No. 16-109

IN THE

Supreme Court of the United States

STOP RECKLESS ECONOMIC INSTABILITY CAUSED BY DEMOCRATS; TEA PARTY LEADERSHIP FUND; AND ALEXANDRIA REPUBLICAN CITY COMMITTEE., ET AL.

Petitioners,

v.

FEDERAL ELECTION COMMISSION,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF FOR THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

Benjamin P. Edwards
Barry University
6441 East Colonial Drive
Orlando, Florida 32807
bpedwards@barry.edu

ILYA SHAPIRO
Counsel of Record
Cato Institute
1000 Mass. Ave. N.W.
Washington, D.C. 20001
(202) 842-0200
ishapiro@cato.org

August 24, 2016

QUESTIONS PRESENTED

1. In the context of election law, may federal courts adjudicate the merits of disputes that are "capable of repetition, yet evading review" even though the same plaintiff may not face the same issue again?

2. May the government reduce First Amendment rights after six months by cutting the amount that political committees (PACs) may contribute to political parties, so long as it simultaneously boosts a different form of political activity by increasing the amount PACs may contribute to candidates?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF THE *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan policy research foundation established in 1977 and dedicated to the principles of individual liberty, free markets, and limited government. Cato's Center for Constitutional Studies was established in 1989 to help restore the principles of constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, and produces the annual *Cato Supreme Court Review*.

This case concerns *amicus* because it involves the ability of the public to challenge senseless restrictions on political activity. In particular, Cato supports this petition because it may increase the ability to challenge laws that suppress participation in all parts of the electoral process, including campaign contributions, voter registration, and voting itself.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Court maintains a firm commitment to fair and free elections. But if the Fourth Circuit's approach here is allowed to stand, courts' ability to effectively review such laws will be severely curtailed. This case presents the Court with an opportunity to ensure that lower courts will resolve election-law controversies under the "capable of repetition, yet evading review" exception to its mootness doctrine. *S. Pac. Term. Co. v. ICC*, 219 U.S. 498, 515 (1911). In other

---

[1] Rule 37 statement: All parties received timely notice of *amicus*'s intent to file this brief; their consent letters have been lodged with the Clerk. Further, no counsel for any party authored this brief in whole or in part and no person or entity other than *amicus* funded its preparation or submission.

contexts, courts applying this exception typically require that the controversy be capable of repetition regarding the same plaintiff. *See, e.g.*, *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975). But, as the Petition explains, such an approach would severely limit review in election-law cases—and this Court has thus often relaxed or waived this "same-plaintiff" requirement in such situations. *See* Pet. at 1–2.

This case presents a valuable opportunity for the Court to explicitly affirm this election-law exception that has already been recognized and applied by its jurisprudence. Indeed, circuit courts are divided over the same-plaintiff exception. This split threatens to open a rift across federal jurisdictions in the ability of people to enforce their fundamental constitutional rights. Affirming the election-law exception to the same-plaintiff requirement will ensure that courts can continue to actually resolve disputes, and it will increase the likelihood that future elections proceed in an orderly, constitutionally valid manner.

Without an election-law exception to the same-plaintiff requirement, substantial harms to voting rights will occur without legal redress. In particular, legislators may exploit the same-plaintiff rule to suppress voting by discrete groups. As this case shows, timing-related restrictions may limit participation during the crucial pre-election period and then phase out once the election is over, preventing judicial scrutiny of the underlying unconstitutional law.

The "same-plaintiff" requirement rewards plaintiffs and defendants alike for taking disingenuous positions. It creates an incentive for plaintiffs to allege that they will run again in the future, even if they have no future desire to run for public office. And it

creates an incentive for defendants to obstruct the speedy resolution of cases and thus win a technical victory based on mootness.

In addition to resolving the circuit split regarding the "same plaintiff" requirement, the Court should also accept this case to protect the important First Amendment freedoms at stake. The petitioner has challenged a senseless, six-month "seasoning" period, after which the donation limits placed on a political action committee (PAC) shift in conflicting and contradictory directions. These arbitrary and mutually inconsistent changes do nothing to reduce *quid pro quo* corruption or the appearance of corruption. If anything, the shifting limits *contribute* to corruption because they provide significant advantages to insiders with pre-established PACs.

The law at issue violates the First Amendment rights of newer PACs because they are barred from full participation during the vital pre-election period. A new PAC is hardly able to engage in the core First Amendment speech of political advocacy if it must wait until *after* an election cycle to disburse its funds.

Furthermore, the law needlessly burdens the First Amendment rights of "seasoned" PACs that have existed for more than six months. The law's shifting donation limit forces such PACs to reduce their donations to existing political parties. To the extent that the creators of a seasoned PAC created it to support existing parties, the shifting regulatory structure reduces the utility of the existing PAC and creates an incentive to either throw support to newer PACs. These rules do nothing to reduce corruption and only drive the proliferation of PACs for no reason other than technical legal compliance.

ARGUMENT

I. THE DECISION BELOW WIDENS THE VAST DISPARITY ACROSS THE CIRCUITS IN THE ABILITY OF PEOPLE TO PROTECT THEIR FIRST AMENDMENT RIGHTS

This Court has a long history of adjudicating election-law cases under the "capable of repetition, yet evading review" exception, even when these cases do not meet the "same-plaintiff" requirement. Pet. at 21–26. As Justice Scalia's correctly recognized *Honig*, this practice has existed long enough to definitively state that there is an exception to "the same-party requirement" in election law cases. *Honig v. Doe*, 484 U.S. 305, 335–36 (1988) (Scalia, J., dissenting).

But despite the clear implication of this Court's precedent, a wide circuit split has developed over the issue. The Fifth, Sixth, Seventh, and Ninth Circuits recognize the exception, while the First, Second, and Fourth Circuits do not. *Compare Catholic Leadership Coal. of Tex. v. Reisman*, 764 F.3d 409, 423–24 (5th Cir. 2014) (recognizing the implied election-law exception), *Lawrence v. Blackwell*, 430 F.3d 368, 372 (6th Cir. 2005) (same), *Majors v. Abell*, 317 F.3d 719, 723 (7th Cir. 2003) (same); and *Caruso v. Yamhill Cnty.*, 422 F.3d 848, 853–54 (9th Cir. 2005) (same); *with Barr v. Galvin*, 626 F. 3d 99, 105–06 (1st Cir. 2010) (declining to apply the exception); *Van Wie v. Pataki*, 267 F.3d 109, 114–15 (2d Cir. 2001) (same).

Not only does this split threaten the fabric of justiciability; it may blind courts to future divergences on *substantive* issues as well. A circuit split on an issue of justiciability can generate longstanding and irresolvable divergences across the circuits on sub-

stantive law, because courts that do not recognize the "same-plaintiff" exception will be simply unable to adjudicate many significant election-law questions. For example, jurisdictions that do not recognize the election-law exception may be significantly less likely to adjudicate the constitutionality of time-limited election laws. *See*, *e.g.*, *Dunn v. Blumstein*, 405 U.S. 330, 338 (1972) ("Tennessee's durational residence laws classify bona fide residents on the basis of recent travel, penalizing those persons . . . who have gone from one jurisdiction to another during the qualifying period."). If the same-plaintiff rule remains in place, some jurisdictions will be able to insulate their voter-suppression laws from review, generating great disparities in the enforcement of constitutional rights.

II. THE "SAME-PLAINTIFF" REQUIREMENT CREATES PROBLEMS IN ELECTION LAW

Justiciability and mootness doctrines currently "lacks a coherent theoretical foundation." Matthew I. Hall, *The Partially Prudential Doctrine of Mootness*, 77 Geo. Wash. L. Rev. 562, 562 (2009). It is not surprising, then, that lower courts have struggled to apply them. In many instances, courts simply take a prudential approach, adjudicating cases even when a party's personal interest may be moot or tenuous at best. *Id.* As explained below, the election-law context presents unique challenges to adjudicating legal issues before particular plaintiffs undergo a permanent change in legal status, and therefore it calls for a clear exception to the same-plaintiff requirement.

A. The "Same-Plaintiff" Requirement Impedes the Resolution of Controversies over Voter-Identification Laws

Courts must vigilantly protect against the "inevitable tendency of elected officials to entrench themselves by targeting groups unlikely to vote for them." *See N.C. State Conference of NAACP v. McCrory*, No. 16-1468, 2016 WL 4053033, at *1 (4th Cir. July 29, 2016) (recognizing that "minority voters" may be "uniquely vulnerable" to voter suppression laws). The absence of an election-law exception reduces the ability of courts to review voter-identification laws because such laws often only prevent each individual voter from participating in one election. For example, defenders of enhanced voter-ID laws have repeatedly sought the dismissal of suits challenging those laws by arguing that such cases become moot once a plaintiff obtains or renews a photo ID. *See, e.g.*, *Frank v. Walker*, No. 11-C-1128, 2016 WL 3948068, at *2 (E.D. Wis. July 19, 2016) ("The defendants point out that two of these plaintiffs . . . have obtained ID, and contend that therefore their claims are moot"); *One Wisc. Inst., Inc. v. Thomsen*, No. 15-CV-324-JDP, 2016 WL 4059222, at *14 (W.D. Wis. July 29, 2016) ("Defendants contend that the latest emergency rule fixes the problems with the [ID system], and that because all petitioners still in the process have a receipt valid for voting, the dispute over the [ID process] is moot").

So long as the same-plaintiff requirement is in place, such tactics may allow these laws to persist indefinitely, even if they disenfranchise minority voters while addressing minor voter-fraud problems. *See One Wisc. Inst.*, 2016 WL 4059222, at *2 ("The Wisconsin experience demonstrates that a preoccupation

with mostly phantom election fraud leads to real incidents of disenfranchisement"). The longer that controversies over election laws persist without resolution, the more the perceived integrity of elections will be called into doubt. Only by explicitly recognizing an election-law exception to the same-plaintiff requirement can this Court protect electoral legitimacy.

B. The "Same-Plaintiff" Requirement Allows Legal Uncertainty to Fester and Increases the Likelihood of Mid-Election Crises

Resolving the validity of a law at the earliest opportunity is particularly important in the election-law context, since allowing such issues to remain unsettled threatens to taint future elections and diminish public confidence in the electoral process. But without a same-plaintiff exception in such cases, courts are often left with two unappealing alternatives: either address difficult legal issues in a hurried rush so that they can be adjudicated before the next election or not resolve the issue at all once the next election renders it moot. *Cf. Veasey v. Abbott*, No. 14-41127, 2016 WL 3923868, at *16 (5th Cir. July 20, 2016) (explaining that in reaching its decision, the court took into account the time "needed to communicate those modifications to the wider public so as not to disrupt the election process"). An election-law exception to the same-plaintiff requirement ensures that courts can engage in the ordinary deliberative process and resolve these issues accurately.

It is far from ideal for courts to resolve legal issues in an emergency, during the heat of an election and subject to the distortions created by the charged, partisan atmosphere. *See*, *e.g.*, *Bush v. Gore*, 531 U.S. 98 (2000). The Court understood as much when it chose

to resolve the ballot-access issue underlying the merits of *Moore v. Ogilvie*, an issue that initially arose in relation to the (then-passed) 1968 election, but that would inevitably arise again in future. 394 U.S. 814 (1969). The *Moore* Court firmly rejected the argument of the dissent, which argued against adjudicating the "moot" case because the appellants had not indicated any "intent to participate as candidates in any future Illinois election." *Id.* at 819 (1969) (Stewart, J., dissenting) (arguing against resolving controversy on the ground that "the 1968 election is now history").

The *Moore* Court realized that rather than adjudicating a 1968 election controversy too late, it was in fact resolving an issue that would arise in the 1972 election (and beyond) at exactly the right time—with three years to spare before the next presidential election. Continuing the practice which worked so well in *Moore* will allow this Court to resolve potentially contentious issues in advance, and thereby reduce the likelihood of future mid-election legal crises.

C. The "Same-Plaintiff" Requirement Creates Perverse Incentives

Maintaining a same-plaintiff requirement in the election law context creates a range of perverse incentives for both plaintiffs and defendants.

1. It incentivizes plaintiffs' disingenuous predictions to preserve jurisdiction.

The same-plaintiff requirement in election law presents problems that extend beyond the circumstances of this particular case. Here, the six-month waiting period applies once in a PAC's lifetime. But frequently, a regulation imposes burdens that recur *every election cycle*. With the same-plaintiff require-

ment, plaintiffs are forced to "tip their hand" to maintain standing, by declaring that they intend to act in *future* elections in ways that will expose them to the same regulations. Such a requirement is in sharp tension with the respect for autonomy and independent decisionmaking at the heart of political freedom.

Political groups that are unwilling to reveal their intentions and strategies years in advance should not be prevented from vindicating their legal rights. The Court's precedents show that such groups have only found adequate protection when the same-plaintiff requirement has been discarded. For example, in *Rosario v. Rockefeller*, this Court retained jurisdiction to resolve the constitutionality of a party-registration deadline, even though no plaintiff could guarantee a desire to change their party registration again in future elections. 410 U.S. 752 (1973). It was enough for the Court to simply note that the "petitioners will be eligible to vote in the next scheduled New York primary" and to leave the question of whether they actually *would* vote unanswered. *Id.* at 756 n.5. The Court recognized that this is a choice voters should be free to make when *they* choose to make it, not one that they should be forced to make (or pretend to make) just to artificially preserve standing.

The experience of the plaintiffs in *Rosario* stands in stark contrast to the experience of plaintiffs in circuits that rigidly apply the same-plaintiff requirement in election-law cases. For example, when a group of plaintiffs challenged a New York requirement that voters register for one of the party primaries before knowing who would be running in that primary, the Second Circuit dismissed the case as moot because the plaintiffs could not guarantee they

would face the same situation in a future primary. *Van Wie v. Pataki*, 267 F.3d 109, 115 (2d Cir. 2001). Ironically, the freedom *not* to be forced to declare one's voting intentions before knowing the full circumstances of an election was precisely the right at issue in the case. Vindicating that right in one election would have been of little benefit if the plaintiffs had been forced to guarantee in advance their behavior in a subsequent election. Nonetheless, the Second Circuit held that "a mere theoretical possibility that the controversy is capable of repetition with respect" to the same plaintiff in a future primary forced the court to dismiss the case as moot. *Id.*

The same-plaintiff requirement also creates a perverse incentive for plaintiffs to avoid curing known issues, since this is one tactic to guarantee that the issue *will* affect them in future elections. For example, in instances where litigants challenge identification or registration requirements, the same-plaintiff requirement creates a strong incentive to avoid obtaining an ID or providing updated registration information, so that the defect remains present during the full course of litigation. An exception to the same-plaintiff requirement would allow litigants to obtain ID or register without mooting an otherwise valid challenge—one that will protect others who have not yet obtained that identification or registration.

2. It rewards defendants for causing unnecessary delay.

Just as the same-plaintiff requirement creates awkward—and sometimes perverse—incentives for *plaintiffs*, so does it also create counterproductive incentives for *defendants*. Specifically, it incentivizes defendants to delay the resolution of election-law cas-

es for as long as possible, in the hope that the expiration of an election will protect them from having to defend a law on the merits. Once an election or time limit passes, the legal issue may be deemed "moot," effectively insulating the law or practice from review and vindicating the most dilatory defendants.

In many instances, it may be difficult to differentiate legitimate but time-consuming behavior from foot-dragging designed to destroy jurisdiction. For instance, here the respondent repeatedly insisted on time-consuming discovery, even though it never cited any evidence developed from that discovery. *See, e.g.*, Pet. at 14–15. Foot-dragging or legitimate legal strategy? The same-plaintiff requirement makes it difficult to determine the strategic calculus behind such fruitless requests for discovery, but it assuredly makes such requests more common.

The benefits of delay caused by the same-plaintiff rule may unfairly force defendants into ethical dilemmas. The ABA's Model Rules of Professional Conduct call for lawyers to "make reasonable efforts to expedite litigation consistent with the interests of the client." *ABA Model Rule Prof. Conduct* 3.2. A comment to that rule explains that a failure to expedite litigation is not reasonable "if done for the purpose of frustrating an opposing party's attempt to obtain rightful redress." *Id.* Cmt. 1 ("It is not a justification that similar conduct is often tolerated by the bench and bar."). The same-plaintiff rule inherently puts the strategic interests of defendants in tension with this rule, since victory can often be assured simply by stretching a case beyond the six-month point. Thus, even when defendants have not actually violated this rule, the same-plaintiff requirement will naturally

lead plaintiffs to raise questions about the defendant's integrity and ethics. An environment of rancor and accusations of bad faith are far from the ideal way to litigate important questions concerning the fairness and constitutionality of election laws.

An election-law exception would help drain such potential rancor from these types of proceedings. By moderating the time pressure that is otherwise guaranteed in a pre-election legal challenge, an election-law exception might even result in more efficient litigation because defendants would no longer try to win by insisting on unnecessary procedure. Because of this dynamic, the existence of an election exception may actually diminish the need for its use, as parties would no longer gain from delay, allowing for more cases to be decided before the election in question.

3. It lets legislatures shield incumbent-protecting laws from judicial review.

The same-plaintiff requirement not only provides perverse incentives to those *litigating* election laws; it also gives dangerous powers to the legislatures that *create* them. That is because such a requirement creates a roadmap for insulating regulations from judicial review. So long as the same-plaintiff requirement is in place, legislators may simply create temporary and time-limited "protective" measures that expire after each election, when they have already achieved their purpose. Although such measures only prevent each *individual* voter, candidate, or political speaker from participating in one election, the cumulative effect of such measures can be enormous.

One classic example of such a regulation is an unconstitutionally lengthy residency requirement for

voting in state elections. Rejecting the same-plaintiff requirement allowed this Court to reject such a regulation in *Dunn v. Blumstein*, striking down Tennessee's six-month residency-restriction on the right to vote. 405 U.S. 330, 338 (1972). By the time that case reached this Court, the residency had already been satisfied by the individual plaintiff. But the Court correctly held that the case was not moot: "Although appellee now can vote, the problem to voters posed by the Tennessee residence requirements is '*capable of repetition, yet evading review*.'" *Id.* at 333 n.2 (quoting *Moore*, 394 U.S. at 816) (emphasis added).

Similarly, restrictions on the ability of independent candidates to run in elections, such as unconstitutionally early ballot-registration deadlines, can limit the electoral competition incumbents must face—and in some cases even leave voters with no meaningful choice. Ohio had one such rule, requiring independent candidates to submit nominating petitions 75 days before the major parties had their primary elections. When an independent presidential candidate challenged that regulation as imposing an unequal burden on independent candidates, this Court rightly adjudicated the case, even though the election at issue was three years past and the particular independent candidate gave no indication he intended to run again. *See Anderson v. Celebrezze*, 460 U.S. 780, 784 n.3 (1983) ("Even though the 1980 election is over, the case is not moot."). Thus, the Court was able to review the law, and ultimately struck it down as an impermissible burden "on the voters' freedom of choice and freedom of association." *Id.* at 806.

In a world without the same-plaintiff exception for election-law cases, these regulations, and others like

them, could still be in effect today. After all, the first rule of political science is that legislators will act in their own self-interest when it comes to maximizing their chances of being re-elected. *See*, *generally*, David R. Mayhew, *Congress: The Electoral Connection* (2d ed., 2004). Thus, such burdensome regulations are particularly likely to remain entrenched when they work to the benefit of incumbents, protecting those incumbents from new and potentially disruptive voters in each election. When legislatures have no incentive to eliminate unconstitutional voting restrictions, it is even more vital that courts have the power to actually review those statutes. An election-law exception provides courts with this ability and makes it more difficult for these incumbent-protecting tactics to evade judicial review.

III. THE CONTRIBUTION LIMITS AT ISSUE INCENTIVIZE STRATEGIC BEHAVIOR BY PACS AND DO NOT DECREASE THE RISK OF CORRUPTION

A. The Lowered Contribution Limits are Unlikely to Achieve Their Desired Effects

The six-month waiting period of the statute at issue envisions a sharp distinction between "new" political action committees and "seasoned" ones that have existed for more than six months. The former are supposedly more at risk of corrupting the political system by "sprouting up" immediately before an election and contributing to individual candidates. This is why "seasoned" PACs enjoy the right to contribute $5,000 to individual candidates, while newer PACs may only contribute $2,700. See Pet. at 10.

Yet in practice, the effect of the limits on newer PACs is not to limit corruption, but to benefit well-organized political groups, which can easily "game the system" by creating PACs well in advance of when they will actually be used. Despite the existing limitations on coordinated action, the reality is that the creation of such "shelf" PACs easily allows well-organized groups to simply route funds through pre-existing PACs already under the control of ideologically aligned groups—even if those PACs have never been actively used. So long as seasoned PACs may contribute nearly twice as much to individual candidates, control over existing PACs (that have been registered for six months) grants insiders a significant advantage over smaller, newer entrants seeking to influence the political process.

Another supposed benefit of the donation limits is to decrease the amount of money in politics. Yet once again, due to the reality of coordination, the effect of such regulations is not to decrease the total amount of donations, but to spread them across more PACs, making it more difficult to trace the influence of money in politics (if that's your thing). Unlike newer PACs, which may contribute $33,400 to national party committees, 52 U.S.C. § 30116(a)(1)(B), seasoned PACs may only contribute $15,000 annually. *Id.* § 30116(a)(2)(B). Rather than cutting in half the amount that organized donors actually channel to national party committees, it is far more likely that these restrictions on seasoned PACs simply lead to twice as many PACs being created. Such an increase in the number of money-channeling entities serves no purpose except to make it harder for the public to understand actual capital flows in the political process.

In sum, neither of the lowered contribution limits are likely to achieve the benefits that motivated Congress to enact them—such as lowering the influence of newer PACs or decreasing the amount of money in politics. Instead, both are far more likely to backfire and make the world of campaign finance more arcane and abstruse, benefitting only those with the resources, networks, and strategic expertise necessary to navigate it.

B. The Contribution Limits Do Not Decrease the Risk of Corruption, And Therefore Violate The First Amendment

Besides the fact that they are unlikely to achieve their desired effect, these regulations also face an even more fundamental problem. Even if they *did* achieve these desired effects, neither of these goals would justify the restriction on First Amendment political participation that the limitations entail. The Court has "made clear that Congress may not regulate contributions simply to reduce the amount of money in politics, or to restrict the political participation of some in order to enhance the relative influence of others." *McCutcheon v. FEC*, 134 S. Ct. 1434, 1441 (2014). Instead, it is only decreasing *quid pro quo* corruption (or the appearance thereof) that can justify such limits. *Id.*

When determining whether a donation is likely to purchase influence and therefore become corrupting, it is the *amount* of a donation—not its *source*—that is key. This is clear from the Court's approach in *McCutcheon*, which looked at the amount individuals could donate *per candidate*—rather than the amount individuals were permitted to donate *in the aggregate*—in determining whether the limitation was

likely to limit corruption. *See id.* at 1452 ("If there is no corruption concern in giving nine candidates up to $5,200 each, it is difficult to understand how a tenth candidate can be regarded as corruptible if given $1,801, and all others corruptible if given a dime.").

Such an approach makes plain that neither decreasing the amount that new PACs may donate to individual candidates nor decreasing the amount that seasoned PACs may donate to parties is likely to limit corruption. Since the law allows an individual candidate to accept $5,000 from a seasoned PAC, it is hard to see how that same candidate can be "regarded as corruptible" if given $2,701 from a new PAC. Likewise, since the law allows new PACs to donate $33,400 to national political parties, it is hard to see how those parties can be "regarded as corruptible" if given $15,001 from a seasoned PAC. The very structure of the law reveals that limiting corruption was neither intended, nor likely to be achieved, by the differing limitations on political donations.

The court below erred by treating this case solely as an Equal Protection issue and entirely missing the underlying First Amendment violations. As Petitioners explain, the Fourth Circuit invented a novel "tradeoffs" approach to evaluate the burdens on both seasoned and new PACs and found that the differing burdens balanced out such that the two types of PACs were treated equally. *See* Pet. at 38–40. But just because two burdens are *equal* does not mean that either burden is *constitutional*. If the government tells one group of people they may not speak on Tuesdays and another group they may not speak on Wednesdays, the fact that the net burden on each group is the same does not make both constitutional-

ly sound. In focusing only on the overall *equality* of the burdens, the lower court entirely missed the fact that *both* burdens violate the First Amendment because neither can be justified by limiting corruption.

Review of a lower-court decision is warranted when its approach so squarely conflicts with one of this Court's recent precedents. Without this Court's review, lower courts may continue to flagrantly ignore *McCutcheon*' approach, which would represent a significant threat to First Amendment rights.

CONCLUSION

The decision below confuses and complicates election law and leaves in place regulations that are counterproductive and unconstitutional. The Court should grant the petition.

Respectfully submitted,

BENJAMIN P. EDWARDS
Barry University
6441 East Colonial Drive
Orlando, Florida 32807
bpedwards@barry.edu

ILYA SHAPIRO
Counsel of Record
Cato Institute
1000 Mass. Ave. N.W.
Washington, D.C. 20001
(202) 842-0200
ishapiro@cato.org

August 24, 2016