No. 24-621

In the Supreme Court of the United States

NATIONAL REPUBLICAN SENATORIAL COMMITTEE,
ET AL., PETITIONERS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR THE FEDERAL RESPONDENTS

D. JOHN SAUER
Solicitor General
Counsel of Record
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases:

Statutes—Continued: Page

Miscellaneous:

In the Supreme Court of the United States

No. 24-621

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, ET AL., PETITIONERS

v.

FEDERAL ELECTION COMMISSION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR THE FEDERAL RESPONDENTS

A political party has a special relationship with its candidates, who bear its imprimatur, advocate its platform, and implement its policies once elected. Because parties' election-time speech advances core First Amendment interests in promoting candidates and policies, the First Amendment makes it difficult for restrictions on party speech to pass muster. This Court thus invalidated limits on parties' independent expenditures in *Colorado Republican Federal Campaign Committee* v. *FEC*, 518 U.S. 604 (1996) (*Colorado I*). The Court's 5-4 decision in *FEC* v. *Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*), upholding limits on parties' ability to coordinate with candidates on election-related speech stands as an outlier. That decision was wrong from the start and is untenable in light of ensuing legal, statutory, and factual developments. Today, at a minimum, the party-expenditure limit could survive only if it were narrowly tailored to prevent *quid pro quo* corruption—a rigorous test it manifestly flunks.

Intervenors and the Court-appointed amicus curiae devote conspicuously little space to explaining how the party-expenditure limit and its exceptions could satisfy current First Amendment doctrine. Instead, they mount a barrage of novel but meritless jurisdictional attacks. They also perversely treat the limit as a special benefit for parties—ignoring that, for parties, the inability to coordinate with candidates running under their banner is a unique, and uniquely acute, *disability*. They compare the party-expenditure limit to limits on contributions by individuals—but individuals' contributions pose a risk that the contributor will corrupt the candidate, whereas parties do not corrupt their own candidates by coordinating with them. Finally, they defend the party-expenditure limit as the finger in the dike of campaign-finance restrictions, prophesying the end of contribution limits if *Colorado II* falls. But acknowledging parties' special role—as *Colorado II* itself did—hardly opens the floodgates to limitless contributions from others.

Intervenors and amicus do not show that the party-expenditure limit addresses real or apparent *quid pro quo* corruption; that other anti-circumvention measures are inadequate; or that the limit is narrowly tailored. This Court should abrogate *Colorado II*, recognize that the party-expenditure limit blatantly violates the First Amendment, and restore parties' traditional right to consult with candidates about how best to make their case to the American people in this context where First Amendment interests are most compelling of all—elections for public office.

A. Amicus's Jurisdictional Arguments Are Incorrect

Amicus raises (Br. 15-30) a slew of jurisdictional objections. None is sound.

1. Amicus incorrectly asserts (Br. 23-30) that no petitioner is a proper plaintiff. Only one proper plaintiff is necessary. See *California Medical Ass'n* v. *FEC*, 453 U.S. 182, 187 n.6 (1981). Vice President Vance qualifies, so this Court need not consider the other petitioners. Then-Senator Vance undisputedly had standing at the outset because he planned to run for re-election in 2028. See Pet. App. 6a, 166a. And Vance, as an "individual eligible to vote" for President, 52 U.S.C. 30110, may invoke the statute's expedited judicial-review procedure.

Amicus objects that Vance now lacks standing because, since being elected Vice President, he has stated that it is "too early to be thinking about 2028." Br. 28 (brackets and citation omitted). That argument "confuse[s] mootness with standing." *Friends of the Earth, Inc.* v. *Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 189 (2000). "It is the doctrine of *mootness*, not standing, that addresses whether 'an intervening circumstance has deprived the plaintiff of a personal stake'" in the case. *West Virginia* v. *EPA*, 597 U.S. 697, 719 (2022) (brackets and citation omitted). The tests for mootness and standing differ. See *Friends of the Earth*, 528 U.S. at 189. The litigant opposing jurisdiction "bears the burden" of establishing mootness. *West Virginia*, 597 U.S. at 719.

Here, amicus would need to show it is "impossible" "to grant any effectual relief whatever" to Vance. *Mission Product Holdings, Inc.* v. *Tempnology, LLC*, 587 U.S. 370, 377 (2019) (citation omitted). That standard is "demanding"; "any chance" of effectual relief, "if at all plausible," ensures a live controversy. *Ibid.* A case remains live if "the parties have a concrete interest, however small, in the outcome." *Chafin* v. *Chafin*, 568 U.S. 165, 172 (2013) (citation omitted).

Amicus comes nowhere close to clearing that bar. It is plausible that Vice President Vance could run in 2028 for an office covered by the party-expenditure limit (President, Vice President, Senator, or Representative). He filed a form in January 2023 stating his intent to run for Senate in 2028. J.A. 177; see https://perma.cc/W3C6-HJEP. He has not formally terminated that campaign, and his committee, J.D. Vance for Senate Inc., has continued to raise money this year—money that could also be transferred to a campaign for a different covered office. See https://perma.cc/YX2R-9XN6. It makes no difference that he might seek a different office now than when this suit began. The party-expenditure limit restricts coordination with candidates for all federal elected offices. See 52 U.S.C. 30116(d). Thus, the suit has not been "sufficiently altered so as to present a substantially different controversy." *Northeastern Florida Chapter of the Associated General Contractors of America* v. *City of Jacksonville*, 508 U.S. 656, 662 n.3 (1993) (citation omitted).

2. Amicus separately errs in arguing (Br. 15-23) that the government's decision not to defend the party-expenditure limit mooted the case by removing any possibility of enforcement. Again, a case is live if the parties retain a "concrete interest, however small, in the outcome." *Chafin*, 568 U.S. at 172 (citation omitted). Petitioners retain such an interest because they still face a credible threat that the party-expenditure limit will be enforced against them.

To start, private parties, such as intervenors, may still enforce the limit. If the Federal Election Commission (FEC) dismisses or fails to act on a complaint alleging a violation, any "party aggrieved" may seek judicial review. 52 U.S.C. 30109(a)(8)(A). The court may grant declaratory relief and direct the FEC to "conform with such declaration." 52 U.S.C. 30109(a)(8)(C). If the FEC fails to do so, the complainant may bring "a civil action to remedy the violation." *Ibid.* One of the intervenors is currently invoking that procedure to enforce the party-expenditure limit against one of the petitioners. See *DCCC* v. *FEC*, No. 24-cv-2935 (D.D.C. filed Oct. 17, 2024). Regardless of whether the FEC would enforce the party-expenditure limit, the prospect that intervenors would do so ensures a live controversy.

More broadly, petitioners misconceive the Executive's position. The Executive has determined that it "should not defend" the party-expenditure limit in this Court, not that it will stop enforcing the statute. Letter from D. John Sauer, Solicitor Gen., to Mike Johnson, Speaker, U.S. House of Representatives (June 3, 2025). In previous cases—such as *INS* v. *Chadha*, 462 U.S. 919 (1983), and *Morrison* v. *Olson*, 487 U.S. 654 (1988)—the Executive declined to defend but continued to enforce challenged statutes. See Letter from Andrew Fois, Assistant Att'y Gen., to Orrin Hatch, Chairman, Comm. on the Judiciary, U.S. Senate (Mar. 22, 1996). The decision whether to continue enforcing a statute is "necessarily specific to context." 18 Op. O.L.C. 199, 200-201 (1994). "[T]he President may base his decision to comply" "in part on a desire to afford the Supreme Court an opportunity" to decide the issue. *Ibid.* Here, the Executive has "inform[ed] the Court of its concerns about the party-expenditure limit" but recognized that "only this Court can ultimately resolve" "the vitality of one of the Court's own precedents." FEC Cert. Response Br. 20-21.

Amicus's startling contrary position (Br. 16-27) would prevent this Court from reconsidering *Colorado II* and would instead enable the Executive to unilaterally jettison this Court's precedent. But it is "this Court's prerogative alone" to abrogate its precedents. *State Oil Co.* v. *Khan*, 522 U.S. 3, 20 (1997). The Executive "will respect both the judgments and the opinions of this Court." *Trump* v. *CASA, Inc.*, 606 U.S. 831, 860 n.18 (2025). Hence, while the Executive has concluded that the party-expenditure limit's serious constitutional flaws preclude defending it in this Court, only this Court can resolve what remains of *Colorado II*.*

Amicus fares no better in arguing (Br. 20) that "[t]here is no adversity." There is "adequate Art. III adverseness" where, as here, the government declines to defend but does not disavow enforcing a challenged statute. *Chadha*, 462 U.S. at 939. Further, "adverseness is beyond doubt" given intervenors' presence. *Ibid.* Indeed, intervenors argued in their motion for leave to intervene (at 15) that their participation would ensure "full adversity."

Contrary to amicus's suggestion, (Br. 18) Justice Scalia's dissent in *United States* v. *Windsor*, 570 U.S. 744 (2013), does not support his position. Justice Scalia argued that the government may not appeal a lower court's decision invalidating a statute that it refuses to defend. See *id.* at 781-782 (Scalia, J., dissenting). Here,

---

* Contrary to amicus's suggestion (Br. 17), Executive Order 14,215, 90 Fed. Reg. 10,447 (Feb. 24, 2025), does not require the FEC to stop enforcing the party-expenditure limit. The Order states that the President's and Attorney General's legal determinations are "controlling" within the Executive Branch. *Id.* at 10,448. But neither the President nor the Attorney General has determined that the Executive should stop enforcing the statute.

by contrast, petitioners have asked this Court to review a lower court's decision upholding a statute that injures them. Justice Scalia also recognized that the presence of intervenors can establish adverseness. See *id.* at 783. That, too, confirms that this case is justiciable.

3. Finally, amicus urges (Br. 52-54) this Court to dismiss the writ of certiorari as improvidently granted. But "once certiorari has been granted," the Court usually presumes that the case "is properly here." *Ferguson* v. *Moore-McCormack Lines, Inc.*, 352 U.S. 521, 559 (1957) (opinion of Harlan, J.). This Court should not reward scattershot jurisdictional objections with dismissal, least of all when those objections are easily rejected. Because "there is no doubt that [the Court has] jurisdiction," the Court should not "reverse course at this late stage." *United States* v. *Williams*, 504 U.S. 36, 40 (1992).

B. The Party-Expenditure Limit Is Unconstitutional

Though *Colorado II* narrowly upheld the party-expenditure limit, later legal and factual developments leave no doubt that the limit cannot survive even closely drawn scrutiny. Today, closely drawn scrutiny requires a rigorous showing that a restriction is narrowly tailored to advance a valid interest. Today, the only valid interest is preventing real or apparent *quid pro quo* corruption. And today's version of the party-expenditure limit —significantly amended since *Colorado II*—cannot possibly clear that bar. *Colorado II* has lost any remaining vitality and should be overruled.

1. Intervenors and amicus err in attempting to sidestep rigorous scrutiny

Intervenors and amicus mainly defend the party-expenditure limit by trying to sidestep closely drawn First Amendment scrutiny entirely. Their attempts fail.

a. Intervenors (Br. 23-33) and amicus (Br. 50-52) argue that, because Congress may limit other speakers' coordination with candidates, Congress may similarly limit parties. That argument is flawed.

Restrictions on coordination with candidates burden parties more than other speakers. Unlike other speakers, parties are "inextricably intertwined" with candidates. *McConnell* v. *FEC*, 540 U.S. 93, 155 (2003) (citation omitted). Only parties "select slates of candidates for elections," and "party affiliation is the primary way by which voters identify candidates." *Id.* at 188. A "party's success or failure depends in large part on whether its candidates get elected." *Colorado II*, 533 U.S. 431, 469 (Thomas, J., dissenting). "Because of this unity of interest, it is natural for a party and its candidate to work together and consult with one another." *Ibid.* Thus, while this Court has stated that limits on an individual's coordination with candidates impose only a "marginal restriction" on speech, *Buckley* v. *Valeo*, 424 U.S. 1, 20 (1976) (per curiam), restricting a party's "collaboration with its own candidate" imposes a "severe" burden, *California Democratic Party* v. *Jones*, 530 U.S. 567, 589 (2000) (Kennedy, J., concurring).

Limits on individuals also rest on a different rationale. *Buckley* upheld caps on individuals' contributions to ensure that high-dollar contributors do not corrupt or appear to corrupt officeholders. See 424 U.S. at 25-27. But it would be nonsensical to suggest that *parties* could corrupt their candidates, and neither amicus nor intervenors go that far. Intervenors (Br. 33-34) and amicus (Br. 33-42) instead argue that the party-expenditure limit reduces the likelihood that donors will circumvent base contribution limits by funneling money through parties. By definition, that rationale is far weaker and more attenuated than the corruption concern raised by large individual contributions.

That analysis does not grant parties "favored constitutional status," contra Amicus Br. 51, but simply recognizes the "real-world differences" between "parties" and other speakers, *McConnell*, 540 U.S. at 188. Sometimes, those differences can justify more stringent regulation of parties—for instance, stricter regulation of party fundraising. See *id.* at 187-188. Other times, parties' distinctive features justify lesser restrictions—for instance, requiring higher contribution limits for parties than other donors. See *Randall* v. *Sorrell*, 548 U.S. 230, 256 (2006) (opinion of Breyer, J.). This case fits in the latter category. Limits on coordination by parties impose a greater burden, yet rest on a weaker justification, than similar limits on individuals.

Intervenors observe (Br. 28) that the "Framers were famously suspicious of parties." They were even more famously suspicious of government censorship of political speech. Regardless, the operative question is whether Congress had an adequate justification for this particular restriction. It did not.

b. Intervenors contend (Br. 20-24) that "coordinated expenditures are effectively contributions" and that contribution limits are constitutional if "they are not too stingy." But contribution or coordination limits do not automatically satisfy the First Amendment simply because they allow some fundraising. Any limit must satisfy closely drawn scrutiny, and courts assess each limit on its own terms.

While Congress has generally treated coordinated expenditures like contributions, it does not follow that party-coordinated expenditures are "identical" to contributions for First Amendment purposes. Intervenors Br. 10. The Court has stated that a contribution limit "involves little direct restraint" on speech because it "permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributors' freedom to discuss candidates and issues." *Buckley*, 424 U.S. at 21. But when a party makes a coordinated expenditure—*e.g.*, when it consults with a candidate in developing an advertising campaign touting the candidate's record—its speech "is not just 'symbolic expression.'" *Colorado II*, 533 U.S. at 468 (Thomas, J., dissenting) (citation omitted). The party's speech instead manifests its "political views," and any restriction on that speech "undermines parties' 'freedom to discuss candidates and issues.'" *Ibid.* (citation omitted).

More broadly, intervenors understate the constitutional protection owed to contributions, which are among "the most fundamental First Amendment activities." *Buckley*, 424 U.S. at 14. Even base contribution limits are subject to closely drawn scrutiny—so courts must go beyond asking whether the caps are "so low" that they prevent candidates "'from amassing the resources necessary for effective advocacy.'" Intervenors Br. 16 (citation omitted). This Court has invalidated contribution limits when they are not properly "tailored," *McConnell*, 540 U.S. at 232; when they inflict "special party-related harms" without adequate justification, *Randall*, 548 U.S. at 249 (plurality opinion); and when they seek to "level electoral opportunities," *Davis* v. *FEC*, 554 U.S. 724, 741 (2008) (citation omitted).

Further, under closely drawn scrutiny, contribution restrictions layered atop base limits raise additional concerns. The Court struck down aggregate contribution limits in *McCutcheon* v. *FEC*, 572 U.S. 185 (2014), and a restriction on post-election contributions in *FEC* v. *Ted Cruz for Senate*, 596 U.S. 289 (2022), not because the limits were too low, but because they did not serve a legitimate interest. This case, too, involves a restriction designed to prevent circumvention of the base limits, which are themselves designed to prevent corruption. That "prophylaxis-upon-prophylaxis approach" "is a significant indicator that the regulation may not be necessary," *id.* at 306, and "requires that [courts] be particularly diligent in scrutinizing the law's fit," *McCutcheon*, 572 U.S. at 221 (plurality opinion).

c. Intervenors also downplay (Br. 24) the burden on parties because Congress has exempted activities such as "encouraging voter turnout." But intervenors overstate the scope of the exemptions, which (for instance) exempt voter-turnout efforts only by state and local committees (not national committees) and only in presidential elections (not midterms). See Gov't Br. 25-26. More importantly, the "basic function of a political party" is to select candidates and promote them among voters. *Jones*, 530 U.S. at 581 (citation omitted). By impairing that function, the party-expenditure limit stifles "the ability of the party to do what it exists to do." *Colorado I*, 518 U.S. at 630 (Kennedy, J., concurring in the judgment and dissenting in part). It is no consolation that the statute exempts other tasks, such as "setting up headquarters." Intervenors Br. 24.

Intervenors insist (Br. 30) that the limit *helps* parties allocate resources to "long-term party-building" rather than "short-term" "electioneering." This Court has rejected that "highly paternalistic approach." *Eu* v. *San Francisco County Democratic Central Committee*, 489 U.S. 214, 223 (1989) (citation omitted). Congress may not limit speech to "save the [party] from undertaking a course of conduct destructive of its own interests." *Tashjian* v. *Republican Party*, 479 U.S. 208, 224 (1986).

d. Finally, amicus argues that a facial challenge can succeed only if "'no set of circumstances exists under which the challenged law would be valid.'" Br. 31-32 (brackets, citation, and emphasis omitted). But "a different standard applies" "when a facial suit is based on the First Amendment." *Moody* v. *NetChoice, LLC*, 603 U.S. 707, 723 (2024). A statute violates the First Amendment on its face if "a substantial number of [its] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Ibid.* (citation omitted). Because the party-expenditure limit is invalid as applied to political advertising, and because such advertising accounts for "roughly 97% of the [party] committees' expenditures," Pet. App. 17a, the statute is facially unconstitutional even assuming arguendo that Congress could enact a narrower statute targeting "travel costs or electricity bill[s]," Amicus Br. 32.

2. *The party-expenditure limit does not satisfy closely drawn scrutiny*

a. Petitioners (Br. 42), intervenors (Br. 15-20), and amicus (Br. 31-32) debate whether the party-expenditure limit is subject to strict or closely drawn scrutiny. This Court need not resolve that debate; the statute fails even the less stringent standard.

Intervenors (*e.g.*, Br. 19-20) and amicus (*e.g.*, Br. 42) rely on a watered-down version of closely drawn scrutiny from *Colorado II* and earlier cases like *Nixon* v. *Shrink Missouri Government PAC*, 528 U.S. 377 (2000). But this Court has "strengthened the 'closely drawn' test" since *Colorado II*. Pet. App. 11a. *Colorado II* defined corruption to include "undue influence," 533 U.S. at 441, but the Court has since clarified that Congress may target only *quid pro quo* corruption, see *Cruz*, 596 U.S. at 305. *Colorado II* did not test the claim that the party-expenditure limit seeks to prevent corruption, see 533 U.S. at 457 n.19, but more recent cases require the government to "prove at the outset that it is in fact pursuing a legitimate objective," *Cruz*, 596 U.S. at 305. And *Colorado II* tolerated "unskillful tailoring," 533 U.S. at 463 n.26, but the Court has since explained that a restriction is closely drawn only if it is "narrowly tailored," *McCutcheon*, 572 U.S. at 218 (plurality opinion). The party-expenditure limit did not pass even the old test, and it certainly flunks the stricter test the Court now applies.

b. Closely drawn scrutiny requires showing that the challenged law pursues a valid anti-corruption goal. See *Cruz*, 596 U.S. at 305. Intervenors (Br. 39) and amicus (Br. 34) argue that the party-expenditure limit helps prevent circumvention of base contribution limits, but the statute in fact serves the illegitimate purpose of simply reducing the amount of money in politics. See Gov't Br. 23-27.

That goal is evident from Congress's imposition of different spending caps for different offices and States, which can only be explained as a paternalistic effort to dictate how much money parties should spend in each type of race. See Gov't Br. 25. Amicus defends that variation by theorizing that a "'contribution's value is diluted,'" and the corruption risk "is proportionally lower," in larger States. Br. 40 (citation omitted). But the statute caps the party's *expenditures*, not the allegedly corrupting *contributions*. Besides, amicus cites no evidence that a contribution's corruptive potential varies by office or State—a theory that conflicts with Congress's imposition of the same base contribution limit ($3300 in the 2023-2024 cycle) for every office in every State. See Gov't Br. 6. And intervenors' observation (Br. 35) that "population provides a good proxy for relative campaign costs" just underscores the problem. Congress set different expenditure limits to dictate what levels of spending seemed appropriate in different States, not to address corruption. But the Constitution forbids Congress from dictating how much political speech is too much. See *Buckley*, 424 U.S. at 57.

The statute's many exemptions—some added since *Colorado II*—further belie any asserted anti-corruption interest. See Gov't Br. 25-27. Intervenors (Br. 13) and amicus (Br. 40-41) assert that exempted activities pose less risk of corruption. But it is hard to fathom why state-party-coordinated expenditures for bumper stickers (exempt) pose a lower risk than party-coordinated expenditures for billboards (covered). Or why voter-registration drives for presidential candidates (exempt) present less risk than drives for congressional candidates (covered). Or why get-out-the-vote efforts in presidential campaigns (exempt) threaten less corruption than similar efforts in midterm campaigns (covered). Or why recounts (exempt) invite less corruption than advertisements (covered). See Gov't Br. 26. The exemptions' arbitrariness thoroughly undermine the asserted purpose and instead suggest a congressional effort, "through the combined operation of a general speech restriction and its exemptions," "to 'control the search for political truth.'" *City of Ladue* v. *Gilleo*, 512 U.S. 43, 51 (1994) (citation and ellipsis omitted).

c. Intervenors and amicus also fail to show "the need to address a special problem," as closely drawn scrutiny requires. *Cruz*, 596 U.S. at 307; see Gov't Br. 28-32. They argue that, without a cap on party coordinated spending, "a donor could max out his individual contributions to a candidate, then simply pump additional money through [a party], expecting that the [party] would spend it on that candidate's campaign—all with the candidate's full knowledge and gratitude." Amicus Br. 34; see Intervenors Br. 33-34. But speech regulation "may not target" "general gratitude." *McCutcheon*, 572 U.S. at 192 (plurality opinion). It may target only corruption, and "[i]ngratiation" is "not corruption." *Citizens United* v. *FEC*, 558 U.S. 310, 360 (2010).

Amicus insists (Br. 33) that contributions funneled through parties "raise the same *quid pro quo* concerns" as direct contributions to candidates. This Court has held the opposite: "[T]here is not the same risk of *quid pro quo* corruption or its appearance when money flows through independent actors to a candidate, as when a donor contributes to a candidate directly." *McCutcheon*, 572 U.S. at 210 (plurality opinion). When a donor contributes to a party, he must "cede control over the funds." *Id.* at 211. If the funds are "rerouted to a particular candidate, such action occurs at the [party's] discretion—not the donor's." *Ibid.* So "the chain of attribution grows longer, and any credit must be shared among the various actors along the way." *Ibid.*

Intervenors and the amicus also largely ignore many other provisions that prevent donors from funneling bribes to candidates through parties. The Federal Election Campaign Act of 1971 (Act), 52 U.S.C. 30101 *et seq.*, caps how much a donor may give to a party, see 52 U.S.C. 30116(a)(1)(B); treats a payment to a party as a contribution to a candidate, triggering the base contribution limits, if the donor in any way earmarks it for the candidate, see 52 U.S.C. 30116(a)(8); and requires parties to disclose their spending and their donors' names and contributions, see 52 U.S.C. 30104(b). Intervenors argue that Congress may reinforce those measures with yet another "prophylactic law," Br. 42, but this Court's cases firmly reject such "prophylaxis-upon-prophylaxis," *Cruz*, 596 U.S. at 306.

Amicus contends (Br. 34) that it is "not speculative" that donors use parties as conduits to facilitate corruption, but none of his examples supports the party-expenditure limit.

- Amicus notes (Br. 34) that, before the Act's adoption, the dairy industry gave "millions" to party committees, which then transferred the funds to President Nixon's campaign. But the Act addresses that concern by capping an individual's contributions to a party committee—at $41,300 per year in 2023-2024. See Gov't Br. 6.
- Amicus observes (Br. 36) that "an Ohio business executive contributed funds to a local party committee knowing that they would be earmarked for a school board member's campaign." But at the federal level, the Act treats earmarked donations to the party as contributions to the candidate. See 52 U.S.C. 30116(a)(8).
- Amicus contends that, in the 1990s and 2000s, candidates encouraged donors "to 'give to the party

with the tacit understanding that' the party would funnel that contribution back to the candidate." Br. 35 (citation omitted). But even "implicit agreements" to funnel money are "prohibited by the earmarking rules." *McCutcheon*, 572 U.S. at 222-223 (plurality opinion).

- Amicus notes (Br. 36) that Representative Bob Ney and state senator Chuck Chvala entered into *quid pro quo* arrangements involving donations to party committees. But there is no indication that Ney or Chvala funneled the money to themselves. See J.A. 286, 328; Republican Governors' Ass'n Amicus Br. 18. Rather, they traded favors for contributions to their parties. A law restricting party-candidate coordination in no way addresses that risk, for it does not regulate the actual source of the corruption: contributions to the party.

Amicus argues (Br. 37) that joint fundraising arrangements increase the risk of corruption-by-conduit and that an arrangement among all 50 state committees would enable a contributor to write "a single, massive check" of nearly "*$1 million*," which the joint committee could then funnel to one candidate. Intervenors, too, argue (Br. 42) that such committees "have *increased*" the risk of corruption since *Colorado II*. But *McCutcheon* rejected that argument in invalidating a different provision, and its reasoning applies equally here. See 572 U.S. at 215-216 (plurality opinion). A "joint fundraising committee is simply a mechanism for individual committees to raise funds collectively, not to circumvent base limits or earmarking rules." *Id.* at 215. Any agreement between the contributor and committees to route funds to a particular candidate "would trigger the earmarking provision." *Ibid.* So amicus's scenario requires assuming that "50 separate party committees would engage in a transparent violation of the earmarking rules (and that they would not be caught if they did)." *Ibid.*

"Further, to the extent that the law does not foreclose" amicus's scenario, "experience and common sense do." *McCutcheon*, 572 U.S. at 216 (plurality opinion). As a "practical matter," it is improbable that "so many distinct entities would cooperate" to funnel money to a single candidate. *Id.* at 215. It is also unlikely that "state parties would willingly participate in a scheme to funnel money to another State's candidate." *Id.* at 216. "The Iowa Democratic Party, for example, has little reason to transfer money to the California Democratic Party." *Ibid.* Amicus's circumvention-by-joint-committee example is both "illegal under current campaign finance laws" and "divorced from reality." *Ibid.*

d. The party-expenditure limit also fails closely drawn scrutiny because alternative measures—earmarking rules and disclosure laws—prevent circumvention "while avoiding 'unnecessary abridgment' of First Amendment rights." *McCutcheon*, 572 U.S. at 223 (plurality opinion) (citation omitted). Intervenors (Br. 36) and amicus (Br. 44) dismiss earmarking rules as ineffective. But *McCutcheon* relied heavily on those rules, explaining that aggregate contribution limits were unnecessary because the Act already prevents circumvention by treating earmarked donations to parties as contributions to candidates. See 572 U.S. at 201-202, 210-212, 215, 222-223 (plurality opinion). Even if earmarking is hard to prove for small sums, see Amicus Br. 44-45, it hardly follows that the FEC "will be equally powerless to prevent a scheme in which a donor routes" *a million* *dollars* "to a particular candidate," as in amicus's hypothetical example, *McCutcheon*, 572 U.S. at 217.

Intervenors (Br. 36) and amicus (Br. 45) also dismiss requirements that contributions to parties and candidates be publicly disclosed. But disclosure "minimizes the potential for abuse" and, given "modern technology," provides "a particularly effective means of arming the voting public with information." *McCutcheon*, 572 U.S. at 223-224 (plurality opinion). This Court has repeatedly cited disclosure as a viable alternative mechanism for preventing corruption. See, *e.g.*, *Cruz*, 596 U.S. at 306-307; *McCutcheon*, 572 U.S. at 223-224; *Citizens United*, 558 U.S. at 369-371.

e. Intervenors urge (Br. 49) "deference" to Congress's judgment that the party-expenditure limit prevents corruption. But "deference" is "inappropriate" in campaign-finance cases, especially given the systemic risk that "the legislative act may have been an effort to 'insulate legislators from effective electoral challenge.'" *Cruz*, 596 U.S. at 313 (brackets and citation omitted).

Deference is especially inapt here because Congress never made a judgment that party-coordinated spending poses a special risk of corruption. Congress limited party expenditures across the board without differentiating between independent and coordinated expenditures. See 52 U.S.C. 30116(d). This Court invalidated the statute as to independent expenditures in *Colorado I* but upheld it as to coordinated expenditures in *Colorado II*. The only apparent congressional judgment is an unconstitutional one: that all party expenditures should be capped to "reduc[e] what [Congress] saw as wasteful and excessive campaign spending." *Colorado I*, 518 U.S. at 618 (opinion of Breyer, J.).

C. This Court Should Abrogate *Colorado II*

Colorado II was wrong from the start, and ensuing legal, statutory, and factual developments have "so undermined [it] that it is no longer good law." See *Agostini* v. *Felton*, 521 U.S. 203, 217-218 (1997). The Court should either recognize that *Colorado II* "retain[s] no vitality," *Herrera* v. *Wyoming*, 587 U.S. 329, 342 (2019) (citation omitted), or overrule the decision. Intervenors and amicus offer no adequate reason to retain a decision that impairs candidates' and parties' core First Amendment rights election after election.

1. Intervenors and amicus barely acknowledge the quarter century of doctrinal changes that have eroded *Colorado II*'s foundations. To recap:

- *Colorado II* denied that parties and candidates are "so joined at the hip" that they need to coordinate. 533 U.S. at 448. But *McConnell* recognized that candidates and parties are "inextricably intertwined." 540 U.S. at 155 (citation omitted).
- *Colorado II* reasoned that Congress may limit speech to curb "undue influence." 533 U.S. at 441; contra Intervenors' Br. 38. But later precedents allow Congress to target only *quid pro quo* corruption and its appearance. See, *e.g.*, *Cruz*, 596 U.S. at 305.
- *Colorado II* upheld the party-expenditure limit as means of preventing circumvention, see 533 U.S. at 456, but this Court now greets such rationales with "skepticism," *Cruz*, 596 U.S. at 306.
- *Colorado II* accepted "unskillful tailoring," 533 U.S. at 463 n.26, but closely drawn scrutiny now

requires "narro[w] tailor[ing]," *McCutcheon*, 572 U.S. at 218 (plurality opinion) (citation omitted).

- *Colorado II* "defer[red] to Congress," *McConnell*, 540 U.S. at 185 n.72, but the Court has since rejected such "deference" as "inappropriate," *Cruz*, 596 U.S. at 313.

In short, *Colorado II* rests on reasons that have "been repeatedly and expressly rejected" in intervening cases. Pet. App. 132a (Readler, J., dissenting).

2. Statutory and factual changes, too, have undercut *Colorado II*. This case does not involve "the same law" as *Colorado II*, contra Amicus Br. 30; a 2014 amendment added exemptions that further belie any anti-corruption interest, see Gov't Br. 26-27. Intervenors assert (Br. 41) that the newly exempt activities are not "analogous to direct electioneering," but never explain, for instance, why party-coordinated spending on a recount poses a lower risk of corruption than spending on advertising. See pp. 15-16, *supra*.

Nor do "[t]he relevant facts remain consistent," contra Intervenors' Br. 40. Technological changes have made disclosure "effective to a degree not possible" when *Colorado II* was decided. *McCutcheon*, 572 U.S. at 224 (plurality opinion). And the rise of Super PACs makes it less likely that donors will make "conduit contributions" through parties; instead, donors "are likely to simply make unlimited contributions to Super PACs." *Id.* at 214.

3. *Colorado II*'s serious real-world consequences further favor overruling it. "Our constitutional tradition is one in which political parties and their candidates make common cause in the exercise of political speech." *Jones*, 530 U.S. at 589 (Kennedy, J., concurring). By departing from that tradition, the party-expenditure

limit "make[s] party speech less valuable and effective." McConnell Amicus Br. 11 (emphasis omitted). The limit also "chill[s] speech by threatening parties with investigations and penalties if protected advocacy is later deemed to be 'coordinated.'" Florida Republican Party Amicus Br. 14. And the limit forces parties to spend "million[s]" on "firewalled 'independent expenditure unit[s]'"—an especially severe burden on state committees, which tend to have "less funding, fewer employees, and more limited infrastructure" than their national counterparts. Georgia Republican Party Amicus Br. 26.

Colorado II also subjects parties to an untenable double standard. On the one hand, the Court has reasoned that, because parties are "inextricably intertwined" with candidates, Congress may subject them to special restrictions. *McConnell*, 540 U.S. at 155 (citation omitted). Congress may, for example, cap contributions to parties, see *id.* at 144-145, but cannot cap contributions to Super PACs, see Gov't Br. 6-7. On the other hand, *Colorado II* reasoned that parties and candidates are *not* "so joined at the hip" that their coordinated speech is protected. 533 U.S. at 449. That inconsistency contributes to a system that "reduces the power of political parties as compared to outside groups." *RNC* v. *FEC*, 698 F. Supp. 2d 150, 160 n.5 (D.D.C.) (three-judge court) (Kavanaugh, J.), aff'd 561 U.S. 1040 (2010).

4. Intervenors (Br. 46) and amicus (Br. 47-52) err in arguing that overruling *Colorado II* would destabilize campaign-finance law and threaten base contribution limits. *Colorado II* is profoundly wrong not least because it equated parties with other actors. The "unique relationship between a political party and its candidates," *Colorado II*, 533 U.S. at 476 (Thomas, J., dis-

senting), answers any concerns about "destabilizing spillover effects" for laws regulating other actors, Amicus Br. 44, or about a "wider revolution in campaign finance doctrine," Intervenors Br. 46.

Intervenors contend (Br. 48) that "parties and candidates" have relied on *Colorado II*, but parties and candidates have no meaningful reliance interest in retaining a decision that restricts their freedom. Overruling *Colorado II* would allow, but not compel, parties to coordinate with candidates. If intervenors want (Br. 48) to continue engaging in "their own speech" without coordination, they could still do so.

Intervenors are likewise wrong (Br. 46-49) that overruling *Colorado II* would upend rules governing the rates broadcasters may charge for political advertisements. As intervenors acknowledge (Br. 47), those rules require broadcasters to charge low rates for candidate spending, but not for party spending—whether coordinated or independent. See 47 U.S.C. 315(b)(1) (regulating rates charged to a "legally qualified candidate"). Overruling *Colorado II* would not change that. Parties could spend more money on advertisements, but broadcasters still would not be required to charge parties special low rates. Regardless, solicitude for broadcasters' profit margins does not justify retaining a precedent that abridges core political speech.

Finally, intervenors are wrong to suggest (Br. 3) that overruling *Colorado II* would free parties to make "unlimited contributions" to candidates. Party-coordinated expenditures, in which parties decide how to spend money after consulting with the candidate, differ from contributions, in which the party "cede[s] control over the funds" to the candidate. *McCutcheon*, 572 U.S. at 211 (plurality opinion). The statute itself recognizes the distinction: The party-expenditure limit caps parties' coordinated expenditures, while the distinct party-to-candidate limit caps their direct contributions. See 52 U.S.C. 30116(a)(2)(A). Petitioners have not challenged the party-to-candidate limit here. Overruling *Colorado II* thus would not destabilize campaign-finance law; on the contrary, it would reaffirm "the principle that debate on public issues should be uninhibited, robust, and wide-open." *Buckley*, 424 U.S. at 14 (citation omitted).

* * * * *

This Court should reverse the judgment of the court of appeals and remand the case for further proceedings.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

OCTOBER 2025