

**Testimony of Angela Migally
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New Jersey Assembly
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The Brennan Center for Justice at New York University School of Law thanks the Committee for holding this hearing on the impact *Citizens United* may have on New Jersey and for the invitation to testify.

Since its creation in 1995, the Brennan Center has focused on fundamental issues of democracy and justice, including research and advocacy to enhance the rights of voters and to reduce the role of money in our elections. That work takes on even more urgency after the United States Supreme Court's decision in *Citizens United v. Federal Election Commission* on January 21, 2010. *Citizens United* rivals *Bush v. Gore* for the most aggressive intervention into politics by the Supreme Court in the modern era. Indeed, *Bush v. Gore* affected only one election; *Citizens United* will affect every election for years to come.

By largely ignoring the central place of voters in the electoral process, the *Citizens United* majority shunned the First Amendment value of protecting public participation in political debate. To restore the primacy of voters in our elections and the integrity of the electoral process, the Brennan Center strongly endorses four steps to take back our democracy:

- Promote public funding of political campaigns¹
- Modernize voter registration²
- Demand accountability through consent and disclosure³
- Advance a voter-centric view of the First Amendment.⁴

¹ Frederick A.O. Schwarz Jr., *Public Financing of Races: If It Can Make It There...*, ROLL CALL, Jan. 28, 2010, available at http://www.rollcall.com/issues/55_83/ma_congressional_relations/42688-1.html.

² VOTER REGISTRATION MODERNIZATION: COLLECTED BRENNAN CENTER REPORT AND PAPERS (The Brennan Center for Justice 2009), available at http://brennan.3cdn.net/329ceaa2878946ba17_kwm6btu6r.pdf.

³ Ciara Torres-Spelliscy, CORPORATE CAMPAIGN SPENDING: GIVING SHAREHOLDERS A VOICE (The Brennan Center for Justice 2010), available at http://brennan.3cdn.net/0a5e2516f40c2a33f6_3cm6ivqcn.pdf. Upon request, the Brennan Center is happy to provide hard copies of the report to this Committee.

⁴ Monica Youn, *Giving Corporations an Outsized Voice in Elections*, THE L.A. TIMES, Jan. 10, 2010, available at <http://www.latimes.com/news/opinion/commentary/la-oe-youn10-2010jan10,0,1203910.story>.

I. What Did *Citizens United* Really Say?

Before discussing how *Citizens United* will impact New Jersey's elections, it is important to understand what *Citizens United* did and did not say. Until *Citizens United*, a century's worth of American election laws prohibited corporate managers from spending a corporation's general treasury funds in *federal* elections.⁵ Pre-existing laws required corporate managers to make political expenditures via separate segregated funds, which are also commonly known as corporate political action committees, so that shareholders, officers and managers who wanted the corporation to advance a political agenda could contribute funds for that particular purpose.⁶

Citizens United, which was registered under Section 501(c)4 of the U.S. Tax Code, wanted to air an on-demand 90-minute documentary criticizing Senator Hillary Clinton in the weeks leading up to the presidential primary and wanted to pay for this documentary using its general treasury funds. They sued the Federal Elections Commission, claiming that the requirement that they pay for the documentary from a separate segregated fund burdened their First Amendment rights to speech.

Citizens United did...

- Hold that corporations have the same First Amendment rights to make independent expenditures as natural people.
- Hold that restrictions that prohibited corporations and unions from spending their general treasury funds on independent expenditures violated the First Amendment.
- Uphold disclosure requirements for political advertisements that mentioned a candidate and were made within 60 days of an election even if they did not expressly advocate for the defeat or election of a candidate.

Citizens United did not....

- Rule on the constitutionality of contribution limits.
- Rule on the constitutionality of pay-to-play laws.
- Rule on the constitutionality of soft money regulations.
- Rule on the constitutionality of the public financing of elections.

⁵ Until *Citizens United*, the Federal Elections Campaign Act (FECA) prohibited corporations (profit or nonprofit), labor organizations and incorporated membership organizations from making direct contributions or expenditures in connection with federal elections. 2 U.S.C. § 441b. The limits have a long vintage. For 63 years, since Taft-Hartley, corporation have been banned from spending corporate treasury money to expressively support or oppose a federal candidate and for 103 years, since the Tillman Act, corporations have been banned from giving contributions directly from corporate treasury funds to federal candidates. After *Citizens United*, corporations are still banned from direct contributions in federal elections.

⁶ 11 C.F.R. 100.6; FED. ELECTION COMM'N, SSFs AND NONCONNECTED PACS (May 2008), available at <http://www.fec.gov/pages/brochures/ssfvnonconnected.shtml>.

II. How Will *Citizens United* Impact New Jersey's Elections?

Since New Jersey does not ban or place source restrictions on corporate independent expenditures, *Citizens United* will have little direct impact on New Jersey's campaign finance laws. However, the broader implications that *Citizens United* has on the role of individual voters in elections will undoubtedly change New Jersey democracy.

A. Corporate Spending

In New Jersey, corporations have long been able to use their general treasury funds to finance independent expenditures in state elections. Thus, *Citizens United* has not opened up any new avenues for corporate political spending at the state level that did not already exist in New Jersey.

However, *Citizens United* may increase corporate independent expenditures in New Jersey's federal elections. An increase in corporate spending at the federal level may trickle down or even precipitate renewed corporate spending at the state level.

B. Pay-to-Play

Citizens United will not impact New Jersey's pay-to-play laws. As stated above, the Supreme Court in *Citizens United* did not address the constitutionality of pay-to-play bans and leaves the case law in that area undisturbed.

Narrow and well crafted pay-to-play bans have generally been upheld against speech related challenges.⁷ However, courts seem more willing to strike down broad pay-to-play schemes that are not tailored to target the potential for corruption.⁸

⁷ See *N.C. Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 718 (4th Cir. 1999) (upholding sessional ban on lobbyist's contributions as constitutional); *Blount v. Sec. Exch. Comm'n*, 61 F.3d 938, 946-47 (D.C. Cir. 1995) (upholding constitutionality of SEC regulations that prohibit municipal finance underwriters from making campaign contributions over \$250 to officeholders who award government underwriting contracts); *Wachsman v. City of Dallas*, 704 F.2d 160, 173 (5th Cir. 1983) (upholding City charter provision prohibiting contributions by City employees to City council elections); *Ognibene v. Parkes*, No. 08 Civ. 1335 (S.D.N.Y. 2009) (upholding New York City's city contractor pay-to-play laws); *Green Party of Conn. v. Garfield*, 590 F. Supp. 2d 288 (D. Conn. 2008) (upholding Connecticut's state contractor pay-to-play laws); *Inst. of Governmental Advocates v. Fair Political Practices Comm'n*, 164 F. Supp. 2d 1183, 1192 (E.D. Cal. 2001) (upholding ban on contributions from lobbyists to offices lobbied); *Earle Asphalt Co.*, 198 N.J. 143 (NJ 2009) (upholding NJ's state contractor pay-to-play laws); *Casino Ass'n of La. v. State*, 820 So. 2d 494, 509 (La. 2002) (upholding ban on contributions from riverboat and land-based casinos to all candidates and all PACs that support or oppose a candidate); *State v. Alaska Civil Liberties Union*, 978 P.2d 597, 619-20 (Ala. 1999) (upholding a restriction on lobbyists' giving contributions to candidates outside of their own district); *Kimbell v. Hooper*, 164 Vt. 80, 665 A.2d 44, 48 (1995) (upholding sessional ban on lobbyist's contributions); *Schiller Park Colonial Inn, Inc. v. Berz*, 349 N.E.2d 61, 67-68 (Ill. 1976) (upholding ban on contributions from members of liquor industry to any candidate or political party); *Soto v. State*, 565 A.2d 1088, 1098 (N.J. Super. Ct. App. Div. 1989) (upholding ban on political contributions from casino employees to any candidate or political committee).

New Jersey's contractor ban has already been challenged and upheld in the State's Supreme Court.⁹

C. The Role of the Voter

Perhaps the greatest threat to New Jersey elections posed by *Citizens United* is the case's displacement of the role of voters at the center of our political process. The law struck down by the Court in *Citizens United* represented over a 100 years of congressional efforts to wrest control over Washington out of corporate hands and into the hands of the American people. Until *Citizens United*, campaign finance regulation had the effect of encouraging candidates to rely on support from individuals rather than corporations. Through innovative campaign strategies and the savvy use of technology, political parties and candidates seized on this people-based model, transforming donations from many individuals into significant money. The fruits of these efforts were evident in the 2004 and 2008 presidential elections. In the 2004 primary, 25% of the \$183 million raised by President Bush came from contributions of \$200 or less. In the 2008 election cycle, Senator Obama's campaign raised \$750 million from over 400,000 individual donors.¹⁰

By opening up the flow of corporate treasury funds, the Court effectively gave a monopoly on political discourse to whatever interest is willing to spend the most money, whatever the result to democracy. In Justice Stevens' eloquent dissent, he powerfully warned, American citizens "may lose faith in their capacity, as citizens, to influence public policy" as a result of *Citizens United*.¹¹

III. How to Reclaim A Voter-based Democracy?

Although the Court may have re-ordered the priorities in our democracy, there are ways to restore and strengthen the primacy of voters in our elections. The Brennan Center strongly endorses a four-step strategy to take back our democracy.

⁸ See *Dallman v. Ritter*, No. 09CV1188 (Co. Dt. Ct. 2009) (Colorado state court invalidated a broad pay-to-play ban that banned contributions "to any candidate for any office at any level of government anywhere in Colorado, and to political parties" without any evidence that such a reach was necessary to combat corruption).

⁹ *Earle Asphalt Co.*, 198 N.J. 143 (NJ 2009) (upholding NJ's state contractor pay-to-play laws)..

¹⁰ Michael J. Malbin, SMALL DONORS, LARGE DONORS AND THE INTERNET, *available at* http://www.cfinst.org/president/pdf/PresidentialWorkingPaper_April09.pdf.

¹¹ *Citizens United v. FEC*, No. 08-205, Slip op. at 81 (Jan. 21, 2010).

A. Public Funding of Political Campaigns

“Your Ten Dollars Makes You One of The Most Powerful People in Politics”
--The New Jersey Clean Elections Website--

We urge New Jersey to enact a full public financing system for statewide and legislative offices. New Jersey currently has a public financing system for gubernatorial races and had a pilot program that publically financed legislative races in select districts in 2005 and 2007. This committee should hold hearings to explore the creation of a public financing system modeled after New York City – a model that encourages candidates to seek out small donors throughout the duration of the election cycle.

Traditionally, public financing systems have been valued for their ability to “cleanse” politics by providing eligible candidates public, non-corrupting money to finance their campaigns in exchange for a participant’s promise not to accept potentially corrupting contributions from lobbyists, PACs and corporations.

But, innovative public financing systems can also make people, specifically small donors, the most valuable players in the game. Multiple match public financing systems, like the system in New York City and the system proposed in Congress – the Fair Elections Now Act (FENA) – make citizens the central figures throughout the entire election. Early on in the election, candidates who wish to become eligible for public financing must raise a requisite amount of small donations from many individuals. However, these systems encourage candidates to seek out small donors throughout the election by creating an incentive structure that matches small donations from individuals. This structure rewards candidates for relying on people, and lets people know that they are the driving force of democracy.

Ever since public financing systems were enacted, they have faced constitutional challenges brought by those who claim that their First Amendment rights are violated when the state awards funds to qualified publicly-financed candidates.¹² Courts, agreeing that public financing furthers First Amendment values, have consistently upheld such systems against constitutional challenge.¹³

¹² Matching fund provisions, that disburse additional money to participating candidates when they are targeted by independent expenditures or high spending opponents, have been particularly targeted. These mechanisms, usually known as matching funds, are used to incentive participation in public financing programs while still preserving public monies.

¹³ See *North Carolina Right to Life Comm. Fund v. Leake*, 524 F.3d 427 (4th Cir. 2008), cert. denied by *Duke v. Leake*, 129 S.Ct. 490 (Nov. 3, 2008) (affirming denial of preliminary injunction against North Carolina’s public financing system for appellate judicial elections); *Daggett v. Comm’n on Governmental Ethics & Election Practices*, 205 F.3d 445 (1st Cir. 2000) (upholding Maine’s Clean Election Act); *Rosenstiel v. Rodriguez*, 101 F.3d 1544, 1552 (8th Cir. 1996) (upholding Minnesota’s public funding system for elections); *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 38 (1st Cir. 1993) (upholding Rhode Island’s public funding system).

Indeed, *Citizens United* reaffirmed that “it is our law and our tradition that more speech, not less, is the governing rule.”¹⁴ The Court thus reiterated the “more speech” principle on which the Court upheld the presidential public financing system in *Buckley v. Valeo*. The *Buckley* Court broadly approved of public funding programs, finding that they represent a governmental effort, “not to abridge, restrict, or censor speech, but rather to use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people.”¹⁵ By making it possible for candidates to run a viable, competitive campaign through grassroots outreach alone, public funding programs decrease the need for deep-pocketed supporters.

Recently, however, a new slew of challenges have been launched. These new challenges claim that the Court’s 2008 decision in *Davis v. FEC*, 128 S.Ct. 2759 (2008), has cast doubt on the use of “matching provisions”. As a result, lawsuits challenging the public funding programs in Connecticut and Arizona are pending before the Second and Ninth Circuits respectively; and two new challenges were recently launched in Wisconsin.¹⁶

B. Empowering Voters Through Transparency and Accountability

A troubling assumption adopted by the *Citizens United* majority is the adequacy of disclosure laws to safeguard democratic values against subversion. Justice Kennedy’s argument that limits on corporate political spending are unnecessary is premised upon his unsupported assumption that disclosure laws allow both the electorate and corporate shareholders to make informed decisions and to give proper weight to different speakers and messages.

With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation’s political speech advances the corporation’s interest in making profits, and citizens can see whether elected officials are “in the pocket” of so-called moneyed interests.” The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.¹⁷

¹⁴ *Citizens United*, Slip op. at 45.

¹⁵ *Buckley v. Valeo*, 424 U.S. 1, 92-93 (1976).

¹⁶ Matching fund provisions were struck down at the district court level in Connecticut and in Arizona. See *Green Party v. Garfield*, 648 F.Supp.2d 298 (D.Conn. Aug. 27, 2009), *argued* (2d Cir. Jan. 13, 2010); *McComish v. Brewer*, No. CV-08-1550 (D.Ariz. Jan. 20, 2010), *appeal docketed* (9th Cir. Jan. 26, 2010). In Wisconsin, recently-filed lawsuits challenge the mechanism by which Wisconsin's program distributes money to participants and the reporting requirements of the system. *Wisconsin Right to Life v. Brennan*, 09-cv-764 (W.D.Wi. 2009); *Koschnick v. Doyle*, 09-cv-767 (W.D.Wi. 2009).

¹⁷ *Citizens United*, Slip op. at 55 (citations omitted).

Unfortunately, these assumptions are not born out in the current campaign finance system.¹⁸ In fact, in today's political environment, corporations regularly hide behind false names to disguise their true identity and agenda:

- In a recent Colorado election, a group called "Littleton Neighbors Voting No," spent \$170,000 to defeat a restriction that would have prevented Wal-Mart from coming to town. Another group called "Littleton Pride" spent \$35,000 in support of the prohibition. When the disclosure reports for these groups were filed, however, voters discovered that "Littleton Neighbors" was not a grassroots organization but a front for Wal-Mart – the group was, in fact, exclusively funded by Wal-Mart. Behind a grassroots facade, Wal-Mart was able to outspend "Littleton Pride," a true grassroots group, by a 5:1 ratio.¹⁹
- As the record in *McConnell* demonstrated, corporations commonly veil their political expenditures with misleading names – the "The Coalition-Americans Working for Real Change" was a business organization opposed to organized labor and "Citizens for Better Medicare" was funded by the pharmaceutical industry.²⁰

The majority's assumption that corporate political spending must be disclosed to shareholders or the public at large is similarly incorrect. Under current laws regulating corporations, nothing requires corporations to disclose to shareholders whether funds are being used to fund politicians or ballot measures, or how the political money is being spent.²¹ In short, corporate managers could be using shareholder funds for political spending, without the knowledge or consent of investors.

1. Giving Shareholders a Voice

The Brennan Center has proposed a remedy to this disclosure gap in our recently-issued report *Corporate Campaign Spending: Giving Shareholders a Voice*.²² We suggest two specific reforms: first, require managers to obtain authorization from shareholders before

¹⁸ For example, independent expenditures – the very type of political expenditures unleashed by *Citizens United* – are underreported in most states. As one report explained, "holes in the laws – combined with an apparent failure of state campaign-finance disclosure agencies to administer effectively those laws – results in the poor public disclosure of independent expenditures. The result is that millions of dollars spent by special interests each year to influence state elections go essentially unreported to the public." Linda King, INDECENT DISCLOSURE PUBLIC ACCESS TO INDEPENDENT EXPENDITURE INFORMATION AT THE STATE LEVEL 4 (National Institute of Money in Politics 2007) available at <https://www.policyarchive.org/bitstream/handle/10207/5807/200708011.pdf?sequence=1>.

¹⁹ Def.'s Response Br. to Pls.' Mot. for Summary Judgment, *Sampson v. Coffman*, 06-cv-01858 at 43-44 (D. Co. 2007) (Dkt. #34).

²⁰ See *McConnell v. FEC*, 540 U.S. 93, 128, 197 (2003).

²¹ See Jill Fisch, *The "Bad Man" Goes to Washington: The Effect of Political Influence on Corporate Duty*, 75 *FORDHAM L. REV.* 1593, 1613 (2006) ("Political contributions are generally not disclosed to the board or shareholders, nor are political expenditures generally subject to oversight as part of a corporation's internal controls.").

²² See Torres-Spelliscy, *supra* n. 3.

making political expenditures with corporate treasury funds; and second, require managers to report corporate political spending directly to shareholders.

These requirements will increase corporate accountability by placing the power directly in the hands of the shareholders, thereby ensuring that shareholders' funds are used for political spending only if that is how the shareholders want their money spent. Moreover, the disclosure requirement serves valuable information interests, leaving shareholders better able to evaluate their investments and voters better-equipped to deliberate choices at the polls. The report includes model legislation to effectuate the proposed reforms, and we urge New Jersey to consider this legislation as soon as possible.

2. Empowering Voters Through Disclosure

After the Supreme Court's decision in *Citizens United*, the importance of disclosure to the health of our democracy cannot be overstated. Unfortunately, there is currently a sustained and unrelenting wave of legal challenges aimed at eliminating disclosure of independent expenditures. Indeed, the *New York Times* recently quoted the attorneys who brought the *Citizens United* suit as stating that disclosure was their next target in a ten-year strategy to eliminate campaign finance regulations.²³ The Supreme Court has already granted *certiorari* in *Doe v. Reed*, a case brought by the same lawyers who brought *Citizens United*, and the case will be fully briefed this spring.²⁴ Although that case, which involves the disclosure of ballot petition signatures, does not implicate campaign finance disclosures directly, the plaintiffs advance a broad conception of a right to anonymous speech which would undermine campaign finance disclosure regimes.

To be sure, *Citizens United* upheld BCRA's disclosure requirements against the plaintiffs' challenge, and expressly affirmed the importance of disclosure as a means of "provid[ing] the electorate with information' about the sources of election-related spending."²⁵ Even while upholding these disclosure requirements, however, the majority opinion dropped several hints that could provide opponents of disclosure with a roadmap to a successful constitutional challenge to these laws.

First, the Court sent a subtle message that evidence of harassment or retaliation might be a sufficient foundation for a successful challenge to disclosure laws.²⁶ The majority specifically remarked that examples of harassment against contributors to various initiatives were "cause for concern," but noted that *Citizens United* had demonstrated no record of harassment. However, to strike down valuable disclosure laws on constitutional grounds in order to guard against harassment would be using "a sledgehammer rather than

²³ See David Kirkpatrick, *A Quest to End Spending Rules for Campaigns*, N.Y. TIMES, Jan. 25, 2010, at A11, available at <http://www.nytimes.com/2010/01/25/us/politics/25bopp.html?scp=1&sq=james%20bopp&st=cse>.

²⁴ *Doe v. Reed*, 586 F.3d 671 (9th Cir. 2009), *cert. granted*, ___ S.Ct. ___, 2010 WL 144074 (2010) (No. 09-559).

²⁵ *Citizens United*, Slip op. at 52 (quoting *Buckley v. Valeo*, 424 U. S. 1, 66 (1976)).

²⁶ *Id.* at 54-55.

a scalpel.”²⁷ A better tailored approach would use more robust anti-harassment laws to protect the constitutional interests of both contributors and the public at large.

Second, the Court sent a worrying signal for supporters of disclosure in holding that requiring corporations to form a PAC for corporate political expenditures was so burdensome as to constitute a ban on political speech.²⁸ Many of the PAC restrictions that the Court found to be unconstitutionally burdensome – appointing a treasurer, keeping records, and making detailed reports of expenditures – are nothing more than disclosure requirements under another name. The Court assumed the existence of an unconstitutional burden despite the absence of any factual record demonstrating any “chill” or other harm. Using this same rationale, the Court could potentially find that compliance with disclosure laws is burdensome in practice and therefore unconstitutional as applied, while upholding the principle of disclosure in theory.

Lastly, as a result of the Court’s decision, corporations that want to make political expenditures without having to disclose their identity may funnel their money through benign sounding 501(c)4’s and 501(c)6’s. Under current law, these organizations are not required to publically disclose the identity of their contributors. Should New Jersey want to regulate in this area, it should focus any legislation at preventing the use of these organizations by corporations to evade disclosure.

C. Voter Registration Modernization

Bringing new eligible voters into the political process is another “more speech” solution to *Citizens United*. This can be accomplished by bringing New Jersey’s voter registration system into the 21st century, an initiative which, in the words of Attorney General Eric Holder, would “remove the single biggest barrier to voting in the United States.”²⁹ Indeed, if today’s system were modernized, it could bring as many as 65 million eligible Americans nationwide into the electoral system permanently – while curbing the potential for fraud and abuse.

Voter registration modernization (“VRM”) holds the government responsible for automatically and permanently registering all eligible citizens. VRM also provides failsafe mechanisms to ensure same-day registration. A bipartisan coalition at the federal level actively supports VRM legislation, and a number of states around the country are currently moving to implement the idea. A dozen states have already adopted internet registration; at least nine have implemented parts of automated registration; eight others have permanent registration; and another eight have Election Day registration.

²⁷ *Id.* at 7 (Stevens, J., dissenting).

²⁸ *Id.* at 21.

²⁹ Eric Holder, Attorney General, Remarks at the Brennan Center for Justice Brennan Legacy Awards Dinner on Indigent Defense Reform (Nov. 16, 2009), available at <http://www.justice.gov/ag/speeches/2009/ag-speech-0911161.html>.

Voter registration modernization would also compliment New Jersey's recent efforts to register a greater number of eligible citizens through stricter compliance with the National Motor Vehicle Act. In 2008, the Department of the Public Advocate found serious gaps in New Jersey's implementation of that law, resulting in a deflated number of new registrants. The Motor Vehicle Commission and the Attorney General have since responded and new voter registrations are now occurring twice as fast as they were previously, including more than 155,000 registrations between March 2008 and March 2009.³⁰ By fully modernizing New Jersey's voter registration system and moving from costly paper to more efficient electronic transmission, such compliance will be easier, cheaper and more effective overall.

Voter registration modernization would help us live up to our ideal of being a nation governed with the consent of the governed. We should aspire to get as close to full registration of eligible voters as possible. If enacted, voter registration modernization could be the most significant voting measure since the Voting Rights Act.

D. Advancing A Voter-Centric View of the First Amendment

Our constitutional system has traditionally sought to maintain a balance between the rights of candidates, parties, and special interests to advance their own views, and the rights of the electorate to participate in public discourse and to receive information from a variety of speakers.³¹ First Amendment jurisprudence incorporates a strong tradition of deliberative democracy – an understanding that the overriding purpose of the First Amendment is to promote an informed, empowered, and participatory electorate. This is why our electoral process must be structured in a way that “build(s) public confidence in that process,” thereby “encouraging the public participation and open discussion that the First Amendment itself presupposes.”³²

In this post-*Citizens United* era, a robust legislative response will be critical. It is similarly imperative, however, that we reframe our constitutional understanding of the First Amendment value of deliberative democracy. In the longer term, reclaiming the First Amendment for the voters will be the best weapon against those who seek to use the “First Amendment” for the good of the few, rather than for the many.

³⁰ Dep't of the Public Advocate, *Expanding Voter Registration*, available at http://www.state.nj.us/publicadvocate/public/issues/voter_registration.html.

³¹ See, e.g., *Nixon v. Shrink Missouri Government PAC*, 528 U.S. 377, 390 (2000) (balancing candidate's and political committee's claims with threat that “the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance”); *FEC v. Mass. Citizens for Life*, 479 U.S. 238, 257-58 & n.10 (1986) (balancing nonprofit organization's interests with importance of protecting “the integrity of the marketplace of political ideas” necessary for citizens to “develop their faculties”); *FEC v. National Right to Work Comm.*, 459 U.S. 197, 560 (1982) (balancing corporate interests against the value of promoting “the responsibility of the individual citizen for the successful functioning of that process”).

³² *Shrink Missouri*, 528 U.S. at 400.

IV. A Brief Note On The Supreme Court's "Deregulatory Turn"

The limits on corporate campaign spending at issue in *Citizens United* represent the fourth time challenges to campaign finance laws have been argued before the Robert's Court, and the fourth time the Robert's Court majority has struck down such provisions as unconstitutional.³³ With *Citizens United*, the current Supreme Court's majority's hostility to campaign finance law has become apparent to even the most casual observer. At oral argument, Justice Antonin Scalia exemplified the majority's unwarranted suspicion of long-standing campaign finance reform safeguards, assuming in his questions that such safeguards represented nothing more than incumbent self-dealing:

Congress has a self-interest. I mean, we – we are suspicious of congressional action in the First Amendment area precisely because we – at least I am – I doubt that one can expect a body of incumbents to draw election restrictions that do not favor incumbents. Now is that excessively cynical of me? I don't think so.³⁴

In light of this deregulatory turn, it is imperative that legislative bodies develop rich factual records that demonstrate the purpose of any campaign finance regulation.

V. Conclusion

In the aftermath of *Citizens United*, there are still several ways to empower voters and return to a citizen-centric democracy. The Brennan Center urges New Jersey to enact public financing, automate its voter registration system, improve robust disclosure and continue to advocate for a voter-centric vision of the First Amendment. We also urge the legislature to be aware of the deregulatory environment in the courts and to enact legislation that is strongly support by a rich factual record.

³³ *Randall v. Sorrell*, 548 U.S. 230 (2006); *FEC v. Wisconsin Right to Life*, 551 U.S. 449 (2007); *Davis v. FEC*, 128 S.Ct. 2759 (2008).

³⁴ Transcript of Oral Argument at 50-51, *Citizens United*, No. 08-205 (Sept. 12, 2009).