No. 09-50296

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

PIERCE O'DONNELL,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
No. 08-CV-00872 · The Honorable S. James Otero

BRIEF *AMICI CURIAE* FOR THE CAMPAIGN LEGAL CENTER AND DEMOCRACY 21 SUPPORTING PLAINTIFF-APPELLANT AND URGING REVERSAL

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The Campaign Legal Center (CLC) is a non-profit organization organized under Section 501(c)(3) of the Internal Revenue Code. The CLC neither has a parent corporation nor issues stock. There are no publicly held corporations that own ten percent or more of the stock of the CLC.

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STATEMENT OF INTEREST[1]

Amici curiae Campaign Legal Center and Democracy 21 are nonpartisan, nonprofit organizations that work to strengthen the laws governing campaign finance, ethics and governmental integrity. *Amici* have participated as *amici* or counsel in many campaign finance cases in federal and state courts from the trial court level to the U.S. Supreme Court. *Amici*, for example, represented intervenors Senators John McCain and Russell Feingold in *McConnell v. Federal Election Commission* (*FEC*), 540 U.S. 93 (2003), and, more recently, represented Senator John McCain, Representative Tammy Baldwin, and former Representatives Christopher Shays and Martin Meehan as *amici curiae* in *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007).

The present case concerns a prosecution brought under 2 U.S.C. § 441f, a provision of federal campaign finance law that is vital to the enforceability of federal campaign contribution limits and disclosure requirements. Enforcement of federal campaign contribution limits and disclosure requirements are key issues in campaign finance law and directly impact the interests and activities of the *amici curiae*.

[1] All parties, through counsel, have consented to the participation of the Campaign Legal Center and Democracy 21 as *amici curiae* and to the filing of this brief.

SUMMARY OF ARGUMENT

In 1972, Congress enacted the Federal Election Campaign Act (FECA), which requires disclosure of political contributions. *See* Pub. L. No. 92-225, Title III, 86 Stat. 3-20 (1972); *see also McConnell*, 540 U.S. at 117-18. In order to prevent easy circumvention of the disclosure provisions, Congress included a provision that prohibits contributions in the name of another person. Pub. L. No. 92-225, § 310, 86 Stat. 3-20 (1972), codified at 2 U.S.C. § 440 (1972) (now codified, as amended, at 2 U.S.C. § 441f) (hereinafter "Section 441f").

"As the 1972 presidential elections made clear, however, FECA's passage did not deter unseemly fundraising and campaign practices. Evidence of those practices persuaded Congress to enact the [FECA] Amendments of 1974[,]" which included limits on the size of contributions to federal candidates. *McConnell*, 540 U.S. at 118; Pub. L. No. 93-443, Title I, 88 Stat. 1263-1304 (1974), codified at 18 U.S.C. § 608(b)(1)-(3) (1974) (now codified, as amended, at 2 U.S.C. § 441a(a)(1)-(3)) (hereinafter "Section 441a(a)(1)-(3)"). As part of the contribution limits section of the 1974 FECA Amendments, Congress included a subsection requiring any "intermediary or conduit"[2] who forwards an "earmarked" contribution to a candidate to disclose to the recipient candidate and to the FEC the

[2] The words "conduit" and "intermediary" have the same meaning under federal campaign finance law and are used interchangeably. *See* 11 C.F.R. § 110.6(b)(2). For the sake of simplicity, *amici* use only the word "conduit" throughout this brief.

"original source" of the contribution. *See* Pub. L. No. 93-443, § 101(a), 88 Stat. 1263-1304 (1974), codified at 18 U.S.C. § 608(b)(6) (1974) (now codified at 2 U.S.C. § 441a(a)(8)) (hereinafter "Section 441a").

The Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1976), upheld the federal contribution limits and disclosure requirements against constitutional challenge, concluding that the contribution limits serve the governmental interest in limiting the "actuality and appearance of corruption resulting from large individual financial contributions," *id.* at 26, and that the disclosure requirements serve the governmental interests of providing information to aid voters in evaluating those who seek federal office, deterring corruption, and gathering data necessary to detecting violations of the contribution limits. *Id.* at 66-68.

Since 1974, Sections 441a and 441f have worked in harmony to prevent the wholesale circumvention of FECA's disclosure requirements and contribution limits that would undoubtedly occur if contributors were permitted to funnel their contributions through conduits. Congress understood that contribution limits and disclosure requirements would be meaningless if a contributor could evade them through the simple expedient of laundering a contribution through a middle man who could claim the contribution as his own.

These FECA provisions establish in unambiguous language that (1) a contributor must use his own name—not the name of another—when making a

campaign contribution; and (2) when a contributor uses a conduit to make a contribution to a candidate, the original contributor's identity must be disclosed to the recipient candidate and the FEC, so that the original contributor is credited with having made the contribution for the purposes of the disclosure requirements and contribution limits. FEC regulations and enforcement actions have for more than three decades reinforced the plain meaning of these FECA provisions.

The United States Government ("Government") alleged in the District Court that Defendant-Appellee Pierce O'Donnell secretly contributed $26,000 to a presidential candidate in the names of 13 other people. Based on this allegation, the Government indicted O'Donnell for (1) conspiring to make illegal campaign contributions in violation of 2 U.S.C. § 441f ("Count 1"); (2) making and causing to be made illegal campaign contributions in violation of 2 U.S.C. § 441f ("Count 2"); and (3) knowingly and willfully causing ESP's treasurer to make materially false statements in violation of 18 U.S.C. § 1001 ("Count 3"). GER[3] 1-2.

The District Court dismissed Counts 1 and 2, erroneously concluding that "441f prohibits only the act of making a contribution and providing a false name, not asking others to make contributions in their names and reimbursing them for it." GER 3. The District Court based its decision largely on an apparent

[3] "GER" refers to the government's excerpts of record and is followed by the page number.

misunderstanding of how Sections 441a and 441f work in conjunction with one another, stating:

> [I]f § 441f covered indirect contributions made through a conduit, that would mean such contributions were never allowed. However, § 441a allows for indirect and conduit contributions, as long as they do not exceed designated limits. *See* § 441a. Thus, reading § 441f to prohibit such contributions is irreconcilable with 441a's express authorization of them.

GER 4.

Contrary to the District Court's conclusion, under the unambiguous wording of Sections 441a and 441f, the legality of a contribution depends not on whether a conduit is used, but, rather, how a conduit is used. If the conduit discloses to the recipient and the FEC the original source of the contribution, the contribution has been made in the name of the original source in compliance with Section 441f (subject to the contribution limits of Section 441a(a)(1)-(3) applicable to the original source). However, if the conduit does not disclose the original source of the contribution and, instead, falsely claims the contribution as her own, a contribution has been made by the original source in the name of the conduit in violation of Sections 441f, 441a(a)(8) and, depending on the amounts, potentially in violation of Section 441a(a)(1)-(3) as well.

More simply, when a person makes a contribution in the name of a conduit, that person has made a contribution in the name of another (*i.e.*, the conduit) in

violation of Section 441f. If that person's contribution exceeds the applicable limit, then the person has violated Section 441a(a)(1)-(3) as well.

O'Donnell made 13 contributions using the names of other persons in violation of Section 441f. For this reason, *amici* respectfully urge this Court to reject the District Court's erroneous interpretation of Section 441f and reverse the District Court's dismissal of Counts 1 and 2 of the indictment.

ARGUMENT

I. Sections 441a and 441f Exist in Harmony, Not in "Tension."

This Court reviews statutory interpretations *de novo*. *U.S. v. Fuller*, 531 F.3d 1020, 1024 (9th Cir. 2008), *cert. denied*, 129 S. Ct. 1603 (2009). *Amici* endeavors to assist the Court in understanding the relationship between Sections 441a and 441f, generally, and the regulation of "conduits" under federal campaign finance law, specifically, so as to clear up the errors made by the District Court in its statutory interpretation. The District Court's misunderstanding of the role of conduits under federal campaign finance law led the Court to wrongly conclude that there is "tension" between Sections 441a and 441f, which, in turn, led to the District Court's erroneous conclusion that O'Donnell's reimbursement of contributions was not prohibited by Section 441f. *See* GER 4-5. Instead, Sections 441a and 441f exist in harmony, as two sides of one coin.

Two specific FECA provisions were at issue in the District Court's error.

Section 441a(a)(8) provides that "all contributions made by a person, either directly or indirectly, . . . including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate." 2 U.S.C. § 441a(a)(8). Section 441a(a)(8) requires the conduit to "report the original source" of such contribution to the FEC and to the recipient candidate. *Id.*

Section 441f provides that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution, and no person shall knowingly accept a contribution made by one person in the name of another person." 2 U.S.C. § 441f.

The District Court found "tension" between Sections 441a and 441f and explained this "tension" as follows:

> [I]f § 441f covered indirect contributions made through a conduit, that would mean such contributions were never allowed. However, § 441a allows for indirect and conduit contributions, as long as they do not exceed designated limits. *See* § 441a. Thus, reading § 441f to prohibit such contributions is irreconcilable with 441a's express authorization of them.
>
> Indeed, the Government acknowledged the tension between § 441a and § 441f at oral argument, stating: 'I do see the ambiguity that the Court's pointing to is that in one sense [FECA is] saying you have to report [an indirect contribution]. If you have to report it, then why is it something that 441(f) prohibits?'

GER 4 (quoting June 2, 2009 Tr. 22:1-4) (alteration in original).

The District Court thus concluded:

> Because a statute must be construed as a whole, the Court must read § 441a and § 441f in a way that makes them consistent with one another, and with the rest of FECA. . . . [T]he Government's proposed interpretation does not do this. Accordingly, analyzing the plain language of § 441f in the context of FECA as a whole, § 441f is unambiguous and does not prohibit soliciting and reimbursing contributions.

GER 4-5.

The District Court erred in this conclusion in two respects. First, the court erroneously believed that "if § 441f covered indirect contributions made through a conduit, that would mean such contributions were never allowed." GER 4. The simple fact that Section 441f "covers" contributions made through a conduit does not mean that such contributions are never allowed. Instead, contributions made through a conduit are permissible so long as the conduit discloses the original source as the contributor (as required by Section 441a(a)(8)), but are impermissible if the conduit fails to disclose the original source. In the latter case, the original source causes the conduit to fraudulently report that the conduit is the contributor and, in doing so, violates Section 441f.

Second, the District Court erroneously believed that "§ 441a allows for indirect and conduit contributions, as long as they do not exceed designated limits." GER 4. But the contribution amount limits are not the only restriction on conduit contributions contained in Section 441a. Section 441a(a)(8) also requires a conduit to report the original source of the contribution to the FEC and the

recipient candidate. A failure by a contributor and his conduit to abide by this disclosure requirement of Section 441a results in a violation of Section 441f.

Thus, the alleged "tension" between Sections 441a and 441f that led the District Court to dismiss Counts 1 and 2 of the indictment was a product of misreading the statutory scheme. Properly understood, Sections 441a and 441f are entirely consistent and operate together in service of the Government's compelling interest in preventing circumvention of FECA's contribution limits and disclosure requirements.

A. Section 441a requires that, when a contributor uses a conduit to deliver his contribution, the conduit report the original source as the contributor so as to prevent evasion of the contribution limits and disclosure requirements.

Congress understood that FECA's contribution limits and disclosure requirements would be meaningless if a contributor could evade them by simply passing contributions through conduits who could claim the contributions as their own. On the other hand, an outright prohibition on the ability of a candidate's supporters to collect and deliver voluntary contributions from other supporters to a candidate would likely raise serious First Amendment issues. Perhaps for this reason, Congress did not go so far as to ban conduits from handling contributions made by others but, instead, provided in FECA that:

> [A]ll contributions made by a person, either directly or indirectly, . . . including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be

> treated as contributions from such person to such candidate. The intermediary or conduit shall report the original source and the intended recipient of such contribution to the Commission and to the intended recipient.

2 U.S.C. § 441a(a)(8) (emphasis added).

Section 441a(a)(8) contains the only references in FECA to the terms "intermediary" and "conduit." According to the unambiguous wording of the statute, a conduit is a person who delivers a contribution from a contributor to a candidate. A conduit must report to the FEC and to the recipient candidate the identity of the original source contributor and the fact that the conduit has served as a conduit.

The FEC's regulations faithfully interpret the FECA "conduit" provision. FEC regulations state that all contributions by a person made to a candidate, "including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate." 11 C.F.R. § 110.6(a). The regulation further provides that, in the case where a conduit exercises direction or control over the choice of the ultimate recipient, the contribution will be treated as a contribution from both the original contributor and the conduit. 11 C.F.R. § 110.6(d). Section 441a(a)(8) has long been interpreted by the FEC to require not only attribution of the contribution to the original source but also, under some circumstances, to the conduit as well.

FEC regulations define a "conduit or intermediary" to mean "any person who receives and forwards an earmarked contribution to a candidate." 11 C.F.R. § 110.6(b)(2). "Earmarked" means "a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate . . . ." 11 C.F.R. § 110.6(b)(1).

These regulatory definitions make clear that the role of a conduit is simply to forward a contribution from its original source to the candidate for whom the contribution is earmarked and to fully disclose all aspects of the transaction. FEC regulations require a conduit to forward an earmarked contribution within 10 days of receiving it. 11 C.F.R. § 102.8(a). And far from allowing concealment of the actual contributor's identity, the FEC's regulations require a conduit to report detailed information, including:

- the name and mailing address of each contributor;
- the amount of each earmarked contribution, the date received by the conduit, and the intended recipient as designated by the contributor; and
- the date each earmarked contribution was forwarded to the recipient candidate and whether the earmarked contribution was forwarded in cash or by the contributor's check or by the conduit's check.

11 C.F.R. § 110.6(c)(1)(iv).

Section 441a(a)(8), together with the FEC regulations interpreting it, facilitate transparency in circumstances where contributors lawfully give their

contributions to conduits for the sole purpose of delivering those contributions to candidates. The notion that Section 441a(a)(8) may serve as a shield to conceal a contributor's identity—the practical effect of the District Court's decision—is wholly inconsistent with the unambiguous wording of the statute and its obvious purpose.

The Government thus was incorrect in arguing to the District Court that "[i]f a person makes a conduit contribution he has violated § 441f, regardless of the amount of the conduit contribution." GER 4. The Government has corrected this error in its opening brief filed with this Court, where it argues: "Defendant did not violate Section 441f because he contributed indirectly or through a conduit, but rather because he contributed in the names of conduits/straw donors." Gov't Br. at 43. In other words, contributions through a conduit are not *per se* illegal; but contributions "in the name of" a conduit are.

A "conduit" is simply a "person who receives and forwards an earmarked contribution to a candidate." 11 C.F.R. § 110.6(b)(2). For decades, conduits have played a lawful role in federal politics, but a role characterized by full transparency and disclosure. Under no circumstance is a conduit permitted to hide the identity of the person whose contribution the conduit is forwarding to a candidate. Where a conduit does hide the identity of the original source contributor, the original source

has made a contribution in the name of the conduit, and it is that conduct which constitutes a violation of Section 441f.

B. Section 441f does not prohibit a person from making a contribution through a conduit, but, instead, prohibits a person from making a contribution in the name of a conduit.

Section 441f reads: "No person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution and no person shall knowingly accept a contribution made by one person in the name of another." 2 U.S.C. § 441f.

The District Court erroneously believed that Section 441f does not "cover[] indirect contributions made through a conduit" because "that would mean such contributions were never allowed"—a possibility that the District Court rejected because Section 441a requires conduit contribution disclosure. GER 4. The District Court, however, missed the crucial distinction between making contributions "through" a conduit and making contributions "in the name of" a conduit.

As explained above, Section 441a permits the act of making a contribution through a conduit—so long as the contribution is disclosed and subject to the contribution limits applicable to the source. And consistent with this, Section 441f does not prohibit *per se* the making of a contribution through a conduit. What Section 441f does prohibit is the making of a contribution "in the name of" a

conduit—*i.e.*, a contributor's use of a conduit to hide that contributor's identity by having the conduit claim the contribution as her own. Section 441f thus "covers" contributions made through a conduit if and only if the contributor has the conduit claim the contribution as her own, hiding the identity of the original source contributor, resulting in the making of a contribution in the name of another (*i.e.*, in the name of the conduit).

More than three decades ago, the FEC promulgated a regulation to interpret and enforce Section 441f. The regulation mirrors the statutory prohibition and then provides examples of "contributions in the name of another," including "[g]iving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made," and "[m]aking a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source." 11 C.F.R. § 110.4(b)(2) (emphasis added).

Section 441f and regulation 110.4(b) could not be clearer: when the original source of a contribution causes someone else to be reported as having made that contribution, Section 441f has been violated. O'Donnell made contributions through 13 individuals and, thus, "ma[d]e a contribution in the name of another

person," 2 U.S.C. § 441f, and caused those individuals to be reported as having made the contributions, which they did not. O'Donnell violated Section 441f.

II. Federal Courts and the FEC Have For Decades Understood That Section 441f Prohibits the Use of Conduits to Evade Contribution Limits and Disclosure Requirements and Have Enforced the Law Accordingly.

The unambiguous language of Section 441f has, since its enactment, been consistently interpreted by courts and the FEC as prohibiting the evasion of contribution limits and disclosure requirements by a contributor's use of a conduit who claims the original source's contribution as her own.

A. The Supreme Court and Circuit Courts have recognized that Section 441f prohibits the use of conduits to evade contribution limits and disclosure requirements.

The Supreme Court in *McConnell*, for example, pointed to the effectiveness of Section 441f as a reason for invalidating a federal law ban on contributions by minors. The Court rejected the Government's argument that the ban "protects against corruption by conduit; that is, donations by parents through their minor children to circumvent contribution limits applicable to the parents." 540 U.S. at 231-32. The Court reasoned that the Government had offered scant evidence of this form of evasion and suggested that "[p]erhaps the Government's slim evidence results from sufficient deterrence of such activities by [Section 441f], which prohibits any person from 'mak[ing] a contribution in the name of another person' or 'knowingly accept[ing] a contribution made by one person in the name of

another." *Id.* at 232. It is hard to fathom that the Supreme Court would point to Section 441f as a sufficient safeguard to prevent parents from evading contribution limits by making contributions through their children as conduits if, as the District Court believes, Section 441f does not prohibit the use of conduits to evade contribution limits and disclosure requirements.

In *Mariani v. U.S.*, 212 F.3d 761 (3rd Cir. 2000), the application and constitutionality of Section 441f were squarely at issue. A criminal indictment pending at the time charged Mariani with violating Section 441f "by making campaign contributions to a number of candidates for federal office through enlisting company employees and others to forward contributions to the candidates that were thereafter reimbursed by one of the [defendant's] companies." *Id.* at 764. Mariani challenged the constitutionality of Section 441f, but the Third Circuit "conclude[d] that the challenge to § 441f [was] patently without merit." *Id.* at 766. Mariani argued, among other things, that Section 441f "violates the First Amendment because it fails to advance any compelling state interest." *Id.* at 775. The Third Circuit explained that the Supreme Court in *Buckley* "accorded broad acceptance to the FECA's reporting and disclosure requirements." *Id.* The Third Circuit concluded: "Proscription of conduit contributions (with the concomitant requirement that the true source of contributions be disclosed) would seem to be at the very core of the [*Buckley*] Court's analysis. In light of *Buckley*, we reject

Mariani's argument that § 441f fails to advance a compelling state interest." *Id.* Again, the premise of the Court's reasoning was that Section 441f prohibits contributions through a conduit if the identity of the "true source of contributions" remains concealed.

Similarly, this Court recognized in *Goland v. U.S.*, 903 F.3d 1247 (9th Cir. 1990), while discussing FECA's contribution limits and disclosure requirements in relationship to Section 441f, that the "Act prohibits the use of 'conduits' to circumvent these restrictions." *Id.* at 1251 (emphasis added). In that case, Goland made arrangements to and then did in fact reimburse 56 individuals for contributions ranging from $1,000 to $4,500 to a federal candidate of Goland's choice.[4] A federal grand jury charged Goland with "making a contribution in the name of another in violation of 2 U.S.C. § 441f." *Id.* at 1252. Goland then filed a civil complaint challenging the constitutionality of FECA's disclosure requirements and contribution limits, but not challenging Section 441f. This Court rejected Goland's challenges to the disclosure requirements and contribution limits

[4] Goland's conduit contributions took the form of payments to a media company that produced ads with and for the candidate (*i.e.*, in-kind contributions to the candidate). *Goland*, 903 F.3d at 1251. FECA makes clear that, when a person pays for a candidate's distribution of a television ad, that person has made a contribution to such candidate. Specifically, FECA provides that "the financing by any person of the dissemination . . . of any broadcast . . . prepared by the candidate . . . shall be considered an expenditure . . . ." 2 U.S.C. § 441a(a)(7)(B)(ii). FECA further provides that "expenditures made by any person in cooperation, consultation, or concert with . . . a candidate . . . shall be considered a contribution to such candidate. 2 U.S.C. § 441a(a)(7)(B)(i).

on the ground that the "issues Goland raise[d] were resolved by the [Supreme] Court in *Buckley*." *Id.* at 1258.

Thus, both the Supreme Court and this Court, as well as others, have understood the unambiguous language of Section 441f to prohibit the use of conduits to circumvent FECA's contribution limits and disclosure requirements. The District Court's conclusion that "reading § 441f to prohibit such [conduit] contributions is irreconcilable with 441a's express authorization of them," GER 4, is wrong, and is itself irreconcilable with the wording of Section 441f and with the judicial precedent interpreting and applying the provision. Accordingly, this Court should reverse the District Court's judgment.

B. The FEC has for decades enforced Section 441f as a prohibition on the use of conduits to evade contribution limits and disclosure requirements.

The FEC has for decades enforced Section 441f consistently with its unambiguous meaning—as prohibition on the use of conduits to evade contribution limits and disclosure requirements. Earlier this year, for example, the FEC entered a conciliation agreement (*i.e.*, settlement agreement) with John Karoly, Jr., who agreed to pay a $155,000 fine for violating Section 441f by arranging for several of his employees to make contributions to a federal candidate and then reimbursing the employees for those contributions. *See* FEC MUR 5504, John Karoly, Jr.

Conciliation Agreement (June 29, 2009).[5] Also, earlier this year, the FEC entered a conciliation agreement with Joseph A. Solomon, who paid a $6,400 fine for violating Section 441f by arranging for several of his employees to make contributions to a federal candidate and then reimbursing them for those contributions. *See* FEC MUR 5927, Joseph A. Solomon Conciliation Agreement (April 13, 2009).[6]

Similarly, in 2008, the FEC collected more than $65,000 in fines from individuals perpetrating a single-event conduit reimbursement scheme. Thomas W. Noe pled guilty to federal charges of making illegal conduit contributions in connection with an October 30, 2003, fundraiser for a federal candidate. The indictment stated that Mr. Noe used $45,400 of his funds to make contributions over the legal limits, and concealed the true source of the contributions by making them in the names of conduits. The FEC entered conciliation agreements with several of these conduits for knowing and willful violations of Section 441f. *See* FEC MUR 5871, Joseph Restivo Conciliation Agreement (Sept. 15, 2008);[7] FEC MUR 5871, Donna Owens Conciliation Agreement (Sept. 15, 2008);[8] FEC MUR

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5 *Available at* http://eqs.sdrdc.com/eqsdocs/29044244534.pdf.
6 *Available at* http://eqs.sdrdc.com/eqsdocs/29044234876.pdf.
7 *Available at* http://eqs.sdrdc.com/eqsdocs/28044211096.pdf.
8 *Available at* http://eqs.sdrdc.com/eqsdocs/28044211134.pdf.

5871, Betty Shultz Conciliation Agreement (Sept. 15, 2008);[9] FEC MUR 5871, Sam Thurber Conciliation Agreement (Sept. 15, 2008).[10]

A search of the FEC's Enforcement Query System[11] for conciliation agreements to resolve violations of Section 441f produces 55 enforcement actions since 1999, many of which had multiple respondents. The sheer volume of violations of Section 441f suggests that contributors are highly motivated to evade federal campaign contribution limits and disclosure requirements and willing to run the risk of being caught. If the District Court's misinterpretation of Section 441f stands, FECA's contribution limits and disclosure requirements will be severely undermined, as will Congress' effort through passage of FECA to inform the electorate of the sources of campaign funds and to limit corruption in our political system.

CONCLUSION

For the reasons set forth above, the District Court's judgment dismissing Counts 1 and 2 of the indictment should be REVERSED.

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9 *Available at* http://eqs.sdrdc.com/eqsdocs/28044211121.pdf.

10 *Available at* http://eqs.sdrdc.com/eqsdocs/28044211115.pdf.

11 The Enforcement Query System can be accessed at: http://eqs.sdrdc.com/eqs/searcheqs.

RESPECTFULLY SUBMITTED this 23rd day of September, 2009.

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CERTIFICATE OF COMPLIANCE

I certify that pursuant to Fed. R. App. P. 29(d), Fed. R. App. P. 32(a)(7)(B) and Ninth Circuit Rule 32-1, the attached Brief *Amici Curiae* is proportionally spaced, has a typeface of 14 points and contains 4,660 words.

DATED this 23rd Day of September, 2009.

Respectfully submitted,

/s/ Paul S. Ryan
PAUL S. RYAN

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief *Amici Curiae* for the Campaign Legal Center and Democracy 21 with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on September 23, 2009.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that one of the participants in the case is not a registered CM/ECF user. I have mailed the foregoing Brief *Amici Curiae* for the Campaign Legal Center and Democracy 21 by First-Class Mail, postage prepaid, to the following non-CM/ECF participant:

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9th Circuit Case Number(s): 09-50296

Case Name: United States v. O'Donnell

The Clerk will enter my appearance as counsel on behalf of: The Campaign Legal Center & Democracy 21

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- ☐ Respondent
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- ☐ Appellee/Cross-Appellant

☒ Check if you are lead counsel. Lead counsel must be designated if a party is represented by more than one attorney or law firm.

☐ Re-Assignment. (Optional) This case has been re-assigned to me from another attorney in my office (for ex., the Federal Public Defenders Office, OIL, or a law firm). Enter name of counsel you are replacing below.

I am replacing (name of counsel):

Signature (use "s/" format): s/ Paul S. Ryan Date: 9/23/2009

Name: Paul S. Ryan

Address: The Campaign Legal Center
215 E Street NE

City: Washington State: DC Zip Code: 20002

Phone Number (including area code): (202) 736-2200