No. 98-963

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

JEREMIAH W. NIXON,
ATTORNEY GENERAL OF MISSOURI, *et al.*,

Petitioners,

—v.—

SHRINK MISSOURI GOVERNMENT PAC,
ZEV DAVID FREDMAN and JOAN BRAY,

Respondents.

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

BRIEF FOR NORMAN DORSEN, BRUCE J. ENNIS, CHARLES MORGAN, JR., ARYEH NEIER, JOHN PEMBERTON, JOHN POWELL, and MELVIN L. WULF, *AMICI CURIAE*, SUPPORTING PETITIONERS

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QUESTION PRESENTED

Did the Court of Appeals err in subjecting Missouri's $1,075 campaign contribution limit for statewide office to strict scrutiny, and in holding that it violates the First Amendment?

INTEREST OF THE *AMICI CURIAE*[1]

Amici, who file this brief with the consent of the parties, are civil libertarians: advocates for strong protection of freedom of speech, broadly conceived, and believers that the First Amendment guarantees just such capacious rights. Among their other responsibilities — teaching law, practicing law, leading a foundation deeply engaged in building freedom and civil society abroad — each has served in a leadership position with the American Civil Liberties Union.

Norman Dorsen served as ACLU General Counsel from 1969-1976 and as President of the ACLU from 1976-1991. Jack Pemberton and Aryeh Neier served as Executive Directors of the ACLU from 1962-1978. Melvin L. Wulf, Bruce J. Ennis, and John Powell served as National Legal Directors of the ACLU from 1972-1992. Charles Morgan, Jr. served as National Legislative Director of the ACLU from 1972-1976. With the exception of Burt Neuborne, who is counsel for respondent Joan Bray supporting petitioners in this case, and two other persons currently in government service and therefore not free to participate in this brief,[2] every living person to have served as ACLU President, ACLU Executive Director, ACLU Legal Director, or ACLU Legislative Director during the past 30 years, with the exception of the current leadership, has joined this brief supporting the validity of the Missouri

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than the *amici curiae*, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief.

[2] Morton Halperin and John Shattuck, both former Legislative Directors of the ACLU, are now, respectively, Director of the Office of Policy Planning at the State Department and Ambassador to the Czech Republic.

limitations at issue. Each has previously signed a statement "supporting the constitutionality of efforts to enact reasonable campaign finance reform."

Amici submit this brief supporting the Missouri law imposing ceilings on campaign contributions *not* because they believe that the particular ceilings at issue here are wise, but because of their intense belief that the Constitution does not prohibit them, and that well-meaning opponents of limits on campaign spending have misread the First Amendment in contending otherwise. *Amici* believe that, as long as ceilings on contributions do not endanger the ability of candidates to amass the funds needed for robust electoral advocacy, reasonable content neutral efforts to limit the potentially corrosive impact of money on electoral politics do not violate the First Amendment. Far from rendering contributions ceilings presumptively unconstitutional, the First Amendment and the democratic values it safeguards are vitally served when legislatures act to prevent the corruption of the political process by limiting the size of contributions, so long as those ceilings do not prevent candidates from amassing the resources necessary to engage in robust electoral advocacy.

SUMMARY OF ARGUMENT

Whatever else may be said about the analytical framework established by *Buckley v. Valeo*, 424 U.S. 1 (1976), *Buckley* was surely sound insofar as it recognized that the speech interests underlying contributions to candidates or campaigns are limited and are not so seriously threatened by contribution ceilings as to warrant exacting judicial scrutiny or to be presumptively immune from legislative regulation.

The speech interests underlying campaign contributions are the interest in signaling support for a candidate and the interest in fueling a candidacy. A ceiling on contributions

entails only a "marginal restriction" on those interests, *id.* at 20, since 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." *Id.* at 21. Similarly, in the usual case, contribution ceilings do not significantly restrain the "fueling" interests, given the evident success candidates throughout the nation have had in obtaining huge campaign war chests while subject to the $1,000 contribution limitation of federal law, and comparable success in states with similar ceilings.

In recognition of the modest impact contribution ceilings have on free speech interests, and the important non-content-based goals they serve — avoiding the appearance and reality of corruption — this Court's cases from *Buckley* onward have consistently subjected contribution ceilings to less-than-strict scrutiny.

Nothing in the record below suggested that either of the interests underlying contributions is so sufficiently threatened by Missouri's contribution limitations as to warrant judicial skepticism, strict scrutiny, or judicial invalidation of the attempt by Missouri's voters, acting through their legislators, to reform the political process so as to avoid the reality and appearance of corruption and make it more democratic in appearance and in fact.

ARGUMENT

I. UNDER BUCKLEY V. VALEO, THE ACT OF TRANSFERRING MONEY TO A CANDIDATE IMPLICATES ONLY LIMITED EXPRESSIVE INTERESTS, AND THE IMPOSITION OF REASONABLE CEILINGS ON THE SIZE OF CAMPAIGN CONTRIBUTIONS DOES NOT WARRANT FIRST AMENDMENT STRICT SCRUTINY, UNLESS THE CEILINGS UNDERMINE THE ABILITY OF CANDIDATES TO AMASS FUNDS NEEDED TO WAGE ROBUST CAMPAIGNS.

The current constitutional framework governing the regulation of political campaign contributions and expenditures took shape in *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*). Noting our "'profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open,'" *id.* at 14 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)), the Court considered both political contributions and campaign expenditures to constitute forms of expression that come within the free speech guarantee of the First Amendment. In some respects, the Court fused spending and speech into a single First Amendment concept, reasoning that spending money is a necessary precondition to campaign speech because "every means of communicating ideas in today's mass society requires the expenditure of money." *Id.* at 19. The Court analogized money to fuel, noting that just as an automobile cannot travel without gasoline, a political speaker cannot communicate effectively in the absence of money. *Id.* at 19 n.18.[3]

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[3] With respect, while the analogy is instructive in ways, it was also grievously imprecise, because a contested election campaign is not simply a drive in the country, with each

(continued...)

The Court also discerned, however, that fundamentally different First Amendment interests underlie *contributions to* candidates, than underlie spending decisions by candidates, parties, or individuals speaking directly to the public. The Court concluded that limitations on contributions ought not be subjected to strict scrutiny, and that judgment and the sound reasons supporting it ought to control this case.

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[3](...continued)
candidate freely making autonomous decisions about how much fuel to put in the car, but a competitive race in which participants' decisions about how much to spend are, in large part, reciprocally driven by the spending of opponents. Instead of a scenic drive in the family car, a more apt analogy would be to an arms race where both contestants wish to limit their spending, but neither dares do so because of a fear that its adversary will pull ahead. Uncontrolled campaign spending often resembles a classic arms race spiral, where opposing participants can become trapped in a prisoners' dilemma that can be resolved only by collective action. *See* Kenneth E. Abbott, *"Trust But Verify": The Production of Information in Arms Control Treaties and Other International Agreements*, 26 Cornell Int'l L.J. 1 (1993). Whether sufficiently generous campaign spending ceilings that permit robust and vigorous advocacy but avoid an arms control spiral should be equated with censorship is a much closer question than the *Buckley* court viewed it, but that issue is not presented in this case, which concerns only contribution limitations, not spending limitations.

A. Reasonable Contribution Ceilings Impose Only a Marginal Restriction on a Contributor's Legitimate First Amendment Interests.

The *Buckley* Court discerned fundamental differences in the expressive values underlying contributions and independent expenditures. The Court concluded that although both contribution and expenditure limitations implicate important expressive interests, expenditure ceilings "impose significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions." *Buckley*, 424 U.S. at 23. Contribution ceilings entail only a "marginal restriction" upon the contributor's ability to engage in free communication because a contribution is simply a "general expression of support" and a "symbolic expression" signaling the contributor's support for a candidate and his or her views. As the Court wrote:

> 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 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.

Id. at 20-21 (footnote omitted).

Because campaign contributions are merely indirect efforts to "fuel" the speech of another, the Court concluded that the overall effect of the contribution ceilings at issue in *Buckley* was "merely to require candidates and political committees to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression, rather than to reduce the total amount of money potentially available to promote political expression. *Id.* at 22.

Similarly, although recognizing that both campaign contributions and independent expenditures are forms of political association, the Court recognized differences between the effect on associational freedoms of limitations on contributions, on the one hand, and spending, on the other. *Id.* Making a contribution "serves to affiliate a person with a candidate" and "enables like-minded persons to pool their resources in furtherance of common political goals." Those interests are not threatened by reasonable limitations such as the $1,000 contribution ceiling at issue in *Buckley* because contribution limitations leave "the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates" and leave

"associations and candidates [free] to aggregate large sums of money to promote effective advocacy." *Id.*

In upholding the contribution limitations at issue in *Buckley*, the Court found "significant[ ]" that the "contribution limitations in themselves do not undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens, associations, the institutional press, candidates, and political parties," *id.* at 29, and that there was no indication that the contribution limitations "would have any *dramatic adverse effect* on the funding of campaigns and political associations." *Id.* at 21 (emphasis added). Contribution restrictions would only have a cognizable impact on political dialogue and first Amendment interests, the Court held, "if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." *Id.*

The Court's analysis of contribution limitations in *Buckley* thus recognized two important speech interests of which judicial review of campaign finance regulation must take account. *First*, restrictions must not be so restrictive as to curtail "robust and effective discussion of candidates and campaign issues." *Second*, restrictions must not be so restrictive as to curtail an individual contributor from signaling the fact and intensity of his (or her) support. *Id.* at 29.

With respect to the legislation before it, the Court concluded that "[i]t is unnecessary to look beyond the Act's primary purpose — to limit the actuality and appearance of corruption resulting from large individual financial contributions — in order to find a *constitutionally sufficient justification* for the $1,000 contribution limitation," *id.* at 26 (emphasis added), and that "[t]he contribution ceilings thus serve the *basic governmental interest* in safeguarding the integrity of the electoral process without directly impinging upon the rights of

individual citizens and candidates to engage in political debate and discussion." *Id.* at 58 (emphasis added).

By contrast, the Court struck down expenditure limitations, holding that they placed "substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate." *Id.*[4]

B. REASONABLE CAMPAIGN CONTRIBUTION CEILINGS ARE SUBJECT TO LESS-THAN-STRICT SCRUTINY.

The *Buckley* Court, in concluding its analysis of campaign contributions, stated that "under the *rigorous* standard of review established by our prior decisions, the *weighty interests* served by restricting the size of financial contributions to political candidates are *sufficient to justify* the limited effect upon First Amendment freedoms caused by the $1,000 contribution ceiling." *Buckley*, 424 U.S. at 29 (emphasis added). Although the *Buckley* Court failed to articulate precisely what the "rigorous" standard of review

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[4] The expenditure limitations at issue in *Buckley* were unreasonably low. Spending for congressional campaigns was capped at $70,000 for both the primary and general elections; spending for Senate campaigns was capped at 8 cents multiplied by the voting-age population or $100,000 for the primary, and 12 cents multiplied by the voting age population or $150,000 for the general election; and independent expenditures were capped at $1,000. *See Buckley*, 424 U.S. at 39, 55. Since those unreasonably stringent limitations on expenditures would have materially interfered with campaigning, *amici* have no quarrel with the precise holding of *Buckley*. Whether more generous limits should similarly be equated with censorship is a much closer question not now before the Court. *See* n. 3, *supra.*

entailed, it was clearly less rigorous than the "exacting" scrutiny accorded to expenditure restrictions. *Compare id.* at 23-30 (review of contribution restrictions) *with id.* at 39-54 (review of expenditure restrictions). The Court's analysis of the contribution limitations was far from "strict" precisely because, as compared to spending regulations, contribution limitations have only a "marginal" effect on legitimate expressive values.

Finding that a limitation on contributions "involves little direct restraint on [a contributor's] political communication, for it permits the symbolic expression of support," and that the limitations allow for "robust and effective discussion of candidates and campaign issues," the Court suggested that contribution ceilings would be unconstitutional only where they have a dramatic adverse effect on a candidate's ability to raise campaign funds, thereby severely impacting political dialogue. *Id.* at 29. Presumably, contribution limitations flunk scrutiny only in those cases where they prevent candidates and political committees from amassing the resources necessary for effective advocacy. *Id.*

Cases subsequent to *Buckley* have consistently reaffirmed that contribution ceilings are ordinarily not subject to strict scrutiny. *See, e.g., California Medical Ass'n v. Federal Election Comm'n*, 453 U.S. 182, n.16, 196 (1981) (plurality opinion) (contributions involve only "some *limited* element of protected speech," and the "'speech by proxy'" that is achieved through contributions to a political campaign committee "is not the sort of political advocacy that this Court in Buckley found entitled to full First Amendment protection.") (emphasis added); *Federal Election Comm'n v. National Conservative Political Action Committee*, 470 U.S. 480, 493 (1985) ("NCPAC") (distinguishing expenditure limitations from limitations on contributions); *Federal Election Comm'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 259-60 (1986) ("[w]e have consistently held that restrictions on contributions require

less compelling justification than restrictions on independent spending.") (citing *NCPAC, California Medical Ass'n*, and *Buckley*); *Colorado Republican Fed. Campaign Comm. v. Federal Election Comm'n*, 518 U.S. 604, 614-15 (1996) (plurality opinion) (the Court's cases have found a "'fundamental constitutional difference between money spent to advertise one's views independently of the candidate's campaign and money contributed to the candidate to be spent on his campaign.'") (citing *NCPAC*).

A comparable distinction — between regulations that substantially threaten First Amendment interests, which draw strict scrutiny, and those that impose relatively light burdens and are accordingly subject to less rigorous review — has been consistently applied to the related line of cases involving voting rights. *See, e.g., Timmons* v. *Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) ("Regulations imposing severe burdens on plaintiffs' rights must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's "'important regulatory interests'" will usually be enough to justify "'reasonable, nondiscriminatory restrictions.'") (citations omitted); *Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (rejecting petitioner's assumption "that a law that imposes any burden upon the right to vote must be subject to strict scrutiny," and noting that "the rigorousness" of the Court's inquiry into the propriety of a challenged regulation depends on the extent to which that regulation burdens First and Fourteenth Amendment rights. If a statute imposes only "'reasonable, nondiscriminatory restrictions'" upon those rights, "'the State's important regulatory interests are generally sufficient to justify'" the restrictions.) (citation omitted).[5]

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[5] *Amici* believe that the Court in both *Timmons* and *Burdick* seriously undervalued the expressive aspects of voting, (continued...)

The recognition that contribution ceilings serve important goals unrelated to the suppression of free expression and the resulting decision to subject them to less-than-strict scrutiny are consistent with the Court's general First Amendment jurisprudence. The First Amendment interests underlying contributions are of course legitimate and important, but they are far more indirect than those accompanying expenditures: the speech interests implicated in campaign contributions are simply (1) to assure that a preferred candidate has enough money to "fuel" a robust and effective campaign; and (2) to "signal" the fact and intensity of a contributor's support for a particular candidate. *Buckley*, 424 U.S. at 28-29.

As long as those two important First Amendment interests are not imperiled, a putative contributor has no further legitimate First Amendment interest, or at best only a modest one, in transferring unlimited sums of money to candidates for public office. Indeed, once a contributor's legitimate "fueling" and "signaling" First Amendment interests are satisfied, the act of transmitting unlimited sums of money to candidates for public office is more accurately perceived as a form of regulable conduct, not as protected First Amendment activity. *See Colorado Republican Fed. Campaign Comm.*, 518 U.S. at 615. That is why, as the *Buckley* Court recognized, once a Presidential candidate opts for public funding (thereby assuring that a putative contributor's "fueling" interest is satisfied), contributors may be forbidden from making any contributions directly to the Presidential candidate. *Buckley*, 424 U.S. at 95, n.129.

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[5](...continued)
leaving the outcomes in both cases subject to criticism.

So long as Missouri's regulatory scheme does not significantly impinge upon a contributor's legitimate First Amendment "fueling" and "signaling" interests, no reason exists to impose any level of heightened First Amendment scrutiny upon it.

II. THE STRICT SCRUTINY APPLIED BY THE EIGHTH CIRCUIT WAS AN UNWARRANTED STANDARD OF REVIEW.

Failing to recognize the distinction between contribution ceilings and expenditure ceilings (which this Court described as "established principle" in *Colorado Republican Fed. Campaign Comm.*, 518 U.S. at 615), and that this case involves only contribution ceilings, the Eighth Circuit strictly scrutinized the limitations at issue, requiring Missouri to prove "that it has a compelling interest and that the contribution limits at issue are narrowly drawn to serve that interest." *Shrink Missouri Gov't PAC v. Adams*, 161 F.3d 519, 520 (1998) (citations omitted). The Eighth Circuit thereby ignored the practice of this Court's entire campaign finance jurisprudence to subject limitations on contributions to less-than-strict scrutiny. *See Colorado Republican Fed. Campaign Comm.*, 518 U.S. at 635 (dissenting opinion) (Thomas, J.); *Federal Election Comm'n v. Massachusetts Citizens for Life, Inc.*, 479 U.S. at 259-60.

The rigor of the scrutiny accorded by the Eighth Circuit is evident from its insistence that the contribution limits could be upheld only if Missouri undertook to prove that legislators were actually being corrupted by contributions in excess of $1,075, and that public perception of the corrupting influence of large campaign contributions was "objectively" reasonable. *Shrink Missouri Gov't PAC*, 161 F.3d at 522.

Only a level of review that was not merely strict but intentionally fatal could have led the panel to brush aside the considered judgment of both Houses of the Missouri legislature,

an extraordinary expression of concern by 74% of the state's electorate, the local expertise of the Federal District Court, and a sworn statement by the co-chair of the Interim Committee that recommended contribution ceilings. *See Shrink Missouri Gov't PAC v. Adams*, 5 F.Supp.2d 734, 737, 739, n.7 (E.D. Mo. 1998).

The standard of proof required by the panel majority would invariably doom legislation attempting to limit the size of campaign contributions. Proponents of such legislation are unlikely to be able to obtain the evidence that standard requires, when such proof often eludes prosecutors armed with full prosecutorial authority.

If the evidence and considerations canvassed above, persistent legislative efforts to address the appearance of corruption, and the widespread belief by Americans that their representatives are far more beholden to large monied interests than to voters generally, are insufficient (as the court below held) even to raise an issue of triable fact that concern with the potentially corrupting influence of campaign contributions in excess of $1,075 was more than "illusory" within the meaning of *Buckley*, 424 U.S. at 27, then the promise of *Buckley* — that reasonable limitations on contributions may be upheld in the interests of combating the "inherent" risk of real and perceived corruption — will have been rendered sterile indeed.

Buckley itself noted the difficulty inherent in proving a *quid pro quo* relationship between large campaign contributions and particular political conduct that makes it necessary to place prophylactic limits on the size of campaign contributions in the first place. *Id.* at 26-27. But where this Court twenty-three years ago read that difficulty as reason *not* to stifle legislative reform, the Eighth Circuit turned that difficulty into a weapon to beat back campaign contribution ceilings, requiring Missouri to prove adjudicative facts demonstrating that Missouri politicians were actually being corrupted by large campaign

contributions before the state could prophylactically control the inherently corrupting influence of unlimited campaign contributions. Doing so is inconsistent with the less-than-strict review accorded other laws that do not directly, substantially, or in content-based ways trench on First Amendment interests. *See, e.g., Turner Broadcasting Sys., Inc. v. FCC*, 520 U.S. 180 (1997); *Turner Broadcasting Sys., Inc. v. FCC*, 512 U.S. 622 (1994).

The Eighth Circuit panel failed to find —and had no basis for finding — that Missouri's attempt to impose an inflation-adjusted ceiling of $1,075 on contributions to candidates for statewide office would actually impinge on a contributor's legitimate First Amendment interests in "fueling" a candidate's ability to engage in robust and effective speech, or in "signaling" the contributor's intense level of support. It therefore erred when it applied strict scrutiny to invalidate a modest contribution ceiling limitation not different in kind from those upheld on lesser scrutiny in *Buckley*.

Indeed, although the burden was on the challengers, the record is clear that Missouri's $1,075 ceiling on direct contributions does *not* materially impinge on a contributor's "fueling" interest, and that candidates for statewide office in Missouri are currently able to raise sufficient funds to conduct vigorous and robust campaigns, just as candidates for federal office throughout the nation are able to raise adequate funds to wage robust campaigns under an even more stringent contribution ceiling. Strict scrutiny was therefore wholly unwarranted.

III. MISSOURI'S CONTRIBUTION CEILINGS DO NOT UNDULY IMPINGE ON CONTRIBUTORS' LEGITIMATE FIRST AMENDMENT INTERESTS.

Measured against an appropriate standard of review, Missouri's decision to adopt the federal ceiling for statewide

office is fully justified. Missouri voters expressed overwhelming concern that large contributions were eroding confidence in the democratic process by establishing a climate of apparent corruption when they approved a statewide initiative placing even more stringent limits on campaign contributions. *Shrink Missouri Gov't PAC*, 161 F.3d at 520. Both Houses of the Missouri legislature carefully considered the issue, and determined that contribution ceilings were necessary to prevent the appearance or reality of corruption. Senator Goode, a 36-year veteran of Missouri politics, filed a sworn statement describing the deliberations of the Interim Committee of the Missouri legislature that recommended the contribution limits, and explaining why he believed them to be necessary. *Id.* Newspaper editorials throughout the state, both in the context of the voter initiative, and the legislative consideration of the issue, described incidents of apparent relationship between large contributions and political favors. *Shrink Missouri Gov't PAC*, 5 F.Supp.2d at 739, n.7. The federal district court judge, conversant with the reality of Missouri political life, believed that no reasonable person could disagree with the determination that contributions in excess of $1,075 posed, at a minimum, a risk of the appearance of corruption. *Id.* at 739. For the panel majority to rule that such a record does not even pose a triable issue of fact concerning the relationship between contributions in excess of $1,075, and the appearance or reality of corruption, is to substitute ideological disagreement with this Court's decision in *Buckley* for reasoned analysis.

There was no evidence that Missouri's contribution limitations undermine to any material degree the potential for robust and effective discussion of candidates and campaign issues by individual citizens. They do not limit the amount Shrink Missouri Government or any of its members may jointly or severally independently expend in order to advocate political views. The Missouri limits, like the limits in *Buckley*, entail only a marginal, if any, restriction upon the contributor's ability to

engage in speech: they do not prevent anyone from spending as much as she wishes on her own speech.

So far as the interest in fueling candidates is concerned, a contribution ceiling leaves that interest unimpaired, absent proof that the limitation is so draconian as to prevent candidates from raising sufficient funds to spread their speech publicly. Campaign money is fungible, and a candidacy can be equally well fueled whether the funds come from one large contribution or a larger number of smaller ones. Indeed, under *Buckley*, if a candidate were to opt for public financing, the contributor's First Amendment interest in fueling would be fully satisfied, justifying a complete ban on private contributions. *Buckley*, 424 U.S. at 95, n.129.

Nor does the $1,075 limit impinge on a contributor's ability to "signal" support, or particularly "intense" support, for a candidate. That interest is more than adequately served by the ability to make, and to be publicized as having made, a contribution to the maximum limit permitted. It can be further served, to whatever unlimited extent a contributor may desire, by the opportunity to make unlimited independent expenditures in support of the candidate.

No basis exists to subject Missouri's effort to limit the coercive use of campaign contributions to any level of heightened First Amendment scrutiny, much less the lethal version employed to invalidate Missouri's limits. Limiting the size of campaign contributions to $1,075 minimizes the illegitimate coercive use of large contributions, while respecting a contributor's desire to "fuel" and "signal." Absent a showing that Missouri's ceilings prevent candidates from gathering the funds necessary for robust campaign advocacy, the fact that some members of the Eighth Circuit might have drawn the balance differently does not justify overturning the considered judgment of the people of Missouri that the inherent likelihood of corruption, the legislative perception of corruption, and the

popular belief in corruption in the electoral finance process warranted limiting the size of contributions to candidates for statewide office.

CONCLUSION

The judgment of the Eighth Circuit should be reversed.

Respectfully Submitted.

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