No. 24-621

IN THE

Supreme Court of the United States

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, ET AL.,

Petitioners,

v.

FEDERAL ELECTION COMMISSION, ET AL.,

Respondents,

AND

DEMOCRATIC NATIONAL COMMITTEE, ET AL.,

Intervenor-Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

SUPPLEMENTAL BRIEF FOR PETITIONERS

Noel J. Francisco
Counsel of Record
Donald F. McGahn II
John M. Gore
E. Stewart Crosland
Brinton Lucas
David Wreesman
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001
(202) 879-3939
njfrancisco@jonesday.com

Counsel for Petitioners
(Additional Counsel Listed on Signature Page)

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

INTRODUCTION

Despite amicus's ongoing attempts to muddy the water, the jurisdictional analysis is clear. Amicus agrees (Br.16) petitioners had standing at the start of this case. He therefore admits that it is "his burden" to establish "mootness." Supp.Br.9. And he accepts that the "only" way he can discharge that duty is by proving that "it is impossible to grant any effectual relief." Supp.Br.11 (cleaned up). Yet his only two bases for mootness—(1) the government's change in position on the merits and (2) Vice President Vance's recent media statements—do not come close to doing so.

ARGUMENT

I. THE THREAT OF ENFORCEMENT REMAINS.

A. Start with amicus's claim that in light of the government's agreement with petitioners on the merits, there is now "no threat of enforcement." Supp.Br.1. As amicus admits, petitioners faced that risk "[w]hen this case began" (Br.16) and the FEC "has not specifically disavowed the possibility of enforcing" § 30116(d) today. Supp.Br.2 (cleaned up). And for all his fixation on Executive Order 14215, amicus has no answer to the fact that "neither the President nor the Attorney General has determined that the Executive should stop enforcing the statute." FEC.Reply.6 n.*.

This alone shows amicus cannot prove mootness. Even the FEC's "'voluntary cessation'" of § 30116(d) enforcement would "'not moot a case' unless it is 'absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *West Virginia v. EPA*, 597 U.S. 697, 720 (2022). Here, amicus agrees (Supp.Br.2) there has been *no* cessation, making this controversy very much alive. Pet.Reply.3-4.

Amicus nevertheless demands petitioners prove "this FEC will enforce Section 30116(d) *against them*." Supp.Br.3. But even for standing, a plaintiff need not show the government is "affirmatively commit[ted] to enforcement," let alone with respect to a particular target. Supp.Br.2. Rather, it suffices that the government has "not disavowed enforcement" if petitioners engage in outlawed speech "in the future"—the precise situation here. *SBA List v. Driehaus*, 573 U.S. 149, 165 (2014); *see* Supp.Br.2. It necessarily follows that amicus has not carried *his* burden to show mootness.

Amicus is no more persuasive in dismissing (Supp.Br.3) the threat of enforcement by a future administration. While he again invokes potential defenses (*id.*), it would be insane for petitioners to knowingly violate a law upheld by the Sixth Circuit based on its view of binding Supreme Court precedent, all in the hopes they could defeat a future prosecution. Pet.Reply.4. Nor does Article III require that petitioners place their faith in future prosecutorial discretion by their political opponents (Supp.Br.3), especially when they are *currently* pursuing petitioners for allegedly violating § 30116(d). Pet.Reply.5; *infra* Pt. I.B.

B. In all events, amicus admits that intervenor DCCC is seeking enforcement of § 30116(d) against NRSC right now. Pet.Reply.5. He just quibbles the DCCC is doing so through "an *APA* action" rather than "a Section 30109(a)(8) enforcement suit." Supp.Br.4. But DCCC's suit expressly alleges that since July 2024, "NRSC" has been flouting the "limits that Congress has placed on coordinated spending between political parties and their candidates" through expenditures on certain "advertisements." Dkt. 1 at 1, *DCCC v. FEC*, No. 24-cv-2935 (D.D.C.).

DCCC therefore seeks a declaratory judgment that these expenditures by its political adversary are unlawful. *Id.* at 31. And while that case started with a suit "*against the FEC*" (Supp.Br.4), NRSC has intervened and asserted the same First Amendment defense it raises here. *DCCC* Dkt. 40 at 29-31. As a result, a ruling in NRSC's favor from this Court would preclude DCCC—which is now a party in both cases—from pursuing that lawsuit to NRSC's harm. Pet.Reply.5. That is presumably why the *DCCC* district court stayed that litigation, explaining that its resolution "will almost certainly turn on the Supreme Court's decision in *NRSC v. FEC*." *DCCC* Dkt. (July 31, 2025). That alone ensures it is not impossible for this Court to grant effective relief.

II. VICE PRESIDENT VANCE'S RECENT REMARKS MAKE NO DIFFERENCE.

Amicus fares no better in contending that Vance's "recent comments" moot his claims. Supp.Br.10. This Court can still grant Vance meaningful relief, and the Committees have standing regardless.

A. Amicus admits that Vance has not "conclusively ruled out a run" for federal office in the future. Supp.Br.10-11. That is dispositive. To show that "it is impossible to grant any effectual relief," amicus must prove that Vance has abandoned his intention to campaign for federal office, such that a judgment preventing § 30116(d)'s enforcement would do nothing for his political future. Supp.Br.11 (cleaned up); *see* Pet.Reply.6. Amicus concedes that he cannot do that, making his cases requiring "concrete plans" for a plaintiff to establish "standing" beside the point. *Carney v. Adams*, 592 U.S. 53, 64 (2020); *see* Supp.Br.9.

Unable to satisfy the ordinary test for mootness, amicus asserts, without support, that this standard does not apply when the plaintiff lacks "a concrete and imminent injury from which relief is warranted in the first place." Supp.Br.11. But that just improperly collapses the tests for mootness and standing. Pet.Reply.3, 6.

Amicus's standing-necessary-to-avoid-mootness exception also makes no sense on its own terms. The impossible-to-grant-effectual-relief test is just a way of determining whether a party retains "'a concrete interest, however small, in the outcome of the litigation.'" *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). Thus, even "where the practical impact of any decision is not assured," the mere "possibility" that it will matter is enough to ensure the necessary stake. *Id.* at 175, 180. And here, even amicus agrees (Supp.Br.10-11) it is at least possible that a ruling in Vance's favor could provide him effective relief. "However small that concrete interest may be due to" any "uncertainty" about Vance's political intentions, "it is not simply a matter of academic debate." *Chafin*, 568 U.S. at 175-76 (cleaned up). That "is enough to save this case from mootness." *Id.* at 176.

In any event, this Court need not rely on mere possibilities, as all available evidence shows Vance *will* again campaign for federal office (and again face § 30116(d)'s speech caps). The record is filled with Vance's statements to that effect, and he continues to hold himself out as a federal candidate in the 2028 election. JA14, 177, 179-81, 183-85; Pet.Reply.7. With that event less than three years away, Vance would even have *standing* to sue now.

Amicus waves this away as "legacy" information. Supp.Br.11. But Vance's declaration of candidacy is *currently* in effect, which is why his Senate campaign is *currently* raising money, including over $50,000 this year alone. Pet.Reply.7. And while amicus dismisses (Supp.Br.11) the fact that 11 of the last 14 vice presidents have run for the presidency, this Court need not "'exhibit a naiveté from which ordinary citizens are free.'" *Department of Com. v. New York*, 588 U.S. 752, 785 (2019).

Nor does amicus's compendium of recent media statements suggest Vance plans to retire from political life in 2029. All these show is that Vance is "focused" on his current job, not "running for the next" one, and that "after the midterms," he plans to "sit down with the President … and talk to him about 2028." Add.1a, 3a, 5a-6a (cleaned up). None of this comes close to showing Vance has abandoned his "inten[tion] to run for federal office again in the future." JA14.

B. In all events, amicus never denies the Committees have concrete plans to engage in coordinated political speech in the next election. Instead, he just rehashes his arguments why they are improper parties.

1. Amicus first renews his collateral attack on the FEC's assignment regulation, urging this Court to resolve that rule's validity before the question presented. But "[f]or standing purposes," this Court must "accept as valid the merits" of petitioners' "legal claims," including that § 30116(d) "unconstitutionally burdens" their speech. *FEC v. Cruz*, 596 U.S. 289, 298 (2022). Here, that entails accepting their assertion that § 30116(d) "impacts" the Committees' speech "through" a valid assignment "regulation." Supp.Br.7.

While amicus insists that resolution of the regulation's validity is necessary because it "bears *only* on standing," he offers no support for pulling this Court down that rabbit hole. Supp.Br.9. Nothing about petitioners' reliance on this regulation is "'so … implausible'" that it can be disregarded for purposes of jurisdiction. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 89 (1998). To the contrary, this Court *upheld* the assignment regulation as valid nearly 45 years ago in *FEC v. DSCC*, 454 U.S. 27 (1981), and it has been in effect ever since. Pet.Reply.9.

Amicus thus claims that holding did not survive *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), on the premises that (1) *Loper Bright* retained "only prior *Chevron*-based holdings that '*specific agency actions* are lawful,'" and (2) *DSCC* upheld only "an FEC administrative order" and not the "assignment regulation." Supp.Br.7-8. Neither one is correct.

As to the first, *Loper Bright*'s carveout for "specific agency actions" preserves prior *statutory constructions*, not *agency regulations*. 603 U.S. at 412. As *Loper Bright* explained, it was not disturbing "prior cases that relied on the *Chevron* framework," which were "still subject to statutory *stare decisis* despite [the] change in interpretive methodology." *Id.* That was because the fact that "a precedent relied on *Chevron* is, at best, 'just an argument that the precedent was wrongly decided,'" which "is not enough to justify overruling a statutory precedent." *Id.* And not even amicus can deny that *DSCC* held that FECA "does not foreclose" assignments of coordinated-spending authority, and that the FEC therefore "acted within the authority vested in it by Congress when it determined to permit" them. 454 U.S. at 32.

As to the second, *DSCC did* "adjudicate the validity" of the "assignment regulation in effect in 1981." Supp.Br.8. In the course of reading FECA to allow coordinated-expenditure-authority assignments, this Court explained that all parties "accept[ed]" as "valid" the assignment "regulation, 11 CFR § 110.7 (1981)," which "clearly demonstrates" that coordinated expenditures could be made by "the Republican and Democratic National Senatorial Committees." 454 U.S. at 34 & n.6. Amicus notes that the 1981 regulation was "differently worded" than the current one (written in 2004) (Supp.Br.8), but the tweaks are immaterial. *Compare* 11 C.F.R. § 110.7(a)(4) (1981) ("The national committee of a political party may make expenditures authorized by this section through any designated agent, including … subordinate party committees."), *with* 11 C.F.R. § 109.33(a) (2004) ("[T]he national committee of a political party … may assign its authority to make coordinated party expenditures … to another political party committee.").

In all events, Congress ratified both *DSCC* and the assignment regulation in the 2014 amendment. Pet.Reply.9. While amicus dismisses this ratification as "convoluted," the statute could not be clearer. Supp.Br.8. As amended, § 30116(d) provides that its "limitations … shall not apply to expenditures made from any of the accounts described in subsection (a)(9)." 52 U.S.C. § 30116(d)(5). And the accounts in subsection (a)(9) expressly include a "separate, segregated account of … a national congressional campaign committee of a political party." *Id.* § 30116(a)(9)(B)-(C). The 2014 amendment thus "'cannot be read except as a validation of [*DSCC*'s] holding.'" *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001).

Indeed, amicus never explains how § 30116(d) as amended could be read to foreclose coordinated expenditures by the Committees. Instead, he just quotes (Supp.Br.8) a different portion of *Sandoval* rejecting an attempt to "infer[] congressional intent to ratify" decisions "regarding a particular statutory provision when Congress comprehensively revised the statutory scheme but did not amend that provision." 532 U.S. at 292. But petitioners' ratification argument does not "rel[y] on congressional inaction." *Id.* Rather, it rests on congressional action—namely, the 2014 amendment, which makes sense only if the Committees can engage in coordinated spending. Section 30116(d)'s limits therefore clearly apply to the Committees, which means they have standing to challenge them.

2. Moving beyond Article III, amicus maintains (Supp.Br.5) that the Committees do not qualify as "the national committee" of the Republican Party for purposes of § 30110. This argument remains triply flawed.

a. For one, it is forfeited. Section 30110 provides that "the national committee of any political party … may institute such actions in the appropriate district court" to resolve FECA's constitutionality. Below, the Committees invoked this cause of action, and no one objected to them doing so. Because a lack-of-cause-of-action defense is non-jurisdictional, amicus cannot raise the point now. Pet.Reply.10.

Rather than dispute any of this, amicus asserts that "Section 30110 is jurisdictional." Supp.Br.5 (cleaned up). But this conflates § 30110's separate parts. Section 30110's first sentence—authorizing the national committee to "institute actions"—plainly creates a cause of action. Its second sentence then directs the

court of appeals to resolve "questions of constitutionality" of FECA "certif[ied]" by the district court. Amicus does not deny that the district court here properly certified a question regarding FECA's constitutionality under the second sentence. Instead, his argument rests on the premise that the Committees do not satisfy the first sentence's cause-of-action requirement. But that is not a *jurisdictional* requirement, which is why a court of appeals can review a certified order under 28 U.S.C. § 1292(b) even if the plaintiff had no cause of action. Pet.Reply.11. Amicus ignores all of this.

b. For another, even if the Sixth Circuit's jurisdiction turned on the presence of a party with a cause of action under § 30110, that condition would be satisfied here. Even putting the Committees aside, *Vance* is an "'individual eligible to vote in any election for the office of President,'" and so he clearly has a cause of action under § 30110. And Vance's presence likewise ensured that the Sixth Circuit had Article III jurisdiction, since it issued its opinion on September 5, 2024—*before* he was elected Vice President. So even under amicus's theory, the Sixth Circuit had "interlocutory appellate jurisdiction" over the certified question. Supp.Br.6; *see* Pet.Reply.11.

This Court in turn has jurisdiction to review the Sixth Circuit's judgment. Section 30110 has nothing to do with this Court's statutory authority, which instead comes from the certiorari statute, 28 U.S.C. § 1254(1). And this Court has Article III jurisdiction to review the Sixth Circuit's judgment, as that ruling is currently injuring the Committees and Vance alike. Pet.Reply.11-12. Again, amicus ignores all of this.

c. For a third, amicus's claim that "the national committee of any political party" excludes the Committees is wrong. As amicus admits, other provisions in FECA confirm that the phrase "includes congressional committees." Supp.Br.6 (cleaned up). He just dismisses these sections as showing that "Congress was explicit when departing from" his narrow reading of "national committee." *Id.* Yet Congress also specified when the phrase *excludes* "a national congressional campaign committee," and it eschewed that approach in § 30110. 52 U.S.C. § 30116(a)(9)(A) (referring to "a national committee of a political party (*other than* a national congressional campaign committee of a political party)") (emphasis added).

Amicus also suggests these provisions do not trigger "'the presumption of consistent usage'" because they were enacted "after" § 30110. Supp.Br.7. But that presumption applies to both an "[a]ct and its amendments." *Sullivan v. Stroop*, 496 U.S. 478, 482 (1990); *see id.* at 484. That makes sense, as statutory construction seeks the meaning of a term that "fits most logically and comfortably into the body of both previously and subsequently enacted law." *West Virginia Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 100 (1991).*

Amicus therefore falls back to the statutory definition, but that provision does not move the needle either. Supp.Br.6. FECA defines "'national committee'" as "the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as

* For that reason, *DSCC*'s remark in 1981 that the "RNC, not the NRSC, is the 'national committee'" does not dictate § 30110's meaning today. 454 U.S. at 33 n.4; *see* Supp.Br.6.

determined by the Commission." 52 U.S.C. § 30101(14). Both NRSC and NRCC are organizations "responsible for the day-to-day operation" of the Republican Party "at the national level," as "determined by the Commission." After all, they are the sole Party entities charged (respectively) with overseeing senate and congressional races across the country. And drawing on their "[b]ylaws," the FEC has long treated each one as "a national political party committee of the Republican Party," including in this case. JA377-78.

While amicus attaches (Br.24) great significance to the definition's use of "the," he never denies that under the Dictionary Act, the words "the" and "a" are interchangeable "unless the context indicates otherwise." 1 U.S.C. § 1; *see* Pet.Reply.12. And here, context confirms the Dictionary Act's presumption, because FECA itself uses those terms interchangeably. *Compare, e.g.,* 52 U.S.C. § 30116(a)(9) ("*a* national committee of a political party … includ[es] *a* national congressional campaign committee") (emphases added), *with id.* § 30125(b)(2)(B)(iv)(II) ("*the* national committee of a political party … includ[es] *a* national congressional campaign committee") (emphases added). Accordingly, § 30110's "use of the definite article 'the' is too thin a reed to support [amicus's] conclusion." *EPA v. Calumet Shreveport Ref., LLC*, 605 U.S. 627, 641 (2025).

C. Finally, even if any concern remained, petitioners remain ready to add new parties—such as Senator Moreno and Representative Barrett—if doing so would aid the Court. Pet.Reply.12 n.2. Contrary to amicus's suggestion, it is unnecessary to litigate their "Article III standing" or ability to "establish venue" now, as petitioners are prepared to submit affidavits on those issues. Supp.Br.12.

And to the extent amicus believes Moreno and Barrett are not up to the task, the Committees have a deep roster of other potential parties, such as Senator Jon Husted (who would establish venue and is up for reelection in 2026). To be clear, petitioners see no need for any of these prospective plaintiffs. For present purposes, the point is that petitioners are prepared to meet amicus's barrage of meritless jurisdictional objections with other candidates if helpful to do so.

CONCLUSION

This Court should reverse the judgment below.

December 1, 2025

Respectfully submitted,

Jessica Furst Johnson
LEX POLITICA PLLC
853 New Jersey Ave., S.E.
Suite 200-231
Washington, D.C. 20003

Counsel for Petitioners National Republican Senatorial Committee & National Republican Congressional Committee

Noel J. Francisco
Counsel of Record
Donald F. McGahn II
John M. Gore
E. Stewart Crosland
Brinton Lucas
David Wreesman
JONES DAY
51 Louisiana Ave., N.W.
Washington, D.C. 20001
(202) 879-3939
njfrancisco@jonesday.com

Counsel for Petitioners