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 *AMICUS CURIAE* THE BUCKEYE INSTITUTE IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

1. Whether the limits on coordinated party expenditures in 52 U.S.C. § 30116 violate the First Amendment, either on their face or as applied to party spending in connection with "party coordinated communications" as defined in 11 C.F.R. § 109.37.

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

INTEREST OF AMICUS CURIAE

Amicus curiae The Buckeye Institute was founded in 1989 as an independent research and educational institution—a think tank—whose mission is to advance free-market public policy in the states.[1] The Buckeye Institute accomplishes the organization's mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating free-market policy solutions, and marketing those policy solutions for implementation in Ohio and replication throughout the country. The Buckeye Institute is a nonpartisan, non-profit, tax-exempt organization as defined by I.R.C. section 501(c)(3). The Buckeye Institute files and joins amicus briefs that are consistent with its mission and goals.

The Buckeye Institute is dedicated to protecting individual liberties, and especially those liberties guaranteed by the Constitution of the United States, against government interference. Like the drafters of the First Amendment, The Buckeye Institute believes that free and open debate, particularly in the context of federal elections, is crucial to the republic that the Framers envisioned. Limits on spending—particularly limits on spending by political parties—are limits on the core political speech protected by the First Amendment.

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[1] The Buckeye Institute states that, pursuant to Rule 37.6, no counsel for any party has authored this brief in whole or in part and no person other than the amicus has made any monetary contribution to this brief's preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Sixth Circuit pointed out that the facts and the law of campaign finance and this Court's jurisprudence have changed since this Court decided *Fed. Election Com'n* v. *Colorado Republican Fed. Campaign Committee*, 533 U.S. 431 (2001)(*Colorado II*). "Political speech is the primary object of First Amendment protection" and "the lifeblood of a self-governing people." *Colorado II*, at 474 (Thomas, J., dissenting)(internal quotes omitted). *Colorado II*'s test is no longer workable or helpful in light of intervening decisions.

Since the advent of modern campaign law jurisprudence in *Buckley* v. *Valeo*, 426 U.S. 1, (1976), the government has justified its limitation on core political speech in campaigns by pointing to a legitimate interest in preventing quid pro quo corruption or its appearance. *Buckley* at 26–27; *Nixon* v. *Shrink Missouri Government PAC*, 528 U.S. 377, 387–88 (2000); *Colorado Republican Fed. Campaign Committee* v. *Fed. Election Com'n,* 518 U.S. 604, 615 *(Colorado I*); *Colorado II* at 440; *McConnell* v. *Federal Election Comm'n*, 540 U.S. 93, 136, 138 n.40 (2003); *Davis* v. *Federal Election Comm'n*, 544 U.S. 724, 737 (2008); *Citizens United* v. *Federal Election Comm'n,* 558 U.S. 310, 359 (2010); *McCutcheon* v. *Fed. Election Com'n,* 572 U.S. 185 (2014). In fact, as this Court has held repeatedly, preventing quid pro quo corruption or its appearance is the *only* legitimate interest that Congress has to limit speech in an election. *McCutcheon*, 572 U.S. at 192. "Campaign finance restrictions that pursue other objectives. . .

‘impermissibly inject the Government ‘into the debate over who should govern.” *Id.* (quoting *Arizona Free Enterprise Club’s Freedom Club PAC* v. *Bennett*, 564 U.S. 721, 750 (2011)).

Yet the *Colorado II* Court gave short shrift to the analysis of how potential coordination of expenditures between a political party and one of its candidates creates the danger of corruption, instead focusing on whether political parties are special actors in the electoral world who, because of the particular role they play, should lie outside of the rule imposing limits when the candidate and his or her political party coordinate expenditures. See, *e.g.*, *Colorado II*, at 454–55.

The *Colorado II* majority, did not address the more fundamental question, succinctly asked by Justice Thomas in his dissent: “The question is whether the Government has demonstrated both that coordinated expenditures by parties give rise to corruption and that the restriction is ‘closely drawn’ to curb this corruption.” *Colorado II*, at 474 (Thomas, J., dissenting). The answer then—and the answer now—should be that a political party coordinating its expenditures with that party’s candidates poses no particular threat of corruption and the FEC’s blanket restriction is not closely drawn to prevent corruption.

Reason teaches—and a realistic look at the current campaign spending landscape shows—that coordinated expenditures by political parties pose no more risk of quid pro quo corruption than uncoordinated and thus, permissible, independent expenditures.

ARGUMENT

I. *Buckley* corruption means quid pro quo corruption.

A. *Buckley* identified the government interest of preventing quid pro quo corruption and the appearance of corruption.

In *Buckley*, the proverbial irresistible force met the proverbial immovable object. The public mood following Watergate was that something in the American electoral system was fundamentally broken and needed to be changed. Anthony J. Gaughan, *The Forty-Year War on Money in Politics: Watergate, FECA, and the Future of Campaign Finance Reform*, 77 Ohio St. Law J. 791 (2016). The admonition to "follow the money" found on the third-rate burglars led investigators to a Miami bank account that President Nixon's campaign committee "had used to launder thousands of dollars in secret and illegal contributions." *Id*. at 794. Watergate investigators discovered that the Nixon campaign had amassed $850,000 "in illegal corporate campaign contributions" from familiar names such as "American Airlines, Anheuser-Busch, 3M, Disney, Dupont, Goodyear Tire, and Gulf Oil, among others." *Id*. at 795–96.

But the "follow the money" mantra soon morphed into "blame the money." Commentators at the time took the position that money in elections was inherently corrupting. For example, Delaware Senator John J. Williams stated that "the reprehensible, clandestine political acts connected with Watergate were financed and made possible by an excess of campaign donations, many of them secretly and illicitly obtained." *Id.* at 796 (internal citation omitted). Jeb Magruder, a Nixon aide jailed for his role in the scandal, attributed the campaign's bad behavior to "'too much money'" in the Nixon campaign coffers." *Id.* The press, too, was seized by the reformist zeitgeist, with the New York Times opining, "[n]ow is the time for a full and fundamental cleansing of the nation's outmoded, corrupt system of financing public elections with private money." *Id.* at 799. Similarly, The Philadelphia Inquirer called for a "revolution" in campaign finance law to end "the need for money, in huge quantity, which corrupted the 1972 electoral process beyond the grimmest, most cynical limits of previous imagination." *Id.* at 800 (internal citations omitted).

The national mood was so fixated on removing the putative evil of money from campaigns that even Nixon himself called for "the creation of a nonpartisan commission to "examine the costs and financing of campaigns" and to find "ways in which the costs can be kept down and improper influence or influence seeking through large campaign contributions can be ended." *Id.* Thus, with bipartisan support, and the following sea of public interest in getting the money out of politics, Congress enacted the Federal Election Campaign Act of 1974 ("FECA"), giving significant teeth to its tamer predecessor enacted in 1971 by imposing contribution and spending limits on campaign committee and then creating the FEC to police these restrictions.

The immovable object, however, was—and remains—the First Amendment. If the First

Amendment protects anything at all, it protects the right to speak in support of, or against, political candidates. See *Buckley*, 424 U.S. at 14 ("The First Amendment affords the broadest protection to such political expression in order 'to assure (the) unfettered interchange of ideas for the bringing about of political and social changes desired by the people'"); *Mills* v. *Alabama*, 384 U.S. 214, 218 (1966) ("[T]here is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs . . . . [O]f course include[ing] discussions of candidates. . . ."). The *Buckley* Court addressed the conflict between removing the influence of money on campaigns and the speech protected by the First Amendment. In so doing, the Court determined that the government's interest in regulating campaign speech was the prevention of quid pro quo corruption. The Court thus upheld the restrictions on contributions on the basis that contributions to a campaign committee posed a higher risk of that type of corruption, while recognizing that the Congress could not limit expenditures, including those made independent of and without coordination with a candidate committee. *Buckley*, 424 U.S. at 143.

Because *Buckley*'s recognition of a government interest in preventing corruption is the urtext for all subsequent campaign finance law, it warrants close examination. The first mention of "corruption" appears on the decision's twenty-fifth page, where the Court acknowledges that the parties and amici agree that the purpose of the 1974 FECA "is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidate's positions and on their actions if elected to office." *Id*. at 25. The Court continued: "[t]o the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our representative democracy is undermined." *Id.* at 26–27. The Court concluded that the Act's limit on direct contributions to a campaign committee "focuses precisely on the problem of large campaign contributions—the narrow aspect of political association where the actuality and potential for corruption have been identified . . . ." *Id.* at 28. The potential for quid pro quo corruption was highest—and thus presented a legitimate government interest—where individuals donated directly to candidates' campaign committees.

B. In *NCPAC*, the Court reaffirmed that the sole governmental interest in regulating campaign speech is preventing quid pro quo corruption.

In retrospect, the *Buckley* Court appears perhaps naïve in failing to anticipate the current campaign landscape, where single candidate super-PACs can perform much the same function as a candidate's campaign committee—albeit without direct coordination. But the Court was necessarily addressing the political ecosystem at the time, where the primary means of campaign giving was direct contribution to a campaign committee. See *Federal Election Com'n* v. *National Conservative Political Action Committee,* 470 U.S. 480, 497 (1985) ("*NCPAC*"). The subsequent evolution in campaign giving, driven in large part by *Buckley*, required the

Court to revisit the government's interest in regulating political speech.

While the public memory of Watergate faded, the notion that the republic would be healthier if only money was removed from politics remained. Despite the public and congressional insistence on reducing monetary influence on campaigns, the Court insisted on compliance with the First Amendment. Thus, in *NCPAC*, the court struck down a limit on independent expenditures by PACs. *Id.* at 501. In so doing, the *NCPAC* majority began by affirming that "preventing corruption or the appearance of corruption are the only legitimate and compelling government interests" supporting the restriction of campaign finances. *Id*. at 496–97. The *NCPAC* Court explained the government's valid interest in preventing quid pro quo:

> Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns. The hallmark of corruption is the financial *quid pro quo:* dollars for political favors.

NCPAC, 470 U.S. at 497.

The *NCPAC* Court reaffirmed *Buckley's* dichotomy between coordinated and independent expenditures, holding—but providing no cogent explanation of how—the latter pose less risk of the appearance of quid pro quo corruption. *Id.* at 497–98. Indeed, the *NCPAC* Court pointed out that candidates and office holders "alter[ing] or reaffirm[ing] their own positions on issues in response to political messages paid for by the [independent] PACs can hardly be called corruption, for one of the essential features of democracy is the presentation to the electorate of varying points of view." *Id.* The Court conceded that independent expenditures could "hypothetically" result in a perceived or actual quid pro quo because "candidates may take notice of and reward those responsible for PAC expenditures by giving official favors to the latter in exchange for the supporting messages." *Id.* Yet clinging to the *Buckley* distinction, the Court held that an expenditure's "independence" renders it permissible, while coordination makes it subject to regulation.

The *NCPAC* Court unfortunately did not explain—other than noting that the lack of coordination "undermines" the expenditure's value—why the nominal lack of coordination prevents corruption. Surely the PAC and its contributors are familiar with the campaign committee's themes and arguments as well as the issues important to voters during that election. Regardless, the government's interest in preventing fraud is limited to avoiding the exchange of political favors for money.

The Court subsequently reaffirmed that preventing the quid pro quo was the government's sole legitimate interest in regulating campaign finance, rejecting "leveling the playing field" and equalizing influence as justifications for regulation. See *Davis* v. *Federal Election Com'n*, 554 U.S. 724 (2008), *Arizona Free Enterprise Club's Freedom Club PAC* v. *Bennett*, 564 U.S. 721 (2011). And in *Citizens United*, the Court reaffirmed that "*ingratiation and access … are not corruption.*" *Citizens United*, 558 U.S. at 360 (emphasis added).

II. Coordinated Party Expenditures Pose No Special Risk of Quid Pro Quo Corruption or its Appearance

Justice Thomas' question remains, do coordinated party expenditures present a risk of quid pro quo corruption greater than that posed by independent expenditures? Here, the government has not provided any persuasive argument than it did in *Colorado II*.

Plainly, the function of political parties is to raise money and then spend it to elect their candidates. See *Colorado II*, 533 U.S. at 450. And in the process of raising money for that purpose, they aggregate donor contributions. That aggregation diffuses donor influence on individual candidates in a way that PACs do not. Donors may give to a party to support a particular candidate, to support a slate of candidates, or to even more generally support the platform on which the party's candidates run. Indeed, the *Colorado* cases even recognized that parties and candidates necessarily work together in crafting messages and campaign themes. Further, as a practical matter, policing coordination between candidates and political parties is a near impossibility. See Bradley A. Smith, *Super PACs and the Role of "Coordination" in Campaign Finance Law*, 49 Willamette L. Rev. 603, 620 (2013).

If a party could formally coordinate expenditures with a candidate, it would be the party, not its donors, that engaged in the coordination and decided how and where the funds are spent. Of course, a donor could ask the political party to earmark a contribution to support a particular candidate and for the party to communicate to the candidate the donor's identity and the amount donated. That communication by itself would not seem to raise the specter of quid pro quo corruption any more than an independent expenditure on campaign ads, which are not only publicly visible but also the subject of the media campaign coverage. At the same time, the policy preferences of the individual or PAC making the independent expenditure are rarely a secret. Neither *Colorado II*, the government here, nor the government here, offer any reasoning to distinguish why a candidate's coordination of expenditures with a political party presents a danger of quid pro quo corruption and a "loud" public independent expenditure, where the candidate knows the size of the expenditure and policy goals of the spender, does not.

Instead, *Colorado II*'s rationale for upholding the non-coordination provision is that coordinated expenditures by a political party would make it easy for a contributor to evade the limits on contributions to, and expenditures by a candidate's campaign committee by making donations through the party. See, *e.g.*, *Shays* v. *Federal Election Com'n*, 528 F.3d 914, 919–20 (D.C. Cir. 2008) (quoting *Shays* v. *Federal Election Com'n*, 508 F. Supp. 2d 10 (D.D.C. 2007)) ("'The reason. . . is obvious. Without a coordination rule, politicians could evade contribution limits and other restrictions by having donors finance campaign activity directly,' e.g., by asking a donor to buy air time for a campaign-produced advertisement.").

But arguing that coordination with a political party threatens quid pro quo corruption because it might allow contributors to circumvent contribution limits begs the question. It defaults to the assumption that "too much money" is the evil to be regulated. Of course, as this Court has held time and again, the government has no legitimate interest in policing the amount of spending in elections, only in preventing quid pro quo corruption. This non-circumvention rationale fails to address *how and why* the law's non-circumvention methodology prevents quid pro quo corruption when a contributor can still make unlimited contributions to an independent PAC.

On the other hand, assuming—as many have for decades—that money itself is the problem, allowing coordinated party expenditures may lead to more efficient campaign spending. The goal of political accountability is served by the fact that, unlike single candidate super PACs, a national political party is tied to its entire slate of candidates and a public platform. Coordinated spending does not raise the specter of quid pro quo corruption in the same way as coordinated spending with a PAC or individual because in many cases, the public expects a political party to coordinate its message and spending with its candidates.

Nor has the government made the case that unlimited coordinated party spending seem likely to increase the perception or appearance of corruption. Undoubtedly, even where there is no actual corruption, "[p]reserving the integrity of the electoral process [and] the individual citizen's confidence in government are interests of the highest importance." *NCPAC*, 470 U.S. at 511 (citing *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 788–89 (1978)). But research suggests—not surprisingly—that voters expect parties to support their candidates. In fact, voters often depend on the party label in making electoral choices. To the extent that the courts should take judicial notice of public perceptions when justifying an infringement on the First Amendment, current public perceptions do not justify this encroachment.

"The most important piece of information about a candidate in a US general election is usually their party." Tessa Ditonto et al., *The Gendered Risks of Violating Expectations and the Importance of Information for Women Candidates*, Politics & Gender, July 23, 2025, at 2. That's because "[a]s voters learn more specific information about candidates, such as actual policy stances, they update their evaluations of those candidates in line with what they learn, but usually still through the lens of partisanship…." *Id.* at 3. This emphasis on party alignment shows the associational value of political parties. Plus, it supports the theory that candidates more closely associated with the party will have greater success in elections, especially primaries.

And when a candidate holds views "that deviate[] from expectations about what a typical candidate of a particular party 'should' look like," voters are driven to vote for another candidate. *Id.* In other words, party members expect candidates and politicians to tow the party line, which inherently involves some level of coordination between the politician and the party.

Additionally, most people would be unlikely to donate to a political party absent an expectation that their donation would be used to support candidates closely aligned with the party. Simply put, voters *expect* parties to coordinate spending with candidates.

This voter reliance on party labels and the expectation of coordination is that coordinated party spending actually provides *more* information to voters than an independent expenditure by a vaguely named PAC or a wealthy individual whose policy preferences may be opaque. Party spending on behalf of a candidate tells voters that the candidate, at least in large part, supports the party's platform. An independent PAC expenditure, in contrast, provides no information on the PAC's policy goals other than what the PAC chooses to share. The *Colorado II* court did not evaluate how the public perception of coordination and a candidate's association with a party might actually reduce the risk of perceived corruption. In deciding this case, this Court can bring clarity to its campaign finance and First Amendment jurisprudence by engaging in that analysis.

CONCLUSION

For all the forgoing reasons, the Court should reverse the Sixth Circuit.

Respectfully submitted,

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