

No. 12-536

---

---

In The  
**Supreme Court of the United States**

—◆—  
SHAUN MCCUTCHEON, ET AL.,

*Appellants,*

v.

FEDERAL ELECTION COMMISSION,

*Appellee.*

—◆—  
**On Appeal From The United States District Court  
For The District Of Columbia**

—◆—  
**BRIEF OF *AMICI CURIAE* COMMUNICATIONS  
WORKERS OF AMERICA, GREENPEACE, NAACP,  
SIERRA CLUB, AMERICAN FEDERATION OF  
TEACHERS, MAIN STREET ALLIANCE,  
OURTIME.ORG, PEOPLE FOR THE AMERICAN  
WAY FOUNDATION, ROCK THE VOTE, U.S.PIRG,  
WORKING FAMILIES ORGANIZATION  
AND DÉMOS IN SUPPORT OF APPELLEE**

—◆—  
ELIZABETH KENNEDY  
ADAM LIOZ  
DÉMOS  
220 Fifth Ave.  
2nd Floor  
New York, NY 10001  
(212) 633-1405

BRENDA WRIGHT  
*Counsel of Record*  
DÉMOS  
358 Chestnut Hill Ave.  
Suite 303  
Brighton, MA 02135  
(617) 232-5885  
bwright@demos.org

*Counsel for Amici Curiae*

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	iv
INTEREST OF <i>AMICI CURIAE</i> .....	1
SUMMARY OF ARGUMENT .....	1
ARGUMENT .....	4
I. AGGREGATE CONTRIBUTION LIMITS ARE A LONGSTANDING MEASURE TO MEET THE GOVERNMENT’S RESPON- SIBILITY TO FIGHT THE REALITY AND APPEARANCE OF CORRUPTION .....	4
A. Aggregate contribution limits fight the reality and appearance of corrup- tion without unduly burdening the exercise of a constitutional right.....	5
B. Government has a compelling inter- est in fighting the reality and ap- pearance of corruption to protect the integrity of democratic governance.....	7
II. THE EROSION OF PUBLIC CONFIDENCE IN GOVERNMENT STEMMING FROM CONTRIBUTIONS THAT CRE- ATE THE APPEARANCE OF CORRUP- TION IS A SERIOUS, AND NOT A SPECULATIVE, CONCERN .....	12
A. Americans’ confidence in government is at an all-time low.....	13

## TABLE OF CONTENTS – Continued

	Page
B. Americans believe their elected representatives are more responsive to financial supporters than to constituents or the public interest .....	15
C. Americans believe that government’s differential response to wealthy donors is caused by the corrupting influence of large contributions.....	18
III. AMERICANS’ CONCERNS ABOUT DONORS’ IMPROPER INFLUENCE OVER GOVERNMENT ARE JUSTIFIED AND NOT SPECULATIVE.....	22
A. The policy preferences of those who can make large donations differ greatly from those of ordinary Americans.....	23
B. The largest contributors already dominate the funding of U.S. elections.....	27
C. Public policy outcomes in the U.S. are strongly responsive to the preferences of the affluent, even when those preferences diverge markedly from those of the general public.....	32
IV. STRIKING THE AGGREGATE LIMITS WILL INCREASE THE DANGER OF CORRUPTION AND AGGRAVATE THE APPEARANCE OF CORRUPTION.....	37
CONCLUSION.....	41

TABLE OF CONTENTS – Continued

Page

APPENDIX

ORGANIZATIONAL DESCRIPTIONS OF  
*AMICI CURIAE* .....1a

## TABLE OF AUTHORITIES

	Page
CASES	
<i>Beaumont v. FEC</i> , 539 U.S. 146 (2002) .....	6, 40
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976) (per curiam) ....	<i>passim</i>
<i>California Medical Ass'n v. FEC</i> , 453 U.S. 182 (1981).....	10
<i>Citizens Against Rent Control v. Berkeley</i> , 454 U.S. 290 (1981).....	36
<i>Citizens United v. FEC</i> , 558 U.S. 310 (2010) ...	11, 15, 32
<i>FEC v. Colo. Republican Fed. Campaign Comm. (Colorado II)</i> , 533 U.S. 431 (2001).....	8, 9
<i>FEC v. National Right to Work Comm.</i> , 459 U.S. 197 (1982).....	10
<i>FEC v. Nat'l Conservative Political Action Comm.</i> , 470 U.S. 480 (1985) .....	17
<i>FEC v. Colorado Federal Campaign Comm.</i> , 533 U.S. 431 (2001).....	8, 9
<i>McConnell v. FEC</i> , 251 F. Supp. 2d 176 (D.D.C.), <i>aff'd in part, rev'd in part</i> , 540 U.S. 93 (2003).....	31
<i>McConnell v. FEC</i> , 540 U.S. 93 (2003).....	<i>passim</i>
<i>McCutcheon v. FEC</i> , 893 F. Supp. 2d 133 (D.D.C. 2012).....	6, 7
<i>Nixon v. Shrink Mo. Gov't PAC</i> , 528 U.S. 377 (2000).....	12, 16

## TABLE OF AUTHORITIES – Continued

	Page
<i>U.S. Civil Service Comm’n v. Nat’l Ass’n of Letter Carriers, AFL-CIO</i> , 413 U.S. 548 (1973).....	38
 STATUTES, REGULATIONS, AND RULES	
2 U.S.C. § 441a(a)(3) (2011).....	4, 5
76 Fed. Reg. 8,370 (Feb. 14, 2011) .....	4
Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 .....	5, 8
Pub. L. No. 107-155, § 307, 116 Stat. 81 (2002)....	5, 11, 12
 ADMINISTRATIVE OPINIONS, RULEMAKINGS, AND NOTICES	
FEC, <i>Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold</i> , Notice 2013-03, 78 Fed. Reg. 8,530 (Feb. 6, 2013) .....	4
 OTHER AUTHORITIES	
Am. Nat’l Election Studies, <i>The ANES Guide to Public Opinion and Electoral Behavior</i> (last visited July 12, 2013).....	14, 38
Am. Nat’l Election Studies, <i>User’s Guide and Codebook for the Preliminary Release of the ANES 2012 Time Series Study</i> (July 1, 2013)....	14, 38
Larry M. Bartels, <i>Unequal Democracy: The Political Economy of the New Gilded Age</i> (2008).....	35

## TABLE OF AUTHORITIES – Continued

	Page
Paul Blumenthal, <i>Chris Murphy: ‘Soul-Crushing’ Fundraising Is Bad for Congress</i> , Huffington Post (May 7, 2013, 5:40 PM).....	30
Brennan Ctr. for Justice, <i>National Survey: Super PACs, Corruption, and Democracy</i> (Apr. 24, 2012).....	16
David Callahan & J. Mijin Cha, <i>Stacked Deck: How the Dominance of Politics by the Affluent and Business Undermines Economic Mobility in America</i> , Dēmos (2013) .....	25, 35
Center for Responsive Politics, <i>Donor Demographics</i> , OpenSecrets.Org .....	28
Common Cause, <i>Fair Elections Poll</i> , Money in Politics (Feb. 2009).....	20
Lee Drutman, Sunlight Foundation, <i>The Political 1% of the 1% in 2012</i> , Sunlight Foundation Blog (June 24, 2013, 9:00 AM) .....	27, 28, 30
Martin Gilens, <i>Affluence and Influence: Economic Inequality and Political Power in America</i> (2012) .....	26, 33, 34, 35, 36
John Green, et al., <i>Individual Congressional Campaign Contributors: Wealthy, Conservative, and Reform-Minded</i> (1998).....	29
Greenberg Quinlan Rosner Research, <i>Money in Politics is a Ballot Box Issue</i> , Democracy Corps Nat’l Surveys (May 9, 2012).....	20, 39

## TABLE OF AUTHORITIES – Continued

	Page
Greenberg Quinlan Rosner Research, <i>Voters Push Back against Big Money Politics</i> , Democracy Corps Nat'l Surveys (Nov. 13, 2012) .....	17
Samuel Issacharoff, <i>On Political Corruption</i> , 124 Harv. L. Rev. 118 (2010).....	18, 19
Liz Kennedy, <i>Citizens Actually United: The Overwhelming, Bi-Partisan Opposition to Corporate Political Spending and Support for Achievable Reforms</i> , Dēmos (Oct. 25, 2012) .....	15, 20
Adam Lioz & Blair Bowie, <i>Billion Dollar Democracy: The Unprecedented Role of Money in the 2012 Elections</i> , Dēmos (2013) .....	27, 28
Mem. of Campaign Legal Center & Democracy 21 as <i>Amici Curiae</i> in Opp'n Pls.['] Mot. Prelim. Inj., <i>McCutcheon v. FEC</i> , 893 F. Supp. 2d 133 (D.D.C. 2012) (No. 12cv1034(JEB)(JRB)(RLW)).....	7
Memorandum from Celinda Lake et al., Lake Research Partners & Brian Nienaber & Ashlee Rich, Tarrance Group, <i>Nationwide Poll Results on Economic Recovery – January 2009</i> (Feb. 1, 2009).....	16, 19
Elizabeth Mendes & Joy Wilke, Gallup, <i>Americans' Confidence in Congress Falls to Lowest on Record</i> , Gallup Poll (June 13, 2013).....	14
Merits Brief of the Appellee, <i>McCutcheon v. FEC</i> , No. 12-536, 2013 WL 3773847 .....	6



## TABLE OF AUTHORITIES – Continued

	Page
Benjamin I. Page et al., <i>Democracy and the Policy Preferences of Wealthy Americans</i> , 11 <i>Persp. On Pol.</i> 51 (2013) .....	24, 25, 26, 28, 29
Susan Page, <i>Why 90 Million Americans Won't Vote in November</i> , USA Today, Aug. 15, 2012 .....	37
Nathaniel Persily & Kelli Lammie, <i>Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law</i> , 153 <i>U. Penn. L. Rev.</i> 119 (2004) .....	21
Robert Post, <i>Campaign Finance Regulation and First Amendment Fundamentals</i> , in <i>Money, Politics, and the Constitution: Beyond Citizens United</i> (M. Youn, ed. 2011) .....	13
Public Campaign, <i>Color of Money: The 2004 Presidential Race</i> (2004) .....	29
Martin Schram, <i>Speaking Freely: How Congress is Compromised in the Great Money Chase</i> , <i>Center for Responsive Politics</i> (1995) .....	18
Molly J. Walker-Wilson, <i>Financing Elections and "Appearance of Corruption": Citizen Attitudes and Behavior in 2012</i> (St. Louis Univ. Legal Studies Research Paper Series, No. 2013-14, 2013) .....	21

## **INTEREST OF *AMICI CURIAE***

This brief is filed on behalf of *amici curiae* Communications Workers of America, Greenpeace, NAACP, Sierra Club, the American Federation of Teachers, Main Street Alliance, OurTime.org, People for the American Way Foundation, Rock the Vote, U.S.PIRG, the Working Families Organization, and Dēmos. *Amici* collectively represent millions of Americans who are concerned about the effect of large campaign contributions on the integrity and responsiveness of the United States government. A description of each *amicus* is included in an Appendix to this Brief.<sup>1</sup>



## **SUMMARY OF ARGUMENT**

This Court has long grounded its campaign finance jurisprudence on the government's compelling interest in fighting corruption or its appearance. Fighting the perception and the reality of a democratic government corrupted by the improper influence of financial support, however, is more than just a compelling reason for regulation; it is a responsibility of any democratic government. Legitimacy – the belief

---

<sup>1</sup> Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity other than *amici curiae* has made a monetary contribution to the preparation or submission of this brief. The written consents of the parties to the filing of this brief have been filed with the Clerk.

by the people that they are fairly represented – after all, is a first principle of democratic governance.

Aggregate contribution limits function in tandem with base contribution limits to protect the legitimacy of our democratic government by combatting the perception and reality of corruption. *See infra* Point I. Aggregate limits ensure that no one donor can find ways to funnel hundreds of thousands of dollars to a candidate or a party, and candidates and officeholders cannot solicit huge sums from a single donor – which evidence suggests would foster a belief among the public that elected officials are improperly influenced by such large contributions. At the same time, contribution limits impose only an indirect burden on speech and thus are not subject to strict scrutiny. For these reasons, this Court upheld aggregate contribution limits in *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*), and has had no cause to reconsider this sound principle.

Appellants ask this Court to overrule settled precedent regarding contribution limits at a particularly inopportune time, because even with these limits in place public confidence in U.S. government is by some measures at an all-time low. Public opinion data demonstrate that this lack of confidence in government is tied to the widespread perception that government is more responsive to financial supporters than to voters or the public interest, and is corrupted by the improper influence of money in campaigns. *See infra* Point II.

Recent political science research has demonstrated more clearly than ever before that this public concern is not speculative or irrational but rather quite closely tethered to reality. *See infra* Point III. Campaign funding has long been the province of large donors, but the near-dominance of a tiny fraction of the U.S. population over contributions to federal candidates has escalated in recent years. Important new research has documented that the wealthy have starkly different policy priorities than the general public, especially on economic issues, and that government in the U.S. responds differentially – often dramatically so – to the preferences of those who are able to make large campaign contributions, even when these preferences run counter to those of the general public. This particularly affects communities of color, which are far less likely to be represented among the ranks of those whose policy preferences appear to influence officeholders. Campaign finance is a significant factor in this dynamic.

Striking aggregate contribution limits will exacerbate problems of corruption and its appearance. *See infra* Point IV. Without these limits, a small cadre of donors will be able to contribute millions of dollars to candidates, parties, and political action committees, and candidates and officeholders will be permitted to solicit large sums from potential donors, functionally reviving the “soft money” system that Congress acted to end a mere 11 years ago. This will provide further (and renewed) incentive for federal candidates and officeholders to grant these donors improper influence,

skewing policy outcomes more and more towards the preferences of donors as opposed to those of the general public.

Perceptions of corruption are already at dangerous levels in the United States. These perceptions are not irrational fears but rather reasoned reactions to a system that is more responsive to the policy preferences of a narrow segment of the electorate as a result of the improper influence gained through large financial contributions. This Court must not risk undermining the legitimacy of our Republic by overturning longstanding precedent to strike a key bulwark against the reality and appearance of corruption of our democratic government.



## ARGUMENT

### **I. AGGREGATE CONTRIBUTION LIMITS ARE A LONGSTANDING MEASURE TO MEET THE GOVERNMENT'S RESPONSIBILITY TO FIGHT THE REALITY AND APPEARANCE OF CORRUPTION.**

Appellants challenge the aggregate biennial limit that currently caps the total that an individual can contribute to all federal candidates, parties, and committees combined at \$123,200. *See* 2 U.S.C. § 441a(a)(3) (2011); 76 Fed. Reg. 8,370 (Feb. 14, 2011); FEC, *Price Index Adjustments for Contribution and Expenditure Limitations and Lobbyist Bundling Disclosure Threshold*, Notice 2013-03, 78 Fed. Reg.

8,530, 8,532 (Feb. 6, 2013). The \$123,200 aggregate limit is broken down between a \$48,600 ceiling on contributions to all federal candidates and their committees, and a \$74,600 limit on contributions to all other committees (including no more than \$48,600 to committees other than national party committees). 2 U.S.C. § 441a(a)(3). These limits are needed to ensure that donors cannot circumvent the complementary limits on contributions to individual candidates, parties and committees, and to serve the long-recognized governmental interest in deterring “the reality or appearance of improper influence stemming from the dependence of candidates on large campaign contributions.” *Buckley*, 424 U.S. at 58.

**A. Aggregate contribution limits fight the reality and appearance of corruption without unduly burdening the exercise of a constitutional right.**

Congress adopted base and aggregate contribution limits in the 1974 Amendments to the Federal Election Campaign Act of 1971 (FECA), which were upheld in *Buckley*. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3. Though details of the protections have changed, their purpose to fight the reality and appearance of corruption has not.

Appellants challenge the aggregate contribution limits adopted in the Bipartisan Campaign Reform Act of 2002 (“BCRA”). Pub. L. No. 107-155, § 307, 116 Stat. 81, 102-03 (2002). The court below upheld them,

finding that without the aggregate limits, “an individual might contribute \$3.5 million to one party and its affiliated committees in a single election cycle.” *McCutcheon v. FEC*, 893 F. Supp. 2d 133, 135 (D.D.C. 2012).

In *Buckley*, the Court determined that “[w]hile contributions may result in political expression if spent by a candidate or an association . . . , the transformation of contributions into political debate involves speech by someone other than the contributor.” *Buckley*, 424 U.S. at 20-21. Hence, the aggregate contribution limits entail only a marginal restriction upon First Amendment rights, and thus this “quite modest restraint,” *id.* at 38, is subject to less exacting scrutiny than is a limit on expenditures. This core distinction between limits on expenditures and limits on contributions has remained at the heart of this Court’s campaign finance jurisprudence since *Buckley*. See, e.g., *Beaumont v. FEC*, 539 U.S. 146, 162 (2002) (“[A] contribution limit involving significant interference with associational rights passes muster if it satisfies the lesser demand of being closely drawn to match a sufficiently important interest.” (internal quotation marks omitted)).<sup>2</sup> Appellant McCutcheon

---

<sup>2</sup> *Amici* agree with, and do not further address here, the FEC’s argument that Appellants have presented no sound justification for the Court to overrule *Buckley* by applying strict scrutiny to the contribution limits challenged in this case. See Merits Brief of the Appellee at 25-31, *McCutcheon v. FEC*, No. 12-536, 2013 WL 3773847.

can exercise his associational rights by contributing money to as many candidates as he likes, and is not barred from giving to any candidate, party, or committee. He merely has to abide by clear total ceilings on contributions because Congress has determined that aggregate limits are important to fight the reality and appearance of corruption and to prevent circumvention of the base limits.

In *McConnell v. FEC*, 540 U.S. 93 (2003), this Court upheld a ban on “soft money” contributions to political parties precisely because of the importance of effective contribution limits to fighting corruption and its appearance. The aggregate limits at issue in this case serve the same function – namely, preventing the inevitable reality and appearance of corruption when candidates and officeholders solicit huge sums from individuals with particular policy agendas, and when such individuals are permitted to funnel contributions well over base limits to key officeholders or party leaders. See Mem. of Campaign Legal Center & Democracy 21 as *Amici Curiae* in Opp’n Pls.[?] Mot. Prelim. Inj. at 6-9, *McCutcheon v. FEC*, 893 F. Supp. 2d 133 (D.D.C. 2012) (No. 12cv1034(JEB)(JRB)(RLW)).

**B. Government has a compelling interest in fighting the reality and appearance of corruption to protect the integrity of democratic governance.**

Contribution limits protect against *quid pro quo* corruption and the appearance thereof. As the Court



has continuously recognized, rules to fight the reality and appearance of corruption are necessary to protect the integrity of democratic government and the interests of its citizens. “Our cases have made clear that the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits.” *McConnell v. FEC*, 540 U.S. at 143. The Court has consistently cited the danger that large contributions pose to representative government, recognizing that “[t]o the extent that large contributions are given to secure a political *quid pro quo* from current and potential officeholders, the integrity of our system of representative democracy is undermined.” *Buckley*, 424 U.S. at 26-27; *see also FEC v. Colo. Federal Campaign Comm. (Colorado II)*, 533 U.S. 431, 440-41 (2001) (“[L]imits on contributions are more clearly justified by a link to political corruption than limits on other kinds of . . . political spending are.”).

The Court has written “. . . the primary interest served by the limitations . . . is the prevention of corruption and the appearance of corruption spawned by the real or imagined coercive influence of large financial contributions on candidates’ positions and on their actions if elected to office.” *Buckley*, 424 U.S. at 25. In upholding FECA’s original contribution limits, the *Buckley* Court explained that:

These limitations, along with the disclosure provisions, constitute the Act’s primary weapons against the reality or appearance of improper influence stemming from the

dependence of candidates on large campaign contributions. The 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.

Congress is also entitled to take into account the fact that experience “demonstrates how candidates, donors, and parties test the limits of the current law, and it shows beyond serious doubt how contribution limits would be eroded if inducement to circumvent them were enhanced. . . .” *Colorado II*, 533 U.S. at 446-47. The aggregate contribution limits serve to alleviate the threat of corruption arising from solicitations of multiple donations from one big donor.

While the prospect of an individual contributing more than \$3.5 million in a federal election, or candidates or officeholders soliciting hundreds of thousands of dollars from a single donor through joint fundraising committees, certainly raises the risk of actual corruption, government also retains a strong interest in deterring the appearance of corruption that such large contributions inevitably create. The Court has recognized that “[o]f almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.” *Buckley*, 424 U.S. at 27.

A democratic government has not merely a compelling interest, but a responsibility, to prevent the loss of faith in government that is created by a regime of large individual contributions. The Court has wisely recognized that “Congress could legitimately conclude that the avoidance of the appearance of improper influence ‘is also critical . . . if confidence in the system of representative [g]overnment is not to be eroded to a disastrous extent.’” *Id.* (quoting *United States Civil Serv. Comm’n v. Nat’l Ass’n of Letter Carriers*, 413 U.S. 548, 565 (1973)). As the Court has written, “in *Buckley v. Valeo*, we specifically affirmed the importance of preventing both the actual corruption threatened by large financial contributions and the eroding of public confidence in the electoral process through the appearance of corruption. These interests directly implicate ‘the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process.’” *FEC v. National Right to Work Comm.*, 459 U.S. 197, 208 (1982) (quoting *United States v. UAW-CIO*, 352 U.S. 567, 570 (1957)). *See also Cal. Med. Ass’n v. FEC*, 453 U.S. 182, 194 n.15, 195 (1981) (noting that the *Buckley* Court upheld base and aggregate limits because “such limitations served the important governmental interests in preventing the corruption or appearance of corruption of the political process that might result if such contributions were not restrained” (emphasis added) (citing *Buckley v. Valeo*, 424 U.S. at 23-38)).

The Court should be wary of exacerbating fundraising dynamics that put pressure on representatives to favor the positions of those upon whom they rely for financial support. The Court recognized in *Citizens United v. FEC*, 558 U.S. 310, 361 (2010), that “[i]f elected officials succumb to improper influences . . . ; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern. We must give weight to attempts by Congress to seek to dispel either the appearance or the reality of these influences.”

While in *Citizens United* Justice Kennedy wrote “the appearance of influence and access . . . will not cause the electorate to lose faith in our democracy,” this was in the context of examining independent expenditures, “by definition . . . not coordinated with a candidate.” *Id.* The Court has never doubted that direct financial relationships between supporters and candidates or parties present a serious risk of corruption and the appearance of corruption. In fact, the *Citizens United* Court made this precise distinction, stating that “[t]he BCRA record establishes that certain donations to political parties, called ‘soft money,’ were made to gain access to elected officials. This case, however, is about independent expenditures, not soft money.” 558 U.S. at 360-61 (citations omitted). The instant case, of course, is not about independent expenditures; it is in fact about the type of large direct contributions given by individual donors and solicited by candidates and officeholders

that characterized the “soft money” system that Congress acted through BRCA to end.

Invalidation of the current aggregate limits would allow a single individual to direct huge sums to federal candidates, committees, and parties in an election cycle, and allow candidates and officeholders to solicit such sums directly. Allowing such enormous contributions would give rise to the kind of improper influence over federal officeholders that undermines public confidence in government and its ability to be responsive to the citizenry as a whole. The Court has repeatedly relied on its finding that “[t]ake away Congress’ authority to regulate the appearance of undue influence and ‘the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance.’” *McConnell*, 540 U.S. at 144 (quoting *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 390 (2000)).

## **II. THE EROSION OF PUBLIC CONFIDENCE IN GOVERNMENT STEMMING FROM CONTRIBUTIONS THAT CREATE THE APPEARANCE OF CORRUPTION IS A SERIOUS, AND NOT A SPECULATIVE, CONCERN.**

Appellants ask this Court to strike aggregate contribution limits at a particularly inopportune time. Even with these limits in place, significant majorities of Americans express the concern that the actions of their government are responsive to the wishes of financial supporters; that their government

does not represent their interests or respond to the needs of the broad populace anymore; and that this reflects a corruption of government and its ability to serve the public. The legal scholar Robert Post describes “the growing fear that our elections are increasingly failing to fulfill their democratic task, and that as a consequence the successful legitimation of our constitutional government may be slipping from our grasp.” Robert Post, *Campaign Finance Regulation and First Amendment Fundamentals*, in *Money, Politics, and the Constitution: Beyond Citizens United* 11, 18 (M. Youn, ed. 2011).

**A. Americans’ confidence in government is at an all-time low.**

Where the public believes that government is corrupt, we can expect to see an erosion of “confidence in the system of representative government.” See *Buckley*, 424 U.S. at 26-27.

Since 1958, the National Election Survey has included three questions that pertain to corruption in government. Survey administrators use these questions to calculate the Trust in Government Index, which measures Americans’ faith in government on a one to 100 scale. In 2008, the last year for which the Trust in Government Index is available, the Index

tied with its prior (1994) low of 26. Since then the indicia that make up the Index have all declined.<sup>3</sup>

Further, the public has the lowest level of confidence in Congress on record. A majority, 52%, has little or no confidence in Congress. This is the lowest level of confidence *for any institution* on record since Gallup began asking this question in 1973. Elizabeth Mendes & Joy Wilke, Gallup, *Americans' Confidence in Congress Falls to Lowest on Record*, Gallup Poll (June 13, 2013).<sup>4</sup>

---

<sup>3</sup> Am. Nat'l Election Studies, *User's Guide and Codebook for the Preliminary Release of the ANES 2012 Time Series Study* 451, 454, 455, 489 (July 1, 2013) [hereinafter *NES 2012 Dataset*], available at <http://www.electionstudies.org>; see also Am. Nat'l Election Studies, *The ANES Guide to Public Opinion and Electoral Behavior*, tbl.5A.5, available at [http://www.electionstudies.org/nesguide/toptable/tab5a\\_5.htm](http://www.electionstudies.org/nesguide/toptable/tab5a_5.htm) (last visited July 12, 2013). For example, in 2008 69% of Americans agreed with the statement that the “government is pretty much run by a few big interests looking out for themselves” as opposed to being “run for the benefit of all the people.” By 2012, the percentage of Americans believing government is run by a few big interests looking out for themselves had shot up ten points, to 79% of Americans; the share of Americans who thought that our government is run for the benefit of all had fallen from 29% in 2008 to only 19% in 2012. Voters' responses to other questions making up the indicia show similar changes. In 2008, 51% of voters thought “quite a few” of the people running the government are crooked. In 2012, that figure rose to almost 60%. In 2008, 25% said that they trust Congress to do the right thing “most of the time,” dropping to only 5.7% in 2012. *Id.*

<sup>4</sup> Available at <http://www.gallup.com/poll/163052/americans-confidence-congress-falls-lowest-record.aspx>. The public's rate of confidence in the institutions polled was: the military (76%);  
(Continued on following page)

Americans do not just have low confidence in government generally; this lack of confidence is driven by specific concerns about corruption. Six out of ten Americans worry very or fairly often about corruption of government, and another quarter worry about it occasionally. Liz Kennedy, *Citizens Actually United: The Overwhelming, Bi-Partisan Opposition to Corporate Political Spending and Support for Achievable Reforms*, Dēmos 4 (Oct. 25, 2012) [hereinafter L. Kennedy].<sup>5</sup> Taken together, 86% of Americans are worried about corruption of our government. *Id.* Similarly, 82% of Americans are very often, fairly often, or occasionally worried about special interests buying elections. *Id.*

**B. Americans believe their elected representatives are more responsive to financial supporters than to constituents or the public interest.**

“Democracy is premised on responsiveness.” *Citizens United*, 558 U.S. at 359 (quoting *McConnell*, 540 U.S. at 297 (Kennedy, J., concurring in part and

---

small business (65%); the police (57%); church or organized religion (48%); presidency (36%); medical system (35%); U.S. Supreme Court (34%); public schools (32%); criminal justice system (28%); banks (26%); television news (23%); newspapers (23%); big business (22%); organized labor (20%); health maintenance organizations (19%); Congress (10%). *Id.*

<sup>5</sup> Available at [http://www.demos.org/sites/default/files/publications/CitizensActuallyUnited\\_CorporatePoliticalSpending.pdf](http://www.demos.org/sites/default/files/publications/CitizensActuallyUnited_CorporatePoliticalSpending.pdf).



dissenting in part)). However, “[i]f elected officials succumb to improper influences . . . ; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern. We must give weight to attempts by Congress to seek to dispel either the appearance or the reality of these influences.” *Id.* at 310.

There is striking evidence that Americans believe that “politicians [are] too compliant with the wishes of large contributors.” *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 389 (2000) (citing *Buckley*, 424 U.S. at 28). Sixty percent of Americans say members of Congress are more likely to vote in a way that pleases their financial supporters, while only 20% think representatives will vote in the best interests of their constituents. Memorandum from Celinda Lake et al., Lake Research Partners & Brian Nienaber & Ashlee Rich, Tarrance Group, *National Polling on Support for a Proposal to Tackle Big Money in Congressional Elections 2* (Feb. 1, 2009) [hereinafter *Lake/Tarrance Poll*].<sup>6</sup> Two-thirds of Americans do not think that voters and donors have the same access and influence on candidates. See Brennan Ctr. for Justice, *National Survey: Super PACs, Corruption, and Democracy 2* (Apr. 24, 2012).<sup>7</sup>

---

<sup>6</sup> Available at <http://www.acrreform.org/wp-content/uploads/2011/05/Fair-Elections-Polling-2.6.09.pdf>.

<sup>7</sup> Available at [http://www.brennancenter.org/sites/default/files/legacy/Democracy/CFR/SuperPACs\\_Corruption\\_Democracy.pdf](http://www.brennancenter.org/sites/default/files/legacy/Democracy/CFR/SuperPACs_Corruption_Democracy.pdf).

A recent study found that “[v]oters are deeply concerned that all of this money purchases influence in Congress and drowns out the voices of ordinary voters. When asked who has the most influence on Congressional votes, the views of constituents ranked at the bottom of the list, while 59 percent of voters said ‘special interest groups and lobbyists’ and almost half (46 percent) said campaign contributors.” Greenberg Quinlan Rosner Research, *Voters Push Back against Big Money Politics*, Democracy Corps Nat’l Surveys 1 (Nov. 13, 2012).<sup>8</sup>

“Just as troubling to a functioning democracy as classic *quid pro quo* corruption is the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder.” *McConnell*, 540 U.S. at 153. This entails “a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns.” *FEC v. Nat’l Conservative Political Action Comm.*, 470 U.S. 480, 498 (1985).

These dangers are not imaginary, but real. For example, former Senator Wyche Fowler described succumbing to influence from business interests who were constantly asking for special provisions in the

---

<sup>8</sup> Available at <http://www.democracycorps.com/attachments/article/930/dcor.pcaf.postelect.memo.111312.final.pdf>.

tax code when he was on the Ways and Means Committee: “I am sure that on many occasions – I’m not proud of it – I made the choice that I needed this big corporate client and therefore I voted for, or sponsored its provision, even though I did not think that it was in the best interests of the country or the economy.”<sup>9</sup>

**C. Americans believe that government’s differential response to wealthy donors is caused by the corrupting influence of large contributions.**

Professor Samuel Issacharoff describes the danger that “the electoral system leads the political class to offer private gain from public action to distinct, tightly organized constituencies, which in turn may be mobilized to keep compliant public officials in office.” Samuel Issacharoff, *On Political Corruption*, 124 Harv. L. Rev. 118, 126 (2010). Those in positions of economic power can use their financial resources to support the election efforts of favored politicians to keep their power; elected officials can use their political power to further the economic interests of their financial supporters. A vicious cycle can form where the economic and political power that each group

---

<sup>9</sup> Martin Schram, *Speaking Freely: How Congress is Compromised in the Great Money Chase*, Center for Responsive Politics 28 (1995). Senator Wyche’s observation is just one of many similar observations documented in *Speaking Freely*.

helped the other attain can be used to retain those gains.

Professor Issacharoff identifies the danger as “the potential private capture of the powers of the state,” and reminds us that

[t]he American recognition of the risk of legislation in the private interest dates at least to *The Federalist No. 10*, in which Madison identified as a central problem of republican governance the ability to resist ‘a number of citizens . . . who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.’

*Id.* at 129 (quoting James Madison, *The Federalist No. 10*, in *The Federalist Papers* 72 (Clinton Rossiter ed., 2003)).

This is in fact what the public sees in our modern democracy. Americans believe that large financial contributions are the reason their representatives are more responsive to private interests with financial resources than to the public interest. Seventy-three percent of voters thought that the influence of campaign money given to members of Congress was a “major factor in causing the current financial crisis on Wall Street.” *Lake/Tarrance Poll*, at 2. They thought large campaign contributions from the banking industry led to lax oversight of the industry. This was true for three out of four Democrats (76%) and Republicans (74%). *Id.* And, Americans recently reported

feeling that the federal government “is so corrupted by big banks, big donors, and corporate lobbyists that it no longer works for the middle class.” Greenberg Quinlan Rosner Research, *Money in Politics is a Ballot Box Issue*, Democracy Corps Nat’l Surveys 1 (May 9, 2012) [hereinafter *Money in Politics Survey*].<sup>10</sup>

Americans fear that improper influence from private economic interests is preventing government from acting to address their real problems. Almost eight in ten Americans agree with the statement “I am worried that large political contributions will prevent Congress from tackling the important issues facing America today, like the economic crisis, rising energy costs, reforming health care, and global warming.” Common Cause, *Fair Elections Poll*, *Money in Politics* (Feb. 2009).<sup>11</sup>

And citizens see this improper influence as corruption. “Eighty-five percent of Americans call it corruption when financial supporters have more access and influence with members of Congress than average Americans,” and “fifty-seven percent say this is very corrupt.” L. Kennedy, *supra*, at 3.

Such findings present a serious challenge, because “[c]itizen distrust in the democratic process

---

<sup>10</sup> Available at [http://www.democracycorps.com/attachments/DCorps\\_PCAF\\_memo\\_FINAL.pdf](http://www.democracycorps.com/attachments/DCorps_PCAF_memo_FINAL.pdf).

<sup>11</sup> Available at <http://www.commoncause.org/atf/cf/{fb3c17e2-cdd1-4df6-92be-bd4429893665}/POLLING%20MEMO%20FEB%202009%20FINAL.PDF>.

threatens the health of a democracy.” Molly J. Walker-Wilson, *Financing Elections and “Appearance of Corruption”: Citizen Attitudes and Behavior in 2012* 37 (*St. Louis Univ. Legal Studies Research Paper Series*, No. 2013-14, 2013) (examining how appearance of corruption undermines Americans’ sense of political efficacy and deters civic participation).<sup>12</sup> Striking the aggregate limits and unleashing direct contributions of more than \$3.5 million by one individual can only deepen the public’s already strong concerns about the integrity of their government.<sup>13</sup>

---

<sup>12</sup> Available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2231695](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2231695).

<sup>13</sup> Professors Nathaniel Persily and Kelli Lammie question the notion that the public perception of corruption is correlated with the “activity taking place in the campaign finance system.” Nathaniel Persily & Kelli Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. Penn. L. Rev. 119, 123 (2004). They recognize, however, that “the inability of the campaign finance system to affect such perceptions might be a product of the constraints placed by the jurisprudence itself.” *Id.* They also note that “[i]n the end, we must admit that large shares of the American population distrust their government and believe the campaign finance system is a source of undue influence.” *Id.* at 174. It also follows that, while current levels of confidence in government are uncomfortably low, they could be worse if the few protections fighting the reality and appearance of corruption were not in place or were dismantled.

### III. AMERICANS' CONCERNS ABOUT DONORS' IMPROPER INFLUENCE OVER GOVERNMENT ARE JUSTIFIED AND NOT SPECULATIVE.

As the preceding discussion has shown, Americans are deeply concerned that their elected officials do not respond to the needs of their constituents or the public interest as a whole, but instead to the interests of the largest donors – implicating the very corruption danger the Court's precedents have identified. *See, e.g., McConnell*, 540 U.S. at 187. Examining three related empirical questions sheds light on whether Americans' concerns are grounded in reality: (1) do the policy preferences of those able to make large donations actually differ in significant ways from those of other Americans; (2) do such donors dominate campaign funding such that we should expect candidates to privilege their policy preferences; and (3) is government in fact more responsive to the wishes of those with more economic clout?

Answering these empirical questions is important for understanding the compelling nature of the interests served by the limits on aggregate contributions at issue in this case. After all, if the wealthier Americans who are able to make large donations held substantially the same views as the general public, then their outsized influence on government policy might matter less because it would not skew policy outcomes in a particular direction. Similarly, if there were no evidence that government policies actually respond more strongly to the preferences of those who

fund campaigns, then again, the public's concern about this might appear less compelling.

The answers, however, are clear, and show that Americans' concerns about the capture of their government by financial supporters are justified and not imaginary. Important research confirms that the people who have the financial resources to provide major funding to political campaigns have systematically different policy preferences than the general public, especially on economic issues; that contributions from just a tiny subset of Americans disproportionately dominate campaign funding; and that our government responds differentially – often dramatically so – to the policy preferences of the wealthy. It is this reality that creates a substantial and realistic appearance of corruption, and is a driving force behind the dismal figures reported in the previous section regarding public confidence in our electoral system and public institutions.

**A. The policy preferences of those who can make large donations differ greatly from those of ordinary Americans.**

A substantial body of research documents the differing preferences of the wealthy from the general public on many important policy issues.<sup>14</sup> One of the

---

<sup>14</sup> *Amici* discuss the preferences of the wealthy here not because they are concerned with the opinions of wealthy Americans *per se*, but because these preferences serve as a reasonable

(Continued on following page)



most revealing recent studies is *Democracy and the Policy Preferences of Wealthy Americans*, carried out in 2011 by political science scholars Benjamin I. Page, Larry M. Bartels, and Jason Seawright. Their study gives an unprecedented window into the opinions of the very wealthy and how they differ from those of other Americans. *See generally* Benjamin I. Page et al., *Democracy and the Policy Preferences of Wealthy Americans*, 11 *Persp. On Pol.* 51 (2013) [hereinafter *Policy Preferences*].<sup>15</sup>

The authors of *Policy Preferences* find that the preferences of the very rich differ substantially from those of the general public – especially on key questions about how to structure the economy and respond to America’s economic needs. One example concerns the central question of how government should prioritize job creation as compared to reducing the nation’s budget deficit. In polls conducted over the past several years, the general public has been consistently more concerned with job creation and

---

proxy for the views of those who make the large political contributions at issue in this case. As shown below, evidence confirms the twin common-sense notions that large donors are more likely than non-donors or small donors to be wealthy and that wealthy Americans are more likely than other citizens to be large donors.

<sup>15</sup> The study is based on interviews of a representative sample of respondents in the Chicago metropolitan area corresponding to the top 1% of American wealth-holders. Interviewees had a mean wealth of \$14.0 million, a median wealth of \$7.5 million and an average yearly income of slightly more than \$1 million. *Id.* at 53.

economic growth than with reducing the deficit, often by two-to-one margins or more. David Callahan & J. Mijin Cha, *Stacked Deck: How the Dominance of Politics by the Affluent and Business Undermines Economic Mobility in America*, Demos 5-6 & 5 tbl.1 (2013).<sup>16</sup>

In contrast, when the high-wealth interviewees in the *Policy Preferences* study were asked to name the most important problem facing the country, “[o]ne third (32 percent) of all open-ended responses mentioned budget deficits or excessive government spending, far more than mentioned any other issue.” *Policy Preferences*, *supra*, at 55. By comparison, unemployment and education “was mentioned as the *most* important problem by only 11 percent, indicating that they ranked a distant second and third to budget deficits among the concerns of wealthy Americans.” *Id.*

This disparity concerning the importance of the deficit is not an aberration. The *Policy Preferences* study finds significant differences across a range of issues related to economic well-being and the role that government should play in the economy. This is particularly true for policy preferences regarding the government’s role in encouraging job creation and employment. A full two-thirds (68%) of the general public believes that “the government in Washington

---

<sup>16</sup> Available at <http://www.demos.org/sites/default/files/publications/Demos-Stacked-Deck.pdf>.

ought to see to it that everyone who wants to work can find a job.” *Id.* at 57 tbl.5. But among the wealthy respondents in the *Policy Preferences* study, only 19% agreed with that statement – more than a three to one disparity. *See id.*

Similarly, 78% of the public supports a minimum wage high enough that no family with a full time worker falls below the poverty line, while only 40% of the wealthy agree. A majority (53%) of the public believes that “the federal government should provide jobs for everyone able and willing to work who cannot find a job in private employment,” but only 8% of wealthy respondents agree. *Id.*

The *Policy Preferences* authors also find that its respondents were far more likely to favor cutting spending on programs such as Social Security, Food Stamps, and health care than was the general public, which instead would prefer to see expanded government spending on such programs. *Id.* at 56-57 & 56 tbl.4.

The *Policy Preferences* findings are particularly important because the authors were able to isolate policy views among a highly affluent group of Americans corresponding roughly to the top 1% – extending previous research that had compared policy differences among more broadly defined wealth categories. *See* Martin Gilens, *Affluence and Influence: Economic Inequality and Political Power in America* 2-3, 70-96 (2012) (defining “affluent” as Americans at 90th

income percentile – the top 10% – earning at least \$135,000 per year in 2010, and still finding significant differences in public opinion based upon wealth). Taken together, this is exactly the segment of the population that has the capacity to contribute large sums to political candidates, parties, and committees.

**B. The largest contributors already dominate the funding of U.S. elections.**

Candidates for federal office are heavily dependent on campaign contributions from individuals. Adam Lioz & Blair Bowie, *Billion Dollar Democracy: The Unprecedented Role of Money in the 2012 Elections*, Dēmos 12-13 (2013) [hereinafter *Billion Dollar Democracy*].<sup>17</sup> Even with current limits on contributions in place, those who make the largest contributions provide candidates with a huge percentage of their overall funds. Data compiled by the Sunlight Foundation shows that in the 2012 elections, over a quarter of all of the identifiable political contributions to any candidate, party, committee, or group came from just 31,385 people. This number represents just one ten-thousandth of the U.S. population. Lee Drutman, Sunlight Foundation, *The Political 1% of the 1% in 2012*, Sunlight Foundation Blog (June 24,

---

<sup>17</sup> Available at [http://www.demos.org/sites/default/files/publications/BillionDollarDemocracy\\_Demos.pdf](http://www.demos.org/sites/default/files/publications/BillionDollarDemocracy_Demos.pdf).

2013, 9:00 AM).<sup>18</sup> The impact of this tiny cohort of the American public was so great that “not a single member of the House or Senate was elected without financial assistance from this group.” *Id.*

The relative influence of this elite group is clear: 84% of members elected to the House of Representatives in 2012, and more than half of the members of the Senate, received more money from the 1% of the 1% *than from all their small donors combined.* *Id.* Other data show that candidates for the U.S. Senate in 2012 raised 64% of their funds in contributions of at least \$1,000, from just 0.04% of the U.S. population. *Billion Dollar Democracy, supra*, at 13 fig.17. Indeed, in the 2012 elections “candidates got more money from a smaller percentage of the population than any year for which we have data.” Sunlight Foundation, *supra*.

Survey evidence also confirms – not surprisingly – that the affluent are far more likely to make financial contributions than are other Americans. The *Policy Preferences* study described above finds that a full two-thirds (68%) of the wealthy respondents had made political contributions in the previous 12 months. *Policy Preferences, supra*, at 54 & 54 tbl.2. This compares with just 0.4% of the American population who made a disclosed federal contribution in 2012. Center for Responsive Politics, *Donor*

---

<sup>18</sup> Available at [sunlightfoundation.com/blog/2013/06/24/1pct\\_of\\_the\\_1pct/](http://sunlightfoundation.com/blog/2013/06/24/1pct_of_the_1pct/).

*Demographics*, OpenSecrets.Org (last visited July 19, 2013).<sup>19</sup> Moreover, as the authors of the study note, “A remarkable 21 percent of our wealthy respondents solicited or ‘bundled’ other peoples’ political contributions – not an activity that is common among ordinary citizens.” *Policy Preferences, supra*, at 54.<sup>20</sup>

The income gap in who makes campaign donations is accompanied by a racial gap as well. A study of the 2004 Presidential election is illustrative. In that campaign, the top-contributing zip code (located on Manhattan’s Upper East Side) was 86.4% white. This one zip code, home to fewer than 100,000 voting age residents, generated more campaign dollars than the 377 U.S. zip codes with the largest percentage of African Americans, home to 6.9 million voting age residents; as well as the 365 zip codes with the largest percentage of Hispanic residents, with 8.1 million adults. Public Campaign, *Color of Money: The 2004 Presidential Race* 3-4 (2004).<sup>21</sup>

---

<sup>19</sup> Available at <http://www.opensecrets.org/bigpicture/donordemographics.php?cycle=2012>.

<sup>20</sup> In addition, a nationwide survey found that 81% of those who gave contributions of at least \$200 during the 1996 congressional elections reported annual family incomes greater than \$100,000. John Green, et al., *Individual Congressional Campaign Contributors: Wealthy, Conservative, and Reform-Minded* (1998).

<sup>21</sup> Available at [http://library.publiccampaign.org/sites/default/files/2004\\_cofm\\_pres\\_complete.pdf](http://library.publiccampaign.org/sites/default/files/2004_cofm_pres_complete.pdf).

Further, “[t]he nation’s biggest campaign donors have little in common with average Americans. They hail predominantly from big cities, such as New York and Washington. They work for blue-chip corporations, such as Goldman Sachs and Microsoft. One in five works in the finance, insurance and real estate sector. One in ten works in law or lobbying.” Sunlight Foundation, *supra*. The median aggregate contribution from this elite group was \$26,584; this is more than half the median family income in the United States. *Id.*

U.S. Senator Chris Murphy has provided insight on how the need to solicit donations from those with ample financial resources can affect officeholders. He recently described the four to six hours per day he was required to spend calling potential donors in order to raise campaign funds and noted that when making fundraising appeals, he “would not call anyone who could not drop at least \$1,000,” people he estimated make at least \$500,000 to \$1 million per year. Paul Blumenthal, *Chris Murphy: ‘Soul-Crushing’ Fundraising Is Bad for Congress*, Huffington Post (May 7, 2013, 5:40 PM).<sup>22</sup>

I talked a lot more about carried interest inside of that call room than I did in the supermarket . . . [The people I’m calling] have fundamentally different problems than other

---

<sup>22</sup> Available at [http://www.huffingtonpost.com/2013/05/07/chris-murphy-fundraising\\_n\\_3232143.html](http://www.huffingtonpost.com/2013/05/07/chris-murphy-fundraising_n_3232143.html).

people. And in Connecticut especially, you spend a lot of time on the phone with people who work in the financial markets. And so you're hearing a lot about problems that bankers have and not a lot of problems that people who work at the mill in Thomaston, Conn., have. You certainly have to stop and check yourself.

*Id.*

The record in *McConnell*, which addressed the soft-money system that would be largely recreated by striking the aggregate limits, was replete with similar evidence of how public policy can be shaped by the corrupting influence of such large contributions. Former Senator Alan Simpson testified that “Too often, Members’ first thought is not what is right or what they believe, but how it will affect fundraising.” *McConnell v. FEC*, 251 F. Supp. 2d 176, 481 (D.D.C.) (Kollar-Kotelly, J., concurring in part and dissenting in part), *aff’d in part, rev’d in part*, 540 U.S. 93 (2003). Former Senator Paul Simon recounted how Federal Express obtained a favorable amendment to a bill without even a hearing after contributing \$1.4 million to incumbents and almost \$1 million in soft money contributions to political parties. One of his senior colleagues brushed back objections by explaining “we’ve got to pay attention to who is buttering our bread.” *Id.* at 482.



**C. Public policy outcomes in the U.S. are strongly responsive to the preferences of the affluent, even when those preferences diverge markedly from those of the general public.**

The differing policy preferences of the wealthy as compared to the general public would not present a challenge to the democratic vision of a representative government if the actual influence of the wealthy on public policy accorded with their numbers. The top one percent – or one tenth of one percent – of Americans may desire very different outcomes than the broad public; but by definition they are a tiny segment of the electorate, and could not improperly sway policy outcomes by their numbers alone in a democracy guided by the principle of one person, one vote.

Increasing evidence, however, challenges this core assumption of democratic governance in the U.S. It is no new observation that in fact the cohort of Americans that contribute large sums to federal campaigns exerts a strong influence on the political process and public policy outcomes. But, the degree of influence that has been documented in recent studies should be sobering to anyone concerned with the health of our democracy – and should give substantial pause in considering Appellants’ demand to unleash the potential for contributions of more than \$3.5 million by a single individual in federal elections. *Cf. Citizens United*, 558 U.S. at 361 (supporting government’s efforts to dispel the appearance or reality of “elected officials succumb[ing] to improper

influences; . . . surrender[ing] their best judgment; and . . . put[ting] expediency before principle.”).

In *Affluence and Influence*, Professor Gilens set out to measure what he calls the “preference/policy link” across the economic spectrum. Gilens, *supra*, at 70-97. His research examines the extent to which the policy preferences of different income groups are reflected in actual policy outcomes in the United States. His findings present a direct challenge to the notion that American democracy ensures policy outcomes that represent the views of the broad citizenry. Gilens writes:

The American government does respond to the public’s preferences, but that responsiveness is strongly tilted toward the most affluent citizens. Indeed, under most circumstances, the preferences of the vast majority of Americans appear to have essentially no impact on which policies the government does or doesn’t adopt . . . The complete lack of government responsiveness to the preferences of the poor is disturbing and seems consistent only with the most cynical views of American politics . . . median-income Americans fare no better than the poor when their policy preferences diverge from those of the well-off.

*Id.* at 1, 81.

Professor Gilens continues by describing explicitly the power of the preferences of the affluent to

override those of the much more numerous poor and middle class:

. . . for Americans below the top of the income distribution, any association between preferences and policy outcomes is likely to reflect the extent to which their preferences coincide with those of the affluent . . . We saw above that less-well-off Americans have little influence over policy outcomes when their preferences diverge from those of the affluent. [Additional data described] show that this is true not only for the poor and the middle class considered separately . . . but for those policies on which the poor and middle class are closely aligned in opposition to the affluent.

*Id.* at 83-84.<sup>23</sup>

This is a remarkable finding that challenges the vision of American democracy in which government responds to the will of the majority: when the preferences of the wealthiest 10% of Americans conflict with those of the rest of the population, the 10% trumps the 90%. It underscores why Americans are so deeply concerned that campaign funding prevents

---

<sup>23</sup> While the preferences of the affluent are quite dominant across the board, the divergence of influence is not equal across policy domains. Professor Gilens finds that “the starkest difference in responsiveness to the affluent and the middle class occurs on economic policy, a consequence of high-income Americans’ stronger opposition to taxes and corporate regulation. . . .” *Id.* at 101.

their elected officials from acting in the interests of their constituents, *see supra* Section II. In the end, Professor Gilens' exhaustive study of the "preference/policy" link in the United States leads him to some stark conclusions about the state of American democracy. He writes that "[t]he patterns of responsiveness found in previous chapters often correspond more closely to a plutocracy than to a democracy." *Id.* at 234.

Professor Gilens is by no means alone in his conclusions. Political scientist Larry Bartels also finds that, in contrast to the affluent, low-income Americans have little influence over policy outcomes. As he writes in his 2008 study, *Unequal Democracy: The Political Economy of the New Gilded Age*: "The preferences of people in the bottom third of the income distribution have no apparent impact on the behavior of their elected officials." Larry M. Bartels, *Unequal Democracy: The Political Economy of the New Gilded Age* 285 (2008).

Professors Gilens' and Bartels' findings are particularly troubling in light of the demographic characteristics of the bottom third of the income distribution in the U.S. As noted in a recent Dēmos report, over half of African American households and 45% of Latino households are in the lowest third of income distribution in the U.S. These researchers' findings thus suggest that the majority of African Americans and nearly half of Latinos earn too little for their views to have any impact on the behavior of elected officials. *See Callahan & Cha, supra*, at 21.

Professor Gilens notes that the influence of the wealthiest Americans on policy outcomes seems to be increasing. “The analyses of change over time” he notes “do reveal an important general trend: the strengthening of policy responsiveness for affluent Americans.” Gilens, *supra*, at 193. This is important because it suggests that government’s skew toward the policy preferences of the affluent is not an immutable reality, but rather may be responsive to changes in opportunities for influence, as well as particular policy or economic conditions, over time. *Id.*

The realities illuminated by the above research fuel the public perception of corruption and certainly give rise to significant fears about “real or imagined coercive influence of large financial contributions on candidates’ positions. . . .” *Buckley*, 424 U.S. at 25.<sup>24</sup>

---

<sup>24</sup> The concern discussed in this brief regarding the potential harm of unleashing huge financial contributions in federal elections is centered wholly on the role of such contributions in increasing the potential for corruption and the public’s loss of faith in the integrity of government. Appellants have argued that aggregate limits cannot be supported by a desire to protect one set of contributors “from the possibility that others will make larger contributions[,]” *Citizens Against Rent Control v. Berkeley*, 454 U.S. 290, 295 (1981) (addressing ballot measure campaigns), which they see as an impermissible demand for equalizing the voices of all donors. The argument in this brief is based on an entirely different rationale – it is based directly on the concern about the reality and appearance of corruption stemming from large contributions in candidate elections that would be unleashed by striking the aggregate limits, and how such large contributions would contribute to the erosion of citizens’ faith in government.

#### **IV. STRIKING THE AGGREGATE LIMITS WILL INCREASE THE DANGER OF CORRUPTION AND AGGRAVATE THE APPEARANCE OF CORRUPTION.**

The preceding discussion demonstrates the public's eroding confidence in the ability of government to respond to important public needs and to resist the improper influence of campaign money on policymaking. This phenomenon is driving a significant percentage of the public away from political engagement. Even in 2008, an election with record turnout, 80 million eligible persons failed to participate. Susan Page, *Why 90 Million Americans Won't Vote in November*, USA Today, Aug. 15, 2012, at A1 (reporting on Suffolk University/USA Today poll).<sup>25</sup> In a poll of eligible persons who stated that they were unlikely to vote, when asked why they did not pay attention to politics, 54% said, "[i]t is so corrupt." *Id.* As citizens lose faith in government, levers of democratic accountability are dismantled, and we lose the wisdom of the larger electorate in determining the direction of our nation.

Striking aggregate contribution limits – which would allow a single donor to funnel more than \$3.5 million directly into federal election campaigns and allow candidates or officeholders to solicit huge sums – would alter our political system in exactly the way that is most likely to further erode confidence in

---

<sup>25</sup> Available at <http://usatoday30.usatoday.com/news/politics/story/2012-08-15/non-voters-obama-romney/57055184/1>.

government and foster the appearance of corruption, perhaps “to a disastrous extent.” *Buckley*, 424 U.S. at 27 (quoting *U.S. Civil Service Comm’n v. Nat’l Ass’n of Letter Carriers, AFL-CIO*, 413 U.S. 548, 565 (1973)). The evidence suggests that removing these generous caps will lead to an even greater gulf between the policy choices of government and the preferences of ordinary citizens – fueling cynicism, depressing political engagement, and leading even more citizens to conclude (apparently accurately) that government is more responsive to a narrow set of donors than to the broad populace.

Americans’ current perception of corruption in government and lack of faith in public institutions such as Congress already presents a challenge to the legitimacy of our democracy. When most Americans already believe that government is run by a few big interests instead of for the benefit of all people, our democracy cannot abide further erosion of the campaign finance limits that are the government’s most effective tool in deterring corruption and its appearance. *NES 2012 Dataset, supra*, at 454. Sixty percent of Americans already believe that “public officials do not care what the people think.” Am. Nat’l Election Studies, *The ANES Guide to Public Opinion and Electoral Behavior*, tbl.5B.3 (last visited July 12, 2013).<sup>26</sup> How will our Republic fare if that figure continues to rise?

---

<sup>26</sup> Available at [http://www.electionstudies.org/nesguide/toptable/tab5b\\_3.htm](http://www.electionstudies.org/nesguide/toptable/tab5b_3.htm).

Finally, in striking aggregate limits, this Court would contribute to public disenchantment with government by stripping the state of a popular and effective tool. Despite their concerns about the impact of campaign money on the integrity of their government, Americans have not given up on the belief that limiting the size of contributions is an important answer. Nearly three-quarters (73%) of all voters believe there should be common-sense limits on the amount of money people can contribute to political campaigns. *Money in Politics Survey, supra*, at 1. Of that group, a large majority (59%) is “intensely committed” to such limits. *Id.* A large majority (60%) says “candidates ought to tackle money in politics in order to make government work for the middle class.” *Id.*

Faith in government and its legitimacy is a first principle. In its seminal campaign finance case, this Court recognized that where the public believes that government is corrupt, we can expect to see an erosion of “confidence in the system of representative government.” *See Buckley*, 424 U.S. at 26-27. We are seeing just that right now. Although the full cure for this problem lies outside the confines of this particular case, this case does present the Court with a compelling need to do no harm, to not make matters worse.

The U.S. Government has a compelling interest and an obligation to protect its legitimacy. This Court should defer to the judgment of Congress that the aggregate limits are a necessary means to that end, and are critical to prevent further erosion of citizens’



confidence in government. The limits on aggregate contributions reflect Congress' well-grounded judgment that limits are necessary to deter the reality and appearance of corruption that are so corrosive to citizens' faith in government. The Court has "understood that such deference to legislative choice is warranted particularly when Congress regulates campaign contributions, carrying as they do a plain threat to political integrity and a plain warrant to counter the appearance and reality of corruption. . . ." *Beaumont*, 539 U.S. at 155 (citing *Buckley*, 424 U.S. at 26-28). This Court should respect Congress' judgment, prior precedent, and current political reality by upholding aggregate contribution limits.



**CONCLUSION**

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

BRENDA WRIGHT  
*Counsel of Record*  
DĒMOS  
358 Chestnut Hill Ave.  
Suite 303  
Brighton, MA 02135  
(617) 232-5885  
bwright@demos.org

ELIZABETH KENNEDY  
ADAM LIOZ  
DĒMOS  
220 Fifth Ave.  
2nd Floor  
New York, NY 10001  
(212) 633-1405  
*Counsel for Amici Curiae*

**APPENDIX**  
**ORGANIZATIONAL DESCRIPTIONS**  
**OF *AMICI CURIAE***

The Communications Workers of America, AFL-CIO (“CWA”), is an international labor organization representing over 700,000 workers and retirees throughout the United States, Puerto Rico and Canada. CWA members work in the telecommunications, print and broadcast media, airline, transportation, manufacturing, education and health care industries and in a wide variety of public sector public service jobs. CWA and the workers it represents are actively involved in efforts to achieve a more democratic and accountable government that responds to the needs of working families and ordinary citizens. CWA has been a longstanding advocate for campaign finance reform, including efforts to eliminate the inappropriate and destructive influence of large financial contributions on the democratic political process.

Greenpeace was founded in 1971 and, with more than 300,000 financial supporters in the U.S. alone, is the largest independent global environmental organization in the world that defends the natural world and promotes peace by investigating, exposing and confronting environmental abuses in non-violent ways, while championing environmentally responsible solutions. Greenpeace has an interest in campaign finance reform because of the undemocratic influence that large polluters can wield over environmental

policy and the election process by making large campaign contributions.

Founded in 1909, the National Association for the Advancement of Colored People (hereinafter the “NAACP” or the “Association”) is the nation’s oldest and largest civil rights organization. The mission of the NAACP is to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination. The fundamental goal of the NAACP’s voting rights advocacy is to ensure that every American will have free, open, equal, and protected access to the vote and fair representation at all levels of the political process. The NAACP has been at the forefront of the effort to increase minority non-partisan participation and civic engagement. The Association has fought to protect ordinary citizens’ right to bring their interests and concerns before their elected officials. The NAACP views campaign finance as an important civil rights issue.

The Sierra Club is a national nonprofit organization of approximately 600,000 members dedicated to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth’s ecosystems and resources; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. Sierra Club’s members need a political system that is responsive to citizens to effectively advocate for policies that reflect their environmental

priorities. The Club's particular interest in this case stems from its members' belief and concern that large financial contributions to political candidates impede their efforts and endanger our democracy.

The American Federation of Teachers (AFT), founded in 1916, today represents more than 1.5 million educators and school personnel, healthcare and childcare providers, and other professionals. AFT is committed to advancing the principles of fairness, democracy and economic opportunity, as well as high-quality public education, healthcare and public services, through political activism, community engagement, organizing, collective bargaining and the work our members do. AFT supports strong campaign finance laws to safeguard the voices of our members, their families, and their communities through greater fairness, openness and participation in elections.

The Main Street Alliance (MSA) is a national network of state and locally based small business coalitions that together represent over 12,000 small business owners nationwide. MSA creates opportunities for Main Street small business owners to speak for themselves on issues that impact their businesses and local economies. MSA's small business members believe allowing big contributors to dominate the funding of campaigns for public office threatens to tilt the economic playing field against small businesses, replacing honest competition – competition based on quality, value and service – with distorted markets influenced by pay to play politics. With large campaign contributions threatening to put small businesses at

a serious disadvantage in the marketplace, MSA strongly opposes efforts to strike aggregate contribution limits.

OurTime.org is a nationwide non-partisan, non-profit organization that leverages online organizing, new media, and popular culture to enhance the political voice of young Americans. More than one million members strong, OurTime.org leads campaigns that register voters, remove ballot barriers, and highlight relevant news and policies that will impact this generation's lives. All too frequently, young Americans are overlooked in election cycles because they lack the fiscal resources to demand the time and attention of candidates. Representing this growing demographic of voters, OurTime.org is especially concerned with keeping the democratic process fair and accountable for all citizens.

People For the American Way Foundation ("PFAW Foundation") is a nonpartisan, non-profit citizens' organization established to promote and protect civil and constitutional rights, including First Amendment freedoms. Founded in 1981 by a group of religious, civil and educational leaders, PFAW Foundation now has over 575,000 members and supporters nationwide who are dedicated to the democratic traditions embodied in this country's Constitution. PFAWF is committed to promoting values and institutions that sustain a diverse democratic society and an informed and participatory electorate, and our efforts include defending the right to vote and opposing measures that damage a functioning democracy.

Rock the Vote is a national, non-partisan organization with 1.5 million members dedicated to engaging young people ages 18-29 in our nation's democracy. For more than two decades, Rock the Vote has used pop culture, technology, and grassroots organizing to register more young people to vote than any other organization or campaign – including more than a million people in the 2012 elections. A critical part of Rock the Vote's work to increase civic engagement amongst young people is advocating for voting and campaign finance laws that restore the Millennial generation's belief that our democracy can be responsive to its people and give our members – and all Americans – faith that their interests are being represented by those they elect.

U.S.PIRG, the federation of state Public Interest Research Groups (PIRGs), stands up to powerful special interests on behalf of the American public and our tens of thousands of members, working to win concrete results for our health and our well-being. With a strong network of researchers, advocates, organizers and students in state capitals across the country, we take on the special interests on issues such as product safety, public health, political inequality, tax and budget reform and consumer protection, where these interests stand in the way of reform and progress. U.S.PIRG has been a long-standing advocate for campaign finance reform, working to eliminate the undue influence of big money in our elections and ensure that every citizen has a meaningful voice in our democratic process.

Working Families Organization (WFO) is a network of state-based progressive coalitions committed to a fair economy and a real democracy that works for everyone – not just the wealthy and well-connected. Formed by community organizations, neighborhood activists, and labor unions, WFO represents affiliated organizations in New York, Connecticut, New Jersey, Maryland, DC, and Oregon as well as more than 430,000 individual supporters throughout the country. WFO has spent years fighting to remove the corrosive influence of money in politics and to empower working class and middle class families to have control over decisions that impact their lives at the local, state, and federal levels.

Dēmos is a national public policy center working for an America where we all have an equal say in our democracy and an equal chance in our economy. Removing barriers to political participation and ensuring full representation of America's diverse citizenry are central to Dēmos' mission. Dēmos engages in litigation, research and advocacy to support campaign reforms that protect the integrity of government and ensure that the voices of citizens can be heard.

---