Senator Craig Hickman, Senate Chair
Representative Laura Supica, House Chair
Committee on Veterans & Legal Affairs
Maine State Legislature

RE: IB 5, LD 2232 (An Act to Limit Contributions to Political Action Committees That Make Independent Expenditures)

March 5, 2024

Dear Chair Hickman and Chair Supica,

I am the Legal Director of Free Speech For People, a national non-partisan non-profit organization that works to renew our democracy and to limit the influence of money in our elections. I write in support of LD 2232, which will limiting contributions to independent expenditure PACs, more commonly known as "super PACs."

Super PACs are political committees that make only "independent" expenditures. Under current law, there are absolutely no limits on contributions to these committees. This creates some unfortunate, illogical, and harmful effects. For example, it is illegal for a wealthy donor to contribute a penny more than $1,950 to a candidate for governor, because the legislature has determined that contributions above that amount pose an unacceptable risk of corruption or the appearance of corruption.[1] Yet that same wealthy donor may contribute $100,000, or $1 million, if not $10 million, to the candidate's super PAC. As just one example, in 2022, a super PAC funded by a single donor spent some $300,000 on the primary in the Cumberland County district attorney's race—four times as much as the total raised by both candidates combined.[2]

This bill amends Title 21-A to impose a contribution limit of $5,000 from any individual or other PAC to a super PAC. This is two-and-a-half times the limit on contributions to gubernatorial candidates, and over ten times the limit on contributions to legislative candidates. It is more than enough to enable contributors to support their favored candidates without posing an unacceptable risk of corruption.

---

[1] Me. Rev. Stat. ch. 21-A, § 1015.
[2] See David Sharp, *National groups flooding local prosecutor races with money*, NewsCenter Maine, https://www.newscentermaine.com/article/news/nation-world/local-prosecutor-races-get-national-funding/507-5a575486-fff2-469c-b4ca-8f4c65172638 (June 10, 2022).

Some believe that U.S. Supreme Court decisions, including the 2010 *Citizens United* decision, ban limits on contributions to independent expenditure PACs. But that is incorrect. While some federal courts of appeals in other parts of the country, have interpreted *Citizens United* to require this result,[3] as explained in detail below, the reasoning of those decisions is incorrect. In any event, no court with jurisdiction over Maine—neither in the state court system nor any federal court—has ever adopted the reasoning of those courts or otherwise indicated that limits on contributions to super PACs would be unconstitutional.

And since 2010, empirical evidence has mounted against the assumptions underlying that decision. For example, as explained in more detail in two reports by political scientist Stephen Weissman,[4] the actual relationships between "independent" super PACs and their large donors provides ample opportunities for quid pro quo corruption.[5] Recent empirical research shows that, as one might expect, this also leads to the *appearance* of corruption.[6]

LD 2332 would help increase the integrity of Maine's elections by banning deep-pocketed donors from contributing unlimited amounts to super PACs, thus reducing

---

[3] *See, e.g.,* SpeechNow.org v. Fed. Election Comm'n, 599 F.3d 686 (2010).

[4] See Stephen R. Weissman, *The* SpeechNow *Case and the Real World of Campaign Finance* (Oct. 2016), *available at* https://freespeechforpeople.org/wp-content/uploads/2016/10/FSFP-Weissman-Report-final-10-24-16.pdf; Stephen R. Weissman, *The* SpeechNow *Case and the Real World of Campaign Finance: Undermining Federal Limits on Contributions to Political Parties (Part II)* (May 2017), *available at* https://freespeechforpeople.org/wp-content/uploads/2017/05/Research-Report-2017_01.pdf.

[5] Indeed, a federal grand jury indicted a sitting U.S. Senator for bribery for a contribution to a super PAC, and a federal judge upheld the indictment as consistent with *Citizens United*, although the jury later deadlocked and the judge dismissed some of the charges for insufficient evidence. *See* United States v. Menendez, No. CR 15-155, 2018 WL 526746, at *9 (D.N.J. Jan. 24, 2018). Relatedly, in 2011 the U.S. Court of Appeals for the Eleventh Circuit upheld a bribery conviction against Alabama Governor Don Siegelman where the bribe in question was given to a charitable organization that engaged only in issue advocacy. *See* United States v. Siegelman, 640 F.3d 1159, 1175 (11th Cir. 2011). The fact that a federal court found quid pro quo corruption from a contribution to a group that spent only on issue advocacy is striking because courts consider issue advocacy to pose no greater (and probably less) risk of corruption than "independent" expenditures in candidate races.

[6] *See* Christopher Robertson et al., *The Appearance and the Reality of Quid Pro Quo Corruption: An Empirical Investigation,* 8 Journal of Legal Analysis 375 (Winter 2016), *available at* https://academic.oup.com/jla/article/8/2/375/2502553.

the risk of quid pro quo corruption or the appearance of quid pro quo corruption. The remainder of this memorandum provides a detailed legal explanation why the U.S. Supreme Court's campaign finance precedent does not block Maine from protecting its elections in this way.

Thank you for considering LD2332 and I would be happy to discuss it further at your convenience.

Sincerely,
Ron Fein, Legal Director
Free Speech For People
617-244-0234
rfein@freespeechforpeople.org

I. Limits on contributions to candidates and closely affiliated political actors, including super PACs, are constitutional means of preventing quid pro quo corruption and its appearance.

1. Under U.S. Supreme Court precedent, campaign finance limits must serve "the prevention of '*quid pro quo*' corruption or its appearance." *FEC v. Cruz*, 142 S. Ct. 1638, 1652 (2022). But the Court has long held that restrictions on contributions are different in kind from expenditure limits and accordingly are subject to a more deferential constitutional scrutiny.

Expenditure limitations directly restrict communication and are therefore subject to "exacting scrutiny." *Buckley v. Valeo*, 424 U.S. 1, 19, 44-48 (1976). But contribution limits are "merely marginal speech restrictions" that "lie closer to the edges than to the core of political expression." *FEC v. Beaumont*, 539 U.S. 146, 161 (2003) (internal quotation marks and citation omitted). A contribution serves only "as a general expression of support for the candidate and his views." *Buckley*, 424 U.S. at 21. It "does not communicate the underlying basis for the support." *Id.* "[T]he transformation of contributions into political debate involves speech by someone other than the contributor." *Id.* A contribution limit thus moderates only "the symbolic expression of support evidenced by a contribution." *McCutcheon v. FEC*, 572 U.S. 185, 197 (2014) (plurality opinion) (quoting *Buckley*, 424 U.S. at 21).[7] It does "not in any way infringe the contributor's freedom to discuss candidates and issues." *Id.* (quoting *Buckley*, 424 U.S. at 21).

Thus, contribution limits are subject to less rigorous scrutiny than expenditure limits. *Id.* at 196-97. Contribution limits are valid when "closely drawn" to prevent quid pro quo corruption or its appearance. *See id.* at 197-98, 207-08; *Buckley*, 424

[7] All subsequent citations to *McCutcheon* are to the plurality opinion unless otherwise noted.

U.S. at 25-29. This "relatively complaisant" test, *Beaumont*, 539 U.S. at 161, does not permit the public to limit "mere influence or access" to political officials, *McCutcheon*, 572 U.S. at 208. But the public may permissibly limit "'the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions' to particular candidates." *Id.* at 207 (quoting *Buckley*, 424 U.S. at 27).

2. Consequently, the Supreme Court has "routinely struck down limitations on independent expenditures by candidates, other individuals, and groups, while repeatedly upholding contribution limits." *FEC v. Colo. Republican Fed. Campaign Comm. ("Colorado II")*, 533 U.S. 431, 441-42 (2001) (citations omitted). Especially relevant here, the Court has repeatedly upheld statutes limiting the amount of money people may contribute to candidates or third parties with close ties to particular candidates.

First, in *Buckley*, the Court upheld the Federal Election Campaign Act's ("FECA") limits on contributions directly to candidates. 424 U.S. at 28-29. Candidates, the Supreme Court explained, "depend on financial contributions from others to provide the resources necessary to conduct a successful campaign." *Id.* at 26. Absent regulation, therefore, large contributions might be given "to secure a political quid pro quo from current and potential office holders." *Id.* "[T]he opportunities for abuse inherent in a regime of large individual financial contributions" would also create an "appearance of corruption" that could erode "confidence in the system of representative Government." *Id.* at 27 (citation omitted).

In *California Medical Association v. FEC*, 453 U.S. 182 (1981) (*"CalMed"*), the Court applied *Buckley*'s rationale and upheld a limit on contributions to multicandidate political committees that, *inter alia*, made independent expenditures. *Id.* at 184-85. Without these limits, the restrictions on contributions to candidates themselves "could be easily evaded" simply "by channelling funds through a multicandidate political committee." *Id.* at 198 (plurality opinion). Thus, capping contributions to outside groups is "an appropriate means by which Congress could seek to protect the integrity of the contribution restrictions upheld by this Court in *Buckley*." *Id.* at 199.

In *McConnell v. FEC*, 540 U.S. 93 (2003), the Court similarly applied *Buckley*'s rationale to uphold limits on donations of "soft money"—contributions to national, state, and local political parties for activities that included issue advertising. *Id.* at 122-24, 131, 168. Even assuming that money was not spent in coordination with particular candidates, *see id.* at 152 & 152 n.48, the Court recognized that soft-money contributions "create[d] a significant risk of actual and apparent corruption," *id.* at 168. "[O]fficeholders were well aware of the identities of the donors" who contributed large amounts of soft money to parties. *Id.* at 147. And given the "close

ties" between parties and the parties' candidates, *id.* at 161, the activities funded by soft money "confer[red] substantial benefits on federal candidates," *id.* at 168. Parties, therefore, could serve as "intermediaries" between big donors seeking "to create debt on the part of officeholders" and candidates seeking "to increase their prospects of election." *Id.* at 146.

3. The Supreme Court's cases since 2010, including *Citizens United v. FEC*, 558 U.S. 310 (2010), are in accord. In *Citizens United*, the Court invalidated a federal statute that forbade corporations from making political *expenditures* close to elections. *Id.* at 318-19. Reiterating that expenditures are "political speech," and that "[t]he First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office," the Court reasoned that "[t]he anticorruption interest is not sufficient" to restrict such expenditures. *Id.* at 339-40, 357 (internal quotation marks and citation omitted). "[I]ndependent expenditures," the Court further stated, "do not give rise to corruption or the appearance of corruption." *Id.* at 357. At the same time, the Court emphasized that it had "sustained limits on direct *contributions* in order to ensure against the reality or appearance of corruption." *Id.* at 357 (emphasis added); *see also id.* at 345, 361 (stressing that *Citizens United* dealt only with expenditures).

After *Citizens United*, the Court again recognized that "Congress may regulate campaign contributions to protect against corruption or the appearance of corruption." *McCutcheon*, 572 U.S. at 191. In *McCutcheon*, the Court invalidated a statute limiting *aggregate* candidate contributions. *Id.* at 193, 221. But it reiterated *Buckley*'s holding that FECA's "base" limits themselves "serv[e] the permissible objective of combatting corruption." *Id.* at 192-93; *see also id.* at 197-98. The Court also stressed that "*McConnell*'s holding about 'soft money'" was unaffected by its ruling. *Id.* at 209 n.6.

Crucially, the Court in recent years has twice summarily reaffirmed FECA's restrictions on soft money contributions, ***even where the recipients of the prospective donations sought to spend the money independently—i.e., without coordinating with a candidate or campaign***. *See Republican Party of La. v. FEC*, 219 F. Supp. 3d 86, 96-97 (D.D.C. 2016), *aff'd*, 137 S. Ct. 2178 (2017); *Republican Nat'l Comm. v. FEC*, 698 F. Supp. 2d 150, 157 (D.D.C. 2010), *aff'd*, 561 U.S. 1040 (2010). In the second of those cases, the Solicitor General's 2017 filing stressed "the distinction between expenditure limits and contribution limits" and agreed that Congress may limit soft-money *contributions* that political parties intend to use exclusively for independent *expenditures*. Mot. to Dismiss or Affirm at 18-22, *Republican Party of La. v. FEC*, 137 S. Ct. 2178 (2017) (No. 16-865), 2017 WL 1352870, at *18, *22. Only two Justices would have set the case for argument. *Republican Party of La.*, 137 S. Ct. at 2178.

Finally, nothing in the Court's most recent campaign finance decision, *FEC v. Cruz*, 142 S. Ct. 1638 (2022), alters this framework.

II. Contrary to the D.C. Circuit's view, *Citizens United* does not prohibit limits on contributions to independent expenditure groups.

In *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc), the D.C. Circuit asserted that *Citizens United* dictates, "as a matter of law," that contributions to committees that make only independent expenditures cannot be limited. *Id.* at 695. The court of appeals reasoned: "[B]ecause *Citizens United* holds that independent expenditures do not corrupt or give the appearance of corruption as a matter of law, then the government can have no anti-corruption interest in limiting contributions to independent expenditure-only organizations." *Id.* at 696.

But *SpeechNow*'s reasoning is fallacious. ***Even when an organization's spending does not corrupt, a contribution to that organization can still corrupt***.

1. Bribery law makes clear that donations to actors other than candidates or organizations under their control can give rise to quid pro quo corruption. Even when the recipient of a donation is independent and incorruptible, the donation can corrupt an actor who is interested in seeing the organization funded and successful—and who may be willing to grant favors in return.

Bribery laws incorporate that commonsense insight. Because a payment can corrupt even when it is directed to an entity the bribed official does not control, the federal bribery statute forbids a public official from corruptly seeking "anything of value personally *or for any other person or entity*" in exchange for official action. 18 U.S.C. § 201(b)(2) (emphasis added); *see, e.g.*, *United States v. Brewster*, 506 F.2d 62, 68-69 (D.C. Cir. 1974) (emphasizing the import of the "any other person or entity" coverage).

For instance, a senator "who agreed to vote in favor of widget subsidies in exchange for a widget maker's donation to the Red Cross" would be guilty of bribery even if he had no connection to the Red Cross or role in determining how the organization spent the funds. Albert W. Alschuler et al., *Why Limits on Contributions to Super PACs Should Survive* Citizens United, 86 Fordham L. Rev. 2299, 2310 (2018). Even though the Red Cross's expenditures would be virtuous, the widget maker's contribution would be corrupt. *Id.*

Bribery through corrupt donations to autonomous third-party entities themselves engaged in non-corrupting spending is not merely a hypothetical concern. Affirming the conviction of a former governor, the Eleventh Circuit has recognized that soliciting a donation to an issue-advocacy foundation—which engages solely in non-corrupting issue advocacy speech—can violate the bribery

statute, even though donations to such organizations "do not financially benefit the individual politician in the same way that a candidate-election campaign contribution does." *United States v. Siegelman*, 640 F.3d 1159, 1169 n.13 (11th Cir. 2011); *see also, e.g.*, *United States v. Gross*, No. 15-cr-769, 2017 WL 4685111, at *42 (S.D.N.Y. Oct. 18, 2017) (bribery through donation to a church).

2. In *Citizens United*, the Supreme Court reiterated that "'[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate.'" 558 U.S. at 357 (quoting *Buckley*, 424 U.S. at 47). It then further stated that "independent expenditures . . . *do not* give rise to corruption or the appearance of corruption." *Id.* (emphasis added).

That statement arose in the context of independent expenditures. In that context, the *spender*—the person(s) involved in selecting, e.g., where to buy TV ads, or how to frame a message about the opponent—is not communicating with the *politician*. But if the *spender* is isolated from the *politician*, then the spender's independent spending ("quid") cannot be connected with favors from the politician ("quo") because they have no opportunity to discuss that exchange (no "pro").

That, however, says nothing about a donor who contributes to the spender at the request of the politician. Even if a super PAC (the spender) does not coordinate its campaign strategy with a supported candidate, a contributor is free to discuss both the "quid" and the "quo" with the candidate. *See* Albert W. Alschuler, *Limiting Political Contributions after* McCutcheon*,* Citizens United*, and* SpeechNow, 67 Fla. L. Rev. 389, 475 (2015). Interviews with former Members of Congress and political operatives suggest how such quid pro quo agreements could occur. *See* Daniel B. Tokaji & Renata E.B. Strause, *The New Soft Money: Outside Spending in Congressional Elections* (2014). As one campaign operative explained: "So the Member calls and says 'Hey, I know you're maxed out – and I can't take any more money from you – but there's this other group. I'm not allowed to coordinate with them, but can I have someone call you?'" *Id.* at 68. The conversation could then discuss official matters, including an agreement to take official action in exchange for the donor's contributions to the "other group," *i.e.*, the super PAC.

Put another way, the *spender* (e.g., the media consultant running the super PAC) does not want widget subsidies—the *donor* does. A quid pro quo transaction is thus perfectly plausible: The donor and politician agree that the donor will contribute a large sum to the super PAC in exchange for widget subsidies; the politician agrees; the donor makes the corrupt contribution; and the super PAC—which can be isolated from the widget subsidy conversation—spends the money, *non-corruptly*, to buy independent ads in support of the politician. Thus, the condition described in *Citizens United* is maintained (the independent spending

does not corrupt) but the facile syllogism in *SpeechNow* (that money contributed for the purpose of non-corrupt spending cannot be part of a separate corrupt transaction) is refuted.

In fact, Chief Justice Roberts has refuted the idea that independent spending has no value to candidates—that there is no corrupting "quid." He explained, "We have said in the context of independent expenditures that '[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent . . . undermines the value of the expenditure to the candidate.' *But probably not by 95 percent*." *McCutcheon*, 572 U.S. at 214 (cleaned up; emphasis added; citation omitted). Thus, independent spending *does* have value to candidates. The reason it can't corrupt is because the independent spender is isolated from the politician and thus has no chance to discuss an exchange. But a super PAC provides a cut-out, leaving the donor and politician free to communicate.

Indeed, the federal government has repeatedly charged individuals with bribery arising from donations to super PACs themselves.[8] In 2020, the federal government convicted insurance magnate Greg Lindberg of "orchestrating a bribery scheme involving independent expenditure accounts and improper campaign contributions." Press Release, U.S. Dep't of Justice, *Federal Jury Convicts Founder and Chairman of a Multinational Investment Company and a Company Consultant of Public Corruption and Bribery Charges* (Mar. 5, 2020), perma.cc/38BH-JD4V. Lindberg funneled $1.5 million to a super PAC he created for the purpose of bribing a state insurance commissioner to replace an official investigating Lindberg's company. Ian Vandewalker, *10 Years of Super PACs Show Courts Were Wrong on Corruption Risks*, Brennan Ctr. for Justice (Mar. 25, 2020), perma.cc/4DJN-DSKT.[9]

---

[8] These examples may appear few, but "'the scope of such pernicious practices can never be reliably ascertained.'" *Citizens United*, 558 U.S. at 356 (quoting *Buckley*, 424 U.S. at 27). Moreover, *SpeechNow* rested on a syllogistic conclusion that such quid pro quo corruption was logically impossible, so the existence of *any* quid pro quo corrupt transaction via a contribution to a super PAC illustrates its fallacy. *Cf. FEC v. Cruz*, 142 S. Ct. 1638, 1653 (2022) (in reviewing a challenge to a different campaign finance statute, noting that "the Government is unable to identify a single case of *quid pro quo* corruption in this context.")

[9] Lindberg was caught on tape telling the commissioner, "I think the play here is to create an independent-expenditure committee for your reelection specifically, with the goal of raising $2 million or something." Ames Alexander, *Watch Secretly Recorded Videos from the Bribery Sting that Targeted Durham Billionaire*, Charlotte Observer, at 00:16-30 (Mar. 10, 2020), bit.ly/35aPKvV (quotation transcribed from first video posted in article). Lindberg emphasized that "the beauty of" such a committee is that it can receive "unlimited" donations. *Id.* at 00:35-45.

In 2015, the Government prosecuted a sitting U.S. Senator and a donor for an alleged bribery scheme involving a $300,000 contribution to a super PAC supporting the Senator's reelection. *See United States v. Menendez*, 132 F. Supp. 3d 635, 640 (D.N.J. 2015). The case resulted in a hung jury, but the court did not question the validity of prosecutors' theory that contributions to super PACs can corrupt.

If the D.C. Circuit were right that "contributions to groups that make only independent expenditures . . . cannot corrupt or create the appearance of corruption," *SpeechNow*, 599 F.3d at 694, these prosecutions would all have been illegitimate. The quid pro quo corruption the federal government alleged would be impossible. When something theorized to be impossible actually occurs, the theory, not the reality, requires correction.

2. The Supreme Court's campaign finance precedents underscore the impropriety of the D.C. Circuit's leap from the proposition that independent *expenditures* do not corrupt to the conclusion that *contributions* to independent-expenditure-only organizations cannot corrupt. In *Colorado Republican Federal Campaign Committee v. FEC ("Colorado I")*, 518 U.S. 604 (1996), the Court invalidated limits on independent expenditures by political parties as insufficiently justified by a danger of corruption. *See id.* at 617-18. But the opinion recognized a valid interest in limiting *contributions to the very organizations making those independent expenditures* to fight the "danger of corruption" that would inhere in allowing "large financial contributions [to those organizations] for political favors." *Id.* at 615-17 (opinion of Breyer, J.).

In *McConnell*, the Supreme Court likewise explained that, because of the "close connection and alignment of interests" between officeholders and parties, "large soft-money contributions to national parties are likely to create actual or apparent indebtedness on the part of federal officeholders, *regardless of how those funds are ultimately used*." 540 U.S. at 155 (emphasis added). And in *Republican Party of Louisiana*, which the Supreme Court summarily affirmed in 2017, 137 S. Ct. 2178, a three-judge federal court recognized that contributions to political parties can corrupt even when the parties' expenditures do not. 219 F. Supp. 3d at 97. Writing for the panel, Judge Srinivasan reasoned that "the inducement occasioning the prospect of indebtedness on the part of a federal officeholder is not the *spending* of soft money by the political party. The inducement instead comes from the *contribution* of soft money to the party in the first place." *Id.*

That logic applies here. It does not matter whether super PACs' *expenditures* present a risk of corruption. The question instead is whether large *contributions* to these organizations risk corruption or the appearance of corruption. *See McCutcheon*, 572 U.S. at 191.

III. Limiting contributions to super PACs is a valid means of preventing quid pro quo corruption and its appearance.

Just like the limits on contributions the Supreme Court upheld in *Buckley* and subsequent cases, limits on contributions to super PACs "protect against corruption or the appearance of corruption." *Id.*

1. Many super PACs are functionally alter egos of candidates' campaigns themselves—raising the same prospects of corruption that direct contributions present.[10] This is most obviously true for super PACs that spend the money they receive to promote a single candidate. Many of these super PACs are run by "former staff of candidates who understand what will help the candidate and make expenditures intended to help the candidate, such as funding events about more general issues that feature the candidate." U.S. Gov't Accountability Off., GAO-20-66R, *Campaign Finance: Federal Framework, Agency Roles and Responsibilities, and Perspectives* 52 (2020). Indeed, such super PACs conduct "a wide array of activities typically the province of the candidates"—including "provid[ing] rapid response to charges against their candidate" and "build[ing] lists of persuadable voters." Bipartisan Policy Ctr., *Campaign Finance in the United States: Assessing an Era of Fundamental Change* 39 (2018). Candidates also "often openly support and associate with" such organizations, appearing at their fundraising events and the like. *Id.* at 33. Similarly, super PACs that promote multiple candidates of the same party often function as alter egos for parties.

Donor activity with respect to super PACs confirms that limiting contributions to such organizations is necessary to prevent the limits on contributions to candidates from being "functionally meaningless." Richard Briffault, *Super PACs*, 96 Minn. L. Rev. 1644, 1684 (2012). A small handful of exceptionally wealthy people not only contribute the maximum permissible amount to candidates; they donate huge amounts of money to super PACs supporting those same candidates.[11] And consider the 2021 Boston mayor's race, where the legal contribution limit (i.e., the threshold at which the legislature has found a risk of corruption) for a contribution

---

[10] That applies even to relationships that are *permitted* under anti-coordination rules. Under those rules, donors typically still view a contribution to a super PAC as functionally indistinguishable from a contribution to a candidate himself. The real-world practices described herein do not constitute "coordination" under these rules, and there is no reason to believe that these practices fit within the U.S. Supreme Court's conception of "coordination." The fundamental issue is not the coordination or lack thereof; it is potential for corruption and the appearance of corruption. Accordingly, the only pathway available to prevent the potential corruption—and obvious appearance of corruption—enabled by super PACs is through contribution limits.

[11] See Stephen R. Weissman, *The SpeechNow Case and the Real World of Campaign Finance* (Oct. 2016), https://bit.ly/3MT3FLC.

to a candidate was $1,000. *See* M.G.L. ch. 55, § 7A(a)(1). Notwithstanding this $1,000 limit, one donor (legally) contributed over one *million* dollars to a super PAC that spent 100% of its money supporting a particular candidate.[12] Meanwhile, the super PAC supporting that candidate's opponent received multiple $50,000 contributions (50 times the limit for a direct contribution) and many just under.[13]

In short, the Supreme Court has held that Maine may prohibit a donor from contributing more than $1,950 to candidate Smith because larger contributions would risk actual or apparent corruption. But, under the D.C. Circuit's logic, the Constitution confers upon that same donor the constitutional right to give over one *million* to a super PAC that is dedicated exclusively to Smith's election, and to hold a freewheeling conversation with Smith about both the contribution and what Smith can do for the donor in return. According to the D.C. Circuit, Maine cannot restrict such a massive contribution because it does not raise *any risk of corruption at all*. That cannot be right.

2. Finally, large contributions to super PACs present the *appearance* of quid pro quo corruption. Intuitively, if a contribution directly to a candidate of $1,951 risks the appearance of corruption, then a contribution of $1,950,000 to that candidate's super PAC risks at least the same appearance of corruption.

Elected officials agree. During the 2016 campaign, then-candidate Donald Trump decried super PACs as "[v]ery corrupt." Alschuler et al., *supra*, at 2339. Trump continued: "There is total control of the candidates . . . . I know it so well because I was on both sides of it . . . ." *Id.* Senator Lindsey Graham made a similar observation in 2015, stating that "basically 50 people are running the whole show." *Id.* at 2341. The late Senator John McCain said that super PACs have "made a contribution limit a joke." *Id.* Consistent with these comments from elected officials, surveys show that the general public overwhelmingly perceives that unlimited contributions to super PACs "lead to corruption."[14]

---

[12] See OCPF, *81065 Real Progress Boston Independent Expenditure Political Action Committee*, https://m.ocpf.us/Filers/FilerInfo?q=81065. The donor in question is James Davis.

[13] See OCPF, *81057 Boston Turnout Project Independent Expenditure Political Action Committee*, https://m.ocpf.us/Filers/FilerInfo?q=81057.

[14] Brennan Ctr. for Justice, *National Survey: Super PACs, Corruption, and Democracy* (Apr. 24, 2012), https://bit.ly/3NVKt17 (summary and appendix) (noting that 69% of respondents, including broad supermajorities of both Republicans and Democrats, endorsed this proposition). In the same survey, 75% of Republicans and 78% of Democrats agreed specifically that "there would be less corruption if there were limits on how much could be given to Super PACs." *Id.*

Finally, the aforementioned bribery prosecutions involving super PAC contributions illustrate what these officials openly admit: super PAC contributions can—and do—facilitate quid pro quo arrangements. Of course, bribery prosecutions capture "only the most blatant and specific attempts" to corrupt candidates and public officials. *Buckley*, 424 U.S. at 28. But the fact that they have occurred underscores the reasonableness of a judgment that contributions to independent expenditure political committees should be limited to prevent the appearance, as well as actuality, of quid pro quo corruption.

###