

# The Real Problem with *Citizens United*: Campaign Finance, Dark Money, and Shadow Parties<sup>1</sup>

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Last weekend, I listened to an esteemed academic describe what he thinks is the problem with *Citizens United v. Federal Election Committee* (hereafter referred to as *Citizens United*).<sup>2</sup> It was the near ubiquitous tale that reformers, reporters, and even a fair number of academics tell about the current state of campaign finance. The story is that the Supreme Court's decision in *Citizens United* treated corporations as if they were individuals for the first time. It thereby ushered in a new era of corporate spending, with wealthy corporations spending wildly, saturating the airwaves, and taking over American politics. The story is that *Citizens United* has caused a sea change in American politics and that the Court's overturning of *Austin*<sup>3</sup>—the much revered case in which the Court upheld campaign-finance regulations to promote equality—was the modern day equivalent of *Dred Scott*.<sup>4</sup>

Even setting aside the overwrought reference to *Dred Scott*, almost all of that story is wrong, and some of it is utter nonsense. And I say that not as someone who is against campaign-finance regulation but as someone who believes in it. I say that as someone who believes that there is a bigger story about the relationship between *Citizens United* and American politics; it is just not the story the media and reformers

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1 What follows is a lightly footnoted, lightly edited version of a speech delivered on 15 November 2013, as part of a symposium on the right to vote. The full lecture was delivered as the Boden Lecture at the Marquette University School of Law.

2 *Citizens United v. Federal Election Committee*, 558 U.S. 310 (2010).

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

4 *Dred Scott v. Sandford*, 60 U.S. 393 (1857).

are telling. Today I will argue that the so-called dark money trend may be a symptom of a deeper shift taking place in our political process, and it is one that *Citizens United* has helped bring about. *Citizens United* mattered but not for the reasons that most people seem to think. Today, in short, I hope to tell you the real problem with *Citizens United*.

#### THE REAL PROBLEM WITH *CITIZENS UNITED*

To understand why *Citizens United* matters, you have to know some history. The tale we tell in the academy is that in the beginning, Congress created the Federal Election Campaign Act,<sup>5</sup> and we saw that it was good. The snake in this garden of campaign-finance Eden was the Supreme Court's decision in *Buckley v. Valeo*<sup>6</sup>; the Supreme Court famously drew a distinction for First Amendment purposes between *contributions* (the money given to a campaign) and *expenditures* (the money spent on a campaign). According to the Court, expenditures were closely tied to cherished First Amendment activities and were thus hard to regulate, let alone cap. Contributions, on the other hand, raised weaker First Amendment concerns and could thus be subject to more regulation, including caps.

You can see the problem. Congress intended to regulate both sides of the money/politics equation (i.e., the money donated and the money spent). By lifting the cap on expenditures while leaving in place the cap on contributions, the Supreme Court created a world in which politicians' appetite for money would be limitless, but their ability to get it would not. Two of my colleagues analogized it to giving money-starved politicians access to an all-you-can eat financial buffet but insisting they can only serve themselves with a teaspoon.<sup>7</sup>

We all know what happened: just what you would expect to happen. Political interests inevitably looked for loopholes, they inevitably found loopholes, and they inevitably drove big trucks of money through those loopholes. There was the soft money loophole. When that got closed, people started to use issue ads to bypass the existing rules. Then came 527s and "swift boating." The 527s have been displaced by SuperPACs and 501(c)(4) and (c)(6)s. As a result, the entire reform game has been focused on closing those loopholes, engaging in the regulatory equivalent of whack-a-mole.

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<sup>5</sup> 2 U.S.C. §§ 431 et seq.

<sup>6</sup> 424 U.S. 1 (1976).

<sup>7</sup> See S. Issacharoff, and P. S. Karlan, "The Hydraulics of Campaign Finance Reform." *Tex. L. Rev.* 77 (1999): 1705, 1711.

*Why the Court's Rulings on Corporations and Austin Were Doctrinal Sideshows*

This history brings me to the first mistake in the tale we tell about *Citizens United*, and it will be a familiar point to anyone who has been involved in this game of regulatory whack-a-mole. The floodgates of corporate spending were open well before *Citizens United*.<sup>8</sup> Because of an earlier Supreme Court decision,<sup>9</sup> certain kinds of corporate and union ads were constitutionally protected as long as they were phrased carefully; as long as those ads did not explicitly encourage people to vote for or against a candidate, they were protected. *Citizens United* simply eliminated the need to be careful about phrasing the ad copy. To offer a crude example, before *Citizens United*, a corporation could run an ad saying “Senator X kicks puppies. Call Senator X and tell him to stop kicking puppies.” After *Citizens United*, a corporation could run an ad saying, “Senator X kicks puppies. Don’t vote for the puppy-kicking Senator X.” If there were a time to amend the Constitution to prohibit corporate speech, it was well before *Citizens United*, which means it was well before anyone thought there was a problem.

Nor can we blame *Citizens United* for the fact that independent spending, corporate or otherwise, is hard to trace. *Citizens United* ruled 8 to 1 in favor of the constitutionality of transparency measures, upholding a variety of disclosure and disclaimer rules.<sup>10</sup> The fact that so much independent election spending is “dark money” must be laid at the feet of Congress and the FEC, which have failed to enact adequate disclosure regulations.

The final mistake in the reformers’ tale of woe was that it was a disaster when *Citizens United* overruled *Austin*,<sup>11</sup> the solitary Supreme Court case that relied on the equality rationale to uphold a campaign-finance regulation.<sup>12</sup> You can imagine why reformers were so attached to *Austin*; equality is a deeply intuitive justification for campaign-finance regulation. However, the overruling of *Austin* was even less significant than what the Court said about corporate speech. *Austin* was a symbol, to be sure, but in terms of the doctrine, the case was a sport. *Austin* would have been an important case if it had ever been

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8 This point was made early on by Nathaniel Persily. See N. Persily, “The Floodgates Were Already Open,” *Slate Magazine* (January 15, 2010), accessed at [http://www.slate.com/articles/news\\_and\\_politics/jurisprudence/2010/01/the\\_floodgates\\_were\\_already\\_open.html](http://www.slate.com/articles/news_and_politics/jurisprudence/2010/01/the_floodgates_were_already_open.html)

9 *FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007).

10 *Citizens United*, 558 U.S. at 365-71.

11 *Citizens United*, 558 U.S. at 336-37.

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

followed—but it had not. By overruling *Austin*, all the Court did was formally confirm its irrelevance to current doctrine.

### *Why The Court's Ruling on Corruption Mattered*

*Citizens United*, however, was important. It was important for reasons that reformers in particular do not want to talk about. *Citizens United* substantially cut back on the power Congress has to regulate in campaign finance, and it is that part of the ruling—not the part about corporations nor the part about equality—that is reshaping the campaign-finance landscape.

As any first-year law student can tell you, when Congress regulates in this area, it must have a good reason to do so, and *Citizens United* seems to have dramatically cut back on the reasons the Court can regulate. That is because it substantially narrowed the definition of corruption, which is regularly invoked whenever Congress wants to pass reform. Indeed, although reformers have mourned the Court's rejection of the equality rationale, the most important line in *Citizens United* was not the one overruling *Austin*. It was this one: “. . . ingratiation and access . . . are not corruption.”<sup>13</sup>

For many years before *Citizens United*, the Court had gradually expanded the corruption rationale to extend beyond “quid pro quo corruption” (i.e., I give you money, you give me votes). The Court had licensed Congress to regulate even when the threat was simply that large donors had better access to politicians or that politicians had become “too compliant with the[ir] wishes.”<sup>14</sup> Indeed at times, the Court went so far as to say that even the mere appearance of “undue influence”<sup>15</sup> or the public's “cynical assumption that large donors call the tune”<sup>16</sup> was enough to justify regulation. Before *Citizens United*, in other words, “ingratiation and access” were corruption. This broad definition of corruption was easy to both satisfy and invoke when regulating campaign finance. After all, if Congress can regulate whenever the American people think the fix is in, it can regulate at any time.<sup>17</sup> What this meant in practice is that reformers could get almost

<sup>13</sup> *Citizens United*, 558 U.S. at 360.

<sup>14</sup> *Nixon v. Shrink Missouri Governance PAC*, 528 U.S. 327, 388 (2000).

<sup>15</sup> *Federal Elections Committee v. Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 441 (2001).

<sup>16</sup> *Nixon*, 528 U.S. at 389.

<sup>17</sup> Cf. N. Persily, and K. Lammie, “Perceptions of Corruption and Public Finance: When Public Opinion Determines Constitutional Law.” *U. Pa. L. Rev.* 153 (2004): 119. (This reference is a study showing that public perceptions of corruption have remained strong over time and are unaffected by changes in campaign-finance regulation).

everything they would have gotten from *Austin* without ever having to say the word “equality.”

But Justice Kennedy is not a fool. He was well aware of what his more liberal colleagues had been doing with the corruption rationale, and he did everything he could in *Citizens United* to put a stop to it. Kennedy did not say that the Court was overruling these cases—but that is exactly what it was doing.

*Citizens United* thus shifted the regulatory terrain surrounding *independent spending* (the spending that is not done in conjunction with the party or the candidate). That is the money spent by SuperPacs; that is the money spent by Karl Rove’s Crossroads GPS; that is the money that Justice Kennedy told us does not corrupt, which means that is the money that neither Congress nor the Federal Election Commission (FEC) can regulate heavily going forward. *Citizens United*, in sum, did not matter because of what it said about corporations—it mattered because of what it said about corruption. If you are going to amend the Constitution, focus on the corruption ruling, not on whether, to quote Mitt Romney, “corporations are people,” too.<sup>18</sup>

The evidence that the corruption rationale is the one that matters is clear. Lower-court decision after lower-court decision has struck down regulations on independent spending<sup>19</sup>, which is why we have SuperPACs and why the 501(c)(4)s and (c)(6)s are hard to regulate.

The numbers tell the same story. There was a lot more money swishing around in 2012 than in prior years, and much of that money involved independent (often untraceable) expenditures. However, that money (as best we can tell) has not signaled a giant uptick in corporate spending. The share of corporate spending looks roughly the same, and it is not hard to guess why. Most corporations would rather stay out of the game. It is dangerous, for one thing, as Target learned when it was subjected to a boycott for supporting a conservative gubernatorial candidate who opposed same-sex marriage.<sup>20</sup> Companies also worry about getting shaken down by politicians on both sides of the aisle. As a general matter, corporations do much better by investing their

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<sup>18</sup> P. Rucker, “Mitt Romney Says ‘Corporations are People’ at the Iowa State Fair,” *Washington Post* (August 11, 2011).

<sup>19</sup> See, e.g., *SpeechNow.org v. Federal Election Committee*, 599 F.3d 686 (D.C. Cir. 2010); *Texans for Free Enter. v. Texas Ethics Commission*, 732 F.3d 535 (5th Cir. 2013); *Iowa Right to Life Committee, Inc. v. Tooker*, 717 F.3d 576 (8th Cir. 2013); *Green Party of Connecticut v. Garfield*, 616 F.3d 189 (2d Cir. 2010); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684 (9th Cir. 2010).

<sup>20</sup> A. Chang, “Target, Gay Rights Supporters at Odds over How to Settle Dispute,” *L. A. Times* (April 8, 2011); A. Stern, “Target Targeted for Corporate Donation,” *Reuters* (August 3, 2010).

resources in lobbying, where their influence is both outsized and hidden from view. That is where the smart corporate money goes.

*Citizens United* mattered, but it mattered for reasons that people have largely ignored. It did not unleash the corporate floodgates; it did not fundamentally shift the doctrine when it overruled *Austin*; it did not even prevent Congress or the FEC from shedding light on the sources of dark money. What *Citizens United* did is substantially limit the extent to which Congress or the states can limit independent expenditures. That mattered for 2012—and it may matter even more going forward.

#### DARK MONEY AND SHADOW PARTIES

The corruption ruling leads me to what I think is the real problem with *Citizens United*, or, more accurately, it leads me to the two real problems with *Citizens United*. The first is dark money, and the second is shadow parties.

Dark money is the problem you know. Thanks, in part, to the Court's corruption ruling, there was a lot of dark money in 2012. In 2008, the Obama campaign had a record \$800 million. One political scientist told me at the time that Obama had more money than God, although I am not sure how we would verify that. However, the independent groups that were spending in 2012 had a great deal more money. Estimates consistently put that number well over a \$1 billion—that is billion with a “b”—and much of that was dark money that cannot be traced to its origins.

As I noted earlier,<sup>21</sup> we cannot really lay the blame for dark money at the Court's feet. The push toward independent spending was already happening, in large part, because of the failure of Congress and the FEC to keep up with the game of regulatory whack-a-mole. Even before *Citizens United*, 501(c) organizations such as the Chamber of Commerce or Crossroads GPS—the independent organizations that absolutely dominated the 2012 elections—fell outside current regulations, and neither Congress nor the FEC has done what is needed to trace from where the independent money is flowing. *Citizens United* did not cause that problem, but by deregulating independent spending in a world without adequate disclosure measures, it exacerbated it and prevented Congress and the FEC from adopting sensible fixes going forward. Needless to say, dark money is a problem. We worry when billionaires can secretly spend gigantic amounts of cash to support candidates.

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<sup>21</sup> See note 10.

I will not rehash those worries here; I will just say that as much as I worry about dark money, I worry more that dark money is just a symptom of a deeper trend in campaign finance. My worry is less about money and politics and more about power and politics. My worry is not about dark money—it is about shadow parties. My worry is that the SuperPACs and 501(c) organizations might someday become shadow parties as political elites adapt to the new regulatory environment ushered in by *Citizens United*.

*Parties as Shapeshifters: The Rise of the Shadow Party?*

So, what is the relationship between money and power in this cycle? It is a perfect example of what Pam Karlan and Sam Issacharoff call the “hydraulics” of campaign finance.<sup>22</sup> Campaign finance regulations do not reduce money’s influence; they simply force it into different outlets. Party donors whose contributions were limited turned to soft money. When the soft money loophole was closed, the money went into 527s. 527s morphed into SuperPACs, and then 501(c)(4)s and (c)(6)s. The money is still in the system; it is just traveling down different channels, hence the depressing lesson about the hydraulics of campaign finance reform. Regulation does not necessarily reduce the amount of money in the system; it may just shift money into different channels.

That is what many people in my field predicted would be happening in 2012. However, they missed a crucial feature about 2012 spending. They assumed that money in 2012 would move away from the parties into other structures and that the parties would therefore lose control of it. Some even thought this movement would give incumbent politicians an incentive to regulate independent spending. Incumbents, after all, naturally worry about independent organizations stepping on a campaign’s message, sending the wrong signal, and depriving candidates and parties of the control they prefer to exercise over spending. Indeed, the one point of agreement between incumbents on both sides of the aisle is that they would prefer to keep the money in their own hands.

It turns out, however, that parties still exercise a great deal of control over independent spending. What do I mean by that? If the money is being spent by outside groups, how can “the parties” control it?

It’s simple. Despite the formal prohibitions on coordination, the independent SuperPACs and 501(c)(4)s are intimately interconnected with the real parties. Party elites have shapeshifted in response to the

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<sup>22</sup> Issacharoff and Karlan, *supra* note 7.

new regulatory environment.<sup>23</sup> These new organizations have started to function like shadow parties—they are outside of the formal structure, but they have begun to house the party leadership.

To get a sense of which institutions party elites occupy nowadays, take a look at a great paper co-authored by one of my favorite political scientists, Seth Masket.<sup>24</sup> It graphs the connections among the individuals who run 527s and party elites. The connections are so deep and pervasive that the diagram looks like a rat's nest.

The same deep connections run between the SuperPACs and the candidates they support. Most of the SuperPACs are run by the people who used to run candidates' campaigns. And it is not just staff members that tie the SuperPACs to their candidates and party. It is the candidates themselves, as has been brilliantly shown by Stephen Colbert, who has singlehandedly done more for campaign-finance reform than anyone in the 20th century save Richard Nixon. Colbert did a great skit with his fellow comedian, Jon Stewart, and his lawyer, Trevor Potter, in which Potter represented both Colbert and Colbert's SuperPAC at the same time.<sup>25</sup> Colbert even put the leaders of both the campaign and the SuperPAC on the same conference call to talk strategy.

The only problem with Colbert's running joke is that it is too accurate to be funny. Colbert is playing it straight. The reality is the farce; the comedy is the tragedy. Although no common-sense definition of *coordination* exists that would allow what we see today, the legal definition of coordination allows a great deal of, well, coordination.

SuperPACs have used the same footage in advertisements as the campaigns they are supporting.<sup>26</sup> SuperPACs and campaigns have even run what are basically the same ads.<sup>27</sup> Sometimes they even share the same office. For instance, companies working for both Romney's SuperPAC and his campaign were in exactly the same suites in

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23 In making this argument, I draw inspiration from an article by Michael Kang, although it was written almost a decade ago and was devoted to different questions. M. S. Kang, "The Hydraulics and Politics of Party Regulation," *Iowa L. Rev.* 91 (2005): 131.

24 D. Dulio, S. Masket, and R. Skinner, "527 Committees and the Political Party Network," *Am. Pol. Res.* 60 (2012).

25 Accessed at <http://www.colbertnation.com/the-colbert-report-videos/405889/january-12-2012/indecision-2012---colbert-super-pac---coordination-resolution-with-jon-stewart>

26 The story first appeared in Politico. B. Smith, "Perry Ad Features SuperPAC Footage," *Politico* (November 26, 2011). The Campaign Legal Center filed a complaint in response. See [http://www.campaignlegalcenter.org/index.php?option=com\\_content&view=article&id=1565:december-15-2011-fec-complaint-filed-against-perry-campaign-and-perry-supporting-super-pac-urging-investigation-of-shared-video-footage&catid=63:legal-center-press-releases&Itemid=61](http://www.campaignlegalcenter.org/index.php?option=com_content&view=article&id=1565:december-15-2011-fec-complaint-filed-against-perry-campaign-and-perry-supporting-super-pac-urging-investigation-of-shared-video-footage&catid=63:legal-center-press-releases&Itemid=61)

27 G. Mullaney, "Pro-Romney Super PAC Runs Ad Similar to 2007 Campaign Spot," *The Caucus: The Politics and Government Blog of the New York Times* (February 23, 2011).



Alexandria, Virginia.<sup>28</sup> Better yet, the founder of one of the companies was married to a deputy campaign manager for the Romney campaign. She, conveniently enough, also ran a consulting firm that is housed—you guessed it—in the same suite. Her husband, temporarily cursed with self-awareness, did at least admit that the arrangement looked “ridiculous.” However, returning to Ferdinand the Bull mode, he also insisted that he and his wife never talked about the campaign. He also told us not to worry about coordination with the third company in the suite—one that also works for Romney’s SuperPAC, as well as Karl Rove’s Crossroads GPS. Why? Because it is separated from the other companies . . . by a conference room.

Even the top-tier leadership is connected. Campaign heads—even some candidates themselves—have begun to attend SuperPAC fundraisers, while donors and operators of the SuperPACs regularly consult with party officials. My favorite example of “non-coordination” is when Newt Gingrich told his own SuperPAC to stop running certain advertisements.<sup>29</sup>

### *Where Will Jim Messina Work in 2020?*

What does the emergence of these independent organizations mean for the structure of American politics? What keeps me up at night is a simple question: Where is Jim Messina—Obama’s mad genius of a campaign manager—going to work in 2020? I am worried about whether the Jim Messinas of the world will be working inside the formal party structure or outside of it, inside the Democratic and Republican parties or inside the shadow parties.

The SuperPACs and nonprofits, after all, have started to function like shadow parties. They raise money, they push candidates and issues, and their leadership is often the mirror image of the leadership of the parties themselves. However, these organizations have important advantages over the formal parties. They can raise unlimited sums of money, often with minimal disclosure. Election lawyers spend endless amounts of time dealing with the hassles associated with the formal parties’ raising money. If you are a lawyer for one of the shadow parties, your biggest worry is that Congress or the FEC may actually start doing their jobs and pass regulations. In this day and age, that is not much of a worry.

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28 M. McIntire, and M. Luo, “Fine Line between ‘SuperPACs’ and Campaigns.” *The New York Times* (February 25, 2012).

29 S. Huisenga, “Gingrich to SuperPAC: Fix Negative Ad or Take It Down.” *CBS News* (January 3, 2012), accessed at <http://www.cbsnews.com/news/gingrich-to-super-pac-fix-negative-ad-or-take-it-down/>

Given all the advantages that the shadow parties have over the formal parties, money will continue to flow toward them. More importantly, power will continue to flow toward them.

The one group that these independent organizations will never house, however, is the party faithful. The *party faithful* are the people who knock on doors, make calls, show up at rallies, and spend countless hours working for campaigns. Every day, people who are passionate about politics (the party faithful) do most of the groundwork for the campaigns. Call them politics' foot soldiers; call them partisan hacks; call them crazy. I call them the most glorious creatures in American politics. Even as the shadow parties' influences grows, the party faithful still reside in the formal party.

What happens if the center of gravity shifts? What happens if the elites run the shadow parties and the party faithful are left by themselves in the shell of the formal party structure? What happens if what really matters in politics happens in the shadow party, not the formal party?

Let me give a crude example. The *Christian Science Monitor* ran a rather extraordinary story in fall 2012, when Romney was behind in the polls.<sup>30</sup> The story suggested that the Romney campaign did not have enough money to take it through November. It was depending on outside spending, particularly Karl Rove's massive war chest. The reporter asked a simple question: What happens if Rove decides to cut Romney off?

Now imagine you want to be a player in GOP politics. Where do you want to work? Do you want to work for Romney's campaign? Or Rove's? Romney's formal party? Or Rove's shadow party?

Let me admit something academics do not admit often enough: It is possible it will not matter; it is possible that these shadow parties will simply remain convenient means for evading campaign-finance rules; but it is also possible that the center of gravity will shift. We will see a bipartite world, with elites and big donors occupying one institution—wielding enormous power by virtue of their money—and the party faithful occupying the other.

#### WHY WE SHOULD PLACE OUR FAITH IN THE PARTY FAITHFUL

I worry about a world dominated by shadow parties because I have a slightly romanticized view of the party faithful. I think of them as one of the few groups capable of keeping the parties honest. They serve as a bridge between the elites and the voters, between the party and the people. They provide an institutional check on the bargains that elites

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<sup>30</sup> L. Marlantes, "Mitt Romney's Debate Challenge: Keeping Karl Rove On Board." *Christian Science Monitor* (October 1, 2012).

can strike, some brake on how many principles will get compromised along the way. Party faithful are often political realists. They understand that compromise needs to be made, but they also believe in something—which is why they are the party faithful.

The party faithful's influence comes through informal mechanisms, the influence that comes from being part of the same organization, being under one roof, interacting regularly with the campaign leadership. We are social animals. Our views are shaped by those around us whether we are aware of it or not.<sup>31</sup>

If you have faith in the party faithful, you might worry about shadow parties because they hive off the party elite from the party faithful, reducing the day-to-day interactions that have long connected the two groups. If you have faith in the party faithful, you might worry that the emergence of a dual system—a party and a shadow party—will reduce the party faithful's most important form of influence, the influence they exercise by virtue of being part of the same organization. Big donors and big interests have always played an outsized role in politics. Until now, however, one important access point for the everyday concerns of everyday people has been the everyday people who work for campaigns. What happens when even that access point is eliminated? If you have faith in the party faithful, the emergence of shadow parties might worry you for reasons that have nothing to do with the conventional wisdom about big donors and dark money.

## CONCLUSION

I will end with a more modest, perhaps even a more optimistic, claim. Politics is an ever-changing, dynamic force and few things stay stable for long, but I will stick with my romantic point as well. As the campaign-finance landscape evolves in response to *Citizens United's* deregulation of independent spending, we should not lose track of the partisan hacks, politics' foot soldiers, and the worthiest and most honorable participants in the party structure: the party faithful. Although I have been among those who worry about driving money outside the parties, my bigger worry has become that we are driving power outside of the parties, turning them into shell organizations whose utility to candidates is little more than heuristic. We are separating the party elites from the party faithful. We are ensuring that the party elites talk to the moneyed interests and that the party faithful talk to the rest of us. The informal social network that once provided a

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31 For a survey of this literature and its import, see H. K. Gerken, *The Democracy Index: Why Our System is Failing and How to Fix It*. Princeton: Princeton University Press, 2009, 87–8.

bridge between those two worlds is slowly being dismantled. I have faith in the party faithful and hope very much that they will continue to wield the power they do. It is hard to see how that will happen, however, if the power of the shadow parties exceeds that of the real ones.