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**United States Court of Appeals**  
*for the*  
**First Circuit**

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Nos. 25-1705, 25-1706

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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)*

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

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

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of the Maine Commission on Governmental Ethics and Election Practices;  
AARON M. FREY, in the official capacity as Attorney General of Maine;  
SARAH E. LECLAIRE, in the official capacity as a Member of the Maine  
Commission on Governmental Ethics and Election Practices,

*Defendants-Appellants,*

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

*Defendants.*

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DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

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RICHARD A. BENNETT,

*Defendants-Appellants,*

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and Election Practices; BETH N. AHEARN, in the official capacity as a Member  
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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.*

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**RULE 26.1 DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *Amici Curiae* Dēmos and Common Cause state that neither of them have a parent corporation and that no publicly held corporation owns 10% or more of either of their stock.

TABLE OF CONTENTS

|                                                                                                                             | Page |
|-----------------------------------------------------------------------------------------------------------------------------|------|
| INTERESTS OF <i>AMICI CURIAE</i> .....                                                                                      | 1    |
| Summary of Argument .....                                                                                                   | 2    |
| ARGUMENT .....                                                                                                              | 3    |
| I. 1972: Unchecked Contributions Distort Democracy .....                                                                    | 3    |
| A. ITT Promised a \$400,000 Contribution to Favorably Settle an<br>Antitrust Case .....                                     | 4    |
| B. The Dairy Industry Contributed \$2 Million To Obtain Increased<br>Price Supports.....                                    | 6    |
| C. Ambassadorships Were For Sale.....                                                                                       | 7    |
| D. Congress Strengthened the Federal Election Campaign Act to<br>Address This Rampant Corruption.....                       | 8    |
| II. The Supreme Court Draws a Distinction Between Contributions and<br>Expenditures .....                                   | 9    |
| A. Contribution Limits Only Marginally Restrict Free Speech and<br>Address the Risks of Actual and Apparent Corruption..... | 10   |
| 1. <i>Buckley</i> .....                                                                                                     | 10   |
| 2. Post- <i>Buckley</i> Decisions Reaffirm That Contribution<br>Limits Only Marginally Restrict Free Speech Rights.....     | 11   |
| B. Expenditure Limits Are Subject to More Exacting Scrutiny than<br>Contribution Limits .....                               | 13   |
| C. <i>Citizens United</i> Reaffirmed <i>Buckley</i> ’s Distinction Between<br>Contributions and Expenditures .....          | 14   |
| III. The Logic of <i>Citizens United</i> Does Not Support Striking Down Limits<br>on Contributions to Super PACs .....      | 15   |

- A. The First Amendment Interest in Contributions to Super PACs is Marginal.....16
- B. The Risk of Corruption From Unlimited Contributions to Super PACs is Much Greater Than the Risk of Corruption From Unlimited Independent Expenditures.....17
  - 1. The Risk of Corruption from Super PAC Contributions .....18
  - 2. The Risk of Circumvention of Candidate Contribution Limits .....20
- IV. 2025: Unlimited Contributions Distort Democracy Again .....22
  - A. Senator Robert Menendez .....24
  - B. José Susumo Azano Matsura.....25
  - C. Greg Lindberg .....26
  - D. Senator Susan Collins.....27
  - E. Unlimited Super PAC Contributions Create the Appearance of Corruption .....28
- CONCLUSION .....30

## TABLE OF AUTHORITIES

| <b>Cases</b>                                                                                                                                               | <b>Page(s)</b> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| <i>Alaska Pub. Offices Comm’n v. Patrick</i> ,<br>494 P.3d 53 (Alaska 2021) .....                                                                          | 16             |
| <i>Buckley v. Valeo</i> ,<br>424 U.S. 1 (1976).....                                                                                                        | <i>passim</i>  |
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| <i>Citizens United v. FEC</i> ,<br>558 U.S. 310 (2010).....                                                                                                | <i>passim</i>  |
| <i>F.E.C. v. Colorado Republican Fed. Campaign Comm.</i> ,<br>533 U.S. 431 (2001).....                                                                     | 13, 21         |
| <i>FEC v. Beaumont</i> ,<br>539 U.S. 146 (2003).....                                                                                                       | 13, 21         |
| <i>FEC v. Wis. Right to Life</i> ,<br>551 U.S. 449 (2007).....                                                                                             | 14             |
| <i>Fed. Election Comm’n v. Cruz</i> ,<br>596 U.S. 289 (2022).....                                                                                          | 15             |
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|                                                                                                       |    |
|-------------------------------------------------------------------------------------------------------|----|
| <i>N.Y. Progress &amp; Prot. PAC v. Walsh</i> ,<br>733 F.3d 483 (2d Cir. 2013) .....                  | 16 |
| <i>Nixon v. Shrink Missouri Government PAC</i> ,<br>528 U.S. 377 (2000).....                          | 12 |
| <i>Republican Party of N.M. v. King</i> ,<br>741 F.3d 1089 (10th Cir. 2013) .....                     | 16 |
| <i>SpeechNow.org v. Fed. Election Comm'n</i> ,<br>599 F.3d 686 (D.C. Cir. 2010).....                  | 15 |
| <i>Texans for Free Enter. v. Tex. Ethics Comm'n</i> ,<br>732 F.3d 535 (5th Cir. 2013) .....           | 15 |
| <i>United States v. Menendez</i> ,<br>291 F. Supp. 3d 606 (D.N.J. 2018).....                          | 24 |
| <i>Wisc. Right to Life State Pol. Action Comm. v. Barland</i> ,<br>664 F.3d 139 (7th Cir. 2011) ..... | 15 |

## Statutes

|                                |    |
|--------------------------------|----|
| 2 U.S.C. § 441i(e)(1)(A) ..... | 20 |
|--------------------------------|----|

## Other Authorities

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 11 C.F.R. §§ 109.20(a)-.21(a) (2018) .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 19 |
| 11 C.F.R. § 109.21(d) (2018).....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | 18 |
| 11 CFR § 300.61 .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 20 |
| 120 Cong. Rec. S 4553 (daily ed. March 27, 1974) .....                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 9  |
| Albert Alschuler, Laurence Tribe, Norman Eisen, and Richard Painter,<br><i>Why Limits on Contributions to Super PACs Should Survive</i><br><i>Citizens United</i> , 86 Fordham L. Rev. 2299 (2018) .....                                                                                                                                                                                                                                                                                                                                                                                                                                 | 9  |
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|                                                                                                                                                                                                                                                                                                                                                                                                                                   |         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
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| <i>Beyond District: How Americans View their Government</i> , Pew Rsch. Ctr. (Nov. 23, 2015), <a href="https://www.pewresearch.org/wp-content/uploads/sites/4/2015/11/11-23-2015-Governance-release.pdf">https://www.pewresearch.org/wp-content/uploads/sites/4/2015/11/11-23-2015-Governance-release.pdf</a> .....                                                                                                               | 29      |
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| Colin Woodard, Defense contractor pleads guilty to making illegal contributions to Sen. Collins' 2020 campaign, <i>Portland Press Herald</i> (Sept. 28, 2022) .....                                                                                                                                                                                                                                                               | 28      |
| E.W. Kenworthy, <i>The Extraordinary I.T.T. Affair</i> , N.Y. Times, Dec. 16, 1973 .....                                                                                                                                                                                                                                                                                                                                          | 4       |
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| H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. (1974) .....                                                                                                                                                                                                                                                                                                                                                                           | 8       |
| Herbert Kalmbach, <i>Who Figured in Watergate Payoffs, Dies at 95</i> , N.Y. Times, Sep. 29, 2017 .....                                                                                                                                                                                                                                                                                                                           | 8       |

|                                                                                                                                                                                                                                                                                                                                                                                                                                          |    |
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| Indictment, <i>United States v. Azano, et al.</i> , Case No. 3:14-cr-00388-MMA, Dkt No. 336 (S.D. Cal. Jul. 8, 2016) .....                                                                                                                                                                                                                                                                                                               | 25 |
| Indictment, <i>United States v. Householder, et al.</i> , Case No. 1:20-cr-00077-TSB, Dkt. 1 (S.D. Ohio Jul. 30, 2020) .....                                                                                                                                                                                                                                                                                                             | 23 |
| Indictment, <i>United States v. Kao, et al.</i> , Case No. 1:22-cr-00048-CJN, Dkt. No. 1 (D.D.C. Oct. 10, 2022).....                                                                                                                                                                                                                                                                                                                     | 27 |
| Indictment, <i>United States v. Vázquez-Garced, et al.</i> , Case No. 3:22-cr-342-RAM, Dkt. 3 (D.P.R. Aug. 3, 2022).....                                                                                                                                                                                                                                                                                                                 | 23 |
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| Jack Anderson, <i>Secret Memo Bares Mitchell-ITT Move</i> , Washington Post, Feb. 29, 1972.....                                                                                                                                                                                                                                                                                                                                          | 5  |
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|                                                                                                                                                                                                                                                                                                                                                                                                                      |        |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|
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| Theodore Schleifer, <i>Bill Gates Privately Says He Has Backed Harris With \$50 Million Donation</i> , N.Y. Times (Oct. 22, 2024) .....                                                                                                                                                                                                                                                                              | 23     |
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|                                                                                                                |    |
|----------------------------------------------------------------------------------------------------------------|----|
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|----------------------------------------------------------------------------------------------------------------|----|

**INTERESTS OF *AMICI CURIAE***<sup>1</sup>

*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.

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<sup>1</sup> 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.<sup>2</sup> This became public when the Washington

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<sup>2</sup> 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 Ctr. 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.<sup>3</sup> 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?”<sup>4</sup>

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

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<sup>3</sup>Jack Anderson, *Secret Memo Bares Mitchell-ITT Move*, Washington Post, Feb. 29, 1972.

<sup>4</sup> *Id.*

to resign and, later, to plead guilty to failing to testify accurately before Congress about the affair.<sup>5</sup>

**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

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<sup>5</sup> 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.<sup>6</sup>

#### **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).

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<sup>6</sup> 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<sup>7</sup>**

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

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<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.

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<sup>8</sup> *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”).

<sup>9</sup> *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.<sup>10</sup>

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

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<sup>10</sup>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.<sup>11</sup> And in 2024, multiple donors contributed \$50 million or more to a Democratic or Republican super PAC.<sup>12</sup>

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.<sup>13</sup> 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.”<sup>14</sup>

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.<sup>15</sup>

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

<sup>12</sup> 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>.

<sup>13</sup> 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>.

<sup>14</sup> *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/>.

<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup>

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

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*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).

<sup>16</sup> 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).

<sup>17</sup> Michael Waldman, *Old-Fashioned Scandal in the Era of Dark Money and the Trump International Hotel*, Brennan Ctr. 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.<sup>18</sup> Among the beneficiaries was San Diego mayoral candidate Robert Filner.<sup>19</sup> "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."<sup>20</sup>

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<sup>18</sup> 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).

<sup>19</sup> 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/>.

<sup>20</sup> 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.<sup>21</sup> Filner resigned from office six months later in an unrelated scandal. Azano was convicted of conspiracy to violate federal election laws.<sup>22</sup>

### **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.<sup>23</sup> 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

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<sup>21</sup> *Id.*

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

<sup>23</sup> 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 . . . .”<sup>24</sup> Mr. Lindberg was convicted of conspiracy to commit wire fraud.<sup>25</sup>

#### **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.<sup>26</sup> 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.<sup>27</sup>

The federal investigation became public in 2021 when an FBI search warrant was unsealed and Senator Collins vigorously denied wrongdoing.<sup>28</sup> Although

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<sup>24</sup> *Id.* at 3.

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

<sup>26</sup> 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>.

<sup>27</sup> 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.

<sup>28</sup> Phil Hirschhorn, *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.<sup>29</sup> 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.

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

<sup>29</sup> 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.”<sup>30</sup> In 2015, 76% of survey respondents reported that they believed money had a greater influence on American politics than before.<sup>31</sup> 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.<sup>32</sup>

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

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<sup>30</sup>*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>.

<sup>31</sup>*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>.

<sup>32</sup>*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](https://www.rasmussenreports.com/public_content/archive/mood_of_america_archive/congressional_performance/is_congress_for_sale).

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

## 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

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<sup>33</sup> *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](https://www.pewresearch.org/wp-content/uploads/sites/20/2023/09/PP_2023.09.19_views-of-politics_REPORT.pdf).

<sup>34</sup> *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](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.

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**CERTIFICATE OF COMPLIANCE WITH RULE 29(a)(5)**

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5), because it contains 6,492 words, calculated by the word processing system used in its preparation, and excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. 32(a)(6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word 2010 in Times New Roman 14-point font.

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### **CERTIFICATE OF SERVICE**

I hereby certify that on October 29, 2025 I electronically filed the foregoing Brief Amici Curiae of Dēmos and Common Cause with the Clerk of the Court for the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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