordinated party expenditures limits. *See* 52 U.S.C. § 30116(a)(9). As then-Speaker of the House John Boehner described on the congressional record, these accounts "are not for the purpose of influencing federal elections" in any way analogous to direct electioneering. 160 Cong. Rec. H9284-03, H9286. Petitioners have previously conceded that the 2014 amendments "did not introduce any new concepts to the law." *See* Comment of NRCC and NRSC (Jan. 30, 2017), Notice 2016-10 (Rulemaking Petition: Implementing the Consolidated and Further Continuing Appropriations Act, 2015), FEC REG 2014-10.[8]

It also does not follow that increased spending by Super PACs, ostensibly at parties' expense due to BCRA's soft-money ban, requires a doctrinal overhaul. *See, e.g.*, Pet. Br. 44–45. Before BCRA, soft money could only be used by "political parties for activities intended to influence state or local elections," *McConnell*, 540 U.S. at 123, so it had no effect on parties' ability to coordinate spending with federal candidates. And because Super PACs are prohibited from engaging in *any* coordinated expenditures, they are not a substitute for coordinated party expenditures. There is no reason to believe that restrictions on parties' ability to influence

[8] Available at https://perma.cc/NKJ2-6FUF.

municipal elections have anything to do with coordinated spending with federal candidates.

Lacking any significant factual developments to point to, Petitioners seek to shift the burden to the law's defenders to prove the *absence* of factual changes—demanding Respondents marshal evidence that *quid pro quo* corruption remains a threat. *See* Pet. Br. 24. It makes no sense, however, to require widespread lawbreaking to justify an existing prophylactic law. And given the dire consequences that a corrupted electoral system poses to our constitutional democracy, the Court permitted governments to take preventative action against perceived risks of abuse "without waiting for it to occur and be detected," even when that preventative action risks infringing other constitutional rights. *Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 686 (2021). Corrupt dealings with candidates are likely to be all-but impossible to prove, or even notice. The *quid pro quo* exchange does not leave a smashed door or empty safe as testament to the violation. A corrupt donation can have all the appearances of a lawful one, and a legislative vote that has been sold can be indistinguishable from one of good conscience. It is precisely because corrupt *quid pro quo* exchanges are so easy to conceal that Congress requires the necessary latitude to mitigate their risk.

In any event, developments in campaign finance since *Colorado II* have *increased*, rather than decreased, the risk of *quid pro quo* corruption, while undermining the ability of a ban on "earmarking to neutralize party conduit corruption." JA808 (Stranch, J., concurring in the judgment). After *McCutcheon* held aggregate contribution limits unconstitutional, *see* 572 U.S. at 220–21, JFCs have emerged as an even more powerful means for parties to jointly raise very large contributions from a single individual donor. JA809.[9] The aggregate contribution limits cabined the possible size of JFCs; with those limits invalidated, a single JFC can raise for even more committees at once. As a result, donors are now able to write one very large check to a JFC, capped only at the aggregate contribution limit of all participating entities, with no limit on how many entities may participate. *See* 11 C.F.R. § 102.17(c)(5); *see also* JA808–09 (citing Br. of *Amici Curiae* Campaign Legal Ctr. & CREW at 22–27)). JFCs—which are often named after a candidate or elected official running for office—then divvy up the contributions via a waterfall among the participating entities at agreed-upon allocations.[10] And, most striking, many of those

[9] Notably, JFCs may be formed between any number of state and national party committees across the states and territories of the United States.

[10] For example, in 2024, Ted Cruz Victory Fund collected numerous contributions of well over $100,000 each, totaling over $19 million. About 80% of that total was transferred out of the committee, including $6.7 million to the NRSC, $3.1 million to the Republican Party of Texas, and just under $3 million to Ted Cruz's campaign itself. *See Ted Cruz Victory Fund Summary, 2024*, OpenSecrets, available at https://www.opensecrets.org/joint-fundraising-committees-jfcs/ted-cruz-victory-fund/C00849778/2024/summary (last accessed Sep. 26, 2025).

participating entities may be state party committees that are free legally to immediately transfer the resulting contributions to the relevant national party committee. *See* 52 U.S.C. § 30116(a)(4).

As a result, a candidate-sponsored JFC can raise—from a single donor, in a single year—up to $7,000 for the candidate's committee ($3,500 per election), $44,300 for the national party committee, and $10,000 for each of the more than 50 "state" political parties, for a total of almost $600,000—or more, if more accounts or committee are added. The first $3,500 goes straight to the candidate's primary campaign; the next $3,500 to their general election campaign; the rest can be immediately transferred by each state party to the relevant national committee. And if Petitioners and Federal Respondents have their way, the national committee could then spend all of that money to pay invoices for the candidate's campaign. And with all of the contributions to the candidate-named JFC carefully tracked and publicly reported, the beneficiary candidate is "well aware of who contributed what" and "how the selected party committee intends to use the funds," thereby generating "even more reason to reward generous donors with political favors." JA809.

McCutcheon's elimination of aggregate contribution limits and the corresponding rise of ever-larger JFCs has therefore left the coordinated party expenditure limits as the last barrier preventing individual donors from contributing enormous sums to directly benefit particular candidates via coordinated expenditures. The risk of *quid pro quo* corruption, or at least the appearance of it, is every bit as obvious as when *Colorado II* was decided.

C. Political actors and Congress have structured their activities in reliance on *Colorado II*'s rule.

As this Court has observed, "the desirability that the law furnish a clear guide for the conduct of individuals" is "often considered the mainstay of *stare decisis*." *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 403 (1970); *Bendix Autolite Corp. v. Midwesco Enters.*, 486 U.S. 888, 897–98 (1988) (Scalia, J., concurring in the judgment) (indicating that "the ultimate objective of the rule of *stare decisis*" is enabling and protecting "confident expectations"); Amy Coney Barrett, *Originalism and Stare Decisis*, 92 Notre Dame L. Rev. 1921, 1921 (2017) ("*Stare decisis* is a sensible rule because, among other things, it protects the reliance interests of those who have structured their affairs in accordance with the Court's existing cases.").

Colorado II contains no "ambiguities" causing confusion. *Dobbs*, 597 U.S. at 283. The decision has produced neither "inconsistent results," *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 547 (1985), nor a "long list of Circuit conflicts," *Dobbs*, 597 U.S. at 284; *see In re Cao*, 619 F.3d at 410; JA709–11. The coordinated party expenditure rule is crystal clear, and parties rely on it as such. On the other hand, "[i]f the Court were to overrule [this] precedent[], a number of other major decisions also would have to be reconsidered." *Welch v. Tex. Dep't of Highways & Pub. Transp.*, 483 U.S. 468, 494 (1987). A wider revolution in campaign finance doctrine, in turn, would wreak correspondingly greater havoc.

The entire campaign finance apparatus is constructed on the foundation of FECA's contribution limits. In addition to limiting contributions from donors to candidates, Congress limited contributions from donors to traditional PACs and party committees, and from traditional PACs and party committees to candidates, precisely because committees can serve as conduits for transferring cash from donors to candidates. Contributions to Super PACs, in contrast, are unlimited because Super PACs cannot contribute to candidates at all.

If the Court holds that coordinated party expenditures are no longer equivalent to contributions and cannot be restricted, then the tapestry unravels. The logical endpoint would allow donors to pay candidates' bills, in unlimited amounts. The careful taxonomy of political committees that Congress created will be completely scrambled.

At a more granular level, overruling *Colorado II* threatens to destabilize the lowest-rate-charge system for political advertising that has been in place for decades. As amended in 1972, the Federal Communications Act "requires that, 45 days before a primary or 60 days before a general election, broadcast stations must sell a qualified candidate the 'lowest unit charge of the station for the same class and amount of time for the same period.'" *McConnell*, 540 U.S. at 224–25 (Rehnquist, C.J.) (quoting 47 U.S.C. § 315(b)(1)). As a result, when candidates book airtime during high-demand election seasons, they are entitled to pay the cheapest rate that the station has sold to any other advertiser. Congress provided this privilege "to improve the position of *candidates* by putting them on a par with broadcasters' most favored advertisers during the pre-election period." *Hernstadt v. FCC*, 677 F.2d 893, 900–01 (D.C. Cir. 1980) (emphasis added). In contrast, "independent expenditures do not qualify for the lowest rates on the purchase of broadcasting time, as coordinated expenditures would." *FEC v. Colo. Republican Fed. Campaign Comm.*, 41 F. Supp. 2d 1197, 1210 (D. Colo. 1999) (citing uncontested facts).

Congress enacted the lowest-unit-charge requirement in 1971, after FECA's enactment but before *Buckley*. It then chose to leave the rules unchanged when it enacted BCRA in 2002, and it considered but declined to extend lowest-unit-charge privileges to party committees in 2010. *See* DISCLOSE Act, S.B. 3295, 111th Cong. (2010). Congress therefore accepted lowest-unit-charge's application to the limited amount of candidate committee spending, but it never authorized lowest-unit-charge's application to a limitless deluge of advertisements from party committees—and broadcasters made clear they would oppose any such extension.[11]

If limits on coordinated party expenditures are eliminated, however, then Congress's scheme is upended. Broadcasters across the country will face significant increases in advertisements that purport to qualify for lowest unit rates, thereby inflicting a substantial financial strain upon them. Overruling *Colorado II* therefore threatens broadcasters' "very concrete reliance interests, like those that develop in 'cases involving property and contract rights.'" *Dobbs*, 597 U.S. at 288 (quoting *Payne v. Tennessee*, 501 U.S. 808, 828 (1991)).

Finally, in the decades since FECA's coordinated party expenditures limits have been enacted and upheld, political parties and candidates have structured their behavior accordingly. Precisely because they are saved by the limits from funneling all of their money to paying the bills of candidate committees, parties have made major investments in building out their own electioneering infrastructure to promulgate their own speech as a complement to candidate advertising. Should Petitioners succeed in enjoining enforcement of the coordinated party expenditure limits, however, parties will be incentivized to shutter those efforts and fully exploit their singular ability to funnel resources to a few

[11] *See Political Advertising and the Lowest Unit Charge*, Nat'l Assoc. of Broads. (rev. Nov. 2010), https://perma.cc/A8F6-NC5H (emphasizing that the trade association "strongly opposes changes to the lowest unit charge").

swing-state or swing-district candidates. This seismic shift in incentives will create new opportunities for corruption, requiring scrupulous party committees to increase their measures to dissuade donors from seeking *quid pro quo* favors while always wondering if their opponents are being equally vigilant. The significant reliance interests reflect that the regulatory regime has functioned smoothly, and that, too, counsels in favor of staying the course.

D. Congress's special expertise in this area warrants deference.

Though Petitioners frame their claim as a constitutional challenge, many of their arguments sound in public policy and political theory rather than law. *See, e.g.*, Pet. Br. 47–48 (arguing that a relative decline in party strength has caused polarization); *id.* at 44–45 (arguing that BCRA increased the attractiveness of Super PACs to donors); *id.* at 16–17 (opining on the purpose of political parties). "They relate to the wisdom, need, and effectiveness of a particular project. They are therefore questions for the Congress not the courts." *State of Oklahoma ex rel. Phillips v. Guy F. Atkinson Co.*, 313 U.S. 508, 527 (1941); *cf. Davis v. FEC*, 554 U.S. 724, 737 (2008) ("When contribution limits are challenged as too restrictive, we have extended a measure of deference to the judgment of the legislative body that enacted the law."); *Trump v. CASA, Inc.*, 606 U.S. 831, 856, (2025) (recognizing that "with most questions of law, the policy pros and cons are beside the point").

It is for Congress, rather than the federal judiciary, to structure different kinds of political committees in different ways with different bundles of regulatory advantages. It is for Congress to situate the parties within the array, and to determine whether privileges afforded to that organizational form enhance or degrade civic life. And it is for Congress to gauge the precise dollar figure of coordinated party expenditures that appropriately enhance parties' appeal relative to PACs in the fundraising landscape without hollowing out parties' other core functions.

The existing campaign finance regime reflects the nimble application of congressional expertise. Political donors have a menu of options, each customized for different goals. Candidate committees directly fund the activities of specific candidates in specific elections; traditional PACs facilitate contributions to a subset of aligned candidates; Super PACs allow for unlimited outside support for favored candidates; and party committees are designed for long-term investments in voter persuasion and mobilization, *plus* they can support candidates directly with strategic advice, direct contributions, and coordinated expenditures, *plus* they can engage in unlimited independent advertising. Far from being hostile to political parties, the current regime awards them a surplus of regulatory advantages.

Congress's decision to limit parties' coordinated expenditures is best viewed in this light—as a considered effort to privilege parties by providing beneficial differentiation in the fundraising marketplace while preserving their principal infrastructure-building purpose. This special solicitude for parties is no accident; as this Court has previously recognized, "[t]he national committees of the two major parties are both run by, and largely composed of, federal officeholders and candidates." *McConnell*, 540 U.S. at 155; *see* JA450–54, 459–60 (confirming this remains the case). Congressional leaders knew exactly what party committees need to succeed, and they legislated accordingly. And while the Court has historically suspected that campaign finance laws are crafted to benefit incumbents, e.*g*., *Cruz*, 596 U.S. at 304, the coordinated party expenditure limits have the opposite effect. Incumbents control the party committees, so further relaxing restrictions on the committees would systematically benefit the incumbents—and harm those who would challenge them.

Still today, "determining which measures suitably balance the nurture of political parties and the prevention of their use as tools of corruption is a matter for the legislative rather than the judicial process." *FEC v. Colo. Republican Fed. Campaign Comm.*, 213 F.3d 1221, 1239 (10th Cir. 2000). Congress can adjust limits if and when factual circumstances warrant. *See* JA804–06 (Stranch, J., concurring in the judgment). And "critics of [coordinated party expenditure limits] can [still] take their objections across the street, and Congress"—which is currently controlled by NRSC's and NRCC's leadership—"can correct any mistake it sees." *Kimble* *v. Marvel Ent., LLC*, 576 U.S. 446, 456 (2015); *see also Kisor v. Wilkie*, 588 U.S. 558, 587 (2019).

IV. Petitioners' as-applied challenge is redundant of their facial challenge.

Petitioners also challenge the party coordinated expenditure limits as applied to "party coordinated communications," defined in 11 C.F.R. § 109.37. *See* Pet. Br. 3. Petitioners characterize their challenge as "targeting the limits' application to a 'party's own speech,' as opposed to mere 'payment of the candidate's bills.'" *Id.* at 39. This challenge fails several times over.

First, Petitioners' drive-by as-applied challenge, developed in a few sparse paragraphs, Pet. Br. 39–40, is indistinguishable from their facial challenge. Petitioners do not argue in this Court that expenditures subject to the regulation demand greater First Amendment protection than other coordinated expenditures, nor that the caps are less tailored as applied to those expenditures. Fifteen of the 16 judges on the Sixth Circuit rejected the notion that Petitioners' as-applied challenge was analytically distinct from their facial challenge, with the lead opinion emphasizing that the "party coordinated communications" subject to Petitioners' as-applied challenge constitute 97 percent of all coordinated expenditures subject to their facial challenge. JA725; JA679–82. Their attempt to "bring an as-applied challenge to a statutory provision based on the same factual and legal arguments the Supreme Court expressly considered when rejecting a facial challenge to that provision" is "not so much an as-applied challenge as it is an argument for overruling a precedent." *In re Cao*, 619 F.3d at 430 (citing *RNC v. FEC*, 698 F. Supp. 2d 150, 157 (D.D.C. 2010) (three-judge panel) (Kavanaugh, J.), *aff'd*, *RNC v. FEC*, 561 U.S. 1040 (2010) (Mem.)). The relevant precedent, *Colorado II*, cogently explains why *all* coordinated expenditures may be limited, and it remains good law. *See supra* Parts II, III.

Second, Petitioners' implicit suggestion that all party coordinated communications involve the party's own speech is incorrect. Petitioners suggest here for the first time that "the Committees seek the freedom to run their own ads while still obtaining input from the candidates." Pet. Br. 39. But "[n]othing in their complaint or briefs limits this challenge to specific settings that do not involve coordination or to a specific type of advertisement." JA724. Petitioners could have challenged coordinated party expenditure limits as applied to a specific subset of party coordinated communications—for example, those that "expressly advocate[] the election or defeat of a clearly identified candidate for Federal office," or those that "refer[] to a clearly identified" candidate shortly before an election. 11 C.F.R. § 109.37(a)(2)(ii) and (iii). But Petitioners have challenged coordinated party expenditure limits as applied to *all* coordinated party communications—which expressly include advertisements that simply "disseminate[], distribute[], or republish[]" materials "prepared by a candidate." *Id.* § 109.37(a)(2)(i). Such dissemination, distribution, or republication is the equivalent of simply paying a candidate's bills.

Third, the distinction that Petitioners now try to introduce between coordinated expenditures on advertising and coordinated expenditures on other campaign expenditures is illusory. Petitioners seem to suggest that coordinated advertising is more likely to contain elements of party committees' unique speech than coordinated payment for "a candidate's travel bills," Pet. Br. 39, but that is not necessarily so. The record here reflects party committees paying candidates' media invoices without any apparent involvement in the creative process, and Petitioners do not try to carve that out from their as-applied challenge. *See* JA187–207.

Petitioners' as-applied challenge therefore fails, too.

CONCLUSION

The Court should dismiss for lack of jurisdiction or affirm.

Respectfully submitted,

Marc E. Elias
Counsel of Record
David R. Fox
Jacob D. Shelly
Omeed Alerasool
Julianna D. Astarita
ELIAS LAW GROUP LLP
250 Massachusetts Ave. NW,
Suite 400
Washington, DC 20001
(202) 968-4490
eliasm@elias.law

Counsel for Intervenor-Respondents DNC, DSCC, and DCCC