CITIZENS UNITED AND CAMPAIGN FINANCE REFORM


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Contents of #4
Staggenborg, Pledge to Amend
Amendment Fundamental
Congressional Amendment Process
Progressive for Constitutional Amendment
Momentum Building
Pledge to Amend
Move to Amend: Change More than Symptoms
Public Citizen for Amendment

Contents #5

Moyers and Co. Two Programs on Citizens United
September 16, 2012

Moyers and Co. Sept. 23, 2012

Jimmy Carter Denounces Citizens United

ACLU Members Differ over CU: Neuborne vs. Herman

Fang, Super-Pacs Buying Election

Fang, Corporations Buying the Election
September 16 and 23 Moyers is devoting to examination of *Citizens United* and the takeover of the US by corp. money assisted by the Supreme Court. On the 16th during the first three-quarters of the program he interviewed the publisher of *The Nation* magazine, Katrina vanden Heuvel, and Jamie Raskin, both highly articulate opponents of CU, both of them authors of articles in the latest *The Nation* focused on *CU*. During the 2nd segment 9-16, Moyers examined the extraordinary power wielded by Karl Rove in the interests of corporations and the wealthy. Try to see it, and watch next Sunday.

**Bill Moyers | Our Pro-Corporate Supreme Court**

Bill Moyers, Moyers & Company

Excerpt: "The Nation editor Katrina vanden Heuvel and Jamie Raskin, constitutional law professor and Maryland state senator, join Bill to discuss how the uncontested power of the Supreme Court is changing our elections, our country, and our lives." READ MORE [http://readersupportednews.org/opinion2/277-75/13506-our-pro-corporate-supreme-court](http://readersupportednews.org/opinion2/277-75/13506-our-pro-corporate-supreme-court)

**SUNDAYS 10 A.M., AETN, PBS, CHANNEL 13.**

**BILL MOYERS CO. PBS SEPTEMBER 23, 2012**

Guest Trevor Potter, formerly John McCain’s General Counsel, now head of Campaign Legal Center devoted to reversing the power of corporations and money over our democracy. Potter knows everything about the complex laws and practices, of which *Citizens United* is a part, by which our federal elections are poisoned. Particularly helpful is his detailed explanation of how SuperPacs and 301(4)c accounts work to distribute money from wealthy donors and keep them anonymous. [http://billmoyers.com/series/moyers-and-company/](http://billmoyers.com/series/moyers-and-company/)

**Jimmy Carter Slams 'Citizens United' as Threat to Democracy.**

Carter hopes "Supreme Court will reverse that stupid ruling."

Former U.S. President Jimmy Carter issued scathing remarks on the impacts of *Citizens United*, slamming the "financial corruption" and "excessive influx of money" that is making the U.S. electoral process "one of the worst in the world."

Carter made the comments speaking at Conversations at The Carter Center, a town-hall style discussion event, Tuesday evening, Sep 11th in Atlanta.

Referring to the 2010 Citizens United decision, Carter said he hopes the "Supreme Court will reverse
that stupid ruling," the Associated Press reports him as saying.
"We have one of the worst election processes in the world right in the United States of America, and it's almost entirely because of the excessive influx of money," he said.
"You know how much I raised to run against Gerald Ford? Zero," Carter said. "You know how much I raised to run against Ronald Reagan? Zero. You know how much will be raised this year by all presidential, Senate and House campaigns? $6 billion. That's 6,000 millions."
Newser reports that Carter instead praised a publicly-financed elections currently used by other countries, and said the U.S. should follow suit.

ACLU Debate in The Nation
Burt Neuborne, “Open Letter to the ACLU”; Response by Susan Herman
August 29, 2012 | This article appeared in the September 17, 2012 edition of The Nation.
Open Letter to the ACLU
Why the ACLU Is Wrong About 'Citizens United'
Burt Neuborne
March 21, 2012 | This article appeared in the April 9, 2012 edition of The Nation.

I've marched proudly behind the ACLU’s First Amendment flag for almost fifty years. On campaign finance reform, however, I believe the ACLU’s adamant opposition to limits on massive campaign spending by the superrich gets the constitutional issues wrong. Limiting the power of a few individuals and corporations that exercise disproportionate political influence solely because of their enormous wealth has nothing to do with censoring a speaker’s message; it is desperately needed to preserve the integrity of the egalitarian democracy the First Amendment was designed to protect.

Burt Neuborne was on the ACLU legal staff for eleven years, serving as its national legal director from 1981 to 1986.

About the Author
Burt Neuborne
Burt Neuborne, the Inez Milholland Professor of Civil Liberties at New York University Law School, is the founding...

Also by the Author
Letters

Feedback on the April 9 issue: trusting government ("again?")}, Katha Pollitt’s plea to affluent
Our Readers and Burt Neuborne

Debating 'Citizens United' (Citizens United v. FEC, The Constitution)

Was the Supreme Court's infamous decision a desecration, or only what the Constitution requires? A First Amendment scholar and civil liberties advocate debate.

Floyd Abrams and Burt Neuborne

16 comments

The campaign finance mess rests on three erroneous arguments the ACLU advanced in the 1976 Buckley v. Valeo case before the Supreme Court: (1) that spending unlimited amounts of money in an electoral campaign is “pure” speech entitled to the highest level of First Amendment protection; (2) that any attempt to equalize political power by limiting massive electoral spending by the superrich is flatly unconstitutional; and (3) that “independent” expenditures on behalf of a candidate (as opposed to contributions to the candidate) are incapable of corrupting the democratic process. In 2010, in Citizens United, five Supreme Court justices made the Buckley system even worse by ruling that corporations have the same electoral free-speech rights as individuals, which unleashed a torrent of electoral spending by corporations seeking a financial return on their political investments.

I confess to having supported the ACLU position in Buckley. As the corrosive effects on democracy of uncontrolled campaign spending became increasingly clear, however, I joined several former ACLU leaders—Norman Dorsen, Aryeh Neier, John Shattuck and Mort Halperin—in opposing the organization’s campaign finance position. We have argued, before the Supreme Court and the ACLU board, that spending massive amounts of money during an election campaign is not “pure” speech when the spending level is so high that it drowns out competing voices by repeating the same message over and over at higher decibel levels; that a compelling interest in equality justifies preventing wealthy speakers from buying up an
unfair proportion of the speech in settings like courtrooms, classrooms, town meetings, presidential debates and elections; that massive campaign spending by “independent” entities poses a serious risk of postelection corruption; and that corporations lack the attributes of conscience and human dignity that justify free-speech protection.

We’ll keep repeating those arguments. The shift of a single vote on the Supreme Court will make them law one day. But we needn’t wait for a new Court. The State of Montana has leveled a powerful challenge to *Citizens United* that is making its way to the Court. Since 1912, in an effort to shield its democracy from a takeover by out-of-state mining interests, Montana has banned corporate political spending. When the Montana Supreme Court recently stubbornly upheld the corporate electioneering ban in the teeth of *Citizens United*, corporations asked the US Supreme Court to overturn the Montana Court without a hearing. Instead, the justices temporarily stayed the Montana law and invited the parties to file papers discussing whether the case should be accepted for full-scale review. In reluctantly voting to stay the Montana statute even temporarily, justices Ruth Bader Ginsburg and Stephen Breyer asserted that *Citizens United* should be reconsidered because massive “independent” spending in the 2012 presidential election has undercut the assumption that such spending is incapable of corrupting democracy. The absurdity of the fiction that election winners will ignore huge debts owed to wealthy supporters who have spent millions to get them elected is now apparent even to the Supreme Court. In *Caperton v. A.T. Massey Coal Co.* (2009), the Court recognized that massive independent spending by a litigant to elect a member of the West Virginia Supreme Court risked influencing his postelection rulings, requiring the judge to step down in cases involving his electoral sugar daddy. Step one in untangling the current mess is persuading the Supreme Court that in light of the experience in the 2012 presidential election, unlimited independent campaign expenditures pose a significant risk of postelection
corruption of elected legislators and executive officials, as well as elected judges.

Second, in *Citizens United* Justice Anthony Kennedy responded to the argument that corporations lack the attributes of conscience and human dignity needed for free-speech protection by insisting that First Amendment protection does not depend on the speaker’s identity. As long as a speaker is generating speech of value to voter/hearers, Kennedy argued, the speech itself enjoys protection. Like Yeats (and the Eagles), Justice Kennedy declined to separate “the dancer from the dance.” The Court has swept away that prop for *Citizens United*. In *Bluman v. FEC*, a Canadian graduate of an American law school working at a New York law firm and an Israeli citizen working as a medical resident argued that the Congressional ban on independent electoral spending by lawful resident aliens violates the First Amendment. In January all nine justices rejected the resident aliens’ First Amendment claim without even issuing an opinion. Frankly, it isn’t surprising that the justices disposed of *Bluman* without an opinion. You just cannot write a principled opinion distinguishing corporate speakers from resident alien speakers without jettisoning Kennedy’s insistence that the speaker’s identity doesn’t matter. Step two in untangling the campaign finance mess is to recognize that after *Bluman*, the identity of the speaker matters a good deal. *Bluman* makes it much easier to question whether corporations, lacking the attributes of human dignity, should be treated as protected First Amendment speakers, especially when more than a century ago the Supreme Court denied them the Fifth Amendment right to remain silent in *Hale v. Henkel*, precisely because corporations lack the attributes of human dignity.

Finally, Kennedy’s *Citizens United* opinion rested on the assumption that voters would know who was bombarding them with corporate electoral speech. But disclosure laws are riddled with loopholes permitting huge electoral spenders—corporate and human—to avoid or delay disclosure. *Citizens United* does not forbid plugging the loopholes, but it has proven
impossible to persuade cash-addicted politicians to go cold turkey on secret cash. Since both
*Buckley* and *Citizens United* were premised on protections provided by imaginary full-
disclosure rules that will never be enacted, step three in fixing the mess is to persuade the
Court that unless and until full disclosure is attained, the contingent rights described in
*Citizens United* should not exist.

So, here’s a modest proposal for our friends at the ACLU from its past leaders. Join us in filing
a Supreme Court brief supporting Montana’s right to shield its democratic processes from
corporate takeover. Almost forty years of experience teaches that the ACLU’s campaign
finance policies are well intentioned but mistaken. It takes a truly great organization to admit a
mistake. But then, the ACLU is a truly great organization.

*Burt Neuborne*
March 21, 2012

This article appeared in the April 9, 2012 edition of The Nation.

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**SUSAN HERMAN’S REBUTTAL AND NEUBORNE’S REPLY**

**The ACLU & Political Speech** BY SUSAN HERMAN

New York City The Nation. *May 7, 2012 P. 26*

We always like getting mail from our esteemed friend and former colleague
Burt Neuborne, but in his criticism of
our stance on the *Citizens United* decision
[“Open Letter to the ACLU,” April 9],
we think his stance is on a dangerously slippery slope.
Trying to make the case for reconciling
the tenets of the First Amendment with expenditure
limits on campaign finance, Neuborne
points to a “compelling interest in
equality” he claims would justify preventing
rich people from buying speech in various
contexts. But this approach invites the government
to be in the business of determining
which political speech is legitimate and
which should be squelched. Forget the slippery slope. If we sign on to that notion, we’ll have already fallen off the mountain. Neuborne contends that speech bankrolled by a wealthy donor should be regarded as not being “pure” speech because it might have an undesirable impact on people’s views. But speech doesn’t stop being speech depending on who is speaking or how much. Of course, the ACLU is not immune to the anxiety many people, including Neuborne, have about the integrity of our electoral process and the influence of money on politics. However, there are better ways to address those concerns than a scheme that empowers the government to determine who gets to speak and for how long. Like Neuborne, we want to expand the marketplace of political ideas and discourse. However, we would achieve that with a comprehensive system of public financing of elections that would create a level playing field and not force politicians to start dialing for dollars as soon as the polls have closed on the last election. Decreasing the supply of money expended on political speech by government fiat is not the answer. Cash will always find a way to flow through loopholes. Reducing the demand for cash is a more promising approach. We can have meaningful regulation without abandoning our First Amendment principles. The ACLU backs reasonable limits on campaign contributions—by individuals and corporations alike—as well as suitable disclosure rules that promote transparency so we know who is funding political speech. Neuborne argues that we should nevertheless be willing to compromise our First Amendment principles to accomplish the desired result (less speech by certain people or corporations) because real solutions to the confluence of money and politics, like public financing and meaningful disclosure rules, are unlikely to be adopted in today’s political climate. Yes, there are systematic flaws that have indeed become a plague on our political system. But limits on speech itself will only magnify those flaws and make them worse.
Neuborne Replies

New York City

It’s never fun to disagree with a friend like Susan Herman, but I fear that she (and the rest of the ACLU’s current leadership) is suffering from a bad case of Skokie syndrome. In Skokie, the ACLU stood firm in favor of free speech for Nazis. It was an iconic moment, and the ACLU was right. Censorship of speech on the basis of content is never—and I mean never—permissible under the First Amendment. But that doesn’t mean that every government effort to limit the power of the superrich to turn elections into auctions also violates the First Amendment.

In the first place, restrictions on the amount of money very wealthy people can spend on buying public office have nothing to do with censoring on the basis of content. The rules would apply to all rich folks—George Soros and Sheldon Adelson alike—regardless of who they support. Second, if the Nazis wanted to march through Skokie all day, all the time, I’ll bet the ACLU would have supported a limit on the decibel level and repetitive nature of the speech. It’s one thing to assure that someone’s message has a chance to be heard; it’s another to guarantee someone the unlimited power to repeat the message louder and louder until it drowns out everyone else. Third, Susan Herman makes no effort to defend the ACLU’s incomprehensible insistence that huge multi-shareholder corporations have a First Amendment right to pour unlimited funds into the electoral process. The last time I looked, corporations lacked the attributes of conscience and human dignity needed to support such a First Amendment right. Please tell me, Susan, how limiting the First Amendment to human beings puts us on a slippery slope to anything but a return to sanity.
Finally, I’d have more sympathy for the ACLU’s claim to be in favor of public funding of elections if the organization had sought to defend Arizona’s excellent matching plan from invalidation by the usual 5-4 vote in the Supreme Court. Norman Dorsen and I were there defending the plan. Where was the ACLU?

In fact, it’s the ACLU that’s trapped on a slippery slope. The organization appears terrified of moving away from an absolutist position opposing campaign finance reform because it fears government abuse. So do I. But by opposing virtually all regulation of spending by the very rich, the ACLU position leaves our democracy vulnerable to massive private abuse by the very rich. Face it, guys, there is no escape from risk in this world. To my mind, the risk posed by control of our politics by the 1 percent is far greater than any risk posed by thoughtful campaign finance reform.

Burt Neuborne

Never Mind Super PACs: How Big Business Is Buying the Election By Lee Fang

This article was reported in collaboration with the Investigative Fund at the Nation Institute, where Lee Fang is a reporting fellow.

On January 27, 2010, one year into his term, President Barack Obama used the occasion of his State of the Union address to issue a warning. The Supreme Court had just opened the “floodgates for special interests—including foreign corporations—to spend without limit in our elections.” He was speaking about the ruling in Citizens United v. Federal Election Commission, in which the Court struck down nearly a century of law, granting corporations vast new leeway to influence the outcome of elections.
In the months after Obama’s speech, the American Petroleum Institute, an oil industry trade association that represents hundreds of multinational oil and gas companies, would demonstrate just how prescient the president's warning was.

**We Recommend**

**Secret Election Money Unleashed** *(US Politics, Campaign Finance, Citizens United v. FEC)*

Since Citizens United, corporations and foreign entities can spend unlimited undisclosed funds on elections. Here's what it looks like.

In a letter to the Obama administration obtained by the *The Nation*, Ryan asked that a clinic in his district receive a grant made possible by the Affordable Care Act.

Lee Fang

**Former Democratic Strategists Now Boost the GOP** *(Election 2012)*

The 2008 producer of the DNC convention is among the many Democratic strategists now working for the GOP.

Lee Fang

Before *Citizens United*, API had gone to battle with the president over his efforts to address global warming. It took out issue ads, hired lobbyists from K Street, and financed dubious studies to claim that even the most piecemeal legislative fixes, such as the Waxman-Markey bill designed to cap carbon emissions, would lead to economic ruin. The group spent $7.3 million on federal lobbying during the year the bill was being debated.

But as the 2010 midterm elections loomed, *Citizens United* handed API an additional arrow for its quiver. The group could now funnel undisclosed corporate donations directly to campaign entities. **Among the oil executives leading API at the time**—and still to this day—was Tofiq Al-Gabsani, a registered lobbyist for the Saudi government. Al-Gabsani is the chief executive of Saudi Refining Inc., a wholly owned subsidiary of the Saudi Arabian Oil Company, the government-owned Saudi oil giant better known as Aramco.
Aramco, by means of its US subsidiary, is understood by insiders to be one of the top donors to API, where, according to the *Washington Post*, membership dues for the largest firms can be as much as $20 million a year. API has roughly 400 member firms, but only a small group of oil and gas industry CEOs sit on its board of directors, which oversees the trade association’s major political campaigns, according to API state business filings and two former API executives. Alongside the top officials of such major American firms as ExxonMobil and ConocoPhillips, one of those directors for the past three years has been Al-Gabsani.

US law still bans foreign corporations from participating directly in elections. But after *Citizens United*, trade associations like API—whose influential members include foreign corporations—are free to spend as they wish, unburdened by disclosure requirements. And these groups have taken full advantage of their new freedoms. While other campaign committees, from labor unions to Super PACs, face strict transparency rules, trade associations enjoy unparalleled power to covertly manipulate elections using corporate money.

API-funded groups were a force behind the tidal wave of negative advertisements to hit Democrats in the midterms. Pennsylvania Representative Joe Sestak “voted for Pelosi’s job-killing cap-and-trade plan,” intoned one election-season TV ad from Americans for Tax Reform, one of several groups financed by API in 2010. Sestak’s vote for a bill to put a price on carbon pollution, the ad continued, constituted “a great big tax that would make utility bills skyrocket, gas prices soar.” Sestak lost his bid for the US Senate, and his Congressional seat was one of sixty-three taken by the Republicans.

The ads bankrolled by entities like API helped deliver one of the greatest midterm election upsets in American history. For the first time, outside spending groups eclipsed party spending. The young president, with his party’s ranks decimated and the House flipped into
the hands of the far right, was forced to abandon much of his domestic agenda.

Perhaps the most profound aspect of the Democrats’ defeat that year: the window for confronting global warming all but closed. With extreme weather events convulsing the globe, 86 percent of incoming freshman Republicans signed an oil industry–sponsored pledge to oppose all climate regulation. As John Boehner lifted the House speaker’s gavel, any chance of passing climate legislation collapsed. In this way, the Democrats’ defeat was a resounding victory for the oil companies represented by API—and for Saudi Arabia, the world’s largest exporter of crude oil.

Saudi Arabia has worked for years to obstruct progress on climate reforms. Just weeks prior to Obama’s State of the Union address warning of the dangers of foreign corporate money, Mohammad Al-Sabban, a senior adviser to the Saudi government on energy policy, helped lead the opposition to a global climate accord in Copenhagen. Like many of the interest groups dependent on fossil fuels, Al-Sabban even disputed the idea that industry has contributed to global warming. “Climate is changing for thousands of years, but for natural and not human-induced reasons,” he told BBC News.

The Nation
About the Author
Lee Fang
Lee Fang is a reporter who covers money in politics, conservative movements and lobbying. Lee’s work has resulted...
Also by the Author
Exclusive: Paul Ryan Quietly Requested Obamacare Cash (Healthcare Policy, Election 2012)

LEE FANG, “Look Who’s Buying the Election”
Unrestrained, secret corporate electioneering unleashed by *Citizens United.*

The US Chamber of Commerce's Multimillion-Dollar Attack Plan

*Sasha Abramsky*  
*August 29, 2012*  |  *This article appeared in the September 17, 2012 edition of The Nation.*

Florida seniors,” a grim voiceover announces. “Did Bill Nelson consider the consequences when he cast a deciding vote for Obamacare?”

“Tell Jon Tester: the Washington way isn’t the solution,” another intones. “We need less government and lower taxes.”

“Sherrod,” a third asks, referring to Ohio Senator Sherrod Brown, “what planet are you on?”

If you live in a state where a competitive race could help tip the balance in the Senate this fall, you’ve almost certainly seen ads like these, laden with menacing theme music, light on the facts and funded by the **US Chamber of Commerce.** The nation’s largest business lobby is showcasing bold ambitions this year in an effort to build on gains made in the 2010 midterms, when at least $33 million of Chamber advertising helped push the nation dramatically rightward. The group began placing ads in swing districts as early as November 2011. Since then, it has rolled out a campaign aimed at influencing at least fifty House and eight Senate races, and according to *Politico* it has set a goal of $100 million in spending for this electoral
Watchdog groups believe the strategy in 2012 is similar to that of 2010: the Chamber goes into a district, blitzes it with attack ads to soften up the opposition and then steps back to let other deep-pocket groups come in. The intent is to force Democrats to play defense across the board, thus spreading their resources thin. According to the liberal online publication *ThinkProgress*, twenty of the twenty-one ads the Chamber released in May were hostile to Democratic candidates.

“The Chamber has spent about $600,000 attacking me,” Tester, the farmer turned Democratic Montana senator, told me in April. “I’ve got a great small-business record. I’ve carried bills the US Chamber has advocated for in the past. [But] they see Montana as a state that they can pick up. They’re dishonest, painting me as something I’m not. They’re trying to paint me as Wall Street, as somebody who’s ‘gone DC.’ It’s about as crazy as anybody can get.”

The organization is maintaining its longstanding policy of not officially taking sides in presidential elections. But even though it has not directly funded anti-Obama or pro-Romney ads, that doesn’t mean its leaders wouldn’t dearly love to oust Obama. Robert Weissman, president of the consumer advocacy group Public Citizen, says the Chamber hopes to influence the presidential election indirectly—by shaping the contours of the public debate in the months leading up to election day and by bringing conservative voters to the polls.

It is also reportedly coordinating with the top conservative Super PACs to craft a unified message and spending strategy. US Chamber Watch has documented a series of meetings between the Chamber’s counsel and GOP strategists dating back to 2009, when they conceived the notion of creating American Crossroads, the Super PAC headed by Karl Rove.
Since then, the watchdog group believes, the Chamber has been holding regular meetings with Crossroads, which claims that it will be able to bring $300 million to the 2012 election fight, and with Koch brothers–backed organizations (including Americans for Prosperity), which have bandied about the figure of $400 million as their target. Further evidence of cross-pollination: Chamber strategist Scott Reed previously worked for the GOP, and former Chamber counsel Steven Law is president of Crossroads GPS, the Rove-affiliated 501(c)(4) "social welfare organization."

According to the Washington Post, the key players in this alliance have been meeting every couple of weeks to strategize. In May, Mike Allen and Jim Vandehei reported in Politico that the Chamber, Crossroads, Americans for Prosperity and the conservative Congressional Leadership Fund had joined together in a pledge to raise an unprecedented $1 billion to influence the upcoming elections.

Compared to these figures, the $100 million that the Chamber hopes to spend could seem almost paltry. But to view it as such would be a huge mistake—for if recent years have proven anything about the role of money in the country’s politics, it’s that a group with a sizable budget for carefully targeted advertising can exert outsized influence on election day.

All of this adds up to a ton of bad news for the country’s democratic system. Pay-to-play makes it that much harder for ordinary people to get a fair hearing. It wrecks the notion of good governance, and it undermines the idea that the public interest can be well represented by the state and its elected officials.

And yet there are signs that the Chamber has overplayed its hand. Historically, the organization has been careful to camouflage its right-wing economic agenda, claiming it simply champions a “common sense” approach to the country’s problems. But these days the
Chamber is struggling to tame the Tea Party beast it helped to unleash, whose destabilizing extremism was on display during last year’s debt ceiling debate. And the Chamber is facing increased scrutiny into its questionable spending of charitable funds for political purposes as well as its alleged misuse of money ponied up by anonymous donors. The Citizens United ruling gave corporations a free pass to influence elections, but with the flood of money has come heightened attention to the organizations that are bundling and spending it, often playing fast and loose with established federal election requirements. That puts the Chamber in an unwelcome—and possibly damaging—spotlight.

SASHA ABRAMSKY, “THE CHAMBER MAKES IT RAIN”
THE NATION (SEPTEMBER 17, 2012).
The business lobby spends millions attacking Democrats while playing fast and loose with the law.

About the Author
Sasha Abramsky
Sasha Abramsky is receiving support from the Special Fund for Poverty Alleviation of the Open Society Foundations to...

Also by the Author
Running for President on the Justice Party Ticket: A Q&A with Rocky Anderson (Are Republicans and Democrats the Same?, Electoral Politics, Third Party Politics)

The former Salt Lake City mayor is mounting an unlikely protest against American plutocracy.

Sasha Abramsky
Kamala Harris, Protecting and Serving the 99 Percent (Banking Predatory Lending, US Politics, Economics, Law). When it comes to defending homeowners from the big banks, the California attorney general is on a roll. Sasha Abramsky