United States Court of Appeals

for the

First Circuit

Case No. 25-1705

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

Plaintiffs-Appellees,

v.

WILLIAM J. SCHNEIDER, in the official capacity as Chairman of the Maine Commission on Governmental Ethics and Election Practices; DAVID R. HASTINGS, III, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; DENNIS MARBLE, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; BETH N. AHEARN, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; AARON M. FREY, in the official capacity as Attorney General of Maine; SARAH E. LECLAIRE, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices,

Defendants-Appellants,

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

Defendants.

(For Continuation of Caption See Inside Cover)

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

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

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Case No. 25-1706

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

Plaintiffs-Appellees,

v.

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Defendants-Appellants,

WILLIAM J. SCHNEIDER, in the official capacity as Chairman of the Maine Commission on Governmental Ethics and Election Practices; DAVID R. HASTINGS, III, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; DENNIS MARBLE, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; BETH N. AHEARN, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; AARON M. FREY, in the official capacity as Attorney General of Maine; SARAH E. LECLAIRE, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices,

Defendants.

Corporate Disclosure Statement

Pursuant to Federal Rule of Appellate Procedure 26.1, Amicus Curiae Mainers for Working Families states that it is a nonprofit organization and that does not have any shareholders, and thus no parent corporation, publicly held corporation, affiliated corporation, limited liability company, partnership, firm, joint venture, trust, or other entity, or any individual owns 10% or more of its stock or has 10% or more ownership interest in the entity.

Financial Disclosure Statement

Free Speech For People authored the brief in whole. No party, party's counsel, or person other than the amicus curiae, its members, or its counsel contributed money to fund preparing or submitting the brief.

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INTEREST OF AMICUS CURIAE

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

INTRODUCTION AND SUMMARY OF ARGUMENT

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

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

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[19] Mellon was the top contributor to Make America Great Again Inc. in 2024. *Top Organizations Disclosing Donations to Make America Great Again Inc, 2024*, Open Secrets, https://bit.ly/4k1Yfjf (accessed Oct. 29, 2025).

[20] *See* Taylor Giorno & Caroline Vakil, *What We Learned About the Money Fueling The Final Stretch of the Election*, The Hill (Dec. 6, 2024), https://bit.ly/3QwyrOB (summarizing large 2024 contributions). Musk continued to make tens of millions of dollars in super PAC contributions to support Trump immediately after the election. *See Musk, Elon: Donor Detail*, Open Secrets, https://bit.ly/4mxICQA (accessed Oct. 28, 2025).

[21] America PAC Comm., FEC, https://www.fec.gov/data/committee/C00879510/ (accessed Oct. 29, 2025).

[22] RBG PAC, FEC, https://www.fec.gov/data/committee/C00891291/ (accessed Oct. 29, 2025); *see* Giorno & Vakil, *supra* note 20.

[23] MAHA Alliance, FEC, https://www.fec.gov/data/committee/C00888172/ (accessed Oct. 29, 2025).

[24] Theodore Schleifer et al, *Musk is Going All In to Elect Trump*, N.Y. Times (Oct. 11, 2024), http://bit.ly/421Gx82.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[32] *Transcript of the Republican Debate in Florida*, N.Y. Times (Mar. 11, 2016), https://www.nytimes.com/2016/03/11/us/politics/transcript-of-the-republican-presidential-debate-in-florida.html.
[33] Albert W. Alschuler et al., *Why Limits on Contributions to Super PACs Should Survive Citizens United*, 86 Fordham L. Rev. 2299, 2340 (2018).

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

CONCLUSION

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

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

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and 1st Cir. R. 32(g), I hereby certify that the foregoing filing complies with rules that pertain to the filing of briefs in this Court, including but not limited to the type-volume limitations under Fed. R. App. P. 29(a)(4) and 1st Cir. R. 29(1)(4).

This brief is produced in the proportionally spaced font Times New Roman at size 14, and, excluding those portions exempted by Fed. R. App. P. 32(f) and 1st Cir. R. 32(f), contains 6,383 total words as calculated by the word count feature on Microsoft Word.

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CERTIFICATE OF SERVICE

I hereby certify that, on October 29, 2025, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the First Circuit by using the appellate CM/ECF system, which will send a notification of such filing to all counsel of record.

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