No. 17-35019

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DAVID THOMPSON; AARON DOWNING; JIM CRAWFORD; and DISTRICT 18 of the ALASKA REPUBLICAN PARTY,

Plaintiffs-Appellants,

v.

HEATHER HEBDON, in Her Official Capacity as the Executive Director of the Alaska Public Offices Commission; and IRENE CATALONE, RON KING, TOM TEMPLE, ROBERT CLIFT, and ADAM SCHWEMLEY, in Their Official Capacities as Members of the Alaska Public Offices Commission,

Defendants-Appellees.

Appeal from the United States District Court for the District of Alaska, No. 3:15-cv-00218 TMB (Honorable Timothy M. Burgess)

APPELLANTS' OPENING BRIEF

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APOC	Alaska Public Offices Commission
ER	Excerpt of Record
PAC	Political Action Committee
TE	Trial Exhibit

JURISDICTIONAL STATEMENT

The district court issued its decision on November 7, 2016. [ER-2] Final judgment was entered December 8, 2016. [ER-1] Appellants timely appealed under Fed. R. App. P. 4(a)(1)(A) and Fed. R. App. P. 26(a)(1) on January 9, 2017. [ER-402] The district court had jurisdiction under 42 U.S.C. § 1983; 28 U.S.C. § 1331; and 28 U.S.C. § 1343(a)(3). This Court has jurisdiction under 28 U.S.C. § 1291.

ISSUES PRESENTED

1. After *McCutcheon*, can Alaska justify its aggregate limit for nonresident contributions, a limit that, when triggered for a candidate, bans all nonresidents from contributing to the candidate, thus denying those would-be contributors even the symbolic expression of association with the candidate?

2. Can Alaska justify the 50% reduction of its longtime $1,000 limit to $500 annually, not indexed for inflation, which is the lowest limit for statewide races in the Nation and among the six lowest for other races, without submitting proof of a nexus between the 50% reduction and preventing *quid pro quo* corruption?

3. Can Alaska justify cutting the limit for contributions by individuals to groups to $500 annually, not adjusted for inflation, when circumvention of base

limits for individuals is already curtailed, in that groups are subject to a $1,000 annual limit for what they can give candidates?

4. Can Alaska justify establishing an aggregate limit for contributions from all of the separate and independent components of political parties?

STATEMENT OF THE CASE

1. History of Alaska's Campaign Contribution Laws.

Prior to 1974, Alaska had no limits on campaign contributions. *See State v. Alaska Civil Liberties Union*, 978 P.2d 597, 601 (Alaska 1999). From 1974 to 1997, and then again from 2003-2006, Alaska set its base contribution limit at $1,000 annually. *See ACLU*, 978 P.2d at 601. From 1997-2002 and from 2007 to present, Alaska set its base contribution limit at $500 annually. *See ACLU*, 978 P.2d at 601; AS 15.13.070(b)(1). For twenty-six of the forty-three years Alaska has had contribution limits, the State has viewed $1,000 annual contributions as free of *quid pro quo* corruption or its appearance. *See McCutcheon v. FEC*, 134 S. Ct. 1434, 1448, 1452 (2014).

In 1996, attorney Michael Frank ("Frank") started an initiative to reduce Alaska's twenty-two-year-old $1,000 annual base-contribution limit. [ER-189-194, 199-200] But, Frank began his journey on two wrong feet. First, Frank had constitutionally impermissible goals. Frank wanted the initiative to address the increasing expense of elections, reduce the amount of money being

spent on Alaska's campaigns for public office, stop the "endless money chase," and "get big money out of politics." [ER-195-198, 225-226] Frank thought that campaigns were too long and too expensive, elected officials were constantly trying to get more money, and, as a result, elected officials were more responsive to large contributors than they were to the general public. [ER-210, 221-222]

Second, Frank set out to determine what constituted a "large contribution" from an incorrect perspective.[1] Frank looked at the largeness of the contribution from the perspective of the contributor or the public. [ER-217-218] By contrast, however, the Supreme Court in *Buckley* spoke of the largeness of contributions in terms of what amount would be enough to entice (or appear to entice) a candidate to give a corrupt political favor. *See Buckley*, 424 U.S. at 26. Embarking down this misguided path, Frank selected a lower limit for Alaska using impermissible bases: what amount did average contributors give to campaigns [ER-200, 211-212]; what limits were other states setting [ER-223-224]; what amounts of income (per-capita and per-household) were average Alaskans making [ER-199, 202, 212]; what amount of contribution would the average person think was large [ER-211-212, 217]; and what amount did Frank and his wife generally give to

[1] Frank knew that his perception did not match the Supreme Court's view of "large contributions" in *Buckley v. Valeo*, 424 U.S. 1 (1976). [ER-199, 219-220] In *Buckley*, the Court upheld $1,000 per-election and $2,000 per-election-cycle limits; *i.e.*, those were not large contributions. 424 U.S. at 25-30.

candidates [ER-205]. Frank picked the $500 amount because he determined that the average contributor gave about $200—he doubled that amount and added $100. [ER-200, 211-212, 217] This is the full thought process that went into picking Alaska's $500 limit. And, Frank made his selection at a time when "influence" could be viewed as corruption. *Buckley*, 424 U.S. at 26.

Frank wrote the 1996 ballot Initiative and its statements of purpose to focus upon the length and expense of campaigns, individuals, or groups gaining influence over elected officials, the advantages of incumbency, and candidates converting excess campaign funds to personal income. He wrote: "campaigns for elective public office last too long, are uninformative, and are too expensive;" "highly qualified citizens are dissuaded from running for public office due to the high cost of campaigns;" "organized special interests are responsible for raising a significant portion of all campaign funds, and may thereby gain an undue influence over campaigns and elected officials, particularly incumbents;" "incumbents enjoy a distinct advantage in raising campaign funds and many elected officials raise and carry forward huge surpluses from one campaign to the next to the disadvantage of challengers." [TE-AJ; ER-211, 221] The Initiative proposed, among other things, to reduce the limit for contributions to candidates and groups to $500 annually; and ban contributions to candidates from nonresidents. [TE-AJ at 3, 5] The Initiative

provided for the Alaska Public Offices Commission ("APOC") to periodically review the $500 limit and adjust it for inflation. [TE-AJ; ER-227-230]

After the Initiative was approved for the ballot, the Alaska Legislature passed a law addressing campaign contributions. [TE-AM; ER-315-316] Because Representative Finkelstein, who had joined the Initiative effort [ER-314-315] sponsored the bill, the law contained the same statements of purpose and many of the same substantive provisions as the Initiative, including the $500 annual contribution limit to candidates and groups. [TE-AM; ER-204, 211] Neither the Initiative nor the law contained statements of purpose regarding *quid pro quo* corruption. [TE-AJ; TE-AM] The law contained no inflation adjustment, banned contributions by corporations and unions, prohibited candidates from making personal use of excess funds, and placed an aggregate cap on contributions to candidates from nonresidents. [TE-AM] The law had no inflation adjustment simply because APOC did not want the administrative burden of adjusting the limit. [ER-229-230] The legislatively enacted law replaced the Initiative. [ER-202-203, 314-315]

In 2003, the Alaska Legislature again modified the State's campaign finance laws. [ER-325-327; TE-AQ] The Legislature raised the contribution limit for individuals back to $1,000 annually. [TE-AQ; ER-326-327] This higher limit remained in place for four years until a 2006 Initiative reduced the limit back to

$500 annually, with no inflation index. [TE-AR; ER-325-328, 333-334] Although the Initiative did not pass until 2006, the Initiative effort began in 2003, immediately after the Legislature raised the limit to $1,000, as a reflexive action to revert the limit back to $500. [ER-333-334]. The sponsors of the Initiative made no effort to consider or identify what contribution amount would risk *quid pro quo* corruption or its appearance. [ER-310-311] A statement in support of the 2006 Initiative appeared in the 2006 Voter Pamphlet, and this statement contained a short, three-sentence general reference to "corruption"—nothing in the statement suggested a $1,000 limit risked *quid pro quo* corruption, whereas a $500 limit did not. [TE-AR] Instead, they simply reverted the limit back to the $500 amount that Frank had selected for all wrong reasons. [TE-AJ; TE-AM; TE-AR; ER-333-334]

2. The Plaintiffs and Their Contributions.

The Appellants are three individuals and one component of an Alaska political party that were prevented in different ways from giving contributions in the 2015-16 election cycle. David Thompson was prevented from making a $100 contribution to his brother-in-law, an incumbent legislator running for reelection, simply because Thompson resides in Wisconsin. [ER-29-35; TE-98] Aaron Downing and Jim Crawford wanted to contribute more than $500 to candidates and groups, but were not allowed to do so. [ER-38-40, 45-48] District 18, an

independent unit of the Alaska Republican Party, wanted to contribute to a mayoral candidate, but was prohibited from giving more than $250 because other independent components of the Party had already given $4,750 to the candidate. [ER-51-52]

STANDARD OF REVIEW

This Court reviews constitutional issues, including the constitutionality of state statutes, de novo. *Montana Right to Life Ass'n v. Eddleman*, 343 F.3d 1085, 1090 (9th Cir. 2003). When a district court holds a restriction on speech constitutional, this Court conducts an independent de novo examination of the facts. *Berry v. Dep't of Social Servs.*, 447 F.3d 642, 648 (9th Cir. 2006). A district court's determinations on mixed questions of law and fact that implicate constitutional rights are reviewed de novo. *Wright v. Incline Village Gen. Improvement Dist.*, 665 F.3d 1128, 1133 (9th Cir. 2011). When key issues arise under the First Amendment, this Court independently reviews the facts. *Berger v. City of Seattle*, 569 F.3d 1029, 1035 (9th Cir. 2009). A district court's credibility findings are reviewed for clear error. *Anderson v. City of Bessemer*, 470 U.S. 564, 573 (1985).

SUMMARY OF THE ARGUMENT

Alaska's nonresident aggregate limits are unconstitutional under *McCutcheon*. The base contribution limit is Alaska's primary tool for combatting

quid pro quo corruption. An aggregate is only a secondary tool to stop circumvention of base limits. In *McCutcheon*, the Supreme Court held that aggregates do little to combat corruption, while substantially burdening free political speech and association. Alaska's aggregates serve no anti-circumvention purpose, and when triggered, operate as a ban on nonresident contributions regardless of whether the individual has given to any other candidates, groups, or parties. This ban deprives would-be contributors of even the symbolic expression of association that a contribution embodies.

Alaska's $500 annual and non-inflation-indexed base limit, lowest in the Nation for statewide races and among the six lowest for other races, was adopted for improper purposes. The limit, which bears the *Randall* danger signs, seeks to inhibit perfectly legal influence, responsiveness, ingratiation and access, and it is not narrowly focused on *quid pro quo* corruption. Hebdon did not prove a difference in *quid pro quo* corruption risk or appearance as between Alaska's long-time $1,000 limit and the new $500 limit, and they presented no evidence that the 50% reduction was necessary to combat *quid pro quo* corruption. The limit leaves potential contributions unrealized, and it is so low that campaigns routinely run deficits, challengers are disadvantaged, and challengers run out of funds before election day. The limit is disproportional because nearly 40% of total campaign dollars come from maximum contributions. The individual-to-group limit is

unjustified because groups cannot offer a *quid pro quo* to donors and can only donate $1,000 to candidates. There is no justification for aggregating independent political party units.

ARGUMENT

I. THE CONTROLLING LAW ON CAMPAIGN CONTRIBUTION LIMITS

A. General Principles.

There is no right more basic in our democracy than the right to participate in electing political leaders. *McCutcheon*, 134 S. Ct. at 1440-41. The First Amendment safeguards an individual's right to participate in public debate through political expression and political association. *Id.* at 1448. One way in which citizens can exercise those rights is to "contribute to a candidate's campaign." *Id.* at 1441. Thus, the right to make political contributions is protected by the First Amendment. *Id.* When an individual contributes money to a candidate, he exercises both the right to political expression and the right to political association: "The contribution 'serves as a general expression of support for the candidate and his views' and 'serves to affiliate a person with a candidate.'" *Id.* at 1448.

B. Level of Scrutiny.

The Supreme Court applies intermediate, but nonetheless rigorous, scrutiny to laws that limit contributions. *Id.* at 1444. Interference with the political speech

and association embodied in a contribution may be sustained only if the government demonstrates a sufficiently important interest and employs means closely drawn to avoid unnecessary abridgement of associational freedoms. *Id*. Strict scrutiny applies to restrictions that operate as more than just limitations on the amount of contribution a donor may give to a candidate. The Court subjects expenditure limits to the exacting scrutiny applicable to limitations on core First Amendment rights because they reduce the quantity of expression by restricting the number of issues discussed, the depth of their exploration, and the size of the audience reached. *Id.* A limitation that denies an individual even "the symbolic expression of support evidenced by a contribution" and/or that "infringe the contributor's freedom to discuss candidates and issues," is subject to strict scrutiny. *Id*. Under exacting scrutiny, the government may regulate protected speech only to promote a compelling interest by the least restrictive means. *Id*.

C. The Only Permissible Government Interest Is Preventing *Quid Pro Quo* Corruption or Its Appearance.

Government may only restrict campaign contributions to prevent *quid pro quo* corruption or its appearance. *Lair v. Bullock*, 798 F.3d 736, 740 (9th Cir. 2015). This interest is both "sufficiently important" and compelling. *McCutcheon*, 134 S. Ct. at 1445-46, 1450, 1462. The Latin phrase *quid pro quo* "captures the notion of a direct exchange of an official act for money." *Id*. at 1450-51. The

basest form of *quid pro quo* corruption is a bribe (*Buckley*, 424 U.S. at 27-28)—a bribe requires an agreement to exercise specific formal governmental power, or to make an official decision regarding a specific matter then pending, in exchange for personal gain. *See McDonnell v. United States*, 136 S. Ct. 2355, 2361, 2371-72 (2016). Limitations that pursue objectives other than preventing *quid pro quo* corruption or its appearance "impermissibly inject the Government 'into the debate over who should govern.'" *McCutcheon*, 134 S. Ct. at 1441.

The hallmark of corruption is the financial *quid pro quo*: dollars for political favors. *Id*. And to be "corrupt," the political favor must encompass a specific "official act," *i.e.*, a formal exercise of governmental power or an official decision regarding a specific matter then pending in exchange for personal gain. *McDonnell*, 136 S. Ct. at 2361, 2371-72. It is not corrupt for a government official to be influenced by—listen and respond to—those who support him, even those who legally make maximum contributions to his campaign. *McCutcheon*, 134 S. Ct. at 1441, 1450-51.

D. *Randall* and *Lair*/*Eddleman*

Base contribution limits are government's primary tool for combatting *quid pro quo* corruption. *Id*. at 1451. However, it is not true that, "the lower the limit, the better." *Randall v. Sorrell*, 548 U.S. 230, 248 (2006). The Supreme Court has indicated that a contribution limit can be set too low, and thus not be closely

drawn. *See Randall*, 548 U.S. at 248-249 (striking Vermont's limits as too low); *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 397 (2000) (there are "outer limits" for contribution limitations); *id.* at 404 (Breyer and Ginsberg, JJ, concurring) ($1,075 ($378, 1976 dollars)) is low enough to raise constitutional questions). This Court recognized the same thing in *Lair v. Bullock*, 697 F.3d 1200, 1208 (9th Cir. 2012) (*Lair I*); *Lair*, 798 F.3d at 747-49; and *Eddleman*, 343 F.3d at 1092. "[C]ontribution limits that are too low can" "harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability." *Randall*, 548 U.S. at 249. Contribution limits that are too low could themselves "prove an obstacle to the very electoral fairness [they] seek[] to promote." *Id*. at 249. "*Randall* stands as a warning to lower courts that *Buckley* does not license them to approve any contribution limit that professes an anti-corruption rationale; instead lower courts must carefully analyze statutes to ensure that they are narrowly tailored." *Lair I*, 697 F.3d at 1208.

Randall provides that courts should carefully examine a statutory scheme that contains certain "danger signs." *Id.* at 248-51. The "danger signs" are that the limit is: set per-election cycle rather than per election; lower than the limits the Supreme Court upheld in *Buckley*; lower than comparable limits in other states and lowest or among the lowest in the Nation; and well below the lowest limit the

Supreme Court has previously upheld. *Id.* *Randall*'s "danger signs" do not conflict with the *Lair/Eddleman* framework—they simply trigger a careful examination of a contribution-limit scheme, in this Circuit utilizing the *Lair/Eddleman* framework.

Beyond *Randall*'s "danger signs," both *Randall* and *Lair/Eddleman* utilize extremely similar factors for determining if a particular limitation scheme is closely drawn. The *Randall* factors are whether the limits: significantly restrict funding for challengers to run competitive campaigns; significantly curtail party participation by limiting the party's contributions and aggregating all of its units and affiliates; treat volunteer services and costs as contributions; are not adjusted for inflation; and have no special justification. *Randall*, 548 U.S at 253-61. The *Lair/Eddleman* factors are whether the limits focus narrowly on *quid pro quo* corruption or its appearance; leave the contributor free to affiliate with a candidate; and allow the candidate to amass sufficient resources to wage an effective campaign. *Lair*, 798 F.3d at 748. Although *Randall* does not abrogate *Eddleman*'s closely drawn analysis (*Lair*, 798 F.3d at 747), it is certainly persuasive, and this Court can use it to inform its application of *Lair/Eddleman*. *See Lair I*, 697 F.3d at 1208 ("the overall analytical framework in *Eddleman* is in harmony with *Randall*"). For example, limiting and aggregating party contributions, treating volunteer services and costs as contributions, and not adjusting a limit for inflation

(*Randall*, 548 U.S. at 253-61), can show that the limit does not "focus narrowly on the state's [only] interest." *Lair*, 798 F.3d at 748.

II. ALASKA'S BAN ON MOST NONRESIDENT CONTRIBUTIONS IS UNCONSTITUTIONAL

Alaska statutes place an annual aggregate limit on the amount of money candidates can receive from nonresidents of Alaska. AS 15.13.072(a)(2), (e). Only the first six nonresidents who give the $500 base limit are permitted to give to any particular House candidate. AS 15.13.072(e)(3). Once a House candidate has collected more than $2,500 from any number of nonresidents, the base limit for individual nonresidents is reduced below $500. If a House candidate has collected $3,000, there is a ban on further nonresident contributions.

A. Aggregate Limits Are Not Permitted Under *McCutcheon*.

An aggregate limit, a prophylaxis-upon-prophylaxis, is no more than a corollary of a base limit. *McCutcheon*, 134 S. Ct. at 1446. "[T]he base limits themselves are a prophylactic measure" in that "restrictions on direct contributions are preventative because few, if any, contributions to candidates will involve *quid-pro-quo* arrangements." *Id.* at 1458. Prior to *McCutcheon*, the only legitimate function of an aggregate limit was to prevent circumvention of the base limits. *Id.* at 1442, 1446. The "base limits remain the primary means of regulating campaign contributions." *Id.* at 1451.

The question in *McCutcheon* was whether aggregate limits serve to assist the government in preventing *quid pro quo* corruption by checking circumvention without unnecessarily abridging First Amendment freedoms. The Court answered this question in the negative because aggregate limits do little, if anything, to address circumvention, while seriously restricting participation in the democratic process. *Id.* at 1442, 1446. *McCutcheon* holds that aggregate limits are not permitted because they apply a sledge hammer to bludgeon First Amendment freedoms, rather than a scalpel to dissect the various avenues that a contributor might use to circumvent base limits in order to accomplish a *quid pro quo*. *Id.* at 1448, 1452, 1458.

The district court's decision that Alaska's nonresident aggregates are subject to only intermediate scrutiny and survive *McCutcheon*, because they do not limit the total amount of money an individual nonresident can contribute to candidates, parties, and groups other than his chosen candidate [ER-22-24], is misguided. Alaska's nonresident aggregates are exponentially more restrictive than the aggregate limit that was involved in *McCutcheon*. In *McCutcheon* and *Buckley*, the Supreme Court addressed the federal aggregate limit that permitted an individual to give a base per-election contribution to candidates and other non-candidate committees of his choosing until such time as his total contributions reached the aggregate limit. *Id.* at 1442-46. The circumvention that was addressed

in *McCutcheon* and *Buckley* related to the possibility that a contributor might (1) use legal channels to funnel "massive amounts of money" to a candidate, then (2) obtain attribution with the candidate for that "massive amount of money," and then later (3) receive the *quid* from the candidate—the political favor—for the *quo*—the channeled money in circumvention of the base limits. *Id.* at 1442-46, 1452-56; *Buckley*, 424 U.S. at 38. By contrast, Alaska's nonresident aggregates, once triggered, prevent all nonresidents from making contributions of even $.01 to their chosen Alaska candidate simply because they reside in other states.

Alaska's nonresident aggregates do not address circumvention. Instead, they ban an entire class of individuals (nonresidents) from making any contributions to candidates of their choice if the candidates have already received the aggregate limit from other nonresidents—the ban applies regardless of whether those nonresidents have themselves given any other contributions to any other candidate, group, or political party. Here, Thompson was prohibited from making one $100 contribution to one Alaska House candidate, his brother-in-law, and he did not want to contribute to other Alaska candidates, parties, or groups. [TE-98; ER-29-31] It is of no consolation to Thompson, and it is no constitutional solution, that he could have given to others. *See, e.g.*, *McCutcheon*, 134 S. Ct. at 1449. "It is no answer to say that the individual can simply contribute less money to more people" (*id.*), or as here, to say that Thompson must give his money to people other

than his chosen candidate. In any event, giving to a Party or group is an ineffective way to support a candidate because contributors to parties and groups cannot earmark money for a particular candidate—earmarking, or giving money in the name of another, is a "corrupt practice" and a crime. AS 15.13.074(b); AS 15.56.012. And, even if the group or Party gives to the candidate, the donor must share attribution for that limited contribution with all other donors to the group/Party. *See McCutcheon*, 134 S. Ct. at 1452-53.

Both base and aggregate limits must be designed to prevent *quid pro quo* corruption or its appearance. *Id*. at 1445-46, 1450, 1462. When layers of regulation are ostensibly designed to address the same corruption interest, the "closely drawn" test is to be applied rigorously. *Id.* at 1458. When they are allowed to give, nonresidents are controlled by the same $500 limit as Alaskans. AS 15.13.070(b)(1); AS 15.13.072(a)(2), (e). That base limit, itself a prophylaxis, is Alaska's primary tool for preventing *quid pro quo* corruption or its appearance. *McCutcheon*, 134 S. Ct. at 1442, 1446, 1451. And, the base limit is the amount that Alaska views as being free of corruption or its appearance. *Id.* at 1448, 1452. Thus, Alaska's nonresident aggregates target *quid pro quo* corruption only if nonresidents are improperly viewed, like they were by the district court, as being *ipso facto* corrupt. [ER-24-25] Here, the district court upheld Alaska's nonresident aggregates, not because they prevent circumvention, but for the impermissible goal

of preventing "outside industry and interests" from pursuing perfectly legal influence in Alaska. [ER-25]

The district court's observation that Alaska has a small population, is geographically isolated, is dependent on "outside industry interests" to develop its "great natural resources," and thus "vulnerable to exploitation" [ER-24] says nothing about why nonresidents pose risks of *quid pro quo* corruption simply because they are nonresidents—and it says even less about why a nonresident's legal base-limit contribution is or appears corrupt when the same contribution from an Alaskan does not. Whether Alaska is "vulnerable" to "exploitation" by "outside industry interests" [ER-24], whatever those terms mean, and they are far from self-explanatory, this provides no logical, let alone reasonable, rationale for concluding that all nonresidents are or appear corrupt when they give a perfectly legal contribution within base limits to an Alaska candidate. Alaska's nonresident aggregates are not limited to those tied to "outside industry" "interests." [ER-24] Thompson, a retired school teacher, war veteran, and former Navy Seal, was banned from giving a mere $100 contribution to his brother-in-law. [TE-98; ER-30-35]

Protecting a policy of isolationism from the rest of the Nation—*i.e.*, from "outside industry and interests"—is not an important or compelling interest that will justify limiting and banning free political speech and association. Contrary to

the district court's view, Alaska is not entitled to close its doors to outside industries and interests, or to try to curtail the free political speech and association of nonresidents who, for whatever reason, take an interest in Alaska's politics. Regulating Alaska's natural resources and protecting Alaska from so-called "exploitation," can be accomplished in a myriad of ways that do not involve denying other Americans their rights to free political speech and association. The First Amendment protects the free speech and association of all Americans in Alaska, just the same as in other states.

The evidence contradicts the district court's speculation that out-of-state corporations involved in natural resource extraction in Alaska might "exert pressure on their employees to make contributions"—presumably both resident and nonresident employees. [TE-99; TE-AZ; ER-260-263] Professor Richard Painter's "conjecture" [ER-261] that, if the base limit was increased, outside corporations (like ConocoPhillips or BP) would amp up pressure on their employees—including nonresidents—to contribute to Alaska candidates, was proven false. [ER-307-311; TE-BK] During 2003-2006, when Alaska's limit was $1,000, there was no increase in the number of Alaska candidates capping out their aggregate nonresident limits. *Id.*

McCutcheon establishes that aggregate limits, even those that pursue legitimate anti-circumvention objectives, are unconstitutional. 134 S. Ct. at

1452-1458. As the Supreme Court explained, "[t]he difficulty is that once the aggregate limits kick in, they ban all contributions of any amount. But Congress's selection of a . . . base limit indicates its belief that contributions of that amount or less do not create a cognizable risk of corruption. . . . Government must defend the aggregate limits by demonstrating that they prevent circumvention of the base limits. The problem is that they do not serve that function in any meaningful way." *Id.* at 1452. Alaska's nonresident aggregates are even less defensible than those at issue in *McCutcheon* because they do not address circumvention. Nonresidents can attempt circumvention of Alaska's base limit all they want by (1) giving to a candidate—so long as the candidate has not received the aggregate limit from other nonresidents, and then (2) giving more to parties and groups likely to support the same candidate—as ineffective as this may be due to the prohibition on earmarking. [AS 15.13.074(b); AS 15.56.012; ER-165, 249, 259]

As misguided as the district court's decision was regarding the supposed justification for Alaska's nonresident aggregates, its decision does lay bare Alaska's impermissible discriminatory resolve to silence nonresidents. [ER-24-25] But, stifling the voice of nonresidents in order to enhance the voice of Alaskans, is an unconstitutional purpose. *See*, *e.g.*, *Buckley*, 424 U.S. at 48-49; *McCutcheon*, 134 S. Ct. at 1450. At this time, only Alaska and Hawaii have aggregate caps on nonresident contributions. *See* AS 15.13.072(a)(2)(e); H.R.S. § 11-362. Because

Alaska's aggregates, when triggered, deny nonresidents the right of association via "the symbolic expression of support evidenced by a contribution," they should be subjected to strict scrutiny. *McCutcheon*, 134 S. Ct. at 1444. Alaska's aggregates fail strict scrutiny.

B. *VanNatta v. Keisling* Prohibits Residency-Based Contribution Bans.

A law that discriminates between residents and nonresidents with respect to campaign contributions is unconstitutional. *See VanNatta v. Keisling*, 151 F.3d 1215, 1217-18 (9th Cir. 1998); *accord Whitmore v. FEC*, 68 F.3d 1212, 1215-16 (9th Cir. 1995). In *VanNatta*, this Court struck down an Oregon law prohibiting candidates from accepting contributions from individuals residing outside their district. *VanNatta*, 151 F.3d at 1217-18. Although the state can prevent nonresidents from voting in a district where they do not reside, it cannot deny them the right to contribute to a candidate based upon residency. *Id.*

The only distinction between *VanNatta* and this case is one without a difference—residency within a voting district versus residency within a state. And, in *VanNatta*, this Court expressly held that the distinction between "out-of-state" and "out-of-district" contributions was constitutionally insignificant. *Id.* at 1217. In *Whitmore*, this Court rejected as "frivolous" a claim that permitting candidates to accept "out-of-state campaign contributions" was unconstitutional—the Court

noted that a residency restriction on campaign contributions "may violate the rights of the out-of-state contributors." *Whitmore*, 68 F.3d at 1216.

The district court's belief that *VanNatta is* distinguishable because the Oregon law this Court struck down banned all nonresident contributions, whereas Alaska's law permits a token few nonresidents to give to a candidate before its ban kicks in, is flawed. [ER-24] Once Alaska's nonresident ban is triggered, it is virtually identical to the law struck down in *VanNatta*. That six nonresidents were permitted to give to Wes Keller in 2015 did nothing to preserve Thompson's right to free speech and association. And, the fact that Thompson was free to give to political parties or groups that might also support Keller, did nothing to preserve Thompson's right to the symbolic expression of association that would have been evidenced by his contribution to Keller's campaign. Thompson was banned from making the only contribution that he wanted to make. [ER-30-35; TE-98]

In *VanNatta*, this Court rejected the idea that a nonresident contribution ban can be justified because it prevents "a distortion of the republican form of government" (*VanNatta*, 151 F.3d at 1216)—*i.e.*, those who reside outside the jurisdiction can be prohibited from trying to influence the jurisdiction's politics. [ER-24-26] This Court's decision was correct. "[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." *Buckley*, 424

U.S. at 48-49; *McCutcheon*, 134 S. Ct. at 1450. The Supreme Court has never "allowed the exclusion of a class of speakers from the general public dialogue." *Citizens United v. FEC*, 558 U.S. 310, 341 (2010). Justice Kennedy emphatically summed up the point: "[w]hen government seeks to use its full power . . . to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought. This is unlawful." *Id.* at 356. Alaska is not permitted to restrict the speech of non-Alaskan Americans in order to enhance the relative voice of Alaskans.

In *Landel v. Sorrell*, 382 F.3d 91 146-48 (2d Cir. 2002), the Second Circuit rejected a proportional nonresident aggregate cap nearly indistinguishable from Alaska's. Vermont's nonresident aggregate cap barred nonresidents from contributing to a candidate if the candidate's total nonresident contributions equaled 25% of his total contributions from all sources. *Id.* at 146. The Second Circuit considered and flatly rejected the Alaska Supreme Court's idea—expressed in *ACLU*, 978 P.2d at 616-17—that nonresident contributions can be discriminatorily capped in order to prevent the possibility that non-Alaskan interests might "cumulatively overwhelm Alaskans' political contributions" and "distort the Alaska political system." *Landell*, 382 F.3d at 147-48. This idea is "a sharp departure from the corruption analysis adopted by the Supreme Court in *Buckley*." *Id.* at 148. The Seventh Circuit expressed a similar view in *Krislov v.*

Rednour when it struck down a prohibition against a candidate's use of nonresident circulators to gather signatures on nominating petitions. 226 F.3d 851, 866 (7th Cir. 2002). Laws directed at preventing citizens of other states from having influence on local elections "are harmful to the unity of the Nation" because they penalize association with nonresidents. *Id*.

III. THE $500 INDIVIDUAL-TO-CANDIDATE BASE CONTRIBUTION LIMIT IS UNCONSTITUTIONAL

A. The Stated Purposes of the Law and Many of the State's Claimed Interests Are Not Legitimate.

The stated legislative purposes for cutting Alaska's individual contribution limits in half, reducing them from $1,000 to $500, do not relate to the prevention of *quid pro quo* corruption or its appearance—neither the Initiative's sponsors or the Legislature in 1996, nor the Initiative's sponsors or the public in 2006, considered what forms or amounts of limits were needed to prevent *quid pro quo* corruption or its appearance. [TE-AJ at 2, § 1; TE-AR; TE-AM; ER-211, 221, 333-335]. The district court's attempt to distance Alaska's current law from Frank and the 1996 Initiative and legislation [ER-13] is ineffectual. The district court overlooked that the 2006 Initiative was simply a reflexive about-face to Frank's $500 amount, selected for all wrong reasons. [ER-333-334] The district court ignored unrebutted evidence that the crafters of the 2006 Initiative performed no analysis regarding, and gave no thought toward, picking a contribution limit that

was appropriate to address *quid pro quo* corruption or its appearance. *Id*. The three-sentence statement in the 2006 Voter's Pamphlet said nothing about what amount of a contribution might trigger *quid pro quo* corruption, or why $1,000 was corrupt whereas $500 was not. [TE-AR] The current $500 limit embodies the improper purposes and policy choices that Frank and the Legislature made in 1996 [ER-333-334], and was not selected by what large contributions would result in *quid pro quo* corruption or its appearance as *Buckley*, *Citizens United*, and *McCutcheon* all require.

Preventing *quid pro quo* corruption or its appearance is the only legitimate government interest that will sustain campaign contribution limits. *Lair*, 798 F.3d at 740. Alaska's current limits were enacted prior to *Citizens United* (both in 1996 and 2006) for purposes that are illegitimate now: trying to shorten and reduce the cost of campaigns because they are allegedly too long and too expensive—partly to reduce the amount of money in politics and partly to encourage citizens to run for public office [TE-AJ at 2m § 1(a), (b); TE-AM at 1, § 1 (1), (2); ER-195, 198, 211, 225-226]; trying to modify and correct allegedly uninformative political campaign speech [TE-AJ at 2, § 1(a); TE-AM at § 1 (1)]; and trying to reduce the participation and so-called "undue influence" of "special interests" [TE-AJ at § 1(c); TE-AM at § 1 (3); TE-AR at 10, ¶ 3; ER-225-226]. So-called "undue influence" stopped being a legitimate government interest in 2010 with *Citizens*

United, 558 U.S. at 359-60. Trying to reduce all contributions to the average amount given across the country or by Frank, and to bring the limit within the reach of nominal income earners—incomes that were then about 180% above poverty level (currently at poverty level)—are not legitimate purposes. [ER-175-176, 200, 211-212, 217][2]

The district court's fundamental flaw is that it misconstrued what is and what is not corruption as a matter of law. [ER-7-15] The district court wrongly focused on (1) the "influence" and "pressure" that financial contributors can have on elected officials, (2) the expectations that contributors can have that elected officials will respond to their political desires, and (3) the favor and responsiveness that elected officials could give their supporters. [ER-7-15] Along these same lines, the district court focused on so-called "dependency relationships" that might develop between an elected official and a group of like-minded contributors who give a significant percentage of the official's campaign funds. [ER-15] Then, without the slightest evidence, the district court concluded that individual $1,000 contributions are "large" and create a "pervasive and persistent" risk of corruption in Alaska [ER-11]—ignoring that (1) Alaska viewed these contributions as being

[2] In 1996, the $17,000-$18,000 per-capita income Frank considered was about 180%, and $30,000 for a family of four was about 153% of poverty level. *See http://aspe.hhs.gov/1996-hhs-poverty-guidelines.* In 2016, $30,000 for a family of four is right about at poverty level, $30,380. *See http://www.ncsl.org/research/health/2014-federal-poverty-level-standard.aspx.*

free of corruption for twenty-six years, and (2) Hebdon's experts admitted they had no basis for claiming that a $1,000 contribution is or appears more corrupt than $500, and that it is not possible to quantify an increased risk of corruption or appearance from a contribution of $1,000 as opposed to $500. [ER-219, 250, 253-254]. Lastly, the district court effectively wrote the first *Lair/Eddleman* factor out of the law by accepting the idea that the state need not prove that the selected limit is narrowly focused on *quid pro quo* corruption, but simply that the limit "furthers" the state's interest in combatting such corruption. [ER-14] By the district court's reasoning, "lower" limits can always be said to further the state's interest, and the state can pick any lower limit so long as candidates can raise sufficient funds to run effective campaigns. [ER-14-15]

But, the foundation of the district court's decision collapses under the weight of established law. Although the district court gave lip service to the Supreme Court's stated principles [ER-6], it ignored fundamental legal rules. The district court erroneously accepted the idea that such things as access, influence, and responsiveness [ER-7-11], as well as "dependency," or the mere appearance of "dependency," are corruption. [ER-15] But, influence that a campaign contributor may have on a candidate, and favoritism that a candidate may show to his supporters—whether voters or financial contributors—is not corruption. *Citizens United*, 558 U.S. at 359-60.

In *Citizens United*, the Supreme Court rejected most everything the district court accepted as corruption:

> "Favoritism and influence are not . . . avoidable in representative politics. It is the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness." Reliance on a "generic favoritism or influence theory . . . is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle." The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy.

558 U.S. at 359-60. Ingratiation and access, *i.e.*, dependency or responsiveness, "embody a central feature of democracy—that constituents support candidates who share their beliefs and interests, and candidates who are elected can be expected to be responsive to those concerns." *McCutcheon*, 134 S. Ct. at 1441. The fact that elected officials legally develop a financial support base on which they depend for their campaigns, whether this base of legal support is broadly spread across the voting public or is concentrated among either like-minded voters, contributors, or PACs associated with a particular industry or political ideology—and that elected officials respond to these contributors—is not corruption. *Id.*

Unlike the district court [ER-7-15], the Supreme Court has recognized that citizens express their support for a candidate who is responsive to—influenced

by—their concerns via either votes and/or contributions. *Citizens United*, 558 U.S. at 359-60. So-called "dependency relationships" between elected officials and their supporters (whether contributors, voters, or both) is not corruption. Rather, influence and responsiveness is the natural byproduct of a democratically elected government. *McCutcheon*, 134 S. Ct. at 1441. "The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt." *Citizens United*, 558 U.S. at 359. Government may not target the general gratitude a candidate feels toward those who support him, or the political access such support may afford. *McCutcheon*, 134 S. Ct. at 1441.

"And because the Government's interest in preventing the appearance of corruption is equally confined to the appearance of *quid pro quo* corruption, the Government may not seek to limit the appearance of mere influence over or access" to elected officials. *McCutcheon*, 134 S. Ct. at 1451 (citing *Citizens United*, 558 U.S. at 360). Further, government may not regulate contributions simply to reduce the amount of money in politics. *Arizona Free Ent. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2825-26 (2011). And, lower limits are not always better or constitutionally permissible. *Randall*, 548 U.S. at 232; *Lair I*, 697 F.3d at 1208; *Lair*, 798 F.3d at 747-49.

The district court accepted the idea that mere collective legal contributions from like-minded, commonly-employed, or similarly-interested people—*i.e.*, legal

fundraising—is tantamount to corruption. [ER-14-16] Also, to the district court, any fundraising or contribution activity, individual or collective, that is coupled with communicating to the candidate what it is the individual or group of people want, is corrupt. [ER-7, 17] The district court accepted the idea that *quid pro quo* corruption lurks in any situation where a collective group of people—people giving perfectly legal contributions of their own money—give enough in collective contributions to amount to a significant percentage of the candidate's total campaign budget. [ER-15] But, all campaign fundraising efforts are designed to try to "bundle" together contributions from multiple people so as to amass the total amount of funds needed by a candidate. [ER-269-270, 272-274, 276-277] And unlike the district court, *Buckley* actually found "bundling" by like-minded people—what the Court called "pooling"—to be a positive. 424 U.S. at 22. Moreover, *Buckley's* corruption focus was on "large individual contributions," (424 U.S. at 26-27), not collective "bundling" or "pooling." *Id.*

"Bundling" or "pooling" contributions is not corrupt—it is the legitimate goal of legal fundraising to bundle or pool as many legal contributions from as many like-minded donors as possible. *Id.* [ER-15, 269-270, 272-274, 276-277] The district court's decision is also internally inconsistent—on the one hand declaring it a positive that Alaska's basement-level limit forces candidates to "go broad" for support, while on the other hand declaring that the broad support of

multiple affiliated and like-minded legal donors creates corrupt "dependency," "influence," and "pressure." [ER-15, 17] What the district court missed is that, absent an actual *quid pro quo* or an illegal "bonus" scheme [TE-59 at 8, ¶ 21(a)], collective giving is, and it appears to be, nothing other than legal fundraising and politically protected speech and association. *See*, *e.g.*, *Buckley*, 424 U.S. at 22; *Citizens United*, 558 U.S. at 359.

Further, what the district court found to be corrupt or potentially corrupt "dependency relationships" [ER-15] matches the perfectly legal contribution activity of labor unions and their PACs. Multiple labor unions form PACs—there were about forty labor-union PACS in Alaska in 2016, more than any other interest or industry. [ER-389-390] The unions encourage or pressure their members to donate to the PACs. [ER-55-56, 266, 336] The labor-union PACs then act collectively to give multiple $1,000 contributions to the unions' preferred candidates. [ER-56-57, 266, 336] These separate $1,000 union PAC contributions multiply ("bundle" or "pool"), and at times, can comprise significant percentages of the candidate's total campaign budget. [ER-346-350] Unions use this "bundling" to "influence" elected officials. [ER-246, 258, 265-266] For example, in his 2016 Anchorage Assembly race, Eric Croft received 25% of his total $100,000+ campaign budget from labor-union PACs. [ER-347-350; TE-100-102] By the district court's version of corruption [ER-7-11, 15], this would be a

reflection of Croft's "dependency relationship" with labor unions and conversely, the labor unions' corrupting influence on Croft. [ER-231-236, 238-244, 248, 251-252, 264] But, the district court ignored this fact and proceeded to credit Croft's testimony. [ER-9, 19, 14]

Hebdon's expert, Painter, opined that Alaska can reduce its limit to address "dependency relationships," not because they are *quid pro quo* corruption at present, but rather because they "lead to" corruption, or "can quickly become a *quid pro quo* situation." [ER-247-248] But, a candidate and a contributor sitting together and talking at a fundraiser or on a park bench could likewise "lead to" corruption, but neither can be prohibited or regulated. What the district court ignored is that the government's only legitimate interest is actual *quid pro quo* corruption or its appearance. *Lair*, 798 F.3d at 740. Dependency or the appearance of dependency, which is nothing more than a combination of legal ingratiation, access, and responsiveness, are not corruption. *McCutcheon*, 134 S. Ct. at 1441; *Citizens United*, 668 U.S. at 360.

The district court's denigration of the oil industry is improper, literally assuming oil industry influence to be *ipso facto* corrupt. [ER-7-10] But, there is no evidence in this record to prove that the oil industry's political activity is inherently corrupt. In any event, targeting the oil industry's influence in Alaska for restriction [ER-7-10], is impermissible. *See Citizens United*, 558 U.S. at 340

(speech regulations cannot target particular speakers). Government may not restrict the political participation of some in order to enhance the relative influence of others. *McCutcheon*, 134 S. Ct. at 1450. And although individuals associated with the oil industry may collectively inject a large amount of money into Alaska campaigns, government may not target the spending of large sums of money in elections when it is not intentionally designed to control the exercise of an officeholder's official duties. *Id*. at 1451. "Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder's official duties, does not give rise to *quid pro quo* corruption." *Id*. at 1450-51.

"Nor does the possibility that an individual who spends large sums may garner 'influence over or access to' elected officials or political parties." *Id.* at 1451. In Justice Kennedy's words:

> There is no basis, in law or in fact, to say favoritism or influence in general is the same as corrupt favoritism or influence in particular. . . . Favoritism and influence are not . . . avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and by necessary corollary, to favor the voters and contributors who support those policies.

McConnell v. FEC, 540 U.S 93, 297 (2003). "The line between *quid pro quo* corruption and general influence may seem vague at times, but the distinction must be respected in order to safeguard basic First Amendment rights. . . . [I]n drawing

that line, the First Amendment requires [courts] to err on the side of protecting political speech rather than suppressing it." *McCutcheon*, 134 S. Ct. at 1451.

And, states may not use contribution limits to try to inhibit the influence of so-called "untrustworthy outsiders." *See VanNatta*, 151 F.3d at 1217; *Landell*, 382 F.3d at 148; *Krislov*, 226 F.3d at 866. Promoting "competitive races" [ER-132] is not a legitimate objective. Government may not try to "level the playing field," or "level electoral opportunities," or "equalize[e] the financial resources of candidates." *McCutcheon*, 134 S. Ct. at 1450. Government may not use contribution limits to try to mold or shape campaign speech. *Buckley*, 424 U.S. at 48-49; *McCutcheon*, 134 S. Ct. at 1450; *Citizens United*, 558 U.S. at 356. Stripped of its unconstitutional justifications, the district court's decision collapses.

The district court's reliance on the Allen/Veco bribery scandal was inappropriate. [ER-9-10] The scandal had no bearing on the 2006 Initiative. The first search warrants were served, and the first news stories about that scandal broke, only after the Initiative had already passed in the 2006 primary. [ER-317-318, 402]. And, unlike the legal campaign fundraising that Alaska's laws curtail, the individuals involved in that scandal engaged in criminal bribery, extortion, and "giving in the name of another"—they were not engaged in legal contribution activity. [TE-47-62; ER-174, 332] Further, the legislators involved did not accept legal contributions, but rather took money for personal gain. *Id*. Allen/Veco

illegally gave company money to employees in the form of bonuses for the employees, in turn, to give to candidates in their own names. [ER-171-172, 173-174; TE-59, at 8, ¶ 21(a)] The "narrowly focused" way to prevent bribery, extortion, and criminal "giving in the name of another" is to prosecute violators—*i.e.*, using the scalpel. *See McCutcheon*, 134 S. Ct. at 1441. This is precisely what the government successfully did with those involved in the Allen/Veco scandal. [TE-47-62] Limiting every honest citizen's campaign contributions in order to address a few criminals is overbroad—*i.e.*, using the hammer. *McCutcheon*, 134 S. Ct. at 1441. The Allen/Veco scandal proves nothing about what amount of legal campaign contribution might be, or reasonably appears to be, corrupt (*i.e.*, the "large contributions" the Court spoke of in *Buckley*, 424 U.S. at 25-30).

B. Alaska's Contribution Limits Bear the *Randall* Danger Signs.

Alaska's $500 limit bears all of the *Randall* danger signs. First, the annual nature of Alaska's limit makes it equivalent to a per-cycle limit for challengers. A candidate who does not register in the year before the general election cannot raise money that year. AS 15.13.070(b)(1); AS 15.13.400(1)(A). Over the past sixteen years, challengers have overwhelmingly (98%) been the candidates that do not register and raise funds in the off year. [ER-101-108, 145-148, 284, 387; TE-BF] Challengers are generally not recruited until the election year. [ER-127, 144, 290-292, 388] This phenomenon gives a significant advantage to incumbents who

fundraise in the off year because they can double their contributions from maximum donors. [ER-63, 110, 114, 129, 149-150, 284] Alaska's annual limit has the practical effect of restricting challengers to only one $500 contribution from maximum donors, while enabling incumbents to receive $1,000 from maximum donors. [ER-148-149] Thus, worse than *Randall*, where all candidates were subjected to a per-cycle limit (548 U.S. at 249), as a practical matter, Alaska's law subjects only challengers to a per-cycle limit.

Second, Alaska's limit is lower than the limit upheld in *Buckley*. The $1,000 limit that was approved in *Buckley*, the amount the Court found created no risk or appearance of corruption (now $2,700 per election, $5,400 per cycle), applies to federal elections in Alaska that involve the exact same voter base as Alaska's statewide elections. [ER-64] When Alaska's limit was selected, that limit in raw 1996 dollars represented only 18% of the per-election limit the Court approved in *Buckley*. Adjusted for inflation, $500 in 1996 was equal to only $181.33 in 1976. http://www.bls.gov/data/inflation_calculator.htm. Because Alaska's annual limit is the practical equivalent of a per-cycle limit for challengers [ER-101-105, 145, 284; TE-BF], this $181.33 in 1996 was equivalent to a per-election limit of $90.66 in 1976 dollars (*i.e.*, 9% of the federal per-election limit approved in *Buckley*). In 2006, Alaska's limit represented only $140.19 in 1976 dollars and 14% of the limit approved in *Buckley*. At present, Alaska's limit represents only $116.69 in 1976

dollars and only $58.34 per election (http://www.bls.gov/data/inflation_ calculator.htm). This is a mere 5.8% (a little more than one-twentieth) of the $1,000 per-election limit approved in *Buckley*. *See*, *Randall*, 548 U.S. at 250.

Third, Alaska's limit is the lowest in the nation for statewide races and lower than nearly all comparable limits in other states. [TE-66] Only six states—Colorado, Connecticut, Kansas, Maine, Michigan and Wisconsin—have contribution limits for some legislative offices that are equal to or lower than Alaska's, and some of these nonetheless have more value because they are per-election rather than annual or per-cycle limits. *Id.* All of the states that have equal, comparable, or lower legislative/municipal limits than Alaska have a higher statewide limit. *Id.*

Fourth, Alaska's limit is below the lowest statewide limit the Supreme Court has previously upheld—the $1,075 per-election limit (adjusted for inflation) that the Court upheld in *Nixon*. 528 U.S. at 383. Tellingly Alaska's annual limit, which has a value of only $408.30 when adjusted to 2006 dollars,[3] is nearly identical to the per-cycle limits the Court struck down in *Randall*. Vermont's limits in 2006 were $400 statewide, $300 senate, and $200 house, per cycle and not adjusted for inflation. *Randall*, 548 U.S. at 238. Alaska's statewide population is only slightly greater than Vermont's (736,732 to 626,562) and Alaska's voting

[3] *See* https://www.bls.gov/data/inflation_calculator.htm.

population is comparable to the average population of the congressional districts that were at issue in *Buckley* in 1976—546,215 (Alaska as of 2013) to 465,000 (congressional district in 1976). *See* https://www.census.gov/quickfacts/table/ PST 045215/00; *Randall*, 548 U.S. at 250.

C. The Limit Fails the *Lair*/*Eddleman* Test.

Alaska's base annual limit of $500 fails the *Lair/Eddleman* test. And, when the *Randall* factors are viewed within the *Lair/Eddleman* framework, as a set of consistent and helpful tools, the constitutional infirmity of Alaska's limit is clear. The *Lair/Eddleman* factors are listed in the conjunctive, and Hebdon was required to prove every facet of the *Lair/Eddleman* framework. *Lair*, 798 F.3d at 748; *Eddleman*, 343 F.3d at 1092.

1. The Limit Does Not Focus Narrowly on *Quid Pro Quo* Corruption.

Lair/*Eddleman* hold that in order for a campaign contribution limit to be "closely drawn," that limit must "focus narrowly on the state's interest"—the prevention of *quid pro quo* corruption or its appearance. *Lair*, 798 F.3d at 740, 748; *Eddleman*, 343 F.3d at 1092. This requires the Court to evaluate whether "a substantial mismatch" exists "between the Government's stated objective and the means selected to achieve it," *McCutcheon*, 134 S. Ct. at 1446, *i.e.*, whether there is a "reasonable fit" to serve that objective. *Id.* at 1457. Although the reasonable

fit is "not necessarily the least restrictive means," it must still be "a means narrowly tailored to achieve the desired objective." *Id*. at 1457-58. Failure to satisfy this factor alone renders the limit unconstitutional.

In order for Alaska's contribution limit to "focus narrowly" on the State's legitimate interest, there must be a nexus between the $500 amount of the limit, *i.e.*, the reduction from $1,000 to $500, and the prevention of *quid pro quo* corruption or its appearance in both 1996 and 2006. Because the Alaska limit was put in place for improper purposes, it "could never be said to focus narrowly on a constitutionally permissible anti-corruption interest." *Lair v. Motl*, 2016 WL 2894861 *7 (D. Montana 2016). And, the district court's thought that the $500 limit can permissibly be focused on "influence," "pressure," "gratitude," and "responsiveness" [ER-7-11, 15] is wrong as a matter of law.

Other than putting forward the general proposition that the lower the limit the less money any person or collective group of people can amass for a candidate [ER-13-14], the district court's decision contains no reasoning to support the notion that Alaska's $500 limit is important, let alone essential, to preventing *quid pro quo* corruption or its appearance. Hebdon candidly admitted that "[t]here is no magic about $500" because that number represents mere "guesswork" [ER-400]—and, as Frank's testimony confirms, it was guesswork about all the wrong things. [ER-211-217] There is no evidence in this record that anyone (in 1996 or 2006)

even tried to "guess" what amount was enough to be or appear to be a corrupt *quid pro quo*. Hebdon did not prove that $500 is an amount that is "narrowly focused" on the prevention of *quid pro quo* corruption or its appearance. *Lair*, 798 F.3d at 748.

Proclaiming the task of selecting a limit to be "guesswork" does not satisfy the State's burden to prove the constitutionality of the limit. When the Supreme Court in *Buckley* acknowledged that it did not have a "scalpel to probe" contribution levels, the Court was considering what limit amount might trigger "improper influence," and whether the limit should have been varied by federal office. 424 U.S. at 30. But, at this time, trying to curb "influence" is no longer legitimate because "influence" is no longer considered corrupt. *Citizens United*, 558 U.S. at 35-60. Even *Randall*, which struck down Vermont's limits as too low, was decided at a time when the "influence" that a contribution might wield was a legitimate "corruption" concern. 548 U.S. at 241, 244, 247, 261 (the Court spoke only of "corruption," not *quid pro quo* corruption). The Court did not narrow the genre of "corruption" to solely *quid pro quo* arrangements until *Citizens United*. 558 U.S. at 359-60. "Guesswork" does not satisfy the State's burden to prove that its limit is narrowly focused on *quid pro quo* corruption. In any event, unlike the district court, "the Ninth Circuit has 'never accepted mere conjecture as adequate

to carry a [state's] First Amendment burden.'" *Citizens for Clean Gov't v. City of San Diego*, 474 F.3d 647, 653 (9th Cir. 2007).

Frank, who selected the $500 amount, provided no evidence of a nexus between $500 and preventing *quid pro quo* corruption, and he could not explain why $1,000 allegedly is, or appears to be, more corrupt than $500. [ER-219, 224] Like the district court, Frank said only that the lower the limit the less possibility of corruption. [ER-219] But, this logic would support even lower limits or a complete ban on contributions. [ER-177, 210] It is impermissible for the State to cut its limit in half and then justify the reduction by merely saying "lower is always better"—it is not correct that "the lower the limit, the better." *Randall*, 548 U.S. at 248-49; *Nixon*, 528 U.S. at 397; *Lair*, 798 F.3d at 747-49.

The district court left unexplained how Alaska's alleged vulnerability is allegedly alleviated by having the lowest statewide—and among the lowest legislative—limits in the Nation. There is no nexus between lowering Alaska's limits and alleviating Alaska's alleged "vulnerability" to corruption, whatever this concept means. The district court's conclusion that "the incentive to buy a vote and the chances of successfully doing so" is "higher in Alaska than in states with larger legislative bodies" [ER-7-8], is incongruous. Simple common sense dictates, as Senator Coghill explained, that the chances of "buying" a vote hinges not on the size of the legislature or the amount of the contribution, but on the moral

character and personal fortitude of the individual legislator. [ER-60, 65] The size of the legislature does not change the incentive to buy, or the likelihood of buying, a vote—it only changes the number of votes one might need to buy. Irrespective, there is no evidence in this record of an elected Alaska official being "bought" in exchange for legal campaign contributions, whether $1,000 or $500. By focusing on Alaska's alleged vulnerability, the district court was misled by Hebdon's sleight-of-hand, switching (1) an improper focus on the perfectly legal influence that individuals and so-called "interests" are constitutionally entitled to pursue and hold in Alaska's politics, for (2) a proper focus on *quid pro quo* corruption.

The district court's focus on Alaska's oil industry is injudicious. [ER-7-8] The focus on oil industry influence improperly assumes that influence in general is corrupt, and that oil industry influence in particular is *ipso facto* corrupt. But perfectly legal influence, even oil industry influence, is not a permissible justification for lower contribution limits. Moreover, Alaska's economy would remain dependent on the oil industry, Alaska's largest industry, no matter what contribution limit is adopted, or whether contributions are altogether eliminated. There is no evidence in the record that the oil industry wielded less influence in Alaska simply because the contribution limit was dropped from $1,000 to $500. Rather, the evidence proves that the oil industry has wielded great influence in

Alaska politics when both limits were in place, and would continue to do so even if the limit was dropped to $1. [ER-180-182; TE-Z at 1-2]

The oil industry has been powerful and influential in Alaska's politics from pre-statehood, to statehood, through the 1980s, and even until present. [ER-169-170, 178, 181-182, 185-186; TE-Z at 1-3] There is no correlation between the amount of Alaska's base contribution limit and the strength and influence of the oil industry in Alaska. Moreover, targeting the oil industry's influence, as opposed to someone else's or everyone's influence, is not permitted. *McCutcheon*, 134 S. Ct. at 1450. In any event, Alaska is similar to other states with higher contribution limits, and who are reliant on the oil industry or other significant industries—Hebdon presented no evidence that there are higher corruption risks in those other states because their contribution limits are higher or unlimited. [ER-180-181, 184-185, 245, 255-257; TE-66]

The district court's thought that lower limits make it harder for "interests" to amass and focus larger total amounts of money via multiple contributions [ER-15], embraces the impermissible. This is once again a mistaken focus upon legal "influence." Moreover, the district court's idea would justify taking Alaska's limit down to even lower depths below the national basement, where it currently resides. This is nothing more than "the lower the better." Other *Randall* factors exist: Alaska limits what a party may contribute to candidates and aggregates all of the

independent party components [AS 15.13.070(d); AS 15.13.400(15)]; Alaska treats volunteer services as contributions when the contributor ordinarily charges for his services, *e.g.*, a graphic designer. AS 15.13.400(4)(A).

The lack of an inflation adjustment in Alaska's limits highlights the fact that they are not focused narrowly on *quid pro quo* corruption. Simply adding an inflation adjustment to the limit in 1996 would not have resulted in risk or appearance of *quid pro quo* corruption over time. Frank and Croft testified that they do not believe an inflation adjustment would have created a risk or appearance of corruption. [ER-64, 229-230, 333-334] This means that the sponsors of the two Initiatives agree that a limit of at least $776.93 in 2017[4] would create no risk or appearance of *quid pro quo* corruption. [ER-69-70, 71] The district court's idea that limits of $750 and $1,000 would increase the likelihood of a candidate being "dependent" on—responsive to—an individual or groups of individuals, is misguided. Once again, the district court's focus is on perfectly legal "influence" and "bundling," or as *Buckley* called it, "pooling." 424 U.S. at 22. There is no evidence in this record that a legal individual contribution of $750 or $1,000 has ever been enough to garner a corrupt *quid pro quo* in Alaska. Croft received twenty-four $1,000 donations from labor-union PACs in 2016 ($24,000, one quarter of his Anchorage Assembly campaign budget), and neither he nor the

[4] *See* http://www.bls.gov/data/ inflation_calculator.htm.

district court viewed Croft as corrupt. [ER-331, 334, 345-351; TE-100-102] And, Frank acknowledged that he picked the $500 amount despite *Buckley* upholding a $1,000 per-election, $2,000 per-cycle limit. [ER-219-220] *See Buckley*, 424 U.S. at 29.

A multiplicity of witnesses, both candidates and contributors, who received or gave legal $1,000 contributions testified that those contributions did not make them to be, or to appear to be, corrupt. [ER-40, 59-60, 205-208, 319, 321, 329-330, 332, 334] Painter agreed that a mere $1,000 contribution does not create a risk or appearance of corruption, and admitted that he cannot quantify a difference in the risk of *quid pro quo* corruption or its appearance as between a contribution limit of $500 and $1,000. [ER-59-60, 250, 267-268]

The district court's reliance upon Charles Wohlforth, a former Anchorage Assemblyman, who accepted $1,000 contributions [ER-378-379], and is the only former elected official who thinks he gave political favors for legal contributions—even as little as $198—is imprudent. [ER-377, 379, 383][5] Unlike the Supreme Court, Wohlforth believes that legal campaign financing leads to corruption just because of the natural gratitude a candidate feels toward a contributor. [ER-381-382]; *contra. McCutcheon*, 134 S. Ct. at 1441. Irrespective, public figures are responsible to have more personal fortitude than what little bit Wohlforth claims to

[5] Wohlforth believes he never gave a corrupt *quid pro quo*. [ER-335]

have had. [ER-380] Alaska's campaign finance laws are not required to be molded to accommodate the infirm rectitude of the worst examples of Alaska's public figures.[6] As was proven via the Allen/Veco scandal, bribery and extortion laws are sufficient to address Alaska's bottom-of-the-barrel elected officials. [ER-61, 186-187]

In any event, Finkelstein, Wohlforth, Croft, Senator Coghill, and Robert Bell each spoke of nothing more than legal "influence," "expectation," and "pressure" [ER-178, 315, 331, 351, 369, 382, 384-385], none of which is corruption. And as sordid as it may seem, those contributors who approached Senator Coghill and Bell [ER-9] did nothing to amount to a corrupt *quid pro quo*, and they were fully entitled to take their contributions and fundraisers elsewhere upon learning that Coghill/Bell would not support their desired causes. [ER-251-252] The solution for Wohlforth would have been for him to develop and exercise the self-fortitude of Coghill and Bell.

Vic Kohring's views on "corruption" are not worthy of consideration. [ER-10] Kohring is a convicted felon—he sold his votes in exchange for bribes from Allen/Veco that he put into his own pocket in amounts ranging from $17,000

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[6] It is ultimately an elected official's responsibility to refuse attempted *quid pro quo* proposals. *See* Jesse Unruh (long-time California Assembly Speaker), http://www.latimes.com/la-calpolitics-money-missionstatement-story.html ("If you can't take their money, drink their booze, eat their food, screw their women and vote against them, you don't belong here.").

to as little as $200, or candy. [TE-49-50; ER-168] The 1990 Government Ethics Center study [ER-10] spoke only of "reputation," "image," and "influence" [TE-AP], a legitimate concern in 1990 (*Buckley*, 424 U.S. at 30), but not in the post-*Citizens United* world of campaign finance where only *quid pro quo* corruption is a legitimate concern. 558 U.S. at 359-60; *Lair*, 798 F.3d at 740, 745-46.

Contribution limits should be proportional to the State's interest in preventing *quid pro quo* corruption or its appearance. *Randall*, 548 U.S. at 249, 262. If there is too high a percentage of donors hitting the maximum limit—even 30%—that is an indication the limit is not proportional to ("narrowly focused on") the State's interest in *quid pro quo* corruption. *Id.* [ER-77-79] Nearly 40% of Alaska campaign contribution dollars during five $500-limit election cycles spanning ten years, all cycles but 2004 and 2006, came from maximum contributions. [ER-300; TE-BI] Alaska's limit is, therefore, disproportional to the State's only legitimate interest in preventing *quid pro quo* corruption or its appearance, and is overbroad.

Further, Alaska's statutes, and current constitutional law, permit unlimited contributions to independent expenditure groups. Unlimited contributions to independent expenditure groups, coupled with Alaska's disclosure law, AS 15.13.090(a)(2)(C), create significantly greater risks of *quid pro quo* corruption

than do mere $1,000 contributions—a contribution amount for which Hebdon could not even quantify an increased risk of corruption. [ER-250, 253-254] In comparison, the State's $500 individual limit is plainly too low and not narrowly focused.

2. The Limit Inhibits the Ability of Candidates, Particularly Challengers in Competitive Races, from Amassing Sufficient Resources for Effective Campaigns.

The goal of a campaign is to win. [ER-87] Money is the ammunition of campaigns and raising more money is always better than raising less money. [ER-98, 285-286] Campaigns that raise more money generally win. [ER-126, 301; TE-BJ] Gubernatorial campaigns in Alaska can require $1-$2 million. [TE-26] Senate campaigns in Alaska can require up to $172,000. [TE-BF at 4 (French)] Alaska House campaigns can require from $112,000 to $127,000. [TE-BF at 1 (LeDoux); ER-133] Anchorage municipal campaigns can require over $100,000. [ER-350] There is a limited pool of contributors from which campaigns in Alaska can raise needed funds. Alaska has a population of roughly 736,000, but only roughly 550,000 are of voting age, roughly 500,000 actually register to vote, even less actually do vote, and over the past sixteen years, only a fraction of 1% have given any contribution to a candidate. [ER-293-296]

Incumbents have significant natural advantages in elections over challengers. [ER-62-63, 112-113, 124, 140, 142-143, 343-344] Most challengers

start races with a huge name-recognition disadvantage. [ER-124] It requires enormous amounts of money for a challenger to build name recognition. *Id.* On average, incumbents, who often do not draw challengers [ER-297], raise more money more easily than challengers, and they generally win elections, historically at about a 95% rate, sometimes spending less money. [ER-125-126, 140-141, 142-143, 278, 289, 322-323, 337-343] Challengers in Alaska House races very seldom defeat an incumbent. [ER-302; TE-BM] Raising Alaska's limit to $1,000 was not a big enough increase to change that pattern. *Id*. That a few challengers were successful in the 2016 Alaska primaries [ER-19],[7] says nothing about Alaska's basement-level limit (historical incumbent success rate is 95%). Nationally, when contribution limits are raised above $1,000 or to unlimited amounts, the percentage of successful challengers is increased by a statistically significant margin. [ER-303-307; TE-BR] Alaska's lower $500 limit is harder on challengers. [ER-54, 58] Increasing contribution limits benefits challengers more than incumbents. [ER-279-285, 303-307, 391-393]

"The critical question concerns not simply the average effect of contribution limits on fundraising but, more importantly, the ability of a candidate running

[7] Only five incumbents (10%) lost elections in Alaska's 2016 primaries. *See https://ballotpedia.org/Incumbents_defeated_in_2016%27s_state_legislative_elections#Alaska_2*. Lynn Gattis and Craig Johnson were running for new seats in the State Senate, not as incumbents in the House. *See* https://ballotpedia.org/Alaska_State_Senate_elections,_2016.

against an incumbent officeholder to mount an effective challenge." *Randall*, 548 U.S. at 255. "Information about *average* races, rather than *competitive* races, is only distantly related to that question, because competitive races are likely to be far more expensive than the average race." *Id*. Competitive races, those with a vote spread of about 55% to 45% [ER-67], draw the most attention from donors. [ER-67-68, 134, 342] In competitive races, on average, campaigns raise significantly more money, spend more than they raise, challengers raise less than incumbents, winning candidates raise and spend more than losing candidates, and campaigns spend money as fast as it comes in the door. [ER-98, 128, 287, 342]

Alaska's base individual limit is so low that campaigns in competitive races routinely run deficits [ER-99], which makes it difficult for challengers to mount effective campaigns so as to compete with the significant advantages of incumbency. [ER-73-76; TE-79 at 10] There were twenty-four Alaska Senate campaigns between 2002 and 2014 that met the definition of competitive. [ER-72; TE-79 at 10] In these races, campaigns on average spent more than they raised and ran deficits. [ER-73-76; TE-79 at 10] Winning campaigns on average raised about $17,000 more than losing campaigns ($107,000 versus $91,000). [ER-74-77; TE-79 at 10] On average, incumbents raised about 37% more than challengers. [ER-75; TE-79 at 10] Between 2002 and 2014, in over forty-five Alaska House districts, there were about ninety campaigns that were competitive. [ER-81; TE-79

at 11] In those races, the campaigns spent more than they raised and ran deficits [ER-81-83; TE-79 at 11], winners raised more than losers ($66,000 to $58,000) [ER-72; TE-79 at 11], and incumbents raised about 15% more than challengers [ER-82-83; TE-79 at 11]. On average, in competitive races in both the Senate and House, incumbents raised about 30% more than challengers. [ER-83; TE-79 at 10-11][8] Running out of money before an election is a disaster for campaigns. [ER-275, 287-289] The district court ignored substantial evidence in the record of Alaska campaigns in recent competitive races running out of money before election day. [ER-100-101, 109-111, 352-375; TE-2-3; TE-89-93] Hebdon's expert, Heckendorn, described a campaign strategy he employed to try to get an opponent with limited resources to run out of money before the final stretch of the race. [ER-275, 287-288]

Campaigns in Alaska have become more expensive with inflation [ER-53-54, 62, 84-91, 94, 96-97, 131, 135-139, 164, 277], but none of Alaska's contribution limits have ever been adjusted for inflation. [ER-84] The district

[8] The district judge in *Lair* and Justice Breyer in *Randall* both credited Clark Bensen's summary of voluminous public data regarding campaign fundraising and spending. *Motl*, 2016 WL 2894861 *8; *Randall*, 548 U.S. at 253-54. The district court committed clear error by rejecting Bensen's summary of voluminous data [Fed. R. Evid. 1006] regarding money raised and spent in Alaska's elections [ER-72-76, 80-83; TE-79], simply because Bensen acknowledged that one of his separate and unrelated opinions could have been better formulated. [ER-17-18] Even Appellees themselves relied on Bensen's voluminous public data summaries. [ER-401]

court's idea that inflation might affect the rest of the world, but not campaigns, is both absurd and shortsighted. *Randall*, 548 U.S. at 261; [ER-36-37]. According to the Supreme Court, inflation does affect campaigns (*Randall*, 548 U.S. at 261), and as it devalues the contribution limit, it also diminishes an individual's speech and association. *Id.* Moreover, Alaska's population increase has exacerbated the effect of inflation on campaigns. [ER-120-123] Total funds raised for House races in 2001-2002 was $3,371,777—$7.36 for each registered voter. [ER-394-399; TE-BH; TE-74] Adjusted to 2014 dollars, this $7.36 is equivalent to $9.69. By comparison, in 2014, House races raised $3,055,623—$6 per registered voter. *Id.* Measured in constant 2014 dollars, this represents a decline from 2002 to 2014 of $3.69 ($9.69-$6.00 per registered voter) or 38% per voter. In the 2001-2002 election cycle, total funds raised in Senate races was $2,190,682—$5.50 per registered voter. *Id.* Adjusted for inflation, this equates to $7.24 per registered voter in 2014 dollars. The 2014 Senate election cycle indicates total campaign funds of $1,790,584 raised—$4.99 per registered voter. *Id.* Measured in constant 2014 dollars, this represents a decline from 2002 to 2014 of $2.25 ($7.24 - $4.99) or 31% per voter. The long-term trend shows a decline in funds available to Alaska campaigns on a per-voter basis. *Id.*

The fact that some candidates manage to make do with less under the current limits does not satisfy Hebdon's burden—campaigns running deficits [ER-72-76,

81-83; TE-79 at 10-11], challengers running out of funds before election day [ER-100-101, 109, 111, 113-119, 151-163, 356-357, 365; TE-89-94; TE-BF], candidates making hard choices to forego certain campaign tools or strategies [ER-92-93, 95-96] or to enter races late so as to entice an opponent to not fundraise [ER-291], and incumbents winning races at a rate of 95% [ER-125-126], speak of a system that does not permit enough money to flow into campaigns.

Potential campaign funds are not being realized under the $500 limit. [ER-312-313; TE-26; TE-BI; TE-BH] When campaign funds are not being realized due to reductions in contribution limits, that is reflective of a system that is not permitting robust individual contributor participation. *Randall*, 548 U.S. at 253. For example, Tony Knowles raised a total of $1.7 million in 1994 for his gubernatorial race under a $1,000 contribution limit. [ER-166-167; TE-26] In 1998, with a $500 limit, he raised only $1 million, a 40% reduction. *Id.* Then in 2006, he raised about $1.7 million under a $1,000 limit. *Id*. The drop and increase in Knowles' campaign funds for his gubernatorial races coincides with the raising and lowering of the contribution limit between $1,000 and $500. *Id*. This phenomenon was not unique to Knowles—gubernatorial candidates overall raised 60% more in 2006 under a $1,000 limit than under the lower $500 limit. [ER-312-313; TE-BH] And, candidates over all raised substantially more funds in $1,000 years than in $500 years. [ER-312; TE-BH]

Hebdon presented evidence confirming that when the contribution limit went up to $1,000, there was significantly more money being donated to House races than in the $500 years (both before and after the 2003-2006 cycle under the $1,000 limit). [TE-BH; ER-298-299] In 2002, with a $500 limit the total dollar amount donated to House candidates by individual contributors was $2.9 million. In 2004 and 2006, when the limit went up to $1,000, the total dollar amounts donated to House candidates went up to $3 and $3.3 million. *Id.* Then, in 2008 and after, when the limit was dropped back down to $500, the total dollar amounts donated to House candidates went down to $2.4 million (2008), $2.2 million (2010), $2.6 million (2012) and $2.5 million (2014). [ER-299; TE-BH] The drop from the average total contributions to House candidates in the $1,000-limit years of 2003-2006 (avg. $3.15 million) to the average contributions to House candidates in the $500-limit years of 2002 and 2008-2014 (avg. $2.52 million) is about $600,000. [ER-299; TE-BH]

IV. THE $500 INDIVIDUAL-TO-GROUP LIMIT IS UNCONSTITUTIONAL

For all the same reasons stated above, Alaska's $500 limit on an individual's contribution to a group that is not a political party is unconstitutional. But, this limit is even less justified than the $500 limit on individual contributions to candidates. There is no way for a group to offer a *quid pro quo* to a contributor. Groups do not have any political authority, position, or power, and thus cannot

offer the kind of political favor that the Supreme Court considers corruption. *See McDonnell*, 136 S. Ct. at 2361, 2371-72. Thus, the only permissible state interest in the individual to group limit, is one in preventing circumvention.

But, this interest is not sufficient in Alaska because groups themselves are limited in what they can give to candidates—$1,000 per year. AS 15.13.070(c). Thus, there is no way for an individual to funnel "massive amounts of money" around the base limit as *McCutcheon*, 134 U.S. at 1446, and *Buckley*, 424 U.S. at 38, indicate would be a legitimate concern. Moreover, the individual who gives to a group cannot earmark his funds for a particular candidate—the group controls what the group gives. And, even if an individual gave a group $1 million, that group could not give the individual's preferred candidate more than $1,000, and that individual would have to share attribution for the group's contribution with every other donor to the group. This chain of attribution is too long, and the individual's share too small, to support any form of indirect *quid pro quo*. *McCutcheon*, 134 S. Ct. at 1452. Although groups are defined in Alaska as being as little as two people [ER-15-16], there is no evidence that individuals are using group formation to circumvent base limits.

V. THE AGGREGATION OF INDEPENDENT POLITICAL PARTY UNITS IS UNCONSTITUTIONAL

The aggregation of financially independent political Party units—units that raise and control their own funds—for purposes of contributions to candidates [ER-41-50] is not closely drawn to prohibiting *quid pro quo* corruption or its appearance. As an initial matter, it is not corruption when a Party seeks to influence its candidates. *McCutcheon*, 134 S. Ct. at 1461. Party units are similar to labor-union PACs. According to APOC, independent Party units can form groups like union PACs and make separate $1,000 annual contributions to candidates, in addition to Party contributions. [ER-346-350; TE-100-102] If the Party units can form independent groups and make independent $1,000 contributions, then there is no justification for aggregating them for Party contributions.

The aggregation of financially independent political Party units is discriminatory in comparison to how Alaska's multiple labor-union PACs are permitted to individually contribute to candidates without aggregation. The State's failure to aggregate contributions from any number of individual labor union PACs—PACs that often act in unison to provide substantial financial support to a Democratic candidate—sometimes equaling as much as 25% of the candidate's

total campaign budget [ER-346-350]—undermines the State's claimed justifications for aggregating Party units.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed.

DATED this 19th day of May, 2017.

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STATEMENT OF RELATED CASES

This case is related to another case that is pending in this Court. The related case is *Lair v. Motl*, Case No. 16-35424, which is on appeal to this Court from the United States District Court for the District of Montana. The two cases involve the constitutionality of state campaign contribution limitations, respectively Alaska and Montana, under the United States Constitution. The two cases raise the same or closely related constitutional issues.

CERTIFICATE OF COMPLIANCE
PURSUANT TO NINTH CIRCUIT RULES

This Brief complies with the length limits set forth in Ninth Circuit Rule 32-4. The brief is 13,000 words, excluding the portions exempted by Fed. R. App. P. 32(f), if applicable. The Brief's type size and typeface comply with Fed. R. App. P. 32(a)(5) and (6).

DATED this 19th day of May, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2017, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 19th day of May, 2017.

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