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 U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

AMICUS BRIEF OF GEORGIA REPUBLICAN PARTY, INC. IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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INTERESTS OF AMICUS CURIAE[1]

Amicus curiae Georgia Republican Party, Inc. is a political party registered under Georgia law, *see* Ga. Code § 21-2-110, and affiliated with the Republican Party of the United States. It is led by a state executive committee which "exercis[es] statewide jurisdiction and control over party affairs." *Id.* § 21-2-111(a). Among other things, it is responsible for qualifying candidates seeking to run in the Georgia Republican Primary for certain state offices. *Id.* § 21-2-153(d)(1). It has established a federal political committee, the Georgia Republican Federal Campaign Committee, FEC Comm. #C00033571, through which it makes contributions and expenditures relating to federal candidates and to influence federal elections.

The party works throughout the State of Georgia to register voters, raise funds, support its candidates for public office, and promote free and fair elections. It seeks to educate voters about its candidates, their policy positions, and Republican party values. The party, through its candidates, advocates freedom, an originalist interpretation of the U.S. Constitution, the rule of law, lower taxes, and small government. It has a strong interest in being able to convey its message to

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[1] Pursuant to S. Ct. R. 37.6, amicus curiae certifies that no counsel for a party authored any part of this brief, and no person or entity other than the amicus, its members, or its counsel made a monetary contribution to fund the brief's preparation or submission. The Georgia Republican Party notified Counsel of Record for Petitioners and Respondents of its intent to file this brief and requested their consent on December 31, 2024. Counsel for all parties consented to the filing of this brief and waived any objections to the timing of this notice under Sup. Ct. R. 37.2.

the electorate more effectively by engaging in coordinated expenditures with its candidates for both federal and state office.

SUMMARY OF ARGUMENT

1. Petitioners in this case challenge the Federal Election Campaign Act's ("FECA") limits on coordinated expenditures between national party committees and their candidates. *See* 52 U.S.C. § 30116(d)(2)-(3). These limits burden a political party's ability to engage in political expression and associate with its nominees for federal office. These constitutional burdens apply not only to national political party committees such as the National Republican Senatorial Committee, but the federal committees of state political parties such as the Georgia Republican Party, as well. *Id*.

The constitutional questions this Petition raises extend beyond the FECA, however. Numerous states, including Georgia, similarly limit coordination between state political parties and the candidates for state office they nominate. *See, e.g.*, Ga. Code §§ 21-5-41(a); Ga. R. & Regs. § 189-6-.04. This Court should grant certiorari because a favorable ruling would invalidate First Amendment burdens on core political speech at both the federal and state levels throughout the country.

Political parties such as the Georgia Republican Party occupy a constitutionally "special place" in our nation's electoral system. *California Democratic Party v. Jones*, 530 U.S. 567, 575 (2000). The candidates a party chooses to nominate serve as the party's "ambassador[s]," *id*., and "standard bearer[s],"

Eu v. San Francisco Cnty. Democratic Cent. Comm., 489 U.S. 214, 224 (1989) (quoting *Ripon Soc'y v. Nat'l Republican Party*, 525 F.2d 567, 601 (1975) (Tamm, J., concurring in result)). Limiting a party's ability to coordinate its political messaging with the very candidates through whom the party seeks to obtain electoral victory, *see Texas Democratic Party v. Benkiser*, 459 F.3d 582, 587 (5th Cir. 2006); *see also Drake v. Obama*, 664 F.3d 774, 782-83 (9th Cir. 2011), is a serious burden on its First Amendment rights.

2. When this Court previously upheld the validity of coordinated party expenditure limits in *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) ("*Colorado II*"), it relied upon a sweepingly overbroad conception of "corruption" which it has since repudiated. In *Colorado II*, the Court held Congress had a constitutionally valid interest in combatting "not only . . . *quid pro quo* agreements, but also . . . undue influence on an officeholder's judgment, and the appearance of such influence." *Id.* at 441. This Court has since rejected this sweeping view of corruption, declaring, "The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt." *Citizens United v. FEC*, 558 U.S. 310, 360 (2010). Since the primary doctrinal foundation of *Colorado II* has been eliminated, this Court should grant certiorari to revisit this holding. There is no evidence coordinated party expenditures pose a risk of actual or apparent quid pro quo corruption. *Id.* at 359. This Court should overturn *Colorado II* and allow political parties to engage in unlimited coordinated expenditures with their candidates.

ARGUMENT

I. MANY STATES HAVE ADOPTED THE SAME UNCONSTITUTIONAL RESTRICTIONS AS FEDERAL LAW ON EXPRESSIVE ASSOCIATION BETWEEN STATE POLITICAL PARTIES AND THEIR CANDIDATES

This Court should grant certiorari. This case presents First Amendment questions which impact not only the particular provisions of federal law Petitioners challenge, but state campaign finance laws throughout the nation. Petitioners ask this Court to review the Federal Election Campaign Act's ("FECA") limits on political expenditures which federally registered political party committees coordinate with those parties' federal candidates. *See* 52 U.S.C. § 30116(d)(2)-(3). This statute violates the fundamental First Amendment rights of both national political party committees like Petitioner National Republican Senatorial Committee ("NRSC"), as well as federal committees of state and local political parties, such as the Georgia Republican Federal Campaign Committee, established by Amicus Georgia Republican Party.

Many state parties, including the Georgia Republican Party, also face additional state-law restrictions on their ability to coordinate political messaging with their candidates for state office.[2]

[2] Depending on the jurisdiction, state law may similarly regulate coordination involving county or local candidates or party committees.

Numerous states, including Georgia, *see* Ga. Code §§ 21-5-41(a); Ga. R. & Regs. § 189-6-.04, specifically limit the amount state political parties may contribute—generally including in-kind contributions of goods and services—to candidates for state office in general elections.[3] Others instead subject state political party committees to the same contribution limits as other types of persons[4] or political committees.[5]

In most of these jurisdictions, including Georgia, Ga. R. & Regs. § 189-6-.04, expenditures which either a person in general[6] or a political party more

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[3] *See, e.g.*, Ark. Code § 7-6-203(a)(1)(A)(ii)-(iv); Ark. Regs. R. 153-00-011, § 101(b); Alaska Stat. § 15.13.070(d); Conn. Gen. Stat. § 9-617(b)(1); Del. Code tit. 15, § 8010(b); Fla. Stat. § 106.08(2); Idaho Code § 67-6610A(2); Md. Elec. L. § 13-226(c)(1); Mich. Comp. L. §§ 169.252(3)-(4), 169.269(3)-(4); Minn. Stat. § 10A.27, subd. 2; Minn. Stat. § 211A.12(a); Mont. Code § 13-37-216(2), (4); Okla. Ethics Comm'n R. 2.32, at 68 (Nov. 1, 2022); S.C. Code Ann. § 8-13-1316(A); Tenn. Code Ann. § 2-10-306(a); Wash. Rev. Code § 29B.40.020(4)(a) (effective Jan. 1, 2026); *see also* R.I. Gen. L. 17-25-10.1(e).

[4] *See, e.g.*, Colo. Const. art. XXVIII, § 3(1), (3)(d); Colo. Code Regs. tit. 8, § 1505-6, R. 10.17.1(b); Haw. Rev. Stat. § 11-357(a); Mo. Const. art. VIII, §§ 23(3)(1)(a), 23(7)(19); Nev. Rev. Stat. §§ 294A.009(3), 294A.100(1).

[5] Me. Rev. Stat. tit. 21-A, § 1015(2-B).

[6] These states include state political parties within their definition of "person." *See, e.g.*, Haw. Rev. Stat. § 11-302; Wash. Rev. Code § 29B.10.400 (effective Jan. 1, 2026); *see also* Me. Rev. Stat. tit. 21-A, § 1001(3) (defining "person" to include, in relevant part, committees, associations, and other groups); Mont. Code § 13-1-101(32); Tenn. Code Ann. § 2-10-102(10)(A).

specifically[7] coordinates with a candidate qualify as contributions to that candidate[8] and count against contribution limits. Some states embed this principle within their statutory definitions of "contribution."[9] Other of these jurisdictions, in contrast, appear to address the issue more implicitly by simply defining the term "independent expenditure" to exclude coordinated expenditures.[10]

As a result of these measures, state political parties throughout the nation are hampered in their ability to craft political messages with their nominees

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[7] *See, e.g.*, Del. Code tit. 15, § 8012(f); Mo. Ethics Comm'n, Op. No. 2002.07.106, at 3 (July 19, 2002), https://mec.mo.gov/Scanned/PDF/Opinions/347.pdf; *see also* R.I. Gen. L. § 17-25-23(1).

[8] *See, e.g.*, Colo. Const. art. XXVIII, § 5(3); Colo. Rev. Stat. § 1-45-108(8); Haw. Rev. Stat. § 11-363(a); Me. Rev. Stat. tit. 21-A, § 1015(5); Md. Elec. L. § 13-249(a)(4)(i), (b)(1); Mont. Admin. R. 44.11.602(5); Okla. Ethics Comm'n R. 2.107(H), 2.108(H) (Nov. 1, 2022); Tenn. Code Ann. § 2-10-303(5); *see also* Mich. Comp. L. § 169.224c(1)(a); Minn. Stat. § 10A.01, subd. 4.

[9] *See, e.g.*, Conn. Gen. Stat. § 9-601a(a)(4), (b)(21); Mont. Code § 13-1-101(9)(a)(ii); Mont. Admin. R. 44.11.401(1)(e); Okla. Stat. tit. 21, § 187(4); Okla. Ethics Comm'n R. 2.2(6) (Nov. 1, 2022); Wash. Rev. Code § 29B.10.160(1)(b) (effective Jan. 1, 2026); *see also* Colo. Code Regs. tit. 8, § 1505-6, R. 1.5.3; Del. Code tit. 15, § 8002(8)(g); Mich. Comp. L. § 169.204(1), (3)(e); S.C. Code § 8-13-1300(7) (defining "contribution" to include "in-kind . . . expenditures").

[10] *See, e.g.*, Ark. Regs. R. 153-00-008, § 700(c); Alaska Stat. § 15.13.400(11); Idaho Code § 67-6602(11); Nev. Rev. Stat. § 294A.0077; S.C. Code § 8-13-1300(17)(b); *see also* Fla. Stat. § 106.011(12)(b).

for state as well as federal office. This Court has recognized "the basic object of a political party" is to help elect whichever candidates the party believes would best advance its ideals and interests." *Randall v. Sorrell*, 548 U.S. 230, 257-58 (2006). Limiting a political party's ability to coordinate political messaging with the very candidates it has nominated makes very little sense.

Political parties play "an important and legitimate role in federal elections." *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 618 (1996) ("*Colorado I*"); *see, e.g.*, *FEC v. Democratic Senatorial Campaign Comm.*, 454 U.S. 27, 42 (1981) (recognizing "the two great American political parties"). A political party's primary reason for existence "is typically to gain control of the machinery of state [and the federal] government by electing its candidates to public office." *Storer v. Brown*, 415 U.S. 724, 745 (1974). A party's nominee is its "standard bearer" who represents "the party's ideologies and preferences" in the general election. *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989) (quoting *Ripon Soc'y v. Nat'l Republican Party*, 525 F.2d 567, 601 (1975) (Tamm, J., concurring in result)). He or she is "the party's ambassador to the general electorate in winning it over to the party's views." *California Democratic Party v. Jones*, 530 U.S. 567, 575 (2000). As a practical matter, the public often views a candidate's political messages and positions as those of his or her political party to a much greater extent than an obscure party platform which typically languishes unnoticed and unread. It is precisely because a party's nominee performs a constitutionally protected function as a party's "standard bearer" and

"ambassador" to the electorate that the Government may not restrict the ability of a party and its candidates to coordinate political communications with each other.

This Court has already recognized the First Amendment provides a "special place" and "special protection" for a party's candidate nomination process. *Id*. at 575 (quoting *Eu*, 489 U.S. at 224). Likewise, in the context of Article III standing, federal courts have consistently held the interests of political parties and their nominees are inextricably intertwined. "[A] political party's interest in a candidate's success is not merely an ideological interest. Political victory accedes power to the winning party, enabling it to better direct the machinery of government toward the party's interests." *Texas Democratic Party v. Benkiser*, 459 F.3d 582, 587 (5th Cir. 2006); *see also Drake v. Obama*, 664 F.3d 774, 782-83 (9th Cir. 2011) ("[A] candidate ***or his political party*** has standing to challenge the inclusion of an allegedly ineligible rival on the ballot, on the theory that doing so hurts the candidate's or party's own chances of prevailing in the election." (emphasis added; quoting *Hollander v. McCain*, 566 F. Supp. 2d 63, 68 (D.N.H. 2008)); *Fulani v. Hogsett*, 917 F.2d 1028, 1030 (7th Cir. 1990). And this Court relied on the uniquely "close relationship" and "nexus" between national parties and federal officeholders in upholding the validity of the Bipartisan Campaign Reform Act's soft-money restrictions. *See McConnell v. FEC*, 540 U.S. 93, 154-55 (2003).

Political parties engage in the "practical democratic task" of "creating a government that voters can instruct and hold responsible for subsequent

successes or failure." *Colorado I*, 518 U.S. at 615-16. They pursue this goal by selecting nominees who can advocate their principles to the public most effectively and helping those nominees win as many elections as possible. The extent of a political party's success and power are unavoidably determined by the extent of its candidates' success.

If anything, state parties such as the Georgia Republican Party have an even greater interest than national party committees in coordinating with their federal and state candidates since state parties actually nominate them. *See, e.g.*, Ga. Code § 21-2-151(a). And state parties are generally far less able than national party committees to bear the costs involved in making independent expenditures without running afoul of contribution limits. The record below explains how the NRSC has spent several million dollars to establish a separate, firewalled "independent expenditure unit" housed in "separate facilities" to prevent inadvertent coordination. *See* Petition for Writ of Certiorari ("Pet.") 197a, 200a, 219a-220a. Most state party committees have far less funding, fewer employees, and simpler infrastructure, making it more difficult and burdensome to comply with the anti-coordination requirements of FECA and state-law analogues.

In short, the First Amendment questions in this case extend far beyond a single federal statute and handful of national party committees. FECA limits the ability of state political parties' federal committees to engage in coordinated expenditures with their candidates. 52 U.S.C. § 30116(d)(2)-(3). And many states likewise limit coordination between state parties and state (and often local) candidates, as well.

See supra notes 3-10. These ubiquitous restrictions on pure political speech inherently burden and restrict a political party's ability to craft a coherent, consistent, persuasive political message with its candidates. This Court should grant certiorari to consider these important constitutional issues.

II. THIS COURT SHOULD OVERTURN *COLORADO II* BECAUSE IT RESTS ENTIRELY ON AN UNCONSTITUTIONALLY OVERBROAD CONCEPTION OF "CORRUPTION" WHICH THIS COURT HAS SINCE REPUDIATED.

In *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) ("*Colorado II*"), this Court upheld the constitutionality of the FECA's expenditure limits on political party committees as applied to coordinated expenditures. It held such limits were a closely tailored means of combatting corruption. *Id.* at 453 (holding coordinated expenditures between candidates and political parties "exacerbate the threat of corruption and apparent corruption that . . . contribution limits are aimed at reducing"). It explained, however, that "corruption" was "not only . . . *quid pro quo* agreements, but also . . . undue influence on an officeholder's judgment, and the appearance of such influence." *Id.* at 441.

This interpretation was consistent with the Court's approach to corruption in its contemporaneous ruling in *McConnell v. FEC*, 540 U.S. 93 (2003). *McConnell* similarly held the First Amendment allows the government to limit political contributions to prevent the appearance contributors have "access" to, or

"influence" over, government officials. *Id*. at 150. The *McConnell* Court declared the "danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder," is "troubling to a functioning democracy." *Id*. at 153.

Several years, later, this Court decisively rejected the sweeping conception of "corruption" upon which both *Colorado II* and *McConnell* were based. In the 2010 case *Citizens United v. FEC*, 558 U.S. 310, 360 (2010), this Court declared, "Ingratiation and access . . . are not corruption." It elaborated, "The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt." *Id*. at 359; *see also id*. ("It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies" (quoting *McConnell*, 540 U.S. at 297 (opinion of Kennedy, J.))). The *Citizens United* Court concluded the Government's "interest in preventing corruption or the appearance of corruption . . . was ***limited to quid pro quo corruption***." *Id*. at 359 (emphasis added); *see also McCutcheon v. FEC*, 572 U.S. 185, 192 (2014) (per curiam) ("Any regulation must instead target what we have called 'quid pro quo' corruption or its appearance.").

This Court should reassess the validity of limits on coordinated expenditures between political parties and their candidates under this refined, much more precise conception of corruption. Coordinated expenditures are less valuable to candidates than other forms of monetary or in-kind contributions since

the political party retains ultimate control and decision-making authority over the funds involved, rather than providing them to the candidate. *Cf. McCutcheon*, 572 U.S. at 210-11 (holding contributions create a substantial risk of corruption in large part because the contributor "must by law cede control over the funds" to the recipient).

Moreover, restricting political parties' coordinated expenditures is unnecessary to prevent circumvention of base contribution limits for two reasons. First, both Congress and states are free to limit the amount contributors provide to political party committees. *Cf. Cal. Medical Ass'n v. FEC*, 453 U.S. 182, 198-99 (1981) (upholding constitutionality of limits on contributions to political committees). And Congress has, in fact, done so. *See* 52 U.S.C. § 30116(a)(1)(B), (D), (a)(2)(B)-(C). Second, national and state political parties obtain contributions from so many individuals that the amount of a political party's coordinated expenditure attributable to any particular contributor is limited. *Cf. McCutcheon*, 572 U.S. at 212 (holding contributors are unlikely to attempt to circumvent limits on contributions to candidates by providing money to PACs, instead, since a person's PAC contributions "will be significantly diluted by all the contributions from others to the same PACs"). The burdens on political parties' constitutionally protected rights to engage in political expression and association with their "ambassadors," *Cal. Democratic Party*, 530 U.S. at 575, and "standard bearers," *Eu*, 489 U.S. at 224, far outweigh whatever marginal enhancement the challenged restrictions provide to the Government's interest in combatting actual or apparent *quid pro quo* corruption.

Practical experience further undermines the misguided notion the federal or state governments must limit coordination between political parties and their candidates. Several states, of course, either completely lack political contribution limits for state candidates or allow unlimited contributions from political party committees to them. *See* Nat'l Conference of State Legislatures, *State Limits on Contributions to Candidates, 2023-2024 Election Cycle* (May 2023).[11]

Even among jurisdictions that otherwise regulate such contributions, however, several have created special carve-outs to permit state parties to engage in unlimited coordinated expenditures with their candidates. Politically diverse states such as Massachusetts, New Mexico, and Ohio already protect their state political parties' First Amendment rights by refraining from limiting in-kind contributions from a political party to a state candidate in general elections,[12] and then designating coordinated expenditures between such entities to be in-kind contributions.[13] Such states thereby allow state parties to coordinate with candidates for state office in general elections without limit.

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[11] https://documents.ncsl.org/wwwncsl/Elections/ Contribution-Limits-to-Candidates-2023-2024.pdf.

[12] Mass. Code Regs. tit. 970, § 1.04(12)(11); N.M. Stat. Ann. § 1-19-34.7(J); N.M. Admin. Code § 1.10.13.18(F); Ohio Code § 3517.102(B)(6)(b)(iii).

[13] Mass. Code Regs. tit. 970, § 2.21(4); N.M. Stat. Ann. § 1-19-26(I)(2); N.M. Admin. Code §§ 1.10.13.18(B), 1.10.13.28(A); Ohio Code § 3517.01(C)(16); Ohio Admin. Code § 111:2-2-01.

Arizona does not even recognize "coordinated party expenditures" as "contributions" to a candidate.[14] West Virginia likewise provides, notwithstanding any other provision of law, a political party's central committee "may make coordinated expenditures in any amount with the general election campaign" of candidates for state offices, including the state legislature.[15] Other states, including Georgia,[16] have much more limited exceptions for certain types of party coordinated expenditures.[17] There is no evidence such states have experienced greater corruption than others which have followed the FECA's example and limited coordinated party contributions. *Cf. Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 391 (2000) ("The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised.").

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[14] Ariz. Rev. Stat. §§ 16-911(B)(4)(b), 16-922(E); *see also id.* § 16-901(14).

[15] W. Va. Code § 3-8-9b(a).

[16] Ga. Code § 21-5-41(j) (specifying that contribution limits are inapplicable to political parties' expenditures "in support of a party ticket or a group of named candidates").

[17] *See also* Conn. Gen. Stat. §§ 9-601(25), 9-601a(b)(16) (allowing political parties to make unlimited "organization expenditures" for a candidate to cover certain types of expenses); Mont. Admin. R. 44.11.401(2), 44.11.225(3) (providing that certain services provided by political party staff members qualify as coordinated expenditures but do not count toward the party's contribution limit).

Accordingly, this Court should grant certiorari in this case to apply the constitutionally correct standard of "corruption" to the FECA's limits on coordinated party expenditures and hold they violate political parties' First Amendment rights. This ruling will benefit both parties and candidates at the state and federal levels and, by extension, the voters and other citizens they serve. Allowing political parties and their candidates to provide a consistent, harmonized political message will enhance the ability of both to convey their message to voters clearly, consistently, and accurately. *See Buckley v. Valeo*, 424 U.S. 1, 65-66 (1976) (per curiam) (recognizing the Government's important interest in ensuring voters have accurate information upon which to base their electoral decisions).

CONCLUSION

For these reasons, this Court should grant the petition and issue a writ of certiorari in this case.

Respectfully submitted,

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JANUARY 2025