



# “A Republic—If You Can Keep It!”

## An Agenda for Our Democracy

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Thank you, Tom, for that very kind introduction. It is truly wonderful to be at Chautauqua this week, and I am particularly honored to be asked to speak on the Fourth of July. The root and the fruit of July 4<sup>th</sup>, 1776 was independence—*independence of mind and thought, independence from a political system built on wealth and privilege, independence to create a government where representatives would be responsive to the people, rather than to the aristocrats and monopoly interests which dominated the British Parliament.*

Today, we are gathered in the heart of a beautiful and historic place that has its *own* role in American history, to reflect on the sacrifices made by those who lit the torch of liberty 240 years ago in Philadelphia. And today, we should ask what needs to be done to maintain those founding American ideals. The theme of this week at Chautauqua is Money and Power. What better way to launch the week than to talk about how we have attempted to navigate the relationship between these two words in our system of self-government?

Chautauqua, and this amphitheater, stand tall in the grand tradition of American oratory. In the days before radio and television, the Fourth of July was a great day for public speaking. Orators stood up and kept going—for two and three hours! Don't worry—much as I love American traditions, I know better than to try to replicate that one! Traditionally, Fourth of July orations began with a reading of the Declaration of Independence. We know the famous lines: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed.”

But usually the ENTIRE Declaration would be read at Independence Day celebrations—not just those majestic familiar words but all of those many clauses that begin “He” (King George) “has.” “He has plundered”, “he has obstructed”, “he has refused”—a list going on for pages.

“The root and the fruit of July 4th, 1776 was independence ... independence to create a government where representatives would be responsive to the people”



These words remind us that the Declaration was not a merely a statement of philosophy. Those Americans had real grievances against a government they found distant, unresponsive, and run in the interests of others. Reading the entire Declaration is a tradition perhaps best left for another day, when you are sitting in soft chairs rather than on benches, but the directness and poetic beauty of those opening lines never fail to make my spine tingle. The Declaration also usefully reminds us that we Americans have a tradition of growing impatient and angry at a government we think is not listening to us, or acting in our interest.

Of course, the Revolutionary story only *began* with the Declaration in 1776. Seven years of war and hard times followed until the Peace of 1783. A dysfunctional Congress, unpaid troops, lost battles, jealousy and rivalry amongst commanders, treason, and atrocities of civil war between Patriot and Tory Americans. And it did not grow much easier after the peace was signed—four more years of the Articles of Confederation, and a weak government, and debt, and even armed rebellion, before finally the Constitutional Convention in Philadelphia in 1787 gave us the Federal Constitution and the basics of our current system of government.

That Convention met in strict secrecy, and the people of Philadelphia were naturally curious about what was happening inside. Would it be a monarchy, with General Washington as King? Would it be a direct democracy? Or something else entirely?

The story goes that on the final day of the Convention, as the 81 year old Benjamin Franklin descended the steps of Independence Hall, a lady approached him and asked “Well, Doctor, what have you given us?” Franklin replied, “A Republic, Madam, if you can keep it.”

That is the theme of my talk today, and in a broader sense of this whole week at Chautauqua.

We Americans have been trying to “keep our Republic” ever since—through two centuries of domestic and international turmoil. Our country has seen not only wars, political upheavals, and economic disasters at home and abroad, but also, along with these crises, a continuous renewal and expansion of democracy—first a broadening of the vote beyond mainly white male property owners; then a rewriting of the Constitution after the Civil War to provide citizenship for ex-slaves; then a guarantee of votes for women—an excluded half of our population; and full political participation by the millions of immigrants from distant shores and foreign cultures who remade America; then the Civil Rights movement of the 1950s and 1960s and the resulting end of the poll tax and literary tests that prevented non-whites from exercising their constitutional right to vote.

The march of American history from Independence Day in 1776 to the Independence Day celebrations of 2016 at Chautauqua has been long and difficult one. And the battle to keep our republic and its representative system of government—in the face of so much current disillusionment —goes on.

Why talk about all this history, which you surely know? I think it is important to remember the history



because it is easy to think that we are the first Americans to face economic hard times, or to live in dangerous political times, or to think that Congress is dysfunctional and does not represent our interests. Not so. Those who have come before us have surmounted huge obstacles and strengthened our democracy, and so must we.

But they did it with vast effort and focus—and so must we. To borrow Abraham Lincoln’s phrase from the Gettysburg address, how do we do OUR part to ensure that government ‘of the people, by the people, for the people, shall not perish’? Because it IS threatened—and the American people know it.

As civics texts tell us—if anyone takes civics any more—the framers of the Constitution did not set up a direct democracy. Instead, their purpose was to build a representational system, with checks and balances, designed to cool popular passions, avoid mob rule, and to ensure that no one “faction,” in Madison’s term (what we would call a “special interest”) would dominate politics and government. For this structure to be successful, the representatives have to listen to their constituents, use their own judgment, and work together with other representatives for the common good.

In order to do this, they would have to compromise. Even in 1787, the country was diverse, with vast geography resulting in a divergent population with competing interests. To Madison, this was a distinct advantage. The presence of so many factions was not an insuperable obstacle to the success of the new government, but a virtue, because it ensured that compromise would be necessary among people of good will.

But – and this is the critical point – the system was still designed to *function*. The Framers intended to promote compromise, not to discourage it. They expected our Representatives in Congress, and the President, to work together for the national good—not to form two inwardly-focused political parties that talk only with their “base” rather than each other, with such incompatible views that it is as if they live in different worlds. And the Founders expected our federal government to respond to the voices of the people they represent—not primarily to campaign donors, or to lobbyists who fundraise, and to the narrow interests those lobbyists represent in Washington.

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Let me give you an example of how far we have gone astray since then: Recently the Supreme Court held that a law passed by Congress was unconstitutional because it limited the total amount of money that one person may give to all federal candidates and party committees combined in one election cycle.



Now, you may or may not agree that that law was a good idea—though polls indicate that most Americans think it is the right policy, as I will show you in a moment. However, what disturbed me the most about this Supreme Court decision was the statement by the Chief Justice that Members of Congress are *supposed* to be “responsive” to their “constituents”—and by constituents he was referring to their campaign *donors*.

That’s right—we have moved so far from our Founder’s ideals that a 5-4 majority of the Supreme Court can issue an opinion talking about the importance of “unreserved communication” with “constituents” so that the “political responsiveness at the heart of the democratic process” is not “compromised” —all the while referring to campaign contributors as the “constituents” to whom Members of Congress should be “responsive.” By contrast, when the Founders spoke of *constituents* they meant voters or residents of the member’s state or district—the people they were elected to represent in Washington.

The signers of the Declaration of Independence pledged “our lives, our Fortunes, and our sacred Honour” to the cause of Independence. Today I’m afraid the government our Founders gave us suffers from too much of the “our Fortunes” part and distinctly not enough “sacred Honour.”

I said a few minutes ago that our Republic is threatened today—and that the American people know it. Let’s look at why I say that: We know that political polarization has greatly increased in our politics and government, but there is one subject today on which Americans of all political persuasions overwhelmingly agree.

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Let me repeat that statement: “campaign finance should be reformed so that a rich person does not have more influence than a person *without money*.”

Let me pause to point out the obvious: An American campaign finance system that aspired to, and reached, that goal, would look *nothing* like the system we have today.

79% of Americans think that government is “run by a few big interests looking out for themselves.” This question has been asked for decades in a national political science survey. By comparison, in 1964, only 29% of us felt that way.

75% of Americans believe “corruption is widespread throughout the government” – ranking the U.S. alongside countries such as Jamaica, Costa Rica, and Belize. This is not the norm for a functioning



democracy: Only 19% of Danes and 14% of Swedes would say the same of their governments.

Americans agree by an almost two-to-one margin that their “vote does not matter because of the influence that wealthy individuals and big corporations have on the electoral process.”

Finally, 59% agree with the statement that “The political system is broken – we need to just start over.” This reflects the anger we have seen in both parties this year—the statements by voters that “I just want to tear it all down.”

These are sobering numbers indeed to hear on this July 4<sup>th</sup>. By comparison, these majorities and supermajorities far exceed estimates of the majorities that supported independence for the American colonies in 1776—independence from a distant King and a system of government in which they had no vote and no representation. Today, Americans are objecting to a government for which we—in theory—have direct responsibility: a Congress and President that are in office as our representatives, and only because of our votes. Even so, huge majorities of Americans think our government is no longer responsive to us.

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“Democracy is not about billionaires buying elections”

“When you give, they do whatever the hell you want them to do.”

The leading Presidential candidates this year have campaigned on this issue: Following her victory in the California primary last month, Hillary Clinton said that “we want a government that listens to the people—not the powerbrokers—which means getting unaccountable money out of politics.”

That same night, Bernie Sanders similarly called for an end to our “corrupt campaign finance system,” since “democracy is not about billionaires buying elections.”

And Donald Trump—a billionaire—has said “this election isn't about Republican or Democrat; it's about who runs this country—the special interests, or the people.” He has called his opponents “corrupt” for being supported by Super PACs, and explained that he knows what he is talking about from personal experience. As he put it, as a businessman he has given to both Republicans and Democrats because “when you give, they do whatever the hell you want them to do.”

The supermajorities of dissatisfied Americans in those polls believe the fundamental contract between Citizens and their government has been violated. Citizens do not think the government is listening to them or making decisions “in the public interest.” They believe that the government is now responsive



instead to special interests and campaign donors in New York and LA, and lobbyists in Washington DC.

Whether this is true or not—and I think it is at least partially true—the perception that this has occurred is a potentially fatal problem for a representational system of government. The belief that representatives are making corrupt decisions is hugely dangerous precisely because it leads to the “throw it out and start again” mentality. There were Russian aristocrats in 1917 who supported the fall of the monarchy and the revolution because they knew the Tsar and his government were corrupt and inadequate, and thought “what could be worse?” Well, they found out. As so did the German people, as their unhappiness with their broken political system caused them to leap into the unknown in 1933.

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I’m not sure what the 59% of Americans who say they want to “just start over” have in mind, but I am at heart a conservative and not an anarchist, so I would rather not find out. But it is clear that we are in danger of losing sight of the Founders’ original vision of a representative democracy, and have allowed practices that corrupt it to become commonplace. The system our Founders established is broken, but not broken beyond repair. We must identify what needs to change, and make that change happen.

To start with, our elected representatives, in both parties, and in both Houses, appear to have lost the spirit of compromise. Compromise lies at the heart of our republic’s design, as conceived by James Madison and the other Framers. But today, some candidates even campaign for Congress on the platform that if elected, they will *refuse* to compromise! The newly nominated Republican candidate for the US Senate seat in Colorado was recently asked by the moderator in a debate how he would work across party lines if elected. He responded “I think your question exemplifies what’s wrong with America and the frustration out there. You just don’t get it.” He later said “I’m tired of hearing about Republicans reaching across the aisle.” This inflexibility is not unique to Republicans—Democrats campaigning to do something about climate change and preserve social spending promise not to “compromise our values” also.

The two political parties used to be coalitions, and the coalitions used to compromise both within and between themselves. Much of the environmental legislation we take for granted—the Clean Water Act and Clean Air Act, for instance—are the result of such compromises.

In recent years, though, the system has gone through a process of what political scientists call “sorting,” and as a result, the parties have each become more ideological, similar to the parties in a parliamentary system. If one party is for something, the other party is against it. Unlike a parliamentary system, however, the reality is that one party almost never has control of the whole elected federal government: a majority in the House, a filibuster proof Senate, and the White House. But without that, our vaunted

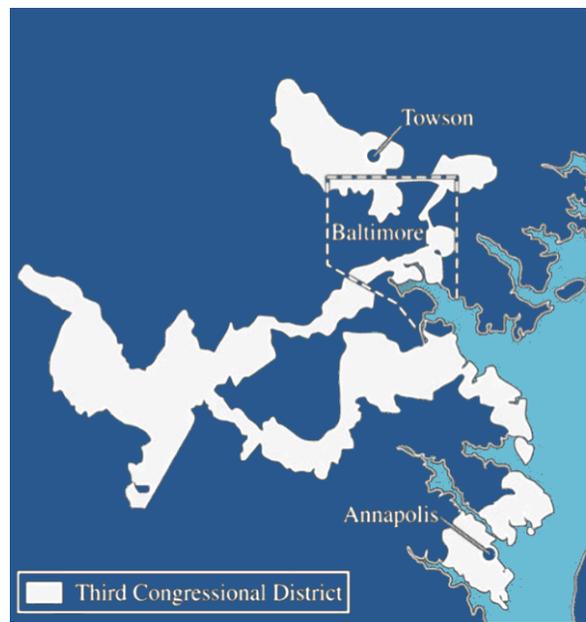
“checks and balances” can result in partisan gridlock. The risk is that the minority party comes to think that its sole job is to prevent the majority from accomplishing anything.

Although it’s often said that the American people prefer divided government, the fear of concentrating too much power in the hands of one party is not a vote for complete gridlock and partisan warfare. It’s an invitation – even a demand – to get to work, and to compromise. Instead, today, Congress is polarized – and as the term implies, a bitter freeze has descended upon Washington, except on those occasions when it is subsumed in white-hot partisan anger. It didn’t used to be this way, even in recent memory.

What changed?

Well, part of the problem is Gerrymandering, which has been around through much of our history but is made much worse by the power of modern computer programs to know where we live and who we vote for. This gives us Congressional districts drawn by partisan state legislators to create as many safe seats as possible for their party.

This is what Maryland’s Third Congressional District looks like, drawn by the Democratic legislature to maximize Democratic seats. It is estimated that fewer than 40 seats nationwide—less than ten percent of the House of Representatives—are even competitive in an election year. 90% of the Members of the House, as long as they keep their party base happy, they can safely expect to remain in office, sometimes without even an opponent on the ballot. Not only do these Members have no need to reach out to the other party or independent voters, but they know they may be punished by a primary challenge if they do. Even *that* threat to incumbency, though, is rare: This year, only three members of Congress lost in a primary, and two of those were because court-ordered redistricting changed their safe seats.



In the meantime, many of the mechanisms by which Congress traditionally carried out the work of legislating have simply broken down in recent years under the pressure of polarization, and the demands of political fundraising. It used to be that new members gained expertise in a committee’s subject matter, advanced due to experience and seniority, and, most importantly, learned how to compromise in order gain the support needed to pass legislation. Today, however, the agenda of Congress is driven not by the committee chairs, as it used to be, but by the party leaders. And those leaders are focused on positioning



their party for the next election—keeping control of Congress, or taking it back. They view legislation through the lens of whether it will help their party’s “messaging,” or encourage their political “base” to turn out to vote. Committee chairs are chosen not on their knowledge or experience, but rather on their loyalty to party leadership—and that loyalty is, in significant part, measured by a Member’s success at fundraising for their party.

And that brings us to the single biggest driver in today’s Congress: the pervasive demand for money in our political system. The continuous need to raise large amounts of money—for reelection, for a war chest to scare off opponents, as a reserve in case of anonymous last minute television attacks, for party coffers, for endangered colleagues, to earn a committee chairmanship—money for all of these things has come to dominate the activities and daily lives of Members of Congress. This has two terrible effects on our government: First, it means that our leaders have no time to govern, and second it means that they are primarily dependent on those who fund them, rather than on their actual constituents and voters.

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Harvard Law Professor Lawrence Lessig calls the system we have now “dependence corruption”. Members of Congress become dependent on the donors, the PACs, and the party committees and consultants, who keep them in office—the whole panoply of the political fundraising industry. Members become captives of these interests, since angering them could dry up their vital cash.

Money and power. Power attracts money, and money maintains power. Money and power in Washington have become a closed circle.

One result of this mania for campaign money, and the leadership’s emphasis on political success rather than on legislating, is that Members now spend far more time away from Washington raising money, or campaigning for reelection in their districts, than in Washington, working. This entire year Congress has only 54 full days in Washington—54—out of a possible 250 work days! By contrast, it used to be that Members moved to the Capital for the entire legislative session, lived together, worked together, and even compromised together.

Now, votes are scheduled only for a day or two in mid-week, and even during those two days, fundraising dominates the calendar. Members are at fundraising breakfasts, fundraising lunches, fundraising receptions, and fundraising dinners—and that is when they are not in phone booths in the basement of party headquarters, “dialing for dollars.”



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Democratic Congressman Steve Israel says that fundraising takes up 70% of his working time, about 30 hours per week. He has announced his retirement—he says in part because he cannot bear the insatiable fundraising demands. Another member—Representative Rick Nolan of Minnesota—stated that Congress’ recent sessions have been “the most unproductive in the history of the country. Why? Well, if everybody’s busy campaigning and raising money, *there’s no time for governing.*” And Republican Congressman David Jolly of Florida went even further, calling the atmosphere “a cult-like boiler room on Capitol Hill where sitting members of Congress . . . are compromising the dignity of the office they hold.” These

are quotations from Members of Congress describing their day-to-day lives in a job which is *supposed* to be focused on representing the interests of the American people—and remember: this is only what a few are willing to say publicly, *on the record*.

The head of a respected Washington foreign policy think tank told me that our system of campaign finance has become a “national security threat.” “We have lots of challenges facing us around the world”, he said, and “they are solvable, but they require the attention and thought of our senior leadership in Congress—and they aren’t here because they are off raising money. Junior staff do not have the knowledge—or the authority—to fill the gap, so decisions just do not get made. Members are not here to work with each other on these crucial issues”.

Just so you don’t think Congress is the only problem here when it comes to the demands of fundraising, take a look at these two numbers. The first—3—is the number of fundraisers that President Ronald Reagan attended in 1984—the year in which he ran for re-election as President. The other number—223—is the number of fundraisers that President Barack Obama attended in his re-election year of 2012.

The difference is that President Reagan participated in the voluntary Presidential public funding system that was created after the Watergate scandals. This was designed to get Presidents out of the fundraising business, and ensure they spent their waking hours doing their *very* full-time and all-consuming job, and that when they did campaign they were out with the public rather than in small living rooms with wealthy donors.

President Obama did not participate in the public funding system in his 2012 re-election campaign. That system died in 2008, when he decided not to take a limited check from the Presidential Public Funding program, as John McCain did, and instead raise far more money through private contributions.

President Obama has said he hates the current fundraising demands on officeholders, but neither he nor



the Congress has done anything to repair or replace the old public funding system in which every President, of both parties, participated for 30 years, from Gerald Ford and Jimmy Carter through George W. Bush.

That's not to say work doesn't get done in Washington anymore—there's just been a shift in *who's* doing it. In 1959, shortly before President Eisenhower warned the nation about the dangers of influence from the “military-industrial complex,” there were only 400 registered lobbyists in Washington. Today, there are 12,000. Corporate spending on lobbyists has risen from \$200 million in the late 1980s to \$3.2 billion today – that's a larger budget than both houses of Congress *combined!*

Even worse, too many members of Congress do not go home when their public service is finished, and return to the plow as Cincinnatus did. Instead, fully half—50%—of Members who leave Congress today become lobbyists. Some even leave in the middle of their terms. One prominent member announced she was leaving to become a lobbyist after her re-election to Congress, but before she was sworn in to her next term! Obviously, the million-dollar plus job of heading a big trade association was preferable to representing her district in the “people's house.”

So what do lobbyists *do* to earn all that money? They have become an integral part of how Congress functions. Because of the changes in the committee system, and the revolving door for staff, lobbyists often have more subject matter expertise in a given area than Congress. As a result, lobbyists not only help legislators understand the bills on which they vote, but they sometimes write the bills themselves, taking the middleman out of the process. Lobbyists are a living example of how crony capitalism works—their job is to bend the government to the desires of those who seek a preference not obtainable in the free market: a preferential tax break, a clause in an appropriations bill, a special status in a trade agreement. Just as often the job of lobbyists is to make certain that something does *not* happen—that a tax loophole is not closed, or that a new competitor does not gain access to a procurement program.

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One source of the power of lobbyists is the key role they play in raising money for the very legislators they lobby. They serve on campaign finance committees, run PACs, host fundraisers, and act as bundlers, soliciting their clients for contributions. For Members of Congress today, getting on a committee often means first and foremost the opportunity to raise campaign funds. They use committee assignments to build a network of people – those who lobby them – on whom they then depend to finance both their own reelection, and the money the party leadership requires them to raise. It's a closed circle of influence, one



that gives rise to the term “Washington insider.” The insiders are those in the closed circle; everyone else is essentially frozen out.

Those are the problems that plague our representative government, almost 229 years after Franklin spoke of “a Republic, if you can keep it.” A polarized Congress struggles to pass even the most essential legislation, while members spend so much time fundraising that they barely have time for the business of legislating at all. When they do, they appear likely to listen closest to those on whom they have become dependent: their donors. It’s not hard to understand why so many Americans are dissatisfied with the republic we have inherited.

The good news—and I could not speak at Chautauqua on July 4<sup>th</sup> without good news, for I am inherently an optimist, believing in the possibility of improvement of the world, just as I suspect most of you are, or you would not be sitting here this morning—the good news is that we can fix these problems. In fact, we have successfully addressed money in politics problems before in this country—in the progressive era around 1900, and again after the Watergate scandal, and then with the McCain-Feingold reforms in 2002.

A hundred years ago, at the turn of the 20<sup>th</sup> Century, there was similar anger over a campaign finance system and government that were seen to be unresponsive to the people and corrupted by special interests. Disgust with that system spanned the political spectrum, from progressive Democrats to the Republican President, Theodore Roosevelt. As a result of these concerns, Congress banned political contributions by corporations in 1907. Congress responded to popular pressure by amending the Constitution so that Senators became directly elected by the voters, rather than by state legislatures “in the pocket” of special interests. Then the Constitution was again amended to ensure that women had the right to vote. At the time, skeptics said none of these could be done—why would Congress vote to change

the system that put them there? But they did—the people demanded it.

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Then, in response to the Watergate scandal in the 1970s, Congress again took action—completely rewriting campaign finance law to limit contributions, require full disclosure of all money spent in elections, and create the Federal Election Commission to enforce these new rules. And most recently in 2002, the McCain-Feingold law was passed in response to the scandal of parties soliciting huge “soft money” contributions by offering special consideration to large donors. Now, the cynical lesson one could draw from this history is that reform is not worth doing—because special interests will always try and find a way around it.

I believe, however, that the correct conclusion to draw from this history is far different: that “eternal vigilance is the price of liberty,” as Thomas Jefferson said. There is no “silver bullet” good for all time, but rather a requirement that we continually evaluate what is working and what is not, and make ongoing corrections as needed. Corrupt funding will always *try* to find a way to dominate our politics and government, but our democracy will survive and succeed if its leaders push back against this influence, adopting new policies to regulate in the face of new challenges. Congress may from time to time slide into bad practices, or descend into new ones that undermine and frustrate our representative system, but those can be corrected.

The further good news is that there already are many proposals for change—at the local, state, and national levels, and affecting all branches of government—that can counter the corrupting power of money in politics. Many thoughtful people have put forward a wide range of ideas; I will highlight five of those that I believe are among the most promising:

First, let’s get Congress back to work. Congress needs new rules governing the conduct of Members to ensure that our representatives in Washington are there to do the work of their constituents—and by that I specifically mean their voters rather than their financial donors.

Second, a system of financing for campaigns that would make it possible for any citizen to seek elected office—not just those who are millionaires and billionaires, or have supporters who are.

Third, ethics reform to limit the fundraising role of lobbyists, and to ensure that Members spend their time in Congress representing their constituents, not auditioning for a more lucrative lobbying job.

Fourth, redistricting reform to increase members of Congress’ responsiveness to their electorates.

And finally, developing a new Supreme Court jurisprudence that takes a broader view of the principles behind the First Amendment.

Let’s look at each of these.

First, why not say that Congress has to go back to work for the people who are writing their paychecks—We the Taxpayers? If Members need to raise campaign funds, they should do so on their own time, not the





taxpayers'. Millions of other Americans have to punch a time-clock to get paid—why shouldn't our representatives in Washington? During the Monday to Friday work week, Members and Senators should be working on Congressional business: attending committee hearings, meeting with constituents, voting on legislation, and building relationships with other Members. Yes—even having lunch with their colleagues! We should prohibit the raising of political funds during the work day. 9AM to 6PM, Monday through Friday, no dialing for dollars from the party call center, no rushing out of a committee meeting to attend a fundraising event. Instead, members should turn up at work and do the job we are paying them to do—the job our country needs them to do. And if they are working in their home districts or states, the same rules should apply.

Now, Members of Congress will complain that this is impossible, because it will not give them the hours they need to fundraise. It's not that they like the current mad money chase, they will say. And they don't—many of them are embarrassed by it—but they will say they have to do it. Well, they do not—there are alternatives. Did you know that we are the ONLY major democracy that relies on the wealthiest one percent of the population to fund its political campaigns and select who will serve in government? Every other major democracy has free TV time for candidates, or public funding of political parties, or other ways to enable candidates to communicate with voters without spending all of their work days raising money. So we also need to provide alternative sources for campaign funds for candidates and parties.

In doing so, we should return to the principles of the federal system devised by the Framers. In their theory, the House represents the people alone, while the Senate represents the states—those are their respective constituencies under our Constitution. Let's go back to the original idea that Congresspeople and Senators derive their legitimacy from the people who actually elect them, rather than from their financial backers. We could adopt a system that emphasizes the importance of funds raised from one's own constituents rather than from deep-pocketed donors whose only connection to the candidate is financial.

For instance, contribution limits could be higher for donations made by a member's voting constituents than for contributions from out-of-state. More ambitiously, we should combine this with the idea of a matching funds systems. New York City, for example, now provides \$6 in matching funds for every \$1 raised in small contributions by candidates for city office. This is similar to the matching funding system that used to work for primary candidates in the Presidential public funding system.

There are other ideas worth looking at, such as tax credits for individual political contributions. For instance, Virginia provides tax rebates to residents who make small-dollar contributions to candidates for state offices. Another idea is "Democracy vouchers"—registered voters are given a voucher which they may donate to the candidates or political parties of their choice, who in turn redeem them from the treasury. Seattle has just voted to experiment with such a program, giving \$100 worth of vouchers for each registered voter in the city. Putting these vouchers in the hands of voters is certainly one way to get



candidates to pay attention to their real constituents.

Now, some will immediately say that we cannot afford such citizen funding systems—we are already too deep in debt. My reply is short—we cannot afford our current system, and these alternatives would, in fact, *save us money*. In addition to the time Members of Congress consume in fundraising rather than solving our problems, the tax loopholes and crony capitalism that result from our current practices far exceed the cost of any of these citizen funding systems. Any one of these proposals would be less expensive for the United States of America than *one* unneeded new pork-barrel fighter jet program, or special tax break for Wall Street. But the point of all of these ideas is the same—to provide an alternative to today’s culture of all-consuming political fundraising from Washington lobbyists and wealthy special interests, and instead to make it relatively easy to obtain campaign funds from average citizens at home, thereby empowering those citizens.

“Any one of these proposals would be less expensive for the United States of America than one unneeded new pork-barrel fighter jet program, or special tax break for Wall Street.”

Next, we also need to address the role of lobbyists in our system. One commonsense solution that’s been proposed is to ban lobbyists from raising money for the members they lobby. Lobbyists could make their own, personal, limited contributions, but that’s it. No serving on “host committees,” no directing donors to “friendly” representatives, no bundling, nothing. If they want to do that, then they cannot lobby the members they fundraise for. As Charles Fried, a distinguished former Solicitor General of the United States in the Reagan administration said, “When I approach the bench in Court to make my arguments, I do not first hand the judge an envelope with money in it.”

Adopting this reform would actually bring us closer to what the Framers intended when they established the First Amendment right to petition for redress of grievances. Recall what I said earlier about Madison and the existence of “factions” in the new republic. “Faction” has a bad connotation today, but many such “factions” are perfectly legitimate. For instance, a trade association for automakers or doctors or teachers or any other group has direct interests before Congress. But these groups, as Madisonian “factions,” should make substantive arguments on the merits of a proposal, or use their strength at the ballot box, rather than relying on fundraising and PAC contributions to buy access not available to other Americans. Advocacy of ideas – not using fundraising as a tool to buy power and influence – was the Framers’ true intention. A petition for the redress of grievances need not come printed on small green bills.

As for gerrymandering and redistricting, reform will not completely alter the system of deeply entrenched and polarized incumbents we see today, but it will help. And it is the right thing to do. A basic principle of democracy is that voters should choose their representatives—not representatives, their voters. Several states have adopted independent redistricting commissions by citizen initiative—most recently, Ohio



voted to create such a commission just last year—and others should follow that example.

This is an ambitious agenda – but I am convinced that, with work, it is within our grasp—or as a lobbyist would say to a Member of Congress: “it’s doable.” Sometimes we hear the objection that nothing can be done about money in politics because of the First Amendment, as interpreted by the five (now four) Justices who had the majority on the Supreme Court. That we have to amend the Constitution in order to change anything. But that’s a misunderstanding of the Court’s jurisprudence. In fact, no Supreme Court holding stands in the way of any of the reforms I just outlined.

“The reality is that many of the worst aspects of our current campaign finance system have arisen not *because* of court decisions like *Citizens United*, but *despite* them.”

The reality is that many of the worst aspects of our current campaign finance system have arisen not *because* of court decisions like *Citizens United*, but *despite* them. The Supreme Court’s ruling in that case allowing unlimited corporate and union spending in elections was premised on the idea that there would be no opportunity for corruption because the money would be spent wholly independent of candidates. Instead, we now have a system where candidates handpick their closest political allies to head up a supposedly “non-coordinated” Super PAC, and then go out and work with that “independent” Super PAC to raise money for its spending.

Similarly, in *Citizens United*, Justice Kennedy placed great reliance on full and speedy disclosure of the sources of campaign spending, believing this was essential to avoid both actual corruption and the appearance of corruption in politics. He has recently said, though, that disclosure is not working the way it should: “The result is not happy. . . You live in this ‘cyber age.’ You don’t need to wait for three months after the election for a report on who gave the money; it can be done in 24 hours. If the voters don’t like the people who are funding you? Don’t vote for ‘em! But that’s not working the way it should.”

For a Supreme Court Justice to state that a decision he wrote is “not working the way it should” ought to get our attention. And it is not. The bedrock policy that the sources of all money spent in federal elections should be fully disclosed is under attack, and we, the voters, are losing the battle. Each election year we see more “dark money”—secret contributions to mysterious groups calling themselves something like “Americans for a Better Country”—being spent to elect or defeat candidates. Sometimes we get clues to who the donors are, and sometimes there is just a wall of secrecy.

But it’s unfair to cast blame entirely on the Court for getting the result so wrong. In this area of campaign finance, our entire Federal government isn’t working the way it should. Congress is supposed to step in and remedy these systemic failures, but it is completely polarized and gridlocked on these issues, and has done nothing except attack the IRS and SEC for trying to do something. My old agency, the Federal



Election Commission, should be enforcing the law, but the current bitter partisan divide on the FEC means that is not happening. A better-functioning FEC, supported by a better-functioning Congress, would ensure that “independent expenditure” groups are, in fact, truly independent of candidates and parties, and that the sources of their funding are fully disclosed in real time. This transparency is the first step to ensuring that money does not buy power without our knowledge, and consent.

The principal constitutional issue is to what degree the spending of money in politics may be restricted under the First Amendment. The majority on the Supreme Court has taken the approach that money is speech, that campaign contributors are “constituents” who are entitled to buy access, and that huge “independent expenditure campaigns” may not be limited to prevent corruption.

Today, legal scholars and dissenting Supreme Court Justices are examining these questions from a different perspective, arguing that reasonable campaign finance restrictions actually *advance* the interests the First Amendment is designed to protect.

The Founders intended the First Amendment to prevent tyranny and to empower self-government. Those fundamental interests require debate among citizens as they choose their representatives, and are a means to ensure that elected officials remain responsive to their actual constituents once they are in office. If the voices of very wealthy interests and donors drown out the voices of average Americans, or dominate the attention of our elected officials, then equal participation in self-government becomes impossible and officeholders lose their connection with the citizenry. This is what Americans think is happening now.

“If the voices of very wealthy interests and donors drown out the voices of average Americans, or dominate the attention of our elected officials, then equal participation in self-government becomes impossible”

Along these lines, Justice Breyer has argued that the First Amendment not only protects the ability of citizens to speak out, but also justifies a role for the government in protecting the ability of citizens to wield real influence. He has written about what he calls the concept of “active liberty” embedded in our Constitution; that is, the First Amendment not only gives individuals the right to free speech but also empowers the *government* to ensure that each of us retains the ability to be heard. Professor Lessig has recently written that this is similar in theory to the government role in antitrust laws or other consumer regulations –it acts to ensure that monopolists or duopolists do not dominate the marketplace and keep all competitors out.

What would this mean in practice? It could include mechanisms I have discussed to create broad citizen funding of elections through matching fund systems, democracy vouchers, and tax credits for contributions. These do not restrict speech, but instead expand it to all citizens, thereby furthering the



goals of the First Amendment. These mechanisms provide a way for citizens who are not fortunate enough to be billionaires to be able to participate meaningfully in the political system.

Or, one might look at the question from the perspective of basic fairness in the system. The Framers envisioned one person having one vote, not one dollar having one vote. The Court has simply not managed the tension between the power of money and the importance of political access for all under the first amendment very well—nor have Congress and the states. Now is the time to think through anew how to do that better.

And so, we are right back to Benjamin Franklin’s words: We have a Republic –if we can keep it. We need to figure out how to design and implement better campaign finance systems, to get Members of Congress back to work and subject them—and those who lobby them—to more effective ethics regulations, and think through how to promote political speech for all citizens. The goal of these reforms is simple—to have Americans feel that they are again represented by those they elect to public office, that those representatives are attentive to their views, and that they are acting for the common good. That is not unreasonable to ask of a representative democracy.

For today, as we remember and honor American independence, it is enough to say that our Republic, which we have always considered worth fighting for, is also worth working for. Our Founders put us on the road to true self-government, and now we, the people, need to take the steps necessary to restore and renew that government. And this is a cause to which we may all pledge, just as the signers of the Declaration of Independence did 240 years ago this day, “our Lives, our Fortunes, and our sacred Honor.”

Yesterday morning, when we sang “America the Beautiful” in this space, one moving stanza, written long ago, seemed to reach across the years, speaking to us in this moment in our political lives:

“America, America, God mend thy every Flaw  
Confirm thy Soul in Self Control,  
Thy Liberty in Law.”

Thank you.