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

BRIEF OF *AMICI CURIAE* STATE OF OHIO AND 13 OTHER STATES IN SUPPORT OF THE PETITIONERS

DAVE YOST
Ohio Attorney General

T. ELLIOT GAISER*
**Counsel of Record*
Ohio Solicitor General
STEPHEN P. CARNEY
TRANE J. ROBINSON
Deputy Solicitors General
30 E. Broad St., 17th Fl.
Columbus, Ohio 43215
614.466.8980
thomas.gaiser@ohioago.gov

Counsel for Amicus Curiae State of Ohio
(additional counsel listed at the end of the brief)

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INTRODUCTION AND STATEMENT OF AMICI INTEREST*

The amici States—Ohio, Alabama, Arkansas, Indiana, Iowa, Georgia, Kansas, Kentucky, Louisiana, Nebraska, South Carolina, South Dakota, Texas, and West Virginia—have strong interests not only in how our citizens select our federal representatives, but also in protecting the associations of those citizens to promote their candidates through political parties. Indeed, "[o]ur form of government is built on the premise that every citizen shall have the right to engage in political expression and association," and the "[e]xercise of these basic freedoms in America has traditionally been through the media of political associations." *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (plurality op.). Thus, the amici States recognize, "[a]ny interference with the freedom of a party is simultaneously an interference with the freedom of its adherents." *Id.*

The federal laws at issue here, which limit so-called "coordinated party expenditures," thus implicate Amici States' interests. As the name suggests, that regulation restricts spending by a political party, and in particular, it restricts a party's spending to promote a candidate when the party *coordinates* that spending with the candidate's own campaign committee.

Political parties are uniquely situated in American society; the parties differ from every other organized political group. The parties and their candidates have

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* The amici States provided all parties with the notice required by Rule 37.2(a).

a special, reciprocal relationship. The political party exists to see its candidates elected. Candidates, in turn, shape and run on their party platforms. Indeed, citizens become candidates only with party approval.

As associations of American citizens designed to channel their views, parties are entitled to free-speech rights under the First Amendment. Party speech is inherently political—every message a party communicates carries political connotation, even statements about religion. *See* DNC Statement on Hanukkah (Dec. 25, 2024), https://democrats.org/news/dnc-statement-on-hanukkah-5/. Because parties are political entities, they are constantly involved in core political speech. So if anything, their identity as political actors bolsters, not dilutes, parties' speech rights, especially in election campaigns.

Perhaps this is why many of the States comprehensively regulate campaign finance but impose no limits on coordination between parties and their candidates. At least 24 States' laws regulate campaign finance without limiting coordinated party expenditures. *See* below at 20. And the sky has not fallen in that diverse array of jurisdictions. Like defendants below, the States cannot point to any example of parties corrupting their candidates. *See* Pet.App.14a ("no evidence of corruption has materialized" in the states without state-level limits on coordinated party expenditures).

Because these limits do not serve an anti-corruption purpose, and also because they are not closely drawn to meet such an interest, the limits at issue in this case violate the Free Speech Clause. The law restricts the amount parties can spend in coordination with their chosen candidates. That spending limitation amounts to a speech limitation.

True, the Court previously rejected a facial challenge to an earlier version of the same basic coordinated-expenditure limitation. *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) (*Colorado II*). But both statutory and doctrinal changes have overtaken that case. Applying today's precedent to today's statutes, the coordinated-party-expenditure limit fails "closely drawn" scrutiny and thus cannot survive judicial review under the First Amendment.

Colorado II should not stand in the way of vindicating the First Amendment's robust speech and associational protections here—the Court should either distinguish *Colorado II* based on changes to the statute or, to the extent that it cannot be distinguished, overrule it. After all, the "First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office." *FEC v. Cruz*, 596 U.S. 289, 302 (2022) (quotation omitted).

For all these reasons and more, the Court should review this case and hold the challenged coordinated-party-expenditure provisions unconstitutional.

STATEMENT

1. The Federal Election Campaign Act govern political contributions and expenditures. For contributions, the Act caps the dollar amount individuals may contribute to political party committees. 52 U.S.C. §30116(a). And the Act in turn limits the amount those committees may distribute to candidates for federal office. §30116(c)-(d).

For expenditures, the Act caps the party committees' expenses for their chosen candidates. Expenditures can be coordinated or independent; the Act

limits both. This Court held in *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996) (*Colorado I*), that the limit on independent expenditures—those without candidate participation—violates the First Amendment. But in *Colorado II*, this Court held the Act's limits on coordinated expenditures—those involving candidate "cooperation," 11 C.F.R. §109.20(a)—is not facially unconstitutional. The Court equated coordinated expenditures to direct contributions and applied *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*). The Act today, under *Colorado II*, limits party committees' ability to coordinate their spending with the candidates they wish to support. This Court's precedent, however, prevents applying any such limit to independent expenditures.

2. Congress amended the Act in 2014 by adding three exceptions to the party committees' limits on coordinated expenditures. *See* §30116(d)(5) (cross-referencing §30116(a)(9)). The previous expenditure caps now do not apply to party committees' coordinated expenditures drawn from accounts used "to defray" costs of: (1) funding "a presidential nominating convention" (up to $20 million); (2) building and operating party "headquarters buildings"; and (3) "election recounts … and other legal proceedings." §30116(a)(9).

3. Petitioners "are the national senatorial and congressional committees of the Republican Party, Senator J.D. Vance, and former Representative Steve Chabot." Pet.App.4a. The National Republican Senatorial Committee "makes coordinated party expenditures up to the [Act's] limit but has a desire to expend more monies in support and in conjunction with senatorial candidates in excess of those limits." Pet.App.168a. The Act's limit on coordinated party

expenditures limits the petitioner committees' ability to support their preferred candidates.

4. Petitioners sued in the Southern District of Ohio, raising a First Amendment challenge to the coordinated-party-expenditure limits. The District Court certified the constitutional question to the *en banc* Sixth Circuit. Pet.App.186a; *see* 52 U.S.C. §30110. A ten-judge majority, seeing *Colorado II* as this Court's binding precedent "[i]n a hierarchical legal system," rejected the challenge facially and as-applied. Pet.App.4a, 9a (op. of Sutton, C.J.). Judges Thapar and Bush wrote concurring opinions and Judges Stranch and Bloomekatz wrote opinions concurring in the judgment. 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." Pet.App.124a–25a.

SUMMARY OF ARGUMENT

This case cries out for review because of the apparent conflict between the Court's *Colorado II* decision, which upheld the then-limits on coordinated-party-expenditures, and the intervening statutory and caselaw changes, which undermine that holding.

First, the statute formerly applied to *all* coordinated party expenditures, but amendments have carved out exceptions. The new swiss-cheese approach undercuts the validity of any claimed interest in across-the-board restrictions.

Second, the old case law allowed limits to be justified by an alleged need to curtail "undue influence" by donors. Now, the Court has rejected that watered-down interest, demanding that any limits be justified

in terms of preventing actual or perceived quid-pro-quo corruption. The limits do not meet that test.

Third, both the statutory and precedential changes have reshaped the landscape by incentivizing the growth of PACs and SuperPACs and other entities as primary conduits for massive contributions and spending, weakening the parties in turn. Those other avenues leave parties the least likely conduit for any potential corruption, but render coordination limits ineffective and actually harmful, as they further degrade the *most* democratic entities in our political system. Weakening democratic institutions like political parties in the name of saving democracy is upside down. The Court should grant review to set things right.

ARGUMENT

A "constitutional line" separates "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.). This case asks whether the cap on coordinated party expenditures is on the unconstitutional side of the line. Regardless of the answer, it is an important question, which is why the Court took it up once before, holding in *Colorado II* that the cap is not facially unconstitutional.

But the answer today is that the Act's coordinated party expenditure cap violates the First Amendment. Since *Colorado II*, Congress amended the Act, and this Court's campaign-finance precedents have strengthened First Amendment protections for political speech. *Colorado II* gives way to these statutory and doctrinal evolutions. The Court should distinguish or overrule *Colorado II*, because the Act's cap on

coordinated party expenditures violates Petitioners' free-speech rights "in an area of the most fundamental First Amendment activities." *Buckley*, 424 U.S. at 14.

As shown below, current precedent says that preventing real or perceived quid-pro-quo corruption is the sole justification for expenditure limits. "The hallmark of corruption is the financial *quid pro quo*: dollars for political favors." *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985). The challenged limits serve no such purpose, nor are they closely drawn to meet any such purpose. The limits should thus be re-evaluated and invalidated.

I. This case warrants certiorari because the decision below conflicts with this Court's recent precedents.

A. *McCutcheon* and other recent cases set the controlling standard.

This Court's campaign-finance cases delineate what limits on political contributions and expenditures the First Amendment tolerates. Ever since *Buckley v. Valeo*, the Court has looked more skeptically upon the Act's expenditure limits than upon its contribution limits. *See* 424 U.S. at 19–21. The Court there employed "the exacting scrutiny applicable to limitations on core First Amendment rights of political expression" to evaluate the Act's expenditure limits. *Id.* at 44–45. By contrast, contribution limits, which the Court said "involve[] little direct restraint on [donors'] political communication," require only "means closely drawn" to achieve "a sufficiently important interest." *Id.* at 21, 25. Under those standards, *Buckley* upheld the Act's base contribution limit but struck down its "expenditure ceilings." *Id.* at 29, 40, 51.

In *Colorado I*, the Court held "that the First Amendment prohibits" the Act's application to a political party's independent expenditure. 518 U.S. at 608 (lead op. of Breyer, J.). The Court deferred addressing the Act's limit on *coordinated* party expenditures for five more years. *Colorado II*, in turn, rejected a "facial challenge to the limits on parties' coordinated expenditures." 533 U.S. at 437. The Court observed that coordinated expenditures are "the functional equivalent of contributions" and thus applied *Buckley*'s "closely drawn" standard. *Id.* at 447, 456. And coordinated-expenditure limits, the Court held, are meant to "minimize circumvention of contribution limits," and are thus closely drawn to the Act's anti-corruption purpose. *Id.* at 465. As for the government interest to justify an abridgment of political speech, the Court pointed not only to preventing "*quid pro quo* agreements, but also [to] undue influence on an officeholder's judgment, and the appearance of such influence." *Id.* at 441.

The Court's campaign-finance cases in the intervening years significantly narrowed the interests that justify speech restrictions. As the lead opinion in *McCutcheon* put it, there is a constitutional "line between *quid pro quo* corruption and general influence," and the First Amendment can at most tolerate certain measures to prevent only actual corruption. 572 U.S. at 209 (plurality op.). In *Cruz,* a majority of the Court confirmed the point: Preventing "quid pro quo corruption or its appearance" is the "one permissible ground for restricting political speech" in campaigns. 596 U.S. at 305 (quotation omitted).

This evolution creates conflicts along at least two axes. On one, the decision below upholds the limits based solely on *Colorado II*'s outcome, in conflict with

the Court's later cases that reset the high standard of the First Amendment. The Sixth Circuit did not find that the challenged limits serve the quid-pro-quo interest, nor did it find that the lesser "undue influence" justification somehow still survived. Instead, the Sixth Circuit felt constrained by the *outcome* of *Colorado II,* along with some of its reasoning, even if the standard and the full analysis no longer held up. Pet.App.14a–15a.

The other conflict is simply the discrepant legal tests within this Court's cases. Any use of the old "undue influence" justification that *Colorado II* relied upon cannot be squared with *Cruz*'s repudiation of that standard.

To be sure, this latter conflict ought not exist, as the Court's statements should already show that any generalized interest in preventing "undue influence" has now been "rejected." *Compare Colorado II*, 533 U.S. at 441, *with Cruz*, 596 U.S. at 305. Justice Breyer made this very point in *McCutcheon*: Older cases (like *Colorado II*) welcomed "undue influence on an officeholders' judgment" as a valid anti-corruption justification, but now quid-pro-quo corruption (wrongly, in Justice Breyer's view) is the only acceptable justification. 572 U.S. at 239–40 (dissenting op.) (quotation omitted); *see* Pet.App.128a (Readler, J., dissenting). That means, under closely drawn scrutiny, the question is whether the coordinated expenditure cap is closely drawn to preventing quid pro quo corruption without unnecessary speech intrusions. But the decision below, by relying on an outcome premised upon the now-discarded underlying analysis, leaves doubt whether the Court's intended interment of that amorphous justification has taken hold.

B. *Colorado II* does not control the outcome here.

As just noted, *McCutcheon* and *Cruz* require the challenged limits to serve the purpose of preventing real or perceived quid-pro-quo corruption, and they must be "closely drawn" to meet that purpose. *Colorado II* answered a different question—whether the then-limits helped to prevent "undue influence." That means it does not control here as a matter of traditional *stare decisis*. Although the change in standards suggests overruling *Colorado II*—or confirming that it has already been functionally overruled, *see Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022)—the Court need not do so. That is because *Colorado II*, even if left nominally untouched, does not control for at least two reasons. First, Congress's 2014 amendments to that Act meaningfully altered the nature of the challenged limits, both by carving out exceptions and by changing the broader contribution and spending landscape. Second, *Colorado II* rejected only a facial challenge but left room for this as-applied challenge to succeed.

i. Statutory amendments overtook *Colorado II*.

The *Colorado II* Court reviewed a meaningfully different version of the Act. In 2014, Congress exempted three new categories of spending from the limit on coordinated party expenditures. These now-exempt categories of spending range from building party "headquarters buildings," to funding a "presidential nominating convention," to contesting elections and "other legal proceedings." 52 U.S.C.

§30116(a)(9). The Court's precedents never accounted for these exemptions, which affect both the Act's ends and means—the nature of the law's justification as well as the "closely drawn" tailoring analysis. It is hard to see how Congress still maintains its goal to block such party spending when it allows it in several lanes. Further, it is hard to see how the remaining coordinated-party-spending limits are "closely drawn" in light of the exceptions. After all, those three exempted categories could be conduits for the type of donations that the Act seeks to prevent. (And that is aside from the question whether a corruption interest is even implicated when *parties,* not other interested groups, are involved.)

More broadly than the exemption amendments, the Bipartisan Campaign Reform Act of 2002 (BCRA)—also known as the "McCain-Feingold" Act—reshaped the entire landscape of party and non-party contributions and expenditures one year after *Colorado II*. That reform barred state parties from receiving and spending "soft money." That structural change facilitated the movement away from party influence and toward PACs or other independent groups dominating electoral politics. *See* Ian Vandewalker & Daniel I. Weiner, *Stronger Parties, Stronger Democracy: Rethinking Reform*, Brennan Center for Justice (Sept. 16, 2015), 5–6 (citing BCRA's soft-money elimination and asking whether such "changes to campaign finance law in the last decade will topple the party committees entirely from their place as the main vehicle for election spending other than candidates") ("*Stronger Parties*"); Raymond J. La Raja, *Why Super PACs: How the American Party System Outgrew the Campaign Finance System*, 10 The Forum 91, 93 (Feb. 2013) ("The severe constraints on party organizational

fundraising … has led to a surge in campaign ads by non-party" entities, such as "[s]uper PACs").

In addition to BCRA directly sapping the parties of soft-money, other legal and factual changes led to the rise of non-party entities, such as so-called "Super PACs" and "dark money" groups as major players in campaign spending. Pet.App.135a (Readler, J., dissenting) (citing Heather K. Gerken, *The Party's Over:* McCutcheon*, Shadow Parties, and the Future of the Party System*, 2014 Sup. Ct. Rev. 175, 188 (2014) ("Money … is plainly flowing toward the shadow parties, not the official ones."")). Those changes further reduce the risk that parties function as a conduit for any potential quid-pro-quo corruption.

Together, these changes mean that the now-challenged limits are not part of the same system that the Court reviewed in *Colorado II*. Indeed, the Court has already explained how statutory changes in this campaign-finance field—even when the changes are to adjacent statutes, and not the one being challenged—can create a new case for new review. *McCutcheon* re-assessed the same aggregate contribution limit that *Buckley* upheld, because, the plurality explained, *other* regulatory changes undercut the allegedly justified role of the challenged limit in the overall scheme, leaving the Court "confronted with a different statute" from that in *Buckley*. 572 U.S. at 203. Here too, the coordinated-party-expenditure regime stands on different ground today than when *Colorado II* addressed the pre-amended Act. Thus, the Court should review the current coordinated-party-expenditure limits without according *Colorado II* the effect of *stare decisis*.

ii. *Colorado II* resolved a facial challenge.

Even if the statutory changes "do not suffice to alter the verdict of *Colorado II*," Pet.App.13a, it is important to not read that decision for more than it is worth. *Colorado II* rejected a "facial challenge to the limits on parties' coordinated expenditures." 533 U.S. at 437. The Court held that the First Amendment allows the Act's expenditure limits in *some* situations, and that any unconstitutional applications are not a "substantial number" compared to the law's legitimate sweep—not that the limit is constitutional in *every* application. *See Moody v. NetChoice, LLC*, 603 U.S. 707, 723–24 (2024).

Colorado II does not foreclose judicial review of the coordinated-party-expenditure limit as applied to specific cases. Indeed, the Court included that express disclaimer: "an as-applied challenge focused on application of the limit to specific expenditures is a question that … we need not reach in this facial challenge." *Colorado II*, 533 U.S. at 456 n.17. The facial nature of the challenge is perhaps why this Court equated coordinated expenditures to contributions. In a facial analysis, the Court could contemplate all applications, including the widest-ranging, most contribution-like application of the coordinated expenditure cap—and that is what the Court did, citing as an example "coordinated expenditures that amount to no more than payment of the candidate's bills." *Id.* But even if *Colorado II* concluded that the First Amendment tolerates limits on parties paying candidates' bills, many other coordinated expenditures "would not be functionally identical to direct contributions" and "the constitutionality of" limits on those coordinated party activities "remains unresolved." *Id.* at 468 n.2 (Thomas,

J., dissenting). The Court has never reviewed the blocked coordinated expenditures involved in this case, such as coordinated advertisements that party committees finance in support of candidates. *See* Pet.App.220a, 230a (findings of fact ¶¶75, 102–103).

Facial challenges are intentionally "hard to win." *Moody*, 603 U.S. at 723. They are hard to win because they require adjudication "en masse" and defy "case by case" application of facts to law. *Id.* *Colorado II*'s rejection of facial invalidity does not foreclose finding a Free Speech Clause violation with respect to Petitioners' as-applied challenge to core speech activity.

iii. If *Colorado II* is not distinguishable, then it cannot be reconciled with more recent cases and should be overruled.

In the alternative, if changes from Congress and the unique character of facial analysis are inadequate to cabin *Colorado II* to its particulars, *cf.* *Carson v. Makin*, 596 U.S. 767, 789 (2022)—that is, if the Court concludes that *Colorado II*, left as-is, mandates upholding the current laws, too—then the Court should overrule that decision. The Court should acknowledge that doctrinal developments, as explained above (at _–_), have overtaken *Colorado II*. Either way, the current coordinated-party-expenditure limits violate the First Amendment, as explained below (at _–_), so the Court should take one path or another to get there. If that path requires overruling *Colorado II*, then so be it.

Today, just one government objective justifies suppressing political speech: "the prevention of '*quid pro quo*' corruption or its appearance." *Cruz*, 596 U.S. at 305 (quoting *McCutcheon*, 572 U.S. at 207 (plurality

op.)). *Colorado II*, by contrast, left the door open to broader anti-corruption objectives like curbing "undue influence on an officeholder's judgment." 533 U.S. at 441. Thus, at a minimum, the "undue influence" part of *Colorado II* should be overruled.

Further, Congress's chosen means must sufficiently fit the end of preventing quid pro quo corruption. "In the First Amendment context, fit matters." *McCutcheon*, 572 U.S. at 218 (plurality op.). Closely drawn tailoring requires a "narrowly tailored" restriction that avoids "unnecessary abridgment of First Amendment rights." *Id.* at 218, 221 (plurality op.) (quotation omitted). "Again, *Colorado II* shows its age here." Pet.App.32a (Thapar, J., concurring). The "unskillful tailoring" *Colorado II* allowed unravels under the controlling standard. 533 U.S. at 463 n.26. While *Colorado II* reflected the view of a bare majority "at one moment in time," the decision is in tension with the subsequent "general tenor of legal principles." *See Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2276–77 (2024) (Gorsuch, J., concurring) (quotation omitted). It is political speech that pays the price of this "demonstrably erroneous decision[]." *Gamble v. United States*, 587 U.S. 678, 711 (2019) (Thomas, J., concurring). And perhaps only incumbent candidates, super PACs, and top-dollar donors can claim reliance interests on the Act's impediment to the parties' speech—not exactly the weighty interests that caution against course correction. *See Ramos v. Louisiana*, 590 U.S. 83, 122 (2020) (Kavanaugh, J., concurring in part).

Indeed, given the interplay between parties and non-party entities, it seems more likely that the limits on coordinated-party-expenditures are ineffective at best, and affirmatively *harmful* to the cause of

preventing corruption at worst. Indeed, those limits incentivize funneling campaign activity through less transparent and less accountable entities. Therefore, invalidating the limits on party coordination could actually do more to *prevent* quid-pro-quo corruption by channeling campaign spending through the most transparent, accountable vectors of political association in modern self-government: political parties.

* * *

The Sixth Circuit concluded it was constrained by the "hierarchical legal system" to follow *Colorado II*. Pet.App.15a (majority op.) (revisiting precedent is "the Supreme Court's province, not ours"). In other words, it deferred to this Court to do the job of straightening out the inconsistency between old and new cases. The Court should now do just that.

II. Statutory limits on a party coordinating with its own candidates violate the Free Speech Clause.

"[T]here is no doubt that the law does burden First Amendment electoral speech." *Cruz*, 596 U.S. at 305. The limit on coordinated party expenditures restricts a party's spending to promote a candidate when the party *coordinates* that spending with the candidate's own campaign committee. Coordination, of course, occurs through speech between party representatives and candidates and their campaign staff. That infringement on core political communication ought to be strictly scrutinized the same as other campaign expenditure caps. *See Colorado I*, 518 U.S. at 631, 640 (Thomas, J., concurring in judgment and dissenting in part) ("coordinated expenditures" are subject to and "fail strict scrutiny").

In fact, the current coordinated-party-expenditures limit would fail even under the Court's more forgiving "closely drawn" test. *Cf. McCutcheon*, 572 U.S. at 199 (plurality op.) (applying "the 'closely drawn' test" without deciding the proper standard because the law failed even the lower test). A law survives that test if it serves "a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms." *McCutcheon*, 572 U.S. at 197 (plurality op.) (quoting *Buckley*, 424 U.S. at 25). Here, the law fails on each aspect.

Important interest. Preventing *quid pro quo* corruption or its appearance is the one government interest important enough to justify a restriction on campaign spending. *Cruz*, 596 U.S. at 305. Granted, the broader purpose of the Act "was to limit *quid pro quo* corruption and its appearance." *McCutheon*, 572 U.S. at 197. But this particular law muzzles political parties alone, so the question is whether this particular restriction, not all of the Act, serves that important interest.

In asking whether the Act serves an anti-corruption interest, step back and reflect on what corruption is, and why it is bad. Corruption is based on the dishonest performance of public acts to favor some illegitimate, narrow interest rather than the broader public good, in exchange for something of value to the officeholder. Typically, that means favoring one person or entity in exchange for something to the politician. *See United States v. Sun-Diamond Growers of California*, 526 U.S. 398, 404–05 (1999). Such corruption or its appearance erodes democratic self-government. *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 389 (2000).

Yet, when a politician responds to the "pressure" of an entire democratic majority—"giving the people what they want," so to speak—that is not corrupt. Indeed, quite to the contrary, that is rightly *celebrated* as democratic responsiveness. A political party is far closer to a democratic majority than to some narrow special interest. Indeed, a party typically succeeds in placing its candidates in office (and thus in a position to affect policy) by garnering a democratic majority (or at least a plurality) of a vote in an election.

Equally important, the voters generally know that a Democratic or Republican (or Green or Libertarian or other) Party candidate intends to generally follow her party's platform. The definition of "corrupt" involves some deceit or dishonesty in whom the candidate answers to. *See, e.g., Corrupt*, *Black's Law Dictionary* (12th ed. 2024). A corrupt act requires "an intent to procure an unlawful benefit." *Marinello v. United States*, 584 U.S. 1, 21 (2018) (Thomas, J., dissenting) (quotation omitted); *United States v. Fischer*, 64 F.4th 329, 352–53 (D.C. Cir. 2023) (Walker, J., concurring in part and in judgment), *vacated*, 603 U.S. 480 (2024); Br. of United States 44, *Fischer v. United States*, No. 23-5572 (U.S. Feb. 28, 2024) (quoting *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005)). Analogously, the Court explained, a "*quid pro quo*" requires "a specific intent to give or receive something of value *in exchange* for an official act." *Sun-Diamond*, 526 U.S. at 404–05.

In that light, it makes little sense to worry that a political party might entice a *corrupt* agreement by trying to get its candidates to follow the party's policy views in exchange for spending political dollars on its chosen candidate. *See* 52 U.S.C. §30116(d). Parties exist to see their candidates elected and their policy

platforms enacted. That is their dominant, if not sole, purpose. Parties do not seek to change policy to make money; they seek to raise and spend money to make policy. Their candidates, meanwhile, are *expected* to generally follow party platforms, even if individual candidates might buck the party on discrete issues, and the public generally sees candidates for a party as representatives of that party's viewpoint.

This symbiotic relationship between party entities and their candidates is not corrupting. A candidate's loyalty to party is not a harm to be prevented, but a channel of accountability to the voters—who may select a candidate precisely because of her association with her party. Thus, the coordinated-party-expenditure limit could be said to serve an anti-corruption interest only in an exponentially prophylactic manner. *See McCutcheon*, 572 U.S. at 221 (plurality op.).

Further, the 2014 amendment's three exceptions belie any claim that the coordinated expenditure limits advance an anti-quid-pro-quo purpose. If Congress's concern is a party entering a corrupt agreement with a candidate, what better enticement than to host the "presidential nominating convention" in that candidate's State? *See* 52 U.S.C. §30116(a)(9), (d)(5). Building and operating a brand new "headquarters building" in the candidate's district might be enough to entice a putative corrupt agreement Congress envisions. *See id.* Or perhaps a party could withhold funds for "legal proceedings" unless the candidate-elect agrees to become beholden to the party. *See id.* Were party-candidate quid pro quos prevalent, litigation funding would be fertile ground: Post-election litigation is a regular fixture in the election cycle. *See, e.g.*, Jeff Horvath, *McCormick files challenge against Philadelphia provisional ballots after*

claiming victory in Senate race vs. Casey, The Scranton Times Tribune (Nov. 8, 2024), https://perma.cc/4JZZ-EPVF.

The point here is not that such coordination between party and candidate facilitates corrupt agreements—the amici States have not seen and do not foresee that consequence—but rather that the 2014 amendments undermine any purported anti-corruption justification. The States' collective experience is instructive. That experience shows that unlimited coordinated expenditures does not cause corrupt state elections. *See* Pet.App.14a. After all, at least two dozen States' laws regulate campaign finance without imposing coordinated-party-expenditure limits analogous to the federal limits challenged here. *See, e.g.*, Ohio Rev. Code §3517.102(B), Ind. Code §3-9-2-1 *et seq*, Iowa Code §68A.101 *et seq*., Kan. Stat. §25-4153(a), Ky. Rev. Stat. §121.150, La. Stat. §18:1505.2(H)(1), Miss. Code §23-15-807, and the rest below.† That is not to say that the States have never had corruption in their States, but that it has not been connected to this mechanism. Perhaps Congress undermined the Act's justifications so dramatically

† At least 24 States have laws that expressly or implicitly allow unlimited coordinated party expenditures for some or all state offices, with no further regulations or regulations other than amounts. *See* Ala. Code §17-5-15; Ariz. Rev. Stat. §§16-911(B)(4)(b), 16-912, 16-915; Cal. Gov't Code §§85301, 85400(c); 10 Ill. Comp. Stat. 5/9-8.5(b); 970 Mass. Code Regs. 1.04(12); N.J. Stat. §19:44A-29; N.J. Admin. Code §19:25-11.2; ; N.Y. Elec. Law §14-114(1), (3); N.C. Gen. Stat. §163-278.13(h); N.D. Cent. Code §16.1-08.1-01 *et seq*.; Or. Rev. Stat. §260.005 *et seq*.; 25 Pa. Stat. §3241 *et seq*.; S.D. Codified Laws §12-27-7; Tex. Elec. Code §253.001 *et seq*.; Vt. Stat. tit. 17, §2941(a); Va. Code §24.2-945; W. Va. Code §3-8-5c; Wis. Stat. §§11.1101(1), 11.1104(5).

because the underlying notion of a party corrupting its candidates is mistaken to begin with.

Closely drawn tailoring. A closely drawn measure is "narrowly tailored to" preventing quid pro quo corruption and "avoid[s] unnecessary abridgment of" fundamental rights. *McCutcheon*, 572 U.S. at 197, 218 (plurality op.). Narrow tailoring does not require the *least restrictive* measure, but it does require demonstrating the restriction's "need … in light of any less intrusive alternatives." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 613 (2021).

The coordinated-party-expenditure restriction is poorly tailored. As noted above, the limits do not even add any anti-corruptive protection. But even if they did, it is hard to see how blunt population-adjusted caps could be "closely drawn." Uncoordinated or independent expenditures are unrestricted, *Colorado I*, 518 U.S. at 618, so the government must show that coordination limits stop corruption between the party and candidates.

If anything, limiting party coordination simply incents donors to contribute to other entities, such as superPACs, to carry on campaign activity. To the extent that such re-channeling occurs, that is unhelpful to any anti-corruption cause.

Unlike other political action committees or independent expenditure groups, which might answer to a narrow interest or solely to donors, the parties are accountable to their voters, which represent broader swaths of citizens. The affected party entities here are all accountable by different routes. State parties are typically made up of committees directly elected by voters. *See, e.g.*, Ohio Rev. Code §3517.02. The national committees have members selected by those

State parties, or are elected officials themselves, that is, party officials elected by voters. *See* The Charter and Bylaws of the Democratic Party of the United States, art. 3. Secs. 2–3, available at perma.cc/M85S-AGM7; The Rules of the Republican Party, Rules 1–2, available at gop.com/rules-and-resolutions. And the House and Senate committees are of course led by elected officials. Pet.App.205a–206a (findings of fact ¶¶9–18). So if a candidate is beholden to those party organs, she is beholden to—that is, accountable to—a large number of American voters.

Thus, the "problem" of a candidate being "beholden" to her party is not corruption to be combatted, but democracy to be celebrated. America has "a constitutional tradition of political parties and their candidates engaging in joint First Amendment activity" that follows from the "practical identity of interests between the two entities during an election." *Colorado I*, 518 U.S. at 630 (Kennedy, J., concurring in part). That is why "[p]arty spending in cooperation, consultation, or concert with a candidate therefore is indistinguishable in substance from expenditures by the candidate or his campaign committee." *Id.* (quotation omitted)

Moreover, that same political accountability of parties also prevents individuals from enlisting the party as a conduit of corruption with a candidate. Here, the earmark rules already prevent a donor from using the party as a mere conduit for a direct contribution to candidate. If the donor insists on earmarking, that contribution is treated as a direct contribution. But if the amounts are not earmarked—if donations to the party might go to any candidate the party sees fit to support, regardless of donor preference—that breaks the "pro" link of *quid-pro-quo*

arrangements. The earmarking rule therefore ensures whatever valid anti-corruption effect the coordinated expenditure limit might cause. State and federal criminal law, moreover, imposes harsh sanctions on officials who accept corrupt payments of the kind the coordinated-party-expenditure caps must envision. *See Snyder v. United States*, 603 U.S. 1, 7 (2024) (citing 18 U.S.C. §201); Ohio Rev. Code §2921.02. Nor, for that matter, are the States complacent against political corruption, as States enforce their laws against such corruption. *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. The limits of party coordination, then, sit outside the core protections against corruption. Such a "prophylaxis-upon-prophylaxis approach" is "a significant indicator that the regulation may not be necessary for the interest it seeks to protect." *Cruz*, 596 U.S. at 306 (citing *McCutcheon*, 572 U.S. at 221 (plurality op.)). "[I]t is hard to imagine what marginal corruption deterrence could be generated by" the extra layer. *See Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 752 (2011).

The limits on coordinated party expenditure are loosely drawn, at best, to prevent candidates from entering corrupt agreements. And yet the limits infringe on parties' core political speech. For that reason, the coordinated-party-expenditure limits violate the First Amendment. The Court should grant review of this important case and say so.

* * *

The Court should grant review to address the continuing import of *Colorado II* and either distinguish

or overrule it to invalidate the challenged limits. Doing so would be important to the doctrinal development of the law by reconciling what appears to the States an inconsistency between this Court's First Amendment cases and the Act's speech restrictions. Either way, therefore, this Court should grant review.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

DAVE YOST
Ohio Attorney General

T. ELLIOT GAISER*
**Counsel of Record*
Ohio Solicitor General
STEPHEN P. CARNEY
TRANE J. ROBINSON
Deputy Solicitor General
30 East Broad St., 17th Fl.
Columbus, Ohio 43215
614.466.8980
thomas.gaiser@ohioago.gov

Counsel for Amicus Curiae
State of Ohio

Additional counsel listed on the following pages.

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Additional Counsel

STEVE MARSHALL
Alabama Attorney General

TIM GRIFFIN
Arkansas Attorney General

CHRISTOPHER M. CARR
Georgia Attorney General

THEODORE E. ROKITA
Indiana Attorney General

BRENNA BIRD
Iowa Attorney General

KRIS KOBACH
Kansas Attorney General

RUSSELL COLEMAN
Kentucky Attorney General

LIZ MURRILL
Louisiana Attorney General

MICHAEL T. HILGERS
Nebraska Attorney General

ALAN WILSON
South Carolina Attorney General

MARTY JACKLEY
South Dakota Attorney General

KEN PAXTON
Texas Attorney General

PATRICK MORRISEY
West Virginia Attorney General