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 AMICUS CURIAE OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS[1]

Amicus Curiae, the American Center for Law and Justice ("ACLJ"), is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have appeared often before this Court as counsel for parties, e.g., *Trump v. Anderson*, 601 U.S. 100 (2024) (unanimously holding that states have no power under the U.S. Constitution to enforce Section Three of the Fourteenth Amendment with respect to federal offices); *McConnell v. FEC*, 540 U.S. 93 (2003) (unanimously holding that minors enjoy the protection of the First Amendment); *Lamb's Chapel v. Center Moriches Sch. Dist.*, 508 U.S. 384 (1993) (unanimously holding that denying a church equal access to public school premises to show a film series on parenting violated the First Amendment); or for amici, e.g., *Republican National Committee v. Genser*, 145 S. Ct. 9 (2024); *Trump v. United States*¸ 603 U.S. 593 (2024); *Fischer v. United States*, 144 S. Ct. 2176 (2024); and *Bush v. Gore*, 531 U.S. 98 (2000). The ACLJ has a fundamental interest in defending the uniformity of federal elections and in promoting election security and confidence.

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[1] Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

SUMMARY OF ARGUMENT

This Court has long held that restrictions on political speech are justified only to prevent *quid pro quo* corruption or its appearance. *FEC v. Ted Cruz for Senate*, 596 U.S. 289, 305 (2022). Petitioners show why that principle controls here: the limits on party expenditures at issue thus cannot survive. The decision below essentially acknowledged as much—recognizing that since 2001, this Court "has recognized only one permissible ground for restricting political speech: the prevention of '*quid pro quo*' corruption or its appearance," and that *Colorado Republican Federal Campaign Committee v. FEC*, 533 U.S. 431 (2001) ("*Colorado II*"), has been abandoned in practice. Pet. App. 10a–11a.

Yet the Sixth Circuit upheld the law for one reason: "*Colorado II* has not been formally overruled." Pet. App. 11a–12a. Relying on *Rodriguez de Quijas v. Shearson/Am. Express, Inc.*, 490 U.S. 477, 484 (1989), the court concluded that because *Colorado II* opined on the same statutory provision, it remains binding until this Court explicitly says otherwise.

That reading of *Rodriguez* is mistaken. This Court has often overruled its precedents *implicitly*, without naming them. Properly understood, *Rodriguez* does not compel lower courts to treat long-abandoned decisions as controlling until the Court utters the right "magic words." To is not fidelity to precedent but defiance of this Court itself—forcing this Court to catalogue the cases it discards in every opinion and

leaving "zombie precedents" to distort the law long after they have been rejected in substance. Such a regime undermines doctrinal coherence, wastes judicial resources, and erodes this Court's authority.

This case offers the Court the chance to say two things plainly: *Colorado II* is no longer good law, and *Rodriguez* does not require blind adherence to decisions that the Court has already clearly displaced.

ARGUMENT

I. THIS COURT MAY OVERRULE ITS OWN PRECEDENT IMPLICITLY.

Only this Court has authority to overrule its own precedent. *State Oil Co. v. Kahn*, 522 U.S. 3, 20 (1997). But such an overruling need not be *explicit*; it can occur *implicitly*, without naming the displaced case. As this Court recognized long ago, "a later decision in conflict with prior ones had the effect to overrule them, whether mentioned and commented on or not." *Asher v. Texas*, 128 U.S. 129, 131-32 (1888). This principle does not invite lower courts to speculate about future rulings, but it does mean that this Court is not forced literally to list every precedent displaced by its subsequent opinions.

Indeed, this Court could not be expected exhaustively to catalog outdated decisions every time an opinion alters this Court's case law. When two of this Court's opinions cannot coexist, the latter governs. To deny that reality would produce startling consequences.

Consider *Plessy v. Ferguson*, 163 U.S. 537 (1896). No serious student of American history believes it

remained "good law" after *Brown v. Board of Education*, 347 U.S. 483 (1953). Yet *Brown* never said so in express terms; the proposition that *Brown* "implicitly overturned" *Plessy* was simply understood. *See, e.g.,* Steven G. Calabresi, *Text vs. Precedent in Constitutional Law*, 31 HARV. J.L. & PUB. POL'Y 947, 953 (2008). Only later did this Court itself describe *Plessy* as overturned by *Brown*. *See, e.g., Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 203-04 (2023) ("In [*Brown*] we overturned *Plessy* for good and set firmly on the path of invalidating all *de jure* racial discrimination by the States and Federal Government."). *Brown* is not unique. This Court has often recognized that its decisions were implicitly displaced by later ones.[2]

That principle extends to precedent within a given "line." When this Court overrules a foundational case—expressly or implicitly—it also strips its progeny of precedential force. Thus, when *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), *expressly* overruled *Roe v. Wade*, 410 U.S. 113 (1973),

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[2] *See, e.g., Trump v. Hawaii*, 585 U.S. 667, 710 (2018) ("The dissent's reference to *Korematsu*, however, affords this Court the opportunity to make express what is already obvious: *Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution.'") (citing *Korematsu v. United States*, 323 U.S. 214, 248 (1944) (Jackson, J., dissenting); *Hudgens v. NLRB*, 424 U.S. 507, 518 (1976) ("[W]e make clear now, if it was not clear before, that the rationale of *Logan Valley* did not survive the Court's decision in the *Lloyd* case. Not only did the *Lloyd* opinion incorporate lengthy excerpts from two of the dissenting opinions in *Logan Valley*, 407 U.S., at 562-563, 565; the ultimate holding in *Lloyd* amounted to a total rejection of the holding in *Logan Valley*.").

it necessarily deprived the entire *Roe* line of cases of binding effect, without enumerating each case individually. *See also Medina v. Planned Parenthood*, 145 S. Ct. 2219, 2234 (2025) ("To the extent lower courts feel obliged, or permitted, to consider the contrary reasoning of [certain named precedents governing implied causes of action], they should resist the impulse… given this Court's longstanding repudiation of [their] reasoning").

The same dynamic operated in *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 534 (2022), in which this Court confirmed that it had "long ago abandoned *Lemon* and its endorsement test offshoot." (citing *Am. Legion v. Am. Humanist Ass'n*, 588 U.S. 19 (2019)). No prior case had said this in so many words, but the overruling was unmistakable—and with it, the progeny of *Lemon* lost precedential weight, even without being named individually. The same is true for long-abandoned precedents.

II. VERTICAL *STARE DECISIS* REQUIRES LOWER COURTS TO ACKNOWLEDGE IMPLICIT OVERRULING.

Because this Court can, and often does, overrule its past decisions implicitly, lower courts may not apply a cramped, overly literal version of *stare decisis* that treats only explicit overrulings as binding. Implicit overrulings bind no less than explicit ones. The rationale of *stare decisis*—the "policy judgment that 'in most matters it is more important that the applicable rule of law be settled than that it be settled right,'" applies with equal force whether a precedent is displaced expressly or be necessary implication. *Agostini v. Felton*, 521 U.S. 203, 235 (1997) (quoting

Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406 (1932) (Brandeis, J., dissenting)). Here, as both Judge Sutton's opinion below and Judge Readler's dissent explain in detail, *Colorado II* cannot be reconciled with modern First Amendment jurisprudence. That analysis need not be repeated; it suffices to say *Colorado II* no longer reflects this Court's understanding of the Constitution. The only remaining question is whether the Sixth Circuit was nevertheless bound to follow it. It was not.

Yet this does not mean lower courts are free to disregard precedent at will. This Court has been clear that mere "doubts about [a case's] continuing vitality" are insufficient to disregard controlling authority. *Cf. Bosse v. Oklahoma*, 580 U.S. 1, 3 (2016) (quoting *Hohn v. United States*, 524 U.S. 236, 252-53 (1998)). "[I]t is this Court's prerogative alone to overrule one of its precedents." *United States v. Hatter*, 532 U.S. 557, 567 (2001) (quoting *State Oil Co. v. Khan*, 522 U.S. 3, 20 (1997)). More directly, *Rodriguez* instructs that when "a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the Court of Appeals should follow the case which directly controls, leaving to this Court the prerogative of overruling its own decisions." 490 U.S. at 484.

These directives are not in tension. Lower courts must distinguish between precedent that has been effectively overruled—whether expressly or implicitly—and precedent that, though questioned, remains binding. The former they are obligated to set aside; the latter they must continue to apply. As the dissent below explained,

> [W]e do not mechanically apply earlier Supreme Court doctrine when "events subsequent to the [Supreme Court's] last decision… approving the doctrine or—especially later decisions by that court, or statutory changes—make it almost certain that the [Supreme Court] would repudiate the doctrine if given a chance to do so." *Olson v. Paine, Webber, Jackson & Curtis, Inc.*, 806 F.2d 731, 734 (7th Cir. 1986) (Posner, J.); *see also Hobbs v. Thompson*, 448 F.2d 456, 473 (5th Cir. 1971) (declining to apply Supreme Court doctrine that is "out of harmony with… a long line of cases decided subsequently").

Pet. App. 121a.

This Court has essentially said the same thing. In *Kennedy* it made clear that the Ninth Circuit *was wrong* in its continued reliance on *Lemon* after the Supreme Court had so clearly and repeatedly departed from *Lemon*'s holding and analysis. 597 U.S. at 535-36. This Court noted that it had already "instructed" a new constitutional approach at least eight years prior. *Id.* (citing *Town of Greece v. Galloway*, 572 U.S. 565 (2014)) *See also Lamb's Chapel*, 508 U.S. at 398 (Scalia, J., concurring) (comparing *Lemon* to "some ghoul in a late-night horror movie that repeatedly sits up in its grave and shuffles abroad, after being repeatedly killed and buried."). This Court minced no words: "[T]he Ninth Circuit *erred* by failing to heed this guidance."

Kennedy, 597 U.S. at 536 (emphasis added).[3]

Other circuits had, by contrast, correctly recognized *Lemon*'s demise. *See, e.g.*, *Woodring v. Jackson County*, 986 F.3d 979, 981 (7th Cir. 2021) (holding that intervening Supreme Court decisions required the abandonment of the *Lemon* test); *Perrier-Bilbo v. United States*, 954 F.3d 413, 425 (1st Cir. 2020) (same); *Kondrat'yev v. City of Pensacola*, 949 F.3d 1319, 1326 (11th Cir. 2020) (recognizing that "*Lemon* is dead"). The Sixth Circuit's reading of *Rodriguez* in the present case—that lower courts must wait helplessly until this Court pens *Colorado II*'s obituary—is mistaken and incompatible with this Court's clear instructions.

III. *RODRIGUEZ* DOES NOT REQUIRE LOWER COURTS TO IGNORE THIS COURT'S ACTUAL HOLDINGS.

The Sixth Circuit read *Rodriguez* to mean that until this Court formally declares a case "overruled," lower courts must treat it as binding—even when subsequent decisions have unmistakably displaced it. Pet. App. 11a-12a. That interpretation misreads *Rodriguez* and converts it into a rule of paralysis. Such a rule is both impractical and

[3] *See also Limbach v. Hooven & Allison Co.*, 466 U.S. 353, 361 (1984) (finding "error" in a lower court applying a precedent which, while not "expressly overruled," failed to "retain[] current validity."); *Rowe v. Peyton*, 383 F.2d 709, 714 (4th Cir. 1967), *aff'd* 391 U.S. 54 (1968) ("[T]here are occasional situations in which subsequent Supreme Court opinions have so eroded an older case . . . as to warrant a subordinate court in pursuing what it conceives to be a clearly defined new lead from the Supreme Court to a conclusion inconsistent with an older Supreme Court case.").

counterproductive: by ignoring controlling law, lower courts would undermine doctrinal coherence, erode judicial legitimacy, and force needless appeals—the very ills *stare decisis* was meant to prevent. A more faithful reading confines *Rodriguez* to its own terms.

Rodriguez concerned the continued validity of *Wilko v. Swan*, 346 U.S. 427 (1953), which had interpreted the Securities Act of 1933. The Fifth Circuit held *Wilko* no longer viable in light of *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220 (1987), a case construing a different statute -- the Securities Exchange Act of 1934. *See Rodriguez de Quijas v. Shearson/Lehman Bros., Inc.*, 845 F.2d 1296 (5th Cir. 1988). This Court ultimately agreed that *Wilko* was bad law, but reproved the Fifth Circuit for anticipating that result by discarding *Wilko* before this Court had done so. *Rodriguez*, 490 U.S. at 484. The "chiding" in *Rodriguez* was thus directed at anticipatory overruling—at the Fifth Circuit's own acknowledgement that *Wilko* had not yet been overruled, even as it proceeded as though it were. 845 F.2d at 1298.

That principle makes sense: lower courts may not speculate about whether this Court will abandon a precedent. But it does not follow that, once this Court has spoken—repeatedly and unmistakably—lower courts should persist in treating the displaced precedent as controlling. A bar on anticipatory repudiation is not a command of willful blindness. Requiring adherence to precedent this Court has already left behind is not fidelity to *stare decisis* but obstinance. It would reduce vertical precedent to a mechanical game of "magic words," obligating this Court to append comprehensive obituaries to any

decision that reshapes this Court's view of the governing law, lest abandoned doctrines to continue to shamble on as "good law."

This is not how this Court has operated. *See supra* §§ I-II. Nor could it be: such a rule entrenches zombie precedents, sows confusion among courts and litigants, and obscures this Court's actual holding until a formal funeral rite is performed. Nothing in *Rodriguez* demands such a distortion of the judicial process. To the extent courts of appeals have read *Rodriguez* that way, this Court should correct the error.

* * *

This Court should make clear that *Colorado II* no longer governs and that *Rodriguez* does not compel lower courts to enforce precedent this Court has already clearly abandoned.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

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