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 Petition For A Writ of Certiorari To The United States Court of Appeals For The Sixth Circuit

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to advocate on behalf of its members in matters before Congress, the Executive Branch, and the courts.

The Chamber plays a key role in advancing the First Amendment rights of its members. In that capacity, the Chamber was a party to the *McConnell v. FEC*, 540 U.S. 93 (2003), litigation that challenged the facial constitutionality of an electioneering communication ban on corporate political speech. The Chamber also regularly files *amicus curiae* briefs where the business community's right to political speech is at stake. *See, e.g., Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021); *Am. Tradition P'ship, Inc. v. Bullock*, 567 U.S. 516 (2012); *Citizens United v. FEC*, 558 U.S. 310 (2010); *Wisconsin Right to Life, Inc. v. FEC*, 546 U.S. 410 (2006); *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002); *Elections Bd. of State of Wisconsin v. Wisconsin Mfrs. & Com.*, 597 N.W.2d 721 (Wis. 1999); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238

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[1] No party's counsel authored this brief in whole or in part, and no person or entity other than *amicus* or its counsel made a monetary contribution to fund the brief's preparation or submission. *Amicus* provided timely notice of this filing to all parties.

(1986). And the Chamber has litigated to preserve its own First Amendment rights of speech and association. *See, e.g., Chamber of Commerce of the United States v. Moore*, 288 F.3d 187 (5th Cir. 2002); *Chamber of Commerce of the United States v. FEC*, 69 F.3d 600 (D.C. Cir. 1995).

The restrictions on political parties' speech at issue in this case inhibit Americans' full participation in democratic government. Weakened political parties deprive American voters of access to information critical for their decision-making. Moreover, the Chamber has a broader interest in ensuring that individuals can associate and speak in concert without undue interference from the Government. If the activities of political parties are restricted, as the FEC advocates they should be here, the freedom of other organizations is necessarily at risk.

INTRODUCTION AND SUMMARY OF ARGUMENT

Political parties help unify and amplify the voices of the electorate. These free associations perform the crucial political function of distilling various positions and viewpoints into concise platforms, providing the voters with clear and distinct choices at the ballot box. And they play an important role in vetting and supporting candidates seeking office. They are, in short, a crucial part of what makes American democracy the envy of the world.

The business community benefits from this association and expression. Parties, in close coordination with their candidates, explain what

voters can expect from their elected officials on issues that will profoundly affect businesses—everything from taxes to regulatory burdens to trade policy. Thus, this carefully coordinated messaging allows Americans to cast their votes with a clearer understanding of the stakes for the business community and thus the national economy. And understanding those stakes is deeply important because every American is impacted by free enterprise—be it as an owner, an employee, a customer, or a participant in our interconnected economy.

At issue in this case are statutory limitations on political parties' ability to receive input from the candidates they support. This is an affront to the First Amendment. The Framers chose to include the right to free speech and association among those liberties enumerated in the Constitution because they recognized the paramount importance of unfettered political dialogue in a representative democracy and the need for citizens to associate with each other to advance such speech. Preventing political parties from receiving input from candidates cannot withstand scrutiny because it undermines these purposes and erodes our democratic system. Contrary to the FEC's claims, *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*), does not permit the restrictions at issue in this case. And if it does, it can no longer control in light of this Court's jurisprudence developed in the decades since *Colorado II*.

If the operations of political parties continue to be stifled in the manner advocated by the FEC, no association, including the Chamber of Commerce and

its members, is safe from government interference or suppression. The Court should endorse an outcome that guarantees more political speech, not less—one that ensures citizens can act in concert to pursue their desired political outcomes. The First Amendment compels that the Sixth Circuit be reversed.

ARGUMENT

I. THE FIRST AMENDMENT PROTECTS POLITICAL SPEECH ABOVE ALL ELSE.

A. The Right To Engage In Political Speech Is At The Heart Of The First Amendment.

Throughout human history—in nearly every society to have existed—individuals have faced the ever-present threat of punishment for speaking their minds about the affairs of the system by which they are governed. Even today, engaging in political speech, especially speech that runs counter to the state's official narrative, is risky business in much of the world. *See, e.g.*, Sarah McLaughlin, *UK Police Threaten to Prosecute Speech from "Further Afield Online" While Internet Crackdowns and Blackouts Strike Around the World*, Foundation for Individual Rights and Expression (Aug. 21, 2024), https://tinyurl.com/57dr97d8.

After the thirteen American colonies declared their independence, the Founders sought to follow a different course. They recognized that political speech—historically, the most subject to suppression—warrants the most protection. Although the Framers believed that free speech was a God-given right enjoyed by all freeborn Englishmen,

they were keenly aware of its suppression in Great Britain. In the years leading up to the Revolution, even truthful criticism of the government could, at times, be prosecuted as seditious libel. *See Bustos v. A & E Television Networks*, 646 F.3d 762, 763 (10th Cir. 2011) (discussing *De Libellis Famosis Case*, 77 Eng. Rep. 250, 251 (Star Chamber 1606)). Dissenting opinions were recognized as dangerous to the ruling regime and treated just like physical threats of violence. The printing press—perhaps the greatest innovation in the history of political speech—was sometimes targeted by the Crown as a result. *See Citizens United v. FEC*, 558 U.S. 310, 353 (2010) (explaining that the First Amendment's Speech Clause "was understood as a response to the repression of speech and the press that had existed in England and the heavy taxes on the press that were imposed in the Colonies").

Following the Revolution, Americans were no longer to be subjects. They were to be citizens, charged with the administration of their own government. Consequently, "[t]he Founders sought to protect the rights of individuals to engage in political speech because a self-governing people depends upon the free exchange of political information." *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 411 (2000) (Thomas, J., dissenting). To ensure that citizens could discuss the affairs of government, the Framers took care to place uncompromising language in their founding document to prohibit those in power from preventing citizens from speaking—including, among other things, about the positions and qualifications of candidates for office. The First Amendment was thus "designed and intended to remove governmental restraints from the arena of public discussion, putting

the decision as to what views shall be voiced largely into the hands of each of us, … in the belief that no other approach would comport with the premise of individual dignity and choice upon which our political system rests." *Cohen v. California*, 403 U.S. 15, 24 (1971). As the Framers realized, the state could not be trusted to respect criticism of officeholders or advocacy in support of those who might replace them through the democratic process. "Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates … and all such matters relating to political processes." *Mills v. State of Alabama*, 384 U.S. 214, 218–19 (1966).

Elections, which are the primary means for citizens to determine how they are governed, would be meaningless exercises absent the ability of Americans to inform themselves and others. Thus, the "First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office." *FEC v. Cruz*, 596 U.S. 289, 302 (2022) (quotations omitted); *see also Citizens United*, 558 U.S. at 339; *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989); *Colorado II*, 533 U.S. at 465 (Thomas, J., dissenting) ("Political speech is the primary object of First Amendment protection.").

As this Court has long recognized, political speech in support of candidates often requires the expenditure of money. "When an individual contributes money to a candidate … [t]he contribution

'serves as a general expression of support for the candidate and his views' and 'serves to affiliate a person with a candidate.'" *McCutcheon v. FEC*, 572 U.S. 185, 203 (2014) (plurality) (quoting *Buckley v. Valeo*, 424 U.S. 1, 21–22 (1976) (per curiam)). Thus, political "contribution and expenditure limitations operate in an area of the most fundamental First Amendment activities." *Buckley*, 424 U.S. at 14.

These foundational protections for electoral expression and association ensure that voters have access to numerous and diverse voices to assess which candidate or party is fit to govern them. As Justice Holmes recognized long ago, "the best test of truth is the power of the thought to get itself accepted in the competition of the market." *Abrams v. United States*, 250 U.S. 616, 630 (1919). That "theory of our Constitution," *id.*, protects "an uninhibited marketplace of ideas," *303 Creative LLC v. Elenis*, 600 U.S. 570, 585 (2023). In the electoral context, that marketplace ensures the "unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Buckley*, 424 U.S. at 14. Such a marketplace only works if it guarantees a wide range of voices—even those that generate "profound offense" and "popular opposition." *McCutcheon*, 572 U.S. at 191.

This vibrant marketplace of ideas enhances predictability and choice for the American electorate. That is because "an election campaign is a means of disseminating ideas as well as attaining political office." *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 186 (1979). Thus, the greater the availability and clarity of an electoral message, the better voters can understand how to cast

their ballots and what the success of their chosen candidates will mean for society. Uninhibited access to ideas is thus crucial to allow "voters … to inform themselves about the candidates and the campaign issues." *Eu*, 489 U.S. at 223.

The American business community both contributes to, and benefits from, free political expression and association. For example, the Chamber and its members often have unique insights that can help inform voters about important issues that could otherwise go unnoticed, such as how the corporate tax rate affects Americans' local economies;[2] what opportunities exist to combat rising cargo and package theft;[3] and whether government reports are giving the public the full story about an industry.[4] The business community and its stakeholders also benefit when political parties and their candidates work in close coordination to clearly communicate their policy platforms. Americans can use that information to understand the impact of their electoral choices on the businesses they own, work at, or patronize. More coordinated speech by political parties results in more information about where

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[2] *See* Watson M. McLeish & Curtis Dubay, *How Higher Corporate Taxes Would Affect Your Local Economy*, U.S. Chamber of Commerce (Sept. 19, 2024), https://tinyurl.com/57mhdjm8.

[3] *See* Press Release, U.S. Chamber of Commerce, U.S. Chamber Hosts Government & Business Leaders on Solutions to Curb Cargo, Package Theft (Dec. 18, 2024), https://tinyurl.com/4czurvaf.

[4] *See* Dan Byers, *What to Know About the Department of Energy's LNG 'Pause' Study*, U.S. Chamber of Commerce (Dec. 19, 2024), https://tinyurl.com/45ecvcxh.

candidates stand and thus more predictability about the policy consequences of electoral outcomes. By the same token, precluding coordination by parties and their candidates undermines the availability and accuracy of electoral communication. In this way, free association, free expression, and free enterprise are deeply intertwined.

B. The First Amendment Jealously Guards Political Parties' Right To Speak And Associate.

While the First Amendment protects the right of all persons, whether acting individually or in concert, to spend money in furtherance of political speech, *see Citizens United*, 558 U.S. at 349 ("If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech."), the need for such protections is at its zenith when it comes to political parties. This is true for at least three reasons.

First, political parties inherently implicate the "right to associate with others." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 606 (2021). As this Court has long recognized, "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association," given "the close nexus between the freedoms of speech and assembly." *NAACP v. State of Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958) (citing *De Jonge v. State of Oregon*, 299 U.S. 353, 364 (1937); *Thomas v. Collins*, 323 U.S. 516, 530 (1945)). As a result, an "individual's freedom to speak … could not be vigorously protected from interference by the

State unless a correlative freedom to engage in group effort toward th[at] end[ ] were not also guaranteed." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). Thus, just as electoral expression is given robust First Amendment protections, *see supra* I.A, so too is association for the purpose of furthering that expression. Indeed, the "political freedom of the individual" has "traditionally been [exercised] through the media of political associations." *Sweezy v. State of New Hampshire by Wyman*, 354 U.S. 234, 250 (1957).

Political parties are, by their very nature, associations formed to further electoral expression. For that reason, it "is well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments." *Eu*, 489 U.S. at 224. That protected association includes "a right to identify the people who constitute the association and to select a standard bearer who best represents the party's ideologies and preferences." *Id.* And that association between the party and its members means that "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Democratic Party of U.S. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981).

Thus, while the First Amendment looks skeptically on all government speech restrictions, they are "particularly egregious where the State censors the political speech a political party shares with its members." *Eu*, 489 U.S. at 224. These concerns are compounded where the speech restrictions operate "at the crucial juncture at which the appeal to common principles may be translated

into concerted action, and hence to political power in the community." *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 216 (1986). Ultimately, democratic systems—as with most human endeavors—depend on individuals acting in concert. A restriction on the operation of a political party is thus a restriction on the operation of democracy itself.

Second, and relatedly, a political party and "its candidates" are "inextricably intertwined." *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 630 (1996) (Kennedy, J., concurring) (*Colorado I*). Indeed, the "party nominates its candidate; a candidate often is identified by party affiliation throughout the election and on the ballot; and a party's public image is largely defined by what its candidates say and do." *Colorado II*, 533 U.S. at 469 (Thomas, J., dissenting). At bottom, political parties exist to "promot[e] candidates" so that they may accrue "political power." *Eu*, 489 U.S. at 224. Thus, speech by political parties also necessarily implicates the First Amendment's protections for a candidate's "freedom to speak without legislative limit." *Cruz*, 596 U.S. at 302 (quotations omitted). The reverse is also true: severing the link between party and candidate "suffocates" the party's right to support its chosen candidate. *Eu*, 489 U.S. at 224. The candidate and the party are codependent—a relationship that benefits the democratic process. The relationship cannot be inhibited without impeding the ability of Americans to select those who will govern them.

Third, limitations on speech by political parties infringe on the right of individuals to *receive* information from willing speakers. Even individuals who do not partake in collective political action

themselves—individuals whose participation in the electoral system may be limited to casting a ballot on election day—nevertheless benefit from those who choose to act in concert. That is because associations strengthen the voice of those who participate, which, in turn, allows messages to reach those who would otherwise lack access to such information. That information, in turn, strengthens our democracy by enabling voters to understand where the parties and candidates stand on crucial issues, including those that affect the businesses in their community.

For these reasons, the "First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw." *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978). It is thus "well established that the Constitution protects the right to *receive* information and ideas." *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972) (emphasis added); *see also Murthy v. Missouri*, 603 U.S. 43, 75 (2024) ("we have recognized a First Amendment right to receive information and ideas") (quotations omitted). In short, restricting the operation of parties "hamstrings voters seeking to inform themselves about the candidates and the campaign issues." *Eu*, 489 U.S. at 223.

C. The Limits On Political-Party Speech Are A First Amendment Aberration.

The coordinated party expenditure limits at issue in the petition cannot be squared with these core First Amendment principles. These limits cap the amount that parties may spend on messaging that is

"coordinated" with their own candidate for office. *See* 52 U.S.C. § 30116(d); Pet. 8. The limits thus restrict precisely what the First Amendment was designed to protect—the "uninhibited marketplace of ideas," *303 Creative*, 600 U.S. at 585 (quotations omitted), which is essential to a properly functioning democracy.

Unsurprisingly, then, the coordinated party expenditure limits are a historical anomaly. Judge Bush's survey of the historical evidence below revealed that enactment-era Americans "imposed no restrictions on how the emerging political parties communicated to the public who their candidates were and where they stood on the issues." App.60a. To the contrary, "in the period leading to the American Revolution, coordination of speech was necessary to rally the American colonies, later states, in their fight for independence." App.49a. And this practice of political coordination continued after the nation won its independence. Early political movements freely coordinated "financial support" for initiatives, including "messaging through news media." App.56a–57a. Thus, free coordination between and among political movements to deliver their messages to the public has long been the norm in America.

The coordinated party expenditure limits are anomalous not only historically, but doctrinally too. This Court has consistently recognized robust protections for political-party expression and association. For example, in *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986), the Court held unconstitutional a law that required "voters in any party primary to be registered members of that party," *id.* at 210–11, 229, because it impermissibly

"limit[ed] the Party's associational opportunities," *id.* at 216. In *Eu v. San Francisco County Democratic Central Committee,* 489 U.S. 214 (1989), the Court struck down a law that prohibited "political parties from endorsing candidates in party primaries," *id.* at 216, because it "directly hamper[ed] the ability of a party to spread its message and hamstrings voters seeking to inform themselves about the candidates and the campaign issues," *id.* at 223 (collecting cases). And in *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996), the Court held unconstitutional limits on "independent" expenditures by parties, *id.* at 608, recognizing that "expression of a political party's views is core First Amendment activity," *id.* at 616 (quotations omitted).

The Court broke from this historical and doctrinal practice in *Colorado II*. There, five members of the Court rejected a facial challenge to an earlier version of the coordinated party expenditure limits. *Colorado II*, 533 U.S. at 437. Before that sharply divided decision, this Court had "never upheld an expenditure limitation against political parties." *Id.* at 475 (Thomas, J., dissenting). And it has rejected such limits since then. *See Randall v. Sorrell*, 548 U.S. 230, 259 (2006) (plurality) (holding unconstitutional "contribution limits" that "would reduce the voice of political parties … to a whisper") (quotations omitted). Thus, the coordinated party expenditure limits and *Colorado II* should be recognized for what they are: a First Amendment aberration.

The coordinated party expenditure limits also plainly run afoul of the First Amendment. This Court has repeatedly indicated that such limits may be subject to strict scrutiny, *see Cruz*, 596 U.S. at 305;

McCutcheon, 572 U.S. at 199, or, at the very least, "'closely drawn' scrutiny," *Cruz*, 596 U.S. at 305 (citing *Buckley*, 424 U.S. at 25). The coordinated party expenditure limits fall far short "under either standard." *See id.*

Consider first the heavy First Amendment burden imposed by the limits. As explained above, political-party speech is inextricably bound with the expression of the parties' candidates and adherents. The relationship between party and candidate is the paradigmatic form of political free association the First Amendment was designed to protect, and it is an essential component—perhaps *the* essential component—of American democracy. These features of political-party speech place it in the heartland of the First Amendment, *see supra* section I.B, and therefore deserve the strongest level of constitutional protection. Indeed, this Court has recognized that "it is particularly egregious where the State censors the political speech a political party shares with its members." *Eu*, 489 U.S. at 224. The same goes for "freedom of association." *Id.*; *accord Colorado II*, 533 U.S. at 471 n.3 (Thomas, J., dissenting) (explaining that coordinated party expenditure limits require "an intrusive and constitutionally troubling investigation of the inner workings of political parties") (quoting ACLU *amicus* brief).

The Government fails to justify the burdens the coordinated party expenditure limits impose. There is "only one permissible ground for restricting political speech: the prevention of '*quid pro quo*' corruption or its appearance." *Cruz*, 596 U.S. at 305. To be sure, the FEC defends the limits as connected with that interest. Pet. 16. But, as Judge Thapar recognized

below, "it doesn't make any sense to think of a party as 'corrupting' its candidates." App.26a. After all, "[t]he very aim of a political party is to influence its candidate's stance on issues and, if the candidate takes office or is reelected, his votes." *Colorado II*, 533 U.S. at 476 (Thomas, J., dissenting). That relationship between party and candidate is not corruption, but protected association.

The FEC has also "point[ed] to nothing in the certified record demonstrating quid pro quo corruption tied to donations to party committees." App.150a (Readler, J.). And the lack of evidence to support an anticorruption purpose is no surprise. This Court previously recognized "that Congress wrote the Party Expenditure Provision not so much because of a special concern about the potentially 'corrupting' effect of party expenditures, but rather for the constitutionally insufficient purpose of reducing what it saw as wasteful and excessive campaign spending." *Colorado I*, 518 U.S. at 618.

But even if the coordinated party expenditure limits were intended to prevent *quid pro quo* corruption, they are a poor "fit" for that purpose. *McCutcheon*, 572 U.S. at 199. The petition and the decisions below persuasively explain that the FEC's anticircumvention theory of preventing corruption relies on a "prophylaxis-upon-prophylaxis-upon-prophylaxis-upon-prophylaxis-upon-prophylaxis approach" that strongly suggests "the regulation may not be necessary for the interest it seeks to protect." Pet. 19; App.29a. The Government's fit analysis also ignores obvious, less burdensome alternatives, such as the "earmarking" rule that already prevents donors from circumventing candidate-contribution limits

through party contributions. Pet. 21–22. Whether assessed under interest or fit, the outcome is the same: the coordinated party expenditure limits contravene the First Amendment.

Of course, the Government can—and must—police corruption. Nobody disputes that. But the Government cannot use unfounded fears of corruption as a pretext for restricting speech and association protected by the First Amendment. And yet the record shows that to be the case here because "[d]espite having decades to look for" evidence that the coordinated party expenditure limits prevent corruption, the findings are "paltry," and the purported solution "nonsensical." App.30a–31a (Thapar, J.).

II. THE COURT SHOULD GRANT THE PETITION TO SAFEGUARD CORE CONSTITUTIONAL PROTECTIONS FOR POLITICAL SPEECH.

Allowing the coordinated party expenditure limits to persist would endanger more than just political parties (after all, "political parties did not" even "exist at the Founding, at least in their modern sense." App. 48a (Bush, J.)). These restrictions risk impeding the ability of all Americans to associate with their fellow citizens "through coordination of messaging, candidates, and supporters." *Id.* It is not hyperbole to suggest that such restrictions threaten the very fabric of American democracy itself.

Just like political parties, the business community in the United States, including the Chamber and its members, exercises its right "to inquire, to hear, to

speak, and to use information"—activities that, regardless of speaker, are "an essential mechanism of democracy" and "a precondition to enlightened self-government and a necessary means to protect it." *Citizens United*, 558 U.S. at 339. Indeed, "political speech does not lose First Amendment protection simply because its source is a corporation." *Id.* at 342 (quotations omitted).

Just like political parties, the business community and other speakers' expression is protected by the Constitution's "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *Cruz*, 596 U.S. at 302; *see Citizens United*, 558 U.S. at 343 ("Corporations and other associations, like individuals, contribute to the discussion, debate, and the dissemination of information and ideas that the First Amendment seeks to foster") (quotations omitted). These speakers, just like political parties, also enjoy a protected "freedom of association." *Ams. for Prosperity Found.*, 594 U.S. at 606. And all of these speakers generate expression that individuals have "the right to receive." *Kleindienst*, 408 U.S. at 762; *accord Bellotti*, 435 U.S. at 777 ("The inherent worth of the speech in terms of its capacity for informing the public does not depend upon the identity of its source, whether corporation, association, union, or individual.").

While non-political-party speakers enjoy First Amendment rights to speak and associate in the political arena, they also face threats to those rights. The Chamber knows this firsthand. In *Chamber of Commerce of the United States v. FEC*, 69 F.3d 600 (D.C. Cir. 1995), the Chamber and the American

Medical Association were forced to challenge an FEC rule that dramatically limited the degree to which the organizations were able to politically coordinate with their members. The D.C. Circuit recognized that this would "burden" the organizations' "First Amendment right to communicate with [their] members." *Id.* at 605 (quotations omitted) (citing *United States v. CIO*, 335 U.S. 106 (1948)). The resulting "constitutional difficult[y]" led the Court to invalidate the FEC's rule. *See id.* Thus, just like political parties, other speakers face attempts to unconstitutionally restrict their political expression and association.

If this Court tolerates a constitutionally repugnant restriction on political parties' right to freely speak and associate, it could give lower courts license to uphold similarly wrongful limits on other speakers—or worse. Indeed, this Court has previously found that a campaign-finance statute was *more* constitutionally suspect when it "plac[ed] identical limits upon contributions to candidates, whether made by an individual or by a political party." *Randall*, 548 U.S. at 259. The Court reasoned, in part, that the law failed to "balance" the special role of political parties, and it expressly highlighted that the contribution limits in *Colorado II* were higher for political parties than for other entities. *Id.* at 258–59. *Colorado I* similarly hinted at particularly strong First Amendment protections for political parties, finding that the Constitution would not "deny … to political parties" a right that it "grants to individuals, candidates, and ordinary political committees." *Colorado I*, 518 U.S. at 618. The upshot is that lower courts may misread this Court's political-party precedents to mean that the Government has an even broader license to inhibit non-party entities' political

speech and association. *See also* I.B *supra*; App.118a (finding FEC's argument particularly "weak[ ]" because it regulated "not just any speaker, but political parties, whose primary mission is to promote candidates for office"). Thus, if this Court allows onerous speech restrictions on political parties to stand, other political speakers may have to prepare for worse to come.

Indeed, there is evidence *Colorado II* has already sprung a leak in this Court's First Amendment jurisprudence. *See* Pet. 32. For example, in *Alabama Democratic Conference v. Broussard*, 541 F. App'x 931 (11th Cir. 2013) (per curiam), the Eleventh Circuit declined to enjoin a law that "prohibits all transfers of funds from one PAC to another"—even transfers "used only for independent expenditures." *Id.* at 932. It cited *Colorado II* for the proposition that "candidates, donors, and parties test the limits of current law" and thus accepted the State's bald assertion that a PAC recipient could simply lie and use for "campaign contributions" funds earmarked for "independent expenditures." *Id.* at 934–35. But that move cannot be squared with this Court's teaching that it has "never accepted mere conjecture as adequate to carry a First Amendment burden." *Cruz*, 596 U.S. at 307 (quoting *McCutcheon*, 572 U.S. at 210). In *Ognibene v. Parkes*, 671 F.3d 174 (2d Cir. 2011), the Second Circuit upheld an election restriction after citing *Colorado II* for the proposition that limiting "undue influence" was a legitimate aim for regulating election contributions. *Id.* at 186–87 (emphasis omitted). But this Court has "consistently rejected attempts … to limit the general influence a contributor may have over an elected official" as a justification "to restrict campaign speech." *Cruz*, 596 U.S. 305. In *Republican*

Party of New Mexico v. Torrez, 687 F. Supp. 3d 1095 (D.N.M. 2023), a district court relied heavily on *Colorado II* to find that contributions between state parties and candidates created a "risk of circumvention" due to the "close relationship between … parties and their candidates," even where there was no "specific evidence" that the relationship facilitated circumvention. *Id.* at 1131–34. But this Court has refused to credit "circumvention concerns" based on "speculation" devoid of "real-world" evidence. *McCutcheon*, 572 U.S. at 217–18

Lower courts continue to cite *Colorado II* for dubious constitutional principles and to uphold election restrictions beyond just the coordinated party expenditure limits at issue in that case and in the petition before this Court. The Court should thus grant the petition to plug this leak and to protect the First Amendment rights of political parties and other voices in the American political process.

CONCLUSION

The Court should grant the petition.

January 6, 2025

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