To: The Chief Justice
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Thomas
Justice Ginsburg
Justice Breyer

Pre-check changes throughout
Change marked at pp 7-8
Part II B, pp 10-15, revised from arrow

To: The Chief Justice
Justice Stevens
Justice O'Connor
Justice Scalia
Justice Kennedy
Justice Thomas
Justice Ginsburg
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From:
Justice Souter

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SUPREME COURT OF THE UNITED STATES

No. 98–963

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

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

[November ___, 1999]

JUSTICE SOUTER delivered the opinion of the Court.

The principal issues in this case are whether *Buckley* v. *Valeo*, 424 U. S. 1 (1976) *(per curiam)*, is authority, without more, for state limits on contributions to state political candidates and whether the federal limits approved in *Buckley*, with or without adjustment for inflation, define the scope of permissible state limitations today. We hold *Buckley* to be authority for comparable state regulation, which need not be pegged to *Buckley*'s dollars.

I

In 1994, the Legislature of Missouri enacted Senate Bill 650 (SB650) to restrict the permissible amounts of contributions to candidates for state office. Mo. Rev. Stat. §130.032 (1994). Before the statute became effective, however, Missouri voters approved a ballot initiative with even stricter contribution limits, effective immediately. The United States Court of Appeals for the Eighth Circuit then held the initiative's contribution limits unconstitutional under the First Amendment, *Carver* v. *Nixon*, 72 F. 3d 633, 645 (CA8 1995), cert. denied, 518 U. S. 1033

Justice Kennedy
Justice Thomas
Justice Ginsburg

a "sufficiently important interest," *ibid.*, though the dollar amount of the limit need not be "fine tun[ed]," *id.*, at 30.[3]

While we did not attempt to parse distinctions between the speech and association standards for contribution limits, we did make it clear that those restrictions bore more heavily on the associational right than on freedom to speak. *Id.*, at 24–25. We consequently proceeded on the understanding that a contribution limitation surviving a claim of associational abridgment would survive a speech challenge as well, and we held the standard satisfied by the contribution limits. "[T]he prevention of corruption and the appearance of corruption," was found to be a "constitutionally sufficient justification," *id.*, at 25–26:

> "To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined. . . .
>
> "Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions. . . .

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[3] The quoted language addressed the correlative overbreadth challenge. On the point of classifying the standard of scrutiny, compare *Roberts* v. *United States Jaycees*, 468 U. S. 609, 623 (1984) ("Infringements on [the right to associate for expressive purposes] may be justified by regulations adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms"); *NAACP* v. *Button*, 371 U. S. 415, 438 (1963) ("The decisions of this Court have consistently held that only a compelling state interest in the regulation of a subject within the State's constitutional power to regulate can justify limiting First Amendment freedoms"); *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 460–461 (1958) ("[S]tate action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny").

> Congress could legitimately conclude that the avoidance of the appearance of improper influence 'is also critical . . . if confidence in the system of representative Government is not to be eroded to a disastrous extent.'" *Id.*, at 27 (quoting *Civil Service Comm'n* v. *Letter Carriers,* 413 U. S. 548, 565 (1973)).

See also *Federal Election Comm'n* v. *National Conservative Political Action Comm.,* 470 U. S. 480, 497 (1985) ("Corruption is a subversion of the political process. Elected officials are influenced to act contrary to their obligations of office by the prospect of financial gain to themselves or infusions of money into their campaigns"); *Federal Election Comm'n* v. *National Right to Work Comm.,* 459 U. S. 197, 208 (1982) (noting that Government interests in preventing corruption or the appearance of corruption "directly implicate 'the integrity of our electoral process, and, not less, the responsibility of the individual citizen for the successful functioning of that process'" (quoting *United States* v. *Automobile Workers,* 352 U. S. 567, 570 (1957)); *First Nat. Bank of Boston* v. *Bellotti,* 435 U. S. 765, 788, n. 26 (1978) ("The importance of the governmental interest in preventing [corruption] has never been doubted").

In speaking of "improper influence" and "opportunities for abuse" in addition to "*quid pro quo* arrangements," we made clear that we recognized a concern not confined to bribery of public officials, but extending to the broader threat that politicians grown dependent on large contributions will lose critical independence and instinctively identify interests of a plutocracy with the public good. These were the obvious points behind our recognition that the Congress could constitutionally address the power of money "to influence governmental action" in ways less

"blatant and specific" than bribery. *Buckley* v. *Valeo*, 424 U. S., at 28.[4]

B

In defending its own statute, Missouri espouses those same interests of preventing corruption and the appearance of it that flows from munificent campaign contributions. Even without the authority of *Buckley*, there would be no serious question about the legitimacy of the interests claimed, which, after all, underlie bribery and anti-gratuity statutes. While neither law nor morals equate all political contributions, without more, with bribes, we spoke in *Buckley* of the perception of corruption "inherent in a regime of large individual financial contributions" to candidates for public office, 424 U. S., at 27, as a source of concern "almost equal" to *quid pro quo* improbity, *ibid.* The public interest in countering that perception was, indeed, the entire answer to the overbreadth claim raised in the *Buckley* case. *Id.*, at 30. This made perfect sense. Leave the perception of impropriety unanswered, and the cynical assumption that large donors call the tunes could jeopardize the willingness of voters to take part in democratic governance. Democracy works "only if the people have faith in those who govern, and that faith is bound to

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[4]In arguing that the *Buckley* standard should not be relaxed, respondents Shrink Missouri and Fredman suggest that a candidate like Fredman suffers because contribution limits favor incumbents over challengers. Brief for Respondents Shrink Missouri Government PAC et al. 23–24. This is essentially an equal protection claim, which *Buckley* squarely faced. We found no support for the proposition that an incumbent's advantages were leveraged into something significantly more powerful by contribution limitations applicable to all candidates, whether veterans or upstarts, 424 U. S., at 31–35. Since we do not relax *Buckley*'s standard, no more need be said about respondents' argument, though we note that nothing in the record here gives respondents a stronger argument than the *Buckley* petitioners made.