No. D-1-GN-11-002363

TEXAS DEMOCRATIC PARTY, BOYD L. RICHIE, in his capacity as Chairman of the Texas Democratic Party, and JOHN WARREN, in his Capacity as Democratic Nominee For Dallas County Clerk,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	TRAVIS COUNTY, TEXAS
v.	§	
KING STREET PATRIOTS, INC., CATHERINE ENGLEBRECHT, BRYAN ENGLEBRECHT and DIANE JOSEPHS,	§	
Defendants.	§	261ST JUDICIAL DISTRICT

BRIEF *AMICI CURIAE* FOR CAMPAIGN LEGAL CENTER IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

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STATEMENT OF INTEREST

Defendants and counter-plaintiffs King Street Patriots *et al*. ("KSP") in their counterclaim challenge the constitutionality of Texas's restriction on corporate contributions to state candidates, officeholders and political committees, Tex. Elec. Code §§ 253.091-253.104, and its disclosure and organizational requirements connected to "political committees," Tex. Elec. Code §§ 251.001, 253.031, -.037. All of the challenged laws are vital to preventing corruption and ensuring transparency in elections, and have become yet more crucial in light of the Supreme Court's recent decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), which invalidated longstanding restrictions on corporate and union expenditures to influence elections.

Amicus curiae Campaign Legal Center (CLC) is a non-profit, non-partisan organization created to represent the public perspective in administrative and legal proceedings interpreting and enforcing the campaign finance and election laws throughout the nation. The CLC has participated in numerous past cases addressing corporate restrictions and political disclosure, including *Citizens United*, *FEC v. Wisconsin Right to Life (WRTL),* 551 U.S. 449 (2007) and *McConnell v. FEC*, 540 U.S. 93 (2003). The CLC thus has substantial expertise in litigation regarding the specific types of laws at issue in this case and a longstanding, demonstrated interest in the constitutionality and efficacy of such laws.

All parties have consented to the CLC's participation as *amicus curiae* in this case.[1]

SUMMARY OF ARGUMENT

In this case, KSP stretches the Supreme Court's recent decision in *Citizens United* beyond the breaking point in its challenge to Texas's restriction on corporate contributions and its political committee disclosure requirements. *See* Motion for Summary Judgment by King

[1] Consent was obtained from Chad W. Dunn on behalf of plaintiffs and James Bopp, Jr. on behalf of defendants.

Street Patriots *et al*. (Aug. 31, 2011) ("Def. Br."); Defendants' Original Answer and Counterclaim (Nov. 15, 2010) ("Counterclaim"). The holding in *Citizen United* simply does not support the radical result KSP seeks here. *Amicus* respectfully urges this Court to reject KSP's baseless challenge to Texas's campaign finance laws, and to grant summary judgment in favor of plaintiffs Texas Democratic Party *et al*. ("TDP") with respect to KSP's counterclaim.

TDP has filed an action seeking damages under Tex. Elec. Code §§ 253.131 and 253.132, as well as declaratory and injunctive relief, for a number of violations of Texas campaign finance law committed by KSP. First, TDP alleges that KSP, a non-profit corporation organized under Section 501(c)(4) of the Internal Revenue Code, made in-kind contributions to the Republican Party in violation of Texas's restriction on corporate political contributions at Tex. Elec. Code §§ 253.091-253.104. These contributions allegedly took the form of candidate forums hosted by KSP at which only Republican candidates were allowed to appear, and the training of poll watchers in coordination with the Republican Party and the assignment of such poll watchers to polling locations at the request of the Republican Party. *See* Plaintiffs' Fourth Amended Petition (June 27, 2011) at 6-7; Plaintiffs' Motion for Summary Judgment on Defendants' Counterclaim (Aug. 31, 2011) at 20-21. TDP also alleges that KSP is in violation of the law because it failed to register as a political committee and to comply with the organizational and reporting requirements applicable to political committees. *See*, *e.g*., Tex. Elec. Code §§ 251.001(12), 253.031, 253.037.

In the memorandum of law that follows, *amicus curiae* will focus on the arguments relating to the corporate contribution restriction, Tex. Elec. Code §§ 253.091-253.104, set forth in KSP's counterclaim. KSP's arguments are contrary to both Supreme Court jurisprudence and governing Texas case law. Corporate contribution restrictions have been upheld by the Supreme

Court on multiple occasions, most recently in *FEC v. Beaumont*, 539 U.S. 146 (2003), and there is no support for KSP's suggestion that these precedents were called into question by *Citizens United*. *Citizens United* reviewed only the federal restriction on corporate expenditures, not the restriction on corporate contributions, and therefore has no direct application to this case. 130 S. Ct. at 909. Furthermore, the expenditure restriction reviewed by *Citizens United* and the contribution restriction under review here are subject to different standards of scrutiny and are supported by different governmental interests: the reasoning of *Citizens United* therefore does not even indirectly impact Texas's corporate contribution restriction. This was recognized by *Ex parte Ellis*, 279 S.W.3d 1 (Tex. App. – Austin 2008), *aff'd but criticized on other grounds*, 309 S.W.3d 71 (Tex. Crim. App. 2010), wherein the Texas Court of Criminal Appeals upheld Texas's restriction in the wake of *Citizens United*.

Amici will not discuss in detail KSP's claims pertaining to the political committee disclosure requirements, nor the definitions of "expenditure" and "political committee," Tex. Elec. Code §§ 251.001(6)-(10), (12), (14), upon which the requirements are premised. However, it is evident that these claims also lack merit and should be dismissed. In 2010 alone, the Supreme Court twice upheld, by overwhelming 8-1 votes, laws requiring political disclosure. *Citizens United*, 130 S. Ct. at 916; *see also Doe v. Reed*, 130 S. Ct. 2811 (2010) (upholding Washington state law authorizing disclosure of ballot referenda petitions). Far from questioning campaign finance disclosure, *Citizens United* stressed that disclosure is subject to relatively relaxed judicial review and is justified because "enables the electorate to make informed decisions and give proper weight to different speakers and messages." 130 S. Ct. at 916. Furthermore, the U.S. Courts of Appeals for the D.C. Circuit, the Ninth Circuit and the First Circuit have all recently upheld political committee disclosure regimes at least as extensive as

that of Texas. *SpeechNow v. FEC*, 599 F.3d 686 (D.C. Cir. 2010), *cert. denied Keating v. FEC*, 131 S. Ct. 553 (2010) (upholding organizational, reporting and record-keeping requirements applicable to federal political committees); *Human Life of Washington v. Brumsickle,* 624 F.3d 990 (9th Cir. 2010) (upholding disclosure requirements applicable to "political committees" that supported or opposed candidates or ballot propositions); *National Organization For Marriage v. McKee*, --- F.3d ---, 2011 WL 3505544, *16-*17 (1st Cir. 2011) (upholding definition and regulation of "non-major-purpose" political committees).[2]

For all these reasons, the challenged laws are constitutional, and TDP's motion for summary judgment should be granted and KSP's motion for summary judgment denied.

ARGUMENT

I. Texas's Restriction on Corporate Contributions to Candidates, Officeholders and Political Committees Is Constitutional.

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[2] KSP attacks the statutory definitions and related political committee disclosure requirements on multiple grounds, including that the definitions are unconstitutionally vague and that Texas impermissibly imposes political committee disclosure requirements on groups who do not have as their "major purpose" the nomination or election of a candidate. Def. Br. at Sections III and IV.

Amicus curiae wishes to bring to the court's attention a number of lower court cases that have rejected similar challenges brought against the disclosure laws of multiples states following the *Citizens United* decision. First, in terms of the vagueness challenge, courts have accepted a range of state law definitions of the term "expenditure" that are more expansive than express advocacy, and the definitions of the term "contribution" are rarely even challenged given the observation in *Buckley* that "contribution" is an inherently less vague term than "expenditure," *see* Section I.D.1. *infra.* *See*, *e.g.*, *Human Life*, 624 F.3d at 1014 (approving definition of "independent expenditure" that covered money spent "in support of or opposition to" a candidate or ballot initiative, and definition of "political advertising" as mass communications "used for the purpose of appealing, directly or indirectly" for support in any election campaign). Second, the weight of recent case law has also rejected KSP's argument that political committee status cannot be imposed for the purpose of disclosure on "non-major purpose" groups. *See*, *e.g.*, *McKee*, 2011 WL 3505544, *17 ("We find no reason to believe that this so-called 'major purpose' test, like the other narrowing constructions adopted in *Buckley*, is anything more than an artifact of the Court's construction of a federal statute."); *Human Life*, 624 F.3d at 1011 (rejecting "the notion that the First Amendment categorically prohibits the government from imposing disclosure requirements on groups with more than one 'major purpose'"); *Iowa Right to Life Comm., Inc. (IRTL) v. Tooker*, --- F.Supp.2d ----, 2011 WL 2649980, at *9 n.29 (S.D. Iowa June 29, 2011) (rejecting claim that "that a state may not impose 'PAC-style burdens' on an organization unless that organization has the major purpose of making independent expenditures").

A. Corporate Contribution Restrictions Are a Standard Component of Federal and State Campaign Finance Laws.

For over a century, restrictions on corporate campaign contributions have been a key component of campaign finance laws at both the federal and state level, with the federal restriction dating back to 1907, and the Texas restriction dating back to 1903. Further, both the federal law and its state counterparts have been upheld on multiple occasions as entirely consonant with the First Amendment. KSP's contention that the Texas restriction is so extraordinary so as to implicate the Eighth Amendment is therefore unsustainable.

Federal law has restricted corporate campaign contributions since 1907. Tillman Act, Ch. 420, 34 Stat. 864 (1907).[3] The current Federal Elections Campaign Act (FECA) makes it unlawful "for any corporation whatever, or any labor organization, to make a contribution … in connection with any election at which presidential and vice presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to, Congress are to be voted for, or in connection with any primary election or political convention or caucus held to select candidates for any of the foregoing offices, or for any candidate, political committee, or other person knowingly to accept or receive any contribution prohibited by this section…." 2 U.S.C. § 441b(a). FECA, however, allows a corporation to establish a political action committee to make campaign contributions, and to pay its administrative expenses – a choice often referred to as the "PAC option." 2 U.S.C. § 441b(b)(2)(C). The PAC is barred from using corporate treasury funds to finance its political contributions. 2 U.S.C. § 441b(a). Instead, the PAC can solicit voluntary contributions from the connected corporation's "restricted class" (*i.e.* shareholders and executive and administrative personnel and their families) in compliance with the federal

[3] The Tillman Act prohibited on corporate campaign contributions in federal elections on penalty of fine and imprisonment. Ch. 420, 34 Stat. 864. This 1907 statute was amended several times, and eventually incorporated into FECA, the current federal campaign finance statute. *See* 2 U.S.C. § 441b.

contribution limits. 2 U.S.C. § 441a(a)(1), 441b(b)(4); 11 C.F.R. § 114.5. Violation of these provisions carries a penalty of fines or imprisonment not to exceed one year for contributions aggregating up to $25,000 during a calendar year, and imprisonment not to exceed five years for contributions aggregating over that amount. 2 U.S.C. § 437g(d).

The Supreme Court has repeatedly affirmed the constitutionality of the federal restriction over the law's hundred-year history. In 1982, the Court upheld the federal law, or more specifically, its attendant PAC restrictions, as applied to a nonprofit corporation that sought to make contributions to federal candidates through its corporate PAC. *FEC v. Nat'l Right to Work Comm*., 459 U.S. 197 (1982). In 2003, the Supreme Court again affirmed the constitutionality of the federal restriction on corporate contributions in a more direct challenge to the law in *Beaumont*. *See* Section I.B. *infra* for further detail.

The Texas prohibition on corporate campaign contributions predated even the federal restriction. Four years before the federal restriction was enacted, Texas Governor S. W. T. Latham signed into law House Bill No. 45, which made it unlawful for "[a]ny corporation, or officer thereof" to "directly or indirectly, furnish[], loan[], or give[] any money or thing of value … to any campaign manager or to any particular candidate or person to promote the success of such candidate for public office." H.B. 49 § 137, *in* THE LAWS OF TEXAS, 1903-1905 (Volume 12), at 157, *available at* http://texashistory.unt.edu/ark:/67531/metapth6695/m1/187/. Although the penalties have changed, and the scope of the ban has been expanded to prohibit contributions from labor organizations, the basic legislative proscription remains materially the same 110 years later. *See* Tex. Elec. Code § 253.094(a). The constitutionality of the Texas statute was upheld as recently as 2010 in *Ex parte Ellis*. 309 S.W.3d at 85-86.

Although its legislature led the way in limiting the influence of corporate money in elections in 1903, Texas is now one of more than twenty states to prohibit direct corporate contributions to candidates.[4] Every state makes a violation of the law punishable by fine, and Texas is one of fourteen states that also provide for imprisonment as a penalty.[5] These state restrictions on corporate contributions have been tested in courts around the country and have passed constitutional muster. The laws of Alaska,[6] Iowa,[7] and Minnesota[8] have recently been upheld, as well as those of New York City[9] and San Diego, California.[10]

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[4] The other states include Alaska, Arizona, Colorado, Connecticut, Iowa, Kentucky, Massachusetts, Michigan, Minnesota, Montana, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, West Virginia, Wisconsin and Wyoming. *See State Limits on Contributions to Candidates*, National Conference of State Legislatures (Jan. 20, 2010), *available at* http://www.ncsl.org/Portals/1/documents/legismgt/limits_candidates.pdf.

[5] *See* ARIZ. REV. STAT. ANN. § 16-919; CONN. GEN. STAT. ANN. § 9-613; IOWA CODE ANN. §§ 68A.503, 68A-701; KY. REV. STAT. ANN. §§ 121.025, 121.990; MASS. GEN. LAWS ANN. ch. 55, § 8; MICH. COMP. LAWS ANN. § 169.254; MINN. STAT. ANN. § 211B.15; N.C. GEN. STAT. § 163-278.19; N.DAK. CENT. CODE 16.1-08.1-03.3; OHIO REV. CODE ANN. § 3599.03; 21 OKL. STAT. ANN. § 187.2; 25 CONS. PENN. STAT. §§ 3253, 3543; S. D. COD. LAWS § 12-27-18; TEX. ELEC. CODE § 253.094(a); WIS. STAT. ANN. § 11.38, 11.61.

[6] *Jacobus v. Alaska*, 338 F.3d 1095, 1122 (9th Cir. 2003) (upholding Alaska ban on corporate contributions to political parties).

[7] *IRTL*, 2011 WL 2649980, at *10.

[8] *Minnesota Citizens Concerned for Life (MCCL) v. Swanson*, 741 F. Supp. 2d 1115 (D. Minn. 2010), *aff'd* 640 F.3d 304 (8th Cir. 2011). The Eighth Circuit decision upholding the corporate contribution restriction was vacated on July 12, 2011 after the Court of Appeals granted appellants' petition for an *en banc* rehearing on their separate claims relating to Minnesota's campaign finance disclosure requirements. *MCCL v. Swanson*, No. 10–3126 (rehearing en banc granted, opinion vacated July 12, 2011). Following the grant of this petition, appellants requested that the Court also permit them to rebrief their claims relating to the state corporate contribution restrictions, but the Court has not indicated whether it will rehear these claims. Appellants' Motion to File Supplement Brief, *MCCL v. Swanson*, No. 10–3126 (8th Cir. July 13, 2011).

[9] *Ognibene v. Parkes*, 599 F. Supp. 2d 434 (S.D.N.Y. 2009), *appeal docketed*, No. 09-0994 (Mar. 10, 2009) (upholding extension of existing municipal ban on corporate contributions to prohibit political contributions from LLCs, LLPs and general partnerships).

[10] *Thalheimer v. City of San Diego*, 645 F.3d 1109 (9th Cir. 2011).

Despite the widespread existence of corporate contribution restrictions and the prevalence of imprisonment and high fines as punishment for violations, KSP nonetheless maintains that the Texas law violates the Eight Amendment because its two-year minimum term of imprisonment (ten-year maximum term) is "grossly disproportionate" to the acts proscribed by the law. Def. Br. at 71 (citing Tex. Elec. Code §§ 253.094(c), 253.095; Tex. Penal Code § 12.34).

As an initial matter, no sentence has been imposed on any of the defendants, and thus KSP's Eighth Amendment challenge is premature, at the least. However, even in the abstract, KSP's argument is absurd in light of the criminal penalties imposed by the federal contribution ban and more than a dozen other state corporate contribution bans. Certainly, *amicus curiae* is aware of no case in which a sentence of two years for campaign finance-related violations has been invalidated as inflicting unconstitutionally cruel and unusual punishment.

Nor do the legal authorities offered by KSP support its theory that the penalties prescribed by Tex. Elec. Code § 253.094(c) are grossly disproportionate to the prohibited acts. KSP cites only *Graham v. Florida,* 130 S. Ct. 2011 (2010), *as modified* (July 6, 2010), but there, the Supreme Court considered a sentence of <u>life imprisonment</u> without parole for a juvenile non-homicide offender. Def. Br. At 71-72. Furthermore, the Court in *Graham* affirmed the principle that the Eighth Amendment "does not require strict proportionality between crime and sentence," *id. at* 2021 (quoting *Harmelin v. Michigan*, 501 U.S. 957, 997 (1991)), noting that the Court in the past had previously <u>upheld</u> sentences such as life without parole for possession of cocaine, 25 years to life for the theft of a few golf clubs under California's so-called "three-strikes" sentencing guidelines, and 40 years imprisonment for possession of marijuana with distribution. KSP's argument that a two-year minimum term of imprisonment for illegal corporate

contributions qualifies as an "extreme sentence" that is "grossly disproportionate" is thus inconsistent with the standards set by the Supreme Court authorities it cites.

B. *Citizens United* Does Not Directly or Indirectly Impact the Constitutionality of the Corporate Contribution Restriction.

KSP next argues that the "rule" of *Citizens United* "compels a finding that the Corporate Ban is unconstitutional." Def. Br. at 24; Counterclaim at ¶¶ 88-89. The problem with this argument, however, is two-fold. First, *Citizens United* did not directly consider the constitutionality of corporate contribution restrictions; instead, the controlling precedent on this subject is the Supreme Court's 2003 *Beaumont* decision. Second, the reasoning of *Citizens United* does not even indirectly impact the constitutionality of corporate contribution restrictions because expenditure restrictions and contribution restrictions are subject to fundamentally different constitutional analyses.

KSP does not dispute that *Citizens United* reviewed only a restriction on corporate expenditures, not a restriction on corporate contributions, and therefore has no direct application to this case. Indeed, the Supreme Court stated expressly that "Citizens United has not made direct contributions to candidates, and it is not suggested that the Court should reconsider whether contribution limits should be subjected to rigorous First Amendment scrutiny." 130 S. Ct. at 909 (emphases added). The only Supreme Court case to directly consider the constitutionality of a corporate contribution restriction was *Beaumont*, and the *Citizens United* Court in no way suggested that *Beaumont* was in doubt.

Nevertheless, KSP contends that the "logic" of *Citizens United* indirectly undermines the constitutionality of corporate contributions and implicitly overrules *Beaumont*. Def. Br. at 24. But KSP has no basis for this radical extension of *Citizens United*. It is black-letter law that expenditure restrictions and contribution restrictions are subject to different standards of scrutiny

and are supported by different governmental interests. *Citizens United*'s analysis of the former therefore has no bearing on the constitutionality of the latter.

First, different standards of review apply to expenditure restrictions and contribution restrictions. Beginning with *Buckley*, the Court has held "that expenditure limits bar individuals from "any significant use of the most effective modes of communication," and therefore represent "substantial … restraints on the quantity and diversity of political speech." *Buckley v. Valeo*, 424 U.S. 1, 19 (1976). Consequently, a statutory restriction on expenditures must satisfy strict scrutiny review. *Citizens United*, 130 S. Ct. at 898; *WRTL,* 551 U.S. at 464; *Buckley*, 424 U.S. at 44-45. By contrast, a contribution limit "entails only a marginal restriction upon [one's] ability to engage in free communication," because a contribution "serves as a general expression of support for the candidate and his views, but does not communicate the underlying basis for the support." *Buckley,* 424 U.S. at 20-21. As a result, a contribution restriction "passes muster if it satisfies the lesser demand of being closely drawn to match a sufficiently important interest." *Beaumont*, 539 U.S. at 162 (internal quotations omitted); *see also Buckley*, 424 U.S. at 25. Further, KSP is incorrect in asserting that the fact that Texas "bans" corporate contributions instead of limiting such contributions changes this analysis. Def. Br. at 25. *Beaumont* squarely rejected this argument. There, the Court emphasized that "the level of scrutiny is based on the importance of the political activity at issue to effective speech or political association," and applied only "closely drawn" scrutiny to the federal "ban" on corporate contributions. 539 U.S. at 161-62 (internal quotations omitted). *See also Ex parte Ellis*, 309 S.W.3d at 85 (declining to apply strict scrutiny to Texas corporate contribution ban).

Consistent with this precedent, the Court in *Citizens United* applied strict scrutiny to the challenged corporate expenditure restriction. 130 S. Ct. at 898. But the Court's application of

strict scrutiny to an expenditure restriction in no way suggested that a corporate contribution restriction must also be reviewed under strict scrutiny. To conclude otherwise would upend the longstanding framework for determining the scrutiny applicable to campaign finance laws. As noted by the Second Circuit, "although the [Supreme] Court's campaign-finance jurisprudence may be in a state of flux" after *Citizens United*, "*Beaumont* and other cases applying the closely drawn standard to contribution limits remain good law." *Green Party v. Garfield*, 616 F.3d 189, 199 (2d. Cir. 2010).

Second, expenditure restrictions and contribution restrictions are justified by different governmental interests, and thus *Citizens United*'s analysis of expenditure restrictions does not even have indirect relevance to this case. In *Austin* and earlier precedents, restrictions on corporate expenditures were found to further two governmental interests: first, the interest in ensuring that the expenditure of corporate funds amassed in the "economic marketplace" did not distort the "political marketplace," *see Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 659 (1990), *quoting FEC v. Massachusetts Citizens for Life (MCFL),* 479 U.S. 238, 257 (1986), and second, the desire to protect shareholders from the unapproved corporate use of their investment dollars to fund campaign-related advocacy, *see id.* at 670-71 (Brennan, J., concurring). By contrast, corporate contribution restrictions have been justified on the basis of wholly different governmental interests. In *Beaumont*, the Court noted that the federal restriction on corporate contributions prevented "corporate earnings from conversion into political 'war chests,'" and thereby was "intended to 'preven[t] corruption or the appearance of corruption.'" 539 U.S. at 154, *quoting National Conservative PAC (NCPAC) v. FEC*, 470 U.S. 480, 496-97 (1985). Relatedly, the Court found that "another reason for regulating corporate electoral involvement" was to "hedge[] against their use as conduits for 'circumvention of [valid]

contribution limits.'" *Id.* at 155, *quoting FEC v. Colorado Republican Federal Campaign Comm.*, 533 U.S. 431, 456 and n.18 (2001).[11]

In *Citizen United*, the majority found that the interest in preventing corruption and the appearance of corruption, although a compelling interest, did not justify a restriction on corporate independent expenditures because their independence obviated any corruptive potential. 130 S. Ct. at 904-11. But the Court's decision that the anti-corruption interests failed to support a corporate expenditure restriction did not call into question this interest with respect to a corporate contribution restriction, as KSP claims. Def. Br. at 25-26.[12] To the contrary, the *Citizen United* majority was careful to distinguish between expenditure restrictions and contribution restrictions in its analysis of the applicability of the anti-corruption interest. It noted that "contribution limits … unlike limits on independent expenditures, have been an accepted means to prevent quid pro quo corruption." 130 S. Ct. at 908. The Court further noted that the *Buckley* Court "sustained limits on direct contributions in order to ensure against the reality or

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[11] To be sure, *Beaumont* acknowledged that the interests set forth in *Austin* also supported the federal corporate contribution restrictions, but the Court made clear that the contribution restrictions were justified principally by the state interests in preventing quid pro quo corruption and the circumvention of the individual contribution limits. 539 U.S. at 154-56.

[12] KSP also make the untenable argument that the anti-corruption interest does not apply to contributions to political committees, but only contributions to candidates. Def. Br. at 25-26. First, the federal corporate contribution restriction prohibits not only contributions to candidates, but also contributions to non-connected political committees. *See* 2 U.S.C. § 441b(a) (prohibiting corporate contributions "in connection to any election" for federal office and prohibiting "any candidate, political committee, or other person knowingly to accept or receive" such a corporate contribution). This law was upheld in *Beaumont*. *See* Section I.B. *supra*. To be certain, the Federal Election Commission (FEC) has since *Citizens United* allowed certain federal political committees that make only independent expenditures, known as "Super-PACs," to accept contributions from corporations and unions. FEC AO 2010-09 (Club for Growth); FEC AO 2010-11 (Commonsense Ten). But, here KSP is alleged to have provided in-kind contributions to the Republican Party, not to an independent political committee. The federal "soft money" restrictions also prohibit corporate contributions to national political committees, 2 U.S.C. § 441i(a), and this law was specifically upheld by the Supreme Court based upon the government's anti-corruption interest in *McConnell*. 540 U.S. 188-189. There is no question that contributions to political party committees are still prohibited post-*Citizens United*.

appearance of corruption," but "did not extend this rationale to independent expenditures." *Id.* It acknowledged that *Buckley* found that large contributions could be given "to secure a political quid pro quo," *id., citing Buckley*, 424 U.S. at 26, but found that "[t]he absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate." *Id., citing Buckley*, 424 U.S. at 47 (emphasis added). Thus, far from questioning whether a corporate contribution restriction is supported by the state's anticorruption interest, the *Citizens United* majority emphasized that such interest repeatedly had been found to justify restrictions on contributions.[13]

Thus, even if this court had the authority to disregard a controlling Supreme Court precedent – which it does not – KSP has no basis for its claim that the reasoning of *Citizens United* implicitly overruled *Beaumont*.

C. The Weight of the Case Law Following *Citizens United* Recognizes the Validity of *Beaumont*.

Because expenditure restrictions and contribution restrictions are subject to fundamentally different constitutional analyses, the legal reasoning in *Citizens United* does not even indirectly impact the constitutionality of a corporate contribution restriction – or the continuing vitality of the *Beaumont* decision. This has been the near-unanimous conclusion of those courts that have addressed the validity of *Beaumont* in the wake of *Citizens United*.

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[13] Because of the different constitutional analyses applicable to contribution restrictions and expenditure restrictions, the Supreme Court has frequently upheld contribution restrictions while striking down expenditure restrictions with respect to the same political actor. For instance, in *Buckley*, the Court upheld the challenged limits on contributions to federal candidates, 18 U.S.C. § 608(b) (1970 ed., Supp. IV), yet simultaneously invalidated the limits on expenditures by federal candidates, *id.* § 608(a), (c). 424 U.S. at 23-30, 54-59. Similarly, the Court upheld the limits on contributions to independent political committees in *California Medical Ass'n v. FEC*, 453 U.S. 182, 201 (1981), but four years later, struck down limits on certain expenditures by such political committees in *NCPAC*, 470 U.S. at 501.

Indeed, the Texas Court of Criminal Appeals is one of the many courts that has held that the constitutionality of corporate contribution restrictions is unaffected by the *Citizens United* decision. *Ex parte Ellis*, 279 S.W.3d 1 (Tex. App. – Austin 2008), *aff'd but criticized on other grounds*, 309 S.W.3d 71 (Tex. Crim. App. 2010). KSP criticizes the holding of the lower court, *i.e.*, the Austin Court of Appeals, arguing that its decision predated *Citizens United*, and thus did not take into account *Citizens United*'s analysis of corporate campaign restrictions. Def. Br. at 31-32. However, in an enormous oversight, KSP fails to mention that the Austin Court of Appeals' ruling was subsequently affirmed by the Texas Court of Criminal Appeals in a 2010 decision that specifically analyzed the possible impact of *Citizens United* on Texas's corporate contribution restriction.

The defendants in *Ex parte Ellis* attacked the same provisions of the law that KSP attacks here, contending that *Citizens United* marked a "philosophical shift in the Court's treatment of restrictions on corporate free speech" that rendered the Texas corporate contribution ban unconstitutional. 309 S.W.3d at 85. But while acknowledging that *Citizens United "*remov[ed] restrictions on independent corporate expenditures," the Court of Criminal Appeals unambiguously "disagree[d] with [defendants'] contention that the decision [in *Citizens United*] has had any effect on the Court's jurisprudence relating to corporate contributions." *Id.* (emphasis added). The Court of Criminal Appeals instead recognized that *Citizens United* had reaffirmed the distinction drawn by *Buckley* between direct political contributions and independent expenditures, both in terms of the standard of scrutiny applied and the governmental interests implicated by the two types of law. *Id.* at 84-86. Based on this reasoning, *Ex parte Ellis* held that *Citizens United* had not in any way undercut the constitutionality of the Texas

corporate contribution restrictions, nor the rationales articulated in *Beaumont* for such restrictions. *Id.* at 86.

Similarly, the Ninth Circuit Court of Appeals recently found that *Beaumont* was unaffected by the *Citizens United* decision when it upheld a San Diego law prohibiting political contributions by "non-individual entities" (e.g., corporations, labor unions and other groups) to candidates, political parties and certain other political committees. *Thalheimer*, 645 F.3d at 1124-26. The Thalheimer plaintiffs had argued that *Citizens United* implicitly overruled *Beaumont*, asserting that *Citizens United* had found that the government's interest in preventing circumvention of the contribution limits was no longer valid. The Ninth Circuit, however, rejected this theory, concluding that "there is nothing in the explicit holdings or broad reasoning of *Citizens United* that invalidates the anti-circumvention interest in the context of limitations on direct candidate contributions."[14] *Id.* at 1125.

In addition to the cases discussed above, the Eighth Circuit Court of Appeals and the U.S. District Court for the Southern District of Iowa have also found that *Beaumont* remains the controlling precedent on the subject of corporate contribution restrictions in the wake of *Citizens United*. *See MCCL*, 640 F.3d at 318-19[15]; *IRTL*, 2011 WL 2649980, at *10 (noting that

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[14] In responding to plaintiffs' argument that the anti-circumvention interest had been discredited by *Citizens United*, the Ninth Circuit first found that plaintiffs had mistakenly equated two different governmental interests: the "anti-distortion rationale" recognized in *Austin*, which was "based on an equality rationale," and the anti-circumvention interest, "which was part of the familiar anti-corruption rationale." 645 F.3d. at 1124 (emphasis added), *citing FEC v. Colo. Republican Fed. Campaign Comm.*, 533 U.S. 431, 456, ("[A]ll Members of the Court agree that circumvention is a valid theory of corruption."). The fact that the *Citizens United* Court rejected the "anti-distortion rationale" thus was irrelevant to the validity of the "anti-circumvention" rationale. Furthermore, the Ninth Circuit also highlighted the *Citizens United* Court had disapproved of the *Austin* interests in the context of regulating political expenditures, not contributions, and had "made clear that it was not revisiting the long line of cases finding anti-corruption rationales sufficient to support such limitations." *Id.* at 1124, *citing* 130 S.Ct. at 909.

[15] *See supra* note 8 for the full history of this case.

"pursuant to *Beaumont*, [Iowa] can generally ban all direct corporate contributions") (quoting *MCCL*, 640 F.3d at 319). *See also Green Party*, 616 F.3d at 199 ("*Beaumont* … remain[s] good law.").

The only court that has deviated from this consensus following *Citizens United* is the U.S. District Court for the Eastern District for Virginia in *U.S. v. Danielczyk*, --- F.Supp.2d ---, 2011 WL 2161794 (E.D. Va. May 26, 2011), *opinion clarified on denial of reconsideration*, 2011 WL 2268063 (E.D. Va. Jun 07, 2011). Its ruling is currently under appeal to the Fourth Circuit Court of Appeals. *U.S. v. Danielczyk*, *appeal docketed*, No. 11-4667 (4th Cir. June 29, 2011).

Danielczyk is a criminal case alleging a number of campaign finance violations, including that the defendants directed corporate contributions from for-profit corporations to Hillary Clinton's 2008 Presidential campaign in violation of the federal corporate contribution restriction at 2 U.S.C. § 441b. On May 26, 2011, the district court dismissed the charges relating to illegal corporate contributions on grounds that the constitutionality of § 441b had been implicitly invalidated by *Citizens United*. *Danielczyk I*, 2011 WL 2161794 at *18. Astoundingly, the district court failed to consider or even cite *Beaumont* in this opinion. After this oversight was roundly criticized by legal experts and the media,[16] the district court, on its own motion, requested additional briefing on whether it should reconsider its initial decision in light of the *Beaumont* precedent. *Danielczyk*, No. 1:11-cr-00085 (E.D. Va. May 31, 2011) (order requesting

[16] *See, e.g.,* N.Y. TIMES, Editorial, *About That Precedent* (June 2, 2011), *available at* http://www.nytimes.com/2011/06/03/opinion/03fri2.html; Robert Barnes, *Va. judge takes on political donations ban*, WASH. POST (May 28, 2011), *available at* http://www.washingtonpost.com/politics/va-judge-rules-against-us-ban-on-direct-corporate-contributions-to-candidates/2011/05/27/AGEPEpCH_story.html; Rick Hasen, *Federal District Court, in Criminal Case, Holds That Ban on Direct Corporate Contributions to Candidates is Unconstitutional under Citizens United*, ELECTION LAW BLOG (May 26, 2011), *at* http://electionlawblog.org/?p=18342.

supplemental briefing). The court then issued a second opinion that reiterated its initial holding, arguing that *Beaumont* did not "directly control" the case at hand because *Beaumont* held that the federal corporate contribution restriction was constitutional as applied to contributions from a non-profit corporation, whereas *Danielczyk* concerned contributions from a for-profit corporation. *Danielczyk II*, 2011 WL 2268063 at *3-4.

Danielczyk was incorrectly decided for at least two reasons, but even if it were correct, has no application to this case.

First, as discussed in Section I.B. *supra*, the *Danielczyk* court had no basis to conclude that *Citizens United* had *sub silentio* overruled *Beaumont*. To the contrary, the *Citizens United* Court emphasized that it was not considering the federal corporate contribution ban and repeatedly recognized that restrictions on contributions and restrictions on expenditures are subject to different constitutional analyses. Second, the *Danielczyk* court's attempt to sidestep *Beaumont*'s status as controlling precedent by characterizing *Beaumont* as limited to non-profit corporations is simply untenable. To be sure, *Beaumont* concerned an as-applied challenge to § 441b by a non-profit corporation, North Carolina Right to Life (NCRTL). 539 U.S. at 149. But the Supreme Court could not have upheld the specific application of the federal corporate contribution restriction to NCRTL if it had not also found that the general restriction on contributions from "any corporation whatever," 2 U.S.C. 441b(a), was facially constitutional. Otherwise expressed, § 441b had to be found constitutional as to for-profit corporations before it could be applied to non-profit corporations.[17] The Court could only avoid a ruling on the general

[17] Furthermore, *Danielczyk* turns Supreme Court jurisprudence on its head because the Supreme Court has typically held that the First Amendment provides more protection for non-profit corporations than for business corporations, not less. In *MCFL*, for instance, the Supreme Court exempted certain non-profit advocacy corporations from the federal corporate expenditure restriction provided that they did not accept contributions from business corporations or unions. 479 U.S. at 264. The Court reasoned that the regulation of corporate political expenditures was based on the "distortion" rationale – *i.e.* "the prospect

corporate contribution restriction under the doctrine of constitutional avoidance if it found that the general restriction did not apply to a non-profit corporation, in which case the constitutionality of the general restriction may have been irrelevant to the resolution of the case. *Compare Citizen United*, 130 S. Ct. at 892-96 (explaining that it was necessary for Court to consider facial constitutionality of federal corporate expenditure restriction because the suggested rationales for exempting Citizens United from this restriction on as-applied basis were "unsound" or "unsustainable").

Finally, even if the *Danielczyk* decision were sound, it would only be relevant to a case concerning contributions from a for-profit corporation. *Danielczyk* II, 2011 WL 2268063, at *1 (stating that its holding was limited to the "the circumstances of this case" and § 441b was not "unconstitutional as applied to all corporate donations"). Here, by contrast, KSP is indisputably the type of non-profit corporation that was the subject of *Beaumont*. Hence, "by its own terms,

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that resources amassed in the economic marketplace [by corporations] may be used to provide an unfair advantage in the political marketplace." *Id.* at 257. Groups such as MCFL, however, were less likely to distort the "political marketplace" because "MCFL was formed to disseminate political ideas, not to amass capital," and its resources "are not a function of its success in the economic marketplace, but its popularity in the political marketplace." *Id.* at 259.

Attempting to exploit this precedent, NCRTL argued in *Beaumont* that as a non-profit corporation, it was entitled to the *MCFL*-style exemption from the federal corporate contribution restriction. 539 U.S. at 159. The Supreme Court in *Beaumont* rejected this as-applied exemption, however, finding that that for the purposes of the corporate contribution restriction, non-profit advocacy corporations such as NCRTL shared a significant amount of the "corrupting potential" of their for-profit counterparts. *Id.* at 159-160. The Court noted, for instance, that "[n]onprofit advocacy corporations are . . . no less susceptible than traditional business companies to misuse as conduits for circumventing the contribution limits imposed on individuals." *Id.* at 160. If contributions from for-profit corporation were corruptive, the Court reasoned, then so too were contributions from non-profit corporations, given their common characteristics.

The *Danielczyk* Court has thus turned this jurisprudence backwards. In *Beaumont*, the Court extended the corporate contribution restriction to cover even non-profit corporations – based on their similarity to for-profit corporations in terms of enabling the circumvention of the individual contribution limits. But following this logic, if the corporate contribution restriction is constitutional as applied to a less-corruptive non-profit corporation, then the restriction is on even more solid constitutional ground as to a more corruptive for-profit corporation. Exempting only for-profit corporations from the federal restriction, as the *Danielczyk* court did, defies this reasoning.

Danielczyk has no applicability to the instant case," and *Beaumont* controls. *IRTL*, 2011 WL 2649980, at 810 n.37 (finding *Danielczyk* inapplicable to challenge by non-profit corporation to Iowa corporate contribution restriction).

D. The Texas Law Is Appropriately Tailored To Prevent Corruption and the Appearance of Corruption, and the Circumvention of the Contribution Limits.

1. Neither the Statutory Definition of "Political Contribution," Nor the Corporate Contribution Restriction, Is Vague or Overbroad.

KSP charges that the statutory prohibition on corporate "political contributions" is unconstitutionally vague and overbroad insofar as it relies upon the definition of "political contribution" at Tex. Elec. Code § 251.001(5). Counterclaim at ¶ 98; Def. Br. at 34-41. However, Texas courts recently rejected a virtually-identical challenge to the state corporate contribution restriction in *Ex parte Ellis*. Furthermore, the Supreme Court has rejected the proposition that the analogous federal definition of "contribution" is vague or overbroad.

Texas law provides that a "political contribution" is "a campaign contribution or an officeholder contribution." *Id*. at § 251.001(5). A "campaign contribution," in turn, is "a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure." *Id*. at § 251.001(3). And an "officeholder contribution" is "[a] contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that … are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office…." *Id*. at § 251.001(4).

KSP attacks these definitions on various grounds, arguing that the phrase "in connection with," in the definitions of "campaign contribution" and "officeholder contribution," is unconstitutionally vague, and that the definitions rely upon an impermissible "intent standard."

Counterclaim at ¶¶ 116, 118.[18] Def. Br. at 37-40. Both of these claims are foreclosed by *Ex parte Ellis* however, which rejected a similar challenge scarcely over a year ago.

a. "In connection with" language

In *Ellis*, the Court of Criminal Appeals found that the "in connection with" language was no broader than the "for the purpose of influencing" language in the federal definition of "contribution" that was approved by the U.S. Supreme Court in *Buckley*. 309 S.W.3d at 88-89. As the *Ellis* Court noted, the Supreme Court has declined to impose a narrowing construction on the federal definition of "contribution," or to apply an "express advocacy" test. *Id.*

Federal law defines a "contribution" as "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i) (emphasis added). Both the definition of "contribution" and the definition of "expenditure" in FECA rely on the same operative phrase: "for the purpose of influencing any election for Federal office." 2 U.S.C. §§ 431(8)(A)(i) (defining "contribution"), (9)(A)(i) (defining "expenditure").

In *Buckley*, the Supreme Court addressed the "for the purpose of influencing" language, and found that it was neither vague nor overbroad in connection to the definition of contribution.

To be sure, the *Buckley* Court held that this phrase did raise vagueness concerns in connection to the definition of "expenditure" as applied to individuals and to groups that did not have campaign activity as their major purpose, and consequently construed "expenditure" narrowly for individuals and such groups to encompass "only funds used for communications

[18] KSP also complains that the definition of "contribution" is unconstitutionally vague, Tex. Elec. Code § 251.001(2), which it alleges renders the term "political contribution" unconstitutionally vague. Even if this Court were to accept the claim that the definition of "contribution" is vague, however, the corporate contribution restriction at issue here does not contain the term "contribution," but rather relies on the term "political contribution," which has an additional, independent definition, as discussed in Section I.D.1. *Id*. at §§ 253.094(a), 251.001(5). Thus, the sufficiency of the definition of "contribution" standing alone is irrelevant to this case.

that expressly advocate the election or defeat of a clearly identified candidate." 424 U.S. 1, 79-80 (emphasis added). *See also Osterberg v. Pena*, 12 S.W.3d 31, 50-51 (Tex. 2000). But, by contrast, the Court found that the same phrase "presents fewer problems in connection with the definition of a contribution because of the limiting connotation created by the general understanding of what constitutes a political contribution." *Id.* at 24 (emphasis added). Instead of imposing an "express advocacy" construction on the definition of "contribution," the Supreme Court merely clarified that:

> Funds provided to a candidate or political party or campaign committee either directly or indirectly through an intermediary constitute a contribution. In addition, dollars given to another person or organization that are earmarked for political purposes are contributions under the Act.

424 U.S. at 24. The *Buckley* Court thus recognized that in the bounds of the "general understanding" of a political contribution (*i.e.* funds "provided to a candidate or political party or campaign committee" or "given to another person or organization that are earmarked for political purposes") the statutory definition of "contribution" was sufficiently clear and did not require the limiting gloss of express advocacy.

Based upon this principle articulated in *Buckley*, the Court of Criminal Appeals in *Ellis* found that the definition of "political contribution," upon which the corporate contribution ban was premised, passed constitutional muster. 309 S.W.3d at 88-89.

b. "Intent" standard

Ex parte Ellis also rejected KSP's argument that the Texas definition of "political contribution" is impermissible because it relies on an alleged "intent" standard. *See* Def. Br. at 37-38. As the Court of Criminal Appeals highlighted, the use of an intent standard does not automatically render a statute unconstitutionally vague in the First Amendment context, contrary to KSP's claims. 309 S.W.3d at 89-90 (quoting *U.S. v. Williams*, 553 U.S. 285, 306 (2008)).

Further, the possibility that intent may be difficult to establish is the problem of the State, not the defendant; it remains the burden of the State to demonstrate the "applicable culpable mental states." *Id*. at 90.

KSP cites no authority that would call *Ex parte Ellis* into question. It emphasizes *dicta* from *WRTL* that discusses the potential chill that may result when an "intent" standard is used to define the types of independent expenditures are subject to regulation. *See* Def. Br. at 37 (citing *WRTL*, 551 U.S. at 466-69). Specifically, the *WRTL* Court was considering whether it should use an "intent-and-effect test" to determine whether certain "electioneering communications" were the "functional equivalent of express advocacy." 551 U.S. at 465. The Court made clear, however, that its concerns regarding an "intent test" were connected to "the difficulty of distinguishing between discussions of issues on the one hand and advocacy of election or defeat of candidates on the other," or in other words, the difficulty of distinguishing between different types of independent spending. *Id.* at 467. The Court in no way suggested that such concerns would arise in the context of defining a "contribution." Indeed, *Buckley* had stressed that defining a "contribution" was less sensitive than defining an "expenditure" due to the "limiting connotation created by the general understanding of what constitutes a political contribution." 424 U.S. at 24. The "limiting connection" was that something of value had to actually be "provided" to a candidate or political party, or to another "person or organization" "for political purposes." *Id.* (emphasis added).

Here, a corporation will only potentially be in violation of Texas law when it actually "provides" something of value to a candidate, officeholder or political committee. The intent standard does not stand alone, but rather is an additional element that the state has to

demonstrate. Hence, the requirement that the state demonstrate a "culpable mental state" narrows the reach of the law and offers added protection to corporate actors.

2. The Texas Corporate Contribution Restriction Is Not Underinclusive.

KSP complains that the corporate contribution restriction is underinclusive because it allows corporations and unions to engage in certain forms of campaign activity. But the fact that the statute targets only those activities that the state deems most corruptive does not detract from the constitutionality of the statute, but rather supports its constitutionality.

In *Buckley*, the plaintiffs also asserted that certain provisions of federal campaign finance law were underinclusive, arguing, for instance, that the public financing program invidiously discriminated against candidates not running in party primaries because it provided public funds only to candidates running in primaries. But the Supreme Court found that the statute was not constitutionally invalid simply because Congress "address[es] itself to the phase of the problem which seems most acute to the legislative mind." 424 U.S. at 105. According to the Court, "[r]eform may take may take one step at a time." *Id., quoting Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966). *See also McConnell,* 540 U.S. 93, 207-08 (2003) (rejecting argument that electioneering communication regulation was underinclusive because it regulated only broadcast advertising and not print or Internet advertising); *SEC v. Blount*, 61 F.3d 938, 946 (D.C. Cir. 1995) (finding that "a regulation is not fatally underinclusive simply because an alternative regulation, which would restrict *more* speech or the speech of *more* people, could be more effective"). Indeed, the fact that a campaign finance restriction leaves open alternative channels for political expression generally is considered a factor in favor of a finding of constitutionality. *Buckley*, 424 U.S. at 28 (noting approvingly that contribution restriction "leaves people free" to

still "engage in independent political expression" and "associate actively through volunteering their services").

Furthermore, many of purported "exceptions" to the Texas corporate contribution restriction to which KSP objects reflect long-standing "exceptions" to the federal corporate contribution restriction at 2 U.S.C. § 441b. For example, several of the alleged exceptions highlighted by KSP pertain to the formation and operation of a PAC. It notes, for instance, that Texas law permits corporations to "pay the administrative expenses of a general purpose political committee" and "finance the solicitation of political contributions to a general-purpose political committee from their stockholders or employees." *See* Def. Br. at 27 (citing Tex. Elec. Code § 253.100). *See also Ex parte Ellis*, 309 S.W.3d at 91-92 (recognizing that Texas law permits corporations to form their "own political committee"). But federal law also permits corporations to use treasury funds to defray the administrative expenses of a PAC, 2 U.SC. § 441b(b)(4), and to solicit their restricted class of officers, employees and shareholders for contributions to such PAC, *id.* at §§ 441b(b)(2)(A), (b)(4). But far from finding that this "PAC option" renders the federal statute unconstitutionally underinclusive, the Supreme Court has found this option demonstrates that the law is carefully tailored to minimize any burdens on First Amendment activity. *See Beaumont*, 539 U.S. 162-63 ("The PAC option allows corporate political participation without the temptation to use corporate funds for political influence, quite possibly at odds with the sentiments of some shareholders or members, and it lets the Government regulate campaign activity through registration and disclosure … without jeopardizing the associational rights of advocacy organizations' members….").[19] Similarly, Texas could have

[19] Many of the other "exceptions" in Texas law highlighted by KSP are also present in the federal corporate contribution restriction:

made the determination that providing corporations with a "PAC option" is a way to promote First Amendment freedoms while still prohibiting the most troubling source of potential corruption, namely, political contributions from corporate treasuries.

In short, the "exceptions" in the law highlighted by KSP indicate that the law has been carefully tailored to address "the problem which seems most acute to the legislative mind," not that the law is underinclusive.

CONCLUSION

For the foregoing reasons, Texas's restriction on corporate political contributions, as well as its political committee disclosure requirements, are consistent with the First Amendment. Accordingly, this Court should deny KSP's motion for summary judgment and grant summary judgment in favor of TDP.

- KSP highlights that Texas law allows a corporation to hold a candidate forum where candidates address the corporations' stockholders or employees, provided that the opportunity is made available to all candidates. Def. Br. at 27 (citing Op. Tex. Comm'n No. 340 (1996)). Federal law also permits corporations to host a candidate to address their restricted class of shareholders and executive and administrative personnel. 11 C.F.R. § 114.3(c)(2).

- KSP highlights that Texas law allows corporations to defray a party's expenses in hosting a primary election or convention. Def. Br. at 28 (citing Tex. Elec. Code § 257.002(a). Federal law permits corporations to support a national Presidential nominating convention through donations to a host committee or a municipal fund in the city hosting the convention. 11 C.F.R. §§ 9008.52(b), 9008.53(b).

- KSP highlights that Texas law allows partnerships and limited liability companies to make political contributions. Def. Br. at 28 (citing Op. Tex. Ethics Comm'n No. 383 (1997) & Op. Tex. Ethics Comm'n No. 108 (1992)). Federal law also permits partnerships, 11 C.F.R. § 110.1(e), and limited liability companies (that elect to be taxed as a partnership), 11 C.F.R. § 110.1(g)(2), to make political contributions.

Respectfully submitted,

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Dated: September 21, 2011

CERTIFICATE OF SERVICE

I hereby certify that on the 21th day of September, 2011, a true and correct copy of the foregoing BRIEF AMICI CURIAE FOR CAMPAIGN LEGAL CENTER was served upon the following counsel of record and/or interested parties herein by regular First Class U.S. Mail (and by email where email addresses were known):

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