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Keynote Address: On What Being a (small r) Republican Means

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KEYNOTE ADDRESS: ON WHAT BEING A (SMALL R) REPUBLICAN MEANS*

Lawrence Lessig**

By definition, every year is a centennial. But I am particularly disappointed by our failure to remark the profoundly important events that happened 100 years ago this year. Of course, people noticed the centennial of the Titanic. We could have remarked the centennial of Wilbur Wright's passing. We could note the centennial of Woody Guthrie's birth. But the centennial I would like to remark is of the extraordinary presidential election that happened 100 years ago this year. America had a choice among four very different candidates for president: Eugene Debs, a Socialist; William Howard Taft, the stand-pat Republican; Teddy Roosevelt, who had started a new party to challenge the man he had selected for president—William Howard Taft; and Woodrow Wilson.

Teddy Roosevelt and Woodrow Wilson were very different people. They had very different views about what the government should do and how the government should deal with the problems of the day. But both of them called themselves “progressives.” This is a fact about progressivism that we forget today. Today we think progressives are liberals. But 100 years ago progressives came from every political stripe. Progressives were people who saw a system of corrupted government and imagined a system that could do something more. An astonishing fact about the election of 1912 is that between these two progressives, 70% of America voted in favor of this progressive idea. More voted for Wilson than for Roosevelt, but 70% identified progressivism as an ideal that they would back.

This progressivism was not just at the level of the United States. It is 100 years ago this year too that Montana finally overcame an extraordinary system of corruption that had weakened its government. One hundred years ago, Montana passed into law a series of reforms including a limitation on the ability of corporations to participate directly in political elections. One hundred years ago, that referendum passed, and there began in Montana,

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100 years, almost, of elections that would not be dominated by corporations.

One hundred years ago, we could say that there was a certain victory for democracy. A victory that meant we could invest in that democracy. A victory against a certain kind of corruption. But, of course, the corruption of 100 years ago is very different from the corruption we think about today. The corruption of W. A. Clark, the Senator who bought his way into the Senate twice, is very different from the corruptions we face today. And the victory 100 years ago over that corruption, a victory over this image of corporate control over politics, is a victory that took that corrupting influence and put it in its place.

I sometimes think that history is too much like the very worst of Hollywood—repeating the same ideas over again and again. Because as we look back over these 100 years and recognize where we are today, we should recognize that we have just come back to the same place that we were 100 years ago. And the question I want to ask tonight is: “What should we have learned from 1912, and what have we forgotten?”

To answer that question, I want to first take us to a different place, a place called “Lesterland.” Lesterland looks a lot like the United States. Like the United States, it has about 311 million people. And like the United States, there are about 144,000 Lesters in Lesterland. So, about 0.05% of the population of Lesterland is comprised of Lesters.

But Lesters in Lesterland have a certain kind of power. Lesterland has two elections. It has a general election, in which every citizen gets to vote. And it has a Lester election, in which only Lesters get to vote. But here is the rub—to be able to run in the general election you must do extremely well in the Lester election. You do not necessarily have to win, but you must do extremely well.

That is the picture of democracy in Lesterland. What can we say about this democracy?

I think we can say that, first, as the Supreme Court said in *Citizens United*,¹ it is certainly the case that in Lesterland the people have the ultimate influence over the elected officials. They have the ultimate influence because the people get to vote in the general election. But of course, the people have “the ultimate influence” only after “the Lesters” have had their influence first. And that first influence certainly has an effect. It certainly changes the influences that determine who will govern Lesterland.

Second, and obviously, this dependence upon the Lesters will produce a subtle, understated, and camouflaged bending to keep the Lesters happy. It cannot be too obvious, because then you are just a sellout, but it cannot be

1. *Citizens United v. Fed. Election Commn.*, 558 U.S. 310, 130 S. Ct. 876 (2010).

too hidden either, because then the Lesters will neither support you nor give you the opportunity to run in the general election.

Third, any reform that would anger these Lesters is unlikely—highly unlikely.

That is Lesterland. There are three things I want you to recognize about Lesterland.

First, the United States is Lesterland. The United States also has two elections. It has a general election, and it has a money election. In the money election, it is the funders of campaigns who decide who wins, and in the general election, it is the citizens who decide who wins. But as in Lesterland, here is the rub—to be able to run in the general election you must do extremely well in the money election. You need not necessarily win, but you must do extremely well. This is the picture of democracy in America. We have a democracy in which the representatives are dependent upon the funders.

But the relevant “funders” in the United States are just as few as the “Lesters” in Lesterland—essentially, 0.05%. In the United States in 2010, 0.26% of Americans gave more than \$200 in a congressional election; 0.05% gave the maximum amount to any congressional candidate; 0.01%—the 1% of the 1%—gave \$10,000 or more in the election cycle. And in this presidential cycle so far, 0.000015% of America—47 Americans—have given 42% of the Super PAC money that has been spent by candidates. As Politico puts it, “in an election purportedly being driven by the economic concerns of the middle class, this top 0.07% of donors are more valuable than the bottom 86%.”

Okay, so I am a lawyer, and when I look at this range—0.26%, 0.05%, 0.01%—0.05% is a fair estimate of the relevant “funders” in this system. They are “the funders” who are “the Lesters.”

As we could say about Lesterland, so can we say three things about USAland. First, as the Supreme Court said in *Citizens United*, of course “the people have the ultimate influence over elected officials”²—but only after “the funders” have had their way with the candidates. Second, and obviously, this dependence upon “the funders” will in subtle, understated, and camouflaged ways produce a bending to keep “the funders” happy. Candidates for Congress spend anywhere between 30–70% of their time raising money to get back to Congress or to get their party back into power. As they do this, they develop, as any of us would, a sixth sense—a constant awareness about how what they do might affect their ability to raise money. They become in the words of the X-Files, “shape-shifters,” as they constantly adjust their views in light of what they know will help them to raise

2. *Citizens United*, 130 S. Ct. at 910.

money—not on issues 1–10, but on issues 11–1,000. Leslie Byrne, a Democrat from Virginia, describes that when she went to Congress she was told by a colleague to “always lean to the green.” And then to clarify, she went on, “he was not an environmentalist.”

And finally, third, reform that angers “the funders” in this version of Lesterland is highly unlikely.

So this is my first major point: the United States is Lesterland.

The second point is this: the United States is worse than Lesterland. For if you imagine that if the Lesters received a letter in the mail that said “we have this new system of government and in this system you Lesters have been picked; you are the chosen ones; you get to select which candidates the rest of us get to pick from,” you can imagine that the Lesters—who come from all segments of society, rich and poor, black and white—could develop aristocratic attitudes. They could well begin to think: “What should we do to help the society as a whole? It is our job as Lesters to vote in a way that helps society as a whole, and everybody will ask us what we have done to help society as a whole.” At least it is possible that the Lesters in Lesterland would act for the good of Lesterland. But in our land, in this land, in USAland, the Lesters act for the Lesters. This constant shifting coalition of people who constitute the 0.05% is a shifting coalition made up primarily of people who are eager to influence policy to benefit them but not the public interest. They do not even pretend it is the public interest. It is the interest to benefit them in a system that increasingly turns to them, asking: “What do you need?” In this sense, the United States is worse than Lesterland.

And finally, my third point: Whatever is true about Lesterland, in our land—in our Lesterland—in our USAland, this pattern for democracy is corrupt. I do not mean brown paper bag corruption with cash secreted among members of Congress. I do not mean Rod Blagojevich corruption—buying and selling public office for personal gain. I do not even mean W. A. Clark corruption. I do not mean any illegal act. The corruption I am talking about is perfectly legal. I mean corruption relative to a baseline—the Framers’ baseline—for how this nation was to function.

The Framers gave us what they called a “republic.” As they explained, what they meant by a “republic” was a representative democracy. And as they explained in many contexts, and in particular in *Federalist 52*, by a representative democracy they meant a government that would have a branch that would be “dependent upon the people alone.”³

So this is the model of government: you have the people and you have the government—an exclusive dependency. And through this exclusive de-

3. James Madison, *The Federalist No. 52* 354 (Jacob E. Cooke ed., Wesleyan U. Press 1961).

pendency, the public good would be found. But here is the problem: Congress has evolved a different dependence. There is no longer just a dependence upon the people; there is increasingly a dependence upon “the funders.” This is a dependence too, but it is a different and conflicting dependence from a dependence upon the people so long as “the funders” are not “the people.” This is a corruption. It is what we could call a “dependence corruption” because we have allowed the wrong dependence to evolve inside the system and because it is not an exclusive dependence upon the people alone.

This corruption has an effect. First, it leads most Americans to believe, rightly so, I think, that money buys results in Congress. Seventy-five percent of Americans believe this, according to a poll we conducted for the book that I released last fall. The number is a little bit higher among Democrats than Republicans, but I guarantee you before the Republicans took control of the House of Representatives in 2010, just as many Republicans as Democrats believed it. So whether it is two-thirds or three-fourths, this is the one thing we Americans believe: money buys results in Congress.

Second, that belief erodes trust and confidence in this institution. Last year ABC News and the *New York Times* reported that 9% of Americans had confidence in Congress. We should put that in context. It is certainly the case that at the time of the revolution, there was a higher percentage of Americans who had confidence in the British crown than who have confidence in our Congress today.

Third, this erosion of confidence erodes participation in the system. Rock the Vote, which organizes and turns out young voters and in 2008 turned out the largest number of young voters ever in the history of this nation, found in 2010 that a significant number of their voters were just not going to vote. When asked why, the number one reason given by far—2 to 1 over the second highest reason—was “no matter who wins, corporate interests will still have too much power and prevent real change.” And it is not just kids who think this. The vast majority who could have voted in 2010 did not vote, at least in part, because of this belief.

This point has been well known for more than a century. As the Montana Supreme Court commented in their opinion upholding the Montana law passed 100 years ago this year, W. A. Clark himself testified that “many people have become so indifferent to voting because of the large sums of money that have been expended in these campaigns.”⁴ And it is not just voting. As the Montana Supreme Court also said, citing extraordinarily good work by Edwin Bender from the National Institute on Money in

4. *W. Tradition Partn., Inc. v. Atty. Gen. of Mont.*, 271 P.3d 1, 9 (Mont. 2011), cert. granted, judgment rev'd sub nom., *Am. Tradition Partn., Inc. v. Bullock*, 132 S. Ct. 2490 (2012) (citing K. Ross Toole, *Montana, An Uncommon Land* 184–185 (U. of Okla. Press 1959)).

State Politics, if you look at states where corporations are restricted in their ability to participate in the political process and compare them to states where corporations are not restricted, the percentage of individuals who contribute to campaigns falls from 48% to 23%.⁵ When the ordinary person recognizes that big money calls the shots, the ordinary person decides he or she is going to spend his or her money someplace else.

So, if you look at this problem in this way, what we can do? There is a systemic problem: “the funders” are not “the people.” This begs for a systemic solution: to make it so “the funders” are “the people”; to give Congress one way to fund their campaigns without Faust, without selling their soul, and thereby convincing and alienating America that they have sold their soul. And the one, and perhaps only, way to do this is to openly and firmly embrace a system of what I want to call “citizen-funded campaigns.”

What would a system of citizen-funded campaigns mean? The first point to recognize is, the internet notwithstanding, for as long as we can see, campaigns are going to cost money. They will therefore need to be funded. So, the first question is: “Funded by whom?” Will campaigns be funded by citizens or by noncitizens? Noncitizens, like the Chinese or the French, or corporations—for whether or not corporations are persons, no one has ever suggested that they are United States citizens. When Americans are presented with this choice, the vast majority say, of course, that it should be citizens who fund campaigns.

But that leads to a second question: “Which citizens?” Should some citizens or all citizens fund campaigns?

For the current system for funding campaigns is a citizen-funded system, where only some citizens participate in funding our campaigns. These are the large-dollar campaigns funded by a small percentage of Americans—the 0.26%, the 0.05%, and the 0.01%. The Lesters. These are campaigns funded by the smallest slice of the 1%, evoking the same idea of corruption that captured Montana 100 years ago.

So obviously, when I talk about citizen-funded campaigns, I do not mean to refer to this model of funding campaigns. But that leads some people to the opposite extreme—what we typically refer to as “public funding of campaigns.” This used to be the norm in presidential campaigns, where the government decided how much money you needed to run your campaign and, once you qualified, wrote you a very big check. This system, it turns out, is hated by most Americans. Americans hate it for many reasons. One very salient reason is many people are concerned by any system where basically “my money is being used to subsidize your political speech.” Also, of course, the system has become bloated and bureaucratic,

5. *W. Tradition Partn., Inc.*, 271 P.3d at 234.

evoking images that not many people would rally to in support of reform of our system. So again, when I talk about citizen-funded campaigns, I do not mean what we typically refer to as the “public funding of campaigns.”

Instead, what I mean by “citizen-funded campaigns” is a system in which everyone participates in funding campaigns but through a bottom-up process. This is a process where people and candidates opt-in to a system where candidates take small contributions only. The system then amplifies the contributions to make it possible for a candidate to win a campaign by taking small contributions only.

There are many versions of this system. Arizona, Maine, and Connecticut have versions of it for their state offices. Connecticut, when it adopted this system, found 78% of the elected representatives opted in to the system in the first year—Democrats and Republicans alike electing not to take large contributions to fund their campaigns.

But these systems still suffer from the concern that “my money is subsidizing your speech.” So when I wrote my book, I wondered whether there was a way to architect such a system so that it has the same feature of bottom-up funding but without the flaw of “my money subsidizing your speech.”

That objective led me to what I call the “Grant and Franklin Project.” The system works like this: regardless of income level, all voters contribute at least \$50 of their income to the Federal Treasury. Whether through income taxes, payroll taxes, Social Security taxes, gas taxes, or cigarette taxes, whatever, all of us send at least \$50 of our money to the Federal Treasury. So under this system, the first \$50 that all of us sent is rebated to us in the form of a coupon, or “democracy voucher.” Citizens are allowed to give the voucher to a candidate if the candidate agrees to fund his or her campaign with vouchers plus contributions limited to about \$100 per citizen only. This is very similar to an idea that Bruce Ackerman and Ian Ayres advanced more than a decade ago, but this makes the opportunity for a candidate to take the money contingent upon his agreeing to fund his campaign only with small dollar contributions.

Fifty dollars per voter adds up to \$7 billion. In 2010, the total amount raised and spent in congressional campaigns was \$1.8 billion. So, \$7 billion is about three times the amount raised and spent in 2010, meaning it is real money, but representative. The money comes from all of us, not the tiniest fraction of those of us who are “the Lesters” in this system. It is a kind of one person, one voucher system that assures all of us are participating, or have the opportunity to participate, in the same way.

This is what I mean by citizen-funded campaigns. And the point to recognize is that if we had a Congress selected by such a system, selected through small dollar contributions only, then we all could believe, as we all

want to believe, that whenever Congress did something crazy, it might have been because there are too many Democrats or because there are too many Republicans, but not because of the money. Because this system would remove the premise that leads most of us to be as cynical about this institution as we are.

Now the problem with this story is that nobody talks like this. I obviously do not literally mean nobody. Somebody talks like this: I do. But I often feel like it is only me talking about the system like this. I begin to feel like my kids' book, "Mr. Nobody." I am Mr. Nobody talking about this while everybody else, Mr. Everybody, is obsessed with the focus on the U.S. Supreme Court and the *Citizens United* decision. Because, of course, on January 21, 2010, a year and a day after President Barack Obama was sworn into office, the Supreme Court started us on the proverbial "slippery slope" down to the age of the Super PAC. This age does not just include the pretty, happy Super PACs of people like Colbert, but increasingly, it includes Super PACs that evoke a much darker image.

That Supreme Court decision, of course, provoked extraordinary outrage. Larry Tribe suggested it "marks a major upheaval in First Amendment law." Jonathan Alter described it as the "most serious threat to American democracy in a generation."

Suffice it that the case was not loved. And indeed, the *Washington Post* was able to show that opposition to the decision was high across the board. Democrats, Independents, and Republicans in significant extremes opposed this decision and found it to be troubling for what it said about the future of democracy.

That outrage began a series of remedies, and those remedies got us T-shirts ("Corporations Are Not People"), it got us slogans ("Money Is Not Speech"), and it got us organizations keen to see these slogans and these T-shirts inserted into the Constitution.

My view is those remedies are wrong. My view is the focus on *Citizens United* is wrong. My view is that this decision, in an extremely important but narrow way, was right. I do not mean "left versus right" right. Of course it was right in that sense. But I mean right in the sense of correct. The Supreme Court was correct about the very narrow question that was presented: whether this organization, Citizens United, a non-profit political filmmaker, should be allowed to use its corporate funds to promote its movie "Hillary: The Movie." And my view of the First Amendment is the answer to that question has got to be "of course it should." Of course it should be free to use its corporate funds to promote its movie. Whether or not corporations are people, this film is political speech, and in our tradition, political speech is restricted if and only if there is corruption. Corruption means, as the Supreme Court says it means, quid pro quo corruption.

So, when the Court said in *Citizens United* that “independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption,”⁶ the important word there to focus on is “independent.” What the Court was saying was that “independent” means there could be no quid pro quo involved, and therefore, if you think corruption is quid pro quo, “independent” expenditures, by definition, are not corruption.

That is one conception of corruption. I have advanced another—dependence corruption. But even under my conception of corruption, the non-profit Citizens United promoting “Hillary: The Movie” does not signal improper dependence. So under either definition of corruption, this is not corruption. Therefore, under either conception of corruption, this decision, in my view, was right. It was right about this entity, but it was wrong to suggest (and it is my view this is not yet a holding, it is just a suggestion, and this is not actually a quote from the opinion, but this is what people read the opinion to say) that “therefore there is nothing Congress can do to limit the role of independent expenditures.” People think the Court said that. I agree the Court suggested this, but in my view, it did not say it. This broader view is just a suggestion. It is not yet a holding. And it is my view it would not be a holding if the Court was presented with the right case.

So, what is the right case here? Imagine a statute called the “American Anti-Corruption Act.” Let us call it the AA Act just to evoke the dependency metaphor as strongly as we can. Imagine the AA Act targets what we will call Independent Political Action Committees—iPACs. And imagine iPACs are spending their money independently without coordinating with a candidate. Further imagine the statute has two parts: (1) No iPAC may accept contributions greater than \$5,000; and (2) every contribution above \$200 dollars to an iPAC must be disclosed. The Court is pretty clear that the second provision is constitutional. What about the first? Is that constitutional?

Well, that depends upon whether this rule is tailored to “corruption.” If you think corruption is just quid pro quo corruption, then, this statute is not constitutional. But if corruption also includes what I call dependence corruption, then it is constitutional because it is attacking what has now become recognized as a kind of dependence corruption. It is plain to everybody, and I am sure even the Supreme Court, that the system the Court gave birth to in *Citizens United* has evolved a dependence on these large contributors, upon “the Lesters,” that is different and conflicting with a dependence upon the people alone. And if they take seriously the Framers’ conception of the balance and limitations intended in our system, I think they

6. *Citizens United*, 130 S. Ct. at 909.

should see this as corruption and they should justify a narrowly tailored law targeting that corruption.

So in summary, in my view, number one, *Citizens United* talk is mistaken. It is not clear there is no power in Congress to restrict the kind of speech all of us think needs to be restricted, namely unlimited contributions to committees that are spending in the name of the contributors. And, number two, I do not think *Citizens United* would be reversed by the gimmicks that have been advanced as a way to reverse *Citizens United*. Declaring corporations are not persons feels good. I get it. I can feel the romance in declaring only “people are people.” I get the joke. I have repeated it: I will believe a corporation is a person when Texas executes one. All of that is perfectly understandable from a political perspective, but from a legal perspective, it is not at all clear that declaring corporations are not persons reverses the effect of *Citizens United*. And finally, in my view, adopting the slogan “money is not speech” would do far more harm than good. These are gimmicks—effective politically, but they will not solve this problem if indeed a constitutional change is needed to solve this problem.

My second view is that *Citizens United* talk misses the point of what the problem here is. Here is the point. On January 20, 2010, the day before *Citizens United* was decided, we must remember, our republic was already broken. *Citizens United* may have shot the body, but the body was already cold. Even if we reverse that decision, this is still Lesterland. We still have a system, even with no corporate participation at all, where the tiniest fraction of the 1% is funding the elections, which produces exactly the kind of corruption that I think Lesterland illustrates. This will remain so long as “the funders” are not “the people.” Rather than obsessing about whether corporations are people, we need to dedicate ourselves to the real work, the extremely hard work, to get Americans to recognize we need a system where “the funders” are “the people.” Is it possible to win that fight? Is it possible to imagine Congress passing the laws to win that fight?

As Dean Irma Russell was suggesting in her introduction this evening, there are moments, indeed every time I think about this in a rational way, when I am convinced that it is absolutely impossible to imagine this Congress making the changes that need to be made. What evokes this most strongly is an image given to me by Jim Cooper, a Democrat from Tennessee who has been in Congress for as long as all but about 20 other members of Congress. When I interviewed him for my book, Cooper said, “You see the problem is that Capitol Hill has become a farm league for K Street.” K Street is where the lobbyists work. Cooper said that “members and staffers and bureaucrats have this increasing common business model in their head, a business model focused on their life after government, their life as lobbyists.” Public Citizen calculated that, between 1998 and 2004, 50% of the

Senate and 42% of the House left to become lobbyists, and those numbers have only gone up since 2004. This year, United Republic calculated that the average salary increase for those they could track who were going to become lobbyists was 1,452%. In a world where everyone depends upon this system surviving for their future, how could we imagine them changing this system?

The answer is that we have to find a way around the cancer that is now the Beltway. We have to find a way around it, and I am going to suggest the beginnings of such a way.

The chatterati in our political system say the interesting division in American politics is between the left side and the right side. I think the interesting division in American politics is between the inside and the outside. Inside—life within the Beltway—and outside—life in the rest of America. If you think about and listen to what the people on the inside talk and obsess about and compare it to what people on the outside talk and obsess about, to borrow and remix a title from John Gray's book, I begin to think that D.C. is from Mars, and we are from Earth.

This distinction between the inside and the outside suggests a certain politics—what we could call, following Nigel Cameron, a kind of exopolitics: the politics of the outsiders. The politics of the outsiders is not a politics of politicians. These are not wanna-be Representatives or wanna-be Senators who are just finding their way into the system to climb up in the system. This is citizen politics. These are citizens demanding that politics change. If we look at the last 14 years we can see a series, with increasing frequency, of waves of self-described “open-source energy” that comes from this exopolitical movement driving for significant change.

There are many examples of this, increasingly frequent. The first was MoveOn.org in 1998. That organization was born when two Berkeley programmers looked at Washington, which at the time was obsessed with the question of whether Congress should impeach a president for lying about whether he had sex with a member of his staff, and said “this is crazy.” They said “there are a lot of serious problems that our country faces. This is nowhere near the top.” They started a group devoted to saying Congress should censure the President and move on. Within a few weeks they had gathered millions of signatures on their petition demanding that Congress end this obsession, Democrats and Republicans alike, and that was the first example of the web empowering a movement that did not have its roots in a lobbyist's office inside the Beltway.

I think the Tea Party, too, was an exopolitical movement, at least when it was born. Today it has been co-opted by too many Beltway Republicans, but when it was born, I think it represented exactly the same kind of exopolitical frustration and anger demanding that the system wake up and be

responsive to at least Tea Partiers' conception of the views that should guide what politics did.

I think the Occupy movement, one year old last week, was a similar exopolitical movement. And I think the movement that stopped Hollywood's latest round of regulations to try to control "piracy"—the SOPA battle—was an exopolitical movement: millions contacted their congresspersons, because of the extraordinary online campaign that woke up to demand they stop this bill, including Wikipedia shutting down for a day in the name of stopping the bill, and Congress then balked. And for the first time, the copyright lobbying was stopped by a grassroots exopolitical movement.

My view is if there is hope, the hope is here. But the challenge here is this: the kind of change we are talking about is fundamental. It is not necessarily a constitutional change, but it is fundamental. Fundamental change needs a cross-partisan movement to support it. I do not mean a bipartisan Kumbaya movement where we all say: "yeah, we all agree with each other." I am not talking about Kumbaya here at all. I am talking about a movement that cuts across partisan lines. The kind of movement the original progressives represented.

But right now this exopolitical movement is extremely polarized. Everyone in our society—the politicians, the political parties, the media, even the dot orgs that are trying to make the world a better place—practices this business model of polarization. It is a business model that teaches that we all profit the more we divide people and teach them to hate each other. This is a kind of a Ray-Ban culture—extremely polarized, but very cool.

The question then is whether there is a way to get beyond this polarizing "us" versus "them." And if we can, it begins with a certain recognition that we can trace back to Henry David Thoreau. Writing at Walden Pond in 1846, Thoreau wrote, "There are a thousand hacking at the branches of evil to one who is striking at the root." Let's call that one a "root striker." What the root striker sees is, if you step back from the issues that any of us care about and connect the dots, whether it is health care reform on the left or government bailouts for the right, whether it is global warming for the left or a complex tax system for the right, whether it is financial reform for the left or financial reform for the right, what the root striker recognizes is that we get no change in any of these areas until we change this corruption.

This exopolitical movement must see this fact and must change in light of it. What it needs to do is to think about how to build an alliance that focuses on common ground and is diverse yet cross-partisan. The alliance should include different people with different values who find a way to stand together on a common ground. I do not mean an alliance focused on a common end. I do not think we have a common end between the ex-

tremes of this American political movement, but we have a common enemy. The common enemy is this corruption. It is this picture of democracy that blocks the opportunity for people on the left and people on the right to get from this government what they believe this government should provide.

So how could we get there? Well, you have to think about first steps, and these are just tiny first steps. The first step is a pledge. If the biggest obstacle to reform is what Jim Cooper describes, the temptation to this extraordinary pay increase once you cash out from government, then this institution is not likely to vote for any change that changes the system because that is a vote to cut off this extraordinary reward when they leave the institution. We have to begin to think about how to populate Congress with members who do not have that conflict and who have no interest in continuing to serve in Washington as a lobbyist after they have stopped serving in Washington as a representative. The group I work with, “RootStrikers,” has launched something we call the “No Lobbying Pledge.” It is an elaborate document. The core of it is basically this: members and candidates say “I pledge that if I am elected to Congress, when I leave, for ten years, I will not become a lobbyist.” In detail, the pledge means, “I will not provide lobbying services, and if I do, any money I get has to be given to a charity.” We launched that about a week and a half ago. The first person to sign the pledge was Jim Cooper. The first idea is that, when you hear a member plea to you for your vote or a candidate plead and ask you to support him or her against the incumbent, you ask: “Will you work exclusively for us or will you also be working for your future employer, the lobbyists, and will you pledge to us so that we can be confident you are just working for us?” That is number one.

Number two: I want you to believe in a draft. Now that is a little hard to sell people on, but the thing to recognize is that none of us trust this institution to fix the system. A poll by the Clarus Group found that 80% of Americans believe that the changes in reform that we have seen before have been designed more to help current members of Congress get re-elected than to improve the system. So whatever they do, we read them as doing it just to benefit themselves. So, what we need to think about is how could we begin to build a way to trust us, not them; a way to propose reform that we—citizens—should push to get behind.

When I was asked to testify in July to the Senate Committee about the response to *Citizens United*, I proposed one such idea. I said to them, “Look, the biggest problem you have is that nobody will trust any change you make so you should turn to the people and ask them. Convene what we could call citizens’ conventions.” You can think about a citizens’ convention as just a kind of jury; it is a jury in the sense that it is randomly se-

lected, but we basically draft citizens into this civic service just like we used to draft citizens into military service. By randomly selecting members, we guarantee the convention is representative as long as it is a large enough jury. Then these members are given the evidence. They are given an opportunity to understand the nature of the problem and then given a chance to deliberate in the model of what people here will recognize as Jim Fishkin's deliberative polling. Let us call that "A Citizen Convention." Imagine Congress convening four of them and having one former president chair each of these four conventions. And then let these conventions answer two questions. First, "Is there a problem with the system the way it is or is everything just fine?" And second, "If there is a problem, then what are the changes that should fix it?" And when these deliberative polls, these conventions, come up with ideas, then let us make them, Congress, listen to them and respond to them in a way that takes them seriously and identifies them as a source of insight into what we the people believe, which is not tied to the current system and is not tied to the partisans who currently speak for the system.

Then there is number three. We need a way to make this problem boil over and that happens by it boiling up state by state and by engaging in practices that demand reform. Already we have seen this with the movement to overturn *Citizens United*—getting state legislatures to call for an amendment to overturn *Citizens United*. The Framers themselves imagined only one way that we could ever rally the people to take on a corrupt institution. If Congress were the corrupt institution, under Article V of our Constitution, states may begin to call for a convention for the purpose of proposing amendments to the Constitution. One hundred years ago this year, we came closer than ever to having such a convention. When Congress refused to change the system from appointed senators, the system that W. A. Clark used to become the Senator from Montana, the people increasingly demanded the change. When Congress would not change it, then state by state, resolutions were passed calling for a convention. When we were within one vote of having enough states to call for a convention, some in Congress got terrified. What would a convention do? They quickly sent out the reform that capitalized on the movement that had been building for many years to demand Senators would be elected. Even if you do not get to the convention, the point is this process begins to register the demand for reform in a credible state-by-state way and force Congress to answer.

These three steps are three small steps, but what they are designed to invoke is this cross-partisan citizen politics, this exopolitical movement. My view, again, is that the only chance that we have to restore this republic is a movement of this kind.

Benjamin Franklin, when he was carried from the convention in Philadelphia, was stopped by a woman on the streets and asked, “Mr. Franklin what have you wrought?” Franklin responded, “A republic, madam, if you can keep it.” A republic: by which he meant a representative democracy; a government with a branch “dependent upon the people alone.”

We have lost that republic. All of us have to act to get it back.

