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,

AND

DEMOCRATIC NATIONAL COMMITTEE, ET AL.,

Intervenor-Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Faced with the glaring conflict between 52 U.S.C. § 30116(d) and the First Amendment, amicus and intervenors spill considerable ink on a "mare's nest of justiciability issues" they claim to have discovered. But the basis for the Court's jurisdiction remains just as clear as it was when petitioners sought certiorari a year ago. At that time, J.D. Vance planned to run again for federal office, desired to work in greater coordination with the Republican Party in doing so, but found the enforcement of § 30116(d) stood in his path.

All that remains true today. While Vance is not "focused" on campaigning for federal office right now, he has never disavowed his plan to do so. And no matter the federal office he pursues, Vance will want to engage in coordinated speech with his party. At that point, he will again face § 30116(d)'s limits, which the FEC—alongside intervenors and other private parties—will continue to enforce. In demanding more details about Vance's plans, amicus and intervenors forget that it is *their* burden to show *mootness*, not *Vance's* to reestablish *standing*.

In any event, it is clear that the Committees (NRSC and NRCC) have Article III standing, as they are participating in federal campaigns and will do so in the future. While amicus claims § 30116(d) does not apply to the Committees on the mistaken premise that a longstanding FEC regulation this Court already *upheld* is invalid, that misguided *merits* argument has nothing to do with this Court's *jurisdiction*. The same goes for the forfeited objection that the Committees lack a cause of action under 52 U.S.C. § 30110—something no one disputes Vance has.

In fairness, the other side's reluctance to face the merits is understandable. While they tout § 30116(d) as a "vital bulwark" against donors slipping bribes to candidates through party coordinated spending, they have no example of that taking place. Nor do they have an answer to Judge Thapar: If Congress "is worried donors will launder bribes to candidates through parties, why permit such bribery for recount lawsuits?"

Amicus and intervenors therefore fall back on *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*), insisting this "rock solid" precedent has stood the test of time. But the dissenters in *Citizens United v. FEC*, 558 U.S. 310 (2010), and *McCutcheon v. FEC*, 572 U.S. 185 (2014), knew better, recognizing *Colorado II* upheld the limits as a hedge against undue influence, not *quid pro quo* corruption. Section 30116(d)'s defenders thus do not seriously grapple with why *Colorado II* does not control or even the traditional *stare decisis* factors. Instead, they warn that overruling *Colorado II* would "massively destabilize" this Court's caselaw, campaign-finance statutes, and the First Amendment itself. But while petitioners have made no secret of their view that strict scrutiny should apply to all of FECA's limits, this Court can stop far short of that to rule in their favor. Given the lack of evidence of *quid pro quos* here, a simple application of closely drawn scrutiny would suffice. Reaffirming *Colorado II*, by contrast, would work a sea change in this Court's jurisprudence, calling its recent campaign-finance precedents into doubt. Indeed, amicus and intervenors make the link explicit, insisting that *McCutcheon* "supercharged" the "threat" of corruption. This Court should not take the bait. It is time for *Colorado II* to be clarified or overruled.

ARGUMENT

I. THIS CASE IS JUSTICIABLE.

When petitioners sought this Court's review last year, nobody doubted there was a live controversy: Petitioners want to engage in political speech beyond § 30116(d)'s limits, the judgment below prevents them from doing so, and reversal would redress their harm. Amicus accepts all this (Br.16), but insists that two things have changed. *First*, he argues petitioners no longer face a threat of enforcement because the government now agrees the limits flout the First Amendment. *Second*, he contends Vance mooted his claim through comments on a 2028 presidential run and the Committees never had standing to begin with.

Each theory fails. While amicus frequently invokes (Br.16, 20-21, 29-30) cases addressing a plaintiff's burden to show *standing*, he overlooks that "'*mootness*, not standing, … addresses whether an intervening circumstance" has eliminated jurisdiction. *West Virginia v. EPA*, 597 U.S. 697, 719 (2022). And that "distinction matters" because amicus, "not petitioners, bears the burden to establish that a once-live case has become moot." *Id*. To show mootness, amicus must prove it is now "'impossible for a court to grant any effectual relief whatever'" to petitioners. *Chafin v. Chafin*, 568 U.S. 165, 172 (2013). He cannot do so.

A. The government's change in position on the merits does not destroy jurisdiction.

To begin, the government's concession that § 30116(d) is unconstitutional does not eliminate any "threat of enforcement." Amicus.Br.3. That risk to petitioners is very much alive for three reasons.

First, the government's reply reveals that it will continue to enforce § 30116(d) so long as *Colorado II* formally remains the law of the land. That is fatal to amicus's theory. As he admits, if the government is "enforcing Section 30116(d)," this Court may review the judgment upholding it. Br.19; *see, e.g.*, *Seila Law LLC v. CFPB*, 591 U.S. 197, 212-13 (2020). Cases rarely die due to voluntary cessation; they obviously survive when there has been no cessation at all. *See, e.g.*, *FBI v. Fikre*, 601 U.S. 234, 241-45 (2024).

Second, even if the government had sworn off the enforcement of § 30116(d) for now, petitioners would still face the threat of a future administration exercising its discretion differently. Given that § 30116(d) violations are governed by a five-year statute of limitations, petitioners are not going to risk criminal penalties by engaging in speech for which their political foes could later prosecute them. 52 U.S.C. § 30145. Instead, as the district court found, petitioners "will comply with" the limits "[s]o long as" they "remain in place." JA670.

Amicus dismisses this "chill" by positing that the "Due Process Clause" and "entrapment by estoppel" would protect petitioners down the road, but cites no decision from this Court guaranteeing those defenses would apply. Br.21. More to the point, amicus cannot carry his burden to establish mootness by speculating about petitioners' potential shields to future prosecutions. Even when it comes to a plaintiff's burden to prove standing—as opposed to amicus's burden to prove mootness—he need only show a "'credible threat of *prosecution*,'" not a credible threat of *conviction*. *SBA List v. Driehaus*, 573 U.S. 149, 160 (2014) (emphasis added).

Third, even if the Solicitor General's view of the merits could take *FEC* enforcement off the table, it would not eliminate the threat of *private* enforcement. FECA allows "[a]ny person who believes" a violation has occurred to not only file a complaint with the FEC, but even bring a private action against the alleged culprit in certain cases. 52 U.S.C. § 30109(a)(1), (8); *see* CREW.Br.8-21. And right now, intervenor DCCC is pursuing a judgment that NRSC's advertisements violated § 30116(d). Dkt., *DCCC v. FEC*, No. 24-cv-2935 (D.D.C.). NRSC intervened in that case, which is stayed pending the decision here. *Id.* Because DCCC is a party before this Court, a judgment for petitioners would preclude DCCC from pursuing that lawsuit to NRSC's harm. This case therefore remains alive. *See Haaland v. Brackeen*, 599 U.S. 255, 293-94 (2023).

Ultimately, amicus's objections are just prudential points masquerading as jurisdictional ones. *See* Amicus.Br.52-54. But this Court already addressed "any prudential concerns with deciding an important legal question in this posture" by not only appointing amicus to defend the judgment below, but allowing intervenors to do so as well. *Seila Law*, 591 U.S. at 213 (rejecting similar jurisdictional objections raised for the first time by appointed amicus).

If anything, prudential considerations only confirm there is "a pressing need"—"in the real world"—for the Court to answer the question presented now. Amicus.Br.53. If petitioners are right, then Congress has for decades been curtailing the First Amendment rights of political parties and their candidates. And the government indicates that it will continue to enforce those restrictions despite its belief that they are unconstitutional.

In doing so, it will be joined by private parties, including petitioners' political opponents such as intervenor DCCC. If prolonging that state of affairs leaves "petitioners as victors *de facto*," one can only imagine what amicus would describe as their defeat. *Id.*

B. Vice President Vance's recent remarks do not destroy jurisdiction.

Amicus fares no better in trying (Br.28-30) to manufacture mootness out of Vance's recent statement that he is not "focused" on running for President right now. Amicus has not shown Vance's claim is moot, and the Committees still have standing to press theirs.

1. In asserting that Vance's claim is no longer live on the premise that he lacks "any concrete plan to run for any specific federal office" (Br.28), amicus "confuse[s] mootness with standing." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000); *see supra* at 3. Each of amicus's cases on the subject concerns a plaintiff's burden to establish standing, not amicus's burden to establish mootness. Amicus.Br.29-30. That is important, for the likelihood of a future event "may be too speculative to support standing, but not too speculative to overcome mootness." *Laidlaw*, 528 U.S. at 190.

Specifically, under the doctrine of mootness, amicus must show it would be "'impossible" to "'grant any effectual relief'" to Vance now. *Chafin*, 568 U.S. at 172. To pull off that demanding feat, he must prove Vance does not plan to campaign for federal office again, such that a judgment precluding § 30116(d)'s enforcement would mean nothing to him. *See id.* (explaining a case remains live if "'the parties have a concrete interest, however small, in the outcome of the litigation'").

Amicus has come nowhere close to doing so. To the contrary, all available evidence—in both the record and the media—indicates that Vance will again run for federal office, and no one denies that § 30116(d) restricts speech for any such campaign.

To start, Vance has never "disclaimed" his plan to run for federal office in the future. Amicus.Br.28. Vance alleged at the outset that he "intends to run for federal office again." JA14. And amicus accepts (Br.28) the district court's ruling, affirmed by the Sixth Circuit, that Vance had standing in 2024 due to his "intent to run for reelection in 2028." JA623; *see* JA713.

While amicus claims "the facts have changed dramatically" since then (Br.28), he mostly relies on this Court to fill in the blanks. For example, amicus leans on the fact that "Vance is now Vice President." *Id.* But that only cuts against mootness: Since the Eisenhower Administration, just three of Vance's 14 immediate predecessors failed to run for President after serving as Vice President—and one of those, Spiro Agnew, resigned before his term expired. Vance's current role also cannot overcome the unrebutted "'evidence'" in the "'record'" that he intends to run for Senate in 2028. Br.29. Unlike Chabot, who "has "'terminate[d] his campaign committee'" and "does not intend to run for federal office again," JA665, Vance maintains both an active "Statement of Candidacy" with the FEC concerning his intended 2028 Senate run, JA177, and an active principal campaign committee, which last reported over $120,000 on hand after receiving more than $50,000 in 2025, FEC, *JD Vance for Senate Inc.* So even if he does not run for President, Vance—like Vice President Hubert Humphrey—has an active vehicle and plan in place to at least campaign for Senate.

Lacking record *evidence,* amicus points to two *news articles* quoting Vance. Even assuming the Court could consider them, neither is remotely sufficient to carry amicus's burden. In one, Vance explained he is currently "focused" on serving as Vice President, not on running for the presidency. Kochi, *Will JD Vance Run for President in 2028? VP Pressed on Potential White House Bid*, USA TODAY (Aug. 10, 2025). In the other, Vance stated that he would begin to refocus on electoral politics "in 2027," and that success in future campaigns would not "be given" to him. Koch, *Vice President JD Vance Teases 2028 Bid, Says it Won't Be 'Given' to Him*, FOX NEWS (Sept. 6, 2025). None of this is even arguably inconsistent with the record evidence of Vance's stated intention to run again for federal office. Regardless of Vance's current *personal focus*, amicus offers no evidence suggesting there will not be a future Vance *campaign* hampered by § 30116(d).

2. Regardless, wholly apart from Vance, the Sixth Circuit also correctly found the "claims of the party committees … remain live." JA713. While amicus insists the Committees lack both Article III standing and a statutory cause of action, neither is the case.

a. On Article III, amicus contends that a ruling for petitioners "will not remedy any injury" to the Committees on the premise that § 30116(d) "does not govern" their coordinated spending. Br.25-26. But that premise is false: As amicus admits, § 30116(d)'s limits apply to the Committees under 11 C.F.R. § 109.33, which lets the RNC assign them its "coordinated-spending authority." Br.26. Amicus's argument therefore turns on his assertion that the FEC's regulation is "invalid." *Id.* But that theory suffers from two flaws.

First, it is simply incorrect. Amicus concedes that in *FEC v. DSCC*, 454 U.S. 27 (1981), this Court upheld the "FEC's interpretation" allowing the RNC to assign coordinated-spending authority to the NRSC. Br.27. He nevertheless urges this Court to overrule *that* precedent instead of *Colorado II*, claiming *DSCC* employed "*Chevron*-like deference" and thus "cannot survive" *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Br.27. But *Loper Bright* preserved "prior cases that relied on the *Chevron* framework"—including their holdings that "specific agency actions are lawful"—so *DSCC*'s ruling that the assignment regulation is valid remains alive and well. 603 U.S. at 412.[1]

It also is "the best interpretation of FECA." Br.27. In the 2014 amendment, Congress ratified *DSCC*'s interpretation allowing the RNC to assign its coordinated-spending authority to the Committees. Specifically, FECA now provides that "a national committee of a political party (including a national congressional committee of a political party)" is exempt from § 30116(d)'s limits in certain areas, such as candidate legal fees. 52 U.S.C. § 30116(a)(9), (d)(5). That necessarily presumes that § 30116(d) otherwise governs the Committees' coordinated spending. *See Alexander v. Sandoval*, 532 U.S. 275, 280 (2001) (Congress "ratified" this Court's interpretation by enacting provision that "'cannot be read except as a validation'" of that reading).

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[1] While amicus quibbles that *DSCC* reviewed an "administrative order," not the "later-promulgated … regulation" (Br.27), it upheld the current regulation's materially indistinguishable predecessor in reading § 30116(d) to allow assignments. 454 U.S. at 34-35; *see* 68 Fed. Reg. 421, 445 (2003); 11 C.F.R. § 110.7 (1981).

Second, amicus's collateral attack on the regulation does not go to jurisdiction in any event. "For standing purposes," this Court instead must "accept as valid the merits" of the Committees' "legal claims"—including that they may engage in coordinated spending under current law. *FEC v. Cruz*, 596 U.S. 289, 298 (2022). While amicus disagrees with that *status quo*, he has no support for the idea that this Court can revisit its precedent and set aside a longstanding regulation on a collateral issue while assessing a party's standing. Put differently, amicus makes an "argument on the merits," but nothing about the regulation's validity is "so implausible that it may be disregarded on the question of jurisdiction." *Chafin*, 568 U.S. at 177. Amicus's disquisition (Br.26-28) on the FEC's statutory authority therefore has no bearing on this case.

b. Article III aside, amicus contends (Br.23-24) the Committees are not "the national committee of any political party" under 52 U.S.C. § 30110. This argument suffers from three independent defects.

First, it is forfeited. As amicus admits (Br.24 n.6), this argument was neither pressed nor passed upon below, so he cannot resurrect it now. *See, e.g.*, *FTC v. Phoebe Putney Health Sys., Inc.*, 568 U.S. 216, 226 n.4 (2013). While amicus labels the point "jurisdictional" (Br.4), § 30110 creates a cause of action by providing that some plaintiffs "may institute such actions" to challenge FECA's constitutionality. And an alleged lack of a "cause of action" is "not jurisdictional," so not even an "intervenor" can revive the point once the government forfeits it. *Grocery Mfrs. Ass'n v. EPA*, 693 F.3d 169, 183, 185 n.5 (D.C. Cir. 2012) (Kavanaugh, J., dissenting); *see Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 n.4 (2014).

That leaves amicus to take refuge in *Bread PAC v. FEC*, 455 U.S. 577 (1982), which he says "held that there is no appellate 'jurisdiction' over claims brought by plaintiffs who do not fall into these categories." Br.23. No such holding exists. While *Bread* briefly described § 30110 as "[j]urisdictional," 455 U.S. at 580, such "drive-by jurisdictional" comments from decades past—which ignored "the critical differences between true jurisdictional conditions and nonjurisdictional limitations on causes of action"—carry "no precedential effect." *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 161, 174 (2010) (cleaned up).

Amicus's reading of *Bread* also makes little sense of § 30110. Rather than create "appellate 'jurisdiction' over claims brought by" certain "plaintiffs" (Amicus.Br.23), the provision allows interlocutory review of "particular 'questions.'" *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 240 (2021). Nothing in § 30110 suggests a plaintiff's lack of a valid "action[]" in "district court" destroys the jurisdiction of the "court of appeals" over the certified "questions." 52 U.S.C. § 30110. By way of analogy, an appellate court reviewing an order under 28 U.S.C. § 1292(b) need not dismiss the appeal for lack of jurisdiction upon determining that the plaintiff lacked a cause of action. *See, e.g.*, *Harris Tr. & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 244-45 (2000). So too here.

Second, even if amicus could invoke § 30110 now, his argument would be irrelevant. No one denies that Vance, an "individual eligible to vote" for "President," falls squarely within § 30110. The Sixth Circuit thus had "mandatory, interlocutory en banc appellate jurisdiction under Section 30110" to answer the question the district court certified. Br.23. And this Court has

jurisdiction under Article III and 28 U.S.C. § 1254(1) to review the Sixth Circuit's judgment, which is currently harming the Committees (and Vance). *See ASARCO Inc. v. Kadish*, 490 U.S. 605, 618-19 (1989).

Third, amicus's position conflicts with the statutory scheme. FECA repeatedly provides that the phrase "a national committee of a political party" includes "national congressional campaign committee[s]" like the Committees, including in § 30116(d)'s exceptions. 52 U.S.C. §§ 30116(a)(9), (d)(5), 30125(a), (b)(2)(A)(iv)(II); *see supra* at 9. Section 30110's use of the same phrase presumptively bears the same meaning. To get around that default rule, intervenors insist § 30110 uses a narrower definition by referring to "'*the* national committee.'" Br.14. But that "use of the definite article 'the' is too thin a reed to support" their "conclusion." *EPA v. Calumet Shreveport Ref., LLC*, 145 S. Ct. 1735, 1749 (2025); *see* 1 U.S.C. § 1 (providing that "words importing the singular include and apply to several persons, parties, or things" "unless the context indicates otherwise").[2]

II. THE COORDINATED PARTY EXPENDITURE LIMITS VIOLATE THE FIRST AMENDMENT.

When he reaches the merits, amicus accepts "closely drawn" scrutiny applies. Br.31. He must therefore prove that § 30116(d) both (1) actually furthers the goal of preventing *quid pro quo* corruption and (2) is narrowly tailored. Amicus fails on both counts.

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[2] In all events, petitioners are ready to move to add Senator Bernie Moreno and Representative Tom Barrett as parties if necessary to aid the Court. *See* Shapiro *et al.*, Supreme Court Practice § 6.16(c) (11th ed. 2019); *see, e.g.*, *NFIB v. Sebelius*, 565 U.S. 1154 (2012); *Mullaney v. Anderson*, 342 U.S. 415, 416-17 (1952).

A. The limits do not advance a permissible interest.

For good reason, neither amicus nor intervenors try to justify § 30116(d) as necessary to thwart the *parties* from buying off their *candidates*. Pet.Br.19-21. Instead, they insist the limits prevent donors from laundering their contributions through parties in order to bribe candidates. Amicus.Br.33. Binding precedent, the record, and common sense, however, foreclose that convoluted theory of *quid pro quo*-by-circumvention.

1. To start, amicus's assertion that "Congress enacted" § 30116(d) "to protect" against donor-candidate "corruption" is a *post hoc* invention. Br.2. In reality, Congress enacted § 30116(d) to protect against what incumbents saw as unseemly amounts of campaigning. That is why § 30116(d) purports to cap *all* party expenditures—coordinated or independent—and sets *different* limits based on population and office sought. Pet.Br.18-19.

Undeterred, amicus suggests that "Congress had multiple goals"—it curbed the parties' independent spending to limit money in politics and their coordinated spending to check conduit bribery schemes. Br.40. But while attributing such fine-grained hypothetical distinctions to Congress may work under rational-basis review, it cannot satisfy any form of heightened scrutiny. Pet.Br.19; Chamber.Br.15-18. Instead, amicus must back his theory with "'legislative findings.'" *Cruz*, 596 U.S. at 310. But "Congress … made no finding that the Party Expenditure Provision serves different purposes for different expenditures." *Colorado II*, 533 U.S. at 475 n.5 (Thomas, J., dissenting).

Nor does amicus's trawl through legislative history fill that gap. The best he can dredge up (Br.34-35) is a handful of floor statements about a different bill that never became law. Yet even for enacted legislation, "stray floor statements" do not suffice. *Cruz*, 596 U.S. at 310. And "[n]othing these legislators said" is "actual evidence" that the limits are "necessary to prevent *quid pro quo[s]*." *Id.* Rather, they supported "equalizing" the spending limits on "party political committees and all other political committees," which may not coordinate *any* expenditures with candidates beyond their base limits. 119 Cong. Rec. 26,321 (1973) (Sen. Stevenson). If anything, this history cuts against amicus: Had Congress feared conduit bribes in this context, it would have treated parties like PACs by forbidding any coordinated party spending above the base limits. Instead, it allowed coordinated party expenditures above the base limits, subject to arbitrary caps.

Amicus is no more persuasive in trying to justify the limits' variability on the theory that Congress allowed more party "'speech in states where each contribution's value is diluted.'" Br.40. Voting-age population and office sought have little bearing on whether a race will attract heavy spending (thereby diluting a contribution's worth). Contributions, like "campaign costs," "do not automatically increase or decrease in precise proportion to the size of an electoral district." *Randall v. Sorrell*, 548 U.S. 230, 252 (2006) (plurality). Instead, *competitiveness* drives a race's costs. For example, in 2024, donors poured nearly double into Ohio's Senate race as California's, yet § 30116(d)'s limit for the former was less than a third of the one for the latter. *See* OpenSecrets, *2024 Most Expensive Races*; FEC, *Coordinated Party Expenditure Limits*.

2. In any event, amicus's revisionist theory fails on its own terms. With no "'legislative findings,'" amicus must "point to 'record evidence'" of "*quid pro quo* corruption in this context." *Cruz*, 596 U.S. at 307. But neither he nor intervenors have found a single instance in the record of a donor laundering a bribe to a candidate through party coordinated spending. Nor do they have one from the majority of states that give the parties free rein to engage in coordinated expenditures, or from the many areas of coordinated party spending FECA leaves untouched. Pet.Br.25-26; RGA.Br.8-29.

Instead, amicus largely relies (Br.34-37) on materials the FEC unsuccessfully (or never) submitted to the district court. But there are reasons why this "extensive evidence" is not in the record. Amicus.Br.42. Petitioners have already explained why amicus's best case—an alleged bribe involving an Ohio school board election that prosecutors caught—cannot prop up § 30116(d). Pet.Br.27. And his other examples did not even involve coordinated party expenditures. *See McConnell v. FEC*, 540 U.S. 93, 140 (2003); JA286, 304, 330, 425, 431-37, 489-90, 797-99; RGA.Br.18-19. Amicus's materials therefore at best provide arguable support for *other* provisions of federal law, not a justification for § 30116(d)'s *extra* prophylaxis.

3. Amicus ultimately dismisses the need for "'empirical evidence,'" asserting that § 30116(d) rests on "the same justification" for limits on coordinated spending by "all other groups." Br.42. But the basis for the other limits is to foreclose direct *two-way* bribery schemes—a donor's coordinated spending with a candidate might "have virtually the same value" as a contribution, and hence pose the same "quid pro quo" risk. *Buckley v. Valeo*, 424 U.S. 1, 46-47 (1976); *see* Pet.Br.19.

That is not the theory here—there is no serious risk of parties bribing their candidates. Instead, amicus's argument is that § 30116(d) thwarts *three-way* bribery schemes involving donors, parties, and candidates. That theory, however, is foreclosed by *McCutcheon*, which held "there is *not* the same risk" of bribery "when money flows through independent actors." 572 U.S. at 210-11 (emphasis added); *see* Pet.Br.21-24.

Rather than grapple with that point, amicus says *McCutcheon*'s rejection of an "anti-circumvention" theory hinged on the continued presence of the "*limits at issue here*." Br.42. But *McCutcheon* just briefly mentioned § 30116(d) in rejecting one circumvention hypothetical, before noting that even if "the law does not foreclose" such a scheme, "experience and common sense do." 572 U.S. at 216. So too here. Likewise, the Committees tried no "bait-and-switch" in *McCutcheon* (Br.39) by merely including the limits—along with the "earmark[ing]" rule—among FECA's many already-existing prophylaxes against "circumvention." Committees.Br.20, *McCutcheon*, 572 U.S. 185 (No. 12-536). And in all events, this Court's skepticism of "anti-circumvention as a valid basis" for abridging political speech is not confined to *McCutcheon*. Amicus.Br.42; *see Cruz*, 596 U.S. at 306-07 (collecting cases).

4. Amicus also fails to grapple with the limits' underinclusivity, instead just resting on (Br.40-41) assertions from Judge Stranch and the majority in *Libertarian National Committee v. FEC*, 924 F.3d 533 (D.C. Cir. 2019) (en banc) (*LNC*). But many other judges—below and on the D.C. Circuit—saw things differently. *See* JA721, 737-38, 859-60; *LNC*, 924 F.3d at 553-58 (Griffith, J., dissenting in part); *id.* at 568-70 (Katsas, J., dissenting in part).

It is easy to see why: "money is fungible, the exceptions dwarf the rule, and there is no plausible anti-corruption rationale to explain the disparate treatment." *LNC*, 924 F.3d at 570 (Katsas, J., dissenting in part); *see* Pet.Br.28-30. Indeed, given that amicus's allies decry the "new threats" posed by the 2014 exceptions (CLC.Br.3), his assurances that Congress just "fine-tune[d]" § 30116(d) ring hollow. Br.41.

B. The limits are not narrowly tailored.

Amicus also cannot show § 30116(d) is narrowly tailored. Its underinclusivity is fatal here too, and amicus has no plausible response to petitioners' alternatives.

First, amicus effectively concedes that reducing "the cap on individual contributions to a party" would address circumvention concerns. Br.43. Yet he dismisses this option as a "greater threat" that would "deplete" the parties' coffers for "independent expenditures." *Id.* But as *Buckley* noted, *any* contribution limit will reduce the recipient's "resources" for expenditures, yet that did not stop it from deeming such limits "less intrusive." 424 U.S. at 21, 44.

Second, amicus admits *McCutcheon* saw the "earmarking" rule as "a better alternative," but he complains the rule does not reach bribes a donor "expects" the party will spend on a candidate. Br.43-45. Yet whatever the donor's expectations, the party alone retains "control," so his scheme may fail. *McCutcheon*, 572 U.S. at 211. Amicus's hypothetical (Br.44) proves the point: A donor trying to launder a bribe to President Biden through the DNC would have been sorely disappointed when the party ousted him from the ticket and spent the money on Vice President Harris instead.

Third, amicus says treating "disclosure" as a "substitute" would imperil the base limits. Br.45. But *McCutcheon* viewed disclosure as a viable alternative while preserving the base limits, and there is no reason for a different approach here—particularly given the higher risk of bribery in the context of direct donor-to-candidate donations. 572 U.S. at 223-24. That is because § 30116(d) and the aggregate limits are *extra* prophylaxes placed on top of the base limits. *Id.* at 221.

III. *COLORADO II* CANNOT SAVE THE LIMITS.

Amicus thus retreats to the claim that "*Colorado II* squarely controls." Br.13. But he does not so much defend *Colorado II* as extend it—rewriting it to account for intervening precedent, applying it to new statutory schemes, and reading it to cover as-applied challenges it expressly reserved. This Court should take *Colorado II* on its own terms. And if it finds that the decision does control, it is time to give it a proper burial.

A. *Colorado II* does not control this case.

To start, this Court need not overrule *Colorado II* to give petitioners relief, for three independent reasons.

First, the Court has already razed *Colorado II*'s foundations several times over—including its view of undue influence as corruption, evidence-free approach to speech caps, and billowy conception of narrow tailoring. Pet.Br.34-37. Intervenors protest "*quid pro quo* corruption was central" to that decision, but they just "cherry-pick." Br.38-39. While *Colorado II* occasionally *used* the phrase "*quid pro quo*," it never *linked* that threat to the limits. 533 U.S. at 441, 446, 456 n.18. Rather, it grounded them in the fear of donors gaining access to "candidates" at party "receptions," where they could exercise "undue influence." *Id.* at 441, 461.

Second, amicus accepts that if the 2014 amendment produced a meaningfully "different statutory regime," *Colorado II* does "not control." *McCutcheon*, 572 U.S. at 200; *see* Pet.Br.38-39. He just dismisses it as a "'tweak,'" but that move fails. Br.41; *supra* at 16-17. Indeed, amicus cannot point to a single instance of conduit bribery under the 2014 amendments.

Third, amicus dismisses petitioners' as-applied challenge with the claim that some coordinated "political advertising" is "not the party's 'own speech.'" Br.45-46. Specifically, he insists a party could pay for its candidate's ads despite having "never reviewed" them. Br.46. But as the record shows, the Committees exercise "final review and approval of any advertisements" funded by their coordinated spending. JA581; *see* JA100-02, 110, 115, 179, 182, 672-75. This ensures they have some level of "quality control" before giving their "seal of approval" to an ad—which must bear their name in a disclaimer—"regardless of who's actually designing" it. JA355; *see* 11 C.F.R. § 110.11(d). So even these communications are a "party's own speech," and thus qualify for the type of as-applied challenge *Colorado II* reserved. 533 U.S. at 456 n.17.

B. *Colorado II* should be overruled

1. In all events, this Court should overrule *Colorado II*. Neither amicus nor intervenors really engage with the reasons *Colorado II* cannot be saved under the traditional *stare decisis* factors. Pet.Br.41-49. For example, amicus claims § 30116(d) is more important now because *McCutcheon* "supercharged" the bribery risks posed by "joint fundraising committee[s]." Br.37. But as *McCutcheon* explained, "a joint fundraising committee is simply a mechanism for individual committees

to raise funds collectively, not to circumvent base limits or earmarking rules." 572 U.S. at 215. And while amicus can ask this Court to revisit *McCutcheon* to save *Colorado II*, he "cannot claim the mantle of *stare decisis*" in doing so. *SFFA v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 227 (2023).

Nor do *Colorado II*'s defenders substantiate the traditional basis for retaining a misbegotten precedent—reliance. Amicus, for instance, suggests *Colorado II* is "relied upon" merely because it is "workable," but this Court has discarded even clear rules when necessary. Br.47; *see, e.g.*, *Ramos v. Louisiana*, 590 U.S. 83, 126 (2020) (Kavanaugh, J., concurring).

2. With no traditional *stare decisis* considerations on his side, amicus resorts to slippery-slope fearmongering about the fate of *other* limits in FECA. In his telling, recognizing § 30116(d)'s infirmity would tear apart "fifty years of campaign-finance law." Br.50. But while petitioners have not been shy about seeking to overrule *Buckley* (Pet.Br.42), this Court need not go that far. After all, amicus's position would have surprised Chief Justice Rehnquist, who joined both *Buckley*'s blessing of *some* coordinated expenditures as akin to contributions, 424 U.S. at 25, 46-47, and the *Colorado II* dissent's conclusion that *party* coordinated expenditures are distinct, 533 U.S. at 466-82 (Thomas, J.). Amicus's jeremiad also cannot be squared with the opposition to § 30116(d) among even supporters of campaign-finance limits. It is a rare FECA provision that can draw fire from everyone from the Chamber of Commerce to Bob Bauer and the Brennan Center. Pet.Br.48; Chamber.Br.23-27; Brennan.Br.2. So whatever else is true of § 30116(d), it is not the keystone statute for campaign-finance law.

Indeed, that view is at odds with First Amendment scrutiny—close or strict—which requires a careful, record-driven analysis of each provision and its proffered justifications. *See Cruz*, 596 U.S. at 307. This Court thus cannot validate *Colorado II* based on speculation about the outcomes in hypothetical cases with their own evidentiary records. It can, however, distinguish § 30116(d) from the provisions amicus cites.

First, amicus points to FECA's "party-to-candidate contribution limits," but those govern funds the party no longer controls. Br.48 (cleaned up). Coordinated expenditures, by contrast, remain in the party's hands, both making them the party's own speech and reducing the risk of conduit bribery schemes. Pet.Br.22. That explains why Justice Kennedy, joined by Chief Justice Rehnquist, thought Congress might still be able to "restrict undifferentiated political party contributions" if § 30116(d) fell. *Colorado Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 630 (1996) (*Colorado I*) (concurring in the judgment).[3]

Second, amicus frets about the fate of "individual-to-party contribution limits." Br.49. But he *rejected* petitioners' proposed alternative to "lower" those limits. Br.43; *see supra* at 17. And even if tightened, those limits would be both less burdensome and better tailored to addressing the supposed risk of donors laundering bribes to candidates through parties, making them doubly distinguishable. Pet.Br.32.

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[3] It also explains why amicus errs in contending that "'strict scrutiny'" does not apply to petitioners' "*facial* challenge": He wrongly assumes at least "*some* coordinated party spending" is the same as "a direct cash" contribution. Br.31-32.

Third, amicus worries (Br.49) that this Court's repetition of *McCutcheon*'s holding that "there is not the same risk of *quid pro quo* corruption … when money flows through independent actors" could jeopardize the soft-money ban upheld in *McConnell*. 572 U.S. at 210. But as amicus notes, "*McCutcheon* specifically left intact" that holding, so it is unclear why merely applying *McCutcheon*'s rule to § 30116(d) would place the soft-money ban in any greater peril. Br.41.

Fourth, amicus warns of the risk to caps on contributions to and from "every other independent actor," PACs included. Br.49 (cleaned up). But this Court can rule for petitioners without implicating "cases uphold[ing] contribution limitations" involving "individuals and associations." *Colorado I*, 518 U.S. at 628 (Kennedy, J., concurring in the judgment). That is because parties, not PACs, play a "unique role" in our "constitutional tradition." *Id.* at 629-30. Rightly so: No one claims a party would be engaged in bribery by conditioning coordinated expenditures on the candidate's adherence to its platform. The same cannot be said for a *quid* offered by, say, "the AFL-CIO." Amicus.Br.50.

Amicus therefore contends (Br.50-52) that recognizing this truth about the parties would violate the First Amendment by creating a speaker-based distinction. But amicus admits that this Court's precedents and § 30116(d)'s limits already single out parties for special treatment; he just thinks allowing party coordinated spending beyond those limits would be a bridge too far. Br.52; *see* DNC.Br.24-26. It is thus amicus who seeks to "destabilize settled First Amendment doctrine" by changing the presumption against speaker-based distinctions from a shield against censorship into a sword pointed at political speech. Amicus.Br.50.

This Court should not allow "concerns about phantom constitutional violations" to "justify actual violations." *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 543 (2022). And that is no less true for phantom Article III violations than First Amendment ones. *Contra* Amicus.Br.53 (urging the Court to preserve § 30116(d) "regardless of whether Article III formally bars review").

CONCLUSION

This Court should reverse the judgment below.

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