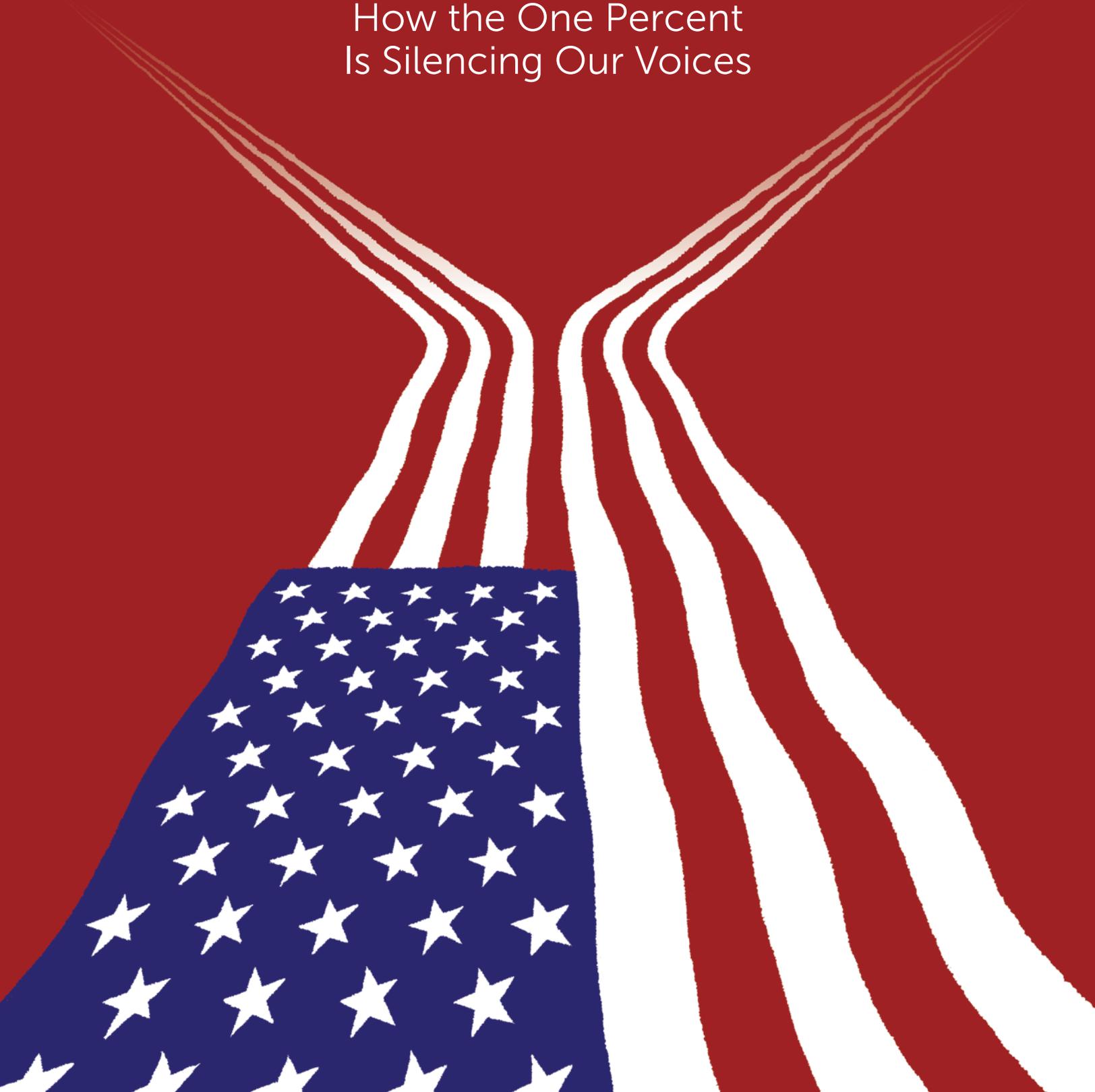


# DEMOCRACY AT A CROSSROADS

How the One Percent  
Is Silencing Our Voices



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## Acknowledgements

This report would not have been possible without the tremendous talent and knowledge of many experts. Common Cause offered invaluable input, particularly from Allegra Chapman, Jay Riesterberg, and Steven Spaulding. Every Voice Center staff, including Tam Doan, David Duhalde, Adam Smith, and Chris Tallent, provided critical assistance. Sincere thanks also to Marissa Brown of Democracy Initiative, Courtney Hight of the Sierra Club, George Kohl of the Communications Workers of America, Moshe Marvit of the Century Foundation, Adam Lioz of Demos, and Mark Schmitt of New America Foundation for reviewing and commenting on early drafts. We would like to give a special thank you to our editor, Shelley Sperry, who provided indispensable guidance along the way.

On the graphics team, we thank Kerstin Diehn for our layout design and Heath Hinegardner for the cover illustration.

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Is Silencing Our Voices



**DEMOCRACY**  
INITIATIVE  
EDUCATION FUND

*A Democracy Initiative Education Fund Publication*

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*Research and editorial support from the  
Communications Workers of America and  
Every Voice Center*



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## PREFACE

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In 2010 and 2011, state legislatures across the country passed a barrage of laws that defied traditional American values: laws that created new restrictions on voting, laws that undermined the right of working people to organize for better wages and better lives, and laws that increased the power of the one percent to buy elections and silence the voices of everyone else.

Today, Americans everywhere are mobilizing to fight for our democracy as threats increase. Now the attacks on democratic values are coming not just from state legislatures, but from all levels and branches of government, including Congress, some federal agencies, and the Supreme Court led by Chief Justice John Roberts.

This report analyzes events since 2010 and concludes that attacks on unions and the right to organize, assaults on the right to vote, and the toxic flood of billions of dollars pouring into our political system are not isolated incidents. These events are inextricably and directly linked as parts of a systematic effort to shift power from the majority of Americans to a tiny minority of the very rich and the most powerful corporate interests.

Throughout the report we describe a nexus of powerful interests at the center of these antidemocratic activities. While these powerful interests often identify with the most conservative elements of the Republican Party, we fully acknowledge that many individuals on the right and many corporate interests do not support the steadily increasing concentration of American political power in fewer and fewer hands.

Moreover, the ideological divide was not always this wide. In past decades, Republicans joined with Democrats to pass legislation that demanded a more inclusive society. Many Republicans stood with workers and passed pro-labor legislation such as the Wagner Act of 1935. Some Republicans understood the toxic effect of overwhelming amounts of money in elections and passed bills such as the Bipartisan Campaign Reform Act of 2002, better known as McCain-Feingold. And in poignant contrast to the party's efforts in 2015, Republican support made the Voting Rights Act of 1965, and its full reauthorization in 2006, possible.

Now a relatively small group of ultra-wealthy elites in our country espouses an exclusionary worldview that clashes with the inclusive ideals of voting rights, labor rights, and campaign finance reform. But American values still support political inclusion and fairness:

- Every family should have a chance at a better life, and government policies should assist them in reaching their goals, not block the path.
- Everyone should have a voice in their communities and in policymaking decisions. This requires a political system in which all voices are heard and elected leaders listen and respond.
- Local, state, and federal governments and other powerful institutions must care about the plight of everyday people—all of them.

The groups and individuals we describe in this report largely subscribe to another vision, which is individualistic to a fault and privileges one small subset of the American people. It says we function as individuals, separate from one another, and we sink or swim according to how much money or power we can amass, with little regard for who gets left behind in the economy, the halls of state legislatures and Congress, or the courts.

In this report, we examine the wealthy and powerful men and women who are making the decisions for all of us: conservative state legislatures and governors, extreme right-wing members of Congress and the federal agencies that Congress controls, and the Roberts majority on the U.S. Supreme Court. We analyze the ideologically driven actions of these men and women, demonstrating that wealthy elites are rigging the rules of politics in favor of their interests and destroying the very foundation of our government of, by, and for the people. We focus primarily on the destructive policies and activities that have taken place since the 2008 election, because it is very much in the present day that we are facing these challenges. However, historical context is provided where needed.

Our goal throughout this report is to support tens of millions of Americans who are joining together to fight back, discovering the power of their voices and refusing to be silenced.

In 2013, the Communications Workers of America (CWA), the Sierra Club, the National Association for the Advancement of Colored People (NAACP), and Greenpeace—later joined by Common Cause and the AFL-CIO—created The Democracy Initiative (DI). The DI seeks to restore the simple, powerful principle of *equality*—the right to be equally represented and have an equal say in our democracy.

Labor, civil rights, voting rights, environmental, good government, and other like-minded organizations with diverse memberships are committing to building a movement that will strengthen and broaden our great democracy. These groups, and 55 more partner members, understand that this moment in history requires all of us to work together to move our country forward.

Reverend Dr. William S. Barber, president of the North Carolina NAACP, talks about the “intersectionality” of our movement for democracy. All of our causes are tied together, so we must fight together. None of us will advance the interests of a just society until we fix our democracy.

We ... asked why are all the advocacy groups fighting separately on the issues? Why don't we find a way to come together? ... [We] went down the voting list and found the same people that were voting against environmentalists were voting against public education, voting against labor rights. And the question was: If they were mean enough to be together, why weren't we smart enough to be together?<sup>1</sup>

We take inspiration from Rev. Barber as in this report we examine those who join together against democracy and ally ourselves with those who oppose them. A few voices alone cannot defeat the powerful forces that seek to silence us. Together, we can, and we will.

## A Note from the Democracy Initiative



A nation in which “average citizens have little or no independent influence” is no longer acceptable. Through marches and protests, editorials and letter-writing campaigns, social media, and groundbreaking legislative proposals, ordinary Americans are now saying “No!” to the system that is depriving them of opportunities and protections previously considered inalienable rights of citizenship.

Groups from all corners of society are starting to engage in a collective and organized response to attacks on our American ideals—ideals that helped create a vast middle class and a more egalitarian nation in the twentieth century. Organizations—large and small, local and national—are fighting back to regain power taken from them in the twenty-first century.

We are demanding laws that make our system responsive to the people, not to a few deep-pocket interests. We are demanding that politicians stop catering to the one percent and begin responding to the needs of the rest of us. We are taking back our government and our country.

This is the mission of the Democracy Initiative.

We have some successes under our belts, but we’re just getting started. If voting rights advocates, organizations fighting big money in politics, and labor unions join together with other allies, we can build a *movement of millions*.

We can create a voting system in which every American has access to the ballot box and is inspired to take part in our democratic system.

We can create a country where all workers have a right to bargain collectively and a voice in the workplace.

We can create a politics where dollars don’t determine candidates and public policy—the people do.

The chapters that follow lay out the breadth and depth of the ongoing challenges in state legislatures, Congress, federal agencies, and the Supreme Court. We conclude with some of our recent successes and the battles that lie ahead.

## INTRODUCTION: WHO SHOULD RULE AMERICA?

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*Who are to be the electors of the federal representative? Not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune. The electors are to be the great body of the people of the United States.*

James Madison  
Federalist 57

Not long ago, many Americans were hopeful that the election of Barack Obama would move us forward toward a more egalitarian, less divided, and economically fairer future. But not all Americans viewed Election Day on November 5, 2008, with hope. Wealthy power elites saw that a decades-long effort to move the country toward a power structure dominated by corporate interests was being threatened.

It is important to remember the historical precedents. For example, after the Great Society's New Liberalism gained traction in the 1960s, conservative ideologues and allied corporate executives fought back, trying to influence legislators in unprecedented ways. In 1971, only 175 businesses had registered lobbyists in Washington. By 1982, the number was over 2,500.<sup>2</sup> And in 2013, when 12,281 individuals were registered as lobbyists, experts estimated the number was likely closer to 100,000.<sup>3</sup>

Conservative think tanks such as the Heritage Foundation formed in response to a much-cited document written by Lewis Powell in 1971, shortly before his appointment to the Supreme Court.<sup>4</sup> In the Powell Memorandum, he summarized and strengthened an argument, long held by influential members of the conservative establishment, that "elites" should assume more power and a greater voice in public policy decisions—across all political structures—than average Americans, and he laid out a blueprint for achieving that goal.

By the Reagan era, and well into the early 2000s, a multi-pronged conservative attack on the Great Society was well

established. Then in 2008, President Obama's election coincided with the recognition that demographic changes in the country were leading to an eventual majority-minority United States. The wealthy power elites acted quickly to protect and further strengthen their economic, ideological and political standing.

## Wealthy Special Interests on the Attack

The 2008 election looked dangerous to conservative elites for many reasons: Everyday Americans in unprecedented numbers went to the polls—the highest percentage of eligible voters since 1968.<sup>5</sup> Turnout was especially high among African Americans and young people.<sup>6</sup> These voters selected a candidate who had pledged to enact relatively progressive policies, potentially at the expense of wealthy powerful elites.

Since 2008, these same elites have used state legislatures, extreme congressional partisanship, federal agencies, and the courts to help create a new political order to empower moneyed interests at the expense of everyday Americans. Their efforts have helped suppress the voting rights of working Americans, including those of low-income, people of color, youth, seniors, the disabled, and immigrants. They have drastically weakened the capacity of unions to fight for workers. And they have dismantled decades-old limits on the amount of money individuals, big business, and other special interests can spend to influence political campaigns. The tools they have used to attack democracy are multi-faceted, including:

- **Restricting voting rights.** Between 2008 and 2015, at least 22 states have imposed carefully targeted voter photo ID laws that disproportionately affect working Americans, communities of color, and young people. States have cut back on early voting, election-day registration, and other reforms that would increase turnout. These efforts are concentrated in communities with diverse electorates. “Of the 11 states with the highest African-American turnout in 2008, seven passed laws making it harder to vote. Of the 12 states with the largest Hispanic population growth in the 2010 Census, nine have new restrictions in place. And of the 15 states that used to be monitored closely under the Voting Rights Act because of a history of racial discrimination in elections, nine passed new restrictions.”<sup>7</sup>
- **Targeting assaults on campaign finance laws at the state and federal levels.** As far back as the Gilded Age with its robber barons, Americans have tried to protect democracy from the corrupting influence of large financial contributions from wealthy elites. We have enacted laws to sever links between Big Money and public policy. In the past four decades, campaign finance laws have come under assault at the state and federal levels, and especially in the Supreme Court led by Chief Justice John Roberts. Opponents of campaign finance regulation have slowly dismantled meaningful contribution limits, eliminated many restrictions on moneyed special interest campaign spending, reduced disclosure of sources, and weakened enforcement of remaining laws on the books.
- **Mounting attacks on unions and pro-worker policies in state legislatures, Congress, and the Supreme Court.** Unions are the collective voice of working Americans. They help to level the field when workers negotiate with powerful employers; reduce economic inequality; raise wages for workers; and ensure adequate health care, paid sick leave, and retirement programs for all Americans. Recently, however, state legislatures have passed laws severely compromising workers' ability to organize and to bargain collectively, Congress has been hostile to pro-worker legislation and has made federal enforcement of labor laws more difficult. At the same time, the Roberts Court has ruled consistently on the side of big business.

All of these efforts combine and complement each other to ensure that political and economic power remains in the hands of the one percent. But this is no conspiracy theory. This multi-pronged effort does not require systematic coordination; wealthy power elites do not have to subscribe to the same listservs or meet in cloakrooms in order to

identify opportunities to exploit the 99 percent and share strategies for destroying threats to their power. Their interest is ultimately in the bottom line: what benefits will accrue to themselves and other members of the one percent.

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**Wealthy power elites share an underlying antidemocratic philosophy: Use power to achieve the desired results and eliminate any obstacles that stand in the way, regardless of the broader public interest or the preferences of the American people. In order to maintain power, the elites require a greater voice in our democracy than everyday working Americans, which leads to the political power-grabs described above.**

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Wealthy power elites share an underlying antidemocratic philosophy: Use power to achieve the desired results and eliminate any obstacles that stand in the way, regardless of the broader public interest or the preferences of the American people. In order to maintain power, the elites require a greater voice in our democracy than everyday working Americans, which leads to the political power-grabs described above.

The power elite's strategies have been successful for years, but we have reached an important turning point that demands a change. As Martin Gilens and Benjamin Page note, current U.S. government policies reflect the desires and needs of rich and powerful interest groups, not those of the majority of citizens.<sup>8</sup> After examining close to 1,800 U.S. policy changes between 1981 and 2002, Gilens and Page compared those changes with the expressed preferences of an American at the 50th percent-

tile of income and with the preferences of affluent Americans at the 90th percentile of income.<sup>9</sup> They found that "mass-based interest groups and average citizens have little or no independent influence" on the state of policy in this country.<sup>10</sup> In other words, public policy is a rich man's game.

These elites have damaged the foundations of our democratic system. Those in power are tightening their grip by changing the rules to favor their money over the many and cementing their power:

- Many voters are disenfranchised, and increasingly so.
- Unions are weaker than they have been in generations.
- Protections to guard against the undue influence of money in our political system are gone.

As former Secretary of Labor Robert Reich explains, companies "treat[] workers as disposable cogs," "consumers [who have less choice] ...are feeling ... taken for granted," and voters feel as though "no one is listening because politicians, too, face less and less competition."<sup>11</sup>

Many Americans now feel distanced from their political system and powerless over their own lives. They want public policies that serve the interests of the whole of American Society.

Together, millions of Americans are ready and able to take back our democracy.

## Government Of, By, and For the Wealthy

In an award-winning study of political power in the United States, scholar Martin Gilens concludes that our patterns of government responsiveness “correspond more closely to a plutocracy than to a democracy.”<sup>12</sup> Elected officials, he finds, rarely respond to the preferences of low- and middle-income citizens. Instead, they serve the needs and desires of the rich.

Part of the reason for this disparity is a huge difference in voting rates, with low-income Americans participating much less. Another reason is the overwhelming influence big dollar donors have over campaigns and the decisions of elected officials.

One recent study showed that “if low-income people voted at the same rate as those earning over \$100,000 a year, the electorate would grow by 11.5 million voters.”<sup>13</sup>

**Figure 1: Adult Citizen Population, Registration, and Voting by Annual Household Income, 2012**

Annual Household Income, Approximate Quintiles	Adult Citizens (in 1000s)	Column %	Registered (in 1000s)	Registered as % of Adult Citizens	Voted (in 1000s)	Voted as % of Adult Citizens	Voted as % Registered
Less than \$25,000	47,686	22.2%	29,162	61.2%	23,548	49.4%	80.7%
\$25,000 to \$39,999	36,401	16.9%	24,109	66.2%	20,537	56.4%	85.2%
\$40,000 to \$59,999	36,732	17.1%	25,867	70.4%	22,616	61.6%	87.4%
\$60,000 to \$99,999	49,122	22.8%	36,827	75.0%	33,029	67.2%	89.7%
\$100,000 and over	45,140	21.0%	36,124	80.0%	33,217	73.6%	92.0%
<b>Total Reporting</b>	<b>215,081</b>	<b>100.0%</b>	<b>152,089</b>	<b>70.7%</b>	<b>132,948</b>	<b>61.8%</b>	<b>87.4%</b>

The table above categorizes by income level the percentage of registered voters and those who actually voted in the 2012 elections.

Source: Perez, Vanessa. 2015. “Representational Bias in the 2012 Electorate.” *Project Vote*, p. 35. <http://www.projectvote.org/wp-content/uploads/2015/06/Representational-Bias-in-the-2012-Electorate.pdf>

Disparities in voting patterns would not matter as much from a pure policy perspective if the views of elites and the rest of American society aligned. However, political scientists Jan Leighley and Jonathan Nagler find that voters and nonvoters have different policy views, resulting in “consistent overrepresentation of conservative views among voters compared to nonvoters.”<sup>14</sup> For example:

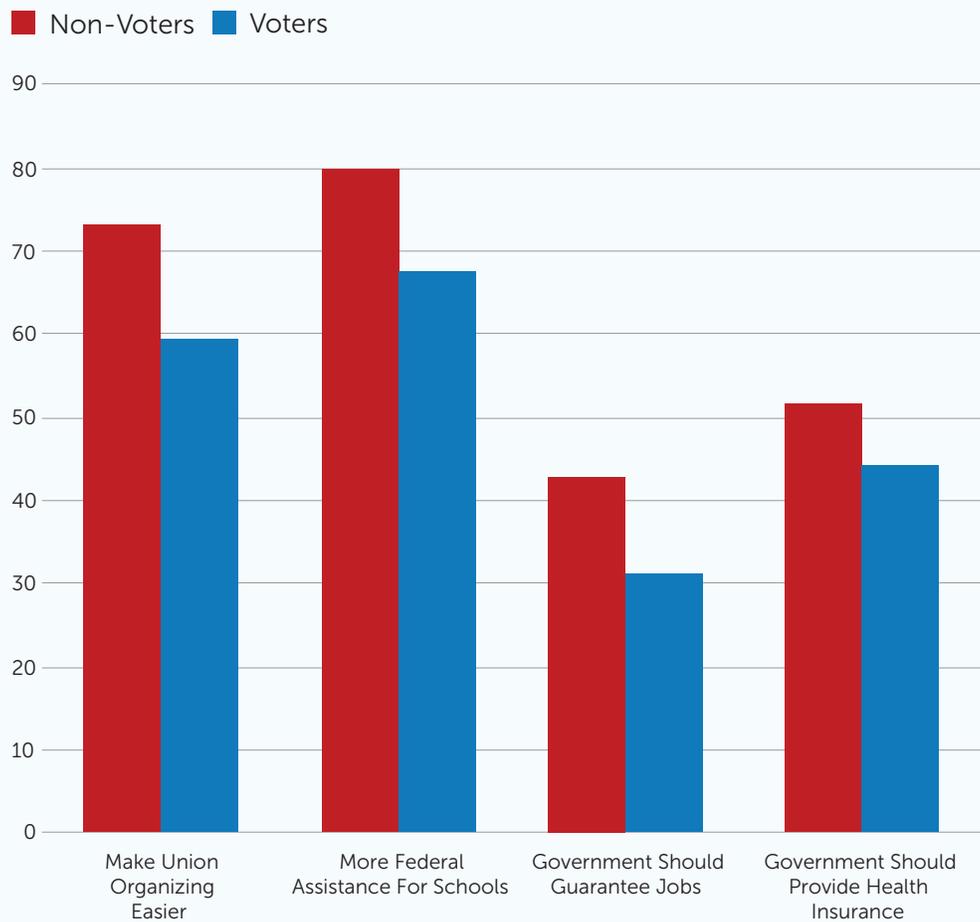
The general public is far more concerned with job creation than most voters, and they believe the government should help to provide needed jobs.

Voters are more likely to disapprove of health care reform than nonvoters, by 11 points.<sup>15</sup>

Nonvoters' support for robust government services is about 20 points higher than among voters.<sup>16</sup>

And nonvoters are less likely than voters to be anti-union and more likely to favor government-sponsored health insurance.<sup>17</sup>

**Figure 2: Nonvoters versus Voters on the Issues**



The graphic above shows the percentage of voters and nonvoters replying “yes” to questions about union organizing, federal assistance to schools, government support for jobs, and government-provided health insurance.

Source: McElwee, S. 2014. “Why the Voting Gap Matters.” Demos, p. 2. Using data from Leighley, J. and Nagler, J. 2007. “Unions, Voter Turnout, and Class Bias in the U.S. Electorate, 1964-2004.” *Journal of Politics*, pp. 430-441.

Clearly, as Martin Gilens and Benjamin Page note in another influential study, “the issues about which economic elites and ordinary citizens disagree reflect important matters, including many aspects of

trade restrictions, tax policy, corporate regulation, abortion, and school prayer, so that the resulting political losses by ordinary citizens are not trivial.<sup>18</sup> For example, almost twice as many members of the general public support a minimum wage when compared to more affluent citizens.<sup>19</sup>

There is evidence that this disparity of interests has a concrete impact on public policy. For example, states with much disparity in voting rates based on income spend less on programs that help the poor.<sup>20</sup> A large percentage of higher income voters in a particular area results in less legislation to provide affordable housing. When the number of voters across income levels is more equal, policymakers are more likely to support affordable housing. One 2013 study found that “reducing high income bias in voter turnout leads to more spending on healthcare for children, higher minimum wages, and more regulation of predatory lending.”<sup>21</sup>

Many academic studies over the past decade have come to similar conclusions when analyzing the overwhelming influence of elites on government policies at the state and federal levels. Gilens found that when the rich prefer policies that differ from those the poor or middle class prefer, policy change corresponds most closely to the preferences of the rich.<sup>22</sup> In a 2010 analysis of roll call voting in the U.S. Senate in the late 1980s and early 1990s, Larry Bartels demonstrated that senators’ roll call behavior best reflected the ideological self-identification of wealthy citizens in their districts and hardly reflected the views of the poor at all.<sup>23</sup> And examining foreign policy decision-making in a 2005 paper, Lawrence Jacobs and Benjamin Page discovered that business leaders exerted much more influence than the general public over the foreign policy attitudes of elected officials.<sup>24</sup>

But overrepresentation in the electorate is only a part of the reason that politicians are so much more responsive to the wealthy. Jesse Rhodes and Brian Schaffner find that responsiveness is dictated even more by campaign donations than by voters’ income.<sup>25</sup> In a paper published in 2014, Gilens and Page powerfully confirm these findings:

The central point that emerges from our research is that economic elites and organized groups representing business interests have substantial independent impacts on U.S. government policy, while mass-based interest groups and average citizens have little or no independent influence.<sup>26</sup>

Gilens and Page go on to sum up the state of our current political life by attributing the most substantial power to “individual economic elites and organized interest groups (including corporations, largely owned and controlled by wealthy elites)” and virtually no power to ordinary citizens.<sup>27</sup>



## Sweeping Attacks on Voting Rights

Not since the Civil Rights Era, culminating in passage of the 1965 Voting Rights Act, have there been such persistent efforts by states to undermine the right of all citizens to vote. Today the attacks are against not only African Americans, but all people of color, the disabled, youth, seniors, and other working Americans. As Representative Terri Sewell, Alabama's first black Congresswoman, says, "...The assaults of the past are here again."<sup>29</sup>

Since 2002, and building to a crescendo after the 2010 midterm elections, states have introduced hundreds of bills making it harder for ordinary citizens to vote. New photo ID requirements are fueled by model legislation drafted by the American Legislative Exchange Council (ALEC).<sup>30</sup> Many state legislatures are attempting to cut back on early voting and to eliminate same-day registration.

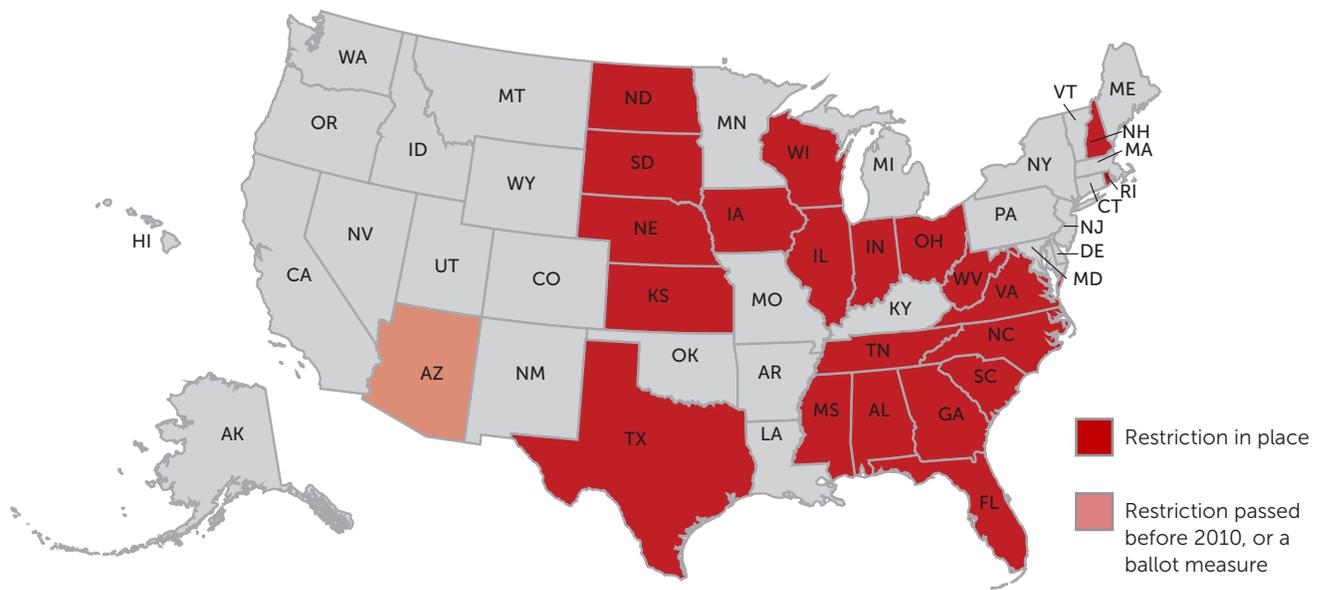
In touting the work of Republicans in Pennsylvania's state legislature at a party committee meeting, Majority Leader Mike Turzai bragged, "Pro-Second Amendment? The Castle Doctrine: It's done. First pro-life legislation (abortion facility regulations) in 22 years: Done. Voter ID, which is gonna allow Governor Romney to win the state of Pennsylvania: Done."<sup>31</sup>

In a landmark reversal of decades of civil rights progress, in 2013 the Supreme Court handed down its decision in *Shelby County v. Holder*, striking at the heart of the Voting Rights Act. The ruling invalidated the formula used to determine which jurisdictions with a history of discrimination must demonstrate to a federal court or to the U.S. Attorney General that any proposed voting changes are not discriminatory. Effectively, the Court eviscerated the Voting Rights Act, opening the door for state legislators to reintroduce bills previously blocked as discriminatory. Texas and North Carolina, for example, reintroduced laws that would disenfranchise many voters the day after the Court handed down *Shelby County*.<sup>32</sup>

From 2011 to 2015, legislators introduced 395 new voting restrictions in 49 states—with Idaho as the exception.

Sources: Ari Berman, "50 Years After Bloody Sunday, Voting Rights Are Under Attack," *The Nation*, March 5, 2015. <http://www.thenation.com/article/50-years-after-bloody-sunday-voting-rights-are-under-attack/>; Wendy Weiser, "Voter Suppression: How Bad? (Pretty Bad)," *The American Prospect*, Fall 2014.

**Map 2: Laws to Restrict Access to Voting in 2015**



In 2015, restrictive voting laws were pending, active, or passed in 17 U.S. states.

Source: Brennan Center for Justice

As noted, people who do not vote hold substantially different views on key issues, particularly economic ones, than do consistent voters. This includes support for labor unions and wages. In part, the recent restrictions on voting have been motivated by keeping these nonvoters, who are often hard-to-reach populations, not voting. Again, this reflects a policy of exclusion of everyday Americans rather than visions of an inclusive democracy.

Three states—North Carolina, Florida, and Texas—provide case studies of the laws passed in many state legislatures in order to suppress Americans’ voices at the ballot box.

### *North Carolina Unleashes a Backlash*

North Carolina once boasted a broad package of voter-friendly laws and practices, such as early voting, same-day registration, and portable registration. This made it the state with the highest increase in turnout of any state in the country between 2004 and 2008, with an additional 802,377 voters.<sup>33</sup> Turnout was particularly strong among African-American voters.<sup>34</sup> In 2012, North Carolina jumped from twenty-first in state turnout to eleventh.<sup>35</sup>

## **VOTER ID LAWS: A SNAPSHOT OF DISCRIMINATION**

Photo voter ID laws are major obstacles to voting for many working Americans. About 11 percent of Americans do not have a driver’s license or other form of government ID, and the percentage is much higher among African Americans, Latinos, Native Americans, immigrants, and the poor.

A national survey by the Brennan Center for Justice found that Americans earning less than \$35,000 per year are twice as likely to lack required IDs as Americans who earn more. The same study found that African Americans are more than three times as likely as whites to have no government-issued identification. In other words, *one quarter of all adult African Americans lack identification that would qualify them to vote under these laws.*

*Source: Keesha Gaskins and Sundeep Iyer, “The Challenge of Obtaining Voter Identification,” Brennan Center, July 18, 2012, <http://www.brennancenter.org/publication/challenge-obtaining-voter-identification>*

- eliminated in-person voting on the Sunday before Election Day.

As a result, early voting turnout in Florida dropped by over 225,000 from 2008 to 2012. Long lines were widespread

As a result of its impressive turnout, North Carolina saw one of the most intense backlashes against voting rights after the *Shelby* decision.<sup>36</sup> Legislators in Raleigh passed laws curbing early voting, cutting same-day registration, eliminating pre-registration for teens, expanding “challengers” at polling places, and imposing a strict photo voter ID law that may be implemented in 2016. Scholars have found that each one of these would disproportionately impact the ability of African Americans to register and vote and result in lower African-American turnout.<sup>37</sup>

### *Florida Puts an End to Early Voting*

The District of Columbia and 32 states currently offer some form of voting before Election Day.<sup>38</sup> Data from the 2008 presidential election showed that African Americans mobilized by churches and grassroots groups made greater use of expanded time periods than most other communities.<sup>39</sup> In states that have passed measures to cut early voting, the results appear to be lower turnout, especially among African Americans. For example, in advance of the 2012 elections, Florida passed H.B. 1355,<sup>40</sup> which:

- reduced the number of days that counties were permitted to offer early voting from 14 to 8,
- cut the number of hours counties were required to offer early voting from 96 to 48, and

during the early voting period and on Election Day in 2012.<sup>41</sup> Election Day lines were so long that some people reached the front of the line to vote after midnight. One study indicated that more than 201,000 voters were deterred from voting because of long lines.<sup>42</sup>

Scholars, looking at the data from the 2012 election, concluded that the effect of early voting changes was to make voting harder for African Americans. “Cutbacks led to more crowded polling places and “voters who faced greater congestion, and presumably longer lines . . . were disproportionately African-American.”<sup>43</sup>

Clearly, the exclusion of so many voters from one community will have real world impacts on public policy. And that, in large part, is the point.

### *Texas Implements the Nation’s Strictest Voter ID Law*

A federal district court initially struck down a new photo voter ID law passed in Texas in 2011 because, the judge said, it was enacted with the intent to discriminate, and in fact had the effect of being discriminatory.<sup>44</sup> Under the law, hunting licenses are acceptable forms of identification, but state-issued student IDs are not.<sup>45</sup> The law remained in effect for the 2014 midterm elections after the Supreme Court upheld it. In August 2015, a federal appeals court unanimously ruled that the act violated Section 2 of the 1965 Voting Rights Act, but Texas continues to pursue appeals.<sup>46</sup>

Considered the strictest voter photo ID law in the country, the Texas law may have deterred a significant number of eligible voters from the polls. The district court that first assessed the law found that it would directly suppress 600,000 *registered voters* from casting ballots, an astounding number that does not even account for eligible voters who could have been added to the rolls in time for the election.<sup>47</sup>

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**Under the law, in Texas hunting licenses are acceptable forms of identification, but state-issued student IDs are not.**

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Given what we know about possession of identity documents and irregular voters, it is highly likely that the exclusion of such an enormous group of people from the process of electing Texas’s representatives is having an impact on who is making the decisions and their policy choices.

Through restrictive ID laws, curbing early voting, ending same-day registration, and eliminating other reforms, proponents argue that they are making elections “safer.” But even Judge Richard Posner, the 7<sup>th</sup> Circuit judge whose findings were the basis for the Supreme Court case upholding the first state photo voter ID law,<sup>48</sup> has since acknowledged that such laws are “now widely regarded as a means of voter suppression rather than fraud prevention.”<sup>49</sup>

To date, 34 states have passed some form of voter ID law, with a few such laws still the subject of litigation. They are passed along partisan lines, frequently in states with large African-American populations.<sup>50</sup> Based on available voter data through the 2012 election, “for Latinos, Blacks, and multi-racial Americans there are strong signs that strict photo identification laws decrease turnout.”<sup>51</sup> One study predicts that introduction of a strict photo ID law could depress Latino turnout by 11.4 percentage points and decrease African-American turnout by 1.5 points.<sup>52</sup>

Most states already suffer from anemic political engagement, yet the kinds of “reforms” discussed above further dampen participation and prevent previously marginalized populations from engaging in the political process in the future. These reforms silence citizens’ voices not just in one election, but also for the long term. For some extreme partisans, that is exactly the intent.

## American Business Learns to Wield Political Power: An ALEC Backgrounder

In 1971 corporate attorney Lewis Powell wrote an internal memo to the U.S. Chamber of Commerce outlining a plan to encourage corporations to become more involved in American politics.<sup>53</sup> The memo advocated that corporate leaders use college campuses, religion, the media, intellectual and literary journals, and a variety of other means to curry favor with the American public. Powell warned against “socialists,” “Communists,” “New Leftists,” and “extremists” who critique American capitalism, calling on corporate executives to counter that critique through targeted public relations campaigns and by becoming more involved in government affairs. Powell suggested using outside groups, including the U.S. Chamber of Commerce, to promote corporations’ messages and policy viewpoints and persuade elected officials and the public.<sup>54</sup>

Two months after Powell wrote the memo, President Richard Nixon nominated him to the Supreme Court. The internal memo did not become public until long after his confirmation.

It was no coincidence that in the previous few decades unions had greatly improved the lives of people working in big businesses through passage of legislation requiring days off for the weekend, by leading the way toward the great expansion of health care coverage, and by improving wages and working conditions for millions.

### Legislating Behind Closed Doors

Although the direct role of the Powell memo is a subject of debate among historians, the ideas within it found standard-bearers in Paul Weyrich and the wealthy Coors family.<sup>55</sup> The Coors provided seed funding for Weyrich to establish the Heritage Foundation and the American Legislative Exchange Council (ALEC) in 1973. Today the Heritage Foundation is the premier conservative think tank in Washington, D.C., reporting more than \$112.6 million in revenue in 2013.<sup>56</sup>

Less well known than the Heritage Foundation is the American Legislative Exchange Council, which gathers state legislators, corporate lobbyists, and executives behind closed doors to vote as equals on “model bills” that are then introduced in statehouses across the country.

Nearly all of ALEC’s funding comes from corporate members and sponsors, including Verizon, Time Warner, ExxonMobil, Koch Industries, Wal-Mart, McDonalds, AT&T, Pfizer, Altria, Coca-Cola, Chevron, Google, and Comcast.<sup>57</sup> ALEC has supported a variety of antidemocratic and corporate causes in its model bills:

- Suppression of voter turnout,
- Roadblocks to renewable energy,
- Implementation of Stand Your Ground laws and extreme Second Amendment agendas,
- Repeal of the Affordable Care Act, and
- Restrictions on labor unions and limitations on collective bargaining.

The organization has been extremely successful in its effort to erode the power of organized labor unions. ALEC’s “right-to-work” act—a measure that in effect provides the right to work for lower wages

and no bargaining power—is the model for a renewed right-to-work effort in many state legislatures.<sup>58</sup>

After Barack Obama took office in 2009, as a result of the highest general election turnout in nearly 60 years, ALEC fully deployed its model Voter ID Act.<sup>59</sup> By 2012, 37 states were considering 62 photo ID bills.<sup>60</sup> ALEC’s controversial Public Safety and Elections Task Force, which created the model Voter ID Act, included representatives of the National Rifle Association, Koch Industries, the Center for Competitive Politics, the American Bail Coalition, and Corrections Corporation of America.<sup>61</sup> The Task Force also created model bills opposing a National Popular Vote<sup>62</sup> and public financing of elections,<sup>63</sup> as well as supporting the U.S. Supreme Court’s 2010 *Citizens United* decision.<sup>64</sup>

Although the organization disbanded its Public Safety and Elections Task Force in 2012 in response to public criticism, ALEC continues to advocate for its members’ antidemocratic causes.<sup>65</sup> At its December 2014 conference panelists opposed efforts by shareholders to require corporations to disclose political spending and lobbying efforts.<sup>66</sup>

## Undermining Workers’ Rights

While states pursued legislation to keep Americans from the polls, they pursued parallel efforts to silence workers’ voices and strip them of power in the workplace. In fact, the worst anti-union legislation enacted since the 2010 Republican takeovers of state legislatures is concentrated in many of the same states that saw attacks on voting rights. The strategy was simple:

1. Break the unions’ ability to organize workers so that corporations and executives make more money.
2. Silence unions when they try to defend the rights of Americans in the workplace, in the public policy sphere, and in elections.

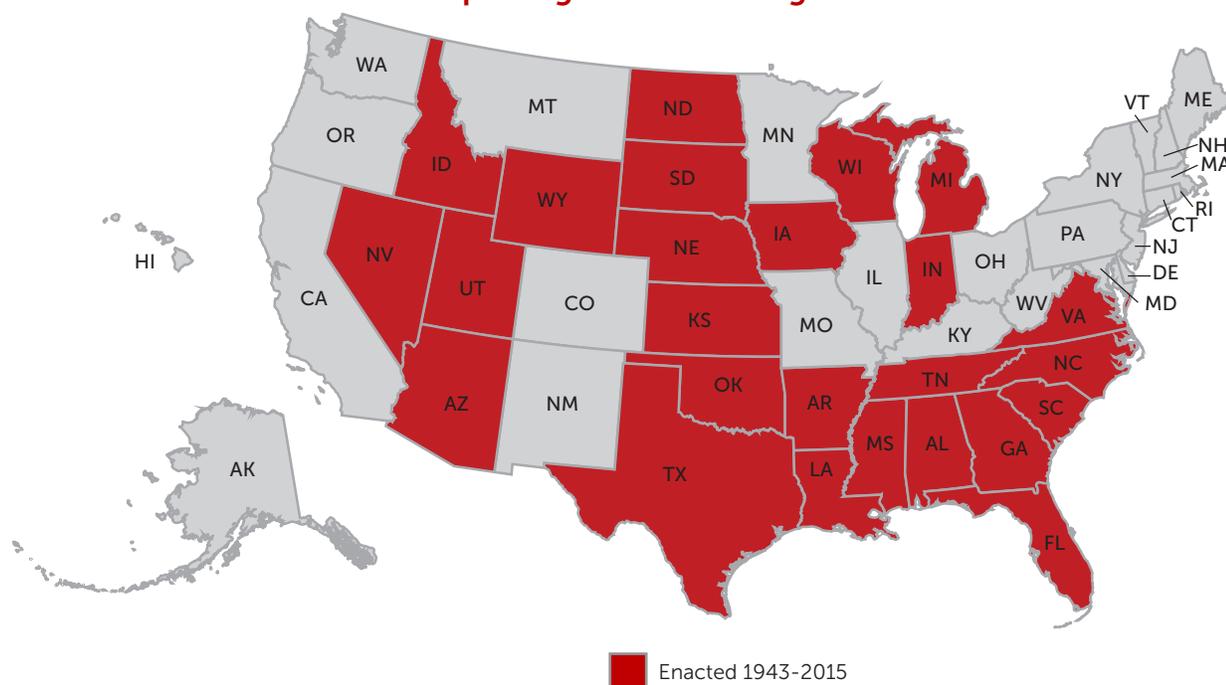
After the 2010 elections, states introduced an avalanche of bills to restrict the ability of unions to organize, to bargain collectively, and to speak politically. Many of these bills passed and became law.

Anti-union lobbyists claim that the depletion of union strength and organizing power benefits the economy, but in fact, research shows the opposite is true.<sup>67</sup> Weak unions mean lower wages and lower quality of life for all workers. A majority of Americans supports unions, and this support is growing.<sup>68</sup> As discussed above, even more people who do not regularly vote support unions.

### *“Right-to-Work” (For Less) Laws and Koch Family Values*

State legislatures’ primary attacks on workers have come in the form of ironically named “right-to-work” laws, which cripple workers’ ability to join together to improve their lives.

### Map 3: Right-to-Work Legislation



As of January 2016, so-called “right-to-work” laws are in effect in one form or another in 25 U.S. states.

Source: Analysis by report authors

In workplaces where employees work under collective bargaining agreements, union dues pay for securing workers’ rights and fair wages through bargaining contracts, and they also pay for handling grievances. Until recently, in most states employees working under union contracts could opt out of union dues if they paid an agency fee, which would go toward the union’s work on behalf of all employees, but explicitly could not be used for political activities.<sup>69</sup>

Right-to-work laws ban unions from requiring workers employed under a collective bargaining agreement to pay agency fees, or “fair shares,” without taking affirmative steps to opt into the program. But the union still is obligated to serve *everyone* under the contract equally, even if some or most employees do not contribute.

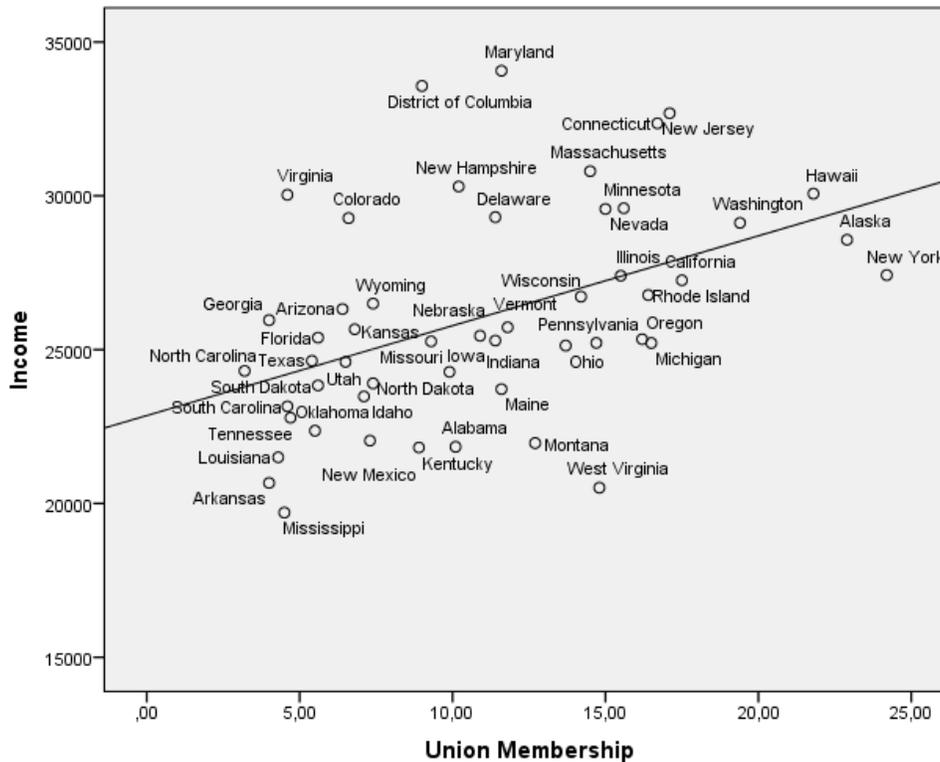
Right-to-work laws clearly create an untenable situation and may lead to the eventual demise of unions, denying workers that protection.<sup>70</sup> As one observer put it, “right-to-work laws simply discourage non-union employees in unionized workplaces from paying for the services they automatically receive and financially cripple unions by denying them the revenue that pays for those services.”<sup>71</sup>

Despite significant anti-union sentiment among some deep-pocket interests since the New Deal era, states passed few right-to-work laws before 2010. Between 1979 and 2010, only three states adopted right-to-work laws: Idaho (1985), Texas (1993), and Oklahoma (2001).<sup>72</sup> But since the 2010 midterm elections, right-to-work lobbying campaigns have launched in more than a dozen states, including Indiana,<sup>73</sup> Kentucky,<sup>74</sup> Maine,<sup>75</sup> Michigan,<sup>76</sup> Minnesota,<sup>77</sup> Missouri,<sup>78</sup> New Hampshire,<sup>79</sup> New Mexico,<sup>80</sup> Ohio,<sup>81</sup> Oregon,<sup>82</sup> Pennsylvania,<sup>83</sup> West Virginia,<sup>84</sup> and Wisconsin.<sup>85</sup> Most of these bills are direct copies of ALEC’s model Right-to-Work Act.<sup>86</sup> During the 2015 legislative session, ALEC’s model “right to work” legislation made its way into legislative chambers in New Hampshire, Missouri, New Mexico, West Virginia, Kentucky, Illinois, Michigan, Montana, and Colorado.<sup>87</sup> Wisconsin became the 25th state to implement a right-to-work law on March 9, 2015.<sup>88</sup>

Who is funding this massive nationwide campaign? The Koch family and its network have been critical supporters. In 2012, the Kochs' Freedom Partners group funneled \$1 million to the National Right-to-Work Committee (NRTWC), which launched a massive lobbying effort at the state and federal levels. In the U.S. Congress alone, the NRTWC spent more than \$33 million on lobbying between 1999 and 2013. Today, at least three former Koch associates work as attorneys for the NRTW's Legal Defense Foundation.<sup>89</sup>

Although advocates claim to pursue right-to-work agendas for the benefit of state economies and workers' own wallets, the negative results—as a result of lower unionization rates—in right-to-work states could not be clearer. Researchers find that unionized states perform better than non-unionized ones across the board.

**Figure 3: Union Membership and Median Income**



In states with higher union membership, median income tends to be higher.

Source Richard Florida, "Unions and State Economies: Don't Believe the Hype," *The Atlantic*, March 10, 2011. Based on data compiled by Charlotta Mellander and Richard Florida.

### Gutting Unions in Michigan, Kentucky, and Illinois

In the anti-union climate after 2010, legislators launched all-out campaigns to impose right-to-work laws. The ordeals of workers in Michigan, Kentucky, and Illinois are instructive case studies.

- Michigan's right-to-work law was masterminded by millionaire activists and campaign donors, including Richard DeVos, Jr., owner of the Amway Corporation a huge international enterprise with its world headquarters in Ada, Michigan. According to its website, "the Ada complex stretches one mile from east to west and is comprised of 80 buildings and 3.5 million square feet of office and manufacturing space. More than 4,000 of our 21,000 global employee family work in Ada." DeVos pressured and intimidated wavering lawmakers into passing right-to-work legislation in 2012. He and his team crafted 15 pages of talking points

to circulate to Republican lawmakers and a barrage of television, radio, and Internet ads.<sup>90</sup> The Michigan Freedom Fund, run by DeVos employee Greg McNeilly, organized a \$1 million ad campaign in support of the right-to-work legislation.<sup>91</sup> State legislators who led the right-to-work fight say it was the pressure from DeVos and his allies that convinced hesitant Republicans, including the governor himself, to pull off what DeVos called “the largest shift in public policy in Michigan in a generation.”<sup>92</sup>

Union membership in Michigan dropped from approximately 633,000 in 2013 to 585,000 in 2014, even as the total number of workers in the state grew. The percentage of workers represented by a union, including those who *weren't* members, declined from 16.9 percent to 15.7 percent during the same short period.<sup>93</sup>

- In Kentucky in 2014, ALEC expanded the scope of its leverage beyond state legislatures, creating a new program called the American City Council Exchange (ACCE) to help corporate representatives influence city, county, and municipal officials and policies. Through ACCE, ALEC has pushed a new form of its right-to-work philosophy at the county level. ALEC’s board of directors adopted the model Local Right-to-Work Ordinance in January 2015.<sup>94</sup> The first targets were 12 counties in Kentucky, the only southern state without a right-to-work law.<sup>95</sup>

As of July 2015, all 12 counties have introduced right-to-work ordinances, and 10 have passed.<sup>96</sup> Legal challenges to those ordinances are pending, based on the fact that the 1947 Taft-Hartley Act allows for right-to-work laws only in a state or territory.<sup>97</sup>

- In Illinois Republican Governor Bruce Rauner began advocating for right-to-work zones at the county and municipal level and signed a controversial executive order declaring right-to-work across the state.<sup>98</sup> After failing to get it through the state legislature, and the Attorney General declaring it illegal, the order is tied up in the courts.<sup>99</sup>

### *Restrictions on Collective Bargaining*

While they are pursuing right-to-work legislation, many states also are destroying the right of workers to bargain collectively for fair wages and working conditions, further tilting the playing field in favor of the one percent.

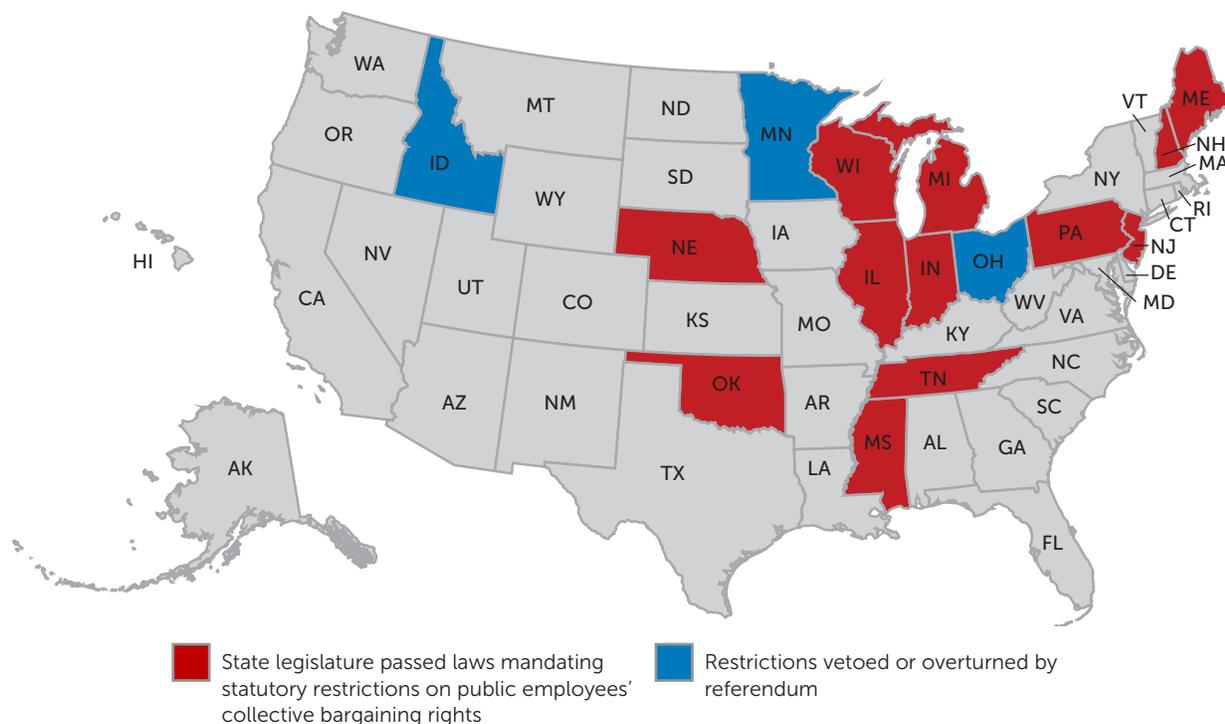
In May 2011 NPR reported a stunning 820 bills seeking to restrict or eliminate the collective bargaining rights of public workers were introduced in all 50 states and Puerto Rico.

For private sector workers, the right to bargain collectively was established in the National Labor Relations Act of 1935. State laws covering public sector workers emerged beginning in the late 1950s—the first passing in Wisconsin. The fact that state and local public sector workers’ rights are governed by state and local laws, not federal, means there is no uniformity. In some cases, different types of public employees are treated differently. Today 31 states and the District of Columbia allow public employees to bargain collectively; 11 permit some, but not all categories of public employees to bargain collectively; and only 8 states bar all public workers from bargaining collectively.<sup>100</sup>

### *Silencing Public Workers in Wisconsin and Beyond*

In Wisconsin and Ohio, the results of the 2010 midterms fueled efforts to curtail public employees’ collective bargaining rights. Two former ALEC members, Governor Scott Walker (WI) and Governor John Kasich (OH) led the charge, but many legislators and governors backed by elite interests followed their lead.

## Map 4: Restrictions on Public Employees' Right to Organize



Fourteen state legislatures passed laws mandating permanent, statutory restrictions on public employees' collective bargaining rights in 2011-2012, but in three states, those new restrictions were overturned by referendum.

Source: Gordon Lafer, "The Legislative Attack on American Wages and Labor Standards, 2011-2012," Economic Policy Institute. October 31, 2013

In 2011 and 2012, 15 state legislatures passed laws restricting public employees' collective bargaining rights or ability to collect "fair share" dues through payroll deductions (or, in one state, restricting the collective bargaining rights of private-sector employees who are nonetheless covered under state labor law). Beyond Wisconsin, for instance, collective bargaining rights were eliminated for Tennessee schoolteachers, Oklahoma municipal employees, graduate student research assistants in Michigan, and farm workers and child care providers in Maine.

Ohio legislators adopted a law—later overturned by citizen referendum—largely imitating Wisconsin's, prohibiting employees from bargaining over anything but wages, outlawing strikes, and doing away with the practice of binding arbitration (the only impartial means of settling a contract dispute without a right to strike) in favor of the state agencies' right to set contract terms unilaterally.

Indiana, which had already eliminated most collective bargaining rights for state employees in 2006, adopted new legislation that prohibits even voluntary agreements with state employee unions.<sup>101</sup>

Idaho has recently enacted a series of bills that curtail teachers' collective bargaining rights, and Indiana has significantly limited bargaining for teachers.

**Figure 4: Collective Bargaining for Public-Sector Workers**

	Firefighters	Police	Teachers
Illegal	North Carolina South Carolina Tennessee Virginia	Georgia North Carolina South Carolina Tennessee Virginia	Georgia North Carolina South Carolina Texas Virginia
Legal	Alaska Arizona Arkansas California Colorado Connecticut Delaware District of Columbia Florida Georgia Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York North Dakota Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Texas Utah Vermont Washington West Virginia Wisconsin Wyoming	Alaska Arizona Arkansas California Connecticut Delaware District of Columbia Florida Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York North Dakota Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Texas Utah Vermont Washington West Virginia Wisconsin	Alabama Alaska Arkansas California Colorado Connecticut Delaware District of Columbia Florida Hawaii Idaho Illinois Indiana Iowa Kansas Kentucky Louisiana Maine Maryland Massachusetts Michigan Minnesota Mississippi Missouri Montana Nebraska Nevada New Hampshire New Jersey New Mexico New York North Dakota Ohio Oklahoma Oregon Pennsylvania Rhode Island South Dakota Tennessee Utah Vermont Washington West Virginia Wisconsin Wyoming
No Statute/ Case Law	Alabama Mississippi	Alabama Colorado Mississippi Wyoming	Arizona

As of 2014, collective bargaining is legal for public-sector workers in most states, but the number of challenges is growing.

Source: Center for Economic Policy Research

In states where curtailing employees’ rights has become a contentious issue, the battles are politically polarized. Some scholars argue that the purpose of those who push such measures is primarily to weaken the voice of a constituency that has traditionally supported Democratic candidates.<sup>102</sup>

Wealthy power elites pushing for the destruction of collective bargaining rights argue that higher wages earned through the collective bargaining process lead to increased deficits and that public employees make too much money. Both of these arguments are false, according to recent studies:

Proponents often claim that because public workers are overcompensated, they are a significant cause of state deficits. But the correlation simply isn’t there. . . . States that allow public sector collective bargaining on average have a 14 percent deficit relative to their budgets, while states that bar

collective bargaining have 16.5 percent deficits. . . . This is in large part because public employees are not, in fact, overcompensated.<sup>103</sup>

### The “Paycheck Protection” Deception

Another policy designed to tilt the playing field toward the wealthy is known as “paycheck protection.” Under this deceptively named stratagem, unions must obtain written permission from workers before spending union dues for political purposes, which are defined broadly to include lobbying, communicating with and mobilizing members, and paying administrative expenses.<sup>104</sup>

Paycheck protection initiatives emerged after 1988, when the Supreme Court decision in *Communications Workers of America v. Beck* allowed workers to “opt out” of paying for the political activities of a union and opened the door for states to impose an “opt in” requirement, “that is, unions must receive permission from each worker to use a portion of their dues for political activities.” The administrative challenges and expenses that such a system requires can be debilitating for unions, and they are meant to be.<sup>105</sup>

Five states—Idaho, Michigan, Ohio, Washington, and Wyoming—currently have paycheck protection laws.<sup>106</sup> But many state legislatures are lining up to enact them. A variety of attacks on payroll deductions for unions have been introduced in 20 states, and ALEC is, of course, a major supporter.

ALEC’s model Paycheck Protection Act limits how a union can spend member dues, specifically on political activities. In an attempt to silence workers’ voices, many states—including Missouri and Pennsylvania—have passed versions of the act.<sup>107</sup> During 2013 legislative sessions, 14 states introduced the Paycheck Protection Act and similar bills.<sup>108</sup> In 2014, ALEC’s board of directors approved a new model bill, the “Public Employee Choice Act,”<sup>109</sup> that allows workers in a union shop in a right-to-work state to opt out of being represented by a union, thus *undermining the entire process of collective bargaining*.

The agenda of ALEC and Koch-financed organizations in regard to workers’ rights could not be clearer. Through a combination of right-to-work laws, paycheck protection, and targeted attacks on public employees, anti-union forces seek to silence working people, their unions, and political opponents.

### Assaults on Campaign Spending Limits

The third target—after voting rights and unions—of those who are trying to increase the political power of the wealthy and corporations while decreasing the influence of ordinary citizens, is campaign finance law. Again, the 2010 midterm election was a pivotal event, after which state legislatures began weakening laws and shifting more political power to wealthy donors and special interests. Although the attack on spending limits began in the 1970s, these bills came just after the Supreme Court’s decision in *Citizens United*, which declared that corporations and other special interests have a First Amendment right to spend unlimited amounts of money influencing elections. Among a variety of approaches to increasing the power of big donors, states passed laws:

- raising campaign contribution limits,
- facilitating increased “independent” spending, and
- undermining public financing programs.

Wisconsin Governor Scott Walker, Michigan Governor Rick Snyder, and North Carolina Governor Pat McCrory allied openly with deep-pocketed special interests to become key players in these offensive tactics.



In Wisconsin and North Carolina, governors and legislatures heavily tied to elite special interests eliminated public financing programs altogether:

- In 2011, Governor Scott Walker succeeded in defunding—essentially ending—Wisconsin’s modest public financing program, while securing revenue for his voter ID initiative and passing anti-worker laws. After Walker proposed changing the funding mechanism in a way that would leave a token, practically unfunded program, all funding for public financing was removed in the biennial budget.<sup>111</sup> In December 2015, Walker compounded his assault on the state’s campaign finance laws by signing two bills blatantly tailored to his agenda and alliance with the Koch brothers. In one bill, Walker dismantled the Government Accountability Board after it assisted in an investigation of his 2012 recall campaign, when he may have coordinated illegally with independent spending groups. The other bill explicitly allowed that type of coordination (after the state supreme court halted the investigation), making Wisconsin the first state to legalize it. The second bill also doubled contribution limits, removed requirements for large individual donors to disclose employer information, and allowed corporate donations to parties and legislative campaign committees for the first time.<sup>112</sup>
- In 2013, North Carolina repealed its popular voter-owned public financing system, which had begun as a pilot program for judges in 2002, then expanded to other offices. Art Pope, a powerful campaign donor, became North Carolina Budget Director and used that position to block a revenue-neutral amendment that would have saved the state’s Public Campaign Fund. State Representative Jonathan Jordan offered an amendment to remove public financing’s taxpayer check-off funding, but maintain an annual fee on lawyers to fund the program. Pope and his family had donated thousands to Jordan’s campaign, and Pope-backed independent spending groups also supported Jordan. Pope intervened, and Jordan quietly dropped his revenue-neutral amendment.<sup>113</sup>

From 2010 to 2014, state politicians also rolled back regulation of “independent expenditures” partly in response to Supreme Court decisions. This meant groups and individuals could spend unlimited money— independent of any campaign—on TV ads, mail, or any other activity to advocate for a candidate.

The 2010 ruling in *Citizens United v. FEC* was a watershed event, forcing states to repeal existing laws banning corporate and union entities from making independent expenditures. Subsequently, 14 states passed new laws to allow corporations and unions to make independent expenditures.

Recent attacks on voting rights, attacks on workers’ rights, and attempts to use corporate dollars to buy elections at the state level share the same family history: All are backed by ALEC, the Koch brothers, and other organizations that represent wealthy power elites. The links among these antidemocratic efforts are easy to trace and extend to the federal level.

## THE ANTI-DEMOCRACY AGENDA IN WASHINGTON, DC

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In the U.S. Congress and federal agencies—most clearly in the Federal Elections Commission—our government has allowed *Citizens United* to corrupt politics to an equal or even greater extent than is happening in the states. At the same time, Washington is actively diminishing workers’ rights and voting rights.

### *Citizens United v. Everyday Americans*

*At a time when the American people are disgusted by the amount of money in the political system, the Supreme Court decision today will remove the remaining safeguards that have given the American people a fair voice in government.*

Rep. John B. Larson (D-CT)  
January 21, 2010

The Supreme Court’s 2010 decision in *Citizens United* vastly expanded the scope and type of vehicles that deep-pocketed donors can use to influence the political process. Four years later, in *McCutcheon v. FEC*, the Court struck down limits on the total amount that any one donor can give to candidates, party committees, and PACs in an election cycle. As Justice Breyer stated in his dissent, the two decisions have “eviscerate[d] our Nation’s campaign finance laws, leaving a remnant incapable of dealing with the grave problems of democratic legitimacy that those laws were intended to resolve.”<sup>114</sup>

In the six years since *Citizens United*, the influence of big money in American politics has expanded to unprecedented levels. Since 2010, outside spending (excluding party committees) has exceeded \$1.8 billion in federal elections.<sup>115</sup> This money is coming from a tiny, highly unrepresentative segment of the population that expects something in return for the investment. In fact, according to an in-depth report by the *New York Times*, as of October 2015, just

158 families (many representing hedge funds and the oil industry) had “provided nearly half of the early money for efforts to capture the White House.”<sup>116</sup>

Rather than trying to rein in the excesses, our representatives and agency administrators in Washington, D.C., have made it worse.

## A Flood of Big Anonymous Donors

Late in 2014—after the Supreme Court’s *McCutcheon* ruling—Congressional leaders quietly inserted a provision into a must-pass spending bill that increased *by more than 2,000 percent* the amount a single donor can contribute to political party committees in a two-year cycle. The limit went from \$74,600 to \$1.6 million.<sup>117</sup>

Through well-orchestrated gridlock and purposeful inaction Congress also has blocked progress on laws designed to shine a light on hidden money in elections and improve citizens’ confidence in our democracy. Since *Citizens United* there has been a flood of spending by faceless donors, including some phony nonprofits set up solely to avoid laws that would make such spending transparent. This makes it harder to “follow the money.”

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**Of the \$1.8 billion dollars in outside money unleashed by *Citizens United*, approximately one-third of it—over \$600 million—came from entities that do not disclose the sources of the money.**<sup>120</sup>

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In the *Citizens United* decision, the Justices assumed that election-related spending would, at a minimum, be disclosed promptly by way of the Internet to “provide shareholders and citizens with the information needed to hold corporations and elected officials accountable.”<sup>118</sup> According to the Court, “transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”<sup>119</sup> That has not been the result.

Of the \$1.8 billion dollars in outside money unleashed by *Citizens United*, approximately one-third of it—over \$600 million—came from entities that do not disclose the sources of the money.<sup>120</sup>

Our broken system means that voters have less information than they need. It is impossible to know to whom candidates are indebted and the degree to which elected officials are beholden to political spenders instead of their constituents. Those with the resources to spend such enormous sums of money—the wealthy few—are able to skew the policy agenda in their favor, sometimes at the expense of the public interest.

Some members of Congress have tried to modernize laws to keep pace with the flood of spending after *Citizens United*. In every session of Congress since 2009-2010, senators and representatives have introduced the DISCLOSE Act, a bill requiring corporations and other groups spending money to influence elections to disclose their major donors. In each case opponents in the Senate representing the interests of deep-pocket elites demanded a 60-vote threshold to move forward, consistent with their practice of filibustering nearly every major piece of legislation to reach the Senate floor and raising the bar on the number of votes needed to pass bills. The DISCLOSE Act fell just one vote short of defeating the filibuster.<sup>121</sup>

Despite the uphill battle, some members of Congress continue to propose legislation to restore the voices of everyday Americans in the political process:

- The *Government By the People Act* and *Fair Elections Now Act* would create public financing systems to allow candidates to raise small amounts of money that would then be matched with public funds.
- The *EMPOWER Act* would repair the broken public financing system for presidential elections.

- The *Democracy for All Resolution* is a proposed constitutional amendment to overturn *Citizens United* and other harmful campaign finance decisions. In September 2014, a majority of 54 senators voted to advance the amendment, but fell six votes short of defeating a Republican filibuster on the legislation.<sup>122</sup>

### *Primaries for Billionaires, Not for Voters*

Among the most insidious results of the rapid increase of big money in politics are new avenues for influence peddling and increased pressure on candidates to audition for wealthy backers who are now free to spend unlimited amounts of money—including secret contributions—on campaigns. Some candidates are more responsive to supporting policies favored by wealthy donors if it means securing their financial backing.

## WEALTHY DONORS DISENFRANCHISED BY THE SUPER-WEALTHY

In a remark so un-self-aware it is worthy of political satirist Stephen Colbert, one former wealthy bundler of political contributions who raised over \$4 million in 2012 compared her post-*Citizens United* predicament to the loss of voting rights. In the good old days, said Bobbie Kilberg, bundlers “were part of the process and made a difference. . . . But when you look at super PAC money and the large donations that we’re seeing, the regular bundlers feel a little disenfranchised.”

*Matea Gold and Tom Hamburger, “In 2016 Campaign, the Lament of the Not Quite Rich Enough,” Washington Post March 25, 2015*

The billionaire Koch brothers of Kansas are notorious among the players in the world of big-time election spending. David and Charles Koch are libertarian-minded political activists, tied in sixth place in *Forbes* magazine’s rankings of the world’s wealthiest individuals. The Kochs have a combined net worth of over \$80 billion in 2015.<sup>123</sup>

In January 2015, the *New York Times* reported that, “the political network overseen by the conservative billionaires Charles G. and David H. Koch plans to spend close to \$900 million on the 2016 campaign.”<sup>124</sup> Such a massive war chest buys enormous power. More than a year out from the real presidential primaries and far in advance of candidates’ formal announcements, the Kochs held events that became known as “Koch Primaries,” to showcase Republican hopefuls before rooms full of wealthy donors.

Las Vegas billionaire Sheldon Adelson followed the Kochs’ lead in the spring of 2015 with “a key cattle call for presidential aspirants.”<sup>125</sup> *Politico* reported that Adelson has “held private meetings with most of the Republican candidates,” with Marco Rubio emerging

as the clear frontrunner for Adelson’s support.<sup>126</sup> In the 2012 presidential election cycle, Adelson spent over \$100 million, including \$15 million to support Newt Gingrich’s run for the White House. Because of Adelson’s support, Gingrich’s campaign extended well past what the polls would have otherwise indicated.<sup>127</sup>

The rise of these billionaire primaries is a relatively new phenomenon. In the past, well-connected activists collected checks from wealthy donors and “bundled” them to forward on to a campaign, often gaining prestige as campaign insiders in return. Now these bundlers are concerned that men like Koch and Adelson, with deep, deep pockets, are pushing them out of the arena. According to the *Washington Post*, former bundlers have been “downgraded, forced to temporarily watch the money race from the sidelines. They’ve been eclipsed by the uber-wealthy, who can dash off a seven-figure check to a super PAC without blinking.”<sup>128</sup>

## Gridlock and Inaction at the FEC

*People think the FEC is dysfunctional. It's worse than dysfunctional.*

FEC Commissioner Ann Ravel

*New York Times*, May 2, 2015

The Federal Election Commission (FEC), pilloried as the “Failure to Enforce Commission,” a “toothless tiger,” “weak, slow-footed and largely ineffectual,” “designed for impotence,” and FECKless,” is among the most dysfunctional federal agencies in Washington.<sup>129</sup> The FEC’s structure, made up of six commissioners—three Democrats and three Republicans—seems designed to facilitate gridlock and inaction.<sup>130</sup> Any FEC action—to continue an investigation, promulgate rules, or agree on an advisory opinion—requires four votes. A vote that splits three to three results in no action.<sup>131</sup>

Although the FEC is an independent agency, Congress’s role in identifying and confirming commissioners gives it significant power. In effect, members of Congress determine who will oversee campaign finance rules that govern their own campaigns. Senators who are ideologically opposed to campaign finance laws can and do appoint commissioners who will orchestrate gridlock and sabotage the agency from within.

House and Senate leadership usually recommend potential FEC commissioners to the President, who then sends the names on to the Senate for a confirmation vote. Once seated, commissioners are appointed to one six-year term. No commissioner has to vacate his or her seat, however, until a replacement is confirmed. *Currently, four of the six commissioners are lame ducks sitting in expired seats.*

The power of members of Congress to perpetuate inaction on the FEC is illustrated by the case of would-be Commissioner Hans von Spakovsky. Senator Mitch McConnell fought long and hard to confirm the 2006 recess appointment of von Spakovsky to the FEC in spite of ardent opposition from the civil rights community, proponents of limiting unlimited spending in elections, and then-Senate Majority Leader Harry Reid.<sup>132</sup> At the time the FEC had only two of six commissioners; without a quorum it was unable to act on anything. Mr. von Spakovsky withdrew his nomination in 2008, and the Senate confirmed four new commissioners—including three brand new Republicans—for a fully staffed FEC.

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**In effect, members of Congress determine who will oversee campaign finance rules that govern their own campaigns.**

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According to independent election law scholar Rick Hasen, the new suite of Republican commissioners “have eviscerated campaign finance law simply by resisting the enforcement of such laws.”<sup>133</sup> Last year, the FEC’s current Chairwoman, Ann Ravel, penned an op-ed describing the dysfunction:

[The FEC] Is failing to enforce the nation’s campaign finance laws. . . . I’ve quickly learned how paralyzed the FEC has become and how the courts have turned a blind eye to this paralysis. The problem stems from three members who vote against pursuing investigations into potentially significant fund-raising and spending violations. In effect, cases are being swept under the rug by the very agency charged with investigating them. . . . In voting not to investigate, the commission’s anti-enforcement bloc [has] disregarded clear facts and law. . . . Money from anonymous donors will continue to pour into elections. And voters will again be barraged with political advertising from unknown sources. . . . If we continue on this path, we will be betraying the public and putting our democracy in jeopardy.<sup>134</sup>

For those who are ideologically opposed to the FEC's role, the situation is as it should be. Republican Commissioner Lee Goodman explained, "Congress set this place up to gridlock. This agency is functioning as Congress intended. The democracy isn't collapsing around us."<sup>135</sup>

Since *Citizens United* in 2010, the FEC has:

- **deadlocked**, against the advice of its own staff attorneys, to block an investigation into whether Karl Rove's Crossroads GPS group—which spent \$20 million dollars on federal campaign activity—should have registered as a political committee, which would have subjected it to disclosure rules;<sup>136</sup>
- **deadlocked** on whether to revise disclosure rules in the wake of *Citizens United* and the hundreds of millions of new dollars that would influence elections;<sup>137</sup>
- **dramatically reduced the number of enforcement cases it takes**, from 612 cases in 2007 to 135 in 2012<sup>138</sup>; and
- **dramatically reduced its assessment of fines**, dropping from \$626,408 in 2013 to \$135,813 in 2014.<sup>139</sup>

At the same time as the FEC is abandoning its responsibilities, there is more money influencing our elections now than at any other time in our nation's history. Political consultants, corporations, and wealthy individuals have routed hundreds of millions of dollars from secret sources into political campaigns, buying influence and access to the process.<sup>140</sup> The FEC, the federal agency responsible for policing elections, has done nothing to provide adequate disclosure or to ensure that money does not further corrupt the democratic process. Blame for the agency's inaction lies squarely on the doorstep of Congress.<sup>141</sup>

## Disappearing Protections for Working Americans

As state and local attacks on collective bargaining rights accelerated after 2010, elected officials in Washington all but abandoned working people—failing to pass legislation to protect unions and working Americans. Instead, as in other areas, Congress increased the power and profits of big corporations and wealthy Americans at the expense of working families.

### The Employee Free Choice Act: How Anti-Union Forces Bought a Victory

The machinations behind the defeat of the Employee Free Choice Act (EFCA) demonstrate how the close alliance of business and government corrupts our system—and just how much money is involved. The Chamber of Commerce waged a well-funded and focused attack on EFCA, spending over \$200 million on the effort. Their tactics included hosting "fly-in days," bringing in hundreds of anti-union executives to convince members of Congress to vote against the Act.<sup>142</sup> Businesses particularly targeted members like Senator Diane Feinstein of California, Arlen Specter of Pennsylvania, and other potentially persuadable senators, with numerous executives holding meetings with them while the bill was being considered.<sup>143</sup>

The EFCA was the centerpiece of labor's legislative priorities in 2008. The act would have fixed loopholes in current labor law while leveling the playing field for workplace organizers. EFCA contained three important provisions:

1. **Majority sign-up**, or “card-check,” which would allow private sector employees to form a union if a majority of employees signed union authorization cards;
2. **Imposition of stronger penalties** for employers who violate workers’ right to join a union; and
3. **Guarantee of a first contract**, which brings in a neutral third party to settle differences if a union and employer cannot agree to a first contract.<sup>144</sup> This is necessary because many employers that fail to defeat a union in an election simply refuse to bargain.

Despite passing by an overwhelming margin in the House and having President Obama’s support, EFCA was never even debated on the Senate floor.<sup>145</sup>

As noted under the filibuster rules governing the Senate, any measure has come to need not just majority support, but the votes of 60 senators—the threshold needed to defeat a filibuster. Although Democrats enjoyed a majority in both houses of Congress from 2006 to 2010, many progressive reforms never made it past the gridlocked Senate. EFCA was a victim of this dysfunction. Abuse of Senate rules and intense pressure on moderate Democrats by business lobbyists prevented the party from achieving the 60 votes needed to ensure the bill would go to debate and up for a vote. The vote was 51-48.<sup>146</sup>

A few years later, Senators Feinstein and Specter—who had initially supported EFCA—announced their opposition. Most notably, Specter was an original sponsor of the legislation and switched his vote just two weeks after being visited by Chamber of Commerce-funded lobbyists.<sup>147</sup> A last-ditch effort to reach a compromise—including removing the card-check provision of the bill—failed to turn the tide.<sup>148</sup>

In this and many other cases, employer interests won at the expense of working families. The defeat of EFCA eliminated labor’s best chance for federal legislation to ensure workers’ right to bargain collectively for better wages and working conditions.

### *Disempowering the NLRB*

During the Obama Administration, the National Labor Relations Board (NLRB) has been under siege by members of Congress who advocate for wealthy power elites. They have made a mockery of the filibuster rules of the Senate to try to disempower the Board. Refusing to confirm the president’s appointees to the NLRB, the Republican majority in the Senate rendered the Board effectively powerless. Senate Majority Leader Harry Reid and other Democrats contributed to the precarious position of the Board by resisting reform to Senate rules.

In 2012 President Obama made necessary NLRB appointments during a Congressional recess, prompting organizations representing wealthy power elites to sue the Obama Administration, with the support of Republican senators. In *Noel Canning v. NLRB*, the plaintiffs claimed that the Senate was not technically in recess, making the appointments illegitimate. The D.C Circuit Court for the District of Columbia ruled in favor of the argument and threw out the recess appointments.

Suddenly, NLRB decisions made by the current membership were potentially null and void because the Board did not have the proper quorum, a prospect that certainly delighted many corporations. In 2014, the Supreme Court upheld the D.C. Circuit Court’s decision.<sup>149</sup>

It is not difficult to trace the influence of campaign donations on the politicians who supported disempowering the NLRB. As in the case of the EFCA, corporations that stood to benefit from a non-functioning National Labor Relations Board spared no expense making their preferences known to members of Congress.<sup>150</sup>

This story ends, however, with a silver lining. In 2013, even before the Supreme Court ruled on the issue, a coalition led by the Democracy Initiative launched a campaign called “Fix the Senate Now,” and successfully urged a majority of the Senate to reform the filibuster rule to allow confirmation for all executive branch and judicial nominees (except Supreme Court justices) with a simple majority of the Senate. President Obama nominated a new slate of appointees to the NLRB, and they were confirmed. Fix the Senate Now was the first major campaign of the Democracy Initiative and demonstrated the power of organizations working together to restore equality and democracy to our political system.

### *Real-World Results of the Attacks on Labor*

Beyond the Washington-based frustrations of our broken political system in the age of gridlock, there are tragedies for thousands of ordinary Americans outside of the Beltway—aggrieved workers whose cases were stalled indefinitely while waiting for Washington politicians to fulfill their responsibilities. Reporter David Jamieson cites just one example:

West Virginia miners had been waiting nearly a decade to have their union-busting case with coal giant Massey Energy resolved. The miners’ favorable ruling by the NLRB in 2012—which would have reinstated them to their jobs with back pay—was stayed due to the appeals court decision that two board members at the time had been invalidly appointed.<sup>151</sup>

Some opponents of organized labor in Congress continue to fight the NLRB and its decisions under Obama, even opposing the most benign of rules, such as a requirement that employers hang posters notifying workers of their rights under labor law. Senator Lindsey Graham of South Carolina, one of the Board’s staunchest critics, declared that an “inoperable” Board could be “considered progress.”<sup>152</sup>

Clearly demonstrating a concerted effort to erode the power of federal watchdog agencies, Senate Majority Leader Mitch McConnell (KY) and Senator Lamar Alexander (TN) introduced legislation in early 2015 that would expand the NLRB from five members to six and require a majority to approve any decision. The only other federal agency constructed this way is the FEC, made useless in recent years exactly as power-centered elites and their political allies would like to render the NLRB impotent.

Larry Cohen, President of the CWA, said that this proposed expansion of the National Labor Relations Board would mean “the NLRB just can’t do anything anymore—and that’s exactly what they [labor’s opponents] want.”<sup>153</sup>

### *Voting Rights Under Siege*

Congress has entrenched a political system driven by gridlock and partisanship. Congressional inaction on the problem of voting rights is as bad or worse than on the problems of money in politics and workers’ rights.

### *Failure to Address Shelby County v. Holder*

In 2006, Congress voted to uphold the entirety of the Voting Rights Act, almost unanimously.<sup>154</sup> With its 2013 *Shelby County v. Holder* decision, the Supreme Court thwarted that vote. In response, Representative Jim Sensenbrenner (WI), a Republican, and Representative John Conyers (MI), a Democrat, introduced legislation in 2014—the Voting Rights Amendment Act—to address the gaping hole in voting rights protections.<sup>155</sup> House Judiciary Committee Chair Bob Goodlatte (VA) refused to hold a hearing on the bill.

Appropriately, Sensenbrenner and Conyers reintroduced their bill in 2015 on the same day the House considered legislation to award Congressional Gold Medals to the “foot soldiers” of the 1965 March from Selma to Mont-

gomery for Voting Rights.<sup>156</sup> In addition, an even stronger law to protect voting rights was introduced in 2015: the Voting Rights Advancement Act. Introduced in the House and the Senate, the new measure would modernize the act, providing tools to protect against discrimination in voting rights across the country. Again, Chairman Goodlatte refused to allow discussion of the bill in his committee, declaring the measure unnecessary.<sup>157</sup> Shortly before a bipartisan commemoration in Selma, honoring those who fought and bled for the right to vote, Congress turned its back on their achievements.

The House of Representatives has held no hearings on pro-voter legislation since 2010. The Senate has held two.

Other members of Congress have introduced bills to improve the system in the past decade, but most were squelched before they even got a hearing. Just in the past five years, dozens of bills that would have strengthened voting rights have been ignored or blocked.<sup>158</sup> The only pro-voter legislation to pass in recent years was the Military and Overseas Voter Empowerment Act, which expanded registration and voting opportunities for those two groups.

### *Efforts to Destroy the Election Assistance Commission*

The Help America Vote Act of 2002 was a broad election reform law passed in response to the highly controversial and contested 2000 presidential election. Part of the act established the U.S. Election Assistance Commission (EAC). Like the FEC's, the EAC's structure encourages gridlock: It has four commissioners, two from each party; they are appointed by the president and confirmed by the Senate. The EAC is intended to provide guidance to states on election-related issues and best practices and to deal with voting machines through voluntary guidelines and accreditation of testing labs and certification processes. The agency also oversees implementation of the National Voter Registration Act.

Despite controversies and chronic underfunding, the EAC has managed to provide useful tools, information, and recommendations for elections practitioners. Its oversight of the voting technology used at the polls is vital. Yet almost from its inception, Republican leaders have tried to kill the tiny agency—the only federal entity with any responsibility for federal election administration.<sup>159</sup> Members of Congress have repeatedly introduced bills to defund the agency in order to kill it.

In early 2015, Representative Gregg Harper (R-MS) introduced HR 195 for the fourth time, trying to shut down the EAC by taking away its \$10 million budget. According to press reports, Harper was the leader of the elite political “mission to eliminate the EAC, saying it has outlived its usefulness.”<sup>160</sup>

Anti-democracy Republicans have persistently blocked nomination and confirmation of EAC Commissioners. The agency lacked commissioners for two election cycles until appointments were confirmed in 2014. One appointee waited more than *four years* between appointment and confirmation.<sup>161</sup>

### *Obstruction of Immigration Reform to Limit New Voters*

By obstructing immigration reform at every turn, Congress has devised a less direct, but equally effective way of blocking new voters from joining the electorate. For years, Congress has failed to allow a path to citizenship for millions of undocumented persons, many of who have been in the country for years and have children and other relatives who are American citizens.

As happened with money in politics reform, filibusters in the Senate doomed immigration reform efforts like the DREAM Act of 2010, which would have provided a conditional path to citizenship for young people who had been brought to this country by their parents when they were children.<sup>162</sup>

The possibility of comprehensive immigration reform arose again in 2012 and 2013 when a bipartisan “Group of Eight” senators proposed, and the Senate actually passed, a bill giving undocumented immigrants a path to citizenship, albeit with strict conditions. In this case the House, not the Senate, failed to act. In response, in 2014 President Obama issued an executive order that would give temporary relief from deportation to millions of immigrants. Republican governors are now fighting this action in court.

There is overwhelming popular support for allowing immigrants to slowly, but surely become full-fledged participants in American democracy. Today, 88 percent of Americans support a path to citizenship, but comprehensive reform that would allow immigrants who are living and paying taxes in America’s communities to gain full rights of citizenship seems more elusive than ever.<sup>163</sup>

Billionaire primaries, carefully orchestrated attacks on workers’ rights, and persistent refusal to improve voters’ access to the polls or pursue meaningful immigration reform are all manifestations of an antidemocratic agenda in Congress and certain federal agencies. A parallel agenda that has been the rule in the Supreme Court for years is explained below.

## THE ANTI-DEMOCRACY AGENDA IN THE SUPREME COURT

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In recent years, the U.S. Supreme Court has been yet another source of attacks on unions, limitations on voting rights, and expansion of big money in politics. Earlier in American history the Court was considered an unbiased arbiter, but today at least five of the nine justices engage in ideologically driven overreach. The Court's bias in favor of big corporations and wealthy elites has been evident in cases that address the political system.

The fact that the justices who sit on the Court today are of such a bent is not an accident. The same people who set up an entire infrastructure to damage unions, stand in the way of the right to vote, and block sanity in the way we fund campaigns are orchestrating who sits on the courts. Ideological, conservative institutions, such as the Federalist Society, funded by the same individuals who have trained and promoted these jurists, wield tremendous influence over the process.

### ***Citizens United* and the Court of Public Opinion**

According to a variety of public opinion surveys in the past few years, Americans now expect money, not their votes, to hold the balance of power in U.S. politics. Billionaires and many corporations seem to agree. When the Koch brothers announced they were planning on spending almost a billion dollars on the 2016 U.S. presidential campaign in order to elect their chosen candidates, many observers saw this as the inevitable outcome of the Supreme Court's *Citizens United* ruling.

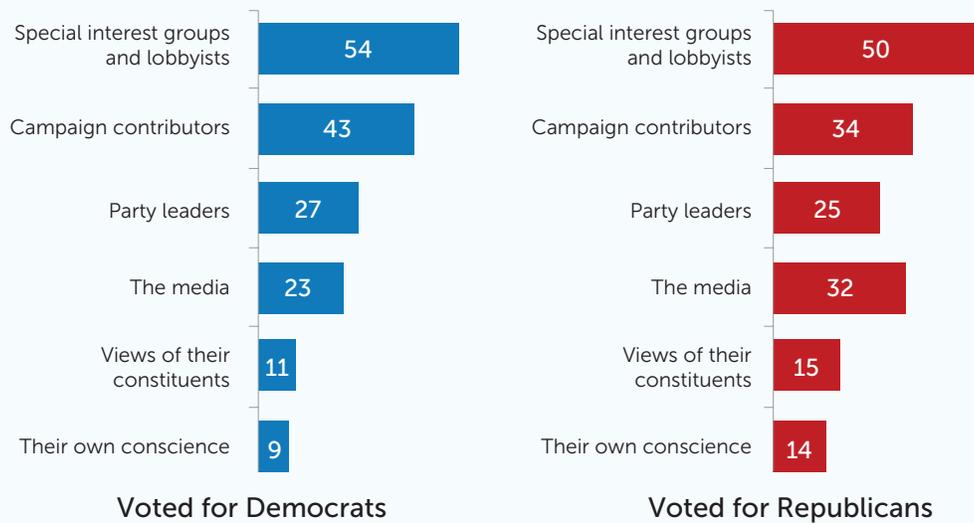
In a June 2015 *New York Times* poll, 84 percent of Americans said that money has too much influence on political campaigns, and 66 percent said that the wealthy have more opportunities to influence elections than the rest of us. A majority said that politicians promote the policies of campaign donors most of the time.<sup>164</sup>

Americans clearly understand the power of big money in politics, and they clearly oppose it.

Just after the *Citizens United* decision, a *Washington Post/ABC* poll found that “Eight in 10 poll respondents say they oppose the high court’s Jan. 21 decision to allow unfettered corporate political spending, with 65 percent ‘strongly’ opposed. Nearly as many backed congressional action to curb the ruling, with 72 percent in favor of reinstating limits. The poll reveals relatively little difference of opinion on the issue among Democrats (85 percent opposed to the ruling), Republicans (76 percent) and independents (81 percent).”<sup>165</sup>

After the 2014 election, Every Voice Center commissioned a poll that showed “Majorities of Republican and Democratic voters believe that special interest groups, lobbyists, and campaign contributors have the largest influence on members of Congress, displacing the views of constituents by a wide margin.”<sup>166</sup>

**Figure 5: Who Influences Congress?**



Voters who identify themselves as Democrats and as Republicans both say Congress is influenced by special interests and wealthy contributors.

Source: Democracy Corps

Many Americans are now so dispirited by their realization that only the voices of the rich and big business are heard in Washington that they have become apathetic. A recent survey by The Brennan Center for Justice found the following:<sup>167</sup>

One in four respondents—and even larger numbers of low-income people, African Americans, and Latinos—reported that they are less likely to vote because big donors to Super PACs have so much more sway than average Americans.

Only about 1 in 5 Americans agree that average voters have the same access to candidates (and influence on candidates) as big donors to Super PACs.

More than two-thirds of all respondents (68 percent), including 71 percent of Democrats and Republicans, agreed that a company that spends \$100,000 to help elect a member of Congress could successfully pressure him or her to change a vote on proposed legislation. Only one in five respondents disagreed.

More than three-quarters of all respondents, or 77 percent, agreed that members of Congress are more likely to act in the interest of a group that spends millions to elect them than to act in the public interest. Similar numbers of Republicans (81 percent) and Democrats (79 percent) agreed. Only 10 percent disagreed.

Another poll late in 2012 found that after an election in which more than \$6 billion was spent and one billion of it was outside money, “voters are fed up with big money politics that they believe undermines democracy...Voters are deeply concerned that all of this money purchases influence in Congress and drowns out the voices of ordinary voters. When asked who has the most influence on Congressional votes, the views of constituents ranked at the bottom of the list, while 59 percent of voters said ‘special interest groups and lobbyists’ and almost half (46 percent) said campaign contributors.”<sup>168</sup>

In all cases, the belief in the corrosive, antidemocratic effects of money in politics crosses party lines, and alarms both Republicans and Democrats.

## The Court Opens the Door to Money in Politics

The Supreme Court has demonstrated fealty to the rich, powerful, and deep-pocketed corporations in a variety of ways, including using the First Amendment to support antidemocratic decisions.

### *Distorting the First Amendment to Benefit Big Money*

Research demonstrates that the current Supreme Court is the most pro-business in history. Analysts find that in the post-World War II era, five of the ten Justices who have been friendliest to business interests are serving currently, and two of them—Alito and Roberts—rank first and second. “These rankings suggest . . . that the Roberts Court is indeed highly pro-business—the conservatives extremely so, and the liberals only moderately liberal.”<sup>169</sup> Once again this reflects a philosophy that moves us toward a system ruled by the rich and powerful to the exclusion of everyone else.

But exactly how has the Court used the First Amendment as a tool to shift the playing field in favor of the wealthy and corporations? According to Harvard Professor John C. Coates, “corporations have increasingly displaced individuals as direct beneficiaries of First Amendment rights,” and “nearly half of First Amendment legal challenges now benefit business corporations and trade groups, rather than other kinds of organizations or individuals.”<sup>170</sup>

Many Americans are familiar with the 2010 *Citizens United* case, but it was only one in a series of cases that steadily opened the floodgates to allow money from big donors and powerful corporate interests to flow into elections. The most far-reaching decisions were *Wisconsin Right to Life*, *Citizens United*, and *McCutcheon*.

- *Wisconsin Right to Life* (2007) held unconstitutional a prohibition on corporate funded broadcast ads aired within 30 days of a primary or within 60 days of a general election that named a candidate and targeted voters, unless it obviously advocated for the election or defeat of a candidate.

- The *Citizens United* (2010) decision declared that corporations (including nonprofit corporations and unions) could spend money from their general treasury funds to support or oppose candidates for office, as long as the efforts were independent of (and not coordinated with) the candidate.

## SUPER PAC DONORS: ONE PERCENT OF THE ONE PERCENT

The 2010 *Citizens United* decision laid the groundwork for the creation of Super PACs, which are independent political groups that can take in and spend unlimited sums in support of a campaign, as long as they maintain independence—or the appearance of independence—from that campaign. These groups have contributed to the astronomical growth in independent political spending in the past five years.

- Outside groups spent over **\$1 billion in the 2012 election**, more than the total outside spending reported to the FEC from 1980 to 2010.
- Nearly 60% of Super PAC funding came from just 159 donors contributing at least \$1 million.
- In the 2012 election, an estimated **28 percent of all disclosed political contributions came from just 31,385 people**.

In a nation of 313.85 million, super PAC donors represent the **1 percent of the 1 percent**. This narrow set of donors is overwhelmingly (at least 90 percent) white and groups can take advantage of loopholes in election law and tax codes to hide identities of donors.

Source: Peter Olsen-Phillips, Russ Choma, Sarah Bryner and Doug Weber, "The Political One Percent of the One Percent in 2014: Mega Donors Fuel Rising Cost of Elections," *Open Secrets*, April 30, 2015; Blair Bowie and Adam Lioz, "Billion Dollar Democracy," *US PIRG and Demos*, January 17, 2013; Adam Lioz, "Stacked Deck," *Demos*, 2014, p. 1.

- The *McCutcheon* (2014) decision further diminished any reasonable standard for adjudicating the constitutionality of regulating money in politics, ruling that only outright bribery could justify contribution limits. This marked the first case in which the Supreme Court struck down a federal contribution limit, ruling that the First Amendment prohibited the overall, aggregate limit of what any one person could contribute directly to federal candidates and parties.

### *The Problem of Secret Money*

A 501(c)(4) organization is a tax-exempt entity whose exclusive purpose is supposed to be the promotion of social welfare. Social welfare nonprofits usually fall outside of the FEC's rules for political action committees, and therefore, they do not have to disclose information about their donors. Election-related spending by these organizations increased from *less than \$5.2 million in 2006 to well over \$250 million in the 2012 election*<sup>171</sup> and is expected to far surpass that in 2016. Increasingly, corporations are making anonymous contributions to trade associations and 501(c)(4) organizations that serve as their proxies for political involvement.

Looking at cases over the past thirty years, election law scholar Richard Hasen attributes the rightward swing of the pendulum at the Court—with respect to contribution limits and restraints on campaign spending—to a change in the composition of the bench. Hasen says the turning point was in 2006 in *Randall v. Sorrell*—decided just after Chief Justice Roberts and Justice Alito replaced Chief Justice Rehnquist and Justice O'Connor.<sup>172</sup> In this case, the Court ruled that Vermont's limits on campaign contributions by a person, party, or political association were in violation of the First Amendment.<sup>173</sup>

*Citizens United* was premised on the assumption that disclosure of donors would reveal to the public political spending by deep-pocketed donors in real time, thereby combating the possibility of corruption and letting voters hold their elected officials accountable. However, the past several years have shown that disclosure laws are not in place to address the massive increase in political spending.

Since 2010, spending by entities outside of campaigns has exceeded \$1.8 billion, and at least \$600 million of this spending came from faceless, nameless donors. Without appropriate measures that ensure full transparency, voters are denied critical information about the sources and funders of the campaign advertising meant to influence their decisions.

### *A New Inequality Culminating in Citizens United*

As Mark Schmitt of the New America Foundation has noted, “the most recent decision after *Citizens United*, *McCutcheon v. FEC*, stated explicitly what the *Citizens United* majority had only hinted: In their view, only the prevention of *quid pro quo* corruption (a specific promise of action by an elected official in exchange for a contribution) is a valid basis for the regulation of any kind of political spending. Because *quid pro quo* corruption is difficult to spot and harder to prove, this is too weak a foundation on which to build any kind of structure to offset the real distortions of democracy by money—the way it governs who can run, which ideas are on the agenda, and who elected officials spend their time listening to.”<sup>174</sup>

Adam Lioz of Demos has analyzed the implications of *McCutcheon* and the other key cases at length, pointing out how these decisions are exacerbating the already dire economic inequality in the country, and transferring the inequality directly into the political process. Lioz says:

The Court’s fundamentally misguided approach to money in politics has helped create a vicious cycle, ultimately leading us into a new Inequality Era in which the income gap expands endlessly and the size of a citizen’s wallet determines the strength of her voice—reinforcing trends that if left unchecked will spin us towards plutocracy . . . Those who are successful (or simply lucky) in the economic sphere can translate their economic might directly into political power . . . The American people have long recognized that in order to provide working families a fair shot at upward mobility and basic economic security, democracy must write the rules for capitalism, not the other way around.<sup>175</sup>

Furthermore, a record of racial and ethnic exclusivity runs parallel to political inequality and is also an essential characteristic of the post-*Citizens United* framework. A recent Every Voice Center study of early 2016 presidential cycle campaign contributions noted that, “Donors from the Upper East and Upper West sides of Central Park gave more to presidential candidates than all 1,200 majority African-American zip codes in the country. They also gave more than all 1,300 majority Hispanic or Latino zip codes in the country.”

Journalist Lee Fang, examining the unlimited gifts to outside groups in the same election wrote that “out of over 50 individual donors who gave \$1 million or more to the Super PACs supporting the current field of presidential candidates, only four are nonwhite. And with the exception of a \$2.5 million contribution by a company owned by Cuban-American Benjamin Leon, all of the corporate entities that gave \$1 million or more to Super PACs are owned or run by white executives.”<sup>176</sup>

These facts make a difference when it comes to representation and policymaking on issues of critical significance to African-American and Latino communities. In the 2014 *Stacked Deck* report from Demos, the authors point out that “the lack of attention given to people of color is in part due to the racial disparity in campaign contributions and the resulting relative lack both of candidate focus on these communities’ priorities and of elected officials of color.”<sup>177</sup>

Jamie Raskin, election law scholar, compares the Court’s recent line of pro-corporate decisions to the *Lochner* era, when the Court struck down a series of New Deal measures meant to protect the most vulnerable in society from an array of business abuses.

While the *Lochner* era read *individualist free market ideology* into the Constitution, the *Citizens United* era is reading *corporatism* into the Constitution, extending to mammoth business corporations the rights of the

people, an endowment that translates . . . into corporate political and social power over the people . . . The threat to political democracy is more comprehensive today than a century ago because the *Citizens United* ideology directly targets our democratic political infrastructure. Corporatist judicial ideology is thus not only regularly defeating democratically enacted laws in court, but also relentlessly entrenching corporate power in the political process itself.”<sup>178</sup>

And in line with John. C. Coates’s discussion of First Amendment benefits for corporations above, Raskin suggests that the First Amendment is the doctrinal tool the Court is using to promote corporate power over the people. But, as Lioz has pointed out, “The First Amendment was never intended as a tool for use by the wealthy and powerful to dominate our political process.”<sup>179</sup>

## Using the First Amendment to Strip Workers’ Rights

The Supreme Court has distorted the First Amendment not only in regard to corporations’ rights, but also as applied to the voices of workers and the unions that represent them. The current Justices’ interpretation of the First

Amendment’s freedom of expression and balancing of interests depends entirely on whether the Court is considering the interests of labor unions or the rights of corporations.

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**The Roberts-led Court persistently subverts the rights and interests of unions—the leading organizations that represent the interests of working Americans—in favor of the rights of employers.**

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The Roberts-led Court persistently subverts the rights and interests of unions—the leading organizations that represent the interests of working Americans—in favor of the rights of employers. Employers, often wealthy corporations, have been afforded considerable free speech rights—from the right to

spend unlimited and often unaccounted-for money in political campaigns to the right to speak in opposition to collective bargaining activities. These same freedoms are not extended to labor unions, and corporations possess an inherent advantage over labor in both spheres.

### *Weakening Public Sector Unions*

The 1977 case of *Abood v. Detroit Board of Education*<sup>180</sup> established the principle that non-union-member, public-sector employees can be charged a “fair share” fee to cover the costs of union business, such as arbitration, contract negotiation, and benefits administration, when a union has exclusive representation in the workplace.<sup>181</sup> Public-sector unions are barred from requiring membership, even when they are the sole negotiating agents in a given public-sector workplace.<sup>182</sup> Fair share fees were established to prevent the problem of free riders in these environments—employees who enjoyed the benefits of a unionized environment without paying the dues necessary to sustain the union’s work. This principle served as the foundation for thousands of public sector union contracts. The fair share fees ensure that a union can afford to conduct the business of representation, while respecting the First Amendment rights of dissenting non-members in the workplace.

Initially, the Court held that fair share fees were permissible so long as dissenting non-members were given the right to “opt-out” of all costs associated with political activities.<sup>183</sup> In 2012, in *Knox v. SEIU*,<sup>184</sup> the Court began to reverse course.<sup>185</sup> In this case, the union collected a special assessment, part of which it used to fund opposition to two ballot measures in California. The union then gave non-members the opportunity to be reimbursed if they objected to the use of their dues for this speech—in other words, to “opt-out” after the fact. The Court held the opt-out method employed by SEIU in this instance was insufficient to protect the First Amendment rights of the employees involved and constituted a form of compelled speech,<sup>186</sup> diminishing the power of employees collectively while drastically increasing the power of dissenting employees in a unionized environment.<sup>187</sup>

The public sector fair share arrangement came under attack once again in the Court's 2014 decision in *Harris v. Quinn*.<sup>188</sup> The plaintiffs, home health care workers in Illinois under a collective bargaining agreement with SEIU, petitioned the Court to explicitly overrule *Abood*, claiming their fees were unconstitutionally compelled speech. While the Court declined to overrule *Abood* completely, mainly due to the quasi-governmental nature of the employees in question, the majority's language plainly invited another case concerning government employees. The Court held that the provisions in the home-health-care-worker contract that required the payment of fair share fees were unconstitutional because the fees compelled the workers to support collective bargaining, which was a political activity according to their reasoning.

This year the Court will revisit the question of the *Abood* case's constitutionality in the case *Friedrichs v. California Teachers Association*, which concerns fair share fees of non-member teachers. The case could spell disaster for the labor movement, and public sector unions in particular. *Friedrichs v. California Teachers Association* seeks to take the *Harris v. Quinn* ruling to its natural conclusion, seeking an explicit overruling of *Abood* that would make fair share fees completely unconstitutional in the public sector. While it is unclear how the justices will rule, it seems likely, given recent cases, that the justices will side with the plaintiffs and rule these fees unconstitutional.

The plaintiffs in *Friedrichs*, ostensibly California public school teachers, allege that paying fair share fees is akin to subsidizing political speech with which they disagree. In reality, the *Friedrichs* plaintiffs are merely the public face of a large, coordinated campaign being waged by wealthy corporate interests who are seeking to dismantle labor unions across the country. The named plaintiff, Rebecca Friedrichs, is being represented by the Center for Individual Rights, a law firm funded solely by billionaire donors, including the Koch Brothers.

This case is a clear attempt to weaken the financial position of the large public sector unions that have championed the rights of workers in the political process. The demise of fair share fees would mean a massive source of union revenue would be lost. While fair share fees are rarely, if ever, used to fund union political activity, the fees allow the unions to conduct the business of representation for all employees. Without the ability to collect these fees, the unions' overall treasury for operations would be severely diminished, meaning much less dues could be spent to ensure the voices of working Americans are heard in the political and policymaking process.

By contrast, in *Citizens United* the Roberts Court had no concern for the dissenting shareholders of a company.<sup>189</sup> Rather, the Court held that the corporation's First Amendment right to express its political views and participate in the education of the electorate outweighed any concern for shareholders who may consider the corporation's viewpoint anathema to their own.<sup>190</sup> Moreover, the fact that shareholders could sell their shares was enough to protect dissenters in this instance from compelled speech.<sup>191</sup>

Justice Kennedy drew a dubious distinction between investors in a corporation and those non-union employees who pay member dues, arguing that shareholders in a corporation are not compelled to fund political speech with which they disagree because they have access to the procedures of corporate democracy—that is, dissenting shareholders can sell their investment in the corporation.<sup>192</sup> However, this is simply not true for a large percentage of investors, who are institutional investors in the form of mutual funds, 401(k)s, and pension plans.<sup>193</sup> These funds are managed by a fiduciary whose duty is to make investments in the best financial interests of the investment pool—not based on the political leanings of the pool's investors.<sup>194</sup> Thus, the tools of corporate democracy are unavailable to the vast majority of a company's shareholders. When a corporation spends its capital on political donations, without giving its investors a meaningful opportunity to object, the corporation is compelling these individuals to fund speech with which they may disagree.

The fact that no reciprocal version of opt-out rights is granted to investors in a corporation gives corporations a distinct advantage over unions in raising funds for political spending. A union's available treasury funds are comprised entirely of union dues paid monthly by employees, and a substantial portion of these funds are reimbursed

to those nonmembers who object to their dues being used for political activities. Corporations' spending from their treasuries similarly draws on funds that are raised in part through the contributions of stockholders and does not require respecting individuals' political wishes when choosing to spend in elections.

### *Unequal Disclosure Requirements*

The Court has demonstrated an unequal approach to unions and corporations with respect to disclosure requirements in campaign spending. Unions with total annual receipts over \$250,000 must report and make public every single political expenditure, but corporations only report *indirect spending* to the IRS, and these disclosure forms are not public.<sup>195</sup> Any spending a corporation does through a 501(c) may be kept secret.<sup>196</sup> Labor, on the other hand, is required to disclose contributions to these same nonprofits on their tax forms.<sup>197</sup>

A number of corporations are taking considerable advantage of these tax laws, making secret contributions to so-called "politically active nonprofits." These groups include trade organizations such as the Chamber of Commerce—one of the biggest spenders in the 2014 elections. As a result of such lax disclosure laws, outside spending by secret money groups more than doubled in the 2014 Senate races alone.<sup>198</sup>

## **A Philosophy Developed Over Decades: A Word on Employer Speech**

The Supreme Court has been thoroughly pro-business when it comes to equality of voices in the workplace itself. In the early days of the NLRB, employers were required to remain neutral during organizing campaigns. In response, employers demanded "reciprocal free speech rights" to counter "pro-union rhetoric."<sup>199</sup>

The concept of employer speech rights proliferated after the passage of the 1947 Taft-Hartley Act. Before Taft-Hartley, the NLRB did not require an election in order for a union to certify; the union could provide other types of evidence of support, such as collection of membership cards. Although the NLRB had already started moving in this direction, the codification of Taft-Hartley meant that thereafter, elections (or voluntary recognition by the employer) were the only route.

Subsequent NLRB decisions have granted employers the right to force employees to attend anti-union meetings on company time and have allowed employers to interrogate workers about suspected organizing activity. No reciprocal right to respond to employer "captive audience speeches" or to remediate these interrogation practices was granted to unions. The NLRB deems these activities permissible so long as the employer's activities do not cross the threshold of "coercive." In practice, all kinds of employer behaviors are allowed in the face of union campaigns. By contrast, the Board often imposes penalties on union organizers whose speech it deems coercive, resulting in the overturning of several elections.

Rather than balance the speech rights of unions and corporations in a union election environment, the NLRB decisions only resulted in a further imbalance of power in favor of corporations, which already possessed an immense economic advantage over labor.

In addition, the NLRB decisions led to years of rampant anti-union campaigns within corporations with much less rigorous enforcement of collective bargaining protections. Employers have waged anti-worker, hostile campaigns designed to increase strife and intimidate employees engaged in or-

ganizing efforts. Workers today face a gauntlet of unfair labor practices, with employers threatening or firing union supporters, making illegal changes to working conditions, and even shutting down workplaces altogether.<sup>200</sup>

These anti-union tactics have been highly effective in dissuading workers from joining unions—despite numbers suggesting over 50 percent of non-union workers want representation.<sup>201</sup> In 2015, union membership is at an all-time low of 11.1 percent of the overall workforce and just 6.6 percent of workers in the private sector.<sup>202</sup>

## The Supreme Court Devalues Voting Rights

*Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.*

Chief Justice Earl Warren  
*Reynolds v. Sims* (1963)

The current Court’s approach to protecting Americans’ fundamental right to vote—the source of all other rights—has been shockingly retrograde. In contrast to the careful scrutiny the Justices now apply to any restrictions on corporate political speech, they apply remarkably little scrutiny to restrictions on the right to vote. Cases decided in the 1960s and 1970s favored strong protections for voting rights, but the Court now defers to legislatively mandated restrictions and obstacles to access to the ballot box.

### *From Strict to Little Scrutiny*

In the 1960s, the Supreme Court began to apply the most serious examination, known as strict scrutiny, to laws and practices related to voting. For example:

- In *Reynolds v. Sims* (1964), the Court held that representation in state legislatures must be apportioned equally on the basis of population and reaffirmed that the Constitution protects the right to vote in federal elections.<sup>203</sup>
- In *Harper v. Virginia Board of Elections* (1966), the Court struck down a poll tax that restricted the exercise of the “fundamental” right to vote.
- In *Kramer v. Union Free School District No. 15* (1969), the Court held that restrictions on an individual’s right to vote other than residence, age, and citizenship *must promote a compelling state interest in order to be upheld*.
- In *Dunn v. Blumstein* (1972), the Court struck down a Tennessee residence requirement for voting, again using the language of fundamental rights.<sup>204</sup>

These and other cases set firmly in place the notion that voting is a fundamental right subject to strict scrutiny.<sup>205</sup> Justices Marshall, Brennan, and Douglas “stood ready to apply strict scrutiny in any case in which plaintiffs could show that their political participation was hindered by the challenged requirement.”<sup>206</sup>

In the 1970s, the Court subtly began to shift away from strong voter protection, starting with *Storer v. Brown* (1974), which lowered the standard for challenging a barrier to a third-party candidate seeking access to the ballot.

By 1992, in *Burdick v. Takushi*, the Justices determined that barriers to voting are acceptable if they meet a very low standard of examination in terms of their constitutionality.

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**Thus, states have been able to enact and implement restrictions on the right to vote without presenting any serious evidence that such a restriction is truly necessary or that the barrier put in place is the most efficient method of satisfying the state's interest**

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In *Burdick* the Court reasoned that, “states or the government need to structure elections to promote their fairness and honesty, not all regulations need to be subject to strict scrutiny simply because they impose some burdens on voters.”<sup>207</sup> *Burdick* held that a court considering a challenge to a state election law must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise interests put forward by the State as jus-

tifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiff’s rights.”<sup>208</sup>

The *Burdick* case involved the ability to cast a write-in vote, not a situation in which the actual right to vote was in jeopardy. Nonetheless, courts, including the Supreme Court, have since decided that voting rights cases need not be treated automatically as fundamental rights cases. Now, rather than presume that a barrier to voting requires strict scrutiny, judges presume such barriers are reasonable and apply in a rather incoherent manner the lightest scrutiny in determining whether a barrier to voting is constitutional.

Today, a reasonable barrier to voting need only seem “rational.” Thus, states have been able to enact and implement restrictions on the right to vote without presenting any serious evidence that such a restriction is truly necessary or that the barrier put in place is the most efficient method of satisfying the state’s interest.

### *Consequences: Disenfranchisement and Discrimination*

The disenfranchising consequences of the courts’ decisions regarding voting issues can be seen in two landmark cases: *Crawford v. Marion County* and *Shelby County v. Holder*.

In *Crawford v. Marion County Election Board* (2008) the Court upheld strict voter ID requirements in order to cast a ballot. The Justices acknowledged that, “The record contains no evidence of any such [voter] fraud actually occurring in Indiana at any time in its history.”<sup>209</sup> The prevention of voter fraud was the *only* state interest asserted in the case.

The Court’s disenfranchising *coup de grace* was its 2013 decision in *Shelby County v. Holder*. In 2006, Congress made a full review of the record and voted nearly unanimously to reauthorize the Voting Rights Act in full. Shelby County, Alabama, sued to have Sections 5 and 4(b) of the Act declared unconstitutional. The U.S. District Court and the U.S. Court of Appeals in the case upheld the reauthorization after doing their own reviews of the record, but in 2013 the Court struck down the heart of the Act, rendering Section 5 inoperable. Section 5 had required certain states and jurisdictions with a record of racial discrimination get approval from the U.S. Department of Justice prior to making changes in their voting systems.

In the 5 to 4 decision, Chief Justice Roberts concluded that the formula in Section 4 of the Act, which determined what jurisdictions should be covered, was not properly based on “current needs.” Roberts conceded that “voting discrimination still exists; no one doubts that,” but he went on to hold the strongest measure to combat that discrimination void and null. Writing for the majority, he invoked the doctrine of “equal sovereignty,” a concept that had been dismissed in *South Carolina v. Katzenbach* (1966), when it had been advocated by states’ rights proponents

in a last-ditch attempt to preserve the Jim Crow era.

By overemphasizing the “burden” of making states submit changes to the Justice Department ahead of time and ignoring the record of ongoing discrimination that still needs to be addressed, the majority recast the states covered by Section 5 as *victims* of an unfair system.

Bringing multiple elements of our story together in a disturbing way, the Koch brothers and other deep-pocketed donors apparently underwrote the *Shelby* case. Financial support for the case came through Donors Trust and Donors Capital Fund, operations that fund conservative causes from anti-labor efforts to climate change denial. The Donors Trust provided hundreds of thousands of dollars to Wiley Rein, the D.C. law firm that argued the *Shelby* case before the Supreme Court. According to an in-depth report by Greenpeace:

Support for the *Shelby County* case also came from other conservative legal groups and think tanks, including Pacific Legal Foundation, Cato Institute, Reason Foundation, and the Landmark Foundation. Most of these groups have received financial support from Donors Trust and many also filed briefs in the *Citizens United* and *McCutcheon* cases.<sup>210</sup>

A string of decisions and refusals to adjudicate voting rights cases left bad laws in place just prior to the 2014 elections. As Justice Ginsberg said in her dissent in a case allowing a very restrictive voter identification law to be imposed in Texas, “The greatest threat to public confidence in elections in this case is the prospect of enforcing a purposefully discriminatory law, one that likely imposes an unconstitutional poll tax and risks denying the right to vote to hundreds of thousands of eligible voters.”<sup>211</sup>

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**“The greatest threat to public confidence in elections in this case is the prospect of enforcing a purposefully discriminatory law, one that likely imposes an unconstitutional poll tax and risks denying the right to vote to hundreds of thousands of eligible voters.”**

**— Justice Ruth Bader Ginsburg**

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## REGAINING OUR VOICES AND MARCHING FORWARD

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Despite the challenges of the past few years, pro-democracy change is still possible. Polls show the majority of Americans favor stronger campaign finance laws and restoring the Voting Rights Act.<sup>212</sup> Most also oppose stripping workers' collective bargaining rights.<sup>213</sup> Across the country citizens have fought to block anti-labor and anti-voting rights bills and to move forward public financing reforms in cities and municipalities. Grassroots activists have pressed for a nationwide minimum wage and new union organizing campaigns. Americans have pressed elected officials at all levels of government to demand that *Citizens United* be overturned. America's values embrace inclusion, not exclusion. Americans support measures that protect the future of families and promote the participation of all Americans in the political system, so that everyone has an equal say.

Despite the challenges, in recent years there have been many pro-democracy successes.

### States Champion Money in Politics Reforms

New movements spearheaded by diverse organizations are working to bring public financing measures forward in cities, counties, and states.

- Voters passed ballot initiatives to enact small-donor public financing laws by landslide margins in Maine and Seattle in November 2015.
- There are ongoing campaigns to adopt small-donor public financing measures in Chicago; Denver; Buffalo; Washington, D.C.; Albuquerque; and other major U.S. cities.
- The Council of Montgomery County—the most populous county in Maryland—voted in favor of adopting a public financing system for all its elections.<sup>214</sup>

- The Montana legislature passed a strong campaign finance disclosure bill with support from both Democrats and Republicans.<sup>215</sup>
- In Maryland, Republican Governor Larry Hogan supported a bill<sup>216</sup> to strengthen the state's public financing system.
- In Missouri, a Republican legislator introduced a bill to reestablish contribution limits and create stronger disclosure rules.<sup>217</sup>
- With bipartisan support, voters in Tallahassee approved a referendum that included new campaign contribution limits, strong ethics rules, and a rebate for small campaign donations.<sup>218</sup>
- Massachusetts adopted one of the strongest campaign disclosure laws in the country with support from Republicans and Democrats.<sup>219</sup>

Since the 2010 *Citizens United* decision, campaign finance reform activists have launched a nationwide effort to adopt an amendment to the U.S. Constitution to overturn the ruling. Sixteen states and 665 municipalities have rallied to the cause.<sup>220</sup> In the fall of 2014, for the first time since the decision, the majority of the U.S. Senate voted in favor of opening debate on a bill that included the amendment.<sup>221</sup>

There is enthusiasm for change at the state and local level. For example, over 670 cities, towns, counties, and other local jurisdictions have passed resolutions calling on Congress to send a constitutional amendment overturning *Citizens United* to the states for ratification. Sixteen states have also gone on record in support of a constitutional amendment to overturn the decision. States have used a variety of mechanisms: nonbinding state ballot questions, resolutions passed by legislatures, and a majority of a state's legislators signing onto a statement or letter urging Congress to act. The states in favor of a constitutional amendment are California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Massachusetts, Montana, New Jersey, New Mexico, Oregon, Rhode Island, Vermont and West Virginia.<sup>222</sup>

The American people clearly back proactive campaign finance reform. A recent *New York Times*/CBS News poll shows that 85 percent of Americans support fundamental changes to or a complete overhaul of the way political campaigns are funded, and large majorities support limiting campaign contributions and strengthening disclosure laws.<sup>223</sup>

## Labor Fights Back

Undoubtedly, the attacks over the past three decades, and especially in recent years, have taken their toll. Union membership is down dramatically, and stands now at 11.1 percent,<sup>224</sup> in stark contrast to its height in the 1950s, when more than one-third of Americans were members of unions.<sup>225</sup>

However, polls show support for unions on the rise in America, with overall approval rates of 58 percent, and, in a sign of things to come, an approval rate of 66 percent among Americans under 35.<sup>226</sup>

Despite widespread attacks, labor unions have successfully fought many anti-union, anti-worker bills. Standing up to pressure from wealthy special interests, many Republicans have spoken out against right-to-work laws. Missouri State Representative Anne Zerr urged her Republican colleagues to oppose a right-to-work bill because "labor is not the enemy." Her colleague, Chris Molendrop has said the economic arguments for right-to-work do not have much merit.<sup>227</sup> In Missouri, the legislature has passed right-to-work bills, but Democratic Governor Jay Nixon has repeatedly vetoed them. And right-to-work legislation has been blocked from moving forward in Republican-controlled legislatures in Ohio, Pennsylvania, West Virginia, and Montana.

Labor unions have defeated anti-union ballot measures and overturned other laws using the referendum process.

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**In 2014 union-backed minimum wage and paid sick leave measures passed in deep-red states, demonstrating broad support for progressive efforts to address income inequality.**

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- In 2011 Governor John Kasich signed into law a repeal of collective bargaining rights for public employees in Ohio. Unions organized a campaign to repeal that law using the citizens' veto referendum. In the November 2011 elections, 61 percent of voters voted to repeal the law.<sup>228</sup> An overwhelming majority sent a clear message to Ohio politicians to cease plans to push anti-union measures in the state, including right-to-work laws.

- In 2012 nonpartisan campaign finance advocacy groups, including California Common Cause, Public Citizen, and the California League of Women Voters helped block Proposition 32, a "paycheck deception" ballot initiative in California. The measure failed with 56 percent of voters saying no.<sup>229</sup>
- In 2014 voters in Anchorage, Alaska, repealed a city ordinance limiting collective bargaining rights.<sup>230</sup>

Positive, pro-labor measures were on the ballot too. In 2014 union-backed minimum wage and paid sick leave measures passed in deep-red states, demonstrating broad support for progressive efforts to address income inequality.

- In 2014 Republican candidates won statewide races in Alaska, Arkansas, Illinois, Nebraska, and South Dakota, and at the same time voters in those states approved ballot initiatives for higher minimum wage laws with solid majorities. In the deep-red state of Nebraska the minimum wage initiative won with over 59 percent of the vote. In Arkansas it won with more than 65 percent of the vote.<sup>231</sup>
- Progressive paid leave measures passed in Massachusetts; Trenton, New Jersey; Montclair, New Jersey; and Oakland, California.
- Both Oakland and San Francisco passed ballot measures increasing the minimum wage.<sup>232</sup>

At the federal level, labor is achieving some modest success. President Obama has issued executive orders requiring federal contractors to increase wages, have no record of labor violations, and offer employees paid sick leave.<sup>233</sup> The National Labor Relations Board ruled that a company that hires a contractor to staff its facilities is in effect an employer of the workers. "A union representing those workers would be legally entitled to bargain with the parent company, not just the contractor, under federal labor law . . . For example, if employees at a fast-food restaurant run by a franchisee were to unionize—something almost none have succeeded in doing to date—they would immediately be entitled to negotiate not just with the owner of the individual restaurant, but also with the corporate headquarters."<sup>234</sup>

Many employers have used the long time period between initial unionization efforts and holding a union election to orchestrate anti-union campaigns. In December 2014, the NLRB took a modest step toward stopping such campaigns, issuing a ruling that modernizes, simplifies, and streamlines cases brought before the board regarding the right to organize. The efficiency of the updated system will reduce the number of frivolous procedural delays through which employers seek to postpone votes. Moreover, employers are required to provide unions with the contact information—including email addresses—of all workers in the bargaining unit.

Republicans in Congress tried to block implementation of the new NLRB ruling by passing a resolution against it, but President Obama successfully vetoed the resolution through a memorandum of disapproval.

Among the most impressive moves forward for labor in the past few years have been the “Raise the Wage” and “Fight for \$15” campaigns. Led by a coalition of diverse organizations and unions, these campaigns have brought unprecedented attention to income inequality and the lack of wage growth in the United States.

In April 2015, Fight for \$15 launched the largest protest of low-wage workers in U.S. history, as an estimated 60,000 workers took part in demonstrations across the country.<sup>235</sup> The campaign focuses primarily on low-wage employers, including fast food giant McDonalds and big-box megastore Walmart. In response, many low-wage employers and retail chains, including McDonalds, Walmart, TJ Maxx, Target, Starbucks, IKEA, and Gap, have announced increases in their baseline pay.<sup>236</sup>

Looking toward the future, these nationwide, grassroots campaigns are not just about increasing wages and employer-paid benefits. They are about worker dignity and respect. The battle cry is “\$15 *and a union*.”

## Registering More Voters

Momentum for improvement in voting rights is building. Despite restrictive measures introduced in many states and Congress’s failure to act on bills that could enhance opportunities for voter registration and turnout, some reforms have been introduced and passed—including some with bipartisan support.

In March 2015 Oregon passed *automatic registration*, a first-of-its-kind law that gives the government, rather than the individual, the obligation of registration. Capturing data on individuals via local departments of motor vehicles, Oregon state officials will register eligible individuals to vote and then inform them, through mailed cards, of their registration status. Citizens may also opt out of the system, if they choose. In the state of Oregon alone, the system has the capacity to build voter registration rolls by up to 500,000 new voters.<sup>237</sup>

The idea of automatic registration is now spreading like wildfire as legislators across the country introduce similar bills, all intended to make the voting process more accessible to all Americans. Presidential candidates Bernie Sanders and Hillary Clinton are advocating for a similar measure at the federal level.<sup>238</sup>

Online voter registration is a measure supported by politicians on both sides of the aisle. To date, 25 states have either passed or implemented online registration, a reform that allows more ease and flexibility for voters and administrators.<sup>239</sup> Online voter registration and 18 other reforms were recommended by the Presidential Commission on Election Administration.<sup>240</sup> Online registration in particular was heralded as “an invaluable tool for managing the accuracy of voter rolls and reducing the costs of list maintenance.”<sup>241</sup>

Same-day registration is a single reform that on average boosts turnout by ten percentage points. Recently passed in Vermont and preserved in Hawaii, same-day registration may be gaining momentum elsewhere.<sup>242</sup> In just the past ten years, same-day registration has been enacted in eight additional states and Washington, D.C.

For the past several years, voting rights groups have been working with state officials to properly implement the section of “Motor Voter” that requires states to provide voter registration services at public assistance agencies in much the same manner they do at the DMV. After finding that many states neglected this obligation, the organizations worked with state officials and brought litigation when necessary to ensure the law was being implemented properly. As a result, these groups have helped 1,820,633 eligible voters apply to register to vote at public assistance agencies.<sup>243</sup>

## A CALL TO COLLECTIVE ACTION

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*Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, those ripples build a current which can sweep down the mightiest walls of oppression and resistance.*

Robert F. Kennedy

In the 1960s, the labor, civil, and voting rights movements dreamed, worked, and walked hand-in-hand. Labor activists helped organize the historic March on Washington in 1963, the full name of which was The March on Washington for Jobs and Freedom. Dr. Martin Luther King, Jr. addressed brothers and sisters at the 1961 AFL-CIO convention, declaring,

The duality of interests of labor and Negroes makes any crisis which lacerates you, a crisis from which we bleed.<sup>244</sup>

Dr. King understood that the battles we often wage separately are part of one larger battle, a fight for justice for all. Secretary of Labor Thomas E. Perez echoed King's thoughts when he said that "both movements are rooted in the idea that empowerment comes when many people speak with one voice, rallying as a community, taking collective action."<sup>245</sup>

We have some successes under our belts, but these are only the first steps toward taking our nation back—putting it in the hands of the people, which is where it belongs in a democracy.

When voting rights advocates, labor activists, and campaign finance reformers join together with other allies to build a *movement of millions of Americans*, there is no fight we can't win.

- We can create a voting system in which every American has access to the ballot box and is encouraged and inspired to take part in our democratic system.
- We can create a politics in which people, not dollars, choose the candidates and the public policy.
- We can create a society in which all working families have a voice in the workplace and deciding the economic and quality-of-life issues that affect us all.

Winning this fight will take massive collective effort. We are battling for a system *of, by, and for the people* in the states, in Congress, and in the courts.

We have the power to make change. Join us.

## APPENDIX 1:

### Summary of State Legislation That Weakened Campaign Finance Systems, 2010-2014

(Basis for Map 5 in the body of this report.)

State	Total Unique Bills	Year & Bills Per Topic		
		Contribution Limits	Independent Expenditures	Public Financing
Alabama	1	2013 (SB 445)		
Alaska	1		2010 (SB 284)	
Arizona	5	2013 (HB 2593)	2010 (HB 2788); 2010 (SB 1393); 2014 (SB 1344)	2012 (HB 2779); 2014 (SB 1344)
Colorado	1		2010 (SB 203)	
Connecticut	3	2013 (HB 6850)	2010 (HB 5471)	2010 (SB 551)
Florida	1	2013 (HB 569)		
Illinois	1		2013 (HB 2418)	
Iowa	2		2010 (SF 2354); 2010 (SF 2195)	
Maine	3	2011 (LD 856)		2011 (LD 726); 2012 (LD 1774)
Maryland	1	2013 (HB 1499)		
Massachusetts	2	2014 (HB 4366)	2010 (HB 4800)	
Michigan	1	2013 (SB 661)		
Minnesota	3	2013 (SF 80)	2010 (SF 80); 2010 (SF 2471); 2013 (SF 661)	
Nevada	1		2013 (AB 48)	
North Carolina	2	2013 (HB 589)	2010 (HB 748)	2013 (HB 589)
North Dakota	1		2013 (SB 2299)	
South Dakota	1		2010 (HB 1053)	
Tennessee	2	2011 (SB 1915)	2010 (HB 3182)	
Texas	1		2011 (SB 2359)	
Vermont	1	2014 (S 82)		
West Virginia	1		2010 (HB 4647)	
Wisconsin	1			2013 (Admin)
Wyoming	2	2013 (HB 187)	2011 (SF 3)	

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*Research and editorial support from the  
Communications Workers of America and  
Every Voice Center*



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*A Democracy Initiative Publication*