No. 02-1740

In The

Supreme Court of the United States

VICTORIA JACKSON GRAY ADAMS, et al.,

Appellants,

v.

FEDERAL ELECTION COMMISSION, et al.,

Appellees.

On Appeal To The United States District Court, District Of Columbia

BRIEF AMICUS CURIAE OF PUBLIC CAMPAIGN IN SUPPORT OF APPELLANTS

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INTEREST OF *AMICUS*[1]

Public Campaign is a non-profit, non-partisan educational organization with separate corporate branches established under sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. As the premier national organization supporting legislation to establish the public financing of elections, Public Campaign promotes reforms that aim to dramatically reduce the role and influence of money in America's elections. Public Campaign rigorously monitors the effects of fundraising and campaign contributions on the legitimacy of our representative bodies and produces educational materials describing the actual operation of Clean Money campaign funding systems already adopted in four of the fifty states. The raised "hard money" contribution limits at issue in this case directly undermine the mission of Public Campaign, and the rights of its members, by augmenting the influence of that minuscule portion of the electorate wealthy enough to constrict electoral competition through massive campaign contributions.

Amicus respectfully urges the Court to reverse that portion of the decision that dismissed the claims lodged by the *Adams* Appellants on justiciability grounds and to declare unconstitutional the increased "hard money" limits adopted by Congress in sections 304, 307, and 319 of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81, 97-100, 102-103, and 109-112 (codified as amended at 2 U.S.C. §§ 441a and 441a-1).

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[1] Pursuant to Rule 37.6, *Amicus* hereby certifies that no counsel for a party to this action authored this brief in whole or in part and further certifies that no person or entity other than *amicus*, its members, and its counsel have made any financial contribution to the preparation or submission of this brief. All parties have submitted to the Clerk of the Court "blanket" consents to the filing of *amicus curiae* briefs.

SUMMARY

This appeal raises an issue of epochal concern for the survival of our republic: what substance is left to representative democracy when aggregations of wealth drawn from a tiny number of citizens bar non-wealthy voters from meaningful participation in elections? Despite the overwhelming evidence of electoral lockup proffered by the *Adams* Appellants, the district court below refused to acknowledge jurisdiction over their complaint and face the implication of the facts they presented. That decision conflicts with four decades of precedent from this Court affirming the duty of the Judiciary to protect all citizens' effective exercise of the franchise. It also conflicts with the unmistakable intent of the Framers that the Constitution should effect elections open to all classes of society, regardless of their economic status. This Court now faces a simple choice: address the mounting sea of evidence that indicates how debased our democracy has become, or enforce the will of entrenched incumbents and that scant minority of citizens wealthy enough to sustain a bipartisan electoral lockup through large campaign contributions.

In order to pass legislation designed to close a long-standing loophole in the campaign finance laws that had allowed corporations and wealthy individuals to channel vast sums of what was known as "soft money" into federal elections, Congressional opponents of reform insisted upon doubling the "hard money" limits that had served as the primary bulwark against the corruption of our electoral system since the passage of the Federal Election Campaign Act of 1974.[2] Given the spiraling costs of effective

[2] "Quite simply, the increase in the hard money limits was the price to be paid to gain sufficient support from our Republican colleagues for banning soft money and reining in so-called sham issue ads." 147 CONG. REC. S3833 (daily ed. April 24, 2001) (statement of Sen. Dodd). "But for the willingness of Senators . . . to find common ground

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campaign communication, access to substantial wealth has become a prerequisite to meaningful electoral competition. Because fundraising almost always determines electoral outcomes, any serious aspirant for office must amass campaign funds on the same order of magnitude as his or her opponents. Lack of access to wealth thus makes effective political competition impossible. By doubling the amount of money that wealthy citizens may pour into campaigns, Congress raised the entry barrier for non-wealthy voters and candidates who wish to participate in self-government to insuperable new heights.

Non-wealthy voters and candidates brought the instant case to vindicate the political rights of the vast majority of Americans who cannot contribute campaign funds anywhere near the levels contemplated by the BCRA.[3] The district court below summarily held that it had no jurisdiction to rule on the matter. In reaching this conclusion, the district court radically mischaracterized the nature of the *Adams* Appellants' complaint, incorrectly stating that they seek "equal influence" in elections. Instead, they assert an equal protection right to a "meaningful opportunity" to compete, a concept of self-evident significance in the scholarly literature and jurisprudence regarding the regulation of free and open economic markets. Flouting the proper procedural duty for jurisdictional

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on the issue of increasing hard money limits, I fear our efforts would have proved as futile as they have in the past." 147 CONG. REC. S3258 (daily ed. April 2, 2001) (statement of Sen. McCain).

[3] "It is unfortunate that the Senate voted to raise the hard money contribution limits. Nearly 80 percent of the money in our elections is hard money, more and more of which is being raised in checks of $1000. During the last election, only 4 out of every 10,000 Americans made a contribution greater than $200. Only 232,000 Americans gave contributions of $1000 or more to federal candidates – one ninth of one percent of the voting age population." 147 CONG. REC. S3256 (daily ed. April 2, 2001) (statement of Sen. Wellstone).

dismissals, the district court also improperly relied on its own factual conclusion that the *Adams* Appellants raise no issue of ballot access. Given the breadth of evidence demonstrating that lack of wealth does effectively restrict access to ballot – evidence which the district court was required to take as true – this factual determination was clear error. This Court's precedents also make clear that the right of suffrage can be unconstitutionally debased and diluted even when no one is denied the right to cast a vote and no direct barrier has been placed on the ballot.

Because this Court reviews the legal decision below *de novo*, *see e.g.*, *Shaw v. Reno*, 509 U.S. 630, 638 (1993), attention must at last be given to the facts adduced by the *Adams* Appellants, which accurately reflect the experience and learning of *Amicus* during its extensive research into American politics. During the debate over passage of the BCRA, numerous Senators decried the raised "hard money" limits, lamenting how few citizens stood to benefit from them and specifically condemning their anti-democratic and discriminatory implications for the future.[4]

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[4] *See, e.g.*, "The thrust of McCain-Feingold was to minimize the influence of the special interests. It has now become maximized. . . . the thrust of McCain-Feingold was to eliminate the obscenity of the outrageous amounts of money that it takes in politics to be elected. The final bill now doubles this obscenity." 147 CONG. REC. S3240 (daily ed. April 2, 2001) (statement of Sen. Hollings); "One-quarter of 1 percent of the population contributes $200 or more, one-ninth of 1 percent of the population contributes $1,000 or more. So I do not really see the benefit of injecting yet more money into politics, literally turning some of the hard money into soft money. . . . I don't see how politics that becomes more dependent on big contributors, heavy hitters, people who have more money and can afford to make these contributions, is better politics." 147 CONG. REC. S3022 (daily ed. March 28, 2001) (statement of Sen. Wellstone); "We ought to be looking for ways to reduce the amount of money in politics. . . . It is running the risk of moving our very system of democracy into deep trouble. There is no issue more important than this one. The other issues we will have come before us are significant, but this goes right to the heart of who we are as a people,

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These observations, bolstered as they are by stark statistics of an electoral system dominated by the wealthy and distrusted by the public, cannot go unheeded. "Leave the perception of impropriety unanswered, and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance." *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 390 (2000).

The district court's dismissal is also at odds with the Framers' intent to create a lasting government of the People. Recognizing that corruption inheres to unchecked power, the Framers intended that Congress, by expressing the voice of the "entire body of the People", would serve as the last line of defense against all manner of tyranny. The authors of the Federalist Papers repeatedly argued that the representation of diverse interests in Congress would prevent government from devolving into an oligarchy of the "wealthy and well-born". The People adopted the Constitution in reliance on this promise of representation. Because representation of the diverse interests of the People is a fundamental, explicit premise of our Constitutional order, it must have been the Framers' intent that our Constitution should establish open and free elections based upon the cornerstone principle of political equality. Because our constitutional order leaves the judiciary as the only branch of government capable of breaking a lockup of the electoral marketplace, the *Adams* Appellants must have a legally protected interest in the meaningful exercise of the franchise.

The extensive jurisprudence regarding the regulation necessary to sustain open and fair competition in economic

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who can run for public office, who can get elected to public office. Our failure to do something about it places, as I said the other day, our democracy, in my view, in peril." 147 CONG. REC. S2918 (daily ed. March 26, 2001) (statement of Sen. Dodd).

markets provides this Court an analytical framework for recognizing the bipartisan electoral lockup effectuated by the BCRA. Self-interested contestants in the electoral marketplace will follow incentives not only to game the system for temporary gain, but also to design rules of participation that perpetuate their market power. Because the judiciary must protect the function of electoral marketplace at least as vigilantly as it protects economic markets, courts cannot ignore evidence of entrenched financial power that squelches competition and creates barriers to entry. The extensive evidence of bipartisan electoral lockup should compel this Court to apply a hard-nosed, skeptical review of the effects of the raised hard money limits in the BCRA.

ARGUMENT

I. BY CONCLUDING THAT THE *ADAMS* APPELLANTS RAISED NO JUSTICIABLE CLAIM, THE DISTRICT COURT BELOW ABDICATED ITS FUNDAMENTAL DUTY TO SAFEGUARD THE POLITICAL PROCESS FROM ANTI-DEMOCRATIC LOCKUP.

A. The decision below is plainly at odds with this Court's precedents holding that voters and candidates have standing to seek redress for their exclusion from electoral participation on the basis of wealth.

"No right is more precious in a free country than having a voice in the election of those who make the laws under which . . . we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Beginning with the apportionment and filing fee cases of the 1960's and 1970's, this Court recognized that the right to vote necessarily comprises far more than an entrance pass to a voting booth and a theoretical chance to place one's name on a ballot. *See Baker v. Carr*, 369 U.S. 186 (1962); *Gray v.*

Sanders, 372 U.S. 368 (1963); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Bullock v. Carter*, 405 U.S. 134 (1972); *Lubin v. Panish*, 415 U.S. 709 (1974); *Davis v. Bandemer*, 478 U.S. 123 (1986). Precisely because voting is *the* fundamental act of self-government, upon which the entire conceit of our Constitutional order depends, this Court has long fulfilled its unique institutional duty to scrutinize the regulations of state and federal legislative bodies for impediments to the *effective* exercise of the franchise throughout all stages of the electoral process. *See, e.g., Reynolds*, 377 U.S. at 565 (in the context of apportionment, the Constitution "requires" that each citizen have "an equally effective voice"); *Williams v. Rhodes,* 393 U.S. 23 (1968); *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979) (ballot access restrictions burden "the right of qualified voters . . . to cast their votes effectively"); *Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) (noting the "right of qualified voters . . . to cast their votes effectively"); *Norman v. Reed*, 502 U.S. 279 (1992); *Burson v. Freeman*, 504 U.S. 191, 199 (1992) (plurality) (recognizing compelling interest in preserving integrity of the electoral process); *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 402 (2000) (Breyer, J. concurring) ("the Constitution often permits restrictions on the speech of some in order to prevent the few from drowning out the many . . . [and] limiting the political rights of some so as to make effective the political rights of the entire electorate") (citing *Storer v. Brown*, 415 U.S. 724, 736 (1974)).[5]

Even when legislators have imposed no direct restraint on casting a ballot or appearing on a ballot, this

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[5] Courts have also recognized the value of "protecting access to the political arena". *Landell v. Sorrell*, 118 F. Supp. 2d 459, 483 (D. Vt. 2000) (quoting *Colorado Republican Federal Campaign Comm. v. Federal Election Comm'n*, 518 U.S. 604, 649-50 (1996) (Stevens, J., concurring)).

Court has recognized that the right to vote may be so substantially degraded by an electoral regulatory framework, or by the actions of officials surrounding the election, as to lose all practical meaning. *See, e.g., Bush v. Gore,* 531 U.S. 98, 105 (2000) ("The right of suffrage can be denied by a debasement or dilution of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise") (citing *Reynolds v. Sims,* 377 U.S. at 555); *Baker, supra.* Even when barriers to meaningful exercise of the franchise were erected by private, non-state actors, this Court has interceded to protect the rights of all citizens to participate in all integral aspects of the electoral process. *See Terry v. Adams*, 345 U.S. 461 (1953) (plurality). And when the impediment to effective exercise of the franchise has been financial, the Court has unequivocally championed the rights of all persons, regardless of their economic status, to participate meaningfully in self-government. *See Harper v. Virginia Bd. of Elections*, 383 U.S. 663 (1966); *Bullock, supra*; *Lubin, supra; Morse v. Republican Party of Virginia*, 517 U.S. 186 (1996). In all these cases touching on the substantive meaning of the right to vote, detailed attention to actual electoral circumstances was necessary to maintain the significance of suffrage and to preserve our claim to representative democracy.

Offering overwhelming evidence of the anti-competitive effects of wealth in our elections, the *Adams* Appellants allege that the BCRA cements an entry barrier to the electoral marketplace and squelches the political rights of non-wealthy citizens. In a cursory few sentences, the district court below dismissed the *Adams* plaintiffs' claims as non-justiciable, concluding that they "have not suffered an invasion of a *legally protected* interest" and that, even if they had suffered such an injury, "it would not be 'fairly . . . trace[able]' to BCRA". *McConnell v. FEC*, No. 02-582, May 19, 2003, Slip Op. at 340 (D.D.C.) (Henderson, J.) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)) (emphasis in original). By concluding that non-wealthy voters and candidates have no "legally

protected interest" to some basic modicum of meaningful political participation, the district court below ignored four decades of precedent, cited above, that have given substance to the 'right to vote'. *Id.*, Slip Op. at 340. As set forth more fully in section B, *infra*, this holding flies in the face of the Framers' clear intent that all citizens should participate in elections under terms of political equality. The decision also ignores the court's duty to credit the plaintiff's allegations of fact when weighing a jurisdictional dismissal.

For dismissals under Rule 12(b)(1), "the complaint will be construed broadly and liberally . . . with all uncontroverted factual allegations being accepted as true". 13 CHARLES A. WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FED. PRAC. & PROCEDURE, § 1350 (2d ed. 1990 & Supp.); *see also Lujan*, 497 U.S. at 889 (courts presume that general allegations embrace necessary specific facts); *Allen v. Wright*, 468 U.S. 737, 751-52 (1982) ("the standing inquiry requires careful judicial examination of a complainant's allegations"); *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974); *American Fed'n of Gov't Employees v. Cohen*, 171 F.3d 460, 465 (7th Cir. 1999) (to dismiss for lack of standing "[a]ll material allegations of the complaint are accepted as true and construed in the light most favorable to the pleader"). By summarily concluding that the *Adams* Appellants had failed to "carry [their pleading] burden", the district court utterly failed to follow this procedural duty. *McConnell*, Slip Op. at 340. The district court did not identify any specific deficiency in the *Adams* Appellants' factual allegations. Nor did it make any reference to any facts at all. Instead, the district court radically mischaracterized the *Adams* Appellants' complaint as one alleging a "right to equal influence in the overall electoral process" and improperly interposed its own factual conclusions regarding the *Adams* Appellants' access to the ballot. *Id.* ("none of the *Adams* plaintiffs has been . . . stripped of his right to vote or of access to the ballot."). Each of these errors independently justifies reversal.

Radical mischaracterization of a complaint is plain and obvious error – in effect, the destruction of a paper tiger. The district court simply avoided the gravamen of the *Adams* Appellants' claims by citing four decisions from the Courts of Appeal, in which those courts also refused to address any facts demonstrating the effective exclusion of non-wealthy voters and candidates from the electoral process. *See id.* (citing *Georgia State Conference of NAACP Branches v. Cox,* 183 F.3d 1259 (11th Cir. 1999) ("*Cox*"); *NAACP v. Jones,* 131 F.3d 1317 (9th Cir. 1997), *cert. denied,* 525 U.S. 813 (1998) ("*Jones*"); *Albanese v. Federal Election Comm'n,* 78 F.3d 66 (2d Cir. 1996) ("*Albanese*"); *Kruse v. City of Cincinnati,* 142 F.3d 907 (6th Cir.), *cert. denied,* 525 U.S. 1001 (1998)). In the three "wealth primary" cases – *Cox, Jones*, and *Albanese* – the voter and candidate plaintiffs did *not* claim a 'right to equal influence' but rather a right to 'meaningful participation' in the electoral process. Though the concepts of 'equal influence' and 'meaningful participation' are as radically distinct as the notions of 'equality of opportunity' and 'equality of outcome', the Courts of Appeal in two of those cases all relied on such mischaracterization as a rationale for dismissal. *See Cox*, 183 F.3d at 1263 (mischaracterizing claim as "right to equal influence in the overall electoral process"); *NAACP v. Jones*, 131 F.3d at 1323-24 (mischaracterizing claim as "right . . . to have equal influence in the election process" and "right of voters to contribute to successful campaign").[6] Because those decisions founder on a plain confusion of the rights asserted, their authority as precedents is suspect.

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[6] The *Cox* court also relied on the suspect passage in *Buckley* which claimed that "[t]he concept that government may restrict the speech of some in order to enhance the relative voice of others is wholly foreign to the First Amendment." *Buckley v. Valeo,* 424 U.S. 1, 48-49 (1976). As Justice Breyer observed, "those words cannot be taken literally". *Nixon v. Shrink*, 528 U.S. at 402 (Breyer, J. concurring).

Albanese and *Kruse* also fail to support the dismissal below. In *Albanese*, the Court of Appeals "substantially" adopted the opinion of the district court, which found the plaintiffs' theory "intriguing" but felt "bound to apply" a legal analysis that deemed the candidate's injury too "conjectural". *See Albanese*, 78 F.3d at 68-69; *Albanese v. Federal Elections Comm'n*, 884 F. Supp. 685, 691 n. 8 and 692-93 (E.D.N.Y. 1995) ("Albanese opted not to participate in the election process; he was not prevented from doing so"). The court found the notion that plaintiffs suffer injury because they "have less access or influence than a hypothesized wealthy contributor . . . abstract and remote." *Id.*, at 692. This conclusion, drawn against both common sense and the allegations of plaintiffs, simply does not bear up under scrutiny. *See generally* LARRY MAKINSON, SPEAKING FREELY: WASHINGTON INSIDERS TALK ABOUT MONEY IN POLITICS (2d ed. 2003) (retired Congresspeople admit large contributors' disproportionate access and influence). Similarly, in *Kruse*, a panel majority refused to consider evidence proffered by the City of Cincinnati to justify its campaign spending limits because it concluded such limits were *per se* unconstitutional under *Buckley*. Like the other cases cited by the district court, these decisions simply represent refusals to address any evidence of the debasement of the franchise. Such refusal conflicts with both the rules of procedure and the duty of the Judicial Power to protect functional political equality. *See* § B, *infra*.

In asserting that no *Adams* plaintiff could "conceivably" be "stripped of his right to vote or of access to the ballot" by operation of the BCRA, the district court also erred by impermissibly folding its own factual conclusion regarding ballot access into a legal statement that is plainly at odds with this Court's own precedent. *McConnell*, Slip Op. at 340. This Court's decisions regarding ballot access, vote dilution, and filing fees establish that the right to vote may indeed be abridged even when no one is prevented from casting a ballot. *See, e.g., Reynolds v.*

Sims; Baker v. Carr; Bullock v. Carter; *Morse v. Republican Party of Virginia; Bush v. Gore, supra.* Whether or not the *Adams* Appellants have meaningful access to the ballot is a complex question that may not be determined in the absence of actual fact-finding. It was clear, reversible error for the district court to prejudge this factual question.

The district court also erroneously concluded that any injury suffered by the *Adams* Appellants would not be fairly traceable to the BCRA. Slip Op. at 340. This conclusion defies common sense and conflicts with other decisions that have confirmed the standing of parties whose competitive chances were injured by electoral regulatory regimes. *See, e.g., Vote Choice v. DiStefano*, 4 F.3d 26, 36 (1st Cir. 1993); *Fulani v. League of Women Voters Education Fund*, 882 F.2d 621, 626 (2d Cir. 1989); *International Ass'n of Machinists v. Federal Election Comm'n*, 678 F.2d 1092, 1099 (D.C. Cir. 1982); *see also Becker v. Federal Election Comm'n*, 230 F.3d 381, 388 (1st Cir. 2000) ("one who challenges a governmental action may not be denied standing merely because his challenge in a sense stems from his own choosing"). Congress dealt incumbent members and their financial patrons a loaded hand in the BCRA. This legislation will directly cause the costs of electoral competition to skyrocket, thereby extinguishing the opportunity for non-wealthy voters to place persons who might represent them on the ballot. *Compare Terry v. Adams*, 345 U.S. at 481 (private citizens cannot constitutionally deprive a discrete minority of their right to participate in "any 'part of the machinery for choosing [elected] officials'" even when the state does not control such private conduct) (Clark, J., concurring)); *Bullock v. Carter*, 405 U.S at 143 (a financial burden creating

"barriers to candidate access to the ballot . . . tend[s] to limit the field of candidates from which voters might chose").[7] The exclusion of non-wealthy voters from meaningful electoral competition is traceable to the BCRA and the flood of electoral spending it threatens to release.

This Court has stressed the importance of evaluating the operation campaign finance regulations in light of "actual political conditions". *See, e.g., Federal Election Comm'n v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 443-462 (2001) ("*Colorado Republican*"). Precisely because "the right of suffrage can be denied" through complex schemes of debasement or dilution, *Bush v. Gore, supra*, courts must perform a thorough review of all the relevant facts with a common-sense sensitivity to actual political conditions that give rise to the controversy at issue. *See, e.g., Bullock*, 405 U.S. at 143-44 (finding it "essential to examine in a realistic light the extent and nature of [the] impact" of filing fees on voters and concluding that "[w]e would ignore reality were we not to recognize that this system falls with unequal weight on voters, as well as candidates, according to their economic status"). The district court utterly failed to review the facts with the requisite scrutiny.

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[7] The traceability conclusion below appears analytically indistinguishable from the discredited premise that reliance of free markets constitutes government neutrality. This notion, dating to *Lochner v. New York*, 198 U.S. 45 (1905), has been supplanted by the understanding that existing distributions of wealth can result as much from government decisions not to act as from regulation. *See* MORTON HOROWITZ, THE TRANSFORMATION OF AMERICAN LAW; 1870-1960 (1992); *see also* Cass R. Sunstein, *Political Equality and Unintended Consequences*, 94 Col. L. Rev. 1390, 1397 (1994). The BCRA structures the 'free market' distribution of resources available to wealthy candidates, and by extension, imposes a competitive burden on those candidates whose constituents have no substantial wealth.

Those facts, a portion of which are reproduced in the Adams Appellants' Appendices to their Jurisdictional Statement before this Court, paint a clear picture of electoral lockout. To claim that they fail to allege a concrete injury to the right to vote, one would have to believe that a non-wealthy candidate could amass funds from her non-wealthy constituents sufficient to mount a competitive campaign against a well-funded opponent. The facts adduced by the *Adams* Appellants show that such a scenario is delusional. The BCRA's raised contribution limits will establish an electoral system where wealthy donors effectively pre-select all the candidates who will appear on ballots.

The decision below thus stands in troubling contrast to the judiciary's long-standing willingness to protect the rights of wealthy citizens and corporations to spend vast sums directly, and indirectly, on political speech. *Buckley* and its progeny announce a quite familiar hierarchy of judicial scrutiny for electoral spending, according some uses of money more protection than others based upon the "importance of the 'political activity at issue' to effective speech or political association." *Federal Election Comm'n v. Beaumont*, 539 U.S. __, 71 U.S.L.W. 4451, 4455 (2003) (citing *Federal Election Comm'n v. Massachusetts Citizens for Life,* 479 U.S. 238, 259 (1986); *Colorado Republican*, 533 U.S. at 440-42; and *Nixon v. Shrink*, 528 U.S. at 386-88). When the Courts have the authority and duty to strike down congressional attempts to regulate political spending because those regulations make political association ineffective for those who can spend, must they not also have the authority and duty to review congressional regulations that render "effective speech and political association" all but impossible for those who cannot? Indeed, it is difficult to ascribe any substantive meaning at all to the concept of "*effective* speech or political association" if that right is not shared by all, because the contrary proposition – that the right to effective speech is only enjoyed by those citizens wealthy enough to exercise it – so plainly undermines the purpose of the Constitution. *See*

§ B, *infra*. By closing the courthouse door before even the most cursory consideration of the *Adams* Appellants' factual allegations, the decision below inescapably leads to the conclusion that the judiciary will only defend the 'effective speech and political association' of voters and candidates who have access to money.[8] This Court must not allow this implication to stand. Because the district court's cursory conclusion that non-wealthy plaintiffs have no legally protected interest in meaningful political participation directly refutes this Court's long-standing determination to protect the meaning of the franchise, it must be reversed.

B. The decision below is plainly at odds with the Framers' intent that the Constitution establish elections based upon political equality, their disavowal of any property qualifications on the right to vote or hold office, and their expectation that the Judicial Power would address all cases arising under the Constitution and laws of the United States.

The proposition that non-wealthy citizens have no "legally protected interest" in the meaningful exercise of the franchise is manifestly contradicted by evidence of the Framers' contrary intention. Defending the proposed Constitution from all manner of objection, the authors of the Federalist Papers turned time and time again to the

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[8] Incumbents in Congress confirm that fundraising is indispensable to mounting an *effective* campaign and recognize its deleterious effects on the body politic: "The influence of special interests and the enormous amount of money required to effectively run a modern political campaign have created a rift between the Congress and the American people." 147 CONG. REC. S3239 (daily ed. April 2, 2001) (statement of Sen. Nelson).

Accordingly, the Framers' repeated insistence that Congress would represent the voice of the People indicates their clear intent that the Constitution establish and guarantee an electoral system founded on functional political equality. *Accord Gray v. Sanders*, 372 U.S. at 380-81 (noting "[t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments").

Much of the Federalists' defense of the proposed order was devoted to reassuring doubters that the new government could not devolve into oligarchy nor revert to monarchy. THE FEDERALIST NO. 57 (Alexander Hamilton or James Madison) ("The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation"). The Framers' repeated assurance that our government would represent the entire body of the people was more than a rhetorical ploy; it was instead the logical linchpin of their arguments in support of the legitimacy of the proposed Union. Though convinced "that the federal Senate [would] never be able to transform itself, by gradual usurpations, into an independent and aristocratic body", the Framers' believed "that if such a revolution should ever happen from causes which the foresight of man cannot guard against, the House of Representatives, with the people on their side, will at all times be able to bring back the Constitution to its primitive form and principles. Against the force of the immediate representatives of the people, nothing will be able to maintain even the constitutional authority of the Senate, but such a display of enlightened policy, and attachment to the public good, as will divide with that branch of the

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necessary for the intelligent deliberation that self-government requires).

will of the People, expressed through their representatives in Congress, as the ultimate line of defense against corruption of the proposed government. Most importantly, the Framers insisted that, in order to perform its Constitutional function in a system of checks and balances, the voice of the People must be the voice of the "entire body of the People" and not just some favored class. THE FEDERALIST NO. 63 (Alexander Hamilton or James Madison). In defense of the republican form of representative democracy, James Madison stressed that "[i]t is ESSENTIAL to such a government that it be derived from the great body of the society, not from an inconsiderable proportion, or a favored class of it; otherwise a handful of tyrannical nobles, exercising their oppressions by a delegation of their powers, might aspire to the rank of republicans, and claim for their government the honorable title of republic." THE FEDERALIST NO. 39 (James Madison) (emphasis in original).[9] This "essential" policy *requires* that all citizens have a meaningful and equal opportunity to seek representation in government; without functional political equality, republican government is logically impossible.[10]

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[9] *See also* THE FEDERALIST NO. 57 (Alexander Hamilton or James Madison) ("Who are to be the electors of the federal representatives? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States."); *see also* JAMES MADISON, 14 THE PAPERS OF JAMES MADISON 197 (Robert A. Rutland *et al.* eds., 1983) ("establishing political equality among all" is the primary remedy to political evils).

[10] *See* J. Skelly Wright, *Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?*, 82 Colum. L. Rev. 609, 625 (1982) (Political equality is the "cornerstone of American democracy"); JOHN RAWLS, A THEORY OF JUSTICE, 11-19, 205-07, 221-28 (1971) ("fair opportunity to take part in and to influence the political process" is a precondition of constitutional democracy); A. MEIKLEJOHN, FREE SPEECH AND ITS RELATION TO SELF-GOVERNMENT 10-11, 23 (1948) (some regulation of political speech in the name of political equality is

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legislature the affections and support of the entire body of the people themselves." THE FEDERALIST NO. 63 (Alexander Hamilton or James Madison). If, on the contrary, through 'causes the which the foresight of man cannot guard against,' the 'entire body of the people' are not in fact represented in Congress, the major pillar in the Framers' logic, and thus the legitimacy of our experiment in self-government, collapses.

Broad and equal political rights were deemed necessary to cure the inevitable evils of "faction" and "the superior force of an interested and overbearing majority". *See, generally,* THE FEDERALIST NO. 10 (James Madison). More importantly, the Framers explicitly and repeatedly identified *diversity of interest* as an essential curative and prophylactic force in republican self-government. "There is sufficient diversity in the state of property, in the genius, manners, and habits of the people of the different parts of the Union, to occasion a material diversity of disposition in their representatives towards the different ranks and conditions in society. . . . The House of Representatives being to be elected immediately by the people, the Senate by the State legislatures, the President by electors chosen for that purpose by the people, there would be little probability of a common interest to cement these different branches in a predilection for any particular class of electors." THE FEDERALIST NO. 60 (Alexander Hamilton). *See also* THE FEDERALIST NO. 10 (James Madison) ("Does [the advantage of the republican form] consist in the greater security afforded by a greater variety of parties, against the event of any one party being able to outnumber and oppress the rest? In an equal degree does the increased variety of parties comprised within the Union, increase this security. Does it, in fine, consist in the

greater obstacles opposed to the concert and accomplishment of the secret wishes of an unjust and interested majority?").[11] By arguing that the security of individual rights is dependent upon representation in government of a multiplicity of interests, the Framers expressed an unmistakable intent that elections be functionally open to all.

The Framers also generally warned that aggregations of wealth pose a serious threat to the proper function of elections in republican government. Not only did the Federalist authors inveigh against "the intrigues of the ambitious . . . the bribes of the rich" and "the vicious arts by which elections are too often carried", they also recognized that "the most common and durable source of factions has been the various and unequal distribution of property." THE FEDERALIST NO. 10 (James Madison). To fend off the charge that the new government would only serve the interests of the wealthy, the Federalist authors specifically relied on the fact that the Constitution would not countenance any property qualifications on the right to vote or hold office:

> The truth is, that there is no method of securing to the rich the preference apprehended, but by prescribing qualifications of property either for those who may elect or be elected. But this forms no part of the power to be conferred upon the national government. Its authority would be expressly restricted to the regulation of the TIMES, the PLACES, the MANNER of elections. The

[11] *See also* THE FEDERALIST NO. 51 (Alexander Hamilton or James Madison) ("Different interests necessarily exist in different classes of citizens. Whilst all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.")

> qualifications of the persons who may choose or be chosen . . . are defined and fixed in the Constitution, and are unalterable by the legislature.

THE FEDERALIST NO. 60 (Alexander Hamilton).[12] The Framers believed that a Constitution which ensured the opportunity for representation to citizens of all classes was necessary to withstand the evils of faction, forestall the tyranny of a powerful majority, and prevent the reversion to oligarchy. Elections free from property qualifications were a necessary, explicit premise of this belief.

While the promoters of our Constitution claimed that the diversity of the People represented in our elections would prevent government from falling under the sway of the "wealthy and well-born", uniform and overwhelming evidence now shows that this diversity no longer obtains. *See* Jamin B. Raskin & John C. Bonifaz, *The Wealth Primary: Campaign Fundraising and The Constitution*, Ch. § 3 (visited July 2, 2003) <http://www.opensecrets.org/pubs/law_wp/wealth06.htm> ("millionaires are over-represented in the House by a factor of more than 3,000 percent and in the Senate by a factor of more than 5,000 percent"); JOHN GREEN, PAUL HERRNSON, LINDA POWELL & CLYDE WILCOX, JOYCE FOUNDATION OF CHICAGO, INDIVIDUAL CONGRESSIONAL CAMPAIGN CONTRIBUTORS: WEALTHY, CONSERVATIVE – AND REFORM MINDED (1998) (95% of those who make large contributions are white; 81% are male; 81% report incomes over $100,000). The Framers' faith in the enduring diversity of our representative bodies now

[12] While elsewhere, in defense of the federal power of taxation, Hamilton conceded the impossibility of having every possible "occupation" and class directly represented by one of its members, he nonetheless argued that a power of taxation could present no opportunity for abuse when each of the various classes of society were represented in Congress by some "natural representatives" who shared and would guard that class's interests. *See, generally,* THE FEDERALIST NO. 35 (Alexander Hamilton).

rings hollow when measured against the debased nature of present electoral competition.

The authors of the Federalist Papers did not specifically anticipate how access to substantial wealth would itself become a functional prerequisite to meaningful electoral participation.[13] One may fairly conclude that such an idea was simply inconceivable – a conclusion buttressed by the specific denials in the Federalist Papers that such a "property qualification" could ever be imposed, given the clearly enumerated powers bestowed on the legislature in the regulation of elections. THE FEDERALIST NO. 52 (Alexander Hamilton or James Madison) ("Under these reasonable [qualifications of holding elective office set forth in the Constitution], the door of this part of the federal government is open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith."); THE FEDERALIST NO. 57 (Alexander Hamilton or James Madison) ("Were the objection to be read by one who had not seen the mode prescribed by the Constitution for the choice of representatives, he could suppose nothing less than that some unreasonable qualification of property was annexed to the right of suffrage; or that the right of eligibility was limited to persons of particular families or fortunes . . ."). In the present circumstance, when a flood of electoral spending bars non-wealthy citizens from meaningful entry into politics, persons whose political rights have been debased in this

[13] The electoral schemes explicitly mentioned by the Federalist authors as having potential to debase the franchise were essentially geographic, in the nature of the gerrymander and of strategic placement of polling places. *See, generally,* THE FEDERALIST NO. 60 and THE FEDERALIST NO. 61.

manner, like voters subject to an unconstitutional gerrymander, can not rely on the curative power of future elections to vindicate their rights. Incumbent legislators, who are by definition masters of the fundraising system, undeniably benefit from the raised BCRA limits, which facilitate a lockup of the electoral process. *See* section II, *infra*; *see also* Daniel R. Ortiz, *Federalism, Reapportionment and Incumbency: Leading the Legislature to Police Itself*, 4 J.L. & POL. 653, 675 (1988).[14]

Non-wealthy citizens thus have no recourse but to the judiciary to seek vindication of their Constitutional right to meaningful electoral participation. Given the self-evident futility of seeking relief from a wealth-based barrier to entry at the ballot box,[15] it is essential that this Court acknowledge its duty to defend the Constitutional order contemplated by the Framers and exercise jurisdiction over the controversy raised by the *Adams* Appellants. Such judicial review of unconstitutional legislation is both proper and necessary. U.S. CONST., Art. III, § 2; *Marbury v. Madison*, 1 Cranch 137 (1803); *Reynolds v. Sims*, 377 U.S.

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[14] That the raised limits may also benefit some newcomers does not mitigate the exclusionary effects of augmented electoral spending; successful newcomers, of necessity, will arise only from the ranks of those well-connected to established avenues of fundraising and to the few, wealthy citizens who have the capacity to be big-time donors.

[15] "Malfunction occurs when the process is undeserving of trust, when (1) the ins are choking off the channels of political change to ensure that they will stay in . . . and the outs will stay out, or (2) though no one is actually denied a voice or a vote, representatives beholden to an effective majority are systematically disadvantaging some minority out of simple hostility or a prejudiced refusal to recognize commonalities of interest, and thereby denying that minority the protection afforded other groups by a representative system. Obviously our elected representatives are the last persons we should trust with identification of either of these situations." JOHN HART ELY, DEMOCRACY AND DISTRUST 102-03 (1980); *see also* THE FEDERALIST NO. 81.

at 566 ("a denial of constitutionally protected rights demands judicial protection; our oath and our office require no less of us.").[16]

* * *

The Founders intended that our nation be a democracy in which an voter's right to participate was not gauged to his or her wealth. When the spiraling costs of electoral participation have made meaningful competition impossible for a substantial portion of the citizenry, the Court must conclude that an *essential* element of the design of the nation has been abandoned. That the People adopted our Constitution in reliance on the Framers' repeated assurance that the "electors [of the federal representatives would] be the great body of the people of the United States" is beyond cavil. THE FEDERALIST NO. 57 (Alexander Hamilton or James Madison). The raised contribution limits of BCRA put this fundamental guarantee of political equality under full assault. Those limits establish an effective lockup of the electoral process, favoring incumbents and the champions of that small portion of the electorate capable of contributing vast sums of money. The judiciary stands alone as the institutional actor empowered to preserve the central premise of political equality in our Constitutional order. For this reason, this Court cannot refuse to examine the facts proffered by the *Adams* Appellants, which reflect a fundamental threat to our republican form of government. The decision of the district

[16] "[T]here ought always to be a constitutional method of giving efficacy to constitutional provisions. . . . No man of sense will believe, that such prohibitions would be scrupulously regarded, without some effectual power in the government to restrain or correct the infractions of them. This power must either be a direct negative on the State laws, or an authority in the federal courts to overrule such as might be in manifest contravention of the articles of Union . . ." THE FEDERALIST NO. 80 (Alexander Hamilton).

court below regarding the justiciability of the *Adams* Appellants' claims must be reversed.

II. BY RAISING THE HARD MONEY CONTRIBUTION LIMITS IN THE BCRA, CONGRESS INSTITUTED AN UNCONSTITUTIONAL ENTRY BARRIER TO THE ELECTORAL MARKETPLACE.

By doubling the hard money limits and indexing them to inflation, Congress dismantled a necessary prophylactic against domination of the electoral marketplace by a minuscule number of the country's citizens. Because electoral competition now primarily involves financial struggle for the voting public's attention, it is proper for the Courts to analyze electoral competition by reference to the case law and scholarly literature describing the malfunction of economic markets. *See generally* JOHN HART ELY, DEMOCRACY AND DISTRUST (1980). As discussed above, a rights-based approach that focuses only on wealthy citizens' rights to "effective speech and political association" ignores a systemic malfunction in the electoral marketplace that strips our democracy of its legitimacy. Through BCRA's raised and ever-rising limits, Congress has facilitated the creation of massive political war chests, drawn from a small and select portion of the electorate. These war chests raise the cost of challenge to insuperable heights and erect a barrier to entry to the political marketplace, denying non-wealthy voters and candidates a meaningful opportunity to compete in the electoral arena.

Noting "the increasingly sophisticated ways, over the course of the twentieth century, that the two dominant parties managed to manipulate and capture the ground rules of political competition so as to freeze out serious challengers" and "lock up political institutions to forestall competition," commentators have rightly urged "the institution best positioned to destabilize these lockups, the United States Supreme Court, to develop a theoretical

framework that would enable effective judicial performance of this role." Samuel Issacharoff & Richard H. Pildes, *Politics as Markets: Partisan Lockups of the Democratic Process,* 50 STANFORD L. REV. 643, 644 (1998). Professors Issacharoff and Pildes recommend that courts "assess . . . reforms intensively to ensure they do not further entrench bipartisan political lockups." *Id.*, at 689; *see also* Michael J. Klarman, *Majoritarian Judicial Review: The Entrenchment Problem*, 85 GEO. L.J. 491, 537 (1997). "[W]hen interpreting the various constitutional provisions that protect self-government . . . the Court should construe those provisions against a background conception of democracy that recognizes the importance of competitive political markets to ensuring appropriately responsive representation. As part of that inquiry, the Court ought to focus on whether the process remains sufficiently open to challenge and reform, or whether the costs of mobilizing effective challenge have been raised so high as to leave the system insufficiently responsive." Issacharoff & Pildes, *supra*, at 673.

The elementary principles of antitrust law, which describe anticompetitive behavior and barriers to market entry, provide apt guidance in this inquiry. *See* PHILIP E. AREEDA, Herbert Hovenkamp & John L. Solow, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION, Volume IIA, ¶ 420 (1995) ("Entry Barriers Generally"). Antitrust policy abhors "exclusionary", "anti-competitive", and "predatory" practices that allow cartels and monopolists to keep potential competitors from entering the marketplace at all. The raised contribution limits in BCRA represent such an anti-competitive barrier because they perpetuate the entrenched power of Congressional incumbents and their patrons.[17] Congress'

[17] "Entry is especially likely to be deterred if it is a[n] . . . expensive process requiring specialized assets that would have little salvage value in the event of failure." Areeda, Hovencamp & Solow, at ¶ 420, n.6.

self-dealing in the BCRA represents a form of "horizontal agreement" among putative competitors to exacerbate dependence on big-money contributions, giving big contributors more exclusive access to elected representatives. Such horizontal agreements "are antitrust's most 'suspect' classification, and as a class provoke harder looks than any other arrangement." PHILIP E. AREEDA & HERBERT HOVENKAMP, FUNDAMENTALS OF ANTITRUST LAW § 19.03 (2002). Because the political marketplace is more susceptible to lockup than a purely economic model – there is no price mechanism to restrain exclusionary market power – this Court should subject the BCRA's raised limits to the strictest scrutiny.

Conduct that impairs rivals or raises their costs to create or facilitate the exercise of anticompetitive market power violates the antitrust laws and inflicts antitrust injury on an aggrieved competitor. *See, e.g., Eastman Kodak Co. v. Image Technical Servs.*, 504 U.S. 451 (1992); *Premier Elec. Constr. Co. v. NECA*, 814 F.2d 358, 368 (7th Cir. 1987) (Easterbrook, J.); Thomas Krattenmaker & Steven Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price*, 96 Yale L. J. 209 (1986). Similarly, in the context of mergers and cartels, "conduct that impairs a competitor's ability to act as a constraint on the market power of the merging firms is conduct that harms both the competitor and consumers – the precise sort of conduct that gives rise to antitrust injury in the sense contemplated by *Brunswick* [429 U.S. 477 (1977)] and *Cargill* [479 U.S. 104 (1986)]." Jonathan M. Jacobsen & Tracy Greer, *Twenty-One Years of Antitrust Injury: Down the Alley with Brunswick v. Pueblo Bowl-O-Mat*, 66 ANTITRUST L. J. 2 (1998). The BCRA's raised limits inflict such anti-competitive injuries.

Understanding the operation of wealth as an electoral barrier does not, however, require resort to the arcana of game theory or microeconomics. The *Adams* Appellants' factual presentation makes the futility of mounting a campaign against a well-funded opponent obvious. To

establish the operation of wealth as an entry barrier, the *Adams* Appellants need not prove an absolute, invariable correlation between spending and electoral success. Rather, they need only show that BCRA makes substantial fundraising a pre-requisite to meaningful competition.[18] Because the BCRA makes it substantially more difficult for a non-wealthy candidate to raise funds on the same order of magnitude as his or her opponent, that candidate stands no realistic chance of having his or her voice heard by the voting public. As one non-wealthy voter put it, "[i]t would be like fighting a fire with a cup of water." *Adams* Jurisdictional Statement, App. D, Exh. 25, Decl. of Carrie Bolton, ¶ 11.

To remedy legislation like the BCRA that produces a plainly unconstitutional electoral barrier, it is not necessary for the Court to devise an exact formula of how to achieve fully competitive elections. "As in so many areas of the law, it is far easier to identify dramatically anticompetitive practices than it is to specify precisely what optimal competition would look like. This is particularly characteristic of much of the constitutional law of politics. Without identifying an ideal theory of proper municipal boundary-line drawing, the Court was able to strike down grossly impermissible forms of manipulating such boundaries. *See Gomillion v. Lightfoot*, 364 U.S. 339 (1960). Without a full theory of equal voting power, the Court was able to identify impermissible vote dilution. *See White v. Regester*, 412 U.S. 755 (1973); *Whitcomb v. Chavis*, 403 U.S. 124 (1971). Without a worked-out vision of appropriate partisan factors in redistricting, the Court was able to hold partisan gerrymandering unconstitutional. *See Davis*

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[18] That rare winning candidates spent marginally less than their opponents has no bearing at all on the fact that accumulated wealth bars the non-wealthy from meaningful competition, because *those rare winning candidates who spent less still raised and spent substantial sums of money*.

v. Bandemer, 478 U.S. 109 (1986). So too here: Without a complete theory of optimal partisan political competition, the courts can do a far better job of recognizing grossly anticompetitive practices." Issacharoff & Pildes, *supra*, at 680-81.

In *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 658-59 (1990), this Court recognized that vast aggregations of wealth, amassed without relation to popular support for a particular idea, threaten to dominate and pervert the political process. The *Austin* Court "squarely acknowledged . . . that inequalities of private economic power tend to reproduce themselves in the political sphere and displace legitimate democratic governance." Stephen Loffredo, *Poverty, Democracy and Constitutional Law*, 141 U. PA. L. REV. 1277, 1285 (1993). While the *Austin* decision focused on the dangers of economic power amassed through the corporate form, unless one assumes that wealthy citizens achieved their wealth through popular support for their political ideas, there is no principled reason to conclude that non-corporate aggregations of wealth do not produce the same distorting and exclusionary effects on politics. Recently, in the context of advocacy corporations, this Court acknowledged that "political war chests may be amassed simply from [the aggregation of individual] members' contributions." *Beaumont*, 71 U.S.L.W. at 4455 (Slip Op. at 13, n. 6) (citation and internal quotation marks omitted). No matter their source, such war chests render politics a futile enterprise for citizens who do not have the support of wealthy donors. Congress' decision to facilitate the formation of these war chests by a minute portion of the electoral must be seen as an unconstitutional effort to undermine electoral competition and entrench a class of well-connected incumbents:

> By raising the hard money limits, the Senate voted to increase the amount of special interest money in politics and entrench candidates' dependence on a narrow, political, elite made up of wealthy individuals. That is not reform. The

> Senate also adopted an amendment to allow candidates facing self-financing opponents to raise even more big money. Again, this is a step backward and is blatant incumbent protection.

147 CONG. REC. S3256 (daily ed. April 2, 2001) (statement of Sen. Wellstone). By doubling the amount of money that wealthy individuals can directly spend on their preferred slate of candidates, the BCRA unmistakably favors incumbents and well-connected candidates. By raising the costs of challenge to insuperable heights, political insiders are thus able to lock up the "market for control". *See* Issacharoff & Pildes, *supra*, at 664-65.

The anticompetitive effects of massive fundraising injure both the excluded voters and the electoral system as a whole. "[D]emocracy is damaged when some groups of citizens have no or sharply diminished opportunity to appeal for their convictions because they lack the funds to compete with rich and powerful donors. People cannot plausibly regard themselves as partners in an enterprise of self-government when they are effectively shut out from the political debate because they cannot afford a grotesquely high admission price." Ronald Dworkin, *Free Speech and the Dimensions of Democracy,* in IF BUCKLEY FELL: A FIRST AMENDMENT BLUEPRINT FOR REGULATING MONEY IN POLITICS 78 (E. Joshua Rosencranz, ed. 1999). This Court must give effect to the Constitution's guarantee of political equality by ensuring a truly competitive electoral marketplace. Were the Court to ignore legislative rules that entrench the power of money in politics, it would close off the only avenue of redress for the vast majority of non-wealthy citizens and effectuate a tyranny of a minority wholly inimical to the Constitution. *Amicus* respectfully urges this Court to fulfill the duty of its oath and office by facing the overwhelming evidence of electoral malfunction.

CONCLUSION

For the foregoing reasons, the Court should find that the raised hard-money contribution limits set forth in sections 304, 307, and 319 of the BCRA violate the Due Process Clause of the Fifth Amendment.

Respectfully submitted,

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