SUPREME COURT OF THE UNITED STATES

No. 98–963

JEREMIAH W. (JAY) NIXON, ATTORNEY GENERAL OF MISSOURI, ET AL., PETITIONERS *v.* SHRINK MISSOURI GOVERNMENT PAC ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[January 24, 2000]

JUSTICE THOMAS, with whom JUSTICE SCALIA joins, dissenting.

In the process of ratifying Missouri's sweeping repression of political speech, the Court today adopts the analytic fallacies of our flawed decision in *Buckley* v. *Valeo,* 424 U. S. 1 (1976) *(per curiam).* Unfortunately, the Court is not content to merely adhere to erroneous precedent. Under the guise of applying *Buckley*, the Court proceeds to weaken the already enfeebled constitutional protection that *Buckley* afforded campaign contributions. In the end, the Court employs a *sui generis* test to balance away First Amendment freedoms.

Because the Court errs with each step it takes, I dissent. As I indicated in *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n,* 518 U. S. 604, 635–644 (1996) (opinion concurring in judgment and dissenting in part), our decision in *Buckley* was in error, and I would overrule it. I would subject campaign contribution limitations to strict scrutiny, under which Missouri's contribution limits are patently unconstitutional.

I

I begin with a proposition that ought to be unassailable:

Political speech is the primary object of First Amendment protection. See, *e.g.*, *Mills* v. *Alabama*, 384 U. S. 214, 218 (1966); *Whitney* v. *California*, 274 U. S. 357, 375 (1927) (Brandeis, J., concurring); T. Cooley, Constitutional Limitations *422; Z. Chafee, Free Speech in the United States 28 (1954); Bork, Neutral Principles and Some First Amendment Problems, 47 Ind. L. J. 1, 20 (1971); Sunstein, Free Speech Now, in The Bill of Rights in the Modern State 304–307 (G. Stone, R. Epstein, & C. Sunstein eds. 1992). The Founders sought to protect the rights of individuals to engage in political speech because a self-governing people depends upon the free exchange of political information. And that free exchange should receive the most protection when it matters the most– during campaigns for elective office. "The value and efficacy of [the right to elect the members of government] depends on the knowledge of the comparative merits and demerits of the candidates for public trust, and on the equal freedom, consequently, of examining and discussing these merits and demerits of the candidates respectively." Madison, Report on the Resolutions (1799), in 6 Writings of James Madison 397 (G. Hunt ed. 1906).

I do not start with these foundational principles because the Court openly disagrees with them– it could not, for they are solidly embedded in our precedents. See, *e.g.*, *Eu* v. *San Francisco County Democratic Central Comm.*, 489 U. S. 214, 223 (1989) ("[T]he First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office" (quoting *Monitor Patriot Co.* v. *Roy*, 401 U. S. 265, 272 (1971))); *Brown* v. *Hartlage*, 456 U. S. 45, 53 (1982) ("The free exchange of ideas provides special vitality to the process traditionally at the heart of American constitutional democracy– the political campaign"); *Garrison* v. *Louisiana*, 379 U. S. 64, 74–75 (1964) ("[S]peech concerning public affairs is . . . the essence of self-government"). Instead, I start with them

because the Court today abandons them. For nearly half a century, this Court has extended First Amendment protection to a multitude of forms of "speech," such as making false defamatory statements, filing lawsuits, dancing nude, exhibiting drive-in movies with nudity, burning flags, and wearing military uniforms.[1] Not surprisingly, the Courts of Appeals have followed our lead and concluded that the First Amendment protects, for example, begging, shouting obscenities, erecting tables on a sidewalk, and refusing to wear a necktie.[2] In light of the many cases of this sort, today's decision is a most curious anomaly. Whatever the proper status of such activities under the First Amendment, I am confident that they are less integral to the functioning of our Republic than campaign contributions. Yet the majority today, rather than going out of its way to *protect* political speech, goes out of its way to *avoid* protecting it. As I explain below, contributions to political campaigns generate essential political speech. And contribution caps, which place a direct and substantial limit on core speech, should be met with the utmost skepticism and should receive the strictest scrutiny.

II

At bottom, the majority's refusal to apply strict scrutiny to contribution limits rests upon *Buckley*'s discounting of the First Amendment interests at stake. The analytic

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[1] *New York Times Co.* v. *Sullivan*, 376 U. S. 254 (1964); *NAACP* v. *Button*, 371 U. S. 415 (1963); *Barnes* v. *Glen Theatre, Inc.*, 501 U. S. 560 (1991) (plurality opinion); *Erznoznik* v. *Jacksonville*, 422 U. S. 205 (1975); *United States* v. *Eichman*, 496 U. S. 310 (1990); *Schacht* v. *United States*, 398 U. S. 58 (1970).

[2] *Loper* v. *New York City Police Dept.* 999 F. 2d 699 (CA2 1993); *Sandul* v. *Larion*, 119 F. 3d 1250 (CA6 1997); *One World One Family Now* v. *Miami Beach*, 175 F. 3d 1282 (CA11 1999); *East Hartford Education Assoc.* v. *Board of Education of East Hartford*, 562 F. 2d 838 (CA2 1977).

foundation of *Buckley*, however, was tenuous from the very beginning and has only continued to erode in the intervening years. What remains of *Buckley* fails to provide an adequate justification for limiting individual contributions to political candidates.

A

To justify its decision upholding contribution limitations while striking down expenditure limitations, the Court in *Buckley* explained that expenditure limits "represent substantial rather than merely theoretical restraints on the quantity and diversity of political speech," *Buckley* v. *Valeo*, 424 U. S., at 19, while contribution limits "entai[l] only a marginal restriction upon the contributor's ability to engage in free communication," *id.*, at 20–21 (quoted *ante*, at 6). In drawing this distinction, the Court in *Buckley* relied on the premise that contributing to a candidate differs qualitatively from directly spending money. It noted that "[w]hile 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." *Id.*, at 21. See also *California Medical Assn.* v. *Federal Election Comm'n*, 453 U. S. 182, 196 (1981) (plurality opinion) ("[T]he 'speech by proxy' that [a contributor] seeks to achieve through its contributions . . . is not the sort of political advocacy that this Court in *Buckley* found entitled to full First Amendment protection").

But this was a faulty distinction *ab initio* because it ignored the reality of how speech of all kinds is disseminated:

> "Even in the case of a direct expenditure, there is usually some go-between that facilitates the dissemination of the spender's message— for instance, an advertising agency or a television station. To call a con-

> tribution 'speech by proxy' thus does little to differentiate it from an expenditure. The only possible difference is that contributions involve an extra step in the proxy chain. But again, that is a difference in form, not substance." *Colorado Republican*, 518 U. S., at 638–639 (THOMAS, J., concurring in judgment and dissenting in part) (citations omitted).

And, inasmuch as the speech-by-proxy argument was disconnected from the realities of political speech to begin with, it is not surprising that we have firmly rejected it since *Buckley*. In *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480 (1985), we cast aside the argument that a contribution does not represent the constitutionally protected speech of a contributor, recognizing "that the contributors obviously like the message they are hearing from these organizations and want to add their voices to that message; otherwise they would not part with their money." *Id.*, at 495. Though in that case we considered limitations on expenditures made by associations, our holding that the speech-by-proxy argument fails to diminish contributors' First Amendment rights is directly applicable to this case. In both cases, donors seek to disseminate information by giving to an organization controlled by others. Through contributing, citizens see to it that their views on policy and politics are articulated. In short, "they are aware that however great the confidence they may justly feel in their own good sense, their interests can be more effectually promoted by [another] than by themselves." The Federalist No. 35, p. 214 (C. Rossiter ed. 1961) (A. Hamilton).

Without the assistance of the speech-by-proxy argument, the remainder of *Buckley*'s rationales founder. Those rationales– that the "quantity of communication by the contributor does not increase perceptibly with the size of his contribution," *Buckley* v. *Valeo, supra*, at 21 (quoted

ante, at 6), that "the size of the contribution provides a very rough index of the intensity of the contributor's support for the candidate," 424 U. S., at 21 (quoted *ante*, at 6), and that "[a] contribution serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support," 424 U. S., at 21 (quoted *ante*, at 6)– still rest on the proposition that speech by proxy is not fully protected. These contentions simply ignore that a contribution, by amplifying the voice of the candidate, helps to ensure the dissemination of the messages that the contributor wishes to convey. Absent the ability to rest on the denigration of contributions as mere "proxy speech," the arguments fall apart.[3]

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[3] If one were to accept the speech-by-proxy point and consider a contribution a mere symbolic gesture, *Buckley*'s auxiliary arguments still falter. The claim that a large contribution receives less protection because it only expresses the "intensity of the contributor's support for the candidate," *Buckley* v. *Valeo*, 424 U. S. 1, 21 (1976) *(per curiam)* (quoted *ante*, at 6), fails under our jurisprudence because we have accorded full First Amendment protection to expressions of intensity. See *Cohen* v. *California*, 403 U. S. 15, 25–26 (1971) (protecting the use of an obscenity to stress a point). Equally unavailing is the claim that a contribution warrants less protection because it "does not communicate the underlying basis for the support." *Buckley* v. *Valeo*, *supra*, at 21 (quoted *ante*, at 6). We regularly hold that speech is protected when the underlying basis for a position is not given. See, *e.g.*, *City of Ladue* v. *Gilleo*, 512 U. S. 43, 46 (1994) (sign reading "For Peace in the Gulf"); *Tinker* v. *Des Moines Independent Community School Dist.*, 393 U. S. 503, 510–511 (1969) (black armband signifying opposition to Vietnam war). See also *Colorado Republican Federal Campaign Comm.* v. *Federal Election Comm'n*, 518 U. S. 604, 640 (1996) (THOMAS, J., concurring in judgment and dissenting in part) ("Even a pure message of support, unadorned with reasons, is valuable to the democratic process"). Cf. *Hurley* v. *Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U. S. 557, 569 (1995) (opinion of the Court by SOUTER, J.) ("[A] narrow, succinctly articulable message is not a condition of constitutional protection").

The decision of individuals to speak through contributions rather than through independent expenditures is entirely reasonable.[4] Political campaigns are largely candidate focused and candidate driven. Citizens recog-

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[4] JUSTICE STEVENS asserts that "[m]oney is property; it is not speech," *ante*, at 1 (concurring opinion), and contends that there is no First Amendment right "to hire mercenaries" and "to hire gladiators," *ante*, at 2. These propositions are directly contradicted by many of our precedents. For example, in *Meyer* v. *Grant*, 486 U. S. 414 (1988) (opinion of the Court by STEVENS, J.), this Court confronted a state ban on payments to petition circulators. The District Court upheld the law, finding that the ban on monetary payments did not restrain expression and that the would-be payors remained free to use their money in other ways. *Id.*, at 418. We disagreed and held that "[t]he refusal to permit appellees to pay petition circulators restricts political expression" by "limit[ing] the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach." *Id.*, at 422–423. In short, the Court held that the First Amendment protects the right to pay others to help get a message out. In other cases, this Court extended such protection, holding that the First Amendment prohibits laws that do not ban, but instead only regulate, the terms upon which so-called mercenaries and gladiators are retained. See *Riley* v. *National Federation of Blind of N. C., Inc.*, 487 U. S. 781 (1988) (holding that the First Amendment prohibits state restriction on the amount a charity may pay a professional fundraiser); *Secretary of State of Md.* v. *Joseph H. Munson Co.*, 467 U. S. 947 (1984) (same). Cf. also, *e.g.*, *Teachers* v. *Hudson*, 475 U. S. 292 (1986) (opinion of the Court by STEVENS, J.) (holding that the First Amendment restrains government-compelled exactions of money); *Abood* v. *Detroit Bd. of Ed.*, 431 U. S. 209 (1977) (same). In these cases, the Court did not resort to JUSTICE STEVENS' assertion that money "is not speech" to dismiss challenges to monetary regulations. Instead, the Court properly examined the impact of the regulations on free expression. See also, *e.g.*, *Federal Election Comm'n* v. *National Conservative Political Action Comm.*, 470 U. S. 480 (1985) (First Amendment protects political committee's expenditures of money); *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290 (1981) (First Amendment protects monetary contributions to political committee); *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 769 (1978) (First Amendment protects "spend[ing] money to publicize [political] views").

nize that the best advocate for a candidate (and the policy positions he supports) tends to be the candidate himself. And candidate organizations also offer other advantages to citizens wishing to partake in political expression. Campaign organizations offer a ready-built, convenient means of communicating for donors wishing to support and amplify political messages. Furthermore, the leader of the organization– the candidate– has a strong self-interest in efficiently expending funds in a manner that maximizes the power of the messages the contributor seeks to disseminate. Individual citizens understandably realize that they "may add more to political discourse by giving rather than spending, if the donee is able to put the funds to more productive use than can the individual." *Colorado Republican*, 518 U. S., at 636 (THOMAS, J., concurring in judgment and dissenting in part). See also *Federal Election Comm'n* v. *Massachusetts Citizens for Life, Inc.*, 479 U. S. 238, 261 (1986) ("[I]ndividuals contribute to a political organization in part because they regard such a contribution as a more effective means of advocacy than spending the money under their own personal direction").[5]

In the end, *Buckley*'s claim that contribution limits "d[o] not in any way infringe the contributor's freedom to discuss candidates and issues," 424 U. S., at 21 (quoted *ante*, at 6), ignores the distinct role of candidate organizations as a means of individual participation in the Nation's civic

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[5] Even if contributions to a candidate were not the most effective means of speaking– and contribution caps left political speech "significantly unimpaired," *ante*, at 7– an individual's choice of that mode of expression would still be protected. "The First Amendment protects [individuals'] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing." *Meyer*, *supra*, at 424 (opinion of the Court by STEVENS, J.). See also *Glickman* v. *Wileman Brothers & Elliott, Inc.*, 521 U. S. 457, 488 (1997) (SOUTER, J., dissenting) (noting a "First Amendment interest in touting [one's] wares as he sees fit").

dialogue.[6] The result is simply the suppression of political speech. By depriving donors of their right to speak through the candidate, contribution limits relegate donors' points of view to less effective modes of communication. Additionally, limiting contributions curtails individual participation. "Even for the affluent, the added costs in money or time of taking out a newspaper advertisement, handing out leaflets on the street, or standing in front of one's house with a hand-held sign may make the difference between participating and not participating in some public debate." *City of Ladue* v. *Gilleo,* 512 U. S. 43, 57 (1994) (opinion of the Court by STEVENS, J.). *Buckley* completely failed in its attempt to provide a basis for permitting government to second-guess the individual choices of citizens partaking in quintessentially democratic activities. "The First Amendment mandates that we presume that speakers, not the government, know best both what they want to say and how to say it." *Riley* v. *National Federation of Blind of N. C., Inc.,* 487 U. S. 781,

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[6] *Buckley*'s approach to associational freedom is also unsound. In defense of its decision, the Court in *Buckley* explained that contribution limits "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates." 424 U. S., at 22 (quoted *ante,* at 7). In essence, the Court accepted contribution limits because alternative channels of association remained open. This justification, however, is peculiar because we have rejected the notion that a law will pass First Amendment muster simply because it leaves open other opportunities. *Spence* v. *Washington,* 418 U. S. 405, 411, n. 4 (1974) *(per curiam)* (Although a prohibition's effect may be "minuscule and trifling," a person "'is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place'" (quoting *Schneider* v. *State (Town of Irvington),* 308 U. S. 147, 163 (1939))). See also, *e.g.*, *Texas* v. *Johnson,* 491 U. S. 397, 416, n. 11 (1989); *Kusper* v. *Pontikes,* 414 U. S. 51, 58 (1973). "For even when pursuing a legitimate interest, a State may not choose means that unnecessarily restrict constitutionally protected liberty." *Id.,* at 58–59.

790–791 (1988).

B

The Court in *Buckley* denigrated the speech interests not only of contributors, but also of candidates. Although the Court purported to be concerned about the plight of candidates, it nevertheless proceeded to disregard their interests without justification. The Court did not even attempt to claim that contribution limits do not suppress the speech of political candidates. See 424 U. S., at 18 ("[C]ontribution . . . limitations impose direct quantity restrictions on political communication and association by . . . candidates"); *id.*, at 33 ("[T]he [contribution] limitations may have a significant effect on particular challengers or incumbents"). It could not have, given the reality that donations "mak[e] a significant contribution to freedom of expression by enhancing the ability of candidates to present, and the public to receive, information necessary for the effective operation of the democratic process." *CBS, Inc.* v. *FCC*, 453 U. S. 367, 396 (1981). See also *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U. S. 290, 299 (1981) ("Placing limits on contributions which in turn limit expenditures plainly impairs freedom of expression"). Instead, the Court abstracted from a candidate's individual right to speak and focused exclusively on aggregate campaign funding. See *Buckley* v. *Valeo*, *supra*, at 21 ("There is no indication . . . that the contribution limitations imposed by the Act would have any dramatic adverse effect on the funding of campaigns") (quoted *ante*, at 15–16); *ante*, at 16 (There is "no showing that 'the limitations prevented the candidates and political committees from amassing the resources necessary for effective advocacy'" (quoting *Buckley* v. *Valeo*, *supra*, at 21)).

The Court's flawed and unsupported aggregate approach ignores both the rights and value of individual

candidates. The First Amendment "is designed and intended to remove governmental restraints from the arena of public discussion, putting the decision as to what views shall be voiced largely into the hands of *each of us*, in the hope that use of such freedom will ultimately produce a more capable citizenry and more perfect polity and in the belief that no other approach would comport with the premise of *individual* dignity and choice upon which our political system rests." *Cohen* v. *California*, 403 U. S. 15, 24 (1971) (emphases added). See also *Sweezy* v. *New Hampshire*, 354 U. S. 234, 250 (1957) (plurality opinion) ("Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association"); *Richmond* v. *J. A. Croson Co.*, 488 U. S. 469, 493 (1989) (plurality opinion) ("As this Court has noted in the past, the 'rights created by the first section of the Fourteenth Amendment are, by its terms, guaranteed to the individual. The rights established are personal rights'" (quoting *Shelley* v. *Kraemer*, 334 U. S. 1, 22 (1948))). In short, the right to free speech is a right held by each American, not by Americans en masse. The Court in *Buckley* provided no basis for suppressing the speech of an individual candidate simply because other candidates (or candidates in the aggregate) may succeed in reaching the voting public. And any such reasoning would fly in the face of the premise of our political system– liberty vested in individual hands safeguards the functioning of our democracy. In the case at hand, the Missouri scheme has a clear and detrimental effect on a candidate such as petitioner Fredman, who lacks the advantages of incumbency, name recognition, or substantial personal wealth, but who has managed to attract the support of a relatively small number of dedicated supporters: It forbids his message from reaching the voters. And the silencing of a candidate has consequences for political debate and competition overall. See *Arkansas Ed. Television Comm'n* v. *Forbes*, 523 U. S.

666, 692, n. 14 (1998) (STEVENS, J., dissenting) (noting that the suppression of a minor candidate's speech may directly affect the outcome of an election); cf. *NAACP* v. *Button*, 371 U. S. 415, 431 (1963) ("'All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups . . . '" (quoting *Sweezy* v. *New Hampshire*, *supra*, at 250–251 (plurality opinion))).

In my view, the Constitution leaves it entirely up to citizens and candidates to determine who shall speak, the means they will use, and the amount of speech sufficient to inform and persuade. *Buckley*'s ratification of the government's attempt to wrest this fundamental right from citizens was error.

III

Today, the majority blindly adopts *Buckley*'s flawed reasoning without so much as pausing to consider the collapse of the speech-by-proxy argument or the reality that *Buckley*'s remaining premises fall when deprived of that support.[7]

After ignoring these shortcomings, the Court proceeds to apply something less– much less– than strict scrutiny. Just how much less the majority never says. The Court in

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[7] Implicitly, however, the majority downplays its reliance upon the speech-by-proxy argument. In fact, the majority reprints nearly all of *Buckley*'s analysis of contributors' speech interests, block quoting almost an entire paragraph from that decision. See *ante*, at 6 (quoting *Buckley* v. *Valeo*, 424 U. S., at 20–21). Tellingly, the only complete sentence from that paragraph that the majority fails to quote is the final sentence– which happens to be the one directly setting forth the speech-by-proxy rationale. See *id.*, at 21 ("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 at least purported to employ a test of "'closest scrutiny.'" 424 U. S., at 25 (quoting *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 461 (1958)). (The Court's words were belied by its actions, however, and it never deployed the test in the fashion that the superlative instructs. See *Colorado Republican*, 518 U. S., at 640–641, n. 7 (THOMAS, J., concurring in judgment and dissenting in part) (noting that *Buckley* purported to apply strict scrutiny but failed to do so in fact).) The Court today abandons even that pretense and reviews contributions under the *sui generis* "*Buckley*'s standard of scrutiny," *ante*, at 7, which fails to obscure the Court's ad hoc balancing away of First Amendment rights. Apart from its endorsement of *Buckley*'s rejection of the intermediate standards of review used to evaluate expressive conduct and time, place, and manner restrictions, *ante*, at 5–6, the Court makes no effort to justify its deviation from the tests we traditionally employ in free speech cases. See *Denver Area Ed. Telecommunications Consortium, Inc.* v. *FCC*, 518 U. S. 727, 774 (1996) (SOUTER, J., concurring) ("Reviewing speech regulations under fairly strict categorical rules keeps the starch in the standards for those moments when the daily politics cries loudest for limiting what may be said").

Unfortunately, the majority does not stop with a revision of *Buckley*'s labels. After hiding behind *Buckley*'s discredited reasoning and invoking "*Buckley*'s standard of scrutiny," *ante*, at 7, the Court proceeds to significantly extend the holding in that case. The Court's substantive departure from *Buckley* begins with a revision of our compelling-interest jurisprudence. In *Buckley*, the Court indicated that the only interest that could qualify as "compelling" in this area was the government's interest in reducing actual and apparent corruption.[8] 424 U. S., at

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[8]The Court in *Buckley* explicitly rejected two other proffered ration-

25–26. And the Court repeatedly used the word "corruption" in the narrow *quid pro quo* sense, meaning "[p]erversion or destruction of integrity in the discharge of public duties by bribery or favour." 3 Oxford English Dictionary 974 (2d ed. 1989). See also Webster's Third New International Dictionary 512 (1976) ("inducement (as of a political official) by means of improper considerations (as bribery) to commit a violation of duty"). When the Court set forth the interest in preventing actual corruption, it spoke about "large contributions . . . given to secure a political *quid pro quo* from current and potential office holders." *Buckley* v. *Valeo*, 424 U. S., at 26. The Court used similar language when it set forth the interest in protecting against the appearance of corruption: "Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions." *Id.*, at 27. Later, in discussing limits on independent expenditures, the Court yet again referred to the interest in protecting against the "dangers of actual or apparent *quid pro quo* arrangements." *Id.*, at 45. See also *id.*, at 47 (referring to "the danger that expenditures will be given as a *quid pro quo* for improper commitments"); *id.*, at 67 (corruption relates to "post-election special favors that may be given in return" for contributions). To be sure, after mentioning *quid pro quo* transactions, the Court went on to use more general terms such as "opportunities

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ales for campaign finance regulation as out of tune with the First Amendment: equalization of the ability of citizens to affect the outcome of elections and controlling the costs of campaigns. See 424 U. S., at 48–49 (governmentally imposed equalization measures are "wholly foreign to the First Amendment"); *id.*, at 57 (mounting costs of elections "provid[e] no basis for governmental restrictions on the quantity of campaign spending").

for abuse," *id.*, at 27, "potential for abuse," *id.*, at 47, "improper influence," *id.*, at 27, 29, 45, "attempts . . . to influence," *id.*, at 28, and "buy[ing] influence," *id.*, at 45. But this general language acquires concrete meaning only in light of the preceding specific references to *quid pro quo* arrangements.

Almost a decade after *Buckley*, we reiterated that "corruption" has a narrow meaning with respect to contribution limitations on individuals:

> "Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money in their campaigns. The hallmark of corruption is the financial *quid pro quo*: dollars for political favors." *National Conservative Political Action Comm.*, 470 U. S., at 497.

In that same opinion, we also used "giving official favors" as a synonym for corruption. *Id.*, at 498.

The majority today, by contrast, separates "corruption" from its *quid pro quo* roots and gives it a new, far-reaching (and speech-suppressing) definition, something like "[t]he perversion of anything from an original state of purity." 3 Oxford English Dictionary, *supra*, at 974. See also Webster's Third New International Dictionary, *supra*, at 512 ("a departure from what is pure or correct"). And the Court proceeds to define that state of purity, casting aspersions on "politicians too compliant with the wishes of large contributors." *Ante*, at 9. "But precisely what the 'corruption' may consist of we are never told with assurance." *National Conservative Political Action Comm.*, *supra*, at 498. Presumably, the majority does not mean that politicians should be free of attachments to constituent

groups.[9] And the majority does not explicitly rely upon the "harm" that the Court in *Buckley* rejected out of hand, namely, that speech could be regulated to equalize the voices of citizens. *Buckley* v. *Valeo*, *supra*, at 48–49. Instead, without bothering to offer any elaboration, much less justification, the majority permits vague and unenumerated harms to suffice as a compelling reason for the government to smother political speech.

In refashioning *Buckley*, the Court then goes on to weaken the requisite precision in tailoring, while at the same time representing that its fiat "do[es] not relax *Buckley*'s standard." *Ante*, at 10, n. 4. The fact is that the majority ratifies a law with a much broader sweep than that approved in *Buckley*. In *Buckley*, the Court upheld contribution limits of $1,000 on individuals and $5,000 on political committees (in 1976 dollars). 424 U. S., at 28–29,

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[9] The Framers of course thought such attachments inevitable in a free society and that faction would infest the political process. As to controlling faction, James Madison explained, "There are again two methods of removing the causes of faction: the one, by destroying the liberty which is essential to its existence; the other, by giving to every citizen the same opinions, the same passions, and the same interests." The Federalist No. 10, p. 78 (C. Rossiter ed. 1961). Contribution caps are an example of the first method, which Madison contemptuously dismissed:

"It could never be more truly said than of the first remedy that it was worse than the disease. Liberty is to faction what air is to fire, an aliment without which it instantly expires. But it could not be a less folly to abolish liberty, which is essential to political life, because it nourishes faction than it would be to wish the annihilation of air, which is essential to animal life, because it imparts to fire its destructive agency." *Ibid.*

The Framers preferred a political system that harnessed such faction for good, preserving liberty while also ensuring good government. Rather than adopting the repressive "cure" for faction that the majority today endorses, the Framers armed individual citizens with a remedy. "If a faction consists of less than a majority, relief is supplied by the republican principle, which enables the majority to defeat its sinister views by regular vote." *Id.*, at 80.

35–36. Here, by contrast, the Court approves much more restrictive contribution limitations, ranging from $250 to $1,000 (in 1995 dollars) for both individuals and political committees. Mo. Rev. Stat. §130.032.1 (Supp. 1999). The disparity between Missouri's caps and those upheld in *Buckley* is more pronounced when one takes into account some measure of inflation. See *Shrink Missouri Government PAC* v. *Adams*, 161 F. 3d 519, 523, and n. 4 (CA8 1998) (noting that, according to the Consumer Price Index, a dollar today purchases about a third of what it did in 1976 when *Buckley* was decided). Yet the Court's opinion gives not a single indication that the two laws may differ in their tailoring. See *ante*, at 15 (Missouri's caps are "striking [in their] resemblance to the limitations sustained in *Buckley*"). The Court fails to pay any regard to the drastically lower level of the limits here, fails to explain why political committees should be subjected to the same limits as individuals, and fails to explain why caps that vary with the size of political districts are tailored to corruption. I cannot fathom how a $251 contribution could pose a substantial risk of "secur[ing] a political *quid pro quo*." *Buckley* v. *Valeo*, *supra*, at 26. Thus, contribution caps set at such levels could never be "closely drawn," *ante*, at 7 (quoting *Buckley* v. *Valeo*, *supra*, at 25), to preventing *quid pro quo* corruption. The majority itself undertakes no such defense.

The Court also reworks *Buckley*'s aggregate approach to the free speech rights of candidates. It begins on the same track as *Buckley*, noting that "a showing of one affected individual does not point up a system of suppressed political advocacy that would be unconstitutional under *Buckley*." *Ante*, at 17. See also, *e.g.*, *ante*, at 16 (claiming that candidates "'are still able to amass impressive campaign war chests'" (quoting *Shrink Missouri Government PAC* v. *Adams*, 5 F. Supp. 2d 734, 741 (ED Mo. 1998))). But the Court quickly deviates from *Buckley*, persuading itself

that Missouri's limits do not suppress political speech because, prior to the enactment of contribution limits, "97.62 percent of all contributors to candidates for state auditor made contributions of $2,000 or less." *Ante*, at 17. But this statistical anecdote offers the Court no refuge and the citizenry no comfort. As an initial matter, the statistic provides no assurance that Missouri's law has not reduced the resources supporting political speech, since the largest contributors provide a disproportionate amount of funds. The majority conspicuously offers no data revealing the percentage of funds provided by large contributors. (At least the Court in *Buckley* relied on the *percentage of funds* raised by contributions in excess of the limits. 424 U. S., at 21–22, n. 23, 26, n. 27.) But whatever the data would reveal, the Court's position would remain indefensible. If the majority's assumption is incorrect– *i.e.*, if Missouri's contribution limits actually do significantly reduce campaign speech– then the majority's calm assurance that political speech remains unaffected collapses. If the majority's assumption is correct– *i.e.*, if large contributions provide very little assistance to a candidate seeking to get out his message (and thus will not be missed when capped)– then the majority's reasoning still falters. For if large contributions offer as little help to a candidate as the Court maintains, then the Court fails to explain why a candidate would engage in "corruption" for such a meager benefit. The majority's statistical claim directly undercuts its constitutional defense that large contributions pose a substantial risk of corruption.[10]

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[10] The majority's statistical analysis also overlooks the quantitative data in the record that directly undercut its position that Missouri's law does not create "a system of suppressed political advocacy." *Ante*, at 17. For example, the Court does not bother to note that following the imposition of contribution limits, total combined spending during primary and general elections for five statewide offices was cut by over

Given the majority's ill-advised and illiberal aggregate rights approach, it is unsurprising that the Court's *pro forma* hunt for suppressed speech proves futile. See *ante*, at 15–18. Such will always be the case, for courts have no yardstick by which to judge the proper amount and effectiveness of campaign speech. See, *e.g.*, Smith, Faulty Assumptions and Undemocratic Consequences of Campaign Finance Reform, 105 Yale L. J. 1049, 1061 (1996). I, however, would not fret about such matters. The First Amendment vests choices about the proper amount and effectiveness of political advocacy not in the government– whether in the legislatures or the courts– but in the people.

IV

In light of the importance of political speech to republican government, Missouri's substantial restriction of speech warrants strict scrutiny, which requires that contribution limits be narrowly tailored to a compelling governmental interest. See *Buckley* v. *American Constitutional Law Foundation, Inc.*, 525 U. S. 182, 207 (1999)

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half, falling from $21,599,000 to $9,337,000. See App. 24–28. Significantly, total primary election expenditures in each of the races decreased. *Ibid*. In fact, after contribution limits were imposed, overall spending in statewide primary elections plummeted 89 percent, falling from $14,249,000 to $1,625,000. *Ibid*. Most importantly, the majority does not bother to mention that before spending caps were enacted each of the 10 statewide primary elections was contested, with two to four candidates vying for every nomination in 1992. After caps were enacted, however, only 1 of the 10 primary elections was contested. Overall, the total number of candidates participating in statewide primaries fell from 32 to 11. See *ibid*. Even if these data do not conclusively show that Missouri's contribution limits diminish political speech (although it is undeniable that the data strongly suggest such a result), they at least cast great doubt on the majority's assumption that the picture is rosy.

(THOMAS, J., concurring in judgment); *Colorado Republican*, 518 U. S., at 640–641 (THOMAS, J., concurring in judgment and dissenting in part).

Missouri does assert that its contribution caps are aimed at preventing actual and apparent corruption. Brief for Petitioners 26–28. As we have noted, "preventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances." *National Conservative Political Action Comm.*, 470 U. S., at 496–497. But the State's contribution limits are not narrowly tailored to that harm. The limits directly suppress the political speech of both contributors and candidates, and only clumsily further the governmental interests that they allegedly serve. They are crudely tailored because they are massively overinclusive, prohibiting all donors who wish to contribute in excess of the cap from doing so and restricting donations without regard to whether the donors pose any real corruption risk. See *Colorado Republican, supra*, at 642 (THOMAS, J., concurring in judgment and dissenting in part) ("'Where First Amendment rights are involved, a blunderbuss approach which prohibits mostly innocent speech cannot be held a means narrowly and precisely directed to the governmental interest in the small minority of contributions that are not innocent'" (quoting Brief for Appellants in *Buckley* v. *Valeo*, O. T. 1975, Nos. 75–436 and 75–437, pp. 117–118)). See also *Martin* v. *City of Struthers*, 319 U. S. 141, 145 (1943) (Though a method of speaking may be "a blind for criminal activities, [it] may also be useful [to] members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion"). Moreover, the government has less restrictive means of addressing its interest in curtailing corruption. Bribery laws bar precisely the *quid pro quo* arrangements that are targeted here. And disclosure laws "'deter actual corruption and avoid the

appearance of corruption by exposing large contributions and expenditures to the light of publicity.'" *American Constitutional Law Foundation*, *supra*, at 202 (quoting *Buckley* v. *Valeo*, 424 U. S., at 67). In fact, Missouri has enacted strict disclosure laws. See Mo. Stat. Ann. §§130.041, 130.046, 130.057 (Supp. 1999).

In the end, contribution limitations find support only in the proposition that other means will not be as effective at rooting out corruption. But when it comes to a significant infringement on our fundamental liberties, that some undesirable conduct may not be deterred is an insufficient justification to sweep in vast amounts of protected political speech. Our First Amendment precedents have repeatedly stressed this point. For example, in *Martin* v. *City of Struthers*, *supra*, we struck down an ordinance prohibiting door-to-door distribution of handbills. Although we recognized that "burglars frequently pose as canvassers," *id*., at 144, we also noted that door-to-door distribution was "useful [to] members of society engaged in the dissemination of ideas in accordance with the best tradition of free discussion," *id*., at 145. We then struck down the ordinance, observing that the "dangers of distribution can so easily be controlled by traditional legal methods." *Id*., at 147. Similarly, in *Riley* v. *National Federation of Blind of N. C., Inc.*, 487 U. S. 781 (1988), we struck down a law regulating the fees charged by professional fundraisers. In response to the assertion that citizens would be defrauded in the absence of such a law, we explained that the State had an antifraud law which "we presume[d] that law enforcement officers [we]re ready and able to enforce," *id*., at 795, and that the State could constitutionally require fundraisers to disclose certain financial information, *ibid*. We concluded by acknowledging the obvious consequences of the narrow tailoring requirement: "If this is not the most efficient means of preventing fraud, we reaffirm simply and emphatically that the First Amendment does not permit the State to sacrifice

speech for efficiency." *Ibid.* See also, *e.g.*, *Schneider* v. *State (Town of Irvington)*, 308 U. S. 147, 162 (1939) ("There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets").

The same principles apply here, and dictate a result contrary to the one the majority reaches. States are free to enact laws that directly punish those engaged in corruption and require the disclosure of large contributions, but they are not free to enact generalized laws that suppress a tremendous amount of protected speech along with the targeted corruption.

V

Because the Court unjustifiably discounts the First Amendment interests of citizens and candidates, and consequently fails to strictly scrutinize the inhibition of political speech and competition, I respectfully dissent.