UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

DINNER TABLE ACTION, *et al.*, Plaintiffs, v. SCHNEIDER, *et al.*, Defendants,	Case No. 1:24-CV-00430-KFW

INTERVENORS' OPPOSITION TO PLAINTIFFS' MOTION FOR PERMANENT INJUNCTION

INTRODUCTION

In November 2024, the Maine electorate overwhelmingly decided to adopt common-sense contribution limits and disclosure requirements on SuperPACs—political action committees that make independent expenditures. Contributions to SuperPACs active in Maine have exploded in recent years, with Mainers unable to trace the source of those funds. Intervenors proposed the Act to Limit Contributions to Political Action Committees That Make Independent Expenditures (the "Act") to remedy the palpable risk of corruption those contributions present. The Act passed as a ballot initiative with the support of 74.9% of Mainers. Decl. of Cara McCormick, Dkt. 17-2, at ¶ 11. Plaintiffs now ask this Court to override the judgment of Maine's citizens about how best to preserve Maine's electoral process from corruption.

Plaintiffs contend that *Citizens United v. F.E.C*, 558 U.S. 310 (2010), decides this case in their favor. Not so. *Citizens United* recognized that "contribution limits" on funds candidates and PACs receive constitute "an accepted means to prevent *quid pro quo* corruption." *Id*. at 359. The Supreme Court has consistently distinguished contributions from independent expenditures—i.e. the political speech that PACs exercise. *Id*. at 357. A few courts have held, without much analysis, that if independent expenditures cannot corrupt, *contributions* to PACs that make independent expenditures cannot corrupt. *E.g*., *SpeechNow.org v. F.E.C*., 599 F.3d 686, 696 (D.C. Cir. 2010) (en banc). But those decisions are not binding and are inconsistent with Supreme Court precedent.

The Act's contribution limits are permissible under *Citizens United* because they are closely drawn to address the important interest of preventing *quid pro quo* corruption and its appearance. That is not just a matter of common-sense: A sitting U.S. senator has been indicted for soliciting SuperPAC contributions in exchange for official acts. *See United States v. Menendez*, 132 F. Supp. 3d 635, 640 (D.N.J. 2015). The testimony of the Maine citizens who proposed the Act, a Maine legislator who advocated for it, and robust survey data all confirm that unfettered

SuperPAC donations create, at a minimum, an appearance of corruption, and that a $5,000 limit on such donations is tailored to address this concern. This Court should thus deny the injunction.

The Court should also deny the injunction because the Act is closely drawn to address a sufficiently important interest in combatting "dependence corruption"—the improper dependence of public officials on deep-pocket interests rather than their own constituents. Lawrence Lessig, *A Reply to Professor Hasen*, 126 HARV. L. REV. F. 61, 65 (Dec. 2012). The Founders of our Republic viewed the prevention of dependence corruption as "essential" to Republican government. THE FEDERALIST 39 (Madison). The Act addresses the concern that unfettered SuperPAC contributions will drive politicians to "flinch in the performance of their duties." Senator Richard Bennett, Dkt. 17-1, at ¶¶ 7-8. Mainers want their officials to represent them—not out-of-state dark money.

Finally, the Act's disclosure requirements are independently permissible. Nearly 50 years of Supreme Court precedent supports the constitutionality of disclosure laws designed to achieve transparency in the campaign finance process. *See Buckley v. Valeo*, 424 U.S. 1, 66 (1976). This Court should uphold those provisions, regardless of its decision on the Act's contribution limits.

BACKGROUND

The Act "received more votes, 600,191, than any citizens' initiative or politician has ever received in any election in the history of the State of Maine." Decl. of Cara McCormick, Dkt. 17-2, at ¶ 11. That was no surprise. Following recent elections, the citizens of Maine have become "aware of the substantial negative impacts of SuperPAC funding on local elections" as elected officials "choose to curry favor with anonymous megadonors to access their deep coffers" rather than attend to the public policy issues ordinary Mainers care about. Decl. of Cara McCormick, Dkt. 17-2, at ¶ 12. Politicians in Maine likewise believe that unfettered donations to SuperPACs are "particularly damaging to the integrity of [Maine's] democratic processes." Decl. of Senator

Richard Bennett, Dkt. 17-1, at ¶ 7. The practical necessity of currying favor with SuperPACs has meant that the issues "out-of-state supporters find most important take centerstage during election season, to the detriment of local issues that matter to local voters." *Id.* at ¶ 7. As a result of large SuperPAC donations, "Maine politicians are less likely to engage with the local issues that really matter to Maine citizens." *Id.* "The size of this spending in Maine [also] creates the appearance of quid-pro-quo corruption," discouraging Maine citizens "from donating to candidates, participating in political campaigns, and even from voting." *Id.*

Given the widespread fear in Maine that unrestricted SuperPAC donations lead to corruption and the appearance of corruption, the citizens of Maine, including Intervenors, took matters into their own hands. By ballot initiative, Maine voters added SuperPAC-specific regulations to an existing, robust set of campaign regulations that operate together to ensure clean and transparent elections. Sections 1 and 2 limit individual and business-entity SuperPAC contributions to $5,000 per year. 21-A M.R.S. §§ 1015(2)(C), (D). Sections 3 requires any person, party committee, or PAC to identify the "total contributions from each contributor" if they make an independent expenditure exceeding $250. *Id.* § 1019-B(4)(B). Section 4 requires SuperPACs to account for all independent expenditures using only funds legally received. *Id.* § 1019-B(6).

On December 13, 2024, two SuperPACs known as Dinner Table Action and For Our Future, as well as their founder Alex Titcomb, filed this action for declaratory and injunctive relief against the Act. Plaintiffs filed a motion for a permanent injunction on January 17, 2025. State Senator Richard Bennett, citizens' initiative proponents Cara and Peter McCormick, and the fair election organization EqualCitizens moved to intervene on January 24, 2025, given their unique interests in the outcome of the litigation. The Court granted intervention.

ARGUMENT

Plaintiffs ask this Court to undo the will of the voters and permanently enjoin the Act. To

obtain that extraordinary relief, they must (1) "prevail on the merits"; (2) demonstrate "irreparable injury"; (3) show that the balance of equities tips in their favor; and (4) show that "the public interest would not be adversely affected." *Asociacion de Educacion Privada de Puerto Rico, Inc. v. Garcia-Padilla*, 490 F.3d 1, 8 (1st Cir. 2007). Plaintiffs do not even mention three of those factors, and thus cannot possibly be entitled to an injunction. And Plaintiffs' requested injunction is contrary to Supreme Court precedent and the original meaning of the First Amendment.

I. The Act Is Lawful Under *Citizens United* Because It Is Closely Drawn To Address A Sufficiently Important Interest In Preventing Quid-Pro-Quo Corruption.

The Supreme Court has long distinguished between limits on *contributions* to candidates and PACs and the *expenditures* they make. *See Buckley,* 424 U.S. at 21; *F.E.C. v. Colorado Republican Fed. Campaign Comm*., 533 U.S. 431, 440 (2001) ("[L]imits on political expenditures deserve closer scrutiny than restrictions on political contributions."). Contribution limits survive scrutiny if they are "closely drawn" to serve the "sufficiently important interest" of combatting actual or apparent quid-pro-quo corruption. *Davis v. F.E.C.*, 554 U.S. 724, 740 n.7 (2008) (quoting *McConnell v. F.E.C.*, 540 U.S. 93, 136 (2003)); *see Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 397 (2000) (upholding Missouri ballot initiative limiting campaign contributions); *California Med. Ass'n v. F.E.C.*, 453 U.S. 182, 195 (1981) (upholding $5,000 limit on contributions to multicandidate political committees); *see also* Pls' Br. at 9 (citing *Buckley*, 424 U.S. at 25).

Plaintiffs claim that contribution limits are contrary to the Supreme Court's decision in *Citizens United*. Mot. at 1–2. But *Citizens United* expressly recognized that "contribution limits . . . unlike limits on independent expenditures, have been an accepted means to prevent *quid pro quo* corruption." *Id*. at 358 (quotation marks omitted). Such limits combat the unique risk of corruption "threatened by large financial contributions" tied to their tendency to create "political debts," which "directly 'implicate the integrity of our electoral process.' " *F.E.C. v. Nat'l Right to*

Work Comm., 459 U.S. 197, 208 (1982) (upholding restriction on PAC's ability to solicit funds)). Unlike limits on "independent expenditures," the "overall effect" of contribution limits is "merely to require . . . political committees to raise funds from a greater number of persons." *Buckley*, 424 U.S. at 21–22. Contributors are still free to associate with whomever they choose, and committees may still "aggregate large sums of money to promote effective advocacy." *Id.* at 22.

The Supreme Court has thus sanctioned contribution limits, even while it has struck down limits on independent expenditures. *See id.* Plaintiffs are correct that a few courts, including the D.C. Circuit in *SpeechNow.org v. F.E.C*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), have concluded that SuperPAC contribution limits are unconstitutional. *See* Mot. at 10–11. But those decisions are not binding on this Court and are inconsistent with Supreme Court precedent holding that contribution limits *are permissible*, provided they address actual or apparent corruption.[1]

When a truly independent entity makes an expenditure in support of a candidate, there is no quid—no "prearrangement" to prompt "improper commitments." *Citizens United*, 558 U.S. at 357. But a person who *contributes* to a SuperPAC may do so in exchange for political favors. The fact that SuperPACs *make* "independent expenditures" does not ensure that they *receive* independent contributions free from quid-pro-quo corruption (or its appearance). As this Circuit has recognized, "quid pro quo" corruption occurs regardless of whether the official personally receives the money. *United States v. Correia*, 55 F.4th 12, 34-35 (1st Cir. 2022) (official must only "bring about the transfer of another's property to a third party" (alterations omitted)).

This type of corruption is not just a theoretical possibility—it is a practical reality. Former

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[1] The Supreme Court has not adopted *SpeechNow*'s holding. *Contra* Pl's Br. 3, 11–12. Rather, the Court cited *SpeechNow* for the straightforward proposition that the "base and aggregate limits [in the Federal Election Campaign Act] govern contributions to traditional PACs, but not to independent expenditure PACs." *McCutcheon v. F.E.C.*, 572 U.S. 185, 193 n.2 (2014).

Senator Robert Menendez was indicted in 2015 for soliciting "approximately $300,000 for [a] PAC" in return for "advocacy at the highest levels of [the Department of Health and Human Services]." *United States v. Menendez*, 132 F. Supp. 3d 635, 640 (D.N.J. 2015). The District Court declined to dismiss the indictment on the basis of *Citizens United*, explaining that regardless of the "real value of independent expenditures," Menendez could subjectively value PAC donations "earmarked" for expenditures related to his campaign. *Id.* at 640. The contributions also "unquestionably had value" to the PAC itself. *Id*. Hence the quid-pro-quo: An elected official may corruptly seek a donation "for [the PAC], in return for being influenced in the performance of an official act." *Id*.; *see also id*. at 643 (indictment "clearly allege[d] an explicit *quid pro quo*"). There are multiple other examples of quid-pro-quo corruption involving SuperPAC contributions.[2]

As these real-world examples show, SuperPAC contributions lead to corruption and the appearance of corruption. The Supreme Court has "specifically affirmed" political contribution limits due to their tendency to "erod[e] public confidence" in our nations' elections. *Nat'l Right to Work Comm*., 459 U.S. at 208 (citing *Buckley*, 424 U.S. at 26–27). The harm to public confidence is real: Intervenors' expert conducted a robust survey of the American public to determine the perceived likelihood of an elected official selling a policy outcome in exchange for SuperPAC contributions. Robertson Rpt., Ex. 3-A at 8. That analysis revealed that below $5,000, a majority

[2] *See, e.g.*, *United States v. Lindberg*, No. 19-CR-22, 2020 WL 520948, at *2 (W.D.N.C. Jan. 31, 2020) (declining to dismiss indictment of individuals who, among other things, offered to "put $1.5 million" into an "independent expenditure committee" in exchange for action by state insurance commissioner); Opinion & Order, *United States v. Vázquez-Garced*, No. 22-CR-342, Dkt. No. 498 at 12–22 (D.P.R. Mar. 7, 2024) (declining to dismiss indictment of former governor of Puerto Rico for appointing individual as banking regulator in exchange for commitment to "fund [a] SuperPAC," and finding this could constitute "a quid pro quo"); *United States v. Householder*, No. 20-CR-77, 2023 WL 24090, at *5 (S.D. Ohio Jan. 3, 2023) (declining to dismiss RICO indictment of former Ohio house speaker for "agree[ing] to receive and accept millions of dollars in bribe payments . . . including bribe payments paid through GENERATION NOW [a SuperPAC], in return for … taking specific official action"); *id*., Dkt. No. 288.

of individuals believe that quid-pro-quo corruption is relatively unlikely. But that result flips dramatically "at or above $5,000," where a clear majority believe quid-pro-quo corruption is likely to occur. *Id*. As Intervenors' expert detailed, imposing a $5,000 contribution limit has a clear salutary effect by causing a 10%-plus swing in the percentage of individuals who believe various quid-pro-quo corruption scenarios are likely to occur. *Id*. at 11.

The Act is closely drawn to serve the sufficiently important interest of combatting actual and apparent quid-pro-quo corruption. There can be no dispute that donations to SuperPACs risk quid-pro-quo corruption and its appearance, as demonstrated by the Maine electorate's overwhelming decision to limit such contributions, the testimony of Mainers such as Intervenors Cara McCormick and Senator Bennett, real-world examples, and survey data. The $5,000 limit is closely drawn because it falls within the range of similar measures the Supreme Court has approved of as appropriate to address this interest, while still allowing SuperPACs to aggregate and spend significant sums. *See, e.g.*, *California Med. Ass'n*, 453 U.S. at 201 ($5,000 limit on contributions to multicandidate political committees); *Shrink Missouri Gov't PAC*, 528 U.S. at 384 ($1,075 contribution limit); *Buckley*, 424 U.S. at 13 ($1,000 contribution limit). The Supreme Court has held, moreover, that contribution limits need not be "fine tun[ed]" and that "distinctions in degree" will "not invalidate the legislation." *Buckley*, 424 U.S. at 30.

Plaintiffs claim (at 13-14) that the Act is underinclusive because it does not expressly apply to "party committees." But state party committees and "subordinate" entities are *already* subject to an extensive array of federal regulations, including contribution limits. 11 C.F.R. § 110.3(b); *id*. § 110.1(c)(5) ("[N]o person shall make contributions to a political committee established and maintained by a State committee of a political party in any calendar year that, in the aggregate, exceed $10,000."). The existence of those limits is strong evidence that the Act does not exceed

"the outer limit of acceptable tailoring" in applying similar restrictions to SuperPACs. *See Colorado Republican Fed. Campaign Comm.*, 533 U.S. at 462.

Plaintiffs' alternative argument (at 15-16) that the Act violates the Fourteenth Amendment lacks merit for a similar reason: the Act must be viewed as part of the overall tapestry of campaign finance regulations. The existence of "actionable discrimination" turns on an "overall" difference in treatment between two entities—not just "the specific provision . . . that is being challenged." *Stop Reckless Econ. Instability Caused by Democrats v. Fed. Election Comm'n*, 814 F.3d 221, 235 (4th Cir. 2016). Courts have thus rejected nearly identical challenges to federal limits on PACs making coordinated expenditures because "political committees overall clearly receive *more favorable* treatment" "than do other groups." *Id.*; *see also California Med. Ass'n v. Fed. Elec. Comm'n*, 453 U.S. 182, 200 (1981) (rejecting equal protection claim where "the statute as a whole imposes far *fewer* restrictions" on plaintiff entities). That is no less true in Maine where, until the passage of the Act, SuperPACs were not subject to any contribution limits—even though various requirements applied to campaigns and traditional PACs. *E.g.*, 21-A M.R.S. § 1015(1), (4) (PACs subject to $1,950 contribution limit for funds solicited by candidate for statewide office).

II. The Original Meaning of the First Amendment Does Not Bar the Regulation of Dependence Corruption.

The Court should also uphold the Act for a second, independent reason: It is closely drawn to serve the sufficiently important interest of preventing dependence corruption, and the original meaning of the First Amendment would permit the regulation of dependence corruption.

A. This Court Should Apply the Original Meaning of the First Amendment.

No federal court has evaluated campaign finance regulations under the original meaning of the First Amendment. The Supreme Court was not presented with originalist arguments in its foundational case, *Buckley v. Valeo,* 424 U.S. 1 (1976). And since *Buckley*, federal courts have

applied *Buckley's* test without considering whether the original meaning of the First Amendment would permit the People a broader scope for campaign finance regulations.

This Court should apply the original meaning of the First Amendment to permit the regulation of dependence corruption, a corruption distinct from the quid-pro-quo corruption recognized in *Buckley*. As in *Heller*, the government's brief in *Buckley* had "scant discussion of the history of the [First] Amendment." *D.C. v. Heller,* 554 U.S. 570, 623-24 (2008). This Court should take up what the government had failed to do in *Buckley*, and become the first to apply the original meaning of the First Amendment to measure the constitutionality of Maine's law.

B. Contribution Limits Do Not Violate The Original Meaning Of The First Amendment.

Following the method that Justice Thomas has described for determining the limits of the First Amendment, Maine's law is plainly constitutional. *See Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220, 1223-24 (2021) (Thomas, J., concurring) ("regulations that might affect speech are valid if they would have been permissible at the time of the founding"); *McKee v. Cosby*, 139 S. Ct. 675 (2019) (Thomas, J., concurring in denial of certiorari) (embracing "the original meaning of the First and Fourteenth Amendments"). As Professor Jonathan Gienapp explains, applying Justice Thomas's approach, the original meaning of the First Amendment would not prohibit a law—like this one—enacted through a process "representative of the people" and serving "the interest of the public good." Gienapp Decl., Ex. 1, at ¶ 9. At least where a regulation is not viewpoint based, *see RAV v. St. Paul*, 505 U.S. 377, 384-85 (1992), the Maine law should be upheld under the original meaning of the First Amendment.[3]

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[3] Intervenors acknowledge that this Court is constrained to apply *Buckley*, which asks the Court to assess whether there is a sufficiently important interest to justify a campaign contribution limit. In Part II.B, Intervenors thus preserve the argument that the Supreme Court should overturn *Buckley*, reject an intermediate scrutiny test for contribution limits, and return to the original meaning of

C. The Regulation Of Dependence Corruption Is A "Sufficiently Important Interest" To Sustain Maine's Law Under The Supreme Court's Buckley *Framework.*

In *Buckley*, the Supreme Court identified the risk of quid-pro-quo corruption as a "sufficiently important interest" and "constitutionally sufficient justification" for upholding limitations on contributions to political campaigns. 424 U.S. at 16, 26; *see FEC v. Cruz*, 596 U.S. 289, 305 (2022) (to date, the Supreme Court "has recognized only one permissible ground for restricting political speech: the prevention of *'quid pro quo'* corruption or its appearance"). This Court should likewise recognize the risk of dependence corruption as a "sufficiently important interest" to justify upholding limitations on contributions to SuperPACs. Intervenors ask this Court to address that question in the first instance by analyzing the "the principles that underpin our regulatory tradition." *Rahimi*, 602 U.S. at 692. Founding-era history, the text of the Constitution, post-enactment history, and precedent all point to the same conclusion: Dependence corruption is a sufficiently important interest recognized at the Founding to justify restrictions on SuperPAC contributions. The Act is closely drawn to address that interest—and is thus constitutional.

1. Founding-era History. During the Republic's early years, candidates did not campaign for office, so there are no Founding-era examples of laws regulating campaign contributions. *See* Zephyr Teachout, *Corruption in America: From Benjamin Franklin's Snuff Box to Citizens United* 175 (2014) (explaining that Andrew Jackson's 1828 presidential campaign was the first to actively engage potential voters); Lawrence Lessig, WHAT AN ORIGINALIST WOULD UNDERSTAND CORRUPTION TO MEAN, 102 Calif. L. Rev. 1, 20 (Feb. 2014); Rakove Decl., Ex. 2, at ¶ 48. In this situation, when "[n]o accepted existence of governmental restrictions of the sort at issue . . . demonstrates their unconstitutionality, but neither can their nonexistence clearly be

the First Amendment. In Part II.C, Intervenors ask this Court in the alternative to uphold the Act under *Buckley* based on the State's interest in addressing dependence corruption.

attributed to constitutional objections," the Court must determine "whether the government action under challenge is consonant with the concept of the protected freedom (in this case, the freedom of speech and of the press) that existed when the constitutional protection was accorded." *McIntyre v. Ohio Elections Com'n*, 514 U.S. 334, 375 (1995) (Scalia, J., dissenting). Here, Maine's interest in combatting dependence corruption is consonant with the Founders' deep concern with such corruption as well as the nation's post-ratification regulatory tradition, and this Court should interpret the First Amendment consistent with that history.

Prior to the American Revolution, the King of England had dispensed honors, offices, and privileges to form "a vast network of connections extending to the royal governors, and ramifying from them into almost every part of American society." Gordon S. Wood, *The Creation of the American Republic 1776-1787* 146 (1998). Sitting Parliamentarians became "enthralled" by the promise of patronage appointments and "lost their concern for their country." *Id.* How to avoid replicating this "problem of placemen"—"of people going into office not to represent the public but in order to get a well-paid job"—was the subject of extensive debate at the Constitutional Convention. Teachout, *Corruption in America*, at 59-67; *see also* Rakove Decl., Ex. 2 at ¶ 22. The Framers were likewise troubled by "rotten boroughs"—electoral districts in England with populations disproportionate to their representation. *Teachout, Corruption in America*, at; *see also* Rakove Decl., Ex. 2 at ¶ 21. A member of the aristocratic elite could buy off the small number of voters in a rotten borough and thereby control outsized political power. Convention delegates referred to rotten boroughs as the "kind of objectionable governmental action that the Constitution should not tolerate." *Wesberry v. Sanders*, 376 U.S. 1, 14 (1964).

Of equal concern were the ambitions of private stakeholders. One of the charges leveled against the House of Representatives in the ratification debates was that it would lack "sympathy

with the mass of the people" and lose "a proper responsibility" to the electorate in favor of a small but powerful constituency. THE FEDERALIST 57 (Madison). Federalists and Anti-Federalists alike considered it "essential" to the republican form of government "that it be derived from the great body of society, not from an inconsiderable proportion, or a favored class of it." THE FEDERALIST 39 (Madison). Proponents of the Constitution were thus pressed to demonstrate to their fellow colonists that the House had been "so constituted as to support in the members an habitual recollection of their dependence" on "the great body of the people in the United States": "Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune." *Id*.

The Framers were also concerned about public officials becoming dependent on constituencies with no connection to the electorate. George Mason fretted that out-of-state residents would seek to "purchase an Election" in a sister state. Teachout, *Corruption in America*, at 59. Edmond Randolph expressed similar concerns, explaining that "[i]t was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any emolument from foreign states." David Robertson, *Debates and other Proceedings of the Convention of Virginia* 330 (2d ed. 1805) (1788). The Framers wished to avoid becoming dependent on a foreign crown as the British government had become dependent on the Bourbons, "even if there was no clear quid pro quo tied to the gifts." Lessig, *Republic Lost*, at 19.

In short, "the big fear underlying all the small fears" of the delegates to the Constitutional Convention was whether the new nation could "control corruption as England and France had not." Teachout, *Corruption in America*, at 57. Nothing was more desired than elected representatives "dependent on the people alone," THE FEDERALIST 52 (Madison), which was "essential to [republican] government." THE FEDERALIST 39 (Madison). *See* Rakove Decl., Ex. 2, at ¶ 23.

When interpreting the First Amendment, this Court should accordingly take into account the Founders' serious concern with dependence corruption—and avoid interpreting the First Amendment to prevent regulation of such corruption. *See Rahimi*, 602 U.S. at 691 (explaining that "the Second Amendment permits more than just those regulations identical to ones that could be found in 1791"); *McIntyre*, 514 U.S. at 373 (Scalia, J., dissenting) ("Quite obviously, not every restriction upon expression that did not exist in 1791 or in 1868 is *ipso facto* unconstitutional.").

2. Text. The Founders' concern with dependence corruption is also reflected in the text of the Constitution itself, demonstrating that Maine's law regulating SuperPAC contributions "fits within the Nation's regulatory tradition." *Rahimi*, 602 U.S. at 682. These constitutional provisions were intended to ensure "dependen[ce] on the people alone." THE FEDERALIST 52 (Madison).

The Ineligibility and Emoluments Clause. The Constitution provides that "[n]o Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time." U.S. CONST. art. I, § 6, cl. 2. Convention delegates saw this measure as a precaution against the problem of placemen, explaining that the provision would "preserv[e] the Legislature as pure as possible, by shutting the door against appointments of its own members to offices." 1 FARRAND'S RECORDS 386 (Rutlidge).

Separation of Powers. Barring *sitting* legislators from plum positions in the Executive Branch only partially addresses the problem of placemen. Legislators may still be tempted to please the Executive—rather than the people—in hopes of being rewarded after leaving office. *See* Teachout, *Corruption in America*, at 66. Proponents of the Constitution vaunted the Senate's "Advice and Consent" power as a "check upon a spirit of favoritism in the President," one that "would tend greatly to prevent the appointment of unfit characters from," among other things,

"family connection" or "personal attachment." THE FEDERALIST 76 (Hamilton).

Frequent Elections. Frequent elections were deemed "the only policy by which" a proper "dependence and sympathy" with the people could be "effectually secured." THE FEDERALIST 52 (Madison). The Framers thus provided for House elections "FREELY by the WHOLE BODY of the people every SECOND YEAR." THE FEDERALIST 41 (Madison). This was a marked departure from the seven-year terms of members of the House of Commons, which, Madison theorized, gave the executive too much time to weaken representatives' sense of obligation to the people who voted them into office. Teachout, *Corruption in America*, at 71; Rakove Decl., Ex. 2, at ¶¶ 21, 24, 28; *cf. id* ¶ 40 (explaining that "commitment to annual elections was arguably the single most important anti-corruption provision of the first state constitutions").

Electoral College. The Framers' decision to select the President through the Electoral College was likewise intended to limit "the danger of cabal and corruption." 2 FARRAND'S RECORDS 500 (Mason). Alexander Hamilton explained that if the President were "appointed by the Legislature" he "would be tempted to make use of corrupt influence to be continued in office." *Id*. at 524; *see* 2 FARRAND'S RECORDS 31, 404 (Morris). The delegates' solution was to select the President through the Electoral College, which, James Wilson explained, was "as nearly home to the people as is practicable." 2 DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE CONSTITUTION 512 (ELLIOT'S DEBATES) (Jonathan Elliot ed.) (1836).

The Census. The decennial census was the Framers' answer to rotten boroughs. Teachout, *Corruption in America*, at 74. The Census Clause requires that the number of legislators be tied to the number of people in each state, rather than allowing a small number of people to have an outsized influence over U.S. politics. U.S. CONST. art. I, § 2, cl. 3.

Eligibility Requirements. The Constitution's birthplace and residency restrictions were also

devised to ensure the government's dependence on the intended constituents. *See* U.S. CONST. art. I, § 2, cl. 2 (Representatives); *id*. at § 3, cl. 3 (Senators); *id*. at art. II, § 1, cl. 5 (President). George Mason explained that without the residency requirement, "Rich men of neighboring States" may "employ with success the means of corruption in some particular district and thereby get into the public Councils after having failed in their own States." 2 FARRAND'S RECORDS 218.

As these provisions show, the text of the Constitution demonstrates a deep concern with dependence corruption, providing strong support for Maine's interested in addressing this form of corruption through the Act—and for this Court to interpret the First Amendment to permit regulations that address such corruption. *See N. Pipeline Const. Co. v. Marathon Pipe Line Co*., 458 U.S. 50, 64 (1982) (plurality) (explaining that constitutional text "must be interpreted in light of the historical context in which the Constitution was written, and of the structural imperatives of the Constitution as a whole"); *see also National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 550 (2012) (explaining that the Necessary and Proper Clause cannot be read to "undermine the structure of government established by the Constitution"); Rakove Decl., Ex. 2, at ¶ 39 (noting that dependence corruption concerns were also reflected in early state constitutions).

3. Post-ratification History. Regulation of dependence corruption continued after the Founding Era, providing further support for the constitutionality of the Act. *See Rahimi*, 602 U.S. at 692 (consulting the "Nation's regulatory tradition" to determine the Second Amendment's application to changing technology); *McIntyre*, 514 U.S. at 378 (Scalia, J., dissenting) ("Where the meaning of a constitutional text (such as 'the freedom of speech') is unclear, the widespread and long-accepted practices of the American people are the best indication of what fundamental beliefs it was intended to enshrine.").

President Teddy Roosevelt introduced the first campaign finance legislation, the Tillman

Act, at the turn of the century to bar corporations from contributing to campaigns. Teachout, *Corruption in America*, at 188. The Federal Corrupt Practices Act and its amendments followed, limiting party and candidate spending in U.S. Senate races and primaries. *Id*. And in 1913, the Seventeenth Amendment was ratified to reign in corruption by corporate interests. *Id*. at 189. The Senator who proposed the amendment explained that "the development during recent times of the great corporate interests of the country" had "tenaciously sought control of Senators friendly to their interests." Sen. Joseph Bristow, *The Direct Election of Senators*, *in* CONGRESSIONAL SERIAL SET ISSUE 6177 (U.S. G.P.O. 1912). They had "spent enormous amounts of money in corrupting legislatures to elect to the Senate men of their own choosing." *Id*. The American people responded to that corruption as Mainers have responded here—by demanding structural change.

4. Precedent. "Although precedent does not supersede the original meaning of a legal text, it may remain relevant when it is not demonstrably erroneous" to "liquidate . . . the meaning of written laws." *Gamble v. United States*, 587 U.S. 678, 720-21 (2019) (Thomas, J., concurring) (citing THE FEDERALIST 78 (Hamilton)). "For nearly seventy years after Roosevelt left office, courts upheld . . . campaign finance rules against an array of constitutional challenges." Teachout, *Corruption in America*, at 189. The Court recognized that campaign finance laws were a legitimate exercise of Congress's authority "to prevent subversion of the integrity of the electoral process," notwithstanding countervailing First Amendment concerns. *United States v. UAW-CIO*, 352 U.S. 567, 575 (1957); *see also id*. at 596 (Douglas, J., dissenting) (disagreeing that this interest overcame free-speech concerns). The Supreme Court, moreover, has continued to approve regulation of election-related contributions. *See supra* pp. 4-6.

Contribution limits are permissible if they are "closely drawn," *Buckley*, 424 U.S. at 25, "to serve a 'sufficiently important interest.'" *Davis*, 554 U.S. at 740 n.7. As history, text, and

precedent show, Maine has a sufficiently important interest in preventing dependence corruption. The Act is closely drawn to address that interest by limiting contributions to $5,000 per donor, decreasing the risk that elected officials will be dependent on single individuals rather than Maine's broader electorate. The survey data shows that a $5,000 cap increases the perception that government will "serve public interests." Robertson Rpt., Ex. 3-A at 16. "For example, with a $5,000 cap in place, respondents were significantly *more likely* to *agree* that 'people like me are likely to have strong voice in government.'" *Id*. at 12. The $5,000 limit, moreover, is within the range of accepted contribution limits, *supra* p. 5, and should be upheld for that independent reason.

III. The Act's Disclosure Requirements Are Independently Permissible.

This Court should reject Plaintiffs' separate challenge to the Act's disclosure requirements. Even in the non-election setting, there is no unmitigated First Amendment right to anonymity. *See Lewis Publishing Co. v. Morgan*, 229 U.S. 288, 314 (1913). Instead, compelled disclosure requirements are permitted if there is "a substantial relation between the disclosure requirement and a sufficiently important governmental interest." *Americans For Prosperity Foundation v. Bonta*, 594 U.S. 595, 600 (2021). That requirement is met here.

For nearly 50 years, the Supreme Court has consistently upheld election-related disclosure requirements. *See, e.g., Valeo*, 424 U.S. at 66 (upholding disclosures for contributions to political campaigns); *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 202–03 (1999) (upholding disclosure of initiative sponsors and amounts spent gathering support for initiatives); *Citizens United*, 558 U.S. at 369 (upholding disclosures on paid election advertising); *John Doe No. 1 v. Reed*, 561 U.S. 186, 191 (2010) (holding that disclosure of referendum signatories "does not as a general matter violate the First Amendment"). The First Circuit has followed suit. *See, e.g., Gaspee Project v. Mederos*, 13 F.4th 79, 87 (1st Cir. 2021) (upholding disclosure laws related to independent expenditures and electioneering communications); *Nat'l Org. for Marriage, Inc. v.*

McKee, 669 F.3d 34, 40–41 (1st Cir. 2012) (upholding disclosures for ballot question committees).

A "long history" of American regulation bolsters the notion that "the First Amendment does not prohibit public disclosure." *John Doe*, 561 U.S. at 219 (Scalia, J. concurring); *Rahimi*, 602 U.S. at 682. Courts first considered challenges to the constitutionality of "close government regulation of the electoral process . . . in the late 1800's." *McIntyre*, 514 U.S. at 374, 375–76 (Scalia, J. dissenting). The "earliest statute" regulating anonymous speech was passed around the same time, and similar laws proliferated in the decades following. *Id.* at 376. As Justice Scalia emphasized, "governmental practice that has become general throughout the United States, and particularly one that has the validation of long, accepted usage, bears a strong presumption of constitutionality." *Id.* at 375. Founding-era evidence of anonymous speech has never persuaded the Supreme Court to hold that the First Amendment unyieldingly bars disclosure regulations.

Three independent governmental interests are sufficiently important to require disclosure of SuperPAC contributors, and there is a substantial relationship between the Act's disclosure requirements and those interests. *First*, there is an interest in publicizing information about who funds independent expenditures in local elections so that Maine voters "may consider . . . the source and credibility" of those funds, *Belotti*, 435 U.S. at 791-92, and "give proper weight to different speakers and messages," *Citizens United*, 558 U.S. at 371. *See also Daggett*, 205 F.3d at 465-66. That "informational interest alone is sufficient to justify" the disclosure requirements. *Citizens United*, 558 U.S. at 369. *Second*, Maine has a "particularly strong" interest with "respect to efforts to root out fraud." *John Doe*, 561 U.S. at 197. Lack of disclosure begets fraud and stymies Maine's efforts to tame it, which "drives honest citizens out of the democratic process and breeds distrust of our government." *Id. Third*, disclosure requirements "deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of

publicity." *Valeo*, 424 U.S. at 67. Requiring disclosure of contributions that finance particular independent expenditures meets each of those objectives.

Plaintiffs fight this conclusion (at 16) by relying on a host of compelled speech cases, but those cases are inapt. *See NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958) (general membership disclosure); *Bonta*, 594 U.S. at 606-07 (general donation disclosure); *McIntyre*, 514 U.S. at 341-42 (authorial disclosure on ballot pamphlets). The Supreme Court has long treated campaign finance differently from other kinds of political speech. *See McIntyre*, 514 U.S. at 337, 346. Disclosure requirements for political contributions "may burden the ability to speak, but they 'impose no ceiling on campaign-related activities,' and 'do not prevent anyone from speaking.' " *Citizens United*, 558 U.S. at 366 (citing *Buckley*, 424 U.S. at 64 and *McConnell*, 540 U.S. at 231).

The Supreme Court has already rejected Plaintiffs' argument (at 15-16) that a low contribution threshold renders a disclosure requirement unconstitutional. Such policy decisions are left to legislative discretion, and a legislature need not "establish that it has chosen the highest reasonable threshold." *Valeo*, 424 U.S. at 84-85 (upholding a $10 disclosure threshold). *See also* Decl. of Senator Richard A. Bennett, Dkt. 17-1, at ¶ 11 ("In our small state, it does not take much money to move the needle in an election."); Complaint, Dkt. 1, at ¶ 37 ("Dinner Table Action regularly receives contributions of less than $50 from individual contributors."). The low disclosure threshold, moreover, separately vindicates Maine's enforcement interest. *See Valeo*, 424 U.S. at 84-85 (upholding low disclosure threshold because it "mak[es] it relatively difficult to aggregate secret contributions in amounts that surpass the $100 limit").

Plaintiffs also misapprehend the Act's disclosure provision, asserting that it does not apply "equally to candidate donations, donations to traditional PACs, or donations to party committees." Mot. at 17. But the disclosure requirement does not apply to political donations wholesale. It

merely states that anyone who makes an independent expenditure above $250 must disclose the "total contributions from each contributor" to that particular expenditure. 21-A M.R.S. § 1019-B(4)(B). The Act makes no other changes to Maine's existing disclosure requirements. Candidates must still disclose "all contributions made to . . . the candidate" once the relevant contribution or expenditure threshold is met. 21-A M.R.S. §§ 1017(2)(A), 1017(3)(A). Likewise, all PACs must continue to disclose details regarding any contribution greater than $50. 21-A M.R.S. § 1060(6). And party committees are still required to report "all contributions" from "a single contributor" that total more than $200. 21-A M.R.S. § 1017-A(1). The Act's disclosure requirement does not inject a new provision in the election code that treats entities differently; it just layers on a generally-applicable and particularized disclosure requirement for independent expenditures.

Finally, the disclosure requirement does not rise or fall with the constitutionality of the Act's contribution limits. *See* Mot. at 15. The contribution limits and disclosure requirements separately address Maine's interest in preventing corruption (and its appearance). Whether the contribution limits are permissible has no bearing on whether the disclosure requirement survives scrutiny. Indeed, Maine's informational interest independently justifies the disclosure requirement. *See Valeo*, 424 U.S. at 83 (holding that legislatures are "not required" to "tailor[]" disclosure thresholds and disclaimer requirements "only to corruption and enforcement"). Indeed, *Citizens United* upheld disclosure requirements even as it prohibited independent expenditure limits that did not address corruption. 545 U.S. at 361, 368. Even if this Court upholds the Act's contribution limits as unconstitutional, the disclosure requirements withstand scrutiny under binding precedent.

CONCLUSION

For the foregoing reasons, this Court should deny Plaintiffs' motion.

Respectfully submitted,

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February 26, 2025

CERTIFICATE OF SERVICE

I certify that on February 26, 2025, I electronically filed the foregoing using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties of record.

/s/ David M. Kallin
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