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THE CAMPAIGN LEGAL CENTER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CITIZENS TO SAVE CALIFORNIA, a Coalition of Business and Taxpayer Organizations, a California Public Benefit Corporation; Assembly Member KEITH RICHMAN, M.D.,

Plaintiffs,

vs.

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION; DOES I - X, inclusive,

Defendants.

ARNOLD SCHWARZENEGGER, Governor, in his individual capacity; GOVERNOR SCHWARZENEGGER'S CALIFORNIA RECOVERY TEAM, a candidate-controlled political committee,

Plaintiffs/Interveners,

vs.

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION; DOES I - X, inclusive,

Defendants.

Case No. 05AS00555

APPLICATION OF THE CAMPAIGN LEGAL CENTER TO FILE A BRIEF *AMICUS CURIAE* IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

SENATOR JOHN CAMPBELL, State Senator, in his individual capacity; RESCUE CALIFORNIA FROM BUDGET DEFICITS, a recipient campaign committee; TAXPAYERS FOR RESPONSIBLE PENSIONS, a recipient campaign committee,

Plaintiffs/Interveners,

vs.

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION; DOES I - X, inclusive,

Defendants.

The Campaign Legal Center, by and through their counsel, respectfully requests permission to file a brief *amicus curiae* in opposition to the motion of Citizens to Save California *et al*. for preliminary injunction. The Campaign Legal Center's brief is attached. In support of this motion, *amicus curiae* The Campaign Legal Center states as follows:

1. This case concerns the First Amendment of the United States Constitution and its application to the candidate contribution limits established by Cal. Gov't Code §§ 85301 and 85302, as interpreted by the California Fair Political Practices Commission (hereinafter "FPPC") through adoption of 2 Cal. Code Regs. § 18530.9 (hereinafter "Regulation 18530.9"). Specifically, this case concerns the constitutionality of limiting contributions to candidate controlled ballot measure committees. The U.S. Supreme Court's recent decision in *McConnell v. Federal Election Commission*, 124 S. Ct. 619 (2003) [hereinafter "*McConnell*"], significantly clarified this area of constitutional law.

2. The Campaign Legal Center, Inc. is a nonpartisan, nonprofit organization which works in the areas of campaign finance, communications, and governmental ethics. In the campaign finance area, The Campaign Legal Center generates legal and policy debates about disclosure, political advertising, contribution limits, enforcement issues, and many other matters.

This case directly implicates the campaign finance interests and activities of The Campaign Legal Center.

3. The Campaign Legal Center is thoroughly familiar with the issues involved in this case. In addition to its campaign finance public policy work throughout the nation, The Campaign Legal Center served as counsel to defendant intervenors Senator John McCain, Senator Russell Feingold, *et al.*, in *McConnell*, the Supreme Court decision central to clarifying and resolving the constitutional issues arising in this case. Furthermore, undersigned counsel to The Campaign Legal Center, Paul S. Ryan, participated extensively in the public comment processes leading to the FPPC's adoption of Regulation 18530.9.[1]

4. The Campaign Legal Center provides this *amicus curiae* brief to assist the Court in understanding the major issue in this case—the constitutionality of limiting contributions to committees controlled by candidates and the importance of the *McConnell* decision in clarifying the constitutionality of such limits. The Campaign Legal Center believes the attached *amicus curiae* brief offers legal arguments and historical perspective not necessarily presented by other Parties in this case.

5. Granting leave to file the proposed *amicus curiae* brief will not delay the instant case, as The Campaign Legal Center's brief is being submitted simultaneously with this application and served on plaintiffs in the instant case within the time permitted for a party to serve an opposition to the pending motion. The Campaign Legal Center submits that the acceptance of and consideration of this brief by the Superior Court is discretionary, but for the above stated reasons (and as further explained in the attached brief), an *amicus curiae* brief is warranted and may be particularly helpful in this case.

[1] Paul S. Ryan, in his previous employment capacity as Political Reform Project Director of the Center for Governmental Studies, submitted written comments to the FPPC, regarding then-proposed Regulation 18530.9, on April 7, 2004 and again on June 21, 2004. Mr. Ryan also testified in person on this matter at the FPPC's June 25, 2004 public meeting.

WHEREFORE, The Campaign Legal Center respectfully prays that this Court grant its motion to file the attached amicus curiae brief.

Dated: February 18, 2005

Respectfully Submitted,

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Case No. 05AS00555

BRIEF *AMICUS CURIAE* ON BEHALF OF THE CAMPAIGN LEGAL CENTER IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

SENATOR JOHN CAMPBELL, State Senator, in his individual capacity; RESCUE CALIFORNIA FROM BUDGET DEFICITS, a recipient campaign committee; TAXPAYERS FOR RESPONSIBLE PENSIONS, a recipient campaign committee,

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

The Campaign Legal Center, *amicus curiae* herein, respectfully submits this brief to provide the Court with an understanding of the constitutionality of limiting contributions to candidate controlled committees—regardless of the ends to which the contributions are ultimately put. The U.S. Supreme Court has long recognized that reasonable limits on contributions to candidates are a constitutionally permissible means of advancing a government's important interest in avoiding the threat of real and apparent political corruption posed by large contributions. This threat of corruption depends on a candidate's receipt of contributions, not on how a candidate chooses to spend contributions.[1]

Plaintiffs have brought suit against the California Fair Political Practices Commission (hereinafter "FPPC" or "Commission") alleging, among other things, that the Commission's adoption and pending enforcement of 2 Cal. Code Regs. § 18530.9 (hereinafter "Regulation 18530.9") violates plaintiffs' rights under the First Amendment of the U.S. Constitution. Regulation 18530.9, adopted by the FPPC in June 2004, makes clear that candidate contribution limits established by Cal. Gov't Code §§ 85301 and 85302 limit all political contributions to candidates, including those made to a candidate controlled ballot measure committee.

Applying the U.S. Supreme Court holdings detailed in this brief to the facts of this case leads to one inescapable conclusion: if the candidate contribution limits of Cal. Gov't Code §§ 85301 and 85302 are a reasonable and constitutional means of preventing real and apparent corruption of candidates, then the FPPC regulation applying these limits to candidate controlled ballot measure committees is likewise constitutional. The regulation is closely drawn to advance the same government interests and prevent circumvention of the 85301 and 85302 limits.

As explained more fully below, the U.S. Supreme Court first considered the constitutionality of limits on contributions from individuals to candidates in its seminal campaign finance decision *Buckley v. Valeo*, 424 U.S. 1 (1976). The Court determined in *Buckley* that contribution limits entail only a marginal restriction on First Amendment rights and, as such, are

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[1] This brief does not address the threat of real and apparent corruption related to *solicitation* or *direction* by candidates of large, unregulated contributions to political committees or other entities. Although such solicitation and direction arguably poses a serious threat of real and apparent corruption, the issue is not before this Court.

not subject to strict scrutiny. Instead, a limit on contributions to candidates is constitutionally permissible so long at is closely drawn to match a sufficiently important government interest. *Id.* at 25. The *Buckley* Court recognized the government's interest in preventing real and apparent corruption of candidates resulting from large contributions as sufficiently important to justify the federal $1,000 contribution limit. *Id*. at 29.

The Supreme Court has reiterated its reasoning and holding in *Buckley* over the past three decades, finding contribution limits constitutional whenever the potential for candidate corruption is present. In the Supreme Court's recent landmark ruling in *McConnell v. FEC*, 124 S. Ct. 619 (2003), detailed below, the Court upheld against First Amendment challenge a new federal law prohibiting candidates from raising any funds in excess of federal contribution limits (*i.e.*, "soft money") in connection with any election—even state elections.[2] *McConnell*, 124 S. Ct. at 683 (emphasis added). The Court found the soft money ban to be a closely drawn, constitutionally permissible means of preventing corruption and circumvention of existing contribution limits. The *McConnell* Court made clear that contributions to candidates may be limited, regardless of the ends to which those funds are ultimately put.

Under California law, funds formerly raised by candidates in excess of state contribution limits for deposit into candidate controlled ballot measure committees are analogous to the soft money now prohibited in the federal elections. Just as the federal law prohibition of candidate acceptance of unlimited soft money contributions for any committee is constitutional, *see McConnell*, 124 S. Ct. at 683, so too is the FPPC Regulation prohibiting California candidates from accepting unlimited soft money contributions for ballot measure committees they control.

Plaintiffs in this lawsuit base their constitutional claim on the U.S. Supreme Court decision in *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981). Plaintiffs ignore, however, the key fact underpinning that Supreme Court decision. *Citizens Against Rent*

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[2] On July 29, 2003, more than four months before the Supreme Court decision in *McConnell*, the Federal Election Commission formally advised U.S. Rep. Jeff Flake, through a published Advisory Opinion, that while he is permitted by federal law to raise funds for an Arizona state ballot measure committee he "established, financed, maintained or controlled," both he and the committee must comply with federal candidate contribution limits and source prohibitions pursuant to the "soft money" fundraising prohibition of 2 U.S.C. § 441i(e)(1)(B), later upheld in *McConnell*. *See* Federal Election Commission Advisory Opinion Number 2003-12, p. 11.

Control involved no candidate controlled committee and, hence, no threat of candidate corruption. *Citizens Against Rent Control* is not controlling authority in the examination of the constitutionality of limits on contributions to candidate controlled committees.

Plaintiffs also claim that Regulation 18530.9 conflicts with California's Political Reform Act and is inconsistent with the purposes and intent of voter-approved Proposition 34, which established the state candidate contribution limits. However, plaintiffs point to no language in state law evidencing voter intent to carve out an exception to the candidate contribution limits for contributions a candidate chooses to spend in support of or in opposition to ballot measures. Instead, plaintiffs point to an alleged lack of statutory language stating redundantly that the limits on contributions to candidates do indeed limit all political contributions to candidates. Proposition 34 is clear and unambiguous. Voters intended to limit all political contributions to candidates.

Regulation 18530.9 carries out the purposes and intent of Proposition 34, is consistent with the Political Reform Act, and is constitutional. For these reasons, *amicus curiae* respectfully submits that this Court should deny all requested relief.

II. BACKGROUND AND FACTS

In November 2000, California voters passed Proposition 34, which, among other things, established limits on contributions to candidates for state office. These limits prohibit candidates from accepting contributions exceeding amounts ranging from $3,000 to $20,000, based on the office sought and the identity of the contributor. *See* Cal. Gov't Code §§ 85301 and 85302.

In June 2004, after seeking and receiving public comment in written form and at a public meeting, the FPPC adopted Regulation 18530.9 to make clear that Proposition 34 limits all political contributions to candidates—even contributions the candidate chooses to deposit into a ballot measure committee he or she controls.

In this lawsuit, plaintiffs have brought suit alleging that Regulation 18530.9 violates the First Amendment of the U.S. Constitution. Plaintiffs claim that the U.S. Supreme Court decision in *Citizens Against Rent Control*, 454 U.S. 290 (1981), bars the State on First Amendment grounds, from limiting contributions to candidate controlled ballot measure committees.

CITIZENS TO SAVE CALIFORNIA (hereinafter "CITIZENS") Complaint at ¶ 9. Plaintiffs also claim that Regulation 18530.9 was "beyond the power of the FPPC to adopt" and that the regulation conflicts with and is contrary to the terms of the California Political Reform Act. CITIZENS Complaint at ¶ 1. Plaintiffs seek preliminary and permanent injunctions of the enforcement of Regulation 18530.9 and a judicial declaration that the regulation is illegal and unenforceable. CITIZENS Complaint at 8 ¶¶ 1 and 2. As we show below, these contentions lack merit and the requested relief should be denied.

III. ARGUMENT

A. *Buckley* And Its Progeny Make Clear That Limits On Contributions To Candidates Do Not Violate The First Amendment.

The U.S. Supreme Court first considered the constitutionality of limits on contributions to candidates in *Buckley v. Valeo*, 424 U.S. 1, 23-38 (1976). In *Buckley*, plaintiffs challenged on First Amendment grounds a federal law $1,000 limit on contributions to candidates from individuals.

The Court began its analysis by explaining the difference, with respect to constitutional analysis, between limits on contributions and limits on expenditures. Whereas a limitation on political expenditures represents substantial restraint on the quantity and diversity of political speech:

> a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication. A contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the undifferentiated, symbolic act of contributing. . . . A limitation on the amount of money a person may give to a candidate . . . thus involves little direct restraint on his political communication . . . . While contributions may result in political expression if spent by a candidate . . . to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor.

Buckley, 424 U.S. at 20-21 (footnote omitted). According to the Court, "the primary First Amendment problem raised by the Act's contribution limitations is their restriction of one aspect of the contributor's freedom of political association." *Id.* at 24. However, the Court continued, it is clear that "neither the right to associate nor the right to participate in political activities is absolute." *Id.* at 25 (quoting *CSC v. Letter Carriers*, 413 U.S. 548, 567 (1973)).

Having characterized the restriction on a contributor's First Amendment rights resulting from a contribution limit as "marginal," the *Buckley* Court then announced a less-than-strict standard of judicial review to be employed when analyzing the constitutionality of contribution limits. The Court reasoned, "Even a significant interference with protected rights of political association may be sustained if the State demonstrates a sufficiently important interest and employs a means closely drawn to avoid unnecessary abridgment of associational freedoms." *Buckley*, 424 U.S. at 25 (quoting *Cousins v. Wigoda*, 419 U.S. 477, 488 (1975)) (quotation marks omitted) (emphasis added).

Considering the government's proffered interests justifying the contribution limit, the Court determined it was "unnecessary to look beyond the Act's primary purpose to limit the actuality and appearance of corruption resulting from large individual financial contributions in order to find a constitutionally sufficient justification for the $1,000 contribution limitation." *Buckley*, 424 U.S. at 26. The Court upheld against constitutional challenge the federal contribution limit, concluding that "the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect upon First Amendment freedoms caused by the $1,000 contribution ceiling." *Buckley*, 424 U.S. at 29.

The Supreme Court's *Buckley* decision makes clear that reasonable limits on contributions to candidates are a constitutional, closely drawn means of serving the State's important interest in limiting the actuality and appearance of corruption. Nowhere in *Buckley* does the threat of actual or perceived corruption hinge on the purposes for which a candidate uses contributions. Rather, the touchstone in *Buckley* was a candidate's receipt of large contributions.

Like the federal law limit on contributions to candidates upheld in *Buckley*, the FPPC regulation limiting contributions to candidate controlled ballot measure committees is a

constitutional means of reducing the threat of real and apparent corruption resulting from large contributions to candidates for California state office. The fact that a candidate uses contributions to support ballot measures in no way reduces the threat of corruption. The purposes for which a candidate uses contributions—whether it be to support ballot measures or the candidate's own election—is irrelevant to the constitutional analysis.

The Supreme Court's 1976 *Buckley* decision remains the cornerstone of constitutional analysis regarding limits on political contributions. More recent Supreme Court decisions in *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000), and *FEC v. Beaumont*, 539 U.S. 146 (2003) have reaffirmed and clarified *Buckley*'s analysis.

1. The Supreme Court's Decision In *Nixon* Makes Clear That *Buckley* Is Controlling Authority For State Limits On Candidate Contributions.

In *Nixon v. Shrink Missouri Government PAC*, a political committee challenged on First and Fourteenth Amendment grounds Missouri state law limits on contributions to candidates, which ranged from $275 to $1,075 depending on the office sought. *Nixon*, 528 U.S. at 383. The Court identified the principal issues in the case as whether *Buckley* "is authority for state limits on contributions to state political candidates and whether the federal limits approved in *Buckley*, with or without adjustment for inflation, define the scope of permissible state limitations today." *Nixon*, 528 U.S. at 381-82. In *Nixon*, the Court held *Buckley* to be authority for state contribution limits and explicitly noted that state limits need not be pegged to *Buckley*'s dollar amounts. *Nixon*, 528 U.S. at 382.

The Supreme Court's opinion in *Nixon* is relevant to the present case in at least three respects. First, the Court in *Nixon* reiterated and clarified the appropriate level of judicial scrutiny for contribution limits, explaining:

> under *Buckley's* standard of scrutiny, a contribution limit involving significant interference with associational rights could survive if the Government demonstrated that contribution regulation was <u>closely drawn</u> to match a <u>sufficiently important interest</u>, though the dollar amount of the limit need not be fine tuned.

Nixon, 528 U.S. at 387-88 (emphasis added) (internal quotation marks and citations omitted) (quoting *Buckley*, 424 U.S. at 25, 30.).

Second, by upholding Missouri's contribution limits, the Court in *Nixon* made clear that a state may constitutionally enact contribution limits which vary in amount based on the office sought by the candidate. The Court's statement that the dollar amount of a contribution limit need not be fine tuned, quoted above, was a reference to the Court's earlier pronouncement in *Buckley* that Congress' failure to fine tune the federal contribution limits on the basis of the office sought by the candidate did not invalidate the legislation. *See Buckley*, 424 U.S. at 30. "[I]f it is satisfied that some limit on contributions is necessary, a court has no scalpel to probe, whether, say, a $2,000 ceiling might not serve as well as $1,000." *Buckley*, 424 U.S. at 30. In short, it is permissible, though not constitutionally required, for contribution limits to vary on the basis of the office sought by a candidate. The fact that Regulation 18530.9 applies varying contribution limits of Cal. Gov't Code §§ 85301 and 85302 to ballot measure committees controlled by candidates seeking or holding different offices does not invalidate the regulation. Further, California's candidate contribution limit amounts, which are much higher than those upheld by the Supreme Court in *Nixon*, are clearly reasonable.

Third, the Supreme Court made clear in its *Nixon* opinion that a state may rely on a broad range of evidence to support its conclusion that unlimited contributions to state candidates pose a serious threat of real and apparent corruption. The Court accepted as sufficient evidence an affidavit from a state senator simply stating that large contributions have "the real potential to buy votes," along with several "newspaper accounts of large contributions supporting inferences of impropriety." *Nixon*, 528 U.S. at 393-94. Finally, the fact that Missouri voters had approved the state contribution limits as a ballot proposition, observed the Court, "certainly attested to the perception . . . that contribution limits are necessary to combat corruption and the appearance thereof." *Nixon*, 528 U.S. at 394 (internal quotation marks omitted) (quoting *Carver v. Nixon*, 882 F. Supp. 901, 905 (W.D. Mo. 1995)). Given the high degree of deference to policymakers shown by the Court with regard to evidentiary requirements, the FPPC will meet its burden of demonstrating an appearance of corruption that would surely ensue unless contributions to candidate controlled ballot measure committees are limited.

2. The Supreme Court's *Beaumont* Decision Reiterates The *Buckley* Holding That Strict Scrutiny Does Not Apply To Contribution Limits.

In *FEC v. Beaumont*, 539 U.S. 146 (2003), the Court considered an "as-applied" First Amendment challenge to the federal law prohibiting corporations from using treasury funds to make political contributions. The challenge was brought by the nonprofit advocacy corporation North Carolina Right to Life, Inc. ("NCRL").

In *Beaumont*, the Supreme Court upheld the federal law ban on corporate contributions as applied to nonprofit advocacy organizations. In doing so, the Court rejected NCRL's argument that the law should be subject to strict scrutiny and, instead, applied the "relatively complaisant review" established by the Court in *Buckley*. The Court explained that:

> the level of scrutiny is based on the importance of the political activity at issue to effective speech or political association. Going back to *Buckley v. Valeo*, . . . restrictions on political contributions have been treated as merely "marginal" speech restrictions subject to relatively complaisant review under the First Amendment, because contributions lie closer to the edges than to the core of political expression. While contributions may result in political expression if spent by a candidate . . . , the transformation of contributions into political debate involves speech by someone other than the contributor. This is the reason that instead of requiring contribution regulations to be narrowly tailored to serve a compelling governmental interest, a contribution limit involving significant interference with associational rights passes muster if it satisfies the lesser demand of being closely drawn to match a sufficiently important interest.

Beaumont, 539 U.S. at 161-62 (emphasis added) (internal quotation marks and citations omitted) (footnote omitted) (quoting *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 259 (1986), *FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 440-42 (2001), *Nixon*, 528 U.S. at 386-88, *Buckley*, 424 U.S. at 20-21, 25, 44-45).

B. The Supreme Court's Decision In *McConnell*, Upholding A Ban On Candidate Acceptance Of Unlimited Contributions Regardless Of The Ends To Which The Contributions Are Ultimately Put, Makes Clear That Regulation 18530.9 Is Constitutional.

Most recently, in *McConnell v. FEC*, 124 S. Ct. 619 (2003), the Supreme Court upheld against constitutional challenge a federal law prohibiting federal candidates from soliciting, receiving, directing, transferring or spending funds in connection with any election unless such

funds are raised in compliance with the federal law contribution amount limits and source prohibitions (*i.e.*, so-called "hard money"). *McConnell*, 124 S. Ct. at 682-83. *See also* 2 U.S.C. § 441i(e)(1).

In the federal campaign finance law context, money not raised in compliance with contribution limits and source prohibitions is generally referred to as "soft money"—a term equally applicable to unregulated contributions accepted by California candidates and deposited into candidate controlled ballot measure committees prior to the FPPC's adoption of Regulation 18530.9. The baseless nature of the plaintiffs' claim in this lawsuit that the First Amendment prohibits limits on contributions to candidate controlled ballot measure committees is made evident by the Supreme Court's comments in *McConnell*:

> No party seriously questions the constitutionality of [the federal law] general ban on donations of soft money made directly to federal candidates and officeholders, their agents, or entities established or controlled by them. Even on the narrowest reading of *Buckley,* a regulation restricting donations to a federal candidate, regardless of the ends to which those funds are ultimately put, qualifies as a contribution limit subject to less rigorous scrutiny. Such donations have only marginal speech and associational value, but at the same time pose a substantial threat of corruption. By severing the most direct link between the soft-money donor and the federal candidate, [the federal law] ban on donations of soft money is closely drawn to prevent the corruption or the appearance of corruption of federal candidates and officeholders.

McConnell, 124 S. Ct. at 682 (emphasis added).

Unlike the FPPC regulation challenged in this lawsuit, which merely limits contributions to committees controlled by a candidate, the federal law challenged and upheld in *McConnell* goes further to prohibit a candidate from soliciting unregulated contributions for committees the candidate has no control over (*e.g.*, PACs and national party committees). Nevertheless, the Court upheld the solicitation ban, reasoning:

> [the] restrictions on solicitations are justified as valid anticircumvention measures. Large soft-money donations at a candidate's or officeholder's behest give rise to all of the same corruption concerns posed by contributions made directly to the candidate or officeholder. Though the candidate may not ultimately control how the funds are spent, the value of the donation to the candidate or officeholder is evident from the fact of the solicitation itself. Without some restriction on solicitations, federal candidates and officeholders could easily avoid [federal law]

> contribution limits by soliciting funds from large donors and restricted sources to like-minded organizations engaging in federal election activities.

McConnell, 124 S. Ct. at 683 (emphasis added). *See also FEC v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 465 (2001) (party expenditures coordinated with a candidate may be limited to minimize circumvention of candidate contribution limits).

The *McConnell* Court upheld a ban on candidate solicitation of unrestricted contributions for committees over which the candidate has no control and regardless of the ends to which those funds are ultimately put—as a closely drawn, constitutionally permissible means of preventing corruption and circumvention of existing contribution limits. The FPPC regulation limiting contributions to candidate controlled ballot measure committees is likewise a closely drawn, constitutionally permissible means of preventing corruption and circumvention of existing contribution limits.

C. The Decision In *Citizens Against Rent Control* Does Not Bar Contribution Limits To Candidate Controlled Ballot Measure Committees.

Plaintiffs rely on the U.S. Supreme Court decision in *Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290 (1981), as the legal authority for their claim that Regulation 18530.9 violates their First Amendment constitutional rights. *See* CITIZENS Memorandum of Points And Authorities In Support Of Motion For Preliminary Injunction, 11. That case is easily distinguishable, however. In *Citizens Against Rent Control*, a non-candidate-controlled political committee challenged on First Amendment grounds a generally applicable $250 limit on contributions made in support of or in opposition to a ballot measure. *Citizens Against Rent Control*, 454 U.S. at 292. The Court explicitly noted that, in its *Buckley* decision, the Court had "identified a single narrow exception to the rule that limits on political activity were contrary to the First Amendment. The exception relates to the perception of undue influence of large contributors to a candidate[.] . . . *Buckley* thus sustained limits on contributions to candidates and their committees." *Citizens Against Rent Control*, 454 U.S. at 296-97 (emphasis added).

Unlike the limit on contributions to candidates and their committees challenged and upheld in *Buckley*—and recognized as constitutional in the *Citizens Against Rent Control*

opinion—the Berkeley ordinance challenged in *Citizens Against Rent Control* limited contributions to a plaintiff committee not controlled by or associated with any candidate.

The Court in *Citizens Against Rent Control* reasoned, "Referenda are held on issues, not candidates for public office. The risk of corruption perceived in cases involving candidate elections simply is not present in a popular vote on a public issue." *Citizens Against Rent Control*, 454 U.S. at 298 (quoting *First National Bank of Boston v. Bellotti*, 435 U.S. 765, 790 (1978)). Based on this reasoning, the Court determined that the Berkeley ordinance did not advance the same government interest recognized in *Buckley*—avoiding real and apparent corruption of candidates. The Court concluded that the Berkeley ordinance did not "advance a legitimate governmental interest significant enough to justify its infringement of First Amendment rights" and declared the ordinance unconstitutional. *Citizens Against Rent Control*, 454 U.S. at 299.

In short, the ordinance at issue in *Citizens Against Rent Control* was not closely drawn to match the government's important interest in limiting the real and apparent corruption of candidates because the Berkeley limit was unrelated to candidates or committees that operated under candidate control. FPPC Regulation 18530.9, by contrast, imposes contribution limits on committees controlled by candidates, which triggers the State's important interest in limiting real and apparent corruption of candidates. The Supreme Court has recognized—in *Citizens Against Rent Control*, *Buckley*, *Nixon*, *Beaumont* and *McConnell*—that the prevention of candidate corruption is a government interest sufficiently important to justify the marginal First Amendment restriction resulting from the imposition of reasonable limits on contributions to candidates and committees they control. Because Regulation 18530.9 is "closely drawn to match" California's important interest of preventing real and apparent corruption, it is clearly constitutional.

D. Regulation 18530.9 Is Consistent With The Intent, Purposes And Text Of Proposition 34 And The Political Reform Act, And Does Not Exceed The FPPC's Regulatory Authority.

The FPPC is empowered by Cal. Gov't Code § 83112 to adopt rules and regulations "to carry out the purposes" of the Political Reform Act, so long as the regulations are consistent with the Act and other applicable law. The Commission's adoption of Regulation 18530.9, applying the contribution limits enacted by voter-approved Proposition 34 to candidate controlled ballot measure committees, clearly carries out the purposes of Proposition 34's contribution limits and is consistent with the Political Reform Act.

1. California Voters Enacted Proposition 34 For The Purpose Of Limiting All Political Contributions To State Candidates.

California courts have consistently held that, "Absent ambiguity, [a court] presumes that the voters intend the meaning apparent on the face of an initiative measure . . . ." (*Lungren v. Superior Court of the City and County of San Francisco*, 14 Cal. 4th 294, 301 (1996). *See also Lesher Communications, Inc. v. City of Walnut Creek*, 52 Cal. 3d 531, 543 (1990).) Furthermore, "[w]here [a] statute is clear, courts will not 'interpret away clear language in favor of an ambiguity that does not exist.'" *People v. Frederick Henry Haykel*, 96 Cal. App. 4th 146, 150 (2002) (quoting *Lennane v. Franchise Tax Bd.*, 9 Cal. 4th 263, 268 (1994)).

The meaning apparent on the face of Proposition 34 is unambiguous—California voters intended to limit <u>all</u> political contributions to candidates, regardless of how a candidate might choose to spend funds he or she controls. This unambiguous voter intent is evident in Proposition 34's declarations, purposes and in the statutory language creating the limits on contributions to candidates.

Proposition 34 stated as its first declaration that "Monetary contributions to political campaigns are a legitimate form of participation in the American political process, <u>but large contributions may corrupt or appear to corrupt candidates for elective office</u>." Cal. Proposition 34 § 1(a)(1) (2000) (emphasis added). Proposition 34 went on to state, "The people enact the Campaign Contribution and Voluntary Expenditure Limits . . . to accomplish all of the following purposes: . . . To minimize the potentially corrupting influence and appearance of corruption caused by large contributions by providing reasonable contribution and voluntary expenditure

limits." Cal. Proposition 34 § 1(b)(2) (2000). The operative language of Proposition 34's contribution limits is likewise unambiguous. Proposition 34 rewrote two sections of California's Political Reform Act to provide that a candidate "may not accept" from any person a contribution exceeding specified dollar amounts ranging from $3,000 to $20,000, depending on the office sought by the candidate and whether the contributor qualifies as a small contributor committee. Cal. Gov. Code §§ 85301 and 85302. The clear and unambiguous language of Proposition 34 limits the receipt by candidates of contributions exceeding certain dollar amounts, and makes no exception based upon a candidate's intended or eventual use of contributions.

Neither the text of Proposition 34, nor any of its accompanying official ballot pamphlet materials distributed by the Secretary of State to voters as part of the November 2000 Voter Information Guide (*e.g.*, the ballot measure summary, the official Title & Summary prepared by the Attorney General, the Analysis of the Legislative Analyst, the arguments for and against Proposition 34 along with respective rebuttals), gave California voters any indication that contributions to candidates would be exempt from Proposition 34's contribution limits if the candidate chose to spend the contributions to support or oppose ballot measures.[3]

In sum, California voters enacted Proposition 34 with the intent of limiting all political contributions to state candidates. The FPPC regulation limiting contributions to candidate controlled ballot measure committees was adopted to carry out this purpose and therefore constitutes a permissible exercise of the Commission's regulatory authority under Cal. Gov't Code § 83112.

2. Regulation 18530.9 Is Consistent With The Political Reform Act And Other Applicable Law.

As explained in the preceding section, the FPPC regulation limiting contributions to candidate controlled ballot measure committees is entirely consistent with the Political Reform Act's statutory text limiting the size of contributions candidates may accept. Sections 85301 and 85302 of the Political Reform Act include no exceptions for contributions a candidate accepts for eventual expenditures in support of or opposition to ballot measures.

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[3] The official, complete California Voter Information Guide for the November 7, 2000 general election is available on the Secretary of State's website at: http://vote2000.ss.ca.gov/VoterGuide/pdf/ballotpamphlet.pdf.

Plaintiffs wrongly argue that "Regulation 18530.9 is void because it is directly contrary to PRA § 85303(c) . . . ." CITIZENS Memorandum of Points and Authorities In Support Of Motion For Preliminary Injunction, 5. Cal. Gov't Code § 85303(c) states: "Except as provided in Section 85310, nothing in this chapter shall limit a person's contributions to a committee or political party committee provided the contributions are used for purposes other than making contributions to candidates for elective state office." (Emphasis added.) Notwithstanding plaintiffs claims to the contrary, contributions to candidate controlled ballot measure committees are not "for purposes other than making contributions to candidates" but, rather, are contributions directly to candidates. Consequently, contributions to candidate controlled ballot measure committees are not subject to the "nothing in this chapter shall limit" language of § 85303(c).

If this Court were to interpret § 85303(c) consistently with plaintiffs' approach—to find that direct contributions to a candidate controlled ballot measure committee are not within the scope of § 85303(c)'s "making contributions to candidates" exception—then the logical extension of that argument is that § 85303(c) would prohibit the application of §§ 85301 and 85302 contribution limits to any candidate controlled committee, unless the receiving candidate committee makes contributions to other candidates. That's an absurd result and was clearly not intended by the voters who enacted Cal. Gov't Code §§ 85301, 85302 and 85303 to address the widely recognized problem that "large contributions may corrupt or appear to corrupt candidates for elective office." Cal. Proposition 34 § 1(a)(1) (2000) (emphasis added).

The FPPC regulation clarifying that candidate contribution limits apply to candidate controlled ballot measure committees is entirely consistent with ordinary meaning of Proposition 34's language. The FPPC regulation constitutes a reasonable and accurate interpretation of Cal. Gov't Code §§ 85301, 85302 and 85303 and effectively advances the stated purposes of Proposition 34 relied upon by California voters who enacted these contribution limits in 2000. As such, the FPPC's adoption of the regulation is fully within the authority granted to the Commission by Cal. Gov't Code § 83112.

IV. CONCLUSION

For the above reasons, *amicus curiae* respectfully submits that Regulation 18530.9, which limits contributions to candidate controlled ballot measure committees, is constitutional and enforceable. We urge this Court to deny all requested relief.

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Respectfully Submitted,

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