No. 12-579

IN THE

Supreme Court of the United States

WILLIAM P. DANIELCZYK, JR. AND EUGENE R. BIAGI,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

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

BRIEF OF *AMICI CURIAE* DAVID M. PRIMO, PH.D. AND JEFFREY D. MILYO, PH.D. IN SUPPORT OF PETITIONERS

TERENCE P. ROSS
Counsel of Record
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
(202) 624-2500
tross@crowell.com

Attorneys for David M. Primo, Ph.D. and Jeffrey D. Milyo, Ph.D.

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

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INTEREST OF *AMICI CURIAE*[1]

Amicus curiae David M. Primo, Ph.D. is the Ani and Mark Gabrellian Professor and Associate Professor of Political Science and Business Administration at the University of Rochester. *Amicus curiae* Jeffrey D. Milyo, Ph.D. is the Middlebush Professor of Social Sciences and Professor of Economics at the University of Missouri at Columbia. *Amici* are respected scholars in the area of campaign finance law and the effect thereof upon public perceptions of government, competitiveness of elections, and participation in the democratic process. Dr. Primo and Dr. Milyo have both served as expert witnesses in a variety of campaign finance cases brought in federal court. Dr. Primo's testimony was cited by this Court in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2822, 180 L. Ed. 2d 664, 683 (2011).

One of the issues presented by this Petition is whether a government interest exists sufficient to justify a complete ban on corporate contributions to candidates for federal office. The United States below relied upon research conducted by Dr. Primo and Dr. Milyo to argue that corporate contributions heighten perceptions of government corruption and, therefore, a government interest exists sufficient to

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[1] This brief was not authored in whole or in part by counsel for a party, and no person or entity other than *amici* and its counsel made a monetary contribution to the preparation and submission of this brief. All parties have consented to the filing of this brief. These written consents have been filed with the Clerk.

justify banning such contributions notwithstanding their manifest infringement upon the right to political speech. In fact, *amici's* research is to the contrary: campaign finance laws regulating corporate contributions to political campaigns have little to no effect on public perceptions of government. Thus, *amici* have an interest in correcting these mistaken assertions by the United States to protect the integrity of their scholarship. More broadly, the Fourth Circuit's decision proceeds from the false premise that laws banning corporate contributions promote public confidence in government by preventing corruption. *Amici's* research calls into question this central justification for such laws. Thus, *amici* have an interest in obtaining this Court's review in order to clarify that the unsubstantiated fear of *quid pro quo* corruption from corporate contributions is not a basis for limitations on political speech. Accordingly, Dr. Primo and Dr. Milyo submit this brief to urge the Court to review the ruling below.

SUMMARY OF ARGUMENT

The Petition presents an issue going to the heart of political speech – the ability to contribute to a candidate for federal office. *See FEC v. Colorado Republicans Fed. Campaign Comm.*, 533 U.S. 431, 440 (2001) (political contributions fall within First Amendment protection of speech and association). The Fourth Circuit's decision approving a complete ban on such political speech by corporations rests upon a false premise. The Fourth Circuit's belief that a ban on corporate campaign contributions promotes a positive public perception of government by reducing corruption or the appearance of corruption finds no support in the research of *amici* or broader scholarship. This mistake by the Fourth Circuit is the result, at least in part, of a misrepresentation as to *amici's* research made by the United States to the courts below.

REASONS FOR GRANTING THE PETITION

The United States asserted as a fact below that contributions by corporations heighten public perceptions that government is corrupt. The United States cited as the exclusive scholarly support for this proposition an article authored by *amici*.[2] This assertion by the United States, however, misrepresents the article authored by *amici*, as well as their underlying research. *Amici's* research has established that the effects of corporate campaign contribution restrictions on perceptions of government – specifically, measures of "political efficacy" – are modest, at best. Systematic analysis of statistical evidence does *not* establish that perceptions of government are meaningfully improved by stricter campaign finance laws, including corporate contribution limits. Thus, *amici's* article, contrary to the assertion of the United States, does *not* support an argument that corporate contributions heighten perceptions of government corruption. Moreover, the conclusion reached in *amici's* article that campaign finance laws

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[2] David M. Primo & Jeffrey Milyo, *Campaign Finance Laws and Political Efficacy: Evidence From the States*, 5 Election L.J. 23 (2006).

have little to no effect on public perceptions of government is supported by most other academic research.

Unfortunately, the Fourth Circuit relied upon this false premise to justify its decision below. Thus, the Fourth Circuit stated: "Prevention of actual fraud and perceived corruption and the threat of circumvention are firmly established government interests that support regulations on campaign financing." (Appendix of Petitioner, 11a). Reliance upon such wholly unsubstantiated conclusions to justify the curtailment of political speech provides ample reason to grant the Petition as discussed further below.

I. The Research Of *Amici Curiae* Does Not Support The Conclusion That Public Perceptions Of Government As Corrupt Increase When Corporate Campaign Contributions Are Allowed.

The United States argued to the court below that the prohibition of corporate contributions to candidates for federal office, 2 U.S.C. § 441b(a), is closely drawn to prevent corruption and the appearance of corruption. To support this argument, the United States asserted that contributions by corporations heighten public perceptions that government is corrupt. The exclusive scholarly support cited for this proposition is an academic article authored by *amici*. *See* David M. Primo & Jeffrey Milyo, *Campaign Finance Laws and Political Efficacy: Evidence From The States*, 5 Election L.J. 23 (2006) (hereinafter, "*Campaign Finance Laws*"). The argument of the United States, however, misinterprets this article and, thus, its assertion that corporate contributions heighten perceptions of government as corrupt is inaccurate.

Amici's article, *Campaign Finance Laws*, studies the effects of state campaign finance laws on three public opinion questions related to "political efficacy" – the belief that an individual can influence the political process. These questions focus on three aspects of efficacy: whether people "like them" have a say about what the government does; whether public officials care what people "like them" think; and whether politics is too complicated for a person "like them" to understand.[3] *Amici* studied whether responses to these questions were influenced by the existence or absence of four types of state campaign finance regulations – disclosure requirements; limits on organizational contributions (including corporate contributions); limits on individual contributions; and public financing of elections.[4] *Campaign Finance Laws* was the first scholarship to use state campaign finance laws to study the relationship between campaign finance regimes and perceptions of government.

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[3] These questions are part of a biennial survey of the American electorate, the American National Election Studies. *See* http://www.electionstudies.org (last visited January 10, 2012).

[4] The research coded a state as having a limit on organizational contributions if it had *any* restrictions on contribution by "corporations, unions, and PACs." There was no distinction drawn between direct corporate contributions and contributions by a corporation's PAC.

Amici's research revealed that there was a "statistically significant" relationship between public confidence in state government's responsiveness to individual citizens and the existence of limits on organizational campaign contributions. *Campaign Finance Laws, supra,* at 33. *Amici's* research, however, further discovered that "the results for contribution limits, even when statistically significant, are substantively modest." *Id.* at 35. Moreover, for all three measures of political efficacy, the effects of corporate campaign contribution limits are small. Using the measure of efficacy that yields the strongest results, *Amici's* research revealed that voters living in states with corporate campaign contribution limits (and no individual limits) have a four percent (4%) greater chance of being politically efficacious; voters living in states with both corporate and individual campaign contribution limitations have a one percent (1%) *smaller* chance of being politically efficacious – an effect which is not statistically significant. *Id.* at 34. Thus, *amici* concluded that campaign finance laws, including limits on corporate contributions, have little to no effect on how citizens view their government.[5]

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[5] A working paper by Dr. Milyo expands upon the methodology used by *amici* in *Campaign Finance Laws.* Dr. Milyo's new work pools the results of several national surveys of voter perceptions of state government. The findings of this new research are consistent with *amici's* findings in *Campaign Finance Laws. See* Jeffrey Milyo, *Do State Campaign Finance Reforms Increase Trust and Confidence in State Government* (April 2012) (unpublished paper) available at

(continued....)

Thus, reliance by the United States upon *amici's* research to support a ban on corporate contributions is misplaced. The United States' mistake is founded upon a misunderstanding of the distinction between "statistical significance" and "substantive significance." When a research finding is statistically significant, it means that the researcher can be confident that the finding is not due to chance. Statistical significance, however, provides no guidance as to whether the effects found are large or small (*i.e.*, whether the finding is substantively significant). For example, research might find that drinking a single cup of coffee per day reduces the likelihood of catching a cold by .0000001 percent, and that this result is statistically significant. This means that the findings are unlikely to be attributable to chance, but it does not mean that one can conclude drinking a daily cup of coffee will ward off colds. In other words, although this finding is statistically significant, it is not substantively significant.

Amici's findings reflect a result analogous to the foregoing example. Although *amici's* finding that there is a four percent (4%) greater chance of a voter believing himself or herself to be politically efficacious in a state with corporate campaign contribution limits is statistically significant –

(continued) . . .

http://web.missouri.edu/~milyoj/files/CFR%20and%20trust%20in%20state%20government_v3.pdf (last visited December 9, 2012).

unlikely to be attributable to chance – it is not substantively significant. In addition, this effect is not present in states where individual contribution limits are also in place. Accordingly, these findings do not support the argument that the public is more likely to perceive government as corrupt when corporate campaign contributions are allowed, as the United States asserted below and the Fourth Circuit accepted as "firmly established."

II. The Broader Academic Research Also Fails To Support The Conclusion That Public Perceptions Of Government Are Influenced By Political Contributions And Spending.

The overwhelming majority of empirical studies have found virtually no relationship between trust in government and political contributions and spending. For example, as shown in Figure 1 below, a 2003 study demonstrated that the sharp decline in the public trust of government in the 1960s and 1970s preceded the significant increase in Congressional campaign spending that began in the late 1970s. *See* David M. Primo, *Campaign Contributions, the Appearance of Corruption, and Trust in Government, in* Inside the Campaign Battle: Court Testimony on the New Reforms, 285, 290 (A. Corrado *et al.* eds., 2003). Moreover, this same study found virtually no relationship between campaign spending and trust in government during the period after 1980. *Id.*

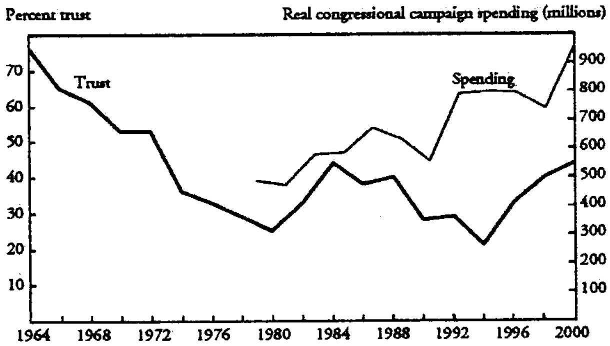

Figure 1: The Decline in the Public's Trust in Government Preceded a Spike in Congressional Campaign Spending

Indeed, as shown in Figure 2 below, this study discovered that trust in government actually increased at the same time that political parties were becoming more dependent upon "soft money" – contributions to political parties that, to a large extent, come from corporations. *Id.*

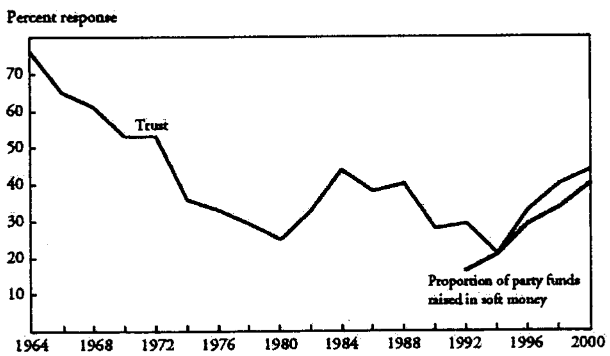

Figure 2: As the Political Parties Became More Dependent on Soft Money, Trust in Government Increased

A 2004 study confirmed, as shown in Figure 3 below, that, even as "soft money" contributions increased in the 1990s, public perceptions of government as corrupt were declining. *See* Nathaniel Persily and Kelly Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. Pa. L.Rev. 119 (2004). This study concluded that "trends in general attitudes of corruption seem unrelated to anything happening in the campaign finance system (*e.g.*, a rise in contributions or the introduction of a particular reform)." *Id.* at 122. Instead, the study explained the public's perception of corruption rises and falls with the popularity of the incumbent president, declining during popular wars and economic prosperity while rising during times of recession. *Id.* at 121.

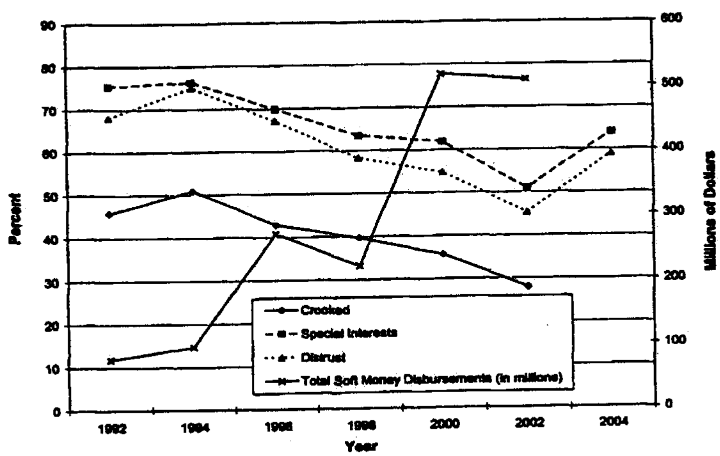

Figure 3: As Soft Money Increased in the 1990s, Perceptions of Corruption Declined

Moreover, earlier research into campaign spending concluded that increased spending has the "generally beneficial" effect of shedding light on a candidate's policies and stances on issues. *See* John J. Coleman & Paul F. Manna, *Congressional Campaign Spending and the Quality of Democracy*, 62 J. of Politics 757, 759 (2000). This study examined variation across districts in the 1994 and 1996 U.S. House elections, and concluded that increased campaign spending in a congressional district did not encourage mistrust or cynicism. *Id.* at 756. To the contrary, campaign spending actually contributed to the "quality and quantity" of public discourse, and made "political elites (or would-be elites) accountable to the governed." *Id.* at 757.

Thus, like the research of *amici*, the broader academic research also fails to support the conclusion that public perceptions of government are influenced by political contributions and spending. The Fourth Circuit's reliance upon a non-existent link between corporate campaign contributions and corruption is inadequate to establish any government interest sufficient to support a ban on this type of political speech. Accordingly, this Court should review the Fourth Circuit's decision below.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

TERENCE P. ROSS
Counsel of Record
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
(202) 624-2500
tross@crowell.com

Attorneys for David M. Primo, Ph.D. and Jeffrey D. Milyo, Ph.D.