No. 12-579

In the Supreme Court of the United States

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

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the prohibition on the use of corporate-treasury funds to make a contribution to a candidate, 2 U.S.C. 441b(a), violates the First Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-13a) is reported at 683 F.3d 611. The district court's opinion (Pet. App. 30a-71a) is reported at 788 F. Supp. 2d 472, and its opinion on reconsideration (Pet. App. 14a-26a) is reported at 791 F. Supp. 2d 513.

JURISDICTION

The judgment of the court of appeals was entered on June 28, 2012. A petition for rehearing was denied on August 10, 2012 (Pet. App. 72a-73a). The petition for a writ of certiorari was filed on November 8, 2012. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

A grand jury in the Eastern District of Virginia indicted petitioners on one count of knowingly and willfully causing contributions of corporate money, totaling at least $25,000 in a single calendar year, to be made to a presidential campaign, in violation of 2 U.S.C. 441b(a), 437g(d)(1)(A)(i), and 18 U.S.C. 2; two counts of making contributions in the name of another, in violation of 2 U.S.C. 441f, 437g(d)(1)(A)(i), and 18 U.S.C. 2; one count of obstruction of justice, in violation of 18 U.S.C. 1519 and 2; and one count of conspiracy to make corporate-treasury contributions, to make contributions in the name of another, and to obstruct justice, in violation of 18 U.S.C. 371. Gov't C.A. Br. 6-7. The grand jury also indicted petitioner Danielczyk on two counts of causing false statements to be made to the government, in violation of 18 U.S.C. 1001(a)(2) and 2. Gov't C.A. Br. 7. The district court dismissed the corporate-contribution count and the portion of the conspiracy count relating to corporate-treasury contributions. See Pet. App. 14a-71a. The court of appeals reversed. *Id.* at 1a-13a.

1. Since 1907, federal law has prohibited corporations from using treasury funds to contribute to candidates for federal office. See Act of Jan. 26, 1907, ch. 420, 34 Stat. 864. That prohibition is now part of the Federal Election Campaign Act of 1971 (FECA), Pub. L. No. 92-225, 86 Stat. 3, and is codified at 2 U.S.C. 441b(a). Under Section 441b(a), no corporation (or labor organization) may "make a contribution * * * in connection with any election" for federal office; no candidate may receive such a corporate contribution; and no corporate officer or director may knowingly authorize such a contribution.

Although corporations may not contribute their treasury funds to federal candidates, a corporation may establish a "separate segregated fund," commonly known as a political action committee or "PAC." 2 U.S.C. 441b(b)(2)(C). The corporation administers the separate segregated fund, decides to whom the fund will contribute, and may pay all of the fund's administrative expenses out of its corporate treasury. 11 C.F.R. 114.1(a)(2)(iii) and (b), 114.5(d). Although the fund may incorporate separately, its name must include the corporation's name. 11 C.F.R. 102.14(c). Separate segregated funds may contribute up to $5000 to each federal candidate per election (a separate $5000 limit applies to each primary, general, runoff, or special election) once they meet certain initial requirements. 2 U.S.C. 441a(a)(2)(A) and (4). A corporation's separate segregated fund makes those contributions not from the corporate treasury, but from money it raises from the stockholders, executives, and administrative personnel of the corporation, and their families, with each individual able to contribute up to $5000 per year. 2 U.S.C. 441a(a)(1)(C), 441b(b)(4).

Any person who knowingly and willfully violates the prohibition on making or receiving corporate-treasury contributions is subject to criminal prosecution. 2 U.S.C. 437g(d)(1)(A). The offense is a misdemeanor if it involves aggregate contributions of $2000 or more (but less than $25,000), and it is a felony if it involves aggregate contributions of at least $25,000 in a single calendar year. 2 U.S.C. 437g(d)(1)(A)(i) and (ii). The Federal Election Commission (FEC) may also seek injunctions and civil penalties to remedy violations of Section 441b(a). 2 U.S.C. 437g(a)(6).

2. Danielczyk is the former chairman of Galen Capital Corporation, a corporation organized under the laws of Nevada, and of the corporation's wholly owned subsidiary, Galen Capital LLC. Gov't C.A. Br. 5; Pet. App. 2a. Biagi was the corporate secretary of Galen Capital Corporation and an executive of the subsidiary. Gov't C.A. Br. 5; Pet. App. 2a.

The indictment in this case alleges that in March 2007, Danielczyk co-hosted a fundraiser for then-Senator Hillary Rodham Clinton's campaign for the Democratic presidential nomination. Pet. App. 2a; see *United States* v. *National Dairy Prods. Corp.*, 372 U.S. 29, 33 n.2 (1963) (in reviewing a motion to dismiss, the Court presumes allegations of indictment to be true). Danielczyk recruited individuals (including Biagi himself) to serve as "straw donors" to Senator Clinton's campaign, assuring the donors that they would be reimbursed for their contributions. Pet. App. 2a; see Gov't C.A. Br. 5-6. After Danielczyk's assistant collected the contributions for transmission to the campaign, petitioners then reimbursed the "straw donors" for their contributions using Galen Capital Corporation's treasury funds, through the subsidiary. Pet. App. 2a-3a; Gov't C.A. Br. 6.

Biagi disguised the nature of the reimbursement payments by writing "consulting fees" on the checks' memorandum line and by issuing the checks for amounts slightly larger than the campaign contributions (*e.g.*, $4712.93 rather than $4600). Pet. App. 2a-3a; Gov't C.A. Br. 6. Petitioners also created false back-dated letters to the individual contributors, which likewise characterized the reimbursement payments as "consulting fees." Pet. App. 3a. All told, petitioners reimbursed a total of $156,400 in contribu-

tions to Senator Clinton's presidential campaign from corporate funds. *Ibid.* The campaign unwittingly reported the money as lawful contributions from the individual "straw donors." *Ibid.*; Gov't C.A. Br. 6.

3. On February 16, 2011, a grand jury in the Eastern District of Virginia returned a seven-count indictment against petitioners, alleging that they had violated several provisions of federal law by making and conspiring to make and conceal numerous unlawful campaign contributions, including contributions made with corporate-treasury funds. Gov't C.A. Br. 5. As relevant here, one count alleged that petitioners knowingly and willfully caused contributions of corporate money, totaling at least $25,000 in a single calendar year, to be made to a presidential campaign, in violation of 2 U.S.C. 441b(a) and 437g(d)(1)(A)(i). Pet. App. 3a; Gov't. C.A. Br. 6-7. Another count alleged that petitioners conspired to make corporate-treasury contributions, to make contributions in the name of another, and to obstruct justice, in violation of 18 U.S.C. 371. Pet. App. 3a; Gov't C.A. Br. 7.

Petitioners filed a pretrial motion to dismiss, raising, among other things, a First Amendment claim. The district court held that Section 441b(a)'s bar on corporate-treasury contributions violates the First Amendment and dismissed the Section 441b(a) count and the corresponding portion of the conspiracy count. Pet. App. 63a-66a, 71a. The district court reasoned that the statute was unconstitutional on the "logic" of *Citizens United* v. *FEC*, 130 S. Ct. 876 (2010), which had held that the federal prohibition on the use of corporate-treasury funds for independent electioneering communications and express advocacy in federal elections was an unconstitutional restriction of "politi-

cal speech." *Id.* at 913; Pet. App. 63a-66a. Although *Citizens United* had expressly observed that the constitutionality of corporate contribution limits was not at issue in that case, 130 S. Ct. at 909, the district court read the decision to categorically bar Congress from differentiating between individuals and corporations in setting contribution limits. Pet. App. 65a.

Five days after its initial dismissal order, the district court *sua sponte* ordered the parties to address whether it should reconsider that ruling in light of, *inter alia*, this Court's decision in *FEC* v. *Beaumont*, 539 U.S. 146 (2003), which had rejected a nonprofit advocacy corporation's First Amendment challenge to Section 441b(a)'s ban on corporate-treasury contributions. Pet. App. 4a. After further briefing, the district court issued a modified dismissal order accompanied by a new opinion that distinguished *Beaumont* on the ground that *Beaumont* involved a nonprofit advocacy corporation, while the present case involves a for-profit corporation. *Id.* at 14a-26a.

4. The court of appeals reversed. Pet. App. 1a-13a. It concluded that "*Beaumont* clearly supports the constitutionality of § 441b(a)" and that "*Citizens United*, a case that addresses corporate independent expenditures, does not undermine *Beaumont*'s reasoning" with respect to Section 441b(a)'s bar on corporate-treasury contributions. *Id.* at 5a.

The court of appeals reasoned that this Court's decision in *Beaumont* "makes clear that § 441b(a)'s ban on direct corporate contributions is constitutional as applied to all corporations." Pet. App. 7a. It observed that *Beaumont* had "thoroughly explained [this Court's] longstanding jurisprudence upholding Congress's 'original, core prohibition on direct corporate

contributions'" and had "warned that this jurisprudence 'would discourage any broadside attack on corporate campaign finance regulation o[f] corporate contributions.'" *Id.* at 6a-7a (quoting *Beaumont*, 539 U.S. at 153, 156). The court of appeals further observed that *Beaumont* had recognized multiple government interests supporting the ban on direct corporate-treasury contributions, including an "anti-corruption" interest and an "anti-circumvention" interest in preventing the evasion of the contribution limits that FECA imposes on individual (noncorporate) contributors. *Id.* at 7a.

The court of appeals rejected petitioners' argument that *Citizens United* had effectively overruled *Beaumont*. Pet. App. 8a-12a. It noted that *Citizens United* involved only regulation of independent expenditures, "did not discuss *Beaumont*," and "explicitly declined to address the constitutionality of the ban on direct contributions." *Id.* at 8a (citing *Citizens United*, 130 S. Ct. at 909). The court of appeals also reasoned that "[l]eaping to th[e] conclusion" that *Citizens United* undermines *Beaumont* would "ignore[] the well-established principle that independent expenditures and direct contributions are subject to different standards of scrutiny and supported by different government interests." *Id.* at 9a. The court of appeals explained that while this Court has treated limitations on independent expenditures as direct regulation of political speech and reviewed them under a strict-scrutiny standard, this Court has recognized that limitations on contributions "'entail[] only a marginal restriction upon the contributor's ability to engage in free communication'" and thus need only satisfy "the 'lesser demand of being closely drawn to match a

sufficiently important interest.'" *Ibid.* (quoting *Buckley* v. *Valeo*, 424 U.S. 1, 20-21 (1976) (per curiam)), and *Beaumont*, 539 U.S. at 162).

The court of appeals also agreed with "the Second and Ninth Circuits" that "*Citizens United* preserved" the "anti-corruption and anti-circumvention" interests "recognized in *Beaumont*." Pet. App. 10a. "While clarifying that the anti-corruption interest is limited to actual quid pro quo corruption or the appearance of it, as opposed to the appearance of influence or access, *Citizens United* did not deny that anti-corruption was a sufficiently important government interest, which is all that is required for closely drawn scrutiny." *Id.* at 11a. And "[w]ith respect to the anti-circumvention interest, the *Beaumont* court explained that without limitations on corporate contributions, individuals 'could exceed the bounds imposed on their own contributions by diverting money through the corporation.'" *Ibid.* (quoting *Beaumont*, 539 U.S. at 155). The court of appeals observed that the majority opinion in *Citizens United* "did not even discuss [the anti-circumvention] interest when it struck down the independent expenditure ban." *Id.* at 12a.

ARGUMENT

Petitioners contend (Pet. 14-35) that Section 441b(a)'s prohibition on corporate-treasury contributions in federal elections violates the First Amendment. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or any other court of appeals. In any event, the interlocutory posture of this criminal case makes it an unsuitable vehicle for reviewing the question presented.

1. Because the court of appeals reversed the district court's dismissal of the indictment and remanded for further proceedings, the decision below is interlocutory. That posture "alone furnishe[s] sufficient ground for the denial of" the petition for a writ of certiorari. *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916); see *VMI* v. *United States*, 508 U.S. 946 (1993) (Scalia, J., respecting the denial of the petition for a writ of certiorari). If a jury acquits petitioners, or if they were to plead guilty to certain counts in return for the dismissal of the counts at issue here, their current claims would be moot. If, on the other hand, they are convicted, they may raise their First Amendment challenges—together with any other claims that may arise during the proceedings—in a single petition for a writ of certiorari following the entry of final judgment against them. See *Major League Baseball Players Ass'n* v. *Garvey*, 532 U.S. 504, 508 n.1 (2001) (per curiam) (stating that this Court "ha[s] authority to consider questions determined in earlier stages of the litigation where certiorari is sought from" the most recent judgment).

Reviewing petitioners' claims now would be particularly unwarranted, because they face additional counts arising out of the same conduct, which will be proved by the same evidence at trial. Nor, for similar reasons, is it likely that the counts at issue here will affect any sentences they might receive. Petitioners will be free to seek review from a final judgment—the position they would have occupied had the district court (correctly) denied their motion to dismiss by following *FEC* v. *Beaumont*, 539 U.S. 146 (2003).

2. In *Beaumont*, this Court upheld Congress's authority, consistent with the First Amendment, to bar

corporations (including but not limited to nonprofit advocacy corporations) from contributing corporate-treasury funds to federal candidates—a bar that has existed for more than a century. 539 U.S. at 152-156. The prohibition, *Beaumont* explained, is supported by important interests: first, "to prevent corruption or the appearance of corruption" and second, to prevent corporations from being "use[d] as conduits for circumvention of valid contribution limits" by individuals, who could "divert[] money through the corporation." *Id.* at 154-155 (citations, internal quotation marks, and brackets omitted). The Court emphasized that "experience 'demonstrates how candidates, donors, and parties test the limits of the current law, and it shows beyond serious doubt how contribution limits would be eroded if inducement to circumvent them were enhanced.'" *Ibid.* (quoting *FEC* v. *Colorado Republican Fed. Campaign Comm.*, 533 U.S. 431, 457 (2001)). *Beaumont* then rejected any exception from the general rule for nonprofit advocacy corporations. 539 U.S. at 156-163. As the court of appeals correctly held, *Beaumont* represents the controlling precedent here and dictates the denial of petitioner's motion. Pet. App. 7a-8a.

3. Petitioners do not seriously dispute that their constitutional claim is essentially indistinguishable from the claim rejected in *Beaumont*. They contend (Pet. 16-28), however, that *Beaumont*'s rationales have been rejected by subsequent decisions of this Court—primarily, *Citizens United* v. *FEC*, 130 S. Ct. 876 (2010). That contention is incorrect.

a. A fundamental aspect of *Beaumont* is that it involved regulation of corporate-treasury contributions to candidates, and a contribution limit does not

have to survive strict scrutiny review. *Beaumont*, 539 U.S. at 161-163. A "basic premise" of the Court's campaign-finance cases "[g]oing back to *Buckley* v. *Valeo*, 424 U.S. 1 (1976)," is that a contribution limit "passes muster if it satisfies the lesser demand of being 'closely drawn' to match a sufficiently important interest." *Beaumont*, 539 U.S. at 161-162 (citations and internal quotation marks omitted). The reason for that lesser standard is that contribution limitations are "merely 'marginal' speech restrictions * * * , because contributions lie closer to the edges than to the core of political expression." *Id.* at 161. And compared to other contributions, "corporate contributions are furthest from the core of political expression," because restricting the corporation from contributing treasury funds "leaves individual members of corporations free to make their own contributions, and deprives the public of little or no material information." *Id.* at 161 n.8. Judicial deference to the regulation of corporate contributions is "particularly warranted where, as [in Section 441b(a)], we deal with a congressional judgment that has remained essentially unchanged throughout a century of 'careful legislative adjustment.'" *Id.* at 162 n.9 (quoting *FEC* v. *National Right to Work Comm.,* 459 U.S. 197, 209 (1982)).

Citizens United, in contrast, involved a First Amendment challenge to the federal prohibition on the use of corporate-treasury funds for independent spending on electioneering communications and express advocacy in federal elections. 130 S. Ct. at 886 (citing 2 U.S.C. 441b). Classifying that prohibition as "a ban on speech," the Court found it unconstitutional. *Id.* at 898; see *id.* at 886; *id.* at 913 ("[T]he Govern-

ment may not suppress political speech on the basis of the speaker's corporate identity."). Applying strict scrutiny, the Court concluded that "[a]n outright ban on corporate political speech during the critical pre-election period is not a permissible" means of furthering the government's interest in preventing *quid pro quo* corruption or the appearance of such corruption. *Id.* at 911; see *id.* at 908-911.

Citizens United does not cast doubt on *Beaumont*. The Court emphasized that it was not addressing congressional regulation of corporate *contributions*, noting that the appellant had "not made direct contributions to candidates" and had "not suggested that the Court should reconsider whether contribution limits should be subjected to rigorous First Amendment scrutiny." *Citizens United*, 130 S. Ct. at 909. Accordingly, *Citizens United* could not and did not reject the central premises that support *Beaumont*'s holding: (1) that strict scrutiny does not apply to contribution limits; (2) that campaign contributions are not pure speech, but instead are a means of conveying largely symbolic support for a message to be selected and conveyed by the candidate; (3) that in fashioning contribution limits, Congress may distinguish between corporations and individuals; and (4) that the applicable standard of scrutiny requires only that a contribution rule be closely drawn to serve anti-corruption and anti-circumvention interests, which a ban on corporate-treasury contributions does.

b. In contending otherwise, petitioners first suggest (Pet. 16-20) that *Citizens United* categorically forecloses Congress from imposing different campaign-finance restrictions on corporations than on individuals. But *Citizens United*'s reasoning in the

context of direct "political speech," 130 S. Ct. at 908, does not mean that corporations and individuals must receive exactly the same treatment in the context of contribution limits. As this Court has explained, "a limitation upon the amount that any one person or group may contribute to a candidate or political committee entails only a marginal restriction upon the contributor's ability to engage in free communication," because "the transformation of contributions into political debate involves speech by someone other than the contributor." *Buckley*, 424 U.S. at 20-21. And while independent expenditures "do not give rise to corruption or the appearance of corruption," *Citizens United*, 130 S. Ct. at 909, this Court has long "sustained limits on direct contributions in order to ensure against the reality or appearance of corruption," *id.* at 908. Those differences—in the First Amendment interests at stake, the levels of scrutiny, and the risks of corruption or its appearance—justify a different rule in the corporate-contribution context.

This Court's post-*Citizens United* summary affirmance in *Republican National Committee* v. *FEC*, 698 F. Supp. 2d 150 (D.D.C.) (three-judge court), aff'd, 130 S. Ct. 3544 (2010) (*RNC*), proves the point. The Court there left intact contribution limits that treat corporations and individuals differently. The case involved an as-applied challenge to a portion of FECA—upheld against a facial challenge in *McConnell* v. *FEC*, 540 U.S. 93, 123, 142 (2003)—that permits individuals to contribute over $30,000 to a national political party, but does not permit any corporate-treasury contributions to a national political party. 2 U.S.C. 441a(c), 441b(a), 441i(a); 76 Fed. Reg. 8370 (Feb. 14, 2011). Although *RNC* did not involve contri-

bution limits to federal candidates in particular, this Court's rejection of the as-applied challenge is inconsistent with petitioners' contention that corporations and individuals must always be subject to identical contribution limits.

Congress has good justification for treating corporate and individual contributions differently. One special risk posed by corporate-treasury contributions—that is not posed by individual contributions—is the ease with which corporations can proliferate. New corporations can be formed merely by filing some papers. Nevada, where Galen was incorporated, will form a new corporation for as little as $75. See Nevada Sec'y of State, *Profit Corporation Fee Schedule* (July 1, 2008), http://nvsos.gov/Modules/ShowDocument.aspx?documentid=1050. A single corporation can spawn multiple new corporations, each of which could then make its own campaign contributions. Contrary to petitioners' suggestion (Pet. 22), the government could not easily devise and enforce rules for attributing one corporation's contributions to another. See *Beaumont*, 539 U.S. at 160 n.7 (rejecting argument, which "ignore[d] the practical difficulty of identifying and directly combating circumvention under actual political conditions," that government could simply apply "earmarking" rule to corporate contributions) (quoting *Colorado Republican Fed. Campaign Comm.*, 533 U.S. at 462). Corporations could often be structured to avoid formal affiliation, no matter what test for affiliation were devised, and getting beneath the surface to probe ownership or control would be extraordinarily resource-intensive and in many in-

stances virtually impossible.* And in any event, even assuming that with tremendous oversight efforts petitioners' suggestion could be implemented, the government is not required to adopt it, because no strict "narrow[] tailor[ing]" requirement applies to the regulation of contributions. *Beaumont*, 539 U.S. at 162 (citing, *inter alia*, *Nixon* v. *Shrink Mo. Gov't PAC*, 528 U.S. 377, 387-388 (2000)); see, *e.g.*, *Buckley*, 424 U.S. at 27-28.

c. Petitioners err in suggesting (Pet. 26) that *Beaumont*'s anti-corruption rationale is no longer sound because *Beaumont* cited *Austin* v. *Michigan State Chamber of Commerce*, 494 U.S. 652 (1990), which this Court later overruled in *Citizens United*, 130 S. Ct. at 913. The holding of *Beaumont* did not depend on *Austin*. In upholding a restriction on corporate independent advocacy, *Austin* relied on an anti-corruption interest based on corporations' use of state-created advantages to amass wealth in the economic marketplace that they then translated into

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* Petitioners' focus (Pet. 22) on the attribution rules in place for "pass-through" entities like partnerships and limited-liability corporations that are taxed like partnerships, see 11 C.F.R. 110.1(g)(2), is misplaced. In corporations, unlike partnerships, the executive authority may reside with individuals who are not owners, and corporations therefore present enormous complexities of attribution that partnerships do not. Congress could thus permissibly conclude that corporations require a different rule. See *California Med. Ass'n* v. *FEC,* 453 U.S. 182, 201 (1981) ("The differing restrictions placed on individuals and unincorporated associations, on the one hand, and on unions and corporations, on the other, reflect a judgment by Congress that these entities have differing structures and purposes, and that they therefore may require different forms of regulation in order to protect the integrity of the electoral process.").

unfair political advantages. 494 U.S. at 659-660. *Citizens United* later repudiated that interest, 130 S. Ct. at 904-908, but it reaffirmed that the government's interest in combating *quid pro quo* corruption and its appearance can justify *contribution* limits, see *id.* at 901-902. Since the issue in *Beaumont* involved corporate contributions to political candidates, *Beaumont* remains fully justified without resort to the "different type of corruption" identified in *Austin*, 494 U.S. at 659-660, and later disavowed in *Citizens United*. Had *Beaumont* depended on *Austin*, Justice Kennedy—who dissented in *Austin* and declined to give it any weight in *Beaumont*—would not have joined the Court's judgment. See *Beaumont*, 539 U.S. at 163-164 (Kennedy, J., concurring in the judgment).

d. Petitioners also suggest (Pet. 22-23, 27-28) that a corporation's option to contribute through a PAC has no weight because *Citizens United* "made clear that a PAC's political activity is not the political activity of the corporation that created it." Petitioners again overlook that *Citizens United* addressed restrictions on independent expenditures—a form of "corporate speech." 130 S. Ct. at 897. Unlike the independent advocacy at issue in *Citizens United*, a contribution implicates essentially an "associational" freedom that provides "a general expression of support for [a] candidate and his views." *Buckley*, 424 U.S. at 21, 25. A PAC formed by the corporation shares the corporation's name, see 11 C.F.R. 102.14(c), and the PAC's contribution thus serves the same symbolic function as a contribution by the corporation itself. In any event, even if petitioners were correct that the PAC-contribution option should have no weight, the government's anti-corruption and anti-

circumvention interests would themselves sufficiently justify a ban on direct corporate-treasury contributions. See *Beaumont*, 539 U.S. at 159 n.5 ("[W]e have never intimated that the risk of corruption alone is insufficient to support regulation of political contributions.").

e. Similarly misplaced is petitioners' suggestion (Pet. 20-22) that the anti-circumvention interest recognized in *Beaumont* was effectively rejected in *McConnell*. *McConnell* did not even cite *Beaumont*, which had been decided less than six months earlier, much less disapprove it. Rather, *McConnell* simply invalidated a separate provision of federal law prohibiting contributions by any individual "17 years old or younger." 2 U.S.C. 441k. The Court found that evidence that minors were used as conduits for others' campaign contributions was insufficient and thus deemed the statute "overinclusive." *McConnell*, 540 U.S. at 232; see *ibid.* (suggesting that "prohibiting contributions by very young children" might be permissible).

A corporation cannot be equated with a child. Without Section 441b(a), an individual who wanted to exceed the individual contribution limit could quickly create a new corporation to serve as his conduit, or a hundred new corporations, each of them able to contribute to the same candidate in the same election cycle. The corporations may all have different names, and the complexities of corporate structure may mask their relationship to each other and to the conduit contributor. By contrast, an individual who wants to contribute through his minor children cannot create them by himself, in an hour, over the Internet, in unlimited numbers, nor can he easily dispense with them

after the election. Even if he already has children through whom he can contribute, his identity as the conduit contributor will likely be relatively easy to detect (especially if the child shares his surname and home address), whereas the original source of the funds a corporation contributes may be exceedingly difficult to uncover.

f. Finally, petitioners launch an attack (Pet. 30-35) on this Court's longstanding distinction between the degrees of scrutiny applicable to expenditure limits and contribution limits. That distinction, however, has been a part of this Court's campaign-finance jurisprudence from its seminal decision in *Buckley* (see 424 U.S. at 20-22) through its most recent decision in *Arizona Free Enterprise Club's Freedom Club PAC* v. *Bennett*, 131 S. Ct. 2806 (2011); see *id.* at 2817 ("[W]e have subjected strictures on campaign-related speech that we have found less onerous to a lower level of scrutiny and upheld those restrictions. For example, after finding that the restriction at issue was 'closely drawn' to serve a 'sufficiently important interest,' * * * we have upheld government-imposed limits on contributions to candidates."); see, *e.g.*, *Davis* v. *FEC*, 554 U.S. 724, 737 (2008); *Randall* v. *Sorrell*, 548 U.S. 230, 246-247 (2006) (plurality opinion); *McConnell*, 540 U.S. at 134-142 & nn.40 & 42, 231-232; *Colorado Republican Fed. Campaign Comm.*, 533 U.S. at 440-442; *Shrink Mo. Gov't PAC*, 528 U.S. at 386-388. That distinction does not turn, as petitioners suggest (Pet. 32), on a "judicial assessment of [a particular] expression's value," but instead on the recognition that contribution limits primarily affect associational rights, not freedom of expression. See, *e.g.*, *Buckley*, 424 U.S. at 20-22.

Contrary to petitioners' contention (Pet. 32-33), *Knox* v. *SEIU Local 1000*, 132 S. Ct. 2277 (2012), a case involving union fees, does nothing to undermine the distinction between contributions and expenditures in the campaign-finance context. In *Knox*, the Court recognized that its prior decisions had "made it clear that any procedure for exacting fees from unwilling contributors must be 'carefully tailored to minimize the infringement' of free speech rights." *Id.* at 2291 (quoting *Chicago Teachers Union Local No. 1* v. *Hudson*, 475 U.S. 292, 303 (1986)). The First Amendment rights at stake in compelling a nonmember to support a union are greater than the associational rights at stake in limiting contributions to political campaigns. As this Court has recognized, although contribution restrictions "limit one important means of associating with a candidate or committee," they do not preclude other means of association, and they "leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates." *Buckley*, 424 U.S. at 22. The Court has not identified a comparable alternative means of serving First Amendment values in the case of compelled union fees.

4. Petitioners acknowledge (Pet. 29-30) the absence of a circuit conflict on the question presented, as every court of appeals to address the question recognizes the distinction between *Beaumont* and *Citizens United* and continues to treat *Beaumont* as good law. See *Minnesota Citizens Concerned For Life, Inc.* v. *Swanson*, 692 F.3d 864, 877-879 (8th Cir. 2012) (en banc); *Ognibene* v. *Parkes*, 671 F.3d 174, 182-197 (2d Cir. 2011), cert. denied, 133 S. Ct. 28 (2012); *Thal-*

heimer v. *City of San Diego*, 645 F.3d 1109, 1124-1126 (9th Cir. 2011); *Green Party* v. *Garfield*, 616 F.3d 189, 199 (2d Cir. 2010). And contrary to petitioners' contention, unanimity in the circuits on this issue is a reason for denying certiorari, not for granting it. See Sup. Ct. R. 10. For reasons explained above, this Court has neither effectively overruled nor undermined *Beaumont*, and no compelling reason exists for revisiting the issue. See *Dickerson* v. *United States,* 530 U.S. 428, 443 (2000) ("While *stare decisis* is not an inexorable command, * * * even in constitutional cases, the doctrine carries such persuasive force that [the Court has] always required a departure from precedent to be supported by some special justification.") (internal quotation marks and citations omitted). Rather, stability in the law is particularly important in this context: the century-long ban on corporate-treasury contributions is a fundamental feature of campaign-finance regulation, and its approval by this Court should not be revisited.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JANUARY 2013