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 COURT-APPOINTED *AMICUS CURIAE*

ROMAN MARTINEZ
Counsel of Record
MARGARET A. UPSHAW
CHRISTINA R. GAY
TIMOTHY J. BORGERSON
NATHANIEL G. BERRY
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-3377
roman.martinez@lw.com

September 29, 2025

QUESTIONS PRESENTED

1. Whether this case is non-justiciable under Article III of the Constitution, or should otherwise be dismissed as improvidently granted.

2. Whether the First Amendment is compatible with 52 U.S.C. § 30116(d)'s limits on the amount of money that the national committee of a political party may contribute to political candidates in the form of coordinated expenditures.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS—Continued

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

TABLE OF AUTHORITIES—Continued

Page(s)

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

Page(s)

TABLE OF AUTHORITIES—Continued

Page(s)

STATEMENT OF INTEREST

This Court invited Roman Martinez to brief and argue this case, as *amicus curiae*, in support of the judgment below.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Relevant statutory and regulatory provisions are reproduced in the addendum (Add. 1a-44a).

INTRODUCTION

Petitioners want this Court to facially invalidate a federal statute, overrule a long-settled precedent, and blow a hole in the campaign-finance framework that Congress enacted to protect our political system from corruption. The Court should decline the invitation. This case is not justiciable under Article III of the Constitution, for reasons that were not considered below or at the non-adversarial certiorari stage. And petitioners' First Amendment challenge fails on the merits in any event.

The foundation of the Federal Election Campaign Act (FECA) is a series of "base" limits on how much individuals, organizations, political party committees, and others can contribute to candidates. FECA defines contributions to include not only direct cash donations, but also money spent in "coordination" with a candidate, including on ordinary campaign expenses. That makes sense: Paying a candidate's bills is functionally the same as handing him cash.

The provision petitioners challenge in this case, 52 U.S.C. § 30116(d), gives "the national committee of a political party"—i.e., the Republican and Democratic National Committees—a special *exception* from those limits, allowing them to make coordinated expenditures on behalf of a candidate up to a higher cap. Petitioners contend that Section 30116(d) is facially unconstitutional because the First Amendment entitles the RNC and DNC to an *unlimited* exception from the base restrictions that apply to everyone else.

This Court rightly rejected that argument in *FEC v. Colorado Republican Federal Campaign Committee*

(*Colorado II*), 533 U.S. 431 (2001). There, it held that Section 30116(d)'s limits on party coordinated spending are permissible on the same grounds that justify coordinated-spending limits on all others—to prevent *quid pro quo* corruption or its appearance by reducing donors' ability to circumvent the base limits. *Id.* at 442-43, 446 (citing *Buckley v. Valeo*, 424 U.S. 1, 47 (1976)).

Colorado II's foundation remains rock solid. Limits on coordinated expenditures are a vital bulwark against circumvention of the base limits—an interest this Court has repeatedly reaffirmed. Section 30116(d) is closely drawn to address this concern, without unduly impinging on First Amendment activity. And nothing in this Court's jurisprudence supports petitioners' assertion that political parties have broader free-speech rights than anyone else. Indeed, the plurality in petitioners' favorite case, *McCutcheon v. FEC*, expressly *relied* on Section 30116(d) to strike down another campaign-finance provision. 572 U.S. 185, 216 (2014). If the Court reaches the merits, petitioners should lose.

But the Court should *not* reach the merits. Most fundamentally, the case is moot. The Executive Branch—including the Federal Election Commission (FEC)—agrees with petitioners that Section 30116(d) is unconstitutional. There is no longer the actual and imminent threat of enforcement that Article III requires. Indeed, President Trump has squarely prohibited agencies from acting contrary to his legal determinations. The prospect that a future FEC might change position on Section 30116(d) is too speculative and remote to warrant this Court's intervention now.

There are other jurisdictional defects too. The Sixth Circuit lacked interlocutory appellate jurisdiction over the claims brought by the National Republican Senatorial Committee (NRSC) and National Republican Congressional Committee (NRCC). Moreover, Section 30116(d) does not even *apply* to those petitioners. Coordinated expenditures by those committees are governed by the base limits, not Section 30116(d)—and petitioners abandoned any challenge to those limits below. As for the individual petitioners: Neither Vice President J.D. Vance nor former Representative Steve Chabot are active candidates for any particular federal office. None of the petitioners have Article III standing.

These serious jurisdictional obstacles were not considered by the lower courts, raised at the certiorari stage, or addressed by the parties. And they are not mere technicalities—they go right to the heart of this Court's role in our constitutional system. In its current posture, this case is just a naked request for an advisory opinion. That's not what the Court is here for. Bedrock principles of judicial restraint weigh strongly against adjudicating petitioners' constitutional challenge on the merits. The Court should reject that challenge on justiciability grounds or dismiss the petition as improvidently granted.

STATEMENT OF THE CASE

A. Legal Background

1. Since 1971, FECA has been the bedrock of the campaign-finance regime. While elements of this regime have since been amended by Congress, or pared back by this Court, one feature has remained constant: limits on the amount of money individuals, organizations, and political committees can

contribute to a candidate. *See* 52 U.S.C. § 30116(a)(1)-(2). Federal law has imposed these "base limits" for nearly a century, and they have served as a vital check on *quid pro quo* corruption in federal elections throughout that time. *Buckley*, 424 U.S. at 26-29.

FECA also prevents circumvention of the base limits. It defines "contribution" broadly to include not only direct cash payments, but also "expenditures made . . . in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate." 52 U.S.C. § 30116(a)(7)(B)(i). These "coordinated expenditures" are treated as contributions for the obvious reason that, if FECA only limited direct cash payments, donors could easily "avoid[] the[ir] contribution limitations by the simple expedient of paying directly for media advertisements or for other portions of the candidate's campaign activities." *Buckley*, 424 U.S. at 46-47.

FECA also limits the amount an individual may contribute to a "multicandidate political committee"—in addition to limiting how much such committees may contribute to candidates. 52 U.S.C. § 30116(a)(1)-(2); *see also id.* § 30116(h) (higher limits on party committee spending on Senate races). Congress imposed limits on all multicandidate committees—whether a party-affiliated committee like the RNC or NRSC, a corporate or labor union political action committee (PAC), or an independent PAC—to "restrict the opportunity to circumvent the . . . limits on contributions to a candidate." H.R. Rep. No. 94-1057, at 57-58 (1976) (Conf. Rep.). Congress believed political parties were every bit as vulnerable to that circumvention risk as any other

multicandidate committee. *See* 119 Cong. Rec. 26,321, 26,323 (1973); *infra* 34-35.

2. While FECA and its subsequent amendments limited contributions from political committees—including party committees—Congress granted political parties two special accommodations relevant here. First, Congress set higher limits on donations *to* party committees than to other entities. 52 U.S.C. § 30116(a)(1). In its current inflation-adjusted form, donors can give party committees up to $44,300, as compared to limits of $3,500 per election per candidate, and $5,000 per year to "any other political committee."[1]

Congress also created the special coordinated-expenditure exemption at issue in this case, now codified at 52 U.S.C § 30116(d):

> Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party . . . may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2), (3), and (4) of this subsection.

---

[1] FEC, *Contribution Limits*, https://www.fec.gov/resources/cms-content/documents/contribution-limits-chart-2025-2026.pdf.

52 U.S.C. § 30116(d)(1).[2] Sections 30116(d)(2) and (3) impose inflation-adjusted limits of $32,392,200 for presidential campaigns; $127,200 or more depending on state population for Senate campaigns; and $63,600 for most House campaigns.[3]

FECA elsewhere defines "national committee" to mean "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level"—i.e., the RNC and DNC. 52 U.S.C. § 30101(14); *see also id.* § 30101(16) (defining "political party"). Section 30116(d)'s special exemption therefore does not apply to the NRSC or NRCC's spending. Those committees are instead subject to the contribution limits in Sections 30116(a)(2) and (h). *See* JA3-4.

Section 30116(d) thus privileges the lead political party committees—the RNC and DNC—over virtually all other donors. While individuals and PACs can only spend a few thousand dollars in coordination with candidates under the base contribution limits in Section 30116(a), Section 30116(d) allows the RNC and DNC to spend many times that amount on such expenditures.

---

[2] Until 2014, this provision was codified at 2 U.S.C. § 441a(d), and it was cited as such in *Colorado I*, *Colorado II*, *McConnell*, and *McCutcheon*. This brief refers to both versions as Section 30116(d).

[3] FEC, *Coordinated Party Expenditure Limits*, https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/coordinated-party-expenditures/coordinated-party-expenditure-limits/; FEC Br. 8 (listing 2024 limits).

3. Since *Buckley*, this Court has rejected First Amendment challenges to FECA's contribution limits—including both direct payments and coordinated spending—because such donations pose a unique risk of *quid pro quo* corruption. 424 U.S. at 26-27, 46-47, 58. By contrast, the Court has struck down limits on "independent expenditures," which, by definition, are not coordinated with candidates and do not present the same corruption risk. *Id.* at 47. This core distinction—between contributions (including coordinated expenditures) and independent spending—remains the foundation of this Court's campaign-finance jurisprudence. *See, e.g.*, *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 194-97 (1981); *Citizens United v. FEC*, 558 U.S. 310, 345 (2010); *McCutcheon*, 572 U.S. at 196-97; *infra* 31.[4]

This Court has also made clear that "preventing individuals from evading the applicable contribution limitations" is a "permissible purpose" under the First Amendment. *Buckley*, 424 U.S. at 35-36. For instance, in *California Medical*, the Court upheld FECA's limits on the amount a donor can contribute to a multicandidate political committee because those limits help "prevent circumvention of the [base limits] that this Court upheld in *Buckley*." 453 U.S. at 197-98.

In two cases involving the provision at issue here, this Court reaffirmed the basic distinction between contributions and independent expenditures. In *Colorado Republican Federal Campaign Committee v. FEC* (*Colorado I*), 518 U.S. 604 (1996), the Court addressed a First Amendment challenge to Section

---

[4] Unless otherwise noted, citations to *McCutcheon* and *California Medical* are to the plurality opinions.

30116(d)'s limits as applied to *independent* expenditures not made with candidate involvement. Applying *Buckley*, the Court held the limits unconstitutional as applied to such spending. *Id.* at 614-19.

In *Colorado II*, this Court held that Section 30116(d)'s limits on a political party's *coordinated* expenditures are not facially unconstitutional. The Court reaffirmed that, since *Buckley*, it had consistently upheld limits on coordinated expenditures by all "political speakers" *other* than parties. 533 U.S. at 440-43, 445. So the central question in *Colorado II* was whether political parties alone were constitutionally entitled to a blanket exemption from limits that apply to everyone else. *Id.* at 445.

The Court rejected that theory, emphasizing that the very attributes the parties claimed set them apart—for instance, their "capacity to concentrate power to elect"—made them uniquely susceptible "to exploitation as channels for circumventing contribution and coordinated spending limits binding on other political players," like PACs. *Id.* at 455. It emphasized that "all Members of the Court agree[d] that circumvention is a valid theory of corruption," and that the only "bone of contention" was "evidentiary." *Id.* at 456. On that score, the Court concluded that "substantial evidence demonstrate[d] how candidates, donors, and parties test the limits of the current law." *Id.* at 457.

The Court also found Section 30116(d)'s restrictions appropriately tailored to the government's anti-circumvention interest, given "the practical difficulty of identifying and directly

combating circumvention under actual political conditions." *Id.* at 462. It thus upheld the limits.

B. This Litigation

1. Petitioners in this case are the NRSC, NRCC, Vice President J.D. Vance, and former Representative Steve Chabot. JA6-8. In 2022, petitioners filed a First Amendment challenge to FECA's party coordinated-expenditure limits, both facially and as applied to all "party coordinated communication[s]" as defined in 11 C.F.R. § 109.37. JA29-32. Petitioners alleged that they wanted to engage in "coordinated" spending above the statutory limits but were "chilled" from doing so by the "risk of [FEC] enforcement for a violation of those limits." JA7-8, 10-14; JA184. They sought declaratory and injunctive relief that would bar respondents—the FEC and its commissioners—from enforcing those limits against them. JA32.

Petitioners asked the district court to certify their constitutional question to the en banc Sixth Circuit under 52 U.S.C. § 30110, a FECA provision creating interlocutory appellate jurisdiction for constitutional challenges brought by (1) the FEC, (2) "the national committee of any political party," and (3) eligible voters in presidential elections. The district court found that then-Senator Vance and the committees suffered injuries sufficient to establish Article III standing due to the FEC's "real threat of investigation and enforcement of the coordinated party expenditure limits," and it certified their constitutional question to the en banc Sixth Circuit. JA625-26, 642-43.

2. At the Sixth Circuit, a 10-1 majority rejected petitioners' facial and as-applied challenges to Section 30116(d). Writing for the majority, Chief

Judge Sutton explained that *Colorado II* had already "asked and answered" petitioners' challenges, and that petitioners' "claimed changes" in the facts and the law "would not alter *Colorado II* even on its own terms." JA717, 722; *see* JA724-26.

Judges Thapar, Bush, Stranch, and Bloomekatz wrote separate concurrences, each agreeing that *Colorado II* controlled. JA726, 744, 775, 822. Judge Stranch offered a plenary defense of *Colorado II* on the merits. JA793-810. Among other things, she explained that party coordinated spending carries the same corruption risks as direct contributions. JA794-96, 804. Judge Stranch also identified record evidence "confirm[ing] that, absent regulation, political actors will in fact pursue circumvention via party conduits." JA797.

Judge Readler dissented, contending that *Colorado II* did not control and that the limits are facially unconstitutional. JA831-63.

3. In December 2024, petitioners sought certiorari in this Court. After President Trump took office, the FEC abandoned the position it had taken in the Sixth Circuit, agreed with petitioners that Section 30116(d)'s coordinated-expenditure limits are unconstitutional, and urged the Court to grant certiorari and overrule *Colorado II*. FEC Cert. Br. 1-2, 16. The Solicitor General also filed a letter with Congress under 28 U.S.C. § 530D, memorializing the government's new position that Section 30116(d) violates the First Amendment. *See* Letter from D. John Sauer to Mike Johnson (June 3, 2025), https://www.justice.gov/oip/media/1403636/dl?inline (530D Letter).

SUMMARY OF ARGUMENT

This case raises fundamental questions not just about the First Amendment, but also about the Court's power to declare a federal law unconstitutional in the absence of a real-world controversy. The answers are clear: There is no Article III jurisdiction here, and Section 30116(d) is valid. The Court should decline to address the merits, either on justiciability grounds or by dismissing the petition as improvidently granted.

I. For a host of reasons—none of which the lower courts considered—this Court lacks jurisdiction to resolve petitioners' constitutional challenge in its current posture.

Most fundamentally, the case is moot due to the FEC's change of position. In a pre-enforcement challenge, Article III requires a plaintiff to show a real, concrete, and immediate threat of government enforcement. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-59 (2014). Petitioners cannot make that showing here. The government—including the FEC—agrees with them that Section 30116(d)'s limits are unconstitutional. And the President himself has expressly forbidden agency action inconsistent with his understanding of the Constitution. There is no credible risk that the FEC will imminently bring an enforcement action against the Republican congressional committees, Vice President Vance, or former Representative Chabot. That deprives this Court of jurisdiction.

In addition, the NRSC and NRCC are not proper parties here. For one thing, the Sixth Circuit lacked appellate jurisdiction over their constitutional claims. Petitioners and the Sixth Circuit invoked Section

30110's interlocutory jurisdiction, but that provision authorizes expedited appellate review only for claims brought by "three carefully chosen classes of persons"—"[t]he [FEC], the national committee of any political party, or any individual eligible to vote in [a presidential] election." *Bread Pol. Action Comm. v. FEC*, 455 U.S. 577, 581 (1982). The NRSC and NRCC fit none of those categories.

The NRSC and NRCC also lack Article III standing to challenge Section 30116(d)'s limits because those limits do not apply to them. Their coordinated spending is instead governed by the base limits in Sections 30116(a) and (h), which petitioners do not question here. Petitioners' only conceivable Article III hook is an FEC regulation purportedly entitling them to receive "assignments" of the RNC's or State committees' Section 30116(d) authority. But that regulation—11 C.F.R. § 109.33(a)—has no statutory footing and cannot survive *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

Finally, the individual petitioners' claims are moot for reasons beyond the absence of any imminent enforcement threat. The record contains no evidence that former Representative Chabot or now-Vice President Vance currently have any concrete and definite plans to run for any specific federal office—or to accept coordinated expenditures in doing so. On the contrary, Chabot has conceded he will not run again and Vice President Vance has repeatedly disclaimed any concrete plans to do so. That flunks Article III.

II. Petitioners are wrong on the merits in any event. *Colorado II* squarely controls their claims, and they offer no special justification for overruling that decision. There, the Court rightly recognized that

party coordinated expenditures are no different than paying a candidate's bills, and it faithfully applied the level of scrutiny appropriate to such contributions. It also correctly held that Section 30116(d)'s limits are closely drawn to serve the important government interest in preventing donors from using parties as conduits to evade their base limits. Petitioners and the FEC fail to show that any element of *Colorado II*'s analysis was egregiously wrong. And petitioners' as-applied challenge is simply their facial challenge by another name.

Petitioners' request to overrule *Colorado II* would massively destabilize campaign-finance law, threatening many key FECA provisions and imperiling other precedents. It would also unsettle First Amendment doctrine by granting political parties special rights denied to all other speakers. The Court should not set those chain reactions in motion.

III. Rather than rule on jurisdiction and the merits, the Court should dismiss the petition as improvidently granted. To reach the merits, the Court would need to resolve a complex set of justiciability issues that the lower courts did not address. The Court would then need to decide whether to facially strike down an Act of Congress, thereby overturning a settled precedent and destabilizing campaign-finance law more broadly. And it would need to do all of this in an inherently politicized case—and one where petitioners face no realistic prospect of harm because the government concedes Section 30116(d) cannot lawfully be enforced. In these circumstances, dismissal is fair to the parties and the proper course.

ARGUMENT

I. This Court Lacks Jurisdiction

This case no longer presents a live Article III controversy. Petitioners and the FEC are on the same side of the constitutional question, and there are multiple other reasons petitioners lack standing and this Court lacks jurisdiction. In the situation here—where there is "no dispute between opposing parties" and petitioners cannot show a "specific harm" they will "personally suffer"—the Court "has no business assessing the law." Amy Coney Barrett, *Listening to the Law: Reflections on the Court and Constitution* 111-14 (2025).

A. The Case Is Moot Due To The FEC's Change Of Position

1. Article III of the Constitution limits federal "judicial Power" to the adjudication of "Cases" and "Controversies." U.S. Const. art. III, § 2, cl. 1. One "essential and unchanging part of the case-or-controversy requirement" is Article III standing, which requires a plaintiff to show an "'actual or imminent'" injury that is fairly traceable to the defendant's conduct and will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

Article III's requirements apply "at all stages of litigation." *Uzuegbunam v. Preczewski*, 592 U.S. 279, 282 (2021). While the "doctrine of standing generally assesses whether th[e requisite personal] interest exists at the outset, . . . the doctrine of mootness considers whether [such interest] exists throughout the proceedings." *Id.* The mootness doctrine thus requires re-evaluating standing throughout the litigation to ensure a live controversy persists.

This case is a pre-enforcement challenge seeking advance declaratory relief that Section 30116(d) is unconstitutional. Such relief is appropriate only in extraordinary circumstances where there is an "actual" and "imminent" threat that the government will enforce the unconstitutional law against the plaintiffs. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158-59 (2014).

That is a daunting standard. The mere "'chilling effect'" of having an allegedly unconstitutional statute "'on the books'" is not enough. *Whole Women's Health v. Jackson*, 595 U.S. 49, 50 (2021). Article III requires a "concrete" threat of enforcement. *Id.* The threat must be "credible" and "specific," *id.* at 57 (Thomas, J., concurring in part and dissenting in part), not "'imaginary or speculative,'" *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979). It must exist in real life.

2. When this case began in 2022, petitioners argued that they satisfied Article III—and needed pre-enforcement declaratory relief—because they credibly feared that the FEC would enforce Section 30116(d) against their First Amendment activities. JA9-14. That may have been true then, when the FEC was committed to that provision. But no longer.

The Executive Branch—including both the FEC and the Department of Justice—has now formally declared that Section 30116(d)'s coordinated-expenditure limits are unconstitutional. FEC Br. 3, 16-47; 530D Letter. That determination eliminates any real-world threat of FEC enforcement.

The President has a constitutional duty to "take Care that the Laws be faithfully executed," and those laws include the First Amendment. U.S. Const. art

II, § 3. Here, the responsible officials have concluded that the First Amendment trumps Section 30116(d), which by definition means they do not believe it can lawfully be enforced. There is no actual, credible, concrete, specific, or imminent threat that the FEC will nonetheless enforce that provision.

President Trump's own directives confirm this. In Executive Order 14215, President Trump declared that all Executive Branch officials and agencies—including the FEC—are subject to "Presidential supervision and control." 90 Fed. Reg. 10447 (Feb. 24, 2025). The order instructs that his and the Attorney General's "authoritative interpretations of law" are "controlling on all employees in the conduct of their official duties." *Id.* at 10448. It prohibits Executive Branch employees from "advanc[ing] an interpretation of the law as the position of the United States that contravenes the President or the Attorney General's opinion on a matter of law, *including . . . [through] positions advanced in litigation*." *Id.* at 10448-49 (emphasis added).

As applied here, Executive Order 14215 affirmatively bars FEC employees from enforcing Section 30116(d) against anyone. Under the presumption of regularity, the Court must assume Executive Branch officials will follow, not defy, that directive. *Cf. United States v. Chem. Found., Inc.*, 272 U.S. 1, 14 (1926). That presumption is especially rock solid as to the specific petitioners here—Vice President Vance and the NRSC and NRCC. It is fanciful to think that President Trump's unitary Executive Branch will suddenly launch Section

30116(d) enforcement proceedings against his closest political allies.[5]

3. This Court has never confronted this precise situation—an Executive Branch change of position in the midst of a pre-enforcement challenge seeking declaratory relief that a statute is unconstitutional. But Justice Scalia's Article III analysis in *United States v. Windsor* provides a clear roadmap for addressing that issue. 570 U.S. 744, 778-91 (2013) (dissenting). It confirms there is no live Article III controversy here.

In *Windsor*, taxpayer Edith Windsor challenged the constitutionality of Section 3 of the Defense of Marriage Act (DOMA) after the federal government denied her a tax refund because it refused to recognize her same-sex marriage. *Id.* at 753. Mid-litigation, President Obama determined that Section 3 was unconstitutional, though the government continued to dispute Windsor's refund claim to keep the case alive. *Id.* at 753-54. After the lower courts ordered the government to pay the refund, the government petitioned for certiorari, asking this Court to invalidate DOMA. The Court concluded there was a live Article III controversy, but only because the government continued to enforce Section 3 and formally deny Windsor's claim. *Id.* at 758.

Justice Scalia—joined by the Chief Justice and Justice Thomas—would have rejected the government's maneuver on jurisdictional grounds. His dissent attacked the "counterintuitive notion"

---

[5] Reinforcing this, the FEC currently lacks a quorum and cannot launch enforcement proceedings against anyone, and President Trump currently has the right to appoint five new commissioners.

that Article III courts have authority to resolve the constitutionality of a federal law when both the plaintiff and the government agree that the law is unconstitutional and seek affirmance of a lower court's judgment. *Id.* at 778-88. Drawing on separation-of-powers principles, Founding-era evidence, and more than a century of precedent, Justice Scalia explained that the Court is "quite forbidden" to pronounce that a law violates the Constitution unless "that allegation will determine the outcome of a lawsuit, and is contradicted by the other party." *Id.* at 780.

The majority disagreed with Justice Scalia's position—and found an ongoing Article III controversy—based entirely on the government's ongoing enforcement of Section 3 against Windsor. *Id.* at 755-58. As Justice Scalia explained, the *Windsor* case "saw the light of day only because the President enforced [DOMA] (and thus gave Windsor standing to sue) even though he believed it unconstitutional." *Id.* at 786.

This case is far easier than *Windsor*: Here the FEC is *not* enforcing Section 30116(d) against anyone. And Justice Scalia explained what would have happened if President Obama had taken that course in *Windsor*, by "cho[osing] (more appropriately, some would say) neither to enforce nor to defend the statute he believed to be unconstitutional." *Id.* In that event, Justice Scalia concluded,

> Windsor would not have been injured, the District Court could not have refereed this friendly scrimmage, and the Executive's determination of unconstitutionality would have

> escaped this Court's desire to blurt out its view of the law.

Id. at 787. Justice Scalia reached that conclusion even though it meant "some questions of law will *never* be presented to this Court, because there will never be anyone with standing." *Id.* at 781.

The *Windsor* majority did not dispute Justice Scalia's assessment of that hypothetical, which reflects bedrock Article III principles. And the hypothetical describes this exact case. Here, President Trump has chosen not "to defend the statute he believe[s] to be unconstitutional"; he has prohibited his Executive officials from "enforc[ing]" any statute contrary to his legal views; and petitioners have not been injured. *Id.* at 786. There is no adversity and no credible threat of enforcement. As a result, the Court "ha[s] no power to decide this case." *Id.* at 778.

4. No court or party has yet addressed the jurisdictional problem created by the FEC's change in position. Petitioners might speculate that a future FEC—under a different President—could reassess Section 30116(d)'s constitutionality and resume enforcement. But that possibility does not equate to a "*certainly* impending" threat. *Clapper v. Amnesty Int'l, USA*, 568 U.S. 398, 410 (2013) (emphasis added).

After all, the outcome of future elections is inherently uncertain. So is the position of the next President—regardless of party—on the coordinated-expenditure limits. As petitioners emphasize, even some "stalwart defenders of campaign-finance regulation" oppose those limits, and the DNC itself previously argued they were unconstitutional. Petrs. Br. 4, 48; Petrs. Intervention Resp. Br. 1 & n.*

(discussing DNC's *Colorado I* brief). It is impossible to know what fundraising strategies either political party will develop in the interim or where their interests will lie. Regardless, the possibility of an FEC flip-flop *over three years from now* is not the kind of "imminent" threat Article III requires. *Susan B. Anthony*, 573 U.S. at 158-59.

Nor will that possibility chill petitioners' speech today. The Due Process Clause would prohibit a future FEC from targeting petitioners for expenditures made in reliance on the FEC's current position. *See, e.g.*, *PHH Corp. v. Consumer Fin. Prot. Bureau*, 839 F.3d 1, 44-48 (D.C. Cir. 2016) (Kavanaugh, J.) (explaining that "[t]he Due Process Clause does not allow *retroactive* application of" the government's "reversal of position"). So would the doctrine of entrapment by estoppel, as the government recently conceded in a similar context involving reliance on a later-abandoned government interpretation. *See* Gov't Reply Br. 18-19, *Garland v. Cargill*, 602 U.S. 406 (2024) (No. 22-976). And if a future FEC does change position, an appropriate party will be able to seek expedited relief under Section 30110 at that time.

5. Petitioners might also invoke the "voluntary-cessation" doctrine, which typically applies where a defendant tries to moot a case for strategic purposes by halting its challenged conduct while reserving the right to restart it later. In those circumstances, a defendant invoking mootness "bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000).

Even if the voluntary-cessation doctrine applied here, the case would still be moot. The Executive Branch is not halting enforcement based on discretionary policy considerations, but because it has concluded—formally and in good faith—that it has no lawful power to enforce insofar as the statute is unconstitutional. That readily eliminates any reasonable expectation of enforcement under *Laidlaw*. Indeed, the government's failure to "vigorously defend[] the constitutionality of its [law]" is a key factor under this Court's voluntary-cessation precedents. *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 719 (2007); *see West Virginia v. EPA*, 597 U.S. 697, 720 (2022).

In any event, the better view is that the voluntary-cessation doctrine *doesn't* apply here. As the government has recognized, the doctrine "exists because 'a party should not be able to evade judicial review, or to defeat a judgment, by temporarily altering questionable behavior.'" Gov't. Suppl. Br. 5, *Trump v. Int'l Refugee Assistance Project*, 582 U.S. 571 (2017) (No. 16-1436) (quoting *City News & Novelty, Inc. v. City of Waukesha*, 531 U.S. 278, 284 n.1 (2001)).

That rationale does not apply when the facts do not suggest "arguable manipulation of [this Court's] jurisdiction"—for instance, where the party who voluntarily ceased its conduct "*opposes* a declaration of mootness"—and there is no reason to think any actual dispute persists. *City News*, 531 U.S. at 284 (emphasis added). In that type of case, the Court applies its normal standing and mootness rules. Indeed, the D.C. Circuit refused to apply the voluntary-cessation doctrine for exactly these reasons just last year. *Pub. Citizen, Inc. v. FERC*, 92 F.4th

1124, 1128 (D.C. Cir. 2024) (Garcia, J., joined by Katsas and Pan, JJ.); *see also Trump v. Int'l Refugee Assistance*, 138 S. Ct. 353, 353 (2017) (dismissing challenge to expired executive order as moot, without applying voluntary-cessation doctrine).

Here, there is no plausible argument that the government is acting strategically to moot the case. Quite the opposite: It supported certiorari and wants a constitutional ruling from this Court—one that *strikes down* Section 30116(d). Applying the heightened voluntary-cessation test in these circumstances would depart from Article III principles. This case is moot.

B. The NRSC and NRCC Are Not Proper Parties

The NRSC and NRCC are not proper parties here, both because (1) the Sixth Circuit lacked jurisdiction over their interlocutory appeal, and (2) Section 30116(d) inflicts no Article III injury on them. The Sixth Circuit did not fully consider either issue.

1. *Appellate Jurisdiction.* Below, petitioners and the Sixth Circuit both invoked that court's mandatory, interlocutory en banc appellate jurisdiction under Section 30110. Petrs. CA6 First Br. 7; JA6; JA635 n.6; JA713; *supra* 10. But that provision authorizes interlocutory review only for claims brought by "three carefully chosen classes of persons"—"[t]he [FEC], the national committee of any political party, or any individual eligible to vote in [a presidential] election." *Bread Pol. Action Comm. v. FEC*, 455 U.S. 577, 581 (1982). This Court has squarely held that there is no appellate "jurisdiction" over claims brought by plaintiffs who do not fall into these three categories. *Id.*

The NRSC and NRCC fall into none of the categories. "[T]he national committee" of a political party under Section 30110 is "*the* organization which, by virtue of the by-laws of a political party, is responsible for the day-to-day operation" of the party "at the national level." 52 U.S.C. § 30101(14) (emphasis added). As this Court recognized in *FEC v. Democratic Senatorial Campaign Committee* (*DSCC*), "[t]he RNC, not the NRSC, is the 'national committee' as defined by [Section 30101(14)]." 454 U.S. 27, 33 n.4 (1981); *see also* RNC *Amicus* Br. 1 (same); Intervenors Br. 14-15. And that follows from Section 30101(14)'s plain text: Neither the NRSC nor NRCC are "responsible" for the Republican party's "day-to-day operation" at the "national level." *See* Rule No. 1(a), *The Rules of the Republican Party* (July 15, 2024), https://prod-static.gop.com/media/Rules_Of_The_Republican_Party.pdf ("The Republican National Committee shall have the general management of the Republican Party . . . .").[6]

In short, the NRSC and NRCC are not covered by Section 30110. The Sixth Circuit thus had no jurisdiction to hear their interlocutory appeal. That defect blocks this Court from adjudicating their First Amendment claim.

---

[6] Below, petitioners and the FEC asserted that the NRSC and NRCC qualify as "a national committee" under Section 30101(14), and the district court accepted that assertion. *See* JA6-7; JA547; JA661-62. But no one considered the text of either Section 30101(14) or 30110, or this Court's unambiguous statement in *DSCC*. And petitioners conceded that the NRSC and NRCC did *not* qualify as "the national committee" of the Republican party under Section 30116(d). JA3.

2. *Standing*. For similar reasons, the NRSC and NRCC lack Article III standing to challenge Section 30116(d), which does not apply to them.

a. Section 30116(d) governs "the national committee of a political party" and "State committee[s] of a political party." 52 U.S.C. § 30116(d)(1). It authorizes only those specific entities to make coordinated expenditures above the limits in Section 30116(a).

The NRSC and NRCC are neither "the national committee" of the Republican party, nor State party committees. *Supra* 24. Section 30116(d) thus does not govern them. Rather, as petitioners conceded in their complaint, "only the Republican National Committee and Democratic National Committee and individual state party committees have any authority to make coordinated party expenditures up to the limits under" Section 30116(d). JA3. "The national senatorial and congressional committees of the two major parties do not have separate limits under [Section] 30116(d)." *Id.*

In this Court, petitioners say (at 9) that Section 30116(d) "strips" the NRSC and NRCC "of the right to make any of their *own* coordinated expenditures." That's just wrong: Section 30116(d) does not mention those committees, let alone "strip[]" them of anything. The only restrictions on the NRSC and NRCC's coordinated expenditures are the base limits imposed by Sections 30116(a) and (h). *Supra* 7.

Petitioners seemed to challenge the base limits in their complaint, JA3-4, but they abandoned that challenge in the Sixth Circuit and do not renew it here. Instead, they are attacking only Section 30116(d)—the provision that doesn't govern them.

Invalidating Section 30116(d) will not remedy any injury inflicted by Sections 30116(a) and (h).

b. The NRSC and NRCC will likely assert that Section 30116(d) does injure them, because (1) an FEC regulation grants the RNC and State party committees the right to "assign" their Section 30116(d) coordinated-spending authority to other party committees, and (2) the NRSC and NRCC would like to receive *unlimited* spending authority under such assignments. Petrs. Br. 9; JA3-4.

That standing theory fails because the regulation at issue—11 C.F.R. § 109.33(a)—is invalid. Section 109.33(a) provides that "[t]he national committee of a political party" and State party committees "may assign [their] authority to make coordinated party expenditures . . . to another political party committee." But nothing in FECA gives the FEC the right to let the RNC or State committees transfer their coordinated-expenditure authority to others. FECA imposed its contribution and expenditure limits on carefully specified entities, and Section 30116(d)'s exception from the base limits in Sections 30116(a) and (h) is textually cabined to "the national committee" and State party committees—neither of which includes the NRSC and NRCC. No FEC regulation can authorize the NRSC and NRCC to exceed the *statutory* caps on their coordinated expenditures imposed by Sections 30116(a) and (h).[7]

---

[7] Section 30116(d)(4)(C)—a provision of FECA added in 2002 and invalidated in *McConnell v. FEC*, 540 U.S. 93, 213-19 (2003)—obliquely references assignments of coordinated-spending authority, but does not authorize such assignments or allow a recipient to exceed Section 30116(a) or (h)'s base limits.

The D.C. Circuit's decision in *Democratic Senatorial Campaign Committee v. FEC*, confirms that Section 109.33(a)'s assignment power is unmoored from the statute. 660 F.2d 773 (D.C. Cir. 1980). There, the court properly rejected an FEC administrative order holding that the RNC's coordinated-expenditure authority under Section 30116(d) could be assigned to the NRSC. *Id.* at 778-82. The court rested its decision on the "plain language" of the statute, which "preclude[s] any arrangement by which the [coordinated-expenditure] authority of a named entity is transferred to another." *Id.* at 779. The D.C. Circuit backed this up with a careful analysis of FECA's structure and history, which showed that Congress considered—and rejected—a version of Section 30116(d) that would have extended coordinated-expenditure authority to the NRSC and NRCC. *Id.* at 779-80.

To be sure, this Court later reversed the D.C. Circuit's ruling. *DSCC*, 454 U.S. at 37-43. But it did so only by applying extreme, *Chevron*-like deference to the FEC's interpretation. Among other things, the Court: (1) refused to "construe the statute based on [the Court's] own view" of what Section 30116(d) meant; (2) chastised the D.C. Circuit for "interpret[ing] the statute as [the D.C. Circuit] thought best," instead of just checking to see if the FEC's view was "sufficiently reasonable"; and (3) deferred to an FEC interpretation that might not have been "the reading the [C]ourt would have reached" on its own. *Id.* at 31-43. That analysis cannot survive *Loper Bright* or rescue the FEC's later-promulgated assignment regulation.

The best interpretation of FECA is the D.C. Circuit's: Section 30116(d)'s coordinated-expenditure

authority cannot simply be handed over to the NRSC and NRCC. *Supra* 27. Section 109.33(a) is invalid and cannot create Article III standing.

C. The Individual Petitioners Are Not Proper Parties

The claims of the individual petitioners are moot for reasons beyond the lack of any imminent enforcement threat. Both Chabot and Vice President Vance have disclaimed any concrete plan to run for any specific federal office.

Chabot's lack of an ongoing Article III stake is straightforward: He "no longer serves in Congress," JA713, and the district court properly found that "he does not intend to run for federal office again in the future," JA665.

Vice President Vance's claim is also moot. Below, the district court found standing—in January 2024—because then-Senator Vance "[wa]s a current sitting Senator who ha[d] expressed intent to run for re-election in 2028," and "[wa]s preparing for a 2028 election run." JA623. But the facts have changed dramatically since that time: Then-Senator Vance is now Vice President, and he has publicly disclaimed any such ongoing, concrete plan. For example, Vice President Vance has recently emphasized that "[i]t's certainly way too early to be thinking about 2028," and that "the American people are so fed up with folks who are already running for the next job, seven months into the current one."[8]

---

[8] Sudiksha Kochi, *Will JD Vance run for president in 2028? VP pressed on potential White House bid*, USA Today (Aug. 10, 2025), https://www.usatoday.com/story/news/politics/2025/

Those statements refute Vice President Vance's ongoing Article III stake in this case. Under this Court's precedent, Vice President Vance "'bears the burden of establishing . . . and maintaining'" his standing throughout this litigation. *Murthy v. Missouri*, 603 U.S. 43, 58 (2024). He must do so with actual "'evidence'" showing his intent to run for federal office—and to benefit from coordinated expenditures—again. *Id.* Such evidence must be contained in the judicial "record." *Carney v. Adams*, 592 U.S. 53, 59, 63 (2020).

As to potential candidates for public office, the Court has made clear that a plaintiff's "general intent" to seek office is insufficient absent "concrete" evidence that he is "'ready'" to do so. *Id.* at 59-66. Vague statements that a plaintiff "'would seriously consider'" running if "'he feels he is qualified'" are not enough. *Id.* at 61. Nor are hints that a plaintiff "'*may* run for office again,'" without record evidence of "concrete plans" to do so. *Nader v. FEC*, 725 F.3d 226, 229 (D.C. Cir. 2013) (emphasis added). As the FEC correctly argued below, candidate standing requires a "description of concrete plans" and a "specification of *when*" the candidate will run for federal office in the future. D.Ct. Dkt. No. 45 at 11 (quoting *Lujan*, 504 U.S. at 564).

This Court has zealously applied these bedrock Article III principles even to prominent politicians at the height of their public service. In *McConnell v.*

08/10/jd-vance-president-2028-early/85600664007/; Alexandra Koch, *Vice President JD Vance teases 2028 bid, says it won't be 'given' to him*, Fox News (Sept. 6, 2025), https://www.foxnews.com/politics/vice-president-jd-vance-teases-2028-bid-says-wont-given-him.

FEC, for example, the Court rejected Senator Mitch McConnell's standing to challenge a provision of campaign-finance law restricting the advertisements he could run during his next bid for re-election. 540 U.S. 93, 225-26 (2003). The Court found the prospect of Senator McConnell's next race too remote because it would come five years in the future—even though McConnell credibly testified he planned to seek re-election, and there was no doubt the FEC would enforce the restriction. *Id.*

That holding applies *a fortiori* here. Vice President Vance has more than three years left in his current term, and he—unlike McConnell—has affirmatively disclaimed any concrete plans to run again. Moreover, the Trump Administration would continue to oversee the FEC in 2028, making it especially unlikely that Vice President Vance would be subject to any enforcement action then if he runs for office. On this record, he lacks Article III standing to keep the case alive. There is no jurisdiction here.[9]

II. Section 30116(d) Is Constitutional Under *Colorado II*

If this Court reaches the merits, it should affirm. As the Sixth Circuit recognized, petitioners' facial challenge to Section 30116(d) is squarely controlled by *Colorado II*. JA717-23. They challenge the same law,

---

[9] *Amicus* acknowledges that the jurisdictional arguments presented here raise novel issues that have not yet been addressed in this case. As a result, it is not clear how petitioners or the FEC will respond. *Amicus* would be happy to submit a short supplemental brief addressing petitioners' and the FEC's arguments on jurisdiction, if the Court believes that would assist its review. The Court may also wish to remand for the lower courts to address these jurisdictional issues in the first instance.

on the same grounds, under the same theory, seeking the same relief—and should meet the same fate.

Petitioners cannot show that *Colorado II* was "grievously or egregiously wrong." *Ramos v. Louisiana*, 590 U.S. 83, 121 (2020) (Kavanaugh, J., concurring in part). Nor can petitioners otherwise identify any "'special justification[]'" for overruling that case. *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 929 (2018). And petitioners' as-applied challenge fails for largely the same reasons.

A. *Colorado II* Rightly Applied Closely Drawn Scrutiny

In *Buckley*, this Court held that contribution limits—including limits on coordinated expenditures—must be "closely drawn" to match a "sufficiently important interest." 424 U.S. at 25. Petitioners contend (at 42) that *Colorado II* "plainly erred in concluding that closely drawn scrutiny rather than strict scrutiny applies here." But *Colorado II* faithfully applied *Buckley*'s closely drawn test, 533 U.S. at 446, and petitioners have not seriously asked this Court to overrule *Buckley*. *Colorado II* was not "egregiously wrong" for applying the very test this Court's precedents required—and *still* require. *See, e.g.*, *McCutcheon*, 572 U.S. at 199; *Davis v. FEC*, 554 U.S. 724, 737 (2008).

Petitioners also argue (at 42) that "'party coordinated spending' should not be treated as 'contributions' under *Buckley*'s dichotomy" because it includes a party "'advocating its most essential positions.'" But *Colorado II* and this case both involve a *facial* challenge, which requires showing that "*no* set of circumstances exists under which the

[challenged law] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987) (emphasis added); *see* JA793 & n.5 (no overbreadth claim). The question, then, is not whether *some* coordinated party spending might involve a party developing its own "advertisement for a congressional candidate," FEC Br. 19—but whether *all* coordinated party spending must be treated that way.

The answer is no. As *Colorado II* correctly recognized, "[c]oordinated spending by a party . . . covers a spectrum of activity"—including the simple act of paying any or all of a candidate's campaign expenses, which is "'virtually indistinguishable'" from a direct cash payment. 533 U.S. at 444-45; *see id.* at 456 n.17. If petitioners win this case, the NRSC and NRCC will not just be able to coordinate with candidates on the committees' own speech; rather, they will be able to fund literally any kind of campaign activity, whether directly related to speech or not. Below, petitioners conceded that coordinated party spending includes things like "covering a candidate's travel costs" or "staffs' salaries."[10]

Petitioners cannot ignore that reality to load the dice on the level of scrutiny. Section 30116(d)'s limits are facially valid if—as applied to paying a candidate's travel costs or electricity bill—they are closely drawn to serve an important government interest.

---

[10] Oral Argument at 7:10-7:57, *NRSC v. FEC*, 117 F.4th 389 (6th Cir. 2024) (No. 24-3051), https://www.opn.ca6.uscourts.gov/internet/court_audio/audio/06-12-2024 - Wednesday/24-3051 NRSC v FEC et al.mp3.

B. The Government Has A Compelling Interest In Preventing Donor-To-Candidate *Quid Pro Quo* Corruption

Colorado II held that the government has a strong interest in combatting *quid pro quo* corruption by preventing circumvention of FECA's base limits. 533 U.S. at 456. That holding was correct—and certainly not egregiously wrong. Common sense and history show that donors will often use political parties as conduits to circumvent their base limits. The strategy is simple: A donor maxes out his contributions to a candidate, then routes additional money to the candidate by giving to the party, which uses that money to pay the candidate's expenses. Such donations are the functional equivalent of direct contributions, and they raise the same *quid pro quo* concerns that justify the base contribution limits upheld in *Buckley*.

1. Since *Buckley*, this Court has made clear that the government has a compelling interest in limiting campaign contributions to prevent "'actual quid pro quo arrangements'" and "'the appearance of corruption'" that arises from a system of unchecked direct contributions. 424 U.S. at 27; *see*, *e.g.*, *McCutcheon*, 572 U.S. at 208-09 & n.6. Later cases confirm that this anti-corruption interest justifies "not only contribution limits themselves, but [also] laws preventing the circumvention of such limits." *McConnell*, 540 U.S. at 144; *see id.* at 142-46 (soft money ban); *FEC v. Beaumont*, 539 U.S. 146, 155 (2003) (corporate contribution ban); *Buckley*, 424 U.S. at 26 (limits on other groups' coordinated spending); *Cal. Med.*, 453 U.S. at 197-98 & n.18 (limits on PAC spending).

Colorado II applied this principle to restrictions on party coordinated expenditures, which are functionally equivalent to direct contributions. *Supra* 32. Without the limits in Section 30116(d), a donor could max out his individual contributions to a candidate, then simply pump additional money through the RNC, expecting that the RNC would spend it on that candidate's campaign—all with the candidate's full knowledge and gratitude. That scheme would allow donors to achieve precisely what FECA prohibits: donating massive sums to a candidate above the base limits, raising the risk of *quid pro quo* corruption. This Court's precedents sensibly protect against such circumvention.

2. The use of political parties as conduits to evade base limits and facilitate corruption is not speculative or hypothetical. It's a real-world problem, as reflected in evidence from the 1970s to the present day.

During the Watergate scandal, for example, the dairy industry funneled millions through various Republican party committees, including the NRSC, which then transferred those funds to President Nixon's re-election campaign committee. JA411-12. Shortly thereafter, President Nixon "'circumvent[ed]'" and interfered with the "'legitimate functions'" of the Agriculture Department to favor the dairy industry, while his Attorney General (and campaign manager) halted a grand-jury investigation of the milk producers' association. JA412. Discovery of these facts "motivated the 1974 FECA amendments that form the heartland of the law today." JA799.

Congress designed Section 30116(d) to block this practice of laundering contributions to candidates through parties. The legislative history confirms this concern. As Senator Mathias warned, absent limits

on contributions to and from parties, "[a] wealthy contributor [c]ould come to the candidate and say 'I want to give you a lot of money this year,'" to which the candidate would respond, "'You can only give me $3,000. However, you can go to the party chairman.'" 119 Cong. Rec. 26,323 (1973); *see also id.* at 26,321 (critiquing early draft bill for leaving line "from the party to the candidate . . . a wide open avenue" and noting that donors often know their party contribution "would be directed to a candidate"); *id.* at 26,323-24 (Senators Kennedy and Pastore expressing concern about donors "circumvent[ing]" FECA's limits through donations to parties).

Efforts to use parties as conduits continued into the 1990s and early 2000s, when "tallying" schemes became the new workaround: Candidates encouraged maxed-out donors to "give to the party with the tacit understanding that" the party would funnel that contribution back to the candidate through coordinated expenditures. *Colorado II*, 533 U.S. at 458-60; *see* JA67; JA284; JA428-29; JA797. The DNC, for example, kept meticulous records to ensure donors' generosity was credited to their chosen candidate. *See Colorado II*, 533 U.S. at 459. This Court recognized that the "tallying" practice was direct evidence that opening "the floodgates" on coordinated spending would close the door on meaningful base limits. *Id.* at 459 n.22.

In *McConnell*, this Court confirmed the same pattern, "highlight[ing] [an] 'ample record' demonstrating . . . that political parties have embraced their role in facilitating the 'widespread circumvention' of federal contribution limits.'" *N. Carolina Right to Life, Inc. v. Leake*, 525 F.3d 274, 292 (4th Cir. 2008) (Wilkinson, J.); *see also* Campaign

Legal Center (CLC) Br. 10-12 (discussing *McConnell* record). For example, when *McConnell* was decided, parties regularly kept detailed tallies of the amount of "soft money" raised by each candidate and then used those funds to support the candidate. 540 U.S. at 146.

Some of these circumvention efforts were technically legal—the product of ingenious campaign-finance lawyers exploiting every loophole for their clients. But others crossed the line. For example:

- In 2005, Chuck Chvala, then-Majority Leader of the Wisconsin Senate, pleaded guilty to felony corruption charges for distributing political favors in exchange for contributions to the State's Democratic committees. JA435-37; *see* JA286, 304, 330; JA799.
- In 2006, Representative Bob Ney pleaded guilty "'to a series of quid pro quos with the lobbyist Jack Abramoff'" that included contributions to the NRCC that Ney solicited as quids in return for legislative quos. JA431-35; JA799.
- From 2002 to 2008, an Ohio business executive contributed funds to a local party committee knowing they would be earmarked for a school board member's campaign, in exchange for the board member using his position to help the executive's company secure lucrative government contracts. JA799.

In addition, in 2009, former Representative Joseph Cao "admi[tted]" that he and the RNC took "steps to circumvent the Act's individual donor contribution limits." *Cao v. FEC (In re Cao)*, 619 F.3d

410, 429, 434 (5th Cir. 2010); *see* JA425, 489-90; JA797-98.

3. Today, the threat that party committees will funnel money from donors to candidates is exemplified by the explosive growth of "joint fundraising" arrangements, as supercharged by this Court's decision in *McCutcheon*. JA49-50; JA79; JA283; JA471-72; *see also* CLC Br. 25-31. Over the past ten years, money raised through joint fundraising has tripled, reaching a gargantuan $3.5 billion in the 2024 elections.[11]

Joint fundraising arrangements allow a candidate to team up with federal and State party committees and other PACs to solicit a single, massive check from a donor up to the amount of *all* the committees' contribution limits combined. JA324-25; JA808-09. With the aggregate limits on individual contributions dissolved by *McCutcheon*, that contribution can now approach *$1 million* per donor. JA809.

On paper, the joint fundraising committee must formally divide donations among the various "join[ed]" committees. 11 C.F.R. §§ 102.6(a)(1), 110.3(c)(2). But in reality, candidate and party committees (both State and national) can simply pool their funds by "transfer[ring]" them to a single party committee, like the NRSC. 52 U.S.C. § 30116(a)(4); 11 C.F.R. §§ 102.6(a)(1)(ii), 110.3(c)(1). And once the funds received are consolidated into a single party committee, that committee can use the money for the

---

[11] *Total Joint Fundraising Committees, 1990-2024*, OpenSecrets.org, https://www.opensecrets.org/joint-fundraising-committees-jfcs.

benefit of the relevant candidate who helped raise it.[12]

These arrangements take the guesswork out of political giving in ways that make *quid pro quo* exchanges infinitely easier. Instead of spreading donations across a tangle of committees and hoping to be noticed, a donor can now write one huge check—reaching seven figures—to a joint fundraising committee supporting that candidate. The candidate obviously knows exactly who gave and how much, guaranteeing the donor gets full credit—just as with direct contributions. JA66-67; JA79-80; JA170-73; JA284, 307; JA469-76.

These joint fundraising arrangements show why Section 30116(d)'s coordinated-expenditure limits are so critical. As *McCutcheon* itself recognized, Section 30116(d) prevents joint fundraising arrangements from becoming an illicit end-run around the base limits. 572 U.S. at 216. To take just one example, Section 30116(d)'s $63,600 limit on coordinated spending with House candidates is what blocks donors from routing a full $1 million haul through a party back to a single candidate. *See id.*

Petitioners NRSC and NRCC know all this, of course. In *McCutcheon*, they filed an *amicus* brief urging the Court to scrap the aggregate contribution limits. To persuade the Court that the sky would not fall, they emphasized Section 30116(d)'s coordinated-spending cap as an existing (and presumably valid) means to prevent "circumvention" of the base limits.

---

[12] *See, e.g.*, David Byler, *How megadonors circumvent laws to give huge checks to politicians*, Washington Post (Apr. 17, 2023), https://www.washingtonpost.com/opinions/2023/04/17/campaign-spending-megadonors-joint-fundraising-committees/.

McCutcheon NRSC & NRCC *Amici* Br. 20, 23-26 (No. 12-536). The Court agreed with that rationale. *See McCutcheon*, 572 U.S. at 216.

Having won in *McCutcheon*, the NRSC and NRCC now complete the bait-and-switch, arguing that Section 30116(d) is invalid after all. If they succeed, the crucial safeguard will fall away: Nothing will stop candidates from "solicit[ing] exceptionally large donations directly from donors so long as the money is directed to a party account over which the candidate exercises complete or large control." JA50-51; *see* JA285. In practice, this would eviscerate the base limits that have been central to campaign-finance law since FECA's enactment and *Buckley*.

4. Petitioners and the FEC criticize *Colorado II*'s holding that the coordinated-expenditure limits serve a sufficiently important government interest. Their arguments lack merit.

a. Petitioners cite (at 18) *Colorado I*'s passing statement that Section 30116(d) was originally motivated by the "constitutionally insufficient purpose of reducing what [Congress] saw as wasteful and excessive campaign spending." 518 U.S. at 618. But as *Colorado II* explained, this "observation was relevant to examination of the Party Expenditure Provision *as applied to independent expenditures*"—the only issue *Colorado I* addressed. 533 U.S. at 457 n.19 (emphasis added).

In fact, "neither the dissent nor the Party [in *Colorado II*] seriously argue[d] that Congress was not concerned with circumvention of contribution limits using parties as conduits" when it enacted Section 30116(d). *Id.* And contrary to petitioners' claim (at 19), the fact that Congress originally enacted limits

governing both independent and coordinated expenditures shows—at most—that Congress had multiple goals in mind, not that it was unconcerned with *quid pro quo* corruption.[13]

b. Petitioners and the FEC also claim FECA's line-drawing is "indefensibly arbitrary." FEC Br. 4; Petrs. Br. 29. Petitioners say (at 18) that because the limits vary by office and state, Congress must not have been motivated by a desire to prevent corruption. But the variation in the limits is perfectly reasonable, as it "increas[es] parties' capacity for speech in states where each contribution's value is diluted"—and the risk of *quid pro quo* corruption is proportionally lower. JA805.

Nor does Congress's creation of certain exceptions render Section 30116(d) unconstitutional. *See* Petrs. Br. 28-29. On the contrary, the exceptions show Congress "careful[ly] balancing" its "competing interests" in "preventing quid pro quo corruption on the one hand and promoting strong political parties on the other." JA804.

For example, Section 30101(9)(B)(ix) exempts State party spending on volunteer get-out-the-vote activities because such activities "pose a less urgent risk of corruption." JA805; *see* JA802-03. The FEC faults Congress (at 4, 14) for allowing State—but not national—committees to conduct such activities without limit. But the State and local party committees are the ones who usually engage in these

---

[13] Section 30116(d)'s rich legislative history distinguishes *Colorado II* from *FEC v. Cruz*, where the anti-corruption justification for the challenged provision was an after-the-fact FEC litigating position. 596 U.S. 289, 310-11 (2022).

small-scale grassroots activities. *See* JA68; CLC Br. 23 n.5.

Moreover, Congress has given national party committees their *own* exemptions, reflecting a balanced approach. For example, in 2014, Congress relaxed FECA's limits on national party committees for three party-building functions—presidential nominating conventions; party headquarters; and election recounts and legal proceedings—"that pose a similarly moderate threat." JA803, 805; *see* 52 U.S.C. § 30116(a)(9). As the D.C. Circuit concluded, those 2014 exceptions "represent[] just another tweak in Congress's decades-long project to fine-tune FECA's balance between speech and associational rights, on the one hand, and the government's anticorruption interest, on the other." *Libertarian Nat'l Comm., Inc. v. FEC*, 924 F.3d 533, 550 (D.C. Cir. 2019). The fact that Congress chose to "relax[] restrictions on First Amendment activity where" it concluded it could "achieve its anticorruption interest with less stringent limits" does not undermine Congress's commitment to fighting corruption. *Id.*

c. The FEC also makes (at 37) a much broader argument: that preventing circumvention of the base limits is not a valid government goal at all. But this Court has repeatedly held that Congress may limit contributions to entities other than candidates—including PACs—precisely to prevent circumvention of the base limits. *See Cal. Med.*, 453 U.S. at 197-98 & n.18.

Moreover, this Court relied on the anti-circumvention rationale when upholding Section 30125's limits on party spending in *McConnell*—a holding *McCutcheon* specifically left intact. *See* 572 U.S. at 209 n.6. And in *McCutcheon*, the Court relied

on other anti-circumvention rules—*including the Section 30116(d) limits at issue here*—as reasons why the aggregate limits were unnecessary. *See id.* at 216. That is a far cry from rejecting anti-circumvention as a valid basis for campaign-finance restrictions.

d. Petitioners resort to arguing (at 24-28, 36) that *Colorado II*'s evidentiary record was too sparse to support the limits. But that's a flimsy basis for overturning a precedent that has stood for decades and undergirds vast swaths of modern campaign-finance law. And regardless, petitioners ignore the extensive evidence discussed above. *Supra* 34-37.

This Court has emphasized that the "quantum of empirical evidence needed" to sustain a campaign-finance law "will vary up or down with the novelty and plausibility of the justification raised." *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 391 (2000). Here, the justification is neither novel nor implausible; it is the same justification the Court deemed sufficient to let Congress treat coordinated expenditures as a type of contribution for purposes of the base limits that apply to all other groups. *See Buckley*, 424 U.S. at 47. Petitioners offer no reason why parties are immune from the same circumvention concerns that apply to everyone else.

C. Section 30116(d) Is Closely Drawn To Serve The Government's Interests

Petitioners also attack *Colorado II*'s tailoring analysis, arguing (at 31-33) that Congress could have achieved its anti-circumvention goals through three "'alternative'" measures that would "'pose a smaller First Amendment burden'" on parties. But *Colorado II* correctly held that none of those measures is

adequate to meet the government's anti-circumvention goal.

1. Petitioners first say (at 32) that Congress could simply lower the cap on individual contributions to a party. But that would pose a far greater threat to political parties' First Amendment rights, as it would deplete their ability to make the independent expenditures protected by *Colorado I*. Such independent spending has the greatest First Amendment protection and lowest risk of corruption. *See Buckley*, 424 U.S. at 19, 47-48. And reducing such spending would make the purported disparities between parties and Super PACs even worse. JA806; *see* Petrs. Br. 45, 48.

2. Petitioners next invoke (at 32) FECA's earmarking rule, which treats a contribution to a party as a contribution to a candidate if it is "earmarked or otherwise directed through [the party] to [a] candidate." 52 U.S.C. § 30116(a)(8). FEC regulations define earmarking as any "designation, instruction, or encumbrance" directing funds to a candidate. 11 C.F.R. § 110.6(b)(1).

As the Citizens for Responsibility and Ethics in Washington (CREW) *amicus* brief explains (at 6-32), the earmarking prohibition does not fully address the corruption problem. First, the statute itself does not cover situations where a donor simply expects that his donation will go to a particular candidate, without actively directing his funds. *See* 52 U.S.C. § 30116(a)(8). Nor does the FEC's earmarking rule. *See* JA363-64 & n.2 (FEC General Counsel statement distinguishing tallying from earmarking).

This is significant because donors rarely need to explicitly earmark to accomplish their goals.

Contributors can easily determine how their money will be used even without formally designating the funds—and parties regularly convey the identity of donors to the candidates. JA66-67; JA79-80; JA170-73; JA284, 307; JA469-76; JA808.

Examples of *quid pro quo* arrangements that evade the contribution limits are therefore easy to imagine. Consider this scenario. The DNC runs a fundraising advertisement stating:

> The Democratic Party and President Biden need your help! We promise to use your donation to advance Democratic values and support President Biden's re-election. We do not accept earmarked contributions, but we may use your gift to support President Biden's campaign, and will make sure President Biden knows about your contribution!

The earmarking regulation does not—and, under the statute, cannot—reach this message or the resulting contribution. Yet the donor could feel confident as to where his money is going and the candidate would know exactly where it is coming from. The donation is a contribution in everything but name. And such arrangements happen in real life. *See* CREW *Amicus* Br. 8-32 (citing extensive examples).

Second, even under the current regime, earmarking violations are essentially impossible to discover and prove—which is why FEC enforcement is virtually nonexistent. JA283, 295, 314, 327, 341. For that reason, petitioners' claim (at 33) that the government could simply "'strengthen'" the earmarking rule is no solution. A broader restriction

would be even *harder* to enforce. Policing what a donor expects or understands requires mind-reading, not fact-finding—an unworkable standard raising First Amendment concerns of its own.

Petitioners lean heavily (at 32-33) on *McCutcheon*'s discussion of earmarking as a better alternative to the aggregate limits at issue in that case. But as discussed, *McCutcheon* relied on Section 30116(d) as a reason why the aggregate limits were unnecessary—just as the NRSC and NRCC had argued there. 572 U.S. at 216; *supra* 38-39.

Finally, petitioners invoke (at 33) FECA's disclosure requirements. But "[j]ust as Congress's tools for preventing quid pro quo corruption are not confined to disclose-on-the-front-end, prosecute-on-the-back-end in the world of contributions to candidates, they are not so limited in the world of party coordinated expenditures." JA807. Petitioners do not explain why—if enhanced disclosures are not an effective substitute for the base contribution limits, *see Buckley*, 424 U.S. at 28—coordinated expenditures are any different.

D. Petitioners' As-Applied Challenge Also Fails

Beyond their sweeping facial attack on Section 30116(d) and *Colorado II* , petitioners also purport to bring a narrower, "as-applied" challenge. That challenge asserts that Section 30116(d) is unconstitutional as applied to "party coordinated communication[s]"—i.e., political advertising—covered by 11 C.F.R. § 109.37. JA31-32; *see* JA5. Petitioners' as-applied challenge is just a restyled version of their facial attack. It fails for the same reasons.

Petitioners portray their as-applied theory as modest and narrow, asserting (at 3, 39-40) that it involves only the "'party's own speech'" rather than the mere "'payment of the candidate's bills." That is not correct. Petitioners challenge the limits "as applied" to *all* communications encompassed by 11 C.F.R. § 109.37(a). JA5. That broad provision covers political advertisements that are prepared and disseminated by the candidate, and merely "paid for" by the party. 11 C.F.R. §§ 109.37(a), 109.21(d)(2). Under petitioners' rule, the party could fund unlimited communications even if the party itself never reviewed the content. This is not the party's "own speech" in any meaningful sense.

In real life, party committees routinely do nothing more than pay the candidate's bills for advertisements the candidate's campaign prepared on its own. The record shows, for example, then-Senator Vance's campaign emailing the NRSC a completed advertisement and corresponding invoice—with no meaningful consultation or input from the NRSC. JA198-205. The Chabot campaign did the same—forwarding the NRCC a "produced spot" and requesting payment for it. JA195-96. As a DNC official testified about its coordinated spending: "We pretty much let the campaign take the lead in how the money was spent. . . . They would send us their bills for the agreed upon amount, and we would pay them." D.Ct. Dkt. No. 36-11 at 8; *see also* JA52-53; JA187; JA673. Indeed, the record here does not include a single example of the NRSC or NRCC developing their *own* advertisements after consulting with candidates.

Petitioners do not explain why paying a candidate's media bill deserves more constitutional

protection than paying any other campaign expense. "[R]ejection of a facial challenge to a statute" "surely precludes" future as-applied attacks "resting upon the same asserted principle of law." *Penry v. Lynaugh*, 492 U.S. 302, 354 (1989) (Scalia, J., concurring in part and dissenting in part).

Because petitioners' as-applied theory is materially identical to their facial challenge, it fails so long as *Colorado II* is on the books. JA723-25, 780-81. And, as explained, *Colorado II* is correct. Petitioners and the FEC are wrong to say parties should have an *unlimited* right to pay candidates' media bills.

E. Overruling *Colorado II* Would Destabilize Campaign-Finance Law And Distort The First Amendment

Intervenors ably explain why—beyond the merits—the *stare decisis* factors weigh strongly against overruling *Colorado II*. Intervenors Br. 36-52. That decision is workable in practice, deeply relied upon, and doctrinally consistent with this Court's campaign-finance precedents. *Id.* *Amicus* wishes to highlight the most consequential *stare decisis* concerns with reversing *Colorado II*: the destabilizing spillover effects for other areas of campaign-finance law and the distortion of key First Amendment values.

1. Following precedent usually "promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne v. Tennessee*, 501 U.S. 808, 827 (1991). Sometimes—but rarely—a precedent undermines those goals. In *Citizens*

United, for example, the Court overturned an outlier decision that the Chief Justice described as "uniquely destabilizing," because its "rationale threaten[ed] to upend [the Court's] settled jurisprudence" on other campaign-finance issues. 558 U.S. at 379, 380 (concurring). That interest in stability guided the Court, even as it corrected course.

This case presents the exact opposite scenario. Here, overturning *Colorado II* would not be a one-off reversal that ultimately promotes stability. Rather, it would "unsettle stable law" by immediately calling into question multiple tenets of the longstanding campaign-finance framework. *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 458 (2015). The FEC is wrong to say (at 46) that "overruling *Colorado II* would produce a narrow result." The Court should not topple this first domino unless it's sure it wants the others to fall.

As this Court recognized in *Colorado I*, striking down Section 30116(d)'s limits on "coordinated party expenditures necessarily implicates . . . the constitutionality of [the] party[-to-candidate] contribution limits" in Sections 30116(a) and (h). 518 U.S. at 625. That's because there is no real-world distinction between a party's coordinated spending and its direct contributions to a candidate—coordinated spending includes cutting checks to pay a candidate's bills. *Supra* 32. If restricting *that* activity is unconstitutional, limits on direct cash payments cannot survive either.

Accepting petitioners' arguments would send ripple effects through the rest of the statutory scheme as well. A linchpin of petitioners' (and the FEC's) theory here is that "the risk of corruption abates when money flows through 'independent actors' (such as parties) rather than going 'directly' from a donor to a

candidate." FEC Br. 37; *see id.* at 15, 28-30; Petrs. Br. 14, 21-24. But embracing that argument would eviscerate other core restrictions on party spending, including the individual-to-party contribution limits, *see* 52 U.S.C. § 30116(a)(1)(B), (D), and the prohibition on party committees receiving or spending soft money upheld in *McConnell*, *see id.* § 30125. And with no limit on what an individual can give to a party *or* on what a party can give to a candidate, there would simply be no limits at all. Donors could use parties to funnel *unlimited* funds to candidates.

Petitioners' logic would also undermine FECA's limits on contributions to and from every other "'independent actor[],'" FEC Br. 37—including the longstanding caps on donations to and from PACs, upheld in *California Medical*. *See* 52 U.S.C. § 30116(a)(1)(C), (2). Those caps rest on the very same anti-circumvention interest as the limits on party coordinated expenditures. *See Cal. Med.*, 453 U.S. at 197-98 & n.18. And scrapping those limits would be no small matter. PACs are the political arms of corporations, unions, and issue-based groups and, by design, function as conduits for those concentrated interests. Eliminating the contribution limits would mean a single corporation or labor union's PAC could cut a multi-million dollar check to a candidate—no questions asked. That would obliterate the base limits upheld in *Buckley*.

The net result of all this would be to cast significant doubt on a whole slew of federal statutes, as well as many of this Court's decisions. Justice Thomas has written thoughtful dissents and concurrences advocating precisely this sort of revolutionary approach, *see, e.g.*, *McCutcheon*, 572

U.S. at 228-32 (concurring), but the Court has treaded far more carefully. And rightly so: The Court should not put itself in the business of deconstructing fifty years of campaign-finance law one petition, provision, and precedent at a time. Yet that is exactly where petitioners would take us.

2. Overturning *Colorado II* would also destabilize settled First Amendment doctrine governing equal treatment of speakers. It would create a major First Amendment anomaly by immediately giving political parties—and no one else—the right to make unlimited coordinated expenditures. While the First Amendment sometimes permits different treatment of speakers in certain contexts, such a sweeping exemption for parties is impossible to reconcile with settled constitutional principles.

The First Amendment generally prohibits the government from "distinguishing among different speakers, allowing speech by some but not others." *Citizens United*, 558 U.S. at 340. As the Court said in *Buckley*: "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment." 424 U.S. at 48-49.

Yet that is precisely what petitioners and the FEC seek to accomplish here. They ask this Court to invalidate Section 30116(d) and thereby allow political parties—and only political parties—to channel unlimited funds to candidates. In other words, they want the Court to say, for the first time, that parties have special rights under the First Amendment allowing them to engage in spending and advocacy that other groups—like the Club for Growth, the ACLU, the NRA, and the AFL-CIO—cannot.

Nothing in the Constitution's text or history remotely suggests that political parties occupy a favored constitutional status entitling them to engage in forms of speech denied to others. Far from granting them special privileges, the Constitution did not even "anticipate[] parties and . . . made no provision for their existence." Noble E. Cunningham, Jr., *The Jeffersonian Republican Party*, *in* 1 *History of U.S. Political Parties* 239, 240 (Arthur M. Schlesinger ed., 1973); *see* The Federalist No. 10, at 77 (James Madison) (Clinton Rossiter ed., 1961) (stressing that the Constitution would, in fact, control "'the violence of faction'").

On the contrary, the Founders viewed parties with deep distrust—equating them with "divisiveness, disruption, and conspiracy against government." Cunningham, *supra*, at 240. If there was "one point of political philosophy upon which" Washington, Adams, Madison, Hamilton, and Jefferson all agreed, "it was their common conviction about the baneful effects of the spirit of party." Richard Hofstadter, *The Idea of a Party System* 3 (1969). Giving parties special rights—above all other speakers—turns originalism on its head.

Petitioners and the FEC defend this special treatment by lamenting the growing role of Super PACs in campaign finance. FEC Br. 17-18, 40; Petrs. Br. 45. But under *Colorado I*, parties and Super PACs have the same right to make unlimited independent expenditures. 518 U.S. at 618-19. There is no justification for giving parties extra rights to make fully coordinated expenditures as well. Differential treatment designed to "enhance the relative voice" of parties over Super PACs is anathema to the First Amendment. *Buckley*, 424 U.S. at 48-49.

To be sure, political parties are not identical to other participants in federal campaigns, and in certain respects Congress may accommodate those differences. Federal law "actually favors political parties in many ways," including through the higher base limits governing their donors, as well as Section 30116(d)'s higher limits on coordinated expenditures. *McConnell*, 540 U.S. at 188. Section 30116(d), in particular, strikes a balance—giving parties slightly more leeway to coordinate with candidates, while protecting against the use of such parties "to 'circumvent contribution limits that apply to individuals.'" *Randall v. Sorrell*, 548 U.S. 230, 258-59 (2006).

A ruling for petitioners would unravel that balance. It would hand political parties an unchecked constitutional entitlement to unlimited coordinated expenditures, an advantage no other political actor enjoys. The First Amendment does not allow—let alone require—that result.

III. The Petition Should Be Dismissed As Improvidently Granted

By now one thing should be clear: This case is anything but straightforward. To reach the merits, the Court will need to resolve a "mare's nest" of justiciability issues that no judge has addressed, and that were never vetted at the certiorari stage. *Arizona v. City & Cnty. of San Francisco*, 596 U.S. 763, 766 (2022) (Roberts, C.J., concurring). These include thorny questions of mootness, appellate jurisdiction, the meaning of Sections 30101(14) and 30110, the validity of 11 C.F.R. § 109.33(a), and the test for political-candidate standing.

If the Court gets past the threshold, it will then have to decide whether to facially invalidate an Act of Congress—"'the gravest and most delicate duty that this Court is called on to perform.'" *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981). Doing so would require overturning a settled precedent and potentially destabilizing campaign-finance and First Amendment law more generally.

If petitioners actually needed the relief they seek—in the real world—all this effort might be worth it. But they don't. This is not a case like *Citizens United*, *Dobbs*, *Students for Fair Admissions*, or *Loper Bright*. There, the Court made tough decisions to overturn precedent when necessary to resolve real-life concrete disputes. Here, by contrast, petitioners have successfully persuaded the government that Section 30116(d) is unconstitutional and cannot be enforced against them. In this unique circumstance—regardless of whether Article III formally bars review—there is no pressing need for the Court to jump in and issue sweeping pronouncements of constitutional law.

Instead, the Court should exercise its discretionary judgment to dismiss the petition as improvidently granted, based on the FEC's conclusion that Section 30116(d) is unconstitutional. That result would not fully satisfy everyone, but it offers a middle ground that respects constitutional values and exemplifies judicial restraint.

Dismissal would leave the Republican petitioners as victors *de facto*, if not *de jure*. They filed this case to eliminate the chill the FEC's enforcement threat posed to their First Amendment interests. That chill is now gone. *Supra* 21. Dismissal would send the case back to the lower courts, where the parties could

agree to dismiss the complaint without prejudice. If the FEC ever changes position again, years down the road, the Republicans could renew their challenge on a clean slate.

Dismissal would also be fair to the Democratic intervenors. *Colorado II* would remain on the books, just as if intervenors had won on the merits. And although they would surely be frustrated by the FEC's non-enforcement of Section 30116(d), any complaint would lie with the voters, the Executive Branch, and the separation of powers—not with this Court. *See Windsor*, 570 U.S. at 787 (Scalia, J., dissenting); *see also* Mot. for Leave to Intervene 2 (opposing certiorari).

As for the Court: Dismissing this inherently politicized case would vindicate its commitment to restraint, neutrality, and staying above politics. It would reaffirm the Court's preference to "refrain from addressing constitutional questions" when doing so is not "necessary." *Citizens United*, 558 U.S. at 373 (Roberts, C.J., concurring). It would avoid the risks to stability and the rule of law inherent in overruling precedent. And it would preserve the Court's limited resources for live disputes between adverse parties, just as Article III envisions.

Amicus respectfully submits that dismissing the petition is the best way forward.

CONCLUSION

For the foregoing reasons, this Court should either decline to resolve this case on the merits or affirm the judgment below.

Respectfully submitted,

ROMAN MARTINEZ
Counsel of Record
MARGARET A. UPSHAW
CHRISTINA R. GAY
TIMOTHY J. BORGERSON
NATHANIEL G. BERRY
LATHAM & WATKINS LLP
555 11th Street, NW
Suite 1000
Washington, DC 20004
(202) 637-3377
roman.martinez@lw.com

September 29, 2025

ADDENDUM

ADDENDUM TABLE OF CONTENTS

Page

2 U.S.C. § 441a (2000)

§ 441a. Limitations on contributions and expenditures

(a) Dollar limits on contributions

(1) No person shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $1,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $20,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(2) No multicandidate political committee shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(3) No individual shall make contributions aggregating more than $25,000 in any calendar year. For purposes of this paragraph, any contribution made to a candidate in a year other than the calendar year in which the election is held with respect to which such contribution is made, is considered to be made during the calendar year in which such election is held.

(4) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party. For purposes of paragraph (2), the term "multicandidate political committee" means a political committee which has been registered under section 433 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee, except that (A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fund raising efforts; (B) for purposes of the limitations provided by

paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and (C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office if (i) such transfer is not made when the candidate is actively seeking nomination or election to both such offices; (ii) the limitations contained in this Act on contributions by persons are not exceeded by such transfer; and (iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of title 26. In any case in which a corporation and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the limitations provided by paragraph (1) and paragraph (2).

(6) The limitations on contributions to a candidate imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a

general election for such office) shall be considered to be one election.

(7) For purposes of this subsection—

(A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate;

(B)(i) 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;

(ii) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for purposes of this paragraph; and

(C) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any

way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(b) Dollar limits on expenditures by candidates for office of President of United States

(1) No candidate for the office of President of the United States who is eligible under section 9003 of title 26 (relating to condition for eligibility for payments) or under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of—

(A) $10,000,000, in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section), or $200,000; or

(B) $20,000,000 in the case of a campaign for election to such office.

(2) For purposes of this subsection—

(A) expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and

(B) an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by—

(i) an authorized committee or any other agent of the candidate for purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

(c) Increases on limits based on increases in price index

(1) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period. Each limitation established by subsection (b) of this section and subsection (d) of this section shall be increased by such percent difference. Each amount so increased shall be the amount in effect for such calendar year.

(2) For purposes of paragraph (1)—

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means the calendar year 1974.

(d) Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2) and (3) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e) of this section). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e) of this section); or

(ii) $20,000; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

(e) Certification and publication of estimated voting age population

During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age population of the United States, of each State, and of each congressional district as of the first day of July next preceding the date of certification. The term "voting age population" means resident population, 18 years of age or older.

(f) Prohibited contributions and expenditures

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

(g) Attribution of multi-State expenditures to candidate's expenditure limitation in each State

The Commission shall prescribe rules under which any expenditure by a candidate for presidential nominations for use in 2 or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

(h) Senatorial candidates

Notwithstanding any other provision of this Act, amounts totaling not more than $35,000 may be contributed to a candidate for nomination for election, or for election, to the United States Senate during the year in which an election is held in which he is such a candidate, by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees.

52 U.S.C. § 30101

§ 30101. Definitions

When used in this Act:

* * *

(14) The term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission.

* * *

(16) The term "political party" means an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization.

52 U.S.C. § 30104

§ 30104. Reporting requirements

* * *

(e) Political committees

(1) National and congressional political committees

The national committee of a political party, any national congressional campaign committee of a political party, and any subordinate committee of either, shall report all receipts and disbursements during the reporting period.

(2) Other political committees to which section 30125 of this title applies

(A) In general

In addition to any other reporting requirements applicable under this Act, a political committee (not described in paragraph (1)) to which section 30125(b)(1) of this title applies shall report all receipts and disbursements made for activities described in section 30101(20)(A) of this title, unless the aggregate amount of such receipts and disbursements during the calendar year is less than $5,000.

(B) Specific disclosure by State and local parties of certain non-Federal amounts permitted to be spent on Federal election activity

Each report by a political committee under subparagraph (A) of receipts and disbursements made for activities described in section 30101(20)(A) of this title shall include a

disclosure of all receipts and disbursements described in section 30125(b)(2)(A) and (B) of this title.

(3) Itemization

If a political committee has receipts or disbursements to which this subsection applies from or to any person aggregating in excess of $200 for any calendar year, the political committee shall separately itemize its reporting for such person in the same manner as required in paragraphs (3)(A), (5), and (6) of subsection (b).

(4) Reporting periods

Reports required to be filed under this subsection shall be filed for the same time periods required for political committees under subsection (a)(4)(B).

* * *

52 U.S.C. § 30110

§ 30110. Judicial review

The Commission, the national committee of any political party, or any individual eligible to vote in any election for the office of President may institute such actions in the appropriate district court of the United States, including actions for declaratory judgment, as may be appropriate to construe the constitutionality of any provision of this Act. The district court immediately shall certify all questions of constitutionality of this Act to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

52 U.S.C. § 30116

§ 30116. Limitations on contributions and expenditures

(a) Dollar limits on contributions

(1) Except as provided in subsection (i) and section 30117 of this title, no person shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $2,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $25,000, or, in the case of contributions made to any of the accounts described in paragraph (9), exceed 300 percent of the amount otherwise applicable under this subparagraph with respect to such calendar year;

(C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed $5,000; or

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.

(2) No multicandidate political committee shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election

for Federal office which, in the aggregate, exceed $5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000, or, in the case of contributions made to any of the accounts described in paragraph (9), exceed 300 percent of the amount otherwise applicable under this subparagraph with respect to such calendar year; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than—

(A) $37,500, in the case of contributions to candidates and the authorized committees of candidates;

(B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.

(4) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party. For purposes of paragraph (2),

the term "multicandidate political committee" means a political committee which has been registered under section 30103 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee, except that (A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fund raising efforts; (B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and (C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office if (i) such transfer is not made when the candidate is actively seeking nomination or election to both such

offices; (ii) the limitations contained in this Act on contributions by persons are not exceeded by such transfer; and (iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of title 26. In any case in which a corporation and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the limitations provided by paragraph (1) and paragraph (2).

(6) The limitations on contributions to a candidate imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

(7) For purposes of this subsection—

(A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate;

(B)(i) 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;

(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or local committee of a political party, shall be considered to be contributions made to such party committee; and

(iii) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for purposes of this paragraph; and[1]

(C) if—

(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 30104(f)(3) of this title); and

(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's

---

[1] So in original. The word "and" probably should not appear.

party and as an expenditure by that candidate or that candidate's party; and

(D) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for election to the office of President of the United States.

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(9) An account described in this paragraph is any of the following accounts:

(A) A separate, segregated account of a national committee of a political party (other than a national congressional campaign committee of a political party) which is used solely to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses, except that the aggregate amount of expenditures the national committee of a political party may make

from such account may not exceed $20,000,000 with respect to any single convention.

(B) A separate, segregated account of a national committee of a political party (including a national congressional campaign committee of a political party) which is used solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more headquarters buildings of the party or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses (including expenses for obligations incurred during the 2-year period which ends on December 16, 2014).

(C) A separate, segregated account of a national committee of a political party (including a national congressional campaign committee of a political party) which is used to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.

(b) Dollar limits on expenditures by candidates for office of President of United States

(1) No candidate for the office of President of the United States who is eligible under section 9003 of title 26 (relating to condition for eligibility for payments) or under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of—

(A) $10,000,000, in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this

subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e)), or $200,000; or

(B) $20,000,000 in the case of a campaign for election to such office.

(2) For purposes of this subsection—

(A) expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and

(B) an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by—

(i) an authorized committee or any other agent of the candidate for purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

(c) Increases on limits based on increases in price index

(1)(A) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of

such calendar year and the price index for the base period.

(B) Except as provided in subparagraph (C), in any calendar year after 2002—

(i) a limitation established by subsections (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be increased by the percent difference determined under subparagraph (A);

(ii) each amount so increased shall remain in effect for the calendar year; and

(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(C) In the case of limitations under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(2) For purposes of paragraph (1)—

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means—

(i) for purposes of subsections (b) and (d), calendar year 1974; and

(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), calendar year 2001.

(d) Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2), (3), and (4) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e)). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e)); or

(ii) $20,000; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

(4) INDEPENDENT VERSUS COORDINATED EXPENDITURES BY PARTY.—

(A) IN GENERAL.—On or after the date on which a political party nominates a candidate, no committee of the political party may make—

(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 30101(17) of this title) with respect to the candidate during the election cycle; or

(ii) any independent expenditure (as defined in section 30101(17) of this title) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

(B) APPLICATION.—For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees)

and all political committees established and maintained by a State political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

(C) TRANSFERS.—A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

(5) The limitations contained in paragraphs (2), (3), and (4) of this subsection shall not apply to expenditures made from any of the accounts described in subsection (a)(9).

(e) Certification and publication of estimated voting age population

During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age population of the United States, of each State, and of each congressional district as of the first day of July next preceding the date of certification. The term "voting age population" means resident population, 18 years of age or older.

(f) Prohibited contributions and expenditures

No candidate or political committee shall knowingly accept any contribution or make any

expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate, or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

(g) Attribution of multi-State expenditures to candidate's expenditure limitation in each State

The Commission shall prescribe rules under which any expenditure by a candidate for presidential nominations for use in 2 or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

(h) Senatorial candidates

Notwithstanding any other provision of this Act, amounts totaling not more than $35,000 may be contributed to a candidate for nomination for election, or for election, to the United States Senate during the year in which an election is held in which he is such a candidate, by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees.

(i) Increased limit to allow response to expenditures from personal funds

(1) Increase

(A) In general

Subject to paragraph (2), if the opposition personal funds amount with respect to a

candidate for election to the office of Senator exceeds the threshold amount, the limit under subsection (a)(1)(A) (in this subsection referred to as the "applicable limit") with respect to that candidate shall be the increased limit.

(B) Threshold amount

(i) State-by-State competitive and fair campaign formula

In this subsection, the threshold amount with respect to an election cycle of a candidate described in subparagraph (A) is an amount equal to the sum of—

(I) $150,000; and

(II) $0.04 multiplied by the voting age population.

(ii) Voting age population

In this subparagraph, the term "voting age population" means in the case of a candidate for the office of Senator, the voting age population of the State of the candidate (as certified under subsection (e)).

(C) Increased limit

Except as provided in clause (ii), for purposes of subparagraph (A), if the opposition personal funds amount is over—

(i) 2 times the threshold amount, but not over 4 times that amount—

(I) the increased limit shall be 3 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a

candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution;

(ii) 4 times the threshold amount, but not over 10 times that amount—

(I) the increased limit shall be 6 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

(iii) 10 times the threshold amount—

(I) the increased limit shall be 6 times the applicable limit;

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

(III) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party shall not apply.

(D) Opposition personal funds amount

The opposition personal funds amount is an amount equal to the excess (if any) of—

(i) the greatest aggregate amount of expenditures from personal funds (as defined in section 30104(a)(6)(B) of this title) that an opposing candidate in the same election makes; over

(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

(E) Special rule for candidate's campaign funds

(i) In general

For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (D)(ii), such amount shall include the gross receipts advantage of the candidate's authorized committee.

(ii) Gross receipts advantage

For purposes of clause (i), the term "gross receipts advantage" means the excess, if any, of—

(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held, over

(II) the aggregate amount of 50 percent of gross receipts of the opposing

candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

(2) Time to accept contributions under increased limit

(A) In general

Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)—

(i) until the candidate has received notification of the opposition personal funds amount under section 30104(a)(6)(B) of this title; and

(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 110 percent of the opposition personal funds amount.

(B) Effect of withdrawal of an opposing candidate

A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure

under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

(3) Disposal of excess contributions

(A) In general

The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

(B) Return to contributors

A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

(j) Limitation on repayment of personal loans

Any candidate who incurs personal loans made after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $250,000, such loans from any contributions made to such candidate or any authorized committee of such candidate after the date of such election.

11 C.F.R. § 109.32

§ 109.32 What are the coordinated party expenditure limits?

(a) *Coordinated party expenditures in Presidential elections.* (1) The national committee of a political party may make coordinated party expenditures in connection with the general election campaign of any candidate for President of the United States affiliated with the party.

(2) The coordinated party expenditures shall not exceed an amount equal to two cents multiplied by the voting age population of the United States. See 11 CFR 110.18. This limitation shall be increased in accordance with 11 CFR 110.17.

(3) Any coordinated party expenditure under paragraph (a) of this section shall be in addition to—

(i) Any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for President of the United States; and

(ii) Any contribution by the national committee to the candidate permissible under 11 CFR 110.1 or 110.2.

(4) Any coordinated party expenditures made by the national committee of a political party pursuant to paragraph (a) of this section, or made by any other party committee under authority assigned by a national committee of a political party under 11 CFR 109.33, on behalf of that party's Presidential candidate shall not count against the candidate's expenditure limitations under 11 CFR 110.8.

(b) *Coordinated party expenditures in other Federal elections.* (1) The national committee of a

political party, and a State committee of a political party, including any subordinate committee of a State committee, may each make coordinated party expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party.

(2) The coordinated party expenditures shall not exceed:

(i) In the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(A) Two cents multiplied by the voting age population of the State (see 11 CFR 110.18); or

(B) Twenty thousand dollars.

(ii) In the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

(3) The limitations in paragraph (b)(2) of this section shall be increased in accordance with 11 CFR 110.17.

(4) Any coordinated party expenditure under paragraph (b) of this section shall be in addition to any contribution by a political party committee to the candidate permissible under 11 CFR 110.1 or 110.2.

11 C.F.R. § 109.33

§ 109.33 May a political party committee assign its coordinated party expenditure authority to another political party committee?

(a) *Assignment*. The national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may assign its authority to make coordinated party expenditures authorized by 11 CFR 109.32 to another political party committee. Such an assignment must be made in writing, must state the amount of the authority assigned, and must be received by the assignee committee before any coordinated party expenditure is made pursuant to the assignment.

(b) *Compliance*. For purposes of the coordinated party expenditure limits, *State committee* includes a subordinate committee of a State committee and includes a district or local committee to which coordinated party expenditure authority has been assigned. State committees and subordinate State committees and such district or local committees combined shall not exceed the coordinated party expenditure limits set forth in 11 CFR 109.32. The State committee shall administer the limitation in one of the following ways:

(1) The State committee shall be responsible for insuring that the coordinated party expenditures of the entire party organization are within the coordinated party expenditure limits, including receiving reports from any subordinate committee of a State committee or district or local committee making coordinated party expenditures under 11

CFR 109.32, and filing consolidated reports showing all coordinated party expenditures in the State with the Commission; or

(2) Any other method, submitted in advance and approved by the Commission, that permits control over coordinated party expenditures.

(c) *Recordkeeping*. (1) A political party committee that assigns its authority to make coordinated party expenditures under this section must maintain the written assignment for at least three years in accordance with 11 CFR 104.14.

(2) A political party committee that is assigned authority to make coordinated party expenditures under this section must maintain the written assignment for at least three years in accordance with 11 CFR 104.14.

11 C.F.R. § 109.37

§ 109.37. What is a "party coordinated communication?"

(a) *Definition*. A political party communication is coordinated with a candidate, a candidate's authorized committee, or agent of any of the foregoing, when the communication satisfies the conditions set forth in paragraphs (a)(1), (a)(2), and (a)(3) of this section.

(1) The communication is paid for by a political party committee or its agent.

(2) The communication satisfies at least one of the content standards described in paragraphs (a)(2)(i) through (a)(2)(iii) of this section.

(i) A public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing, unless the dissemination, distribution, or republication is excepted under 11 CFR 109.23(b). For a communication that satisfies this content standard, see 11 CFR 109.21(d)(6).

(ii) A public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office.

(iii) A public communication, as defined in 11 CFR 100.26, that satisfies paragraphs (a)(2)(iii)(A) or (B) of this section:

(A) *References to House and Senate candidates*. The public communication refers to a clearly identified House or Senate candidate and is publicly distributed or otherwise publicly disseminated in the

clearly identified candidate's jurisdiction 90 days or fewer before the clearly identified candidate's general, special, or runoff election, or primary or preference election, or nominating convention or caucus.

(B) *References to Presidential and Vice Presidential candidates*. The public communication refers to a clearly identified Presidential or Vice Presidential candidate and is publicly distributed or otherwise publicly disseminated in a jurisdiction during the period of time beginning 120 days before the clearly identified candidate's primary or preference election in that jurisdiction, or nominating convention or caucus in that jurisdiction, up to and including the day of the general election.

(3) The communication satisfies at least one of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6), subject to the provisions of 11 CFR 109.21(e), (g), and (h). A candidate's response to an inquiry about that candidate's positions on legislative or policy issues, but not including a discussion of campaign plans, projects, activities, or needs, does not satisfy any of the conduct standards in 11 CFR 109.21(d)(1) through (d)(6). Notwithstanding paragraph (b)(1) of this section, the candidate with whom a party coordinated communication is coordinated does not receive or accept an in-kind contribution, and is not required to report an expenditure that results from conduct described in 11 CFR 109.21(d)(4) or (d)(5), unless the candidate, authorized committee, or an agent of any of the foregoing, engages in conduct described in 11 CFR 109.21(d)(1) through (d)(3).

(b) *Treatment of a party coordinated communication.* A payment by a political party committee for a communication that is coordinated with a candidate, and that is not otherwise exempted under 11 CFR part 100, subpart C or E, must be treated by the political party committee making the payment as either:

(1) An in-kind contribution for the purpose of influencing a Federal election under 11 CFR 100.52(d) to the candidate with whom it was coordinated, which must be reported under 11 CFR part 104; or

(2) A coordinated party expenditure pursuant to coordinated party expenditure authority under 11 CFR 109.32 in connection with the general election campaign of the candidate with whom it was coordinated, which must be reported under 11 CFR part 104.

11 C.F.R. § 110.6

§ 110.6. Earmarked contributions 52 U.S.C. 30116(a)(8)).

(a) *General.* All contributions by a person made on behalf of or to a candidate, including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate.

(b) *Definitions.* (1) For purposes of this section, *earmarked* means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee. A contributor's authorization that a commercial payment processor, whose usual and normal business is to process payments, transmit funds from the contributor to the designated candidate or authorized committee in the commercial payment processor's ordinary course of business does not in itself constitute an earmark.

(2) For purposes of this section, *conduit or intermediary* means any person who receives and forwards an earmarked contribution to a candidate or a candidate's authorized committee, except as provided in paragraph (b)(2)(i) of this section.

(i) For purposes of this section, the following persons shall not be considered to be conduits or intermediaries:

(A) An individual who is an employee or a full-time volunteer working for the candidate's authorized

committee, provided that the individual is not acting in his or her capacity as a representative of an entity prohibited from making contributions;

(B) A fundraising representative conducting joint fundraising with the candidate's authorized committee pursuant to 11 CFR 102.17 or 9034.8;

(C) An affiliated committee, as defined in 11 CFR 100.5(g);

(D) A commercial fundraising firm retained by the candidate or the candidate's authorized committee to assist in fundraising; and

(E) An individual who is expressly authorized by the candidate or the candidate's authorized committee to engage in fundraising, and who occupies a significant position within the candidate's campaign organization, provided that the individual is not acting in his or her capacity as a representative of an entity prohibited from making contributions.

(ii) Any person who is prohibited from making contributions or expenditures in connection with an election for Federal office shall be prohibited from acting as a conduit for contributions earmarked to candidates or their authorized committees. The provisions of this section shall not restrict the ability of an organization or committee to serve as a collecting agent for a separate segregated fund pursuant to 11 CFR 102.6.

(iii) Any person who receives an earmarked contribution shall forward such earmarked contribution to the candidate or authorized committee in accordance with 11 CFR 102.8, except that—

(A) A fundraising representative shall follow the joint fundraising procedures set forth at 11 CFR 102.17.

(B) A person who is prohibited from acting as a conduit pursuant to paragraph (b)(2)(ii) of this section shall return the earmarked contribution to the contributor.

(c) *Reporting of earmarked contributions*—(1) *Reports by conduits and intermediaries*. (i) The intermediary or conduit of the earmarked contribution shall report the original source and the recipient candidate or authorized committee to the Commission and to the recipient candidate or authorized committee.

(ii) The report to the Commission shall be included in the conduit's or intermediary's report for the reporting period in which the earmarked contribution was received, or, if the conduit or intermediary is not required to report under 11 CFR part 104, the report shall be provided in writing to the Commission within thirty days after forwarding the earmarked contribution.

(iii) The report to the recipient candidate or authorized committee shall be made when the earmarked contribution is forwarded to the recipient candidate or authorized committee pursuant to 11 CFR 102.8.

(iv) The report by the conduit or intermediary shall contain the following information:

(A) The name and mailing address of each contributor and, for each earmarked contribution in excess of $200, the contributor's occupation and the name of his or her employer;

(B) The amount of each earmarked contribution, the date received by the conduit, and the intended recipient as designated by the contributor; and

(C) The date each earmarked contribution was forwarded to the recipient candidate or authorized committee and whether the earmarked contribution was forwarded in cash, by the contributor's check, by the conduit's check, or by electronic transfer.

(v) For each earmarked contribution passed through the conduit's or intermediary's account, the information specified in paragraph (c)(1)(iv) (A) through (C) of this section shall be itemized on the appropriate schedules of receipts and disbursements attached to the conduit's or intermediary's report, or shall be disclosed in writing, as appropriate. For each earmarked contribution forwarded in the form of the contributor's check or other written instrument, the information specified in paragraph (c)(1)(iv) (A) through (C) of this section shall be disclosed as a memo entry on the appropriate schedules of receipts and disbursements attached to the conduit's or intermediary's report, or shall be disclosed in writing, as appropriate.

(2) *Reports by recipient candidates and authorized committees.* (i) The recipient candidate or authorized committee shall report each conduit or intermediary who forwards one or more earmarked contributions which in the aggregate exceed $200 in any election cycle.

(ii) The report by the recipient candidate or authorized committee shall contain the following information:

(A) The identification of the conduit or intermediary, as defined in 11 CFR 100.12;

(B) The total amount of earmarked contributions received from the conduit or intermediary and the date of receipt; and

(C) The information required under 11 CFR 104.3(a) (3) and (4) for each earmarked contribution which in the aggregate exceeds $200 in any election cycle.

(iii) The information specified in paragraph (c)(2)(ii) (A) through (C) of this section shall be itemized on Schedule A attached to the report for the reporting period in which the earmarked contribution is received.

(d) *Direction or control.* (1) A conduit's or intermediary's contribution limits are not affected by the forwarding of an earmarked contribution except where the conduit or intermediary exercises any direction or control over the choice of the recipient candidate.

(2) If a conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the earmarked contribution shall be considered a contribution by both the original contributor and the conduit or intermediary. If the conduit or intermediary exercises any direction or control over the choice of the recipient candidate, the report filed by the conduit or intermediary and the report filed by the recipient candidate or authorized committee shall indicate that the earmarked contribution is made by both the original contributor and the conduit or intermediary, and that the entire amount of the contribution is attributed to each.

11 C.F.R. § 110.7 (1981)

§ 110.7 Party committee expenditure limitations (2 U.S.C. 44la(d)).

(a) * * *

(4) The national committee of a political party may make expenditures authorized by this section through any designated agent, including State and subordinate party committees.

* * *