



## **Edit Memo: Senator Udall's Constitutional Amendment Proposal Would Restore the First Amendment and Strengthen Our Democracy**

***To: Interested Parties***

***From: Marge Baker, Executive Vice President, People For the American Way***

***Date: June 2, 2014***

***Subject: Senator Udall's Constitutional Amendment Proposal Would Restore the First Amendment and Strengthen Our Democracy***

On June 3<sup>rd</sup>, 2014, the Judiciary Committee of the United States Senate will hold a hearing on the need to amend the Constitution to overturn the Supreme Court's decisions in *Citizens United v. FEC*, 558 U.S. 310 (2010), *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014), and related cases. In particular, the Committee will examine Senator Tom Udall's amendment proposal SJRES 19, which seeks to restore the constitutional authority to regulate the raising and spending of money to influence elections, so that the American people, and not corporations, billionaires and special interests, hold the power in our elections.

As of May 30, SJRES 19 had 41 cosponsors in the Senate, while in the House, similar amendment proposals which seek to overturn *Citizens United* and related cases had, in aggregate, garnered 123 sponsors and cosponsors.<sup>1</sup> The building momentum in Congress for an amendment mirrors the robust grassroots organizing taking place across the country at the local and state level. Since the landmark *Citizens United* decision, 16 states and over 550 municipalities, including large cities like New York, Los Angeles, Chicago and Philadelphia, have gone on record supporting congressional passage of a constitutional amendment to be sent to the states for ratification.<sup>2</sup> Transcending political leaning or geographic location, voters in states and municipalities that have placed amendment questions on the ballot have routinely supported these initiatives by large margins.

These local and state organizing efforts have produced a growing roster of public officials—now more than 1,700 in state legislatures alone— who are on record in support of an amendment.<sup>3</sup> The amendment strategy is endorsed by well over 100 organizations, ranging from civil rights associations like the NAACP, environmental groups like the Sierra Club, trade unions like the Communications Workers of America and SEIU, religious organizations like the Franciscan Action Network, and good government watchdogs like CREW.<sup>4</sup> The amendment strategy was included in the 2012 Democratic Platform,<sup>5</sup> and has been endorsed by President Obama and former Supreme Court Justice John Paul Stevens.<sup>6</sup>

The campaign to overturn *Citizens United* and related cases by amending the Constitution is a serious policy proposal that continues to receive widespread public support. That support is borne out of the growing understanding that the Court has left the American people no choice but for Congress and the states to pass and ratify such an amendment. Constitutional amendments are warranted in only the most extreme circumstances. This is one of them.

## ***The Effects of Citizens United and Related Cases on American Democracy***

In the wake of *Citizens United* and its progeny,<sup>7</sup> American elections have grown increasingly expensive, with the 2012 elections having been the most expensive in American history. Spending in the 2012 federal elections is estimated to have exceeded \$6 billion,<sup>8</sup> while the total spending in 2012 local, state and federal elections reached an estimated \$10 billion.<sup>9</sup>

Americans have witnessed an explosion of outside spending in elections since 2008, the last federal election before *Citizens United* was decided. From 2008 to 2012, outside spending increased roughly 245 percent in presidential elections, 662 percent in House elections, and 1,338 percent in Senate elections.<sup>10</sup> And as political entities adapt to a post-*Citizens United*, post-*McCutcheon* landscape, these trends are only getting worse, as evidenced by the experience so far in the 2014 midterm congressional elections.<sup>11</sup>

Equally important, these decisions are having a clear impact on local and state elections as well.<sup>12</sup> The concern was perhaps best summed up by Wisconsin Republican state Senator Dale Schultz, who earlier this year cited the poisonous effects of *Citizens United* and money in politics as a reason for his decision to leave elective office.<sup>13</sup> Schultz was blunt in his assessment of the current state of affairs: “As a Republican, I have always thought business should have access to the public square. I never thought anybody should be able to buy the public square, and that’s really about where we’re at right now.”<sup>14</sup>

The post-*Citizens United* increase in outside spending as a percentage of total election spending is particularly troublesome given that most of it comes from a tiny, severely unrepresentative sliver of the overall population. In the 2012 federal elections, 60 percent of all Super PAC donations came from just 159 donors; 93 percent came from 3,318 donors—just 0.0011 percent of the US population.<sup>15</sup>

The effects that this flood of money continues to have on our democracy are profound and multifaceted. Particularly troublesome and unsustainable are the following:

- 1) In order to adapt to an increasingly expensive, unpredictable and unaccountable election environment, public officials now spend exorbitant amounts of time fundraising from big donors, time that should be spent governing and serving their constituents. “Most Americans,” Senator Dick Durbin [D-IL] has stated, “I think, would be maybe a little embarrassed, certainly surprised, about how much time that members of Congress spend talking about raising money, and actually raising money.”<sup>16</sup> Durbin’s statement is well-founded. To reach the average amount it now takes to win a seat in the Senate, a U.S. senator must raise roughly \$4,600 each day of his or her six-year term, including weekends and holidays; a House member must raise roughly \$2,000 each day of his or her two-year term to reach the winning average.<sup>17</sup> Not surprisingly, freshmen members of Congress have been advised by party leadership to spend four hours out of each day making fundraising calls, as well as an hour per day on “strategic outreach,” which includes attending fundraisers. Essentially, these lawmakers have been advised to spend roughly half of each day fundraising.<sup>18</sup> The obvious question becomes: when, in the midst of all this time spent fundraising, will these legislators find the time to legislate?
- 2) The spiraling cost of elections has led to a corresponding loss of access to the democratic process for average Americans,, whether they seek to interact with their elected officials or to serve in elected office themselves. On the one hand, to become a viable candidate for

many offices, it has become almost a prerequisite to either be wealthy or to have access to fundraising assistance from the wealthy, leading to the so-called “wealth primary” that defines political campaigns.<sup>19</sup> On the other hand, candidates and elected officials have become far more concerned about granting access to big donors rather than to their constituents at large. Witness the spectacle this past March when a coterie of potential GOP presidential nominees flew to Las Vegas to court the mega-donor Sheldon Adelson.<sup>20</sup> Less sensationally but more significantly, the reality that big donors get more access to candidates and elected officials than do everyday constituents has been substantiated by numerous academic studies.<sup>21</sup>

- 3) The ever-increasing importance of big donors and corporate spending in elections skews policy outcomes towards the desires of those donors and corporations, which can often run counter to the desires of the American people. As documented by Princeton professor Martin Gilens, “when Americans with different income levels differ in their policy preferences, actual policy outcomes strongly reflect the preferences of the most affluent but bear virtually no relationship to the preferences of poor or middle-income Americans.”<sup>22</sup> This helps explain why policy proposals that are popular with the majority of Americans yet unpopular with wealthy and corporate interests—policies like increasing the minimum wage and providing social programs that keep the poor out of privation—are frequently met with strong resistance once they reach Congress.<sup>23</sup> One does not have to look far to see how the Supreme Court’s decisions in *Citizens United* and related cases have contributed to this policy disconnect. Nightmare scenarios in which a corporation or wealthy individual spends or threatens to spend limitless sums against public officials to support or counter a policy proposal are made real all too frequently in local, state, and federal governing bodies across the country.<sup>24</sup>
- 4) In part due to their loss of access to the political process, their subsequent loss of political influence, and their understanding that politicians spend far too much time fundraising from corporate interests and the super-wealthy, the American people are losing faith in American democracy. A November, 2013, poll found that seven in 10 American voters think our election system is “biased in favor of the candidate with the most money,”<sup>25</sup> while year after year the Supreme Court, responsible for the stream of cases that is demolishing our campaign finance laws, has grown more partisan and less fair in the eyes of the public.<sup>26</sup> The consequences of this loss of faith threaten the longevity of our democracy. As James Madison wrote in Federalist Paper 52, “As it is essential to liberty that the government in general should have a common interest with the people, so it is particularly essential that the branch of it under consideration [the House of Representatives] should have an immediate dependence on, and an intimate sympathy with, the people.”<sup>27</sup>

### ***Tying the Hands of Congress and the States***

Since *Buckley v. Valeo*, 424 U.S. 1 (1976), but especially during the past few years, the Supreme Court has imposed ever more limits on the ability of Congress and the states to enact commonsense election spending regulations. In decisions leading up to *Citizens United v. FEC* and in subsequent cases, the Court has removed a host of legislative powers from the people and their representatives.

Under the current status quo, Congress and the states are constitutionally prohibited from:

- 1) Setting limits on independent expenditures or on contributions to independent election spending entities made by corporations or by individuals;<sup>28</sup>

The result: *The super-wealthy can spend infinite sums to influence our elections.* In the 2012 election cycle, “[t]he top 32 Super PAC donors, giving an average of \$9.9 million each, matched the \$313.0 million that President Obama and Mitt Romney raised from all of their small donors combined—that’s at least 3.7 million people giving less than \$200.”<sup>29</sup> Such torrents of spending are not limited to presidential races; congressional, state and local elections are subject to this election environment as well.

- 2) Barring corporations from spending general treasury funds to independently influence elections;<sup>30</sup>

The result: *Large corporations can independently spend without limit on elections.* Since *Citizens United*, corporations have spent hundreds of millions of dollars on political ads at the local, state and federal level, at times hiding that spending behind “dark money” groups like social welfare organizations and trade associations that under federal law and most state laws are not required to disclose their donors.<sup>31</sup>

- 3) Setting caps on self-funded campaigns;<sup>32</sup>

The result: *Wealthy candidates can spend without limit on their own campaigns,* creating vast inequalities in campaign financing and an unfair advantage. This loophole is so problematic that it led even staunch campaign finance regulation opponent Senator Mitch McConnell [R-KY] to state in a subcommittee hearing on campaign finance during the second session of the 100<sup>th</sup> Congress: “I would not have any problem with amending the Constitution with regard to the millionaire's problem.”<sup>33</sup>

- 4) Setting aggregate limits on direct contributions by individuals to candidates, PACs and party committees;<sup>34</sup>

The result: *Politicians can obtain multi-million dollar contributions from big donors,<sup>35</sup> while big donors can circumvent base limits on direct donations to candidates through circuitous methods.* At the federal level, until this year’s *McCutcheon* decision, aggregate limits stood at roughly \$123,000 per donor per election cycle. Now, government watchdogs are forecasting that big donors will be able to directly give between \$3.6 and \$5.9 million per election cycle to candidates, PACs and party committees through joint fundraising committees,<sup>36</sup> which can now become what have been recently dubbed “super” joint fundraising committees.<sup>37</sup> Not only does the elimination of aggregate limits seriously threaten the efficacy of base contribution limits, it also vastly enhances the ability of the wealthiest among us to influence even more elections and to incur the gratitude (and loyalty) of party leaders.<sup>38</sup>

- 5) Implementing a range of innovative election reform measures.

The result: *Congress and the states are restricted to operating within the Court’s flawed framework,* and thus are unable to provide additional funds to publicly-financed candidates to compensate for spending by privately-funded opponents;<sup>39</sup> set expenditure limits on candidate campaigns;<sup>40</sup> enact time limits on fundraising;<sup>41</sup> and pursue other measures that violate the defective holdings of *Buckley* and its progeny.<sup>42</sup>

The Court has tied the hands of Congress and the states, prohibiting them from setting limits on campaign spending and saying that the only legitimate rationale under the First Amendment for such laws is to counter narrowly defined quid pro quo corruption (bribery). The Court has ruled illegitimate any attempt to reduce the ability of the nation's wealthiest and most powerful to buy inappropriate and outsized influence in our elections. This distortion of the Constitution has prevented any meaningful regulation or reform of the way we finance elections in America. To restore the First Amendment, short of changing the composition or the jurisprudence of the Court, we have no choice but to amend the Constitution.

### ***The Udall Amendment Would Strengthen The First Amendment***

As Justice Breyer noted in his *McCutcheon* dissent, the interests of the Court in preventing corruption or the appearance of corruption are "rooted in the First Amendment itself ... in the constitutional effort to create a democracy responsive to the people— a government where the laws reflect the very thoughts, views, ideas, and sentiments, the expression of which the First Amendment protects."<sup>43</sup> As such, Justice Breyer urges, "[w]e should see [campaign finance laws] as seeking in significant part to strengthen, rather than weaken, the First Amendment."<sup>44</sup> To correct the Court's flawed decisions in *Buckley*, *Citizens United* and *McCutcheon* and restore the First Amendment's contribution to a government whose laws reflect the people's "thoughts, views, ideas, and sentiments"<sup>45</sup> we have no choice but to amend the Constitution.

The Udall resolution provides the proper framework for that amendment. The resolution provides, in a simple and straightforward way, that Congress and the states have the authority to regulate and limit the raising and spending of money on elections. It gives Congress and the states the power to enact appropriate legislation to implement and enforce the amendment. And it provides the important clarification that nothing in the amendment should be construed to abridge the freedom of the press.

Importantly, the Udall amendment also rejects the current Court's misguided interpretation that the only basis for campaign finance regulation is to address corruption in the form of quid pro quo bribery.<sup>46</sup> In fact, in addition to preventing corruption, there are multiple rationales that justify campaign finance regulation, including but not limited to: leveling the electoral playing field; advancing the fundamental principle of equality for all; and protecting the integrity of the governmental and electoral processes. These are concepts incorporated in the Udall proposal, which provides guidance for a new post-amendment campaign finance jurisprudence to be developed by the Court.

Amending the Constitution is a weighty matter, and not something to be contemplated lightly. But the notion of empowering the American people, through Congress and the states, to set reasonable limits on election spending in order to foster healthy debate in the public square is certainly not a radical idea. As former Supreme Court Justice John Paul Stevens noted, writing in favor of a constitutional amendment:

"There are... situations in which rules limiting the quantity of speech are justified by the interest in giving adversaries an equal opportunity to persuade a decision maker to reach one conclusion rather than another. The most obvious example is an argument before the Supreme Court. Firm rules limit the quantity of both oral and written speech that the parties may present to the decision maker. Those rules assume that the total quantity permitted is sufficient to enable the Court to reach

the right conclusion; they are adequately justified in interests in fairness and efficiency.”<sup>47</sup>

On the contrary, imagine if the Supreme Court were to operate in the same fashion in which American elections are currently conducted, with argument time allotted according to ability to pay. The hypothetical is as preposterous – and dangerous – as is America’s now toothless campaign finance regime.

With the Udall amendment, campaign finance statutes like Arizona’s matching funds program, which was struck down by the Court because it was designed to provide greater equality of opportunity in the electoral sphere,<sup>48</sup> would now be able to stand. Reasonable limitations on contributions to election spending entities would be upheld on the basis that such limitations help protect the integrity of the electoral process. By the same token, unreasonable or discriminatory limits could still be struck down if they are found to violate other constitutional protections, for example the constitution’s equal protection guarantees.

### ***The Time to Amend is Now***

America boasts a long and celebrated history of amending the Constitution to overturn misguided Supreme Court decisions and expand the democratic enterprise.<sup>49</sup> The abolition of slavery, the enactment of women’s suffrage, the prohibition of the poll tax—many of America’s movements for social and economic justice have relied upon Article V (the constitutional provision for amending the Constitution) to enact landmark achievements.

When signing the 24th Amendment that eliminated the poll tax, President Lyndon B. Johnson proclaimed, "A change in our Constitution is a serious event."<sup>50</sup> Johnson was right. Amending the Constitution is not to be undertaken lightly, but the issue of undue corporate and plutocratic influence over our governing system is a serious problem.

The time is now to amend the Constitution to restore the true meaning of the First Amendment and the promise of our founding documents.

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<sup>1</sup> For SJRES 19 cosponsors, see *Library of Congress THOMAS*, “S.J.RES.19,” <http://thomas.loc.gov/cgi-bin/bdquery/z?d113:S.J.RES.19:@@P>. For amendment proposals in the 113<sup>th</sup> Congress and their cosponsors, see *United For the People*, “Amendments,” <http://www.united4thepeople.org/amendments.html>. For the views of senators and representatives in 113<sup>th</sup> Congress on the amendment strategy, see *United For the People*, “113th Congress,” <http://www.united4thepeople.org/113/>.

<sup>2</sup> *United For the People*, “Local and State Resolutions,” <http://www.united4thepeople.org/local.html>.

<sup>3</sup> *United For the People*, “Endorsers,” accessed on May 25, 2014, <http://united4thepeople.org/endorsers.html>.

<sup>4</sup> *United For the People*, “Endorsing Organizations,” accessed on May 25, 2014, <http://www.united4thepeople.org/orgs.html>.

<sup>5</sup> *People For the American Way*, “Democratic Platform Open to a Constitutional Amendment”, Sept. 4, 2012. Available here: <http://blog.pfaw.org/content/democratic-platform-open-constitutional-amendment>.

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<sup>6</sup> *People For the American Way*, “President Obama voices his support for a constitutional amendment,” Aug. 31, 2012. Available here: <http://www.pfaw.org/content/president-obama-voices-his-support-constitutional-amendment>. Zachary Roth, *MSNBC*, “John Paul Stevens: We need to level the playing field,” <http://www.msnbc.com/msnbc/john-paul-stevens-money-politics>.

<sup>7</sup> While *Citizens United*, 558 U.S. 310 (2010), was a devastating blow to the people’s ability to protect our democracy and our elections, problems go back to *Buckley v. Valeo*, 424 U.S. 1 (1976). Available here: [http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0424\\_0001\\_ZO.html#424\\_US\\_1n65ref](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0424_0001_ZO.html#424_US_1n65ref).

Although in *Buckley* the Court upheld disclosure provisions, contribution limits, and aggregate contribution limits— the latter of which were recently knocked down by the Roberts Court in *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014)— the Court struck down limits on individuals’ expenditures and on self-funding of campaigns. Thus in *Buckley*, the Court created exploitable loopholes and set the basis for an illogical campaign finance jurisprudence that would have lasting and damaging effects on Congress and the states’ ability to regulate election spending.

<sup>8</sup> *OpenSecrets*, “Big Picture”, accessed on May 25, 2014, <http://www.opensecrets.org/bigpicture/>.

<sup>9</sup> John Nichols and Robert W. McChesney, *The Nation*, “Dollarocracy,” Sept. 30, 2013. Available here: <http://www.thenation.com/article/176140/dollarocracy>.

<sup>10</sup> Richard Hasen, Daniel Lowenstein and Daniel Tokaji, “Election Law Cases and Materials” Fifth Edition, 2013 supplement, <http://electionlawblog.org/wp-content/uploads/2013-supp-final.pdf>.

<sup>11</sup> As of May 30, 2014, over \$106 million of outside spending has already poured into the 2014 federal midterm elections. Of that, roughly 60% has come from Super PACs, and over 20% has come from “dark money” social welfare groups and trade associations that do not have to disclose their donors. *Center For Responsive Politics*, “Outside spending,” accessed May 30, 2014, [https://www.opensecrets.org/outsidespending/fes\\_summ.php](https://www.opensecrets.org/outsidespending/fes_summ.php). Spending by these outside groups, as of May 30th in this election cycle, has approximately tripled from the amount outside groups spent in the same time period leading up to the 2010 midterms (leaping from \$27.6 million in 2010 to \$97.7 million in 2014). In 2006, this number was \$3.5 million – that’s a twenty-eight-fold increase in just two midterm cycles. *Center For Responsive Politics*, “Total Outside Spending by Election Cycle, Excluding Party Committees” accessed May 30, 2014, [http://www.opensecrets.org/outsidespending/cycle\\_tots.php?cycle=2012&view=A&chart=N#summ](http://www.opensecrets.org/outsidespending/cycle_tots.php?cycle=2012&view=A&chart=N#summ).

52% of the money spent so far on national cable and broadcast television advertisements in 2014 Senate races has been purchased by outside groups; of those television advertisements, over half have come from groups that do not have to disclose their donors. 90% of all television advertisements in North Carolina’s U.S. Senate race have come from outside spenders. *Wesleyan Media Project*, “Interest Group Advertising Pours Into Senate Races,” <http://mediaproject.wesleyan.edu/2014/04/29/interest-group-advertising-pours-into-senate-races/>.

<sup>12</sup> In 2012, out of \$4 million spent on a city council race in Richmond, California, the Chevron Corporation spent \$1.2 million in independent expenditures. Prior to *Citizens United*, state law prohibited such spending from corporate treasuries on elections. Three months before the election, a fire in a refinery operated by Chevron in Richmond had spewed toxic fumes through the city, prompting the city council to consider tough measures against the oil company. Tawanda Kanhema, *Richmond Confidential*, “Citizens Outspent: Inside Richmond’s \$4m Election Campaign,” <http://richmondconfidential.org/2012/11/05/citizens-outspent-inside-richmonds-4m-election-campaign/> and John Geluardi, *East Bay Express*, “Can Richmond Progressives Regroup?” <http://www.eastbayexpress.com/oakland/can-richmond-progressives-regroup/Content?oid=3412074>.

In the 2011 elections for Oklahoma City Council, one Super PAC – which received its contributions from an anonymous non-profit – called the “Committee for Oklahoma City Momentum” spent \$400,000 on four candidates. Spending in the elections totaled roughly \$1 million. This post-*Citizens United* increase in election spending was unprecedented. A retiring ward councilman, Sam Bowman, had the following to say about the situation: “In these last few weeks, big money has gotten involved to the extent, in my opinion, that *it has just made a mockery of our city elections*... I didn’t see it coming this fast. The times are here where bigger money is going to be involved in local elections. I had no idea whatsoever to this extent [*Emphasis added*].” Michael Baker, *NewsOk*, “Oklahoma elections: Ed Shadid wins Oklahoma City Council Ward 2 seat,” <http://newsok.com/oklahoma%E2%80%90elections%E2%80%90ed%E2%80%90shadid%E2%80%90wins%E2%80%90oklahoma%E2%80%90city%E2%80%90council%E2%80%90ward%E2%80%902%E2%80%90seat/article/3555775/?page=1> and Clifton Adcock, *Oklahoma Gazette*, “Who’s behind the money?” <http://www.okgazette.com/oklahoma/article-11066-who%E2%80%99s-behind-the-money.html>.

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For a list of state statutes directly affected by *Citizens United*, see *National Conference of State Legislatures*, “Life After *Citizens United*,” <http://www.ncsl.org/research/elections-and-campaigns/citizens-united-and-the-states.aspx>. Although in the landmark campaign finance cases *Citizens United v. FEC* (2010) and *McCutcheon v. FEC* (2014), the Robert Court struck down federal laws, with devastating consequences for the states, the Roberts Court has also directly rebuked state efforts to uphold their own campaign finance laws. Notably, in *American Tradition Partnership, Inc. v. Bullock* (2012), the Roberts Court summarily reversed Montana’s effort to uphold a century-old prohibition on corporate spending in elections, *SCOTUSblog*, “American Tradition Partnership, Inc. v. Bullock,” <http://www.scotusblog.com/case-files/cases/american-tradition-partnership-inc-v-bullock/>.

<sup>13</sup> Ashley Luthern and Jason Stein, *Milwaukee Journal Sentinel*, “Republican Dale Schultz won’t seek re-election in Wisconsin Senate”: <http://www.jsonline.com/news/statepolitics/republican-dale-schultz-wont-seek-re-election-in-senate-b99192350z1-242203711.html>.

<sup>14</sup> Carl Gibson, *The Huffington Post*, “A Midwest Republican Senator Crusades Against the Corruption of Money in Politics”: [http://www.huffingtonpost.com/carl-gibson/carl-levin-citizens-united\\_b\\_4747203.html](http://www.huffingtonpost.com/carl-gibson/carl-levin-citizens-united_b_4747203.html).

<sup>15</sup> Adam Lioz and Blair Bowie, *DEMOS and US PIRG*, “Billion-Dollar Democracy,” <http://www.demos.org/publication/billion-dollar-democracy-unprecedented-role-money-2012-elections>.

<sup>16</sup> Steven Rosenfeld, *Alternet*, “Who and What Can Possibly Save American Democracy? 4 Key Questions”: [http://www.alternet.org/story/156463/who\\_and\\_what\\_will\\_save\\_american\\_democracy](http://www.alternet.org/story/156463/who_and_what_will_save_american_democracy).

<sup>17</sup> Russ Choma, *Open Secrets*, “Election 2012: The Big Picture Shows Record Cost of Winning a Seat in Congress”: <http://www.opensecrets.org/news/2013/06/2012-overview/>.

<sup>18</sup> Sabrina Siddiqui and Ryan Grim, *The Huffington Post*, “Call Time For Congress Shows How Fundraising Dominates Bleak Work Life”: [http://www.huffingtonpost.com/2013/01/08/call-time-congressional-fundraising\\_n\\_2427291.html](http://www.huffingtonpost.com/2013/01/08/call-time-congressional-fundraising_n_2427291.html).

<sup>19</sup> Jamin Raskin and John Bonifaz, *Yale Law & Policy Review*, “Equal Protection and the Wealth Primary”: <http://www.jstor.org/discover/10.2307/40239404?uid=3739584&uid=2134&uid=2&uid=70&uid=4&uid=3739256&sid=21104216617793>.

<sup>20</sup> *People For the American Way*, “Sheldon Adelson Shops for Next GOP Candidate”, March 25, 2014. Available here: <http://blog.pfaw.org/content/sheldon-adelson-shops-next-gop-candidate>.

<sup>21</sup> Joshua Kella and David Broockman, “Congressional Officials Grant Access to Individuals Because They Have Contributed to Campaigns: A Randomized Field Experiment”: [http://www.ocf.berkeley.edu/~broockma/kalla\\_broockman\\_donor\\_access\\_field\\_experiment.pdf](http://www.ocf.berkeley.edu/~broockma/kalla_broockman_donor_access_field_experiment.pdf). More studies substantiating the assertion can be found in the citations of the Kella and Broockman article.

<sup>22</sup> Martin Gilens, *Public Opinion Quarterly*, “Inequality and Democratic Responsiveness”: <http://qipsr.as.uky.edu/sites/default/files/Gilens-Inequality%20and%20Democratic%20Responsiveness-POQ.pdf>.

<sup>23</sup> *Demos*, “Stacked Deck”: <http://www.demos.org/stacked-deck-how-dominance-politics-affluent-business-undermines-economic-mobility-america>.

<sup>24</sup> Take for example the role mega-donor Art Pope played in the dismantling of North Carolina’s judicial public financing program. According to the Institute For Southern Studies, the funding of that popular and successful program was under attack by state lawmakers, yet eventually a compromise was made to salvage it. The architect of that compromise, Representative Jonathan Jordan (R-93), was visited by Art Pope and, in the words of the Institute, “made an abrupt U-turn and dropped the amendment.” Unsurprisingly, Pope and his close family had “maxed out” in direct contributions to Jordan’s 2010 political campaign (spending \$16,000 to do so), while three Pope-connected outside groups had poured \$91,500 into election advertisements on Jordan’s behalf. *Institute For Southern Studies*, “How Art Pope killed clean elections for judges in North Carolina” <http://www.southernstudies.org/2013/06/how-art-pope-killed-clean-elections-for-judges-in-nc.html>. For more information on Art Pope and the role big money has played in North Carolina public policy, see Miranda Blue and Calvin Sloan, *Right Wing Watch*, “How Big Money Bought North Carolina for Extremists,” <http://www.rightwingwatch.org/content/how-big-money-bought-north-carolina-extremists>.



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Another salient example of how deregulated election landscapes engender “pay-to-play” politics and skew policy outcomes was uncovered by *New York Times* investigative reporter Nicholas Confessore, see: *New York Times*, “A Campaign Inquiry in Utah Is the Watchdogs’ Worst Case” <http://www.nytimes.com/2014/03/18/us/politics/a-campaign-inquiry-in-utah-is-the-watchdogs-worst-case.html>. Confessore’s article delves into how payday loan corporations—which have been criticized for charging the poor with usurious rates—used “dark money” 501(c)(4) organizations to cover up their tracks in Utah and establish quid-quo-pro agreements with Attorney General John Swallow, exchanging their financial support for his election with his commitment to not regulate their industry. According to Confessore, some groups seem to have used non-profits to collect money on behalf of Super PACs, thereby creating the opportunity to evade disclosure requirements.

<sup>25</sup> Jeff Harrelson and Ben Tulchin, MFour Research and Tulchin Research, “National Voter Survey Findings,” [http://mfour.com/wp-content/uploads/2013/12/representus.mediarelease.FINAL\\_.pdf](http://mfour.com/wp-content/uploads/2013/12/representus.mediarelease.FINAL_.pdf).

<sup>26</sup> Andrew Dugan, *Gallup*, “Americans’ Approval of Supreme Court Near All-Time Low”: <http://www.gallup.com/poll/163586/americans-approval-supreme-court-near-time-low.aspx>.

<sup>27</sup> James Madison, “Federalist Paper 52”: <http://www.constitution.org/fed/federa52.htm>.

<sup>28</sup> *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010). Available at [http://www.cadc.uscourts.gov/internet/opinions.nsf/4B824DD5C7D7C4EF85257807005A9A46/\\$file/08-5223-1236837.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/4B824DD5C7D7C4EF85257807005A9A46/$file/08-5223-1236837.pdf). See also <http://www.scotusblog.com/case-files/cases/speechnow-org-v-fcc/> for case history and media analysis.

<sup>29</sup> Adam Lioz and Blair Bowie, *DEMOS and US PIRG*, “Billion-Dollar Democracy,” <http://www.demos.org/publication/billion-dollar-democracy-unprecedented-role-money-2012-elections>.

<sup>30</sup> *Citizens United v. FEC*, 588 U.S. 310 (2010). Available at <http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>. See also <http://www.scotusblog.com/case-files/cases/citizens-united-v-federal-election-commission/> for case history and media analysis.

<sup>31</sup> During the 2012 federal elections, for-profit corporations contributed \$71.8 million to Super PACs, and spent untold sums by contributing to politically active 501(c)(4) social welfare organizations and 501(c)(6) trade associations. Adam Lioz and Blair Bowie, *DEMOS and US PIRG*, “Distorted Democracy: Post-Election Spending Analysis,” <http://www.uspirg.org/reports/usp/distorted-democracy-post-election-spending-analysis>. Just one of those “dark money” groups, the Chamber of Commerce—which is funded by its corporate members—has spent \$82.8 million on political advertisements since *Citizens United*. *Open Secrets*, “Chamber of Commerce,” <http://www.opensecrets.org/outsidespending/detail.php?cycle=2014&cmte=US+Chamber+of+Commerce>.

<sup>32</sup> *Buckley v. Valeo*, 424 U.S. 1, 51-54 (1976). Available at: [http://www.law.cornell.edu/supct/html/historics/USSC\\_CR\\_0424\\_0001\\_ZO.html#424\\_US\\_1n65ref](http://www.law.cornell.edu/supct/html/historics/USSC_CR_0424_0001_ZO.html#424_US_1n65ref).

<sup>33</sup> Mitch McConnell, Subcommittee on the Constitution, Hearing on Campaign Finance Reform in 100<sup>th</sup> Congress, Second Session, p 43, <http://babel.hathitrust.org/cgi/pt?id=pst.000015454713;view=1up;seq=47>.

<sup>34</sup> *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014). Available at [http://www.supremecourt.gov/opinions/13pdf/12-536\\_e1pf.pdf](http://www.supremecourt.gov/opinions/13pdf/12-536_e1pf.pdf). See also <http://www.scotusblog.com/case-files/cases/mccutcheon-v-federal-election-commission/> for case history and media analysis.

<sup>35</sup> Fred Wertheimer, *SCOTUSblog*, “Symposium: The Supreme Court and the McCutcheon decision,” <http://www.scotusblog.com/2014/04/symposium-the-supreme-court-and-the-mccutcheon-decision/>.

<sup>36</sup> Fred Wertheimer, *Democracy 21*, “The Consequences of Today’s Disastrous Decision by the Supreme Court Majority in the McCutcheon Case”: <http://www.democracy21.org/inside-the-courts/press-releases-inside-the-courts/fred-wertheimer-the-consequences-of-todays-disastrous-decision-by-the-supreme-court-majority-in-the-mccutcheon-case/> and *Public Citizen*, “Post McCutcheon Fact Sheet”: <http://www.citizen.org/documents/mccutcheon-decision-fact-sheet.pdf>.

<sup>37</sup> Peter Overby, *NPR*, “Court’s Decision Will Encourage Joint Fundraising Committees”: <http://www.npr.org/2014/04/03/298579214/courts-decision-will-encourage-joint-fundraising-committees>.

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<sup>38</sup> *People For the American Way*, “How The Supreme Court’s McCutcheon Decision Could Balloon Spending In State Elections”: <http://www.pfaw.org/media-center/publications/how-supreme-courts-mccutcheon-decision-could-balloon-spending-state-electi>.

<sup>39</sup> *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett*, 131 S.Ct. 2806 (2011). Available at <http://www.supremecourt.gov/opinions/10pdf/10-238.pdf>. See also <http://www.scotusblog.com/case-files/cases/arizona-free-enterprise-clubs-freedom-club-pac-v-bennett/> for case history and media analysis.

<sup>40</sup> See *Buckley v. Valeo*, 424 U.S. 1, 57 (1976) p 57, available at <http://www.law.cornell.edu/supremecourt/text/424/1>. See also *Republican Nat’l Comm v. FEC* 487 F. Supp. 280 (S.D.N.Y. 1980) available at [http://ny.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19800205\\_0000058.SNY.htm/qx](http://ny.findacase.com/research/wfrmDocViewer.aspx/xq/fac.19800205_0000058.SNY.htm/qx).

<sup>41</sup> Ciara Torres-Spelliscy, *Brennan Center*, Chapter III, Section III, “Writing Reform”: <http://www.brennancenter.org/sites/default/files/legacy/Writing%20Reform%202010%20FINAL.pdf>.

<sup>42</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976), available at <http://www.law.cornell.edu/supremecourt/text/424/1>.

<sup>43</sup> . *McCutcheon v. FEC*, 134 S.Ct. 1434, 1468 (2014).

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> See *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014). See also Richard Hasen, *Reuters*, “Opening the political money chutes,” <http://blogs.reuters.com/great-debate/2014/04/07/opening-the-political-money-chutes/>.

<sup>47</sup> John Paul Stevens, “Six Amendments,” p 71, Little Brown Books, 2014.

<sup>48</sup> See *Arizona Free Enter. Club’s Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011) at (Arizona’s matching funds program struck down after finding that “the government has a compelling state interest in ‘leveling the playing field’ that can justify undue burdens on political speech”). Available here: [http://www2.bloomberglaw.com/public/desktop/document/Arizona\\_Free\\_Enter\\_Clubs\\_Freedom\\_Club\\_PAC\\_v\\_Bennett\\_131\\_S\\_Ct\\_2806](http://www2.bloomberglaw.com/public/desktop/document/Arizona_Free_Enter_Clubs_Freedom_Club_PAC_v_Bennett_131_S_Ct_2806).

<sup>49</sup> Jamie Raskin, *People For the American Way*, “Take Back the Constitution from the Corporate Court”, July 23, 2012.

<sup>50</sup> Lyndon B. Johnson, Remarks Upon Witnessing the Certification of the 24th Amendment to the Constitution, <http://www.presidency.ucsb.edu/ws/?pid=26056>.