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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

The government agrees this Court should grant review and hold that the Federal Election Campaign Act's limits on coordinated party expenditures, 52 U.S.C. § 30116(d), "abridge[] the freedom of speech under this Court's recent First Amendment and campaign finance precedents." Br. 1-2. That acquiescence is understandable, for those decisions present "a clear-cut case against the validity of this speech restriction, which raises First Amendment concerns of the utmost importance." Br. 2.

On the merits, the government confirms that the challenged limits flout the First Amendment because they burden core constitutional rights of political parties and candidates alike without being narrowly tailored to advance the government's only permissible interest in regulating political speech—preventing *quid pro quo* corruption. *Id.* The government likewise agrees that *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*), cannot save these limits because it neither controls this case nor could survive the *stare decisis* inquiry if it did. Br. 29-31.

The government also recognizes that this case is "exceptionally important" to the future of "our Nation's political system." Br. 18. All agree that FECA's limits severely impair the ability of political parties to carry out their core functions of unifying and amplifying the electorate, thereby contributing to greater political polarization and fragmentation. Br. 15-16, 20; *see also* Chamber Br. 17 ("It is not hyperbole to suggest that [these] restrictions threaten the very fabric of American democracy itself.").

Only this Court can remedy the harms inflicted by the coordinated party expenditure limits upheld by *Colorado II*. As the government agrees, this case is an excellent vehicle to do so. Br. 19-20. This Court should grant certiorari and reverse.

I. THE GOVERNMENT AGREES THAT THE COORDINATED PARTY EXPENDITURE LIMITS VIOLATE THE FIRST AMENDMENT.

The government admits that FECA's limits on coordinated party expenditures "violate[] core First Amendment rights" and that developments since 2001 have rendered *Colorado II* "no longer controlling even as to this very statute." Br. 2-3. Those concessions confirm the need for this Court's review.

A. The government agrees that the limits flunk any form of heightened scrutiny.

The government admits (Br. 2) that FECA's coordinated party expenditure limits "burden First Amendment electoral speech." *FEC v. Cruz*, 596 U.S. 289, 305 (2022). As it explains, "[t]he core function of a political party is to promote its candidates to the electorate." Br. 2. And FECA's limits on party spending, the government continues, "severely burden[]" that mission by limiting "cooperation with the candidates themselves." *Id*.

The government further acknowledges that this "severe burden" cannot be justified. Br. 9. Under any form of heightened scrutiny—whether strict scrutiny or the "closely drawn" test—the challenged limits are "not narrowly tailored to serve the only interest this Court has held can justify a campaign-finance restriction: preventing the reality or appearance of *quid pro quo* corruption." Br. 2. To the contrary, they

only "serve[] 'the impermissible objective of simply limiting the amount of money in politics.'" Br. 12.

The government admits too that its principal merits defense of the limits below—that they might "prevent contributors from circumventing the candidate base limits or from funneling bribes to candidates through political parties"—falls flat. Br. 10-11. FECA, the government acknowledges, "already includes four [additional] layers of protection against such *quid pro quo* corruption"—which alone strongly indicates that the "fifth layer of prophylaxis" offered by the coordinated party expenditure limits is not "'necessary for the interest that it seeks to protect.'" Br. 11. And there is good reason for such skepticism: As the government now concedes, "[t]he record here contains no persuasive evidence that contributors have used donations to political parties to funnel bribes to specific candidates." *Id.* To the contrary, even though "'28 states largely give parties free rein to make coordinated expenditures on behalf of their state-level nominees,' … 'no evidence of corruption has materialized' in those jurisdictions." Br. 11-12.

B. The government agrees that *Colorado II* cannot save the limits.

The government also recognizes that *Colorado II* does not control "because the constitutional questions at issue here meaningfully differ" from those in that case. Br. 13. To start, "the statute, the doctrine, and the facts have all materially changed." Br. 16. Among other things, "Congress has amended [FECA] since *Colorado II*, exempting various types of expenditures, including coordinated expenditures for post-election recounts and legal challenges, from the party-

expenditure limit." Br. 15. Because a different statute is now at issue, a fresh analysis is necessary, especially as the intervening amendments "materially undermine" *Colorado II*'s rationale for upholding the party-expenditure limits. *Id.*[*]

In all events, the government agrees that if "*Colorado II* remains a controlling precedent," the time has come for this Court to "overrule" it. Br. 16. As the government acknowledges, "*Colorado II* is 'not just wrong, but grievously or egregiously wrong.'" Br. 17. Indeed, it has become "'the kind of doctrinal dinosaur or legal last-man-standing'" that calls out for correction. *Id.* Whereas *Colorado II* "'upheld limits upon coordinated expenditures because it found they thwarted … undue influence by wealthy donors,'" this Court has since then "repeatedly determined that the government's anti-corruption interest extends only to *quid pro quo* corruption." Br. 13. Moreover, *Colorado II*'s treatment of "'closely drawn' scrutiny … as a highly deferential standard" that does "not require narrow tailoring" runs headlong into this Court's more recent recognition that even this framework "is a 'rigorous' test under which the government must show that the statute is 'narrowly tailored.'" Br. 14-15. And *Colorado II*'s theory that the challenged limits are necessary to prevent circumvention of the candidate base limits—"themselves prophylactic measures"—

[*] The government also does not deny that even if *Colorado II* governs petitioners' *facial* challenge, it expressly reserved judgment on a future "*as-applied* challenge"—such as the one petitioners have presented—targeting the limits' application to a "party's own speech," as opposed to mere "payment of the candidate's bills." 533 U.S. at 456 n.17; *see* Pet. 23-24.

cannot be reconciled with this Court's subsequent rejection of "yet more layers of protection." Br. 13-14.

The government also admits that "*Colorado II* has 'caused significant negative real-world consequences.'" Br. 17 (quoting *Ramos v. Louisiana*, 590 U.S. 83, 122 (2020) (Kavanaugh, J., concurring)) (ellipsis omitted). FECA's limits have substantially weakened political parties by "impair[ing]" their "ability to carry out their core function: 'promoting among the electorate candidates who espouse their political views.'" *Id.*; *see also* Chamber Br. 2-3 ("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."). That impairment has created a "void," which has been filled by entities less transparent and accountable than political parties. Br. 17.

And "[o]n the other side of the ledger, no reliance interests justify retaining *Colorado II*." Br. 18. As the government admits, "[o]verruling *Colorado II* would not cause 'anything like the prospective economic, regulatory, or social disruption' that sometimes prompts this Court to retain wrongly decided precedents." *Id.* (quoting *Ramos*, 590 U.S. at 107). Instead, it would "[a]t most" remove the basis for a speech "limit" that the government now recognizes is unconstitutional. *Id.* "It would be unconscionable to permit free speech rights to be abridged in perpetuity in order to preserve" a restriction that the government itself no longer defends. *Janus v. AFSCME*, 585 U.S. 878, 927 (2018).

II. THE GOVERNMENT AGREES THAT THE QUESTION PRESENTED IS EXCEPTIONALLY IMPORTANT.

All parties recognize that "[t]his case involves an exceptionally important legal question that calls for this Court's review." Br. 18. As the government itself emphasizes, the challenged limits both "restrict[] a right that lies at the core of the First Amendment" and have "significant practical consequences for the operation of our Nation's political system." *Id.* And that in turn affects all sorts of entities beyond the political parties, as the raft of amicus briefs here underscores. *See, e.g.*, Chamber Br. 2-3, 17-21; Ohio Br. 1-3; RGA Br. 18-21.

Moreover, the decision below confirms the practical reality that "[o]nly this Court can determine whether *Colorado II* remains good law or whether the statutory restriction is invalid notwithstanding *Colorado II*." Br. 19. Although this Court has "sometimes concluded that intervening developments have deprived its precedents of controlling effect, the en banc Sixth Circuit was understandably reluctant to take that step on its own." *Id.* (internal citation omitted). Thus, unless this Court acts, nothing will change.

This Court should not "indefinitely leav[e] in place a statute" that even the government admits "violates core First Amendment rights." Br. 21. Instead, as in other cases where the government agrees that a federal statute is unconstitutional, this Court should grant review and provide clarity to regulator and regulated alike. *See, e.g.*, *Erlinger v. United States*, 602 U.S. 821, 828 (2024); *Seila Law LLC v. CFPB*, 591 U.S. 197, 209 (2020); *United States v. Windsor*, 570 U.S. 744, 753-55 (2013).

III. THE GOVERNMENT AGREES THAT THIS CASE IS AN EXCELLENT VEHICLE.

Finally, the Government acknowledges that this case presents a clean "'vehicle'" to clarify or overrule *Colorado II*. Br. 20. When the Court last denied a petition touching on the question presented in 2011, neither "Congress's 2014 amendments to the Act" nor "this Court's decisions in *McCutcheon* and *Cruz*" were on the books. Br. 19. Moreover, the petitioners in that case brought only an as-applied challenge and "did not challenge the statute across the board." *Id.* They also "had failed to preserve one of their as-applied challenges below, and factual uncertainty rendered the case a poor vehicle for addressing another of the challenges." Br. 19-20 (cleaned up). "This case," by contrast, "does not raise those concerns." Br. 20. Instead, it provides this Court with the perfect opportunity to rectify an unconstitutional speech restriction that goes "'to the heart of our method of democratic government.'" *Id.*

CONCLUSION

This Court should grant the petition.

May 30, 2025

Respectfully submitted,

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