No. 25-1705

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

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.

On Appeal from the United States
District Court for the District of Maine
No. 1:24-cv-00430-KFW, Hon. Karen Frink Wolf

No. 25-1706

DINNER TABLE ACTION, FOR OUR FUTURE,
ALEX TITCOMB,

Plaintiffs-Appellees,

v.

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

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.

On Appeal from the United States
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BRIEF OF *AMICUS CURIAE* CITIZENS FOR RESPONSIBILITY AND ETHICS IN WASHINGTON IN SUPPORT OF APPELLANTS

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and 29, Citizens for Responsibility and Ethics in Washington ("CREW") submits its corporate disclosure statement.

(a) CREW has no parent company, and no publicly-held company has a ten percent or greater ownership interest in CREW.

(b) CREW is a non-profit, non-partisan corporation organized under section 501(c)(3) of the Internal Revenue Code. Through a combined approach of research, advocacy, public education, and litigation, CREW seeks to protect the rights of citizens to be informed about the activities of government officials and to ensure the integrity of those officials. Among its principal activities, CREW files complaints with the Federal Election Commission to ensure enforcement of federal campaign finance laws and to ensure its and voters' access to information about campaign financing to which CREW and voters are legally entitled. CREW disseminates, through its website and other media, information it learns in the process of those complaints to the wider public.

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INTEREST OF AMICI[1]

CREW is a nonpartisan, section 501(c)(3) nonprofit corporation that seeks to combat corruption and corrupting influences in government. CREW has monitored the growth of independent expenditure groups in the wake of *SpeechNow.org* and how such groups are likely to and have given rise to *quid pro quo* corruption. In addition, CREW has observed how the use of corporations to funnel large contributions to these groups permit them to hide the sources of funds in ways that other political actors cannot. CREW uses this information to write reports for public consumption and, where appropriate, file complaints. CREW is therefore familiar with the inadequacy of other laws to combat corruption stemming from large contributions to independent expenditure groups.

ARGUMENT

The court below summarily threw out a ballot initiative overwhelmingly adopted by the people of Maine to combat the corruption they have seen with their own eyes that stems from the unlimited flow of massive contributions to independent electioneering groups. It did so without even conducting the analysis the Supreme Court has said applies to limits on contributions: expressive acts that "lie closer to

[1] All parties to this matter have consented to this amicus brief. No counsel for any party authored this brief in whole or in part, nor has any person, including any party or party's counsel, other than CREW and its counsel contributed money that was intended to fund preparing or submitting this brief.

the edges than to the core of political expression" of First Amendment value. *FEC v. Beaumont*, 539 U.S. 146, 161 (2003). It did so by uncritically following what it saw as the agreement of other courts. JA350. In affording the overwhelming agreement of the people of Maine such short shrift, however, the court below erred.

The record below shows what was not before any prior court—the evidence of *quid pro quo* corruption that other courts assumed was impossible. That record shows *quid pro quo* bribes paid through contributions to independent expenditure groups like those targeted by Maine's law, the type of corruption the Supreme Court has consistently said justifies a limit on transfers. Those examples are not rare one-offs. Rather, given the apparent value candidates routinely place on well-funded independent groups that will reliably support their and their allies' elections, those examples likely capture only a small portion of the bribes being paid through contributions to independent expenditure groups.

Unfortunately, other attempts to limit the corrupting possibilities from unlimited contributions to independent expenditure groups have proven inadequate. Rules limiting candidates' solicitation of funds to independent groups and disclosure rules, *see, e.g.*, 52 U.S.C. §§ 30104, 30125, including those requiring the tracing of funds, *see, e.g.*, 52 U.S.C. § 30122, have existed but failed to "prevent[] *quid pro quo* corruption," *FEC v. Cruz*, 596 U.S. 289, 305 (2022), as the examples below demonstrate.

The court below had before it what no other court had: proof that unlimited contributions to independent expenditure groups do in fact give rise to *quid pro quo* corruption. Given that evidence, and the lower First Amendment interests that attach to the mere transfer of funds, the lower court erred in summarily rejecting the overwhelming judgment of the people of Maine.

I. Contributions To Independent Expenditure Groups Can Buy *Quid Pro Quos*

The district court below followed the "seemingly unanimous" judgment of other courts to conclude that, "'because *Citizens United* holds that independent expenditures do not corrupt or give rise to an appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to' independent expenditure groups." JA350 (quoting *SpeechNow.org v. FEC*, 599 F.3d 686, 696 (D.C. Cir. 2010)). Yet it did so while aware of the error upon which that unanimity rested: the fiction that contributions to independent expenditure groups could never "serve as the quid in a *quid pro quo* arrangement." JA352.[2]

[2] *See Republican Party of N.M. v. King*, 741 F.3d 1089, 1103 (10th Cir. 2013) ("[T]he absence of a corruption interest breaks any justification for restrictions on contributions" for independent expenditures); *N.Y. Progress and Protection PAC v. Walsh*, 733 F.3d 483, 487 n.1 (2d Cir. 2013) ("[T]he threat of *quid pro quo* corruption does not arise when individuals make contributions to groups that engage in independent spending on political speech"); *Texans for Free Enter. v. Texas Ethics Comm'n*, 732 F.3d 535 (5th Cir. 2013) (concluding contributions to

Based on the record and the examples discussed below, the district court was right to recognize this hubristic error. Contributions to independent expenditure groups, also known as super PACs, have resulted in *quid pro quos*, and the apparent value that candidates place on those contributions makes that risk widespread. Yet the district court failed to follow the logic of that realization: recognizing that because contributions to super PACs can give rise to a *quid pro quo*, then the American people's compelling interest in preventing *quid pro quos* justifies the limits that Maine voters overwhelmingly adopted.

A. *Quid Pro Quos* Involving Super PAC Contributions

The Appellants cited below several cases where contributions to super PACs were the *quid* in an illegal bribery scheme. Those cases show that the likelihood a contribution to a super PAC could be part of a *quid pro quo* exchange is materially greater than "zero." Plfs.'s Mot. for Permanent Injunction, ECF 16 at 2.

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independent expenditure groups "do not give rise to corruption or the appearance of corruption"); *Wisc. Right to Life State Political Action Comm. v. Barland*, 664 F.3d 139, 155 (7th Cir. 2011) (finding "no valid response" to authority holding contributions cannot result in *quid pro quo* corruption); *SpeechNow.org*, 599 F.3d at 432 ("[C]ontributions to groups that make only independent expenditures also cannot corrupt or create the appearance of corruption."); *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 293–94 (4th Cir. 2008) (claiming no evidence of "danger of corruption due to the presence of unchecked contributions to independent expenditure political committees" (internal quotation marks omitted)); *Alaska Public Offs. Comm'n v. Patrick*, 494 P.3d 53, 58 (Alaska 2021) ("There is no logical scenario in which making a contribution to a group that will then make an expenditure" can result in a *quid pro quo*).

1. The Logic of a Bribe Where a Candidate "[P]laced [S]ubjective [V]alue" on Super PAC Contributions

The parties cover at length the bribery prosecution of former U.S. Senator Bob Menendez, who was indicted for allegedly accepting bribes, in part, in the form of contributions to a super PAC. *See* Defs.'s Opp. to Mot. for Permanent Injunction, ECF 45 at 4–5; Invs.'s Opp. to Mot. for Permanent Injunction, ECF 53 at 6–7); *United States v. Menendez*, 291 F. Supp. 3d 606, 621 (D.N.J. 2018); *United States v. Menendez*, 132 F. Supp. 3d 635, 640 (D.N.J. 2015). Most relevant here—and directly refuting the "unanimous" premise of the other courts, JA350 —the district court recognized that "ample evidence" showed that "Menendez placed subjective value on" contributions to the super PAC, notwithstanding the fact the super PAC was not part of the scheme, supported multiple candidates, and was not coordinating its activities with Menendez. *Menendez*, 291 F. Supp. 3d at 623.

Accordingly, irrespective of whether the government met its heightened burden to prove an "explicit" *quid pro quo* agreement between the super PAC donor and the Senator beyond a reasonable doubt, *see id.* at 624–25, 634–35, the evidence shows there is nothing "[il]logical" about a super PAC contribution bribe, *cf.* ECF

53 at 12. Indeed, the difficulty in prosecuting such agreements after-the-fact merely underscores the need to prevent them beforehand.[3]

2. A "half million" Super PAC Contribution *Quid* for a Firing *Quo*

In another matter, a jury convicted Greg Lindberg of paying bribes to the Commissioner of the North Carolina Department of Insurance in exchange for the commissioner removing a deputy responsible for overseeing Lindberg's insurance companies. *United States v. Lindberg*, 476 F. Supp. 3d 240, 246–47, 253–54 (W.D.N.C. 2020)[4]; ECF 53 at 7 n.2. As part of that bribery scheme, Lindberg created and funded an independent expenditure committee to support the commissioner. *Lindberg*, 476 F. Supp. 3d at 250 (quoting Lindberg offering to "put in a million or two" as the "sole donor").

There was no evidence that the Commissioner solicited this contribution, *cf.* Plfs.' Reply in Support of Permanent Injunction, ECF 61 at 5, or that the committee subsequently coordinated with the commissioner, *id*. at 13. In fact, the agreement specified there "could not be 'any coordination'" between the commissioner and the

[3] Senator Menendez was subsequently convicted in a different bribery scheme. *See United States v. Menendez*, 759 F. Supp. 3d 460, 473 (S.D.N.Y. 2024).

[4] Although an initial conviction was vacated over improper jury instructions, *see United States v. Lindberg*, 39 F.4th 141 (4th Cir. 2022), Lindberg was again convicted on retrial with proper instructions, DOJ, *Chairman of Multinational Investment Company and Company Consultant Convicted in Bribery Scheme at Retrial* (May 16, 2024), https://perma.cc/3ZLK-KUPF.

committee. *Lindberg*, 476 F. Supp. 3d at 251. Rather, it would simply be run by someone the commissioner would "have confidence in." *Id.* at 250. As part of the scheme, the conspirators agreed to route some of the funds through a nonprofit section 501(c)(4) entity that would permit Lindberg to "stay anonymous on the source of [all] the money," *Id.* at 252 (agreeing to contribute another half-a-million directly to a section 527 entity that would disclose Lindberg as the source, but to use a (c)(4) to hide the total amount of Lindberg's support).

3. $1 million Super PAC Contribution *Quid* for a Bailout *Quo*

Also covered extensively by the Appellants, the prosecution of former Ohio Speaker Larry Householder serves as another example of bribes using super PACs. ECF 45 at 5; ECF 53 at 7 n.2. As part of a larger bribery schemes, a utility contributed funds to super PACs for Householder to use to further his bid for the speakership. Defs.' Surreply in Opp. to Mot. for Permanent Injunction, ECF 66 at 6; *see also* Matt Corley, *Three dark money lessons from the Larry Householder corruption prosecution*, CREW (Mar. 29, 2023) https://perma.cc/6G3E-3TZL?type=image (discussing roles of Growth & Opportunity PAC and other super PACs). There was nothing at the time of the scheme to indicate that Householder controlled the super PACs or coordinated on any of their communications. *See United States v. Householder*, 137 F.4th 454, 464 (6th Cir. 2025) (detailing use of vehicles to conceal source of funds); Second Am. Complaint ¶¶ 59, 89, *Ohio v.*

FirstEnergy, No. 20 CV 006281 (Ct. of Comm. Pleas, Ohio Aug. 5, 2021) *available at* https://perma.cc/P269-JQJN (alleging scheme to "prevent the public and regulators from discovering their efforts to influence the outcome of the 2018 Ohio Primary Election"). Accordingly, there was no way for the public to enforce anti-coordination rules in a way that could prevent the *quid pro quo*.

4. A New Funded Supportive Super PAC *Quid* For Help With an Examination *Quo*

In another case, the governor of Puerto Rico was indicted in an apparent bribery scheme involving contributions to a super PAC. Indictment, ¶¶ 31, 48, 88, 97–100, 106, 107, 110, 114, 138, 140, 142, 160, 168, 173–74, *United States v. Vazquez Garced*, 22-cr-342 (D.P.R. 2022), https://perma.cc/753Y-ZUW2; *see also* ECF 53 at 7 n.2. The alleged scheme involved the governor agreeing to remove an official examining a bank in exchange for, in part, the bank owner setting up and funding a super PAC to support the governor. *Id.* ¶¶ 4, 48. There was no allegation, however, that the governor would control the super PAC or coordinate on its expenditures—rather, she simply could expect support because that was the terms of the agreement. The Governor pled guilty to a lesser included charge of accepting an excessive contribution. Patricia Mazzei and Glenn Thrush, *Former Puerto Rico Governor Pleads Guilty to Campaign Finance Violation*, N.Y. Times (Aug. 27, 2025), https://www.nytimes.com/2025/08/27/us/puerto-rico-vazquez-plea.html.

Each of the above examples disproves the premise underlying the "seemingly unanimous consensus" of other courts: that contributions to super PACs will be of so little value because of their supposed independence that candidates would not trade official acts for them.

Notably, all the *quid pro quo* examples above involve an agreement between a candidate and a contributor, but not the independent expenditure maker. In the Menendez example, there was no allegation that the independent expenditure group was even aware of the corrupt bargain behind the contribution. The prevalence of contributors in these corrupt bargains may be because the contributors, unlike the independent expenditure makers, have a variety of interests other than the election of candidates, and so may trade support they may not otherwise give to advance those interests. Further, contributors enjoy potential anonymity that does not attach to the independent expenditure maker. In the Householder and Lindberg examples, the ability of independent expenditure groups to accept unlimited funds from intermediary 501(c)(4) entities that shielded the sources was instrumental in the corrupt bargain. Further, transferring the money to entities that are repeat players and therefore reliably and effective allies of an officeholder, *see infra*, may make those transfers much more valuable, and therefore much more likely to result in a

quid pro quo, than an offer to spend the funds directly would.[5] Regardless, whether or not the actual expenditure of funds independently from a campaign "give rise to corruption or the appearance of corruption," *Citizens United v. FEC*, 558 U.S. 310, 357 (2010), the above examples show that contributions to independent expenditure groups can and do.

B. Candidates Value Super PAC Contributions, and Contributors Know It

The above examples stem from criminal bribery prosecutions, but prosecutions that must be proven beyond reasonable doubt will "'deal with only the most blatant and specific attempts of those with money to influence governmental action.'" *Libertarian Nat'l Comm. v. FEC*, 924 F.3d 533, 543–44 (D.C. Cir. 2019) (quoting *Buckley v. Valeo*, 424 U.S. 1, 28 (1976)) ("[I]f [bribery] laws were sufficient to achieve the government's compelling interest in preventing *quid pro quo* corruption and its appearance, then Congress would have had no need in the first place to impose contribution limits to combat prior decades' 'deeply disturbing' quid

[5] Notably, individuals could spend unlimited amounts on independent expenditures since *Buckley*, yet in the years between *Buckley* and *Citizens United*, independent expenditures "made up a small portion of overall election-related spending." *CREW v. FEC*, 971 F.3d 340, 344 (D.C. Cir. 2020). The explosion of such activities once they could be funded by unlimited contributions shows financiers see value in contributions far beyond their ability to create advertisements.

pro quo arrangements."). Rather, the value that candidates place on super PACs that gave rise to the above prosecutions is evidently widely shared.

Candidates now routinely fundraise for super PACs, demonstrating the value on which they place their funding. *See, e.g.*, Max Greenwood and Ana Ceballos, *Trump to attend high-dollar 'roundtable' with donors in Doral on Thursday*, Miami Herald (Mar. 21, 2024), https://www.miamiherald.com/news/politics-government/article286952185.html (reporting then candidate Trump's attendance at fundraiser for supportive super PAC); Edward-Isaac Dovere, *Hakeem Jeffries is staging a takeover of the New York Democrats. His Hope to become speaker may depend on it*, CNN (June 28, 2023), https://www.cnn.com/2023/06/28/politics/hakeem-jeffries-takeover-new-york-democrats (reporting House Democratic leader "pitch[ed] some of [New York's] biggest Democratic donors to spend their money locally with the House Majority super PAC"); Ted Johnson, *Hollywood, L.A. Figures Raise Money For Democratic PAC To Win Senate Control*, Deadline (Oct. 8, 2020), https://deadline.com/2020/10/senate-majority-pac-democrats-1234594253/ (reporting Senate Minority Leader co-hosted a fundraiser for independent expenditure group); Manu Raju, *How McConnell is maneuvering to keep the Senate in GOP hands – and navigating Trump*, CNN (Sept. 10, 2020), https://www.cnn.com/2020/09/10/politics/mitch-mcconnell-senate-majority/index.html (reporting Senate Leader "regularly doing fundraising calls and Zoom meetings with

donors to help" allied independent expenditure organization); Reid Wilson, *Inside the GOP's Effort to Consolidate the Super PAC Universe*, Morning Consult (Mar. 24, 2016) https://morningconsult.com/2016/03/24/inside-the-gops-effort-to-consolidate-the-super-pac-universe/ (reporting Senate Leader told other Senators they "should steer big donors to" two independent expenditure organizations). President Trump's campaign announced in the 2020 election that a supposedly independent super PAC was the "approved outside non-campaign group" because it was "run by allies of the President and is a trusted supporter of President Trump's policies and agendas." Donald J. Trump for President Campaign, *Trump Campaign Statement on Dishonest Fundraising Groups* (May 7, 2019), https://bit.ly/2VRRWm1 [hereinafter "Trump Campaign Statement"]. President Biden switched the supposedly independent groups to which his campaign drove donors in the course of his 2024 campaign. Shane Goldmacher and Reid J. Epstein, *Biden Switches Up His Big-Money Operation Ahead of 2024*, N.Y. Times (July 14, 2023), https://www.nytimes.com/2023/07/14/us/politics/biden-future-forward-super-pac.html.

Super PACs are often staffed by "trusted" campaign surrogates. Trump Campaign Statement. "[C]andidates' top aides … now leav[e] campaign teams to work for supportive super PACs." Brent Ferguson, *Super PACs: Gobbling Up Democracy?*, Brennan Center for Justice (June 23, 2015), https://bit.ly/2X6dg8F.

For example, the president of the principal super PAC supporting the democratic presidential candidate in 2024 formerly worked for the democratic party. Nick Corasaniti, *A Democratic Super PAC Surge Helps Biden Expand His Map*, N.Y. Times (Oct. 22, 2020), https://www.nytimes.com/2020/10/20/us/politics/future-forward-super-pac.html. In another example, "[a] group of former Trump aides designed the super PAC America First Action." Ashley Balcerzak, *Inside Donald Trump's army of super PACS and MAGA nonprofits*, The Center for Public Integrity (Feb. 18, 2019), https://bit.ly/2WujK43.

The parties have created their own super PACS while appearing to take the minimum steps to assert their independence. Ian Vandewalker, *Dark Money from Shadow Parties is Booming in Congressional Elections*, Brennan Center for Justice (Oct. 28, 2024), https://perma.cc/H44B-7WKS. These super PACS collect as much as, and sometimes more than, the party committees themselves.[6]

[6] *Compare* FEC, HMP Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00495028/?cycle=2024 (approximately $260 million in receipts) *with* FEC, DCCC Financial Summary 2023-24, (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00000935/?cycle=2024 (approximately $339 million in receipts); FEC, SMP Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00484642/?cycle=2024 (approximately $389 million in receipts) *with* FEC, DSCC Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00042366/?cycle=2024 (approximately $275 million in receipts); FEC, Congressional Leadership Fund Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00504530/?cycle=2024 (approximately $243 million in receipts) *with* FEC, NRCC Financial Summary 2023-24 (last

In fact, candidates now include super PACs among their joint fundraising committees. *See* FEC, *AO 2024-07: Campaign may engage in joint fundraising with a Super PAC* (Sept. 6, 2024), https://www.fec.gov/updates/ao-2024-07/. Candidates split their fundraising with independent groups because they place equal, or nearly equal, value on contributions to such entities as they do on contributions to their own campaign committees.

Donors know this, which is why some donors are willing to break the law to make donations to super PACs. For example, in order to earn a mayor's favor that a donor believed would be good for business, the donor directed funds to independent committees understood to be supportive of the mayor. *United States v. Singh*, 979 F.3d 697, 707–08 (9th Cir. 2020). That included an independent expenditure committee. Superseding Indictment, ¶¶ 11, 21(f), 22(e), (p), (r), 27(a), (d), *United States v. Matsura*, No. 14CR0388-MMA (S.D. Cal. Aug. 12, 2014), *available at* https://perma.cc/7WLV-M7HV. As a foreign national, however, the law prohibited him from donating. *Singh*, 979 F.3d at 707. (citing 52 U.S.C. § 30121(a)). Yet the

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visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00075820/?cycle=2024 (approximately $236 million in receipts); FEC, Senate Leadership Fund Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00571703/?cycle=2024 (approximately $298 million in receipts) *with* FEC, NRSC Financial Summary 2023-24 (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00027466/?cycle=2024 (approximately $296.5 million in receipts).

Mexican national understood that donating to the independent group would redound to his benefit, so he used a straw donor scheme to secretly make the contributions, also in violation of the law. *Id.*. He was eventually convicted. *Id.* at 706.

In another example, a jury convicted an individual working as a straw donor on behalf of a Malaysian national. *United States v. Michel*, No. 19-148-1, 2024 WL 4006545, at *1, *2 (D.D.C. Aug. 30, 2024). The Malaysian national believed contributing the funds would earn him an audience with a presidential candidate. *Id.* at *2. Among the recipients of the funds was a super PAC. *Id.* at *11. The conspirators thought contributing to the super PAC would likely earn access because they understood the benefitted candidates would value those contributions.

In yet another example, two individuals were convicted in a scheme to launder funds to a super PAC, America First Action PAC. *United States v. Parnas*, No. S3 19-CR-725, 2022 WL 669869, at *4 (S.D.N.Y. Mar. 7, 2022), *see also* FEC, America First Action, Inc. Financial Summary (last visited Oct. 22, 2025), https://www.fec.gov/data/committee/C00637512/ (showing group is a super PAC). The individuals believed contributing to the super PAC would "gain [them] access to politicians to promote the Defendants' nascent businesses." *United States v. Parnas*, No. 19-CR-725, 2021 WL 2981567, at *3 (S.D.N.Y. July 14, 2021). Such contributions would only earn them access if the benefitted candidates valued those contributions.

In short, candidates value contributions to independent groups and donors know it. The independence of the recipient may "undermin[e] the value" of the contribution to the candidate somewhat, but it does not wholly eliminate it. *McCutcheon v. FEC*, 572 U.S. 185, 214 (2014). Accordingly, the difference in risk of corruption arising from contributions to candidates and those to independent groups is not a difference in kind, but rather only one of degree. Where a contribution of $476 raises sufficient risk of corruption when donated directly to a candidate, *see* 20 A.M.R.S. §1015(1) ($475 limit for "legislative candidate"), a contribution multiples greater to an independent group raises the same risk, *see McCutcheon*, 572 U.S. at 214 (a contribution to an independent group is less valuable, but "probably not [] 95%" less valuable).

C. The Court Below Ignored the Risk of Corruption and Failed to Apply the Required Analysis

The court below essentially acknowledged the record above but concluded that it was irrelevant: that *Citizens United* declared "as a matter of law" that independent expenditures never corrupt and so contributions to fund such expenditures axiomatically will never corrupt either. JA350 (quoting *SpeechNow.org*, 599 F.3d at 696). Yet a Supreme Court decision is not a "command" to "reject the evidence of your eyes and ears." *Cf.* George Orwell, *1984* p.69 (1983).

"Like King Canute, neither the Congress nor a court can change the forces of [human] nature." *EEOC v. Colby Coll.*, 589 F.2d 1139, 1144 (1st Cir. 1978).

Rather, *Citizens United* was a ruling based on the record before it. It relied on the absence of "any direct examples of votes being exchanged for … expenditures" in the *McConnell* record. *See Citizens United*, 558 U.S. 360 (citing *McConnell v. FEC*, 251 F. Supp. 2d 176, 209 (D.D.C. May 1, 2003)); *id.* at 357 (relying on the fact "[t]he Government does not claim that [independent] expenditures have corrupted the political process" in states that permit corporate expenditures); *see also id.* at 356–57 (relying on *Buckley*, 424 U.S. at 47); *Buckley*, 424 U.S. at 46 (stating that independent expenditures "do[] *not presently* appear to pose dangers" of *quid pro quo* corruption (emphasis added)).[7] It accordingly concluded that "Congress has created categorical bans on speech that are asymmetrical to preventing *quid pro quo* corruption." *Citizens United*, 558 U.S. at 361 (analyzing a total ban on corporate expenditures, not a limit on significantly large ones). Consequently, as the record now provides the evidence with respect to contributions that *Citizens United* found

[7] Each of the other cases to strike down limits on contributions to independent expenditure groups was a result of the record before it and largely predate the examples in the record here. *Cf. Patrick*, 494 P.3d 53 (issued in 2021 but not addressing Menendez or Lindberg examples). Whether or not the judges "lacked imagination," ECF 16 at 5, is irrelevant. Courts must adjudicate such limits based on "record evidence or legislative findings." *Cruz*, 596 U.S. at 306.

absent with respect to independent expenditures, that should at least give a court pause in expanding the holding of *Citizens United* to this new territory.

Even if that record would not be sufficient to justify a limit on independent expenditures had it been before the *Citizens United* court, it at least demands more than summary dismissal with respect to contributions, which are afforded less First Amendment protection. *See* JA353. The Court has consistently held for more than fifty years that contribution limits, unlike expenditure limits, impose "only a marginal restriction on contributor's ability to engage in free communication." *Buckley*, 424 U.S. at 20*, accord Randall v. Sorrell*, 548 U.S. 230, 241, 246–67 (2006). It is true that a contribution "serves as a general expression of support," *Buckley*, 424 U.S. at 20, but so too does every financial transaction. "[T]he transformation of contributions into political debate involves speech by someone other than the contributor," and thus one may not bootstrap the speaker's protected interest onto the contribution. *Buckley*, 424 U.S. at 21.

Accordingly, the Court has consistently held that limits on contributions are subject to a distinct and "less[] demand[ing]" test than expenditures, *McConnell v. FEC*, 540 U.S. 93, 136 (2003). It "has been plain ... ever since *Buckley* that contribution limits would more readily clear the hurdles before them" than would independent expenditure limits. *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 387 (2000). Yet the district court did not apply that less demanding standard to the

record before it. Rather it uncritically applied the conclusion from *Citizens United* which resulted from a higher, nonapplicable, standard.

For their part, the Appellees merely wave away the inconvenient evidence. They claim there is no evidence that contributions to independent expenditure groups can corrupt because they simply redefine a 'contribution to an independent group' as one that involves no corruption. ECF 61 at 13 (claiming examples of *quid pro quos* involving contributions to independent expenditure groups are irrelevant because they involved "an outright bribe or a coordinated expenditure"). Of course, the fact that *some* contributions to independent expenditure groups may be "outright bribes" is the entire point. If a contribution to a super PAC can involve "an outright bribe," *id.*, then contributions can be restricted to "prevent[] *quid pro quo*" corruption, *Cruz*, 596 U.S. at 305.

Corrupting contributions are also not necessarily the result of a candidate's solicitation or will result in a coordinated communication. *See supra* Part I.A. Rather, officials have agreed to illicit *quid pro quos*, risking serious criminal penalties, even if the contribution is unsolicited or the expenditure will be independent.[8] They do so because they in fact value contributions to independent

[8] If one treats every contribution that is part of a *quid pro quo* as solicited even if the offer is first made by the private party, then a ban on solicitations is simply identical to a ban on bribery, and the Court has recognized such bans are inadequate to protecting the public's interest in combatting *quid pro quos*. *See Buckley*, 424 U.S.

but supportive groups just as they do "contributions to [their] campaign." ECF 61 at 3. Even if the group is formally independent, the fact that it will reliably convert those funds into support—even if that support is split among other candidates, *compare* ECF 61 at 7 (distinguishing multi-candidate PACs versus single candidate PACs)) *with supra* Part I.A.1 (*quid pro quo* involving contribution to multi-candidate super PAC)—makes those contributions valuable. There is no way for the public to determine ahead of time which contributions will result in a *quid pro quo* and which will not. Accordingly, that value creates the risk of a *quid pro quo* that the First Amendment permits the State of Maine to "prevent[]" through contribution limits. *Cruz*, 596 U.S. at 305.

Indeed, Appellees admit this. Even in setting out their maximalist view that no restraint on contributions to independent expenditure groups are permitted, they include a caveat. They recognize the Government may, consistent with the First Amendment, limit contributions to independent expenditure groups from a "[]foreign source." ECF 61 at 2. But in conceding such a limit, Appellees concede that contributions are not the equivalent of speech and raise concerns distinct from speech that the Government may address.

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at 28 (concluding bribery laws are not "sufficient to achieve the government's compelling interest in preventing quid pro quo corruption and its appearance" because such corruption occurred even while bribery laws existed).

Regardless of whether foreigners may "assert rights under the U.S. Constitution," *Agency for Int'l Dev. v. All. For Open Soc'y Int'l Inc.*, 591 U.S. 430, 434 (2020), "the essence of self-government" undergirds the First Amendment "rights of the citizens of the country to … hear [an alien] explain and seek to defend his views." *Kleindienst v. Mandel*, 408 U.S. 753, 764 (1972); *see also Stanley v. Georgia*, 394 U.S. 557, 564 (1969) ("[T]he Constitution protects the right to receive information and ideas … regardless of their social worth.")); *Lamont v. Postmaster General*, 381 U.S. 301 (1965) (protecting First Amendment rights of American to receive from abroad materials labeled "communist political propaganda"). Were it otherwise, the Government could ban works like Blackstone's *Commentaries on the Laws of England*, Locke's *Treatise on Law*, or de Tocqueville's *Democracy in America*; or Rousseau, Burke, Paine, Hayek, Aristotle, or Plato; or the Bible simply because of their authors' foreign status and location.

Financial support is, however, distinct, even if it is eventually spent to create speech. *See Bluman v. FEC*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011), *aff'd* 565 U.S. 1104 (2012). Like a personal gift, a contribution does not persuade; rather it "influence[s]." *Id.*; *cf. United States v. Martinez*, 994 F.3d 1, 7 (1st Cir. 2021) (gifts given to "influence[]" official action support bribery charge). That is, a contribution does not alter minds by convincing them of the merit of some cause; it appeals to a benefactor's avarice. A pledge to contribute millions of dollars can sway a

candidate's opinion notwithstanding the fact those funds have not yet been spent on speech that could persuade, and that will likely be spent on speech (if ever) unrelated to the matter to be influenced. *See, e.g.*, Kenneth P. Vogel, Sarah Kliff, and Katie Thomas, *Trump Delayed a Medicare Change After Health Company Donations*, N.Y. Times (Aug. 7, 2025), https://www.nytimes.com/2025/08/07/us/politics/trump-medicare-bandages-donors.html (noting Trump changed policy position to align with company that donated $5 million to allied super PAC shortly after contribution). Such funds influence well before they are turned into speech "presented to the electorate" to "persuade voters." *Cf. Citizens United*, 558 U.S. at 360

Accordingly, although a foreigner may attempt to persuade through speech, even on electoral matters, the Court has approved restraints on foreigners' ability to "influence" through their largess. *Id.*; *see also id.* at 289–90 (distinguishing the "right to speak" from "an expressive act" like "[s]pending money to … expressly advocate for or against the election of a political candidate" that "is both speech and participation in democratic self-government"); *id.* at 291 (noting decision does not apply to prohibition on "foreign nationals from engaging in speech other than contributions to candidates and parties, express-advocacy expenditures, and donations to outside groups to be used for contributions to candidates and parties and express-advocacy expenditures").

Of course, the Court has also said, at least with respect to American money, that "influence" is not necessarily the same as "*quid pro quo*" corruption and, to ensure "breathing space" for speech, that states may not seek to combat the former when it does not amount to the latter. *Citizens United*, 558 U.S. at 329, 359–60. But the fact that a *quid* can buy influence means that same *quid* can buy official acts if it is sufficiently large. The logic of Appellees' concession, at least with respect to foreign contributions, that contributions to independent expenditure groups can buy influence that is distinct from persuasion means that, with respect to all contributors, such contributions can buy *quid pro quos* if sufficiently large.

The record here establishes that contributions to independent expenditure groups not only buy influence, but can and have resulted in *quid pro quo* arrangements. That record was not before the Court in *Citizens United* nor any other court to consider limits on such contributions. Even if that record would not have altered the Court's conclusion with respect to direct limits on expenditures, the "logic of *Citizens United*" does not "dictat[e]" a similar result with respect to financial transfers, JA353, that only "marginal[ly] restrict[] [a] contributor's ability to engage in free communication," *Buckley*, 424 U.S. at 20, and is subject to a "less[] demand[ing]" analysis, *McConnell*, 540 U.S. at 136. The court below erred in not applying that analysis and should be reversed.

II. There are No Viable Alternatives to Contribution Limits

As the district court did not analyze Maine's law under the appropriate rubric, it did not examine whether there were adequate alternatives to limiting the contributions to independent expenditure groups to prevent *quid pro quo* corruption. Appellees suggested, however, that the limit would not serve an anti-corruption interest where large contributions to independent expenditure groups are already disclosed, ECF 61 at 5, and suggested the bans on coordination and candidate solicitations would be sufficient alternatives to combat corruption, *id*. Unfortunately, these measures were in place when the above examples of *quid pro quo* corruption occurred and proved inadequate to prevent them.

To start, the promise of full disclosure was one of the grounds *SpeechNow.org* identified as meeting a state's anti-corruption interests at the time it created super PACs. *See SpeechNow.org*, 599 F.3d at 696. While disclosure serves many compelling interests, *see Buckley*, 424 U.S. at 66 (1976), it is "only a partial measure" at combating corruption, *id.* at 28, and has failed to even reveal the identities of those using contributions to affect a *quid pro quo*.

The record below demonstrates the inadequacy of disclosure rules, showing that about $1.32 billion in contributions to independent expenditure groups on the federal level come from unknown sources in the 2024 election cycle, and about $2.9 billion from unknown sources since 2010. JA72. These sources remained

anonymous despite rules requiring independent expenditure makers to disclose the sources of their funds, including any funds that are routed through intermediaries. *See* 52 U.S.C. §§ 30104(b)(3)(A), (c)(2), 30122. Unfortunately, experience shows these rules are easily evaded.

For example, in the Householder prosecution discussed above, the parties used a 501(c)(4) intermediary to accept "undisclosed and unlimited contributions" sent on to super PACs. *Householder*, 137 F. 4th at 464. The same scheme was used in the Lindberg corruption scheme. *See Lindberg*, 476 F. Supp. 3d at 252. The contributions to the super PACs could be anonymized because these groups, unlike candidates and parties, have accepted corporate contributions since *SpeechNow.org*. That permits contributors to use corporate forms to evade disclosure—something they cannot do with respect to contributions to candidates and parties.

In one case, public reporting showed a super PAC had been funded by a 501(c) entity that had inadvertently disclosed that it was not the original source of more than $1 million in contributions. An investigation then traced funds through a LLC—quickly set up for the purpose of laundering the contribution—to a mysterious Trust, but still failed to locate the original source. *See* FEC, Statement of Reasons of Commissioner Ellen L. Weintraub at 2, MUR 6920, Am. Conservative Union (Apr. 7, 2020) https://www.fec.gov/files/legal/murs/6920/6920_2.pdf. In another case, a source or sources laundered approximately $5 million through a mysterious 501(c)

entity that split the funds and delivered to two additional 501(c) entities, involving groups apparently set up solely to launder these funds, that then each made contributions to related super PACs (as well as pass funds between themselves) in an apparent attempt to avoid triggering reporting obligations by any entity beyond the final recipient super PACs who would not report the original sources. *See* FEC, Gen. Counsel's Report at 3, MUR 8110, Am. Coalition for Conservative Policies (May 3, 2024) https://www.fec.gov/files/legal/murs/8110/8110_56.pdf. One can create infinite corporate forms in short order and dissolve them just as quickly to launder funds to independent expenditure groups and hide the actual source; those efforts are worthwhile because they can hide the source of large contributions.

Although earmarking rules attempt to combat these types of schemes, they are wholly inadequate and easily evadable. For example, one FEC investigation into an independent expenditure group showed the group accepting funds earmarked for the "reelection" of a particular candidate. *See* FEC, Gen. Counsel's Report at 16, MUR 7465, Freedom Vote, Inc. (Sept. 20, 2021), https://www.fec.gov/files/legal/murs/7465/7465_27.pdf. But the group did not report this donor, despite a rule requiring it to report the identity of anyone who contributed to it to influence federal elections. *See* 52 U.S.C. § 30104(c)(2). Rather, the group sent the contributor a boilerplate letter stating that it was the recipient's policy not to accept earmarked contributions, and thus that it would treat the contributor's contribution as an unrestricted gift—

one not subject to disclosure. *See* Gen. Counsel's Report at 16. Of course, the group then spent the funds exactly as requested. *Id.*

Notably, this contribution was only disclosed because the FEC investigated the group because it committed a violation that could be observed by reported data. *See* FEC, Gen. Counsel's Report at 4–9, MUR 7465, Freedom Vote, Inc. (July 1, 2019) https://www.fec.gov/files/legal/murs/7465/7465_15.pdf (recommending opening of investigation based on group's public tax returns and FEC filings). The public has no way to observe, however, independent expenditure group's compliance with earmarking rules.

Nor can the public observe and enforce rules like those that apply to a candidate's participation in the solicitation. *Cf.* ECF 61 at 5 (citing 52 U.S.C. § 30125(e)). As noted, some of the examples above involve bribes paid to super PACs that the candidate did not solicit. *See supra* Part I.A.2, I.A.4. Even assuming these rules would cover situations like the bribery case involving Lindberg and the Puerto Rican governor above, where the candidates did not solicit the contributions, they would be inadequate. The public had no insight into the conversations that surrounded the transfers, and thus no way to monitor the entities for compliance. *See, e.g., Buckley*, 424 U.S. at 28 (fact *quid pro quo* corruption occurs while laws are in effect shows such rules are not "sufficient" to preventing *quid pro quo*). Rather, only observable violations, like comparing the size of contributions reported

on an organization's tax forms against statutory limits, provide an effective means to combat *quid pro quo* corruption.

CONCLUSION

The court below failed to apply the appropriate analysis to Maine's limit on contributions because it erroneously relied on a seeming consensus—one that never considered the record of *quid pro quo* corruption stemming from contributions to independent expenditure groups presented here. That analysis, when the record is properly taken into account, sustains the overwhelming choice of Maine's voters to combat the corruption they have observed.

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32, I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a) because it contains 6,458 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). In addition, this brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in has been prepared in a proportionally spaced typeface using Microsoft Word 365 in Times New Roman 14-point font.

/s/ Stuart McPhail
Stuart McPhail

CERTIFICATE OF SERVICE

I certify that on October 29, 2025, the foregoing brief was electronically filed with the Clerk of this Court using the CM/ECF system. I further certify that all participants in this case are registered CM/ECF users and that service will be accomplished using the CM/ECF system.

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