No. 12-3305

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ILLINOIS LIBERTY PAC, *et al.*,	)	On Appeal From the U.S. District Court for the Northern District of Illinois
Plaintiffs-Appellants,	)	
v.	)	Case: 1:12-cv-05811
LISA M. MADIGAN, *et al.*,	)	Hon. Gary Feinerman *Judge Presiding*
Defendants-Appellees.	)	

BRIEF OF THE CAMPAIGN LEGAL CENTER, CHICAGO APPLESEED AND ILLINOIS CAMPAIGN FOR POLITICAL REFORM AS *AMICI CURIAE* IN OPPOSITION TO PLAINTIFFS'-APPELLANTS' MOTION FOR INJUNCTION PENDING APPEAL OR TO EXPEDITE THE FULL HEARING

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 12-3305

Short Caption: Illinois Liberty PAC, et al. v. Madigan et al.

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Attorney's Signature: /s/ David R. Melton Date: 10/18/2012
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Attorney's Signature: /s/ Thomas Rosenwein Date: 10/18/2012
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Attorney's Signature: /s/ J. Gerald Hebert Date: 10/18/2012
Attorney's Printed Name: J. Gerald Hebert

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Attorney's Signature: /s/ Paul S. Ryan Date: 10/18/2012
Attorney's Printed Name: Paul S. Ryan

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Attorney's Signature: /s/ Tara Malloy Date: 10/18/2012
Attorney's Printed Name: Tara Malloy

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Attorney's Signature: /s/ Megan McAllen Date: 10/18/2012
Attorney's Printed Name: Megan McAllen

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STATEMENT OF INTEREST[1]

Amici curiae Campaign Legal Center (CLC), Chicago Appleseed Fund for Justice and Illinois Campaign for Political Reform (ICPR) participated in the district court proceedings below through the filing of a brief *amici curiae* in opposition to plaintiffs'-appellants' (hereinafter "appellants") motion for preliminary injunction.

The Campaign Legal Center is a nonpartisan, nonprofit organization that works in the area of campaign finance law, and participates in state and federal court litigation throughout the nation regarding contribution limits, disclosure, political advertising, enforcement issues, and other campaign finance matters. The CLC has participated in numerous cases addressing state and federal campaign finance issues, including *Am. Tradition P'ship v. Bullock*, 132 S. Ct. 2490 (2012), *Ariz. Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011), *Citizens United v. FEC*, 130 S. Ct. 876 (2010), *Randall v. Sorrell*, 548 U.S. 230 (2006) and *McConnell v. FEC*, 540 U.S. 93 (2003). CLC thus has a longstanding, demonstrated interest in the laws at issue in this case.

Chicago Appleseed Fund for Justice is a research and advocacy organization that identifies community injustices, conducts impact research to develop proposed solutions, and advocates for their implementation. Chicago Appleseed oversees the Center for Judicial Performance and Integrity, which utilizes judicial evaluations to improve the quality of the state judiciary, and works for stricter judicial recusal standards and increased transparency in judicial campaign contributions. Chicago Appleseed thus has a longstanding, demonstrated interest in the laws at issue in this case.

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[1] Pursuant to Fed. R. App. P. 29(c)(5), *amici* state that no party's counsel authored the brief in whole or in part; no party or a party's counsel contributed money that was intended to fund preparing or submitting the brief; and no a person—other than the *amici curiae* or their counsel—contributed money that was intended to fund preparing or submitting the brief.

Illinois Campaign for Political Reform is a non-profit and non-partisan public interest organization that conducts research and advocates reforms to promote public participation and to encourage integrity, accountability, and transparency in both government and the election process. Founded in 1997 by former US Sen. Paul Simon (D-IL) and then-Lt. Gov. Bob Kustra (R-IL), ICPR facilitates bi-partisan dialogue around a range of reform issues in order to restore honest, open, and accountable government and re-invigorate public confidence and civic involvement. ICPR worked closely with the legislature to craft statutes in response to the corruption convictions of former governors George Ryan and Rod Blagojevich, has a longstanding, demonstrated interest in the laws at issue in this case, and is in a unique position to assist this Court in understanding the effect of the government integrity and accountability issues at stake in this litigation.

INTRODUCTION & SUMMARY OF ARGUMENT

This is a simple case, unnecessarily complicated by appellants' obtuse arguments and general avoidance of the decades-old, well-established legal framework for determining the constitutionality of contribution limits. The only cognizable burden on appellants' free speech and associational rights is that which stems from the contribution limits directly applicable to appellants themselves. Illinois law imposes a $50,000 per election cycle limit on contributions from appellant Illinois Liberty PAC (ILP) to a candidate for state office, a $5,000 per election cycle limit on contributions from appellant Bachrach to a candidate for state office, and a $10,000 per election cycle limit on contributions from appellant Bachrach to appellant ILP. *See* 10 ILCS 5/9-8.5(b) and (d). Time and again the Supreme Court has held that such contribution limits are a constitutionally permissible means of advancing the government's vital interests in preventing corruption, the appearance of corruption and circumvention of candidate contribution limits—so long as the limits are not so low as to prevent candidates and PACs from amassing the

resources necessary for effective advocacy. *See, e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 20-29 (1976); *Cal. Med. Ass'n. v. FEC*, 453 U.S. 182, 194-99 (1981) (*CalMed*); *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 381-98 (2000); and *Randall v. Sorrell*, 548 U.S. 230, 238-69 (2006).

The simple legal question presented by this case is whether the challenged $50,000, $10,000 and $5,000 contribution limits prevent candidates and PACs from amassing the resources necessary for effective advocacy. Appellants do not allege that these limits prevent effective advocacy, which is no surprise considering that the Supreme Court has upheld much lower limits against constitutional challenge. Appellants are free under the challenged Illinois contribution limits to associate with the candidates and PACs of their choice and to effectively advocate for the election or defeat of the candidates of their choice. Illinois' contribution limits are clearly constitutional.

Appellants move this Court for an injunction of enforcement of 10 ILCS 5/9-8.5(b)-(d) pending appeal of the district court decision below. Appellants' Mot. For Inj. at 1. As this Court noted in *Cavel Int'l, Inc. v. Madigan*, 500 F.3d 544 (7th Cir. 2007), "[t]here is a difference between asking a district court for a preliminary injunction and asking a court of appeals for a stay of, or other relief from, the district court's ruling." *Id.* at 547. The Court explained: "[D]ifferent Rules of Procedure govern the power of district courts and courts of appeals to stay an order pending appeal. *See* Fed. Rule Civ. Proc. 62(c); Fed. Rule App. Proc. 8(a). Under both Rules, however, the factors regulating the issuance of a stay are generally the same." *Id.* (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). This Court explained these factors in *Christian Legal Soc'y v. Walker*, 453 F.3d 853 (7th Cir. 2006):

> To win a preliminary injunction, a party must show that [1] it is reasonably likely to succeed on the merits, [2] it is suffering irreparable harm that outweighs any harm the nonmoving party will suffer if the injunction is granted, [3] there is no adequate remedy at law, and [4] an injunction would not harm the public interest.

> *Joelner v. Vill. of Wash. Park*, 378 F.3d 613, 619 (7th Cir. 2004). If the moving party meets this threshold burden, the district court weighs the factors against one another in a sliding scale analysis, *id.*, which is to say the district court must exercise its discretion to determine whether the balance of harms weighs in favor of the moving party or whether the nonmoving party or public interest will be harmed sufficiently that the injunction should be denied.

Id. at 859. "If an appeal has no merit at all, an injunction pending appeal should of course be denied." *Cavel Int'l*, 500 F.3d at 547.

For the reasons detailed below, appellants' "appeal has no merit at all" and "an injunction pending appeal should of course be denied." *Id.* Appellants have failed to show a reasonable likelihood of success on the merits. Appellants have failed to show that they are suffering any irreparable harm. Furthermore, importantly, appellants have failed to demonstrate that an injunction would not harm the public interest. Indeed, in a state where the last two governors have gone to jail for corruption, including one governor whose unlimited pursuit of campaign contributions was at the heart of the scandal, enjoining enforcement of the state's contribution limits in the weeks leading up to the November election would most certainly harm the public interest. Even if this Court concludes that appellants meet the four-factor "threshold burden," the "balance of harms" sliding scale analysis tips decidedly in the state's favor. *See Christian Legal Soc'y*, 453 F.3d at 859. Curbing the threat of corruption that would exist in the absence of the challenged contribution limits heavily outweighs appellants' marginal First Amendment concerns. If this Court grants an injunction pending appeal, the people of Illinois will suffer irreparable harm each day the contribution limits are not enforced, leaving Illinois government open to corruption and further undermining the public's already-damaged faith in the integrity of state government. Any urgency to appellants' request for emergency injunctive relief is the result of appellants' own delay in bringing this legal challenge, waiting until the election was imminent before seeking an injunction.

For all of the above-stated reasons and those detailed below, appellants' motion for injunction pending appeal or to expedite the full hearing should be denied.

ARGUMENT

I. Appellants Are Unlikely To Succeed On the Merits.

To win an injunction pending appeal, appellants must first show that they are reasonably likely to succeed on the merits of their First Amendment constitutional challenge to 10 ILCS 5/9-8.5(b)-(d). *See Christian Legal Soc'y*, 453 F.3d at 859. Application of Supreme Court precedent and the appropriate "less rigorous" "closely drawn" scrutiny makes clear that the challenged Illinois limits are constitutional because they do not prevent candidates from amassing the resources for effective advocacy. Appellants are very unlikely to succeed on the merits of their challenge—their motion for an injunction pending appeal should be denied.

A. Contribution Limits Are Subject to "Less Rigorous" "Closely Drawn" Review, Not Strict Scrutiny.

Beginning with *Buckley*, the Supreme Court has held that expenditure limits represent "substantial . . . restraints on the quantity and diversity of political speech," *Buckley*, 424 U.S. at 19, and consequently, must satisfy strict scrutiny review. *Id*. at 44-45. By contrast, a contribution limit "entails only a marginal restriction upon [one's] ability to engage in free communication," *id*. at 20, and thus is constitutionally "valid" if it "satisfies the lesser demand of being closely drawn to match a sufficiently important interest." *McConnell*, 540 U.S. at 136 (quoting *FEC v. Beaumont*, 539 U.S. 146, 162 (2003) (quotation marks omitted)).

This "less rigorous" standard, *id*. at 137, reflects that a contribution represents merely a "symbolic expression of support" because it "serves as a general expression of support . . . but does not communicate the underlying basis for the support." *Buckley*, 424 U.S. at 21. Further, a contribution represents only indirect speech, or "speech by proxy," *CalMed*, 453 U.S. at 196,

because "the transformation of contributions into political debate involves speech by someone other than the contributor." *Beaumont*, 539 U.S. at 161-62 (quoting *Buckley*, 424 U.S. at 20-21).

This case concerns limits on contributions—i.e., contributions made by appellants to candidates and contributions made by appellant Bachrach to appellant ILP—not limits on expenditures by appellants. Thus less rigorous "closely drawn" scrutiny, not strict scrutiny, is appropriate. This standard is fitting because a contribution by appellants to a candidate represents only a symbolic communication of appellants' support that "bears little relation to its size . . . ." *Colo. Republican Fed. Campaign Comm. v. FEC*, 518 U.S. 604, 615 (1996) (*Colorado I*). Further, appellants are engaged only in indirect speech by making contributions, because it is the recipient that uses the money to speak, not the contributor.

Appellants misrepresent the appropriate level of scrutiny applicable to Illinois' contribution limits, arguing that "the district court erroneously applied 'closely drawn' scrutiny" when, according to appellants, "strict scrutiny would apply here." Appellants' Mot. For Inj. at 9 n.3. Appellants also cite *Citizens United*, 130 S. Ct. 876 (2010), for the proposition that strict scrutiny is appropriate here. *See id*. at 18 ("Laws that burden political speech are subject to strict scrutiny[.]" (internal quotation marks omitted)). Appellants' reliance on the Supreme Court's decision in *Citizens United* is misplaced. *Citizens United* had nothing to do with contribution limits; instead, *Citizens United* was a challenge to a federal law prohibiting "corporations and unions from using their general treasury funds to make independent expenditures for speech defined as an 'electioneering communication' or for speech expressly advocating the election or defeat of a candidate." 130 S. Ct. at 886 (emphasis added). The *Citizens United* Court explained approvingly that the *Buckley* Court had upheld contribution limits, recognizing a "'sufficiently important' governmental interest in 'the prevention of corruption and the appearance of

corruption' [that] . . . followed from the Court's concern that large contributions could be given 'to secure a political *quid pro quo*.'" *Id.* at 901 (internal citation omitted). The *Citizens United* Court continued: "The *Buckley* Court explained that the potential for *quid pro quo* corruption distinguished direct contributions to candidates from independent expenditures." *Id.* at 901-02. *Citizens United* makes clear that although the Court has long applied strict scrutiny to spending restrictions such as the one at issue in *Citizens United* and found them unconstitutional, the Court has long applied a lower level of scrutiny to contribution limits and has typically upheld them.

The Supreme Court's most recent decision regarding the constitutionality of state law contribution limits, *Randall v. Sorrell*, 548 U.S. 230 (2006), which appellants do not even mention in their motion to this Court, makes clear the Supreme Court's continuing application of strict scrutiny to expenditure limits and less rigorous "closely drawn" scrutiny to contribution limits. Indeed, in a concurring opinion, Justice Thomas sharply criticized the Court majority's longstanding differential scrutiny of contribution limits and expenditure limits, stating: "I would overrule *Buckley* and subject both the contribution and expenditure restrictions . . . to strict scrutiny . . . ." *Randall*, 548 U.S. at 266-67 (Thomas, J., concurring).

Justice Thomas' disagreement with the Court majority's longstanding application of less rigorous "closely drawn" scrutiny to contribution limits was also on full display in *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377 (2000), another constitutional challenge to state contribution limits. In *Nixon*, the Court upheld a Missouri statute imposing limits ranging from $275 to $1,075 on contributions to candidates against First and Fourteenth Amendment challenges. *Id*. at 383. In upholding Missouri's contribution limits, the *Nixon* Court majority applied *Buckley*'s "closely drawn" standard of scrutiny. *Id.* at 387-88. Justice Thomas, joined by Justice Scalia, took issue with his colleagues, referring in a dissenting opinion to "the

majority's refusal to apply strict scrutiny to contribution limits," *id.* at 412 (Thomas, J., dissenting), and noting that the Court's majority had applied "something less—much less—than strict scrutiny" to the state's contribution limits. *Id*. at 421. Notwithstanding repeated efforts, Justice Thomas has never managed to convince a majority of the Court's members to join him in his desired application of strict scrutiny to contribution limits.

For more than 35 years, the Supreme Court has repeatedly made clear that contribution limits are not subject to strict scrutiny. "In *Buckley* and subsequent cases," the Court has "recognized that contribution limits, unlike limits on expenditures, entai[l] only a marginal restriction upon the contributor's ability to engage in free communication" and are therefore constitutional so long as they "satisf[y] the lesser demand of being closely drawn to match a sufficiently important interest." *McConnell*, 540 U.S. at 134-36 (quotation marks omitted) (quoting *Buckley*, 424 U.S. at 20 and *Beaumont*, 539 U.S. at 162). *Amici* respectfully urge this Court to reject appellants' argument that strict scrutiny applies to Illinois' contribution limits and, instead, to apply the less rigorous "closely drawn" scrutiny appropriate for contribution limits.

B. Illinois' Contribution Limits Are Clearly Constitutional.

Appellants challenge the constitutionality of Illinois' contribution limit "scheme" established by 10 ILCS 5/9-8.5(b)-(d). *See, e.g.*, Appellants' Mot. For Inj. at 2 ("Appellants ask this Court to enjoin enforcement of the Act's scheme of contribution limits.") However, appellants' constitutionally-protected right to free speech is impacted only by three discrete contribution limits found within Sections 5/9-8.5(b) and 5/9-8.5(d)—and all three contribution limits are clearly constitutional under Supreme Court precedent.

Section 5/9-8.5(b) imposes a $50,000 per election cycle limit on contributions from a PAC such as appellant ILP to a candidate for state office. Section 5/9-8.5(b) imposes a $5,000

per election cycle limit on contributions from an individual such as appellant Bachrach to a candidate for state office. Section 5/9-8.5(d) imposes a $10,000 per election cycle limit on contributions from an individual such as appellant Bachrach to a PAC such as appellant ILP.

Constitutional analysis of these three contribution limits is simple and straightforward. These limits are closely drawn to match the state's compelling interests in preventing corruption and the circumvention of candidate contribution limits and are thus constitutional. Indeed, these Illinois limits are far more accommodating of appellants' constitutional rights than the federal law $1,000 contribution limit upheld in *Buckley*, the federal law $5,000 limit upheld in *CalMed*, and the state law contribution limits ranging from $275 to $1,075 upheld in *Nixon*.

1. Contribution Limits Are Constitutional So Long As They Do Not Prevent Candidates and PACs From Amassing the Resources Necessary for Effective Advocacy.

In *Buckley*, the Court considered the constitutionality of a federal law limiting contributions by an individual to candidates for federal office to $1,000 per election. 424 U.S. at 13. The Court noted that "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" because though a "contribution serves as a general expression of support for the candidate and his views," it "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." *Id.* at 20-21. The Court reasoned that a "limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues." *Id.* at 21.

To be certain, the *Buckley* Court acknowledged that contribution limits "could have a severe impact on political dialogue if the limitations prevented candidates and political committees from amassing the resources necessary for effective advocacy." *Id.* However, the Court concluded that the federal law $1,000 limit on contributions to candidates would not have "any dramatic adverse effect on the funding of campaigns and political associations." *Id.* On the contrary, the Court found that the federal law contribution limits would "permit associations and candidates to aggregate large sums of money to promote effective advocacy." *Id.* at 22.

Applying "closely drawn" scrutiny, the *Buckley* Court concluded that "[i]t is 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. *Id.* at 26. "To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined." *Id.* at 26-27. The *Buckley* Court was further concerned by the "impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." *Id.* at 27. The Court concluded: "We find that, under the rigorous standard of review established by our prior decisions, 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." *Id.* at 29.

In *CalMed*, the Supreme Court upheld the federal law limiting contributions by an individual to a PAC to $5,000 per calendar year. *CalMed*, 453 U.S. at 194-99. The Court began by noting that in *Buckley* it had "upheld the various ceilings the Act placed on the contributions

individuals and multicandidate political committees could make to candidates and their political committees" because "such limitations served the important governmental interests in preventing the corruption or appearance of corruption of the political process that might result if such contributions were not restrained." *Id.* at 194-95. The Court explained that the limit on contributions to PACs was enacted "to prevent circumvention of the very limitations on contributions that this Court upheld in *Buckley*" and explained that without such a limit, "an individual or association seeking to evade the $1,000 limit on contributions to candidates could do so by channelling funds through a multicandidate political committee." *Id.* at 197-98.

In *Nixon*, the Court upheld Missouri state law limits on contributions to candidates ranging from $275 to $1,075. The principal issues in *Nixon* were 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. The Court held *Buckley* "to be authority for comparable state regulation, which need not be pegged to *Buckley*'s dollars." *Id*. at 382. The *Nixon* Court applied *Buckley*'s "closely drawn" scrutiny, *id.* at 387-88, recognized the governmental interests of preventing actual and apparent corruption as sufficient justification for Missouri's contribution limits, *id.* at 388-89, and upheld the limits. The Court once again noted that, as in *Buckley*, there was "'no indication . . . that the contribution limitations imposed by the [law] would have any dramatic[ally] adverse effect on the funding of campaigns and political associations,' and thus no showing that 'the limitations prevented the candidates and political committees from amassing the resources necessary for effective advocacy.'" *Id.* at 395-96 (quoting *Buckley*, 424 U.S. at 21). Consequently, the *Nixon* Court concluded: "There is no reason in logic or evidence to doubt the sufficiency of *Buckley* to govern this case in support of

the Missouri statute." *Id*. at 397-98.

Most recently, in *Randall*, the Court considered the constitutionality of Vermont's limits on contributions to candidates for state office ranging from $200 to $400, depending on the office sought. 548 U.S. at 238. The Court once again applied *Buckley*'s "closely drawn" scrutiny and once again examined whether the challenged "contribution limits prevent candidates from 'amassing the resources necessary for effective [campaign] advocacy;' whether they magnify the advantages of incumbency to the point where they put challengers to a significant disadvantage; in a word, whether they are too low and too strict to survive First Amendment scrutiny." *Id*. at 248 (quoting *Buckley*, 424 U.S. at 21). The Court recognized the governmental interest in preventing corruption and the appearance of corruption, but noted that the rationale "does not simply mean 'the lower the limit, the better.'" *Id*. "That is because contribution limits that are too low can also harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability." *Id*. at 248-49. The *Randall* Court concluded that, "[a]s compared with the contribution limits upheld by the Court in the past, and with those in force in other States, [Vermont's] limits are sufficiently low as to generate suspicion that they are not closely drawn." *Id.* at 249. Noting, for example, that Vermont's $400 limit on contributions to gubernatorial candidates was "well below the lowest limit" the Court had previously upheld—the $1,075 limit for candidates for Missouri state auditor upheld in *Nixon*, *id*. at 250, the Court concluded that Vermont's contribution limits threatened "to inhibit effective advocacy by those who seek election, particularly challengers" and muted "the voice of political parties[,]" rendering them unconstitutional. *Id.* at 261.

2. Illinois' Contribution Limits Do Not Prevent Candidates and PACs From Amassing the Resources Necessary for Effective Advocacy and Are Thus Constitutional.

Buckley and its progeny make clear that limits on contributions to candidates, as well as limits on contributions to PACs that contribute to candidates, are a closely drawn, constitutionally permissible means of advancing the government's vital interests in preventing corruption, the appearance of corruption and circumvention of candidate contribution limits—so long as the limits are not so low as to prevent candidates and PACs from amassing the resources necessary for effective advocacy. *See*, *e.g.*, *Buckley*, 424 U.S. at 20-29; *CalMed*, 453 U.S. at 194-99; *Nixon*, 528 U.S. at 381-98; *Randall*, 548 U.S. at 238-69.

Appellants do not allege—and cannot in good faith allege—that the Illinois contribution limits applicable to them, 10 ILCS 5/9-8.5(b) and(d), prevent candidates and PACs from amassing the resources necessary for effective advocacy.

Section 5/9-8.5(b) imposes a $50,000 per election cycle limit on contributions from appellant ILP to a candidate for state office and a $5,000 limit on contributions from appellant Bachrach to a candidate for state office. The Supreme Court in *Buckley* upheld a $1,000 limit on contributions to candidates, part of a statutory regime that limits PAC contributions to candidates to $5,000[2] and, though acknowledging that contribution limits could be unconstitutional if they "prevented candidates and political committees from amassing the resources necessary for effective advocacy," 424 U.S. at 21, the Court explicitly rejected the argument that the challenged federal law $1,000 limit on contributions to candidates would not have "any dramatic adverse effect on the funding of campaigns and political associations." *Id.*

Similarly, the *Nixon* Court upheld state law limits on contributions to candidates ranging

[2] *See Buckley*, 424 U.S. at 13 n.12 ("An organization registered as a political committee for not less than six months which has received contributions from at least 50 persons and made contributions to at least five candidates may give up to $5,000 to any candidate for any election.").

from $275 to $1,075 and found "'no indication . . . that the contribution limitations imposed by the [law] would have any dramatic[ally] adverse effect on the funding of campaigns and political associations,' and thus no showing that 'the limitations prevented the candidates and political committees from amassing the resources necessary for effective advocacy.'" 528 U.S. at 395-96 (quoting *Buckley*, 424 U.S. at 21). Consequently, the *Nixon* Court concluded: "There is no reason in logic or evidence to doubt the sufficiency of *Buckley* to govern this case in support of the Missouri statute." *Id*. at 397-98.

If the $1,000 contribution limit upheld in *Buckley*, or the $1,075 limit upheld in *Nixon*, do not prevent candidates from amassing the resources necessary for effective advocacy, it is unfathomable that Illinois' $50,000 limit on appellant ILP's contributions to candidates, or Illinois' $5,000 limit on appellant Bachrach's contributions could have such an effect. The contribution limits established by 10 ILCS 5/9-8.5(b) are closely drawn to the state's vital interest in preventing corruption and the appearance of corruption and thus are constitutional.

Section 5/9-8.5(d) imposes a $10,000 per election cycle limit on contributions from appellant Bachrach to appellant ILP. The Supreme Court in *CalMed* upheld a $5,000 limit on contributions by an individual to a PAC as closely drawn to the governmental interests of preventing corruption and the appearance of corruption, and preventing circumvention of the candidate contribution limits. *CalMed*, 453 U.S. at 194-99. Illinois' more generous $10,000 limit on contributions from individuals to PACs such as appellant ILP is likewise closely drawn to the same governmental interests and is constitutional.

Appellants argue that the state's application of different contribution limits to political parties and nonparties like themselves "demonstrates that [the state law] does not serve an anticorruption purpose[.]" Appellants' Mot. For Inj. at 15. The Court should reject this

argument. Appellants cite the Supreme Court's decision in *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001) (*Colorado II*), implying that the Court's decision requires application of the same contribution limits to parties as to nonparties—but the Court said no such thing. *See* Appellants' Mot. For Inj. at 16-17. In *Colorado II*, a political party challenged federal law limits on expenditures coordinated with specific candidates, which the Court treated as contributions to such candidates. 533 U.S. at 437-38 ("Expenditures coordinated with a candidate . . . are contributions under the Act."). The question in *Colorado II* was whether the constitution permits limits on contributions from parties to candidates—not whether the constitution requires limits on contributions from parties to candidates. Indeed, *amici* know of no occasion in which the constitution has been interpreted by a court as requiring the imposition of contribution limits.

Further undermining appellants' reliance on *Colorado II* is the fact that the limits upheld in *Colorado II*—limits on party contributions to candidates—were much higher than the limits on contributions by nonparties to candidates. The limits upheld in *Colorado II* are based on population-dependent formula. *See id.* at 438-39. In this year's elections, under the limits upheld in *Colorado II*, political parties may contribute (in the form of coordinated expenditures) $21,684,200 to candidates for the office of president, while a PAC can only contribute $5,000 per election to such a candidate and an individual can only contribute $2,500 per election to such a candidate.[3] Appellants' reliance on a Supreme Court decision upholding the constitutionality of a $21,684,200 limit on contributions from parties to candidates, while PACs and individuals are subject to limits of $5,000 and $2,500, respectively, is baffling. If anything, *Colorado II*

[3] *See* FEC, *2012 Coordinated Party Expenditure Limits*, http://www.fec.gov/info/charts_441ad_2012.shtml (last visited Oct. 17, 2012); *see also* FEC, *Contribution Limits for 2011-2012*, http://www.fec.gov/info/contriblimits1112.pdf (last visited Oct. 17, 2012).

stands for the proposition that it is perfectly constitutional to apply much lower limits on contributions from PACs and individuals to candidates than the limits on party contributions to candidates.

The Supreme Court has repeatedly upheld the constitutionality of contribution limits of varying amounts, with respect to different contributors and recipients, noting that "a court has no scalpel to probe" whether a particular amount limit works best. *Buckley*, 424 U.S. at 30; *see also Randall*, 548 U.S. at 248. Instead, it is the role of the legislature to determine which precise amount limits work best. Under both the First and Fourteenth Amendments, contribution limits are a constitutionally-permissible, closely drawn means of preventing corruption, the appearance and circumvention of candidate contribution limits, so long as they do not prevent candidates and PACs from amassing the resources necessary for effective advocacy.

Appellants do not allege that 10 ILCS 5/9-8.5(b) and (d) prevent candidates and PACs from amassing the resources necessary for effective advocacy—and, in fact, they do not. These Illinois contribution limits are thus constitutional.

II. An Injunction Pending Appeal Would Greatly Harm the Public Interest and the Balance of Harms Weighs Decidedly In Favor of the State.

In addition to showing a reasonable likelihood of success on the merits, appellants must also show that they are suffering irreparable harm that outweighs any harm the state will suffer if the injunction is granted and that their requested injunction would not harm the public interest. *Christian Legal Soc'y*, 453 F.3d at 859 (citing *Joelner*, 378 F.3d at 619). And if appellants meet this threshold burden, this Court must weigh the "factors against one another in a sliding scale analysis . . . to determine whether the balance of harms weighs in favor of the moving party or whether the nonmoving party or public interest will be harmed sufficiently that the injunction should be denied." *Christian Legal Soc'y*, 453 F.3d at 859 (internal citation omitted).

Less than one year ago, sentencing former Illinois governor Rod Blagojevich to fourteen years in prison for campaign contribution-related crimes, U.S. District Court Judge James Zagel stated: "When it is the governor who goes bad, the fabric of Illinois is torn and disfigured and not easily repaired[.] . . . You did that damage." Jeff Coen and Bob Specter, *14 Years for Blagojevich, Judge: "Fabric of Illinois is torn,"* Chi. Trib., Dec. 8, 2011, *available at* 2011 WLNR 25362807. The Chicago Tribune noted that Blagojevich's "sentence is more than double the prison time given to Blagojevich's corrupt predecessor, George Ryan, and marks the fourth time since the 1970s that a former Illinois governor has been sent to prison for wrongdoing." *Id*. Included among Blagojevich's corrupt activities was an attempt to secure "$1.5 million in campaign cash for appointing U.S. Rep. Jesse Jackson Jr." to President Obama's vacated U.S. Senate seat. *Id*.

The "fabric of Illinois" was "torn and disfigured" by the Blagojevich campaign finance corruption scandal and previous government corruption scandals. The contribution limits at issue in this case are closely drawn to the state's vital interest in preventing future campaign finance-related corruption that would irreparably tear and disfigure the fabric of Illinois. As the *Buckley* Court concluded when upholding federal contributions much lower than those at issue in this case:

> It is 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. . . . To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined.

424 U.S. at 26-27. The *Buckley* Court found 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." *Id*. at 29. The

public's interest in a government free from actual and apparent corruption is incredibly strong and indisputable. An injunction pending appeal in this case would directly and irreparably harm this public interest by unleashing a flood of potentially-corrupting unlimited political contributions in the weeks leading up to next month's election.

By contrast to the irreparable harm to the public interest in corruption-free government that would result from this Court's grant of an injunction pending appeal, appellants are suffering no harm as a result of the challenged contribution limits. The contribution limits at issue in this case "entail[] only a marginal restriction upon [appellants'] ability to engage in free communication." *Id*. at 20. Appellants' contributions represent merely a "symbolic expression of support" because they "serve[] as a general expression of support . . . but do[] not communicate the underlying basis for the support." *Id.* at 21. A contribution represents only indirect speech, or "speech by proxy," *CalMed*, 453 U.S. at 196, because "the transformation of contributions into political debate involves speech by someone other than the contributor." *Beaumont*, 539 U.S. at 161-62 (quoting *Buckley*, 424 U.S. at 20-21). Appellant ILP is free to contribute up to $50,000 to any candidate for state office. Appellant Bachrach is free to contribute up to $5,000 to any candidate for state office. And appellant Bachrach is free to contribute up to $10,000 to appellant ILP. *See* 10 ILCS 5/9-8.5(b) and (d). Contributions in these amounts more than adequately convey the "general expression of support" protected by the First Amendment. *See Buckley*, 424 U.S. at 21. Furthermore, appellants are free to engage in unlimited, direct political spending supporting or opposing the candidates of their choice.

In the event this Court reaches the point of weighing the "factors against one another in a sliding scale analysis . . . to determine whether the balance of harms weighs in favor of the moving party or whether the nonmoving party or public interest will be harmed sufficiently that

the injunction should be denied[,]" *Christian Legal Soc'y*, 453 F.3d at 859 (internal citation omitted), the balance of harms tips decidedly in the state's favor. As the Ninth Circuit recognized this week in *Lair v. Bullock*, --- F.3d ----, 2012 WL 4883247 (9th Cir. Oct. 16, 2012), staying a district court decision enjoining the enforcement of Montana's campaign contribution limits, which unlike Illinois' generous limits, are "some of the most restrictive campaign limits in the country":

> [B]ecause the fairness of the imminent election would be put in danger by our failure to stay the permanent injunction, the State of Montana and the public interest would be irreparably harmed, and that harm vastly outweighs any minimal harm that might come to the interested parties who have operated under the established Montana contribution limits for almost two decades.

Id.

Amici respectfully submit that the serious threat to the public interest, weighed against the absence of any irreparable harm to appellants, should lead this Court to deny appellants motion for an injunction pending appeal.

CONCLUSION

"There is no reason in logic or evidence to doubt the sufficiency of *Buckley* to govern this case in support of the [Illinois] statute." *Nixon*, 528 U.S. at 397-98. Illinois' contribution limits established by 10 ILCS 5/9-8.5(b) and (d) are clearly constitutional. Appellants have failed to show a reasonable likelihood of success on the merits of their constitutional challenge, or to satisfy the other prerequisites for obtaining the extraordinary relief of an injunction pending appeal. The balance of harms weighs decidedly in the state's favor. Accordingly, appellants' motion for an injunction pending appeal or to expedite the full hearing of its appeal of the district court's decision below should be denied.

Respectfully submitted,

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Dated: October 18, 2012

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE STYLE REQUIREMENTS

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) and Fed. R. App. P. 29(d) because this brief contains 6,034 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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Dated: October 18, 2012

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CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that on October 18, 2012, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system.

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