

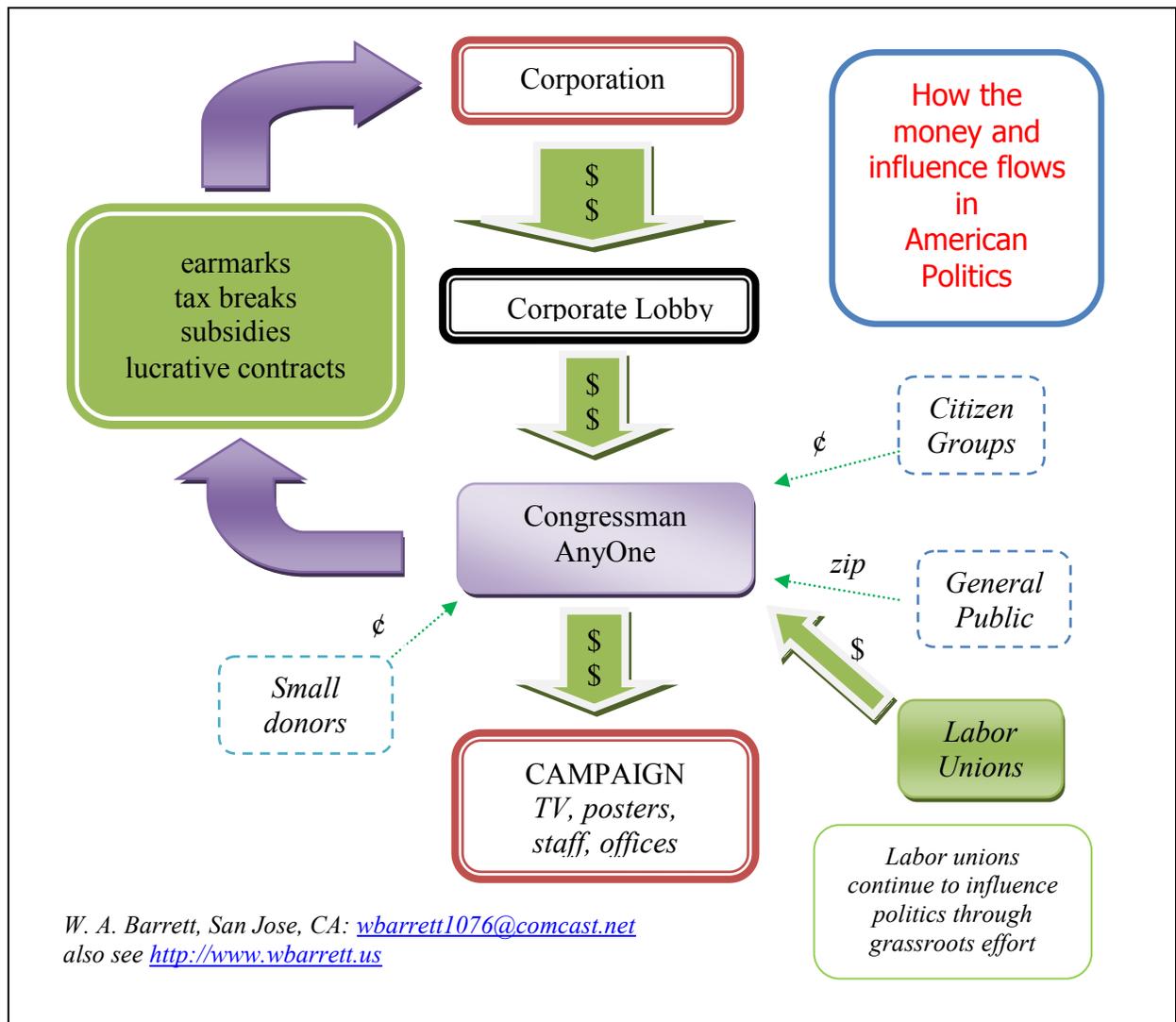
How Money and Influence Flows

... in American Politics

W. A. Barrett, San Jose, CA, June 2013

The chart below is a simplified representation of how Congress (and most state legislatures) operate today. Corporations support lobbyists, who funnel cash and advice to legislators, who tend to vote for various goodies for their corporate friends.

Influence over legislation is as old as our Constitution. However, the relative degree of influence has shifted from the Citizen Groups and General Public prior to 1900 to Labor Unions (until the 1970s), finally to Corporate Lobbies today. Congress-people need money for campaigns, but then find themselves beholden to interest groups for campaign contributions. Corporate funding comes with strings, and the corporations expect returns in the form of subsidies, contracts, tax breaks, etc.



What we now have is a positive feedback loop from individual corporations, wealthy individuals or corporation-sponsored groups through heavily funded corporate lobbies to Congress. Lobbyists funnel cash to members of Congress as open campaign contributions. They also continuously feed slanted “information” to legislators about various bills coming up for a vote. The campaign contributions by law cannot be “sold” for votes, but every member of Congress clearly is grateful for the cash, in order to cover their campaign expenses. Every member of Congress is expected to raise huge sums for the next campaign, whether or not he/she is interested in another term in Congress. This is not only time-consuming, but distracting. Dialing for dollars is much easier if the donors can be expected to chip in huge sums, rather than many \$20 donations from small donors, and the gratitude for the donation obviously shifts with the size of the amount.

As Lawrence Lessig points out in *Republic, Lost*, votes-for-cash is now transacted through a “gift economy” rather than a “quid-pro-quo” economy: both are technically illegal, but the former is very difficult to prove in court. Both the lobbyists and their target politicians understand all this very well, and wish to remain out of jail.

From the corporation’s point of view, a million dollar donation to a campaign chest coupled with a little rider to some appropriations bill can pay off in billions of dollars in an appropriation, subsidy, contract, tax loophole or other benefit.

Breaking the Loop

The feedback loop from Corporation to Corporate Lobby to Congress-person through Earmarks (etc.) back to Corporation is what an engineer or biologist would call a “positive feedback loop”. There’s a net positive return to the corporation from a campaign contribution. A corporate contribution to a campaign chest is typically paid back to the corporation through legislative benefits by a factor of ten or more. This is a consequence of the huge number of dollars involved in almost any tax or appropriation measure.

But -- **the interests of a corporation or group of corporate interests is rarely the same as the general public’s interest.** In short, although a corporation is now considered a “person”, according to the *Citizen’s United* decision, a corporation is in fact dedicated to **maximizing its return to its stockholders, and not to maximizing the general welfare.** This has little or nothing to do with the integrity or personality of the CEO of a corporation. His/her legal responsibility is to maximize returns to the company’s stockholders, and every action taken has to be justified in that light.

For example, Lockheed-Martin, as a corporation, has a direct interest in maximizing its stockholder’s profits. Given the business it is in, that is best done by encouraging Congress to purchase more high-tech military aircraft. But that is a force in the direction of an ever-expanding military sector, with many unfortunate consequences, including a major drain on tax resources that might better be spent on education, health, housing, and infrastructure.

The banking sector would like to see banking regulations relaxed, to increase profit margins. The repeal of the Glass-Steagall act of 1932 was a major achievement of the banking lobby, did result in huge profits (and bonuses to banking executives), but eventually led to the collapse of the banking industry in 2008, and its costly bailout by the government. The detailed nature of the 2008 banking crisis is complicated, but its root lies in the outsized influence of the banking industry on Congress. Very few Congress members spoke against Glass-Steagall repeal, and the public seemed indifferent.

Breaking such a feedback loop requires eliminating one of the amplifying factors involved in the loop, or several of them. The key is reducing enough of the amplifying factors through some change in the law to make the overall “loop gain” less than unity. For example --

- A. Find a way to stop the “gift economy” influence that has replaced “quid-pro-quo” sale of votes through law enforcement,
- B. Make it illegal for a corporation to donate to any political campaign, or
- C. Elect more Congress members who have the integrity to resist the monied lobbies and pay more attention to the broad voter base, or
- D. Reduce the need of Congress members for campaign cash, or
- E. Make the influence of money on legislation much more evident and reportable through the media, or
- F. Provide some public funding combined with campaign contribution limits.

None of these will be easy to achieve. Some combination may do the trick.

Factor A is probably hopeless to enforce. Proving that a member of Congress voted for some measure (yea or nay) because he/she received a block of campaign cash in the past can only be done through evidence of a quid-pro-quo transaction -- some record that the vote was secured through a corrupt payment. Most lobbyists and members know not to fall into that trap.

Factor B: Move to Amend was organized to work on factor B. The goal of MTA is a constitutional amendment that not only declares a corporation as a “non-person”, but also restricts the ability of a corporation to use its monetary assets to influence legislation.

Factor C: We'd all like to see more politicians with integrity (factor C), but this is a tricky thing for voters to assess. A candidate is elected on the basis of his or her speech and endorsements, but neither is much of a guarantee that he/she will vote in the public interest after the election. There's more than enough corruption to make factor C desirable, but not practically achievable.

Factor D has great promise, but a sad history of defeats. There have been many attempts at public funding of campaigns or restricting the amounts spent in a campaign. But money spent on television ads does work, and the candidate with the most money to spend has an advantage over one with less money. Public funding requires not just a law, but a public that appreciates the need for this as a way of ending the feedback loop shown above, plus other benefits. Unfortunately, several propositions (in California and other states) to provide public funding for certain offices have failed to pass.

Factor E: The *Disclose* movement was organized to work on factor E -- the concept is to ensure that every public television or print advertisement favoring some political issue or candidate before an election also carry the parties funding that ad.

Factor F: The next page describes a proposal by the Campaign Finance Institute that has great promise. Rather than full public funding of elections, which has been defeated by the public several times, a form of matching funds might pass. This could be coupled with certain limits on campaign contributions.

Is the Game Over? Time Will Tell...

Cartoonist's view

SJM News - 2/6/2012 - p A11



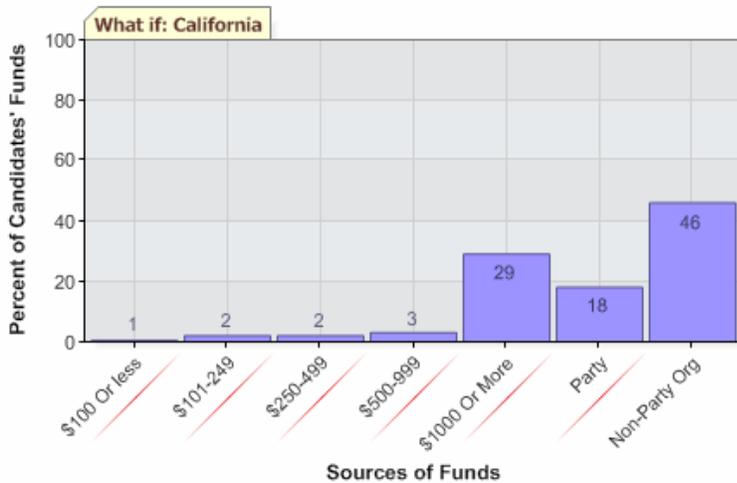
Matching Funds and Campaign Limits -- a Model

These charts are from <http://www.cfinst.org/State/CitizenPolicyTool/CA.aspx>. The Campaign Finance Institute has developed an interactive model that lets you examine the consequences of a few simple changes in campaign funding.

Each chart shows the relative funding of a typical candidate for state office in California. (Similar charts can be generated for other states). Watch the leftmost category (\$100 or less), which represents the average lower or middle class voter, and the three rightmost categories (\$1000 or more, Party, and Non-Party Org). The Non-Party Org represents large, organized campaign groups, mostly campaign PACs, funded by the super-rich. We can expect the Non-Party Org category to grow in future elections through *Citizens United*, and large, hidden corporate donations.

No Matching Funds; No Campaign Limits; Few Small Donors

The chart below is the current situation in California, for its Senate: no public funds; no matching funds; no campaign limits; few small donors. **If you were a Senator, whose interests would you listen to?**

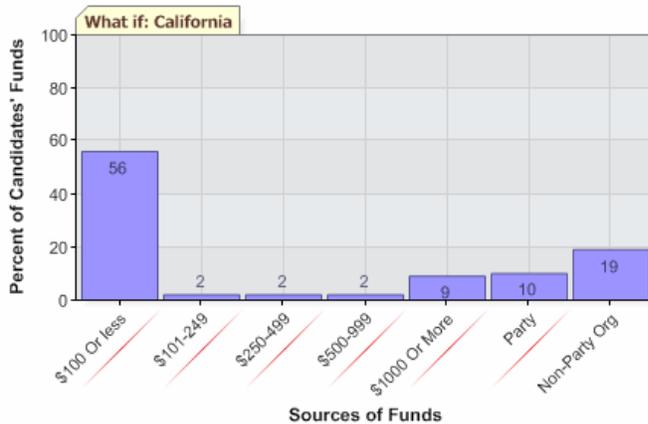


Matching Funds; Individual and Group Limits; 4% of Voters Donating \$50/year

Below is a *what-if* chart for California legislature candidate funds, given:

- \$2,000 individual limits; \$10,000 group limits, per year
- 5-to-1 matching funds, up to \$50/year per donor
- At least 4% of voters donating \$50/year or more

Then, if you were a Senator, whose interests would you listen to?



Some Back-of-the-envelope Estimates

The CFI proposal that at least 4% of the voters donate \$50/year seems unrealistic. It isn't. Let's examine that. See http://elections.gmu.edu/voter_turnout.htm for voter turnout numbers.

- Number voting in 2010 national elections: 90.7 million, a 41% turnout ratio of voters/registered voters.
- Number voting in 2008: 132.6 million, a 62% turnout ratio of voters/registered voters.
- Let's assume 100 million voting on average.
- Assume 4% contributing: that's 4 million contributing voters
- Assume an average contribution of \$50/year: that's \$200 million/year for campaigns.

Most of the campaign expenses are every other year, so, roughly \$400 million in *small voter contributions* to even-year elections would be available.

That's a whopping sum, *without* any federal matching funds.

- 5-for-1 matching funds would result in at least \$2.4 billion available for campaign expenses for all elections. (Federal funding kicks in \$5 for every \$1 in small contributions)
- 2-for-1 matching funds would result in at least \$1.2 billion. (Federal funding kicks in \$2 for every \$1 in small contributions)

For a comparison, president Obama has raised more than \$220 million for his 2012 campaign, and the Koch Brothers have pledged \$100 million to defeat him in November. Other wealthy right-wing interest are pledging similar amounts toward his defeat. (www.huffingtonpost.com).

Consequences

- *Much smaller influence of wealthy backers.* Given individual and group limits, no more \$100 million pledges from a few individuals. Also, much less incentive to try to influence legislation with money.
- *Wealthy backers must chip in a whole lot more money to compete.* No more cheaply bought bills passed to favor some corporate or wealthy special interest.
- *End the need for political "dialing-for-dollars"* now required of members of Congress.
- *Politicians will pay more attention to the general public,* as they should under the *all persons are created equal* preamble to the Constitution.
- *There should be more small contributors,* given less influence of big money. This change in attitude will require several years to sink in.
- *Small contributors are more likely to become involved* in citizen's group, promoting the general welfare over the special interests.

More Ideas

- A portion of the contribution fund should be spent on general advertising in favor of making small donations, getting more involved in political groups, etc. These ads would not be for or against any candidate or party, but merely educate the public on the importance of making a small donation to a candidate or campaign of their choice, getting involved in citizen's groups, and explaining how to do that.
- A line could be included with each income tax form, to be used to make an annual contribution to some organized political group, politician or candidate. Other publications sent to the public should also contain a one-page blurb about the contribution program.
- A web site should be maintained, listing donation targets, based on area code, with candidates and office-holders interested in receiving donations, along with information on how to get involved in a candidate's campaign.
- Should citizen's interest groups be eligible for public funding? I suggest more study of that issue. Thousands of groups, large and small, worthy and scams, would spring up. Who would decide which are worthy of public funding? At least a candidate registered on the ballot in an election has already cleared some public hurdles, and could be considered worthy of support. An interest group is another story.
- Labor unions should be distinguished from corporations, as legal entities. A union is supposed to represent all of its members through some democratic process, yet it needs special protection against management and corporate interests in cutting labor costs. Organizing as an ordinary corporation misses the point completely - a labor union is not incorporated to sell a product and maximize returns to stockholders as is a corporation. When a union petitions Congress or a state legislature, it is to benefit all its members, not some group of stockholders.

OPINION

More Commentary

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www.sfgate.com/blogs/opinionshop

E.J. DIONNE JR.

Wealthy citizens united

We have seen the world created by the Supreme Court's Citizens United decision, and it doesn't work. Oh, yes, it works nicely for the wealthiest and most powerful people in the country, especially if they want to shroud their efforts to influence politics behind shell corporations. It just doesn't happen to work if you think we are a democracy and not a plutocracy.

Two years ago, Citizens United tore down a century's worth of law aimed at reducing the amount of corruption in our electoral system. It will go down as one of the most naive decisions ever rendered by the court.

The strongest case against judicial activism — against “legislating from the bench,” as former President George W. Bush liked to say — is that judges are not accountable for the new systems they put in place, whether by accident or design.

The Citizens United justices were not required to think through the practical consequences of sweeping aside decades of work by legislators, going back to the passage of the landmark Tillman Act in 1907, who sought to prevent untoward influence-peddling and indirect bribery.

If ever a court majority legislated from the bench (with Bush's own appointees leading the way), it was the bunch that voted for Citizens United. Did a single justice in the majority even imagine a world of super PACs and phony corporations set up for the sole purpose of disguising a donor's identity? Did they think that a presidential candidacy might be kept alive largely through the generosity of a Las Vegas gambling magnate with important financial interests in China? Did they consider that the democratizing gains made in the last presidential campaign through the rise of small online contributors might be wiped out by the brute force of millionaires and



Dean Rofner / NewsArt

billionaires determined to have their way?

“The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy.” Those were Justice Anthony Kennedy's words in his majority opinion. How did he know that? Did he consult the electorate? Did he think this would be true just because he said it?

Justice John Paul Stevens' observation in his dissent reads far better than Kennedy's in light of subsequent events. “A democracy cannot function effectively,” he wrote, “when its constituent members believe laws are being bought and sold.”

But ascribing an outrageous decision to naïvete is actually the most sympathetic way of looking at what the court did in Citizens United. A more troubling interpretation is that a conservative majority knew exactly what it was doing: that it set out to remake our political system by fiat in order to strengthen the hand of corporations and the wealthy. Seen this way, Citizens United was an attempt by five justices to push future electoral outcomes in a direction that would entrench their approach to governance.

In fact, this decision should

be seen as part of a larger initiative by moneyed conservatives to rig the electoral system. How else to explain conservative legislation in state after state to obstruct access to the ballot by lower-income voters?

Those who doubt that Citizens United has created an entirely new political world with far broader openings for corruption should consult important news reports last week by Nicholas Confessore and Michael Luo in the New York Times and by T.W. Farnam in the Washington Post. Both accounts show how American politics has become a bazaar for the very wealthy and for increasingly aggressive corporations. We might consider having candidates wear corporate logos.

In the short run, Congress should do all it can within the limits of Citizens United to contain the damage it is causing. In the long run, we have to hope that a future Supreme Court will overturn this monstrosity, remembering that the first words of our Constitution are “We the People,” not “We the Rich.”

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Calling for a Convention

BY LAWRENCE LESSIG

To keep money from corrupting our democratic politics, we need constitutional change. No doubt lots can be done by statute alone—meaningful transparency rules, such as the Disclosure Act, and small-dollar public funding, such as the Fair Elections Now Act. The Supreme Court, however, has all but guaranteed that these won't be enough. Transparency by itself won't build trust; public funding can only be voluntary; and independent expenditures are all but certain to swamp even the best reforms tolerated by the Court. If we're ever going to get a Congress "dependent," as James Madison put it in *Federalist Paper No. 52*, "upon the People alone," and not "the Funders," it is clear that Congress will need new constitutional authority.

Yet it is also clear that Congress won't ask for this authority itself. The chance that this Congress, or any Congress elected in the current environment, could muster 67 votes in the Senate to alter Washington's economy of influence is zero. Congress is the problem. Fixing itself is just one of the items on a very long list of things that it simply cannot do. A whole industry of influence depends upon preserving the status quo. For that industry, blocking change is child's play.

At some point, we reformers must consider the one way the framers gave us to revise the Constitution when Congress itself is the problem. This is the Article V conven-

tion. If 34 state legislatures apply, then Congress must "call a Convention for proposing Amendments." The product of such a convention is just that—proposals, not constitutional change. As with amendments proposed by Congress, those put forward by the convention become law only if ratified by 38 states. But the convention is the one path to making such proposals that Congress can't easily control, and the one path that could create enough of a mandate to force Congress to act.

Liberals and conservatives alike fear a convention. That fear is fair. In the 223 years since our Constitution was ratified, we've never had a convention (though we've gotten close). It's not even completely clear how one would be organized or how it would be controlled. But any remaining uncertainty must be viewed practically, with a clear eye to the political constraints that would cabin any amending process.

So what happens if the convention exceeds its mandate (the so-called runaway convention)? What happens if it proposes radical changes on either the left or the right? Why would anyone expect reform from a convention to be more likely, or more sensible, than change coming out of Congress?

Let's start with the politics: It is easier to imagine 34 states calling for a convention than it is to imagine 67 senators voting to propose an

amendment to end the corrupting influence of money in Congress. Much easier. That's because the 34 states need not agree on the reason for a convention; they only have to agree on the need for a convention. Some states might want a convention to propose a balanced-budget amendment. Some states might want a convention to propose amendments to address money in politics. Reformers of different stripes can thus work together for the chance to convince a convention of their own version of reform. Agreement on substance comes later; the first step is agreement on the process.

But what if the convention proposes radical reform? What's to protect us from extreme change? Again, the question must be viewed practically. If 38 states must ratify any proposal, then 13 states can block any proposal. There are plainly 13 red and 13 blue states, so radical change is not on the table. Even if one believes the majority of state legislatures are nuts (not my view, but maybe yours), one must believe that at least 25 percent are sane.

Of course, it is possible that a proposal that exceeded the scope of a convention—call it a runaway proposal—would be ratified. Indeed, some say that's precisely what happened with our own Constitution. But again, speaking practically, if a convention runs away, that's a good reason to ignore its proposals. If despite its running away, three-fourths of the state legislatures ratify the proposal, how bad could it be?

Deploying a convention to bring about constitutional reform may well carry risk, no doubt. But risk can also come from doing nothing. There is an endless list of critical problems that this Congress won't face because of the corrupting influence of money in politics. Is that any less risky?

Is the risk of a runaway convention greater than the risk from doing nothing about global warming? Or from accepting the only health-care system we can get so long as insurance and pharmaceutical companies can blackmail even an Obama? Or from a financial system that can block any meaningful reform, even after the greatest collapse since the Depression? There are risks on both sides here. At least for those who are convinced that fundamental reform of our system is needed, it is hard to believe the risks from doing nothing are smaller than the risks from an Article V convention.

The Republic our framers gave us—one "dependent upon the People alone"—is lost. This Republic is now heavily dependent upon "the Funders." So long as the system remains as it is, the Funders will always have the power to block essential reform. That power is a constant danger. There will be risks in fighting it. But we must accept those risks if we're going to restore our Republic. ■

Lawrence Lessig is the Roy L. Furman professor of law at Harvard Law School and the director of the Edmond J. Safra Center for Ethics at Harvard University. His latest book is *Republic, Lost: How Money Corrupts Congress—and a Plan to Stop It* (Twelve).



source: <http://prospect.org/article/calling-convention>, Lawrence Lessig, *The American Prospect*, Jan. 2012.