

United States, Inc.

Citizens United *and* the Shareholder Citizen

Lynn Mie Itagaki

This article examines how deregulation is imagined and packaged for a new generation. Although not often included in discussions of deregulation, analysis of campaign finance reform—the restrictions on money in politics—provides a useful lens on elite regulation: on the interpretation and dissemination of specific notions of rights and the values associated with democratic principles such as equality and freedom of speech that are held by political and economic elites. In a controversial decision that has continued to make national headlines in subsequent election cycles, the US Supreme Court handed down a 5–4 ruling in the case of *Citizens United v. Federal Election Commission* in January 2010, striking down restrictions on contributions from the general treasury funds of corporations to political action committees (PACs), now popularly known as Super PACs, and other significant campaign finance reforms.¹ While the ruling still restricts direct contributions from corporations to individual campaigns, a flood of corporate money has flowed into campaign coffers since 2010. Invoking First Amendment rights, the *Citizens United* decision illustrates how the most fundamental tenets of the Constitution are currently reimagined. These reconceptions change the nature of our public life, our political expression, the relationship of the individual citizen to the state, and the very makeup of the imagined community of the US nation.

I examine the language of the majority opinion, concurrences, and dissents in the *Citizens United* decision in order to dissect the competing models of democratic participation, equality, and fairness. Through the co-optation of the language of Civil Rights and even radical feminism in terms of equality and recognition, the conservative justices in the majority dwell on the abstract rights of the person, even going so far as to suggest there is no difference between corporate and human speech or between corporate and human speakers. Under

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Kal Fou, Volume 1, Issue 2 (Fall 2014). © 2014 by the Regents of the University of California. ISSN 2151-4712 (print). ISSN 2372-0751 (online). <http://dx.doi.org/10.15367/kf.v1i2.35>. All rights reserved.

the continuing ravages of global neoliberalism—what in the US critics identify as the “Great Risk Shift,” the “consumerization of the republic,” and the financialization of the economy since the 1970s²—I posit the shareholder citizen, a new conception of citizenship that more accurately identifies the state’s obligations to and expectations of its subjects. The shareholder citizen incorporates significant, yet unacknowledged changes in the way we currently think about our democratic society. The shareholder citizen realigns priorities *vis-à-vis* the ascendance of the interests of the corporate elites and investor classes in politics, naturalizes corporate democracy as the model for political participation, and ultimately condones the vast restrictions on the agency of individual citizen shareholders, leaving them largely powerless in the political process. The conflation of the people with the market finds its utmost expression in the *Citizens United* ruling. This article examines how the popular conception of the shareholder reconstitutes citizenship, pushing aside political equality as a goal and privileging shareholder citizens.

“Corporations Are People, My Friend”

During South Carolina’s 2012 Republican presidential primary race, a political action committee (PAC) began running an attack ad accusing one candidate of being, of all things, a *serial killer*. These accusations were not intended in the indirect sense of advocating policies supporting wars, sanctioning genocides abroad, or ordering targeted assassinations that galvanize antiwar and human rights protests, but rather identified the candidate as the actual murderer responsible for a long string of deaths. To heighten the heinous nature and criminal monstrosity of this man, footage of the candidate appeared in slow motion, his words a distorted, barely comprehensible growl. An animated sequence showed a cartoon figure of the candidate ruthlessly running victim after victim through a woodchipper.

The target of the negative ad was none other than Willard “Mitt” Romney, one-term Massachusetts governor, high-ranking member of his church, and former corporate executive worth hundreds of millions of dollars. In his capacity as head of the private equity firm Bain Capital, Romney supervised the termination of various corporations during his tenure—the series of deaths for which he is held responsible. The ad argues that if corporations are legal persons, and Bain Capital shut down various corporations under Romney’s tenure as CEO, then logically it would follow that Romney is a serial killer for terminating these legal persons. The ad’s claim is based on the candidate’s response to a testy audience member’s question about the recent government bailout of the banking industry at a town hall on the campaign trail in Iowa, in which Romney maintained, “Corporations are people, my friend.” The ad repeats this line several times, binding Romney to pro-corporate policies and likely inflaming

the anti-corporate factions of the Republican Party, such as the Tea Party, thus promoting their support for other candidates.

All this electioneering might have been unremarkable, except for the fact that the attack ad was paid for by the Super PAC “Americans for a Better Tomorrow, Tomorrow,” the brainchild of award-winning comedian Stephen Colbert. Founded in early 2011, the Super PAC anchored a running series of gags such as continuing coverage of Colbert’s one-state run for President and the show’s offering of one thousand Super PAC Fun Packs that promised “everything young people need to form their own Super PACs: Federal Election Commission paperwork, filing instructions, an allen wrench, and a small canned ham that resembles Karl Rove.”³ Both heavily criticized for making a mockery of the seriousness of politics and praised for mocking its absurdities, Colbert’s controversial coverage of his own Super PAC, the sale and use of his Fun Packs, and repeated jabs at the recent Supreme Court decision on campaign finance regulation garnered *The Colbert Report* a second Peabody Award for its “satirical protest against megabucks politics.”⁴

The foundational legal premise and animating principle of Colbert’s attack ad is that a former CEO and venture capitalist such as Romney would be intimately familiar with how corporations are indeed legal persons. This assertion of corporate personhood, picked up widely by the national media, would antagonize both the populist left and right critical of Romney’s politics and professional background, those who blamed corporate America for outsourcing jobs and their lack of job creation as well as those especially frustrated with the outsized power and influence that corporations wield in governance and politics. Aside from the hoary legal fiction of corporate personhood investing corporations with certain rights and protections that is the foundation of corporate law and has fostered the astronomical growth, influence, and power of corporations, such an assertion would be painfully off-key to the populist strains within either party frustrated by both big government and big business. While corporations are indeed metaphysical persons, they are unlike flesh-and-blood humans since these corporate entities are unable to feel pain and terror in the way human victims of serial killers might. The brilliance of Colbert’s attack ad is that the absurdity is not as clear as it might seem: while corporations are not voters, citizens, or even human beings, these legal entities enjoy increasingly more of the Constitutional rights and protections that were once reserved for entities legally defined as “natural” persons—the neighbors next door, the voters in the booth, the citizens at a rally.⁵ Under the Fourteenth Amendment, long the guarantor of equal protection, cases considering the extent of corporate personhood have far exceeded those of human litigants, eclipsing the long history of Civil Rights struggles for equality.⁶

The First Amendment right of free speech, so crucial to democratic elections, appeared to be expanded for corporate persons, perhaps to the detriment of human persons. Decided in January 2010 in time for the midterm elections,

Citizens United v. Federal Elections Commission is a case about campaign finance law, determining whether a not-for-profit corporation could use donations funded from corporations' general treasuries in order to show a documentary critical of a candidate on an on-demand cable network that would be free for subscribers. Citizens United was a PAC that accepted donations from corporations' general treasury funds; its members wished to show *Hillary: The Movie* (2008), a sixty-minute film critical of Hillary Rodham Clinton, then a Democratic presidential candidate, on a cable provider's Video-on-Demand channel within the sixty-day blackout before a primary election was held. Rather than deciding on only the as-applied challenge or arguing that the statute had been applied unconstitutionally, the Roberts Court had the case re-argued as a facial challenge to the constitutionality of the First Amendment rights of corporations.⁷ Previously, corporations had been prevented from giving contributions from general treasury funds for ads telling viewers to vote for or against candidates. Reagan appointee Justice Anthony Kennedy, usually considered the lone swing vote, wrote the majority opinion for this landmark decision. While overturning campaign finance regulations such as the 2002 Bipartisan Campaign Reform Act (BCRA), more popularly known as the McCain-Feingold Act, the ruling charted a new precedent for the Roberts Court in its reversal of the Rehnquist Court's purported deference to Congress on election law, and its outright dismissal or significant revision of previously upheld rationales behind laws concerned with corruption, distortion, and political inequality.

Rather than addressing the "as-applied" challenge, or ruling on the narrow question of the film's distribution through this new avenue of dissemination, the Roberts Court directed the petitioners to take up larger constitutional questions in the facial challenge that had been abandoned in the federal appellate court arguments. Legal scholar Justin Levitt posits that *Citizens United* is the "final straw" in lifting the ban on corporate advocacy,⁸ "the final extant prohibition on independent corporate political speech" and as such, "has thereby taken on the perceived sins of the whole line of decisions expanding corporate rights in the political marketplace."⁹ While election law scholars such as Richard Hasen criticize the "incoherence" of the *Citizens United* ruling,¹⁰ Michael Kang speculates that perhaps the relatively brief majority opinion and the many questions left unanswered about foreign spending and corporations as legal persons "may not make great sense only because the Court is not yet finished with what is a longer process that will extend over many decisions and years."¹¹ The campaign finance reform rulings of the 2011 *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett* and 2014 *McCutcheon v. FEC* more firmly cemented the foundation of the Roberts Court's interpretation of free speech.¹² *Citizens United* is a building block for future cases, establishing the agenda of the Roberts Court.

Like the attack ad, the Supreme Court decision emphatically recognizes corporations as rights-bearing and claims-making persons in law and business.

Taking a stance similar to Romney's, the justices rely on definitions of corporations as collectives of individuals, or voluntary associations. Both are part of the foundation grounding the relationship between corporations and the Constitution, the integration of corporate speech into electoral politics, and the valuation of money and speech. Campaign finance reform entails the regulation of individuals, parties, associations, unions, and corporations in order to prevent them from unfairly influencing the outcome of elections. By expanding the diminished freedom of speech of "disfavored" corporate speakers to mirror that of what the *Citizens United* majority referred to as "preferred" human speakers, the justices were able to further deregulate electoral politics, not only at the presidential level but also in elections for Congress and other elected bodies down to the smallest units of local government.

Part of the animus greeting the *Citizens United* decision stemmed from the historical moment in which it was announced. The continuing aftershocks of the 2007–2008 global financial crisis and the democratic, regime-toppling revolutions of the Arab Spring contributed to feelings of insecurity among individuals and their diminishing horizons of economic optimism and confidence in state stability. In the United States, this financial instability was set off by the 2007 housing market collapse and the ensuing wave of foreclosures that spurred the hugely controversial government bailouts of the auto and banking industries.¹³ Repeated, even escalating, reminders and revelations of the power and wealth concentrated in the hands of corporate elites triggered the so-called "American Spring" of Occupy Wall Street and other enduring protests in civic spaces across the nation and abroad. Populist rhetoric against corporate elites, finance capitalism, and big government further galvanized voting publics and captured national headlines, dominating the nightly news for months.

The rhetoric of the *Citizens United* majority opinion, as described by one Court observer, attempted "to poke a finger in the eye" of its opposition.¹⁴ This was especially true considering that the average citizen would be concerned about extreme wealth dominating politics, and about the fast-disappearing likelihood of obtaining a worry-free retirement. Extreme uncertainty about the middle class's financial prospects and future well-being heightened popular concern about the power of extreme wealth. With the shrinking of home values, retirement funds, and employment possibilities, the solicitous attention paid to corporate entities seemed outsized in relation to the governmental help promised to and received by individual citizens who suffered from overzealous foreclosures, bad mortgages, toxic financial products, and high unemployment.

The Shareholder Citizen

The concept of the shareholder citizen was produced at the intersection of these legal, political, economic and social forces, and then codified by the 2010 rul-

ing. It provides a useful framework for analyzing the *Citizens United* ruling, especially in its broader cultural contexts. These include what legal scholars have importantly delineated as the Court's precedents in case law and the justices' ideological-political reasoning, and also deregulatory trends that have facilitated the power, interests, and aims of global capital and neoliberal states. These discourses have changed our political imagination in terms of citizens' rights and responsibilities in relation to the state as well as the state's orientation toward its citizens. The conceptual manifestation of these forces is effected through the shareholder citizen. In the minds of the majority of Supreme Court justices ruling in *Citizens United*, it is the shareholder, not the citizen, who primarily populates civil society and its markets. Therefore, it is this imagined community of shareholders upon which our political system increasingly turns. The shareholder citizen supersedes the concept of the citizen-as-consumer, and the category of the shareholder even overwhelms the category of citizen itself.

In order to frame the discussion of the shareholder citizen, it is important to examine the world deregulation has created, especially the forces that demand policies that expose citizens to more risks through the lure of outsized rewards *and* the specter of losses. The shareholder citizen emerges from three interdependent currents that have become increasingly prominent since the 1970s: financialization, deregulation, and "rights-based public life."¹⁵ In terms of financialization, although anthropologist Arjun Appadurai provocatively outlines five terrains upon which we might analyze contemporary society, it becomes increasingly clear that the "finanscape" is both the engine that drives our understanding of contemporary life and its limiting factor,

since the disposition of global capital is now a more mysterious, rapid and difficult landscape to follow than ever before, as currency markets, national stock exchanges, and commodity speculations move megamonies through national turnstiles at blinding speed, with vast absolute implications for small differences in percentage points and time units.¹⁶

Scholars such as sociologist Greta Krippner and historian Judith Stein have explained the financialization of our economy. They examine how "financial institutions sit at the center of the corporate network" because government policies have "traded factories for finance" and "become increasingly dependent on financial activities as sources of revenue in recent years."¹⁷ Through these processes, "non-financial corporations [are] beginning to resemble financial corporations."¹⁸ Studies of finance capitalism are crucial in appraising the current impact of globalization and neoliberalism. Developing notions of global and "flexible" citizenship appear to more closely mirror the fate of transnational corporations and reflect the interests of the economic and political elites that control them, the "control stockholders" or the managerial class.

Spurred by the question of who controls the modern corporation, however, studies of financialization might be more accurately defined by analyzing who bears the risks of that process or, put another way, who ends up taking the losses. Political scientist Jacob Hacker argues that “more and more economic risk has been offloaded by government and corporations onto the increasingly fragile balance sheets of workers and their families” in what he calls “The Great Risk Shift.”¹⁹ These deregulatory policies, promoted as benefiting the consumer, are also transferring risks and possible losses from institutions to individuals, from government and corporations to the citizen and consumer. The intersection of financialization, deregulation, and corporate rights and the promotion of the dominant philosophy and practice of maximizing shareholder profits is also “the story of growing economic insecurity in the United States,” from the state’s abandonment of the “same reassuring message: someone is watching out for you, *all of us are watching out for you*, when things go bad” to its starker “*You are on your own*.”²⁰ The shareholder citizen who makes this risk visible is the one who stands to profit, but also potentially to lose his or her entire investment. In the reasoning of the majority opinion for *Citizens United*, analogous to the shareholder’s assumption of risk, it is the voter’s responsibility to determine the best or most competitive idea in the “marketplace of ideas,” the justices’ repeated metaphor for rendering the political into the economic. The justices argue that more money leads to more speech and, as a consequence, to more ideas and more competition. They do not seem to consider that more money can lead to more of one idea with less competition, as the dissenting justices forewarned.

The shareholder as investor in the US economy has many positive connotations that political and economic elites have marshaled to expand their stake in governance. This citizen is perceived as actively supporting the health and well-being of the national economy, self-sufficiently overseeing his or her own retirement accounts and stock portfolios, and eminently deserving full citizenship through those admirable qualities of personal responsibility and financial acumen. But as an economic behavior, shareholding is not without its barriers to entry. Only about half of US households own any stocks at all.²¹ These shareholders have been dubbed the “investor class” by leading pollster John Zogby. This investor class became politically significant when Zogby trumpeted this political community as more predictive of voting patterns in the 2004 presidential election than such identity categories as “income, religion, race, marital status and size of individual portfolio.”²² Zogby International’s online polls reported that 38 percent of its several thousand respondents considered themselves investors, and in the 2004 election, these self-identified investors comprised 46 percent of the vote. Following suit, investment-oriented print and online magazines such as *Business Week*, *CNN Money*, and *Forbes* regularly polled their own readers as part of this investor class, asking not only which candidate they supported for each national election cycle but also which issues were most important to them.

Touted as a statistically significant voting bloc by these media outlets, the conception of the investor class fuses together a political community that is primarily characterized by its stock ownership and position in relation to the national economy. From this perspective, ownership connotes control of private property and cultivation of personal responsibility for its maintenance. Ownership also means consumption. Through his “ownership society” platform in his re-election campaign in 2004, former President George W. Bush was both responding to and coalescing these shareholders as a voting public. Bush’s platform explicitly tied ownership to stakeholding; expanding ownership means that “more people have a vital stake in the future of this country.”²³ Three of its main tenets were explicitly related to the financialized economy: privatizing Social Security, increasing homeownership through mortgage loans, and cutting capital gains taxes.²⁴

With financialization, however, the citizens-as-consumers of this “ownership society” are superseded as shareholders by citizen owners. The increased focus on the shareholder both identifies this displacement and further overshadows the citizen consumer that had been so prominent and influential in public policies of the twentieth and beginning of the twenty-first century. In *A Consumers’ Republic* (2003), Lizabeth Cohen details how mass consumption in the latter half of the twentieth century organized and shaped US life in public policy and political practice. Cohen marks a shift in the conceptual relation between citizen and consumer:

As the market relationship became the template for the citizen’s connection to government, the watchdog, public-spirited citizen consumers of the 1930s and 1940s increasingly were replaced by the self-interested government customers of the 1990s, who were encouraged to bring a consumer mentality to their relations with government, judging public services and tax assessments much like other purchased goods, by the personal benefits they derived from them.²⁵

Cohen argues that the government, viewing “the people” primarily as consumers, increasingly encouraged these individuals to consider themselves customers or “shoppers in the marketplace” of governmental services and evaluate their own “customer satisfaction” with governance in “a new-style government modeled after the efficient retail business.”²⁶ Cohen provocatively claims that the presidential administrations from Ford to Clinton “justif[ied] the new order by claiming it served the interests of consumers” and identifies this discourse as “the Consumerization of the Republic.”²⁷

Cohen rightly tracks this shift from the “watchdog, public citizen consumer” to the “consumer/citizen/taxpayer/voter” since the 1990s, and details how such a shift was enabled by deregulatory policies that opened the floodgates of finance

capitalism.²⁸ Congress and voters became increasingly responsive to deregulation when these policies were couched as benefiting consumers; however, these deregulatory policies rarely acknowledged the risk to the citizen and taxpayer. But consumption, as tracked by the government and reflected in the stock market, is just another data point in the expectations market. Cohen uses the language of finance capitalism—a citizen’s “larger return on investment”—to make her point.²⁹ The precedence of the economy in the political sphere asserts itself in the breezy references to the economic and political marketplaces, rendered interchangeable and conflated in the majority opinion for *Citizens United*. This overlap is nowhere clearer than in President George W. Bush’s 2002 State of the Union Address, which exhorted Americans to demonstrate their patriotism and faith in a post-9/11 America by consuming, foreshadowing his later promotion of the “ownership society.” The flipside to the “ownership society” is that individuals would bear more risk, something that was felt acutely when individual retirement accounts were decimated by the faltering stock market in the wake of the 2007–2008 global mortgage crisis.

For the most part, in rhetoric and reality, political discourses have replaced consumers with investors. Critics identify the recent ascendancy of shareholder profit maximization as one facet of financialization. However beneficial investor activity may be to the stock market, the investor class is an imprecise target demographic as a de facto elite. The shareholder class, roughly synonymous with the investor class, is a more inclusive and populist notion than manager elites, but it still describes only half of US households. While a significant contingent of the population, it is still a minority of voters. Only one-third of the people in Zogby International’s poll self-identify as investors; a sizeable number of respondents do not identify as investors yet have financial investments for retirements, for example, a 401(k) retirement account, that would qualify them for this identity. But many likely do not identify as investors because they derive most of their wealth from their employment income rather than the dividends and sale of investments; their stockholding is most probably in the less liquid, tax-deferred retirement plans. According to the Tax Policy Center and the Center for Budget and Policy Priorities, in 2012, the top 1 percent of all taxpayers received 71 percent of all capital gains and the bottom 80 percent received 6 percent of all capital gains.³⁰

If more ownership means more of a stake in the nation, then less ownership means less of a stake. While this formulation seems a circumstance that the “ownership society” hoped to correct, it means that the current state of affairs categorizes the people as bigger or smaller stakeholders. While all individuals are consumers and almost all are taxpayers, a lesser number are citizens, an even smaller number are eligible or likely voters, and a relative minority are shareholders. This notion of bigger and smaller stakeholders largely divides the higher and lower wealth classes into the stockholders and the non-stockholders.

Slightly fewer than half of US households hold stocks, but more than nine in ten households of the wealthiest top 5 percent own stocks; this asset ownership distinguishes this group from the lowest 60 percent of households, only 21.8 to 44.6 percent of whom own stocks.³¹ One can disaggregate stockholders even further through the distinction of holding taxable versus nontaxable stocks, or capital gains and dividend income versus retirement accounts. As polled by Zogby International in 2004, the investor class tended to represent mostly white men who were married and claimed conservative or moderate political views. Quoting pollster Scott Rasmussen, who claims that having \$5,000 in stocks makes people 18 percent more likely to be Republican, antitax activist Grover Norquist forecast an optimistic outlook for the 2004 presidential election and beyond, given the federal government's expansion of tax-deferred investment accounts, claiming that "every demographic group, including race, gender, age, and income, becomes more Republican with stock ownership."³² These statistics are used to buttress public policies around national income tax cuts, especially for capital gains.

The shareholder is a subcategory of stakeholder, and the basic unit of shareholder capitalism. An economic system primarily focused on the shareholder value maximization theory that General Electric CEO Jack Welch popularized for decades—and then famously rejected after the 2008 global financial crisis—promotes corporations' principal aims to increase dividends and stock prices for shareholders. Policy journalist Michael Lind contrasts shareholder capitalism to stakeholder capitalism:

Shareholder capitalism is the doctrine that companies exist solely to make money for their shareholders. It is frequently contrasted with stakeholder capitalism, which holds that companies exist for the benefit of their customers, workers and communities, not just for ever-fluctuating number of mostly remote and unengaged passive investors who just happen to own stock in them, often without even being aware that they do.³³

Although the shareholder citizen is the main constituent of shareholder capitalism, the shareholder is clearly a much less inclusive and more homogenous category than the stakeholder. This restricted pool of constituents encourages managers to concentrate on short-term profits and cost-cutting policies rather than long-term investments in research and development or worker abilities. Furthermore, rather than imagining the corporation as functioning within a complex network of stakeholders or as beholden to the nation-state, this conception suggests that the corporation has moral and legal obligations to only its shareholders. Thus, the primacy of the stakeholder negates the corporation's responsibilities to other constituencies that its actions and policies may affect.

In the financialized economy, shareholders are paramount. But the egalitarian potential of this category in the abstract—anyone can be a shareholder while not everyone can be a citizen—masks its larger inequities and biases in practice. From the perspective of the government, the haves and the have-nots are not merely the citizens and noncitizens, the law-abiding and the law-breaking, taxpayers and non-taxpayers; rather, they are investors and non-investors. What is perhaps so revelatory about the Roberts Court ruling on *Citizens United* is just how naked this reinvention of “we, the people” as investors is. The ascendancy of the shareholder citizen manifests how the financial elites have left behind everyday citizens in the “real” market of customers, products, producers, labor, machinery, and bricks and mortar of business and industry. The purchaser-consumer of the “Consumers’ Republic” that Cohen has compellingly delineated fails to meet the “expectations market” of corporate executives with their emphasis on shareholder value and earnings reports. Scholars and journalists are only beginning to document the enormity of this transformation.

What is less known and unexplored is how much the expectations market has shaped contemporary notions of citizenship.³⁴ While the financialization of the economy depends on the consumerization of the republic, the financial-services industry subordinates consumers to the forces that support the stock market values of companies and the dividends of shareholders. This is nowhere more evident than in tracking the rise and fall of the Dow Jones Industrial Average: “For many Americans, the leading stock market indices act as a kind of barometer for the economy as a whole. Gains in the market generate surges in consumer spending even where more tangible indicators of economic vitality, such as job growth or wage levels, lag behind.”³⁵ The financial-services industry has generated much of the wealth of the managerial and investor classes. Thus, the shareholder citizen has swallowed up the political identities of the consumer and the citizen, together the drivers of civic energy and the focus of political imaginations in the mid-twentieth century. Industry leaders and wealthy US corporations such as General Electric, Sears, General Motors, and Ford have developed “captive finance units that were originally intended to support consumer purchases of their products by offering installment financing but which eventually became financial behemoths that overshadowed the manufacturing or retailing activities of the parent firm.”³⁶

Preferred and Disfavored Speakers in a Corporate Democracy

In the years since *Citizens United*, the power of money in politics has routinely made national headlines. Critics of the *Citizens United* decision point to the hundreds of millions of dollars more that have been spent in each new election cycle since 2010. The off-year 2010 election saw \$304.8 million in total outside spending, just 33 million less than the 2008 presidential election cycle and more

than four times as much as the previous off-year 2006 election (\$69.5 million).³⁷ However, Justin Levitt notes that *Citizens United* is positioned to have far less impact than its most staunch supporters and vocal detractors might think, given the abilities of corporations to donate through other channels such as the 527s and 501(c)(4) organizations and the ostensible effectiveness of outside spending since the 2004 presidential election.³⁸ Data compiled on outside spending by the Center for Responsive Politics in the last few elections clearly show that corporate spending on elections skyrocketed well before the 2010 election.³⁹ Perhaps the most significant change comes in the Court's narrowing of the government interest in corruption, now restrictively defined as *quid pro quo* corruption—the clear-cut political favors bestowed on generous donors—rather than encompassing “access and influence” or the appearance of corruption these donations might create. Richard Hasen notes the Court's failure to define corruption beyond the electoral process and to consider its legislative manifestations in terms of the favorable considerations that big donors might receive from winning candidates. Prior to the *Citizens United* ruling, these forms of access and influence were considered part of the anticorruption rationale for campaign finance reform.⁴⁰

The controversial ruling sparked numerous prognostications. President Barack Obama argued in his 2010 State of the Union Address that the ruling would “open the floodgates for special interests—including foreign corporations—to spend without limit in our elections.” David Bossie, president of the Citizens United not-for-profit corporation, claimed to the contrary that it “leveled the playing field.”⁴¹ Would the decision be the last straw in a long history of pro-corporation donations in politics or just the beginning of a future massive overhaul of campaign finance reform that might be the lasting hallmark of the Roberts Court? Writing for the majority, Justice Kennedy and the concurring justices have much more to say about citizenship, especially about how corporations and individual citizens stand alongside each other in relation to the state. The case of *Citizens United* begins with First Amendment rights of free speech. Justice Kennedy reasserts commonly held precepts that ground his reasoning: “Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. . . . The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”⁴² Kennedy anchors his comments by quoting another cornerstone campaign finance reform case, *Buckley v. Valeo* (1976), which restricted independent contributions to one campaign and required reporting over a set amount: “In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential.”⁴³ The majority opinion addresses the question of diminished liberty for the wealthy individual or corporation who wants to give unrestricted amounts to individual campaigns and political parties.⁴⁴ The foun-

dational premise of this interpretation of First Amendment rights is that more speech is always better because it always provides more information.

In *Citizens United*, the majority of justices focused on expanding the ostensibly diminished freedom of speech encountered by “disfavored” corporate speakers, bringing it to mirror that of “preferred” human speakers. In the alchemy of money equaling speech, persons with larger contributions to the political process should therefore receive correspondingly more speech. These persons should enjoy the liberties associated with their corresponding wealth. Constitutional law scholar Kathleen Sullivan notes that the majority and the dissenting justices have different interpretations of the First Amendment: liberty enhancing versus equality producing.⁴⁵ Judges appointed by Democratic Party presidents have traditionally advocated for both interpretations in their opinions.⁴⁶ In this decision, while the dominant interpretation of the majority’s understanding of free speech was liberty enhancing, they couched some of their reasoning in equality terms. Justice Kennedy made a few throat-clearing statements:

While some means of communication may be less effective than others at influencing the public in different contexts, any effort by the Judiciary to decide which means of communications are to be preferred for the particular type of message and speaker would raise questions as to the courts’ own lawful authority. Substantial questions would arise if courts were to begin saying what means of speech should be preferred or disfavored. And in all events, those differentiations might soon prove to be irrelevant or outdated by technologies that are in rapid flux.⁴⁷

The post-Civil Rights era is one in which those injured and victimized are no longer women and people of color but white men. The so-called victim discourse of racial discrimination, the rewriting of affirmative action as “preferential treatment” for certain identity categories of applicants, reappears in the primary argument for allowing corporations some of the same freedoms of speech as noncorporate individuals. These include the freedom to express advocacy for or against candidates, and the lifting of the ban on when political action committees funded by corporations’ general treasuries may run ads. The majority ruling casts corporations under the BCRA and previous campaign finance jurisprudence as “disfavored” speakers to the noncorporate “preferred speakers”:

Quite apart from the purpose or effect of regulating content, moreover, the Government may commit a constitutional wrong when by law it identifies certain preferred speakers. By taking the right to speak from some and giving it to others, the Government deprives the disadvan-

taged person or class of the right to use speech to strive to establish worth, standing, and respect for the speaker's voice. The Government may not by these means deprive the public of the right and privilege to determine for itself what speech and speakers are worthy of consideration. The First Amendment protects speech and speaker, and the ideas that flow from each.⁴⁸

This language of preferences and identity categories resonates with past court decisions over affirmative action. Just as maintaining admissions policies that ecologically favor white applicants means that all applicants would receive equal treatment, they claim, so too would the preservation of the advantages of corporate wealth enable all speakers to enjoy equal treatment.

Despite the language of preferential treatment that proved fatal to affirmative action equal protection jurisprudence, actual equality—in this case, political equality in terms of equal opportunity and outcomes and leveling “the playing field between the monied and everyday citizen”⁴⁹—had already been abandoned. Even its close corollary, the antidistortion rationale, was abandoned by the Solicitor General in oral arguments for *Citizens United*. Perhaps even more damning is that the most ardent supporter of the political equality rationale and longstanding member of the court, Justice John Paul Stevens, never identifies or argues political equality as a government interest, missing a crucial opportunity for laying the groundwork for a future court less interested in enhancing the freedoms of corporate speech.⁵⁰ The majority justices rejoiced that “the darling” of campaign finance reformers—the 1990 *Austin v. Michigan Chamber of Commerce* decision that was “as close as the Court has ever come to saying Congress can regulate campaign finance to promote ‘equality’”—was finally overruled and judged to be an outlier from what the majority considered to be an otherwise coherent set of campaign finance rulings.⁵¹

Because the majority decision is most concerned with the possibility of chilling political speech, it follows then that the court's premise is that more speech is good. Wealthy people and corporations should be allowed to spend as much as they like. This implicit notion furthers the majority justices' “liberty-enhancing project.” Given their earlier rejection of the political equality rationale and this rationale's close connection, if not dependence, on the antidistortion rationale, it is understandable that the government abandoned the antidistortion rationale. Even Justice Stevens makes arguments for the political equality rationale without naming them as such.⁵² In his concurrence, Chief Justice Roberts mocks the Solicitor General's abandonment of the antidistortion rationale; yet given the majority's rejection of previously more expansive definitions of corruption and the political equality rationale that had both been motivating principles of state and federal legislation and campaign finance reform judicial precedents, this omission was likely because the Solicitor General's office did not believe that

invoking the rationale would have been an effective strategy with this court. If so, arguing for the rights of the shareholder therefore seems the way in which this court might be most responsive.⁵³ While Roberts feels that shareholder protection is not a worthy government interest, he also bases his claims on the ostensible primacy of shareholders in political-*cum*-economic considerations. If a majority of justices cannot be persuaded to consider the equal protection and free speech of the average citizen, the government hopes that they might be so moved through the plight of the shareholder. This argument undertaken by the Solicitor General's office further entrenches the importance of the shareholder—as the primary terrain upon which individual political rights will be debated and, implicitly, determined.⁵⁴

Election law scholar Richard Hasen argues that this jurisprudence is incoherent despite Justice Kennedy's and Roberts's assurances to the contrary. He explains that where there are instances of lapses in originalism, political considerations are paramount. Hasen identifies an "illusory coherence" celebrated by the majority opinion that has more to do with the staunch belief that the free market will solve all problems and that it is the imperfect functioning of a restricted market that causes problems.⁵⁵ This belief is manifested in the concurring justices' dependence on such curiously inadequate and troubling expressions of democratic participation as shareholder activism, trust-based public life, and corporate democracy.

However sanguine Kennedy's opinion and Roberts's concurrence are in relation to the ability for shareholders to "correct" the tyranny of the majority "through the procedures of corporate democracy,"⁵⁶ this analogy of voting and free speech rights to the agency of the rights-bearing speaker, the shareholder, is severely restricted within the putative structure of corporate democracy. Shareholders primarily vote with their feet and, more importantly, how *many* feet they have: that is, through whether they hold or sell their shares, and through the number of their shares and the percentage of controlling interest in the corporation those shares represent. Even more troubling than the limitations of shareholder activism and the power of dissenting shareholders to control the political contributions of a corporation, is the analogy, repeated throughout the opinion and the concurrences, between a political democracy and a corporate one. The linkage is obviously ill fitting; dissenting voters cannot just opt in or out of national citizenship, nor do they receive a number of votes corresponding to the size of their wealth or political contributions.⁵⁷ Corporate democracy contradicts a common understanding of representative democracy as "one person, one vote." Some votes, just like some voices, count more than others. So what seems to be fair and just in the realm of corporate governance is assumed to be true in the democratic state.

The shareholder is now the citizen who matters, and the shareholder's limited rights legitimate limits on democratic governance. In this formulation, the

shareholder is to corporate governance as the citizen voter is to the US democratic polity. Or perhaps more aptly, the limitations of the shareholder model echo the ways in which the rights of voters are already constrained by the liberty of others. It is a reminder of the early days of the republic in which the franchise was only for property owners who were free white men. In *Citizens United*, the justices in the majority implicitly further institute a tiered system of citizenship that has been determined by class, gender, and racial hierarchies.⁵⁸ Individuals who have more money and assets deserve more consideration, an asymmetry of power relations that reflects corporate structures but does not fit the ideals of political equality that are supposed to be guaranteed in a democracy. By contributing and investing more money, the citizen, like the shareholder, has more of a stake in the state and thus deserves more of a voice. However, the logical extrapolation of this is to focus on how the increased freedoms accorded to wealth bring about fewer freedoms for the less wealthy. The *Citizens United* ruling leads to a world in which the citizen or corporation with less money deserves less speech: not only because you should get what you pay for but also because if you cannot pay for it you are presumed to have less of a stake in the “future of America.”

Voting and speech are matters of trust, information, and political participation protected by rights. These criteria for conducting and voting in elections allude to certain different standards of “democratic public life” that have shaped civic engagement since the founding of the nation. Corporate democracy largely functions under the aegis of trust, given the limited power of the majority of shareholders, and exemplifies, as sociologist Michael Schudson argues, the “trust-based public life” that characterized the founding fathers’ vision of democratic participation. As Schudson explains:

The Founders did not support broad publicity for governmental proceedings, they did not provide for general public education, and they discouraged informal public participation in governmental affairs. They viewed elections as affairs in which local citizens would vote for esteemed leaders of sound character and good family, deferring to a candidate’s social pedigree more than siding with his policy preferences. As for the free press, some patriots who were ardent defenders of free speech and press when they were challenging a monarchy felt quite differently when the authority in control was an elected legislature and not a hereditary monarch.⁵⁹

Schudson goes on to argue that this form of public life based on trust continues into the present day, manifested in elections for unions, alumni associations, churches, school boards, municipalities, counties, and corporate boards.⁶⁰ This kind of trust in the virtue of corporate boards and managers to do their best by

their shareholders and, by extension, the larger citizenry is the implicit foundation upon which the majority of the justices in *Citizens United* rely. But rather than exhort corporate speakers to reciprocally trust noncorporate speakers, the justices provide corporate speakers more access to the “rights-based public life.” Bringing “federal power or national norms of equality to bear on local practices,”⁶¹ the justices configure these corporate speakers as “disfavored” and akin to a minority in need of protection and equalization.

This definition of citizenship patterned in the image of the shareholder clearly exposes how the economic has become the dominant prerequisite for the political. The majority opinion, the concurrences, and the dissenting interpretation make some fundamentally competing claims about democratic processes and civic participation that sketch the contours of shareholder citizenship and *United States, Inc.*, for the coming decades. Upholding the shareholder citizen allows democracy to be outsourced or made metaphorically analogous to corporate law for the regulation of shareholders’ rights and privileges. Economic hierarchies undergird the logic by which political rights and privileges are maintained and secured. Because the consumer citizen has reduced the primary assessment of the proper functioning of government to customer satisfaction, the cultivation of a customer-citizen retail business model of customer satisfaction may indeed make government seem more efficient. Yet this is only because it has greatly narrowed the function and scope of the government’s purpose as services provided to “me and mine,” rather than meeting the needs of a range of worthy constituencies. The citizen, simplified as the consumer, evaluates how well the government is serving “me”—*my* family, *my* publics, *my* political communities, and *my* economic interests—rather than a broader aggregate of these collectives and people beyond the individual’s networks. This limited notion of belonging shrinks the political imagination. Through *Citizens United*, the concept of the shareholder citizen encourages political communities to believe the government should be responsive only to citizens who are shareholders rather than to all citizens.

Persons Are People Too

In terms of First Amendment jurisprudence, money is speech to the justices in the majority; to the dissenting justices, money is only money. For the justices in the majority, there are preferred and disfavored speakers whose restrictions on speech should be equalized; for the dissenting justices, such restrictions are justified by the potential distortion and threat of corruption that some speakers may pose to the balance of free speech. Crucial to my argument about shareholder citizenship is who or what is included in “we, the people,” the oft-invoked phrase that evokes the foundational centrality of the democratically imagined community. Given Kennedy’s implied meaning of the phrase, “we, the people” must now be imagined not solely as human individuals but also as corporate

entities. The opinion, concurrences, and dissents identify, explicitly and implicitly, the constituents of government, the audiences for the political speech protected and regulated by the Constitution and by federal and state laws. For the justices in the majority, the abrogation of certain rights and privileges enjoyed by “natural” persons but not by corporate persons and speakers is a violation of equal rights. As discussed above, this calculus designates human beings as the preferred speakers in previous campaign finance law with corporations figured as disfavored ones, a condition necessitating judicial remedy. The 2014 *McCutcheon* decision extends this calculus.⁶² The majority justices use the more expansive rights to speech for human speakers as a standard by which to expand the capabilities of corporate speakers.

In the post-Cold War era, human rights philosophies and humanitarian discourses have traced the intertwined genealogies of the concepts of human persons and lives: who lives under which juridical conditions. Competing conceptions of “the people” motivate divergent rationales and rulings. The notion of corporations as persons, metaphysical rather than natural, is not new with *Citizens United*. Its controversial origins of corporate personhood come from a court reporter’s headnote to the 1886 *Santa Clara County v. Southern Pacific Railroad Company* decision that created the precedent that “corporations are persons within the meaning of the Fourteenth Amendment to the Constitution of the United States.” Often used as the plural of person, “the people” have long encompassed the rights and protections accorded to legal persons. The most notorious example arises from the antebellum three-fifths compromise, which exemplified this distinction between those “free Persons” with agency and “all other Persons” without it—namely, those enslaved persons who would have no legal voice and only partially count for the apportionment of House Congressional representatives and tax burdens. US citizenship and its qualifications have long had a fraught historical relationship to property in terms of gender, heterosexual marriage, race, and literacy. The category of the person was a political definition that originally rested on property holdings in addition to gender and racial requirements.

As the property requirement was dropped, European indentured servitude ended, chattel slavery was outlawed, women won the right to vote, and draft-eligible men were enfranchised, these people were finally recognized as legal, enfranchised persons. As the requirements for voting, citizenship, and naturalization were lessened, the franchise expanded. The basic definition of “the people” as natural persons, which so many take for granted, is now judged to include artificial or metaphysical persons, namely corporations. The individual, the reasonable subject of jurisprudence, the person on the street, may believe that “the people” denotes an imagined community of natural persons, but in fact, the state protects a much larger constituency. This constituency of corporate persons can far outweigh the importance of a political community

made up of human persons. Corporate representatives are also perceived as acting on behalf of the corporation, but executives and higher-level managers can often make political contribution decisions that hurt company profits or even go against purported goals of shareholder profit maximization. But the justices' deployment of terms is inconsistent in provocative ways. To a large extent, the divide between the majority and dissenting opinions turns upon the question of who is directly referenced in "we, the people."

Less abstrusely, we, the persons, the intended viewership, the intended voters, can no longer seek remedy for distortions in our "open marketplace of ideas"; there, only one idea-product is available for purchase, or all the other ideas are hard to find given the increasingly expensive barriers to market entry. In that political marketplace, we buy and sell ideas—if not candidates themselves—by adopting and promoting them. Such a coinciding of the political and the economic naturalizes corporate governance as the most appropriate ordering for political democracy. Nowhere is this more evident than in the naturalized analogy of marketplace competition to democratic debate. The perpetual reference to economic metaphors indicates how deeply entrenched the economic model of Anglo-American corporate capitalism has become, a model in which beliefs about unregulated, unfettered competition have saturated the political system with its logic.

The shareholder citizen is a new conceptual category, but also an analytic by which to evaluate the current state of citizenship rights, protections, and immunities. This new interpretive framework encourages us to think about how another implicit restriction on full citizenship returns to the socioeconomic and class distinction of holding property as a requirement of voting (and naturalization). But instead of buildings, land, farm animals, wives, children, and slaves, today stocks and other financial investments serve this winnowing function, not as a formal legal requirement but as the necessary qualifications of the "we, the people" to which politicians and policymakers are accountable, the imagined community of constituents to which governmental actors feel they are beholden. Spurred by the increasing prominence of the so-called investor class, the corporate decision makers (boards, CEOs, majority stockholders) and their shareholders, political and economic elites have shrunk our political imaginations, displaced other means of democratic belonging, and reduced our political communities to the sum of financial contracts and transactions. Our political imagination is not much more than our economic one.

NOTES

Acknowledgments: I am deeply grateful to Devin Fergus, Tim Boyd, George Lipsitz, Rose Elfman, Jennifer Gully, Jinah Kim, and Randall Williams for their suggestions. I thank Molly Reinhoudt and Haley Swenson for their invaluable research assistance.

1. Political action committees or PACs have contribution limits, but after *Citizens United* was decided in January 2010, corporations were allowed to give unlimited funds from their

treasuries. Later that year a federal appeals court in *SpeechNow.org v. FEC*, citing the controversial Citizens United decision as its precedent, allowed individuals to give unlimited funds to PACs as well. Super PACs are independent expenditure-only PACs: while both PACs and Super PACs are subject to disclosure requirements and can advocate for or against candidates, referenda, and legislation, Super PACs cannot donate directly to a candidate's campaign treasury nor can they coordinate with the candidate's campaign.

2. In referencing these terms, I draw from works by political scientist Jacob Hacker (*The Great Risk Shift*), historian Elizabeth Cohen (*A Consumers' Republic*), and sociologist Greta Krippner (*Capitalizing on Crisis*), respectively. I discuss these concepts later in the article.

3. Colbert, "The Colbert Pac—Mitt Romney Attack Ad."

4. Peabody Awards, "The Colbert Report—Super Pac Segments."

5. As in most negative ads, Romney's potentially damning one-liner is not the tone-deaf declaration of corporate personhood rights as it appears in the attack ad, but perhaps something more akin to a compassionate corporatism. In fact, Romney continues on to insist that corporations are not only made up of people but also benefit them: "Everything corporations earn ultimately goes to the people. Where do you think it goes? Whose pockets? Whose pockets? People's pockets! Human beings my friend" (Sargent, "Mitt Romney").

6. I discuss this contrast between corporate and human personhood later in the article. The three Reconstruction Amendments that were ratified after the Civil War included the Thirteenth Amendment, which abolished slavery; the Fourteenth, granting citizenship to former enslaved persons; and the Fifteenth, which protected the voting rights of all citizens. However, as historian Rayford Logan notes in his landmark 1954 work *The Negro in American Life and Thought: The Nadir, 1877–1901*, the Fourteenth Amendment was the constitutional basis for more than half the 528 cases before the Supreme Court from 1890 to 1910; however, 288 cases concerned corporate rights as compared to 19 for Black litigants (100).

7. A facial challenge argues that a statute is unconstitutional "on its face" or in all its applications. An as-applied challenge determines whether a statute is unconstitutional in its application to certain people, groups, or circumstances. While these definitions of facial and as-applied challenges are generally accepted, legal scholars have analyzed the inconsistencies of this doctrine. Given Kennedy's speculation regarding arbitrary distinctions between the two challenges in the majority opinion, the *Citizens United* decision might support the "rhetorical" rather than methodological differences between the as-applied and facial challenges. See Alex Kreit, "Making Sense of Facial and As-Applied Challenges," 657.

8. Levitt, "Confronting the Impact of *Citizens United*," 217.

9. *Ibid.*, 223.

10. See Hasen, "*Citizens United* and the Illusion of Coherence."

11. Kang, "After *Citizens United*," 248.

12. The 2011 *Arizona Free Enterprise Club* ruling jeopardizes the future of public campaign financing by rejecting a primary means of achieving equal funding for candidates. If a candidate were able to spend more private funds than a publicly financed candidate, then the government would have to provide matching funds for the other candidate. The majority decision chose to argue that, rather than curtailing the speech of the candidate who opted for public campaign financing, this policy curtailed the speech of the privately funded candidate and thus the automatic trigger of dollar matching for the candidates was unconstitutional. Implicitly, this decision further dismisses the political equality rationale that had long been at stake for candidates for political office as well as for voters of Arizona's and other states' successful ballot initiatives for public financing (*Arizona Free Enterprise Club's Freedom Club Pac v. Bennett*, 131 S. Ct. 2806 [2011]). *McCutcheon* challenged the BCRA limits on the amounts an individual may contribute to federal candidates and party and non-party political committees in each two-year election cycle. The aggregate total an individual can contribute also has a limit; from 2011 to 2012, the limit was \$117,000 (See *McCutcheon v. Federal Election Commission*, 134 S. Ct. 1434 [2014]). As a benchmark for the limited number of people whose freedom of speech these limits are purportedly curtailing, in 2011 and 2012, the median household income in the US was \$51,324 and \$51,371, respectively (Noss, *Household Income: 2012*, 1), and more than

half the households in the United States earned less than the average amount one could spend each year of the biennial campaign contribution limit of \$117,000.

13. This governmental intervention and support prompted debates from all sides of the political spectrum: frustration with big government, deficits and national debt growing, outrage that the mistaken risks of industry executives were rectified by taxpayers whereas those of individual households invested in toxic financial products such as subprime mortgages largely were not. The Troubled Asset Relief Program (TARP) government bailout of the financial-services industry, the question of the government's role in stimulating the economy and providing a social safety net resurfaced as conservatives called for more tax cuts and drastic reductions in popular programs such as Medicare and Social Security and liberals advocated more tax revenue.

14. Levitt, "Confronting the Impact of *Citizens United*," 223.

15. I refer to one of sociologist Michael Schudson's categories of different manifestations of democratic public life, which I discuss later in the article. See Schudson, "Good Citizens and Bad History."

16. Appadurai, "Disjuncture and Difference," 8.

17. Krippner, "Financialization," 201; Stein, *Pivotal Decade*; Krippner, *Capitalizing on Crisis*, 28.

18. Krippner, "Financialization," 202.

19. Hacker, *Great Risk Shift*, ix.

20. *Ibid.*, ix, x, x; italics in original.

21. Domhoff, "Wealth, Income, and Power."

22. Zogby, "Investors for Bush."

23. Bush, "Fact Sheet."

24. *Ibid.*

25. Cohen, *A Consumers' Republic*, 397.

26. *Ibid.*, 396.

27. *Ibid.*, 15.

28. *Ibid.*, 9.

29. *Ibid.*, 403.

30. Huang and Marr, "Raising Today's Low Capital Gains Tax Rates," 2, 7.

31. Wolff, "The Asset Price Meltdown and the Wealth of the Middle Class," 67.

32. Norquist, "The Democratic Party Is Toast."

33. Lind, "The Failure of Shareholder Capitalism."

34. Elsewhere I have begun to trace the cultural politics of the financialization of the economy in terms of debt and how politicians and policymakers construct indebtedness as a practice of good citizenship. I specifically examine Elizabeth Warren's autobiographical references in her personal finance writing and during her successful US senatorial campaign speeches and debates as attempts to activate the collective movement of debtor-citizens. See Itagaki, "The Autobiographical IOU." The popular consensus around citizenship rights, privileges, and immunities is connected to the imagined community in the sense that who should be included or excluded from these protections and the often implicit cultural rationale justifies the boundaries of the imagined community in the first place.

35. Krippner, *Capitalizing on Crisis*, 174.

36. *Ibid.*, 28–29. Taking GE Capital as one exemplar of this "industrial firm-turned-bank," its financial arm contributed almost half of the total firm earnings (*ibid.*, 29).

37. Center for Responsive Politics, "Total Outside Spending."

38. 527 and 501(c) organizations can promote specific views on issues as long as they do not expressly advocate for or against particular candidates or coordinate with candidates' campaigns or political parties. Defined by sections of the Internal Revenue Code, 527s and 501(c)s must report to the Internal Revenue Service, whereas PACs and Super PACs must file with the FEC. Only 527s, not 501(c)s, must disclose their donors. 501(c)s cover a wide range of religious, charitable, educational, scientific, labor and business groups, but 501(c)(4)s—"social welfare" organizations—have sparked the most concern for "dark money" in politics: although they

cannot spend more than half of their donations on political activities, they do not have to disclose their donors.

39. Center for Responsive Politics, “Total Outside Spending.”

40. As Richard Hasen puts it, “Under a legislative strategy, a spender’s support for a candidate can help secure access—if not more—from grateful elected officials” (“*Citizens United* and the Illusion of Coherence,” 606). Critics of *Citizens United* connect the astronomical increase in outside spending enabled by corporate contributions to the increased power and influence corporate managers, board members, and control shareholders feel they have; campaign spending influences the policy proposals and decisions of candidates.

41. Pierce, “Q&A: David Bossie Defends *Citizens United*.”

42. *Citizens United v. Federal Election Commission*, 558 US 310 (2010), 339.

43. *Buckley v. Valeo*, 424 US 1 (1976), quoted in *Citizens United v. Federal Election Commission*, 339. However, the state interest in the citizenry making informed choices does not extend to campaign fund matching for publicly financed candidates running against privately financed ones. Overturning parts of a ballot initiative that passed in 1998, the 2011 *Arizona Free Enterprise Club* decision held that the government may uphold this state interest in principle, as posited in *Buckley*, but less fervidly in practice.

44. Sullivan, “Two Concepts of Freedom of Speech,” 155.

45. *Ibid.*, 146.

46. *Ibid.*, 144n9.

47. *Citizens United v. Federal Election Commission*, 558 US 310 (2010), 326.

48. *Ibid.*, 341.

49. Gerken, “The Real Problem with *Citizens United*.”

50. See Hasen, “*Citizens United* and the Illusion of Coherence.”

51. Gerken, “The Real Problem with *Citizens United*.” For the decision in question, see *Austin v. Michigan Chamber of Commerce*, 494 US 652 (1990).

52. Richard Hasen speculates that Justice Elena Kagan, as the former Solicitor General for *Citizens United*, might have had political considerations in strategizing the government’s arguments given her potential nomination to the Court that would later materialize in May 2010 (Hasen, “*Citizens United* and the Orphaned Antidistortion Rationale,” 994).

53. The pro-business rulings of Justices Breyer, Ginsberg, Sotomayor, Kagan, and Stevens should not be underestimated. Indeed, according to an analysis over 2000 federal cases concerning businesses as litigants the Supreme Court from 1946 to 2011, those often regarded as the most liberal members on the Roberts Court still rank as more likely to rule in favor of business than justices considered moderate and liberal in previous courts. See Epstein, Landes, and Posner, “How Business Fares in the Supreme Court.”

54. The administration’s position may be more of a philosophical rather than merely tactical move.

55. See Hasen, “*Citizens United* and the Illusion of Coherence.”

56. *Citizens United v. Federal Election Commission*, 371. Both Justices Kennedy and Stevens refer to the 1978 decision of the Burger Court, *First National Bank of Boston v. Bellotti*, 435 US 765, which held that corporations were no longer restricted from contributing funds in ballot initiatives.

57. Akin to the spirit of “one person, one vote,” one scheme for campaign financing has been to give the same amount of credit to each voter who can decide how to disburse one’s allotment of campaign funding to as few or as many candidates as one chooses. See Ackerman and Ayres, *Voting with Dollars*.

58. Elsewhere I have discussed the cultural dimensions of abstract citizenship in more detail. See Itagaki, *Racial Burnout*.

59. Schudson, “Good Citizens and Bad History,” 6.

60. *Ibid.*, 7.

61. *Ibid.*, 10.

62. *McCutcheon v. Federal Election Commission*, 134 S. Ct. 1434 (2014).

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