No. 24-621

In the Supreme Court of the United States

NATIONAL REPUBLICAN SENATORIAL COMMITTEE, ET AL.,

Petitioner,

v.

FEDERAL ELECTION COMMISSION, ET AL.,

Respondents.

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

BRIEF OF THE BRENNAN CENTER FOR JUSTICE AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

The Brennan Center for Justice at New York University School of Law[2] ("Brennan Center") is a not-for-profit, nonpartisan law and public policy institute that seeks to improve systems of democracy and justice. The Brennan Center has longstanding expertise on campaign finance regulation and related constitutional issues, including regulation of political party fundraising and spending. Our work has been cited by the parties in this case and several *amici*.

SUMMARY OF THE ARGUMENT

This case is about the proper interpretation of the First Amendment; it is not about the optimal policy for campaign finance regulation. But Petitioners and several amici repeatedly conflate constitutionality and policymaking. One of the ways they do so is by repeatedly highlighting the Brennan Center's longstanding policy view that the party coordinated spending rules at issue in this case may, practically speaking, do more harm than good and that Congress should consider their repeal, among several other reforms. See, *e.g.*, Pet. at 1; Ohio Br. at 11-12; Br. of Pet. at 4; Br. of RNC at 11-12. This remains an important question, but it is one that is far beyond the expertise and proper constitutional purview of this Court.

Parties today have many flaws, but they are integral to our political system and, relative to super PACs and similar groups, bring important democratic

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[2] This brief does not purport to reflect the views, if any, of the New York University School of Law.

benefits.[3] And while the Court has long recognized that party organizations are not interchangeable with their candidates, see *Colorado Republican Fed. Campaign Comm.* v. *FEC*, 518 U.S. 604, 622 (1996) ("*Colorado I*"); *FEC* v. *Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 449–450 (2001) ("*Colorado II*"), as a practical matter their effectiveness often depends on their ability to work closely together—including by coordinating electoral advocacy, see Vandewalker & Weiner, note 3, *supra*.

For these reasons, we have long advocated for *Congress* to pass campaign finance reforms to strengthen the role of traditional party organizations in American democracy, including, in some circumstances, repeal of coordinated party spending limits. This should be part of a package of legislative changes that balances the need to strengthen parties with the continuing need to protect against corruption and advance other important policy objectives.[4] In considering such pro-

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[3] Our research and that of other scholars and advocates has found that, relative to outside groups like super PACs, traditional party committees tend to be (i) more transparent in their funding; (ii) receive financial support from a broader and more diverse base of contributors; (iii) do more to spur grassroots political engagement; and (iv) given their overarching interest in assembling durable governing majorities, place more long-term emphasis on accountability to the public. See Ian Vandewalker & Daniel I. Weiner, *Stronger Parties, Stronger Democracy: Rethinking Reform*, Brennan Center for Justice (Sep. 16, 2015), https://www.brennancenter.org/our-work/research-reports/stronger-parties-stronger-democracy-rethinking-reform.

[4] In addition to allowing parties greater opportunities to coordinate election spending with their candidates, we have recommended imposing reasonable, relatively uniform contribution

posals, Congress must grapple with the broader campaign finance landscape shaped in significant part by this Court's previous interventions and their many unintended consequences. See Part I, *infra*. Indeed, eliminating coordinated spending limits without taking this bigger picture into account is less likely to benefit American democracy and could create further harmful outcomes. See Part II, *infra*.

In any event, such questions are the purview of Congress. It is Congress that is elected to represent the American people and Congress that has the ability to hold hearings, weigh a broad range of evidence, and propose comprehensive regulatory frameworks that balance competing priorities and interests. Regulating campaign finance necessitates careful weighing of the need to protect free speech and association, prevent corruption, promote transparency, and foster the overall health of our political system. These are issues elected legislatures are best situated to evaluate. As elected leaders, they are also in the best position to assess the impact that campaign rules—or a lack thereof—are likely to have on the public's confidence in government institutions, an especially important consideration at a time when the public's faith in government is already being tested.

Of course, this Court also has an important role. But it is a narrow one: assessing whether the party coordinated spending limits at issue here violate the

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limits for both party committees and candidates, expanding public financing for party committees, and loosening federal restrictions on state and local party organizations, among other reforms. See Vandewalker & Weiner, note 3, *supra*.

First Amendment. In that, we concur with Court-Appointed Amicus and Intervenor-Respondents that they do not. Br. for Court-Appointed Amicus Curiae at 30–52; Br. for Intervenor-Respondents at 15–32. Given the Court's history of prior interventions that have had unexpected and harmful outcomes—to say nothing of the absence of even the most basic factual record in this case—the Court should exercise judicial restraint and resist the temptation to act as a super-legislature by deciding questions that should be left to the People and their elected representatives.

ARGUMENT

Petitioners ask the Court to strike down the limits on coordinated party expenditures under 52 U.S.C. 30116(d), arguing that these caps violate the First Amendment. But the Court already resolved this issue in *Colorado II*, where it recognized that because coordinated party expenditures are functionally equivalent to candidate contributions, Congress can limit them to prevent donors from using party committees to circumvent individual candidate contribution limits. 533 U.S. at 447, 464–465. That principle remains true and should end this Court's constitutional inquiry.

Whether party coordinated limits remain good *policy* is a distinct question. Our brief underscores why this set of issues is best left for elected representatives to address. Specifically, Part I documents the Court's history of intervention in the statutory scheme for campaign finance regulation designed by Congress in response to the overwhelming preferences of the American people. While we believe the Court has never afforded sufficient deference to the judgments of Congress in this area, its prior practice of basing

decisions on detailed factual findings grounded in record evidence at least allowed for due consideration of the realities with which Congress grappled when it enacted reforms. More recent decisions have taken none of this context into account and as a result have had harmful unintended consequences. In Part II, we explain why, in light of this history, the Court should leave weighing the wisdom of the particular campaign finance policy at issue here to Congress and not conflate a complex policy debate with questions of constitutionality.

I. The Court's campaign finance interventions have second-guessed Congress and diverged from the policy preferences of the American public, with harmful unintended consequences.

A. The coordinated spending rules at issue in this case are part of a system of campaign finance regulation that Congress enacted in response to the clear preferences of most Americans to address the role of concentrated wealth in the electoral process.

The American public has long overwhelmingly favored reasonable regulation of money in the electoral process.[5] Congress and state legislatures responded to

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[5] Five decades ago, as the Watergate scandal was unfolding, a Harris poll found that nearly 90 percent of Americans believed campaign spending was excessive and 68 percent supported imposing limits on political contributions. *Money, Politics and the American Public*, Roper Center for Public Opinion (Oct. 14, 2014), https://www.ropercenter.cornell.edu/blog/money-politics-and-american-public. A CNN/USA Today/Gallup poll in 2001 found similar results: 76 percent of respondents said they favored limits on political fundraising. Keating Holland, *Poll:*

the public's persistent demand for reform, starting in the Nineteenth Century with restrictions on corporate (and later union) campaign spending. See *Citizens United* v. *FEC*, 558 U.S. 310, 432–447 (2010) (Stevens, J., dissenting in part) (charting the long history of campaign finance regulation in the United States). In the 1970s, with the cost of campaigns growing and then in the wake of Watergate, Congress passed (and amended) the Federal Election Campaign Act ("FECA") to impose limits on campaign contributions and expenditures, establish disclosure requirements, and create other safeguards. Then in 2002, Congress again responded to the public's frustration over the influence of campaign money and lack of transparency when it passed the Bipartisan Campaign Reform Act ("BCRA"), which banned "soft money" contributions[6]

Americans favor campaign finance reform efforts, CNN (Mar. 16, 2001), https://www.cnn.com/2001/ALLPOLITICS/03/16/cnn.poll/index.html. And today, supermajorities of Americans continue to say that political spending should be subject to limits. Bradley Jones, *Most Americans Want to Limit Campaign Spending, Say Big Donors Have Greater Political Influence*, Pew Research Center (May 8, 2018), https://www.pewresearch.org/short-reads/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence/ (finding that 77 percent of Americans agreed there should be limits on political spending); Andy Cerda & Andrew Daniller, *7 Facts About Americans' Views of Money in Politics*, Pew Research Center (Oct. 23, 2023), https://www.pewresearch.org/short-reads/2023/10/23/7-facts-about-americans-views-of-money-in-politics/ (finding that 72 percent of U.S. adults support limits on campaign contributions).

[6] "Soft money" contributions refer to funds raised and spent outside the federal campaign finance regulatory framework, typically by political parties for activities that are not electoral advocacy and are viewed as party-building activities, such as voter registration drives, issue advocacy, and general administrative

to national political parties and regulated electioneering communications funded by corporations and unions.

These legislative developments reflected considered policy choices by lawmakers intimately acquainted with the realities of campaign fundraising, the risk of corruption, and the broader dangers posed by the concentration of private wealth and political power.[7] As one Representative put it: "The great social thrust of the last decade has been to reaffirm equality of opportunity for all Americans, especially with regard to the power of the ballot. We must not let

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costs. These contributions are not subject to federal limits or disclosure requirements when used for non-candidate-specific purposes. See, *e.g.*, *McConnell* v. *FEC*, 540 U.S. 93, 122–133 (2003).

[7] State lawmakers in red and blue states alike have also adopted robust campaign finance laws. Thirty-eight states and Washington, D.C., impose limits on the amount that an individual or PAC can contribute to a candidate or committee. See *Campaign Contribution Limits: Overview*, Nat'l Conf. of State Legislatures (updated July 9, 2025), https://www.ncsl.org/elections-and-campaigns/campaign-contribution-limits-overview. Twenty-three states and Washington, D.C., completely prohibit corporations from contributing to candidates or candidate committees. See *id.* Every state and Washington, D.C., requires campaign finance disclosure to varying extents. See *Contribution Disclosure Requirements*, Nat'l Conf. of State Legislatures (updated July 22, 2022) https://www.ncsl.org/elections-and-campaigns/contribution-disclosure-requirements; *Expenditure Disclosure Requirements*, Nat'l Conf. of State Legislatures (July 22, 2022), https://www.ncsl.org/elections-and-campaigns/expenditure-disclosure-requirements. And fifteen states and Washington, D.C., provide a public financing option. See *Pub. Campaign Fin.*, Nat'l Conf. of State Legislatures (updated Sep. 9, 2025), https://www.ncsl.org/elections-and-campaigns/public-financing-of-campaigns-overview.

these important advances to be [sic] eroded by a growing inequality in campaign finance and access to public office." FEC, *Legis. Hist. of the FECA of 1971* (Sep. 1981), https://www.fec.gov/resources/legal-resources/legislative-history/legislative_history_1971.pdf, at 694 (House Floor Debate on H.R. 11060, Stmt. of Rep. Matsunaga); see also *id.* at 687 (Stmt. of Rep. Thompson) (decrying "dependence of candidates on support from a few sources of concentrated wealth"); *id.* at 677 (stmt. of Rep. Staggers) (arguing that Congress "must assure that wealth or access to great sums of money, with its attendant corrupting influence, does not become a qualification for Federal elective office"); *id.* at 788 (stmt. of Rep. Fisher) (arguing that unregulated campaign spending "begets corruption, unethical tactics, deceit, and deliberate distortion of facts and issues"); *id.* at 131 (Sen. Comm. on Commerce Rep. No. 92-96; Stmt. of Sen. Hart) (arguing that "if we are to eliminate the influence, real or imagined, of the large contributor . . . if we are to make our political campaigns a testing ground for ideas and issues rather than exercises for our money-raisers—then I believe we must eliminate our dependence on private contributions . . . It is the source of the money which . . . suggests the likelihood of favor and influence"); *id.* at 547 (Sen. Fl. Debate & Amds. to S. 382; Stmt. of Sen. Symington) (arguing that "[r]easonable limitations must be applied to the expenditures of a candidate so as to prevent any person with unlimited resources from 'buying' an election"). They also mirrored a broader international consensus among established democracies that preventing dependence on private contributions from a small pool of wealthy individuals is part and parcel of fighting corruption and encouraging policymaking to

be more attuned to the priorities of everyday constituents and the broad national interest.[8]

B. The Court's departure from Congress's vision over the past two decades has caused harmful unintended consequences.

In its review of campaign finance laws, this Court has generally not granted appropriate deference to Congress and the preferences of the American people. Notably, in *Buckley* v. *Valeo* in 1976, the Court struck down most of the original FECA's limitations on campaign expenditures, finding that they could not be justified as a means to limit *quid pro quo* corruption, the only government interest the Court has been willing to acknowledge as compelling in this context. 424 U.S.

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[8] For instance, three of America's oldest allies, Canada, France, and the United Kingdom, limit contributions to parties and candidates, implement reporting requirements that parallel or exceed those in the United States, and provide extensive public funding. Canada, see Grady Yuthok Short, *The Campaign Finance System Americans Could Have Had*, Brennan Center for Justice (Apr. 23, 2025), https://www.brennancenter.org/our-work/analysis-opinion/campaign-finance-system-americans-could-have-had (last visited Oct. 4, 2025); France, see France 24, *How French Parties and Politicians Are Funded* (June 7, 2010), https://www.france24.com/en/20100706-french-parties-politicians-funded-france-government-legislation (last visited Sep. 19, 2025); United Kingdom, see Inst. for Gov't, *How Is Election Spending Regulated in the UK?*, (May 22, 2024), https://www.instituteforgovernment.org.uk/explainer/election-spending-regulated-uk.

Many other established democracies, including Germany, Spain, Norway, and Finland, similarly regulate campaign finance more extensively than the United States. See Int'l IDEA, *Pol. Fin. Database*, https://www.idea.int/data-tools/data/political-finance-database (last visited Oct. 4, 2025).

1, 45–49 (1976); see also *Citizens United*, 558 U.S. at 345.

However, *Buckley* was at least decided with the benefit of a robust record, including testimony and extensive findings of fact. And in subsequent decisions, the Court carefully applied the framework announced in *Buckley* to take due account of the legitimate bases for challenged laws, again basing its decisions on substantial factual records. The Court's careful approach in *McConnell*, 540 U.S. 93, which upheld most of BCRA, exemplifies this approach. The Court's decision in *McConnell* was deeply informed by a voluminous record that included congressional committee reports, testimony from members of Congress and hundreds of other witnesses, and ample other documentation of the corruption BCRA aimed to address. See *id.* at 150. The Court also benefited from a robust factual record when it last upheld the constitutionality of the coordinated party expenditure limits at issue here. *Colorado II*, 533 U.S. at 457 (concluding that "substantial evidence demonstrates how candidates, donors, and parties test the limits of the current law, and it shows beyond serious doubt how contribution limits would be eroded if inducement to circumvent them were enhanced by declaring parties' coordinated spending wide open"); see also *id.* at 461 ("[T]he record shows that even under present law substantial donations turn the parties into matchmakers whose special meetings and receptions give the donors the chance to get their points across to the candidates.").

Over the last two decades, however, the Court has taken a sharply different approach to campaign finance cases, repeatedly substituting its own judgment

for that of Congress and the American people, consistently without the benefit of a well-developed factual record. See, *e.g.*, *FEC* v. *Wis. Right to Life*, 551 U.S. 449, 469–474 (2007); *Citizens United*, 558 U.S. at 338–340; *McCutcheon* v. *FEC*, 572 U.S. 185, 204–205 (2014). Instead of hard facts, the Court has increasingly based its decisions on unfounded assumptions and hypotheticals manufactured by plaintiffs, resulting in decisions that are misaligned with legislative intent, contradictory to public will, and all too often divorced from the realities of political campaigns and fundraising.

The Court's approach has resulted in several harmful unintended consequences. We detail some of the most notable examples below.

1. The Court's decisions have resulted in a significant amount of outside campaign spending that is not "independent" from candidates, increasing corruption risks.

The Court's landmark opinion in *Citizens United* and its progeny swept away restrictions on corporate and union campaign spending and ultimately resulted in the rise of super PACs and other groups that can raise and spend unlimited amounts of money on elections, much of it coming from a handful of the wealthiest donors. See, *e.g.*, *Citizens United*, 558 U.S. at 336–366; *SpeechNow.org* v. *FEC*, 599 F.3d 686, 692–693 (D.C. Cir. 2010); *About Outside Spending*, OpenSecrets.org, https://www.opensecrets.org/outside-spending (last accessed Oct. 4, 2025) (showing that super PACs and nonprofit groups have spent at least $13.3 billion on federal elections since 2010). These rulings rest on the core premise that because outside groups

operate "independently" from candidates, their campaign activities—no matter how massive and impactful—cannot generate a risk of *quid pro quo* corruption sufficient to justify any limits. See, *e.g.*, *Citizens United*, 558 U.S. at 360 ("[I]ndependent expenditures do not lead to, or create the appearance of, *quid pro quo* corruption."); *McCutcheon*, 572 U.S. at 210 ("[T]here is not the same risk of *quid pro quo* corruption or its appearance when money flows through independent actors to a candidate, as when a donor contributes to a candidate directly.").

In reality, however, it is quite easy for many purported "outside" groups to work hand-in-glove with campaigns, resulting in spending that is not actually independent. During the 2024 election, both major party presidential candidates outsourced core campaign functions to supportive super PACs. See Dan Merica, *Elon Musk's PAC Spent an Estimated $200 Million to Help Elect Trump, AP Source Says*, Associated Press (Nov. 11, 2024), https://apnews.com/article/elon-musk-america-pac-trump-d248547966bf9c6daf6f5d332bc4be66; Marina Pino & Julia Fishman, *Fifteen Years Later, Citizens United Defined the 2024 Election*, Brennan Center for Justice (Jan. 14, 2025), https://www.brennancenter.org/our-work/research-reports/fifteen-years-later-citizens-united-defined-2024-election. For instance, groups funded almost entirely by one supporter of President Donald Trump, Elon Musk, not only ran ads, but took on much of the campaign's ground game in key states, knocking on approximately 10 million doors. See Theodore Schleifer, *Elon Musk and His Super PAC Face Their Crucible Moment*, New York Times (Nov. 4, 2024), https://www.nytimes.com/2024/11/04/us/elections/musk-america-pac-trump-voters.html. Vice

President Kamala Harris also relied on outside groups funded by her largest donors for important research and other core campaign functions. See Theodore Schleifer and Shane Goldmacher, *Inside the Secretive $700 Million Ad-Testing Factory for Kamala Harris*, New York Times (Oct. 17, 2024), https://www.nytimes.com/2024/10/17/us/elections/future-forward-kamala-harris-ads.html; Pino & Fishman, p. 14, *supra*.

Given that outside groups are often the alter-egos of candidates' campaigns and may receive unlimited funds, it should come as no surprise that they are also vectors for corruption. One recent high-profile example saw former U.S. Senator Robert Menendez convicted in a bribery scheme involving a donor with close ties to the Egyptian government who made contributions to a super PAC earmarked for his reelection campaign. See Press Release, *Former U.S. Senator Robert Menendez Sentenced To 11 Years In Prison For Bribery, Foreign Agent, And Obstruction Offenses*, U.S. Att'y Office for S.D.N.Y. (Jan. 29, 2025), https://www.justice.gov/usao-sdny/pr/former-us-senator-robert-menendez-sentenced-11-years-prison-bribery-foreign-agent-and; *United States* v. *Menendez*, 132 F. Supp. 3d 610, 617–619 (D.N.J. 2015).

In another case, North Carolina insurance executive Greg Lindberg was convicted of attempting to bribe the state's insurance commissioner with $1.5 million funneled through a super PAC he controlled. Press Release, *Chairman Of Multinational Investment Company And Company Consultant Convicted Of Bribery Scheme At Retrial*, U.S. Att'y Office for W.D.N.C. (May 15, 2024), https://www.justice.gov/usao-wdnc/pr/chairman-multinational-in-

vestment-company-and-company-consultant-convicted-bribery; *United States* v. *Lindberg*, 5:19-cr-22-MOC-DCK-1, ECF No. 435 (W.D.N.C. May 16, 2024). Former Ohio House Speaker Larry Householder likewise was convicted in a major bribery scandal involving $60 million in contributions to his nonprofit dark money group, which he used in part to support his bid for the speaker's gavel by funding supposedly independent expenditures in favor of his allies. Press Release, *Former Ohio House Speaker Sentenced to 20 years in Prison for Leading Racketeering Conspiracy Involving $60 Million in Bribes*, U.S. Att'y Office for S.D. Ohio (June 29, 2023), https://www.justice.gov/usao-sdoh/pr/former-ohio-house-speaker-sentenced-20-years-prison-leading-racketeering-conspiracy; *United States v. Householder*, 137 F.4th 454, 464–70 (6th Cir. 2025).

Far from isolated events, these convictions exemplify an all-too-familiar pattern in which unlimited and often hidden contributions to super PACs and other dark money groups repeatedly fuel serious bribery scandals. See Ian Vandewalker, *10 Years of Super PACs Show Courts Were Wrong on Corruption Risks*, Brennan Center for Justice (Mar. 25, 2020), https://www.brennancenter.org/our-work/analysis-opinion/10-years-super-pacs-show-courts-were-wrong-corruption-risks.

The Court's insistence that the sale of access and influence can never be corrupt for purposes of campaign finance regulation has compounded this problem. See *Citizens United*, 558 U.S. at 360. Wealthy donors giving massive sums to super PACs are increasingly receiving benefits in the form of favorable regulations, pardons and other lenient treatment, and

even government positions where they can formally or informally impact policies affecting their own business and financial interests. For example, one nursing home executive who had been convicted of misappropriating over $10 million of this employees' payroll taxes received a pardon after his mother contributed $1 million to a pro-Trump super PAC. Kenneth P. Vogel, *Trump Pardoned Tax Cheat After Mother Attended $1 Million Dinner*, New York Times (May 27, 2025), https://www.nytimes.com/2025/05/27/us/politics/trump-pardon-paul-walczak-tax-crimes.html. These trends reinforce widespread concerns among Americans of all political persuasions that large donors have too much power over politicians, reinforcing cynicism and apathy at a time when public trust in government is already hovering near historic lows. See Part I.A.5., *infra*.

2. The Court's decisions have resulted in a significant amount of outside campaign spending that has not been transparent.

Citizens United and subsequent cases also repeatedly extolled the value of donor transparency, finding that more stringent limits were unnecessary because disclosure rules would allow voters to understand who is trying to influence them. See 558 U.S. at 370 ("With 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."); see also *McCutcheon*, 572 U.S. at 223 ("[D]isclosure of contributions minimizes the potential for abuse of the campaign finance system.").

Here, too, reality has been markedly different from the Court's assumptions. Since *Citizens United*, there has been an explosion of dark money spending in federal elections from groups that do not disclose their donors—at least $4.3 billion. See Anna Massoglia, *Dark Money Hit a Record High of $1.9 Billion in 2024 Federal Races*, Brennan Center for Justice (May 7, 2025), https://www.brennancenter.org/our-work/research-reports/dark-money-hit-record-high-19-billion-2024-federal-races. Just in the 2024 election cycle, shell companies and nonprofits that did not disclose their funding sources gave $1.3 billion to super PACs, more than in the prior two election cycles combined. *Id.* Thus, in many instances, voters are not actually able to make the sort of informed choice between different speakers and messages in the political marketplace that the Court appears to have envisioned in *Citizens United*. See 558 U.S. at 371.

3. The Court's decisions have made it easier for foreign money to make its way into American elections.

The Court has also insisted that its decisions would not allow significant amounts of foreign campaign money to infiltrate American elections. See *Citizens United*, 558 U.S. at 362 (rejecting campaign finance restrictions based on the speaker's identity and declining to reach the government's interest in limiting foreign influence over American politics).

Such spending is indeed still prohibited, but the Court's rulings have rendered that prohibition easier than ever to evade. There is now extensive evidence that foreign donors have used super PACs and other outside groups to influence the U.S. political process. In 2016, Mexican businessman Jose Susumo Azano

Matsura was convicted of illegally funneling $600,000 in foreign funds into the San Diego mayoral race through a super PAC to influence that race. Press Release, *Mexican Businessman Jose Susumo Azano Matsura Sentenced for Trying to Buy Himself a Mayor*, U.S. Att'y Office for S.D. Cal. (Oct. 27, 2017), https://www.justice.gov/usao-sdca/pr/mexican-businessman-jose-susumo-azano-matsura-sentenced-trying-buy-himself-mayor; *United States* v. *Azano Matsura*, No. 14-cr-388-MMA-1 (S.D. Cal. Sep. 2016), *aff'd*, 129 F. Supp. 3d 975.

A year later, former Miami Beach Commissioner Michael Grieco pleaded no contest to criminal charges after secretly establishing a super PAC and accepting concealed donations from a Norwegian developer seeking to build in the city. Joey Flechas & Nicholas Nehamas, *Beach commissioner pleads to criminal charge. But swears he didn't do it.*, Miami Herald (Oct. 24, 2017), https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article180710691.html. Other examples abound. See, *e.g.*, *United States* v. *Cuellar*, No. 4:24-cr-00123 (S.D. Tex. May 3, 2024) (congressional representative indicted for accepting alleged bribes from Azerbaijan oil company and Mexican bank in exchange for influencing U.S. policy in favor of donors); Jimmy Cloutier, et al., *Foreign-Influenced Corporate Money in State Elections*, OpenSecrets (Jan. 23, 2024), https://www.opensecrets.org/news/reports/foreign-influenced-corporate-money.

While some of these violations have been uncovered through civil and criminal enforcement actions, such cases usually take years, with sanctions coming long after the relevant election. See Ewan Palmer,

Mike Johnson's Campaign Contributions From Company Tied to Russia, Newsweek (Oct. 27, 2023), https://www.newsweek.com/house-speaker-mike-johnson-donations-russia-butina-1838501 (FEC issued civil penalty 5 years after alleged misconduct and deadlocked on enforcing harsher penalty against petroleum company "for donating to GOP candidates in Louisiana in 2018 despite being almost entirely owned by Russian nationals"); Daniel I. Weiner & Owen Bacskai, *The FEC, Still Failing to Enforce Campaign Laws, Heads to Capitol Hill*, Brennan Center for Justice (Sep. 15, 2023), https://www.brennancenter.org/our-work/analysis-opinion/fec-still-failing-enforce-campaign-laws-heads-capitol-hill; see also Ian Vandewalker & Lawrence Norden, *Getting Foreign Funds Out of America's Elections*, Brennan Center for Justice (Apr. 6, 2018), https://www.brennancenter.org/our-work/policy-solutions/getting-foreign-funds-out-americas-elections.

4. The Court's decisions have made other limits easier to circumvent.

The prohibition on foreign campaign spending is not the only remaining campaign finance limit that the Court has made easier to circumvent despite its own assurances. Most notably, in striking down aggregate limits on how much any one individual could give to federal candidates, parties, or PACs, the plurality in *McCutcheon* expressly dismissed as implausible the concern that individual donors would then use joint fundraising and other tactics to circumvent remaining contribution limits for these recipients. See 572 U.S. at 218 ("The absence of such a prospect today belies the Government's asserted objective of preventing corruption or its appearance. The improbability of

circumvention indicates that the aggregate limits instead further the impermissible objective of simply limiting the amount of money in political campaigns."); see also *McCutcheon* v. *FEC*, No. 12-536, Oral Arg. Tr. at 36 (U.S. Oct. 8, 2013), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2013/12-536_2k81.pdf (dismissing these concerns as "wild hypotheticals that are not, obviously, plausible or—and lack—certainly lack any empirical support").

But that is precisely what has occurred in the years since. In particular, party committees now routinely use joint fundraising committees ("JFCs") to raise massive six-figure checks from single donors. "[A]fter the 2014 *McCutcheon* v. *FEC* Supreme Court decision eliminated aggregate donor limits, JFC usage exploded from only 42 in the 1994 cycle to over 1,000 registered JFCs in 2024." Adrienne Royer, *Everything You Need to Know About Joint Fundraising Committees*, CMDI (June 9, 2025), https://www.cmdi.com/blog/everything-you-need-to-know-about-joint-fundraising-committees. Although JFCs must distribute funds they receive to the various "joined" committees according to applicable contribution limits, party committees can then transfer unlimited amounts among themselves. In effect, this allows party committees to consolidate implicitly earmarked money from a single donor into a single party committee to be used for the benefit of the specified candidate. See Br. of Campaign Legal Center, League of Women Voters, and Common Cause as Amici Curiae at 25–26.

5. The Court's decisions have undermined public confidence in government.

Finally, without offering any support, the Court in *Citizens United* asserted that "[t]he appearance of influence or access," resulting from its ruling would "not cause the electorate to lose faith in our democracy." *Citizens United*, 558 U.S. at 360; see also *McCutcheon*, 572 U.S. at 208 (holding that "[s]pending large sums of money in connection with elections" and "garner[ing] 'influence over or access to' elected officials or political parties" do not give rise to *quid pro quo* corruption). But public opinion data suggests that this is exactly what has happened. One recent poll found that 7 in 10 Americans believe that "corporations and the wealthy control government and that politicians are only in it for themselves." Tom Rosenstiel, *While Politics Divides the Country, Americans Share a Profound Sense of Distrust,* NORC (Jan. 27, 2025), https://www.norc.org/research/library/while-politics-divide-country-americans-share-profound-sense-distrust.html. Likewise, 80 percent of respondents in a 2023 Pew Research Center survey said that large campaign donors have too much say in politics, and 70 percent agreed that constituents have too little influence. Andy Cerda & Andrew Daniller, *7 Facts About Americans' Views of Money in Politics*, Pew Research Center (Oct. 23, 2023), https://www.pewresearch.org/short-reads/2023/10/23/7-facts-about-americans-views-of-money-in-politics/. Similar findings appear in a wide range of other surveys.[9] These

[9] See James Oliphant & Jason Lange, *Americans worry Musk's campaign to slash government could hurt services*, Reu-

sentiments are shared by Americans across different partisan and ideological divides.

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Despite the consensus of a supermajority of Americans across political affiliations in favor of reasonable limits on the influence of money in politics, the Court's jurisprudence has steadily weakened federal and state campaign finance systems, including in many ways even the Court itself does not appear to have anticipated at the time. And today, the American public's trust in the country's government and institutions hovers near all-time lows. See Part I.B, *supra*; see also Susan K. Urahn, *Americans' Mistrust of Institutions,* Pew Research Center (Oct. 17, 2024),

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ters (Feb. 20, 2025), https://www.reuters.com/world/us/americans-worry-musks-campaign-slash-government-could-hurt-services-reutersipsos-2025-02-20/ ("71% agreed with a statement that the very wealthy have too much influence on the White House, and 69% said they think the wealthy are making money off their White House connections."); Tayor Orth, *Most Americans see corruption among politicians, judges, and executives as serious problems*, YouGov (Jan. 17, 2025), https://today.yougov.com/politics/articles/51398-most-americans-see-corruption-as-serious-problem (80 percent of U.S. adults say corruption is a "very serious" or "somewhat serious" problem among elected members of Congress; 72 percent say the same of U.S. presidents, which contrasts to lower perceived levels of corruption of unelected professionals); Ana Jackson, *State of the Union 2024: Where Americans stand on the economy, immigration and other key issues,* Pew Research Center (Mar. 7, 2024) (62 percent of Americans—including similar shares of Democrats and Republicans—said "reducing the influence of money in politics should be a top policy goal this year"), https://www.pewresearch.org/short-reads/2024/03/07/state-of-the-union-2024-where-americans-stand-on-the-economy-immigration-and-other-key-issues/.

https://www.pew.org/en/trend/archive/fall-2024/americans-mistrust-of-institutions (finding that trust in the federal government to do the right thing is near historic lows, down to 22 percent). If the Court—rather than lawmakers—again intervenes to weaken the current campaign finance regulatory framework, it risks eroding public trust in American government and institutions even further.[10]

II. Whether coordinated party expenditure limits remain useful and effective should be left to Congress to decide.

The many unintended consequences of the Court's recent interventions to invalidate campaign finance rules weigh strongly in favor of deference to Congress in this case.

Regardless of their ultimate utility as a policy matter, the Court has long held that coordinated party

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[10] Of course, Congress could mitigate at least some of these unintended consequences through legislation, for example by strengthening disclosure laws. But "vindication by congressional inaction is a canard." *Johnson* v. *Transp. Agency, Santa Clara Cnty.*, 480 U.S. 616, 672 (1987) (Scalia, J., dissenting). There are countless reasons why Congress may not act, including potential atrophy of the democratic process due to judicial overreach. *Kennedy* v. *Louisiana*, 554 U.S. 407, 454 (2008) (Alito, J., dissenting) ("[W]hen state legislators think that the enactment of a new … law is likely to be futile, inaction cannot reasonably be interpreted as an expression of their understanding of prevailing societal values. In that atmosphere, legislative inaction is more likely to evidence acquiescence."). Whatever the reason for congressional inaction, the fact remains that widespread dissatisfaction with the influence of money in the political process persists as the Court's campaign finance decisions have stifled policy innovation and discouraged interbranch dialogue, reinforcing the public's belief that the system is broken.

spending limits serve a valid purpose in preventing circumvention of individual contribution limits for candidates, whose constitutionality the Court has not questioned. See *Colorado II*, 533 U.S. at 447, 464–465; *Buckley*, 424 U.S. at 26–27; *McConnell*, 540 U.S. at 143–144 (discussing history of upholding "not only contributions limits themselves, but laws preventing the circumvention of such limits"); *McCutcheon*, 572 U.S. at 192–193, 209 (stating the Court has "previously upheld [contribution limits to individual candidates] as serving the permissible objective of combatting corruption").

This reasoning is no less applicable today than it was originally. In contrast to candidates, party committees today operate under significantly more permissive rules—a disparity that has been widened by both this Court's decisions and legislative changes. See, *e.g.*, Section I.B.4., *supra* (discussing consequences of *McCutcheon*); Vandewalker & Weiner, note 2, *supra* (discussing 2014 legislative changes that enabled national party committees to raise large donations for special purpose accounts).[11] Today, the effective limit for an individual donor giving to one of the

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[11] Before the 2014 appropriations bill was enacted, political parties were permitted to contribute up to $5,000 per election to individual candidates. The bill also authorized parties to establish three separate, segregated accounts designated for specific purposes:

1. Presidential nominating conventions;
2. Party headquarters buildings; and
3. Election recounts, contests, and other legal proceedings.

Importantly, the bill lifted coordination restrictions between parties and candidates for activities funded through these new

major parties is over $3.6 million per election cycle—over *500 times* the individual limit for donations to a candidate. It thus is reasonable for Congress to limit how much party committees can turn around and spend in coordination with candidates subject to exponentially lower limits. Cf. *Colorado II*, 533 U.S. at 464–465 (recognizing that coordinated expenditures are functionally indistinguishable from contributions). That should be the end of the Court's inquiry.

Petitioners and their amici largely ignore this basic reality, focusing instead on various policy arguments against coordinated spending limits. See, *e.g.*, Pet. Br. at 13–14, 18–30, 32–33; Br. of Ohio, et al. as Amici Curiae at 1–3, 8–10, 14–24; Br. of The Buckeye Institute as Amicus Curiae at 10–14; Br. of Institute of Free Speech, et al. as Amici Curiae at 3–8, 14–16; Br. of The Liberty Justice Center as Amicus Curiae; Br. of The Cato Institute as Amicus Curiae at 2–23, 30–34. As noted, we are sympathetic to some of these arguments, but they should not determine the constitutional analysis before this Court. See Part I, *supra*.

We also question whether erasing the coordinated spending limits in 52 U.S.C. 30116 without any other changes would yield the improvements to our political system for which many advocates seem to hope. See Vandewalker & Weiner, note 2, *supra* (discussing the limited benefits of deregulation without other reforms). Whether any benefits that do result outweigh the increased risk of corruption resulting from the cre-

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accounts. This change allowed parties to work directly with federal candidates in areas supported by the newly authorized funds.

ation of yet another avenue for circumventing candidate contribution limits is, at a minimum, debatable. See *id.*

In short, this Court must consider seriously the likelihood that unilaterally invalidating the coordinated spending limits will have serious unintended consequences, as has been the case with its other recent interventions.

All of which is precisely why such questions are best left to the legislative branch. See, *e.g., Ziglar* v. *Abbasi*, 582 U.S. 120, 135–136 (2017) ("When an issue 'involves a host of considerations that must be weighed and appraised,' it should be committed to 'those who write the laws' rather than 'those who interpret them.'") (quoting *Bush* v. *Lucas*, 462 U.S. 367, 380 (1983)); *United States* v. *Gilman*, 347 U.S. 507, 511–513 (1954) ("The selection of that policy which is most advantageous to the whole involves a host of considerations that must be weighed and appraised. That function is more appropriately for those who write the laws, rather than for those who interpret them."); *SAS Inst., Inc.* v. *Iancu*, 584 U.S. 357, 368 (2018) ("Policy arguments are properly addressed to Congress, not this Court. It is Congress's job to enact policy and it is this Court's job to follow the policy Congress has prescribed.").

These principles of judicial deference on complex policy questions apply to the realm of campaign finance, as this Court has recognized for the better part of a century. See, *e.g.*, *FEC* v. *Beaumont*, 539 U.S. 146, 155 (2003) ("In sum, our cases on campaign finance regulation represent respect for the 'legislative judgment' …. And we have understood that such deference to legislative choice is warranted particularly when

Congress regulates campaign contributions, carrying as they do a plain threat to political integrity and a plain warrant to counter the appearance and reality of corruption and the misuse of corporate advantages.") (citation modified); *Burroughs* v. *United States*, 290 U.S. 534, 545 (1934) ("To say that Congress is without power to pass appropriate legislation to safeguard such an election from the improper use of money to influence the result is to deny to the nation in a vital particular the power of self-protection.").

This case presents a quintessential legislative question, not a constitutional infirmity. This Court should thus recognize that Congress is better situated than the judiciary to address the complex campaign finance issues presented by this case and decline Petitioners' request to strike down the coordinated party expenditure limits at 52 U.S.C. 30116(d). Exercising judicial restraint and showing deference to Congress returns this debate—and power—to the American people and their elected representatives.

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OCTOBER 2025