

No. _____

IN THE
Supreme Court of the United States

EDMUND CORSI & GEAUGA CONSTITUTIONAL COUNCIL,

Petitioners,

v.

OHIO ELECTIONS COMMISSION,

Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court Of Ohio

PETITION FOR A WRIT OF CERTIORARI

Maurice A. Thompson
1851 CENTER FOR
CONSTITUTIONAL LAW
208 E. State Street
Columbus, Ohio 43215
Tel: (614) 340-9817

Allen Dickerson
Counsel of Record
Tyler Martinez
Zac Morgan
Anne Marie Mackin
David Silvers
CENTER FOR COMPETITIVE POLITICS
124 S. West Street, Ste. 201
Alexandria, Virginia 22314
Tel: (703) 894-6800
adickerson@campaignfreedom.org
Counsel for Petitioners

June 11, 2013

QUESTIONS PRESENTED

Ohio law defines political action committees (“PACs”) to include only those groups “the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy.” OHIO REV. CODE. ANN. § 3517.01(B)(8) (2012). The Ohio Elections Commission found that the Geauga Constitutional Council had such a “major purpose” based upon (1) its mission statement, which included “supporting and helping to elect” individuals to office as one of the Council’s multiple goals, (2) a single voter guide produced by the Council, and (3) isolated excerpts from the Council’s website. However, contrary to this Court’s decisions in *Buckley v. Valeo*, 424 U.S. 1, 79 (1976) (*per curiam*) and *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 252 n. 6 (1986), no finding was ever made that these statements and publications comprised a majority, plurality, or even a substantial portion of the Council’s activity or expenditures. The Court of Common Pleas, Franklin County, upheld the Commission’s ruling despite the absence of such a finding, as did the Ohio Court of Appeals, Tenth Appellate District. The Supreme Court of Ohio, by a vote of 4-3, declined to review those rulings.

The questions presented are:

1. May the major purpose test for political committee status, established by this Court in *Buckley v. Valeo* and *FEC v. Mass. Citizens for Life*, be satisfied without finding that

regulated activity comprises the majority of an organization's activity or expenditures?

2. May a state meet its burden of demonstrating an organization's major purpose without determining the portion of its expenditures directed toward political communications?

PARTIES TO THE PROCEEDING

The Petitioners (Appellants below) are Edmund Corsi and the Geauga Constitutional Council, an unincorporated entity.

The Respondent (Appellee below) is the Ohio Elections Commission.

Edmund Corsi and the Geauga Constitutional Council respectfully petition for a writ of certiorari to review the judgment of the Ohio Court of Appeals, Tenth District, in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Ohio denying certiorari is reprinted in the Appendix at 51a and is reported at *Corsi v. Ohio Elections Comm'n*, 984 N.E.2d 29 (Ohio 2013). The opinion of the Ohio Court of Appeals is reprinted in the Appendix at 1a and is reported at *Corsi v. Ohio Elections Comm'n*, 981 N.E.2d 919 (Ohio Ct. App. 2012). The opinion of the Ohio Court of Common Pleas is reprinted in the Appendix at 21a and is unreported. The Ohio Elections Commission's administrative Decision and Filing is reprinted in the Appendix at 35a and is unreported.

JURISDICTION

Petitioner seeks review of the judgment and opinion issued by the Ohio Court of Appeals on October 18, 2012. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) after the Ohio Supreme Court denied Petitioner's request for review by that court on March 13, 2013.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The relevant provisions of U.S. CONST. amend I, U.S. CONST. amend. XIV, OHIO REV. CODE ANN. §§ 3517.10(A), 3517.10(D)(1), 3517.10(D)(4) (2012), and

OHIO ADMIN. CODE 3517-1-14(B) (2012) appear in the appendix at App. 52a-64a, *infra*.

STATEMENT

This case presents a fundamental question of campaign finance law that has been a significant source of confusion at the state level. Since 1976, this Court’s rulings have limited the scope of federal political committee status to groups that are “under the control of a candidate or the major purpose of which is the nomination or election of a candidate.” *Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 252 n. 6 (1986) (“*MCFL*”) (Brennan, J.) (plurality opinion). Ohio purports to incorporate this test in its own definition of political action committee. OHIO REV. CODE ANN. § 3517.01(B)(8) (“the primary or major purpose of [a PAC] is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy”). But a recent decision of the Ohio Elections Commission (“OEC”), upheld by the state courts, interpreted that statute to require an organization to register as a PAC even where political advocacy does not comprise a majority—or even a substantial portion—of its activity or expenditures.

The OEC found that the Geauga Constitutional Council (“GCC”), a small, unincorporated entity, was a PAC under Ohio law. In so doing, it specifically found that the GCC has “a major purpose” of supporting or opposing candidates or issues. OEC Decision and Finding, App. at 49a (emphasis supplied). It did not find that such support or opposition was the GCC’s *primary*

purpose, as allowed by Ohio law. R.C. § 3517.01(B)(8) (defining PACs as those organizations meeting a “primary or major purpose” requirement). This is doubtless because, as its Chairman noted, the Commission believes that “[m]aybe you can only have one primary purpose, but you can certainly have more than one major purpose.” Tr. of OEC Hearing, April 28, 2011, at 108. Put differently, the OEC’s decision turned on a belief that political advocacy comprised a portion—but not a majority—of the GCC’s activities.

In fact, the OEC made no finding whatsoever regarding how much of the GCC’s total activity was political, instead satisfying itself with a finding that the organization engaged in *some* political activity. The OEC consulted only a few pieces of evidence in identifying political advocacy as one of the GCC’s major purposes, and conducted no overall analysis of the organization’s activities. In particular, it did not investigate what portion of the GCC’s finances were spent on political communications, nor did it require the state to prove that such expenditures constituted any particular portion of total GCC spending. As a result, Ohio law now subjects an organization engaging in any substantial political activity to PAC registration and reporting requirements,¹ but

¹ Petitioners do not contest that they may be required to report actual independent expenditures, as in *MCFL*, 479 U.S. at 252 (Brennan J.) (plurality opinion). The question, also as in *MCFL*, is whether they can be required to take on the substantial added burdens of registering with the government as a PAC and complying with those detailed and extensive regulations. *Compare, id.* at 253-54 (Brennan J.) (plurality opinion) (discussing burdens of political committee status) *with id.* at 266 (O’Connor, J. concurring) (discussing

provides no guidance as to how this substantiality is demonstrated, or what portion of total activity subjects an entity or group to this regime.

PROCEDURAL HISTORY

On June 28, 2010, OEC Director Philip Richter informed Edmund Corsi that a complaint had been filed against the GCC and Mr. Corsi personally. Edward Ryder, chairman of the Geauga County Republican Party and a member of the Geauga County Board of Elections, initiated the complaint on behalf of the Board. Mr. Corsi obtained counsel, and on August 4, 2010, moved the OEC for judgment on the pleadings. Proceedings before the entire OEC took place on April 28, 2011. The proceedings and all OEC deliberations were public and transcribed by OEC staff.

During the hearing, counsel for the GCC reminded the Commission of the state's law regarding the major purpose test, inviting the Commission to "look for the expressed advocacy, look for whether the primary or major purpose is actually elections or any kind of money is actually for electioneering." OEC Tr. at 16. Petitioners' counsel further noted that the state law reads, "primary or major, not incidental purpose" and that "[w]hat the Supreme Court says in *Buckley v. Valeo* is that you can only regulate the support or opposition of a candidate." OEC Tr. at 84-85.

The proceeding included testimony from two witnesses, the complainant Mr. Ryder and the

organizational constraints imposed by political committee status).

respondent Mr. Corsi. Both parties also presented affidavits from others involved either directly or tangentially with the GCC. Additionally, eleven exhibits—a copy of GCC’s pamphlet, printouts from the GCC website, etc.—were introduced before the OEC. The state introduced no information concerning the full and accurate cost of any of the GCC’s activities, nor did the OEC conduct its own investigation or analysis.

Mr. Ryder explained that he decided to file the complaint after “[a] couple of different people brought me...[a] little pamphlet that was being passed out at the booth that the Constitutional Council had at the [county] fair.” OEC Tr. at 18. Mr. Ryder attended the fair as chairman of the county Republican Party, which was also participating in the event. *Id.* After learning that the pamphlet—which included a list of officeholders and candidates the GCC was “supporting and not supporting”—did not carry the disclaimer mandated by state law for PAC expenditures, Ryder took the issue to the Board, which ultimately referred the matter to the OEC. *Id.* at 19.

Following the complainant’s cross-examination of Mr. Corsi, members of the Commission were allowed to ask him questions. Although the hearing had not yet concluded, OEC Commissioner Mrockowski declared that the GCC appeared to

walk like a duck, sound like a duck, poops [*sic*] like a duck, does all these other things like a duck, it’s a duck. Everything that you have done here, to me, shows me that you’re a PAC....I’ve seen others come here that

must comply by the law, fill out the forms, do what you need to do. And I think that's what you need to do, sir.

Id. at 74-75.

In response, Mr. Corsi referred Commissioner Mrockowski to his attorney's arguments in the still ongoing hearing. *Id.* These included the need to find not only that GCC engaged in some political activity, but that such activity was its major purpose. *Id.* at 9-16.

After the parties concluded their arguments, the Commission engaged in an open discussion. One commissioner asked Director Richter to "define the elements of a PAC." *Id.* at 90. And once the Commission determined that Mr. Corsi had not acted alone, Mr. Mrockowski asked Chairman Bryan Felmet whether the PAC analysis went "beyond that...that in itself does that say, by statute, that that's a PAC?" *Id.* at 97. Chairman Felmet responded, "we have to determinate" whether "advocacy or a primary purpose or something less than a primary purpose" described the GCC's activities. *Id.* at 99. Director Richter reminded the Chairman that under Ohio law, a PAC could be regulable if express advocacy constitutes either the "major purpose" or the "primary purpose" of an organization. *Id.* Chairman Felmet responded: "[o]h, it says primary or major?" *Id.*

The Commission discussed the educational components of the GCC, as well as the Council's mission statement. Chairman Felmet noted that he initially wanted to determine that the Council's activities did not require PAC registration, but that "primarily [because of] the mission statement" he had decided GCC was likely a PAC. *Id.* at 103-04.

The Chairman also acknowledged the educational nature of the only GCC events where fees for attendance and food were charged, and noted, “[i]f that’s all you did, you’re not a PAC.” *Id.* at 106-07. “Maybe,” the Chairman mused, “you can only have one primary purpose, but you can certainly have more than one major purpose.” *Id.* at 108. Finally, emphasizing the OEC’s standard-less approach to the major purpose test, the Chairman stated: “I note[] in your affidavit you say, ‘Do I have to hire a lawyer to avoid these things?’ Yeah, I guess so. I think that’s – it’s very complicated without going to those lengths.” *Id.* at 104; *compare Citizens United v. FEC*, 558 U.S. 310, 324 (2010) (“The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day.”).

In its written Decision, the OEC concluded that “[t]he second portion of the definition of a PAC under Ohio law is whether the activities of the organization fulfill the ‘primary or major purpose’ element,” but the statute does not “help define that phrase.” OEC Decision and Finding, App. at 43a. Thus, the Commission turned to dictionary definitions of “major” and “purpose.” *Id.*

It then reasoned that “[t]he appropriate way to judge an organization...is through its self-proclaimed Mission Statement.” *Id.* at 23a. Finding that express advocacy was the third element of the Council’s mission statement, the Commission deemed that “it is certainly reasonable to assert that by including this item among the only three action items in the Mission Statement of the GCC that this

is a major purpose of the organization.” *Id.* at 44a-45a. But the Commission specifically noted that “by listing this element third in the hierarchy of its actions the GCC does not consider this element the primary mission of the organization, as a primary mission would be ‘first in order’ or ‘of first rank.’” *Id.* at 43a (quoting WEBSTER’S NEW WORLD DICTIONARY (2d college ed. 1986)).

The Commission supplemented this finding by “reviewing the materials included in the complaint and presented at the hearing.” *Id.* at 48a. After concluding this limited review, the Commission decided “[t]here could be no clearer indication of express advocacy as there is contained in these statements.” *Id.* The Commission made no finding, however, as to what portion of the GCC’s activities this express advocacy comprised. Moreover, the Commission expressly declined to review GCC’s finances as part of its inquiry. *Id.* at 39a.

The GCC appealed to the Franklin County Court of Common Pleas, arguing that “*the* major purpose of any group, not simply *a* major purpose must be...express advocacy in order for PAC regulations of speech to attach to otherwise free political speech.” Corsi R. Br. (C.P.) at 1 (internal citations omitted, emphasis in original). Further, the Council argued that the method the OEC used to determine PAC status was incorrect, as “the major purpose of anything, group or individual, cannot be ascertained without reviewing that person or entity’s *entire body of work*, to determine what quotient thereof constitutes express advocacy.” Corsi R. Br. (C.P.) at 1-2 (internal citations omitted, emphasis in original). But in a decision handed down on October 27, 2011, the trial court determined that

“overwhelming evidence” existed “that a major purpose of the GCC is to support or oppose candidates or issues as demonstrated in the Mission Statement and throughout the materials authored on behalf of the GCC.” Decision and Entry, Court of Common Pleas, App. at 26a (citing OEC Decision) (emphasis added).

The GCC appealed this ruling to the Tenth Appellate District of the Court of Appeals of Ohio, arguing that the “OEC’s standards in applying the ‘primary or major purpose’ test...ignore[d] actual spending on express advocacy for or against identified candidates” and “ignore[d] the totality of a speaker’s speech” while “only requir[ing] ‘a’ major purpose of express advocacy.” Corsi R. Br. (Ohio Ct. App.) at 9 (emphasis supplied). Further, by refusing to make a “comparison of the organization’s spending with overall spending to determine whether the preponderance of expenditures are for express advocacy or contributions to candidates,” the GCC’s PAC status was derived in violation of *MCFL*. Corsi R. Br. (Ohio Ct. App.) at 9-10 (internal citations and quotations omitted). Nonetheless, the Court of Appeals handed down a decision on October 18, 2012, which held that Ohio’s PAC status regime was consistent with *Buckley v. Valeo*, and it was permissible to determine “the Council’s major or primary purpose was express advocacy...based on a number of facts, none of which involved how much money was spent or received.” *Corsi v. Ohio Elections Comm’n*, 2012 Ohio 4831, App. at 17a ¶ 25 (Ohio Ct. App. 2012) (citation omitted).

REASONS FOR GRANTING THE PETITION

- A. The Ohio Court of Appeals applied the First Amendment in a manner inconsistent with the major purpose test required by *Buckley v. Valeo* and *Mass. Citizens for Life v. FEC*.

In 1976, this Court decided *Buckley v. Valeo*, an omnibus challenge to the then-recently amended Federal Election Campaign Act (“FECA”). *Buckley v. Valeo*, 424 U.S. 1, 6-7 (1976). Of particular import here, the *Buckley* Court emphasized the need to shield issue speech from government regulation, including registration and filing requirements. *Id.* at 42-44, 79-80. But the resulting need to distinguish issue speech from electoral advocacy posed a difficult challenge, as “the supposedly clear-cut distinction between discussion, laudation, general advocacy, and solicitation puts the speaker in these circumstances wholly at the mercy of the varied understanding of his hearers and consequently of whatever inference may be drawn as to his intent and meaning.” *Id.* at 43 (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)) (discussing FECA’s limits on political expenditures).

FECA’s definition of “expenditure,” a term that triggered PAC status, posed a particularly thorny problem. Congress had written the law in such a way that it appeared “to prohibit all individuals...except political parties and campaign organizations from voicing their views relative to a clearly identified candidate through means that entail aggregate expenditures of more than \$1,000 in a calendar year.” *Id.* at 39-40 (internal quotation marks omitted). In order to save the statute from

constitutional infirmity, the *Buckley* Court limited the definition of “expenditure” to communications that “contain[] express words of advocacy of election or defeat, such as ‘vote for,’ ‘elect,’ ‘support,’ ‘cast your ballot for,’ ‘Smith for Congress,’ ‘vote against,’ ‘defeat,’ [and] ‘reject.’” *Id.* at 43 n. 52.

The need to protect issue speech from regulation also required the Court to address FECA’s definition of “political committee.” Having already limited the definition of “expenditure” to express advocacy, the Court found that Congress could only regulate groups making expenditures if they were also “under the control of a candidate or [had] the major purpose” of expressly advocating the election or defeat of candidates. *Id.* at 79.

The Court revisited—and reaffirmed—this standard in *MCFL*. In that case, the Court determined that MCFL had a “central organizational purpose...[of] issue advocacy,” and that while it “occasionally engage[d] in activities on behalf of political candidates,” this was not MCFL’s major purpose. *MCFL* at 252 n. 6.

Writing for a plurality of the Court, Justice Brennan expressed concern that the burdens of disclosure accompanying PAC status might overwhelm small, grassroots organizations. *Id.* at 253-54. Justice O’Connor, in concurrence, feared that “the organizational restraints” of being a political committee might hinder issue groups from raising money for their causes. *Id.* at 266. The Court concluded that MCFL would be classified as a political committee only if its “independent spending bec[a]me so extensive that the organization’s *major purpose* may be regarded as campaign activity.” *Id.* at 262 (emphasis supplied).

Similarly, in *McConnell v. FEC*, this Court reaffirmed the major purpose test, specifically quoting *Buckley*'s refined definition of a political committee. 540 U.S. 93, 170 n. 64 (2003).

In contrast to *Buckley* and *MCFL*'s test, Ohio law now conceptualizes “political action committees”—entities bearing substantively the same burdens as federal “political committees”—as organizations with *multiple* “major” purposes, including some political advocacy. The Ohio Revised Code provides that a “political action committee” is “a combination of two or more persons, the primary or major purpose of which is to support or oppose any candidate, political party, or issue, or to influence the result of any election through express advocacy...” OHIO REV. CODE ANN. § 3517.01(B)(8) (2012).

Ohio's statute and its enforcement by the OEC are inconsistent with this Court's precedents and the First Amendment, as incorporate against the states by the Fourteenth Amendment. In its Decision and Finding, the OEC held that because “*one* of the GCC's *major purposes* is to support or oppose a candidate or issue,” registration as a PAC was mandatory. OEC Decision, App. at 45a (emphasis supplied). However, the OEC did not consider spending or any other indicia of the GCC's overall activities, nor did it compare the relative proportions of GCC's political activity to its overall activity. Thus, the OEC's analysis is inconsistent with *Buckley* and *MCFL*, because it required the Petitioner to register as a PAC, but did not require the state to demonstrate that a majority of the GCC's activities were political, or even conduct an inquiry in that regard.

Of particular relevance to the OEC was the GCC's voter guide. *Id.* at 45a-46a. But as this Court has made clear, a voter guide—even one which constitutes express advocacy—does not compel PAC status. *MCFL* at 262. Indeed, the *MCFL* Court reviewed all of MCFL's "diverse education and legislative activities designed to further its agenda." *Id.* at 242. The express advocacy contained in MCFL's voter guide was weighed against, *inter alia*, newsletters, discussion groups, proposed legislation, "a prayer service...in front of the Statehouse," and testimony before the Massachusetts state legislature. *Id.* at 242-43.

The Commission entirely failed to undertake a similarly comprehensive analysis of the GCC's body of work. Instead, the OEC pulled statements from the GCC's mission statement and flyers, without weighing what proportion this activity held towards the overall functions of GCC. This is precisely the scenario *Buckley* sought to avoid. "No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation." *Buckley*, 424 U.S. at 43.

B. Because the decision below reflects an approach to the major purpose test taken by a number of state governments, the questions presented are of exceptional importance.

Ohio has codified "the primary or major purpose" requirement in its campaign finance laws. But in applying this standard, the Commission found that the GCC was a PAC despite having more than one major purpose. Moreover, it failed to

articulate any standard for what portion of the GCC's activities must be political in order to trigger PAC status. Indeed, such a holding would have been impossible given the OEC's failure to determine—or even inquire about—the portion of GCC's activities that were political.

The “multiple major purpose PAC” is not unique to Ohio. Most states fail to articulate any sort of statutory major purpose requirement, requiring groups with *de minimis* express advocacy to register as political committees. *See, e.g.* ALA. CODE § 17-5-2(a)(11) (2013) (regulating organizations which receive contributions or make expenditures, or merely anticipate doing so) CONN. GEN. STAT. § 9-601(1) (2013) (regulating organizations which are designed “to aid or promote” success or defeat of a candidate). Other states impose arbitrary monetary triggers, a sure means to capture groups with minimal electioneering involvement. *See, e.g.* FLA. STAT. § 106.011(1)(a) (2013) (\$500 monetary trigger), ARIZ. REV. STAT. § 16-901(19) (2013) (\$250 monetary trigger). Still other states regulate groups with merely *a* major purpose, not *the* major purpose, a rejection of this Court's holding in *Buckley*. *See, e.g.* KAN. STAT. ANN. § 25-4143(k)(1) (2013) (regulating organizations which have “a major purpose” of expressly advocating for or against the election or defeat of a clearly identified candidate).

Colorado is another such example. The state permits regulation of groups with *a* major purpose of electioneering. *See* COLO. CONST. ART. XXVIII, § 2(10). In 2008, “a nonprofit policy research organization” which had become embroiled in the campaign finance laws, sued the Colorado secretary of state, arguing that the state's “a major purpose”

test was unconstitutional. *Independence Institute v. Coffman*, 209 P.3d 1130, 1134 (Colo. App. 2008). The state court of appeals upheld the “a major purpose requirement,” partially based on the odd conclusion that if “an organization...has four equally important purposes, only one of which is electoral advocacy,” then “[i]t will be easier, not harder, to determine ‘a’ rather than ‘the’ major purpose of that organization.” *Id.* at 1143 (Connelly, J., concurring). Both the Colorado Supreme Court and this Court denied the Institute’s requests for *certiorari*. *Cert. denied sub nom., Independence Institute v. Buescher*, 2009 SC 26 (Colo. 2009), *cert. denied* 558 U.S. 1024 (2009).

In Utah, the state’s political issues committee definition was struck down by a federal court, on the grounds that the major purpose test was mandatory, as “*Buckley* did indeed mean exactly what it said.” *Nat’l Right to Work Legal Defense and Ed. Found., Inc. v. Herbert*, 581 F.Supp. 2d 1132, 1154 (D. Utah 2008) (citing *N.C. Right to Life v. Leake*, 525 F.3d 274, 288 (4th Cir. 2008)). In response to the court’s order, the state of Utah declined to adopt the major purpose test, instead defining political committees as those having merely “a major purpose” of electioneering, a decision that simply copied the law in neighboring Colorado. UTAH CODE ANN. §§ 20A-11-101(30)(a) and -101(32)(a) (2013).

Other states have explicitly required registration for groups whose major purpose is not express advocacy. Maine has created a category of non-major purpose PACs which must register with the state upon spending an arbitrary amount “promoting, defeating or influencing the nomination or election of any candidate to political office.” ME. REV. STAT. tit. 21-A, §§ 1052(5)(A)(5), 1053 (\$5,000

trigger). The First Circuit upheld these explicitly non-major purpose PAC requirements because, *inter alia*, the Supreme “Court has never applied a ‘major purpose’ test to a state’s regulation of PACs.” *Nat’l Org. for Marriage v. McKee*, 649 F.3d 34, 59 (1st Cir. 2011), *cert. denied* 132 S.Ct. 1635 (2012).

Unless this Court weighs in, the major purpose requirement is poised to become a dead letter in the states. Just this past year, the state of Nevada enacted a new campaign finance law that regulates any organization which has as its “primary purpose” affecting the outcome of an election, and which spends \$1,500 toward that end. 2013 Nev. Stat. 259, § 1, 77th Sess. (Nev. 2013) (effective Oct. 1, 2013) (amending NEV. REV. STAT. § 294A.0055 (2013)). But the statute also regulates any organization that “does not have as its primary purpose” affecting the outcome of an election, provided that the organization meets the arbitrary measure of receiving contributions or making expenditures in excess of \$5,000. *Id.*

The “considered judgment of” this Court and other federal courts ought not to “be lightly cast aside.” *Newdow v. Rio Linda Union Sch. Dist.*, 597 F.3d 1007, 1075 n. 55 (9th Cir. 2010) (Reinhardt, J., dissenting). This is particularly true in the context of political rights enshrined in the First Amendment, which are “integral to the operation of the system of government established by our Constitution.” *Buckley*, 424 U.S. at 14. Many states, including Ohio,² have adopted systems whose vague and

² Particularly when applied by entities such as state elections commissions. For some of the problems faced by organizations at the OEC, including the partisanship and lack of legal

overbroad triggers “offer[] no security for free discussion”—the very harm *Buckley* sought to avoid. *Id.* at 43. The states’ refusal to apply the major purpose test is even more troubling when many of the most egregious offenders, such as Colorado, Nevada, and certainly Ohio, are perennially competitive states in national elections.

- C. Because the Ohio courts failed to require any showing that political activity comprised the majority of Petitioner’s activities, or any analysis concerning what portion of Petitioner’s activities were political, this case is a superior vehicle for addressing the scope of the major purpose test.

This case presents the Court with an opportunity to address widespread misapplication of *Buckley* and *MCFL*. See *Cooper v. Aaron*, 358 U.S. 1 (1958). The Ohio District Court of Appeals and the Franklin County Court of Common Pleas both accepted the Ohio Elections Commission’s finding that PAC status attaches even when political advocacy does not constitute the majority of a group’s activities, and despite the OEC’s complete failure to undertake any comparative analysis of the cost or frequency of the GCC’s political activities versus other activities, such as non-political blogging and concededly-educational events. OEC Transcript at 53-55 (discussing education forums the GCC

training of members, and the lack of adequate procedures for building a record, see Br. of *Amicus Curiae* Att’y Gen. of Ohio, *COAST Candidates PAC v. Ohio Elections Comm’n.*, No. 11-cv-775, (S.D. Ohio 2012) available at http://www.hamilton-co.org/cinlawlib/blog/DeWine_COAST_brief.pdf.

hosted); 72 (discussing certain posts from the GCC's blog). Indeed, as discussed above, the OEC's Chairman conceded that the GCC's events with national speakers, where GCC "was bringing money in" to pay for tickets and food, were educational in nature. OEC Tr. at 106-08.

This Court has not hesitated to address such egregious legal errors when committed by state courts. *See, e.g., Presley v. Georgia*, 558 U.S. 209 (2010) (*per curiam*) ("The Supreme Court of Georgia's affirmance contravened this Court's clear [Sixth Amendment] precedents"); *Arkansas v. Sullivan*, 532 U.S. 769, 771 (2001) (*per curiam*) ("Because the Arkansas Supreme Court's decision on rehearing is flatly contrary to this Court's controlling [Fourth Amendment] precedent, we grant the State's petition for writ of certiorari and reverse"); *Ohio v. Reiner*, 532 U.S. 17, 21 (2001) (*per curiam*) ("The Supreme Court of Ohio's determination...clearly conflicts with *Hoffman* and *Grunewald*"). When a statute is in "direct conflict with [the Court's]...precedents" and "simply cannot be squared" with the Court's decisions, it is the province of this Court to instruct lower courts they are "mistaken." *Lambert v. Wicklund*, 520 U.S. 292, 293, 297 (1997) (*per curiam*).

Such is the case here. *Buckley* and *MCFL* plainly require comparison of an organization's political activity to its overall activity before PAC status, with its various burdens, can be imposed. *Buckley*, 424 U.S. at 79; *MCFL*, 479 U.S. at 252, n.6 (Brennan, J.) (plurality opinion). The OEC's failure to do so constitutes an unconstitutional act, one which was squarely presented to the state courts that reviewed that act. *See, supra* at 8-9.

This Court’s silence on cases involving express advocacy and the major purpose test only encourages courts and legislatures to move further from the dictates of this Court’s *per curiam* opinion in *Buckley v. Valeo*. *Corsi v. Ohio Elections Comm’n* (Ohio. Ct. App. 2012), App. at 17a ¶24 (citing *Real Truth About Abortion, Inc. v. FEC*, 681 F.3d 554, 555-58 (4th Cir. 2012), *cert denied* 133 S. Ct. 841 (2013), for the proposition that examining expenditures is not the “only method to determine PAC status...”). GCC’s experience provides a clean opportunity for this Court to declare the major purpose test mandatory, and to require the states to undergo the comparative analysis that is already required at the federal level. *See Real Truth*, 681 F.3d at 555; *N.M. Youth Organized v. Herrera*, 611 F.3d 669, 677 (10th Cir. 2010).

CONCLUSION

For the foregoing reasons, this Court should grant the petition for a writ of *certiorari*.

Respectfully submitted,

Maurice A. Thompson
1851 CENTER FOR
CONSTITUTIONAL LAW
208 E. State Street
Columbus, Ohio 43215
Tel: (614) 340-9817

Allen Dickerson
Counsel of Record
Tyler Martinez
Zac Morgan
Anne Marie Mackin
David Silvers
CENTER FOR COMPETITIVE
POLITICS
124 S. West Street, Ste. 201
Alexandria, Virginia 22314
Tel: (703) 894-6800
adickerson@campaignfreedom.org
Counsel for Petitioners