

Spring 2011

Commentary: Campaign Finance in the Wake of Citizens United, 44 J. Marshall L. Rev. 583 (2011)

Thomas E. Mann

Follow this and additional works at: <https://repository.law.uic.edu/lawreview>



Part of the [Business Organizations Law Commons](#), [Constitutional Law Commons](#), [Election Law Commons](#), [First Amendment Commons](#), [Jurisprudence Commons](#), and the [Law and Politics Commons](#)

Recommended Citation

Thomas E. Mann, Commentary: Campaign Finance in the Wake of Citizens United, 44 J. Marshall L. Rev. 583 (2011)

<https://repository.law.uic.edu/lawreview/vol44/iss3/2>

This Symposium is brought to you for free and open access by UIC Law Open Access Repository. It has been accepted for inclusion in UIC Law Review by an authorized administrator of UIC Law Open Access Repository. For more information, please contact repository@jmls.edu.

COMMENTARY

CAMPAIGN FINANCE IN THE WAKE OF *CITIZENS UNITED*

THOMAS E. MANN*

I have just come from Washington—that makes me suspect already. Two days ago, we had a debate at Brookings on the constitutionality of the individual mandate. I sat back and listened to David Rivkin and Walter Dellinger, among others, and thought about the case, or series of cases, that have been brought by almost half of the states challenging the constitutionality of the linchpin of the Affordable Care Act. I thought to myself, “it is probably no coincidence that in all of those governments, either the governor or the Attorney General with the independent authority are Republicans, and the ones who then had not brought the cases are Democrats.” It was astounding as I listened to the debate to imagine a situation where a principle, a proposal, that was originally generated at the Heritage Foundation, was offered by Republicans in the last round of health reform, and was embedded in then-Governor [Mitt] Romney’s health reform plan in the Commonwealth of Massachusetts, is now being not just rejected by Republicans unanimously in the political arena, but challenged in the courts with equal certainty and vigor.

At the very same time in Washington, Republicans are playing brinkmanship on a possible government shutdown, and a failure to raise the debt ceiling, which is necessary to honor past budgetary decisions and avoid a default. In both cases, a huge amount of attention is being given to a very small part of the budget, and demands for immediate reductions in discretionary spending are not obviously responsive to the economic problems facing the country. Similar battles are brewing around the country, most prominently in Wisconsin, where Democratic legislators have taken refuge here in Illinois to prevent Governor Scott Walker from pushing what they regard as unprecedented legislative steps to deny public employees collective bargaining rights.

All of these examples are similar in several respects. One is

* W. Averell Harriman Chair and Senior Fellow, The Brookings Institution

the ideological reach and aggressiveness of the Republican moves. It is quite stunning to see the steps being taken now by one of our major political parties that not too long ago would have been seen as out of the mainstream of party competition and debate. Secondly, there is remarkable unity within both parties, whether operating on the offensive or on the defensive. The normal kind of variation by constituency and state that has characterized much policy making in America has given way to the rise of Parliamentary-like parties in our politics that are ideologically polarized and internally unified. Third, I see a remarkable disconnect between the political battles being waged and the underlying problems being addressed or not addressed, and the solutions that might be offered. That is to say, our well-earned reputation for pragmatism, reasonableness, bargaining, negotiation, and compromise has given way to something that might fit more naturally in the rarefied airs of the University of Chicago Law School classrooms. It is really quite stunning. Finally, I have observed the absolute and total war that is being waged in Washington and across the country between our two political parties.

Now, it turns out the topic of this symposium, the *Citizens United* case and its impact on corporate speech and on American democracy, is very much a part of that same war being waged between ideological adversaries and the two political parties. Now, to be sure, campaign finance has long had its warring ideological camps. Every democracy that appropriately values its constitutional guarantee of free speech grapples with the challenge of reconciling the tensions between economic inequality and political equality. Every country has wrestled with this tension and not simply dismissed or defined it away.

It is manifest in the case of corporations in a way that our earlier speakers refer to directly or indirectly. One is the concern for the potential for corporations to leverage their accumulated wealth in the election process, either directly or through the anticipated reactions of policy makers to garner favorable treatment. But the other side, which got too little attention this morning, is the temptation for party and elected officials to legally extort or persuade corporations to pay to play. That is really the set of challenges that we have been wrestling with for decades, indeed, since the founding of the Republic.

Now to some, there is no tension. Free speech trumps all other considerations and, since money is speech, any restrictions on its flow violate the most important right protected by the First Amendment. Others see the tension as so profound and the vulnerability of political equality so grave that the only course is to replace virtually all private money with public funds. That battle has been going on for decades. It is intensely ideological, it is

stylized, it is pretty unproductive and, frankly, it is getting a little stale. I found that I just cannot get up for it anymore—to get out there with Brad Smith and play the game— partly because I do not feel as though I am a member of either camp. I think it is all too typical of our politics today, in which we fall into ideological and partisan camps that prevent us from accepting facts, weighing evidence, trying to understand the tradeoffs between costs and benefits, and working with people who come at it in a somewhat different way.

But, alas, the momentum in the legal and policy arenas is now very much with the first camp—the deregulators. Moreover, as I have suggested, even more now than in the past, campaign finance reform is a central part of the broader ideological polarization of the parties and the permanent campaign between them. Consequently, I conclude that there is no realistic prospect for reconciling differences in Congress on campaign finance policy in the foreseeable future—that is simply a reality.

Citizens United gets a lot of attention because it was a dramatic decision. Ilya [Shapiro], it is not just twenty-some years of precedent overturned; by my accounting it was in the 1940s that Congress made explicit the prohibition on corporate spending in federal elections. (Ilya: “And they still cannot donate to campaigns and parties.”) Wait, you did not make that point. The point is that part of the law went back to the 1940s. As far as the Tillman Act of 1907.¹ I have not studied this period, but there is a lot of interesting work that suggests the plain meaning of Congress at the time was not to differentiate between contributions and expenditures; they saw both as ways of participating through their treasuries in federal elections. So I do not think [President] Obama failed the test. It is safer to say sixty years rather than one hundred, but to go back only to McCain-Feingold² or to an earlier court decision in a slightly longer period or time frame is not accurate.

The point is, *Citizens United* was shocking and, as Marc [Elias] said this morning, it came out of nowhere. It was a solution in search of a problem. There had been no real complaints from the corporate world; there are numerous opportunities for corporate participation through PACs, communications with their restricted class, including shareholders and managers, opportunities to engage in issue advertising, and contributing to third-party groups like the Chamber of Commerce that might, in turn, engage in more explicit electioneering. Corporate executives

1. Brad Smith, *Ben Tillman: Forgotten Founding Father of “Reform”*, CTR. FOR COMPETITIVE POLITICS (Dec. 1, 2006), http://www.campaignfreedom.org/blog/ID.124/blog_detail.asp.

2. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-55, 116 Stat. 81-116 (2002).

can also make individual contributions to candidates and bundle the contributions of their friends and associates. It was really quite a stunner that an ostensibly conservative court would take a pretty routine matter that, as Marc argued earlier, should have been approved by the FEC or settled in the courts on very modest grounds, rather than ordering a rehearing on constitutional issues not raised by the plaintiffs, and overturning settled law.

But the fact is, the decision in *Citizens United* was not an outlier. It was part of an ongoing deregulatory dynamic on the courts that has been playing out for a number of years—the fourth decision on campaign finance by the Roberts court that has overturned previous congressional and judicial actions. So however shocking it was in its particulars (now I am referring to the process by which it was made as opposed to the substance of it) it does not stand alone in the body of judicial forces, much less the broader political forces that are shaping the role of money in politics. The deregulatory dynamic has been reinforced by developments at the FEC, which has become utterly dysfunctional in recent years, with Republican members joined occasionally by a Democrat, all holdovers with expired terms, pursuing a strategy of legislative nullification.

The collapse of the presidential public financing system, which was unrelated to *Citizens United*, contributed to a widespread sense that all forms of public regulation of money and politics were being overwhelmed by powerful forces beyond the control of citizens and policy makers.

My charge today is to assess the impact of *Citizens United* in the 2010 elections, to identify the policy responses, and to suggest what to expect in 2012 and the years ahead. Now, some of this has been well-covered by my colleagues in the morning panels, and I will not tarry with that.

Certainly, we have seen a sharp increase in nonparty independent spending, particularly with the jump in 2010. We have people out there trying to parse the impact of *Citizens United* on this increase. We have one brave soul that tells us it is forty percent. I do not place much credibility in that. As was argued this morning there is this natural dynamic where, when you are out of power in times that are bad, your troops are ready to mobilize and do everything possible to take advantage of the legal opportunities that exist. So it is no surprise that the nonparty outside groups, which had been favoring the Democrats in the last several elections, came to favor the Republicans this time around. What is significant is the marked decrease in the disclosure of the sources of funding for that activity. The numbers on this are really quite astounding. I believe there was a seventy percent decline in the number of organizations filing with the FEC their express advocacy and electioneering communications, which in previous

elections had also reported donor data, but now do not. So there has been a well-documented decline in disclosure. This is partly a consequence of a decline in the use of the 527 organizations, and an increase in the use of 501(c)s.³ The latter, given their long standing rules and newer interpretations by the FEC, were able to argue that unless a particular donor has allocated money for a specific ad, there is no basis for requiring disclosure of that donor. And it was easy for virtually all those groups to take that into account.

We also saw the emergence of super PACs. Super PACs are political action committees that engage only in independent spending—no contributions to candidates. Unlike the limits facing PACs now, there is no limit on the size of individual contributions to these PACs, and there is no source restriction so that corporations and unions can contribute to the super PACs. We think there were as many as ninety such entities, but if you look at just the top ten, they account for about half of all the spending.⁴ Seven out of ten of those were working the Republican side of the aisle—AFSCME never met its goal of seventy or eighty million dollars, and ended up spending more like fifteen or twenty. Karl Rove⁵ and Ed Gillespie⁶ put them to shame. But it is an important new development in our politics and one very likely to be with us for some time.

There is evidence of targeted late expenditures in swing districts and states that evened or tipped the balance of resources in a number of key states. But there were limited signs of any direct independent activities by major corporations, just as many of us suspected and argued. What we do not know yet is whether any of the many major corporations funneled contributions through third-party groups like the Chamber of Commerce. Best as we can tell it is planning out as we expected. The corporations that would take advantage of unlimited direct or indirect independent spending from corporate treasuries are family-held,

3. CAMPAIGN FIN. INST., *Soft Money Political Spending by 501(c) Nonprofits Tripled in 2008 Election* (Feb. 25, 2009), http://www.cfinst.org/press/releases/09-02-25/Soft_Money_Political_Spending_by_Nonprofits_Tripled_in_2008.aspx.

4. Megan R. Wilson, *Who's Buying This Election? Close to Half the Money Fueling Outside Ads Comes from Undisclosed Donors*, OPEN SECRET.ORG (Nov. 2, 2010, 6:09 PM), <http://www.opensecrets.org/news/2010/11/whos-buying-this-election.html>.

5. J. Crewdson, A. Fitzgerald, J. Salant & C. Babcock, *Secret Donors Multiply in U.S. Election Spending* (May 19, 2011, 5:01 AM), <http://www.bloomberg.com/news/2011-05-19/secret-donors-multiply-in-u-s-with-finances-dwarfing-watergate.html>.

6. Jim Rutenberg, *Conservative Donor Groups Lay a Base for 2012 Elections*, N.Y. TIMES, Oct. 31, 2010, <http://www.nytimes.com/2010/11/01/us/politics/01groups.html?ref=edgillespie>.

private, fully under control of a CEO who has an ideological agenda as well as a set of corporate economic interests. I mean, the classic case is the Koch brothers.⁷ But it appears that the mainstream corporate community is not yet taking advantage of the new electioneering opportunities provided by *Citizens United*. The jury is still out on this question, given the limited disclosure of indirect spending and the fact that we have had only one election cycle to observe.

Citizens United was probably not crucial for the 2010 mid-term election outcome. I make no argument that too much money was spent, or that it was disproportionately mobilized by corporate interests favoring the Republican party, which put it into power in the House and made great gains in the Senate. This election was driven by large forces: an economic referendum, and a radically shrunken and restructured electorate. There was, indeed, a rough balance of resources between the parties. Sometimes the outside groups ended up evening what would have otherwise been an advantage for the Democrats. There is some sign of their activities expanding the playing field but, in general, as one looks at the evidence, one has a hard time making a case that corporate participation was dispositive.

A lot of people threw a lot of money away on losing campaigns. Meg Whitman,⁸ the Republican gubernatorial candidate in California, spent an astounding amount from her own wealth, which did more for the state economy than for her political future. Linda McMahon from Connecticut and CEO of the World Wrestling Federation, spent a lot of bucks.⁹ As usual, self-financed candidates did poorly in the elections.

Again, I do not mean to belittle the new developments, but I would argue any fair-minded social science analysis of this election would say the new resources, the balance or imbalance of resources, was a relatively minor factor in the outcome of the election.

What have been the policy responses? We have already heard this morning of the failure last year to pass the DISCLOSE Act.¹⁰

7. See Paul Harris, *The Koch brothers: all the influence money can buy* (Apr. 8, 2011), <http://www.guardian.co.uk/commentisfree/cifamerica/2011/apr/08/koch-brothers-lobbying> (explaining how the Koch brothers are expending vast amounts of money in lobbying).

8. Philip Caulfield, *Meg Whitman Loses California Governor Race Despite \$160 Million Tab; Jerry Brown Wins for 3rd Time*, N.Y. DAILY NEWS, Nov. 3, 2010, http://articles.nydailynews.com/2010-11-03/news/27080075_1_meg-whitman-oldest-person-california-governor-race.

9. Fred Lief, *Linda McMahon, MBA's Bradley Lose Elections*, CHRISTIAN SCIENCE MONITOR, Nov. 3, 2010, <http://www.csmonitor.com/USA/Elections/From-the-Wires/2010/1103/Linda-McMahon-NBA-s-Bradley-lose-elections>.

10. Democracy is Strengthened by Casting Light on Spending in Elections

By the way, the characterization of it as being loaded with things that should not have been there is true. And it still came within one vote in the Senate of breaking a filibuster after passing in the House. The question is, “could you have picked up any Republicans had you removed those, or would you have lost many more Democrats in the process?” It is a good but unanswerable question. There was a renewed effort to pass the Fair Elections [Now] Act,¹¹ the public financing of Congressional elections. It went nowhere in spite of a significant advertising and lobbying campaign.

No progress was made on efforts to revitalize the FEC. The appointment process either deadlocks or produces commissioners with little evident commitment to enforcing the law. It is hard to see how that changes anytime soon.

Now what about this Congress, the 112th Congress? There is an effort underway to pare down the DISCLOSE Act, to get everything out of it except real disclosure of indirect independent spending by corporations. We had a ringing endorsement on the past panel. I want someone to get a transcript of that and send it up to Speaker [John] Boehner¹² and Minority Leader [Mitch] McConnell¹³ to show the groundswell of support for strengthened disclosure. My view is that it has absolutely no chance of going anywhere. Boehner will not allow this to come to the floor, and I do not know of one Republican member who would sign a discharge petition to bypass the Speaker, as more than a score of Republican members did in 2002 to make possible the enactment of McCain-Feingold.¹⁴ So no chance of that. What we may get is a formal repeal of the presidential public financing system. Those who support that system want desperately to keep it there—it was once the crown jewel of the public financing system. It actually seemed to achieve its objectives in the short term, and supporters would like to keep it there if only as a structure on which they could build a new system.

Frankly, nothing on campaign finance reform is happening in Congress, nor will it happen anytime soon, but that does not make it exceptional—that is true of most everything else that is going

Act, H.R. 5175, 111th Cong. (2d Sess. 2010) (amending the Federal Election Campaign Act of 1971 to prohibit foreign influence in federal elections, to prohibit government contractors from making expenditures with respect to such elections, and to establish additional disclosure requirements with respect to spending in such elections, and for other purposes).

11. Fair Elections Now Act, H.R. 1826, 111th Cong. (1st Sess. 2009); H.R. 6116, 111th Cong. (2d Sess. 2010).

12. SPEAKER OF THE HOUSE JOHN A. BOEHNER, <http://www.speaker.gov/> (last visited Sept. 12, 2011).

13. REPUBLICAN LEADER MITCH MCCONNELL, <http://mccconnell.senate.gov/public/> (last visited Sept. 12, 2011).

14. Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-55, 116 Stat. 81-116 (2002).

on. The parties are intensely divided on anything where ideological differences exist, or where there is a perception that the issue could tip the electoral balance toward the Democrats or to the Republicans.

The real policy action is in the judiciary. It is fascinating to see the level of activity underway. Deregulators have staffs of dozens filing lawsuits in localities and states around the country. Their highest priority is to weaken the disclosure system even beyond where it is now, feeling no real effort is needed to fight off efforts to strengthen it because there are no plausible efforts underway.

It was not long ago that the rallying cry of the deregulators was, "deregulate and disclose!" Now effective disclosure is opposed by the same people who once championed it. It is perhaps telling that the original proposal to deregulate and disclose was offered by two congressmen named Doolittle and DeLay.

In any case, this is going on all around the country. There have been efforts to repeal the party soft-money ban.¹⁵ We are seeing efforts to water down or nullify restrictions on coordination with respect to independent spending, some by parties, which you could argue has some compelling rationale, much of it by corporations and other independent groups.

There are a series of challenges being waged against the Arizona public financing system. I have signed-on to an amicus brief calling for upholding the constitutionality of that particular system, but more broadly arguing that if the Court acts like it did in *Citizens United*, if it moves to rule against all public financing, it would do a travesty to the law and to the options available to state and local publics who have found many of these programs quite successful.

We are seeing efforts in lawsuits to allow unlimited party coordinated spending. I think independent spending by parties is nuts. Parties ought to work with their candidates. I have long supported letting parties spend their money in coordination with their candidates, but in a new, modest reform scheme, we link unlimited coordinated party spending to the use of small donors' funds by parties as a way of trying to prevent some gaming of the existing rules regarding individual contributions to candidates.

Finally, there is an effort, to challenge a major underpinning of *Buckley v. Valeo*,¹⁶ the distinction between expenditures and contributions. Arguments are being made that since corporations are persons entitled to all the rights of the Constitution they

15. See Bipartisan Campaign Reform Act of 2002, Pub. L. No. 107-55, 116 Stat. 81-116 (2002) (banning large individual and corporate contributions to political parties even if the money is to be spent on activities unrelated to federal elections).

16. *Buckley v. Valeo*, 424 U.S. 1 (1976).

should be allowed to make contributions out of their treasuries. All of those efforts are underway. At best, it has been a mixed success so far. We have a couple of small nonprofits—The Campaign Legal Center¹⁷ and the Brennan Center for Justice¹⁸—that have been resisting some of these lawsuits, offering advice and filing amicus briefs and beyond, but it is hard to tell where that is going. Nevertheless, that is where the action is. Some of the states have had to change the law to reflect *Citizens United* because roughly half of them had prohibitions on corporate expenditures in their campaigns, and they are proceeding in a variety of ways to try to accomplish that objective.

What do I see for 2012? First of all, we now have a two-track system and it is likely to remain in place. One track is regulated contributions and disclosure for candidates, parties, and PACs. That system has really not been challenged by *Citizens United* or any other Supreme Court decision and there is still a lot of action there. [President] Obama raised \$750 million in 2008¹⁹ and it was all hard money. There is real money there, in hard money, and candidates and parties have continued to be major players in this game—not simply waifs among forces. The other track is increasingly undisclosed financing of independent expenditures and is unrestricted in size and source. This is the area undergoing growth right now.

Within the first track, several things are obvious. One, no serious candidate will use public funding even if it survives in law—the spending limits are too low and it is a sign of failure if you do it. Second, we will see stepped-up and more sophisticated bundling efforts of large individual contributions. [President] Obama was masterful at it, and his campaign staff is already traveling around the country getting commitments and connecting these commitments with joint fundraising through the National Party Committee.

We will see more prospecting for small donors taking advantage of the internet and social media, and we will see a continuing shift in the allocation patterns of PACs back to the Republican party. This is due to the likelihood that Republicans will hold their majority in the House and have a reasonable chance of gaining a majority in the Senate. I think it is perfectly reasonable to assume [President] Obama will raise \$1 billion, and this time he will not have any primary challenge so it all goes for

17. THE CAMPAIGN LEGAL CTR., <http://www.campaignlegalcenter.org/> (last visited Sept. 12, 2011).

18. THE BRENNAN CTR. FOR JUSTICE AT N.Y.U., <http://www.brennancenter.org/> (last visited Sept. 12, 2011).

19. *Presidential Pre-Nomination Campaign Receipts Through December 31, 2008*, FEC (June 8, 2009), http://www.fec.gov/press/press2009/20090608Pres/2_2008PresPrimaryCmpgnRcpts.pdf.

the general election, which will run an entire year.

On the "B" track, the unrestricted track, the Republicans will expand their efforts in 2010, and the Democrats will respond in kind. We already heard of some such groups that have been announced by Democrats. I actually think we are going to see a growth in super PACs because there is a lot of flexibility; you do not have to worry about whether the IRS is going to come get you in an audit at some time and find out that you were engaged in an activity that was not consistent with your tax status. Therefore, I expect to see a huge growth, lots of money going into super PACs.

Finally, I conclude my remarks with a suggestion that we monitor these developments. First, some really interesting things are going on in corporate governance programs. The Conference Board²⁰ and the Committee for Economic Development²¹ have taken the lead in urging corporations either to forego spending corporate funds in election campaigns or at least to fully disclose all such direct and indirect activities. But there are all kinds of risks associated with spending corporate funds on political campaigns, including angering shareholders and customers. Many corporate leaders believe it is just unethical. These are arguments coming from corporate CEOs, and if you go up on the website for the Center for Political Accountability,²² you will see the dozens of companies that have signed-on to this with a pledge not to engage in any independent spending with their treasury funds, and talking about the ways in which they will increase the transparency of all their activities that relate in any way to the political process. So look for this. Remember, *Citizens United* was a solution in search of a problem. It was ideologically motivated and pushed by party and issue activists and officeholders who saw this as an opportunity to buttress their side of the political divide.

Second, there will be continuing challenges, and David [Gans] gave us a hint of the substance of those efforts, to the whole notion of corporate personhood. I will not be the fourth person to refer to Roberts's language in the FOIA case involving AT&T,²³ but it does tell you there may be some second thoughts underway. We may go from Roberts to Roberts to Roberts. It will be fascinating to see how this develops. I do not expect any public backlash in the short term to the return to a state of nature in money and politics in America. But, if history is any guide, and if we can learn from other countries, the time will come. It will almost certainly come to

20. THE CONFERENCE BD., <http://www.conference-board.org/> (last visited Sept. 12, 2011).

21. COMM. FOR ECON. DEV., <http://www.ced.org/> (last visited Sept. 12, 2011).

22. CTR. FOR POLITICAL ACCOUNTABILITY, www.politicalaccountability.net (last visited Sept. 12, 2011).

23. *FCC v. AT&T*, 131 S. Ct. 1177 (2011).

the point when politicians see it in their advantage to deal with a public seized by a scandal of some kind. I do not think that we are anywhere close to that.

But I end with two more upbeat, encouraging things. One goes to transparency—it is not a be-all and end-all—and there are real limits given the state of law. However, I honestly believe the efforts that have been unleashed in a very informal and decentralized way, to gather and share information on all manner of things in governance and in politics will continue and intensify. New organizations, we have some already, will form. Different ways will be found for garnering information so that the effort to actually disclose who is spending for what in our politics will not be devastated by these recent developments.

Finally, I end on this point. We have reached the limit of limits in campaign finance. Given the nature of the Constitution and the way it has been interpreted, given the possibilities of new media and organization, the fact is, without *Citizens United* corporations and wealthy individuals could do about anything they wanted to do to influence our politics. It is a reality, and every time you try to put more emphasis on limiting wealth in politics you are going to lose. It is going to go somewhere else.

So I actually think that the direction of change is giving serious thought and effort to trying to balance the influence in election campaigns of large spending by corporations and wealthy individuals with small donations by many individuals. It is a very tricky proposition. It is easier to do for a charismatic candidate at a time of discontent in a presidential election than it is for the Fairfax County Board of Supervisors. It is really tough, but efforts are underway and there has been a gradual increase in the ability to raise small dollars. More individuals feel they have a stake in some candidates and officeholders, and in a political party in general. In my own view, the most promising area of public policy development would be to use public dollars not tied to spending limits of any kind to provide multiple public matches for small donations. This creates an incentive for both the candidates to seek those dollars and the individual citizens to give, but still allows a natural marketplace instead of handing a primary challenger a half million or one million dollars in public funds after getting one hundred people to pony up fifty bucks. I mean, it allows the marketplace to work but where there are market failures it provides for some public goods, and I think that is the more promising direction of our politics.

Obviously, I think the system that we have now will be in place for this next election cycle. I think the ideological battles that characterize contemporary American politics will not ease soon. The sharp divisions between the parties, the denial by responsible people of seeming facts—like [President] Obama was

born in the United States—but more important ones really having to do with the impact of the stimulus, the cost of the financial bailout, whether the automaker intervention had any elements of success as an effort in a structured bankruptcy, whether the Affordable Care Act, by including virtually every known potential cost-saving measure in healthcare by the policy community might begin to bend the cost curve and deal with the biggest fiscal problem we face. That is, I hope we come to a point where we can actually talk about those things once again. I mean, there are reasons for argument and disagreement, but instead now we just have the most banal, stylized, and ideological of debates. What is in our campaign finance system is in our broader politics, and eventually we will come to our senses. We will get new leaders arising within the party that seems, at least this time, to be pulled further to its ideological extreme, the Republican party, as we saw early in the twentieth century after a period of intense partisan polarization. New forces arose, a new politics emerged. It is going to be something big like that rather than tweaking a particular piece of legislation that is going to produce change that we can actually believe might do some good.

Thank you.