May 7, 2014

The Hon. Angus King
The Hon. Pat Roberts
Committee on Rules & Administration
U.S. Senate
305 Russell Senate Office Building
Washington, D.C. 20510

Via email to record@rules.senate.gov

Re: Dollars and Sense: How Undisclosed Money and Post-McCutcheon Campaign Finance Will Affect 2014 and Beyond (Apr. 30, 2014)

Dear Senator King and Ranking Member Roberts:

Please accept Free Speech For People's attached written comments into the record for the Committee's April 30, 2014 hearing regarding campaign finance. As explained in detail within the comments, Free Speech For People believes that the Supreme Court's decisions in *Citizens United v. FEC* and *McCutcheon v. FEC* must be addressed through a constitutional amendment to overturn those rulings, and the 1976 *Buckley v. Valeo* ruling, to allow Congress and the states to regulate campaign spending.

Free Speech For People is a national nonpartisan organization founded in January 2010 on the day of the Supreme Court's *Citizens United* decision, and it has helped to catalyze and lead the growing grassroots movement to amend the Constitution to overturn *McCutcheon*, *Citizens United*, and *Buckley* and to restore republican democracy to the people.

Respectfully submitted,

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Testimony of Ronald Fein, Free Speech For People

Campaign finance policy is a vexing problem. All efforts by Congress or state or local legislatures must balance a wide range of competing interests to develop a system that allows voters to have a fair chance of a slate of candidates that have not been pre-screened by wealthy donors or outside interests; candidates, whether wealthy or not, to run vigorous but fair races without becoming beholden to funders; elected officials to focus their time on legislation and constituent service, not fundraising; and parties, associations, and other groups of citizens to engage in the political process in a manner proportionate to their numbers and intensity of interest, not available funds. A legislature developing a campaign finance regulatory system must also anticipate that unforeseen loopholes will be exploited, and frequently refine the system to address changes in technology, political and social organization, and campaigns that render old assumptions obsolete. And of course, it must be politically feasible in today's often rancorous politics.

Developing campaign finance laws that address these challenges would be daunting for any legislature just given the constraints described above. But the task has been made far more difficult by a series of Supreme Court decisions—beginning with *Buckley v. Valeo*,[1] and continuing through April's *McCutcheon v. FEC*[2]—that impose artificial limits on how "we the people" choose to organize our political campaigns.

Worse yet, the Court has created an artificially cramped discussion by focusing entirely on the very small group of people and corporations that contribute and spend money in politics. By treating their money as worthy of constitutional protection, but essentially ignoring the far broader interests of voters in a fair political system in which candidates are not pre-screened by wealthy donors, the Court has forced the discussion into terms under which it is difficult, if not impossible, for common-sense campaign finance reforms to succeed.

The resulting system pleases very few, and frustrates elected officials, candidates, voters, small donors, and non-voting citizens and residents who must live under the system the Court has created. It even frustrates many wealthy individuals or

[1] 424 U.S. 1 (1976).
[2] 134 S. Ct. 1434 (2014).

corporations that would frankly prefer not to be political contributors and would welcome collectively-imposed reforms that would limit their ability to spend in politics, and therefore give them an excuse to decline solicitations.[3]

Many worthy proposals have been offered to address the campaign finance problem within the confines of the limits that the Supreme Court has imposed, and Free Speech For People endorses such efforts. But to address directly the problem and the threat it poses to our democracy, we must revisit the central assumptions that have guided the Court since 1976—that the paramount interests to be considered are those of donors, rather than voters; that money is, or deserves the same protections as, speech; and that the *only* basis on which the American people can seek to stem the flow of money into the political system is "corruption" (and in the Court's even narrower current interpretation, only "*quid pro quo*" corruption).

Instead, we need to return to the following core principles:

One person, one vote. More than fifty years ago, the Supreme Court declared that "[t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote."[4] Few dispute this principle today. But our present system of campaign finance, in which a small number of wealthy donors have far greater influence on most politicians than the vast majority of ordinary Americans, subverts this principle. To be sure, at an official voting station, a captain of industry has the same vote as any other citizen. But in the period *before* Election Day—and, in today's era of "permanent campaigns," it is *always* before the next Election Day—wealthy donors (many of whom are not even constituents) exert far greater influence than ordinary voters.

Money is not speech. Money *amplifies* speech. Consider the difference between a person delivering a short speech on a street corner; delivering that short speech to a camera phone and posting it on YouTube; and delivering that same speech to a professional camera crew and paying for it to blanket TV for weeks. The difference between these is not speech; the speech is the same. Rather, the difference is how much money is available to *amplify* that speech. And just as the Supreme Court long ago held that society can limit the volume of sound trucks on the public streets,[5] it does not abridge anyone's freedom of speech to place limits (without discrimination) on how "loudly" they can drown out all other voices.

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[3] Indeed, the 1907 Tillman Act, which banned corporate political contributions in federal elections, was welcomed by corporate leaders for just this reason: it ended an era of extensive political solicitation of corporate contributions. *See* Robert H. Sitkoff, *Corporate Political Speech, Political Extortion, and the Competition for Corporate Charters*, 69 U. Chi. L. Rev. 1103, 1131-38 (2002).
[4] *Gray v. Sanders*, 372 U.S. 368, 381 (1963).
[5] *Kovacs v. Cooper*, 336 U.S. 77 (1949).

Corporations are not people. Corporations are artificial legal entities, created by the state, and they are not entitled to the same rights as people. As Chief Justice Marshall wrote in 1819:

> A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. . . . But this being does not share in the civil government of the country, unless that be the purpose for which it was created.[6]

Corporations are not citizens, let alone voters, and they are not identical to the actual people (employees and shareholders) who are associated with them. There is no reason to allow them to exert influence in our elections, any more than we allow foreign nationals to exert influence in our elections.[7]

To restore these principles and our democracy, Free Speech For People supports a constitutional amendment to overturn *Buckley*, *Citizens United*, and *McCutcheon*, and clarify that the American people, through their representatives in Congress and the states, can devise a campaign finance system that could include limits on political campaign spending and contributions from people and corporations. Justice Stevens proposed such a bill in his testimony. We have endorsed Senator Udall's amendment bill, S.J. Res. 19, and applaud Senator Schumer's announcement that the Senate will hold a floor vote this year on that bill.

Notably, these amendment bills do not commit Congress or the states to any *particular* campaign finance reform scheme—they simply clear away the obstructions that the Supreme Court has set in the path. Once an amendment has passed, then Congress (and each state) may begin the difficult but important work of negotiating, drafting, and revising campaign finance legislation. Surely there will be difficult political compromises involved. And wealthy donors and corporate leaders will be allowed to voice their views in that process, just as they can today. The difference will be that, once the difficult work of passing bipartisan campaign finance legislation has been completed, displeased donors will not be able to seek a second bite of the apple from an activist court.

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[6] *Trustees of Dartmouth Coll. v. Woodward*, 17 U.S. (4 Wheat.) 518, 636 (1819).
[7] *Bluman v. Fed. Election Comm'n,* 132 S. Ct. 1087 (2012).