UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 10-2119

RESPECT MAINE PAC; HAROLD A. CLOUGH; REP. ANDRE E. CUSHING, III,

Plaintiffs-Appellants,

v.

WALTER F. MCKEE, *et al.*,

Defendants-Appellees.

AMICI CURIAE OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR INJUNCTIVE RELIEF PENDING APPEAL

Counsel for *Amici Curiae*:

Monica Youn*
Mimi M. D. Marziani*
BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW
161 Avenue of the Americas,
12th Floor
New York, NY 10013
(646) 292-8310

Lisa J. Danetz*
Brenda Wright (68598)
DEMOS
358 Chestnut Hill Avenue
Suite 303
Brighton, MA 02135
(617) 232-5885

John Brautigam (62098)
1 Knight Hill Road
Falmouth, ME 04105
(207) 671-6700

* Admission pending

TABLE OF CONTENTS

Page

CORPORATE DISCLOSURE STATEMENT
FED. R. APP. P. 26.1

Amicus Curiae Maine Citizens for Clean Elections certifies that it has no parent corporation and that it does not issue stock. Therefore, no publicly held company owns 10% or more of its stock.

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

INTEREST OF THE *AMICI*

Amici curiae include Maine Citizens for Clean Elections ("MCCE") – a non-partisan association of organizations and individuals with the common purpose of enacting, implementing and defending the Maine Clean Election Act ("MCEA") and other campaign finance reforms. For its fifteen-year history, MCCE has been dedicated to ensuring the orderly and successful functioning of the election process and Maine's campaign finance system. MCCE drafted the MCEA and successfully campaigned for its approval by popular vote in November 1996. Since then, MCCE has spearheaded significant efforts to educate the public and candidates about the law, ensured its full implementation by the Ethics Commission, defended the law against legal challenges, and fought for the law's full financing.

Eight candidates running for legislative seats in Maine also appear as *amici curiae,* including four Senate candidates (Phil Bartlett, Justin Alfond, Owen Pickus and Pam Trinward) and four House candidates (Sharon Treat, Jon Hinck, David Van Wie and Shelby Wright) ("the candidate-*amici*"). Their campaigns are broadly representative of Maine's legislative contests as a whole, including highly competitive races, races against traditionally funded opponents with the ability to exceed the trigger threshold, and races where independent expenditures are likely. Each candidate-*amici* has invested substantial resources qualifying for the public

funding system and organizing his or her campaign according to its regulatory scheme. Moreover, through participating in the MCEA, each has relinquished the ability to raise private funds and has reasonably relied on supplemental funds from the MCEA as needed and would be unfairly disadvantaged by losing those funds now, in the eleventh hour. Finally, as candidates and Maine citizens, candidate-*amici* have a strong interest in the orderly functioning of the election process for the duration of this campaign.

Pursuant to Federal Rule of Appellate Procedure 29(a), all parties have consented to the filing of this brief.

SUMMARY OF ARGUMENT

The eleventh-hour relief which Plaintiffs seek here is extraordinary: They ask this Court to throw a ten-year-old campaign finance system into disarray on the eve of an election, disrupting settled expectations and potentially altering electoral outcomes in races affecting 297 publicly financed candidates across the state of Maine. In seeking this drastic remedy, however, Plaintiffs fail to mention that since the filing of the complaint, Plaintiff Andre Cushing's own actions have rendered his claims of injury highly questionable, if not entirely moot. The gravamen of Rep. Cushing's asserted injury is an alleged "chill" upon the exercise of his First Amendment rights – specifically, that he would curtail "expenditures in support of his campaign so as to avoid triggering funds to his publicly funded

opponent." Plaintiffs' Emergency Motion for Injunctive Relief Pending Appeal 12 ("Pls. Emergency Mot."). But publicly filed reports demonstrate that Rep. Cushing's expenditures in the upcoming general election have already surpassed the "triggering" threshold at which additional funds would be disbursed to his opponent. Thus, Rep. Cushing's claim of "chill" is a nullity – one cannot be "chilled" from taking an action that one has already taken.

Plaintiff Respect Maine PAC (hereinafter "RMPAC") similarly claims that the prospect of triggering funds to publicly financed candidates has "chilled" its plans to make independent expenditures. But one cannot be "chilled" from taking an action one has no actual plan to make. RMPAC has failed to allege, much less to offer any proof, that it has ever had any concrete plan to make any independent expenditure in any particular election. Finally, Plaintiff Clough's theory of injury – that he has a right to make campaign contributions in excess of the applicable limits – is squarely foreclosed by *Buckley v. Valeo*, 424 U.S. 1 (1976), and more than three decades of settled law. Plaintiffs' perfunctory allegations of injury fail even to satisfy the basic requirements of standing, much less the stringent standard of irreparable injury required here.

Ignoring these obvious deficiencies, Plaintiffs advance three legal developments upon which they rest their claim for relief: (1) the Supreme Court's decision in *Davis v. FEC*, 128 S.Ct. 2759 (2008), a case that did not involve public

financing; (2) two recent circuit court decisions that struck down particular trigger provisions within the Connecticut and Florida public financing systems; and (3) the Supreme Court's recent stay of the triggered supplemental funds in the Arizona public financing system. None of these authorities, however, provide any justification for Plaintiffs – or this Court – to disregard the settled law of this Circuit.

First, the theory of injury put forward in *Davis* is simply inapplicable to the context of public financing, where the award of funds to a participating candidate does not burden the First Amendment rights of non-participants. Second, the Connecticut and Florida cases are readily distinguishable since, under the particular public financing schemes at issue there, the availability of trigger funds to supplement the program's base grants did not appear to be essential to advance the state's goals. Third, the Court's issuance of a stay pending its decision on *certiorari* in the Arizona case has no precedential value. Federal courts may not ignore precedent to engage in the sort of unsupported guesswork about the Supreme Court's future decisions that Plaintiffs invite.

Finally, the requested injunction would wreak havoc with Maine's elections, resulting in severe hardship to publicly financed candidates, who would find themselves without adequate funding to run viable campaigns, and to Maine's citizens, who will hear less speech, not more, if participating candidates are denied

supplemental funds. Plaintiffs have proffered no excuse for delaying the filing of their complaint until mid-August, long after candidates were required to decide on participation in the program and just weeks before Maine's general election (for which early voting began on Monday, September 27th). The requested last-minute judicial intervention would throw the electoral system into chaos, unjustly disadvantaging candidates who had placed reliance on the availability of supplemental funds. Such a result would be particularly unfair given that this disruption would be amplified by Plaintiffs' own delay in filing suit. This Court should decline to exercise its equitable powers to accomplish such an unjust result.[1]

ARGUMENT

I. Plaintiffs Lack Standing to Seek a Stay of the Trigger Funds.

A threshold issue to this Court's consideration of whether Plaintiffs are entitled to preliminary relief is whether Plaintiffs' alleged injuries are sufficient to meet the minimal requirements of Article III standing. *See O'Shea v. Littleton*, 414 U.S. 488, 493 (1974) (referring to "the threshold requirement by Art. III of the

[1] Although Plaintiffs also allege a disclosure claim, they do so only in the most cursory manner. Accordingly, we rely upon the State Defendants' discussion of the issue and respectfully refer the Court to their brief. Defendants' Opposition to Plaintiffs' Motions for a Preliminary Injunction and for a Temporary Restraining Order 17-21 ("Defs. Op.").

Constitution that those who seek to invoke the power of federal courts must allege an actual case or controversy"); *IMS Health Inc. v. Ayotte*, 550 F.3d 42, 48 (1st Cir. 2008) ("Standing is a threshold issue in every federal case." (citations omitted)). The Supreme Court has emphasized, and this Court has recently reaffirmed, the importance of "present[ing] an injury that is concrete, particularized, and actual or imminent." *Ramirez-Lebron v. Int'l Shipping Agency, Inc.*, 593 F.3d 124, 130 (1st Cir. 2010); *Daggett v. Comm'n on Governmental Ethics & Election Practices*, 205 F.3d 445, 462 (1st Cir. 2000).

Plaintiffs' core claim is that the MCEA chills their ability to spend freely in the upcoming election. To support this supposed injury, Plaintiffs Rep. Cushing and RMPAC have alleged plans to engage in "self-censorship" to avoid triggering additional monies to publicly funded candidates. *See* Compl. ¶¶ 21, 23. Indeed, in Plaintiffs' recently-filed emergency motion, Rep. Cushing vows that he will curtail his own campaign fundraising and spending; RMPAC asserts that it will not make independent expenditures that it would otherwise have made in support of traditionally funded candidates or in opposition to publicly funded candidates. Pls. Emergency Mot. 9, 12.

Despite these allegations, Plaintiffs' claims are directly contradicted by publicly available campaign finance records. In fact, Rep. Cushing already raised and spent funds in excess of the "triggering" threshold – foreclosing arguments of

any chill. As of a September 21st filing, Rep. Cushing has raised over $5,539 for his general election bid, well in excess of the supplemental funds threshold of $4,144 and thus triggering extra funds to his publicly funded opponent – the very harm that this emergency motion purports to forestall. Andre E. Cushing, *42-Day Pre-General 2010 Campaign Finance Report for the Comm'n on Governmental Ethics & Election Practices* (Sept. 21, 2010).[2] Similarly, although he was unopposed in this year's primary contest, Rep. Cushing raised over $7,000 and spent $6,489 before the primary election in June. *See* Affidavit of Jonathan Wayne dated Sept. 10, 2010 ("Wayne Aff.") ¶ 43. The facts squarely contradict that Rep. Cushing has any intent to "curtail" his fundraising and spending in the upcoming weeks as a result of the MCEA, or that the MCEA has "chilled" his spending. Instead, Rep. Cushing's behavior is consistent with other nonparticipating candidates, as explained *infra*, Section II(B) – raising and spending as much money as possible to get his message out, without regard to triggering thresholds. This is also, unsurprisingly, just what Rep. Cushing has done in past elections.[3]

---

[2] This document is available at http://www.mainecampaignfinance.com/netCrystalReports/CandidateCombinedReport.aspx?Params=82765;42-Day+Pre-General;YNYNYNNNY&GUID=public&Year=2010&MCEA=0.

[3] In 2008, facing publicly financed candidates both in the primary and general elections, Rep. Cushing spent over $24,000, triggering $4,739 in supplemental funds to his opponents. Wayne Aff. ¶¶ 40-42 & Ex. 3.

Since the facts belie Rep. Cushing's assertions of harm, he has no standing to seek injunctive relief. As this Court recently reaffirmed, "a party seeking relief in federal court must show that he has suffered an actual injury…." *Coggeshall v. Massachusetts Board of Registration*, 604 F.3d 658, 666 (1st Cir. 2010).

RMPAC's claims of injury are similarly impossible to square with the facts, and plainly inadequate to establish standing. RMPAC, which Rep. Cushing chairs and which has only one donor besides Rep. Cushing, has never spent a single penny on an independent expenditure, nor has it alleged any concrete plans to make independent expenditures likely to trigger supplemental funds. *See* Wayne Aff. ¶¶ 45-47. RMPAC has not identified any specific candidates it intends to support or oppose, nor has it specified when it plans to start its campaign spending – even though the general election is just weeks away and early voting has already commenced.

RMPAC's assertion that it may, in unidentified races involving unidentified candidates, curtail its independent expenditures because such spending could trigger supplemental funds to a hypothetical candidate's hypothetical publicly funded opponent comprises nothing more than one contingency piled upon another. This Court has repeatedly emphasized that a plaintiff cannot establish standing based on a "threatened injury . . . contingent on several events which may or may not happen." *McInnis-Misenor v. Maine Medical Center*, 319 F.3d 63, 72

(1st Cir. 2003); *see also In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, 522 F.3d 6, 11 (1st Cir. 2008). There is thus no doubt that RMPAC's chain of conjecture is insufficient to establish injury-in-fact – indeed, it seems highly probable that the multiple contingencies involved in RMPAC's hypotheticals will never come to pass. Thus, Rep. Cushing and RMPAC have failed to establish standing and cannot rightfully invoke this Court's jurisdiction.

II. Plaintiffs Cannot Meet the Heavy Burden Required for an Injunction of the Trigger Funds.

In evaluating a request for a stay pending appeal of a judgment, courts consider the traditional four-part standard applicable to injunctions. *See Acevedo-Garcia v. Vera-Monroig*, 296 F.3d 13, 16 (1st Cir. 2002). Accordingly, to warrant the relief requested, Plaintiffs must demonstrate: (1) the probability of success on the merits; (2) that irreparable harm will result absent an injunction; (3) that, if no injunction issues, Plaintiffs will suffer more harm than those who oppose the injunction; and (4) that an injunction is in the public interest. *Bl(a)ck Tea Soc'y v. City of Boston*, 378 F.3d 8, 11 (1st Cir. 2004). This Court has characterized injunctive relief as "a potent weapon that should be used only when necessary to safeguard a litigant's legitimate interests." *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 163 (1st Cir. 2004).

A. Plaintiffs Have No Likelihood of Success on the Merits Because Binding Circuit Authority Squarely Forecloses Their Claims.

Even if this Court finds that the Plaintiffs have standing, the Court should conclude that its decision in *Daggett*, 205 F.3d 445, controls the outcome of this litigation as law of the circuit and clearly forecloses the very arguments advanced by Plaintiffs. As this Court recently explained,

> The "law of the circuit" rule is a subset of *stare decisis*. It is one of the building blocks on which the federal judicial system rests. Under the rule, newly constituted panels in a multi-panel circuit court are bound by prior panel decisions that are closely on point. Although this rule is not "immutable," the exceptions are extremely narrow and their incidence is hen's-teeth-rare.

San Juan Cable LLC v. Puerto Rico Tel. Co., Inc., 612 F.3d 25, 33 (1st Cir. 2010) (citations omitted). Specifically, this doctrine holds "a prior panel decision inviolate absent either the occurrence of a controlling intervening event (*e.g.*, a Supreme Court opinion on the point; a ruling of the circuit, sitting en banc; or a statutory overruling) or, in extremely rare circumstances, where non-controlling but persuasive case law suggests such a course." *United States v. Rodriguez,* 311 F.3d 435, 438 (1st Cir. 2007) (quotation marks omitted); *accord Irving v. United States*, 162 F.3d 154, 160 (1st Cir. 1998) (en banc). As illustrated below, no supervening authority has overruled *Daggett*, nor does this litigation present the extremely rare situation where the subject matter and legal issues of non-controlling Supreme Court authority are so substantially similar as to warrant

reconsideration.[4] *San Juan Cable*, 612 F.3d at 33; *see also United States v. Rodriguez-Pacheco*, 475 F.3d 434, 442 (1st Cir. 2007) (stressing limited nature of this second exception).

Here, as the district court correctly noted, "All of the same arguments currently raised by Plaintiffs . . . were raised, and ultimately rejected in [*Daggett*]."). Order on Motion for Temporary Restraining Order 10 (Sept. 15, 2010). *Daggett* concerned the identical causes of action that Plaintiffs seek to relitigate here – a challenge to public financing trigger provisions, disclosure provisions, and campaign contribution limits. Since *Daggett*, no supervening authority has overruled this Court's decision. Indeed, the Ninth Circuit's recent decision in *McComish v. Bennett*, 611 F.3d 510 (9th Cir. 2010), cited and reaffirmed this Court's analysis.

[4] A recent case demonstrates the limited applicability of this second exception. In *Eulitt v. Maine*, the First Circuit considered an Establishment Clause challenge to a state law prohibiting the use of government-issued tuition vouchers in religious school. 386 F.3d 344, 346 (1st Cir. 2004). While there was First Circuit precedent on this issue, this Court decided that reconsideration was appropriate because the Supreme Court had just decided two cases involving the same subject matter – school vouchers – and the same legal issue – alleged violation of the Establishment Clause. *Id*. at 350 (explaining that "[i]f these decisions, collectively, do not make the law crystalline, they at least provide more focused direction than was available to the [previous] panel").

As the *Daggett* Court recognized, Plaintiffs' alleged injury "boils down to a claim of a First Amendment right to outraise and outspend an opponent, a right that they complain is burdened by the [trigger provisions]." 205 F.3d at 464. But, this is not a "right" protected by the Constitution. In fact, the purpose of the First Amendment is just the opposite – it seeks to "secure the widest possible dissemination of information from diverse and antagonistic sources." *Id*. (quoting *Buckley*, 424 U.S. at 49). Plaintiffs simply have "no right to speak free from response." *Daggett*, 205 F.3d at 464; *accord McComish*, 611 F.3d at 524. Indeed, voluntary public financing schemes like Maine's have been repeatedly upheld in recognition of this very principle – that the rights of non-participants are unaffected by the grant of public funds to participating candidates. *See Buckley*, 424 U.S. at 85-109 (upholding the presidential public financing system); *North Carolina Right to Life Comm. Fund v. Leake*, 524 F.3d 427 (4th Cir. 2008), *cert. denied*, 129 S.Ct. 490 (2008) (affirming denial of preliminary injunction against public financing system for appellate judicial elections); *Daggett*, 205 F.3d 445 (upholding Maine's Clean Election Act); *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1552 (8th Cir. 1996) (upholding Minnesota's public funding for elections); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 38 (1st Cir. 1993) (upholding Rhode Island's public funding system).

1. *The Injury in Davis is Readily Distinguishable from the Injury Claimed by Plaintiffs.*

Plaintiffs attempt to evade *Daggett*'s precedential authority by claiming that *Davis* is supervening controlling precedent. But this effort is unavailing – *Davis* did not address public financing systems, and, indeed, noted that such schemes are, as a matter of fact and law, "quite different" from the provision at issue there. 128 S.Ct. at 2772. This critical difference between a system of purely private financing and a system with optional public funding is essential to understanding the reach of the *Davis* decision. The so-called "Millionaire's Amendment" challenged in *Davis* replaced the normal rule in congressional elections (namely, that all candidates in privately-funded congressional elections are subject to the same contribution limits) with "a new, asymmetrical regulatory scheme." *Id*. at 2766. Under this scheme, if one candidate spent over $350,000 of his personal money to fund his own campaign, the initial contribution limits were tripled and the limits on coordinated party-candidate expenditures were eliminated – but *only* for that privately funded candidate's privately funded opponent. It was this disparate treatment of otherwise similarly-situated candidates that the Court ultimately rejected, deeming it an "unprecedented penalty." *Id*. at 2771.

Unlike in *Davis*, where the Millionaire's Amendment imposed differential contribution limits, under the MCEA, publicly financed and traditionally funded

candidates cannot be deemed similarly situated. The MCEA offers all candidates a choice between two entirely different systems of financing, each with its own particular set of benefits and burdens. As publicly funded candidates can constitutionally be awarded benefits not afforded to privately funded ones, the award of triggered supplemental funds to participating candidates cannot be "discriminatory" or "asymmetrical." *See Buckley*, 424 U.S. at 94 (finding no injury from "the claimed denial of the enhancement of opportunity to communicate with the electorate that [public funds] afford eligible candidates" because public financing system was voluntary). Thus, provisions providing supplemental funds in high-spending races – like all discrete parts of a public funding program – are part of the package of incentives that participating candidates accept in exchange for "a countervailing denial." *Buckley*, 424 U.S at 95; *Daggett*, 205 F.3d at 467 ("[T]he government may create incentives for candidates to participate in a public financing system in exchange for their agreement not to rely on private contributions.").

The rights of non-participating candidates and third-party supporters are simply not burdened "as long as the candidate remains free to engage in unlimited private funding and spending instead of limited public funding." *Daggett*, 205 F.3d at 467 (citation omitted). Indeed, participating candidates who receive supplemental funds enjoy no competitive advantage relative to their privately

funded opponents. The reality under the MCEA is just the opposite: The privately funded candidate, with an unfettered ability to amass private funds and make unlimited expenditures, ultimately enjoys a fundraising advantage over the publicly funded candidate who operates under an expenditure cap.

2. *The Connecticut and Florida Cases are Readily Distinguishable, and Have No Bearing on this Court's Analysis.*

Plaintiffs place heavy reliance upon the *Davis* Court's passing citation to the Eighth Circuit's decision in *Day*, 34 F.3d 1356 (8th Cir. 1994), as well as two recent circuit court decisions, *Green Party v. Garfield*, Nos. 09-3760-cv, 09-3941-cv, 2010 WL 2737153, ___ F.3d ___ (2d Cir. July 13, 2010), and *Scott v. Roberts*, 612 F.3d 1279 (11th Cir. 2010).

The Court's citation of *Day* in dicta provides no excuse to disregard binding circuit precedent. The Court cited *Day* for nothing more than the uncontroversial proposition that, under the Millionaire's Amendment, a candidate who makes large personal expenditures in support of his campaign must shoulder a "potentially significant burden." 128 S. Ct. at 2772. There is no reason to believe that this mere citation was intended *sub silentio* to signal the Court's invalidation of a significant body of appellate case law upholding the constitutionality of trigger provisions in

public financing systems, particularly when that issue was simply not before the Court.[5]

Moreover, in relying on these cases, Plaintiffs fail to recognize that "no two public funding schemes are identical, and thus no two evaluations of such systems are alike"; accordingly, it is erroneous to treat all grant distribution plans as identical for constitutional purposes. *Daggett*, 205 F.3d at 464; *see also McComish*, 611 F.3d at 523-26 (examining factual record of Arizona's program to balance extent of burden against strength of state interests). The three cases upon

---

[5] Although Plaintiffs claim that the *Davis* decision "settled [a] split between the circuits," Pls. Emergency Mot. at 6, this characterization of the case law is simply wrong. Prior to *Davis*, three federal circuit courts had ruled that public financing trigger provisions pass constitutional muster. *See, e.g.*, *Leake*, 524 F.3d at 437; *Daggett*, 205 F.3d at 464; *Rosenstiel*, 101 F.3d 1544. Although the Eighth Circuit in *Day* had, indeed, held Minnesota's trigger funds statute unconstitutional, the circuit later distinguished *Day*. In *Rosenstiel*, the Eighth Circuit explained that the trigger funds provision failed scrutiny in *Day* only because the state's asserted interest in incentivizing candidate participation appeared to be "contrived for the purposes of this litigation" since "candidate participation in the public financing scheme was approaching 100 percent when the challenged provision was enacted." *Rosenstiel*, 101 F.3d at 1556 (citing *Day*, 34 F.3d at 1361); *Leake*, 524 F.3d at 438 ("[T]he *Day* decision appears to be an anomaly even within the Eighth Circuit, as demonstrated by that court's later decision in *Rosenstiel*."). Thus, prior to *Green Party* and *Scott*, the federal circuit court authority – rather than being "split" – in fact demonstrated significant consensus. If the Supreme Court had meant in *Davis* to overturn such consensus, it would have done so explicitly. The Supreme Court does not "hide elephants in mouseholes." *Whitman v. American Trucking Ass'ns*, 531 U.S. 457, 468 (2001).

which Plaintiffs rely are readily distinguishable since, in each, the public financing systems appeared to function – incentivizing sufficient participation and offering adequate funds to run a viable campaign – even in the absence of trigger funds, so the trigger provisions appeared inessential to the state's anticorruption goals. For example, as discussed *supra*, note 6, participation in the *Day* public financing program was already close to 100% prior to the implementation of triggered supplemental funds, so the addition of these funds was deemed unnecessary to incentivize participation in the program. 34 F.3d at 1361. Likewise, in *Green Party*, not a single privately financed candidate in the 2008 election reached the excess expenditure threshold, demonstrating that publicly financed candidates could run viable campaigns against traditionally funded opponents without resort to triggered supplemental grants. *Green Party of Conn. v. Garfield*, 648 F. Supp.2d 298, 415-44 (D. Conn. 2009) (expenditure tables). Similarly, the Florida public financing program at issue in *Scott* provided that when a nonparticipating candidate spent above a certain threshold, the expenditure limits entirely ceased to apply to the participating candidate, who *also* received supplemental funds. *Scott*, 612 F.3d at 1286. The Eleventh Circuit reasoned that the triggered release from the expenditure limits (which was not at issue in the case) was a sufficient incentive to induce candidates to participate in the program, rendering the triggered

supplemental funds unnecessary to advance the state's anticorruption goals. *Id.* at 1294.

By contrast, the trigger provisions are an integral part of the operation of the MCEA. Unlike other states, with far more generous grants of base funding to participating candidates, Maine candidates could not run a viable campaign against most privately financed opponents without the availability of supplemental funds. For example, in Connecticut, the base grant amounts were set at levels that substantially exceeded historical average expenditures in legislative races. *Green Party*, 648 F. Supp.2d at 338.

By contrast, Maine has relatively low base grant amounts, allowing the state to avoid wasting state funds on low-spending races while still ensuring that participating candidates have sufficient funds to run a viable campaign when faced with a high-spending opponent or hostile outside groups. This tiered distribution system allows the state to balance its compelling interest in combating corruption against an equally compelling interest – protection of the public fisc. *See Buckley*, 424 U.S. at 96. In this way, Maine's system is more closely analogous to the Arizona system upheld by the Ninth Circuit. *McComish*, 611 F.3d at 527 ("By linking the amount of public funding in individual races to the amount of money being spent in these races, the State is able to allocate its funding among races of varying levels of competitiveness. . .").

Moreover, in Maine, the participating candidate is barred from ultimately outspending a privately financed candidate as the participating candidate's spending is subject to an absolute expenditure limit. *Compare Scott*, 612 F.3d at 1286. As this Court recognized in *Daggett*, the supplemental funds simply do not "create an exceptional benefit for the participating candidate." 205 F.3d at 468.

3. *The Supreme Court's Recent Stay of Arizona's Trigger Provisions Has No Precedential Import.*

As Plaintiffs note, the Supreme Court has issued a stay pending filing of a petition for certiorari in *McComish*, thereby temporarily enjoining the triggered supplemental funds in Arizona's public financing program. *See McComish v. Bennett*, 130 S.Ct. 3408 (2010); Pls. Emergency Mot. 7. But this action has no precedential force and is of no legal significance to the present action. *See Indiana State Police Pension Trust v. Chrysler LLC*, 129 S. Ct. 2275, 2276-77 (2009) (emphasizing that decision to grant or deny stay is "not a decision on the merits of the underlying legal issues"); *Barefoot v. Estelle*, 463 U.S. 880, 907 n.5 (1983) (Marshall, J. dissenting) ("Denials of certiorari never have precedential value … and the denial of a stay can have no precedential value either ….'). Indeed, a cautionary example about attempting to guess the direction of the Court based on a stay decision may be found in the recent *Doe v. Reed* decision, in which the Court granted a stay against the application of a state disclosure law at the plaintiffs'

request but then ruled in favor of state defendants on the merits. *Compare Doe v. Reed*, 130 S.Ct. 486 (2009) (granting stay against disclosure requirements) *with Doe v. Reed*, 130 S.Ct. 2811 (2010) (upholding disclosure requirements against facial challenge). The rules of precedent were established to forbid such guesswork.

B. Plaintiffs Cannot Claim Any Irreparable Injury to Their First Amendment Rights Resulting from the MCEA.

The grant of preliminary injunctive relief is meant to protect a plaintiff from future, irreversible injury pending resolution of a lawsuit, "not simply to punish past misdeeds or set an example." *American Board of Psychiatry & Neurology, Inc. v. Johnson-Powell*, 129 F.3d 1, 4 (1st Cir. 1997) (affirming denial of preliminary injunction where there was no evidence of imminent future harm). For these reasons, injunctive relief is improper where future injury is unlikely. *Id*.; *Nat'l Tank Truck Carriers, Inc. v. Burke*, 608 F.2d 819, 824 (1st Cir. 1979) ("[T]he prime prerequisite for injunctive relief is the threat of irreparable *future* harm." (citations omitted and emphasis added)). Here, as explained *supra*, Section I, Rep. Cushing's spending has already triggered supplemental funds to his opponent, so that any alleged "chill" has already passed. This fact alone dooms Rep. Cushing's request for emergency injunctive relief.

Moreover, examination of the spending record of privately financed candidates in Maine's 2008 general elections shows that Rep. Cushing's actions are typical of the fundraising patterns of privately funded candidates. If the prospect of triggering supplemental grants to publicly financed opponents indeed "chilled" the spending of privately funded candidates, one would expect to see such spending stop just short of these thresholds. But the actual spending patterns of non-participating Maine candidates shows no such "clustering" below the threshold.[6] Instead, privately funded candidates seem to spend as much as they can raise – presumably constrained not by the triggering threshold, but by their own fundraising ability.[7] Plaintiffs fail to adduce a single piece of evidence that demonstrates any injury, and the facts contradict their unsupported claims of "chill."

---

[6] For the Court's convenience, this information is portrayed graphically in two charts, attached hereto as Appendix A. Candidate spending data is publicly available on the Maine Commission on Governmental Ethics and Election Practices website at www.mainecampaignfinance.com.

[7] Such absence of chill finds further support in the factual record of *McComish*, where expert testimony established a similar absence of "clustering" in the spending pattern. *McComish v. Brewer*, Cv-08-1550, 2010 WL 2292213, *3 (D. Ariz. Jan. 20, 2010).

C. Enjoining the Trigger Funds on the Eve of the Election Would Unjustly Disadvantage Participating Candidates, Including *Amici*.

Where, as here, the "emergency" nature of the requested relief stems from Plaintiffs' own delay in filing, preliminary injunctive relief is particularly inappropriate. *See, e.g.*, *Max-Planck-Gesellschaft Zur Förderung Der Wissenschaften E.V. v. Whitehead Institute for Biomedical Research,* 650 F. Supp.2d 114, 123 (D. Mass. 2009) ("A party cannot delay the initiation of litigation and then use an 'emergency' created by its own decisions concerning timing to support a motion for preliminary injunction."); *League of Women Voters v. Diamond,* 923 F. Supp. 266, 275 (D. Me. 1996) (denying motion where "Plaintiffs helped create the situation necessitating preliminary injunctive relief by their delay in bringing the action"). Here, Plaintiffs' legal theory is predicated on the argument that *Davis* renders trigger funds unconstitutional, yet Plaintiffs waited until the eve of the election – more than two years after *Davis* was decided – to file their claim.

There is little doubt that enjoining the supplemental funds at this critical point in the campaign – changing established rules at the last minute – would cause substantial harm to *amici*. For candidate-*amici*, eliminating supplemental funds now would disrupt months of strategic planning done in reliance on the established

rules.[8] For example, Rep. David Van Wie is currently running in his second highly competitive race for the House of Representatives. His privately funded opponent was the first in the general election cycle to exceed the trigger amount, and Rep. Van Wie will certainly qualify for more supplemental funds in the crucial final weeks as his opponent continues to raise and spend large sums of money. Like all candidates who are eligible for supplemental funds, the resources available to Rep. Van Wie cannot possibly exceed those of his opponent. But without supplemental funds, Rep. Van Wie will have no ability to respond – he will be forced to finish his electoral fight with both hands tied behind his back.

The potential harm to Rep. Van Wie provides only a glimpse of the disruption and unfairness that would result from changing the rules governing the gubernatorial race and 186 legislative races in the crucial final days of the election. Indeed, it is reasonable to expect that many of the 297 participating candidates would suffer similar harm. The final weeks of the campaign are typically when most supplemental funds are issued and is, of course, when the ability to respond is most crucial. Eliminating supplemental funds now would unfairly disadvantage a

[8] The institutional goals and mission of the MCCE would also suffer significant harm if the MCEA is enjoined – indeed, its very *sine qua non* is at stake. The chaos resulting from a last-minute injunction would cast constitutional doubt upon much of what MCCE has accomplished in the fifteen years, despite the fact that only discrete provisions of the MCEA are challenged here.

long list of candidates, leaving them no time or means to compensate. Moreover, it would give privately funded candidates, including Rep. Cushing himself, a marked competitive advantage due to the last-minute disruption of their publicly financed opponents' campaign plans. A court of equity should not allow Plaintiffs to thus derive benefit from their own delay.

D. Enjoining the Program on the Eve of the Election Would Cause Unwarranted Disruption to the Detriment to the Citizens of Maine.

The citizens of Maine, too, have a strong First Amendment interest in a system of campaign finance that facilitates democratic, representative, and accountable government. As noted above, Maine's election season is in full swing, and early voting has already commenced. A last-minute injunction would cause unnecessary chaos, throwing doubt on the entirety of the MCEA, even though only discrete provisions of the system are challenged here. Such turmoil would destroy voters' confidence in a system they have depended upon to keep their elections orderly and corruption-free.[9] There is little doubt that the public debate over the

[9] For example, public polling has consistently shown strong support for the public financing program across Maine's electorate. In recent surveys, 67% of Maine voters expressed overall approval for the MCEA. *See Critical Insights on Maine Tracking Survey: Summary Report of Finding from Proprietary Items* 5 (Critical Insights ed., May 2010) (attached hereto as Appendix B). 70% of voters were in favor of the MCEA's public financing provisions, and 66% of voters surveyed agreed that the MCEA is needed because, prior to the enactment of the law, large donors wielded disproportionate influence. *Id*. at 7, 10.

substantive issues would be poorly served by the specter of candidates scrambling to adapt to new rules and a significantly re-aligned playing field. The public interest in orderly elections and a healthy campaign dialogue would certainly be a casualty.

More fundamentally, an injunction would threaten the First Amendment benefit Maine's citizens derive from the political dialogue that the supplemental funds facilitate. As the *Buckley* Court noted:

> [T]he central purpose of the Speech and Press Clauses was to assure a society in which "uninhibited, robust, and wide-open" public debate concerning matters of public interest would thrive, for only in such a society can a healthy representative democracy flourish. Legislation to enhance these First Amendment values is the rule, not the exception.

Id. at 93 n.127 (citations omitted); *see also Citizens United v. FEC*, 130 S.Ct. 876, 911 (2010) ("[I]t is our law and our tradition that more speech, not less, is the governing rule."). Like the presidential public financing system praised by the *Buckley* Court, the MCEA is an effort "not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people." *Buckley*, 424 U.S. at 92-93. The "more speech" approach exemplified by public financing and facilitated by trigger funds furthers the primary First Amendment goal of democratic deliberation.

III. Plaintiffs Cannot Establish Any First Amendment Harm from the Gubernatorial Contribution Limit.

A. Plaintiffs have Not Offered Adequate Justification for Overturning Well-Settled Law.

Supreme Court case law clearly establishes the presumptive constitutionality of contribution limits. As to donors' rights, the *Buckley* Court recognized that a contribution limit "entails only a marginal restriction" upon speech because contributions serve only "as a general expression of support" and the "expression rests solely on the undifferentiated act of contributing." *Buckley*, 424 U.S. at 20-21**.** Because greater contributions do not equate to a greater or different expression, a limit on the amount of money one gives does not limit one's speech in an unconstitutional manner. *Id*. at 21. Similarly, larger contributions do not translate into greater association. *Id*. at 22. While making a contribution allows one to associate with a candidate, many other actions serve the same purpose – thus, that right is not materially diminished by a contribution limit. *Id*.

Nor are *candidates'* free speech rights unduly burdened by contribution ceilings: These limits are constitutional unless they prevent candidates from "amassing the resources necessary for effective advocacy." *Randall v. Sorrell*, 548 U.S. 230, 249-50 (2006); *Buckley*, 424 U.S. at 21. Limits on the amount any one contributor can give simply forces candidates to find more supporters; the limits do

not prevent candidates from effectively advocating the issues of concern to their contributors. *Buckley*, 424 U.S. at 21-22.

Thus, contribution limits are permissible when they "are closely drawn to match a sufficiently important interest." *Randall*, 548 U.S. at 247 (internal quotations omitted). It is well established that combating corruption and the appearance of corruption – the interest underlying Maine's contribution limits – meets this test. *Buckley*, 424 U.S. at 26; *see Daggett*, 205 F.3d at 467. In determining whether a contribution limit is "closely drawn" – the alleged issue here – a court has "no scalpel to probe" the exact amount because "the legislature is better equipped to make such empirical judgments, as legislators have 'particular expertise' in matters related to the costs and nature of running for office." *Randall*, 548 U.S. at 248.

Indeed, a court will examine the amount of a contribution limit only in the extreme case "where there is strong indication . . . , *i.e.* danger signs" that the limit is so low that it will "harm the electoral process by preventing challengers from mounting effective campaigns against incumbent officeholders, thereby reducing democratic accountability." *Randall*, 548 U.S. at 249 (including as "danger signs" (a) contribution limits set on an election-cycle basis, (b) $200 limits that were lowest in nation, and (c) well below lowest limit previously upheld). Since these danger signs were present in Vermont, the Supreme Court then considered five

factors that, *taken together*, rendered the state's contribution limits of $200 unconstitutional: (1) "the amount of funding available for challengers to run competitive campaigns" against incumbents was significantly restricted, particularly funds supplied by political parties; (2) the same dollar limit applied to party contributions to candidates as to individual contributions; (3) the absence of exceptions for certain types of volunteer expenses; (4) the absence of an inflation adjustment; and (5) no special justification for the state's extremely low contribution limits. *Id*. at 253-61. Importantly, since *Randall*, no court has struck down a uniformly applicable contribution limit as too low or for causing competitive harm to challengers.[10] *See, e.g.*, *Thalheimer v. City of San Diego*, 2010 WL 596397, *5 (S.D. Cal. 2010) (noting *Randall* as only case to strike down

[10] Moreover, political science research since the time of the *Randall* case shows that, far from impeding challengers, contribution limits have "the practical effect of benefitting challengers as a class." *Buckley*, 424 U.S. at 32. One study examined contribution data from 57 gubernatorial election cycles in 41 states over a 20-year period and concluded that contribution limits actually benefit challengers in their races against incumbents. Kihong Eom & Donald A. Gross, *Contribution Limits and Disparity in Contributions between Gubernatorial Candidates*, 59 Pol. Res. Q. 99 (2006). Similarly, a comprehensive survey of state house elections in 42 states from 1980 to 2006 showed that low contribution limits make elections more competitive, while high contribution limits (or the absence of any limits) benefited incumbents. Ciara Torres-Spelliscy, Kahlil Williams & Thomas Stratman, *Electoral Competition and Low Contribution Limits* (Brennan Center for Justice ed., 2009).

contribution limits). Plaintiffs here, offering only the sketchiest allegations of harm, provide no justification to overturn this consensus of settled law.

B. Plaintiffs Cannot Establish Any Legal Injury From the Gubernatorial Contribution Limit and Therefore Cannot Meet The Standard of Irreparable Injury Required for Injunctive Relief.

The claim of Plaintiff Clough, a *donor* who challenges the gubernatorial contribution limits, should be disposed by a simple application of *Buckley*. Plaintiff Clough has exercised his associational and speech rights by making a $750 contribution during this election and donations totaling $200 in the primary. Wayne Aff. ¶ 50. Notably, Clough could have donated $550 more in the primary but failed to do so. Donating more at this point would not express greater support for, or association with, the LePage campaign.

Moreover, the competitive harms at issue in *Randall* are not present here, where there is no gubernatorial candidate challenging the limit and thus no issue of a candidate's competitive harm before the court. Indeed, the risk of incumbent entrenchment at issue in *Randall* is completely inapplicable, since there is no incumbent in the gubernatorial race to which the challenged contribution limits apply. Although Mr. Clough, a LePage supporter, may have an "interest in the problem," he lacks the "direct stake in the outcome" of this litigation that is necessary for him to assert a *Randall* claim. *Adams v. Watson*, 10 F.3d 915, 918 (1st Cir. 1993).

Even if this Court finds it appropriate to engage in a *Randall* analysis, there is "not a shred of competent evidence in the record that Maine's $750 contribution limit will deprive any gubernatorial candidate of the resources necessary to run a viable campaign." Defs. Op. 23. In fact, the only evidence before this Court shows that privately funded candidates are able to raise ample funds for their campaigns. Wayne Aff. ¶¶ 51-52. Even under the lower, previously applicable contribution limit of $500, privately financed gubernatorial candidates were able to raise significantly more money than they had before the contribution limits were lowered in 1996. Wayne Aff. ¶ 51. The contribution limits – quite simply – place no cognizable burden on Mr. Clough's political rights.[11]

CONCLUSION

For these reasons, *amici* respectfully submit that Plaintiffs' Emergency Motion for Injunctive Relief Pending Appeal should be denied.

[11] Like the other Plaintiffs, Mr. Clough's claim of imminent, irreparable injury is undercut by the timing of this lawsuit. For over a decade, Maine has limited contributions to gubernatorial candidates to $500, *see* Me. Rev. Stat. Ann. tit. 21A § 1015 (2008), and only raised the limit to $750 last year. *See* 2009 Me. Acts 286. Yet Mr. Clough waited until the eve of this election – more than a decade after Maine enacted its contribution limits, to bring this suit.

Respectfully Submitted,

/s/ Monica Youn

Monica Youn*
Mimi M. D. Marziani*
BRENNAN CENTER FOR JUSTICE AT
NYU SCHOOL OF LAW
161 Avenue of the Americas,
12th Floor
New York, NY 10013
Phone: (646) 292-8310
Fax: (212) 463-7308
monica.youn@nyu.edu
mimi.marziani@nyu.edu

Lisa J. Danetz*
Brenda Wright (68598)
DEMOS
358 Chestnut Hill Avenue
Suite 303
Brighton, MA 02135
Phone: (617) 232-5885
ldanetz@demos.org
bwright@demos.org

John Brautigam (62098)
1 Knight Hill Road
Falmouth, ME 04105
Phone: (207) 671-6700
jblaw@maine.rr.com

September 30, 2010

Counsel for *Amici Curiae*

* Admission pending

CERTIFICATE OF COMPLIANCE
FED. R. APP. P. 32

1. This brief complies with the type-volume limitation of Fed. R. App. P.32(a)(7)(B) because this brief contains 6,946 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally-spaced typeface using Microsoft Word in Times New Roman, 14 point font.

/s/ Mimi M.D. Marziani

Mimi M.D. Marziani
BRENNAN CENTER FOR JUSTICE AT
NYU SCHOOL OF LAW
161 Avenue of the Americas, 12th Floor
New York, NY 10013
Phone: (646) 292-8327
Fax: (212) 995-4550
mimi.marziani@nyu.edu

CERTIFICATION OF SERVICE

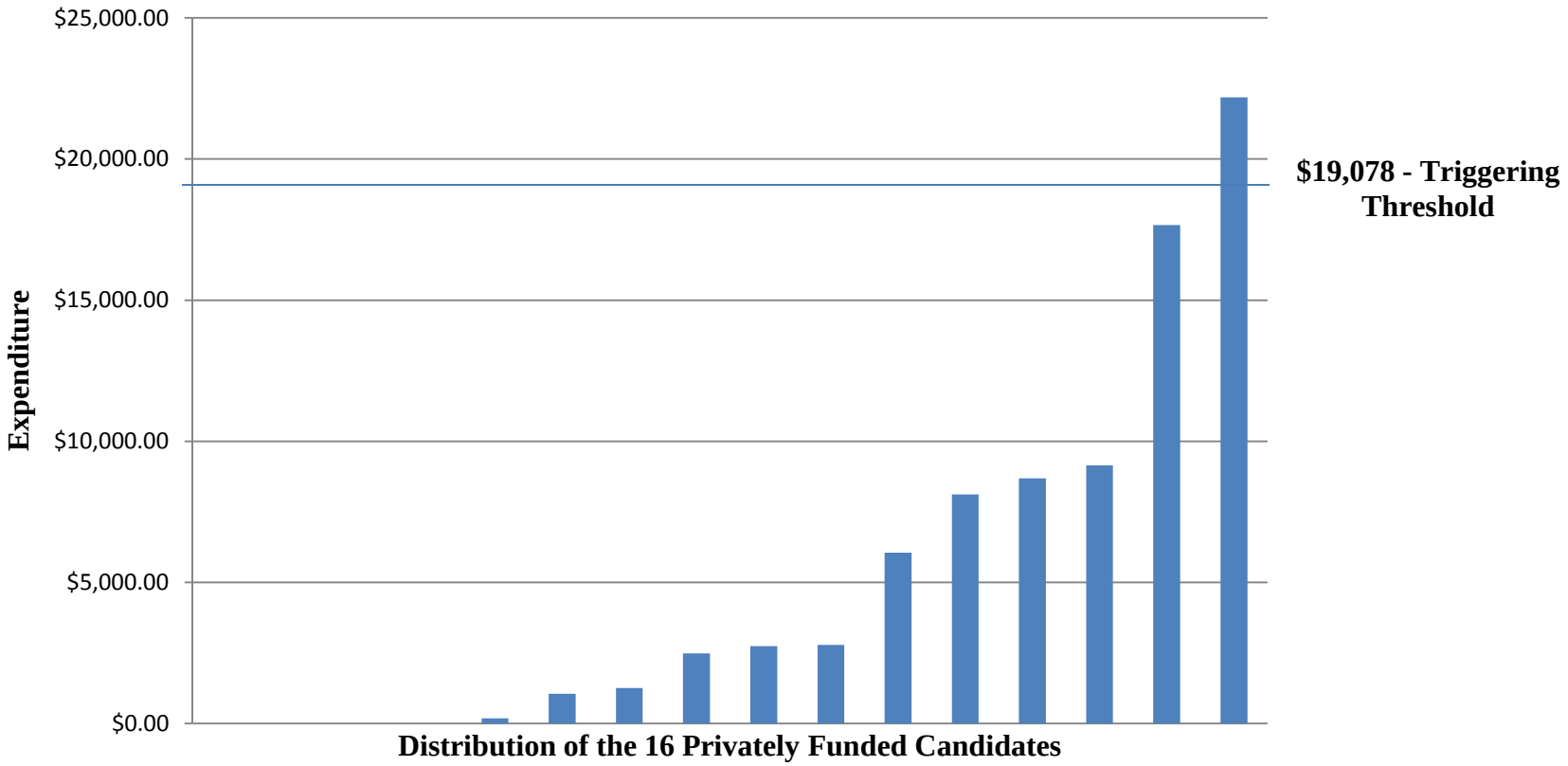
I hereby certify that on September 30, 2010, a copy of the foregoing *Amici Curiae Opposition to Plaintiffs' Emergency Motion for Injunctive Relief Pending Appeal* was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Lisa J.Danetz

Lisa J. Danetz
DEMOS
358 Chestnut Hill Ave.
Suite 303
Brighton, MA 02135
Phone: (617) 232-5885
ldanetz@demos.org

Appendix A

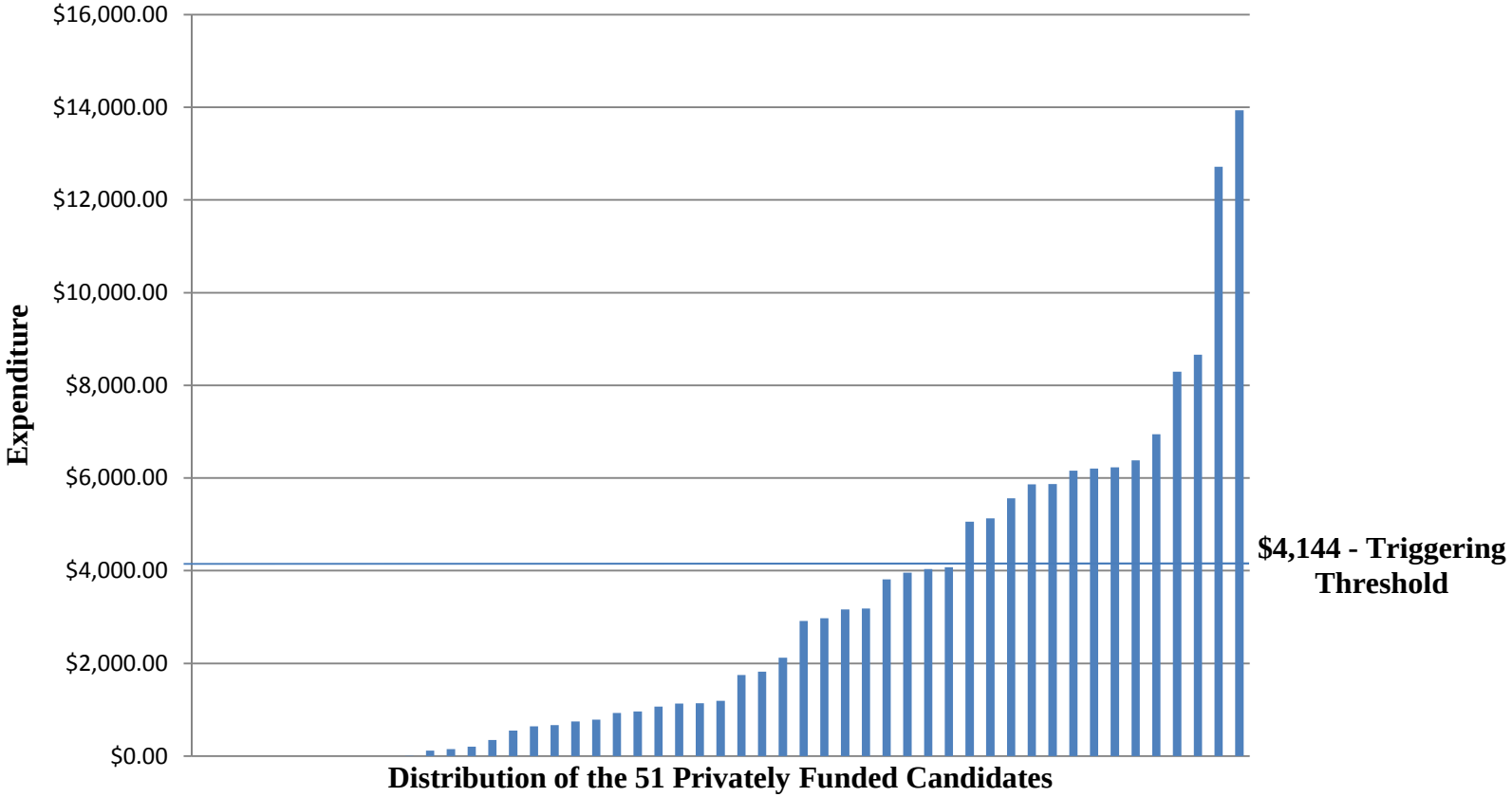
GRAPH 1: DISTRIBUTION OF THE PRIVATELY FUNDED CANDIDATES IN THE MAINE SENATE 2008 GENERAL ELECTION



Distribution of privately funded Senate candidates' total fundraising for the 2008 general election shows no evidence of clustering at or near near threshold at which supplementary funds are triggered.

Spending data was obtained by aggregating three campaign finance reports filed by each privately funded candidate and available on the Maine Commission on Governmental Ethics and Election Practices website: (1) 42-Day Pre-General Election Report, (2) 11-Day Pre-General Election Report, and (3) 42-Day Post-General Election Report. Monies spent after the date of the election were not included in this data set. See www.mainecampaignfinance.com for more information.

GRAPH 2: DISTRIBUTION OF THE PRIVATELY FUNDED CANDIDATES IN THE MAINE HOUSE OF REPRESENTATIVES 2008 GENERAL ELECTION



Distribution of privately funded House candidates' total fundraising for the 2008 general election shows no evidence of clustering at or near near threshold at which supplementary funds are triggered.

Spending data was obtained by aggregating three campaign finance reports filed by each privately funded candidate and available on the Maine Commission on Governmental Ethics and Election Practices website: (1) 42-Day Pre-General Election Report, (2) 11-Day Pre-General Election Report, and (3) 42-Day Post-General Election Report. Monies spent after the date of the election were not included in this data set. See www.mainecampaignfinance.com for more information.

Appendix B

CRITICAL INSIGHTS

RESEARCH FOR PRECISE PRAGMATIC DIRECTION

Critical Insights on Maine™ Tracking Survey

~ Spring 2010 ~

Summary Report of Findings from Proprietary Items

Prepared for:

MCCE MAINE CITIZENS FOR CLEAN ELECTIONS

May 2010

Focus Groups • Surveys • Public Opinion Polling

120 Exchange Street, Portland, Maine 04101

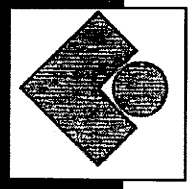
Telephone: 207-772-4011 • Fax: 207-772-7027

www.criticalinsights.com

Introduction

Background & Methodology

- Each Spring and Fall, Critical Insights conducts the *Critical Insights on Maine™* Tracking Survey, a comprehensive, statewide public opinion survey of registered voters which covers a variety of topics of interest to business, government, and the general public.
  - In addition to general interest items (the results of which are released to the media as a public service), the survey also includes a number of proprietary items included on behalf of sponsoring entities, with results of those items released only to the sponsors.
- For the current wave of the study, Critical Insights completed a total of 600 random telephone interviews across the state between April 28, 2010 and May 7, 2010.
  - With a sample of 600 interviews, results presented here have an associated margin of error of ±3.4 percentage points at the 90% confidence level, or ±4.0 percentage points at the 95% confidence level.
  - All interviews were conducted with self-reported registered voters; final data was statistically weighted according to relevant demographics to reflect the voter base in Maine.
  - On average, the entire survey instrument – including general interest items and all subscriber questions – was 21 minutes in administrative length.
- This document presents results of questions proprietary to the Maine Citizens for Clean Elections.



Proprietary Results

Views on Campaign Contributions and the Maine Clean Election Act

- A majority of registered voters (64%) polled for *Critical Insights on Maine™* believe that large campaign contributions from special interest groups have "a great deal" of influence on elected officials.
  - Another 1-in-5 (22%) voters feel there is "some" influence, while very few indicate that there is "not much" or "very little."
  - Self-described Independents are significantly more likely to say that large contributions from special interest groups have "a great deal" of influence, while Democrats and Republicans are more likely indicate "some" influence.
- Not surprisingly then, overall approval for the Maine Clean Election Act is high among Maine voters (67%).
  - While very few (9%) say they disapprove, it is notable that about one-quarter (24%) claim they don't know enough about the Maine Clean Election Act to offer an opinion.
  - Favorability is significantly higher among those from upper-income households ($75k or more) and those who are well-educated (college degree or more); by contrast, voters from lower- and middle-income households and those with a high school diploma or less are more likely than others to state that they don't know enough about the Act to approve or disapprove.

Views on the Maine Clean Election Act

- When informed that under the Maine Clean Election Act, once candidates qualify for a set amount of public funds, they must adhere to campaign spending limits and can no longer accept contributions, fully 7-in-10 Maine voters express favorability for the Act.
  - Favorability is again highest among college-educated voters and those in the upper-income bracket – as well as among declared Democrats; conversely, self-described Republicans and Independents are significantly more likely than Democrats to state opposition when presented with this additional information.
- Despite high favorability ratings and relatively low levels of disapproval/opposition, the gap closes a bit in terms of whether the Maine Clean Election Act should be eliminated.
  - Indeed, half (51%) of voters polled indicate that they are against eliminating the Maine Clean Election Act, while one-third (32%) favor elimination.
    - Consistent with patterns observed previously, those from upper-income households are more likely to say they are against eliminating the Act; additionally, self-described Democrats are more likely than those affiliated with other political parties to say they are "strongly against" eliminating the Act.

CRITICAL INSIGHTS
RESEARCH FOR PRECISE PRAGMATIC DIRECTION

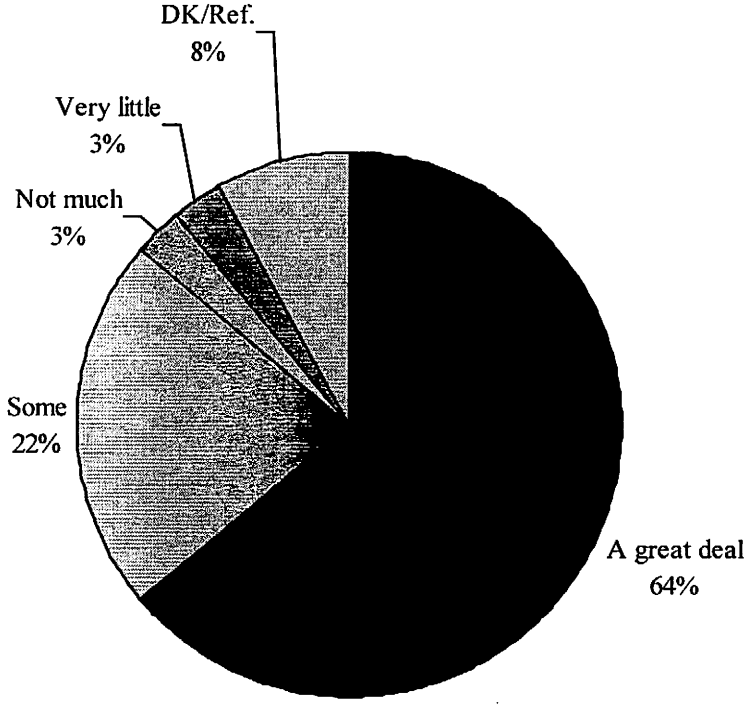
120 Exchange Street
Portland • Maine
www.criticalinsights.com

Views on the Maine Clean Election Act

- Nevertheless, when asked which statement most closely represents their personal point of view, the majority (66%) of voters surveyed say that the Maine Clean Election Act is needed due to big donors wielding too much influence on elections in the past, while roughly 1-in-5 (19%) say that we just can't afford the Act in the current economy – perhaps a key reason among those who feel the Act should be eliminated.
  - Again, similar to results observed earlier, the Maine Clean Election Act holds significantly more importance for declared Democrats than for Republicans or Independents.

Perceived Influence of Campaign Contributors

How much influence do you think large campaign contributions from special interest groups have on elected officials? Would you say…

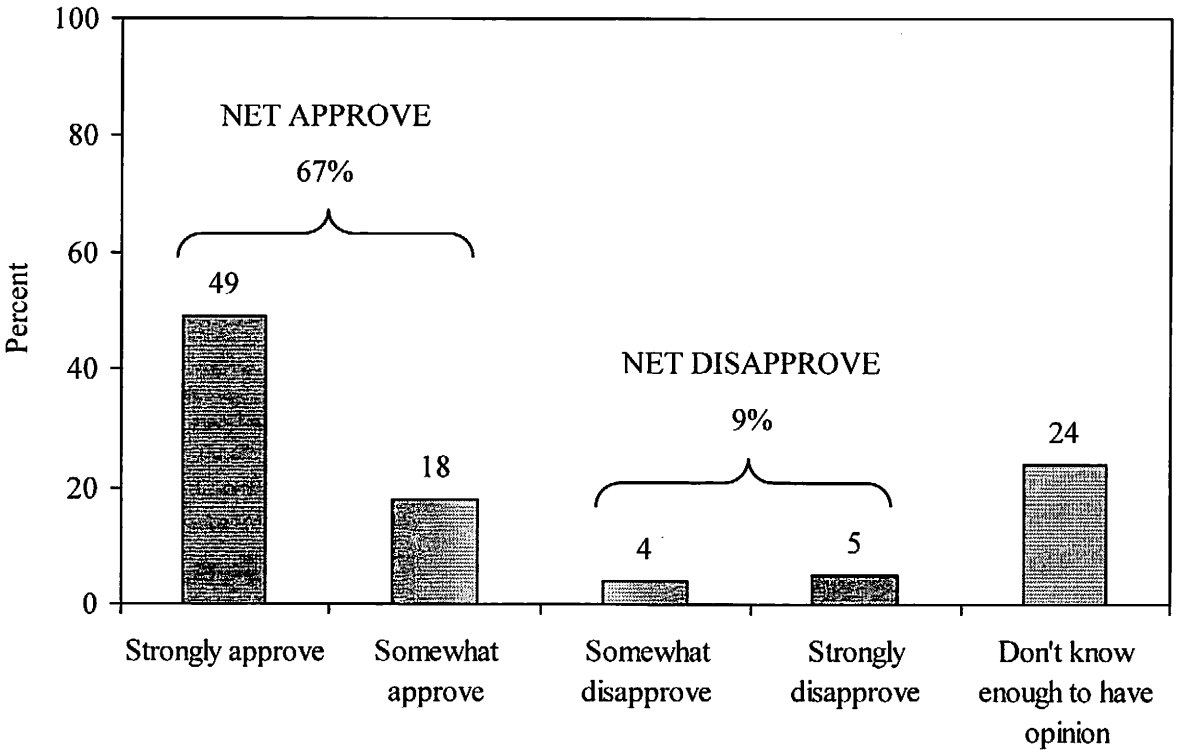


CRITICAL INSIGHTS
RESEARCH FOR PRECISE PRAGMATIC DIRECTION

120 Exchange Street
Portland • Maine
www.criticalinsights.com

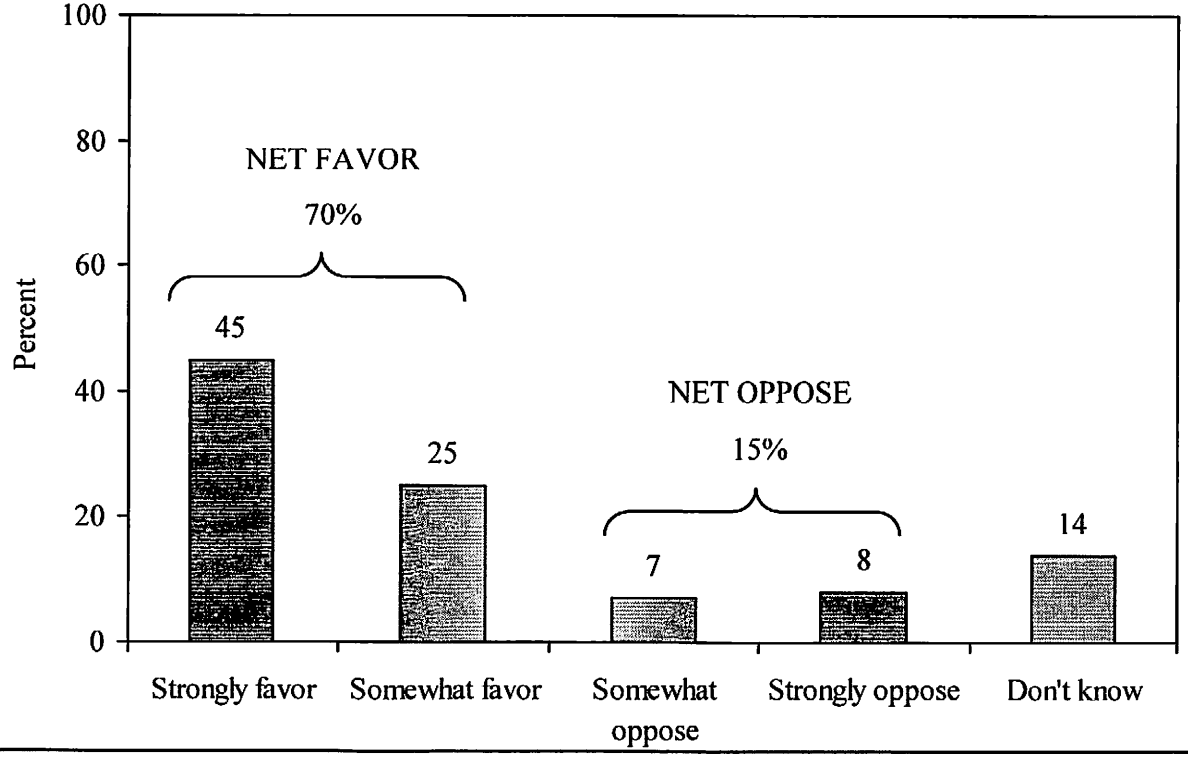
Approval of the Maine Clean Election Act

The Maine Clean Election Act was approved ten years ago by voters to allow candidates to run for office without relying on campaign contributions from lobbyists and other special interests. Do you strongly approve, somewhat approve, somewhat disapprove, or strongly disapprove of the Maine Clean Election Act, or do you not know enough to have an opinion?



Favorability of the Maine Clean Election Act

Under the Maine Clean Election Act, candidates collect a set amount of five-dollar contributions to qualify for a limited amount of public funds. Once qualified, they must adhere to campaign spending limits and can no longer accept campaign contributions. Knowing this, do you strongly favor, somewhat favor, somewhat oppose, or strongly oppose the Maine Clean Elections Program?

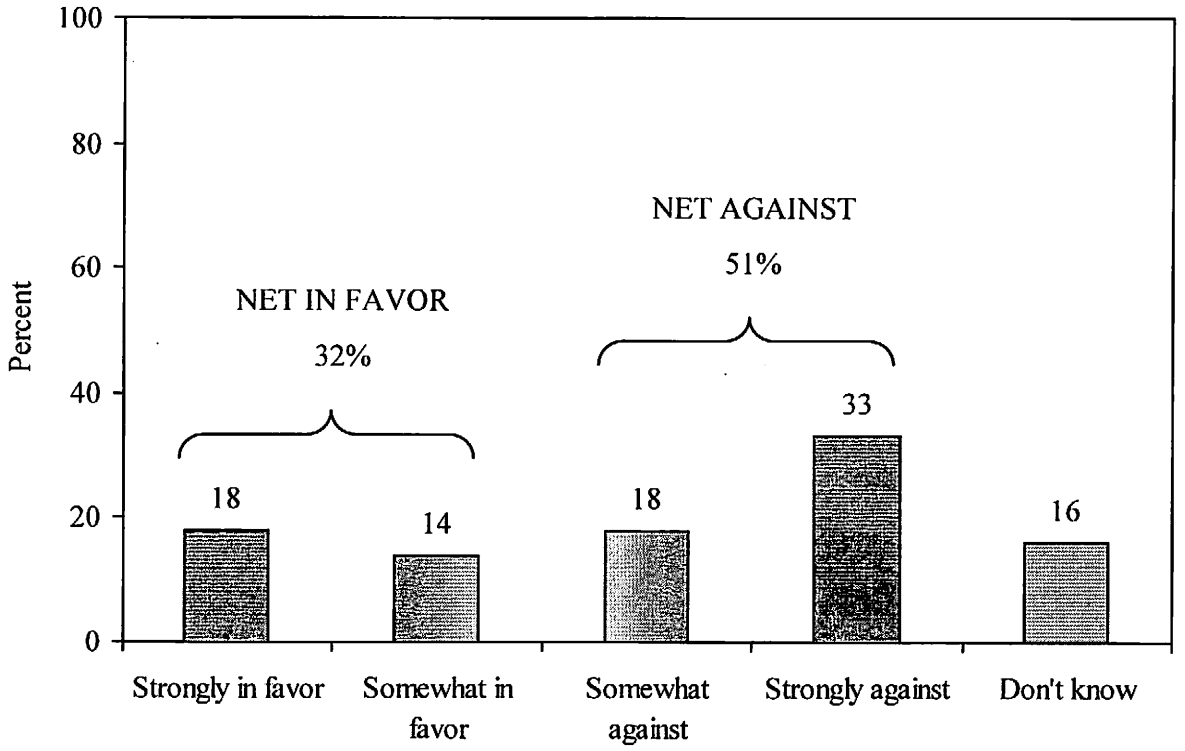


CRITICAL INSIGHTS
RESEARCH FOR PRECISE PRAGMATIC DIRECTION

120 Exchange Street
Portland • Maine
www.criticalinsights.com

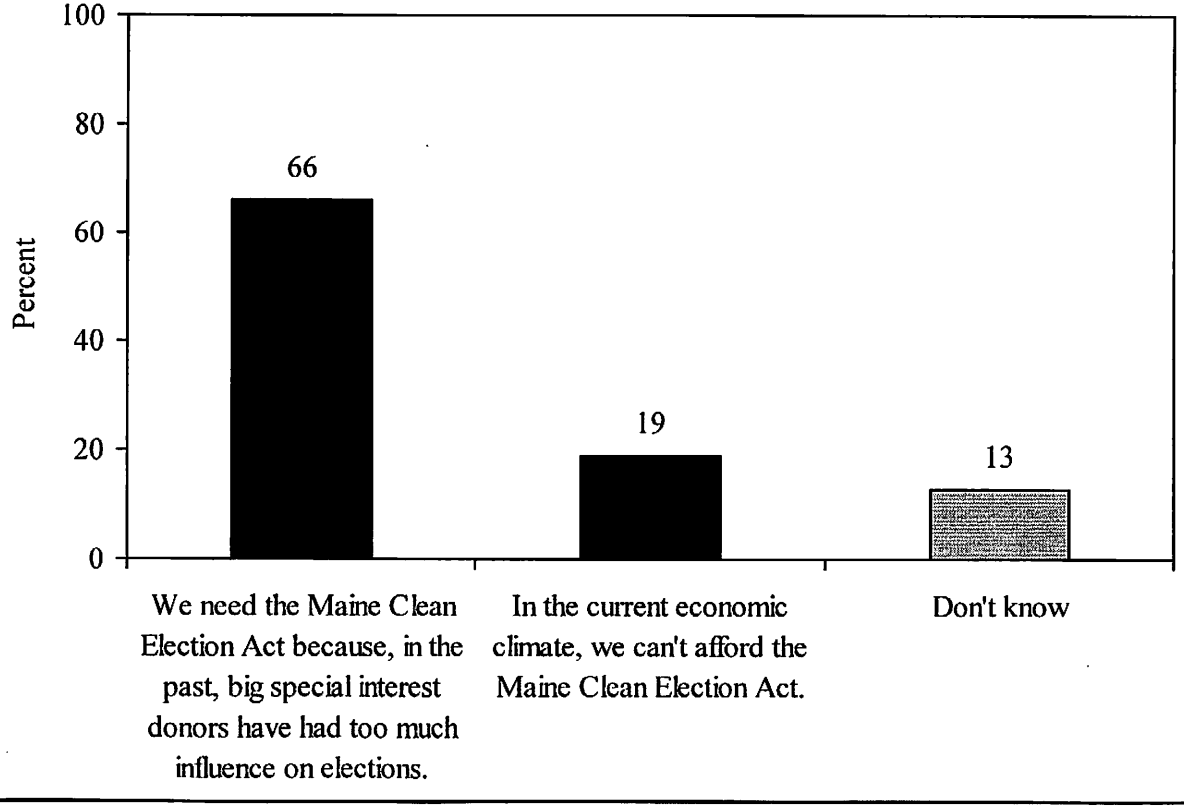
Views on Eliminating the Maine Clean Election Act

Some groups want to eliminate the Maine Clean Election Act. Based on what you now know, which of the following best matches your feelings: You are strongly in favor of eliminating the program, you are somewhat in favor of eliminating the program, you are somewhat against eliminating the program, or you are strongly against efforts to eliminate the Maine Clean Elections Program?



Overall Views on the Maine Clean Election Act

I am now going to read you two statements about the Maine Clean Election Act. Please tell me which ONE comes closest to your own personal point of view:



CRITICAL INSIGHTS
RESEARCH FOR PRECISE PRAGMATIC DIRECTION

120 Exchange Street
Portland • Maine
www.criticalinsights.com