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Money in politics has risen to the forefront of the public political consciousness in the decade since Citizens United v. FEC. At the root of the issue are deeply flawed Supreme Court rulings on the constitutional protection afforded to political spending and the definition of regulable "corruption," which have exacerbated issues in the American campaign finance system and effectively legalized
political bribery. The purpose of this comment is to highlight the impact of campaign finance on public policy and ultimately propose that we, the American people, must amend our Constitution to restore a representative democracy.

I. INTRODUCTION: SYSTEMIC CORRUPTION

A. People Hate Politicians (For Good Reason)

Politicians are unpopular.1 Politicians are so unpopular, in fact, that one 2013 poll found that sixty-seven percent of respondents hold a higher opinion of head lice than of Congress (and fifteen percent were unsure).2 The same poll also found Congress to be less popular than cockroaches, traffic jams, and Mongolian warlord Genghis Kahn.3 This low opinion of Congress likely stems from Americans’ belief that their elected representatives do not actually represent them: seventy-four percent say that politicians “don’t care what people like me think” and that politicians “put their own interests first.”4 Just nineteen percent of Americans believe they can trust the government to do the right thing “most of the time.”5 This cynicism might explain why the United States — a country founded by disgruntled citizens of an unrepresentative government — ranks twenty-seventh in voter turnout among developed countries.6 More disturbing than the electorate’s

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2. Id.
3. Id.
cynicism is the fact that they are correct to be cynical.\textsuperscript{7}

This comment will argue that American campaign finance laws incentivize corruption and have legalized political bribery by allowing campaign funders to leverage their financial contributions into influence over public policy.\textsuperscript{8} Most Americans agree with the general premise that campaign contributors have disproportionate influence: sixty-four percent say that major donors have “a lot” of influence over how representatives vote on issues, while only fourteen percent say that constituents have “a lot” of influence.\textsuperscript{9} Whether or not Americans are right about this disparity of influence, widespread lack of confidence in a government’s ability to represent its citizens undermines the legitimacy of that government.\textsuperscript{10} Americans want to address the influence of donors:

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\item[] frustration with gridlock and “belief that Congress is under the control of outside influences”.
\item[] See Martin Gilens & Benjamin I. Page, Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens, AM. POL. SCIENCE ASS’N (Sept. 2014), scholar.princeton.edu/sites/default/files/gilens/files/gilens_and_page_2014_testing_theories_of_american_politics.doc.pdf (finding that “average Americans have little or no independent influence” over public policy). This study will be discussed in greater detail in Section II. See also Harriet Agerholm, America Falls Short of Being a Full Democracy For Second Year Running, Report Finds, INDEPENDENT (Feb. 5, 2018), www.independent.co.uk/news/world/americas/america-democracy-rates-donald-trump-not-fully-democratic-us-president-report-the-economist-a8195121.html (citing to a report from the Economist Intelligence Unit, which found that growing wealth inequality and public dissatisfaction with government function led to the classification of the United States as a “flawed democracy”); Christopher Ingraham, Elizabeth Warren Says Government Has Been Bought and Paid For By Big Business. Political Scientists Say She’s Got A Point, WASH. POST (Jan. 2, 2019), www.washingtonpost.com/business/2019/01/02/elizabeth-warren-says-government-has-been-bought-paid-by-big-business-political-scientists-say-shes-got-point/.
\item[] See Zephyr Teachout, Legalized Bribery, N.Y. TIMES (Jan. 26, 2015), www.nytimes.com/2015/01/26/opinion/zephyr-teachout-on-sheldon-silver-corruption-and-new-york-politics.html (arguing for reforms to “make politics more about serving the public and less like legalized bribery”). Teachout is a professor of law at Fordham University and this comment will reference more of her scholarship throughout.
\item[] See Michael W. Traugott, Americans: Major Donors Sway Congress More than Constituents, GALLUP (July 6, 2016), news.gallup.com/poll/193484/americans-major-donors-sway-congress-constituents.aspx (noting that these figures are fairly consistent across party and ideology); see also Newport & Sadd, supra note 6 (finding that ninety-four percent of those who rate Congress as doing a poor job agree that Congress pays too much attention to financial contributors, with fifty-six percent strongly agreeing).
\item[] See Declaration of Independence: A Transcription, U.S. NAT’L ARCHIVES (Dec. 14, 2018), www.archives.gov/founding-docs/declaration-transcript (asserting that a government derives “just powers from the consent of the governed”); See also Is Congress for Sale?, RASMUSSEN REP. (July 9, 2015), www.rasmussenreports.com/public_content/archive/mood_of_america_archive/congressional_performance/is_congress_for_sale (finding that “59% of voters think most members of Congress are willing to sell their vote for either cash or a campaign contribution, and 56% think it’s likely
seventy-four percent say it is “very important” that major political donors not have more influence than others. During the 2016 election cycle, this desire manifested itself in support for two candidates: Donald Trump, who went on to win the presidency; and Bernie Sanders, who lost the Democratic primary to Hillary Clinton.

Though they differed in policy and demeanor, the Trump and Sanders campaigns both seized on the electorate’s desire for a candidate unbound to major donors. Sanders, relatively unknown on the national stage prior to the 2016 election, almost overcame a sixty-point polling deficit to Hillary Clinton during the Democratic Primary while pushing campaign finance reform as one of the central issues of his platform and raising historic amounts of donations from small-dollar donors. Trump similarly painted himself as someone who could not be “bought” by major political donors (because of his personal wealth). During Republican
primary debates, Trump even touted how he had previously given money to many of the politicians on-stage with him, and that in return they always took his calls when he wanted to voice an opinion on policy.\textsuperscript{16} Promising to “drain the swamp,” Trump was the lone Republican candidate (and lone candidate in the general election) emphasizing the need to address a “broken system.”\textsuperscript{17} During the general election, Trump portrayed himself as anti-establishment and dubbed his opponent, “Crooked Hillary.”\textsuperscript{18} Both Trump and Sanders made “surprising” headway as “outsider” candidates promising to bring change to the political system beholden to special interests.\textsuperscript{19} Former president Barack Obama campaigned in a similar fashion in 2008, when he promised “hope and change,” claiming his victory would signal the end of “business as usual” in Washington.\textsuperscript{20} More than two years into the Trump presidency, it is clear that, like Obama, Trump’s anti-corruption rhetoric was more political strategy than principled position, which

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  See Fang, supra note 15 (quoting Donald Trump saying, “When they call, I give. And you know what? When I need something from them, two years later, three years later, I call them, and they are there for me. And that’s a broken system”). Trump stated that Hillary Clinton attended his wedding because she “didn’t have a choice” due to Trump’s prior donations to Mrs. Clinton. Id.
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  Stephen Collinson, Outsider Campaigns Seek Inside Track, CNN POL. (Apr. 11, 2016), www.cnn.com/2016/04/11/politics/donald-trump-bernie-sanders/index.html; Michael Sandel, Bernie Sanders and Donald Trump Look Like Saviours to Voters Who Feel Left Out of the American Dream, GUARDIAN (Feb. 27, 2016), www.theguardian.com/commentisfree/2016/feb/28/bernie-sanders-donald-trump-populist-moment-in-americopolitics; see also Nicolas Pollock & Leah Varjacques, The Problem With Congress, and How to Fix It, ATLANTIC (Aug. 17, 2016), www.theatlantic.com/video/index/496262/lawrence-lessig-interview/ (interviewing Harvard Law professor Lawrence Lessig, who argues that “people are drawn to anti-establishment candidates like Donald Trump or Bernie Sanders” because “politicians are focused on answering to their biggest campaign donors rather than the general population”). Given the statistics discussed to this point, this success should not have been so surprising.
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  See As a Candidate, Barack Obama Set Expectations That He Could Not Meet as President, DAILY BREEZE (Jan. 16, 2010), www.dailybreeze.com/2010/01/16/as-a-candidate-barack-obama-set-expectations-that-he-could-not-meet-as-president/ (arguing that voters “turned to Barack Obama because he promised to be different”).
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might account in part for his historically low approval rating.\footnote{21}

This comment argues that the influence of money in politics has brought the United States to a point where representatives serve the interests of major political donors at the expense of average citizens. Section II of this comment will provide historical context for the origin of campaign finance laws in the United States and the judicial rulings that have rendered them ineffective. Section II will also provide basic information about viable alternative campaign finance models. Section III of this comment will analyze some of the major effects of money in politics, including filtration of candidates via fundraising, the overwhelming electoral advantage held by better-funded candidates, the correlation between public policy and the interests of the donor class, the bipartisan rightward shift of American economic policy, the redistribution of wealth from average Americans to the extremely wealthy, the “revolving door” between government and industry, and the complicity of corporate-owned news media in the current structure of campaign finance. Section IV will argue for the necessity of a Constitutional Amendment to cure politics of corruption—by contribution and specifically propose an amendment for public funding of all federal elections.

II. BACKGROUND: CAMPAIGN FINANCE REGULATION AND ROLLBACK

A. Concern About Corruption: The First Calls for Campaign Finance Reform

Just after the turn of the twentieth century, President Theodore Roosevelt, famous for promoting anti-trust laws, pushed for a ban on corporate contributions to political campaigns.\footnote{22} In response, Congress passed the Tillman Act of 1907.\footnote{23} Several laws supplemented the Tillman Act in the decades following, such as the Federal Corrupt Practices Act in 1910, the Hatch Act in 1939, the

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  \item \footnote{22} John Nichols, \textit{Teddy Roosevelt Was Right: Ban ALL Corporate Contributions}, NATION (Jan. 21, 2010), www.thenation.com/article/teddy-roosevelt-was-right-ban-all-corporate-contributions/.
  \item \footnote{23} Tillman Act of 1907, 34 Stat. 864b (1907).
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Smith-Connally Act in 1943 and the Taft-Hartley Act in 1947. Most recently, Congress attempted to bolster campaign finance regulation with the Bipartisan Campaign Reform Act of 2002. These laws all aimed to limit the influence of campaign donations from corporations and unions by placing restrictions on donation amounts, providing regulatory oversight, and mandating disclosure of fundraising sources for political campaigns.

In 1974, the revised version of the Federal Election Campaign Act (originally passed in 1971) created the Federal Election Commission ("FEC"), an independent government agency that enforces campaign finance laws. Still operating today, the FEC's mission is "to disclose campaign finance information, to enforce the provisions of the law such as the limits and prohibitions on contributions, and to oversee the public funding of Presidential elections." The FEC consists of six members appointed by the President and confirmed by the Senate. No more than three members may be from the same political party. Any action by the FEC requires four votes to pass.

The Acts discussed above represent legislative efforts spanning generations to curb potential corruption by limiting spending on campaigns — efforts which the Supreme Court has continually undermined by expanding First Amendment protections for political spending. A few of the most significant campaign finance cases are discussed below.

30. Id.
31. Id.
B. Unlimited Spending in the Political Process: How We Got Here

1. The First Major Blow to Campaign Finance Regulation

After the Watergate scandal, it was clear that Congress’s efforts to curb corruption in the political process had not eradicated the problem.33 Congress passed the Federal Election Campaign Act of 1971 (FECA) in response to renewed enthusiasm for elimination of political corruption.34 FECA imposed limits on the amount an individual could contribute to a political campaign.35 Additionally, the Act limited the amount that could be spent on “independent expenditures,” which are not officially associated with any political campaign but may pay for communications that advocate for or against specific candidates and policy positions.36

In 1976, the case of Buckley v. Valeo rose to the Supreme Court, in which the petitioner challenged the FECA limits on both contributions and independent expenditures as unconstitutional limitations of First Amendment rights.37 The Court first had to determine whether political contributions and expenditures qualified as “speech.”38 The Court found that FECA’s limitations on contributions and expenditures “both implicate fundamental First Amendment interests.”39 That determination has shaped over forty years of campaign finance law.40 The Court upheld the Act’s limit on direct contributions to campaigns but struck as unconstitutional

33. See Frank Van Riper & James Wieghart, President Richard Nixon Resigns Amid the Watergate Scandal in 1974, N.Y. DAILY NEWS (Aug. 9, 1974), www.nydailynews.com/news/national/president-nixon-resigns-watergate-scandal-1974-article-1.2309330 (detailing the culmination of the “political scandal that shattered [Nixon]’s administration, brought him to the brink of certain impeachment and removal from office, and ultimately forced him to become the first American President to quit his post before the end of his term”). The effect of such a scandal at the presidential level helps explain why there would be popular support and legislative incentive to pass anti-corruption laws.

34. Id.


37. Id. at 16.

38. Id. at 23.

39. See Zephyr Teachout, The Anti-Corruption Principle, 94 CORNELL L. REV. 341, 383-84 (Jan. 2009) (arguing that Buckley “is perhaps the single most influential case in the modern law governing political processes” because “it sets up the modern framework for analyzing corruption”).
the clause of the Act that limited independent expenditures. Citing “the absence of prearrangement and coordination of an expenditure with the candidate or his agent,” the Court ruled that, unlike campaign contributions, unlimited independent expenditures do not increase the likelihood of quid pro quo corruption and therefore limits on individuals’ independent expenditures violate the First Amendment. The Court’s classification of campaign spending as “core First Amendment expression,” as well as its focus on quid pro quo corruption, laid the groundwork for future expansion of First Amendment rights in campaign finance.

2. Planting Seeds for the Abolition of Spending Limits

In 2000, the Supreme Court decided Nixon v. Shrink Missouri Government PAC, in which the petitioner sought to overturn the Eighth Circuit’s ruling that Missouri’s limit on campaign contributions was unconstitutional. The Court reversed the Eighth Circuit’s decision and upheld the contribution limit, but the dissenting opinions laid out reasoning that foreshadowed what was to come a decade later in Citizens United v. FEC.

The dissenting Justices supported greater First Amendment protection for political spending and would have overturned the portion of Buckley that upheld the limit on individual contributions to campaigns. Justice Thomas wrote in his dissent (joined by Justice Scalia), “contributions to political campaigns generate essential political speech. And contribution caps, which place a direct and substantial limit on core speech, should be met with the utmost skepticism and should receive the strictest scrutiny.”

41. See Buckley 424 U.S. at 23 (determining that “expenditure ceilings impose significantly more severe restrictions on protected freedoms of political expression and association than do its limitations on financial contributions”); See also Lillian R. BeVier, Money and Politics: A Perspective on the First Amendment and Campaign Finance Reform, 73 CALIF. L. REV. 4 (1985) (concluding that the decision in Buckley was completely consistent with the first amendment tradition of political freedom and fully justified by institutional and enforcement considerations”).

42. See Buckley, 424 U.S. at 47 (reasoning that independent expenditures carry “substantially diminished potential for abuse”).

43. See Teachout, supra note 40, at 384-85 (determining that Buckley carries “enormous doctrinal weight” as the first case to introduce “the idea that corruption and quid pro quo might be interchangeable,” which has engendered a “more mechanical way of thinking about the power of money” and spawned “a vague and light sense of corruption”). Teachout criticized the Court’s discussion on this issue, arguing that the Court “lacked care in its conceptual development of corruption.” Id.

45. Id. at 405-30.
46. Id.
47. Id. at 412.
Unlike the majority here or in *Buckley*, Justices Thomas and Scalia saw no Constitutional distinction between direct contributions and independent expenditures and viewed limits on both as equally offensive to the First Amendment (Justice Kennedy filed his own dissenting opinion).48

3. Opening the Floodgates: Citizens United and Its Progeny

In 2010, the Supreme Court handed down one of the most impactful and controversial cases in recent memory: *Citizens United v. FEC*.49 The case concerned a film critical of then-Senator and presidential candidate Hillary Clinton.50 The timing of the film’s release (within thirty days of the primary election) and the source of its funding (Citizens United, a nonprofit corporation), made the film subject to a federal ban on corporate “electioneering communications.”51 After rejecting the petitioner’s argument that the ban did not apply to the film because it did not fall within the purview of the statute in question, the Court then turned to what it saw as the underlying issue: whether Congress has the authority to limit independent expenditures by corporations.52

Relying on *Buckley*’s precedent that independent expenditures could not be limited for individuals, and rejecting “the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not ‘natural persons,’” the Court struck the federal ban on independent expenditures by corporations.53 Speaking through Justice Thomas, the Court provided a long list of cases to support the idea that corporations have First Amendment rights.54 However, *Citizens United* was the first declare that corporations have campaign spending rights equal to those of natural persons.55

The dissenting Justices, on the other hand, found that, “[i]n the

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48. *Id.* at 413, 415. Thomas wrote that people “speak through contributions,” and that “the only possible difference [between contributions and expenditures] is that contributions involve an extra step in the proxy chain. But again, that is a difference in form, not substance.” *Id.*


51. *Id.* at 323-26.

52. *Id.* at 336-37.

53. *Id.* at 343, 365 (citing to *Buckley* and *First Nat’l Bank of Boston v. Bellotti*, the Court held that “the Government may not suppress political speech on the basis of the speaker’s corporate identity”).

54. *Id.* at 342.

context of election to public office, the distinction between corporate
and human speakers is significant.” Speaking through Justice
Stevens, the minority pointed out that, unlike natural persons,
corporations operate with limited liability and can be owned by
foreign individuals and entities. The dissent also invoked
originalist arguments, citing explicit concerns expressed by the
Framers regarding corporations and their propensity for
corruption. The minority disputed the idea that the First
Amendment was designed to allow corporations to wield significant
political influence due simply to their ability to generate profit:

The resources in the treasury of a business corporation ... are not an
indication of popular support for the corporation's political ideas.
They reflect instead the economically motivated decisions of investors
and customers. The availability of these resources may make a
corporation a formidable political presence, even though the power of
the corporation may be no reflection of the power of its ideas...Corporations help structure and facilitate the activities of
human beings, to be sure, and their "personhood" often serves as a
useful legal fiction. But they are not themselves members of "We the
People" by whom and for whom our Constitution was established.

Furthermore, the minority took issue with the majority’s reading of
several key cases, Buckley chief among them. Drawing the

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56. See Citizens United, 558 U.S. at 394, 466-67 (Stevens, J., dissenting)
(finding that corporate speech is “derivative” and that “no one's autonomy,
dignity, or political equality has been impinged upon in the least” by limitations
placed on a corporation’s ability to use treasury funds for political
expenditures”).
57. Citizens United, 558 U.S. at 465. The point on foreign ownership is
especially important, as many of the largest corporations are multinational
in nature and the Citizens United ruling allows these corporations to spend
unlimited amounts in American elections.
58. Id. at 430-32 (accusing the majority of “enlist[ing] the Framers in its
defense without seriously grappling with their understanding of corporations or
the free speech right,” noting that “members of the founding generation held a
cautious view of corporate power and a narrow view of corporate rights...and
that they conceptualized speech in individualistic terms.” This argument was
specifically addressed at Justice Scalia, a self-proclaimed “originalist”).
59. See id. at 465-66 (adding “that corporations have no consciences, no
beliefs, no feelings, no thoughts, no desires”); See also Benjamin T. Brickner &
Daniel E. Weiner, Electoral Integrity in Campaign Finance Law, BRENNANCTR.
FOR JUST. (Apr. 21, 2017), www.brennancenter.org/blog/electoral-integrity-
campaign-finance-law (referring to “the Court’s core—if awkwardly framed—
concern in Austin v. Michigan Chamber of Commerce, when it decried ‘the
corrosive and distorting effects of immense aggregations of wealth’ on the
electoral process” and arguing, “that concern is especially acute when wealthy
political actors spend other people’s money—like executives at public
corporations spending general treasury funds in which shareholders have
ownership interests.” The author points out that, “in those instances, not only
is unrestricted campaign spending potentially drowning out the voices of
ordinary voters, it may be doing so with their own money”).
60. Id. at 443-46 (accusing the majority of grasping at “a quotational straw”
from a single case (First Nat’l Bank of Boston v. Bellotti) and uses this “straw”
opposite inference as Justice Thomas, Justice Stevens argued that *Buckley*'s "silence on corporations only reinforced the understanding that corporate expenditures could be treated differently from individual expenditures." The issue of "corporate personhood" had immediate and significant legal impact, and it is around that idea that much of the criticism of *Citizens United* has rightly been centered. However, equally as outrageous (though less groundbreaking) was the Court's holding that "influence or access" gained through independent expenditures did not "give rise to corruption or the appearance of corruption."

As to the facts of the case, the Court concluded that there exists "only scant evidence that independent expenditures" ingratiate spenders with officials or lead to political access. In the next sentence, the Court rendered the point moot with its assertion that, "[i]ngratiation and access, in any event, are not corruption." Citing to extrapolate on the holding that corporations have First Amendment rights to determine that corporations have First Amendment rights equal to natural persons.

61. See id. at 436 (noting that *Buckley* “famously (or infamously) distinguished direct contributions from independent expenditures”).


63. *Citizens United*, 558 U.S. at 314 (stating “[t]hat speakers may have influence over or access to elected officials does not mean that those officials are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy”). However, see Kelly Bergstrand, Darren Modzelewski, Christopher Robertson, & D. Alex Winkelman, *The Appearance and the Reality of Quid Pro Quo Corruption: An Empirical Investigation*, 8 J. OF LEGAL ANALYSIS 375 (2016) (reading the Court’s emphasis on the “appearance of corruption” to conclude that “the constitutionality of regulation actually depends on empirical questions which can be answered through empirical investigation”). The authors performed such an empirical investigation by staging a mock criminal trial for the “appearance of corruption” and determined that the Court “may have underestimated the capacity of the *quid pro quo* concept.” Id. In other words, a future Court may undue “the Supreme Court’s three-decade project of dismantling prophylactic reforms,” if it determines — as most Americans have — that the structure of campaign finance looks like corruption. See also Zephyr Teachout, *How the Supreme Court Gets Corruption Totally Wrong*, WASH. POST (May 5, 2016), www.washingtonpost.com/news/in-theory/wp/2016/05/05/how-the-supreme-court-gets-corruption-totally-wrong/ (summarizing Teachout’s arguments on the anti-corruption principle).

64. *Citizens United*, 558 U.S. at 360.

65. Id; see also id. at 359 (asserting:

The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt: “Favoritism and influence are not . . . avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is
to *Buckley* and *McConnell v. FEC*, the Court here held that the government’s compelling interest to limit corruption is limited to *quid pro quo* corruption, and thus rejected the notion that “favoritism” elicited by expenditures violates the Constitution.\(^{66}\) The Court found no evidence in the record of exchanges of expenditures for votes, and thus no appearance of regulable corruption.\(^{67}\) The majority argued that attempts to regulate any form of corruption short of *quid pro quo* would be an unconstitutional attempt to level the playing field of political speech.\(^{68}\)

As with corporate personhood, the dissent attacked both the precedential support and the logic of the majority’s conclusion on corruption.\(^{69}\) The minority argued that the Court’s interest in

premised on responsiveness” (quoting *McConnell v. FEC*).\(^{70}\)

*See also* Michael D. Gilbert, *The Coordination Fallacy*, 43 FLA. ST. U. L. REV. 399 (2016) (arguing that the law should be even more lenient and allow for coordination between Super-PACs and campaigns). Gilbert’s arguments might be legally sound, but they all stem from the faulty definition of “corruption” offered by the Supreme Court, which is at the root of the problem, constitutionally speaking.

\(^{66}\) *Id.* However, the *Buckley* decision did not explicitly state that *quid pro quo* corruption was the only regulable form of corruption. *See* Heather K. Gerken, *Lobbying as the New Campaign Finance*, 27 GA. ST. U. L. REV. 1155, 1158 (2011) (emphasizing that it was the *Citizens United* decision, which “substantially narrowed the definition of corruption.”) Gerken, a professor and dean at Yale Law School, argues that the ruling that “ingratiation and access are not corruption,” is the “most important line” in the decision. *Id.* (quoting *Citizens United*, 558 U.S. at 360).

\(^{67}\) *Citizens United*, 558 U.S. at 360; *see also* id. at 449 (Stevens, J., dissenting) (dissenting from the majority opinion citing to the Court’s “undue influence” cases, which previously upheld legislation “designed to ensure, to some minimal extent” that government officials make decisions based “on the merits or the desires of their constituencies,’ and not ‘according to the wishes of those who have made large financial contributions’ — or expenditures” (quoting *McConnell v. FEC*). The dissent found disingenuous the majority’s determination as to the validity of evidence of *quid pro quo* corruption, as the arguments from neither the petitioner nor the respondent were centered around cash-for-vote arrangements. *Id.*

\(^{68}\) *Id.* at 341 (holding that “restrictions distinguishing among different speakers” are prohibited in part because “restrictions based on the identity of the speaker are all too often simply a means to control content”).

\(^{69}\) *Id.* at 443 (arguing that the majority ignored a significant distinction made by the Court in *First Nat’l Bank of Boston v. Bellotti*, which dealt with expenditures regarding voter referenda, not elections of candidates:

The majority attempts to explain away the distinction Bellotti drew—between general corporate speech and campaign speech intended to promote or prevent the election of specific candidates for office — inconsistent with the rest of the opinion and with *Buckley*. Yet the basis for this distinction is perfectly coherent: The anticorruption interests that animate regulations of corporate participation in candidate elections, the “importance” of which “has never been doubted,” do not apply equally to regulations of corporate participation in referenda. A referendum cannot owe a political debt to a corporation, seek to curry
Curbing corporate campaign spending is not to level the playing field, but to “confront the distinctive corrupting potential of corporate electoral advocacy financed by general treasury dollars.” The minority further argued that limiting regulable corruption to *quid pro quo* transactions renders Congress unable to address more subtle forms of corruption. Lastly, the minority contested that the Court overstated the distinction between direct contributions and independent expenditures, “some expenditures may be functionally equivalent to contributions in the way they influence the outcome of a race, the way they are interpreted by the candidates and the public, and the way they taint the decisions that the officeholder thereafter takes.”

The minority predicted that *Citizens United* created a pathway for “corporations with large war chests to deploy on electioneering may find democratically elected bodies becoming much more attuned to their interest.”

Whatever merit might support the dissent in *Citizens United*, it was the dissenters from *Nixon* — Justices Kennedy, Scalia, and Thomas — who were now joined by Justice Alito and Chief Justice Roberts to form a majority in favor of unlimited political expenditures. This shift made a constitutional splash with favor with a corporation, or fear the corporation's retaliation (internal citations omitted)).

70. *Id.* at 442. See also Teachout, supra note 40 (analyzing precedent on regulation of political spending:

*Austin* does not want to suggest that the equality is absolute, or mandate proportionality, but to suggest that where political speech approaches a state of no proportionality, (“little or no correlation”) it ceases to be political, protected speech. It is no longer the expression of anything public when it has no grounding in the public-inequality has the power to transform public speech into non-public, corrupt speech.

71. See *Citizens United*, 558 U.S. at 455 (noting that it would be “quite remarkable” if officials created a record of direct exchanges of cash-for-votes and that “no one will acknowledge that he sold a vote”). The dissent argued that unlimited corporate expenditures “creates new opportunities for the mirror image of *quid pro quo* deals: threats, both explicit and implicit.” *Id.*

72. *Id.* at 459; see also John A. Fortunato & Shannon E. Martin, The Intersection of Agenda-Setting, the Media Environment, and Election Campaign Laws, 6. J. OF INFO. POL’Y 129, 145 (2016) (arguing that upholding the financial limits of the BCRA shows that “the Supreme Court obviously believes that repeated exposure to framed political advertisements can cause a change, a media effect, in how people view a candidate or issue and can impact the behavior of how they will vote”).

73. *Citizens United*, 558 U.S. at 45; see also Chris Cillizza, How *Citizens United* Changed Politics in 7 Charts, WASH. POST (Jan. 22, 2014), www.washingtonpost.com/news/the-fix/wp/2014/01/21/how-citizens-united-changed-politics-in-6-charts/(showing that the dissent’s prediction came true: there has been massive increase in spending in elections following the Court’s decision in *Citizens United*).

74. See Jan Crawford Greenburg, *Bush Legacy: The Supreme Court*, ABC
Citizens United, a decision that had great immediate impact and paved the way for further relaxation of campaign finance regulation. This comment will now discuss two cases decided on the precedent of Citizens United.

a. Unlimited Money: Super-PACs and Elimination of Aggregate Contribution Limits

Only two months after Citizens United, the D.C. Circuit Court of Appeals applied the fresh precedent in SpeechNow.org v. FEC. In that case, the petitioner, SpeechNow — an unincorporated political organization — sought an advisory opinion as to whether it was subject to certain FECA requirements, including a limit on the total amount it could receive in contributions. The Circuit Court had not yet issued its opinion when Citizens United was decided, and the precedent it provided synthesized case law previously divided, simplifying the Circuit Court’s analysis in SpeechNow.org. Since SpeechNow planned to “operate exclusively through independent expenditures” — and the Circuit Court read Citizens United to mean that “the government has no anti-corruption interest in limiting independent expenditures” — the Circuit Court concluded that limitations on contributions to SpeechNow violated the First Amendment.
As a result of this decision, organizations like SpeechNow, which are commonly known as Political Action Committees ("PACs"), can now receive unlimited amounts in contributions, so long as the organization makes only independent expenditures and does not contribute directly to a candidate or campaign.\textsuperscript{80} The removal of contribution limits for PACs making only independent expenditures necessitated a new moniker — thus, “super-PACs” were born.\textsuperscript{81}

In 2014, the Supreme Court again struck limits on political spending, this time addressing direct contributions to campaigns.\textsuperscript{82} In McCutcheon v. FEC, the Republican National Committee joined the individual petitioner in challenging aggregate limits on contributions to candidates and various political committees.\textsuperscript{83} For example, the aggregate limit on contributions in 2011-12 was $48,600, with a limit of $2,700 to any single candidate.\textsuperscript{84} While the Court in Buckley found aggregate contribution limits to be a “quite modest restraint upon protected political activity,” the Court here, speaking through Chief Justice Roberts, likened aggregate contribution limits to limits on the number of endorsements a newspaper may issue.\textsuperscript{85}

Again, the Court stressed that the government’s anticorruption interest is only valid to address \textit{quid pro quo} corruption.\textsuperscript{86} The Court found that aggregate limits did “little, if anything, to address that concern, while seriously restricting participation in the democratic

\begin{footnotesize}

\textsuperscript{81} See Political Action Committees, supra note 80 (distinguishing Super-PACs from standard PACs, which can make “contributions” in addition to “expenditures”); see also Michael W. McConnell, \textit{Reconsidering Citizens United as a Press Clause Case}, 123 YALE L.J. 412 (2013) (arguing that the decision in SpeechNow.org, “far more than \textit{Citizens United}, is responsible for recent erosions of limits on campaign money”).


\textsuperscript{83} McCutcheon, 572 U.S. at 195.

\textsuperscript{84} Id. at 194. The petitioners also challenged the aggregate limit of $74,600 for political committees but did not challenge the $2,600 “base limit” for contributions to a single candidate. Id.

\textsuperscript{85} Id. at 204.

\textsuperscript{86} Id. at 207. See also Id. at 242 (arguing that influence attained through financial contributions are “just as troubling to a functional democracy as classic \textit{quid pro quo} corruption” (quoting McConnell v. FEC)).
\end{footnotesize}
process.” The McCutcheon decision rejected the notion that large donations create even the appearance of corruption:

Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder’s official duties, does not give rise to quid pro quo corruption. Nor does the possibility that an individual who spends large sums may garner “influence over or access to” elected officials or political parties.

Indeed, Chief Justice Roberts not only reiterated Justice Thomas’s assertion from Citizens United, that ingratiation and access gained through political contributions cannot be corruption, but argued that such practices “embody a central feature of democracy — that constituents support candidates who share their beliefs and interests, and candidates who are elected can be expected to be responsive to those concerns.”

Some scholars predict that McCutcheon has set the stage for an eventual removal of per-candidate contribution limits. In truth, it might matter little whether those predictions are correct; any further loosening of campaign finance regulations may amount to pouring a water pail into the ocean. In the wake of the decisions discussed above, the total amount of money spent on elections has grown — up to $6.5 billion in 2016 and $5.2 billion in 2018 (presidential elections, naturally, cost more). More importantly, the portion of this coming from “outsider spending,” i.e., independent expenditures, has more than doubled since Citizens United and SpeechNow.org. During the 2018 election cycle, the top

87. Id at 193.
88. Id at 208.
89. Citizens United, 558 U.S. at 360; McCutcheon, 572 U.S. 192.
90. First Amendment — Freedom of Speech — Aggregate Contribution Limits — McCutcheon v. FEC, supra note 82 (citing to Professor Richard Hasen’s suggestion “that McCutcheon could ultimately threaten the base limits because it allows Congress to address only quid pro quo corruption,” and thus “may yet contain the seeds of Buckley’s demise”). Justice Thomas, for one, will be happy if this comes to pass.
92. Cost of Election, OPEN SECRETS, www.opensecrets.org/overview/cost.php (last visited Feb. 22, 2019); see also Kathleen Ronayne, Opensecrets.org Unveils 2010’s ‘Big Picture’ Analysis, OPEN SECRETS (July 26, 2010), www.opensecrets.org/news/2011/07/2010-election-big-picture/ (declaring 2010 the most expensive non-presidential election in history); see also John Hudson, The Most Expensive Election in History by the Numbers, ATLANTIC (Nov. 6, 2012), www.theatlantic.com/politics/archive/2012/11/most-expensive-election-history-numbers/321728/ (detailing the amount of money spent on the 2012 election and providing a basic breakdown of the source of the money and the causes on which the money was spent).
ten individual donors (whose contributions were disclosed) gave more than $500 million combined to political organizations and the top ten organizational donors gave over $400 million combined, with more than $1 billion coming from the top forty organizations.94

C. Alternative Models: Public Funding in the States

Some states have attempted to institute their own systems of public campaign financing.95 In 1998, for example, Arizona implemented a system of public financing in which qualified candidates could apply for public funding, receive a base amount of funding determined by a variety of factors, and be eligible to receive further public funding to match privately funded opponents.96 In 2004, ten out of eleven officials statewide, including the governor, used public funds to win their respective elections.97 However, legal challenges to Arizona’s public funding program proved effective,


96. Overview of State Laws on Public Financing, supra note 95. The Arizona program required candidates to meet private fundraising thresholds, ranging from 200 contributions for candidates for state legislature to 4,000 contributions for gubernatorial candidates. Id. Candidates were not allowed to receive any additional private funding once they accepted public funding. Initial public distributions ranged from almost $12,000 to candidates for state legislature in primaries to almost $700,000 for gubernatorial candidates in general elections. Id. If a publicly funded candidate faced a privately funded opponent that raised money greater than the initial public disbursement amount, the Arizona program would match the private funds up to three times the amount of the original public disbursement. Id. Candidates in uncontested elections had severely limited access to public funds. Id.

97. Id. Nine of eleven statewide officials were elected with public funds in 2006, the last election cycle before publication of the article. Id.
when, in 2011, the Supreme Court reversed the Ninth Circuit and struck down the fund matching provisions Arizona’s public financing program in *Arizona Free Enterprise Club’s Freedom Club PAC v. Bennett.* The Court found that the matching provision placed an undue burden on political speech, a logical outcome in the wake of *Citizens United,* which cemented the constitutional requirement to protect political spending as much as political speech.

In 1996, Maine put in place a public finance system substantially similar to that later implemented by Arizona. Like Arizona’s system, Maine’s was upheld at the Circuit Court level. While challenges to the Maine Clean Elections Act never made it to the Supreme Court, the holding in *Arizona Free Enterprise Club’s Freedom Club PAC* meant that Maine had to end the fund matching portion of its public campaign finance program as well. Still, the Maine law maintains public support: in 2015, Maine voters passed an initiative to strengthen the law that originally set up the public financing system.

In 2008, the Stanford Law Review published a study analyzing the effects of public financing in Maine and Arizona. Refuting common criticism of public financing systems, the study found that public campaign funding programs did not lead to lower quality candidates, but rather that they supported competitive races and serious challengers. The study stressed the importance of future research on whether policies implemented by officials elected with

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100. Frasco, supra note 95.
104. Id. The author posits that one of the reasons for the generally high quality of candidates who accept public funding for their campaigns might be the effort required to meet the eligibility requirements for public funding. Id. The author also opines that the effectiveness of public financing programs might increase as participation in the programs rises. Id.
public funds better reflected concerns of average citizens than their privately funded counterparts. Subsequent scholarship has been unable to follow through on this call for further research on the effects of public funds, in large part due to the ruling in Arizona Free Enterprise Club’s Freedom Club PAC and the resulting lack of public finance systems to analyze.

Since Maine and Arizona’s enactment of public campaign financing programs, over a dozen states have implemented public financing of elections at some level. While each system offers its own strengths and weaknesses, Connecticut’s program is particularly interesting in that it faced a legal challenge from a group one would have thought would be a primary beneficiary of public campaign financing: the Green Party. The Connecticut system differs from the Maine/Arizona model in that eligibility requirements to receive public funding are much higher, and the Green Party of Connecticut argued that the program effectively eliminated the possibility for small parties to compete. Though short-lived, the run of fund matching public financing programs was relatively successful, and were it not for the decision in Arizona Free Enterprise Club’s Freedom Club PAC, perhaps matching fund programs would have become more popular at the state level. However, as the law stands today, states lack the ability to match private funds with public funds, substantially limiting their ability to enact comprehensive campaign finance regulation.

The purpose of this background section has been to familiarize readers with the history of campaign finance regulation in the United States, ending with a short demonstration of the feasibility

105. Id.
106. Arizona, 564 U.S. at 754-55.
107. Overview of State Laws on Public Financing, supra note 95.
108. See Green Party of Conn. v. Garfield, 616 F.3d 213 (2d Cir. 2010) (holding that the Connecticut program did not unconstitutionally discriminate against minor parties, but striking down certain parts of the public fund matching provision, reasoning that those provisions impermissibly restricted the rights of individuals and candidates to spend their own funds on campaign speech). In this sense, Green Party is a precursor to the Supreme Court’s decision in Arizona. See also Green Party of Connecticut v. Jeffrey Garfield, BRENNAN CTR. FOR JUST. (July 13, 2010), www.brennancenter.org/legal-work/green-party-connecticut-v-jeffrey-garfield (summarizing the case); see also Mark Paziokas, A Primer on Public Financing of Campaigns in Connecticut, CT. MIRROR (July 2 2014), ctmirror.org/2014/07/02/a-primer-on-public-financing-of-campaigns-in-connecticut/ (overviewing the Connecticut public financing program).
110. Frasco, supra note 95; Arizona, 564 U.S. at 754-55.
of public campaign financing in the United States. The foregoing section will build on the information here and analyze the role of money in politics, arguing that campaign finance reform is vital to ensure the survival of democracy. This analysis will lead to the conclusion that the influence of money is so deeply ingrained in American politics and law, that the only proper solution is to amend the Constitution.

III. ANALYSIS: WE DO NOT LIVE IN A DEMOCRACY

The previous section briefly traced the history of campaign finance legislation in the United States and some Supreme Court rulings that have found various limits on political spending to be unconstitutional limits on free speech. As the law stands today, individuals and corporations can spend unlimited amounts in the form of “independent expenditures” supporting and opposing political candidates and positions.

This section will explore the effects that campaign finance has on American politics, including its role as a barrier for entry, the electoral advantage it provides, and the influence it has on public policy. This section will also discuss the “revolving door” between government and major business interests, and the role of corporate-owned news media in maintaining the political and economic status quo. This section concludes with the assertion that the current campaign finance system is legalized bribery.

A. Financial Filtration and the Funding Advantage

“I don’t care who does the electing, so long as I get to do the nominating.” - Boss Tweed


114. See generally Daniel Hays Lowenstein, For God, For Country, or For Me, 74 CAL. L. REV. 1479, 1500 (1986) (arguing — in 1986 — that the issue of “bribery” is complex in a legal context, but that, “No one can consider bribery or corruption in contemporary American politics without considering campaign contributions”). Any concerns about “bribery” in the form of campaign contributions have undoubtedly been exacerbated by the legal progression of campaign finance and corruption law discussed in Section II.

Those who dispute the influence of money in politics often argue that citizens have ultimate control over their politicians because, at the end of the day, money does not vote—people do.116 It is a mathematical fact that when it comes to counting votes, a non-donor has the same amount of influence as a donor. However, before any citizen casts a ballot—before they watch a debate or see an ad or even become aware of their choices—candidates are subject to a filtration process in the form of fundraising.117

In 2018, the average cost of a campaign for the House of Representatives was nearly $580,000, and nearly $2.3 million for the Senate.118 For aspiring candidates, the prospect of paying for their campaigns poses the first challenge.119 Candidates can hardly expect to acquire the requisite funds by going door-to-door and winning voters’ donations with the power of their ideas, and it is only natural to seek funding from those that can provide the most.120 Assuming that anyone who spends $2,700 (the maximum amount allowed for a direct campaign contribution) or more in any given election cycle qualifies as a “relevant funder,” that means 0.09 percent of U.S. adults qualified as relevant funders in 2018.121 Lowering the standard for “relevant funder” to $200 brings the total of relevant funders to 0.6 percent of U.S. adults.122 In total, 0.47 percent of the U.S. population provided seventy-one percent of “all individual contributions to federal candidates, PACs, parties and outside groups.”123 Such a system creates obvious potential for those Tweed’s political power). This quote encapsulates the crucial role of funding as a filter for candidates: people vote, but it is critical to consider which interests narrow voters’ choices by selecting candidates.

116. See Citizens United, 558 U.S. at 360 (stating that voters have “ultimate influence over elected officials”).

117. See Lessig, supra note 79 (explaining the power of political spending through the concept of the continuous “money election”).

118. 2018 Election Overview, OPEN SECRETS, www.opensecrets.org/overview/index.php (last visited Feb. 26, 2019); Lessig, supra note 79 (arguing “a candidate doesn’t necessarily have to win the money election, but she must do extremely well”). While the mean cost is not the best indicator (median would be a better measure), the point stands that elections are expensive.

119. Lessig, supra note 79.

120. Biersak, supra note 93; Choma, supra note 93.

121. 2018 Donor Demographics, OPEN SECRETS, www.opensecrets.org/overview/donordemographics.php (last visited Feb. 26, 2019). This threshold is less than one half of one percent of the average cost of a House campaign. 2018 Election Overview, supra note 118.

122. 2018 Donor Demographics, supra note 121.

123. Id.; see also Sarah Bryner, Russ Choma, Peter Olsen-Phillips, & Doug Weber, The Political One Percent of the One Percent in 2014: Mega Donors Fuel Rising Cost of Elections, OPEN SECRETS (Apr. 30, 2015), www.opensecrets.org/news/2015/04/the-political-one-percent-of-the-one-percent-in-2014-mega-donors-fuel-rising-cost-of-elections/ (noting the increase in “mega donors:” “In 2010 only 17 individuals contributed a total of $500,000 or more, while members of the $1 million-plus club numbered only nine. In 2014, the number of $500,000 and up donors ballooned to a whopping 135, and 63 people gave more than $1 million”); see also Lessig, supra note 79 (noting that, “in the 2012 presidential
that fund campaigns to wield greater influence than most Americans. 124

Lessig argues that through the idea of relevant funders, “We can see just why the way we fund elections today is ‘corruption,’” which he asserts “has created a dependency that conflicts with the dependency intended by the Constitution.” 125 Candidates for Congress spend anywhere between thirty percent and seventy percent of their time raising money. 126 As one would expect, successful candidates “get good at speaking in a way that inspires that essential funding,” learning “to talk about the issues the funders care about” and “spend very little time talking about the issues most Americans care about.” 127 These are the seeds of funding that eventually grow into favorable policy for funders (this will be discussed in the ensuing subsection). 128 So, while voters ultimately decide between candidates (usually only two), those candidates already had to win the favor of donors — who represent a tiny portion of the population — long before appealing to those voters, and candidates that do not win the favor of donors never got a fair chance to appeal to voters. 129 Politicians’ incentive to curry favor with donors is not only to secure their own funding, but to stave off the prospect of well-funded competitors who are more

124. See Jones, supra note 11 (providing data that indicates that Americans recognize this potential for corruption).

125. Lessig, supra note 79, at 5 (citing to The Federalist No. 52, Lessig argues that “Congress was intended to be ‘dependent on the people alone’” but has developed an “additional dependence” — on campaign funders. Lessig argues that this dependence “violates the exclusivity requirement (‘alone’) in ‘dependence on the people alone.’ A dependence upon them is thus ‘corruption.’”); see also Jonathan Shaw, A Radical Fix for the Republic, HARV. MAG. (Aug. 2012), harvardmagazine.com/2012/07/a-radical-fix-for-the-republic (summarizing Lessig’s ideas about “dependence corruption” and quoting Lessig: “The corrupting influence of money is the first problem facing this nation … Unless we solve this problem, we won’t solve anything else”). Lessig acknowledges that a determination that the current system constitutes “dependence corruption” would not overturn Citizens United, which is why his proposed constitutional reinterpretation does not go far enough to address the issue of money, though it provides ample evidence supporting the need to go further. Id.

126. Lessig, supra note 79.

127. Id. Likening fundraising practices to a “Skinner box,” Lessig argues that “life in that funders box teaches members which buttons to push in order to trigger the funding that they need.” Id. at 4.

128. Id.; Gilens & Page, supra note 7.

129. Brickner & Weiner, supra note 59 (arguing that, “[w]here the few can blot out the voices of the many in this way, many argue the right to vote is a hollow one”); Small Donors Make Good Press, Big Donors Get You Reelected, OPEN SECRETS (last visited Feb. 26, 2019), www.opensecrets.org/resources/dollarocracy/04.php; Lee Drutman, The Political One Percent of the One Percent, SUNLIGHT FOUND. (Dec. 13, 2011), sunlightfoundation.com/2011/12/13/the-political-one-percent-of-the-one-percent/.
friendly to donor interests.\textsuperscript{130}

Beyond being competitive in the race, fundraising superiority correlates with victories: the better-funded candidate tends to win Congressional races.\textsuperscript{131} Between 2010 and 2016, candidates who outspent their opponents won ninety percent of House elections.\textsuperscript{132}

\textsuperscript{130} See Lessig, supra note 79 (providing the answer a senator gave when asked about the impact of \textit{Citizens United}:

The single most frightening prospect that an incumbent now faces is that, thirty days before an election, some anonymously funded super PAC will drop $500,000 to $1,000,000 in attack ads in the district. When that happens, the incumbent needs a way to respond. He can’t turn to his largest contributors—by definition, they have all maxed out and can’t, under the law, give any more. So, the only protection he can buy is from super PACs on his own side.

That protection, however, must be secured in advance—a kind of insurance, the premium for which must be paid before a claim gets filed. And so how do you pay your premium to a super PAC on your side in advance? By conforming your behavior to the standards set by the super PAC. “We’d love to be there for you, Senator, but our charter requires that we only support people who have achieved an 80 percent or better grade on our Congressional Report Card.” And so the rational senator has a clear goal—80 percent or better—that he works to meet long before he actually needs anyone’s money. And thus, without even spending a dollar, the super PAC achieves its objective: bending congressmen to its program. It is a dynamic that would be obvious to Tony Soprano or Michael Corleone but that is sometimes obscure to political scientists).

\textsuperscript{131} \textit{Winning vs. Spending}, OPEN SECRETS, www.opensecrets.org/overview/bigspenders.php (last visited Feb. 26, 2019); see also \textit{2018 Most Expensive Races}, OPEN SECRETS, www.opensecrets.org/overview/topraces.php (last visited Feb. 26, 2019) (highlighting that the most expensive Senate election cost over $125 million and the most expensive House election was nearly $50 million); see also Wesley Lowery, \textit{91% of the Time the Better-Financed Candidate Wins. Don’t Act Surprised}, WASH. POST (Apr. 4, 2014), www.washingtonpost.com/news/the-fix/wp/2014/04/04/think-money-doesnt-matter-in-elections-this-chart-says-youre-wrong/ (noting that victorious Congressional candidates spent more than 20 times more than their opponents in 2012); see also Domenico Montanaro, \textit{Money is Pretty Good Predictor of Who Will Win Elections}, PBS NEWS HOUR (Nov. 11, 2014), www.pbs.org/newshour/updates/money-pretty-good-predictor-will-win-elections/ (reporting that in 2014, the candidate who was better-funded won 94 percent of races in the House of Representatives and 82 percent of races in the Senate); see also Philip Bump, \textit{Does More Campaign Money Actually Buy More Votes: An Investigation.}, ATLANTIC (Nov. 11, 2013), www.theatlantic.com/politics/archive/2013/11/does-more-campaign-money-actually-buy-more-votes-investigation/355154/ (finding correlation between the amount spent per vote and the closeness of the race and between a candidate’s margin of victory and the amount by which they outspent their opponent in 2012 Congressional races. Bump also found that the latter correlation was stronger, when looking only at close races).

\textsuperscript{132} Maggie Koerth-Baker, \textit{How Money Affects Elections}, FIVETHIRTYEIGHT (Sep. 10, 2018), fivethirtyeight.com/features/money-and-elections-a-complicated-love-story/. Koerth-Baker presents the argument of political science professors Richard Lau and Adam Bonica:

The strong raw association between raising the most cash and winning
After winning their seats, it would only be natural for legislators to consider how their decisions as lawmakers might affect their campaign donors, who played a crucial role in their election and on whose funds they will likely rely in any reelection campaign(s).\textsuperscript{133} With this in mind, the following section will discuss how legislation tends to favor the interests of big business and wealthy individuals over average Americans.\textsuperscript{134}

**B. Public Opinion and Public Policy, a Discouraging Disconnect**

In 2014, the American Political Science Association published a study of the correlation between public policy and public opinion, comparing this correlation for Americans at the fiftieth income percentile (“average Americans”) and the ninetieth percentile (the “economically elite”).\textsuperscript{135} These were also compared against the organized interest groups (broken down into “business-oriented” groups and “mass-based” groups).\textsuperscript{136} The authors of the study provided the following summary of their findings, “the central point that emerges from our research is that economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while mass-based interest groups and average citizens have little or no independent influence.”\textsuperscript{137} In short, the study revealed that public policy tends to favor the interests of the economically elite on all issues, while “ordinary citizens get what they want from government only when they happen to agree with elites or interest groups that are really calling the shots.”\textsuperscript{138}

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\textsuperscript{133} Probably has more to do with big donors who can tell (based on polls or knowledge of the district or just gut-feeling woo-woo magic) that one candidate is more likely to win — and then they give that person all their money.

\textit{Id.} While some may say this refutes the idea that money causes electoral victories, the efforts by donors to get a proverbial foot in the door with the eventual winner supports the idea that the point of political spending is to garner influence.

\textsuperscript{134} Lessig, \textit{supra} note 79; Teachout, \textit{supra} note 40. Both Lessig and Teachout point out that the frequency of election cycles was meant to increase dependence on voters. \textit{Id.} Ironically, the constant need to raise money for reelection has instead led to extreme dependence on campaign funders.

\textsuperscript{135} See 2018 Donor Demographics, \textit{supra} note 121; Bryner, Choma, Olsen-Phillips, \& Weber, \textit{supra} note 123 (highlighting the power of those that can donate more than an average American).

\textsuperscript{136} Id. “Powerful interest groups” were determined based inclusion on \textit{Fortune} magazine’s “Power 25” lists over the years of the study. \textit{Id.}

\textsuperscript{137} Id. In addition to this disproportionate influence, the study also found a strong bias in favor of the status quo: “even when fairly large majorities favor policy change, they generally do not get it” (emphasis added). \textit{Id.} at 565.

\textsuperscript{138} Id. The authors report, “When a majority of citizens disagrees with
The study found that economically elite individuals had more influence than average Americans, but that organized interest groups were even more influential than wealthy individuals. Most Americans would not find these results surprising: fifty-five percent say lobbyists have “a lot” of influence and strongly agree that Congress pays “too much attention to special interests and lobbyists.” Business-oriented interest groups were found to be about twice as influential as mass-based interest groups (like labor unions and the AARP), which the authors attributed to there being about twice as many business-oriented interest groups. Furthermore many such interest groups “take stands that are unrelated (pro-life and pro-choice groups) or negatively related (gun owners) to what the average American wants.” On the other hand, “preferences of average citizens are positively and fairly highly correlated, across issues, with the preferences of economic elites.” Still, “the issues about which economic elites and ordinary citizens disagree reflect important matters,” and therefore “the resulting political losses by ordinary citizens are not trivial.”

The study offers the grim conclusion that the “public actually have little influence over the policies our government adopts,” and that, “when a majority of citizens disagrees with economic elites or with organized interests, they generally lose.” The authors warn that policymaking “dominated by powerful business organizations and a small number of affluent Americans” seriously threatens America’s “claims to being a democratic society.”

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139. Id. Gilens and Page summarized their findings: “Our evidence clearly indicates that—controlling for the influence of both the average citizen and economic elites—organized interest groups have a very substantial independent impact upon public policy.” Id. Highlighting the power of organized interest groups even over wealthy individuals, Gilens and Page stressed that “economic elites stand out as quite influential—more so than any other set of actors studied here—in the making of U.S. public policy.” Id.

140. Newport & Saad, supra note 6.


142. Id. The authors note that some membership organizations, such as labor unions and the AARP, “do tend to favor the same policies as average citizens.” Id. at 571. However, the influence of these organizations tends to be overshadowed by the greater volume of pro-business organizations. Id.

143. Id. The study found: “Rather often, average citizens and affluent citizens (our proxy for economic elites) want the same things from government.” Id. at 570. This supports the idea that corporate spending is the key issue for curbing undue influence of moneyed interests. Id.

144. Id. at 573.

145. Id. Comparing the influence of average Americans against economic elites and organized interest groups the study concludes, “Not only do ordinary citizens not have uniquely substantial power over policy decisions; they have little or no independent influence on policy at all.” Id. at 576.

146. Id. at 577; see also Jason S. Oh, Are Progressive Tax Rates Progressive Policy?, 92 N.Y.U. L. REV. 1909, 1972 (2017) (discussing in part “alternative studies that test unequal representation by comparing the ideology of
now briefly examine one of the preeminent examples of the disconnect between public policy and public opinion: mandatory background checks for gun purchases.

The issue of gun regulation shows one of the most stark examples of the government’s indifference to the will of the electorate.147 A June 2017 poll from Quinnipiac University found that ninety-four percent of Americans favor requiring background checks for all gun buyers.148 Other recent polls indicate a slightly lower percentage, but the aggregate of major polls places the number well over eighty percent.149 However, the current law in the United States does not require background checks for private gun purchases, which make up roughly twenty percent of all gun purchases in the United States.150 Democratic legislators have recently pushed for legislation mandating universal background checks, but no such legislation has passed.151 The votes on these bills have largely been shot down by votes along party lines, with Republicans voting overwhelmingly against the proposed legislation.152 However, it turns out there is little difference between Democratic and Republican voters on the issue of universal background checks, and large majorities of both parties’ voters agree that background checks should be required for all gun purchases.153

The National Rifle Association (“NRA”) is one of the biggest political spenders and has taken full advantage of their unlimited spending power provided by Citizens United and SpeechNow.org —
almost exclusively supporting Republicans and opposing Democrats.\footnote{154} In the 2016 election cycle, the NRA spent $54.4 million on independent expenditures supporting or opposing candidates, the ninth highest total of any organization.\footnote{155} In the 2018 cycle, the NRA spent $9.4 million in expenditures, ranking twenty-first.\footnote{156} Boasting one of the strongest lobbies in Washington, the NRA has spent $17 million on lobbying since 2015.\footnote{157} Most of the NRA’s lobbying is against proposed legislation, including proposals for mandatory background checks.\footnote{158} While the American public strongly favors mandatory background checks for all gun purchases, Congress (especially Republicans in Congress) has thus far sided with the NRA.\footnote{159} The issue of gun control is perhaps the preeminent example of Congress’s indifference to public opinion, but it is far from the only example.\footnote{160}


\footnote{155} NRA Profile for 2016 Election Cycle, supra note 154. In the 2016 cycle, the NRA spent $37 million opposing Democratic candidates and $17 million supporting Republican candidates. \textit{Id.} In addition to outside spending, the NRA also made over $1 million in direct contributions. \textit{Id.}

\footnote{156} \textit{Id.}


\footnote{160} See Newport & Saad, supra note 6 (reporting that Congress’s inability to address the issue of gun regulation “despite much evidence that the public supports increases in background checks and restrictions on the sale of assault weapons,” illustrates the public’s concerns about their lack of influence over policy); see also David Dayen, Revenge of the Stadium Banks, INTERCEPT (Mar. 2, 2018), theintercept.com/2018/03/02/crapo-instead-of-taking-on-gun-control-democrats-are-teaming-with-republicans-for-a-stealth-attack-on-wall-street-reform/ (reporting that “[i]nstead of taking on gun control, Democrats are teaming with Republicans for a stealth attack on Wall Street Reform”).
C. The False Dichotomy of the Two-Party System

1. The Boundaries of Acceptable Positions

The idea of the “Overton window” suggests that there is a range of acceptable positions within a society’s political discourse; any ideas that fall outside that window are viewed as extreme and deemed politically impossible. This concept is useful for considering how money in politics has shifted the political spectrum in the United States, however, whereas the original theory posited that “ideas approved of by the electorate” set the Overton window, it is in fact a tiny portion of the electorate — along with entities that are decidedly not part of the electorate — that have shifted the window by garnering political influence through campaign funding and lobbying.

Unlike other countries, which tend to have several viable parties from which voters can choose, the United States has just

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161. See Nathan J. Russell, An Introduction to the Overton Window of Political Possibilities, MACKINAC CTR. FOR PUB. POLY (Jan. 4, 2006), www.mackinac.org/7504 (explaining the concept of the Overton window:

Since commonly held ideas, attitudes and presumptions frame what is politically possible and create the "window," a change in the opinions held by politicians and the people in general will shift it. Move the window of what is politically possible and those policies previously impractical can become the next great popular and legislative rage. Likewise, policies that were once acceptable become politically infeasible as the window shifts away from them).

162. Id. The theory suggests that politicians “will almost always constrain themselves to taking actions within the ‘window’ of ideas approved of by the electorate,” even if actions outside the window may be “more optimal in terms of sound policy.” However, this comment suggests that the Overton window is not determined by the approval of the electorate, but by the approval of major campaign funders. See also Rory Carroll, The Myth of Ronald Reagan: Pragmatic Moderate Or Radical Conservative?, GUARDIAN (Sep. 19, 2015) (analyzing former president Reagan’s “complex” legacy and accusing modern right-wing politicians of ignoring more “moderate” aspects of Regan’s policy positions. Carroll cites then-candidate Hillary Clinton’s proposition, that the Republican party “has moved far to the right” and left “the real Reagan” behind. Through these accusations — and by channeling “her own version of Reagan” — Clinton (perhaps unwittingly) highlighted the rightward shift in the Democratic party, which is an essential component of the overall impact of money in politics).

163. Bryner, Choma, Olsen-Phillips, & Weber, supra note 123; Gilens & Page, supra note 7; see also Larry M. Bartels, Benjamin I. Page, & Jason Seawright, Democracy and the Policy Preferences of Wealthy Americans, 11 PERSP. ON POL. 15 (2013), (finding that the top one percent of wealth-holders are “extremely active politically” and “much more conservative than the American public as a whole with respect to important policies concerning taxation, economic regulation, and especially social welfare programs.” The study suggests that “these distinctive policy preferences may help account for why certain public policies in the United States appear to deviate from what the majority of US citizens want the government to do”).
two. The two parties are designed to oppose and check one another, sitting at opposite ends of the political spectrum. Classifying the Republican Party as the right-wing and the Democratic Party as the left-wing sets the terms for political discourse, creating an assumption that political compromise (and the most reasonable/"centrist" position) should be found in the middle of the two parties. However, this assumption is false and engenders misleading and inaccurate discourse, when the ideological center of the two controlling parties does not reflect the ideological center of all citizens — as is the case in the United States.

In the modern political era, both parties rely on extremely large donations and the artificial left-right binary has left voters to choose between two parties that both promulgate policy designed to serve the interests of wealthy people and corporations over the interests of average Americans. In this political system, "compromise" on economic policy takes place between two parties serving the same.


165. Blake, supra note 164.

166. See Political Polarization in the American Public, PEW RES. CTR. (June 12, 2014), www.people-press.org/2014/06/12/section-4-political-compromise-and-divisive-policy-debates/ (noting that, “The Ideological ‘Center’ is not necessarily ‘moderate’”).  

167. See Katherine M. Gehl & Michael E. Porter, Why Competition in the Politics Industry is Failing America, HARV. BUS. SCH. 33 (2017), www.hbs.edu/competitiveness/Documents/why-competition-in-the-politics-industry-is-failing-america.pdf (arguing that a system in which “replacements from either side will perpetuate the current competition or be neutralized if they try to act differently” impedes political progress); Gilens & Page, supra note 7; see also Mehdi Hasan, AOC, Sanders, and Warren Are the Real Centrists Because They Speak for Most Americans, INTERCEPT (Feb. 26, 2019), theintercept.com/2019/02/26/democratic-party-centrism-aoc-sanders-warren/ (supporting with polls the notion that politicians branded as “dangerously far left ... represent the actual political middle”); Christopher Ingraham, Congress Thinks the Public is Way More Conservative than it Actually Is. Deep-Pocketed Lobbyists Are to Blame, According to New Research., WASH. POST (Nov. 1, 2018), www.washingtonpost.com/business/2018/11/02/congress-thinks-public-is-way-more-conservative-than-it-actually-is-deep-pocketed-lobbyists-are-blame-according-new-research/.  

donor interests.\textsuperscript{169} Political parties are supposed to represent the citizenry, but in the United States, there has long been no room in mainstream political discourse for policies that might impose greater financial burden on the wealthy or corporations, even if such policy would benefit the majority of Americans.\textsuperscript{170} Sadly, corporations and the donor class have more influence on the two major political parties than we, the people, do.\textsuperscript{171}

Some would argue that the impact of money on public policy is overstated in this comment.\textsuperscript{172} A 2012 article on political advertising from the University of Minnesota Law Review argued that any fear of the potential effects of \textit{Citizens United} and its progeny had proven unfounded.\textsuperscript{173} Research for that article found that advertisements paid for by independent expenditures separate from campaigns were sometimes focused on different issues than campaign advertisements, and therefore the rise in political spending “greatly added to the diversity of political speech.”\textsuperscript{174} The article acknowledges the increase in power of outside funding groups, but asserts that increased outside spending in the political process has led to exposure of issues that otherwise would have been overlooked.\textsuperscript{175} However, outside spenders and candidates focusing on different issues in their advertisements does not indicate anything about the influence money has over actual legislation because that fact does not rebut the idea that candidates are indebted to those that helped them win.\textsuperscript{176} Furthermore, the authors of the Minnesota article argue that concerns about the influence of money in politics is overblown because there is a relative “balance” of money on the Republican and Democratic side.\textsuperscript{177} As the following section will make clear, an equity of money on the Republican and Democratic sides of the aisle does not indicate a healthy democracy, but rather a troubling ideological unity between the two parties regarding the interests of major donors.

\textsuperscript{169} Id.
\textsuperscript{170} Id.
\textsuperscript{171} Id.
\textsuperscript{172} See generally Kenneth Goldstein, David A. Schweidel, & Mike Wittenwyler, \textit{Lessons Learned: Political Advertising and Political Law}, 96 MINN. L. REV. 1732 (2012) (concluding that the fears espoused by critics of the decision in \textit{Citizens United} decision had not come to fruition).
\textsuperscript{173} Id.
\textsuperscript{174} Id. at 1753.
\textsuperscript{175} Id.
\textsuperscript{176} Id.
\textsuperscript{177} See id. at 1754 (arguing that because “both major political parties can claim to have significantly well-funded outside groups pushing in their direction,” the concerns about the effects of \textit{Citizens United} are unfounded). Of course, the fact that large quantities of money go to both major political parties does not refute notions that those large quantities of money wield influence over both political parties. Id.
2. The Business Party: Illusion of Choice

Over the four decades since Buckley, and especially since the decisions in Citizens United and SpeechNow.org, major political spenders have become vital to the fundraising efforts for both the Democratic and Republican Parties.178 In that timeframe, the parties have diverged on social issues, such as gay marriage, access to abortion, and immigration reform but have found common ground on matters of economic policy, especially as to policies that most significantly impact the wealthiest Americans and largest corporations.179

During the 1980s (shortly after the levee had broken in Buckley), the Republican party, led by President Ronald Reagan, brought about an age of massive deregulation and tax cuts.180 The legacy of “Reaganomics,” as the policies are commonly known, is one of disappointment and unfulfilled promises.181 The effects of these

178. See Bryner, Choma, Olsen-Phillips, & Weber, supra note 123 (analyzing contribution data and finding that “Democratic party committees raised roughly 18 percent of all their contributions” in 2014 from the “political one percent of the one percent,” while Republican party committees drew twenty-nine percent of their funding from this group, a figure that increased from 2012 (twenty-five percent) and 2010 (twenty-one percent)).

179. Tamara Keith, Republicans, Democrats Still Divided on Same-Sex Marriage After Ruling, NAT'L PUB. RADIO (June 26, 2015), www.npr.org/2015/06/26/417840352/republicans-democrats-still-divided-on-same-sex-marriage-after-ruling; see Hannah Hartig, Nearly Six-in-Ten Americans Say Abortion Should be Legal in All or Most Cases, PWE RES. CRT. (Oct. 17, 2018), www.pewresearch.org/fact-sheet/2018/10/17/nearly-six-in-ten-americans-say-abortion-should-be-legal/ (noting a sharp divide between Republican and Democratic voters on the issue of abortion legality); Jennifer Haberkorn & Didi Martinez, House GOP Closes Ranks on Abortion, POLITICO (June 28, 2018) www.politico.com/story/2018/06/28/house-republicans-abortion-rights-680629; House Republicans and Democrats at Odds Over Immigration Reform, U.S. L. CRT. (July 23, 2013), www.uslawcenteronline.com/blog/2013/07/house-republicans-and-democrats-at-odds-over-immigration-reform.shtml; see Alexandra Rosenmann, Noam Chomsky: The Democratic Party Now Belongs to Moderate Republicans, SALON (May 17, 2016), www.salon.com/2016/05/17/noam_chomsky_the_democratic_party_is_now_composed_of Moderate_republicans_partner/ (comparing the political dynamic between the two parties today, to the 1980s and positing that a political shift has moved both parties significantly to the “right,” especially on economic issues); Dayen, supra note 160 (reporting in part on the bipartisan nature of a bill to undercut Wall Street reform); see also Commercial Banks: Top Recipients, 2018 Election Cycle, OPEN SECRETS, www.opensecrets.org/industries/recips.php?ind =F03&cycle=2018&recipdetail=S&mem=Y&sortorder=U (detailing which politicians received the most in contributions from commercial banks. Of the top 20 recipients, 14 were Democrats and 6 were Republicans.)


181. See Ramesh Ponnuru, Reaganism After Reagan, N.Y. TIMES (Feb. 17, 2013), www.nytimes.com/2013/02/18/opinion/updating-reaganomics.html (discussing the legacy of Reaganomics in today’s political arena and encouraging Republicans to change policy position because economic growth
policies (most prominent among them a significant increase in wealth concentration at the top) are discussed further in the following subsection.182

When the Democratic Party returned to the White House, it did not come a return to populist economics that one might have expected from the “left-wing” party.183 President Bill Clinton teamed up with a Republican Congress in 1999 to repeal Glass-Steagall, a banking regulation put in place after the Great Depression as a safeguard for consumer money.184 Essentially, Glass-Steagall separated consumer money from investor money, and the repeal of the law allowed investment banks to gamble with pension funds and other consumer savings.185 Throughout his political career, Bill Clinton and his wife, Hillary, have received close to $70 million in political contributions from sources in the banking industry.186 Bipartisan congressional support and

“has to trump corporate executives’ campaign donations”); See also Alana Semuels, Is the U.S. Due for Radically raising Taxes for the Rich?, ATLANTIC (Aug. 8, 2016), www.theatlantic.com/business/archive/2016/08/is-america-due-for-a-tax-hike/494795/ (noting significant cuts in tax rates for the top income bracket under Reagan and a corresponding increase in wealth concentration for top earners).

182. Id.
183. Steve Jonas, Reconsidering the Legacy of Bill Clinton: When the Democrats Turned Neoliberal, TRUTH-OUT (Aug. 6, 2014), truth-out.org/buzzflash/commentary/reconsidering-the-legacy-of-bill-clinton-when-the-democrats-turned-neoliberal; see also Rebecca Jolene Byrne, Framing Income Inequality in the Media: Is There a Liberal or Neoliberal Bias? (May 2012) (unpublished M.A. thesis, Georgia Southern University) (on file with the Digital Commons@Georgia Southern Electronic Theses and Dissertations) (describing neoliberalism as a system that “characterizes individual success or failure as a result of virtuous entrepreneurial effort or personal failings, denying any social or structural influence on outcomes” and views the wealthy “as virtuous and deserving while the poor are morally suspect at best.” Byrne argues that neoliberalism “has had a lasting impact on American social policy, starting with Regan’s attack on poor women, who characterized them as ‘welfare queens,’ and continuing into the welfare cutbacks of the Clinton era”); see also George Monbiot, Neoliberalism — the Ideology at the Root of All Our Problems, GUARDIAN (Apr. 15, 2016), www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot (arguing that “neoliberalism was not conceived as a self-serving racket, but it rapidly became one”).

184. Lauren Carroll, Bill Clinton: Glass-Steagall Repeal Had Nothing to do With Financial Crisis, POLITIFACT (Aug. 19, 2015), www.politifact.com/truth-o-meter/statements/2015/08/19/bill-clinton/bill-clinton-glass-steagall-had-nothing-do-financi/ (rating as “mostly true” former President Clinton’s claim that the repeal of Glass-Steagall did not have any role in the financial crisis, but noting that this is in large part because the legislation that technically repealed Glass-Steagall was simply the nail in its coffin — it had already been crippled by decades of deregulation).


186. Matea Gold, Tom Hamburger, & Anu Narayanswamy, Inside the
President Clinton’s signature also brought about The North American Free Trade Agreement (“NAFTA”), an economic policy that analysts estimate has cost the United States over one million jobs since its inception.\textsuperscript{187} NAFTA enabled corporations to move factory jobs to Mexico, where they pay workers a small fraction of what they were paying Americans prior to NAFTA.\textsuperscript{188} President Clinton also passed (along with a Republican Congress) the Telecommunications Act of 1996, which massively deregulated the media industry.\textsuperscript{189} Media industry executives have been the top donors for both Bill and Hillary Clinton over the course of their political careers.\textsuperscript{190}

With the George W. Bush administration came another outspoken proponent of Reaganomics.\textsuperscript{191} President Bush signed into


\begin{quote}
It is downright shameful to pretend to enact a pro-competition policy, while continuing to preserve the worst features of our old spectrum allocation policies, exacerbating the anti-competitive, anti-efficiency effects of universal service policy, and steadfastly refusing to ask (or to require the FCC to ask) real questions about real competitive conditions in real markets;
\end{quote}

\textit{See also} Larry Pressler, \textit{A Look Back at the Telecommunications Act of 1996}, HILL (Feb. 7, 2017), thehill.com/opinion/op-ed/318394-a-look-back-at-the-telecommunications-act-of-1996 (providing a former senator’s defense of the Act, which he characterizes as “deliberative, bipartisan legislation that changed global communications for the better”).


law massive tax cuts for the wealthy and corporations, seventy-three percent of the benefits of which went to the top twenty percent of wealthy Americans (including thirty percent for just the top one percent). President Bush also formed his energy policy with significant input from top oil companies. By no coincidence, Bush’s energy policy included $14.5 billion worth of tax breaks for oil companies. In 2008, after major banks had caused the worst economic crash since the Great Depression through fraudulent and predatory lending practices, President Bush signed into law a taxpayer-funded bailout for the banks — a bill that received more support from Congressional Democrats than Republicans. This as an example of collective economic policies that scholars have called “socialism for the rich.” As Martin Luther King Jr. argued, “rugged free market capitalism” is reserved for the poor.

Even Barack Obama, branded as a “socialist” by the right-wing of American politics, was able to get on board with the bipartisan economic agenda of serving donor interests. Former President Obama took office in the wake of the greatest financial crisis since the Great Depression and had a chance to follow through on his promise to end “business as usual” in Washington. Despite

evidence of rampant fraud, the Justice Department under President Obama did not prosecute a single banker in the wake of the crisis.\(^{200}\)

The regulatory response to the 2008 crisis was so lackluster that it did not even include a re-installment of Glass-Steagall, and the banks are now significantly larger than they were before the 2008 crash.\(^{201}\) In retrospect, that response makes sense when one considers that employees for Wall Street behemoths Goldman Sachs, J.P. Morgan Chase, and Citigroup combined to contribute over $2.6 million to Obama’s 2008 campaign.\(^{202}\) This is not the place to review every pro-corporate position of the Obama administration, but it is at least worth mentioning that the healthcare reform named after him, which critics called “socialized medicine” in efforts to fearmonger, was in fact a boon to the private health insurance industry and a policy originally proposed by the Heritage Foundation, a right-wing think tank.\(^{203}\) In short, saying Barack


\(^{201}\) See Randall D. Guynn, \emph{The Financial Panic of 2008 and Financial Regulatory Reform}, HARY. L. SCH. FORUM ON CORP. GOVERNANCE (Nov. 20, 2010), corpgov.law.harvard.edu/2010/11/20/the-financial-panic-of-2008-and-financial-regulatory-reform/ (summarizing that, “The Dodd-Frank Act will not change the fundamental contours of the U.S. financial regulatory structure. It will only cause a limited amount of shuffling of the regulatory boxes.”) Randall D. Guynn authored the U.S. chapter of a report issued by the Task Force on the Financial Crisis of the International Bar Association; \emph{See also} Gary Rivlin, \emph{How Wall Street Defanged Dodd-Frank}, NATION (Apr. 30, 2013) www.thenation.com/article/how-wall-street-defanged-dodd-frank/; \emph{see also} Matt Taibbi, \emph{How Wall Street Killed Financial Reform}, ROLLING STONE (May 10, 2012), www.rollingstone.com/politics/news/how-wall-street-killed-financial-reform-20120510 (arguing that the Dodd-Frank Act was ineffective because of influence from the financial industry. The author also contrasts President Obama’s reaction to the 2008 crisis to President Franklin Roosevelt’s reaction to the Great Crash of 1929, a good illustration of the Democratic Party’s move away from progressive politics).


\(^{203}\) This is one of the key issues illustrative of the political shift rightward, which is often called “centrism” but is more accurately characterized as “corporatism” (politics that serve first and foremost the interests of large corporations).

Patient Protection and Affordable Care Act, 42 U.S.C. § 18001 (2010); \emph{See} J.D. Kleinke, \emph{The Conservative Case for Obamacare}, N.Y. TIMES (Sept. 29, 2012), www.nytimes.com/2012/09/30/opinion/sunday/why-obamacare-is-a-conservatives-dream.html (noting that the “architecture of the Affordable Care Act is based on conservative, not liberal, ideas about individual responsibility and the power of market forces” and that “the law is nearly identical in design
to the legislation Mr. Romney passed in Massachusetts while governor” but that “in the partisan war sparked by the 2008 election, Republicans conveniently forgot that this was something many of them had supported for years” because of their political motivation to defy any policy supported by former president Obama. Kleineke also notes that the ACA “has few champions on the left precisely because it is not a government takeover of health care,” which explains why “the health insurance industry has been quietly supporting the plan all along”); see also Carolyn McClarkanen, How Much Are Insurers Winning Under Obamacare?, FORBES (May 4, 2014), www.forbes.com/sites/carolynmcclanahan/2014/05/04/how-much-are-insurers-winning-under-obamacare/ (arguing that Obamacare “was set up to provide continued outlandish rewards to for-profit insurers at the expense of the health of our nation” and reporting that four major private health insurance companies “will pay a total of $1.951 BILLION in dividends to shareholders in 2014”); see also Rober Lenzner, ObamaCare Enriches Only the Health Insurance Giants and their Shareholders, FORBES (Oct. 1, 2013), www.forbes.com/sites/robertlenzner/2013/10/01/obamacare-enriches-only-the-health-insurance-giants-and-their-shareholders/ (characterizing the ACA as “Obama’s sellout of the public interest” and arguing that the Act allowed companies “to raise their premiums, especially on small business, dramatically multiply their profits and send the value of their common stocks up by 200%-300%,” which Lenzner argues “is bloody scandalous and should be a cause for concern”); see also Michael Smerconish, What Do Socialists Think of Obamacare?, HUFFPOST (Jan. 23, 2014), www.huffingtonpost.com/michael-smerconish/what-do-socialists-think_b_4054666.html (quoting Greg Pason, the national secretary for Socialist Party USA, who said: “Obamacare cannot be considered socialist in any way”); see also Dan Arel, The Affordable Care Act is Not Socialism, TRUTHOUT (Dec. 23, 2013), truthout.org/articles/the-affordable-care-act-is-not-socialism/ (offering the same quote from Greg Pason and calling the ACA “a gift to capitalists.” Arel provides more of Pason’s statements on the ACA, which Pason points out “relies on private health insurance companies to manage health services,” whereas a socialized system “would be an actual national health-care system which would be publicly funded through progressive taxation and controlled by democratically elected assemblies of health-care workers and patients.”). Lastly, Pason makes the key point that labeling the ACA as “socialism” is not “an educated argument” and the prevalence of such an argument undermines any legitimate criticism of, or conversation about, the law. The ACA also illustrates the power of money in politics, in this case specifically the power of the private health insurance and pharmaceutical companies: “[p]olitically no law would have passed without the support of — or at least without active opposition from — the insurance industry”; William M. Sage, Putting Insurance Reform in the ACA’s Rearview Mirror, 51 HOU.S. L REV. 1081 (2014); see also Richard Kirsch, The Politics of Obamacare: Health Care, Money, and Ideology, 81 FORDHAM L. REV. 1737 (2013) (noting that if Democrats had not “agreed not to press for negotiating drug prices in Medicare and to oppose allowing importation of drugs from Canada,” then the pharmaceutical industry “would have spent its $100 million on ads opposing the proposed law”). As to the ACA’s legislative origins in the Heritage Foundation, see Timothy Noah, Author, Author: A Conservative Think Tank Indignantly Denies Influencing Obamacare, SLATE (Apr. 19, 2010), slate.com/news-and-politics/2010/04/the-conservative-heritage-foundation-indignantly-denies-influencing-obamacare.html#p2 (explaining how the Heritage Foundation supported many of the core policies that eventually became the ACA but changed their position as the policy came to be associated with former president Obama); Avik Roy, How the Heritage Foundation, A Conservative Think Tank, Promoted the Individual Mandate, FORBES (Oct. 20, 2011),
Obama is a socialist is as true as saying he was never the President of the United States. It is hopefully clear at this point, that it is not simply the Republican Party, the Democratic Party, nor the individual members of either party that are corrupted by money. The overall structure of campaign finance virtually necessitates dependence on major donors. Furthermore, both parties draw from the same wells to fund their campaigns. Take, for example, the PACs set up by Goldman Sachs, J.P. Morgan Chase, and Citigroup: all three spend over six figures on direct contributions to Republicans and Democrats each election cycle. The Goldman Sachs PAC spends nearly identical figures in contributions to Democratic and Republican candidates and committees in each election cycle.


This tendency to play both sides seems to refute the idea that corporations support candidates or parties based on ideological values, and suggests instead that the goal of these organizations is to ensure they have the ear of whichever party takes power. For large corporations like Wall Street banks, which have made themselves essential (if not indispensable) cogs in the fundraising machine, there is no such thing as losing an election.

D. Tax Policy: Redistribution of Wealth from the Bottom to the Top

As one would expect, the primary interests of major donors and lobbyists is promoting policy that benefits their bottom line. This can be seen most transparently in the tax code, which has undergone significant changes over the last forty years. In 1980, the first presidential election following the Buckley decision, Ronald Reagan won the presidency. Reagan is canonized in conservative circles as the political godfather of “trickle-down” economics (also known as supply-side economics). According to this theory, cutting taxes for the wealthiest people and corporations (along with loosening regulations) will stimulate growth and create more wealth for everyone as those at the top circulate their savings into the economy rather than paying taxes to the government.

210. Smith, supra note 205 (arguing that “donating equally to both sides is clearly not about helping one side win” and that, instead, these donations are designed to remove certain issues from public scrutiny, especially when businesses “stand to lose from policy changes that would be popular with the electorate”). The “implied threat” of providing more funding to the other side helps keep both parties silent on such issues). Id.
211. Id.; see also Mike Collins, Buying Government with Lobbying Money, FORBES (Mar. 28, 2015), www.forbes.com/sites/mikecollins/2015/03/28/buying-government-with-lobbying-money-29e8aff466b93f (discussing how special interest groups receive “fantastic” returns on their investment in lobbying).
215. Kocieniewski, supra note 212; see also Bruce Bartlett, Tax Cut Fever: Republican Trickle-Down Theory is Lies, USA TODAY (Sept. 27, 2017), www.usatoday.com/story/opinion/2017/09/27/tax-cut-fever-republican-supply-side-theory-hogwash-bruce-bartlett-column/704464001/ (arguing that the theory “has long outlived its usefulness and is now nothing more than dogma completely divorced from reality and that this indictment comes from Bruce Bartlett, who “helped originate the Republican obsession with slashing taxes”);
Initially, these policies garnered widespread public support. However, as it became clear that these policies almost exclusively benefit the economically elite, public opinion swung against trickle-down economics. Americans tend to vote “with their wallet,” i.e., for the candidate that will implement economic policy that will benefit them directly. While, generally, lowering taxes first seemed to serve this interest, it quickly became clear that trickle-down economic policies do not benefit average Americans, and in fact work against their economic interests.

On its face, supply-side tax policy calls for drastic decreases in tax rates that most directly benefit a small percentage of Americans near the top of the economy. The last major tax overhaul before the Reagan administration, which came in the wake of the Great Depression, implemented a top marginal income tax rate of seventy percent. The rate stayed at or above this level for the next forty years.

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see also Does Trickle-Down Economics Add Up — Or Is It a Drop in the Bucket?, WHARTON FINANCE ONLINE (Dec. 12, 2017), knowledge.wharton.upenn.edu/article/trickle-economics-flood-drip/ (presenting the general arguments for and against trickle-down economics).


218. David Goldman, Americans Say They’ll Vote With their Wallets, CNN MONEY (July 1, 2008), money.cnn.com/2008/07/01/news/economy/election_issue_poll/.

219. Chris Weigant, The GOP’s Big Lie About Tax Cuts, HUFFPOST (Oct. 23, 2017), www.huffingtonpost.com/entry/the-gops-big-lie-about-tax-cuts_us_59ee8793e4b08bec726e0334; Bartlett, supra note 215; see also C.K., Why People Vote Against Their Economic Interests, ECONOMIST (June 5, 2018), www.economist.com/democracy-in-america/2018/06/05/why-people-vote-against-their-economic-interests (discussing, for example, how Republican voters generally do not support increased Medicare spending despite the fact that Medicare recipients skew Republican).

220. Kocieniewski, supra note 212.

221. See Alan L. Feld, Fairness in Rate Cuts in the Individual Income Tax, 68 CORNELL L. REV. 429 (1983) (outlining the history of income tax rate adjustments up to 1983, particularly the increased reliance on income tax for federal tax revenue from 1939 to 1979).
years, growing as high as ninety-two percent in the 1950s.222 Reagan-sponsored tax cuts in 1981 and 1986 lowered the top income tax rate from seventy percent to twenty-eight percent.223 Under President Reagan, corporate tax rate decreased from forty-six percent to thirty-four percent.224 These tax cuts shifted more of the tax burden onto average Americans through increased reliance on social insurance taxes and taxes on retirement funds as federal revenue sources.225 According to the trickle-down theory, these savings for corporations and wealthy individuals would soon beget wage and wealth increases for middle-class Americans and spark investment in small business and entrepreneurship, all of which would combine to offset the negative impact of average Americans’ increased tax burden.226

However, as taxes on corporations and wealthy individuals have been lowered over the last half-century, the benefits have not “trickled down.”227 For the average American, wages have been

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225. Louis Jacobson, Bernie Sanders Says Tax Share Paid by Corporations Has Fallen From 33% to 9% since 1952, POLITIFACT (Aug. 28, 2014), www.politifact.com/truth-o-meter/statements/2014/aug/28/bernie-s/bernie-sanders-says-tax-share-paid-corporations-ha/ (describing that in 1952, corporations contributed 33 percent of the total tax revenue, which decreased to 10 percent by 2013; the inverse is true of taxes on social insurance (social security and other similar programs) and retirement funds, which accounted for 10 percent of all tax revenue in 1952 but 36 percent in 2013); see also Kimberly Amadeo, US Corporate Income Tax Rate, Its History and the Effective Rate, THE BALANCE (Jan. 16, 2019), www.thebalance.com/corporate-income-tax-definition-history-effective-rate-3306024 (tracing the history of corporate tax rates and briefly noting some ways that corporations avoid paying taxes altogether).

226. See Bartlett, supra note 215 (stating that Republicans “assert, without any evidence, that tax cuts pay for themselves by greatly expanding the economy” and lead to reduction in government spending); see also Joseph Bankman, Social Welfare and the Rate Structure: A New Look at Progressive Taxation, 75 CAL. L. REV. 1905 (1987) (making arguments against a progressive tax rate that were offered in support of trickle-down policies, including decreased efficiency of progressive structure and decreased incentive to make money caused by high marginal rates on top earners).

stagnant for forty years, growing more slowly than the rate of inflation.\textsuperscript{228} The cost of living, meanwhile, has risen at a higher rate than both wages and inflation.\textsuperscript{229} To make matters even more alarming, productivity has grown during this time of wage stagnation, meaning that the American workforce has been reliably increasing its collective output while reaping no increases in compensation for their work.\textsuperscript{230} Meanwhile, wages have increased by over 150 percent for the top one percent of earner, and by over 340 percent for the top 0.1 percent of earners.\textsuperscript{231} Wage disparity within corporations is even more stark: corporations have spent savings from tax cuts overwhelmingly to benefit shareholders with stock buybacks and to inflate executive salaries.\textsuperscript{232} Since 1978, the

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\textsuperscript{228} D. Desilver, For Most Workers, Real Wages Have Barely Budged for Decades, PEW RES. CTR. (Aug. 7, 2018), www.pewresearch.org/fact-tank/2014/10/09/for-most-workers-real-wages-have-barely-budged-for-decades/; see also Christopher Ingraham, In Every State, the Minimum Wage is Lower than What Residents Want, Study Says, WASH. POST (Nov. 30, 2018), www.washingtonpost.com/business/2018/11/30/every-single-state-minimum-wage-is-lower-than-what-residents-want-study-says. (reporting on dissatisfaction with minimum wage laws across the country).


\textsuperscript{231} L. Mishel & J. Wolfe, Top 1.0 Percent Reach Highest Wages Ever — Up 57 Percent Since 1979, ECON. POLY INST. (Oct. 18, 2018), www.epi.org/blog/top-1-0-percent-reaches-highest-wage-ever-up-57-percent-since-1979/; see also D. DeSilver, U.S. Income Inequality, on Rise for Decades, is Now Highest Since 1928, PEW RES. (Dec. 5, 2013), www.pewresearch.org/fact-tank/2013/12/05/u-s-income-inequality-on-rise-for-decades-is-now-highest-since-1928 (noting also that majorities of Americans at all income levels agree that the economic system favors the wealthy).

\textsuperscript{232} Corporate Tax Cuts Mainly Benefit Shareholders and CEOs, Not Workers, CTR. ON BUDGET & POL’Y PRIORITIES (Oct. 11, 2017), www.cbpp.org जेकल्फील्ड/फेडरल-टैक्स/कॉर्पोरेट-टैक्स-कट्स-माइन-बिनेर-शेयरहेंडर्स-एंड-सीईए-नो-वर्कर्स; see also S. Gandel, Five Charts That Show Where Those Corporate Tax Savings Are Going, BLOOMBERG (Mar. 5, 2018), www.bloomberg.com/opinion/articles/2018-03-05/five-charts-that-show-where-those-corporate-tax-savings-are-going (reporting that 60 percent of corporate tax savings from the 2017 cuts went to shareholders, while 15 percent went to employees); D. Spiegel, Now We Know: This is How Major Corporations Are Actually Spending Their Tax Cuts, CNBC (June 21, 2018), www.cnbc.com/2018/06/20/now-we-know-how-major-corporations-are-
average CEO salary has risen by almost 1,000 percent while average worker compensation has risen just over eleven percent.233 This growing disparity in income has, naturally, increased wealth inequality.234 The wealthiest ten percent of Americans control over seventy percent of total wealth in the United States; the top one percent owns nearly forty percent of total wealth; the top 0.1 percent owns nearly twenty percent — more than the combined wealth of the bottom eighty percent of Americans.235 Finally, the top 0.00025 percent of Americans (roughly the 400 wealthiest individuals) own more wealth than the bottom sixty percent of Americans (roughly 150 million individuals). This level of wealth inequality has not been since the eve of the Great Depression.236


233. See Lawrence Mishel & Jessica Schieder, CEO Compensation Surged in 2017, ECON. POLY INST. (Aug. 16, 2018), www.epi.org/publication/ceo-compensation-surged-in-2017/ (noting that “CEO compensation has grown far faster than stock prices or corporate profits” and that, “if CEOs earned less or were taxed more, there would be no adverse impact on output or employment”). Mishel and Schieder suggest reinstating “higher marginal income tax rates at the very top,” setting “corporate tax rates higher for firms that have higher rations of CEO-to-worker compensation,” and setting “a cap on compensation” and taxing above that cap). Id.; see also Alyssa Davis & Lawrence Mishel, CEO Pay Has Grown 90 Times Faster than Typical Worker Pay Since 1978, ECON. POLY INST. (July 1, 2015), www.epi.org/publication/ceo-pay-has-grown-90-times-faster-than-typical-worker-pay-since-1978/ (reporting on the same phenomenon two years earlier and offering similar suggestions); DeSilver, supra note 231.

234. See generally Gabriel Zucman, Global Wealth Inequality, NAT'L BUREAU OF ECON. RES. (Jan. 2019), www.nber.org/papers/w25462.pdf (providing overview of global wealth inequality and statistics referenced in this comment); see also Rosalind Dixon & Julie Suk, Liberal Constitutionalism and Economic Inequality, 85 U. CHI. L. REV. 369 (2018), (arguing, “[b]oth the concentration of wealth at the top and the decline of the middle class pose threats to liberal constitutionalism”).

235. Id., supra note 234.

236. Id.; see also Christopher Ingraham, Wealth Concentration Returning to Levels Last Seen During the Roaring Twenties,’ According to New Research, WASH. POST (Feb. 8, 2019), www.washingtonpost.com/us-policy/2019/02/08/wealth-concentration-returning-levels-last-seen-during-roaring-twenties-according-new-research/ (reporting on Zucman’s study and pointing to a potential cause of this inequality: “[t]he wealthy use their money to buy political power, and they use some of that power to protect their money”); Lisa Fu, Wealth Gap in the U.S. is Worse than in Russia or Iran, FORTUNE (Aug. 1, 2017), fortune.com/2017/08/01/wealth-gap-america; see also Molly Moorhead, Bernie Sanders Says Walmart Heirs Own More Wealth than the Bottom 40
As Americans have felt the impact of these policies, they have become disillusioned with the trickle-down theory: today, over sixty percent of Americans believe corporations and the wealthiest people pay less than their fair share of taxes.\textsuperscript{237} Despite this evidence that tax cuts for the wealthiest Americans and corporations do not benefit average Americans, and despite popular support for raising taxes on the wealthy, trickle-down economic policies are still standard for the Republican Party.\textsuperscript{238} In control of the White House

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237. Frank Newport, Majority Say Wealthy Americans, Corporations Taxed Too Little, GALLUP (Apr. 18, 2017), news.gallup.com/poll/208688/majority-say-wealthy-americans-corporations-taxed-little.aspx; see Amanda Becker, Three Quarters of Americans Favor Higher Taxes for the Wealthy — Reuters/Ipsos Poll, REUTERS (Oct. 11, 2017), www.reuters.com/article/us-tax/three-quarters-of-americans-favor-higher-taxes-for-wealthy-reuters-ipsos-poll-idUSL2N1MM024 (finding that 76 percent favor raising taxes on the wealthy); see also Top Frustrations With Tax System: Sense That Corporations, Wealthy Don’t Pay Fair Share, PEW RES. CTR. (Apr. 14, 2017), www.people-press.org/2017/04/14/top-frustrations-with-tax-system-sense-that-corporations-wealthy-dont-pay-fair-share/ (finding that a majority of people feel they pay “about the right amount in taxes” but that over 60 percent of people are bothered “a lot” by their perception that wealthy people and some corporations “don’t pay their fair share”); see also Janet Elder & Adam Nagourney, Bush’s Support Strong Despite Tax Cut Doubts, N.Y. TIMES (May 14, 2003), www.nytimes.com/2003/05/14/us/bush-s-support-strong-despite-tax-cut-doubts.html (reporting that less than half the country had “confidence in Mr. Bush’s ability to manage the economy leading up to his 2003 tax cuts and that “many Americans say that instead of cutting taxes, the nation should use the money to cut the deficit or finance a national health care system”); John Harwood, GOP Tax Cuts Have Gotten Less Popular With Voters, New NBC/WSJ Poll Says, CNBC (Apr. 16, 2018), www.cnbc.com/2018/04/16/gop-tax-cuts-have-gotten-less-popular-with-voters-nbc-wsj-poll.html.

and both chambers of Congress from 2017-19, one of the only major legislative achievements from Republicans was another round of tax cuts — the benefits of which have almost exclusively gone to corporations and wealthy individuals. Most significantly, the 2017 cuts lowered the corporate tax rate from thirty-five to twenty-one percent. The Democratic Party has played a role in the tax cut craze over the years as well: tax cuts passed under former President Bush were made permanent by a Democratic Congress

2017 tax cuts); see Justin Fox, Why Republicans Fell in Love With Tax Cuts, BLOOMBERG (Jan. 18, 2019), www.bloomberg.com/opinion/articles/2019-01-18/republicans-fell-in-love-with-tax-cuts-thanks-to-reagan (quoting Northwestern University sociologist Monica Prasad: “[t]ax cuts solve for Republicans the problem that Americans say they prefer small government but support almost everything the government actually does”). According to Prasad, research suggests that the initial 1981 Reagan tax cuts were motivated by desire for voter approval and was not the result of political influence for business interests. Id. However, given the demonstrated failure of trickle-down policies to produce economic benefits for anyone other than business interests and wealthy individuals, the political influence of business interests is responsible for the continued, illogical commitment to these policies that has persisted for nearly forty years. Id.


with the support of former President Obama. Only recently has a national conversation begun about returning top marginal rates to pre-Reaganomics figures and imposing new taxes on wealth. While this section has focused mostly on income tax rates because they are most relevant and salient to the average American, favoritism toward the economically elite permeates the current tax code as well as legislative priorities for further tax reform.


242. Jon Schwarz, With Alexandria Ocasio-Cortez, Americans Finally Have a Politician Who Agrees with Them About Taxes, INTERCEPT (Jan. 21, 2019), theintercept.com/2019/01/21/ocasio-cortez-marginal-tax-rate/ (noting that trickle-down tax cuts were never driven by popular support:

These changes were not driven by popular demand. A 1978 Roper Organization survey found that a rousing 7 percent of Americans believed that the federal income taxes were unfair to high-income families. According to that survey, 5 percent felt that the tax rate was unfair to large corporations. And when the survey was repeated in 1986, the numbers were almost exactly the same: 7 percent and 6 percent, respectively, were worried that the rich and corporations were overtaxed.


243. Take, for example, the preferential treatment of income from capital gains, which disproportionately go to wealthy Americans. See William D. Popkin, The Deep Structure of Capital Gains, 33 CASE W. RES. L. REV. 153 (1983) (noting that capital gains are taxed at lower rates than traditional income); see also Dana Latha, Taxation of Capital Gains, Tax Avoidance and Other Problems under the Revenue Act of 1934, 23 CAL. L. REV. 30 (1934), (showing the deeply rooted nature of the preference toward capital gains);
The shift in the tax burden from corporations and wealthy individuals to average Americans has, along with stagnating wages, successfully redistributed a large share of the nation’s wealth from the working class to the economically elite, providing the greatest benefits to those with the greatest ability (and inclination) to spend on campaigns. This redistribution from the bottom to the top began in earnest shortly after the decision in Buckley v. Valeo. The influence of money in politics compels both parties to cater to the donor class, often leaving working-class Americans unable to vote in favor of their own economic interests. All this might explain why Congress polls lower than head lice, cockroaches, and traffic jams.

E. The Revolving Door and Lobbyist Influence

The focus of this comment is campaign finance, but any analysis of the influence of money on politics must include discussion lobbying, which some have argued is a better representation of the power of money in politics than campaign finance. Certainly, lobbying and campaign finance are


244. See Nicholas Confessore, Sarah Cohen, & Karen Yourish, Small Pool of Rich Donors Dominates Electing Giving, N.Y. TIMES (Aug. 1, 2015), www.nytimes.com/2015/08/02/us/small-pool-of-rich-donors-dominates-election-giving.html (noting that a super-PACs supporting Ted Cruz had raised $37 million to that point, almost all of it coming from three families); Zucman, supra note 234.

245. Id.


248. Gerken, supra note 66, at 1162 (asserting that lobbying “raises exactly the same kinds of conceptual questions as does campaign finance,” and that the “informal and largely unregulated lobbying system is prone to abuse, risks
intrinsically linked as two sides of the same coin.\textsuperscript{249} As one would expect, many of the top lobbying organizations are also top spenders in election cycles.\textsuperscript{250}

Often, what lobbyists and campaign financers seek is friendly regulation; in another embodiment of the impact of money in politics, these interests are commonly regulated by former and/or future employees in their industry.\textsuperscript{251} For example, since the Clinton administration, a former Goldman Sachs employee has always held a high-ranking position in the Treasury Department.\textsuperscript{252} The FCC has had three full-time chairmen since 2009, and all were previous employees of major media companies.\textsuperscript{253} Between 2001 and 2010, more than a quarter of FDA employees that reviewed and

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\textsuperscript{249} Id. Gerken argues that scholars should think about lobbying similarly to how they approach campaign finance, specifically though egalitarian considerations. Id.

\textsuperscript{250} Top Organization Contributors, OPEN SECRETS, www.opensecrets.org/orgs/list.php?id= (last visited Feb. 26, 2019); Top Lobbying Spenders, OPEN SECRETS, www.opensecrets.org/lobby/top.php?showYear=2018&indexType=s (last visited Feb. 26, 2019) (stating that companies such as AT&T, Amazon, and Alphabet stand out as top spenders on both campaigns and lobbying).

\textsuperscript{251} Jennifer Kuzma & Zahra Meghani, The “Revolving Door” Between Regulatory Agencies and Industry: A Problem That Requires Reconceptualizing Objectivity, 24 J. OF AGRIC. AND ENVTL. ETHICS 575 (2010); see also Lisa Gilbert, Reforming the Financial Services Revolving Door, HILL (July 15, 2015), thehill.com/blogs/pundits-blog/finance/247962-reforming-the-financial-services-revolving-door (stating, “big banks know the benefits of having [regulatory] positions filled by those who are loyal to them and might put their interests above that of Main Street”); but see Wentong Zheng, The Revolving Door, 90 NOTRE DAME L. REV. 1265 (2015) (arguing that regulatory positions filled by former industry employees does not tend to produce regulatory action more favorable to industry).

\textsuperscript{252} Josh Gerstein, supra note 21; see also Katya Wachtel, The Revolving Door: 29 People Who Went From Wall Street to Washington to Wall Street, BUS. INSIDER (Jul. 31, 2011), www.businessinsider.com/wall-street-washington-revolving-door-2011-4#neel-kashkari-26 (providing several examples of revolving door participants); Michael Sainato, Trump Continues White House’s Goldman Sachs Revolving Door Tradition, HILL (Dec. 12, 2016), thehill.com/blogs/pundits-blog/the-administration/309966-trump-continues-white-houses-goldman-sachs-revolving; but see David Zaring, Against Being Against the Revolving Door, 2013 U. ILL. L. REV. 507, 549 (2013) (concluding “[i]t is worth learning to live with the revolving door, and reflecting on its easily overlooked positive attributes, and it is time to make peace with the revolving door, rather than decrying it at every opportunity”). With all due respect to Mr. Zaring — no, it is not.

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approved certain drugs for public consumption left to work in the pharmaceutical industry.\textsuperscript{254}

A recent historical example illustrates the interconnection of campaign finance and the revolving door in regulation: in 2016 it was revealed that a 2008 email from Michael Froman, a then-executive at Citigroup, to the co-chair of Barack Obama’s transition team, John Podesta, included a list of recommendations for every cabinet position — a list that proved to be almost entirely accurate.\textsuperscript{255} Citigroup employees were among the top contributors for both of Obama’s presidential bids and Citigroup received the largest bailout from the federal government in the wake of the 2008 financial crisis.\textsuperscript{256} The revelation of Citigroup’s role in the selection of Obama’s cabinet shows that the revolving door is more than just a pattern of individuals going back-and-forth between industry and regulating agency: corporations have direct involvement in the appointment of department heads, whose job it is to regulate those very corporations.\textsuperscript{257} After campaigning on promises to decrease the influence of special interests in Washington, the revolving door continued to turn through the Obama administration.\textsuperscript{258}

Another door revolves between Congress, federal agencies, and lobbyist organizations.\textsuperscript{259} Lobbying interests spend over $3 billion...
annually to influence congressmen and government officials to support or oppose certain policy positions — a figure that does not account for unreported spending on “advocacy.” Since the early 1990s, at least a quarter of retiring members from both chambers of Congress (sometimes as high as fifty percent for the Senate), have registered as lobbyists after leaving office. In 2012, about half of retiring senators and one third of retiring congressmen registered as lobbyists. This trend holds true across party affiliation and the ideological spectrum. While congressmen receive a comfortable salary of $174,000 — nearly three times the median annual income in the United States — they stand to triple or even quintuple that salary, if and when they join lobbyist firms. Such a pay increase almost makes one forgive elected officials for their eagerness to join the ranks of lobbyists after their time as public servants —

260. See Tim LaPira, How Much Lobbying is There in Washington? It's Double What You Think, SUNLIGHT FOUND. (Nov. 25, 2013), sunlightfoundation.com/2013/11/25/how-much-lobbying-is-there-in-washington-its-double-what-you-think/ (pointing out that many “involved in policy advocacy” partake in what is essentially the same activity as registered “lobbyists”); see also Gerken, supra note 66, at 1162 (concluding that “the smart money” is spent on lobbying rather than campaign funding). However, Gerken’s analysis was based in part on the fact that $3.47 billion was spent on lobbying in 2008 while only $3.2 billion was spent on the 2008 election. Id. Gerken did not predict that campaign spending would surpass spending lobbying — nearly double it, in fact — after Citizens United and SpeechNow.org. See also Lee Drutman, How Corporate Lobbyists Conquered American Democracy, ATLANTIC (Apr. 20, 2015), www.theatlantic.com/business/archive/2015/04/how-corporate-lobbyists-conquered-american-democracy/390822/ (tracking the rise of lobbying since the 1950s); see also Maggie McKinley, Lobbying and the Petition Clause, 68 STAN. L. REV. 1131 (2016) (arguing that the lobbying system ought not to be protected by a proper reading of the Petition Clause).


262. Id.

263. Id.

Though many politicians pay lip service to curbing the influence of special interests, legislation and regulation that targets lobbying is rare and generally ineffective — perhaps in part because so many government officials plan to join lobbyist ranks after leaving office.

Some worry that government officials becoming lobbyists leads to improper exploitation of influence former officials may wield with their former colleagues. Of course, exploitation of that influence is exactly what lobbyist firms are paying for when they dole out enormous salaries for former officials, which might explain why the most powerful members of Congress (those who chair the most important committees and hold leadership positions) are the most likely to become lobbyists. Lobbying firms seek a return on their investment in former government officials, and these high salaries pay dividends: when lobbying interests find themselves opposed, the side with more former government officials wins sixty-three

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265. Id.

266. See Gerken, supra note 66, at 1164 (arguing that bipartisan interest in the status quo is partially responsible for ineffective lobbying regulation, which is to be expected "when foxes guard the henhouse — when you have to ask self-interested politicians to reform themselves"); see also Anita S. Krishnakumar, Towards a Madisonian, Interest-Group-Based, Approach to Lobbying, 58 ALA. L. REV. 513 (2007) (describing the "persistent failure" of efforts to regulate lobbying and offering proposals for more effective regulation); William V. Luneberg, The Evolution of Federal Lobbying Regulation: Where We Are Now and Where We Should Be Going, 41 MCGEORGE L. REV. 85 (2009); Vincent R. Johnson, Regulating Lobbyists: Law, Ethics, and Public Policy, 16 CORNELL J.L. & PUB. POL’Y 1 (2006) (opening with the assertion that "widespread concerns about the influence of lobbyists have been addressed only half-heartedly through legal regulation" and pointing to the states as examples for how to regulate lobbying; "[f]or virtually every problem that one can identify relating to lobbyists, some legislative body, somewhere in the country, has already found a plausible solution"). Johnson cautions against regulation that focuses solely on transparency because "there are limits as to what can be achieved by regimes that seek to thrust masses of information on a citizenry too busy, distracted, or simply unable to utilize that information." Id.


268. Jeffrey Lazarus, Which Members of Congress Become Lobbyists? The Ones with the Most Power. Here’s the Data, WASH. POST (Jan. 15, 2016), www.washingtonpost.com/news/monkey-cage/wp/2016/01/15/which-members-of-congress-become-lobbyists-the-ones-with-the-most-power-heres-the-data/; Drutman supra note 261; Theodoric Meyer, Ex-Lawmakers ‘Scrambling and Looking’ For Lobbying Gigs, POLITICO (Jan. 14, 2019), www.politico.com/story/2019/01/14/congress-lobbying-revolving-door-republicans-democrats-1098626 (comparing “the hiring process for former lawmakers to the NFL draft, in which the players drafted first typically come from colleges with standout football programs”). In this analogy, “the big football schools are congressional leadership and the committees with jurisdiction over corporate America, such as the House Ways and Means Committee and the House Financial Services Committee.” Id.
percent of the time.\textsuperscript{269}

One fundamental link between campaign finance and lobbying is that the same economically elite interests wield the most influence in both arenas.\textsuperscript{270} One study found that corporations spend $34 on lobbying for every $1 spent by public interest groups and unions, combined.\textsuperscript{271} That funding advantage is used in part to recruit former government officials with the high salaries discussed above.\textsuperscript{272} It would be natural for a government official eyeing a future career in lobbying to side with the interests of potential future employers.\textsuperscript{273} Recent increases in competition among outgoing lawmakers for lobbyist jobs would only heighten this pressure and tend to push lawmakers in the direction of “centrism” — or more accurately, favoritism for corporations and wealthy individuals.\textsuperscript{274}

The role of money in politics is seen not only in campaign spending, but in the multi-billion dollar lobbying industry, which operates continuously to influence policy (mostly in favor of corporations), and in the revolving doors between industries and regulatory agencies and between lawmakers and lobbyists.\textsuperscript{275} The immense influence of lobbying, which works in conjunction with campaign finance, leaves no confusion as to why both political parties cater to the interests of the economically elite.\textsuperscript{276}

\begin{itemize}
\item 269. Drutman, supra note 261. While a company might spend millions on lobbying, getting friendly policy can save billions and thus the investment is well worth their time and money.
\item 270. Top Organization Contributors, supra note 250; Top Lobbying Spenders, supra note 250.
\item 271. Drutman, supra note 261.
\item 272. Id.; Lazarus, supra note 268.
\item 273. See Edsall, supra note 259 (stating that the knowledge that members of Congress are likely to become lobbyists “inevitably influences — and arguably corrupts — their votes on legislation crucial to the interests most likely to hire them after they leave the halls of Congress”).
\item 274. See Meyer, supra note 268 (quoting one Republican lobbyist, who compared the rush for lobbyist jobs to musical chairs, “[t]here’s not enough seats for everybody who wants in”); see also Aída Chávez & Ryan Grim, Could Joe Crowley End Up Being A Lobbyist for Big Console?, INTERCEPT (Jan. 21, 2019), theintercept.com/2019/01/21/joe-crowley-video-game-lobby/ (reporting that incumbent congressman Joe Crowley, who was defeated in a Democratic primary in 2018 by Alexandria Ocasio-Cortez, appears headed for a lobbyist job).
\item 275. Meyer, supra note 268; See Edsall, supra note 259; see also Isaac Arnsdorf, Trump Lobbying Ban Weakens Obama Rules, POLITICO (Jan. 28, 2017), www.politico.com/story/2017/01/trump-lobbying-ban-weakens-obama-ethics-rules-234318 (reporting on efforts by the Trump administration to further weaken lobbying rules).
\end{itemize}
F. Corporate Control of the Media: Complicity in Content

The role of a free press is pivotal to the health of any society, and the United States has always rhetorically valued freedom from government censorship of or influence over the press, as seen in the First Amendment.277 However, the American press, like the government itself, is not free from corporate influence. This section will briefly examine the role of mainstream news media in the United States today and how the dominant discourse presented therein works to promote corporate interests by reinforcing the political and economic status quo.278

Since former president Clinton signed the Telecommunications Act of 1996, there has been rampant conglomerat

277. U.S. CONST. amend. I. There have been some notable exceptions to his lofty goal, including the Alien and Sedition Acts.

278. The purpose of this section is not to discuss the legality of corporate media ownership nor propose structural change (ideas well beyond the scope of this comment), but to emphasize the importance of the flow of information in political discourse, which is largely controlled by corporate interests. This section does not opine as to whether corporate ownership constitutes corruption, but does posit that, at a minimum, corporate media operations demonstrate complicity in political corruption, which helps us understand how corporate interests maintain political power at the expense of average American.

279. See generally Paul Wellstone, Growing Media Consolidation Must be Examined to Preserve our Democracy, 52 FED. COMM. L.J. 551 (2000) (arguing that consolidation of media ownership has led to decreased diversity in perspectives presented by the news, that corporate mergers of media companies have not been approved based on the proper “public interest” standard, and that media consolidation must be examined by the FCC and antitrust agencies); Fritz Messere, Analysis of the Telecommunications Act of 1996, OSWEGO, www.oswego.edu/~messere/telcom2.html (last visited Feb. 26, 2019).

280. Ashley Lutz, These 6 Corporations Control 90% of the Media in America, BUS. INSIDER (June 14, 2012), www.businessinsider.com/these-6-corporations-control-90-of-the-media-in-america-2012-6. These figures are somewhat outdated, but further consolidation since the publication of this article have only increased concentration. See also Aric Jenkins & Nicolas Rapp, Chart: These 6 Companies Control Much of U.S. Media, FORTUNE (July 24, 2018), fortune.com,longform/media-company-ownership-consolidation/ (providing an updated chart of consolidation as of July 2018). While these figures include entertainment media in addition to news media, the point about overall consolidation still stands. Id.; see also Chriss Mills, Here’s Everything AT&T Now Owns, Apart From Your Soul, BOY GENIUS REP. (June 16, 2018), bgr.com/2018/06/16/att-time-warner-merger-brands-what-they-own/ (reporting on the 2018 merger between AT&T and Time Warner, in which AT&T acquired, among other properties, CNN); see also Kate Vinton, These 15 Billionaires Own America’s News Media Companies, FORBES (June 1, 2016), www.forbes.com/sites/kavinton/2016/06/01/these-15-billionaires-own-americas-news-media-companies/#4c3272be60a (profiling some of the most powerful news media owners); see generally Daniel E. Oh, Viewpoint Diversity and Media
corporations the opportunity to frame political discourse and set the nation’s political agenda in ways favorable to their interests, which is far more valuable than just any old revenue stream.\textsuperscript{281}

Much is made of bias in the news media, but accusations of media bias often miss the forest for the trees.\textsuperscript{282} Accusations that media leans too far to the “right” or “left” ignore the underlying biases in favor of the powers that be.\textsuperscript{283} Often, critics of the “liberal media” cite to media members’ party affiliation and political leanings on social issues (such as gay marriage and abortion) to support this claim.\textsuperscript{284} However, as with the false dichotomy of the Democratic and Republican parties — both of which largely serve the interests of the economic elite at the expense of average Americans — the discussion of a “liberal” or “conservative” bias in the media ignores the true, pervasive bias of American news media, which is pro-corporate and pro-status quo.\textsuperscript{285}

The enormous corporations that own the American news media are not in the business of making news, they are in the business of making money.\textsuperscript{286} It would be illogical to support a news industry that acted counter to the business interest of the parent company.\textsuperscript{287}


281. Vinton, supra note 280 (noting, “billionaires have long exerted influence on the news simply by owning U.S. media outlets”); see Fortunato & Martin, supra note 72 (introducing the concept of agenda-setting, which will be discussed shortly).

282. James Berger, \textit{This is the Media’s Real Bias — Pro-Business, Pro-Corporate, Pro-CEO,} SALON (Oct. 30, 2015), www.salon.com/2015/10/30/this_is_the_medias_real_bias_pro_business_pro_corporate_pro_ceo/.


284. Wemple, supra note 283.

285. Berger, supra note 282. In an example of meta irony, corporate news sometimes discuss bias in the media, and when they do their framing excludes any consideration of a corporate bias. See Tucker Doherty & Jack Shafer, \textit{The Media Bubble is Worse than You Think,} POLITICO (May/June 2017), www.politico.com/magazine/story/2017/04/25/media-bubble-real-journalism-jobs-east-coast-215048 (analyzing media bias in detail but failing to consider a pro-establishment, pro-status quo, or pro-corporate bias). It might not even occur to most corporate journalists that there is such a thing as pro-corporate bias, which would point to the deep roots of that very bias. \textit{Id.}


Some argue that while executives may prioritize profit at any expense, journalists and those running the newsroom do not have the same proc-corporate agenda. Regardless of whether journalists hold such biases, the coverage they provide tends to serve the business interests of their employers’ parent companies in both the selection of topics to cover, and the manner of coverage provided — a practice known as agenda-setting.

Agenda-setting media theory posits that by selecting topics for coverage and how to cover those topics, news media impacts both what audiences think about and how they think about it. Because news cannot provide thorough discourse on every relevant news topic, “it is necessary to think critically about what, exactly, the media does provide.” By selecting which topics to cover (and necessarily excluding others), the media provides a “limited and rotating set of public issues, around which the political and social system can engage in dialogue.” One must wonder then, what purpose it serves for corporate news to largely omit coverage of economic policies supported by both parties that have redistributed wealth from average citizens to the elite and increased the tax burden of the working class while allowing wages to stagnate as productivity has grown with inflation.


288. However, see Byrne, supra note 183 (citing to Noam Chomsky for the proposition that professional norms in corporate journalism “act to constrain journalists from expressing views counter to the interests of corporate and political elites”). Byrne also cites to research showing “that while journalists tend to be liberal on social issues, they are more conservative than the general public on economic issues,” which scholars Herman and Chomsky attribute to internalization of “elite corporate and government interests and values” that results from a professional environment that rewards those who express such views. Id. Furthermore, prior any such “bubble” effects, the hiring process can act as an ideological filter similar to the money elections discussed in Section III. Id.

289. See Fortunato & Martin, supra note 72 (summarizing the concept of agenda-setting). “[T]he core concept of agenda-setting ... is the transfer of topic salience from the media agenda to the public agenda ... agenda-setting posits the media may be successful in influencing what the public thinks about and how the public thinks about those particular topics.” Id. at 130, 134.

290. Id.

291. Byrne, supra note 183.

292. Fortunato & Martin, supra note 72.

293. Zucman, supra note 234; DeSilver, supra note 231; see Andrea Grisold & Hendrik Theine, How Come We Know? The Media Coverage of Income Inequality, 11 Int’l J. of Comm. 4265, 4278 (2017) (studying 2017 media coverage of income inequality and concluding that, while the quantity of coverage has increased, “qualitative analysis reveals the one-sidedness of the reporting, the coverage being framed in an episodic rather than a thematic
As important as selecting a topic is framing the discussion. By choosing how to cover a topic, news media can prime viewers to perceive information in certain ways and focus their own thoughts and conversations in those same frameworks. For example, a study of media framing of tax cuts in the early 2000s found that they "were framed by the media as benefiting all Americans, despite the reality that they overwhelmingly benefited the wealthy," and that "issues of equality and inequality were simply left out of the frame all together." By priming citizens to focus on issues that do not threaten the economic and political status quo, news media work to support those who are already economically and politically powerful.

Remember, American voters cast ballots primarily based on their economic interests. Thus, the pro-corporate agenda-setting discussed above underscores the fact that mainstream news in the United States is a for-profit industry, the primary purpose of which is not to act as a public service. Completely aside from any influence parent corporations might have over news content, news outlets directly benefit from increased political spending in the form of advertising revenue.

way”). The study also found a “bias toward individualistic explanations, and a neglect of the positive implications of redistributional policies to diminish inequality.” Id.; see also Carole V. Bell & Robert M. Entman, The Media’s Role in America’s Exceptional Politics of Inequality: Framing the Bush Tax Cuts of 2001 and 2003, 16 INT’L J. OF PRESS/Pol. 548, 550-52 (2011) (finding that media framing of 2001 and 2003 tax cuts “diminished citizens’ ability to deliberate effectively over taxation policy” by failing to provide citizens with necessary information such as “the likelihood of greater inequality” and over-emphasizing supposed benefits of tax cuts, thus shaping “an environment favorable to tax policies that exacerbated economic inequality in the United States”).

294. Bell & Entman, supra note 293, at 552.
295. Fortunato & Martin, supra note 72, at 135 (explaining that media necessarily “call[s] attention to some aspects of reality while obscuring other elements, which might lead audiences to have different reactions”).
296. Byrne, supra note 183 (Byrne also notes that media tend “to frame the discussion of income inequality and the economic plight of the middle class in such a way as to avoid analyzing the long-term implications of the current economic system or to consider possible solutions to the problem”).
297. Id. (writing that “social mobility” is “absent” from media framing of “discourse on income inequality”). This makes intuitive sense: it directly serves the interest of these enormous parent corporations to perpetuate political discourse that ignores the underlying structural issues of the American economy, including the fact that too much wealth is controlled by too few people). Id.
300. Rebecca Ballhaus, Political TV Advertising is Forecast to Fall This Election Season, WALL ST. J. (Sept. 29, 2016), www.wsj.com/articles/political-tv-
the internet threatens the hegemonic narrative of traditional news outlets, the prevalence of pro-corporate bias and the power of advertising are still relevant today.301 Whatever their reasons, mainstream news outlets in the United States “promote the interests of economic and political elites under the guise of objectivity, while deliberately conflating the interests of the elites with those of workers and others outside.”302 Far from playing the

advertising-is-forecast-to-fall-this-election-season-1475176575 (projecting nearly $3 billion to be spent on 2016 political advertising, which was slightly down from 2012); Michael Beckel, Super PACs Dominate 2016 Republican TV Ads So Far, TIME (Sept. 16, 2015), time.com/4036969/campaign-ads-super-pacs/; Danielle Kurtzleben, 2016 Campaigns Will Spend $4.4 Billion on TV Ads, But Why?, NAT’L PUB. RADIO (Aug. 19, 2015), www.npr.org/sections/itsallpolitics/2015/08/19/432759311/2016-campaign-tv-ad-spending; see Fortunato & Martin, supra note 72 (likening the power of agenda-setting through political advertising to the agenda-setting power of news content, both of which aim to increase salience of certain issues and frames). Fortunato and Martin also note the industrial power of advertising interests: “Advertisers have the power to influence media content, either by requiring media outlets to write editorial copy that they find supportive, or by refusing to advertise in media outlets that express views counter to their interests.” Id.

301. Fortunately, the internet allows voters to conduct their own research into policy, donations, and their own best interest without relying on traditional news outlets. Janna Anderson & Lee Rainie, Digital Life in 2025, PEW RES. CTR. (Mar. 11, 2014), www.pewinternet.org/2014/03/11/digital-life-in-2025/; see also Fortunato & Martin, supra note 72, at 135 (stating that “social media’s expansive palette of topic availability alleviated some of the concern over lack of coverage” of certain issues). Fortunato and Martin also point out that social media also provides “an opportunity for a more expansive conversation about topic attributes with more aspects of a topic able to be discussed.” Id. at 136. However, the authors note that internet content is often “redundant to traditional media content,” which might explain symmetry of topic salience across generations. Id. at 137.

Increased reliance on independent sources online was likely a large contributor to the Americans’ increased awareness of political corruption and rejection of “establishment politics.” Id. However, increased consumption of news online does not eliminate corporate influence: attempting to adjust to the new media landscape, political advertisers spent $900 million on digital platforms in 2018, an increase of over 250 percent from 2014. Political Ad Spending Hits New Record for 2018 Midterm Elections, AXIOS (Nov. 6, 2018), https://www.axios.com/record-midterm-ad-spend-explodes-money-was-no-object-1541450836-f92d1767-ad5f-4d85-99ee-96d8847e7691.html. Still, the abundance of online news sources weakens the hegemonic power of corporate news organizations. Id. While the ability to curate one’s newsfeed also comes with some negative side effects (e.g., the “echo chamber” effect), broadened access to information and enhanced capacity for political discourse strengthen democracy overall. Id.

302. Fortunato & Martin, supra note 72; Byrne, supra note 183 (offering this conclusion, among other findings:

It is difficult not to draw the conclusion that the media is systematically reinforcing elite ideology – income inequality is acceptable because if an individual works hard enough, he or she will make it to the top of the inverted pyramid– by leaving out the single most potentially subversive
role of “watchdog,” mainstream news media in the United States has instead become a facilitator of institutional political corruption by reinforcing, rather than challenging, a status quo that disproportionately benefits those already in power.\textsuperscript{303}

\textbf{G. Legalized Bribery: A Broken System}

By this point, it is hopefully clear that campaign finance plays an important role in determining who has influence over elected officials, party institutions, and the policies they institute.\textsuperscript{304} This has not escaped the notice of the American people, who have lost faith in their representatives’ ability and desire to serve their constituents.\textsuperscript{305} The problem is not a handful of corrupt actors, but the system itself, which incentivizes politicians and parties to serve the interests of those that provide them funding. In a series of decisions that display indifference toward core Constitutional principles as well as disregard for reality, the Supreme Court has determined that spending money in the political process to gain influence is the backbone of a healthy democracy.\textsuperscript{306}

The Court not only ironically justifies the disproportionate influence of funders in the name of avoiding favoritism, but in doing so ignores core principles within the Constitution.\textsuperscript{307} The freedom to

\begin{itemize}
  \item bit of information: most Americans will never personally benefit from the current economic system. (Internal citations omitted).
\end{itemize}

Byrne cites to scholarship that has found that corporate media “promote the interests of economic and political elites under the guise of objectivity, while deliberately conflating the interests of the elites with those of workers and others outside.” \textit{Id.}


306. \textit{Citizens United}, 558 U.S. at 359 (stating that it is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors). Democracy is premised on responsiveness). \textit{Id.}

Likewise, companies are open about the motivation behind their contributions. Alan Suderman, \textit{Facing New Scrutiny, Powerful Utility Turns to Old Friends}, ASSOCIATED PRESS (Jan. 29, 2018), apnews.com/c994e09470254d6e95aadd4ff78c43255 (reporting on Dominion Energy in Virginia, which “has forged deep ties with ... lawmakers through decades of intense lobbying, generous campaign contributions and pricey gift giving”).

307. \textit{McCutcheon}, 572 U.S. at 227 (stating

For the past 40 years, our campaign finance jurisprudence has focused
spend unlimited amounts on political “speech” may be a right for all, but it is an impossibility for most. As discussed in Section II, this renders politicians reliant on a tiny fraction of the population for support. Lessig argues that this constitutes “dependency that conflicts with the dependency intended by the Constitution,” which ought to be every bit as regulable as quid pro quo corruption. Teachout argues that the Court has inexplicably ignored the principle of anti-corruption that must be inferred from any reasonable reading of the Constitution.

Some scholars believe any efforts to limit political spending are wasted. Others have argued that those aiming to curb the

on the need to preserve authority for the Government to combat corruption, without at the same time compromising the political responsiveness at the heart of the democratic process, or allowing the Government to favor some participants in that process over others).

This justification provided by the Court is Orwellian: the decision emphasizes importance of not allowing the law to favor “some participants in [the political] process over others” in a decision that loosens campaign finance regulation and thus expands a system that enables vastly disproportionate influence for some participants over others. Id.

308. See Lessig, supra note 79 (discussing the idea of “relevant funders”).

309. Id.; see also Benjamin T. Brickner & Daniel I. Weiner, Electoral Integrity in Campaign Finance Law, 20 LEGIS. & PUB. POL’Y 101 (2017), (supporting a fair market for political speech and decrying monopolization of political “speech” by the rich).

310. Lessig. supra note 79. (writing at length about how reliance on campaign funders constitutes “dependence corruption,” which, he argues, violates the Constitutional principle of “dependence on the people alone.” Lessig compares this to “white primaries” (primary elections in which only white citizens could vote) and asserts that the current dependence on donors creates similar constitutional issues). Lessig cites to the Federalist Papers and notes from the Constitutional Convention, to support his claim that the Framers of the Constitution “were unquestionably and primarily worried about ‘dependence corruption.” Id. Lessig argues that “only a non-originalist” could embrace the position that quid pro quo corruption is the only constitutionally relevant form of corruption. Id. According to Lessig, campaign finance regulation is not unconstitutional just because it has the incidental effect of “leveling the playing field,” if the primary purpose of a law is to limit the influence of spending on government behavior. Id.

311. Teachout, supra note 40 (arguing that the problem with corruption can be traced to Buckley, “since Buckley v. Valeo gave corruption a relatively weak role in the constitutional scheme the concept of corruption has been unbound from the text and history of the document itself”). Like Lessig, Teachout cites to constitutional history to support her declaration that the Framers’ definition of corruption would include “public decisions to serve private wealth made because of dependent relationships,” which accurately describes the current system of campaign finance. Id. Teachout also points out that, historically, “corruption” is not limited to illegal activity and finds it curious that “modern Courts turn to Buckley rather than to the “history or structure” of the Constitution. Id. Justice Thomas’s ideology is more accurately described as strict corruptionist than strict constructionist. Id.

312. Gerken, supra note 66, at 1155. Gerken correctly points out that, “Citizens United has cut off most of the traditional pathways for campaign finance reform,” that donors will always look for loopholes to work around
influence of money ought to target lobbying rather than campaign finance. To be fair, the work of Gilens and Page, which is integral to the arguments in this comment, is more directly evidence of the influence of lobbying than of campaign finance. However, in the nine years since *Citizens United* and *SpeechNow.org*, spending on campaigns has far outpaced lobbying, which has stayed relatively steady. While reform must also address the corruptive nature of the lobbying to completely cure our political system, the most pressing issue in American politics today is the ability of corporations and wealthy individuals to legally bribe politicians by providing unlimited amounts in campaign funding. Campaign funders act as gatekeepers for candidacy viability and loom ever present as potential funders of the next opponent of any lawmaker that dares defy their interests. This structure allows the economically elite to undermine the will of the electorate through sheer power of wealth, which is a recipe for aristocracy, not democracy. Admittedly, it is much easier to point out the problems caused by money in politics than to propose a viable solution to eradicate those problems. However, this comment will

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313. See Gerken, supra note 66, at 1159 (taking the position that, “[r]ather than focusing on taking money out of politics, it seems to me that pragmatic reformers and academics will move in new directions”). Gerken offers some interesting solutions, including public funds matching private contributions, public lobbying funds, requiring disclaimers for political ads, and public funding for research to provide to politicians to decrease reliance on lobbyist research. Id. Unfortunately, the matching provisions Gerken supports here, were later ruled unconstitutional (this will be discussed later in the comment).


316. While politicians sometimes emphasize transparency and getting rid of “dark money,” rampant corruption is transparent, legal, and detrimental to democracy. See Heather K. Gerken, *The Real Problem with Citizens United: Campaign Finance, Dark Money, and Shadow Parties*, MARQ. LAW., (2014), at 11. (discussing division between voters and “party elites,” which Gerken attributes in part to the power of “shadow parties” — organizations outside the party that house the party elites”). Gerken’s criticisms highlight real problems with the overall influence of money, but one need not delve deep into “dark money” or “shadow parties” to see the corrupting influence of money. *Id.*

317. Lessig, supra note 79.

318. Agerholm, supra note 7.
now offer a bold proposal, as potentially transformative as it is politically challenging: amend the Constitution.

IV. PROPOSAL: AMEND THE CONSTITUTION

A. Regular Legislation Will Be Insufficient

Scholars and activists have proposed numerous ideas on how to address the issue of money in politics, but nothing short of amending the Constitution itself can address the constitutional crisis of campaign finance. To address the systemic corruption inherent in the American campaign finance structure, the law must stop equating campaign spending with political speech. In some instances, it might be proper to afford financial “speech” appropriate constitutional protections. However, the disproportionate influence wielded by those who fund campaigns shows why campaign finance is not an area in which the right to spend money should be protected as free speech. Unfortunately, it is legally impossible to rectify this problem through regular legislation.

Many concerned about the impact of money in politics aim to address the problem through challenges in the courts. However,


320. See Deborah Hellman, Money Talks but It Isn’t Speech, 95 MINN. L. REV. 953 (Feb. 2011) (distinguishing between rights the effectuation of which require economic activity [e.g. to effectuate the right to an abortion, one must have the right to pay for an abortion] and rights that do not require economic activity to be effectuated [e.g. voting]).


322. See Hellman, supra note 320, at 955 (noting that in Citizens United v. FEC, the Supreme Court “considered it so obvious that restrictions on spending money amount to restrictions on speech that it needed no discussion at all, not even a citation to Buckley”); Gerken, supra note 66; Buckley, 424 U.S. 1; Nixon v. Shrink Mo. Gov’t Pac, 528 U.S. 377; Citizens United, 558 U.S. 310; SpeechNow.org, 599 F.3d 686; McCutcheon, 572 U.S. 185 (showing the progression of Constitutional free speech principles to campaign finance regulation).

323. See Russ Feingold, The Money Crisis: How Citizens United Undermines Our Elections and the Supreme Court, 64 STAN. L. REV. ONLINE 145 (June 14, 2012), www.stanfordlawreview.org/online/the-money-crisis/ (placing the burden on the Court to reconsider its interpretation without considering the possibility of supplanting the Court’s interpretation via Amendment). Placing the burden on the Supreme Court to overturn its own decision may seem more viable than amending the Constitution, in part because the Supreme Court will likely rule on cases that challenge Citizens United in the future. However, average citizens have no control over the makeup of the Supreme Court, and it is part of the purpose of this article to emphasize the need for citizen-fueled structural
given the current makeup of the Supreme Court and the tendency of both major parties to favor the interests of big business, it is highly unlikely that the Supreme Court will reverse its position on political spending. More importantly, we cannot afford to wait for a change in the makeup of the Court, nor should we leave any chance for a future Court to reverse again. The only way to provide this immunity is to go over the Court’s head and amend the Constitution itself.

B. Article V Will Keep Democracy Alive: How to Amend

There are two ways to amend the Constitution. Amendments can come directly from Congress, which can amend the Constitution with a two-thirds majority vote from both the Senate and the House of Representatives. The other method to amend the Constitution is to have two-thirds (thirty-four in total) of the several states call for a Constitutional Convention for the purpose of proposing Amendments. Amendments proposed at the Convention must address a particular issue stipulated by the states in their call for the Convention. Proposed Amendments are incorporated into the Constitution if they are ratified by three-quarters of states (thirty-eight in total).

The United States Congress is so systemically corrupt that there is little hope for passing an amendment to get money out of politics through Congress. Therefore, the prudent route is to have the requisite number of states call for a Constitutional Convention to get money out of politics.

change. Id. Furthermore, while it is possible for the Supreme Court to reverse *Citizens United*, another Court down the line could walk back that reversal. Enacting change through a Constitutional Amendment provides a more permanent solution. Id.

324. 325. Gerken, *supra* note 66. However, these strategies will not just be the dominant game, they may be the only game in town (at least until the personnel on the Supreme Court changes).

326. Many will say this is an impractical solution, that a constitutional amendment is mere fantasy. To these people, I pose the following question: what purpose is served by our ability to amend the Constitution if not to address crises like the systemic corruption we see today? A problem so deeply rooted, with impact so pervasive, is exactly what amendments ought to address.

327. U.S. CONST. art. V.

328. *Id.*

329. *Id.*


331. U.S. CONST. art. V.

332. Lessig, *supra* note 79.
C. Going through the States: How It Could Work

Unfortunately, state legislatures are not immune from the effects of money in politics. Right-wing donors, especially, have made control over state legislatures an important part of their political strategy over the last decade. Today, Republicans control sixty-one out of ninety-eight state legislative chambers in the country. Between 2009 and 2016, Democrats lost over nearly 1,000 seats in state legislatures. In 2009, Democrats held majorities in both chambers of twenty-seven state legislatures. Four election cycles later, Republicans hold majorities in both chambers of thirty state legislatures. While many factors played a role in the huge shift in power, including redistricting following the 2010 census and the Democratic party’s neglect of blue-collar issues like the minimum wage and healthcare, it is undeniable that a concerted effort by major right-wing donors has had major impact on the makeup of state legislatures.

More importantly, donor influence plays an important role influencing state legislatures. The American Legislative Exchange Council (“ALEC”) is an organization that produces model legislation for policies such as lowering corporate tax rates, privatizing schools and prisons, and stopping increases in minimum wage. Id. See What is ALEC?, ALEC EXPOSED (Oct. 13, 2017), www.alecexposed.org/wiki/What_is_ALEC%3F (noting specific examples of benefits to donors resulting from ALEC-sponsored legislation, including tax breaks for tobacco firms and expanded incarceration that benefits private prisons).


338. Id.

339. Edsall, supra note 335.

340. See What is ALEC?, supra note 335.
Studies have shown that ALEC-backed legislation becomes law at a much higher rate than other legislation, showing that money does wield significant influence at the state level of politics. Still, while state legislatures may not be the hotbed of representative democracy that they should be, they are the best chance for getting money out of politics. The best evidence for this is that five states have already called for a Constitutional Convention to get money out of politics.

The organization Wolf-Pac, founded in 2011, has made efforts in many states to call for the much-needed Constitutional Convention. Legislation calling for the Convention has been proposed in twenty-six states. While most proposals have died in the committee stage, the legislation has passed at least one chamber in twelve states. In only three chambers has legislation been introduced and voted down. Since 2014, five states — California, Illinois, New Jersey, Rhode Island, and Vermont — have passed the legislation through both chambers of the state legislature.

While it must be conceded that no Amendment to the Constitution has ever come from an Article V convention, there is


344. Id.


347. Amendment Comparisons, supra note 343 (introduced and voted down in one body in Connecticut, Maine, and Missouri).

348. Id. (passing both chambers in California, Illinois, New Jersey, Rhode Island, and Vermont).
an important caveat to that concession — the history of the Seventeenth Amendment.\textsuperscript{349} Around the turn of the twentieth century, many states called for a constitutional convention to propose an amendment mandating direct election of senators, who were elected by state legislatures until 1913.\textsuperscript{350} The amendment aimed to make the Senate, which was “seen as a ‘millionaire’s club’ serving powerful private interests,” “more directly accountable to the people.”\textsuperscript{351} The House of Representatives passed several resolutions proposing such an amendment in the 1890s, but the Senate always refused to take a vote.\textsuperscript{352} However, as the number of states calling for a convention neared the requisite total, Congress passed the amendment themselves in the face of popular political pressure.\textsuperscript{353} Like instituting direct election of senators, addressing disproportionate influence brought on by campaign finance aims to correct a lack of public accountability for elected officials.\textsuperscript{354} Americans’ eagerness to ride the government of corruption makes campaign finance an issue with real potential to bring about the first Article V Amendment.\textsuperscript{355}

There are many practical advantages to calling for a convention through the states, including the sheer number of state representatives, the small constituencies that make up state legislative districts, and the financial demographics of state legislatures. It is easier for donors to control Congress, which totals 535 members, than it is to control all state legislatures, which total over 7,300 members across all fifty states.\textsuperscript{356} Additionally, state
legislators can more easily win elections without the large amount of money seen in national or even state-wide elections because the relatively small size of state legislative districts allows for more effective grassroots campaigning.\textsuperscript{357} Perhaps most importantly, unlike Congressmen and Senators at the national level, it is not in the personal interest of most state legislators to push a pro-corporate, pro-wealthy, agenda: while Congress has become a “Millionaires’ Club,” state legislators often make less than their state’s median income.\textsuperscript{358} Therefore, the people that make up state legislatures are inherently more attuned to the economic struggles faced by average Americans and, one would expect, are more likely to implement change for their own benefit as well as their constituents. Representatives that themselves are victims of a politically-constructed economy, which has left the middle class behind in favor of wealthy individuals and corporations, are more likely to recognize and seek to correct a political system that has been corrupted by the influence of money.

It will surely be an uphill battle, but the Constitution is the only authority higher than the pro-corporate Supreme Court and therefore the Constitution must be amended. Since Congress, too, sits firmly in the pocket of big business interests, calling for a convention through the states is the most viable way to achieve the only solution that can effectively end legalized bribery in the United States: a constitutional amendment that eliminates private money from the election process, ensuring that elected officials represent their constituents, not their donors.

\textbf{D. The Amendment Itself: Public Financing}

Once a convention is called for and assembled, the actual restructuring of campaign finance must begin. Organizations aside from Wolf-Pac have also proposed amendments to get money out of politics.\textsuperscript{359} Democracy for America, Citizens Take Action, and Move to Amend all have their own versions of an amendment in addition to Wolf-Pac, and Senator Bernie Sanders has introduced an

\textsuperscript{357} Inversely, it may be easier to flood singular local elections with large amounts of money.


\textsuperscript{359} Amendment Comparisons, supra note 343.
amendment to the Senate.\footnote{360} Most of these amendments focus specifically on overturning the decision in \textit{Citizens United}.\footnote{361} However, the amendment must go beyond \textit{Citizens United} and overturn the portions of \textit{Buckley v. Valeo} that deemed campaign spending to be “core First Amendment expression” and implied that corruption was only regulable in \textit{quid pro quo} form.\footnote{362} Since the purpose of the process is to give power to ordinary people rather than special interest groups, the best way to do so is to create a system that is entirely funded by public money.\footnote{363} Recent polling shows that about half of Americans favor public financing for federal campaigns, surprisingly high support for a topic that receives practically no media attention.\footnote{364}

The ideal system would mandate that all qualified candidates receive equal funding from the federal government, and no candidate would be able to spend more than any other candidate. Candidates would have to meet different standards at different points of the election, beginning with a certain number of voter signatures and gradually being tied to positioning in the polls; this is similar to the state models discussed in Section II, but using voter signatures rather than contributions as the threshold benchmark. This would greatly reduce the influence of wealthy individuals and corporations, as they would no longer be able to legally bribe

\begin{footnotesize}
\footnote{360} S.J.Res. 33, 112th Cong. (2011).
\footnote{361} \textit{Amendment Comparisons, supra} note 343; Sanders Proposes Amendment to the Constitution That Would Limit Free Speech, HILL (Dec. 9, 2011), thehill.com/blogs/floor-action/senate/198343-sanders-offers-constitution-amendment-to-strip-corporations-of-first-amendment-rights.
\footnote{362} \textit{Buckley}, 424 U.S. at 1; see also Eugene Temchenko, \textit{A First Amendment Right to Corrupt Your Politician}, 103 CORNELL L. REV. 465, 499 (2018) (concluding: “[e]ither the Court must reverse course or our anti-corruption laws will disappear”).
\footnote{364} Lydia Saad, \textit{Half in U.S. Support Publicly Financed Federal Campaigns}, GALLUP (June 24, 2013), news.gallup.com/poll/163208/half-support-publicly-financed-federal-campaigns.aspx.}
\end{footnotesize}
politicians, nor threaten funding a future opponent if an official does not “play ball.” Under such a system it would be necessary to increase the budget of the FEC and boost its efficacy so it could strictly regulate the use of funds in the political process, ensuring no outside money makes its way in, and no public money is used for non-political purposes. At this point it must be conceded that no country funds national elections entirely through public funding. However, America has always considered itself exceptional. There would be no better way to prove this oft-claimed exceptionalism then to become the first major country to finance elections entirely through public funding.

If private money is to be allowed at all, the Amendment should retain and lower the cap on campaign contributions, mandate a cap on independent expenditures, and include language that unambiguously differentiates between political speech for individuals and for corporations and between the level of constitutional protection afforded to traditional “free speech” and to political spending. These measures would correct the primary failings of the current system, under which political spending enjoys the same level of protection as actual speech and corporations have the right to unlimited political “speech,” i.e., spending. While the elimination of corporate personhood should be an essential component of any amendment, overturning Citizens United is not sufficient. As long as political spending is considered “speech” under the Constitution, those with the most money will have the loudest voices and the most influence over elected officials and the policies they implement. To end the undue influence of money over politics, the Amendment must cut out the problem at its root by expressly overturning the portion of Buckley v. Valeo that equated political spending to political speech.

After ratification, the amendment would require Congress to allocate funding to support the new campaign finance system. While one might worry that this financial burden would be placed on the working class, Congress would be wise to fund elections with significant tax increases for the average American, given that such an amendment could only come in a political climate of drastically decreased influence for the economically elite special interest. Furthermore, once constitutionally mandated to do so, Congress could fund elections by enacting the popular policies of tax increases for the wealthy and corporations (or by implementing new taxes on wealth or speculative transactions specifically for the purpose of

365. Feingold, supra note 323 (asserting that the FEC is “completely neutered,” and that for practical purposes, campaign finance regulations are “simply not enforced”).


funding elections) or by shifting money around from the bloated military budget.\footnote{See James Carden, Congress Just Passed a Bloated and Destabilizing $619 Billion Defense Bill, NATION (Dec. 9, 2016), www.thenation.com/article/congress-just-passed-a-bloated-and-destabilizing-619-billion-defense-bill/ (highlighting that the budget calls for almost twice as much money to be spent on new nuclear weapons as on nuclear disarmament, and also noting that, recently before the announcement of this budget, the Pentagon came under fire for allegedly covering up a study that revealed $125 million in administrative waste — more than double what Russia spent on its entire defense budget in 2016).} Keep in mind that in a publicly funded system the total amount spent would not need to come anywhere close to the billions of dollars spent on elections today, the cost of which have been inflated by the ability of mega-donors to pump unlimited amounts into the process and the uniquely spectacular scale of American campaigns.\footnote{See Olga Khazan, Why Germany’s Politics Are Much Saner, Cheaper, and Nicer Than Ours, ATLANTIC (Sept. 30, 2013), www.theatlantic.com/international/archive/2013/09/why-germany-s-politics-are-much-saner-cheaper-and-nicer-than-ours/280081/ (highlighting the differences between elections in the United States and other systems around the world, in which elections are significantly shorter and cost significantly less); Zeeshan Aleem, 7 Other Nations That Prove Just How Absurd U.S. Elections Really Are, Mic (May 19, 2015), mic.com/articles/118598/7-facts-from-the-around-the-world-show-how-absurd-america-s-elections-really-are#.4zNatyE0E; Paul Waldman, How Our Campaign Finance System Compares to Other Countries, THE AM. PROSPECT (Apr. 4, 2014), prospect.org/article/how-our-campaign-finance-system-compares-other-countries; Nick Thompson, International Campaign Finance: How Do Countries Compare?, CNN (Mar. 5, 2012), www.cnn.com/2012/01/24/world/global-campaign-finance/index.html; Political Parties’ Financing, STATISTICS NORWAY (Sept. 13, 2018), www.ssb.no/en/partifin. As of the completion of this comment in late February 2019, ten candidates have already begun their 2020 campaign for president.}

The saying goes that one should not bite the hand that feeds them. As the American political finance system works today, elected officials are afraid to bite the hands of donors because those donors can make or break them in the next election cycle. The political finance system needs to make elected officials afraid to bite the hands of voters. Under a publicly-funded system, elected officials would have no systemic incentive to serve anyone but the public.

Unfortunately, even an amendment that provides for entirely publicly funded elections, will likely not completely dissolve the influence of money in politics.\footnote{Richard Briffault, Public Funding and Democratic Elections, 148 U. PITT. L. REV. 563 (1999) (acknowledging that public financing will not solve all problems caused by money in politics).} The problem of the revolving door would likely persist, as would the influence of lobbying. To address this, the scope of the FEC must be expanded, or a new agency created, to regulate the revolving door between the government, major industries, and lobbyist organizations. While this would not be included in the language of the amendment itself, a de-corrupted political system would hopefully be able to produce this legislation.
Certainly, further action would need to be taken even in the wake of a transformational amendment on campaign finance. But before the United States can address the broad array of political issues in a way that lives up to the ideals of representative democracy, first it must strip the economically elite of their disproportionate political influence.

The purpose of this comment was primarily to establish that political donors wield significant influence over public policy in the United States and to emphasize the necessity of amending the Constitution due to the Supreme Court’s stances on political spending and corruption. This comment also offered a basic framework for public financing around which a Constitutional Amendment could be drafted.

Future scholarship will hopefully focus on sound structural proposals for fully publicly funded campaign finance systems. In the meantime, activists who seek to curb the influence of money in politics ought to pursue all potential solutions to the problem, including normal legislation (though it can do little to implement comprehensive change) and judicial challenges to Buckley as well as Citizens United and its progeny. Whatever solution(s) one champions, the most important thing is to start right now, because until the United States purges its political system of the corrosive influence of big money, average Americans will continue to struggle in an economy rigged against them and be without any way to vote for their own economic interests.

V. CONCLUSION: REPRESENTATIVE DEMOCRACY, FINALLY

The structure of campaign finance in American politics has allowed wealthy individuals and large corporations to hijack what is supposed to be a democratic government. Politicians on both sides of the aisle take massive donations from sources with massive incentive to maintain an economic system that benefits the wealthiest individuals and large corporations while average Americans deal with stagnating wages, insufficient societal infrastructure, and a looming ecological crisis.371

American politics is overrun with cash, and elections are only getting more expensive. Average Americans understand that the political process is corrupted by money and have shown that they are ready to follow leaders that speak the truth regarding systemic corruption in American politics.372 Unfortunately, no one politician can end systemic corruption. To undo the damage done by the Supreme Court, donors, and complicit political actors, we must amend the Constitution to enshrine a publicly funded campaign

371. DeSilver, supra note 231; Gilens & Page, supra note 7.
372. Hensel, supra note 10; Berman, supra note 14; Fang, supra note 15.
system directly in the country's founding document. This will strip the economically elite of their ability to wield massive political influence and thus allow the United States to operate as a truly representative democracy.