

No. 08-205

In the
Supreme Court of the United States

CITIZENS UNITED,
Appellant

v.

FEDERAL ELECTION COMMISSION,
Appellee.

On Appeal from the
the United States District Court
for the District of Columbia

**BRIEF OF *AMICUS CURIAE*
INDEPENDENT SECTOR
IN SUPPORT OF NEITHER PARTY**

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**BRIEF OF *AMICUS CURIAE* INDEPENDENT SECTOR IN
SUPPORT OF NEITHER PARTY**

INTEREST OF *AMICUS CURIAE*

Independent Sector, a non-profit corporation organized under section 501(c)(3) of the Internal Revenue Code, is the nation's foremost leadership forum for charities, foundations, and corporate giving programs committed to advancing the common good in America and around the world.¹

¹ This brief is filed with the consent of the parties. The Government has filed a blanket consent and a letter of consent from Citizens United has been filed with the Court.

Its nonpartisan coalition leads, strengthens, and mobilizes the charitable community to fulfill its vision of a just and inclusive society and a healthy democracy of active citizens, effective institutions, and vibrant communities. Independent Sector's membership of over 500 organizations collectively represents tens of thousands of charitable groups serving every cause in every region of the country, as well as millions of donors and volunteers.

The majority of Independent Sector's members are 501(c)(3) organizations that engage in advocacy efforts to inform public policy debates on issues that affect their constituents' and their ability to fulfill their charitable purposes. Such organizations are prohibited by law from participating in any political campaign on behalf of (or in opposition to) any candidate for public office. Some of Independent Sector's members have affiliated 501(c)(4) organizations that are subject to the existing federal campaign finance regulations in the same manner as the Appellant.

The advocacy efforts of Independent Sector's members include informing the public about pending public policy issues, as well as engaging in grassroots activities that discuss specific elected officials and their stated policy positions. Organizations such as Independent Sector's members cannot predict or control the timing of

Pursuant to this Court's Rule 37.6, *Amicus* affirms that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *Amicus* and its counsel made such a monetary contribution.

when an issue will be considered by public officials in relation to election dates. Independent Sector members have called on the public to contact their congressional representatives about pending votes that affect the funding and eligibility requirements for specific government programs related to charitable purposes ranging from human services to health to the arts. Some of Independent Sector's member organizations, for example, are concerned about the possibility of estate tax repeal because of the negative effect that would have on charitable giving. Their ability to encourage the public to contact their elected officials about a pending vote on the estate tax would be curtailed if the vote or hearings on the bill should be scheduled during an election period. Independent Sector members may find it necessary to run ads urging specific local actions, such as asking a local official to keep a particular shelter open, even though the official is also a candidate for federal office.

Independent Sector, and the charitable and philanthropic community as a whole, also have a fundamental interest in the integrity of our democratic system of government. The continuing influence of money in politics jeopardizes that integrity. Corruption and the appearance of corruption in the political process impairs the ability of citizens and charitable organizations to exercise their right to advocate for the causes they espouse and can discourage participation by individuals as well as charitable organizations.

Independent Sector supports the principles of campaign finance reform legislation that aim to bring greater integrity to the electoral and

democratic processes. Campaign finance reform should protect and strengthen the ability of citizens and the charitable non-profit organizations they form not only to advocate for their cause, but also to ensure that the voices and aspirations of citizens and the organizations that represent their views receive a fair hearing in the political process.

SUMMARY OF ARGUMENT

This Court directed the parties to submit supplemental briefing on the question of whether the Court should “overrule either or both *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), and the part of *McConnell v. FEC*, 540 U.S. 93 (2003), which addresses the facial validity of Section 203 of the Bipartisan Campaign Reform Act of 2002, 2 U.S.C. §441b?”

Amicus respectfully submits that the answer to that question is no. There are ample narrower grounds on which to resolve any constitutional tension present in this case between Citizens United’s desire to distribute its film using general treasury funds through the medium of video on demand and the well-established compelling government interests in regulating corporate funding of elections.

ARGUMENT**I. CITIZENS UNITED’S COMMUNICATION
COULD BE PROTECTED UNDER A PROPER
APPLICATION OF THE *MCFL* EXEMPTION****A. Background**

For over a century, Congress has regulated the use of corporate monies in federal elections. “The current law grew out of a ‘popular feeling’ in the late 19th century ‘that aggregated capital unduly influenced politics, an influence not stopping short of corruption.’” *FEC v. Beaumont*, 539 U.S. 146, 187 (2003) (quoting *United States v. Auto. Workers*, 352 U.S. 567, 570 (1957)).

This Court has consistently recognized that the “careful legislative adjustment of the federal election laws’ . . . meant to strengthen the original, core prohibition on direct corporate contributions” was supported by the “public interest in ‘restrict[ing] the influence of political war chests funneled through the corporate form.’” *Id.* at 153 (quoting *FEC v. Nat’l Right to Work Comm.*, 459 U.S. 197, 209 (1982)). As this Court further stated, “substantial aggregations of wealth amassed by the special advantages which go with the corporate form of organization should not be converted into political ‘war chests’ which could be used to incur political debts from legislators.” *Nat’l Right to Work Comm.*, 459 U.S. at 207 (quoting *Auto. Workers*, 352 U.S. at 59). Corruption, the appearance of corruption, and ensuring the integrity of the election process through narrowly tailored restrictions on both direct and indirect contributions is central to

these regulations. In *Buckley v. Valeo*, 424 U.S. 1 (1976), this Court upheld campaign contribution limits of the Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3 (codified as amended at 2 U.S.C. §§ 431-455) (“FECA”) out of concern that when “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.

Alongside Congress’s “careful legislative adjustment” in the campaign finance area, this Court has conscientiously evaluated each successive legislative effort, repeatedly upholding regulations that furthered core government interests and modifying or striking down those aspects that did not sufficiently further those core interests. The holding in *FEC v. Massachusetts Citizens for Life, Inc.* (“*MCFL*”), 479 U.S. 238, 256-65 (1986), demonstrates the incremental and deliberative approach that this Court consistently has used in reviewing challenges to the campaign finance laws. In *MCFL*, *supra*, this Court invalidated federal restrictions on campaign ads by non-profit political organizations funded primarily by individual contributions. The Court balanced the governmental interest in preventing the use of such organizations as “conduits” against the specific characteristics of the organization before it, finding that the governmental interest was not sufficiently strong to uphold the regulations. *Id.* at 262.

In 2002, Congress passed the Bipartisan Campaign Reform Act (“BCRA”) in part to address the increasing problems created by soft money

and issue advertising. BCRA, Pub. L. No. 107-155, 116 Stat. 81. Section 203 of BCRA broadened, *inter alia*, the FECA provisions originally applicable only to express advocacy to prohibit all “electioneering communications.” 2 U.S.C. § 441b(c). BCRA defines “electioneering communication” as any “broadcast, cable, or satellite communication” that “refers to a clearly identified candidate for Federal office” and is made within 30 and 60 days of a primary and general election respectively (the “blackout period”). *Id.* at § 434(f)(3)(A)(i)(I)-(II)(bb). In *McConnell*, this Court upheld a broad facial challenge to BCRA, and reaffirmed the validity of the *MCFL* exemptions. 540 U.S. at 209-11. In *FEC v. Wisconsin Right to Life, Inc. (“WRTL II”)*, 551 U.S. 449 (2007), Chief Justice Roberts’s controlling opinion held that the Constitution restricted Congress’s ability to regulate electioneering communications to those that expressly advocate for or against a candidate for federal office, or their functional equivalent. *Id.* at 469-70.

The resulting campaign finance regulations have focused on four characteristics: 1) the speaker (including the speaker’s corporate status and source and nature of funding); 2) the speech (whether it is express advocacy or its equivalent); 3) the timing of the speech (including proximity to an election); and 4) the medium of the speech. Applying these factors, the District Court below held that Appellant’s documentary (the “Movie”) could not be distributed via video on demand during the blackout period because the Movie: 1) fell within the media regulated under BCRA; 2)

amounted to express advocacy; and 3) was funded in part by corporate contributions. If any of these three findings were improper, then the Court need not reach the facial invalidity question.²

B. Non-Profit Corporations That Accept *De Minimis* Corporate Contributions Do Not Present The Threat Of Being A Conduit For Corporate Monies

1. *The MCFL Exemption*

While acknowledging the propriety of congressional concerns that “organizations that amass great wealth in the economic marketplace not gain unfair advantage in the political marketplace,” the *MCFL* Court also recognized that “[s]ome corporations have features more akin to voluntary political associations than business firms, and therefore should not have to bear

² In BCRA, Congress singled out broadcast, cable and satellite transmissions of electioneering communications because of their wide appeal to the voting public and because of their pervasiveness. *See McConnell v. FEC*, 251 F. Supp. 2d 176, 569-70 (D.D.C.) *modified by* 540 U.S. 93 (2003). If shown on video on demand, the Movie would be accessible only to cable subscribers who took affirmative steps to view the Movie, J.A. 256a, 258a, thus posing no risk that casual viewers would come across the Movie accidentally. Whether video on demand should fall within the media that BCRA was intended to regulate is questionable, and equally questionable whether the government’s compelling interest in regulating express advocacy on broadcast, cable or satellite would necessarily extend to video on demand.

burdens on independent spending solely because of their incorporated status.” *Id.* at 239, 263. Accordingly, the *MCFL* Court carved out an exemption from the FECA expenditure prohibitions for certain non-profit political corporations, and enumerated three factors (“the *MCFL* factors”) that were “essential” to its holding: 1) the entity was formed for the purpose of promoting political ideas, and did not engage in business activities; 2) it had no shareholders; and 3) it was not formed by a corporation, and had a policy against accepting corporate contributions. *Id.* at 263-64.

The Court balanced the burden on First Amendment rights posed by requiring MCFL to engage in express advocacy only through a separate fund against the compelling government interest at issue:

Regulation of corporate political activity thus has reflected concern not about use of the corporate form *per se*, but about the potential for unfair deployment of wealth for political purposes. Groups such as MCFL, however, do not pose that danger of corruption. MCFL was formed to disseminate political ideas, not to amass capital. The resources it has available are not a function of its success in the economic marketplace, but its popularity in the political marketplace. . . . In short, MCFL is not the type of ‘traditional [corporation] organized for economic gain,’ *NCPAC, supra*, at 500, that has been the focus of regulation of corporate political activity.

Id. at 259. While the absence of corporate contributions was a factor in the Court's decision, the Court by no means based its holding on that factor alone. The rationale of *MCFL* certainly allows for a more nuanced analysis of the structure and purpose of a non-profit than counting only the sources of its support.

2. *All Circuit Courts Have Found A De Minimis Exception Within The MCFL Exemption*

Every Court of Appeals that has considered whether a 501(c)(4) non-profit corporation, such as Appellant, may accept any corporate contributions without violating BCRA has expressly found that a *de minimis* amount of corporate funding does not violate the *MCFL* exemption. *See Colo. Right to Life Comm., Inc. v. Coffman*, 498 F.3d 1137, 1147-49, 1151 (10th Cir. 2007); *Beaumont v. FEC*, 278 F.3d 261, 273 (4th Cir. 2002), *rev'd on other grounds*, 539 U.S. 146 (2003); *FEC v. Nat'l Rifle Ass'n of Am.*, 254 F.3d 173, 192 (D.C. Cir. 2001); *Minnesota Citizens Concerned for Life v. FEC*, 113 F.3d 129, 130 (8th Cir. 1997); *Day v. Holahan*, 34 F.3d 1356, 1363-64 (8th Cir. 1994); *FEC v. Survival Educ. Fund, Inc.*, 65 F.3d 285, 292-93 (2d Cir. 1995).

For example, the Tenth Circuit held that a non-profit corporation that received less than one percent of its funding from corporations was entitled to an *MCFL* exemption because such a small amount of corporate funding “does not invite the creation of a political conduit for corporate funding of political activity.” *Colo.*

Right to Life Comm., 498 F.3d at 1151. The D.C. Circuit held that the National Rifle Association's acceptance of \$1000 in corporate contributions was *de minimis* and did not preclude the organization from receiving an *MCFL* exemption. *Nat'l Rifle Ass'n*, 254 F.3d at 192. Additionally, the Eighth Circuit twice held that a non-profit organization was entitled to an *MCFL* exemption when it had received "insignificant contributions from business corporations." *Minn. Citizens Concerned for Life*, 113 F.3d at 130; *see also Day*, 34 F.3d at 1364 ("The state goes too far in concluding that the factual findings of *MCFL* translate into absolutes in legal application."). The Second Circuit held that a non-profit corporation was entitled to an *MCFL* exemption when the minimal corporate funding it received was less than one percent of its overall revenue. *Survival Educ. Fund*, 65 F.3d at 292 ("[A] non-profit political advocacy corporation, which in fact receives no significant funding from unions or business corporations, does not surrender its First Amendment freedoms for the want of such a policy.") *Accord Beaumont*, 278 F.3d at 273 (stating that eight percent of overall revenue was a "modest percentage" that did not convert the non-profit into a conduit for corporate spending).

3. *Citizens United Appears To Be Entitled To The De Minimis Exception To The MCFL Exemption*

Here, both the record and the law suggest that Citizens United may be entitled to the *de minimis* exception recognized by the courts. The

Appellant's Brief represents that "[m]ore than ninety-nine percent of the funding for [the Movie] came from individuals" and its overall funding is "predominantly by donations from individuals who support Citizens United's ideological message" (Appellants Br. at 5, 32-33) (citing J.A. 244a, 251a-52a). This insignificant level of corporate support appears consistent with the *de minimis* standard applied by every Circuit Court that has addressed this issue. Like the non-profit in *MCFL*, Citizens United was formed for the express purpose of promoting certain political ideologies.³ J.A. 11a. As such, Citizens United is unlikely to pose a threat of becoming a conduit for prohibited corporate contributions. Expressly adopting the *de minimis* exception here is entirely consistent with the Court's prior rulings and Congress's intent with respect to BCRA.

The Government has rightly suggested that "the evidentiary record is inadequate to determine whether [the Movie] was in fact financed 'overwhelmingly' by individual donations" since during discovery Citizens United "disclosed only those donations of \$1000 or more that were made or pledged for the purpose of" producing the Movie. (Appellee Br. at 30) (citing J.A. 225a, 244a) The record is also silent on the important question of Citizens United's overall corporate funding as opposed to the funding for this particular film. In order to fully resolve this issue, remanding this case to the District Court

³ The record is devoid of any indication that Citizens United had any shareholders. Therefore, *MCFL's* concern over the interest of shareholders is inapplicable.

for a determination of the amount of corporate contributions and for an initial ruling on whether Citizens United has surpassed any *de minimis* exception would be appropriate.

C. Citizens United’s *De Minimis* Corporate Contributions Create A Unique Factual Scenario That Should Not Form A Basis To Overrule *Austin* And *McConnell*.

This case does not present an appropriate vehicle to overrule *Austin* and *McConnell*. This is the first case before this Court in which a non-profit political advocacy group with apparently *de minimis* donations from corporations sought an exemption from the limits on advertising imposed by BCRA. Although this might appear to be an insignificant distinction, in fact it goes to the heart of the motivation of the federal regulation at issue: “to ‘preven[t] corruption or the appearance of corruption[,]” *Beaumont*, 539 U.S. at 146 (quoting *FEC v. Nat’l Conservative Political Action Comm’n*, 470 U.S. 480, 496 (1985)), and to protect against the organization’s “use as conduits for ‘circumvention of [valid] contribution limits.’” *Id.* at 155 (quoting *FEC v. Colo. Republican Federal Campaign Comm.*, 533 U.S. 431, 456 (2001)).

The *McConnell* decision recognized the *MCFL* exemption, but the Court was not called upon to apply it. *McConnell*, 540 U.S. at 210-211. The Court’s discussion of *MCFL* was limited to its recognition that the absence of an explicit carve-out for *MCFL* organizations from a specific section did not invalidate the entire section. *Id.* at 210-

11. Indeed, the Court reasoned that the existence of the *MCFL* test “for many years before BCRA was enacted,” created the presumption that the legislators were aware that section 316(c)(6) could not have applied to *MCFL* organizations. *McConnell*, 540 U.S. at 211. Thus, *McConnell* need not be overruled for the proper disposition of the instant case.

Further, if the Court is inclined to exempt Citizens United from the advertising limits at issue here, it need not overrule *Austin* because it is not in conflict with this Court’s existing precedent, given the specific circumstances of that case. The organization in *Austin*, the Michigan State Chamber of Commerce (the “Chamber”), unlike Citizens United, had largely corporate members, creating precisely the type of “conduit” for corporate money that Congress has sought to restrict, and that this Court has upheld through decades of its jurisprudence. *See MCFL*, 479 U.S. at 256-65; *Beaumont*, 539 U.S. at 155, *McConnell*, 540 U.S. at 211, *WRTL II*, 551 U.S. at 469-70.

Relying on the *MCFL* Factors, the *Austin* Court found that the Chamber was an organization composed primarily of corporate members, was financed primarily by corporate contributions, and was dedicated to promoting economic conditions favorable to private enterprise. These corporations would be reluctant to withdraw as members regardless of the Chamber’s political expressions. *Austin*, 494 U.S. at 656. Citizens United, by contrast, is fairly characterized as having no purpose other than political advocacy, and its members have no economic incentive to remain a part of the

organization should they disagree with its political activities. J.A. 11a.

The fundamentally different tax status of the Chamber and Citizens United is also significant. The Chamber is a 501(c)(6) organization. In addition to chambers of commerce, section 501(c)(6) specifically encompasses business leagues, real estate boards, trade boards, and professional football leagues. Accordingly, these 501(c)(6) organizations will almost inevitably count corporations among its members and primary supporters. In contrast, Citizens United is a section 501(c)(4) organization that must be “operated *exclusively* for the promotion of social welfare,” 26 U.S.C. 501(c)(4)(A) (emphasis added). Indeed, its express purpose is to “reassert the traditional American values of limited government, freedom of enterprise, strong families, and national sovereignty and security.” J.A. 11a.

These factual distinctions are sufficiently broad to distinguish the holding in *Austin* with respect to the first two *MCFL* factors. With respect to the third factor, clarifying that a *de minimis* exception to the *MCFL* exemption exists preserves the rationale behind *Austin* and *WRTL II*, while preventing the use of such organizations as conduits for circumvention of valid limits on political spending by corporations. This clarification offers ample support for the protection of atypical organizations like Citizens United, which do not expressly prohibit corporate donations, but are overwhelmingly supported by individuals.

II. OVERRULING *AUSTIN* AND *MCCONNELL* IS NOT APPROPRIATE IN THIS APPEAL

This litigation began as a challenge to the constitutionality of BCRA’s regulation of electioneering communications as applied to a specific film produced by one 501(c)(4) entity to be distributed at a particular time by way of video on demand. J.A. 9a As noted above, to the extent that the Court is inclined to limit BCRA’s regulation of electioneering communications in the specific context of this case, there are ample narrower constitutional grounds on which to reach this result. *Amicus* respectfully submits that this Court should apply its well-established prudential doctrines—especially in the campaign finance context—and decline to expand this specific challenge to every possible application of section 203 of BCRA. *See Wash. State Grange v. Wash. State Republican Party*, 128 S. Ct. 1184, 1191 (2008) (“[F]acial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution.”).

Overruling recent precedent to sustain a facial challenge to complex legislation such as BCRA presents a number of practical and jurisprudential problems, especially where that precedent is in accord with decades of prior decisions. BCRA was the result of seven years of congressional hearings, fact-finding, consideration and careful drafting. *See McConnell*, 540 U.S. at 129-34. Just six years ago, this Court upheld the constitutionality of the basic structure of that

statute. *Id.* As a result of Congress’s careful drafting and this Court’s express approval, many states have modeled their own regulation of election-related financing by corporations on the federal statutes.⁴ BCRA and *McConnell* have not proved “unworkable,” as this Court’s prior precedents require to overrule such a key and recent decision, *Montejo v. Louisiana*, 129 S. Ct. 2079, 2089 (2009), nor has it been demonstrated on the record that the statute’s overbreadth is substantial compared to its plainly legitimate sweep. *Wash. State Grange*, 128 S. Ct. at 1191, n.6.⁵ Rather, in this particularly sensitive area of elections, core to the Nation’s democracy and constitutional values, a step-by-step evaluation of

⁴ See e.g. Ariz. Rev. Stat. §§ 16-901, 16-919, & 16-920; Colo. Const. art. XXVIII, § 3(4); Conn. Gen. Stat. § 9-613; M.G.L. c. 55, § 8; Mich. Comp. Laws § 169.254; Minn. Stat. § 211B.15; 25 Pa. Stat. Ann. § 3253-3254; R.I. Gen. Laws § 17-25-10; Tex. Elec. Code Ann. §§ 253.091-253.098; Wis. Stat. § 11.38(1)(a)1 & Wis. Stat. 11.01(16)(a)1 (regulating corporate contributions).

⁵ The absence of any factual record on the overbreadth issue is a sufficient ground in and of itself for the Court to pass on any such challenge. As this Court has repeatedly held, “[t]he overbreadth claimant bears the burden of demonstrating ‘from the text of [the law] *and from actual fact*,’ that substantial overbreadth exists.” *Virginia v. Hicks*, 539 U.S. 113, 122 (2003) (quoting *New York State Club Assn., Inc. v. City of New York*, 487 U.S. 1, 14 (1988)) (emphasis added). In contrast, the factual record before the Court in support of the facial challenge to this statute in *McConnell* consumed 100,000 pages including testimony and declarations of over 200 fact and expert witnesses. See *McConnell*, 251 F.Supp.2d at 208-09.

the constitutional limits on financial restrictions in the context of elections with consequently narrow constitutional holdings is more than appropriate, it is imperative. *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 402-03 (2000) (Breyer, J., concurring); *Nat'l Right to Work Comm.*, 459 U.S. at 209 (“This careful legislative adjustment of the federal electoral laws, in a ‘cautious advance, step by step,’ . . . to account for the particular legal and economic attributes of corporations and labor organizations warrants considerable deference”) (quoting *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 46 (1937)).

In *WRTL II*, this Court engaged in just such an analysis, narrowing Section 203 of BCRA to regulate express advocacy or the functional equivalent of express advocacy by corporations or labor unions. 551 U.S. at 469-70 (Opinion of Roberts, J.). Since 1947, this Court has upheld congressional power to regulate such corporate campaign contributions, including express advocacy and its equivalent in federal elections. *Beaumont*, 539 U.S. at 152 (“[a]ny attack on the federal prohibition of direct corporate political contributions goes against the current of a century of congressional efforts to curb corporations’ potentially ‘deleterious influences on federal elections,’ which we have canvassed a number of times before”) (quoting *Auto. Workers*, 352 U.S. at 585); *accord*, *MCFL*, 479 U.S. at 246-49; *National Right to Work Comm.*, 459 U.S. at 209. Reversing *McConnell* would result in a reversal of federal and state regulation of such corporate contributions that began more than sixty years ago. (*See* Appellee Supp. Br. at 16-19)

Contrary to Citizens United's argument, (Appellant Supp. Br. at 3-6), the compelling government interests in these regulations repeatedly articulated by this Court remains "to prevent corruption or the appearance of corruption" and as a safeguard "against their use as conduits for 'circumvention of [valid] contribution limits.'" *Beaumont*, 539 U.S. at 154-55 (quoting *Colo. Rep. Fed. Campaign Comm.*, 533 U.S. at 456).

As this case, the statute at issue, and the most recent set of presidential elections all demonstrate, the means of communication of election messages and the possibilities that those means offer for increasing and decreasing the risk of corruption in the electoral processes are changing rapidly. What impact the Internet, for example, will have on campaign fund-raising, on political communications, on corporate participation in the electoral process is unclear and has changed dramatically with each election cycle. That is all the more reason to avoid rigid and broad constitutional restraints on the abilities of the various levels of government to reach accommodation between free and open dialogue about issues and candidates and reasonable regulation of corporate and labor union money in the context of elections. *See e.g., Wash. State Grange*, 128 S. Ct. at 1191 ("Exercising judicial restraint in a facial challenge 'frees the Court not only from unnecessary pronouncement on constitutional issues, but also from premature interpretations of statutes in areas where their constitutional application might be cloudy.'")

(quoting *United States v. Raines*, 362 U.S. 17, 22 (1960))).

CONCLUSION

Amicus Independent Sector has long been committed both to the integrity of the electoral process and the freedom of governmental officials from financial pressures and corruption necessitated by the inevitable fund raising that is part of the electoral process over the recent past. Independent Sector is also deeply conscious of the need for robust debate on the issues that affect the country, the people, non-profit and for profit corporate entities, and the tension between full realization of both goals. Accordingly, Independent Sector respectfully urges the Court not to overrule *Austin* or *McConnell*, but instead to rule narrowly to resolve the specific challenge before the Court.

Respectfully submitted,

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