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## Combating Campaign Finance Corruption in the United States: Why a Grass Roots Approach Is the Only Solution

Chelsea Bellew

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## Combating Campaign Finance Corruption in the United States: Why a Grass Roots Approach Is the Only Solution

### Cover Page Footnote

Thank you to the University of Dayton Law Review for publishing my article.

# COMBATING CAMPAIGN FINANCE CORRUPTION IN THE UNITED STATES: WHY A GRASS ROOTS APPROACH IS THE ONLY SOLUTION

Chelsea Bellew\*

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*“I will tell you that our system is broken. I gave to many people, before this, before two months ago, I was a businessman. I give to everybody. When they call, I give. And do you know what? When I need something from them two years later, three years later, I call them, [and] they are there for me.”<sup>1</sup>*

## I. INTRODUCTION

On January 21, 2015, a group of angry protestors disrupted a session held by the Supreme Court of the United States to condemn the ruling in *Citizens United v. Federal Election Commission* (“FEC”) on its fifth anniversary.<sup>2</sup> Eight protestors interrupted the start of the session by uttering

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\* Licensed Florida Attorney practicing Labor and Employment Law in South Florida at Scott, Wagner & Associates; Ohio Northern University, J.D., LL.M. in Democratic Governance and the Rule of Law, 2015; Denison University, B.A. in Economics, B.A. in International Studies, 2012. Thank you to the University of Dayton Law Review for publishing my article.

<sup>1</sup> *Transcript: Read the Full Text of the Primetime Republican Debate*, TIME, <http://time.com/3988276/repUBLICAN-debate-primetime-transcript-full-text/> (last updated Aug. 11, 2015, 4:30 PM) (quoting Donald Trump from a full transcript at the Republican Debate in Cleveland).

<sup>2</sup> Mark Walsh, *View from the Courtroom: Disruption from the Gallery on the Fifth Anniversary of Citizens United*, SCOTUSBLOG (Jan. 21, 2015, 12:36 PM), <http://www.scotusblog.com/2015/01/view-from-the-courtroom-disruption-from-the-gallery-on-5th-anniversary-of-citizens-united/>.

rehearsed statements during announcements from the Justices.<sup>3</sup> They were immediately escorted outside the building following each outburst and were charged with violating federal law and court rules.<sup>4</sup> While the disruption was short-lived, it drew attention to several controversial Supreme Court decisions, like *Citizens United*.<sup>5</sup> This group in particular, named 99Rise, is not the only group to question the wisdom of such a decision.<sup>6</sup>

In 2015, Senator Bob Menendez was indicted for public corruption charges due to a bribery scandal, which included using corporate political spending from a Super Political Action Committee (“Super PAC” or “PAC”) that was used to support his candidacy.<sup>7</sup> The indictment from the Department of Justice tied contributions from Dr. Salomon Melgen’s Vitreo-Retinal Consultants that were given to a Super PAC for Menendez’s reelection in 2012,<sup>8</sup> to favors that the Senator made to benefit Dr. Melgen’s business after he was reelected.<sup>9</sup> Dates closely tie actions from the Senator in favor of Melgen after receipt of a significant amount of funds from Melgen to the Senate Majority PAC.<sup>10</sup> Menendez is accused of peddling influence to obtain visas for Melgen’s girlfriends and of using government money to help his largest donor in his re-election effort.<sup>11</sup> While these actions are clearly damning for the Senator, the ruling in *Citizens United* and *McCutcheon v. FEC* made these exchanges possible by limiting the definition of corruption while scaling back regulations created to limit the amount of corruption present in federal campaigns.<sup>12</sup> Both decisions found campaign financing regulations aimed at preventing *quid pro quo* corruption to be unconstitutional under the Free Speech Clause of the First Amendment.<sup>13</sup> The Supreme Court found the interest in allowing donors to support candidates and causes that they favor to be an important First Amendment interest that must be protected in elections.<sup>14</sup>

To combat corruption in campaign financing, transparency is incredibly important. When the Supreme Court removed spending limits for

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *See id.*; Justin Levitt, *Confronting the Impact of Citizens United*, 29 YALE L. & POL’Y REV. 217, 217 (2010); Andrew Mayersohn, *Four Years After Citizens United: The Fallout*, OPENSECRETS BLOG (Jan. 21, 2014), <http://www.opensecrets.org/news/2014/01/four-years-after-citizens-united-the-fallout/>.

<sup>7</sup> Paul Blumenthal, *Bob Menendez Corruption Case Reads Like an Indictment of Citizens United Ruling, Too*, HUFFINGTON POST (Apr. 3, 2015, 4:46 PM), [http://www.huffingtonpost.com/2015/04/03/bob-menendez-citizens-united\\_n\\_7000350.html?](http://www.huffingtonpost.com/2015/04/03/bob-menendez-citizens-united_n_7000350.html?)

<sup>8</sup> R. SAM GARRETT, CONG. RESEARCH SERV., R42042, SUPER PACS IN FEDERAL ELECTIONS: OVERVIEW AND ISSUES FOR CONGRESS 3 (2013) (defining a super “political action committee” as an independent expenditure only political committee and independent expenditures are mostly purchases that consist of advertising for or against an identified candidate).

<sup>9</sup> Blumenthal, *supra* note 7.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *See* 558 U.S. 310, 357 (2010); *see also* 134 S. Ct. 1434, 1441–42 (2014).

<sup>13</sup> *See Citizens United*, 558 U.S. at 340; *see also McCutcheon*, 134 S. Ct. at 1462.

<sup>14</sup> *See Citizens United*, 558 U.S. at 339–40; *see also McCutcheon*, 134 S. Ct. at 1460–62.

corporations and aggregate limits for donors, big money in politics became a greater influence in determining which candidates are elected.<sup>15</sup> In addition, the creation of Super PACs, and a lack of donor disclosure or oversight on these entities, has given wealthy individuals and groups more access to the election system and therefore greater influence to effect election outcomes.<sup>16</sup>

This Article seeks to suggest a viable solution about how to curb the influence that wealthy individuals and corporations have in federal elections because this influence not only perpetuates a system of corruption, but also creates problems with transparency for voters.<sup>17</sup> When corporations and wealthy individuals can use money to influence elections, the congressional and presidential representatives that they spent money supporting are beholden to their donors, not their constituencies.<sup>18</sup> Part II will discuss recent Supreme Court precedent that changed campaign finance laws and the effect that these changes had on the deregulation of campaign finance that allowed Super PACs to flourish. Part III will examine international principles and comparison of trends in the regulation of campaign finance in the United States. Part IV will explain that the only means of combatting deregulation that allows corruption to take place in federal campaign finance is to empower the citizens of the United States with knowledge about which corporations and wealthy individuals are promoting or calling for defeat of specific candidates.

## II. BACKGROUND

Since 2010, the Supreme Court of the United States has decided several seminal cases that have had profound effects on campaign financing and the regulation of corruption in election donations to candidates.<sup>19</sup> These decisions have contributed to the deregulation of election contributions, which have permitted the influence of large donors in federal elections to grow exponentially.<sup>20</sup> As Senator Menendez's story illustrates, the Supreme Court's view that First Amendment interests in freedom of political speech should outweigh governmental interests in prohibiting corruption between donors and elected candidates could not have been based on accurate information about corruption in politics.<sup>21</sup> The Bipartisan Campaign Reform Act ("BCRA"), which was enacted in 2002, has been eviscerated by the

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<sup>15</sup> Levitt, *supra* note 6, at 233.

<sup>16</sup> See generally *Transparency International – USA Calls for Full Disclosure*, TRANSPARENCY INTERNATIONAL (Apr. 23, 2015), [http://www.transparency.org/news/pressrelease/transparency\\_internationalusacallsforfulldisclosureofsourcesofpoli](http://www.transparency.org/news/pressrelease/transparency_internationalusacallsforfulldisclosureofsourcesofpoli).

<sup>17</sup> BRUCE ACKERMAN & IAN AYRES, VOTING WITH DOLLARS 13 (2002); Levitt, *supra* note 6, at 230.

<sup>18</sup> ACKERMAN & AYRES, *supra* note 17, at 13; Levitt, *supra* note 6, at 230.

<sup>19</sup> See *Citizens United*, 558 U.S. at 319; see also *McCutcheon*, 134 S. Ct. at 1441.

<sup>20</sup> See *Citizens United*, 558 U.S. at 318–19; see also *McCutcheon*, 134 S. Ct. at 1442.

<sup>21</sup> *Citizens United*, 558 U.S. at 340; Walsh, *supra* note 2.

Supreme Court's decision.<sup>22</sup> These cases will be discussed in detail below because the precedent directly affects the solution that this Article will propose to the problem of corruption in campaign financing.<sup>23</sup>

#### A. *Citizens United v. FEC*

The *Citizens United* decision is one of the most controversial decisions that the Supreme Court has ruled upon during the last five years. This case was the first in a line of cases that would extend individual rights, like free speech, to corporations and was the beginning of campaign finance deregulation.<sup>24</sup> While some scholars argue that this decision would not have a great effect on democratic principles, it is clear that representative democracy in the United States has been undermined by the role corporations are now allowed to play in campaign elections.<sup>25</sup> A brief summary of the facts and reasoning that led to the decision to overrule important precedent is necessary to understand the effect of the ruling on campaign finance laws and individuals in the political arena.

*Citizens United* brought this case because—as a corporation—it was not permitted to make a movie, entitled “Hillary,” about Hillary Clinton available on television through video-on-demand before the 2008 primary elections.<sup>26</sup> *Citizens United* requested an injunction against the FEC because funding and playing the video would subject it to penalties under the BCRA.<sup>27</sup> The BCRA prohibits corporations from using “general treasury funds for express advocacy or electioneering communications.”<sup>28</sup> Because of this prohibition on the corporation’s use of funds, corporations are able to create PACs instead to hold funds for these purposes.<sup>29</sup>

The Supreme Court decided that “Hillary” was covered by section 441b of the BCRA.<sup>30</sup> The Court ruled that the movie “Hillary” was “express advocacy” because it chronicles her career and was used to dissuade voters from voting for her to be president.<sup>31</sup> This led the Court to consider whether this prohibition resulted in the chilling of political speech prohibited under the First Amendment.<sup>32</sup> The previous holdings in both *McConnell v. FEC*<sup>33</sup>

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<sup>22</sup> *Citizen United*, 558 U.S. at 365–66; see Bipartisan Campaign Reform Act of 2002, 2 U.S.C. § 441b (2012).

<sup>23</sup> See discussion *infra* Sections II.A., II.B.

<sup>24</sup> See *Citizens United*, 558 U.S. at 342; *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2770 (2014) (highlighting Supreme Court extension of freedom to exercise religion to corporations).

<sup>25</sup> See Levitt, *supra* note 6, at 217 (arguing that the impact of *Citizens United* on campaign financing is not that great because disclosure rules remain intact).

<sup>26</sup> *Citizens United*, 558 U.S. at 321.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 324.

<sup>31</sup> *Id.* at 325.

<sup>32</sup> *Id.* at 329.

<sup>33</sup> 540 U.S. 93 (2003).

and *Austin v. Michigan Chamber of Commerce*<sup>34</sup> were then reconsidered because these cases were instrumental in the Court's previous holding that the BCRA was constitutional.<sup>35</sup>

Under *McConnell*, speech by corporations that spoke on prohibited subjects before federal elections was considered a federal felony and the BCRA was upheld under the Court's previous reasoning in *Austin*.<sup>36</sup> This brought the issue of the BCRA's constitutional validity to the forefront of the Court's opinion.<sup>37</sup> The Court used three reasons to support its review of the statute's chilling effect: the uncertainty about how section 441b would be applied, the large amount of time required to explain how to operate under the statute, and the importance of speech to the election process.<sup>38</sup>

The Court then went on to describe the law as "an outright ban, backed by criminal sanctions" on free speech guaranteed by the First Amendment.<sup>39</sup> The Court gave several examples of types of speech from corporations that would be banned under the law but that are also fundamental forms of free speech.<sup>40</sup> The Court acknowledged that corporations could alternatively create PACs to fund communications barred under the BCRA, but that this alternative avenue for speech did not make the restriction permissible.<sup>41</sup> PACs are burdensome alternatives that take a great amount of time and money for corporations to use to get political messages to the masses; they are not suitable alternatives to the restrictions under the BCRA.<sup>42</sup>

The Supreme Court then used a traditional First Amendment protection analysis to extend these protections to corporations for political speech.<sup>43</sup> Cases like *Buckley v. Valeo*,<sup>44</sup> which invalidated limitations on independent expenditures in an effort to combat corruption while upholding limitations on contributions to candidates, were discussed in the majority opinion.<sup>45</sup> The Court also decided to extend First Amendment protections to similar campaign laws that did not involve speech by corporations.<sup>46</sup> Then, the Court also held direct restrictions on independent expenditures constitutional in *Austin*.<sup>47</sup> "*Austin* found a compelling governmental interest

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<sup>34</sup> 494 U.S. 652 (1990).

<sup>35</sup> *Citizens United*, 558 U.S. at 332 (citing *McConnell*, 540 U.S. at 205).

<sup>36</sup> *Id.* (citing *McConnell*, 540 U.S. at 203–09).

<sup>37</sup> *Id.* at 333.

<sup>38</sup> *Id.* at 333–34.

<sup>39</sup> *Id.* at 337.

<sup>40</sup> *Id.* The court gave examples that would warrant criminal sanctions under the current law, like ads run by the Sierra Club to dissuade voters from voting for a representative that would favor the destruction of forests. *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 337–39.

<sup>43</sup> *Id.* at 340–43.

<sup>44</sup> 424 U.S. 1, 45 (1976).

<sup>45</sup> *Citizens United*, 558 U.S. at 345 (citing *Buckley*, 424 U.S. at 25, 47–48).

<sup>46</sup> *Id.* at 347.

<sup>47</sup> *Id.*

in preventing ‘the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public’s support for the corporation’s political ideas.’”<sup>48</sup>

In *Citizens United*, the Court holds that if it were to follow the line of reasoning in *Austin*, it would result in a ban on all corporate speech due to the form of corporations and could keep corporations from participating in political speech in many forms, “such as . . . printing books.”<sup>49</sup> The need to protect political speech and free discourse in society was found to outweigh any anti-distortion interest the Government has in keeping corporations from greatly influencing election outcomes.<sup>50</sup> Media corporations were exempt under the law’s ban but the Court reasoned that this exemption is not enough to permit the law to ban political speech by corporations.<sup>51</sup> The Court found that a ban on speech by some corporations but not others, like media corporations, is discriminatory.<sup>52</sup>

The Court focused on the idea that many corporations do not have large amounts of aggregate wealth, so the anti-distortion interest that the Government argued that is protected by the BCRA is not present in many of the entities prohibited from engaging in political speech.<sup>53</sup> The Court also reasoned that this would not stop the efforts of corporations to lobby government officials after elections even if the expenditure ban were permitted to remain, so there are other opportunities for corporations to attempt to influence elected officials.<sup>54</sup> Groups and individuals that have large amounts of wealth may still influence elections with money so it is unfair to limit corporations from political speech and participation because of its form.<sup>55</sup>

The Court also decided that the rationale of *Buckley* did not extend to *Citizens United*.<sup>56</sup> In that case, limits on direct contributions were upheld in order to stop corruption.<sup>57</sup> “The anticorruption interest is not sufficient to displace the speech here in question. Indeed, 26 States do not restrict independent expenditures by for-profit corporations. The Government does not claim that these expenditures have corrupted the political process in those States.”<sup>58</sup> The type of corruption the Government was trying to eliminate was *quid pro quo* corruption and the Court’s opinion states that influence from

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<sup>48</sup> *Id.* at 348 (quoting *Austin v. Mich. State Chamber of Commerce*, 494 U.S. 652, 660 (1990)).

<sup>49</sup> *Id.* at 349.

<sup>50</sup> *Id.* at 350–51.

<sup>51</sup> *Id.* at 351–52.

<sup>52</sup> *Id.* at 352.

<sup>53</sup> *Id.* at 354.

<sup>54</sup> *Id.* at 355–56.

<sup>55</sup> *Id.* at 356.

<sup>56</sup> *Id.* at 357.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*



corporations in elections is acceptable because independent expenditures are not coordinated with specific candidates.<sup>59</sup>

At the end of the majority opinion, the Supreme Court overruled the precedent set in *Austin*, and followed the line of reasoning from *Buckley* and *First National Bank of Boston v. Bellotti*<sup>60</sup> to protect First Amendment interests of corporations.<sup>61</sup> The arguments in *Austin* that were previously accepted by the Court are no longer valid today with the rapid changes in technology and expertise that corporations can share with voters during election time.<sup>62</sup>

While the Court found that the criminalization of Citizens United's use of the movie "Hillary" to contribute to political discourse unconstitutional, it upheld the disclaimer and disclosure requirements under sections 201 and 311 of the BCRA.<sup>63</sup> The Court found no reason that these disclosure requirements would cause donor harassment and the disclaimers are confined to communications that expressly advocate for a specific point of view.<sup>64</sup> These disclosure requirements are not strictly enforced and there are many ways for corporations to get around the requirements.

The dissent reasoned that Citizens United could have showed the movie anywhere before the thirty day period before the primary election and so its political speech was not completely barred.<sup>65</sup> The dissenting Justices abhorred the majority's failure to follow precedent and explained why the expenditure limits should not have been held to be unconstitutional.<sup>66</sup> The dissent also argued that anticorruption interests should be compelling interests and that the party who has a direct interest in the matter is responsible for the enactment of the legislation.<sup>67</sup>

The rationale that led to the holding in *Citizens United* is a direct contradiction to the rationale that led to the holding in *Caperton v. A. T. Massey Coal Co.*<sup>68</sup> where the Court found that a judge must recuse himself from cases involving donors to the judge's campaign if these donors come before the judge as a party to the case.<sup>69</sup> The interested judge's probability of bias was high even though the campaign contribution was not a bribe.<sup>70</sup> In

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<sup>59</sup> *Id.* at 360.

<sup>60</sup> 424 U.S. 1 (1976); 435 U.S. 765 (1978).

<sup>61</sup> *Citizens United*, 558 U.S. at 363 (citing *FEC v. Wis. Right to Life*, 551 U.S. 449, 500 (2007) (Scalia, J., concurring)).

<sup>62</sup> *Id.* at 364 (relying on the 24-hour news cycle and that corporations may have something to add to the current political conversation).

<sup>63</sup> *Id.* at 371.

<sup>64</sup> *Id.* at 370.

<sup>65</sup> *Id.* at 393 (Stevens, J., dissenting).

<sup>66</sup> *Id.* at 394–95.

<sup>67</sup> *Id.* at 457.

<sup>68</sup> 556 U.S. 868, 872 (2009).

<sup>69</sup> *Id.* at 888; Levitt, *supra* note 6, at 230.

<sup>70</sup> *Caperton*, 556 U.S. at 882.

this case, the Court appears to consider human nature and the idea that an individual may feel grateful for donations that helped him get elected during his campaign.<sup>71</sup> Whether the donor's contributions actually helped Justice Benjamin win the election at issue in the case was not addressed;<sup>72</sup> it was plainly foreseeable that extraordinary contributions to a campaign may elicit bias from a judge.<sup>73</sup> This precedent was not discussed in *Citizens United*, and it is unclear how judges can be susceptible to corruption while congressmen cannot under the Court's reasoning.

### B. *McCutcheon v. FEC*

While the decision in *Citizens United* arguably began the movement toward the deregulation of campaign financing from corporations, the Court's decision in *McCutcheon v. FEC*<sup>74</sup> furthered deregulation when the Supreme Court, in a five-to-four decision, invalidated aggregate limits in political contributions as violations of the First Amendment.<sup>75</sup> The Supreme Court began the opinion by stating:

There is no right more basic in our democracy than the right to participate in electing our political leaders. Citizens can exercise that right in a variety of ways: They can run for office themselves, vote, urge others to vote for a particular candidate, volunteer to work on a campaign, and contribute to a candidate's campaign.<sup>76</sup>

Like in *Citizens United*, the Court relied on the First Amendment to protect the right to make political contributions to candidates running for election.<sup>77</sup> Congress is not permitted to regulate the "amount of money in politics, or . . . restrict the political participation" of certain entities or individuals in order to enhance the influence of others.<sup>78</sup> Regulations for campaign financing may only be enacted to stop corruption, and the definition of corruption is limited to the direct exchange of money in order to have an official perform a specific act.<sup>79</sup>

Sections 441a(a)(1) and 441a(a)(3) of the BCRA were at issue in *McCutcheon*.<sup>80</sup> Section 441a(a)(1) limits the amount of money that donors can give to candidates or committees and section 441a(a)(3) sets the aggregate

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<sup>71</sup> *Id.*

<sup>72</sup> *Id.* at 885.

<sup>73</sup> *Id.* at 886.

<sup>74</sup> 134 S. Ct. 1434 (2014).

<sup>75</sup> *Id.* at 1437, 1440.

<sup>76</sup> *Id.* at 1440–41.

<sup>77</sup> *Id.* at 1441.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 1442.

limit for how much money donors can give to all candidates or committees.<sup>81</sup> The Court found that aggregate limits were also unconstitutional under the First Amendment because donations are a form of protected political speech.<sup>82</sup> This holding furthered the deregulation of campaign finance by now allowing wealthy donors to contribute as much money as they would like to campaigns or PACs.

This case came before the Supreme Court because Shaun McCutcheon wanted to contribute more money to more candidates than he was permitted to donate under the BCRA.<sup>83</sup> The aggregate limits imposed by the BCRA limited contributions to federal candidates to \$48,600 and \$74,600 to political committees from each specific donor.<sup>84</sup> McCutcheon argued that he would have liked to contribute at least \$60,000 to candidates and \$75,000 to political committees in the next election cycle, but the current law prohibited him from doing so.<sup>85</sup> The Republican National Committee also argued that it should be able to receive these donations and the receipt of such donations should be protected under the First Amendment.<sup>86</sup>

The majority opinion begins by discussing *Buckley*, the first case to examine the constitutional validity of contribution and expenditure limits used in campaign financing.<sup>87</sup> This was the first case to use First Amendment principles in the analysis of whether campaign contribution limitations were constitutional, and how limitations on expenditures can chill the discussion of political issues.<sup>88</sup> “[T]he Government may regulate protected speech only if such regulation promotes a compelling interest and is the least restrictive means to further the articulated interest.”<sup>89</sup> Under this test, the Court found that the base limit at issue could be upheld because it was closely associated with the “Government’s interest in eliminating *quid pro quo* corruption . . . .”<sup>90</sup> The Court also rejected an overbreadth challenge to the law.<sup>91</sup> Then the *Buckley* opinion stated:

The overall \$25,000 ceiling does impose an ultimate restriction upon the number of candidates and committees with which an individual may associate himself by means of financial support. But this quite modest restraint upon protected political activity serves to prevent evasion of the \$1,000 contribution limitation by a person who might

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<sup>81</sup> See *id.*; see also 2 U.S.C. § 441a (2012).

<sup>82</sup> *McCutcheon*, 134 S. Ct. at 1461–62.

<sup>83</sup> *Id.* at 1443.

<sup>84</sup> *Id.* at 1442 (citing 2 U.S.C. § 441a(a)(3)).

<sup>85</sup> *Id.* at 1443.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.* at 1444.

<sup>88</sup> See generally *Buckley v. Valeo*, 424 U.S. 1 (1976).

<sup>89</sup> *McCutcheon*, 134 S. Ct. at 1444.

<sup>90</sup> *Id.* at 1445.

<sup>91</sup> *Id.*

otherwise contribute massive amounts of money to a particular candidate through the use of unearmarked contributions to political committees likely to contribute to that candidate, or huge contributions to the candidate's political party. The limited, additional restriction on associational freedom imposed by the overall ceiling is thus no more than a corollary of the basic individual contribution limitation that we have found to be constitutionally valid.<sup>92</sup>

The Court found the aggregate limits in the Federal Election Campaign Act constitutionally valid because it was closely drawn to combat corruption while allowing individuals to support his or her desired candidate.<sup>93</sup>

The majority in *McCutcheon* found that *Buckley*'s conclusion on the constitutionality of the aggregate limits was not applicable to the present case.<sup>94</sup> Today, there are many more regulations for campaign finance than existed at the time of *Buckley* and so the Court found it necessary to reevaluate aggregate limits in *McCutcheon*.<sup>95</sup> The Court began with the same First Amendment analysis that it used in *Citizens United* to find that aggregate limits impose a heavy burden on political participation and discourse protected by freedom of speech.<sup>96</sup> Therefore, the Government cannot restrict the number of candidates or causes, as the Court puts it, that an individual may support.<sup>97</sup>

The Court then discussed the Government's interest in preventing corruption compared to the large First Amendment interest at issue for citizens.<sup>98</sup>

Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder's official duties, does not give rise to such quid pro quo corruption. Nor does the possibility that an individual who spends large sums may garner 'influence over or access to' elected officials or political parties.<sup>99</sup>

The majority opinion rejected a broad definition of corruption and instead endorsed this limited definition of corruption.<sup>100</sup> This narrow definition of corruption is a major flaw in the Court's analysis of whether the Government's interest in protecting against corruption in campaign financing

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 1444–45 (citing *Buckley*, 424 U.S. at 28–29).

<sup>94</sup> *Id.* at 1446.

<sup>95</sup> *Id.* at 1446–47.

<sup>96</sup> *Id.* at 1448.

<sup>97</sup> *Id.* at 1448–49.

<sup>98</sup> *Id.* at 1450.

<sup>99</sup> *Id.* at 1450–51.

<sup>100</sup> *Id.*

and elections is a legitimate interest.

The BCRA banned contribution amounts based on how much money it takes to elicit candidates to agree to practice corrupt practices in favor of a donor.<sup>101</sup> There was no demonstration from the Government that the limits selected actually combat corruption between donors and candidates elected to office.<sup>102</sup> Rules are in place to keep donors from contributing to specific PACs that support specific candidates, and candidates are kept from donating money to PACs that will give the donation straight to the candidate.<sup>103</sup> The Court focused heavily on the regulations surrounding the operation of PACs that dilute the effect that large donations can have on candidates.<sup>104</sup> The Court also scoffed at the idea of one donor giving to multiple PACs to support one candidate because donors may not create so many specific PACs to support their favored candidate.<sup>105</sup>

In *McCutcheon*, the Supreme Court invalidated aggregate limits on campaign contributions due to the poor fit of the structure of the BCRA in its attempt to curb *quid pro quo* corruption.<sup>106</sup> The Court found multiple suitable alternatives available to Congress like creating transfer rules that prohibit the movement of money between party committees and candidates, requiring funds to only be spent by recipients, or changing earmarking requirements.<sup>107</sup> Unfortunately, Congress has enacted none of these alternatives yet. Regulation of campaign finance during elections does not appear to be at the forefront of Congressional priorities, making it clear that oversight of the process must happen by actors outside of the Government through other means.<sup>108</sup>

### C. Federal Election Commission and Political Action Committees

The current state of the FEC and effect of Super PACs in federal elections is still unclear after *Citizens United*. What is clear is that candidates who have the most money supporting them usually win the election, and that corporations are willing to spend massive amounts of money to help favored candidates become elected.<sup>109</sup> Money in politics has always influenced elections and now it could have an even larger impact on the result of elections.

Super PACs collect independent expenditures for its advertisements

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<sup>101</sup> *Id.* at 1452.

<sup>102</sup> *Id.* at 1453.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> *Id.* at 1454.

<sup>106</sup> *Id.* at 1461–62.

<sup>107</sup> *Id.* at 1458–59.

<sup>108</sup> See *infra* Part IV.

<sup>109</sup> See generally Mayersohn, *supra* note 6.

supporting or opposing candidates.<sup>110</sup> These independent expenditures cannot be coordinated with specific candidates or their campaigns, and this is the only regulation that attempts to keep contributions to Super PACs from becoming a way to get around contribution limits.<sup>111</sup> Many times, Super PACs are run by a colleague of a candidate running for office, creating the opportunity for the coordination of funds.<sup>112</sup> Senator Menendez's indictment is an example of the lack of oversight permitting corruption between donors and congressmen to flourish.<sup>113</sup> While these entities may not be outwardly coordinating with candidates, the lack of contribution limits makes PACs influential during election campaigns.<sup>114</sup>

The 2012 elections, the first election cycle to follow the *Citizens United* decision, were the most expensive to date with Super PACs raising a total of \$826.6 million and spending a total of \$799.2 million.<sup>115</sup> Two Republican Super PACs spent more than \$100 million each during the 2012 elections.<sup>116</sup> In 2012, Super PACs spent \$620.9 million in independent expenditures, meaning this money went to promotional ads favoring or disfavoring candidates in congressional and presidential races.<sup>117</sup> Which political parties that are favored by Super PACs vary between presidential and congressional races and election cycles.<sup>118</sup> Between 2010 and 2012, the number of Super PACs grew from 80 to more than 800.<sup>119</sup> Donors can avoid disclosure requirements by using 501(c) organizations if they are interested in making large donations, but most individuals make smaller contributions to Super PACs.<sup>120</sup>

In 2014, the FEC submitted rule changes in the Federal Register to change current regulations to reflect the changes created by the Supreme Court in *Citizens United* and *McCutcheon*.<sup>121</sup> The proposed changes allowed corporations and unions to spend money from its general treasury on creating and using electioneering communications and other activities coordinated with specific candidates or parties.<sup>122</sup> After accepting comments on the

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<sup>110</sup> GARRETT, *supra* note 8, at 3.

<sup>111</sup> *Id.*

<sup>112</sup> Kevin Quealy & Derek Willis, *Independent Spending Totals*, N.Y. TIMES, <http://elections.nytimes.com/2012/campaign-finance/independent-expenditures/totals> (last visited Sept. 1, 2016).

<sup>113</sup> Michael Scherer, *The Robert Menendez Corruption Charges Undermine the Supreme Court*, TIME (Apr. 2, 2015), <http://time.com/3769023/citizens-united-robert-menendez/>.

<sup>114</sup> GARRETT, *supra* note 8, at 6.

<sup>115</sup> *Id.* at 1; Press Release, Fed. Election Comm'n, FEC Summarizes 21-Month Campaign Activity of the 2012 Election Cycle (Jan. 30, 2013), [http://www.fec.gov/press/press2013/20130130\\_2012-Q3Summary.shtml](http://www.fec.gov/press/press2013/20130130_2012-Q3Summary.shtml)

(summarizing campaign finance activity of PACs from January 1, 2011 through September 30, 2012).

<sup>116</sup> GARRETT, *supra* note 8, at 14.

<sup>117</sup> *Id.* at 15.

<sup>118</sup> *Id.* at 1.

<sup>119</sup> *Id.* at 14.

<sup>120</sup> *Id.* at 1.

<sup>121</sup> Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations, 79 Fed. Reg. 203,62800 (Oct. 21, 2014).

<sup>122</sup> *Id.*

multiple alternatives offered by the FEC, the Commission decided “that the Court’s holding applies to all non-coordinated corporate and labor organization expenditures, regardless of whether they fall within the narrower statutory definition of an ‘independent expenditure.’”<sup>123</sup> These rule changes were necessary because Congress has yet to create legislation in light of the rulings from the Supreme Court that drastically changed the regulation of campaign finance.<sup>124</sup>

Several advisory opinions regarding Super PACs were additionally issued by the FEC to clarify application of current law and regulations to these entities.<sup>125</sup> One of these advisory opinions allowed the formation of these PACs to raise unlimited contributions.<sup>126</sup> Another opinion also stated that candidates could be involved in fundraising for a Super PAC as long as contribution limits were in place and these funds were not given specifically to the candidate.<sup>127</sup>

Super PACs do have disclosure requirements, and these requirements are the same as other types of PACs.<sup>128</sup> Filings must be made with the FEC containing receipts and disbursements, information about individuals who contribute more than \$200 per year, the recipient of those funds, and the purpose of those disbursements, as well as reports with information about independent expenditures.<sup>129</sup> Finding all this information on the FEC’s website is not easy and the average voter cannot be expected to take the time to look for who has contributed the most money to each Super PAC. It is clear that Super PACs that contribute millions of dollars to advertising could have a large effect on the average voter that relies on television to gain more knowledge about candidates.

With the creation and growing popularity of the use of Super PACs, many questions about whether these entities are bad for democratic principles that are integral to the United States are forthcoming. There are currently few regulations on coordination between Super PACs and candidate’s campaigns. The impact on representation is also an issue in light of the deregulation of campaign finance and the possibility for corruption between corporations and elected representatives.<sup>130</sup> House and Senate members do not run with local money or support, making them beholden to the corporations and unions that

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<sup>123</sup> *Id.*

<sup>124</sup> GARRETT, *supra* note 8, at 7.

<sup>125</sup> *Id.* at 8.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 9.

<sup>128</sup> *Id.* at 11.

<sup>129</sup> *Id.* at 11–12.

<sup>130</sup> See Levitt, *supra* note 6, at 230–34; see also James L. Ross, Note, *Regulation of Campaign Contributions: Maintaining the Integrity of the Political Process Through an Appearance of Fairness*, 56 S. CAL. L. REV. 669 (1983) (discussing campaign finance and corruption).

donate the largest contributions.<sup>131</sup> This forces candidates to cater to the interests of big donors instead of representing the people in their districts.<sup>132</sup> For this reason, this Article asserts that Super PACs undermine representative democratic governance.

### III. INTERNATIONAL COMPARISON

This Part will briefly explain how campaign financing works in other western countries to aid in a comparison with how campaign finance is regulated in the United States. Unfortunately, no other country appears to permit the creation of entities similar to PACs, so the comparison is not instructive on how to solve the corruption that the deregulation of campaign financing has permitted to flourish in the United States. Generally, Americans are more accepting of free speech than many other countries around the world,<sup>133</sup> so any discussion of using freedom of speech principles to protect political discourse is largely absent in campaign financing considerations in other countries.

#### A. *International Principles of Elections*

Many acknowledge that money is necessary to run political campaigns in a modern democracy, but there is also a growing consensus that lack of regulations in campaign financing can undermine democratic values.<sup>134</sup> When corruption is present in politics, “the government loses legitimacy and becomes destabilized when it is misused for private advantage.”<sup>135</sup> Many forms of corruption are acknowledged by other societies, instead of the Supreme Court’s simplistic view of *quid pro quo* corruption being the only type that happens when donors contribute to candidates running for election.<sup>136</sup> The most important control on this corruption is the requirement that all parties work to create transparency in the election process.<sup>137</sup> Disclosure is one of the main tools that can help create transparency in campaign finance and is utilized by many countries.<sup>138</sup> Lack of mechanisms to regulate the participation of all candidates and donors to make political financing transparent is the real problem that many countries face.<sup>139</sup> Contribution limits, bans, and expenditure limits are also ways to

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<sup>131</sup> See Levitt, *supra* note 6, at 230–32; see also KENNETH P. VOGEL, *BIG MONEY* (2014) (discussing large campaign contributions and their impact on elected officials); Ross, *supra* note 130.

<sup>132</sup> See Levitt, *supra* note 6, at 230–34; see also VOGEL, *supra* note 131.

<sup>133</sup> See VOGEL, *supra* note 131; see also Ross, *supra* note 130.

<sup>134</sup> Ryan Patrick Phair & Laurel E. Shanks, *Political Finance and Corrupt Practices*, in *INTERNATIONAL ELECTION PRINCIPLES* 347, 348 (John Hardin Young ed., 2009).

<sup>135</sup> *Id.* at 354.

<sup>136</sup> *Id.* at 355.

<sup>137</sup> *Id.* at 357.

<sup>138</sup> *Id.* at 358–59.

<sup>139</sup> *Id.* at 365.



limit the influence of money in elections.<sup>140</sup>

The most common ban that exists in political financing around the world is a ban on state resources to political parties or candidates.<sup>141</sup> Foreign donations and companies partially owned by governments are also typically banned.<sup>142</sup> Seventy-eight percent of countries have no ban on corporate donations to candidates; however, about one-third of countries have bans on corporate donations to candidates from corporations that have government contracts.<sup>143</sup> Overall, there seems to be strong deregulation in contribution limits in western countries, following the trend in the United States, but the deregulation in other western countries is not typically due to free speech concerns.<sup>144</sup>

### 1. United Kingdom

There are no legal limits on donation amounts to candidates in the United Kingdom.<sup>145</sup> In the past, campaign-spending limits only applied to candidates at the local level.<sup>146</sup> This limitation was put in place to keep candidates from literally buying votes from constituents.<sup>147</sup> In 2001, national party organizations became limited in the amount of expenditures they could spend depending on the type of election taking place.<sup>148</sup>

The United Kingdom has moved toward more transparency in donations to political parties.<sup>149</sup> This includes the requirement that parties make campaign financing contributions public.<sup>150</sup> Reports about donations to political parties and local party officers must be reported quarterly to the Electoral Commission.<sup>151</sup> During elections, these reports must be submitted weekly to the commission.<sup>152</sup> In addition, parties must submit reports of expenditures after general elections.<sup>153</sup>

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<sup>140</sup> *Id.* at 366–68.

<sup>141</sup> MAGNUS OHMAN, INT’L INST. FOR DEMOCRACY AND ELECTORAL ASSISTANCE, POLITICAL FINANCE REGULATIONS AROUND THE WORLD: AN OVERVIEW OF THE INTERNATIONAL IDEA DATABASE 13 (2012).

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 16.

<sup>144</sup> Jack Guez, *Held Dear in U.S., Free Speech Perplexing Abroad*, NPR (Sept. 19, 2012, 5:11 PM), <http://www.npr.org/2012/09/19/161439562/held-dear-in-u-s-free-speech-perplexing-abroad> (describing the reduced emphasis on free speech in other western countries).

<sup>145</sup> Ruud A. Koole, *Political Finance in Western Europe (Britain and France)*, in FOUNDATIONS FOR DEMOCRACY: APPROACHES TO COMPARATIVE POLITICAL FINANCE 73, 86 (Karl-Heinz Nassmacher ed., 2001).

<sup>146</sup> *See id.* at 86–87; *see also Campaign Finance: United Kingdom*, LIBR. CONGRESS, <http://www.loc.gov/law/help/campaign-finance/uk.php> (last updated July 1, 2015).

<sup>147</sup> *See Campaign Finance: United Kingdom*, *supra* note 146; *see also* Koole, *supra* note 145, at 86.

<sup>148</sup> Koole, *supra* note 145, at 87.

<sup>149</sup> *Campaign Finance: United Kingdom*, *supra* note 146.

<sup>150</sup> *Id.*

<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

In contrast, individual candidates have no limits on what they may receive as long as it comes from “permissible donors.”<sup>154</sup> Candidates must also report what they spent in campaign expenses during the election and have spending limits.<sup>155</sup> The average electoral candidate for parliament spent £4,000 in the 2005 general election.<sup>156</sup> Besides direct donations to the candidate, parties are allowed to use a specific amount of time on national television and the radio free of charge.<sup>157</sup> Candidates are permitted to use this option as well as the use of state-funded locations to hold meetings for free.<sup>158</sup>

The European Court of Human Rights found that implementing a donation ceiling on third parties interfered with freedom of expression.<sup>159</sup> In *Bowman v. United Kingdom*, a woman disseminated pamphlets about the voting record of various candidates on abortion laws, which clearly cost more than she was allowed to spend on the pamphlets.<sup>160</sup> Because this ceiling was akin to a bar on the speech, the court ruled that interest in maintaining the ceiling was disproportionate to the right to freedom of expression.<sup>161</sup>

## 2. France

Campaign financing in France was not regulated until the late 1980s when it found that it was behind other countries in regulating this area of elections.<sup>162</sup> No legal entities other than political parties can participate in financing candidates.<sup>163</sup> To compensate for the loss parties and candidates would face due to this restriction, the French government supplies public funding to parties and candidates during elections.<sup>164</sup>

In France, candidates and parties have legislative expenditure limits.<sup>165</sup> Limits are set based on which position the candidate is running for and the type of elections they are participating in (country or European elections).<sup>166</sup> Candidates and parties may not receive funds from private companies or corporations, and there are caps on the total amount of money individuals may give to a specific candidate’s campaign.<sup>167</sup>

Campaign accounts of candidates are audited to ensure that disclosure

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Campaign Finance: France*, LIBR. CONGRESS, <http://www.loc.gov/law/help/campaign-finance/france.php#f35> (last updated July 1, 2015).

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> Koole, *supra* note 145, at 87.

<sup>166</sup> *Campaign Finance: France*, *supra* note 159.

<sup>167</sup> *Id.*

of donors to campaigns takes place.<sup>168</sup> Candidates can be reimbursed by the state for a portion of their expenses.<sup>169</sup> Political advertisements can be aired free of cost as well.<sup>170</sup> Super PACs do not exist in France.

### 3. Germany

Contribution limits do not exist in Germany for individuals or business organizations.<sup>171</sup> Because of the lack of contribution limits, Germany has strict disclosure rules and a long list of contributions that may not be accepted by candidates.<sup>172</sup> Contributions from public entities, factions of legislature or councils, political foundations, charitable or church entities, publically-held businesses, and many other general “corrupting contributions,” made with the expectation that the recipient will do something in return for the money, are prohibited.<sup>173</sup>

Germany gives public funding to political parties but not individual candidates.<sup>174</sup> The amount of money that each party receives from the government depends upon the percentage of votes that party received in the last election cycle.<sup>175</sup> In addition, public broadcasting is free for parties before elections.<sup>176</sup> While free airtime is permitted, advertising on private television and radio is generally prohibited.<sup>177</sup>

Political parties have few limits on campaign expenditures but parties and candidates must comply with disclosure requirements.<sup>178</sup> These reports must show where funds came from, whom they went to, and balance sheets of campaign expenditures from each party.<sup>179</sup> These disclosure and reporting requirements exist to keep candidates and parties honest about who could be influencing them through campaign donations.<sup>180</sup> Super PACs do not exist in Germany, but Germany’s robust disclosure rules can be a model for the United States, should Congress ever decide to require more disclosure in campaign financing from candidates during elections.

## IV. PROPOSED SOLUTION

Rachel Kleinfeld proposes a new process that rule of law reformers

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<sup>168</sup> *Id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> Martin Morlok & Thilo Streit, *Germany*, in *LOBBYING, GOVERNMENT RELATIONS AND CAMPAIGN FINANCE WORLDWIDE* 123, 127 (Thomas D. Grant ed., 2005).

<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.* at 128.

<sup>175</sup> *Id.*

<sup>176</sup> *Id.* at 130.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 132.

<sup>179</sup> *Id.* at 133.

<sup>180</sup> *Id.*

should use when searching for and creating solutions to problems in their host countries.<sup>181</sup> She suggests that we begin by identifying the actual problem through consultation with individuals in countries having experience with the problem that the rule of law program is attempting to resolve.<sup>182</sup> The next step is to look at the institutional, political, and cultural components of the problem.<sup>183</sup> In this case, it appears that the power structure and institutions in the United States, that is allowing unregulated influence to affect elections, must be reformed.

This Part will address the problem of corruption in campaign financing due to the great influence corporations and individuals may have in elections using unregulated Super PACs. There are many institutional, political, and cultural components involved in this problem. Politicians clearly have an interest in being elected to their posts, and after the last federal election cycle, it is clear that they will most likely need a great amount of money to do so. The Supreme Court has set precedent that effectively creates a roadblock to any legislative reforms Congress could possibly create.<sup>184</sup> Legislating around political discourse that is protected by the First Amendment is difficult in light of current freedom of speech jurisprudence.

Several parties have suggested a top-down approach that includes the creation of a new amendment or passage of legislation to combat the corruption that the current campaign financing laws permit. In 2014, a Senate Judiciary Committee convened to hear the proposal for the amendment that would:

Authorize[] Congress and the states to regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.

Grants Congress and the states the power to implement and enforce this amendment by appropriate legislation, and to distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections.

Declares that nothing in this amendment shall be construed to grant Congress or the states the power to abridge the freedom of the press.<sup>185</sup>

In the Senate Report on the amendment, the committee laments the precedent that the Court overruled in *Citizens United* and *McCutcheon* that protected

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<sup>181</sup> RACHEL KLEINFELD, ADVANCING THE RULE OF LAW ABROAD 186 (2012).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 188.

<sup>184</sup> See *Citizens United v. FEC*, 558 U.S. 310, 392–93 (2010); see also *McCutcheon v. FEC*, 134 S. Ct. 1434, 1461–62 (2014).

<sup>185</sup> S.J. Res. 19, 113th Congress (2014); S. REP. NO. 113-223, at 2 (2014).

federal elections from corruption.<sup>186</sup> The Court's definition of corruption is not broad enough to cover the actual corrupt acts that take place and the committee argues that there is a national history beginning with the Framers of the Constitution that discussed corruption in a broader sense, contradicting the Supreme Court's definition of corruption.<sup>187</sup>

The Report also discusses the "fallout" from these decisions and the influx of money spent in recent elections.<sup>188</sup> The Center for Responsive Politics found that 600 million of the more than one billion dollars spent in the presidential election cycle came from Super PACs.<sup>189</sup>

Because the members of Congress and presidential candidates have a stake in the outcome of elections, there is no reason to expect Congress to create a legislative solution to combat the corruption and influence of money in campaigns. The *Citizens United* ruling came down in 2010 and Congress has yet to legislate on the matter to bring current laws into step with Supreme Court jurisprudence. While many hope that the Supreme Court will one day overrule *Citizens United*, the *McCutcheon* opinion shows this is unlikely to happen anytime soon. In light of the First Amendment protections afforded campaign contributions and the big effect that Super PACs will continue to have on elections, a bottom-up solution is the only potential solution at this time.

Legal empowerment of the citizens of the United States by the media or a group that discloses who the big money donors are behind specific advertisements being played during election cycles is the only way to accurately inform voters of who is trying to influence their votes. The citizens of the United States must hold governmental representatives accountable for their actions. If the First Amendment protects political donations to campaigns under free speech of individuals to support whatever candidate and causes they support, then a legislative solution is unfeasible because it will more than likely be found unconstitutional under the Court's current jurisprudence.

Stephen Golub, a leading scholar on legal empowerment as an alternative to traditional rule of law reforms, argues that *legal empowerment* is often a better means of change than top-down reform.<sup>190</sup> Golub defines legal empowerment as "the use of legal services and related development activities to increase disadvantaged populations' control over their lives."<sup>191</sup> This type of reform is community-driven and can be used in conjunction with

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<sup>186</sup> S. REP. NO. 113-223, at 15–21 (2014).

<sup>187</sup> *Id.* at 8, 19–20.

<sup>188</sup> *Id.* at 21–24.

<sup>189</sup> *Id.* at 22.

<sup>190</sup> Stephen Golub, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, 41 RULE OF LAW SERIES 1, 3 (2003).

<sup>191</sup> *Id.*

top-down reform.<sup>192</sup> Civil society is the most widely used means for bottom-up reform, and in a society like the United States, where the leaders at the top of the pyramid can be held somewhat accountable by the people, at least through mechanisms like democratic elections, a bottom-up solution may be effective to draw light on corrupt practices in campaign finance.<sup>193</sup> A grass-roots approach will be the most effective means to aid in transparency and informal regulation of the influence that Super PACs have on elections. A top-down strategy will not be effective to force members of Congress to legislate or create a constitutional amendment around First Amendment barriers to combat corruption political finance practices.

Italy is an instructive example of how bottom-up reform can work to rid institutions of corrupt behavior. Corruption is traditionally present in Italian politics because of mafia influence in Italy.<sup>194</sup> The Italian government had turned a blind eye to many crimes and corrupt practices of its politicians, like bribery.<sup>195</sup> When the Mafia committed an egregious murder, the Italian judiciary took a stand against the Mafia, putting its members on trial.<sup>196</sup> The public outrage that festered before the trial forced the judiciary to try Mafia members and the government officials that participated in the corrupt acts for their crimes and discontinued the culture of immunity for the Mafia.<sup>197</sup> While some of the individuals that were at the forefront of this movement paid with their lives, it is still a useful example of how the masses can force the elites in government and society to change corrupt behavior.<sup>198</sup>

Alina Mungiu-Pippidi argues that corruption is the “perversion or destruction of integrity in the discharge of public duties by bribery and favor.”<sup>199</sup> To combat corruption, there must be an assumption that the state will strive to treat citizens equally but that this equality is tainted by favoring certain groups, like wealthy elites.<sup>200</sup> In the United States, the balance of power between groups of differing wealth and affluence is generally even,<sup>201</sup> but the Supreme Court’s decision in *Citizens United* has shifted the balance of power significantly.<sup>202</sup> Pippidi’s approach to anti-corruption of using status groups against each other to stop the cycle of corruption may be the best approach to use in the United States. She describes this process as gathering the “losers” in the system, which in this case is Americans other than

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<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Organized Crime: Italian Organized Crime*, FBI, <https://www.fbi.gov/investigate/organized-crime> (last visited Sept. 1, 2016).

<sup>195</sup> Guido Neppi Modona, *Italian Criminal Justice Against Political Corruption and the Mafia: The New Model for Relations Between Judicial and Political Power*, 32 OSGOODE HALL L.J. 393, 398 (1994).

<sup>196</sup> *Id.* at 399, 407.

<sup>197</sup> *Id.* at 399–400.

<sup>198</sup> *Id.* at 407.

<sup>199</sup> Alina Mungiu-Pippidi, *Corruption: Diagnosis and Treatment*, 17 J. DEMOCRACY 86, 87 (2006).

<sup>200</sup> *Id.*

<sup>201</sup> *Id.* at 91.

<sup>202</sup> *See generally* *Citizens United v. FEC*, 558 U.S. 310 (2010).

corporations or extremely wealthy individuals, to force the predatory elites to change their ways.<sup>203</sup> These “losers” have the most to lose by allowing this corruption to flourish. In this case, the “losers” will lose a representative democracy where their representatives at the local level no longer serve the constituency’s interest, but instead pander to corporations and wealthy elites.<sup>204</sup>

Bottom-up reform is the only way to combat corruption in campaign financing.<sup>205</sup> Voters have an interest in knowing who is trying to influence their votes and who is behind the messages they see about candidates during election cycles. In order to limit the influence that money has in politics, candidates and PACs should be required to disclose from whom they are receiving contributions and it should be clear who is supporting political advertisements in favor or opposition of candidates. Unchecked, Super PACs will drastically shape the political landscape of the United States if there must be voluntarily disclosure of who is supporting the Super PACs affiliated with each candidate and how the money and messages being put forth by these Super PACs has been used in the election. Civil society will have to shame politicians that refuse to disclose the identities of all of their donors and where all of their contributions are coming from to ensure that this support is not used to secure political favors in the future.

OpenSecrets.org, from the Center for Responsive Politics, is a website that seeks to spread information about a variety of topics in politics like campaign financing.<sup>206</sup> The mission of the Center is to “[i]nform citizens about how money in politics affects their lives[,] [e]mpower voters and activists by providing unbiased information[,] [and to] [a]dvocate for a transparent and responsive government.”<sup>207</sup> The Center researches Super PACs that are tied to certain candidates and how much money non-disclosing groups are injecting into the election cycle.<sup>208</sup>

For whatever reason though, the information on the website has not resulted in significant action from the people of the United States about the lack of regulation in campaign finance. Change in this area will only truly be possible when the people are legally empowered by the information they

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<sup>203</sup> Mungiu-Pippidi, *supra* note 199, at 97.

<sup>204</sup> *See id.*

<sup>205</sup> *See* KLEINFELD, *supra* note 181, at 151–53 (defining bottom-up reform and its effects).

<sup>206</sup> *See* OPENSECRETS.ORG, <http://www.opensecrets.org/about/index.php>.

<sup>207</sup> *Id.*

<sup>208</sup> *See, e.g.,* Robert Maguire, *How 2014 is Shaping Up to be the Darkest Money Election to Date*, OPENSECRETS.ORG (Apr. 30, 2014), <http://www.opensecrets.org/news/2014/04/how-2014-is-shaping-up-to-be-the-darkest-money-election-to-date> (discussing the increasing amount of “dark money” in politics in 2014); *Behind the Candidates: Campaign Committees and Outside Groups*, OPENSECRETS.ORG, <http://www.opensecrets.org/pres16/outsidegroups.php> (last updated Mar. 10, 2016); Michael Beckel, *Flush With Mystery Money, Kentucky Nonprofit Haunts Grimes’ Senate Bid*, CTR. FOR PUBLIC INTEGRITY, <http://www.publicintegrity.org/2014/10/29/16088/flush-mystery-money-kentucky-nonprofit-haunts-grimes-senate-bid> (last updated May 21, 2015) (discussing Senatorial race in Kentucky and the advertising that played a large role in opposing Grimes).

receive from sites like OpenSecrets.org to take action to hold their elected representatives accountable. While legislating around the First Amendment can be very difficult, Congress could establish more regulations for disclosure and oversight for the coordination of Super PAC money with specific campaigns, as Senator Menendez's story clearly illustrates the problems with permitting large donors to influence politicians with Super PACs. While the Supreme Court has held that limits on contributions and aggregate limits are unconstitutional under the First Amendment, this does not mean that the people cannot demand full disclosure about who is influencing candidates to represent their interests in federal institutions.

## V. CONCLUSION

*Citizens United* has been heralded as one of the Supreme Court's worst decisions in the history of the Court.<sup>209</sup> It opened the door to allowing corporations and wealthy individuals to influence elections because contributions can no longer be limited to combat corruption. Despite what the opinions of the Supreme Court state, it is clear that corruption is present in campaign elections and that the amount of money put into campaigns influences the amount of skewed advertisements that voters see during election cycles. Without being able to know how this unregulated money influences elections, voters cannot cast their votes with full knowledge of what the views are of the candidate they are voting for and who the candidate might be influenced by once he or she is in office. Super PACs, and the little regulation that it is subject to, make democratic governance difficult because congressmen will no longer be representing their constituent's interests, but will instead be representing the interests of the corporations or wealthy individuals that helped elect them.

From Senator Menendez's example, it is clear that there are not enough regulations and oversight of Super PACs. Candidate's colleagues and friends frequently run Super PACs and do not expend Super PAC funds in a disinterested manner. Civil society must join the fight against corruption in politics and provide some oversight in campaign financing to ensure voters are informed about who is financially supporting candidates through these mechanisms. No change will be possible until the citizens of the United States demand accountability from elected candidates during elections. Only then will Americans be able to truly know whether a candidate will serve the public good or serve the favor of wealthy individuals and corporations once in office.

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<sup>209</sup> See Charlotte Alter, *Ginsburg Says Citizens United was Supreme Court's Worst Ruling*, TIME (Sept. 29, 2014), <http://time.com/3445010/ruth-bader-ginsburg-citizens-united/>; see also Ramsey Cox, *Franken: Citizens United is One of the 'Worst' Rulings*, HILL (Sept. 9, 2014, 12:27 PM), <http://thehill.com/blogs/floor-action/senate/217105-franken-citizens-united-decision-is-worst-ever>.