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 CAMPAIGN LEGAL CENTER, THE LEAGUE OF WOMEN VOTERS, AND COMMON CAUSE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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This brief is filed on behalf of the League of Women Voters, Common Cause, and Campaign Legal Center, three nonprofit, nonpartisan organizations that work in the areas of campaign finance, ethics, voting rights, and election law to ensure government is accountable, accessible, and transparent.

SUMMARY OF ARGUMENT

Petitioners National Republican Senatorial Committee ("NRSC"), et al., and Federal Respondents (collectively, "petitioners") urge this Court to strike down the limits that Congress, over fifty years ago, placed on expenditures by national political party committees in coordination with their federal candidates. 52 U.S.C. § 30116(d). To reach this end, however, petitioners also must convince this Court to take the extraordinary step of overturning its decision in *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431 (2001) ("*Colorado II*"). There, this Court upheld the party coordinated spending limits because they inhibit circumvention of the contribution limits at the heart of the Federal Election Campaign Act ("FECA"), and thereby advance the same governmental interest that contribution limits do, namely, preventing quid pro quo corruption and its appearance.

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1 This brief was not authored in whole or in part by counsel for any party. No person or entity other than *amici* or their counsel made a monetary contribution to this brief's preparation or submission. S. Ct. R. 37.6.

Colorado II was correctly decided, and subsequent changes in the law and campaign practices reaffirm that the Court was not only correct, but prescient, in fearing that party committees could serve as conduits for huge contributions.

Petitioners levy two main attacks on *Colorado II*. First, they claim that this decision is an "outlier" or "anomaly" in this Court's First Amendment jurisprudence, NRSC Br. at 3, 43, and that the majority there was "wrong many times over" in ruling that the party coordinated spending limits "prevent[] donors from circumventing the candidate base limits," Fed. Resp'ts Br. at 28 (citation modified). But this Court has consistently held that measures that prevent circumvention of the "base" contribution limits are justified by the same anti-corruption interest as the base contribution limits themselves. *See McConnell v. FEC*, 540 U.S. 93 (2003), *overruled in part on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010); *FEC v. Beaumont*, 539 U.S. 146 (2003); *California Med. Ass'n v. FEC*, 453 U.S. 182 (1981) ("*CalMed"*); *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam). These holdings are founded on a basic insight that still holds true today: attempts to circumvent contribution limits are endemic to a system of privately financed elections and corrosive to its integrity. *See Citizens United*, 558 U.S. at 364 ("Political speech is so ingrained in our culture that speakers find ways to circumvent campaign finance laws."). For this reason, deference to Congress's expertise in anticipating and cutting off routes of circumvention is critical. *McConnell*, 540 U.S. at 165.

Second, petitioners claim that "developments in the law and the facts in the decades since *Colorado II* have eroded the decision's underpinnings," rendering it obsolete. NRSC Br. at 42 (internal quotations omitted). Not so. Intervening changes have instead created new threats to the campaign finance system that further necessitate measures to check circumvention. Congress has relaxed the limits on certain contributions to party committees, *see Libertarian Nat'l Comm. v. FEC*, 924 F.3d 533, 552 (D.C. Cir. 2019) (en banc), effectively putting *more* weight on the coordinated spending limits to serve as a first-line defense against quid pro quo corruption. And evolving campaign practices—such as the sharp rise of joint fundraising by candidates and party committees following *McCutcheon v. FEC*, 572 U.S. 185 (2014)—have led to a surge of million-dollar contributions entering party coffers. Indeed, the total amount of money raised through joint fundraising—the practice of candidates "jointly" raising funds with dozens of national and state political committees—has almost tripled in the past ten years to hit a staggering $3.5 billion in the 2024 elections. *Total Joint Fundraising Committees, 1990-2024*, OpenSecrets.org, https://www.opensecrets.org/joint-fundraising-committees-jfcs. A donor can now cut a single check approaching $1 million to a single joint fundraising committee, with the knowledge that these funds can be legally transferred to a national party committee to spend for the benefit of the candidate raising these funds. *See infra* Part II.B. Thus, far from eroding *Colorado II*'s "underpinnings," recent developments greatly intensify the risk that party committees will serve as vehicles for circumvention of the base contribution limits.

ARGUMENT

I. The Court has long recognized that measures that prevent circumvention of the contribution limits reduce quid pro quo corruption.

Although the NRSC makes a feint at challenging the applicable standard of scrutiny, NRSC Br. at 42, petitioners' challenge focuses on whether the party coordinated spending limits are "closely drawn" to serve the important governmental interest in preventing actual and apparent corruption. Of course, this Court already considered that question in 2001 and unequivocally answered in the affirmative. So petitioners attempt to characterize *Colorado II* as an "outlier" and assert that its "quid pro quo-by-circumvention" theory of corruption has been superseded by more recent decisions. NRSC Br. at 1, 14, 21. Only by ignoring decades of this Court's precedents and the "entire history of campaign finance regulation," *McConnell*, 540 U.S. at 165, can petitioners maintain such a sweeping, ahistorical, and incorrect position.

A. Party coordinated spending limits prevent circumvention of the base contribution limits.

In 2024, a person could directly contribute up to the "base limit" of $3,300 to a federal candidate per election. 52 U.S.C. § 30116(a)(1)(A) (indexed to inflation). The limit on how much a person could give a national party committee in 2024 was $41,300 annually. *Id.* § 30116(a)(1)(B) (indexed to inflation). Contributions to state party committees are limited to $10,000 annually. *Id.* § 30116(a)(1)(D).

Because donors can make much larger contributions to political parties than to candidates, the base limit of $3,300 is vulnerable to circumvention—at least if a party committee can pass a donor's larger party contributions on to the donor's chosen candidate through direct contributions or coordinated expenditures. To deter this activity, FECA places both a $5,000 limit on how much a party committee can contribute directly to a candidate, 52 U.S.C. § 30116(a)(2)(A), and a significantly higher limit on how much party committees can give in the form of coordinated expenditures, 52 U.S.C. § 30116(d)(3). Depending on the type of election and its location, the coordinated spending limits range from $61,800 to $123,600 in House races, and $123,600 to $3,772,100 in Senate races. *Coordinated party expenditure limits adjusted for 2024*, FEC (Jan. 29, 2024), https://www.fec.gov/updates/coordinated-party-expenditure-limits-adjusted-for-2024/. In all races, however, party committees benefit from an exponentially higher coordinated spending limit than the $5,000 limit applicable to the coordinated expenditures of non-party political committees (or "PACs"). 52 U.S.C. § 30116(a)(2)(A).

Colorado II recognized that the chief purpose of the coordinated spending limits was to prevent circumvention through party committees. The principal concern was not that the party itself would corrupt its candidates, but instead that parties "whether they like it or not" serve as vehicles for donors seeking to give in excess of the base limits. *Colorado II*, 533 U.S. at 452. The party coordinated spending limits prevent donors from exploiting the much higher party contribution limits to route over ten times the amount otherwise allowed through the party to their preferred candidate. Because "[t]here is no significant functional difference between a party's coordinated expenditure and a direct party contribution to the candidate," there is "good reason to expect that a party's right of unlimited coordinated spending would attract increased contributions to parties to finance exactly that kind of spending." *Id.* at 464.

Petitioners seek to create an alternative history for the limits on party coordinated spending in which they were enacted to allay "wasteful and excessive campaign spending," but this claim is misleading. NRSC Br. at 18; Fed. Resp'ts Br. at 4. The reference to "excessive campaign spending" was not drawn from the legislative history, but rather from this Court's discussion of limits on *independent* party expenditures in *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604, 618 (1996) ("*Colorado I*"), where it reasoned that the only rational purpose served by such limits was to reduce overall campaign spending. *Id.*

Instead, as the government in *Colorado II* documented, anti-corruption concerns drove party contribution limits, including the application of limits to coordinated spending. Brief for Petitioner at 27–28, *Colorado II*, 533 U.S. 431 (2000) (No. 00-191), 2000 WL 1784871 ("The pertinent legislative history reflects congressional concern about the potential corruptive effects of campaign spending by political parties—and, in particular, the danger that large party contributions could be used as a means of evading statutory limits on individual donations."). *See also id*. at *28-29 (noting statement of Senators Kennedy and Pastore that through "unspoken understandings[,] donors could . . . us[e] the party as a conduit for large contributions to candidates without any explicit earmarking of funds"). This perspective was adopted by the Court. *Colorado II*, 533 U.S. at 457 n.19 (noting that "neither the dissent nor the Party seriously argues that Congress was not concerned with circumvention of contribution limits using parties as conduits").

B. This Court has recognized that the incentives to circumvent the base limits are endemic to our campaign finance system.

Although petitioners labor to characterize *Colorado II* as an "outlier" in the jurisprudence, the concern that donors will seek to circumvent the base limits to buy favors from candidates and officeholders is woven through decades of campaign finance precedents.

So, for instance, the plurality in *CalMed* upheld the $5,000 limit on contributions to political committees, recognizing that otherwise PACs could serve as pass-throughs for large contributions, allowing "circumvention of the very limitations on contributions that this Court upheld in *Buckley*." 453 U.S. at 197-98. The Court then found that the corporate form could serve a similar purpose, and upheld the federal corporate contribution ban as a "hedge[] against . . . use [of corporations] as conduits for circumvention of [valid] contribution limits." *Beaumont*, 539 U.S. at 155 (internal quotations omitted).

Most of all, this Court has repeatedly recognized that parties "act as agents for spending on behalf of those who seek to produce obligated officeholders." *Colorado II*, 533 U.S. at 452. Because of the "special relationship and unity of interest" between federal candidates and officeholders and national parties, federal party committees like the NRSC are a particularly attractive vehicle for donors seeking to circumvent the limits. *McConnell,* 540 U.S. at 145.

This close relationship with candidates—and parties' consequent "capacity to concentrate power to elect"—is precisely what "opens them to exploitation" by big donors seeking a one-stop shop for the purchase of political favors from candidates and officeholders. *Colorado II*, 533 U.S. at 455. Indeed, "lobbyists, CEOs, and wealthy individuals alike all have candidly admitted donating substantial sums of soft money to national committees not on ideological grounds, but for the express purpose of securing influence over federal officials." *McConnell*, 540 U.S. at 147. And "national parties serv[e] as willing intermediaries." *Id.* at 146.

Further, because national parties are "inextricably intertwined with federal officeholders and candidates," *id.* at 155 (quoting 107th Cong., 148 Cong. Rec. H409 (Feb. 13, 2002)), officeholders know the identities of large party donors and, in fact, would have to "actively avoid such knowledge" in order to remain insulated from this pressure, *McConnell v. FEC*, 251 F. Supp. 2d 176, 487-88 (D.D.C. 2003) (Kollar-Kotelly, J.). Therefore, donors need not formally "earmark" their contributions to ensure their targeted candidates know of—and benefit from—their largesse. Indeed, nothing in the law prevents party committees from "distribut[ing] lists of potential or actual donors" to candidates, or donors themselves from "report[ing] their generosity to officeholders." *McConnell*, 540 U.S. at 147.

In this context, circumvention schemes routinely escape earmarking restrictions. *Colorado II* described one such example, the party "tally system," an informal recordkeeping system designed to ensure that candidates benefited from the money they raised for the party. 533 U.S. at 459-61. In essence, candidates ask donors who have "maxed out" on direct contributions to give additional sums to their party; the candidate informs the party or the party otherwise keeps track of this fundraising on behalf of the party; and donors walk away with the "tacit understanding that the favored candidate will benefit." *Id.* at 458. Because donors need not include a "designation" or "instruction" with their contribution to ensure their money benefits a particular federal candidate, 11 C.F.R. § 110.6, the earmarking rules do not come into play. 52 U.S.C. § 30116(a)(8). As *Colorado II* noted, these rules consequently "reach only the most clumsy attempts to pass contributions through to candidates." 533 U.S. at 462.

This evidence of party circumvention was amplified by the record in *McConnell* in its review of the Bipartisan Campaign Reform Act ("BCRA"). There, this Court described a series of circumvention schemes involving "soft money," i.e., funds not raised under the federal contribution limits and source restrictions, including:

- <u>State party soft money</u>. "[F]ederal officeholders have commonly asked donors to make soft-money donations to national and state committees solely in order to assist federal campaigns, including the officeholder's own." 540 U.S. at 146.
- <u>Party tally systems</u>. "Parties kept tallies of the amounts of soft money raised by each officeholder, and . . . [d]onors often asked that their contributions be credited to particular candidates, and the parties obliged, irrespective of whether the funds were hard or soft." *Id*.
- <u>Joint fundraising.</u> "National party committees often teamed with individual candidates' campaign committees to create joint fundraising committees, which enabled the candidates to take advantage of the party's higher contribution limits while still allowing donors to give to their preferred candidate." *Id*.

Importantly, all of these circumvention schemes were "legal," and operated in a system that included base limits on direct contributions to candidates and party committees, comprehensive disclosure requirements, and statutory and regulatory earmarking restrictions. Thus, all the measures that petitioners claim are sufficient to prevent circumvention of the base limits, *see* NRSC Br. at 21-23, were in place.

As discussed in Part II *infra*, today's political operatives have developed yet more sophisticated routes to circumvent the base limits, unimpeded by the alternative measures that petitioners flag. Longstanding campaign practices, like joint fundraising, have evolved to take advantage of changes in the legal landscape—such as the invalidation of the aggregate contribution limits—and allow donors to again pump big money through party committees to their candidates of choice. Indeed, judged from the perspective of the *McConnell* Court, today's fundraising practices may be more pernicious than those targeted by BCRA: donors of "soft money" in the 1990's at least needed to profess that their donations were not for the purpose of influencing federal elections, but rather for state or local elections or party building objectives, *McConnell*, 540 U.S. at 122-24, whereas today, those cutting six-figure checks to joint fundraising committees need not even maintain this pretense.

And, as this Court found, the circumvention schemes in *McConnell* paid dividends, securing big donors important votes on specific legislation and other quid pro quo benefits. *See*, *e.g.,* 540 U.S. at 150 (noting evidence that soft money purchased "manipulations of the legislative calendar, leading to

Congress's failure to enact, among other things, generic drug legislation, tort reform, and tobacco legislation"). *See also* JA 420-31. The national parties also sold big donors, in an express exchange, preferential access to officeholders and party leaders, with this practice so pervasive that "the six national party committees actually furnish their own menus of opportunities for access to would-be soft-money donors, with increased prices reflecting an increased level of access." 540 U.S. at 151. As this Court later affirmed, "*McConnell*'s decision to uphold the soft-money ban rested on something more specific" than the general concern about ingratiation and access rejected by *Citizens United*, namely: "record evidence of the *selling of preferential access* to federal officeholders and candidates in exchange for soft-money contributions." *Republican Nat'l Comm. v. FEC ("RNC")*, 698 F. Supp. 2d 150, 158 (D.D.C. 2010) (italics in original), *summ. aff'd*, 561 U.S. 1040 (2010).

C. The party coordinated spending limits are justified by the same interest in preventing quid pro quo corruption as the base contribution limits themselves.

Against this backdrop, petitioners argue—improbably—that there is no reason to think that measures that forestall circumvention of the base limits through national party committees "target real or apparent quid pro quo corruption." Fed. Resp'ts Br. at 27.

More specifically, petitioners claim that "the government must identify record evidence or legislative findings" of quid pro quo corruption, but failed to do so here. NRSC Br. at 24. They quote *FEC v. Cruz*, 596 U.S. 289, 307 (2022), for this proposition, but fail to acknowledge that *Cruz* considered a relatively recently enacted restriction on post-election fundraising that had received little legislative or judicial attention. Here, by contrast, the party coordinated spending limits have already been considered and upheld, and both *Colorado II* and *McConnell* described at length the many ways party committees could be—and had been—used as vehicles for circumvention and transactional exchanges. *See supra* Part I.B.[2] Petitioners all but ignore *McConnell*. They claim that "post-*Colorado II* cases have repudiated its analysis of political parties' relationship with candidates," Fed. Resp'ts Br. at 4, but *McConnell* did the opposite: its voluminous record reinforced *Colorado II*'s understanding of the nexus between party and candidates, documented the

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[2] The NRSC also expresses dissatisfaction with the record of quid pro quo corruption compiled by the FEC in *these* proceedings, NRSC Br. at 24-25, but "we would not expect to find . . . continuing evidence of large-scale quid pro quo corruption," given that coordinated expenditures limits have been in effect for five decades. *Wagner v. FEC*, 793 F.3d 1, 14 (D.C. Cir. 2015) (en banc). *See also Burson v. Freeman*, 504 U.S. 191, 208 (1992). Even so, the FEC below did document recent examples of corruption involving party spending. *See* FEC Br. at 40-43, No. 24-3051 (Apr. 4, 2024) ("April FEC Br."), *available at* https://www.fec.gov/resources/cms-content/documents/fec-second-br-04-04-2024.pdf; JA 431-60. Petitioners disregard this as "hearsay," NRSC Br. at 25, but the legislative materials and news articles in the record are the type of legislative facts not subject to the Federal Rules of Evidence. *See* Fed. R. Evid. 201, Note to Subdivision (a) (explaining distinction between adjudicative and legislative facts).

circumvention schemes facilitated by this relationship, and described the legislative rewards big donors procured as a result.

Petitioners next attempt to cast doubt on the validity of the "quid pro quo-by-circumvention theory," arguing it was definitively rejected by *McCutcheon*. NRSC Br. at 14, 21.

Even conceptually this position makes little sense. Petitioners' argument turns on the assumption that a concern with circumvention is separate and distinct from the well-recognized interest in preventing quid pro quo corruption and its appearance. But there is no daylight between these two objectives. In 2024, donors could contribute a total of over $82,000 to the national party committees in the two-year election cycle. Absent the coordinated spending limits, a donor could give the party $82,000 "with the tacit understanding that [their] favored candidate will benefit," *Colorado II*, 533 U.S. at 458, and that amount could be passed through to the candidate in the form of coordinated expenditures without limitation. This $82,000 in coordinated expenditures is "as useful to the candidate as cash," *id*. at 446, and poses an equivalent risk of quid pro quo corruption.

Accordingly, it is uncontroversial to assert that unlimited contributions or coordinated expenditures from a PAC to a candidate are corruptive, even though PACs likewise can accept only limited contributions from their own donors, and typically under far lower limits than party committees. 52 U.S.C. § 30116(a)(1)(c), (2). These two tiers of contribution limits—from donor to PAC and PAC to candidate—were upheld as a closely tailored measure to combat circumvention. *CalMed*, 453 U.S. at 197-98. Petitioners never explain why unlimited coordinated expenditures by a party do not create an inducement for circumvention—and thus a cognizable risk of quid pro quo corruption—but coordinated expenditures by other PACs apparently do.

Further, although petitioners claim this theory of corruption is "anomalous," NRSC Br. at 46, it was endorsed by *McConnell* and this Court has declined to abandon this holding. Even as this Court reevaluated its jurisprudence relating to independent campaign spending,[3] it has reaffirmed the constitutionality of restrictions on party fundraising and the validity of the anti-corruption and anti-circumvention rationales underpinning *Colorado II* and *McConnell*. *See RNC*, 698 F. Supp. 2d at 158, *summ. aff'd*, 561 U.S. 1040 (2010) (reaffirming constitutionality of limits on party soft money); *Republican Party of La. v. FEC*, 219 F. Supp. 3d 86, 89 (D.D.C. 2016), *summ. aff'd*, 581 U.S. 989 (2017) (reaffirming constitutionality of limits on

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[3] *Citizens United* reviewed a limit on independent expenditures and had no cause to consider the circumvention of contribution limits through coordinated spending. The Court there also specifically distinguished the limits on "donations to political parties, called 'soft money'" that had been sustained in in *McConnell*. *Citizens United*, 558 U.S. at 360-61. *See RNC*, 698 F. Supp. 2d at 153; *Republican Party of La.*, 219 F. Supp. 3d at 97. *See also Cao v. FEC*, 619 F.3d 410, 431 (2010) (en banc), *cert. denied*, 562 U.S. 1286 (2011) (finding that "*Citizens United* has no bearing on whether Congress has the power to restrict political parties' coordinated expenditures").

state party use of soft money for federal election activities).

Nor does *McCutcheon* mark the end of the anti-circumvention rationale, as petitioners contend. NRSC Br. at 1, 14; Fed. Resp'ts Br. at 29-30. There, the Court invalidated the federal aggregate contribution limits, but its skepticism about the asserted governmental interests was specific to the facts of that case. First, the Court doubted that donors could effectively leverage large aggregate giving—in the form of many limited contributions spread across multiple recipients—to extract quid pro quo benefits. 572 U.S. at 210 ("If there is no corruption concern in giving nine candidates up to $5,200 each, it is difficult to understand how a tenth candidate can be regarded as corruptible if given $1,801, and all others corruptible if given a dime."). Nor did the Court deem "plausible" various hypothetical scenarios of how a donor might circumvent the base limits to "contribute massive amounts of money" to a single chosen candidate. *Id.* at 210-12. If, for instance, a donor attempted to give to "100 different PACs" in the hopes of rerouting those funds to a single candidate, the coordination of so many unrelated committees would be impracticable and each PAC would be strictly limited in how much it could pass on to the chosen candidate. *Id.* Notably, the Court considered whether a party joint fundraising effort would enable a donor to funnel contributions through many party committees to their preferred candidate; it concluded however that the *party coordinated spending limits* would prevent the party committees from passing on a significant amount of this money, at least to House and Senate candidates. *Id.* at 216. Thus, the very limits that petitioners challenge here as insufficiently connected to a valid governmental interest were precisely the measure that this Court deemed an important barrier to potential circumvention in *McCutcheon*.

The defects the *McCutcheon* Court identified with the government's theories of circumvention are not relevant here. First, unlike a plan to funnel money to a single candidate through 100 unrelated PACs, here the circumvention route from donor to candidate is simple and direct. A donor evades the base limit for their preferred candidate by giving a dozen times that amount to a single federal party committee—or even more to a joint fundraising committee—indicating with a "wink and a nod" that the preferred candidate should benefit. *Colorado II*, 533 U.S. at 442-43. No further effort is required from the donor. And the possibility of huge joint fundraising scenarios is no longer hypothetical. The Court may have deemed such schemes "speculative" in *McCutcheon*, 572 U.S. at 210—and trusted that they would be cabined by the party coordinated spending limits—but today, donors frequently cut checks for hundreds of thousands of dollars to their preferred candidate through massive party-based joint fundraising operations. *See infra* Part II.

Finally, the NRSC argues that even if the coordinated spending limits "serve[] a permissible objective," they are not narrowly tailored to achieve this end because less restrictive alternatives would suffice. NRSC Br. at 14. Specifically, petitioners claim that the base limits on contributions to candidates and parties, the earmarking rules, and campaign finance disclosure requirements constitute adequate "protection against circumvention of the candidate base limits." *Id.* at 14, 21-23. But these safeguards have been in place in every relevant case in which this Court has considered an anti-circumvention measure and have not prevented this Court from routinely upholding such measures. *See*, *e.g.*, *McConnell,* 540 U.S. at 126; *Beaumont,* 539 U.S. at 155.

In particular, the NRSC disregards this Court's previous finding that the earmarking rules prevent only the "most clumsy" attempts to circumvent the limits, *see Colorado II*, 533 U.S. at 462, as well as the many circumvention schemes documented in *McConnell* that operated without impediment under these rules. Although BCRA significantly restricted parties' use of unregulated soft money, *see McConnell*, 540 U.S. at 123-24, it did not strengthen the earmarking provisions or otherwise prevent the use of party committees as conduits for "hard money." Thus, even if the party tally system described in *Colorado II* or the soft money schemes covered in *McConnell* have become less prevalent, there is no reason to think that the earmarking restrictions today will be any more effective, particularly as joint fundraising techniques evolve to exploit recent changes in the legal landscape.

And it is no answer to say that the FEC could simply tweak the earmarking rules. Because "earmarking" often turns on non-public communications and subjective motives, earmarking rules are inherently easy to evade and difficult to enforce.[4] And a key insight of *Colorado II*—and *McConnell*—is that a "degree of circumvention" is typical in party committee operations—even with the safeguards petitioners claim comprise a sufficient alternative to the challenged limits. 533 U.S. at 446-447. Given this reality, it is crucial to defer to Congress's expertise in designing a coherent, comprehensive system of campaign contribution restrictions that anticipates and cuts off routes of circumvention. *McConnell*, 540 U.S. at 165, 170. In Congress's judgment, this system requires limits on party coordinated spending—not earmarking rules alone. *See infra* Part III.

II. The party coordinated spending limits remain crucial to impeding circumvention today.

In addition to asserting that *Colorado II* is out of step with Supreme Court precedent, petitioners also claim the decision is obsolete due to "intervening changes in the statute itself" and the "the factual

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[4] This is evident in the disclosure context where current FEC regulations allow groups running certain campaign ads to report only those donors who designate their contributions for specific ads. *See Van Hollen v. FEC*, 74 F. Supp. 3d 407 (D.D.C. 2014), *rev'd*, 811 F.3d 486 (D.C. Cir. 2016). After the FEC adopted an earmarking restriction for the reporting of electioneering communications, 11 C.F.R. § 104.20(c)(9), groups financing such communications went from providing near complete donor disclosure to almost none. *See* Taylor Lincoln & Craig Holman, *Fading Disclosure: Increasing Number of Electioneering Groups Keep Donors' Identities Secret*, Pub. Citizen (2010), https://www.citizen.org/wp-content/uploads/disclosure-report-final.pdf.

realities of modern campaigns." Fed. Resp'ts Br. at 5. Amici do not dispute the gravity of these changes but rather their import. If anything, recent developments exacerbate the use of party committees to facilitate circumvention of the base contribution limits and further confirm *Colorado II's* holding.

A. Recent changes have relaxed the laws regulating party contributions, undercutting petitioners' claims of disadvantage.

The NRSC argues that the Court is now "confronted with a different statute" which undercuts the underpinnings of *Colorado II,* NRSC Br. at 38, but the only significant statutory changes it identifies are amendments to FECA made by the 2014 "Cromnibus" appropriations bill. The amendments both waived the coordination rules and tripled the limits for contributions to three party "special accounts"—to be used exclusively to maintain party headquarters, fund legal and compliance work, and run presidential nominating conventions. 52 U.S.C. § 30116(a)(1)(B), (a)(9), (d)(5). In the 2024 election, a donor could give up to $123,900 to each of these accounts annually. *Contribution limits for 2023-2024 federal elections*, FEC, https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/.

But because the 2014 amendments thus eased the federal limits applicable to party committees, they place further weight on the existing party coordination restrictions to serve as the front line against attempts to bypass the base contribution limits. Perhaps recognizing this effect, petitioners argue that the 2014 amendments nevertheless render the coordination restrictions underinclusive. NRSC Br. at 28-29. But this argument was already rejected in *Libertarian National Committee*, 924 F.3d at 552. There, the en banc D.C. Circuit affirmed that Congress made a reasonable choice when it loosened limits on funds raised for party objectives unconnected to specific candidates—i.e., relating to party headquarters, recounts, and conventions—because this spending was unlikely to lead to corruption or its appearance. *Id*. at 550-551 (noting that *McConnell* found that contributions "that can be used to benefit federal candidates directly" pose the "greatest risk" of corruption) (internal quotations omitted).

Even if this claim had not already been rejected by at least one Court of Appeals, "the First Amendment imposes no freestanding underinclusiveness limitation." *Williams-Yulee v. Florida Bar,* 575 U.S. 433, 449 (2015). The bar for demonstrating underinclusiveness is accordingly high: petitioners must show that coordinated spending limits now cannot "fairly be said" to advance the government's anti-corruption interest because they provide only "ineffective or remote" support for this goal. *FCC v. League of Women Voters*, 468 U.S. 364, 396 (1984). The NRSC has not even attempted to make such a showing—perhaps because it is fatally self-contradictory to claim that the coordinated spending limits *both* "severely restrict[] parties' spending in coordination with their own candidates," NRSC Br. at 1, *and* are wholly ineffective at restricting coordinated spending.

The record in this case also underscores that the amendments retained the lower contributions limits and coordination rules for exactly those party expenditures that the parties—and their candidates—deem most valuable. Between 2013 and 2022, both the NRSC and NRCC devoted 95-99% of their coordinated expenditures and 96-100% of their independent expenditures to advertising for their candidates. *See* April FEC Br., *supra,* at 45-46 (noting that most reported NRSC coordinated expenditures were coded as "media," "media placement," or "media production"). The DSCC's and DCCC's spending reflected a comparable emphasis on media advertising. *Id. See also* JA 495-502. Thus, the record confirms that the 2014 amendments affect only a tiny fraction of the national parties' coordinated expenditures: those for purposes, such as payments for party headquarters, that neither the parties nor their candidates prioritize because they do not "benefit federal candidates directly." *Libertarian Nat'l Comm.*, 924 F.3d at 550. If anything, the amendments thus appear to have *more* closely tailored FECA to limit only those types of party coordinated expenditures deemed likely to corrupt.[5]

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[5] Petitioners raise an additional statutory change—two narrow exceptions to FECA's definitions of "contribution" and "expenditure" for certain *state* party grassroots activities that they claim somehow render the *national* parties' coordinated spending limits underinclusive. *See* NRSC Br. at 28-29 (citing 52 U.S.C. § 30101(8)(B)(ix), (xi); (9)(B)(viii), (ix)). They elide most of

The NRSC also cites *Citizens United* and the rise of super PACs as part of the changed "'factual' foundation" that would support reconsideration *Colorado II*. NRSC Br. at 44. Petitioners stress the parties' supposed loss of power and fundraising capacity in this new environment, *id*. at 44-46, but this alleged disadvantage is neither relevant to the constitutional analysis, nor remotely accurate. *See*, *e.g*., *McCutcheon,* 572 U.S. at 207 (noting it "is not an acceptable governmental objective to level the playing field") (internal quotations omitted). That super PACs now spend heavily in federal elections does not mean party committees no longer serve as conduits for the purchase of influence. Indeed, it is the very fact that parties can coordinate large amounts of spending with their candidates—which super PACs are not permitted to do—that makes parties the most attractive vehicles for the circumvention schemes that

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the text of these provisions in an effort to obscure their tight parameters, however, failing to mention that these provisions cover state party payments for certain volunteer and voter-related activities, *provided that* the payments are not for general public communications, and are funded by federal hard money contributions that have not been designated for any particular candidate. *See* 52 U.S.C. § 30101(9)(B)(viii)(1)-(3) & (ix)(1)-(3). The provisions ease FECA requirements for small-scale grassroots and volunteer activity, and do not implicate the mass media advertising to which the national parties devote the near entirety of their campaign budgets. Petitioners' avowed concerns that these narrow exceptions—allowing for the purchase of bumper stickers and yard signs for volunteers—render the coordinated spending limits ineffective thus ring hollow.

justify the coordinated spending limits. *Colorado II*, 533 U.S. at 452.

The NRSC also fails to mention other shifts in the law that have deregulated party fundraising and heightened concerns that parties will serve as conduits for circumvention. Most significantly, the 2014 *McCutcheon* decision eliminated the individual aggregate contribution limits and supercharged the practice of joint fundraising. In the 2014 elections, a single donor was limited to contributing $123,200 in aggregate to all candidates, party committees, and other PACs, and within this cap, to contributing $70,800 to party committees. *McCutcheon*, 572 U.S. at 194. *McCutcheon* invalidated these limits, allowing donors to give—within the base limits—unlimited amounts in aggregate to all candidates and party committees aligned with their partisan preferences, as well as to outside PACs.

Unsurprisingly, aggregate giving has surged, and parties continue to succeed in the so-called super PAC era. In the 2008 Presidential election immediately preceding *Citizens United*, the national committees of the Democratic Party raised a total of approximately $960 million and those of the Republican Party raised $920 million. *Party Committee Totals, 2008*, OpenSecrets.org, https://www.opensecrets.org/political-parties?cycle=2008. By 2020, in the wake of both *Citizens United* and *McCutcheon*, the total amount raised by the Democratic and Republican parties shot up to $1.8 billion and $2 billion respectively, vastly exceeding the 23% inflation rate for that period. *Party*

Committee Totals, 2020, OpenSecrets.org, https://www.opensecrets.org/political-parties?cycle=2020; *CPI Inflation Calculator*, https://www.bls.gov/data/inflation_calculator.htm. Although overall election spending likewise rose in the same period—amplified by the large amounts spent by super PACs—it is simply inaccurate to claim that the major parties are terminal.

B. New campaign practices—particularly joint fundraising—have made the party coordinated spending limits more, not less, necessary.

These developments have predictably led to new techniques to circumvent the base limits, and in particular, to a much more robust use of joint fundraising committees. The total amount of money raised through joint fundraising skyrocketed from $1.1 billion in 2012 to $2.6 billion in 2020 to $3.5 billion in 2024. *Total Joint Fundraising Committees, 1990-2024*, OpenSecrets.org, https://www.opensecrets.org/joint-fundraising-committees-jfcs. Today, dramatically more money can flow through party committees to benefit donors' preferred candidates, checked now only by the base contribution limits and the coordinated spending limit challenged here.

"Joint fundraising" is when a candidate's campaign creates a "joint fundraising committee" with multiple federal and state party committees and other PACs to enable big donors to write a single "joint" check up to the amount of all the committees' contribution limits combined. Although the joint fundraising committee must then distribute these funds among all the various "joined" committees according to each committee's respective contribution limit, *see* 11 C.F.R. §§ 102.6(a)(1), 110.3(c)(2), party committees may transfer unlimited amounts of money to other committees of the same party without triggering the otherwise applicable contribution limits, *see* 52 U.S.C. § 30116(a)(4); 11 C.F.R. §§ 102.6(a)(1)(ii), 110.3(c)(1). Thus, nothing prevents the party committees from consolidating this implicitly "earmarked" money back into a single party committee to be used for the benefit of the headlining candidate, who is well aware of which donors contributed to the joint effort most generously.

Federal candidates had for many decades engaged in joint fundraising efforts with other candidates and federal and state party committees,[6] but until *McCutcheon*, this practice was constrained by the aggregate limits; the maximum number of committees that could be joined was capped. But that decision predictably led to the formation of new "super joint fundraising committees," which expanded this practice by adding ever more party committees to the effort. Peter Olsen-Phillips, *Joint fundraisers ballooning after McCutcheon decision*, Sunlight Foundation (Oct. 29, 2014), https://sunlightfoundation.com/2014/10/29/joint-

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[6] Although FECA only authorizes joint fundraising by candidates, the relevant FEC regulation has long permitted any political committee to "engage in joint fundraising with other political committees or with unregistered committees or organizations." 11 C.F.R. § 102.17(a)(1)(i).

fundraisers-ballooning-after-mccutcheon-decision/. Within months of *McCutcheon*, two new "super joints" were formed with over 20 recipient committees. *Id.*

By the 2016 election, joint fundraising had ballooned. Hillary Clinton set up a joint "victory fund" with the DNC and "an unheard-of 32 state parties," allowing a single donor to give up to $356,100 annually. Matea Gold, *Here's how a wealthy Trump supporter could give $783,400 to support his campaign and the RNC*, Wash. Post (May 19, 2016), https://www.washingtonpost.com/news/post-politics/wp/2016/05/19/heres-how-a-wealthy-trump-supporter-could-give-783400-to-support-his-campaign-and-the-rnc/?postshare=5271463674395707. Exploiting the new Cromnibus limits, the national parties also "rolled out expensive packages for their biggest backers that come with perks like access to top officials and premium convention passes," provided they reached the highest donor tier by funding the parties' convention, recount, and headquarters accounts as well. *Id.*

In the most recent election, joint fundraising operations became yet more extreme. Donald Trump's campaign launched a joint fundraising operation with his own leadership PAC, the RNC, and 40 state Republican party committees that sought donations of up to $814,600. Daniel Strauss & Fredreka Schouten, *Donors to new Trump fundraising outfit can obtain 'Ultra MAGA' status with maximum contribution*, CNN (Mar. 29, 2024), https://www.cnn.com/2024/03/29/politics/trump-fundraising-ultra-maga/index.html. Half of the maximum contribution—$413,000—is designated to be received by the RNC, a huge amount only made possible by combining the $41,300 maximum contribution to the party committee with the $123,900 maximum contributions to each of the party's three special accounts. Maeve Reston & Marianne LeVine, *Joint committee allows Trump to raise money for legal bills, huge checks for RNC*, Wash. Post (Mar. 21, 2024), https://www.washingtonpost.com/politics/2024/03/21/trump-joint-fundraising-committee-rnc/. More money still could be transferred from the participating state party committees to the RNC.

Joe Biden established a similar joint fundraising operation, the Biden Victory Fund, together with the DNC and the party committees of all 50 states; it could accept contributions of up to $929,600 per donor. Brian Schwartz, *Biden, Democrats plan beefed-up 50-state fundraising strategy to overwhelm GOP rivals*, CNBC (May 24, 2023), https://www.cnbc.com/2023/05/24/biden-democrats-fundraising-plan.html?msockid=2f574b30cbba665a39415ae3caa86730. When Kamala Harris took over the Democratic nomination for President, she continued the effort. Her joint fundraising committee, Harris Victory Fund, ultimately raised an eye-popping total of $1.3 billion. *Joint Fundraising Committees, 2024*, OpenSecrets.org, https://www.opensecrets.org/joint-fundraising-committees-jfcs/all-committees.

Joint fundraising has also surged in Senate and congressional campaigns. *See* Eliza Newlin Carney, *Costly Midterms Fuel Hundreds of Joint Fundraising Committees*, Roll Call (May 28, 2014), https://rollcall.com/2014/05/28/costly-midterms-fuel-hundreds-of-joint-fundraising-committees/. By the 2020 elections, it was standard practice for Senate candidates—particularly incumbents or leadership—to set up joint fundraising committees to either support their own campaigns or advance their party leadership ambitions by fundraising for other candidates in their party. *See Joint Fundraising Committees, 2024*, OpenSecrets.org, https://www.opensecrets.org/jfc/top.php?type=C&cycle=2020. These efforts are often focused on the most competitive races. For instance, in the hotly contested 2022 Georgia Senate race between Democratic candidate Raphael Warnock and Republican candidate Herschel Walker, the biggest donors often directed their funds to the candidate's joint fundraising committees (or super PACs). Kyle Khan-Mullins, *Raphael Warnock's Billionaire Donors Aren't Spending Big Like Herschel Walker's*, Forbes (July 8, 2022), https://www.forbes.com/sites/kylemullins/2022/07/08/raphael-warnocks-billionaire-donors-arent-spending-big-like-herschel-walkers/. *See also Joint Fundraising Committees, 2022*, OpenSecrets.org, https://www.opensecrets.org/joint-fundraising-committees-jfcs/all-committees?cycle=2022 (Warnock Victory Fund raised over $17 million in 2022).

Compounding corruption concerns, joint fundraising is dominated by large donors. In the 2024 elections, 60 donors each gave over $2 million in total to joint fundraising committees supporting candidates of their chosen party; the Republican Party's biggest donor gave $5.5 million to Republican joint fundraising committees and the Democratic Party's biggest donor gave $4.9 million to the equivalent Democratic committees. *Top Individual Contributors to Joint Fundraising Committees, 2024*, OpenSecrets.org, https://www.opensecrets.org/joint-fundraising-committees-jfcs/top-individuals. In essence, these committees "act as one-stop shops for donors willing to write large checks." Bridget Bowman, *Presidential candidates use joint fundraising committees. So what are they?*, NBC News (Apr. 20, 2023), https://www.nbcnews.com/meet-the-press/meetthepressblog/presidential-candidates-use-joint-fundraising-committees-are-rcna80498.

These expanded joint fundraising techniques give lie to petitioners' claim that intervening real-world developments have fatally weakened parties and alleviated concerns that parties could serve as vehicles for quid pro quo exchanges. The practice of joint fundraising implicitly "earmarks" funds for the candidate who headlined the fundraising effort—without running afoul of the federal earmarking rules that petitioners claim are a viable alternative to the challenged limits. Indeed, reinforcing what *Colorado II* held with respect to the earlier "tally system" of the parties, current joint fundraising techniques confirm that the earmarking rules capture only the "the most clumsy attempts to pass contributions through to candidates," 533 U.S. at 462.

It is difficult to see how a single donor can give $5 million to joint fundraising committees, implicitly designating the funds for the candidates heading those committees, without raising a cognizable risk of corruption or its appearance, even under the most restrictive conception of this governmental interest. Currently, however, party committees can spend only a prescribed amount of their money in coordination with a candidate; as this Court recognized in *McCutcheon*, the coordinated spending limits thus moderate the risk that a party could simply forward on every dollar of this $5 million to the relevant candidates in the form of coordinated expenditures. The party instead must spend a sizable portion of such funds independently or for other purposes, "alleviat[ing] the danger that [these expenditures] will be given as a quid pro quo for improper commitments from the candidate." *Buckley*, 424 U.S. at 47.

III. Congress Has Unique Expertise in Preventing Circumvention of Campaign Finance Laws.

Unlike most statutory regimes, FECA is a rare instance of members of Congress regulating themselves. For this reason, the Court has often recognized that deference should be paid to the legislature's experience with the financing of electoral campaigns and legislators' own first-hand knowledge about the vulnerabilities of candidates and other political players to corruption. *See McConnell*, 540 U.S. at 137; *Beaumont*, 539 U.S. at 155; *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 391, 397 (2000); *FEC v. Nat'l Conservative PAC*, 470 U.S. 480, 500

(1985); *CalMed*, 453 U.S. at 201; *Buckley*, 424 U.S. at 30.

Relevant here, this Court has stressed that Congress has expertise in the structure and operation of political parties—as they are organizations "both run by, and largely composed of, federal officeholders and candidates." *McConnell*, 540 U.S. at 155. For that reason, deference to Congress's expertise in designing and enacting systems to check routes of circumvention through party committees is crucial to maintaining a functional campaign finance system. *McConnell*, 540 U.S. at 164-65 (noting that Congress was entitled to "ma[ke] a prediction" after "[h]aving been taught the hard lesson of circumvention by the entire history of campaign finance regulation"). Further, given that political parties are operated by and for incumbent officeholders, there is little cause to fear that Congress, by *limiting* party contributions to candidates, is attempting "incumbent protection," as petitioners claim. NRSC Br. at 47.

By contrast, this Court is less well situated to make these judgments. It is limited to the factual record in specific cases and forced to consider individual provisions in the complex campaign finance system piecemeal. In recent decisions, the Court's predictions about how sophisticated political players will respond to different legal rules were proven incorrect.

For instance, in *Citizens United*, when the Court deregulated independent corporate expenditures, it relied upon the existence of "effective disclosure" to shine a light on this spending and to check any abuses that might arise: "[w]ith the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters." 558 U.S. at 370. But "effective disclosure" of independent campaign spending plummeted after *Citizens United* due to weaknesses in FECA, regulatory inertia, and rapidly evolving campaign practices. *See supra* n.4. Several years thereafter, the author of the *Citizen United* opinion, Justice Anthony Kennedy, conceded that the disclosure he envisioned was "not working the way it should." Paul Blumenthal, *Anthony Kennedy's Citizens United Disclosure Salve 'Not Working,'* Huff. Post. (Nov. 2, 2015), https://www.huffingtonpost.com/entry/citizens-united-anthonykennedy_us_5637c481e4b0631799134b92. Even as petitioners now offer up federal disclosure laws as a better alternative to the limits challenged here, NRSC Br. at 33, these laws have proven deeply inadequate, creating a "dark money" crisis that has allowed billions of dollars of untraceable money to flood American elections. Anna Massoglia, *Dark Money Hit a Record High of $1.9 Billion in 2024 Federal Races*, Brennan Center (May 7, 2025), https://www.brennancenter.org/our-work/research-reports/dark-money-hit-record-high-19-billion-2024-federal-races.

Similarly, after *McCutcheon*, certain circumvention schemes have turned out to be common, not "implausible" as the Court predicted. 572 U.S. at 210, 211. In particular, that decision dismissed—as contrary to "experience and common sense"—the possibility that party joint fundraising would supercharge circumvention while eluding the earmarking rules. *Id*. at 216. *But see id*. at 256-57 (Breyer, J., dissenting) (noting that joint fundraising allows the transfer of "large sums of money to specific candidates" without triggering earmarking rules) (citing Brief for Campaign Legal Center, et al., as Amici Curiae). This is precisely what has happened in the election cycles following *McCutcheon*. Over $6 billion has been raised through joint fundraising committees in the last two presidential elections alone.

Evaluating the constitutionality of campaign finance regulation requires not only expertise in the law, but also an empirical analysis of the problems the regulation seeks to address and the likely impacts of different forms of regulation on the campaign system: "To what extent will unrestricted giving lead to corruption or its appearance? What forms will any such corruption take? To what extent will a lack of regulation undermine public confidence in the democratic system?" *McCutcheon*, 572 U.S. at 259 (Breyer, J., dissenting).

This Court should both give weight to these questions in reviewing the coordinated spending limits and acknowledge that they have been largely answered by the record created by Congress—and further developed in *Colorado II* and *McConnell*—that documents how party committees have served as "willing intermediaries" between donors seeking to "create debt on the part of officeholders" and candidates seeking funds to "increase their prospects of election." *McConnell*, 540 U.S. at 146. In particular, it would be error to turn a blind eye to the extraordinary increase in the use of joint fundraising committees following *McCutcheon* despite the Court's predictions to the contrary. Indeed, following this Court's recent decisions, "[w]hat a realist would expect to occur has occurred," *Colorado II*, 533 U.S. at 458: the invalidation of longstanding rules for campaign fundraising has permitted the development of an even more corrupting variation of the party "soft money" system decried in *McConnell*. Now big donors use the mechanism of joint fundraising, instead of the pretense of soft money, to funnel huge sums through the parties with the "understanding that the favored candidate will benefit." *Id.* And the relief sought by petitioners will only further exacerbate the risk of quid pro quo corruption, because absent the limits they challenge, party committees will be able to pass on every such dollar to the donors' favored candidates through coordinated spending. "The inducement to circumvent [will] almost certainly intensify," *id.* at 460, and donors will seek yet more routes to bypass this increasingly porous system. The base contribution limits that are the bedrock of our campaign finance system will be far more than "eroded": they will be litigated out of the law altogether.

CONCLUSION

The judgment of the court below should be affirmed.

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