No. 98-963

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1998

JEREMIAH W. (JAY) NIXON,
ATTORNEY GENERAL OF MISSOURI,
Petitioner,

v.

SHRINK MISSOURI GOVERNMENT PAC, et al.,
Respondents.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

BRIEF OF *AMICI CURIAE* STATES OF OHIO, ALASKA, ARIZONA, ARKANSAS, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, HAWAII, IDAHO, INDIANA, IOWA, KANSAS, LOUISIANA, MAINE, MARYLAND, MINNESOTA, MONTANA, NEW MEXICO, NEW YORK, NORTH CAROLINA, OKLAHOMA, RHODE ISLAND, TENNESSEE, UTAH, VERMONT, WASHINGTON, THE COMMONWEALTHS OF KENTUCKY AND MASSACHUSETTS AND THE TERRITORY OF U.S. VIRGIN ISLANDS IN SUPPORT OF PETITIONER

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STATEMENT OF *AMICI* INTEREST

The State of Ohio and 29 other *amici* States and Territories join together in urging the Court to reverse the judgment below. At issue is their authority to limit—in light of local experience and consistent with the varying political realities each faces—the sometimes corrosive role that large-dollar campaign contributions can play in state and local elections. Since the Court issued its decision in *Buckley v. Valeo*, 424 U.S. 1 (1976) (upholding the constitutionality of limits on campaign contributions to candidates for *federal* offices), dozens of States have relied on that decision in crafting similar limits on contributions to candidates in state and local races.

Now the Eighth Circuit's decision striking Missouri's $1,075 limit on individual contributions to statewide candidates has called into question similar laws in many other States. Some of the States joining this brief permit individuals to make larger campaign contributions than does Missouri, while others impose more stringent limits. Still others impose no limits at all. Yet each of the States shares an interest in preserving the flexibility that *Buckley* and the First Amendment rightly give them: the authority to decide whether unchecked campaign contributions pose a threat to the political process, and the ability to control that threat by limiting—in varying degrees—the amount of money that any one contributor may give to a candidate for public office.

The need for such limits is an inquiry the States should be left to assess for themselves in light of their particular concerns for, and experience with, the potentially corrupting influence of large campaign contributions. Some have seen no need to impose limits, while others have chosen to closely regulate the process. The important point is that *Buckley* expressly approved such limits, and the First Amendment does not prevent the States from enacting them. Because the

States have such a critical interest in retaining the freedom to regulate their own electoral systems as local conditions warrant, we submit this *amicus curiae* brief for the Court's consideration.

SUMMARY OF ARGUMENT

While the First Amendment to the U.S. Constitution protects the public's right to express opinions and to communicate ideas, that Amendment also allows government to regulate election campaigns to ensure that the candidates chosen in those campaigns are not beholden while in office to their contributors. Throughout the nation's history, but particularly during the last thirty years, the States have enacted a wide variety of measures designed to keep their election campaigns—and more importantly, the daily workings of state and local government—free from corruption. Some States have limited campaign contributions or imposed reporting requirements on candidates. Others have experimented with restrictions on the political activities of government employees or have limited the number of terms in office that elected officials may serve. Still others have moved toward public financing of campaigns, much like the system used to fund presidential campaigns. With each of these changes, the States aim not just to improve the responsiveness and effectiveness of government, but to increase the public's confidence in their elected officials and their public institutions as well.

Reasonable persons can disagree about the wisdom of these measures, and surely few would claim that contribution limits or any other single reform effort has proven to be the perfect answer to either the problem of political corruption or the decline in public confidence in our elected officials. Yet

the constitutionality of these measures should not be in doubt, unless (in the rare circumstance) they have the effect of preventing candidates from engaging in vigorously competitive campaigns. Campaign finance reforms enacted by the States are the product of the public's outrage at a government that appears to be slipping further away from the people it serves. Courts should not look at these measures with excessive suspicion, for they vindicate the fundamental principles of representative democracy that the First Amendment—indeed the Constitution as a whole—is designed to advance. And indeed, from *Buckley* forward, the Court has repeatedly permitted the States and Congress to enforce reasonable restrictions on campaign contributions in order to prevent corruption and the appearance of corruption in our election campaigns. Contribution limits permit all citizens to have their say in how our democracy should function and who should lead it, while addressing the States' justified concern that contributors and candidates may potentially engage in financial dealings that tie the hands of the latter once they are in office.

Because contribution limits advance a long-recognized compelling government interest in controlling corruption, and because those limits can help to achieve an electoral system that fosters honest public debate without unduly restricting the freedoms of speech or association of candidates or contributors, courts ought to give deference to the legislature's conclusion that those limits are needed. Contribution limits apply in a viewpoint-neutral way to all candidates, both incumbent and challenger alike. Only where those limits prevent candidates from waging a vigorous campaign should the First Amendment be read to block their enforcement. Short of that showing by a candidate, the States should be free to determine for themselves the most

appropriate dollar-amount limit for their particular statewide and local races (assuming, again, that they have determined that there is a need for some limit within their particular jurisdiction). And in the end, the States should be permitted to experiment with reforms like contribution limits that promote rather than frustrate the unfettered public debate and responsive honest government that the public rightly demands.

ARGUMENT

I. The States Have Enacted Scores Of Campaign Contribution Limits Since *Buckley* Was Decided, With Each Selecting The Level Of Regulation It Feels Will Best Promote The Integrity Of Its Own Electoral Processes.

The variety of campaign finance reforms enacted by the States is remarkable. To confirm this truth, one need only examine a Federal Election Commission publication entitled *Campaign Finance Law 98* by Edward D. Feigenbaum and James A. Palmer (lodged with the Clerk of this Court simultaneously with the filing of this brief). Even in the area of campaign contributions alone, notable variations exist, each reflecting the particular concerns of the several States. Some States, like Alaska and Maryland, impose a blanket dollar-amount restriction on individual contributions to candidates, regardless of the office involved. Arizona, Missouri and others impose varying limits for contributions to statewide candidates on the one hand, and to all remaining down-ticket candidates on the other. Some States, like Connecticut and Minnesota, impose different contribution limits for various statewide offices, as well as other limits for lower-ticket races.

The timing and the method of payment are also subject to regulation in some States. In California and Delaware, limits on contributions are tied to the election cycle (encompassing the total time between elections for the same office), while in other States, like Minnesota and New York, the limits are tied to the calendar year. Some States, like Florida and Massachusetts, have seen fit to limit the amount of money that children may contribute to political candidates; or, as in Louisiana, have restricted contributions from government employees to candidates; or, like Oklahoma and Pennsylvania, now bar anonymous campaign contributions. (This Court's decision in *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995), does not disturb *Buckley*'s holdings regarding the permissibility of disclosure requirements for campaign contributions.)

And all of the limits just described apply only to contributions from individuals to candidates. There are in some States restrictions as well on other entities that may give or not give contributions, and in varying amounts (such as corporations, unions, PACs or national political parties) and restrictions on those to whom contributions may be given (such as political parties or PACs). And some States restrict the transaction associated with the contribution—through limits on cash contributions or receipt requirements—and still others regulate those government employees who may solicit political contributions (or who may be targeted for such solicitation efforts themselves).

In short, the variety of campaign finance reforms in the States—even in the narrow niche of campaign contribution regulations, quite apart from regulations of expenditures, public financing, reporting requirements and

other regulatory devices—is stunning. The States, following *Buckley*, have created an incredible diversity of laws designed to address the unique concerns each faces in battling corruption and the appearance of corruption, and contribution limits have become an important tool in that battle.

Several States of course have chosen to leave campaign contributions virtually unregulated, while others have not. And just as the States do not agree on what works and what does not in their efforts to address the danger of corruption associated with influence-peddling between large-dollar campaign contributors and candidates for public office, so the scholarly literature in the field provides no easy answers on the best choices either. *See, e.g.*, David A. Strauss, *Corruption, Equality, and Campaign Finance Reform*, 94 Colum. L. Rev. 1369 (1994) (proposing new way to think about the issue of corruption); C. Edwin Baker, *Campaign Expenditures and Free Speech*, 33 Harv. Civ. Rts.-Civ. Lib. L. Rev. 1 (1998) (proposing new way to think about the institutional structure of election campaigns); Frederick G. Slabeck, *The Constitution and Campaign Finance Reform: An Anthology* (1998) (useful collection of excerpts from oft-cited articles).

"In this circumstance, the theory and utility of our federalism are revealed, for the States may perform their role as laboratories for experimentation to devise various solutions where the best solution is far from clear." *United States v. Lopez*, 514 U.S. 549, 581 (1995) (Kennedy, J., concurring). We cannot hope to resolve in this brief all differences between the experts or the various States on the wisdom of contribution limits, and surely courts are ill-equipped to make those policy judgments as well, even were that their role.

Rather, we write in this case, first, to show the very real consequences of judicial action in this area of the law, for when a court strikes a campaign finance law in one State, it calls into question a whole host of related legal cousins elsewhere. And we write as well to urge the Court to let the States experiment in this area, not because the reforms are bearing fruit in some States—though many believe that is true—but because those States that impose contribution limits do so in the justifiable belief that these limits are necessary to ferret out the potentially corrupting role of big dollars in political campaigns. The Constitution does not frown on the States' objective here. Rather it embraces it, for the integrity of our democratic institutions suffers not just when traditional public debate on issues is squelched by the government, but also when quid pro quo deals are made between a big contributor and the public official, or when the need to raise campaign funds undermines the formulation of public policy.

The Constitution does not place the rights of those who would donate large amounts above the public's right to maintain a democratic system free from a pay-to-play approach to governing, and the First Amendment does not require the States to stand idly by while the temptation for corruption and the even more dangerous public cynicism it breeds run rampant in the name of free speech. Whatever their differences on the wisdom of contribution limits, the States all agree that the First Amendment should protect, not limit, the very experimentation now evident in their efforts to stamp out those twin evils.

II. A Contribution Limit Is Constitutional Unless It Prevents Vigorously Contested Elections.

A. The Constitutional Analysis Of Contribution Limits Articulated In *Buckley* Remains Sound Today.

1. A fair reading of *Buckley* is that it holds contribution limits to be constitutional unless, in the context of particular elections, they prevent candidates from waging vigorously contested campaigns. This reading of *Buckley* is derived from putting together two points that the Court's opinion explicitly makes. First, the Court says: "Congress was surely entitled to conclude that . . . contribution ceilings were a necessary legislative [measure] to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions." 424 U.S. at 28. (The Court reiterates this first point later in its opinion when it states: "Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large money contributions be eliminated." *Id.* at 30.) Second, in rejecting the claim that Congress was required to justify the particular limit of $1,000, in comparison to some higher amount, the Court responds that "Congress' failure to engage in such fine tuning does not invalidate the legislation," and then quotes approvingly the Court of Appeals' assertion that "if it is satisfied that some limit on contributions is necessary, a court has no scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000." *Id.*

Together, these two points add up to the proposition that Congress, or a state legislature, is constitutionally entitled to adopt any particular level of contribution limit (unless, as

we will discuss subsequently, it can be shown that the limit prevents candidates from waging vigorously contested campaigns). The latter point is that the legislature can choose whatever level of limit it thinks best as long as it justifiably believes some limit is necessary. The former point is that this legislative belief is generally justified because the absence of any limit at all might well result in an appearance of corruption (as well as inevitably increasing the risk of actual corruption). Thus, as a general rule, a legislature has the constitutional authority to choose whatever particular level of contribution limit it finds most reasonable because a legislature is entitled to believe that some limit is necessary to avoid at least the appearance of corruption.

The only qualification to this general rule is that the constitutionality of a contribution limit is unsustainable if the limit prevents candidates from engaging in vigorously contested campaigns. For this reason, the Court obviously finds it "significant[]" that the record in *Buckley* shows that the contribution limits there "do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues." *Id.* at 28-29. And this qualification is what the Court has in mind when it says that the specific level of a contribution limit—that is, $1,000 instead of $2,000—becomes constitutionally "significant only when ["such distinctions in degree"] amount to differences in kind." *Id.* at 30. In other words, the legislative choice of $1,000 rather than $2,000 becomes a "difference in kind" and thus unconstitutional if (but only if) the choice of the lower level has the consequence of stifling a robust electoral debate. In sum, the proposition of law to extract from *Buckley* holds that contribution limits are constitutionally valid (as measures to avoid at least the appearance of corruption) unless, in a particular case, they

happen to have the pernicious effect of preventing a vigorously contested campaign.

2. In this case, the Court should reaffirm this proposition of law, not solely on the grounds of stare decisis, but also because the proposition remains as sound now as at the time of *Buckley*. Twenty-three years have not changed the fact that, without any contribution limit at all, there may well exist an appearance of corruption (as well as a heightened risk of actual corruption). Nor has the passage of time altered the truth that it is impossible for a legislature to determine the precise dollar amount of the largest political contribution that poses no realistic risk to the integrity of the electoral process. Consequently, once it is established that *some* level of contribution limit would be constitutionally permissible for every election, the decision of exactly what level of limit to adopt remains a matter best left to legislative discretion, without judicial interference, unless it can be shown that the legislative choice will prevent a vigorously contested election.

Moreover, *Buckley's* general presumption that a contribution limit is constitutional rests upon a weighing of competing constitutional values that remains just as valid today as then. Avoiding both actual corruption and the appearance of corruption preserves "the integrity of our system of representative democracy," (*Buckley*, 414 U.S. at 26-27), and few governmental interests can be of greater importance than maintaining an electoral system that is—and is seen by citizens to be—free from the taint of influence-buying. Conversely, as the *Buckley* Court recognized, a contribution limit "entails only a marginal restriction on the contributor's ability to engage in free communication." *Id.* at 20. Instead, a contribution limit threatens free expression, if

at all, only when it causes an inability of candidates to engage in a vigorously contested electoral race. Thus, balancing the need to avoid both real and perceived corruption against the presumptively minimal intrusion on First Amendment values yields the conclusion that contribution limits are presumptively constitutional (unless and until they are shown to have the anti-democratic effect of preventing a robust debate among candidates).

There should be no doubt about the correctness of this constitutional calculus. The balance of competing constitutional considerations weighs heavily in favor of a general presumption that contribution limits are constitutionally valid. But in the event that the Court might find it useful, we offer a brief review of exactly why the interests in avoiding corruption and its appearance are so strong and why the threat of a contribution limit to First Amendment liberties is so (presumptively) slight.

B. The First Amendment Permits The States To Safeguard The Integrity Of The Electoral Process.

1. The corruption that concerned *Buckley,* and which will always remain a pressing concern in a representative democracy, is the possibility that candidates, once elected, will favor the interests of large-money contributors over the interests of others. This favoritism need not take the form of a fully-acknowledged "quid pro quo" between candidate and contributor. The favoritism can be as corrupting to representative democracy if the elected official feels obligated to give the interests of a big donor the benefit of the doubt in a close case.

The reason why this kind of favoritism is fundamentally antithetical to the integrity of representative democracy is that democracy is premised on the idea that the interests of all citizens count equally for purposes of determining public policies. *See* Robert Dahl, *Democracy and Its Critics* 85 (1989). As Jeremy Bentham put this basic point, "everyone [is] to count for one and no one for more than one." *Id.* at 86. This idea, of course, does not mean that everyone is entitled to prevail in having public policies coincide with their best interests. The operation of legislative decisionmaking in a representative democracy necessarily has its winners and losers. But the idea does mean that no one's special interests are entitled to extra weight or consideration in the determination of public policy just because of who they are or how much financial control they can exercise over a candidate's campaign.

To be sure, this point about the equal consideration of all citizens' interests in a democracy is different from the argument for an equalization of voices that is often made to defend expenditure limits, which are not involved in this case. The former point concerns solely the status of citizens and their competing interests in the decision-making of an elected official who is considering the pros and cons of adopting a particular public policy. The latter involves the very different issue of how much expression individual citizens may engage in to publicize their interests—an issue that obviously raises distinct First Amendment concerns, as *Buckley* recognized.

Moreover, the public perception that large-money contributions generate this kind of favoritism, or special consideration, by subsequently-elected officials is, as *Buckley* also recognized, almost as problematic as any actual favoritism that might occur. The reason that public

perception is so important is that the legitimacy of a system of government depends on the public's willingness to accept the system as fundamentally fair. And if the public has reason to believe that candidates owe their loyalty to a few well-heeled contributors, faith in our representatives and in the integrity of the political process suffers. This loss of faith leads to disinterest and detachment—the great foes of deliberative government. What the Court said decades ago about one of the first congressional attempts to regulate campaign contributions still applies to the States' efforts to regulate those contributions today:

> [I]ts aim was not merely to prevent the subversion of the integrity of the electoral process. Its underlying philosophy was to sustain the active, alert responsibility of the individual citizen in a democracy for the wise conduct of government.

United States v. International Union Automobile, Aircraft and Agricultural Implement Workers of Amer., 352 U.S. 567, 575 (1957) (discussing Tillman Act of 1907 that prohibited political contributions by corporations and banks).

In any event, there can be no denying that avoiding corruption and the appearance of corruption are among the most paramount of values that the law, or a piece of legislation, can endeavor to achieve. And as Chief Judge Wilkinson wrote just this year on behalf of the Fourth Circuit in a decision upholding contribution limits in North Carolina, the "effort on the part of a state legislature to protect itself from the damaging effects of corruption should not lightly be thwarted by the courts. Here, the proper judicial posture

should be one of restraint." *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 717-18 (4th Cir. 1999).

2. In contrast to the States' efforts "to protect the free discussion of governmental affairs," which is, as *Buckley* notes, "a major purpose of [the First] Amendment," 424 U.S. at 14, the act of giving money to another person is quite far removed from the heart of free expression. This point is true even if both the donor and donee know that the money will be used to engage in core political speech, like campaign advocacy. While the candidate's speech explaining his proposed agenda or policy priorities obviously lies right at the heart of the First Amendment, the contributor's act of handing money to the candidate is not itself "speech," unless one considers it an act of symbolic speech, tantamount to uttering the words, "I support this candidate." Yet, as *Buckley* recognized, an upper limit on the dollar amount of a campaign contribution, unaccompanied by any limit on independent expenditures, still permits the contributor to utter those words of political support as much as he wishes (and to disseminate these words using as much money as he is willing and able to spend).

Furthermore, as *Buckley* also acknowledged, a contribution limit still enables the contributor to engage in the "symbolic speech" of letting the contribution convey the message of political support. After all, as long as the contribution limit is not zero, the contributor still is free to hand the candidate a check (and to do so in public) and to write the check up to the amount of the legal limit. It is true that the contributor is not free to write the check for $1,000,000 when the limit is $1,000, and it is also true that a $1,000,000 check would convey symbolically some additional message about the intensity of the contributor's support for

the candidate—tantamount to uttering the words, "I really, really support this candidate." In any event, however, the deep-pocketed contributor is still at liberty to spend as much of his wealth as he wishes on independent messages to proclaim publicly how much he supports the candidate. Thus, a prohibition on *giving to a candidate* an amount of money *above a certain limit* is, as *Buckley* said, at most a "marginal" interference with the free expression of ideas. 424 U.S. at 20.

C. *Buckley* Strikes A Proper Balance Between The States' Interest In Electoral Integrity And The Candidates' Interest In Mounting Vigorous Campaigns.

The true threat to free speech that a contribution limit *conceivably* might make, as *Buckley* understood, is the possibility that candidates might be unable to raise enough money to wage vigorous campaigns. But this risk is remote, as *Buckley* also understood, as long as candidates are free to raise the same overall dollar amount from a larger number of donors, each contributing smaller sums. Although it is surely easier for a candidate to raise $1,000,000 from a single donor, rather than from one thousand donors each contributing $1,000, as long as the candidate is able to get to a comparable bottom line, either route gives him the same purchasing power for buying advertising time. There is no diminution of political speech as a result of the contribution limit.

Moreover, requiring a candidate to raise $1,000,000 from one thousand donors, rather than one, demonstrates precisely how contribution limits serve the compelling goal of avoiding corruption or the appearance of corruption. Precisely because it is so much easier to raise a large sum of money from one benefactor, rather than many benefactors, it

is also easy to become beholden—or appear to become beholden—to giving special consideration to that one benefactor's interests. It is much harder to provide special treatment for a thousand different individuals, many of whom have conflicting interests. To be sure, requiring a candidate to spend the time necessary to raise $1,000,000 from a thousand donors, rather than currying the favor of a single donor, may have costs, like making it more difficult for candidates, but especially incumbents, to perform their official duties or to educate themselves about details of important policy issues. Nonetheless, a legislature is entitled to make the discretionary judgment that, overall, the integrity of a well-functioning democracy is better served by requiring candidates to spend the time necessary to raise their campaign funds from a large base of donors.

Thus, *Buckley* struck the right balance of constitutional considerations in holding that contribution limits are presumptively valid—because presumably candidates still can raise enough money to wage vigorous campaigns by enlarging their pool of donors. But this presumption is rebuttable by showing that, in the context of a particular contribution limit and a particular election, candidates are unable in this way to raise the necessary funds to engage in vigorous campaign advocacy. If in a given case the presumption is rebutted by this kind of showing, then a court quite properly should invalidate the contribution limit as inconsistent with the freedom of expression necessary for democratic elections. But, absent this kind of showing, then, as *Buckley* held, courts should sustain contribution limits as constitutionally valid, since, by their very nature they require candidates to seek funds from a large number of donors, and thus serve the compelling goals of avoiding actual and perceived corruption.

III. Parties Challenging Contribution Limits Should Bear The Burden Of Showing That The Limits Prevent Candidates From Waging A Vigorous Campaign.

Given the proposition of law properly derived from *Buckley*—that contribution limits are constitutional unless they prevent vigorously contested campaigns—it follows that *Buckley* effectively established a rule for the burden of proof in a case challenging the constitutionality of a particular contribution limit. It is the burden of parties who challenge the contribution limit to show that the limit prevents candidates from waging vigorously contested campaigns. If these parties meet this burden, then they should prevail (with the court enjoining the application of the limit to the particular elected office at issue). But if they fail to meet this burden, then the government should prevail in its defense of the limit's constitutionality. And if those challenging the constitutionality of the contribution limit fail even to proffer evidence that would tend to show the inability of candidates to wage vigorous campaigns, then the government should be entitled to summary judgment on the ground that there is no genuine issue of material fact.

It is important to be clear about precisely what evidence these challenging parties would need to offer to defeat the government's motion for summary judgment. It would not be enough for a particular candidate to show that the contribution limit prevents *him* from raising an amount of money sufficient to wage a vigorous campaign. Nor would it suffice for this candidate to show also that *he* would have been able to raise the amount necessary for vigorous

campaign advocacy had identifiable donors been able to contribute sums above the legislative limit.

Instead, the proper focus of the factual inquiry is on the effect of the contribution limit *on the race for the particular elected office as a whole*. In other words, as long as there are plenty of other candidates who, despite the contribution limit, are able to raise enough money to wage vigorously competitive campaigns against each other, then the electoral process is well-functioning. In this situation, even with the contribution limit, there is still a robust debate among competing candidates, and the electorate is able to use that debate to make a choice about who should be selected to serve in office. Free political expression remains flourishing and hardly has been stifled by the contribution limit. The only consequence is that *a particular candidate* has been unable to raise the funds necessary *for him* to enter the fray on a competitive basis with the other candidates for the same office. But this consequence means only that this particular candidate lacks the breadth of popular support that the other candidates have (a fact that is surely relevant to a well-functioning electoral process's efforts to winnow the field to, eventually, a single winner). *See Burdick v. Takushi*, 504 U.S. 428, 438 (1992).

Moreover, any individual who would be willing to give this relatively unpopular candidate a large campaign contribution would still be free to spend that money independently in an effort to build greater support for that candidate. Thus, this supporter's freedom to express a public message of support for the candidate remains fully protected. It is true, of course, that the contribution limit prevents the particular candidate himself from having control of this money to publicize his own message. But, just as obviously, there is

no constitutional requirement that candidates be able to receive whatever funds anyone is willing to give them. There is no doubt about the constitutionality of limits, or even prohibitions, on campaign contributions by foreign governments or citizens, or corporations or labor unions. *See Federal Election Comm'n v. National Right to Work Comm.*, 459 U.S. 197, 210 (1982). This is true *even though, in the absence of those limits or prohibitions, the candidate would have received enough money to wage a vigorous campaign against other competitive candidates*. In other words, the legislature is entitled to keep these potentially corrupting sources of funds from entering a candidate's campaign coffers, in part to permit the electoral process to determine which candidates become competitive without receiving those potentially corrupting funds. Likewise, the legislature is entitled to make the judgment that, as long as there are enough competitive candidates, the electoral process is better served when those who can wage vigorous campaigns do so without receiving large amounts of money from a small number of donors.

Thus, when the issue is viewed, as it should be, from the perspective of the electoral race as a whole, there is no First Amendment violation just because a particular candidate is unable to raise the money that *that* candidate needs for a competitive campaign. On the contrary, the interests of the First Amendment are fully served by the existence of an ample number of other candidates who are able to raise sufficient funds for competitive campaigns, as well as the unfettered freedom of everyone to express independently whatever political messages they wish. Likewise, the compelling interest of protecting the integrity of the electoral process justifies a contribution limit that requires candidates raising funds from outside sources to do so from a large number of

donors, even if the consequence is that a particular candidate is unable to secure a broad base of donors. On balance, the competing constitutional considerations require a candidate challenging a contribution limit to prove more than just the fact that *his own candidacy* was rendered uncompetitive by the contribution limit. Instead, he must prove that the contribution limits led to an insufficient number of competitive candidacies, so that the result was that the electorate was denied a meaningful choice in the process.

A candidate might meet this burden in either of two ways. One would be to show that contribution limits caused one candidate (perhaps, at times, the incumbent) to have so much of an advantage that all others, as a group, were unable to wage a vigorous race. The other would be to show that although all candidates were able to raise roughly the same amount of money, that amount was not enough, in the given media market, for any of the candidates to engage in a robust public debate of the issues, thereby depriving the electorate of any meaningful choice on election day. (This problem could arise in open-seat contests as well as those involving challenges against incumbents.) But unless there is a showing that, in some way, the contribution limit causes a systemic frustration of a competitive election process, the burden of proof on the relevant factual issue has not been met, and the contribution limit should be sustained as constitutional.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals should be reversed.

Respectfully submitted,

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