

Bonus Chapters to *When Money Talks*

# We Can Do It

---

How We Really *Can* Get Big  
Money out of Politics

Derek D. Cressman



Berrett-Koehler Publishers, Inc.  
*a BK Currents book*

Copyright © 2016 by Derek D. Cressman

This work is available free of charge and verbatim copies of it, not derivative works based on it, may be shared, copied, and distributed for noncommercial purposes in any medium or format without permission. The sale of all or part of this work in any form is prohibited.

Berrett-Koehler Publishers, Inc.  
1333 Broadway, Suite 1000  
Oakland, California 94612-1921  
Tel: (510) 817-2277, Fax: (510) 817-2278  
[www.bkconnection.com](http://www.bkconnection.com)

**Ordering information for *When Money Talks*,  
ISBN: 978-1-62656-576-0**

**Quantity sales.** Special discounts are available on quantity purchases by corporations, associations, and others. For details, contact the “Special Sales Department” at the Berrett-Koehler address above.

**Individual sales.** Berrett-Koehler publications are available through most bookstores. They can also be ordered directly from Berrett-Koehler: Tel: (800) 929-2929; Fax: (802) 864-7626; [www.bkconnection.com](http://www.bkconnection.com)

**Orders for college textbook/course adoption use.** Please contact Berrett-Koehler: Tel: (800) 929-2929; Fax: (802) 864-7626.

**Orders by U.S. trade bookstores and wholesalers.** Please contact Ingram Publisher Services, Tel: (800) 509-4887; Fax: (800) 838-1149; E-mail: [customer.service@ingrampublisherservices.com](mailto:customer.service@ingrampublisherservices.com); or visit [www.ingrampublisherservices.com/Ordering](http://www.ingrampublisherservices.com/Ordering) for details about electronic ordering.

Berrett-Koehler and the BK logo are registered trademarks of Berrett-Koehler Publishers, Inc.

First Edition

Interior design and project management: Dovetail Publishing Services

# Contents

<b>Introduction to the Bonus Chapters</b>	1
Bonus Chapter A	
<b>We've Done It Before</b> —How Legislators and Voters Have Limited Money in Politics	3
Bonus Chapter B	
<b>Myths and Red Herrings</b> —Faulty Arguments of the Big Money Believers	27
Bonus Chapter C	
<b>Real Threats to Free Speech</b> —How Government Stifles Regular People While Letting Billionaires Shout	45
<b>Notes</b>	59



# Introduction to the Bonus Chapters

In the book *When Money Talks*, I explain how the US Supreme Court wrongly conflated free speech with paid speech in misguided rulings such as *Citizens United v. FEC*. The book also details how citizens can reverse these court rulings and take our elections off the auction block.

One key point in *When Money Talks* is that we all have limited time. Out of respect for readers' time, I limited the length of the book to make it easier to digest the most important points. However, some readers will be left hungry for more. These bonus chapters will address some questions raised, but not fully answered, in *When Money Talks*.

It's one thing to demonstrate that the Supreme Court got it wrong and to note that Congress and state legislatures *could* make things right by passing a constitutional amendment to limit the role of money in politics. But, you might wonder, why *would* they? Aren't corrupt legislators part of the problem? Bonus chapter A reveals that, despite what you might think, Americans have been remarkably successful over our history in forcing Congress and the states to enact some very tough rules against big money in politics. The problem has been that these laws have not been enforced, in large part due to the courts.

Politicians who benefit from huge campaign contributions often trot out a parade of horrible things that would happen to us if we ever did get big money out of politics. Should you ever find yourself in a debate with a big money believer, bonus chapter B will help you answer these trumped-up charges.

Finally, all phony treatment of campaign spending as “free speech” has tended to overshadow the real reasons our constitutional framers drafted the First Amendment in the first place. Bonus chapter C notes some of the restrictions on free speech increasingly faced by regular Americans. Our Supreme Court often turns a blind eye to these very real threats to free speech while giving its blessing to just a handful of billionaires who want to buy so much speech that they drown out everyone else.

If you’ve read *When Money Talks*, hopefully you’ll find these bonus chapters a useful and interesting addition. If you’re reading these chapters without reading the book, that’s fine too. The information in these bonus chapters stands on its own. But don’t stop here—the important part is to take action. The stakes have become too high to settle back into resigned cynicism—we can, and must, take our country back.

## Bonus Chapter A

# We've Done It Before

## How Legislators and Voters Have Limited Money in Politics

*As a result of the war, corporations have become enthroned, and an era of corruption in high places will follow. The money power of the country will endeavor to prolong its rule by preying upon the prejudices of the people until all wealth is concentrated in a few hands and the Republic is destroyed.*

—President Abraham Lincoln, 1864

When Didius Julianus, a wealthy senator, wanted to become emperor of the Roman Empire, he didn't bother with an election. He bought it—literally. Didius outbid another would-be emperor at an auction held by the Praetorian Guard, which used its military might to appoint, and assassinate, emperors at will.<sup>1</sup>

For as long as there has been government, people have used the government for personal gain and greed. This is true of monarchies, dictatorships, and authoritarian regimes. It is also true in democracies.

Those seeking influence over public policy for personal profit can use bribery, election rigging, or simple relationships with those in power—such as “courtiers” who become friends with a king or dictator to curry favor. But a democratic republic, which is *supposed* to be influenced by its citizens, is particularly susceptible to being *unduly* influenced by a tiny minority seeking profit at everyone else’s expense.

We should be neither surprised nor discouraged that we find self-serving influence-seekers in the United States. The only question is how to best offset their greed by giving all citizens equal influence, lest we meet the same fate that the Romans did.

For some anarchists and libertarians, the solution to undue influence is easy: just abolish or shrink the government. If government had little or no power to make and enforce rules, there would be no incentive for anyone to influence it. But most Americans agree with our Constitution’s main premise: government should have sufficient authority to establish justice, ensure public safety (domestic tranquility), provide national security, promote the general welfare, and secure our liberty. If self-government is going to accomplish these tasks, “We the People” need to hear from every point of view to make wise choices. We need all voices to be heard, not just a wealthy few.

But how?

When you look at the overwhelming amounts of money washing around in our political system today, it is easy to become cynical. After all, why would any politician who gets elected from such a corrupt system, and prospers lavishly within that system, vote to change that system?

Perhaps surprisingly, politicians *have* voted to change the system—time and again. A brief look at our history of reform reveals two important lessons.

First, legislators can, and often have, responded to public pressure to enact very tough limits on money in politics. It is not futile for citizens to petition our government. We can make our elected officials listen. We can make them act.

Second, the primary obstacle to reclaiming democratic self-government in America is not our legislatures but rather our courts, particularly the US Supreme Court. This chapter will explore how legislatures, and voters themselves, have repeatedly limited money in politics. Chapter 4 of *When Money Talks* explores how the courts have dismantled those limits over the past forty years.

---

“It is not futile for citizens to petition our government. We can make our elected officials listen. We can make them act.”

---

## **Early Attempts to Limit Big Money in Campaigns**

Prior to the adoption of the secret ballot, big money influenced elections by literally buying votes through bribing or intimidating voters.<sup>2</sup> Because ballots were preprinted on specially colored paper by political parties, it was easy for vote buyers to see if voters held up their end of the deal.

In 1892, Massachusetts reformer Samuel McCall worked to pass the state Anti-Corruption Act, requiring disclosure of campaign spending. Subsequent amendments limited a candidate to spending no more than \$25 for every thousand voters and banned CEOs from using shareholder funds for both candidate and ballot measure campaigns. It

removed violators from office and barred them from running again for three years. McCall was then elected to Congress and began introducing similar legislation at the federal level.

That same year, Ohio passed a law limiting campaign spending and invalidating election results for candidates who exceeded the limits. Nevada passed a law including mandatory campaign spending limits in 1895.

As government began debating whether to regulate the trusts, railroads, oil monopolies, and other huge economic enterprises at the turn of the century, the wealthy people controlling those companies spent more and more to protect their self-interest. In 1895, US Senator Mark Hanna, chief political strategist for President William McKinley, quipped, “There are two things that are important in politics. The first is money and I can’t remember what the second one is.”<sup>3</sup>

You’d like to think that voters would have been the second thing, but I guess Hanna forgot about them. Whose voices was he hearing?

When Samuel Gompers, the first president of the American Federation of Labor, approached Senator Boies Penrose to support legislation to stop child labor early in the twentieth century, Penrose reportedly responded, “Sam, you know as damn well as I do that I can’t stand for a bill like that. Why those fellows this bill is aimed at—those mill owners—are good for \$200,000 a year to the party. You can’t afford to monkey with business that friendly.”<sup>4</sup>

Note that neither Boies Penrose nor Mark Hanna needed an explicit conversation with a donor or lobbyist to act according to their wishes. They knew who greased the wheels and how to keep them happy without any explicit quid pro quo agreement (which is the only definition of corruption our Supreme Court has recognized, as discussed in *When Money*

*Talks*, chapter 4). Money talks, and the politicians heard the donors' "speech" when they cashed their checks.

But turn-of-the-century politicians also responded to the Populist and Progressive movements as well as striking industrial workers. Millions organized around a broad agenda to make government more responsive to ordinary people. President Teddy Roosevelt, once a big money politician as William McKinley's vice president, hopped on the bandwagon of reform and proposed a system of public subsidies for federal campaigns.

The fat cats were furious, complaining "we bought the son-of-a-bitch and then he did not stay bought."<sup>5</sup>

Teddy Roosevelt also championed a ban on corporate contributions to federal campaigns, which Congress passed in the Tillman Act of 1907. Reformers had been proposing this idea for years. Kentucky was the first state to ban corporate campaign contributions in 1891. Congress was finally spurred to act not only by Roosevelt, but also by a scandal where New York Life Insurance Company executives used shareholders' funds for lavish balls and personal perks, in addition to political contributions. This abuse of "other people's money" outraged the country and Congress responded.<sup>6</sup>

After receiving public pressure from such good government groups as the National Publicity Law Organization, Congress passed modest campaign disclosure laws in 1910 in the Federal Corrupt Practices Act. The law was inspired by the Massachusetts law passed nearly twenty years earlier. The act also set spending limits for political parties and House members (but not challengers).

The laws worked, despite their weak enforcement mechanisms. Republicans spent nearly \$70 million on the 1900

presidential elections but only \$20 million four years later after passage of the Tillman and Corrupt Practices Acts.<sup>7</sup>

## Early Instructions to Limit Campaign Spending

In the fall of 1910, an Illinois “committee of seven” gathered 133,000 signatures to place three voter instruction measures on the statewide ballot. (Chapter 7 of *When Money Talks* discusses voter instructions in greater detail.) One measure was to establish a citizen initiative process, another was to establish a civil service act, and the third called for campaign spending limits.<sup>8</sup> It read:

*Shall the next General Assembly enact a corrupt practices act, limiting the amount a candidate and his supporters may spend in seeking office, and providing for an itemized statement under oath showing all expenditures so made?*

That question received 422,437 votes in favor and 122,689 against.<sup>9</sup>

Seventeen states at the time had passed corrupt practices laws, many incorporating limits on campaign contributions or spending based on an 1883 law in England.<sup>10</sup> Congress must have taken note of such public support when it enacted spending limits for Senate races in 1911 and extended the limits to cover primaries. The amendments limited House campaigns to \$5,000 and Senate campaigns to \$10,000.

In Montana, voters went further than instructing elected officials to solve the problem and made use of the new citizens initiative process to enact reform legislation themselves. Big money ran the state. Montana mining firms such as the Anaconda Copper Mining Company and Standard Oil,

which employed 80 percent of the workers in the state, bribed judges and legislators. Industrialist W. A. Clark spent more than \$400,000 bribing state legislators to appoint him to the US Senate. (As discussed in *When Money Talks*, US senators were originally appointed by legislatures, not directly elected by voters.)

In 1912, 77 percent of Montana voters approved initiative I 304-305, which set campaign spending limits and also banned corporate contributions to candidate campaigns.<sup>11</sup> Vermont also enacted candidate spending limits after two statewide referenda votes around this time.

In 1925, Congress acted again in response to public outcry over the Teapot Dome scandal where oil companies paid federal officials to win leases on public lands. Amendments to the Federal Corrupt Practices Act placed additional disclosure requirements on congressional candidates and political committees and again set overall spending limits on all congressional candidates for the general election. Senate campaigns were limited to three cents per voter or a maximum of \$25,000. House candidates faced a maximum spending limit of \$5,000.

The Hatch Act of 1939 and 1940 restricted political activity by federal employees in an effort to crack down on patronage machines that awarded jobs to political supporters. Congress also set both contribution and spending limits for political committees—not just candidate committees but also independent political committees, which would apply to today's "independent expenditure committees," or super PACs. The Taft-Hartley Act of 1947 further limited contributions and spending by congressional candidates as well as by labor unions and corporations.

## **The Fund-Raising Arms Race Escalates**

The first major election featuring television ads was in 1952, beginning the modern era of “paid speech” campaigns. Total spending for all local, state, and federal races for that year has been estimated at \$140 million<sup>12</sup>—less than was spent on the presidential race alone in 2000. Those who think elections are impossible without big money TV ads should examine how democracy functioned in the United States before 1952.

From 1956 to 1968, overall spending for all US campaigns escalated from \$155 million to \$300 million, with the media portion of that sum rising from \$10 million to \$60 million. These levels, while explosive at the time, look quaint today—yet would anyone say that political debate suffered during those years?

However, campaign law enforcement was still weak, so while limits remained on the books, they were routinely ignored. In fact, during the forty-seven years that the Corrupt Practices Act was in place, not a single member of Congress was prosecuted for violating it.<sup>13</sup> In 1966, future House Speaker Jim Wright testified that campaign finance law was “intentionally evaded by almost every candidate . . . I dare say there is not a member of Congress, myself included, who has not knowingly evaded its purpose in one way or another.”<sup>14</sup> President Lyndon Johnson said that campaign finance rules were “more loophole than law . . . inviting evasion and circumvention.”<sup>15</sup>

Throughout the 1950s, the US Senate passed campaign finance bills that strengthened disclosure, adjusted campaign spending limits for Congress, and even set mandatory spending limits for presidential campaigns. Although these measures did not pass the House, there was no serious doubt about their constitutionality.

Congress enacted a modest system of public financing for presidential campaigns in 1966, funded by a \$1 tax checkoff on income tax forms. The measure was suspended a year later before it could go into effect.

In 1971, a newly formed citizen organization named Common Cause tried to enforce the 45-year-old Corrupt Practices Act with a class-action lawsuit that failed legally but helped raise awareness. Citizens pressured Congress to pass the 1971 Federal Election Campaign Act (FECA), which again tightened disclosure rules and capped how much candidates could spend for advertising on TV, radio, and some forms of print. The goal wasn't to limit the total amount a candidate could raise, for it allowed unlimited spending on brochures, phone lines, travel, polling, and campaign staff. Rather, the objective was to make paid advertising more equal among candidates. Congress took note of the First Amendment implications of the law and concluded the limits would allow voters to hear from a greater diversity of candidates.

In response to opposition from the American Civil Liberties Union (ACLU) to the campaign spending limits, a House committee described a system much like we still see today. It noted that big money political campaigns led

*to a closed, insulated, self-perpetuation system, dominated by special interests and unresponsive to the public will . . . which often creates the impression that only the rich can run for public office, and that a candidate can buy an election by spending large amounts of money in a campaign. . . . [It] works an inequitable hardship on the candidate who cannot compete with the resources of great wealth, but of even greater significance, it is unfair*

*to the electorate which is entitled to have presented to it for its evaluation and judgment candidates from all walks of life and not just those persons who, because of their wealth, can conduct a campaign which resorts to techniques which are more appropriate to merchandising a product than to familiarizing the public with a candidate's qualities as a potential public official and his program for the country.*<sup>16</sup>

Despite the new limits, campaign spending ballooned from \$300 million in 1968 to \$400 million in 1972.<sup>17</sup> Voter turnout fell to the lowest level in twenty-five years, with 55 percent of eligible adults participating. The average House incumbent raised \$54,600, while Senate incumbents raised \$403,000 on average.<sup>18</sup> Candidates relied more heavily on huge donations that were far beyond what ordinary people could afford, with two-thirds of funds coming from contributions above \$100.<sup>19</sup> One successful Senate candidate spent \$2.5 million on his own campaign.<sup>20</sup> Common Cause again tried to pressure the proper authorities to enforce the law, filing hundreds of complaints about late or incomplete campaign disclosures.<sup>21</sup>

## **Watergate Unleashes a Watershed of Reform**

President Richard Nixon's political fund-raisers Maurice Stans and Herbert Kalmbach scoured the country for big money in March and early April of 1972, telling donors to get their checks in before April 7. That was when the new FECA disclosure requirements kicked in. Robert Vesco delivered \$200,000 in cash stashed in a briefcase. The ITT Corporation gave \$400,000 to pay for the 1972 Republican Convention.

President Nixon found the company's "speech" persuasive and the Justice Department settled an antitrust case in ITT's favor shortly after the contribution. Nixon personally ordered an increase in dairy price supports after the industry gave \$2 million to his reelection campaign. A 1974 Senate committee found at least thirteen corporations and their foreign subsidiaries had made \$780,000 in illegal corporate contributions.<sup>22</sup> At least 142 people gave Nixon \$50,000 or more.<sup>23</sup>

On June 17, 1972, five men were caught breaking into the Democratic Party headquarters in the Watergate Hotel. Investigators soon learned the burglars were paid with Nixon's campaign cash.<sup>24</sup> As the Watergate scandal unfolded, eventually forcing President Nixon to resign, it became clear that huge campaign contributions were at the center of the affair.

After investigating abuses of the new campaign finance law in the 1972 campaign, the US Senate passed amendments to FECA that set strict campaign spending limits for all congressional elections. The goal was to set spending limits low enough that candidates could reach the limit by relying solely on small donations from ordinary citizens.

Republican John Gardner, the president of Common Cause at the time, testified:

*Mr. Chairman, we also support your concept of an overall limit—we feel very strongly about that—the overall limit on expenditures in a given race, and applaud your statement supporting a ceiling on individual contributions. I will say parenthetically that I do believe that the overall limit on expenditures ultimately relates to the sources of the contributions. If the sky is*

*the limit, you pretty much have to go sooner or later to a very large donor.*<sup>25</sup>

In addition, Common Cause called for contribution limits of \$100 for House races, \$250 for Senate races, and \$500 for presidential races as well as an independent elections commission to enforce the law. Those guidelines would ensure a candidate didn't reach the spending limit by relying primarily on a few large donors.

However, the final law set contribution limits much higher than reformers had called for, allowing a candidate to accept \$1,000 from a donor for a primary campaign and another \$1,000 for the general. To prevent donors from evading the contribution limits by funding a separate campaign that simply parroted the candidate's message, the law set the same limit of \$1,000 that a donor could spend on an independent campaign.

The new law also set an annual limit of \$25,000 on donations each person could give to all federal candidates, parties, and political committees combined. This amount was well beyond what most Americans could afford, but it did set an upper bound on the total amount of political "speech" that any one plutocrat could fund.

The FECA amendment set mandatory limits of \$84,000 for a House campaign, stipulating up to \$70,000 for communication costs and another \$14,000 to cover fund-raising expenses. This was well above the \$54,600 spent by the average House candidate in 1972. Spending limits for Senate races were based on population of the state. New York's limit, for example, was set at \$2.3 million, while less-populated states like Hawaii and Wyoming had limits of \$220,000. For presidential campaigns, the

limits were voluntary—candidates who accepted them received some public funds as an incentive.

Senator James Buckley questioned Senator Howard Cannon, one of the authors of the FECA amendments, if he wanted to limit the total volume of political advertising. “Does it not limit the amount of persuasiveness one can put into the atmosphere?” Buckley asked.

Cannon indicated that the bill’s authors did indeed want to limit paid speech.

*That was the intention of these limitations, to limit the overall amount, because we felt that there ought to be a limit beyond which one cannot go in saturating the airways, the radio, the TV, newspapers and the personnel expenditures, the hiring of people, billboards, and so on, and that is the basic reason to try to limit the cost somewhat and not get into a bought campaign.<sup>26</sup>*

(emphasis added)

Congress concluded wealthy donors shouldn’t drown out other voices.

Voters too thought that the levels of political advertising in the early 1970s, absurdly low by today’s standards, were excessive. Three-quarters of Americans told pollsters that there should be controls to reduce the amount of TV advertising, while only 19 percent wanted to keep current levels.<sup>27</sup>

## **A New Round of State Spending Limits**

The federal reforms coincided with reform at the state level. In 1972, 72 percent of voters in Washington State approved Initiative 276, calling for disclosure of campaign funds and campaign spending limits. In 1974, 65 percent of

Massachusetts voters enacted Question 5 to establish an independent Corrupt Practices Commission to enforce the campaign spending limits that had been on the books since the turn of the century. Missouri voters approved Proposition 1 with 77 percent of the vote to limit contributions and campaign spending. It too created a new enforcement agency to make sure the rules would be followed. Nevada's legislature also enacted campaign limits in the post-Watergate era.

California voters adopted mandatory spending limits for statewide candidates and ballot measure campaigns, approving Proposition 9—the Political Reform Act—in 1974 by a vote of 70 percent to 30 percent. The initiative created the Fair Political Practices Commission to enforce the rules. California Common Cause and a grassroots group known as the People's Lobby gathered the signatures to qualify Prop 9 for the ballot, and California secretary of state Jerry Brown promoted the measure as part of his initial campaign for governor.

In Albuquerque, New Mexico, a stunning 90 percent of voters followed the national trend for reform and adopted a 1974 ballot measure that enacted mandatory limits on campaign spending. Albuquerque's limits became nationally important because they went unchallenged in the courts for three decades, providing one of our few examples of how campaigns work under spending limits. (See chapter 4 of *When Money Talks* to find out what happened.)

In 1980, 78 percent of Minnesota voters approved a constitutional amendment that established a state initiative process and established that “the amount that may be spent by candidates for constitutional and legislative offices to campaign for nomination or election shall be limited by law.”<sup>28</sup>

## **The Low Contribution Limits Movement**

Throughout the 1980s and early 1990s, reformers tried to pass congressional public financing bills, but without success. In 1976, the first federal election with the new contribution limits in place, individual donations under \$100 still accounted for a third of congressional fund-raising—the same percentage as in 1974. The limits were set so high they merely froze the current system in place—preventing the situation from getting worse but doing nothing to improve things. Then, in 1992, candidate spending for House campaigns shot up 33 percent from 1990 levels.<sup>29</sup> With federal reforms stuck, energy moved back to the states, which repeatedly passed tough-as-nails reforms by huge margins.

It began in 1990, when Lawton Chiles ran for governor of Florida while voluntarily accepting contributions no larger than \$100. He defeated incumbent Bob Martinez and went on to defeat Jeb Bush in 1994, again accepting no more than \$100 from anyone. Chiles' success sparked a national movement.

People wondered what politics would look like if every candidate only accepted contributions up to \$100. In Washington, DC, residents put the idea on the ballot in 1992. They gathered signatures to propose Initiative 41, which limited contributions for mayor to \$100 and to \$50 for city council. It passed by a two-to-one margin and began a national drive to enact similar reforms.

The 1990s low contribution limits movement offered an alternative to the earlier spending limits approach, which had been foiled by the Supreme Court in 1976 with *Buckley v. Valeo* (as detailed in chapter 4 of *When Money Talks*). The contribution limits upheld in the *Buckley* ruling were so high they hardly made a difference. However, reformers

realized that lower limits could bring some sanity back to elections. The low contribution limits movement reframed the goal of reform from providing equal spending for candidates to instead giving each citizen a more equal voice.

In 1993, Senator Paul Wellstone proposed a legislative amendment reducing the federal contribution limit from \$1,000 to \$100. Wellstone's idea received thirteen votes, including three Republican senators: William Cohen, Charles Grassley, and John McCain. Wellstone tried a second amendment to lower the limit to \$500, which received thirty-two votes—still well short of the sixty needed to overcome a Senate filibuster but nonetheless a strong showing for the idea that contribution limits should be lower.

In 1994, Oregon voters approved Measure 9 by a margin of 72 percent, establishing contribution limits of \$100 for legislative candidates, \$500 for statewide candidates, and banning contributions from corporations. The same year, Missouri voters approved Proposition A by 74 percent, also setting \$100 limits on legislative contributions. Montana voters approved \$100 limits by a margin of 60 percent. Reformers in Massachusetts gathered signatures to qualify a similar measure for the ballot there, but compromised with the legislature on a reform bill setting contribution limits at \$500.

Two years later, voters in Arkansas and Colorado approved similar \$100 contribution limits by margins of two to one. The Arkansas measure also included a tax credit of \$50 to encourage small donations—something that Oregon and Minnesota had already enacted.

By a 60 percent margin, California voters approved a 1996 measure to set contribution limits at \$250 for legislative races, a more moderate proposal than a competing measure that called for \$100 limits. That competing measure,

Prop 212, contained a drafting error that would have repealed the \$10 limit on what lobbyists could pay to take a legislator out to lunch. Despite that serious flaw, Prop 212 almost passed, in part because voters liked its lower contribution limits. But what they liked even more were its mandatory campaign spending limits.

Prop 212 was intentionally designed to revisit the Supreme Court's ruling in *Buckley* by enacting the exact policy that the Court had rejected back in 1976. It looked like the public was ready. In a 1995 survey, 87 percent of Americans favored limiting the amount of money a candidate could spend on political campaigns.<sup>30</sup> Were it not for Prop 212's drafting error, voters would likely have approved it.

Also in 1996, Maine voters approved a ballot measure that lowered contribution limits from \$500 to \$250 for state races and implemented a system of public financing for state races. It passed with 56 percent of the vote. A strong 71 percent of Nevada voters approved a ballot measure limiting campaign contributions.

Montana voters passed initiative I-125 to ban CEOs from using corporate treasury funds for ballot measure campaigns. The 1996 measure required corporations to solicit voluntary contributions from their shareholders and executives to fund political work, rather than taking shareholder funds without consent. Championed by Common Cause and the Montana Public Interest Research Group, the measure aimed to revisit a 1978 Supreme Court ruling that had struck down a similar law in Massachusetts. As in California, reformers were ready to test the Court and see if it was ready to reverse its past mistakes.

In 1997, the Alaska legislature lowered its own contribution limits from \$1,000 to \$500 in response to citizens

gathering signatures for a measure that would have set them even lower. The new law also set a limit on how much money a candidate could accept from outside of Alaska.

The Vermont legislature passed a sweeping reform bill in 1997 with the toughest limits of any state. It not only included contribution limits of \$200 per election cycle but mandatory spending limits for candidate campaigns. Vermont had repealed its 1916 spending limits after the *Buckley* ruling. But, like Montana in 1996, Vermont threw down the gauntlet and was prepared to take this issue back to the US Supreme Court to see if it would change its mind. Like Alaska, Vermont's law also limited out-of-state contributions, and like Maine, it included public financing for gubernatorial candidates.

In 1998, a measure similar to Maine's passed in Arizona, lowering its contribution limits by 20 percent and implementing public financing. In 2000, Missouri and Oregon voters rejected other public financing measures that did not lower contribution limits.

## **Smaller Contributions Allow More People to Be Heard**

When low contribution limits were put in place in the District of Columbia for the 1994 city council elections, many more viable candidates ran for office.<sup>31</sup> With the limit on each contribution lowered by 90 percent, candidates reached out to many more donors so fund-raising totals dropped only 23 percent.<sup>32</sup>

More donors were funding speech and more candidates were speaking.

When Oregon enacted low contribution limits for the 1996 election, the total amount raised from individual

donors nearly doubled.<sup>33</sup> A report by the Oregon secretary of state found that “it is likely that more Oregonians made contributions to legislative candidates than at any previous election.”<sup>34</sup> The limits meant more people were heard.

Similarly, when low contribution limits went into effect for the 1998 Colorado elections, more citizens contributed than before, and the average contribution fell from \$343 to \$172.<sup>35</sup> Dick Williams, campaign manager for Colorado’s Republican governor Bill Owens, noted that the limits encouraged his campaign to broaden its base, saying, “The fact is, you’re getting more people involved in running campaigns.”<sup>36</sup>

Colorado’s Democratic senate leader Mike Feeley acknowledged the new rules had prompted him to visit small towns and hold grassroots fund-raisers. “Rather than pick up the phone and ask for a \$20,000 contribution from an individual, it has forced me to go out and speak to 50 to 100 individuals to raise that same amount of money,” Feeley told the *Denver Post*.<sup>37</sup> Given physical constraints on his time, the limits meant Feeley was spending less time listening to the concerns of mega-donors and more time fielding questions from constituents.

## **Congress Tries Again: McCain-Feingold Targets Outside Money**

Meanwhile, at the federal level, things went from bad to worse. Ultrarich donors began evading the \$20,000 limit on contributions to federal parties by giving to so-called “soft money” accounts set up by the parties. These were originally designed to fund voter registration and party building, but parties then used them to fund “issue ads” that promoted or attacked candidates but did not explicitly call for their

election or defeat. Michael Dukakis first used huge chunks of soft money in his 1988 campaign, and Bill Clinton took it to new heights with his 1996 reelection campaign at the urging of consultant Dick Morris. By 2000, both parties were swimming in huge amounts of soft money, which was supposedly outside the control of individual candidates.

Americans were getting fed up. In 1999, 88-year-old Doris Haddock of Laconia, New Hampshire, walked across America to draw attention to the insane amounts of money in politics. She became known as Granny D, one of the late twentieth century's true American folk heroes. I joined her march as it entered Washington, DC, on February 29, 2000, with more than two thousand people. I will forever remember giving my first political speech on the steps of the Capitol with Granny D at my side.

Two months later, Granny D was arrested in the US Capitol building along with thirty-one others. Here's how she explained herself to the judge:

*Your honor, the old woman who stands before you was arrested for reading the Declaration of Independence in America's Capitol Building. I did not raise my voice to do so and I blocked no hall. I was reading from the Declaration of Independence to make the point that we must declare our independence from the corrupting bonds of big money in our election campaigns. In my 90 years, this is the first time I have been arrested. I risk my good name—for I do indeed care what my neighbors think about me. But, your honor, some of us do not have much power, except to put our bodies in the way*

*of an injustice—to picket, to walk, or to just stand in the way. It will not change the world overnight, but it is all we can do.*<sup>38</sup>

The government could limit Granny D's speech, because demonstrations aren't allowed in the Capitol. But it wouldn't limit billionaires from buying speech through campaign ads. Granny D personified the huge frustration that Americans were feeling with the floodgates now open, letting huge amounts of money into campaigns.

By November 2000, a record \$3 billion went into federal campaigns, with 780,000 people giving \$200 or more—a mere 0.28 percent of the US population.<sup>39</sup> Roughly 20 percent of all federal contributions went into soft money accounts of the political parties, which were disclosed but unlimited.<sup>40</sup>

Because the Supreme Court had gutted the post-Watergate reforms, fund-raising by congressional candidates had gone up 425 percent since reforms had gone into effect in 1976, compared to a general rate of inflation of 170 percent.<sup>41</sup>

George W. Bush became the first major candidate to violate the voluntary spending limits set in the 1974 FECA reforms during the primary. In 1999, Bush raised a record \$68 million using at least 214 individual “Pioneers” to gather \$1,000 checks into “bundles” of \$100,000. Other Republican candidates (as well as Democrat Al Gore), who adhered to the limits, raised \$28 million combined by the end of 1999.<sup>42</sup> All of the Republicans besides John McCain dropped out due to lack of funds. The “wealth primary” was in full force.

## **A “Wyly” Loophole**

In the spring of 2000, George W. Bush crushed John McCain in Super Tuesday’s primaries with the help of a secretly funded group called Republicans for Clean Air. It was later revealed that the money came from Dallas millionaire Sam Wyly, whose brother Charles was a Bush “Pioneer” bundler. They used a new loophole called a 527 committee to fund the ads, avoiding the contribution limits and disclosure requirements for outside campaigns by cleverly avoiding the words “vote for” in their ad praising George W. Bush. They claimed, therefore, that it was not a campaign ad.

Nobody believed them.

This 527 loophole exploded, becoming an early precursor to the super PACs that emerged in the 2012 presidential elections. By June of 2000, Congress responded—in part. It passed a law, signed by President Clinton, which required 527 groups to disclose their donors—but did not limit the amount of money they could receive.

By the end of the primaries, Bush had raised more than \$100 million, doubling Al Gore’s war chest. Bush then went on to accept the spending limits for the general election, receiving an additional \$67 million in federal funds and forgoing private fund-raising for the rest of his campaign. Barack Obama would later become the first candidate to reject the voluntary limits for both the primary and general elections.

In the spring of 2002, nearly a decade of lobbying by federal reform advocates spurred passage of the Bipartisan Campaign Reform Act (BCRA), better known as the McCain-Feingold law for its sponsors John McCain and Russ Feingold.

To pass BCRA, reformers accepted a Faustian bargain. On March 28, 2002, the US Senate approved an amendment by California senator Diane Feinstein to increase contribution limits from \$1,000 to \$2,000 and regularly increase this limit for inflation, going in the exact opposite direction that states had been going for the past decade. Most Beltway reform groups blessed the move.

Why? Because by accepting an increase in hard money (which accounted for 80 percent of all funds raised), the major DC reform organizations won a ban on soft money funds to federal parties. The victory was largely symbolic, however, because even when the law was upheld by the courts (as it initially was), soft money donors were able to shift their funds not only over to 527 groups (which disclose donors as parties do) but also to so-called “dark-money” organizations that don’t have to reveal their donors. Nonetheless, McCain-Feingold set the stage for a major showdown at the US Supreme Court, which would now have to grapple with its first major federal campaign finance law since 1974. (Chapter 4 of *When Money Talks* describes what happened.)



### **What you can do: Ask for access**

Call your members of Congress and request a personal meeting in their district office to discuss the problem of big money in politics. Organize other constituents and local organizations to join in the request. If they refuse, find out who hosts their campaign fund-raisers (see <http://politicalpartytime.org/>) and write a column about it for your local newspaper.



## Bonus Chapter B

# Myths and Red Herrings

## Faulty Arguments of the Big Money Believers

*This amendment . . . [will] give this Congress the power to quiet the voices; quiet the voices not just of members of Congress and the people who may oppose them, . . . but any individual, any group, anybody. We could shut them all up.*

—Senator Mitch McConnell, opposing a constitutional amendment to overturn *Citizens United*. (When McConnell's time to speak on the senate floor expired, the senate chairperson then shut him up.)

*When Money Talks* presumes, as most Americans presume, that reducing the amounts of money coming from large contributors into political campaigns is a good thing. Politicians and donors who benefit from the current system often concede this point, but tell us that it has always been this way and it is too hard to change it. Chapter A refuted that claim.

Other times, politicians will tell us that they'd *like* to do something about big money in politics, but the First

Amendment just won't allow it. Chapters 2 and 3 of *When Money Talks* debunk that falsehood.

On occasion, however, opponents will actually defend big money. They will claim it is virtuous. It is important for reformers to seriously consider these arguments and understand their failings.

Here is what they say and why their arguments are either myths that are flat-out incorrect or red herrings that attempt to use big money to address a legitimate problem that has better solutions than throwing more billionaire money into political campaigns.

### **Big Money Myth #1: Campaign Money Limits Will Protect Incumbents**

Big money apologists endlessly repeat a claim that reducing campaign spending would insulate incumbents by making it harder for challengers to buy enough ads to get elected. Former House Majority Leader Tom DeLay, for instance, often said that limiting big money donations amounted to an “incumbent-protection” plan.<sup>43</sup> This assertion is insincere, factually incorrect, and philosophically unsound.

There is a real threat that incumbents will rig the game to protect themselves, their parties, or their factions. We have seen this for hundreds of years through impossibly high hurdles for third parties to break into the system, political gerrymandering of electoral districts, policies to suppress voter participation such as the poll tax, needlessly restrictive photo ID requirements, ballot-box stuffing, and partisan efforts to purge voter registration rolls.

But when incumbent politicians pretend they are selflessly looking out for their future challengers by rejecting limits on campaign money, think twice about their sincerity.

The fact is, whenever they think nobody is watching them, incumbents *raise* the limits on campaign money.

When voters in Washington, DC, Missouri, California, and Colorado enacted low contribution limits through citizen initiatives in the 1990s, incumbent legislators raised or repealed those limits every chance they got.

When Congress passed limits on political party soft money in 2002, senators insisted on *increasing* contribution limits for individual candidate campaigns as part of the bargain. Legislatures never lower contribution limits for their own races except in response to scandal or significant public pressure.

It simply is not credible to suggest that legislators secretly want to help challengers by increasing limits when nobody is looking but that they willingly harm challengers by lowering limits when the public forces them to. Just the opposite is true.

In a moment of candor, Senator Joe Biden described how incumbents really feel about campaign finance reform. When he was new to the Senate, Biden confided how an unnamed senator had privately lectured him about Biden's idea that all candidates should spend the same amount of money:

*He said: "Enough of this stuff now, all right?" I said, "Enough of what?" He said, "This thing about giving the other guy the same amount of money we get. . . . I worked too darn hard to get to the point where some little sniveling brat will get the same money I have to run against me."*<sup>44</sup>

Motivation and sincerity aside, what do the numbers tell us about whether limiting campaign money helps or hurts challengers?

Political scientist Gary Jacobson and others have tried to project what would happen if campaign finance rules

change by looking at statistics on how challengers perform under the current rules.<sup>45</sup> As I learned when I got a degree in political science, you can prove anything with statistics—you just need to ask the wrong questions in order to get misleading answers. So, when they asked whether challengers who raised gobs of cash outperformed challengers who didn't raise much money, unsurprisingly, these bean counters found that challengers who raise more money under our current system of big money campaigns tend to do better.

Big money believers then take a huge logical leap by assuming that any reform that reduces the amount of money challengers could raise would hurt challengers as a group. But that's because they asked the wrong question—they ignore what the effects of campaign money limits would be on incumbents. It's a bit like saying that rookies in Major League Baseball who use steroids tend to do better than rookies who do not, and then assuming that banning steroids would generally make it worse for rookies than for veterans in the league.

In the 2014 elections, Senate challengers raised an average of \$1.2 million compared to \$12.1 million for the average incumbent. Average House challengers raised \$258,000 compared to \$1.5 million for the average incumbent.<sup>46</sup> Is it any wonder 95 percent of House incumbents and 82 percent of Senate incumbents were reelected?

---

**“The ‘incumbent protection’ argument is not only insincere, it is factually incorrect.”**

---

Obviously any limits on campaign fund-raising are going to reduce money to incumbents way more than to

challengers. Incumbents usually start out with higher name recognition, so arguably money is less valuable to them than it is to lesser known challengers. On the other hand, with congressional approval ratings plummeting well below 20 percent,<sup>47</sup> it's conceivable that an unknown challenger could defeat a well-known incumbent if neither side spent any money. Maybe this is why incumbents spend so much of their time raising money even while knowing that their challengers are unlikely to have many funds.

Rather than just guessing how a change in rules might impact challengers, one researcher has actually looked at differences between states with different contribution limits and at what happens when a state raises or lowers its limits. The evidence is indisputable that lower contribution limits hurt incumbents and help challengers.<sup>48</sup>

The only data we have on spending limits comes from Albuquerque, New Mexico, where four incumbent mayors were defeated while spending limits were in place and none was reelected. One city's experience does not make an exhaustive study, but it's hard to conclude that spending limits helped incumbents.

So the "incumbent protection" argument is not only insincere, it is factually incorrect. We have more to fear from incumbents setting limits that are too high than too low.

But philosophically, assume for a minute that down was up, truth was fiction, and that reducing big money in politics really did advantage incumbents. Would we really want a campaign finance system where well-liked legislators with voting records we can evaluate were defeated by unknown challengers simply because the challengers were backed by billionaires, special interests, and corporations? The point is that focusing on either challengers or incumbents obscures

the more important question of whether any set of rules furthers the game as a whole.

We want baseball players to compete based upon natural abilities rather than steroid-enhanced strength even though it may mean fewer home runs and even if, for some strange reason, it disadvantaged rookies. We want NFL teams to use properly inflated footballs, no matter who this benefits or harms. Likewise, even if it meant incumbents were reelected, we might choose to have elections that accurately reflect the will of the people even if it meant that popular candidates who won the previous election are likely to prevail against unknown candidates who take positions that are supported by billionaires but contrary to the wishes of the people.

So, if reform opponents are wrong to argue that campaign money limits that are too low will damage challengers more than incumbents, what about the question of who should write campaign finance rules in the first place? The fact is, left to their own devices, incumbents virtually always set limits that are too high or set no limits at all. Reformers can happily resolve the phony argument about incumbent protection once and for all by offering a simple solution: somebody else should set the limits for incumbents.

State legislatures, or the president, could set the rules for Congress. Congress could write the rules for presidential campaigns. Citizens themselves could write the rules for state-level races using citizen initiatives.

This is one reason why a constitutional amendment should not specify that Congress should set its own limits but rather simply require courts to use standards of political equality and full and fair debates to evaluate limits. (See

chapter 6 in *When Money Talks* for a discussion of constitutional amendment wording.) Then, if courts used real data based on multiple campaign cycles to find that campaign finance rules really did unfairly advantage anyone, they could reject those limits because they did not promote political equality or a fair debate. Maybe courts would even find our current campaign finance regime unconstitutional.

## **Big Money Myth #2: Money Will Just Flow Around the Limits**

Another common argument against limiting campaign money is that it is simply impossible to do so. Limits just won't work. Like water running downhill, opponents say money will simply flow around any barrier we put in its place. They even argue it's better to have unlimited contributions going to candidates because otherwise it will flow "underground" to outside, dark money groups.

Nonsense. Limits don't force money underground—disclosure laws do.

Donors will hide their involvement anytime they think that voters will be suspicious of an ad if they know who funded it. We see donors hide all the time in ballot measure campaigns, which have no contribution or spending limits but are governed by disclosure laws.

When I worked at Common Cause in 2012, we were suspicious about the sources of \$11 million that mysteriously flowed into two California ballot measures, where no contribution limits apply. Once the campaign was over, an investigation by the Fair Political Practices Commission revealed that the money had come through the secretive network of organizations maintained by Charles and David Koch. The

donors had used the network because they wanted to remain anonymous. The solution to dark money is to enforce disclosure requirements on all individuals and organizations that spend money on *all* types of political campaigns, not just on candidates and parties.

It is true that campaign finance laws do not change the amount of money in the universe. So, yes, any money not given to a politician will wind up going somewhere else.

It is also true that we cannot change the amount of rain falling from the sky, so it will eventually run downhill. However, with levees, canals, dams, and reservoirs, we can move water into more useful places and prevent it from causing a lot of damage in floods.

Likewise, with campaign finance rules, we can move money into more useful places and prevent it from doing a lot of damage in flooding our political discourse with noxious attack ads. A limit that forces money to move further away from a candidate is a bit like a levee that forces water to move further away from a town.

If, for example, somebody is going to spend \$10,000 to influence an election, it is more accurate and honest for that money to fund a message from that donor than to let it flow into a candidate's coffers. That way, it funds an advertisement that accurately reflects the donor's viewpoint, whereas a candidate might choose to take that money and run an ad about an issue the donor doesn't care about.

Worse yet, the candidate might not even use the donor's money for an ad at all; she or he might give it to another candidate or save it for a future campaign that the donor doesn't even support. When I ran for California secretary of state in 2014, some of my supporters had donated to one of my opponents for his previous campaign for state senate. He didn't

use their funds for the senate race, but saved them to run for secretary of state. The donors wound up funding a campaign they didn't even support.

Further, with adequate disclosure laws, voters can more easily identify the individual donors behind an independent campaign than those behind a candidate campaign. If the disclaimer at the end of an ad says “paid for by Chevron,” the voter has a lot more information than if Chevron gave the same amount of money to candidate Smith and the disclaimer says “paid for by Smith for Congress.”

Beyond ensuring that campaign contributions actually fund the speech a donor supports and making the donor more visible to the voter, moving money away from candidates and into independent campaigns reduces its value to corrupt or influence the candidate. A thousand dollars given directly to a candidate is far more valuable than the same thousand dollars given to a truly independent campaign because that campaign may not fund the message that a candidate wants. From a diversity of viewpoint perspective, that's good. It is useful to have multiple and even conflicting messages because it enables us to fully evaluate the issues, interests, and supporters surrounding any particular candidate.

But from the candidate's perspective of wanting to control and narrow the debate, multiple messages are bad. This is why federal candidates are constantly finding ways to coordinate and control the supposedly “independent” super PACs that spend money on their behalf. Otherwise, independent campaigns can wind up being counterproductive to a candidate by highlighting issues they would rather not discuss.

This is why when there are no limits, both donors and candidates prefer to have the money flow directly into coffers that a candidate controls—it's more useful for the

candidate and, because of its higher value, the donor gets more influence with the candidate. This doesn't mean, as the five men of the Roberts Court have claimed, that independent spending has zero influence on a candidate and no chance of leading to corruption. But outside money is less influential *on* a candidate because it is less valuable *to* a candidate, if it is truly independent (although much of it now appears not to be).

Finally, although campaign finance rules do not change the amount of money in the universe, experience shows that they do in fact change the amount of money spent in political campaigns. Big donors may spend their money on yachts, second homes, charities, investments, or any other nonpolitical purpose when laws limit what they can spend on campaigns. But small donors actually spend more money on politics when their small donations matter more.

When contribution limits were lowered in Washington, DC, Missouri, Oregon, and Colorado in the 1990s, the total amount of money spent by candidate campaigns *and* independent campaigns went down even while the total number of donors went up. Similarly, Albuquerque's spending limits worked for forty years, and Montana's ban on corporate contributions worked for a century before the Supreme Court gutted the law.

When campaign limits are struck by the courts, campaign spending goes up. This is because the vast majority of people are honest and follow the rules.

Limits work when donors think other people will also abide by them and fail when they don't feel that way. If a donor knows that the most anyone can give a candidate is \$100, they are content to give their favorite candidate \$100 if they can afford it. Even a \$25 donation feels like it might

make a difference. But, if a donor knows that other people can give \$1 million, by golly they're going to give as much as they can afford to in order to keep up. Or they will conclude that their donation would be too small to matter. An arms race will lead to each side spending more on weapons than a truce will. Likewise, removing limits on campaign money will lead to more money than uniformly imposed limits will.

Campaign finance laws, arms control agreements, speed limits, and taxes all work most of the time, but some people will always find ways to cheat. A few sneaky fat cats will try to evade limits on contributions to candidates by funding some outside operation just as they'll hire accountants to find ways to avoid paying taxes by moving their money into offshore bank accounts.

Just as it doesn't work to protect only half a city with levees, limits on big money in politics must apply to all places the money could flow. The solution to outside, unaccountable money is to apply the same contribution limits to outside campaigns as to candidate campaigns and to place an aggregate limit on the total amount of money any donor can give to all political campaigns, no matter who controls them.

### **What about Labor Unions, the NRA, the Sierra Club, and Other “Special” Interests?**

People who feel strongly about a particular issue can have greater impact by joining their voices together. This is a good thing for participatory democracy and is protected by the First Amendment's freedom of association. Society will benefit from hearing about these particular issues, so long as these groups don't simply become laundering devices to inject huge contributions from billionaires into the electoral and legislative process—which then violates the principle of

political equality. It's also important to ensure that any funds spent by an interest group accurately reflect the political views of its members.

A person who joins the NRA for gun safety classes or who joins the Sierra Club in order to participate in local outings might not support the same politicians that the organization does. A worker might vote to join a union in order to bargain collectively with her employer but disagree with fellow union members about which candidates to support. On the other hand, if a group spends all of its money only on politics, such as the Democratic or Republican parties, it's a safe bet that its donors support its political agenda. That's why organizations that are formed for both political and social purposes should establish separate political committees that both limit and disclose the contributions from their members that end up going toward candidates—who will inevitably take positions on many issues that are not relevant to the organization's mission. These groups might reasonably use their general funds to support issue advocacy and ballot measures that are relevant to reasons why people join the organization.

For-profit corporations are formed purely for economic purposes and are given significant government privileges in order to amass large investments for important economic projects. In order to ensure that any political activity by a for-profit corporation accurately reflects the interests and opinions of investors who have given it money, all political activity by corporate interests should take place through a political committee subject to disclosure requirements and individual contribution limits. Corporate political committees can then promote viewpoints of investors and offer an alternative voice to labor unions.

Contrary to some claims that labor unions had an unfair advantage over corporations prior to the Supreme Court's ruling in *Citizens United v. FEC*, the ruling struck down a provision in federal law that barred both unions and corporations from spending general treasury money on federal elections. Pre-*Citizens United*, labor unions and corporations were able to spend money on candidate races only by using political committees to raise voluntary, limited funds from members and shareholders. In the post-*Citizens United* era, the general treasury funds of both corporations and unions are wide open.

Rather than pretending that either corporations or labor unions are “people” with constitutional rights, the right way to prevent one particular “special” interest from drowning out other voices in an election is to restrict political committees to only spending money on campaigns in the districts where their donors' funds originated. The “can't vote, can't contribute” rule would preserve freedom of association but also ensure that opposing viewpoints aren't overpowered by out-of-district money from special interests.

### **Red Herring #1: Limiting Campaign Money Will Give Us Celebrity Candidates**

Unlike the outright false claims that getting big money out of politics is impossible or will insulate incumbents, it is true that candidates who are popular with the public will have an advantage over candidates who are unpopular or unknown if the unknown candidates can't take a hundred thousand dollar check from a single donor. But this isn't a reason to oppose limits.

It's first worth remembering that by the time your debate opponent is making this argument, they are conceding that campaign finance rules do have an impact—they do work.

Because they work, they will, as with any rules, advantage some people and disadvantage others. Rules against roughing the passer in football advantage quarterbacks and disadvantage defensive linemen, for instance, but they benefit the game overall.

If we limit what unknown candidates can spend in advertising, it will tend to advantage people who are already highly regarded either because they are in elected office, are family members of former officeholders, have accomplished something significant in business or the military, or are a celebrity. Celebrities may or may not be particularly qualified to be elected officials, but they do come from all sides of the political spectrum and they have an advantage no matter what the campaign finance rules are.

Fred Thompson (a conservative Republican), Al Franken (a liberal Democrat), and Arnold Schwarzenegger (a centrist Republican) all had an advantage running for office because of their name recognition earned through acting. Dwight Eisenhower rode his military renown into the White House. Elizabeth Warren was elected to the Senate only after becoming known during her unsuccessful nomination to head the Consumer Financial Protection Bureau.

But not all well-known people are viewed favorably—just look at Rosanne Barr's presidential campaign or Gary Coleman's campaign for California governor.

Famous people will have an advantage no matter what the rules are about money in politics. The question is, do we want to give an advantage to both famous and non-famous people who take positions that cater to wealthy donors, or do we want a campaign finance system that encourages candidates to build their reputations through grassroots support and grassroots means to communicate with voters, such as

town hall meetings, unchoreographed media interviews, voters' guides, and publicly financed campaigns.

Given the choice, I suspect most Americans would prefer a legislature of well-known, respected civic leaders as opposed to a group of no-name moneygrubbers who bought their way into office. But this is a policy choice that different states, and different generations of Americans, will have to make for themselves. It is not something our Constitution requires one way or the other.

## **Red Herring #2: Campaign Limits Will Make the News Media More Powerful**

Some politicians complain that if you reduce their ability to run ads, it will only make media sources like newspapers more powerful. This is not only true, enhancing the free press is in fact the whole point. By limiting paid speech, voters will have more time and brain capacity to consider the free speech they read in the newspaper and other media sources. This puts the voter in control of what speech they decide to listen to, not the politicians.

Media consolidation is a real concern. For example, California newspaper barons such as Harry Chandler of the *Los Angeles Times* and William Randolph Hearst of the *San Francisco Examiner* used their near monopoly on speech dissemination to defeat Upton Sinclair's antipoverty campaign for governor in 1932. Sinclair didn't have any billionaire backers or alternative media outlets to offset this concentrated media power. In modern times, Rupert Murdoch has wielded considerable influence through his media empire. He's also a mega-donor to candidates and parties.

But having billionaires fund ad campaigns does not solve the problem. The solution to media power is not to give

politicians huge campaign war chests to run ads in those same media publications. Rather, it is to ensure that citizens can choose from a broad range of news sources. We need to know who owns media outlets and whether their owners, or other big donors, heavily subsidize and control the news content.

We need rules to prevent media consolidation in the hands of a few powerful corporations and rules to keep the Internet free and open. We need public radio and public TV stations that can invest in news coverage and maintain independence from commercial advertisers. We should enforce the public interest obligations that broadcasters owe us in return for use of the public airwaves to disseminate their programs. We could insist that they provide local news coverage and provide free airtime to serious candidates and parties that demonstrate a legitimate degree of support.

### **Red Herring #3: Campaign Limits Will Empower Parties**

Just as you may call a friend or family member who you trust for advice on how to vote, for most of our history Americans have relied upon political parties and other civic associations for their endorsements and recommendations on who to vote for. Making parties and politicians more responsive to people than to dollars is not necessarily bad.

Although Americans are frustrated when politicians refuse to compromise and get anything accomplished due to partisanship (something that seems to have only gotten worse in recent years as campaign spending exploded), this does not mean that political parties are evil. Parties allow people who share similar political viewpoints to quickly, and

inexpensively, identify candidates who also share those viewpoints.

But political party bosses sometimes have wielded undue power in determining who runs for office and who wins elections. As with media consolidation, the solution is not to give individual candidates huge campaign war chests that overpower opponents but to ensure that voters have meaningful choices among different parties that are all funded by small donors. This not only would ensure we have vibrant minor parties, such as the Libertarian or Green parties, but it would help break the lock on power that the Democratic and Republican parties have enjoyed for years in many states where there isn't even a viable second political party.

One-party rule not only breeds arrogance and complacency among elected officials, it reduces the information that a party label provides to a voter. When every politician in the post-Reconstruction South was a Democrat, it was harder to tell the differences between candidates. Similarly, it means less to be a Republican in Wyoming or a Democrat in Chicago today simply because almost all politicians are in the dominant party and many races are uncontested.

When only one candidate's name appears on the ballot, we have democracy in name only.

If we provide voters real choices in political parties and through issue-based civic organizations, and if we ensure that those institutions maintain internal democratic processes, then the power of parties and organizations will represent the power of people. Having that power offset the power of big money advertisements is something to celebrate, not fear.



## What you can do: Ask before you donate

When any candidate asks *you* for your vote, or for a contribution, ask *them* what they are actively doing to reverse the Supreme Court's ruling in *Citizens United*.

---

## Bonus Chapter C

# Real Threats to Free Speech

## How Government Stifles Regular People While Letting Billionaires Shout

Money is not free speech and the Roberts Court is wrong to pretend otherwise. Rather than allowing billionaires to buy elections, the Court could and should be doing more to protect free speech for ordinary Americans.

But the debate over money in politics risks overshadowing what we mean by “free” speech in the first place.

### Why We Need Offensive Speech

Saïd and Chérif Kouachi were offended by what Stéphane “Charb” Charbonnier had to say about Islam. So they shot him.

The Kouachi brothers killed Charbonnier and eleven other people at Paris’s *Charlie Hebdo* satirical newspaper on January 7, 2015. The cold-blooded massacre was a stark reminder of how intolerant people can be of one another’s beliefs and of how intolerance can lead to violence.

*Charlie Hebdo*’s cartoons frequently offended people. The cartoonists lacked respect for people of many religions—including Christians, Jews, and Muslims.

The United States Constitution recognizes a universal right to say (and draw) offensive things. Americans also have a right to hold beliefs that many of us might find objectionable—the First Amendment protects the freedoms of religion, speech, and press in the same sentence. Not everyone shares these values, but Americans have more authority upholding them around the world when we also adhere to them at home.

Americans protect our freedom to believe what we want and to openly talk about those beliefs partly out of a narrow self-interest. We don't want the government censoring other people because someday we might find the government wants to censor us. We protect everyone's liberty when we stand up for the rights of just a few people with controversial, and even offensive, viewpoints.

But just as important as each person's right to express his or her own beliefs is the public's need to hear controversial viewpoints that challenge conventional wisdom. Sometimes the heretics turn out to be right, even if they do offend our sensibilities at first.

Galileo had an inalienable right to his heretical conclusion that the earth revolved around the sun instead of the other way around. But far beyond his own rights, the citizens of the world were also better off for hearing Galileo's ideas, even though the Catholic Church tried to silence him. Galileo's viewpoint, once held by a small minority of people, eventually won the day.

He was right.

## **Government Censorship from the Gulag to Now**

It is tempting for a tyrannical government to maintain power by preventing people from speaking their minds.

The Soviet Union forced some fourteen million of its own citizens into “Gulag” prison camps from 1929 to 1953. Some were criminals, but many were political prisoners such as Aleksandr Solzhenitsyn.

The Soviets used the Gulag camps as a system of forced labor to drive the economy, but also as a threat to suppress freedom of conscience and freedom of speech. Solzhenitsyn detailed the prison camps in a secret book, *The Gulag Archipelago*, which was eventually smuggled out of the country and printed in the West. Copies of Solzhenitsyn’s book, often handwritten, were smuggled back into Russia and read surreptitiously in kitchens and living rooms.

It took decades, but eventually his fellow citizens and the entire world heard what Aleksandr Solzhenitsyn had to say. His truth helped bring down the Soviet Union by reducing its legitimacy in the eyes of other countries, and more importantly in the eyes of its own people.

Even today, autocratic regimes jail people for pointing out that the emperor has no clothes. In 2015, Egypt sentenced Alaa Abdel Fattah, a 33-year-old blogger, to five years in prison for protesting without government permission.<sup>49</sup> Turkish police arrested a former Miss Turkey winner for posting a satirical poem on social media that prosecutors said was critical of Turkish president Recep Tayyip Erdoğan.<sup>50</sup> Russia sent two members of the rock band Pussy Riot to prison camps—the modern equivalent of the Gulag—for two years for protesting against Vladimir Putin inside a cathedral.<sup>51</sup> It insults people who have been jailed, or killed, for their political beliefs to equate billionaire campaign spending with the freedom of allowing someone to simply speak their mind.

“It insults people who have been jailed, or killed, for their political beliefs to equate billionaire campaign spending with the freedom of allowing someone to simply speak their mind.”

---

## **Subtler Censorship**

Beyond jailing political dissidents, modern authoritarian regimes have found other ways to restrict the flow of information and ideas.

China routinely blocks its citizens’ access to websites that contain news about China or social networking tools that allow citizens to organize themselves. There are workarounds to access the censored information, but even then Chinese authorities are able to make the banned sites operate maddeningly slow while providing fast connections to government-approved sites. China finds that it doesn’t need to arrest or physically block most people from seeking out political viewpoints; it is enough just to make it somewhat difficult to access information the government objects to while distracting them with other information.<sup>52</sup>

In a world of information overload, making some information plentiful and other information hard to find is all that is needed to keep the truth buried.

## **Censorship in the United States**

We’d like to think that the United States would never ban criticism of the government. But shortly after we were founded, the government did just that.

The Sedition Act of 1798 made it a crime to “write, print, utter, or publish . . . any false, scandalous, and

malicious writing against the government of the United States.” The Federalists who controlled the government at the time said these restrictions were necessary for national security—they had just seen the French Revolution and were worried another revolution could happen in America. No court rejected the Sedition Act—rather, Thomas Jefferson led a national movement against it that swept the Federalists out of power.

We have seen more recent attempts to suppress unpopular viewpoints that threatened the government. Fear of communism led to the First Red Scare from 1919 to 1920, including a second sedition act that made “disloyal, scurrilous, or abusive” language about the government illegal. Again, the Supreme Court upheld the censorship.

In the 1950s, during the height of the Second Red Scare, Senator Joe McCarthy dragged people before his congressional committee purely for their potential political beliefs as communists. Many people were fired or blacklisted, their careers ruined, as a result.

More recently, after demonstrations and riots broke out protesting a 2014 police shooting in Ferguson, Missouri, the Federal Aviation Administration blocked news helicopters from filming events from the air.<sup>53</sup> Eleven journalists were arrested while covering the protests.<sup>54</sup>

The Secret Service regularly cordons off political protesters during any presidential trip into a so-called “free speech zone” that is usually located so far away from the presidential motorcade that neither the president nor the press corps can actually see or hear the “free speech.” There is a legitimate need to protect the safety of our president, but security protocols as well as the phalanx of White House

staff that screen every letter, phone call, and e-mail intended for the president have reached a point where it is essentially impossible for most ordinary Americans to have their speech heard by our nation's most important political official. Early presidents, including Lincoln and Jefferson, would routinely meet with visitors to the White House, who often traveled for days for the chance to talk directly with the president. If our Supreme Court was truly interested in the freedom of speech, maybe it could require presidents and members of Congress to hold office hours, as college professors do, to make themselves accessible to regular voters who have been screened for security in exchange for upholding restricted access at virtually all other times for security reasons.

But rather than expanding free speech, the Roberts Court seems intent on restricting it. Almost unbelievably, a federal court recently upheld a restriction on protesting outside the U.S. Supreme Court chambers. Even though these protests do not disturb court proceedings, the judges want to silence any dissent to their rule.

## **Subtly Controlling Speech in the United States**

Unlike in China, the US government does not control the Internet. Corporations do.

But just as China's government has managed to slow down access to Internet sites it doesn't like and speed up access to sites it approves of, corporations want to create a fast lane and a slow lane for Internet content in the United States. Because there is so much speech, video, music, and photographs overwhelming the Internet, providers of online service want to make some of that content go faster—for websites willing to pay a premium.

If you thought the US courts would be on the lookout for and strike down any such corporate scheme to reduce free speech in the United States, you would be wrong.

In 2014, the federal courts ruled that due to a technicality, the Federal Communication Commission (FCC) could not require Internet service providers to be neutral in the content of websites they provide access to. In February of 2015, the FCC fixed that technicality and issued strong “net neutrality” rules. Huge telecommunication firms immediately began lobbying Congress to rewrite and weaken those rules and filed more than a half-dozen lawsuits to block the rules. If the telecom companies prevail, our government may soon allow some Internet speech (that the listener is paying for) to be slowed down by corporations so that other speech (paid for by the speaker so corporations may profit) can be enhanced—precisely what the *Buckley v. Valeo* ruling said we cannot do with campaign spending. (Recall the Supreme Court’s words in that case, as noted in chapter 4: “The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.”) Just like in China, someone will decide for you what information is easy to get and what is hard to find.

Media conglomerates have also lobbied the Federal Communications Commission to weaken rules against media consolidation that once prevented a single corporation from monopolizing news service in any given city. The FCC complied, approving megamergers and weakening local ownership requirements for TV and radio stations, thus reducing our choices in the free press instead of enhancing them.<sup>55</sup>

Major news corporations are also increasingly prone to self-censorship in order to curry favor with the government.

As long as they play nice, their reporters are granted access to influential White House staff or even the president, or are allowed to embed with troops in combat. The mainstream news media, which failed to question official White House claims that Iraq was harboring significant weapons of mass destruction, voluntarily agreed not to publish images of US casualties during the Iraq War.<sup>56</sup> News outlets that are too critical of the president don't get access to White House news sources or are punished in other ways.

But the problem extends beyond self-censorship. The United States—just like Russia, China, Egypt, and other totalitarian regimes—still jails people for reporting the news. More than a dozen US news reporters have been jailed for refusing to reveal a confidential news source.<sup>57</sup> The group Reporters Without Borders ranked the United States forty-ninth out of 180 countries in its 2015 ranking of press freedom worldwide.<sup>58</sup> If the Supreme Court really wanted to protect our freedoms, media rights would be a good place to focus its attention.

## **Privatizing the Public Square**

Apart from our constricted news media, our ability to simply talk to each other face-to-face is shrinking every day. Of course, some restrictions are reasonable. You cannot yell fire in a crowded movie theater when there is no fire or otherwise unnecessarily incite a crowd to panic or violence. The movie attendees' rights to public safety trump your rights to speak something that is untrue.

Likewise, neither can you interrupt a movie to give a political speech. The theater would remove you for trespassing. Their property rights trump your rights of free speech.

But as the public square has become increasingly privatized in the form of shopping malls and giant box stores, this

principle of banning political speech on private property is becoming a huge barrier to civic engagement. In many states, it is practically impossible to exercise the First Amendment right to petition the government because supermarkets, shopping malls, and nearly all locations where people now gather prohibit people from circulating petitions. I personally have been escorted off a Kmart parking lot for circulating a petition despite having a letter from the state attorney general authorizing that form of political speech. Even the US Postal Service now bans people from circulating petitions on its property.

It's not just commercial properties. Gated communities and locked-down condominiums and apartment complexes make it increasingly impossible to go door-to-door to engage your neighbors in politics or even register them to vote. If you can't go door-to-door and you can't engage people in the public square, just where can you use only your voice to speak these days?

If our Supreme Court were truly interested in protecting the free speech of ordinary Americans, it might take a closer look at the balance of property rights of huge businesses that are open to the public and the free speech rights of citizens who want to speak to one another in places where the public gathers. Instead, our courts are allowing severe restrictions on the speech of most citizens and letting the wealthy few purchase political speech that only they can afford.

### **Liberal Censorship on Campus**

When students at Rutgers University learned that former secretary of state Condoleezza Rice was invited to speak on their campus, they didn't want to listen. After student protests and sit-ins, Rice declined the invitation. The Rice example is part of a growing trend to deny controversial speakers a chance to

be heard in the very places vibrant and dissenting conversations should take place—our universities.<sup>59</sup>

In an attempt to rein in cyberbullying, most campuses now suspend or expel students for posting hateful or hurtful speech online. Although there are legitimate concerns about threats, bullying, and sexual assault aimed at specific individuals, some college rules go even further. Many campuses have rules that silence newspaper articles that are offensive but not violent, even awkward or botched attempts at humor.<sup>60</sup> What does this teach students about the need to balance security and civility interests with freedom of speech? We ought not condone hatred or intolerance, but just as the cartoons in *Charlie Hebdo* offended many religious people, trying to control what people are allowed to say, and think, may not be the wisest approach to combating bigotry and hatred. Rather, we should speak back—with our voices, not our dollars.

## **Breaking Out of Our Information Silos**

It is increasingly easy in the United States to move to a community of like-minded people, engage socially online with people who share your political viewpoints, and consume news programs that present only information that reinforces your beliefs while leaving out any contrary information or opinions.

Chapter 1 in *When Money Talks* discussed how we need information filters to manage a deluge of information overload, which could prevent us from hearing anything. But these filters can also make it easy to block out anything contrary to our current beliefs. Increasingly, search engines and websites are providing us with personalized information

based upon records of what we've previously searched for and read, or what our friends are saying.<sup>61</sup>

These filters can make us less wise by depriving us of opposing, controversial, or even offensive information that we nonetheless would be better off considering. We might never hear the next Galileo because he won't pop up in our search engines or be "liked" in our friends' social media posts—nor will he have a billion-dollar ad campaign.

## **The New Censorship of Sold Speech**

Rather than blocking anyone from talking by threatening them with fines and imprisonment, the new censorship of *Citizens United* lets everyone spend money to "talk" instead of talking with their mouths—but only a few can spend enough to be heard. Like granting permission to quietly recite poetry during a rock-and-roll-concert, the doctrine of big money as speech ensures nobody can hear political dissidents but avoids calling attention to their cause as jailing them for their beliefs would.

Overt censorship increasingly backfires, but the new censorship that drowns out dissent works better than ever.

The Kouachi brothers tried to silence *Charlie Hebdo* by killing twelve of its staff, but they failed. The next edition of *Charlie Hebdo* sold seven million copies—far more than the normal print run of sixty thousand.

The Soviets too failed to silence Aleksandr Solzhenitsyn. Indeed, speech in the USSR was so quiet that it was possible for one brave voice to stand out and be noticed—even though there was no ad campaign to promote Solzhenitsyn's banned books.

Across the world, citizens have become resistant to the most blatant attempts to silence us. Indeed, the more we know that government wants to shut someone up, the harder we work to find out what they are saying.

But one wonders, could Aleksandr Solzhenitsyn be heard in the United States today if he wasn't backed by a group of billionaire donors? Could Thomas Paine be heard?

An organization called Project Censored tracks twenty-five stories each year that journalists report but that most Americans never hear because they aren't covered in the mainstream news or backed by a multimillion-dollar ad campaign. Because we have largely stopped buying newspapers, the newspaper industry no longer has the resources to hire investigative reporters to keep a close eye on our government or major corporations. Cable news programs are losing viewers.

Our news industry may have killed its golden goose by chasing away readers and viewers who are not only fed up with political ads but also convinced they no longer need news. Why should we spend precious time following current events when there is little we can do to influence our government? On balance, our modern information systems of sold speech and infotainment may be more effective at drowning out dissent than authoritarian regimes have been at silencing it.

## **Buying Your Own Diverse News and Views**

With so much at stake, we must not only protect but also expand free speech for real people. Our history has shown we cannot always rely on the Congress, the president, or even the Supreme Court to protect our freedom of speech.

Each branch of government has readily trampled on our rights or turned a blind eye while others suppressed free speech and the free press.

We have to do this for ourselves.

If you don't want to bother running your own government, don't worry—you can let someone else run it for you. But remember, they may not give it back if you don't like how they're running it.

Likewise, if you don't want to buy your own news and information, you can let someone else pick up the tab through advertising and subsidized news outlets. The trouble is, they won't tell you what they're leaving out.

Power is responsibility.

If we want ordinary people to have the power in our society, then we ordinary people need to take responsibility for informing ourselves.

Subscribe to your local newspaper and a national one with different views and coverage. Invest in a cable subscription or Internet service and watch both sides debate the issues of the day on C-SPAN. Listen to (and support) your public radio and public TV stations, which still do have resources to conduct some investigative journalism. Subscribe to a conservative and a liberal magazine (after finding out who pays to publish them) to get diverse viewpoints on the issues of the day.

Read a book (and lend this one to a friend).

Expose yourself to speech that you disagree with—even speech you find offensive. Do your own research about candidates and issues on your ballot while turning off every TV ad and recycling every junk mailer. Follow like-minded people *and* people you differ with on social media—see if there's

one out of every twenty things they say you can learn something from.

You have the tools you need to make free speech work. Use them.



---

### **What you can do: Buy your own news**

Actively seek out information rather than relying on media organizations or advertisers to spoon-feed it to you. If knowledge is power, it's worth paying for, so don't only rely on "free" sources of news that others are paying for you to read.

---

# Notes

1. Edward Gibbon, *The Decline and Fall of the Roman Empire*, vol. 1, chapter 5.
2. Zephyr Teachout, *Corruption in America* (Cambridge: Harvard University Press, 2014), p. 178. Teachout notes that votes were sold for as much as \$250 to \$500 in today's dollars.
3. Jacob Hacker and Nathaniel Lowentheil, "How Big Money Corrupts the Economy," *Democracy: A Journal of Ideas*, issue #27, winter 2013, <http://www.democracyjournal.org/27/how-big-money-corrupts-the-economy.php?page=all>.
4. Melvin Urofsky, "Campaign Finance Reform before 1971" *Albany Government Law Review*, 2008, <http://www.albanygovernmentlawreview.org/archives/pages/article-information.aspx?volume=1&issue=1&page=1>.
5. Jeffrey Toobin, "Money Unlimited" *New Yorker*, May 21, 2012, <http://www.newyorker.com/magazine/2012/05/21/money-unlimited>.
6. For more on this history, see Adam Winkler, "Other People's Money: Corporations, Agency Costs, and Campaign Finance Law," UCLA School of Law Research Paper No. 05-28, [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=805504](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=805504).
7. Teachout, *Corruption in America*, p. 188.
8. *Chicago Daily Tribune*, August 6, 1910.
9. C. O. Gardner, "The Working of the State-Wide Referendum in Illinois," *American Political Science Review*, vol. 5, no. 3, August 1911, p. 417, [http://www.jstor.org/stable/1944869?seq=24#page\\_scan\\_tab\\_contents](http://www.jstor.org/stable/1944869?seq=24#page_scan_tab_contents).
10. City Club of Chicago, *City Club Bulletin*, vol. 3, no. 33, November 2, 1910, p. 374. At least Minnesota, Massachusetts, and Oregon had mandatory spending limits as of 1910.

11. Montana Secretary of State election results, November 1906, [http://sos.mt.gov/Elections/Ballot\\_Issues/initandref2010tbl.pdf](http://sos.mt.gov/Elections/Ballot_Issues/initandref2010tbl.pdf).
12. Marc Yacker, "Major Events in the History of Federal Campaign Reform in the United States," Congressional Research Service, Library of Congress, March 7, 1974, p. 2.
13. Statement of John Gardner, president of Common Cause, before the Subcommittee on Elections of the Administration Committee of the House of Representatives, *Congressional Record*, November 29, 1973, p. 389.
14. "Changes Made in Campaign Finance Laws," *CQ Almanac 1966*, pp. 484–496, <http://library.cqpress.com/cqalmanac/document.php?id=cqal66-1301851>.
15. *Ibid.*
16. Statement of John Gardner, president of Common Cause, before the Subcommittee on Elections of the Administration Committee of the House of Representatives, *Congressional Record*, November 29, 1973, p. 388.
17. "Campaign Spending in 1972 Hits Record of \$400 million," *New York Times*, November 18, 1972.
18. Statement of John Gardner to hearings of the Communications Subcommittee of the Senate Committee on Commerce, March 7, 1973, p. 66.
19. Statement of John Gardner, president of Common Cause, before the Subcommittee on Elections of the Administration Committee of the House of Representatives, *Congressional Record*, November 29, 1973, p. 388.
20. Opening statement of Senator John Pastore at meetings of the Communications Subcommittee of the Senate Committee on Commerce, March 7, 1973.
21. Statement of John Gardner, president of Common Cause, to hearings of the Communications Subcommittee of the Senate Committee on Commerce, March 7, 1973, p. 62.
22. Center for Responsive Politics, "A Brief History of Money in Politics," 1995.
23. Joseph P. Albright, "The Price of Purity," *New York Times*, September 1, 1974, p. 12, as cited in Joshua Rosenkranz, *Buckley Stops Here* (New York: Century Foundation Press, 1998).
24. Carl Bernstein and Bob Woodward, "Bug Suspect Got Campaign Funds," *Washington Post*, August 1, 1972,

- [http://www.washingtonpost.com/politics/bug-suspect-got-campaign-funds/2012/06/06/gJQAYtjKJV\\_story.html](http://www.washingtonpost.com/politics/bug-suspect-got-campaign-funds/2012/06/06/gJQAYtjKJV_story.html).
25. John Gardner, testimony, March 7, 1973.
  26. *Congressional Record*, October 8, 1974, p. 34383.
  27. John Nichols and Robert McChesney, *Dollarocracy* (New York: Nation Books, 2013), p. 104.
  28. See <https://www.revisor.mn.gov/data/revisor/law/1980/0/1980-587.pdf> and [http://ballotpedia.org/Minnesota\\_Campaign\\_Spending\\_Limits,\\_Amendment\\_1\\_%281980%29](http://ballotpedia.org/Minnesota_Campaign_Spending_Limits,_Amendment_1_%281980%29).
  29. Larry Makinson, "The Price of Admission," Center for Responsive Politics, 1993.
  30. Testimony of Ann McBride, Common Cause, for Senate Rules Committee, February 1, 1996.
  31. In 1990, twenty-four candidates raised at least \$1,000. In 1994, forty candidates raised \$1,000 or more, despite much lower limits on the size of each contribution.
  32. Testimony of Derek Cressman of Campaign Finance Reform before the Senate Rules Committee, March 29, 2000.
  33. Although contributions from labor unions and corporations declined under the limits, those from individuals went from \$723,325 in 1992 to \$1,383,972 in 1996.
  34. Oregon Secretary of State, "The Effect of 1994 Ballot Measure 9 on Legislative Elections in Oregon," April 8, 1997.
  35. Research published in the Colorado Springs *Gazette Telegraph*, November 22, 1998.
  36. Testimony of Derek Cressman of Campaign Finance Reform before the Senate Rules Committee, March 29, 2000.
  37. *Ibid.*
  38. E-mail from Dennis Burke relaying Doris Haddock's court statement on May 24, 2000, <http://www.1215.org/lawnotes/lawnotes/grannyd.htm>.
  39. Larry Makinson, "The Big Picture: The Money Behind the 2000 Elections," Center for Responsive Politics, September 2001.
  40. US PIRG, "Stop the Increase of Big Money in Politics," 2001.
  41. US PIRG, "Look Who's Not Coming to Washington," January 2001.
  42. Larry Makinson, "The Big Picture: The Money Behind the 2000 Elections," Center for Responsive Politics, September 2001.

43. David Hess, "Campaign Finance Bill Passed by House," *Philadelphia Inquirer*, August 4, 1998, [http://articles.philly.com/1998-08-04/news/25727144\\_1\\_campaign-finance-bill-martin-t-meehan-senate-campaign-finance-bill](http://articles.philly.com/1998-08-04/news/25727144_1_campaign-finance-bill-martin-t-meehan-senate-campaign-finance-bill).
44. *Congressional Record*, March 13, 1997.
45. Gary Jacobson, *Money in Congressional Elections* (New Haven, CT: Yale University Press, 1980).
46. Center for Responsive Politics 2014 election overview, as viewed on 2/16/15, <https://www.opensecrets.org/overview/incumbts.php>.
47. Prior to the 2014 elections, Gallup measured congressional approval at 14 percent. See <http://www.gallup.com/poll/175676/congress-approval-sits-two-months-elections.aspx>.
48. Thomas Stratmann, "Do Low Contribution Limits Insulate Incumbents from Competition?" *Election Law Journal*, vol. 9, no. 2, 2010, [http://www.gmu.edu/centers/publicchoice/faculty%20pages/stratmann/vitae%20files/Low\\_Contribution\\_Limits\\_2010.pdf](http://www.gmu.edu/centers/publicchoice/faculty%20pages/stratmann/vitae%20files/Low_Contribution_Limits_2010.pdf), and US PIRG Education Fund, "Contribution Limits and Competitiveness," October 2002, [http://www.calpirg.org/sites/pirg/files/reports/ContributionLimits10\\_1\\_02.pdf](http://www.calpirg.org/sites/pirg/files/reports/ContributionLimits10_1_02.pdf).
49. David Kirkpatrick and Merna Thomas, "Egyptian Blogger Sentenced to 5 Years in Prison for Protest Role," *New York Times*, February 23, 2015, [http://www.nytimes.com/2015/02/24/world/middleeast/blogger-who-led-protests-is-given-a-five-year-sentence-in-egypt.html?\\_r=0](http://www.nytimes.com/2015/02/24/world/middleeast/blogger-who-led-protests-is-given-a-five-year-sentence-in-egypt.html?_r=0).
50. Associated Press, "Former Miss Turkey Accused of Insulting President Erdogan, Faces Prison," February 25, 2014, <http://www.foxnews.com/world/2015/02/25/former-miss-turkey-accused-insulting-president-erdogan-faces-prison/>.
51. Nastassia Ashtrasheuskaya, "Russia's Jailed Punk Rock Band Members Sent to Prison Camps," Reuters, October 22, 2012, <http://www.reuters.com/article/2012/10/22/entertainment-us-russia-pussyriot-prison-idUSBRE89L0JU20121022>.
52. Beibei Bao, "How Internet Censorship is Curbing Innovation in China," *Atlantic*, April 22, 2013, <http://www.theatlantic.com/china/archive/2013/04/how-internet-censorship-is-curbing-innovation-in-china/275188/>.
53. *USA Today*, "US Approved Ferguson No-Fly Area to Block Media," November 2, 2014, <http://www.usatoday.com/story/news/nation/2014/11/02/ferguson-flight-restrictions-helicopters-protests/18380867/>.

54. Brian Stelter, “6 More Journalists Arrested in Ferguson Protests,” *CNN*, August 19, 2014, <http://www.cnn.com/2014/08/19/us/ferguson-journalists-arrested/>.
55. See generally Nichols and McChesny, *Dollarocracy*.
56. Pat Arnow, “From Self-Censorship to Official Censorship”, Fairness and Accuracy in Reporting, April 1, 2007, <http://fair.org/extra-online-articles/from-self-censorship-to-official-censorship/>.
57. Reporters Committee for Freedom of the Press, “Paying the Price: A Recent Census of Reporters Jailed or Fined for Refusing to Testify,” <http://www.rcfp.org/jailed-journalists>.
58. Reporters Without Borders, 2015 World Press Freedom Index, <https://index.rsf.org/#/>.
59. The organization FIRE has documented an increase in “disinvitations” of political speakers on college campuses since 2000. See <http://www.thefire.org/disinvitation-season-report-2014/>.
60. Nick Gillespie, “Welcome to College—Now Please Stop Thinking,” *Time*, September 10, 2014, <http://time.com/3318516/college-free-speech-censorship-humor/>.
61. Eli Pariser, *The Filter Bubble* (New York: Penguin Press, 2011).



## **Berrett-Koehler** Publishers

Berrett-Koehler is an independent publisher dedicated to an ambitious mission: *connecting people and ideas to create a world that works for all.*

We believe that to truly create a better world, action is needed at all levels—individual, organizational, and societal. At the individual level, our publications help people align their lives with their values and with their aspirations for a better world. At the organizational level, our publications promote progressive leadership and management practices, socially responsible approaches to business, and humane and effective organizations. At the societal level, our publications advance social and economic justice, shared prosperity, sustainability, and new solutions to national and global issues.

A major theme of our publications is “Opening Up New Space.” Berrett-Koehler titles challenge conventional thinking, introduce new ideas, and foster positive change. Their common quest is changing the underlying beliefs, mindsets, institutions, and structures that keep generating the same cycles of problems, no matter who our leaders are or what improvement programs we adopt.

We strive to practice what we preach—to operate our publishing company in line with the ideas in our books. At the core of our approach is stewardship, which we define as a deep sense of responsibility to administer the company for the benefit of all of our “stakeholder” groups: authors, customers, employees, investors, service providers, and the communities and environment around us.

We are grateful to the thousands of readers, authors, and other friends of the company who consider themselves to be part of the “BK Community.” We hope that you, too, will join us in our mission.

### **A BK Currents Book**

This book is part of our BK Currents series. BK Currents books advance social and economic justice by exploring the critical intersections between business and society. Offering a unique combination of thoughtful analysis and progressive alternatives, BK Currents books promote positive change at the national and global levels. To find out more, visit [www.bkconnection.com](http://www.bkconnection.com).



# Berrett-Koehler Publishers

Connecting people and ideas  
to create a world that works for all

Dear Reader,

Thank you for picking up this book and joining our worldwide community of Berrett-Koehler readers. We share ideas that bring positive change into people's lives, organizations, and society.

**To welcome you, we'd like to offer you a free e-book.** You can pick from among twelve of our bestselling books by entering the promotional code **BKP92E** here: <http://www.bkconnection.com/welcome>.

When you claim your free e-book, we'll also send you a copy of our e-newsletter, the *BK Communiqué*. Although you're free to unsubscribe, there are many benefits to sticking around. In every issue of our newsletter you'll find

- A free e-book
- Tips from famous authors
- Discounts on spotlight titles
- Hilarious insider publishing news
- A chance to win a prize for answering a riddle

Best of all, our readers tell us, "Your newsletter is the only one I actually read." So claim your gift today, and please stay in touch!

Sincerely,

Charlotte Ashlock  
Steward of the BK Website

Questions? Comments? Contact me at [bkcommunity@bkpub.com](mailto:bkcommunity@bkpub.com).