

NO. 11-4667

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**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**UNITED STATES OF AMERICA,**

Appellant,

v.

**WILLIAM P. DANIELCZYK, JR. and EUGENE R. BIAGI,**

Defendants-Appellees.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
(The Hon. James C. Cacheris, District Judge)

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**BRIEF FOR *AMICI CURIAE*  
DAVID M. PRIMO, PH.D. AND JEFFREY D. MILYO, PH.D  
IN SUPPORT OF APPELLEES AND AFFIRMANCE**

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Terence P. Ross  
(COUNSEL OF RECORD)  
Jessica M. Thompson  
CROWELL & MORING LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2595  
(202) 624-2500

Counsel for *Amici Curiae*

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## IDENTITY AND INTEREST OF *AMICI CURIAE*<sup>1</sup>

*Amici* are respected scholars in the area of campaign finance law and the effect thereof upon public perceptions of government, competitiveness of elections, and participation in the democratic process. David M. Primo, Ph.D. is Associate Professor of Political Science and Business Administration at the University of Rochester. Jeffrey D. Milyo, Ph.D. is the Middlebush Professor of Social Sciences and Professor of Economics at the University of Missouri at Columbia. Dr. Primo and Dr. Milyo have both served as expert witnesses in a variety of campaign finance cases brought in federal court. Dr. Primo's expert testimony was cited in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806, 2822, 180 L.Ed.2d 664, 683 (2011).

One of the issues presented by this appeal is whether laws barring contributions by corporations to candidates for federal office promote a positive view of government by the public by reducing corruption or the appearance of corruption. In support of this proposition, the United States relies upon research conducted by *Amici*, Dr. Primo and Dr. Milyo. Dr. Primo and Dr. Milyo do not believe that their research supports such a conclusion. Thus, *Amici* have an interest

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<sup>1</sup> All parties to this action have consented to the filing of this *amicus* brief. No party's counsel authored this *amicus* brief in whole or in part. In addition, no party, party's counsel or third party contributed money to fund the preparation or submission of this *amicus* brief.

in correcting these mistaken assertions by the United States both to protect the integrity of their scholarship and to insure that their research is properly understood by the Court. Dr. Primo and Dr. Milyo will explain herein that laws regulating corporate contributions to candidates for federal office have little effect upon public perceptions of government. Thus, *Amici's* research calls into question a key justification for such laws.

### **INTRODUCTION AND SUMMARY OF ARGUMENT**

The opening brief of the United States asserts as fact that “contributions by corporations also heighten public perceptions that government is corrupt.” Brief of Appellant at 42. The exclusive scholarly support cited for this proposition is an article authored by *Amici. Id.* (citing David M. Primo & Jeffrey Milyo, *Campaign Finance Laws and Political Efficacy: Evidence From The States*, 5 Election L.J. 23 (2006)). The argument of the United States, however, reflects a misinterpretation of this article. *Amici's* research has established that the effects of corporate campaign contribution restrictions on perceptions of government – specifically, measures of “political efficacy” – are modest, at best. Systematic analysis of statistical evidence does *not* establish that perceptions of government are meaningfully improved by stricter campaign finance laws, including corporate contribution limits. Thus, *Amici's* article, contrary to the assertion of the United States, does *not* support an argument that corporate contributions heighten

perceptions of government corruption. Moreover, the conclusion reached in *Amici's* article that campaign finance laws have little to no effect on public perceptions of government is supported by other academic research.

## ARGUMENT

### **I. The Research Of *Amici Curiae* Does Not Support The Assertion By The United States That Public Perceptions Of Government As Corrupt Increase When Corporate Campaign Contributions Are Allowed.**

The United States argues that the prohibition of corporate contributions to candidates for federal office, 2 U.S.C. § 441b(a) (hereinafter, “Section 441b”), is closely drawn to prevent corruption and the appearance of corruption. To support this argument, the United States asserts that: “Contributions by corporations . . . heighten public perceptions that government is corrupt.” Brief for Appellant at 42. The exclusive scholarly support cited for this proposition is an academic article authored by *Amici*. *Id.* (citing David M. Primo & Jeffrey Milyo, *Campaign Finance Laws and Political Efficacy: Evidence From The States*, 5 Election L.J. 23 (2006) (hereinafter, “*Campaign Finance Laws*”). The argument of the United States, however, misinterprets this article and, thus, its assertion that corporate contributions heighten perceptions of government as corrupt is inaccurate.

*Amici's* article, *Campaign Finance Laws*, studies the effects of state campaign finance laws on three public opinion questions related to “political efficacy” – the belief that an individual can influence the political process. These

questions focus on three aspects of efficacy: whether people “like them” have a say about what the government does; whether public officials care what people “like them” think; and whether politics is too complicated for a person “like them” to understand.<sup>2</sup> *Amici* studied whether responses to these questions were influenced by the existence or absence of four types of state campaign finance regulations – disclosure requirements; limits on organizational contributions (including corporate contributions); limits on individual contributions; and public financing of elections. *Campaign Finance Laws* was the first scholarship to use state campaign finance laws to study the relationship between campaign finance regimes and perceptions of government.

*Amici’s* research, as set out in *Campaign Finance Laws*, revealed that there was a “statistically significant” relationship between public confidence in state government’s responsiveness to individual citizens and the existence of limits on organizational campaign contributions. *Campaign Finance Laws, supra*, at 33. *Amici’s* research, however, further discovered that “the results for contribution limits, even when statistically significant, are substantively modest.” *Id.* at 35. Moreover, for all three measures of political efficacy, the effects of corporate

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<sup>2</sup> These questions are part of a biennial survey of the American electorate, the American National Election Studies. See <http://www.electionstudies.org> (last visited January 10, 2012).

campaign contribution limits are small. Using the measure of efficacy that yields the strongest results, *Amici's* research revealed that voters living in states with corporate campaign contribution limits (and no individual limits) have a four percent (4%) greater chance of being politically efficacious; voters living in states with both corporate and individual campaign contribution limitations have a one percent (1%) *smaller* chance of being politically efficacious – an effect which is not statistically significant. *Id.* at 34. Thus, *Amici* concluded that campaign finance laws, including limits on corporate contributions, have little to no effect on how citizens view their government.<sup>3</sup>

Reliance by the United States upon *Amici's* article is misplaced. The United States' mistake is founded upon a misunderstanding of the distinction between “statistical significance” and “substantive significance.” When a research finding is statistically significant, it means that the researcher can be confident that the finding is not due to chance. Statistical significance, however, provides no

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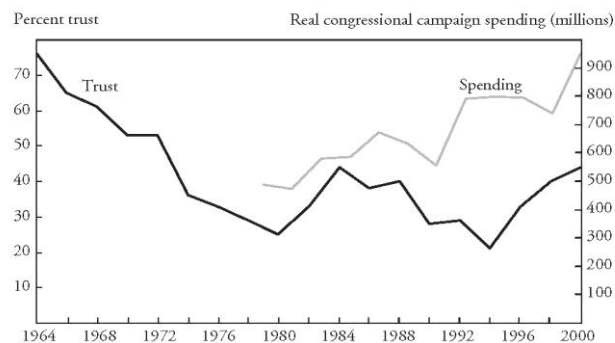
<sup>3</sup> A working paper by Dr. Milyo expands upon the methodology used by *Amici* in *Campaign Finance Laws*. Dr. Milyo's new work pools the results of several national surveys of voter perceptions of state government. The findings of this new research are consistent with *Amici's* findings in their *Campaign Finance Laws* article. See Jeffrey Milyo, *Do State Campaign Finance Reforms Increase Trust and Confidence in State Government* (November 2010) (unpublished paper) available at [http://web.missouri.edu/~milyoj/files/CFR%20and%20trust%20in%20state%20government\\_v2.pdf](http://web.missouri.edu/~milyoj/files/CFR%20and%20trust%20in%20state%20government_v2.pdf) (last visited January 9, 2012).

guidance as to whether the effects found are large or small (*i.e.*, whether the finding is substantively significant). For example, research might find that drinking a single cup of coffee per day reduces the likelihood of catching a cold by .0000001 percent, and that this result is statistically significant. This means that the findings are unlikely to be attributable to chance, but it does not mean that one can conclude drinking a daily cup of coffee will ward off colds. In other words, although this finding is statistically significant, it is not substantively significant.

*Amici's* findings published in their article, *Campaign Finance Laws*, reflects a result analogous to the foregoing example. Although *Amici's* finding that there is a four percent (4%) greater chance of a voter believing himself or herself to be politically efficacious in a state with corporate campaign contribution limits is statistically significant – unlikely to be attributable to chance – it is not substantively significant. In addition, this effect is not present in states where individual contribution limits are also in place. Accordingly, these findings do not support the argument that the public is more likely to perceive government as corrupt when corporate campaign contributions are allowed, as the United States asserts in this case.

## II. The Academic Research Does Not Support The Assertion By The United States That Public Perceptions Of Government Are Influenced By Political Contributions And Spending.

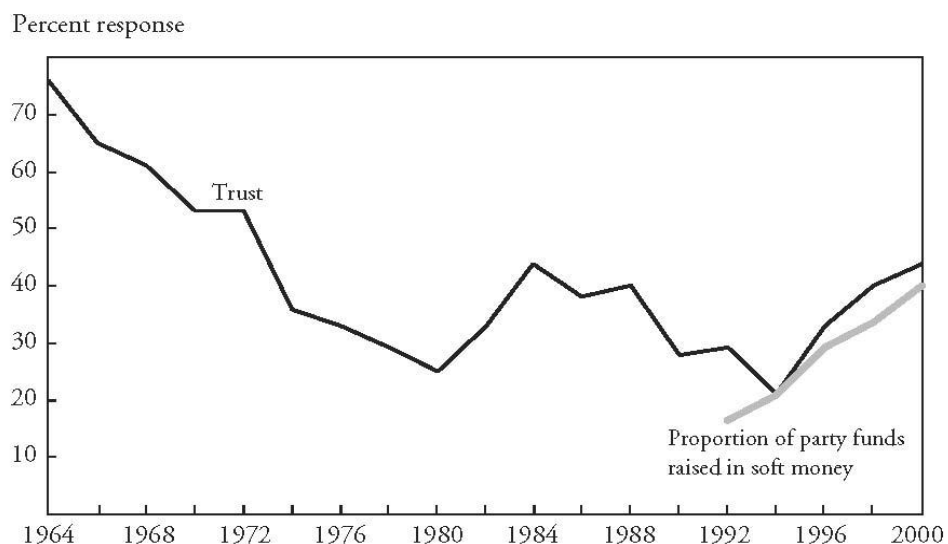
The overwhelming majority of empirical studies have found virtually no relationship between trust in government and political contributions and spending. For example, as shown in Figure 1 below, a 2003 study demonstrated that the sharp decline in the public trust of government in the 1960s and 1970s preceded the significant increase in Congressional campaign spending that began in the late 1970s. See David M. Primo, *Campaign Contributions, and Appearances of Corruption, and Trust in Government*, in *Inside the Campaign Battle: Court Testimony on the New Reforms*, 285, 290 (A. Corrado *et al.* eds., 2003). Moreover, this same study found virtually no relationship between campaign spending and trust in government during the period after 1980. *Id.*



**Figure 1: The Decline in the Public's Trust in Government Preceded a Spike in Congressional Campaign Spending<sup>4</sup>**

<sup>4</sup> *Campaign Contributions*, *supra*, at 290.

Indeed, as shown in Figure 2 below, this study discovered that trust in government actually increased at the same time that political parties were becoming more dependent upon “soft money” – contributions to political parties that, to a large extent, come from corporations. *Id.*



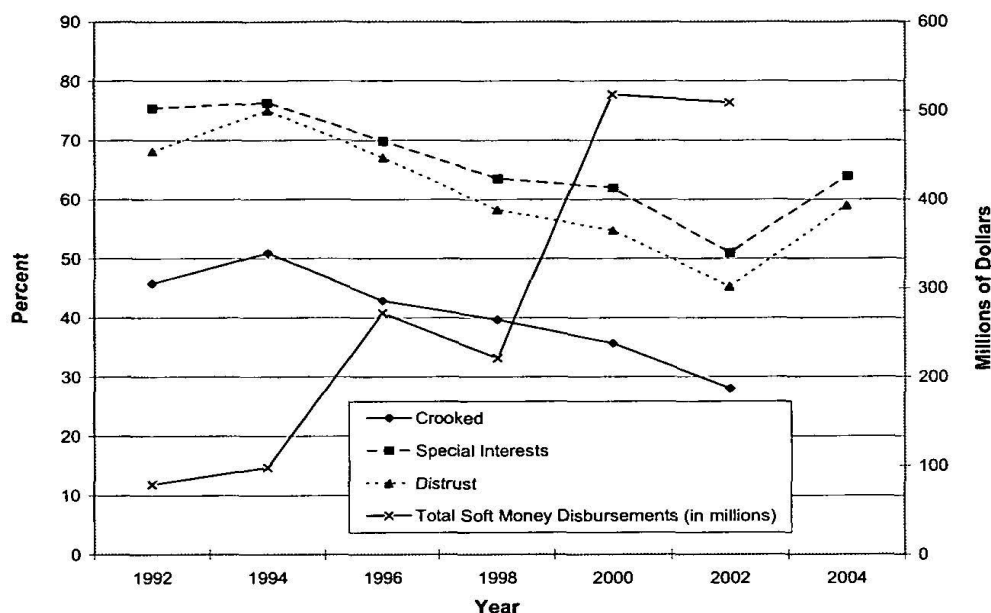
**Figure 2: As the Political Parties Became More Dependent on Soft Money, Trust in Government Increased<sup>5</sup>**

A 2004 study confirmed, as shown in Figure 3 below, that, even as “soft money” contributions increased in the 1990s, public perceptions of government as corrupt were declining. *See* Nathaniel Persily and Kelly Lammie, *Perceptions of Corruption and Campaign Finance: When Public Opinion Determines Constitutional Law*, 153 U. Pa. L.Rev. 119 (2004). This study concluded that

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<sup>5</sup> *Id.*

“trends in general attitudes of corruption seem unrelated to anything happening in the campaign finance system (e.g., a rise in contributions or the introduction of a particular reform).” *Id.* at 122. Instead, the study explained the public’s perception of corruption rises and falls with the popularity of the incumbent president, declining during popular wars and economic prosperity while rising during times of recession. *Id.* at 121.



**Figure 3: As Soft Money Increased in the 1990s, Perceptions of Corruption Declined<sup>6</sup>**

Moreover, earlier research into campaign spending concluded that increased spending has the “generally beneficial” effect of shedding light on a candidate’s

<sup>6</sup> 153 U. Pa. L. Rev. at 149.

policies and stances on issues. *See* John J. Coleman & Paul F. Manna, *Congressional Campaign Spending and the Quality of Democracy*, 62 J. of Politics 757, 759 (2000). This study examined variation across districts in the 1994 and 1996 U.S. House elections, and concluded that increased campaign spending in a congressional district did not encourage mistrust or cynicism. *Id.* at 756. To the contrary, campaign spending actually contributed to the “quality and quantity” of public discourse, and made “political elites (or would-be elites) accountable to the governed.” *Id.* at 757.

### CONCLUSION

Notwithstanding the assertions of the United States, *Amici’s* research does not support the proposition that restrictions on corporate campaign contributions improve public perceptions of government. Moreover, *Amici’s* research is consistent with other research into this issue. This research undermines any justification for Section 441b predicated upon a link between corporate campaign contributions and public perceptions of government corruption. No statistical evidence for such a link exists and, therefore, it would be a mistake to conclude that Section 441b prevents the appearance of government corruption.

Respectfully submitted,

/s/ Terence P. Ross

Terence P. Ross

*Counsel of Record*

Jessica M. Thompson

Crowell & Moring LLP

1001 Pennsylvania Avenue, N.W.

Washington, DC 20004-2595

(202) 624-2500

*Counsel For Amici Curiae*

*David M. Primo, Ph.D. and*

*Jeffrey D. Milyo Ph.D.*

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William M. Jay, Esquire  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W., Suite 5629  
Washington, DC 20530  
(202) 514-8976

*Counsel for the United States*

Jeffrey A. Lamken, Esquire  
MoloLamken, LLP  
The Watergate  
600 New Hampshire Avenue, N.W.  
Washington, DC 20037  
(202) 556-2010

*Counsel for Defendant-Appellee Danielczyk/  
Lead Defense Counsel*

Todd M. Richman, Esquire  
Office of the Federal Public Defender  
1650 King Street, Suite 500  
Alexandria, VA 22314  
(703) 600-0800

*Counsel for Defendant-Appellee Biagi*

I also caused the original and seven (7) true and correct printed copies to be filed with the Clerk of the Court by Federal Express overnight delivery directed to the following:

Patricia S. Connor  
Clerk  
United States Court of Appeals  
for the Fourth Circuit  
1100 East Main Street, Suite 501  
Richmond, VA 23219-3517

/s/ Terence P. Ross

Terence P. Ross  
*Counsel of Record*  
Jessica M. Thompson  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2595  
(202) 624-2500

*Counsel For Amici Curiae*  
*David M. Primo, Ph.D. and*  
*Jeffrey D. Milyo Ph.D.*