No. 17-35019

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAVID THOMPSON; AARON DOWNING; JIM CRAWFORD; and DISTRICT 18 of the ALASKA REPUBLICAN PARTY,

Plaintiffs-Appellants,

v.

HEATHER HEBDON, in Her Official Capacity as the Executive Director of the Alaska Public Offices Commission; and IRENE CATALONE, RON KING, TOM TEMPLE, ROBERT CLIFT, and ADAM SCHWEMLEY, in Their Official Capacities as Members of the Alaska Public Offices Commission,

Defendants-Appellees.

Appeal from the United States District Court for the District of Alaska, No. 3:15-cv-00218 TMB (Honorable Timothy M. Burgess)

APPELLANTS' REPLY BRIEF

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS (continued)

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES (continued)

Page

TABLE OF AUTHORITIES (continued)

Page

TABLE OF AUTHORITIES (continued)

Page

Statutes/Regulations

Texts/Articles/Publications

TABLE OF AUTHORITIES (continued)

Page

TABLE OF ABBREVIATIONS, ACRONYMS, AND SHORTENED NAMES

APOC	Alaska Public Offices Commission
BC	*Amicus Curiae,* Brennan Center for Justice at NYU School of Law
BCRA	Bipartisan Campaign Reform Act of 2002
CLC	*Amicus Curiae,* Campaign Legal Center
DOJ	Department of Justice
ER	Excerpt of Record
FECA	Federal Election Campaign Act of 1971
FSP	*Amicus Curiae*, Free Speech for People
Hebdon	Appellees, Heather Hebdon, in Her Official Capacity as the Executive Director of the Alaska Public Offices Commission; and Irene Catalone, Ron King, Tom Temple, Robert Clift, and Adam Schwemley, in Their Official Capacities as Members of the Alaska Public Offices Commission
PAC	Political Action Committee
SER	Supplement Excerpt of Record (Hebdon)
SSER	Second Supplemental Excerpt of Record (Thompson)
TE	Trial Exhibit
Thompson	Appellants, David Thompson, Aaron Downing, Jim Crawford, and District 18 of the Alaska Republican Party

INTRODUCTION

Alaska's nonresident aggregate caps, that prohibit every American in the Lower 48 from donating even $.01 to a candidate once they are triggered, are unconstitutional. These limits further the impermissible objective of limiting the amount of money in political campaigns, and/or the equally impermissible objective of stifling the voices of nonresidents in order to enhance the voice of Alaskans. Alaska's $500 annual limit for individual contributions to candidates, lowest in the nation for statewide races and unadjusted for inflation, is also unconstitutional. The limit targets contributions that are below the limit approved in *Buckley v. Valeo*, an amount that the Court found was not "large" so as to create risks of corruption, and it is not narrowly focused on *quid pro quo* corruption. The limit for individual contributions to groups is an unconstitutional *prophyaxis-upon-prophyaxis* measure that unnecessarily burdens free speech and association. The aggregation of independent political party units for purposes of contributions to candidates is likewise unconstitutional.

ARGUMENT

I. ALASKA'S BAN ON MOST NONRESIDENT CONTRIBUTIONS IS UNCONSTITUTIONAL

Alaska bans all Americans residing in other states from contributing even $.01 to an Alaska candidate after a nominal annual aggregate cap is reached—the

cap varies by the office the candidate seeks: $20,000 (Governor/Lieutenant Governor), $5,000 (Senate), and $3,000 (House). AS 15.13.072(e).[1] When they are permitted to contribute, nonresidents are limited to the same base limit as Alaskans.[2] If the base limit does not risk corruption or the appearance of corruption when it is given by an Alaskan, it is inconceivable that it could do so when given by a nonresident. The district court's and Hebdon's conjecture that absent the nonresident aggregate caps "outside interests" might "circumvent" the $500 base limit and engage in "other game playing" [ER-25-26; Hebdon, 66-69] so as to accomplish *quid pro quo* corruption,[3] improperly impugns nonresidents as being corrupt and focuses on criminal conspiracies of colossal proportion that are "far too speculative," conjectural, "implausible," and "divorced from reality," to carry Hebdon's burden of proof. *See McCutcheon*, 134 S. Ct. at 1452-53, 1455-56.

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[1] David Thompson, a former Navy Seal, war veteran, retired school teacher, and resident of Wisconsin, ran into the $3,000 aggregate found in AS 15.13.072(e)(3) when he attempted to donate $100 to his brother-in-law, Wes Keller, a candidate for Alaska State House. [ER-29-35; TE-98] Keller returned Thompson's contribution because Keller had already received $3,000 from other nonresidents. [TE-98] Hebdon's reference to "standing" is of little import. [Hebdon, 62 n.122] AS 15.13.072(e)(1)-(3) are each unconstitutional for the same reasons.

[2] AS 15.13.070(a) and (b)(1).

[3] *See Lair v. Bullock*, 798 F.3d 736, 740 (9th Cir. 2015) (only one permissible interest); *See also McCutcheon v. FEC*, 134 S. Ct. 1434, 1445-46, 1450, 1462 (2014); *Citizens United v. FEC*, 558 U.S. 310, 359 (2010) (citing *McConnell v. FEC*, 540 U.S. 93, 296-98 (2003) (opinion of Kennedy, J.); *Buckley v. Valeo*, 424 U.S. 1, 26-28, 30, 46-48 (1976); *FEC v. National Conservative PAC*, 470 U.S. 480, 497 (1985)).

The improbability of the circumvention Hebdon contemplates "indicates that the aggregate limits instead further the impermissible objective of simply limiting the amount of money in political campaigns,"[4] and/or the equally impermissible objective of stifling the voices of nonresidents in order to enhance the voice of Alaskans.[5] *See Buckley*, 424 U.S at 48-49; *McCutcheon*¸134 S. Ct. at 1450.

No matter how politically correct it might seem in Alaskan circles to try to cleanse the State's politics of "[o]utside influence,"[6] that interest is not legitimate, important, or compelling, from a First Amendment perspective. Neither is Alaska's interest in self-governance [Hebdon, 69-76] sufficient to restrict the First Amendment free speech of Americans. *See VanNatta v. Keisling*, 151 F.3d 1215, 1217-18 (9th Cir. 1998); *accord Landell v. Sorrell*, 382 F.3d 91, 146-48 (2nd Cir. 2002); *Krislov v. Rednour*, 226 F.3d 851, 866 (7th Cir. 2000). Citizens of different states are all part of, and entitled to an equal right to speak within, the larger American political community. *Bluman v. FEC*, 800 F. Supp. 2d 281, 287, 290 (D.D.C. 2011), *aff'd* 565 U.S. 1104 (2012).

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4 *McCutcheon*, 134 S. Ct. at 1456.

5 *See* Hebdon, 67-68; ER-24-25.

6 *See State v. Alaska Civil Liberties Union*, 978 P.2d 597, 617 (Alaska 1999).

A. Alaska's Nonresident Ban Is Prohibited By *McCutcheon.*

1. *McCutcheon* Forecloses the Use of Aggregate Limits on Individual Contributions.

McCutcheon controls the constitutionality of Alaska's nonresident aggregates. As Thompson argued to the district court below[7] and in his opening brief [Thompson-15-20], *McCutcheon* rejected the government's use of aggregate limits on individual contributions because they (1) restrict political speech, (2) do not further the government's only legitimate interest in preventing *quid pro quo* corruption via circumvention, and (3) are not closely drawn to avoid unnecessary abridgement of First Amendment rights. *See McCutcheon*, 134 S. Ct. at 1446, 1452, 1457-58. Thompson argued below and once again here that the rule of *McCutcheon*—all three aspects of the decision—forecloses Alaska's use of nonresident aggregates.[8]

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[7] Thompson argued below that Alaska's nonresident aggregates are unconstitutional under the rule of *McCutcheon*, which struck down aggregate limits in part because they are not closely drawn to prohibit *quid pro quo* corruption or its appearance. *See* DK31, 11-13 (*e.g.*, P.12 "not 'closely drawn to avoid unnecessary abridgement' of free speech and associational freedoms."); DK51, 6-8 (*e.g.*, P.6 "checking circumvention of the base limits without unnecessarily abridging First Amendment freedoms."); DK51, 21-22 ("Not Closely Drawn"); DK131, 60-62 ("closely drawn" "without unnecessarily abridging speech or associational freedoms"); DK140, 23 ("must be closely drawn" "without unnecessarily abridging speech or associational freedoms").

[8] The only argument Thompson disclaimed to the district court was that the dollar amounts of the aggregates are too low. See ER-21; DK61-11 ("Thompson is not challenging the amount of the $3,000 limit claiming that it is unconstitutionally

As the Supreme Court explained in *McCutcheon*, base limits restrict how much money a donor may give to any candidate or committee, whereas aggregate limits restrict how many candidates or committees the donor may support within base limits. 134 S. Ct. at 1443. The base limit—the amount that government views as not creating a cognizable risk of corruption,[9] and itself a prophylactic measure[10]—is government's primary tool for preventing *quid pro quo* corruption or its appearance. *Id.* at 1451. An aggregate, which is "layered on top" of the base limit, "ostensibly to prevent circumvention of the base limits,"[11] is only a secondary tool, a prophylaxis upon prophylaxis, to prevent a donor from accomplishing a *quid pro quo*. *Id.* at 1452-54, 1458.

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low"). Despite the district court's incongruous statement that it need not analyze whether the aggregate caps were "closely drawn" [ER-25], the district court's analysis of *McCutcheon* already addressed the "closely drawn" aspect of the decision and concluded that Alaska's nonresident aggregates survived despite *McCutcheon*. 134 S. Ct. at 1446-59.

[9] *McCutcheon*, 134 S. Ct. at 1452 ("Congress's selection of a $5,200 base limit indicates its belief that contributions of that amount or less do not create a cognizable risk of corruption.").

[10] *Id.* at 1458 ("[T]he *base limits* themselves are a prophylactic measure" "because few if any contributions to candidates will involve *quid pro quo* arrangements.").

[11] *Id.* at 1458.

Prior to *McCutcheon*, an aggregate limit on individual contributions was constitutional only as "a corollary of the base limit." *Id.* at 1446.[12] Both base and aggregate limits must be designed to prevent *quid pro quo* corruption or its appearance without unnecessarily abridging First Amendment rights. *Id.* at 1445-46, 1450, 1462.[13] Because base contribution limits already address the risk of *quid pro quo* corruption or its appearance, aggregate limits on individual contributions stand or fall on the basis of whether they effectively prevent contributors from using otherwise legal means for circumventing base limits so as to accomplish a *quid pro quo*. *Buckley*, 424 U.S. at 38; *McCutcheon*, 134 S. Ct. at 1446-56. An aggregate limit has never been permitted as a means to prevent "circumvention" solely for the sake of preventing "circumvention."

While Alaska has an important interest in preventing *quid pro quo* corruption or its appearance, it does not have such an interest in preventing a contributor from giving an extra base-limit contribution—perhaps just one

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[12] "*Buckley* treated the constitutionality of the … aggregate limit as contingent upon that limit's ability to prevent circumvention … describing the aggregate limit as no more than a corollary" of the base limit." *Id.* (citing *Buckley*, 424 U.S. at 38).

[13] "[I]f a law that restricts political speech does not 'avoid unnecessary abridgement' of First Amendment rights … it cannot survive 'rigorous' review…. [W]e permit Congress to pursue [its single] interest only so long as it does not unnecessarily infringe an individual's right to freedom of speech…. Congress may target only … '*quid pro quo*' corruption." *Id.* at 1446, 1450; *accord Citizens United*, 558 U.S. at 357, 359 (quoting *FEC*, 470 U.S. at 497-98; *Buckley*, 424 U.S. at 25-28).

contributor giving one extra contribution to one candidate. Contribution limits, including aggregates, are permitted only as a means to prevent *quid pro quo* corruption, which is why *Buckley* spoke of the aggregate limit as a means to prevent an individual from circumventing base limits by using legal channels to funnel "massive amounts of money to a particular candidate." 424 U.S. at 38; *accord McCutcheon*, 134 S. Ct. at 1446, 1452-53, 1460. The "circumvention" of concern in *Buckley* related to the possibility that a contributor might use legal channels to funnel "massive amounts of money" to a candidate, then obtain attribution for that "massive amount of money" with the candidate, and then later receive the *quid* from the candidate—the political favor—for the *quo*—the channeled money in circumvention of the base limits. *McCutcheon*, 134 S. Ct. at 1446-53; *Buckley*, 424 U.S. at 38.

Following *McCutcheon*, targeted restrictions on the methods an individual might use for circumvention is the only constitutionally permitted scheme for addressing possible circumvention by individual contributors, and "aggregate limits are no longer permitted for individual contributors. 134 S. Ct. at 1444-46, 1450, 1462.[14] As the Supreme Court explained, "if a law that restricts political

[14] The Court noted that various earmarking and anti-proliferation rules had already disarmed the risk of circumvention by making the routes of circumvention illegal, and thus eliminated the need for and the utility of an aggregate limit. *McCutcheon*, 134 S. Ct. at 1452-56.

speech does not 'avoid unnecessary abridgement' of First Amendment rights, it cannot survive 'rigorous' review." *Id.* at 1446 (citing *Buckley*, 424 U.S. at 25).

The above view of *McCutcheon* is neither new nor novel. Following *McCutcheon*, eleven jurisdictions, including nine states, the District of Columbia, and Los Angeles, California, each ceased enforcing their various forms of individual aggregate limits. Eleven of these jurisdictions either announced that they would cease enforcing their aggregates or their legislatures outright repealed the laws.[15] Two states, Wisconsin and Minnesota, had their aggregate limits enjoined by a federal court.[16] Currently only two states—Alaska and Hawaii—still have any form of aggregate cap on individual contributions to candidates, and those laws both target nonresidents.[17] Hebdon's and her amici's notion that

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[15] The ten jurisdictions that stopped enforcing or repealed varying forms of aggregate limits after *McCutcheon* are: Connecticut; the District of Columbia; Kentucky; Maine; Maryland; Massachusetts; New York; Rhode Island; Wisconsin; Wyoming; and Los Angeles, California. [SSER-1-24]

[16] *See Young v. Vocke*, Case No. 13-CV-635 (E.D. Wis. 2014) (Adelman, L., Order, dated May 22, 2014); *CRG Network v. Barland*, 48 F. Supp. 3d 1191, 1194-95 (E.D. Wis. 2014); *Seaton v. Wiener*, 22 F. Supp. 3d 945, 948, 951-52 (D. Minn. 2014).

[17] *See* AS 15.13.072(a)(2)(e); H.R.S. § 11-362. Fourteen states have aggregates of a different type that target contributions by political parties, PACs, and/or corporations: Ariz. Rev. Stat. § 16-905(D); Fla. Stat. § 106.08(2); Ind. Code § 3-9-2-4; Ky. Rev. Stat. § 121.150(23); La. Rev. Stat. § 18:1505.2 H(7); Mass. Gen. Laws, ch. 55, § 6A; Minn. Stat. §§ 10A.27, Subds. 2 and 11; Mont. Code Ann. §§ 13-37-216(3) and (4); and Mont. Code Ann. § 13-37-218; N.Y. Elec. Law

aggregate limits on individual contributions, let alone a nonresident aggregate cap, can survive *McCutcheon*,[18] is a view not shared by many.

In *McCutcheon*, the Supreme Court addressed the constitutionality of the aggregate contribution limits contained in federal campaign finance law—the Federal Election Campaign Act of 1971 (FECA) as amended by the Bipartisan Campaign Reform Act of 2002 (BCRA), 2 U.S.C. § 441a(a)(3). The federal aggregate limit permitted an individual to give a base per-election contribution to candidates and other non-candidate committees of his choosing until his total contributions to all candidates and committees reached the aggregate limit. *McCutcheon*, 134 S. Ct. at 1442-43. The question presented in *McCutcheon*, therefore, was whether the aggregate limit served to assist the government in preventing *quid pro quo* corruption by checking circumvention of the base limits without unnecessarily abridging First Amendment freedoms. *Id.* at 1446-62. The Court answered this question in the negative: "We conclude … that the aggregate limits do little, if anything, to address that concern [circumvention of the base limits so as to accomplish a *quid pro quo*], while seriously restricting participation in the democratic process…. Because we find a substantial mismatch between the

§ 14–116(2); S.C. Code § 8-13-1316(A); Tenn. Code §§ 2-10-302(c), (d) and Tenn. Code §§ 2-10-306(a), (c); and Wis. Stat. § 11.26(9).

[18] Hebdon, 62-76; FSP, 1-21; CLC, 22-33.

Government's stated objective and the means selected to achieve it, the aggregate limits fail even under the 'closely drawn' test." *Id*. at 1442, 1446.[19]

Hebdon's and her amici's notion that Alaska's nonresident aggregates are not subject to the rule of *McCutcheon* because they are an aggregate of a different type,[20] is mistaken. And, Hebdon's and the district court's idea that Alaska's nonresident aggregates are less onerous than the aggregate that *McCutcheon* struck down,[21] is puzzling. Whereas Congress utilized a sledge hammer of an aggregate in the BCRA, Alaska, by contrast, utilizes the figurative equivalent of dynamite. The aggregate limit in *McCutcheon* permitted all donors to make a base limit contribution to up to nine candidates, but then prohibited them from fully contributing to any additional candidates—even if all contributions fell within the base limits that Congress viewed as being adequate to protect against corruption. *McCutcheon*, 134 S. Ct. at 1448. By contrast, Alaska prohibits each and every American in the Lower-48 from donating even $.01 to an Alaska candidate once a small handful of nonresident donors have made a base-limit contribution to that candidate. Similar to the BCRA, Alaska's nonresident ban applies, despite

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[19] The Court's analysis in *McCutcheon* had nothing to do with the amount of the BCRA's aggregate limit.

[20] Hebdon, 63-64; CLC, 23-24.

[21] *See* Hebdon, 63-64; ER-23.

nonresident contributions being limited to the base amount of $500[22]—the amount that Alaska believes "do[es] not create a cognizable risk of corruption." *See McCutcheon*, 134 S. Ct. at 1452. Contrary to Hebdon's assertion that Alaska's nonresident caps do not limit how much money any one individual nonresident can contribute in total,[23] any one nonresident would be prohibited from making any contribution to any Alaska candidate if they were not one of the first few nonresident donors to any candidate.[24]

McCutcheon's ruling is squarely applicable to Alaska's nonresident aggregate caps. Just as with the BCRA in *McCutcheon*, Alaska cuts off an individual's ability to support a candidate or candidates of his choosing even by means of a base-limit contribution—the amount otherwise presumed free of any cognizable risk of corruption. *McCutcheon*, 134 S. Ct. at 1448, 1452. Like the BCRA, Alaska law layers the prophylactic nonresident aggregate on top of its already existing prophylactic base limit—when allowed to give, nonresidents are limited to the base amount. *See* AS 15.13.070(b)(1). Like the BCRA, Alaska cuts off a nonresident's association with the candidate of his choice via the symbolic

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[22] AS 15.13.070(b)(1).

[23] Hebdon, 63.

[24] In most all years, every Alaskan candidate will not max out their nonresident contributions. [TE-BK] But this fact is of little consolation to the average donor, like Thompson, who wishes to support a particular Alaska candidate and not just any Alaska candidate. [ER-29-31; TE-98]

expression of support evidenced by a contribution. *Id.* at 1444. Like the BCRA, Alaska imposes an artificial line for prohibiting further contributions from a nonresident—the BCRA set the artificial line of nine candidates to whom a donor could give a base-limit contribution, and Alaska imposes an even more arbitrary first-come-first-serve rule that permits only a token few nonresidents to contribute a base limit to a candidate (Governor/Lt. Governor-40; Senate-10; House-6).

Additionally, Alaska's nonresident aggregate is thinner on both logic and practical effect in advancing Alaska's only legitimate interest—preventing *quid pro quo* corruption—than was the BCRA that *McCutcheon* struck down. The BCRA at least followed a line of logic that targeted an individual's total giving to all candidates so as to prevent that individual from accomplishing a *quid pro quo* via circumvention—although this was logic the Court rejected.[25] By contrast, Alaska's nonresident cap irrationally leaves open the possibility that a nonresident could make a base-limit contribution to every Alaska candidate for every public office if he simply wins the first-come-first-serve race to every candidate—and beyond candidates, the same speedy nonresident could also make a base limit contribution to every party and group registered in Alaska.[26] Thus Alaska's

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[25] *McCutcheon*, 134 S. Ct. at 1452-56.

[26] Amicus CLC's notion that the "race" dynamic saves Alaska's nonresident cap from *McCutcheon*'s prohibition [CLC, 23-24], is false. Only a certain number of nonresidents can give to any Alaska candidate, and once the cap is reached, the

aggregate, unlike the BCRA, leaves a speedy nonresident free to attempt circumvention of the base limit to his heart's content, while barring any unlucky nonresident from giving even $.01 to his candidate of choice, even if he chooses to support only one candidate. And lastly, Alaska's aggregate even allows a nonresident to try—without illegal earmarking—to support his capped-out candidate of choice by giving to other candidates, groups, and parties in the hope (completely outside his control) that they will support his candidate of choice.

Just as with the BCRA that *McCutcheon* struck down, Alaska's nonresident aggregates do little if anything to address circumvention as a means to accomplish a *quid pro quo* while seriously restricting participation in the democratic process. *McCutcheon*, 134 S. Ct. at 1442, 1446. Just as with the BCRA, Alaska's nonresident aggregates fail even under the closely drawn test because there is a substantial mismatch between Alaska's only permissible objective and the means selected to achieve it. *Id*.

That nonresidents who are turned away from supporting their candidate of choice might still be free to donate to other Alaska candidates, parties,

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next unlucky nonresident is unable to give even $.01 to the candidate—if Thompson had given sooner to Keller, then one of Keller's six other nonresident donors would have been barred from giving. When an Alaska candidate caps out nonresident contributions, the "race" dynamic simply creates a figurative game of musical chairs in which there will inevitably be a losing nonresident donor who is figuratively left standing.

or groups [ER-24] is not a constitutional solution. *See, e.g.*, *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 739 (2011). Like the Arizona law struck down in *Bennett*, nonresident contributors who run into the aggregate cap are faced with an unconstitutional choice: change their First Amendment expression by contributing to, and thereby associating with, a completely different candidate, party, or group, or refrain from exercising their First Amendment rights. *Id.*[27] That speakers can avoid the burdens of a law "by changing what they say"—or in this case, who they support—does not mean the law complies with the First Amendment. *See FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 477 n.9 (2007) (opinion of Roberts, C.J.).

2. Aggregate Caps Cannot Be Used to Combat Circumvention of Base Limits Through Illegal Activity.

Hebdon argues and the district court found that Alaska's nonresident aggregate caps are constitutionally permissible to assist the State in preventing outside interests from circumventing Alaska's base limit by funneling "large amounts of out-of-state money" to candidates through "nonresident surrogates" or by "reimburse[ing] employees" [ER25-26; Hebdon, 67-68]. In other words, to

[27] "[F]orcing that choice—trigger matching funds, change your message, or do not speak—certainly contravenes 'the fundamental rule of protection under the First Amendment, that a speaker has the autonomy to choose the content of his own message.'" *Id.* at 739 (citing and quoting *Hurley v. Irish-American Gay Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 573 (1995); *Citizens United*, 130 S. Ct. at 898)).

Hebdon and the district court, Alaska's nonresident aggregates will help prevent illegal giving in the name of another.[28] But, the Supreme Court rejected this same reasoning in *McCutcheon*. 134 S. Ct. at 1452-56. The Court there held that aggregates were previously permitted to target circumvention that could have been accomplished through legal avenues. *Id.* at 1452-53, 1455. The Court rejected the proposition that government can justify an individual aggregate limit based upon its speculative fear that large groups of people or entities will engage in "illegal" conduct. *Id.* at 1455.

Just as in *McCutcheon*, the circumvention schemes that Hebdon envisions are "far too speculative," conjectural, and "implausible" to carry her burden of proof. *Id.* at 1452-55. In order for a so-called outside interest to funnel even $25,000 into an Alaska candidate's campaign, fifty separate nonresidents, along with the entity that provides the funding, would have to engage in a transparent violation of the law—funneling $50,000 would require 100 nonresidents; $100,000 would require 200. Dreading criminal conspiracies of this magnitude is "divorced from reality." *Id.* at 1456. The evidence reflects that Alaska candidates seldom reach their nonresident caps. [SSER-31, 37-39; TE-BK] The record is also devoid of evidence that Alaska's largest oil companies attempt to direct or coerce their

[28] Earmarking and giving money in the name of another, is a "corrupt practice" and a crime. AS 15.13.074(b); AS 15.56.012.

employees to give to particular candidates or parties. Employees of BP and ConocoPhillips spread their contributions across the political spectrum. [SSER-28-29; 32-36; TE-AZ at 1-8, 39-48] Hebdon has no evidence that these companies would change their behavior if the base limit—the so-called "potential payoff" [Hebdon, 68]—were increased. [SSER-32-36]

After *McCutcheon*, government is not permitted to stack individual aggregate limits on top of other laws that already make the potential avenues of circumvention illegal. 134 S. Ct. at 1452-55. Imposing an aggregate limit on all individual nonresident donors, all of whom are bound by the base limit and most of whom would never act illegally, just to place an extra prophylactic layer of proscription on the unscrupulous few who might try to illegally give through others, is overly burdensome and not closely drawn. *Id.*; *accord McConnell*, 540 U.S. at 231-32. In *McConnell*, the Court struck down a ban on contributions by individuals seventeen years old or younger—the Court rejected the argument that the law was justified because parents might illegally try to circumvent base limits by giving through children. *Id*. Just as *McConnell* lacked evidence of circumvention by parents giving through children [*id.* at 232], this record is devoid of evidence that outside interests attempt to circumvent base limits by illegally giving through nonresidents. [TE-BK]

APOC's alleged prosecutorial impotency [Hebdon, 64, 66-69; ER-25-26] is no justification for Alaska's nonresident caps. Far from being a "real possibility," "circumvention of the base limits through nonresident channels that are beyond APOC's reach" [Hebdon, 64] is pure conjecture, implausible and divorced from reality. *See*, *e.g.*, *McCutcheon*, 134 S. Ct. at 1452-56. *See supra* 15. Hebdon's unsubstantiated fantasy of "large amounts" of Texans giving "bundled" or "earmarked" contributions funded by some fictional "outside firm" [Hebdon, 68] is unworthy of consideration. Bundling or pooling base-limit contributions is legal. *See Buckley*, 424 U.S. at 22; *accord Citizens United*, 558 U.S. at 359.[29] Earmarking, or giving in the name of another is illegal [*supra*. n.28], and if an "outside firm" attempted such a colossal criminal conspiracy, the U.S. Department of Justice could prosecute the wrongdoers. Hebdon, her amici, and the district court [Hebdon, 67-68; ER-25-26; CLC, 31-32] ignore that it was the DOJ not APOC that previously prosecuted Alaska's home-grown political corruption. [TE-47-62; SSER-26; *United States v. Dischner*, Case No. 3:87-cr-JKS-1 (D. Alaska 1987)][30] And, Hebdon's "mere conjecture" is not "adequate to carry a First Amendment burden." *McCutcheon*, 134 S. Ct. at 1452 (quoting *Nixon v.*

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[29] Absent an actual *quid pro quo* or an illegal "bonus" scheme [TE-59 at 8, ¶ 21(a)], collective giving is nothing other than politically protected speech and association.

[30] The DOJ prosecuted even though the corruption involved but a few Alaskans.

Shrink Missouri Govt. PAC, 528 U.S. 377, 392 (2000)); *Citizens for Clean Gov't v. City of San Diego*, 474 F.3d 647, 653 (9th Cir. 2007).

B. Alaska's Nonresident Ban Fails *Lair/Eddleman.*

McCutcheon abrogates *Eddleman*[31] regarding the analysis of aggregate limits and thus controls the analysis of Alaska's nonresident caps. But, Alaska's aggregate caps fail even the *Lair/Eddleman* closely drawn analysis because as explained in the context of the *McCutcheon* analysis, they are not "narrowly focused" on *quid pro quo* corruption. *Lair*, 798 F.3d at 748; *Eddleman*, 343 F.3d at 1092. There is no nexus between state residency and *quid pro quo* corruption—an otherwise legal $500 base-limit contribution does not risk corruption or its appearance just because it is given by a nonresident. Each of the corruption schemes that Hebdon imagines regarding "surrogates" and "employees" [Hebdon, 68-69] bear no unique relationship to nonresident status and could also be accomplished by Alaskans—in this respect the laws are significantly under-inclusive. *VanNatta*, 151 F.3d at 1221. Alaska's political corruption scandals of the past involved Alaskans. [TE-47-62]

[31] *Montana Right to Life Ass'n. v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003).

C. Alaska's Nonresident Aggregates Fail Strict Scrutiny.

Alaska's nonresident aggregates should be subjected to strict scrutiny because they operate as more than just limitations on the amount of a donor's contribution. *McCutcheon*, 134 S. Ct. at 1444. A limitation that denies an individual even "the symbolic expression of support evidenced by a contribution" and/or that "infringe the contributor's freedom to discuss candidates and issues," is subject to strict scrutiny. *Id*. Federal courts apply strict scrutiny to similar residency restrictions that burden free political speech. *See Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 192 & n.12, 193-96 (1999) (applying strict scrutiny to a residency requirement for petition circulators); *Nader v. Brewer*, 531 F.3d 1028, 1035-36 (9th Cir. 2008); *Chandler v. City of Arvada*, 292 F.3d 1236, 1238-39, 1241-42 (10th Cir. 2002); *Krislov*, 226 F.3d at 855-56, 857, 860-62. Alaska's nonresident aggregates are not narrowly tailored to prevent *quid pro quo* corruption by the least restrictive means. *McCutcheon*, 134 S. Ct. at 1444.

D. Alaska's Nonresident Ban Is Prohibited By *VanNatta*.

This Court's decision in *VanNatta* compels the conclusion that Alaska's nonresident aggregates are unconstitutional. 151 F.3d at 1217-21. In *VanNatta*, this Court struck down Oregon's law prohibiting contributions from anyone residing outside a candidate's voting district. *Id.* at 1216-18. Alaska's law, like

Oregon's, applies to all out-of-state residents—the fact that Oregon's law also applied to Oregonians residing outside a candidate's voting district is not a significant distinction. The sole criterion for who may or may not give in both *VanNatta* and here, is residency.

That Alaska's aggregates permit a token few nonresidents to contribute to a candidate whereas Oregon's law barred all nonresident contributions is also not a significant distinction—according to *VanNatta*, residency is not a valid criterion for denying the right to contribute. *Accord Nader*, 531 F.3d at 1035-36. In any event, once a token few nonresidents give to an Alaska candidate (six may give a base-limit contribution to a House candidate) Alaska's law bans all further nonresidents from giving even $.01 to the candidate. Hebdon relies on complete conjecture for her fear of corruption from nonresidents [Hebdon, 66-69]—she, like Oregon, can point to no evidence demonstrating that nonresident contributions, unlike resident contributions, uniquely lead to *quid pro quo* corruption—making Alaska's law under-inclusive. *VanNatta* at 1221.

The Second Circuit reached a similar conclusion in *Landell*, where the court struck down a proportional aggregate cap on nonresident campaign contributions. And, in *Buckley*, 525 U.S. at 192 & n.12, 193-96; *Nader*, 531 F.3d at 1035-36; *Chandler*, 292 F.3d at 1238-39, 1241-42; and *Krislov*, 226 F.3d at 866, federal courts have struck down, on First Amendment grounds, laws that limit petition

circulators by state residency. The central holding of *Bluman*, 800 F. Supp. 2d at 289-90, that foreign nationals can be prohibited from giving contributions, is inapplicable to Alaska's nonresident aggregate caps. *Accord Citizens United*, 558 U.S. at 424 n.51 (Stevens, J., concurring and dissenting) (the Framers were obsessed with preventing foreign influence). American citizens residing in the Lower 48 are not foreign nationals. In any event, *Bluman* actually supports striking down Alaska's nonresident aggregates—*Bluman* states that citizens of other states cannot be treated like foreign nationals. 800 F. Supp. 2d at 290.

E. Alaska's Nonresident Ban Furthers No Legitimate Interest.

1. There Is No Nexus Between Residency and Corruption.

Hebdon's and the district court's view that Alaska's nonresident aggregates serve to advance a proper anti *quid pro quo* corruption interest is incorrect. The district court's description of the alleged "nexus between … *quid pro quo* corruption" and "nonresident" status says nothing about corruption—the district court recites that Alaska (1) has a small population, (2) is geographically isolated, (3) has great natural resources, (4) is dependent on outside industry to cover the great expense needed to develop resources; (5) has numerous foreign and out-of-state corporations involved in natural-resource extraction; and that (6) profits from resource extraction are sent out of state. [ER24-25] Although this scenario perhaps cautions that Alaska be vigilant in its regulation of its natural resources, it says

absolutely nothing about corruption, let alone *quid pro quo* corruption, and it certainly does not establish a "nexus" between residency and corruption.

Further, as explained *supra*, using an aggregate to target circumvention [Hebdon, 66] is no longer permissible, and in any event, Alaska's nonresident aggregates do not properly address circumvention. There is a substantial mismatch between Alaska's claimed anti-circumvention interest and its nonresident aggregates. Hebdon's idea that nonresident contributions have more potential to create "a corrupt dependency relationship" than resident contributions [Hebdon, 69] is both misguided and groundless. It is misguided because "dependency," which is nothing more than a combination of legal ingratiation, access, and responsiveness, is not corruption. *McCutcheon*, 134 S. Ct. at 1441; *Citizens United*, 558 U.S. at 359-60. Recognizing that candidates or office holders are or become "dependent" upon their supporters—voters and/or contributors—is nothing more than a recognition of the unremarkable fact that in a representative democracy office holders feel pressure to act in conformity with the wishes of those who helped get them elected.[32]

[32] *See, e.g.*, *McCutcheon*, 134 S. Ct. at 1462 ("Constituents have the right to support candidates who share their views and concerns. Representatives are not to follow constituent orders but can be expected to be cognizant of and responsive to those concerns. Such responsiveness is key to the very concept of self-governance through elected officials."). The Supreme Court recognized McCutcheon, who gave to many candidates beyond those who directly represented him and for whom

In a representational democracy, officeholders who do not satisfy the wishes of the supporters who helped get them elected will likely not retain that support or get re-elected. *See* Jaffe, *Club for Growth targeting 9 'RINO' Republicans for primary challenges*, http://thehill.com/blogs/ballot-box/house-races/285193-club-for-growth-targeting-rino-republicans; Engel, Jackson, *Wielding the Stick Instead of the Carrot: Labor PAC Punishment of Pro-NAFTA Democracts*, http://journals.sagepub.com/doi/abs/10.1177/106591299805100312; Jansa, *Labor Punish Democrats?*, http://michelehoyman.web.unc.edu/files/2017/02/Jansa-Hoyman-and-Khalafalla.pdf. That is not corruption—it is representative democracy. Hebdon's and the district court's view is groundless because there is no evidence in this record to support the idea that a contributor is more likely to be corrupt, or to have a corrupt purpose for contributing to an Alaska candidate, just because they live outside Alaska. And the proposition that nonresidents are more likely corrupt is constitutionally offensive.

Whether Alaskans "worry about outside money" and whether Alaska office holders who receive nonresident contributions might appear to "feel[] obligated to outside interests" over "constituents" [Hebdon, 66, 69; ER-25], are constitutionally irrelevant. Alaska is permitted to concern itself only with *quid pro quo* corruption,

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he could not vote, as a constituent to whom elected officials should be responsive. *Id.* Hebdon also acknowledges this concept. [Hebdon, 74]

not whether contributions come from nonresidents or whether officeholders feel inclined to respond to nonresident donors. *See McCutcheon*, 134 S. Ct. at 1450-51. Base contribution limits address *quid pro quo* corruption concerns, and if Alaskans are concerned about politicians representing "outside interests," the constitutional solution is for Alaskans to vote those politicians out of office—bludgeoning free speech is not a constitutional remedy for this concern.

2. Alaska's Interest in Self-Governance Is Not Legitimate.

Limiting *quid pro quo* corruption or its appearance is the only interest Alaska is permitted to pursue via its campaign contribution limits. *Lair*, 798 F.3d at 740; *McCutcheon*, 134 S. Ct. at 1450-51. Protecting "federalism," a "republican form of government," or an interest in "self-governance," is not important so as to limit the political free speech of American citizens. *See VanNatta*, 151 F.3d at 1216; *Landel*, 382 F.3d at 146-48; *Krislov*, 226 F.3d at 866; *accord McCutcheon*, 134 S. Ct. at 1462 (McCutcheon was protected in his ability to give to candidates beyond those who directly represented him); *Bluman*, 800 F. Supp. 2d at 283-84, 287, 290 (recognizing that the United States as a whole is the pertinent political community for campaign contributions in local, state, and federal elections); *Nader*, 531 F.3d at 1035-36.

Hebdon's and her amici's idea that *Bluman* lends support for a "self-governance" justification for Alaska's nonresident aggregates, is misguided.

Hebdon, her amici, and the district court rely on the notion of a state-by-state division of political communities [Hebdon, 69-74; ER-22;[33] FSP, 11-17]. But, before ruling that government may exclude "foreign nationals" from activities within the pertinent political community, *Bluman* defined the political community as the United States as a whole. 800 F. Supp. 2d at 287, 290 (citing *Bernal v. Fainter*, 467 U.S. 216, 220 (1984)).[34]

Bluman holds that "citizens of other states … are all members of the American political community." *Id*. at 290. According to *Bluman*, the "interest that justifies [government] in restraining foreign nationals' participation in American elections" "does not apply equally to … citizens of other states." *Id.* And to emphasize the distinction between "foreign nationals" and American "citizens," *Bluman* reiterated that "a law that is justified as applied to aliens may not be justified as applied to citizens of the United States." *Id.* at 290. "Grapl[ing]" with *Bluman* [FSP, 15], leads to the conclusion that Alaska's nonresident aggregates, which improperly treat (1) Alaska as its own stand-alone

[33] ER-22: "Alaska residents and nonresidents are not similarly situated with respect to state elections."

[34] The law at issue in *Bluman*—2 U.S.C. § 441(e)(a)—addressed the United States as a whole as a political community and excluded "foreign national[s]" from contributing to candidates in "a Federal, State, or local election," *i.e.*, the entirety of the pertinent political community. 800 F. Supp. 2d at 284, 289-90.

political community; and (2) "citizens of other states" as the equivalent of "foreign nationals," are unconstitutional. *Id.* at 289-90.

From the perspective of free speech and association, nonresidents of Alaska may have and are entitled to have just as much an interest in Alaska's politics as are Alaskans. *See* Jessica Bulman-Pozen, *Executive Federalism Comes to America*, 102 Va. L. Rev. 953, 1013, 1032, 1077, 1134, 1140 (2016). Nonresidents may reside in Alaska for substantial parts of the year (so-called "snow birds" who flee Alaska for warmer weather in the winter). *Id.* State decisions are part of national decision making and state elections can affect out-of-state residents. *Id.* States are key players in national politics and their policy decisions are often aimed at, and have consequences for, the national public. *Id*.

3. Alaska's Alleged Vulnerability Is Specious and Does Not Support Alaska's Suppression of Nonresident Free Speech.

The notion that Alaska, unlike other states, has special privilege to stifle First Amendment rights because of its large geographic size, small population, and rich natural resources [Hebdon, 66-67; ER-7, 24], is unsupported and without merit. Hebdon and the district court do not cite a single authority to support the proposition that our Nation's Constitution permits Alaska, or any other state, a unique license, different from other states, to pummel First-Amendment-protected free speech. Alaska's concern about "outside interests" "exploiting its resources"

[Hebdon, 66-67; ER-24-25] can and should be addressed through natural resource regulations that do not suppress free speech. So called "outside interests" are perfectly entitled to use legal means to try to influence Alaska's laws in order to further their own interests—Alaska cannot bludgeon the free speech of every citizen in the Lower-48 in its, or some faction of Alaskans', effort to win political battles over the development or preservation of its natural resources.

II. THE $500 INDIVIDUAL-TO-CANDIDATE BASE LIMIT IS UNCONSTITUTIONAL

A. Hebdon's and the District Court's Concept of Corruption Is Contrary to Supreme Court Precedent.

Hebdon and her amici admit, as they must, that contribution limits may only target *quid pro quo* corruption or its appearance. [Hebdon, 22; CLC, 7; BC, 15-17] "[W]hile preventing corruption or its appearance is a legitimate objective," government "may target only a specific type of corruption—'*quid pro quo*' corruption." *McCutcheon*, 134 S. Ct. at 1450; *id.* at 1441 ("any regulation must … target what we have called '*quid pro quo*' corruption"); *Lair*, 798 F.3d at 740. As the Court explained, government "may permissibly seek to rein in 'large contributions [that] are given to secure a political *quid pro quo* from current and potential office holders." *McCutcheon*, 134 S. Ct. at 1450 (quoting *Buckley*, 424 U.S. at 26); *accord Citizens United*, 558 U.S. at 359. To the extent that government targets "the appearance of corruption," that interest is "equally

confined to the appearance of *quid pro quo* corruption." *McCutcheon*, 134 S. Ct. at 1441, 1451. And, Hebdon rightly concedes that government may not use contribution limits to curb the "influence over or access to elected officials" that a contribution may afford, because neither constitute corruption. [Hebdon, 22] *McCutcheon*, 134 S. Ct. at 1451.

Hebdon's reliance on decisions predating *McCutcheon* and *Citizens United*, together with her jaded reading of precedents, leads her to a distorted and impermissibly broad concept of corruption. [Hebdon, 22-23, 25-26] Contrary to Hebdon's approach, in this developing area of constitutional law,[35] it is important to give greatest heed to the Supreme Court's newest decisions and to draw from older decisions sparingly and with caution, because, as the Court explained in *McCutcheon*, "[i]t is fair to say … 'that [the Court has] not always spoken about corruption in a clear and consistent voice.'" *McCutcheon*, 134 S. Ct. at 1451. According to *McCutcheon* and *Citizens United*, "[t]he hallmark" of *quid pro quo* corruption is the "financial" arrangement of "dollars for political favors." *Id.* at 1441; *Citizens United*, 558 U.S. at 359. And to be "corrupt," the political favor must encompass a specific "official act" in exchange for personal gain. *See McDonnell v. United States*, 136 S. Ct. 2355, 2361, 371-72 (2016).

[35] Or, as CLC calls it, "a volatile body of Supreme Court precedents." [CLC, 8]

The favoritism an officeholder may show to his campaign contributors and the influence and access contributors may have with the candidate, are not corruption. *See Citizens United*, 558 U.S. at 359 (quoting *McConnell*, 540 U.S. at 297 (opinion of Kennedy, J.)). Writing for the Court in *Citizens United*, Justice Kennedy squarely rejected Hebdon's idea that mere influence can constitute corruption:

> The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt: "Favoritism and influence are not … avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies…." Reliance on a "generic favoritism or influence theory … is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle."

Id. As this Court recognized in both *Lair*, 798 F.3d at 746, and *Thalheimer v. City of San Diego*, 603 F.3d 1109, 1119 (9th Cir. 2010): "*Citizens United* 'narrowed the scope of the anti-corruption rationale to cover *quid pro quo* corruption only, as opposed to money spent to obtain influence over or access to elected officials.'"

Hebdon confuses *McCutcheon*'s reference to an elected official being "influenced to act contrary to their obligations of office,"[36] with the natural and perfectly legal influence and responsiveness that exists between elected officials and their supporters (voters and contributors). Justice Kennedy, writing for the

[36] *McCutcheon*, 134 S. Ct. at 1460-61; Hebdon, 22-23.

Court in *Citizens United*, squarely rejected Hebdon's distinction between "voters" and "contributors" [Hebdon, 23]:

> It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors.

Citizens United, 558 U.S. at 359 (quoting *McConnell*, 540 U.S. at 297 (opinion of Kenendy, J.)). Hebdon's own expert Painter admitted that there is not a real significant distinction between an elected official's "dependence" upon (*i.e.*, being influenced by and responding to) voters or contributors, because "the people who vote for the candidate" are likely "the same people that would contribute to his campaign." [SSER-30] "The line between *quid pro quo* corruption and general influence may seem vague at times, but the distinction must be respected in order to safeguard basic First Amendment rights." *McCutcheon*, 134 S. Ct. at 1451.

CLC's suggestion that the Supreme Court's summary affirmance of the three-judge panel in *Republican Nat'l Party of La. v. FEC*, 137 S. Ct. 2178 (2017), *aff'g* 219 F. Supp. 3d 86 (D.D.C. 2016) overrides *McCutcheon*'s narrow ruling as to what does and does not constitute corruption (CLC, 7-8), is wrong. "[A] summary affirmance" "has 'considerably less precedential value than an opinion on the merits.'" *Comptroller of the Treasury v. Wynne*, 135 S. Ct. 1787, 1800 (2015) (quoting *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173,

180-81 (1979)). The Supreme Court held in *Comptroller* that "[a] summary affirmance 'is not to be read as a renunciation by this Court of doctrines previously announced in our opinions after full argument.'" *Id.* (quoting *Mandel v. Bradley*, 432 U.S. 173, 176 (1977) (*per curiam*)). "A summary affirmance is an affirmance of the judgment only," and "the rationale of the affirmance may not be gleaned solely from the opinion below." *Id.* at 1801 (quoting *Mandel*, 432 U.S. at 176).

So-called "dependency relationships" [Hebdon, 23; BC, 16-17] that allegedly result from collective giving by like-minded people, are not corruption—they are not even potential corruption, no more than any other conceivable relationship dynamic (except perhaps the "large individual financial contributions" the Court was concerned about in both *McCutcheon*, 134 S. Ct. at 1450; and *Buckley*, 424 U.S. at 27). Hebdon and her amici imagine an idealized world in which (1) campaign contributors give, and continue to give, to a candidate's campaign regardless of whether the candidate declares, and once elected performs, as the contributors desire; (2) officeholders make official decisions and take official actions heedless of the interests, desires, and wishes of those who helped them get elected by contributing to their campaigns; and (3) government may set low contribution limits—below the limits deemed not "large" in *Buckley*—in order to prevent an officeholder from becoming "dependent upon," *i.e.*, responsive to, collective groups of like-minded financial supporters. [Hebdon, 23-24; BC, 16-17]

But in the real world of representative democracy, candidates who get elected and then ignore the interests and wishes of their contributors lose the support of those contributors and likely do not get reelected. *See Jaffe* and *Engel*, *Jackson supra* 23. This reality is not a reflection of corruption—it is a reflection of representative democracy.

Thompson's reference to the undeniable "dependency" or "appearance of dependency"—using Painter's concept—that exists in Alaska between labor union PACs and elected officials, such as Eric Croft [ER-347-50], was not, as Hebdon imagines, to "attack the role of labor unions in elections." [Hebdon, 24] Rather, Thompson highlighted Croft's receipt of 25 percent of his total campaign funds in his 2016 race for Anchorage Assembly from labor union PACs to demonstrate that Painter's notions of corruption, which he imagines in the form of "dependency relationships" that could "become" a *quid pro quo*, are overbroad and encompass perfectly legal collective giving and non-corrupt relationships.[37]

[37] Thompson's point was to highlight Hebdon's and the district court's inconsistency in (a) associating collective legal giving—bundling—with co-called "corrupt" "dependency" [Hebdon, 23; ER-14], while at the same time (b) crediting Croft as a sterling example of integrity and credibility despite his "dependency relationship" (as Painter described the concept) with labor unions. [Hebdon, 28-29; ER-14]

B. The $500 Limit for Individual Contributions Is Not "Narrowly Focused" on *Quid Pro Quo* Corruption.

Hebdon and her amici emphasize the unremarkable proposition that under current law, governments may impose base individual contribution limits and that the imposition of such limits furthers anti-corruption interests. [Hebdon, 19; CLC, 5-6; BC, 17][38] But, the question in this case is not whether Alaska can establish a base individual contribution limit, but whether Alaska's $500 annual limit, unindexed for inflation—an amount that was lower the day it was adopted than the $1,000 limit the Supreme Court deemed to not be "large" in *Buckley*—is "narrowly focused" on *quid pro quo* corruption.[39] *See Lair*; 798 F.3d at 748; *Eddleman*, 343 F.3d at 1092. Government cannot set any limit, no matter how low, and then expect that limit to be presumed, or to be found to be, "narrowly focused" on *quid pro quo* corruption. The amount of the base-contribution limit must be narrowly focused on *quid pro quo* corruption—contribution limits can be set too low and thus not be closely drawn. *Randall v. Sorrell*, 548 U.S. 230, 248-49 (2006); *Nixon*, 528 U.S. at 397; *accord Lair*, 798 F.3d at 1092.

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[38] Only the Supreme Court has the power to overrule the portion of its decision in *Buckley* that distinguishes contributions from expenditures. *See Agostini v. Felton*, 521 U.S. 203, 237 (1997).

[39] The $1,000 individual contribution that was deemed not "large" in *Buckley* in 1976 was worth $2,776.98 in 1996 dollars. https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=1%2C000.00&year1=197601&year2=199601

Hebdon and her amici imagine that because contribution limits are recognized as a means of preventing corruption, Alaska can select any limit, no matter how low, so long as candidates can raise sufficient funds to run effective campaigns. [Hebdon, 19-20, 41; BC, 10] But this position ignores the holding of *Lair*, 798 F.3d at 748, that a limit must be "narrowly focused" on *quid pro quo* corruption. Hebdon and her amici repeatedly acknowledge, as they must, that the Supreme Court tied the legitimate government concern regarding corruption to "large contributions" and "large individual financial contributions."[40] [Hebdon, 20, 23, 26, 38 (six references to "large" contributions); BC, 4, 15, 16, 21, 26 (six references); CLC, 6, 10-12, 14, 19, 28, 30 (nine references)] Yet, Hebdon and her amici offer no explanation, and the district court made no finding, to explain or demonstrate why or how any amount equal to or below the $1,000 limit that *Buckley* concluded was **not** large, could be equated with the "large contributions" that *Buckley* said create a risk and appearance of *quid pro quo corruption*. For this reason, *Randall* set the $1,000 limit of *Buckley* as a marker—"danger sign"—of the unconstitutionality of limits set below that marker. 548 U.S. at 250.

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[40] *Buckley*, 424 U.S. at 25-28, 30, 32-33, 36, 45, 46, 58 (and more). *Buckley* repeatedly uses the terms "large contributions" and "large individual financial contributions." *Accord McCutcheon*, 134 S. Ct. at 1445, 1447, 1450-51, 1459, 1460-61; *Citizens United*, 558 U.S. at 345, 356 ("This followed from the Court's concern that large contributions could be given 'to secure a political *quid pro quo*'…. With regard to large direct contributions, *Buckley* reasoned that they could be given 'to secure a political *quid pro quo.*'").

Hebdon's attempt to parse a difference between money for which an officeholder feels "obligated" and money for which they are merely "grateful" [Hebdon, 23], misreads *McCutcheon* and does nothing to demonstrate that Alaska's basement-level limit is narrowly focused on *quid pro quo* corruption. The Court's reference to obligation was to money "beyond the base limits funneled in an identifiable way to a candidate." 134 S. Ct. at 1461. The Court's reference to mere gratefulness was to money "within the base limits given widely to a candidate's party." *Id*. The Court's point in this regard had absolutely nothing to do with determining what amount of an individual contribution limit might appear "large," and cannot reasonably be read to lend support to the notion that contributions under $1,000 can be deemed to be, or to appear to be, the "large contributions" "given to secure a political *quid pro quo*" and "that pose[] the danger of corruption." *Id.* at 1450, 1460-61. The record in this case is devoid of evidence that $1,000 legal contributions, the contributions that Alaska viewed as free of corruption for twenty-six years,[41] ever garnered *quid pro quo* corruption. Candidates, officeholders, and donors testified that they were not and did not

[41] *See McCutcheon*, 134 S. Ct. 1452. Hebdon's statement that Alaska never viewed $1,000 contributions to be free of corruption [Hebdon, 36-37] is nonsensical. If Hebdon means to assert that for twenty-six years Alaska set its legal base limit at a level that it viewed as being corrupt, that proposition is absurd.

appear corrupt when they received and gave $1,000 contributions. [ER-40, 59-60, 205-08, 319, 329-30, 332, 334][42]

Regardless of whether anyone who designed Alaska's laws intended to target them at the oil industry [Hebdon-27], Hebdon and the district court targeted their justifications for Alaska's basement-level $500 annual and non-indexed limit, at the oil industry. [ER-6-7; Hebdon, 27-28] Alaska and the district court cannot justify Alaska's lowest-in-the-Nation contribution limit for statewide races by claiming it is necessary to target the oil industries' influence in Alaska. *McCutcheon*, 134 S. Ct. at 1450. In any event, Hebdon still cannot demonstrate any correlation between the dollar amount of Alaska's contribution limit and the oil industry's influence in Alaska. The oil industry's influence in Alaska stems from its ability to take its business elsewhere. *See* Cole, "Alaska's Big Three oil companies prefer limited competition," ADN, October 8, 2013 https//

[42] Hebdon's suggestion that witnesses were merely "reluctant to use the word 'corrupt' to describe themselves" [Hebdon, 29], is meritless. Hebdon offered no evidence, and there is no evidence in the record, to rebut the witnesses' testimony that they did **not** view themselves as corrupt. The only witness who viewed himself as perhaps corrupt was Charles Wohlforth. And, Wohlforth's conception of corruption was seriously confused—Wohlforth believed himself possibly to have been a participant in *quid pro quo* corruption simply because he equated corruption with the mere "pressure" that he personally felt to respond favorably in gratitude to any donor to his campaigns (even one giving as little as $198). [ER-377, 379, 383] But, Wohlforth had at least enough understanding of actual corruption to distance himself from it—when asked if he believed that he had ever taken a bribe in the form of campaign contributions, Wohlforth denied having ever done so. [SSER-41]

www.adn.com/voices/article/big-three-oil-companies-haveown-view-competition/2013/10/08.

III. THE $500 INDIVIDUAL-TO-GROUP LIMIT DOES NOT PASS CONSTITUTIONAL SCRUTINY

Groups are not public officials and they cannot offer a *quid pro quo* to a contributor. Alaska places a limit of $500 annually for what an individual may give to a group. And, Alaska places a limit of $1,000 annually on what a group can give to a candidate. AS 15.13.070(c). Therefore, the contribution limit for individual-to-group giving is a secondary prophylaxis that is stacked on top of the already-existing limit for group-to-candidate giving. The group-to-candidate limit already serves to circumvent an individual's use of a group to circumvent the base individual-to-candidate limit.

The only circumvention that Alaska may constitutionally target is that which would be sufficient to enable donors to accomplish a *quid pro quo*. Given the existing $1,000 group-to-candidate limit, Hebdon's and the district court's idea that individuals could use groups to circumvent the $500 base limit for individual-to-candidate giving is implausible. Consider the example of an individual attempting to funnel a mere $25,000 through groups to a candidate above the base limit. Giving the $25,000 to one group would accomplish little—the group can give only $1,000 to the candidate and the donor would have to share attribution for

the donation with all other donors to the group. In order for the donor to try to spread that $25,000 through multiple two person groups, at $1,000 per donation that would require twenty-five groups and fifty people—and, once again, the donor would have to share attribution for each group's donation with every donor to the group. *See McCutcheon*, 134 S. Ct. at 1452-53.

CONCLUSION

For the foregoing reasons and for the reasons stated in Appellants' Opening Brief, the judgment of the district court should be reversed.

DATED this 31st day of August, 2017.

BRENA, BELL & CLARKSON, P.C.

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CERTIFICATE OF COMPLIANCE
PURSUANT TO NINTH CIRCUIT RULES

This Brief contains 8,879 words, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. A Motion to Exceed Type/Volume Limits has been filed. The Brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

DATED this 31st day of August, 2017.

BRENA, BELL & CLARKSON, P.C.
Attorney for Plaintiffs-Appellants

By /s/ Kevin G. Clarkson
Kevin G. Clarkson
Matthew C. Clarkson

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth 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.

DATED this 31st day of August, 2017.

BRENA, BELL & CLARKSON, P.C.
Attorney for Plaintiffs-Appellants

By /s/ Kevin G. Clarkson
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Matthew C. Clarkson

ADDENDUM

TABLE OF CONTENTS TO ADDENDUM

Page

Alaska Statute 15.13.070. Limitations on amount of political contributions.

(a) An individual or group may make contributions, subject only to the limitations of this chapter and AS 24.45, including the limitations on the maximum amounts set out in this section.

(b) An individual may contribute not more than

(1) $500 per year to a nongroup entity for the purpose of influencing the nomination or election of a candidate, to a candidate, to an individual who conducts a write-in campaign as a candidate, or to a group that is not a political party;

(2) $5,000 per year to a political party.

(c) A group that is not a political party may contribute not more than $1,000 per year

(1) to a candidate, or to an individual who conducts a write-in campaign as a candidate;

(2) to another group, to a nongroup entity, or to a political party.

(d) A political party may contribute to a candidate, or to an individual who conducts a write-in campaign, for the following offices an amount not to exceed

(1) $100,000 per year, if the election is for governor or lieutenant governor;

(2) $15,000 per year, if the election is for the state senate;

(3) $10,000 per year, if the election is for the state house of representatives; and

(4) $5,000 per year, if the election is for

(A) delegate to a constitutional convention;
(B) judge seeking retention; or
(C) municipal office.

(e) This section does not prohibit a candidate from using up to a total of $1,000 from campaign contributions in a year to pay the cost of

(1) attendance by a candidate or guests of the candidate at an event or other function sponsored by a political party or by a subordinate unit of a political party;

(2) membership in a political party, subordinate unit of a political party, or other entity within a political party, or subscription to a publication from a political party; or

(3) co-sponsorship of an event or other function sponsored by a political party or by a subordinate unit of a political party.

(f) A nongroup entity may contribute not more than $1,000 a year to another nongroup entity for the purpose of influencing the nomination or election of a candidate, to a candidate, to an individual who conducts a write-in campaign as a candidate, to a group, or to a political party.

Alaska Statute 15.13.072. Restrictions on solicitation and acceptance of contributions.

(a) A candidate or an individual who has filed with the commission the document necessary to permit that individual to incur election-related expenses under AS 15.13.100 may not solicit or accept a contribution from

(1) a person not authorized by law to make a contribution;

(2) an individual who is not a resident of the state at the time the contribution is made, except as provided in (e) of this section;

(3) a group organized under the laws of another state, resident in another state, or whose participants are not residents of this state at the time the contribution is made; or

(4) a person registered as a lobbyist if the contribution violates AS 15.13.074(g) or AS 24.45.121(a)(8).

(b) A candidate or an individual who has filed with the commission the document necessary to permit the individual to incur election-related expenses under AS 15.13.100, or a group, may not solicit or accept a cash contribution that exceeds $100.

(c) An individual, or one acting directly or indirectly on behalf of that individual, may not solicit or accept a contribution

(1) before the date for which contributions may be made as determined under AS 15.13.074(c); or

(2) later than the day after which contributions may not be made as determined under AS 15.13.074(c).

(d) While the legislature is convened in a regular or special legislative session, a legislator or legislative employee may not solicit or accept a contribution to be used for the purpose of influencing the outcome of an election under this chapter Unless

(1) it is an election in which the legislator or legislative employee is a candidate and the contribution is for that legislator's or legislative employee's campaign;

(2) the solicitation or acceptance occurs during the 90 days immediately preceding that election; and

(3) the solicitation or acceptance occurs in a place other than the capital city or a municipality in which the legislature is convened in special session if the legislature is convened in a municipality other than the capital city.

(e) A candidate or an individual who has filed with the commission the document necessary to permit that individual to incur election-related expenses under AS 15.13.100 may solicit or accept contributions from an individual who is not a resident of the state at the time the contribution is made if the amounts contributed by individuals who are not residents do not exceed

(1) $20,000 a calendar year, if the candidate or individual is seeking the office of governor or lieutenant governor;

(2) $5,000 a calendar year, if the candidate or individual is seeking the office of state senator;

(3) $3,000 a calendar year, if the candidate or individual is seeking the office of state representative or municipal or other office.

(f) A group or political party may solicit or accept contributions from an individual who is not a resident of the state at the time the contribution is made, but the amounts accepted from individuals who are not residents may not exceed 10 percent of total contributions made to the group or political party during the calendar or group year in which the contributions are received.

(g) A candidate or an individual who has filed with the commission the document necessary to permit that individual to incur election-related expenses under AS 15.13.100 for election or reelection to the office of governor or lieutenant governor may not solicit or accept a contribution in the capital city while the legislature is convened in a regular or special legislative session.

(h) A nongroup entity may solicit or accept contributions for the purpose of influencing the nomination or election of a candidate from an individual who is not a resident of the state at the time the contribution is made or from an entity organized under the laws of another state, resident in another state, or whose participants are not residents of this state at the time the contribution is made. The amounts accepted by the nongroup entity from these individuals and entities for the purpose of influencing the nomination or election of a candidate may not exceed 10 percent of total contributions made to the nongroup entity for the purpose of influencing the nomination or election of a candidate during the calendar year in which the contributions are received.

Alaska Statute 15.13.074. Prohibited contributions.

(a) A person, group, or nongroup entity may not make a contribution if the making of the contribution would violate this chapter.

(b) A person or group may not make a contribution anonymously, using a fictitious name, or using the name of another.

(c) A person or group may not make a contribution

(1) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 when the office is to be filled at a general election before the date that is 18 months before the general election;

(2) to a candidate or an individual who files with the commission the document necessary to permit that individual to incur certain election-related expenses as authorized by AS 15.13.100 for an office that is to be filled at a special election or municipal election before the date that is 18 months before the date of the regular municipal election or that is before the date of the proclamation of the special election at which the candidate or individual seeks election to public office; or

(3) to any candidate later than the 45th day

(A) after the date of the primary election if the candidate was on the ballot and was not nominated at the primary election; or

(B) after the date of the general election, or after the date of a municipal or municipal runoff election.

(d) A person or group may not make a contribution to a candidate or a person or group who is prohibited by AS 15.13.072(c) from accepting it.

(e) A person or group may not make a cash contribution that exceeds $100.

(f) A corporation, company, partnership, firm, association, entity recognized as tax-exempt under 26 U.S.C. 501(c)(3) (Internal Revenue Code), organization, business trust or surety, labor union, or publicly funded entity that does not satisfy the definition of group or nongroup entity in AS 15.13.400 may not make a contribution to a candidate, group, or nongroup entity.

(g) An individual required to register as a lobbyist under AS 24.45 may not make a contribution to a candidate for the legislature at any time the individual is

subject to the registration requirement under AS 24.45 and for one year after the date of the individual's initial registration or its renewal. However, the individual may make a contribution under this section to a candidate for the legislature in a district in which the individual is eligible to vote or will be eligible to vote on the date of the election. An individual who is subject to the restrictions of this subsection shall report to the commission, on a form provided by the commission, each contribution made while required to register as a lobbyist under AS 24.45. Upon request of the commission, the information required under this subsection shall be submitted electronically. This subsection does not apply to a representational lobbyist as defined in regulations of the commission.

(h) Notwithstanding AS 15.13.070, a candidate for governor or lieutenant governor and a group that is not a political party and that, under the definition of the term "group," is presumed to be controlled by a candidate for governor or lieutenant governor, may not make a contribution to a candidate for another office, to a person who conducts a write-in campaign as a candidate for other office, or to another group of amounts received by that candidate or controlled group as contributions between January 1 and the date of the general election of the year of a general election for an election for governor and lieutenant governor. This subsection does not prohibit

(1) the group described in this subsection from making contributions to the candidates for governor and lieutenant governor whom the group supports; or

(2) the governor or lieutenant governor, or the group described in this subsection, from making contributions under AS 15.13.116(a)(2)(A).

(i) A nongroup entity may not solicit or accept a contribution to be used for the purpose of influencing the outcome of an election unless the potential contributor is notified that the contribution may be used for that purpose.

Alaska Statute 15.13.090. Identification of communication.

(a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the person paying for the communication. In addition, except as provided by (d) of this section, a person shall clearly

(1) provide the person's address or the person's principal place of business;

(2) for a person other than an individual or candidate, include

(A) the name and title of the person's principal officer;

(B) a statement from the principal officer approving the communication; and

(C) unless the person is a political party, identification of the name and city and state of residence or principal place of business, as applicable, of each of the person's three largest contributors under AS 15.13.040(e)(5), if any, during the 12-month period before the date of the communication.

(b) The provisions of (a) of this section do not apply when the communication

(1) is paid for by an individual acting independently of any other person;

(2) is made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065(c); and

(3) is made for

(A) a billboard or sign; or

(B) printed material other than an advertisement made in a newspaper or other periodical.

(c) To satisfy the requirements of (a)(1) of this section and, if applicable, (a)(2)(C) of this section, a communication that includes a print or video component must have the following statement or statements placed in the communication so as to be easily discernible; the second statement is not required if the person paying for the communication has no contributors or is a political party: This communication was paid for by (person's name and city and state of principal place of business). The top contributors of (person's name) are (the name and city and state of residence or principal place of business, as applicable, of the largest contributors to the person under AS 15.13.090(a)(2)(C)).

(d) Notwithstanding the requirements of (a) of this section, in a communication transmitted through radio or other audio media and in a communication that includes an audio component, the following statements must be read in a manner that is easily heard; the second statement is not required if the person paying for the communication has no contributors or is a political party: This communication was paid for by (person's name). The top contributors of (person's name) are (the name of the largest contributors to the person under AS 15.13.090(a)(2)(C)).

(e) Contributors required to be identified under (a)(2)(C) of this section must be listed in order of the amount of their contributions. If more than three of the largest contributors to a person paying for a communication contribute equal amounts, the person may select which of the contributors of equal amounts to identify under (a)(2)(C) of this section. In no case shall a person be required to identify more than three contributors under (a)(2)(C) of this section.

(f) The provisions of this subsection apply to a person who makes an independent expenditure for a communication described in (a) of this section. If the person paying for the communication is not a natural person, the provisions also apply to the responsible officer or officers of the corporation, company, partnership, firm, association, organization, labor organization, business trust, or society who approve the independent expenditure for the communication. A person who makes a communication under this subsection may not, with actual malice, include within or as a part of the communication a false statement of material fact about a candidate for election to public office that constitutes

defamation of the candidate. For purposes of this subsection, a statement constitutes defamation of the candidate if the statement

(1) exposes the candidate to strong disapproval, contempt, ridicule, or reproach; or

(2) tends to deprive the candidate of the benefit of public confidence.

Alaska Statute 15.13.400. Definitions.

In this chapter,

. . .

(8) "group" means

(A) every state and regional executive committee of a political party;

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070, whether or not control of the group has been disclaimed by the candidate; and

(C) any combination of two or more individuals acting jointly who organize for the principal purpose of filing an initiative proposal application under AS 15.45.020 or who file an initiative proposal application under AS 15.45.020;

. . .

(15) "political party" means any group that is a political party under AS 15.80.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct;

Alaska Statute 15.56.012. Campaign misconduct in the first degree.

(a) Except as provided in AS 15.56.014 and 15.56.016, a person commits the crime of campaign misconduct in the first degree if the person knowingly engages in conduct that violates a provision of AS 15.13 or a regulation adopted under authority of AS 15.13.

(b) Violation of this section is a corrupt practice.

(c) Campaign misconduct in the first degree is a class A misdemeanor.

HRS § 11-362. Contributions limited from nonresident persons.

(a) Contributions from all persons who are not residents of the State at the time the contributions are made shall not exceed thirty per cent of the total contributions received by a candidate or candidate committee for each election period.

(b) This section shall not be applicable to contributions from the candidate's immediate family.