



ACTIVIST TOOLKIT

Take action to defend our democracy and ensure the U.S. Supreme Court protects all of us, not just the wealthy few



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INTRODUCTION

We deserve a democracy that works for all of us, not just wealthy donors and special interests. The U.S. Supreme Court has a significant impact on our democracy and whether our voices matter. Will the wealthy continue to have unfettered power in our elections or will ordinary people be able to have an equal voice and access to power? That's what is at stake when it comes to who will be confirmed by the U.S. Senate to a lifetime seat on the court.

President Donald Trump has nominated an ideological extremist, Judge Neil Gorsuch, to fill the vacancy on the nation's highest court. His record shows that he has consistently favored corporate interests and the wealthy, and is likely to be extremely hostile to any measures that set reasonable limits on the influence of big money in our politics.

Supreme Court nominees are vetted first by the Senate Judiciary Committee and must then be confirmed by the full Senate. Soon the Judiciary Committee will hold hearings and shortly thereafter, the Senate will vote on Gorsuch's nomination. **Hearing from you will make the difference.**

Your senators will be home during the Congressional recess from February 18-26, which is the perfect time for them to hear from you in person. This toolkit has resources to help you speak out directly to your senators while they are home, through calls and visits to their offices and participation in events such as town hall meetings.

This may be the last time that senators are home before they vote on Gorsuch's nomination. The time to act is now.

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TAKE ACTION: CALL YOUR SENATOR

Calling your senators offices is *always* a helpful and easy way to express your views on an issue and to urge your Senators to take specific actions. Although in-person communication is always more effective, calls are critically important and can help influence a senator's position. Encouraging your friends and family to call their senators is helpful as well.

You can reach your senators by calling the Capitol switchboard at 202-224-3121.

Tell the staff person who answers your name, town or city, and concerns, and ask your senator to vote no on his confirmation. Always be polite and courteous with the staff member who answers the phone. Below are some sample scripts you can use, or you can personalize these with a story from your own experience.

Sample Scripts

My name is _____, I am from (Place). I have been reading some troubling things about Supreme Court nominee Neil Gorsuch's record on the issue of money in politics. We should not give someone a lifetime seat on the Supreme Court if they will favor corporations and the wealthy over ordinary people. We need a justice that will protect everyone, not just those able to write big checks. I'm calling to urge you to oppose the nomination of Neil Gorsuch.

My name is _____, I am from (Place). I am very concerned with this Supreme Court nominee – his record shows that time and time again he sides with big business and the wealthy, giving them a bigger voice than the rest of us. He believes corporations have rights and would likely vote to gut restrictions on campaign contributions – which will just pile onto the mass amounts of money already coming in and drown out my voice in our political system. This is not fair, and it's immoral. I'm calling to urge you to oppose Neil Gorsuch and vote no on giving him a lifetime seat on the Supreme Court.

My name is _____, I am from (Place). I am concerned that the Supreme Court has opened the door to allow corporations and the wealthy unlimited ability to rig our system. I'm calling to urge you to ask Supreme Court nominee Neil Gorsuch what he thinks of Citizens United and other Court decisions that have stopped laws to restrict big money's power in politics. As my senator, I urge you to oppose his nomination.

TAKE ACTION: ATTEND A TOWN HALL

During Congressional recesses, many senators hold town hall meetings in order to report on their priorities and hear from constituents about their concerns. These town halls are good forums for raising your issue by asking questions, waving signs (if they are allowed), and wearing buttons or t-shirts with slogans expressing your views on an issue. Numbers count so enlist like-minded friends and colleagues to join you!

Tips

- Go [here](#) to look up your Senators upcoming town hall events. You can also sign-up for your senators' emails lists to learn about scheduled public events. Check out [this link](#) to Senate office contact information.
- Get the agenda and format before the meeting so that you can plan accordingly. Some events require constituents to sign-up in advance to ask a question.
- Before the meeting, craft a brief question that states your views and puts a direct "ask" to the senator (some examples provided below). Arrive early and sit near the microphone. When you speak, identify yourself.
- Be confident, but always be polite.
- Don't allow yourself to be interrupted before you are finished and politely make it clear if your question is evaded.
- Share your experience on social media via Twitter or Facebook. You might even use Facebook Live to broadcast parts of the meeting.
- Follow-up with the senator and staffer afterwards, reiterating your message.
- Bring homemade signs! Or print out the sign samples included in this toolkit.

Sample Questions

My name is _____, I am from (Place). I have been reading some troubling things about Supreme Court nominee Neil Gorsuch's record on the issue of money in politics. We should not give someone a lifetime seat on the Supreme Court if they will favor corporations and the wealthy over ordinary people. We need a justice who will protect the people first and foremost. Will you oppose the nomination of Neil Gorsuch?

My name is _____, I am from (Place). I am concerned that the Supreme Court has opened the door to allow corporations and the wealthy to rig our system through money in politics. Will you ask Supreme Court nominee Neil Gorsuch what he thinks of Citizens United and other Court decisions that have stopped laws to restrict money in politics?

My name is _____, I am from (Place). I am concerned with this Supreme Court nominee. His record shows that time and again he has sided with big business and the wealthy to allow them more rights than the rest of us. He will likely vote to gut restrictions on campaign contributions, which will further drown out my voice in our political system. It's unfair, and it's immoral. Will you oppose Neil Gorsuch for the Supreme Court?

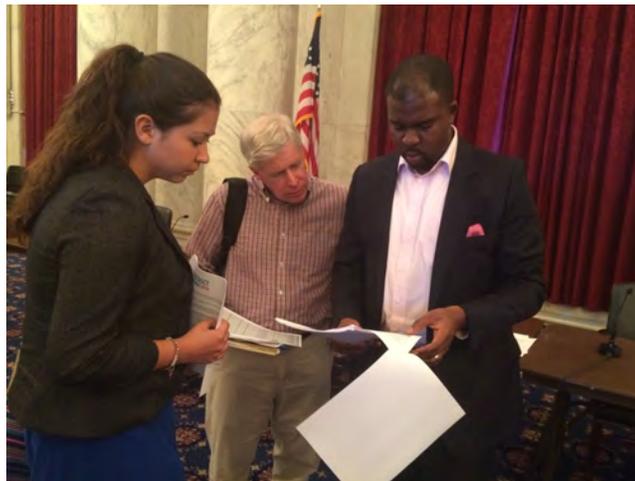
TAKE ACTION: SET UP A MEETING

Senators will be in their home states during the congressional recess from February 18 through 26, 2017. That's the perfect time to share your views directly with your senators or their staffers at a visit to their offices, at a town hall meeting, or another event.

How to Set Up a Visit

While constituents are encouraged to visit their senators on their own, joining with a diverse group of other constituents, influential leaders, or organizational representatives who share your views on the relationship between money and politics and the Supreme Court adds to your power.

- [Call](#) the senator's in-state office to make an appointment. Ask to speak to the scheduler.
- Be prepared to follow up with a written request by email. Include the number of people joining you, what organization(s) will be represented, and the issue you want to discuss.
- A day or two prior to your meeting, confirm the appointment by calling the scheduler or staff person with whom you will be visiting. If you have a written confirmation, bring a copy to the meeting.
- Consider holding a brief meeting or call just before the visit to discuss messages with your group and who will say what at the meeting.
- Don't be disappointed if your meeting is with a staffer or if the senator only makes a brief appearance. Building a relationship with key staff people in the senator's office is important.
- Bring some succinct written materials outlining your position and leave them with the person you are visiting. This toolkit has information you can use or you can go [here](#) for more background on money in politics and the Supreme Court.



Every Voice members huddle before a meeting with their Senator.

Tips for a Successful Visit with Senators' Offices

Whether you are meeting with your senator or their staffers, you want to make the most impact in what will likely be a short time together. Here are some tips:

An effective visit includes:

- ✓ A clear statement of who you are and why you are there
- ✓ A brief explanation of the issue, including examples of the problem
- ✓ A succinct statement on why it is important to you
- ✓ A direct question to determine the position, thinking or concerns of the senator
- ✓ A thank you!

- Bring other folks along to show that your issue is embraced by many different kinds of groups and individuals.
- Do your homework! Read the information in this toolkit in advance and choose which points you want to emphasize. Find out what you can about your senator's interests and viewpoint on the topic beforehand – your organization may be able to help supply that information.
- Hold a brief pre-meeting with the group participating in the visit. Assign roles to make sure that everyone is contributing to the conversation.
- Be mindful that you will likely have a brief time with the senator or staffer so ensure that no one person monopolizes the time.
- Leave time for the senator or staffer to share their point of view on your issue, but don't allow them to hijack the meeting by talking about other issues. Be prepared to politely turn the conversation back to Judge Gorsuch's nomination and his troubling views on money in politics.
- Remember that you're not there as experts who know the issue inside and out – you are there as concerned constituents with a point of view you want to share! Don't feel that you have to answer any question you don't know the answer to. Tell the senator or staffer that you will have someone get back to them. Be sure to note the question when you report back.
- Personalize the issue if there is a relevant story you can share briefly during the visit. Be sure to say why this issue matters to you and your organization if you are there on their behalf.
- Bring materials to leave behind like this [Resource Packet](#) that contains useful background information on the issue.
- [Report back!](#) What happens at this meeting is very important to your organization. They are eager to hear what you discussed during your visit, whom you met with, and the information you gathered.

Sample Talking Points

- *Gorsuch has a troubling record of valuing political donations more than the Supreme Court sometimes protects the right to vote, and treating corporations as people. I have brought information on this record.*
- *American values are fairness and equality. Judge Gorsuch believes that businesses and corporations are equal to people like you and me.*
- *The Supreme Court keeps making it easier and easier for the wealthy and corporations to buy our elections, and harder for the rest of us to be heard. We need a Supreme Court justice committed to a democracy that works for all of us. I am concerned that Judge Gorsuch doesn't share that commitment.*
- *This is an important turning point in the future of the court: we have an opportunity to return to values like political equality, political participation, and fairness. But we need to have justices who share those values – it's not at all clear that Judge Gorsuch does.*
- *This country's founders would be shocked to learn the role big money plays in our elections. We need someone on the court who understands that our democracy aspires to represent all of us, not just millionaires and billionaires.*

Ask Direct Questions of the Staff and/or Senator

Do you think there should be more money from corporations and wealthy donors in politics, or less?

Do you believe that the more money someone has, the more speech they should have?

Will you commit to voting NO on Judge Gorsuch?

FACT SHEET: MONEY IN POLITICS & THE SUPREME COURT

The Role of the Supreme Court: Four Decades of Protecting the Money over the Interests of the Many

- The Supreme Court has taken an extremely restrictive view of how the people and our representatives are empowered under the Constitution to enact reasonable protections against big money. *Citizens United* is one of the Court's worst cases, but the problem goes much deeper—back 40 years to 1976's *Buckley v. Valeo*. This isn't about a few bad cases, but rather a narrow and deeply flawed approach.
- This has led the Court to strike down key protections against big money including:
 - Limits on total campaign spending;
 - Limits on self-funding by billionaire candidates;
 - Limits on contributions to ballot initiative campaigns;
 - Bans on election spending by corporations and unions;
 - Additional public financing for candidates to match big spending by opponents or outside groups;
 - Limits on the amount that one wealthy donor can contribute to all candidates, parties, and political committees combined; and more.

The Court Has Neglected Key Constitutional Values, Focusing Only on Corruption

- The central idea behind the Court's flawed approach on campaign finance is that fighting corruption or its appearance is the only reason Congress or states are allowed to place limits on big money contributions or spending, and in recent years five justices have narrowed the definition of corruption to mean quid pro quo bribery.
- Clean governance is important, but it's only one of the fundamental values at stake related to money in politics. It is also important that Congress, states, and localities are permitted to limit the power of big money for other reasons, such as:
 - Preventing wealthy interests from translating economic might directly into political power
 - Ensuring that the strength of our voices doesn't depend upon the size of our wallets
 - Leveling the playing field between wealthy donors and ordinary citizens
 - Enabling Americans of all incomes and backgrounds to run effectively for office
 - Protecting the legitimacy and integrity of our elections and democracy

In 2014 testimony before the Senate Rules Committee, Justice John Paul Stevens agreed. He said, “It is fundamentally wrong to assume that preventing corruption is the only justification for laws limiting the First Amendment rights of candidates and their supporters. Elections are contests between rival candidates for public office. Like rules that govern athletic contests or adversary litigation, those rules should create a level playing field.”

Big Money Elections Perpetuate a Racist Political System

- Centuries of racist policies have created a staggering [racial wealth gap](#)—and big money politics translates this gap in economic power into a similar gap in political voice.
- Nearly 95 percent of \$5,000+ federal election donors [are white](#), whereas small donors are [not necessarily skewed](#) by gender and race.
- Large donors, on the whole, [have different priorities](#) than do people of color and the public at large, and are less progressive on key economic issues such as creating jobs and ensuring affordable college.
- [Ninety percent of elected officials are white](#), even though people of color make up nearly 40 percent of the U.S. population. Fewer candidates of color run due to the fundraising barrier, and those who do [raise substantially less money](#) than their white counterparts (47 percent less in one study).
- Elected officials who are disproportionately white and [more responsive to the white donor class](#) than to ordinary voters produce public policies and practices that are skewed against people of color [on issues](#) from housing policy to mass incarceration to fair wages.



The Strength of Our Voices Should Not Depend Upon the Size of Our Wallets

- The Court has also said that unlimited spending is the equivalent of free speech. This cannot be correct because those with more money should not get more political speech in a democracy. There is a clear difference between protecting the content of unpopular speech and saying the wealthy have an unlimited right to spend money to amplify their speech and drown out the rest of our voices.

A Better Way Forward to Protect Our Democracy

- Limiting the power of big money in politics can level the playing field between wealthy donors and ordinary citizens; protect the integrity of our democracy; and enable Americans of all incomes and backgrounds to run effective campaigns for public office.
- Scholars have developed a range of alternatives to the Court's current exclusive focus on quid pro quo corruption, and justices must be open-minded about these new approaches. Some examples include limiting big money to promote political equality and/or electoral integrity; protecting elected officials' time; and re-expanding the definition of corruption to cover systemic abuses.
- We need a Supreme Court that understands that the Constitution gives the People the power to build a democracy in which every eligible citizen can exercise the freedom to vote; the size of a person's wallet does not determine the strength of her voice; and wealthy special interests cannot translate economic might into political power.

Additional Resources

- [Breaking the Vicious Cycle](#): Short paper summarizing why the Supreme Court's current approach to money in politics is fundamentally flawed and inconsistent with democratic principles of political equality.
- [Rethinking Campaign Finance](#): Summary of alternatives to the Supreme Court's current corruption-only approach proposed by scholars.
- [Buckley at 40](#): Accessible Q & A on Buckley v. Valeo and its impact.
- [Why Citizens United Just Scratches the Surface](#): American Prospect article on why the problem goes deeper than one bad case.
- [More Than Just Corruption Threatens the Integrity of Our Democracy](#): American Prospect article on why fighting corruption is not a sufficient approach to money in politics.
- [Fact Check: What the Supreme Court Got Wrong in its Money in Politics Decisions](#): Brennan Center analysis of the Court's campaign finance "assumptions and assertions."

Money in Politics & The Supreme Court: Frequently Asked Questions

BY ADAM LIOZ

What do people mean by “money in politics” or “campaign finance reform”?

Running for office requires money—for staff, travel, TV ads, etc. In many countries, much of the cost of public elections is paid for by public funds, so the voters control the process and candidates are only accountable to their constituents. But in most places in the U.S., election campaigns are funded only with private money, most of it coming in the form of large checks from wealthy donors.

Many concerned citizens want to change the way election campaigns are funded so elected officials are **more responsive to voters** rather than donors. And many are also concerned that the **billions of dollars** special interests spend lobbying legislators skews our elected officials’ priorities.

Why is the role of money in politics a problem in the U.S.?

In a democracy, the size of a person’s wallet isn’t supposed to determine the strength of her voice. The principle of “one person, one vote” means we’re all supposed to have an equal say over the decisions that affect our lives. But right now the rich have more say than the rest of us.

Running for office in the U.S. typically requires raising lots of money from wealthy donors, and this means the “donor class”—those who can afford to give \$1,000, \$10,000, or even \$1 million to campaigns—ends up with **much more influence than the rest of us**. These rich individuals and institutions even act as gatekeepers, using their money to decide who’s able to run for office, who wins elections, and what issues get attention from elected officials.

Is it getting better or worse?

The problem has been getting worse in two important ways. First, the cost of running for office is rising sharply, which means that people who aren’t rich themselves and don’t have rich friends or associates have trouble getting

a campaign off the ground. To match the median winner in 2014, a candidate for U.S. Senate [had to raise \\$3,300 every single day for six years](#). That's really hard to do unless you're bringing in \$1,000 to \$5,000 checks. Which leads to the next way the problem is getting worse: a greater percentage of the money is coming from a tiny fraction of the public giving big bucks. These large donors are [whiter and wealthier](#) than the rest of us, and have [very different views](#) on critical issues such as living wages and protections against Wall Street abuses.

What does the public think about all this?

The vast majority of Americans—regardless of party or ideology—think this is a serious problem and support a whole range of solutions. [Three quarters of voters](#) think wealthy companies and individuals have too much influence over elections, and this was [a top concern](#) in the 2016 election. More than 80 percent of Democrats and more than 70 percent of Republicans [support limits](#) on campaign spending.

What has Congress done to address the problem?

After the Watergate scandal in the 1970s, Congress [passed a law](#) that limited campaign contributions and spending, required disclosure, launched a system of public funding for presidential campaigns, and created the first agency to actually enforce the law, the Federal Election Commission (FEC). Unfortunately, [the Supreme Court struck](#) down spending limits; congressional inaction in the face of rising campaign costs has left the presidential system ineffective; and the FEC is hobbled by a structure that often leads to tie votes and lack of enforcement.

By 2002, corporations and other rich donors were finding ways around the law, so after the Enron scandal Congress tried again, banning unlimited “soft money” contributions to political parties as well as corporate and union spending on ads meant to look like advocacy around issues but actually intended to influence elections. But the Supreme Court struck down key parts of that law too.

What about states and cities?

States and cities have been [leading the way](#) on money in politics reforms, especially in recent years. States like Maine, Arizona, and [Connecticut](#) give public funding grants to candidates who show sufficient grassroots support, so they don't need to depend upon wealthy donors. Cities such as New York and Los Angeles match small contributions with public funds, giving candidates the incentive to reach out to low- and middle-income constituents who can only afford to give \$20 or \$30. And Seattle recently created an innovative system making \$100 in [“democracy](#)

vouchers” available to every eligible voter to give to any candidate for city office. These programs [can diversify the donor pool](#), and encourage more candidates of different backgrounds to run for office.

States have also passed contribution limits set at levels average Americans can afford to give. But these low-limits programs have been undermined by Supreme Court rulings opening the floodgates to unlimited spending by billionaires and outside interest groups. Strictly limiting candidates’ fundraising, but not fundraising or spending by outside groups, can result in candidates’ voices being overwhelmed by all the outside money. In addition, the Supreme Court has struck down some low limits directly.

What has been the role of the Supreme Court?

The Supreme Court has been the single biggest obstacle to creating a fair system. In 1976, [the Court said](#) that unlimited campaign spending is like free speech, and struck down key parts of Congress’ post-Watergate law. In the four decades since, the justices have gutted common-sense protections against big money time and again. The most famous case is [Citizens United](#) from 2010, but there have been [plenty of others](#).

What kinds of laws has the Supreme Court struck down?

The Court has struck down a range of protections from limits on how much a wealthy candidate can spend on his own campaign, to bans on corporations helping to elect candidates who are good for their bottom lines, to limits on the total amount that a single wealthy donor can pump into the system in an election cycle. You can find a rundown of the most important protections the Court has gutted on the back of this FAQ.

Why has the Court been striking down common-sense protections against big money?

Back in the 1970s, [the Court ruled](#) that unlimited campaign spending is like free speech, which means that those with more money get more speech. The Court also ruled that the only reason we’re allowed to put any limits on contributions or spending is to fight corruption or its appearance. The justices said we’re not allowed to level the playing field between wealthy donors and the rest of us—even though our democracy is supposed to be based on equal citizenship.

More recently, [the Roberts Court has said](#) that we’re not even allowed to tackle systemic corruption or big donors getting increased access and influence—our laws can only target actual bribery of elected officials. We can’t pass a law unless we can show there’s a significant risk of someone being bought off. That’s why billionaires are allowed to spend as much

money as they want to support their favorite candidates, as long as they don't talk to the candidates about it; the majority of the Court claims that no discussion must mean no bribery.

But bribery isn't that common in the U.S., and it's not the primary way special interests and rich people get what they want from government. Using their contributions as leverage, big donors determine who can run for office, who has the best chance to win elections, and which issues get attention from legislators. But since none of that involves cash-for-vote exchanges, the Supreme Court finds nothing wrong with it and says we can't limit big money to fight it.

What have been the consequences for our democracy?

The Court's decisions in money in politics cases have distorted our democracy, **stacked the deck** in favor of the wealthy and against ordinary voters, and made a mockery of the one person, one vote principle. And because people understand this, rulings like *Citizens United* have reduced the public's confidence in our system and the people who serve within it. In fact, **85 percent of Americans** think we need to "fundamentally change" or "completely rebuild" our system for funding campaigns.

And for our economy?

Since the 1970s, the top 1 percent has monopolized the vast majority of the nation's economic growth, while inter-generational mobility has stalled. The Court's money in politics decisions have helped structure a society in which wealthy interests can freely translate economic might directly into political power, and write rules that keep themselves rich while the majority of Americans struggle to get ahead, or even stay afloat. The Court launched a **vicious cycle** of political and economic inequality, and a big-money political system that holds back our struggle for economic justice.

What about racial equity?

Centuries of state-sponsored oppression have created a **huge racial wealth gap** in the U.S., and our big-money system translates this inequality into political voice. The donor class is **much whiter than the rest of America**, and often pursues agendas that **disproportionately affect people of color**—such as rejecting strong investments in affordable college education. And the need to raise big money **is a barrier** to candidates of color running for elected office.

What difference could the next justice confirmed to the Court make?

The stakes couldn't be higher. The Court is currently split 4-4 on money in politics, and many other issues. The next justice will decide whether we

lose even more protections against big money (like the ban on contributions from corporations to candidates) or if we can actually turn the tide and end Super PACs, get corporate money out of our elections, and bring back reasonable limits on contributions. With a justice committed to core democratic principles, we can restore our pro-democracy Constitution, and finally get government that is truly of, by, and for the people.

What should senators know about a Supreme Court justice nominee's views on money in politics before voting on his or her confirmation?

Every senator should ask the nominee: Is fighting bribery the only valid reason for limiting big money in politics, or do We the People have the power to enact common-sense protections so that Americans of all incomes, races, and backgrounds can run for office and have our voices heard?

Why is it important that we have Supreme Court justices who understand the Constitution gives us the power to protect our democracy from big money?

Right now we're fighting big money with one hand tied behind our backs—because the Supreme Court has [taken away some of our best weapons](#), such as strong limits on political contributions and spending. To tackle our nation's biggest challenges—from climate change to economic and racial injustice—we'll need to build a democracy where the strength of our voices doesn't depend upon the size of our wallets. We can do that together, as long as the Supreme Court gets out of our way.

Dēmos

Dēmos is a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy.

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Supreme Court Shreds Protections Against Big Money Politics

Year	Protection Struck Down	Case	Impact	Example
1976	Limits on how much personal or family wealth a candidate can spend on her own campaign	<i>Buckley v. Valeo</i>	Millionaires and billionaires can attempt to buy elected office with unlimited personal or family wealth	Michael Bloomberg spends more than \$250 million to become and stay mayor of New York City. ¹
1976	Limits on total spending by candidate campaigns	<i>Buckley v. Valeo</i>	High cost of campaigns raises significant barrier to entry for non-wealthy candidates; officeholders forced to spend up to half of their time raising money in a nonstop arms race	Candidates spend a combined \$49 million in one 2014 Kentucky U.S. Senate race. ²
1976	Limits on the amount an individual or political committee can spend to influence an election without cooperating with a candidate (“independent expenditures”)	<i>Buckley v. Valeo</i>	Billionaires permitted unlimited election spending; sets the stage for the rise of “outside spending” groups, which took off after <i>Citizens United</i> in 2010	Anthem, Inc. insurance company gives nearly \$13 million to defeat a 2014 pro-consumer health care initiative in CA. ³
1979	Ban on spending by corporations on ballot initiatives	<i>First National Bank of Boston v. Bellotti</i>	For profit and nonprofit corporations can spend treasury funds to support or oppose ballot initiatives	More than 75% of the \$266 million given by the top 50 donors to 2014 ballot measure groups comes from corporations or business trade groups, which had a 96% win record. ⁴
1981	Limits on contributions to ballot initiative campaigns	<i>Citizens Against Rent Control v. Berkeley</i>	Wealthy individuals and institutions can spend unlimited sums to influence what measures make it onto state and local ballots and ultimately pass or fail	Anthem, Inc. insurance company gives nearly \$13 million to defeat a 2014 pro-consumer health care initiative in CA. ⁵
2006	Strict limits on contributions to candidates, set at levels that average Americans can afford to give—such as \$200 to state representative candidates	<i>Randall v. Sorrell</i>	Congress, states, and cities can set relatively high contribution limits to prevent candidates from being bought off, but not low contribution limits that level the playing field between wealthy donors and ordinary citizens	2012 U.S. Senate candidates get 64% of the funds they raise from individuals in contributions of at least \$1,000 – from 0.04% of the population. ⁶
2010	Ban on direct spending by corporations to influence candidate elections	<i>Citizens United v. FEC</i>	For-profit corporations and unions can spend unlimited treasury funds to support or oppose candidates, overturning nearly a century of law; secret money explodes into U.S. politics since many nonprofit corporations are not required to disclose their donors	The Koch Brothers’ network of political organizations pledges to spend \$889 million in the 2016 election cycle, mostly through nonprofits that are not required to disclose their donors. ⁷
2010	Limits on contributions to groups that spend money to influence elections but do not contribute to candidates	<i>Citizens United v. FEC and Speech Now v. FEC (DC Circuit)</i>	Super PACs are born; permitted to collect unlimited contributions from virtually any source and spend unlimited sums, as long as they don’t contribute to or cooperate with candidates or parties	Super PACs raise \$696 million in the 2014 election cycle – more than either major party that cycle. ⁸
2011	Additional public financing for candidates to match big spending by opponents or outside groups	<i>Arizona Free Enterprise Club v. Bennett</i>	Public funding programs cannot match high-dollar spending by non-participating candidates or outside groups, making systems harder to sustain	Arizona “Clean Elections” candidate Janie Hydrick lost to her privately-financed opponent by less than 5,000 votes while being outspent more than 3.5 to 1. ⁹
2014	Limits on the total amount one wealthy donor can contribute to all candidates, parties, and political committees combined	<i>McCutcheon v. FEC</i>	A single individual can now contribute millions of dollars to a single party’s candidates and committees plus millions more to PACS, versus a prior total federal cap of \$123,200	Paul Singer made over \$569,000 in 2014 cycle contributions to federal candidate and party committees – more than 4 times the limit before McCutcheon. ¹⁰

Sources

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Judge Gorsuch's Extreme Views Could Undermine Urgently Needed Money-In-Politics Reforms

Trump's Nominee Must be Pressed on Money in Politics

- For four decades, the Supreme Court's [flawed approach to money in politics](#) has gutted common-sense protections against the power of special interests and wealthy individuals, and shaped a system that [85% of Americans](#) believe needs fundamental changes.
- [More than 90% of voters](#) (including 91% of Trump voters) think it's important that President Trump nominates a Supreme Court justice who is open to limiting the influence of big money in politics.
- Yet, Trump has pledged to nominate someone [in the mold of Justice Scalia](#), an ardent opponent of limits on big money. And Trump's nominees [were vetted by White House Counsel Don McGahn](#), one of the commissioners most hostile to money-in-politics rules in the history of the Federal Election Commission.

Judge Gorsuch's Money-in-Politics Record

Judge Gorsuch's record on money in politics, while sparse, raises significant concerns.

- In his only opinion directly addressing money in politics, Judge Gorsuch expressed openness to providing a higher level of constitutional protection to a donor's right to make political contributions than the Court currently affords the right to vote.¹ Judge Gorsuch's openness to applying rigid "strict scrutiny" review to contribution limits—one of the few remaining checks on big money we have left, thanks to the Supreme Court—puts him among the ranks of justices extremely hostile to this issue, such as Thomas and Scalia, and is cause for serious concern.²
- In *Riddle v. Hickenlooper*, Judge Gorsuch joined a Tenth Circuit panel in striking down an ill-advised Colorado statute that imposed lower campaign contribution limits on minor party candidates than the limits applying to major party candidates.³ Because the statute *was* discriminatory, the outcome of the case is not cause for concern in and of itself.

- What is troubling, however, is that Judge Gorsuch went out of his way to write a concurring opinion suggesting that making a political contribution is a “fundamental” right that ought to be afforded the highest form of constitutional protection, which is known as “strict scrutiny review.”⁴
 - As the highest form of constitutional protection, strict scrutiny review is reserved for our most precious rights, like the right to be free from discrimination on the basis of race or religion, or the right to express an unpopular viewpoint. Sometimes the Court doesn’t even apply this level of scrutiny to restrictions on the right to vote itself.⁵
 - In recent years, the Supreme Court’s 5-4 majority has applied strict scrutiny review to strike down laws governing money spent independently of candidates. If the court were to follow Judge Gorsuch’s reasoning and apply strict scrutiny to laws governing direct contributions to candidates, many remaining protections against big money in politics would similarly fall.
 - It is precisely this approach that has created a system in which single individuals and corporations can spend tens of millions of dollars to influence elections, and in which candidates and elected officials are significantly more responsive to the priorities of an elite donor class that is richer, whiter, and more male than Americans on the whole.
- It is unclear whether Judge Gorsuch would seek to apply strict scrutiny to all contribution limits, or only when there is an allegation of discrimination against a type of “speaker.” But even the latter, more modest approach could open the door for an attack on a range of contribution restrictions: in particular, the ban on corporate contributions directly to candidates may be vulnerable given Judge’s Gorsuch’s views on corporations.
- In the *Hobby Lobby* case, Judge Gorsuch joined a troubling extension of the Supreme Court’s holding in *Citizens United v. FEC*, in favor of corporate personhood. Specifically, the Tenth Circuit ruled that privately held, for-profit secular corporations are “persons” under the meaning of the Religious Freedom Restoration Act (RFRA), and could qualify for religious exemptions from the Affordable Care Act’s mandate to provide reproductive health services.⁶
- One of the central holdings of *Citizens United* is that the government can’t “discriminate” against corporations by banning them from spending treasury funds on electoral “speech.”⁷ This misguided notion combined with strict scrutiny review could easily lead Judge Gorsuch to vote to strike the corporate contribution ban as “discriminatory.”⁸ One of the few remaining protections against corporate influence on our elections could fall, and we could also see “secret money” from non-disclosing non-profit corporations going directly to candidates’ campaigns. There have been multiple challenges to corporate contribution bans following *Citizens United*, and one such challenge to Texas’ ban is currently pending before the state supreme court.⁹

Other Causes for Concern for our Democracy

- Judge Gorsuch is hostile to regulations on the corporate sector and has a record of ruling against consumers and working Americans.¹⁰
- Like others on Trump's short list, Judge Gorsuch has ties to the Chamber of Commerce—the single-largest lobby in the country comprised of corporate giants from the pharmaceutical, oil, and other industries, and which has spent tens of millions of dollars in elections while keeping its donors secret.¹¹ Before becoming a judge on the Tenth Circuit, Gorsuch represented the National Chamber of Commerce, arguing in favor of rules that would make it more difficult to hold companies accountable for securities fraud.¹²
- Judge Gorsuch has described his own jurisprudence as backward-looking.¹³ On numerous occasions he has ruled against plaintiffs claiming to have been discriminated against on the basis of race, and his ruling in favor of law enforcement in an excessive use of force case raises concerns that his jurisprudence would continue to entrench systemic “colorblind” racism in the United States.¹⁴
- Judge Gorsuch's nomination has been applauded by the Center for Competitive Politics, a staunch defender of big money in American politics.¹⁵

ENDNOTES

1. 742 F.3d 922, 930-31 (10th Cir. 2014) (Gorsuch, J., concurring). While not directly on point, Judge Gorsuch also joined a Tenth Circuit opinion that could be read in support of disclosure rules. See *Doe v. Shurtleff*, 628 F.3d 1217 (10th Cir. 2010). As Judge Gorsuch wrote prior to his appointment to the Tenth Circuit in a brief for the Chamber of Commerce, in some instances the lack of disclosure of critical information can be “inconsistent with the very premise of an open capital market, which depends on the freest possible flow of information.” See Brief of Amicus Curiae for the United States Chamber of Commerce at 17, *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336 (2005) (citing Richard A. Posner, *Economic Analysis of the Law* 457-58 (6th ed. 2003)). This type of faux-support for disclosure while advocating for bigger-picture deregulation is not cause for celebration.
2. See, e.g., *Randall v. Sorrell*, 548 U.S. 230, 266-67 (2006) (Thomas, J., concurring). Justice Thomas’s concurrence was joined by Justice Scalia. See *id.*
3. See *Riddle*, 742 F.3d at 927-28. The panel held that the right to contribute money to a candidate is a fundamental right, and struck down the contribution limits under an intermediate scrutiny or a “closely drawn” standard of review.
4. See *id.* at 930-31 (Gorsuch, J., concurring). Specifically, he opined:

[The challengers] say that contributing in elections implicates a fundamental liberty interest, that Colorado’s scheme favors the exercise of that fundamental liberty interest by some at the expense of others, and for this reason warrants the most searching level of judicial scrutiny. For my part, I don’t doubt this line of argument has much to recommend it. The trouble is, we have no controlling guidance on the question from the Supreme Court. And in what guidance we do have lie some conflicting cues.

- Id.* It is worth reiterating that the statute challenged in *Riddle* implicated Equal Protection, in addition to First Amendment, concerns, since it discriminated on the basis of the political candidate that a donor supported. It is not entirely clear that Judge Gorsuch would apply strict scrutiny review in a simple First Amendment challenge to contribution limits (for example, in a case challenging a limit as being too low). The majority opinion also characterized making political contributions as a “fundamental right” while not going so far as to apply strict scrutiny. *Riddle*, 742 F.3d at 927. Yet, Judge Gorsuch wrote separately to discuss the appropriate level of scrutiny, and, if appointed to the Supreme Court, it could well be Gorsuch’s prerogative to provide the “controlling guidance” he said was missing, and to clarify that restrictive, strict scrutiny review should apply to contribution limits.
5. See, e.g., *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181 (2008) (applying a lax, “undue burden” standard to challenged voter ID provision).
 6. See *Hobby Lobby*, 723 F.3d 1114 (finding that the freedom to worship must be protected by a correlative freedom to engage in corporate efforts to those ends). Judge Gorsuch wrote separate concurrence opining that the Green family behind the Hobby Lobby company was entitled to additional relief, beyond the relief provided to the corporate “person.” See *id.* (Gorsuch, J., concurring).
 7. 558 U.S. 310, 365 (2010) (“...the Government may not suppress political speech on the basis of the speaker’s corporate identity”).
 8. In *Hobby Lobby Stores, Inc. v. Sebelius*, Judge Gorsuch joined the majority to hold that for-profit corporations have rights under the Free Exercise clause of the First Amendment. 723 F.3d 1114 (10th Cir. 2013). The opinion relied on *Citizens United v. FEC*, a Supreme Court opinion ruling that the First Amendment’s protection of political speech extends to for-profit corporations). 558 U.S. 310 (2010).
 9. See, e.g., David Saleh Rauf, *Citizens United lawyer targets Texas campaign finance laws*, *Seattle Times* (Feb. 6, 2017), <http://www.seattletimes.com/nation-world/citizens-united-lawyer-targets-texas-campaign-finance-laws/>.
 10. See, e.g., *Compass Environmental, Inc. v. OSHRC*, 663 F.3d 1164 (10th Cir. 2011) (Gorsuch, J., dissenting) (arguing that a fine imposed by the Dep’t of Labor because the company failed to train its employee, resulting in the employee’s death, should be overturned); *TransAm Trucking, Inc. v. Admin. Review Bd.* No. 15-9504, 2016 WL 3909526 (10th Cir., July 15, 2016) (Gorsuch, J., dissenting) (concluding a company did not unlawfully retaliate for whistleblowing). *Gutierrez v. Lynch*, 834 F.3d 1142, 1149-59 (10th Cir. 2016) (Gorsuch, J., concurring). Judge Gorsuch’s radical views against affording administrative agencies deference in interpreting the laws they are charged with enforcing makes him more conservative on this issue than former Justice Scalia. See Eric Citron, *Potential nominee profile: Neil Gorsuch*, SCOTUSBLOG.ORG (Jan. 13, 2017, 12:53 PM), www.scotusblog.com/2017/01/potential-nominee-profile-neil-gorsuch/.
 11. See Center for Media and Democracy, *U.S. Chamber of Commerce*, SOURCEWATCH.ORG (Aug. 2, 2016, 9:37 AM), http://www.sourcewatch.org/index.php/U.S._Chamber_of_Commerce. Two others on Trump’s rumored short list for Supreme Court Justice, Justices Sykes of the Seventh Circuit and Justice Kethledge of the Sixth Circuit, also have ties to the Chamber of Commerce at the state level.
 12. See Brief of Amicus Curiae for the United States Chamber of Commerce, *supra* note 1; Neil M. Gorsuch, *No Loss, No Gain*, LEGAL TIMES (Jan. 31, 2005).
 13. See Neil M. Gorsuch, *Of Lions and Bears, Judges and Legislators, and the Legacy Of Justice Scalia*, 66 CASE W. RES. L. REV. 905, 906 (2016).
 14. See, e.g., *Young v. Dillan Cos., Inc.*, 468 F.3d 1243 (10th Cir. 2008); *Alvarado v. Donley*, 490 Fed. App’x. 932 (10th Cir. 2012); *Officer v. Sedgwick Cty.*, 226 Fed. App’x. 783 (10th Cir. 2007). See also *Wilson v. City of Lafayette*, 510 Fed. App’x. 775 (10th Cir. 2013). In this case, Judge Gorsuch ruled in favor of a law enforcement officer in a case involving an officer’s excessive use of force causing the death of a young man. While the young man in the *Wilson* case was white, Gorsuch’s analysis indicates a willingness to shield trigger-happy law enforcement officers from liability, a problem that we know disproportionately affects people of color.
 15. See, e.g., Matt Nese, *CCP Applauds Nomination of Judge Gorsuch for Supreme Court*, CENTER FOR COMPETITIVE POLITICS (Jan. 31, 2017), <http://www.campaignfreedom.org/2017/01/31/ccp-applauds-nomination-of-judge-gorsuch-for-supreme-court/>.



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OUR SUPREME COURT MUST REFLECT OUR VALUES:

**ALL PEOPLE ARE EQUAL
REGARDLESS OF HOW MUCH MONEY THEY HAVE**

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**It is IMMORAL &
UN-AMERICAN**

**to believe the wealthiest should
speak louder than the rest of us.**

I WANT A SUPREME COURT JUSTICE WHO AGREES.