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 OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF AFFIRMANCE

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES — cont'd

TABLE OF AUTHORITIES — cont'd

Page(s)

Other Authorities

TABLE OF AUTHORITIES — cont'd

TABLE OF AUTHORITIES — cont'd

Page(s)

INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and to preserve the rights and freedoms it guarantees. CAC accordingly has a strong interest in defending federal laws that further the Constitution's deeply rooted anti-corruption principles and in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

In one of the most famous passages from *The Federalist Papers*, James Madison declared that "[i]f men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary." *The Federalist No. 51*, at 322 (Clinton Rossiter ed., 1961). Madison's statement reflected the Framers' deep-seated and nearly universal fear of corruption in government, born out of their experiences in England. This interest in establishing a political system capable of combatting corruption and improving integrity in government lies at the foundation of our constitutional republic and is reflected in multiple provisions in our national charter that give Congress the power to limit opportunities for corruption in government.

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

Exercising those powers, Congress enacted the Federal Election Campaign Act of 1971 (FECA), the foundational law governing money in politics. The centerpiece of FECA is its base limits on contributions to candidates, which this Court upheld as constitutional half a century ago, *see Buckley v. Valeo*, 424 U.S. 1, 26-29 (1976) (per curiam), and has repeatedly upheld since then, *see, e.g.*, *McCutcheon v. FEC*, 572 U.S. 185, 208 (2014); *FEC v. Cruz*, 596 U.S. 289, 306 (2022).

A corollary to those base contribution limits is FECA's limit on expenditures by national political party committees made in coordination with their federal candidates. 52 U.S.C. § 30116(d). That provision prevents donors from "us[ing] parties as conduits for contributions meant to place candidates under obligation." *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 452 (2001) ("*Colorado II*"). In other words, it prevents the subversion of FECA's base contribution limits through "disguised contributions" that might be given "as a *quid pro quo* for improper commitments from the candidate." *Buckley*, 424 U.S. at 47.

That approach to stemming corruption is deeply rooted in constitutional text and history. Concerns about the corrupting potential of gifts routed to people in positions of power date to the Founding. When the Framers gathered in Philadelphia in the summer of 1787 to draft the Constitution, anti-corruption measures were considered essential to creating an enduring system of government. As George Mason warned his fellow delegates at the Constitutional Convention, "if we do not provide against corruption, our government will soon be at an end." 1 *The Records of the Federal Convention of 1787*, at 392 (Max Farrand ed., 1966) ("*Farrand's Records*"). Because the Framers understood that corruption is insidious and could be

"expected to make [its] approach[] from more than one quarter," *The Federalist No. 68*, *supra*, at 412 (Alexander Hamilton), they enshrined in the Constitution as many protections against corruption as possible, including by giving Congress the power to pass laws designed to ensure integrity in federal elections. *See* U.S. Const. art. I, § 4, cl. 1 (granting Congress authority to regulate "[t]he Times, Places and Manner of holding Elections").

While some of these protections took the form of governmental structures that were designed to help the government withstand corruption and ensure that it would be independent of potentially corrupting influences, the Framers also included in the Constitution a number of specific and strongly worded gift, salary, and appointment restrictions targeted at minimizing discrete opportunities for corruption. These specific restrictions, such as the Emoluments Clauses, reach more broadly than simply outlawing bribery. Much like the FECA provision at issue in this case, they serve as prophylactic measures that minimize opportunities for corruption, targeting not just *quid pro quo* corruption itself, but also the appearance thereof, which was "[o]f almost equal concern" to the Framers, *Buckley*, 424 U.S. at 27.

Consistent with this constitutional text and history, this Court has long recognized Congress's "legitimate and compelling" interest in "preventing corruption and the appearance of corruption." *FEC v. Nat'l Conservative PAC*, 470 U.S. 480, 496 (1985). Over a century ago, this Court observed that "[i]n a republican government, like ours, where political power is reposed in representatives of the entire body of the people, chosen at short intervals by popular elections, the temptations to control these elections . . . by corruption is a constant source of danger." *Ex parte Yarbrough*,

110 U.S. 651, 666 (1884). Thus, avoiding even the appearance of corruption is "critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent." *Buckley*, 424 U.S. at 27 (quotation marks omitted).

The FECA provision limiting party coordinated expenditures fits comfortably within the constitutional tradition of avoiding corruption in government by targeting actual and apparent *quid pro quo* corruption. That is why this Court upheld this very provision in the face of a materially identical challenge a quarter of a century ago in *Colorado II*.

That decision came on the heels of *Colorado I*, which invalidated limits on *independent* party expenditures, recognizing that "[t]he absence of prearrangement and coordination of an expenditure with the candidate . . . not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 615 (1996) ("*Colorado I*") (quotation marks omitted). In contrast, in *Colorado II*, this Court determined that *coordinated* party expenditures "are as useful to the candidate as cash," *Colorado II*, 533 U.S. at 446, and thus, unlike independent expenditures, "may be restricted to minimize circumvention of contribution limits" and the *quid pro quo* corruption that could result from such circumvention, *id.* at 465.

Petitioners and the government provide no meaningful justification for overruling *Colorado II*. Instead, they attempt to recast that decision as upholding party coordinated expenditure limits because they "combat donor influence in general," Gov't Br. 2; *see, e.g.*, Pet. Br. 35, rather than because they further the "one permissible ground for restricting political speech: the

prevention of '*quid pro quo*' corruption or its appearance." *Cruz*, 596 U.S. at 305. That is wrong.

The chief and explicit justification for upholding the party coordinated expenditure limits in *Colorado II* was the prevention of *quid pro quo* corruption and its appearance. And that makes perfect sense: this Court has repeatedly held that FECA's base contribution limits permissibly target actual and apparent *quid pro quo* corruption. And by preventing circumvention of those base limits, the party coordinated expenditure limits necessarily serve the same purpose.

Moreover, in the court below, the government introduced extensive record evidence of the ways in which parties may be used as conduits to launder contributions to candidates by maxed-out donors. From Teapot Dome to the Democratic Party's historic "tallying" system "that helps to connect donors to candidates through the accommodation of a party," *Colorado II*, 533 U.S. at 459, this is hardly a case in which there are no on-point examples of the corrupt practices that might occur in the absence of the challenged statutory provision. *Cf. Cruz*, 596 U.S. at 307 (invalidating a campaign-finance regulation where "the Government [was] unable to identify a single case of *quid pro quo* corruption").

In short, party coordinated expenditure limits are part of a long American tradition of rooting out opportunities for corruption in government, and they fit squarely within this Court's doctrine by preventing actual and apparent *quid pro quo* corruption. At the end of the day, it is "beyond serious doubt" that "contribution limits would be eroded" in the absence of party coordinated spending limitations. *Colorado II*, 533 U.S. at 457. Candidates could simply tell maxed-out donors to give to the party, knowing that the money would end up in their pockets. Whether such giving would in fact

be done in exchange for political favors is irrelevant. What matters is that the risk of the appearance of *quid pro quo* corruption is just as inherent in party coordinated expenditures as it is in direct contributions to candidates, making it appropriate for Congress to treat the two in the same way.

Consistent with these precedents, as well as the constitutional text and history reflecting the Framers' commitment to limiting opportunities for corruption in government, this Court should uphold the FECA provision at issue in this case, and the judgment of the court below should be affirmed.

ARGUMENT

I. The Constitution's Text and History Reflect the Framers' Strong Interest in Preventing Corruption.

A. In Drafting the Constitution, the Framers Were Keenly Concerned About Preventing Both the Appearance and Reality of Corruption.

The Framers viewed the American Revolution as a fresh start from the corruption they saw as endemic to politics and government. While many viewed Britain as "the best example of structured self-government that [they] could imagine," Zephyr Teachout, *Corruption in America* 36 (2014), they also viewed it as a tragedy of corruption, racked, in the words of Patrick Henry, by "the bolts and bars of power" with "bribery and corruption defiling the fairest fabric that ever human nature reared." Patrick Henry, *Speech in the Convention of Virginia on the Expediency of Adopting the Federal Constitution*, June 7, 1788, *reprinted in* 1 E.B. Williston, *Eloquence of the United States* 223 (E. & H. Clark eds., 1827); *see also* 1 *Farrand's Records* 380 (George Mason) ("I admire many parts of the

British constitution and government, but I detest their corruption.").

Indeed, the very decision to hold the Constitutional Convention itself—separate from the ordinary process established under the Articles of Confederation—was in part a reaction to the perceived "corruption & mutability of the Legislative Councils of the States." 2 *Farrand's Records* 288 (John Francis Mercer). The Framers viewed those self-interested state legislatures as a chief cause of the failure of the Articles of Confederation because they repeatedly put their own interests ahead of the whole. *See* 3 *Farrand's Records* 542 (James Madison) (describing, for instance, how the states under the Articles of Confederation "were subject to be taxed by their neighbors," creating "a source of dissatisfaction and discord, until the new Constitution, superseded the old").

Corruption was thus a chief concern that informed the Framers' design of the Constitution, and "there was near unanimous agreement [among the delegates at the Convention] that corruption was to be avoided, that its presence in the political system produced a degenerative effect, and that the new Constitution was designed in part to insulate the political system from corruption." James D. Savage, *Corruption and Virtue at the Constitutional Convention*, 56 J. Pol. 174, 181 (1994). As Alexander Hamilton put it, "[n]othing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption." *The Federalist No. 68*, *supra*, at 412.

This preoccupation with stemming corruption, born of the Founders' experience under British rule and the shortcomings of the Articles of Confederation, pervaded the debates at the Constitutional Convention. James Madison's notes of the Constitutional Convention record that fifteen delegates used the term

"corruption" no less than fifty-four times. The vast majority of these references were made by seven of the most prominent delegates, including Madison, Governeur Morris, George Mason, and James Wilson. Savage, *supra*, at 177. Corruption was an express topic of concern on almost a quarter of the days that the members convened, Zephyr Teachout, *The Anti-Corruption Principle*, 94 Cornell L. Rev. 341, 352 (2009), and concern over corruption quickly became "the common grammar of politics" during the Convention, John M. Murrin, *Escaping Perfidious Albion: Federalism, Fear of Aristocracy, and the Democratization of Corruption in Postrevolutionary America*, *in Virtue, Corruption, and Self-Interest: Political Values in the Eighteenth Century* 103, 104 (Richard K. Matthews ed., 1994).

The early American concept of corruption boiled down to a fear of "excessive private interests influencing the exercise of public power." Teachout, *Corruption in America*, *supra*, at 38. This concept stemmed from two main sources: the theories of the French philosopher Charles de Montesquieu, and the Christian tradition of virtue, which was intertwined with John Locke's theories of natural law. *See id.* at 39. In both traditions, "the core metaphor of corruption was organic and derived from disease and internal collapse. Corruption was a rotting of positive ideals of civic virtue and public integrity." *Id.* As Montesquieu explained, civic "virtue" at the core of a functioning democracy was "the love of the laws and of our country," and "[s]uch love requires a constant preference of public to private interest." 4 Charles de Montesquieu, *The Spirit of Laws* (1748) (Melvin Richter trans., Cambridge University Press 1991). Thomas Jefferson copied this passage into his notebook, and he and others referred to these principles repeatedly throughout the

late eighteenth century. Teachout, *Corruption in America*, *supra*, at 42.

While the Framers were well-versed in political theory, they were not detached from the rough-and-tumble world of politics, and they approached the problems of corruption with a real-world understanding of political systems and their potential to foster or restrain corruption. "When the delegates spoke of corruption at the [C]onvention, they did so in a manner that reflected classical republican concerns about dependency, cabals, patronage, unwarranted influence, and bribery." Savage, *supra*, at 181. They were also concerned that even the appearance of corruption posed a risk to civic virtue and the integrity of the fledgling American government. As one scholar has explained, "[t]he Framers appear to have conceptualized corruption as a derogation of the public trust." Samuel Issacharoff, *On Political Corruption*, 124 Harv. L. Rev. 118, 129 (2010).

In keeping with these practical concerns, the Framers frequently referenced several notorious instances of European corruption that they sought to protect against in the new constitutional order. Several of these incidents involved outright bribery: for instance, when Louis XIV paid Charles II and later James II for foreign affairs alliances. *See, e.g.*, 2 *Farrand's Records* 68-69 (Gouveneur Morris) (noting that even a king, who "[o]ne would think . . . well secured agst. Bribery . . . was bribed by Louis XIV"); 4 *Debates in the Several State Conventions on the Adoption of the Federal Constitution* 264 (Jonathan Elliot ed., 1836) [hereinafter *Elliot's Debates*] (Charles Cotesworth Pinckney) (noting the bribe of "Charles II., who sold Dunkirk to Louis XIV").

But the Framers' concerns about corruption extended beyond outright bribery. In Europe at the time,

and especially in France, "[e]xpensive gifts—sometimes called *presents du roi* or *presents du congé*—functioned as tokens of esteem, prestige items, and perhaps petty bribes, and were embedded in the culture of international relations." Teachout, *Corruption in America*, *supra*, at 19 (quotation marks and end note omitted). During the Virginia ratification debates, Governor Edmund Randolph explained:

> A box was presented to our ambassador by the king of our allies. It was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emoluments from foreign states. I believe, that if at that moment, when we were in harmony with the king of France, we had supposed that he was corrupting our ambassador, it might have disturbed that confidence, and diminished that mutual friendship, which contributed to carry us through the war.

3 *Farrand's Records* 327.

As this statement illustrates, the appearance of *quid pro quo* corruption posed not only a risk of domestic distrust in government, but also a risk of the souring of diplomatic relationships. Thus, based on their real-world experiences with corruption, the Founders were determined to craft a governing charter that rooted out not just outright bribery but also *opportunities* for corruption and situations that could give rise to the *appearance* of corruption.

In one famous example, the King of Spain gave John Jay a horse, even though Jay was engaged in high-level negotiations with a Spanish representative at the time. *See* 10 *The Documentary History of the Ratification of the Constitution* 1369 n.7 (John P.

Kaminski et al. eds., 1993). And in 1780, the United States Ambassador to France, Arthur Lee, received from Louis XVI of France a portrait of the King set atop a gold box commonly called a "snuff box." *Id.* Lee turned the gift over to Congress, which resolved that he could keep it. *Id.*

But perhaps the most well-known snuff box was Benjamin Franklin's. When Franklin left Paris in 1785, Louis XVI gave him a spectacular parting gift: a portrait of King Louis, surrounded by 408 diamonds set in two rows around the painting and held in a solid gold snuff box. Teachout, *Corruption in America*, *supra*, at 1-2, 25-26. While no one thought that the gift was a bribe, it nevertheless risked the appearance of corruption due to its ostentatious nature, Franklin's "outsized role in the American political landscape," and the fact that Franklin was "notoriously adored" by the French government. *Id.* at 25-26.

Franklin ultimately asked Congress to approve the gift, which it did in 1786, and there is some evidence that the Constitution's Foreign Emoluments Clause was inspired in part by Franklin's notorious snuff box. *Id.* at 26-27. That Clause, along with several other constitutional provisions, was designed to reduce temptations and opportunities for corruption among public officials and block influences that would tend to compromise the government's intended "dependen[ce] on the people alone." *The Federalist No. 52*, *supra*, at 326 (James Madison).

B. The Constitution's Text Reflects Broad Anti-Corruption Principles and Includes Specific Restrictions Designed to Prevent *Quid Pro Quo* Corruption and Its Appearance.

The Framers recognized that even if a public official or an institution of government was not actually tainted by a corrupting force, members of the public might still reasonably question whether their representatives remained loyal to the public. Thus, rather than simply criminalize bribery of public officials, the Framers also included in the Constitution provisions designed to prevent actions that could give rise to the appearance of corruption. These provisions eliminated opportunities for temptation or circumvention of other constitutional controls that could cause the public to question the integrity of government leaders.

The Foreign Emoluments Clause. The Constitution mandates that "no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State." U.S. Const. art. I, § 9, cl. 8. The Framers wrote this clause in part in response to those instances between the Revolution and the Convention when American diplomats—like Benjamin Franklin—received valuable gifts from foreign dignitaries. Teachout, *Corruption in America*, *supra*, at 27.

But this Clause also responded to the Founders' deep-seated concern, not tied to any particular incident, that foreign powers could use emoluments and gifts to interfere with America's internal affairs, undermining the nation's republican institutions and making its leaders subservient to foreign interests. Alexander Hamilton wrote that one of the vulnerabilities of republics "is that they afford too easy an inlet to

foreign corruption." *The Federalist No. 22*, *supra*, at 149. And during the Constitutional Convention, Elbridge Gerry warned that "[f]oreign powers will intermeddle in our affairs, and spare no expence to influence them." 2 *Farrand's Records* 268. By reaching more broadly than simply outlawing bribery, the Foreign Emoluments Clause served as a prophylactic measure that targeted not just actual corruption, but also the appearance of *quid pro quo* corruption.

This restriction on accepting foreign emoluments was one of the few measures to be transferred from the Articles of Confederation to the new Constitution in 1787, reflecting its importance to the Founding generation. Teachout, *Corruption in America*, *supra*, at 26-27. At Philadelphia, the Foreign Emoluments Clause was added to the draft of the new Constitution by unanimous agreement of the state delegations after Charles Pinckney "urged the necessity of preserving foreign Ministers & other officers of the U.S. independent of external influence." 2 *Farrand's Records* 389; *see id.* at 384. In adding that clause, the Founders largely borrowed the language of the precursor provision in the Articles of Confederation—language that was sweeping and unqualified, making it one of the most "strongly worded prohibitions in the Constitution," designed to root out all opportunities and temptations for corruption of the United States government by foreign influences, Teachout, *Corruption in America*, *supra*, at 26.

But they did make one important change: they codified the practice that federal officeholders could accept otherwise prohibited emoluments from foreign states if they first obtained the affirmative consent of Congress, thus reducing the *appearance* of corruption. Teachout, *Corruption in America*, *supra*, at 26-27; *see also* 3 Joseph Story, *Commentaries on the Constitution*

of the United States § 1346, at 216 (1833) (calling the provision "highly important" despite doubting "[w]hether, in a practical sense, it can produce much effect," for "[a] patriot will not be likely seduced from his duties to the country by the acceptance of any title, or present, from a foreign power," but "[a]n intriguing, or corrupt agent, will not be restrained from guilty machinations in the service of foreign state by such constitutional restrictions").

The Domestic Emoluments Clause. The Constitution also provides that "[t]he President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them." U.S. Const. art. II, § 1, cl. 7. This clause, known as the Domestic Emoluments Clause, was written to allay the Founders' concerns that vesting executive power in a single chief executive could stoke corruption of the kind they had seen in England—where a king engaged in "absolute Tyranny" over the people, The Declaration of Independence para. 2 (U.S. 1776), and where "a well-designed government was eventually internally corrupted and, therefore, self-destructed," Teachout, *The Anti-Corruption Principle*, *supra*, at 350.

The Framers were especially worried that Congress or the states might exploit the President's self-interest as a means of inducing him to favor their personal or provincial concerns. Alexander Hamilton observed that "a power over a man's support is a power over his will," and that if legislatures could alter the President's financial circumstances, they could "tempt him by largesses" and thereby cause him "to surrender at discretion his judgment to their inclinations." *The Federalist No. 73*, *supra*, at 441. History revealed

many examples "of the intimidation or seduction of the Executive by the terrors or allurements of . . . pecuniary arrangements." *Id.* Even in the American colonies, experience had shown how conniving legislatures could gain undue influence over the executive through financial rewards, and how the executive in turn could exploit his office to enrich himself.

In some colonies, for instance, governors lacked a fixed salary, instead relying on myriad other sources of profit that accompanied their offices: bonuses, awards of pensions, grants of land, use of land and public labor for personal profit, sharing in taxes and fees, use of idle public funds as personal capital, tax exemptions, and "customary gifts" of merchandise or money from ships at port. Alvin Rabushka, *Taxation in Colonial America* 13, 241-44, 248, 374, 384, 536 n.35, 606 (2008). In colonies that operated as proprietorships, the situation was ever starker: the "public revenue of the colony belonged to the private proprietor," who often was the governor. Alvin Rabushka, *The Colonial Roots of American Taxation, 1607-1700*, Hoover Institution Pol. Rev. (Aug. 1, 2002), http://www.hoover.org/research/colonial-roots-american-taxation-1607-1700. In both situations, governors "engaged in trade," "accepted bribes," and even "engaged in illicit activities . . . and supported piracy." Rabushka, *Taxation in Colonial America*, *supra*, at 311. Such rampant profiteering enabled legislatures to influence governors' decisions by manipulating their financial rewards. It also enabled governors to hold legislatures hostage to their personal monetary demands.

Aware of this history, the Framers wrote the Domestic Emoluments Clause to avert the flagrant extortion in which some colonial governors had engaged and prevent Congress from bribing the President or

punishing him by manipulating his salary. But they ultimately realized that providing a fixed compensation was not enough: Congress and the states might instead give the President other lucrative benefits or rewards *besides* a compensation increase to bend him to their will. To prevent such corruption, John Rutledge and Benjamin Franklin moved to supplement the presidential compensation provision by adding the following: "and he (the President) shall not receive . . . any other emolument from the U.S. or any of them." 2 *Farrand's Records* 626. Franklin and Rutledge's motion was swiftly approved by the Convention, and the Domestic Emoluments Clause became part of the new Constitution. *Id.*

The Ineligibility and Emoluments Clause. The Constitution also provides that "[n]o Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time." U.S. Const. art. I, § 6, cl. 2. This constitutional restriction reflects the Framers' anxiety that legislators' temptation to secure employment in the future might cloud their duty to act in the public interest in the present. "The core corruption the Framers wanted to avoid was Parliament's loss of independence from the Crown because the king had showered members of Parliament with offices and perks that few would have the strength to resist." Lawrence Lessig, *Republic, Lost* 19 (2011). At the Convention, the delegates explained that this provision would "preserv[e] the Legislature as pure as possible, by shutting the door against appointments of its own members to offices, which was one source of its corruption." 1 *Farrand's Records* 386 (John Rutledge).

The delegates' decision that an express constitutional "precaution ag[ainst] intrigue was necessary" stemmed from their observations of the British experience, "where men got into Parl[iament] [so] that they might get offices for themselves or their friends"—"the source of the corruption that ruined their Gov[ernment]." *Id.* at 376 (Pierce Butler). George Mason supported the exclusion "as a corner stone in the fabric" of the Constitution and was "for shutting the door at all events ag[ainst] corruption," particularly in light of the "venality and abuses" that took place in this regard in England. *Id.* During ratification debates over the Constitution, James McHenry explained that the purpose of the provision was "to avoid as much as possible every motive for Corruption." James McHenry, *Speech before the Maryland House of Delegates* (Nov. 29, 1787), *in* 3 *Farrand's Records* 148; *see McConnell v. FEC*, 540 U.S. 93, 153 (2003) ("The best means of prevention is to identify and to remove the temptation.").

Thus, much like the Foreign and Domestic Emoluments Clauses, the Ineligibility and Emoluments Clause uses sweeping language directed at circumstances under which an officeholder might receive—or *appear* to receive—a personal benefit in exchange for political favors.

Eligibility Requirements for Elected Office. The Constitution's restrictions on candidates for elected office were also designed to guard against possible sources of corruption. Beginning with Congress, the Constitution requires that any Representative or Senator "be an Inhabitant of that State in which he shall be chosen." U.S. Const. art. I, § 2, cl. 2; *id.* § 3, cl. 3. This residency requirement was a response to the Framers' fear that wealthy non-residents would purchase elected office. George Mason explained that "[i]f residence be not required, Rich men of neighbouring

States, may employ with success the means of corruption in some particular district and thereby get into the public Councils after having failed in their own State." 2 *Farrand's Records* 218. Representatives were also required to be "seven Years a Citizen," U.S. Const. art. I, § 2, cl. 2, and Senators "nine Years a Citizen," U.S. Const. art. I, § 3, cl. 3, because of concerns about foreign intrigue.

The Constitution's eligibility requirements for President are even more stringent, reflecting the Framers' concern that this office was particularly susceptible to corruption. James Madison thought that because the presidency "was to be administered by a single man . . . corruption was more within the compass of probable events." 2 *Farrand's Records* 66. Building on this concern, the Constitution requires that the President be "a natural born Citizen," and have "been fourteen Years a Resident within the United States." U.S. Const. art. II, § 1, cl. 5. Through these eligibility requirements, the Founders sought to impose an additional layer of protection against sources of possible corruption.

The Elections Clause. Finally, aware that the specific safeguards written into the Constitution might be insufficient on their own to guard against corruption in elections in particular, the Framers drafted the Elections Clause to give Congress the tools to supplement those safeguards, avoid their circumvention, and address new abuses that might arise in the future. The Elections Clause provides that Congress may regulate the "Times, Places, and Manner of holding Elections." U.S. Const. art. I, § 4, cl. 1. "The Clause's substantive scope is broad. 'Times, Places, and Manner[]' . . . are 'comprehensive words,' which 'embrace authority to provide a complete code for congressional elections.'" *Arizona v. Inter Tribal Council of Ariz., Inc.*,

570 U.S. 1, 8-9 (2013) (quoting *Smiley v. Holm*, 285 U.S. 355, 366 (1932)).

The Framers granted Congress the power to establish uniform ground rules for federal elections "to prevent corruption or undue influence," 2 *Elliot's Debates* 535 (Thomas M'Kean), and to ensure that Congress would be dependent on the people alone, not factions in the states that might seek to "mould their regulations as to favor the candidates they wished to succeed." 2 *Farrand's Records* 241 (James Madison); *see* 3 *Elliot's Debates* 11 (George Nicholas) (observing that "the power of Congress to make the times of elections uniform in all the states, will destroy of the continuance of any cabal"). The Elections Clause gave Congress the power to guarantee the integrity of federal elections and prevent new forms of corruption from undermining the Constitution's anti-corruption principles. Indeed, the FECA provision at issue in this case was enacted pursuant to Congress's Elections Clause power to regulate the "manner" of elections and to guard against the risk of both actual and apparent *quid pro quo* corruption.

II. The FECA Provision at Issue Here Specifically Targets *Quid Pro Quo* Corruption and Its Appearance.

Consistent with the constitutional text, history, and structure discussed above, this Court has long recognized the compelling nature of the government's interest in preventing both corruption and the appearance of corruption. This Court has thus repeatedly upheld "preventative" measures limiting "contributions in order to ensure against the reality or appearance of corruption." *Citizens United v. FEC*, 558 U.S. 310, 357 (2010).

A foundational one of these measures is FECA's base contribution limit, which caps the amount any individual may donate directly to a candidate's election committee. This Court has consistently upheld FECA's contribution limits since *Buckley*, where it held that Congress was "surely entitled to conclude" that "contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed." *Buckley*, 424 U.S. at 28; *see, e.g.*, *Colorado II*, 533 U.S. at 465; *FEC v. Beaumont*, 539 U.S. 146, 155 (2003). Even though "few if any contributions to candidates will involve *quid pro quo* arrangements," *Citizens United*, 558 U.S. at 357, contribution limits still play a critical role in effectuating the Framers' plan to limit opportunities for corruption in government. Specifically, they prevent a situation in which a single donor may give vast amounts of money to a single candidate, making the candidate answerable to that constituent over others and thus more prone to grant that constituent political favors—the definition of *quid pro quo* corruption.

But the contribution base limit is not just a "figurehead." Pet. App. 69a (Stranch, J., concurring in the judgment). Rather, Congress has "fortified [it] by a series of regulations that prevent circumvention by donors masking de facto contributions under more creative labels." *Id.* As relevant here, since *Buckley*, this Court has recognized that "coordinated expenditures"—that is, spending by a party made in coordination with a candidate—should be treated as "contributions" to "prevent attempts to circumvent the Act through prearranged or coordinated expenditures

amounting to disguised contributions." *Colorado II*, 533 U.S. at 446 (quoting *Buckley*, 424 U.S. at 47).

The theory is straightforward. FECA's base contribution limits exist to prevent *quid pro quo* corruption. The limits are higher for contributions to parties than contributions to candidates, given the heightened risk of *quid pro quo* corruption arising out of direct contributions to candidates. But when parties engage in "coordinated expenditures" with candidates, those expenditures "are as useful to the candidate as cash." *Id.* at 446. Thus, "such 'disguised contributions'"—just like direct contributions to candidates—risk being "given 'as a *quid pro quo* for improper commitments from the candidate.'" *Id.* (quoting *Buckley*, 424 U.S. at 47). A donor could use a party contribution to effectively launder a bribe, making the party a conduit for precisely the sort of *quid pro quo* corruption that the base contribution limits seek to root out.

Because of the heightened risk of *quid pro quo* corruption and its appearance associated with coordinated expenditures, this Court upheld the precise FECA provision challenged here—limiting party expenditures made in coordination with candidates—a quarter of a century ago in *Colorado II*, despite having previously struck down Congress's regulation of *independent* party expenditures in a case known as *Colorado I*. The "'constitutionally significant fact' in *Colorado I*" that made the statutory limitation unnecessary to prevent *quid pro quo* corruption and thus overly burdensome "was 'the lack of coordination between the candidate and the source of the expenditure.'" *Id.* at 464 (quoting *Colorado I*, 518 U.S. at 617). But when a donor knows a party will be using his or her contribution to coordinate an expenditure with a candidate, "[d]onors give to the party with the tacit understanding that the favored candidate will benefit,"

heightening the risk of *quid pro quo* corruption, or at least its appearance. *Id.* at 458.

Nothing about the campaign finance landscape or this Court's jurisprudence has changed since *Colorado II* in a way that should alter this analysis. Petitioners and the government advance a slew of arguments for why this Court should overrule *Colorado II*, but they all boil down to an assertion that *Colorado II* upheld the party coordination limits on grounds other than seeking to prevent *quid pro quo* corruption. That is wrong.

In *Colorado II*, this Court's chief justification for upholding the party coordinated expenditure was explicit: the prevention of *quid pro quo* corruption and its appearance. As this Court put it, "prearrangement and coordination of an expenditure with the candidate or his agent" creates a "danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Id.* at 464 (quoting *Buckley*, 424 U.S. at 47). The Court's entire analysis of the statute in *Colorado II* was based on the premise that "[t]here is no significant functional difference between a party's coordinated expenditure and a direct party contribution to the candidate, and there is good reason to expect that a party's right of unlimited coordinated spending would attract increased contributions to parties to finance exactly that kind of spending." *Id.* at 464. That situation, the Court explained, posed a clear "power to corrupt." *Id.* at 465.

While this Court could have premised *Colorado II* on a broader theory of corruption given the Framers' concern with rooting out corruption in all of its forms, not just bribery, it simply did not do so. Indeed, its only even arguable reference to a broader theory was a single parenthetical noting the premise, generally accepted at the time, that regulable corruption

included "undue influence" in addition to "*quid pro quo* agreements." *Id.* at 441. This broader theory played no part in the Court's rationale for upholding the limits on coordinated expenditures.

In a related line of attack, Petitioners and the government argue that *Colorado II* rested on an anti-circumvention theory that has since been "eroded" by more recent decisions. Gov't Br. 37; *see, e.g.*, Pet. Br. 14. But again, that is wrong. If there is one thing this Court's recent decisions make clear, it is that "the prevention of '*quid pro quo*' corruption or its appearance" is a "permissible ground for restricting political speech." *Cruz*, 596 U.S. at 305; *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 389 (2000) ("[That] governmental interest . . . has never been doubted." (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 788 & n. 26 (1978))). A rule designed to prevent *quid pro quo* corruption by avoiding *circumvention* of the contribution base limits—which themselves prevent *quid pro quo* corruption under this Court's precedents, *see, e.g.*, *Buckley*, 424 U.S. at 26-27—is really just a rule designed to prevent *quid pro quo* corruption itself.

The fact that this Court has held that *other* campaign-finance regulations, such as the aggregate contribution limit challenged in *McCutcheon*, could not survive First Amendment scrutiny because they did not sufficiently serve this anti-circumvention purpose does not mean that avoiding circumvention of the base limits is not a valid government interest itself. *Contra* Gov't Br. 37. To the contrary, in *McCutcheon*, this Court expressly recognized that preventing circumvention of regulations designed to stem *quid pro quo* corruption is a valid interest justifying campaign-finance regulation, while also holding that "the indiscriminate ban on all contributions above the aggregate

limits [was] disproportionate" to that valid interest. 572 U.S. at 220.

Moreover, there is extensive real-world evidence, including in the record below, of how allowing unlimited coordinated party expenditures would increase opportunities for *quid pro quo* corruption—just as much today as in the past. Before the Sixth Circuit, as well as in *Colorado II*, the government cited the Democratic Party's historic "tallying" system "that helps to connect donors to candidates through the accommodation of a party." *Colorado II*, 533 U.S. at 459; *see id.* (describing the system as "an informal agreement between the DSCC and the candidates' campaigns that if you help the DSCC raise contributions, we will turn around and help your campaign" (quotation marks omitted)). And years after *Colorado II*, the en banc Fifth Circuit found these risks persisted, determining that the Republican National Committee had told its "'maxed out' donors to contribute to the RNC," and that the RNC had traded donor lists with its candidates. *In re Cao*, 619 F.3d 410, 429 (5th Cir. 2010) (en banc) (quoting *Cao v. FEC*, 688 F. Supp. 2d 498, 526 (E.D. La. 2010)). The record is also replete with examples of parties being used as conduits for *quid pro quo* corruption dating back to Teapot Dome, when two oil executives paid off a $1.5 million debt owed by the Republican Party in exchange for a lease on Teapot Dome's oil reserves, J.A. 408-09, and continuing to Samuel Bankman-Fried's alleged attempts to obtain "a favorable regulatory environment" through donations made to various Democratic Party committees, *id.* at 449-50.

There is thus concrete evidence that both major political parties have repeatedly been used as conduits for *quid pro quo* corruption. That makes this case unlike *Cruz*, where there was not "a single case of *quid*

pro quo corruption" proffered by the government. *Cruz*, 596 U.S. at 307. Here, there are countless examples in the record of parties being used as conduits for corruption—even more today than when *Colorado II* was decided.

In short, party coordinated expenditure limits ensure that the base contribution limits are not rendered meaningless through subversion. To put it in historical terms, these limits recognize that the Framers' outrage about Louis XIV's payment of bribes, and their preoccupation with the lavish snuff boxes bestowed upon their early leaders, stemmed not from the means by which the corrupt act was achieved, but from the fact that it was achievable under a system without adequate checks on either corruption or the appearance of corruption. To put it in modern terms, these limits recognize that there is no meaningful difference between a maxed-out donor giving $25,000 to a candidate's campaign (which the base contribution limits prohibit) or giving $25,000 to a party to foot the TV advertising bill of that same candidate.

Because "[c]oordinated expenditures of money donated to a party are tailor-made to undermine contribution limits," *Colorado II*, 533 U.S. at 464, limiting them serves the essential function of ensuring the integrity of federal elections through the reduction of opportunities for *quid pro quo* corruption. At bottom, by limiting the ability of individuals to make massive political contributions to candidates in exchange for political favors, party coordinated expenditure limits check both actual and apparent corruption "stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions," *Buckley*, 424 U.S. at 27. They thus fit within the constitutional tradition of guarding against corruption in all its forms, including *quid pro quo*

corruption, the most "deadly adversar[y] of republican government." *The Federalist No. 68*, *supra*, at 412 (Alexander Hamilton).

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the court below.

Respectfully submitted,

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