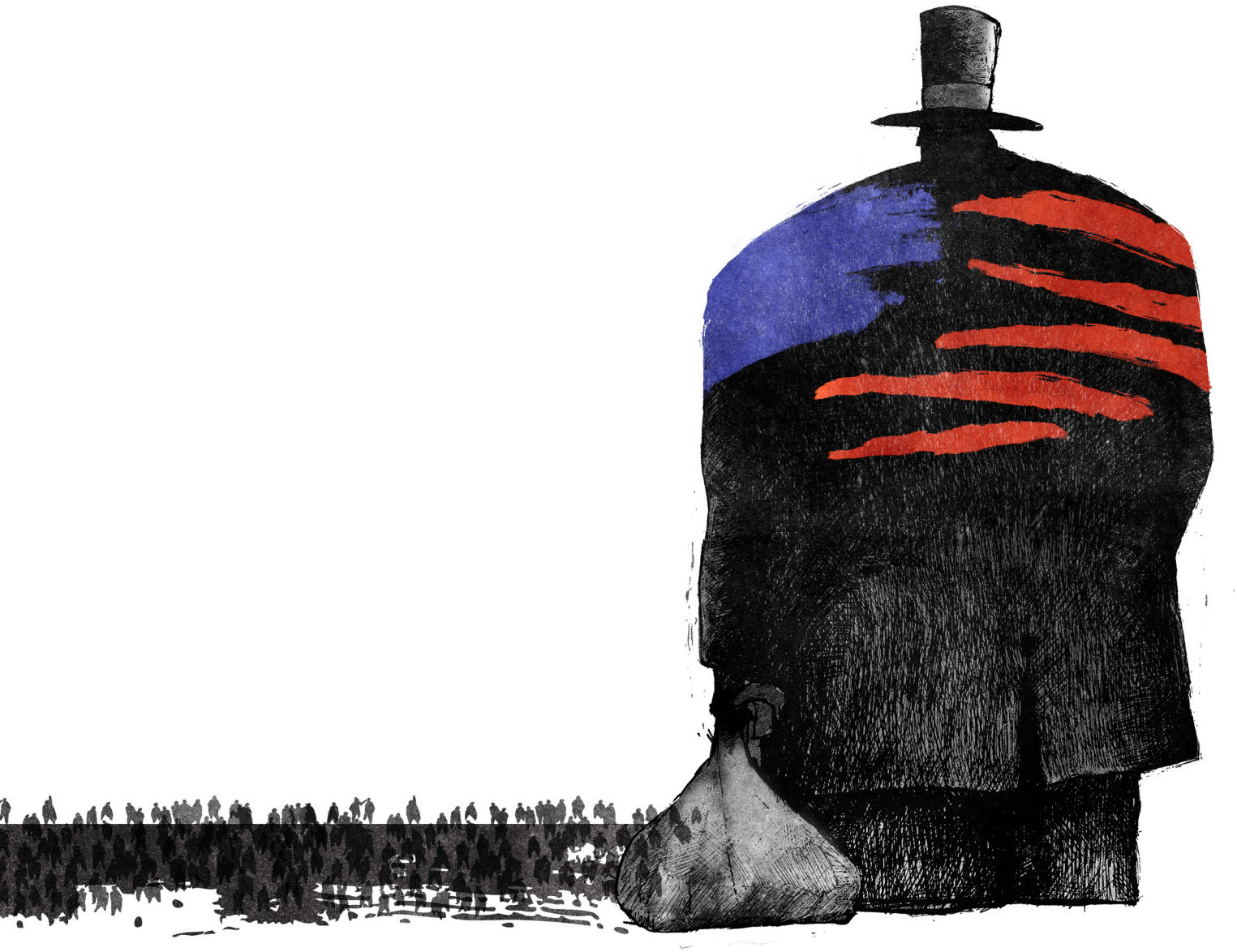
FRIENDS OF A CORRUPTION-FREE GOVERNMENT

Edited by EQUALCITIZENS.US



Omitted from the briefs are Certifications of Compliance and Service, as well as Corporate Disclosures.

v.3, 11/14/2025

Table of Contents

(Yep, this page is blank.)

Preface

> The billionaire class is not just satisfied to control the economic life of this country. They are moving aggressively to control the political life of this country. So while ordinary Americans get the right to vote, and they have one vote, the billionaire class—as a result of this disastrous *Citizens United* Supreme Court decision—[] have the right not just to cast one vote as a citizen, but to contribute hundreds of millions of dollars into SuperPACs who will elect their friends and defeat their political opponents. … I would hope that here in Congress [and] on the campaign trail, leaders of this country make it clear that we have got to overturn this disastrous Supreme Court decision of *Citizens United*.
>
> *Senator Bernie Sanders,*
> *February 2025*

For 15 years, the conventional wisdom about SuperPACs in America — on both the Right and Left — has echoed the analysis Bernie Sanders offers in this quote from a speech on the floor of the United States Senate: That *Citizens United* gave us SuperPACs, and therefore, the only way to end SuperPACs is to "overturn … *Citizens United*."

The reason is a syllogism: The only basis under the First Amendment for limiting political speech is a risk of quid pro quo corruption; *Citizens United* held that independent expenditures create no risk of quid pro quo corruption; the DC Circuit held in *SpeechNow v. FEC* that contributions to committees that make independent expenditures also create no risk of quid pro quo corruption; therefore, under the First Amendment, neither independent expenditures (*Citizens United*) nor contributions to independent expenditure committees (*SpeechNow*) can be limited. The innocence in the one must transfer to the other. And thus was the SuperPAC born.

Yet in 2015, the Department of Justice demonstrated why innocence is not transitive — and thus, why the protection for independent spending in *Citizens United* does not entail a protection for the contributions that give us SuperPACs.

On April 1st, Senator Robert Menendez (D-NJ) was indicted for quid pro quo corruption. As the indictment alleged, Menendez had promised favors to a Florida businessman in exchange for the Florida businessman's promise to contribute to Menendez's SuperPAC. Bingo: Quid pro quo corruption involving a contribution to an independent political action committee. The very thing the DC Circuit said could not happen had indeed, at least allegedly, happened.

That indictment should have ended SuperPACs in America. It should have signaled to election law lawyers everywhere that the logic of *SpeechNow* was flawed, and that *Citizens United* in fact did not compel the conclusion that the First Amendment forbids the regulation of contributions to independent political action committees. Shortly before Menendez's indictment, Albert Alschuler (Chicago) published an article identifying the logical error in *SpeechNow*. Shortly after the indictment, four prominent legal scholars — Albert Alschuler (Chicago), Laurence Tribe (Harvard), Richard Painter (Minnesota), and former ambassador Norm Eisen — joined a more extensive analysis of the logical flaw. Their article conclusively demonstrated that *Citizens United* did not require the First Amendment immunity that gives us SuperPACs. That the one, in other words, is logically distinct from the other.

And thus that, contrary to Bernie Sanders' suggestion, to end SuperPACs, we do not need to overturn *Citizens United*.

Yet neither flawed logic nor law review articles are enough to reverse circuit court precedent. Instead, a reversal requires litigation. Thus, FreeSpeechForPeople.org filed a lawsuit in the DC Circuit. The court impatiently batted it away. My group, EqualCitizens.US, then tried litigation in Alaska. The lower court agreed with us; the Alaska Supreme Court reversed. FreeSpeechForPeople.org and EqualCitizens.US then both tried to get a ballot measure on the Massachusetts ballot. The Attorney General blocked us, claiming the initiative violated the First Amendment. The Massachusetts Supreme Judicial Court refused to review the ruling on procedural grounds.

Then in November 2023, EqualCitizens.US, working with democracy activists in Maine, gathered signatures to put onto the Maine ballot an initiative that challenged the logic of *SpeechNow* directly. If that initiative passed, then there would be no SuperPACs in Maine affecting state elections. On Election Day 2024, 74.9% of Mainers—more than 600,000 voters, the largest number to vote for any person or initiative in the history of Maine—rallied to pass the initiative.

Within a month, two SuperPACs operating within Maine filed a lawsuit to strike the initiative down. That challenge was then taken up by a district court judge. And that judge—for the first time in any court anywhere—acknowledged what the DC Circuit had denied: that yes indeed, contributions to independent political action committees do create the risk of quid pro quo corruption. But then, based on a theory that no court had ever uttered (and which is certainly inconsistent with the logic of *Citizens United* and *Buckley v. Valeo*), the court declared that nonetheless the donors to SuperPACs were protected by the First Amendment. The people of Maine—even 75% of the people of Maine—had no power to limit the size of contributions to these engines of political polarization and hate.

The briefs collected in this book are an effort to show exactly why the district court got it wrong. Styled "amicus briefs," meaning "friend of the court briefs," they are efforts by organizations and people with a particular perspective on the

appeal to explain, from their perspective, the mistakes the district court made. They are an extraordinary collection of arguments.

One brief on behalf of Albert Alschuler, Laurence Tribe and Norm Eisen (Richard Painter, as chair of the EqualCitizens.US board, could not participate) introduces the argument they made in their 2018 essay which had originally identified the mistake in *SpeechNow*. Another, on behalf of certain high net-worth individuals, including Mark Cuban, William von Mueffling, Steve Jurvetson, Vin Ryan and Reid Hoffman, argues that the power SuperPACs give people like them denies the core political equality of a republic. A brief by IssueOne's ReFormer's caucus, including 12 Republican and 12 Democratic former members of Congress, describes just how dramatically SuperPACs have changed the character of American politics everywhere. A brief by Mainers for Working Families, written by the great lawyers at FreeSpeechForPeople.org, who have been fighting this issue the longest, demonstrates powerfully the logical mistake in the district court's decision, and the dramatic rise in the risk (and reality) of quid pro quo corruption. A brief by Demos, a nonprofit pushing for a more inclusive democracy, and Common Cause, which was founded in 1970 by John Gardner and drove the political movement that gave rise to the first modern campaign finance regulation, begins by recounting the corruption that inspired that law, and links that corruption to the pattern of corruption we see across America today. CREW, which is perhaps America's foremost anti-corruption non-profit in Washington, and which has been monitoring the corruption triggered by SuperPACs from the start, enumerates example after example of quid pro quos involving contributions to SuperPACs. The Brennan Center, which has become among the foremost defenders of voting rights in America, emphasizes the experience of the last 15 years, negating the logical assumptions behind *SpeechNow.* The Center for American Progress, which has pressed for many progressive reforms, but especially for reforms that would increase trust in government, calls on the court to recognize the powerful new evidence of the public's deep distrust of American politics, undermining the premise, they say, of *Citizens United* itself. And finally, the Campaign Legal Center, the dean of campaign finance reform and litigation, lays out a beautifully clear statement of the corruption and appearance of corruption standard that the Supreme Court has applied for 50 years, and which, if applied properly, would clearly sustain Maine's initiative.

Conventional wisdom is changed through these 9 briefs. Taken together, they mean one simple but powerful point: Without overturning *Citizens United*, SuperPACs can be stopped. Maine has now done so. And as goes Maine, so goes the nation.

As a law professor, it has surprised me just how difficult it is to convey the argument that these briefs so powerfully make. But I express that surprise with some humility, because I didn't get it at first either. I was litigating this issue for years before I saw just how powerful the point was. Our work in Alaska had focused on an originalist argument supporting anti-super

PAC regulation. It was only when we teamed up with FreeSpeechForPeople.org in Massachusetts that I finally saw how powerful was the argument that Alschuler, Tribe, Painter, and Eisen had made more than six years before, and exactly why it could ground a legal movement to end SuperPACs.

But having now seen the argument, I've been fascinated with understanding how it could be expressed most concisely. I've tried many times, but I've come to believe that perhaps this is the simplest way to get someone to see it.

The difficulty in seeing it, I now believe, comes from the belief that *Citizens United* had said that independent expenditures could not be regulated. But that's not what *Citizens United* said. *Citizens United* said that expenditures could not be limited *if they were independent,* but to prove them independent, expenditures were regulated in an important way: The only legal way to spend beyond campaign limits is for that spending to be "uncoordinated." If the spending is coordinated, then the expenditure is treated as a contribution. If it is large, it would be an illegal contribution, exposing the corporation or political action committee to either civil or criminal penalties.

That anti-coordination requirement is thus plainly a regulation of political speech, justified to avoid the risk of quid pro quo corruption. And once you see it like this, you can more easily see the logical mistake that *SpeechNow* makes.

In *SpeechNow*, Judge Sentelle, writing for the court, held as follows:

> In light of the Court's holding as a matter of law that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption.

But if we unpack this statement just a bit, we can see the error that is implicit in its logic. In the following version of the same quote, I add the implicit part that made the claim about *Citizens United* true, just to emphasize how untrue it is as applied to contributions.

> In light of the Court's holding as a matter of law that independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption, [**because they are regulated to be uncoordinated, and therefore remove any practical opportunity for quid pro quo corruption,]** contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption, [**because they too are regulated to be uncoordinated, and therefore remove any practical opportunity for quid pro quo corruption to occur.]**

The problem with this reconstructed version of the holding from *SpeechNow,* however, is that it is just false. While independent *expenditures* are regulated to be uncoordinated, *contributions* to independent expenditure committees are not. To the contrary, the law explicitly permits candidates and independent committees to fundraise together. Thus, the presupposition justifying First Amendment protection for unlimited expenditures simply does not apply to contributions.

That has led some to suggest that a less intrusive way to ensure there is no risk of quid pro quo corruption with independent expenditure committees is simply to require that fundraising be uncoordinated. But that alternative could not be effective. A SuperPAC can police its own people. It can require that its people not coordinate with a campaign or not follow the work of a campaign to ensure that its expenditures are deemed, "uncoordinated." But a SuperPAC has no way to know what the source of a contribution was or the reason why it was made. When a $10 million check arrives in its mailbox, it has no effective way to assure that that contribution was not part of an exchange with the candidate. Neither could the law meaningfully or sensibly forbid candidates to communicate with potential contributors as a way to avoid quid pro quo corruption. Instead, the obvious way effectively to achieve the objective of avoiding the risk of corruption is the traditional way: limits on the size of contributions, which is what Maine's initiative does.

There will be a day, I am convinced, when it will be difficult for lawyers to recognize what is today conventional wisdom. Just as I, personally, cannot really understand how I missed the point before, lawyers will be puzzled about how the law missed the point generally.

Yet will it be so, for at least 18 years, that the Supreme Court's *Citizens United* decision was interpreted — wrongly — to secure to the very few a constitutional right to contribute unlimited sums to independent political action committees. That right never followed from *Citizens United*. We are all therefore grateful to the friends of a corruption-free democracy for their help in bringing this mistake to an end.

In the pages that follow, you can find both each amicus brief, and for organizations standing behind the brief, a QR code and a link to donate to those organizations. (And we've checked: There's no corruption risk in contributing to these corruption-fighting organizations!)

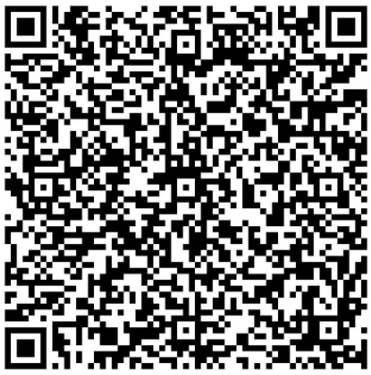
Lawrence Lessig
Cambridge, MA

(Yep, this page is blank.)

Amicus Brennan Center

The Brennan Center for Justice at NYU School of Law, founded in 1995, is a nonpartisan law and policy institute dedicated to strengthening democracy and securing equal justice for all. Its campaign finance reform work focuses on curbing the influence of wealth in politics while amplifying the voices of ordinary voters. Through rigorous research, litigation, and advocacy, the Center promotes policies such as small-donor public financing, robust disclosure laws, and strong anti-corruption safeguards. Guided by a commitment to fairness and democratic integrity, the Brennan Center works to ensure that political power in America reflects the will of the people—not the wealth of a few.

You can donate to The Brennan Center here.



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 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.

On appeal from the United States District Court for the District of Maine

---

No. 25-1706

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

Plaintiffs — Appellees,

v.

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

Defendants — Appellants,

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 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.

BRIEF OF BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF LAW IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

ROBERT G. JONES
DEVON A. CATON
DANIEL M. PUTNAM
Ropes & Gray LLP
Prudential Tower, 800 Boylston Street
Boston, MA 02199
(617) 951-7000
robert.jones@ropesgray.com

REBEKAH KIM
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036

DANIEL I. WEINER
Brennan Center for Justice at NYU School of Law
777 6th Street NW
Washington, DC 20001

MARINA PINO
Brennan Center for Justice at NYU School of Law
120 Broadway
New York, NY 10271

Counsel for Amicus Curiae

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

The Brennan Center for Justice at New York University School of Law[2] (the "Brennan Center") is a not-for-profit, nonpartisan law and public policy institute that seeks to improve systems of democracy and justice. The Brennan Center has longstanding expertise on campaign finance regulation and related constitutional issues. The Brennan Center files this brief pursuant to Rule 29(a) of the Federal Rules of Appellate Procedure, and all parties to the appeal consent to the filing of this brief.

SUMMARY OF ARGUMENT

In reviewing state and federal campaign finance laws over nearly half a century, the U.S. Supreme Court has consistently recognized two important principles: (i) strong state interests in preventing the reality or appearance of *quid pro quo* corruption support reasonable limits on campaign contributions; and (ii) such contribution limits are qualitatively less burdensome of First Amendment interests than expenditure limits and thus subject to a more forgiving standard of

[1] All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than amicus contributed money intended to fund the brief's preparation or submission. Neema Jyothiprakash, an attorney and a Brennan Center for Justice fellow, made substantial contributions to this brief.

[2] This brief does not purport to reflect the views, if any, of the New York University School of Law.

constitutional review. The Court's rulings in *Citizens United v. Federal Election Commission* and other cases, for all that we disagree with them, did not overrule these basic principles. *See* Gov't Appellants Br. 31–32, Equal Citizens Appellants Br. 14.

Relying on the Supreme Court's teachings, the people of Maine voted overwhelmingly to enact reasonable contribution limits for super PACs—outside groups that can generally fundraise and spend without limit—in November 2024. The initiative they passed, *An Act to Limit Contributions to Political Action Committees That Make Independent Expenditures* (the "Act"), received more votes than any other citizen initiative in Maine's history. Maine voters took this action at a time when super PACs have deployed massive amounts of money to influence American elections, including Maine elections. Despite being nominally "independent," they often spend in close coordination with candidates. Most of these funds come from a tiny group of the wealthiest donors and special interest groups, creating new avenues for political corruption, foreign influence, and other harms. In its ruling, the district court relied on decisions from other circuits that could not have fully grasped these ramifications because they were mostly decided immediately after the Supreme Court's decision in *Citizens United*. *See infra* Part I. This Court is not obligated to adopt those precedents.

The explosion in super PAC spending is especially impactful in a small state like Maine, where even modest expenditures can have an outsized impact and where the legislative record of the Act reflects real and widespread fears of corruption in politics. The decision of Maine voters to address the effects of super PAC spending on Maine elections by establishing reasonable contribution limits for these groups merits considerable deference from this Court. *See infra* Part II. At a minimum, if the Court is not prepared to uphold the constitutionality of the Act at this time, it should remand the case to the district court for the parties to create a comprehensive factual record establishing whether the judgment of Maine voters furnishes a constitutionally sufficient justification for implementing the Act. *See infra* Part III.

ARGUMENT

I. The experience of the last fifteen years weighs strongly against adopting the rulings of other circuits extending *Citizens United*.

For nearly half a century, the U.S. Supreme Court has recognized that reasonable limitations on campaign contributions are justified by important state interests in preventing corruption and the appearance thereof. While the ability to make a campaign contribution implicates important associational rights, the ability to make a contribution of any *amount* is less consequential. *See Buckley v. Valeo*, 424 U.S. 1, 21 (1976). And "[t]o the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the

integrity of our system of representative democracy is undermined," giving the government an important interest in imposing reasonable limits. *Id.* at 26–27 (emphasis added). The Supreme Court applied this reasoning in upholding contribution limits in multiple cases following *Buckley*. *See Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377 (2000) (upholding state limits on contributions to state candidates); *FEC v. Beaumont*, 539 U.S. 146 (2003) (upholding the federal ban on corporate campaign contributions to federal candidates). *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010), which concerned the right of corporations (and by implication unions) to spend money directly on elections, did not overrule these cases, nor did any subsequent decision. *See* Gov't Appellants Br. 34–35.[3]

[3] The only subsequent case to invalidate a purported "contribution limit," *McCutcheon v. Federal Election Commission*, concerned so-called "aggregate" limits on how much an individual can give to all candidates, parties and PACs *combined*. 572 U.S. 185 (2014). The Court rejected this as an unnecessary "prophylaxis-upon-prophylaxis" because of the continued existence of other limits. *Id.* at 209, 221 (explaining that the "base limits remain the primary means of regulating campaign contributions"). Here, by contrast, there are no other limits. Rather than attempting to enact a "prophylaxis-upon-prophylaxis," Maine voters seek only to place one set of reasonable limits on groups that have become integral participants in the electoral process alongside candidates and parties. *See*, *e.g.*, Ian Vandewalker, *Since Citizens United, a Decade of Super PACs,* Brennan Center for Justice (Jan. 14, 2020), https://www.brennancenter.org/our-work/analysis-opinion/citizens-united-decade-super-pacs. The plurality in *McCutcheon* expressly disclaimed any need to "revisit *Buckley*'s distinction between contributions and independent expenditures and the corollary distinction in the applicable standards of review." *McCutcheon*, 572 U.S. at 199 (plurality opinion).

Nevertheless, the D.C. Circuit Court of Appeals extended the Supreme Court's analysis of independent expenditures in *Citizens United* to disallow limitations on *contributions* made to independent expenditure groups, reasoning that because "independent expenditures do not corrupt or create the appearance of *quid pro quo* corruption, contributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption." *SpeechNow.Org v. FEC*, 599 F.3d 686, 693–94 (D.C. Cir. 2010). Other federal circuit courts have followed the D.C. Circuit's approach. *See*, *e.g.*, *Wis. Right to Life State Pol. v. Barland*, 664 F.3d 139, 153–54 (7th Cir. 2011); *Republican Party of N.M. v. King*, 741 F.3d 1089, 1095–97 (10th Cir. 2013); *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 487 (2d Cir. 2013).

None of these decisions, which came in the months and immediate years following *Citizens United*, analyzed whether most super PAC spending would in fact be truly "independent" from candidates. In particular, in setting the precedent the district court followed here, *SpeechNow* did not evaluate how the lack of such independence or the many other unanticipated consequences of super PACs' proliferation in federal and state elections might factor in applying the more forgiving standard of constitutional review for direct contribution limits on such groups. *See SpeechNow*, 599 F.3d at 696; *see also* Gov't Appellants Br. 30–33.

This Court, with the benefit of hindsight, should not ignore the developments of the last fifteen years. *See infra* at 14.

Among the developments the Court should take into account:

New Avenues for Corruption. Fifteen years after *SpeechNow*, it is clear that many—and perhaps most—super PACs actually operate in tandem with candidates, opening up a notable vector for corruption.

From 2010 to 2024, super PAC spending in federal elections ballooned from $62 million to $2.7 billion. 2024 Outside Spending, by Super PAC, OpenSecrets.org, https://www.opensecrets.org/outside-spending/super_pacs (last accessed Oct. 29, 2025). Most of this money has come from a small group of the very wealthiest donors giving far more than the limit on direct contributions to candidates, which was $3,300 for individuals per election in 2024. Contribution Limits for 2023-2024, Fed. Election Comm'n (Feb. 2023), https://www.fec.gov/resources/cms-content/documents/contribution_limits_chart_2023-2024.pdf. During the 2024 presidential cycle, for instance, the largest super PACs supporting the major party nominees for president derived more than 75 percent of their funding from donors who gave $5 million or more. Ian Vandewalker, *Super PACs supporting Harris or Trump raised more than twice as much from donors giving at least $5 million compared to the last election,* Brennan Center for Justice (Nov. 1, 2024), https://www.brennancenter.org/our-work/analysis-opinion/megadonors-

playing-larger-role-presidential-race-fec-data-shows. President Trump has continued raising money for his designated super PAC, MAGA, Inc., since the election—$200 million as of the last reporting period—almost exclusively (96 percent) from donors of $1 million or more. Ian Vandewalker, *Unprecedented Big Money Surge for Super PAC Tied to Trump*, Brennan Center for Justice (Aug. 5, 2025), https://www.brennan center.org/our-work/analysis-opinion/unprecedented-big-money-surge-super-pac-tied-trump.

Like MAGA, Inc., many super PACs are anything but "independent" from candidates. Indeed, they often work together, hand-in-glove. In 2024, for instance, President Trump's campaign not only incorporated MAGA, Inc., it also worked closely with outside groups supported by his largest donor, Elon Musk, who spent approximately $250 million to help the president get elected. David Wright & Alex-Leeds-Matthews, *Elon Musk spent more than $290 million on the 2024 election, year-end FEC filings show,* CNN (Feb. 1, 2025), https://www.cnn.com/2025/02/01/politics/elon-musk-2024-election-spending-millions. Musk's groups took on many core campaign functions, including a vast ground game in key swing states that knocked on approximately 10 million doors. *See* Dan Merica, *Elon Musk's PAC Spent an Estimated $200 Million to Help Elect Trump, AP Source Says*, Associated Press (Nov. 11, 2024), https://apnews.com/arti-cle/elon-musk-america-pac-trump-d248547966bf9c6daf6f5d332bc4be66; *see also* Theodore

Schleifer, *Elon Musk and His Super PAC Face Their Crucible Moment*, N.Y. Times (Nov. 4, 2024), https://www.nytimes.com/2024/11/04/us/elections/musk-america-pac-trump-voters.html. Vice President Kamala Harris also relied on a designated super PAC, Future Forward PAC, funded by her largest donors (as well as many groups who kept their donors secret) for important research and voter surveys. *See* Theodore Schleifer & Shane Goldmacher, *Inside the Secretive $700 Million Ad-Testing Factory for Kamala Harris*, N.Y. Times (Oct. 17, 2024), https://www.nytimes.com/2024/10/17/us/elections/future-forward-kamala-harris-ads.html. These are only a few of many examples of candidates and super PACs working closely together. *See, e.g.*, Jessica Piper, *Super PACs keep testing the limits of campaign finance law*, Politico (Apr. 8, 2024), https://www.politico.com/news/2024/04/08/super-pac-fec-limits-00150672 (noting a super PAC supporting Robert F. Kennedy Jr.'s independent presidential run repeatedly accepted million-dollar contributions from a security consultant who was also his campaign's largest vendor); Sasha Issenberg, *Ron DeSantis' Super PAC Thinks It Has the Code on Delivering His Message*, Politico (Sept. 7, 2023), https://www.politico.com/news/magazine/2023/09/07/desantis-super-pac-texting-00113807 (describing how a super PAC backing Ron DeSantis' campaign in the 2024 presidential primary handled core campaign functions, including a canvassing operation in Iowa); *see also* Gabriel Foy-Sutherland & Saurav Ghosh, *Coordination in Plain Sight: The Breadth and*

Uses of "Redboxing" in Congressional Elections, 23 Election L.J. 149, (June 17, 2024).

The frequent close ties between candidates and outside groups like super PACs mean that such groups have become a notable vector for corruption. For example, in 2024, New Jersey Senator Robert Menendez was convicted in a bribery scheme involving, among other facts, a donor with close ties to the Egyptian government who made contributions to a super PAC earmarked for his reelection campaign. *See* Press Release, U.S. Att'y Off., Dep't of Just., Former U.S. Senator Robert Menendez Sentenced To 11 Years In Prison For Bribery, Foreign Agent, And Obstruction Offenses (Jan. 29, 2025), https://www.justice.gov/usao-sdny/pr/former-us-senator-robert-menendez-sentenced-11-years-prison-bribery-foreign-agent-and; *United States v. Menendez*, 132 F.Supp. 3d 610, 617–19 (D.N.J. 2015). Menendez had previously been charged with soliciting $600,000 in contributions to a super PAC which had been earmarked to support his campaign in exchange for intervening on the contributor's behalf in a federal administrative proceeding alleging Medicare fraud, although the jury deadlocked at trial. *See United States v. Menendez*, 291 F. Supp. 3d 606, 621 (D.N.J. 2018) (finding that exchange of an official act for a super PAC contribution can support a bribery charge). In North Carolina, insurance executive Greg Lindberg was recently convicted of attempting to bribe the state's insurance commissioner with $1.5

million funneled through a super PAC he controlled. Press Release, U.S. Att'y Off., Dep't of Just., Chairman Of Multinational Investment Company And Company Consultant Convicted Of Bribery Scheme At Retrial (May 16, 2024), https://www.justice.gov/archives/opa/pr/chairman-multinational-investment-company-and-company-consultant-convicted-bribery-scheme. And in Ohio, former state House Speaker Larry Householder was convicted in a major bribery scandal involving $60 million in contributions to his nonprofit dark money group, which he used in part to fund outside campaign ads in favor of allies who would support his bid for speaker. Press Release, U.S. Att'y Off., Dep't of Just., Former Ohio House Speaker Sentenced to 20 years in Prison for Leading Racketeering Conspiracy Involving $60 Million in Bribes (June 29, 2023), https://www.justice.gov/usao-sdoh/pr/former-ohio-house-speaker-sentenced-20-years-prison-leading-racketeering-conspiracy; *United States v. Householder*, 137 F.4th 454, 464–70 (6th Cir. 2025). These are among a number of prominent examples of lawbreaking tied to super PACs. *See* Ian Vandewalker, *10 Years of Super PACs Show Courts Were Wrong on Corruption Risks*, Brennan Center for Justice (Mar. 25, 2020), https://www.brennancenter.org/our-work/analysis-opinion/10-years-super-pacs-show-courts-were-wrong-corruption-risks.

New Avenues for Foreign Interference. Of particular note, super PACs have become a significant vehicle for illegal foreign campaign money to infiltrate

American elections. For instance, in 2017, former Miami Beach Commissioner Michael Grieco pleaded no contest to criminal charges after establishing a super PAC and accepting concealed donations from a Norwegian real estate developer. Joey Flechas & Nicholas Nehamas, *Beach commissioner pleads to criminal charge. But swears he didn't do it*., Miami Herald (Oct. 24, 2017), https://www.miamiherald.com/news/local/community/miami-dade/miami-beach/article180710691.html. In 2016, Mexican businessman Jose Susumo Azano Matsura was convicted of funneling $600,000—concealed through "corporate 'straw donor' contributions"—in illegal foreign money into the San Diego mayoral race through a shell company and super PAC with the hope of securing a lucrative development project in exchange. Press Release, U.S. Att'y Off., Dep't of Just., Mexican Businessman Jose Susumo Azano Matsura Sentenced for Trying to Buy Himself a Mayor (Oct. 27, 2017), https://www.justice.gov/usao-sdca/pr/mexican-businessman-jose-susumo-azano-matsura-sentenced-trying-buy-himself-mayor; *United States v. Azano Matsura*, No. 14-cr-388-MMA-1 (S.D. Cal. July 10, 2015), *aff'd*, 129 F. Supp. 3d 975 (S.D. Cal. 2015). Other examples abound. *See*, *e.g.*, *United States v. Cuellar*, No. 24-cr-00123 (S.D. Tex. May 3, 2024) (congressional representative indicted for accepting alleged bribes from Azerbaijan oil company and Mexican bank in exchange for influencing U.S. policy in favor of donors); Jimmy Cloutier et al., *Foreign-Influenced Corporate Money in State Elections*,

OpenSecrets (Jan. 23, 2024), https://www.opensecrets.org/news/reports/foreign-influenced-corporate-money.

Less Campaign Transparency. Super PACs have made it easier to circumvent federal campaign disclosure rules, which *SpeechNow* touted as a "less restrictive alternative to more comprehensive regulations of speech." 599 F.3d at 696 (quoting *Citizens United*, 558 U.S. at 369). Since 2010, there has been at least $4.3 billion in dark money spending in federal elections from groups that do not disclose their donors. *See* Anna Massoglia, *Dark Money Hit a Record High of $1.9 Billion in 2024 Federal Races*, Brennan Center for Justice (May 7, 2025), https://www. brennancenter.org/our-work/research-reports/dark-money-hit-record-high-19-billion-2024-federal-races. Initially, these groups prioritized spending on direct campaign ads, which had to be reported to the Federal Election Commission if the ads ran in the weeks leading up to an election (making the spending relatively straightforward to track, even if its source was opaque). But dark money groups' spending on campaigns is now mostly routed through super PACs, making such spending much harder to trace. There was more than $1.3 billion in such spending in the 2024 election cycle—much of it attributable to candidate-aligned super PACs. *Id.* For instance, the main super PAC backing Vice President Kamala Harris and the dark money groups donating to it were collectively responsible for $1 out of $6 in dark money spent. *Id.*

Loss of Public Confidence in Government. Finally, the growing prominence of super PACs that can raise unlimited funds appears to be helping undermine confidence in American democracy. One recent poll found that 7 in 10 Americans believe that "corporations and the wealthy control government and that politicians are only in it for themselves." Tom Rosenstiel, *While Politics Divides the Country, Americans Share a Profound Sense of Distrust*, NORC (Jan. 27, 2025), https://www.norc.org/research/library/while-politics-divide-country-americans-share-profound-sense-distrust.html. Likewise, 80 percent of respondents in a 2023 Pew Research Center survey said that large campaign donors have too much say in politics. Andy Cerda & Andrew Daniller, *7 Facts About Americans' Views of Money in Politics*, Pew Research Center (Oct. 23, 2023), https://www.pewresearch.org/short-reads/2023/10/23/7-facts-about-americans-views-of-money-in-politics/. As a result, 62 percent of Americans—including similar shares of Democrats and Republicans—said that "reducing the influence of money in politics should be a top policy goal." Anna Jackson, *State of the Union 2024: Where Americans stand on the economy, immigration and other key issues,* Pew Research Center (Mar. 7, 2024), https://www.pewresearch.org/short-reads/2024/03/07/state-of-the-union-2024-where-americans-stand-on-the-economy-immigration-and-other-key-issues/. But trust in the federal government to do the right thing has reached alarming lows, hovering around 22 percent (significantly

below where it was at the nadir of the Watergate scandal). *See* Susan K. Urahn, *Americans' Mistrust of Institutions*, Pew Research Center (Oct. 17, 2024), https://www.pew. org/en/ trend/archive/fall-2024/americans-mistrust-of-institutions.

* * *

In short, the proliferation of super PACs that can raise and spend unlimited funds, often in tandem with candidates, has had serious negative consequences that were not, and perhaps could not have been, fully anticipated by *SpeechNow* and the other circuit court rulings on which the district court relied. This Court need not follow the same approach. *See Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 489–492 (2025) (explaining that earlier internet speech precedents relied on decades-old factual findings and "could not have conceived of these developments" in widespread internet access before upholding an age-verification law); *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 363 (2006) ("Careful study and reflection" revealed erroneous assumptions such that the Court was "not bound to follow. . . dicta in a prior case in which the point now at issue was not fully debated.").[4]

[4] Of course, some of the negative effects of super PACs could be mitigated through other measures, such as stronger restrictions on coordination between candidates and outside groups. *See Components of an Effective Coordination Law*, Brennan Center for Justice (May 1, 2018), https://www.brennancenter.org/sites/default/files/stock/2018_10_MiPToolkit_CoordinationLaw.pdf. But determining whether

II. Maine voters had ample justification for limiting contributions to super PACs and their decision warrants deference.

The nationwide consequences of unlimited contributions to super PACs have plainly been felt in Maine, a small state where super PAC spending can have an outsized impact. Federal races in Maine have attracted enormous sums of money from outside groups since *SpeechNow* was decided. In 2024, one super PAC from Illinois spent $2.3 million on the race in Maine's Second Congressional District, most of which came from a single donor. AnnMarie Hilton, *Billionaire-backed Midwest super PAC spending millions on Maine's CD2 race*, Maine Morning Star (Sept. 23, 2024), https://mainemorningstar.com/2024/09/23/billionaire-backed-

---

illegal coordination between a campaign and outside group has taken place is typically a fact-intensive inquiry that often necessitates far more laborious and intrusive investigations than are needed to enforce a straightforward and universally-applicable limit on contributions. *See*, *e.g.*, Kaveri Sharma, *Voters Need to Know: Assessing the Legality of Redboxing in Federal Elections*, 130 Yale L.J. 1898, 1920–26, 1942-46 (2021)**.** Campaign finance agencies around the country often struggle to enforce these rules. *See* Maia Cook, *Super PACs raise millions as concerns about illegal campaign coordination raise questions*, OpenSecrets (Aug. 18, 2023), https://www.opensecrets.org/news/2023/08/super-pacs-raise-millions-concerns-illegal-campaign-coordination-raise-questions/. Between 2010 and 2023, for instance, the U.S. Federal Election Commission appears to have initiated only a handful of investigations, none of which resulted in any fines. Daniel I. Weiner & Owen Bacskai, *The FEC, Still Failing to Enforce Campaign Laws, Heads to Capitol Hill,* Brennan Center for Justice (Sept. 15, 2023), https://www.brennancenter.org/our-work/analysis-opinion/fec-still-failing-enforce-campaign-laws-heads-capitol-hill (citing enforcement data provided by the Commission to the U.S. House Committee on Administration). Under these circumstances, it was reasonable for Maine voters to opt for straightforward and reasonable contribution limits for all outside election spenders.

midwest-super-pac-spending-millions-on-maines-cd2-race/. In 2020, outside groups spent over $91 million, mostly targeting the state's marquee Senate contest. Susan Cover, Darren Fishell, & Meg Robbins, *How record sums of money have shaped Maine's 2020 elections*, Maine Monitor (Oct. 25, 2020), https://themainemonitor.org/how-record-sums-of-money-have-shaped-maines-2020-elections/. Recent state elections in Maine have followed similar trends. In the state's gubernatorial elections between 2010 and 2022, outside group spending roughly quadrupled, from $3.5 million to $13.6 million, even while candidate spending dropped. Gov't Appellants Br. 18–19.

As in races elsewhere, there is evidence that candidates and outside groups often operate in tandem. *See*, *e.g.*, Andrew Perez, *Outside groups use Sen. Collins' own footage in ads boosting her campaign*, Maine Beacon (Nov. 4, 2019), https://mainebeacon.com/outside-groups-use-sen-collins-own-footage-in-ads-boosting-her-campaign/ (describing how a pro-Susan Collins super PAC aired advertisement footage "almost entirely comprised of footage that the campaign created"); Yuichiro Kakutani, *Ethics Complaint Filed Against Gideon Campaign,* Washington Free Beacon (Sept. 16, 2020), https://freebeacon.com/elections/ethics-complaint-filed-against-gideon-campaign/ (describing allegations that super PAC backing Collins' opponent Sara Gideon disseminated ads shaped by Gideon campaign tweets containing "highly specific suggestions" as to messaging). And

super PACs in Maine have also been linked to lawbreaking. *See, e.g.*, Nick Grube, *Court records tell story of a Hawaii defense contractor's attempts to influence Susan Collins and others*, Maine Monitor (June 25, 2023), https://themainemonitor.org/court-records-tell-story-of-a-hawaii-defense-contractors-attempts-to-influence-susan-collins-and-others/ (defense contractor pled guilty to federal crimes that included illegal straw donations to a super PAC as part of influence campaign targeting Senator Collins).

Unsurprisingly, Mainers' trust in both their national and state governments has fallen, following national trends. In 2024, Mainers' trust in the federal government was a mere 17 percent. Colby Coll. Goldfarb Center for Public Affairs et al., Strengthening Maine's Civic Life: Trust, Belonging, and the Future, Maine Community Foundation, https://www.mainecf.org/wp-content/uploads/2024/10/CG-Civic-Health-Report_final-digital.pdf. Their trust in state government, while better, was still only 37 percent, close to a record low. *Id.*

These facts, coupled with the broader national environment, provide essential context for Maine's overwhelming 74 percent vote in favor of the Act, which received more votes than any other citizens' initiative in Maine history. *See* Me. State Legis., Legislative History Collection, Citizen Initiated Legislation, 1911–Present, available at https://www.maine.gov/legis/lawlib/lldl/citizeninitiated/; *see also* An Act to Limit Contributions to Political Action Committees That Make

Independent Expenditures, H.R. 2232, 131st Leg., 2d Reg. Sess. (Me. 2024) (noting factors that influenced the legislature's decision to send the Act to voters for approval, including desire to prevent *quid pro quo* corruption and its appearance). This lopsided vote weighs in favor of judicial deference. Among other things, it is direct evidence of the voters' perception that corruption is a significant problem and that contribution limits are necessary to combat it. *See Nixon*, 528 U.S. at 394; *see also Daggett v. Comm'n on Governmental Ethics & Election Pracs.*, 205 F.3d 445, 458 (1st Cir. 2000) ("[W]e take note . . . of the fact that Maine voters approved the referendum imposing reduced contribution limits as indicative of their perception of corruption.").

III. Alternatively, the Court should remand the case to the district court to create a robust evidentiary record.

Even if this Court is not prepared to uphold Maine's contribution limits at this juncture, at minimum, it should remand the case to the district court for creation of a more fulsome factual record. The Supreme Court has relied upon a well-developed factual record when reviewing constitutional challenges to campaign contribution limits and similar rules.[5] *See Randall v. Sorrell*, 548 U.S.

[5] The fact that in more recent cases the Supreme Court evaluated campaign finance laws without a fully developed record, *see*, *e.g.*, *Citizens United*, 558 U.S. at 310; *McCutcheon*, 572 U.S. at 185, does not preclude this Court from remanding the case back to the district court here. Nothing in those cases forbids lower courts from developing factual records to aid them in applying the Court's more recent teachings, especially in the face of a campaign landscape that has shifted

230, 253 (2006) (noting the record must be "independently and carefully" examined "to determine whether [the Act's] contribution limits are 'closely drawn' to match the State's interests"); *see also McConnell* v. *FEC*, 540 U.S. 93, 150–52 (2003) (invoking a voluminous record, including congressional committee reports, witness testimony, and other documentary evidence of corruption); *FEC* v. *Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 457 (2001) (concluding that "substantial evidence demonstrates how candidates, donors, and parties test the limits of the current law," and "how contribution limits would be eroded if inducement to circumvent them were enhanced by declaring parties' coordinated spending wide open").

The evidentiary record before this Court is sparse. This case was decided on a motion for permanent injunction, with limited fact-gathering. And as discussed above, the factual assumptions underlying older decisions of other circuits that bar contribution limits for super PACs have been seriously called into question. At minimum, the Court should require a factual record that reflects the post-*Citizens United*, super PAC-centered political landscape that is our reality today. Given the absence of such a record here, remand is warranted. *See Ashcroft v. ACLU*, 542

---

substantially over the last fifteen years. As discussed *supra*, this case centers on Maine voters' overwhelming majority vote to advance a law to prevent corruption and its appearance. A record that either substantiates or disproves that vote should be developed and reviewed before a court were to weigh in on its merits.

U.S. 656, 671–72 (2004) (remanding because the factual record did not reflect the "current technological reality," which significantly affected the court's strict scrutiny analysis); *see also Thompson v. Hebdon*, 589 U.S. 1, 6–7 (2019) (remanding to the circuit court to determine whether the record showed any "special justification" to uphold Alaska's contribution limits). Expert testimony, additional legislative history, and other evidentiary materials would illuminate Maine's recent electoral history, the effects of super PACs on Maine voters' confidence in government, and whether less restrictive means—such as anti-coordination rules—can hope to achieve the State's anti-corruption interest. To that end, if the Court does not find for the State of Maine on the merits, the Court should at minimum grant the State the opportunity to properly shoulder its constitutional burden on the basis of an updated record.

* * *

This case presents a unique opportunity for the First Circuit to account for the lessons learned in the aftermath of *SpeechNow* and other decisions. The voters of Maine recognized the corruptive effects of allowing unlimited contributions to independent expenditure organizations and opted to impose reasonable limits. Their choice should not be set aside lightly. For these reasons, we urge the Court to reverse the judgment of the district court and uphold the Act.

Dated: October 29, 2025

Respectfully submitted,

s/ Robert G. Jones
Robert G. Jones
Devon A. Caton
Daniel M. Putnam
Ropes & Gray LLP
Prudential Tower, 800 Boylston Street
Boston, MA 02199
(617) 951-7000
robert.jones@ropesgray.com

Rebekah Kim
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036

Daniel I. Weiner
Brennan Center for Justice at NYU School of Law
777 6th Street NW
Washington, DC 20001

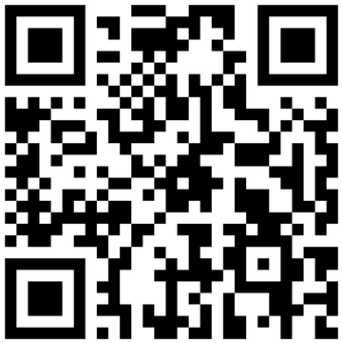
Marina Pino
Brennan Center for Justice at NYU School of Law
120 Broadway
New York, NY 10271

Counsel for Amicus Curiae

Amicus Campaign Legal Center

The Campaign Legal Center (CLC), founded in 2002 by former Republican Federal Election Commission Chair Trevor Potter, is a leading nonpartisan organization using the law to advance democracy. CLC works to ensure transparent and accountable elections, fight the influence of dark money, and promote equal access to the political process. Through legal action, policy reform, and public education, CLC defends strong campaign finance rules and enforces ethics standards that prevent corruption. Its mission is rooted in a simple principle: our government should represent the interests of voters, not those of wealthy special interests.

You can donate to The Campaign Legal Center here.



IN THE

United States Court of Appeals for the First Circuit

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 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.

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,
Plaintiffs-Appellees,

v.

EQUAL CITIZENS; CARA MCCORMICK; PETER MCCORMICK; RICHARD A. BENNETT,
Defendants-Appellants,

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 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.

On Appeal from the United States District Court for the District of Maine,
Case No. 1:24-cv-00430-KFW (Karen Frink Wolf, J.)

AMICUS CURIAE BRIEF OF CAMPAIGN LEGAL CENTER IN SUPPORT OF APPELLANTS AND REVERSAL

Megan P. McAllen
Kevin P. Hancock
Erin Chlopak
Samantha J. Perlman
CAMPAIGN LEGAL CENTER
1101 14th Street NW, Suite 400
Washington, DC 20005
(202) 736-2200
mmcallen@campaignlegalcenter.org

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases: Page

Statutes:

Other Authorities:

IDENTITY AND INTEREST OF AMICUS CURIAE[1]

Amicus Curiae Campaign Legal Center ("CLC") is a nonpartisan, nonprofit organization working for a more transparent, inclusive, and accountable democracy at all levels of government. *See About*, Campaign Legal Center, https://campaignlegal.org/about (last visited Oct. 29, 2025). CLC has substantial experience with the issues here, having participated in numerous cases addressing state and federal campaign finance requirements, as well as every major U.S. Supreme Court campaign finance case since *McConnell v. FEC*, 540 U.S. 93 (2003).

SUMMARY OF ARGUMENT

In November 2024, Maine voters resoundingly approved—by nearly 75 percent—a citizen-initiated bill entitled an "Act to Limit Contributions to Political Action Committees That Make Independent Expenditures" (the "Act"). JA51, 157-58. The Act is a modest, carefully tailored response to a serious and well-documented threat of quid pro quo corruption related to "super PACs," political committees empowered to accept unlimited contributions from virtually any source provided they spend those funds independently of candidates. The Act's core provision caps, at $5,000 per year, the aggregate amount any individual or entity

[1] Pursuant to Fed. R. App. P. 29(a)(4)(E), amicus curiae states that no party's counsel or person except amicus and its counsel authored this brief or contributed money to fund its preparation or submission. All parties have consented to the filing of this brief pursuant to Fed. R. App. P. 29(a)(2).

may give to a political committee "for the purpose of making independent expenditures." JA157. Far from burdening core political speech, this provision merely places a ceiling on large contributions—symbolic gestures the Supreme Court has long held may be limited to protect compelling anticorruption interests.

The district court erred by enjoining the Act in reliance on the D.C. Circuit's 2010 ruling in *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (en banc), and similar nonbinding appellate decisions foreclosing limits on contributions to super PACs. Those decisions give short shrift to decades of Supreme Court rulings recognizing that large financial contributions inherently create opportunities for quid pro quo exchanges, regardless of how the recipient ultimately spends the funds.

Not only that, but *SpeechNow* and its descendants also rest on the faulty assumption that contributions to super PACs cannot result in corruption or its appearance per se. That assumption, however, has been overtaken by more than a decade of real-world experience proving otherwise. Since 2010, super PAC contributions have repeatedly served as the quid in explicit quid pro quo exchanges, a fact directly reflected in criminal prosecutions, indictments, and public corruption scandals nationwide. Federal courts and juries have recognized that elected officials highly value super PAC largesse benefiting their candidacies, and are willing to trade official acts for it. This record confirms what common sense already suggests: the transfer of massive sums to a super PAC supporting a candidate creates indebtedness

on the part of that candidate. The Act therefore addresses an actual mechanism through which corruption now occurs, closing a channel of influence Congress could not have foreseen and which did not yet exist when *SpeechNow* was decided.

The Act is independently justified by Maine's compelling interest in preventing the appearance of corruption, an interest the Supreme Court has repeatedly recognized as coequal with preventing actual quid pro quos. A robust evidentiary record, including empirical scholarship and expert testimony below, shows that the public perceives super PAC contributions as corrupt, and that those perceptions spike dramatically once a contribution exceeds $5,000—the precise limit Maine adopted. The Act thus directly targets a known vector of perceived corruption and does so at the threshold where that risk becomes most acute in the eyes of the voting public.

Moreover, by preventing both the actuality and appearance of corruption, the Act also safeguards public confidence in the democratic process—an interest of the highest order in a democracy. As the Supreme Court has explained, "[d]emocracy works only if the people have faith in those who govern, and that faith is bound to be shattered when high officials . . . engage in activities which arouse suspicions of malfeasance and corruption." *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 390 (2000) (internal quotation marks omitted). The people of Maine reached the same judgment: by a record turnout and a 74.9% margin, they concluded that

limiting super PAC contributions is necessary to prevent corruption and restore faith in self-government.

Because Maine's $5,000 limit directly targets the demonstrated conduit for corrupt exchanges, leaves untouched independent advocacy and expenditures, and is supported by substantial legislative facts and voter judgment, it satisfies constitutional scrutiny. The district court's contrary ruling—resting on a categorical, a priori rejection of anticorruption evidence—should be reversed.

ARGUMENT

I. Limiting Contributions to Super PACs Is a Constitutionally Permissible Means of Preventing Actual and Apparent Quid Pro Quo Corruption.

Experience across the country since the advent of super PACs—"independent expenditure-only political committees" that can generally accept contributions in unlimited amounts from individuals as well as entities, including corporations, unions, and dark-money nonprofits—makes clear the risks these committees pose. Because Maine's limit advances compelling anticorruption interests while imposing only a modest First Amendment burden, the Act satisfies constitutional scrutiny.

A. The Act Is Supported by Valid—and Compelling—Anticorruption Interests that the District Court Failed to Credit.

Concerns about the corruptive potential of large financial contributions benefiting candidates—regardless of whether those funds are ultimately used for independent expenditures—are neither "novel nor implausible." *Shrink Missouri*,

528 U.S. at 391. As the Supreme Court has noted, "there is little reason to doubt that sometimes large contributions will work actual corruption of our political system, and no reason to question the existence of a corresponding suspicion among voters." *Id.* at 395.

Nevertheless, although the anticorruption interests animating the Act have long been recognized by the Supreme Court as both "legitimate and compelling," *FEC v. Nat'l Conservative PAC*, 470 U.S. 480, 496 (1985), the district court refused to credit them here. Instead, it doubled down on the faulty reasoning of *SpeechNow* and its nonbinding analogues from other Circuits, which collectively assumed that if "independent expenditures do not corrupt or give the appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to" independent expenditure-only committees. *SpeechNow*, 599 F.3d at 696; *see* JA350-53. *See also, e.g.*, *Wis. Right to Life State PAC v. Barland*, 664 F.3d 139, 154 (7th Cir. 2011); *Texans for Free Enter. v. Tex. Ethics Comm'n*, 732 F.3d 535, 537-38 (5th Cir. 2013); *Republican Party of N.M. v. King*, 741 F.3d 1089, 1103 (10th Cir. 2013); *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 487 (2d Cir. 2013); *Alaska Pub. Offs. Comm'n v. Patrick*, 494 P.3d 53, 58 (Alaska 2021).

Notwithstanding this apparent consensus in the lower appellate courts, in all of the Supreme Court's decisions involving contribution limits, "[t]he importance of the governmental interest in preventing [corruption] has never been doubted." *FEC*

v. Beaumont, 539 U.S. 146, 154 (2003) (second alteration in original) (citation omitted). Indeed, this Court today is presented with a much more compelling anticorruption case for limiting contributions to super PACs than was the D.C. Circuit fifteen years ago in *SpeechNow*, where there was no practical experience with super PACs and the plaintiff group in no way resembled how the median super PAC now operates. The plaintiffs in *SpeechNow* were a group of individuals who formed an unincorporated nonprofit association that lacked any ties to parties or candidates and planned to spend in support of multiple candidates. 599 F.3d at 689-90. In contrast, today, political operatives from candidates' inner circles routinely organize and run sophisticated single-candidate super PACs—a reality that significantly compounds the risk of quid pro quo corruption. *See, e.g.*, Fred Wertheimer, *The Case for Ending Individual-Candidate Super PACs*, Democracy 21 (Feb. 26, 2019), https://perma.cc/W2CL-V5EJ.

And while *Citizens United v. FEC*, 558 U.S. 310 (2010), provided the impetus for *SpeechNow* and similar lower court decisions, it did not address contribution limits or alter the longstanding framework for their review. Both before and after *Citizens United*, the Supreme Court has consistently subjected contribution limits to lesser scrutiny than expenditure ceilings because "the transformation of contributions into political debate involves speech by someone other than the contributor." *Buckley v. Valeo*, 424 U.S. 1, 21 (1976) (per curiam); *see, e.g.*,

McCutcheon v. FEC, 572 U.S. 185, 218 (2014) (applying closely drawn scrutiny to aggregate limit); *Beaumont*, 539 U.S. at 161 (upholding federal corporate contribution ban under closely drawn standard); *Buckley*, 424 U.S. at 20-23, 25. *See also, e.g.*, *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 196 (1981) (describing contributions to a PAC as "speech by proxy" that is "not . . . entitled to full First Amendment protection").

Further, the *Buckley* framework and its "relatively complaisant review," *Beaumont*, 539 U.S. at 161, applies to the analysis of a contribution limit regardless of how the recipient committee ultimately spends the money. So when the Supreme Court analyzed the federal ban on spending so-called "soft money" in *McConnell v. FEC*, 540 U.S. 93 (2003), it treated that "mechanism" as a contribution limit rather than a spending limit (and thus applied a lesser form of scrutiny) because "large soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders, *regardless of how those funds are ultimately used*." 540 U.S. at 138-39, 155 (emphasis added).

The Court has twice summarily affirmed that reasoning in later challenges to the soft-money restrictions, most recently in *Republican Party of Louisiana v. FEC*, 137 S. Ct. 2178 (2017) (mem.) (affirming three-judge federal court decision finding that contributions to political parties can corrupt even when the parties' expenditures do not). As Judge Srinivasan explained in his opinion for the three-judge panel, "the

inducement occasioning the prospect of indebtedness on the part of a federal officeholder is not the *spending* of soft money by a political party," but "instead comes from the contribution of soft money to the party in the first place." 219 F. Supp. 3d 86, 97 (D.D.C. 2016). The same principle holds here. Like other contribution limits, the Act does not "in any way limit[] the total amount of money [committees] can spend," *McConnell*, 540 U.S. at 139, but "merely" requires them "to raise funds from a greater number of persons." *Id.* at 136 (citing *Buckley*, 424 U.S. at 21-22).

Experience in the years since *SpeechNow* only further exposes the errors of that decision and its progeny, which did not consider or anticipate the mounting evidence that large contributions to super PACs do facilitate opportunities for corrupt quid pro quos. *See infra* Part I.B. Nor did most of those courts have the benefit of recent empirical research indicating that the explosion of multimillion-dollar contributions to super PACs creates the appearance of corruption and erodes public confidence in the democratic process. *See infra* Part II.

Therefore, the district court erred in assuming, following "the logic" of *Citizens United* and *SpeechNow*, JA353, that any factual record evincing the corruptive potential of super PAC contributions would be insufficient as a matter of law to sustain the Act. Assessing whether a given contribution limit is supported by valid and sufficiently weighty anticorruption interests is part and parcel of the

constitutional analysis under the applicable "closely drawn" standard of scrutiny. Whether political contributions pose a risk of corruption is a question of legislative fact, and courts tasked with answering it should consult the full range of relevant sources, including controlling precedent, the records in other cases, and available empirical studies and recorded experience. *See, e.g.*, *Ognibene v. Parkes*, 599 F. Supp. 2d 434, 448 (S.D.N.Y. 2009) ("[L]egislative facts" are to be considered "in determining whether a reasonable person would believe that corruption or the potential for corruption exists."), *aff'd*, 671 F.3d 174 (2d Cir. 2011). Maine's evidence was owed a fuller consideration.

The evidentiary record thoroughly substantiates Maine's concerns about corruption stemming from large contributions to super PACs, and refutes the proposition endorsed below that Maine's asserted anticorruption interests are categorically "not enough" to justify its adoption of a $5,000 limit. JA354.

B. The Corruptive Potential of Unlimited Contributions to Super PACs Is Amply Borne Out by the Empirical Record and Experience Since 2010.

Since 2010, real-world political practice has disproven the central factual premise on which *SpeechNow* and its progeny have rested. *SpeechNow* treated contributions to independent spenders as too attenuated from candidates to pose the risk of quid pro quo corruption or its appearance, reasoning that because *Citizens United* held that independent expenditures cannot result in corruption, donations to

entities that make only independent expenditures must likewise be harmless. *See* 599 F.3d at 696. But that assumption has now been overtaken by evidence.

Numerous high-profile cases, including criminal prosecutions, now reveal that contributions to super PACs can and frequently do constitute the "quid" in a corrupt quid pro quo transaction between a super PAC donor and public official. This is true even though contributions to super PACs do not directly line a public official's pockets or campaign coffers; evidence shows that candidates nevertheless value super PAC contributions enough to trade them for official acts. Candidates solicit super PAC contributions precisely because they believe that such contributions bolster their own electoral prospects. And donors route their payments through super PACs precisely because the magnitude of those sums—often millions of dollars—would be unlawful if made as direct campaign contributions to the candidate (currently limited to $3,500 per election at the federal level[2]).

This dynamic is amplified by the fact that donors may coordinate their contributions to super PACs with the candidates they seek to support. As Appellants emphasize, *Citizens United* treated independent expenditures as non-corrupting only because they are, "by definition," not coordinated with a candidate. *See* Equal Citizens Opening Br. 17 (quoting *Citizens United*, 558 U.S. at 360). But

[2] *See Contribution limits for 2025-2026*, FEC (Jan. 2025), https://perma.cc/XY62-69GQ.

contributions to super PACs are not subject to any comparable ban on coordination—candidates may even solicit them directly (within applicable hard-money limits at the federal level, *see* 52 U.S.C. § 30125)—so they can be traded for official acts. *See* Equal Citizens Opening Br. 13-14, 30-31. As one study of super PAC contributions observed, "[c]ritics of the *SpeechNow* ruling and its descendants have rightly argued that [the ruling's] analysis ignores the ability of contributors of unlimited funds to [super PACs] to communicate with candidates benefiting from those donations and thereby turns a blind eye to the danger of quid pro quo corruption and its appearance."[3]

Federal bribery cases in the past decade show conclusively that super PAC contributions can—and do—serve as the payable "quid" in an illicit bargain. Courts hearing these cases have refused to dismiss the indictments based on arguments invoking *SpeechNow*, recognizing that a super PAC donation can be the basis for corruption even when the super PAC purports to spend that money independently.

United States v. Menendez. Federal prosecutors alleged that Senator Robert Menendez solicited approximately $300,000 earmarked for a super PAC aligned with his reelection in exchange for intervening with federal regulators on behalf of

[3] Stephen R. Weissman, The *SpeechNow* Case and the Real World of Campaign Finance, Free Speech for People Issue Report 2016-02, at 10 (Oct. 2016), https://perma.cc/7LQL-XF65.

a donor. *United States v. Menendez*, 132 F. Supp. 3d 635, 640 (D.N.J. 2015). Senator Menendez moved to dismiss on the theory adopted in *SpeechNow*: that super PAC contributions are incapable of corruption because they fund "independent" expenditures. *See id.* at 639-40. The court rejected that argument, holding that a jury could find that Menendez "placed value, albeit subjective, on the earmarked donations" to the super PAC. *Id.* at 640. The indictment also alleged an "explicit quid pro quo." *Id.* at 643. The court later reaffirmed that a jury could convict Menendez of bribery based on super PAC contributions because "there was ample evidence available from which it could conclude either that Menendez placed subjective value on [the] contributions, or that Menendez (or his agents) solicited" the contributions. *United States v. Menendez*, 291 F. Supp. 3d 606, 622 (D.N.J. 2018).

United States v. Lindberg. The prosecution of North Carolina businessman Greg Lindberg confirms the same pattern. Lindberg and associates allegedly sought the removal of a state insurance regulator hostile to his interests and promised to put $1.5 million into a super PAC supporting the commissioner's reelection. *United States v. Lindberg*, No. 5:19-cr-22, 2020 WL 520948, at *2 (W.D.N.C. Jan. 31,

2020) (unpublished).[4] When defendants argued that such contributions are constitutionally noncorrupting, the court rejected the argument and declined to dismiss the indictment. *See id.* at *7 n.6. Lindberg was convicted in May 2024.[5]

United States v. Householder. In 2020, federal prosecutors charged former Ohio House Speaker Larry Householder and his associates with operating a racketeering conspiracy built around bribe payments routed to a super PAC. According to the indictment, the alleged bribe was a stream of roughly $60 million that electric utility FirstEnergy quietly paid to Generation Now, a dark-money nonprofit controlled by Householder's network. This money was then used to fund a Householder-aligned super PAC that spent heavily on advertising to elect Householder and candidates loyal to him, which in turn helped Householder to be elected speaker in 2019. *See United States v. Householder*, No. 1:20-CR-77, 2023 WL 24090 (S.D. Ohio Jan. 3, 2023) (unpublished).[6] The money funded advertising

---

[4] *See also* Ames Alexander, *Watch secretly recorded videos from the bribery sting that targeted Durham billionaire*, The Charlotte Observer (Mar. 10, 2020), https://www.charlotteobserver.com/news/local/article241043236.html.

[5] *See Donor and consultant convicted again of trying to bribe North Carolina's insurance commissioner*, AP News (May 16, 2024), https://perma.cc/8VZN-ESDH.

[6] *See also* Matt Corley, *These Criminal Prosecutions Show What Citizens United Got Wrong About Corruption*, CREW (Mar. 19, 2024), https://www.citizensforethics.org/reports-investigations/crew-investigations/these-criminal-prosecutions-show-what-citizens-united-got-wrong-about-corruption.

and electioneering almost entirely to maintain Householder's political power and was structured as a continuing pipeline of political support exchanged for legislative duty. *See id.* at *1, *5-6. The court's refusal to dismiss the indictment, *see id.*, and Householder's later conviction, *see* Judgment, *United States v. Householder*, No. 1:20-cr-77 (S.D. Ohio July 6, 2023), ECF No. 288,[7] confirm that quid pro quo corruption does not require officials to pocket personal checks—just to direct vast political resources that they perceive will keep them in office.

United States v. Vázquez-Garced. Similarly, in the prosecution of former Puerto Rico Governor Wanda Vázquez-Garced, the indictment alleged that the scheme began while Bancrédito—an international bank owned by Venezuelan financier Julio Martín Herrera Velutini—was under examination by Puerto Rico's Office of the Commissioner of Financial Institutions ("OCIF"). Herrera Velutini allegedly sought to defuse that scrutiny by offering, through intermediaries, to provide major financial backing for Vázquez-Garced's 2020 reelection bid if she would remove the sitting OCIF commissioner and replace him with someone favorable to his bank's interests. *See* Indictment at 7-13, *United States v. Vázquez-Garced*, No. 3:22-CR-342 (D.P.R. Aug. 4, 2022). Prosecutors allege that Vázquez-

[7] *See also* Press Release, U.S. Att'y's Off., S. Dist. of Ohio, Jury convicts former Ohio House Speaker, former chair of Ohio Republican Party of participating in racketeering conspiracy (Mar. 9, 2023), https://perma.cc/83T6-NM68.

Garced accepted the bargain, ultimately forcing out the incumbent regulator and installing a former consultant to Bancrédito. *See id.* at 14-17. The indictment further alleges that Herrera Velutini conveyed his willingness to form and finance a super PAC supporting her campaign as part of the same quid pro quo. *See id.* at 17-21; *see also* Frances Robles, *Former Puerto Rico Governor Arrested on Corruption Charges*, N.Y. Times (Aug. 4, 2022), https://www.nytimes.com/2022/08/04/us/puerto-rico-wanda-vasquez-arrest.html (reporting DOJ allegation that Herrera "then formed a political action committee for Ms. Vázquez"). When Vázquez-Garced later lost her primary, Herrera Velutini allegedly shifted strategy, attempting to bribe the eventual winner—current Governor Pedro R. Pierluisi—by offering super PAC support in exchange for favorable regulatory treatment of Bancrédito. *See Robles*, *supra*.[8]

United States v. Parnas. In 2019, Lev Parnas and Igor Fruman funneled hundreds of thousands of dollars to America First Action, a high-dollar super PAC supporting President Trump, for the express purpose of "obtain[ing] access to

[8] In August 2025, Vázquez-Garced accepted a plea deal in which she pleaded guilty to illegally accepting a campaign contribution from a foreign national. *See Former Puerto Rico Gov. Wanda Vázquez pleads guilty to campaign finance violation*, AP News (Aug. 27, 2025), https://perma.cc/H6XW-TQ4W.

exclusive political events and gain[ing] influence with politicians."[9] They routed a $325,000 contribution through a shell LLC to disguise the true source of the funds and another $15,000 to a second super PAC. Prosecutors alleged—and trial evidence confirmed—that the scheme's purpose was to "buy potential influence with candidates, campaigns, and the candidates' governments." Sealed Indictment at 2, *United States v. Parnas*, 1:19-cr-00725 (S.D.N.Y. Oct. 9, 2019).

Zekelman Industries (MUR 7613). In 2022, the FEC imposed one of the largest fines in its history—$975,000—against entities controlled by Canadian billionaire Barry Zekelman for directing $1.75 million to the pro-Trump super PAC America First Action. *See* FEC, Factual & Legal Analysis and Conciliation Agreement (MUR 7613) (Zekelman Industries, Inc.), https://perma.cc/A2SP-Q9JS. The payoff was not subtle: shortly after the contribution, Zekelman was invited to a private dinner to discuss trade policy affecting his steel empire, which was soon followed by the administration imposing caps on steel imports from Zekelman competitors, like South Korea. *See* CLC, *New York Times Report on Canadian CEO Barry Zekelman Prompts Two CLC Complaints* (May 24, 2019), https://perma.cc/ED2E-H2KK.

[9] *See* Press Release, U.S. Att'y's Off., S. Dist. of N.Y., Lev Parnas Sentenced to 20 Months in Prison for Campaign Finance, Wire Fraud, and False Statement Offenses (June 29, 2022), https://perma.cc/W9XM-5FPM.

United States v. Azano Matsura. In 2016, a Mexican businessman and foreign national, Jose Susumo Azano Matsura, was sentenced to three years in federal prison after funneling $500,000 in illegal contributions to San Diego mayoral candidates via straw donors in an attempt to buy support for a waterfront development project and access to political figures.[10] $100,000 of the funds were routed through a super PAC created by Matsura and his associates to support the campaign of Bonnie Dumanis for Mayor.[11] Matsura worked with a campaign consultant and a former San Diego police detective to effect the contributions; both were also charged in the scheme.[12]

* * *

[10] *See* Press Release, U.S. Att'y's Off., S. Dist. of Cal., Mexican Businessman Jose Susumo Azano Matsura Sentenced for Trying to Buy Himself a Mayor (Oct. 27, 2017), https://perma.cc/4EA6-B8ET; John Hudson, *Feds: Mexican Tycoon Exploited Super PACs to Influence U.S. Elections*, Foreign Policy (Feb. 11, 2014), https://foreignpolicy.com/2014/02/11/feds-mexican-tycoon-exploited-super-pacs-to-influence-u-s-elections/ [https://archive.is/gPJCP#selection-1131.36.1131.61].

[11] Dave Maass, *New Dumanis super PAC backed by Mexican businessman*, San Diego CityBeat (May 23, 2012), https://web.archive.org/web/20140128114550/http:/www.sdcitybeat.com/sandiego/blog-914-new-dumanis-super-pac-backed-by-mexican-businessman.html.

[12] Craig Gustafson & Susan Shroder, *Feds: Illegal money funneled to SD pols*, The San Diego Union-Trib. (Jan. 21, 2014), https://web.archive.org/web/20140122053336/http:/www.utsandiego.com/news/2014/jan/21/feds-illegal-money-funneled-to-san-diego/#article-copy.

When viewed collectively, these cases demonstrate that super PAC contributions now routinely serve as the quid in corrupt, quid pro quo arrangements. Fifteen years ago, the D.C. Circuit in *SpeechNow* was not faced with the current reality of sophisticated super PACs acting as conduits for corruption. *See supra* at 6. The premise of *SpeechNow*—that contributions to independent spenders would be too far removed or too "independent" to be or appear corrupt—has been disproven. Unlimited sums create a functional marketplace for political favors in which donors trade large contributions for expected official benefit.

Recent conduct underscores just how far from reality *SpeechNow*'s factual premise has drifted. Elon Musk's relationship with the administration is paradigmatic. Musk spent nearly $300 million to support President Trump's 2024 campaign—funds routed primarily through a pro-Trump super PAC, America PAC—before being installed as the head of a newly created "U.S. DOGE Service," where he exercised direct authority over agencies with regulatory jurisdiction over his own companies. *See* CLC, Trump's Corrupt Transactions: How the 47th President Has Brazenly Traded Official Benefits for Personal and Political Gain at 3 (Oct. 15, 2025), https://perma.cc/6N7V-8QPR. The public record reflects subsequent regulatory and contracting benefits to Musk's businesses, including Starlink, Tesla, and xAI. *See id.* Longtime Trump donor Linda McMahon likewise contributed more than $20 million to the pro-Trump super PAC Make America Great

Again Inc. between late 2023 and 2024, before being named Secretary of Education. *See id.* at 4. In a similar vein, hedge fund executive Scott Bessent gave $1.4 million to Trump-affiliated super PACs and was promptly tapped to serve as Secretary of the Treasury. *See id.*

The same pattern extends to clemency decisions. For example, Paul Walczak received a presidential pardon shortly after his mother contributed $1 million at a MAGA Inc. fundraising dinner—an event tied to super PAC financing—and the pardon application expressly invoked that contribution. *See id.* at 11. These are not *post hoc* favors granted to supportive allies; they are official acts temporally and causally tethered to specific, seven- and eight-figure super PAC contributions. That linkage is the precise quid pro quo pattern *SpeechNow* and its descendants have deemed impossible. *See* 599 F.3d at 694.

Because the record now shows that unlimited super PAC contributions have become vehicles for trading official action, limits on those contributions should be permissible as the very kind of safeguard the Supreme Court has long recognized as essential to preventing the sale of public office.

II. The Act Is Independently Justified Because It Prevents the Appearance of Corruption and Promotes Public Faith in Self-Government.

The Act's contribution limit not only removes a clear avenue for corruption, but also, critically, insulates Maine elections from the dispiriting *appearance* of corruption associated with unrestrained super PAC giving. Preventing the

appearance of corruption is a well-established and compelling governmental interest, *see, e.g.*, *Buckley*, 424 at 25-29, and the record here fully demonstrates its validity and strength.

Although the Supreme Court has not yet had occasion to define the full scope of what constitutes the *appearance* of quid pro quo corruption,[13] it has indicated that voter sentiment is highly salient evidence of apparent corruption. *See Shrink Missouri*, 528 U.S. at 393-94. On this front, there is copious evidence to support the Act. As empirical studies consistently show, voters understand that big donors—including donors to super PACs—are a source of quid pro quo corruption. The same insight is reflected in the record below, which includes, *inter alia*, expert testimony validating that the Act prevents the appearance of corruption. And even if survey evidence and expert testimony would not be sufficient alone to substantiate the government's interest in preventing the appearance of corruption, here it is reinforced by the many criminal prosecutions of actual quid pro quos based on super PAC contributions, *see supra* Part I.

Maine voters considered their experience under the regime of unlimited super PAC contributions unleashed since *SpeechNow* and determined that limiting those

[13] In *McCutcheon*, 572 U.S. at 208, the Court stated that the "Government's interest in preventing the appearance of corruption is equally confined to the appearance of quid pro quo corruption," but it did not further elucidate what such appearances include.

contributions was necessary to prevent corruption and reinforce public confidence in democratic governance. This was a constitutionally permissible choice, and, given the compelling interests at stake, an appropriate one.

A. Preventing the Appearance of Corruption Is a Compelling Governmental Interest in Its Own Right.

The Supreme Court has repeatedly explained that preventing the appearance of corruption is a compelling governmental interest that can independently support campaign finance legislation:

> The public interest in countering th[e] perception [of corruption] was, indeed, the entire answer to the overbreadth claim raised in the *Buckley* case. This made perfect sense. Leave the perception of impropriety unanswered, and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance. Democracy works "only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption."

Shrink Missouri, 528 U.S. at 390 (quoting *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 562 (1961)). As the Court has long recognized, avoiding the appearance of corruption is "[o]f almost equal concern as the danger of actual quid pro quo arrangements," and "the avoidance of the appearance of improper influence 'is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.'" *Buckley*, 424 U.S. at 27 (quoting *CSC v. Letter Carriers*, 413 U.S. 548, 565 (1973)). Indeed, "[t]his interest exists even where there is no actual corruption, because the perception of corruption,

or of opportunities for corruption, threatens the public's faith in democracy." *Ognibene v. Parkes*, 671 F.3d 174, 186 (2d Cir. 2011).

These campaign finance holdings are consistent with the Supreme Court's other decisions involving the integrity of the nation's system of self-government and the essential role of public confidence in that system. *See, e.g.*, *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 197 (2008) (recognizing that "public confidence in the integrity of the electoral process . . . encourages citizen participation in the democratic process") (internal quotation marks and citations omitted); *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006) ("Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy."). As one scholar has observed, "[a]ppearances drive social trust, democratic legitimacy, and the constitutional stability of government. Legitimacy also facilitates voluntary compliance with the laws made under a political regime." Christopher T. Robertson et al., *The Appearance and the Reality of Quid Pro Quo Corruption: An Empirical Investigation*, 8 J. of Legal Analysis 375, 378 (2016) (citations omitted), *available at* https://academic.oup.com/jla/article/8/2/375/2502553.

The Supreme Court has similarly recognized the importance of appearances in cases concerning the judicial branch and the intersection of judicial impartiality and campaign finance. In *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868 (2009), the Court found a due process violation when a West Virginia State Supreme

Court Justice failed to recuse himself from a case in which one of the parties had spent exorbitant amounts in support of the Justice's campaign. The Court found that the public's perception of the judiciary is "a vital state interest" and explained that judicial codes "are the principal safeguard against judicial campaign abuses that threaten to imperil public confidence in the fairness and integrity of the nation's elected judges." *Id.* at 889 (internal quotation marks and citation omitted). And in *Williams-Yulee v. Florida Bar*, 575 U.S. 433, 453 (2015), the Court gave broad discretion to the legislature when the decision held that "Florida ha[d] reasonably determined that personal appeals for money by a judicial candidate inherently create an appearance of impropriety that may cause the public to lose confidence in the integrity of the judiciary."

B. The Public's Perception of Corruption Directly Affects the Strength and Vitality of American Democracy.

The Supreme Court has correctly understood that the public's perception of corruption can have a deep and consequential effect in our system of democratic self-government. Campaign finance regulation is a key bulwark supporting the strength of that system; indeed, a growing body of empirical evidence indicates that our underregulated campaign finance system has contributed to a steep decline in the public's faith in government. Anticorruption measures like the Act are thus all the more essential—because they counter the widespread perception that American democracy is for sale.

Especially during the past decade, as campaign finance law has been further deregulated, the public's perception of corruption has continued to grow and its confidence in government's fairness and integrity has plummeted. When a demographically representative study in 2014 tested the American population's attitude on specific campaign finance issues, the highly statistically significant results indicated that "citizens experience a decrease in their faith in democracy as the magnitude of reported election campaign contributions from organizations increases." Rebecca L. Brown & Andrew D. Martin, *Rhetoric and Reality: Testing the Harm of Campaign Spending*, 90 N.Y.U. L. Rev. 1066, 1089 (2015). And citizens "experience a greater decrease in their faith in democracy based on evidence of reelection campaign expenditures on behalf of a candidate, when those expenditures are coordinated with the candidate's campaign, as compared with when the expenditures are truly independent." *Id.*

As Professors Spencer and Theodoridis have summarized, "[n]ationally representative surveys report that most Americans believe corruption is widespread throughout the government and that campaign contributors have a 'great deal' of influence over public policy decisions. . . . Survey respondents also report that contributions from corporations and unions are more corrupting than contributions from individuals." Douglas M. Spencer & Alexander G. Theodoridis, *"Appearance*

of Corruption": Linking Public Opinion and Campaign Finance Reform, 19 Election L. J. 510, 510-11 (2020) (citations omitted).

Similarly, the Brennan Center for Justice has shared the following results of a national survey:

> The poll reveals that nearly 70 percent of Americans believe Super PAC spending will lead to corruption and that three in four Americans believe limiting how much corporations, unions, and individuals can donate to Super PACs would curb corruption. . . . [M]ost alarmingly, the poll revealed that concerns about the influence Super PACs have over elected officials undermine Americans' faith in democracy: one in four respondents—and even larger numbers of low-income people, African Americans, and Latinos—reported that they are less likely to vote because big donors to Super PACs have so much more sway than average Americans.

Brennan Ctr. for Justice, *National Survey: Super PACs, Corruption, and Democracy* (2012) (citations omitted), https://perma.cc/X6UJ-GJQ9.[14]

Other recent scholarship has shown that "perceived corruption of standard campaign practices is by no means limited to political cynics, experts, partisans, or any other narrow grouping," but rather "is a super-majority judgment of the

[14] In 1997, Common Cause Minnesota, in conjunction with St. Cloud State University, found similar results in a Minnesota survey. Almost one-third of those surveyed said "yes" when asked, "Are you personally less likely to vote or participate in politics because you believe that those who give political contributions have more influence over elected officials than you do?" Todd Paulson & David Schultz, *Bucking Buckley: Voter Attitudes, Tobacco Money, and Campaign Contribution Corruption in Minnesota Politics*, 19 Hamline J. Pub. L. & Pol'y 449, 469 (1998).

American citizenry." Matthew DeBell & Shanto Iyengar, *Campaign Contributions, Independent Expenditures, and the Appearance of Corruption: Public Opinion vs. the Supreme Court's Assumptions*, 20 Election L. J. 286, 297 (2021) (reporting a "relative invariance in the relationship between perceived corruption and political characteristics"). After testing several hypotheses about contributions, independent expenditures, and the perceptions of corruption they may create, the study found that "[p]erceptions of corruption increase consistently (monotonically) with the amount of money contributed or spent," and suggested that "current campaign finance laws may contribute to reduced trust in government and lower voter turnout." *Id.* at 296, 297.[15]

Although *Buckley* recognizes that "laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action," 424 U.S. at 27-28, the relevant empirical research suggests that the public's perception of quid pro quo corruption is quite broad. For example, in one pair of studies involving jury simulations and fact patterns "designed to mimic ubiquitous behavior that virtually any of the 535 Members of Congress engage in every day . . . the vast majority of [the mock] grand jurors were willing to indict such everyday behavior under the federal bribery

[15] *See also* Pew Research Center, *The Public, the Political System and American Democracy* at 4 (2018), https://perma.cc/4HHV-L7K5.

statute," even though much of the described behavior is likely legal under current law. Robertson, *Appearance and Reality*, 8 J. of Legal Analysis at 380.[16] To deter the kind of cynicism that can erode participation in and support for democratic governance, this Court should adopt a definition of the appearance of quid pro quo corruption that accords with the public's actual attitudes.

C. Maine's Interest in Avoiding the Appearance of Corruption Is Confirmed by the Evidentiary Record.

In addition to the general empirical literature supporting Maine's interest in preventing perceived quid pro quo corruption, the Act also demonstrably effectuates that goal. The evidentiary record is replete with support for the proposition that limiting contributions to super PACs prevents apparent corruption, and confirms that Maine's limit is well tailored to that vital interest.

Perhaps most notably, the record includes expert testimony validating that the Act prevents apparent corruption. Employing vignette-based survey research methodology, Equal Citizens's expert found robust empirical support for several key propositions, including that contributions to super PACs foster the appearance of

[16] One example involved a congressman who initially met with a corporate lobbyist but declined to support a legislative rider that the company wanted; after the company contributed $50,000 to a 501(c)(4) organization that was running ads supporting the type of bills the congressman supported, he expressed a willingness to support the rider. No witness testified that the parties agreed to exchange anything, yet 73% of the jurors voted to indict. Robertson, *Appearance and Reality*, 8 J. of Legal Analysis at 395-97.

corruption; that "the amount of money matters"; and that perceptions of corruption spike "dramatic[ally]" at and above the precise level at which Maine's contribution limit is set ($5,000). JA205.

In one experiment, the study not only "found a clear relationship between the amount of money contributed and perceived likelihood that the elected official would sell a policy outcome," but also demonstrated that "$5,000 appears to be an inflection point in perceptions of quid pro quo corruption." JA205-206. In a second experiment simulating how the existence or absence of the contribution limit would affect perceptions of corruption, the researchers found that "a $5,000 cap on [super PAC] contributions has a significant and substantial effect on perceptions of quid pro quo corruption and that the cap supports broader perceptions of democratic legitimacy and effectiveness." JA210.

That the Act was adopted by Maine voters directly via citizen-initiated legislation is a particularly clear indication of public sentiment. In *Shrink Missouri*, which likewise considered contribution limits voters approved by statewide ballot measure, the Supreme Court noted that "the statewide vote . . . certainly attested to the perception relied upon here: [A]n overwhelming 74 percent of the voters of Missouri determined that contribution limits are necessary to combat corruption and the appearance thereof." 528 U.S. at 394 (internal quotation marks omitted). Considering this and other evidence, the Court concluded that "this case does not

present a close call" as to whether Missouri met its "evidentiary obligation." *Id.* at 393. Here, too, the Act garnered a record-breaking number of votes and passed with an overwhelming 74.9% margin of victory, JA156, demonstrating that the vast majority of Maine voters perceive large contributions to super PACs as a serious problem in need of correction. That "certainly attest[s] to the perception [of corruption] relied upon here." 528 U.S. at 394.

CONCLUSION

For the foregoing reasons, the district court decision should be reversed.

Respectfully submitted,

/s/ Megan P. McAllen
Megan P. McAllen (Bar No. 1197810)
mmcallen@campaignlegalcenter.org
Kevin P. Hancock
Erin Chlopak
Samantha J. Perlman
CAMPAIGN LEGAL CENTER
1101 14th Street NW, Ste. 400
Washington, DC 20005

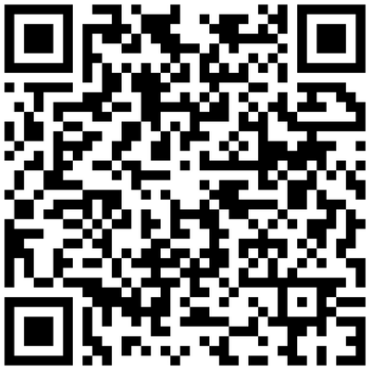
Counsel for Amicus Curiae

Dated: October 29, 2025

Amicus Center for American Progress

The Center for American Progress (CAP), founded in 2003, is a public policy research and advocacy organization that develops progressive solutions to major national challenges. While not solely focused on campaign finance reform, CAP plays a significant role in advancing policies to reduce the influence of big money in politics and expand political participation. Its experts advocate for stronger disclosure requirements, public financing systems, and structural reforms that strengthen democratic institutions. Through research, communications, and coalition-building, CAP seeks to create a government that is responsive to citizens, not corporations or wealthy donors.

You can donate to The Center for American Progress here.



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.

No. 25-1706

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants

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,

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

Thomas H. Moore
The Center for American Progress
1333 H St. NW
Washington, D.C. 20005
(202) 682-1611
Email: tmoore@americanprogress.org

Counsel for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

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.

---

[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

---

[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

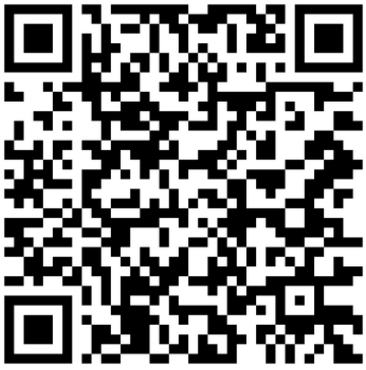
Thomas H. Moore
The Center for American Progress
1333 H St. NW
Washington, D.C. 20005
(202) 682-1611
tmoore@americanprogress.org

Counsel for Amicus Curiae

Amicus Citizens for Responsibility and Ethics Washington

Founded in 2003, Citizens for Responsibility and Ethics in Washington (CREW) is a nonpartisan watchdog organization promoting ethics, transparency, and accountability in government. CREW investigates and exposes corruption, conflicts of interest, and campaign finance violations across the political spectrum. Using litigation, public records requests, and in-depth reporting, CREW sheds light on the flow of dark money and advocates for reforms that strengthen democratic institutions. Its goal is to ensure that government officials act in the public interest—and that voters, not secret donors, shape the nation's political future.

You can donate to CREW here.



No. 25-1705

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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.

On Appeal from the United States
District Court for the District of Maine
No. 1:24-cv-00430-KFW, Hon. Karen Frink Wolf

No. 25-1706

DINNER TABLE ACTION, FOR OUR FUTURE,
ALEX TITCOMB,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants,

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.

On Appeal from the United States
District Court for the District of Maine

BRIEF OF *AMICUS CURIAE* CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON IN SUPPORT OF APPELLANTS

Stuart McPhail
CITIZENS FOR RESPONSIBILITY
AND ETHICS IN WASHINGTON
P.O. Box 14596
Washington, DC 20004
(202) 408-5565
smcphail@citizensforethics.org

Attorneys for Amicus Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Cases—continued

Cases—continued

Statutes

Other Authorities

Other Authorities—continued

Other Authorities—continued

INTEREST OF AMICI[1]

CREW is a nonpartisan, section 501(c)(3) nonprofit corporation that seeks to combat corruption and corrupting influences in government. CREW has monitored the growth of independent expenditure groups in the wake of *SpeechNow.org* and how such groups are likely to and have given rise to *quid pro quo* corruption. In addition, CREW has observed how the use of corporations to funnel large contributions to these groups permit them to hide the sources of funds in ways that other political actors cannot. CREW uses this information to write reports for public consumption and, where appropriate, file complaints. CREW is therefore familiar with the inadequacy of other laws to combat corruption stemming from large contributions to independent expenditure groups.

ARGUMENT

The court below summarily threw out a ballot initiative overwhelmingly adopted by the people of Maine to combat the corruption they have seen with their own eyes that stems from the unlimited flow of massive contributions to independent electioneering groups. It did so without even conducting the analysis the Supreme Court has said applies to limits on contributions: expressive acts that "lie closer to

[1] All parties to this matter have consented to this amicus brief. No counsel for any party authored this brief in whole or in part, nor has any person, including any party or party's counsel, other than CREW and its counsel contributed money that was intended to fund preparing or submitting this brief.

the edges than to the core of political expression" of First Amendment value. *FEC v. Beaumont*, 539 U.S. 146, 161 (2003). It did so by uncritically following what it saw as the agreement of other courts. JA350. In affording the overwhelming agreement of the people of Maine such short shrift, however, the court below erred.

The record below shows what was not before any prior court—the evidence of *quid pro quo* corruption that other courts assumed was impossible. That record shows *quid pro quo* bribes paid through contributions to independent expenditure groups like those targeted by Maine's law, the type of corruption the Supreme Court has consistently said justifies a limit on transfers. Those examples are not rare one-offs. Rather, given the apparent value candidates routinely place on well-funded independent groups that will reliably support their and their allies' elections, those examples likely capture only a small portion of the bribes being paid through contributions to independent expenditure groups.

Unfortunately, other attempts to limit the corrupting possibilities from unlimited contributions to independent expenditure groups have proven inadequate. Rules limiting candidates' solicitation of funds to independent groups and disclosure rules, *see, e.g.*, 52 U.S.C. §§ 30104, 30125, including those requiring the tracing of funds, *see, e.g.*, 52 U.S.C. § 30122, have existed but failed to "prevent[] *quid pro quo* corruption," *FEC v. Cruz*, 596 U.S. 289, 305 (2022), as the examples below demonstrate.

The court below had before it what no other court had: proof that unlimited contributions to independent expenditure groups do in fact give rise to *quid pro quo* corruption. Given that evidence, and the lower First Amendment interests that attach to the mere transfer of funds, the lower court erred in summarily rejecting the overwhelming judgment of the people of Maine.

I. Contributions To Independent Expenditure Groups Can Buy *Quid Pro Quos*

The district court below followed the "seemingly unanimous" judgment of other courts to conclude that, "'because *Citizens United* holds that independent expenditures do not corrupt or give rise to an appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to' independent expenditure groups." JA350 (quoting *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010)). Yet it did so while aware of the error upon which that unanimity rested: the fiction that contributions to independent expenditure groups could never "serve as the quid in a *quid pro quo* arrangement." JA352.[2]

[2] *See Republican Party of N.M. v. King*, 741 F.3d 1089, 1103 (10th Cir. 2013) ("[T]he absence of a corruption interest breaks any justification for restrictions on contributions" for independent expenditures); *N.Y. Progress and Protection PAC v. Walsh*, 733 F.3d 483, 487 n.1 (2d Cir. 2013) ("[T]he threat of *quid pro quo* corruption does not arise when individuals make contributions to groups that engage in independent spending on political speech"); *Texans for Free Enter. v. Texas Ethics Comm'n*, 732 F.3d 535 (5th Cir. 2013) (concluding contributions to

Based on the record and the examples discussed below, the district court was right to recognize this hubristic error. Contributions to independent expenditure groups, also known as super PACs, have resulted in *quid pro quos*, and the apparent value that candidates place on those contributions makes that risk widespread. Yet the district court failed to follow the logic of that realization: recognizing that because contributions to super PACs can give rise to a *quid pro quo*, then the American people's compelling interest in preventing *quid pro quos* justifies the limits that Maine voters overwhelmingly adopted.

A. *Quid Pro Quos* Involving Super PAC Contributions

The Appellants cited below several cases where contributions to super PACs were the *quid* in an illegal bribery scheme. Those cases show that the likelihood a contribution to a super PAC could be part of a *quid pro quo* exchange is materially greater than "zero." Plfs.'s Mot. for Permanent Injunction, ECF 16 at 2.

---

independent expenditure groups "do not give rise to corruption or the appearance of corruption"); *Wisc. Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 155 (7th Cir. 2011) (finding "no valid response" to authority holding contributions cannot result in *quid pro quo* corruption); *SpeechNow.org*, 599 F.3d at 432 ("[C]ontributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption."); *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 293–94 (4th Cir. 2008) (claiming no evidence of "danger of corruption due to the presence of unchecked contributions to independent expenditure political committees" (internal quotation marks omitted)); *Alaska Public Offs. Comm'n v. Patrick*, 494 P.3d 53, 58 (Alaska 2021) ("There is no logical scenario in which making a contribution to a group that will then make an expenditure" can result in a *quid pro quo*).

1. The Logic of a Bribe Where a Candidate "[P]laced [S]ubjective [V]alue" on Super PAC Contributions

The parties cover at length the bribery prosecution of former U.S. Senator Bob Menendez, who was indicted for allegedly accepting bribes, in part, in the form of contributions to a super PAC. *See* Defs.'s Opp. to Mot. for Permanent Injunction, ECF 45 at 4–5; Invs.'s Opp. to Mot. for Permanent Injunction, ECF 53 at 6–7); *United States v. Menendez*, 291 F. Supp. 3d 606, 621 (D.N.J. 2018); *United States v. Menendez*, 132 F. Supp. 3d 635, 640 (D.N.J. 2015). Most relevant here—and directly refuting the "unanimous" premise of the other courts, JA350 —the district court recognized that "ample evidence" showed that "Menendez placed subjective value on" contributions to the super PAC, notwithstanding the fact the super PAC was not part of the scheme, supported multiple candidates, and was not coordinating its activities with Menendez. *Menendez*, 291 F. Supp. 3d at 623.

Accordingly, irrespective of whether the government met its heightened burden to prove an "explicit" *quid pro quo* agreement between the super PAC donor and the Senator beyond a reasonable doubt, *see id.* at 624–25, 634–35, the evidence shows there is nothing "[il]logical" about a super PAC contribution bribe, *cf.* ECF

53 at 12. Indeed, the difficulty in prosecuting such agreements after-the-fact merely underscores the need to prevent them beforehand.[3]

2. A "half million" Super PAC Contribution *Quid* for a Firing *Quo*

In another matter, a jury convicted Greg Lindberg of paying bribes to the Commissioner of the North Carolina Department of Insurance 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)[4]; ECF 53 at 7 n.2. As part of that bribery scheme, Lindberg created and funded an independent expenditure committee to support the commissioner. *Lindberg*, 476 F. Supp. 3d at 250 (quoting Lindberg offering to "put in a million or two" as the "sole donor").

There was no evidence that the Commissioner solicited this contribution, *cf.* Plfs.' Reply in Support of Permanent Injunction, ECF 61 at 5, or that the committee subsequently coordinated with the commissioner, *id*. at 13. In fact, the agreement specified there "could not be 'any coordination'" between the commissioner and the

[3] Senator Menendez was subsequently convicted in a different bribery scheme. *See United States v. Menendez*, 759 F. Supp. 3d 460, 473 (S.D.N.Y. 2024).

[4] Although an initial conviction was vacated over improper jury instructions, *see United States v. Lindberg*, 39 F.4th 141 (4th Cir. 2022), Lindberg was again convicted on retrial with proper instructions, DOJ, *Chairman of Multinational Investment Company and Company Consultant Convicted in Bribery Scheme at Retrial* (May 16, 2024), https://perma.cc/3ZLK-KUPF.

committee. *Lindberg*, 476 F. Supp. 3d at 251. Rather, it would simply be run by someone the commissioner would "have confidence in." *Id.* at 250. As part of the scheme, the conspirators agreed to route some of the funds through a nonprofit section 501(c)(4) entity that would permit Lindberg to "stay anonymous on the source of [all] the money," *Id.* at 252 (agreeing to contribute another half-a-million directly to a section 527 entity that would disclose Lindberg as the source, but to use a (c)(4) to hide the total amount of Lindberg's support).

3. $1 million Super PAC Contribution *Quid* for a Bailout *Quo*

Also covered extensively by the Appellants, the prosecution of former Ohio Speaker Larry Householder serves as another example of bribes using super PACs. ECF 45 at 5; ECF 53 at 7 n.2. As part of a larger bribery schemes, a utility contributed funds to super PACs for Householder to use to further his bid for the speakership. Defs.' Surreply in Opp. to Mot. for Permanent Injunction, ECF 66 at 6; *see also* Matt Corley, *Three dark money lessons from the Larry Householder corruption prosecution*, CREW (Mar. 29, 2023) https://perma.cc/6G3E-3TZL?type=image (discussing roles of Growth & Opportunity PAC and other super PACs). There was nothing at the time of the scheme to indicate that Householder controlled the super PACs or coordinated on any of their communications. *See United States v. Householder*, 137 F.4th 454, 464 (6th Cir. 2025) (detailing use of vehicles to conceal source of funds); Second Am. Complaint ¶¶ 59, 89, *Ohio v.*

FirstEnergy, No. 20 CV 006281 (Ct. of Comm. Pleas, Ohio Aug. 5, 2021) *available at* https://perma.cc/P269-JQJN (alleging scheme to "prevent the public and regulators from discovering their efforts to influence the outcome of the 2018 Ohio Primary Election"). Accordingly, there was no way for the public to enforce anti-coordination rules in a way that could prevent the *quid pro quo*.

4. A New Funded Supportive Super PAC *Quid* For Help With an Examination *Quo*

In another case, the governor of Puerto Rico was indicted in an apparent bribery scheme involving contributions to a super PAC. Indictment, ¶¶ 31, 48, 88, 97–100, 106, 107, 110, 114, 138, 140, 142, 160, 168, 173–74, *United States v. Vazquez Garced*, 22-cr-342 (D.P.R. 2022), https://perma.cc/753Y-ZUW2; *see also* ECF 53 at 7 n.2. The alleged scheme involved the governor agreeing to remove an official examining a bank in exchange for, in part, the bank owner setting up and funding a super PAC to support the governor. *Id.* ¶¶ 4, 48. There was no allegation, however, that the governor would control the super PAC or coordinate on its expenditures—rather, she simply could expect support because that was the terms of the agreement. The Governor pled guilty to a lesser included charge of accepting an excessive contribution. Patricia Mazzei and Glenn Thrush, *Former Puerto Rico Governor Pleads Guilty to Campaign Finance Violation*, N.Y. Times (Aug. 27, 2025), https://www.nytimes.com/2025/08/27/us/puerto-rico-vazquez-plea.html.

Each of the above examples disproves the premise underlying the "seemingly unanimous consensus" of other courts: that contributions to super PACs will be of so little value because of their supposed independence that candidates would not trade official acts for them.

Notably, all the *quid pro quo* examples above involve an agreement between a candidate and a contributor, but not the independent expenditure maker. In the Menendez example, there was no allegation that the independent expenditure group was even aware of the corrupt bargain behind the contribution. The prevalence of contributors in these corrupt bargains may be because the contributors, unlike the independent expenditure makers, have a variety of interests other than the election of candidates, and so may trade support they may not otherwise give to advance those interests. Further, contributors enjoy potential anonymity that does not attach to the independent expenditure maker. In the Householder and Lindberg examples, the ability of independent expenditure groups to accept unlimited funds from intermediary 501(c)(4) entities that shielded the sources was instrumental in the corrupt bargain. Further, transferring the money to entities that are repeat players and therefore reliably and effective allies of an officeholder, *see infra*, may make those transfers much more valuable, and therefore much more likely to result in a

quid pro quo, than an offer to spend the funds directly would.[5] Regardless, whether or not the actual expenditure of funds independently from a campaign "give rise to corruption or the appearance of corruption," *Citizens United v. FEC*, 558 U.S. 310, 357 (2010), the above examples show that contributions to independent expenditure groups can and do.

B. Candidates Value Super PAC Contributions, and Contributors Know It

The above examples stem from criminal bribery prosecutions, but prosecutions that must be proven beyond reasonable doubt will "'deal with only the most blatant and specific attempts of those with money to influence governmental action.'" *Libertarian Nat'l Comm. v. FEC*, 924 F.3d 533, 543–44 (D.C. Cir. 2019) (quoting *Buckley v. Valeo*, 424 U.S. 1, 28 (1976)) ("[I]f [bribery] laws were sufficient to achieve the government's compelling interest in preventing *quid pro quo* corruption and its appearance, then Congress would have had no need in the first place to impose contribution limits to combat prior decades' 'deeply disturbing' quid

[5] Notably, individuals could spend unlimited amounts on independent expenditures since *Buckley*, yet in the years between *Buckley* and *Citizens United*, independent expenditures "made up a small portion of overall election-related spending." *CREW v. FEC*, 971 F.3d 340, 344 (D.C. Cir. 2020). The explosion of such activities once they could be funded by unlimited contributions shows financiers see value in contributions far beyond their ability to create advertisements.

pro quo arrangements."). Rather, the value that candidates place on super PACs that gave rise to the above prosecutions is evidently widely shared.

Candidates now routinely fundraise for super PACs, demonstrating the value on which they place their funding. *See, e.g.*, Max Greenwood and Ana Ceballos, *Trump to attend high-dollar 'roundtable' with donors in Doral on Thursday*, Miami Herald (Mar. 21, 2024), https://www.miamiherald.com/news/politics-government/article286952185.html (reporting then candidate Trump's attendance at fundraiser for supportive super PAC); Edward-Isaac Dovere, *Hakeem Jeffries is staging a takeover of the New York Democrats. His Hope to become speaker may depend on it*, CNN (June 28, 2023), https://www.cnn.com/2023/06/28/politics/hakeem-jeffries-takeover-new-york-democrats (reporting House Democratic leader "pitch[ed] some of [New York's] biggest Democratic donors to spend their money locally with the House Majority super PAC"); Ted Johnson, *Hollywood, L.A. Figures Raise Money For Democratic PAC To Win Senate Control*, Deadline (Oct. 8, 2020), https://deadline.com/2020/10/senate-majority-pac-democrats-1234594253/ (reporting Senate Minority Leader co-hosted a fundraiser for independent expenditure group); Manu Raju, *How McConnell is maneuvering to keep the Senate in GOP hands – and navigating Trump*, CNN (Sept. 10, 2020), https://www.cnn.com/2020/09/10/politics/mitch-mcconnell-senate-majority/index.html (reporting Senate Leader "regularly doing fundraising calls and Zoom meetings with

donors to help" allied independent expenditure organization); Reid Wilson, *Inside the GOP's Effort to Consolidate the Super PAC Universe*, Morning Consult (Mar. 24, 2016) https://morningconsult.com/2016/03/24/inside-the-gops-effort-to-consolidate-the-super-pac-universe/ (reporting Senate Leader told other Senators they "should steer big donors to" two independent expenditure organizations). President Trump's campaign announced in the 2020 election that a supposedly independent super PAC was the "approved outside non-campaign group" because it was "run by allies of the President and is a trusted supporter of President Trump's policies and agendas." Donald J. Trump for President Campaign, *Trump Campaign Statement on Dishonest Fundraising Groups* (May 7, 2019), https://bit.ly/2VRRWm1 [hereinafter "Trump Campaign Statement"]. President Biden switched the supposedly independent groups to which his campaign drove donors in the course of his 2024 campaign. Shane Goldmacher and Reid J. Epstein, *Biden Switches Up His Big-Money Operation Ahead of 2024*, N.Y. Times (July 14, 2023), https://www.nytimes.com/2023/07/14/us/politics/biden-future-forward-super-pac.html.

Super PACs are often staffed by "trusted" campaign surrogates. Trump Campaign Statement. "[C]andidates' top aides … now leav[e] campaign teams to work for supportive super PACs." Brent Ferguson, *Super PACs: Gobbling Up Democracy?*, Brennan Center for Justice (June 23, 2015), https://bit.ly/2X6dg8F.

For example, the president of the principal super PAC supporting the democratic presidential candidate in 2024 formerly worked for the democratic party. Nick Corasaniti, *A Democratic Super PAC Surge Helps Biden Expand His Map*, N.Y. Times (Oct. 22, 2020), https://www.nytimes.com/2020/10/20/us/politics/future-forward-super-pac.html. In another example, "[a] group of former Trump aides designed the super PAC America First Action." Ashley Balcerzak, *Inside Donald Trump's army of super PACS and MAGA nonprofits*, The Center for Public Integrity (Feb. 18, 2019), https://bit.ly/2WujK43.

The parties have created their own super PACS while appearing to take the minimum steps to assert their independence. Ian Vandewalker, *Dark Money from Shadow Parties is Booming in Congressional Elections*, Brennan Center for Justice (Oct. 28, 2024), https://perma.cc/H44B-7WKS. These super PACS collect as much as, and sometimes more than, the party committees themselves.[6]

---

[6] *Compare* FEC, HMP Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00495028/?cycle=2024 (approximately $260 million in receipts) *with* FEC, DCCC Financial Summary 2023-24, (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00000935/?cycle=2024 (approximately $339 million in receipts); FEC, SMP Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00484642/?cycle=2024 (approximately $389 million in receipts) *with* FEC, DSCC Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00042366/?cycle=2024 (approximately $275 million in receipts); FEC, Congressional Leadership Fund Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00504530/?cycle=2024 (approximately $243 million in receipts) *with* FEC, NRCC Financial Summary 2023-24 (last

In fact, candidates now include super PACs among their joint fundraising committees. *See* FEC, *AO 2024-07: Campaign may engage in joint fundraising with a Super PAC* (Sept. 6, 2024), https://www.fec.gov/updates/ao-2024-07/. Candidates split their fundraising with independent groups because they place equal, or nearly equal, value on contributions to such entities as they do on contributions to their own campaign committees.

Donors know this, which is why some donors are willing to break the law to make donations to super PACs. For example, in order to earn a mayor's favor that a donor believed would be good for business, the donor directed funds to independent committees understood to be supportive of the mayor. *United States v. Singh*, 979 F.3d 697, 707–08 (9th Cir. 2020). That included an independent expenditure committee. Superseding Indictment, ¶¶ 11, 21(f), 22(e), (p), (r), 27(a), (d), *United States v. Matsura*, No. 14CR0388-MMA (S.D. Cal. Aug. 12, 2014), *available at* https://perma.cc/7WLV-M7HV. As a foreign national, however, the law prohibited him from donating. *Singh*, 979 F.3d at 707. (citing 52 U.S.C. § 30121(a)). Yet the

---

visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00075820/?cycle=2024 (approximately $236 million in receipts); FEC, Senate Leadership Fund Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00571703/?cycle=2024 (approximately $298 million in receipts) *with* FEC, NRSC Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00027466/?cycle=2024 (approximately $296.5 million in receipts).

Mexican national understood that donating to the independent group would redound to his benefit, so he used a straw donor scheme to secretly make the contributions, also in violation of the law. *Id.*. He was eventually convicted. *Id.* at 706.

In another example, a jury convicted an individual working as a straw donor on behalf of a Malaysian national. *United States v. Michel*, No. 19-148-1, 2024 WL 4006545, at *1, *2 (D.D.C. Aug. 30, 2024). The Malaysian national believed contributing the funds would earn him an audience with a presidential candidate. *Id.* at *2. Among the recipients of the funds was a super PAC. *Id.* at *11. The conspirators thought contributing to the super PAC would likely earn access because they understood the benefitted candidates would value those contributions.

In yet another example, two individuals were convicted in a scheme to launder funds to a super PAC, America First Action PAC. *United States v. Parnas*, No. S3 19-CR-725, 2022 WL 669869, at *4 (S.D.N.Y. Mar. 7, 2022), *see also* FEC, America First Action, Inc. Financial Summary (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00637512/ (showing group is a super PAC). The individuals believed contributing to the super PAC would "gain [them] access to politicians to promote the Defendants' nascent businesses." *United States v. Parnas*, No. 19-CR-725, 2021 WL 2981567, at *3 (S.D.N.Y. July 14, 2021). Such contributions would only earn them access if the benefitted candidates valued those contributions.

In short, candidates value contributions to independent groups and donors know it. The independence of the recipient may "undermin[e] the value" of the contribution to the candidate somewhat, but it does not wholly eliminate it. *McCutcheon v. FEC*, 572 U.S. 185, 214 (2014). Accordingly, the difference in risk of corruption arising from contributions to candidates and those to independent groups is not a difference in kind, but rather only one of degree. Where a contribution of $476 raises sufficient risk of corruption when donated directly to a candidate, *see* 20 A.M.R.S. §1015(1) ($475 limit for "legislative candidate"), a contribution multiples greater to an independent group raises the same risk, *see McCutcheon*, 572 U.S. at 214 (a contribution to an independent group is less valuable, but "probably not [] 95%" less valuable).

C. The Court Below Ignored the Risk of Corruption and Failed to Apply the Required Analysis

The court below essentially acknowledged the record above but concluded that it was irrelevant: that *Citizens United* declared "as a matter of law" that independent expenditures never corrupt and so contributions to fund such expenditures axiomatically will never corrupt either. JA350 (quoting *SpeechNow.org*, 599 F.3d at 696). Yet a Supreme Court decision is not a "command" to "reject the evidence of your eyes and ears." *Cf.* George Orwell, *1984* p.69 (1983).

"Like King Canute, neither the Congress nor a court can change the forces of [human] nature." *EEOC v. Colby Coll.*, 589 F.2d 1139, 1144 (1st Cir. 1978).

Rather, *Citizens United* was a ruling based on the record before it. It relied on the absence of "any direct examples of votes being exchanged for … expenditures" in the *McConnell* record. *See Citizens United*, 558 U.S. 360 (citing *McConnell v. FEC*, 251 F. Supp. 2d 176, 209 (D.D.C. May 1, 2003)); *id.* at 357 (relying on the fact "[t]he Government does not claim that [independent] expenditures have corrupted the political process" in states that permit corporate expenditures); *see also id.* at 356–57 (relying on *Buckley*, 424 U.S. at 47); *Buckley*, 424 U.S. at 46 (stating that independent expenditures "do[] *not presently* appear to pose dangers" of *quid pro quo* corruption (emphasis added)).[7] It accordingly concluded that "Congress has created categorical bans on speech that are asymmetrical to preventing *quid pro quo* corruption." *Citizens United*, 558 U.S. at 361 (analyzing a total ban on corporate expenditures, not a limit on significantly large ones). Consequently, as the record now provides the evidence with respect to contributions that *Citizens United* found

[7] Each of the other cases to strike down limits on contributions to independent expenditure groups was a result of the record before it and largely predate the examples in the record here. *Cf. Patrick*, 494 P.3d 53 (issued in 2021 but not addressing Menendez or Lindberg examples). Whether or not the judges "lacked imagination," ECF 16 at 5, is irrelevant. Courts must adjudicate such limits based on "record evidence or legislative findings." *Cruz*, 596 U.S. at 306.

absent with respect to independent expenditures, that should at least give a court pause in expanding the holding of *Citizens United* to this new territory.

Even if that record would not be sufficient to justify a limit on independent expenditures had it been before the *Citizens United* court, it at least demands more than summary dismissal with respect to contributions, which are afforded less First Amendment protection. *See* JA353. The Court has consistently held for more than fifty years that contribution limits, unlike expenditure limits, impose "only a marginal restriction on contributor's ability to engage in free communication." *Buckley*, 424 U.S. at 20*, accord Randall v. Sorrell*, 548 U.S. 230, 241, 246–67 (2006). It is true that a contribution "serves as a general expression of support," *Buckley*, 424 U.S. at 20, but so too does every financial transaction. "[T]he transformation of contributions into political debate involves speech by someone other than the contributor," and thus one may not bootstrap the speaker's protected interest onto the contribution. *Buckley*, 424 U.S. at 21.

Accordingly, the Court has consistently held that limits on contributions are subject to a distinct and "less[] demand[ing]" test than expenditures, *McConnell v. FEC*, 540 U.S. 93, 136 (2003). It "has been plain ... ever since *Buckley* that contribution limits would more readily clear the hurdles before them" than would independent expenditure limits. *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 387 (2000). Yet the district court did not apply that less demanding standard to the

record before it. Rather it uncritically applied the conclusion from *Citizens United* which resulted from a higher, nonapplicable, standard.

For their part, the Appellees merely wave away the inconvenient evidence. They claim there is no evidence that contributions to independent expenditure groups can corrupt because they simply redefine a 'contribution to an independent group' as one that involves no corruption. ECF 61 at 13 (claiming examples of *quid pro quos* involving contributions to independent expenditure groups are irrelevant because they involved "an outright bribe or a coordinated expenditure"). Of course, the fact that *some* contributions to independent expenditure groups may be "outright bribes" is the entire point. If a contribution to a super PAC can involve "an outright bribe," *id.*, then contributions can be restricted to "prevent[] *quid pro quo*" corruption, *Cruz*, 596 U.S. at 305.

Corrupting contributions are also not necessarily the result of a candidate's solicitation or will result in a coordinated communication. *See supra* Part I.A. Rather, officials have agreed to illicit *quid pro quos*, risking serious criminal penalties, even if the contribution is unsolicited or the expenditure will be independent.[8] They do so because they in fact value contributions to independent

[8] If one treats every contribution that is part of a *quid pro quo* as solicited even if the offer is first made by the private party, then a ban on solicitations is simply identical to a ban on bribery, and the Court has recognized such bans are inadequate to protecting the public's interest in combatting *quid pro quos*. *See Buckley*, 424 U.S.

but supportive groups just as they do "contributions to [their] campaign." ECF 61 at 3. Even if the group is formally independent, the fact that it will reliably convert those funds into support—even if that support is split among other candidates, *compare* ECF 61 at 7 (distinguishing multi-candidate PACs versus single candidate PACs)) *with supra* Part I.A.1 (*quid pro quo* involving contribution to multi-candidate super PAC)—makes those contributions valuable. There is no way for the public to determine ahead of time which contributions will result in a *quid pro quo* and which will not. Accordingly, that value creates the risk of a *quid pro quo* that the First Amendment permits the State of Maine to "prevent[]" through contribution limits. *Cruz*, 596 U.S. at 305.

Indeed, Appellees admit this. Even in setting out their maximalist view that no restraint on contributions to independent expenditure groups are permitted, they include a caveat. They recognize the Government may, consistent with the First Amendment, limit contributions to independent expenditure groups from a "[]foreign source." ECF 61 at 2. But in conceding such a limit, Appellees concede that contributions are not the equivalent of speech and raise concerns distinct from speech that the Government may address.

---

at 28 (concluding bribery laws are not "sufficient to achieve the government's compelling interest in preventing quid pro quo corruption and its appearance" because such corruption occurred even while bribery laws existed).

Regardless of whether foreigners may "assert rights under the U.S. Constitution," *Agency for Int'l Dev. v. All. For Open Soc'y Int'l Inc.*, 591 U.S. 430, 434 (2020), "the essence of self-government" undergirds the First Amendment "rights of the citizens of the country to … hear [an alien] explain and seek to defend his views." *Kleindienst v. Mandel*, 408 U.S. 753, 764 (1972); *see also Stanley v. Georgia*, 394 U.S. 557, 564 (1969) ("[T]he Constitution protects the right to receive information and ideas … regardless of their social worth.")); *Lamont v. Postmaster General*, 381 U.S. 301 (1965) (protecting First Amendment rights of American to receive from abroad materials labeled "communist political propaganda"). Were it otherwise, the Government could ban works like Blackstone's *Commentaries on the Laws of England*, Locke's *Treatise on Law*, or de Tocqueville's *Democracy in America*; or Rousseau, Burke, Paine, Hayek, Aristotle, or Plato; or the Bible simply because of their authors' foreign status and location.

Financial support is, however, distinct, even if it is eventually spent to create speech. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd* 565 U.S. 1104 (2012). Like a personal gift, a contribution does not persuade; rather it "influence[s]." *Id.*; *cf. United States v. Martinez*, 994 F.3d 1, 7 (1st Cir. 2021) (gifts given to "influence[]" official action support bribery charge). That is, a contribution does not alter minds by convincing them of the merit of some cause; it appeals to a benefactor's avarice. A pledge to contribute millions of dollars can sway a

candidate's opinion notwithstanding the fact those funds have not yet been spent on speech that could persuade, and that will likely be spent on speech (if ever) unrelated to the matter to be influenced. *See, e.g.*, Kenneth P. Vogel, Sarah Kliff, and Katie Thomas, *Trump Delayed a Medicare Change After Health Company Donations*, N.Y. Times (Aug. 7, 2025), https://www.nytimes.com/2025/08/07/us/politics/trump-medicare-bandages-donors.html (noting Trump changed policy position to align with company that donated $5 million to allied super PAC shortly after contribution). Such funds influence well before they are turned into speech "presented to the electorate" to "persuade voters." *Cf. Citizens United*, 558 U.S. at 360

Accordingly, although a foreigner may attempt to persuade through speech, even on electoral matters, the Court has approved restraints on foreigners' ability to "influence" through their largess. *Id.*; *see also id.* at 289–90 (distinguishing the "right to speak" from "an expressive act" like "[s]pending money to … expressly advocate for or against the election of a political candidate" that "is both speech and participation in democratic self-government"); *id.* at 291 (noting decision does not apply to prohibition on "foreign nationals from engaging in speech other than contributions to candidates and parties, express-advocacy expenditures, and donations to outside groups to be used for contributions to candidates and parties and express-advocacy expenditures").

Of course, the Court has also said, at least with respect to American money, that "influence" is not necessarily the same as "*quid pro quo*" corruption and, to ensure "breathing space" for speech, that states may not seek to combat the former when it does not amount to the latter. *Citizens United*, 558 U.S. at 329, 359–60. But the fact that a *quid* can buy influence means that same *quid* can buy official acts if it is sufficiently large. The logic of Appellees' concession, at least with respect to foreign contributions, that contributions to independent expenditure groups can buy influence that is distinct from persuasion means that, with respect to all contributors, such contributions can buy *quid pro quos* if sufficiently large.

The record here establishes that contributions to independent expenditure groups not only buy influence, but can and have resulted in *quid pro quo* arrangements. That record was not before the Court in *Citizens United* nor any other court to consider limits on such contributions. Even if that record would not have altered the Court's conclusion with respect to direct limits on expenditures, the "logic of *Citizens United*" does not "dictat[e]" a similar result with respect to financial transfers, JA353, that only "marginal[ly] restrict[] [a] contributor's ability to engage in free communication," *Buckley*, 424 U.S. at 20, and is subject to a "less[] demand[ing]" analysis, *McConnell*, 540 U.S. at 136. The court below erred in not applying that analysis and should be reversed.

II. There are No Viable Alternatives to Contribution Limits

As the district court did not analyze Maine's law under the appropriate rubric, it did not examine whether there were adequate alternatives to limiting the contributions to independent expenditure groups to prevent *quid pro quo* corruption. Appellees suggested, however, that the limit would not serve an anti-corruption interest where large contributions to independent expenditure groups are already disclosed, ECF 61 at 5, and suggested the bans on coordination and candidate solicitations would be sufficient alternatives to combat corruption, *id*. Unfortunately, these measures were in place when the above examples of *quid pro quo* corruption occurred and proved inadequate to prevent them.

To start, the promise of full disclosure was one of the grounds *SpeechNow.org* identified as meeting a state's anti-corruption interests at the time it created super PACs. *See SpeechNow.org*, 599 F.3d at 696. 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, and has failed to even reveal the identities of those using contributions to affect a *quid pro quo*.

The record below demonstrates the inadequacy of disclosure rules, showing that about $1.32 billion in contributions to independent expenditure groups on the federal level come from unknown sources in the 2024 election cycle, and about $2.9 billion from unknown sources since 2010. JA72. These sources remained

anonymous despite rules requiring independent expenditure makers to disclose the sources of their funds, including any funds that are routed through intermediaries. *See* 52 U.S.C. §§ 30104(b)(3)(A), (c)(2), 30122. Unfortunately, experience shows these rules are easily evaded.

For example, in the Householder prosecution discussed above, the parties used a 501(c)(4) intermediary to accept "undisclosed and unlimited contributions" sent on to super PACs. *Householder*, 137 F. 4th at 464. The same scheme was used in the Lindberg corruption scheme. *See Lindberg*, 476 F. Supp. 3d at 252. The contributions to the super PACs could be anonymized because these groups, unlike candidates and parties, have accepted corporate contributions since *SpeechNow.org.* That permits contributors to use corporate forms to evade disclosure—something they cannot do with respect to contributions to candidates and parties.

In one case, public reporting showed a super PAC had been funded by a 501(c) entity that had inadvertently disclosed that it was not the original source of more than $1 million in contributions. An investigation then traced funds through a LLC—quickly set up for the purpose of laundering the contribution—to a mysterious Trust, but still failed to locate the original source. *See* FEC, Statement of Reasons of Commissioner Ellen L. Weintraub at 2, MUR 6920, Am. Conservative Union (Apr. 7, 2020) https://www.fec.gov/files/legal/murs/6920/6920_2.pdf. In another case, a source or sources laundered approximately $5 million through a mysterious 501(c)

entity that split the funds and delivered to two additional 501(c) entities, involving groups apparently set up solely to launder these funds, that then each made contributions to related super PACs (as well as pass funds between themselves) in an apparent attempt to avoid triggering reporting obligations by any entity beyond the final recipient super PACs who would not report the original sources. *See* FEC, Gen. Counsel's Report at 3, MUR 8110, Am. Coalition for Conservative Policies (May 3, 2024) https://www.fec.gov/files/legal/murs/8110/8110_56.pdf. One can create infinite corporate forms in short order and dissolve them just as quickly to launder funds to independent expenditure groups and hide the actual source; those efforts are worthwhile because they can hide the source of large contributions.

Although earmarking rules attempt to combat these types of schemes, they are wholly inadequate and easily evadable. For example, one FEC investigation into an independent expenditure group showed the group accepting funds earmarked for the "reelection" of a particular candidate. *See* FEC, Gen. Counsel's Report at 16, MUR 7465, Freedom Vote, Inc. (Sept. 20, 2021), https://www.fec.gov/files/legal/murs/7465/7465_27.pdf. But the group did not report this donor, despite a rule requiring it to report the identity of anyone who contributed to it to influence federal elections. *See* 52 U.S.C. § 30104(c)(2). Rather, the group sent the contributor a boilerplate letter stating that it was the recipient's policy not to accept earmarked contributions, and thus that it would treat the contributor's contribution as an unrestricted gift—

one not subject to disclosure. *See* Gen. Counsel's Report at 16. Of course, the group then spent the funds exactly as requested. *Id.*

Notably, this contribution was only disclosed because the FEC investigated the group because it committed a violation that could be observed by reported data. *See* FEC, Gen. Counsel's Report at 4–9, MUR 7465, Freedom Vote, Inc. (July 1, 2019) https://www.fec.gov/files/legal/murs/7465/7465_15.pdf (recommending opening of investigation based on group's public tax returns and FEC filings). The public has no way to observe, however, independent expenditure group's compliance with earmarking rules.

Nor can the public observe and enforce rules like those that apply to a candidate's participation in the solicitation. *Cf.* ECF 61 at 5 (citing 52 U.S.C. § 30125(e)). As noted, some of the examples above involve bribes paid to super PACs that the candidate did not solicit. *See supra* Part I.A.2, I.A.4. Even assuming these rules would cover situations like the bribery case involving Lindberg and the Puerto Rican governor above, where the candidates did not solicit the contributions, they would be inadequate. The public had no insight into the conversations that surrounded the transfers, and thus no way to monitor the entities for compliance. *See, e.g., Buckley*, 424 U.S. at 28 (fact *quid pro quo* corruption occurs while laws are in effect shows such rules are not "sufficient" to preventing *quid pro quo*). Rather, only observable violations, like comparing the size of contributions reported

on an organization's tax forms against statutory limits, provide an effective means to combat *quid pro quo* corruption.

CONCLUSION

The court below failed to apply the appropriate analysis to Maine's limit on contributions because it erroneously relied on a seeming consensus—one that never considered the record of *quid pro quo* corruption stemming from contributions to independent expenditure groups presented here. That analysis, when the record is properly taken into account, sustains the overwhelming choice of Maine's voters to combat the corruption they have observed.

Date: October 29, 2025

/s/ Stuart McPhail
Stuart McPhail
Citizens for Responsibility
and Ethics in Washington
P.O. Box 14596
Washington, DC 20004
(202) 408-5565
smcphail@citizensforethics.org

Attorneys for Amicus Curiae

(Yep, this page is blank.)

Amici Cuban et al. Brief

Amicus Mark Cuban is an entrepreneur, investor, producer, television personality, and part-owner of the Dallas Mavericks. *Amicus* William von Mueffling is the President of Cantillon Capital Management, an investment firm with $23 billion under management, and a philanthropist who serves on the numerous non-profit boards. *Amicus* Steve Jurvetson is an early-stage venture capitalist with a focus on founder-led, mission-driven companies who has led founding investments in several companies that had successful IPOs and others that were billion-dollar acquisitions. *Amicus* Vin Ryan is chairman of Schooner Capital, LLC, a venture capital firm founded in 1971, and president of the Schooner Foundation, which supports domestic and international organizations in the fields of human rights, social justice, global health equity, education, and conservation. *Amicus* Reid Hoffman is a technology entrepreneur and investor who has co-founded multiple American companies, including LinkedIn and Manas AI.

Their brief was written by the Election Law Clinic at Harvard Law School. You can support their work here.

Nos. 25-1705, 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,

and

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

Defendants-Appellants.

No. 25-1706

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants,

and

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.

On Appeal From the United States District Court
for the District of Maine
No. 1:24-cv-00430-KFW

BRIEF OF MARK CUBAN, WILLIAM VON MUEFFLING, STEVE JURVETSON, VIN RYAN, AND REID HOFFMAN AS *AMICI CURIAE* IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

Samuel Jacob Davis
Ruth Greenwood
ELECTION LAW CLINIC AT
HARVARD LAW SCHOOL
6 Everett Street
Cambridge, MA 02138
617-998-1010
sadavis@law.harvard.edu
rgreenwood@law.harvard.edu

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

STATEMENT OF INTEREST

Amici curiae are prosperous Americans, among the nation's wealthiest. Collectively, they hold diverse political views. They participate in politics in different ways and to varying degrees. Some have contributed to superPACs and will continue to do so, at least while the current campaign finance system remains intact. Some don't contribute to superPACs and never would. What unifies them is their belief that the current system is an unmitigated disaster—for democracy and for voters, principally, but also for wealthy Americans like them who are the supposed beneficiaries of decisions striking down reasonable campaign finance regulations.

Amicus Mark Cuban is an entrepreneur, investor, producer, television personality, and part-owner of the Dallas Mavericks. *Amicus* William von Mueffling is the President of Cantillon Capital Management, an investment firm with $23 billion under management, and a philanthropist who serves on the numerous non-profit boards. *Amicus* Steve Jurvetson is an early-stage venture capitalist with a focus on founder-led, mission-driven companies who has led founding investments in several companies that had successful IPOs and others that were billion-dollar acquisitions. *Amicus* Vin Ryan is chairman of Schooner Capital, LLC, a venture capital firm founded in 1971, and president of the Schooner Foundation, which supports domestic and international organizations in the fields of human rights, social justice, global health equity, education, and conservation. *Amicus* Reid Hoffman is a technology entrepreneur and investor who has co-founded multiple American companies, including LinkedIn and Manas AI.

As very wealthy Americans, *amici* have unique insight into the dynamics that arise in the absence of restrictions on contributions to superPACs and similar independent-expenditure entities. Each has a significant interest in the enforcement of laws that would obviate the need to donate ever-increasing sums to support candidates in today's superPAC arms race. Each sees that

reasonable campaign finance laws like Maine's are necessary to protect the infrastructure of American democracy from the kind of corruption that plagues too many elections. Each understands that, especially in less populated places like Maine, a relatively small amount of outside money can play an outsized role in local races that should be focused on local issues. *Amici* believe this Court will benefit from their presentation of additional data, arguments, and context relevant to the proper disposition of the constitutional issues at the heart of this case.[1]

SUMMARY OF ARGUMENT

Amici urge this Court to reverse the decision below for three reasons. First, regulating superPAC contributions imposes only a minimal burden on free speech rights. SuperPAC contributions give voters little useful information and often express a muddled political message—or effectively none at all. Americans who wish to support candidates in Maine elections will have ample opportunity to do so even if the law at issue in this case is enforced. Second, contrary to what other circuit courts have assumed, allowing unlimited contributions to superPACs does indeed fuel *quid pro quo* corruption and the appearance thereof. In recent years, superPAC contributions have played a central role in numerous criminal prosecutions and have enabled regulated entities to circumvent campaign finance rules aimed at combatting corruption. The problem is especially acute in smaller states like Maine given the relatively low cost of campaigning, particularly in state and local races. Third, allowing unlimited superPAC contributions has corrosive effects on American democracy. It feeds widespread and warranted

[1] Pursuant to Local Rule 29(a)(2), *amici* state that all parties have consented to the filing of this brief. Counsel for *amici*, the Election Law Clinic at Harvard Law School, are the sole authors of this brief. No party, and no other person, contributed money that was intended to fund the preparation or submission of this brief.

cynicism about government, makes politics less responsive to the needs of ordinary voters, and jeopardizes the rules-based legal system on which America's freedom and prosperity depend.

ARGUMENT

I. No one is seriously burdened by reasonable limits on superPAC contributions.

Reasonable limits on superPAC contributions only minimally burden the speech rights of Americans like *amici*. In this context, the rationales for treating candidate contributions as lower-value speech that the Supreme Court articulated in *Buckley v. Valeo*[2] apply with equal force: "(1) a super PAC contribution does not convey the underlying basis for the contributor's support, (2) its transformation into debate requires speech by someone other than the contributor, and (3) limiting it does not prevent the contribution from serving as a symbolic expression of support or restrict the contributor's ability to discuss candidates and issues."[3] Thus, "*Buckley* and its progeny require treating contribution limits as 'marginal speech restrictions subject to relatively complaisant review under the First Amendment, because contributions lie closer to the edges than to the core of political expression.'"[4]

For at least three reasons, superPAC contributions are even lower-value speech than the candidate contributions at issue in *Buckley*. First, an increasing number of superPAC contributions are essentially anonymous: donations are often funneled through shell entities, or "dark money" organizations.[5] These associations—often bearing vague, apolitical names—help

---

[2] 424 U.S. 1 (1976).

[3] *See* Albert W. Alschuler et al., *Why Limits on Contributions to Super PACs Should Survive Citizens United*, 86 Fordham L. Rev. 2299, 2356 (2018).

[4] *Id.* (quoting *Fed. Election Comm'n v. Beaumont*, 539 U.S. 146, 161 (2003)).

[5] *See, e.g.*, Matthew Denes & Madeline Marco Scanlon, *Shining a Light on Firms' Political Connections: The Role of Dark Money*, 14 The Rev. Corp. Fin. Stud. 989 (2025) ("The number of firms reporting dark money contributions has steadily increased since [*Citizens United*], reaching nearly 25 percent of companies in the S&P 500.").

conceal the identities of individual donors.[6] These donations communicate essentially no useful information to voters about the message or ideology the contribution expresses.

Second, some superPACs engage in "bet-hedging," contributing similar amounts to opposing candidates in a single election. These donations don't express support for either candidate, but instead aim to curry favor with the eventual winner.[7] For example, in a recent Georgia election, two large "dark money" nonprofits funded superPACs that "simultaneously supported one state official who resisted [President] Trump's effort to overturn the 2020 election while boosting the challenger to another official Trump unsuccessfully sought to pressure."[8] Bet-hedging is also common in Presidential races.[9] As one pharmaceutical industry observer explained before the 2024 election,

> Despite [Presidential Candidate Kamala] Harris having stated in a speech that she would work to cap prescription drug prices and take on the pharma industry, … pharma, and those tied to it, may want to 'show good faith' toward Harris and get into her good graces should she win the election.
>
> [The observer] suggested that those in the industry may view a Harris win as more likely. 'But I think also they just want to make

[6] *See, e.g.*, Sami Edge, *An opaque PAC spending big on attack ads in Portland congressional race releases much-anticipated donor list. It's blank*, The Oregonian (May 24, 2024), https://www.oregonlive.com/politics/2024/05/an-opaque-pac-spending-big-in-portland-congressional-race-releases-much-anticipated-donor-list-its-blank.html (describing "incendiary and somewhat misleading ads" funded by PAC that allegedly timed donations to evade disclosure requirements)

[7] Samuel Issacharoff & Pamela S. Karlan*, The Hydraulics of Campaign Finance Reform*, 77 Tex. L. Rev. 1705, 1714 (1999) ("[M]any institutional actors […] hedge their bets and contribute on both sides of important elections.").

[8] *See* Matt Corely, *Dark Money Groups Played Both Sides of the Big Lie in Georgia*, Citizens for Resp. & Ethics in Wash. (June 30, 2022), https://www.citizensforethics.org/reports-investigations/crew-investigations/dark-money-groups-played-both-sides-of-the-big-lie-in-georgia/.

[9] *See, e.g.*, Carrie Levine et al., *Presidential campaign donors hedge bets*, The Center for Pub. Integrity (Jul. 16, 2020), https://publicintegrity.org/politics/presidential-campaign-donors-hedge-bets/ ("More than 50 donors crossed party lines when contributing to multiple presidential candidates.").

> sure that they . . . can say, hey, we donated to your campaign, right? We want to work with you,' she said.[10]

Third, superPAC contributions are no more revealing in the aggregate than they are individually. Twelve individuals (six generally supporting Democrats, six generally supporting Republicans) alone contributed an estimated $1 out of every $13 in politics between 2009 and 2020.[11] In the 2020 cycle, 91% of contributions to superPACs affiliated with Congressional leadership on both sides of the aisle came from donors who gave $100,000 or more; 74% came from donors who gave $1 million or more.[12] These and other megadonors, collectively, distribute their spending almost evenly across both major parties.[13] The result is a noisier campaign season, but not one that gives voters useful information about each candidate's base of support.

II. Unlimited superPAC contributions create a serious risk of actual *quid pro quo* corruption and its appearance.

The First Amendment authorizes campaign finance regulations to combat *quid pro quo* corruption—where "large contributions are given to secure a political *quid pro quo*."[14] "The

---

[10] Tyler Patchen, *As Election Nears, Pharma Hedges Campaign Contribution Bets*, BioSpace (Aug, 7, 2024), https://www.biospace.com/policy/as-election-nears-pharma-hedges-campaign-contribution-bets.

[11] *See* Michael Beckel, *Outsized Influence*, Issue One (Apr. 20, 2021), https://issueone.org/articles/outsized-influence-12-political-megadonors-are-responsible-for-1-of-every-13-in-federal-elections-since-citizens-united-and-25-of-all-giving-from-the-top-100-zip-codes-a-total-of-3-4-bil/.

[12] *See* Michael Malbin & Brendan Glavin, *Million-Dollar Donors Fuel Congressional Leadership Super PACs, along with "Dark Money" and "Grey Money"*, OpenSecrets (Aug. 8, 2012), https://www.followthemoney.org/research/institute-reports/cfi-million-dollar-donors-fuel-congressional-leadership-super-p.

[13] *See* Ian Vandewalker, *Megadonors Playing Larger Role in Presidential Race, FEC Data Shows*, The Brennan Center (Nov. 1, 2024), https://www.brennancenter.org/our-work/analysis-opinion/megadonors-playing-larger-role-presidential-race-fec-data-shows ("This election, the biggest super PACs supporting the major party nominees for president have together taken in $865 million from donors who each gave $5 million or more.").

[14] *Buckley*, 424 U.S. at 26.

hallmark of [*quid pro quo*] corruption is … dollars for political favors."[15] Today, direct campaign contributions, which are subject to contribution limits, are no longer the principal channel for this kind of corruption. "Political money, like water, must go somewhere."[16] Donors may not be able to make unlimited contributions to individual candidates, but they can and do choose to funnel money into superPACs.

Courts have assumed *Buckley*'s observation that independent *expenditures* do not, as a matter of law, give rise to corruption also applies to *contributions* to independent expenditure entities like superPACs.[17] But recent experience belies this tautology. Numerous federal prosecutions have involved the exchange of political favors for contributions to aligned superPACs. These include an alleged bribery scheme involving Senator Bob Menendez, who was accused of "using his Senate office to influence contractual and Medicare billing disputes to [the donor's] benefit" in exchange for donations including "$600,000 in super PAC contributions"; another scheme involving a former North Carolina Insurance Commissioner, where an insurance executive allegedly "fund[ed] outside groups that would spend money to benefit [the Commissioner's] re-election" "in exchange for the removal of an insurance commission official who oversaw [the executive's] company"; an alleged RICO scheme where an electric utility allegedly "fund[ed] a super PAC … that paid for advertisements benefiting" the eventual Speaker of the Ohio House of Representatives, who then helped "pass and uphold a billion-dollar nuclear plant bailout" that benefited the utility; and an alleged bribery scheme involving the Governor of Puerto Rico, who was accused of agreeing to replace an oversight

---

[15] *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 497 (1985).

[16] Issacharoff & Karlan, *supra* note 7 at 1708.

[17] *See, e.g.*, *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686, 694 (D.C. Cir. 2010).

official in exchange for an executive's promise to support her politically by "creat[ing] a super PAC supporting her."[18] It does not follow, legally or logically, that contributions to superPACs cannot give rise to *quid pro quo* corruption.

Quid pro quo corruption can take the form of clientelism, whereby "political support (votes, attendance at rallies, money) is exchanged for privileged access to public goods."[19] Individuals and corporations can exploit the system to help them achieve private gains through public means.[20] In prominent cases across the country, individuals and corporations have used superPAC contributions to support elected officials with the power to steer public contracts their way. Executives have donated extensively to superPACs supporting state officials who "directed lucrative state pension investments to their firms," circumventing rules that limit direct contributions to campaigns.[21] A military technology company allegedly used a superPAC to launder donations to support a Senator who had "strongly advocated for" the company to receive an $8 million contract from the U.S. Navy.[22] Researchers have found evidence of "politicians not only rewarding supporters but also punishing opponents" by granting (or withholding)

---

[18] *See* Matt Corley, *These criminal prosecutions show what Citizens United got wrong about corruption*, Citizens for Resp. & Ethics in Wash. (Mar. 19, 2024), https://www.citizensforethics.org/reports-investigations/crew-investigations/these-criminal-prosecutions-show-what-citizens-united-got-wrong-about-corruption/.

[19] Samuel Issacharoff, *The Supreme Court, 2009 Term — Comment: On Political Corruption*, 124 Harv. L. Rev. 118, 127 (2010).

[20] *Id.* at 127 ("The public choice accounts of recent political economy claim that the existence of public power is an occasion for motivated special interests to seek to capture the power of government, not to create public goods, but to realize private gains through subversion of state authority.").

[21] *See* David Sirota & Andrew Perez, *Rick Scott Super PAC Donations Challenge Federal Anti-Corruption Rule*, Cap. & Main (Apr. 19, 2018), https://capitalandmain.com/rick-scott-super-pac-donations-challenge-federal-anti-corruption-rule-0419.

[22] *See* Roger Wieand, *CLC Investigation Leads To Criminal Charges Over A Straw Donor Scheme*, Campaign Legal Center (Feb. 11, 2022), https://campaignlegal.org/update/clc-investigation-leads-criminal-charges-over-straw-donor-scheme.

exemptions to industry-wide tariffs, suggesting "quid pro quo arrangements between politicians and firms."[23]

Another example is the common practice of appointing wealthy donors to prominent public offices. In the last administration, the President's ambassadorial nominees and their spouses had donated over $22 million to party-affiliated committees in the decade prior to their nomination and "millions more to super PACs that can raise and spend unlimited sums to help Senators get elected"—Senators who then vote on whether to confirm the President's ambassadorial appointments.[24] Some appointees lacked substantive foreign policy experience or didn't know the native language of the country they served in.[25] The current Secretary of Education had no teaching experience prior to her appointment,[26] but she had donated tens of millions of dollars to various superPACs supporting the President who appointed her.[27]

Unlimited superPAC contributions also undermine campaign finance regulations aimed at deterring corruption. Take, for example, the apparent use of superPAC contributions to skirt New York City's rule that individuals doing business in the city may not give more than $400 to a citywide candidate.[28] In the 2025 mayoral campaign, one major real estate developer violated

---

[23] *See* Veljko Fotak et al., *The Political Economy of Tariff Exemption Grants*, 60 J. of Fin. & Quantitative Analysis 2678 (Jan. 27, 2025).

[24] *See* Roger G. Winead & Delaney Marsco, *The Donor-To-Ambassador Pipeline: Why America's Key Diplomats Are Often Wealthy Political Donors*, Campaign Legal Center (May 2023), https://campaignlegal.org/sites/default/files/2023-05/DTA_Report_Final.pdf.

[25] *See id.* at Appx. B.

[26] *See* Arthur Jones, *Does the secretary of education need to be an educator?*, ABC News (Dec. 4, 2024), https://abcnews.go.com/Politics/secretary-education-educator/story?id=116386124.

[27] *See* Zach Montague & Ana Swanson, *Trump Chooses Longtime Ally Linda McMahon to Run Education Dept.*, N.Y. Times (Nov. 19, 2024), https://www.nytimes.com/2024/11/19/us/politics/linda-mcmahon-education-secretary-trump.html.

[28] *See* N.Y.C. Admin. Code § 3-703(1-a) (2025).

this rule, initially contributing $2,100 directly to one candidate's campaign.[29] The campaign quickly refunded the developer—but then *one day later* the developer donated $250,000 to a superPAC supporting the candidate.[30] At the federal level, federal contractors have evaded direct contribution bans by donating to superPACs supporting federal candidates.[31] While it's unclear whether these examples yielded *quid pro quos*, they do illustrate ways superPAC contributions can enable "corporations to buy taxpayer-funded contracts with political contributions, and, vice versa, for politicians to reward political contributors with lucrative contracts."[32]

These kinds of exchanges, at minimum, feed "the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions."[33] This is especially true in small states like Maine, where the cost of legislative and statewide races is a fraction of the cost in larger states.[34] Maine is one of a handful of states that helps fund state elections through "clean election" public funding,[35] but relatively modest outside contributions can swamp the public funding system and create dynamics that give rise to corruption. Indeed, Maine has already seen an explosion in superPAC

---

[29] *See* Greg Smith, *Cuomo Super PAC Got $2.7 Million Donors With Business Before the City*, The City (June 9, 2025), https://www.thecity.nyc/2025/06/09/cuomo-super-pac-fix-the-city-donations/.

[30] *Id.*

[31] *See* Maggie Christ, *$760,000 in Illegal Contributions Returned or Reattributed Thanks to Recent CLC Complaints*, Campaign Legal Center (Oct. 30, 2018), https://campaignlegal.org/update/760000-illegal-contributions-returned-or-reattributed-thanks-recent-clc-complaints.

[32] *Id.* (citation modified).

[33] *Buckley*, 424 U.S. at 27.

[34] *Compare California 2023 & 2024 Elections*, OpenSecrets (last accessed Oct. 22, 2025), https://www.followthemoney.org/at-a-glance?y=2024&s=CA, *with Maine 2023 & 2024 Elections*, OpenSecrets (last accessed Oct. 22, 2025), https://www.followthemoney.org/at-a-glance?y=2024&s=ME.

[35] *See* Jonathan Wayne, *Fiscal Status Report – Maine Clean Election Fund* (Jan. 8, 2025), https://legislature.maine.gov/doc/11299 (reporting total Clean Elections Fund payments of $4.5 million in 2024 to 195 candidates).

spending, especially in federal elections.[36] With campaign spending (and spending by dark money groups) increasing every election cycle,[37] it is unsurprising that many Americans now perceive corruption as a defining feature of American politics. Across partisan lines, majorities believe there is too much money in politics, that elected officials are "bought off," and that campaign donors are effectively paying bribes.[38] The absence of limits on superPAC contributions feeds this widespread and warranted belief.

III. Allowing states to enforce reasonable limits on superPAC contributions will make government more responsive to ordinary voters.

As the Supreme Court stated in a major campaign finance opinion, the concept of responsiveness is "at the heart of the democratic process."[39] When individuals vote for or contribute to a candidate who shares their beliefs, they reasonably expect that the candidate will be responsive to their concerns.[40] Yet our current system ensures that candidates are largely unresponsive to their voters. Instead, candidates often focus their time and energy on issues that the general public does not care about—and take positions their constituents do not generally

---

[36] *See* Anna Massoglia, *Outside spending on 2024 elections shatters records, fueled by billion-dollar 'dark money' infusion*, OpenSecrets (Nov. 5, 2024), https://www.opensecrets.org/news/2024/11/outside-spending-on-2024-elections-shatters-records-fueled-by-billion-dollar-dark-money-infusion/.

[37] *See* Anna Massoglia, *Dark Money Hit a Record High of $1.9 Billion in 2024 Federal Races*, The Brennan Center (May 7, 2025), https://www.brennancenter.org/our-work/research-reports/dark-money-hit-record-high-19-billion-2024-federal-races.

[38] *See* David M. Primo & Jeffrey D. Milyo, *Campaign Finance and American Democracy: What the Public Really Thinks and Why It Matters* 8–9 (Univ. of Chi. Press 2020) (describing survey data showing that Americans across political lines believe money is a malignant force in politics); *see also* Katherine Haenschen et al., *The normatively troubling impact of attitudes toward the role of money in politics on external political efficacy*, 105(3) Soc. Sci. Quarterly 666 (2024).

[39] *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 227 (2014).

[40] *Id.* at 192.

support—to align with the demands of donors.[41] These dynamics hold true whether donations come in the form of direct campaign contributions or donations to aligned superPACs.[42]

Contributions shape how elected officials spend their time and what policies they enact. Members of Congress are three times more likely to meet with donors than with constituents.[43] Legislators who receive a larger share of donations from outside their districts—donations that national superPACs can help funnel into state and local races—vote in ways that are less ideologically aligned with their constituents' preferences.[44] On the whole, economic elites and organized business interests exert substantial influence on U.S. policy outcomes, while average citizens and mass-based interest groups exert little or none.[45]

A system in which elected officials are unresponsive to the needs of voters undermines democratic accountability—and, in the long run, economic vibrancy. Wealth inequality is not inherently suspect. Across the world, strong democracies persist despite significant

---

[41] *See* Nicholas O. Stephanopoulos, *Aligning Election Law* 252 (2024); Michael J. Barber et al., *Ideologically Sophisticated Donors: Which Candidates Do Individual Contributors Finance?* 61 Am. J. Pol. Sci. 271, 285 (2017) (finding it "plausible that congressional members could be increasingly responsive to out-of-state donors whose preferences do not align with those of in-state voters").

[42] *See* Anna Harvey & Taylor Mattia, *Does Money Have a Conservative Bias? Estimating the Causal Impact of* Citizens United *on State Legislative Preferences*, 191 Pub. Choice 417, 427-29 (2019).

[43] *See* Joshua Kalla & David Broockman, *Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment*, 60 Am. J. Pol. Sci. 545, 553 (2016) ("Members of Congress were more than three times as likely to meet with individuals when their offices were informed the attendees were donors, an over 200% increase in access.").

[44] *See* Anne E. Baker, *Getting Short-Changed? The Impact of Outside Money on District Representation*, 97 Soc. Sci. Quarterly 1096, 1105 (2016) ("[S]harp declines in members' responsiveness with minimal amounts of outside funds coupled with ideologically polarized positioning by dependent members suggest non-constituent donors have more influence than constituents over House members' behavior and non-constituent donors are more ideologically extreme than voters.").

[45] Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 Persp. on Pol. 564, 565 (2014).

concentrations of wealth.[46] However, where wealth is dependent on "political privilege"—and wealth accumulation is contingent on staying in the government's favor—the free market suffers, ultimately hindering investment and efficient production.[47] *Amici* have worked hard to amass their fortunes and benefitted from the rules-based legal system that undergirds America's democracy and world-leading economy. The current campaign finance system jeopardizes both.

CONCLUSION

Because of their wealth, *amici* have the capacity to be extraordinarily influential in America's political system. But *amici* didn't ask for this power. And they don't want it. Maine's "Act to Limit Contributions to Political Action Committees That Make Independent Expenditures," 21-A M.R.S. §§ 1015(2-C), 1015(2-D), minimally burdens free speech rights, serves the state's interest in deterring *quid pro* corruption and the appearance thereof, and promotes the kind of responsiveness to the needs of voters that is at the heart of America's democracy. *Amici* urge this Court to reverse the decision below.

Dated: October 29, 2025

Respectfully submitted,

/s/ *Samuel Jacob Davis*
Samuel Jacob Davis
Ruth Greenwood

---

[46] Sutirtha Bagchi, *Billionaires & Democracy*, Milken Inst. Rev. (Jan. 23, 2024), https://www.milkenreview.org/articles/billionaires-and-democracy.

[47] *Id.* ("By contrast, in countries where great wealth is dependent on political privilege – everything from monopoly rights to guaranteed government contracts to exclusive rights to import key goods – democracy can be an intolerable risk to rich individuals."); *see also* Nikita Zakharov, *Does corruption hinder investment? Evidence from Russian Regions*, 56 Eur. J. Pol. Econ. 39, 55 (2019) (finding that corruption in Russia leads to under-investment in fixed capital); Klaus Gründler & Niklas Potrafke, *Corruption and Economic Growth: New Empirical Evidence*, 60 Eur. J. Pol. Econ. 1, 10 (2019) (showing that corruption is negatively associated with economic growth).

ELECTION LAW CLINIC AT
HARVARD LAW SCHOOL
6 Everett Street
Cambridge, MA 02138
617-998-1010
rgreenwood@law.harvard.edu
sadavis@law.harvard.edu

Counsel for Amici Curiae

Amici Dēmos and Common Cause

Dēmos, founded in 2000, is a nonpartisan public policy organization committed to creating a just, inclusive, multiracial democracy. Its campaign finance work focuses on dismantling the outsized political power of the wealthy and ensuring that every voice carries equal weight in the political process. Through legal advocacy, research, and movement partnerships, Dēmos advances reforms such as small-donor public financing, stronger campaign finance rules, and limits on corporate influence. The organization also links economic and racial equity to democratic reform, emphasizing that fair representation requires both political and economic inclusion.

Common Cause, established in 1970, is one of the oldest and most influential nonpartisan organizations advocating for open, accountable government and a democracy driven by citizens—not money. With chapters across the United States, Common Cause has been at the forefront of campaign finance reform for over five decades, championing measures like public financing of elections, strict disclosure laws, and limits on corporate and special interest spending. Combining grassroots organizing, policy advocacy, and litigation, Common Cause empowers people to hold power accountable and protect the core principle that government should serve the public good, not private wealth.

You can donate to Dēmos here and to Common Cause here.

Dēmos

Common Cause

United States Court of Appeals

for the

First Circuit

Nos. 25-1705, 25-1706

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

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE, NO. 1:24-CV-00430-KFW (KAREN FRINK WOLF, J.)

BRIEF FOR *AMICI CURIAE* DĒMOS AND COMMON CAUSE IN SUPPORT OF DEFENDANTS-APPELLANTS

PHI NGUYEN
NEDA KHOSHKHOO
ANGELO ANCHETA
DĒMOS
368 Ninth Avenue, 6th Floor, Suite 11-105
New York, New York 10001
(212) 633-1405

OMAR H. NOURELDIN
COMMON CAUSE
805 15th Street NW, Suite 800
Washington, DC 20005
(202) 386-8571

JONAH M. KNOBLER
Counsel of Record
GREGORY L. DISKANT
ANDREW I. HADDAD
GEORGE E. HARRIS
DAVID M. EPSTEIN
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, New York 10036
(212) 336-2331

Attorneys for Amici Curiae

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.

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants,

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.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Other Authorities

INTERESTS OF *AMICI CURIAE*[1]

Amicus curiae Dēmos is a non-profit public policy organization working to build a just, inclusive, multiracial democracy and economy. For nearly 25 years, Dēmos has worked to create policy solutions that advance democratic and economic opportunities for all Americans, especially Black and brown communities that often bear the brunt of political systems skewed by unlimited money in politics. Dēmos is concerned that unlimited campaign contributions are damaging our democracy.

Amicus curiae Common Cause is a nonpartisan, grassroots organization dedicated to fair elections, due process, and ensuring that government at all levels is more democratic, open, and responsive to the interests of the people. Founded by John Gardner in 1970 as a "citizens' lobby," Common Cause has over 1.5 million members nationwide and local organizations in 23 states. Common Cause has long supported efforts to protect democracy and limit the corrosive influence of money in politics.

---

[1] All parties have consented to the filing of this amicus brief. No party's counsel in this case authored this brief in whole or in part. No party or party's counsel contributed any money intended to fund preparing or submitting this brief. No person, other than *amici*, their members, or their counsel contributed money that was intended to fund preparing or submitting this brief.

SUMMARY OF ARGUMENT

The district court's conclusion, following that of the D.C. Circuit and other courts of appeals, is based on a false premise: because limits on *independent expenditures* by political action committees ("PACs") violate the First Amendment, restrictions on *contributions* to PACs that make independent expenditures ("super PACs") must also violate the First Amendment.

This purported syllogism is a *non sequitur*; its conclusion does not follow from its premise. Rather, this reasoning contradicts Supreme Court campaign finance decisions beginning with *Buckley v. Valeo*, 424 U.S. 1 (1976), which sharply distinguish between contributions and expenditures, a distinction the D.C. Circuit failed to recognize. Contributions have less expressive value and more potential for *quid pro quo* corruption than expenditures, so limits on contributions are subject to less exacting scrutiny than limits on expenditures. The Supreme Court has repeatedly upheld limits on contributions to candidates, political parties, and PACs, while simultaneously striking down limits on expenditures by those same groups.

The principles distinguishing contributions from expenditures apply equally to super PAC contributions. As in *Buckley*, super PAC contributions have less expressive value than super PAC expenditures. Meanwhile, although super PAC expenditures must be independent of the candidate, nothing makes super PAC

contributions independent. As in *Buckley*, such contributions have the potential for *quid pro quo* corruption, in fact and in appearance. *Citizens United*'s ruling invalidating *expenditure* limits for super PACs does not support invalidating *contribution* limits for super PACs.

Besides conflicting with Supreme Court precedent, the district court's conclusion that contributions to super PACs cannot lead to corruption is simply false. Since the D.C. Circuit struck down limits on super PAC contributions in 2010, super PAC contributions have exploded, leading to many examples of actual and apparent corruption, all based on massive super PAC contributions. As just one example, former New Jersey Senator Robert Menendez was charged with corruption based on a $600,000 contribution to his super PAC. The public is sickened by this, as repeated polls demonstrate. In the real world, unlimited super PAC contributions create a risk of *quid pro quo* corruption and its appearance. Legislatures are entitled to place reasonable limits on such contributions consistent with the First Amendment.

ARGUMENT

I. 1972: Unchecked Contributions Distort Democracy

This story begins with the rampant corruption that prompted the 1974 amendments to the Federal Election Campaign Act ("FECA"), which the Supreme Court addressed in *Buckley v. Valeo*. The same problem exists today, but—thanks

to unlimited contributions to super PACs—its scale dwarfs the many scandals known as Watergate.

During the Watergate investigation, the Senate's Select Committee on Presidential Campaign Activities and the Watergate Special Prosecution Force found widespread illegal corporate and individual campaign contributions to President Nixon's 1972 reelection effort. Corporate executives testified that they felt campaign contributions "would get us in the door" with elected officials and regulators and that they contributed out of "fear of a competitive disadvantage that might result" if their competitors contributed and they did not. *Buckley v. Valeo*, 519 F.2d 821, 839 n.37 (D.C. Cir. 1975) (citation and internal quotation marks omitted), *aff'd in part and vacated in part*, 424 U.S. 1 (1976).

A. ITT Promised a $400,000 Contribution to Favorably Settle an Antitrust Case

In one shocking example, the International Telephone and Telegraph Corporation ("ITT") pledged a $400,000 donation to pay for the 1972 Republican National Convention in San Diego in exchange for the Department of Justice settling a longstanding antitrust suit.[2] This became public when the Washington

[2] *See* E.W. Kenworthy, *The Extraordinary I.T.T. Affair*, N.Y. Times, Dec. 16, 1973; Ciara Torres-Spelliscy, *The I.T.T. Affair and Why Public Financing Matters for Political Conventions*, Brennan Cnt. Just., (Mar. 19, 2014), https://www.brennancenter.org/our-work/analysis-opinion/itt-affair-and-why-public-financing-matters-political-conventions.

Post published details of a secret memo from an ITT lobbyist describing the deal.[3] The memo reported that President Nixon had told the Attorney General to "see that things are worked out fairly," and that the Attorney General "is definitely helping us, but cannot let it be known." The memo dramatically ended, "please destroy this, huh?"[4]

When the memo became public, it caused a scandal and ITT immediately began a coverup. It shredded the files of the memo's author and reduced its pledge to $25,000. Meanwhile, the RNC moved the convention from San Diego to Miami. *See supra* note 2. When Nixon's White House tapes were released years later, however, the corrupt scheme was confirmed. Just after ITT made its pledge, Nixon told Deputy Attorney General Richard Kleindienst: "The ITT thing—stay the hell out of it. Is that clear? That's an order … I do not want . . . to run around prosecuting people, raising hell about conglomerates, stirring things up." Kleindienst responded: "Yeah, I understand that." *Id.* This scandal led Kleindienst

[3]Jack Anderson, *Secret Memo Bares Mitchell-ITT Move*, Washington Post, Feb. 29, 1972.

[4] *Id.*

to resign and, later, to plead guilty to failing to testify accurately before Congress about the affair.[5]

B. The Dairy Industry Contributed $2 Million To Obtain Increased Price Supports

In another egregious example, dairy industry representatives pledged $2 million to Nixon's campaign "to gain a meeting with White House officials on price supports." *Buckley*, 519 F.2d, at 839 n.36 (citing Final Report of the Senate Select Comm. on Presidential Campaign Activities, S. Rep. No. 93-981, 93d Cong., 2d Sess. (1974) ("Senate Report") at 581, 592-93). Nixon was explicitly notified of the pledge. *Id.* (citing Senate Report at 612-14, 616). To evade reporting requirements, the dairy corporations broke down "the $2 million into numerous smaller contributions to hundreds of committees in various states which could then hold the money for the President's reelection campaign." *Id.* (citing Senate Report at 615).

The payoff worked. In March 1971, Nixon met with dairy industry representatives and increased price supports, overruling his Secretary of Agriculture. *Id.* (citing Senate Report at 648). Just before Nixon's decision was announced, dairy representatives were told by the White House that Nixon was

---

[5] *See* David Stout, *Richard G. Kleindienst, Figure in Watergate Era, Dies at 76*, N.Y. Times, Feb. 4, 2000.

likely to grant the requested increase. They were asked to reaffirm their pledge, which they did. *Id.* The appearance of a presidential bribe and the evasion of reporting laws stunned the public.

C. Ambassadorships Were For Sale

Nixon's fundraisers also commonly offered ambassadorships in exchange for large contributions. As Vincent de Roulet, a contributor later named ambassador to Jamaica explained, "there were only three or four ways to get [a nomination], one of which was money." Senate Report at 501. Thirty-one ambassadors appointed by Nixon made campaign contributions totaling $1.8 million. *Id*. at 493-94.

In one notorious example, Herbert Kalmbach, Nixon's personal lawyer, pleaded guilty to promising an ambassadorship to J. Fife Symington in return for a $100,000 donation. Kalmbach testified that Symington wanted a "major post . . . particularly talking about a European post." Senate Report at 497. Kalmbach then asked him to donate $100,000. Symington agreed, but only if he was "certain that [he would] receive an appointment to a European post." *Id.*

Kalmbach said he could not promise the appointment and Symington demanded assurance from Bob Haldeman, Nixon's Chief of Staff. Kalmbach then received a promise from a Haldeman aide that "[y]ou can go ahead on that." *Id.* at 498. Kalmbach "wrote all this out and gave [Symington] a slip of paper"

memorializing the conversation. *Id.* Symington then gave Kalmbach $50,000 as a first payment. *Id.*

A few months later, another White House aide told Kalmbach, "We didn't give [Symington] a commitment. We can't do it." Kalmbach was aghast: he replied, "I don't care how you slice it, you did, and it came right out of [Haldeman's] office. And as far as I'm concerned, it's a matter of honor and we live up to what we say we will do." *Id.* at 498-99. This was honor among thieves. For his role in the bribery scheme, Kalmbach was sentenced to 18 months imprisonment.[6]

D. Congress Strengthened the Federal Election Campaign Act to Address This Rampant Corruption

Public awareness of this shocking corruption "led to a call for comprehensive corrective measures." *Buckley*, 519 F.2d at 837. In 1974, Congress amended FECA to strengthen its restrictions on political contributions and expenditures. Congress was concerned that "[t]he unchecked rise in campaign expenditures, coupled with the absence of limitations on contributions and expenditures, has increased the dependence of candidates on special interest groups and large contributors." H.R. Rep. No. 93-1239, 93d Cong., 2d Sess., at 3 (1974).

[6] *See* Sam Roberts, *Herbert Kalmbach, Who Figured in Watergate Payoffs, Dies at 95*, N.Y. Times, Sep. 29, 2017.

In enacting the 1974 amendments, legislators from both parties agreed that contribution limits were needed to dispel the reality and the appearance of corruption. For example, Senator Hubert Humphrey, a Democrat, stated, "Those of us who run for office can profess that the campaign contributions we receive do not in any way control our votes, but I venture to say that not many believe it." 120 Cong. Rec. S 4553 (daily ed. March 27, 1974). And Senator Charles Mathias, a Republican, noted that the public's "feeling that big contributors gain special treatment produces a reaction that the average American has no significant role in the political process." *Buckley*, 519 F.2d at 838. That remains the public perception today, as super PAC contributions have exploded. *See infra* section IV.

II. The Supreme Court Draws a Distinction Between Contributions and Expenditures[7]

The FECA amendments were quickly challenged on First Amendment grounds. This led to *Buckley v. Valeo*, in which the Supreme Court sharply distinguished between contribution limits and expenditure limits. That distinction has been reaffirmed many times and remains the law today: contribution limits are subject to less rigorous First Amendment scrutiny than expenditure limits because

[7] For Sections II and III of this brief, we are indebted to Albert Alschuler, Laurence Tribe, Norman Eisen, and Richard Painter, *Why Limits on Contributions to Super PACs Should Survive Citizens United*, 86 Fordham L. Rev. 2299 (2018).

they only marginally restrict speech and are directly targeted against actual and apparent corruption.

A. Contribution Limits Only Marginally Restrict Free Speech and Address the Risks of Actual and Apparent Corruption

1. *Buckley*

The plaintiffs in *Buckley* argued that both FECA's contribution and expenditure limits violated the First Amendment. But the Supreme Court disagreed. It upheld FECA's limits on contributions, while at the same time striking down the limits on expenditures by candidates and third parties. The Court reasoned, "[b]y contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication." 424 U.S. at 21.

This was so for three reasons. First, "[a] contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support." *Id.* Second, limiting an individual's contribution "permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues." *Id.* Third, and perhaps most fundamentally, "the transformation of contributions into political debate involves speech by someone other than the contributor." *Id.*

Because contribution limits only marginally restrict free speech, the Court concluded that "[i]t is unnecessary to look beyond the Act's primary purpose to limit the actuality and appearance of corruption resulting from large individual financial contributions in order to find a constitutionally sufficient justification for the $1,000 contribution limitation." *Id.* at 26. In so ruling, the Court rejected the argument that bribery laws and disclosure requirements would suffice to prevent corruption. In the Court's view, bribery laws "deal with only the most blatant and specific attempts of those with money to influence governmental action," and are insufficient to fully address the risks of actual and apparent corruption. *Id.* at 28. Moreover, "Congress was surely entitled to conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed." *Id.*

2. Post-*Buckley* Decisions Reaffirm That Contribution Limits Only Marginally Restrict Free Speech Rights

Five years after *Buckley*, in *California Medical Ass'n v. FEC,* the Court upheld FECA's limits on contributions to "traditional PACs"—i.e., PACs that contribute money to multiple candidates. 453 U.S. 182 (1981). The plurality opinion reasoned that contributions to PACs are "speech by proxy … that is not the sort of political advocacy that this Court in *Buckley* found entitled to full First

Amendment protection," and that there was no First Amendment difference between limiting contributions to a single campaign and limiting contributions to multi-candidate PACs. *Id.* at 196-97. Additionally, the limit on PAC contributions "further[ed] the governmental interest in preventing the actual or apparent corruption of the political process" by "prevent[ing] circumvention of" the limitations on contributions to individual candidates. *Id.* at 197-98. Without limits on PAC contributions, limits on contributions to candidates "could be easily evaded." *Id.* at 198.

Later decisions continued to affirm the distinctions drawn in *Buckley*. For instance, in *Nixon v. Shrink Missouri Government PAC*, the Court held that *Buckley*'s "line between expenditures and contributions" applies in the context of state campaign finance laws, like Maine's contribution limit at issue here. 528 U.S. 377, 386 (2000). The Court also reaffirmed *Buckley*'s reasoning that, unlike expenditure limits, "limiting contributions le[aves] communication significantly unimpaired." *Id.* at 387. And in 2003, the Court observed that limits on PAC contributions were proper even if the PACs used the funds to "engage in express advocacy and numerous other *uncoordinated* expenditures"—i.e., exactly what super PACs do today. *McConnell v. FEC*, 540 U.S. 93, 154 n.48 (2003), *overruled in part on other grounds by Citizens United v. FEC*, 558 U.S. 310 (2010) (citation omitted; emphasis added).

As has been true since *Buckley*, contribution limits pass constitutional muster so long as they are "closely drawn" to match a "sufficiently important interest." *FEC v. Beaumont*, 539 U.S. 146, 158-59 (2003). This includes protecting against the danger of actual and apparent *quid pro quo* corruption and the circumvention of individual contribution limits.

B. Expenditure Limits Are Subject to More Exacting Scrutiny than Contribution Limits

Buckley's reasons for striking down FECA's expenditure limits are also instructive. The Court explained that, unlike contribution limits, expenditure restrictions "necessarily reduce[] the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached." 424 U.S. at 19. With respect to limits on independent expenditures by groups advocating for a particular candidate—what are now called super PACs—the Court stated that they "do[] not presently appear to pose dangers of real or apparent corruption comparable to those identified with large campaign contributions." *Id.* at 46. This was because "[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent … alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Id.*

The Court reaffirmed this thinking in *F.E.C. v. Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 441 (2001) ("*Colorado II*") (citations omitted),

which concluded that "limits on political expenditures deserve closer scrutiny than restrictions on political contributions" because they "curb more expressive and associational activity" and they are less "justified by a link to political corruption." Since *Buckley*, the Supreme Court has struck down every single expenditure limit that it has considered, but it has upheld most contribution limits to come before it.

C. *Citizens United* Reaffirmed *Buckley*'s Distinction Between Contributions and Expenditures

In *Citizens United*, the Court struck down a federal ban on independent corporate *expenditures* for electioneering communications. 558 U.S. at 365-66. The Court reiterated *Buckley*'s explanation that independent expenditures are less prone to corruption than contributions. *Id.* at 357. Thus, the Court concluded that the government's "anticorruption interest" in limiting independent expenditures "is not sufficient to displace the speech here in question." *Id.* at 357. This is because limits on expenditures are subject to strict scrutiny: they must "further a compelling interest" and be "narrowly tailored to achieve that interest." *Citizens United*, 558 U.S. 310, 340 (2010) (quoting *FEC v. Wis. Right to Life*, 551 U.S. 449, 464 (2007)).

Critically, the Court did not address, much less invalidate, any contribution limits. To the contrary, the Court recognized that "contribution limits … have been an accepted means to prevent *quid pro quo* corruption." *Id.* at 359. The Court emphasized that it was not asked to "reconsider whether contribution limits

should be subjected to rigorous First Amendment scrutiny," and that it was not doing so. 558 U.S. at 359.

Since then, the Court has twice expressly declined "to revisit *Buckley*'s distinction" between contributions and expenditures. *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 199 (2014); see also *Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 305 (2022).

III. The Logic of *Citizens United* Does Not Support Striking Down Limits on Contributions to Super PACs

Shortly after *Citizens United*, the D.C. Circuit held that *Citizens United* implicitly forbids limits on contributions to super PACs. The court's reasoning was limited to a one-sentence *ipse dixit*: "because *Citizens United* holds that independent *expenditures* do not corrupt or give the appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting *contributions* to independent expenditure-only organizations." *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686, 696 (D.C. Cir. 2010) (emphasis added).

Other courts of appeals have followed the D.C. Circuit's lead. But none of these courts has engaged in any level of analysis other than stating, typically in a single sentence, that because expenditures by PACs cannot be regulated, the government can have no anti-corruption interest in limiting contributions—and so they, too, cannot be limited. *Wisc. Right to Life State Pol. Action Comm. v. Barland*, 664 F.3d 139, 154 (7th Cir. 2011); *Texans for Free Enter. v. Tex. Ethics*

Comm'n, 732 F.3d 535, 537-38 (5th Cir. 2013) *Republican Party of N.M. v. King*, 741 F.3d 1089, 1103 (10th Cir. 2013); *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 487 (2d Cir. 2013); *Alaska Pub. Offices Comm'n v. Patrick*, 494 P.3d 53, 58 (Alaska 2021).

The district court in this case took the same approach. "Given that contributions to independent expenditures are one step further removed from the candidate, the logic of *Citizens United* dictates that the danger of corruption is smaller still." Op. at 8. Most respectfully, this analysis makes no sense. It is certainly not dictated by *Citizens United* or its logic and, as shown in Section IV, it is contrary to the facts. The flaw in this purported syllogism is that, while super PAC expenditures are independent from political campaigns, contributions to super PACs are not. Just as in the 1970s, a contribution to a super PAC can be given for a corrupt purpose—a *quid*—upon a candidate's agreement to perform a specified act—a *quo*. That makes them no different than the contributions at issue in *Buckley.* Not surprisingly, there are many instances of corrupt contributions to super PACs in the last decade.

A. The First Amendment Interest in Contributions to Super PACs is Marginal

As in *Buckley*, the speech component in a super PAC contribution is marginal, making the government's interest in regulating such contributions legitimate and greater than its interest in limiting independent expenditures.

Buckley gave three reasons, equally applicable to super PACs, why contributions to candidates have less expressive value than expenditures. First, "the transformation of contributions into political debate involves speech by someone other than the contributor," *Buckley*, 424 U.S. at 21. Likewise, transforming a contribution to a super PAC into political debate also involves speech by someone other than the contributor.

Second, a "contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support." *Id*. Equally, a contribution to a super PAC does not convey the underlying basis for the contributor's support.

Third, limiting the amount of an individual's contribution "permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues." *Id.* Again, contributions to super PACs are no different. A super PAC contribution does not limit a contributor's freedom to discuss candidates and issues.

B. The Risk of Corruption From Unlimited Contributions to Super PACs is Much Greater Than the Risk of Corruption From Unlimited Independent Expenditures

The key flaw in the district court's analysis is its failure to recognize the difference between *independent* expenditures by super PACs and contributions to super PACs that need not be independent and that are largely unregulated.

1. The Risk of Corruption from Super PAC Contributions

Buckley says it is the absence of coordination of independent expenditures with a candidate that reduces the risk of corruption. 424 U.S. at 46. According to FEC rules, for an expenditure to be independent, candidates may not request, suggest, assent to, be "materially involved" in, or engage in "one or more substantial discussions" with a PAC concerning its expenditures. 11 C.F.R. § 109.21(d) (2018).

There are no such independence rules for *contributions* to super PACs. A donor interested in acquiring influence over a candidate by making a multimillion-dollar contribution to a super PAC may tell the candidate about the planned donation, report when the contribution is made, discuss with the candidate how they would like the super PAC to spend those funds—and explicitly or implicitly demand something in return for the contribution. *See* Note, *Working Together for an Independent Expenditure*, 128 Harv. L. Rev. 1478, 1480, 1485-86 (2015).

This is the true, and unsavory, reality that the district court overlooked in observing that contributions to a super PAC are one step removed from its expenditures. And, of course, with the emergence of super PACs dedicated to the election of a single candidate, no discussion between candidate and contributor is even necessary for there to be an appearance of corruption, so long as the candidate is told about the contribution.

There are some limits to this, but they do not meaningfully reduce the risk of *quid pro quo* corruption. One limit is that, per the FEC, the candidate cannot expressly request that a donor make a contribution to a super PAC that is greater than $5,000.[8] But this is a joke. FEC rules make clear that a candidate may attend, speak at, and be a featured guest at super PAC fundraisers at which "unlimited" contributions are solicited, so long as the candidate is not the one making the solicitation.[9] The candidate may literally stand smiling and nodding next to the fund manager as the manager requests guests contribute millions of dollars to support the candidate. And nothing stops a donor so solicited from telling the candidate about the donation—and what is expected in return.

Another meaningless limit is that the candidate cannot direct a donor to act as their agent and convey their wishes to the super PAC about how super PAC funds should be spent. *See* 11 C.F.R. §§ 109.20(a)-.21(a) (2018). But when the super PAC is dedicated to a single candidate, as is common today, the direction of the funds is predetermined when they are given—they are spent on behalf of the candidate.

---

[8] *See* FEC, Advisory Opinion 2011-12 (Majority PAC and House Majority PAC) (June 30, 2011), http://saos.fec.gov/saos/searchao?AONUMBER=2011-12 (enter "2011-12" in "Go to AO number" field and press "Search").

[9] *Id.* at 4-5.

In short, the rules governing super PAC contributions are so limited that staggering sums can be directed to a super PAC with the acquiescence of the candidate, and enforcement is so limited that there is no reason to believe that even these easily circumvented rules are followed. Corrupt bargains are not reached in public, and the very structure of super PAC contributions invites the public to assume they are corrupt. This creates the same opportunities for *quid pro quo* corruption—and the appearance of corruption—as direct contributions to candidates. Super PAC contributions should be restricted under the reasoning of *Buckley*, consistent with the reasoning of *Citizens United*.

2. The Risk of Circumvention of Candidate Contribution Limits

Moreover, also as in *Buckley*, super PAC donations can be used to circumvent limits on direct contributions to candidates, which is the reason that the Supreme Court upheld restrictions on contributions to traditional PACs. *See Cal. Med. Ass'n*, 453 U.S. at 197-98 (plurality opinion). Unlimited contributions to super PACs allow donors to evade the base limits on contributions to candidates. A donor may be limited to a $5,000 direct contribution to a candidate. 2 U.S.C. § 441i(e)(1)(A); 11 CFR § 300.61. But that same donor can circumvent that (meaningless) limit by giving millions of dollars to a super PAC dedicated to that candidate's election, as FEC rules all but invite. *See supra* note 8.

The Supreme Court has consistently held that measures that prevent circumvention of "base" contribution limits are justified by the same anti-corruption interest as the base limits themselves. *See McConnell*, 540 U.S. at 182 (upholding solicitation restrictions as "valid anticircumvention measures"); *Beaumont*, 539 U.S. at 160 n.7 (addressing "the Government's interest in combating circumvention of the campaign finance laws"); *Cal. Med. Ass'n*, 453 U.S. at 197-98 (holding limit on PAC contributions "is an appropriate means … to protect the integrity of the contribution restrictions upheld … in *Buckley*"); *Buckley,* 424 U.S. at 35-36 (upholding restrictions that "serve the permissible purpose of preventing individuals from evading the applicable contribution limitations").

The Court has repeatedly reaffirmed this principle. In *Colorado II,* for example, the Court upheld limits on donations to political parties while recognizing that Congress enacted these limits out of a "concern[] with circumvention of contribution limits using parties as conduits." 533 U.S. at 457 n.19. More recently, in *McCutcheon*, the Court noted the importance of "statutory safeguards against circumvention" of base contribution limits, reaffirming that the First Amendment permits legislation designed to prevent such circumvention. 572 U.S. at 200. This is another, independent justification for Maine's decision to

restrict contributions to super PACs under the reasoning of *Buckley* and its progeny, a justification not foreclosed by *Citizens United*.

IV. 2025: Unlimited Contributions Distort Democracy Again

Our electoral system is in a time of crisis that strongly echoes the scandals of Watergate. The problem is bipartisan—both parties rely heavily on super PACs to receive massive, unlimited contributions. And corruption, or at least its appearance, is rampant.

Since 2010, when the D.C. Circuit struck down federal limits on contributions to super PACs, contributions have skyrocketed. In the 2024 elections, super PACs raised $5.1 *billion*. And $1.3 *billion* of this came from "dark money" sources—nonprofits and shell companies that do not disclose their donors. Compare this to the 2010 election, when dark money groups donated only $7 *million* to super PACs—less than 1% of the 2024 amount.[10]

This explosion of super PAC contributions—to both parties—has been driven by a small group of extraordinarily wealthy individuals. More than 75% of the funding to presidential super PACs in 2024 came from donors who gave $5 million or more; this percentage increased dramatically for both parties from 2020

[10]Anna Massoglia, *Dark Money Hit a Record High of $1.9 Billion in 2024 Federal Races,* Brennan Cnt. Just. (May 7, 2025) https://www.brennancenter.org/our-work/research-reports/dark-money-hit-record-high-19-billion-2024-federal-race.

to 2024.[11] And in 2024, multiple donors contributed $50 million or more to a Democratic or Republican super PAC.[12]

While the problem of excessive giving is bipartisan, to the winner go the spoils. Billionaire donors to super PACs that supported President Trump's campaign now hold many cabinet offices.[13] This has occurred despite President Trump's previous recognition that super PACs are "[v]ery corrupt," and give their donors "total control of the candidates."[14]

Given the lessons of 1972, it should not be a surprise that this explosion of unlimited super PAC contributions has been accompanied by a rise in *quid pro quo* corruption and its appearance.[15]

---

[11] Ian Vandewalker, *Megadonors Playing Larger Role in Presidential Race, FEC Data Shows,* Brennan Cnt. Just. (Nov. 1, 2024), https://www.brennancenter.org/our-work/analysis-opinion/megadonors-playing-larger-role-presidential-race-fec-data-shows.

[12] *See, e.g.*, Theodore Schleifer, *Bill Gates Privately Says He Has Backed Harris With $50 Million Donation*, N.Y. Times (Oct. 22, 2024), https://www.nytimes.com/2024/10/22/us/elections/bill-gates-future-forward-kamala-harris.html.

[13] Laura Mannweiler, *All the President's Billionaires: The Extraordinary Wealth in Trump's Administration*, U.S. News & World Report (Jun. 4, 2025), https://www.usnews.com/news/national-news/articles/how-many-billionaires-are-in-trumps-administration-and-what-is-their-worth.

[14] *Transcript of Republican debate in Miami, full text*, CNN (Mar. 15, 2016), https://www.cnn.com/2016/03/10/politics/republican-debate-transcript-full-text/.

[15] Besides examples discussed below in the text, examples of *quid pro quo* corruption based on unlimited contributions to super PACs include, *e.g.*, Indictment, *United States v. Vázquez-Garced*, *et al.*, Case No. 3:22-cr-342-RAM, Dkt. 3 (D.P.R. Aug. 3, 2022) (describing a scheme in which donors used a super PAC to bribe the then-governor of Puerto Rico to remove a bank regulator); Indictment, *United States*

A. Senator Robert Menendez

Consider former Senator Robert Menendez. According to a federal indictment, Dr. Salomon Melgen made two donations of $300,000 each to a Democratic super PAC earmarked to support Senator Menendez in the 2012 New Jersey Senate race.[16] In return, Senator Menendez allegedly helped three of Melgen's foreign-born girlfriends get visas, tried to help the doctor get out of a multimillion-dollar Medicare payment dispute, and asked the Senate Majority Leader for assistance.[17]

After a nine-week trial, the jury hung. Post-trial, the district court held that "*Citizens United* does not bar the prosecution of bribery schemes involving contributions to Super PACs," and further, that "a rational juror could conclude that [Menendez] entered into an agreement with Melgen to exchange things of value in return for official acts," *United States v. Menendez*, 291 F. Supp. 3d 606, 613, 621 (D.N.J. 2018). Notwithstanding the implicit corrupt agreement, the court

---

v. Householder, et al., Case No. 1:20-cr-00077-TSB, Dkt. 1 at ¶¶ 91, 97 (S.D. Ohio Jul. 30, 2020) (describing a scheme in which the former Speaker of the Ohio House of Representatives conspired to funnel approximately $2 million in bribes to a PAC supporting the Speaker).

[16] Superseding Indictment, *United States v. Menendez, et al.*, Case No. 2:15-cr-00155-WHW, Dkt. 149 at ¶ 57 (D.N.J. Oct. 6, 2016).

[17] Michael Waldman, *Old-Fashioned Scandal in the Era of Dark Money and the Trump International Hotel*, Brennan Cnt. Just. (Sept. 9, 2017), https://www.brennancenter.org/our-work/analysis-opinion/old-fashioned-scandal-era-dark-money-and-trump-international-hotel.

dismissed the criminal bribery charges because the government failed to prove an explicit *quid pro quo* under the strict test of *McDonnell v. United States,* 579 U.S. 550 (2016). This ruling underscores *Buckley*'s observation that the criminal laws can address only "the most blatant and specific attempts of those with money to influence governmental action," and that "contribution ceilings [are] a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions." 424 U.S. at 28.

B. José Susumo Azano Matsura

Similar schemes have unfolded at the local level. According to a 2016 indictment, José Susumo Azano Matsura donated more than $225,000 to super PACs supporting candidates for mayor of San Diego.[18] Among the beneficiaries was San Diego mayoral candidate Robert Filner.[19] "In return for his money, Azano sought to buy political influence and support for . . . a San Diego waterfront development project . . . that promised Azano hundreds of millions in profit."[20]

---

[18] Third Superseding Indictment, *United States v. Azano, et al.*, Case No. 3:14-cr-00388-MMA, Dkt No. 336 at ¶¶ 14, 34(a), 34(d) (S.D. Cal. Jul. 8, 2016).

[19] *See* John Hudson, *Feds: Mexican Tycoon Exploited Super PACs to Influence U.S. Elections*, Foreign Policy (Feb. 11, 2014) https://foreignpolicy.com/2014/02/11/feds-mexican-tycoon-exploited-super-pacs-to-influence-u-s-elections/.

[20] U.S. Dep't of Just., *Mexican Businessman Jose Susumo Azano Matsura Sentenced for Trying to Buy Himself a Mayor* (Oct. 27, 2017) https://www.justice.gov/usao-sdca/pr/mexican-businessman-jose-susumo-azano-matsura-sentenced-trying-buy-himself-mayor.

With Azano's help, Filner won the 2012 San Diego mayoral election and Azano immediately arranged for Filner to meet with Azano's waterfront development project.[21] Filner resigned from office six months later in an unrelated scandal. Azano was convicted of conspiracy to violate federal election laws.[22]

C. Greg Lindberg

According to another federal indictment, in 2018, billionaire Greg Lindberg bribed a North Carolina state commissioner, "request[ing] the removal and replacement" of the deputy assigned to regulate Mr. Lindberg's company in exchange for $2 million in super PAC contributions.[23] One of Mr. Lindberg's associates allegedly explained to the state commissioner, "if you're willing to have a specific employee from another division" oversee Mr. Lindberg's business instead of the assigned deputy, "we'll put the money in the bank." Further, his representatives "pressed the Commissioner for progress on the removal of the senior deputy commissioner and assured the Commissioner that they were upholding their end of the bargain by setting up independent expenditure

---

[21] *Id.*

[22] Judgment, United States v. Azano, et al., Case No. 3:14-cr-00388-MMA, Dkt. 870 (S.D. Cal. Nov. 3, 2017).

[23] Opp'n to Mot. to Dismiss, *United States v. Lindberg, et al.*, Case No. 5:19-CR-00022-MOC, Dkt. No. 69 at 1-3 (W.D.N.C. 2019).

committees . . . ."[24] Mr. Lindberg was convicted of conspiracy to commit wire fraud.[25]

D. Senator Susan Collins

In August 2019, Maine Senator Susan Collins announced that, as a result of her efforts, a military technology company, Navatek, would fulfill an $8 million Navy contract using Maine shipyards.[26] The Navatek contract led to a federal investigation and indictment charging Navatek executives with making illegal campaign contributions to a super PAC supporting Senator Collins. According to the indictment, just a few months before Senator Collins' announcement, Navatek executives used a shell company to donate $150,000 to Senator Collins' super PAC.[27]

The federal investigation became public in 2021 when an FBI search warrant was unsealed and Senator Collins vigorously denied wrongdoing.[28] Although

---

[24] *Id*. at 3.

[25] Judgment, *United States v. Lindberg, et al.*, Case No. 5:19-CR-00022-MOC, Dkt. 261 (W.D.N.C. Sept. 4, 2020).

[26] Press Release, Susan Collins, Senator Collins Joins Celebration of $8 Million Navy Contract Awarded to Navatek in Portland, https://www.collins.senate.gov/newsroom/senator-collins-joins-celebration-8-million-navy-contract-awarded-navatek-portland.

[27] Indictment, *United States v. Kao, et al.*, Case No. 1:22-cr-00048-CJN, Dkt. No. 1 (D.D.C. Oct. 10, 2022), ¶¶ 44-54.

[28] Phil Hirschkorn, *FBI investigating alleged illegal contributions to Sen. Collins re-election campaign*, WMTW 8 (May 19, 2021), https://www.wmtw.com/article/fbi-

Senator Collins was never charged with a crime, the chief executive of Navatek pleaded guilty to criminal charges relating to the campaign contributions in 2022.[29] After two years of intense local coverage of this scandal, it is no surprise that in 2024 an overwhelming 75% of Mainers voted to impose a $5000 limit on all contributions to super PACs.

E. Unlimited Super PAC Contributions Create the Appearance of Corruption

Mainers' views about the need to limit contributions to super PACs reflect an overwhelming national consensus that there is too much money in politics and that it has a corrosive effect. As the *Buckley* Court noted half a century ago, "[a]lthough the scope of" *quid pro quo* corruption involving campaign contributions "can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election [and, as set forth above, again in the last decade] demonstrate that the problem is not an illusory one." 424 U.S. at 27. Such contributions create the appearance of corruption—reason enough to regulate them consistent with the First Amendment.

---

investigating-alleged-illegal-contributions-to-sen-collins-reelection-campaign/36467923.

[29] Colin Woodard, *Defense contractor pleads guilty to making illegal contributions to Sen. Collins' 2020 campaign*, Portland Press Herald (Sept. 28, 2022), https://www.pressherald.com/2022/09/28/defense-contractor-pleads-guilty-to-making-illegal-contributions-to-sen-collins-2020-campaign/.

Polls consistently show the public is profoundly concerned about the effects on our officials and institutions of unlimited and massive super PAC contributions. In 2012 (two years after the era of unlimited super PAC contributions began), one poll found a large, bipartisan consensus that outsized spending is dangerous for our democracy. "[N]early 70 percent of Americans believe[d] Super PAC spending will lead to corruption and … three in four Americans believe[d] limiting how much corporations, unions, and individuals can donate to Super PACs would curb corruption."[30] In 2015, 76% of survey respondents reported that they believed money had a greater influence on American politics than before.[31] The same year, 59% of respondents agreed that "members of Congress are willing to sell their vote for either cash or a campaign contribution," and 56% of respondents thought their representative had already done so.[32]

More recent polls reflect the same. A 2023 survey found that 80% of respondents believed "the people who donated a lot of money" to congressional

---

[30]*National Survey: Super PACs, Corruption, and Democracy*, Brennan Ctr. Just. (Apr. 24, 2012), https://www.brennancenter.org/our-work/analysis-opinion/national-survey-super-pacs-corruption-and-democracy.

[31]*Beyond District: How Americans View their Government*, Pew Rsch. Ctr. (Nov. 23, 2015), https://www.pewresearch.org/wp-content/uploads/sites/4/2015/11/11-23-2015-Governance-release.pdf.

[32]*Is Congress for Sale*, Rasmussen Reports (Jul. 9, 2015), https://www.rasmussenreports.com/public_content/archive/mood_of_america_archive/congressional_performance/is_congress_for_sale.

campaigns had too much influence over Congress.[33] And in a 2025 survey, 72% of respondents agreed the role of money in politics was one of America's biggest problems.[34]

CONCLUSION

Buckley recognized that contribution limits are *less* restrictive of First Amendment rights than limits on independent expenditures and, at the same time, that contributions are *more* susceptible to corruption and its appearance than independent expenditures. The Supreme Court has reaffirmed this distinction many times, including in *Citizens United.*

These principles from *Buckley* and its progeny apply with equal force to super PACs today. Real-world corruption and its appearance, both in the Watergate era and in the current super PAC era, have proved the wisdom of *Buckley*'s distinction. If anything, the problem that *Buckley* sought to address has worsened. This Court should adhere to Supreme Court precedents and hold that limits on contributions to super PACs are a constitutionally permissible method by

---

[33] *Americans' Dismal View of the Nation's Politics*, Pew Rsch. Ctr. (Sept. 19, 2023), https://www.pewresearch.org/wp-content/uploads/sites/20/2023/09/PP_2023.09.19_views-of-politics_REPORT.pdf.

[34] *Americans Continue to View Several Economic Issues as Top National Problems,* Pew Rsch. Ctr. (Feb. 20, 2025), https://www.pewresearch.org/wp- content/uploads/sites/20/2025/02/PP_2025.2.20_national-problems_report.pdf.

which government can address the danger of actual and apparent corruption, as Maine has done here. The district court's decision invalidating Maine's contribution limits should be reversed.

DATED: October 29, 2025

Respectfully Submitted,

By: */s/ Jonah M. Knobler*

JONAH M. KNOBLER
Counsel of Record
GREGORY L. DISKANT
ANDREW I. HADDAD
GEORGE E. HARRIS
DAVID M. EPSTEIN
PATTERSON BELKNAP WEBB & TYLER LLP
1133 Avenue of the Americas
New York, NY 10036
Tel: (212) 336-2000

PHI NGUYEN
NEDA KHOSHKHOO
ANGELO ANCHETA
DĒMOS
368 9th Avenue, 6th Floor, Suite 11-105
New York, NY 10001
(212) 633-1405

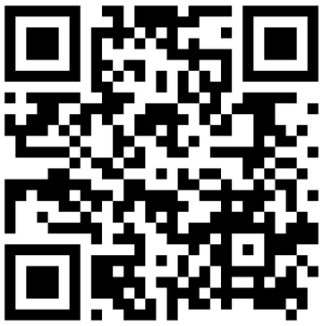
OMAR H. NOURELDIN
COMMON CAUSE
805 Fifteenth St, NW, Suite 800
Washington, DC 20005
(202) 386-8571

Attorneys for Amici Curiae Dēmos and Common Cause

Amicus Issue One

Issue One, founded in 2014, is a nonpartisan organization dedicated to reducing the influence of money in politics and restoring trust in American democracy. Bringing together former elected officials, business leaders, and advocates from across the political spectrum, Issue One works to strengthen ethics and transparency in government and to modernize campaign finance laws. The organization leads bipartisan initiatives to curb dark money, reform lobbying practices, and empower small donors through practical, cross-party solutions. By fostering cooperation rather than division, Issue One aims to rebuild faith in democratic institutions and ensure that political power flows from voters—not from wealthy special interests or secretive funding networks.

You can donate to Issue One here.



Nos. 25-1705, 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.

No. 25-1706

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants

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,

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 FORMER MEMBERS OF CONGRESS AND FORMER GOVERNORS AS AMICI CURIAE IN SUPPORT OF DEFENDANTS-APPELLANTS AND SUPPORTING REVERSAL

Evan Bianchi
Spiro Harrison & Nelson LLC
40 Exchange Place, Suite 1100
New York, New York 10005
(646) 880-8850

Counsel for Amici Curiae

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Rules and Statutes

Other Authorities

IDENTITY AND INTEREST OF AMICI CURIAE

Amici constitute a bipartisan coalition of former elected officials who are part of Issue One's ReFormers Caucus, the largest bipartisan coalition of its kind ever assembled to advocate for sweeping political reforms to fix our broken political system.[1] They are:

- **Hon. Charles Boustany**, former Republican Congressman from Louisiana
- **Hon. Arne Carlson**, former Republican Governor of Minnesota
- **Hon. Tom Daschle**, former Democratic Congressman and former Senator from South Dakota and former Senate Majority Leader
- **Hon. Byron Dorgan**, former Democratic Congressman and former Senator from North Dakota
- **Hon. Russ Feingold**, former Democratic Senator from Wisconsin
- **Hon. Dick Gephardt**, former Democratic Congressman from Missouri and former House Majority Leader
- **Hon. Jim Gerlach**, former Republican Congressman from Pennsylvania

[1] Amici have authority to file this brief pursuant to Federal Rule of Appellate Procedure 29(a)(2) because all parties have consented to its filing. Amici's counsel authored the brief in whole and no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief. *See* Fed. R. App. P. 29(a)(4)(E)(i)–(ii). Issue One, a nonprofit organization, provided funding for the preparation and submission of this brief. *Id.* 29(a)(4)(E)(iii).

- **Hon. Dan Glickman**, former Secretary of Agriculture and former Democratic Congressman from Kansas
- **Hon. Jim Greenwood**, former Republican Congressman from Pennsylvania
- **Hon. Paul Hodes**, former Democratic Congressman from New Hampshire
- **Hon. Bob Inglis**, former Republican Congressman from South Carolina
- **Hon. Ron Kind**, former Democratic Congressman from Wisconsin
- **Hon. Mel Levine**, former Democratic Congressman from California
- **Hon. John McKernan**, former Republican Governor and former Congressman from Maine
- **Hon. Connie Morella**, former U.S. Ambassador to the Organization for Economic Cooperation and Development and former Republican Congresswoman from Maryland
- **Hon. Reid Ribble**, former Republican Congressman from Wisconsin
- **Hon. Tim Roemer**, former U.S. Ambassador to India and former Democratic Congressman from Indiana
- **Hon. Claudine Schneider**, former Republican Congresswoman from Rhode Island
- **Hon. Chris Shays**, former Republican Congressman from Connecticut
- **Hon. Karen Shepherd**, former Democratic Congresswoman from Utah
- **Hon. Olympia Snowe**, former Republican Senator from Maine

- **Hon. Mark Udall**, former Democratic Congressman and former Senator from Colorado
- **Hon. Zach Wamp**, former Republican Congressman from Tennessee
- **Hon. Tim Wirth**, former Democratic Congressman and former Senator from Colorado

As former elected officials, amici have observed firsthand how the rising prevalence of money in politics—particularly via super PACs—has escalated campaign costs and created a system whereby candidates for office are increasingly dependent on large, consolidated contributions from a small group of wealthy donors. This dependence distorts electoral priorities, undermines voters' trust, and creates a system highly prone to corruption and abuse.

Although amici differ in political affiliation and ideology, they share a deep, nonpartisan interest in ensuring that campaign finance systems protect the integrity of the democratic process and strengthen the public's confidence in our governments. Amici are thus united in supporting efforts to prevent corruption and its appearance, such as the Maine law at issue in this case that limits super PAC contributions.

Amici respectfully submit this brief to provide this Court with insight into the real-world dynamics of electoral politics and governance.

SUMMARY OF ARGUMENT

Politics in America is not what it used to be. A generation ago, candidates relied on broad coalitions of voters and small-dollar donors to win elections. But after lower courts interpreted the U.S. Supreme Court's *Citizens United v. Federal Election Commission* decision to open the door to unlimited contributions to super PACs, money—not voters—became the central currency of political power. The predictable result is a system where billionaires and corporate interests dominate, while ordinary citizens are pushed to the margins.

Large super PAC contributions are one of the biggest threats to the integrity of American democracy. In just fifteen years since *Citizens United* and the D.C. Circuit's decision in *SpeechNow.org v. Federal Election Commission*, outside spending in federal elections has skyrocketed from tens of millions of dollars to *billions* of dollars.

This is not a story of more speech; it is a story of concentrated power. Politicians cannot realistically ignore super PACs, also known as independent expenditure committees. Lawmakers are forced to court these groups as a form of political insurance—voting and acting with an

eye toward the donors who can make or break their careers. The result is policy skewed toward elite funders and away from constituents.

Worse still, the bulk of super PAC money bankrolls negative advertising. Because super PACs face no electoral accountability, they are free to run fear-driven attack campaigns that deepen polarization, corrode civic trust, and distort the democratic process.

The risk of corruption associated with super PAC contributions is not hypothetical. Courts, juries, and prosecutors have repeatedly treated super PAC contributions as vehicles for quid pro quo arrangements—from Senator Robert Menendez's alleged solicitations, to Speaker of the House of Ohio Larry Householder's $60 million bribery scheme, to Puerto Rico Governor Wanda Vázquez Garced's acceptance of bribes through a super PAC, to Anaheim Mayor Harry Sidhu's expectation of a $1 million super PAC contribution in exchange for confidential information, and to businessman Greg Lindberg's promises of millions in aid through independent expenditure committees in return for the ousting of the regulator overseeing his business. These real-world cases demonstrate what the Supreme Court recognized in *Buckley v. Valeo* long ago:

contributions are inherently different from expenditures, because they create dependency, leverage, and the appearance of corruption.

Finally, this case arises in a special posture. The Maine contribution limit law at issue is not a product of Maine's legislature; the people of Maine, directly exercising their sovereign power through ballot initiative, proposed and passed the law by a roughly three-to-one margin. When citizens themselves vote to limit super PAC contributions to prevent corruption, their judgment deserves the highest deference. To strike down such a measure would be to substitute judicial speculation for the people's own democratic determination, deepening the very cynicism the Supreme Court has said is fatal to democracy.

This Court should uphold Maine's voter-enacted law. Contribution limits on super PACs are not only constitutionally permissible, they are necessary to preserve the integrity of representative self-government.

ARGUMENT

I. Politics is broken, and limitless super PAC contributions are to blame.

Citizens United and *SpeechNow.org* were decided in 2010. In the decade and a half since, there has been a sea change in American campaign finance. By eliminating independent expenditure restrictions

and allowing unlimited contributions to "independent expenditure-only committees," these decisions created the modern super PAC. The predictable and demonstrable result has been an explosion in outside spending, overwhelming the role of ordinary voters and undermining confidence in the democratic process.

A. The rise of super PACs directly correlates with the increase in money being spent on elections.

Perhaps the most notable, and detrimental, development in politics caused by *Citizens United*, *SpeechNow.org*, and their progeny is the explosion of concentrated money from elite megadonors in elections. Before those decisions were issued, independent expenditures were a factor in federal elections, but one of significantly less degree. According to OpenSecrets, a nonpartisan, nonprofit that tracks money in politics, super PAC expenditures accounted for less than $63 million in spending during the 2010 election cycle. Yet, by the 2024 election cycle, super PACs collectively spent more than *$4.1 billion* on independent expenditures targeting federal candidates:

Election Cycle	Super PAC Independent Expenditures
2010	$63 million
2012	$623 million
2014	$348 million
2016	$1.1 billion
2018	$894 million
2020	$2.7 billion
2022	$1.9 billion
2024	$4.1 billion

See ECF No. 45-5 at 2[2] (OpenSecrets report identifying independent expenditures by active super PACs between the 2010 and 2024 cycles).[3]

Super PACs have thus injected nearly *$12 billion* into U.S. elections in the past decade and a half, with more than half of that spending collectively occurring during the 2022 and 2024 election cycles. In fact, while super PACs accounted for only 2% of all spending in federal

[2] Throughout this brief, standalone citations to "ECF No. __" refer to entries on the District Court's docket in this case.

[3] OpenSecrets' data includes independent expenditures made by Carey committees, also known as hybrid super PACs, which maintain one bank account funded by limited contributions that can be used to directly donate to candidates and a second bank account funded by unlimited contributions that can be used to make independent expenditures.

elections during the 2010 election cycle, that figure had increased to 28% by the 2024 election cycle. *See* Michael Beckel (@mjbeckel), X (Oct. 25, 2025), https://x.com/mjbeckel/status/1982121054622663141.

This dramatic transformation is not the product of an organic increase in democratic participation—it is the result of legal changes that allow a handful of wealthy donors and entities to channel unlimited sums of money into super PACs, saturating the electoral landscape.

B. Politicians have no practical choice other than to engage with super PACs.

The significant increase of money in politics has led to an untenable situation for those running for office. For many, securing support from super PACs is not a choice, it is a requirement.[4] Politicians operate under the constant threat that massive amounts of money (frequently millions of dollars) will be dropped against them in the closing stretches of their campaigns, so they prepare for that situation by stockpiling super PAC

[4] This requirement is enmeshed with, and overlies, the already immense fundraising pressures faced by members of Congress. Between January 2023 and December 2024, the typical representative running for reelection in a toss-up race raised an average of nearly *$11,000 per day*, while the typical senator running for reelection raised an average of more than *$15,000 per day*. Amelia Minkin, *The 118th Congress' Fundraising Treadmill*, Issue One (Feb. 2025), https://issueone.org/articles/the-118th-congress-fundraising-treadmill/.

cash for themselves. *Cf.* Paul M. Smith & Saurav Ghosh, *Recent Changes in the Economics of Voting Caused by the Arrival of Super PACs*, Human Rights Magazine (Oct. 24, 2022) ("In the arms race of political fundraising, super PACs are nuclear weapons; candidates who lack them are at a fundamental, and typically insurmountable, disadvantage."). And to do *that*, politicians go to extreme lengths.

For example, politicians spend an immense amount of their time on fundraising efforts. *See* Maya Kornberg & Sophia Deng, *How Money Shapes Pathways to Power in Congress*, Brennan Center for Justice (Sept. 10, 2024) ("The average amount raised by those running [for] federal office has increased dramatically in recent decades, resulting in candidates and elected officials needing to spend more time raising money during their campaigns just to keep up."), https://www.brennancenter.org/our-work/analysis-opinion/how-money-shapes-pathways-power-congress. Financial pressures, which have been exacerbated by the rise of super PACs, require politicians to "continually fundraise"—not only for themselves, but also for the super PACs "by

attending events or endorsing PACs." *Id.*[5] In fact, a 2016 expose uncovered that leadership for both parties had told newly elected members of Congress to spend 30 hours a week dialing for dollars. Norah O'Donnell, *Are members of Congress becoming telemarketers?*, CBS News (Apr. 24, 2016), https://www.cbsnews.com/news/60-minutes-are-members-of-congress-becoming-telemarketers/. The need to constantly fundraise negatively impacts lawmakers' abilities to perform their jobs and can even lead to burnout.[6]

---

[5] In fact, the Federal Election Commission expressly permits "federal candidates and officeholders" to "attend, speak at and be featured guests at fundraisers for Super PACs at which unlimited individual, corporate and labor organization contributions are solicited." *Fundraising for Super PACs by federal candidates*, Federal Election Commission, https://www.fec.gov/help-candidates-and-committees/making-disbursements-pac/fundraising-super-pacs-federal-candidates-nonconnected-pac; *see also* Phil Hirschkorn, *Obama campaign blurs the line with super PAC*, CBS News (Feb. 7, 2012) (reporting that Obama campaign manager Jim Messina announced that "White House, cabinet, and campaign officials" would appear and speak at super PAC fundraising events) https://www.cbsnews.com/news/obama-campaign-blurs-the-line-with-super-pac.

[6] *See* Kelly Ngo, *Congress has collectively spent 94 years fundraising since 2015*, Issue One (Jul. 12, 2016) ("[E]very hour that a lawmaker spends schmoozing with deep-pocketed donors is an hour he or she doesn't spend getting to know colleagues on both sides of aisle, troubleshooting constituent concerns or diving into complicated legislation to address the most critical issues facing our country. Every hour they spend fundraising is an hour they don't spend working to make our lives better and our country stronger."), https://issueone.org/articles/congress-

In addition to fundraising, politicians will vote (or make campaign promises to vote) in the interests of their target super PACs in order to secure the support of those super PACs. As Senators Ron Wyden, a Democrat from Oregon, and Lisa Murkowski, a Republican from Alaska, put it in a 2012 joint op-ed:

> Contrary to the popular perception, the prospect of getting—or not getting—a check from an individual or political action committee does not drive the typical decision on Capitol Hill. But *decision-making is often colored by the prospect of facing $5 million in anonymous attacks ads* if a member of Congress crosses an economically powerful interest.

Ron Wyden & Lisa Murkowski, *Our states vouch for transparent campaign financing*, The Washington Post (Dec. 2012) (emphasis added), https://www.washingtonpost.com/opinions/a-federal-blueprint-for-transparent-campaign-financing/2012/12/27/b1c6287e-43eb-11e2-8061-253bccfc7532_story.html.

Put in different terms, politicians effectively seek super PAC insurance—a reserve of cash that they can access quickly should they

---

collectively-spent-94-years-fundraising-since-2015; Amisa Ratliff et al., *Why We Left Congress*, Issue One (Dec. 6, 2018) (describing the toll fundraising takes on politicians), https://issueone.org/articles/why-we-left-congress-how-the-legislative-branch-is-broken-and-what-we-can-do-about-it/.

need to respond to their opponent's super PAC arsenal. The premium to access those funds? Time, access, and alignment with the super PAC's interests. Super PACs can thus exert control over politicians even before those politicians have seen (or felt) a dollar of the super PAC's money.

C. Super PACs elevate the voices of the wealthy few over those of the average citizen.

The proliferation of super PAC money also exacerbates the growing disparity between those with wealth, whose voices shape policy, and those without it, whose needs go unheard. To start, a minuscule number of megadonors dominate super PAC fundraising. In the 2024 presidential race, for example, donors contributing $5 million or more accounted for more than 75% of all presidential super PAC receipts. *See* Ian Vandewalker, *Megadonors Playing a Larger Role in Presidential Race, FEC Data Shows*, Brennan Center for Justice (Nov. 1, 2024), https://www.brennancenter.org/our-work/analysis-opinion/megadonors-playing-larger-role-presidential-race-fec-data-shows.

The concentration of political contributions ensures that candidates remain disproportionately responsive to elite funders, not ordinary constituents. *See, e.g.*, Paul M. Smith & Saurav Ghosh, *Recent Changes in the Economics of Voting Caused by the Arrival of Super PACs*, Human

Rights Magazine (Oct. 24, 2022) ("Super PACs have emphatically shifted the electoral balance of power away from everyday voters and toward wealthy donors able and willing to spend millions of dollars on the candidates who will best cater to their private interests."). Political science research demonstrates that policy outcomes in the U.S. align closely with the preferences of affluent donors, while the preferences of average citizens exert "little or no independent influence." Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 Persp. on Pol. 564, 565 (2014).

When the electoral process depends on super PACs fueled by unlimited contributions, candidates are incentivized to adopt positions that appeal to deep-pocketed backers rather than to their constituents as a whole. Instead of campaigning for broad-based support, many candidates prioritize appeasing elite funders. Over time, policy agendas are shaped by narrow interests with the purchasing power to influence electoral outcomes—eroding the democratic concept of political equality.

D. Super PACs distort and undermine the political process by flooding the market with negative ads.

Super PACs, being insulated from direct electoral accountability, predominantly run negative advertising. Because they do not need to face

voters, they are less constrained by reputational risk or the need for broad appeal. Indeed, ads funded by super PACs—including so-called "pop-up" super PACs that form, spend huge sums, and then disappear shortly after Election Day[7]—tend to be significantly more negative in tone than those by candidates or parties.[8]

This dynamic contributes to blame-centric, fear-driven, and polarized discourse, rather than reasoned deliberation. Negative political ads exacerbate the adversarial "us versus them" mentality, *see* Danielle Martin & Alessandro Nai, *Deepening the rift: Negative campaigning fosters affective polarization in multiparty elections*, Electoral Studies 87 (2024) ("[A]ffective polarization between two parties is higher when the

---

[7] *See* Carolyn Daly, *"Pop-up" Super PACs Game the System to Leave Voters in the Dark*, Campaign Legal Center (June 2024), https://campaignlegal.org/update/pop-super-pacs-game-system-leave-voters-dark.

[8] *See, e.g.*, Michael Beckel, *9 Key Numbers to Know About the Money in the 2020 Presidential Race*, Issue One (Sept. 2020) (noting that 76% of the money spent by the 12 top-spending outside groups has spent on negative advertising), https://issueone.org/articles/9-key-numbers-to-know-about-the-money-in-the-2020-presidential-race/; Michael Beckel, *Super PACs and Dark Money Groups Outspent Candidates in a Record Number of Races in 2018*, Issue One at 1 (Dec. 2018), https://www.issueone.org/wp-content/uploads/2018/12/2018-outside-spending.pdf.

tone of these parties is more negative, and also when these two parties attack each other more."), fuel cynicism and erode voters' trust in government, *see generally* William J. Schenck-Hamlin et al., *The Influence of Negative Advertising Frames on Political Cynicism and Politician Accountability*, 26 Human Commc'n Rsch. 53 (2000), and rely on fear and *ad hominem* attacks over policy-based critiques, *cf.* Katelyn Howard, *How Negative Campaign Ads Appeal To Voter Fears*, KOSU (Oct. 14, 2024) ("[P]oliticians benefit from appealing to broad, general fears and alluding to potential solutions rather than offering details."), https://www.kosu.org/politics/2020-10-14/how-negative-campaign-ads-appeal-to-voter-fears.

The focus on negativity reflects a "win at all costs" approach, regardless of the harmful effects on our democracy. Super PACs' limitless ability to obtain and spend funds with no accountability to voters means they do not need to focus on how to solve problems and build coalitions of voters and politicians—instead, they can focus solely on winning by flooding the political process with attack ads.

II. Super PAC contributions, unlike super PAC expenditures, raise unique corruption concerns that justify regulation.

Whether or not one likes the speech that super PACs induce, the only constitutional basis for regulating political speech is the risk of corruption. Amici urge this Court not to accept the premise, advanced in *SpeechNow.org* and its successors, that contributions to super PACs pose no greater risk of corruption than expenditures. *SpeechNow.org v. Fed. Election Comm'n*, 599 F.3d 686, 696 (D.C. Cir. 2010) ("[B]ecause *Citizens United* holds that independent expenditures do not corrupt or give the appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to independent expenditure-only organizations."). Those cases misread *Citizens United*, which spoke only to expenditures, and ignore the realities of modern campaigns. In practice, super PAC contributions implicate corruption and its appearance in ways that expenditures do not—and thus fall within the zone of permissible regulation contemplated by *Buckley*.

A. Super PAC contributions are fundamentally different from expenditures and should be treated differently.

For nearly fifty years, the Supreme Court has recognized that contributions and expenditures are not constitutionally equivalent. *See*

Buckley v. Valeo, 424 U.S. 1, 19–20 (1976). Contributions are not speech in the same way expenditures are: they are transfers of money to another actor, signaling loyalty and conferring influence by virtue of the recipient's discretion over how the funds will be used. Expenditures, by contrast, are an individual's or organization's own expressive act, the kind of political speech at the heart of the First Amendment. Treating the two identically, as *SpeechNow.org* did, ignores the logic of *Buckley* and extends *Citizens United* beyond its holding.

Moreover, contributions to super PACs implicate corruption concerns in ways that independent expenditures do not. A donor who writes a check for $10 million to a super PAC that exists solely to elect a specific candidate is not engaging in independent political expression. Rather, the donor is financing an entity whose sole purpose is to advance the candidate's electoral success, and the candidate is acutely aware of who supplied the funds. That act creates dependence and leverage, which is why contributions are inherently more susceptible to quid pro quo arrangements than expenditures.[9]

[9] Of course, while the line between politician and donor is most direct in the context of contributions made to single-candidate super PACs, contributions made to multi-candidate super PACs are not immune from

The appearance of influence is no less corrosive. In the public's eye, contributions made by a small handful of wealthy donors who dominate the financing of super PACs are widely understood not as disinterested speech, but as investments designed to secure access and favorable consideration. *See* Press Release, *New polling illuminates how the Supreme Court got Citizens United wrong and shows bipartisan momentum for money-in-politics reforms, including proposed Montana ballot measure*, Issue One (Oct. 28, 2025) ("[N]early 8 in 10 Americans (79%) agreed that large independent expenditures . . . by wealthy donors and corporations in elections give rise to corruption or the appearance of corruption."), https://issueone.org/press/new-polling-citizens-united-money-in-politics-reforms/.[10]

---

the corruption risk, as those contributions can easily be earmarked to ensure that it will benefit a single candidate. *See, e.g.*, ECF No. 45-7 (Menendez indictment) at ¶57 (alleging that a donor's contributions were "earmarked . . . for the New Jersey Senate race," in which Menendez was the only Democrat running).

[10] *See also National Survey: Super PACs, Corruption, and Democracy*, Brennan Center for Justice (Apr. 24, 2012) ("Large majorities of Americans believe that members of Congress will favor the interests of those who donate to Super PACs over those who do not—and that Super PAC donors can pressure elected officials to alter their votes."), https://www.brennancenter.org/our-work/analysis-opinion/national-survey-super-pacs-corruption-and-democracy. In this 2012 survey, more than two-thirds of respondents "agreed that a company that spent

Candidates, too, are aware of such contributions and recognize the signaling function of such gifts. *See supra* n.5 (discussing how politicians can, and do, attend and speak at super PAC fundraising events); Matt Corley, *Three dark money lessons from the Larry Householder corruption prosecution*, Citizens for Responsibility and Ethics (Mar. 29, 2023) ("Anonymous political spending may only be anonymous to the public—politicians often know who is spending to benefit them."), https://www.citizensforethics.org/news/analysis/three-dark-money-lessons-from-the-larry-householder-corruption-prosecution/. A massive contribution to a super PAC tied to a campaign effectively communicates the donor's importance, ensuring the donor's interests are not ignored.

Allowing unlimited contributions to super PACs also undermines the integrity of the contribution regime the Supreme Court preserved in *Buckley*. Campaign contribution limits to candidates are designed to cap the size of any one donor's influence. But those limits are meaningless if donors can supplement their capped contribution with unlimited

---

$100,000 to help elect a member of Congress could successfully pressure him or her to change a vote on proposed legislation," and more than three-fourths of respondents "agreed that members of Congress are more likely to act in the interest of a group that spent millions to elect them than to act in the public interest." *Id.*

donations to a super PAC devoted to the same candidate's election. A donor may give the statutory maximum directly to a candidate while simultaneously contributing millions of dollars to the candidate's allied super PAC. This is the functional equivalent of an unlimited direct contribution. The *SpeechNow.org* approach thus invites circumvention, nullifying the carefully balanced contribution limits the Supreme Court upheld. As the late Mike Castle, a Delaware Republican who served in the U.S. House of Representatives from 1993 to 2011, aptly observed:

> What super PACs are doing today is probably as problematic as anything in the financing of campaigns out there. Wealthy people on both sides organize these PACs and fund the heck out of them—they make more substantial contributions than they could individually. That's a problem.[11]

Making matters worse, the supposed safeguard that super PACs are independent of candidates is a fiction. In practice, the independence of super PACs is porous at best. Campaigns and super PACs share consultants, vendors, and field organizing operations; candidates headline super PAC fundraisers; and "redboxing" allows campaigns to

[11] Michael Beckel, *Behind the Price of Power: Q&A with former Rep. Mike Castle (R-DE)*, Issue One (Aug. 15, 2017), https://issueone.org/articles/behind-price-power-qa-former-rep-mike-castle-r-de/. Castle, like amici, was a member of the ReFormers Caucus.

post messaging guidance that super PACs then adopt wholesale.[12] These realities render the distinction between contributions to candidates and contributions to their aligned super PACs largely formal. When entities are so intertwined, contributions to super PACs cannot be meaningfully distinguished from contributions to the candidates themselves.

Finally, preserving the public's confidence in elections demands treating contributions differently from expenditures. The Supreme Court

---

[12] *See, e.g.*, Albert W. Alschuler et al., *Why Limits on Contributions to Super PACs Should Survive* Citizens United, 86 Fordham L. Rev. 2299, 2323–24 (2018) (observing that, at the time the Supreme Court decided *Buckley*, it "probably did not foresee super PACs that spend more than the candidates they support, that are managed by candidates' former campaign managers and other experienced political operatives, and that may be ceded responsibility for all of a campaign's advertising" (internal footnotes omitted)); Sophia Gonsalves-Brown, *Super PAC Deals are a Bad Deal for Democracy*, Campaign Legal Center (Jan. 26, 2023) ("Unsurprisingly, candidates and super PACs frequently work hand in glove, with candidates fundraising for super PACs, providing super PACs with preferred messaging and other materials to support their campaigns, and contracting through common vendors that are familiar with the candidate's messaging and strategic objectives."), https://campaignlegal.org/update/super-pac-deals-are-bad-deal-democracy. "Redboxing" is the practice of a campaign "provid[ing] messaging on its website and us[ing] widely understood signals (like a literal red box) and specific phrasing . . . to direct super PACs to use the campaign's approved messaging in their ads." Saurav Ghosh & Eric Kashdan, *Voters Need to Know What "Redboxing" Is and How It Undermines Democracy*, Campiagn Legal Center (Mar. 27, 2025), https://campaignlegal.org/update/voters-need-know-what-redboxing-and-how-it-undermines-democracy.

has recognized the compelling governmental interest in preventing the appearance of corruption. *See, e.g.*, *Buckley*, 424 U.S. at 27. When voters see massive checks written to super PACs, they reasonably perceive that government is for sale.[13] That perception—*i.e.*, the very appearance of corruption identified in *Buckley*—corrodes trust in democratic institutions no less than explicit quid pro quo corruption. To treat such contributions as constitutionally immune, as *SpeechNow.org* did, is to disregard the real-world dynamics of modern campaigns and to risk delegitimizing the electoral process itself.

In short, contributions to super PACs are not equivalent to expenditures. They create dependency, signal influence, permit circumvention of contribution limits, and rest on a hollow fiction of independence. Because the D.C. Circuit failed to grapple with these realities in *SpeechNow.org*, its reasoning—and the reasoning of the other circuit courts that followed—is unpersuasive. This Court should hold

---

[13] *See* Tom Moore, *Undoing* Citizens United *and Reining In Super PACs*, Center for American Progress (Sept. 15, 2025) ("Americans are fed up with a political system that seems bought and sold. . . . Year after year, polls show overwhelming majorities convinced that elected officials listen more to wealthy donors and special interests than to the people who sent them to office."), https://www.americanprogress.org/article/undoing-citizens-united-and-reining-in-super-pacs/.

that super PAC contribution limits are constitutionally permissible to protect against both corruption and its appearance.

B. Contribution-based corruption is real, not just theoretical.

The distinctions between super PAC contributions and super PAC expenditures are not mere academic concerns. As several recent cases demonstrate, courts, juries, and prosecutors frequently treat super PAC contributions as being capable of furthering corruption (and, at a minimum, being capable of triggering the appearance of corruption).

i. Robert Menendez

In 2016, then-Senator Robert Menendez, a Democrat from New Jersey who had served as the top-ranking Democrat on the Senate Foreign Relations Committee, was charged with multiple counts of bribery, in part based on alleged quid pro quo contributions sought by Menendez and received from Florida ophthalmologist Salomon Melgen. ECF No. 45-7 at ¶57. Specifically, Melgen contributed $600,000 to a super PAC called "Majority PAC" that was earmarked for the New Jersey Senate race. *Id.* Menendez was the only Democrat running in the New Jersey Senate race that year. *Id.* Melgen's donations were allegedly made in exchange for Menendez' "advocacy at the highest levels of [the Centers

for Medicare & Medicaid Services and/or the Department of Health and Human Services] on behalf of" Melgen. *See, e.g.*, *id.* at ¶¶247, 251.

On Menendez' motion for acquittal following a nine-week trial, the district court held that super PAC contributions may qualify as "anything of value" under 18 U.S.C. § 201, but ultimately held that a rational juror could not find an explicit quid pro quo based on the evidence proffered (a requirement under the First Amendment). *See United States v. Menendez*, 291 F. Supp. 3d 606, 622, 633 (D.N.J. 2018).

ii. Greg Lindberg

In 2019, insurance executive Greg Lindberg was charged with bribing the commissioner of the North Carolina Department of Insurance. *See United States v. Lindberg*, 19-cr-22, ECF No. 3 (W.D.N.C. Mar. 18, 2019). The indictment alleged that Lindberg promised millions of dollars in support to the North Carolina insurance commissioner, routed through independent expenditure committees in return for the removal of a senior insurance regulator overseeing the regulation and periodic examination of Lindberg's business. *Id.* at ¶¶12–14; *see also id.* at ¶86 (alleging that Lindberg "gave, offered, and agreed to give $2 million in campaign contributions . . . through an independent

expenditure committee to the [insurance commissioner] . . . to influence and reward the [insurance commissioner] in connection with the transfer of [a] Senior Deputy Commissioner").

After an initial 2020 conviction was vacated, *see United States v. Lindberg*, 39 F.4th 151 (4th Cir. 2022), Lindberg was retried and convicted in 2024 of bribery and wire fraud, *see United States v. Lindberg*, 19-cr-22, ECF No. 435 (W.D.N.C. May 15, 2024) (verdict form).

iii. Larry Householder

In 2020, then-Ohio House Speaker Larry Householder was charged with racketeering conspiracy, *see* ECF No. 45-8 at 1–43 (Householder indictment) in connection with the "largest public corruption case in state history," Paula Christian, *Jury finds former Ohio House Speaker Larry Householder and co-defendant Matt Borges guilty*, News 5 Cleveland (Mar. 9, 2023), https://www.news5cleveland.com/news/politics/ohio-politics/jury-finds-former-ohio-house-speaker-larry-householder-and-co-defendant-matt-borges-guilty. The government alleged that Householder and his associates accepted approximately $60 million from FirstEnergy Corp. through a 501(c)(4) nonprofit dark money group and a super PAC in exchange for passing and protecting House Bill 6, a billion-dollar

bailout for the company's nuclear plants. *See, e.g.*, ECF No. 45-8 at ¶¶15–16, 25, 91, 97, 100, 130.

Householder was found guilty after a jury trial. *See* ECF No. 45-8 at 44. He was sentenced to 20 years. *See* Press Release, *Former Ohio House Speaker sentenced to 20 years in prison for leading racketeering conspiracy involving $60 million in bribes*, Department of Justice (June 29, 2023), https://www.justice.gov/usao-sdoh/pr/former-ohio-house-speaker-sentenced-20-years-prison-leading-racketeering-conspiracy.[14]

iv. Wanda Vázquez Garced

In 2022, former Puerto Rico Governor Wanda Vázquez Garced and others were charged with conspiracy, bribery, and wire fraud. *See United States v. Vazquez-Garced*, 22-cr-342, ECF No. 3 (D.P.R. Aug. 3, 2022). The indictment alleged that Julio Herrera Velutini and Mark Rossini "offer[ed] bribes in the form of . . . funding" in support of Vazquez' election campaign in exchange for Vázquez-Garced's termination of a

[14] FirstEnergy Corp., the entity that made the contributions, agreed to pay a $230 million monetary penalty and signed a deferred prosecution agreement. *See* Press Release, *FirstEnergy charged federally, agrees to terms of deferred prosecution settlement*, Department of Justice (July 22, 2021), https://www.justice.gov/usao-sdoh/pr/firstenergy-charged-federally-agrees-terms-deferred-prosecution-settlement.

commissioner of the Office of the Commissioner of Financial Institutions of Puerto Rico. *Id.* at ¶30. The funding included payments to super PACs. *See, e.g.*, *id.* at ¶¶31, 138, 174.

Vázquez Garced pleaded guilty in August 2025 to accepting promises of political campaign contributions. Pedro Menéndez Sanabria, *Former Governor Wanda Vázquez Pleads Guilty in Federal Court*, The Weekly Journal (Aug. 27, 2025), https://www.wjournalpr.com/top-stories/former-governor-wanda-v-zquez-pleads-guilty-in-federal-court/article_ba29f5a0-4009-400b-b756-e6a4f466c778.html. As of today's date, Vázquez Garced's sentencing is set for December 4, 2025. *United States v. Vazquez-Garced*, 25-cr-296, ECF No. 16 (D.P.R. Oct. 6, 2025).

v. Harry Sidhu

In 2023, former Anaheim, California, Mayor Harry Sidhu entered a plea agreement admitting obstruction of justice, wire fraud, and false-statement-to-federal-agency charges arising from the attempted sale of the stadium in which the Anaheim Angels Major League Baseball team plays. *See United States v. Sidhu*, 23-cr-114, ECF No. 3 at ¶¶2, 15 (C.D. Cal. Aug. 16, 2023). Sidhu admitted that, while on the city's negotiating team for the stadium sale, he "provided confidential inside information

belonging to the City . . . so that the Angels could buy Angel Stadium on terms beneficial to the Angels." *Id.* at ¶15. Sidhu also admitted that he "expected a $1,000,000 campaign contribution from the Angels" after the sale, to be routed to a super PAC supporting his reelection campaign. *Id.* (admitting that Sidhu "was secretly recorded stating that he . . . expected $1 million to be directed to a political action committee (PAC) to be spent on [his] behalf during the next election"). The quid pro quo admitted was Sidhu's disclosure of confidential city negotiation materials in exchange for that million-dollar super PAC contribution if the transaction closed.

Sidhu was sentenced to two months in prison, a year of supervised release, and a $55,000 fine. *See* Spencer Custodio, *Disgraced Former Anaheim Mayor Harry Sidhu Sentenced to Two Months in Prison*, Voice of OC (Mar. 28, 2025), https://voiceofoc.org/2025/03/disgraced-former-anaheim-mayor-harry-sidhu-sentenced-to-two-months-in-prison/.

The outcome of any of these cases is irrelevant. They are important because they show that corruption vis-à-vis a quid pro quo arrangement between politician and super PAC contributor is a plausible risk (and, in most of the cases, an *actual* risk) that will only become more prevalent if super PAC growth remains unchecked. These cases thus support the

conclusion that unrestricted super PAC contributions implicate, at best, the appearance of corruption, and, at worse, actual corruption.

III. Courts should not supplant Maine voters' attempt to combat the appearance of corruption.

There are few tools of democracy, if any, that more faithfully reflect the voice of the people than ballot initiatives. *See, e.g.*, *Kansans for Const. Freedom v. Kobach*, 789 F.Supp.3d 1062, 1074 (D. Kan. 2025) ("Ballot initiatives are perhaps the purest, most democratic process of self-government." (internal quotation marks and alterations omitted)); Julian N. Eule, *Judicial Review of Direct Democracy*, 99 Yale L. J. 1503, 1510 (1990) ("Substitutive direct democracy is direct democracy in its purest current form."). Maine's ballot initiative process—which allows Maine voters to initiate and approve of legislation directly—is no exception. *See* Me. Const. art. IV, Pt. 3, §§ 18–19 (constitutional provisions governing ballot initiatives).

When Maine voters enact legislation directly via ballot initiative, they speak in their own voice as lawmakers, expressing policy choices without the filter of political bargaining or legislative compromise. Such legislation carries significant weight, as it is the result of the exercised right of the people to enact legislation—a right that is "reserved to the

people through the direct initiative of legislation provisions of the Constitution" that "cannot be abridged directly or indirectly by any action of the Legislature." *Kelly v. Curtis*, 287 A.2d 426, 428 (Me. 1972); *see also* William R. Leinen, *Preserving Republican Governance: An Essential Government Functions Exception to Direct Democratic Measures*, 52 Wm. & Mary L. Rev. 997, 1010 (2010) (recognizing that courts are often highly deferential to ballot measures, and that "[m]uch of the deference accorded to ballot initiatives is based in the deep-seated belief that the electorate holds a reserved legislative power that is equal to or greater than that of the legislature").[15]

The Act—which was passed via ballot initiative by the *vast* majority of Maine voters[16]—thus reflects the direct voice of the people of Maine.[17]

---

[15] This aspect of ballot initiatives is also true in other states. *See, e.g.*, *Rossi v. Brown*, 889 P.2d 557, 560 (Cal. 1995) ("The initiative and referendum are not rights granted the people, but powers reserved by them. Declaring it the duty of the courts to jealously guard this right of the people, the courts have described the initiative and referendum as articulating one of the most precious rights of our democratic process." (cleaned up)).

[16] *See* ECF No. 45-10 (indicating that approximately 75% of Maine electors voted in favor of the Act); *see also* ECF No. 74 at 2 (noting that the Act was passed by "a record number of Maine voters").

[17] It also reflects the longstanding opinions of the American people at large. A recent poll commissioned by Issue One and conducted by YouGov

This aspect of the Act is particularly significant in the context of deciding whether the Act's contribution limits are constitutional.

The Supreme Court has long recognized that preventing corruption and the *appearance* of corruption is a compelling governmental interest that justifies limits on campaign contributions. *See Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 305 (2022); *Fed. Election Comm'n v. Nat'l Conservative Pol. Action Comm.*, 470 U.S. 480, 496–97 (1985). When voters themselves enact contribution limits through a ballot initiative—like Maine voters did here—their collective judgment regarding the apparent risk of corruption is entitled to particular deference. That is

---

demonstrated that 79% of Americans believe that large independent expenditures by wealthy donors and corporations in elections give rise to corruption, or the appearance of corruption. Press Release, *New polling illuminates how the Supreme Court got Citizens United wrong and shows bipartisan momentum for money-in-politics reforms, including proposed Montana ballot measure*, Issue One (Oct. 28, 2025), https://issueone.org/press/new-polling-citizens-united-money-in-politics-reforms/. A survey conducted 13 years earlier, in the aftermath of *Citizens United* and *SpeechNow.org*, similarly established that nearly 70% of Americans "believe[d] Super PAC spending will lead to corruption and that three in four Americans believe[d] limiting how much corporations, unions, and individuals can donate to Super PACs would curb corruption." *National Survey: Super PACs, Corruption, and Democracy*, Brennan Center for Justice (Apr. 24, 2012), https://www.brennancenter.org/our-work/analysis-opinion/national-survey-super-pacs-corruption-and-democracy.

because the appearance of corruption is a matter of public perception. Indeed, in *Nixon v. Shrink Missouri Government PAC*, the Supreme Court recognized that, "[a]lthough majority votes do not . . . defeat First Amendment protections," a statewide vote "certainly attested to the perception relied upon here: An overwhelming 74[%] of the voters of Missouri determined that contribution limits are necessary to combat corruption and the appearance thereof." 528 U.S. 377, 394 (2000) (internal quotation marks and alterations omitted); *see also McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 275 n.8 (2003) (Thomas, J., concurring in part and dissenting in part) (drawing connection between the appearance of corruption and evidence of public perception).[18]

Maine voters' overwhelming approval of the Act—by a roughly three-to-one margin—is not the only piece of evidence demonstrating their perception that contribution limits are necessary to combat apparent corruption. A survey conducted in connection with this litigation found that most individuals believe that quid pro quo

[18] The correlation between public perception and appearance of impropriety is well established in other contexts, as well. *See, e.g.*, *Wersal v. Sexton*, 674 F.3d 1010, 1022 (8th Cir. 2012) ("[T]he appearance of impartiality arises from the public's perception of that judge.").

corruption is relatively unlikely to occur with respect to contributions below $5,000, but that it *is* likely to occur with respect to donations at or above $5,000. *See* ECF No. 53-3 at 9–10; *cf.* 21-A M.R.S.A. § 1015(2-C) (applying $5,000 limit to super PAC contributions). There can therefore be little doubt that Maine voters enacted the Act to prevent the appearance of corruption.

The upshot is that Maine voters' opinion that the Act prevents the appearance of corruption is precisely the kind of judgment best made by the electorate rather than by the courts.[19] Contribution limits enacted by ballot initiative reflect a democratic check on the very dangers the Supreme Court has identified—actual and apparent quid pro quo corruption. By respecting voter-enacted contribution limits, courts will honor the principle that sovereignty ultimately rests with the people.

In contrast, second-guessing the very citizens whose trust in government the Constitution seeks to protect would replace public

[19] Deference is particularly appropriate given the disparity between how courts and the public assess the appearance of corruption. *See* Douglas M. Spencer & Alexander G. Theodoridis, *"Appearance of Corruption": Linking Public Opinion and Campaign Finance Reform*, 19 Election L.J. 510 (2020) ("[P]erceptions of corruption are much broader among the general public than in the courts.").

judgment with judicial speculation about what "appears" corrupt, thereby undermining the core rationale of the appearance standard. Judicial invalidation would also risk deepening the cynicism voters already feel toward government, sending the message that even when citizens act directly to reform their system, their voices will be disregarded.

As the Supreme Court has long observed, "a democracy is effective only if the people have faith in those who govern," *United States v. Mississippi Valley Generating Co.*, 364 U. S. 520, 562 (1961), and "the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance," *Nixon*, 528 U.S. at 390. When the people themselves move to address that risk, like Maine voters did here, courts should not stand in the way.

CONCLUSION

For the foregoing reasons, this Court should reverse the District Court's decision below.

Dated: October 29, 2025

Respectfully submitted,

/s/ Evan Bianchi

Evan Bianchi
Spiro Harrison & Nelson LLC
40 Exchange Place, Ste. 1100
New York, New York 10005
(646) 412-5616
ebianchi@shnlegal.com

Counsel for Amici Curiae

(Yep, this page is blank.)

Amicus Mainers for Working Families

Free Speech For People (founded 2010) and Mainers for Working Families work in partnership to advance bold, nonpartisan reforms that reduce the power of money in politics and strengthen democracy in Maine and beyond. Free Speech For People, a national nonprofit, leads legal and advocacy efforts to challenge the undue influence of corporate and wealthy interests in elections, promoting constitutional and legislative reforms that put voters first. Mainers for Working Families, a state-based organization, brings those principles to life on the ground—mobilizing citizens, supporting fair elections, and advocating for policies that ensure the government reflects the needs of working people rather than big donors. Together, they have championed initiatives like Maine's Clean Election system and transparency measures that curb dark money in state politics. Their collaboration demonstrates how national expertise and local action can combine to build a more accountable, people-powered democracy.

You can donate to Free Speech for People here.

You can donate to Mainers for Working Families here.

United States Court of Appeals
for the
First Circuit

Case 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.

(For Continuation of Caption See Inside Cover)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE, IN CASE NO. 1:24-CCV-00430-KFW,
HONORABLE KAREN FRINK WOLF, JUDGE

BRIEF OF *AMICUS CURIAE* MAINERS FOR WORKING FAMILIES IN SUPPORT OF DEFENDANTS-APPELLANTS AND REVERSAL

PETER BRANN (#45139)
BRANN & ISAACSON
113 Lisbon Street
P.O. Box 3070
Lewiston, Maine 04243
(207) 786-3566

COURTNEY HOSTETLER (#1164088)
JOHN BONIFAZ (#73656)
BEN CLEMENTS (#30191)
FREE SPEECH FOR PEOPLE
28 South Main Street, Suite 200
Sharon, Massachusetts 02067
(617) 244-0234

Counsel for Amicus Curiae

October 29, 2025

CP COUNSEL PRESS (800) 4-APPEAL • (387073)

Case No. 25-1706

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants,

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.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

TABLE OF AUTHORITIES—CONTINUED

Rules and Regulations

Other Authorities

TABLE OF AUTHORITIES—CONTINUED

TABLE OF AUTHORITIES—CONTINUED

Administrative Proceedings

Case Documents

INTEREST OF AMICUS CURIAE

Amicus Curiae Mainers For Working Families (MFWF) is a nonprofit that advocates for policies, including democracy reform, that help Maine families thrive. It promotes fair elections and democracy reform so that Maine families have a meaningful political voice, educates Maine communities about policies that affect working families, and seeks to empower working families through legislative literacy. MFWF supports the appeal by the defendants-appellants because unlimited contributions to political action committees put Maine elections at risk of corruption and undermine Maine families' meaningful participation in fair elections, and because Maine's law is constitutional.[1]

INTRODUCTION AND SUMMARY OF ARGUMENT

Super PACs have changed the landscape of U.S. elections. Though contributions to candidate- and party-controlled political action committees (PACs) are subject to reasonable limitation, contributions to independent expenditure PACs are not. The result is the super PAC: a PAC that can receive millions of dollars in contributions because they make only independent expenditures, are critically important to the success of a candidate's campaign, and create vast and virtually untraceable opportunities for corrupt agreements between contributor and candidate.

[1] Counsel received the consent of all parties prior to filing this amicus brief.

By November 2024, Mainers had enough. 75% of voters in the state voted to place reasonable contribution limits on PACs that only make independent expenditures (referred to herein as "IE PACs" or "super PACs"), significantly disincentivizing the funneling of quid pro quo payments through these PACs. The district court's decision to enjoin the law has disempowered Maine voters, kept Maine elections vulnerable to quid pro quo corruption, and collapsed the legal expenditure-contribution distinction in disregard of nearly fifty years of Supreme Court precedent.

The First Circuit should reverse the district court's ruling. The Supreme Court has long distinguished between political expenditures and contributions, subjecting expenditures to exacting scrutiny and contributions to lesser "close drawn" scrutiny, and upholding contribution limits even where it strikes down expenditure limits. Under this enduring framework, it is clear that Maine's law is constitutional: it places *no* limit on expenditures; it limits only contributions; and it does so in order to protect the state's interest in preventing quid pro quo corruption and the appearance of corruption.

The district court wrongly presumed that the recipient of the contributions changes this analysis. It does not. Unlimited contributions to IE PACs create opportunities for corruption because the contributor likely is closer to, not further removed from, the candidate. And because these contributions, like all political

contributions, "entail[] only a marginal restriction upon the contributor's ability to engage in free communication," *Buckley v. Valeo*, 424 U.S. 1, 20 (1976), they are scrutinized under a lesser standard than the independent expenditures themselves.

The district court's analytical errors stem first, from its misunderstanding of the Supreme Court's expenditure-specific findings in *Citizens United v. FEC*, 558 U.S. 310 (2010); second, from its reliance on the wrongly decided *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*), a D.C. Circuit court ruling not binding on this court, which struck a federal law limiting IE PAC contributions because of its fundamental misunderstanding of how IE PACs work and of prior Supreme Court rulings; and third, from its minimization of relevant facts developed in the fifteen years since *SpeechNow*, which have thrown *SpeechNow*'s faulty logic into sharp relief and unequivocally support Maine voters' state interest in ending unlimited super PAC contributions.

ARGUMENT

I. The Supreme Court subjects contribution limits to lesser scrutiny than expenditure limits and typically upholds them.

In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court considered First Amendment challenges to the Federal Election Campaign Act (FECA). 52 U.S.C. § 30101, *et seq.* (formerly codified at 2 U.S.C. § 431, *et seq.*). The Act was Congress' response to "deeply disturbing examples [of corruption] surfacing from the 1972

election" and imposed disclosure requirements, restricted media advertising expenditures, and limited contributions. *Buckley*, 424 U.S. at 27. Its "primary purpose [was] to limit the actuality and appearance of corruption resulting from large individual financial contributions." *Id.* at 26.

In reviewing FECA, *Buckley* distinguished between expenditure limits and contribution limits, subjecting only expenditure limits to more "exacting scrutiny" because they directly restrict election-related communication and thus "heavily burden[] core First Amendment expression." *Id.* at 44-48. By contrast, contribution limits received lower scrutiny because they "entail[] only a marginal restriction upon the contributor's ability to engage in free communication." *Id.* at 20. "As a general expression of support for the candidate and his views," contribution limits pose "little direct restraint on [the speaker's] political communication . . ." and "do[] not in any way infringe on the contributor's freedom to discuss candidates and issues." *Id*. at 20-21; *see also McCutcheon v. FEC*, 572 U.S. 185, 196-97 (2014) (plurality opinion) (discussing *Buckley*).

Applying this two-tiered approach—distinguishing between contributions and expenditures and subjecting only the later to exacting scrutiny—the *Buckley* Court held that the government's interest in preventing "the actuality and appearance of" corruption was insufficient to justify FECA's expenditure limits, but "constitutionally sufficient" to uphold contribution limits for individual candidates

under the lesser "closely drawn" scrutiny. 424 U.S. at 25-27, 47-48[2]; *see also Daggett v. Comm'n on Governmental Ethics & Election Pracs.,* 205 F.3d 445, 456-58 (1st Cir. 2000) (anything more than an "illusory" threat of corruption is a sufficient state interest to justify contribution limits).

Since *Buckley*, the Supreme Court has "routinely struck down limitations on independent expenditures . . . while repeatedly upholding contribution limits." *FEC v. Colo. Republican Fed. Campaign Comm.* ("*Colorado II*"), 533 U.S. 431, 441-42 (2001); *see also Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 610 (1996) (opinion of Breyer, J.) ("[m]ost of the provisions this Court found unconstitutional imposed *expenditure* limits"). The Court upheld limits on coordinated party expenditures that are functionally indistinguishable from direct party contributions to candidates. *Colorado II*, 533 U.S. at 464-65. It upheld contribution limits for multicandidate political committees; because the limit prevented contributors and candidates from "easily evad[ing]" direct contribution limits, it is "an appropriate means . . . to protect the integrity of contribution restrictions upheld by this Court in *Buckley*." *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 184-85, 198-99 (1981). It also upheld limits on "soft money" contributions to political parties (used to benefit candidates without expressly advocating for their

[2] The Supreme Court limits "corruption" to "quid pro quo corruption." *See FEC v. Cruz*, 596 U.S. 289, 305 (2022).

election) because they prevent corruption, its appearance, and the circumvention of other contribution limits. *McConnell v. FEC*, 540 U.S. 93, 122-26 (2003); *see also Republican Party of La. v. FEC*, 581 U.S. 989 (2017) (summarily reaffirming this holding); *Republican Nat'l Comm. v. FEC*, 561 U.S. 1040 (2010) (same). The Court's rationale has been consistent: the exacting scrutiny that applies to expenditures does not apply to contributions.

The First Circuit relied on *Buckley*'s two-tiered system to uphold contribution limits in the Maine Clean Election Act, noting that "Maine voters as well as legislators and those intimately involved in the political process have valid concerns about corruption and the appearance thereof caused by large contributions," and taking "the fact that Maine voters approved the referendum imposing reduced contribution limits as indicative of their perception of corruption." *Daggett*, 205 F.3d at 456-58.

Citizens United v. FEC, 558 U.S. 310, 372 (2010), which invalidated a federal statute banning corporate political expenditures, maintained this approach. Reiterating that expenditures are "political speech," the Supreme Court reasoned that "[t]he anticorruption interest is not sufficient" to restrict independent expenditures. *Id.* at 329, 357. *Citizens United* looked *only* at independent expenditure limits, applied the exacting scrutiny standard that *Buckley* set forth for analyzing expenditure limits, and took pains to contrast expenditures and contributions.

Indeed, in its analysis the court noted that contribution limits "unlike limits on independent expenditures, have been an accepted means to prevent *quid pro quo* corruption," *Citizens United*, 558 U.S. at 359 (citing *FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197, 206 (1982)), and that it had upheld direct contribution limits "to ensure against the reality or appearance of corruption." *Id.* at 357.

II. The district court's decision contradicts fifty years of Supreme Court precedent distinguishing between contributions and expenditures and fifteen years of evidence confirming that super PACs lead to corruption and its appearance.

The district court's decision was based on its simple, but erroneous, assertion that, "[i]f the government's interest in combatting the appearance of corruption was not enough to justify limits on independent expenditures [in *Citizens United*], it stands to reason that the same interest is not enough to justify limits on contributions to independent expenditures." JA 354. In reaching this conclusion, the court relied heavily on a D.C. Circuit case, decided shortly after *Citizens United*, and other decisions that followed quickly in its wake, holding that a federal law limiting contributions to PAC's was unconstitutional as applied to IE PACs. *See SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010) (*en banc*) ("because *Citizens United* holds that independent expenditures do not corrupt or give the appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to independent expenditure-only

organizations."), *cert. denied on unrelated issue sub nom. Keating v. FEC*, 562 U.S. 1003 (2010).[3]

The district court's reasoning, like the circuit decisions it followed (none of which are binding on this court), is fallacious. First, it contradicts the fundamental distinction drawn in *Buckley, Citizens United,* and every other modern Supreme Court campaign finance decision, between expenditure limits, which are subject to strict scrutiny and almost always unconstitutional, and contribution limits, which are subject to lesser "closely drawn" scrutiny and generally constitutional. In doing so, it failed to recognize that, unlike limits on independent expenditures themselves, limits on contributions to PACs (independent or otherwise) "entail only a marginal restriction" on speech, regardless of what kind of expenditures those PACs go on to make. *See Buckley*, 424 U.S. at 20; *McConnell*, 540 U.S. 122-26 (upholding soft money contribution limits). Further, contrary to the district court's reasoning, even if an organization's spending does not corrupt, a contribution to the organization can still be the payment part of a quid pro quo transaction. Contributions to super PACs, like contributions to any other "third party" made by a donor at the behest of a candidate, may be part of a quid pro quo corrupt agreement, even if the recipient of the payment (the super PAC itself) is ignorant of the corrupt agreement. Finally, the

[3] The sole recent case, *Alaska Pub. Offices Comm'n v. Patrick*, 494 P.3d 53, 58 (Alaska 2021), like the district court here, did not consider the then-available evidentiary record.

public record (which the district court largely ignored) amassed in the fifteen years since *SpeechNow,* in which elections have become dominated by the millionaires and billionaires who fund candidate campaigns with massive (often multi-million dollar) contributions funneled through super PACs, has proven beyond any question that contributions to super PACs can and do lead to quid pro quo corruption and its appearance, shattering public faith in our elections.

A. *The district court's conflation of contributions and expenditures contradicts* Buckley, Citizens United, *and modern campaign finance jurisprudence.*

In assuming that a contribution to an independent expenditure committee is the constitutional equivalent to an independent expenditure made by that committee, the district court ignored the Supreme Court's rationales for distinguishing between contributions and expenditures.

First, unlike the limits on independent expenditures that were struck down in *Buckley* and *Citizens United*, Maine's limits on contributions to IE PACs have absolutely no effect on anyone's freedom to spend as much as they want expressing their support for a candidate or candidates. The IE PAC donor can contribute the legal maximum to the IE PAC supporting their favorite candidate and still spend unlimited amounts on their own in support of that candidate. As the Court explained in *Buckley:*

> By contrast with a limitation upon expenditures for political expression, a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication. A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. At most, the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate. A limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues. While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.

Buckley, 424 U.S. at 20-21 (footnote omitted).

The district court's rationale likewise defies the Supreme Court's reasoning regarding the risk of quid pro quo corruption. In rejecting limits on independent expenditures, the Supreme Court reasoned that because independent expenditures by definition cannot be coordinated with candidates, the risk of quid pro quo corruption is too small to survive an exacting scrutiny analysis. *Citizens United*, 558 U.S. at 357 (distinguishing independent expenditures from contributions because they are not prearranged or coordinated with a campaign, which "alleviates the danger [they] will be given as a *quid pro quo*" (quoting *Buckley*, 424 U.S. at 47)). This non-coordination rule does not apply to communications between candidates and

contributors to IE PACs. And in a system such as ours, in which elections are funded by campaign contributions solicited by candidates (from, among others, the same persons who are contributing to IE PACs), no such rule could apply. Donors can and do coordinate with candidates, making the reasoning of *Citizens United* inapplicable to contributions to IE PACs.

The district court theorized that contributions to independent expenditures "are one step further removed from the candidate" than the super PACs themselves, so "the logic of *Citizens United* dictates that the danger of corruption is smaller still." JA 353; *see also id.* (citing *Alaska Pub. Offices Comm'n*, 494 F.3d at 58, to conclude that there is "no logical scenario" where a contribution is "more prone to quid pro corruption than the expenditure itself"). But the idea that contributions are "further removed" from candidates than expenditures and therefore pose a lesser danger of corruption appears nowhere in *Citizens United* or in any other decision binding on this Court. Nor does it have any basis in reality. As explained above, candidates can and do communicate and coordinate with IE PAC contributors, meaning that, unlike with the IE PACs themselves, there is *no* "removal" of the IE PAC contributor from the candidate.

The district court's reasoning is further contradicted by the Supreme Court and other court decisions upholding limits on "soft money" contributions. These decisions recognize that contributions to committees that benefit but are not

controlled by candidates create the sense of indebtedness by candidates to donors which can facilitate quid pro quo dealings. In *McConnell*, the Supreme Court explained that "large soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders, regardless of how those funds are ultimately used." 540 U.S. at 155. In 2017, a three-judge district court panel emphasized that "the inducement occasioning the prospect of indebtedness on the part of a federal officeholder is not the *spending* of soft money by the political party… [but] the *contribution* of soft money to the party in the first place." *Republican Party of La. v. FEC*, 219 F. Supp. 3d 86, 97 (D.D.C. 2017) (emphases in original), *aff'd*, 581 U.S. 989 (2017); *see also Republican Nat'l Comm. v. FEC*, 698 F. Supp. 2d 150, 157 (D.D.C. 2010), *aff'd*, 561 U.S. 1040 (2010).

B. *The district court decision ignored the manner in which unlimited contributions create opportunities and incentives for quid pro quo corruption.*

Federal law itself confirms that payments to third parties can be the quid of a quid pro quo corrupt agreement. Federal statutes prohibit public officials from seeking "anything of value personally *or for any other person or entity*" in exchange for official action. 18 U.S.C. § 201(b)(2) (emphasis added). Public officials have been prosecuted for making deals in which the bribe is sent to a third party. *See United States v. Gross*, No. 15-cr-769, 2017 WL 4685111, at *6-7, 42 (S.D.N.Y. Oct. 18, 2017) (affirming bribery conviction where the head of a federal credit bureau

directed a bribe payment be paid to a church, and explaining that "the Government . . . correctly . . . made clear to the jury that Gross's desire to use his position at the credit union to effect a benefit to his church through the soliciting of bribes would also be corrupt, even if he did not use that money to pay personal expenses"). The same is true in the context of campaign contribution bribes. The Eleventh Circuit, affirming the conviction of a former governor, concluded that soliciting a donation to an issue-advocacy foundation is unlawful even though such donations "do not financially benefit the individual politician in the same way that a candidate-election campaign contribution does." *United States v. Siegelman*, 640 F.3d 1159, 1169 n.13 (11th Cir. 2011). In 2020, a lobbyist pleaded guilty to participating in a bribery scheme that featured PAC contributions.[4] And the *Menendez* court specifically held that *Citizens United* does not bar the prosecution of bribery schemes involving super

[4] The scheme involved a politician taking official acts to benefit a developer, in exchange for $75,000 contributions to a politician's favored PACs, including one supporting his relative. *See* Press Release, U.S. Attorney's Office, C.D. Cal., *Lobbyist Agrees to Plead Guilty in City Hall Bribery Scheme in Which City Councilman Jose Huizar Supported Developer in Exchange for PAC Donations* (Aug. 25, 2020), https://perma.cc/6CNL-D5BH. The developer saved $14 million from the scheme, and ultimately paid only a $1.2 million fine. David Zahniser, *Downtown Developer Will Pay $1.2 Million in L.A. City Hall Corruption Case*, LA Times (Jan. 7, 2021), http://bit.ly/4mapesM.

PAC contributions. *See United States v. Menendez*, 132 F. Supp. 3d 635, 640 (D.N.J. 2015); *United States v. Menendez*, 291 F. Supp. 3d 606, 621-23 (D.N.J. 2018).[5]

Indeed, absent contribution limits, there are significant incentives for funneling corrupt payments through super PACs. First, contributions to candidate PACs are subject to strict limits but super PAC contributions are not, so super PACs are an attractive end destination for bribes. This is particularly true in today's climate, in which super PACs are critical to the success of a candidate's campaign, and the candidate can be reasonably sure that certain super PACs will support their campaign in the manner they prefer. *See* discussion *infra* Section II.C. Limiting the size of a contribution does not change the message that a contribution conveys as an "undifferentiated, symbolic act," *Buckley*, 424 U.S. at 21, but opportunities to give large contributions increase the risk that they will be used for and seen as part of quid pro quo corruption.

Second, super PACs are a discreet destination for bribes; the system allows a donor to make a large contribution without widely advertising their connection to the candidate. The conviction of former Ohio Speaker Larry Householder illustrates why super PACs are attractive vehicles for corrupt payments. Householder solicited millions to his 501(c)(4) and ultimately to a super PAC, in exchange for a billion

[5] Nicholas Confessore & Matt Apuzzo, *Robert Menendez Indictment Points to Corrupting Potential of Super PACs*, N.Y. Times (Apr. 2, 2015), https://bit.ly/4gX3y0q.

dollar nuclear plant bailout. Because the agreed-upon bribes passed through a 501(c)(4) before going to a super PAC, Householder knew who the payers were, though the public did not.[6] In this respect, super PAC contributions may create a greater danger of quid pro quo corruption and its appearance than contributions to candidates.

Here again, the constitutionality of soft money contribution limits is instructive. Absent limits, soft money created opportunities and incentives for corruption. Candidates were asking donors to make massive soft-money contributions; donors were directing contributions to support certain candidates and trading on candidates' reliance on party committees; party committees teamed up with campaign committees to enable candidates to take advantage of the soft money; and contributors and candidates easily evaded direct contribution limits. *McConnell*, 540 U.S. at 145-46. Soft money contributions had "the inherent capacity . . . to create a risk of *quid pro quo* corruption or its appearance," which contribution limits reduced, substantially and constitutionally. *Republican Party of La*., 219 F. Supp. 3d at 97-98. IE PACs similarly are built with an "inherent capacity" to result in *quid pro quo* corruption or its appearance.

[6] Press Release, U.S. Attorney's Office, S.D. Ohio, *Former Ohio House Speaker Sentenced to 20 Years in Prison For Leading Racketeering Conspiracy Involving $60 Million in Bribes* (June 29, 2023), https://perma.cc/BKX6-K6W7.

C. *Fifteen years of evidence demonstrate that super PAC contributions create risk of actual corruption and its appearance.*

The district court miscalculated the state's interest by minimizing fifteen years of data demonstrating that unlimited super PAC contributions create significant risk of quid pro quo corruption and its appearance. *See* JA 352 (of defendants' ample evidence, mentioning only two criminal cases).

1. Candidates depend on large super PAC contributions to fund the important role that super PACs play in campaigns.

Since *SpeechNow*, super PACs have become "a dominant form of political activity."[7] Candidates are dependent upon super PACs and on the large contributions that fill their coffers. For example, President Trump's recent re-election campaign raised $463.66 million in direct contributions, while supportive super PACs raised at least $895 million.[8] In Maine, expenditures by PACs now outpace candidate-controlled campaign spending in gubernatorial elections: between 2010 and 2022, PAC independent expenditures rose from approximately $3.5 million to more than $13.6 million, while campaign spending dropped from nearly $15.5 million to under

[7] Bipartisan Policy Center, *Campaign Finance in the United States: Assessing an Era of Fundamental Change* 38 (2018), http://bit.ly/4gEtP3D.

[8] *Summary Data for Donald Trump, 2024 Cycle*, Open Secrets, https://bit.ly/4h35qFb (accessed Oct. 29, 2025); Theodore Schleifer & Albert Sun, *How Much Did Trump, Biden, and Harris Raise? A Stunning $4.7 Billion*, N.Y. Times (Dec. 6, 2024), https://bit.ly/431w8KJ.

$8.5 million. JA 55. In non-gubernatorial election campaigns, PAC independent expenditures quadrupled to $3.5 million between 2010 and 2024. JA 56.

Because Maine's local and state elections raise less money overall, a contribution need not be as large as the largest federal race contributions in order to swamp direct candidate contributions, influence the course of an election, and create significant incentives for quid pro quo corruption. For example, in a 2022 district attorney race, the two candidates made expenditures of $54,120.13 and $22,657.55, but a super PAC funded by a single entity's contributions spent $384,345 on that election, five times the combined spending of both candidates. JA 58. Also in 2022, candidates and outside groups combined spent $22,117,200.98 on the Maine gubernatorial election; the Democratic Governors' Association's $9.2 million contribution almost wholly funded Better Maine PAC's $9.2 million expenditures in that election, while the Maine Families First PAC's $2.9 million expenditures were funded solely by contributions from Thomas Klingenstein of New York, one of the nation's largest individual election donors.[9] JA 57.

[9] *See, e.g.,* Jason Wilson, *The Far-Right Megadonor Pouring Over $10m Into the US Election to Defeat 'The Woke Regime'*, Guardian (Oct. 22, 2024), https://bit.ly/433Rl6L; Billy Kobin, *Megadonor is Funding a Maine Republican's Return to State Politics*, Bangor Daily News (Aug. 15, 2024), https://bit.ly/4gTOzV8.

Super PACs increasingly operate as alter egos for candidate campaigns, assuming core campaign functions.[10] President Trump's campaign outsourced many field operations—including canvassing and get-out-the-vote efforts—to Elon Musk's America PAC.[11] During the primaries, a pro-DeSantis super PAC drove Florida Governor Ron DeSantis around the country and financed many of his public events while his campaign's event spending dropped.[12] One of the largest liberal super PACs served as a "full-service communications, research and training behemoth for Democrats up and down the ballot."[13]

Super PACs can coordinate canvassing activities with candidates. FEC Advisory Op. 2024-01 (canvassing literature and scripts are not coordinated communications). Candidates may headline super PAC fundraising events and solicit certain contributions, FEC Advisory Op. 2015-09 at 8,[14] including for groups

---

[10] Jessica Piper & Sally Goldenberg, *The Super PAC Frenzy Redefining Campaign Operations*, Politico (June 25, 2023), https://bit.ly/439RKoj. Super PACs now perform "many of the functions that parties did in the heyday of 'soft money'" Bipartisan Policy Center, *supra* note 7, at 33.

[11] *See* Theodore Schleifer, *Elon Musk and His Super PAC Face Their Crucible Moment*, N.Y. Times (Nov. 4, 2024), https://nyti.ms/3X81H1D; *see also* Theodore Schleifer, *Trump Gambles on Outside Groups to Finance Voter Outreach Efforts*, N.Y. Times (Aug. 14, 2024), https://bit.ly/41926lE.

[12] *See* Alec Hernandez & Bridget Bowman, *How Ron DeSantis' Super PAC is Taking Financial Pressure Off His Campaign*, NBC News (Oct. 20, 2023), https://bit.ly/3CYcvss.

[13] Rebecca Davis O'Brien, *Liberal Super PAC Is Turning Its Focus Entirely Digital*, N.Y. Times (Nov. 14, 2023), https://bit.ly/3CQdVFz.

[14] Maine has partially closed the "fundraiser loophole." A contribution to a PAC primarily supporting a candidate is counted as a contribution to that candidate for

advocating for a measure appearing on a ballot in which that candidate is also appearing, FEC Advisory Op. 2024-05. Campaign staff may plan strategies with a candidate, then leave to run a super PAC supporting that candidate after a 120-day "cooling-off period." 11 C.F.R. § 109.21(d)(5)(i); U.S. Gov't Accountability Office, GAO-20-66R Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives 52 & n. 178 (Feb. 3, 2020), https://www.gao.gov/assets/gao-20-66r.pdf. Super PACs post research for candidate use, and candidates post advertising guidance for super PACs. *See* Letter from Aaron McKean, Campaign Legal Ctr, to Michael Reed, Chair of Philadelphia Bd. of Ethics (Aug. 16, 2022), https://bit.ly/41jaW1F (candidates communicating to super PACs via websites "enables quid pro quo corruption" and its appearance); *see also* In the Matter of Vote Vets et al., MUR 770 (FEC Apr. 29, 2022) (Statement of Reasons). The FEC has never fined a candidate for coordinating with a super PAC.[15]

---

purposes of Maine's direct campaign contribution limits. 21-A M.R.S.A § 1015-4. But the law does not apply to multicandidate committees. *See Cal. Med. Ass'n*, 453 U.S. at 197-199 (unlimited contributions to multicandidate political committees allow donors to circumvent limits for candidate campaigns, creating same risks of actual or apparent corruption).

[15] Maia Cook, *Super PACs Raise Millions as Concerns About Illegal Campaign Coordination Raise Questions*, Open Secrets (Aug. 18, 2023), https://bit.ly/4k3dQz2; Eric Lichtblau, *F.E.C. Can't Curb 2016 Election Abuse, Commission Chief Says*, N.Y. Times (May 2, 2015), https://bit.ly/3CSEaLt; Alex Roarty et al., *They're Not Allowed to Talk. But Candidates and PACs are Brazenly Communicating All the Time*, Atlantic (Oct. 30, 2014), https://bit.ly/4hHVnX4.

In short, super PACs are becoming more important to a candidate's success than candidate committees themselves. Under these conditions, it is preposterous to conclude, as the district court did, that contributions to super PACs cannot give rise to quid pro quo corruption or its appearance. No rational person would accept the notion that an $11,000 contribution to a political candidate creates a greater risk of quid pro quo corruption or its appearance than does a multi-million dollar contribution to a super PAC that spends its money supporting that candidate.

2. Megadonors have unique control over campaigns and access to candidates.

In 2012, the top 1% of all individual super PAC donors contributed 76.76% of all super PAC contributions from individuals. In 2024, that percentage rose to 97.94%.[16] About 44% of funds raised to support Trump's 2024 campaign came from just ten megadonors, most of which funneled through super PACs.[17] Top donors often given tens of millions of dollars in contributions—or more.

Between 2021 and 2022, George Soros contributed $175 million to liberal super PAC Democracy PAC II, essentially its entire treasury.[18] In 2024, Timothy

---

[16] *Super PACs: How Many Donors Give*, Open Secrets, https://www.opensecrets.org/outside-spending/donor-stats (accessed Oct. 28, 2025).
[17] Albert Serna Jr. & Anna Massoglia, *Big Money, Big Stakes: 5 Things Everyone Should Know About Money in 2024 Elections*, Open Secrets (Nov. 6, 2024), https://bit.ly/3CNqSzW.
[18] *Democracy PAC II PAC Donors*, Open Secrets, https://bit.ly/3X7U5MP (accessed Oct. 29, 2025).

Mellon contributed $150 million to conservative super PAC Make America Great Again Inc., nearly 40% of its treasury.[19] Both sets of contributions were dwarfed by those of billionaire Elon Musk, who contributed more than $260 million to three super PACs instrumental to Trump's 2024 campaign[20]: (1) at least $238 million (via his companies SpaceX and Tesla) to his own super PAC, America PAC, accounting for the vast majority of its funds;[21] (2) $20.5 million to the pro-Trump RBG PAC, funded wholly by Musk's contribution and formed late enough that its source was not disclosed until after election day;[22] and (3) $3 million to the MAHA Alliance, accounting for approximately 50% of its pre-election treasury.[23] Musk "personally steer[ed]" the America PAC,[24] appeared with Trump at rallies, stayed at Mar-a-Lago,

[19] Mellon was the top contributor to Make America Great Again Inc. in 2024. *Top Organizations Disclosing Donations to Make America Great Again Inc, 2024*, Open Secrets, https://bit.ly/4k1Yfjf (accessed Oct. 29, 2025).
[20] *See* Taylor Giorno & Caroline Vakil, *What We Learned About the Money Fueling The Final Stretch of the Election*, The Hill (Dec. 6, 2024), https://bit.ly/3QwyrOB (summarizing large 2024 contributions). Musk continued to make tens of millions of dollars in super PAC contributions to support Trump immediately after the election. *See Musk, Elon: Donor Detail*, Open Secrets, https://bit.ly/4mxICQA (accessed Oct. 28, 2025).
[21] America PAC Comm., FEC, https://www.fec.gov/data/committee/C00879510/ (accessed Oct. 29, 2025).
[22] RBG PAC, FEC, https://www.fec.gov/data/committee/C00891291/ (accessed Oct. 29, 2025); *see* Giorno & Vakil, *supra* note 20.
[23] MAHA Alliance, FEC, https://www.fec.gov/data/committee/C00888172/ (accessed Oct. 29, 2025).
[24] Theodore Schleifer et al, *Musk is Going All In to Elect Trump*, N.Y. Times (Oct. 11, 2024), http://bit.ly/421Gx82.

hosted events, and was in close contact with Trump.[25] After Trump won, Musk joined Trump's phone calls with foreign leaders, answered questions in the Oval Office, and received unprecedent access to government and private data with no oversight while controlling the Department of Government Efficiency.[26]

Maine megadonors provide similar value for a smaller price. As discussed *supra*, single donors played crucial roles in 2022 races. JA 57-58. Looking to this suit's plaintiffs, Dinner Table Action PAC's three top contributors are other PACs, each funded almost entirely by the Concord Fund, an out-of-state 501(c)(4) that does not disclose funders.[27]

---

[25] *Id.*; Maggie Haberman et al., *How Elon Musk Has Planted Himself Almost Literally at Trump's Doorstep*, N.Y. Times (Dec. 30, 2024), https://bit.ly/3D2iVqw; Lauren Sforza, *Democratic PAC Files FEC Complaint Over Trump-Musk Interview*, The Hill (Aug. 13, 2024), https://bit.ly/4gU77oe.

[26] *See, e.g.*, Alan Rappeport et al, *Musk Team Seeks Access to I.R.S. System With Taxpayers' Records*, N.Y. Times (Feb. 17, 2025), https://bit.ly/4hMMHPe; Kathryn Watson, *Elon Musk Defends DOGE as Trump Orders Agencies to Comply With Cuts*, CBS News (Feb. 12, 2025), https://bit.ly/41aPU3P; Jacob Leibenluft, *"DOGE" Access to Treasury Payment Systems Raises Serious Risks*, Center on Budget and Policy Priorities (Feb. 11, 2025), https://bit.ly/4gUvRg7.

[27] In 2024, DTA received $291,255.42 in contributions in 2024. JA 62-66. Its three largest contributions came from For Our Future, which shares DTA's principal officer Alex Titcomb and in 2024 only received contributions from the Concord Fund; Free Maine Campaign, which was 98.9% funded by For Our Future; and Fight For Freedom, which was 89.5% funded by For Our Future. DTA's in-kind contributions were provided wholly by For Our Future, Fight for Freedom, and Titcomb. *See* Committees, Maine Ethics Comm'n, https://mainecampaignfinance.com/index.html#/exploreCommittee (accessed Oct. 29, 2025) (pages and filings for DTA, For Our Future, Free Maine Campaign, and Fight for Freedom). The Concord Fund's donors are anonymous. *See* Hailey Fuchs, *Nonprofit Connected to Leonard Leo Sent Millions to His Firm*, Politico (June 7,

Because candidates rely on super PACs and super PACs rely on megadonors, there is significant risk, if not inevitability, that candidates will court these donors. The courtship might be open—as when Trump told oil executives they should donate $1 billion because he would roll back environmental protections that oil companies disfavor.[28] Or it might occur behind closed doors, in meetings not governed by anti-coordination rules, with super PAC contributions available to facilitate corrupt deals. Either way, Mainers have concrete reason to utilize a constitutional contribution restriction to close the super PAC donor-to-candidate path to corruption.

3. Under these conditions, actual quid pro quo corruption occurs and the appearance of corruption grows.

The risk of corruption or its appearance is not hypothetical. Quid pro quo bribery and its appearance is already happening through super PAC contributions, at great cost to the public interest and the integrity of our democratic institutions. Recent bribery prosecutions, from the Menendez prosecution to the Householder conviction, prove large super PAC contributions are attractive destinations for bribe payments. North Carolina insurance magnate Greg E. Lindberg was convicted for "orchestrating a bribery scheme involving independent expenditure accounts and

---

2024), https://bit.ly/433e7f9; Anna Massoglia & Sam Levine, *Conservative 'Dark Money' Network Rebranded to Push Voting Restriction Before 2020 Election*, Open Secrets (May 27, 2020), https://bit.ly/3D14iDR.

[28] Lisa Friedman et al., *At a Dinner, Trump Assailed Climate Rules and Asked $1 Billion From Big Oil*, N.Y. Times (May 9, 2024), https://bit.ly/4bcufNq.

improper campaign contributions" by funneling $1.5 million to a super PAC he created to bribe a North Carolina insurance commissioner.[29] And former Puerto Rico governor Wanda Vázquez Garced was indicted for an alleged deal to remove a financial regulator in exchange for a banker creating a supportive super PAC—though on the eve of trial, DOJ leaders under Trump's administration ordered prosecutors to reach a lenient plea deal with Vazquez Garced, who had endorsed Trump for president, and with the billionaire banker who was represented by one of Trump's personal attorneys.[30]

---

[29] Lindberg was recorded telling the commissioner, "I think the play here is to create an independent-expenditure committee for your reelection specifically," and that "the beauty of" the committee is that it can receive "unlimited" donations. Ames Alexander, *Watch Secretly Recorded Videos from the Bribery Sting that Targeted Durham Billionaire*, Charlotte Observer 00:18-30, 00:35-45 (Mar. 10, 2020), https://www.charlotteobserver.com/news/local/article241043236.html. Lindberg was granted retrial on other grounds, *United States v. Lindberg*, 39 F.4th 151 (4th Cir. 2022), and found guilty after a second trial. Jury Verdict, *United States v. Lindberg*, 5:19-cr-22-MOC (W.D.N.C. May 15, 2024); *see also* Press Release, U.S. Dep't of Justice, *Federal Jury Convicts Founder and Chairman of a Multinational Investment Company and a Company Consultant of Public Corruption and Bribery Charges* (Mar. 5, 2020), https://perma.cc/LXM5-57YU.

[30] Indictment at 38, *United States v. Vazquez-Garced*, 22-cr-00342 (D.P.R. Aug. 2, 2022); *see also* Press Release, U.S. Dep't of Justice, *Former Governor of Puerto Rico Arrested in Bribery Scheme* (Aug. 4, 2022), https://perma.cc/6GUC-DJED; Ben Penn, *DOJ Overruled Prosecutors in Deal for Trump-Linked Governor*, Bloomberg Law (July 2, 2025), https://news.bloomberglaw.com/us-law-week/ex-puerto-rico-governor-with-trump-ties-gets-bribery-case-break; Ben Penn, *Dismayed Judge Signs Off on DOJ's Deal for Puerto Rico Governor*, Bloomberg Law (July 8, 2025), https://news.bloomberglaw.com/us-law-week/dismayed-judge-signs-off-on-dojs-deal-for-puerto-rico-governor.

Bribery laws are inadequate to prevent quid pro quo corruption in the context of super PAC contributions, just as they are inadequate to prevent quid pro quo corruption in the context of corrupt contributions to candidate committees. It is difficult to detect and prosecute bribery in any case, but especially in the dark and murky world of super PACs. The inadequacy of the bribery laws is particularly acute in today's context in which the Department of Justice, which has long been the primary enforcer of bribery protections at the federal and the state level, is ordering prosecutors to reach sweetheart plea deals with favored defendants and firing officials who investigate and prosecute corruption crimes.[31]

The public knows this. They reasonably presume donations pay for the massive favors that megadonors obtain from politicians. *See e.g.,* Sen. Van Hollen, Facebook (Feb. 5, 2025), https://www.facebook.com/watch/?v=956262319796005 (calling the exchange of Musk's money for government power "the most corrupt bargain we've ever seen in American history"). And they are not seeing consequences for the powerful, even when they are caught up in overt corruption schemes. The appearance of corruption is undermining the legitimacy of our democracy.

[31] Ken Dilanian, *Firings, Pardons, and Policy Changes Have Gutted DOJ Anti-Corruption Efforts, Experts Say*, NBC News (June 3, 2025), http://bit.ly/47v3bro; Adam Goldman, Glenn Thrush, & Devlin Barrett, *F.B.I. Dismantles Elite Public Corruption Squad*, N.Y. Times (May 15, 2025), http://bit.ly/4qwzK0v.

Political leaders acknowledge the risk and appearance of corruption. During his 2016 campaign, Donald Trump decried super PACs as "[v]ery corrupt," giving donors "total control of the candidates. . . . I know it so well because I was on both sides of it."[32] In 2015, former President Jimmy Carter said that America had become "an oligarchy, with unlimited political bribery being the essence of getting the nominations" for presidents, governors, and members of Congress.[33] Maine state legislators and their constituents also recognize that unlimited super PAC contributions result in actual and the appearance of corruption in Maine elections. *See* JA 43-45, 49, 105-06.

The district court wrongly dismissed the appearance of corruption by citing *Citizens United*'s conclusion that voters aren't discouraged by big corporate expenditures because people still have "ultimate influence." JA 354 (citing *Citizens United*, 558 U.S. at 360). But Maine voters limited contributions, not expenditures. The Supreme Court has stated that the public may infer "opportunities for abuse inherent in a regime of large individual financial contributions," so it is hardly surprising that, as the district court recognizes, the public perceives corruption beyond "mere influence or access" in contributions over $5,000. *McCutcheon*, 572

---

[32] *Transcript of the Republican Debate in Florida*, N.Y. Times (Mar. 11, 2016), https://www.nytimes.com/2016/03/11/us/politics/transcript-of-the-republican-presidential-debate-in-florida.html.

[33] Albert W. Alschuler et al., *Why Limits on Contributions to Super PACs Should Survive Citizens United*, 86 Fordham L. Rev. 2299, 2340 (2018).

U.S. at 207-08 (quoting *Buckley*, 424 U.S. at 26, 27); *see* JA 354. This well-warranted perception is causing voters to lose faith in the democratic process—a substantial risk in itself that the state has the constitutional right to combat.[34]

CONCLUSION

For these reasons, we join Defendants-Appellants in asking this Court to reverse the lower court ruling.

Dated: October 29, 2025

Respectfully submitted,

/s/ Courtney Hostetler
Courtney Hostetler (#1164088)
John Bonifaz (#73656)
Ben Clements (#30191)
FREE SPEECH FOR PEOPLE
28 S. Main St., Suite 200
Sharon, Massachusetts 02067
(617) 244-0234
chostetler@freespeechforpeople.org
jbonifaz@freespeechforpeople.org
bclements@freespeechforpeople.org

Peter J. Brann (#45139)
BRANN & ISAACSON
113 Lisbon St., P.O. Box 3070
Lewiston, ME 04243-3070
(207) 786-3566
pbrann@brannlaw.com

***Attorneys for* Amicus Curiae**

[34] *See id.* at 2342-44 (discussing the relationship between Americans' high perceptions of government corruption and large super PAC contributions).

(Yep, this page is blank.)

Amici Law Professors

Albert W. Alschuler is a distinguished legal scholar and Professor Emeritus at the University of Chicago Law School. Known for his work on criminal justice, legal ethics, and constitutional law, Alschuler has written extensively on corruption, campaign finance, and judicial integrity. He is a respected voice for reform and has contributed influential critiques of how money and power distort the rule of law and democratic governance.

Laurence Tribe is a renowned constitutional law scholar and Professor Emeritus at Harvard Law School. Widely regarded as one of the most influential legal thinkers in the United States, Tribe has argued dozens of cases before the U.S. Supreme Court and authored seminal works on constitutional interpretation and civil rights. His scholarship and public advocacy have shaped modern constitutional law, particularly in areas of separation of powers, free speech, and equal protection.

Norman Eisen is a lawyer, author, and former U.S. ambassador to the Czech Republic who has played key roles in government ethics and anti-corruption efforts. A senior fellow at the Brookings Institution and co-founder of Citizens for Responsibility and Ethics in Washington (CREW), Eisen served as ethics czar in the Obama White House, where he developed and enforced transparency and accountability standards. His work continues to focus on safeguarding democracy through integrity, rule of law, and ethical governance.

Their brief was drafted by Jason Harrow of Gerstein Harrow LLP.

25-1705, 25-1706

United States Court of Appeals for the First Circuit

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.

* * *

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

Plaintiffs-Appellees,

v.

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

Defendants-Appellants,

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.

Appeal From the United States District Court for the District of Maine

No. 1:24-cv-00430-KFW (Karen Frink Wolf, J.)

BRIEF OF AMICUS CURIAE ALBERT ALSCHULER, LAURENCE TRIBE, AND NORMAN EISEN IN SUPPORT OF APPELLANTS AND REVERSAL

Jason Harrow
(*counsel of record*)
GERSTEIN HARROW LLP
12100 Wilshire Blvd. Suite 800
Los Angeles, CA 90025
(323) 744-5293
jason@gerstein-harrow.com

Dated: October 29, 2025

Counsel for Amici

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTEREST OF THE AMICI CURIAE[1]

Amici Albert Alschuler, Laurence Tribe, and Norman Eisen are three scholars and public servants who have devoted their careers to the study and practice of constitutional law, ethics in government, and the integrity of American democracy. Collectively, they have served in several federal administrations and taught generations of lawyers at Harvard, the University of Chicago, and elsewhere about the First Amendment, the rule of law, campaign finance, governmental ethics, and more. Their affiliations are listed for identification purposes only. Specifically:

- **Albert W. Alschuler** is the Julius Kreeger Professor Emeritus of Law and Criminology at the University of Chicago Law School.
- **Laurence H. Tribe** is the Carl M. Loeb University Professor Emeritus at Harvard Law School.

---

[1] In accordance with FRAP Rule 29(a)(2), amici confirm they have permission from all parties to file this brief. In accordance with FRAP Rule 29(a)(4)(E), amici state that no party's counsel authored the brief in whole or in part, and that no party, party's counsel, or person other than amici and undersigned counsel contributed money intended to fund preparing or submitting this brief.

- **Norman L. Eisen** is a senior fellow at the Brookings Institution and former U.S. Ambassador to the Czech Republic and Special Counsel to the President for Ethics and Government Reform.

In 2018, amici jointly published (with co-author Richard Painter) *Why Limits on Contributions to Super PACs Should Survive Citizens United*, 86 Fordham L. Rev. 2299 (2018). That article argued that the D.C. Circuit's decision in *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), was wrong in law, logic, and experience. This brief draws on that analysis and on subsequent developments that confirm the thesis of that article.

Amici (and their counsel) have no financial interest in the outcome of this case. Their interest lies solely in restoring constitutional coherence to campaign-finance jurisprudence and vindicating legislators' power to protect the integrity and perceived integrity of elections. They accordingly submit this brief to aid the Court's thinking as it considers the important questions presented by this appeal.

SUMMARY OF ARGUMENT

The legal regime created by *SpeechNow.org v. FEC* and its progeny of unregulated contributions to nominally independent political groups

has no basis in the Constitution, in precedent, or in common sense. It rests on a single mistaken piece of reasoning that has never been endorsed by the U.S. Supreme Court: that because *Citizens United v. FEC*, 558 U.S. 310 (2010), said that independent *expenditures* cannot corrupt, *contributions* to nominally independent groups that make such expenditures also cannot corrupt. That syllogism was created by the D.C. Circuit soon after *Citizens United* with minimal briefing, argument, and evidentiary support. It was wrong at the time, and the consequences of fifteen years of unregulated contributions have confirmed that conclusion. This brief, which follows from the 2018 law review article on this topic co-authored by amici here and cited above, discusses the difficulties posed by the *SpeechNow* line of cases.

First, *SpeechNow*'s logic does not hold up. Contributions to so-called "independent expenditure committees" can and do create both actual and apparent quid pro quo corruption even when these committees' spending does not corrupt. The corruption arises from the donor's act of giving, not the recipient's later spending. Several prosecutions for bribery have explicitly recognized as much, and the federal courts should no longer ignore those cases.

Second, the D.C. Circuit misread *Citizens United*. The statement it treated as dispositive—that independent expenditures "do not give rise to corruption or the appearance of corruption"—was dictum, not holding. *Citizens United* decided only that Congress could not restrict corporate *expenditures* based on the speaker's corporate form. It expressly left undisturbed the constitutionality of *contribution* limits.

Third, *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), drew a constitutional distinction between contributions and expenditures for good reason. Expenditures, like direct speech, are "at the core of the First Amendment." *Id.* at 44–47. Contributions, by contrast, are analogous to "low-value" speech, partly because "the transformation of contributions into political debate involves speech by someone other than the contributor." *Id.* at 21. As a later opinion noted, "'Speech by proxy' . . . is not the sort of political advocacy that this Court in *Buckley* found entitled to full First Amendment protection." *Cal. Med. Ass'n v. FEC*, 453 U.S. 182, 196 (1981) (plurality op.) (quoting *Buckley*, 424 U.S. at 21). Moreover, contributions pose unique risks of quid pro quo corruption. *See Buckley*, 424 U.S. at 46–47. The distinction between a legislature's ample ability to regulate contributions and its comparatively narrow ability to

regulate expenditures survives *Citizens United* and supports reasonable limits on contributions to super PACs.

Finally, evidence from campaigns since 2010 vindicates *Buckley*'s logic. The explosion of super PAC spending—funded by a handful of donors writing massive checks—has produced exactly what *Buckley* sought to prevent: the appearance, and in many cases the reality, of government beholden to private wealth. No legislator voted for this regime. Rather, the decision in *SpeechNow* created it. The claim that the Constitution requires it should be rejected.

ARGUMENT

I. The *SpeechNow* Syllogism Between Expenditures And Contributions Is Incorrect As A Matter Of Law And Logic.

At the outset, the *SpeechNow* court's logic does not hold up on its own terms. The Court reasoned that because *Citizens United* declared that independent *expenditures* do not give rise to corruption or the appearance of corruption, *contributions* to those same groups also cannot corrupt or appear to corrupt. The error lies in conflating an act of *giving* with an act of *spending*. The court provided no reason for conflating the two things, and in fact contributions and expenditures have different value under the First Amendment and pose different dangers of

corruption. A political contribution is an act of conferral: the transfer of something of value to another person or entity with the understanding that it will be used to influence an election. By contrast, an independent expenditure is an act of expression: the spending of a person or group's own funds to advocate a position.

The Supreme Court has recognized this categorical difference for nearly half a century, beginning with *Buckley*. In *Buckley*, the Court upheld limits on contributions precisely because they "entail[] only a marginal restriction upon the contributor's ability to engage in free communication" and because "the integrity of our system of representative democracy is undermined" when large contributions "are given to secure a political quid pro quo." 424 U.S. at 21, 26–27. The act of giving a large sum to a political campaign creates a sense of gratitude and obligation—what the Court called "the actuality and appearance of corruption." *Id.* at 26. By contrast, *Buckley* struck down limits on *expenditures* because spending one's own money on one's own speech does not pose a comparable quid pro quo risk. *Id.* at 47.

The D.C. Circuit in *SpeechNow* ignored this foundational distinction. It treated the two acts as indistinguishable for constitutional

purposes. But the potential for corruption from a campaign contribution does not disappear merely because it passes through an intermediary labeled "independent." To the contrary: at the moment of the contribution, a donor provides something of enormous value to a political actor or a cause closely associated with that actor. The entity spending the money may be legally "independent" from the candidate, but the donor's purpose, and the candidate's gratitude, are not.

The federal bribery statutes provide a useful window into how quid pro quo corruption can occur. Under 18 U.S.C. § 201(b)(2), officials commit bribery when they accept "anything of value personally or for any other person or entity" in exchange for being influenced in the performance of an official act. The statute's text makes clear that the corrupt exchange occurs even if the money goes to someone other than the official, because the contribution can benefit "any other person or entity" in addition to the principal. That makes sense, because the corruption lies in how the donation of a thing of value affects an official's conduct.

The prosecution of Senator Robert Menendez in 2015 illustrates how super PAC contributions can corrupt even when super PAC

expenditures do not. In *United States v. Menendez*, 132 F. Supp. 3d 635 (D.N.J. 2015), prosecutors alleged that Senator Robert Menendez received lavish gifts and large super PAC contributions from Dr. Salomon Melgen in exchange for official favors. The defendants moved to dismiss the super PAC counts, arguing that contributions to an independent-expenditure committee could not be bribes because such committees are legally uncoordinated with candidates. The court disagreed. It recognized that "[a] donation to a Super PAC can be a 'thing of value' under 18 U.S.C. § 201." *Id.* at 639.

The *Menendez* case exposes the flaw in *SpeechNow*'s logic. If a contribution to an independent group were, by law, incapable of corrupting, then the government could not constitutionally prosecute an official who accepted such a bribe. A corrupt senator could simply say, "Pay the money to my super PAC instead." Yet that is not the law, as the *Menendez* court correctly concluded.[2]

---

[2] At least three other bribery prosecutions have proceeded despite the fact that the alleged corrupting act was a contribution to a super PAC or independent expenditure group. *See U.S. v. Householder*, 137 F.4th 454, 464 (6th Cir. 2025) (affirming bribery conviction where facts showed quid pro quo donations to independent group); Bill of Indictment, *U.S. v.*

As these bribery prosecutions show, those seeking political influence use independent groups just as they would official candidate committees. The FEC has also recognized that these arrangements can result in corruption. For instance, federal contractors are (sensibly) barred by statute from making contributions to candidates. So companies instead contribute large sums to super PACs supporting those candidates—at least one of which was punished by the FEC for it. *See* MUR #7099: Suffolk Construction Company, Inc., *Fed. Elec. Comm'n*, https://perma.cc/5PZP-DP5S. Under the *SpeechNow* court's theory, though, this should have been a flawless workaround to bribery laws: directing money to a candidate's super PAC, according to the court's unsupported *ipse dixit*, can never corrupt or give rise to the appearance of corruption. And yet the FEC found the opposite. The bribery prosecutions and FEC sanction are illuminating, but surely the few that are caught and prosecuted are dwarfed by the very many that are not.

Lindberg, No.19-cr-22, ECF No. 3 (W.D.N.C. Mar. 18, 2019); Indictment, *U.S. v. Vazequez-Garced*, No. 22-cr-0342, ECF No. 3 (D.P.R. Aug. 3, 2022).

The prosecutions are viable because as long as a candidate sees a contribution itself as a thing of value, its corrupting effect does not depend on how or whether it is spent. *See Republican Party of La. v. FEC*, 219 F. Supp. 3d 86, 97 (D.D.C. 2016) (three-judge district court) (Srinivasan, J.), *aff'd*, 581 U.S. 989 (2017) (mem.) ("[T]he inducement occasioning the prospect of indebtedness on the part of a federal officeholder is not the spending of the money by a political party. The inducement comes from the contribution of soft money to the party in the first place."). The contribution in *Menendez* would have corrupted even if the super PAC that received it never spent it or donated it to the Red Cross. Major donors sometimes gain major influence; the managers who make super PAC spending decisions, not so much.

II. The Statement in *Citizens United* That *SpeechNow* Relied on Was Dictum.

SpeechNow's flawed logic rests entirely on a single sentence in *Citizens United*: "We now conclude," wrote the Supreme Court majority, "that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." 558 U.S. at 357. The D.C. Circuit read that sentence as a binding holding that entirely eradicated Congress's anticorruption interest with respect to any

independent spending. The Court then extended the sweep of that sentence to encompass contributions to groups that engage in such spending. This interpretation was wrong. The language the D.C. Circuit quoted from *Citizens United* was *dictum*. It was unnecessary both to *Citizens United*'s reasoning and to its result. Treating it as binding law was a profound analytical mistake that has greatly damaged our political system.

The central question in *Citizens United* was whether the federal government could bar a nonprofit corporation from using its general treasury funds to produce a political film critical of a candidate. The challenged statute prohibited corporations and unions from making "independent expenditures" expressly advocating for or against federal candidates. The government argued that use of the corporate form justified a ban that clearly could not have applied to individuals or unincorporated groups. The Court, however, held that "the Government may not suppress political speech on the basis of the speaker's corporate identity." 558 U.S. at 349. That narrow but important conclusion fully resolved the case. Once the Court held that speech could not be restricted

simply because a group had incorporated, there was no need to address whether expenditures in general were corrupting.

To be sure, the *Citizens United* majority discussed whether independent expenditures generally could corrupt. It said, in one fateful sentence, "that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." 558 U.S. at 357. But that statement was neither necessary nor logically connected to the judgment striking down the corporate expenditure ban.[3] And while opining on topics not necessary for the *Citizens United* decision, the Court noted that "contribution limits, unlike limits on independent expenditures, have been an accepted means to prevent quid pro quo corruption." *Id.* at 359 (citation omitted). *Citizens United* thus reaffirmed *Buckley*'s core distinction two months before *SpeechNow* insisted that contributions to super PACs are indistinguishable from expenditures by super PACs.

---

[3] Four dissenting justices in a later case described this statement as "an overstatement" or "dictum." *McCutcheon v. FEC*, 572 U.S. 185, 261 (2014) (Breyer, J., dissenting).

III. *SpeechNow* Misinterpreted the Dictum on Which it Relied.

The decision in *SpeechNow* not only depended on dictum but also interpreted that dictum as a broader pronouncement than the Supreme Court meant it to be. In *SpeechNow*, the D.C. Circuit wrote: "The [Supreme] Court held that the government has *no* anti-corruption interest in limiting independent expenditures." *SpeechNow*, 599 F.3d at 693 (emphasis in the original). Its decision depended on reading the italicized word for all it might be worth. If the Supreme Court had simply declared the anti-corruption interest *insufficient* to justify a restriction of independent expenditures, whether that interest could justify a limitation of super PAC contributions under *Buckley*'s less demanding standard for contributions would have remained unresolved. But the D.C. Circuit declared that no balancing was necessary and no issue was open. Whatever the standard of review might be, the court said, "something . . . outweighs nothing every time." *Id.* at 695.

SpeechNow thus depended on the proposition that independent expenditures do not corrupt *at all*. But the *Citizens United* dictum should not be so interpreted in light of other, similar statements by the Supreme Court and members of the *Citizens United* majority. Consider:

1. Three sentences before its dictum, *Citizens United* declared: "The anticorruption interest is not sufficient to displace the speech in question." *Citizens United*, 558 U.S. at 357. The Court moved from its initial statement to its assertedly broader dictum without noting or acknowledging any difference between them.

2. Only the initial statement declaring the anticorruption interest *insufficient* would have been consistent with *Buckley*, for that decision did not say or intimate that independent expenditures cannot corrupt. *See Buckley*, 424 U.S. at 45 ("We find that the government interest in preventing corruption and the appearance of corruption is *inadequate* to justify § 608(e)(1)'s ceiling on independent expenditures.") (emphasis added); *id*. at 46 ("The independent advocacy restricted by this provision does not presently appear to pose dangers of real or apparent corruption *comparable* to those identified with large campaign contributions.") (emphasis added).

3. Less than a year before *Citizens United*, the author of the majority opinion, Justice Kennedy, wrote another majority opinion that illustrated and depended on the corrupting effect of independent expenditures. In *Caperton v. A.T. Massey Coal Co*., 556 U.S. 868 (2009), the Court held it a violation of the Due Process Clause for a state supreme court justice to hear a case in which a business executive had a substantial financial interest. The executive had supported the justice's election with more than $3 million in contributions and independent expenditures, and the Court ruled that this support created a "serious risk of actual bias." *Id*. at 884.

   Citizens United distinguished *Caperton* on the ground that the remedies at stake in the two cases were different. *Citizens United*, 558 U.S. at 360. But if the

benefactor's independent expenditures could not have corrupted at all, no remedy would have been necessary.

4. In 2007, two members of the *Citizens United* majority, Chief Justice Roberts and Justice Alito, observed that independent expenditures can be highly corrupting. *See FEC v. Wisconsin Right to Life*, 551 U.S. 449, 478 (2007) (Roberts, C.J., joined in relevant part by Alito, J.) ("[I]t may be that, in some circumstances, 'large independent expenditures pose the same dangers or actual or apparent quid pro quo corruption as do large contributions.'"); *id.* ("We have suggested that this interest might . . . justify limiting electioneering *expenditures*.") (emphasis in the original).

5. Two years after *Citizens United*, four members of the *Citizens United* majority again indicated that independent expenditures can corrupt. In *McCutcheon*, 572 U.S. at 214, they quoted *Buckley*'s statement that "[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent . . . undermines the value of the expenditure to the candidate." Then they added: "But probably not by 95 percent."

As this context illustrates, if *Citizens United* truly meant that independent expenditures can never corrupt "as a matter of law," then several of the Court's other cases in this area are inexplicable. By treating that line of dictum as binding law and then extending it to a new context, the *SpeechNow* court started a cascade of lower court opinions that fail to recognize the Supreme Court's own instructions about how to interpret its decisions. The Supreme Court, after all, has long recognized that

"general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399 (1821). Lower courts thus may not extract broad legal rules from language divorced from the issues actually decided. Yet that is precisely what *SpeechNow* did. It construed an aside in *Citizens United* to essentially overrule *Buckley*'s holding that expenditure limits are subject to the "exacting scrutiny" that governs restrictions on "political expression," 424 U.S. at 44–45, while contribution limits "entail[] only a marginal restriction upon the contributor's ability to engage in free communication." *Id.* at 20.

IV. Experience Since *SpeechNow* Has Revealed the Corrupting Effect of Unlimited Contributions to Super PACs.

In 1976, *Buckley* upheld the Federal Election Campaign Act's limits on contributions to candidates, but, in 2010, *SpeechNow* struck down the Act's limit on contributions to independent expenditure groups. Attorney General Eric Holder explained in a letter to Senator Harry Reid why the government failed to seek Supreme Court review of the *SpeechNow* ruling.: "[T]he court of appeals' decision will affect only a small subset of federally regulated contributions." Letter from Attorney General Holder

to Senator Reid (June 16, 2010), https://perma.cc/8TVG-6A8A. It is now clear that this prediction was wrong.

In the 2024 election cycle, the person who gave the most money to super PACs was Timothy Mellon. Mellon could not have contributed as much as $7,000 to his preferred presidential candidate's own campaign. *See* Federal Election Commission, *Limits Adjusted for 2023-2024*, https://perma.cc/6L2L-2QPF. According to the Supreme Court, Mellon had no First Amendment right to make a $7,001 contribution because it posed a danger of corrupting or creating the appearance of corruption. *See Buckley*, 424 U.S. at 26.

But Mellon could and did contribute $125 million to a super PAC whose only mission was to promote the election of his favored candidate. *See Billionaire Timothy Mellon Has Poured $165 Million into 2024 Elections*, OpenSecrets (Aug. 23, 2024), https://perma.cc/PXJ5-DC32. According to the D.C. Circuit, the First Amendment protected Mellon's right to make this contribution because it created no risk of corruption or the appearance of corruption. *See SpeechNow*, 599 F.3d at 695.

Mellon was far from the only multi-million-dollar super PAC donor during that election cycle. Just before the 2024 election, the Brennan Center for Justice reported:

> This election, the biggest super PACs supporting the major party nominees for president have together taken in $865 million from donors who each gave $5 million or more. That's more than double the amount by this point in 2020, which was $406 million. This biggest-spending category of donors has provided more than 75 percent of the funding to presidential super PACs in the 2024 election, up from 63 percent in 2020.

Brennan Center for Justice, Megadonors Playing Larger Role in Presidential Race, FEC Data (Nov. 1, 2024), https://perma.cc/AX7V-DYP4.

Candidates and office holders of both parties have denounced the *SpeechNow* regime of unlimited political contributions, and their statements make the appearance of corruption unmistakable. In his *Farewell Address to the Nation*, President Biden declared: "[A]n oligarchy is taking shape in America of extreme wealth, power, and influence that literally threatens our entire democracy." *Remarks by President Biden in a Farewell Address to the Nation*, The White House (Jan. 15, 2025), https://perma.cc/WL8V-HACH. Biden echoed prior statements by President Trump, who put the point more bluntly in 2016: "[T]hese super

PAC's are a disaster . . . . Very corrupt. . . . There is total control of the candidates." *Transcript of the Republican Debate in Florida*, N.Y. Times (Mar. 11, 2016), https://perma.cc/HCR5-JM7L. Others have also expressed that same sentiment, such as Republican Senators John McCain, *John McCain Predicts "Huge Scandals" in the Super PAC Era*, Huffpost (Mar. 27, 2012), https://perma.cc/CBQ8-82SK ("What we have done is made a contribution limit a joke."), and Lindsey Graham, *Here's One White House Hopeful Who Wants to Get Big Money Out of Politics*, Reuters (Apr. 18, 2015), https://perma.cc/9FJN-Q5UA ("[B]asically 50 people are running the whole show.")

More than 80 percent of both Republicans and Democrats tell pollsters that large donors have too much influence on members of Congress, and more than 70 percent of both Republicans and Democrats say that the people have too little. *Money, Power, and the Influence of Ordinary People*, Pew Research Center (Sep. 19, 2023), https://perma.cc/G2X8-6JUY. The approval by 74.9% of Maine voters of the measure whose constitutionality is now challenged shows that the principle underpinning the *SpeechNow* ruling is false. Unlimited

contributions to super PACs have created an overwhelming appearance of corruption and have undermined our democracy.

The changes that *SpeechNow* brought came on quickly. When *SpeechNow* was decided in 2010, super PACs did not exist. By the next election cycle, they dominated federal politics. In 2012, super PACs raised over $830 million and spent nearly $620 million. *See* 2012 Outside Spending, by Super PAC, OpenSecrets, https://perma.cc/2D9F-PPUP. By 2016, those figures had more than doubled: super PACs spent over $1 billion, with 80 percent of that spending concentrated in committees supporting just a handful of presidential candidates. *See* 2016 Outside Spending, by Super PAC, OpenSecrets, https://perma.cc/Q3YV-M8YM. And in 2024, total super PAC spending in federal elections had exceeded $4 billion, dwarfing the totals from traditional party committees and candidate campaigns combined. *See* David Meyers et al., "By The Numbers: 15 Years of *Citizens United*," OpenSecrets, https://perma.cc/YB35-NTED.

As all of this evidence illustrates, the *SpeechNow* line of cases transformed campaign-finance law in ways no Supreme Court majority ever endorsed and no legislature ever approved. The Court's stray line in

Citizens United about independent *expenditures* became the foundation for a new constitutional right: the supposed right to *contribute* unlimited sums to groups supporting federal candidates. That right appears nowhere in the First Amendment's text or history. To the contrary: it was rejected in *Buckley*. Instead, it was conjured from dictum in *SpeechNow*, and other decisions followed suit. This Court can, after fifteen illuminating years, recognize and correct the mistake.

CONCLUSION

The district court's judgment should be reversed.

Dated: October 29, 2025

Respectfully submitted,

/s/ Jason Harrow

Jason Harrow
GERSTEIN HARROW LLP
12100 Wilshire Blvd. Suite 800
Los Angeles, CA 90025
(323) 744-5293
jason@gerstein-harrow.com

Attorneys for Amici