

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

DINNER TABLE ACTION, et al.,

Plaintiffs,

v.

WILLIAM J. SCHNEIDER, in his official
capacity as Chairman of the Maine
Commission on Governmental Ethics and
Election Practices, et al.,

Defendants.

Case No. 24-cv-00430-KFW

**Brief by *Amicus Curiae* Mainers For Working Families
In Support of State Defendants' Opposition to Motion for Permanent Injunction**

INTEREST OF *AMICUS CURIAE*

Amicus Curiae Mainers For Working Families (MFWF) is a nonprofit organization that advocates for good health care, fair taxes, and policies that will help Maine families thrive. It promotes fair elections and democracy reform so that Maine families have a meaningful political voice, educates Maine communities about policies that affect working families, and seeks to empower working families through legislative literacy. MFWF opposes plaintiffs’ Motion for Permanent Injunction because unlimited contributions to political action committees (“PACs”) put Maine elections at risk of corruption and undermine Maine families’ meaningful participation in fair elections, and because Maine’s law limiting contributions to PACs is constitutional.

INTRODUCTION

In the past fifteen years, super PACs—independent expenditure political action committees that can receive unlimited contributions—have emerged to dominate our elections and to serve as vehicles for circumventing campaign contribution limits.

In November 2024, 75% of Maine voters ended the threat of corruption and the appearance of corruption associated with unlimited contributions to PACs by passing Ballot Question 1, codified at 21-A M.R.S. §§ 1015(2-C), 1015(2-D), 1019-B(4), and 1019-B(6). The law prohibits contributions above \$5,000 in a calendar year to independent expenditure PACs, a cap higher than Maine’s well-established limit on contributions to candidates. 21-A M.R.S. §§ 1015(1), (2-B). But plaintiffs want to block Maine voters’ will—and to do so by overriding Supreme Court precedent that protects states’ interest in limiting contributions that create the risk of corruption or its appearance. *Buckley v. Valeo*, 424 U.S. 1, 26-28 (1976). Instead, they ask this Court to follow *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), *cert. denied on unrelated issue sub nom. Keating v. FEC*, 562 U.S. 1003 (2010), a 2010 D.C. Circuit court ruling that was wrongly decided at the time and that was premised on faulty assumptions about unlimited contributions to

PACs which have become glaringly apparent. After nearly fifteen years of unrestrained contributions to PACs, Maine voters correctly concluded that such unlimited contributions pose a significant risk of quid pro quo corruption and the appearance of corruption. They have a constitutional interest in limiting these contributions.

SUMMARY OF ARGUMENT

The Supreme Court distinguishes between political expenditures and contributions, subjecting only expenditures to the “exacting scrutiny” that governs restrictions on “political expression.” *Buckley*, 424 U.S. at 44-45; *McCutcheon v. FEC*, 572 U.S. 185, 196 (2014). Contributions are subject to a lesser standard of scrutiny, and are constitutional where states have an interest in preventing quid pro quo corruption and its appearance. *Buckley*, 424 U.S. at 26; *Daggett v. Comm’n on Governmental Ethics & Election Pracs.*, 205 F.3d 445, 454-55 (1st Cir. 2000); *Woodhouse v. Maine Comm’n on Governmental Ethics & Election Pracs.*, 40 F. Supp. 3d 186, 195 (D. Me. 2014) (“That formulation [by the *Buckley* Court] is still the standard for any First Amendment analysis of contributors’ rights.”)

But a ruling by the D.C. Circuit in 2010, *SpeechNow v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), collapsed this two-tiered system in improperly striking down a federal law limiting contributions to independent expenditure committees. This decision—which was not reviewed by the Supreme Court—effectively created super PACs. It was wrongly decided, not binding on this court, and its consequences have been catastrophic to Maine and national elections. Unlimited contributions to PACs create risk of actual quid pro quo corruption and the appearance of corruption. Yet despite *SpeechNow*’s legal errors and despite these facts, plaintiffs now ask this court to follow *SpeechNow* and its progeny. The court should not do so.

ARGUMENT

I. Maine may limit political contributions to prevent corruption and its appearance.

For nearly fifty years, the Supreme Court has held that limits may be placed on political contributions to prevent quid pro quo corruption and its appearance. This is precisely why Mainers resoundingly supported Ballot Question 1, and this Court should protect Maine’s interest in preventing the risk of corruption that super PACs pose to Maine elections.

a. The Supreme Court consistently upholds contribution limits.

In *Buckley v. Valeo*, 424 U.S. 1 (1976), the Supreme Court considered First Amendment challenges to expenditure and contribution limits in the Federal Election Campaign Act (FECA). 52 U.S.C. § 30101, *et seq.* (formerly codified at 2 U.S.C. § 431, *et seq.*). The Act, passed by Congress in response to “deeply disturbing examples [of corruption] surfacing from the 1972 election,” imposed disclosure requirements, restricted media advertising expenditures, and limited contributions to candidates and political organizations. *Buckley*, 424 U.S. at 27 (alteration in original). Its “primary purpose [was] to limit the actuality and appearance of corruption resulting from large individual financial contributions.” *Id.* at 25-27.

In reviewing FECA, the *Buckley* Court distinguished between expenditure limits and contribution limits, subjecting only expenditure limits to the more stringent “exacting scrutiny” that governs restrictions on “political expression.” 424 U.S. at 44-45. The Court reasoned that an *expenditure* limit warrants stricter scrutiny because it directly restricts election-related communication and thus “heavily burdens core First Amendment expression.” *Id.* at 47-48; *see also Citizens United v. FEC*, 558 U.S. at 310, 372 (2010) (Roberts, C.J., concurring) (an expenditure limit is “a direct prohibition on political speech”). By contrast, a *contribution* limit “entails only a marginal restriction upon the contributor’s ability to engage in free communication.” *Buckley*, 424 U.S. at 20. “As a general expression of support for the candidate

and his views,” the Court reasoned that limitations on contributions pose “little direct restraint on his political communication . . . but does not in any way infringe on the contributor’s freedom to discuss candidates and issues.” *Id.* at 21; *see also McCutcheon v. FEC*, 572 U.S. 185, 197 (2014) (plurality opinion) (quoting *Buckley*, 424 U.S. at 19).

Applying this two-tiered approach, the *Buckley* Court held that the government’s interest in preventing corruption was insufficient to justify FECA’s expenditure limits. 424 U.S. at 47-48. But it did uphold FECA’s limit on contributions to individual candidates, finding that the interest of “limit[ing] the actuality and appearance of corruption” is a “constitutionally sufficient justification” for that restriction. *Id.* at 26; *see also Davis v. FEC*, 554 U.S. 724, 737 (2008) (contribution limits must be “‘closely drawn’ to serve a ‘sufficiently important interest,’ such as preventing corruption and the appearance of corruption”).¹ The Court reasoned that “of almost equal concern as the danger of actual quid pro quo arrangements is the impact of the *appearance* of corruption stemming from public awareness of the opportunities for *abuse inherent* in a regime of large individual financial contributions.” *Buckley*, 424 U.S. at 27 (emphasis added).

Applying the *Buckley* two-tiered approach, since 1976 the Supreme Court has “routinely struck down limitations on independent expenditures by candidates, other individuals, and groups, while repeatedly upholding contribution limits.” *FEC v. Colo. Republican Fed. Campaign Comm.* (“*Colorado IP*”), 533 U.S. 431, 441-42 (2001) (citations omitted); *see also Colo. Republican Fed. Campaign Comm. v. FEC* (“*Colorado I*”), 518 U.S. 604, 610 (1996) (opinion of Breyer, J.) (noting that the “[m]ost of the provisions this Court found unconstitutional imposed *expenditure* limits” and “[t]he provisions that the Court found constitutional mostly imposed *contribution* limits”). The

¹ The Supreme Court has since limited that “corruption” to “quid pro quo corruption” and the appearance of quid pro quo corruption. *See, e.g., FEC v. Cruz*, 596 U.S. 289, 305 (2022) (“This Court has recognized only one permissible ground for restricting political speech: the prevention of ‘*quid pro quo*’ corruption or its appearance.”).

Court has upheld contribution limits on multicandidate political committees and limits on coordinated party expenditures that function like contributions. *Cal. Med. Ass’n v. FEC*, 453 U.S. 182, 184-85 (1981); *Colorado II*, 533 U.S. at 464-65. It also upheld limits on “soft money” contributions to political parties—contributions the parties use in issue advertising and other activities that benefit candidates but do not expressly advocate for their election. *McConnell v. FEC*, 540 U.S. 93, 122-26 (2003); *see also Republican Party of La. v. FEC*, 581 U.S. 989 (2017) (summarily reaffirming this holding); *Republican Nat’l Comm. v. FEC*, 561 U.S. 1040 (2010) (same). The Court reasoned that limitations on contributions to an outside group both block contributions that can corrupt and create the appearance of corruption, and prevent candidates and donors from “circumvent[ing] FECA’s limitations on . . . contributions in connection with federal elections.” *McConnell*, 540 U.S. at 126; *see also Cal. Med. Ass’n.*, 453 U.S. at 184, 198-99 (limits on contributions to outside groups are “an appropriate means by which Congress could seek to protect the integrity of contribution restrictions upheld by this Court in *Buckley*,” by preventing contributors and candidates from “easily evad[ing]” direct contribution limitations).

Other courts, including the First Circuit, recognize that the two-tiered system remains the appropriate standard for analyzing campaign finance laws and that limiting corruption is a “constitutionally sufficient justification” for contribution limits. *Buckley*, 424 U.S. at 26; *Daggett v. Comm’n on Governmental Ethics & Election Pracs.*, 205 F.3d 445 (1st Cir. 2000). The First Circuit relied on *Buckley* to uphold contribution limits in the Maine Clean Election Act, noting that “Maine voters as well as legislators and those intimately involved in the political process have valid concerns about corruption and the appearance thereof caused by large contributions,” and taking “the fact that Maine voters approved the referendum imposing reduced contribution limits as indicative of their perception of corruption.” *Daggett*, 205 F.3d at 456, 458.

Citizens United v. FEC, 558 U.S. 310 (2010), which invalidated a federal statute that banned corporations from making political *expenditures*, did not break with this precedent. Reiterating that expenditures are “political speech,” the Supreme Court reasoned that “[t]he anticorruption interest is not sufficient” to restrict independent expenditures. *Id.* at 329, 357. At the same time, the Supreme Court distinguished the case law governing political *contributions*, noting that it had “sustained limits on direct contributions in order to ensure against the reality or appearance of corruption.” *Id.*; *see also id.* at 345, 361 (stressing that expenditures are different from contributions and that *Citizens United* dealt only with expenditures).

b. SpeechNow was wrongly decided and is not binding on this court.

Citizens United never addressed limitations on *contributions* to PACs that make only independent expenditures. But shortly after *Citizens United* was decided, the D.C. Circuit answered that question in a ruling that deviated from *Buckley*, conflated analysis of contribution and expenditure limits, and upended five decades of election spending law.

In *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (*en banc*), *cert. denied on unrelated issue sub nom. Keating v. FEC*, 562 U.S. 1003 (2010), a political committee challenged the federal statute imposing limits on contributions it could receive. 52 U.S.C. § 30116(a)(1)(C) (formerly codified at 2 U.S.C. § 441, *et seq.*). Relying on *Citizens United*, the plaintiff argued that the limit violated the First Amendment as applied to its activities because it engaged only in independent electoral advocacy.

The D.C. Circuit agreed. It acknowledged that *Citizens United* dealt only with a ban on campaign expenditures. *SpeechNow*, 599 F.3d. at 692. But it still held that Congress may not limit *contributions* to committees that make only independent expenditures. *Id.* at 696. It reasoned that “because *Citizens United* holds that independent expenditures do not corrupt or give the

appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to independent expenditure-only organizations.” *Id.*

The decision is based on a fundamentally flawed presumption. But the United States Attorney General declined to seek review, predicting that the ruling would “affect only a small subset of federally regulated contributions.” Letter from Eric Holder, Att’y Gen., to Harry Reid, Senate Majority Leader (June 16, 2010), www.justice.gov/sites/default/files/oip/legacy/2014/07/23/06-16-2010.pdf. FEC then stopped enforcing the statute. Federal Elec. Comm’n, Advisory Op. 2011-12, 2011 WL 2662413 (June 30, 2011). Several other courts followed *SpeechNow*’s lead, relying on *SpeechNow*’s rationale without addressing the underlying analytical flaw. Nearly all of these cases were decided in the immediate aftermath of *SpeechNow*,² long before it became apparent how naïve Attorney General Holder was—and how significantly super PACs would change the landscape of our elections, create nearly untraceable opportunities for corruption, and undermine the public’s faith in their representatives. Neither the First Circuit nor the Supreme Court has ever considered the issue.³

SpeechNow’s reasoning is fallacious. Even when an organization’s spending does not corrupt, a contribution to the organization can still be part of a quid pro quo transaction or create the appearance of one. Contributions to super PACs—like contributions to any other “third party” made by a donor at the behest of a politician—may be part of a quid pro quo corrupt agreement, even if the recipient of the bribe—the super PAC itself—is ignorant of the corrupt agreement.

² Most of those cases did not comment on the effect of super PACs, and they did not have the benefit of the evidentiary record before the court today. *See, e.g., Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 696 (9th Cir. 2010); *Wisc. Right to Life State PAC v. Barland*, 664 F.3d 139, 155 (7th Cir. 2011); *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013). The same is true of *Alaska Public Officials Commission v. Patrick*, 494 P.3d 53, 58 (Alaska 2021), a more recent case that followed *SpeechNow* without considering its legal errors or consequences for our elections.

³ Despite plaintiffs’ misleading statements to the contrary, the Supreme Court has never “approved” the *SpeechNow* holding. (ECF No. 16, Mot. at 1, 2, 11, 12.) The *McCutcheon* plurality opinion cited by plaintiffs only provides the current definition of a “so-called Super PAC” in a footnote, without comment or agreement. 572 U.S. at 193 n.2.

1. *Supreme Court precedent highlights the flaw of SpeechNow.*

The Supreme Court’s campaign finance precedents underscore the impropriety of leaping from the proposition that independent *expenditures* do not corrupt to the conclusion that *contributions* to independent expenditure PACs cannot corrupt. In *McConnell*, the Supreme Court upheld limits on donations of “soft money” because they “create[d] a significant risk of actual and apparent corruption.” *See* 540 U.S. at 152 n. 48, 168. The Court explained that “federal officeholders were well aware of the identities of the donors,” *id.* at 147, and that the activities funded by the donors’ soft money contributions “confer[red] substantial benefits on federal candidates.” *Id.* at 168. As a result, parties were positioned to serve as intermediaries between big donors and candidates. *Id.* at 146. “[L]arge soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders, *regardless of how those funds are ultimately used.*” *Id.* at 155 (emphasis added).

The Supreme Court has twice summarily reaffirmed FECA’s restrictions on soft money contributions. In 2017, a three-judge district court panel emphasized that “the inducement occasioning the prospect of indebtedness on the part of a federal officeholder is not the *spending* of soft money by the political party. The inducement instead comes from the *contribution* of soft money to the party in the first place.” *Republican Party of La. v. FEC*, 219 F. Supp. 3d 86, 97 (D.D.C. 2017) (emphases in original), *aff’d*, 581 U.S. 989 (2017); *see also Republican Nat’l Comm. v. FEC*, 698 F. Supp. 2d 150, 157 (D.D.C. 2010), *aff’d*, 561 U.S. 1040 (2010). And in *McCutcheon*, the Court stressed that its ruling did not affect “*McConnell’s* holding about ‘soft money.’” 572 U.S. at 192-93.

Exactly the same logic applies here. It does not matter whether independent expenditure PACs’ *expenditures* give rise to a risk of corruption. The question is whether unlimited

contributions to these organizations give rise to corruption or its appearance. *See McCutcheon*, 572 U.S. at 191 (citing *Buckley*, 424 U.S. at 26-27). They do.

2. *Under criminal bribery statutes, bribes can be sent to third parties.*

Bribery laws, both in general and in the specific context of campaign contributions, make clear that donations to entities other than candidates themselves can give rise to quid pro quo corruption. Even when the recipient of a donation is independent and incorruptible, the donation can corrupt an actor who is interested in the organization's success.

For example, a politician “who agreed to vote in favor of widget subsidies in exchange for a widget maker’s donation to the Red Cross” would be guilty of bribery even if he had no connection to the Red Cross or role in determining how it spent the funds. Albert W. Alschuler et al., *Why Limits on Contributions to Super PACs Should Survive* *Citizens United*, 86 Fordham L. Rev. 2299, 2310 (2018). Even though the Red Cross’s expenditures are virtuous, the widget maker’s contribution is corrupt, and the politician has accepted a bribe. *Id.*

Federal bribery law has long incorporated this commonsense insight. *See* 18 U.S.C. § 201(b)(2) (forbidding a public official from corruptly seeking “anything of value personally or for any other person or entity” in exchange for official action). Bribery via donations to autonomous third-party entities is not a hypothetical concern. Affirming the conviction of a former governor, the Eleventh Circuit has recognized that soliciting a donation to an issue-advocacy foundation can violate the bribery statute, even though such donations “do not financially benefit the individual politician in the same way that a candidate-election campaign contribution does.” *United States v. Siegelman*, 640 F.3d 1159, 1169 n.13 (11th Cir. 2011); *see also United States v. Gross*, No. 15-cr-769, 2017 WL 4685111, at *42 (S.D.N.Y. Oct. 18, 2017).

Prosecutors have charged individuals with bribery arising from donations to super PACs:

- In 2015, the federal government prosecuted then-U.S. Senator Robert Menendez and a donor for an alleged bribery scheme involving a \$300,000 contribution to a super PAC supporting the Senator's reelection. *See United States v. Menendez*, 132 F. Supp. 3d 635 (D.N.J. 2015).⁴ Though the case resulted in a hung jury, the court rejected Menendez's motion to dismiss and post-trial motion for acquittal, concluding that *Citizens United* does not bar the prosecution of bribery schemes involving contributions to super PACs and that a rational juror could find that the contribution had value to Menendez. *Id.* at 640; *United States v. Menendez*, 291 F. Supp. 3d 606, 621-23 (D.N.J. 2018).

- In 2020, a jury convicted North Carolina insurance magnate Greg E. Lindberg of "orchestrating a bribery scheme involving independent expenditure accounts and improper campaign contributions" after he funneled \$1.5 million to a super PAC he created to bribe a North Carolina insurance commissioner to replace an official investigating his company.⁵

- In 2023, former Ohio House Speaker Larry Householder was convicted in a racketeering conspiracy that involved, in part, accepting bribe payments via his 501(c)(4), which then funneled money into super PACs that supported Householder's reelection bid.⁶

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

⁵ Press Release, U.S. Dep't of Justice, Federal Jury Convicts Founder and Chairman of a Multinational Investment Company and a Company Consultant of Public Corruption and Bribery Charges (Mar. 5, 2020), <https://www.justice.gov/opa/pr/federal-jury-convicts-founder-and-chairman-multinational-investment-company-and-company>. Lindberg was caught on tape telling the commissioner, "I think the play here is to create an independent-expenditure committee for your reelection specifically, with the goal of raising \$2 million or something." Ames Alexander, *Watch Secretly Recorded Videos from the Bribery Sting that Targeted Durham Billionaire*, Charlotte Observer 00:18-30 (Mar. 10, 2020), <https://www.charlotteobserver.com/news/local/article241043236.html>. Lindberg emphasized that "the beauty of" such a committee is that it can receive "unlimited" donations. *Id.* 00:35-45. He also suggested that the commissioner get someone he trusted to run the committee, such as his brother. *Id.* 00:58-01:18. Lindberg was granted retrial on other grounds, *United States v. Lindberg*, 39 F.4th 151 (4th Cir. 2022), and found guilty after a second trial. Jury Verdict, *United States v. Lindberg*, 5:19-cr-22-MOC (W.D.N.C. May 15, 2024).

⁶ Press Release, U.S. Dep't of Justice, Former Ohio House Speaker Sentenced to 20 Years in Prison For Leading Racketeering Conspiracy Involving \$60 Million in Bribes (June 29, 2023), <https://www.justice.gov/usao-sdoh/pr/former-ohio-house-speaker-sentenced-20-years-prison-leading-racketeering-conspiracy>.

- The federal government is prosecuting individuals involved in alleged bribery or attempted bribery of Puerto Rican officials, including via super PAC contributions.⁷

If the D.C. Circuit were right that “contributions to groups that make only independent expenditures . . . cannot corrupt or create the appearance of corruption,” then all of these prosecutions would all have been legally impossible. 599 F.3d at 694. That cannot be the case.

Bribery laws alone cannot staunch quid pro quo corruption via super PACs. As the Supreme Court has noted, corruption “can never be reliably ascertained.” *Buckley*, 424 U.S. at 26-27; *see also Daggett*, 205 F.3d at 456 (“because corruption can ‘never be reliably ascertained,’ all that is required is that the threat not be ‘illusory’” (quoting *Buckley*, 424 U.S. at 26-27)). Bribery is notoriously difficult to detect and prosecute. More is needed to protect Maine elections; and Maine voters’ solution is a constitutional means to do so.

II. Unlimited super PAC contributions heighten the risk of actual and apparent quid pro quo corruption in elections.

The role that super PACs would come to play in U.S. elections—and the associated risk that donors may agree to exchange political favors for super PAC contributions—might not have been apparent to the court in *SpeechNow*, but fifteen years of unchecked super PAC contributions has thrown both into sharp relief.

a. Candidates now depend on receiving large super PAC contributions.

The *SpeechNow* decision transformed American politics, exploding election costs and making super PACs “a dominant form of political activity.”⁸ From 2008 to 2020, U.S. federal

⁷ Indictment at 38, *United States v. Vazquez-Garced*, 22-cr-00342 (D.P.R. Aug. 2, 2022); *see also* Press Release, U.S. Dep’t of Justice, Former Governor of Puerto Rico Arrested in Bribery Scheme (Aug. 4, 2022), <https://www.justice.gov/archives/opa/pr/former-governor-puerto-rico-arrested-bribery-scheme>.

⁸ Bipartisan Policy Center, *Campaign Finance in the United States: Assessing an Era of Fundamental Change*, at 38 (2018), <http://bit.ly/4gEtP3D>.

election spending rose from \$7.59 billion to a record \$18.34 billion.⁹ Independent expenditures rose from \$206 million in 2010—a record then—to \$4.28 billion in 2024.¹⁰ As the State Defendants ably discussed in their Opposition to the Motion for Permanent Injunction, these trends are apparent in Maine as well. (Defs’ Opp’n at 2-3.) From 2010 to 2022, Maine’s election costs rose from \$36,659,143 to \$70,761,109.975—a 46.5% increase, adjusting for inflation.¹¹ In 2022, \$22,117,200.98 was spent on the gubernatorial race, the most expensive in state history and mostly funded by outside spending.¹² (ECF No. 45-1, Decl. of Jonathan Wayne (“Wayne Decl.”) ¶ 10; ECF No 45-2, Wayne Decl., Ex .A.)

Candidates now depend upon super PACs and on supporters making massive super PAC contributions. For example, for President Trump’s recent re-election campaign, he raised \$463.66 million in direct campaign contributions, while supportive super PACs raised at least \$895 million.¹³ In Maine, independent expenditures by PACs now outpace candidate-controlled campaign spending in gubernatorial elections; between 2010 and 2022, independent expenditures by PACs rose from just over \$3.5 million to more than \$13.6 million, while campaign spending dropped from nearly \$15.5 million in 2010 to under \$8.5 million in 2022. (Wayne Decl. ¶ 10.) While campaign spending is higher than independent expenditures by PACs in non-gubernatorial elections, the gap is closing as independent expenditures by PACs quadrupled to \$3.5 million between 2010 and 2024. (*Id.* ¶ 11.)

⁹ *Cost of Election*, Open Secrets, <https://bit.ly/415tnWl> (adjusted for inflation).

¹⁰ *Outside Spending by Cycle, Excluding Party Committees*, Open Secrets, <https://bit.ly/3ENNgJT>.

¹¹ *Compare Expenditures and Contribution and Loans Data Download (2010)*, Maine Ethics Commission, *with Expenditures and Contributions and Loans Data Download (2022)*, Maine Ethics Commission, <https://mainecampaignfinance.com/#/dataDownload>. According to the U.S. Bureau of Labor Statistics CPI Inflation Calculator, the 2010 election in Maine would have cost \$48,287,138.20 in 2022.

¹² See also Randy Billings, *Spending in Maine Gubernatorial Race Surges to New Record*, Portland Press Herald (Oct. 28, 2022), <https://bit.ly/3EJqN0D>.

¹³ *Summary Data for Donald Trump, 2024 cycle*, Open Secrets, <https://bit.ly/4h35qFb>; Theodore Schleifer and Albert Sun, *How Much Did Trump, Biden, and Harris Raise? A Stunning \$4.7 Billion*, N.Y. Times (Dec. 6, 2024), <https://bit.ly/431w8KJ>.

The kind of money at stake in federal elections may not be present in Maine’s local and state election super PACs—and it does not need to be in order to create incentives for quid pro quo corruption. Candidates spend less, and have less money to spend, in local and state elections, so contributions significantly smaller than those seen in federal elections can swamp direct candidate contributions. The Executive Director of the Maine Commission on Governmental Ethics and Election Practices provided examples in his declaration. In a 2022 district attorney race, the two candidates made expenditures of \$54,120.13 and \$22,657.55—but a super PAC spent \$384,345 on that election, funded by contributions from a single entity. (Wayne Decl. ¶ 21.) In other words, a single donor contributed *five times more* than the *combined* spending by both candidates in that election. And in the 2022 Maine gubernatorial election, which cost \$22,117,200.98 in race expenditures by candidates and outside sources, a few contributors stood out. The super PAC Better Maine PAC spent \$9,221,777 via independent expenditures to support the Democratic candidate, using a \$9,273,216 contribution from the Democratic Governors’ Association and a \$101,001 contribution from EMILY’s List Maine. (*Id.* ¶ 19.) The super PAC Maine Families First spent \$2,896,310 to support the Republican candidate, funded solely by Thomas Klingenstein of New York, one of the nation’s largest individual election donors.¹⁴ (*Id.* ¶ 20.) These major contributors dwarfed the contributions that candidates could receive directly.

Unlimited contributions are especially enticing to politicians because super PACs increasingly operate as alter egos for candidate campaigns, especially given federal regulations, FEC determinations, and FEC inaction that allow significant coordination. Super PACs are authorized to coordinate canvassing activities with candidates. FEC Advisory Op. 2024-01

¹⁴ See, e.g., Jason Wilson, *The Far-Right Megadonor Pouring over \$10m Into the US Election to Defeat ‘The Woke Regime’*, The Guardian (Oct. 22, 2024), <https://bit.ly/433R16L>; Billy Kobin, *Megadonor is Funding a Maine Republican’s Return to State Politics*, Bangor Daily News (Aug. 15, 2024), <https://bit.ly/4gTOzV8>.

(canvassing literature and scripts are not coordinated communications). Candidates may headline super PAC fundraising events and solicit certain contributions, FEC Advisory Op. 2015-09 at 8,¹⁵ including for groups advocating for a measure appearing on a ballot in which that candidate is also appearing, FEC Advisory Op. 2024-05. Campaign staff may plan strategies with a candidate, then leave to run a super PAC in support of that candidate after a “cooling-off period” of only 120 days. 11 C.F.R. § 109.21(d)(5)(i); U.S. Gov’t Accountability Office, GAO-20-66R Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives 52 & n. 178 (Feb. 3, 2020), <https://www.gao.gov/assets/gao-20-66r.pdf>. Super PACs post research for candidate use, and candidates post advertising guidance for super PACs. *See* Letter from Aaron McKean, Campaign Legal Ctr, to Michael Reed, Chair of Philadelphia Bd. of Ethics (Aug. 16, 2022), <https://bit.ly/41jaW1F> (candidates communicating to super PACs via websites “enables quid pro quo corruption” and its appearance); *see also* In the Matter of Vote Vets et al., MUR 770 (FEC Apr. 29, 2022) (Statement of Reasons). FEC inaction is opening the door to even more coordination; the agency has never fined a candidate for coordinating with a super PAC.¹⁶

Super PACs are taking on many core functions of campaigns.¹⁷ For example, President Trump’s campaign outsourced many field operations—including canvassing and get-out-the-vote

¹⁵ Maine law has partially closed the fundraiser loophole. When a candidate solicits a contribution to a PAC that primarily supports that candidate, the contribution is considered to be a contribution to that candidate for the purposes of Maine’s direct campaign contribution limits. 21-A M.R.S.A § 1015-4. But the law does not apply to multicandidate committees that present similar risks, does not address the other many loopholes that make coordination possible, and faces the same limitations as bribery statutes: unlawful quid pro quo agreements, however they were solicited or agreed upon, are underhanded and unreported. *See Cal. Med. Ass’n v. FEC*, 453 U.S. 182, 197-199 (1981) (allowing unlimited contributions to multicandidate political committees would allow donors to circumvent limits for candidate campaigns, and therefore presented the same risks of actual or apparent corruption).

¹⁶ Maia Cook, *Super PACs Raise Millions as Concerns About Illegal Campaign Coordination Raise Questions*, Open Secrets (Aug. 18, 2023), <https://bit.ly/4k3dQz2>; Eric Lichtblau, *F.E.C. Can’t Curb 2016 Election Abuse, Commission Chief Says*, N.Y. Times (May 2, 2015) <https://bit.ly/3CSEaLt>; Alex Roarty et al., *They’re Not Allowed to Talk. But Candidates and PACs are Brazenly Communicating All the Time*, The Atlantic (Oct. 30, 2014), <https://bit.ly/4hHVnX4>.

¹⁷ Jessica Piper & Sally Goldenberg, *The Super PAC Frenzy Redefining Campaign Operations*, Politico (June 25, 2023), <https://bit.ly/439RKoj>. Super PACs now perform “many of the functions that parties did in the heyday of ‘soft money’” Bipartisan Policy Center, *supra* note 8, at 33. And as the Supreme Court noted in upholding soft money contribution limits, “it is the close relationship between federal officeholders and the national parties, as well as the

efforts—to Elon Musk’s America PAC.¹⁸ During the primaries, a pro-DeSantis super PAC drove Florida Governor Ron DeSantis around the country and financed many of his public events while his campaign’s event spending dropped.¹⁹ One of the largest liberal super PACs served as a “full-service communications, research and training behemoth for Democrats up and down the ballot.”²⁰ In other words, if politicians agree to certain actions in exchange for super PAC contributions, those politicians would know precisely what they are getting.

b. Super PACs are Increasingly Driven By Megadonors

Candidates rely on large super PACs, and therefore necessarily rely on the influx of cash into these super PACs from a small set of megadonors. If these primary sources of funding fall through, then the super PACs fail. And when super PAC funding—or the refusal to provide funding to a super PAC²¹—by megadonors can dictate the success or failure of a candidate’s campaign, there is significant risk for quid pro quo corruption.

Megadonors’ importance to super PACs—and therefore to candidates’ campaigns—have grown rapidly since *SpeechNow*. In 2012, the top 1% of all individual super PAC donors contributed 76.76% of all super PAC contributions from individuals. In 2024, that percentage rose to 96.94%.²² About 44% of the money raised to support Trump’s 2024 campaign came from just

means by which parties have traded on that relationship, that have made all large soft-money contributions to national parties suspect.” *McConnell*, 540 U.S. at 155.

¹⁸ See Theodore Schleifer, *Elon Musk and His Super PAC Face Their Crucible Moment*, N.Y. Times (Nov. 4, 2024), <https://nyti.ms/3X81H1D>; see also Theodore Schleifer, *Trump Gambles on Outside Groups to Finance Voter Outreach Efforts*, N.Y. Times (Aug. 4, 2024), <https://bit.ly/41926IE>.

¹⁹ See Alec Hernandez and Bridget Bowman, *How Ron DeSantis’ Super PAC is Taking Financial Pressure Off his Campaign*, NBC News (Oct. 20, 2023), <https://bit.ly/3CYcvss>.

²⁰ Rebecca Davis O’Brien, *Liberal Super PAC Is Turning Its Focus Entirely Digital*, N.Y. Times (Nov. 14, 2023), <https://bit.ly/3CQdVFz>.

²¹ For example, major Democratic donors threatened a super PAC funding freeze if President Biden did not bow out of the 2024 presidential race. Shane Goldmacher and Theodore Schleifer, *Donors to Pro-Biden Super PAC Are Said to Withhold Roughly \$90 Million*, N.Y. Times (July 12, 2024), <https://bit.ly/4ib3hIu>.

²² *Super PACs: How Many Donors Give*, Open Secrets, <https://www.opensecrets.org/outside-spending/donor-stats>; (Def. Ex. A, at 5.).

ten megadonors, the vast majority of which funneled through super PACs.²³ Top donors often given tens of millions of dollars in contributions—and sometimes much more than that.

Between 2021 and 2022, George Soros contributed \$175 million to liberal super PAC Democracy PAC II, essentially providing its entire treasury.²⁴ In 2024, Timothy Mellon contributed \$150 million to conservative super PAC Make America Great Again Inc., amounting to nearly 40% of the super PAC’s treasury.²⁵ And billionaire Elon Musk contributed more than \$260 million to three super PACs that were instrumental to Trump’s 2024 campaign,²⁶ including: (1) at least \$238 million (via his companies SpaceX and Tesla) to his own super PAC, America PAC, accounting for the vast majority of America PAC’s funds;²⁷ (2) \$20.5 million to the pro-Trump RBG PAC, formed late enough in the election cycle that Musk did not need to disclose his contribution prior to election day and funded wholly by Musk’s contribution;²⁸ and, (3) \$3 million to the MAHA Alliance, accounting for approximately 50% of its \$6.3 million in pre-election individual contributions.²⁹ Trump outsourced crucial canvassing operations to super PACs that in turn relied on individual megadonors like Musk.³⁰ Musk “personally steer[ed]” the America PAC,³¹ appeared with Trump at rallies, stayed at Trump’s Mar-a-Lago residence, hosted events, and was in close direct contact with Trump.³² Musk now has joined Trump’s phone calls with foreign leaders,

²³ Albert Serna Jr. & Anna Massoglia, *Big Money, Big Stakes: 5 Things Everyone Should Know About Money in 2024 Elections*, Open Secrets (Nov. 6, 2024), <https://bit.ly/3CNqSzW>. The vast majority was to outside groups. *See id.*

²⁴ *Democracy PAC II PAC Donors*, Open Secrets, <https://bit.ly/3X7U5MP>.

²⁵ Mellon was the top contributor to Make America Great Again Inc. in 2024. *Top Organizations Disclosing Donations to Make America Great Again Inc., 2024*, Open Secrets, <https://bit.ly/4k1Yfjf>.

²⁶ *See* Taylor Giorno & Caroline Vakil, *What We Learned About the Money Fueling The Final Stretch of the Election*, The Hill (Dec. 6, 2024), <https://bit.ly/3QwyrOB> (summarizing large 2024 contributions).

²⁷ America PAC Committee, Federal Election Commission, <https://www.fec.gov/data/committee/C00879510/>.

²⁸ RBG PAC, Federal Election Commission, <https://www.fec.gov/data/committee/C00891291/>.

²⁹ MAHA Alliance, Federal Election Commission, <https://www.fec.gov/data/committee/C00888172/>.

³⁰ Giorno & Vakil, *supra* note 26.

³¹ Theodore Schleifer et al., *Musk is Going All In to Elect Trump*, N.Y. Times (Oct. 11, 2024), <https://www.nytimes.com/2024/10/11/us/politics/elon-musk-donald-trump-pennsylvania.html>.

³² *Id.*; Maggie Haberman et al., *How Elon Musk Has Planted Himself Almost Literally at Trump’s Doorstep*, N.Y. Times (Dec. 30, 2024), <https://bit.ly/3D2iVqw>; Lauren Sforza, *Democratic PAC Files FEC Complaint Over Trump-Musk Interview*, The Hill (Aug. 13, 2024), <https://bit.ly/4gU77oe>.

answered questions in the Oval Office, been given unprecedented access to government agencies and taxpayers' and healthcare recipients' private data via his role leading the newly created Department of Government Efficiency, which operates with no congressional or independent oversight.³³

In Maine, megadonors are similarly important to super PACs but the price tag is significantly smaller. As discussed *supra*, a single-donor super PAC contributed five times more than the combined spending by both candidates in a 2022 district attorney race. (Wayne Decl. ¶ 21.) Single donors similarly played critical roles in the 2022 Maine gubernatorial election, with Democratic Governors' Association's \$9 million super PAC contribution and billionaire Thomas Klingenstein's \$ 3 million super PAC contribution together accounting for more than 50% of total spending in that election. (*Id.* ¶ 19-20.) Looking no further than the plaintiffs to this suit, plaintiff Dinner Table Action PAC's three top contributors are other PACs, each funded almost entirely by the Concord Fund, an out-of-state 501(c)(4) that does not disclose its funders.³⁴

As megadonors become increasingly important to super PACs that in turn play critical role in candidates' campaign success, candidates will court these donors' money. The courtship might be open—such as when Trump told oil executives and lobbyists that they should donate \$1 billion

³³ See, e.g., Alan Rappeport et al, *Musk Team Seeks Access to I.R.S. System With Taxpayers' Records*, N.Y. Times (Feb. 17, 2025), <https://bit.ly/4hMMHPe>; Kathryn Watson, *Elon Musk Defends DOGE as Trump Orders Agencies to Comply With Cuts*, CBS News (Feb. 11, 2025), <https://bit.ly/41aPU3P>; Jacob Leibenluft, *"DOGE" Access to Treasury Payment Systems Raises Serious Risks*, Center on Budget and Policy Priorities (Feb. 11, 2025), <https://bit.ly/4gUvRg7>.

³⁴ In 2024, DTA's three largest contributions were: (1) \$100,000 from For Our Future, a PAC whose only 2024 contributor was the Concord Fund and which shares DTA's principal officer (Alex Titcomb); (2) \$25,000 from Free Maine Campaign, a leadership PAC 98.9% funded by a \$30,000 contribution from For Our Future, in turn solely funded by the Concord Fund; and (3) \$22,640 from Fight For Freedom, a leadership PAC 89.5% funded by \$102,000 from For Our Future. DTA's fifth largest donor, the Women's Leadership Fund, gave \$7,000 to DTA just after receiving \$7,000 from For Our Future. See Committees, Maine Ethics Comm'n, <https://mainecampaignfinance.com/index.html#/exploreCommittee> (pages and filings for DTA, For Our Future, Free Maine Campaign, Fight for Freedom, and Women's Leadership Fund). DTA received a total of \$291,255.42 in contributions in 2024. (Wayne Decl., Ex. B.) That means approximately 50% or more of DTA's cash contributions came from the Concord Fund. DTA's in-kind contributions were also provided wholly by For Our Future (\$40,800), Fight for Freedom (\$4,000), and Titcomb (\$167). The Concord Fund's donors are anonymous, but it has been reported that the group has paid millions in consulting payments to conservative judicial activist Leonard Leo and is a rebrand of the Judicial Crisis Network. See Hailey Fuchs, *Nonprofit Connected to Leonard Leo Sent Millions to His Firm*, Politico (June 7, 2024), <https://bit.ly/433e7f9>; Anna Massoglia & Sam Levine, *Conservative 'Dark Money' Network Rebranded to Push Voting Restriction Before 2020 Election*, Open Secrets (May 27, 2020), <https://bit.ly/3D14iDR>.

to his campaign because he would roll back environmental protections that oil companies disfavor.³⁵ It may be obscure: in closed-door conversations between candidates and contributors that are not governed by super PAC and candidate anti-coordination rules; or involve payments funneled into organizations that make massive political contributions without disclosing their own funding sources.³⁶ Either way, candidate reliance on megadonor-dependent super PACs has vastly increased the risk that unlimited super PAC contributions will result in quid pro quo corruption.

c. These conditions also create the appearance of quid pro quo corruption.

The conditions discussed *supra* make super PACs an attractive destination for bribe payments. These conditions—for the same reasons—have created the appearance of corruption, undermining Maine elections.

Bribes can be and are being funneled through super PACs, as demonstrated by federal bribery prosecutions discussed *supra*. But the difficulty of detecting and prosecuting bribery means these cases cannot adequately suggest or deter the scale of such corruption, nor can they mitigate how unlimited super PAC contributions also risk an appearance of quid pro quo corruption. The Supreme Court has long recognized that even without prosecution, the public is aware of “opportunities for abuse inherent in a regime of large individual financial contributions.” *See McCutcheon*, 572 U.S. at 207-08 (2014) (quoting *Buckley*, 424 U.S. at 26-27). A campaign finance system that allows unlimited single-donor contributions, especially given the circumstances discussed above, suggests a likelihood of corruption beyond “mere influence or access.” *Id.*

³⁵ Lisa Friedman et al, *At a Dinner, Trump Assailed Climate Rules and Asked \$1 Billion From Big Oil*, N.Y. Times (May 9, 2024), <https://bit.ly/4bcufNg>.

³⁶ *Dark Money Basics*, Open Secrets, <https://bit.ly/3QvTWPj>. From 2012 to 2016, dark super PAC receipts were 4.1-6.0% of all super PAC receipts; this number rose to 11% in 2018 and 19.2% in 2024. (*See* ECF No. 45-5, Decl. of Hilary Braseth, Ex. A at 4.) By 2024, super PACs received \$1.32 billion in dark money contributions. (*Id.*)

Political leaders have warned the public about corrupt super PAC contributions. During his 2016 campaign, Donald Trump decried super PACs as “[v]ery corrupt,” giving donors “total control of the candidates. . . . I know it so well because I was on both sides of it.” Albert W. Alschuler et al., *Why Limits on Contributions to Super PACs Should Survive Citizens United*, 86 Fordham L. Rev. 2299, 2339 (2018). In 2015, former President Jimmy Carter said that America had become “an oligarchy, with unlimited political bribery being the essence of getting the nominations for president or to elect the president. And the same thing applies to governors and U.S. senators and congress members.” *Id.* at 2440. And voters have seen megadonors obtain massive favors—including placement in powerful government positions. At the very least, these relationships create the appearance that these contributions are not merely unduly; they are evidence of unlawful corrupt agreements. *See e.g.*, Sen. Van Hollen, Facebook (Feb. 5, 2025), <https://www.facebook.com/watch/?v=956262319796005> (Senator Van Hollen calling the exchange of Musk’s money for government power “the most corrupt bargain we’ve ever seen in American history”).

These warnings align with Americans’ growing distrust in their candidates and their candidates’ decisionmaking. Alschuler et al., *supra* at 2342-2344 (discussing high perceptions of government corruption relating to large super PAC contributions and how they are causing the electorate to lose faith in democracy). As the State’s brief highlights, Maine state legislators agree that super PAC contributions risk bribery, and that the referendum indicated that state voters perceived that unlimited contributions were unacceptably corrupting their politics. (Defs’ Opp’n at 13.) Voters rightly concluded that this system must change.

This is not a “test case” to “revers[e] *Citizens United*,” as plaintiffs claim. (ECF No. 1, Pls.’ Compl. at 2.) Upholding Ballot Question 1 does not require this or any court to revisit

Citizens United. This court is not bound by, and should not adhere to, the wrongly decided *SpeechNow* ruling. It should instead follow Supreme Court precedent and affirm the reasonable limits that Maine voters placed on contributions to political action committees in order to protect Maine elections from quid pro quo corruption and its appearance.

CONCLUSION

For the reasons aforementioned, the plaintiffs' motion should be denied.

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Respectfully submitted,

/s/ Peter J. Brann

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

FREE SPEECH FOR PEOPLE

Amira Mattar (*pro hac vice*)
John Bonifaz (*pro hac vice*)
Ben Clements (*pro hac vice*)
Courtney Hostetler (*pro hac vice*)
Sage Snider (*pro hac vice*)
28 S. Main St., Suite 200
Sharon, Massachusetts 02067
(617) 244-0234
amattar@freespeechforpeople.org
jbonifaz@freespeechforpeople.org
bclements@freespeechforpeople.org
chostetler@freespeechforpeople.org
sage@freespeechforpeople.org

Attorneys for Amicus Curiae