FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DOUG LAIR; STEVE DOGIAKOS; AMERICAN TRADITION PARTNERSHIP; AMERICAN TRADITION PARTNERSHIP PAC; MONTANA RIGHT TO LIFE ASSOCIATION PAC; SWEET GRASS COUNCIL FOR COMMUNITY INTEGRITY; LAKE COUNTY REPUBLICAN CENTRAL COMMITTEE; BEAVERHEAD COUNTY REPUBLICAN CENTRAL COMMITTEE; JAKE OIL, LLC; JL OIL, LLC; CHAMPION PAINTING; JOHN MILANOVICH, *Plaintiffs-Appellees*, RICK HILL, Warden, *Intervenor-Plaintiff-Appellee*, v. JONATHAN MOTL, in his official capacity as Commissioner of Political Practices; TIM FOX, in his official capacity as Attorney General of the State of Montana; LEO J. GALLAGHER, in his official capacity as Lewis and Clark County Attorney, *Defendants-Appellants*.	No. 16-35424 D.C. No. 6:12-cv-00012-CCL OPINION

Appeal from the United States District Court
for the District of Montana
Charles C. Lovell, Senior District Judge, Presiding

Argued and Submitted March 21, 2017
San Francisco, California

Filed October 23, 2017

Before: Raymond C. Fisher, Carlos T. Bea
and Mary H. Murguia, Circuit Judges.

Opinion by Judge Fisher;
Dissent by Judge Bea

SUMMARY*

Civil Rights

The panel reversed the district court's judgment in an action challenging Montana's limits on the amount of money individuals, political action committees and political parties may contribute to candidates for state elective office.

The panel held that Montana's limits, as set forth in Montana Code Annotated § 13-37-216, were both justified by and adequately tailored to the state's interest in combating quid pro quo corruption or its appearance. The panel held that Montana had shown the risk of actual or perceived quid pro quo corruption in Montana politics was more than "mere conjecture." The state offered evidence of attempts to purchase legislative action with campaign contributions. The panel held that contribution limits served the state's important interest in preventing this risk of corruption from becoming reality.

The panel held that Montana's limits were also "closely drawn" to serve the state's anti-corruption interest. The limits targeted those contributions most likely to result in actual or perceived quid pro quo corruption – high-end, direct contributions with a significant impact on candidate fundraising. Moreover, the limits were tailored to avoid favoring incumbents, not to curtail the influence of political parties, and to permit candidates to raise enough money to make their voices heard. Although Montana's limits were

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

lower than most other states' in absolute terms, they were relatively high when comparing each state's limits to the cost of campaigning there. Thus, Montana's chosen limits fell within the realm of legislative judgments the courts could not second guess.

Dissenting, Judge Bea stated that the district court properly evaluated the evidence submitted by Montana's officials and found the officials had not established the only constitutionally permissible and valid state interest sufficient to justify Montana's campaign contribution limits: the prevention of corruption or its appearance.

COUNSEL

Matthew T. Cochenour (argued), Helena, Montana, for Defendants-Appellants.

James Bopp (argued), Terre Haute, Indiana, for Plaintiffs-Appellees.

OPINION

FISHER, Circuit Judge:

Montana limits the amount of money individuals, political action committees and political parties may contribute to candidates for state elective office. The district court invalidated these limits as unduly restrictive of political speech under the First Amendment. Because Montana's limits are both justified by and adequately tailored to the state's interest in combating quid pro quo corruption or its appearance, we reverse.

Montana has shown the risk of actual or perceived quid pro quo corruption in Montana politics is more than "mere conjecture," the low bar it must surmount before imposing contribution limits of any amount. The state has offered evidence of attempts to purchase legislative action with campaign contributions. Contribution limits serve the state's important interest in preventing this risk of corruption from becoming reality.

Montana's limits are also "closely drawn" to serve the state's anti-corruption interest. The limits target those contributions most likely to result in actual or perceived quid pro quo corruption – high-end, direct contributions with a significant impact on candidate fundraising. Moreover, the limits are tailored to avoid favoring incumbents, not to curtail the influence of political parties, and to permit candidates to raise enough money to make their voices heard. Although Montana's limits are lower than most other states' in absolute terms, they are relatively high when comparing each state's limits to the cost of campaigning there. Thus, Montana's

chosen limits fall within the realm of legislative judgments we may not second guess.

I. Background

A. Montana's Contribution Limits

In 1994, Montana voters passed Initiative 118, a campaign finance reform package that included the contribution limits at issue here. I-118's limits replaced a regime that had been in place since 1975. That regime permitted individuals and political parties to contribute up to the following limits:

Table 1: Pre-Initiative 118 Limits

	Governor	Other Statewide Election	Public Service Commission	Legislature	City or County
Individual	$1500	$750	$400	$250	$200
Political party	$8000	$2000	$1000	$250	$200

See Mont. Code Ann. § 13-37-216 (1975) (enacted by No. 23-4795, 1975 Mont. Laws Ch. 481 § 1).

I-118 lowered the cap on individual contributions while raising the cap on contributions from political parties.[1]

[1] Montana styles its limits on political parties as "aggregate" limits, meaning that a political party is treated as a single entity for contribution purposes, even if the party is broken down into a number of different local committees across the state. *See* Mont. Code Ann. § 13-37-216(2). These

Although the contribution limits at issue here originate from I-118, the limits have not remained static. Since I-118's enactment, the Montana legislature has both amended the limits and indexed them to inflation. *See id.* § 13-37-216 (2003) (raising the limits); Act of Apr. 27, 2007, 2007 Mont. Laws Ch. 328 § 1 (H.B. 706) (indexing the limits to inflation); Admin. R. Mont. 44.11.227. Moreover, unlike the pre-1994 limits, I-118's limits apply per *election* (rather than per *cycle*), so a contributor may give up to the maximum twice if a candidate faces a contested primary (once for the primary and once for the general election). *See* Mont. Code Ann. § 13-37-216(5); Mont. Comm'r of Political Practices, *Amended Office Mgmt. Policy 2.4 Reinstating Pre-Lair 2016 Campaign Contribution Limits* at 2 (May 18, 2016) ("Pre-1994 Limits Policy"), http://politicalpractices.mt.gov/content/ContributionLimitPolicy (explaining that the pre-I-118 limits applied per cycle).

Table 2 shows the post I-118 contribution limits in 1994 (when they were enacted), 2011 (when this lawsuit began) and today. Table 3 compares the pre-I-118 limits to the post I-118 limits as of 2017.

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aggregate limits are different in kind from the ones the Supreme Court struck down in *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014). There, the aggregate limits meant that once an individual's contributions to *all* candidates added up to the aggregate limit, he could no longer give *any* money to *any* candidates. *See id.* at 1443, 1448. Montana's aggregation of political party contributions, by contrast, permits a party to contribute up to the limit to as many candidates as the party wishes.

Table 2: Post-Initiative 118 Limits[2]

	Governor			Other Statewide Election			Public Service Commission			State Senate			Other Public Office		
	1994	2011	2017	1994	2011	2017	1994	2011	2017	1994	2011	2017	1994	2011	2017
Individual/ PAC	$800	$1000	$1320	$400	$500	$660	$200	$260	$340	$200	$260	$340	$200	$260	$340
Political party	$15,000	$36,000	$47,700	$5000	$13,000	$17,200	$2000	$5200	$6900	$800	$2100	$2800	$500	$1300	$1700

See Mont. Code Ann. § 13-37-216; Admin. R. Mont. 44.11.227.

[2] Limits shown are the maximum per cycle assuming a candidate faces a contested primary. Per election limits are one half of the amount shown.

Table 3: Pre-Initiative 118 Limits vs. 2017 Limits

	PRE-INITIATIVE 118	2017	
	Per Cycle	Per Cycle	Per Election
Individuals/PAC			
Governor	$1500	$1320	$660
Other statewide	$750	$660	$330
Public Service Commissioner	$400	$340	$170
State legislature	$250	$340	$170
City or county office	$200	$340	$170
Political Parties			
Governor	$8000	$47,700	$23,850
Other statewide	$2000	$17,200	$8600
Public Service Commissioner	$1000	$6900	$3450
State legislature	$250	$2800	$1400
City or county office	$200	$1700	$850

B. *Eddleman*

We first addressed – and upheld – the constitutionality of Montana's contribution limits in *Montana Right to Life Ass'n v. Eddleman*, 343 F.3d 1085 (9th Cir. 2003). Applying *Buckley v. Valeo*, 424 U.S. 1 (1976) (per curiam), and *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377 (2000), we held

> state campaign contribution limits will be upheld if (1) there is adequate evidence that the limitation furthers a sufficiently important state interest, and (2) if the limits are "closely drawn" – i.e., if they (a) focus narrowly on the state's interest, (b) leave the contributor free to affiliate with a candidate, and (c) allow the candidate to amass sufficient resources to wage an effective campaign.

Eddleman, 343 F.3d at 1092.

At step one, we held Montana's limits furthered the state's "interest in preventing corruption or the appearance of corruption." *Id*. In reaching this conclusion, we noted "[t]he evidence presented by . . . Montana . . . [wa]s sufficient to justify the contribution limits imposed, and indeed carrie[d] more weight than that presented in *Shrink Missouri*." *Id.* at 1093. We defined "corruption" or its appearance to include both "instances of bribery of public officials" and "the broader threat from politicians too compliant with the wishes of large contributors." *Id.* at 1092 (quoting *Shrink*, 528 U.S. at 389).

At step two, we held Montana's limits were "'closely drawn' to avoid unnecessary abridgement of associational freedoms." *Id.* at 1093. The limits were adequately tailored to the state's "interest in preventing corruption and the appearance of corruption" because they "affect[ed] only the top 10% of contributions, and . . . the percentage affected include[d] the largest contributions" – those most likely to be associated with actual or perceived corruption. *Id.* at 1094. The limits also allowed candidates to amass sufficient resources to wage effective campaigns, as shown by testimony from candidates and statistics demonstrating the minor effects of the limits on fundraising compared to the low cost of campaigning in Montana. *See id.* at 1094–95. The limits, moreover, had caused no significant difference in the amount challengers were able to raise compared to incumbents. *See id.* at 1095. We therefore upheld Montana's limits.

C. *Randall*

Three years later, the Supreme Court's decision in *Randall v. Sorrell*, 548 U.S. 230 (2006), left *Eddleman*'s holding on less stable footing. *Randall* invalidated Vermont's contribution limits, and a three-justice plurality led by Justice Breyer proposed a new two-part, multi-factor "closely drawn" test. As we subsequently explained,

> [u]nder [the *Randall*] test, the reviewing court first should identify if there are any "danger signs" that the restrictions on contributions prevent candidates from amassing the resources necessary to be heard or put challengers at a disadvantage vis-a-vis incumbents. [*Randall*, 548 U.S.] at 249–52.

> The plurality found four "danger signs" in Vermont's contribution limits: "(1) The limits are set per election cycle, rather than divided between primary and general elections; (2) the limits apply to contributions from political parties; (3) the limits are the lowest in the Nation; and (4) the limits are below those we have previously upheld." *Id.* at 268 (Thomas, J., concurring) (listing the plurality's "danger signs"). The plurality held, if such danger signs exist, then the court must determine whether the limits are "closely drawn."
>
> The plurality looked to "five sets of considerations" to determine whether the statute was closely drawn: (1) whether the "contribution limits will significantly restrict the amount of funding available for challengers to run competitive campaigns"; (2) whether "political parties [must] abide by *exactly* the same low contribution limits that apply to other contributors"; (3) whether "volunteer services" are considered contributions that would count toward the limit; (4) whether the "contribution limits are . . . adjusted for inflation"; and (5) "any special justification that might warrant a contribution limit so low or so restrictive." *Id.* at 253–62.

Lair v. Bullock, 798 F.3d 736, 743 (9th Cir. 2015) (*Lair II*) (last two alterations in original) (citations omitted). Although this test is in many respects similar to the tailoring inquiry at

step two of the *Eddleman* analysis, it does not map perfectly onto *Eddleman*.

D. *Lair*

After *Randall*, the plaintiffs commenced this action challenging Montana's limits a second time. The district court concluded *Randall* abrogated *Eddleman*'s approach to evaluating contribution limits and held Montana's limits were invalid under *Randall*. *See Lair v. Murry*, 903 F. Supp. 2d 1077, 1093 (D. Mont. 2012). Montana appealed.

Because the district court's decision came weeks before a state election, Montana sought a stay pending appeal, which a motions panel of this court granted in a published decision. *See Lair v. Bullock*, 697 F.3d 1200, 1202 (9th Cir. 2012) (*Lair I*). The motions panel held *Randall* had *not* abrogated *Eddleman*, because no "opinion [in *Randall*] can be meaningfully regarded as narrower than another *and* can represent a common denominator of the Court's reasoning." *Id.* at 1205 (quoting *United States v. Rodriguez-Preciado*, 399 F.3d 1118, 1140 (9th Cir.), *amended by* 416 F.3d 939 (9th Cir. 2005)). Assuming arguendo Justice Breyer's plurality opinion was controlling, *Lair I* concluded *Randall* applied rather than altered *Buckley*, the primary decision upon which *Eddleman* had relied. *Id.* at 1206–08. Finally, even applying *Randall*'s somewhat different "closely drawn" analysis, *Lair I* concluded Montana's limits would likely survive scrutiny. *Id.* at 1208–13.

We then heard Montana's appeal on the merits. *See Lair II*, 798 F.3d at 744. In *Lair II*, we followed the motions panel's holding that *Randall* did not abrogate *Eddleman*'s general approach to evaluating contribution limits. *Id.* at 747.

We also held, however, that the Supreme Court's decisions in *Citizens United v. FEC*, 558 U.S. 310 (2010), and *McCutcheon v. FEC*, 134 S. Ct. 1434 (2014), had limited the important state interest at *Eddleman*'s first step to preventing "quid pro quo corruption, or its appearance." *Lair II*, 798 F.3d at 746. *McCutcheon* defined quid pro quo corruption as "a direct exchange of an official act for money" or "dollars for political favors" and the "appearance" of quid pro quo corruption as "public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions to particular candidates." 134 S. Ct. at 1441, 1450 (internal quotation marks omitted). Because *Eddleman* had relied on a broader definition of corruption – embracing both quid pro quo and a generalized "access and influence" theory – *Citizens United* and *McCutcheon* undermined *Eddleman*'s holding that Montana's limits were justified by an important state interest. We therefore remanded for the district court to evaluate Montana's limits under the *Eddleman* framework, but with the important state interest limited to preventing actual or perceived quid pro quo corruption.

On remand, the district court held the limits unconstitutional under both prongs of *Eddleman*. In the district court's view, Montana did not provide adequate evidence that its contribution limits further the state's interest in combating quid pro quo corruption or its appearance. The court acknowledged evidence of various attempts to obtain political favors through campaign contributions but concluded these examples were inadequate because they did not show the attempted corruption succeeded. "The sticking point with respect to the evidence Defendants rely upon is that the quids in each one of the cited instances were either rejected by, or were unlikely to have any behavioral effect

upon, the individuals toward whom they were directed." *Lair v. Motl*, 189 F. Supp. 3d 1024, 1034 (D. Mont. 2016). Under *Eddleman*'s "closely drawn" prong, the district court concluded the limits both prevented candidates from campaigning effectively and were not narrowly focused, "because they were expressly enacted to combat the *impermissible* interests of reducing influence and leveling the playing field." *Id.* at 1035. Montana again appealed. We have jurisdiction under 28 U.S.C. § 1291, and we reverse.

II. Standard of Review

We generally review a district court's legal conclusions de novo and its factual findings for clear error. *See Lair II*, 798 F.3d at 745. In the First Amendment context, however, "our review [of the district court's fact finding] is more rigorous than other cases." *Id.* at 748 n.8; *see also Randall*, 548 U.S. at 249 (plurality opinion) ("[C]ourts, including appellate courts, must review the record independently and carefully with an eye toward assessing the statute's 'tailoring,' that is, toward assessing the proportionality of the restrictions."). In addition, we "review the application of [the] law to those facts de novo on free speech issues." *Lair II*, 798 F.3d at 745.

III. Discussion

A. Important State Interest

Under *Eddleman*, we ask first whether "there is adequate evidence that [Montana's] limitation[s] further[] . . . [the] important state interest" of preventing actual or perceived quid pro quo corruption. 343 F.3d at 1092. This step of the inquiry is divorced from the actual amount of the limits – it

is a threshold question whether *any* level of limitation is justified. As we explained in *Eddleman*:

> [The plaintiff] does not dispute that [Montana's interest in combating corruption] is sufficient to justify campaign contribution limits. Rather, [the plaintiff] argues that the limits imposed are unnecessarily stringent . . . .
>
> This, however, is not the appropriate inquiry [at step one]. The correct focus . . . is whether the state has presented sufficient evidence of a valid interest, not whether it has justified a particular dollar amount. The latter inquiry, if ever appropriate, occurs in the second part of our analysis, in examining whether the restriction is "closely drawn."

Id.

To satisfy its burden, Montana must show the risk of actual or perceived quid pro quo corruption is more than "mere conjecture." *Id.* (quoting *Shrink*, 528 U.S. at 392); *see McCutcheon*, 134 S. Ct. at 1452 (reiterating the "mere conjecture" standard). Montana need not show any instances of actual quid pro quo corruption. *See Thalheimer v. City of San Diego*, 645 F.3d 1109, 1121 (9th Cir. 2011). It must show "only that the perceived threat [is] not . . . 'illusory.'" *Eddleman*, 343 F.3d at 1092 (quoting *Buckley*, 424 U.S. at 27).

This evidentiary burden is lowest where, as here, the state's purported interest is neither "novel" nor "implausible."

> Because the regulations at issue in *Shrink* were similar to those in *Buckley*, the state's asserted interest was neither novel nor implausible. Therefore, the Court declined to impose, let alone articulate, a stringent evidentiary burden. *Shrink* dealt with direct contributions to candidates, and *Buckley* established that a limit on the amount of such contributions is "only a marginal restriction upon the contributor's ability to engage in free communication" that can be justified by the government's interest in preventing "political *quid pro quo* from current and potential office holders." 424 U.S. at 20–21, 26.

Thalheimer, 645 F.3d at 1122 (citations and internal quotation marks omitted).[3]

Here, the important state interest requirement is satisfied. The plaintiffs do not dispute that Montana's interest in combating quid pro quo corruption or its appearance justifies some level of contribution limit. Indeed, the plaintiffs conceded at oral argument that they believed Montana's pre-1994 limits were constitutional.

Even if the plaintiffs challenged this conclusion they would not succeed, because Montana's evidence shows the threat of actual or perceived quid pro quo corruption in

[3] This conclusion is consistent with the *Randall* plurality's decision, which did not suggest Vermont lacked a valid interest in combating quid pro quo corruption. The plurality's analysis was focused entirely on the tailoring of Vermont's limits. *See Randall*, 548 U.S. at 248–60 (plurality opinion).

Montana politics is not illusory. State Representative Hal Harper testified groups "funnel[] more money into campaigns when certain special interests know an issue is coming up, because it gets results." State Senator Mike Anderson sent a "destroy after reading" letter to his party colleagues, urging them to vote for a bill so a PAC would continue to funnel contributions to the party:

> Dear Fellow Republicans. Please destroy this after reading. Why? Because the Life Underwriters Association in Montana is one of the larger Political Action Committees in the state, and I don't want the Demo's to know about it! In the last election they gave $8,000 to state candidates. . . . Of this $8,000 – Republicans got $7,000 – you probably got something from them. This bill is important to the underwriters and I have been able to keep the contributions coming our way. In 1983, the PAC will be $15,000. Let's keep it in our camp.

State Senator Bruce Tutvedt stated in a declaration that during the 2009 legislative session the National Right to Work group promised to contribute at least $100,000 to elect Republican majorities in the next election if he and his colleagues introduced and voted for a right-to-work bill in the 2011 legislative session. Finally, a state court found two 2010 state legislature candidates violated state election laws by accepting large contributions from a corporation that "bragged . . . that those candidates that it supported 'rode into office in 100% support of [the corporation's] . . . agenda.'" *See Comm'r of Political Practices v. Prouse*, DDV-2014-250

(1st Jud. Dist. Mont. 2016); *Comm'r of Political Practices v. Boniek*, XADV-2014-202 (1st Jud. Dist. Mont. 2015).

In concluding this evidence failed to justify contribution limits, the district court imposed too high an evidentiary burden on Montana.[4] The court held Montana's evidence was inadequate because the attempted corruption did not succeed – the "quids" did not lead to "quos." *See Lair*, 189 F. Supp. 3d at 1034. But Montana need not show any completed quid pro quo transactions to satisfy its burden. It simply must show the risk of actual or perceived quid pro quo corruption is not illusory, a bar Montana's evidence easily clears. Montana's contribution limits are of the same kind as in *Shrink* and *Buckley*, and they are supported by at least as much evidence as was present in those cases. *See Shrink*, 528 U.S. at 393–94 (noting a statement from a legislator "that large contributions have 'the real potential to buy votes'"; "newspaper accounts of large contributions supporting inferences of impropriety"; an example of a "state

[4] Like the district court, the dissent would hold Montana to a more stringent evidentiary burden than our cases or the Supreme Court's permit. The dissent says Montana must prove the *existence* of actual or apparent corruption (Dissent at 37, 38, 41, 42), whereas we – following the Supreme Court – have repeatedly held that all Montana must do is show a "threat" or "risk" of actual or apparent corruption. *Eddleman*, 343 F.3d at 1092; *Farris v. Seabrook*, 677 F.3d 858, 865–66 (9th Cir. 2012). The dissent similarly suggests Montana must show evidence of a completed, successful exchange of dollars for political favors to meets its evidentiary burden. Dissent at 37 n.1, 38, 40, 41–42. But Montana need only show that the threat of actual or apparent corruption is "not . . . illusory" or is more than "mere conjecture." *Buckley*, 424 U.S. at 27; *Shrink*, 528 U.S. at 392. For example, even if the "destroy after reading" letter did not result in the successful purchase of a block of votes in exchange for contributions, it certainly shows that the threat of such arrangements is non-illusory.

representative . . . 'accused of sponsoring legislation in exchange for kickbacks'" (but not convicted); and a scandal in which the former attorney general pled guilty to misusing state property to benefit campaign contributors); *Buckley*, 424 U.S. at 27 n.28 (referencing generic "abuses uncovered after the 1972 elections"). Montana, therefore, has offered adequate evidence that its limits further the important state interest of preventing quid pro quo corruption or its appearance.[5]

B. "Closely Drawn"

We next address whether "the limits are 'closely drawn' – i.e., [whether] they (a) focus narrowly on the state's interest, (b) leave the contributor free to affiliate with a candidate, and (c) allow the candidate to amass sufficient resources to wage an effective campaign." *Eddleman*, 343 F.3d at 1092. This tailoring inquiry "ensures the state's contribution limits are not lower than needed to accomplish the state's goal of preventing quid pro quo corruption or its appearance." *Lair II*, 798 F.3d at 740 n.4. In conducting this inquiry, courts owe significant deference to the legislative process. As *Buckley* explained, courts have "no scalpel to probe" these legislative judgments, so "distinctions in degree

[5] In reaching the contrary conclusion, the dissent points to no case – and we are aware of none – where the risk of actual or apparent corruption was inadequate to justify contribution limits of *some* level. The plaintiffs themselves concede Montana's pre-Initiative 118 limits satisfy the First Amendment. Under the dissent's logic, however, Montana's evidence is inadequate to justify any contribution limits whatsoever, no matter how high. *See Eddleman*, 343 F.3d at 1092 (explaining that the valid interest analysis is divorced from whether the state has justified the particular dollar amount of the limits at issue). On this record, that unprecedented conclusion is simply untenable.

become significant only when they . . . amount to differences in kind." 424 U.S. at 30 (citation omitted). Thus, "the dollar amounts employed to prevent corruption should be upheld unless they are 'so radical in effect as to render political association ineffective, drive the sound of a candidate's voice [below] the level of notice, and render contributions pointless.'" *Eddleman*, 343 F.3d at 1094 (quoting *Shrink*, 528 U.S. at 397).

1. Narrow Focus

The first part of the closely drawn analysis is whether the limits are narrowly focused on Montana's anti-corruption interest. We assess the "fit between the stated governmental objective and the means selected to achieve that objective," *McCutcheon*, 134 S. Ct. at 1445, looking at whether the limits target "the narrow aspect of political association where the actuality and potential for corruption have been identified," *Buckley*, 424 U.S. at 28.

Here, because Montana's limits target the kinds of contributions most likely to be associated with quid pro quo corruption, they satisfy the narrow focus inquiry. First, I-118 targeted only the top 10% of pre-1994 contributions in Montana – the high-end contributions most likely to result in actual or perceived corruption. *See Eddleman*, 343 F.3d at 1094. We relied on this fact in *Eddleman* to conclude the limits were narrowly focused. *See id.* Because the I-118 limits were not indexed to inflation when *Eddleman* was decided, moreover, today's limits affect an even smaller percentage of contributions at the top of the range than they did at that time.

Second, Montana places the strictest limits on direct monetary contributions to candidates – the type of largesse most likely to effect actual or perceived corruption. *See Shrink*, 528 U.S. at 393–94 (focusing on direct contributions in discussing the evidence of corruption justifying Missouri's contribution limits). Political party contributions – i.e., indirect contributions – are capped tens of thousands of dollars higher. *Cf. Randall*, 548 U.S. at 256 (plurality opinion) (imposing the same limits on individuals and political parties cuts against upholding the limits). Moreover, Montana's "statute in no way prevents [individuals and] PACs from affiliating with their chosen candidates in ways other than direct contributions, such as donating money to a candidate's political party, volunteering [their] services, sending direct mail to their supporters, or taking out independent newspaper, radio, or television ads to convey their support." *Eddleman*, 343 F.3d at 1094. This, too, shows tailoring for the type of contribution most likely associated with dollars-for-favors exchanges, without unnecessarily curtailing other forms of political expression.

The plaintiffs argue Montana could accomplish its goals with higher limits, but they seek a level of constitutional precision the Supreme Court has never required – Montana need not "fine tune" its limits to stay within the First Amendment's boundaries. As *Buckley* explained,

> Appellants' first overbreadth challenge . . . rests on the proposition that most large contributors do not seek improper influence . . . . Although the truth of that proposition may be assumed, it does not undercut the validity of the $1,000 contribution limitation. Not only is it difficult to isolate suspect

> contributions, but, more importantly, Congress was justified in concluding that the interest in safeguarding against the appearance of impropriety requires that the opportunity for abuse inherent in the process of raising large monetary contributions be eliminated.
>
> A second, related overbreadth claim is that the $1,000 restriction is unrealistically low because much more than that amount would still not be enough to enable an unscrupulous contributor to exercise improper influence . . . . While the contribution limitation provisions might well have been [higher in some cases], Congress' failure to engage in such fine tuning does not invalidate the legislation.

424 U.S. at 29–30. Here, especially given that the plaintiffs do not dispute the constitutionality of the pre-1994 limits, they ask us to police a "distinction[] in degree," not a "difference[] in kind." *Id.* at 30 (noting the difference between $1,000 and $2,000 was a distinction in degree). This is a legislative judgment we decline to second guess.[6]

[6] At oral argument, the plaintiffs contended Montana must justify the *change* between the pre-1994 limits and today's limits. Every contribution limit case of which we are aware, however, evaluates the *current* limits, and the plaintiffs point to no authority suggesting otherwise. In *Randall*, for example, the Court evaluated Vermont's existing limits without discussing whether the *change* from Vermont's previous regime was justified. *See* 548 U.S. at 237, 239, 248–63 (plurality opinion). Even if the change in limits were relevant, for the reasons we have discussed the difference between the pre-1994 limits and today's

We acknowledge Montana's chosen dollar amounts might appear low, but they are not constitutionally suspect. First, Montana's limits are not an outlier compared to other states' limits:

Table 4: 2015–2016 Limits on Contributions to Gubernatorial Candidates[7]

State	Limit
Montana	$1320 per cycle
Alaska	$1000 per cycle
Colorado	$1150 per cycle
Delaware	$1200 per cycle
Massachusetts	$1000 per calendar year
Rhode Island	$1000 per calendar year

Second, even if the limits are low in absolute terms, they are quite reasonable compared to the low cost of campaigning in the state. Montana to the present is "one of the least expensive states in the nation in which to run a political campaign." *Eddleman*, 343 F.3d at 1094. When contribution limits are viewed in relation to the cost of campaigning for a state house seat, Montana's limits are proportionally higher

limits is not constitutionally significant. *See Buckley*, 424 U.S. at 30.

[7] *See* Nat'l Conf. of State Legs., *State Limits on Contributions to Candidates 2015–2016 Election Cycle* (July 31, 2015), www.ncsl.org/research/elections-and-campaigns/state-limits-on-contributions-to-candidates.aspx.

than both the federal limits and those of 12 other states.[8] Table 5 shows contribution limits relative to the cost of campaigning in the nine states within the Ninth Circuit:

Table 5: Maximum Contributions as a Percentage of Total Fundraising in 2010 State House Races[9]

State	Avg. Total	Limit	Ratio
Montana	$8,231	$320	3.89%
Alaska	$36,870	$1000	2.71%
Arizona	$37,411	$410	1.1%
California	$355,789	$7800	2.19%
Hawaii	$26,956	$2000	7.42%
Idaho	$17,245	$2000	11.6%
Nevada	$74,634	$10,000	13.4%
Oregon	$116,536	none	n/a
Washington	$85,039	$1600	1.88%

[8] For state senate races, Montana's limits are proportionally higher than both the federal limits and those of 14 other states.

[9] For simplicity's sake, the term "state house" refers to the lower chamber of the state legislature, even if a given state calls its lower chamber something else.

Montana's limits are low only if we ignore the low cost of campaigning in the state. Once that reality is factored in, Montana's limits fit well within the mainstream.

Third, Montana's limits are reasonable compared to the size of a typical contribution in Montana. In 2010 state house races, for example, the average individual contributed about $90, when the per cycle limit was $320. In the 2008 race for governor, the typical contribution was only $185, when the per cycle limit was $1200. Thus, in addition to targeting only the top 10% of contributions, the limits do not come close to curtailing the average contributor's participation in campaigns.

Fourth, Montana's limits are reasonably keyed to the actual evidence showing a risk of corruption in Montana. In his "burn after reading" letter, written shortly before I-118 was passed, Senator Anderson suggested a political action committee could obtain political favors from an entire block of legislators through contributions totaling just $8,000. Even adjusted for inflation, that is only a few hundred dollars per legislator. If such contributions can corrupt the legislative process, Montana's limits are anything but an exaggerated response to the risk of actual or perceived corruption that exists in the state.

We should not – and indeed cannot – be in the business of fine tuning contribution limits for states. These judgments are for state lawmakers to make (including voters acting through the initiative process). As judges, our limited role is to ensure that a state chooses limits that are not "so radical in effect as to render political association ineffective, drive the sound of a candidate's voice below the level of notice, and render contributions pointless." *Shrink*, 528 U.S. at 397.

Because Montana's limits satisfy this standard, we hold they are narrowly focused.

The district court concluded otherwise because, in the 1994 Voter Information Pamphlet attached to I-118, the initiative's sponsors argued "[t]here is just way too much money in Montana politics" and urged voters to pass I-118 to prevent "[m]oney from special interests and the wealthy" from "drowning out the voice of regular people," reasons that are inadequate to justify contribution limits under *McCutcheon*. The district court thus concluded the Montana voters who approved I-118 acted with an impermissible motive, meaning the limits "could never be said to focus narrowly on a constitutionally-permissible anti-corruption interest." *Lair*, 189 F. Supp. 3d at 1035. We disagree.

The district court incorrectly cast the narrow focus test as a motive inquiry that looks at the voters' underlying intent when they enacted the limits. The narrow focus test, however, is a tailoring test, not a motive test. It measures how effectively the limits target corruption compared to how much they inhibit associational freedoms – i.e., whether the

> limitation focuses precisely on the problem of large campaign contributions – the narrow aspect of political association where the actuality and potential for corruption have been identified – while leaving persons free to engage in independent political expression, to associate actively through volunteering their services, and to assist to a limited but nonetheless substantial extent in supporting candidates and committees with financial resources.

Buckley, 424 U.S. at 28; *see Eddleman*, 343 F.3d at 1094 (analyzing fit without reference to underlying voter intent). We are aware of no case looking to underlying legislative or voter intent in making this evaluation. Although there is some logic that the sponsors' goal behind I-118 reveals something about the limits' fit, the actual content and effect of the limits – which, as discussed, target the contributions most likely to generate corruption or its appearance – better show their tailoring. We therefore disapprove the district court's reasoning.

2. Contributors' Ability to Affiliate with Candidates

The closely drawn inquiry next assesses whether the contribution limits "leave the contributor free to affiliate with a candidate." *Eddleman*, 343 F.3d at 1092. Montana not only permits such affiliation through direct monetary contributions, but also "in ways other than direct contributions, such as donating money to a candidate's political party, volunteering . . . , sending direct mail . . . , or taking out independent newspaper, radio, or television ads to convey . . . support." *Id*. at 1094. The plaintiffs effectively concede that contributors may associate with candidates, arguing only that some contributors would like to give *more* than the limits allow. Thus, Montana's limits satisfy prong two of the closely drawn analysis.

3. Candidates' Ability to Campaign Effectively

The final part of the closely drawn inquiry asks whether Montana's limits prevent candidates from amassing sufficient resources to campaign effectively. *Eddleman* held they did not, *see* 343 F.3d at 1095, and we see no reason to reach a different conclusion.

To begin with, the evidence from Montana candidates shows the limits do not prevent effective campaigning. Montana Secretary of State Mark Cooney testified, "I don't feel that the limitations . . . have been harmful to my candidacy at all." Representative Harper testified the limits had "[j]ust negligible effects" on his campaigns. Another candidate testified he raised more money after the limits were in place than before. Although one candidate initially testified the limits made it "more difficult" for him to raise enough money, he later clarified he "didn't mean that [his campaigns] were ineffective." He explained, "I mean I did what I had to to win. If my opponents would have been tougher and I felt that I needed to, I would have raised more money, gone out and done the work that I needed to to run that effective campaign."

One candidate witness (Mike Miller) did suggest the limits made his campaigns ineffective, but the facts belie his claim. Between 2008 and 2014, Miller's campaigns received maxed-out contributions from only seven of his approximately 200 contributors, and Miller won all four of his elections.

Statistical data confirm that the limits do not prevent effective campaigning. Plaintiffs' expert Clark Bensen opined that "a high proportion of maxed-out donors" would be an indicator that "the limits were too low." Suppl. Excerpts R. 109 ("Bensen Report"). In Montana, however, maximum contributions are relatively rare. In 2010 state house and senate races, for example, 85% of individual

contributors gave less than the statutory limit.[10] Political parties contributed below the limit 78% of the time. Numbers from other years and other races are comparable. This low proportion of maximum contributions shows the limits do not unduly inhibit candidate fundraising.

The plaintiffs argue competitive elections provide the proper context for evaluating contribution limits, and they point out that the percentage of maximum contributions in *competitive* elections is higher, about 29%. The plaintiffs are correct that the plurality opinion in *Randall* focused on competitive races rather than average ones. *See* 548 U.S. at 255–56. But this focus was based on the potential advantage contribution limits might grant incumbents in competitive races. *See id*. Because these races tend to be more expensive, challengers may need to rely on large contributions more than incumbents do, so overly strict limits could disproportionately affect challengers. *See id.* at 256.

The plaintiffs, however, have not shown this problem exists in Montana. Incumbents and challengers in competitive races have virtually the same percentage of maxed-out contributors. *See* Bensen Report at 101 ("There was very little difference with respect to incumbency [versus challengers]" as to who relied on maximum or near maximum contributions in competitive races.); *cf. Randall*, 548 U.S. at 253–55 (citing to an expert report, also by Clark Bensen, showing Vermont's contribution limits significantly reduced challenger fundraising in competitive races). Indeed, we noted in *Eddleman* that "the average gap between the total

[10] 1,402 maximum donations; 4,469 donations below the maximum but above the $35 reporting threshold; estimated 3,768 donations below the $35 threshold, assuming an average contribution of $20.

amount of money raised by incumbents and challengers for all legislative races was only $65.00 per race." 343 F.3d at 1095.

Three other circumstances underscore the tailoring of Montana's limits to avoid unduly favoring incumbents. First, Montana permits political parties to contribute far more than individuals and PACs. As the plaintiffs' own expert testified, political parties give predominantly to challengers in Montana, whereas PACs contribute more often to incumbents. In *Randall*, by contrast, Vermont imposed identical limits on parties, individuals and PACs, reflecting an incumbency bias cutting against the limits' constitutionality. *See* 548 U.S. at 256–57 (plurality opinion). Second, Montana's limits apply per election, rather than per cycle, meaning a contributor may give up to the limit twice if a candidate runs in a contested primary. Because challengers generally face contested primaries more often than incumbents, per election limits mitigate the incumbent fundraising advantage. This, too, distinguishes this case from *Randall*, where Vermont's per cycle limits were a "danger sign" of the limits' unconstitutionality. *See id.* at 249. Third, by prohibiting "incumbents from using excess funds from one campaign in future campaigns," Montana "keeps incumbents from building campaign war chests and gaining a fundraising head start over challengers." *Eddleman*, 343 F.3d at 1095. The anti-challenger bias that animated the plurality in *Randall* simply is not present here.

In sum, challengers and incumbents alike remain capable of running effective campaigns in Montana. Even if some candidates might prefer to seek fewer, larger contributions to meet their fundraising needs (rather than more numerous, smaller contributions), when "a candidate is merely required

'to raise funds from a greater number of persons and to compel people who would otherwise contribute amounts greater than the statutory limits to expend such funds on direct political expression,' the candidate's freedom of speech is not impugned by limits on contributions." *Id*. at 1091 (quoting *Buckley*, 424 U.S. at 21–22). We hold Montana's limits do not prevent candidates from amassing sufficient resources to campaign effectively.

* * *

Montana's limits are closely drawn to further the state's important interest in preventing actual or perceived quid pro quo corruption. Montana has shown the risk of quid pro quo corruption in Montana is not illusory. Its chosen contribution limits are narrowly focused; they do not prevent contributors from affiliating with the candidates of their choosing; and they do not prevent candidates from raising the money needed for effective campaigning, whether the candidate is an incumbent or challenger and whether the race is competitive or average. We hold, therefore, that Montana's limits survive First Amendment scrutiny. The district court erred by holding otherwise.

C. *Randall*

Even if we were wrong in *Lair II* to hold *Eddleman* controls our evaluation of Montana's contribution limits, we would reach the same conclusion under the plurality's decision in *Randall*. The *Randall* test first looks for "danger signs" that the limits prevent candidates from raising enough money to be heard and challengers from raising enough to compete against incumbents. *See* 548 U.S. at 249–52 (plurality opinion). The plurality found four such "danger

signs" in Vermont's limits: "(1) The limits are set per election cycle, rather than divided between primary and general elections; (2) the limits apply to contributions from political parties; (3) the limits are the lowest in the Nation; and (4) the limits are below those we have previously upheld." *Id.* at 268 (Thomas, J., concurring in the judgment) (listing the plurality's "danger signs").

If these "danger signs" exist, a court then assesses

> "five sets of considerations" to determine whether the statute was closely drawn: (1) whether the "contribution limits will significantly restrict the amount of funding available for challengers to run competitive campaigns"; (2) whether "political parties [must] abide by *exactly* the same low contribution limits that apply to other contributors"; (3) whether "volunteer services" are considered contributions that would count toward the limit; (4) whether the "contribution limits are . . . adjusted for inflation"; and (5) "any special justification that might warrant a contribution limit so low or so restrictive." [*Randall*, 548 U.S.] at 253–62.

Lair II, 798 F.3d at 743 (first alteration in original) (citations omitted).

The motions panel in *Lair I* addressed each of these "danger signs" and "considerations" at length, concluding that *Randall* likely "would not have mandated a different result in *Eddleman*." 697 F.3d at 1208; *see id.* at 1208–13.

We agree. Montana's limits apply per election, not per cycle. The lowest limits do not apply to political parties. The limits are not the lowest in the nation; they are higher than Alaska's ($1000 per cycle for governor), Colorado's ($1150), Delaware's ($1200) and arguably Massachusetts' ($1000 per calendar year) and Rhode Island's ($1000 per calendar year). Although Montana's limits are lower in absolute terms than those the Court has previously upheld, they are significantly higher than those the Court struck down in *Randall* ($400 per cycle for governor). They are also higher as a percentage of the cost of campaigning than the federal limits *Buckley* upheld.[11] Montana's limits do not favor incumbents or prevent challengers from fundraising effectively. Political parties may contribute far more than individuals and PACs; they also may provide campaigns with paid staffers, whose wages are not counted against the party's contribution limits. *See* Mont. Admin. R. 44.11.225(3). Contributors may volunteer for campaigns and otherwise express their support in ways beyond direct contributions. Finally, Montana's

[11] As discussed above, Montana's limits are particularly modest when the cost of campaigning is taken into account – a useful way to measure a maximum contribution's impact on a campaign. A maximum contribution in Montana accounted for 3.89% of the total amount a 2010 state house candidate raised. This percentage was higher than the percentage for the federal limits (0.5% across all House of Representatives races), the dollar amounts of which the Court approved in *Buckley*. Montana's limits are also proportionally higher than those in Alaska (2.71%), Arizona (1.1%), California (2.19%), Colorado (1.1%), Connecticut (2.19%), Delaware (1.91%), Florida (0.87%), Massachusetts (2.14%), Michigan (0.94%), Tennessee (3.78%), Washington (1.88%) and Wisconsin (2.98%). Thus, although Montana's limits are on the low side in absolute terms – but not an outlier – they are relatively high given the low cost of campaigning in the state.

limits are adjusted for inflation. Accordingly, Montana's contribution limits would survive scrutiny even if *Randall* governed.

IV. Conclusion

Our Constitution permits contribution limits to serve the narrow but vital purpose of preventing actual or apparent quid pro quo corruption in politics. Because the limitations imposed by Montana Code Annotated § 13-37-216 both further that interest and are adequately tailored to it, they satisfy the First Amendment.

REVERSED.

BEA, Circuit Judge, dissenting:

Our representative government requires and relies on the ready flow of ideas between elected legislators and the voters. Those ideas are mostly transmitted during election campaigns by advertisements and organized rallies, examples of free speech, neither of which come free. Contributors to the campaigns want their ideas made known and accepted by the campaigning legislators. Restrictions on citizens' campaign contributions limit their ability to make their ideas known and to influence the legislators to accept and further those ideas. For these reasons, our First Amendment law permits limits on such contributions only if the restrictions are closely drawn to a valid, important state interest. Courts must carefully scrutinize such limitations. *See McCutcheon v. FEC*, 134 S. Ct. 1434, 1451 (2014) ("the First Amendment requires us to err on the side of protecting political speech rather than

suppressing it" (citation omitted)). Here, the district court properly evaluated the evidence submitted by Montana's officials and found the officials had not established the only constitutionally permissible and valid state interest sufficient to justify Montana's campaign contribution limits: the prevention of corruption or its appearance. Thus, I respectfully dissent.

In *Montana Right to Life v. Eddleman*, 343 F.3d 1085, 1092 (9th Cir. 2003), we upheld Montana's campaign contribution limits under a two-part test: 1) the contribution limits must respond to a valid important state interest and 2) the contribution limits must be closely drawn to that interest. In that decision, we recognized that discouraging "undue influence" gained over legislators by contributors through their contributions could be a valid important state interest. 343 F.3d at 1096–97. As we recognized in *Lair v. Bullock*, 798 F.3d 736, 747 (9th Cir. 2015), the Supreme Court's plurality decision in *Randall v. Sorrell*, 548 U.S. 230 (2006), which held Vermont's campaign contribution limits unconstitutional under the First Amendment, did not alter *Eddleman*'s framework because no opinion received the support of a majority of the justices.

If *Citizens United* had not been decided the way it was, the Montana officials' claims here of a valid important state interest would make this an easy case for reversal. But *Citizens United* changed all that because it narrowed what can constitute a valid important state interest (at *Eddleman*'s first step) to only the state's interest in eliminating or reducing quid pro quo corruption or its appearance. The Supreme Court explained in *FEC v. National Conservative Political Action Committee* that "[t]he hallmark of corruption is the financial quid pro quo: dollars for political favors." 470 U.S.

480, 497 (1985). The mere prevention of influence on legislators by contributors is now *not* a valid important state interest that could justify campaign contribution limits. *Citizens United v. FEC*, 558 U.S. 310, 359 (2010); s*ee also McCutcheon*, 134 S. Ct. at 1441. As such, only the avoidance of corruption or the appearance of corruption remain as a state interest valid and important enough to limit the free speech rights of contributors exercised through their contributions to their legislators.

To establish this sole valid important state interest defendants here must demonstrate that the existence of actual or apparent quid pro quo corruption is more than "mere conjecture" and is not "illusory."[1] *Eddleman*, 343 F.3d at 1092. While an appellate court's review of a district court's factual findings is more rigorous in the First Amendment

[1] A common sense understanding of quid pro quo corruption suggests that it is limited to exchanges in which a politician personally pockets money in exchange for an official action that violated the politician's obligations of office. The notion that contributions to a candidate's campaign fund, one of the key mechanisms by which constituents influence their elected representatives, could ever constitute part of an improper exchange for an official act seems implausible since the contribution of funds to a campaign to effect influence is their expected and proper purpose. Despite this, the Supreme Court has earlier recognized that quid pro quo corruption includes occasions when "[e]lected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves *or infusions of money into their campaigns*." *McCutcheon*, 134 S. Ct. at 1460–61 (quoting *FEC v. Nat'l Conservative Political Action Comm.*, 470 U.S. at 497 (emphasis added)). As such, under Supreme Court precedent contributions made for the permissible purpose of influencing legislators can apparently constitute quid pro quo corruption in certain circumstances. Such influence is improper corruption when, in fact, the legislator acts contrary to his legal obligation(s). In our record, there is no evidence of such an illegal act.

context, our prior precedent has confirmed that we still review such factual findings with some deference. *See Newton v. Nat'l Broad. Co.*, 930 F.2d 662, 670 (9th Cir. 1990) ("[W]e must simultaneously ensure the appropriate appellate protection of First Amendment values and still defer to the findings of the trier of fact."); *see also Planned Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists*, 290 F.3d 1058, 1066–70 (9th Cir. 2002). Because the district court entered judgment on cross motions for summary judgment, however, a de novo standard of review as to the existence of a material triable issue of fact properly applies here.

A close examination of relevant evidence from the record makes clear that the district court's finding that defendants failed to carry their burden to prove the appearance or existence of quid pro quo corruption at the first step of *Eddleman*, as narrowed by *Citizens United*, was correct even if reviewed under a de novo standard. That is because the record here is devoid of any evidence of exchanges of dollars for political favors – much less for any actions contrary to legislators' obligations of office – or any reason to believe the appearance of such exchanges will develop in the future.

First, consider the letter sent by Senator Mike Anderson to his party-colleagues, urging them to vote for a bill so that money from certain political action committees would continue to flow to the Republican Party's coffers. None of the record evidence shows that any legislator accepted the deal articulated by Senator Anderson and, despite five separate investigations, Anderson himself was never found to have engaged in any unlawful practices. *Eddleman*, 343 F.3d at 1093. Rather than actual or apparent quid pro quo corruption, the event shows rejection of temptation. Next,

consider the offer to contribute $100,000 to the Republican Legislative Campaign Committee in exchange for Republican legislators' support for a right-to-work bill, as testified to by Senator Bruce Tutvedt. This offer also did not constitute quid pro quo corruption because the Republican legislators rejected it. Further, they likely would have introduced and supported such a right-to-work bill regardless of this offer, as it was consistent with their political party's policy position. More importantly, even had certain legislators accepted these offers (as Representative Hal Harper's generalized testimony suggests sometimes occurred), such actions would appear to constitute nothing more than the trading of influence and access, which are critical mechanisms through which our political system responds to the needs of constituents. *See Citizens United*, 130 S. Ct. at 910 ("that speakers may have influence over or access to elected officials does not mean that these officials are corrupt").

Similarly, the Montana state court decisions referenced by defendants do not establish actual or apparent quid pro quo corruption. These include:

- The Montana Supreme Court held in 2013 that a Public Service Commissioner unlawfully accepted financial gifts from power companies that "would tend to improperly influence a reasonable person in [the Commissioner's] position," a number of which payments the Commissioner returned to the contributor shortly after they were received. *Molnar v. Fox*, 301 P.3d 824, 832 (Mont. 2013).

- Two Montana state trial court decisions found that two 2010 legislative primary candidates violated state campaign finance laws by accepting corporate

> contributions in return for promising 100 percent support for the corporations' agenda and without properly reporting such contributions. *Comm'r of Political Practices v. Boniek*, XADV-2014-202 (1st Jud. Dist. Mont. 2015); *Comm'r of Political Practices v. Prouse*, DDV-2014-250 (1st Jud. Dist. Mont. 2016).

None of these cases involved bribery or the improper trading of official acts by violating a legislator's legal obligations for monetary contributions. Two of these cases (*Boniek* and *Prouse*) were default judgments against individuals who never even made it to a general election (each lost in the Republican primaries), making quid pro quo corruption in each circumstance impossible as neither candidate ever held any office from which to grant official favors. Although the Montana court that adjudicated *Boniek* and *Prouse* labeled the conduct in both of these cases as "corruption," the court did not delineate which official actions taken by defendants in these cases constituted an illegal official act, define what "corruption" meant in this context, or explain how this finding was related to the legal claims against defendants before that court. Moreover, defendants Boniek and Prouse already held out-spoken conservative positions on issues like right-to-work, abortion, guns, and government, meaning that any official acts they may have taken to further the interests of conservative contributors had they been elected would have been consistent with their longstanding policy positions and not primarily motivated as an exchange of an illegal official act for campaign contributions.

Finally, the declaration of Montana's Commissioner of Political Practices (Jonathan Motl) that numerous cases of quid pro quo corruption occurred in Montana was rebutted by sworn declarations from the very politicians and political

candidates who, according to Motl, engaged in quid pro quo corruption. Given defendant Motl's position as Commissioner of Political Practices, which gives him broad authority to investigate political misdeeds, *see* Montana Code Annotated § 13-37-111, it is surprising, to say the least, that the only enforcement actions against purported quid pro quo corruption in Montana cited by defendants are the above-referenced, non-starter cases for violations of campaign finance or ethics rules. One would expect that if quid pro quo corruption was as widespread as Commissioner Motl asserts, he could point at least to some actual court convictions for bribery or other forms of quid pro quo corruption.

Taken together, a detailed examination of the evidence offered by defendants establishes that the district court concluded correctly that the record evidence failed to prove any actual quid pro quo corruption. This still leaves the possibility that the evidence in the record establishes the *appearance* of corruption in Montana. As *Buckley v. Valeo* explained, "[o]f 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." 424 U.S. 1, 27 (1976); *see also McCutcheon*, 134 S. Ct. at 1450. In other words, the appearance of quid pro quo corruption is the "public awareness of the opportunities for abuse." For the very reasons discussed above, however, none of the record evidence establishes the existence of any opportunity for quid pro quo corruption or other abuses. Where is the evidence that a legislator caused the re-routing of a freeway to benefit a commercial landowner, who had paid the legislator's vacation travels? Where is the evidence that an airport construction contractor was awarded a contract, and had

remodeled the legislator's home at little or no cost to the legislator? Rather, the record makes clear that Montana politicians often rejected even efforts by certain interests to influence or access legislators, that even seemingly minor violations of campaign finance laws by unelected primary candidates were rigorously punished, and that Montana's Commissioner of Political Practices consistently reviewed the propriety and legality of the actions of politicians, political candidates, and various interest groups. In other words, the only reasonable inference that may be drawn from the record evidence is that there were few opportunities for abuse and, therefore, scant public awareness of such opportunities. As such, on this record the existence of actual or apparent quid pro quo corruption is, at best, "illusory" or "mere conjecture," such that defendants have not met their burden to establish a valid important state interest to justify the contribution limits at issue in this lawsuit. *Eddleman*, 343 F.3d at 1092.

While it is admittedly difficult at times to distinguish between proscribed corruption and acceptable influence, given the important First Amendment interests at stake when restricting political speech we are obliged to scrutinize carefully whether a valid important state interest exists before upholding the constitutionality of such restrictions. *See McCutcheon*, 134 S. Ct. at 1451 ("The line between quid pro quo corruption and general influence may seem vague at times, but the distinction must be respected in order to safeguard basic First Amendment rights."). Although there is admittedly some common sense to the notion that limiting the amount of money citizens may contribute to political candidates inherently forestalls corruption, because so doing also restricts speech our federal constitution requires a greater evidentiary showing than made on this record before a state may restrict political speech through campaign contribution

limits. While the panel majority's opinion pays lip service to the changes in the *Eddleman* framework rendered by *Citizens United*, the contents of its analysis at *Eddleman*'s first step demonstrate it has failed to account substantively for this change.

In footnote 5, the majority opinion notes that "[u]nder the dissent's logic…Montana's evidence is inadequate to justify any contribution limit whatsoever, no matter how high." This is quite correct. Absent a showing of the existence or appearance of quid pro quo corruption based on objective evidence, the presence of a subjective sense that there is a risk of such corruption or its appearance does not justify a limit on campaign contributions. Restrictions on speech must be based on fact, not conjecture.

Because I do not think defendants established the existence of a valid important state interest at step one of the *Eddleman* framework, I respectfully dissent.

Commissioner of Political Practices

Policies and Procedures

Amended Office Management Policy 2.4

Reinstating Pre-Lair 2016 Campaign Contribution limits

Adopted: May 17, 2016; First amended on May 18, 2016; Second amended on May 26, 2016

Introduction

The Federal District Court, in the Matter of *Lair v. COPP* No. 6:12-cv-00012-CCL, issued its Order on May 17, 2016 declaring that the limits imposed by Montana law on contributions to candidates for Montana public office are unconstitutional. The Federal Court's Order has voided the limits on contributions.

The contribution limits voided by the Federal Court were set by a November 1994 vote of Montana voters approving Initiative 118. The new limits set by I-118 amended limits were then set out at §13-37-216 MCA.

In response to the Federal Court's Order the Commissioner adopts the following amended policy.

Policy

The Commissioner hereby recognizes that Montana law reinstates the larger contribution limits in place under §13-37-216 MCA before those limits were amended by the now voided portion of I-118. The Commissioner notes that the Policy is adopted under the reasoning, authority and direction set by the Montana Supreme Court in *State ex. rel. Woodahl v. District Court*, 162 Mont. 283, 290, 511 P.2d 318, 322 (1972): '[a]n unconstitutional amendment to a law leaves the section intact as it had been before the attempted amendment." This issue is further addressed by AG Opinion Vol. 51, No. 2.

I. Individual Contribution Limits

The Court's Order struck 13-37-216(1) MCA (2011) applying limits to individuals. The amounts for individual contributions set by §13-37-216 MCA before the now voided amendment by I-118 are as follows:

$1,500 limit for Gubernatorial candidates
$750 limit for Other Statewide Office candidates
$400 limit for candidates for PSC, District Court Judge, and State Senator

$250 limit for any candidates for any other Montana public office (including State Representative)

Subsection (4) of §13-37-216 MCA (2011) sets an inflation factor based on the consumer price index in place in the year of 2002. The inflation factor was set by the Montana legislature independent of changes made by I-118. The Commissioner applies the inflation factor for the reason that it was not challenged by the *Lair* litigation and appears to be unaffected by the Court's Order. Applying a 1.326 Inflation Factor to the reinstated pre-I-118 limits sets the following limits on individual contributions to a candidate for election in 2016:

$1,990 limit for Gubernatorial candidates
$990 limit for Other Statewide Office candidates
$530 limit for candidates for PSC, District Court Judge, and State Senator
$330 limit for any candidates for any other Montana public office (including State Representative)

It is noted that the limits set by §13-37-216 MCA prior to amendment by I-118 were single limits covering both the primary and general election. Accordingly, the Commissioner adopts the above as a single limit for contributions to a 2016 Montana candidate for public office.

II. Political Committee Contribution Limits, Other than Political Parties.

The Court's Order struck 13-37-216(1) MCA (2011), the subsection of law applying limits to political committees other than political party committees. The amounts for political committee contributions set by §13-37-216 MCA before the now voided amendment by I-118 are as follows:

$8,000 limit for Gubernatorial candidates
$2,000 limit for Other Statewide Office candidates
$1,000 limit for candidates for PSC
$600 limit for a candidate for the state senate
$300 limit for any candidates for any other Montana public office (including State Representative and District Court Judge)

Applying the inflation factor discussed above, the reinstated limits for political committees other than political party committees are:

$10,610 limit for Gubernatorial candidates
$2,650 limit for Other Statewide Office candidates
$1,330 limit for candidates for PSC
$800 limit for a candidate for the state senate

$400 limit for any candidates for any other Montana public office (including State Representative and District Court Judge)

It is noted that the limits set by §13-37-216 MCA prior to amendment by I-118 were single limits covering both the primary and general election. Accordingly, the Commissioner adopts the above as a single limit for contributions to a 2016 Montana candidate for public office.

III. Political Party Contribution Limits

The Court's Order of May 17, 2016 struck 13-37-216(3) MCA (2011), the subsection of law applying limits to political party committees. On May 25, 2016 the Court issued its further Order staying the effect of this part of the Order as to Montana's 2016 elections. Accordingly, political party contribution limits for 2016 elections were and are those set by 44.11.227 ARM:

Office	Contribution Limit – Per Election
Governor/Lieutenant Governor	$23,850
Other Statewide offices	$8,600
PSC	$3,450
State Senate	$1,400
All other Elected Offices	$850

This Policy, with any amendments, is in effect barring further legislative or judicial action that might affect the contribution limits, including the completion of litigation in the matter of *Lair v. COPP* No. 6:12-CV-00012-CCL. Failure to adhere to these contribution limits will be treated as a violation of Montana's campaign practice laws.

STATE LIMITS ON CONTRIBUTIONS TO CANDIDATES

2017-2018 Election Cycle: Limits on Contributions to Candidates

2015-2016 Election Cycle: Limits on Contributions to Candidates

2013-2014 Election Cycle: Limits on Contributions to Candidates

2011-2012 Election Cycle: Limits on Contributions to Candidates

2009-2010 Election Cycle: Limits on Contributions to Candidates

These tables are only available in PDF format and provide the following information by state with statute cites: Individual to Candidate Contributions; State Party to Candidate Contributions; PAC to Candidate Contributions; Corporate to Candidate Contributions; Union to Candidate Contributions.

To view PDF files, you must install *Adobe Acrobat Reader*.

For more information, contact NCSL's Legislative Management Team at elections-info@ncsl.org or 303-364-7700.

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State Limits on Contributions to Candidates
2015-2016 Election Cycle

	Individual → Candidate Contributions	State Party → Candidate Contributions	PAC → Candidate Contributions	Corporate → Candidate Contributions	Union → Candidate Contributions
Alabama Ala. Code § 17-5-1 et seq.	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Alaska § 15.13.070 and 15.13.074(f)	$500/candidate/year Aggregate amounts candidates may accept from non-residents: $20,000/year/gub candidate $5,000/year/Senate candidate $3,000/year/House candidate	$100,000/year/gub candidate $15,000/year/Senate candidate $10,000/year/House candidate $5,000 municipal	$1,000/office/year Contributions from out-of-state PACs prohibited	Prohibited[d]	Prohibited[d]
Arizona[b, e, 1] A.R.S. § 16-905 and 16-919	$5,000/statewide or legislative candidate	Aggregate contributions accepted from all political parties and organizations cannot exceed: $80,000 – statewide candidate $8,000 – legislative candidate	"Super" PACs[2]:$10,000/statewide or legislative candidate/year Regular PACs: $5,000/statewide or legislative candidate/year *Amounts are per election cycle*	Prohibited[d]	Prohibited[d]
Arkansas A.C.A. § 7-6-203	$2,700/candidate/election[a]	$2,700/candidate/election[a]	Same as individual limits	Same as individual limits	Same as individual limits

[1] The Arizona Citizens Clean Elections Commission has filed suit in Maricopa County Superior Court to block the increased limits, claiming that the legislation establishing them (HB 2593, 2013) violated the Voter Protection Act, which bars the legislature from making changes to any voter-approved laws without a second popular vote or a 3/4ths vote of the legislature. This litigation could result in an injunction that prevents the new limits from going into effect. Candidates are responsible for accepting only up to the legal maximum pursuant to law and candidates should check with their election official as to the law's status. The pre-HB 2593 limits would be $912/statewide candidate and $440/legislative candidate per election cycle.

[2] In Arizona, a PAC that has received contributions from 500 or more individuals in amounts of $10 or more in a one-year period may qualify as a "Super PAC." Qualification is valid for two years. (Ariz. Rev. Stat. §16-905(I))

	Individual → Candidate Contributions	State Party → Candidate Contributions	PAC → Candidate Contributions	Corporate → Candidate Contributions	Union → Candidate Contributions
California[e] Gov. Code § 85300 et seq.	For elections held on or after Jan. 1, 2013: $28,200/gubernatorial candidate $7,000/other statewide candidate $4,200/legislative candidate *Amounts are per election*[a]	Unlimited	For elections held on or after Jan. 1, 2013: "Small Contributor" Cmtes[3]: $28,200/gubernatorial candidate $14,100/statewide candidate $8,500/legislative candidate Regular PACs: Same as individual limits *Amounts are per election*[a]	Same as individual limits	Same as individual limits
Colorado[e] Constitution Art. XXVIII	Effective 3/15/11 - 2015: $575/statewide candidate $200/legislative candidate Limits double for a candidate who accepts voluntary spending limits if his/her opponent has not accepted the limits *and* has raised more than 10% of the limit. *Amounts per election*[a]	Effective 3/15/11 - 2015: $615,075/gub. candidate $123,000/other statewide candidate $22,125/Senate candidate $15,975/House candidate Note: Contributions by a candidate to his/her own campaign, and unexpended contributions carried forward to a subsequent election cycle, are treated as contributions from a political party and are subject to the political party limits. Party limits cannot be doubled for candidates who accept voluntary limits. *Amounts are per applicable election cycle.*	Limits effective 3/15/11 - 2015: "Small Donor" Committees:[4] $6,125/gub & statewide cand $2,425/legis. candidate Regular PACs and Federal PACs: Same as individual limits	Prohibited[5]	Can contribute through PAC's established by the organization

[3] In California, a "small contributor committee" is a committee which has been in existence for at least six months, receives contributions from 100 or more persons in amounts of not more than $200 per person, and makes contributions to five or more candidates. (Cal. Govt. Code §85203)

[4] In Colorado, a "small donor committee" means any political committee that has accepted contributions only from natural persons who each contributed no more than $50 in the aggregate per year.

[5] Corporations are prohibited from donating money from their treasury, but are permitted to establish independent expenditure committees or political committees with the same contribution limits as PACs

	Individual → Candidate Contributions	State Party → Candidate Contributions	PAC → Candidate Contributions	Corporate → Candidate Contributions	Union → Candidate Contributions
Connecticut[b] Ct.Gen.Stat. § 9-611, 9-613 and 9-615 Update July 2013	$3,500/gubernatorial candidate $2,000/other statewide candidate $1,000/Senate candidate $250/House candidate $30,000 aggregate/individual to all candidates and committees per Ct. Gen. Stat. § 9-611(d). *All amounts are per election*[a]	$50,000/gubernatorial candidate $35,000/other statewide candidate $10,000/Senate candidate $5,000/House candidate *All amounts are per election*[a]	$5,000/gubernatorial candidate $3,000/other statewide candidate $1,500/Senate candidate $750/House candidate Aggregate limits on contributions by PACs to candidates: $100,000/election by a PAC established by a business entity $50,000/election by a PAC established by an organization *All amounts are per election*[a]	Prohibited[d]	Prohibited[d]
Delaware 15 Del. Code §8010 to 8013	$1,200/statewide candidate $600/other candidate *All amounts per election cycle*	$75,000/gubernatorial candidate $25,000/other statewide candidate $5,000/Senate candidate $3,000/House candidate *All amounts per election cycle*	Same as individual limits	Same as individual limits	Same as individual limits

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	Individual → Candidate Contributions	State Party → Candidate Contributions	PAC → Candidate Contributions	Corporate → Candidate Contributions	Union → Candidate Contributions
Florida Fla. Stat. § 106.08	$3,000/statewide candidate $1,000/legislative *Amounts are per election*[a] (Effective 11/1/2013)	A candidate for statewide office may not accept contributions from parties which in the aggregate exceed $250,000, and no more than $125,000 of that amount may be received during the 28 days preceding an election. A legislative candidate can accept up to $50,000 each from the national or state executive committee of a party, or up to $50,000 from the county executive committee of a party.	Same as individual limits	Same as individual limits	Same as individual limits
Georgia[e] O.C.G.A. § 21-5-41 to 43	Limits last adjusted 12/2010 Regular primary or general: $6,300/statewide candidate $2,500/legislative candidate Run-off: $3,700/statewide candidate $1,300/legislative candidate *Amounts are per election*[a]	Same as individual limits	Same as individual limits	Same as individual limits	Same as individual limits
Hawaii H.R.S. §2: 11-357, 11-359	$6,000/statewide candidate $4,000/Senate candidate $2,000/House candidate Contributions from a candidate's immediate family are limited to $50,000 in an election cycle, including loans. *All amounts are per election cycle*	Same as individual limits	Same as individual limits	Same as individual limits	Same as individual limits

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	Individual → Candidate Contributions	State Party → Candidate Contributions	PAC → Candidate Contributions	Corporate → Candidate Contributions	Union → Candidate Contributions
Idaho § 67-6610A	$5,000/statewide candidate $1,000/leg candidate *Amounts are per election*[a]	$10,000/statewide candidate $2,000/legislative candidate *Amounts are per election*[a]	Same as individual limits	Same as individual limits	Same as individual limits
Illinois[e] 10 ILCS 5/9-8.5	$5,400/candidate/election cycle Any candidate who receives benefit or detriment from independent expenditures in excess of the amounts below is exempted from all contribution limits: $250,000/statewide candidate $100,000/candidate for any other office A candidate and their immediate family members (spouse, parent, or child) can make unlimited contributions to that candidate's campaign. Any candidate whose opponent is self-funded is exempted from contribution limits. A self-funded candidate is an individual who contributes $250,000 to his or her own statewide campaign in an election cycle, or $100,000 for all other elective offices. Contributions made to a candidate by immediate family members are also considered "self-funding."	Unlimited if candidate is not seeking nomination in a primary election. For candidates running in a primary: $215,800/statewide candidate $134,900/Senate candidate 134,900 $80,900/House candidate Unlimited from a political party during General or Consolidated Election Unlimited during Primary Election Cycle when candidate is not seeking nomination *Amounts are per election cycle.*	$53,900 per election cycle Same limit applies to a contribution from one candidate committee to another	$10,800per election cycle	$10,800 per election cycle

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Indiana Ind. Code § 3-9-2-4 et seq.	Unlimited	Unlimited	Unlimited	$5,000 in the aggregate to statewide candidates $2,000 in the aggregate to Senate candidates $2,000 in the aggregate to House candidates *All amounts are per year*	Same as corporate limits
Iowa Iowa Code § 68A.503	Unlimited	Unlimited	Unlimited	Prohibited[d]	Unlimited
Kansas K.S.A. § 25-4153	$2,000/statewide candidate $1,000/Senate candidate $500/House candidate *Amounts are per election*[a]	For a contested primary election, same as individual limits. Unlimited in uncontested primaries and general elections	Same as individual limits	Same as individual limits	Same as individual limits
Kentucky K.R.S. § 121.025, 121.035, and 121.150	$1,000/candidate/election[a]	Unlimited Aggregate Limits: No candidate can retain party contributions which in the aggregate exceed 50% of total contributions or $10,000 (whichever is greater) in an election cycle.	Same as individual limits Aggregate Limits: No candidate can retain PAC contributions which in the aggregate exceed 50% of total contributions or $10,000 (whichever is greater) in an election cycle. 121.150(23)(a)	Prohibited[d]	Same as individual limits

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	Individual → Candidate Contributions	State Party → Candidate Contributions	PAC → Candidate Contributions	Corporate → Candidate Contributions	Union → Candidate Contributions
Louisiana La. R.S. § 18:1505.2	$5,000/statewide candidate $2,500/legislative candidate *Amounts are per election*[a]	Unlimited	Regular PACs: Same as individual limits "Big" PACs[6]: Double the amount of individual limits Candidates subject to following aggregate limits on all PAC contributions accepted for the primary and general elections combined: $80,000/statewide candidate $60,000/legislative candidate	Same as individual limits	Same as individual limits
Maine[b,e] 21-A M.R.S.A. §1015	$1,575/gubernatorial candidate $375/legislative candidate[7] Individual contribution limits do not apply to contributions in support of a candidate by that candidate, or that candidate's spouse or domestic partner. Individuals limited to $25,000 aggregate contributions to all campaign finance entities per calendar year. This limitation does not apply to contributions in support of a candidate by that candidate or that candidate's spouse or domestic partner.	Same as individual limits	Same as individual limits	Same as individual limits	Same as individual limits

[6] In Louisiana, a "Big PAC" is a PAC with over 250 members who contributed over $50 to the PAC during the preceding calendar year and has been certified as meeting that membership requirement.

[7] In Maine, candidates who are enrolled in a political party may contributions of up to $375 from an individual. Individual contributions to unenrolled candidates are unlimited for primary elections.

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	Amounts are per election[a]				
	Individual → Candidate Contributions	**State Party → Candidate Contributions**	**PAC → Candidate Contributions**	**Corporate → Candidate Contributions**	**Union → Candidate Contributions**
Maryland Md. Code § 13-226 and 13-227	Effective Jan. 1, 2015 $6,000/candidate $24,000 aggregate to all candidates *Amounts are per 4-year election cycle*	Transfer limit: $6,000/4-year election cycle In-Kind Contributions: Limited to an amount equal to $1 for every two registered voters in the state, regardless of political affiliation, to a single candidate. Limit is per 4-year election cycle.	$6,000/candidate/4-year election cycle	Same as individual limits	Same as individual limits
Massachusetts G.L. Ch. 55, § 6, 6A, 7A and 8	$1000/candidate $12,500/individual aggregate limit on contributions to all candidates Registered lobbyists may only contribute up to $200/candidate *Amounts are per calendar year.*	$3,000/candidate/year No limit on in-kind contributions	Regular PAC or People's Committee:[8] $500/candidate Candidates cannot accept aggregate contributions from regular PACs that exceed the following amounts (People's Committees are exempt from the aggregate limits): $150,000/gubernatorial candidate $18,750/Senate candidate $7,500/House candidate *Amounts per calendar year.*	Prohibited[d]	Same as PAC limits

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[8] In Massachusetts, a "People's Committee" is a PAC that has been in existence for six months, has received contributions from individuals of $156 (adjusted biennially; this amount is for 2013-2014) or less per year, and has contributed to five candidates.

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	Individual → Candidate Contributions	State Party → Candidate Contributions	PAC → Candidate Contributions	Corporate → Candidate Contributions	Union → Candidate Contributions
Michigan M.C.L. § 169.246, 169.252 and 169.254	$6,800/statewide candidate $2,000/Senate candidate $1,000/House candidate *All amounts are per election cycle*	$750,000/governor or lieutenant governor slate with public funding $136,000/governor or lieutenant governor slate without public funding $136,000/other statewide candidate $20,000/Senate candidate $10,000/House candidate *All amounts are per election cycle*	Political Committees: Same as individual limits. Independent PACs[9]: $68,000/statewide candidate $20,000/Senate candidate $10,000/House candidate *All amounts are per election cycle*	Prohibited[d]	Prohibited[d]

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[9] In Michigan, an "independent committee" must have filed a statement of organization at least 6 months before the election in which the committee wishes to make contributions; must have supported or opposed 3 or more candidates for nomination or election; and must have received contributions from at least 25 persons.

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Minnesota Minn. Stat. § 10A.27 and 211B.15	Election segment limits:[10] $4,000/governor – lieutenant governor slate $2,500/AG candidate $2,000/SOS or auditor candidate $1,000/legislative candidate Non-election segment limits: $2,000/governor-lieutenant governor slate $1,500/Attorney General candidate $1,000/Secretary of State or Auditor candidate $1,000/Senate candidate n/a for House candidates Candidates who have signed a public subsidy agreement are also subject to a limit (equal to five times the election segment limits above) on the amount of personal funds they can contribute to their own campaign. *Amounts are per 2-year election segment.*	Party committees may contribute up to 10 times the limits imposed on individuals Candidates are subject to the following aggregate limits on contributions received in the 2013-14 election cycle from party committees and terminating principal campaign committees: $40,000/governor-lieutenant governor slate $25,000/Attorney General candidate $20,000/Secretary of State or Auditor candidate $10,000/legislative candidate	Same as individual limits Aggregate contributions from political committees or political funds, lobbyists, and individuals who contribute or loan more than ½ the yearly contribution limit cannot exceed the following amounts: $700,000/governor-lieutenant governor slate $120,000/Attorney General candidate $80,000/Secretary of State or Auditor candidate $6,000/Senate candidate $12,000/House candidate	Prohibited[d]	Same as individual limits
Mississippi Miss. Code § 97-13-15	Unlimited	Unlimited	Unlimited	$1,000/candidate/year	Unlimited
Missouri Mo. Rev. Stat. § 130.031	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited

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[10] Minnesota's SF 991 (2013) divided election cycles into two-year periods, and made limits applicable to a two-year period rather than a single year. The limit is higher for the two-year period during which an election is held for the office, and lower during a non-election two-year period for candidates that serve a four- or six-year term.

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Montana[e, 11] M.C.A. §13-35-227 and §13-37-216	$1,990/gubernatorial slate $990/other statewide cand. $530/senate candidate $330/house candidate *Amounts are per election cycle*	$23,850/gubernatorial slate $8,600/other statewide cand. $1,400/senate candidate $850/house candidate *Amounts are per election*	$10,610/gubernatorial slate $2,650/other statewide cand. $800/senate candidate $400/house candidate Candidates limited to total contributions from all PACs: $2,800 senate candidates $1,700 house candidates *Amounts are per election cycle*	Prohibited	Prohibited
Nebraska N.R.S.§ 32-1604 and 32-1608	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Nevada § 294A.100 and Const. Art. 2 §10	$5,000/candidate/election[a]	Same as individual limits	Same as individual limits	Same as individual limits	Same as individual limits
New Hampshire R.S.A. § 664:4	To candidates not agreeing to abide by spending limits: $1,000/election[a] To candidates agreeing to abide by spending limits: $5,000/election[a]	To candidates not agreeing to abide by spending limits: $1,000/election[a] Unlimited to candidates who agree to expenditure limits	Same as party limits	Same as individual limits[12]	Prohibited[d]
New Jersey[e] N.J.S.A. § 19:44A-11.3	$3,800/gubernatorial candidate $2,600/legislative candidate *Amounts are per election*[a]	No limit on contributions by state, county, municipal and legislative leadership committees National party committee: $8,200/election[a]	$8,200/candidate/election[a]	Same as individual limits	Same as individual limits

[11] Montana's contribution limits have been the subject of ongoing litigation over the last several years. See the Montana Commissioner of Political Practices webpage for latest information.

[12] Corporations are no longer prohibited from making political contributions under New Hampshire law despite the language of NH RSA 664:4. That ban was declared unconstitutional by a federal district court in 1999. A June 6, 2000 letter from Deputy Attorney General Steven M. Houran indicates that the limits on individual contributions now apply to corporate contributions as well.

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New Mexico[e] N.M.S.A. § 1-19-34.7	$5,400/statewide candidate $2,500/non-statewide candidate *Amounts are per election*[a]	$5,400/election[a]	Same as party limits	Same as individual limits	Same as individual limits
New York[e] Election Law, § 14-114 and 14-116	Regular Limits, Primary: $6,500-$19,700/statewide[13] $6,500/Senate candidate $4,100/Assembly candidate Family Limits, Primary[14]: $523-$137,978/statewide $20,000-$41,577/Senate candidate $12,500-$17,061/Assembly Regular Limits, General: $41,100/statewide candidate $10,300/Senate candidate $4,100/Assembly candidate Family Limits, General: $278,609/statewide candidate $30,079-$57,304/Senate candidate $12,500-$24,871/Assembly *Amounts are per election cycle.* Maximum contributions by an individual limited to $150,000 in the aggregate per calendar year.	Prohibited in primary election Unlimited in general election	Same as individual limits	Same as individual limits, with exceptions (see below) Corporations are limited to $5,000 per year in aggregate contributions to NY state candidates and committees. Candidates may accept corporate contributions of up to $5,000 annually during each year of an election cycle, so long as the total contributions from the corporation do not exceed the election cycle's regular limits on individual contributions, and the corporation does not exceed its aggregate limit of $5,000/ year to all candidates and committees.	Same as individual limits

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[13] Limit is based on a formula: product of number of enrolled voters in candidate's party in state (excluding voters on inactive status) x $.005, but not less than $6,500 or more than $19,700

[14] Separate limits apply for contributions from all family members in the aggregate. Limit is based on a formula: total # of enrolled voters on active status in candidate's party in the state/district x $0.025. "Family" is defined as a child, parent, grandparent, brother, sister, and the spouses of those persons. Contributions from the candidate and the candidate's spouse are not limited.

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North Carolina[e] N.C.G.S. § 163-278.13, 163-278.15 and 163-278.19	$5,000/candidate/election[a]	Unlimited	Same as individual limits	Prohibited[d]	Prohibited[d]
North Dakota § 16.1-08.1	Unlimited	Unlimited	Unlimited	Prohibited[d]	Prohibited[d]
Ohio[e] O.R.C. § 3517.102, 3517.104 and 3599.03	$12,532.52/candidate/ election[a]	$706,823.95/statewide candidate $140,988.82/Senate candidate $70,181.10/House candidate In-kind contributions unlimited *All amounts are per election*[a]	Same as individual limits	Prohibited[d]	Prohibited[d]
Oklahoma[e] 21 OS § 187.1 et seq. and Ethics Commission Rules §2.23, §2.31, §2.33, §2.37,	$2,700/candidate/election	$25,000/statewide candidate $10,000/other state elective office *Amounts are prior to general election*	$5,000/candidate/election A PAC that has been registered for less than a year prior to a primary OR has fewer than 25 contributors: $2,500 per election	Prohibited[d]	Prohibited[d]
Oregon O.R.S. § 260.160 to 174	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Pennsylvania 25 Pa. Stat. §3253	Unlimited	Unlimited	Unlimited	Prohibited[d]	Prohibited[d]
Rhode Island R.I.G.L. § 17-25-10.1	$1,000/candidate/ year Individuals limited to $10,000 in aggregate contributions to candidates, PACs and party committees per year	$25,000/candidate/year In-kind contributions unlimited	$1,000/candidate/ year Annual aggregate limit of $25,000 to all recipients	Prohibited	Prohibited

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South Carolina S.C. Code § 8-13-1300(10), 8-13-1314 and 8-13-1316	$3,500/statewide candidate $1,000/legislative candidate *Amounts are per election[a] in each primary, runoff, or special election in which a candidate has opposition and for each general election; if a candidate remains unopposed during an election cycle, one contribution limit shall apply.*	$50,000/statewide candidate $5,000/other candidate *Amounts are per election[a] subject to the same exceptions described at left.*	$11,500/statewide candidate $7,600/legislative candidate	Same as individual limits	Same as individual limits
South Dakota S.D.C.L. § 12-27-7	$4,000/statewide candidate $1,000/legislative candidate *Amounts are per calendar year*	Unlimited	Unlimited	Prohibited[d]	Prohibited[d]
Tennessee[e] Tenn. Code § 2-10-302	$3,800/statewide candidate $1,500/legislative candidate *Both amounts are per election[a]*	Candidates limited to aggregate amount from all political party committees: $374,300/statewide candidate $59,900/Senate candidate $30,000/House candidate *All amounts are per election[a]*	$11,200/statewide candidate $11,200/Senate candidate $7,400/other candidates No more than 50% of a statewide candidate's or $112,300 of a legislative candidate's total contributions may come from PACs *All amounts are per election[a]*	Same as PAC limits If a corporation gives more than $250 in the aggregate to candidates, it must register as a PAC and make all further contributions through the PAC. It may transfer unlimited amounts from its corporate treasury to the PAC.	Same as PAC limits A union must register as a PAC before making contributions to candidates.
Texas Election Code, § 253	Unlimited	Unlimited	Unlimited	Prohibited[d]	Prohibited[d]
Utah Utah Code § 20A-11-101	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited

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Vermont[b] 17 VSA §2805	$4,000/statewide candidate $1,500/State Senate $1,000/State House	Unlimited	Same as individual limits	Same as individual limits	Same as individual limits
Virginia Va. Code § 24.2-945	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Washington[e] RCW § 42.17.610 et seq. WAC § 390-05-400	$1,900/gubernatorial candidate $950/legislative candidate *Amounts are per election*[a] During the 21 days before the general election, no contributor may donate more than $50,000 in the aggregate to a statewide candidate or $5,000 in the aggregate to any other candidate or a political committee, including political party committees. This includes a candidate's personal contributions to his/her campaign. The state committees of political parties are exempted from this limit.	Aggregate contributions from a state party central committee to a statewide or legislative candidate may not exceed $.80 x number of registered voters in candidate's district. This limit applies to the entire election cycle.	Same as individual limits A PAC that has not received contributions of $10 or more from 10 or more WA registered voters during the past 180 days is prohibited from making contributions.	Prohibited for corporations not doing business in Washington state. Same as individual limits for Washington corporations.	Prohibited for unions that have fewer than 10 members who reside in Washington. Same as individual limits for Washington unions.
West Virginia § 3-8-8 to 12	$1,000/candidate/election[a]	Same as individual limits	Same as individual limits	Prohibited[d]	Same as individual limits

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Wisconsin § 11.01 et seq.	$10,000/statewide candidate $1,000/Senate candidate $500/Assembly candidate *Amounts are per election cycle* An individual may not contribute more than $10,000 in a calendar year to any combination of Wisconsin candidates or political committees.	Aggregate limit on amount candidates may accept from all political party committees, including legislative campaign committees, in an election campaign : $700,830/gub. candidate $22,425/Senate candidate $11,213/House candidate Additionally, the maximum amount a legislative campaign committee can give without reducing committee contributions is: $6,900/Senate candidate $3,450/Assembly candidate *Amounts are per election cycle*	$43,128/gub. candidate $1,000/Senate candidate $500/Assembly candidate Aggregate limit on amount candidates may accept from PACs and candidate committees (grants from the Wisconsin Election Campaign Fund also count against this limit): $485,190/gub. candidate $15,525/Senate candidate $7,763/House candidate *Amounts are per election cycle*	Prohibited	Prohibited
Wyoming Wyo. Stat. § 22-25-102	Effective 2013-2014: $1,000/candidate/election[a] Effective Jan. 1, 2015: $2,500/statewide candidate $1,500/other candidate *Amounts are per election*[a] No individual may make more than $25,000 (increases to $50,000 eff. Jan. 1, 2015) in total contributions during a two-year election cycle.	Unlimited	Effective 2013-2014: Unlimited Effective Jan. 1, 2015: $7,500/statewide candidate $3,000/other candidate *Amounts are per election*[a]	Prohibited[d]	Prohibited[d]

(a) Primary and general are considered separate elections; stated amount may be contributed in each election.
(b) Candidates participating in the public financing may not accept contributions after qualifying for public funds. Limits listed are for candidates not participating in public financing program.
(d) Direct corporate and/or union contributions are prohibited and/or use of treasury funds and/or dues is prohibited. In these states, the law specifically says that nothing prevents the employees or officers of a corporation from making political contributions through a PAC, using funds from an account that is separate and segregated from corporate accounts. Such contributions are subject to the same limitations placed on other PACs.

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(e) Contribution limits are adjusted for inflation at the beginning of each campaign cycle.

Source: *National Conference of State Legislatures*
Last updated October 2015
Oklahoma and Montana updated May 2016
This data is presented for information purposes only and should not be considered legal advice.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)
Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - A material point of fact or law was overlooked in the decision;
  - A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ► Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ► The proceeding involves a question of exceptional importance; or
- ► The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms.*
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms.*

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
  - ► Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
  - ► and electronically file a copy of the letter via the appellate ECF system by using "File Correspondence to Court," or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

Form 10. Bill of Costs .....***(Rev. 12-1-09)***

United States Court of Appeals for the Ninth Circuit

BILL OF COSTS

This form is available as a fillable version at:
http://cdn.ca9.uscourts.gov/datastore/uploads/forms/Form%2010%20-%20Bill%20of%20Costs.pdf.

Note: If you wish to file a bill of costs, it MUST be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

_____ v. _____ 9th Cir. No. _____

The Clerk is requested to tax the following costs against: _____

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	**REQUESTED** *(Each Column Must Be Completed)*				**ALLOWED** *(To Be Completed by the Clerk)*			
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST
Excerpt of Record			$	$			$	$
Opening Brief			$	$			$	$
Answering Brief			$	$			$	$
Reply Brief			$	$			$	$
Other**			$	$			$	$
			TOTAL:	$			**TOTAL:**	$

* *Costs per page*: May not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

** *Other*: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

Continue to next page

Form 10. Bill of Costs - *Continued*

I, _____ , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature _____

("s/" plus attorney's name if submitted electronically)

Date _____

Name of Counsel: _____

Attorney for: _____

(To Be Completed by the Clerk)

Date _____ Costs are taxed in the amount of $ _____

Clerk of Court

By: _____ , Deputy Clerk