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 THE DISTRICT OF COLUMBIA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, VERMONT, WASHINGTON, AND WISCONSIN AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether the limits on coordinated party expenditures in 52 U.S.C. § 30116 violate the First Amendment, either on their face or as applied to party spending in connection with "party coordinated communication[s]" as defined in 11 C.F.R. § 109.37.

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INTRODUCTION AND INTEREST OF *AMICI CURIAE*

Nearly 25 years ago, this Court recognized limits on spending by a political party in coordination with a candidate as a constitutionally permissible method to combat *quid pro quo* political corruption and its appearance. *FEC v. Colo. Republican Fed. Campaign Comm.* (*Colorado II*), 533 U.S. 431 (2001). Despite petitioners' claims to the contrary, nothing in this Court's precedents since then has disturbed *Colorado II*'s fundamental premise that coordinated expenditures are functionally equivalent to direct contributions, limits on which have been upheld by this Court time and again. *Id*. at 464; *Randall v. Sorrell*, 548 U.S. 230, 242 (2006) (plurality opinion) (collecting cases); *McCutcheon v. FEC*, 572 U.S. 185, 207-08 (2014) (plurality opinion).

Consistent with this well-settled precedent, states have retained the ability to respond to the specific risks of political corruption within their respective jurisdictions and to implement appropriate campaign finance restrictions. The result is a wide range of regimes featuring different types and amounts of contribution limits. Some states, like the federal government, limit a broad range of contributions, including individual to candidate, individual to political party, and political party to candidate. And many of those states explicitly treat coordinated party expenditures as a type of contribution to the candidate. Other states limit only some types of contributions or are less precise about if and when coordinated expenditures amount to contributions. Still other states have chosen not to limit contributions at all.

The District of Columbia and the States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York, North Carolina, Vermont, Washington, and Wisconsin (collectively, "*Amici* States") submit this brief as *amici curiae* not to argue that any particular state regime is right or wrong, better or worse. Instead, *Amici* States wish to maintain the flexibility under our federalist system to construct campaign finance schemes that are best suited to local needs and history. A decision in petitioners' favor in this case threatens to constrict that leeway and could call various states' laws into doubt. The Court should give weight to the states' reliance on the Court's longstanding precedents and avoid needlessly upending this legal landscape.

Here, preserving flexibility for states goes hand in glove with respecting stare decisis. As all but one member of the Sixth Circuit recognized, petitioners' suit—including both its facial and its as-applied components—is squarely foreclosed by *Colorado II*. There is no special justification for overruling that decision, which was correct when decided and remains valid today. The Court should affirm.

SUMMARY OF ARGUMENT

1. To prevent circumvention of direct contribution limits designed to combat political corruption, this Court has upheld limits on coordinated party expenditures because they are often functionally equivalent to a direct party contribution to the candidate. Relying on this long-standing legal backdrop, states have exercised their constitutional

leeway to enact different regimes employing different types and amounts of contribution limits with different exceptions and nuances that apply to different political actors. Multiple states expressly treat coordinated expenditures as a "contribution" subject to applicable limits. Others adopt broad definitions of "contribution" that implicitly cover at least some coordinated expenditures. Still other states have enacted different combinations of contribution limits, while some have opted not to limit contributions.

Overruling *Colorado II* threatens to disrupt this complex ecosystem by creating a cloud of uncertainty that would hamper states' ability to combat political corruption based on each state's individual history and political norms and culture. Thus, petitioners' claims that there are no cognizable reliance interests at play is wrong. States have legislated in reliance on this Court's precedents, including at least a dozen states that define "contribution" to encompass coordinated party expenditures. States should continue to have the constitutional leeway to implement the laws that best serve their state's particular circumstances. Adhering to *Colorado II* preserves this leeway.

2. If this Court reaches the merits despite the case's threshold jurisdictional defects, it should affirm the decision under a faithful application of stare decisis principles. *Colorado II* was not wrongly decided; the dangers of circumvention that *Colorado II* identified and addressed remain today. And given the many reliance interests at stake, including those

of states, there is no special justification for overturning *Colorado II*.

ARGUMENT

I. States Rely On *Colorado II*, Which Properly Preserves States' Authority To Make Individualized Judgments About How Best To Combat Political Corruption.

A. Consistent with this Court's longstanding jurisprudence, states have enacted a wide range of campaign finance regimes.

1. For half a century, this Court's cases have consistently held that, under the First Amendment, legislatures "may regulate campaign contributions to protect against corruption or the appearance of corruption." *McCutcheon*, 572 U.S. at 191 (citing *Buckley v. Valeo*, 424 U.S. 1, 26-27 (1976) (per curiam)). The "primary means of regulating campaign contributions" has long been "base limits" on the amounts that one political actor can give another in a particular election cycle. *Id.* at 209; *see, e.g.*, *id.* at 193 (describing the various federal base limits for the 2013-2014 election cycle). Three types of base limits, which the Court has "previously upheld as serving the permissible objective of combating corruption," *id.* at 192-93, are particularly notable.

The first and most fundamental is a limit on contributions by individuals to candidates. This type of contribution may give rise to *quid pro quo* corruption or its appearance. Accordingly, the Court held in *Buckley* that Congress could validly restrict such direct contributions to the then-applicable limit of $1000. 424 U.S. at 24-30; *see Nixon v. Shrink Mo.*

Gov't PAC, 528 U.S. 377, 381 (2000) (holding that *Buckley* also serves as "authority for state limits on contributions to state political candidates").

To prevent circumvention of this first type of contribution limit, the Court has also upheld limits on contributions from individuals to political committees. *See Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 193-99 (1981) (plurality opinion); *id.* at 203 (Blackmun, J., concurring in part and concurring in the judgment). It has also long left "undisturbed" limits on the related category of contributions from individuals to political parties. *McCutcheon*, 572 U.S. at 209 (plurality opinion).

A third type of base limit, and the one most relevant here, is a limit on contributions from a political party to a candidate. Such limits can help prevent circumvention of the limits on individual-to-candidate contributions by ensuring that parties cannot be used as conduits for contributions by individuals that would be unlawfully large if given directly to a candidate.

This Court's decision in *Colorado II* rested indirectly on the validity of such party-to-candidate contribution limits. In that case, the Colorado Republican party "d[id] not challenge the constitutionality of limits on cash contributions from parties to candidates." 533 U.S. at 442 n.8. Instead, the party challenged a provision that limited the amount of expenditures a party could make in coordination with a candidate—an amount that was in addition to the authorized amount of direct party-to-candidate contributions. *See id.* at 438-40 & n.3, 455 n.16. This Court correctly upheld the limit on coordinated party expenditures against the party's facial challenge. *Id.* at 437. It did so based on the commonsense conclusion, confirmed by record evidence, that "[t]here is no significant functional difference between a party's coordinated expenditure and a direct party contribution to the candidate." *Id.* at 464; *see id.* at 447 (noting that the "characterization of party coordinated spending as the functional equivalent of contributions" was "borne out by evidence"). In other words, the limit on coordinated party expenditures was constitutional precisely because, regardless of its form, it was in function a limit on additional party-to-candidate contributions.

2. In our federalist system, the Constitution reserves to the states the primary "power to regulate elections." *Shelby County v. Holder*, 570 U.S. 529, 543 (2013) (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 461-62 (1991)). "Unless Congress acts," *Foster v. Love*, 522 U.S. 67, 69 (1997) (quoting *Roundebush v. Hartke*, 405 U.S. 15, 24 (1972)), it is the states' responsibility to prescribe the manner of elections and ensure that they are "fair and honest." *Storer v. Brown*, 415 U.S. 724, 730 (1974). States thus "are given, and in fact exercise a wide discretion" in establishing systems to guarantee that elections are fair and corruption-free. *United States v. Classic*, 313 U.S. 299, 311 (1941). And in the specific context of states' campaign contribution limits, this Court has recognized "the legitimate need for constitutional leeway in respect to legislative line-drawing." *Randall*, 548 U.S. at 262 (plurality opinion).

Relying on this Court's longstanding campaign finance jurisprudence, including *Colorado II*, states have exercised that leeway to enact a wide array of campaign finance regimes. These different regimes employ different types and amounts of contribution limits, apply them to different categories of political actors, and have different exceptions and nuances. Comprehensive classification is hard if not impossible, but a sampling of jurisdictions is enough to see the complexity of the ecosystem—and the concomitant risk presented by a disruptive ruling in this case.

Consider first Connecticut, which has chosen to employ all three types of base contribution limits discussed above. It limits contributions from individuals to candidates in amounts that vary depending on the office: e.g., $3,500 per election for Governor, versus $250 per election for state representative. Conn. Gen. Stat. Ann. § 9-611(a). It also limits annual individual contributions to town- and state-level party committees to $2,000 and $15,000, respectively. *Id.* § 9-612(a). And it limits contributions by state and town party committees to candidates in amounts that vary according to the office (e.g., $10,000 for a state party contribution to a candidate for state senator). *Id.* § 9-617.

Of particular note here, Connecticut is one of many states that explicitly treat coordinated expenditures, including such expenditures by a political party, as contributions. Connecticut does so by defining "contribution" to include "[a]n expenditure that is not an independent expenditure." *Id.* § 9-601a(4); *see id.* § 9-601b (defining "expenditure"); *see also id.* § 9-601c (defining "independent expenditure"). The upshot is that a party expenditure made in coordination with a candidate constitutes a contribution to the candidate and is therefore subject to the relevant party-to-candidate contribution limit.

Oklahoma also employs all three types of contribution limits. Individuals can currently contribute $3,500 per election to candidates, Okla. Ethics Ann. R. 2.37, and $10,000 per year to a political party, Okla. Ethics Ann. R. 2.31. Political parties can contribute $25,000 per election to a candidate for statewide office and $10,000 per election to candidates for other offices. Okla. Ethics Ann. R. 2.32. Like Connecticut, Oklahoma defines "contribution" to include "an expenditure other than an independent expenditure," Okla. Ethics Ann. R. 2.2(6), thereby subjecting coordinated party expenditures to the relevant contribution limit.

Montana has chosen a different combination of restrictions. Like Connecticut and Oklahoma (and many other states), it limits how much individuals may contribute to candidates per election, with differing amounts for candidates for (1) governor or lieutenant governor, (2) other statewide office, and (3) other public office. Mont. Code Ann. § 13-37-216(1). Montana also limits party-to-candidate contributions. *Id.* § 13-37-216(2). And it too defines "contribution" to include "an expenditure, including an in-kind expenditure, that is made in coordination with a candidate." *Id.* § 13-1-101(9)(ii). Montana does not, however, limit how much individuals can contribute to political parties.

A number of other states have enacted similar schemes, including limiting expenditures by political parties in coordination with a candidate by treating such expenditures as contributions subject to the applicable limits. *See, e.g.*, Colo. Const. art. XXVIII, §§ 3, 5(3); Del. Code Ann. tit. 15, §§ 8002(8)(g), 8012(f); D.C. Code §§ 1-1161.01(10)(A)(iv), 1-1163.33; Haw. Rev. Stat. Ann. § 11-363; Me. Rev. Stat. Ann. tit. 21-A, § 1015(5); Md. Code Ann., Elec. Law § 13-249; Mich. Comp. Laws Ann. §§ 169.204(1), (3)(e), 169.252, 169.254; Minn. Stat. Ann. §§ 10A.01, subd. 4., 10A.27, 211B.15; N.M. Stat. Ann. §§ 1-19-26(I)(2), 1-19-34.7; 17 R.I. Gen. Laws Ann. § 17-25-10.1(c); Wash. Rev. Code Ann. §§ 42.17A.005(15)(a)(ii), 42.17A.250.

Other states have enacted different schemes. Some states limit party-to-candidate contributions but do not explicitly address whether coordinated expenditures constitute contributions. Georgia, for example, limits both individual- and party-to-candidate contributions. Ga. Code Ann. § 21-5-41(a), (b). It defines "contribution" in capacious terms to include, in relevant part, "a gift, subscription, membership, loan, forgiveness of debt, advance or deposit of money or anything of value conveyed or transferred for the purpose of influencing the nomination for election or election of any person for office." *Id.* § 21-5-3(7). This definition appears broad enough to encompass at least some coordinated party expenditures, some of which might "amount to no more than payment of the candidate's bills." *Colorado II*, 533 U.S. at 456 n.17; *see generally Fortson v. Weeks*, 208 S.E.2d 75-76 (Ga. 1974) (holding, in a similar provision, that "the purchase of media publicity for a candidate . . . shall be deemed to be the equivalent of a direct contribution to the candidate or his campaign committee"). Other states have similarly broad definitions of "contribution" that could implicitly constrain coordinated party expenditures. *See, e.g.*, Ark. Code Ann. § 7-6-201(3); Idaho Code Ann. § 67-6602(3); S.C. Code Ann. § 8-13-1300(7).

Still other states have chosen not to limit contributions from parties to candidates. South Dakota, for instance, permits candidates to accept contributions "[w]ithout limit from a political party," while still imposing limits on individual-to-candidate contributions. S.D. Codified Laws §§ 12-27-7, 12-27-8. Illinois's regime is similar. *See* 10 Ill. Comp. Stat. 5/9-8.5(b). Indeed, most states have enacted some form of limitation on individual-to-candidate contributions. *See* Nat'l Conf. of State Legislatures, State Limits on Contributions to Candidates: 2025-2026 Election Cycle (May 2025), https://perma.cc/TGB3-58NF; Ohio *Amicus* Br. 28 (acknowledging that "most" states "limit donor-candidate contributions").

Finally, Nebraska imposes none of the types of contribution limits discussed in this brief. Nor does North Dakota. In these states, then, whether coordinated party expenditures are characterized as contributions would matter, at most, for purposes of disclosure requirements.

Amici states do not contend that any of these state regimes—or the many others not canvassed here—is "right" or "wrong." States are best positioned to judge the particular dangers of corruption (or its appearance) that affect them. They know best their state's individual history, its political norms and culture, and thus the forms and amounts of contribution limits that are likely to be effective. And they deserve constitutional leeway to implement the laws that best serve their state's particular circumstances. *See Randall*, 548 U.S. at 262 (plurality opinion) (recognizing, with respect to contribution limits, "the legitimate need for constitutional leeway in respect to legislative line-drawing").

B. The Court should consider states' reliance interests and the risk of undermining their campaign finance systems.

As described above, different states have chosen to enact different systems of campaign contribution limits. Although some have regulated such contributions sparingly or not at all, others have set more substantial limits. In an amicus brief filed in *Colorado II*, Missouri—joined by Colorado, Hawaii, Montana, New York, Oklahoma, and Vermont—ably summarized why such constitutional leeway is important: "[G]iving constitutional protection to party expenditures regardless of how extensively they are coordinated with candidates . . . would effectively eliminate the ability of the states to attack the appearance of corruption that is inherent in a regime of large contributions." Missouri *Amicus* Br., *Colorado II*, 533 U.S. 431 (2001) (No. 00-191), 2000 WL 1793085, at *10. This Court agreed; its ruling in *Colorado II* ensured that states retained that ability. And states have since enacted and revised their laws against that backdrop.

Now, however, petitioners and—remarkably—the FEC itself ask this Court to upend this well-settled backdrop by overruling *Colorado II*. And in doing so, they say that "no cognizable reliance interests" factor into the stare decisis analysis. Pet'rs' Br. 15. That is wrong. The states have a "meaningful reliance interest[]" (FEC Br. 16) in *Colorado II*'s holding that coordinated party expenditures can be characterized as contributions and subject to limitations on that basis. As catalogued in Part I.A, at least a dozen states have defined "contribution" in a manner that encompasses coordinated party expenditures. Overruling *Colorado II* could call those state laws into question.

To be sure, none of the state laws described in this brief are identical to the federal party-expenditure limit, either as it existed at the time of *Colorado II* or as it exists now. For instance, as petitioners highlight, federal law has exceptions that allow unlimited coordinated party expenditures for certain types of activities (other than advertisements). Pet'rs' Br. 28-30. Most state laws do not have comparable exceptions. Thus, overruling *Colorado II* (or otherwise ruling in petitioners' favor) may not inevitably trigger the invalidation of any state laws. But it will destabilize the legal landscape and could invite litigation attacking states' laws—litigation that will burden those states even if it is unsuccessful.

At minimum, the risk of destabilizing state law should reinforce the importance of deciding this case—whether for or against petitioners—on narrow grounds. The Court should attend to the nuances of the federal scheme at issue here and ground any First

Amendment ruling in the specifics of that scheme. That approach best respects both the doctrine of constitutional avoidance and principles of federalism. Here as always, "the cardinal principle of judicial restraint" should obtain: "if it is not necessary to decide more, it is necessary not to decide more." *PDK Lab'ys Inc. v. U.S. Drug Enforcement Admin.*, 362 F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment).

II. Consistent With Decades Of Precedent, The Court Should Uphold The Federal Coordinated Party-Expenditure Limit.

As the Court-appointed amicus explains, this case is afflicted with a variety of threshold problems. Appointed *Amicus* Br. 15-30. There are troubling questions about jurisdiction, justiciability, and lack of real adversity. Even if the Court concludes that none of these issues outright *bars* adjudication on the merits, the Court retains discretion to dismiss the petition as improvidently granted. Given the FEC's current position on this issue, Petitioners and other similarly-situated parties are under no threat of imminent enforcement so there is simply no need for the Court to wade into this issue at this time. Such restraint is all the more justified by the risk that an unnecessary constitutional ruling might destabilize state law. *See supra* Part I.

If the Court does reach the merits, however, it should affirm. Indeed, a faithful application of stare decisis compels that result: this case is controlled by *Colorado II*, and the demanding test for overruling precedent is not met.

To start, *Colorado II* controls here. As Chief Judge Sutton and all but one of his Sixth Circuit colleagues agreed, there is no meaningful difference between the challenge to the party-expenditure limit brought in *Colorado II* and petitioners' challenge to it here. Pet. App. 9a-18a (majority opinion); *id.* at 18a (Thapar, J., concurring); *id.* at 37a (Bush, J., concurring dubitante); *id.* at 71a-74a (Stranch, J., concurring in the judgment); *id.* at 115a (Bloomekatz, J., concurring in the judgment). That is obviously true for petitioners' facial challenge, which "is not even 'technically distinguishable' from *Colorado II*—it *is* the claim presented in *Colorado II*." *Id.* at 73a (Stranch, J., concurring in the judgment). Less obviously but just as importantly, the same is also true of their as-applied challenge. As Chief Judge Sutton explained, this follows from "the breadth of [petitioners'] as-applied challenge," *id.* at 16a; their target, the political advertising addressed in 11 C.F.R. § 109.37, amounts to "roughly 97% of the committees' expenditures," *id.* at 17a. Given that fact, "the only way to accept this as-applied challenge would be to reject the reasoning of *Colorado II*." *Id.*

The doctrine of stare decisis weighs firmly against that result. Stare decisis is "'a foundation stone of the rule of law.'" *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015) (quoting *Michigan v. Bay Mills Indian Cmty.,* 572 U.S. 782, 798 (2014)). Respecting this principle "means sticking to some wrong decisions" and overruling precedent only where there exists "a 'special justification'—over and above the belief 'that the precedent was wrongly decided.'" *Id.* at 455-56 (quoting *Halliburton Co. v. Erica P. John Fund, Inc.,* 573 U.S. 258, 266 (2014)). In deciding whether such special justification exists, the Court considers the seriousness of the alleged error, whether the decision has had harmful consequences, and parties' reliance on the decision. *See, e.g.*, *Ramos v. Louisiana*, 590 U.S. 83, 121 (2020) (Kavanaugh, J., concurring in part).

Colorado II was not wrongly decided, let alone seriously so. Perhaps the most fundamental principle of this Court's campaign finance jurisprudence is that the First Amendment permits limits on contributions from individuals to candidates as a valid measure of preventing quid pro quo corruption and its appearance. *Buckley*, 424 U.S. at 23-59. The Court has also recognized that, to make such contribution limits effective, Congress and state legislatures must have leeway to enact anti-circumvention measures to prevent individuals from using third parties as conduits to make outsized contributions to candidates. *See, e.g.*, *Cal. Med. Ass'n*, 453 U.S. at 193-99 (plurality opinion). In *Colorado II*, the Court correctly recognized that political parties, too, could be used as conduits for corrupt contributions, and that coordinated party expenditures are tantamount to contributions and can thus be validly limited. In other words, consistent with the Court's subsequent case law, "*Colorado II* evaluated the party coordinated spending limits against a quid pro quo corruption rubric, identified evidence that the limits in fact serve their anti-corruption goal, and conducted a rigorous tailoring analysis checking the law's fit with its objectives." Pet. App. 77a (Stranch, J., concurring in the judgment).

The danger that actors might pursue circumvention by using political parties as conduits is not merely theoretical. In its amicus brief filed in *Colorado II*, Missouri offered a real-world example from North Carolina in which a gubernatorial candidate successfully solicited more than $200,000 of contributions that were funneled through political parties to his campaign. Missouri *Amicus* Br., 2000 WL 1793085, at *13-14. Judge Stranch's concurrence below catalogs further real-world evidence that, sometimes, "contributions to parties are in fact used to circumvent the base contribution limits and that parties are indeed vulnerable conduits for quid pro quos." Pet. App. 93a; *see id.* at 89a-93a. *Colorado II* was right the day it was decided, and the dangers it addressed remain today.

Moreover, *Colorado II* has not triggered the sorts of harmful consequences that would justify overruling precedent. Party and candidate speech have hardly been muted in the quarter century since *Colorado II* was decided. The party-expenditure limit is a modest but important restriction that leaves parties with freedom to contribute significant sums to candidates. Indeed, federal law treats political parties especially well by removing limitations applicable to other political spenders. Specifically, Section 30116(d) expressly permits political parties to make coordinated expenditures up to a separate, additional limit apart from the direct contribution limits. 52 U.S.C. § 30116(d). In contrast, coordinated expenditures by individuals are treated as in-kind contributions subject to the applicable direct contribution limits. *Id.* § 30116(a)(7)(B)(i). Therefore, under this regime, "a party is better off, for a party has the special privilege the others do not enjoy, of making [additional] coordinated expenditures up to the [applicable] limit." *Colorado II*, 533 U.S. at 455. Put simply, political parties are the least restricted by Section 30116's spending limits. That hardly amounts to a special justification for overturning a prior decision.

Finally, as noted earlier, petitioners and the FEC are wrong that there are no reliance interests at stake here. As the Court-appointed amicus and the DNC explain, *Colorado II* has engendered significant reliance among a broad array of political actors, including broadcasters that are subject to the lowest-rate-charge system for political advertising, and upending *Colorado II* would immediately call into question other core restrictions on party spending like party-to-candidate contribution limits. Appointed *Amicus* Br. 47-49; Intervenors Br. 46-48. In addition, as explained in Part I, many states have enacted campaign finance regimes designed against the backdrop of this Court's precedents, including *Colorado II*. To ensure the stability of state election law, the Court should leave that decision intact.

CONCLUSION

The Court should affirm the Sixth Circuit's judgment.

Respectfully submitted,

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