No. 16-109

In the Supreme Court of the United States

STOP RECKLESS ECONOMIC INSTABILITY CAUSED BY DEMOCRATS, ET AL., PETITIONERS

v.

FEDERAL ELECTION COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioners' as-applied constitutional challenges to two federal election laws, which undisputedly no longer apply or could apply to petitioners, are moot.

2. Whether the court of appeals correctly determined that multicandidate political committees are not subject to discrimination that would trigger a constitutional equal-protection inquiry when, as compared to other political committees, federal law permits them to contribute more to federal candidates but less to political parties.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Constitution, statutes and regulation:

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A1-A28) is reported at 814 F.3d 221. The opinion of the district court (Pet. App. A32-A53) is reported at 93 F. Supp. 3d 466.

JURISDICTION

The judgment of the court of appeals was entered on February 23, 2016. A petition for rehearing was denied on April 22, 2016 (Pet. App. A56-A57). The petition for a writ of certiorari was filed on July 21, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In order to curb political corruption and the appearance of such corruption, the Federal Election Campaign Act of 1971 (FECA), 52 U.S.C. 30101 *et seq*.

(Supp. II 2014), limits the "contributions" (including donations to candidates or parties) that a "person" may make in connection with a federal election. 52 U.S.C. 30116(a)(1); see *Buckley* v. *Valeo*, 424 U.S. 1, 26-29 (1976) (per curiam); see also 52 U.S.C. 30101(8)(A) (definition of "contribution"). As adjusted for inflation, the FECA limits generally allow a person to contribute up to $2700 per election (counting primary and general elections separately) to a candidate. 52 U.S.C. 30116(a)(1)(A); 80 Fed. Reg. 5752 (Feb. 3, 2015) (inflation adjustment). A person also may generally contribute up to $33,400 per year to the national committees of a political party, and up to $10,000 per year to the state and local committees of a political party. 52 U.S.C. 30116(a)(1)(B) and (D); 80 Fed. Reg. at 5752.

FECA's definition of "person" generally includes political committees, which are defined as any "committee, club, association, or other group of persons" that receives more than $1000 in contributions or makes more than $1000 in "expenditures" (outlays of money, other than contributions, intended to influence an election) during a calendar year. 52 U.S.C. 30101(4)(A); see 52 U.S.C. 30101(9)(A) and (11); 11 C.F.R. 100.5(a). A political committee that is not controlled by a candidate or political party, has received contributions from more than 50 people, has contributed to five or more federal candidates, and has been registered for at least six months is considered a "multicandidate political committee." 52 U.S.C. 30116(a)(4). Multicandidate political committees are subject to different contribution limits: they may contribute up to $5000 per election to a candidate, up to $15,000 per year to the national committees of a political party,

and up to $5000 per year to the state and local committees of a political party. 52 U.S.C. 30116(a)(2).

The Federal Election Commission (FEC or Commission) is vested with statutory authority over the administration, interpretation, and civil enforcement of FECA and other federal campaign-finance statutes. The Commission is empowered to "formulate policy" with respect to FECA, 52 U.S.C. 30106(b)(1); "to make, amend, and repeal such rules * * * as are necessary to carry out the provisions of [FECA]," 52 U.S.C. 30107(a)(8); see 52 U.S.C. 30111(a)(8) and (d); to issue written advisory opinions concerning the application of FECA and Commission regulations to any specific proposed transaction or activity, 52 U.S.C. 30108; and to civilly enforce FECA, 52 U.S.C. 30109. The Department of Justice prosecutes criminal violations of FECA. See 52 U.S.C. 30109(d).

2. Petitioner Stop Reckless Economic Instability Caused by Democrats (Stop PAC) is a political committee. Pet. App. A7. Its founders first discussed its formation as early as November 2013, but did not register it until March 2014. C.A. App. 163; Pet. App. A7. By April 2014, Stop PAC had more than 50 contributors and had contributed to five federal candidates. Pet. App. A7.

In April 2014, Stop PAC, along with other plaintiffs, filed suit against the FEC to challenge certain contribution limits. Pet. App. A7-A9. In the first two counts, Stop PAC asserted First Amendment and equal-protection challenges to the limit on contributions to a candidate by a person, as applied to entities that would otherwise qualify as multicandidate political committees but that had not yet been registered for six months. *Ibid.* In the third count, petitioners

Tea Party Leadership Fund (a multicandidate political committee)[*] and Alexandria Republican City Committee (a local political-party committee) brought an equal-protection challenge to the $15,000 limit on contributions by a multicandidate political committee to a national political party committee and the $5000 limit on contributions to state and local party committees. *Id.* at A9.

The district court determined that "an adequate factual record [wa]s necessary for proper consideration of [petitioners'] constitutional claims." D. Ct. Doc. 33, at 1 (June 18, 2014). It set a schedule under which discovery would conclude in September 2014, one day after Stop PAC would satisfy the six-month registration requirement and qualify as a multicandidate political committee. Pet. App. A7; D. Ct. Doc. 32 (June 18, 2014). In late August 2014, petitioners filed a motion for petitioner American Future PAC—a political committee that had more than 50 contributors, had contributed to five candidates, and had registered earlier that month—to join the suit as an additional plaintiff. Pet. App. A9-A10, A37-A38. In early

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[*] Petitioner Tea Party Leadership Fund had itself previously sued to enjoin the FEC from enforcing the statutory requirement that a political committee that has 50 contributors and contributes to at least five candidates must be registered for six months in order to qualify for the increased ($5000) limit on contributions to candidates. See 12-cv-01707 Docket entry No. 1 (D.D.C. Oct. 18, 2012). The district court, citing "delay in filing [the] motion," declined to entertain a request for emergency pre-election relief. Docket entry No. 10, at 3 (Nov. 2, 2012). Tea Party Leadership Fund, which qualified as a multicandidate political committee three days after the 2012 election, later voluntarily dismissed its lawsuit. Docket entry No. 50 (Nov. 7, 2013).

October 2014, after Stop PAC had already qualified as a multicandidate political committee, the district court permitted American Future PAC, which had not yet qualified as a multicandidate political committee, to intervene. *Id.* at A10. In February 2015, while cross-motions for summary judgment filed in September 2014 were still pending, American Future PAC itself qualified as a multicandidate political committee. *Id.* at A11. Petitioners did not attempt to join any additional plaintiffs.

The district court granted summary judgment to the FEC. Pet. App. A32-A53. As a threshold matter, the court expressed skepticism about whether it had jurisdiction to entertain Stop PAC's and American Future PAC's challenge to the requirement that an otherwise-qualified political committee must be registered for six months before it can contribute $5000 to a federal candidate. *Id.* at A40-A44. The court noted "substantial issues" with respect to standing, "given the ability of [such] entities * * * to control the timing of their registrations relative to any particular election." *Id.* at A42. The court also noted that both Stop PAC and American Future PAC had already satisfied the six-month requirement that they were challenging, and found it "unclear" whether any exception to usual mootness principles would apply. *Id.* at A43; see *id.* at A41. Nevertheless, the court "assume[d], without deciding," that those petitioners had standing and that their claims were not moot. *Id.* at A42; see *id.* at A44.

The district court rejected all of petitioners' claims on the merits. Pet. App. A45-A53. First, the court concluded that Stop PAC's and American Future PAC's First Amendment as-applied challenges to the

limit on contributions to a political candidate by a person were foreclosed by this Court's decisions in *Buckley* v. *Valeo* and *California Medical Association* v. *FEC*, 453 U.S. 182 (1981). Pet. App. A45-A49. Second, the court rejected petitioners' equal-protection challenges to that limit and to the limits on contributions by multicandidate political committees to political-party committees. *Id.* at A49-A53. Citing evidence obtained by the FEC during discovery, the district court explained, *inter alia*, that newer political committees are not similarly situated to more "entrenched" multicandidate political committees. *Id.* at A51.

3. The court of appeals directed a jurisdictional dismissal of two counts and affirmed the merits dismissal of the third. Pet. App. A1-A28.

a. The court of appeals concluded that, whether or not petitioners originally had standing to bring their as-applied challenges to the FECA limit on contributions to candidates by persons, those challenges had become moot. Pet. App. A12-A20. The court noted that petitioners "do not deny that once Stop PAC and American Future [PAC] became [multicandidate political committees] and the contribution limit they are challenging therefore ceased to apply to them, the district court was no longer in position to prevent any threatened injury (or provide redress for any past injury)." *Id.* at A15. The court also determined that, because it was impossible for the challenged law to again affect these petitioners, the case did not fall within the exception to mootness doctrine for injuries that are "capable of repetition, yet evading review." *Ibid.*; see *id.* at A14-A20. The court observed that this Court has described that doctrine (outside the class-

action context) as "limited to" circumstances that involve, *inter alia*, "a reasonable expectation that the same complaining party would be subjected to the same action again." *Id.* at A14 (quoting *Weinstein* v. *Bradford*, 423 U.S. 147, 149 (1975) (per curiam)).

The court of appeals rejected petitioners' contention that, "in election-related cases, the same-complaining-party element need not be satisfied." Pet. App. A15. The court noted petitioners' reliance on a dissent by Justice Scalia, in which he had cited election-related cases in which this Court had not expressly applied that requirement, and statements by some circuits that the requirement does not apply to challenges to election laws. *Id.* at A16-A17 (citing, *inter alia*, *Honig* v. *Doe*, 484 U.S. 305, 335-336 (1988) (Scalia, J., dissenting)). The court of appeals observed, however, that this Court "has actually applied the same-complaining-plaintiff rule in two relatively recent election cases." *Id.* at A18; see *id.* at A18-A19 (discussing *FEC* v. *Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007), and *Davis* v. *FEC*, 554 U.S. 724 (2008)). The court of appeals concluded that it should "follow the rule that [this] Court has actually articulated," *id.* at A17, and to which its own precedents had adhered, *id.* at A19.

b. The court of appeals also rejected petitioners' equal-protection challenge to the limits on contributions to a political party by a multicandidate political committee. Pet. App. A23-A28. The court found "no discrimination" against multicandidate political committees that would need "to be justified." *Id.* at A27.

The court of appeals explained that, under this Court's decision in *California Medical Association*, "determining whether actionable discrimination has

occurred" requires "compar[ing] the treatment the relevant respective groups receive under FECA overall, not just the treatment the groups receive under the specific provision of FECA being challenged." Pet. App. A26-A27. It found that petitioners "cannot show that FECA overall burdens the First Amendment rights of political committees that have become [multicandidate political committees] more than it burdens the rights of political committees that have satisfied all [multicandidate political committee] requirements" but have not yet been registered for six months. *Id.* at A27.

The court of appeals determined that the lower limits on contributions to a political party by a multicandidate political committee are "more than counteracted" by the higher limits on contributions to candidates. Pet. App. A27. "To the extent that there is a difference in treatment," the court continued, "it appears to us to *favor* the [multicandidate political committees] in that the total amount of money [multicandidate political committees] can contribute overall will be substantially greater since there are so many different individual candidates to which the respective entities can contribute." *Ibid.*

ARGUMENT

The court of appeals correctly held that petitioners' as-applied challenges to the FECA limit on contributions to a candidate by a person are moot. The court of appeals also correctly rejected petitioners' equal-protection challenge to the limits on contributions by a multicandidate political committee to a political party. Further review is not warranted.

1. a. Article III requires that, in order "[t]o qualify as a case fit for federal-court adjudication, an actual

controversy must be extant at all stages of review." *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 67 (1997) (internal quotation marks and citation omitted). If the plaintiff ceases to have a "personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot." *Campbell-Ewald Co.* v. *Gomez*, 136 S. Ct. 663, 669 (2016) (internal quotation marks and citation omitted) (quoting *Genesis Healthcare Corp.* v. *Symczyk*, 133 S. Ct. 1523, 1528 (2013)).

It is undisputed that petitioners lack any personal stake, either now or in the future, in the contribution limit applicable to a political committee that would otherwise qualify as a multicandidate political committee, but that has not been registered for six months. Although Stop PAC and American Future PAC were subject to that limit earlier in this litigation, the limit long ago ceased to apply to them. They are now multicandidate political committees that can lawfully contribute up to $5000, rather than $2700, to a federal candidate. See Pet. App. A15; see also 52 U.S.C. 30116(a)(1)(A) and (2); 80 Fed. Reg. at 5752.

Notwithstanding their current and prospective legal status, petitioners seek to avoid a jurisdictional dismissal by relying (Pet. 21-34) on the "exception to mootness for disputes that are capable of repetition, yet evading review." *United States* v. *Juvenile Male*, 564 U.S. 932, 938 (2011) (per curiam) (internal quotation marks and citations omitted). "This exception, however, applies only where '(1) the challenged action is in its duration too short to be fully litigated prior to cessation or expiration, and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again.'" *Ibid.* (brackets omit-

ted) (quoting *Spencer* v. *Kemna*, 523 U.S. 1, 17 (1998)). It is undisputed that the second condition is not satisfied here. Because neither Stop PAC nor American Future PAC will ever revert to its pre-multicandidate political committee status, it is impossible that "the same complaining party will be subject to the same action again." *Ibid.* Petitioners' jurisdictional argument thus rests on the contention (Pet. 21) that the second requirement should not apply in "election law cases."

That contention is unsound. Petitioners do not suggest that any decision of this Court has announced such a categorical rule, whereby disputes could and would be litigated by parties with no actual or prospective stake in the outcome. And such a rule would be inconsistent with this Court's recent election-law decisions in *Davis* v. *FEC*, 554 U.S. 724 (2008), and *FEC* v. *Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007) (*WRTL*), in which the Court, in applying the capable-of-repetition exception, has examined whether the same-plaintiff requirement was satisfied. See *Davis*, 554 U.S. at 735-736 (holding that the requirement of "a reasonable expectation that the same complaining party will be subject to the same action again" was satisfied where the plaintiff had announced his intention to run for office again) (citation omitted); *WRTL*, 551 U.S. at 463-464 ("hold[ing] that there exists a reasonable expectation that the same controversy involving the same party will recur," when the plaintiff alleged its intent to engage in "materially similar" conduct in future elections) (internal quotation marks and citation omitted).

The Court has previously applied the same-plaintiff requirement in other election-law cases as well. See

First Nat'l Bank v. *Bellotti*, 435 U.S. 765, 774-775 (1978) (noting same-plaintiff requirement and finding "reasonable expectation that appellants again will be subject to the threat of prosecution under" challenged election law) (internal quotation marks and citation omitted); *Meyer* v. *Grant*, 486 U.S. 414, 417 n.2 (1988) (noting requirement and finding it "reasonable to expect that the same controversy will recur between these two parties"). "This Court does not normally overturn * * * earlier authority *sub silentio*," *Shalala* v. *Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 18 (2000), and petitioners' suggestion (Pet. 22-26) that it has done so here cannot be squared with either recent or past practice.

Most of the decisions on which petitioners rely (Pet. 22-26)—and all of the decisions that Justice Scalia identified in his dissent in *Honig* v. *Doe*, 484 U.S. 305, 335 (1988) (Scalia, J., dissenting), as applying a relaxed version of the capable-of-repetition doctrine—pre-date 1975. That is the year in which the Court first recognized the same-plaintiff requirement, explaining in *Weinstein* v. *Bradford*, 423 U.S. 147 (1975) (per curiam), that *Sosna* v. *Iowa*, 419 U.S. 393 (1975), had "decided that in the absence of a class action, the 'capable of repetition, yet evading review' doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *Weinstein*, 423 U.S. at 149. Justice Scalia accordingly noted the possibility that pre-1975 election-law capable-of-repetition

cases were "limited to their facts" by later decisions. *Doe*, 484 U.S. at 336 (Scalia, J., dissenting).

In any event, the normal requirements of the capable-of-repetition exception either were satisfied, or presumably could have been satisfied, in each of the cases cited by petitioners. See *Barr* v. *Galvin*, 626 F.3d 99, 105 (1st Cir. 2010) (observing that in some of this Court's cases, "the 'same complaining party' requirement, though satisfied, is not always explicitly stated"), cert. denied, 132 S. Ct. 368 (2011). Two of the cases were class actions, a specialized context in which the Court has held that a class's claims may remain capable of repetition even when the lead plaintiff's claims are not. *United States Parole Comm'n* v. *Geraghty*, 445 U.S. 388, 398 (1980); see *Rosario* v. *Rockefeller*, 410 U.S. 752, 755 n.4 (1973); *Dunn* v. *Blumstein*, 405 U.S. 330, 333 n.2 (1972). And in the other cases, the plaintiffs included candidates who would again be subject to the challenged ballot-access laws if they ran for office in a future election. See *Anderson* v. *Celebrezze*, 460 U.S. 780, 782 (1983); *Mandel* v. *Bradley*, 432 U.S. 173, 173-174 (1977) (per curiam); *American Party of Tex.* v. *White*, 415 U.S. 767, 770-771 (1974); *Storer* v. *Brown*, 415 U.S. 724, 726-728 (1974); *Moore* v. *Ogilvie*, 394 U.S. 814, 815-816 (1969). Although the Court may not have expressly required those candidates to allege that they intended to run again, see, *e.g.*, *Moore*, 394 U.S. at 819 (Stewart, J., dissenting) (noting absence of such allegation), any inconsistencies in that regard cannot be understood as implicit deviations from usual mootness principles. See, *e.g.*, *Lewis* v. *Casey*, 518 U.S. 343, 351 (1996) (decision that "made no mention of an actual-injury requirement * * * can hardly be thought to

have eliminated that constitutional prerequisite"). Petitioners identify no election-law case in which the Court found the capable-of-repetition exception to be satisfied even though the challenged law could not possibly affect the same plaintiff in the future.

b. Although courts of appeals have expressed differing views on whether the same-plaintiff requirement applies in election-law cases, the issue is rarely outcome-determinative and does not warrant this Court's intervention.

Because the same-plaintiff requirement is easily satisfied in many election-law cases, some of the circuit decisions cited by petitioners as dispensing with that requirement (including the one they assert to present a situation "materially identical" to this case, Pet. 31) do so only after explicitly finding the requirement to be met. See, *e.g.*, *Catholic Leadership Coal. of Tex.* v. *Reisman*, 764 F.3d 409, 423-423 (5th Cir. 2014) (finding that challenged law imposed a "continuing limitation" that "these Plaintiffs will again be subjected to"); *Center for Individual Freedom* v. *Carmouche*, 449 F.3d 655, 662 (5th Cir. 2006) (finding that the plaintiff "may again feel the need to censor itself to avoid possible application of" the challenged law), cert. denied, 549 U.S. 1112 (2007); *Lawrence* v. *Blackwell*, 430 F.3d 368, 371-372 (6th Cir. 2005) (finding that, "[a]lthough [the plaintiff] has not specifically stated that he plans to run in a future election, he is certainly capable of doing so, and under the circumstances it is reasonable to expect that he will do so"), cert. denied, 547 U.S. 1178 (2006); *Corrigan* v. *City of Newaygo*, 55 F.3d 1211, 1214 (6th Cir.) (finding "reasonable expectation that future candidates for whom [the plaintiff voters] wish to vote will be denied a place

on the ballot under the [challenged] ordinance"), cert. denied, 516 U.S. 943 (1995); *Hatten* v. *Rains*, 854 F.2d 687, 690 n.4 (5th Cir. 1988) (finding that the plaintiff "retains an interest in the litigation generally, because he remains permanently barred from future judicial elections in Texas"), cert. denied, 490 U.S. 1106 (1989).

The other decisions cited by petitioners involved circumstances that were potentially capable of recurring if, for example, the plaintiff candidate or political party sought to participate in a similar way in a future election. See *Libertarian Party of Mich.* v. *Johnson*, 714 F.3d 929, 930-932 (6th Cir.) (candidate), cert. denied, 134 S. Ct. 825 (2013); *Wilson* v. *Birnberg*, 667 F.3d 591, 594-597 (5th Cir.) (candidate), cert. denied, 133 S. Ct. 32 (2012); *Moore* v. *Hosemann*, 591 F.3d 741, 742-745 (5th Cir. 2009) (candidate), cert. denied, 560 U.S. 904 (2010); *Kucinich* v. *Texas Democratic Party*, 563 F.3d 161, 163-165 (5th Cir. 2009) (candidate); *Caruso* v. *Yamhill Cnty.*, 422 F.3d 848, 851, 853-854 (9th Cir. 2005) (petition circulator), cert. denied, 547 U.S. 1071 (2006); *Majors* v. *Abell*, 317 F.3d 719, 722-723 (7th Cir. 2003) (candidate); *Schaefer* v. *Townsend*, 215 F.3d 1031, 1032-1033 (9th Cir. 2000) (candidate), cert. denied, 532 U.S. 904 (2001); *Dart* v. *Brown*, 717 F.2d 1491, 1492-1493 & n.3 (5th Cir. 1983) (candidate and political party), cert. denied, 469 U.S. 825 (1984); *Joyner* v. *Mofford*, 706 F.2d 1523, 1526-1527 (9th Cir.) (candidate), cert. denied, 464 U.S. 1002 (1983); see also *Corrigan*, 55 F.3d at 1212 (candidates). At least in some circumstances, courts may construe a plaintiff's continued pursuit of a challenge to an election law, even after the election has already occurred, as implicitly indicating that the plaintiff expects again to be affected by the law.

Elections of course recur at regular intervals, and many candidates, voters, and advocacy groups repeat substantially the same conduct during each election cycle. It therefore may be that plaintiffs who establish an initial injury from a challenged election law will *usually* be able to satisfy the same-plaintiff requirement of the capable-of-repetition exception, by showing that the law's application to a future election will cause them the same injury. But sometimes, as in this case, recurrence of the controversy between the same parties will be either legally impossible or demonstrably unlikely. See, *e.g.*, *Barilla* v. *Ervin*, 886 F.2d 1514, 1519-1521 (9th Cir. 1989) (finding challenge to law moot where election had occurred and law had been amended).

When that occurs, dismissal of the suit on mootness grounds accords with bedrock Article III principles. "In our system of government, courts have no business deciding legal disputes or expounding on law in the absence of [an Article III] case or controversy." *Already, LLC* v. *Nike, Inc.*, 133 S. Ct. 721, 726 (2013) (internal quotation marks and citation omitted). As one aspect of its Article III jurisprudence, the Court has "repeatedly held that an actual controversy must exist not only at the time the complaint is filed, but through all stages of the litigation." *Ibid.* (internal quotation marks and citation omitted). "No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute is no longer embedded in any actual controversy about the plaintiffs' particular legal rights." *Id.* at 727 (internal quotation marks and citation omitted). Petitioners make no meaningful effort to explain why elimination of the

same-plaintiff requirement in election-law cases, so as to allow continuing litigation at the behest of a plaintiff who lacks any continuing or prospective stake in the outcome, would be consistent with the appropriate role of Article III courts.

c. In any event, this case would be an unsuitable vehicle for addressing the mootness question because the lower courts have also questioned petitioners' standing. The district court perceived "substantial issues" about whether a cognizable injury-in-fact exists in this case, given the ability of political committees "to control the timing of their registrations relative to any particular election." Pet. App. A42; see, *e.g.*, *Clapper* v. *Amnesty Int'l USA*, 133 S. Ct. 1138, 1152-1153 (2013) (finding "self-inflicted injuries" insufficient to provide standing). Although neither court below decided the case on standing grounds, the potential for finding a jurisdictional defect on that basis could impede consideration of the question presented.

2. The Court should also deny certiorari on the second question presented.

a. In *California Medical Association* v. *FEC*, 453 U.S. 182 (1981), this Court rejected an equal-protection challenge to certain contribution limits on the ground that the limits were imposed on entities that, overall, received favorable treatment under FECA. *Id.* at 200-201. The plaintiff in that case, an unincorporated association, claimed that limits on its contributions to political committees were unjustifiably discriminatory because corporations and labor unions could form attached political committees and contribute unlimited amounts to those attached committees. *Id.* at 200. The Court reasoned, however, that it "need not consider

* * * whether the discrimination alleged by appellants is justified" because it "f[ound] no such discrimination." *Ibid.* "Appellants' claim of unfair treatment," the Court explained, "ignores the plain fact that the statute as a whole imposes far *fewer* restrictions on individuals and unincorporated associations than it does on corporations and unions." *Ibid.*; see *id.* at 200-201 (discussing differences in regulation). "The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other," the Court continued, "reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process." *Id.* at 201.

The reasoning of *California Medical Association* forecloses petitioners' equal-protection challenge to FECA's limit on the contributions a multicandidate political committee can make to a political party. Pet. App. A23-A28. Petitioners "cannot show" that the "overall" restrictions on multicandidate political committees are more burdensome than the restrictions on political committees that have not been registered for six months but would otherwise qualify as multicandidate political committees. *Id.* at A27. Rather, FECA as a whole "appears * * * to *favor*" multicandidate political committees, which may contribute $5000 per election, rather than $2700 per election, to a candidate. *Ibid.*; see 52 U.S.C. 30116(a)(1)(A) and (2)(A); 80 Fed. Reg. at 5752. That higher limit "more than counteract[s]" the lower limits on contributions to political parties because "there are so many different individual candidates to which the respective entities can

contribute." Pet. App. A27. Accordingly, as in *California Medical Association*, "there is no discrimination to be justified." *Ibid.*

b. Petitioners identify no court of appeals decision that has reached a different conclusion with respect to the FECA provision that petitioners challenge (or any similar provision in a state law). And, contrary to petitioners' assertion (Pet. 35-40), the court of appeals' decision does not conflict with this Court's decisions in *Davis* and *McCutcheon* v. *FEC*, 134 S. Ct. 1434 (2014).

Neither *Davis* nor *McCutcheon* involved either an equal-protection claim or the particular FECA provision at issue here. In *Davis*, the Court held that the First Amendment precluded Congress from creating a scheme in which candidates who faced self-funded opponents could receive extra contributions. 554 U.S. at 736-745. And in *McCutcheon*, the Court held that the First Amendment precluded Congress from imposing an aggregate limit on the total amount that individuals may contribute to candidates in an election cycle. 134 S. Ct. at 1442 (opinion of Roberts, C.J.); *id.* at 1462-1464 (Thomas, J., concurring in the judgment).

Petitioners rely (Pet. 35-38) on those decisions to argue that the court of appeals failed to identify a sufficient anticorruption interest, of the sort that this Court requires under the First Amendment, to support the contribution limit that they have challenged here. But in the context of an equal-protection challenge, a court "need not consider * * * whether the discrimination alleged * * * is justified" if it "find[s] no such discrimination." *California Med. Ass'n*, 453 U.S. at 200. Here, as in *California Medical Association*, an examination of FECA's provisions "as a whole,"

ibid., illustrates that the entity allegedly discriminated against in fact receives more favorable treatment under FECA. See Pet. App. A27.

The court of appeals' focus on how FECA treats multicandidate political committees "overall" (Pet. App. A27), and its corresponding rejection of a piecemeal limit-by-limit approach to equal-protection analysis, accords with *California Medical Association*. It does not, as petitioners suggest (Pet. 38), contravene *McCutcheon* by approving a "tradeoff[] among First Amendment rights." This case differs from *McCutcheon* with respect to both the constitutional basis for the claim (here, equal protection; there, the First Amendment) and the operation of the challenged provision (here, base limits on contributions to political parties; there, an aggregate limit on contributions to all candidates). While the aggregate cap at issue in *McCutcheon* effectively required an individual to "limit the number of candidates he support[ed]," potentially forcing him "to choose which of several policy concerns he will advance," 134 S. Ct. at 1448 (opinion of Roberts, C.J.), the provisions at issue here permit a multicandidate political committee to contribute up to the limits to as many political party committees as it chooses. The fact that the aggregate cap violated the First Amendment does not imply that the provisions here violate equal-protection principles.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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