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AUGUST 25, 2015

## Is an Earthquake on the Way in Campaign Finance?

 July 26, 2015 by [stevenyoder](#)  [Leave a Comment](#)

The Supreme Court's five-vote conservative bloc has shown a surprising propensity for producing unexpected opinions by fracturing in creative ways. Look no further than its second ruling in four years upholding health care reform—John Roberts strayed over to join liberals both times—and its vote this year affirming gay-marriage rights, with Anthony Kennedy turning his back on ideological allies.

But on campaign finance, the five Justices have consistently been willing to smash existing law. Two themes have guided those rulings—first, that money facilitates and so is indistinguishable from speech, and second, that corporations deserve some of the same Constitutional protections as do individuals. Though prior Courts created both doctrines, no group of Justices has shown such willingness to use them to take down legislation.

That has activists and legislators arguing that the only way to change direction on campaign finance is to amend the U.S. Constitution. And they're managing to shove campaign finance into the 2016 election as an issue that candidates can't ignore.

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**Money as speech.** Last April in *McCutcheon v. FEC*, the Supreme Court majority used the money-as-speech argument to strike down any limits on how much money wealthy donors can contribute to candidates and political committees. The case for that ruling was perhaps articulated no better than by Robert Samuelson in the *Washington Post*: political speech, he wrote, “requires money to hire campaign staff, build a Web site, buy political spots and the like. Penniless politicians can’t easily communicate. Limiting my ability to contribute to candidates and parties restricts my First Amendment rights.”

It’s hard to argue the truth of that first part—running campaigns takes money.

Still, no one believes politicians shouldn’t be able to spend to get out their message. So for supporters of campaign finance laws, that also makes it something of a straw-man argument: they want politicians to have funds to run their campaigns—they just want rules governing where that money comes from.

In fact, a number of federal and state laws seem to undermine the idea that money and speech are identical. The First Amendment guarantees Americans the right to, for example, praise the murderous behavior of ISIS and try to persuade others to support their cause. But under section 2339 of the 2001 USA Patriot Act, *giving money to* ISIS is a federal crime, even if it’s directed toward speech-only activities like helping ISIS publish its magazine *Dabiq*.

Another: Any foreign national can volunteer for a political campaign. But under the 1966 Foreign Agents Registration Act, most are prohibited from donating money to candidates.

And volunteers can go door to door to urge people to pick their candidate. But they can’t offer them money to vote their way.

So all three branches of government appear to accept the idea of a bright line between the act of speaking and the act of spending.

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### Commentary: For Hunger Games – Mockingjay, teens are doing the marketing

December 4, 2014

By Joan Oleck – The Hunger Games:

Mockingjay—Part 1

is, for its teen fan base, a powerful lesson in marketing manipulation. For anyone not living in a cave, this third film in the series of four is based on the über-successful book series by



Even supporters of doing away with all campaign finance rules agree that speech isn't an unregulated right. The Supreme Court doesn't allow cameras or public demonstrations in its chamber. Citizens are prosecuted for selling government secrets to foreign nations, though doing so can doubtless be a way to express disgust with the government. Congress has been energetic in enforcing bans on child pornographers.

More important, Article I of the Constitution gives Congress the power to determine the "Times, Places and Manner of holding Elections." In 2013 the Supreme Court [reaffirmed](#) the power of Congress to regulate elections. Common sense suggests that power includes the ability to set rules for how political contributions are handled.

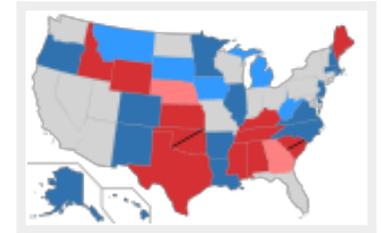
**Corporate personhood.** The idea that corporations have Constitutional protection was a cornerstone of the Supreme Court's January 2010 *Citizens United* ruling. It found that the First Amendment rights of corporations and unions were being violated by the McCain- Feingold law. This Court didn't originate the personhood doctrine—it dates back to an 1886 Court ruling that ingeniously applied the 14th Amendment—designed to guarantee equal protection to former slaves—to corporations as well.

A surprising [essay](#) in the January-February issue of the liberal *Washington Monthly* magazine best captures the arguments for granting Constitutional protections to corporations. The most important is that allowing creation of a legal entity that separates shareholders from corporations is what makes a strong national economy possible. Not providing corporations with Fifth Amendment protections, for example, would allow the government to expropriate at will. No company would ever attract shareholders under such a system.

But there's already a political check on government expropriation—the next election. It's hard to imagine a politician who expropriates corporate property surviving.

Suzanne Collins and weaves a compelling tale of teen survival in [...]

**Commentary:  
The 2014 US  
Midterms –  
The  
democratic  
election  
that wasn't**



November 11, 2014

Commentary: The 2014 US Midterms – The democratic election that wasn't American democracy is predicated on two critical pillars. The selection of political representatives by the majority via the ballot box, and the availability of timely and accurate information that is vital for voters in their assessment of candidates and policies consistent with their self-interest. [...]

**Commentary:  
International  
community  
must address  
Myanmar's  
mistreatment  
of Rohingya  
minority at East Asian summit**



October 31, 2014

As Myanmar, a country with an

And in a 2011 ruling, the Court itself seemed to undermine the idea of corporate person-hood. In that case, AT&T contended that documents it had provided to the government shouldn't be released to the public because that would constitute an invasion of its *personal* privacy and constitute coerced speech, which is banned under the First Amendment.

John Roberts himself shot down that argument in his opinion: "We do not usually speak of personal characteristics, personal effects, personal correspondence, personal influence or personal tragedy as referring to *corporations and other artificial entities*," he wrote [emphasis added]. It's hard to imagine a clearer description of the difference between people and corporations.

The Court's campaign finance rulings, valid or not, carry constitutional weight, so no legislation can override them. That has legislators and activists looking at a different tool.

Last June, Senate Democrat Tom Udall introduced a resolution that would add a 28th Amendment to the Constitution. Co-sponsored by all but one Senate Democrat, the change would restore to Congress the power to regulate contributions and spending in federal elections and give state governments the same authority in state contests. A similar bill with more than a hundred cosponsors also was introduced in the House.

Those bills didn't make it out of committee last year. But there are indications that in states that let policies be put directly to voters, the proposal will do better. In 2012, a 28th Amendment ballot initiative was introduced in Montana. It won 75 percent of the vote—that in a year when Barack Obama lost the state to Mitt Romney by 10 points.

Meanwhile, advocates say big-money influence continues to spiral. Top fundraisers already [say](#) that the cost of the 2016 Presidential campaign may come in at \$5 billion—double that of the 2012 campaign.

Public frustration seems to be building. In April, the *Washington Post* reported that

incipient democracy and alarming human rights record, prepares to host a prestigious regional issues summit in coming weeks, the Southeast Asian nation's galling treatment of its ethnic minority populations is receiving renewed attention. It's an inopportune time for the country's president, Thein Sein, for these issues to be resurfacing in [...]

**Commentary:  
Bandwagon  
outrage over  
Brunei's strict  
Islamic  
criminal  
code all  
but gone**



October 18, 2014

When Brunei became the first Southeast Asian country to nationally adopt a strict Islamic penal code known as Sharia earlier this year, the world was outraged. News and social media told us so in such headlines as "Brunei adopts sharia law amid international outcry" and "Ellen DeGeneres backs boycott of Brunei-owned hotels over 'stone the [...]"

Presidential candidates on both sides are facing questions from voters about the influence of big money in campaigns. That month, a hundred voters calling themselves the New Hampshire Rebellion marched 15 miles to Nashua New Hampshire to a Republican state party forum. They say they'll make money in politics an issue in the Presidential primaries on both sides.

And in a June New York Times/CBS poll asking whether changes are needed to how political campaigns are financed, a huge and bipartisan majority [said](#) they want change: 46 percent said the system needs to be completely rebuilt, 39 percent that fundamental changes are needed, and just 13 percent that only minor changes are needed.

That has even Republican candidates listening. Lindsey Graham [says](#) he supports an amendment like SJ 119.

At the moment, those developments amount to no more than tremors in the 2016 race. But they hint that years of mounting voter anger with big money in politics could soon create a shakeup that turns the political world on its head.

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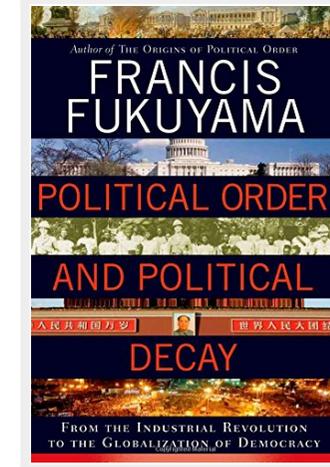
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TERMS OF SERVICE Effective August 11, 2014

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