No. 25-1706

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 25-1705

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

Plaintiffs-Appellees,

v.

WILLIAM J. SCHNEIDER, in the official capacity as Chairman of the Maine Commission on Governmental Ethics and Election Practices; DAVID R. HASTINGS, III, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; DENNIS MARBLE, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; BETH N. AHEARN, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; AARON M. FREY, in the official capacity as Attorney General of Maine; SARAH E. LECLAIRE, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices,

Defendants-Appellants,

EQUAL CITIZENS; CARA MCCORMICK; PETER MCCORMICK; RICHARD A. BENNETT,

Defendants.

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Defendants,

On Appeal from the U.S. District Court for the District of Maine
Hon. Karen F. Wolf, Case No. 1:24-cv-00430-KFW

BRIEF OF THE CENTER FOR AMERICAN PROGRESS AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND SUPPORTING REVERSAL

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CORPORATE DISCLOSURE STATEMENT

The Center for American Progress is a nonprofit, non-stock corporation. It has no parent corporation, and no publicly held corporation owns 10 percent or more of its stock.

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IDENTITY AND INTEREST OF AMICUS CURIAE

The Center for American Progress ("CAP") is an independent, nonpartisan policy institute dedicated to improving the lives of all Americans through bold, progressive ideas, strong leadership, and concerted action.[1] One of CAP's central goals is restoring trust in government—a goal that cannot be met unless citizens believe the political process is fair, transparent, and responsive to the public will.

CAP's Democracy Policy team works to strengthen institutions that protect electoral integrity and public confidence in democracy, including the Federal Election Commission and state election-oversight bodies. The team brings deep expertise in election administration, election law, and campaign-finance law—fields that converge in this case. That perspective, rooted in both policy design and empirical research, gives CAP a distinct vantage point on the issues presented here.

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[1] Amicus curiae has moved for leave to file this brief pursuant to Federal Rule of Appellate Procedure 29(a)(3). No counsel for a party authored this brief in whole or in part, and no party or party's counsel contributed money intended to fund its preparation or submission. No person other than amicus curiae or its counsel contributed money that was intended to fund the preparation or submission of this brief. See Fed. R. App. P. 29(a)(4)(E).

CAP respectfully submits this brief to assist the Court in one narrow but essential respect: to bring before it new empirical facts demonstrating that two of the four factual premises of *Citizens United v. Federal Election Commission* have failed. While this Court may conclude it is bound by *Citizens United*, it also has the opportunity to recognize those failed predicates and to signal, with candor and restraint, that the Supreme Court must reconcile *Citizens United* with *Buckley v. Valeo* if both decisions are to remain coherent.

SUMMARY OF ARGUMENT

Amicus agrees with the members of Issue One's ReFormers Caucus who also filed an amicus brief in this case: The unchecked growth of Super PACs has warped American politics and eroded public confidence in democracy. Maine's voters were right to act, and the judgment below should be reversed.

But should this Court conclude it is bound in this matter by *Citizens United v. Federal Election Commission,* it still has an essential role to play.

Citizens United's holding on independent expenditures rested on four propositions. Two were normative—defining corruption narrowly and equating access with ordinary politics. Two were empirical—declaring that independent expenditures cannot create the appearance of corruption and that influence over and access to elected officials would not cause citizens to lose faith in democracy. Those empirical assertions were unsupported by any factual record.

Fifteen years later, the evidence is in. A 2025 national survey commissioned by Issue One and conducted by YouGov establishes that large independent expenditures do create the appearance of corruption

and have measurably eroded the public's faith in democracy. These are empirical perceptions that constitute relevant facts. Because 'appearance' and 'public faith' are perceptual phenomena, public perception *is* the fact. When three-quarters of the electorate say unlimited spending looks corrupt and undermines their confidence, that appearance and that loss of faith exist as a matter of reality.

These facts afford this Court the opportunity to do what lower courts often must: apply binding precedent while candidly recording that its factual predicates have failed. *Buckley v. Valeo* recognized preventing the appearance of corruption as a compelling governmental interest; *Citizens United* declared that such an appearance is impossible in the context of independent expenditures. The data now show it exists. If the Supreme Court wishes to preserve *Citizens United* despite that evidence, it should be asked to say so expressly—and acknowledge that doing so would repudiate *Buckley*.

This Court can apply precedent and still acknowledge the current empirical landscape as it is, not as the Supreme Court once imagined it to be.

ARGUMENT

I. Alignment and the Discrete Purpose of This Brief

Amicus aligns fully with the members of Issue One's ReFormers Caucus who also filed an amicus brief in this case. The record they present demonstrates powerfully that unlimited super PAC spending has undermined public confidence in representative government and that Maine's voters acted wisely in seeking to restrain it.

This brief serves a narrower, complementary purpose. It presents one discrete point for this Court's consideration: newly available empirical evidence—drawn from a 2025 national survey commissioned by Issue One and conducted by YouGov—shows that two empirical factual premises on which *Citizens United v. Federal Election Commission* rested are not true. The two assumptions took different forms. The first—*that independent expenditures cannot create the appearance of corruption*—was a categorical declaration of impossibility. The second—*that such appearances would not cause citizens to lose faith in democracy*—was a prediction about public reaction. Both have now failed: the first because the appearance exists, the second because the loss of faith has occurred.

Bound though it may be by the Supreme Court's authority in this matter, this Court has both the responsibility and the opportunity to acknowledge the empirical facts now available. It can apply *Citizens United* faithfully while acknowledging that its factual predicates have failed, thereby providing the Supreme Court with an accurate empirical record should review occur. In doing so, this Court would honor precedent yet fulfill the judiciary's larger obligation—to describe the world as it is, not as prior decisions once imagined it to be.

II. Empirical Premises Treated as Law in *Citizens United*

Citizens United set out the foundation for modern campaign-finance law with four interlocking statements:

> "[I]ndependent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption. That speakers may have influence over or access to elected officials does not mean that those officials are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy." 558 U.S. 310, 360 (2010).

From that passage, four propositions emerge:

1. Independent expenditures cannot corrupt.
2. Independent expenditures cannot create the appearance of corruption.
3. Influence and access cannot constitute corruption.

4. The appearance of influence or access will not cause the electorate to lose faith in democracy.

The first and third propositions are normative; they define, as a matter of law, what corruption is. This brief does not address whether those definitions are correct, coherent, or even within the proper reach of the Supreme Court's authority. That is a debate for another day.

This brief is here for the second and fourth propositions. They are *empirical*; they describe how citizens perceive political spending and how those perceptions affect faith in democratic institutions. The Supreme Court treated all four as matters of constitutional law, though only the first and third arguably fall within its interpretive authority. Propositions (2) and (4) were legislative facts—claims about social reality—that were treated as legal premises without record support, untested by the adversarial process, and, as it turns out, false.

These propositions were presented not as conjecture but as statements of fact; their failure thus bears directly on the decision's continuing validity. The first—the claim that independent expenditures cannot create the appearance of corruption—was a categorical declaration of impossibility. The second—the claim that the appearance

of influence and access would not cause citizens to lose faith in democracy—was a prediction about public reaction. Both have failed: the first because the appearance of corruption exists, and the second because, after fifteen years of unlimited independent expenditures under *Citizens United*, the appearance of influence and access has in fact caused citizens to lose faith in their democracy.

These are not abstract disagreements. They are failures of fact that go to the core of the Supreme Court's reasoning. The public's perception of corruption and its faith in democracy are now measurable, those measurements constitute facts, and those facts contradict the assumptions upon which *Citizens United* was built.

III. The New Empirical Record

The October 2025 *National Survey on Campaign Finance Reform*, commissioned by Issue One and conducted by YouGov, was in part designed to test the factual premises underlying *Citizens United*. Its findings directly contradict two of them: that independent expenditures cannot create the appearance of corruption and that perceived access and

influence would not cause citizens to lose faith in democracy.[2] The data find that both assumptions are false: appearance of corruption now exists

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[2] Issue One, *National Survey on Campaign Finance Reform* (Oct. 2025), https://issueone.org/press/new-polling-citizens-united-money-in-politics-reforms (commissioned by Issue One and conducted by YouGov; national n = 1,036 registered voters; MOE ± 3.3%; Montana subsample n = 410, MOE ± 5.8%). The survey was structured to measure public perceptions of large independent expenditures and the influence of major donors on confidence in democracy—questions bearing directly on the empirical assumptions underlying *Citizens United*. The data find that both the appearance of corruption and the loss of faith in democracy have occurred.

These findings align with a consistent empirical record across earlier national surveys, all showing that Americans overwhelmingly perceive large independent expenditures by wealthy donors and corporations as creating corruption or its appearance, and that perceived access and influence by major donors have caused a measurable loss of faith in democracy: Program for Public Consultation, *The Common Ground of the American People* 14 (College Park, Md.: Univ. of Maryland 2020), https://vop.org/wp-content/uploads/2020/08/Common_Ground_Brochure.pdf; Carah Ong Whaley, "Survey Says!: Broad Support for Reforms to Political System," Issue One (Oct. 1, 2024), https://issueone.org/articles/survey-says-broad-support-for-reforms-to-political-system/; Pew Research Center, *Americans' Dismal Views of the Nation's Politics: Money, Power and the Influence of Ordinary People in American Politics* (Washington 2023), https://www.pewresearch.org/politics/2023/09/19/money-power-and-the-influence-of-ordinary-people-in-american-politics/; Steven Kull et al., *Americans Evaluate Campaign Finance Reform* (College Park, Md.: Univ. of Maryland Program for Public Consultation May 10, 2018), https://publicconsultation.org/redblue/very-large-majorities-support-congressional-bills-to-reduce-influence-of-big-campaign-donors/; Public Citizen, *Overturning Citizens United: By the Numbers*, https://www.citizen.org/article/by-the-numbers/.

at scale, and perceived access and influence have eroded faith in democracy.

Seventy-nine percent of Americans agree that large independent expenditures by wealthy donors and corporations give rise to corruption or its appearance. Seventy-three percent agree that if a wealthy donor or corporation gains influence over or access to an elected official, that official is corrupt. Seventy-six percent agree that perceived access and influence cause them to lose faith in democracy.

The first question asked whether "large independent expenditures by wealthy donors and corporations in elections give rise to corruption or the appearance of corruption." The phrasing links the two ideas, but constitutionally they are equivalent. When a citizen calls a political practice corrupt, that statement expresses an appearance of corruption. A response affirming that something is corrupt is, by definition, a report that it appears corrupt. Both formulations capture the same perception—the belief that money has compromised fairness in public life. That perception, shared by nearly four out of five Americans, establishes the appearance of corruption as a matter of fact.

These results are consistent across party lines. Among Republicans, 74 percent agree that large independent expenditures give rise to corruption or its appearance, and 68 percent agree that the appearance of donor or corporate influence causes them to lose faith in democracy. Among Democrats, the corresponding figures are 84 and 84 percent; among independents, 79 and 77 percent. The pattern is uniform: across political divisions, the electorate now perceives that independent expenditures have created corruption or its appearance and that perceived access and influence has caused it to lose faith in its democracy.

IV. What the Evidence Establishes

The survey data establish that *Citizens United's* two empirical premises have failed. Unlimited independent expenditures have created the appearance of corruption the Supreme Court said could not exist. Unlimited independent expenditures have caused the loss of faith in democracy the Supreme Court predicted would not occur. These are not matters of speculation or opinion; they are measurable, widely shared conditions.

The appearance of corruption now exists as a matter of fact. Nearly four out of five Americans perceive that unlimited independent

expenditures by wealthy donors and corporations give rise to corruption or its appearance. When the overwhelming majority of the public sees political spending as corrupting, the appearance of corruption is not a theoretical concern—it is an observable reality.

The loss of faith in democracy likewise exists as a matter of fact. Three-quarters of Americans report that the appearance of donor and corporate influence has caused them to lose faith in democracy. That is not a marginal finding; it is a crisis of confidence.

Even if only one-fifth of the electorate believed that independent expenditures created corruption or undermined faith in democracy, it would be cause for constitutional alarm. The reality is far more dire than that—indeed, far more dire than a full majority. Roughly three-quarters of Americans, across every political and demographic group, now experience a political system in which money has compromised the integrity of government itself.

The data therefore show that the consequences *Citizens United* deemed impossible and unlikely have in fact come to pass. And the decision itself shows that the Supreme Court built its reasoning on those very assumptions. The majority's confidence that independent

expenditures could not create the appearance of corruption, and would not lead citizens to lose faith in democracy, was not peripheral to its reasoning; it was the foundation upon which the case was decided. Those foundations have now given way. Unlimited independent expenditures have produced both the appearance of corruption and a broad loss of faith in democracy, realities that now define the factual landscape against which this Court must apply the law.

V. Factual Collapse of *Citizens United's* Premises

Citizens United was not a neutral act of constitutional interpretation; it was an act of factual declaration. The Supreme Court's confidence that independent expenditures could not create the appearance of corruption and would not cause citizens to lose faith in democracy was treated as self-evident and built into the holding itself. When those factual foundations fail, the decision's continuing authority on those points fails with them.

Under the reasoning of *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983), a rule or policy is arbitrary and capricious if it "offered an explanation for its decision that runs counter to the evidence before the agency." By

analogy, when a constitutional rule rests on factual predicates that have been demonstrably disproven, a lower court applying that rule should note the disjunction. Doing so does not disregard precedent; it fulfills the judicial duty to apply law to fact as the world actually is.

This Court can thus apply *Citizens United*'s legal holdings while recording that its factual premises have collapsed. The approach finds precedent in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 855 (1992), which recognized that stare decisis weakens when "facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification." It finds further support in *United States v. Leon*, 468 U.S. 897, 927–28 (1984) (Blackmun, J., concurring), which acknowledged that empirical judgments underlying constitutional doctrine are "provisional" and must be revisited if experience proves them wrong, and in *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2096–99 (2018), where the Supreme Court overturned precedent after changes in the facts of economic life rendered the earlier rule untenable.

The principle is the same here: when a constitutional rule rests on factual assumptions that were never true, or on predictions that have since failed, the law must take account of that reality.

Later decisions have narrowed the concept of corruption to quid pro quo exchange and its appearance. See *McCutcheon v. FEC*, 572 U.S. 185, 192 (2014) (plurality) (holding that the only legitimate corruption interest is "quid pro quo corruption or its appearance") and *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373, 2381 (2021) (reaffirming that principle). Yet the "appearance" standard remains, and the empirical evidence here goes directly to it. When three-quarters of Americans believe that large expenditures are corrupting, they are describing not some abstract concern about influence or access but the classic form of quid pro quo corruption that even the modern Court still recognizes as constitutionally cognizable. That appearance—money given and official action perceived as returned—is precisely what *Buckley v. Valeo* held the government may seek to prevent.

The Supreme Court in *McCutcheon* rejected polling and public sentiment as evidence of corruption, reasoning that the First Amendment cannot be bounded by "generalized" perceptions of influence

or access. 572 U.S. 185, 209–10 (2014) (plurality). This case is not *McCutcheon*.

The Court in *Citizens United* did not declare that, given the record in that case, an appearance of corruption did not exist; instead, it declared such an appearance to be impossible. The burden here is not to prove that the appearance of corruption exists, but to test—and refute—that extraordinary factual claim.

Falsifying that kind of claim does not require anything akin to a preponderance of evidence pointing the other way. The logic of falsification is simple: a universal assertion is disproved by a single genuine counter-instance. A single, methodologically sound survey showing that the public now perceives an appearance of corruption is sufficient to disprove *Citizens United's* assertion of impossibility, even if it does not resolve every question of scope or mechanism. The survey before this Court provides that counterexample.

Justice Robert H. Jackson observed of the Supreme Court, "We are not final because we are infallible, but we are infallible only because we are final." *Brown v. Allen,* 344 U.S. 443, 540 (1953) (Jackson, J., concurring). Yet when that Court makes empirical judgments—about

what can or cannot happen in the real world—it is *not* final, because reality will have the last word. And when that reality proves the Supreme Court wrong, fidelity to law and to truth alike require that fallible Court to revisit its assumptions.

This Court's recognition of *Citizens United's* collapsed factual premises would not challenge the Supreme Court's authority. It would simply ensure that, if this case proceeds further, the factual record is accurate. *Citizens United* treated its empirical assumptions as legal truths, but they were in fact claims about how people perceive politics. One—the assertion that independent expenditures could not possibly create the appearance of corruption—was false from the outset. The other—the prediction that such appearances would not cause citizens to lose faith in democracy—has been disproven by experience. This Court has the opportunity to make that distinction clear and to note, respectfully, that one assumption was never borne out, and the other has since been overtaken by fact.

VI. The Circuit's Role and the Integrity of *Buckley*

Even if this Court considers itself bound by *Citizens United*'s holdings, *Buckley v. Valeo* remains controlling law on the government's

compelling interest in preventing the appearance of corruption. Avoiding even the appearance of improper influence "is … critical … if confidence in the system of representative Government is not to be eroded to a disastrous extent." 424 U.S. 1, 27 (1976).

Actual corruption distorts particular outcomes; the appearance of corruption endangers democratic legitimacy itself. A bribe may change a vote, but the perception that government is for sale changes citizens' willingness to participate in self-government altogether. *Buckley* recognized that danger nearly fifty years ago, and the evidence before this Court confirms it: the suspicion that political power can be bought corrodes faith as completely as proven acts of corruption.

Buckley held, consistent with the record before it, that large expenditures can create the appearance of corruption—the appearance of access and influence purchased by money—and that such appearances are constitutionally significant. *Citizens United* did not overrule that principle but exempted independent expenditures from *Buckley*'s rule, asserting as a matter of fact that they do not create such appearances and that, even if they did, those appearances would not cause citizens to lose faith in democracy.

The two decisions now stand in empirical conflict. The empirical evidence now available demonstrates that both of *Citizens United*'s factual premises are false: independent expenditures do create the appearance of corruption, and those appearances have eroded public confidence in democracy.

This Court may not be able to discard *Citizens United*, but it need not pretend its empirical assumptions remain true. It can apply binding precedent while recognizing that half of *Citizens United*'s foundation has collapsed. Doing so preserves fidelity to the rule of law and intellectual honesty about the facts on which that law rests.

These facts afford this Court the opportunity to help the Supreme Court confront the conflict between *Buckley*'s constitutional rule and *Citizens United*'s failed factual premises directly. If the Supreme Court intends to uphold *Citizens United* on its two remaining normative assertions, it should be asked to say so explicitly—and to acknowledge that doing so necessarily repudiates *Buckley*'s recognition of the compelling interest in preventing the appearance of corruption. In other words, the Court must either (1) acknowledge that the collapse of *Citizens United*'s factual premises requires overruling that decision under

Buckley's enduring rule, or (2) overrule *Buckley* itself by declaring that the appearance of corruption no longer has constitutional significance.

To choose the latter would be to tell the American people that their perception of corruption in their government, and any loss of faith in their democracy produced by the purchase of access and influence, no longer have meaning under the Constitution.

CONCLUSION

For the foregoing reasons, this Court should reverse the District Court's decision below. Should this Court instead conclude it is bound by *Citizens United* to do otherwise, it should nonetheless acknowledge that two of *Citizens United*'s four premises regarding independent expenditures have failed and make clear that, if the Supreme Court intends to uphold *Citizens United* on its remaining assertions, it must do so explicitly and with the understanding that such a course would repudiate *Buckley v. Valeo*. This Court cannot change *Citizens United*, but it can ensure that the empirical facts that emerge from this Court reflect the world as it is.

Dated: October 29, 2025

Respectfully submitted,

/s/ Thomas H. Moore

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limit of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because it contains 3,644 words, excluding those parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief also complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it was prepared using Microsoft Word in 14-point Century Schoolbook, a proportionally spaced typeface.

Dated: October 29, 2025

/s/ Thomas H. Moore
Thomas H. Moore

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed.R.App.P. 25(d) and First Circuit Rule 25, that on October 29, 2025, I am causing the foregoing motion with the attached proposed Brief Amicus Curiae to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system, thereby serving all persons required to be served.

/s/ Thomas H. Moore
Thomas H. Moore