

–EDITED TRANSCRIPT–

HUDSON INSTITUTE'S
Bradley Center for Philanthropy and Civic Renewal
along with



present

Nonprofits Divided over *Citizens United*?

Tuesday, February 16, 2010 • 12:00 to 2:00 p.m.

Hudson Institute • Betsy and Walter Stern Conference Center • 1015 15th Street, NW • Suite 600

When the Supreme Court handed down its long-awaited decision in *Citizens United v. Federal Election Commission* on January 21, President Barack Obama warned that it gave a “green light to a new stampede of special interest money in our politics. It is a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voice of everyday Americans.” Other observers claimed that the decision simply opened the door for greater participation by a wider variety of parties in the exercise of their First Amendment rights.

However clear its implications for business corporations and unions, though, a more difficult question is, what bearing does *Citizens United* have on nonprofits? While 501(c)(4) organizations (of which *Citizens United* is one) clearly benefit from the enlargement of permitted electoral activities, is it likely that similar latitude will soon follow for 501(c)(3) nonprofits? Should nonprofits push back against the enlargement of corporate prerogatives, push forward for the expansion of their own prerogatives, or some combination of these activities?

On February 16, Hudson Institute’s Bradley Center, along with the Alliance for Justice (AFJ), the Center for Lobbying in the Public Interest (CLPI), and OMB Watch, brought together a panel of experts to discuss these and other questions. Panelists included **ALLISON HAYWARD** of the George Mason University School of Law, the Alliance for Justice’s **ABBY LEVINE**, **CLETA MITCHELL** of Foley & Lardner, and CLPI’s **LARRY OTTINGER**. Additional commentary was provided by **BOB EDGAR** of Common Cause. The Bradley Center’s own **WILLIAM SCHAMBRA** moderated the discussion.

PROGRAM AND PANEL

12:00 p.m. - Welcome by Hudson Institute’s **WILLIAM SCHAMBRA**

12:10 - Panel discussion

ALLISON HAYWARD, George Mason University

ABBY LEVINE, Alliance for Justice

LARRY OTTINGER, Center for Lobbying in the Public Interest

CLETA MITCHELL, Foley & Lardner

with additional commentary by

BOB EDGAR, Common Cause

1:10 - Question-and-answer session

2:00 - Adjournment

FURTHER INFORMATION

This transcript was prepared from an audio recording and edited by Krista Shaffer and Ben Palmer. To request further information on this event or the Bradley Center, please visit our web site at <http://pcr.hudson.org>, contact Hudson Institute at (202) 974-2424, or send an e-mail to Krista Shaffer at Krista@hudson.org.

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Panel Biographies

Allison Hayward is assistant professor of law at George Mason University's School of Law. She previously worked as chief of staff and counsel in the office of Federal Election Commission Commissioner Bradley A. Smith. Prior to this, Hayward practiced election law in California and in Washington DC. In 1994-1995, Hayward was a judicial clerk for the Honorable Danny J. Boggs, United States Court of Appeal for the Sixth Circuit. She is a member of the State Bar of California, the District of Columbia Bar, United States Supreme Court Bar, and the Eastern District of California Bar.

Abby Levine serves as deputy director of advocacy programs at Alliance for Justice. She provides legal guidance that encourages grantmakers to support advocacy and other nonprofit organizations to participate in policymaking decisions through an understanding of Federal tax and election law. Levine's work includes creating curriculum, teaching workshops, providing technical assistance, writing plain-language legal guides, and describing Federal legislative and regulatory developments that impact nonprofits. Prior to joining Alliance for Justice, Levine served as the public policy analyst at the National Council of Nonprofit Associations (NCNA). Before working at NCNA, Levine was an associate in the tax department at Squire, Sanders & Dempsey in Cleveland, Ohio.

Cleta Mitchell is a partner in the Washington, D.C. office of Foley & Lardner LLP and a member of the firm's Political Law Practice. With more than 30 years of experience in law, politics and public policy, Mitchell advises corporations, nonprofit and issue organizations, candidates, campaigns, and individuals on state and Federal campaign finance law, election law, and compliance issues related to lobbying, ethics and financial disclosure. Mitchell practices before the Federal Election Commission, the ethics committees of the US House and Senate and similar state and local enforcement bodies and agencies. In 2008, she authored *The Lobbying Compliance Handbook*, published by Columbia Books, Inc., and in 1999, "The Rise of America's Two National Pastimes: Baseball and the Law," published by the University of Michigan Law Review.

Larry Ottinger is president of the Center for Lobbying in the Public Interest (CLPI). Founded in 1998, originally as a project of Independent Sector, CLPI promotes, supports and protects 501(c)(3) nonprofit advocacy and lobbying in order to strengthen participation in our democratic society and advance the missions of charitable organizations. Ottinger has served as a successful public interest lawyer and social change advocate for more than twenty years. In this work, he has played a lead role in litigation, policy and education on a range of civil rights, anti-poverty, First Amendment and democracy issues. Ottinger is a member of the 2007 class of Leadership Maryland, is co-chair of the Ottinger Foundation, and has served on the board of directors of several nonprofits.

Proceedings

WILLIAM SCHAMBRA: Welcome to today's session! I'm Bill Schambra, director of the Bradley Center for Philanthropy and Civic Renewal at Hudson Institute. Krista Shaffer and I, plus our co-sponsoring organizations – the Alliance for Justice, the Center for Lobbying in the Public Interest, and OMB Watch – who says bipartisanship is dead? Anyway, we all welcome you to today's panel discussion, entitled “Nonprofits Divided over *Citizens United*?”

When the Supreme Court handed down its long-awaited decision – incidentally, “long-awaited” is the mandatory adjective for this decision; I don't think I've seen a single press release that didn't have “long-awaited” in it – in *Citizens United v. the Federal Election Commission* on January 21, President Barack Obama condemned it in no uncertain terms. He warned that it gave, as he put it, a “green light to a new stampede of special interest money in our politics. It is a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voice of everyday Americans.” Other observers have claimed that the decision simply opens the door for greater participation by a greater variety of parties in the exercise of their First Amendment rights.

However clear its implications may be for business corporations and unions, though, a more difficult question is, what bearing does *Citizens United* have on nonprofits? While 501(c)(4) organizations (of which *Citizens United* is one) clearly benefit from the enlargement of permitted electoral activities, is it likely that similar latitude will soon follow for 501(c)(3) nonprofits? Should nonprofits push back against the enlargement of corporate prerogatives, push forward for the expansion of their own prerogatives, or some combination of these activities?

These and no doubt many other questions will be addressed by our panelists today, which include Abby Levine of the Alliance for Justice; Larry Ottinger of the Center for Lobbying in the Public Interest; Allison Hayward, George Mason University School of Law; and Cleta Mitchell of the law firm Foley & Lardner. I should add that it is a particular pleasure to have in our audience today Bob Edgar, the president of Common Cause. We're going to ask him to add some thoughts on this issue after our four panelists have concluded their opening remarks.

So, Abby?

ABBY LEVINE: Good afternoon! As Bill (Schambra) said, my name is Abby Levine, and I'm deputy director of advocacy programs at Alliance for Justice. Alliance for Justice is a national association of a hundred environmental, civil rights, mental health, women's, children's and consumer advocacy groups. We believe that the best way to achieve social justice is for everyone to participate fully in our democracy. Nonprofits should make their voices heard, alongside business and other private interests. The decision in *Citizens United* makes this even more important.

In many ways, this case encompasses the breadth and depth of the work that we do at Alliance for Justice: the importance of who sits on the Supreme Court, the impact the Court has on our everyday activities and our everyday lives, the important role nonprofits play in our democratic

society, and the ways in which nonprofits can participate in our electoral process. Much of the work that we do focuses on encouraging nonprofits – and by “nonprofits” I’m talking about 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), the whole panoply of different types of tax-exempt organizations – to be actively engaged in policymaking, elections, and governing. We help guide those organizations that do so through the legal regimes, so organizations can be both effective and legally compliant. We provide plain-language publications, workshops, technical assistance, and other opportunities for organizations. In addition, we spend a lot of time monitoring Congress, the Federal Election Commission, the Internal Revenue Service, and others to advocate ourselves when appropriate.

We, along with many others in this room and all over the country, have criticized this decision. As Bill (Schambra) said, we have been waiting for the “long-awaited” decision to come down, and there’s a lot to criticize about this decision. But we would also be remiss if we ignored the clear opportunities for nonprofit corporations to more fully participate in elections that the decision allows.

I want to focus on three main themes this afternoon. First, the courts matter. Second, we really must seize the opportunities now afforded to nonprofit corporations and unions. And then, three, I’d like to address a little bit more about where we go from here.

So, first, to the courts. This decision and the conversation we’re having today were not necessary. The Roberts Court, on its own initiative, bent over backwards to rehear this case in order to overturn key campaign finance precedents and to create a major shift in campaign finance law. The decision clearly shows that the people who sit on the Court matter. As Justice Stevens wrote in his dissent, “The only relevant thing that has changed since *Austin* and *McConnell* is the composition of this Court. Today’s ruling thus strikes at the vitals of *stare decisis*.”

Too often, the current Court has decided cases in favor of big business, and at the expense of ordinary people. We expect to have a Supreme Court vacancy sometime later this year, and it is critically important that our next justice understand how the law affects ordinary people. We need justices and judges in all of our courts who will keep faith with our core Constitutional values and protect the rights of all Americans, not a select few. And so it should be.

My second point is that all nonprofit organizations really need to mobilize to operate in this new paradigm. As Bill (Schambra) mentioned, while much of the focus has been about increased spending by for-profit corporations and what that is going to mean in our elections, the decision provides some opportunities for organizations that promote the social good. One of the key messages that we at Alliance for Justice have is that regardless of how you think this case was decided, it’s important that 501(c)(4)s, labor unions, and other nonprofits take advantage of it and use the opportunities that were given to us to strengthen democracy and to increase your public communications about candidates and what’s best for the future. So it’s important that organizations understand what opportunities the decision provides, so that they can explore the newly opened paths on the ever-changing playing field. The world in which corporations can operate has been expanded. The decision has eliminated some of the limitations on speech. And

while the law may change, and there are many ongoing efforts to change it, the current paradigm is probably one we'll have for a while – at least, probably, through the 2010 elections.

So what are these new opportunities? First, the decision provides more freedom and flexibility for nonprofits, other than 501(c)(3) organizations, to communicate their candidate preferences to the general public. They can do more with candidate endorsements, candidate questionnaires, advertisements, voter registration and get-out-the-vote activities, and more. There is less concern about what organizations say on their web sites and put in press statements, and in the nature of the materials that they are communicating to the general public as opposed to communications just to their members.

Nonprofits organizations – again, except for 501(c)(3)s – can make independent expenditures, and can engage in formerly prohibited activities of electioneering communications to the general public. The need for qualified nonprofit corporations, otherwise known as MCFLs, has been reduced if not eliminated.

We don't have time to go into all of the details about what some of these opportunities are, but the one point I do want to be clear about is that the decision, while far-reaching in election law, does not change Federal tax law. The decision applies to Federal election law. While it was written and addressed to Federal law, it also has major ramifications for state and local law and what those laws will have to change as well. But, again, for organizations – and primarily tax-exempt organizations – they need to make sure that they are compliant with both campaign finance laws and Federal tax laws. It is important that organizations, whether they're 501(c)(3)s or 501(c)(4)s, 501(c)(5), or 501(c)(6)s, labor unions, trade associations, or other kinds of social welfare organizations, make sure they're complying with tax law as well.

Again, I won't go into the details about what the changes in the law are, but we do have more information on our web site, www.afj.org, or www.allianceforjustice.org, and we're continually posting new material about what it means for organizations.

Finally, I just want to talk briefly about where we go from here, and what does this really mean for organizations. Over the last few weeks, organizations and politicians have all been looking at the policy implications stemming from this Court's decision. Given the current makeup of Congress and the upcoming midterm elections, we doubt we'll see much out of Congress on this issue this year. With both parties relying on corporate funds, we doubt we'll have the stomach for much real reform this year. But many organizations have made suggestions that will seek to reverse or limit the impact of the Citizens United decision.

We've seen proposals for legislation. There has been lots of talk about Constitutional Amendments. Some of the various proposals include public financing of elections, increased disclosure, free airtime for candidates, shareholder protections, and increased disclaimer requirements. They're all quite interesting proposals, and we're going to be spending a lot more time studying them and looking at what impacts they will likely have.

But again, in the meantime, we know that this election year is important for all organizations, and we want to make sure that after this decision, organizations continue to get involved.

Especially in the wake of the voter registration scandals and some of the concerns with ACORN, we fear that nonprofits will hold their punches, and we want to be clear that this is no time to sit on the sidelines.

Without a doubt, *Citizens United* furthers the complex landscape that nonprofits need to navigate. And we encourage nonprofits to really explore the opportunities. Whether or not organizations continue to pursue some of the policy implications and look at how to change the decision and what the Court has done, it's important that organizations don't sit out the election, and that they don't ignore the opportunities given to them. Nonprofits are uniquely positioned to speak about social issues, and they speak for their constituents rather than for commercial or economic purposes. The issues at stake right now in our country and in our world are too important. And, again, *Citizens United* makes it perfectly clear that it's just so important for nonprofit organizations to get involved, so speak out, and to talk about the issues.

LARRY OTTINGER: First off, I want to thank Bill Schambra, Krista Shaffer, and Hudson Institute's Bradley Center for hosting this important panel. I think Bradley Center discussions perform an invaluable service to the nonprofit and philanthropy sector. I would also like to thank our colleagues at the Alliance for Justice and OMB Watch for co-sponsoring this forum with the Center for Lobbying in the Public Interest (CLPI), and express my gratitude as well to all of the expert panelists here, to special guest commenter Bob Edgar of Common Cause, and to you all in the audience, for coming. There is no more important and timely topic than the role of nonprofits and democracy – and that is evidenced by your participation and interest in this subject.

Indeed, the Center for Lobbying in the Public Interest, which is affectionately known as CLPI (pronounced "clippy"), was founded more than ten years ago with the sole mission of promoting, supporting and protecting nonprofit advocacy, including lobbying and nonpartisan voter engagement, in order to strengthen participation in our democratic society and advance the missions of charitable organizations.

Unlike Abby at the Alliance for Justice, who is focused a little bit more on 501(c)(4)s and other types of nonprofits, our focus has always been on 501(c) public charities. We were originally founded in 1998 as a project of Independent Sector. CLPI is itself a 501(c)(3) public charity, a nonpartisan sector organization. We partner primarily with social and human services charities that deal with issues such as child welfare, affordable housing, education, and health – basic human needs – as well as the arts and what we sometimes refer to as civil society.

The Supreme Court's 5-4 decision in *Citizens United v. FEC* is critically important, because nonprofits have a vital stake in a healthy, participatory democracy and in an effective, transparent and responsive government that serves the common good. Let me give you three reasons why we have a vital stake in a well-functioning democracy that works. First, as has been the case throughout our nation's history, nonprofits are our country's best vehicles for civic participation, and broad-based civic and social movements have been the cornerstone of social, economic, and political progress from the abolition of slavery through movements related to civil rights, fiscal and economic issues and the environment.

Two, nonprofits *must* engage in the policy and political arena in order to achieve their missions, in order to address mission-related challenges in a systemic way at scale and with impact. Private and public sectors are drivers, and the nonprofit sector serves both as a partner with them, on the one hand, and a check and balance, a way to hold them accountable, on the other. Government sets the rules and incentives for the marketplace to produce jobs, goods and services consistent with societal goals. In addition, government's resources dwarf those of philanthropy to address social needs at scale where and when there is market failure – e.g., childhood immunizations for low-income children or severe economic recession.

Third, nonprofits have relevant expertise and on-the-ground experience implementing programs and services that policy-makers and the public need to understand in order to make informed decisions.

Thus, in the wake of the *Citizens United* decision, it is time for our sector to revisit the rules and culture that have held back mainstream philanthropy and charities from the policy and political arena far too much for far too long, even on a nonpartisan issue basis. While the panelists here today may differ on the merits and overall impact of the Supreme Court's decision, I believe and hope we all will be able to agree on the importance of strengthening nonprofit advocacy, and that we even might identify some practical steps for moving forward together. Now, I don't mean to upset Bill (Schambra) by suggesting areas of agreement or practical, common action (laughter), but you should know that in law school I was sometimes referred to as the "reasonable man."

The following are four quick points on how charities and philanthropy can start to change the rules and norms within our sector to revitalize democracy and confront today's enormous challenges.

1. We should simplify and update government rules on charitable lobbying and nonpartisan voter engagement starting with the IRS's rules. Current rules continue to create confusion, discourage permissible civic engagement and undermine compliance and enforcement.

With respect to IRS charitable lobbying rules, there currently are two sets of alternative rules, and the set that outlines what nonprofit groups can do safely without worrying has not been updated in thirty years. The default charitable lobbying rules date from 1934 and are so vague that neither charities, nor the skilled lawyers for those that can afford them, nor IRS officials themselves know exactly what is permissible and what is not.

Simplifying and updating the IRS charitable lobbying rules is something we can do now, relatively quickly, and with broad support from across the ideological spectrum. Indeed, CLPI helped to coordinate an effort in 2005 in which one aspect of charitable lobbying simplification passed in both the US House and Senate with support from a range of nonprofits from Focus on the Family, Concerned Women for America, Alliance for Justice, and OMB Watch to mainstream, direct service organizations like United Way Worldwide, YMCA, the Girl Scouts, and Goodwill Industries.

Moving from lobbying to the tax code's rules on charities' political activity, we believe that the Supreme Court's decision will spur efforts to create a bright-line test for charities to use in

determining whether they are operating within legal bounds when they run nonpartisan efforts to educate Americans on the critical issues of our day and encourage them to vote. Currently, all the IRS offers is a vague “facts and circumstances” test that chills involvement by small and mid-size charities in particular, and undermines IRS efforts to prevent fraud and abuse in nonprofit politicking.

Indeed, there already is litigation – maybe in the context of 501(c)(4)s as well – that is challenging the vagueness of the “facts and circumstances” test.¹ So, change is on the horizon, and we should seize it.

Let me mention one final current restriction on nonprofit advocacy that relates to money and politics, President Obama’s executive order on ethics. While the president’s order was importantly aimed at promoting government integrity and restoring public trust in government, in one critical respect it is flawed in a way that harms charities and the public interest. By restricting public service based on someone’s status as a registered Federal lobbyist or not, rather than on whether someone has a financial conflict of interest, the order has effectively restricted nonprofit leaders with no financial conflict of interest from public service. It does not restrict service by corporate executives and consultants who are not registered lobbyists but may have significant financial conflicts, and has stigmatized the democratic act of lobbying itself and decreased transparency by those who seek now to evade the lobby registration law. In January, CLPI and twelve other major national nonprofit organizations sent a letter to the President to fix what we think is a correctable problem.

2. My second point on strengthening nonprofit advocacy and democracy: Funders, particularly those in mainstream philanthropy that deal with basic human needs and services, must step up their grants for advocacy. Charities want to strengthen their ability to engage in public policy on their issues. We did a survey in 2008 with the Center for Civil Society Studies at the Johns Hopkins University, and we found that charities clearly want to do more. They said that support for dedicated policy staff – as well as increased general operating support – would best enable them to do so. Too many foundations and individual donors to basic human services are hesitant to make grants that can be used for advocacy, and charities have been reluctant to push.

According to a new Foundation Center report on grant making from 2002 to 2006, private and community foundations gave approximately 12 percent of their grants to organizations that promote structural changes in how society works. Despite some signs of hope, that 12-percent figure was only a slight increase from the number at which a similar study – examining grantmaking from 1998 to 2002 – arrived. Philanthropy’s role is particularly important in this arena, because government and business generally will not fund nonprofit advocacy, and because such advocacy is difficult to sustain through earned revenue as well.

3. Nonprofit sector needs to forge a stronger identity and to prioritize advocacy and civic engagement, including charitable lobbying and nonpartisan voter engagement. We need to make nonprofit involvement in democracy an ordinary, not extraordinary, part of what we do every day in this sector.

¹ Here, Ottinger is referring to the work of James Bopp, Jr.

Regardless of ideology and policy views, our nation's more than one million charities are legally and ethically obligated to work for a public purpose, and are prohibited from operating for the private benefit of any individual. By contrast, regardless of ideology or specific policy positions, business corporations are created by law for the purpose of maximizing private gain or profit.

Despite this important distinction between the nonprofit and private sectors, nonprofit organizations generally do not identify themselves under one umbrella defined by a commitment to the common good. Instead, charities are primarily organized by substantive issues such as health, education, housing, or human rights, or by geographic area of service such as a community or state.

Thus, during the past year we've seen a situation where national sector-wide organizations, led by Independent Sector and the National Council of Nonprofits, still have had to educate Federal policymakers that a tax deduction to encourage employer-provided healthcare and jobs would not help tax-exempt organizations because they don't pay taxes. And yet this sector employs an estimated 9 million or more full-time, paid workers and represents more than 7.2 percent of GDP, according to Johns Hopkins Center for Civil Society Studies.

It is timely and important that the Hudson Institute is having this conversation today, but it must be only one of many. Advocacy and civic engagement are absolutely core to our organizations, missions, and democracy. The Supreme Court's decision should make it clear that we cannot keep this discussion and changes on hold any longer. This needs to be an immediate and top priority of sector leaders and participants.

4. Finally, because nonprofits have a vital stake in participatory democracy that works, charities and philanthropy and their constituents must make democracy reform itself a priority. The Supreme Court's decision in *Citizens United* adds urgency to efforts to make our democracy work better. In the aftermath of the *Citizens United* decision, political commentator David Brooks has said that the political system is broken, that the Court's decision will have a poisonous effect on the political environment, that large businesses will have more leverage to seek or protect even greater subsidies for themselves from the Federal government and to crush small businesses and stifle competition by erecting regulatory barriers, and that it's time to consider constitutional Amendments to fix the system.²

Given the new reality under *Citizens United*, it is imperative that there be some measure of balance in our political system that includes voices from all sectors of society, including louder and more consistent voices of nonprofits and their constituents, who too often have been seen but not heard.

Moreover, because the nonprofit sector has such a vital stake in a democracy that works, we must seize the window of opportunity provided by *Citizens United* to have a serious discussion of promising democracy reforms such as public financing of elections; universal and same-day voter registration; stronger disclosure and disclaimer regulations for political advertising; and other reforms that allow a range of voices to be heard and our political system to work better.

² David Brooks, "What's Next, Mr. President?" *The New York Times*, February 12, 2010. Online at <http://www.nytimes.com/2010/02/12/opinion/12brooks.html> (last accessed February 19, 2010).

In conclusion, in his famous Gettysburg Address in 1863, President Lincoln spoke as well as any person ever has about the essence and enduring commitment of American democracy. Thus, President Lincoln began his address speaking about “a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.” And he ended his tribute to those who gave their lives to create a more perfect union by saying, “We here highly resolve that these dead shall not have died in vain – that this nation, under God, shall have a new birth of freedom – and that government of the people, by the people, for the people, shall not perish from the earth.”

It is now our turn and our responsibility to carry the torch of our democracy and restore public faith in government of the people. The current social, economic, and environmental crises that envelop our country and world demand our devotion. For philanthropy and charities, we must do our part, and that means attention to civic and democratic engagement. It is past time for the nonprofit world as a whole to finally bridge the service and advocacy gap, and to fully recognize that broad participation in civic life is the foundation of our democracy and of social progress.

Thank you.

ALLISON HAYWARD: Thanks, once again, to all of you for coming out today through the snow and ice and traffic to talk about campaign finance and tax-exempt organizations. There aren't many people who would do that – but you're here, all eighty-plus of you, and I think that's proof that America is still the strong nation that our forefathers formed for us.

And, Larry (Ottinger), I have to say that I'm going to have to reconsider my stereotype of CLPI, because I found a great deal that I can agree with in what you had to say. I will part company with at least the first two panelists on one point, though, which is that overall I firmly believe that the *Citizens United* decision is a welcome and necessary thing.

The Court has been dodging the clear question of why it is that Congress could impose a one-size-fits-all expenditure ban on corporations. It has dodged that since 1947, with the brief detour that was *Austin v. Michigan Chamber of Commerce*.³ Finally we have a Court that is willing to take that question on directly, and look at something that has always puzzled me: How has it survived strict scrutiny to treat all corporations identically and say that none of them can make expenditures in Federal politics? It doesn't. It's not a rule that was conceived in moments of care. It's a rule that was largely imposed on labor unions, initially, and not so much on corporations because corporations didn't care so much about expenditures in the 1940s. So we should welcome this. We should welcome the clarity. We should welcome the firmness with which the Court has approached the strong First Amendment concerns in this area.

I don't have to tell you that there is a tremendous variety of corporations. There is a tremendous variety of nonprofit corporations. Everything from my little church out in Centreville, VA, to General Electric is a corporation. Why? Because you can't sign a lease for an entity in the modern world if you don't have the things that corporate status give you. So my little church is a Virginia nonstick corporation – among other things. That's the way modern life proceeds. It

³ *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990)

wasn't the way life proceeded in 1907. So the appreciation that a one-size-fits-all rule isn't appropriate is a good thing. You can see the extreme variety of interests and viewpoints that are embraced in the nonprofit sector – even within the particular exempt categories. Not all (c)(4)s act the same, nor do they care about the same sorts of things, or would necessarily be interested in participating in politics.

Now, frankly, nobody knows the probable aftermath of *Citizens United*. I would suspect that groups that were trying to be involved in politics before will be the people who will try and become more involved in politics now that the expenditure ban has been lifted. Those are going to be your civically active (c)(4), (c)(5), and (c)(6) groups. And the groups that didn't want to get involved before aren't going to want to now.

It's not clear to me that there is going to be this stampede of money into corporate politics. I think it may change the scripts of some commercials – because now you can say directly what you had to hint at before. But why is that a bad thing? Why should we be afraid of that clarity, too, in terms of the message and the priorities of an organization? I don't think we should be, obviously.

One salutary affect of *Citizens United* is that it eliminated a trap for the unwary by simplifying immensely what corporate treasury funds can be used for. Abby (Levine) noted that the MCFL status is now less important. I think it has pretty much eliminated the rationale for that special status for political nonprofit (c)(4)s that don't have corporate money or shareholders, and that can under MCFL precedent make independent expenditures. That MCFL recognition has just been extended more broadly – to corporations generally. So corporations – nonprofits as well as for-profits – can be more straightforward about how they feel about things.

Again, I think that has to be good for public debate. Campaigns are the way we all talk about who should govern us. To have artificial impediments on the clear discussion that we need to have is, I think, debilitating to campaigns.

Also, I hope that *Citizens United* removes a cloud that seems to have been placed generally over Federal political activity. There is nothing wrong with making a contribution to a candidate you support. There is nothing wrong with spending money – either your own or your group's – to tell people why you support that candidate. This is a good thing! The more people who do it, the less influence the bad people have over the rest of us – which is paraphrasing a quotation from Alexander Heard, who observed in 1960 that if you have impediments that are sufficiently stringent that the good people don't want to participate in politics, you are left with the self-interested people, the bad people; to the extent that you would broaden, you would broaden the pool for everybody, and we end up with a more representative, healthier debate.

Finally, I just want to talk quickly about some of the reforms that have been proposed. I haven't actually read the Schumer (D-NY)-Van Hollen (D-MD) bill, because the last time I looked the only thing that was available was a fact sheet.⁴ But I read the fact sheet, and I find it to be sort of an attempt to turn back time by putting the genie back in the bottle of *Citizens United*. They can't

⁴ An outline of this legislation was revealed on February 11, 2010, and can be found online at http://vanhollen.house.gov/UploadedFiles/Legislative_Framework_021110.pdf (last accessed February 19, 2010).

bar corporate expenditures, but they sure want to make it hard. And I say, no! Bad! It's just a bad way to respond to *Citizens United* – if a response is necessary – because that's going to fall under the same Constitutional doctrinal trap that the expenditure ban did. If all you're doing is regulating corporate activity so that corporations can't participate in politics, that's not going to fly.

There are better ways to respond to *Citizens United*, if a response is necessary. We can focus on the real source of problems. Sure, Congress can't encumber groups' First Amendment rights simply because they take the corporate form or the union form. But Congress can say a great deal about criteria for government contractors. The proposal right now has been that if you are a government contractor, we won't let you make independent expenditures. Let's reverse that; if you make independent expenditures, it is going to affect how we feel about the criteria you need to meet for government contracts.

Let's look at tax incentives. If participating in politics is not a bad thing, and I don't believe it is, I don't understand why providing appropriate tax incentives for that participation is a bad thing – because it's not!

The notion that for so long charities gave up their First Amendment rights to participate in politics in return for the tax-exempt status – because while you may have a First Amendment right to speak, you don't have a First Amendment right to a tax status – I think is flip and superficial. And yes, we all learned it in law school, but if you think about it for more than a second, you realize that it's just too quick; it doesn't sufficiently respect people's real interest in combining politics with some sort of charitable purpose.

I also think that incumbent officeholders in the Senate and the House of Representatives can take their own internal ethics seriously. At present, that concern of mine overlaps with some news reports we've seen about overlapping roles of members of Congress and tax-exempt organization. The tax-exempt concern there is something that may provoke a not-so-thoughtful response from the IRS that you'll want to be paying attention to.

Now, the question of foreign governments being involved in making expenditures is, I think, a bit of a dodge – to the extent that members of Congress feel like that is an area where potential corruption could be a problem. It seems to me completely appropriate to codify the existing regulatory restrictions on the involvements of foreign nationals, adjusted appropriately to take cognizance of the First Amendment rights of individuals who happen to be foreign nationals. I think that would be healthy.

And then, finally, to the extent that people are concerned that expenditures by “special interests” are somehow going to drown out expenditures by more conventional political bodies – like political parties, I think it would be appropriate to free political parties to do more than they can right now. Again, I look at *Citizens United* as a final, clear recognition of the important First Amendment issues involved here – of free speech and free association. I'm pleased that the Court came down with a clear and broad, admittedly, decision. I think there are other ways for Congress to approach reforms if reform is conceded to be necessary.

And I welcome your questions at the end of the panel.

Thank you!

CLETA MITCHELL: My name is Cleta Mitchell; I am an attorney, a partner in the law firm of Foley and Lartner, and I practice in the area of campaign finance and election law, and I often tell people that I am the consigliere to the vast right wing conspiracy, so I am not the least bit objective about this decision, and I am quite delighted about it.

Let me ask you a question: How many of you have actually read the decision? Shame on you for not reading it. Let me tell you, it is a very easy decision to read, makes a lot of sense. What's interesting about it is that you get a really interesting history of the First Amendment and the application of the 1st Amendment, and one of the things that's really important to understand is that you get a sense of the thinking of the court. Essentially what the decision does is it goes through and asks and then answers all of the questions that people have raised since the decision was handed down.

Mainly, this principle is that the 1st Amendment prohibits the government from picking and choosing winners and losers. That's the fundamental principle that the court was wrestling with. It is why the court decided to actually go back and look at the Austin case, because the Austin case, *Austin v. Michigan Chamber of Commerce*, which was the case that the court went back to review, and was handed down years ago; it involved a state law in Michigan that prohibited the Michigan Chamber of Commerce from making independent candidate related expenditures in the election. That law was challenged and the Supreme Court upheld that law, and said that the corporate structure allows for the amassing of vast wealth, and therefore there's some reason to prevent that from having an influence in politics. That was the decision. It's like having a hand and this is the thumb, the Austin Decision was the thumb decided on a basis that was different from any basis on which the court has decided in a campaign finance decision ever.

So the court went back and looked at it, and then what the court does in going through the decision is that one of the things the court focused on, and what I find so fascinating, is that those who have railed the most loudly about this horrible decision have been the New York Times, the Washington Post; guess what those are, people? Corporations. And what the court said is when Congress says to us that the law prohibits, and can prohibit, all corporations from speaking about candidates except media corporations. What that is tantamount to is Congress granting a speech license to media corporations. And what the court said is that right to speak does not arise from any act of Congress, it arises from the Constitutional protections, and therefore you can't pick and choose and say that media corporations have this right, and no other corporations have this right.

Then there's the issue of separating for-profit corporation versus not-for-profit. The court said, "There are big versus small, public versus private. How do you pick and choose?" And what they finally said is you can't. You can't pick and choose; the 1st Amendment protects the right of independent candidate speech regardless of who the speaker is. And I think that's a really important principle. I would urge you to read the decision, because it does give you a sense of the fact that this wasn't just dashed off, it was long awaited.

There are a couple of myths that I want to puncture, and then I guess we'll open it to questions or we'll hear from Mr. Edgar. The first myth is, unfortunately Abby, one that you stated that somehow this is the decision of big business versus ordinary people. And that there's just going to be this huge amount of money flowing from the oil companies and Wall Street, and on and on. Well, let me tell you, do not look for the Exxon-Mobil candidate endorsement ads on TV, because they're not going to be there. I have a rule of thumb, which is this: If a company is big enough to have a vice president of government relations, there is no chance they're going to do anything overtly involved in politics. That isn't the way business, it isn't the way they act, it isn't the way they think. I had a call the other day from a reporter for a magazine that publishes to counsel corporations, and he said I can't find anybody who's planning to do anything, so I don't think I have a story here. I think he doesn't have a story.

All this talk about what business is going to do; they're not going to do it. What they might do is that they might give money to advocacy groups, which goes to the point that Larry made, and I actually agree with what Larry was talking about and what Abby was talking about, advocacy groups being able to advocate, and nonprofits ought to. But that's a tax issue, and not a campaign finance issue as Allison pointed out. I have one of my tax lawyer partners from Chicago call me after the decision. I've written a memo and sent it out, and what I said is not to get too excited because the tax laws are still in place. Don't think that those have been removed. And he called me and yelled at me and said "Those have to fall, they have to go away". And I said tell the IRS that and I'll advise my clients that it's OK to go ahead and do these things, but until the IRS law changes I'm not going to advise people of that.

What can happen now is that Suzie's Florist Shop Inc. will now allow Suzie to tell her employees and her customers and print cards if she's for a candidate, and not worry that the FEC will somehow come after her. And if you think these things don't happen, you haven't been paying close enough attention. And with regard to not-for-profits, one of the things that I have cited repeatedly since this decision is what advocacy groups can do without fear of being penalized is they can publish voting records on their websites and say "This is the good vote, and this is the bad vote." How many of you knew that before *Citizens United* that it was illegal? How many of you know that until *Citizens United* that you could publish voting records, but you can't say that these are the right answers and these are the wrong answers? Now you can.

And one of the things people are railing about is that they've missed the point that the freedom the court has released on behalf and for advocacy groups to do endorsements, to be able to put it on their website rather than behind your restricted access website. Advocacy groups can now advocate and that's the beauty of this decision, and I think we'll see more active involvement there. And I think that's a good thing, not a bad thing.

The second myth is that it's going to open the spigot of money into politics, and that's going to somehow bring this tidal wave to support the Right. Let me tell you something; if you think that all the money is on the right, you have not been paying attention. I look at this after every election, although after the last election I couldn't bring myself to look at it, and the fact of the matter is SEIU, the labor unions, if you think they're just now going to be able to spend money, in fact they've already been able to spend money. Millions and millions and millions of dollars into 527 organizations all over the country to advocate against incumbent Republicans and in

support of Democrats; it's one of the huge reasons that the Republicans lost in '06 and '08 was all of the union money that went into specific 527s. I'm not arguing about it, I think they ought to have a right to do it. I may not agree with it, but they ought to have a right to do it. To suggest that they haven't been doing it, and to suggest that all of this new flow of money will open the door to money on the right, I look at one organization on the Left. The Fund for America spent \$12 million in 2008, with \$9 million from three donors: George Soros, Stephen Bing, and the SEIU, the vast network of organizations on the Left, and they spent money in all of these different states to support Obama.

So my view is open the door, let people participate, don't try to hide it. Just let there be disclosure. The thing that's interesting about the decision is that *Citizens United* actually lost its case, because they really went to the court for disclaimer requirements which the court upheld. All of the rest of this benefited because they did that.

Finally, I think people need to just stop fretting that somehow these awful things and all of this Wall Street money will be pouring in. If you just look at who Wall Street has been giving money to over the last few years, it's evenly split. When Chuck Schumer was the Chairman of the Democratic Senatorial Committee, a majority of Wall Street donors gave to the Democrats and not to the Republicans. But I will close with this one thought about some of the proposals.

I find it odd that the Administration is so worried about foreign involvement in our politics. This White House should make available to the public all of the donors, even those who gave money in small amounts under \$200, to demonstrate whether or not money came from foreign sources. Because there's good reason to believe that there were foreigners giving money to the Presidential campaign under the radar screen that amounted to millions of dollars. And I also find it odd that the Administration that would give Constitutional rights to would-be terrorists would deny those same Constitutional rights to a foreign corporation domesticated in this country that employs Americans, pays taxes to the American government, and has the First Amendment right to lobby the government.

Essentially, I'm saying that Justice Alito was right. There's a well-developed body of law that has developed over the course of years at the FEC, that Allison referred to, in which no foreign national is allowed to have any decision making role whatsoever in terms of American elections; Local, state, and Federal. That's what the Federal law says, and nothing about the *Citizens United* decisions changed that. I think this is a wonderful decision. All of the hysteria about it is not well-placed, and not based on fact. I am looking forward to, hopefully, seeing a lot of advocacy groups advocating.

Thank you.

BOB EDGAR: I'm Bob Edgar, and I'm president of Common Cause. I was a United Methodist clergyperson for twelve years and a Congressman for twelve years. I ran the Committee for National Security for three years. For ten years I was president of a graduate school. And for seven and a half years I was general secretary of the National Council of Churches. My wife says I can't hold a job. (Laughter.)

I'm here in all of those capacities – as a pastor, a politician, the president of an institution, and now as the CEO of a nonprofit organization founded by John Gardner – and Larry (Ottinger), your organization was founded by Independent Sector. John Gardner founded Independent Sector as well. By the way, John was a moderate Republican – when we had moderate Republicans – who thought everybody had power in Washington except average, ordinary people.

Let me ask you to write on your pieces of paper these words: “We are the leaders we have been waiting for.” I want to make a point that democracy is best served when average, ordinary people work to make a difference, stand up and speak out – boldly. I think our Founding Fathers and Founding Mothers never intended corporations to be considered under the freedom of speech provisions of the Constitution. I'm not sure they ever thought of corporations as persons. I think they thought of corporations as corporations.

Cleta (Mitchell), in your commentary you started really well by advising people to read what the Supreme Court said. I would urge you to read the minority view. Remember, the decision was five to four. If Sandra Day O'Connor were still on the Court, it would have been five to four the other way. So this is very close decision, and a decision that can in fact be changed if the mentality of the Court changes – and I hope it will. And Cleta, I would ask a question of you. What about the Court's statement that there is no threat to elections and an electorate's faith in our democracy by allowing corporations – and labor unions – to take corporate money and spend it.

Now, Allison (Hayward), you liked the decision. I would say that the Court's decision is the Super Bowl of bad decisions. Larry (Ottinger), I thank you for reminding us that foundations and philanthropists should be concerned about advocacy. I've been concerned for years that foundations and large donors often will fund a study about poor people but not help advocate on behalf of those poor people.

And Abby (Levine), I like your watchdog spirit. Nonprofits already have power and already speak.

I want to make just a couple quick points. First, I don't think anyone on the panel talked about the fear factor. As a former elected official, I can speak very personally about it. I'm less worried about the money that corporations can spend. If I am a Congressman from suburban Philadelphia, and I represent Boeing Vertol, which makes Chinook helicopters, and I'm sitting in my office and I've just voted against the defense bill or an amendment to the defense bill, I can see that corporation leader coming into my office and saying, “Bob, we didn't like the way you voted, and we could put in a lot of money against you, but we're not going to do that unless you don't modify the way you think and the way you vote in the future.” I think the fear factor is something that very few people have talked about. It's not just the gobs of money.

That brings me to my second point. There is a money imbalance. I don't know how many of you know, but in 2008 corporations outspent by four-to-one the amount of money that labor unions spent on political action committees. But here's the most important statistic. Corporations spent 61 percent more money, sixty-one-to-one the amount of money that labor unions spent. Now,

this decision impacts on corporations and labor unions, and yes, they both have lots of money to invest, but the imbalance is like this (gestures with hands far apart).

And I just have to say this very personally: I think corporations already have freedom of speech. It's hard to look at the mortgage crisis, the banking crisis, the investment crisis, or this year-long conversation about health care and think that corporations have not had a voice in politics. What's our democracy getting to? When I ran for the United States Senate, I ran against Arlen Specter – he calls me his favorite opponent. He raised \$6 million, and I raised \$4 million. And we had a great campaign. I came in second – I got the silver medal for running for the Senate. (Laughter.) That's okay. In the same state just three years ago (the 2006 election), the two candidates raised \$37.5 million in Pennsylvania for the Senate race.⁵ Now, take a piece of paper and figure out how much money they had to raise every day to run for the United States Senate. In my case, I had to raise \$2.5 million in one hundred days. That was \$25,000 a day, seven days a week for one hundred days in a row. I spent 80 percent of my time on the telephone begging for money from people I didn't know – and in those days you could only give \$1,000 per election. Just think of what it is now! Think of our legislators not spending their time legislating, but instead spending their time worrying about where they're going to get the money to run campaigns in the future.

Corporations already have had an imbalance. Corporations have already had plenty of money. A third point that I want to make is, not only is there a fear factor and a money imbalance, there's a transparency issue. Corporations – and labor unions – can stuff money into 527s. They can stuff money into nonprofits and other forms of advocacy. They can give money to the chamber of commerce for all kinds of things, and they don't really have to show all of the detail. In fact, that was one of the issues of the case, in terms of transparency. I think there ought to be not only full transparency, but I think we ought to recognize that we need *voter-owned* election. We need public financing of elections.

Common Cause, which I represent, is a very strong supporter of something called Fair Elections Now.⁶ We want citizens to own the elections. In Connecticut in 2008, on November 4, 74 percent of the candidates running for the state legislature used a small-donor, public-financing system. Of those, 81 percent got elected – both Democrats and Republicans. In Connecticut, Maine, and Arizona, those candidates – voluntarily – take no special interest money.

I can retire as president of Common Cause the day after every public official serves the public interest, and not the special interest.

One final point is the impact on the poor. I think we have watched elections where everybody talks about the middle class. Everybody talks about corporations, rights, and privileges. Who talks for the poor and the working poor? I'm a disciple of Dr. Martin Luther King, Jr. I met Dr. King here in Washington just five weeks before he was assassinated. I was one of the twelve House members who served on the Select Committee on Assassinations looking into Dr. King's death and President Kennedy's death. I interviewed James Earl Ray, the assassin. I liked the

⁵ Democrat Bob Casey defeated Republican Rick Santorum.

⁶ More information on Fair Elections Now can be found at <http://www.fairelectionsnow.org/>, as well as on the Common Cause web site at <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4773857>.

dreamer better. Dr. King said this: “We will have to repent in this generation not merely for the hateful words and actions of bad people, but for the appalling silence of good people.” Another one of my heroes was Hubert Humphrey, who was given an honor before his death that no other sitting senator has ever been given – he was asked by Republicans and Democrats to speak before a joint session of Congress. I sat in the front row, and when he came to the podium – he was known for his long speeches – he told us that one day his wife Muriel informed him that he didn’t have to talk eternally to be a mortal. (Laughter.) But then he said that of all the words he ever said and all the speeches he ever gave, the most important were that the moral test of government is what we do for those in the dawn of life, our children; those in the twilight of life, the elderly; and all of those in the shadows of life, the poor, the sick, and the disabled.

My commitment and my passion is to get Democrats, Republicans, and Independents elected who once elected serve the public interest and not the special interest. My passion is to see elected officials work across lines to solve the problems that we face. And it’s not going to help us if we have this imbalance not only of money, but of fear, lack of transparency, and just the imbalance that we move towards corporate democracy as opposed to citizens’ democracy.

Thank you.

(Applause.)

WILLIAM SCHAMBRA: Thank you very much! Let’s go right to questions from the audience. Terry Scanlon has his hand up. Incidentally, Terry’s organization, the Capital Research Center, is a big advocate for unleashing nonprofits, especially those that take government money.

TERRENCE SCANLON, Capital Research Center: I want to make one comment, if I could, and then I want to ask for a comment from Mr. Edgar. First, about Alliance for Justice, I’m not sure why they’re afraid of lobbying. I remember back in the 1980s when AFJ president Nan Aron was buttonholing every member of Congress in the halls of Congress –

WILLIAM SCHAMBRA and ABBY LEVINE: She’s still there!

TERRENCE SCANLON: – trying to do in Judge Robert Bork during his confirmation hearing.

Mr. Edgar, I also have to comment on your four-to-one ratio on corporate giving to labor unions. I don’t think your figures are right. But even if they are, of the money that labor gives to political candidates, more than 95 percent goes to Democrats. The corporate money today – and I think this was pointed out on today’s panel by Ms. Mitchell – is evenly split. You have corporations like Pfizer – you know, what’s worse than big pharma? I’m kidding, now. But in any case, they’re giving more money now to Democrats than to Republicans. So this big bugaboo about corporate money is misplaced. It’s about evenly divided.

Thank you.

CLETA MITCHELL: Well, I also want to say one more thing about that. Let’s be really clear about this: The *Citizens United* case had nothing to do with money to candidates. The ban on

corporate contributions to candidates still is in place. What the Court decision dealt with – strictly – was independent spending by corporations and labor unions *about* candidates. We have to keep that separate. I would also tell you that there are many more corporate PACs than there are labor PACs, and those actually do give money to candidates. But if you look at the largest PACs, whether it's the top twenty-five or top fifty, they are mainly labor and left-liberal PACs. They are not corporate. I think you have to get down to the tenth, eleventh, or twelfth biggest PAC before you get to a corporate PAC that is as big as a labor PACs ahead of it.

And Terry's right. What corporations don't do is spend independent money. The labor unions not only give money to Democrats; they spend millions on behalf of Democrats. So the numbers that you quote, Bob (Edgar), that is the myth – but it is a myth.

BOB EDGAR: Let me just respond and say that I happen to agree with you that after all reforms take place, we need lobbyists. The problem is a toxic cocktail between lobbyists and money, and the amount of money that is put into lobbying and to political action committees. And Cleta (Mitchell), I would also agree with you that we could argue my statistics in terms of corporations and labor unions, etc. I think there is an imbalance. I have a problem with the Supreme Court's decision that both labor unions and corporations now can dip into their corporate treasuries and spend them on independent expenditures and on campaigns – not contributions directly to candidates; Cleta is right on that point.

But here's the challenge. As a stockholder – because I have a pension plan that has stock – I don't have any rights in terms of what that corporation does. My hope is that people like Warren Buffett and perhaps Bill Gates stand up and say, well, the Court is letting us do this, but I'm not going to support that with the corporations that I'm part of. Because I don't think that treasuries should be used. It ought to be voluntary money, money from labor unions voluntarily and money from individuals voluntarily – small contributions is what we support, and we'd like to multiply that. The Fair Elections Now Act currently written, introduced by Dick Durbin (D-Ill.) in the Senate and by John Larson (D-Conn.) in the House, calls for \$100 contributions only, matched by \$400 of public funds if in fact that \$100 is from their state. If it comes from outside their state, they only can keep the \$100. That gives the power to the constituents, the people within the state, to fund the elections as opposed to having special interests fund it.

ABBY LEVINE: I want to be very clear – and I'm not sure where this misperception grew from. We at Alliance for Justice believe very strongly in advocacy, very strongly in lobbying. And we – led by Nan Aron – will be lobbying with new judicial nominations, too!

The point that I've been trying to make is that in some ways, regardless of whether you think this decision was good or bad, it allows more advocacy by all corporations. We as nonprofit corporations need to take advantage of that. We need to do more issue advocacy. We need to do more lobbying. It's a key component in all of what we do to empower organizations to speak out and to protect their right to do so. We encourage organizations to talk about the *Citizens United* decision whether you like the Court's decision or not. We hope to see myriad positions taken by many, many organizations. I just want to be very clear about that.

WILLIAM SCHAMBRA: So I gather on this panel, interestingly enough, there is a kind of an agreement – right? – that this decision probably should be extended through – well, you have to get into tax law to do it, I understand, but certainly Larry (Ottinger) is quite outspoken about this, the degree to which 501(c)(3)s should be permitted now to become advocates in the full sense of the term.

Abby (Levine), you seem to be a little less enthused about that, which I think is maybe why Terry (Scanlon) picked up some reluctance.

ABBY LEVINE: Well, we believe strongly that nonprofits – 501(c)(3)s – can lobby. They do lobby. They need to do more lobbying. The law allows them to do much more lobbying than they are. And we’ve been part of the effort to simplify the lobbying regime and continue to support that. But the notion of whether it goes into allowing (c)(3)s to support or oppose candidates is a much, much bigger discussion, I think; there needs to be a lot more conversation. There are a lot of policy reasons for and against it.

But absolutely – 501(c)(3)s need to be able to lobby, need to understand more of what the law currently allows them to do. As Cleta (Mitchell) was saying, there are a lot of myths. There are a lot of myths about what the nonprofit sector – primarily 501(c)(3)s – can do. Too many people are telling organizations, you can’t talk about issues; you can’t get involved in elections at all; you can’t do anything. And that’s some of what we work to do – to empower organizations and to allow them to do as much as they can.

CLETA MITCHELL: Well, one thing I would add is that it strikes me as inherently violative of the First Amendment that 501(c)(4) social welfare grassroots groups, 501(c)(5) unions, 501(c)(6) trade associations, and the whole panoply – veterans organizations and whatever – have to pay a tax for candidate-related expenditures. That’s what the law says. It’s not very well enforced. However, to me – how can it be constitutional to tax a citizens’ group for exercising its First Amendment rights? And yet, that’s the state of the law today. I think that’s a really important element that we need to focus on at some point. And I do think we ought to revisit this whole area, whether it’s pastors in the pulpit or any (c)(3), of making expenditures that are candidate related, because that’s the “death penalty,” and I think the limitation on lobbying makes absolutely no sense. These are protected First Amendment rights. So I would agree 100 percent with the things that Larry (Ottinger) was saying in that regard.

DAVE RALL (ph): I have two questions. One is maybe very simple. What is it about the tax laws that seems to trump the First Amendment for 501(c)(3)s – can you point to a decision or a doctrine? I’m a lawyer, but I’m not aware of where that comes from.

My second question is a broader one, and it’s a moral issue. I think that Bob (Edgar) touched upon it, and Larry (Ottinger) actually mentioned it. This discussion is so “inside Washington,” because what’s at stake is the corruption on a massive scale. Measured by any index, this country is way up there in corruption, and the corruption comes from money in politics. Now, you can say, well, my vote would never change because Boeing decided to threaten me, or Boeing gave money to my opponent. And whether or not that’s true – maybe every Bob Edgar has the moral fiber to stand up to it, and so let’s say there are fifty Congressmen who can stand up to that,

although I doubt it – the American people don't believe it. I don't believe. I believe this system is corrupt because of the money. So why not go to a constitutional convention? Why not amend the First Amendment? Isn't that the basic issue that is shutting down our democracy right now? It's this money. And we're talking around it. We can have these restrictions and keep Cleta (Mitchell) in business until all of our kids are educated –

CLETA MITCHELL: My child is educated. (Laughter.)

DAVE RALL: – these arcane rules, but isn't money the evil that is at the bottom of all this, and shouldn't we just have a \$100 limit on the amount that anyone can contribute?

WILLIAM SCHAMBRA: Let me tack another question onto that, as you (on the panel) think about your response. Obviously we're in a populist mood in this country right now. How do you think the *Citizens United* decision plays into that, one way or another? I mean, one could say that it's going to exacerbate populist tensions and frustration with the political system, although on the other hand you might be able to make the case that it will actually relieve some of those populist tensions. Comments?

ALLISON HAYWARD: On the question of whether *Citizens United* will play nice with populist tendencies or the other way around, I think a lot of that depends on what the legend or myth of *Citizens United* turns out to be in the popular mind. If in the popular mind it is sold as a great mistake that will hurt individuals in the ability to deal with their representatives, then people will be upset. They should be, if they believe that to be true! I happen to believe that's not true, as I said rather plainly before.

I also wanted to say that as far as I know, *Citizens United* did not find unconstitutional the existing criminal laws involving illegal gratuities, extortion, and bribery. So to the extent there is a hypothetical out there involving somebody threatening somebody on a vote, the Department of Justice would have jurisdiction to prosecute that – and if the Member was complacent or cooperative with the deal, they would have their own liability under the ethics rules as well as under the criminal law.

LARRY OTTINGER: I think the decision will encourage populism in the country. And I don't think it is focused as much, politically, on one party or the other. I think that's reflected in the observations of David Brooks – to which no one has responded. He wasn't talking about whether this is going to help the right or the left. He wrote that these are companies set up to maximize profit. That's their fiduciary duty. And they're going to look for a rate of return and see a rate of return through lobbying and election-related activity. Mr. Brooks wrote that they're going to seek subsidies from the government. They're going to seek tax breaks. And they're going to seek to squash competition through regulatory barriers. That, to me, has a strong ring of plausibility to it – from any actor. And I don't know why we should expect that corporations and unions won't use the new advantages of the decision to their benefit. In fact, you could say that they're not doing their duty if they're not trying to maximize that.

On a personal level, I agree with Mr. Rall [ph] that there's no question that the public believes that the close ties between money and politics is a systemic problem and needs to be addressed. I

had a friend, Phil Stern, who just passed away. In his book, *The Best Congress Money Can Buy* (Pantheon, 1988), he told a story: It's the bottom of the ninth inning at Yankee Stadium, and it's the seventh game of the World Series, and the other team is down by one with the bases loaded, and the Yankee pitcher calls time-out. When the umpire comes over, the pitcher pulls out his wallet and takes out \$50,000 in crisp bills. The umpire takes the money, puts it in his pocket, goes behind the plate to call the final batter with the bases loaded. The way Stern ended the story, the game ended and the fans objected, saying that they weren't going to attend a sham like this.

But we've seen this. In many of our states, we still have elections for judges that are privately financed. We saw *Caperton v. Massey*. Right? Even this Supreme Court – maybe I shouldn't say “even” – decided it was just too much for a private business interest to foot the bill, basically, for a campaign for a judge who ended up deciding their case and reversing a decision against their own financial interest. I think that any state that has a privately financed election system – the problem with a privately financed system is that money is not equally distributed in society. And we know that. We're not saying it should be. But we would like the ideal – our democratic system of financing for who gets considered, who can be nominated, who can run for office, and who can represent our country is not necessarily the best system. And I think that's where the public financing systems come in, particularly these ones that match small donors and give a floor of opportunity. CLPI has come in and was able to endorse that bill because of the way it broadened civic participation through the matching of small donors.

ABBY LEVINE: Well, I think, for the populist issue, this decision sort of riles up populist anger on two fronts. One, there is the content of the decision and the question of whether corporations are going to outspend interests – this is what we've been talking about. But there is also the matter of how this decision was made. As many Supreme Court justices have said – some of them directly, in their nomination hearings – they are umpires who call balls and strikes, as opposed to this decision, where they really went out of their way to broaden the scope of the decision instead of deciding the case on its merits, to ask for rehearing, and things like that. There's the question of what this means for the Court, and if this decision was at stake, what it means for other decisions. That has enraged and concerned a lot of people as well.

CLETA MITCHELL: Let me just say this about the populism issue, and then we'll go on to other questions: One of the things the Court talked about in the decision is that there are something like – if I remember correctly – eleven million corporations in America today. Roughly 90 percent of them have annual revenues of \$1 million or less. So, do I think that there has been some stoking of the populist ire? Let's see. When President Obama comes out and talks about the oil companies and Wall Street and the insurance companies and all, I think he's playing populist sentiments. I come from a state which grew, in 1907, out of very populist heritage, and so I grew up with an anti-corporate notion. But as I was trying to say earlier, it has been stoked by those who basically are worried about and want to silence business.

And I don't think you have to worry about silencing business. What you have to worry about with business is getting them to un-silence themselves. And I'll bet you anything that if we come back here a year from today and have an analysis of what was spent by corporations versus unions in this election year, the unions and nonprofit advocacy groups and all will have way

outspent anything that any business corporation spend. They just don't have the stomach for it. I wish they did, but they don't.

WILLIAM SCHAMBRA: Let's hear from Rob Stein, one of the founders of Democracy Alliance. He brought "a little" money into the political process, as I understand.

ROB STEIN: I have a short-answer question. I'd just like to get a sense of everybody's sense of direction, here. It sound to me like you all, whether begrudgingly or enthusiastically, support corporations being able to spend more money, regardless of what kind of corporation they are. Secondly, it sounds to me as though you all are rather enthusiastic about the opportunities of (c)(3)s to also be able to spend unlimited amounts of money, if I heard you correctly. Allison (Hayward), you raised the possibility that we maybe should lift restrictions on contributions to parties – if I heard you correctly. And finally, there was at least a suggestion that maybe we should lift restrictions on contributions to candidates. I'd like each one of you, just in a very short answer, to say whether you agree that we should lift restrictions on all political contributions?

ALLISON HAYWARD: No. I didn't go into this because this is a group of people who are largely about nonprofits, not about political parties or candidates. The notion that I've heard might be suggested as a response to *Citizens United* would be to lift the coordinated expenditure restrictions that parties have with their own candidates, not the contribution limits into either parties or candidate committees. And that would thus enable parties to mobilize if a candidate of theirs is being scrutinized in a way that they feel is unfair. Parties are supple and can move quickly. They certainly have a loyalty and allegiance to their candidates, whereas outside interest groups have a loyalty and allegiance to their own interests. And I think that would be very salutary.

ROB STEIN: So, Allison, your position is to allow independent expenditure organizations to spend as much money as they possibly can raise, and limit how much candidates and parties can raise?

ALLISON HAYWARD: Well, there is no limit on the gross amount they can raise. There remain in the law limits on that individual contribution. I think that those limits are far too low. But this is getting into more of campaign finance geeky-101 than nonprofit stuff, but if you're asking me, I think the limits to parties should be calibrated to some understanding of the potential for corruption of a party, whatever that is. And certainly the contribution limits to candidates have to be calibrated to some real risk of corruption. And that is not \$2,300. Yes, \$2,300 – the per-election limit – is more than most of us can afford. I've heard that one. I can't afford \$2,300 per election either. But I don't think that somebody who could give a candidate \$10,000 can buy that candidate, especially in a very hotly contested race. Then we could get into the question of why it is incumbents who have no challengers can raise money like there's no tomorrow, and what they can do with the money – that's all campaign finance geek 101 stuff.

CLETA MITCHELL: I think one of the real problems is that the campaign finance laws really are designed to send the money outside the party-and-candidate structure, and I don't think that's healthy. If you are a wealthy person – you're George Soros – who gives \$3.5 million here, \$4

million there – that’s chump change for him. But say he wants to “max out” to as many Democratic candidates as he can. Do you know how many he can max out to in a given two-year cycle? Eight, because of the aggregate limits. And so you have people who do want to be involved in the process, and who have more money than Allison (Hayward) and I, and they are driven to the independent groups.

And if that’s what you’re worried about, at the very least remove the aggregate limits to the candidates or the political parties. I just don’t understand why the aggregate limits are there. They are a very real barrier. And I absolutely don’t believe that the parties should have limits on their coordinated expenditures. That’s crazy! Parties exist to support their candidates! How can the candidates and the parties corrupt each other? That’s what they’re there for – to help get their candidates elected. And you know, that formula was set in the 1970s. It’s crazy. It’s insane.

So, Allison is right – this is campaign finance geek 101. But there is a lot that should be done about that. And the problem is, we can’t have a civil conversation because, frankly, Common Cause and Democracy 21 get *hysterical* every time we start trying to talk about the issues of the aggregate limits, and the realities. I just gave up on trying to talk about just some basic changes that would actually encourage – if you love the hard dollar system and you hate soft money, then why do have it so backwards? But I gave up.

LARRY OTTINGER: Just to clarify – maybe – charities currently can’t do anything in terms of partisan political activity. At least as a first step, we should know what we can and can’t do in terms of nonpartisan political activity, issue activity. And that’s unlimited. But we need to know what it is.

The lobbying side is still limited, and I appreciate the thought that we need to think outside the box. I was suggesting that as a first step, we should at least rationalize, simplify, and update the system – which is operating under the limits from 1976 that our founding board chair, Tom Troyer, helped put in place, and has two sets of rules. It’s confusing for the funders and the charities alike.

And I think there needs to be a broader discussion about democracy reform that includes – I think we all should agree with public financing that would match small donors –

(Cleta Mitchell shakes her head.)

LARRY OTTINGER: No? Cleta is not with me on this one, I see! (Laughter.) Well, okay, we’ll stick to nonprofit advocacy. (Laughter.)

But that’s what I was saying, and I certainly was *not* saying that I agree with the Supreme Court’s decision that the limits on corporations should be taken off, but that under that situation we certainly need more disclosure of who is giving – at least the top givers. We’ve got to remember that First Amendment rights aren’t just for those who speak up, but also for the listeners, the citizens who are receiving information. Particularly in an election context, voter rights are very important. And I think there are some tensions we haven’t discussed – around (c)(4)s and some of the nonprofit rights to keep some of that information private versus the needs

for voters to get that information. But I think we need participatory democracy that is more in balance, more of a level playing field where more voices can be heard, more people can run, and decisions can be made on the merits.

DOROTHY WEISS, Center for Law and Social Policy: As the development director of an advocacy organization, I want to go back to the question of the difference between tax laws and campaign laws, and the issue of a level playing field. I thought I knew the law pretty well, but I'm getting very confused at this point. (Laughter.) So, because of the tax restrictions that remain on (c)(3)s, foundations still cannot fund even issue advocacy.

CLETA MITCHELL: Correct.

DOROTHY WEISS: But corporations are going to be able to fund electioneering, in a sense. So doesn't that further give the kinds of organizations that corporations fund versus the kind of organizations that foundations fund an even greater amount of influence?

ABBY LEVINE: What are you talking about by "issue advocacy"?

DOROTHY WEISS: I am talking about specifically the kind that falls under the legal definition of issue advocacy – not necessarily an issue that is on a ballot in an election, but general policy advocacy, legislative advocacy.

ABBY LEVINE: Well, foundations can fund (c)(3)s to do that work.. Unfortunately, they tend not to, and that's a separate conversation. But 501(c)(3)s can lobby and engage in non-lobbying issue advocacy – and they need to do more of that. And as we get more corporations – nonprofit, for-profit, union – involved in elections, it's even more important for (c)(3)s to be out there talking about issues, to be lobbying, to be talking about why issues matter.

DOROTHY WEISS: But there are still the restrictions on foundations that they can't earmark their funds for lobbying, and that still is confining for (c)(3)s, and so unless we change the tax laws, I'm just wondering if – I thought I heard somebody say that a (c)(3) could now put up on its web site the right or wrong vote – is that correct?

ABBY LEVINE: No.

DOROTHY WEISS: Okay, I misheard that part of it. That would just be a (c)(4).

ABBY LEVINE: Exactly. And again, to get to the gentleman's question earlier that I don't think we addressed, the Supreme Court back in 1983, in the case *Regan v. Taxation with Representation*, said that 501(c)(3)s could be limited in how much lobbying they can do because they can have affiliated 501(c)(4)s. That law has stood. And I think we've heard and probably will expect to see somebody challenging that in the wake of *Citizens United* and trying to change some of the rules for 501(c)(3)s. But until now, it has been that because 501(c)(3)s are the only type of tax-exempt organization eligible to receive tax-deductible contributions, that has been a trade-off that organizations have lived with, and the courts have upheld that. Whether that will continue is, I think, anyone's guess.

WILLIAM SCHAMBRA: Let me ask the panel this question. Conservative groups have for many years been very upset about the advocacy of nonprofits that receive government money. Periodically in Republican congresses you have an effort to either curb the advocacy by nonprofits that take government money, or ban it all together. And immediately, Independent Sector and all of the other trade associations become livid and introduce yet another generation of Republican congressmen to the foolishness of that proposition. Are we going to have to look at that again, now, with a different set of eyes given this decision? In other words, is there a momentum here now that is going to carry us into the 501(c)(3)s IRS regulations and change attitudes towards advocacy in general by 501(c)(3)s? Abby (Levine), this question is inspired partly by your statement just now that we're not quite certain where this wave of reform is going to carry us, if there is such a wave.

CLETA MITCHELL: Well, when I hear Chuck Schumer say that, by golly, we're going to crack down and make sure that no federal contractor can engage in any kind of election-related expenditure or activity, I think, well, ACORN. You know? Let's go down the list. There are a lot of nonprofit organizations that get government contracts – many of them through unions that have subsidiary, nonprofit entities that get government contracts. Are those the government contractors we're talking about?

In this rush to “dive the vapors” because we're so worried about Wall Street and oil companies, we ignore the fact that those are people who wouldn't spend a nickel on a candidate-related expenditure if their life depended on it. And the fact is, it has these unintended consequences of really impacting the nonprofit advocacy groups. I think that's the most important thing here. One of the things I've talked about is that after 2004, the Sierra Club paid a \$28,000 fine – they settled a complaint filed against the Sierra Club with the Federal Election Commission – because they had the temerity to print voter guides that compared the environmental records of John Kerry and George W. Bush, and Mel Martinez and Betty Castor, candidates for the US Senate seat vacated by Bob Graham in Florida, and they handed them out door to door. That was deemed to be an independent expenditure by a corporation which was illegal. And they ended up settling a couple of years later and paying a \$28,000 fine.

I think that we ought to be embracing the freedom that we have to advocate, and I hope that these ill-conceived bills – like the Schumer (D–NY)-Van Hollen (D–MD) bill – don't go anywhere, because it's legislation by headline, and we always suffer when Congress races to do something because they feel driven because of headlines. And we might build a coalition of right and left, and say, it's time to take the handcuffs off of the nonprofit advocacy groups – because that's really freedom of association, people coming together because they share a common belief or a common concern. Let's remove the shackles. And they certainly shouldn't have to be taxed on their political expenditures! And let's really think about what (c)(3)s can do to take their studies and actually advocate, whether it's legislatively or in the candidate-related arena.

(Abby Levine and Larry Ottinger nod in agreement.)

Look, I think the First Amendment means what it says, and as George Will puts it, the five most beautiful words in the English language are the first five words of the First Amendment, “Congress shall make no law...” (Laughter.) And I think that’s really what we need to do.

LARRY OTTINGER: This is the shadow of a congressman named Ernie Istook (R–Okla.). The most pernicious part of what he was trying to do – which actually led to the founding of our organization – was saying that if you get federal government money, you can’t use *that* money for lobbying, and you *can’t use privately raised money either*. And we’re still living with this. I’ll give you two quick examples. The Legal Services Corporation – and maybe we can come together on this because we were close to lifting these restrictions – is still operating under 1996 restrictions that basically say, if you get money from the Legal Services Corporation, you can’t use your own money or state and local money to do any kind of advocacy; you can’t bring class-action litigation; you can’t... there’s a whole bunch of restrictions on your ability to represent your client and to speak and advocate. So we certainly welcome that.

And we saw it also with the Serve America Act. I don’t know if folks noticed, because the whole Serve America Act went through with everything else going on and didn’t get a lot of attention, but Representative Virginia Foxx (R–NC) introduced an amendment that actually went through the House before people knew what had happened, and they said, well, we’ll take care of it in the Senate. It basically said that you couldn’t participate in the Serve America Act if you were advocating. You couldn’t use your own money; you basically wouldn’t be able to do that. We defeated it, but I just want to say that these kinds of thoughts are still around, and so it is an important time to put that idea down.

MICHAEL HALPERN, Union of Concerned Scientists: Clela (Mitchell), I have a question for you. It seems that you’re saying that it’s okay that there’s more money coming into it, because corporations are spending just as much money on Republicans in the cycle as they are Democrats, and corporate donations aren’t really going to endorse candidates or bring any ads forward; they’re just going to funnel money through other groups like, say, the Alliance for Rainbows or whatever the nice-sounding thing is.

My question goes back to what Mr. Edgar said about the fact that members of Congress spend the majority of the time raising money. For the whole panel, do you think that it’s acceptable for members of Congress to spend so much time raising money? And how on Earth would this decision reduce that burden from spending all of that time?

CLETA MITCHELL: Well, number one, this decision doesn’t impact that. This has to do with independent spending by corporations and unions. It does not have to do with contributions. But I don’t see what we don’t just adopt the Virginia law or the Oregon law, which say that any money can come from any source. And do you think of Virginia or Oregon as being particularly corrupt states? I don’t. It’s just all disclosed. And I still would be able to make a living, I promise you. (Laughter.)

I have two thoughts. Number one, the reason it takes so much time is because it’s such small increments. If you’re trying to raise \$4 million or \$6 million for a Senate race in \$2,300 increments, that’s a lot of time. Now, remember that this law was passed in the 1970s! There was

no internet. There were three networks. There was no cable and no satellite. The whole framework is high-button shoes, people! The Senate still files its campaign finance reports with the Secretary of the Senate instead of at the FEC.

Put it on the internet. Get it all out there. People want to know where that money comes from *before* the elections, not two years later, after the FEC does an investigation. Let me know beforehand, and if somebody is taking \$100,000 from – here’s a good example: *The Washington Post* ran an article on the race for governor of Virginia ten days before the election about who the Democratic candidate was getting money from – the big donors – and who the Republican candidate was getting money from. Remember, in Virginia it’s unlimited amounts, and no source prohibition – so they can take it from corporations and individuals. And the *Post* put it all out there. Sheila Johnson gave Bob McDonnell \$100,000. If you don’t like that, don’t vote for him. But you know before the election. So that’s one thing that I think is really important.

And the other thing is, I will say this in defense of fundraising: I’ve been a candidate. I’ve been an elected official. I’ve helped a lot of people run for office. I once had a guy who came to me when I was in the Oklahoma legislature, and he wanted to run for the legislature against an incumbent – who needed to be defeated, I might add. And I was going to try and help him. And so I asked him how he was going to raise money. And he replied, “Oh, I can’t raise any money!” And I said, “What do you mean you can’t raise any money?” And he said, “There’s nobody in my district who is going to give me any money!” And I asked him, “Well, how are you going to run this and finance it?” And he replied, “I thought you would help me.” I said, “Let me tell you something, bud. You go back to your district, and if there is not one person in your district who will write you a check, that means there is nobody who believes in you enough to help you.”

And I don’t believe, as David Brooks says – and don’t get me started on him (laughter), that this system is totally corrupt and totally broken. I don’t believe that! Are there things we can do to fix it? Yes! But I am in business and I have to go and find people to be my clients who will pay my bills. If you’re a nonprofit, you have to go and find donors who believe in your mission and will give you money because they believe in what you’re doing. I don’t think politicians should be exempt from that. They need to have to go out and listen to us icky-poo constituents, and if the only way we can get them to come and listen to us is to have a fundraiser, so be it. But my view is, we live in a free-enterprise system, and politics ought to be subject to the same kind of free enterprise pressures as all the rest of society.

ABBY LEVINE: I think this shows, and as Cleta (Mitchell) mentioned, this whole world of campaign finance has become so polarized. We’re constantly talking at each other. We’re tweaking the edges. We’re trying to find little bits and pieces that we can.

This decision will provide some space for groups to come together – in my Pollyanna world – and sit down and figure out what’s best for democracy, what’s best for Congress, what’s best for the poor, what’s best for all of the different interests and issues and constituencies in our country, and be able to figure out what makes sense so that we’re again taking *to* each other rather than just at each other, which is much easier and more fun but not productive.

BOB EDGAR: Cleta (Mitchell), you made a very persuasive argument for Fair Elections Now (<http://www.fairelectionsnow.org/>), which is citizens-owned elections. I would strongly support your effort if I thought that Congresspeople were leaving Capitol Hill and going back to their districts to raise all of their resources. Shelley Pingree, who was the president of Common Cause, said that on her first day as an elected Congressperson, she was told by the leadership that she should spend twenty hours a week raising money for her reelection. On that first day, at the Democratic Club, all of the lobbyists brought legal checks to give out to those freshmen Congressman who had not received those checks during their campaign but lobbyists wanted to make sure they had resources. Also, the paper that Cleta cited – the *Washington Times* – and others have reported on the fact that many special interest groups have bought up the townhouses around Capitol Hill so that Congressmen and Senators only have to walk out of their front door, around the corner, and over to a cocktail party in one of the townhouses and get bundles of resources or checks bundled by special interest groups. I have to say that even in today's *Washington Post*, there was an article about a senator from the great state of Hawaii who raises a great deal of his resources from the defense industry. If you take a look at how much defense industry funds are expended, we have a defense system that is exquisitely prepared for World War II as opposed to a defense system prepared for the current environment, where we need a strong practical defense system but not some of the equipment.

So I would just respond to the comment that was made earlier. I don't want my elected officials spending 50 or 60 or 70 percent of their time raising money. I want them legislating. I want them back in their districts talking to their folks. I want them raising their resources from their districts and from their states. I don't want them raising their money from special interests, whether it's labor special interests or corporate special interests. I want them to serve the public interest. And I think people like John Gardner and others... When I served in Congress, legislation was not put in place by the Democrats. We had Jacob Javits, and Edward Brooke from Massachusetts, and John Heinz and Dick Schweiker from Pennsylvania. There were many moderate Republicans who helped put into place the Older Americans Act, Head Start, and the first energy bill. And once elected, those persons, when they were out raising money for their reelection, they weren't spending 100 or 80 or even 60 percent of their time. They were spending their time trying to work collegially on helping the nation move forward. I want to see us return to that. I think Congress has gotten far too partisan and far too money-oriented in these latter days. I think money is maybe a corrupting force, but it's also a corrosive force, in terms of democracy.

WILLIAM SCHAMBRA: We have time for one quick response from anyone to anything, and then we'll have to conclude the panel.

CLETA MITCHELL: Raise the limits. Take 'em off – take off the aggregate limits. Put it all out there. Let everybody know. And I have lots of other reforms, if you'd like to hear them. (Laughter.) Triple the size of the House of Representatives after the census, so that the districts will be smaller and they can campaign door to door. Less costly. Less television. Tell them to not stay here so long. I haven't missed them the last two weeks – have you?⁷ Term the sessions so that they're not here all year. There are lots of things that can be done to return people back to a more representative government.

⁷ This panel took place the week after the federal government had to shut down for several days in a row due to blizzard conditions.

But I do not accept – I will say this; I’ll end where I began, as consigliere to the vast right-wing conspiracy – that what people yearn for is a day when conservatives sat down and shut up and suffered in silence. And those days, thanks to Newt Gingrich – you can love him or hate him, but that is one thing that he has freed us from, are over. And I think that there is not a lot of bipartisan consensus because we have very real differences of opinions on principles, and I don’t think there is anything wrong with having that kind of principled cacophony, even though it’s unsightly. So – I hate being the Pollyanna here, like Abby. That’s her job, not mine! (Laughter.) But I actually don’t think things are broken nearly as badly as some would have us believe.

LARRY OTTINGER: Thank you all very much for being here!

ABBY LEVINE: I think all of the interest and all of the discussion and debate on blogs and listservs and here today has shown that people really want a participatory democracy. They want an opportunity to talk about the issues that they care about and have a way to get involved. And I think that’s really what’s at stake, and we need to make sure that’s the goal of the work that we’re doing.

WILLIAM SCHAMBRA: Let’s thank our panel – and thank you all for coming out on this post-blizzard day!

(Applause.)

FURTHER READING

On February 23, 2010, the Bradley Center held a panel entitled “Too Close for Comfort? Obama and the Foundations,” at which several of the panelists also addressed the *Citizens United* case. Panelists included **GARA LAMARCHE** of Atlantic Philanthropies, **CHESTER FINN** of the Thomas Fordham Foundation, the Chicago Community Trust’s **TERRY MAZANY**, and **LEWIS FELDSTEIN** of the New Hampshire Charitable Foundation. A complete transcript can be found online at http://www.hudson.org/index.cfm?fuseaction=HUDSON_upcoming_events&id=749. See pages 14 and 25.