No. 24-621

In The
Supreme Court of the United States

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, ET AL.
Petitioners,

v.

FEDERAL ELECTION COMMISSION, ET AL.,
Respondents.

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

BRIEF FOR THE REPUBLICAN NATIONAL COMMITTEE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST[1]

The Republican National Committee ("RNC") is the national committee of the Republican Party. *See* 52 U.S.C. § 30101(14). The RNC advances the Party's principles, supports its nominees, and engages voters nationwide through protected speech and association. It regularly raises and spends funds subject to the Federal Election Campaign Act ("FECA"), files reports with the Federal Election Commission ("FEC"), and, along with the NRSC, NRCC, and Republican state and local committees, makes coordinated expenditures in federal elections. The constitutionality of the FECA's coordinated party-expenditure limits directly affects the RNC's ability to speak with and about its own nominees and to fulfill its core mission of winning elections. The RNC, therefore, has a substantial interest in this Court's resolution of the question presented and files this brief in support of Petitioners.

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[1] Consistent with Rule 37.6, no counsel for a party authored this brief in whole or part; no counsel or party contributed money intended to fund the preparation or submission of this brief; and no person or entity other than *amicus* or its counsel contributed money intended to fund its preparation or submission.

SUMMARY OF THE ARGUMENT

Political parties are indispensable to American democracy. For more than a century, scholars and this Court have recognized that parties aggregate citizens, articulate platforms, mobilize voters, nominate candidates, and help citizens hold government accountable. Collectively, these functions enhance both public participation and effective self-governance. Parties and their nominees pursue the same electoral objective, and the party's advocacy for its candidates is the core means by which the party communicates its own ideas and priorities. Accordingly, parties and their adherents enjoy robust First Amendment rights to speech and association, and restrictions that handicap a party's ability to speak in coordination with its own nominees burden the party's own protected expression and silence its members' collective voice.

The FECA imposes an exceptionally dense web of limits and compliance obligations on national parties. Among these, the FECA limits the amounts that a party may spend in coordination with its nominees. 52 U.S.C. § 30116(d). Although this Court has recognized that a party may make expenditures independent of its nominee, *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996) ("*Colorado I*"), its subsequent affirmation of the government's ability to limit coordinated expenditures in *FEC v. Colorado Republican Federal Campaign*

Committee, 533 U.S. 431 (2001) ("*Colorado II*") severely limits the ability of parties to engage in their core democratic functions and speak effectively.

While Super PACs and other speakers, including internet speakers and new media, now operate without contribution limits and may work with candidates in significant ways or avail themselves of regulatory exemptions, political parties remain subject to strict contribution caps, source prohibitions, and, crucially, tight ceilings on coordinated expenditures that must be rationed between national, state, and local party committees. These coordinated-spending limits are dwarfed by the cost of modern campaigns and have the effect of silencing many state and local parties. Thus, parties are forced to rely on "independent expenditure teams" to avoid coordination rules, which is costly, inefficient, and can result in counterproductive or self-defeating messaging. In short, the factual premises that underwrote this Court's decision in *Colorado II*—that parties "are dominant players, second only to the candidates themselves"—no longer hold. 533 U.S. at 450.

Moreover, irrespective of the contemporary effectiveness of parties, the FECA's coordinated expenditure limits cannot be justified as anticircumvention measures layered atop existing contribution limits, in light of this Court's recent

jurisprudence. Therefore, this Court should invalidate them and, to the extent necessary, reconsider or overrule *Colorado II*.

ARGUMENT

I. Political Parties Play a Beneficial Role in the Democratic Process.

Political scientists have long recognized the role that modern political parties serve in the American democratic process. As one political scientist observed years ago, there is "no America without democracy, no democracy without politics, and no politics without parties." Clinton Rossiter, Parties and Politics in America 1 (1960).

Political science has documented numerous democratic benefits of American political parties:

- Parties organize and harmonize disparate groups of people and ideological groups;
- Parties develop policy platforms that offer voters coherent election choices;
- Parties form governments and foster effective government;
- Voters can hold parties accountable for results;
- Parties promote political participation because, in order to win, they must recruit voters, get out the vote, and communicate with voters;

- Parties increase voter efficacy by affording citizens a political association to join and amplify their own efforts.

These historical benefits of political parties as the primary institutions for aggregating and harmonizing the views of large groups of voters have been well-documented over many decades. Nolan McCarty, *Reducing Polarization by Making Parties Stronger*, *in* Solutions to Political Polarization in America 136, 143 (Nathanial Persily ed. 2015); Raymond La Raja & Brian Schaffner, *Want to Reduce Polarization? Give Parties More Money*, Washington Post, https://www.washingtonpost.com/news/monkey-cage/wp/2014/07/21/want-to-reduce-polarization-give-parties-more-money/ (July 21, 2024); Richard H. Pildes, The Constitutionalization of Democratic Politics, 118 Harv. L. Rev. 29, 35–36 (2004); Joseph Fishkin & Heather K. Gerken, The Party's Over: McCutcheon, Shadow Parties, and the Future of the Party System, 2014 Sup. Ct. Rev. 175, 177 (2015); John H. Aldrich, Why Parties? A Second Look 19 (2011); John H. Aldrich, Why Parties? 18 (1995); Gary R. Orren, The Changing Styles of American Party Politics in The Future of American Political Parties (Joel L. Fleishman ed. 1982); Michael Malbin, Parties, Interest Groups, and Campaign Finance Laws (1980); E. Ladd, Jr., Where Have All the Voters Gone? (1978); J. Kirkpatrick, Dismantling the Parties (1978); E.E.

Schattschneider, Party Government 53 (Rinehart 1942); V.O. Key, Jr., Politics, Parties, and Pressure Groups (1942).

Political parties also serve an important function in government itself. As Justice O'Connor stated in her concurrence in *Davis v. Bandemer*, "[t]here can be little doubt that the emergence of a strong and stable two-party system in this country has contributed enormously to sound and effective government. The preservation and health of our political institutions, state and federal, depends to no small extent on the continued vitality of our two-party system, which permits both stability and measured change." 478 U.S. 109, 144–45 (1986) (O'Connor, J., concurring).

Given the important role of political parties, courts have recognized the significant First Amendment rights of political parties to engage in political action and electoral speech in pursuit of their political objectives. *See, e.g.*, *California Democratic Party v. Jones*, 530 U.S. 567, 574 (2000) ("[T]he court has recognized that the First Amendment protects the freedom to join together in furtherance of common political beliefs[.]" (internal quotation marks and citation omitted)); *Colorado I*, 518 U.S. at 630 (Kennedy, J., concurring in the judgment and dissenting in part) (The United States "has a constitutional tradition of political parties and their

candidates engaging in joint First Amendment activity."); *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 244 (1989); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 214–15 (1986); *Democratic Party of the United States of Am. v. Wisconsin ex rel. La Follette*, 450 U.S. 107, 121–22 (1981); *Cousins v. Wigoda*, 419 U.S. 477, 487–88 (1975); *Storer v. Brown*, 415 U.S. 724, 728–29 (1974); *Gaffney v. Cummings*, 412 U.S. 735, 754 (1973); *Williams v. Rhodes*, 393 U.S. 23, 30 (1968).

Indeed, the First Amendment guarantees a core "right to associate with the political party of one's choice" and to work through such political associations "for the advancement of beliefs and ideas." *Tashjian*, 479 U.S. at 214. The "right to associate with the political party of one's choice is an integral part" of the First Amendment. *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973). "Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Sweezy v. New Hampshire ex rel. Wyman*, 354 U.S. 234, 250 (1957).

Like other political associations, by associating in a political party, individuals are able to amplify their own political efficacy, for the party "is but the medium through which its individual members seek to make more effective the expression of their own views[,]" *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 459 (1958), and citizens are able to "pool

money through contributions, for funds are often essential if 'advocacy' is to be truly or optimally 'effective.'" *Buckley v. Valeo*, 424 U.S. 1, 65–66 (1976).

Of course, First Amendment rights of free speech and association are mutually dependent, and nowhere is the associational right more critical than in political parties, which exist to secure party ballot position, recruit and nominate candidates, pool resources, fund advocacy, and elect standard-bearers to represent a diverse mass of citizens.

Because American political parties exist to assemble electoral majorities, win elections, and govern effectively, they necessarily share a common interest with their nominees for public office. Indeed, the nomination and election of standard-bearers is the most important objective of a party, for "a party's choice of candidate is the most effective way in which that party can communicate to the voters what the party represents and, thereby, attract voter interest and support." *California Democratic Party*, 530 U.S. at 575 (quoting *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 372 (1997) (Stevens, J., dissenting)). This shared interest is a key distinction between political parties and other special interest groups, which often exist to elect one candidate or advance a narrow set of issues. A political party serves as an umbrella organizing institution and is represented by one or more party nominees who

campaign for the party's nomination based on shared beliefs and objectives, which are widely publicized and vetted publicly.

The party and the nominee are integrally associated with one another. The Constitution and laws protect and reinforce this special relationship in many aspects of the political process, including party nomination procedures, *California Democratic Party*, 530 U.S. at 569; access to the ballot, *Williams v. Rhodes*, 393 U.S. 23 (1968); and even funding to conduct presidential nominating conventions, Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. 113-235. The party's speech in favor of a nominee is as much for the party's own interests as it is for the nominee's. And a limit on party expenditures, whether independent or coordinated, in support of its nominees is not just a restriction on the party's contribution to a candidate, but on the party's own speech for its own electoral mission. First Amendment jurisprudence should account for this unique relationship between parties and their nominees.

II. The FECA Restriction on Coordinated Expenditures Prevents Political Parties from Communicating Effectively and Fulfilling Their Missions.

Despite a significant body of political science documenting the constructive role of political parties

in the democratic system, political parties are severely restricted in fulfilling their missions by onerous regulatory burdens. Indeed, political parties are likely the most heavily regulated political organizations in America. *See* Petition for Rulemaking to Strengthen Political Parties, at 1 REG 2016-03 (June 14, 2016) ("FEC Petition"), available at: https://sers.fec.gov/fosers/showpdf.htm? docid=351550 (Ken Martin, Chair of the Minnesota Democratic Farmer-Labor Party, discussing "the problems and need for change in the [FEC]'s restrictive and overly broad regulations for state parties"). They are regulated by state corporation authorities, the Internal Revenue Service as tax-exempt organizations, the Federal Communications Commission as broadcasters, state election authorities for their activities in connection with state elections, and the FEC for their activities in connection with federal elections. State authorities regulate virtually all administrative aspects of national, state, and local political parties, with rules respecting nomination methods, ballot access, and campaign finance in both federal and state elections. The FEC regulates all aspects of national, state, and local parties' finances in connection with federal elections, which often extends into state elections that happen to overlap with federal elections.

The federal regulations range from detailed public disclosure of all funds raised and spent to strict limits on contributions to parties and restrictions on

spending by party committees to advance their ideas and nominees. State and local parties—which rely on thin resources, have minimal staff and volunteers, and experience high staff turnover—struggle to comply with the panoply of state and federal regulations and are the most frequently audited political organizations at the FEC. *See* Daniel Weiner, *Fixing the FEC: An Agenda for Reform*, at 8 Brennan Ctr. for Just., https://www.brennancenter.org/media/161/download/Report_Fixing_FEC.pdf?inline=1 (Apr. 30, 2019) (observing the FEC's current audit system "tends to ensnare less sophisticated players who file sloppy reports, often because they have fewer resources to hire expensive compliance consultants. Cash-strapped state and local party committees in particular are frequently audited, while super PACs that can raise and spend unlimited funds are rarely audited."). Costly and intrusive FEC audits do not reveal any corruption, but rather difficulty with basic regulatory compliance regarding raising, spending, and disclosure of finances. The national parties generally have more sophisticated compliance staff. Still, they must devote substantial resources to legal compliance, which necessarily diverts resources from the kind of beneficial political action documented in political science literature.

It is beyond dispute that the FECA restrictions on political parties severely restrict their ability to raise and spend the resources necessary to

communicate their ideas, engage in party building, and advocate for the election of their nominees. Currently, the national parties' political accounts, which fund candidate advocacy (independent and coordinated) and general party election activities (polling, get out the vote, issue advocacy, etc.), are limited to accepting only individual contributions of no more than $44,300 per year from individuals and $15,000 per year from multi-candidate federal political action committees, 52 U.S.C. § 30116(a)(1)(B). And contributions from corporations (for-profit and non-profit) are strictly prohibited, 52 U.S.C. § 30118. State, regional, and local party committees share one $10,000 annual contribution limit from individual donors and are likewise prohibited from accepting corporate contributions into their federal election accounts. 52 U.S.C. § 30116(a)(1)(D).

The Bipartisan Campaign Reform Act of 2002 ("BCRA"), adopted *after* the Court issued its decision in *Colorado II* (2001), profoundly compounded the financial burdens on party committees. For example, BCRA, for the first time, imposed strict financial limits on party *issue advocacy* and coordination of such issue advocacy between parties and their nominees. 52 U.S.C. § 30116(a)(7)(C). BCRA absolutely prohibited the national political parties from raising or spending any funds that did not comply with the strict contribution limits. 52 U.S.C. §

30125(a). And BCRA subjected state and local parties to federal contribution limits and source prohibitions for virtually all grassroots election activities. 52 U.S.C. § 30125(b). Thus, the party committees were henceforth forced to spend funds from their main political accounts—all fully disclosed—on all party election-related activities, including party building, get-out-the-vote drives, issue advocacy, and, of course, candidate advocacy, subject to strict contribution limits and source prohibitions. These restrictions have been widely criticized for crippling the national and state party committees. *See* Neil Reiff and Don McGahn, *A Decade of McCain-Feingold*, Campaigns & Elections (Apr. 17, 2014) (observing that, after BCRA, political parties may "appear healthy, but in political bang-for-the-buck, they are a shadow of what they used to be" and "state and local party committees are becoming marginalized in the current campaign finance scheme"); Robert Kelner and Raymond La Raja, *McCain-Feingold's Devastating Legacy*, Washington Post (Apr. 11, 2014). These restrictions did not exist when the Court took up *Colorado II*.

Significantly, *Colorado II* found that parties retained the ability to engage in effective advocacy despite the coordinated spending limit. *See* 533 U.S. at 449–50. But the Court could not foresee, and could not take into account, BCRA's future restrictions or how they might alter the Court's factual determinations about party resources, party

effectiveness, and party political influence or corruptive potential. In fact, the post-*Colorado II* restrictions have handcuffed the parties from effective political action. The cumulative result of the multitude of financial restrictions placed on party political activity is demonstrably weakened political parties. Raymond J. La Raja & Brian F. Schaffner, Campaign Finance and Political Polarization: When Purists Prevail 20 (2015).

While the parties were being weighed down by legal restrictions, other legal, technological, and political developments post-dating *Colorado II* further weakened the parties' competitive effectiveness relative to other political actors.

As restrictions on other speakers have been rightly removed, the restrictions on political parties have remained locked in place. This has resulted in a comparative weakening of the voice of the political parties as they remain subject to the coordinated contribution limit. In 2010, the Court handed down its decision in *Citizens United v. FEC*, 558 U.S. 310 (2010), and the U.S. Court of Appeals for the District of Columbia ruled in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), that corporations and wealthy donors could exercise their rights under *Citizens United* in associations commonly referred to as "Super PACs." Since that time, the FEC has deregulated many activities undertaken jointly by Super PACs and

candidates. For example, Super PACs and candidates can raise funds in coordination via "joint fundraising committees," FEC Advisory Opinion 2024-07; candidates can appear and speak at Super PAC fundraising events, FEC Advisory Opinion 2011-12; and Super PACs can coordinate their door-to-door canvassing projects with candidates, FEC Advisory Opinion 2024-01.

Because Super PACs are institutional competitors to political parties and are not subject to any contribution limits or corporate source prohibitions, they have been able to outspend political parties vastly. *Compare, e.g.*, *2024 Outside Spending, by SuperPAC*, OpenSecrets, https://www.opensecrets.org/outside-spending/super_pacs (last visited Aug. 26, 2025) (showing approximately $1.7 billion spent either for Republican candidates or against Democrats) *with Political Parties*, OpenSecrets, https://www.opensecrets.org/political-parties (last visited Aug. 26, 2025) (showing less than $1 billion spent across the RNC, NRCC, and NRSC). This deregulation means that Super PACs have become more politically influential on candidates by comparison to political parties, which must abide by the contribution limits. As a result, political parties play less of a role in influencing their own nominees than Super PACs. Ben Marek, *Selling Out the Center: Campaign Finance and Political Polarization*, The Stanford Rev., https://stanfordreview.org/selling-out-

the-center-campaign-finance-and-political-polarization/ (May 20, 2025) ("[W]hile the overall amount of money in politics hasn't been lowered, efforts to reduce soft money have constrained fundraising and spending by formal party organizations. Essentially, money that parties could have raised and spent is now being raised by issue activists and PACs.").

At the same time, Congress and the FEC have also removed restrictions on speakers using the internet or legacy media. For example, after *Colorado II*, in 2006, the FEC adopted a regulation called the "Internet Exemption" that wholly exempts communications posted for free (i.e., not paid advertising) on the internet, including online communications coordinated with candidates. 71 Fed. Reg. 18,589 (April 12, 2006); 11 C.F.R. §§ 100.26, 100.94(a)(1), 100.155(a)(1). The Internet Exemption freed a vast public forum from regulation, allowing millions of competing speakers, individuals, and organizations to speak about elections independently and in coordination with candidates. As a result, these speakers have been able to coordinate with candidates—while political parties remain subject to strict limits.

Likewise, the legacy media long has exercised its right to coordinate its political commentary, including editorial advocacy, with candidates under the "Media Exemption." 52 U.S.C. § 30101(9)(B)(i); 11

C.F.R. §§ 100.73, 100.132. Now there has been an explosion of new internet-based media outlets ("new media") also taking advantage of the right to coordinate political speech and editorial commentary with candidates without regulation. *See More Than Red and Blue: Political Parties and American Democracy*, at 8 Protect Democracy, https://protectdemocracy.org/wp-content/uploads/2023/07/APSA-PD-Political-Parties-Report-FINAL.pdf (July 2023) ("Parties have become organizationally weaker due to the rise of the partisan new media and social media. Changes in campaign finance law have empowered groups at the expense of parties themselves, inhibiting the ability of parties to serve as gatekeepers against antidemocratic forces.")

So, while the regulations have decreased for Super PACs, legacy media, new media, and speakers using the internet as a platform, political parties remain subject to the strictest financial limits and regulatory burdens of all political organizations. This reality contradicts this Court's conclusion in *Colorado II* that "political parties are dominant players, second only to the candidates themselves, in federal elections." 533 U.S. at 450. These developments not only underscore the kind of changed circumstances that justify an update to the Court's First Amendment jurisprudence to meet modern conditions, but they also illuminate weaknesses in the original *Colorado II* decision. *See Janus v. Am. Fed'n of State, Cnty., &*

Mun. Emps., Council 31, 585 U.S. 878, 929 (2018) (recognizing that "special justification[s]" exist to overrule precedent where "subsequent developments have eroded its underpinnings" (alteration in original)); *cf. South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 184 (2018) (finding that modern technological and commercial developments illuminated error in the Court's previous Commerce Clause jurisprudence).

These legal and political realities provide important context for the Court's assessment of this case. The coordinated spending limit is the most significant restriction on each party's ability to advocate support for its nominees and, therefore, its own political success in elections. The record below shows the severity of the coordinated limits. *See* JA224-226. Each political party's limit on coordinated communications to support the election of House nominees is currently set at a minuscule $63,600. *See Coordinated Party Expenditure Limits,* Fed. Election Comm'n, https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/coordinated-party-expenditures/coordinated-party-expenditure-limit s/ (last visited Aug. 26, 2025). The limit to support Senate nominees ranges from $127,200 to $3,946,100, depending on the state's population. *See id.* These limits apply to each party's spending on issue advocacy, express advocacy, as well as other election-related activities in coordination with their candidate-nominees. *See* 11 C.F.R. § 109.21 (defining

"coordinated communications"); 11 C.F.R. § 109.20 (defining other "coordinated" activities). And they restrict parties to coordinated expenditures that are insignificant in multi-million-dollar congressional elections. *See* Pet. App. 288a–289a.

The FECA affords these coordinated expenditure limits to the RNC (for presidential, Senate, and House elections) while affording a separate limit to each state party (for Senate and House elections). 52 U.S.C. § 30116(d). The RNC must share its limits with its affiliated committees: the NRSC, which focuses on Senate elections, and the NRCC, which focuses on House elections. State parties must share their limits with subordinate congressional district and local party committees in their states. Because the limits are so low, and because state and local parties often lack sufficient funds, the RNC and state parties typically assign their respective limits to the NRSC to support Senate nominees and to the NRCC to support House nominees. The RNC retains its coordinated expenditure limit to support its presidential nominee. *See generally Coordinated Party Expenditures*, FEC, https://www.fec.gov/help-candidates-and-committees/making-disbursements-political-party/coordinated-party-expenditures/ (last visited Aug. 27, 2025). The limits thus force a rationing of scarce coordinated expenditures between and among the national, state, and local party committees. And once one committee

assigns its limit to another, the assigning committee is effectively censored from making any further coordinated communications in support of the nominee. As consequences of this regime: (1) The low limit prevents the RNC, or any party committee, from having a meaningful impact, and (2) the need to ration the low limit eliminates the RNC's ability to associate with and support its House and Senate candidates.

As Justice Kennedy correctly observed, the right to make *independent* expenditures recognized in *Colorado I* is hardly an adequate substitute for the party's need to consult with its nominee when speaking in support of the candidate. *Colorado I*, 518 U.S. at 630 (Kennedy, J., concurring in the judgment and dissenting in part). Indeed, the formalities necessary to engage in independent expenditures force parties to contort their internal operations and governance, incur substantial compliance and staff costs, assume chilling legal risks, and often render their advocacy less effective—or worse, counterproductive.

To comply with FEC rules regarding independence and avoid the risks inherent in the ongoing communications between nominees and party committee leaders, party committees must establish "independent expenditure teams" that are sealed off from the party's regular leadership and political team. *See* Pet. App. 219a. This, in turn, requires the party to

bifurcate its personnel and delegate to the independent expenditure team authority to make spending and communications decisions for the entire party. Because party leadership is excluded from party decisions regarding advocacy content, such internal contortions in and of themselves impose severe burdens on a political party's ability to decide the content of its own speech in pursuit of its core mission. This is not a burden shouldered by other political committees, because they do not have the ongoing relationship characteristic of the party's inherent relationship with its nominee. They are, by definition, independent of the candidate and can manage their political affairs and interactions with the candidate accordingly. It's not so easy for a political party. Moreover, as the record below amply demonstrates, the independent expenditure teams are cumbersome, inefficient, and expensive. *See* Pet. App. 223a.

Further, the party's independent expenditure team must make decisions regarding the content of party advocacy wholly divorced from the party's own leadership and the nominee's input. That means the party might make communications that are disconsonant with the party nominee's message or counterproductive for its candidate. For example, the independent expenditure team might examine polling data indicating a close election and conclude that the turnout of a specific ideological segment is crucial to

overcoming the tight margin. Therefore, the party's independent advocacy might stress a hot-button social issue. But the candidate might conclude that the optimal strategy is to deemphasize polarizing social issues and reach out to undecided independent voters to cover the tight margin with an appeal to less polarizing issues. Because the FECA prohibits the party from discussing strategy with the candidate, the party's independent advocacy would directly contradict its nominee's messages. The result is catastrophic for the party, which is now effectively defeating its own nominee. The risk of such disconsonant independent speech might be an acceptable burden for independent interest groups pursuing their own unique political objectives and causes, but forcing parties to rely upon independent expenditures to support their nominees might actually harm their nominees and, by extension, defeat the party's sole reason for existence. *See, e.g.*, Niall Stanage, *Obama Super-PAC Ad Is Rare Backfire*, The Hill, https://thehill.com/blogs/ballot-box/campaign-ads/122475-obama-super-pac-ad-is-rare-backfire/ (Aug. 14, 2012); Catherine Cruz, *PAC-funded Smear Campaigns Backfire in Hawai'i's Primary Election*, Hawai'i Public Radio, https://www.hawaiipublicradio.org/theconversation/2022-08-15/pac-funded-smear-campaigns-backfire-in-hawaii-primary-election (Aug. 15, 2022).

The upshot is that the FECA's restriction on a political party's right to coordinate its expenditures with its nominees imposes severe, unique, and sometimes self-defeating burdens on political parties and effects a profound impairment upon each party's speech and associational rights.

III. The FECA Party Coordinated Spending Limits Are Impermissible Prophylaxis-Upon-Prophylaxis Speech Restrictions.

Despite these strict limits on contributions to the political parties' hard money accounts, this Court, in *Colorado II*, sustained the FECA's limits on coordinated party expenditures, applying "the same scrutiny [this Court] ha[s] applied to . . . other political actors": "whether the restriction is 'closely drawn' to match what [this Court] has recognized as the 'sufficiently important' government interest in combating political corruption." 553 U.S. at 456 (quoting *Nixon v. Shrink Mo.*, 528 U.S. 377, 387–88 (2000)). In doing so, this Court endorsed the government's concern that large donors could route funds through parties to candidates, thereby evading limits on direct candidate contributions and exacerbating the threat of "corruption and apparent corruption." *Id.* at 453; *see id.* at 464–65 ("There is no significant functional difference between a party's coordinated expenditure and a direct party contribution to the candidate, and there is good reason to expect that a party's right of unlimited coordinated

spending would attract increased contributions to parties to finance exactly that kind of spending.").

Upon this basis, this Court concluded that "a party's coordinated expenditures, unlike expenditures truly independent, may be restricted to minimize the circumvention of contribution limits." *Id.* at 465. But, as both Petitioners and Respondents here acknowledge, this limitation now rests on a doctrinal foundation this Court has repudiated and on factual predicates that no longer hold. Pet. Br 43–45; Resp. Br. 34–37.

As indicated above, the proliferation of new media and rise of institutional competitors has significantly altered the factual premises underlying *Colorado II*. Furthermore, the Court's recent jurisprudence has demonstrated that the ostensible justifications asserted for limits on coordinated campaign expenditures cannot be reconciled with the First Amendment.

In *McCutcheon v. FEC*, a plurality of this Court condemned the use of a "prophylaxis-upon-prophylaxis approach" to remedy perceived issues with the then-existing campaign finance regime. 572 U.S. 185, 221 (2014). In the absence of a clear showing that "parties of candidates would dramatically shift their priorities if the [limits on how much money a donor may contribute in total to all candidates or committees] were lifted[,]" this Court refused to

"conclude that the sweeping aggregate limits [were] appropriately tailored to guard against any contributions that might implicate the Government's anticircumvention interest." *Id.* at 220. As a result, this Court held that such limits "intrude without justification on a citizen's ability to exercise 'the most fundamental First Amendment activities.'" *Id.* at 227 (quoting *Buckley v. Valeo*, 424 U.S. 1, 14 (1976)).

Only three years ago, this Court affirmed *McCutcheon*'s central thesis, invalidating the federal limitation on the money a campaign committee may pay to a candidate-creditor from its post-election revenues. *FEC v. Cruz*, 596 U.S. 289 (2022). "Individual contributions to candidates for federal office, including those made after the candidate has won the election, [were] already regulated in order to prevent corruption or its appearance." *Id.* at 306. "Such a prophylaxis-upon-prophylaxis approach," this Court clarified, "is a significant indicator that the regulation may not be necessary for the interest it seeks to protect." *Id.* at 306–07 (citing *McCutcheon*, 572 U.S. at 221, and *Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 752 (2011) ("In the face of [the State's] contribution limits [and] strict disclosure requirements ... it is hard to imagine what marginal corruption deterrence could be generated by [an additional measure]." (alterations in original))).

This Court has, thus, moved away from the rationale animating *Colorado II*'s central holding, instead emphasizing that the First Amendment does not tolerate broad, duplicative restrictions justified only by speculative circumvention and anticorruption theories. *See McCutcheon*, 572 U.S. at 219–21; *Cruz*, 596 U.S. at 306–07.

As discussed in Section I, above, "[p]olitical parties lie at the heart of American politics." Aldrich, *supra* at 3. They exist to solve the inherent barriers to collective action and seek to mobilize effectively those members of the American electorate who may otherwise forego participation in our broadly democratic system. *Id.* at 27–46. And party funding is the least corrupting source of campaign support. *See, e.g.*, A. James Reichley, The Life of the Parties 386–94, 419–22 (1992); David Magleby & Candice Nelson, The Money Chase (1990); Michael Malbin, Money and Politics in the U.S. (1986); Herbert F. Alexander, Comparative Political Finance in the 1980s (1989); Nelson W. Polsby, Consequences of Party Reform 178 (1983); John K. White & Jerome M. Mileur, Challenges to Party Government (1992); David K. Ryden, Representation in Crisis (1996). When a political party influences a candidate that later takes office, that political party has succeeded in its advocacy, not subverted democracy. *Colorado I*, 518 U.S. at 646–47 (Thomas, J., concurring in part); *see id.* at 629 (Kennedy, J., concurring in part) ("Political

parties have a unique role . . . ; they exist to advance their members' shared political beliefs.").

Moreover, as this Court has long recognized, the presence of strong political parties that compete with one another ensures stability and effectiveness in governance. *See Rutan v. Republican Party of Ill.*, 497 U.S. 62, 107 (1990) (Scalia, J., dissenting) ("The stabilizing effects of such a [two-party] system are obvious."); *Branti v. Finkel*, 445 U.S. 507, 532 (1980) (Powell, J., dissenting) ("Broad-based political parties supply an essential coherence and flexibility to the American political scene.").

This Court has cautioned against financial limits that are "too low" and "reduce the voice of political parties . . . to a whisper." *Randall v. Sorrell*, 548 U.S. 230, 259, 261. By themselves, the contribution limits and regulations imposed by the FECA create robust protections against the form of *quid pro quo* corruption that this Court has held to be the only justifiable rationale for campaign finance regulations. *See McCutcheon*, 572 U.S. at 192 (citing *Citizens United*, 558 U.S. at 360). Thus, even in the absence of limits on coordinated expenditures, political parties are effectively limited in the revenues they may amass to influence their candidates under current law. As a result, the limits at issue here are yet another "prophylaxis-upon-prophylaxis approach"

to campaign finance regulation that this Court should reject.

CONCLUSION

For the foregoing reasons, this Court should hold that the FECA's limits on coordinated party expenditures violate the First Amendment and reverse the judgment of the Court of Appeals.

Respectfully submitted,

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