NO. 11-35620

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ROBIN FARRIS; RECALL DALE WASHAM, a Washington political committee; OLDFIELD & HELSDON, PLLC, a Washington professional limited liability company,

Plaintiffs-Appellees,

v.

DAVE SEABROOK, Chair; BARRY SEHLIN, Vice-Chair; JENNIFER JOLY; JIM CLEMENTS, in their Official Capacities as Officers and Members of the Washington State Public Disclosure Commission; DOUG ELLIS, in his Official Capacity as Interim Executive Director of the Washington State Public Disclosure Commission,

Defendants-Appellants.

ON APPEAL FROM THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

No. C11-05431-RJB
The Honorable Robert J. Bryan

BRIEF OF *AMICUS CURIAE* IN SUPPORT OF APPELLEES AND IN SUPPORT OF AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

No parent corporation or publicly-held corporation owns 10% or more of stock in the Center for Competitive Politics.

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I. IDENTITY AND INTEREST OF AMICUS

The Center for Competitive Politics ("CCP") is a non-profit 501(c)(3) organization founded in 2005. CCP seeks to educate the public about the actual effects of money in politics, and the benefits of a more free and competitive electoral process. CCP works to defend the constitutional rights of speech, assembly, and petition through legal briefs and academically rigorous studies.

CCP has a strong interest in defending the District Court's constitutional reasoning, and in challenging the interpretations of the record that have thus-far been presented to this court.

All parties to this appeal have stipulated that CCP can participate in this appeal as *amicus curiae,* and all parties have consented to the filing of this brief. No contributions of money were made to fund the preparation or submission of this brief, which was authored entirely by counsel for *amicus*. *See* Fed. R. App. P. 29(a), (c)(5).

II. ISSUE PRESENTED

Given the unique features of Washington's recall procedures, and the record before it concerning events in other states, did the District Court abuse its discretion by preliminarily enjoining Washington's contribution limit as applied to the Recall Dale Washam Committee?

III. ARGUMENT

This appeal concerns an order that applied to only one recall committee. The District Court, presented with a novel case, explicitly and emphatically declined to expand the scope of its order. Yet despite the extensive information presented to the District Court by *amicus curiae* below, the state of Washington is appealing that order, arguing that it did not have an opportunity to adequately develop a record justifying its contribution limits. To the contrary, the Court was aware of that record and the arguments of both Appellants and *Amici,* and was not persuaded. This court should confirm that decision.

A. Contribution Limits are Unconstitutional where they Fail to Prevent Corruption of the Appearance of Corruption.

The Supreme Court has determined that the only constitutional interest justifying a state-imposed contribution limit is the deterrence of corruption or the appearance of corruption. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 26 (1976); *Fed. Election Comm'n v. Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 496-97 (1985) ("[P]reventing corruption or the appearance of corruption are the only legitimate and compelling government interests thus far identified for restricting campaign finances"); *Nixon v. Shrink Missouri Gov't PAC,* 528 U.S. 377, 390

(2000) ("While neither law nor morals equate all political contributions…with bribes, we spoke in *Buckley* of the perception of corruption 'inherent in a regime of large individual financial contributions' to candidates for public office as a source of concern 'almost equal' to *quid pro quo* improbity") (internal citations omitted); *Randall v. Sorrell*, 548 U.S. 230, 247 (2006). In fact, when the government has imposed contribution limits under other rationales, the Court has found such an approach "fundamentally at war with the analysis of contribution limits...that [the] Court has adopted." *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 741-743 (2008).

Washington has relied on this constitutionally permissible rationale. Order at 15. But in the specific context of Washington's recall procedures, that approach is unavailing.

i. Washington's unique recall system prevents gamesmanship and opportunities for corruption.

Washington's voters have enacted a unique, multi-step approach to the recall of elected officials that eliminates the dangers of *quid pro quo* corruption, and consequently undermines that justification for contribution limits. This carefully-cabined procedure ensures that only elected officials who have abused the public trust can be successfully recalled, and renders comparison to other states' recall experiences ephemeral or, at worst, misleading.

Only eight states, including Washington, require some accusation of "misfeasance" or "malfeasance" to recall an elected official.[1] Washington's requirement is stricter than some. To initiate a recall, a "legal voter" must prepare a "typewritten charge" naming the officer to be recalled and specifically giving the "approximate date, location, and nature" of each act the voter believes deserving of recall. RCW 29A.56.110.

Unlike the rule in many states, a recall cannot simply assert that an official no longer ought to represent his constituents. Rather, a successful recall effort must show how the official has either:

1. Violated his oath of office;[2]
2. Twice violated the Constitution of Washington State;
3. Committed an act of malfeasance;[3] or
4. Committed an act of misfeasance.[4]

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[1] National Conference of State Legislators, "Recall of State Officials" (2011) (hereafter "NCSL"). Available at: http://www.ncsl.org/default.aspx?tabid=16581.

[2] Defined as "neglect or knowing failure by an elective public offer to perform faithfully a duty imposed by law." RCW 29A.56.110(2).

[3] Defined as "the commission of an unlawful act." RCW 29A.56.110(1)(a). Both malfeasance and misfeasance can also be defined as "any wrongful conduct that affects, interrupts, or interferes with the performance of official duty." RCW 29A.56.110(1).

And the state places its imprimatur on a recall even at this early stage. For, in cases involving the recall of a county official, the ballot synopsis must be drafted by "the prosecuting attorney of the county." RCW 29A.56.130(b). This synopsis is then presented to the Superior Court, which determines the legal sufficiency of the charge, and the adequacy of the ballot synopsis. RCW 29A.56.140.

In short, Washington requires not only specific misbehavior concrete enough to have occurred at a particular place and time, but also prosecutorial involvement and judicial review. As the Washington Supreme Court noted in this very case, while they do not determine "the truthfulness of [a recall's] charges," Washington's "[c]ourts act as a gateway to ensure that only charges that are factually and legally sufficient are placed before the voters…" *In re Washam,* 171 Wn.2d 503, 510, 257 P.3d 513 (2011) (*en banc*).

Only after Washington's courts have served this role may a recall committee obtain signatures to place the question on the ballot. They have, in the case of a county official, 180 days to obtain the signatures of legal voters representing 25% of the number of votes cast for all candidates for the targeted officeholders' position in the prior election. RCW 29A.56.150, 180. And should the recall be

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4 Defined as the "performance of a duty in an improper manner." RCW 29A.56.110(1)(b).

successful, the removed official will be replaced by appointment, not election. RCW 29A.56.260; RCW 36.16.110.

This system is unique. Its many steps, checks, and requirements make the recall of a Washington officeholder unusually difficult, and provide assurances that only those deserving of recall are subject to its provisions. Washington's system simply is not comparable to other states' procedures, with their Westminsterian emphasis on the people's confidence, and their treatment of recall as a purely political question. Washington's recall statute is a uniquely improbably target for those wishing to engage in *quid pro quo* corruption, nor can a system requiring the approval of state courts before a recall proceeds realistically appear corrupt.

ii. *Amici's* record is assembled entirely from outside Washington, and reflects radically different recall procedures from those at issue in this appeal.

The Wisconsin Democracy Campaign and Washington Public Campaigns (hereafter "*Amici*") claim that the "plethora of news accounts from across the nation submitted to the District Court… demonstrates a propensity for recall campaigns to involve corruption, as well as a clear link between recall campaigns and replacement candidacy." *Amici* at 20. This argument is premised on a belief that so long as each aspect of Washington's recall system can be found in another

state, should an issue raising a possibility of corruption also arise in that state, the example can justify Washington's contribution limit. *Id.* at 21

But this approach defies logic. We would not say that our federal constitution is an invitation to corruption, merely because a foreign government is corrupt and is also headed by a president, without inquiring into that government's other branches and the character of its social institutions. Similarly, the strength of Washington's system lies not in its individual components, but in the simultaneous functioning of the entire system. Simply put, the "record contain[s] no examples of corruption or the appearance of corruption in the distinct context" of Washington's unique recall procedure. *Amici* at 6 (citing *McConnell v. Fed. Election Comm'n,* 540 U.S. 93 (2003)) (emphasis in original).

Amici rely heavily on examples from the state of Michigan. *Amici* at 7 (discussing Acme Township recall); 9 (city council recall in Nashville); 14 (school board member recalled in Grand Haven); 14-15 (attempted recall of Saginaw Board of Education member). None of these examples is relevant to Washington's statute. Michigan's recall system operates on a wholly different standard than those in Washington State; Michigan voters presenting grounds for a recall need not present any legal justification. Mich. Election Law §168.951, *et seq.,* RCW 29A.56.110. There is no judicial interference of any kind, although the petition may be reviewed for "clarity." Mich. Election Law §168.952. No county attorney

formulates the language of the ballot synopsis; no superior court reviews it for legal and factual sufficiency. And this is unsurprising, as the Michigan Constitution itself states that "[t]he sufficiency of any statement of reasons or grounds procedurally required shall be a *political rather than a judicial question*." MICH. CONST. ART. I, SEC. 8 (emphasis supplied).

Amici also rely on examples from local and state elections in California. *Amici* at 8 (Lake Elsinore recall); 10 (recall election and replacement candidate in Mission Viejo); 10 (recall election and replacement candidate in Poway); 11-12 (recall election and replacement candidates in Dunsmuir); 13 (Bell recall); 16-17 (2003 recall of Governor Gray Davis). But California's recall procedures also diverge significantly from those of Washington. Cal. Election Code § 11000, *et seq.* California requires no specific grounds to justify a recall, nor do its courts act as gatekeepers to insure that only charges that are "factually and legally sufficient" appear before the voters. *Id.*

Similarly, the Campaigns are concerned that "[r]ecall campaigns can serve as a political platform for replacement candidates, potentially as a way to circumvent contribution limits." *Amici* at 16-17. But unlike the majority of states cited to show this danger, Washington State does not have replacement candidates run for office concurrently with the recall. *See* NCSL, *supra* n. 1 and collected

authorities. Instead, after an official in Washington State is recalled, a replacement official is appointed to fill the seat. RCW 29A.56.260; 36.16.110.

The Campaigns' brief also touches on recall efforts in New Jersey, Wisconsin, Massachusetts, Oregon, Arizona, Colorado, and Nebraska. *Amici* at 9-13, 15, 17-18. None of these states has recall systems incorporating any sort of legal or judicial review. NCSL, *supra* n. 1. None of these states requires any allegation of misfeasance or malfeasance in office before the recall can be placed on the ballot. *Id.*

Amici amassed a large collection of newspaper clippings from local papers across the country. Their exhaustive effort failed to find a single instance of corruption or apparent corruption in Washington. This alone suggests that Washington's contribution limit cannot be justified by any such threat. But a further review of the record placed before the District Court merely demonstrates that the states have adopted a wide range of recall procedures, some of which have been more effective at preventing apparent *quid pro quo* relationships (and, presumably, less effective at removing problematic officeholders) than others. This tradeoff is a matter left to each state's discretion. But whatever the record says about the situation in other states, it in fact supports a finding that Washington, specifically, has no substantial interest in preventing corruption that does not exist.

iii. Recall elections are rare events that, contrary to the assertions of *Amici,* are not generally used for purposes implicating corruption concerns.

Recall elections are rare events. As of 1988, between 4,000 and 5,000 recall elections have been held in the United States, with several thousand more failing to reach the election stage for lack of qualifying signatures, technical and legal difficulties, technical objections over signatures and the form of the petition, or the lack of specificity in the complaint. Thomas E. Cronin, *Direct Democracy: The Politics of Initiative, Referendum and Reform* (1999), at 142. In fact, over the past 108 years, there have been only about two thousand successful recalls in all of the counties and municipalities of the United States. Kurt A. Gardinier, Initiative & Referendum Institute at the Univ. of Southern California, *Recall in the United States* (2011).[5]

As a result, politically inspired recalls by special interest groups, such as *Amici's* example from Acme Township, Michigan, tend to fail. Recall and referendum scholar Thomas Cronin points out that "[m]ost states[,] in addition to signature requirements, prohibit the initiation of a recall against an official until he or she has held office for at least six months. Several states also prohibit a second recall attempt during the same term, or for at least the next year; other states and communities merely prohibit a repeat recall for three to six months. Such

[5] (available at: http://www.iandrinstitute.org/Recall.htm).

restrictions are designed to prevent "sour grapes" recalls and to reduce the risk of needless harassment." Cronin at 153. Furthermore, in most states—as in Washington—those seeking a recall must gather signatures from a number of voters equal to 25% of those who voted in the previous election. *Id.* at 125. As a result, "[t]he arbitrary or wanton exercise of the recall to displace or harass conscientious officials usually backfires… [I]n most recalls that reach the referendum stage, a valid grievance exists." *Id.* at 152.

Unsurprisingly, successful recalls are even more unusual in Washington State. NCSL, *supra* n. 1. Washington's process of judicial review of recall allegations deters retaliatory recalls. The large number of signatures required to place a recall question on the ballot ensures that, even if a campaign uses professional signature gatherers, a sufficiently large percentage of the population must be upset by the behavior of an incumbent officeholder. In fact, only one legislator has ever been subjected to a recall in Washington State. *Id.* That legislator was State Senator Peter von Reichbauer, who was up for recall in 1981. *Id.* Senator von Reichbauer *survived* the recall attempt. *Id.*

As the Supreme Court has recognized, "[t]he Government's interest in deterring the 'buying' of elections and the undue influence of large contributors on officeholders also may be reduced where contributions to a minor party or an independent candidate are concerned, for it is less likely that the candidate will be

victorious." *Buckley v. Valeo*, 424 U.S. at 96 (1976). Here, there is no minor-party affiliation to consider. But given the rarity of recall campaigns, and their historically low likelihood of success, the government's interest in deterring *quid pro quo* corruption, or the appearance of corruption, greatly decreases. This is particularly true in the case of Washington State, with its carefully-designed recall system incorporating judicial review.

iv. The record before the District Court was exhaustive, but its failure to identify any corruption or apparent corruption occurring under relevant systems rendered that record unpersuasive.

The State's brief suggests that the record before the district court was not an "adequate" record. Appellant Opening Brief at 18. The State complains that it was "forced to scour newspaper articles, Internet websites, social media sites, and campaign finance documents…to pull together sufficient facts." *Id.* It is true that the record is lamentably light on statistical or otherwise broad-based analysis. But despite the State's pejorative characterization of its research, Appellants amassed a substantial record based on a survey of recall elections across the country. The State is properly unhappy with this record, because as *Amici* have admitted, no evidence can be found showing the appearance of corruption in Washington's carefully-cabined recall system. *Amicus* at 20. The State's evidence, while substantial, is simply unconvincing.

Amici correctly point out that "[t]he government need only establish that recall campaigns implicate an important interest (in preventing corruption) that is 'not illusory'." *Id.* at 23 (quoting *Buckley,* 424 U.S. at 27). In an effort to prove that Washington has a salient anti-corruption interest, *Amici* have relied on scattershot information from local recall efforts, some successful, some not – and all from states with more liberal recall systems than Washington's. *Amici* at 9-13. They argue that "[t]he government is justified in seeking to prevent the opportunity for…corruption, as opposed to simply waiting for evidence of corruption to appear after the fact." *Amici* at 24 (emphasis in original). But Washington's system is far stricter than those in other states, and the chance of a successful recall lower than in other states. In reality, Washington has already prevented the opportunity for corruption in a recall election by enacting its extremely conservative recall system, where the courts act as a gatekeeper, and recalled officials' seats are filled by appointment.

This is not merely a general point; the specific facts of this recall attempt demonstrate that the prevention of corruption and the appearance of corruption are best accomplished by a robust recall system. And on the facts of this case, that end required a lifting of Washington's contribution limit.

B. Washington State's Contribution Limits Defeat Their Purpose and Compound the Appearance of Corruption in This Particular Recall Election

While the Supreme Court has generally upheld limitations on contributions since *Buckley v. Valeo*, the Court has also found contribution limits and other campaign finance regulations unconstitutional in cases where they worked at cross-purposes with the anti-corruption interest. *See e.g. Randall v. Sorrell; Brown v. Socialist Workers* 459 U.S. 87 (1982). Accordingly, in this specific case, the district court was justified in issuing its preliminary injunction against the state's enforcement of its contribution limit laws as they applied to the Recall Dale Washam committee ("the recall committee"). Washington's courts recognized Mr. Washam's reputation for retaliating against those who oppose him, yet its contribution limit allowed Mr. Washam to use this reputation to stamp out the dissenting voices of the recall committee.

The District Court's order issuing the preliminary injunction was modest in scope. The court determined that "[a]t this stage in the case…Washington has not shown that it has an important state interest which would justify limiting [the recall committee's] First Amendment rights." Order at 18 (emphasis in original). The court was careful to point out that its order "should not be construed as affecting other parties or circumstances." *Id.*

There is at least one good reason for the court's limited ruling: *In re Dale Washam*, the Washington Supreme Court's ruling affirming the proposed ballot

synopsis for Washam's recall. 257 P.3d 513 (2011). In that case, the Court determined that it was "factually and legally sufficient" to state that Washam retaliated against an employee "for filing a complaint against [Washam]." *Id.* at 519. Furthermore, the Court noted that "[a]n investigator from the county found such retaliation." *Id.* The Court also approved language stating that Washam grossly wasted funds "in pursuing criminal charges against his predecessor." *Id.* at 520. While at first blush such a charge does not appear retaliatory, Mr. Washam's predecessor, Ken Madsen, was a constant political opponent of Washam's. In both the 2000 and 2004 election cycles, Mr. Washam was defeated in his bid for the county assessor-treasurership by Mr. Marsden. In fact, Mr. Washam was unsuccessful in a recall effort of his own against Mr. Madsen. *Id.* at 515.

The Washington Supreme Court did not end there. Mr. Washam was also charged with "failing to protect [his] employee from retaliation, false accusations or future improper treatment...by failing thereafter to rectify his retaliatory actions against his employee." *Id.* at 521. On that particular charge, the Court "note[d] that the investigative reports lay out in painstaking detail how Washam violated local whistleblower law, and that [t]he facts support[ed] an inference of willful intent." *Id.* at 521. Ultimately, five charges, three of which dealt with Mr. Washam's retaliatory actions against his political and personal opponents, were approved by the highest state court in Washington, using scathing language.

With this record before it, it is unsurprising that the District Court reported Farris' "assert[ion] that she has lost some volunteers because of Mr. Washam's reputation for retaliating against people...[and that] in light of his reputation, having money to pay for signature gatherers is important." Order at 8.

i. A reasonable fear of retaliation can provide the basis for setting aside otherwise-constitutional campaign finance provisions in as-applied challenges.

Standing alone, the Washington Supreme Court's statements concerning Mr. Washam's retaliatory abuses of his office do not render the state's contribution limits unconstitutional as applied to the recall committee. But there is case law supporting the removal of burdensome campaign regulations in light of a reasonable fear of reprisal or retaliation. The Supreme Court has incorporated retaliation concerns into campaign finance case law in the context of donor anonymity. *See, e.g, Buckley v. Valeo*, 424 U.S. at 74 (1976); *Citizens United v. Fed. Election Comm'n*, 130 S. Ct. 876, 980 (2010) (Thomas, J., concurring in part and dissenting in part) (discussing retaliations against supporters of Proposition 8 in California). In *Buckley*, the Supreme Court determined that a minor party need not disclose its donors if it shows a "reasonable probability" that those donors will be subject to "threats, harassment, and reprisal." *Id.*

This is true despite donor anonymity enjoying even less First Amendment protection than other campaign activities. *Buckley,* 424 U.S.at 64 ("[u]nlike the overall limitations on contributions and expenditures, the disclosure requirements impose no ceiling on campaign-related activities"); *Citizens United,* 130 S.Ct. at 980 (Thomas, J., concurring in part and dissenting in part). Nevertheless, the Supreme Court developed the *Buckley* "reasonable probability" test because it is against the "public interest" for "fears of reprisals…[to] deter contributions to the point where [a political] movement cannot survive." *Buckley,* 424 U.S. at 71. The Supreme Court and other courts have applied this test often. *See, e.g. Brown v. Socialist Workers*, 459 U.S. 87 (1982); *Fed. Election Comm'n v. Hall-Tyner Election Campaign Comm.*, 678 F.2d 416 (2d Cir. 1982); *McArthur v. Smith*, 716 F.Supp. 592 (S.D. Fla. 1989).

One case within this circuit dealt with an attempt by a non-minority group to seek protection under the *Buckley* "reasonable probability" test. The organization was ProtectMarriage.com, the force behind the successful bid to amend California's constitution to prohibit same-sex marriage. *ProtectMarriage.com v. Bowen*, 599 F.Supp. 1197 (E.D. Cal. 2009). ProtectMarriage.com alleged retaliatory harassment by private opponents of their effort to amend the state's constitution, but was rebuffed by the court, which noted that the organization was a majority group that won an election, and could not be considered a "minor party"

under *Buckley*. *ProtectMarriage.com* at 1214. Furthermore, the Court noted that in "each case" of harassment or vandalism against ProtectMarriage.com supporters "there [were] appropriate legal channels through which to rectify and deter the reoccurrence of such reprehensible behavior." *ProtectMarriage.com* at 1218.

The *ProtectMarriage.com* standard has not received the support of this Court, and is inapplicable to the facts of this appeal. Unlike the issues addressed in *ProtectMarriage.com*, the retaliation here came not from private citizens, but rather from a government official known for retaliating against his political opponents. *In re Washam* at 522. As a result, the recall procedure *is* one of the "appropriate legal channels" for the rectification of Mr. Washam's "reprehensible" acts. *Cf. ProtectMarriage.com* at 1218.

Mr. Washam's reputation for harassment has created exactly the situation that the *Buckley* Court feared and found to be against the public interest. Fears of Mr. Washam's reprisals deterred volunteers to the point where the movement could not survive without independent signature gatherers funded by a few large donors. As the Second Circuit explained in a similar case:

> "If apprehension is bred in the minds of contributors to [minority] organizations by fear that their support of an unpopular ideology will be revealed, they may cease to provide financial assistance. The resulting decrease in contributions may threaten the minority party's very existence. Society suffers from such a consequence because the free flow of ideas, the lifeblood of the body politic, is necessarily reduced. Accordingly, a nation dedicated to free thought and free

> expression cannot ignore the grave results of facially innocuous election requirements."

Fed. Election Comm'n v. Hall-Tyner Election Campaign Comm., 678 F.2d at 420.

The Supreme Court has applied similar reasoning, in the context of contribution limits, in *Randall v. Sorrell*. There the Court determined that excessively low contribution limits imposed by a Democratic legislature[6] and a Democratic governor would have an adverse impact on Republican challengers. 548 U.S. 230, 253 (2006). The Court cited a "race-by-race analysis" of Vermont, which concluded that the state's contribution limits "would have reduced the funds available in 1998 to Republican challengers in competitive races in amounts ranging from 18% to 53% of their total campaign income." *Id.* The Court feared that Vermont's contribution limits [would] prevent candidates from "amassing the resources necessary for effective campaign advocacy…[if] they magnify the advantages of incumbency to the point where they put challengers to a significant disadvantage." *Id.* at 248. In effect, the Court feared that Vermont's Democratic legislature had passed a statute that would eliminate the Republicans as a viable opposition party. *Id.* The Court ultimately determined that since such limits could preclude competitive elections, they could not be constitutional, since it is

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6 Vermont General Assembly, "Legislative Process" (2011), available at: http://www.leg.state.vt.us/HouseClerk/Legislative%20Process.htm

impermissible for contribution limits to "impose burdens upon First Amendment interests that (when viewed in light of the statute's legitimate objectives) are disproportionately severe." *Id.* at 237 (parentheses in original).

In this limited case, the evidence before the district court illustrated a picture of Dale Washam as a vindictive, retaliatory official. As a result, in this as-applied case, Washington State's well-intentioned contribution limits regime—like the well-intentioned disclosure regime of the Federal Election Campaign Act—violates the constitution. *Cf. Brown v. Socialist Workers*, 459 U.S. 87 (1982). The system permits Mr. Washam to use his reputation to intimidate volunteers, and then functionally prohibits the recall committee from hiring less-intimidated professional signature gatherers to place the recall on the ballot. Order at 8. Meanwhile, no evidence of corruption was brought forward against the recall committee. Order at 15. Given that Washington's interest in contribution limits solely relies on preventing "corruption" or the "appearance of corruption", it cannot be constitutional for the state's laws to make the recall system appear rigged against the recall of public officials who will, with 'reasonable probability,' retaliate against their political opponents. *Buckley* at 26.

IV. CONCLUSION

For the reasons stated above, the record before the District Court was substantial, but ultimately unpersuasive. There is no evidence of corruption, or even the appearance of corruption, in Washington recall elections. This is unsurprising given the unique recall system used by Washington, with its many steps and substantial involvement. Indeed, in a case where allegations of retaliation have been credibly brought against an official, the ability to mount a successful recall may be important to dispelling the threat of apparent corruption. Such was the case here, and the District Court correctly used its discretion in a difficult case, and should be affirmed.

September 22, 2011

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)
CASE NUMBER 11-35620

Certificate of Compliance With Type-Volume Limitation, Typeface Requirements, and Type Style Requirements.

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 4,385 **(7,000 LIMIT)** words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

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/s/ Allen Dickerson

Attorney for *Amicus Curiae*
Center for Competitive Politics

Dated: September 22, 2011

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CERTIFICATE OF SERVICE

TO: CLERK OF THE ABOVE ENTITLED COURT AND ALL PARTIES OF RECORD

I hereby certify that on September 22, 2011, I electronically filed the Brief of *Amicus Curiae* in the above referenced case with the Clerk of Court using the CM/ECF System, which will send notification of such filing to all counsel of record.

DATED this 26th day of September, 2011.

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