No. 03-4077

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Minnesota Citizens Concerned for Life, Inc., David Racer, and
The Committee for State Pro-Life Candidates,

Plaintiffs-Appellants,

vs.

Douglas A. Kelley, Clyde Miller, Wil Fluegel, Sidney Pauly, Terri Ashmore and Robert Milbert in their capacities as Chair and members of the Campaign Finance and Disclosure Board; and Amy Klobuchar in her official capacity as County Attorney for Hennepin County, Minnesota,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

BRIEF OF *AMICUS CURIAE* NATIONAL VOTING RIGHTS INSTITUTE IN SUPPORT OF APPELLEES URGING AFFIRMANCE OF THE JUDGMENT BELOW

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INTERESTS OF *AMICUS CURIAE*[1]

Amicus National Voting Rights Institute is a non-profit organization dedicated to protecting the constitutional right of all citizens, regardless of economic status, to an equal and meaningful vote and to equal and meaningful participation in every phase of electoral politics. Through litigation and public education, the Institute works to ensure that those who do not have access to wealth are able to participate in politics on an equal and meaningful basis. Meaningful campaign finance regulation, such as that enacted by the state of Minnesota, enhances the ability of average citizens to participate fully in the political process.

Amicus in this brief addresses two issues raised in the appeal that are of broad importance to the state's ability to meaningfully regulate campaign finance.[2]

SUMMARY OF ARGUMENT

1. Minnesota's definition of "political committee," Minn. Stat. § 10A.01, subd. 27 (2002), comports exactly with the Supreme Court's teaching that groups may be regulated as political committees if their major purpose is the nomination or election of a candidate. *Buckley v. Valeo*, 424

[1] The parties have consented to the filing of this brief *amicus curiae.*
[2] *Amicus* agrees with the Appellees that the other provisions challenged in the appeal are constitutional.

U.S. 1, 79-80 (1967). The Appellants wrongly maintain that such groups may be regulated only if, in addition, their communications are shown to be express candidate advocacy. It is well-established that "major purpose" organizations may be regulated without regard to whether communications by the organizations constitute express or issue advocacy. *See McConnell v. Federal Election Comm'n*, __ U.S. __, 124 S.Ct. 619, 675 n. 64 (2003); *Jacobus v. Alaska*, 338 F.3d 1095, 1117 (9th Cir. 2003); *Federal Election Comm'n v. GOPAC, Inc*., 871 F.Supp. 1466, 1470 (D.D.C. 1994). It is only when the speaker is an individual or a group whose major purpose is *not* to influence elections that the nature of the communication is considered, and the distinction between express electoral advocacy and issue advocacy may come into play. *Buckley*, 424 U.S. at 79-80.

2. Minnesota's aggregate limit on contributions from political committees, political funds, lobbyists and large donors, Minn. Stat. § 10A.27, subd. 11 (2002), does not infringe the constitutional rights of donors. A contribution does not represent political speech by the donor. *See Buckley*, 424 U.S. at 21; *California Medical Ass'n v. Federal Election Comm'n*, 453 U.S. 182, 197 (1981). Even if the aggregate limit were to have the effect of barring a political committee or individual from contributing to a particular candidate, such donors would have substantial

other means of supporting and associating themselves with candidates, including independent expenditures and volunteer activity. *See Buckley*, 424 U.S. at 21; *Montana Right to Life Ass'n v. Eddelman*, 343 F.3d 1085, 1098 (9th Cir. 2003) ("*MRLA*"); *Gard v. Wisconsin State Elections Board*, 456 N.W.2d 809, 825 (Wis. 1990).

The aggregate contribution limit protects a vital state interest in avoiding the reality or perception of corruption caused by candidates' overall reliance on the largest donors. *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 391 (2000); *Buckley*, 424 U.S. at 21-22; *MRLA*, 343 F.3d at 1096 (9th Cir. 2003); *Gard*, 456 N.W.2d at 824; *Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637 at 648, 651 (6th Cir. 1997). Moreover, by preventing large donors from dominating the electoral process, contribution limits such as this enhance the ability of ordinary citizens to participate meaningfully in politics. "[S]uch restrictions aim to democratize the influence that money itself may bring to bear upon the electoral process. In doing so, they seek to build public confidence in that process and broaden the base of a candidate's meaningful financial support, encouraging the public participation and open discussion that the First Amendment itself presupposes." *Id*., 528 U.S. at 401 (Breyer, J., concurring, joined by Ginsburg, J.) (citations omitted).

ARGUMENT

I. A Group Whose Major Purpose is to Influence Candidate Elections May be Regulated Without Regard to Whether Particular Communications Constitute Express Advocacy.

The Appellants seek to impose a new requirement that states may regulate groups as political committees only if the groups *both* have as a major purpose the influence of candidate elections *and* engage primarily in express advocacy communications. This erroneously conflates the test for regulation of political committees with a distinct test for regulation of speech by individuals and groups other than political committees. The foundational *Buckley v. Valeo* decision permits the state to regulate as a political committee any group "the major purpose of which is the nomination or election of a candidate." *Buckley v. Valeo,* 424 U.S. 1, 79 (1976). Expenditures of such groups "can be assumed to fall within the core area sought to be addressed by Congress. They are, by definition, campaign related." *Id*. It is only when the speaker is an individual or a group whose major purpose is *not* to influence elections that the nature of the communication is considered, and the distinction between express electoral advocacy and issue advocacy may come into play. *Id*. at 79-80.

The distinction between issue and express advocacy stems from the *Buckley* Court's concern over the FECA provisions regulating groups or

individuals who might not be principally engaged in electoral advocacy. Section 434(e) of FECA required groups *other than* political committees and candidates to disclose contributions or expenditures other than direct candidate contributions. *Id*. at 74. The Court saw no problem with such disclosure requirements as applied to political committees, so long as political committees were construed to "only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate." *Id*. at 79. However, when the maker of the expenditure is "an individual other than a candidate or a group *other than* a 'political committee,'" the Court saw a risk of overbreadth in the FECA's language, and therefore limited the disclosure requirements to reach only funds used to expressly advocate the election or defeat of a clearly identified candidate. *Buckley*, 424 U.S. at 79-80 (emphasis added).

Thus *Buckley* held that "major purpose" organizations may be required to disclose *all* of their contributions and expenditures, irrespective of whether any *particular* contribution or expenditure was made for "express advocacy" or "issue advocacy." 424 U.S. at 78-79. *See also Federal Election Comm'n v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986) ("MCFL") (noting that if political committee's activities met "major purpose" test it would become subject to full panoply of regulations);

Richard L. Hasen, *The Surprisingly Complex Case for Disclosure of Contributions and Expenditures Funding Sham Issue Advocacy*, 48 U.C.L.A. L. REV. 265, 271 & n. 32 (December 2000) (noting that *Buckley* court found no vagueness problem under FECA § 434(e) with respect to candidates and "major purpose" organizations).

Confirming this application of the major purpose test, the Supreme Court recently upheld regulation of political parties based on their clear major purpose of influencing candidate elections, even though many party activities do not constitute express advocacy. *See McConnell v. Federal Election Comm'n*, __ U.S. __, 124 S.Ct. 619 (2003). This decision upholds a panoply of regulations barring the national political parties from receiving and spending "soft money," i.e. money not regulated as contributions and expenditures in federal elections under FECA. By definition, such funds are used for purposes other than express candidate advocacy, yet their regulation is permissible because of the intimate role of political parties in candidate elections. *See* 124 S.Ct. at 661. So, for example, a ban on the use of contributions to state and local parties to fund "public communications" promoting or attacking a candidate was not unconstitutionally vague, "since actions taken by political parties are presumed to be in connection with political campaigns." *Id*. at 675 n. 64 (citing *Buckley*'s holding that the term

"political committee" "need only encompass organizations that are under the control of a candidate or the major purpose of which is the nomination or election of a candidate" and thus its expenditures "are, by definition, campaign related." 424 U.S. at 79.).

Following the Supreme Court's teachings, lower courts have consistently rejected attempts to add an express advocacy requirement to the "major purpose" test for regulating political groups. For example, in *Jacobus v. Alaska*, 338 F.3d 1095 (9th Cir. 2003), the plaintiffs attempted to argue that political party contributions could not be regulated unless they were used for express advocacy, *id*. at 1117, but the Court nevertheless upheld the Alaska's regulation of political party "soft money." The Court rejected "the theory that *Buckley* established 'an express advocacy test' that only allows contributions to be limited where they will be used for speech advocating the election or defeat of a candidate," *id*., stating flatly, "This seriously flawed interpretation reflects a basic misreading of *Buckley*." *Id.*

Similarly, in *Federal Election Comm'n v. GOPAC, Inc*., 871 F.Supp. 1466 (D.D.C. 1994), a group tried to argue that it could not be regulated as a political committee unless it met the major purpose test *and* its contributions or expenditures were made for express advocacy. *Id.* at 1470. Squarely rejecting this, the Court observed, "the controlling relevant question is not

whether the *communication* 'expressly advocates' the election or defeat of such candidates for federal office, but rather whether, at the times in question, the *organization*'s 'major purpose… [was] the nomination or election' of an identified candidate or candidates for federal office." *Id*. at 1471, quoting *Buckley*, 424 U.S. at 79 (emphasis in original).

The Appellants' citation to *Anderson v. Spear*, 356 F.3d 651 (6th Cir. 2004), is unavailing. The portion of *Anderson* on which the Appellants rely considered whether a ban on electioneering within 500 feet of polling places was overbroad if it applied to issue advocacy as well as express advocacy. *Id*. at 663-65. The challenged provision did not regulate "major purpose" political committees, but rather prevented any "person" from conducting electioneering within the 500-foot boundary. *Id*. at 656, citing KRS § 117.235(3).[3] The Court held that the statute was overbroad in restricting issue advocacy, *see id*. at 665, despite doubt cast on the issue-express advocacy distinction by the *McConnell* decision. *See id*. at 664-65, quoting *McConnell*, 124 S.Ct. at 688-89. However, the provisions struck in *Anderson* applied to individuals and non-major purpose organizations; in contrast, the Minnesota political committee definition encompasses only

[3] The statute, as quoted, provides, "No person shall, on the day of any election…do any electioneering at the polling place or within a distance of five hundred (500) feet of a county clerk's office or any entrance to a building in which a voting machine is located." *Id*.

major purpose groups. Even assuming that the express-issue advocacy distinction remains relevant after *McConnell*, it was never applicable to "major purpose" organizations, as discussed *supra*. *See Buckley*, 424 U.S. at 79.

In a further attempt to impose an express advocacy requirement, the Appellants invoke *North Carolina Right to Life, Inc. v. Leake*, 344 F.3d 418 (4th Cir. 2003). *See* Appellants' Brief ("App. Br.") at 25. However, in that case, there was no question that a group may be regulated as a political committee if has "as a major purpose to support or oppose the nomination or election of one or more clearly identified candidates." *Id*. at 428 (quoting N.C. Gen. Stat. § 163-278.6(14)(d)). Rather, at question was a rebuttable presumption that a group's major purpose is to support or oppose a candidate if it contributes and/or expends more than $3,000 during an election cycle. *See id*. In striking down this presumption, the court implicitly accepted the constitutionality of the major purpose test itself. The presumption failed muster because "instead of basing the major purpose standard on the nature of the entity and its overall activities, the standard is based on an arbitrary level of spending that bears no relation to the idiosyncrasies of the entity." *Id*. at 430. The court clearly understood that if *most* of an organization's activities are aimed at electoral advocacy, then the

group may be regulated as a political committee in *all* of its activities. "[T]he test must be based on the nature and overall activity of the entity itself. The test must examine whether an entity's spending in support of or opposition to a candidate has 'become so extensive that [its] major purpose may be regarded as campaign activity.'" *Id*., quoting *MCFL*, 479 U.S. at 252 n. 6.

The Minnesota statute does not set a dollar threshold for contributions or expenditures that would trigger PAC status, as did the provision struck in *NRLC v. Leake*. The Appellants wrongly imply that the Minnesota statute triggers PAC status when an association makes or receives a contribution or expenditure over $100. *See* App. Br. at 25. Rather, a group that otherwise qualifies as a political committee must begin to report campaign contributions or expenditures when these reach $100. *See* Minn. Stat. § 10A.20, subd. 1 (2002).

Finally, the Appellants cite dicta from *North Carolina Right to Life, Inc. v. Bartlett*, 168 F.3d 705 (4th Cir. 1999), which wrongly interprets *Buckley*'s major purpose test to allow regulation of "only those entities that have as a major purpose engaging in express advocacy in support of a

candidate." *Id*. at 712.[4] This is a clear misreading of the *Buckley* decision, which imposes the express advocacy limitation only on regulation of individuals and groups *other* than "major purpose" organizations. *See Buckley*, 424 U.S. at 79; *see also Nat'l Fed'n of Republican Assemblies v. United States*, 218 F.Supp.2d 1300, 1330 (S.D. Ala. 2002) (the *Bartlett* Court "offered no authority for this proposition, which is plainly contrary to *Buckley* and which is dicta in any event"), *vacated on other grounds sub nom. Mobile Republican Assembly v. United States*, 353 F.3d 1357 (11th Cir. 2003); *McConnell v. Federal Election Comm'n*, 251 F.Supp. 2d 176, 602 n. 115 (D.D.C. 2003) (three judge court) (opinion of Kollar-Kotelly, J.) (same, citing *Nat'l Federation*, 218 F.Supp. 2d at 1330), *aff'd in part and rev'd in part*, __ U.S. __, 124 S.Ct. 61 (2003).

Thus the definition of "political committee" adopted by the Minnesota law, Minn. Stat. § 10A.01, Subd. 27 (2002), comports exactly with *Buckley*'s teaching that groups may be regulated as political committees if

[4] This was dicta because the statute challenged in *Bartlett* regulated as political committees those organizations "the primary *or incidental* purpose of which is to support or oppose any candidate or political party or to influence or attempt to influence an election," *id*., which the Court held violated *Buckley's* major purpose test by including groups who only "incidentally" engaged in electoral advocacy. *Id*.

their major purpose is the nomination or election of a candidate.[5] *See* 424 U.S. at 79. The provisions that the Appellants cite as burdening issue advocacy by political committees merely impose reporting, accounting and registration requirements. *See* App. br. at 21 n. 4, citing Minn. Stat. §§ 10A.11, 10A.12, 10A.14, 10A.17, 10A.15, 10A.16, 10A.20, 10A.24 and 10A.242.[6] *Buckley* and its progeny teach clearly that when an organization has the nomination or election of candidates as its major purpose, such reporting and disclosure requirements do not unconstitutionally burden its non-electoral activity. *See Buckley*, 424 U.S. at 64-68. *See also McConnell*, 124 S.Ct. at 670 (requiring political parties to accept only regulated, reported contributions does not unconstitutionally burden rights of political parties).

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[5] The appellants combine their argument on the definition of "political committee" with the definition of "political fund," Minn. Stat. § 10A.01, Subd. 28, treating both provisions as subject to an express advocacy requirement. App. Br. at 9-13. However, "political fund" is defined to encompass monies held by groups *other* than a political committee, principal campaign committee, or party unit, *id*., and the district court appropriately construed the definition of "political fund" to include only funds used for express advocacy. *See Minnesota Citizens Concerned for Life, Inc. v. Kelley*, 291 F.Supp.2d 1052, 1070 (D. Minn. 2003). This construction is consistent with the statute's language, which limits political funds to monies "collected or expended to influence the nomination or election of a candidate," Minn. Stat. § 10A.01, Subd. 28.

[6] The Appellants also reference §10.27, subd. 11, which limits aggregate political committee contributions to candidates. The constitutionality of this provision is discussed *infra* in Part II; by its own terms, it affects only express advocacy

II. The Aggregate Limit on Contributions from PACs, Political Funds, Lobbyists and Large Donors is Constitutional.

In challenging the aggregate contribution limit set forth in § 10A.27, subd. 11 (2002), the Appellants effectively concede that the Constitution permits limits on individual and political action committee (PAC) contributions to candidates, as well they must given the settled state of the law on that question. *See, e.g.*, *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000) (upholding federal limit on individual contributions); *Buckley*, 424 U.S. at 29, 35-36 (upholding limits on individual and PAC contributions); *Landell v. Sorrell*, 118 F.Supp.2d 459 (D.Vt. 2000) (same), *appeal docketed*, No. 00-9159 (2d Cir. Sept. 13, 2000)**;** *Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637, 648 (6th Cir. 1997) (same). Rather, they argue that the Minnesota statute is unconstitutional because after a candidate reaches her aggregate limit, a particular donor may be entirely barred from contributing to that candidate. *See* App. Br. at 51.

This argument fails first because a contribution does not represent political speech by the donor, *see Buckley*, 424 U.S. at 21; *California Medical Ass'n v. Federal Election Comm'n*, 453 U.S. 182, 197 (1981), and second because these donors have substantial other means of supporting and associating themselves with candidates, including independent expenditures and volunteer activity. Aggregate limits have been upheld because they

protect a well-recognized state interest in avoiding the reality or perception of corruption caused by candidates' overall reliance on the largest donors and in avoiding the circumvention of other contribution limits. *See Montana Right to Life Ass'n v. Eddelman*, 343 F.3d 1085, 1096 (9th Cir. 2003) ("*MRLA*") (upholding aggregate limits on PAC contributions to state senate candidates of $2,000 and to state representative candidates of $1,250); *Gard v. Wisconsin State Elections Board*, 456 N.W.2d 809 (Wis. 1990) (upholding aggregate PAC contribution limit of 65 percent of voluntary spending limits); *Kentucky Right to Life*, 108 F.3d at 651 (upholding aggregate PAC contribution limit of $150,000 to a gubernatorial candidate).

C. The aggregate limit does not unconstitutionally burden donors or candidates.

In its most recent, major decision on campaign finance, the Supreme Court reiterated that "contribution limits, unlike limits on expenditures, 'entai[l] only a marginal restriction upon the contributor's ability to engage in free communication.'" *McConnell*, 124 S.Ct. at 655, citing *Buckley*, 424 U.S. at 20. The Court has explicitly rejected the notion that an individual or group speaks through its contributions. "While contributions may result in political expression if spent by a candidate or an association to present views to the voters, the transformation of contributions into political debate involves speech by someone other than the contributor." *Buckley*, 424 U.S.

at 21. *See also Cal. Med.*, 453 U.S. at 196-97 (speech rights of contributors not impaired by limit on contributions to PACs); *cf. Federal Election Comm'n v. Nat'l Conservative Political Action Committee*, 470 U.S. 480, 494-95 (1985) (striking limit on PAC independent expenditures because, unlike a contribution limit, it directly restricts speech rather than "speech by proxy") (quoting *Cal. Med.*, 453 U.S. at 196).

Thus a contribution limit does not impermissibly burden speech unless it is so low as to "preven[t] candidates and political committees from amassing the resources necessary for effective advocacy." *Buckley*, 424 U.S. at 21. *See also Shrink Missouri*, 528 U.S. at 397 (contribution limit not unconstitutionally burdensome unless it is "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice beneath the level of notice, and render contributions pointless"). An aggregate contribution limit such as Minnesota's does not have such an effect, because "[a] candidate is free to obtain additional money from other sources, including an unlimited number of additional donors, the candidate's own funds, and the candidate's political party." *MRLA*, 343 F.3d at 1098 (upholding aggregate PAC contribution limit).

Neither would the aggregate limit unconstitutionally infringe the associational rights of donors even if it had the effect of barring a PAC or an

individual from donating to a particular candidate, because donors have available other means of association with candidates such as independent expenditures and volunteer efforts. *See Buckley*, 424 U.S. at 21 (contribution limits do not unduly burden donors' associational freedoms because they leave donors free to associate through other means); *MRLA*, 343 F.3d at 1098 (aggregate contribution limit "does not prevent PACs from otherwise affiliating with a candidate in ways other than direct contributions," such as by volunteering services, making endorsements, and making independent expenditures); *Gard*, 456 N.W.2d at 825 (upholding aggregate contribution limit because it "does not prohibit PACs from spending unlimited amounts of money on independent expenditures" and therefore "does not impose an absolute ban on committee spending once the aggregate limit has been reached"). As the District Court noted, Minnesota's political committees and their members may associate with candidates through means such as by making independent expenditures to support candidates or volunteering. *See Minnesota Citizens Concerned for Life, Inc. v. Kelley*, 291 F.Supp.2d 1052, 1065 (D. Minn. 2003). This is equally true of the lobbyists, political funds and large donors affected by the statute.

Because other avenues of association exist besides candidate contributions, "a contribution limit involving even 'significant interference' with associational rights is nevertheless valid if it satisfies the 'lesser demand' of being 'closely drawn' to match a 'sufficiently important interest.'"[7] *McConnell*, 124 S.Ct. at 656 (quoting *Federal Election Comm'n v. Beaumont*, 539 U.S. __, 123 S.Ct. 2200, 2210-2211 (2003), in turn quoting *Shrink Missouri*, 528 U.S. at 387-88). Minnesota's aggregate limit easily meets this relatively deferential review, which the Supreme Court has repeatedly applied to contribution limits. *See Shrink Missouri*, 528 U.S. at 387 ("It has, in any event, been plain ever since *Buckley* that contribution limits would more readily clear the hurdles before them); *MCFL*, 479 U.S. at 238 ("We have consistently held that restrictions on contributions require less compelling justification than restrictions on independent spending");

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[7] To bolster their argument that the aggregate limit is not adequately tailored, the appellants mistakenly rely on the statement in *Carver v. Nixon*, 72 F.3d 633 (8th Cir. 1995), that "[t]he district court erred as a matter of law in extending *Buckley* to the infinitely broader interest of limiting all, not just large, campaign contributions." *Id*. at 639. This narrow reading of *Buckley* was disavowed in *Shrink Missouri*, which rejected the contention that "*Buckley* set a minimum constitutional threshold for contribution limits," calling this "a fundamental misunderstanding of what we held." *Shrink Missouri*, 528 U.S. at 396. *See also Daggett v. Commission on Governmental Ethics and Election Practices*, 205 F.3d 445,455 n. 6 (1st Cir. 2000) (noting that reasoning in *Carver* was disavowed by *Shrink Missouri*).

Cal. Med., 453 U.S. at 197 (upholding $5000 limit on contributions to PACs because it does not infringe donors' First Amendment rights); *Buckley* 424 U.S. at 35 (upholding $5000 limit on PAC contributions to candidates, noting "rather than undermining freedom of association, the basic provision enhances the opportunity of bona fide groups to participate in the political process…").

D. The aggregate limit is justified by the State's interest in avoiding corruption and its appearance, and in avoiding the circumvention of individual contribution limits.

The aggregate contribution limit serves a well-established state interest in avoiding the reality or appearance of corruption. *See McConnell*, 124 S.Ct. at 660 ("our cases have made clear that the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits…Of 'almost equal' importance has been the Government's interest in combating the appearance or perception of corruption engendered by large campaign contributions) (quoting *Buckley*, 424 U.S. at 27). This concern is not confined to bribery but extends "to the broader threat from politicians too compliant with the wishes of large contributors." *Shrink Missouri*, 528 U.S. at 389. Moreover, by preventing large donors from dominating the electoral process, contribution limits enhance the ability of ordinary citizens to participate meaningfully in

politics. "[S]uch restrictions aim to democratize the influence that money itself may bring to bear upon the electoral process. In doing so, they seek to build public confidence in that process and broaden the base of a candidate's meaningful financial support, encouraging the public participation and open discussion that the First Amendment itself presupposes." *Id*., 528 U.S. at 401 (Breyer, J., concurring, joined by Ginsburg, J) (citations omitted).

The evidence that contributions from Minnesota PACs and other large donors have created a threat of corruption or its appearance, *MCCL*, 291 F.Supp.2d at 1064-64, is more than adequate to justify the aggregate limit. The evidence needed "will vary up or down with the novelty and plausibility of the justification raised," *Shrink Missouri*, 528 U.S. at 391, and "*Buckley* demonstrates that the dangers of large, corrupt contributions and the suspicion that large contributions are corrupt are neither novel nor implausible." *Id*. Thus considerable deference is owed to Minnesota's judgment that candidates' disproportionate reliance on funding from PACs, lobbyists and other large donors creates the risk of corruption or its appearance.

By seeking to decrease candidates' overall reliance on the largest donors, the aggregate limit addresses itself directly to the "threat from politicians too compliant with the wishes of large contributors." *Shrink*

Missouri, 528 U.S. at 389. As a corollary to this, the measure ensures that candidates seek a broader base of support, leaving them less beholden to any individual. This goal is clearly permissible; the Supreme Court has noted with approval that contribution limits "merely require candidates and political committees to raise funds from a greater number of persons," *Buckley*, 424 U.S. at 21-22, rather than reduce political expression.

Academic research confirms that large donations can affect the voting behavior of legislators. Professor Thomas Stratmann of George Mason University studied two roll call votes in Congress on the repeal of the Glass Steagall Act, a measure that pitted banking interests against insurance and security interests. Thomas Stratmann, *Can Special Interests Buy Congressional Votes? Evidence from Financial Services Legislation*, 45 J. Law & Econ 345 (2002). Looking at those Representatives who switched sides on the two votes, he found that changes in the flow of contributions from the competing interests explained much of the change in voting behavior, particularly since the issue had little salience with constituents and there was no evidence that constituents had changed their opinions on the bill. *Id.* An earlier study analyzing votes on farm subsidy bills in the U.S. House of Representatives in 1981 and 1985 found that when legislators received larger contributions, they were more likely to vote in the interests

of the farm PACs, even after controlling for other variables such as the number of affected constituents, ideology and party affiliation. *See* Thomas Stratmann, *Campaign Contributions and Congressional Voting: Does the Timing of Contributions Matter?*, 77 Rev. Econ. Stat. 127 (1995); Thomas Stratmann, *What Do Campaign Contributions Buy? Deciphering Causal Effects of Money and Votes*, 57 S. Econ. J. 606 (1991).

Stratmann's research also demonstrates that large donations are made with the intention of influencing legislative outcomes. In a series of studies, he found that PAC donations could not be explained solely in terms of a motivation to elect sympathetic candidates (an "electoral strategy"), but instead reflected the additional purpose of influencing how legislators vote (a "legislative strategy"). *See* Thomas Stratmann, *Are Contributors Rational?: Untangling Strategies of Political Action Committees*, 100 J. Pol. Econ. 647 (1992) (farm PAC contributions did not flow most heavily to legislators with the largest farm constituencies, but rather to those whose median farm constituencies made them more likely to be "on the fence" when voting on farm issues); Thomas Stratmann, *How Reelection Constituencies Matter: Evidence from Political Action Committees' Contributions and Congressional Voting*," 39 J. Law & Econ. 603 (1996) (PACs were likely to give to legislators representing constituencies opposed

to the PACs' interests, indicating a legislative strategy rather than an electoral one); Thomas Stratmann, *The Market for Congressional Votes: Is Timing of Contributions Everything?* 41 J. Law & Econ. 89 (1998) (finding a spike in farm PAC contributions shortly before a vote on a major farm subsidy bill which could not be explained by the amount of funds coming in to the PACs or by normal yearly patterns of giving, indicating a legislative rather than electoral strategy).

Thus avoiding candidates' overall reliance on the largest donors serves the state's interest in avoiding the perception or reality of corruption caused by such contributions, whether they come from individuals, *Shrink Missouri*, 528 U.S. at 389; *Buckley*, 424 U.S. at 27, or political action committees. *See Landell*, 118 F.Supp.2d at 489. Aggregate limits such as Minnesota's are "'essential' to preventing undue influence and the appearance of undue influence by special interest groups," *MRLA*, 343 F.3d. at 1096 (quoting district court finding with approval), and "necessary to serve the compelling state interest of preventing corruption caused by the dependence of an individual candidate upon large special interest contributions." *Gard*, 456 N.W.2d at 826. In addition, the aggregate limit is clearly justified as necessary to prevent the circumvention of other

contribution limits. *See Cal. Med.*, 453 U.S. at 198-99; *Kentucky Right to Life*, 108 F.3d at 649; *Gard*, 456 N.W.2d at 824.

The Appellants' argument that contributions by large donors are not uniquely corrupting, and therefore cannot be singled out for greater regulation by subjecting them to an aggregate cap, misses the point. Indeed, it is virtually tautological that larger donations create a greater risk of corruption and its appearance than smaller donations. Subjecting large donations, and not small ones, to an aggregate cap assures that a candidate's fundraising will not be dominated by large donors, and thus directly serves the state's anti-corruption interest.

Moreover, while the appellants complain that the aggregate cap limits the number of $500 individual donations a candidate may receive, Minnesota would be well within its rights to forbid *all* individual contributions above a lower threshold, such as $250. *See Frank v. City of Akron*, 290 F.3d 813, 818 (6th Cir. 2002) (upholding state contribution limits ranging from $100 to $300), *reh'g en banc denied*, 303 F.3d 752 (6th Cir. 2002), *cert. denied sub nom. City of Akron v. Kilby*, 537 U.S. 1160 (2003); *MRLA*, 343 F.3d at 1092 (upholding state contribution limits ranging from $100 to $400); *Daggett*, 204 F.3d at 459 (upholding $250 contribution limit for state legislative candidates); *Landell*, 118 F.Supp.2d at 480 (upholding

state contribution limits ranging from $200 to $400). By allowing candidates to raise some $500 individual donations, but placing an upper limit on the percentage of funds that may be raised in this manner, Minnesota is employing a less restrictive alternative than an across-the-board cap of $250 on all individual donations. The state's decision to pursue one method of limiting large donations rather than another is exactly the type of legislative choice that "courts have no scalpel to probe." *Buckley*, 424 U.S. at 30.

Therefore, Minnesota's decision to impose an aggregate limit on contributions by PACs and other large donors is justified by the state's clear, well-established interest in avoiding corruption or the appearance of corruption and in preventing the circumvention of other contribution limits.

CONCLUSION

For the reasons stated above, *amicus* respectfully requests that the Court uphold the district court's construction of the definition of political committee in Minn. Stat. § 10A.01, subd. 27 and uphold the aggregate contribution limit in Minn. Stat. § 10A.27, sub. 11.

DATED March 25, 2004

Respectfully submitted,

/s/

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The National Voting Rights Institute is a non-profit organization organized under Section 501(c)(3) of the Internal Revenue Code. As such, it has no parent corporations and does not issue stock**.**

CERTIFICATE OF COMPLIANCE WITH FRAP 32(a)(7)(B) and 8th Cir. R. 28A(c)

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I hereby certify that each computer diskette to be filed and served, containing the full text of the brief, has been scanned for viruses and that it is virus-free.

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I hereby certify that on March 25, 2004 I served two copies of this brief and one digital copy, vita U.S. Postal Service first class mail, on each of the following parties:

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