

**Professor Jamie Raskin's Responses to**

**Senator Richard J. Durbin**

**Follow Up Questions for the Record**

**SENATE JUDICIARY COMMITTEE HEARING ON "EXAMINING A  
CONSTITUTIONAL AMENDMENT TO RESTORE DEMOCRACY TO THE  
AMERICAN PEOPLE"**

**June 25, 2014**

1. At last week's hearing, it was implied that no other constitutional amendment has ever removed or changed a right contained in the Bill of Rights? Do you agree with that implication? No, I do not.

Actually, more than simply implied, it was asserted repeatedly that no other constitutional amendment had ever removed or changed a right contained in the Bill of Rights. For example, Floyd Abrams said, "In fact, no amendment has ever been adopted limiting rights of the people that the Supreme Court has held were protected by the Bill of Rights in any of the first ten amendments." *Examining a Constitutional Amendment to Restore Democracy to the American People: Hearing on S.J. Res. 19 Before the S. Comm. on the Judiciary*, 113th Cong. (June 3, 2014) (statement of Floyd Abrams, Partner, Cahill Gordon & Reindel LLP).

This is plainly false, and is directly contradicted by the Reconstruction Amendments to the Constitution, among several other Amendments.

Consider the obvious case of the Thirteenth Amendment, which in 1865 abolished slavery and involuntary servitude and thus overturned nearly a century of Supreme Court authority and federal and state law enshrining the property rights that slave masters had in their slaves.

By abolishing slavery, the Amendment essentially expropriated and confiscated what the slave masters—and, more to the point, the law and the Supreme Court—regarded as hundreds of millions of dollars of private property that they owned in other human beings. *See Osborn v.*

*Nicholson*, 80 U.S. 654, 658 (1871) (holding that the Thirteenth Amendment extinguishes “the title and possession of the [slave owner]” to the slave); *see also* Akhil Reed Amar, *The Supreme Court, 1999 Term – Foreword: The Document and the Doctrine*, available at <http://tinyurl.com/n8elb4y>, (Yale 2000) (“Indeed, the Thirteenth Amendment itself expropriated legal ‘property’ – that is, slaves – without compensation . . .”)

In 1857, the *Dred Scott* decision had, of course, constitutionalized slavery and white supremacy, ruling that a slave or a descendant of slave could not be a “citizen” for the purposes of diversity jurisdiction in federal court and “had no rights which the white man was bound to respect.” *Scott v. Sandford*, 60 U.S. 393, 19 How. 393, 407 (1857).

According to Justice Roger Taney’s decision, the Missouri Compromise violated the Fifth Amendment Due Process rights of slave owners because it purported to make slaves—constitutionally protected property--free upon passage into the Territories. *Id.* at 451-452. This understanding of slaves as the legitimate and irrevocable private property of their masters was so well-entrenched in our law and history that when President Lincoln issued the Emancipation Proclamation in 1863 in the middle of the Civil War, it was carefully defined as an emergency *war measure* that only freed those slaves held in the rebel states of the Confederacy. *See* ALLEN C. GUELZO, *LINCOLN’S EMANCIPATION PROCLAMATION: THE END OF SLAVERY IN AMERICA* 3 (Simon & Schuster 2004) (“The Proclamation was an emergency measure, a substitute for the permanent plan that would really rid the country of slavery . . .”). Lincoln understood that, under *Dred Scott*, he lacked the constitutional power to free slaves in border states, like Maryland, Delaware and Missouri, which had remained loyal to the Union, at least without first rendering just compensation to the slave masters under the requirements of the Fifth Amendment. *See* PHILLIP SHAW PALUDAN, *LINCOLN AND THE GREELEY LETTER: AN EXPOSITION*

in LINCOLN RESHAPES THE PRESIDENCY (Charles M. Hubbard, ed., Mercer Univ. Press, 2003); see also Kaimpono David Wenger, *Slavery as a Takings Clause Violation*, 53 AM. U. L. REV. 191, 242 n.249 (2003) (“Slaves in border states were not affected by the emancipation proclamation and were freed by operation of the Thirteenth Amendment.”). Emancipation outside of the military context would have constituted a taking of the private property of the slave masters and a violation of Fifth Amendment Due Process, as the Court had clearly found in the portion of the *Dred Scott* decision invalidating the Missouri Compromise. See *Scott*, 60 U.S. at 450 (holding that the Fifth Amendment protects a slave owner from being deprived of his property interest in his slaves without due process of law).

It took passage of the enormously controversial Thirteenth Amendment to establish that people cannot be property in the United States of America. At the time, the slave masters and their apologists, of course, cried foul and complained, among other things, that the Thirteenth Amendment was a massive violation of property rights conducted by a tyrannical federal government. See Rick Beard, Editorial, *The Birth of the 13th Amendment*, N.Y. TIMES, April 8, 2014, available at <http://tinyurl.com/Birth-of-the-13th-Amendment> (“[O]pponents [of the Thirteenth Amendment] fell back on the standard pro-slavery arguments that slaves were property and were racially inferior.”). It may be a harsh and inconvenient historical truth, but the Thirteenth Amendment clearly overturned the property rights of the slave masters that were enshrined not only in the Constitution but in the Bill of Rights itself by the *Dred Scott* decision. See *Scott*, 393 U.S. at 393-454 (grounding a slave owner’s right to hold slaves, even in free territory, in Articles One, Four, and Six, and Amendments Five, Nine, and Ten); DON E. FEHRENBACHER, *SLAVERY, LAW, AND POLITICS: THE DRED SCOTT CASE IN HISTORICAL*

PERSPECTIVE 300 (Oxford Univ. Press 1981) (noting that the “principal rulings of the Dred Scott decision were . . . overturned by the Thirteenth and Fourteenth Amendments“).

Given this central aspect of American history in which slave masters were constitutionally protected in the “property” they owned in their slaves, one can only regard with amazement the solemn assurance that no Amendment has ever “limited” settled rights and expectations under the Bill of Rights.

We can multiply the examples with the Fourteenth Amendment, which similarly upset numerous settled expectations and vested rights of white supremacy in the Constitution. To choose just one especially clean and irrefutable example, Section 4 of the Fourteenth Amendment blocked and made illegal any future compensation of slave masters for the confiscation of their vested property rights in their slaves. It reads: “But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, *or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.*” (emphasis added).

Thus, while the Thirteenth Amendment abolished slavery and was silent as to the question of compensation to the slave owners, Section 4 of the Fourteenth Amendment made it impossible for the slave owners ever to achieve restitution for confiscation (liberation) of what used to be their constitutionally protected property under the Bill of Right’s Fifth Amendment and *Dred Scott*. This provision in the Fourteenth Amendment directly debunks the disoriented claim that “no amendment has ever been adopted limiting rights of the people that the Supreme Court has held were protected by the Bill of Rights in any of the first ten amendments.”

There are numerous other examples we could explore, including the clearly relevant history of the Eleventh Amendment, but perhaps we should say a word about the Nineteenth

Amendment and woman suffrage because it allows us to confront not just the historical error but the real logical and moral fallacy at work here.

There seems to be an assumption that the progress of democracy and freedom in our Constitution has been seamless and that no one is ever aggrieved by the addition of new rights for the people as a whole. When you think about it, this is a manifestly absurd assumption. Nearly every expansion of the rights of the people has encountered ferocious opposition by those invested in the status quo, many of whom were able to invoke the explicit doctrine or evident sympathy of the Supreme Court.

In *Minor v. Happersett*, 88 U.S. 162, 21 Wall. 162 (1874), the Supreme Court had rejected a constitutional challenge to the disenfranchisement of women, thus validating the regime of male supremacy. The Court's imprimatur on the disenfranchisement of women formed part of a wall of sexist constitutional doctrine. For example, in *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1873), the Court upheld a state law excluding women from the bar, explaining that, "[t]he paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator." *Bradwell*, 83 U.S. at 141. It took decades of agitation and civil disobedience by Suffragettes to get the 19<sup>th</sup> Amendment enacted, and its opponents interpreted its adoption as a dramatic limitation on their exclusive rights to govern and rule in a patriarchal system, which surely it was. See Paul Halsall, ed., *The Passage of the 19<sup>th</sup> Amendment, 1919-1920: Articles from The New York Times*, in MODERN HISTORY SOURCEBOOK (dated 1997) available at <http://tinyurl.com/62amx>. From the standpoint of male opponents, doubling the size of the electorate to include women cut the value of the male political franchise in half, diluting male voting rights. See, e.g., CAL. STATE SEN. J.B. SANFORD, ARGUMENT AGAINST WOMEN'S SUFFRAGE: ARGUMENT AGAINST SENATE CONSTITUTIONAL AMENDMENT NO.

8 (June 26, 1911) in CAL. STATE ARCHIVES: ELECTION PAPERS (used to prepare a 1912 voting manual) available at <http://preview.tinyurl.com/JB-sanford>; See also Eleanor Barkhorn, ‘Vote No on Women’s Suffrage’: Bizarre Reasons for Not Letting Women Vote,” THE ATLANTIC MAGAZINE (Nov. 6, 2012, 5:37pm ET), available at <http://tinyurl.com/opposing-female-suffrage>.

In truth, the people have been forced to amend the Constitution multiple times to reverse reactionary decisions of the Supreme Court that freeze into place the constitutional property rights and political privileges of the powerful against the powerless. The oft-repeated suggestion at the hearing that we have never enacted a constitutional amendment to limit or nullify existing rights under the Bill of Rights seems, at best, superficial and, at worst, terribly misleading.

**2. Is it true that S.J. Res. 19 would permit discrimination or censorship against specific political groups or causes based on their ideology?**

No. The 28th Amendment would reaffirm and restore congressional and state power to regulate campaign finance, but nothing in it could interfere in any way with the First Amendment doctrines of viewpoint and content neutrality as they would apply to such regulations.

The 28<sup>th</sup> Amendment would, for example, empower Congress to restore the aggregate candidate contribution limits that had been in place under FECA for decades and were just invalidated by the Supreme Court in the 5-4 *McCutcheon* decision, 134 S. Ct. 1434 (2014). However, Congress would remain unable to selectively impose these limits on Republicans, Democrats, Libertarians, Greens, conservatives, liberals, pro-choice or pro-life groups, or people decrying or denying the mortal threat of global climate change. See *RAV v. St. Paul*, 505 U.S. 377, 382 (1992)(“The First Amendment generally prevents government from proscribing speech . . . or even expressive conduct . . . because of disapproval of the ideas expressed.”); *Police Dept.*

of *Chic. v. Mosley*, 408 U.S. 92, 95 (“But, above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.”). Congress could never have passed a viewpoint or content-based campaign finance restriction like that in the past, and nothing in the 28th Amendment would allow it to do so in the future. See *Texas v. Johnson*, 491 U.S. 397, 414 (1989) (“If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”). All the Amendment does is restore to Congress and the states the power to set reasonable – that is, viewpoint and content-neutral, as well as proportional – limits on campaign contributions and expenditures, a traditional power that has been stripped, or is in the process of being stripped, away from them by the Court.

Official neutrality towards the content and viewpoint of political speech and ideology is not just a central principle of the First Amendment principle, but of Equal Protection too. Laws that disfavor the equal participation of specific groups in the political process are not considered rational, much less compelling, under Equal Protection. As the Court put it in *Romer v. Evans*, 517 U.S. 620 (1996), which struck down a state constitutional amendment that imposed a selective disadvantage on pro-gay rights groups: "laws of the kind now before us raise the inevitable inference that the disadvantage imposed is born of animosity toward the class of persons affected," and "if the constitutional conception of 'equal protection of the laws' means anything, it must at the very least mean that a bare ... desire to harm a politically unpopular group cannot constitute a legitimate governmental interest." 517 U.S. at 634 (emphasis added).

The Amendment will just establish that, in regulating the raising and spending of money for elections, Congress and states have intrinsically valid and compelling interests in promoting

democratic self-government, political equality and the integrity of representative institutions, and that these interests will justify distinctions between natural persons and corporate entities. These are essential constitutional interests that reinforce and strengthen political free expression, and they will be considered against claims by billionaires and corporations that they have an unlimited right to spend and give in the electoral field. However, even when we define these interests as inherently compelling – which surely they must be in a modern political democracy – regulations enacted in their name will pass muster only if they do not restrict speech based on its viewpoint or content and only if they are reasonably designed to serve the appropriate purposes. In other words, the Amendment would establish the intrinsic legitimacy of the ends of democratic self-government, political equality and representative integrity, which have been denied and devalued by five justices on the Court, and it would preserve judicial scrutiny of the means used to effectuate these ends under both reasonableness analysis and existing First Amendment doctrine.

3. What are the logical implications of the position articulated by Floyd Abrams and others advocating the lifting of all contribution limits?

It is the logical implication of the “market fundamentalism” ascendant on the Court, and it is the enthusiastic agenda of its champions in the bar, to dismantle *all* campaign finance regulation, with the possible exception of some disclosure laws (as Floyd Abrams suggested). Existing doctrine inherited from *Buckley v. Valeo*, 424 U.S. 1 (1976), holds that campaign expenditures may not be capped at all because such limitations constitute a direct “quantity restriction” on political speech. *Buckley*, 424 U.S. at 57. *Citizens United v. FEC*, 558 U.S. 310

(2010), wiped out the power to restrict any and all corporate political expenditures. 558 U.S. at 365. *McCutcheon* has eliminated aggregate contribution limits. 134 S. Ct. 1434 (2014). James Bopp and the other lawyers driving this train have readily professed their interest in wiping out what remains of campaign finance law, and they have tremendous momentum. *See James Bopp: What Citizens United Means for Campaign Finance*, FRONTLINE (July 27, 2012; published October 30, 2012) <http://tinyurl.com/BoppInterview> (stating his sweeping goals to include the elimination of all election-spending reporting requirements, all coordinated spending restrictions, and most donor disclosure requirements; and that “[t]he endgame is the repeal of contribution limits”).

The next step for the Court may be to strike down the rules treating campaign expenditures by corporations, unions, and other outside actors that are “coordinated” directly with candidates as campaign contributions. *See Paul Blumenthal, Supreme Court Bound? The Next Big Campaign Finance Case Set To Pick Up GOP Support*, THE HUFFINGTON POST: HUFFPOST POLITICS (May 7, 2014, 4:50pm), <http://tinyurl.com/NextCase> (discussing Bopp’s most recent case, a challenge to soft money and coordinated expenditure limits). It will be argued forcefully under the money-is-speech dogma that “coordination” simply means speech and associational activity, and that the anti-coordination rules therefore strike right at the heart of political free expression and association.

At that point, with unlimited independent spending and free coordination between candidates and corporations and unions, the time will be ripe to attack the \$5,200 base limits on individual campaign contributions in federal races along with all such limits on campaign contributions at any level. The logic of this move will be straightforward: if someone wants to give your campaign one million dollars but is limited to giving \$5,200, the government has just

imposed a drastic “quantity restriction” on your spending and thus, according to the doctrine, reduced your political spending and expression by \$994,800. In any event, your benefactor can spend \$1 million on your behalf and, if the doctrine falls in the right direction, coordinate it with your campaign, so what is the real difference between a coordinated expenditure of \$1million and a \$1 million contribution that could justify the burden on the donor’s right to associate and the candidate’s right to spend? The Roberts Court would love to find that the *Buckley* Court made the right call on abolishing expenditure caps but erred in upholding contribution limits. The Court would correct this “mistake” by treating both campaign expenditures and contributions as essentially off-limits to public regulation.

The final lingering hope in current doctrine for maintaining contribution limits—the government’s compelling interest in combatting “‘improper influence’ and ‘opportunities for abuse’ in addition to ‘quid pro quo arrangements,’” as recognized in *Shrink Missouri Government PAC*, 528 U.S. 377 (2000), and other cases following *Buckley v. Valeo*-- has already been reduced to near-nothingness by the Court’s recent jurisprudence. Chief Justice Roberts, speaking for the majority in the *McCutcheon* decision, stated that, “Any regulation [of campaign contributions] must instead target what we have called ‘quid pro quo’ corruption or its appearance.” 134 S. Ct. at 1441. That Latin phrase, of course, captures the sense of a direct exchange of an official act for money or other consideration, which is what is already prohibited under 18 U.S.C. 201 (2012).

By thus reducing all potential political corruption to what is, in essence, criminal bribery, as Fred Wertheimer has observed, the Court’s majority took away the power to regulate forms of structural corruption that it had long recognized before as “‘improper influence’ and ‘opportunities for abuse,’” *Shrink Mo. Gov’t PAC*, 528 U.S. at 388, “undue influence,” *FEC v.*

*Colorado Republican Federal Campaign Committee*, 533 U.S. 431, 441 (2001), and “undue influence on an officeholder’s judgment, and the appearance of such influence,” *McConnell v. FEC*, 540 U.S. 93, 150 (2003). The Court has thus discarded the basic understanding in *Buckley v. Valeo* itself that “laws making criminal the giving and taking of bribes deal only with the most blatant and specific attempts of those with money to influence governmental action,” and that campaign finance regulation is required to deal with the more subtle forms of corruption. *Buckley*, 424 U.S. at 27-28.

Given that limits on contributions to candidates can be easily redefined by the Court as limits on what candidates can spend, and given that *Buckley*’s robust definition of corruption has been whittled down to naked acts of criminal bribery, there is no available justification left for contribution limits that can survive the Roberts Court majority. The interest in preventing the reality and appearance of *quid pro quo* corruption is already vindicated by existing criminal laws against bribery, and no other definition of corruption has survived the jaundiced eye of the Roberts Court majority.

Finally, for the majority, it follows logically and quickly from *Citizens United* that the 1907 Tillman Act, 2 U.S.C. § 441b, banning corporate contributions to candidates, is constitutionally indefensible. Because the “identity of the speaker” is now officially irrelevant in the campaign finance context and the corporate identity of the speaker can no longer be used to isolate it from electoral politics, corporations will enjoy the same right to make individual campaign contributions to candidates as natural persons enjoy. Any protest that corporate treasury contributions are uniquely corrupting will be rejected as obsolete under the reasoning of both *Citizens United* and *McCutcheon*. See *Citizens United v. FEC*, 558 U.S. 310 (2010) (“No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit

corporations.”); *McCutcheon*, 134 S. Ct. 1434 (2014) (“[G]overnment regulation may not target the general gratitude a candidate may feel toward those who support him or his allies, or the political access such support may afford. Ingratiation and access . . . are not corruption. They embody a central feature of democracy. . . .”) (internal citations omitted). If a corporation bribes a politician, criminal liability will attach to the corporation and the responsible officers, but short of *quid pro quo* bribery, Congress and the states cannot treat corporate contributions to candidates as any more intrinsically corrupting than individual contributions, and the anti-circumvention rationale has been largely nullified in *McCutcheon*. *Id.* at 1457 (requiring an unprecedented and practically insurmountable standard for any regulation to be justified by the anti-circumvention interest). If and when the Court knocks down the base limits on individual contributions to candidates and then the ban on corporate contributions directly to candidates, we will live in a political system where CEOs can write checks of unlimited amounts directly to candidates for public office. This is the logical destination of the Court’s free-market fundamentalism in the political campaign field, and it presages a totally unregulated free market in campaign money, as Floyd Abrams candidly suggested at the hearing. *Examining a Constitutional Amendment to Restore Democracy to the American People: Hearing on S.J. Res. 19 Before the S. Comm. on the Judiciary*, 113th Cong. (June 3, 2014) (statement of Floyd Abrams, Partner, Cahill Gordon & Reindel LLP).

As I stated in my original testimony, the path of the Roberts Court leads to demolition of our campaign finance laws, with the possible exception of certain disclosure rules. *Examining a Constitutional Amendment to Restore Democracy to the American People: Hearing on S.J. Res. 19 Before the S. Comm. on the Judiciary*, 113th Cong. (June 3, 2014) (statement of Jamin Raskin, Professor of Law and Director of the Law and Government Program). Of course,

emboldened by their dramatic success with the Roberts Court, the same forces attacking our campaign finance laws have now turned with a vengeance on campaign finance disclosure and invite us to view mandatory disclosure of contributions and expenditures as a form of unlawful and dangerous compelled speech under the First Amendment. *See, e.g.*, Charles Krauthammer, *The Zealots Win Again*, WASH. POST, available at <http://tinyurl.com/m4hmtkg> (April 17, 2014); Sen. Ted Cruz, *The Democratic Assault on the First Amendment*, WALL ST. J., available at <http://tinyurl.com/p7o6n8l> (June 1, 2014, 6:35pm); Mike B. Wittenwyler, *Wisconsin Right to Life v. Barland* (7th Cir. May 14, 2014), GODFREY & KAHN, S.C., <http://tinyurl.com/py6eztl> (May 15, 2014); Ellen Goodman, *First Amendment Liberties and the Right-to-Know – Commercial Disclosure Imperiled*, RUTGERS INST. FOR INFO. POL. AND L. (RIIPL), <http://tinyurl.com/qfvnvmu> (April 24, 2014); Tania N. Archer, *Disclosure Laws Under Attack: Campaign Finance Restrictions and Reporting of Donors*, Insights, BLOOMBERG BNA, <http://tinyurl.com/lf4ylos> (Mar. 8, 2012). All the more reason to pass an Amendment establishing the people’s compelling interest in promoting democratic self-government, political equality, and integrity of representative relationships in the campaign finance arena.

4. In written testimony for the record, Art Pope said that the intent of S.J. Res. 19 is to silence incumbents’ opposition and that *Citizens United* did not change the rules with respect to issue ads.

**a. Is his view of the intent of S.J. Res 19 accurate?**

No. The manifest purpose of S.J. Res. 19 is to restore the power of the people to regulate campaign finance in the interests of safeguarding democratic self-government, political equality, and the integrity of representative institutions.

If Congress or the states tried to use their powers under the Amendment to set lower spending limits for challengers than for incumbents or to forbid independent expenditures to criticize incumbents, such efforts would be struck down as blatantly unreasonable and discriminatory violations of both the First Amendment and Equal Protection, for all the reasons described above. Nothing in the new Amendment touches the First Amendment doctrines of viewpoint and content discrimination, and nothing subtracts from Equal Protection guarantees.

If Mr. Pope's claim is that challengers would be, in practice, more disadvantaged than incumbents by any legislation enacted under the Amendment, there are two massive problems facing this argument. The first, of course, is that we do not know the shape or thrust of the legislation yet to come so it is hard to know what he has in mind. The second is that, if we assume that Congress and the states will reenact the kinds of reform legislation that the Supreme Court has been invalidating recently, these reforms are far more likely to help challengers, not incumbents.

For example, the aggregate limits on individual campaign contributions which were struck down in *McCutcheon* are surely more likely to limit the overall amount that incumbents collect rather than what challengers do. After all, the big spenders who lobby Congress or state legislatures have a built-in incentive to "max out" to all incumbents, who hold the keys to official power, not to their challengers. Every systematic study I have seen shows that incumbents outspend challengers with what the Center for Responsive Politics calls "an insurmountable advantage in campaign cash," so it stands to reason that any contribution or

expenditure limits will help the challengers, not the incumbents who have cornered most of the relationships with special interests and can exploit them assiduously. *See, e.g.*, CENT. FOR RESPONSIVE POL., THE DOLLARS AND CENTS OF INCUMBENCY, <http://tinyurl.com/l4hz958> (last accessed June 24, 2014); CENT. FOR RESPONSIVE POL., INCUMBENT ADVANTAGE, <http://tinyurl.com/mem34gy> (last accessed June 24, 2014); CAMPAIGN FIN. INST., INDEPENDENT SPENDING ROUGHLY EQUALED THE CANDIDATES' IN CLOSE HOUSE AND SENATE RACES; WINNING CANDIDATES RAISED MORE THAN ANY PREVIOUS ELECTION, <http://tinyurl.com/ohk77at> (Nov. 9, 2012); THISNATION.COM, 2004 CONGRESSIONAL ELECTION SPENDING, <http://tinyurl.com/m5toj3c> (last accessed June 24, 2014); *see also* Sara Fritz and Dwight Morris, *Incumbents' Money Advantage Decisive*, L.A. TIMES, available at <http://tinyurl.com/orckaba> (Nov. 8, 1990).

With Congressional incumbent rates routinely soaring over 95% under the increasingly deregulated and plutocratic campaign finance regime that we have, I find the claim that the 28th Amendment might entrench incumbents to be a slightly comic and irrelevant distraction from the real debate. After all, the point of the Amendment is not to help incumbents or challengers but rather to liberate everyone in American politics, both voters and candidates, from the unequal, undemocratic and distorting power of plutocratic wealth. The reason that commanding majorities of Americans favor the Amendment is not because they want to strengthen incumbents or challengers or this or that political party, but because they favor meaningful democratic self-government and reject systematic corruption of the public interest by big money.

- b. Art Pope also wrote that the “history of North Carolina refutes the entire premise that elections can be ‘bought’ by one party or side spending the most money.” Do you agree with Mr. Pope’s assessment?

I am no expert on the politics and economics of North Carolina and will allow Senator McKissick to respond in detail to this question. If you will permit me one observation, it is this: the broader purpose of the Amendment is not to prevent the purchase of elections by “one party or side,” but rather to prevent the purchase of dramatically unequal power over government by *anyone*. The shrewdest strategic actors give money to both parties when convenient and press a bipartisan plutocratic agenda. I am much less interested in following the win-loss record of particular strategic actors working with the political parties and much more interested in promoting a campaign finance regime that promotes true democratic participation, political equality and representative integrity.

Thank you for your questions.

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