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*\*Application for Admission  
Pro Hac Vice to be filed*

**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW JERSEY**

NEW JERSEY BANKERS  
ASSOCIATION,

Plaintiff,

v.

GUBIR GREWAL, in his official  
capacity as Attorney General of the  
State of New Jersey,

Defendant.

Civil Action No. 3:18-cv-15725  
(BRM-DEA)

**[PROPOSED] BRIEF OF  
CAMPAIGN LEGAL CENTER AS  
AMICUS CURIAE IN SUPPORT  
OF DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT AS  
TO COUNT II**

**(Electronically Filed)**

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## INTRODUCTION

Plaintiff claims that New Jersey’s century-old law prohibiting banks and certain other corporations from contributing to candidates and political parties violates the First Amendment. But the Supreme Court has already upheld the broader federal ban on corporate contributions. *FEC v. Beaumont*, 539 U.S. 146 (2003). And N.J.S.A. § 19:34-45 is justified by the State’s important interests in preventing actual and apparent corruption in certain closely regulated industries, where the incentive to “pay to play” is high, and the threat to the public’s faith in democracy is serious.

This *amicus* brief explains how New Jersey’s contribution restrictions for certain corporations fit within the larger landscape of state and federal anticorruption laws, which courts have overwhelmingly upheld. *Amicus* also discusses specific concerns about actual and apparent corruption in the banking and financial services industries. Finally, *amicus* explains how laws like N.J.S.A. § 19:34-45 advance First Amendment interests by preserving public confidence in democratic self-governance. As detailed below, *amicus* respectfully submits that the Court should grant summary judgment to Defendant on Count II of Plaintiff’s complaint and uphold New Jersey’s restrictions on political contributions from banks.<sup>1</sup>

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<sup>1</sup> No party’s counsel authored the brief in whole or in part, and no person—other than *amicus*—contributed money to fund the brief. *Amicus* takes no position on Count I of Plaintiff’s complaint, which concerns a dispute over the proper interpretation of New Jersey state law.

## ARGUMENT

### **I. CORPORATE CONTRIBUTION RESTRICTIONS ARE A COMMON, CONSTITUTIONALLY PERMISSIBLE ANTI-CORRUPTION TOOL.**

#### **A. Restrictions on political contributions are well-established tools for reducing actual and apparent corruption.**

New Jersey's longstanding prohibition on political contributions by banks and other closely regulated corporations is not "uniquely restrictive," as Plaintiff suggests. Compl. ¶ 39. On the contrary, N.J.S.A. § 19:34-45 fits within the national landscape of campaign finance regulation. Federal law and numerous states and localities have long prohibited corporate contributions in recognition of the pervasive threat of actual and apparent corruption.

Federal law has prohibited campaign contributions from corporations and federally chartered banks for more than a century, since passage of the Tillman Act of 1907. *See* Ch. 420, Pub. L. No. 59-36, 34 Stat. 864; 52 U.S.C. § 30118(a). Congress's principal rationale in enacting the Tillman Act remains salient today: protecting against real and apparent corruption stemming from corporate spending in U.S. elections. *See* Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* 7 (1988). Many states, including New Jersey, enacted analogous laws in response to public concerns about widespread political corruption instigated by powerful business interests. Trevor Potter & Bryson B. Morgan, *The History of Undisclosed Spending in U.S. Elections & How*

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Along with the federal government, at least 23 states and many localities proscribe direct corporate contributions to candidates.<sup>2</sup> In addition to New Jersey, Iowa, Massachusetts, Pennsylvania, and the federal government specifically prohibit banks from contributing to candidates, while other states include banks and financial institutions within their broader corporate contribution bans.<sup>3</sup> Public utility companies and other industries subject to N.J.S.A. § 19:34-45 are also barred from making political contributions in Alabama, Georgia, New Mexico, and elsewhere.<sup>4</sup>

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<sup>2</sup> Alaska Stat. § 15.13.074(f); Ariz. Rev. Stat. § 16-916(A); Ark. Code Ann. § 7-6-203(a)(1)(B); Colo. Const. art. 28, § 3; Conn. Gen. Stat. § 9-613(a); Iowa Code Ann. § 68A.503(1); Ky. Rev. Stat. Ann. § 121.025; Mass. Gen. Laws ch. 55, § 8; Mich. Comp. Laws Ann. 169.254(1); Minn. Stat. Ann. § 211B.15 subd. 2; Mo. Const. art. 8, § 23(3); Mont. Code Ann. 13-35-227; N.C. Gen. Stat. Ann. § 163-278.15(a); N.D. Cent. Code § 16.1-08.1-03.5; Ohio Rev. Code § 3599.03(A); Okla. Stat. Ann. tit. 21, § 187.2(A); 25 Pa. Stat. § 3253(a); R.I. Gen. Laws § 17-25-10.1(h); Tex. Elec. Code Ann. § 253.094(a); Wash. Rev. Code § 42.17A.405(12); W. Va. Code Ann. § 3-8-8(a); Wis. Stat. Ann. 11.1112; Wyo. Stat. Ann. § 22-25-102; *see also* N.Y.C. Admin. Code § 3-703(1)(l); S.F., Cal., Campaign & Governmental Conduct Code § 1.114(b).

<sup>3</sup> 52 U.S.C. § 30118(a); Iowa Code Ann. § 68A.503(1); Mass. Gen. Laws ch. 55, § 8; 25 Pa. Stat. § 3253(a); *see also, e.g.*, Conn. Gen. Stat. §§ 9-613(a), 9-601(8); R.I. Gen. Laws §§ 17-25-10.1(h), 17-25-3(1). Like New Jersey, Iowa and Massachusetts also prohibit insurance companies and other financial institutions from contributing to state candidates. Iowa Code Ann. § 68A.503(1); Mass. Gen. Laws ch. 55, § 8.

<sup>4</sup> Ala. Code § 17-5-14(c); Ga. Code Ann. § 21-5-30.1(b); N.M. Stat. Ann. § 8-8-19(C); *see also, e.g.*, Miss. Code Ann. § 77-1-11(2); Okla. Stat. Ann. tit. 17, § 48(A).

Many states and localities also restrict contributions from government contractors, lobbyists, and other industries subject to close government regulation and oversight. For example, New York City limits campaign contributions from persons who have “business dealings with the city,” an expansive classification that includes city government contracts, real estate transactions, land use and zoning approvals, grants, concessions, franchises, and economic development agreements. N.Y.C. Admin. Code §§ 3-702(18), 3-703(1-a).

Some pay-to-play rules extend contribution restrictions beyond candidates to include political parties, PACs, and other politically active organizations. Federal law broadly prohibits current and prospective government contractors from making *any* contributions to federal candidates, parties, or political committees, including independent expenditure-only committees (commonly known as “super PACs”). 52 U.S.C. § 30119; 11 C.F.R. § 115.2.<sup>5</sup> New Jersey’s own pay-to-play rules—including contribution bans and disclosure requirements—apply to current and prospective government contractors at the state, legislative, county, and municipal level.<sup>6</sup>

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<sup>5</sup> See also FEC MUR 7099 (Suffolk Constr.) (2017), <https://www.fec.gov/data/legal/matter-under-review/7099/> (finding reason to believe federal contractor violated 52 U.S.C. § 30119(a)(1) by contributing to a super PAC).

<sup>6</sup> See N.J. Stat. Ann. §§ 19:44A-20.3, 19:44A-20.4, 19:44A-20.5, 19:44A-20.13, 19:44A-20.14, 19:44A-20.15, 19:44A-20.18, 19:44A-20.19. In addition to the New Jersey Statutes’ pay-to-play requirements, a number of cities and counties in New Jersey have adopted their own pay-to-play ordinances for local government

Although states' pay-to-play laws vary in scope, they share a goal of reducing actual and apparent corruption by restricting contributions where there is "a very specific quo for which the contribution may serve as the quid." *Wagner v. FEC*, 793 F.3d 1, 22 (D.C. Cir. 2015) (en banc).<sup>7</sup> The breadth of these federal, state, and local laws, which often ban contributions by banks and other specific industries, makes clear that N.J.S.A. § 19:34-45 is neither "unique" nor an "outlier," as Plaintiff suggests.

**B. Courts have repeatedly upheld broad corporate contribution bans as "closely drawn" to reduce corruption and its appearance.**

Courts have repeatedly affirmed the constitutionality of corporate contribution bans, holding that these laws are "closely drawn" to advance the government's critical interests in preventing real and perceived corruption in the political process.<sup>8</sup> Courts routinely decline to "second guess a legislative determination as to the need for prophylactic measures where corruption is the evil

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contractors. *See, e.g.*, Camden, N.J., Code § 33-19; Essex Cty., N.J., Code § 2-54; Trenton, N.J., Code § 57-4.

<sup>7</sup> New Jersey's contribution ban is also akin to the Hatch Act's restrictions on federal employees' political activities, *see U.S. Civil Serv. Comm'n v. Nat'l Ass'n of Letter Carriers*, 413 U.S. 548, 555-56 (1973), and ethics rules restricting free speech rights of lawyers, *see Gentile v. State Bar of Nev.*, 501 U.S. 1030 (1991). In these examples and those above, persons or entities who occupy a special status (e.g., federal employees, lawyers, contractors, lobbyists, and banks) are subject to restrictions not applicable to other citizens.

<sup>8</sup> It is undisputed that New Jersey's contribution ban is subject to intermediate scrutiny and must be "closely drawn" to advance a "sufficiently important interest." *McCutcheon v. FEC*, 572 U.S. 185, 197 (2014). This *amicus* brief therefore does not address the applicable standard of review, which is well settled.

feared,” regardless of differing corporate structures, purposes, or financial resources. *FEC v. Nat’l Right to Work Comm.*, 459 U.S. 197, 210 (1982); *see also FEC v. Nat’l Conservative PAC*, 470 U.S. 480, 500 (1985) (same); *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 402 (2000) (“Where a legislature has significantly greater institutional expertise . . . the Court in practice defers to empirical legislative judgments.”).

Nearly two decades ago, the Supreme Court upheld the federal corporate contribution ban, which sweeps much more broadly than N.J.S.A. § 19:34-45. In *Beaumont*, the Court held that FECA’s ban on all corporate contributions could be constitutionally applied to a nonprofit advocacy corporation. 539 U.S. at 152-63. Both the historical pedigree of the federal law, which dates to 1907, and the Court’s jurisprudence underscored the need for “deference to legislative choice” in the context of campaign contributions, which pose “a plain threat to political integrity and a plain warrant to counter the appearance and reality of corruption.” *Id.* at 155. Judicial deference to legislative judgments about “proper limits on corporate contributions” is warranted, the Court explained, regardless of the form or affluence of particular corporations. *Id.* at 157; *see id.* at 160 (recognizing that advocacy-oriented nonprofits can be used to circumvent individual contribution limits).

The Supreme Court’s subsequent holding in *Citizens United v. FEC*, 558 U.S. 310 (2010), which addressed only the constitutionality of corporate expenditure

restrictions, did not disturb *Beaumont*'s holding. *Beaumont* thus continues to control judicial review of laws prohibiting corporate contributions, and it forecloses Plaintiff's challenge here to New Jersey's similar but narrower statute. Indeed, over the past decade, federal circuit courts have recognized *Beaumont*'s continuing authority in repeatedly rejecting challenges to federal and state laws prohibiting corporate contributions, including restrictions substantially broader than N.J.S.A. § 19:34-45. See *Iowa Right to Life Comm., Inc. v. Tooker*, 717 F.3d 576, 601 (8th Cir. 2013) (rejecting constitutional challenge to Iowa law prohibiting contributions by corporations, banks, insurance companies, savings associations, and credit unions), *cert. denied*, 572 U.S. 1046 (2014); *United States v. Danielczyk*, 683 F.3d 611, 615-19 (4th Cir. 2012) (rejecting First Amendment defense by defendants prosecuted for illegally reimbursing individuals' contributions with corporate funds), *cert. denied*, 568 U.S. 1193 (2013); *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 877-80 (8th Cir. 2012) (finding First Amendment challenge to Minnesota's corporate contribution ban unlikely to succeed "[i]n light of *Beaumont*"); *Ognibene v. Parkes*, 671 F.3d 174, 194-97 (2d Cir. 2011) (upholding New York City's expansion of its corporate contribution ban to include LLCs, LLPs, and partnerships); *Thalheimer v. San Diego*, 645 F.3d 1109, 1124-26 (9th Cir. 2011) (holding First Amendment challenge to law banning campaign contributions from non-individual entities unlikely to succeed), *overruled on other grounds*, *Bd. of Trs.*

*of Glazing Health & Welfare Trust v. Chambers*, 941 F.3d 1195 (9th Cir. 2019); *see also IA Auto, Inc. v. Dir. of Office of Campaign & Political Fin.*, 105 N.E.3d 1175, 1181-90 (Mass. 2018) (joining “every Federal circuit court that has considered a constitutional challenge to laws banning corporate contributions since *Citizens United*” in applying “the controlling precedent in *Beaumont* and conclud[ing] that the laws were constitutional under the First Amendment”), *cert. denied*, 139 S. Ct. 2613 (2019); *King St. Patriots v. Tex. Democratic Party*, 521 S.W.3d 729, 742-43 (Tex. 2017) (relying on *Beaumont* to uphold Texas law banning corporate contributions).

**C. Courts have routinely upheld laws restricting contributions from certain industries, including financial institutions.**

Courts have also overwhelmingly upheld more targeted contribution restrictions as a constitutional means of reducing actual and apparent corruption by highly regulated entities. Such laws have included restrictions on contributions from contractors, lobbyists, licensees, and others doing business with the government, including the financial services industry. *See, e.g., N.Y. Republican State Comm. v. SEC*, 927 F.3d 499, 501 (D.C. Cir. 2019) (upholding SEC rule banning members of Financial Industry Regulatory Authority, based on past campaign contributions, from conducting business with public officials), *cert. denied*, 140 S. Ct. 908 (2020); *Schickel v. Dilger*, 925 F.3d 858, 871 (6th Cir. 2019) (upholding Kentucky ban on lobbyist contributions); *Wagner*, 793 F.3d at 3 (upholding federal ban on contractor

contributions); *Yamada v. Snipes*, 786 F.3d 1182, 1204-07 (9th Cir. 2015) (upholding Hawaii ban on contractor contributions); *Iowa Right to Life Comm., Inc.*, 717 F.3d at 601 (upholding Iowa ban on contributions from insurance companies, savings associations, credit unions, and banks); *Ognibene*, 671 F.3d at 190-91 (upholding contribution limits on those “doing business” with New York City); *Preston v. Leake*, 660 F.3d 726, 729-30, 736 (4th Cir. 2011) (upholding North Carolina ban on lobbyist contributions); *Green Party of Conn. v. Garfield*, 616 F.3d 189, 198-205 (2d Cir. 2010) (upholding Connecticut ban on contractor contributions); *Blount v. SEC*, 61 F.3d 938, 939-40 (D.C. Cir. 1995) (upholding SEC rule banning municipal securities professionals, based on past campaign contributions, from conducting business with public officials).

These decisions underscore the constitutionality of laws restricting contributions by closely regulated entities and clarify the weight of evidence required to justify such laws. In 1995, for example, the D.C. Circuit upheld a Securities and Exchange Commission (“SEC”) rule that banned municipal securities professionals from conducting business with public officials involved in municipal bond issuances, if the securities professionals had made contributions to those officials within the prior two years. *Blount*, 61 F.3d at 939-40. Despite the absence of specific quid pro quo exchanges in the municipal bond market, the court found that political contributions by municipal securities professionals “self-evidently

create a conflict of interest” and a risk that contracts will be awarded based on how they benefit “campaign chests” rather than the government. *Id.* at 944-45.

The D.C. Circuit reaffirmed *Blount* last year, upholding a similar SEC rule that applied to members of the Financial Industry Regulatory Authority acting as “placement agents,” i.e., individuals and firms that investment advisers hire to help them secure contracts with a government entity. *N.Y. Republican State Comm.*, 927 F.3d at 501. The court emphasized the potential corrupting effect of a contribution “even if it cannot be traced” to a specific quid pro quo “because in this market ‘a contribution brings the donor merely a chance to be seriously considered, not the assurance of a contract.’” *Id.* at 509 (quoting *Blount*, 61 F.3d at 945). Thus, “it would make no sense to require the SEC to show that quid pro quo arrangements are . . . ‘rampant.’” *Id.* Other courts have agreed. *See Ognibene*, 671 F.3d at 188 (declining to require evidence of actual scandals, which “would conflate the interest in preventing actual corruption with the separate interest in preventing apparent corruption”); *Schickel*, 925 F.3d at 870 (same).

Applying similar logic, the D.C. Circuit en banc unanimously upheld the federal prohibition on contractor contributions to federal candidates, political parties, and PACs. *Wagner*, 793 F.3d at 3. The court recognized that “[t]here is nothing novel or implausible about the notion that contractors may make contributions as a quid pro quo for government contracts, that officials may steer

government contracts in return for such contributions, and that the making of contributions and the awarding of contracts to contributors fosters the appearance of such quid pro quo corruption.” *Id.* at 21. Importantly, the court also found the contribution ban appropriate to address the heightened *appearance* of corruption in the contracting context, where “a contribution made while negotiating or performing a contract looks like a quid pro quo, whether or not it truly is.” *Id.* at 22; *see also Schickel*, 925 F.3d at 871 (“Stifling direct contributions from . . . powerful players in the political arena . . . undoubtedly furthers [state’s] interest in preventing the appearance of corruption.”); *Ognibene*, 671 F.3d at 187 (large campaign contributions “certainly feed the public perception of *quid pro quo* corruption, and this alone justifies limitations or perhaps an outright ban”); *Preston*, 660 F.3d at 736; *Green Party*, 616 F.3d at 205; *Yamada*, 786 F.3d at 1206.

Properly understood in this context, N.J.S.A. § 19:34-45 is not an outlier, and the same anticorruption rationale that led courts to uphold other corporate contribution bans applies with equal force here. *See infra* Part II; *see also* Def.’s Summ. J. Br. at 12-15. Plaintiff invokes *McCutcheon* and *Deon v. Barasch*, 960 F.3d 152 (3d Cir. 2020), Pl.’s Summ. J. Br. at 33, but as Defendant correctly explains, neither decision controls the outcome here. *See* Def.’s Reply Br. at 30, 33-35. *McCutcheon* involved an aggregate cap on total contributions to all federal candidates layered on top of existing *base* limits. 572 U.S. at 200. The Supreme

Court found the aggregate limit unnecessary to reduce circumvention of the valid base limits, *id.*, but it did not question the constitutionality of contribution restrictions generally or alter the framework for their review. *Deon* involved a recently enacted Pennsylvania law that prohibited gaming licensees—and *individuals with an interest in such businesses*—from making political contributions. 960 F.3d at 155. The Pennsylvania law was nearly identical to a contribution ban previously invalidated by the state supreme court, and the Third Circuit found the legislative record inadequate to justify the new restrictions. *Id.* at 162. Neither decision suggests that New Jersey’s century-old contribution ban on one of the most powerful political players, *see infra* Part II, is unconstitutional.

Plaintiff also suggests that a lack of “recent public scandals revealing that official acts were corruptly rewarded to banks in exchange for campaign contributions” undermines New Jersey’s anticorruption interest. Pl.’s Summ. J. Br. at 26. On the contrary, courts, including the Supreme Court, have recognized repeatedly that evidence of recent quid pro quo corruption is unlikely—and *unnecessary*—where, as here, contribution restrictions have been in place for a long time. *See, e.g., Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 457 (2001) (recognizing the “difficulty of mustering evidence to support long-enforced statutes” because “there is no recent experience” without them); *Wagner*, 793 F.3d at 14 (“Of course, we would not expect to find—and we cannot demand—continuing evidence

of large-scale quid pro quo corruption or coercion involving federal contractor contributions [where] such contributions have been banned since 1940.”); *Schickel*, 925 F.3d at 874 (rejecting “argument that only *recent* scandals justify a contribution ban” and clarifying that “the Supreme Court views contribution limits as *preventative* measures”); *IA Auto, Inc.*, 105 N.E.3d at 1186, 1187 (declining to require evidence “of what would happen in a ‘counterfactual world’ where [corporate contribution ban] does not exist”; invoking state’s distinctly “important interest in preventing the *appearance* of corruption”; and observing that without corporate contribution ban, political decisions helpful or hurtful to a corporation’s interests could create the appearance that “corporation’s political contributions – or lack thereof – played a role in the decision”).

Plaintiff is also incorrect in suggesting that N.J.S.A. § 19:34-45 is unconstitutionally underinclusive because it doesn’t ban *all* corporate contributions. Pl.’s Summ. J. Br. at 31-32; Compl. ¶ 39. “[T]he First Amendment imposes no freestanding ‘underinclusiveness limitation,’” and states are not required to “address all aspects of a problem in one fell swoop.” *Williams-Yulee v. Fla. Bar*, 575 U.S. 433, 449 (2015). Even if other industries may also pose corruption concerns, New Jersey “is surely not prohibited from fighting such problems in [some] sector[s] unless it fights them in all.” *Wagner*, 793 F.3d at 31. Where, as here, it can “fairly be said” that the challenged statute “advance[s] [a] genuinely substantial government

interest,” *Blount*, 61 F.3d at 946, courts do “not punish [a legislature] for leaving open more, rather than fewer, avenues of expression, especially when there is no indication that the [targeted contribution ban] reflects a pretextual motive.” *Williams-Yulee*, 575 U.S. at 452; *see also, e.g., IA Auto, Inc.*, 105 N.E.3d at 1189 (upholding law banning corporate but not labor union contributions in absence of evidence that state’s “true purpose” was to silence corporate political speech while favoring political viewpoints of unregulated entities).

## II. N.J.S.A. § 19:34-45 PROMOTES NEW JERSEY’S CRITICAL INTEREST IN PREVENTING ACTUAL AND APPARENT CORRUPTION.

New Jersey is home to some of the most notorious pay-to-play scandals in U.S. history, and the State’s interest in preventing actual and apparent quid pro quo corruption in its government is well established. *See* Def.’s Summ. J. Br. at 26-31.<sup>9</sup> While New Jersey recently adopted comprehensive pay-to-play restrictions for government contractors, illicit quid pro quos in that context have continued.<sup>10</sup>

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<sup>9</sup> *See also, e.g.,* Rachel Jackson, *Blowing the Whistle on the Pay-To-Play Game: Campaign Finance Reform in New Jersey, 1998-2012*, Innovations for Successful Societies (2012), <https://tinyurl.com/y2po8wuv>; Josh Getlin, *Locking up N.J.’s Bad Guys*, L.A. Times (Feb. 27, 2003), <https://tinyurl.com/y68djj2l>; *A History of Corruption in the Garden State*, Press of Atlantic City (May 20, 2010), <https://tinyurl.com/y6peutzu>.

<sup>10</sup> *See, e.g.,* Steve Janoski, *Five North Jersey residents charged in alleged scheme to hide \$239,000 in campaign cash*, NorthJersey.com (Aug. 14, 2020), <https://tinyurl.com/yy7cl9nf>.

N.J.S.A. § 19:34-45 protects against similar concerns in banking, insurance, public utilities, and other closely regulated industries. The statute survives constitutional scrutiny even in the absence of a “smoking gun,” where, as here, the opportunities for conflicts of interest are apparent, “the likelihood of stealth great, and the legislative purpose prophylactic.” *Blount*, 61 F.3d at 945.

The financial sector has experienced numerous pay-to-play scandals around the country. The SEC has repeatedly brought civil enforcement actions against financial services firms and professionals for providing illegal campaign contributions and kickbacks to public officials. *See, e.g., Ancora Advisors LLC*, Investment Advisers Act Release No. 5077 (Dec. 18, 2018). In 2017 alone, the SEC brought ten enforcement actions against registered investment advisors for pay-to-play violations. *See* Investment Advisers Act Release Nos. 4608–4617 (Jan. 17, 2017), <https://tinyurl.com/yyamb6w6>. The SEC has also brought numerous enforcement actions for pay-to-play violations by banks. *See SEC Charges State Street for Pay-to-Play Scheme*, SEC (Jan. 14, 2016), <https://tinyurl.com/znrtvgt> (describing State Street’s settlement for pay-to-play scheme to win contracts for Ohio pension funds); *SEC Charges Goldman Sachs and Former Vice President in Pay-to-Play Probe Involving Contributions to Former Massachusetts State Treasurer*, SEC (Sept. 27, 2012), <https://tinyurl.com/y2n4dwb3> (describing Goldman Sachs’s settlement for illegal campaign contributions to then-

Massachusetts state treasurer); *J.P. Morgan Settles SEC Charges in Jefferson County, Ala. Illegal Payments Scheme: SEC Separately Charges Two Former Managing Directors at Firm*, SEC (Nov. 4, 2009), <https://tinyurl.com/y3cd6yc9> (describing \$722 million settlement for scheme involving bond and swap deals that left county with more than \$800 million of debt).

State authorities have also charged banks and financial institutions for violating analogous anticorruption laws. In 2010, for example, Bank of America paid \$137 million to 20 state attorneys general, as well as to several federal agencies, for manipulating bidding processes to win investment business from municipalities. *See* Martin Z. Braun & Jeff Bliss, *Bank of America Deal in Muni Case May Be 'Tip of the Iceberg,'* Bloomberg (Dec. 7, 2010), <https://tinyurl.com/yxqdhsv5>. UBS paid more than \$150 million to settle similar municipal bid-rigging charges, and JPMorgan Chase paid \$211 million to settle allegations by 31 states and federal regulators over its role in nationwide bid-rigging. *See* Eric Dash, *JPMorgan Settles Bond Bid-Rigging Case for \$211 Million*, N.Y. Times (July 7, 2011), <https://tinyurl.com/69b2kqv>. These are far from the only examples of actual corruption involving banks and other financial actors.<sup>11</sup>

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<sup>11</sup> *See also, e.g.,* Mike Gallagher, *NM investment scandal winds down*, Albuquerque J. (Oct. 18, 2020), <https://tinyurl.com/y5fgrg72>; Gary Rivlin, *The Whistleblower: How a Gang of Hedge Funders Strip-Mined Kentucky's Public Pensions*, Intercept (Oct. 21, 2018), <https://tinyurl.com/y8ncjx7m>; Steve Terrell, *Richardson pay-to-play scandal haunts Dem seeking Arizona's top state job*, Santa

N.J.S.A. § 19:34-45 also helps limit the *appearance* of corruption, which is “[o]f almost equal concern as the danger of actual quid pro quo arrangements.” *Buckley v. Valeo*, 424 U.S. 1, 27 (1976) (per curiam). These appearance-of-corruptions concerns are clear from the public’s awareness of banks’ prodigious spending on federal campaigns. According to the Center for Responsive Politics, the financial sector is “far and away” the largest source of contributions to candidates, political parties, and “outside money” groups in federal elections today, giving nearly \$1.5 billion during the 2019-2020 election cycle alone.<sup>12</sup> Banking interests account for a significant share of the financial sector’s campaign contributions, and individuals and PACs affiliated with major banks have contributed millions to congressional Republicans and Democrats alike.<sup>13</sup> See *McConnell v. FEC*, 540 U.S.

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Fe New Mexican (Sept. 30, 2014), <https://tinyurl.com/y2y5nryt>; Bloomberg News, *Sacramento Utility Accuses Banks of Rigging Sales of Municipal Derivatives*, N.Y. Times (Nov. 17, 2009), <https://tinyurl.com/y4jxpu37>; Michael J. de la Merced, *4 Firms Agree to Settlement in New York Pension Fund Inquiry*, N.Y. Times (Sept. 17, 2009), <https://tinyurl.com/y5cugqal>.

<sup>12</sup> Ctr. for Responsive Politics, *Finance/ Insurance/ Real Estate: Long-Term Contribution Trends*, <https://tinyurl.com/yyjupkg9> (last visited Nov. 13, 2020).

<sup>13</sup> Ctr. for Responsive Politics, *Commercial Banks: Top Contributors to Federal Candidates, Parties, and Outside Groups*, <https://tinyurl.com/yyognt3o> (last visited Nov. 13, 2020); see also Tory Newmyer, *The Finance 202: The financial sector is showering Democrats with campaign cash*, Wash. Post (July 28, 2020), <https://tinyurl.com/y2oqpbjd>. Congressional lawmakers who have supported banking deregulation are among the biggest beneficiaries of campaign donations from the financial sector. See Erica Werner & Damian Paletta, *10 years after financial crisis, Senate prepares to roll back banking rules*, Wash. Post (Mar. 4, 2018), <https://tinyurl.com/y6zqhsfal>.

93, 148 (2003) (describing as “[p]articularly telling” large donors’ contributions to “both major national parties”), *abrogated in part on other grounds*, *Citizens United v. FEC*, 558 U.S. 310 (2010). In a 2009 interview, U.S. Senator Richard Durbin candidly remarked that banks are “the most powerful lobby on Capitol Hill. And they frankly own the place.” Ryan Grim, *Dick Durbin: Banks “Frankly Own the Place,”* Huffington Post (May 30, 2009), <https://tinyurl.com/y3wpuwff>.

Against this backdrop, there is a broad, bipartisan perception across the United States that large donors receive preferential treatment from elected officials at the expense of other constituencies.<sup>14</sup> The experiences described above illuminate the real dangers of quid pro quo corruption—and its appearance<sup>15</sup>—that arise from the intermingling of politics and banking. New Jersey’s interest in preventing actual and apparent corruption is well-founded.

### **III. CORPORATE CONTRIBUTION RESTRICTIONS HELP PRESERVE PUBLIC CONFIDENCE IN DEMOCRATIC SELF-GOVERNMENT.**

N.J.S.A. § 19:34-45 also promotes the closely related interest in preserving public confidence in democratic self-governance. As the Supreme Court has

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<sup>14</sup> See, e.g., Pew Research Ctr., *In Views of U.S. Democracy, Widening Partisan Divides Over Freedom to Peacefully Protest* 9 (Sept. 2020), <https://tinyurl.com/yxseczks>; *Americans Evaluate Campaign Finance Reform* at 4, Program for Public Consultation, Univ. of Md. (May 2018).

<sup>15</sup> See, e.g., Jon Lender, *Treasurer’s Soliciting Donations From Contractors Questioned*, Hartford Courant (Oct. 1, 2015), <https://tinyurl.com/y4vvjp64>.

explained, “representative government is in essence self-government through the medium of elected representatives of the people, and each and every citizen has an inalienable right to full and effective participation in the political processes of his State’s legislative bodies.” *Reynolds v. Sims*, 377 U.S. 533, 565 (1964). New Jersey’s contribution restrictions should be considered in light of the substantial First Amendment interests of New Jersey’s citizens to “participate in and contribute to our republican system of self-government,” *Globe Newspaper Co. v. Superior Court for Norfolk Cty.*, 457 U.S. 596, 604 (1982), and to ensure that “government may be responsive to the will of the people,” *Stromberg v. California*, 283 U.S. 359, 369 (1931). In other words, the First Amendment protects a democratic system that depends on “the great body of the people,” and “not [on] an inconsiderable proportion, or a favored class of it.” Federalist No. 39, at 209 (J. Madison).

This central principle of democracy is undermined when “officeholders [] decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder.” *McConnell*, 540 U.S. at 153. When voters perceive that elected representatives are unduly beholden to their campaign benefactors and not attuned to broader constituencies, it subverts a structural principle of our democracy and cultivates public cynicism and distrust of the political system. Conversely, laws that protect the integrity of elections and the responsiveness of government correlate to

improved public confidence in government. Campaign finance laws, in particular, play a key role in preserving our representative form of government, especially in light of the risk of real and apparent corruption in privately financed elections.<sup>16</sup>

To this end, N.J.S.A. § 19:34-45 helps counter the erosion of public faith in our democracy by closing the most direct channel for banks to control state elections and political institutions.<sup>17</sup> That interest remains as crucial today as it did when New Jersey’s statute was originally enacted.

### **CONCLUSION**

For the foregoing reasons, *Amicus Curiae* CLC respectfully submits that the Court should grant summary judgment to Defendant on Count II of Plaintiff’s complaint.

Dated: December 1, 2020

Respectfully submitted,

/s/ Alanna Kaufman

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<sup>16</sup> See, e.g., *McConnell*, 540 U.S. at 137 (finding that campaign finance rules such as contribution limits “tangibly benefit public participation in political debate”); *Shrink Mo. Gov’t PAC*, 528 U.S. at 390 (“Democracy works ‘only if the people have faith in those who govern, and that faith is bound to be shattered when high officials and their appointees engage in activities which arouse suspicions of malfeasance and corruption.’”) (quoting *United States v. Miss. Valley Generating Co.*, 364 U.S. 520, 562 (1961)); *Buckley*, 424 U.S. at 27.

<sup>17</sup> See Gautam Mukunda, *The Price of Wall Street’s Power*, Harv. Bus. Rev. (June 2014), <https://tinyurl.com/jx9jgfv> (describing modern “financialization” of the U.S. economy and how the financial sector has “rebounded to its 1920s apex”).

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