# United States Court of Appeals
## For the First Circuit

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No. 25-1705

DINNER TABLE ACTION; FOR OUR FUTURE; ALEX TITCOMB,

Plaintiffs - Appellees,

v.

WILLIAM J. SCHNEIDER, in the official capacity as Chairman of the Maine Commission on Governmental Ethics and Election Practices; DAVID R. HASTINGS, III, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; DENNIS MARBLE, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; BETH N. AHEARN, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices; AARON M. FREY, in the official capacity as Attorney General of Maine; SARAH E. LECLAIRE, in the official capacity as a Member of the Maine Commission on Governmental Ethics and Election Practices,

Defendants – Appellants,

EQUAL CITIZENS; CARA MCORMICK; PETER MCCORMICK; RICHARD A. BENNETT,

Defendants.

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Defendants.

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

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# BRIEF OF *AMICUS CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF AFFIRMANCE

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## DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the Chamber of Commerce of the United States of America hereby certifies that it is a non-profit, tax-exempt corporation incorporated in the District of Columbia. It has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

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## INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America (the "Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3,000,000 companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to advocate on behalf of its members in matters before Congress, the Executive Branch, and the courts.

The Chamber plays a key role in advancing the First Amendment rights of its members. In that capacity, the Chamber was a party to the *McConnell v. FEC*, 540 U.S. 93 (2003), litigation that challenged the facial constitutionality of an electioneering communication ban on corporate political speech. The Chamber also regularly files *amicus curiae* briefs where the business community's right to political speech is at stake. *See, e.g.*, *Nat'l Republican Senatorial Com. v. FEC*, No. 24-621 U.S. (cert. granted June 30, 2025); *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021); *Am. Tradition P'ship, Inc. v. Bullock*, 567 U.S. 516 (2012); *Citizens United v. FEC*, 558 U.S. 310 (2010); *Wis. Right to Life, Inc. v. FEC*, 546 U.S. 410

[1] No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of the brief. *See* Fed. R. App. P. 29(a)(4)(E). All parties have consented to the filing of this brief.

(2006); *Republican Party of Minn. v. White*, 536 U.S. 765 (2002); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986). And the Chamber has litigated to preserve its own First Amendment rights of speech and association. *See, e.g.*, *Chamber of Com. of the U.S. v. Moore*, 288 F.3d 187 (5th Cir. 2002); *Chamber of Com. of the U.S. v. FEC*, 69 F.3d 600 (D.C. Cir. 1995).

This Court should affirm the ruling below because the restrictions Maine has attempted to place on the ability of citizens to participate in the democratic process through contributions to independent-expenditure political action committees—often called "Super PACs"—are contrary to the First Amendment. The Amendment guarantees the right of Americans to speak both as individuals and collectively without undue interference from government.

## SUMMARY OF ARGUMENT

The State of Maine has attempted to restrict the ability of political action committees to engage in political speech. If such a law sounds implausible, that is because it is: the Supreme Court made clear in *Citizens United* that the First Amendment protects independent political speech regardless of the speaker's identity. The receipt and expenditure of funds by businesses and other associations —including political action committees—supports political speech in its purest form. Political action committees add to the public discourse, amplify voices, and provide new perspectives to Mainers. In short, political action committees play a

role in informing the electorate—a core First Amendment interest that the Framers recognized as a necessary task for the maintenance of a functioning republic.

An attack on the ability of independent-expenditure political action committees to receive contributions is, therefore, a direct attack on the First Amendment, including precedents that recognize the important role of organizations like Plaintiffs-Appellees Dinner Table Action and For Our Future. And that is precisely what the law's backers intended. Having failed to pass a similar initiative in Massachusetts, anti-free speech advocates motivated by a disdain for *Citizens United* and *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (the D.C. Circuit's case applying *Citizens United* to political action committees) traveled north to Maine and tried again. But neither *Citizens United* nor *SpeechNow* have been overruled or called into question in the years since they were decided. To the contrary, as the district court below explained, every court to consider the question has recognized that the holding in *SpeechNow* is logically required by *Citizens United*. Add. 6–8 (citing decisions from Second, Fourth, Fifth, Seventh, and Tenth Circuits and state courts); *see also id.* at 7 ("few contested legal questions have been answered so consistently by so many courts and judges" (cleaned up)). Indeed, both *Citizens United* and *SpeechNow* have been reaffirmed time and again.

The district court in this case, in line with courts throughout the country, correctly rejected Maine's unconstitutional effort to silence political speech.

Because there is no way to distinguish *Citizens United*, and because that decision remains the law of the land, this Court should affirm the decision of the district court so that Mainers may continue to benefit from the political discourse that the First Amendment guarantees.

## ARGUMENT

### I. THE FIRST AMENDMENT GUARANTEES THE RIGHT OF MAINERS TO HAVE THEIR VOICES HEARD THROUGH POLITICAL ACTION COMMITTEES

When the Framers drafted the First Amendment's Speech Clause, their primary purpose was to ensure that Americans could engage openly in political discourse without fear of government suppression. Although the Constitution protects many forms of speech, it sought to protect political speech above all else because "[i]n a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential." *Buckley v. Valeo*, 424 U.S. 1, 14–15 (1976). Indeed, true democratic governance would be impossible if the state were permitted to control what information is available to the electorate. Thus, as the Supreme Court has emphasized, "the First Amendment has its fullest and most urgent application precisely to the conduct of campaigns for political office." *FEC v. Cruz*, 596 U.S. 289, 305 (2022) (citation omitted).

The right to express political opinions, however, is not limited to individuals—"political speech does not lose First Amendment protection 'simply

because its source is a corporation.'" *Citizens United*, 558 U.S. at 342 (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 784 (1978)). As the Supreme Court has long recognized, "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association" given "the close nexus between the freedoms of speech and assembly." *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 460 (1958) (citing *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937); *Thomas v. Collins*, 323 U.S. 516, 530 (1945)). As a result, an "individual's freedom to speak . . . could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward th[at] end[] w[as] not also guaranteed." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984). Thus, just as the Constitution provides robust protection to individuals to opine on political topics, it likewise protects association for the purpose of furthering that expression. Indeed, the "political freedom of the individual" has "traditionally been [exercised] through the media of political associations." *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

This logic applies with greatest force to associations committed to advancing political messages, and it "is well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments." *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 224 (1989); *see also FEC v. Nat'l Right to Work Comm.*, 459 U.S. 197, 206–07 (1982) ("[T]he right of association is a

basic constitutional freedom that is closely allied to freedom of speech and a right which, like free speech, lies at the foundation of a free society." (internal citation and quotation marks omitted)); *NAACP*, 357 U.S. 449, 460 (1958) ("it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious or cultural matters"). Political action committees are, by their very nature, associations formed to further political and electoral expression. Any attempt by government to inhibit their ability to speak is an attack on political discourse itself, harming both the organization, which has its speech restricted, and potential consumers of that speech, who are prevented from accessing information. *See Murthy v. Missouri*, 603 U.S. 43, 75 (2024) ("we have recognized a First Amendment right to receive information and ideas" (internal quotation marks omitted)); *First Nat'l Bank of Boston*, 435 U.S. at 783 ("[T]he First Amendment goes beyond protection of the press and the self-expression of individuals to prohibit government from limiting the stock of information from which members of the public may draw."); *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972) ("It is now well established that the Constitution protects the right to receive information and ideas."). Government efforts to prevent the flow of information are an assault on the very core of what the First Amendment was designed to protect.

Thus, the First Amendment looks skeptically on all government speech restrictions. These concerns are at their zenith where the government attempts to

prevent political organizations from conveying opinions to fellow citizens—a "crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community." *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 216 (1986). Ultimately, democratic systems—as with most human endeavors—depend on individuals acting in concert. A restriction on the operations of a political action committee is, thus, a restriction on the operation of democracy itself and must be met with skepticism.

The Supreme Court recognized as much fifteen years ago in *Citizens United*, where a nonprofit corporation challenged the ability of the government to impose civil and criminal penalties for the mere act of distributing a movie critical of a presidential candidate. *See* 558 U.S. at 319–20. As the Court explained, "[p]olitical speech is 'indispensable to decisionmaking in a democracy, and this is no less true because the speech comes from a corporation rather than an individual.'" *Id.* at 349 (quoting *First Nat'l Bank of Boston*, 435 U.S. at 777). The Court acknowledged that the government may have a legitimate interest in combatting *quid pro quo* corruption or the appearance thereof—the justification the Court in *Buckley* had relied on to uphold limits on direct contributions to candidates, *id.* at 345 (citing *Buckley*, 424 U.S. at 47–48); *see id.* at 357 ("independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption"). Crucially, however, the Court made clear that to prohibit an organization from

engaging in political speech is constitutionally impermissible. *See Citizens United*, 558 U.S. at 319 ("The Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether.").

The D.C. Circuit subsequently applied *Citizens United*'s straightforward reasoning to contributions in *SpeechNow*. *See* 599 F.3d at 696. In that case, the court reviewed the permissibility of a federal prohibition on contributions by corporations to political action committees engaged exclusively in making independent expenditures. As the court explained, "because *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.*; *see also Citizens United*, 558 U.S. at 359 (distinguishing limits on direct contributions to candidates, "which, unlike limits on independent expenditures, have been an accepted means to prevent *quid pro quo* corruption" (citing *McConnell*, 540 U.S. at 136–38, 138 n.40)). "Other courts have . . . been seemingly unanimous" in affirming the logic of *SpeechNow*. Add. 5 (collecting cases from Second, Fourth, Fifth, Seventh, and Tenth Circuits and state courts).

Since *SpeechNow*, political action committees have played an active role in American democracy—amplifying voices in the marketplace of ideas and exposing

Americans to new perspectives and insights. They help inform voters and expand political discourse. Contributions made to political action committees for the purpose of independent expenditures, therefore, warrant maximum protection under the First Amendment.

## II. THE ACT IS A DIRECT CHALLENGE TO *CITIZENS UNITED*

As the district court in this case easily concluded, Maine's decision to place limits on contributions to political action committees that make independent expenditures is a direct challenge to *Citizens United* and strikes at the very core of the First Amendment. Because these political contributions are fully protected by the First Amendment and because Maine cannot identify a valid justification for burdening the speech and associational rights of its citizens, the law was correctly enjoined.

Maine's "Act to Limit Contributions to Political Action Committees That Make Independent Expenditures" (the "Act"), in relevant part, imposes a limit of $5,000 per year on contributions made by an individual, business entity, or political action committee, to a political action committee for the purpose of making an independent expenditure. *See* ME Stat. tit. 21-A, § 1015(2) (2025). A political action committee, in turn, may make independent expenditures only from funds received subject to these contribution limits. *See id*. § 1019-B(6).

Maine's new law, *by design*, restricts the ability of political action committees to contribute to the public discourse via independent expenditures. As its proponents have argued, the Act "addresses *quid pro quo* corruption and the appearance of corruption created by [larger] contributions." Free Speech for People, *Victory! Maine Becomes the First State to Eliminate Super PACs* (Nov. 7, 2024), https://tinyurl.com/n985pce4. And they acknowledge—triumphantly—that the "$5,000 contribution limit effectively eliminates super PACs." *Id.*

But that logic collides head-on with the Supreme Court's reasoning in *Citizens United*. As discussed, *supra* Sec. I, the Supreme Court concluded *unequivocally* that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." *Citizens United*, 558 U.S. at 357; *see SpeechNow*, 599 F.3d at 693. This was not mere stray language, as one set of *amici* suggest, *see* Alschuler Br. at 10–12, but a central holding that cannot be ignored—one that has been followed by seemingly every court, *see* Add. 5.

Indeed, long before *Citizens United*, the Supreme Court had already determined that "[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent . . . alleviates the danger that expenditures will be given as a quid pro quo for improper commitments from the candidate." *Buckley*, 424 U.S. at 47. Thus, the federal and state governments have no legitimate interest in regulating independent expenditures, and that same logic

necessarily applies with equal force to contributions used to fund independent expenditures. *See SpeechNow*, 599 F.3d at 695–96. Moreover, referring to payments made to groups that make only independent expenditures as "contributions" is misleading because, by definition, those payments are not coordinated with any candidate. Instead, such payments are effectively independent expenditures in their own right, made through an agent. Neither *Buckley* nor its progeny suggest otherwise. As the district court in this case concluded, courts have "been seemingly unanimous in holding that 'because *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 groups." Add. 5 (quoting *SpeechNow*, 599 F.3d at 696 and collecting cases).

In fact, Maine's prohibition is, in some respects, *even worse* than the one at issue in *Citizens United*. *Citizens United* concerned an attempt to restrict the independent expenditure of funds in support of candidates. Maine's law would prevent a political action committee from *receiving* those funds in the first place. As the district court explained when enjoining the law: "Given that contributions to independent expenditures are one step further removed from the candidate, the logic of *Citizens United* dictates that the danger of corruption is smaller still." Add. 8. Simply put, there is no serious way for Defendants to argue that Maine's prohibition

does not implicate *Citizens United*. If anything, Maine's assault on the First Amendment is even more egregious.

A previous effort to suppress political speech in Massachusetts confirms this law's unconstitutionality. In 2022, the very same interest group that succeeded in placing Maine's now-law on the ballot proposed a ballot initiative in Massachusetts that would have imposed speech restrictions on political action committees similar to those challenged here. The Commonwealth's Office of the Attorney General, required by Massachusetts law to confirm that any submitted initiative petition does not violate central rights guaranteed by the state Constitution, opined that the same restrictions Maine has placed on political action committees via the Act could not survive judicial review. Citing *SpeechNow*, the opinion noted that "[c]ourts across the country have uniformly held that limits on contributions to independent expenditure PACs—like those at issue in this proposed law—violate free speech protections." Letter from Anne Sterman, Deputy Chief, Government Bureau, Massachusetts Office of the Attorney General to Thomas O. Bean, Partner, Verrill Dana LLP, at 2 (Sept. 7, 2022), https://tinyurl.com/ezcuxhfv. Having failed at this threshold step in Massachusetts, proponents moved north to Maine, which does not subject ballot initiatives to a similar preliminary legal review.

It is no surprise that the Act is an affront to *Citizens United*; its supporters have made clear that their ultimate goal is to have that decision overruled. For

example, a group that advocated for passage of Maine's law notes that it "has been at the forefront of the movement to amend the Constitution to reverse the Supreme Court's *Citizens United* decision since 2010." Free Speech for People, *The Democracy Amendments*, https://tinyurl.com/yhtvsxk2 (last visited Dec. 18, 2025). Likewise, "Equal Citizens," which helped place the measure on the ballot and is openly committed to ending independent-expenditure political action committees, argues that *Citizens United* was wrongly decided because it "rest[s] upon a conception of 'corruption' that is decidedly modern and inconsistent with our Framers' vision." Equal Citizens, *Equal Dependence: Representatives Should Depend on Citizens Equally*, *End Super PACs*, https://tinyurl.com/mwahdptw (last visited Dec. 18, 2025). Although Professor Lawrence Lessig, founder of Equal Citizens and one of the law's leading proponents, has acknowledged that "*Citizens United* isn't going away any time soon," he has not shied away from publicizing his view that "the *Citizens United* decision should be overturned." Ro Khanna and Lawrence Lessig, *Citizens United Isn't Going Away Any Time Soon. But We Can Still Make Campaign Financing Less Corrupt*, Boston Globe (updated Dec. 1, 2024), https://tinyurl.com/5n74tbzn.

On appeal, *amici* have likewise been candid enough to admit that their ultimate goal is the reversal of *Citizens United* itself. *See, e.g.*, Former Members of Congress & Former Governors Br. at 7 ("The predictable and demonstrable result

[of *Citizens United*] has been an explosion in outside spending, overwhelming the role of ordinary voters and undermining confidence in the democratic process."). Maine's statute is nothing more than a vehicle through which its proponents will attempt to overturn Supreme Court precedent—something the district court recognized. *See* App. 10 ("Even the Defendants acknowledge that I am bound to follow Supreme Court precedent on this point and admit that their argument is primarily intended to preserve the issue for subsequent levels of review."). This Court, too, is bound to follow binding Supreme Court precedent. It can no more accept proponent's and *amici*'s invitation to overturn *Citizens United* than it can disregard any other controlling law.

At bottom, the Act appears to be motivated by a fear of increased political speech. Supporters of the Act view such speech with disdain; one set of *amici* on appeal went so far as to describe citizen support for political action committees as "low-value speech." Alschuler Br. at 4; *see also* Former Members of Congress & Governors Br. at 16 (complaining that political action committees "flood[] the political process with attack ads"). But increased spending on speech is never itself a problem for the government to address. That is because, ultimately, it is a candidate's message that wins or loses the day. Although freedom of political speech is typically *necessary* to win an election, it is not *sufficient*. To succeed in a

democratic system, an individual's or group's message must also be a persuasive one.

One need only look at recent history to confirm as much. In the Democratic Party's 2020 presidential primary, for example, former New York Mayor Michael Bloomberg is reported to have spent over *one billion dollars* on his short, 100-day primary run. *See* FEC, *Mike Bloomberg 2020, Inc., FEC Form 3P* (filed Apr. 4, 2020), https://tinyurl.com/5haravrm. He won only 55 delegates and spent roughly $18 million to secure each one. *See* Benjamin Siegel and Soo Rin Kim, *Mike Bloomberg Spent More Than $1 Billion On Four-Month Presidential Campaign According To Filing*, ABC News (Apr. 20, 2020), https://tinyurl.com/54n3kjvh. Similarly, then-Congressman David Trone (D-Md) "burned through $62 million of his own fortune" while running for the Senate in 2024—outspending his Democratic primary opponent by a nearly 10:1 ratio—yet still lost by double digits. Luke Goldstein, *Money Misses the Mark in Maryland*, The American Prospect (May 15, 2024), https://tinyurl.com/2v3jjwne; *see also* Chris Cameron and Maggie Astor, *David Trone Torched $60 Million of His Own Money. He's Not the Only One*, N.Y. Times, May 16, 2024, https://tinyurl.com/33cxh3w3. It turns out that money isn't everything, much less the only thing, when the underlying message doesn't resonate.

As the Court in *Citizens United* made clear, "it is our law and our tradition that more speech, not less, is the governing rule." 558 U.S. at 361. Independent

expenditures help facilitate this speech. Maine's law, which is premised on disdain for political speech from groups like Plaintiffs-Appellees in this case, simply cannot pass constitutional muster under *Citizens United*.

## III. THERE IS NO PATH FOR AVOIDING *CITIZENS UNITED*

Despite the wishes of proponents of Maine's law, *Citizens United* remains the law of the land. Because the Act cannot be squared with that decision, this Court must hold Maine's law unconstitutional and affirm the district court's permanent injunction. Alternative arguments that the Act is somehow compatible with *Citizens United* are unpersuasive.

Maine argues (at 24) that *FEC v. Beaumont*, 539 U.S. 146 (2003), somehow displaces the clear holding of *Citizens United* and the myriad subsequent decisions construing it. It notes that in *Beaumont*—decided before *Citizens United*—the Supreme Court opined that "restrictions on political contributions have been treated as merely 'marginal' speech restrictions subject to relatively complaisant review under the First Amendment, because contributions lie closer to the edges than to the core of political expression." Gov't Appellants Br. at 26 (quoting *Beaumont*, 539 U.S. at 161); *see also* Demos and Common Cause Br. at 2 ("Contributions have less expressive value and more potential for quid pro quo corruption than expenditures, so limits on contributions are subject to less exacting scrutiny than limits on expenditures."). Maine contends that *Beaumont* therefore exempts contributions

from *Citizens United*'s protection. But, as Maine is forced to concede, "*Beaumont* involved direct contributions to *candidates*," Gov't Appellants Br. at 25 (emphasis added)—not entities engaging in independent expenditures, which makes *Beaumont* entirely inapposite. Although payments made directly to candidates by individuals may necessitate regulation for the prevention of *quid pro quo* corruption, the contributions at issue here are protected by the First Amendment precisely because, among other reasons, they go to political action committees that *by definition* do not coordinate with candidates. *Beaumont* is simply irrelevant to this case.

The Act's other supporters have been equally ineffectual at attempting to demonstrate that the law does not violate *Citizens United*. Professor Lessig suggests that the Act does not attack *Citizens United*, but *SpeechNow*. Indeed, that is precisely how he pitched the law to the Veterans and Legal Affairs Committee; Lessig testified that Maine could provide the Supreme Court with an opportunity to overrule the D.C. Circuit without having to revisit *Citizens United*. *See* Emma Davis, *A 'Simple' Bill With Broad Implications: Legislature Hears Campaign Finance Reform Initiative*, Maine Morning Star (Mar. 7, 2024), https://tinyurl.com/5n9yrvkp. But any argument that Maine can flout *SpeechNow* while remaining faithful to *Citizens United* is wholly unpersuasive because it rejects the reasoning that undergirds both cases. Indeed, that is why the reasoning of *SpeechNow* has been followed by every Circuit faced with the same question. App. 5–7. These courts have understood that

an attack on *SpeechNow* is necessarily an attack on *Citizens United*'s central pillar: the recognition that independent political expenditures, by their very nature, cannot lead to *quid pro quo* corruption or the appearance thereof. Accordingly, Maine cannot justify its speech-suppressing law on the basis that it is attempting to prevent *quid pro quo* corruption: when it comes to independent expenditures, no such corruption can exist.

Nor do examples of alleged corruption justify the law's constitutionality under the reasoning of *Citizens United*. Professor Lessig and several *amici* point to the long-running bribery scandals involving Senator Robert Menendez of New Jersey. In one case brought against the embattled legislator, the government alleged, among many other improprieties, that a wealthy Floridian made a $600,000 contribution to a Democratic political action committee that was earmarked to support the senator's 2012 reelection in exchange for the Senator using his office to help the donor's girlfriend obtain a visa to enter the United States (the political action committee at issue was not alleged to have been complicit in the arrangement). *See* Matea Gold, *Menendez Indictment Marks First Big Corruption Case Involving a Super PAC*, The Washington Post (Apr. 2, 2015), https://tinyurl.com/2s3em73c.[2] But it is unclear

[2] Although that prosecution resulted in a mistrial, *see United States v. Menendez*, 291 F. Supp. 3d 606, 611 (D.N.J. 2018), Senator Menendez was convicted for other unrelated improprieties in a subsequent proceeding, *see* Larry Neumeister and Philip

how this example of alleged corruption could justify curtailing political speech given that campaign finance law governing so-called "soft money contributions" already prohibits such conduct, *see* 52 U.S.C. § 30125(e)(1) ("A candidate, individual holding Federal office, agent of a candidate or an individual holding Federal office . . . shall not . . . solicit, receive, direct, transfer, or spend funds in connection with an election for Federal office, including funds for any Federal election activity, unless the funds are subject to the limitations, prohibitions, and reporting requirements of this Act."), as do anti-bribery statutes—as evidenced by the Department of Justice's prosecution, *see United States v. Menendez*, No. 2:15-cr-00155 (D.N.J. 2015); *see, e.g.*, 18 U.S.C. § 201(b)(1)(A). Rather than relying on existing law or advocating for others that impose fewer burdens on political speech, Professor Lessig would prefer restricting the constitutional rights of political action committees and their contributors, operating wholly independently of candidates.

Another proponent of Maine's law testified that it is designed "to challenge the lower courts' interpretation to the Supreme Court's decisions in *Buckley v*[.] *Valeo* and *Citizens United*." *Testimony Before the Joint Standing Committee on Veterans and Legal Affairs in Support of LD 2232*, 131st Leg., 2nd Reg. Sess. (Me.

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Marcelo, *Sen. Bob Menendez Guilty of Taking Bribes in Cash and Gold and Acting as Egypt's Foreign Agent*, AP (Jul. 16, 2024), https://tinyurl.com/5x29975s.

2024) (statement of Adam Cote, Attorney, Drummond Woodsum), https://tinyurl.com/ycxzzu5u. His justification for the law is that "wealthy donors contributing to SuperPACs is one of [those] truly undemocratic forces that enjoys a grossly disproportionate share of influence over our election process." *Id.* That is to say, in his view, the law is necessary because it is designed to "level the playing field" by reducing the relative influence of wealthy individuals. *See also* Former Members of Congress & Governors Br. at 13 ("Super PACs elevate the voices of the wealthy few over those of the average citizen."); Mark Cuban Br. at 10–12 (arguing that wealth results in outsized political influence). But the Supreme Court unambiguously rejected that justification in *Davis v. FEC* when it invalidated the so-called "Millionaires' Amendment" of federal campaign finance law. *See* 554 U.S. 724 (2008). As the Court explained, "[t]he argument that a candidate's speech may be restricted in order to 'level electoral opportunities' has ominous implications because it would permit Congress to arrogate the voters' authority to evaluate the strengths of candidates competing for office." *Id.* at 742; *see also Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 750 (2011) ("'Leveling the playing field' can sound like a good thing. But in a democracy, campaigning for office is not a game."); *Buckley*, 424 U.S. at 48–49 ("[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment . . . ."). Indeed, as

discussed, the Supreme Court "has recognized only one permissible ground for restricting political speech: the prevention of '*quid pro quo*' corruption or its appearance." *Cruz*, 596 U.S. at 305.

At bottom, any attempt at sidestepping *Citizens United*'s effective prohibition on regulating independent political speech would be futile. The Supreme Court made as much clear shortly after deciding *Citizens United* when the State of Montana attempted to ignore the Court's central holding. In that case, Montana had imposed a flat ban on any corporation making "an expenditure in connection with a candidate or a political committee that supports or opposes a candidate or a political party." *Am. Tradition P'ship, Inc.*, 567 U.S. at 516 (per curiam) (quoting Mont. Code § 13–35–227(1) (2011)). Montana argued that its law could be squared with *Citizens United* because: (1) those challenging the law had other means of engaging in political speech, (2) the campaign finance regulatory regime in Montana was simpler and less burdensome than equivalent federal law, and (3) Montana had a unique political history necessitating the suppression of corporate speech, including a long history of corporate influence in campaigns. *See W. Tradition P'ship, Inc. v. Att'y Gen. of State*, 271 P.3d 1, 6–8 (Mont. 2012). The Supreme Court found none of these justifications persuasive, concluding in a one-paragraph *per curiam* opinion that "[t]here can be no serious doubt" that Montana's arguments in defense of the

law "either were already rejected in *Citizens United*, or fail to meaningfully distinguish that case." *Am. Tradition P'ship*, 567 U.S. 516–17.

As the Supreme Court made clear in ruling against Montana, *Citizens United* was not a narrow decision limited to the federal regulatory scheme before it; it was a broad pronouncement concerning the fundamental constitutional right of businesses and other associations to engage in political speech without government interference. States like Maine are not at liberty to concoct innovative excuses for curtailing this right; thus, Maine's effort to skirt *Citizens United* should meet a similar fate.

Simply put, *Citizens United*, which remains binding precedent, cannot be avoided. Maine's law attempts to suppress the ability of political action committees to engage in political speech independent of any candidate, but the Supreme Court has clearly precluded Maine from doing so. Maine's prohibition would undermine the core constitutional right to engage in political speech; accordingly, the law violates the First Amendment and the district court was correct to conclude that it is unenforceable.

## CONCLUSION

For all these reasons, this Court should affirm.

Dated: December 29, 2025

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I hereby certify, on December 29, 2025, that:

1. This brief complies with the word limit under Federal Rule of Appellate Procedure 29(a)(5) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 5,115 words.

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word for Office 365 in a fourteen-point Times New Roman font.

December 29, 2025

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**CERTIFICATE OF SERVICE**

I certify that on December 29, 2025, a true and correct copy of this brief was filed and served electronically on all counsel of record through the Court's CM/ECF system.

December 29, 2025

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