UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ILLINOIS LIBERTY PAC, *et al.*, Plaintiffs, v. LISA M. MADIGAN, *et al.*, Defendants.	Judge Gary Feinerman Magistrate Judge Susan E. Cox Case: 1:12-cv-05811

MEMORANDUM OF CAMPAIGN LEGAL CENTER, CHICAGO APPLESEED AND ILLINOIS CAMPAIGN FOR POLITICAL REFORM AS *AMICI CURIAE* IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

J. Gerald Hebert
Paul S. Ryan
Tara Malloy
Megan McAllen
THE CAMPAIGN LEGAL CENTER
215 E Street, NE
Washington, DC 20002
Tel.: (202) 736-2200
ghebert@campaignlegalcenter.org
pryan@campaignlegalcenter.org
tmalloy@campaignlegalcenter.org
mmcallen@campaignlegalcenter.org

David R. Melton
Counsel of Record
404 Greenwood Street
Evanston, IL 60201
Tel.: (847) 866-6198
david.melton.law@gmail.com

Thomas Rosenwein
GLICKMAN, FLESCH & ROSENWEIN
230 West Monroe Street
Suite 800
Chicago, Illinois 60606
Tel.: (312) 346-1080
Trosenwein@lawggf.com

NOTIFICATION OF AFFILIATES—DISCLOSURE STATEMENT

Pursuant to LCvR 3.2, *amicus* Campaign Legal Center (CLC) states that it has no publicly held affiliates to report.

Pursuant to LCvR 3.2, *amicus* Chicago Appleseed states that it has no publicly held affiliates to report.

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INTRODUCTION & SUMMARY OF ARGUMENT

This is a simple case, unnecessarily complicated by plaintiffs' obtuse arguments and general avoidance of the decades-old, well-established legal framework for determining the constitutionality of contribution limits. The only cognizable burden on plaintiffs' free speech and associational rights is that which stems from the contribution limits directly applicable to plaintiffs themselves. Illinois law imposes a $50,000 per election cycle limit on contributions from plaintiff Illinois Liberty PAC (ILP) to a candidate for state office, a $5,000 per election cycle limit on contributions from plaintiff Bachrach to a candidate for state office, and a $10,000 per election cycle limit on contributions from plaintiff Bachrach to plaintiff ILP. *See* 10 ILCS 5/9-8.5(b) and (d). Time and again the Supreme Court has held that such contribution limits are a constitutionally permissible means of advancing the government's vital interests in preventing corruption, the appearance of corruption and circumvention of candidate contribution limits—so long as the limits are not so low as to prevent candidates and PACs from amassing the resources necessary for effective advocacy. *See*, *e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 20-29 (1976); *Cal. Med. Ass'n. v. FEC,* 453 U.S. 182, 194-99 (1981) (*CalMed*); *Nixon v. Shrink Mo. Gov't PAC,* 528 U.S. 377, 381-98 (2000); and *Randall v. Sorrell*, 548 U.S. 230, 238-69 (2006).

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

Plaintiffs move this court to preliminarily enjoin enforcement of 10 ILCS 5/9-8.5(a)-(d). Pl.'s Mot. For Prelim. Inj. at 1. "[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, *by a clear showing,* carries the burden of persuasion." *Goodman v. Ill. Dep't of Fin. and Prof'l Regulation*, 430 F.3d 432, 437 (7th Cir. 2005) (emphasis in original) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)). To prevail on this motion, plaintiffs must show that:

> (1) they have a reasonable likelihood of success on the merits; (2) no adequate remedy at law exists; (3) they will suffer irreparable harm which, absent injunctive relief, outweighs the irreparable harm the respondent will suffer if the injunction is granted; and (4) the injunction will not harm the public interest.

Id.

For the reasons detailed below, plaintiffs have failed to show a reasonable likelihood of success on the merits. Furthermore, plaintiffs have failed to demonstrate that a preliminary injunction is in the public interest. Curbing the threat of corruption that would exist in the absence of the challenged contribution limits heavily outweighs plaintiffs' marginal First Amendment concerns in a state where the last two governors have gone to jail for corruption, including one governor whose unlimited pursuit of campaign contributions was at the heart of the scandal. And as the state has convincingly argued, the balance of hardships also tips decidedly in the state's favor. "[I]f an injunction is granted, the people of Illinois will suffer irreparable harm each day that the limitations are not enforced, leaving the system open" to corruption. Def.'s Opp. To Pl.'s Mot. For Prelim. Inj. (Aug. 10, 2012) at 4. Any urgency to plaintiffs' claims is the result of plaintiffs' own delay in bringing this legal challenge, waiting until the election was eminent before seeking an injunction.

For all of the above-stated reasons and those detailed below, plaintiffs' motion for preliminary injunction should be denied.

ARGUMENT

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

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

This "less rigorous" standard, *id*. at 137, reflects that a contribution represents merely a "symbolic expression of support" because it "serves as a general expression of support . . . but does not communicate the underlying basis for the support." *Buckley*, 424 U.S. at 21. Further, a contribution represents only indirect speech, or "speech by proxy," *CalMed*, 453 U.S. at 196, because "the transformation of contributions into political debate involves speech by someone other than the contributor." *Beaumont*, 539 U.S. at 161-62 (quoting *Buckley*, 424 U.S. at 20-21).

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

Plaintiffs repeatedly misrepresent the appropriate level of scrutiny applicable to Illinois' contribution limits, arguing that a "state law that substantially burdens political speech, as does the Illinois campaign finance scheme, is subject to strict scrutiny and cannot stand unless it is justified by a compelling state interest." Pl.'s Mot. For Prelim. Inj. at 6 (citing *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2817 (2011) (*Bennett*)); *see also* Pl.'s Mot. For Prelim. Inj. at 10, 17, 18 (urging application of "strict scrutiny"). Plaintiffs' reliance on the Supreme Court's decision in *Bennett* is misplaced. *Bennett* had nothing to do with contribution limits; instead, *Bennett* was a challenge to a state law providing public funds to candidates when opposing candidates or outside groups made expenditures in excess of specified expenditure thresholds, which the Court concluded was effectively a limit on expenditures by outside groups and candidates. Indeed, the passage from *Bennett* cited by plaintiffs, in which the Court applied strict scrutiny to the public funding trigger at issue in that case, makes clear that although the Court has long applied strict scrutiny to spending restrictions and found them unconstitutional, the Court has long applied a "lower level of scrutiny" to contribution limits and disclosure requirements and has typically upheld them. *See Bennett*, 131 S. Ct. at 2817.

The Supreme Court's most recent decision regarding the constitutionality of state law contribution limits, *Randall v. Sorrell*, 548 U.S. 230 (2006), which plaintiffs mention only in passing, *see* Pl.'s Mot. For Prelim. Inj. at 9, 20, makes clear the Supreme Court's continuing application of strict scrutiny to expenditure limits and less rigorous "closely drawn" scrutiny to contribution limits. Indeed, in a concurring opinion, Justice Thomas sharply criticized the Court majority's longstanding differential scrutiny of contribution limits and expenditure limits, stating: "I would overrule *Buckley* and subject both the contribution and expenditure restrictions . . . to strict scrutiny . . . ." *Randall*, 548 U.S. at 266-67 (Thomas, J., concurring).

Justice Thomas' disagreement with the Court majority's longstanding application of less rigorous "closely drawn" scrutiny to contribution limits was also on full display in *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377 (2000), another constitutional challenge to state contribution limits. In *Nixon*, the Court upheld a Missouri statute imposing limits ranging from $275 to $1,075 on contributions to candidates against First and Fourteenth Amendment challenges. *Id*. at 383. In upholding Missouri's contribution limits, the *Nixon* Court majority applied *Buckley*'s "closely drawn" standard of scrutiny. *Id.* at 387-88. Justice Thomas, joined by Justice Scalia, took issue with his colleagues, referring in a dissenting opinion to "the majority's refusal to apply strict scrutiny to contribution limits," *id.* at 412 (Thomas, J., dissenting), and noting that the Court's majority had applied "something less—much less—than strict scrutiny" to the state's contribution limits. *Id*. at 421. Notwithstanding repeated efforts, Justice Thomas has never managed to convince a majority of the Court's members to join him in his desired application of strict scrutiny to contribution limits.

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

II. Equal Protection Challenges To Contribution Limits Likewise Warrant "Less Rigorous" "Closely Drawn" Review, Not Strict Scrutiny.

Plaintiffs challenge Illinois' contribution limits not only under the First Amendment, but also allege that the contribution limits "violate the Equal Protection Clause of the Fourteenth Amendment." Pl.'s Mot. For Prelim. Inj. at 17. Plaintiffs' argue that their Equal Protection claim warrants "strict scrutiny" of the challenged contribution limits, but cite no authority for the application of strict scrutiny in the context of Equal Protection challenges to contribution limits. *Id.* at 18. As the U.S. District Court for the District of Columbia noted recently in *Wagner v. FEC*, --- F. Supp. 2d ----, 2012 WL 1255145, *10 (D.D.C. Apr. 16, 2012), "[t]he Supreme Court has yet to decide what level of scrutiny applies to equal-protection challenges to laws restricting political contributions." The district court in *Wagner* gave thoughtful consideration to the issue and made the following poignant observation:

> If strict scrutiny were to apply to equal-protection claims in the area of campaign contributions, it would lead to the anomalous result that a statutory provision could survive closely drawn scrutiny under the First Amendment, but nevertheless be found to violate equal-protection guarantees because of its impingement upon the very same rights. Any First Amendment claim that could be reframed as an equal-protection challenge would thus be entitled to strict scrutiny and would consequently stand a much greater chance of prevailing. This is particularly concerning given that the Supreme Court has explicitly rejected strict scrutiny for contribution limits (and bans) being challenged in the First Amendment context.

Id. at *11.

After considering and rejecting the defendant's argument that "rational basis" review was appropriate in an Equal Protection challenge to contribution limits, *id.* at 11, the court determined that "it makes more sense to apply closely drawn scrutiny . . . [that] the Supreme Court has specifically designated for restrictions on financial contributions to campaigns and political organizations." *Id.* (citing *Beaumont*, 539 U.S. at 161). "Such a form of review also cures the problem of permitting Plaintiffs to obtain a different level of scrutiny from their First

Amendment challenge merely by labeling their claim one of equal protection." *Id.* The court cited much "precedent for importing scrutiny levels from First Amendment cases when an equal-protection challenge implicates First Amendment rights," *id.*, and "conclude[d], therefore, that to survive an equal-protection challenge, [a contribution restriction] must be 'closely drawn to match a sufficiently important interest.'" *Id*. at 13 (citing *Beaumont*, 539 U.S. at 161).

The *Wagner* court's approach makes good sense and is wholly consistent with the Supreme Court's position that "respondents can fare no better under the Equal Protection Clause than under the First Amendment itself." *Renton v. Playtime Theatres, Inc*., 475 U.S. 41, 55 n.4 (1986). As the U.S. District Court for the District of Columbia explained in *McConnell v. FEC*, 251 F. Supp. 2d 176 (D.D.C. 2003):

> It is generally unnecessary to analyze laws which burden the exercise of First Amendment rights by a class of persons under the equal protection guarantee, because the substantive guarantees of the Amendment serve as the strongest protection against the limitation of these rights. . . . If the Court . . . finds that the classification does not violate any First Amendment right, the Court is unlikely to invalidate that classification under equal protection principles.

251 F. Supp. 2d at 709 n.180 (quoting Ronald D. Rotunda and John E. Nowak, *Treatise on Constitutional Law—Substance & Procedure* § 18.40 (3d ed.1999)).

For these reasons, *amici* respectfully urge this Court to reject plaintiffs' argument that an Equal Protection challenge to Illinois' contribution limits warrants strict scrutiny and, instead, to apply the less rigorous "closely drawn" scrutiny appropriate for contribution limits.

III. Illinois' Contribution Limits Are Clearly Constitutional.

Plaintiffs challenge the constitutionality of Illinois' contribution limit "scheme" established by 10 ILCS 5/9-8.5(b)-(d). *See, e.g.*, Pl.'s Mot. For Prelim. Inj. at 2 ("The Act creates a series of campaign contribution limits on what individuals and PACs can contribute to candidates, parties and PACs. This scheme impermissibly burdens Plaintiffs' free speech . . . .").

However, plaintiffs' constitutionally-protected right to free speech is impacted only by three discreet contribution limits found within Sections 5/9-8.5(b) and 5/9-8.5(d)—and all three contribution limits are clearly constitutional under Supreme Court precedent.

Section 5/9-8.5(b) imposes a $50,000 per election cycle limit on contributions from a PAC such as plaintiff ILP to a candidate for state office. Section 5/9-8.5(b) imposes a $5,000 per election cycle limit on contributions from an individual such as plaintiff Bachrach to a candidate for state office. Section 5/9-8.5(d) imposes a $10,000 per election cycle limit on contributions from an individual such as plaintiff Bachrach to a PAC such as plaintiff ILP.

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

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

In *Buckley*, the Court considered the constitutionality of a federal law limiting contributions by an individual to candidates for federal office to $1,000 per election. *Buckley*, 424 U.S. at 13. The Court noted that "a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication" because though a "contribution serves as a general expression of support for the candidate and his views," it "does not communicate the underlying basis for the support. The quantity of communication by the contributor does not increase perceptibly with the size of his contribution, since the expression rests solely on the

undifferentiated, symbolic act of contributing." *Id.* at 20-21. The Court reasoned that a "limitation on the amount of money a person may give to a candidate or campaign organization thus involves little direct restraint on his political communication, for it permits the symbolic expression of support evidenced by a contribution but does not in any way infringe the contributor's freedom to discuss candidates and issues." *Id.* at 21.

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

Applying "closely drawn" scrutiny, the *Buckley* Court concluded "[i]t is unnecessary to look beyond the Act's primary purpose to limit the actuality and appearance of corruption resulting from large individual financial contributions in order to find a constitutionally sufficient justification for the $1,000 contribution limitation. *Id.* at 26. "To the extent that large contributions are given to secure a political quid pro quo from current and potential office holders, the integrity of our system of representative democracy is undermined." *Id.* at 26-27. The *Buckley* Court was further concerned by the "impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." *Id.* The Court concluded: "We find that, under the rigorous standard of review established by our prior decisions, the weighty interests served by restricting the size of financial contributions to political candidates are sufficient to justify the limited effect

upon First Amendment freedoms caused by the $1,000 contribution ceiling." *Id* at 29.

In *CalMed*, the Supreme Court upheld the federal law limiting contributions by an individual to a PAC to $5,000 per calendar year. *CalMed*, 453 U.S. at 194-99. The Court began by noting that in *Buckley* it had "upheld the various ceilings the Act placed on the contributions individuals and multicandidate political committees could make to candidates and their political committees" because "such limitations served the important governmental interests in preventing the corruption or appearance of corruption of the political process that might result if such contributions were not restrained." *Id.* at 194-95. The Court explained that the limit on contributions to PACs was enacted "to prevent circumvention of the very limitations on contributions that this Court upheld in *Buckley*" and explained that without such a limit, "an individual or association seeking to evade the $1,000 limit on contributions to candidates could do so by channelling funds through a multicandidate political committee." *Id.* at 197-98.

In *Nixon*, the Court upheld Missouri state law limits on contributions to candidates ranging from $275 to $1,075. The principal issues in *Nixon* were whether *Buckley* is "authority for state limits on contributions to state political candidates and whether the federal limits approved in *Buckley*, with or without adjustment for inflation, define the scope of permissible state limitations today." *Nixon*, 528 U.S. at 381-82. The Court held *Buckley* "to be authority for comparable state regulation, which need not be pegged to *Buckley*'s dollars." *Id*. at 382. The *Nixon* Court applied *Buckley*'s "closely drawn" scrutiny, *id.* at 387-88, recognized the governmental interests of preventing actual and apparent corruption as sufficient justification for Missouri's contribution limits, *id.* at 388-89, and upheld the limits. The Court once again noted that, as in *Buckley*, there was "'no indication . . . that the contribution limitations imposed by the [law] would have any dramatic[ally] adverse effect on the funding of campaigns and political

associations,' and thus no showing that 'the limitations prevented the candidates and political committees from amassing the resources necessary for effective advocacy.'" *Id.* at 395-96 (quoting *Buckley*, 424 U.S. at 21). Consequently, the *Nixon* Court concluded: "There is no reason in logic or evidence to doubt the sufficiency of *Buckley* to govern this case in support of the Missouri statute." *Id*. at 397-98.

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

Vermont's contribution limits threatened "to inhibit effective advocacy by those who seek election, particularly challengers" and muted "the voice of political parties" and were thus unconstitutional. *Id.* at 261.

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

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

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

Section 5/9-8.5(b) imposes a $50,000 per election cycle limit on contributions from plaintiff ILP to a candidate for state office and a $5,000 limit on contributions from plaintiff Bachrach to a candidate for state office. The Supreme Court in *Buckley* upheld a $1,000 limit on contributions to candidates, part of a statutory regime that limits PAC contributions to candidates to $5,000[1] and, though acknowledging that contribution limits could be unconstitutional if they "prevented candidates and political committees from amassing the resources necessary for effective advocacy," 424 U.S. at 21, the Court explicitly rejected the argument that the

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

challenged federal law $1,000 limit on contributions to candidates would not have "any dramatic adverse effect on the funding of campaigns and political associations." *Id.*

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

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

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

Plaintiffs argue that the state's application of different contribution limits to "political parties and nonparties belies an anticorruption purpose" Pl.'s Mot. For Prelim. Inj. at 11. The Court should reject this argument under both First Amendment and Fourteenth Amendment analysis. Plaintiffs cite the Supreme Court's decision in *FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431 (2001) (*Colorado II*), implying that the Court's decision requires application of the same contribution limits to parties as to nonparties—but the Court said no such thing. In *Colorado II*, a political party challenged federal law limits on expenditures coordinated with specific candidates, which the Court treated as contributions to such candidates. 533 U.S. at 437-38 ("Expenditures coordinated with a candidate . . . are contributions under the Act."). The question in *Colorado II* was whether the constitution permits limits on contributions from parties to candidates—not whether the constitution requires limits on contributions from parties to candidates. Indeed, *amici* know of no occasion in which the constitution has been interpreted by a court as requiring the imposition of contribution limits.

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

[2] *See* Federal Election Commission, *2012 Coordinated Party Expenditure Limits*, *at* http://www.fec.gov/info/charts_441ad_2012.shtml (last visited Sept. 13, 2012); *see also* Federal Election Commission, *Contribution Limits for 2011-2012*, *at* http://www.fec.gov/info/contriblimits1112.pdf (last visited Sept. 13, 2012).

a $21,684,200 limit on contributions from parties to candidates, while PACs and individuals are subject to limits of $5,000 and $2,500, respectively, is baffling. If anything, *Colorado II* stands for the proposition that it is perfectly constitutional to apply much lower limits on contributions from PACs and individuals to candidates than the limits on party contributions to candidates.

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

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

CONCLUSION

"There is no reason in logic or evidence to doubt the sufficiency of *Buckley* to govern this case in support of the [Illinois] statute." *Nixon*, 528 U.S. at 397-98. Illinois' contribution limits established by 10 ILCS 5/9-8.5(b) and (d) are clearly constitutional. Plaintiffs have failed to show a reasonable likelihood of success on the merits of their constitutional challenge, or to satisfy the other prerequisites for obtaining extraordinary preliminary injunction relief. Accordingly, plaintiffs' motion for preliminary injunction should be denied.

Respectfully submitted,

/s/ David R. Melton
David R. Melton
Counsel of Record
404 Greenwood Street
Evanston, IL 60201
Tel.: (847) 866-6198
david.melton.law@gmail.com

Thomas Rosenwein
GLICKMAN, FLESCH & ROSENWEIN
230 West Monroe Street
Suite 800
Chicago, Illinois 60606
Tel.: (312) 346-1080
Trosenwein@lawggf.com

J. Gerald Hebert
Paul S. Ryan
Tara Malloy
Megan McAllen
THE CAMPAIGN LEGAL CENTER
215 E Street, NE
Washington, DC 20002
Tel.: (202) 736-2200
ghebert@campaignlegalcenter.org
pryan@campaignlegalcenter.org
tmalloy@campaignlegalcenter.org
mmcallen@campaignlegalcenter.org

Counsel for *Amici Curiae*

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