

College of Charleston Speech

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Thank you, Jordan, for that very kind introduction. And for those of you who were hoping that I was secretly Stephen Colbert, I'm sorry to disappoint you. I'm afraid you're stuck with the non-funny one.

It is truly wonderful to be at the College of Charleston this week, and I am particularly honored to be asked to speak at this year's Political Science Convocation. It's fortuitous that the College is holding this event this week. Because, as you may just have noticed, we are one week away from a presidential election. If there's one thing we've learned from this campaign, it's that the electorate is bitterly divided. It seems there is almost nothing that the parties and candidates can agree on. The economy, national security, taxes, groping... You name it, the political parties are fighting about it.

But for those of you who think the American public is polarized for all eternity, and will never agree on **anything**, here are a few interesting numbers:

Eighty-one percent and eighty-four percent. Those are the percentages of Republicans and Democrats who agree with the following statements:

“There are some good things in the system for funding political campaigns but **fundamental changes** are needed: 45% of Republicans and 38% of Democrats agree.”

“The system for funding political campaigns has so much wrong with it that we need to **completely rebuild it**: 36% of Republicans and 46% of Democrats agree.”

So 81% of Republicans and 84% of Democrats think that our campaign finance system needs either fundamental change or a complete rebuild.

Here’s another number.

Ninety percent. That is the percentage of **Independents** who favor fundamental change or a complete rebuild of our campaign finance system. And look at this:

Zero. That is the percentage of Americans who think **NO** changes are needed. **Zero percent.**

So, on one subject at least, *everyone* agrees we need to do **something**. Both major parties. Independents. All with overwhelming majorities. Why do we have such universal agreement on this? What do Americans **hate** about our current campaign finance system?

Well, these are the percentages of Americans who think our system is “corrupt.” Eighty-nine percent of Republicans and seventy percent of Democrats.

In fact, “75 percent of Americans believe ‘corruption is widespread throughout the government.’” This ranks us alongside countries such as Jamaica, Costa Rica and Belize.

In case anyone thinks that this is normal, that this kind of cynicism is just part of the universal human condition: it’s not.

Only 19% of Danes, and 14% of Swedes, think that corruption is widespread in *their* governments. Apparently, contrary to Shakespeare, little is rotten in the state of Denmark. Here in America, on the other hand, we are possessed by the idea that our government is crooked.

But what do Americans **mean** when we talk about corruption? What do we think is **corrupt** about our current system? The answer is this: People think the system is rigged against the average American — the 99% of the country — by the 1%. The wealthy individuals, corporations, lobbyists, and special interests who seem to control the political process.

Eighty-seven percent of Americans believe that “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.

Sixty-six percent say that “wealthy Americans have more of a chance to influence the elections process than other Americans.” Anyone who has seen the presidential candidates flying out to New York, L.A., Seattle, and Las Vegas to meet with billionaire donors and investment banks can understand why people get that impression.

And 79% say that government is “run by a few big interests looking out for themselves.”

These numbers are sobering to hear right before an election. 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.

But let’s talk about this last number, this 79%, for a second. Because this same question has been asked for decades in a national political science survey. And in 1964, only 29% of Americans felt the same way. Only 29% said that “a few big interests” run the government. It hasn’t always been the way it is now. We haven’t always felt so negatively about our government.

That’s important to keep in mind as we think about our campaign finance system.

First, though, we have to diagnose the problem. Why do people think this way now? What causes Americans to believe that the special interests have seized control?

To fully answer this question, we have to go back through our history. When the Framers crafted the Constitution, they sought to make the House of Representatives responsible solely to “the people.” In the *Federalist Papers*, James Madison said:

“Who are to be the electors of the federal representatives? **Not the rich, more than the poor**; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than humble sons of obscure and unpropitious fortune. The electors are to be **the great body of the people of the United States**.”¹ In other words, everyone gets an equal opportunity to influence the outcome of our elections. Everyone gets an equal voice.

We’ve heard warnings on this subject ever since—worries that special interests and wealthy factions were assuming control of our political system.

President Eisenhower famously warned the nation as he left office: “In the councils of government, we must guard against the

¹ THE FEDERALIST NO. 57, at 348-49 (James Madison) (Clinton Rossiter, ed., 2003).

acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex.”²

And President Reagan declared that Congress, the media, and special interests formed an “iron triangle” that blocked any attempts to cut the federal budget.³

Madison, Eisenhower, and Reagan weren’t wrong to worry about special interest influence. Take a look at these numbers:

When Reagan was in office, lobbyists reported spending around \$200 million a year on their activities.⁴ Last year, lobbyists spent \$3.2 **billions**.⁵ That’s larger than the entire budget for the House and Senate!⁶

Spending in federal elections has also skyrocketed, from \$2.5 billion in 2000⁷ to over \$7 billion in 2012.⁸ That’s close to a threefold increase in twelve years.

² *Transcript of President Dwight D. Eisenhower’s Farewell Address*, OURDOCUMENTS.GOV (Jan. 17, 1961), <http://www.ourdocuments.gov/doc.php?flash=true&doc=90&page=transcript>.

³ Lee May, *Reagan Blames “Iron Triangle” for Nation’s Ills*, L.A. TIMES (Dec. 14, 1988), http://articles.latimes.com/1988-12-14/news/mn-279_1_iron-triangle.

⁴ Lee Drutman & Steven Teles, *Why Congress Relies on Lobbyists Instead of Thinking for Itself*, ATLANTIC (Mar. 10, 2015), <http://www.theatlantic.com/politics/archive/2015/03/when-congress-cant-think-for-itself-it-turns-to-lobbyists/387295>.

⁵ *Lobbying Database*, CTR. FOR RESPONSIVE POL., <https://www.opensecrets.org/lobby>.

⁶ For FY15 House and Senate budget, see IDA A. BRUDNICK, LEGISLATIVE BRANCH: FY2016 APPROPRIATIONS 7 tab.3, 8 fig.1, CONG. RESEARCH SERV. (Feb. 1, 2016), <https://fas.org/sgp/crs/misc/R44029.pdf>.

⁷ JOSEPH E. CANTOR, CAMPAIGN FINANCE IN THE 2000 FEDERAL ELECTIONS: OVERVIEW AND ESTIMATES OF THE FLOW OF MONEY 2, CONGRESSIONAL RESEARCH SERVICE (Mar. 16, 2001), <http://fpc.state.gov/documents/organization/22896.pdf>.

⁸ Tarini Parti, *FEC: \$7B Spent on 2012 Campaign*, POLITICO (Jan. 31, 2013), <http://www.politico.com/story/2013/01/7-billion-spent-on-2012-campaign-fec-says-087051>.

Let's look at the cost of just Presidential elections, excluding House and Senate races. This chart shows the amount of money spent by Presidential campaigns between 1976 – the first election under the post-Watergate campaign finance regime – and 2012, the last election for which we have full data.⁹ The amounts in the chart are in constant, inflation-adjusted, 2008 dollars, so these are real increases. What happened in 2008? Barack Obama decided **not** to participate in the presidential public funding system, and raised and spent four times as much money as John McCain. In 2012, **neither** party nominee participated in the public funding system.

This chart shows that we have had a 1,300% increase in the amount spent on Presidential campaigns in just 36 years.

For comparison's sake, inflation has only increased 404% in those years.¹⁰ So spending has gone up more than **three times** the rate of inflation. And, as you can see, most of that increase came in the last few elections.

Where is all this money coming from? Overwhelming majorities of Americans are calling for an end to money's dominant role in politics, but a tiny fraction of our population might disagree. We can see just how tiny by looking at the data. The FEC has a database of all recorded contributions to federal

⁹ Data from 1976-2008 come from JAMES Q. WILSON ET AL., AMERICAN GOVERNMENT: INSTITUTIONS AND POLICIES 236 (13th ed. 2012). The 2012 data come from *2012 Presidential Campaign Finance Explorer*, Wash. Post, <http://www.washingtonpost.com/wp-srv/special/politics/campaign-finance> (last updated Dec. 7, 2012), and were adjusted to 2008 dollars to conform with the 1976-2008 data.

¹⁰ Inflation data from *CPI Inflation Calculator*, BUREAU OF LABOR STATISTICS, http://www.bls.gov/data/inflation_calculator.htm.

candidates, political parties, and PACs. For a campaign or a PAC to give a donor's name to the FEC, that donor must give an aggregate of \$200 in a single election cycle to all candidates, parties, and PACs **combined**.

In the 2014 election cycle, less than one quarter of one percent of the American population donated \$200 or more to any federal campaign, party, or PAC.¹¹ This means that 99-3/4% of all Americans—the rest of us—are left out. We are not even “in the system.”

The situation is getting even worse this year. As you may know, so-called “Super PACs” are becoming the principal fundraising devices for presidential campaigns. A few weeks ago, the *Washington Post* reported that Super PACs had raised \$1.1 billion for this election just by the end of August.¹² That's almost 30% more than Super PACs raised for the *entire* 2012 cycle.

Of that 1.1 billion, nearly one-fifth—or over \$200 million—came from just **ten** mega-donors.

Just **ten** Americans have given an average of \$20 million each to Super PACs.

¹¹ Center for Responsive Politics, *Donor Demographics*, OPENSECRETS.ORG, <https://www.opensecrets.org/overview/donordemographics.php?cycle=2014&filter=A> (last visited Oct. 17, 2016).

¹² Matea Gold & Anu Narayanswamy, *How 10 Mega-Donors Already Helped Pour a Record \$1.1 Billion Into Super PACs*, WASH. POST (Oct. 5, 2016), http://www.washingtonpost.com/politics/how-10-mega-donors-already-helped-pour-a-record-11-billion-into-super-pacs/2016/10/05/d2d51d44-8a60-11e6-875e-2c1bfe943b66_story.html.

Here's another number: 257. So far this cycle, 257 people – a small enough number to fit into this room – accounted for an extraordinary 74% of all individual contributions to super PACs.¹³

Each of these 257 donors gave more than \$500,000. Think about that: many Americans do not see that much money in their lifetimes!

What has changed in our elections to produce this situation where a miniscule number of hyper-wealthy Americans play such a dominant role in our elections? First, voluntary public financing was used by every major presidential nominee from 1976 to 2004, and while it wasn't perfect, it **was** effective. Let's look at two numbers that tell that story:

3 and 223. During his 1984 re-election campaign, Ronald Reagan attended a grand total of three fundraising events – and even then, they were for the Republican National Committee, not his campaign. In fact, he never attended a **single fundraiser** for his own reelection campaign. Why would he? It was publicly funded; he didn't need to.

In 2012, by contrast, after deciding not to participate in the Presidential public finding system four years earlier because he could raise more money outside of it, President Barack Obama attended 223 fundraising events leading up to his re-election. It's reasonable to wonder how one could even find the time to **be**

¹³ Paul Blumenthal, *Super PAC Megadonors Are Giving More Than Ever In 2016*, Huffington Post (Oct. 10, 2016, 7:39 PM), http://www.huffingtonpost.com/entry/super-pac-donors-2016_us_57fc068de4b0e655eab6f34e.

President when having to attend so many fundraising events. But it turns out the President doesn't even have the worst of it.

Here is another figure: 40%. This figure comes from a leaked PowerPoint slide showing a recommended daily schedule for new members of Congress, which was part of a presentation given to freshman representatives in January 2013 by the Democratic Congressional Campaign Committee.

Though it includes a few of the things we would expect from our elected officials –talking with constituents and attending committee meetings – the single largest item, taking up at least twice as much time as any of those other activities, is “call time.”

“Call time” is the hours a day members of congress spend not in their offices or at work, but down the street in the basement of a party office dialing for dollars. We've now reached the point where money has become so singularly important in winning elections that the “model schedule” for an elected representative makes fundraising for four hours a day their biggest priority.

Legislators themselves complain about this. Rodney Alexander, a Republican congressman from Louisiana, retired from Congress in 2014 because of the problems posed by fundraising.

He said: “[A]ggressively raising money . . . [is] an unfortunate part of the business that we’re in. But **it’s the main business**, and it’s 24 hours a day raising money.”¹⁴

Chris Murphy, a Democratic senator from Connecticut, has said the same thing. As he put it:

“Today, more than ever before, the one question you have to ask when you are deciding whether to run for the United States House, the United States Senate is, **are you willing to become a telemarketer for 24 months?**”¹⁵

All this fundraising creates three big problems. The **first** is that our elected officials become heavily dependent on a small group of donors – that one quarter of one percent of Americans. Harvard professor Lawrence Lessig calls this “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 very sensitive to what those donors want, since angering them could dry up their vital cash.

¹⁴ Andy Kroll, *Retiring GOP Congressman: Fundraising Is “The Main Business” of Congress*, MOTHER JONES (Aug. 8, 2013, 11:02 AM), <http://www.motherjones.com/mojo/2013/08/retiring-rodney-alexander-congressman-fundraising-congress> (emphasis added).

¹⁵ Paul Blumenthal, *Chris Murphy: ‘Soul-Crushing’ Fundraising Is Bad For Congress*, Huffington Post (May 7, 2013, 5:40 PM), http://www.huffingtonpost.com/2013/05/07/chris-murphy-fundraising_n_3232143.html.

By dependence corruption, I don't mean *quid pro quo*. This isn't a simple matter of cash for votes. And it doesn't mean that individual politicians are criminals or are acting in bad faith. What it *does* mean is that these wealthy donors systematically get more access to and influence over our elected officials.

One recently published political science study gives us a window into how this works. These researchers had an interest group attempt to arrange meetings with members of Congress. But the researchers told some of the congressmen, randomly selected, that the group had donated to their campaigns.

When the staffers knew that this group had donated to their congressmen's campaigns, the group was **three times** more likely to get a meeting with a senior staffer, and **four times** more likely to meet with the actual congressman.¹⁶ Regular constituents like you and me get the polite brushoff, or else get a meeting with low-level staffers who don't have much influence on policy. Big donors get the star treatment.

This, in turn, affects what elected officials choose to care about.

As Senator Murphy has said, big donors “have fundamentally different problems than other people.”¹⁷ Elected officials often

¹⁶ Joshua L. Kalla & David E. Broockman, *Campaign Contributions Facilitate Access to Congressional Officials: A Randomized Field Experiment*, 60 AM. J. POL. SCI. 545, 553 (2016).

¹⁷ Blumenthal, *supra* note 15.

pursue the issues that their wealthy donors want them to pursue, and block the legislation that their donors want them to block.

Recent scholarship has confirmed this. Political scientists have found that, when the views of average Americans diverge from those of the richest 10% on a particular policy issue, the preferences of poor and middle class Americans have **zero** influence on what the government does. Zero. But, by contrast, the government is extremely responsive to what the top 10% want.¹⁸

The **second** problem with 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.

Since I've been giving you all these numbers throughout this speech, I'm going to give you another one:

111. Congress scheduled only 111 full days in Washington for this entire year, out of a possible 306 work days!¹⁹ By contrast, it used to be that Members moved to the Capital for the entire legislative session, worked together, and even negotiated and compromised together. (Imagine that!)

¹⁸ MARTIN GILENS, *AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA* 80 fig. 3.5 (2012).

¹⁹ John Bresnahan & Seung Min Kim, *Congress Plans Huge Break During Summer 2016*, POLITICO (Nov. 3, 2015, 11:44 AM), <http://www.politico.com/blogs/the-gavel/2015/11/house-2016-schedule-215476>.

Now, votes are scheduled only for a day or two 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.”

Representative Rick Nolan of Minnesota stated that Congress’s 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.**” Simply put, elected officials are not doing the job we hired them to do.

A **third** problem with our campaign finance system is that we don’t actually know who’s doing the spending. The Supreme Court, in *Citizens United* and other cases, has made it easier for wealthy individuals and corporations to pour money into our elections. And federal agencies, like the Federal Election Commission and the IRS, have done almost nothing to enforce the laws requiring disclosure of political spending. So we now have the phenomenon of “dark money”: money whose source we can’t identify, because it’s coming from tax-exempt groups that don’t have to disclose their donors.

Tax-exempt 501(c)(4) organizations that are not required to disclose their donors went from spending a negligible \$3 million on campaign advertising in 2004, to more than a **quarter**

billion in 2012.²⁰ So not only do elected officials spend most of their time fundraising instead of legislating; not only do they then become dependent on their donors rather than on their constituents; but the rest of us don't even know who is funding the advertising that helps elect or defeat them, because those who have a spare \$500,000, or \$20 million, can give unlimited money to supposedly "independent" groups without revealing their identities to the public.

Now, some of you might say, as some pundits have, that money doesn't matter. After all, look at Jeb Bush: his Super PAC raised and spent over \$100 million in the Republican primaries, and he didn't win. He did not even place. He came in fourth in the South Carolina primary and dropped out – the primary his brother won in 2000 to derail the candidacy of John McCain. So Jeb Bush proves that money is not **dispositive**—but it **is** necessary. Very few candidates can win **without** spending significant sums of money.

Let's look at the 2016 Republican primary.²¹ Governor Bush and his Super PAC did, in fact, spend the most money: nearly \$160 million. But all of the candidates who were the most competitive in the primaries—Ted Cruz, Marco Rubio, John Kasich, and of course Donald Trump—spent tens of millions of dollars each. All told, the Republican primary candidates and

²⁰ The 2012 number comes from Adam Lioz & Blair Bowie, *Election Spending 2012: Post-Election Analysis of Federal Election Commission Data*, DEMOS (Nov. 9, 2012), <http://www.demos.org/publication/election-spending-2012-post-election-analysis-federal-election-commission-data>.

²¹ The 2016 primary spending data come from *Which Presidential Candidates Are Winning the Presidential Race?*, N.Y. TIMES (June 22, 2016), <http://www.nytimes.com/interactive/2016/us/elections/election-2016-campaign-money-race.html>.

their Super PACs spent nearly **\$740 million**.

Now, remember that money is used to buy advertising and to communicate with the public. So here's another number:

2 billion. A firm that tracks TV airtime found, all the way back in March, that Donald Trump had already gotten nearly **\$2 billion** in free media coverage. That was more than six times higher than any other Republican candidate.²² Of course, there's a reason for that. Les Moonves, the chairman of CBS, said that Trump's run "may not be good for America, but it's damn good for CBS."²³ At least he was being honest. And what was good for CBS's ratings and advertising sales was also good for Donald Trump's poll numbers.

Let's look at these numbers again, adding the free TV time to the candidate spending.

As you can see, Donald Trump suddenly looks a lot better off, with almost \$2 billion in spending and free media. And Jeb Bush looks much less impressive, with less than one-fifth of that total. Now, let's look at the general election.

As of last week, Donald Trump had spent \$58 million in TV

²² Nicholas Confessore & Karen Yourish, *\$2 Billion of Free Media for Donald Trump*, N.Y. TIMES: THE UPSHOT (Mar. 15, 2016), <http://www.nytimes.com/2016/03/16/upshot/measuring-donald-trumps-mammoth-advantage-in-free-media.html>.

²³ Eliza Collins, *Les Moonves: Trump's Run Is 'Damn Good for CBS'*, POLITICO (Feb. 29, 2016, 6:15 PM), <http://www.politico.com/blogs/on-media/2016/02/les-moonves-trump-cbs-220001>.

advertising. But Hillary Clinton has spent over **\$170 million**.²⁴ Trump is reported to be spending more of his money on social media. And that's not even including both sides' Super PACs. It may be that both sides cancel each other's spending out. But money **does** matter when there are large spending differences.

If all of this is getting you down, don't worry. I didn't come here just to make you depressed. The good news is that there are solutions to these problems, and I'm happy to talk more about those in our Q&A session. But let me leave you with this:

When asked at the second presidential debate about how she would choose a new Supreme Court Justice to replace Justice Scalia, Hillary Clinton said: "I think the current court has gone in the wrong direction. And so I would want to see the Supreme Court reverse *Citizens United* and get dark, unaccountable money out of our politics."²⁵

And Donald Trump has said "this election isn't about Republican or Democrat; it's about who runs this country—the special interests, or the people."²⁶ As a businessman, he has given to both Republicans and Democrats because, as he puts it, "when

²⁴ Ken Goldstein et al., *Donald Trump is Finally Outspending Hillary Clinton on TV Ads*, BLOOMBERG POLITICS (Oct. 26, 2016), <http://www.bloomberg.com/politics/graphics/2016-presidential-campaign-tv-ads>.

²⁵ *Transcript of the Second Debate*, N.Y. TIMES (Oct. 10, 2016), <http://www.nytimes.com/2016/10/10/us/politics/transcript-second-debate.html>.

²⁶ Ian Schwartz, *Trump: I Will Be America's Champion; Clintons Have "Turned The Politics Of Personal Enrichment Into An Art Form"*, REALCLEARPOLITICS (June 7, 2016), http://www.realclearpolitics.com/video/2016/06/07/trump_i_will_be_americas_champion_clintons_have_turned_the_politics_of_personal_enrichment_into_an_art_form.html#!.

you give, they do whatever the hell you want them to do.”²⁷
“That,” he said, “is a broken system.”²⁸

So both of the major-party nominees for president understand that we have a problem, and they both claim they want to solve it. That’s heartening. It means that, no matter the result next week, we can hope that they, and Congress, will start fixing this situation. And that’s good news for our republic.

Thank you.

²⁷ David A. Farenthold & Rosalind S. Helderan, *Trump Bragged That His Money Bought Off Politicians. Just Not This Time.*, WASH. POST (Sept. 7, 2016), https://www.washingtonpost.com/politics/trump-bragged-that-his-money-bought-off-politicians-just-not-this-time/2016/09/07/00a9d1e4-750b-11e6-be4f-3f42f2e5a49e_story.html?postshare=3631473291321307&tid=ss_tw.

²⁸ Jill Ornitz & Ryan Struyk, *Donald Trump’s Surprisingly Honest Lessons About Big Money in Politics*, ABCNews (Aug. 11, 2015, 3:09 PM), <http://abcnews.go.com/Politics/donald-trumps-surprisingly-honest-lessons-big-money-politics/story?id=32993736>.