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

BRIEF FOR THE FEDERAL RESPONDENTS IN SUPPORT OF PETITIONERS

D. JOHN SAUER
Solicitor General
Counsel of Record
SARAH M. HARRIS
Deputy Solicitor General
VIVEK SURI
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether the federal statute that limits the amount of money a political party may spend on an election campaign in coordination with a candidate, 52 U.S.C. 30116(d), violates the Free Speech Clause.

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Eric C. Newburger, U.S. Census Bureau, U.S. Dep't of Commerce, *Home Computers and Internet Use in the United States* (issued Sept. 2001), https://www. census.gov/content/dam/Census/library/publications/2001/demo/p23-207.pdf 41

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-157a) is reported at 117 F.4th 389. The opinion and order of the district court (Pet. App. 158a-203a) is reported at 712 F. Supp. 3d 1017.

JURISDICTION

The judgment of the court of appeals was entered on September 5, 2024. The petition for a writ of certiorari was filed on December 4, 2024, and granted on June 30, 2025. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reprinted in the appendix. See App., *infra*, 1a-20a.

INTRODUCTION

In 1974, Congress attempted to significantly curtail political parties' spending in election campaigns by capping such expenditures and subjecting violators to hefty civil and criminal penalties. See 52 U.S.C. 30116(d). This Court invalidated part of the party-expenditure limit in *Colorado Republican Federal Campaign Committee* v. *FEC*, 518 U.S. 604 (1996) (*Colorado I*), holding that the First Amendment prohibits the government from restricting campaign expenditures that political parties make independently, without input from their candidates. The Court has likewise invalidated many of the similar caps on spending by candidates, individuals, and outside groups that Congress enacted in the same 1974 legislation. Such expenditure limits, the Court has explained, violate the "principle that debate on public issues should be uninhibited, robust, and wide-open." *Buckley* v. *Valeo*, 424 U.S. 1, 14 (1976) (per curiam) (citation omitted).

But the Court took a different tack in *FEC* v. *Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*). There, the Court held that Congress can constitutionally restrict political parties' campaign expenditures when parties make those expenditures in consultation with candidates. The Court treated such coordinated expenditures as de facto campaign contributions, reasoned that Congress may restrict such speech to combat donor influence in general, and concluded that the limit helps ensure that donors do not circumvent limits on direct contributions to candidates by funneling large sums through parties. Justice Thomas, writing for four dissenters, warned that the provision "sweeps too broadly, interferes with the

party-candidate relationship, and has not been proved necessary to combat corruption." *Id.* at 465.

Developments over the intervening years have validated those warnings while severely eroding *Colorado II*'s foundations. For almost a quarter century, *Colorado II* has significantly burdened core political speech by forcing political parties to choose between speech and efficacy in every campaign in every election cycle. Funding a television ad in the pricey New York market, mounting resource-intensive door-knocking efforts in rural Pennsylvania, or even holding a single campaign rally could exceed the statutory cap on political parties' campaign spending. But to avoid that cap, a political party must give up the ability to coordinate with the candidate about what to say, when to say it, which voters to target, which forms of media to use, and how best to avoid duplication of effort. The candidate may not share polling data with the party or even suggest a message for the party to convey. Party-candidate cooperation is essential to our party-oriented democratic system, for it ensures that parties and the candidates who bear their imprimatur remain aligned during the campaign. Yet, under *Colorado II*, such cooperation is instead culpable conduct that can trigger civil penalties and felony prosecutions.

Under the Court's more recent First Amendment precedents, such restrictions are unconstitutional. A political party exists to get its candidates elected. To perform that function effectively, a party must be free to cooperate with the candidates themselves. By restricting that cooperation, the party-expenditure limit severely burdens the rights of political parties and candidates alike. And that limit is not narrowly tailored to serve the only interest that can justify a campaign-

finance restriction under this Court's more recent decisions: preventing the reality or appearance of *quid pro quo* corruption. Moreover, post-*Colorado II* cases have repudiated its analysis of political parties' relationship with candidates, its definition of corruption, and its lenient standard of review.

Reinforcing the constitutional problem, the party-coordination restriction is indefensibly arbitrary and is not tailored to address *quid pro quo* corruption. For example, the statute exempts state committees' spending on get-out-the-vote efforts but not national committees' spending on similar efforts. Similarly, it exempts state committees' spending on voter registration in presidential campaigns but not in midterm campaigns. Congress exacerbated that problem in 2014, exempting spending by national committees (but not state committees) on conventions, headquarters buildings, and recounts. Those exemptions fatally undermine any claim that these provisions combat *quid pro quo* corruption.

Colorado II's factual presuppositions, too, have become obsolete. *Colorado II* assumed that donors would try to circumvent contribution limits by giving money to political parties, but donors now have ample alternative avenues to make contributions for political speech, such as giving to Super PACs. *Colorado II* also assumed that disclosure would not adequately check corruption, but technological developments like online publication and growth in internet access have made disclosure far more effective today than a quarter century ago.

This Court has invalidated many campaign-finance restrictions as inimical to the First Amendment. See, *e.g.*, *FEC* v. *Ted Cruz for Senate*, 596 U.S. 289 (2022); *McCutcheon* v. *FEC*, 572 U.S. 185 (2014); *Citizens United* v. *FEC*, 558 U.S. 310 (2010). And this Court has

not hesitated to overrule campaign-finance precedents that erroneously cabined First Amendment freedoms and chilled core political speech. See *Citizens United*, 558 U.S. at 318.

Colorado II denies primary political actors the most basic rights guaranteed by the First Amendment. Intervening changes in the statute itself, the Court's First Amendment case law, and the factual realities of modern campaigns have eroded its foundations. *Colorado II* also subjects political parties to a double standard: Other cases allow Congress to subject parties to special campaign-finance restrictions on the ground that parties and candidates are *intertwined*, yet *Colorado II* justified its additional restrictions on parties on the ground that parties and candidates are *separate*. Whether this Court holds that *Colorado II* has been superseded or overrules it outright, the decision should not remain standing as an outlier in the Court's First Amendment jurisprudence.

STATEMENT

A. Legal Background

1. Congress enacted the Federal Election Campaign Act of 1971 (Act), 52 U.S.C. 30101 *et seq.*, to regulate the financing of federal election campaigns. The Federal Election Commission (FEC) enforces the Act. See 52 U.S.C. 30109. The FEC may receive complaints, investigate alleged violations, and engage in conciliation to correct violations. See 52 U.S.C. 30109(a)(1)-(5). Penalties for violations can be significant. The FEC may file civil actions seeking injunctions and civil penalties (which may go up to $5000 or the amount of the expenditure involved, whichever is greater). See 52 U.S.C. 30109(a)(6). If the FEC chooses not to act on a complaint, moreover, the complainant may in certain cir-

cumstances bring its own civil action to remedy the violation. See 52 U.S.C. 30109(a)(8). Finally, a knowing and willful violation that involves expenditures of $25,000 or more in a calendar year is a felony punishable by up to five years in prison. See 52 U.S.C. 30109(d)(1)(A)(i).

The Act regulates both campaign expenditures and campaign contributions. This Court has struck down most of the expenditure restrictions, see, *e.g.*, *Buckley* v. *Valeo*, 424 U.S. 1, 39-59 (1976) (per curiam), but the Act continues to restrict contributions.

To begin, the Act restricts the amount of money an individual may contribute to a candidate or political party. See 52 U.S.C. 30116(a)(1). Those caps—known as the "candidate base limit" and "party base limit," respectively—are indexed for inflation. See 52 U.S.C. 30116(a)(1)(A). In the 2023-2024 election cycle, the candidate base limit allowed a donor to give a candidate $3300 for the primary and $3300 for the general election. See FEC, *Contribution limits for 2023-2024 federal elections* (*Contribution Limits*), https://perma.cc/UM3X-XKTQ. The party base limit, meanwhile, allowed a donor to give a political party $41,300 per year. See *ibid.*

The Act also restricts the amount of money a political party may contribute to a candidate. See 52 U.S.C. 30116(a)(2)(A). For most races, that "party-to-candidate limit" is fixed at $5000 per year. See *ibid.* But for Senate races, the cap is set at a higher, inflation-indexed amount—$57,800 in the 2023-2024 cycle. See 52 U.S.C. 30116(c)(1)(A) and (h); *Contribution Limits*.

Though the Act restricts contributions to candidates and parties, courts have held that Congress may not limit contributions to political action committees that engage in independent expenditures, known colloquially as Super PACs. See, *e.g.*, *SpeechNow.org* v. *FEC*,

599 F.3d 686, 692-696 (D.C. Cir.) (en banc), cert. denied, 562 U.S. 1003 (2010). Super PACs accordingly may accept unlimited sums from donors, see *ibid.*, and then spend unlimited sums on elections, see *Citizens United* v. *FEC*, 558 U.S. 310, 319 (2010).

2. On top of the restrictions discussed above, the Act imposes a "party-expenditure limit," the limit at issue in this case. That provision caps how much money a political party's national or state committee may spend in connection with a general-election campaign. See 52 U.S.C. 30116(d). For most House of Representatives seats, the Act sets that limit at an inflation-indexed amount. See 52 U.S.C. 30116(c) and (d)(3). For at-large House seats (*i.e.*, seats in States with one Representative), Senate seats, and the Presidency, the limit varies with the relevant constituency's voting-age population. See 52 U.S.C. 30116(d)(2). But that limit is subject to numerous exceptions and carve-outs.

a. First, the party-expenditure limit applies only when political parties make *coordinated* expenditures —*i.e.*, when they spend money "in cooperation, consultation or concert with, or at the request or suggestion of, a candidate." 11 C.F.R. 109.20(a). It does not apply when political parties make *independent* expenditures —*i.e.*, when they spend money without such input from candidates. That distinction results from this Court's decisions in *Colorado Republican Federal Campaign Committee* v. *FEC*, 518 U.S. 604 (1996) (*Colorado I*), and *FEC* v. *Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*).

Colorado I, a fractured decision, struck down the party-expenditure limit in part. The three-Justice lead opinion invalidated the limit as applied to independent expenditures but left open the limit's constitutionality

as applied to coordinated expenditures. See 518 U.S. at 613, 625 (opinion of Breyer, J.). Four Justices would have gone further and invalidated the statute across the board. See *id.* at 626 (Kennedy, J., concurring in the judgment and dissenting in part); *id.* at 648 (Thomas, J., concurring in the judgment and dissenting in part). Two Justices, meanwhile, would have upheld the limit in full. See *id.* at 648 (Stevens, J., dissenting).

Colorado II then resolved the question left open in *Colorado I* and upheld the application of the party-expenditure limit to coordinated expenditures. The Court explained that, under its precedents, Congress may limit the amount of money that a donor may contribute to a candidate, see 533 U.S. at 440-442, and may treat coordinated expenditures as contributions, see *id.* at 442-443. The Court stated that the Act treats political parties better than other donors, "for a party has the special privilege the others do not enjoy, of making coordinated expenditures up to the [party-expenditure] limit." *Id.* at 455. The Court determined that the cap serves the interest in preventing "corruption"—a term that it understood to include both "*quid pro quo* agreements" and "undue influence on an officeholder's judgment"—by preventing the "circumvention" of the candidate base limits. *Id.* at 441, 456. Four Justices dissented. See *id.* at 465 (Thomas, J., dissenting).

In the 2023-2024 cycle, the cap on coordinated party spending was $61,800 for most House seats, $123,600 for at-large House seats, and $32,392,200 for the Presidency. See FEC, *Coordinated party expenditure limits* (*Party Limits*), https://perma.cc/25VD-83D9. The limit for Senate seats ranged from $123,600 (in Wyoming) to $3,772,100 (in California). See *ibid.* Meanwhile, House races routinely cost millions of dollars, Senate races

routinely cost tens of millions, and Presidential races cost billions.[1]

b. The Act makes narrow exceptions to the cap on party coordinated spending. Some exceptions apply only to state committees' expenditures. State committees face no limit in how much they can spend in coordination with the candidate if they are spending on campaign materials, such as pins, bumper stickers, posters, and yard signs, used "in connection with volunteer activities." 52 U.S.C. 30101(9)(B)(viii). State committees can also spend whatever they wish—even in consultation with candidates—on voter-registration and get-out-the-vote activities for presidential and vice-presidential nominees. See 52 U.S.C. 30101(9)(B)(ix).

But those exceptions do not apply to national committees. Thus, if a national committee coordinates with a candidate about what message to put on yard signs, or how most effectively to mount voter-registration drives or get-out-the-vote efforts, the cap kicks in. The national committee may spend (say) only $61,800 on such initiatives in a House race, on pain of criminal punishment for exceeding that limit. Or, if the national committee wants to spend more, it must forgo consultation with the candidate.

Conversely, in 2014, Congress enacted exceptions for national committees as part of an omnibus appropriations statute. See Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, Div.

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[1] See FEC, *Congressional Candidate Table 6e: Top 50 Senate Campaigns by Disbursements, January 1, 2023 – December 31, 2024* (Mar. 17, 2025), https://tinyurl.com/ywdz8msv; FEC, *Congressional Candidate Table 8e: Top 50 House Campaigns by Disbursements, January 1, 2023 – December 31, 2024* (Mar. 17, 2025), https://tinyurl.com/bde8j6z4.

N, § 101, 128 Stat. 2772. Under the 2014 amendment, the limit does not apply to a national party committee's "segregated account[s]" that are used to pay for (1) "a presidential nominating convention," up to a maximum of $20 million per convention; (2) the "construction, purchase, renovation, operation, and furnishing" of a party's "headquarters buildings"; (3) or "the preparation for and the conduct of election recounts and contests and other legal proceedings." 52 U.S.C. 30116(a)(9); see 52 U.S.C. 30116(d)(5).

National party committees thus may freely coordinate with candidates when building party headquarters or filing lawsuits, and they may spend up to $20 million in coordination with candidates when holding conventions. But state committees that want to coordinate with candidates on the same activities must abide by the statutory caps.

B. Proceedings Below

1. Petitioners are the National Republican Senatorial Committee, the National Republican Congressional Committee, then-Senator (now Vice President) J.D. Vance, and then-Representative Steve Chabot. In 2022, they sued the FEC and its commissioners (respondents) in the U.S. District Court for the Southern District of Ohio. See Pet. App. 159a. They claimed that the party-expenditure limit violates the Free Speech Clause on its face or, at a minimum, as applied to "party coordinated communications" (a defined regulatory term that encompasses certain political advertising). 11 C.F.R. 109.37; see Pet. App. 171a.

The Act contains a special judicial-review provision that directs district courts to certify "all questions of constitutionality of this Act" to the court of appeals, "which shall hear the matter sitting en banc." 52 U.S.C.

30110. Consistent with that provision, the district court established a factual record and certified the following constitutional question to the Sixth Circuit: "Do the limits on coordinated party expenditures in [52 U.S.C. 30116] violate the First Amendment, either on their face or as applied to party spending in connection with 'party coordinated communications' as defined in 11 C.F.R. § 109.37." Pet. App. 202a; see *id.* at 158a-247a.

3. The en banc Sixth Circuit rejected petitioners' facial and as-applied challenges. Pet. App. 1a-157a.

In an opinion for the court written by Chief Judge Sutton and joined by nine other judges, the en banc Sixth Circuit determined that *Colorado II* foreclosed petitioners' facial challenge. See Pet. App. 6a-15a. The court acknowledged that this Court's later decisions "create tension with *Colorado II*'s reasoning," that "the underlying facts" have changed since *Colorado II*, and that "Congress itself altered the campaign finance laws" after *Colorado II*. *Id.* at 10a, 12a, 14a. But the court explained that only this Court could overrule *Colorado II* or deem it no longer controlling. *Id.* at 15a.

The Sixth Circuit also concluded that *Colorado II* required it to reject petitioners' as-applied challenge. See Pet. App. 15a-18a. The court noted that *Colorado II* had left open the possibility of certain as-applied challenges but found that reservation inapplicable given the "breadth" of petitioners' claim. *Id.* at 16a. The court observed that the claim covers all "'political advertising addressed in 11 C.F.R. § 109.37'" and is not limited to "specific settings" or to "a specific type of advertisement." *Id.* at 16a-17a. The court explained that, if it accepted petitioners' claim, it would be "difficult to see what would be left of *Colorado II*," given that the claim

encompasses "roughly 97% of the committees' expenditures." *Id.* at 17a.

Judge Thapar concurred, joined by three other judges. Pet. App. 18a-36a. He agreed that *Colorado II* controlled the outcome but described that decision as "an outlier" in First Amendment and campaign-finance doctrine. *Id.* at 18a. Judge Bush issued an opinion concurring dubitante. *Id.* at 37a-67a. He, too, agreed that *Colorado II* controlled the outcome but urged this Court to "consider revisiting" that decision. *Id.* at 38a.

Judge Stranch, joined by two judges in full and two judges in part, concurred in the judgment. Pet. App. 68a-114a. She agreed with the en banc court that *Colorado II* resolved this case but disagreed with the court's endorsement of petitioner's argument that later developments have undermined that decision. *Id.* at 85a. Judge Bloomekatz concurred in the judgment, stating that *Colorado II* "remains binding" and that "[t]hat is all that is needed to resolve this case." *Id.* at 115a.

Judge Readler dissented. Pet. App. 116a-156a. He reasoned that *Colorado II* was not controlling because later legal and factual developments superseded it, see *id.* at 120a-139a, and that the party-expenditure limit is unconstitutional, see *id.* at 139a-155a.

SUMMARY OF ARGUMENT

The party-expenditure limit violates the First Amendment. Intervening legal and factual developments have eroded the foundations of this Court's contrary decision in *FEC* v. *Colorado Republican Campaign Committee*, 533 U.S. 431 (2001), which should, if necessary, be overruled.

A. The party-expenditure limit severely burdens the central First Amendment right of candidates and political parties to speak during campaigns for public office.

Candidates and parties are uniquely and inextricably intertwined. Candidates rely on parties to nominate them and promote them to the electorate, while parties rely on candidates to advocate for and then implement their policies. Given those ties, parties and candidates have traditionally worked together during election campaigns. By treating such coordination as suspect and in need of heavy regulation, the party-expenditure limit restricts a political party's most natural form of communication.

The party-expenditure limit also caps coordinated party spending at a tiny fraction of the total amount spent on modern campaigns. The burden has grown worse with time: Congress indexed the limit for inflation, but campaign costs have risen much faster than inflation. Outside the sliver of coordinated spending permitted by the limit, parties and their candidates may not discuss what campaign issues to bring up, what positions to take on those issues, or when or how to convey those positions to the voters. Parties must instead guess what their candidates would prefer—and so must run a risk of disseminating speech that candidates find unhelpful or even counterproductive. Adding to the burden, the statute forces parties to incur significant administrative costs to ensure that the employees in charge of their speech remain firewalled from the candidates they support.

B. The party-expenditure limit fails any applicable standard of scrutiny. Instead of applying strict scrutiny, *Colorado II* reviewed the party-expenditure limit under closely drawn scrutiny, the intermediate standard that this Court usually applies to contribution limits. This Court need not revisit that aspect of *Colorado*

II to resolve this case. The party-expenditure limit fails even that standard.

First, the party-expenditure limit does not pursue the only interest that justifies restricting core political speech: preventing actual or apparent *quid pro quo* corruption. As *Colorado I* recognized, the limit instead "reduc[es] what [Congress] saw as wasteful and excessive campaign spending"—an improper purpose. See *Colorado Republican Federal Campaign Committee* v. *FEC*, 518 U.S. 604, 618 (1996) (opinion of Breyer, J.). Reinforcing the lack of any anti-corruption interest, the limit varies by office and State even though an expenditure's corruptive potential does not vary from office to office or State to State. The limit also includes exemptions—for conventions, recounts, get-out-the-vote efforts, and so on—with no apparent connection to an anti-corruption goal.

Second, the party-expenditure limit does not address a real problem in need of solving. *Colorado II* reasoned that the party-expenditure limit prevents donors from evading limits on their own donations to candidates by funneling money to candidates through political parties. But the Act already includes measures that prevent such circumvention. For example, the Act caps the amount of money a donor can give to a political party. The Act also treats a donation to a party as a contribution to the candidate if it is earmarked for the candidate. Not only do this Court's cases take a dim view of speech restrictions imposed to deter speculative harms, the record also does not show that existing deterrents to circumvention are insufficient or that further prophylactic measures are needed. In fact, the record lacks any examples of corruption achieved—or even attempted

—by funneling contributions to a candidate through a political party.

Finally, the party-expenditure limit is not narrowly tailored. The government can combat circumvention in other ways, such as enforcing the rules on earmarking and increasing public disclosure. The drastic step of restricting a political party's ability to communicate with its own candidates is unnecessary and thus unconstitutional.

C. *Colorado II* does not control this case. Its reasoning, dubious at the time, is now clearly untenable in light of later cases. *Colorado II* upheld the party-expenditure limit as a means of curtailing donor influence, but this Court has since repeatedly held that Congress may restrict core political speech only to prevent *quid pro quo* corruption, not to prevent general influence. *Colorado II* accepted the theory that the challenged statute helps prevent circumvention of the contribution limits, but the Court has since recognized that the contribution limits are themselves prophylactic measures and that the First Amendment generally does not allow Congress to layer prophylaxis upon prophylaxis. And *Colorado II* applied a lenient version of closely drawn scrutiny, but the Court has since strengthened the test, making clear that it requires a robust evidentiary showing and narrow tailoring.

In addition, in the 24 years since *Colorado II*, Congress has amended the party-expenditure limit to add significant exemptions that undercut any asserted anti-corruption interest. Furthermore, donors today have less incentive to attempt to evade contribution limits, given the availability of robust alternative avenues for political expression, such as Super PACs. Technological advances also have made disclosure a more effective

check on corruption and have reduced the need for the party-expenditure limit. Given those changes, as well as the doctrinal developments in this Court's First Amendment case law, petitioners' First Amendment claim deserves plenary consideration.

D. To the extent *Colorado II* remains a controlling precedent, this Court should overrule it. *Colorado II* was wrong the day it was decided. Statutory, doctrinal, and factual developments since that day have thoroughly eroded its foundations. *Colorado II* also causes significant harmful consequences by impairing the fundamental right to campaign for public office and by marginalizing political parties. And departing from *stare decisis* here would not upset meaningful reliance interests.

ARGUMENT

The First Amendment right of candidates and political parties to make their case to the American people through campaign speech is one of the pillars of our democracy. The party-expenditure limit severely burdens that basic right by restricting political parties' freedom to speak in coordination with candidates during election campaigns. That restriction cannot withstand First Amendment scrutiny. This Court held otherwise in *FEC* v. *Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001), but material intervening legal and factual changes mean that decision no longer controls this case. To the extent *Colorado II* retains vitality, it should be overruled.

A. The Party-Expenditure Limit Severely Burdens Parties' And Candidates' Speech And Associational Rights

1. The First Amendment's Free Speech Clause "has its fullest and most urgent application precisely to the

conduct of campaigns for public office." *Buckley* v. *Valeo*, 424 U.S. 1, 15 (1976) (per curiam) (citation omitted). That right is essential to our democracy, for it enables citizens to participate in self-government and the citizenry to make informed choices among candidates for public office. See *id.* at 14-15. Restrictions on that right often seek to protect incumbents rather than promote the public interest. See *FEC* v. *Ted Cruz for Senate*, 596 U.S. 289, 310-311 (2022).

The First Amendment also protects the right to engage in political association. See *Buckley*, 424 U.S. at 15. Representative democracy requires "the ability of citizens to band together" in political parties to promote candidates for public office. *California Democratic Party* v. *Jones*, 530 U.S. 567, 574 (2000). The earliest national parties emerged soon after the formation of the Republic, and parties have played a central role in American democracy ever since. See *ibid.* Consistent with that tradition, this Court's cases "vigorously affirm the special place the First Amendment reserves for, and the special protection it accords" to, political parties' selection of nominees, *id.* at 575, and their promotion of those nominees among the electorate, see *Randall* v. *Sorrell*, 548 U.S. 230, 256 (2006) (plurality opinion).

The right to engage in political speech and political association includes the right of political parties and their candidates to coordinate with each other during campaigns. The "basic function" of a political party is to nominate candidates and to encourage voters to elect them. *Jones*, 530 U.S. at 580 (citation omitted). A candidate, in turn, serves as the party's "ambassador to the general electorate," campaigning under the party name and advocating its policies. *Id.* at 575. Both during the campaign and on the ballot, party affiliation provides

the principal means of identifying candidates. Voters judge candidates by their parties and judge parties by their candidates. Given that close affiliation between political parties and candidates, "it is natural for them to work together" during campaigns. *Colorado II*, 533 U.S. at 473 (Thomas, J., dissenting).

The right to coordinate also derives from a party's right to manage its "internal affairs." *Eu* v. *San Francisco County Democratic Central Committee*, 489 U.S. 214, 233 (1989). The Free Speech Clause guarantees the internal autonomy of a political party, protecting its "discretion in how to organize itself, conduct its affairs, and select its leaders." *Id.* at 230. Even in an era when First Amendment doctrine was more tolerant of legislative restrictions on political speech, this Court described a law that restricted a party's communication with its members as a "particularly egregious" form of censorship. *Id.* at 224. A law that restricts a party's communication with its candidate—its "standard bearer" in the election, *ibid.* (citation omitted)—is even worse.

2. The party-expenditure limit significantly burdens candidates' and political parties' right to speak and to associate with each other, contravening our "constitutional tradition" of "joint First Amendment activity." *Colorado Republican Federal Campaign Committee* v. *FEC*, 518 U.S. 604, 630 (1996) (Kennedy, J., concurring in the judgment and dissenting in part). The limit, as narrowed in *Colorado I*, caps the amount of money a political party may spend in coordination with a candidate. Such a ceiling on political spending imposes a "direct and substantial" restriction on speech. *Buckley*, 424 U.S. at 39. It "severely limit[s] the ability of a party to assist its candidates' campaigns by engaging in coordinated spending on advertising, candidate events, voter

lists, [and] mass mailings." *Randall*, 548 U.S. at 257 (plurality opinion). Though a party's public image is largely defined by its candidates, and the candidates' public image by their party, the party may not freely consult with its candidates in deciding what to say and do during the campaign.

Take a political party that wants to run an advertisement for a congressional candidate but has already reached the statutory cap on coordinated spending. A political party can easily find itself in that predicament because modern campaigns cost millions of dollars but the cap is as low as $61,800. In that situation, the Act prevents the party from consulting with the candidate about what the ad should say. The party, on pain of potential criminal penalties, cannot ask him whether the ad should focus on his own strengths or attack his opponent's record; whether the ad should depict him as a committed foe of the President or as a maverick who is willing to reach across the aisle; or whether the ad should discuss the economy, healthcare, immigration, or some other issue. The party must decide for itself how to help the candidate—without advice from the candidate himself, without access to the candidate's polls or other data, and without the opportunity to discuss the issues with the candidate.

That inability to coordinate with candidates diminishes the effectiveness of parties' speech. Given that parties' and candidates' electoral fates are intertwined, party speech without candidate input is, at the very least, "impractical and imprudent." *Colorado I*, 518 U.S. at 630 (Kennedy, J., concurring in the judgment and dissenting in part). Worse, a party that fails to consult its candidate runs a serious risk of disseminating speech that is "unhelpful to, if not entirely disfavored

by, the candidate." Pet. App. 223a (citation omitted); see *Buckley*, 424 U.S. at 47 (independent spending "may prove counterproductive"). Coordination, by contrast, allows the party and candidate to "work together," making the party's speech "more focused, understandable, and effective, based on the known goals of the candidate." Pet. App. 224a (citation omitted). It also allows the party and candidate to convey "a unified message" and to avoid "counterproductive" speech. *Ibid.* (citation omitted).

The record shows that the party-expenditure limit also imposes significant administrative burdens. The limit has forced political parties to set up "independent expenditure units" that are "firewall[ed]" from the parties' main operations. Pet. App. 219a (citation omitted). Parties incur significant costs in running those units, including "payment for separate facilities and employees" to avoid "cross over" between the units and officials who coordinate with candidates. *Ibid.* Those units have resulted in "redundancies in spending and advertising" and proved an "inefficient means to promote the success of specific candidates." *Id.* at 223a.

In addition, the limit chills protected speech. See *Colorado II*, 533 U.S. at 471 (Thomas, J., dissenting). Persons alleged to have violated the statute face FEC investigations, civil enforcement suits, and criminal prosecutions, and persons found to have violated the statute face injunctions, civil penalties, and prison terms of up to five years. See 52 U.S.C. 30109. The prospect of burdensome enforcement proceedings and harsh civil and criminal penalties threatens to deter speakers from engaging in political speech in the first place. See *Citizens United* v. *FEC*, 558 U.S. 310, 324 (2010). For example, political parties could refrain from making some

expenditures because they fear that the FEC will characterize them as coordinated. Even when parties believe that the expenditures are actually independent, the risk of punishment could lead them to err on the side of remaining silent.

Adding to the burden, the statute caps coordinated expenditures at a minuscule fraction of total campaign spending. In the 2023-2024 cycle, competitive House campaigns routinely cost millions of dollars each, competitive Senate campaign cost tens of millions, and the Presidential campaign cost billions. See pp. 8-9, *supra*. The Act, however, limited coordinated spending to just $61,800 for most House seats, as little as $123,600 for Senate seats, and $32,392,200 for the Presidency. See *Party Limits*. Petitioners' expert estimates that, since the adoption of the limit, "coordinated party expenditures in House races have never exceeded 1% of total expenditures by general election candidates." Pet. App. 288a. The "staggering difference" between coordinated party spending and candidate spending illustrates the degree to which the limit constrains political parties in American elections. *Ibid.*

That burden has grown with time. The Act indexes the party-expenditure limit to inflation, see 52 U.S.C. 30116(c), but growth in campaign spending has long outpaced inflation, see *Buckley*, 424 U.S. at 57. Between 1976 and 2022, campaign spending for House races grew by as much as 18% each two-year cycle, while the average inflation adjustment was only 7.8%. See Pet. App. 289a. The party-expenditure limit has "hardly kept pace with the rising cost" of elections. *Id.* at 290a; see *ibid.* (chart showing that candidate spending has skyrocketed but coordinated party spending has stayed stagnant since 1976).

Those restrictions affect ordinary Americans who want to make small donations to political parties, not just big donors. See *Randall*, 548 U.S. at 257 (plurality opinion). To adapt an example in one of this Court's cases, suppose that 20,000 voters donate $50 each to a party—$1 million in total—to "help elect whichever candidates the party believes would best advance its ideals." *Id.* at 257-258. Suppose further that control of the House of Representatives depends on the outcome of ten races. The party-expenditure limit ($61,800 for most House seats in the 2023-2024 cycle) would bar the party from spending the full $1 million in coordination with its candidates in the ten key races. The party would instead need to spend the money independently —and so run a serious risk that the party will duplicate the candidate's own efforts, wrongly guess what issues the candidate wants raised, or even convey messages the candidate considers counterproductive. The limit thus "inhibit[s] collective political activity by preventing a political party from using contributions by small donors to provide meaningful assistance to any individual candidate." *Id.* at 258.

B. The Party-Expenditure Limit Cannot Satisfy First Amendment Scrutiny

Under this Court's cases, the standard of review applicable to a restriction on political speech depends on the nature of the restriction. Restrictions that limit independent expenditures—expenditures not made in concert with or at the request of a candidate—must survive strict scrutiny. See *McCutcheon* v. *FEC*, 572 U.S. 185, 197 (2014) (plurality opinion). A law satisfies that demanding test only if it is the least restrictive means of serving a compelling interest. See *ibid.* Contribution limits, by contrast, trigger a less demanding but still

"rigorous" standard. *Ibid.* (citation omitted). Under that test, a restriction must be "closely drawn"—*i.e.*, "narrowly tailored"—to serve an important interest. *Id.* at 218 (citations omitted). *Colorado II* treated coordinated expenditures as "the functional equivalent of contributions" and so reviewed the party-expenditure limit under the closely drawn standard. 533 U.S. at 447.

To decide this case, this Court need not reconsider *Colorado II*'s choice of standard of review. The party-expenditure limit cannot satisfy closely drawn scrutiny, let alone strict scrutiny. The limit serves illegitimate goals, does not address any actual corruption problem, and is not narrowly tailored.

1. Under both strict and closely drawn scrutiny, this Court has identified only one permissible justification for restricting campaign speech: preventing the reality or appearance of *quid pro quo* corruption. See *Cruz*, 596 U.S. at 305. For example, the Court has upheld contribution limits and disclosure requirements because they help prevent *quid pro quo* arrangements whereby donors and candidates agree to trade dollars for votes or other political favors. See *Buckley*, 424 U.S. at 24-29, 67.

But Congress may not restrict speech for other purposes, such as reducing the amount of money in politics, equalizing electoral opportunities, or limiting a donor's general influence over an elected official. See *Cruz*, 596 U.S. at 305. Further, defenders of the restriction must show that Congress "is in fact" pursuing a valid anti-corruption goal. *Ibid.*; see *United States* v. *Virginia*, 518 U.S. 515, 533 (1996) (heightened scrutiny requires a justification that is "genuine, not hypothesized or invented *post hoc*").

Here, the party-expenditure limit is in no way keyed to rooting out *quid pro quo* corruption. The statute

does not target conduct that "inherently poses" a "*quid pro quo* danger." *McConnell* v. *FEC*, 540 U.S. 93, 298 (2003) (Kennedy, J., concurring in the judgment in part and dissenting in part). The statute as enacted by Congress instead caps the total amount of money a party may spend, and the statute as narrowed in *Colorado II* caps the amount a party may spend in coordination with a candidate. Either way, simply spending money on political speech does not pose "dangers of real or apparent corruption." *Buckley*, 424 U.S. at 46; see *Arizona Free Enterprise Club's Freedom Club PAC* v. *Bennett*, 564 U.S. 721, 751 (2011); *Citizens United*, 558 U.S. at 345; *Davis* v. *FEC*, 554 U.S. 724, 738 (2008). Nor is there anything presumptively corrupt about a party's consulting with a candidate about what to say in a campaign. Quite the contrary, because parties and candidates have a "unity of interest," it is "natural" for them "to work together and consult with one another during the course of the election." *Colorado II*, 533 U.S. at 469 (Thomas, J., dissenting).

Confirming that the party-expenditure limit serves an impermissible goal, Congress enacted the provision as part of a broader package of spending restrictions. See *Buckley*, 424 U.S. at 13. *Buckley* recognized that other restrictions in that package—caps on campaign spending by candidates and individuals—serve no legitimate anti-corruption purpose and instead improperly seek to "reduc[e] the allegedly skyrocketing costs of political campaigns." *Id.* at 57. That context suggests that Congress similarly enacted the party-expenditure limit "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 cam-

paign spending." *Colorado I*, 518 U.S. at 618 (opinion of Breyer, J.).

The statute's structure reinforces the point. The Act does not impose a uniform party-expenditure limit for all federal races, analogous to the uniform $3300 limit on individuals' contributions to candidates. The party-expenditure limit instead varies with the office sought and, for some races, the State's voting-age population. See 52 U.S.C. 30116(d). In the 2023-2024 election cycle, for example, the limit was $61,800 for most House seats, $123,600 for at-large House seats, $699,500 for the Massachusetts Senate seat, $1,138,000 for the Ohio Senate seat, $2,253,100 for the Florida Senate seat, and $32,392,200 for the Presidency. See *Party Limits*. That variation would make no sense if Congress were trying to prevent corruption; if a party's coordination with a candidate could have a corrupting influence, that would not vary by State or office. The more natural inference is that Congress varied the cap by office and State because Congress recognized that different types of races cost more or less and wanted to cap spending to account for those differences. But a bare desire to limit money in politics is a far cry from targeting *quid pro quo* corruption.

The statute's exceptions further "diminish the credibility of the government's rationale for restricting speech." See *City of Ladue* v. *Gilleo*, 512 U.S. 43, 52 (1994). The Act provides that state committees, but not national ones, can coordinate with candidates without triggering the cap, so long as the coordination involves spending on materials like "bumper stickers" and "yard signs." 52 U.S.C. 30101(9)(B)(viii). Yet state committees do trigger the cap when they coordinate with candidates on "billboard[s]" and "direct mail." 52 U.S.C.

30101(9)(B)(viii)(1). Meanwhile, state committees are exempt from the cap when they coordinate on voter-registration drives for presidential nominees, but not when they coordinate on similar drives for congressional nominees. See 52 U.S.C. 30101(9)(B)(ix). State committees also are exempt when they coordinate on get-out-the-vote efforts in presidential campaigns, but not in midterm campaigns. See *ibid.* Moreover, state committees may take advantage of those exemptions, but national committees may not—even though there is no reason to think that the danger of corruption varies with the level of party committee.

Indeed, Congress in 2014 enacted exceptions to the caps for *national* committees, making it all but impossible to discern any anti-corruption rationale from the jumble of exceptions. That year, Congress exempted national committees' spending on presidential nominating conventions, party headquarters buildings, and recounts and other legal proceedings. See 52 U.S.C. 30116(a)(9). But nothing in the record suggests that a convention poses a lower risk of corruption than a campaign rally, that buying furniture for party headquarters poses a lower risk than renting chairs for a town hall, or that a recount poses a lower risk than a newspaper advertisement. See Pet. App. 29a-30a (Thapar, J., concurring). Adding to the illogic, the exemptions apply only to national committees—so that, for example, the statute exempts a national party's spending on a national convention but not a state party's spending on a state convention. The exemptions accordingly raise "doubts about whether [Congress] is in fact pursuing the interest it invokes," rather than manipulating the content of campaign speech. *Williams-Yulee* v. *Florida Bar*, 575 U.S. 433, 448 (2015) (citation omitted).

In addition, the 2014 amendment caps spending on conventions at $20 million per convention. See 52 U.S.C. 30116(a)(9)(A). If Congress truly viewed conventions as posing "a lighter risk" of corruption, Pet. App. 79a (Stranch, J., dissenting), the natural course would be to exempt them outright. The decision not to do so confirms that the whole scheme seeks instead to cap campaign spending at the levels Congress considered appropriate: $61,800 for most House races, $123,600 to $3,772,100 for Senate races, $20 million for conventions, unlimited sums for recounts, and so on. But political speech cannot be prohibited on the ground that it is "wasteful, excessive, or unwise." *Buckley*, 424 U.S. at 57.

The structure and operation of the statute suggest that it seeks not only to limit political parties' campaign spending, but also to protect incumbents. Restrictions on campaign speech tend to favor incumbents, who enjoy advantages such as name recognition and who thus have less need to campaign for office. See *McConnell*, 540 U.S. at 249 (Scalia, J., concurring in part, concurring in the judgment in part, and dissenting in part). More specifically, incumbents benefit from restrictions on political parties' speech, which are empirically "more likely to assist cash-strapped challengers than flush-with-hard-money incumbents." *Id.* at 250; see Pet. App. 314a (political parties "tend to help challengers"). By curtailing a party's ability to coordinate with its candidates, the Act inhibits pro-challenger party speech in particular.

At bottom, the party-expenditure limit does not target real or apparent *quid pro quo* corruption. Because that is the only permissible ground for restricting campaign speech, the limit fails First Amendment review on this basis alone.

2. Separately, speech restrictions can survive heightened scrutiny only if they address "an 'actual problem' in need of solving." *Brown* v. *Entertainment Merchants Ass'n*, 564 U.S. 786, 799 (2011) (citation omitted); see *Cruz*, 596 U.S. at 307. But here, the statute does not just fail to target *quid pro quo* corruption. Even worse, that problem is illusory in the context of the party-expenditure limit. See Pet. App. 25a-31a (Thapar, J., concurring). Neither Congress nor this Court has ever suggested that the cap on coordinated expenditures is necessary to prevent *political parties* from corrupting their own candidates. See *Colorado II*, 533 U.S. at 456 n.18; *Colorado I*, 518 U.S. at 618 (opinion of Breyer, J.). Such a theory would be a non sequitur. The very aim of a political party is to ensure the election of candidates who will implement its agenda. When a party helps candidates who vote for its policies, "that is not corruption"; it is "representative government in a party system." *Colorado I*, 518 U.S. at 646 (Thomas, J., concurring in the judgment and dissenting in part).

Colorado II instead concluded that the limit prevents *donors* from circumventing the candidate base limits and funneling large sums to candidates through parties. See 533 U.S. at 457-460. But that theory is wrong many times over.

The First Amendment ordinarily requires "[p]recision of regulation" and forbids "[b]road prophylactic rules." *NAACP* v. *Button*, 371 U.S. 415, 438 (1963). *Buckley* qualified that principle in the campaign-finance context by upholding contribution limits, which "are themselves prophylactic measures," given that few contributions involve *quid pro quo* agreements. *Cruz*, 596 U.S. at 306. But when a statute piles additional layers of protection atop those limits, this Court has greeted anti-

corruption rationales "with a measure of skepticism" and has required a robust showing of "the need to address a special problem." *Id.* at 306-307.

No such showing has been made here. To start, contributions that go through political parties do not pose the same risk of *quid pro quo* corruption as direct contributions to candidates. See *McCutcheon*, 572 U.S. at 210 (plurality opinion). When a donor gives money to a party, he must "cede control" over the money. *Id.* at 211. If the money makes its way to a candidate, "such action occurs at the [party's] discretion—not the donor's." *Ibid.* The "chain of attribution grows longer, and any credit must be shared among the various actors along the way." *Ibid.* That diminishes the risk of corruption. See *ibid.*

In addition, the Act includes other safeguards against circumvention of the candidate base limit:

- The Act treats a payment to a political party as a contribution to a candidate if it is "in any way earmarked" for the candidate. 52 U.S.C. 30116(a)(8).
- The Act caps the amount of money that a donor may contribute to a political party. See 52 U.S.C. 30116(a)(1)(B). That cap—$41,300 in the 2023-2024 cycle—"prevents evasion of the individual contribution limits by persons funneling large gifts through party committees." S. Rep. No. 689, 93d Cong., 2d Sess. 8 (1974).
- The Act requires parties to report their spending and their donors' names and contributions. See 52 U.S.C. 30104(b).

The Act thus already includes three layers of protection against circumvention of the candidate base limits, which in turn prevent evasion of the bribery laws. The

party-expenditure limit provides yet another layer of prophylaxis. But the First Amendment generally does not tolerate such "prophylaxis-upon-prophylaxis." *Cruz*, 596 U.S. at 306; see *McCutcheon*, 572 U.S. at 221 (plurality opinion); *Bennett*, 564 U.S. at 752; *FEC* v. *Wisconsin Right to Life, Inc.*, 551 U.S. 449, 479 (2007) (opinion of Roberts, C.J.).

The additional layer here is especially problematic because it "target[s] the wrong actor." Pet. App. 34a (Thapar, J., concurring). If the problem is that donors might circumvent the base limits, the logical solution would be to regulate the donors—"the source of the alleged corruption." *Colorado II*, 533 U.S. at 482 (Thomas, J., dissenting). Yet the party-expenditure limit restricts *the party's* ability to speak, even if the party is not trying to coordinate with the candidate about how to spend money from a specific donor. That approach violates the general rule that Congress may not restrict the speech of "a law-abiding [entity]" to "deter conduct by a non-law-abiding third party." *Bartnicki* v. *Vopper*, 532 U.S. 514, 529-530 (2001).

Congress, in all events, may not restrict political speech based on "mere conjecture"; the restriction must rest on "'record evidence or legislative findings.'" *Cruz*, 596 U.S. at 307 (citations omitted). Yet the Act omits any findings that coordinated party spending poses a risk of corruption. Nor did *Colorado II* cite any evidence that donors had ever funneled bribes to candidates through parties. It is improbable that a donor who wants to bribe a candidate would engage in a Rube Goldberg scheme to convey the bribe through party officials. At most, *Colorado II* cited evidence that donors sometimes contributed money to parties "with the tacit understanding that the favored candidate will benefit."

533 U.S. at 458. But simply giving money to a party so that it can promote a candidate, with no understanding that the candidate will provide political favors in return, is not *quid pro quo* corruption. Moreover, this Court has found that no serious risk of corruption arises when a party independently spends millions of dollars to support a candidate. See *Colorado I*, 518 U.S. at 618. It makes little sense to insist that a serious risk of corruption nonetheless arises when a party spends as little as $61,800 simply because the party consulted with the candidate first.

The experience of the States further refutes the notion that unrestricted party-coordinated expenditures encourage corruption or circumvention. At least 28 States "largely give parties free rein to make coordinated expenditures on behalf of their state-level nominees." Pet. App. 14a (citation omitted). But no one has identified even a single case in which a donor in one of those States has used a political party to launder bribes to a candidate. See *id.* at 317a. The "absence of such evidence" is "significant." *Cruz*, 596 U.S. at 307. This Court often looks to state experience to test the justifications for federal campaign-finance restrictions. See *ibid.* (no evidence of corruption in States that did not restrict use of post-election contributions to repay candidate loans); *McCutcheon*, 572 U.S. at 209 n.7 (plurality opinion) (no evidence of corruption in States that did not restrict an individual's aggregate contributions); *Citizens United*, 558 U.S. at 357 (no evidence of corruption in States that did not restrict corporations' independent spending).

Heightened scrutiny also requires proof that the challenged restriction will alleviate the asserted harm "to a material degree." *Edenfield* v. *Fane*, 507 U.S. 761,

771 (1993). Congress "does not have a compelling interest in each marginal percentage point by which its goals are advanced." *Brown*, 564 U.S. at 803 n.9. Nothing in the record suggests that the party-expenditure limit addresses corruption "in any meaningful way." *McCutcheon*, 572 U.S. at 210 (plurality opinion). Even if the statute achieves some "marginal corruption deterrence," that benefit cannot justify the severe burdens that the statute imposes on parties and candidates. *Cruz*, 596 U.S. at 307 (citation omitted).

If anything, the party-expenditure limit disserves the goal of preventing corruption. Candidates' reliance on their personal funds, this Court has observed, "*reduces* the threat of corruption" by diminishing their "dependence on outside contributions." *Bennett*, 564 U.S. at 751 (citations omitted); see *Davis* v. *FEC*, 554 U.S. 724, 740-741 (2008); *Buckley*, 424 U.S. at 53. Similarly, if candidates were able to rely on unlimited party-coordinated funds, they would have less need to obtain contributions directly from donors, thereby reducing any risk of *quid pro quo* corruption that such contributions pose.

3. Finally, even under closely drawn scrutiny, a speech restriction must be narrowly tailored to achieve Congress's objective. See *McCutcheon*, 572 U.S. at 218 (plurality opinion). The party-expenditure limit fails that requirement because "alternative approaches" would serve the asserted anti-circumvention interest "while avoiding 'unnecessary abridgment' of First Amendment rights." *Id.* at 221, 223 (citation omitted); see Pet. App. 32a-34a (Thapar, J., concurring).

For example, the government could enforce laws regulating earmarking. See *McCutcheon*, 572 U.S. at 222-223 (plurality opinion). To the extent contributions

to political parties can corrupt individual candidates at all, they can do so only if they make their way to those candidates. But the Act treats a donation to a party as a contribution to a candidate if it is in any way earmarked for the candidate. See 52 U.S.C. 30116(a)(8). Rigorous enforcement of that provision "is a precise response to [any] circumvention concerns." *Colorado II*, 533 U.S. at 481 (Thomas, J., dissenting).

In addition, disclosure requirements minimize the risk of abuse. See *McCutcheon*, 572 U.S. at 223-224 (plurality opinion). Disclosure requirements deter corruption by "exposing large contributions and expenditures to the light of publicity." *Buckley*, 424 U.S. at 67. They also make it easier "to detect any post-election special favors that may be given in return." *Ibid.* Though disclosure rules burden speech, they are usually less restrictive than "flat bans on certain types or quantities of speech." *McCutcheon*, 572 U.S. at 223 (plurality opinion).

In sum, the party-expenditure limit does not pursue a legitimate objective, does not address a real problem, and is not narrowly tailored. The limit therefore fails closely drawn scrutiny.

C. *Colorado II* Does Not Control This Case

Colorado II upheld the party-expenditure limit as applied to coordinated party speech, but that decision does not control this case. Even when a decision has not yet been formally overruled, this Court may determine that later cases have "so undermined" it that "it is no longer good law." *Agostini* v. *Felton*, 521 U.S. 203, 217-218 (1997). For example, in *Herrera* v. *Wyoming*, 587 U.S. 329 (2019), the Court concluded that an earlier case "'must be regarded as retaining no vitality,'" even though it had not been "'expressly overruled,'" because

its reasoning had been "upended" by a later decision. *Id.* at 341-342 (citation omitted). Statutory and factual changes, too, can drain precedents of controlling effect. In *McCutcheon*, for instance, the Court struck down an aggregate cap on the amount of money an individual could donate during an election cycle, even though it had upheld a similar cap in *Buckley*. See *McCutcheon*, 572 U.S. at 200-203 (plurality opinion). Citing material "statutory and regulatory changes" in the intervening years, the Court determined that *Buckley* did "not control." *Id.* at 200, 202.

So too here, *Colorado II*'s reasoning was unsound even at the time, and later decisions have repudiated every key step of its analysis. Moreover, the statute and the facts have materially changed since *Colorado II*. Given those developments, *Colorado II* does not control this case and "must be regarded as retaining no vitality." *Herrera*, 587 U.S. at 342 (citation omitted).

1. *Colorado II* began by discounting the burden that the party-expenditure limit imposes on political parties. The Court noted that the Act restricts individuals' and outside groups' ability to coordinate with candidates by treating their coordinated expenditures as contributions. See *Colorado II*, 533 U.S. at 455. The Court stated that parties are "not * * * in a unique position" and saw no reason to treat them differently from "other political actors." *Ibid.* The Court doubted that "the party is so joined at the hip to candidates" that coordination is "essential to its very function as a party." *Id.* at 449-450 & n.11.

That analysis conflicts with other First Amendment precedents. Before *Colorado II*, this Court recognized that certain core activities of political parties occupy a "special place" and receive "special protection" under

the First Amendment. *Jones*, 530 U.S. at 575. After *Colorado II*, the Court determined that requiring parties to abide by the same contribution limits as individuals "threatens harm to a particularly important political right, the right to associate in a political party," and so "weigh[s] against" the validity of a statutory scheme. *Randall*, 548 U.S. at 259 (plurality opinion); see *id.* at 269-270 (Thomas, J., concurring in the judgment).

Colorado II's analysis also defies political reality. Just two years after *Colorado II*, this Court acknowledged the "real-world differences between political parties and [other] groups." *McConnell*, 540 U.S. at 188. For example, only parties "select slates of candidates," and "party affiliation is the primary way by which voters identify candidates." *Ibid.* Political parties therefore *do* occupy "a unique position." *Id.* at 145. Unlike other groups, they enjoy "a special relationship and unity of interest" with candidates. *Ibid.*; see *id.* at 155 ("close connection and alignment of interests"). As a result, limiting an outside group's freedom to coordinate with a candidate may impose "only a marginal restriction" on speech, but limiting a party's freedom to coordinate stifles "the ability of the party to do what it exists to do." *Id.* at 467, 471 (Thomas, J., dissenting) (citations omitted). And while a donor's coordination with a candidate could create the appearance that the donor is buying off the candidate, coordination between parties and their candidates is a natural and essential element of our party system.

2. Turning to the government's interest, *Colorado II* concluded that Congress could restrict campaign speech not only to prevent "*quid pro quo* agreements," but also to avoid "undue influence on an officeholder's judgment, and the appearance of such influence." 533

U.S. at 441. That view of corruption underpinned *Colorado II*'s analysis. The decision criticized donors' "apparent hold" on political parties, stated that officials "pay attention to who is buttering [their] bread," and highlighted the "web of relations" linking donors, parties, and candidates. *Id.* at 451 n.12, 452 n.14, 463 (citations omitted). The Court ultimately upheld the party-expenditure limit as a means of ensuring that candidates do not feel "obligated" to donors—not as a means of preventing *quid pro quo* arrangments. *Id.* at 452; see *McCutcheon*, 572 U.S. at 240 (Breyer, J., dissenting) (noting that *Colorado II* upheld the limit as a means of preventing "'undue influence' by wealthy donors") (citation omitted).

That expansive definition of corruption was at odds with *Buckley*, the foundational precedent on campaign-finance regulation, and now contradicts ensuing cases. *Buckley* focused on "*quid pro quo* arrangements." 424 U.S. at 27; see *id.* at 45 ("actual or apparent *quid pro quo* arrangements"). And cases since *Colorado II* emphasize that Congress's anti-corruption interest is "limited to *quid pro quo* corruption," *Citizens United*, 558 U.S. at 359; that Congress "may target only a specific type of corruption—'*quid pro quo*' corruption," *McCutcheon*, 572 U.S. at 207 (plurality opinion); and that preventing real or apparent *quid pro quo* corruption is the "only" "permissible ground" for restricting core political speech, *Cruz*, 596 U.S. at 305.

Indeed, since *Colorado II*, this Court has specifically repudiated the theory that Congress may restrict speech to curtail donors' "influence over or access to" politicians. *McCutcheon*, 572 U.S. at 208 (plurality opinion) (citation omitted). "Favoritism and influence are not avoidable in representative politics," and the theory

that Congress may censor political speech to curb the speaker's influence "is unbounded and susceptible to no limiting principle." *Citizens United*, 558 U.S. at 359 (citation and ellipsis omitted). The "line between *quid pro quo* corruption and general influence may seem vague at times, but the distinction must be respected in order to safeguard basic First Amendment rights." *Cruz*, 596 U.S. at 308 (citations omitted).

3. Further, *Colorado II* upheld the party-expenditure limit as a means of preventing circumvention of the candidate base limits. Later decisions, however, have eroded the Court's analysis in multiple ways.

First, *Colorado II* accepted circumvention as "a valid theory of corruption." 533 U.S. at 456. But later cases have expressed far more "skepticism" about that theory. *Cruz*, 596 U.S. at 306. For example, the Court has since held that Congress may not limit corporate "issue advocacy" to "protect against circumvention of the rule against [corporate] contributions." *Wisconsin Right to Life*, 551 U.S. at 479 (opinion of Roberts, C.J.). The Court also has held that Congress may not cap a donor's aggregate contributions "to prevent circumvention of the base limits." *McCutcheon*, 572 U.S. at 221 (plurality opinion). Those decisions show that the First Amendment generally does not permit the type of "prophylaxis-upon-prophylaxis" that *Colorado II* sustained. *Cruz*, 596 U.S. at 306 (citation omitted).

Colorado II rested on the concern that donors would funnel money to candidates through political parties. See 533 U.S. at 461. But this Court has since recognized that the risk of corruption abates when money flows through "independent actors" (such as parties) rather than going "directly" from a donor to a candidate. *McCutcheon*, 572 U.S. at 210 (plurality opinion).

Colorado II also dismissed the earmarking rule, which treats a payment to a political party as a contribution to a candidate if it is in any way earmarked for the candidate, as an inadequate safeguard. See 533 U.S. at 462-463 & n.26. But *McCutcheon* repeatedly relied on the earmarking rule in explaining why the aggregate contribution limits at issue there were unnecessary to prevent circumvention. See 572 U.S. at 201-202, 210-212, 215, 222-223 (plurality opinion).

4. More broadly, *Colorado II* treated closely drawn scrutiny as a lenient test. For example, the Court did not meaningfully inquire into whether the law actually seeks to prevent corruption. See *Colorado II*, 533 U.S. at 457 n.19. Instead of requiring specific evidence of a real danger of circumvention, the Court noted the "difficulty of mustering evidence" to support the statute and asserted that, without the statute, the "inducement to circumvent would almost certainly intensify." *Id.* at 457, 460. And instead of requiring careful tailoring, the Court stated that "Congress is entitled to its choice" among alternatives and that courts "do not throw out" contribution limits "for unskillful tailoring." *Id.* at 463 n.26, 465. Soon after *Colorado II*, this Court described that decision as applying "less rigorous scrutiny" and as extending "deference to Congress." *McConnell*, 540 U.S. at 185 n.72.

Since *Colorado II*, this Court has "strengthened" the closely drawn test. Pet. App. 11a. It has required the government to "prove at the outset that [Congress] is in fact pursuing" a proper objective. *Cruz*, 596 U.S. at 305. It has explained that Congress may not curtail speech based on speculation and that a restriction must rest on "'record evidence or legislative findings' demonstrating the need to address a special problem." *Id.* at 307 (cita-

tion omitted). It has clarified that a statute satisfies closely drawn scrutiny only if it is "narrowly tailored" to its asserted goal. *McCutcheon*, 572 U.S. at 218 (plurality opinion) (citation omitted). Finally, it has treated closely drawn scrutiny as a "rigorous standard," *id.* at 197 (citation omitted), explaining that "deference to Congress" in this area is "inappropriate," *Cruz*, 596 U.S. at 313.

5. The statutory regime and operative facts, too, have changed in the 24 years since *Colorado II*. Those changes have likewise eroded *Colorado II*'s analysis.

First, the challenged statute has changed. In 2014, Congress amended the statute to exempt spending on conventions, headquarters buildings, and recounts and other legal proceedings. See 52 U.S.C. 30116(a)(9). That amendment matters because a law's exemptions can "diminish the credibility of the government's rationale for restricting speech." *Gilleo*, 512 U.S. at 52. Indeed, a later-enacted exemption can invalidate a previously valid statute. See, *e.g.*, *Arkansas Writers' Project, Inc.* v. *Ragland*, 481 U.S. 221, 224 n.2, 234 (1987) (striking down a tax on magazines because of a later-enacted exemption for religious, professional, trade, and sports magazines).

Here, the exemptions added in 2014 provide strong evidence that the statute aims to limit the amount of money spent on campaigns, not to prevent corruption. See pp. 26-28, *supra*. They also raise the inference that, through the combination of the statute's general speech restrictions and its exemptions, the statute seeks to control the content of political campaigns. See *ibid.*

Second, the risk of circumvention through political-party contributions has fallen since *Colorado II* because there are greater alternative avenues for political speech.

For example, this Court's decision in *Citizens United* and the D.C. Circuit's decision in *SpeechNow.org* v. *FEC*, 599 F.3d 686 (en banc), cert. denied, 562 U.S. 1003 (2010), have enabled both unlimited contributions to and unlimited independent expenditures by Super PACs—thus providing a lawful and effective alternative for speech expenditures that reduces any incentive for circumvention. Indeed, Super PACs spent more than $2.6 billion during the 2023-2024 election cycle. See OpenSecrets, *2024 Outside Spending, by Super PAC*.[2]

Those developments have diminished the likelihood that donors will engage in machinations to circumvent the contribution limits. See *McCutcheon*, 572 U.S. at 214 (plurality opinion). A Justice Department official testified to Congress in 2013: "We anticipate seeing fewer cases of conduit contributions directly to campaign committees or parties, because individuals or corporations who wish to influence elections or officials will no longer need to attempt to do so through conduit contribution schemes that can be criminally prosecuted." *Id.* at 214 n.9. "Instead, they are likely to simply make unlimited contributions to Super PACs." *Ibid.* Factual developments since 2013 have borne out that prediction.

Finally, statutory changes and technological advances have made disclosure requirements a more effective check on corruption—and so have reduced the need for the party-expenditure limit. When this Court decided *Buckley*, campaign-finance reports were filed at FEC offices and were "virtually inaccessible to the average member of the public." See *McCutcheon*, 572 U.S. at 224 (plurality opinion). The FEC began posting some reports on its website in 1996, see FEC, *Annual*

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[2] https://opensecrets.org/outside-spending/super_pacs

Report 1996, at 5 (June 1, 1997),[3] but most Americans still lacked access to the internet, see Eric C. Newburger, U.S. Census Bureau, U.S. Dep't of Commerce, *Home Computers and Internet Use in the United States* 2 (issued Sept. 2001).[4] The Bipartisan Campaign Reform Act 2002 (BCRA), Pub. L. No. 107-155, 116 Stat. 81, enacted a year after *Colorado II*, was accordingly "premised on a system without adequate disclosure." *Citizens United*, 558 U.S. at 370.

BCRA directed the FEC to develop and use software that allows information about contributions and spending to be recorded in real time, transmitted immediately to the FEC, and posted immediately on the FEC's website. See 52 U.S.C. 30104(a)(12). Due to BCRA and growth in internet access, members of the public today can access reports almost immediately upon filing. See *McCutcheon*, 572 U.S. at 224 (plurality opinion). They can also obtain information from private websites such as OpenSecrets.org. See *ibid.* As a result, disclosure is "effective to a degree not possible" when *Colorado II* was decided. *Ibid.* *Colorado II* did not even mention disclosure, but later decisions have repeatedly cited disclosure as a viable alternative means of preventing corruption. See *Cruz*, 596 U.S. at 306-307; *McCutcheon*, 572 U.S. at 223-224; *Bennett*, 564 U.S. at 752; *Citizens United*, 558 U.S. at 369-371.

This case, in short, materially differs from *Colorado II*. It requires this Court to review a different statute under a different doctrinal framework and in light of different operative facts. *Colorado II* accordingly does not control this case, and petitioners' challenge merits

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[3] https://www.fec.gov/resources/cms-content/documents/ar96.pdf

[4] https://www.census.gov/content/dam/Census/library/publications/2001/demo/p23-207.pdf

"plenary consideration." *McCutcheon*, 572 U.S. at 203 (plurality opinion).

D. If Necessary, *Colorado II* Should Be Overruled

To the extent *Colorado II* remains a controlling precedent in this case, this Court should overrule it. Though this Court ordinarily adheres to precedent, *stare decisis* is not "an inexorable command." *Ramos* v. *Louisiana*, 590 U.S. 83, 105 (2020) (citation omitted). The doctrine is "at its weakest" in constitutional cases, given the difficulty of correcting errors through any means other than overruling precedent. *Ibid.* (citation omitted).

In deciding whether to overrule a constitutional precedent, this Court considers the seriousness of the error, the decision's harmful consequences, and reliance on the decision. See, *e.g.*, *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215, 268 (2022); *Ramos*, 590 U.S. at 121-122 (Kavanaugh, J., concurring in part). Those factors support overruling *Colorado II*.

1. *Colorado II* was grievously wrong. The freedom of political speech is "the most fundamental" right guaranteed by the Free Speech Clause. *Buckley*, 424 U.S. at 14. "No form of speech is entitled to greater constitutional protection." *McIntyre* v. *Ohio Elections Commission*, 514 U.S. 334, 347 (1995). Yet *Colorado II* upheld a severe restriction on that basic right without applying serious scrutiny. It allowed Congress to curtail parties' and candidates' speech without considering whether the restriction actually seeks to prevent corruption, is needed to solve a real problem, or is narrowly tailored to the alleged problem.

Colorado II's errors were apparent the day it was decided, for the decision departed in many ways from earlier cases. For example, the Court saw no meaningful difference between political parties and "other polit-

ical actors," *Colorado II*, 533 U.S. at 455, even though earlier decisions had recognized parties' "special place" under the First Amendment, *Jones*, 530 U.S. at 575. *Colorado II* concluded that the party-expenditure limit seeks to prevent corruption, see *Colorado II*, 533 U.S. at 456, despite the Court's previous determination that Congress had enacted the limit "for the constitutionally insufficient purpose of reducing what it saw as wasteful and excessive campaign spending," *Colorado I*, 518 U.S. at 618 (opinion of Breyer, J.). And it defined Congress's anti-corruption interest to include "undue influence," *Colorado II*, 533 U.S. at 441, even though *Buckley* had limited that interest to "*quid pro quo* arrangements," 424 U.S. at 27.

Colorado II's errors have become more glaring over time. As discussed above, more recent decisions have undermined *Colorado II*'s reasoning at every turn. Those decisions have eroded *Colorado II*'s analysis of the burdens that the limit imposes on political parties, its understanding of corruption, its ready acceptance of an anti-circumvention interest, and its lenient version of closely drawn scrutiny. See pp. 34-39, *supra*. The opinions below correctly recognize that this Court's "recent decisions create tension with *Colorado II*'s reasoning," Pet. App. 10a; that *Colorado II* is an "outlier in our First Amendment jurisprudence generally and in campaign-finance doctrine specifically," *id.* at 18a (Thapar, J., concurring); that it "conflicts with recent decisions," *id.* at 38a (Bush, J., concurring dubitante); and that a "wave of intervening precedent" leaves it "on no footing at all," *id.* at 124a (Readler, J., dissenting).

In similar cases, this Court has overruled decisions that wrongly withheld fundamental constitutional rights and conflicted with earlier or later cases. For example,

in *Citizens United*, the Court overruled a case that "depart[ed] from ancient First Amendment principles." 558 U.S. at 319 (citation omitted). In *Janus* v. *AFSCME*, 585 U.S. 878 (2018), it overruled a First Amendment precedent because later cases had "'eroded [its] underpinnings' and left it an outlier" in free-speech doctrine. *Id.* at 924 (citation omitted). And in *Ramos*, it overruled a Sixth Amendment decision that fit "uneasily" with "preceding case law" and that had been eroded by "recent legal developments." 590 U.S. at 106. Overruling *Colorado II* would fully comport with the Court's precedent on precedent.

2. Meanwhile, *Colorado II* continues to impose serious real-world consequences every campaign cycle, in every political campaign. The free discussion of candidates and policies is "integral to the operation of the system of government established by our Constitution." *Buckley*, 424 U.S. at 14. Political parties have traditionally played a crucial role in that discussion. See *Jones*, 530 U.S. at 574. The freedom of political parties is thus "a particularly important political right." *Randall*, 548 U.S. at 256 (plurality opinion).

Colorado II, however, permits a severe intrusion on that fundamental right. "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). Yet *Colorado II* breaks the connection between parties and candidates, curtailing "the party's most natural form of communication," precluding parties from "'effectively amplifying the voice of their adherents,'" and stifling "'the ability of the party to do what it exists to do.'" 533 U.S. at 471 (Thomas, J., dissenting) (citations omitted).

Those restrictions have hampered political parties as political forces. See Samuel Issacharoff, *Outsourcing Politics*, 54 Hous. L. Rev. 845, 862-867 (2017). Parties traditionally possessed a natural advantage over other groups: their close ties to, and ability to coordinate with, their candidates. See *id.* at 864. But now that "the interaction between party and candidate [i]s limited by a principle of non-coordination," parties can no longer speak "on any basis distinct from" any other entity. *Id.* at 864-865.

Worse, this Court's current jurisprudence subjects political parties to a double standard. *Colorado II* stated that parties are not "so joined at the hip to candidates" that they are entitled to coordinate their speech. 533 U.S. at 449. But *McConnell* recognized that parties *are* so "inextricably intertwined" with candidates that Congress may subject them to special restrictions that do not apply to other groups. *Id.* at 469 (citation omitted). That inconsistency contributes to "a campaign finance system that reduces the power of political parties as compared to outside groups." *Republican National Committee* 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). "Entering to fill the void have been new entities," such as Super PACs, that "operate in ways obscure to the ordinary citizen." *Randall*, 548 U.S. at 265 (Kennedy, J., concurring in the judgment).

Colorado II's consequences are especially troubling because Congress did not legislate them. As enacted, the party-expenditure limit restricts expenditures in general; it does not differentiate between independent and coordinated expenditures. See 52 U.S.C. 30116(d). *Colorado I* and *Colorado II*, however, struck down the law as applied to independent but not coordinated

spending. In other words, the limit restricts "the party's most natural form of communication," *Colorado II*, 533 U.S. at 471 (Thomas, J., dissenting), because of partial invalidation and severance, not deliberate legislative choice.

3. No reliance interests justify retaining *Colorado II*. Reliance interests matter most in "property and contract cases," where private individuals or entities may have entered into transactions in conformity with existing legal rules. *Citizens United*, 558 U.S. at 365. No such private reliance exists here. Departing from *stare decisis* in this case would not cause "anything like the prospective economic, regulatory, or social disruption litigants seeking to preserve precedent usually invoke." *Ramos*, 590 U.S. at 107.

Moreover, overruling *Colorado II* would produce a narrow result: This Court need repudiate only the proposition that capping parties' coordinated spending helps prevent corruption. Though the Court has sometimes mentioned that conclusion in its opinions—see, *e.g.*, *Davis*, 554 at 737 (noting that the Court "previously sustained" limits on "coordinated party expenditures")—it has not meaningfully relied on that holding in deciding other cases in the last two decades.

Indeed, the greater threat to this Court's case law comes from retaining *Colorado II*, which destabilizes the Court's First Amendment doctrine. While this Court has made clear that Congress may limit campaign speech only to prevent *quid pro quo* corruption, some Justices have continued to cite *Colorado II* for the proposition that Congress may restrict speech to curb donor influence. See *McCutcheon*, 572 U.S. at 240 (Breyer, J., dissenting); *Citizens United*, 572 U.S. at 447 (Stevens, J., dissenting). *Colorado II* therefore "threatens to up-

end [the Court's] settled jurisprudence in related areas of law." *Citizens United*, 558 U.S. at 379 (Roberts, C.J., concurring). Lower courts, too, may continue to rely on *Colorado II* to advance propositions that this Court's later cases reject.

It is hardly unprecedented for this Court to invalidate a campaign-finance law or to overrule a campaign-finance case. Since *Colorado II*, this Court has issued six decisions invalidating federal campaign-finance restrictions. See *Cruz*, 596 U.S. at 313; *McCutcheon*, 572 U.S. at 227 (plurality opinion); *Citizens United*, 558 U.S. at 372; *Davis*, 554 U.S. at 744; *Wisconsin Right to Life*, 551 U.S. at 481; *McConnell*, 540 U.S. at 213-219, 231-232. The Court also has overruled two campaign-finance precedents that wrongly withheld core First Amendment rights. See *Citizens United*, 558 U.S. at 319 (overruling *McConnell* and *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652 (1990)). Those decisions confirm that ruling for petitioners would not cause any kind of serious disruption. On the contrary, *Colorado II* erroneously justifies the suppression of core political speech, artificially muzzling political parties and distorting campaigns. Retaining *Colorado II*, not jettisoning it, is what would disrupt political campaigns.

CONCLUSION

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
SARAH M. HARRIS
Deputy Solicitor General
VIVEK SURI
Assistant to the Solicitor General

AUGUST 2025

APPENDIX

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APPENDIX

1. 52 U.S.C. 30116 provides:

Limitations on contributions and expenditures

(a) Dollar limits on contributions

(1) Except as provided in subsection (i) and section 30117 of this title, no person shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $2,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year which, in the aggregate, exceed $25,000, or, in the case of contributions made to any of the accounts described in paragraph (9), exceed 300 percent of the amount otherwise applicable under this subparagraph with respect to such calendar year;

(C) to any other political committee (other than a committee described in subparagraph (D)) in any calendar year which, in the aggregate, exceed $5,000; or

(D) to a political committee established and maintained by a State committee of a political party in any calendar year which, in the aggregate, exceed $10,000.

(2) No multicandidate political committee shall make contributions—

(A) to any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed $5,000;

(B) to the political committees established and maintained by a national political party, which are not the authorized political committees of any candidate, in any calendar year, which, in the aggregate, exceed $15,000, or, in the case of contributions made to any of the accounts described in paragraph (9), exceed 300 percent of the amount otherwise applicable under this subparagraph with respect to such calendar year; or

(C) to any other political committee in any calendar year which, in the aggregate, exceed $5,000.

(3) During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than—

(A) $37,500, in the case of contributions to candidates and the authorized committees of candidates;

(B) $57,500, in the case of any other contributions, of which not more than $37,500 may be attributable to contributions to political committees which are not political committees of national political parties.

(4) The limitations on contributions contained in paragraphs (1) and (2) do not apply to transfers between and among political committees which are national, State, district, or local committees (including any subordinate committee thereof) of the same political party. For purposes of paragraph (2), the term "multicandidate political committee" means a political committee

which has been registered under section 30103 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and, except for any State political party organization, has made contributions to 5 or more candidates for Federal office.

(5) For purposes of the limitations provided by paragraph (1) and paragraph (2), all contributions made by political committees established or financed or maintained or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit of such corporation, labor organization, or any other person, or by any group of such persons, shall be considered to have been made by a single political committee, except that (A) nothing in this sentence shall limit transfers between political committees of funds raised through joint fund raising efforts; (B) for purposes of the limitations provided by paragraph (1) and paragraph (2) all contributions made by a single political committee established or financed or maintained or controlled by a national committee of a political party and by a single political committee established or financed or maintained or controlled by the State committee of a political party shall not be considered to have been made by a single political committee; and (C) nothing in this section shall limit the transfer of funds between the principal campaign committee of a candidate seeking nomination or election to a Federal office and the principal campaign committee of that candidate for nomination or election to another Federal office if (i) such transfer is not made when the candidate is actively seeking nomination or election to both such offices; (ii) the limitations contained in this Act on contributions by persons are not exceeded by

such transfer; and (iii) the candidate has not elected to receive any funds under chapter 95 or chapter 96 of title 26. In any case in which a corporation and any of its subsidiaries, branches, divisions, departments, or local units, or a labor organization and any of its subsidiaries, branches, divisions, departments, or local units establish or finance or maintain or control more than one separate segregated fund, all such separate segregated funds shall be treated as a single separate segregated fund for purposes of the limitations provided by paragraph (1) and paragraph (2).

(6) The limitations on contributions to a candidate imposed by paragraphs (1) and (2) of this subsection shall apply separately with respect to each election, except that all elections held in any calendar year for the office of President of the United States (except a general election for such office) shall be considered to be one election.

(7) For purposes of this subsection—

(A) contributions to a named candidate made to any political committee authorized by such candidate to accept contributions on his behalf shall be considered to be contributions made to such candidate;

(B)(i) expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his authorized political committees, or their agents, shall be considered to be a contribution to such candidate;

(ii) expenditures made by any person (other than a candidate or candidate's authorized committee) in cooperation, consultation, or concert with, or at the request or suggestion of, a national, State, or

local committee of a political party, shall be considered to be contributions made to such party committee; and

(iii) the financing by any person of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered to be an expenditure for purposes of this paragraph; and[1]

(C) if—

(i) any person makes, or contracts to make, any disbursement for any electioneering communication (within the meaning of section 30104(f)(3) of this title); and

(ii) such disbursement is coordinated with a candidate or an authorized committee of such candidate, a Federal, State, or local political party or committee thereof, or an agent or official of any such candidate, party, or committee;

such disbursement or contracting shall be treated as a contribution to the candidate supported by the electioneering communication or that candidate's party and as an expenditure by that candidate or that candidate's party; and

(D) contributions made to or for the benefit of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be contributions made to or for the benefit of the candidate of such party for

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[1] So in original. The word "and" probably should not appear.

election to the office of President of the United States.

(8) For purposes of the limitations imposed by this section, all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

(9) An account described in this paragraph is any of the following accounts:

(A) A separate, segregated account of a national committee of a political party (other than a national congressional campaign committee of a political party) which is used solely to defray expenses incurred with respect to a presidential nominating convention (including the payment of deposits) or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses, except that the aggregate amount of expenditures the national committee of a political party may make from such account may not exceed $20,000,000 with respect to any single convention.

(B) A separate, segregated account of a national committee of a political party (including a national congressional campaign committee of a political party) which is used solely to defray expenses incurred with respect to the construction, purchase, renovation, operation, and furnishing of one or more

headquarters buildings of the party or to repay loans the proceeds of which were used to defray such expenses, or otherwise to restore funds used to defray such expenses (including expenses for obligations incurred during the 2-year period which ends on December 16, 2014).

(C) A separate, segregated account of a national committee of a political party (including a national congressional campaign committee of a political party) which is used to defray expenses incurred with respect to the preparation for and the conduct of election recounts and contests and other legal proceedings.

(b) Dollar limits on expenditures by candidates for office of President of United States

(1) No candidate for the office of President of the United States who is eligible under section 9003 of title 26 (relating to condition for eligibility for payments) or under section 9033 of title 26 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury may make expenditures in excess of—

(A) $10,000,000, in the case of a campaign for nomination for election to such office, except the aggregate of expenditures under this subparagraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State (as certified under subsection (e)), or $200,000; or

(B) $20,000,000 in the case of a campaign for election to such office.

(2) For purposes of this subsection—

(A) expenditures made by or on behalf of any candidate nominated by a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States; and

(B) an expenditure is made on behalf of a candidate, including a vice presidential candidate, if it is made by—

(i) an authorized committee or any other agent of the candidate for purposes of making any expenditure; or

(ii) any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate, to make the expenditure.

(c) Increases on limits based on increases in price index

(1)(A) At the beginning of each calendar year (commencing in 1976), as there become available necessary data from the Bureau of Labor Statistics of the Department of Labor, the Secretary of Labor shall certify to the Commission and publish in the Federal Register the percent difference between the price index for the 12 months preceding the beginning of such calendar year and the price index for the base period.

(B) Except as provided in subparagraph (C), in any calendar year after 2002—

(i) a limitation established by subsections (a)(1)(A), (a)(1)(B), (a)(3), (b), (d), or (h) shall be in-

creased by the percent difference determined under subparagraph (A);

(ii) each amount so increased shall remain in effect for the calendar year; and

(iii) if any amount after adjustment under clause (i) is not a multiple of $100, such amount shall be rounded to the nearest multiple of $100.

(C) In the case of limitations under subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), increases shall only be made in odd-numbered years and such increases shall remain in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(2) For purposes of paragraph (1)—

(A) the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics; and

(B) the term "base period" means—

(i) for purposes of subsections (b) and (d), calendar year 1974; and

(ii) for purposes of subsections (a)(1)(A), (a)(1)(B), (a)(3), and (h), calendar year 2001.

(d) Expenditures by national committee, State committee, or subordinate committee of State committee in connection with general election campaign of candidates for Federal office

(1) Notwithstanding any other provision of law with respect to limitations on expenditures or limitations on contributions, the national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may make expenditures in connection with the general election campaign of candidates for Federal office, subject to the limitations contained in paragraphs (2), (3), and (4) of this subsection.

(2) The national committee of a political party may not make any expenditure in connection with the general election campaign of any candidate for President of the United States who is affiliated with such party which exceeds an amount equal to 2 cents multiplied by the voting age population of the United States (as certified under subsection (e)). Any expenditure under this paragraph shall be in addition to any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for the office of President of the United States.

(3) The national committee of a political party, or a State committee of a political party, including any subordinate committee of a State committee, may not make any expenditure in connection with the general election campaign of a candidate for Federal office in a State who is affiliated with such party which exceeds—

(A) in the case of a candidate for election to the office of Senator, or of Representative from a State

which is entitled to only one Representative, the greater of—

(i) 2 cents multiplied by the voting age population of the State (as certified under subsection (e)); or

(ii) $20,000; and

(B) in the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, $10,000.

(4) INDEPENDENT VERSUS COORDINATED EXPENDITURES BY PARTY.—

(A) IN GENERAL.—On or after the date on which a political party nominates a candidate, no committee of the political party may make—

(i) any coordinated expenditure under this subsection with respect to the candidate during the election cycle at any time after it makes any independent expenditure (as defined in section 30101(17) of this title) with respect to the candidate during the election cycle; or

(ii) any independent expenditure (as defined in section 30101(17) of this title) with respect to the candidate during the election cycle at any time after it makes any coordinated expenditure under this subsection with respect to the candidate during the election cycle.

(B) APPLICATION.—For purposes of this paragraph, all political committees established and maintained by a national political party (including all congressional campaign committees) and all political committees established and maintained by a State

political party (including any subordinate committee of a State committee) shall be considered to be a single political committee.

(C) TRANSFERS.—A committee of a political party that makes coordinated expenditures under this subsection with respect to a candidate shall not, during an election cycle, transfer any funds to, assign authority to make coordinated expenditures under this subsection to, or receive a transfer of funds from, a committee of the political party that has made or intends to make an independent expenditure with respect to the candidate.

(5) The limitations contained in paragraphs (2), (3), and (4) of this subsection shall not apply to expenditures made from any of the accounts described in subsection (a)(9).

(e) Certification and publication of estimated voting age population

During the first week of January 1975, and every subsequent year, the Secretary of Commerce shall certify to the Commission and publish in the Federal Register an estimate of the voting age population of the United States, of each State, and of each congressional district as of the first day of July next preceding the date of certification. The term "voting age population" means resident population, 18 years of age or older.

(f) Prohibited contributions and expenditures

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section. No officer or employee of a political committee shall knowingly accept a contribution made for the benefit or use of a candidate,

or knowingly make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this section.

(g) Attribution of multi-State expenditures to candidate's expenditure limitation in each State

The Commission shall prescribe rules under which any expenditure by a candidate for presidential nominations for use in 2 or more States shall be attributed to such candidate's expenditure limitation in each such State, based on the voting age population in such State which can reasonably be expected to be influenced by such expenditure.

(h) Senatorial candidates

Notwithstanding any other provision of this Act, amounts totaling not more than $35,000 may be contributed to a candidate for nomination for election, or for election, to the United States Senate during the year in which an election is held in which he is such a candidate, by the Republican or Democratic Senatorial Campaign Committee, or the national committee of a political party, or any combination of such committees.

(i) Increased limit to allow response to expenditures from personal funds

(1) Increase

(A) In general

Subject to paragraph (2), if the opposition personal funds amount with respect to a candidate for election to the office of Senator exceeds the threshold amount, the limit under subsection (a)(1)(A) (in this subsection referred to as the "applicable

limit") with respect to that candidate shall be the increased limit.

(B) Threshold amount

(i) State-by-State competitive and fair campaign formula

In this subsection, the threshold amount with respect to an election cycle of a candidate described in subparagraph (A) is an amount equal to the sum of—

(I) $150,000; and

(II) $0.04 multiplied by the voting age population.

(ii) Voting age population

In this subparagraph, the term "voting age population" means in the case of a candidate for the office of Senator, the voting age population of the State of the candidate (as certified under subsection (e)).

(C) Increased limit

Except as provided in clause (ii), for purposes of subparagraph (A), if the opposition personal funds amount is over—

(i) 2 times the threshold amount, but not over 4 times that amount—

(I) the increased limit shall be 3 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such

contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution;

(ii) 4 times the threshold amount, but not over 10 times that amount—

(I) the increased limit shall be 6 times the applicable limit; and

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

(iii) 10 times the threshold amount—

(I) the increased limit shall be 6 times the applicable limit;

(II) the limit under subsection (a)(3) shall not apply with respect to any contribution made with respect to a candidate if such contribution is made under the increased limit of subparagraph (A) during a period in which the candidate may accept such a contribution; and

(III) the limits under subsection (d) with respect to any expenditure by a State or national committee of a political party shall not apply.

(D) Opposition personal funds amount

The opposition personal funds amount is an amount equal to the excess (if any) of—

(i) the greatest aggregate amount of expenditures from personal funds (as defined in section 30104(a)(6)(B) of this title) that an opposing candidate in the same election makes; over

(ii) the aggregate amount of expenditures from personal funds made by the candidate with respect to the election.

(E) Special rule for candidate's campaign funds

(i) In general

For purposes of determining the aggregate amount of expenditures from personal funds under subparagraph (D)(ii), such amount shall include the gross receipts advantage of the candidate's authorized committee.

(ii) Gross receipts advantage

For purposes of clause (i), the term "gross receipts advantage" means the excess, if any, of—

(I) the aggregate amount of 50 percent of gross receipts of a candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year pre-

ceding the year in which a general election is held, over

(II) the aggregate amount of 50 percent of gross receipts of the opposing candidate's authorized committee during any election cycle (not including contributions from personal funds of the candidate) that may be expended in connection with the election, as determined on June 30 and December 31 of the year preceding the year in which a general election is held.

(2) Time to accept contributions under increased limit

(A) In general

Subject to subparagraph (B), a candidate and the candidate's authorized committee shall not accept any contribution, and a party committee shall not make any expenditure, under the increased limit under paragraph (1)—

(i) until the candidate has received notification of the opposition personal funds amount under section 30104(a)(6)(B) of this title; and

(ii) to the extent that such contribution, when added to the aggregate amount of contributions previously accepted and party expenditures previously made under the increased limits under this subsection for the election cycle, exceeds 110 percent of the opposition personal funds amount.

(B) Effect of withdrawal of an opposing candidate

A candidate and a candidate's authorized committee shall not accept any contribution and a party shall not make any expenditure under the increased limit after the date on which an opposing candidate ceases to be a candidate to the extent that the amount of such increased limit is attributable to such an opposing candidate.

(3) Disposal of excess contributions

(A) In general

The aggregate amount of contributions accepted by a candidate or a candidate's authorized committee under the increased limit under paragraph (1) and not otherwise expended in connection with the election with respect to which such contributions relate shall, not later than 50 days after the date of such election, be used in the manner described in subparagraph (B).

(B) Return to contributors

A candidate or a candidate's authorized committee shall return the excess contribution to the person who made the contribution.

(j) Limitation on repayment of personal loans

Any candidate who incurs personal loans made after the effective date of the Bipartisan Campaign Reform Act of 2002 in connection with the candidate's campaign for election shall not repay (directly or indirectly), to the extent such loans exceed $250,000, such loans from any contributions made to such candidate or any authorized

committee of such candidate after the date of such election.

2. 52 U.S.C. 30101(9)(B)(viii)-(ix) provides:

Definitions

When used in this Act:

(9)(B) The term "expenditure" does not include—

(viii) the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided*, That—

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(ix) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: *Provided*, That—

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates[.]