No. 02-0784

In The Supreme Court of the United States

CITY OF AKRON AND JOHN V. FRANK, MARCO SOMMERVILLE, JOHN W. VALLE, ROBERT G. KONSTAND, GERALD HOLLAND, NANCY HESLOP, AND CHARLES WALKER,

Petitioners,

vs.

BRUCE KILBY, MIKE PARSONS, PATRICIA LONGVILLE, GREGORY D. COLERIDGE, AND "YES ON ISSUE 11 CAMPAIGN,"

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Did the Sixth Circuit correctly determine that the City of Akron's limits on the amounts that donors may contribute to candidates for municipal office, and related campaign finance disclosure requirements, are constitutional under the First Amendment?

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I. STATEMENT OF THE CASE

In November 1998, voters in the City of Akron overwhelmingly approved a ballot initiative, known as Issue 11, that established a variety of campaign finance regulations for municipal campaigns, including limits on the amounts that donors may contribute to candidates for municipal office and a variety of disclosure and reporting requirements. The contribution limits are set at $300 for contributions to candidates for mayor or at-large city council seats and $100 for contributions to candidates for ward seats on the city council. Section 5(D), Charter Amendment, Petitioners' Appendix ("Pet. App.") 72a. Apart from the contribution limits, the only other provision of Issue 11 addressed in the instant petition is a disclosure requirement providing that candidates' financial reports must identify donors of campaign funds by including the donor's home address. Section 5(G)(1), Charter Amendment, Pet. App. 74a.

The 68% favorable vote on Issue 11 reflected public revulsion over revelations of "pay-to-play" politics that had emerged in the City of Akron. The record shows that, prior to adoption of the contribution limits, persons and businesses seeking contracts with or other favorable treatment from the City had made large campaign contributions to city officeholders in circumstances strongly suggestive of corruption.

For example, an affidavit by Mike Parsons, a former member of the Akron City Council, recounts how, in the fall of 1997, he was offered a $1,000 cash contribution by Mike Lampers, Sr., who owned an oil and gas company that frequently sought to drill oil wells in Akron. Mr. Parsons refused the contribution, saying he would accept

up to a $100 contribution but would feel compromised by a $1,000 contribution. A few months later, however, on the day of a City Council vote on one of Lampers' projects, another City Council member, Ernie Tarle, approached Mr. Parsons in the men's room at City Hall and handed Mr. Parsons an envelope containing a large amount of cash. Mr. Tarle told Mr. Parsons that the envelope was from Mike Lampers, Jr. (Lampers' son) and Everflow, another company interested in the oil drilling project. R. 63, Evidentiary Appendix, Exhibit E, Affidavit of Mike Parsons ("Parsons Affidavit")[1].

Mr. Parsons rejected the attempted "contribution" and immediately advised the City Council president, John Valle, of this shocking incident. Mr. Valle proceeded to hold the vote on the oil well anyway. Mr. Tarle subsequently stood trial on bribery charges and was recalled from office. R. 63, Exhibit E, Parsons Affidavit; *see also* R. 63, Exhibit D, Affidavit of Bruce Kilby ("Kilby Affidavit"); R. 64, Exhibit U (containing news article on incident). Mr. Valle, the City Council president, is one of the plaintiffs in this case.

The affidavits of Mr. Parsons and another former Akron City Council member, Bruce Kilby, document that this incident was only the most blatant example of a corrupt climate of "pay to play" that had become an unfortunate

[1] "R.__" refers to the numbered Record Entries in the District Court's docket sheet for this case. R. 63 and R. 64 are the two volumes of the Evidentiary Appendices filed in the District Court by the Respondents in connection with their opposition to the plaintiffs' motion for summary judgment. Each of these volumes consists of multiple exhibits.

reality for companies seeking favorable consideration by the Akron City Council. *See also* R. 64, Exhibit U (newspaper articles describing contributions to City Council members from donors seeking favorable treatment from the City). A report by the Northeast Ohio American Friends Services Committee also reflects a strong correlation between large campaign contributions to city officeholders and awards of city contracts during the 1990s. R. 64, Exhibit M; *see* Pet. App. 3a. The public's disgust over the influence of contributions in Akron city government is reflected in the 2-to-1 margin by which the voters approved the charter amendment establishing the $300/$100 limits on campaign contributions and other reforms.

A group of Akron City Council members and their supporters filed a complaint in December 1998 seeking to invalidate most of the provisions of Issue 11, including the limits on campaign contributions and the disclosure requirements applicable to contributors. The City of Akron was named as the defendant. However, the City of Akron's Legal Department, instead of defending the constitutionality of the City Charter, joined the plaintiffs in arguing that the contribution limits and other requirements should be struck down, stipulating to the entry of a preliminary injunction against most of the substantive provisions of Issue 11. Pet. App. 20a.

After the District Court granted the stipulated injunction, two groups of intervenors sought and were granted leave to intervene as defendants: Mike Parsons, Bruce Kilby, and Patricia Longville ("Parsons Intervenors") and Gregory D. Coleridge and the Yes on Issue 11 Campaign ("Coleridge Intervenors"). Pet. App. 20a. Mike Parsons and Bruce Kilby are former City Council members who supported Issue 11 because of their observations of the damage to the

political process caused by unlimited campaign contributions and lack of full public disclosure of campaign financing in Akron. R. 63, Exhibits D, E to Evidentiary Appendix (Parsons and Kilby Affidavits). Patricia Longville has resided in Akron for over 25 years and similarly supported Issue 11 because of her observations of the corrupting influence of campaign contributions in Akron politics. R. 63, Exhibit F (Affidavit of Patricia Longville). Greg Coleridge, through his work with the Northeast Ohio American Friends Service Committee, has helped analyze and report on patterns of campaign contributions in Akron campaigns, and worked to support the grassroots reform efforts that led to the Yes on Issue 11 Campaign. R. 63, Exhibit A (Affidavit of Greg Coleridge). Finally, the Yes on Issue 11 Campaign is the campaign committee formed to support adoption of Issue 11. All of these intervenors supported the enactment of Issue 11 and have defended the constitutionality of the contribution limits and disclosure requirement at issue here throughout the subsequent course of the litigation.

With respect to the provisions of Issue 11 at issue here – the contribution limits and home address disclosure requirement – the plaintiffs, joined by the City of Akron, moved for summary judgment on June 25, 1999.[2] The plaintiffs' motion was unsupported by any affidavits, exhibits, or documentary evidence of any kind. The plaintiffs and the City argued that the contribution limits and

[2] Certain provisions of Issue 11, including Sections 5(B), (E), (F), and (I), were struck down on a motion for partial summary judgment made earlier in the case, Pet. App. 21a, and the defendant-intervenors did not appeal the District Court's ruling as to those provisions.

disclosure requirement were unconstitutional as a matter of law and opposed the defendant-intervenors' request for factual discovery.

The defendant-intervenors responded to the motion for summary judgment by filing two substantial evidentiary appendices. R. 63 & R. 64; *see* Pet. App. 24a. These appendices included, among other things, affidavits from current and former City Council members and other politically active individuals (R. 63, Exhibits A-F); reports analyzing patterns of contributions to candidates for municipal office and the award of city business to donors (R. 63, Exhibit G and R. 64, Exhibit M); campaign finance disclosure statements filed by various candidates (R. 64, Exhibits N-R); and newspaper articles describing allegations of corruption and undue influence stemming from contributions to city campaigns (R. 64, Exhibit U).

The District Court granted the plaintiffs' and City's motion for summary judgment on December 2, 1999, ruling that the challenged provisions "pose an unconstitutional burden on political speech and association." Pet. App. 33a. The District Court acknowledged that Akron's contribution limits served the compelling governmental interest in deterring corruption and the appearance of corruption, Pet. App. 30a-32a, and agreed that "a relatively small contribution to a local campaign could create a substantial likelihood of corruption." Pet. App. 37a.

Despite the substantial justification for the contribution limits, the District Court nevertheless ruled that the limits were unconstitutional because they had "not been tailored to minimize the chilling effect on political expression." Pet. App. at 42a. Because the plaintiffs submitted no specific evidence that the contribution limits would

adversely affect candidates' ability to run effective campaigns in Akron, the District Court based its analysis of narrow tailoring instead on several lower court decisions in other jurisdictions (primarily within the Eighth Circuit) that had struck down a variety of campaign contribution limits. Pet. App. 38a-41a. All of these lower court decisions, like the District Court's decision itself, predated this Court's January 2000 decision in *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377 (2000), in which this Court upheld a limit of $1,000 on contributions to candidates for statewide office in Missouri.

With respect to the disclosure requirements, the plaintiffs' complaint did not allege that any of the plaintiffs were deterred from making or receiving contributions because of the requirement that donors' home addresses be included on candidates' financial disclosure forms, nor was any such evidence presented on the summary judgment motion. The District Court nevertheless ruled that the disclosure requirement violated the First Amendment because it could deter some contributors from making contributions. Pet. App. at 46a.[3]

On appeal, the Sixth Circuit reversed and ruled that the challenged contribution limits are fully constitutional

[3] The District Court also struck down Section 5(C) of the charter amendment, which prohibits cash contributions in excess of $25, but the Sixth Circuit reversed on that issue, Pet. App. 9a, and Petitioners do not seek review of the Sixth Circuit's ruling by this Court. Petitioners also have dropped their challenge to Section G(2) of the charter amendment, which requires disclosure of contributors' primary employer for contributions of $50 or more, and which was upheld by both the District Court and the Sixth Circuit. Pet. App. 10a-11a. In describing the rulings of the District Court and Sixth Circuit, Respondents have confined their discussion to those aspects of the rulings still at issue in the petition.

under this Court's holdings in *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam) and *Shrink*. As the Sixth Circuit observed, these decisions establish that limits on the size of contributions do not significantly impinge upon the contributor's freedom of association, Pet. App. at 6a. The Sixth Circuit recognized that, like the contribution limits upheld in *Shrink*, Akron's contribution limits could not be judicially invalidated absent proof that the limits are "so radical in effect as to render political association ineffective, drive the sound of the candidate's voice below the level of notice, and render contributions pointless." Pet. App. 7a (quoting *Shrink*, 528 U.S. at 397) (emphasis omitted). Because the evidence utterly failed to demonstrate that Akron's contribution limits would have any such impact on municipal campaigns, the Sixth Circuit rejected the plaintiffs' First Amendment challenge. As the Court noted, the contribution limit

> does not inhibit candidates from accumulating substantial war chests of campaign money, but it does require them to broaden the number of contributors. They may no longer rely on a small number of large donors who want city contracts or other types of political largess. The restriction on contributions clearly achieves the significant objective of the citizens of Akron in limiting the appearance and the reality of corruption in the form of *quid pro quo* agreements and undue political influence exercised by large contributors. At the same time, the limit does not render contributions pointless or make political association ineffective because each candidate has an ample opportunity to raise significant capital to win a local election.

Pet. App. at 8a.

The Sixth Circuit also reversed the District Court's ruling striking down the requirement of including donors' home addresses in candidates' financial reports filed with the Summit County Board of Elections. As the Sixth Circuit noted, contributor disclosure provisions "serve a significant governmental interest in providing an accountability mechanism to track campaign donors and safeguard against corruption." Pet. App. at 10a. The Court also noted that voters' home addresses are already a matter of public record in Ohio because they are required for voter registration. Pet. App. at 10a. *See* Ohio Rev. Code Ann. §§ 3503.13(B), 3503.26(A) (West 2002).

One judge dissented from the panel majority's rulings on both the contribution limits and home address disclosure requirement. Pet. App. 12a-17a. The dissenting judge, like the District Court, relied on pre-*Shrink* decisions from lower courts in concluding that Akron's limits were unconstitutional, Pet. App. 15a, while failing to cite any of the post-*Shrink* decisions by lower courts that have uniformly upheld such contribution limits.

The Sixth Circuit denied plaintiffs' and the City's petition for rehearing with suggestion for rehearing en banc, with one dissent. Pet. App. 61a-69a.

II. REASONS FOR DENYING THE PETITION

The petition presents no issue meriting exercise of this Court's certiorari jurisdiction. The Sixth Circuit correctly recognized that, under this Court's decision upholding Missouri's limits on campaign contributions in *Nixon v. Shrink Missouri Gov't PAC*, Akron's contribution

limits are constitutional as well. The District Court decision invalidating Akron's contribution limits had been issued prior to and without benefit of this Court's controlling decision in *Shrink*.

The Sixth Circuit's decision also is fully consistent with decisions in other circuits. Indeed, every lower federal court that has examined limits on individual campaign contributions since the date of the *Shrink* decision has upheld the constitutionality of the challenged limits. *See infra* at 12-13. In arguing that a conflict exists, Petitioners rely solely on pre-*Shrink* decisions that are no longer good law.

Finally, the challenged disclosure requirement is fully constitutional under *Buckley* and a long line of cases recognizing the compelling governmental interests served by disclosure relating to campaign donations. Like the Sixth Circuit's decision upholding the contribution limits, the decision upholding the disclosure requirement does not conflict with any decisions of other circuits. Accordingly, the petition for writ of certiorari should be denied.

A. Certiorari Is Unwarranted Because the Sixth Circuit Faithfully Applied this Court's Precedents and No Circuit Conflict Exists.

The Sixth Circuit decision upholding Akron's limits on contributions to candidates for city office is entirely consistent with *Buckley v. Valeo*, which upheld limits on contributions to federal candidates, and *Nixon v. Shrink Missouri Gov't PAC,* which upheld Missouri's limit on contributions to statewide candidates. Both these decisions recognize that limits on contributions to candidates

are justified by the compelling governmental interest in deterring corruption and its appearance, *Buckley,* 424 U.S. at 25-28, *Shrink,* 528 U.S. at 387-390, and pointedly warn that courts have no "scalpel to probe" the amount at which a contribution limit should be set to achieve its purpose. *Buckley*, 424 U.S. at 30 (quotation and internal citation omitted); *see also Shrink*, 528 U.S. at 904 ("dollar amount of the limit need not be 'fine tune[d]' ") (quoting *Buckley*, 424 U.S. at 30).

The *Shrink* decision, in particular, corrected a misimpression among some lower courts that the $1,000 contribution limit for federal elections approved in *Buckley* established a "constitutional minimum" which rendered lower limits inherently suspect. 528 U.S. at 397. Reversing an Eighth Circuit ruling which had placed an onerous burden on the state of Missouri to justify its limits, this Court ruled in *Shrink* that a limit on the size of campaign contributions does not unconstitutionally impinge on First Amendment rights absent a showing that the limit is "so radical in effect as to render political association ineffective, drive the candidate's voice below the level of notice, and render contributions pointless." *Id.*

Petitioners utterly failed to make any such showing in the court below. Plaintiffs below failed to file even a single affidavit asserting that Akron's limits on contributions would affect candidates' ability to run effective political campaigns in any way. They submitted no expert analysis nor any testimony by any fact witness stating that the contribution limits would impede candidates' ability to amass sufficient resources for campaigns for Akron city office. Thus, despite Petitioners' assertions about the impact of Akron's contribution limits, *see* petition at 23,

not a shred of evidence supporting these assertions is in the record.

To the contrary, the record evidence fully supports the Sixth Circuit's conclusion that Akron's $300/$100 limits for local elections are not different in kind from the $1,000 limits upheld for federal elections in *Buckley* or for statewide elections in Missouri in *Shrink*. Regarding City Council ward elections, the City has 10 wards, with total populations of roughly 21,700 each and eligible voter populations well below that. The Respondents' evidence established that an effective campaign for a ward seat in Akron can be run for $3,000 to $4,000. R. 63, Exhibits D & E (Parsons and Kilby Affidavits). Plaintiffs submitted no contrary evidence. Thus, with a $100 contribution limit, 30 or 40 contributions would be enough to fund a City Council ward campaign, even if the candidate puts in no money of his or her own. Accordingly, there is no cogent argument that the $100 limit for City Council ward elections would impede effective campaigns.

With respect to at-large elections in Akron, which include the mayor and three city council positions, the applicable contribution limit is $300. The record shows that the three winning at-large City Council candidates in Akron raised a combined total of $42,000 in the 1993 election and $155,000 in the 1997 election, the most recent elections preceding adoption of the ordinance. R. 63, Evidentiary Appendix, Exhibit G (report, "Follow the Money," published by Dollars and Democracy).[4] Thus, the

[4] Dollars and Democracy is a project sponsored by the Northeast Ohio American Friends Service Committee and the Diocesan Social Action Office of the Catholic Diocese of Cleveland.

average expenditures of the winning at-large candidates, when contributions were unlimited, ranged from about $14,000 to about $52,000 in those two elections. With contribution limits of $300 applicable to such elections, a candidate could raise similar amounts by obtaining donations from between 47 and 173 donors (again, assuming the candidate contributes no funds of his or her own). In a city of 217,000 persons, this clearly is not an insurmountable task.

Moreover, if a candidate wishes to spend more than these past spending patterns would suggest, he or she obviously is free to solicit $300 donations from additional donors. The contribution limit merely requires candidates to broaden their fundraising efforts beyond a tiny group of large donors who are likely to expect favorable treatment in return for their substantial contributions.[5]

Petitioners err in suggesting that the panel decision somehow conflicts with decisions in other circuits. To the contrary, since this Court's ruling in *Shrink* clarified the standards governing the constitutionality of limits on campaign contributions, every lower federal court addressing a challenge to limits on individual contributions to

[5] Of course, even if a contribution limit reduces the total amount of funds that a candidate can raise compared to prior years when contributions were unlimited, this does not convert the contribution limit into a limit on expenditures and does not render the limit unconstitutional. In *Shrink*, the evidence showed that fundraising for all statewide primaries in Missouri declined by almost 90% in the first election cycle after the challenged limits were adopted. 528 U.S. at 426 n.10 (Thomas, J., joined by Scalia, J., dissenting). This did not prevent the *Shrink* majority from concluding that the limits were not so radical in effect as to infringe the First Amendment rights of candidates or donors.

candidates has rejected the challenge and upheld the contribution limit. *See Montana Right to Life Assoc. v. Eddleman*, 306 F.3d 874 (9th Cir. 2002) (upholding Montana's limits of $400 per election for statewide candidates for governor and lieutenant governor, $200 per election for other statewide offices, and $100 per election for all other public offices, *see* Mont. Code Ann. § 13-37-216); *Daggett v. Comm. on Governmental Ethics and Elections*, 205 F.3d 445, 459 (1st Cir. 2000) (upholding Maine's limit of $250 per election for state legislative candidates); *Shrink Missouri Gov't PAC v. Adams*, 204 F.3d 838 (8th Cir. 2000) (upholding candidate contribution limits ranging from $275 to $1075 per election for Missouri legislative and statewide elections); *Landell v. Sorrell,* 118 F. Supp. 2d 459, 476-481 (D. Vt. 2000) (upholding Vermont's per-cycle limits of $400 on individual contributions to candidates for statewide office, $300 for state senate, and $200 for state house), *aff'd in relevant part, vacated in part on other grounds sub nom. Landell v. Vermont Public Interest Research Group,* 2002 WL 1846000 (2d Cir. August 7, 2002), *opinion withdrawn pending further proceedings before and amendment by the panel*, 2002 WL 31268493 (2d Cir. October 3, 2002); *Florida Right to Life, Inc. v. Mortham,* 2000 WL 33733256 (M.D. Fla. March 20, 2000) (upholding limit of $500 per election for all state offices, including statewide offices, in Florida). Clearly, the Sixth Circuit's decision upholding Akron's contribution limits for local elections places the Sixth Circuit squarely in line with post-*Shrink* holdings concerning candidate contribution limits in other circuits.[6]

[6] Indeed, Respondents know of only one lower court decision since *Nixon* that has struck down a candidate contribution limit of any kind.

(Continued on following page)

Despite the broad range of contribution limits that have been upheld in the wake of the *Shrink* decision, Petitioners attempt to argue that Akron's limits are somehow different in kind from all contribution limits upheld by the courts to date. This is belied by examining the cases cited above, which have upheld limits substantially similar to those adopted by Akron. In any event, there is no constitutional requirement that Akron be in exact lockstep with all other jurisdictions in choosing the level of its contribution limit. As the First Circuit noted in *Daggett*, "If contribution limits are permissible, differences in their level from state to state should reflect democratic choices, not court decisions." 205 F.3d at 457 (internal quotation omitted). If Montana, with a population of 902,195, may impose a contribution limit of $400 per election for statewide elections ($800 per election cycle), and Florida, with a population of 15,982,378, may impose a contribution limit of $500 per election for statewide elections ($1,000 per election cycle), and Vermont, with a population of 608,827, may impose a contribution limit of $400 per election cycle for statewide elections, then Akron,

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In *Landell v. Sorrell*, the District Court, while upholding Vermont's limits on individual and PAC contributions to candidates, ruled that the limits were too low as applied to political parties' contributions to candidates. 118 F. Supp. 2d at 487. However, none of the plaintiffs in this case is a political party, and the complaint did not allege that there is any constitutional distinction between the limits as applied to political parties and as applied to other entities, nor did Petitioners make any such argument in the Court below. *Cf. Daggett,* 205 F.3d at 452, 462 (rejecting facial challenge to $250 limit that applied to both individuals and political parties).

with a population of 217,074, may impose a contribution limit of $300 per election cycle for citywide elections.[7]

Petitioners erroneously rely upon pre-*Shrink* decisions, primarily from the Eighth Circuit, to assert that the Sixth Circuit's ruling is contrary to authority from other circuits. Pet. at 14, 30. This is the same case law relied upon by the district court, whose ruling preceded the *Shrink* decision. Pet. App. 38a-41a. The reasoning of these cases, like the reasoning of the District Court below, simply has not survived this Court's ruling in *Shrink*. *See Daggett*, 205 F.3d at 455 n.8 (noting that these cases are "of little value" in determining the constitutionality of a contribution limit after *Shrink*).[8]

In arguing that Akron candidates must remain free to accept large campaign donations of $1,000 or more, Petitioners ignore the substantial evidence of corruption or the appearance of corruption caused by such large donations in Akron. For example, the disgraceful attempt to hand cash to a City Council member in the men's room at City

[7] Official Census 2000 population figures for each state can be found at http://quickfacts.census.gov/qfd/ (visited December 18, 2002).

[8] In their petition for rehearing en banc before the Sixth Circuit, the Petitioners argued that the panel should not have ruled affirmatively that the contribution limits are constitutional because the intervenors did not file a cross-motion for summary judgment below. While they have not repeated that argument in their petition for writ of certiorari, it is worth noting that courts have discretion to order summary judgment for the non-moving party where, as in this case, the moving party has asserted there are no material facts in dispute and has urged the Court to decide the case as a matter of law. *See Trustees of the Michigan Laborers' Health Care Fund v. Gibbons*, 209 F.3d 587, 594-595 (6th Cir. 2000); *Fabric v. Provident Life & Acc. Ins. Co.*, 115 F.3d 908, 914-915 (11th Cir. 1997), *cert. denied,* 523 U.S. 1095 (1998).

Hall started out as an offer of a $1,000 "campaign contribution." *See supra* at 1-2. In 1999, newspaper reports showed that the amounts raised by candidates in a Democratic primary for an Akron City Council seat ranged from $1,065 to $5,895, yet some candidates had taken in donations as large as $1,000 – meaning that one large donor could fund either the entire primary campaign or a substantial portion of it. R. 64, Exhibit U (Akron Beacon Journal, January 5, 1999, "Candidates raise $13,000 for primary"). Additional newspaper articles in the record also describe large contributions from donors who sought favorable consideration for business projects from the City.[9]

In view of the evidence showing that larger campaign contributions had been used in a corrupt manner in Akron city politics, or in a manner creating at least the appearance of corruption, the lower limits approved by Akron voters in November 1998 clearly are closely drawn to serve the compelling governmental interest in deterring corruption and the appearance of corruption. As this Court stated in *Shrink*: "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." 528 U.S. at 390. The Sixth Circuit faithfully followed the teaching of *Shrink,* and all

[9] This Court and lower federal courts have consistently relied upon newspaper accounts concerning money in politics as evidence of a compelling state interest in addressing public concern about corruption and the integrity of government. *See, e.g., Shrink,* 528 U.S. at 393; *Daggett v. Comm. on Governmental Ethics and Elections*, 205 F.3d at 456-58.

lower courts to address similar issues since *Shrink*, in upholding Akron's limits on campaign contributions.

B. *FEC v. Beaumont* Has No Bearing on the Constitutionality of Akron's Ordinance.

Petitioners argue that, even if there is no conflict between the Sixth Circuit's decision and those of other courts, this Court's grant of certiorari in *Federal Election Comm'n v. Beaumont*, 278 F.3d 261 (4th Cir. 2002), *cert. granted,* No. 02-403 (November 18, 2002), somehow justifies a grant of certiorari in this case. This argument is without merit. *FEC v. Beaumont* raises a single narrow issue: whether the total prohibition on corporate contributions to federal candidates under the Federal Election Campaign Act, 2 U.S.C. § 441b, is unconstitutional solely as applied to North Carolina Right to Life, Inc., a non-profit, tax-exempt, political advocacy corporation. Even if this Court were to conclude in *Beaumont* that North Carolina Right to Life, because of its status as a non-profit advocacy organization, cannot be subjected to the *absolute ban* on making direct contributions to federal candidates that applies to for-profit corporations, that would not in any way call into question the constitutionality of overall *limits on the size* of contributions to candidates such as those enacted by the City of Akron. As noted above, the constitutionality of such limits was reaffirmed by this Court only two years ago in *Shrink,* and nothing in the *Beaumont* case calls that basic holding into question.

The additional suggestion that this Court should grant the petition in this case because of litigation pending in the United States District Court for the District of Columbia concerning the constitutionality of various

provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. No. 107-155, 116 Stat. 81 (2002), requires little comment. However important the issues presented in that litigation may be, they have not yet been addressed even by the lower court in that case, and they certainly do not establish any need for this Court's review of the decision of the Sixth Circuit in this case. Petitioners' vague suggestion that BCRA's ban on unlimited "soft-money" contributions to national political parties will somehow affect a "pool" of contributions being made to local candidates running for municipal office in Akron, which in turn will somehow affect the constitutionality of a basic limit on contributions in Akron municipal elections, *see* Pet. at 25-26, is an unpersuasive basis for a grant of certiorari in this case. Regardless of the resolution of the more novel issues presented by the BCRA legislation, local jurisdictions should be free to rely upon and enforce basic limits on the size of campaign contributions to candidates, especially when the constitutionality of such limits has so recently been reaffirmed by this Court in *Shrink*.

Further delay in implementing Akron's limits on campaign contributions is particularly unwarranted given that a municipal election will be held in Akron in November 2003, with primaries in September 2003. Akron citizens already have been forced to wait more than four years, encompassing two election cycles, for implementation of these very basic campaign finance regulations, due to the erroneous decision of the District Court below enjoining the limits. The pendency of other litigation over unrelated campaign finance provisions presents no justification for further delay in concluding this litigation.

C. The Contributor Address Requirement Is Constitutional and Presents No Issue Warranting Certiorari.

In *Buckley v. Valeo*, this Court upheld a variety of disclosure requirements applicable to federal election contributions, reasoning that disclosure serves several compelling governmental interests. 424 U.S. at 60-85. Under *Buckley* and its progeny, Section 5(G)(1) of the Charter Amendment, requiring candidates to list the names and home addresses of their contributors, is fully constitutional. Because many donors may share similar names, requiring candidates to report the addresses of contributors provides a means of better identifying donors, assuring that a particular contributor has not exceeded the maximum donation by making multiple contributions at different times, and following up on potential violations. *Cf. Buckley*, 424 U.S. at 68-69 (noting that disclosure requirements "are an essential means of gathering the data necessary to detect violations of the contribution limitations"). Disclosure of a contributor's residence also allows the public to monitor whether candidates are receiving a substantial portion of their contributions from donors who do not reside in the district or in the City of Akron, which may suggest that the candidate is unduly beholden to interests other than those of his or her constituents. *See* R. 63, Exhibit E (Parsons Affidavit). *Cf. Buckley*, 424 U.S. at 66-67 (noting that disclosure "provides the electorate with information 'as to where political campaign money comes from' " and that "[t]he sources of a candidate's financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitates predictions of future performance in office"). *Cf. Daggett,* 205 F.3d at 465-66 (upholding

variety of disclosure requirements for independent expenditures on political campaigns).

Petitioners argue that disclosure of a contributor's home address may deter individuals from contributing if they fear becoming the target of harassment or intimidation in their homes because of their contributions. Pet. at 28 (citing dissenting opinion of Boggs, J., Pet. App. at 64a: "the forced revelation of home addresses can be extremely chilling to people who may wish to contribute to candidates that may be broadly unpopular, or simply unpopular with particular powerful interests"). But, in an analogous context, *Buckley* considered and rejected concerns about the mere possibility of chill as a basis for granting blanket exemptions from disclosure requirements. In *Buckley*, minor political parties argued that FECA's contributor disclosure requirements (including a requirement of filing quarterly reports with the full name, mailing address, occupation, and principal place of business of contributors donating more than $100, *see* 424 U.S. at 63) were unconstitutional as applied to minor parties and independent candidates, because potential contributors were likely to be chilled by compelled disclosure of their identities. *Buckley* held that any such concerns about harassment or intimidation must be supported by specific evidence of a threat of harassment in an as-applied challenge to the disclosure provision. *Id.* at 68-74. While recognizing that "public disclosure of contributions to candidates and political parties will deter some individuals who might otherwise contribute," and may even "expose contributors to harassment or retaliation," *id.* at 68, this Court found that the governmental interests in disclosure outweighed these concerns. *Buckley* specifically noted that the record was insufficient to support the constitutional challenge

when it contained only the affidavits of several minor-party officials demonstrating that one or two persons had refused to make contributions because of disclosure concerns. *Id.* at 71-72.

Here, the record contains absolutely *no* evidence, in affidavit form or otherwise, that any plaintiff has reason to fear disclosure of his or her home address, nor that this requirement will deter any plaintiff from making a contribution. Similarly, it contains no affidavit or other evidence from any of the candidate-plaintiffs stating that he has any specific concern that his contributors will face harassment or intimidation because of the disclosure requirements. Even the complaint itself contains no such allegations. R. 25 (Amended Complaint). Since the bare theoretical possibility of chill or intimidation is insufficient to support a facial challenge to disclosure provisions under the reasoning of *Buckley,* the lack of any evidence or record on this issue alone establishes that Petitioners' First Amendment challenge must fail. *See also Herschaft v. New York City Campaign Finance Board*, 127 F. Supp. 2d 164, 169 (E.D.N.Y. 2000) (rejecting First Amendment challenge to requirement that candidate file reports identifying name and residential address of all contributors, when plaintiff submitted no specific evidence supporting his claim that contributors would be harassed).[10]

[10] Moreover, if the mere theoretical possibility of harassment arising from disclosure of a home address were sufficient to require facial invalidation of a disclosure requirement, the requirement of a mailing address (included in the FECA provision at issue in *Buckley*) presumably would be unconstitutional as well, since for most people their mailing address and home address are the same.

Equally important, the absence from this case of any plaintiff who has demonstrated (or even alleged) that he or she will be deterred from making or receiving a contribution because of the home address requirement defeats the plaintiffs' standing to raise this claim, and bars this Court from exercising Article III jurisdiction to determine the claim. *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561 (1992) (each element necessary to establish standing "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation").

Petitioners rely upon the opinion of Judge Boggs, who dissented from denial of rehearing *en banc.* The dissent, however, misapprehends the relevant authority concerning the constitutionality of disclosure requirements. The dissent cites *McIntyre v. Ohio Elections Bd.*, 514 U.S. 334 (1995), as bestowing constitutional protection on "completely anonymous political speech." Pet. App. 64a. But *McIntyre* did not strike down a requirement of disclosing the identity or address of contributors to a candidate's campaign. *McIntyre*, instead, struck down an Ohio provision prohibiting the anonymous distribution of campaign literature, which had been applied to prosecute an individual who distributed unsigned flyers opposing a school tax levy. *McIntyre* itself distinguished *Buckley*'s favorable treatment of the disclosure requirements in FECA by pointing out the *Buckley* Court was discussing "contributions to the candidate or expenditures authorized by the candidate or his responsible agent," rather than "the kind of independent activity pursued by Mrs. McIntyre." 514 U.S. at 354. *McIntyre* went on to state that "[r]equired disclosures about the level of financial support a candidate

has received from various sources are supported by an interest in avoiding the appearance of corruption that has no application to this case." *Id.*[11] Thus, even putting aside the problems of proof and standing identified above, the authorities on which the dissent and the Petitioners rely simply do not support Petitioners' challenge to a disclosure

[11] Lower courts also have recognized that *McIntyre*'s concerns about protecting anonymous "issue advocacy" do not invalidate disclosure requirements in the context of *candidate* campaigns. *See Adventure Communications v. Kentucky Registry of Election Finance*, 191 F.3d 429, 442-43 (4th Cir. 1999) (noting that *McIntyre* addressed disclosure requirements for "issue advocacy" rather than candidate expenditures, and does not invalidate reporting requirements imposed on broadcast media relating to advertising time sold to candidates); *Federal Election Comm'n v. Public Citizen*, 268 F.3d 1283, 1287-89 & n.8 (11th Cir. 2001) (holding that *McIntyre* does not invalidate a requirement that groups disclose whether campaign ads supporting or opposing a candidate were authorized by candidate); *Seymour v. Elections Enforcement Comm'n*, 255 Conn. 78, 762 A.2d 880 (Conn. 2000) (holding that *McIntyre* does not invalidate requirement that campaign advertisements in candidate elections must identify person who paid for advertisement), *cert. denied*, 533 U.S. 951 (2001).

The dissent also relies upon *Judicial Watch of Florida v. U.S. Dep't of Justice*, 102 F. Supp. 2d 6 (D.D.C. 2002). The case is inapposite. It holds only that the federal Freedom of Information Act did not require the U.S. Department of Justice, when responding to a third-party FOIA request for copies of correspondence with an independent prosecutor, to disclose addresses and telephone numbers of persons who had written to the prosecutor. It does not stand for the proposition that state or local governments are constitutionally *prohibited* from requiring disclosure of addresses of persons making financial contributions to candidates' campaigns. Finally, Petitioners' reliance on *Bloch v. Ribar,* 156 F.2d 673 (6th Cir. 1998), is also misplaced. *Bloch* holds that a sheriff's release to the press of the intimate, non-public details of a rape, in retaliation for the rape victim's criticism of the sheriff's department, may give rise to an actionable claim for violation of the rape victim's constitutional right of privacy. This holding has no application here.

requirement concerning direct contributions to candidate campaigns.

In any event, as a practical matter, Petitioners' alleged concerns about disclosure of home addresses are entirely illusory. Under Ohio law, the home address of anyone who registers to vote is a public record open to inspection and copying by any person. Ohio Rev. Code Ann. §§ 3503.13(B), 3503.26(A) (West 2002). If, as Petitioners concede, Akron may require the names of contributors to be disclosed, anyone truly bent on harassment could find a contributor's home address by examining voting records.[12] Further, if a citizen can be required to disclose his or her home address in a public record in order to vote, it defies common sense to argue that a citizen cannot be asked to provide such information when making a contribution – a form of political participation which certainly is not as fundamental as the right to vote itself.

[12] The record here entirely fails to disclose that there is some significant category of persons who desire to contribute to campaigns, but not to vote, or that within that already small category there is anyone who has a genuine fear of harassment flowing specifically from disclosure of his or her home address. The complaint does not allege that any plaintiff falls within this category.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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