The following excerpt is the introduction to Zephyr Teachout’s new book, *Corruption in America: From Benjamin Franklin’s Snuff Box to “Citizens United.”* 2014.

The *Citizens United* decision was not merely bad law; it was bad for politics, and displayed an even worse understanding of history. Americans from James Madison onward have argued that it is possible for politicians and citizens alike to try to achieve a kind of public good in the public sphere. The traditional view is not naive — it does not assume that people are generally public regarding. It assumes that
the job of government is to create structures to curb temptations that lead to exaggerated self-interest. It certainly recognizes the power of self-interest; but instead of endorsing it, the traditional American approach makes it government’s job to temper egocentrism in the public sphere. The traditional conception implicates difficult questions: What is self-orientation and public orientation, and what is the public good? But it does not discard these distinctions because they are difficult ones to parse. A classical American approach engages the complexity. Like liberty, speech or equality, corruption is an important concept with unclear boundaries. It refers to excessive private interests in the public sphere; an act is corrupt when private interests trump public ones in the exercise of public power and a person is corrupt when they use public power for their own ends, disregarding others.

Like liberty, speech or equality, corruption is an important concept with unclear boundaries.

*Corruption in America* is my effort to fill in the history that *Citizens United* ignored. It provides a previously neglected story of the use of the concept in American law and a much-needed account of the different kinds of meanings attached to it throughout the political life of the country. I show that for most of American history, courts remained committed to a broad view of corruption. The book draws primarily upon the texts used by lawyers: the Constitutional Convention, cases and statutes. It shows how, starting in the late 1970s, everything began to change around this issue.

The Supreme Court, along with a growing subset of scholars, began to confuse the concept of corruption and throw out many of the prophylactic rules that were used to protect against it. This rejection has led to an overflow of private industry involvement in political elections and a rapid decline in the civic ethic in Congress and the state houses. The old ideas about virtue were tossed out as sentimental, but the old problems of corruption and government have persisted. Interest-group pluralists who reject these ideas do not, I believe, have an answer to the problem of corruption and in fact have been part of the problem.

The contemporary era is full of proverbial diamond-encrusted gifts, although they are less likely to come from the king of France. Instead, they come from the lords of highly concentrated, monopolistic industries who, like the king of France in 1785, have an intense and personal interest in the political choices of the legislative branches and a casual disregard for the civic process.
Candidates are dependent upon the gifts of wealthy individuals in the form of campaign contributions and businesses in the form of independent political expenditures. The impulse to resist these presents is a deeply American one, going all the way back introduction to the founding. But in order to protect this resistance, we will need tools and approaches that are alien to the modern law and economic transactional understandings of corruption.

A criminal law “War on Corruption” is arguably like the wars on drugs or terror — nearly impossible to win in arraignments.

The book argues that prophylactic rules designed to limit temptations are not a backwater but a cornerstone of what is best in our country. In our modern prosecutorial culture, one might be tempted to think that white-collar bribery laws, which I categorized as “corrupt intent” laws, would be the appropriate tool for fighting corruption. But they are problematic. If a bribery statute is narrowly drawn (or interpreted), it covers only brazen, unsophisticated exchanges and does not actually solve problems of money being used to influence policy and undermine representative government. A narrow law will punish only clumsy politicians like William Jefferson, who hid his rolls of cash in a freezer.

More broadly interpreted corrupt intent laws are troubling for the opposite reason: since they proscribe giving a “thing of value” with “intent to influence” governmental action, they can be used to punish political enemies. By their terms, they can even cover a politician’s promise to help a teachers’ group in exchange for an endorsement. A criminal law “War on Corruption” is arguably like the wars on drugs or terror — nearly impossible to win in arraignments.

Corruption is far better fought through changing basic incentive structures. This might seem intuitive to anyone involved in politics, but the majority of the current Supreme Court openly prefer bribery laws to prophylactic campaign spending limits: one of their justifications for striking down campaign finance rules is that corrupt intent laws provide better protection.

A deeper understanding of the tradition of corruption can enrich our civic culture and our laws.

I seek to enrich the way American judges, scholars and citizens imagine the concept of corruption and its relationship to our legal system. The book challenges four commonly held misconceptions: that corruption law began in the post-Watergate era, that criminal bribery law is the dominant sphere in which corruption law plays out, that bribery law is coherent and consistent and that quid pro quo is
the heart of corruption law. A deeper understanding of the tradition of corruption can enrich our civic culture and our laws.

If the Supreme Court can better remember our past, it might overturn dozens of cases that have limited the capacity of elected legislatures to make their own experiments in democracy. And if we, as citizens, can remember our past, it could augment the way we think about our founding principles. What if we could add “anti-corruption” to citizens’ sense of national identity?

From Corruption in America: From Benjamin Franklin’s Snuff Box to Citizens United by Zephyr Teachout. Copyright © 2014 by the President and Fellows of Harvard College. Used by permission. All rights reserved.

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[With much help from Noam Chomsky. –D]

From Watergate to Deflategate (or) Mistakes v. Crimes

One useful measure of a political culture’s moral level is the nature of what counts as a terrible outrage, disgrace, or scandal in that culture. The Vietnam War – really an imperial U.S. war on Vietnam and neighboring countries – has a bad reputation in the United States. That’s a good thing, no doubt, but consider the main reason for the war’s poor standing in the nation’s collective memory. It’s not because the U.S. “crucifixion of South Asia” (as Noam Chomsky aptly described it at the time) was a monumentally immoral and imperial crime that killed from 3 to 5 million Southeast Asians (along with 58,000 U.S troops) between 1962 and 1975. No, the Vietnam War’s bad name results from the fact that the crime is understood to have been a humiliating failure, costing tens of thousands of U.S lives, stirring up mass protest, and damaging the credibility of U.S. foreign policy in a blundering but supposedly well-intended “mistake” that ended with the North Vietnamese sweeping into Saigon.
A similar moral cluelessness mars the national U.S. memory of George W. Bush and Dick Cheney’s invasion and occupation of Iraq. It is commonplace by now for many U.S. politicians on both sides of the nation’s partisan divide to refer to the absurdly named Operation Iraqi Freedom (OIF) as “a mistake.” What you won’t hear except on the mostly excluded margins of U.S. media and politics culture is serious reference to OIF as immoral, imperial, and/or criminal. Such descriptions are wholly appropriate for a transparently illegal war of unprovoked invasion driven by blatantly petro-imperial, racist, and commercial imperatives. Granted advance approved in Congress by then US Senator Hillary Clinton and many other hawkish Democrats, including Reille Hunter’s future sex-scandal partner John Edwards (then a US Senator from North Carolina), this astonishing imperial transgression killed as many as 1 million Iraqis, injured and displaced millions more, and devastated social and civil infrastructure across Mesopotamia. Still, the invasion can be discussed as a “mistake” only in the same sense as Vietnam: as a well-intended policy that didn’t work.

Much the same vapid moral nothingness surrounds the debates over the U.S. military and CIA’s use of “enhanced interrogation” (torture) techniques and murderous drone strikes across the Muslim world in the wake of the 9/11/2001 jetliner attacks. The disputes are mainly about whether or not these terrible, arch-criminal tools of repression actually work or not in the so-called war on terror, more accurately described as a war of terror. The fact that these outrageous methods and weapons have immorally traumatized, maimed, crippled, and killed human beings on a mass scale is beside the point, for Uncle Sam is never a criminal. “The United States,” Bill Clinton’s Secretary of State Madeline Albright explained in 1999,”is good. We try to do our best everywhere.”

Watergate v. COINTELPRO
The infamous Watergate Scandal is another case in point. It was a petty burglary of the Democratic Party’s national headquarters in 1972 by a handful of thugs working for the Republic National Committee. It became a giant national media obsession that led to the resignation of U.S. President Richard Nixon. And it was nothing compared to COINTELPRO. As the leading left US intellectual Noam
Chomsky explained 25 years ago:

“at the exact same time that Watergate was discovered, there were exposures in the courts and through the Freedom of Information Act of massive F.B.I. operations to undermine political freedom in the United States, running back to Roosevelt but really picking up under Kennedy. It was called ‘COINTRELPRO’ [short for ‘Counterintelligence Program’], and it included a vast range of things….the straight Gestapo-style assassination of a Black Panther leader [Fred Hampton];…organizing race riots in an effort to destroy black movements; …attacks on the American Indian Movement, the women’s movement, you name it…fifteen years of F.B.I. disruption of the Socialist Workers Party – that meant regular F.B.I. burglaries, stealing membership lists and using them to threaten people, going to businesses and getting people fired from their jobs and so on. That fact alone…is already vastly more important than…a bunch of Keystone Kops [breaking] into the Democratic National Committee headquarters one time. The Socialist Workers Party is a legal political party after all…And this wasn’t just a bunch of gangsters, this was the national political police; that’s very serious….In comparison to this, Watergate is a tea party” (Chomsky, Understanding Power [New Press, 2002], 118).

Very serious, that is, to anyone who cares about basic civil liberties. It wasn’t terribly serious as far as the Washington Post and other Watergate-obsessed corporate media institutions were concerned, which is why you will get blank stares (“Coinwhatmo?”) when you mention “the COINTELPRO scandal” to all but a few Americans.

Missiles, Coups, and Mass Murder vs. Cigars and a Stained Dress

Watergate and even COINTELPRO were small crimes compared also to Lyndon Johnson and Richard Nixon’s transgressions abroad, including in Nixon’s case the secret, mass-murderous bombing of Cambodia (leading to the rise of the proto-genocidal Pol Pot regime there) and US coordination and support of a fascistic military coup that overthrew the democratically elected Chilean government of the Salvador Allende and killed thousands of workers and activists in 1973. During the televised Watergate hearings, nobody in the reigning mass media or in Congress bothered to mentioned that Nixon had carried out “one of
the most intense bombings campaigns in history in densely populated areas of a peasant country [Cambodia], killing maybe 150,000 people” (Chomsky, Understanding Power, 120).

Watergate was also a much smaller crime than the Reagan administration’s Iran-Contra cockup. That scandal involved elite US military, White House, and intelligence officials illegally funding the right-wing Nicaraguan terrorists known as the Contras by covertly selling missiles to Iran. Reflecting the U.S. Establishment’s sense that Sixties-inspired press freedom and independence had gone far enough with the Watergate coverage, corporate media chieftains agreed not to pursue the Iran-Contra Scandal to the point where another criminal U.S. President might have had to resign – this time over a matter that was explicitly problematic for the notion that US foreign policy is always conducted with good and noble intentions.

Thanks in no small part to that agreement, the next biggest scandal in the official U.S. memory after Watergate involves not the murder of thousands of Nicaraguan peasants but rather the unseemly soiling of a young White House staffer’s blue dress with Bill Clinton’s well-travelled DNA. Clinton currently enjoys remarkably high popularity in the U.S. He does so with no small assistance from a corporate media that helped nearly force his resignation in the face of a monumental presidential scandal two decades ago. So what brought Clinton to the brink of defenestration from the Oval Office: passing the arch-regressive and corporatist North American Free Trade Agreement (NAFTA) over and against his campaign promises not to do so?; pushing and signing the vicious elimination of poor families’ prior entitlement to minimal federal cash assistance in the name of “welfare reform” while embracing endemic corporate welfare and pushing through the deadly de-regulation of high finance?; humiliating Russia, criminally bombing Serbia (on falser pretexts), and otherwise generating a New Cold War with Russia that helped crush hopes for a desperately needed diversion of resources from the bloated Pentagon System to the meeting of human and social needs?; imposing the savage “economic sanctions” that killed more than a million Iraqis? No, what almost proved Clinton’s undoing was the childish Monica Lewinsky cigar and fellatio fiasco – one of Wild Bill’s copious sordid sexual escapades – and the silly
lies he told about his private skullduggery.

“The People Who Own the Place”: Clinton v. Edwards and Nixon

Clinton has been forgiven and redeemed in the “mainstream” U.S. media and politics culture. Such exoneration will never be extended to John Edwards. The reasons for this contrast include the particularly twisted nature of Edwards’ baby-Daddy transgression (committed while Elizabeth Edwards struggled with ultimately terminal cancer) and his subsequent bizarre cover-up. At the same time, however, crazy John Edwards committed an even more unpardonable sin in the corporate-managed “democracy.” He campaigned eloquently, passionately, and perhaps even sincerely against the moneyed elite and corporate-financial domination of both of the nation’s leading political organizations. Whether he meant it or not, candidate Edwards went off the reservation on concentrated wealth.

The more interesting Clinton comparison is with Nixon. Reflecting on why Nixon was removed from the White House over the “triviality” of Watergate, Chomsky noted that Nixon “made a lot of powerful enemies” when he tore apart the post-World War II Bretton Woods system. The Bretton Woods framework established the U.S. dollar as the global reserve currency fixed to gold and placed restrictions on import quotas and the like. It made the U.S. the world’s banker, in essence. When Nixon took the nation off the gold standard, suspended the convertibility of the dollar, and raised import duties, he messed with “the people who own the place.” Leading “multinational corporations and international banks relied on the [Bretton Woods] system, and they did not like it being broken down” (Chomsky, Understanding Power, 119). This elite anger over Nixon’s move was evident in the Wall Street Journal and other elite business venues, suggesting strongly that more than few powerful people were happy to see Nixon go.

Clinton, it should be remembered, stayed carefully obedient to the nation’s corporate and financial masters. The “people who own the place” occupied key positions and maintained hegemonic influence in his militantly neoliberal, NAFTA-signing administration. As Charles Ferguson notes in his useful book Predator Nation: Corporate Criminals, Political Corruption, and the Hijacking of
America (2012), Clinton’s “economic and regulatory policy was taken over by the [financial] industry’s designated drivers – Robert Rubin, Larry Summers, and Alan Greenspan…[and] investment bankers were given clear signals that they could behave as they wished.”

**Deflategate vs. Militarism Promotion**

A revealing episode in the United States’ rich history of selective public outrage comes from the world of sports. Look at the high-profile media scandal that emerged before the most recent Super Bowl merged over supposedly shocking revelations that the National Football League (NFL) champion New England Patriots manipulated the air-pressure of game footballs in accord with the preferences of their quarterback Tom Brady. “Deflategate” is a minor matter even on purely athletic and sportsmanship grounds but it has received enormous media attention and popular discussion over the last seven months. It is now the biggest NFL scandal ever.

In reality, however, two other NFL-related scandals would deserve considerably more attention in a morally serious culture. The first is the NFL’s campaign to undermine and discredit recent path-breaking medical research showing beyond reasonable doubt that the frankly vicious and super-violent game sold by the massively profitable and powerful league has a pervasively crippling and deadly impact on the brains of many of its players from top professional ranks down. This is no small moral matter given the extreme popularity of football in the US, where the more than 1.1 million high school students and more than 90,000 college students play the brain-damaging sport each year.

The second scandal has to do with recent reports that NFL teams have received millions of dollars from the US Defense Department in exchange for honoring US troops and veterans in on-field ceremonies and on stadium screens before and during games. There’s something more than a little distasteful about the NFL taking cash to salute the nation’s military personnel. The league, after all, is rolling in profits thanks in no small part to its cozy relationship with Washington. Thanks to its highly favored status with Washington, it functions as a de facto legal monopoly. It is classified as a 501(c)6 and therefore pays no taxes. No wonder the
billionaires who own all but one of the league’s teams (the Green Bay Packers belong to 360,584 stockholders) all make handsome profits on their franchises (no other major U.S. sports league can say that). Surely, one might imagine, these uber-wealthy beneficiaries of corporate welfare would not need to be paid to throw some love at “our troops” – at the people who are sent off to kill, maim, die, and suffer horrible injuries in the names of “freedom” and “civilization.” But no, football barons must have their pound of flesh even for that little bit of “giving back” to the military “heroes” – something that militaristic Republican politicians like John McCain (R-AZ), Jeff Flake (R-AZ), and Chris Christie have called “disgraceful” and “outrageous.”

Note, however, what is not a scandal in the national coverage and commentary, trapped in the usual moral quicksand of American Exceptionalism, which dictates that the United States and above all its military and its wars are inherently good and noble: the federal government takes millions of taxpayer dollars to invest in promoting the imperial militarism that produces mass-murderous crimes like the U.S. invasions of Vietnam and Iraq and the torture and drone strikes that have helped push untold masses of Muslims into the arms of the Islamic State and other extremist Islamist groups. If the taking of the taxpayer money by explicitly commercial, profit-seeking football capitalists is scandalous, so is the giving of it by the purportedly higher-minded Pentagon. The Defense Department spends the public money with the intention of advancing its ability to garner recruits and continued lavish taxpayer funding for its murderous activities across a war-ravaged planet in which the U.S. accounts for nearly half of all military spending.

Poor Folks’ Welfare v. Rich Folks’ Welfare
Still, it’s good, I suppose, to see any scandal emerge that focuses some attention, however briefly, on federal payouts to the rich. In the U.S. for many decades, “mainstream” media and politics culture has advanced the noxious notion that there is something scandalous about the comparatively tiny percentage of resources the United States government spends on assistance to the poor. This poisonous and reactionary sentiment helped drive Bill Clinton (and Newt
Gingrich’s) aforementioned welfare “reform” (elimination), a Dickensian policy that has proved calamitous for the nation’s many millions of impoverished Americans in the current century. Meanwhile, U.S. government welfare remains all too quietly alive and well, free of scandal – for the wealthy corporate and financial Few, that is. As the leading U.S. business paper *BloombergBusiness* candidly informed its elite (and therefore safe) readers two years ago, reporting on research from the International Monetary Fund:

“the largest U.S. banks aren’t really profitable at all...the billions of dollars they allegedly earn for their shareholders [are] almost entirely a gift from taxpayers...The top five banks – JPMorgan, Bank of America Corp, Citigroup Inc., Wells Fargo & Co,. and Goldman Sachs Group Inc...the banks occupying the commanding heights of the U.S. financial industry – with almost $9 trillion in assets, more than half the size of the U.S. economy – would just about break even in the absence of corporate welfare. In large part, the profits they report are essentially transfers from taxpayers to their shareholders.”

By “corporate welfare,” *Bloomberg Business* meant not just the massive bailouts the big banks received after helping crash the economy in 2008 and 2009, but also and above all the reduction of their borrowing costs by the federal government’s policy of loaning them money at low to zero interest rates. It isn’t just in the financial sector, of course, where big, politically influential corporations receive giant government subsidies and protection, all free from the tough-love “free market discipline” of “welfare reform.” The aforementioned *Pentagon System is itself a giant form of corporate welfare for high-tech U.S. and other global corporations*, one of countless ways in which the federal government funds and protects Big Business, including the highly subsidized and super-profitable fossil fuel firms who are leading humanity over the cliff of radical anthropogenic climate change, Funny how that never quite makes it to real scandal status in the U.S. – no more than the millions killed abroad as “collateral damage” by the U.S. Empire, particularly in the oil-rich Middle East.

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Will GOP Swing State Governors Strip & Flip Donald Trump Into the White House?
By Bob Fitrakis & Harvey Wasserman, Reader Supported News
24 July 16

Voting Machines Can Be Manipulated

As the Democratic Convention opens in Philadelphia, there’s just one one clear message that matters from the Republicans: Donald Trump will be within ten points of Hillary Clinton in the fall election.

Thus, unless the Democrats do something about the issue of election protection, it will be within the power of key GOP swing state governors to give Donald Trump the presidency.

For all its problems, the wildly disorganized and fractious gathering in Cleveland all boiled down to Trump’s final speech. It was rambling and often incoherent. But it delivered the classic strongman message: You need ME to protect you.

Given the chaos, violence, and injustice of imperial America in 2016, that message is almost certain to sell with enough Americans to keep Trump close enough to Hillary Clinton to allow the election to be electronically stripped and flipped.

In 2008 and 2012, Barack Obama was able to overcome these barriers with a huge popular margin in more states than the GOP could reasonably steal.

This year, in a close election, given how the mechanics of our election system operate, the decision of who will enter the White House will be in the hands of the GOP governors of such swing states as Florida, North Carolina, Ohio, Michigan, Iowa and Arizona.

Those will be the only six votes that really count in November. Should all or most of these governors (with their GOP Secretaries of State) flip the vote count for Trump, he will likely has a lock on the White House.

Two major “strip and flip” forces can doom the Democrats in 2016.
First, the GOP stripping of millions of suspected Democrats from the voter roles is proceeding. As Greg Palast reports in his brilliant new film, “The Best Democracy Money Can Buy – a Tale of Billionaires and Ballot Bandits,” computer programs coordinated by Kris Kobach, Kansas’s GOP secretary of state, are being used to disenfranchise millions of mostly African-American, Hispanic and young citizens.

As exposed by Palast, the stripping technique entered the computer age in 2000, when Florida governor Jeb Bush dropped more than 90,000 blacks and Hispanics from the registration rolls in an election ultimately decided by 537 votes.

In 2004 the Ohio GOP stripped more than 300,000 inner city voters in an election decided by 118,775 officially, though more than 90,000 votes still remain uncounted.

Palast shows that in 2016, the Democratic constituency will be electronically stripped of millions of voters in at least two dozen key states, easily enough to make the difference in a close election.

But if that isn't enough to put Trump in the White House, the final count can be flipped with computerized “adjustments” made in the dark hours of election night.


In 2016, well over half the votes will be cast on electronic voting machines. Most of these are ten years old or more. All can be easily manipulated by their owners, which are private corporations, primarily Warren Buffett's ES&S.

The courts have ruled that the software on these machines is proprietary. So there is no effective public monitoring or accountability of the tallying process. At the end of election day, if they are in agreement with each other, the governor and secretary of state can make the vote count pretty much whatever they want.

In a close election, the six key swing states electronically available to the GOP are likely to comprise more than enough votes to swing the Electoral College. The question is: will their governors give those electoral votes to Trump?

Florida’s governor is the far-right Rick Scott. After 2000, Florida reformed the secretary of state position used by Katherine Harris to help Jeb Bush put George W. Bush in the White House. But the governor’s power over the vote count remains potentially decisive. Florida also has a key Senate race involving Marco Rubio, which gives the GOP an added incentive

North Carolina has also made adjustments to its vote count system, and has a Democratic secretary of state. But its disenfranchisement measures are legendary and could be decisive.
Michigan, Iowa and Arizona could all be strip-and-flip locks for the GOP.

So as always, Ohio may be the key. Governor John Kasich has made very clear his disdain for Donald Trump. But the US Senate race pits his good friend Rob Portman against the former Democratic governor Ted Strickland. Kasich may be willing to throw Trump under the bus. But he and his secretary of state, Jon Husted, will be strongly committed to sending Portman back to the Senate.

Thus they won’t want the unlikely discrepancy of a GOP Senate victory alongside a GOP presidential loss.

Whatever the case, no matter how many hundreds of millions are spent on this campaign, no matter how many thousands of hours the bloviators blab about this issue or that, when push comes to shove, this election will be decided on election night by the swing state governors and secretaries of state who have their hands on the electronic vote count.

Thus the smart money would be on Donald Trump entering the White House in January 2017.

Bob Fitrakis & Harvey Wasserman’s Strip & Flip Selection of 2016: Five Jim Crows & Electronic Election Theft is at www.freepress.org, along with The Fitrakis Files. Harvey Wasserman’s America at the Brink of Rebirth: The Organic Spiral of US History is at www.solartopia.org.

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- ‘There Is Effectively No Limit on Money in Politics’
- ‘You Can Legally Bribe a Government Official’

‘There Is Effectively No Limit on Money in Politics’
CounterSpin interview with Brendan Fischer on Wisconsin campaign corruption. By Janine Jackson. Jul272015
Via FAIR 7-29-15

Janine Jackson interviewed Brendan Fischer of the Center for Media and Democracy about Scott Walker’s campaign finance case for the July 24 CounterSpin. This is a lightly edited transcript.

Janine Jackson: Listeners will remember 2011 efforts to recall Wisconsin Gov. Scott Walker in the wake of his frontal assault on labor rights. In 2012, an investigation was
launched into illicit coordination between Walker’s recall-fighting campaign and a number of wealthy conservative groups. The investigation closed this week, but elite media are much more keen to tell us what that means for Walker than what it means for Wisconsin—not to mention constitutionally incapable, it would seem, of seeing past the balance of power between Republicans and Democrats to consider that between the political machinery and the people. Here to help us sort through the court’s ruling and its potential effects is Brendan Fischer. He’s general counsel for the Center for Media and Democracy; they are based in Wisconsin. He joins us now by phone from Washington, DC.

Welcome to CounterSpin, Brendan Fischer.

BF: Thanks for having me.

JJ: Well, it sounds as though the charge was that Walker actively sought to skirt finance laws and that the ruling is: Yes, he did, but it’s OK? I mean, help us to understand exactly what happened here.

BF: That’s about right. Walker was accused of coordinating with outside groups, namely Wisconsin Club for Growth and Wisconsin Manufacturers & Commerce. And these are groups that, after the US Supreme Court’s ruling in Citizens United, can accept unlimited secret donations, and Walker’s campaign is still bound by campaign finance limits that the US Supreme Court has consistently upheld.

And the reason that coordination matters so much is because if a candidate can coordinate directly with a group that takes secret unlimited donations, then the campaign contribution limits that still apply to candidates go out the window, and it basically means that there is really effectively no limits on money in politics any longer. And the Wisconsin Supreme Court threw out the rule that limited coordination between candidates and outside groups and they said that the mere omission of words like “vote for” or “vote against” in a coordinated ad put them beyond the reach of Wisconsin campaign finance law.

JJ: It’s important to underscore that money can come from organizations to the candidate. The candidate will know exactly who sent him that big check; the people who won’t know are the public.

BF: Yeah, that’s exactly right; and the evidence that prosecutors gathered in this investigation and that has been made public is very troubling. There is a mining company CEO that secretly donated $700,000 to a group working with the Walker campaign. After the election, Walker prioritized the mining bill that the company wanted. But at the time that the bill was being debated in the Wisconsin legislature, the public had no idea that the company had donated $700,000 to a group working directly with the Walker campaign.
There was also an example of a chain hardware store owner who gave $1.5 million to this group working with the Walker campaign and in turn, he received $1.8 million in tax credit from the jobs agency that Walker chairs; as well as a significant drop-off in enforcement by the Department of Natural Resources, which enforces environmental laws. These are just two examples among many, of secret contributions to a group working directly with the Walker campaign, that the public had no idea was happening, but Walker had full knowledge of.

**JJ:** Just want to bring you back for a second, to what is ostensibly the First Amendment point here. Because the whole thing hinges on the fact that these dark money groups are not making ads that say “vote for Scott Walker,” they’re making so-called “issue ads.”

This is what the court said was the important distinction. They are making ads that don’t point towards a particular candidate. Is it your sense that that’s just not a meaningful distinction in theory? It certainly seems not to have been meaningful in practice.

**BF:** It’s not meaningful at all; and it goes well beyond what any state or federal court has ever held. Up to this point, no court has ever held that the mere omission of words like “vote for” or “vote against” means that coordination is perfectly acceptable. The critical element of the court’s holding in *Citizens United* was independence. They claimed—I would say questionably—that independent spending poses little risk of corruption because, by definition, it is not coordinated. Once coordination is present, it’s no longer independent. But the Wisconsin Supreme Court ignored that fact and they went well beyond what any court has ever held in opening the floodgates to secret money in politics.

**JJ:** Well, a big part of this story, and what makes it all feel so kind of claustrophobic, is the fact that the Wisconsin Supreme Court justices, who decided the case, are themselves elected, and their elections are bankrolled by the same groups, some of them, like Wisconsin Club for Growth and Wisconsin Manufacturers & Commerce, that coordinated with Walker and that challenged the law. I mean, it really kinda hurts your brain.

**BF:** Yeah, that is certainly the most distressing thing about this decision. The court never should’ve heard this case at all. So Wisconsin Club for Growth and Wisconsin Manufacturers & Commerce, the two groups that Walker is accused of coordinating with and that were parties to this case, are also the dominant spenders on Wisconsin Supreme Court elections. By our accounting, they’ve spent together over $10 million electing the court’s four-justice conservative majority; and that raises serious questions of conflicts of interest.
Particularly because two of the justices, Justice David Prosser and Justice Michael Gableman, were elected by very slim margins. So it’s fair to say that but for the $3.6 million that Wisconsin Club for Growth and Wisconsin Manufacturers & Commerce spent supporting David Prosser in the 2011 race, Prosser would not be on the bench. And we can say something similar about Gableman: He won his race by only 20,000 votes, and if WMC hadn’t spent around $2.75 million on Gableman’s race, he also wouldn’t be on the bench. So these justices would not be on the bench were it not for the spending by the exact same groups that were sitting in front of them in court.

JJ: Yes, well, finally I’m going to refer folks to your piece at PRWatch.org that talks about the role of the right-wing echo chamber, the right-wing media machine, in all of this, which was significant. But I would like to ask you about what many folks think of the mainstream or centrist media and the way they approach these issues. Because, you know—you’d hope that, if nothing else, journalists would be compelled by this use of the First Amendment as actually a weapon of secrecy; but what we get instead is the Washington Post, for example, on July 17 describing these groups that don’t have to disclose their donors, and they say, “These groups are not supposed to directly coordinate with political campaigns, but many have found workarounds.” Workarounds? I mean, “I’m supposed to pay my taxes but I found a workaround.” You know? I can’t help but feel that mainstream media play some role in normalizing this kind of behavior.

BF: Yeah. I think that the groups involved in this case have gotten away with a lot. If you read the mainstream media, you may not know that this entire investigation was actually led by a Republican. So even as Walker and his allies described this as a partisan witch hunt or some sort of political payback, they conveniently ignore the fact that the investigation has been overseen by a Republican, involved the participation of both Republican and Democratic district attorneys across the state. And you might not know that this was not really a questionable area of law. Back in 1999, another Wisconsin Supreme Court justice named Jon Wilcox, who’s no longer on the bench, was fined $60,000 for engaging in basically the same type of issue-ad coordination as Walker. So, this was not a workaround; this was just a broad assertion by groups that thought they could get away with it.

Janine Jackson is the program director of FAIR and the host of CounterSpin. Hear the interview with Brendan Fischer on SoundCloud:
Janine Jackson interviewed investigative reporter Lee Fang about Washington’s revolving door for the July 24 CounterSpin. This is a lightly edited transcript.

Janine Jackson: When Eric Holder first joined law firm Covington & Burling in 2001, he was coming from a stint as deputy attorney general under Bill Clinton. So it’s no wonder that when Holder went to the Obama administration as attorney general, the folks at Covington kept his seat warm.
And indeed, for many, Holder’s seamless slide from theoretically prosecuting big banks to defending big banks from prosecution is a common-sense phenomenon only the hopelessly naïve would bother to decry. He’s a lawyer, what do you expect? was the substance of many a comment —of what comment there was, because, again, this latest glimpse of the porous tissue between regulator and regulated went down as no news at all for most of the press.
Our next guest does find that revolving door newsworthy. Investigative journalist Lee Fang has been talking about money and politics for years; he’s a co-founder of RepublicReport.org and writes at The Nation as well as The Intercept. He joins us by phone from the Bay Area.
Welcome back to CounterSpin, Lee Fang.
Lee Fang: Hey, Janine. Thank you so much for having me.
JJ: Well, tell us first, if you would, a little bit about Covington & Burling. Who are they and who are some of their clients?
LF: Covington & Burling is a Washington, DC, law firm that also engages in lobbying; it’s got an extensive practice that hires former members of Congress, their staff, former federal officials—including of course, Eric Holder—and it represents major corporations. So the firm has helped negotiate settlements for corporations that have been accused of wrongdoing, they’ve also helped secure legislation for their corporate clients and they’ve done a number of regulatory and lobbying acts that help provide their clients with special access to politicians.
JJ: And some of those clients have included some of the largest banks.
LF: Yeah, that’s right. You know, a few years ago, Reuters had a great investigation that showed that Covington & Burling has not only represented the big banks—Bank of America, CitiGroup, JP Morgan, Wells Fargo—but they played a really special role in the foreclosure crisis, helping these banks set up a mortgage company that helped create a document trail. When banks have attempted to foreclose on companies and they have to produce these documents showing that they have a chain of title, then this third party company, known as MERS, produced these documents, in many cases falsified these documents, and Covington’s role, actually, in the late ’90s—they provided the legal documentation to create MERS on behalf of Fannie Mae and Freddie Mac.

The New York Times depicts Eric Holder’s departure from the Justice Department. (photo: Zach Gibson/NYT)

JJ: Well, in thumbnailing Holder’s tenure as attorney general, folks like the New York Times said, “His Justice Department wrested huge fines from banks, including JP Morgan Chase, Barclays and CitiGroup,” but seen another way, Holder by some lights didn’t so much try and fail to prosecute big banks as succeed in protecting them.

LF: That’s right. As the inspector general of the Justice Department found, under Holder the Justice Department actually deprioritized mortgage fraud in their US attorney offices in New York, California and elsewhere. So there was a systemic attempt to shift the blame for the mortgage and financial crisis in 2008. Instead of the big banks, there were only criminal prosecutions of some small-time lenders and mortgage professionals, but the big banks that really had the responsibility behind the financial crisis, there was no effort to make any criminal referrals that we know of publicly and, of course, there were no prosecutions of any of the large banks responsible for the crisis.

JJ: Well, when you talk about Eric Holder going from Covington & Burling to the White House back to Covington & Burling back to the White House back to Covington & Burling, the response from many could be summed up, I think, as “duh.” I mean, some of us don’t forget 1992 Hillary Clinton saying, “For goodness sakes, you can’t be a lawyer if you don’t represent banks.”

And the idea is kind of: This is just how the game is played, what’s your problem? For me, it’s not as if we’re asking reporters to feign surprise or feign ingenuousness, but you can’t present just kind of winking at the cynicism of it all as though that meant the same as interrogating it, or explaining who is hurt and who is helped. Obviously, real people are involved here.

LF: That right. I think this is not just a scandal for the Justice Department in that so many of the officials, not just Holder, but his top deputy Lanny Breuer also returned to Covington & Burling after serving for a few years in the Obama administration—this is a scandal for the media.
One of the perhaps most cynical and most prevalent ways that you can legally bribe a government official or an elected official is to wait to give them a multi-million dollar check, not while they’re in office, but as soon as they retire. So if a politician helps a bank or an oil company, that oil company can’t directly buy them a boat or give them a million-dollar check. But if they wait until that official retires from office, as soon as they step out the door of Congress and find an employment contract with a lobbying firm or a big bank, then they can accept a multi-million-dollar payday; and so it’s simply delayed bribery, in my perspective.

But because this has become so routine, that this happens every day, whether it’s a member of Congress or a high level regulator, or in this case, the head of the Justice Department, this has become such a function of life in Washington, DC, it’s no longer a scandal in the eyes of many reporters. In a sense they condone this behavior, because in some of the exit interviews that Holder gave, reporters who had that special access to Eric Holder, they didn’t ask him about this dynamic, they didn’t ask him how much he’s being paid, they didn’t ask him about the ethics issues of going back to work for a big bank lobbying firm given his role in refusing to criminally prosecute these banks. You know the onus lies on the reporters and the media outlets that fail to ask these questions.

JJ: I almost feel as though it’s a sign of savvy to show that you’re not outraged, that you’re not disturbed at this sort of shenanigan, you know? That’s kinda what makes you a “serious” reporter in some ways. Which is disheartening.

LF: Sure, it’s part of the dynamic of being a beat reporter that if you ask these kind of unflattering questions, you lose access, you get shuffled around. So to be a successful beat reporter, you have to ask only tangential questions, or questions that make the interviewee—cast them in a positive light, I suppose.

A lobbyist for Pepsi is now chief of staff of the Senate Agricultural Committee, which oversees school lunch programs and nutritional guidelines.

JJ: And just so folks know that we’re not using Holder as an example because he’s so rare, this kind of porousness happens at all levels. For example, before you were writing about Holder, you were writing about this guy Stephen Sayle from Chevron and his new job.

LF: That’s right. A top lobbyist for Chevron, Stephen Sayle is now a senior staff member for the House Committee on Science, which oversees science policy for the federal government. This is a lobbyist, Mr. Sayle, who has helped Chevron beat back regulatory efforts that rest on federal science, whether it’s on the ozone or on climate change.

And now that he is overseeing the Science Committee, he has a unique opportunity to shift not only policy that governs the way that federal science is used to implement
pollution regulations, he also has an opportunity to help with the Science Committee’s kind of investigation of climate scientists: Over the years, the House Science Committee has brought in various scientists to quiz them on climate science and other issues that are very controversial now given the EPA’s pursuit of regulations that affect the fossil fuel industry.

But that isn’t a unique dynamic. In the last two Congresses, we’ve seen an unprecedented wholesale change in the senior staff positions in Congress, and I’m referring to the chief of staff, which reports directly to a member of Congress or senator, or the staff director position, and that’s the position that oversees either a committee or a subcommittee. In almost every single position for staff director, we’ve seen lobbyists for the relevant industry take those spots.

So for the Agricultural Committee, which oversees school lunches and nutrition guidelines, we now have a Pepsi lobbyist who is overseeing that committee. In the Senate Armed Services Committee, which oversees military spending, we have a lobbyist for the trade group that represents Lockheed Martin and Boeing now leading that committee. So from committee to committee, whether it’s on chemical safety, whether it’s on pollution or on school lunches, we have lobbyists for the industries affected now running the show from the inside.

JJ: It certainly sounds like a story to me, but it’s not if you think it’s just business as usual.

LF: Certainly, and this gets back to the culture of Washington, DC. If you work in the public interest, if you kind of sacrifice your career to helping the public good, working at a small think tank or at an academic research position or in a public interest organization, you’re kind of seen as a loser. You’re not invited to the big parties, you’re not featured in the glossy magazines. But if you’re a political player, the big media outlets celebrate you; you’re kind of seen as a winner in the big social circles in Washington, DC. And as a kind of side effect of this entire dynamic, when you take these positions, whether it’s with Chevron or with another company, and then move into positions of power, your friends in the media do not consider this a scandal.

JJ: We’ve been speaking with journalist Lee Fang; his recent article on Eric Holder appeared on The Intercept. You can find them online at FirstLook.org. Lee Fang, thank you very much for joining us this week on CounterSpin.

LF: Janine, it was a pleasure. Thank you so much for having me.

Related
Brendan Fischer on Wisconsin Campaign Corruption, Lee Fang on Eric Holder’s Revolving Door July 24, 2015 In "CounterSpin"
The Supreme Court’s *Citizens United* ruling is one of the worst judicial decisions in history. Groups like the Koch Brothers are now free to buy elections and undermine our democracy.

**Help us reach 250,000 citizen co-sponsors for a Constitutional Amendment to overturn *Citizens United*:**

Supporter: Dick Bennett  
Co-Sponsor: **PENDING (click to sign) >>**

**SIGN YOUR NAME →**

Dick --

It’s been more than 5 years since the Supreme Court’s fateful decision in *Citizens United v F.E.C.* Since then we’ve seen:

-- The rise to power of Charles and David Koch  
-- The invention of the “SuperPAC”  
-- The unconstricted flow of money into our elections

What’s happening before us is a fundamental erosion of our democracy. Big money groups -- most prominently those on the far right -- are seizing more and more control of America’s electoral system.

This was painfully evident in the 2014 Elections. Right wing groups were dominant spenders in elections both small and large -- and it paid dividends through a massive Republican wave.

Regardless of whether you lean right or left in your politics, we can’t allow ourselves to have a
system that’s up for sale to the highest bidder.

We need change...but it won't be easy. Amending the Constitution is a major undertaking. To start, we need tens of thousands of citizens like you to stand up in support of this movement.

**Dick, will you join us now and add your name as a citizen co-sponsor for a Constitutional Amendment to overturn *Citizens United*? >>**

[http://act.endcitizensunited.org/Co-Sponsor](http://act.endcitizensunited.org/Co-Sponsor)

We need your support. And we thank you for it.

*-EndCitizensUnited.org*

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Dick,

In 2010, the year *Citizens United* was decided, our race cost more than $30 million: the most expensive in the country.

Fast forward to 2014. A Senate race cost **$100 million**.

You don’t need to be a lawyer to see what’s happening: The amount of “dark money” in politics is exploding, and it’s a direct result of *Citizens United*.

All that "dark money" doesn’t just look like corruption; it is **corruption**. We need to stand up and take action to demand that Congress overturn *Citizens United* and put elections back in the hands of everyday Americans. **Will you add your name?**

[Click here to add your name and demand Congress overturn *Citizens United*.](http://act.endcitizensunited.org/Co-Sponsor)

There’s a reason why we’ve recently had one of the least productive Congresses in modern American history: A small group of ultra-wealthy donors are driving the conversation in Washington, donors whose agenda has nothing to do with the needs of middle-class families.
Citizens United has fundamentally changed the complexion of our democracy, and we need to end it before it’s too late. **Stand with us today to demand Congress overturn Citizens United.**

Add your name: Click here to demand Congress overturn *Citizens United* and put elections back in the hands of everyday Americans.

Thank you, Michael

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Robert Weissman, Public Citizen  
*Via uark.edu*

9:46 AM (32 minutes ago) to James 4-9-15

Dick,

Right now.

We have our very best chance to severely disrupt *Citizens United* since the moment the United States Supreme Court handed down that abominable ruling more than five years ago.

But we have some hard work to do.

Right now.

HERE’S WHERE THINGS STAND:

Thanks to a campaign spearheaded by Public Citizen, President Obama is thinking about requiring all federal contractors to disclose how much they spend trying to influence elections.

**Don’t mistake this for some bureaucratic triviality.**

Our taxpayer dollars go to thousands of companies — including most of the largest corporations — that supply the government with everything from pencils to toilet seats to nuclear submarines.

And, because of *Citizens United*, those corporations can secretly spend literally as much as they want supporting (or attacking) politicians.
However, with an executive order from the president requiring transparency, we can prevent Big Business from corrupting our democracy with all that dark money.

Right now.

HERE’S HOW WE GOT THIS FAR:

Over the past few months, Public Citizen and our allies have made a major push to win White House support for this much-needed rule.

We’ve collected more than 600,000 petition signatures in support of dragging the dark money out of the shadows.

Last week — on the anniversary of another horrid Supreme Court campaign finance ruling, McCutcheon v. FEC — we held a rousing demonstration in front of the White House (and brought all those petitions to deliver to President Obama).

With allies, we also organized rallies in 50 cities around the country — from Honolulu, Hawaii, to Concord, New Hampshire — in support of the executive order.

Those are absolutely stunning numbers.

But we have more to do.

Right now.

HERE’S HOW WE WIN:

In the weeks ahead, we’re going to:

- Direct thousands of calls to the White House from concerned citizens across the country demanding presidential action on political spending by corporations that do business with the government.
- Organize members of Congress to add their voices to the nationwide grassroots demand for disclosure. Constituents across the country will contact their representatives and senators — by email, by phone and in person — and urge them to ask President Obama to act.
- Provide policymakers our detailed and technical expertise to back up the push for an executive order.
- Build on our success in generating media support for contractor disclosure — including a recent column published by The New York Times.
- Use social media tools to engage more and more Americans in this critical opportunity.

One of the things that distinguishes Public Citizen as such a powerful public interest organization is our ability to deploy so many different advocacy tools: organizing and lobbying; research and legal analysis; traditional media outreach and innovative online advocacy; and much more.

And we are going to bring everything we’ve got to strike a blow against Citizens United.

Right now.

Your support can help lock down this benchmark victory against Citizens United and power all the work we’re doing together to preserve democracy.
Can you chip in $5 or more?

We can make history.

Right now.

Onward,

Robert Weissman
President, Public Citizen

Financial Services Conflict of Interest Act (S. 1779, H.R. 3065), and it would block corruption by jamming the “revolving door”


Robert Via uark.edu 7:11 AM (4 hours ago) to James 9-12-15

Dick,

This is tremendous news.

An anti-corruption bill that Public Citizen worked closely with congressional lawmakers to draft is now a major issue in the presidential election.

Hillary Clinton is for it.

Bernie Sanders is for it.

Martin O'Malley is for it.

It’s the Financial Services Conflict of Interest Act (S. 1779, H.R. 3065), and it would block corruption by jamming the “revolving door” between Wall Street and agencies that are supposed to regulate Wall Street.

Your members of Congress should be for it too. Urge your representative and senators to co-sponsor the bill.

Even if you’ve already emailed your congressmembers about this issue, it will help if you email them again.

In a recent speech, Jeb Bush also voiced support for revolving-door reforms.

The Financial Services Conflict of Interest Act would block the revolving door by:

- Banning corporations from offering special “golden parachute” bonuses to CEOs or other employees who take jobs at federal regulatory agencies that oversee the same companies.

- Prohibiting senior staff of federal regulators from taking any official action that directly and substantially benefits a corporation or client they worked for in the past two years — or any
corporation where they seek future employment.

- Requiring any financial sector regulator to wait two years after leaving public service before taking a corporate lobbying job or even assisting in a lobbying campaign.

Senator Elizabeth Warren has noted that the Financial Services Conflict of Interest Act is “a bill any presidential candidate should be able to cheer for.”

Let’s make sure the lawmakers who are currently in office and are able to make a difference right now are cheering too.

Tell your members of Congress: Support the Financial Services Conflict of Interest Act.

Thanks for taking action!

Onward,

Robert Weissman
President, Public Citizen
they regulate—an additional sign, perhaps, that the potential for corruption is at the heart of voters' concerns about money in politics. Thirty-seven percent picked dramatically reducing the amount of money lobbyists can give to candidates and parties, while 31% picked putting tough limits on super PACs.

Represent.us wants legislation that would reduce the power of money in politics, and seeks to reframe the issue around the corruption idea. “Corruption is un-American” reads the tagline on its website. Among the group’s advisers are Lawrence Lessig, the Harvard professor and internet activist, and former Federal Elections Commission chair Trevor Potter.

The poll results come at a time of uncertainty for efforts to limit the role of money in politics. The issue has long polled relatively well, but has struggled to gain traction on Capitol Hill, where many incumbents are wary of changing the rules of a game that has worked to their advantage. Meanwhile, in the wake of the 2010 Citizens United decision, more money than ever is flowing into elections, much of it undisclosed. And the Supreme Court could be poised to strike down another key pillar of campaign-finance law in McCutcheon v. FEC.

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Dick Bennett

Blog: http://jamesrichardbennett.blogspot.com/
For research purposes, specific subjects can be located in the following alphabetized index, and searched on the blog using the search box. The search box is located in the upper left corner of the webpage.
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