

Is “Dependence Corruption” the Solution to America’s Campaign Finance Problems?

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U.S. campaign finance regulation is currently in bad shape. The combination of congressional inaction, regulatory ineffectiveness, and constitutional constraint perpetuates a status quo that no one intended and many deplore. Public financing for presidential elections is effectively dead, while Super PACs and other forms of independent spending are on the rise. The 501(c)(4) nonprofit disclosure rules are very leaky, allowing corporations and others to conceal soft money contributions to Super PACs if they so choose. The Supreme Court has effectively precluded comprehensive campaign finance reform by its rulings, which have thrown out independent and personal expenditure bans,¹ limited public finance to opt-in schemes,² loosened the definition of issue ads,³ and allowed corporations to use unlimited amounts of their treasury monies to fund independent campaigns.⁴ To borrow from Vladimir Lenin, “[W]hat is to be done?”⁵

Professor Lawrence Lessig, in his Jorde Symposium Essay, What an Originalist Would Understand “Corruption” to Mean, believes the answer is to reframe the campaign finance problem as “dependence corruption” using originalist logic. Is he right? I have my doubts, as I will explain. In an effort to persuade the Court to reconsider its very narrow construction of permissible campaign finance reform, Professor Lessig is trying to thread the eye of a

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1. *Buckley v. Valeo*, 424 U.S. 1, 39–59 (1976).
2. *Id.* at 108–09.
3. *FEC v. Wis. Right to Life, Inc.* 551 U.S. 448, 469 (2007).
4. *Citizens United v. FEC*, 558 U.S. 310 (2010).
5. ESSENTIAL WORKS OF LENIN 5 (Henry M. Christman ed., 1966).

doctrinal needle. He wants to broaden the Buckley v. Valeo material corruption logic⁶ but avoid the Austin v. Michigan Chamber of Commerce equality rationale⁷ that was overturned in Citizens United v. FEC.⁸ This is a hard task that he makes even harder by embedding “dependence corruption” in an originalist argument.

In this short commentary, I will examine the merits of this approach from a political science perspective and offer an alternative way to look at the same problem. Lessig’s original-intent account rests on too many contestable counterfactual assumptions regarding what the Founders would have thought about conditions and political practices that they could not have imagined in their day. Moreover, the argument that the Constitution’s intent was only direct popular sovereignty ignores the Electoral College and U.S. Senate elections, which are based on geography. Nonetheless, I must leave it to constitutional scholars to determine whether his story is plausible enough to convince the Court.⁹ My focus is on whether dependence corruption is the right principle for regulating campaign finance. As I will explain, I prefer to think that the problem is one of democratic distortion, and that the solution under the current constitutional constraints requires continuing efforts to open up donor participation to all voters, fix the broken disclosure system, and preserve the current system of congestion pricing.¹⁰

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6. 424 U.S. at 23–38.

7. 494 U.S. 652, 666–68 (1990).

8. 558 U.S. at 327–56.

9. See for instance Seth Tillman’s critique of this originalist reinterpretation of corruption. Seth Barrett Tillman, *The Original Public Meaning of the Foreign Emoluments Clause: A Reply to Professor Zephyr Teachout*, 107 NW. U. L. REV. COLLOQUY 180 (2013).

10. I borrow the term congestion pricing from transportation economics where it refers to adjustments to toll prices according to the level of demand and likely traffic flow. Independent advertisers are charged higher prices for television ads than the candidates themselves. Under FCC rules, candidates are entitled to the most favorite commercial unit rate. For example, this translated to a 40 percent discount for ads in the Las Vegas media market during the 2012 election cycle according to a Sunlight Foundation analysis. Alex Engler, *Las Vegas – Average Political Ad Costs \$1,000; Candidates Get 40-percent Discount During the Final Stretch*, SUNLIGHT FOUND. (Nov. 2, 2012), available at <http://sunlightfoundation.com/blog/2012/11/02/las-vegas-average-political-ad-costs-1000-candidates-get-40-discount-during-the-final-stretch/>. In essence, it amounts to treating independent expenditures as surplus advertising demand.

I.

THE ORIGINALIST CONCEPTION OF CORRUPTION

A political scientist would distinguish between a strict reading of the Constitution and a counterfactual account. The former is a literal reading of constitutional language in the context of politics as it was practiced in the United States at the time of the Constitutional Convention. When James Madison said that the House of Representatives should be “dependent on the people alone,”¹¹ a strict reading would interpret that phrase within the political context of that period, thus meaning an electorate with a limited franchise existing alongside a Senate elected by state legislatures. Subsequent constitutional amendments moved the United States closer to the ideal of being “dependent on the people alone” by expanding the electorate and switching to a directly elected U.S. Senate. But it is important to note that America still has not fully committed to the principle of direct popular sovereignty, having retained the Electoral College and state-based Senate representation.

By comparison, a counterfactual account of the U.S. Constitution projects an interpretation of the Founders’ intentions into conditions they never experienced. There is no way of knowing for certain what the Founders would have thought about campaign finance reform. Would they have even approved of the changes that were made to the electoral franchise or the method of electing the U.S. Senate? We can never know with certainty. It is a matter of speculation.

Putting aside this broad concern for the moment, Professor Lessig’s counterfactual account is as follows: The Founders set up a framework of political accountability that made the House solely dependent on the people and the Senate solely dependent on the state legislatures. They worried about the possibility that American democracy could devolve into monarchy or aristocracy, an undesirable dependence that would undercut the carefully constructed system of formal electoral dependencies. The Founders’ determination to prevent dependence on a rich aristocracy, Professor Lessig explains, even accounts for why they excluded women and blacks from voting. Namely, they feared that “if the non-propertied could vote, the rich would have a simple way to buy more influence”¹² because women, blacks, and poor whites lacked the capacity for independent thought and judgment. Lessig is quick to add that although we now judge the Founders to have been morally and factually wrong, “they certainly understood class.”¹³ All that matters to Lessig is the intent to prevent dependence on a wealthy aristocratic class. Given this understanding of what the Founders intended, Lessig argues that they

11. THE FEDERALIST NO. 52, at 326 (James Madison) (Clinton Rossiter ed., 1961).

12. Lawrence Lessig, *What An Originalist Would Understand “Corruption” to Mean*, 102 CALIF. L. REV. 1, 10 (2014).

13. *Id.*

would have regarded the modern dependence on donors as analogous to the problem of aristocratic dependence in the eighteenth century.

It is unclear, to begin with, how sincere and prominent the Founders' concerns about aristocratic dominance actually were. Their decision to restrict the vote is just as easily explained by outright prejudice against women and minorities, the desire to retain power, fear of differing interests, or any number of other common reasons for political discrimination. Consider the words of John Adams on this subject in 1776:

Depend upon it, Sir, it is dangerous to open So fruitfull a source of Controversy and Altercation, as would be opened by attempting to alter the Qualifications of Voters. There will be no End to it. New claims will arise. Women will demand the vote. Lads from 12 to 21 will think their rights not enough attended to; and every Man who has not a Farthing, will demand an equal Voice with any other, in all Acts of State. It tends to confound and destroy all Distinctions, and prostrate all Ranks to one common Levell.¹⁴

Even assuming that the Founders' concern was dependency caused by treating, their solution to that dependency was not to prohibit or cap the amount of food and beer that the wealthy could hand out at the polling place, the historical analogue to modern campaign contribution and spending limits. They chose instead to deny voting rights to those they thought would be most tempted by small bribes or cowed by aristocratic intimidation. Based on what the Founders did with treating, it seems likely that they would have preferred to reimpose franchise restrictions on poor voters rather than cap aggregate contributions or donations to Super PACs, as Lessig proposes. The problem with originalist logic applied to these questions is that one has to choose selectively among the Founders' ideas to find the right mix for modern American politics.

It is ironic that Professor Lessig has chosen to make an originalist argument on the aspect of the U.S. Constitution that has changed the most dramatically. There have been numerous amendments to the Constitution dealing with political representation. Formally, the Founders balanced direct dependence on the "people" for the House against the indirect election of the Senate and President. Informally, caucus, faction, and party leaders in their day had every bit as much influence as modern donors. The Founders were not populists; they sought to balance the people's voice with other influences. In the language of social science, they believed in the value of intermediaries and filtered democracy. It is not obvious that the Founders would have regarded donors as any more democratically problematic than the various elected and unelected power brokers who determined elections in that period.

The current version of the Constitution has been modified by various amendments related to representation (specifically, the Twelfth, Fourteenth,

14. Letter from John Adams to James Sullivan (May 26, 1776), *in* 1 THE FOUNDERS' CONSTITUTION 394, 395-96 (Philip B. Kurland & Ralph Lerner eds., 1987).

Fifteenth, Seventeenth, Nineteenth, Twenty-Second, Twenty-Third, Twenty-Fourth, and Twenty-Sixth Amendments). The U.S. political system now leans more towards direct popular sovereignty and away from filtered democracy, but not completely. We retain the Electoral College. And although the House is redistricted on a one-person, one-vote principle, the Senate still represents states. Direct popular sovereignty (dependence on the people alone) was not then nor is it now the sole basis of U.S. representation.

The whole exercise of counterfactual speculation about what the Founders would have thought about contemporary campaign finance seems like a weak foundation for judicial doctrine, but it is presumably meant to appeal primarily to judicial conservatives, not political scientists. The fundamental question is whether dependence corruption is a manageable standard for judicial oversight of campaign finance regulation in today’s world.

II.

“DEPENDENCE CORRUPTION” AS A RATIONALE FOR CAMPAIGN FINANCE REFORM

Professor Lessig faces disagreement from others as well, as in his ongoing debate with Professor Rick Hasen over whether dependence corruption is really about equality.¹⁵ While this disagreement may seem arcane to some, it matters because the Supreme Court in *Citizens United v. FEC* rejected an equity rationale for restricting corporate spending that had been used in an earlier case, *Austin v. Michigan Chamber of Commerce*.¹⁶ If dependence corruption merely restates the *Austin* goal of limiting “the corrosive and distorting effects of immense aggregations of wealth” enabled by the corporate form, then Lessig’s pitch to the Supreme Court is essentially dead on arrival.¹⁷

Professor Lessig argues, with the help of a Venn diagram, that dependence corruption overlaps with equality considerations, but that they are not one and the same.¹⁸ He points out that it is possible to have a dependence corruption problem that is not about equality, such as electing congressional representatives by a method that is not specified in the U.S. Constitution.¹⁹ Prior to 1913, indirect Senate election was an intended dependency. A state switching to direct popular election of U.S. Senators, he tells us, would have been a dependence corruption, not a violation of equality.²⁰ Even so, Hasen is, in my opinion, still correct in saying that equality considerations underlie the particular dependency problem that Lessig is concerned with.

15. See Lessig, *supra* note 12, at 2 n.2 for the extensive history of this debate.

16. *Citizens United v. FEC*, 558 U.S. 310, 349–56 (2010).

17. *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 660 (1990).

18. Lessig, *supra* note 12, at 12–13.

19. *Id.* at 13.

20. *Id.*

The equality justification that Professor Lessig wants to avoid in light of the *Citizens United* decision is the goal of offsetting resource advantages enabled by the corporate form. Instead, he focuses on the unrepresentativeness of the donor class due to inequalities of wealth. The campaign finance system is not a constitutional feature such as franchise restrictions or indirect elections. It does not pose a legal participation barrier in the same sense as in the White Primary Cases, when Texas whites attempted in various ways to keep black voters out of Democratic primaries.²¹ Instead, it is an informal and unintended “dependency” caused by the U.S. system of private campaign financing.

Since there are many informal dependencies not specified in the Constitution aside from donors—for instance, political parties—why is donor dependence more problematic? As Lessig tells us:

Only a tiny proportion of “the people” could afford the funding necessary to become “a funder.” That means, of necessity, that “the funders” cannot stand for “the people.” A dependence upon them thus violates the exclusivity requirement (“alone”) in “dependence on the people alone.” A dependence upon them is thus “corruption.”²²

In other words, the answer seems to be that any citizen can belong to a political party, but many cannot afford to be donors. This means that candidates depend on a small, unrepresentative sample of the people for their campaign money. Lessig illustrates this point by citing the percentages of those who actually donated to political campaigns at various levels above two hundred dollars.²³ However, the percentage of those who *actually donate* to campaigns is not a measure of the percentage of those who *are able to donate*, which is the claim he wants to make. The number he really wants—the fraction of citizens who could donate if they wanted to—is hard to determine with certainty. We know generally that there are many who have the means but not the motivation to make donations.

But leaving this problem aside, Lessig’s point is that donors are typically unrepresentative of the electorate as a whole. This claim differs from the *Austin* rationale in that it focuses on participatory exclusion at the bottom of the wealth distribution rather than the excessive influence of corporate wealth. Also, he argues, the *Austin* case concerned limits on independent speech addressed to the voters, whereas dependence corruption is about speech directed to elected officials in the form of campaign donations, drawing on the contribution versus expenditure distinction in the *Buckley* line of cases.²⁴

21. These cases include *Nixon v. Herndon*, 273 U.S. 536 (1927); *Terry v. Adams*, 345 U.S. 461 (1953); and *United States v. Classic*, 313 U.S. 299 (1941) (Louisiana voter rights case).

22. Lessig, *supra* note 12, at 18.

23. *See id.* at 5.

24. The Court upheld contribution limits in *Buckley v. Valeo*, 424 U.S. 1 (1976), as a means of controlling quid pro quo corruption, but held that since independent and personal expenditures were less likely to lead to this kind of corruption, they could not be limited.

Dependence corruption apparently offers no challenge to independent expenditures by wealthy individuals and groups. It accepts that some people will have greater opportunity to influence public opinion because of their wealth and resource advantages and focuses instead on speech to elected officials from private donors. Hence, Professor Lessig’s reform proposals deal only with defending aggregate campaign contribution limits to candidates and curbing unlimited soft-money contributions to Super PACs.

This line of argument has two complicating problems. First, speech to the public and speech to the candidate cannot be easily separated. Most of the money donated to candidates eventually promotes speech directed at the electorate, and it would be very naïve to think that independent expenditures are speech to the public only and not directed to the candidate as well. Just because a person or group does not coordinate its spending with the candidate and his or her campaign organization does not mean that the incumbent or successful challenger will feel any less obligated to a large independent spender than to a large contributor. Indeed, outside spending often reinforces a very specific connection between the candidate’s successful election and the group’s interests and issues.

Second, despite Professor Lessig’s sweeping indictment of the U.S. political system as institutionally corrupt, his reform ideas are surprisingly narrow. If the regulated, hard-money contribution system really causes widespread institutional corruption and unintended dependence on the donor class, I would expect much bolder solutions such as Hasen’s voucher proposal²⁵ or Ackerman and Ayres’s anonymous donor bank and patriot dollars design.²⁶ If Lessig manages to persuade the Court to adopt a dependence corruption rationale, what do we get in return? Apparently, we would get additional protection for aggregate contribution limits that are already in place (even though they have not done much to date about dependence corruption), and, at best, a novel shot at overturning the decision in *SpeechNow.org v. FEC*.²⁷ His reasoning on the latter point is that contributions are treated differently by the Court than are independent expenditures:

Citizens United might mean there is nothing Congress can do to silence George Soros or the Koch brothers. But there maybe something

25. See Richard L. Hasen, *Clipping Coupons for Democracy: An Egalitarian Public Choice Defense of Campaign Finance Vouchers*, 84 CALIF. L. REV. 1 (1996). A voucher system allows every registered voter to distribute public campaign funds to the candidates they prefer. Wealthy individuals would still be able to make independent expenditures, but a voucher system would allow all voters, including the poor, to belong to the donor class. This approach is sometimes referred to in political science as “floors, not ceilings.”

26. See BRUCE ACKERMAN & IAN AYRES, *VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE* (2002). Patriot dollars are a voucher system. The anonymous donor bank would allow donors to give to candidates anonymously. They could claim to make a donation but there would be no public evidence that they did. The central idea is to sever the sense of obligation that candidates have to donors.

27. *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010).

Congress could do to limit the contributions made to Super PACs. Contributions trigger a corruption analysis (since they could evince the wrong kind of dependence), even if expenditures would not.²⁸

In other words, because a contribution to a Super PAC is not direct speech to voters, Lessig believes that the Court might be open to evidence of dependence corruption. Of course, by this reasoning, the Court should also be open to evidence about material corruption and Super PACS, but to date it has not shown any interest in reviewing the D.C. Circuit's decision in *SpeechNow*. In addition, it is unclear whether the Court would regard a contribution to a PAC that spends independently like a direct contribution to a candidate. Both are contributions in the sense that they are not funding direct speech by the donor but one is enabling the independent speech of non-candidates and the other the speech of candidates. The former is likely to seem less corrupting than the latter if the Court continues to maintain that independent spending has less quid pro quo effect on elected officials than contributions do.

Would the empirical evidence for dependence corruption be easier to find than quid pro quo corruption? I doubt it. To begin with, as long as Super PACs are able to use their 501(c)(4) tax-filing status to conceal their donor lists, it will continue to be harder to link their donors to politicians than for normal PACs. And assuming that problem gets solved, proving dependence corruption would require evidence that members of Congress are more likely to give access or support to individuals or groups when they contribute to a Super PAC than those who do not. As it has been with material corruption, I suspect that it will still be hard to find the causal smoking gun. Lessig provides an example from former Senator Evan Bayh, whose statements Lessig paraphrases as follows:

And so how do you pay your premium to a super PAC on your side in advance? By conforming your behavior to the standards set by the super PAC. "We'd love to be there for you, Senator, but our charter requires that we only support people who have achieved an 80 percent or better grade on our Congressional Report Card." And so the rational senator has a clear goal—80 percent or better—that he works to meet long before he actually needs anyone's money. And thus, without even spending a dollar, the super PAC achieves its objective: bending congressmen to its program.²⁹

It is unlikely that we would ever know about this conversation between a Senator and a Super PAC, especially since it does not need to happen. There are lots of political consultants who know the score and can relay the message to the member. Assuming we could measure access and attitudinal influence, the odds are high in this period of strong polarization that members of Congress are primarily dependent on donors who belong to the same party and share the

28. Lessig, *supra* note 12, at 23.

29. *Id.* at 22 (quoting LAWRENCE LESSIG, ONE WAY FORWARD 67–68 (2012)).

same ideology. That may be regrettable, but it is not obviously a corruption of the system unless we want to argue that parties are a dependence corruption as well.

In sum, Professor Lessig’s solution to the current problem is to devise an originalist argument that tries to shift the Court off of its current narrow focus on material corruption to a broader one of dependence corruption. Even assuming that the Court can be persuaded to accept his view that the system is institutionally corrupted, the benefits of this approach are very limited: candidates will still be dependent on hard-money donors and those who make purely independent expenditures. The suggestion that it might help address the Super PAC problem assumes that (1) the Court will treat contributions received by Super PAC organizers the same way it treats contributions received by candidates, and (2) it is easier to prove dependency than it has been to prove material corruption. Count me as skeptical.

III.

AN ALTERNATIVE WAY OF THINKING ABOUT INFLUENCE INEQUALITY

A democratic distortion critique of modern democracy could give a simpler, fuller explanation of the problem as it applies to both lobbying and campaign finance. Democracies are founded on the core principle of basic electoral accountability—namely, that the candidates for office must compete for and win majority approval in order to gain or retain control of government. The electoral mandate, however, is only one of many influences operating on officials. Modern representatives must also balance the influence of party activists, donors, lobbyists, and the media when they decide how to act in office. If any of these other non-electoral influences becomes too strong, it can distort the democratic calculus by diluting basic electoral accountability. Democracies can then try to adjust the relative strength of the electoral mandate and competing influences through political regulation, including campaign finance reform. If the goal, for example, is to strengthen the electoral mandate, then the strongest way to do this would be through total public financing, a delegate as opposed to a trustee expectation of representation, and stricter limitations on lobbying.

However, the U.S. Supreme Court has intervened in this political question, asserting a very strong First Amendment protection against many forms of campaign finance regulations. This leaves the United States with very limited ways to adjust the level of democratic distortion caused by its primarily private system of funding elections: essentially, only contribution limits, disclosure, and voluntary public finance. Other democracies have been able to do more because they have been less constrained by constitutional interpretation. In an effort to work within the constraints imposed on them by the Supreme Court, reformers have tried to regulate campaign finance with the limited tools available to them, but this has created a cascade of secondary

political distortions. Contribution limits unaccompanied by overall spending caps have turned elected officials into full cycle fundraisers because they have to get more donations to make up for the now-prohibited amounts above the limit. Ever since McCain-Feingold closed the soft-money loophole for party building activities, strategic money—meaning money directed at competitive seats where it will have the most impact—has increasingly flowed to independent groups.³⁰ As political campaigning has become more expensive and professionalized, the efficiency imperative has grown stronger. When money is primarily raised and spent by incumbents, it is distributed inefficiently. Too many safe incumbents hold onto money that they do not really need in order to be reelected. Largely unencumbered by the self-interested motives of incumbents and their consultants, independent groups can direct the money to where it is needed the most. The courts have further facilitated this shift to outside spending by loosening the definition of issue ads, enabling unlimited contributions to Super PACs, allowing corporations to use their treasury money for independent political expenditures, and killing off the last remaining equality precedent.³¹

Given all this, the options are limited. The “Hail Mary” option is an Article V convention that creates a specific constitutional exemption for regulating campaign finance. But the United States has never successfully convened such a convention and there is as yet no majority consensus on what that new constitutional provision would be. Only slightly less daunting than the Article V option is Professor Lessig’s heroic attempt to make a democratic distortion argument palatable to the current set of Justices. The third and most pragmatic option is to pursue second-best strategies until the Court composition changes.

What would those strategies be? First, the 501(c)(4) disclosure problem needs to be fixed so that voters can know who is behind the various political messages they receive. This will be harder than it might initially seem because of partisan divisions in Congress. I have suggested elsewhere that one compromise with bipartisan potential might be semi-disclosure: preserving the anonymity of the individuals who contribute regulated amounts in exchange for disclosure of election finance sources in census-like categories.³² The right to donate in amounts that pose little or no danger of distortion or corruption

30. See *Outside Spending*, OPENSECRETS.ORG, http://www.opensecrets.org/outsidespending/fes_summ.php (last visited Dec. 4, 2013).

31. *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652 (1990), was long regarded as the one anomalous case in which the Court allowed an equality argument—the potentially distorting effects of the immense aggregation of wealth enabled by the corporate form—to justify restrictions on contributions and spending. *Id.* at 666–68. That possibility has been eliminated with the *Citizens United* decision, 558 U.S. 310 (2010).

32. See Bruce E. Cain, *Shade from the Glare: The Case for Semi-Disclosure*, CATO UNBOUND (Nov. 8, 2010), available at <http://www.cato-unbound.org/2010/11/08/bruce-cain/shade-glare-case-semi-disclosure>.

should be protected, much like we protect the right to a secret vote. Voters would still know the general categories of contributions (how much came from doctors, drug companies, lawyers, etc.), and enforcement agencies would have all the information they need to police the laws, but privacy would be protected.

Second, the United States cannot give up on public financing. Here I agree with Professor Lessig’s point that the important step is to enable all citizens to become donors. Despite the thoughtful academic designs of voucher-like systems, we have yet to experiment with them to see if they can work as intended. The old schemes of public finance ran into the problem that Americans do not like subsidizing political speech generally, and the speech of people they disagree with specifically. Voucher schemes allow voters to control where the money flows.

Lastly, the 2012 presidential election revealed the value of congestion pricing in regulating the activity of outside spending. Because candidates get preferential pricing when buying TV time while outside groups do not, it costs more to campaign by independent spending. As a result, Romney paid more and got fewer ads because he had to rely on unlimited outside spending.³³ This price discrimination serves as a soft discouragement of outside spending rather than as a hard limitation or prohibition that would run afoul of the Court. In the long run, the switch to the Internet and new social media has the potential to move us away from expensive, paid-media campaigning and toward cheaper forms of advertising. Some of this may be driven more by the financial incentives of political consulting than the true value of the advertising. More attention should be given to bad incentives, such as linking media buyers’ profit to the volume of political ads they purchase.

In the end, fixing democratic distortion is a political task, requiring sufficient political consensus about the inevitable trade-offs between different democratic values. The Court’s intervention to date has contributed to the unintended mess that we have at the moment. Giving it a new rationale might improve things in some ways, but the Justices would be pushed by future litigants to amplify a dependence corruption or democratic distortion principle. These determinations would then be rigidified by the force of precedent and pushed toward a bright line that political actors could recognize and work with. But there is no way that logic by itself can reveal the answer to questions of democratic taste and political balance. What is the right amount of lobbying? How important should political parties be? Should representatives listen more to voters and less to activists and donors? These are all crucial questions that should be determined politically by the citizens, not deduced from constitutional principles by the Court.

33. See Josh Voorhees, *Why Obama’s Ads Are Getting More TV Airtime than Romney’s*, SLATE (Nov. 2, 2012), available at http://www.slate.com/blogs/the_slatest/2012/11/02/political_ads_obama_s_campaign_cash_buys_more_airtime_than_romney_s.html.

