No. 24-621

IN THE

Supreme Court of the United States

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, ET AL.,

Petitioners,

v.

FEDERAL ELECTION COMMITTEE, ET AL.,

Respondents.

and

DEMOCRATIC NATIONAL COMMITTEE, ET AL.,

Intervenor-Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF INTERVENOR-RESPONDENTS

SCOTT L. NELSON
Counsel of Record
ALLISON M. ZIEVE
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
snelson@citizen.org
Attorneys for Amicus Curiae

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Pages**

Statutes and Rules

Other

INTEREST OF AMICUS CURIAE[1]

Amicus curiae Public Citizen is a nonprofit advocacy organization that appears on behalf of its nationwide membership before Congress, administrative agencies, and courts on a wide range of issues. Public Citizen has long had an interest in combating the corruption, and appearance of corruption, of governmental processes that can result from infusions of private money into campaigns for public office. Public Citizen therefore seeks to enact and defend workable and constitutional campaign finance reform legislation at the federal and state levels. Public Citizen has been involved, often as amicus curiae, in many cases in this Court and others involving the constitutionality of such legislation. *See*, *e.g.*, *Williams-Yulee v. Fla. Bar*, 575 U.S. 433 (2015).

In this case, the National Republican Senatorial Committee (NRSC) asks this Court to strike down the longstanding limit on campaign expenditures coordinated between political party committees and candidates, which this Court upheld in *FEC v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431 (2001) (*Colorado II*). That limit, which in substance is a limit on contributions from parties to candidates, serves to prevent the use of party committees as conduits for contributions to candidates from private persons in excess of the limits on such contributions. This Court has repeatedly upheld the limits on contributions from individuals to candidates, and protections against evasion of those limits are essential to maintaining their integrity as a check on

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[1] This brief was not authored in whole or part by counsel for a party. No one other than amicus curiae made a monetary contribution to preparation or submission of the brief.

actual and apparent corruption. Public Citizen submits this brief because the result sought by the NRSC would increase the amounts campaign donors can effectively channel to candidates by orders of magnitude and create new opportunities for corrupt bargains between office-seekers and those who seek use financial means to influence their official actions.

SUMMARY OF ARGUMENT

The limits on party coordinated expenses at issue in this case are constitutional anti-corruption measures. This Court has long recognized that contributions of money to a candidate's own campaign committee are potential sources of *quid pro quo* corruption and that such contributions may be limited to a few thousand dollars per election cycle. The Court has also accepted the common-sense view, embodied in federal campaign finance law, that campaign expenditures coordinated with a candidate are the equivalent of contributions because of the direct financial benefit they confer on the candidate.

These basic propositions explain why party-coordinated expenditure limits serve anti-corruption interests. The national party committees subject to those limits may collectively receive contributions from an individual totaling over a quarter of a million dollars per election cycle. If those contributions, which dwarf the base limits on contributions to candidates, are effectively placed at a candidate's disposal through coordinated spending, they become potent sources of actual or apparent corruption.

Rules prohibiting donors to party committees from "earmarking" contributions to benefit particular candidates would by themselves do little to prevent such corruption because funds are often raised by

candidates and party committees working together in joint fundraising committees whose names and fundraising appeals make clear that the funds are being solicited to support the candidates' election. Connecting the donors to the party funds spent in coordination with candidates, therefore, does not depend on "earmarking" by the donors.

While the NRSC asserts that party coordinated expenditures pose less threat of improper transactions between candidates and their supporters than do independent expenditures by Super PACs, that assertion cannot be squared with this Court's view that independent expenditures are less valuable to candidates than coordinated ones and pose no threat of corruption. Even if the NRSC were correct and the judicial decisions that have given rise to Super PACs were wrong, though, the solution would be to reinstate limits on contributions to Super PACs—not to create still more avenues for corruption by loosening the party coordination rules.

Similarly, the NRSC's claim that exceptions to the coordination rules make them fatally underinclusive runs counter to this Court's recognition that under-inclusiveness of campaign finance restrictions is a red flag only when it shows them to be pretextual or ineffective. The exceptions that the NRSC cites allow the parties to use large donations in coordination with candidates for spending on national conventions, party headquarters, and legal proceedings. Those exceptions reflect a congressional judgment that the exceptions pose a comparatively insubstantial risk of corruption and serve other legitimate interests. Congress may well have drawn the wrong balance, but the decisions it made do not suggest that the possibility of corruption posed by coordinated party

campaign expenditures is not real or that the limits on coordination are ineffective at reducing corruption.

ARGUMENT

I. Permitting unlimited party coordinated spending would facilitate corruption by allowing large individual contributions to party committees to benefit candidates directly.

The NRSC does not challenge this Court's longstanding recognition that limits on contributions to candidates are appropriate means to prevent political corruption and are consistent with the First Amendment. As the Court put it in *McCutcheon v. FEC*, "[o]ur cases have held that Congress may regulate campaign contributions to protect against corruption or the appearance of corruption." 572 U.S. 185, 191 (2014) (citing *Buckley v. Valeo*, 424 U.S. 1, 26–27 (1976)); *see*, *e.g.*, *McConnell v. FEC*, 540 U.S. 93, 134–38 (2003). Direct payments to political candidates present obvious opportunities for actual or apparent exchanges of cash for political favors—what this Court has called " '*quid pro quo*' corruption or its appearance," which campaign finance regulation may legitimately "target." *McCutcheon*, 572 U.S. at 192. The Court's "treatment of contribution restrictions … reflects the importance of the interests that underlie contribution limits—interests in preventing 'both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption.' " *McConnell*, 540 U.S. at 136.

Accordingly, the Court has, since *Buckley*, never wavered from its acknowledgement that the limits on contributions to federal candidates imposed a half

century ago by the Federal Election Campaign Act (FECA) are constitutional because they "serv[e] the permissible objective of combatting corruption." *McCutcheon*, 572 U.S. at 192–93. Those limits were originally set at $1,000 per election, per candidate, were raised to $2,000 (indexed for inflation) effective in 2003, and currently stand at $3,500.[2] The Court has termed the federal limits "reasonably high," *Randall v. Sorrell*, 548 U.S. 230, 260 (2006), and held that they involve relatively minor effects on contributors' rights of speech and association, permit candidates to "amass[ ] the resources necessary for effective advocacy," and are "closely drawn" to serve the "sufficiently important interest" in "prevent[ing] corruption" and its "appearance," *id.* at 246–47 (quoting *Buckley*, 424 U.S. at 21, 25–26). The NRSC does not ask the Court to reconsider its view of the constitutionality of the base limits on candidate contributions or their relationship to the important interest in preventing *quid pro quo* corruption.

Importantly, the NRSC also does not directly challenge a key insight that has informed campaign finance law for decades and been repeatedly acknowledged by the Court: When a candidate's supporter pays for political advertising or other forms of campaign advocacy that have been developed in concert with the candidate, that payment is functionally identical to, and as valuable to the candidate as, a direct contribution of money to the

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[2] *See* FEC, Contribution Limits for 2025-2025, https://www.fec.gov/updates/contribution-limits-for-2025-2026/; FEC, Archive of Contribution Limits, https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/archived-contribution-limits/.

campaign that could be spent on exactly the same candidate-approved campaign activities. For that reason, the potential that coordinated expenditures may be the source of *quid pro quo* corruption is equal to that of direct monetary contributions. Accordingly, federal campaign finance law generally treats campaign spending coordinated with a candidate as a contribution to the candidate. As this Court has put it, "Congress drew a functional, not a formal, line between contributions and expenditures when it provided that coordinated expenditures by individuals and nonparty groups are subject to the Act's contribution limits." *Colorado II*, 533 at 443.

In line with the functional distinction drawn by Congress, this Court, while subjecting restrictions on *independent* expenditures advocating the election of candidates to the strictest of First Amendment scrutiny, *see Citizens United v. FEC*, 558 U.S. 310, 339–40 (2010), has not done the same for limits on coordinated expenditures. Thus, although the Court has repeatedly struck down caps or prohibitions on independent spending, *see Buckley*, 424 U.S. at 45; *FEC v. NCPAC*, 470 U.S. 480, 498 (1985); *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 614–16 (1996); *Randall*, 548 U.S. at 246, the reasons it has given for doing so do not apply to coordinated expenditures. Rather, the Court has repeatedly stated that "the potential for *quid pro quo* corruption distinguishe[s] direct contributions to candidates from *independent* expenditures." *Citizens United*, 558 U.S. at 345 (emphasis added). Specifically, it is "*[t]he absence of prearrangement and coordination* [that] alleviates the danger that expenditures will be given as a *quid pro quo* for

improper commitments from the candidate." *Id.* (quoting *Buckley*, 424 U.S. at 47) (emphasis added).

Where coordination is present, however, so is the potential for *quid pro quo* corruption. Thus, even as it struck down limits on independent expenditures, *Buckley* recognized that "coordinated expenditures are treated as contributions rather than expenditures under [FECA]" and that the Act's "contribution ceilings" properly "prevent attempts to circumvent the Act through prearranged or coordinated expenditures amounting to disguised contributions." 424 U.S. at 46–47. *Buckley* thus "uph[eld] limitations on contributions (by individuals and nonparty groups), as defined to include coordinated expenditures." *Colorado II*, 533 U.S. at 443.

Likewise, in *McConnell*, the Court upheld the constitutionality of provisions in the Bipartisan Campaign Reform Act that treated coordinated expenditures for electioneering communications as contributions, 540 U.S. at 202–03, and that subjected expenditures coordinated with a political party as contributions to the party in the same way that expenditures coordinated with a candidate had long been treated as contributions to the candidate, *id.* at 219–23. The Court explained, again, that the reason these limits on coordinated expenditures are constitutional is that such expenditures are "virtually indistinguishable from [a] simple contributio[n]" and carry the same potential for corruption. *Id.* at 222 (citation omitted).

As the Court held in *Colorado II*, the common-sense propositions that large contributions to candidates pose risks of the reality or appearance of *quid pro quo* corruption, and that coordinated

expenditures pose the same risk because they are the functional equivalent of contributions, support the limits on party-committee coordinated expenses at issue here. Absent those limits, the party committees would become unlimited pools of money that could be spent in accordance with candidates' wishes, making contributions to those committees potentially as valuable to candidates as contributions made directly to their own campaign committees. Candidates would be free to solicit contributions to party committees far in excess of the limits on contributions to their own committees. And through coordinated expenditures by the party committees, the resulting funds could be spent on campaign activities at the candidates' direction.

The magnitude of the difference between current candidate contribution limits and the amounts candidates could seek to raise for their own benefit if party coordinated expenditure limits were eliminated starkly illuminates the temptation for corrupt bargains that the availability of larger donations would pose. Currently, an individual may typically donate $7,000 to a candidate each election cycle ($3,500 for a primary election and $3,500 for the general election). By contrast, during the same election cycle, an individual may donate $44,300 per year to the principal accounts of each of the three national party committees, for a total of $265,800 for the two-year election cycle.[3] Eliminating the limits on coordinated expenditures currently applicable to those accounts and making donations to them fully available for spending approved by candidates would

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[3] *See* FEC, Contribution Limits for 2025-2025, https://www.fec.gov/updates/contribution-limits-for-2025-2026/.

effectively increase by approximately 38 times the amount a candidate could seek from a supporter in funding that could be used to the candidate's direct benefit. If, as this Court has recognized, the $7,000 base limit on contributions per election cycle is a closely drawn anti-corruption measure, the risk of corruption that effectively raising that limit by 40-fold would pose is apparent. Put another way, there is no doubt that permitting candidates to solicit and receive contributions exceeding a quarter of a million dollars would create the risk of actual and apparent *quid pro quo* corruption.[4]

II. The prohibition on earmarking contributions would not alleviate the potential for corruption if limits on coordinated party spending were lifted.

The NRSC's principal response to concerns about corruption is its repeated assertion that prohibitions on earmarking contributions make it unlikely that contributions to parties will become the wellsprings of

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[4] The threat of corruption does not depend on the supposition that parties themselves seek to corrupt their own candidates. *See* Pet. Br. 19–20. The principal danger is that the party committees will be transformed into vehicles for corruption of candidates by privately interested contributors. Nonetheless, while it is certainly true that parties are entitled to influence their candidates and officeholders to adhere to party policy positions, and that there is often an identity of interests between parties and their officeholders and candidates, it is equally true that federal officeholders at times vote in opposition to their parties on the most important matters. The notion that there would be nothing corrupt in an agreement under which a party used the promise of coordinated expenditures to buy a vote from a Senator on a specific matter on which the Senator would otherwise "break ranks," *see id*. at 20, is dubious at best, but the Court need not address that question to decide this case.

corrupt bargains between donors and candidates. *See* Pet. Br. 22–23, 27, 32–33. Leaving aside that, like corrupt *quid pro quos* themselves, earmarking may be difficult to prove and that the earmarking prohibition is unlikely to deter someone willing to engage in the more serious offense of bribery, the NRSC's reliance on earmarking rules as a panacea is at odds with the way candidates and their parties raise funds, which increasingly makes earmarking a moot issue.

As this Court recognized in *McCutcheon*, parties and candidates often utilize joint fundraising committees that allow them to solicit and receive contributions "collectively." 572 U.S. at 214–16.[5] Joint fundraising committees raised nearly $3.5 billion in the 2024 election cycle.[6] Contributions to these committees take the form of lump-sum payments that are allocated by agreement among participating candidate, party, and non-party committees in a manner that ensures that no committee's share of a joint contribution exceeds the contribution that an individual could have made to it alone. *See McCutcheon*, 572 U.S at 215. Thus, if a candidate were to join with all three of his party's national party committees in a joint fundraising committee, a donor could respond to a solicitation with a single check well in excess of one hundred thousand dollars.[7] After the funds had been divided among the participating

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[5] S*ee* FEC, Joint Fundraising with Other Candidates and Political Committees, https://www.fec.gov/help-candidates-and-committees/joint-fundraising-candidates-political-committees/.

[6] *See* OpenSecrets, Joint Fundraising Committees, https://www.opensecrets.org/joint-fundraising-committees-jfcs.

[7] It would require two checks at different points in the election cycle to contribute the full amount of $265,800 that the donor could contribute in a single election cycle.

committees, those committees could, absent the limits on coordinated expenditures at issue here, expend the funds entirely on campaign expenditures that benefited and were approved by the candidate. In this way, the elimination of the coordinated party spending limits would accomplish what this Court in *McCutcheon* reasoned that the elimination of aggregate contribution limits would not do: allow "a candidate today [to] receive a 'massive amount[ ] of money' that could be traced back to a particular contributor." *Id.* at 211.

Of course, as the Court pointed out in *McCutcheon*, contributions raised by joint fundraising committees remain subject to anti-earmarking rules, which prohibit contributors from making designations, giving instructions, or imposing encumbrances that result in contributions being passed on to or expended on behalf of candidates. *See id.* at 215; 11 C.F.R. § 110.6(b)(1). But earmarking is hardly necessary when joint fundraising committees such as the "Harris Victory Fund," the "Trump National Committee JFC," or the "Sheehy Victory Committee" explicitly identify themselves with a candidate and solicit donations to elect her.[8] Without any earmarking, the expectation of all concerned is that the funds raised by such committees are for the support of the candidate named. And if the funds were available to be spent in accordance with the candidate's wishes—that is, in coordination with the

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[8] *See* FEC, Harris Victory Fund, https://www.fec.gov/data/committee/C00744946/?cycle=2024; FEC, Trump National Committee JFC, Inc., https://www.fec.gov/data/committee/c00873893/?cycle=2024; FEC, Sheehy Victory Committee, https://www.fec.gov/data/committee/C00845792/?cycle=2024.

candidate's campaign—there is little reason to think that the candidate would be significantly less inclined to enter into a *quid pro quo* with someone who made a six-figure donation to her joint fundraising committee than with someone who gave a donation of similar magnitude directly to her campaign (if such a donation were legal).

This Court implicitly recognized as much in *McCutcheon*. There, the Court concluded that eliminating aggregate contribution limits would be unlikely to facilitate use of joint fundraising committees to evade base contribution limits for House and Senate candidates. *See* 572 U.S. at 216. The Court did so in large part precisely because the statutory coordinated expenditure limits at issue here would prevent the party committees' share of a joint fundraising committee's contributions from being used in a way that would directly benefit candidates and pose threats of corruption. *See id*. Without the limits on coordinated expenditures, neither "law," "experience," nor "common sense," *id*., would foreclose scenarios in which large contributions to joint fundraising committees consisting of national party committees and candidate committees would pose threats of corruption comparable to those of large direct contributions to candidates.[9]

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[9] Further, unlike the scenarios considered by the Court in *McCutcheon*, the possibility of corruption stemming from large donations to party committees that can engage in unlimited coordinated spending does not depend on the supposition that *state* party committees will use their funds to support candidates in other states. *See McCutcheon*, 572 U.S. at 216. The size of contributions that can be made just to the national party committees (and to party committees in a candidate's home state)

(*Footnote continued*)

III. The NRSC's argument that Super PACs pose a greater risk of corruption than party coordinated spending turns this Court's campaign finance jurisprudence upside down.

The NRSC tries to brush aside the threat of corruption coordinated party spending poses by asserting that, for donors seeking to corrupt a candidate, unlimited donations to Super PACs would provide a "far better vehicle" than donations to joint party-candidate fundraising committees even if the limits on coordinated spending were lifted. Pet. Br. 24. The NRSC's assertion flies in the face of this Court's longstanding insistence that independent expenditures are substantially less valuable to candidates than contributions whose use they can control, and that such non-coordinated expenditures provide little opportunity for *quid pro quo* arrangements involving "improper commitments from the candidate." *Citizens United*, 558 U.S. at 357. Indeed, these considerations led this Court in *Citizens United* to declare that "independent expenditures … do not give rise to corruption or the appearance of corruption." *Id.* And the same reasoning led the D.C. Circuit in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), to hold that limits on contributions to Super PACs (political committees that claim to engage only in independent expenditures) cannot be justified as an anti-corruption measure. *See id.* at 694 ("In light of the [Supreme] Court's holding as a matter of law that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption, contributions

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are ample to create threats of corruption if the limits on coordinated expenditures are lifted.

to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption.").

The NRSC's contention that unlimited Super PAC contributions and spending pose a greater risk of corruption than unlimited party coordinated spending presupposes either that *Citizen United*'s proposition that independent expenditures cannot corrupt candidates is wrong, or that the extensive ties that have developed between candidates and what they often refer to as "their" Super PACs make the "independence" of Super PAC spending a fiction—or both. If either premise of the NRSC's argument is correct, the answer to the problem is not to open up additional avenues for corruption by enhancing the parties' ability to compete for dollars from donors who wish to exert improper influence over candidates. Rather, the NRSC's view suggests, at a minimum, that the enforceability of statutory limits on contributions to political committees that purport to engage only in independent expenditures should be restored by overturning the holding of *SpeechNow*. If, on the other hand, this Court's view of the difference between the corrupting potential of independent expenditures and coordinated ones is correct, the relief sought here by the NRSC would create a potential for corruption not posed by Super PAC donations and spending. Either way, the limits at issue in this case should be sustained.

IV. Exceptions to limits on party coordinated spending do not make those limits ineffective or pretextual.

The NRSC's argument that exceptions to the limits on party coordinated spending undermine their

constitutionality, *see* Pet. Br. 28–30, fares no better than its assertions about Super PACs. The exceptions the NRSC invokes reflect Congress's judgment that the exceptions either pose relatively little risk of corruption or are needed to serve other interests. That judgment is highly debatable and, in our view, erroneous. But it does not suggest that the anti-corruption interest served by the limits at issue here is pretextual or that the limits do not serve that interest in a substantial way.

The NRSC's argument is based largely on provisions added to FECA in the 2014 "cromnibus" legislation.[10] Those provisions create separate, higher limits—currently $132,300—for contributions to segregated accounts that national party committees may maintain to pay for presidential nominating conventions, party headquarters buildings, and election recounts and contests and similar legal proceedings.[11] Spending from these accounts for the specified purposes may be coordinated with candidates. 52 U.S.C. § 30116(d)(5). The NRSC asserts that large donations to these accounts, available for spending in coordination with

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[10] Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, div. N, § 101, 128 Stat. 2130, 2772–73 (2014) (codified at 52 U.S.C. §§ 30116(a)(1)(B), (a)(9), (d)(5)).

[11] Each of the parties' three national committees may maintain a segregated fund for headquarters buildings and legal proceedings, but the congressional and senatorial campaign committees may not maintain a segregated fund for presidential nominating conventions; thus, each major party has a total of seven of the segregated accounts. *See* 52 U.S.C. § 30116(a)(9). The contribution limits apply separately to each segregated account of each committee. Thus, a donor can currently give a total of $930,300 annually to the seven segregated accounts of the national committees of each major party.

candidates, pose at least as much threat of corruption as would coordinated campaign spending through the national party committees' standard accounts. Congress's judgment that the risk posed by the segregated accounts is acceptable, the NRSC claims, is fatal to any suggestion that the coordinated party spending limits at issue here genuinely serve anti-corruption goals. *See* Pet. Br. 30.

The NRSC's argument misunderstands both the role of "underinclusiveness" in First Amendment law and the nature of the congressional judgments reflected in the segregated account provisions. As this Court explained in *Williams-Yulee v. Florida Bar*, "the First Amendment imposes no freestanding 'underinclusiveness limitation,' " 575 U.S. at 449, and thus governments should not be punished just for choosing to regulate *less* speech than they might have, *id*. at 452. In laws implicating the First Amendment, as in other types of legislation, Congress need not, and usually does not, "pursue[ ] its purposes at all costs," *Rodriguez v. United States*, 480 U.S. 522, 525–26 (1987)—not even the purpose of deterring corruption. Congress "need not address all aspects of a problem in one fell swoop; policymakers may focus on their most pressing concerns." *Williams-Yulee*, 575 U.S. at 449. And lawmakers may balance other policies against that of preventing corruption. *See*, *e.g.*, *id.* at 451. Only when a statute's underinclusiveness suggests that an interest purportedly justifying it is pretextual or that the law does not actually advance that interest does underinclusiveness suggest that the law is unconstitutional. *Id*. at 448–49.

Here, as the D.C. Circuit explained in *Libertarian National Committee v. FEC*, 924 F.3d 533, 550–52 (D.C. Cir. 2019), Congress had reasons for

distinguishing the kinds of expenditures for which it increased contribution limits and eliminated coordination restrictions—reasons that do not call into question the legitimacy of the coordination rules it left in place. The new provision concerning national conventions, for example, came in the wake of the elimination of public funding of conventions and "gives parties a tool for making up for that shortfall, ensuring, as Congress must, that parties remain capable of 'amassing the resources necessary for effective advocacy.'" *Id.* at 550. The provisions concerning party headquarters and legal proceedings involve donations for purposes that Congress "could … permissibly conclude[e] … have a comparatively minimal impact on a party's ability to persuade voters and win elections." *Id.* at 550–51. By contrast, donations that can be used for campaign expenditures that "benefit federal candidates directly" are likely to "pose the greatest risk of … corruption." *Id.* at 550 (quoting *McConnell*, 540 U.S. at 167). Indeed, most federal candidates are unlikely even to be involved in election contests or recounts and probably care little about the upkeep of party headquarters buildings, but all of them need to pay for election advocacy and are potentially subject to temptation to raise money for that purpose through corrupt means.

That said, the possibility exists that, in at least some circumstances, large donations to the segregated accounts, spent in coordination with candidates, could present an opportunity for actual or apparent *quid pro quo* corruption. Congress could and should have refrained from creating the new segregated accounts or placed more stringent limits on the amounts that could be donated to them and/or their use in coordination with candidates. But a policy disagree-

ment with Congress on whether to relax anti-corruption measures with respect to the limited categories of spending for which these accounts may be used is not a ground for concluding that the remaining limits—applicable to donations supporting the kinds of core campaign spending that affect all federal candidates in ways that create the potential for corruption—are pretextual or useless. The possibility that some corruption may result from coordinated spending of large donations to the segregated party accounts is no reason to open the door to the still larger arena for potential corrupt bargains that unlimited coordinated spending from party accounts would create.

CONCLUSION

This Court should affirm the judgment of the court of appeals.

Respectfully submitted,

SCOTT L. NELSON
Counsel of Record
ALLISON M. ZIEVE
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
snelson@citizen.org

Attorneys for Amicus Curiae

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