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3 CONGRESSIONAL FORUM: THE MOST EXPENSIVE SEAT IN THE HOUSE:

4 THE STATE OF OUR CAMPAIGN FINANCE SYSTEM

5 Wednesday, April 18, 2012

6 Washington, D.C.

7 The forum met at 1:59 p.m., in Room 1310, Longworth
8 House Office Building, Hon. Charles A. Gonzalez, presiding.

9 Present: Representatives Gonzalez, Pelosi, Brady of
10 Pennsylvania, Price of North Carolina, Ellison, Van Hollen,
11 and Capuano.

12

13 Mr. Gonzalez. Good afternoon, everybody. We will start
14 off with an apology. But, obviously, we had votes, and that
15 is always the first order of business.

16 At this time, I want to call this forum to order, and I
17 would like to begin by thanking House Administration Chairman
18 Dan Lungren for allowing us to use the committee room.

19 The past 2 years since the Supreme Court's decision in
20 *Citizens United* have seen a revolution in campaign finance
21 laws, and it is time that we looked into it. Even before
22 *Citizens*, the Jack Abramoff scandal and others showed how
23 corruption damages our nation.

24 But even the appearance of corruption is destructive.
25 Seventy-five percent of Americans believe campaign
26 contributions buy results in Congress. That is a threat to
27 our democracy itself.

28 We have waited 15 months for the committee of
29 jurisdiction to hold hearings. We can't wait any longer. I
30 am only sorry this is the first discussion the House has held
31 on this subject, and the only hope is to see official
32 hearings some day. But we will do what we can to bring light
33 to the issue.

34 Since *Citizens United*, we have entered a different
35 world. As we see on Chart 1, outside spending in campaigns
36 has drastically increased. The spending on the most
37 expensive campaign for the House of Representatives rose from

38 \$1.7 million in 1990 to \$11.7 million in 2010.

39 Spending by groups that don't disclose their donors
40 increased from 1 percent to 47 percent, as you can see in
41 Chart 2. Part of this has been facilitated by this new
42 invention referred to as the "Super PAC." And we will have a
43 clip on what, in essence, is a Super PAC.

44 [Video shown.]

45 Ted Koppel. [What is the difference] between a PAC and
46 a Super PAC?

47 Stephen Colbert. Well, it gets technical but, without
48 going into too much detail, one of them has the word "Super"
49 in front of it and that makes it a Super PAC. Other than
50 that, as far as I can tell, the difference between a PAC and
51 a Super PAC is a cover letter. Because I formed a PAC but a
52 PAC can only take so much money, it can only spend so much
53 money and I wanted to spend unlimited amounts of money and
54 receive, more importantly, unlimited amounts of money. And
55 so my lawyer told me all I had to do is add a cover letter
56 that said 'I intend this to be a Super PAC,' and it was a
57 Super PAC.

58 Ted Koppel. So now you can take all the money that
59 people are unwise enough to send you?

60 Stephen Colbert. Any amount. Did you bring your
61 checkbook?

62 Ted Koppel. Of course. How much money have you collected

63 so far?

64 Stephen Colbert. Oh, the fun thing about that is I don't
65 have to tell you.

66 [End video]

67 Mr. Gonzalez. What was the Supreme Court thinking? The
68 justices were fully aware of the threat that is posed by
69 political contributions to judges who run for judicial posts,
70 but they saw no such threat to the legislative branch. And
71 we know that Justice Scalia laughed at the idea that people
72 who sign political petitions should remain anonymous because,
73 as he said at oral argument, "The fact is that running a
74 democracy takes a certain amount of civic courage, and the
75 First Amendment does not protect you from criticism or even
76 nasty phone calls when you exercise your political rights to
77 legislate or to take part in the legislative process."

78 In his concurring opinion in that case, Justice Scalia
79 was even more blunt. "Requiring people to stand up in public
80 for their political acts fosters civic courage without which
81 democracy is doomed." Yet an individual or a corporation can
82 remain anonymous when making a monetary contribution.

83 And we should also have a clip here on how that can be
84 done and effectuated.

85 [Video shown.]

86 Stephen Colbert. Ok, so now I can get corporate
87 individual donations of unlimited amount for my (c)(4). What

88 can I do with that money?

89 Trevor Potter. Well, that (c)(4) could take out
90 political ads and attack candidates or promote your favorite
91 ones as long as it's not the principal purpose for spending
92 its money.

93 Stephen Colbert. No, my principle purpose is an
94 educational entity. Right?

95 Trevor Potter. There you go.

96 Stephen Colbert. I want to educate the public that gay
97 people cause earthquakes.

98 Trevor Potter. There are probably some (c)(4)s doing
99 that.

100 Stephen Colbert. Ok, can I take my (c)(4) money and then
101 donate it to my Super PAC?

102 Trevor Potter. You can.

103 Stephen Colbert. Wait, wait. Super PACs are transparent!

104 Trevor Potter. Right.

105 Stephen Colbert. And the (c)(4) is secret. So I can take
106 secret donations of my and give it to my supposedly
107 transparent Super PAC?

108 Trevor Potter. And it'll say, Given by your (c)(4).

109 Stephen Colbert. What is the difference between that and
110 money laundering?

111 Trevor Potter. It's hard to say.

112 Stephen Colbert. Well, Trevor, thank you so much for

113 setting me up.

114 [End video]

115 Mr. Gonzalez. Now, Mr. Colbert may be using satire, but
116 his point is very real. Phony corporations have been set up
117 to disguise donations. W Spann LLC gave \$1 million to the
118 Super PAC, Restore Our Future, and only investigative
119 journalism and the donor's embarrassment revealed the
120 millionaire behind the money. There are criminal probes into
121 other such donations, but some are completely legal.

122 It used to be that every politician, whatever else they
123 thought about campaign finance reform in general, was for
124 disclosure. There is a list of old quotes on the press table
125 that are available to those that want to see those previous
126 positions taken by the same individuals that would oppose
127 DISCLOSE today. All that, of course, has changed, as I just
128 mentioned.

129 Even some of the biggest donors to super PACs are
130 opposed to the idea of unlimited donations. One prominent
131 contributor, whose family has contributed more than \$15
132 million to a Super PAC, said, "I'm against very wealthy
133 people attempting to or influencing elections. But as long
134 as it is doable, I am going to do it."

135 I am sorry that none of the major Super PAC donors
136 accepted my invitation to testify today, but we do have four
137 panelists here today that are very familiar with the subject

138 and some very articulate Members of Congress that are
139 supporting that which we can do in the way of disclosure.

140 I will begin by recognizing the distinguished Democratic
141 leader Nancy Pelosi for an opening statement.

142 Ms. Pelosi. Thank you very much, Ranking Member
143 Gonzalez, for your leadership in bringing us here today on
144 this important issue, so important that it is fundamental to
145 our great democracy.

146 I am honored to be here with you and with our ranking
147 member of the full committee, Congressman Brady, and our
148 other colleagues: Congressman Chris Van Hollen, author of the
149 DISCLOSE Act; with David Price, a respected Member of
150 Congress, who brings academic as well as governmental
151 credentials to this discussion; Keith Ellison, Congressman
152 Keith Ellison, who is working at the grassroots level to try
153 to offset some of the cynicism that is growing regarding the
154 use of money in campaigns; and Congressman Capuano, a
155 respected member of this committee who has worked hard on
156 this issue.

157 It is important because our Founders had intended that
158 we were a democracy, which meant we are a government of the
159 people and that the votes and the voices of the people would
160 determine the outcomes of elections, not the bank books of a
161 very few people.

162 Nearly a century ago, Supreme Court Justice Louis

163 Brandeis wrote about the dangers of corporate interests
164 dominating our economy, stifling competition, and harming our
165 Nation. And he reminded us in the face of these forces that,
166 "Sunlight is said to be the best of disinfectants." We
167 agree.

168 Today, we come together in that same tradition to shed
169 sunlight on our democratic process and preserve the integrity
170 of our elections, our democracy, to call on our colleagues to
171 protect the voices and the votes of the American people. Our
172 effort today is necessary because more than 2 years ago with
173 the *Citizens United* decision, the Supreme Court opened the
174 floodgates of uninhibited special interest spending, secret,
175 undisclosed spending in our elections, and unlimited
176 corporate influence over our public policy debate.

177 In response to the *Citizens United* ruling, Democrats
178 have worked to restore transparency, fairness, and
179 accountability to our political process. We have worked to
180 create what we believe is necessary, a new politics free from
181 special interest and big money.

182 It is with that goal in mind that today we have come
183 together for a forum. Thank you, Mr. Ranking Member Gonzalez
184 and Mr. Brady, for a forum called "The Most Expensive Seat in
185 the House: The State of our Campaign Finance System."

186 While I appreciate the recognition that Ranking Member
187 Gonzalez made to the chairman, who gave us permission to use

188 the room, I think it is really necessary to say if you need
189 any more argument about the need for openness, you only need
190 look to the fact that the chairman denied us the ability to
191 use the cameras, the room's built-in cameras so that we can
192 transmit what is happening here more fully.

193 In fact, the Republican majority has denied us hearings
194 on legislation called the DISCLOSE Act, which would require
195 corporations to report their campaign-related activities.
196 And as Mr. Van Hollen leads us in saying, calling upon them
197 to stand by their ads the same way candidates must do.

198 Already 160 Members have cosponsored this legislation,
199 and I hasten to add that our Mr. Brady, when he was chairman,
200 enabled the Republicans in the minority to have at least
201 three hearings at their request. We hope that the Republican
202 majority will enable this to be a full-fledged hearing. They
203 won't let this proceeding be called a hearing. So it is a
204 forum.

205 This legislation, the DISCLOSE Act, passed the House in
206 2010 with bipartisan support only to be blocked in the Senate
207 by the Republicans. We must fight for full disclosure to get
208 unlimited secret donations out of our politics. We must
209 fight for reform to empower small donors and the grassroots
210 to have a greater role in our elections, and I contend that
211 when we reduce the role of money in politics -- and not just
212 *Citizens United*, but all big money in politics -- we will

213 increase the number of women, minorities, and young people in
214 elective office. It will have a very wholesome impact on our
215 system.

216 Ultimately, we must fight to amend our Constitution to
217 overturn the Supreme Court decision that had strengthened the
218 hands of the special interest at the expense of the people's
219 interest. So I am very honored to join my colleagues in
220 welcoming this very distinguished panel to our forum today.

221 Norman Ornstein of the American Enterprise Institute;
222 Paul Ryan, FEC Program Director; Zephyr -- like the wind --
223 Teachout, Professor, Fordham University School of Law; and
224 Monica Youn, Brennan Center Constitutional Fellow. They will
225 be more appropriately introduced.

226 But today's forum, this effort is about nothing less
227 than our democracy. The votes of the many must determine the
228 outcome of elections, not the bankroll of the very privileged
229 few.

230 With that, Mr. Chairman, I once again commend you for
231 holding this forum and salute you for your leadership on this
232 subject.

233 Mr. Gonzalez. Madam Leader, thank you. Thank you for
234 your leadership and your participation today.

235 To the witnesses, you will be given 5 minutes to make
236 your oral remarks. If you submit anything in writing, please
237 understand that will become part of the record, and you can

238 supplement that, of course. But we are going to try to keep
239 it to 5 minutes, and then we will have Q&A and maybe even a
240 second round of Q&A.

241 Our first witness is Norman J. Ornstein, who received
242 his B.A. from the University of Minnesota and a Master's and
243 a Ph.D. in political science from the University of Michigan.
244 Dr. Ornstein is a longtime observer of Congress and politics.
245 He writes a weekly column for Roll Call and is an election
246 analyst for CBS News.

247 He served as coordinator of the American Enterprise
248 Institute-Brookings Election Reform Project and participates
249 in AEI's Election Watch series. He also serves as a senior
250 counselor to the Continuity of Government Commission. Mr.
251 Ornstein led a working group of scholars and practitioners
252 that helped shape the law known as McCain-Feingold that
253 reformed the campaign finance system. He was elected as a
254 fellow of the American Academy of Arts and Sciences in 2004.

255 His many books include "The Permanent Campaign and Its
256 Future." He coauthored "The Broken Branch: How Congress Is
257 Failing America and How to Get It Back on Track" and also has
258 coauthored, the most recently, "Vital Statistics on Congress
259 2008."

260 And with that, I will turn it over for testimony by Dr.
261 Ornstein.

262

263 STATEMENTS OF NORMAN ORNSTEIN, RESIDENT SCHOLAR, AMERICAN
264 ENTERPRISE INSTITUTE; MONICA YOUN, BRENNAN CENTER
265 CONSTITUTIONAL FELLOW, NYU SCHOOL OF LAW; ZEPHYR TEACHOUT,
266 ASSOCIATE PROFESSOR, FORDHAM UNIVERSITY SCHOOL OF LAW; AND
267 PAUL S. RYAN, FEC PROGRAM DIRECTOR, CAMPAIGN LEGAL CENTER

268 STATEMENT OF NORMAN ORNSTEIN

269 Mr. Ornstein. Thanks, Mr. Chairman, Madam Leader, and
270 members of this panel, many of whom I have worked with on
271 some of these issues.

272 I do have a written statement. I just want to make
273 three quick points.

274 The first is about the *Citizens United* decision, a
275 decision that I think has reverberated around the country,
276 and I have seen it in my own travels, in discussions with
277 people more than any other in the last several decades. The
278 first thing I want to say is I actually have never seen a
279 decision more poorly reasoned or removed from reality as this
280 one.

281 The idea, first of all, that corporations should be
282 treated the same as people when it comes to political
283 involvement. When individuals in the society have a
284 multiplicity of interests and motives, some of them very
285 personal related to their own lives, but others that reach

286 out to the larger society and with an interest in the futures
287 of our children and grandchildren. Corporations have one
288 motive, which is profit.

289 At the same time, the idea that money equals speech --
290 the more money, the more speech, the better -- flies in the
291 face of another reality. If I am speaking with my own voice
292 or just with one microphone to amplify it and you have 30-
293 foot speakers and an amplifier that can shake the seats at
294 Nationals Park, and we are both trying to speak at the same
295 time, I don't view that as something that is good for
296 dialogue in a society. But we have now created a situation
297 where there is enormous leverage for those with those
298 amplifiers.

299 And I have to say that sitting in the Supreme Court, as
300 it argued -- had an oral argument over the McComish decision,
301 another in a string of destructive decisions made by the
302 court, the logic applied there, which was involving the
303 public funding system in Arizona, where if a multimillionaire
304 spent significant sums of his or her own money and opted out
305 of that public funding system, that the candidate who had
306 opted in could raise a little bit more money. The idea that
307 that would damage the speech of the multimillionaire is a
308 kind of logic that it seemed to me belonged on another planet
309 or in another galaxy. But that is what we are talking about
310 here.

311 And finally, the idea in *Citizens United* and Justice
312 Kennedy's decision that independent expenditures can't be
313 corrupting also belongs in another galaxy. The point I would
314 make there is for anybody who has been for more than 10
315 minutes around the halls of this body or in any legislative
316 body, but now especially in the aftermath of *Citizens United*,
317 watching the pressures to raise money, watching what happens
318 when Members no longer have to worry simply about competing
319 against a candidate but against now the nightmare that with 3
320 weeks to go in an election, some alien predator group
321 anonymously can parachute in behind your lines and spend \$20
322 million to slime you, and you have to raise money in small
323 increments -- there is no time to do it -- has put everybody
324 on notice that they better raise war chests in advance.

325 And that means whether you are in this building or
326 standing outside, watching Members stream out in any odd
327 moment to do call time, which has now become far more
328 significant, and knowing what, as a member of this committee
329 Barney Frank has said, the demeaning process of having to go
330 out and either beg for money or shake people down. If that
331 is not corrupting, I am not sure what is.

332 And frankly, the independent amounts, the large amounts
333 that can be spent, the unlimited amounts, I have had lots of
334 people -- Senators in particular -- tell me of their
335 experiences sitting down with somebody who says the

336 equivalent of, you know, "I am working with Americans for a
337 Better America, and they have got more money than God. They
338 really want this amendment."

339 And if anybody challenges them and doesn't do it, I
340 don't know what they will do. But \$20 million in the last
341 few weeks of a campaign, that is not beyond them. The result
342 is we not only will have more money, but we are going to have
343 more amendments, more provisions that nobody will know about,
344 without a dime being spent. That is what unlimited money can
345 do.

346 My final point is this is a problem with the Supreme
347 Court. That is a big lift until we get a change in the
348 court. We have to turn to other agencies where we can begin
349 to get some other impact that can bring us back to true
350 independence, instead of the farce that we have now that
351 Stephen Colbert and our colleague Trevor Potter have pointed
352 out so well, and to real disclosure.

353 It would be nice if we could have gotten -- it would
354 have been nice if we had gotten one Republican in the Senate
355 to support the DISCLOSE Act, including those who now talk
356 eloquently about the need for it in the last Congress. It
357 would be nice now if we can get a Federal Election Commission
358 not to deadlock 3-3 on almost every instance in which we
359 enforce the law.

360 The problem is not just *Citizens United*. It is that

361 laws on the books, everybody who is involved in this process
362 knows you can do almost anything that you want.

363 I hope you will support the Federal Communications
364 Commission as it moves forward now commendably with its
365 action to require broadcasters to put in their public file
366 online, in real time, the donors to the ads that they are
367 getting, which is being resisted strenuously by the same
368 broadcasters who are making billions of dollars in profits
369 from all of the ads that are going up. And I hope that you
370 will also work with the IRS to enforce its own regulations
371 and the Securities and Exchange Commission to require public
372 corporations to disclose all of their expenditures in this
373 area.

374 And finally, let me just say it is worth thinking about
375 an idea that has been raised by a lawyer named Gregory Colvin
376 to introduce a law that would limit the political
377 expenditures of 501(c)(4)s. I am not sure how much we can
378 rely on the IRS, and it may be worthwhile as well to pass a
379 law that makes this more explicit.

380 Thank you very much.

381 [The statement of Mr. Ornstein follows:]

382

383 Mr. Gonzalez. Thank you very much, Dr. Ornstein.

384 I am going to be going a little out of order. I don't
385 mean to throw you all off, but the next witness is going to
386 be Monica Youn from the Brennan Center, Constitutional
387 Fellow. Her education consists of a B.A. from Princeton,
388 Master's in philosophy from Oxford, and J.D. from the Yale
389 Law School.

390 Monica Youn is the inaugural Brennan Center
391 Constitutional Fellow at NYU School of Law, where she focuses
392 on election law and First Amendment issues. She is the
393 editor of "Money, Politics, and the Constitution: Beyond
394 *Citizens United*," a book of essays by leading constitutional
395 scholars, and she has published law review articles on
396 election law issues.

397 She has litigated election law cases in federal courts
398 across the Nation and has testified before Congress on
399 multiple occasions. Her political commentary has been
400 published in Roll Call, Slate, the L.A. Times, among other
401 publications. She has appeared on MSNBC; PBS; the NewsHour;
402 Democracy Now!; and the Bill Moyers Journal.

403 Her work at the Brennan Center has been recognized by
404 the New Leaders Council, which named her one of their "40
405 under 40" nationwide leaders in 2010 and by Common Cause,
406 which awarded her the John Gardner Award for Extraordinary
407 Leadership.

408 Ms. Youn.
409

410 STATEMENT OF MONICA YOUN

411 Ms. Youn. Well, it is 6 months out from the general
412 election, and it seems a little bit early for a weather
413 report. But it seems already clear to everyone in this room
414 and outside this room that the 2012 election is shaping up to
415 be a perfect storm of money and politics.

416 We have unprecedented levels of outside spending,
417 combined with massive loopholes in federal disclosure laws,
418 which has led to a situation that is really kind of the worst
419 of all possible worlds.

420 I wanted to focus my testimony, first of all, on the
421 definition and derivation of Super PACs. I then wanted to
422 talk specifically about what changed in the law between the
423 post-*Citizens United* era and the pre-*Citizens United* era, and
424 then to talk about -- very briefly about some of the faulty
425 assumptions underlying the logic of *Citizens United*.

426 So Super PACs are the latest and greatest soft money
427 loophole, a phenomenon that threatens to overwhelm our
428 politics. Unlike the other major players in campaign
429 fundraising -- candidates, political parties, and traditional
430 PACS -- Super PACS have a court-conferred advantage. They do
431 not have to play by the same fundraising rules as everyone
432 else.

433 Those other entities are all bound by federal

434 contribution limits, which regulate that both the source and
435 amount of contribution, and none of those entities can
436 receive contributions from corporate or union general
437 treasury funds. By contrast, Super PACs can raise and spend
438 unlimited funds not only from wealthy individuals, but also
439 directly from corporate treasuries. And because of loopholes
440 in federal election disclosure laws, including the (c)(4)
441 loophole discussed by Stephen Colbert and, you know, the
442 anonymous shell corporations also created by Stephen Colbert,
443 many of the sources of these funds remain cloaked in secrecy.

444 So this morning's L.A. Times, for instance, reported
445 that Crossroads GPS, which is the (c)(4) that funds American
446 Crossroads, has received \$77 million in undisclosed
447 donations, money that we can expect to have a major impact on
448 what happens with -- on the electoral spending that
449 Crossroads GPS is permitted under current laws to engage in.
450 We don't know who these donors are. We don't even know
451 whether these donors are individuals or whether they are
452 corporations.

453 So how did we get to this state of affairs? There has
454 been a lot of debate over whether the Supreme Court created
455 Super PACs in its *Citizens United* decision. I find a lot of
456 that discussion, frankly, beside the point.

457 The Supreme Court didn't create or even mention Super
458 PACs. Super PACs didn't exist at the time of *Citizens*

459 United. But the logic of Citizens United directly dictated
460 that when the D.C. Circuit heard the case *SpeechNow* that
461 created Super PACs, it had no choice but to follow along with
462 that reasoning.

463 So what has actually changed? Because a lot of people
464 will say, "Well, you know, this is politics. Politics ain't
465 beanbag. There was already corporate money in politics.
466 There were already wealthy donors pouring millions of dollars
467 into independent spending."

468 But you know, prior to *Citizens United*, corporations and
469 unions could participate in politics, but they had to do so
470 through their separate segregated funds, or PACs. These
471 consisted crucially of money that was limited and money that
472 was voluntarily contributed by individuals -- by
473 shareholders, by corporate officers. And so, they had to
474 abide by the same fundraising rules as everyone else. Go hat
475 in hand and say, "Hey, who wants to support the corporation's
476 political agenda?"

477 So, for example, in the 2008 election cycle, Exxon Mobil
478 did exactly that. They went around, hat in hand, to their
479 employee shareholders. They collected about \$700,000, which
480 is a very respectable amount of money.

481 But during the same election cycle, Exxon Mobil's
482 corporate profits were \$80 billion. That is a difference of
483 more than 100,000 times. And what *Citizens United* does is it

484 allows the amount of money that every corporation has
485 available to it to act as a potential election war chest to
486 increase by these kinds of exponential figures. After
487 *Citizens United*, corporations can spend money, often through
488 a shell corporation or other loophole, and do so in an
489 undisclosed manner.

490 So, secondly, about wealthy individuals. So some people
491 have said, look, we all know about the Wyly brothers way back
492 in the day. We know about George Soros, all spending money.
493 You know, the Swift boat advertising. You know, wealthy
494 donors have always poured money into politics.

495 But that money had to be disclosed. Now that donors can
496 cloak their electoral influence in secrecy, we are seeing
497 dark money overwhelm the system. So as these slides will
498 show you, the amount of total outside spending until March
499 8th of this year was \$88 million, which is more than twice as
500 much as 2008 and more than six times as much as in the 2004
501 cycle. So now that that money is in the dark, we are seeing
502 individual wealthy donors just flood to this new dark avenue.

503 So why did the court do this? And without -- I am out
504 of time here. So I am just going to briefly mention the
505 three faulty assumptions that underlay the court's reasoning
506 in *Citizens United*.

507 First of all, that independent expenditures are truly
508 independent. As I explain in my written testimony, that

509 would depend on having a workable definition of what
510 constitutes a coordinated expenditure, a definition that the
511 FEC has utterly failed to promulgate or to enforce.

512 The second, that existing disclosure laws will protect
513 against corruption. Corporate political spending is not
514 required to be disclosed either to shareholders or to
515 corporate boards or to voters. It is very easy to keep this
516 law in the dark. But even if disclosure laws worked,
517 disclosure is necessary, but not sufficient. Disclosure
518 points out the outliers, but it doesn't really take care of
519 the heart of the problem.

520 And thirdly, that quid pro quo corruption is the only
521 problem Congress can constitutionally protect against. As
522 Mr. Ornstein mentioned in his testimony, we now have lots of
523 instances of "Americans for a Better America" or other
524 similarly euphemistic wealthy interests throwing their weight
525 around, you know, and acting in a way that is utterly
526 unaccountable.

527 This may resemble an oligopoly. This may resemble a
528 plutocracy. But it very little resembles what we have come
529 to think of as democracy.

530 Thank you very much.

531 [The statement of Ms. Youn follows:]

532

533 Mr. Gonzalez. Thank you very much. Excuse me.

534 The next witness will be Zephyr Teachout, associate
535 professor of law, Fordham University School of Law. Received
536 her education, her B.A. from Yale University, her Master's in
537 political science from Duke, and her J.D. from Duke.

538 She is a talented and very creative scholar. Professor
539 Teachout brings a rich background in laws governing political
540 behavior, both domestically and abroad, as well as the
541 insights of her original work on corruption and its
542 constitutional history.

543 Her 2009 article, "The Anti-Corruption Principle," was
544 cited by Justice Stevens in his *Citizens United* dissent for
545 showing, among other things, that the Founders "discussed
546 corruption more often in the Constitutional Convention than
547 factions, violence, or instability."

548 Professor Teachout.

549

550 STATEMENT OF ZEPHYR TEACHOUT

551 Ms. Teachout. Thank you so much. It is Zephyr.

552 Thank you so much for having me. I am going to do two
553 things in my remarks. First, talk about history and then
554 talk about the future.

555 I want to place *Citizens* -- is that better? I want to
556 place *Citizens United* in a broader historical context. As a
557 friend of mine, a Texas lawyer who taught at Duke, said about
558 *Buckley v. Valeo*, "They went and got drunk on the First
559 Amendment, didn't they?"

560 And since *Buckley v. Valeo*, the last 30-odd years of
561 jurisprudence have been wildly outside the initial 180 years
562 of thinking about the First Amendment and thinking about
563 Congress's power to limit corruption through political
564 regulation. Up until *Buckley*, it was not a sensible argument
565 to claim that Congress couldn't do what it needed to do to
566 prevent money overcoming political power.

567 Just one of many examples, in 1874, the United States
568 Supreme Court refused to enforce a contract between an old
569 man and a lobbyist because they said lobbying was against the
570 public policy of the United States. And if the great
571 corporations of our day were to hire adventurers to lobby in
572 the halls of Congress, that would corrupt and degrade the
573 entire institution. Several states had laws criminalizing

574 lobbying. And certainly, up until *Buckley v. Valeo*, the
575 assumption was that one could limit campaign expenditures, as
576 well as contributions.

577 Since *Buckley*, you know somewhat from what others have
578 said about the eccentricity of the Court in the context of
579 campaign contributions, but there has been a parallel
580 eccentricity in interpreting federal bribery and extortion
581 statutes. So, in 1991, the Supreme Court says even though
582 many campaign contributions would otherwise count as
583 extortion or violation of federal extortion laws, in this
584 area alone we are going to require a specific promise on the
585 part of the legislature in return for a donation.

586 So that we are going to carve out an exception within
587 federal bribery laws and say here, when it is campaign
588 contributions, it is not bribery. So this creates this
589 incredible bait and switch.

590 Because in the context of bribery laws, we say don't
591 worry. Campaign finance laws will cover it. And then in
592 *Citizens United* and other cases, Kennedy says don't worry.
593 bribery laws will cover it. And what you end up is this
594 great cavity where what you and I and the rest of the country
595 knows is corruption in the sense the Founders meant is
596 allowed to go on.

597 So we are, as Monica suggested, in this terrible world
598 where you spend all your time begging for people to give you

599 \$2,500 and to bring people together who can give you that
600 much. And at the same time, you need to be then scared of
601 the company that might come in or might not and roil your
602 local constituency and swarm it with ads.

603 If you don't change this, you know and I know and the
604 country knows it is a bad couple of years, but it is about to
605 get much worse. The culture of corporations has not yet
606 adopted the *Citizens United* law. They have not yet hired the
607 best campaigners. They have not yet figured out all the
608 loopholes. This is 2 years in. So it is so important to do
609 something now.

610 Now with -- I am former national director of the
611 Sunlight Foundation. I am a former political campaigner, and
612 I am a scholar. I think disclosure is extremely important.
613 But I do not think you can X-ray a sick patient into health,
614 and I do not think that X-rays alone are sufficient and
615 disclosure alone is sufficient for the level of threat that
616 we have right now in this country.

617 It is critical that this Congress focus on changing the
618 structure of the way campaigns are funded. Low-dollar
619 matching funds. I know. I was the director of online
620 organizing for Howard Dean's presidential campaign. We
621 figured out, and we have seen Barack Obama do extraordinary
622 things with this. We know how to allow you to spend your
623 time talking to 100 people who will give you \$100, instead of

624 the richest people in the world.

625 You may lose your jobs fighting for changing the
626 structure of money in politics. But if you don't do this,
627 you can't do anything else. You can't do anything about too
628 big to fail companies if you are scared about them coming
629 into your district. You know that. You can't do anything
630 about capital gains tax or the financial transactions tax
631 with this kind of funding mechanism.

632 So thank you for having me, and I look forward to seeing
633 what happens.

634 [The statement of Ms. Teachout follows:]

635

636 Mr. Gonzalez. Thank you.

637 Next witness is Paul S. Ryan of the Campaign Legal
638 Center. Paul S. Ryan joined the Campaign Legal Center in
639 October 2004. He has specialized in campaign finance,
640 ethics, and election law for more than a decade. Mr. Ryan
641 directs the Campaign Legal Center's Federal Election
642 Commission program and regularly represents the Campaign
643 Legal Center before the Commission.

644 Mr. Ryan also litigates campaign finance issues before
645 federal and state courts throughout the United States and has
646 published extensively on the subject of election law. Mr.
647 Ryan has testified as an expert on election law before
648 numerous legislative bodies and government ethics agencies
649 including the FEC, the California state legislature, the
650 California Fair Political Practices Commission, the New York
651 City Council, the New York City Campaign Finance Board, the
652 Los Angeles City Council, and the Los Angeles City Ethics
653 Commission.

654 Mr. Ryan has also spoken on the topics of campaign
655 finance and ethics laws at conferences around the Nation, has
656 appeared as a campaign finance law expert on news programs of
657 CNN, NBC, C-SPAN, and other media outlets, and has been
658 quoted by the New York Times, Los Angeles Times, the
659 Washington Post, Roll Call, and news publications. He
660 received his education at the University of Montana, as well

661 as the University of California, Los Angeles, School of Law's
662 program in public interest law and policy in 2001.

663 Mr. Ryan.

664

665 STATEMENT OF PAUL S. RYAN

666 Mr. Ryan. Madam Leader, distinguished committee
667 members, thank you for this opportunity to appear before you
668 this afternoon. As you have already heard, the *Citizens*
669 *United* decision was based on at least two faulty assumptions.

670 First, that this new flood of corporate money in
671 politics would actually be disclosed. And second, that this
672 new flood of corporate money in politics would actually be
673 spent in a truly independent manner with respect to
674 candidates and parties.

675 I am going to address the nuts and bolts of existing
676 statutes and regulations that undermine those two assumptions
677 of the Court, and these assumptions were only made worse by
678 the D.C. Circuit Court of Appeals in the *SpeechNow* case,
679 which gave rise to the super PACs.

680 Notwithstanding the Supreme Court's promise that the
681 corporate money it was unleashing would be spent
682 independently of candidates, current laws have been
683 interpreted by the FEC to allow very close relationships
684 between Super PACs and candidates. Congress, in passing the
685 McCain-Feingold law in 2002, ordered the FEC to rewrite its
686 long-ineffective coordination rules. These coordination
687 rules have twice been invalidated by federal courts over the
688 past decade and remain ineffective today.

689 Many assume that the coordination rules restrict general
690 interaction between candidates and outside groups. But
691 instead, current coordination rules regulate only discrete
692 expenditures, discrete ad buys, for example, made by outside
693 groups.

694 Current coordination rules accommodate close personal
695 relationships between candidates and the individuals
696 operating Super PACs, and in fact, many of the candidate-
697 specific Super PACs active in this year's elections are being
698 run by close associates and friends and former employees of
699 these candidates.

700 The McCain-Feingold law prohibits candidates and office
701 holders from soliciting unlimited funds, as well as corporate
702 and union funds in any amount, so-called soft money, in
703 connection with any elections. However, last year, the
704 Federal Election Commission nonsensically issued an advisory
705 opinion stating that candidates and their staff and office
706 holders and their cabinet members can attend, speak, and be
707 featured guests at these Super PAC fundraising events where
708 unlimited funds are being raised so long as they do not make
709 the actual pitch for the unlimited contributions. This is
710 nonsense. The close relationships between Super PACs and
711 candidates fall far short of the independence likely
712 envisioned by the Supreme Court in *Citizens United*.

713 On top of this, we have 501(c)(4) organizations. The

714 *Citizens United* court's second faulty assumption, that
715 disclosure laws would provide voters with the information
716 needed to make informed decisions on Election Day, has not
717 come to pass.

718 Section 501(c)(4) organizations like Crossroads GPS will
719 likely spend hundreds of millions of dollars on election ads
720 in this year's elections without disclosing any of the
721 sources of their funds. This is possible because back in
722 2007, the FEC promulgated a rule gutting the McCain-Feingold
723 law's donor disclosure requirement for electioneering
724 communications.

725 Whereas the statute requires groups that spend more than
726 \$10,000 in a calendar year on electioneering communications
727 to disclose the names of all contributors who contributed
728 \$1,000 or more to the group, the FEC's 2007 rule, by
729 contrast, narrowly restricts that disclosure requirement. It
730 only requires disclosure if the donor gave the funds "for the
731 purpose of furthering electioneering communications." Under
732 the FEC's rules, donors to 501(c)(4) groups simply refrain
733 from designating their contributions to the groups for any
734 particular purpose and, therefore, evade entirely these
735 McCain-Feingold law donor disclosure requirements.

736 Last year, Representative Van Hollen sued the FEC,
737 challenging this 2007 rule. And several weeks ago, he
738 prevailed in his challenge with a favorable decision from the

739 Federal District Court. However, an appeal is pending, and
740 the FEC is unlikely to act on this court order anytime soon.
741 The Campaign Legal Center is very proud to be part of
742 Representative Van Hollen's legal team, and we plan to
743 continue fighting on his behalf in the courts.

744 The Campaign Legal Center urges Congress to pass the
745 DISCLOSE Act of 2012 to close these disclosure loopholes, to
746 address these problems that have been made possible by the
747 FEC's regulations, as well as by holes in existing statutes.
748 The IRS itself has a role to play in this as well. The IRS's
749 faulty interpretation of the tax code has made 501(c)(4)
750 organizations attractive vehicles for spending these millions
751 of dollars in election ads while shielding their disclosures.

752 I am happy to talk further about the tax laws to the
753 extent that it interests you, and I thank you for this
754 opportunity again to testify before you today.

755 [The statement of Mr. Ryan follows:]

756

757 Mr. Gonzalez. Well, we thank the witnesses. We are
758 going to proceed with 5 minutes of questioning from the
759 Members that are up here right now, and I will start by
760 recognizing my colleague, Mr. Brady.

761 Mr. Brady. Thank you, Mr. Chairman, but I would have
762 yielded my time to Leader Pelosi.

763 No, just real quickly -- and this is for all of you.
764 The DISCLOSE Act, do you think that is a good first-step that
765 closes the information gap between unions and the membership
766 organizations, as opposed to corporations?

767 And the reason why I make the distinction, I am a union
768 member, and I am still a current union member of two unions.
769 And every donation that I make, I vote on. I get a chance to
770 vote when I have our meetings, and I submit the request of
771 people or whoever it may be, the organization that asked for
772 donations, and we get a chance to vote on it. And a
773 membership organization is the same.

774 Corporations, they just do what they want to do with any
775 money that they collect. And the problem I have with that is
776 a pen is a company. TVs are companies. Water is companies.
777 These guys, God knows, are companies -- watches, jewelry,
778 clothes. They are all companies that we all support, and we
779 buy items from them, and they make a profit.

780 And then they can use that money, their profit or the
781 money that we give them, they can now use that against me.

782 They can use that against any one of my colleagues, and I
783 have a problem with that. I have a problem with that lack of
784 transparency.

785 Now talking about transparency, as our Speaker -- our
786 Majority Leader [sic] -- just said, that they had asked us,
787 and me as the Chairman of this Committee, for us to have
788 hearings on the *Citizens United* and DISCLOSE Act. And you
789 know, there are a lot of things above my pay range, and
790 naturally, I had to go to my Speaker at the time, Speaker
791 Pelosi, and ask her if we should do that. And she said,
792 "Yes, give them as many as they want." They wanted three.

793 We have on our committee, myself, Mr. Gonzalez, Mrs.
794 Lofgren, asked for a hearing on the influence of corporate
795 money in elections in the same exact way they asked us for
796 hearings when we were the majority, and they said no. And
797 now the current chair won't put our pretty faces on TV and
798 let us -- so that the whole Congress, while we are sitting
799 here waiting for a vote, that they could just watch and
800 listen and form an opinion on what we are hearing here today
801 from all of you.

802 So, you know, that does upset me and bother me a little
803 bit because, again, it is probably above our chairman's pay-
804 grade. But it is not above the leadership that sanctions it
805 or not sanctions us to have these hearings.

806 So, do you think the DISCLOSE Act, back to my question,

807 is a good first step into closing that gap between what is
808 required for our union membership and membership
809 organizations making campaign contributions, as opposed to
810 our corporations that are allowed to be in obscurity and do
811 whatever they want nontransparent? Anyone who would like.

812 Ms. Youn. I would be interested in addressing that. I
813 am not prepared to talk about the DISCLOSE Act, but there is
814 a very interesting asymmetry because the Supreme Court in
815 *Citizens United* pretends it is treating corporations and
816 unions the same. And I think Representative Brady is
817 absolutely correct in pointing out that, in fact, they are
818 not the same.

819 That the Supreme Court, among others, has been
820 absolutely vigilant in making sure that every dollar of
821 member -- of union member funds that goes toward political
822 spending was put there voluntarily and that members who are
823 not interested in their money being used for political
824 spending have an opt-out.

825 Whereas corporations, the money that they are using is
826 not voluntary. When I give my money to my 401(k), I am not
827 saying that whatever corporate manager has their hands on my
828 money has the right to use that to support any political
829 candidate that they like.

830 So, yes, unions and corporations can both spend out of
831 their general treasury funds. But the asymmetry is in

832 amassing those general treasury funds, unions are required to
833 use only voluntary contributions, whereas corporations are
834 not.

835 Mr. Ryan. I would also like to respond. The Campaign
836 Legal Center strongly supports the DISCLOSE Act of 2012. We
837 think it would do great things to improve transparency in
838 U.S. elections. When it comes to treatment of or spending by
839 labor unions versus for-profit corporations, nonprofit
840 corporations like these 501(c)(4) groups, it is the
841 thresholds for disclosure that are intended to capture the
842 information that matters, big donors.

843 In the DISCLOSE Act, I believe the donor disclosure
844 thresholds in the DISCLOSE Act of 2012 are \$10,000. So it is
845 only when a person or an entity, a corporation, gives money
846 to the spender in excess of that \$10,000 threshold that they
847 get disclosed by the spender as a donor to the group. I
848 think that is a good thing.

849 I don't think disclosure thresholds should be so low as
850 to capture every dollar coming into these groups. It may
851 place an unreasonable burden on groups that are funded or
852 driven principally by a huge number of small donors. They
853 don't worry me in terms of democracy.

854 Large numbers of small contributions aren't the problems
855 here. It is small numbers of huge contributions swaying
856 elections that are -- that is what matters. That is what

857 needs to be disclosed.

858 Mr. Ornstein. Just one quick comment. And I also
859 support the DISCLOSE Act, but I would take it further.

860 The campaign monies given by corporations are
861 nondeductible business expenses. If I am a shareholder in a
862 corporation, I ought to know when that company is spending
863 money that is not for legitimate business purposes directly
864 that would be deductible.

865 And it seems to me that two things ought to happen here
866 that perhaps you could participate in. One is to urge the
867 Securities and Exchange Commission to promulgate a regulation
868 that requires in annual reports that all nondeductible
869 business expenses are disclosed. And the second is to talk
870 to major shareholders, and that includes big pension funds,
871 and have them go to corporations and demand that it is in
872 their interest as shareholders to know how they are spending
873 their money that doesn't get a tax deduction.

874 Mr. Brady. Thank you. And thank you all for being here
875 today, and thank you, Mr. Chairman.

876 Mr. Gonzalez. Thank you very much, Mr. Brady.

877 I would recognize Mr. Price for 5 minutes.

878 Mr. Price. Thank you, Mr. Chairman.

879 Thanks to all of you for outstanding testimony in every
880 case. Very, very well done, and very helpful.

881 We all could give multiple examples of how far this has

882 gone already and where it may well take us in the future. On
883 March 30th, *This American Life* ran a show entitled "Take the
884 Money and Run for Office." During the second segment, the
885 show focused on a California race -- actually, the race of
886 the chairman of this committee.

887 Three weeks before the election, the Times ran a piece
888 calling incumbent Dan Lungren "endangered." Guess what
889 happened. The next week, Karl Rove's Super PAC, American
890 Crossroads, dumped \$680,000 into that race in the form of a
891 media buy, and we all know the result.

892 I had a similar experience right next door in North
893 Carolina's Second District with my colleague, Bob Etheridge,
894 in the Second District. Hundreds of thousands of dollars
895 parachuted into that race in the last 2 weeks, and he lost by
896 a very few votes. Needless to say, every dime of that money
897 was spent on negative ads.

898 So the examples are multiplying. The future is before
899 our eyes, I think, in what is happening this year, including
900 the Republican presidential primary. So, I would like to ask
901 a couple of questions, which may help us understand the
902 gravity of this trend and its consequences.

903 All of you in your own way have spoken about corruption
904 -- or the appearance of corruption -- and about the
905 otherworldliness of the court's reasoning about it. I wonder
906 about its effects on this institution and the effects on the

907 functionality of American politics and American government.

908 Norm Ornstein, I would ask you to start because I know
909 you have thought about it, but I expect all of you have. How
910 is this money spent, and in what ways is it spent differently
911 from money spent by other kinds of political groups? Are
912 these ads different? Are they more negative? Are they more
913 personal?

914 Is there any study of this? We all have our
915 impressions, and I wonder if those impressions are confirmed.

916 And what effect does this avalanche of negative ads from
917 undisclosed sources have, and what effect is that likely to
918 have on what we all know is an overly charged, overly
919 polarized political environment? Does it contribute to the
920 dysfunctionality of this institution and our inability, our
921 failure, to come to grips with the major issues of the day?

922 We can't even pass a transportation bill. We can't pass
923 an education reauthorization. And now it seems that we
924 aren't even going to be able to pass appropriations bills
925 because that process has blown up. Congress is not
926 functioning well, and the American people are not being well
927 served.

928 And Norm, I know you have thought about the connection
929 of campaign financing, the way campaigns are paid for, and I
930 would like to have you elaborate on it.

931 Mr. Ornstein. Thanks.

932 Let me start by saying that one of the most significant
933 and commendable provisions of the Bipartisan Campaign Reform
934 Act was the "stand by your ad" provision that David Price
935 authored. I think it has now become familiar to most
936 Americans, and it has changed the nature of campaigning. It
937 has changed those commercials.

938 When a candidate has to stand up in a television
939 commercial and say to the camera, "I am fill-in-the-blank,
940 and I stand by this message," it makes a difference. And if
941 you have watched any of the ads that have been out, the Super
942 PAC and 501(c)(4) ads in the presidential campaign where the
943 disclaimer at the end is, "This message paid for by Americans
944 for a Better America, unaffiliated with any candidate or
945 campaign", what you see -- and we need more systematic
946 research, but it is pretty evident on the surface -- is
947 scorched earth.

948 Lies have now become the coin of the realm.
949 Viciousness, when you don't have to connect yourself to it.
950 And of course, the perfect opportunity for a candidate who is
951 intimately connected to the Super PACs to say, "Well, I had
952 nothing to do with that," it makes it worse.

953 I think it is demeaning the discourse even more. We
954 live in a rough and tumble world. Shock to cut through the
955 cacophony is going to be there all the time. But the "stand
956 by your ad" provision at least puts some broad boundaries

957 around this, and those are going away.

958 And one of the things that I fear so much is these
959 groups are coming in with so much money that they can go to
960 television and radio stations and roadblock all the prime
961 spots by saying, "I will give you retail or 25 percent over
962 retail." And candidates are going to be relegated to the
963 second tier. They are going to be in the AAA ballparks
964 rather than in the best places.

965 And that is going to make it worse. What does all that
966 do? It accentuates the tribal politics. This scorched earth
967 campaign is going to make it that much harder to find
968 bipartisan compromise when we come back. It is going to make
969 voters view even less favorably all of those who are engaged
970 in politics.

971 I don't know how much lower we can sink below the 9
972 percent where we are now in approval, or 9 to 11 percent, but
973 we have got a little bit of running room there. And the
974 harsh negative views will increase, and that means the
975 legitimacy of decisions that are made will come under
976 challenge.

977 So this is not just a matter of some of the really
978 serious elements that we made here, that we are back to the
979 gilded age and you have got people coming in, swooping in and
980 spending money and getting their way in policy. It also
981 challenges, it seems to me, the fundamental legitimacy of the

982 system. And how members of the court who made this misguided
983 decision can't see some of what they have wrought is beyond
984 me.

985 Mr. Ryan. I would love to add to Norm's comments
986 because it is not -- stand by your ad requirements are a
987 great thing. But they are not enough. One of the central
988 flaws in the Citizens United decision was this notion that
989 corporations are just like humans. Corporations aren't just
990 like humans.

991 And these (c)(4)s that are going to be spending tens or
992 hundreds of millions of dollars in this year's elections on
993 attack ads -- and they will be doing the dirty work of
994 candidates, they will be doing the attack ads -- they can
995 dissolve overnight. They can dissolve at the drop of a hat.

996 And those of us sitting in this room today, God willing,
997 we will be here in December. We will be alive. We will be
998 held accountable for the actions we take between now and
999 then. That can't be said for these 501(c)(4) and other types
1000 of outside groups that, again, can dissolve with the filing
1001 of some paperwork with a secretary of state's office at the
1002 drop of a hat. That is a big problem.

1003 Ms. Youn. Representative Price, I also wanted to
1004 mention an example. There is visible negative campaigning,
1005 and I think that the available social science research has
1006 shown that Super PACs overwhelmingly engage in these negative

1007 attack ads, but there is also invisible negative campaigning.
1008 And there is a terrific example from your home state of North
1009 Carolina that is mentioned in the dissenting opinion of a
1010 case called *Duke v. Leake*.

1011 And in that case, there is a lobbying -- there is
1012 organization called Farmers for Fairness. This is in the
1013 North Carolina state legislature, which allowed these kinds
1014 of independent expenditures prior to *Citizens United*. And
1015 Farmers for Fairness supported a particular farm subsidy, and
1016 they knew that the legislature was going to consider this
1017 farm subsidy.

1018 So what they did is they made up a whole campaign of
1019 attack ads against particular legislators they knew were the
1020 swing votes. They then took these ads to the legislators and
1021 screened them behind closed doors and said these are the ads
1022 we will run against you if you do not support our position on
1023 this legislation. And some of these legislators changed
1024 their votes.

1025 Now that is not going to show up on any disclosure.
1026 That is not -- you know, but that is just an example of the
1027 sort of a broader kind of corruption that is a threat to our
1028 system that I don't think the Supreme Court ever envisioned.

1029 Ms. Teachout. I am honored to answer. You were my
1030 Representative for 7 years. We are playing checkers now, and
1031 it is about to be chess. I mean, this hasn't begun yet.

1032 So, right now, we are thinking about ads, but we are in
1033 a technology and data era. So it is not just television ads.
1034 It is using the massive databases and access to data that
1035 some of the largest companies in the world have.

1036 It is not just going to come out in the form that we
1037 recognize of the last 30 years of campaigning. We don't know
1038 exactly what it is going to look like. But we know that we
1039 are just beginning, and the level of sophistication in both
1040 threat and promise at every level of campaigns will be
1041 different.

1042 Who is going to run? Maybe we need somebody in this
1043 district because of the nuclear energy industry. Why don't
1044 we just plop down a promised several million dollars and get
1045 our candidate in the primary? This kind of money in
1046 primaries in local races is extraordinary.

1047 The conversations have been at the presidential level,
1048 but that is the least concerning. It is certainly much --
1049 small amounts of money have a much larger impact. And it is
1050 happening at the same time you see this radical concentration
1051 in economic power.

1052 So when Senator Kennedy proposed that no company be
1053 allowed to merge larger than \$2 billion in 1978, we are
1054 talking about a much more decentralized economic scene.
1055 Right now, it is much more concentrated, and we know the most
1056 concentrated industries spend the most on politics.

1057 So you see a combination of concentrated economic power,
1058 unlimited potential for use in the political sphere, and you
1059 know, I am a deep patriot. I love this institution, and I
1060 love the promise of it. But it is very rare in human history
1061 to have a truly representative government. It is not the
1062 default state.

1063 The default state is, as you know from your own
1064 political science work, the default state is something much
1065 more like a kind of combination of oligarchic power, where
1066 there is concentrated financial power really dominating
1067 politics. And there is this window here before the full
1068 threat of *Citizens United* is realized, and it is so important
1069 to act quickly.

1070 Mr. Price. Thank you.

1071 Mr. Gonzalez. Thank you very much. Mr. Van Hollen for
1072 5 minutes.

1073 Mr. Van Hollen. Well, thank you. Let me start by
1074 thanking you, Mr. Gonzalez and Mr. Brady, for organizing this
1075 forum on a central issue to the integrity of our democratic
1076 process.

1077 I also want to thank Leader Pelosi and my colleagues
1078 here on the panel and others who have focused on this issue,
1079 and all of you who just gave wonderful testimony about the
1080 urgency and importance of this issue. And I do think it is
1081 an absolute travesty that Republicans have refused to hold a

1082 hearing on this very important issue that is fundamental to
1083 the future of our democracy.

1084 I think, as everybody knows, we were able to pass the
1085 DISCLOSE Act several years ago. It went over to the Senate,
1086 got 59 votes. In fact, in one of the terrible sort of
1087 unfortunate ironies of history, had Senator Kennedy not
1088 passed away, the DISCLOSE Act might well be the law of the
1089 land today, would have provided the 60th vote. But
1090 apparently, our Republican colleagues want to keep people in
1091 the dark when it comes to hearings, just as they want to keep
1092 them in the dark when it comes to disclosing the sources of a
1093 lot of the expenditures in these campaigns.

1094 Now you have all made very keen observations about
1095 *Citizens United*. As Mr. Ornstein said, some of the
1096 conclusions that were reached there could only be made by
1097 people who had no clue as to how the American political
1098 system was operating in the 20th and 21st centuries, and it
1099 is going to come back to haunt us unless we act quickly to
1100 fix it.

1101 I support a multi-pronged strategy. I think we have to
1102 proceed on all fronts. I also believe we have to engage in
1103 some political triage. We have to focus on where we are
1104 likely to be most successful in the short term as we also
1105 proceed immediately on other fronts.

1106 I do think disclosure is essential, and I think the

1107 testimony today indicates that there is lots of money pouring
1108 into the system today that would not come into the system if
1109 those individuals and corporations and entities knew that
1110 their identities would become public. We have seen an awful
1111 lot of money laundering going on. And the DISCLOSE Act is
1112 intended to get at exactly that. Trace the money laundering,
1113 require disclosure at all different sources and all different
1114 levels.

1115 And I think that we have a very sort of solid argument
1116 to take to the American people that, number one, voters have
1117 a right to know who is trying to influence the outcome of
1118 these elections. And therefore, we should end the secret
1119 money in politics, and that is what we are attempting to do.

1120 Now one of the cases, as you know, that may be taken up
1121 by the Supreme Court is the Montana case. I am interested in
1122 your views on what opportunities there may be there or not to
1123 make our case.

1124 Mr. Ryan, let me thank you and the center for your
1125 activity and efforts not only on behalf of DISCLOSE. And Mr.
1126 Ornstein, thank you for your support for DISCLOSE and others,
1127 but also for your efforts in the FEC case. I share your
1128 view. It was an important measure, important step.

1129 But we all know how long the processes can be dragged
1130 out in the FEC and through the court system, and it just goes
1131 to my earlier point that we need to proceed on all fronts and

1132 we need to do it in an urgent manner. And I am interested in
1133 all of your views on whether or not the Montana case provides
1134 any additional opportunity for us to revisit these issues?

1135 Mr. Ryan. I am happy to respond to that. Happy to
1136 respond to that. First, the Campaign Legal Center, my
1137 colleagues and I are right now working on a brief to be filed
1138 in that case on behalf of a bunch of transparency, pro-
1139 transparency, pro-campaign finance reform organizations from
1140 around the country.

1141 Justice Ginsburg included a statement in a stay order
1142 that the court issued a couple of months ago, indicating that
1143 at least some members of the court are perfectly ready and
1144 willing to revisit the court's decision in *Citizens United*.
1145 I won't predict whether or not there will be five or six
1146 votes on the court or more to change direction on *Citizens*
1147 *United*. But the door is open a crack, and we are going to
1148 take our best shot at it.

1149 There are a bunch of other very skilled attorneys and
1150 advocates from around the country, including the AG's office
1151 in Montana, that are working hard on that case. So I am
1152 hopeful, but obviously, no guarantees.

1153 Mr. Ornstein. Mr. Van Hollen, let me step back for a
1154 second and say that when we were deep in discussions over
1155 BCRA and putting it together, there was a great deal of
1156 consideration made to making sure that this was evidence

1157 based.

1158 We had a lot of work done on electioneering
1159 communications that were transparent campaign ads, on ads
1160 financed by soft money that was supposed to be for party-
1161 building activities that never mentioned the party, that were
1162 just aimed at attacking candidates. There was reasoning that
1163 went into that decision by Congress, and that was, I think,
1164 taken seriously by the court when it upheld the Bipartisan
1165 Campaign Reform Act.

1166 Reading Justice Kennedy in the *Citizens United* decision
1167 with a not only redefining corruption in the narrowest way,
1168 which is dangerous and unconnected to reality, but with no
1169 evidence at all, saying that independent money would have no
1170 connection to corruption or the appearance of corruption or
1171 it wouldn't matter. And seeing what Richard Posner, a very
1172 well-respected conservative jurist, has written now
1173 suggesting that that really doesn't make a lot of sense, and
1174 then looking at a Montana law that uses evidence from Montana
1175 to say we don't want corporations doing this because it
1176 corrupts us, I hope that there are four justices who will
1177 bring this up, bring it forward, and then force the court at
1178 least to acknowledge that evidence doesn't matter to them.

1179 Ms. Teachout. Thank you for all your work on this, and
1180 I am delighted about the multi-pronged approach. I am always
1181 going to be pushing for prong two. But there is that, you

1182 know, "What is the 1 percent hiding?" There is a real sense
1183 of both privilege and secrecy together it is important to
1184 fight.

1185 I do think it is important to demonstrate to the public
1186 that this Congress knows that transparency isn't enough.
1187 Montana is a great question. It is a really tricky one. And
1188 you know, I wrote an article called "Facts in Exile" about
1189 the Supreme Court sort of treating facts as extra, you know,
1190 a luxury.

1191 And whether or not in court or out of court, the Montana
1192 case provides an opportunity to talk in a really public way
1193 about the water cooler sense of corruption that we all
1194 understand and what we mean when we say your minds are
1195 oriented not towards the public. Your minds are oriented
1196 towards the 1 percent.

1197 Ms. Youn. I think the Montana case is going to be, I
1198 think, absolutely fascinating because, as some of you may
1199 know, it takes four justices to grant *cert* to hear a case in
1200 its entirety, and I think many of us -- the Brennan Center is
1201 also working on a brief in the Montana case. And I think
1202 many of us would welcome the chance to put on the record, you
1203 know, exactly the sort of factual evidence that Justice
1204 Kennedy disregarded when he blithely stated, "Oh, independent
1205 expenditures pose no risk of corruption."

1206 On the other hand, the flip side of that is it generally

1207 takes five justices to -- which could be the same majority as
1208 in *Citizens United*, to grant a summary reversal of a lower
1209 court decision. And I think we are -- you know, we are very
1210 much in a state of Supreme Court practice mystery as to
1211 whether the four justice rule is going to trump the five
1212 justice rule or exactly how this is going to work out.

1213 But in any case, as was referenced earlier, in the
1214 *McConnell* decision, the court considered hundreds of
1215 thousands of pages, including depositions taken by some of my
1216 colleagues at the Brennan Center, talking about what
1217 corporate CEOs expected when they gave soft money
1218 contributions and the way in which contribution -- the way in
1219 which corruption can function below the surface.

1220 The Supreme Court did not take any of that evidence into
1221 account. I know that lots of the record in *McConnell v. FEC*
1222 was sealed for privacy purposes at the time of that decision.
1223 As far as I know, that has never been unsealed.

1224 There is a lot of existing evidence and there is a lot
1225 of new evidence from this new super PAC phenomenon that we
1226 certainly deserve -- believe deserves a public hearing.

1227 Mr. Gonzalez. Thank you very much, Mr. Van Hollen.

1228 Mr. Ellison for 5 minutes.

1229 Mr. Ellison. Thank you, Mr. Chairman.

1230 Also thanks to the leader and all of our witnesses
1231 today.

1232 I just want to say for the record that earlier today we
1233 had a press event that involved over 20 community
1234 organizations that came together with several Members of the
1235 U.S. Senate, double digits of House Members, all coming
1236 together around the idea of an amendment strategy.

1237 On June 11th, there is going to be a Resolution Week in
1238 which municipal leaders all over this country are going to
1239 introduce resolutions to say that we have got to flip
1240 *Citizens United*. So there is a grassroots movement going on
1241 here, and it is very exciting, which leads me to my question.

1242 I can't -- I have got to believe that no matter what
1243 side of the political spectrum you may come from -- liberal,
1244 conservative -- the idea that your little microphone that all
1245 of us are issued as a citizen is going to be drowned out by
1246 speakers that could, you know, Mr. Ornstein put it better
1247 than I can. But they could, you said, shake the seats in
1248 Nationals Stadium because somebody has so many more dollars
1249 than another person. This must be something that there is
1250 broad cross section of support across the country.

1251 What are the people saying about the need for
1252 disclosure, and what are the people saying about the need for
1253 amendment? And also what are they saying on the various
1254 sides of the political spectrum? I mean, what are
1255 conservative groups saying about this stuff? I am sure they
1256 have got to be concerned about it.

1257 Mr. Ryan. Our impression, from reading public opinion
1258 polls, is the public overwhelmingly supports disclosure of
1259 money in politics, overwhelmingly supports it. And I think
1260 that support spans the political spectrum.

1261 When you come to the actual organization, the actual
1262 Members of the House of Representatives, for example, Members
1263 of the Senate, we have seen flip-flopping, unfortunately, in
1264 my view, from some Republican members who for years and
1265 years, for decades, told the story of all we need is
1266 disclosure. Let us get rid of all these limits. All we need
1267 is disclosure.

1268 I was never sold on that because as soon as you allow
1269 incorporated entities into the system, disclosure becomes
1270 very difficult to achieve and sustain. But these same
1271 individuals who -- Senator McConnell, for example, appeared
1272 on Meet The Press and went on and on about -- and this was
1273 fighting against the McCain-Feingold law -- all we need is
1274 disclosure. Let us get rid of all these limits. Let us not
1275 pass this McCain-Feingold law.

1276 Fast forward a decade. Many of the substantive limits,
1277 unfortunately, have been struck down, and they are changing
1278 their tune. And I believe that some of the Republican-
1279 oriented organizations here in Washington and nationally are
1280 following suit and changing their tune and realizing dumping
1281 secret influence-buying money into the system is much to

1282 their liking.

1283 So, again, that is why we have seen trouble with the
1284 DISCLOSE Act in 2010, why we are seeing trouble with the
1285 DISCLOSE Act now in 2012. We need to hold folks accountable
1286 for their historical positions on these issues. Nothing has
1287 changed except their ability now to get away with legalized
1288 money laundering.

1289 Ms. Youn. I think one of the great things about Super
1290 PACs is they are such an easy phrase to remember that people
1291 now know what you are talking about when you are talking
1292 about campaign finance reform. I think, thanks to Stephen
1293 Colbert, but thanks to a lot of, you know, media coverage of
1294 this.

1295 And so, in my written testimony, I reference some of the
1296 more recent polling that says that 67 -- no, 69 percent of
1297 all Americans now support banning Super PACs, and that
1298 support ranges across the political spectrum. We are talking
1299 about majorities of Republican voters. We are talking about
1300 majorities of Democratic voters and independent voters.

1301 So I think that what the people want and what the
1302 leadership want may tend to diverge here. But I think that
1303 we can only take advantage of the momentum that is caused by
1304 this very high-profile unraveling of our campaign finance
1305 system.

1306 Ms. Teachout. Yes, I want to echo that. I mean, there

1307 is extraordinary support for a public funding system now,
1308 even when the alternate arguments are presented,
1309 extraordinary support for disclosure. But there is also
1310 extraordinary room for leadership.

1311 But if Members of Congress do not themselves use their
1312 platform to make a fight out of this and make the fight
1313 clear, there is a softness in the support. People are
1314 looking for how to understand the post-*Citizens United*, post-
1315 financial collapse world. You saw the shifting numbers of
1316 support for Occupy Wall Street with the initial extraordinary
1317 high levels of support and then an absence of national
1318 leadership on defining what this new economic and political
1319 system is going to look like.

1320 So there is both high levels, but there is also a lot of
1321 movement, which is why public clear expression of what
1322 government should look like, who people should be responsible
1323 to, what is possible in Congress is important because,
1324 otherwise, you are going to lose people. You can name an act
1325 anything you want, and people aren't going to believe it
1326 anymore.

1327 So this kind of leadership is really key. Otherwise, I
1328 think you are not going to see the support without -- without
1329 making a strong case.

1330 Mr. Ornstein. Let me just make a few points. First,
1331 you can't underestimate the impact that tribal politics have

1332 now. I mean, I watched as the DISCLOSE Act came up in the
1333 Senate, and I had worked with Olympia Snowe on what was the
1334 Snowe-Jeffords amendment that really was the provision
1335 singled out by the court in Citizens United.

1336 And to watch Senator Snowe, Senator Collins, Senator
1337 McCain, and others who had supported reform, all join
1338 together with the rest of their colleagues to vote against
1339 this was stunning. But it is a reflection of Mitch
1340 McConnell's ability to keep his tribe together and to make it
1341 a top priority and, of course, to get everybody to reverse
1342 course and now say that disclosure doesn't matter. So that
1343 is one important point to make.

1344 The second point is that public opinion does support
1345 disclosure and change, but there are a lot of things that
1346 overwhelming majorities of Americans support and never go
1347 anywhere. I think we are going to see a change in this
1348 coming couple of months. If you were in a state where it is
1349 competitive in the presidential contest, you have got a
1350 competitive Senate race, and maybe something else going on,
1351 the months of September and October, there will not be a
1352 commercial on television that will not be a vicious attack
1353 ad.

1354 And for an awful lot of Americans, you won't be able to
1355 escape it. And it is going to be a little bit like a goose
1356 being force-fed to get the fois gras. You are going to be

1357 sitting there, and this stuff is just going to come down your
1358 throat whether you like it or not. And I think we are going
1359 to see a very substantial reaction. We will have to seize on
1360 it.

1361 And finally, I would say we are not going to get it from
1362 leadership of conservative organizations. But I actually
1363 think on this issue and on many others, including some of the
1364 ethics questions, that some of these Tea Party colleagues of
1365 yours have no reason to be supportive of the huge money
1366 coming in that is going to sometimes drown them out when you
1367 get a different establishment setting.

1368 They are populists in a different way. And it is worth
1369 talking to them maybe individually and perhaps building some
1370 grassroots support for some changes here. It is not going to
1371 come easy, but it is going to be easier to get than it will
1372 coming from the usual suspects on that side.

1373 Mr. Ellison. Any time for a quick follow-up, Mr.
1374 Chairman?

1375 So now I want to ask you about shareholders. I think
1376 this is an interesting group to understand how they see this
1377 because I think this was pointed out several times, you know,
1378 when you send your money to your 401(k), somebody is using
1379 that money to say something that you have no interest in them
1380 saying. Yet if you were in a union, as Representative Brady
1381 pointed out, you would at least have some say on that.

1382 They are fighting us on "say on pay" and golden
1383 parachutes, and yet shareholders at Citibank rejected a
1384 compensation package. So I guess my question to you is, is
1385 there any energy, anything going on among shareholders
1386 saying, wait a minute, you spend my money on stuff. You are
1387 supposed to be trying to make me some money to take care of
1388 my retirement. Why in the world are you beating up on this
1389 person and that person and the other? It is not helping me
1390 out.

1391 Care to address this issue?

1392 Mr. Ryan. There is some work being done, some important
1393 work being done on behalf of shareholders. The SEC was
1394 presented with a rulemaking petition that was open for public
1395 comment, received widespread public comment that urging the
1396 SEC to promulgate rules requiring improved disclosure of
1397 corporate political spending.

1398 Representative Capuano has introduced the Shareholder
1399 Protection Act, which has a national coalition of
1400 organizations advocating its adoption, its enactment, and
1401 that would provide -- would require corporations to obtain
1402 affirmative approval from shareholders before making big
1403 corporate political expenditures.

1404 So work is being done. National coalition is working on
1405 the very important issue that you have highlighted.

1406 Ms. Teachout. I suspect this is where I am going to

1407 differ from some people on this panel. I do not happen to
1408 think that pursuing the shareholder strategy is a good idea at
1409 this point. I do not think that -- I think of it a little
1410 bit like Dodd-Frank.

1411 The country is responding to Dodd-Frank, saying you
1412 didn't do anything about too big to fail. I don't know if
1413 you have seen the recent polling around this? And at the
1414 time, there was a sense, okay, no, we can manage our way. We
1415 don't have to -- we can manage our way, and we can figure out
1416 something, and we will get credit for having figured out
1417 something.

1418 This is bigger than shareholder protection. We actually
1419 have to restructure the way campaigns are funded. If you
1420 don't do that, everything else is a little bit baroque on the
1421 sides.

1422 At the same time, I also think that if you perfect the
1423 agency relationship between the shareholders and companies,
1424 that doesn't necessarily mean you see less funding. In fact,
1425 the rational company might spend a lot more money on
1426 campaigns than they do now, once they have really figured out
1427 this chess game.

1428 So I admire the creativity here, but I actually think
1429 that we should be focusing on the real game, which is how
1430 campaigns are funded and returning to pre-*Buckley*.

1431 Mr. Ornstein. I am not sure that that is -- it is not

1432 the top priority, but I would disagree a little bit with
1433 Zephyr here. I actually think most companies, most public
1434 companies don't want to do this. They did not react with
1435 anger at BCRA. They don't want to get caught in a couple of
1436 terrible dynamics.

1437 One is where you have a party shaking you down and
1438 basically saying, "Whose side are you on?" And, "If you
1439 don't pony up the money, we are going to make you pay."

1440 The second is the situation that we saw with Target and
1441 we are seeing now with ALEC, the American Legislative
1442 Exchange Council, you know, this group that basically has --
1443 talk about corruption -- you know, come in with ready-made
1444 laws that lawmakers are perfectly happy to just channel right
1445 through and get something in return that a lot of companies
1446 gave to. And now it is when that is being disclosed and all
1447 of a sudden they realize that they paid for the stand your
1448 ground laws, they are saying, "Whoa, I don't want to be a
1449 part of that."

1450 So I believe that disclosure will change the role of a
1451 lot of public corporations. It is not enough, and the fact
1452 is that even with billionaires and individual money, it was
1453 very different before *Citizens United* when you, as an
1454 individual, had to go out there if you wanted to put large
1455 sums of money in, and do it all yourself. Where now, you can
1456 just give it to Karl Rove or give it to some other group, and

1457 they do all the work for you.

1458 So we need a lot more than that. We need a short-term
1459 strategy that isn't going to involve overturning *Citizens*
1460 *United*. We need a medium-term strategy that can be ready
1461 with the next product when that happens.

1462 Maybe we need the long-term strategy of looking at a
1463 constitutional amendment, although I would prefer to work in
1464 other ways. But you can't abandon any of those, and you
1465 can't abandon every avenue, whether it is the FCC, the FEC,
1466 the SEC, or the IRS, or legislation, or some of these other
1467 vehicles.

1468 Ms. Youn. I would just briefly like to address that. I
1469 agree that this is only a partial solution. For one thing,
1470 publicly traded corporations are only a very small part of
1471 the problem that we are talking about. But I do think that
1472 we do need to look at creative avenues to encourage corporate
1473 disclosure, you know, just for the sake of my 401(k) fund.

1474 And I think we are used to thinking of corporations as
1475 monoliths. Like, oh, the corporation is spending money in
1476 politics, and they know about it all the way down. They
1477 often don't know about it. Often there is no requirement
1478 that political spending be disclosed to corporate boards.

1479 There is a multinational pharmaceutical corporation that
1480 has become a leader on the shareholder disclosure front
1481 because they found out that one of its mid-level managers was

1482 spending corporate funds to support an openly racist
1483 candidate in Mississippi, and he was doing that without the
1484 knowledge of upper management. It is that sort of -- you
1485 know, shareholder disclosure makes sense for a lot of
1486 reasons. It is not a solution to our current problems of
1487 money in politics, but it is something that is important to
1488 do in its own right.

1489 Mr. Gonzalez. Well, thank you very much. And the chair
1490 is going to recognize himself for 5 minutes, and thank you
1491 for your patience.

1492 But quickly, and I want to follow up on something that
1493 Dr. Ornstein pointed out is that some people may figure that
1494 there may be individuals on the other side of the aisle, they
1495 may not relate to the fears that we feel. *Citizens United*
1496 has truly diminished the role of the individual in the
1497 election of their elected officials.

1498 No one is really recognizing that. And here in
1499 Washington, we are so caught in the middle of this thing, and
1500 I am not real sure that we have ever gotten that message out.

1501 Now I understand that an individual can work on my
1502 campaign, knock on doors, put up a sign, have the bumper
1503 sticker. They can also contribute because the way you
1504 communicate today, obviously, is an expensive thing. But
1505 there are limits as to what the individual can contribute to
1506 Charlie Gonzalez, if I were to be seeking reelection.

1507 Yet how -- and it also impacts what happens in the
1508 future when candidates are thinking of running for office.
1509 And this is what I mean. Let us just say my good friend
1510 Keith Ellison, I am now a private citizen. I want to help
1511 Keith. I love Keith. So I want to contribute.

1512 So I am going to be limited to contribute X amount for
1513 the primary, X amount for the general election, maybe \$5,000,
1514 as an individual. But if I have a whole lot of money, a lot
1515 of money, and I want to help Keith, what would you suggest
1516 would be the best way for me to do it, should this exact
1517 circumstance we find ourselves today on shell corporations,
1518 the Super PACs, the 501(c)(4)s, what is the best way for
1519 Charlie Gonzalez, private citizen, to make all his money
1520 really felt because I want to help Keith Ellison?

1521 He is not going to coordinate anything with me. Maybe
1522 his former campaign manager may be running that Super PAC,
1523 but please don't draw any conclusions. What is the best way
1524 for me to get lots of money to support Keith in his
1525 reelection?

1526 Mr. Ryan. I would ask you whether or not you are
1527 willing to be disclosed publicly, whether or not you are
1528 willing to stand by this support? If you are willing to
1529 stand by the support, you can write an unlimited-sized check
1530 to a Super PAC, and that Super PAC can spend every penny that
1531 you give to that Super PAC to advocate Representative

1532 Ellison's election to office.

1533 You could, of course, go down to local TV or radio
1534 station or to the stations in Representative Ellison's
1535 district and make those ad buys yourself. You have been free
1536 as an individual for decades, forever essentially, to do
1537 that.

1538 But if you don't want to be disclosed for this support,
1539 then you identify a 501(c)(4) group. If one doesn't exist,
1540 you encourage some friends to create it, and you write your
1541 unlimited check to that (c)(4) group. You refrain from
1542 writing on the memo line of that check, "Use this money to
1543 air ads for the reelection of Representative Ellison." You
1544 refrain from specifically designating your donation to the
1545 (c)(4) for any particular purpose, and you will remain
1546 undisclosed.

1547 The (c)(4), in turn, can spend your money, 49 cents out
1548 of every dollar you give it, on hard-hitting express advocacy
1549 ads urging the election of Representative Ellison. And will
1550 spend the other 51 cents on ads that are nearly as hard-
1551 hitting, sham issue ads that either attack an opponent on the
1552 basis of some issue, but certainly identify the candidates in
1553 the race, yet don't contain words of express advocacy and,
1554 therefore, don't fall under the rubric of candidate election
1555 intervention for tax law purposes.

1556 That is the way to do it. And it is your decision

1557 whether you want to remain anonymous or be disclosed.

1558 Mr. Gonzalez. Anyone else?

1559 Ms. Youn. What I find kind of touching about both your
1560 question and Paul's response is we are talking about this as
1561 if it is a hypothetical. But we already know -- I mean,
1562 like, so the poster child of this campaign season so far has
1563 been Sheldon Adelson, who, as we all know, has given upwards
1564 of \$10 million to support Newt Gingrich.

1565 But there are, you know -- but there are two \$10 million
1566 checks that were both written to Crossroads GPS, and we don't
1567 know the name of the person that was on those checks. There
1568 were two separate checks written for \$10 million apiece. We
1569 have no idea who that person is or if it is even a person or
1570 if it is a major corporation behind this.

1571 I mean, this is already happening. This is an avenue
1572 that sophisticates have figured out. And Adelson, at least
1573 he is spending his own money. At least we know his name. I
1574 think the biggest problem is when they are not spending their
1575 own money, and we don't know their names.

1576 Mr. Gonzalez. Anyone else?

1577 Ms. Teachout. So I am going to -- you know I am a law
1578 professor. So I am going to fight the hypothetical. These
1579 are wonderful answers, and I hope nobody hears them because
1580 they are good advice.

1581 But I just want to respond to something also that Norm

1582 suggested earlier. I think, at first, corporations -- I
1583 would love it if we just stuck with the wealthiest
1584 individuals trying to figure this out. It is a terrible
1585 situation, but it doesn't deal with the real threat of
1586 concentrated power used strategically.

1587 We are 2 years in. I think it was Texas Home Builders
1588 who used -- it was the first company that actually did itself
1589 as a company, using the ability to have independent
1590 expenditures. Two weeks ago, we had the first banking Super
1591 PAC because Congress doesn't know to be scared of the banks.
1592 It was in the press release, I believe.

1593 We are just at the beginning of strategic corporate
1594 action. And if they are then following the same strategy,
1595 now we are talking real money, and we are also talking money
1596 that has a particular ideological bent. So that you no
1597 longer see the range of ideological views that Americans
1598 hold.

1599 Mr. Ornstein. Let me answer your question in a couple
1600 of ways, and it will get also at Representative Price's
1601 question.

1602 If I am sitting there as a Member of Congress and I know
1603 that American Crossroads GPS, if the presidential contest
1604 doesn't turn out to be completely close, is going to turn all
1605 of its resources into House and Senate campaigns. And I also
1606 know there are going to be others out there, and I am

1607 worrying about somebody coming in at the end and spending \$10
1608 million against me, of course, I am going to go out there and
1609 try and raise as much as I can in \$2,500 increments. There
1610 are limits to that, especially because everybody else is
1611 going to be looking at the same individuals.

1612 So I am going to try and find a sugar daddy. I am going
1613 to look for somebody who will do for me what the others would
1614 do against me. And to get those, maybe you know a
1615 billionaire who they are ready to be tapped, if necessary.
1616 If not, there will be something in return.

1617 And so, we are going to see a whole lot of additional
1618 corruption as people are going to make side deals just in
1619 case. And the money may never be spent. But once again, it
1620 will have an impact on the legislative process.

1621 And then another element of what David asked, you know,
1622 it really used to be in the days when I first got here that
1623 you could see a lot of Members of Congress who were recruited
1624 to come here by people in their communities who went to them
1625 and said, "You have done wonderful things. You have built a
1626 great reputation. How about spending some time in public
1627 service?"

1628 Now if I wanted to go to somebody like that now, I would
1629 say, it is time to spend some time in public service. And
1630 here is what is going to happen. The first thing is brace
1631 yourself for the \$5 million that will come in by your

1632 opponent and other related groups, designed to strip the bark
1633 off you and destroy that reputation you have spent your
1634 career building. And they will know they have succeeded when
1635 your kids come home from school crying and say they can't go
1636 back anymore because of all the embarrassment that they face
1637 from their friends and fellow students.

1638 And you will do the same thing, and then you will get
1639 elected, and nothing is going to happen around here because
1640 the two parties are completely gridlocked. But you will
1641 spend every spare minute that you aren't racing to get a
1642 plane to go back home spending money, raising money for the
1643 next time around.

1644 It is a miracle, under these circumstances, that we get
1645 good people like you who continue to do this. And I don't
1646 know how much longer. Because the ones who are incentivized
1647 to do this now are the ones who are driven totally by naked
1648 ambition or by an ideology that makes them certain that they
1649 have the right answers and that it is all black and white,
1650 and especially those people who pop up and say, "I am not
1651 like the rest of those bozos up there. I am not a
1652 politician."

1653 So we are leeching out the people who are here to solve
1654 problems, and we are encouraging the worst sorts to come in.
1655 And that is -- this is maybe as fundamental a problem in
1656 terms of the future of this institution as anything else, and

1657 it has been driven by a lot of things, including a debasement
1658 in the culture more generally where lying is no longer
1659 treated as a shameful thing and you double down on your lies
1660 to get around it, but also by what *Citizens United* itself and
1661 its progeny have wrought.

1662 Mr. Gonzalez. Thank you very much.

1663 And I know we have gone over time, but if you will just
1664 indulge us for a couple of minutes, I am going to see if my
1665 colleagues have very short follow-up because we have had some
1666 great discussion since they were able to pose their
1667 questions.

1668 I will recognize Mr. Price.

1669 Mr. Price. Thank you.

1670 I will ask a very pointed question on a narrow topic
1671 that gets at a somewhat broader issue. But I do appreciate
1672 especially what Professor Ornstein just said, getting at the
1673 broader corrosive effects of this system on this institution
1674 and on American politics generally. That isn't a strictly
1675 legal argument, but it sure is an important one. One that is
1676 also what I want to ask about.

1677 First, a very narrow question. I like your quote, Ms.
1678 Teachout, about the limits of disclosure. You can't X-ray a
1679 patient back to health. That is a good one. I want to
1680 remember that one. The limitations of mere disclosure.

1681 However, we all believe that, at a minimum, we need to

1682 push for disclosure and that, of course, there is no question
1683 that it would pass legal muster. There is a problem. Stand
1684 by your ad. You know who is standing by his or her ad, the
1685 candidate. Or with the party, the party leader. That is not
1686 so clear with "Americans For All Good Things."

1687 So the device that we have come up with, I did this in
1688 my "stand by every ad," the latest iteration of "stand by
1689 your ad" -- the Stand by Every Ad Act and its parallel
1690 provisions in the DISCLOSE Act. We have said you have got to
1691 put on the screen those top five donors, one way or another.
1692 Flash up there the top five donors or have a trailer showing
1693 the top five donors.

1694 Is that the best we can do? Is that the equivalent of
1695 what it would mean to saddle someone with personal
1696 responsibility for the ad?

1697 The somewhat broader issue, you know, is that there is a
1698 difference between the legal arguments and the broader
1699 political arguments, and Norm Ornstein just articulated one.
1700 But we talk time and time again about voices being drowned
1701 out, about the voices of ordinary people, of ordinary
1702 citizens, just coming to count for nothing.

1703 It is not just about corruption. I mean, I guess the
1704 most powerful legal argument is about corruption. But in
1705 legal terms, how do we translate this intuition we all have
1706 that this is a disaster for democracy?

1707 The voices of these few wealthy people become so
1708 disproportionate, so overwhelming, drowning out everything
1709 else. There is surely no way that can be healthy for
1710 democracy. Yet I think our legal arguments often go to the
1711 corruption issue and don't do much else.

1712 The political argument, of course, is one thing, and the
1713 legal argument is another. But is there a legal hook for
1714 this intuition we all have that you simply cannot have a few
1715 voices drowning out the others?

1716 Ms. Youn. I represented the Arizona Clean Elections
1717 Commission in the Supreme Court case *McComish v. Bennett*,
1718 which was about the Arizona public financing system. And I
1719 remember sitting up there and feeling my heart sink when
1720 Chief Justice Roberts said, you know, I was looking on the
1721 Commission's Web site this morning, and I came up with a -- I
1722 saw a reference to "level the playing field," and that makes
1723 this law unconstitutional.

1724 So we are in a situation right now where the Chief
1725 Justice of the United States thinks that equality is somehow
1726 unconstitutional. And this is, I think, the distorted vision
1727 of the Constitution that has been promulgated in decisions
1728 like *Citizens United*, the idea that the First Amendment and
1729 ideas of equality in democracy are irrevocably at odds. The
1730 reason that so much legal argument has focused on corruption
1731 narrowly is because that is what the Supreme Court has

1732 defined the only legitimate interest in regulating campaign
1733 ads to be.

1734 They have said, no, we don't care about hearing other
1735 voices. We don't care about equality. God forbid we care
1736 about leveling the playing field. We don't care about saving
1737 candidates' time so that they are not constantly dialing for
1738 dollars. We don't care about the integrity of our electoral
1739 systems.

1740 All we care about is this very narrow version of
1741 corruption, and I think that that is what we need to push
1742 back really hard against.

1743 Ms. Teachout. So I like the five names. I would like
1744 it even more if they to themselves say that they stood by the
1745 ad. But, no, I think it is a wonderful way to have,
1746 actually, the names up there. I think this is creative.

1747 This actually also goes to Representative Van Hollen's
1748 question. A majority of the Supreme Court doesn't actually
1749 think corruption is an idea that makes any sense at all.
1750 They say two things.

1751 One is corruption is the only interest that can be used
1752 to outweigh this First Amendment interest, not our Founder's
1753 First Amendment, this sort of nutty, outer space First
1754 Amendment. And then at a core level, they actually don't
1755 know what corruption is because in Kennedy's opinion, he
1756 expects and accepts, as does Scalia, that Members of Congress

1757 will be dependent and responsive to donors' interests, as
1758 opposed to the public interest.

1759 They, at a core philosophical level, do not believe in
1760 the public good, and they are totally at odds with the
1761 country. The country still believes in the public good, a
1762 possibility of public interest. But for a whole bunch of
1763 reasons, there is an ideological position that doesn't
1764 support that.

1765 I have been sort of interested in this question, too,
1766 about legal hooks, and I have been interested in possibly
1767 Congress coming back and redefining bribery. Because one of
1768 the things Kennedy says in *Citizens United* is don't worry.
1769 Our bribery laws will deal with that.

1770 So what if Congress came back and said your 1991 case
1771 where you said campaign donations aren't treated by the
1772 normal bribery laws, we are overturning that because that was
1773 just a matter of construction. We want to say that campaign
1774 contributions and independent expenditures should be treated
1775 by the normal wink and nod provisions of our federal bribery
1776 and extortion statutes.

1777 There would be an interesting back and forth with the
1778 Supreme Court. But what I think that would show is that this
1779 Congress understands that we, as the public, do believe that
1780 there is a corrupt institutional problem here, and bribery
1781 might be the right word for it.

1782 Mr. Ryan. I will respond to your question with respect
1783 to the stand by your ads. Is that type of provision enough
1784 to create accountability? I am a strong supporter of the
1785 "stand by your ad" provision, the expanded version that you
1786 have advocated. But it is not enough.

1787 Because one of the ways that voters get their
1788 information, one of the ways that people in our society get
1789 their information is through the press, through journalists
1790 analyzing data that is crunched through the hard work of
1791 nonprofits like the Center for Responsive Politics that
1792 attach and slice and dice this contributor data according to
1793 occupation and employer and interest groups.

1794 Those stories reach voters and are just as important as
1795 seeing the name of five folks on the face of an ad at the
1796 tail end when they may or may not be paying attention. It is
1797 really important that all of you continue to support, to
1798 strongly advocate the improvement of collection and fine
1799 grain data, of contributor data, data that is missing now
1800 because disclosure on money going to (c)(4)s, for example, is
1801 not required.

1802 That data is really vital to help the journalists who
1803 are working really hard to improve transparency and tell the
1804 stories, the bigger stories about who these interest groups
1805 are, why they are spending what they are spending. And your
1806 work can really help facilitate that.

1807 Mr. Ornstein. Let me say I am a strong supporter of
1808 your -- of the "stand by every ad" provision, and part of the
1809 reason being that the disclosure regimen that affects Super
1810 PACs is such a farce now anyhow. You know, you get it every
1811 6 months. It is delayed. It is not there for voters to be
1812 able to take into account when the decisions are actually
1813 made.

1814 At the same time, I would come back to the Federal
1815 Communications Commission. They are in the process of
1816 putting together a regulation, which they have done very
1817 carefully and, I think, very conservatively so that small TV
1818 stations won't have a burden. But basically, all stations
1819 now are required to keep information on the funders of ads in
1820 a public file. That public file usually is in stacks of
1821 papers stuck in a back room.

1822 The law says that citizens have access to it. Try and
1823 get access. Go to a local television station. Nine times
1824 out of 10, they will tell you no. But there is no reason why
1825 it should be in that setting. And for the kinds of data that
1826 Paul is talking about it, it would require entities like the
1827 Center for Responsive Politics or the Brennan Center to go to
1828 every single station and spend hours looking through files.

1829 What the FCC wants to do is to require the larger
1830 stations now in the biggest markets to put all of that data
1831 online, and it will be accessible on the FCC Web site. It

1832 actually will cost those stations less. You won't have to
1833 get the data, walk it across a room, put it in a file. You
1834 just punch it in, and almost all of them already have
1835 Websites, and they have Excel files in which to do this.

1836 But they are facing huge pushback from television
1837 stations. Television stations will make billions of dollars
1838 in additional profits because of what has happened in this
1839 campaign system.

1840 The idea that they won't disclose for the public the
1841 sources of those ads is outrageous. You need to fight
1842 against the broadcasters and provide backing, write letters,
1843 and do other things to tell the FCC that they are on the
1844 right track here.

1845 Mr. Gonzalez. Wrapping it up, Mr. Van Hollen, do you
1846 have a follow-up?

1847 Mr. Van Hollen. Thank you. Thank you, Mr. Chairman.

1848 I just want to thank all of our witnesses. I think they
1849 have made excellent points.

1850 You know, one of the problems with the numerous court
1851 decisions and the direction we are headed is not only has it
1852 provided a whole new source of unlimited amount of money
1853 flowing to these campaigns, it is putting a lot of pressure
1854 on the very fragile campaign finance system we had because,
1855 as many of you have said, when you look at the situation
1856 where you have got these limits on contributions to

1857 candidates and their campaigns versus the unlimited amounts
1858 that can be given to Super PACs, campaigns and candidates are
1859 like fighting with pea shooters against bazookas these days.

1860 And it goes to the fundamental, one of the fundamental
1861 problems with the court decision. All of you mentioned it.
1862 Mr. Ornstein mentioned it right at the beginning of his
1863 comments, which is the idea that somehow if you give -- if
1864 Sheldon Adelson gives more than \$2,500 to Newt Gingrich in
1865 the primary and then more than \$2,400 to him in the general,
1866 that that will somehow have a corrupting influence or the
1867 appearance of corruption. But if Sheldon Adelson puts \$5
1868 million to the Newt Gingrich PAC, that that won't, even
1869 though he is meeting with him and has all his campaign guys
1870 are involved. I mean, it just defies common sense.

1871 And how we could have had a Supreme Court that was so
1872 out of touch with reality on this issue just defies logic,
1873 and we are all going to have to work very hard. But I think
1874 this has been instructive.

1875 With respect to the other point the Supreme Court made
1876 that defies logic, with equating corporations with
1877 individuals for these purposes, I would just say to our
1878 chairman, and since he is from the State of Texas, that one
1879 of our colleagues remarked that they would believe that
1880 corporations are individuals when your state of Texas
1881 executed a corporation.

1882 So, you know, this is -- it is just uncanny the sort of
1883 air of unreality that the court had on all these issues, and
1884 we are going to have to fight to make the changes necessary
1885 to preserve the integrity of our democracy.

1886 So thank you, Mr. Chairman.

1887 Mr. Gonzalez. I want to thank the witnesses.
1888 Hopefully, we have provided you a very unique experience in
1889 your professional lives to say that you may have testified in
1890 court before as an expert, you may have testified before a
1891 hearing as an expert. But today, you testified before a
1892 forum. I am not really sure what that means. But hopefully,
1893 that it is going to be substance over form, and I think we
1894 have had a lot of substance today.

1895 Thank you. I want to thank my colleagues and their
1896 staffs because they worked really hard. I want to thank
1897 especially my staff, but also the staff for the Committee on
1898 House Administration.

1899 And with that, this forum will stand adjourned.

1900 [Whereupon, at 3:43 p.m., the forum was adjourned.]