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 CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

STUART C. MCPHAIL
Counsel of Record
DONALD K. SHERMAN
CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON
P.O. Box 14596
Washington, DC 20005
(202) 408-5565
smcphail@citizensforethics.org

Attorneys for Amicus Curiae

386013

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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INTEREST OF *AMICUS CURIAE*[1]

This brief is filed by Citizens for Responsibility and Ethics in Washington ("CREW"), a nonpartisan section 501(c)(3) nonprofit corporation that seeks to combat corruption. As part of its work, CREW monitors for violations of the Federal Election Campaign Act ("FECA"), including violations of the law's earmarking and disclosure provisions, and seeks to combat detected violations through administrative complaints and litigation. CREW is therefore familiar with the inadequacies of the federal earmarking regime and the limits of disclosure in satisfying the compelling interests behind the FECA.

SUMMARY OF ARGUMENT

The Court has recognized the compelling interest behind our Nation's campaign finance laws in "the prevention of '*quid pro quo*' corruption or its appearance." *FEC v. Cruz*, 596 U.S. 289, 305 (2022). Accordingly, the public is entitled to measures that are capable of "achiev[ing] th[is] desired objective," *McCutcheon v. FEC*, 572 U.S. 185, 218 (2014); they need not resort to measures that would do so "less effectively," *Free Speech Coal., Inc. v. Paxton*, 145 S. Ct. 2291, 2317 (2025) (narrow tailoring met if government's interest "would be achieved less effectively absent the regulation"); *John Doe No. 1 v. Reed*, 561 U.S. 186, 198–99 (2010) (holding law was

[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.

narrowly tailored because alternatives "will not catch *all* invalid signatures" and achieves interests "to an extent other measures cannot" (emphasis added)).

Petitioners here challenge one method employed to combat *quid pro quos* that use political parties to circumvent the limits on contributions to candidates: a limit on the amount the party can spend in coordination with that candidate. Petitioners assert that there are adequate and "less burdensome" alternatives to combating the use of parties in *quid pro quos*. Pets.' Br. at 14. In particular, they point to two: (1) federal earmarking rules that provide that donations to political parties that are directed to the benefit of a particular candidate are treated as contributions to that candidate, and (2) federal disclosure laws that reveal the source and amount of contributions to the political parties and the parties' expenditures in support of specific candidates, including by means of coordinated party expenditures. *See* Pets.' Br. at 32–33. Petitioners claim these rules will, at least if "rigorously enforced," *id.*, preclude attempts to circumvent limits on candidate contributions or engage in *quid pro quo* by means of party contributions.

The Court previously rejected that suggestion with respect to the earmarking rules when it last considered a challenge to party coordinated expenditure limits. *See FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 462 (2001) ("*Colorado II*"). The majority recognized the "practical difficulty of identifying and directly combating

circumvention under actual political conditions," leaving the law to catch only the "most clumsy attempts." *Id.* The earmarking rules would leave entirely untouched, moreover, "'understandings'" that do not constitute earmarking but leave donors with confidence about where their funds will go. *Id.* The dissent, for its part, contested this conclusion, claiming an absence of "any evidence to support this assertion." *Id.* at 481 (Thomas, J., dissenting).

The decades since the decision have, unfortunately, provided that evidence. The examples provided below show that donors can direct the use of their funds while evading earmarking rules, leaving the rules to cover only the "most clumsy attempts" to circumvent limits, *id.* at 462, never mind prevent "all" troublesome transactions, *Reed*, 561 U.S. at 198–99.[2] These examples show how easily recipients can disclaim a donor's expressed intent, permitting them to treat a transaction as unencumbered and without instruction, even while they accept the money and spend it as directed. A simple boilerplate letter declaring that the recipient does not accept

[2] This brief focuses on the evidence of earmarking revealed since *Colorado II* and the difficulty of enforcement that evidence shows, as well as the limits of disclosure. It does not address or rely on the Federal Election Commission's complete abdication of enforcement with respect to earmarking rules or, for that matter, every other provision of the campaign finance laws. Even a Commission committed to faithfully enforcing earmarking laws would face great difficulty in rooting out all cases of earmarking like those discussed below, at least without the Court's approving the collection of all communications related to all contributions.

earmarked funds permits them to take donations, for example, given for the express purpose of aiding in the reelection of a specific candidate and spend the money as directed, but then treat the transaction as nothing more than a general support grant, evading any rules dependent on the subjective motives of the transaction. Earmarking rules do not capture such ""understanding[s] between donor and party" that "involve no definite commitment and [are] tacit on the donor's part," even as those understandings permit the donor to reliably circumvent the contribution limits. *Colorado II*, 533 U.S. at 459.

The evidence also demonstrates the difficulty in ferreting out even those clumsy attempts. It shows that donors express their preferences and instructions through non-public means that cannot be effectively monitored. The examples provided below showing donors instructing recipients on the use of their funds were discovered by happenstance: investigations began because of the fortuitous bravery of a whistleblower or because of evidence of other violations that could be detected by outside observers. Even then, earmarking was only discovered because the investigations went into "the inner workings of political parties," the sort that the dissenting Justices asserted to be "intrusive" and "troubling," *Colorado II*, 533 U.S. at 471 n.3.

Petitioners' other offered alternative, disclosure, is highly useful, but it is still no substitute for the limit on party coordinated contributions. It reveals only the flow of dollars and cents, not the underlying

understandings and agreements by which circumvention and *quid pro quo* is achieved. It can inform voters and point to areas of concern, but not singularly reveal, never mind prevent, wrongdoing, particularly the type that takes the form of "post-election special favors" that occur after the voters have cast their ballot. *Buckley v. Valeo*, 424 U.S. 1, 67 (1976). Even if exposed before an election, voters may not choose to toss out the official exposed as corrupt as they must weigh corruption against a myriad of other policy considerations. The wisdom of that judgment aside, the election of a candidate that permits them to carry out a corrupt bargain would not "prevent[] '*quid pro quo*' corruption." *Cruz*, 596 U.S. at 305.

Petitioners' narrow tailoring argument rests on the adequacy of earmarking and disclosure as substitutes. That argument fails because neither earmarking nor disclosure can prevent "all" of the *quid pro quo* corruption that could occur through unlimited party coordinated expenditures, *Reed*, 561 U.S. at 199, or do so as "effectively" as the challenged limit, *Paxton*, 145 S. Ct. at 2317. Donors can reliably direct their contributions without triggering earmarking rules and disclosure does not prevent *quid pro quos*. Any suggestion that these measures could, moreover, would depend not only on "rigorous[] enforce[ment]," Pets.' Br. at 33, but subjection of political parties, candidates, donors, and their agents to complete and total transparency. This transparency would need to cover not only the funds going in and out, but the entities' inner workings and

dealings with each other. Presumably Petitioners are not open to that as an adequate alternative.

ARGUMENT

I. Earmarking Rules Are Not Adequate Alternatives to the Party Coordination Limits

Petitioners admit laws that "further the permissible objective of preventing quid pro quo corruption" are constitutional. Pets.' Br. 17 (internal quotation marks omitted). Petitioners nevertheless claim that party coordination limits are unnecessary to combat *quid pro quo* corruption because adequate alternatives exist in the form of federal "earmarking" rules that "already prohibit" any attempt to use the Petitioners to direct excessive contributions to candidates. *Id.* at 32. These rules, which Petitioners characterize as "sweeping," *id.* at 23, provide that any receipt accompanied by a "designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written" to use the funds to benefit a particular candidate is to be treated as a contribution to that candidate, subject to the limits on contributions to candidates and may also count against the intermediary's contribution limits as well, 52 U.S.C. § 30116(a)(8); 11 C.F.R. § 110.6(b)(1). Petitioners rely on their conclusion that these rules, at least if "rigorously enforced," would prevent donors from using parties to accomplish *quid pro quo* schemes because the rules would require donors to "cede control over the funds," preventing donors from

directing contributions to the other party of the *quid pro quo*. Pets.' Br. at 22. Accordingly, they claim the earmarking rules provide a sufficient alternative to meet any anti-corruption interests. *Id.* at 33.

In *Colorado II*, a majority of the Court rejected Petitioners' suggestion of adequate substitution, noting that "circumvention is obviously very hard to trace," and the limits of earmarking rules to capture all "understandings" that might enable a *quid pro quo* exchange. *Colorado II*, 533 U.S. at 462. The dissent criticized this conclusion over the lack of "any evidence [in its] support." *Id.* at 481 (Thomas J., dissenting).

The intervening decades have unfortunately supplied that evidence that the dissent requested, showing earmarking rules are largely inadequate to prevent *quid pro quo* corruption and do not prevent donors from directing funds to predictable candidates. The following examples show that earmarking occurs in nonpublic communications unlikely to be detected by those other than the involved parties. "[R]igorous[] enforce[ment]" of these rules, Pets.' Br. at 33, would accordingly require the type of "investigation of the inner workings of political parties" that the dissenting Justices asserted to be "intrusive" and "troubling," *Colorado II*, 533 U.S. at 471 n.3. Moreover, parties need not "flagrantly violate" earmarking rules to fulfill a donor's wishes, Pets.' Br. at 23, as recipients can easily, if insincerely, disclaim earmarking directions by asserting hypothetical but reliably unexercised discretion over the funds. Parties may

then maintain funds are not earmarked, all while they are predictably spent as directed, permitting donors to use parties to fulfill *quid pro quo* agreements. In short, they reveal the earmarking rules are effectively "unenforceable," JA283 (Deposition of Professor Jonathan Krasno), and certainly incapable of preventing all party-involved *quid pro quos*.

A. $500,000 "for the reelection of Rob Portman"

In August of 2018, CREW filed a complaint with the Federal Election Commission ("FEC") alleging that a nonprofit social welfare 501(c)(4) organization called "Freedom Vote" had violated the FECA. Complaint, Freedom Vote, MUR 7465 (FEC Aug. 9, 2018), https://www.fec.gov/files/legal/murs/7465/7465_01.pdf. CREW's complaint relied on Freedom Vote's public FEC and IRS filings, which revealed the group devoted more than 60% of its spending to electioneering from October 2013 through September 2014, and more than 80% of its spending to electioneering between October 2015 and September 2016, including publicly reported contributions to political committees and independent expenditures. *See generally id.* Based on these public filings, CREW alleged the organization's reported spending was sufficiently extensive to conclude the group's major purpose was to influence elections, and therefore that it should register and report as a political committee. *Id.* at ¶¶ 57–61 (citing *Buckley*, 424 U.S. at 79).

The FEC agreed that CREW's complaint justified investigating Freedom Vote. Certification, Freedom

Vote, MUR 7465 (FEC July 29, 2019), https://www.fec.gov/files/legal/murs/7465/7465_16.pdf. Accordingly, the FEC's counsel launched an investigation into the organization that included the subpoena of Freedom Vote's financials, its internal communications and communications with donors, and the deposition of its Executive Director. *See* Gen. Counsel's Brief, Freedom Vote, MUR 7465 (FEC Sept. 20, 2021), https://www.fec.gov/files/legal/murs/7465/7465_27.pdf. That investigation not only confirmed CREW's allegations, but revealed additional evidence, including unreported earmarked contributions.

In particular, the investigation disclosed previously nonpublic communications, revealing that a $500,000 2016 donation was accompanied by a letter stating, "Please note this is an Anonymous donation for the reelection of Rob Portman." *Id.* at 16; *see also* Joint Appendix AR0532, *CREW v. FEC*, No. 22-cv-0035 (D.D.C. July 30, 2024), *available at* https://storage.courtlistener.com/recap/gov.uscourts.dcd.238942/gov.uscourts.dcd.238942.41.0.pdf [hereinafter "Freedom Vote Joint Appendix"] (email with name of donor redacted); Portman was then the U.S. Senator from Ohio running again for office, FEC, Form 2, Statement of Candidacy (Oct. 6, 2015) https://docquery.fec.gov/pdf/837/201510060200250837/201510060200250837.pdf. The investigation also revealed that Freedom Vote accepted another $1,000,000 to be used by Freedom Vote "in the Senate race," $50,000 to "help [Freedom Vote] elect pro-growth, pro-business leaders," and a "$10,000

contribution for your committee for the general election." Freedom Vote Joint Appendix AR1498–1501, AR2074, AR2076, AR2167. It further revealed these earmarks were not unsolicited, but rather that Freedom Vote's fundraisers solicited funds to support its electioneering, citing its impact on a candidate's polling. Gen. Counsel's Br., Freedom Vote, MUR 7465, at 15, 16 & n.68.

Despite Freedom Vote understanding its donors' instruction to use their donations to influence federal elections, Freedom Vote did not disclose them. That was not only because Freedom Vote failed to register as a political committee and thus failed to report its donors as required by law. *See* 52 U.S.C. § 30104(b)(3)(A). Freedom Vote also did not report these individuals on its independent expenditure filings, notwithstanding its duty to identify anyone from whom it received more than $200 "for the purpose of influencing any election for Federal office." 52 U.S.C. § 30104(c)(2) (incorporating duty to report "person … who makes a contribution" in subsection (b)(3)(A)); 52 U.S.C. § 30101(8)(A) (defining "contribution"). That rule is similar to the earmarking rule that applies to political parties in that it depends on the subjective purposes of the donation as revealed through, for example, either the donor's or solicitor's communications. An instruction to use funds "for the reelection" of a specified candidate would make the transfer a contribution subject to 52 U.S.C. § 30104(c)(2), and an earmarked contribution if it were made to a political party under 52 U.S.C. § 30116(a)(8).

Freedom Vote likely felt free to omit this information, however, because it had disclaimed the donor's instruction through a boilerplate letter it sent in response. Specifically, Freedom Vote wrote to the half-million-dollar donor seeking to re-elect Senator Portman that Freedom Vote did not "accept contributions earmarked to support or oppose candidates for public office" as a matter of policy, even as it cashed that donor's check and used it for just that purpose, per the donor's request. Gen. Counsel's Br., Freedom Vote, MUR 7465 at 16.

In addition to accepting, but not reporting, earmarked contributions from donors, the investigation also revealed that Freedom Vote accepted earmarked funds from another political organization. In particular, the investigation revealed nonpublic communications from April 2014 that showed that Freedom Vote's reported expenditure for a door-hanger in support of then-representative John Boehner was in fact made at the direction of Brian Walsh, then President of American Action Network ("AAN"). *See* Gen. Counsel's Br., Freedom Vote, MUR 7465 at 21; Freedom Vote Joint Appendix AR1406, AR1988-89, AR1997, AR2032–33 (Freedom Vote's president asking Mr. Walsh in early 2014 for permission to print and use door-knocker). AAN had reported providing a "general support grant" to Freedom Vote that covered the cost of this expenditure. AAN, 2013 Form 990, Schedule I (May 15, 2015), https://projects.propublica.org/nonprofits/display_990/270730508/2015_06_EO%2F27-0730508_990O_201406.

Neither AAN nor Freedom Vote, however, reported AAN's funds as a contribution to influence federal elections, the least its involvement over the expenditure would have required.[3] While the apparent mischaracterization of the purposes behind AAN's donation did not hide its identity as it did with other donors, it had other benefits. At the time of the communication, AAN was the subject of FEC proceedings over its own reported extensive electioneering. *See* AAN, MUR 6589 (last visited Sept. 25, 2025), https://www.fec.gov/data/legal/matter-under-review/6589/ (complaint filed June 2012 and matter closed June 2014). Treating funds earmarked for electioneering as mere general support grants could permit the group to evade its own reporting obligations that would disclose its donors, just as treating an earmarked contribution to a political party as general support could permit the donor to evade contribution limits. Notably, AAN is also closely associated with one of the Petitioners in this case, the National Republican Congressional Committee. *See* Ian Vandewalker, *Dark Money from Shadow Parties is Booming in Congressional Elections*, Brennan Center (Oct. 28, 2024),

[3] AAN's apparent control over the expenditure could have also required it to report the expenditure itself. *See* 52 U.S.C. § 30104(c)(1) (one who "makes" an independent expenditure must report it); 11 C.F.R. § 110.1(b)(6) (contribution occurs when "contributor relinquishes control over the contribution."). Laundering expenditures through intermediary groups and mischaracterizing financial support as unearmarked would also help a group evade reporting obligations.

https://www.brennancenter.org/our-work/analysis-opinion/dark-money-shadow-parties-booming-congressional-elections (reporting AAN is the "dark money affiliate" of the "House Republicans"). The failure to report earmarked transactions by such experienced and institutional actors shows that Petitioners are not immune from engaging in these behaviors.

B. $350,000 to "support Rep Ryan Smith"

Another complaint brought by CREW in 2018 identified a potential unlawful passthrough contribution from a LLC to a federal super PAC, which the PAC had erroneously reported as originating with the LLC. Complaint, LZP, LLC, MUR 7464 (FEC Aug. 9, 2018) https://www.fec.gov/files/legal/murs/7464/7464_01.pdf. The super PAC used the funds to pay for ads attacking Larry Householder, a candidate in that year's elections. *Id.* at ¶14. The LLC's public corporate filings showed the contribution came only a short while after its creation, when the LLC was unlikely to have funds to pay for the contribution itself. *Id.* ¶ 16.

The FEC agreed that the circumstances were sufficiently suspicious to warrant an investigation, Certification, LZP, LLC, MUR 7464 (FEC May 27, 2021), https://www.fec.gov/files/legal/murs/7464/7464_18.pdf, and that investigation eventually collected the intermediaries' and political committee's finances, their internal and external communications, submitted the intermediary's director and the

political committee's treasurer to depositions, and required interviews of two previously undisclosed political consultants connected with the scheme, *see e.g.*, Gen. Counsel's Br., LZP, LLC, MUR 7464 at 3 n.8, 4 n. 10, 5 n.18, 7 n.29, 10 n.42, 11 n.43 (FEC Mar. 1, 2023), *available at* https://www.documentcloud.org/documents/23870715-notification-with-brief-and-supporting-documents-to-independence-and-freedom-network-inc-and-lzp-llc-3-1-23/#document/p37/a2361355.

That investigation eventually confirmed that not only had the LLC acted as a passthrough, but that it was merely at the end of a long line of passthrough entities, including one nonprofit called Ohio Works. *Id.* at 8–11, 13; *see also* Matt Corley, *FEC investigation spurred by CREW complaint reveals Ohio dark money secrets*, CREW (Oct. 17, 2023), https://www.citizensforethics.org/reports-investigations/crew-investigations/fec-investigation-spurred-by-crew-complaint-reveals-ohio-dark-money-secrets/. The funds were eventually traced back to donors that understood the electoral purposes of their donations. One contemporary email between board members of a donating nonprofit connected with an Ohio Utility stated that they knew the recipient entity, Ohio Works, is "supportive of Rep Ryan Smith." Gen. Counsel's Br., LZP, LLC, MUR 7464 at 10. Representative Smith was working to be elected as the speaker of the legislature by electing supportive allies and defeating his competition for the job, Larry Householder. *Id.* at 10. Another donor was a "longtime public supporter" of Rep. Smith and "therefore agreed

to support Smith by making a $100,000 donation to" Ohio Works. *Id.*

Nevertheless, as with Freedom Vote, these donors were not publicly revealed as the sources of these contributions, notwithstanding the federal super PAC's obligation to report the original sources of contributions. Rather, as with Freedom Vote, Ohio Works sent a letter to at least one of the donors stating that, irrespective of any expressed instruction, that funds might not "be used to promote, support, oppose, or attack any clearly identified federal, state, or local candidate." Letter from Tod Bowen, Ohio Works, to Maria Haberman, American Electric Power (Oct. 5, 2017) (attached as exhibit to Letter from Thomas J. Josefiak, Holtzman Vogel, to Aaron Rabinowitz, FEC (Jan. 24, 2023), *available at* https://www.citizensforethics.org/wp-content/uploads/2025/09/Holtzman-Vogel-Letter.pdf). Based on that letter, the nonprofit's President attested that its contributions were "not earmarked," despite knowing the specific candidate whose electoral purposes its $350,000 donation would support. Aff. of JB Hadden ¶ 6 (Jan. 24, 2013) (attached as exhibit to Letter from Thomas J. Josefiak, Holtzman Vogel, to Aaron Rabinowitz, FEC (Jan. 24, 2023), *available at* https://www.citizensforethics.org/wp-content/uploads/2025/09/Holtzman-Vogel-Letter.pdf).

In addition to the previously unreported earmarking, the investigation also revealed that several of the organizations involved were created and

operated by two political consultants who were not identified on any of the organizations' paperwork. Gen. Counsel's Br., LZP, LLC, MUR 7464 at 3–5. These two created the passthrough LLC "for the specific purpose of transferring funds" to the super PAC they also created, *id.* at 7; Dep. Of Lisa Lisker, LZP, LLC, MUR 7464 at 7:13–21, *available at* https://www.documentcloud.org/documents/23870715-notification-with-brief-and-supporting-documents-to-independence-and-freedom-network-inc-and-lzp-llc-3-1-23/?mode=document#document/p37/a2361355, and the two "began running [the passthrough's] operations without communicating any information to" the organization's purported sole officer "about what [the LLC] was doing." Gen. Counsel's Br., LZP, LLC, MUR 7464, at 4–8, 20. Notably, these two consultants have a long history in Ohio politics, including with then Ohio State Treasurer and now former Republican U.S. Senate candidate Josh Mandel. *See* Justin Elliott, *New Details Emerge About Dark Money Group in Ohio U.S. Senate Race*, ProPublica (Sept. 11, 2012), https://www.propublica.org/article/new-details-emerge-about-dark-money-group-in-ohio-us-senate-race. Once again, this example shows that experienced and connected political actors like Petitioners can and do fail to report earmarked transactions.

C. $250,000 "transfer from the NCGOP"

A jury convicted Greg Lindberg in 2020 of paying bribes to the Commissioner of the North Carolina Department of Insurance, Mike Causey, in exchange for the commissioner removing a deputy responsible for overseeing Lindberg's insurance companies. *United States v. Lindberg*, 476 F. Supp. 3d 240, 246–47, 253-54 (W.D.N.C. 2020), *vacated by* 39 F. 4th 151 (4th Cir. 2022).[4] As part of that bribery scheme, Lindberg directed $250,000 through the state political party that supported the commissioner. *Id.* at 253.

At the time, North Carolina state law limited contributions to officials like the insurance commissioner to $5,200. N.C. Gen. Stat. § 163A-1425 (2018), *codified as amended at* N.C. Gen. Stat. § 163-278.13 (increasing limit to $6,800). North Carolina did not (and does not) place any limit on the amount one could contribute to a state political party. *Id.* § 163A-1425(h). It did, however, prohibit conduit contributions made through an intermediary. N.C.

[4] The Fourth Circuit vacated the earlier conviction over improper jury instructions regarding the nature of the official act necessary to sustain a conviction. *Lindberg*, 39 F.4th at 175–76. Lindberg was subsequently retried with proper instructions and once again convicted. *See* Dep't of Just., *Chairman of Multinational Investment Company and Company Consultant Convicted in Bribery Scheme at Retrial* (May 16, 2024), https://www.justice.gov/archives/opa/pr/chairman-multinational-investment-company-and-company-consultant-convicted-bribery-scheme.

Gen. Stat. § 163A-1428 (2018), *codified as amended at* N.C. Gen. Stat. § 163.278.14.

Lindberg was able to direct funds to the insurance commissioner in excess of the State's candidate contribution limit through the state political party by earmarking those funds. Specifically, the evidence produced at trial showed that Lindberg's agent and other participants of the conspiracy called the treasurer of the state political party to inform him of the plan, and that Lindberg "need[ed] for [the insurance commissioner] to get a transfer from the NCGOP in the amount of 250,000 [dollars that] week." *Lindberg*, 476 F. Supp. 3d at 253. The treasurer responded "whatever ya'll wanna do, we'll do," and that he would "get'r done!" *Id.* The NCGOP then transferred funds to the insurance commissioner the next day. *Id.*

Although the state party's transfer to the insurance commissioner's campaign was reported, *see* North Carolina State Board of Elections, Political Committee Disclosure Report (last visited Sept. 25, 2025), https://cf.ncsbe.gov/CFOrgLkup/ReportDetail/?RID=160601&TP=EXP (report for NCGOP showing July 13, 2018 and July 26, 2018 transfers to "Mike Causey Campaign"), and so was Lindberg's contribution to the political party, *see* North Carolina State Board of Elections, Political Committee Disclosure Repot (last visited Sept. 25, 2025), https://cf.ncsbe.gov/CFOrgLkup/ReportDetail/?RID=157088&TP=REC (report for NCGOP showing May 21, 2018 $500,000 contribution from Greg Lindberg), nothing

was disclosed about the earmarking instructions or about the *quid pro quo* arrangement it supported.

The use of an earmarked contribution through a political party to circumvent state candidate contribution limits is "evidence of a donor smuggling a bribe to a candidate through a party[]." Pets.' Br. at 14. The fact that the scheme used a direct transfer and did not require the use of coordinated communications is irrelevant. Unlike federal law, *see* 52 U.S.C. § 30116(a)(2)(A), (c)(1), North Carolina does not limit the amount of funds a state party can directly contribute to a candidate. Parties engaged in a *quid pro quo* need not avail themselves of less direct methods, like coordinating expenditures, when states—including those among the "28 states [that] largely give parties free reign to make coordinated expenditures," Pets.' Br. at 26—permit more direct methods, like direct contributions.

D. "1MM contribution to Senator Ernst"

In 2019, the Campaign Legal Center ("CLC") filed a complaint with the FEC against another tax-exempt nonprofit 501(c)(4) called Iowa Values. Proposed Findings of Fact, ¶¶ 4, 72, *Campaign Legal Ctr. v. Iowa Values*, No. 21-cv-389-RCL (D.D.C. July 18, 2025), *available at* https://campaignlegal.org/sites/default/files/2025-07/Proposed%20Findings%20of%20Fact%20-%20REDACTED%20Version.pdf; *Campaign Legal Ctr. v. Iowa Values*, 710 F. Supp. 3d 35, 43 (D.D.C. 2024). CLC alleged Iowa Values failed to register as a political committee despite working to support the

election of Iowa Senator Joni Ernst. *Iowa Values*, 710 F. Supp. 3d at 43; *see also* Proposed Findings of Fact ¶ 727 (Iowa Values Action reported making independent expenditures opposing Senator Ernst's electoral opponent wholly paid for by Iowa Values). When the FEC failed to act on CLC's complaint, CLC sought and obtained a judgment establishing the exhaustion of its administrative remedies and thereafter brought a suit directly against Iowa Values, as the FECA permits. *Iowa Values*, 710 F. Supp. 3d at 43–44; *see also* 52 U.S.C. § 30109(a)(8)(C).

In accordance with the Federal rules, CLC obtained discovery from Iowa Values in response to interrogatories and requests for production into the organization's finances and internal and external communications, and conducted three 30(b)(6) depositions of the organization and its fundraisers. *Iowa Values*, 710 F. Supp. 3d at 44, 53 n.6; *see also e.g.* Proposed Findings of Fact ¶¶ 31, 35, 76, 638, 752. That discovery confirmed not only the validity of CLC's allegations that Iowa Values was organized for the purpose of influencing elections, and that it spent extensively to do so, *see generally* Proposed Findings of Fact, but also revealed previously unknown evidence that Iowa Values accepted funds earmarked for Senator Ernst's election.

Iowa Values fundraisers produced evidence showing that they solicited funds to support "an independent expenditure effort through Iowa Values." Proposed Findings of Fact ¶ 634; *see also* 52 U.S.C. § 30101(17) (defining "independent expenditure" as

one "expressly advocating the election or defeat of a clearly identified candidate"). The fundraisers offered Iowa Values as a "way[] to help beyond maxing to Senator Ernst campaign directly." Proposed Findings of Fact ¶ 635.

In one newly revealed exchange with a donor who had already maxed out to Senator Ernst's campaign, an Iowa Values fundraiser—who also worked as a fundraiser for the Ernst campaign—discussed ways to continue to support Senator Ernst's reelection. *Id.* ¶¶ 599, 638. The fundraiser was informed that the donor sought to "mak[e] a 1MM contribution to Senator Ernst." *Id.* The fundraiser then responded that "The $1mm will need to go to Iowa Values Inc." as "[i]t is the only entit[y] that can accept such an amount." *Id.*

Iowa Values's acceptance of funds intended to influence federal elections would subject it to political committee disclosures, *see* 52 U.S.C. § 30101(4), (8) (political committee designation applies to group that accepts more than $1,000 in "contributions" in a calendar year, which are funds given "for the purpose of influencing any election for Federal office"), and obligated it to disclose its donors on any independent electioneering report it filed, *see* 52 U.S.C. § 30104(c)(2). Nevertheless, despite accepting such funds and using them to engage in extensive electioneering in support of Ernst, *see* Proposed Findings of Fact ¶¶ 752, 758, Iowa Values did not file reports that would have disclosed its donors, *id.* at ¶ 80.

E. Approximately $60 million "to be very supportive" of a candidate

A jury convicted former Ohio House Speaker Larry Householder after a 26-day trial that showed he accepted approximately $60 million in bribes. *United States v. Householder*, 137 F.4th 454, 463, 470 (6th Cir. 2025). That conviction was the result of a lengthy criminal investigation into the former speaker and affiliates started by a tip from an insider. *See* Jeremy Pelzer, *Meet the man who helped the FBI expose Ohio House Speaker Larry Householder's alleged $60M bribery scheme*, Cleveland.com (July 24, 2020), https://www.cleveland.com/open/2020/07/meet-the-man-who-helped-the-fbi-expose-ohio-house-speaker-larry-householders-alleged-60m-bribery-scheme.html.

The evidence produced at trial revealed, among other things, that Householder and executives from an Ohio utility company agreed to provide Householder "undisclosed and unlimited contributions" through a 501(c)(4) nonprofit entity called "Generation Now" to support Householder's bid for speaker. *Householder*, 137 F. 4th at 464. The 501(c)(4) was a "'vehicle' to 'fund everything that [the conspirators] were trying to do.'" *Id.* The executives informed Householder's agent that it would provide funds, eventually amounting to approximately $60 million, in order to be "very supportive" of Householder's bid for speaker. *Id.* In the midst of these donations, Householder's agents kept the utility executives abreast of the use of their funds with a

"very detailed summary of where [those efforts] stood," discussing races that were of "extreme importance." *Id.* at 464–66. The evidence showed those payments were part of a *quid pro quo* between the utility and Householder that secured Householder's support for a bailout. *Id.* In turn, Householder spent the utility's funds "on the candidates he had recruited" to support his speakership bid and solicited additional funds from the utility for at-risk candidates. *Id.* at 465–66. This conspiracy, including the earmarking of contributions, occurred in relevant part at in-person meetings and phone calls. *Id.* at 464–466.

The parties were able to keep this operation "undisclosed" because the entities that eventually spent the money on the elections did not report the utility as the source of the funds. *See id.* at 464 (stating that "because Generation Now wasn't a political campaign subject to disclosure requirements, 'nobody would ever know' who was giving the funds"). But Ohio law, like federal law, treats groups that accept funds "for the specific purpose of supporting or opposing any candidate" as political committees that are subject to disclosure. Ohio Admin. Code 111:2-1-02(K)(1); Ohio Rev. Code 3517.01(C)(8), 3517.10(A). Accordingly, the scheme could only be successful if the participants did not reveal the earmarking behind the transfers. Because those instructions were discussed in person and non-publicly, there was no way the public could detect them, at least not until after there was a criminal investigation because of a whistleblower's tip.

F. "100% of funds to this account will go to the cause"

In 2021, a whistleblower with inside knowledge filed a complaint with the Michigan Department of State alleging that a former Senate Majority Leader and consultant used two nonprofits as conduits for contributions to a state ballot committee to conceal the sources of the committee's contributions. Aff. In Supp. of Complaint ¶10, *Michigan v. Lombardini,* Case No. 2022-0355062-A (Mich. Feb. 21, 2024), *available at* https://www.michigan.gov/ag/-/media/Project/Websites/AG/releases/2024/February/Baxter-Packet-Redacted.pdf?rev=63c02aaad5164c8e97046daa0bee2008&hash=DE2695B5961A9E89ACA51EDF81A46C6B. That complaint sparked an investigation by the Michigan Secretary of State, *id.* ¶ 13, which then referred the investigation to the Michigan Attorney General's office, *id.* ¶ 14. That investigation eventually led to a search of the consultant's place of business, leading to the collection of communications with donors and financial records, *id.* ¶¶17–18, a search of the nonprofits' bank accounts, ¶ 20, subpoenas of donors, ¶ 21, and the search of the defendants' email accounts, ¶ 23.

The evidence amassed confirmed the whistleblower's allegations, obtaining an email where the consultant "directly solicit[ed] [for the ballot initiative] but instruct[ed] [a] donor to write a check to" another nonprofit in order to evade disclosure. *Id.* ¶ 27. Confirming the evasive purpose of the

intermediary, the consultant wrote in another email that she needed to structure transactions through the intermediary because she didn't "want to show money from my end coming in and then going out immediately." *Id.*

Donors apparently understood that they were not funding the intermediate entities and were told "100%□ of funds to this account will go to the cause" of supporting the ballot initiative. *Id.* ¶ 26. Confirming this purpose, some donors wrote on their checks to the intermediate organizations the name of the ultimate recipient ballot committee in the memo line. *Id.* ¶ 21. Based in part on that declared purpose, Michigan charged the treasurer for the intermediary organizations under state law, alleging the declared purpose of the contributions obligated the groups to register and report as state-level political committees. *Id.* ¶ 36. Despite memorializing the earmarking instruction, these checks, and the conversations behind them, were unknown to the public until a fortuitous whistleblower came forward and started an investigation.

G. Earmarking is Easily Disclaimed and Avoided, and Even Clumsy Attempts Still Involve Non-public Communications Typically Only Revealed Through In-Depth Investigations

As the following examples confirm, donors can easily direct their contributions through intermediaries without the need to "convince the

[recipient] party to violate FECA's earmarking rule." Pets. Br. at 22. Two examples show donors conveying express instructions on the electoral use of their contributions. Yet recipients easily evaded earmarking rules by simply providing a boilerplate letter that disclaimed those instructions and asserted hypothetical, but reliably unexercised, discretion over the use of the funds. *See supra* Sections I.A, I.B. That invocation of hypothetical discretion permitted the parties to characterize the transfer as an unrestricted general grant, one without the "encumbrance" that would qualify the transfer as an earmark. *Cf.* 11 C.F.R. § 110.6. Yet, the recipients still carried out the instructions, as their donors expected. *See supra* Sections I.A, I.B. The ease with which instructions are disclaimed and yet followed means donors can reliably trust recipients with their significant transfers.

Moreover, the remaining faint possibility, whatever it may be, that a donor faces that their instructions will be disregarded does not eliminate the value of the contribution to either the donor or the benefitted candidate. Just as the independence of a spender only partially "undermines the value of the expenditure to the candidate," *McCutcheon*, 572 U.S. at 214 (and then "probably not by 95 percent"), the independence of a reliable counterparty would only partially undermine the value of the contribution.[5] As

[5] For that reason, even in the absence of any expressed intentions, donors can still value party contributions if they can reliably predict the choices a political party will make. For example, in 2022, of the 34 Senate seats up for election, the

demonstrated by the fact the donations were made, a significant donor knows that, notwithstanding any assertions in a boilerplate response letter, there is a better than a 1 in 20 chance that their contribution will eventually benefit the candidate they support. Earmarking rules wholly fail to capture these types of "understanding[s] between donor and party" that "involve no definite commitment and [are] tacit on the donor's part" but that permit the donor to reliably circumvent the contribution limits. *Colorado II*, 533 U.S. at 459.

Even where such methods are not used to evade the scope of earmarking rules, the examples further demonstrate "the practical difficulty of identifying and directly combating circumvention under actual political conditions" for even "clumsy" attempts,

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NRSC devoted over 96% of its spending to just 9 of them. *See* OpenSecrets, *National Republican Senatorial Cmte Expenditures For and Against Candidates* (last visited Sept. 25, 2025), https://www.opensecrets.org/political-parties/NRSC/2022/independent-expenditures. Unsurprisingly, those races were among those identified as likely deciding control of the chamber. *See, e.g.*, Domenico Montaro, *The senate looks like a jump ball. Here are the 10 seats that will decide the majority* (Aug. 22, 2022), https://www.npr.org/2022/08/22/1118389494/top-10-us-senate-seats-pennsylvania-georgia-arizona. A donor could then predict that a significant portion of their party contribution would go to benefit one of those nine candidates without the need for the donor to express any instruction on how their funds are to be spent. There would be no need in this situation for the donor to convey anything to the recipient that could trigger earmarking rules.

meaning any enforcement of earmarking rules will be incomplete. *Colorado II*, 533 U.S. at 462. In each of the above examples, the solicitors' and donors' "designation, instruction, or encumbrance," 11 C.F.R. § 110.6, were conveyed through nonpublic channels, whether in-person meetings, *see supra* Section I.E., emails, *see supra* Sections I.A, I.B., I.D., I.F., or phone calls*, see supra* Sections I.C., I.E. There was no need for the parties to memorialize agreements through any less private means. The public and outside authorities therefore had no opportunity to monitor for compliance with earmarking rules.

Indeed, each of the above examples came about for reasons other than the discovery by the public of an instruction to earmark. Rather, the instructions were discovered in the process of in depth investigations brought about by the fortuitous bravery of a whistleblower, *see supra* Sections I.C, I.E, I.F., or an investigation started because the target engaged in other wrongful acts that were publicly observable, *see supra* Sections I.A., I.B., I.D.

The investigations then only revealed the earmarking because they probed the internal workings of the organizations and their communications with donors. Discovery requests, subpoenas, depositions, and search warrants were needed before a "transparent violation of the earmarking rule" could be detected. Pets.' Br. at 27.

Commensurate with the nature and intensity of these investigations, they are not nearly as common as would be required to ensure "rigorous[]

enforce[ment]." Pets.' Br. at 33. For example, the two investigations by the FEC started by a private complaint and a third investigation by a private complainant in a lawsuit, *see supra* Sections I.A., I.B., I.D., represent essentially the only three times a dark money group's communications with donors have been probed outside criminal proceedings. The FEC rarely investigates, and the private lawsuit represents only the second one that has gone to discovery. It is thus notable that in the three instances where investigators looked, they found donors instructing the uses of their funds, and recipients following those instructions. Simply put, these examples show the ease with which earmarking is done, the commonality of such instructions despite public assurances of their absence, and the effective impossibility of verifying any such assurances without probing an organization's inner workings. Accordingly, it is reasonable to infer from the known examples that many more examples exist, even among Petitioners, that are as yet unknown to the public.

Putting these examples together reveals how easily contributors could, in the absence of the limits on coordinated expenditures, use Petitioners to circumvent candidate contribution limits to carry out *quid pro quo* agreements without "convinc[ing] [them] to violate FECA's earmarking rule." Pets. Br. at 22. Petitioners could solicit donations to support specific candidates, for example stating they need funds to win critical senate seats, or donors could instruct Petitioners on the candidates they wish their contributions to support. They could use nonpublic

channels not subject to disclosure and that would be impossible for outsiders to detect absent an intensive investigation. Petitioners could then assert that, regardless of any understandings between the parties, that Petitioners technically retain discretion over the funds. Having asserted discretion, Petitioners could then spend the money exactly as directed and inline with the parties' understanding, all while treating the funds as un-earmarked. The donor may face a hypothetical risk that Petitioners would use the money for other purposes, but that small risk would only marginally decrease the value of the contribution to the donor or its usefulness in a *quid pro quo*. Moreover, that small risk is more than worthwhile where it permits the donor to direct contributions of more than five-times the candidate-limit to the candidate, to be spent in direct coordination with the candidate in a manner with "virtually the same value to the candidate as a contribution," *Buckley*, 424 U.S. at 46; *see also* FEC, Contribution Limits (last visited Sept. 25, 2025), https://www.fec.gov/help-candidates-and-committees/candidate-taking-receipts/contribution-limits/ (showing $3,500 per election contribution limits to candidates but $44,300 contribution limit to political parties).

Petitioners have sought to distinguish other illustrative examples as irrelevant because they do not involve party committees, *see* Pets.' Br. at 24, and presumably they would object to the examples above on the same grounds. Putting aside the fact one example involves a state level party, *see supra* Section I.C., Petitioners offer no reason to distinguish party

committees from other electoral actors, particularly actors that are closely associated with the Petitioners, *see supra* Sections I.A., I.B., I.D. Donors to political parties need not express their instructions in any more public medium than the donors to the above nonprofits. Donors to each understand that they technically "cede control," Pets. Br. at 22, when they donate funds in the absence of any durable binding instrument. Yet they feel comfortable donating nevertheless, likely secure in the knowledge that, for a big enough donor, their wishes will be dutifully followed out of fear of spurning future generosity. If anything, the unique features of political parties—the higher contribution limits and the ability to engage in significant coordinated expenditures—would make them more attractive targets to circumvent candidate contribution limits than other intermediaries. It is moreover unsurprising that examples from political parties would be difficult to come by: they can be obtained only by subjecting a political party and its donors to the same searching investigation experienced by the targets of the above investigations, something the Petitioners here did not offer. *See* JA601–02 (discussing Petitioners' responses to discovery requests).

In sum, the earmarking rules do not provide an adequate alternative to prevent circumvention or the possibility of *quid pro quo* agreements through the parties. As the above examples show, to "rigorously enforce[]" such provisions, Pets.' Br. at 33, the Petitioners would need to waive any privacy interest they have in their internal workings and

communications with donors and subject each to full public transparency. Even then, Petitioners could sidestep the earmarking rules by relying on tacit understandings and invoke hypothetical discretion, permitting circumvention and even *quid pro quos* without the need to "flagrantly violate" campaign finance laws, *cf.* Pets.' Br. at 23.

II. Disclosure Rules Are Not Adequate Alternatives to Party Coordination Limits

In addition to earmarking, the Petitioners suggest that disclosure provides an adequate alternative to the party coordination limits they challenge. *See* Pets.' Br. at 33. While disclosure serves many compelling interests, *see Buckley*, 424 U.S. at 66 (1976), it is "only a partial measure" at combating corruption, *id.* at 28.

Disclosures rules require parties to report the source and amounts of money over $200 coming in, 52 U.S.C. § 30104(b)(3); 11 C.F.R. § 104.3(a); and the uses of money going out, *id.* § 30104(b)(4), (5), (6); 11 C.F.R. § 104.3(b); *id.* at §104.17(a). But they do not require the parties to disclose their communications with those donors, never mind the terms of any agreement of a *quid pro quo* between the donor and the candidate that could be routed through a party committee. Rather than being subject to disclosure, the communications like those in the above examples that permit donors to instruct recipients on the use of their money remain opaque to those outside of the transaction.

For example, as discussed above, *see supra* Section I.C., contributions were routed through a state political party to fulfill a *quid pro quo*. Both the party's receipt of the bribe and its transfer of the bribe to the individual candidate were reported. *See id.* Nevertheless, the disclosures revealed neither the earmarking instructions which occurred in a private phone call, nor the *quid pro quo* that those transactions supported.

In another example, former Senator Robert Menendez was indicted for bribery in connection with contributions made to a multi-candidate super PAC closely associated with the democratic party. *See United States v. Menendez*, 291 F. Supp. 3d 606, 624–25 (D.N.J. 2018); *see also* Ian Vandewalker, *Dark Money from Shadow Parties is Booming in Congressional Elections* (Senate Majority PAC affiliated with "House Democrats"). Those funds were earmarked for Senator Menendez's benefit, *id.*, but public reporting only indicated that the super PAC received the contributions and made expenditures in support of Senator Menendez, *id.* at 632; *see also* FEC, Receipts (last visited Sept. 25, 2025) https://www.fec.gov/data/receipts/?data_type=processed&contributor_name=VitreoRetinal+Consultants&contributor_name=vitreo&two_year_transaction_period=2012 (filtered for contributions from "Vitreo-Retinal Consultants"); FEC, Independent Expenditures (last visited Sept. 25, 2025) https://www.fec.gov/data/independent-expenditures/?data_type=processed&most_recent=true&q_spender=C00484642&is_notice=true&candidat

e_id=S6NJ00289 (filtered for SMP expenditures supporting or opposing Senator Menendez). Those reports did not require the recipient to disclose that the contributions were earmarked for Senator Menendez's benefit, never mind any requirement to disclose their connection to a *quid pro quo*, particularly one in which the committee was not itself alleged to have been involved. Whether or not there was sufficient evidence of a corrupt bargain behind the transaction to support a criminal conviction, *cf. Menendez*, 291 F. Supp. 3d at 630–35 (finding insufficient evidence of explicit *quid pro quo* agreement involving super PAC contributions), the disclosures alone were not enough to alert the voters to potential corruption.

Moreover, while disclosure can help voters "detect any post-election special favors that may be given in return" for a party donation, *Buckley*, 424 U.S. at 67, notably that detection is going to occur, if ever, *after* the election, when voters have no way to prevent it and no remedy to pursue. That also assumes voters will actually learn of the corrupt bargain. This Court has said that voters "cannot distinguish between voting pattern changes traceable to legitimate donor influence or access, and voting pattern changes as part of an illicit *quid pro quo*" by simply relying on the correlation between an exchange of campaign funds and subsequent favorable official actions. *Cruz*, 596 U.S. at 308–09. Yet Petitioners insist voters do just that. Of course, if voters do, and make an erroneous inference, they may face a ruinous defamation suit.

Disclosure, moreover, does not prevent *quid pro quos* or excessive contributions. Rather, disclosure provides the electorate with information that it may weigh in exercising its franchise. Voters can impose no consequence, however, on the private actors revealed to be involved in a *quid pro quo*. As to the official actor, the consequences are still tempered by the fact that voters must weigh a great number of factors in choosing whether and for whom to cast their vote. A corrupt official may be highly undesirable, but voters may hold their nose and vote if they believe punishing that official is outweighed by other policy considerations. Leaving aside the wisdom of that choice, electing an official to the position in which they may fulfill their corrupt bargain would mean disclosure did not "prevent[] '*quid pro quo*' corruption." *Cruz*, 596 U.S. at 305.

For example, CREW secured a disclosure victory in 2019 when the FEC required a dark money organization to register as a political committee and disclose its donors. *See* Matt Corley, *Hensel Phelps donations to pro-Buck dark money group finally revealed*, CREW, Nov. 19, 2019, https://www.citizensforethics.org/reports-investigations/crew-investigations/hensel-phelps-donations-ken-buck/. Those disclosures revealed that a corporation that was the former employer of a congressman and government contractor, and therefore prohibited from electioneering, was nevertheless illicitly funding a dark money organization to engage in the electioneering in support of the congressman that the donor corporation

could not. *Id.* Despite this revelation, voters returned the congressman to office in the next election, imposing no consequence for revealed illegality. *See Colorado Election Results: Fourth Congressional District*, N.Y. Times, https://www.nytimes.com/interactive/2020/11/03/us/elections/results-colorado-house-district-4.html.

Disclosure of campaign finances serves many purposes and is vital for the "free functioning of our national institutions." *Buckley*, 424 U.S. at 66. Yet it is not a substitute for other direct anti-corruption measures.

CONCLUSION

Enforcing rules against earmarking and the disclosure of financial transactions are no substitute for other direct measures like the limit on coordinated party expenditures, even assuming that their "rigorous[] enforce[ment]" would be "less burdensome." *Cf.* Pets. Br. at 14, 33. Voters are entitled to pursue means that can effectively "achiev[e] th[eir] desired objective," *McCutcheon*, 572 U.S. at 218: the prevention of all *quid pro quo* corruption and its appearance.

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Respectfully submitted,

STUART C. MCPHAIL
Counsel of Record
DONALD K. SHERMAN
CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON
P.O. Box 14596,
Washington, DC 20005
(202) 408-5565
smcphail@citizensforethics.org

Attorneys for Amicus Curiae