No.18-149

In The
Supreme Court of the United States

DOUG LAIR, *ET AL.*,

Petitioners,

v.

JEFF MANGAN, IN HIS OFFICIAL CAPACITY AS THE MONTANA COMMISSIONER OF POLITICAL PRACTICES, *ET AL.*,

Respondents.

On Petition for a Writ of *Certiorari* to the United States Court of Appeals for the Ninth Circuit

AMICUS CURIAE BRIEF OF THE INSTITUTE FOR FREE SPEECH IN SUPPORT OF PETITIONERS

ALLEN DICKERSON
Counsel of Record
ZAC MORGAN
OWEN YEATES
INSTITUTE FOR FREE SPEECH
124 S. West St., Ste. 201
Alexandria, VA 22314
adickerson@ifs.org
(703) 894-6800
Counsel for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*[1]

The Institute for Free Speech is a nonpartisan, nonprofit organization that works to protect and defend the rights to free speech, assembly, press, and petition. As part of that mission, the Institute represents individuals and civil society organizations, *pro bono,* in cases raising First Amendment objections to the regulation of core political activity.

SUMMARY OF THE ARGUMENT

In *Buckley v. Valeo*, 424 U.S. 1 (1976) (*per curiam*), this Court explained the standard for reviewing restrictions on contributions to candidates and political parties. Such limits could only "be sustained if the State demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms." 424 U.S. at 25. The Court applied this "exacting" review, 454 U.S. at 294, over the ensuing decades, in cases such as *Citizens Against Rent Control/Coalition for Fair Housing v. City of Berkeley*, 454 U.S. 290, 294 (1981).

In 2006, however, the Court imposed a new gloss on *Buckley*, creating a two-step, multi-factor test for determining whether a given contribution limit was too low. *Randall v. Sorrell*, 548 U.S. 230 (2006). Three justices approved this test, which was

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[1] No counsel for a party authored this brief in whole or part, nor did any person or entity, other than *amicus* or its counsel, financially contribute to preparing or submitting this brief. All parties have consented to the filing of this brief.

contained in the narrowest—and thus controlling—opinion.

Unfortunately, despite professing a certain technocratic exactitude, the *Randall* plurality's test cannot "be reduced to a workable inquiry," *Randall*, 548 U.S. at 268 (Thomas, J., concurring in the judgment), and provides little useful guidance to the lower courts that are obliged to apply it.

Accordingly, this Court ought to grant the writ and formally supersede the *Randall* plurality's opinion. *See Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 372-393 (2010) (Roberts, C.J., concurring). Furthermore, the Court should take the opportunity to clarify that *Buckley* mandates the application of "exacting scrutiny" to contribution limits. *See Citizens United*, 558 U.S. at 366-367.

ARGUMENT

I. The writ ought to be granted so this Court can replace *Randall v. Sorrell*'s unworkable plurality opinion

a. For thirty years, this Court applied Buckley *when evaluating First Amendment challenges to contribution limits.*

In *Buckley v. Valeo*, this Court facially approved a federal contribution limit of approximately $4,500 per election. [2] However, in

[2] *See* Bureau of Labor Statistics, "CPI Inflation Calculator," https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=1000&year1=197601&year2=201807 ("$1,000 in January 1976 has the same buying power as $4,532.48 in July 2018").

upholding *a* contribution limit, the Court did not uphold *all* contribution limits. Rather, the *Buckley* Court specifically found that "contribution… limitations operate in an area of the most fundamental First Amendment activities." 424 U.S. at 14. The ability to financially participate in a political contest is "a 'basic constitutional freedom' that…'lies at the foundation of a free society.'" *Id.* at 25 (quoting *Kusper v. Pontikes*, 414 U.S. 51, 57 (1973) and *Shelton v. Tucker*, 364 U.S. 479, 486 (1960)).

Contribution limits affect two types of First Amendment rights. They deny some contributors the ability to express the "intensity" of their support for a candidate—a diminishment of expressive activity. *Id.* at 21. In addition, they infringe upon freedom of association by capping the extent to which "like-minded persons [may] pool their resources in furtherance of common political goals." *Id.* at 22; *see NAACP v. Ala.*, 357 U.S. 449, 462 (1958) (First Amendment protects, *inter alia*, "the right of [Americans]…to pursue their lawful private interests privately and to associate freely with others in so doing").

Given these concerns, the *Buckley* Court only upheld the relatively generous federal limits after conducting an exacting review of the statute, and finding the restrictions "closely drawn" to "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." 424 U.S. at 25.[3]

The Court acknowledged that limits that differed "in degree" from those upheld in *Buckley* would not necessarily be unconstitutional. *Id*. at 30. But it cautioned legislators against reading *Buckley* as a green light for low contribution limits, stating that if restrictions instead "can be said to amount to differences in kind," they may violate the First Amendment. *Id* at 30.

Not all chose to heed this warning, and this Court was forced to weigh in—striking down some limits, upholding others. For instance, the City of Berkeley's $250 contribution limit to ballot measure campaigns was struck down on a straightforward application of the *Buckley* holding. *Citizens Against Rent Control*, 454 U.S. at 300. But Missouri's $1,075 limit for a state auditor's race survived. *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 397 (2000).

It was not until 2006, however, three decades after the *Buckley* decision, that the Court struck down a State's political contribution limits for being unconstitutionally low. *Randall*, 548 U.S. at 262-63. There, a majority of Members of the Court were unable to agree *why* the limits ought to be struck, with several justices arguing for overturning *Buckley* itself.

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[3] The Court acknowledged that higher limits were permissible—the federal limits were not *compelled* by any article of the Constitution. 424 U.S. at 30 (acknowledging that a limit twice as high as the one before it, approximately $9,000 per election in today's dollars, would be acceptable); *cf.* U.S. Const. amend. I ("Congress shall make no law…abridging the freedom of speech…or the right of the people peaceably to assemble").

As a result, a three-vote plurality opinion written by Justice Breyer serves as the controlling reasoning in that case. *Marks v. United States*, 430 U.S. 188, 193 (1977) ("When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds….'") (quoting *Gregg v. Ga.*, 428 U.S. 153, 169 n.15 (1976)). Nevertheless, since the *Randall* decision, this Court has not seen fit to apply that plurality's framework to a contribution limit case, despite opportunities to do so. *See Davis v. Fed. Election Comm'n*, 554 U.S. 724 (2008); *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185 (2014).

This is unsurprising. The *Randall* plurality's test is fundamentally incapable of consistent application.

b. The Randall *plurality's analysis is unworkable and cannot be applied predictably.*

The *Randall* plurality began by noting that "[f]ollowing *Buckley*," it "must determine whether [a law's] contribution limits…are too low and too strict to survive First Amendment scrutiny." *Randall*, 548 U.S. at 248; *id.* at 248 ("[W]e must recognize the existence of some lower bound.").

However, the plurality went on to limit prior precedent holding that contribution limits, as a "regulation of First Amendment rights," are "always subject to exacting judicial scrutiny." *Citizens Against Rent Control,* 454 U.S. at 294. Instead, the plurality suggested that "independent[] and careful[]" review of

a particular contribution restriction need not be undertaken unless "there is a strong indication" that something is amiss. *Randall,* 548 U.S. at 249. Consequently, *Randall* undermined the duty of "courts, including appellate courts" to "review the record independently" under exacting scrutiny. *Id.*; *cf. Shrink Mo. Gov't PAC,* 525 U.S. at 391 ("The quantum of empirical evidence needed to satisfy heightened judicial scrutiny of legislative judgments will vary up or down with the novelty and plausibility of the justification raised").

Rather than follow *Buckley* and determine whether Vermont's contribution regime ("Act 64") was closely drawn to deter the coercive effect of large contributions upon legislators, the plurality created a new, two-step, multi-factor test. *Cf. Citizens United*, 558 U.S. at 335-336 (finding that while "a two-part, 11-factor balancing test" promulgated by a federal agency was not "a prior restraint on speech in the strict sense of that term…[a]s a practical matter…applying ambiguous tests" is strongly disfavored under the First Amendment).

At *Randall* Step One, a court must consider whether the "limits are substantially lower than both the limits [this Court has] previously upheld and comparable limits in other States." 548 U.S. at 253. If this is the case, it "generate[s] suspicion that [the limits] are not closely drawn," and the analysis proceeds to Step Two. *Id*. at 249.

But *Randall* Step Two is not a single step. Instead, it is a jumble of five different factors (or "danger signs") that must be "*[t]aken together*" by the courts. *Id*. at 253 (emphasis in original). The five factors are:

(1) Whether "the record suggests…that [the] contribution limits will significantly restrict the amount of funding available for challengers to run competitive campaigns." *Id*.
(2) Whether the challenged law requires "political parties [to] abide by *exactly* the same low contribution limits that apply to other contributors." *Id*. at 256 (emphasis in original).
(3) Whether the law "exclude[s] the expenses" that "volunteers incur…in the course of campaign activities." *Id*. at 259.
(4) Whether the "contribution limits are [] adjusted for inflation." *Id*. at 261.
(5) Whether the record contains any "special justification that might warrant a contribution limit so low or so restrictive as to bring about…serious associational and expressive problems." *Id*.

The plurality, however, "d[id] not…specify the relative weight that should be given to the factors; whether any of the five factors might be dispositive; whether all would need to be present in the same degree; whether other factors might also be relevant." Lillian R. BeVier, *Full of Surprises—And More to Come:* Randall v. Sorrell*, the First Amendment, and Campaign Finance Regulation*, 2006 Sup. Ct. Rev. 173, 181 (2006) ("*Surprises*").

Many questions remain unanswered after *Randall*. Must a contribution limit check all five categories before it flunks a tailoring analysis? Or will four suffice? Can a state decline to peg its limit to the Consumer Price Index if its limit is over $1,000? Is

indexing required for lower limits? Can a State impose similar contribution limits on political parties and individuals so long as it provides an exemption for volunteer expenses?

The list could go on. Far from applying a path for judges seeking to determine whether a contribution limit survives closely drawn review, the *Randall* plurality creates a highly-malleable standard. Consequently, it is unsurprising that "lower courts, faced with applying the *Randall* analysis, have found grounds to distinguish it, to avoid applying in its entirety, or to apply it inconsistently." Pet. 33.

But even if the plurality had explained how to weigh the five factors of the Step Two analysis, lower courts would still need to address *Randall*'s unhelpful description of each element.

1. Determining whether a contribution limit renders elections unconstitutionally uncompetitive.

While money is essential to campaign speech, it is not a direct proxy for political competitiveness. Campaigns are dynamic events, and even professional prognosticators have difficulty predicting electoral outcomes. Yet the first "danger sign" asks the Court to engage in precisely this sort of political punditry.

The *Randall* plurality relied on facially convincing statistics in finding that Vermont's limits implicated the first "danger sign." For example, the plurality cited evidence that "Act 64's contribution limits would have reduced the funds available in 1998," which was "the last [legislative election] to

take place before Act 64 took effect," to Republican challengers in competitive races in amounts ranging from 18% to 53% of their total campaign income." 548 U.S. at 253. But, as the plurality characterizes the study, those numbers simply assume donors that gave in 1998 under the old rules would have acted precisely the same if that campaign had been held under the new limits, a dubious proposition. *See* 548 U.S. at 253-254. *See McCutcheon*, 572 U.S. at 224 ("Because individuals' direct contributions are limited, would-be donors *may* turn to other avenues for political speech.") (emphasis supplied). This was an easy mistake, since respondents chose to "not contest these figures." *Randall*, 548 U.S. at 254.

Thus, while the application of the first factor "has a superficial aura of scientific exactness to it," it skates uncomfortably close to "sociological gobbledygook." Richard L. Hansen, *Campaign Finance Reform: The Newer Incoherence: Competition, Social Science, and Balancing in Campaign Finance Law After* Randall v. Sorrell, 68 Ohio St. L.J. 849, 879 (2007); Tr. of Oral Arg., *Gill v. Whitford*, No. 16-1161 at 40 (Oct. 3, 2017). Certainly, the Court failed to notice that it had imposed a difficult predictive task on lower courts that might face more challenging facts.

2. Regulation of political parties at the exact level as individuals.

The second "danger sign" involves imposing the same contribution limits on political parties and individuals. This second factor ostensibly fights against the dilution of an "important political right,

the right to associate in a political party." 548 U.S. at 256.

But whatever the merits of defending the role of the political parties as unique institutions, this prong of the *Randall* decision leaves courts with little applicable guidance. If individual limits are, say, $400, and party contributions are capped at $600, is that a "danger sign" or a properly structured limit? What is a lower court to make of the tension in this Court's precedents between *Randall*'s solicitude for the unique role served by political parties, and its warning in *McConnell v. Federal Election Commission* that parties and candidates "enjoy a special relationship and unity of interest," and that parties are accordingly in "a unique position, whether they like it or not, to serve as agents for spending on behalf of those who seek to produce obligated officeholders"? 540 U.S. 93, 145 (2003) (internal quotation marks omitted).[4] Finally, how close must the limits to individuals and those to parties be? Should the plurality be taken literally when it cautions against applying "*exactly* the same low contribution limits" in both circumstances? *Randall*, 548 U.S. at 256 (emphasis in original).[5]

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[4] *McConnell* spoke in the context of national parties, because it was reviewing a federal statute. But there is little reason to think the *McConnell* majority would not have thought the same relationship existed between state parties and state candidates.

[5] Moreover, does the existence of independent expenditure committees, so-called "Super PACs," which may receive unlimited contributions so long as they do not coordinate with a party or a candidate, somewhat lessen the uniqueness of a "right to associate in a political party"? Indeed, in Colorado, a State with extraordinarily low contribution limits, that state's Republican Party endeavored to create a "Super PAC" of its own.

3. and 4. Regulating volunteer expenses as contributions and refusing to index limits to inflation.

The next two danger signs are related; both recognize the danger that low limits will be reduced to the point of uselessness. *Id*. at 261. Low limits that fail to exempt volunteer activities will be quickly frittered away,[6] and a failure to index low limits might cause an already-low limit to slowly drift toward unconstitutionality, "impos[ing] the burden of preventing the decline upon incumbent legislators who may not diligently police the need for changes in limit levels to ensure the adequate financing of electoral challenges." *Randall*, 548 U.S. at 261.[7]

How much weight should be given to these factors is, as with the rest of the so-called "danger signs," unknown. For example, the plurality

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James Anderson, Associated Press, *Court: Colorado GOP's creation of super PAC was legal*, Washington Times, Feb. 25, 2016, https://www.washingtontimes.com/news/2016/feb/25/court-colorado-gops-creation-of-super-pac-was-lega/. Is *that* a danger sign?

[6]Jeopardizing the commonsense observation that "volunteer[ing] to work on a campaign, and contribut[ing] to a candidate's campaign" are two different methods by which a "[c]itizen[] can exercise" her "right to participate in electing our political leaders." *McCutcheon*, 572 U.S. at 191.

[7] "CPI Inflation Calculator," https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=1000&year1=197601&year2=200203. To this end, it bears some significance that in March of 2002, Congress raised the individual limit from $1,000, where it had remained static since *Buckley*, to $2,000, indexed to inflation. 52 U.S.C. § 30116(a)(1)(A) and (c). At that time, however, an inflation-adjusted rate would have yielded a per-election limit of just over $3,200.

specifically noted that volunteers could easily exceed a low limit simply by driving. *Id.* at 260 ("Such supporters will have to keep careful track of all miles driven…."). This is all well and good because, within a relatively narrow range, and leaving aside outlandish vehicles, driving costs are constant.

But the same cannot be said for other forms of volunteer activity. Take *pro bono* legal services. *See Inst. for Justice v. State of Wash.*, No. 13-2-10152-7 (Pierce Cty. Super. Ct. Feb. 20, 2015) (rejecting State effort to apply contribution limits to *pro bono* legal advice). Attorneys' time is fairly valued at very different rates, depending on experience, expertise, and ability. Some is quite expensive and will surpass even a comparatively high contribution limit very quickly.

Is *Randall* concerned only with the former type of volunteer activity? Or is it also a warning sign if a contribution limit presents a special bar to professional services? *See Citizens United,* 558 U.S. at 324 ("The First Amendment does not permit laws that force speakers to retain a campaign finance attorney…before discussing the most salient political issues of our day."). If regulating volunteer activity is permitted, how is it to be valued? And what is to be done if certain volunteer activity, such as legal services, is subject to greater inflationary pressures than other campaign costs?

Randall's silence on these points poses a substantial interpretive difficulty for both lower courts and conscientious legislatures.

5. Special circumstances.

Finally, the *Randall* plurality created a catch-all provision, less a "danger sign" than a "get-out-of-jail-free card." A government might place "in the record any special justification" for its low limits. 548 U.S. at 261. But this catch-all for "special circumstances" conflicts with subsequent precedent and leaving it in place is an invitation for litigants and lower courts to ignore those holdings.

This Court has rejected governmental efforts to create new interests beyond the prevention of *quid pro quo* corruption and its appearance. And the Court has consistently found that "Congress may regulate campaign contributions" *only* "to protect against corruption or the appearance of corruption… Campaign finance restrictions that pursue other objectives…impermissibly inject the Government 'into the debate over who should govern.' And those who govern should be the *last* people to help decide who *should* govern." *McCutcheon*, 572 U.S. at 191-92 (emphasis in original) (citations omitted); *cf. McConnell*, 540 U.S. at 248 (Scalia, J., concurring in part and dissenting in part) ("We are governed by Congress, and this legislation prohibits the criticism of Members of Congress by those entities most capable of giving such criticism loud voice….").

Even if *Randall*'s fifth warning sign is read to invite only factual claims, and not the invention of new governmental interests, it is still an invitation to mischief. *See, e.g., Am. Tradition P'ship v. Bullock*, 567 U.S. 516, 516 (2012) (rejecting state claim that, because of its supposedly uniquely corrupt history, it should be excused from "the holding of *Citizens United*"); Br. in Opp'n 19, 26, *Am. Tradition P'ship v.*

Bullock, 567 U.S. 516 (2012) ("The compelling historical interests for the enactment of the Corrupt Practices Act are unmistakable…'Montana state and local politics are more susceptible to corruption than federal campaigns.'"). For this reason alone, *Randall* should be revisited.

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The *Randall* plurality concluded that while "many…campaign finance regulations impose certain of these [five factors] to some degree…our discussion indicates why we conclude that [Vermont's law] in this respect nonetheless goes too far." *Randall*, 548 U.S. at 262.

But, as the discussion *supra* suggests, the two-step *Randall* analysis cannot "be reduced to a workable inquiry." 548 U.S. at 268 (Thomas, J., concurring in the judgment). "Indeed, its discussion offers nothing resembling a rule at all." *Id*. at 272 (Thomas, J., concurring in the judgment). The plurality's "recitation of the five factors…contain[] a myriad of details, [but its] conclusion is undertheorized, good for the resolution of the case at hand but suggesting little about the resolution of the next one." BeVier, *Surprises*, 2006 Sup. Ct. Rev. at 191.

At bottom, the plurality offers "atmospherics" and word games that reflect "the plurality's sentiment" that Vermont's contribution limits were too low. *Randall*, 548 U.S. at 272 (Thomas, J., concurring in the judgment). "But a feeling does not amount to a workable rule of law." *Id*.

c. The incoherent Randall *analysis should be formally jettisoned.*

Nevertheless, absent this Court's intervention, the lower courts are stuck with *Randall*. Whether they consider it *dicta* or a controlling holding,[8] courts are duty-bound to comply with this Court's considered utterances. *See, e.g., IFC Interconsult v. Safeguard Int'l Partners*, 438 F.3d 298, 311 (3d Cir. 2006) ("Nonetheless, we pay due homage to the Supreme Court's well-considered dicta as pharoi that guide our rulings").

This Court ought to grant the writ so that it may dispatch with *Randall*'s three-justice plurality opinion entirely. That ruling has demonstrated no "ability to contribute to the stable and orderly development of the law," and removing it would allow this Court to "restor[e]" its "doctrine to sounder footing." *Citizens United*, 558 U.S. at 380 (Roberts, C.J., concurring op.). Indeed, doing so would simply ratify this Court's disinclination to follow the *Randall* two-step process in striking down FECA's aggregate contribution limit in *McCutcheon v. Federal Election Commission*. "There is…no basis for the Court to give precedential sway to reasoning that it has never accepted, simply because that reasoning happens to support a conclusion reached on different grounds that have since been abandoned or discredited." *Id.* at 384.

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[8] *Amicus* agrees with Petitioners that *Randall* is a holding of the Court. Pet. 27; *supra* at 5 (citing *Marks*, 430 U.S. at 193).

d. Granting certiorari *would also allow the Court to formally explain that "closely drawn" analysis and "exacting judicial scrutiny" are a single standard of review.*

Three justices concurred in the *Randall* decision, and six justices voted to invalidate Vermont's contribution restrictions. Two of those justices, however, argued that the alternative to the unworkable *Randall* process was to overturn *Buckley*. 548 U.S. at 266 (Thomas and Scalia, JJ., concurring in the judgment) ("*stare decisis* should pose no bar to overruling *Buckley*"). The third, Justice Kennedy, found that "[t]he parties [did not] ask the Court to overrule *Buckley*," 548 U.S. at 264, but he had already urged that result in a prior opinion, *Shrink Mo. Gov't PAC*, 528 U.S. at 409-410 (Kennedy, J., dissenting) ("I would overrule *Buckley* and then free Congress or state legislatures to attempt some new reform, if, based upon their own considered view of the First Amendment, it is possible to do so.").

Amicus submits that a drastic reconsideration of this Court's "seminal campaign finance case" is unnecessary. *Ariz. Free Enter. Club Freedom's Club PAC v. Bennett*, 564 U.S. 721, 757 (Kagan, J., dissenting). This Court should simply affirm what a straightforward reading of the *Buckley* opinion suggests: that the "closely drawn" scrutiny applied to contribution limits, and the "exacting scrutiny" applied to other elements of campaign finance law, such as contributor disclosure regimes, is the same standard requiring that a "State demonstrate[] a sufficiently important interest and employ[] means closely drawn to avoid unnecessary abridgment of associational freedoms." *Buckley*, 424 U.S. at 25; *cf.*

Citizens United, 558 U.S. at 366-367 ("The Court has subjected these requirements to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest.") (quoting *Buckley*, 424 U.S. at 64, 66); *see also Citizens Against Rent Control*, 454 U.S. at 294 ("This [is] but another way of saying that regulation of First Amendment rights is always subject to exacting judicial review.").

The federal courts have been able to apply exacting review and determine whether disclosure requirements are too burdensome for the regulated community to comply with, *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 875-77 (8th Cir. 2012) (*en banc*), or whether the regulation captures small-dollar activity that does not threaten the polity's integrity, *Coal. for Secular Gov't v. Williams*, 815 F.3d 1267, 1279-81 (10th Cir. 2016), *cert. denied sub nom. Williams v. Coal. for Secular Gov't*, 580 U.S. __; 137 S. Ct. 173 (2016) (striking registration and reporting threshold of $200 as-applied to organization with revenue of $3,500).

Similarly, this Court recently applied this same test in the contribution limit context, invalidating the federal aggregate contribution limits "because they are not 'closely drawn.'" *McCutcheon*, 572 U.S. at 218 (quoting *Buckley*, 424 U.S. at 25). There, the Court observed that "[i]n the First Amendment context, fit matters. Even when the Court is not applying strict scrutiny, [it] still

require[s]…a means narrowly tailored to achieve the desired objective." *Id.*[9]

Randall adds nothing to this analysis while creating opportunities for error and confusion. Thus, going forward, governments should be prepared to justify their contribution limits before courts applying exacting scrutiny. And those limits should rise or fall based upon the government's showing of need and proper tailoring—that a limit, in its particular context, is narrowly and substantially related to the government's interest in combatting "the real or imagined coercive influence of large financial contributions on candidates' positions and on their actions if elected." *Buckley*, 424 U.S. at 25.

Whether Montana's current low contribution limits can survive this rigorous test based upon, for example, evidence of an apparently rebuffed bribery attempt in 1983 is, perhaps, answered in the asking. App. 38a.

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[9] The *McCutcheon* opinion did, however, add to the doctrinal confusion at issue here by labeling strict scrutiny as "exacting scrutiny." 572 U.S. at 197. This is yet another the reason to grant the Petition, as it offers the Court an opportunity to broadly clarify naming conventions and eliminate some of the confusion its post-*Buckley* precedents have created.

CONCLUSION

For the foregoing reasons, and those given in the Petition, this Court should grant the writ.

Respectfully submitted,

ALLEN DICKERSON
Counsel of Record
ZAC MORGAN
OWEN YEATES
INSTITUTE FOR FREE SPEECH
124 S. West St., Ste. 201
Alexandria, VA 22314
adickerson@ifs.org
(703) 894-6800

September 4, 2018 *Counsel for* Amicus Curiae