

No. 18-733

---

---

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

---

---

1A AUTO, INC. and 126 SELF STORAGE INC.,  
*Petitioners,*

v.

MICHAEL SULLIVAN, Director, Massachusetts  
Office of Campaign and Political Finance,  
*Respondent.*

---

---

**On Petition For A Writ Of Certiorari  
To The Massachusetts Supreme Judicial Court**

---

---

**BRIEF OF *AMICUS CURIAE*  
LANDMARK LEGAL FOUNDATION  
IN SUPPORT OF PETITIONERS**

---

---

MICHAEL J. O'NEILL  
MATTHEW C. FORYS  
LANDMARK LEGAL  
FOUNDATION  
19415 Deerfield Ave.  
Suite 312  
Leesburg, VA 20176  
703-554-6100

RICHARD P. HUTCHISON  
*Counsel of Record*  
LANDMARK LEGAL  
FOUNDATION  
3100 Broadway  
Suite 1210  
Kansas City, MO 64111  
816-931-5559  
816-931-1115 (Facsimile)  
pete.hutch@  
landmarklegal.org

*Attorneys for Amicus Curiae*

TABLE OF CONTENTS

	Page
STATEMENT OF INTEREST OF <i>AMICUS CURIAE</i> .....	1
INTRODUCTION AND SUMMARY OF THE ARGUMENT.....	1
ARGUMENT .....	3
I. Massachusetts’s ban on corporate political contributions violates the First and Fourteenth Amendment because it improperly excludes unions and nonprofits .....	3
II. Massachusetts’s labor union PACs are the top political contributors in Massachusetts elections .....	7
III. Labor unions make millions of dollars in political expenditures at the national level ....	11
IV. Political activity is a primary function of labor unions .....	15
V. Prohibiting contributions from corporations and permitting contributions from labor unions favors Democrats in violation of the First and Fourteenth Amendments.....	17
CONCLUSION.....	19

## TABLE OF AUTHORITIES

	Page
CASES	
<i>1A Auto, Inc. v. Director of the Office of Campaign and Political Finance</i> , 480 Mass. 423 (2018).....	4
<i>Brown v. Entertainment Merchants Ass’n</i> , 564 U.S. 786 (2011) .....	6
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976) .....	3, 4, 5
<i>Citizens United v. FEC</i> , 558 U.S. 310 (2009)....	2, 3, 4, 5
<i>FEC v. Beaumont</i> , 539 U.S. 146 (2003) .....	2
<i>International Ass’n of Machinists v. Street</i> , 367 U.S. 740 (1961) .....	15, 16
<i>McCutcheon v. FEC</i> , 572 U.S. 185 (2014).....	2, 5, 18
<i>Smith v. Daily Mail Publishing Co.</i> , 443 U.S. 97 (1979).....	6
<i>Reed v. Town of Gilbert</i> , 135 S. Ct. 2218 (2015).....	5
<i>Williams-Yulee v. Florida Bar</i> , 135 S. Ct. 1656 (2015).....	6
CONSTITUTION	
U.S. Const. amend. I .....	<i>passim</i>
U.S. Const. amend. XIV .....	3, 5, 17
STATUTES	
26 U.S.C. § 527(f).....	13
Mass. G. L. c. 55, § 8.....	4, 5, 6, 17

## TABLE OF AUTHORITIES – Continued

	Page
REGULATIONS	
26 C.F.R. § 1.527-2(c)(2) .....	13
26 C.F.R. § 1.527-6(b)(2) .....	13
26 C.F.R. § 1.527-6(b)(3) .....	13, 14
OTHER AUTHORITIES	
1199 SEIU, <a href="https://www.1199seiu.org/massachusetts">https://www.1199seiu.org/massachusetts</a> (last visited Jan. 3, 2019) .....	9, 10, 11
AFL-CIO, Return of Organization Exempt From Tax, 2012 (Form 990), <a href="https://pdf.guidestar.org/PDF_Images/2013/530/228/2013-530228172-0a86478d-90.pdf">https://pdf.guidestar.org/PDF_Images/2013/530/228/2013-530228172-0a86478d-90.pdf</a> (last visited Jan. 3, 2019) .....	12
Center for Responsive Politics, American Fedn. Of State, County & Municipal Employees, <a href="https://www.opensecrets.org/orgs/summary.php?id=D000000061&amp;cycle=2016">https://www.opensecrets.org/orgs/summary.php?id=D000000061&amp;cycle=2016</a> (last visited Jan. 2, 2019) .....	12
Center for Responsive Politics, National Education Assn., <a href="https://www.opensecrets.org/orgs/totals.php?id=D000000064&amp;cycle=2018">https://www.opensecrets.org/orgs/totals.php?id=D000000064&amp;cycle=2018</a> (last visited Jan. 3, 2019) .....	14, 17
Center for Responsive Politics, Service Employees International Union (SEIU), <a href="https://www.opensecrets.org/orgs/totals.php?id=D000000077&amp;cycle=2018">https://www.opensecrets.org/orgs/totals.php?id=D000000077&amp;cycle=2018</a> (last visited Jan. 3, 2019) .....	15, 18

## TABLE OF AUTHORITIES – Continued

	Page
Christian M. Wade, <i>Unions dominate Mass. spending in midterms</i> , Eagle Tribune, Nov. 23, 2018, <a href="https://www.eagletribune.com/news/merrimack_valley/unions-dominate-mass-spending-in-midterms/article_dfa765ee-ab22-5778-8c5b-c063d48bc45e.html">https://www.eagletribune.com/news/merrimack_valley/unions-dominate-mass-spending-in-midterms/article_dfa765ee-ab22-5778-8c5b-c063d48bc45e.html</a> (last visited Dec. 28, 2018) .....	8
Clark, R. Theodore, Jr., <i>Politics and Public Employee Unionism: Some Recommendations for an Emerging Problem</i> , 44 U. Cin. L. Rev. 680 (1975) .....	8
Clyde W. Summers, <i>The Public Interest in Union Democracy</i> , 53 NW. U. L. Rev. 610 (1958) .....	16
Daniel M. Rosenthal, <i>Public Sector Collective Bargaining, Majoritarianism, and Reform</i> , 91 Or. L. Rev. 673 (2013) .....	8
Mass. Office of Campaign and Political Finance, <i>Campaign Finance Activity by Political Action Committees in Massachusetts 2011 &amp; 2012</i> , <a href="http://files.ocpf.us/pdf/studies/pac2013.pdf">http://files.ocpf.us/pdf/studies/pac2013.pdf</a> (last visited Dec. 28, 2018) .....	7, 8
NEA, Return of Organization Exempt From Tax, 2015 (Form 990), <a href="https://pdf.guidestar.org/PDF/Images/2013/530/228/2013-530228172-0a86478d-90.pdf">https://pdf.guidestar.org/PDF/Images/2013/530/228/2013-530228172-0a86478d-90.pdf</a> (last visited Jan. 3, 2019) .....	13, 14
The Federalist No. 51 (James Madison (C. Rositer ed., 1961)) .....	2

**STATEMENT OF INTEREST  
OF *AMICUS CURIAE***

Landmark Legal Foundation (“Landmark”) is a national public interest law firm committed to preserving the principles of limited government, separation of powers, federalism, advancing an originalist approach to the Constitution, and defending individual rights and responsibilities. Specializing in constitutional history and litigation, Landmark submits this brief in support of Petitioners 1A Auto, Inc. and 126 Self Storage, Inc. For reasons stated below, Landmark respectfully urges the Court to grant certiorari.<sup>1</sup>



**INTRODUCTION AND  
SUMMARY OF THE ARGUMENT**

Massachusetts treats the First Amendment political expression of corporations differently than labor unions. State law allows unions to contribute to candidates for political office and establish political action committees (PACs). Corporations cannot. Labor unions take positions on policy issues such as the minimum wage, benefits, leave, workplace conditions and health-care, among many others. They advocate on behalf of

---

<sup>1</sup> Counsel for *Amicus Curiae* provided notice of its intention to file this brief to counsel for parties. Petitioners 1A Auto and 126 Self Storage have provided blanket consent for the filing of *Amicus Curiae* briefs in this case. Respondent Michael Sullivan has consented to the filing of this brief. No person other than *Amicus Curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

their positions in the public arena and seek to elect candidates to public office who share their positions, often with an overwhelming partisan tilt. Corporations that oppose these positions and candidates, however, are forcibly kept silent in Massachusetts. Even though they are expected to pay the higher wages and provide more generous benefits, they are not allowed to participate fully in the public arena. This statutory scheme contravenes the First Amendment, as seen in this Court's recent caselaw.

Under *McCutcheon v. FEC*, 572 U.S. 185 (2014), the regulation of political speech is only permissible when it seeks to prevent actual or apparent *quid pro quo* corruption. In addition, legislatures cannot impose different speech restrictions on different groups. *Citizens United v. FEC*, 558 U.S. 310 (2009). The disparate treatment of the political expression of unions and businesses could only be justified in a world where only union members were untainted by corruption. "If men were angels, no government would be necessary." The Federalist No. 51. Such a world does not exist, not even in Massachusetts.

The Court should grant certiorari to protect political speech and ensure all viewpoints are treated fairly. The Court should make clear that *McCutcheon* and *Citizens United* erased the line previously drawn to single out business entities for campaign finance regulation in caselaw such as *FEC v. Beaumont*, 539 U.S. 146 (2003).



## ARGUMENT

### **I. Massachusetts’s ban on corporate political contributions violates the First and Fourteenth Amendment because it improperly excludes unions and nonprofits.**

“It is our law and our tradition that more speech, not less, is the governing rule.” *Citizens United*, 558 U.S. at 361. Political speech in particular “must prevail against laws that would suppress it, whether by design or inadvertence.” *Id.* at 312. Political contributions, therefore, “operate in an area of the most fundamental First Amendment activities.” *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). While limits on contributions (as opposed to limitations on expenditures) impose a “lesser restraint on political speech,” they are still subject to a rigorous standard of review. *Buckley*, 424 U.S. at 29. To survive such review, a limitation or prohibition on contributions to PACs will be permitted only if a state “demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms.” *Id.*

*Citizens United* narrowed the criteria for what constitutes a permissible state interest. Restrictions on political spending are only justified when their stated purpose is to prevent corruption or the appearance of corruption. Corruption is defined narrowly as “quid pro quo corruption” or the exchange of “dollars for political favor.” *Citizens United*, 558 U.S. at 356-362.



*Citizens United* also established that prohibitions made on the basis of the speaker’s identity violated the First Amendment. *Citizens United*, 558 U.S. at 372.

Massachusetts violates these principles by prohibiting for-profit corporations from making political contributions, directly or indirectly. Mass. G. L. c. 55, § 8 states:

[N]o business or professional corporation, partnership, [or] limited liability company partnership under the laws of or doing business in the commonwealth . . . shall directly or indirectly give, pay, expend or contribute [] any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party.

Corporations and other business entities are prohibited from establishing or administering a PAC, may not establish or administer a PAC, and may not contribute to a PAC. Corporations, however, can make independent expenditures in support or against candidates for political office. *1A Auto, Inc. v. Director of the Office of Campaign and Political Finance*, 480 Mass. 423, 426 (2018).

As political expression is “integral to the operation of the system of government,” the First Amendment affords this speech the “broadest protection.” *Buckley*, 424 U.S. at 14. These protections extend to corporations. *Citizens United*, 558 U.S. at 341-342 (“political speech does not lose First Amendment protection

‘simply because its source is a corporation.’) (internal citation omitted). As these protections extend to corporations, restrictions on the political speech of these entities cannot violate the fundamental principles of First Amendment jurisprudence. “[S]peech restrictions based on the identity of the speaker are all too often simply a means to control content” and should be stricken. *Id.* at 340.

Massachusetts’s ban on corporate political contributions violates the First and Fourteenth Amendment because it improperly excludes unions and nonprofits. Any ban on political contributions must be justified solely on the basis of preventing corruption. Limitations on contributions are subject to a “rigorous standard of review.” *McCutcheon v. FEC*, 572 U.S. 185, 191, 197 (citing *Buckley v. Valeo*, 424 U.S. 1, 29 (1976)). To conform to this standard, a state must demonstrate “a sufficiently important interest” and employ “means closely drawn to avoid unnecessary abridgment of associational freedoms.” *Id.* And a state cannot discriminate by applying different restrictions to differing groups. *Citizens United*, 558 U.S. at 340.

Mass. G. L. c. 55 § 8 fails the “closely drawn test” by excluding labor unions and nonprofits. Any law that purportedly prevents corruption cannot carve out exceptions for such influential organizations. Indeed, “a law cannot be regarded as protecting an interest of the highest order . . . when it leaves appreciable damage to that supposedly vital interest unprohibited.” *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2232 (2015).

The failure to include a prohibition on labor unions makes Mass. G. L. c. 55 § 8 fatally under-inclusive. While the Court has acknowledged that “it is always somewhat counterintuitive to argue that a law violates the First Amendment by abridging too little speech,” and that “the First Amendment imposes no freestanding ‘underinclusiveness limitation,’” the Court has also stated that such “underinclusiveness can also reveal that a law does not actually advance a compelling interest.” *Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1668 (2015) (internal citations omitted). For example, prohibiting newspapers but excluding electronic media from releasing the names of juvenile defendants “suggested that the law did not advance its stated purpose of protecting youth privacy.” *Id.* (citing *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97, 104-105 (1979)). Excluding labor unions “raise[s] doubts about whether the government is in fact pursuing the interest it invokes, rather than disfavoring a particular speaker or viewpoint.” *Williams Yulee*, 135 S. Ct. at 1668, quoting *Brown v. Entertainment Merchants Ass’n*, 564 U.S. 786, 802 (2011).

Mass. G. L. c. 55, § 8 suffers from the flaw of under-inclusiveness. It prohibits contributions from corporations but fails to extend this ban to labor unions – entities that play an enormous role in electing or defeating candidates for local, state, and federal offices. Ignoring labor unions discounts the hundreds of thousands of dollars these entities expend within Massachusetts and the millions of dollars spent at the national level. Excluding labor unions also shows

favoritism to labor unions and “raises doubts” about whether the law prevents *quid pro quo* corruption or the appearance of that corruption.

## **II. Massachusetts’s labor union PACs are the top political contributors in Massachusetts elections.**

Union and labor PACs are the top PAC contributors in Massachusetts elections. In its most recent study, Massachusetts’s Office of Campaign and Political Finance (OCPF) reported that during the 2011-2012 election cycle “[o]f the top 20 PACs in terms of total contributions [to state and local candidates], 18 represented unions or labor organizations. . . .” Mass. Office of Campaign and Political Finance, *Campaign Finance Activity by Political Action Committees in Massachusetts 2011 & 2012*.<sup>2</sup> These contributions are skewed toward Democrats, showing that unions favor Democrat positions over Republican positions. *Id.* Democrats received considerably more PAC contributions than Republicans with around 85 percent of all contributions going to Democrats. *Id.* In actual dollar terms, Democrats received \$2,242,385 and Republican candidates received \$201,186. *Id.* The 1199 SEIU (Service Employees International Union) reported the highest amount of contributions totaling \$200,250 to state and county candidates in the 2011-2012 cycle. *Id.*

---

<sup>2</sup> <http://files.ocpf.us/pdf/studies/pac2013.pdf> (last visited Dec. 28, 2018).

The Retired Public Employees PAC, the second largest PAC by contributions, contributed \$125,150. *Id.*

More recent expenditures show a similar pattern. In the 2018 election cycle, 1199 SEIU PAC reported expenditures of \$428,576 to Democratic candidates, ballot committees, and others. Christian M. Wade, *Unions dominate Mass. spending in midterms*, Eagle Tribune, Nov. 23, 2018.<sup>3</sup> The Retired Public Employees PAC reported expenditures of \$285,399. *Id.* While the OCPF last completed a comprehensive analysis of PAC expenditures in 2012, a survey of 2017-2018 disclosures shows that unions and labor organizations continue to be top contributors. *Id.*

Contributions and participation by groups such as labor unions either in favor or against local candidates has “a totally disproportionate impact on the results of [low turnout] elections” such as municipal and school board races. Clark, R. Theodore, Jr., *Politics and Public Employee Unionism: Some Recommendations for an Emerging Problem*, 44 U. Cin. L. Rev. 680, 684 (1975). Teachers unions, for example are particularly effective at ensuring endorsed candidates are elected. One study found that school board incumbents who lacked union endorsement usually lost, while incumbents with union support prevailed in 92 percent of their races. Daniel M. Rosenthal, *Public Sector Collective Bargaining, Majoritarianism, and Reform*, 91 Or. L.

---

<sup>3</sup> [https://www.eagletribune.com/news/merrimack\\_valley/unions-dominate-mass-spending-in-midterms/article\\_dfa765ee-ab22-5778-8c5b-c063d48bc45e.html](https://www.eagletribune.com/news/merrimack_valley/unions-dominate-mass-spending-in-midterms/article_dfa765ee-ab22-5778-8c5b-c063d48bc45e.html) (last visited Dec. 28, 2018).

Rev. 673, 702-703 (2013) (citation omitted). This suggests that the hundreds of thousands of dollars spent by union PACs within Massachusetts are effective. Corporations that may hold opposing views, on the other hand, are silenced.

And the thousands of dollars spent yields results within Massachusetts. On its website, Massachusetts SEIU touts its political successes in ensuring endorsed candidates are elected:

On Tuesday, September 5th, primary day, we made our voices heard. Across the state, the power of our union was on display as members canvassed and called their neighbors, provided rides to the polls, and voted.

Of the 25 candidates we endorsed, we were victorious in helping elect 19 champions (check out full list below) who share our values and care about the issues that impact our industry and communities. Our ability to elect healthcare champions advances our issues agenda and achieves broader social and economic justice.<sup>4</sup>

SEIU touts its ability to exert political influence to ensure issues it supports become law:

1199 SEIU United Healthcare Workers East is the most politically active union in the Commonwealth. 1199 SEIU caregivers have won higher job standards for healthcare

---

<sup>4</sup> 1199 SEIU, <https://www.1199seiu.org/massachusetts> (last visited Jan. 3, 2019).

workers, such as fair wages, affordable health-care and achieving \$15/hour for personal care attendants. 1199ers have also won historic victories for all working people across Massachusetts, including advocating for earned sick time, winning one of the highest minimum wages in the country, and many more.<sup>5</sup>

And its influence and access extend to elected politicians:

On January 29, 1199 SEIU caregivers met with newly elected legislators and went to the Massachusetts State House in Boston to advocate for new bills that will improve the lives of home care and healthcare workers. Caregivers met with legislators including Representatives Michelle DuBois, Evandro Carvahlo, and Carlos Gonzalez to discuss upcoming legislative priorities, including: a higher minimum wage for home care agency workers; bolstering the safety net trust fund for community hospitals and the creation of a commission to recommend policies on nursing homes. “I’ve wanted to get more involved in political action. I never realized how connected our community hospitals are to the budget, politics and bills,” said 1199 SEIU delegate and Good Samaritan Hospital member Marcie Lyford. “Two of our key bills this year are really relevant to my community hospital because Good Samaritan is a Disproportionate Share Hospital and also receives payments

---

<sup>5</sup> *Id.*

from the Health Safety Net Trust Fund. Medicaid reimbursement rates are too low, so we fight for increases because it's what pays our bills and enables us to deliver care.”<sup>6</sup>

Political expenditures by labor unions at the state level overwhelmingly favor Democrats and positions supported by Democrats. Opposing views are not afforded an even playing field. Labor unions can support candidates favoring union interests while corporations are prohibited from expressing support. This under-inclusiveness violates the First Amendment.

### **III. Labor unions make millions of dollars in political expenditures at the national level.**

Every election national unions such as the AFL-CIO, the National Education Association (NEA) and AFSCME spend millions of dollars annually on political expenditures. Some of these expenditures are made with PAC funds and some are made with general revenue funds – funds that stem from dues paying membership. Almost all the dollars spent, however, support Democrats.

For example, the Center for Responsive Politics analyzed cash distributions by AFSCME's 3,400 local unions. AFSCME spent \$15,419,966 on Democrats in the 2016 election cycle with no money spent on

---

<sup>6</sup> *Id.*



Republicans. In 2018, AFSCME spent \$13,176,721 with almost no money going to Republicans.<sup>7</sup>

AFL-CIO reports that it made \$10,775,752 in general treasury political expenditures, distinct from PAC expenditures, during the 2012 election cycle. AFL-CIO describes these expenditures:

[AFL-CIO] provided information to its members about electoral campaigns and issues, encouraged its members to participate in the political process, advocated for particular candidates, and collaborated with other organizations and allied groups on electoral matters, all in order to serve the best interest of the organization's members, their families and all working people[.] The organization also sponsored both federal and nonfederal separate segregated funds that are variously registered with the Federal Election Commission and the Internal Revenue Service[.] The organization provided administrative support for these funds in accordance with the applicable federal regulations.<sup>8</sup>

---

<sup>7</sup> Center for Responsive Politics, American Fedn. Of State, County & Municipal Employees, <https://www.opensecrets.org/orgs/summary.php?id=D000000061&cycle=2016> (last visited Jan. 2, 2019). This amount includes funds contributed to candidates, PAC expenditures, contributions of political parties and contributions to outside spending groups.

<sup>8</sup> AFL-CIO, Return of Organization Exempt From Tax, 2012 (Form 990), <https://pdf.guidestar.org/PDF/Images/2013/530/228/2013-530228172-0a86478d-9O.pdf> (last visited Jan. 3, 2019).

The NEA reported \$10,259,592 in general treasury political expenditures for political activities from September 1, 2015 through August 31, 2016. NEA describes these expenditures as “communications to members concerning identifiable federal and nonfederal candidates and expenses for the administration and fundraising for the taxpayer’s separate segregated funds.”<sup>9</sup>

A union’s general treasury expenditures are treated differently from PAC expenditures under the Internal Revenue Code (IRC). Unions obtain these funds through dues paying membership and are subject to regulation and taxation under the IRC. 26 U.S.C. § 527(f). A union will avoid taxation if it limits its general treasury expenditures to those made for nonpartisan activities and other “indirect expenditures.” 26 C.F.R. § 1.527-6(b)(2). Nonpartisan activities include voter registration drives and “get-out-the-vote” campaigns. 26 C.F.R. § 1.527-6(b)(3). “Indirect expenditures” are expenses associated with overhead and record keeping that are necessary to support political activities. 26 C.F.R. § 1.527-2(c)(2). Other expenditures that are not taxable include internal communications with members, stockholders, and their families (but not the public) that support the election or defeat of identified candidates. 26 C.F.R. § 1.527-6(b)(3). Unions can also use general treasury funds to establish, administer,

---

<sup>9</sup> NEA, Return of Organization Exempt From Tax, 2015 (Form 990), <https://pdf.guidestar.org/PDF/Images/2013/530/228/2013-530228172-0a86478d-90.pdf> (last visited Jan. 3, 2019).

and solicit contributions to separate segregated funds or PACs without incurring tax liability. *Id.*

Unions use these loopholes to make significant general treasury expenditures on political activities. Funds are used for membership communications that advocate the election or defeat of identified candidates. They are also used to finance the establishment and administration of PACs that, in turn, make direct contributions to candidates. Unions can also act as a pass through for PACs. For example, the NEA reports that it received \$12,175,000 in political contributions (presumably from membership) for its “Advocacy Fund” between September 1, 2015 through August 31, 2016.<sup>10</sup>

General treasury expenditures that are used for politics are only a small portion of the union’s role in politics. PACs spend millions of dollars financing political activities. A sampling:

- In 2016, NEA Advocacy Fund spent \$30,448,809.<sup>11</sup>
- In 2018, NEA Advocacy Fund spent \$19,778,698.<sup>12</sup>

---

<sup>10</sup> NEA, Return of Organization Exempt From Tax, 2015 (Form 990), <https://pdf.guidestar.org/PDF/Images/2013/530/228/2013-530228172-0a86478d-90.pdf> (last visited Jan. 3, 2019).

<sup>11</sup> Center for Responsive Politics, National Education Assn., <https://www.opensecrets.org/orgs/totals.php?id=D000000064&cycle=2018> (last visited Jan. 3, 2019).

<sup>12</sup> *Id.*

- In 2016, the Service Employees International Union (SEIU) PAC spent \$39,394,329.<sup>13</sup>
- In 2018, the SEIU's PAC spent \$18,797,880.<sup>14</sup>

Unions spend millions nationally on political activities. And their support goes overwhelmingly to Democrats. Any state law that exempts such influential organizations cannot be designed to prevent *quid pro quo* corruption.

#### **IV. Political activity is a primary function of labor unions.**

Political activity is a core function of a labor union whether it serves private or public sector workers. As Justice Felix Frankfurter has noted, political activity is inherent to labor unions. “For us to hold that these defendant unions may not expend their moneys for political and legislative purposes would be completely to ignore the long history of union conduct and its pervasive acceptance in our political life.” *International Ass’n of Machinists v. Street*, 367 U.S. 740, 812 (1961). He continued, “[t]he notion that economic and political concerns are separable is pre-Victorian. . . . It is not true in life that political protection is irrelevant to, and insulated from, economic interests. It is not true for

---

<sup>13</sup> Center for Responsive Politics, Service Employees International Union (SEIU), <https://www.opensecrets.org/orgs/totals.php?id=D000000077&cycle=2018> (last visited Jan. 3, 2019).

<sup>14</sup> *Id.*

industry or finance. Neither is it true for labor.” *Id.* at 814-815.

Professor Clyde W. Summers, a labor law expert and one of the drafters of the Labor Management Reporting and Disclosure Act of 1959 (“Landrum-Griffin Act”), wrote that political activity was one of a union’s functions:

[U]nions engage in extensive political activity. This may consist of direct political action ranging from merely endorsing candidates to providing campaign funds and full-time campaign workers. It also includes political education programs which, though not directed toward the election of any particular candidate, may influence decisions on subjects reaching from social security or public housing to segregation or foreign aid.

Clyde W. Summers, *The Public Interest in Union Democracy*, 53 NW. U. L. Rev. 610, 621 (1958). Union political activity adds vitality to American political discussions, “but it also poses serious problems.” *Id.* According to Summers, “[t]he use of pooled resources by large interest groups for the purpose of influencing elections and political discussions has long been recognized as a substantial danger within our political system.” *Id.* Professor Summers made these observations in 1958, before the emergence of public sector unionism.

Unions wield enormous power and influence over the political process. They spend millions of dollars at the national level to influence federal elections. At the

state and local levels, unions are even more effective. Failing to include a prohibition on labor unions makes Mass. G. L. c. 55, § 8 underinclusive. The law cannot be justified as preventing “quid pro quo” corruption or the appearance of corruption when it excludes organizations that spend hundreds of thousands of dollars in-state and millions of dollars nationally.

**V. Prohibiting contributions from corporations and permitting contributions from labor unions favors Democrats in violation of the First and Fourteenth Amendments.**

OCPF’s most recent analysis of PAC contributions shows a wide disparity between funds distributed to Democrats and funds distributed to Republicans. This should come as no surprise as 18 of the top 20 PACs were union and labor affiliated. With 85% of all PAC contributions going to Democrats, one particular viewpoint receives preference over another. This discrepancy appears to be directly related to the prohibition on corporate contributions.

Nationally, nearly all labor union support goes to Democrats. The NEA’s PAC contributed \$2,091,820 to Democrats versus \$256,500 to Republicans in the 2018 election cycle. In the 2016 election cycle, NEA’s PAC gave \$2,851,162 to Democrats and contributed \$463,893 to Republicans.<sup>15</sup>

---

<sup>15</sup> Center for Responsive Politics, National Education Assn., <https://www.opensecrets.org/orgs/totals.php?id=D000000064&cycle=2018> (last visited Jan. 3, 2019).

The SEIU's PAC contributed \$1,456,195 directly to Democrats during the 2018 election cycle versus \$17 to Republicans. In the 2016 election cycle, SEIU's PAC contributed \$2,160,284 to Democrats versus \$2,100 to Republicans.<sup>16</sup>

Democrats receive overwhelmingly more support from unions than Republicans. Massachusetts ban favors the speech of one class of organization over another. Corporations and unions often have opposing interests and differing positions on candidates for public office. Permitting one of these groups to contribute to candidates it supports while prohibiting the same conduct from other groups violates principles of equal protection. Massachusetts, in short, is restricting the political participation of corporations and, at the same time, enhancing the influence of labor unions. *See McCutcheon v. FEC*, 572 U.S. at 191.



---

<sup>16</sup> Center for Responsive Politics, Service Employees International Union (SEIU), <https://www.opensecrets.org/orgs/totals.php?id=D000000077&cycle=2018> (last visited Jan. 3, 2019).

**CONCLUSION**

For these reasons, Landmark respectfully urges the Court to grant Petitioner's Writ of Certiorari.

Respectfully submitted,

MICHAEL J. O'NEILL  
MATTHEW C. FORYS  
LANDMARK LEGAL  
FOUNDATION  
19415 Deerfield Ave.  
Suite 312  
Leesburg, VA 20176  
703-554-6100

RICHARD P. HUTCHISON  
*Counsel of Record*  
LANDMARK LEGAL  
FOUNDATION  
3100 Broadway  
Suite 1210  
Kansas City, MO 64111  
816-931-5559  
816-931-1115 (Facsimile)  
pete.hutch@  
landmarklegal.org

*Attorneys for Amicus Curiae*