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 OF *AMICI CURIAE* STATE OF OHIO AND 19 OTHER STATES IN SUPPORT OF THE PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes, Regulations, and Constitutional Provisions

Other Authorities

INTRODUCTION AND STATEMENT OF AMICI INTEREST

Limits on political spending are limits on political speech. Such limits are anathema to the American way. U.S. Const. amend. I. This Court recognizes just one justification for political-spending limits: combating bribery-style corruption and its appearance. The Federal Election Campaign Act limits political party committees' spending in coordination with their preferred candidates. This "Party Expenditure Provision," 52 U.S.C. §30116(d), imposes speech burdens without anticorruption benefits. The law is unconstitutional.

Parties, like legislatures, are vessels of democracy, directly responsive to public opinion. It is the "essence" of "our Nation's party system of government" for candidates and parties to work together to find the winning message. *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 477 (2001) ("*Colorado II*") (Thomas, J., dissenting). Unlike private actors that seek to change policy to make more money—a corruptible endeavor—parties spend money to improve public policy. Party–candidate coordination simply does not raise the "specter of corruption" that political-spending limits aim to prevent. *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 263 (1986). To the contrary, party communication encourages an informed, engaged electorate. Impediments to coordinated party spending thus "reduc[e] the total quantum" and quality of information parties provide voters. *See Meyer v. Grant*, 486 U.S. 414, 423 (1988).

States can attest firsthand. In their own elections, many States do not limit party–candidate coordinated spending. The results from these laboratories of

democracy are higher-quality communication and political association, but not more corruption of the kind political spending limits may permissibly target.

In federal contests, too, States have the utmost interest in political parties' coordination with candidates unfettered by spending limits. Candidate coordination optimizes party spending, eliminating deadweight loss. That matters to States because the People's representatives also guard their States' interests in Congress. U.S. Const. art. I, §§2, 3, amend. XVII; *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 435 (1819) (Marshall, C.J.); The Federalist No. 62 (J. Madison). States thus rely on their citizens to make informed decisions on who is best suited for that job. That electoral process entails core speech and association by and among citizens, candidates, and parties. Coordinated-party-spending limits inhibit the free flow of information at the crucial hour that citizens form their political judgment and convert it to campaign and electoral action. Because parties' "adherents"—that is, voters—pay the price, *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957), the speech abridgment disserves the *amici* States—Ohio, Alabama, Alaska, Arkansas, Florida, Georgia, Indiana, Iowa, Kansas, Kentucky, Louisiana, Missouri, Montana, Nebraska, North Dakota, Oklahoma, South Carolina, South Dakota, Texas, and West Virginia.

As the States' experience shows, limits on coordinated party spending do not serve any anti-bribery interest. Nor are they necessary in light of other preventive measures in place. Though *Colorado II* held otherwise, that decision has been abrogated dramatically. Both Congress, by amending the Party Expenditure Provision, and this Court, through later decisions, undermined that precedent's reasoning and

stare decisis effect. *See* JA831–32 (Readler, J., dissenting). And the Court should overrule *Colorado II*, if necessary, because it wrongly relegated parties' speech rights. "Money, like water, will always find an outlet." *McConnell v. FEC*, 540 U.S. 93, 224 (2003). In *Colorado II*'s wake, donors found unaccountable private-interest groups in parties' stead, thus *encouraging* rather than reducing risk of corruption. No *stare decisis* consideration counsels saving that decision.

STATEMENT

1. Congress passed the Federal Election Campaign Act in 1972. As amended through the Bipartisan Campaign Reform Act, FECA anchors federal campaign-finance law. Though unenforceable in part (*see below* at 4–5, 7), FECA's text limits both campaign contributions and expenditures. For contributions, FECA places base limits on the amount individuals may give both candidates and political party committees. 52 U.S.C. §30116(a). And the Act in turn limits the amount committees may distribute to candidates for federal office. §30116(c)–(d). For expenditures, the Act caps the party committees' spending on their chosen candidates according to an equation tied to voting-age population. *Id.*

Expenditures are classified as coordinated or independent; FECA purports to limit both. §30116(d)(4). Independent expenditures are "not made in concert or cooperation with" any "candidate … or a political party committee." §30101(17). Coordinated expenditures, conversely, are "made in cooperation, consultation or concert with … a candidate" or "political party committee." 11 C.F.R. §109.20(a). FECA counts

coordinated expenditures as contributions. 52 U.S.C. §30116(a)(7)(B)(i).

In 2014, Congress amended FECA to lift the party-expenditure caps in three areas. FECA no longer limits coordinated party expenditures from a segregated account made to defray (i) costs of a "presidential nominating convention," (ii) costs to build and operate a party "headquarters building[]," and (iii) costs related to "election recounts and contests and other legal proceedings." §30116(a)(9), (d)(5).

2. But many of FECA's provisions are unenforceable because they violate the Free Speech Clause, as *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*), and later cases hold. The First Amendment draws a "constitutional line between the permissible goal of avoiding corruption in the political process and the impermissible desire simply to limit political speech." *McCutcheon v. FEC*, 572 U.S. 185, 192 (2014) (plurality op.). The seminal decision in *Buckley* held that contributions and expenditures straddle that line. 424 U.S. at 28–29, 44–45; *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 386–87 (2000). *Buckley* "subjected expenditure limits to 'the exacting scrutiny applicable to limitations on core First Amendment rights of political expression.'" *McCutcheon*, 572 U.S. at 197 (quoting *Buckley*, 424 U.S. at 44–45). Generally, spending limits do not meet that strict level of scrutiny, but *Buckley* did not resolve spending by political party committees. 424 U.S. at 58 n.66. Contribution limits burden speech less, *Buckley* held, because they still allow for the "symbolic expression of support" to the candidate and do not "infringe the contributor's freedom to discuss" politicians and their ideas. *Id.* at 21. The Court thus subjected contribution limits to lesser, "closely drawn" scrutiny, and the limits

survived review on the strength of their means-end fit. *Id.* at 58.

Later, under *Buckley*'s framework, the Court held that limits on political action committees' independent, uncoordinated expenditures were "constitutionally infirm." *FEC v. Nat'l Conservative PAC*, 470 U.S. 480, 497 (1985). Then, in "*Colorado I*," the Court extended that holding to limits on political-party spending, which FECA treated differently from other spending under the Party Expenditure Provision. *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 611, 616 (1996) (lead op.). Limits on independent party expenditures, *Colorado I* held, "impair … direct political advocacy" and do not prevent corruption or its appearance. 518 U.S. at 615. For "prudential reason[s]," *Colorado I* left open the constitutionality of coordinated party expenditures. *Id.* at 623–24.

Justice Kennedy agreed that limits on independent party expenditures are unconstitutional but rejected any distinction between political parties' coordinated and independent spending. *Id.* at 629–30 (op. concurring in judgment and dissenting in part). Coordinated party spending, Justice Kennedy would have held, is constitutionally guaranteed, too. *Id.* Justice Thomas argued that the anticorruption rationale that supports some aspects of FECA "is inapplicable" to "political parties." *Id.* at 631 (op. concurring in judgment and dissenting in part).

3. The Court reached coordinated party expenditures in *Colorado II*. 533 U.S. at 437. The Court rejected a "facial challenge" to those limits. *Id.*; *see also id.* at 456 n.17 (noting facial challenge standard). Congress may limit coordinated spending, the Court held, because parties "act as agents" for self-

interested donors "who seek to produce obligated officeholders." *Id.* at 452. Unlimited coordinated party expenditures, in other words, would circumvent the contribution limits on PACs and individuals that *Buckley* upheld. *Id.* at 453. And in the Court's view, the efficiency that parties gain from crowdsourcing only amplifies the "threat of corruption" from circumvention. *Id.* Ultimately, the Court applied "closely drawn" scrutiny—the "scrutiny appropriate for a contribution limit"—and facially upheld the coordinated-party-spending limit. *Id.* at 456. The Court rested its government-interest analysis on anticircumvention alone; it did not "reach" whether a "concern with *quid pro quo* arrangements … between candidates and parties themselves" justifies the coordinated-spending limit. *Id.* at 456 n.18.

In dissent, Justice Thomas argued the limit on coordinated party expenditures "cannot pass constitutional muster." *Id.* at 466. The dissent said that coordinated-spending limits restrict "the party's most natural form of communication," "preclude[] parties from effectively amplifying the voice of their adherents," and obstruct "the ability of the party to do what it exists to do." *Id.* at 471 (quotations omitted).

4. Soon after *Colorado II*, Congress enacted the Bipartisan Campaign Reform Act of 2002. BCRA closed a loophole that allowed parties to use "soft money"—unregulated contributions directed to national parties' non-federal accounts—to circumvent FECA's contribution limits. BCRA also prohibited certain electioneering activities, such as issue advertising. *See McConnell*, 540 U.S. at 132. In *McConnell*, the Court reviewed BCRA's soft-money and electioneering provisions and upheld them both "[i]n the main." *Id.* at 224.

BCRA fared worse in later cases. First, in *Wisconsin Right to Life*, the Court held that bans on issue advertisements violate the First Amendment unless the advertisements represent an unmistakable "appeal to vote for or against a specific candidate." *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449, 470 (2007). Another pillar of BCRA fell in 2010, when *Citizens United v. FEC* held unconstitutional BCRA's ban on corporations' and unions' independent campaign expenditures, overruling part of *McConnell*. 558 U.S. 310, 365 (2010); *see id.* at 385 (Roberts, C.J., concurring). In *McCutcheon*, FECA's aggregate-limits provision—capping "how much money a donor may contribute in total to all candidates or committees"—failed constitutional muster. 572 U.S. at 192–93. Most recently, the Court held unconstitutional BCRA's limit on funds raised post-election that campaigns can use to repay candidates for personal loans. *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 305 (2022).

Three key principles emerge from these post-*Colorado II* decisions. First, all campaign-finance restrictions that impair speech and association must pass heightened scrutiny. Second, this Court recognizes only one government interest that can justify such restrictions: eradicating *quid-pro-quo* corruption and its appearance. *Cruz*, 596 U.S. at 305; *McCutcheon*, 572 U.S. at 207. Finally, measures that combat corruption only indirectly—so-called "prophylactics"—raise a red flag.

5. This case raises facial and as-applied First Amendment challenges to FECA's coordinated-party-expenditure limits. §30116(d). The plaintiffs are "the national senatorial and congressional committees of the Republican Party, [former] Senator J.D. Vance, and former Representative Steve Chabot." JA712.

The National Republican Senatorial Committee "makes coordinated party expenditures up to the FECA's limit," but left to its own devices, it would spend more. JA624. Plaintiffs sued in the Southern District of Ohio. The District Court certified the constitutional question to the *en banc* Sixth Circuit. JA643; *see* 52 U.S.C. §30110. The Sixth Circuit saw *Colorado II* as binding "[i]n a hierarchical legal system" and upheld the law. JA722, 726. Chief Judge Sutton's majority opinion acknowledged that this "Court's recent decisions create tension with *Colorado II*'s reasoning." JA718. Judges Thapar, Bush, Stranch, and Bloomekatz wrote concurring opinions. Judge Readler dissented, observing that "intervening precedent," along with changes to "both the statutory and factual backdrops," "leaves *Colorado II* essentially on no footing at all." JA831–32.

6. As the case comes to the Court, the "government agrees with [the plaintiffs and *amici* States] that the challenged statute abridges the freedom of speech under this Court's recent First Amendment and campaign-finance precedents." U.S.Resp.Br.1–2. The Democratic National Committee intervened to defend the law. The Court granted *certiorari* and appointed an *amicus* to join in the DNC's defense of the limits. 660 U.S. __ (U.S. June 30, 2025).

SUMMARY OF ARGUMENT

FECA limits the amount of money that party committees may spend in coordination with the candidates they support. 52 U.S.C. §30116(d)(3). That spending limit violates the Free Speech Clause, *Colorado II* notwithstanding.

I.A. Parties exist to support candidates' election bids and offer policy visions that shape voter and

official behavior. Parties spend time and money promoting preferred candidates. Parties devote most of those resources to political advertisements. This spending is inherent to the party mission and constitutes core political speech and association entitled to full constitutional protection.

B. Coordinated-party-expenditure limits are unenforceable. Campaign-finance laws that restrict speech must survive heightened constitutional scrutiny. Expenditure limits normally are subject to the highest level of review, exacting scrutiny. That should be the standard applied to limits on coordinated party expenditures. But under the rigorous standard for contribution limits, closely drawn scrutiny, coordinated party spending limits still fail.

Coordinated-party-spending limits do not serve any *quid-pro-quo*-corruption prevention rationale. A party does not "bribe" its own candidate in the sense that a private interest might, as candidates join parties and parties endorse candidates *because* their interests align. So the limits cannot serve that goal. The only remaining justification, then, is preventing the "circumvention" of donor contribution limits: that is, stopping donors from using party contributions as a conduit to evade direct contribution limits, which in turn aim to stop donor–candidate *quid pro quos*.

But coordinated-party-spending limits are inadequately tailored to survive on an anticircumvention rationale. Other measures already prevent such circumvention: namely, (1) criminal laws against bribery, (2) donor–candidate base contribution limits, (3) donor–party base contribution limits, (4) earmarking restrictions, and (5) disclosure requirements. Those measures also burden free speech, but they are

accepted as prophylaxes for preventing corruption. Limits on coordinated party spending are an unnecessary added layer. When a donor contributes to the party without any illegal earmark, the donor cedes to the party control of the funds. So a donor cannot realistically overcome *all* those obstacles to use party spending as a conduit for a donor–candidate bribe. If the gambit were possible, then tightening those other restrictions (such as decreasing the party base limits) would be a less restrictive solution.

The Party Expenditure Provision is not tailored adequately for additional reasons. The greater freedom of spending available through Super PACs and politically oriented non-profits—where far more plausible threats of corruption lie—undermines any claim that party-spending limits are closely drawn to a permissible goal. And FECA's three exceptions—areas of unlimited coordinated party spending—undermine any claim to legitimate limits on coordinated party spending. The exceptions render the limits fatally underinclusive; if candidates are corruptible at all, they are just as corruptible through these three channels as any other still-restricted channel (such as political advertising). Accordingly, the record belies the evidentiary burden to show that party coordination causes *quid-pro-quo* corruption.

C. The States' experience (*amici* and otherwise) confirms that coordinated party spending does not facilitate corruption. In these jurisdictions, parties' coordinated spending are sometimes limited and sometimes not. But the data do not bear a difference in corrupt results along that axis of differential policy. That is not for lack of care; *amici* States vigorously fight public corruption.

II. *Colorado II* allows the result that the First Amendment forbids limits on coordinated party expenditures. In a facial challenge, *Colorado II* held that such limits are not categorically unconstitutional. Moreover, changes in law and precedent thoroughly abrogate *Colorado II*'s holding, but if not, this Court should overrule it.

A. Statutory and doctrinal changes displace *Colorado II*'s *stare decisis* effect. Congress amended FECA in 2014 to add exceptions. FECA no longer limits parties' coordinated spending in three areas, §30116(a)(9), (d)(5), where parties and candidates may now fully collaborate. That change undermines *Colorado II*'s rationale. So do regulatory changes against donor–party contributions earmarked for a specific candidate. 11 C.F.R. §110.6.

Doctrinal changes are even more pronounced. Major cases, including *Citizens United*, *McCutcheon*, and *Cruz*, undercut *Colorado II*. Specifically, *Colorado II*'s anticorruption rationale credited the risk of general candidate access or soft influence. Later cases reject that approach and explicitly require an interest against *quid-pro-quo* corruption, akin to bribery. Further, *Colorado II*'s tailoring inquiry was much looser than today's rigorous approach.

B. *Colorado II* resolved a facial challenge only. That makes its holding narrow: coordinated party spending limits are constitutional in some applications, *e.g.*, paying candidates' bills. 533 U.S. at 456 n.17; *but see* §30116(a)(9), (d)(5) (allowing unlimited party spending on candidates' bills for "election recounts" and "legal proceedings"). That holding allows for the as-applied review of coordinated advertising. The parties spend most of their money on political

advertisements, which are not functionally candidate contributions, but the parties' own political speech. *Colorado II* never held otherwise.

C. If *Colorado II* controls the Question Presented, then it should fall. *Colorado II* was wrongly decided for the reasons the four-Justice dissent provided. 533 U.S. at 466, 474 (Thomas, J., dissenting). And *stare decisis* considerations counsel its retirement. The case engenders reliance interests only from Super PACs, their suppliers, and incumbents, while it weakens the rule of law. The Court should correct course even if that requires overruling bad caselaw.

ARGUMENT

"Congress shall make no law … abridging the freedom of speech." U.S. Const. amend. I. FECA's limit on coordinated party expenditures delivers a direct hit to the core of that fundamental right. Party committees may not spend money in coordination with their candidate beyond a set cap. 52 U.S.C. §30116(d)(3); 11 C.F.R. §109.30. That spending limit stifles parties' speech, for "an attack upon the funding of speech is an attack upon speech itself." *McConnell*, 540 U.S. at 253 (Scalia, J., concurring in part and dissenting in part). The party loses its right to communicate and associate with voters in the most effective manner, informed with its preferred candidate's input on how best to achieve their shared goal of electoral victory.

The Free Speech Clause forbids that abridgment, and *Colorado II* does not save the law.

I. Limits on parties' coordinated spending violate the First Amendment.

No one doubts that a limit on coordinated spending restricts speech. Under FECA, party committees can

coordinate without spending, or they can spend without coordinating, *see Colorado I*, 518 U.S. at 615. But they cannot do both. §30116(d)(3). Party–candidate coordination requires communication, and spending money is a classic form of electoral speech and association. *Buckley*, 424 U.S. at 14. In result, coordinated-party-spending limits "impose[] a direct restriction" on the quality and "quantity of expression" disseminated to voters. *See Meyer*, 486 U.S. at 419 (citing *Buckley*, 424 U.S. at 19; quotation omitted). In many ways, then, the Party Expenditure Provision suppresses speech at the highest rung of constitutional significance. And that limit is, at best, a tenuous prophylaxis against *quid-pro-quo* corruption; speech restrictions may not be so loosely drawn to their legitimate objectives.

A. Coordinated party expenditures are core political speech.

The uniquely reciprocal relationship between party and candidate informs the constitutional analysis. Candidates serve the party, and the party serves the candidate. The two share in a rich "constitutional tradition" of "joint First Amendment activity." *Colorado I*, 518 U.S. at 630 (Kennedy, J., concurring in judgment and dissenting in part).

Parties "select[] and support[]" chosen candidates. *Id.* at 629. Candidates, in turn, come to define their party. *Cal. Democratic Party v. Jones*, 530 U.S. 567, 575 (2000); *cf.* The Run Up, *It's Kamala's Party Now. What's Different?*, N.Y. Times (Aug. 22, 2024), https://tinyurl.com/22sppczz; The Vanderbilt Project on Unity & American Democracy, *Majority of Republicans Nationally Identify as MAGA for First Time in Unity Poll*, Vanderbilt University (Feb. 24, 2025),

https://perma.cc/XNN6-QUYJ; C. Douglas Golden, *Meet the Future of the Democratic Party: A Deep Dive on Zohran Mamdani*, The Western Journal (July 6, 2025), https://perma.cc/8SX2-VGCK. Thus, "candidates are necessary to make the party's message known and effective, *and* vice versa." *Colorado I*, 518 U.S. at 629 (Kennedy, J., concurring in judgment and dissenting in part) (emphasis added).

Parties and candidates "have a practical identity of interests … during an election." *Id.* at 630. Both want to win the election and shape public policy. *See Colorado II*, 533 U.S. at 450. The DNC's stated aim is "lifting Democrats all across the country to [electoral] victory." Democratic Nat'l Comm., *What We Do* (last accessed Aug. 26, 2025), https://perma.cc/FH89-83VS. Likewise, the RNC prides itself on "majorities in both the House and Senate." Republican Nat'l Comm., *Who We Are* (last accessed Aug. 26, 2025), https://tinyurl.com/yc3pshxw. Coordination is the "ordinary means for a party to" serve its mission. *Colorado II*, 533 U.S. at 469 (Thomas, J., dissenting). One major party most vividly displayed the power of coordination last summer—after the State primaries—when it nominated for the Presidency a candidate who had not entered that race. Elaine Kamarck, *How Did Kamala Harris Wrap Up the Democratic Nomination in 32 Hours?*, Brookings Inst. (Sept. 3, 2024), https://perma.cc/3MKV-6LP5. The DNC's then-Vice Chairman orchestrated that "modern political miracle," which required "nonstop, intense conversations" among party leaders. *Id.*

Candidate and party success requires messaging and spending. On voter outreach, parties have a comparative advantage to communicate with and for candidates. This is because parties can "aggregat[e]

contributions and broadcast[] messages more widely" and "with greater sophistication" by "using such mechanisms as speech coordinated with a candidate." *Colorado II*, 533 U.S. at 453. Parties are uniquely "efficient in generating large sums to spend and in pinpointing effective ways to spend them." *Id.* The canonical example—restricted by FECA—is parties placing a political advertisement in "consult[ation]" with a candidate. *Id.* at 468 (Thomas, J., dissenting); 52 U.S.C. §30116(a)(7)(B)(i); 11 C.F.R. §§109.37(a), 100.26. Indeed, the "record shows that roughly 97% of the committees' expenditures relate to … political advertising." JA725 (majority op.). Coordinated-spending limits cut off "the most effective mechanism of sophisticated" First Amendment activity, *Colorado II*, 533 U.S. at 453, which "undermines the value of the expenditure," *see Citizens United*, 558 U.S. at 357.

Limits on party spending also create a glaring incongruity in campaign-finance law. The First Amendment secures for candidates and their campaigns the right to unlimited spending. *Buckley*, 424 U.S. at 54–59. Of course, FECA cannot restrain candidate–campaign coordination, even though the campaign is "a legal entity distinct from the candidate himself." *See Cruz*, 596 U.S. at 294. The two have "identi[cal] interests"—winning the election. *Cf. Colorado I*, 518 U.S. at 629 (Kennedy, J., concurring in judgment and dissenting in part). The party committee shares that identical interest. Party expenditures are "indistinguishable in substance" from candidate and campaign expenditures, but (under FECA and *Colorado II*) parties lack uninhibited coordinated speech rights. *Id.* at 630. And yet political parties are supposed to enjoy the full suite of First Amendment rights to participate in political discourse, including speaking for, spending

on, and associating with candidates. *Buckley*, 424 U.S. at 15; *accord Colorado II*, 533 U.S. at 448 n.10.

"[I]nterference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Sweezy*, 354 U.S. at 250. FECA "limits the Part[ies'] associational opportunities at the crucial juncture" of democratic participation. *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 216 (1986). This strikes at the heart of the Free Speech Clause's "fullest and most urgent application." *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971).

B. Coordinated-party-expenditure limits do not prevent *quid-pro-quo* corruption.

"When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions." *McCutcheon*, 572 U.S. at 210. The particulars of that burden depend on the law's place in *Buckley*'s analytical dichotomy between spending and giving. Laws burdening the former, expenditure limits, must withstand "exacting scrutiny," that is, the law must advance a "compelling interest" and use the "least restrictive means" to advance it. *Cruz*, 572 U.S. at 197. And those targeting the latter, contribution limits, must be "closely drawn" to a "sufficiently important interest." *Buckley*, 424 U.S. at 25.

Although the Party Expenditure Provision imposes a spending limit, *Colorado II* treated it as functionally a contribution limit, subject to lesser scrutiny. 533 U.S. at 456. Though that was an analytical error, *see Colorado I*, 518 U.S. at 629 (Kennedy, J., concurring in judgment and dissenting in part); *id.* at 631, 640 (Thomas, J., concurring in judgment and dissenting in part) ("coordinated expenditures" are subject to

and "fail strict scrutiny"), it is not dispositive here. Even assuming the lesser, closely drawn scrutiny applies, this restriction fails that test, as well as any more exacting test. *Accord McCutcheon*, 572 U.S. at 199. The limit at issue here neither advances an important government interest nor is tailored adequately to the sole interest it purports to serve—preventing *quid-pro-quo* corruption.

Important Interest. The restriction on coordinated party spending does not further the only legitimate interest this Court recognizes in the campaign-finance arena: preventing "*quid pro quo* corruption or its appearance." *Cruz*, 596 U.S. at 305 (quotation omitted); *McCutcheon*, 572 U.S. at 207; *Citizens United*, 558 U.S. at 909–910. *Quid-pro-quo* corruption is a particular ailment of the political process that should not be conflated with corruption *simpliciter* or other "loosely conceived" notions of "general influence." *Cruz*, 596 U.S. at 308; *Citizens United*, 558 U.S. at 360 ("ingratiation and access … are not corruption"). That distinction—between generic corruption and *quid-pro-quo* corruption—is critical for "safeguard[ing] basic First Amendment" freedoms. *McCutcheon*, 572 U.S. at 209.

1. Begin, then, with what is a *quid pro quo*. The Latin phrase connotes a corrupt agreement: "dollars for political favors." *See Nat'l Conservative PAC*, 470 U.S. at 497. A *quid pro quo* requires "specific intent to give or receive something of value in exchange for an official act." *United States v. Sun-Diamond Growers of Cal.*, 526 U.S. 398, 404–05 (1999). Such an agreement obtains "only if the payments are made in return for an explicit promise or undertaking by the official to perform or not to perform an official act." *McCormick v. United States*, 500 U.S. 257, 273 (1991).

In a *quid-pro-quo* arrangement, the corrupted official performs public acts for illegitimate "private gain, not for the public good." *Snyder v. United States*, 603 U.S. 1, 6 (2024); *Marinello v. United States*, 584 U.S. 1, 21 (2018) (Thomas, J., dissenting).

An agreement is *corrupt* if it has a "wrongful, immoral, depraved, or evil" character. *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005); *cf. Fischer v. United States*, 603 U.S. 480, 494 (2024); *United States v. Fischer*, 64 F.4th 329, 352–56 (D.C. Cir. 2023) (Walker, J., concurring in part) (corruption requires "intent to procure an unlawful benefit"); *United States v. North*, 910 F.2d 843, 942 (D.C. Cir. 1990) (Silberman, J., concurring in part and dissenting in part). It is insufficient that a donor's motivation is "to buy favor or generalized goodwill from a public official." *United States v. Ganim*, 510 F.3d 134, 147–49 (2d Cir. 2007) (Sotomayor, J.). Nor does a gratuity qualify. *Snyder*, 603 U.S. at 18. In effect, *quid-pro-quo* corruption entails a bribe by which a candidate accepts "any undue reward to *influence* his behaviour in his office." *United States v. Sittenfeld*, 128 F.4th 752, 792 (6th Cir. 2025) (Murphy, J., concurring) (quoting 5 St. George Tucker, *Blackstone's Commentaries* 139 (1803); emphasis in *Sittenfeld*); *see* Christopher Robertson *et al.*, *The Appearance and Reality of* Quid Pro Quo *Corruption: An Empirical Investigation*, 8 J. Legal Anal. 379 (2016).

Putting that together, spending limits can be imposed only to prevent elected officials from agreeing to "act contrary to their obligations of office by the prospect of financial gain." *Nat'l Conservative PAC*, 470 U.S. at 497. Any general concerns that a donation will curry "general influence" takes political speech as intolerable collateral damage. *Cruz*, 596 U.S. at 305;

JA736 (Thapar, J., concurring) ("the only permissible goal of campaign-finance regulations is preventing bribery and its appearance"). It is unrealistic that a party would corrupt its own candidate through coordinated spending.

2. Parties are differently situated vis-à-vis candidates from private individuals, (Super) PACs, and other nonprofits, whose private interests introduce risk of corrupt campaign activity. *Buckley*, 424 U.S. at 23, 35. Political parties pose no similar "specter of corruption." *Mass. Citizens for Life*, 479 U.S. at 263. Parties do not seek to change policy to make money; they seek to raise and spend money to make policy. Influencing politicians is the parties' transparent purpose, not a "subversion of the political process." *See Nat'l Conservative PAC*, 470 U.S. at 497. It is difficult to conceive how a party would bribe its own candidate—or how the public would perceive as much. *See Colorado I*, 518 U.S. at 646 (Thomas, J., concurring in judgment and dissenting in part) (posing the question); JA240 (expert report that "the now clearer understanding of what constitutes 'corruption' … calls into serious doubt any notion that parties can act as corrupt conduits." (quotation omitted)). Given the "practical identity of interests between the two entities during the election," the prospect of a corrupting agreement is "fanciful." *Colorado I*, 518 U.S. at 630 (Kennedy, J., concurring in judgment and dissenting in part).

Party–candidate coordination is not a harm to avoid but is instead a *positive* force of democratic accountability in representative government. In other words, it is a democratic feature, not a bug. Parties, like legislatures, are representative organs that respond to public sentiment. Leadership roles in state

party committees often are directly elected by voters. *See, e.g.*, Ohio Rev. Code §3517.02. And national committee members hold their appointment either by selection from the state parties or by virtue of their elected office, meaning they were chosen by voters. *See* The Charter and Bylaws of the Democratic Party of the United States, art. 3, §§2–3, perma.cc/M85SAGM7; The Rules of the Republican Party, Rules 1–2, https://perma.cc/UT6Y-6URX. Members of Congress also lead the House and Senate party committees, including the committee plaintiffs here. JA662–64 (fact findings ¶¶9–18). Party leadership at every level, then, responds to the electorate. "Such responsiveness is key to the very concept of self-governance through elected officials." *McCutcheon*, 572 U.S. at 227. Candidates and parties working in tandem to find the winning message "is simply the essence of our Nation's party system of government." *Colorado II*, 533 U.S. at 477 (Thomas, J., dissenting). A candidate's association with a party, and the party's reciprocal endorsement, is perhaps the clearest message voters receive. *See Tashjian*, 479 U.S. at 215. This coordination "can hardly be called corruption," certainly not the bribery-style corruption that the government may permissibly target. *Nat'l Conservative PAC*, 470 U.S. at 498. Parties do not "corrupt" democracy—they *are* democracy.

3. "To recast" the "shared interest" of parties and candidates "as an opportunity for *quid pro quo* corruption would dramatically expand government regulation of the political process." *McCutcheon*, 572 U.S. at 226. But "there is no risk that" parties themselves will corrupt candidates via coordinated spending. *Id.* at 210. That leaves "the Government [to] defend" coordinated spending "limits by demonstrating that

they prevent circumvention" of donor contribution limits. *Id.*; 52 U.S.C. §30116(a). An anticircumvention justification is conceptually plausible but fatally untailored.

Tailoring. Here, "fit matters." *McCutcheon*, 572 U.S. at 218. A "closely drawn" measure must be "narrowly tailored to" prevent *quid-pro-quo* corruption and "avoid unnecessary abridgement of First Amendment rights." *Id.* at 199, 218 (quotation omitted). Adequate tailoring does not require the least restrictive measure, but it does require demonstrating the restriction's "need … in light of any less intrusive alternatives." *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 613 (2021). The government must carry its burden with *evidence*; "anecdote and supposition" will not do. *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803, 822 (2000).

1. The notion that coordinated spending facilitates bribery-style corruption merits "a measure of skepticism." *Cruz*, 596 U.S. at 306. And when in doubt, the "First Amendment requires [courts] to err on the side of protecting political speech rather than suppressing it." *Wis. Right to Life*, 551 U.S. at 457. At best, a defense for limiting coordinated party spending could rest on an anticircumvention rationale that donors could "use parties as conduits" of corruption. *Colorado II*, 533 U.S. at 452. Moneyed interests, the theory runs, will bypass FECA's direct-contribution limits by channeling their corrupt inducements through party spending. Whatever marginal barrier on corruption coordinated-spending limits may provide, it does not justify the dramatic cost on speech infringement, especially because less intrusive alternatives are apparent.

2. To start with, other barriers against *quid-pro-quo* corruption—"prophylaxis-upon-prophylaxis"—"indicat[e] that the regulation may not be [a] necessary" addition. *Cruz*, 596 U.S. at 306. Means attenuated from their end suggest that the restriction is but a Trojan horse for the "impermissible desire simply to limit political speech." *McCutcheon*, 572 U.S. at 192. Here, at least five layers of protection separate coordinated party spending from corruption. JA736–37 (Thapar, J., concurring).

First, bribery is a federal offense. 18 U.S.C. §210(b); *Snyder*, 603 U.S. at 12. The criminal law already roots out the *quid-pro-quo* corruption that could justify FECA's spending limit. *Cf. United States v. Householder*, 137 F.4th 454, 471 (6th Cir. 2025). The First Amendment does not protect speech to induce a bribe, *United States v. Hansen*, 599 U.S. 762, 783 (2023); *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 502 (1949), so Congress may (and has) directly address the source of the ill FECA envisions: the bribers. *See Sabri v. United States*, 541 U.S. 600, 605 (2004).

Second, FECA caps the amount donors can contribute to candidates and campaigns. 52 U.S.C. §30116(a)(1)(A). *Buckley* upheld these base limits. 424 U.S. at 29. Nonetheless, they "are a prophylactic measure." *McCutcheon*, 572 U.S. at 221. For "few if any contributions to candidates will involve *quid pro quo* arrangements." *Id.* (quoting *Citizens United*, 558 U.S. at 357). But the limits stand just in case.

Third, relatedly, FECA caps the amount donors can contribute to parties. §30116(a)(1)(B); 11 C.F.R. §110.1. Parties cannot accept donations above the limit. 11 C.F.R. §110.9. Donors could exploit parties

to broker a corrupt agreement only if the contribution amount is sufficiently enticing. So party base limits stand as "an additional hurdle for a donor." *McCutcheon*, 572 U.S. at 201. Again here, the limits are "preventative" (and hardly so), because most or all contributions will be aboveboard. *See id.* at 221. But if not, Congress's tailored solution would be to reduce party base limits rather than prevent party–candidate coordination. Dialing back party base limits represents "a lesser burden" than "limits that flatly ban [coordinated spending] beyond certain levels." *Id.*

Fourth, restrictions on earmarking "disarm" the risk of donor-to-party-to-candidate corruption by prohibiting "implicit agreements to circumvent the base limits." *Id.* at 211, 222–23; 11 C.F.R. §110.6. Donors' contributions to parties that are designated for a specific candidate—explicitly or otherwise—count "as contributions from such person to such candidate." §30116(a)(8). In today's "intricate regulatory scheme," a donor would struggle to get attribution for unearmarked party contributions. *McCutcheon*, 572 U.S. at 201. The earmarking restrictions prevent using parties as "an intermediary or conduit to [a] candidate," §30116(a)(8), so circumventing candidate base limits as part of a corrupt agreement would require donors to also circumvent FECA's earmarking requirements. To the extent circumvention is possible, tighter earmarking regulations are preferable to party-coordination limits.

Last, FECA saddles parties with detailed disclosure obligations. §30104(b). Sunlight, after all, is the best disinfectant. L. Brandeis, *Other People's Money* 92 (The McClure Publications 1914) (available online at Google books); R.W. Emerson, *The Conduct of Life* 197 (Smith, Elder & Co. 1860) (same). The "disclosure

of contributions minimizes the potential for abuse of the campaign finance system," it is more effective now than ever, and it "represents a less restrictive alternative to flat bans on certain types or quantities of speech." *McCutcheon*, 572 U.S. at 223–24; *see Buckley*, 424 U.S. at 56.

Only after a briber convinces a candidate that a party contribution within FECA limits is enough *quid* for the *quo*—and only if the donor manages to skirt criminal detection, earmarking, and disclosure—would limits on coordinated party spending spring to action. JA737 (Thapar, J., concurring). "[I]t is hard to imagine what marginal corruption deterrence could be generated by" an extra layer. *See Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 752 (2011). Still then, the briber is just half-way home: The party would need to agree to middleman the scheme. The risk of "corruption or its appearance" decreases "when money flows through independent actors" like parties. *McCutcheon*, 572 U.S. at 210. The earmarking rules ensure donors "cede control over the funds" to the party, which allocates at its own "discretion." *Id.* at 211. As detailed above (at 14–15), party allocation serves transparent electoral-victory interests, not nefarious private interests. *See* JA691–92 (fact findings ¶¶108–09).

Tellingly, the law's defenders have failed to provide evidence to justify the restriction's "need … in light of any less intrusive alternatives." *See Bonta*, 594 U.S. at 613; *Colorado I*, 518 U.S. at 618 (government cannot "simply posit the existence of the disease sought to be cured"). The record is devoid of proof that contributors have used donations to political parties to funnel bribes to specific candidates. U.S.Resp.Br.11.

3. Unnecessary speech burdens are but one tailoring flaw. *McCutcheon*, 572 U.S. at 218. Each of FECA's exceptions "undercuts whatever marginal role the expenditure limitations might otherwise play in enforcing the contribution ceilings." *Buckley*, 424 U.S. at 56. FECA no longer limits coordinated party spending related to "a presidential nominating convention," the "headquarters building of the party," or "election recounts and contests and other legal proceedings." 52 U.S.C. §30116(a)(9), (d)(5). These exceptions introduce under-inclusivity problems that "raise[] serious doubts about whether the government is in fact pursuing the interest it invokes." *Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 777 (2018).

To the extent coordinated party spending could ever facilitate *quid-pro-quo* corruption, FECA's three unlimited channels provide a viable path to circumvent contribution limits. JA859 (Readler, J., dissenting). To illustrate, a donor seeking to induce a corrupt agreement by circumventing the base limits (and navigating the other prophylaxes) could simply finance a presidential convention, new party headquarters, or election-challenge lawsuit (although recounts seldom succeed). Those avenues, where party coordination is unlimited, are as plausible as, say, coordinated advertising to entice a candidate's fealty. In the scenario that a financier supports a successful election challenge, leading the candidate to victory, the line between gratitude and indebtedness may blur. Or surely a Senate candidate would appreciate the benefactor that facilitated her home State playing host to the presidential convention—modern-day "publicity extravaganzas, devoted to promoting the platform and candidate[s] of a dominant political party." JA860 (Readler, J., dissenting) (quotation omitted). If

candidates are corruptible through party coordination, FECA's exceptions dismember its restrictions.

4. Finally, channels of contribution other than parties are far more attractive conduits for potential bribers. As noted, the convoluted path to bribery through coordinated party expenditures—as compared to alternative options—makes the targeted limits on parties beyond untailored, and plain irrational. A tailored law aims its "response to [a] problem" at "its source," *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 361 (2009), here, the potential briber. Such a person could more easily enlist a Super PAC or other non-profit as her choice conduit. BCRA ignited an explosion of Super-PAC "expenditures for federal elections," which "now far exceed those of political parties." JA842 (Readler, J., dissenting); JA706; *see also McCutcheon*, 572 U.S. at 214 n.9; *cf. SpeechNow.org v. FEC*, 599 F.3d 686, 695–96 (DC Cir. 2010) (*en banc*). Super PACs' defining characteristics are unlimited contributions paired with no permissible candidate coordination. Donors' revealed preference for giving to Super PACs over parties shows where the risk of corruption, if any, does and does not lie. If coordinated spending aided corruption, then bribers would not choose Super PACs over parties.

Other private entities, too, namely non-profit 501(c) organizations, attract political donors. Such entities operate without contribution limits or disclosure requirements. *See* 26 U.S.C. §6104(d). FECA's limits incentivize the increasing "movement of money" toward such entities as preferable "avenues for political speech." *McCutcheon*, 572 U.S. at 224. "Money, like water, will always find an outlet." *McConnell*, 540 U.S. at 224. That moneyed interests have trended toward Super PACs and non-profits is yet another

"indicator that the regulation" of coordinated party spending is not tailored to the problem it purports solve, *Cruz*, 596 U.S. at 306, "while seriously restricting" parties' most effective "participation in the democratic process," *McCutcheon*, 572 U.S. at 193. Ironically, the chokehold on party funding has, if anything, channeled funds *away* from democratically accountable party organs to non-transparent private entities. So the Party Expenditure Provision is not merely ineffective, but also affirmatively counterproductive to anticorruption and democratic legitimacy.

Measures other than coordinated spending limits, such as earmarking regulations, are better suited to prevent corruption through circumvention of candidate base limits. If extant measures are inadequate, solutions narrower than coordinated-spending limits avail themselves to Congress. An obvious example is decreasing the party base limit. At a minimum, coordinated-party-spending limits are poorly drawn to prevent *quid-pro-quo* corruption.

C. State experience shows coordinated-party-spending limits are needless.

If coordinated party spending were integral to *quid-pro-quo* corruption, one would expect trouble in the States with unlimited coordination. But many States have no such limits, with no evidence of corruption through coordinated spending. The dearth of party-as-conduit corruption in these States is "telling" evidence *against* the need for coordinated-party-spending limits in federal elections. JA722 (majority op.).

State experience informs the Court's campaign-finance cases. In *Citizens United*, over half the States did "not restrict independent expenditures by for-

profit corporations," but no evidence suggested such spending "corrupted the political process in those States." 558 U.S. at 357. And *McCutcheon* questioned aggregate limits' vitality to prevent corruption absent evidence of "circumvention of base limits from the 30 States with base limits but no aggregate limits." 572 U.S. at 209 n.7.

Coordinated-party-spending limits come with the same defect. Over half the States allow party coordination without limits. *E.g.*, Ohio Rev. Code §3517.102(B).* Most of those States *do limit* donor–candidate contributions. *E.g.*, *id.* By FECA's hypothesis, therefore, donors in those States should use state parties to circumvent state-candidate base limits. But they do not. This exposes the fiction that donors exploit parties' coordinated spending as instruments of corruption.

In fact, *more* bribery would seemingly arise in state campaigns. State campaigns are cheaper, so the dollar goes a longer way. They are subject to less

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See Ala. Code §17-5-15; Ariz. Rev. Stat. §§16-911(B)(4)(b), 16-922(E); Cal. Gov't Code §§85301, 85400(c); 10 Ill. Comp. Stat. 5/9-8.5(b); Ind. Code §3-9-2-1 *et seq.*; Iowa Code §68A.101 *et seq.*; Kan. Stat. §25-4153(f); Ky. Rev. Stat. §121.150; La. Stat. §18:1505.2(H)(1); Miss. Code §23-15-807; Miss. Sec'y of State, 2025 Campaign Finance Guide 17; N.C. Gen. Stat. §163-278.13(h); N.D. Cent. Code §16.1-08.1-01 *et seq.*; 2013 Neb. Laws 79, §41 (repealing Nebraska Campaign Finance Limitation Act after *State ex rel. Stenberg v. Moore*, 258 Neb. 738, 738 (Neb. 2000)); N.J. Stat. §19:44A-29; N.J. Admin. Code §19:25-11.2; N.Y. Elec. Law §14-114(1), (3); Or. Rev. Stat. §260.005 *et seq.*; 25 Pa. Stat. §3253; S.D. Codified Laws §12-27-7(4); Tex. Elec. Code §253.094; Utah Code §20A-11-505.7; Vt. Stat. tit. 17, §2941(a)(1)(B); Va. Code §24.2-945; W. Va. Code §3-8-9b; Wis. Stat. §§11.1101, 11.1104(5); Wyo. Stat. §22-25-102(f).

public scrutiny, so detection is less likely. State candidates represent fewer constituents and so are more accessible. And state legislators realistically are better positioned to affect public policy (more attractive targets for bribers), as gridlock features more prominently in Congress than in States. For example, few States have a legislative filibuster as prohibitive as the Senate's.

Public corruption, to be sure, rears its head in the States with unlimited party spending—but coordinated party spending does not facilitate it. *E.g.*, *Householder*, 137 F.4th at 476. And States combat it. *See, e.g.*, Julie Carr Smyth & Samantha Hendrickson, *Fired FirstEnergy execs indicted in $60 million Ohio bribery scheme; regulator faces new charges*, AP News (Feb. 12, 2024), perma.cc/TYK6-ATVD. Most relevant, coordinated spending has not been corruption's main channel. State experience confirms that limits on coordinated party spending are unnecessary to prevent *quid pro quos*.

II. *Colorado II* is outdated, non-controlling, and wrong.

Colorado II does not pretermit the conclusion that FECA's coordinated-spending limit is unconstitutional. Statutory amendments and doctrinal developments both supersede *Colorado II*. Even at face value, that case rejected a facial challenge only. But if it remains operative precedent, *see* JA722 (majority op.), *Colorado II* is wrong, and *stare decisis* values do not redeem its holding.

A. Both statutes and cases supplant *Colorado II*.

The law *Colorado II* upheld is not the one the Court confronts today. Statutory and doctrinal changes post-*Colorado II* both release its *stare decisis* effect. *See* JA827 (Readler, J., dissenting). *McCutcheon* gave "plenary" review to FECA's aggregate limits even though *Buckley* had addressed them previously—for the same reasons, *Colorado II* permits fresh review here. *See McCutcheon*, 572 U.S. at 203.

Statutory Developments. *First*, FECA itself is different; Congress amended it in 2014. Three categories of coordinated party spending now are unlimited (or nearly so), provided the funds come from a party's "separate, segregated account": funds to a repay expenses from (1) a "presidential nominating convention"; (2) construction and operation of a party headquarters; and (3) for "election recounts and contests and other legal proceedings." 52 U.S.C. §30116(a)(9), (d)(5). As discussed above (at 25), "closely drawn" analysis now differs in light of these exceptions, because such channels of coordinated spending are as open as any other to induce a corrupt agreement. *See* JA840 (Readler, J., dissenting). The States, to clarify, believe that likelihood is near-zero, but the point stands that other applications of coordinated spending are *no more likely* than those three now-unlimited outlets to foster a *quid pro quo*. The once-tenuous claim that limiting coordinated spending prevents corruption is now outright spurious.

Since *Colorado II* as well, BCRA walled-off "soft money" contributions to parties that were previously unregulated. That structural change gave rise to Super PACs. *See* Ian Vandewalker & Daniel I. Weiner,

Stronger Parties, Stronger Democracy: Rethinking Reform 5–6, Brennan Center for Justice (Sept. 16, 2015). Meanwhile, the FEC tightened its regulatory framework. Namely, the earmarking rules are stricter than in 2001. *See* 11 C.F.R. §110.6. Today's earmarking requirements "disarm" donors and candidates from using parties as conduits of corruption. *Above* 23; *contra Colorado II*, 533 U.S. at 462.

Doctrinal Developments. *Second*, and more acutely, this case surfaces "at a different point in the development of campaign finance regulation." *McCutheon*, 572 U.S. at 203. *Colorado II* preceded BCRA, *McConnell*, *Citizens United*, *McCutcheon*, and *Cruz*, among others. That makes a difference.

Colorado II rested on a capacious view of permissible anticorruption justifications. The majority conceptualized corruption "not only as *quid pro quo* agreements, but also as an undue influence on an officeholder's judgment, and the appearance of such influence." *Colorado II*, 533 U.S. at 441. That does not square with the administrable modern line that "the prevention of '*quid pro quo*' corruption or its appearance" is the "one permissible ground for restricting political speech." *Cruz*, 506 U.S. at 305. Limiting "the general influence a contributor may have over an elected official" is decidedly not a permissible government interest. *Id.*; *Citizens United*, 558 U.S. at 359–60. Justice Breyer, dissenting in *McCutcheon*, assailed this very development: The Court formerly recognized preventing "undue influence on an officeholder's judgment" as a valid government interest, but (wrongly in his view) updated the doctrine to reject that "considerably broader definition" of corruption. 572 U.S. at 239–40 (Breyer, J., dissenting) (quoting *FEC v. Beaumont*, 539 U.S. 146, 155–56 (2003)).

Colorado II focused on that broader—now-rejected—general-influence justification. The Court did not "reach" any "concern with *quid pro quo* arrangements … between candidates and parties themselves," resting its entire analysis on an anticircumvention rationale. *Colorado II*, 533 U.S. at 456 n.18. The Court did not mean circumvention of anti-*quid-pro-quo* measures, however, but rather cited "combating circumvention of contribution limits designed to combat the corrupting *influence* of large contributions to candidates from individuals." *Id.* (emphasis added). The Court feared that a system of coordinated party spending fosters unfair access, where "substantial donations turn the parties into matchmakers whose special meetings and receptions give the donors the chance to get their points across to the candidates." *Id.* at 461. In other words, *Colorado II* never reasoned that coordinated spending would make parties a conduit of bribery-style corruption, only a conduit of "more subtle" communication so that candidates might "know whom to thank." *Id.* at 460 n.23.

The Court's post-*Colorado II* jurisprudence draws an "administrable line between money … for which the candidate feels obligated" to a private donor and money "for which the candidate … feels grateful." *McCutcheon*, 572 U.S. at 225–26. Curbing the "possibility that an individual who spends large sums may garner influence over or access to elected officials or political parties" is a justification this Court rejected. *Id.* at 208 (quotation omitted); *Citizens United*, 558 U.S. at 359.

Also, the Court approaches tailoring with more rigor today. Closely drawn scrutiny "demands narrow tailoring." JA719 (majority op.) (quotation omitted; alterations accepted). But *Colorado II* "made no

mention of narrow tailoring and seemed to disavow it, saying" even "unskillful tailoring" would suffice. *Id.* (quoting *Colorado II*, 533 U.S. at 463 n.26).

B. *Colorado II* narrowly rejected facial invalidity.

Even if *Colorado II* remains binding precedent in the modern legal landscape, that decision "left … room" for as-applied review. *Wis. Right to Life*, 551 U.S. at 456. A holding that rejects a First Amendment facial challenge means that the challenged law is capable of *some* lawful applications. *Moody v. NetChoice, LLC*, 603 U.S. 707, 718 (2024).

Indeed, *Colorado II* expressly invited "an as-applied challenge focused on application of the limit to specific expenditures" apart from the "facial challenge" before the Court. 533 U.S. at 456 n.17. And this Court has noted, after *Colorado II*, that facial rulings do not "purport to resolve future as-applied challenges," *Wis. Right to Life, Inc. v. FEC*, 546 U.S. 410, 412 (2006) (*per curiam*). That facial framing allowed the Court to isolate the most contribution-like coordinated spending, such as coordinating to pay "the candidate's bills." *Colorado II*, 533 U.S. at 456 n.17. "Coordinated spending by a party," the Court reasoned, "covers a spectrum of activity," so for facial review the Court could focus on spending "virtually indistinguishable from simple contributions." *Id.* at 444–45 (quotation omitted).

That matters here. Now, the plaintiffs press an as-applied challenge backed by record evidence and fact findings that the committees wish to coordinate their spending with candidates to optimize their political activity. Nearly all party-committee spending goes toward political advertising, and surely coordination

would refine targeted messaging. *See* JA681–82 (fact findings ¶82). The First Amendment secures that coordinated political activity, and nothing *Colorado II* said suppresses it.

C. *Stare decisis* considerations counsel overruling *Colorado II*, if necessary.

If the Court agrees with the Sixth Circuit that statutory and doctrinal changes fail to unseat *Colorado II* and that its holding forecloses fresh as-applied review, then this Court holds one recourse that the Circuit lacked: overruling *Colorado II*. *See* JA719. *Colorado II* was wrongly decided. Justice Thomas explained why exacting scrutiny was appropriate and why limits on coordinated party expenditures fail even closely drawn scrutiny. *See Colorado II*, 533 U.S. at 466, 474 (dissenting op.).

It is not necessarily enough, however, to prove a precedent wrong. The Court weighs other factors before overruling past decisions. Here, those factors—quality of reasoning, consistency with the body of law, changes in factual and legal circumstance, reliance interests, and workability—all counsel correcting *Colorado II*'s mistake. *Ramos v. Louisiana*, 590 U.S. 83, 118 (2020) (Kavanaugh, J., concurring in part).

The bottom-line: *Colorado II* hurts the rule of law. *Citizens United*, 558 U.S. at 378 (Roberts, C.J., concurring). *Colorado II* was poorly reasoned. *Above* 16–27. Its result is incompatible with the campaign-finance law at large. *Above* 31–32. Developments in law and circumstance since 2001 frustrate *Colorado II*'s rationale. *Above* 30–32. The decision is inconsistent with the "general tenor of legal principles." *See Loper Bright Enters. v. Raimondo*, 144 S. Ct. 2244, 2276–77 (2024) (Gorsuch, J., concurring) (quotation

omitted). Workability and reliance-interests considerations fare poorly, too.

The restriction is workable in the sense that parties currently *do* limit their coordinated spending. 11 C.F.R. §100.16. The restriction remains unworkable, however, because it is incongruent with unlimited candidate–campaign coordination, even though candidates, campaigns, and parties "have a practical identity of interests." *Colorado I*, 518 U.S. at 630 (Kennedy, J., concurring in judgment and dissenting in part). Coordination restrictions are unworkable also because they help drive funds from democratically accountable parties to Super PACs. JA213 (expert report). Coordination is parties' one "true competitive advantage over Super PACs." JA239. Coordination limits contribute to parties' precariously weakened position in today's political environment. JA213–15.

Nor do coordinated-spending limits engender weighty reliance interests. Two communities can lay claim to reliance on coordinated-party-spending caps: incumbents and top-dollar donors. Spending limits "handicap a candidate who lacked substantial name recognition or exposure of his views before the start of the campaign." *Buckley*, 424 U.S. at 57. The newcomer candidate's handicap is the incumbent's gain. Such limits force the newcomer to spend more time fundraising, which means less time spreading her message to prospective voters. Lesser-known challengers far more so than name-recognized incumbents bear the incidence of that opportunity cost. Of course, "wealthy interests" enjoy coordination limits because they incentivize "nontransparent, unaccountable" Super PACs. JA215 (expert report). Those interests suggest a market correction would actually enhance election integrity by rechanneling campaign activity

through the most transparent, accountable vectors of political association in modern self-government: political parties.

This Court boasts a "lengthy and extraordinary list of landmark cases that overruled precedent." *Ramos*, 590 U.S. at 118 (Kavanaugh, J., concurring in part). If it is necessary to overrule *Colorado II* to secure parties' speech rights, then it is necessary to overrule *Colorado II*.

CONCLUSION

The Court should hold the Party Expenditure Provision unconstitutional.

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