Roberts at 10:

Campaign Finance and Voting Rights: Easier to Donate, Harder to Vote

By David H. Gans

Introduction

As we noted in our introductory chapter, the story of John Roberts's first decade as Chief Justice is, at least superficially, a complicated one. But the story of his decisions in the area of campaign finance and voting isn't. Since becoming Chief Justice in 2005, John Roberts and his conservative colleagues have transformed our democracy, moving the law dramatically to the right in campaign finance and voting rights cases. Under his tenure, the Supreme Court has made it easier for corporations and the wealthiest of Americans to spend huge sums of money to elect candidates to do their bidding, and harder for Americans to cast their vote on Election Day.

Since Roberts became Chief Justice, hardly a term has gone by without a major ruling sharply limiting campaign finance legislation. In a string of six rulings virtually all decided by 5-4 votes – three written by the Chief Justice himself – the Roberts Court has given corporations the right to spend unlimited sums of money in *Citizens United v. FEC*,[1] struck down contributions limits designed to prevent the wealthiest of Americans from giving inordinate sums of money in *McCutcheon v. FEC*,[2] and made it harder for government to enact public financing laws that empower small donors and combat corruption in cases such as *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett.*[3] These rulings, together, make it difficult to enact new limits on the role of money in politics, even as corporations and the wealthiest of donors spend unprecedented sums of money – into the billions – to elect their favored candidates. The opinions of Chief Justice Roberts in the area of voting rights are especially stark by comparison. Roberts joined the 2008 ruling upholding Indiana's voter-identification law[4] and wrote the majority opinion in *Shelby County v. Holder*[5] striking down a key provision of the Voting Rights Act and turning a blind eye to the Constitution's express grant of power to Congress to protect the right to vote free from discrimination.

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[1] 558 U.S. 310 (2010); see also *FEC v. Wis. Right to Life, Inc.*, 551 U.S. 449 (2007); *Am. Tradition P'ship, Inc. v. Bullock*, 132 S. Ct. 2490 (2012).
[2] 134 S. Ct. 1434 (2014); *see also Randall v. Sorrell*, 548 U.S. 230 (2006).
[3] 131 S. Ct. 2806 (2011); see also *Davis v. FEC*, 554 U.S. 724 (2008);
[4] *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008).
[5] 133 S. Ct. 2612 (2013).

There is no constitutional right that is guaranteed in more provisions of the Constitution than the right to vote, but in Roberts's view, the right to contribute is on par with the right to vote. As the Chief Justice wrote in *McCutcheon*, "[t]here is no right more basic in our democracy than the right to participate in electing our political leaders. Citizens can exercise that right in a variety of ways: They can run for office themselves, vote, urge others to vote for a particular candidate, volunteer to work on a campaign, and contribute to a candidate's campaign."[6] The Chief Justice's emerging framework, as one scholar recently observed, "has demoted the right to vote from its usual position as the most fundamental democratic right. It also has the effect of elevating the right to contribute as normatively equivalent to the right to vote."[7]

At the same time John Roberts has elevated the right to contribute to equal footing with the right to vote, his opinions have tarnished the principle of political equality at the core of the Constitution's voting rights amendments. These Amendments were designed to ensure "government of the people, by the people, [and] for the people,"[8] "make every citizen equal in rights and privileges,"[9] and help us fulfill the Constitution's promise that our system of democracy was "[n]ot [for] the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune."[10] Yet, the opinions authored by Chief Justice Roberts have taken us in the opposite direction, gutting the Voting Rights Act and striking down campaign finance legislation designed to limit opportunities for corruption and to ensure that our democracy is open to all.

Over the course of his nine years as Chief Justice, John Roberts has transformed our system of democracy. As he enters his tenth year as Chief Justice, a new set of precedent-setting cases are on the horizon. In the run up to the 2014 elections, the Court stayed injunctions against Texas's onerous voter identification law,[11] Ohio's cutback of early voting,[12] as well as parts of North Carolina's omnibus voter-suppression law,[13] while handing a victory to plaintiffs who argued that it would be irresponsible to allow Wisconsin to roll out its voter identification law so close to Election Day.[14] One or more of these blockbuster voting rights cases are likely to return to the Court, and together with a host of campaign finance cases moving through the lower courts, could put the Roberts Court front and center in the midst of the presidential election in 2016.

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[6] *McCutcheon*, 134 S. Ct. at 1440-41.
[7] Yasmin Dawood, *Democracy Divided: Campaign Finance Regulation and the Right to Vote*, 89 N.Y.U. L. REV. ONLINE 17, 17-18 (2014).
[8] Abraham Lincoln, Gettysburg Address (Nov. 19, 1863).
[9] CONG. GLOBE, 40th Cong., 3d Sess. 672 (1869).
[10] THE FEDERALIST NO. 57, at 319 (James Madison) (Clinton Rossiter ed., 1961).
[11] *Veasey v. Perry,* Nos. 14A393, 14A402, 14A404, 2014 WL 5311490 (U.S. Oct. 18, 2014).
[12] *Husted v. Ohio State Conference of the NAACP*, No. 14A336, 2014 WL 4809069 (U.S. Sept. 29, 2014).
[13] *North Carolina v. League of Women Voters*, No. 14A358, 2014 WL 5026111 (U.S. Oct. 8, 2014).
[14] *Frank v. Walker*, No. 14A352, 2014 WL 5039671 (U.S. Oct. 9, 2014).

I. John Roberts and Campaign Finance

In 2005, the replacement of Chief Justice Rehnquist with Chief Justice Roberts, together with the replacement of Justice O'Connor with Justice Alito, opened the door to major shifts in the Court's money and politics jurisprudence. As one astute observer predicted at the beginning of Roberts's tenure, "[i]t may be that in 2016, individuals, corporations and unions will be free to give as much money as they want to any candidate or group, subject to the filing of disclosure reports."[15] We're not there yet, but we may well be by 2016. In just under a decade, John Roberts has repeatedly moved the law sharply to the right to allow corporations and wealthy Americans to spend breathtaking sums of money to elect candidates to do their bidding. While at times Roberts has been more hesitant than his conservative colleagues in terms of overruling foundational campaign finance precedents and striking down all spending and contribution limits,[16] this appears to be more of a matter of style than a difference on the merits. In this area, as others, Roberts has preferred to play a long game, authoring opinions that purport to be narrow, but that in fact significantly move the law to the right.

Roberts joined the Court shortly after one of the Justices' most significant campaign finance rulings, the 2003 decision in *McConnell v. FEC*,[17] which upheld the constitutionality of the Bipartisan Campaign Reform Act, which included a federal ban on soft money as well as limits on electioneering by corporations. Early in his tenure, Roberts began to roll back aspects of this ruling.

In 2007, in *FEC v. Wisconsin Right to Life, Inc.*, the Chief Justice wrote the plurality opinion (joined only by Justice Alito) holding that the federal prohibition on electioneering by corporations upheld in *McConnell* could not be constitutionally applied to issue advertisements. Roberts's opinion explained that "[d]iscussion of issues cannot be suppressed simply because the issues may also be pertinent in an election. Where the First Amendment is implicated, the tie goes to the speaker, not the censor."[18] Any broader understanding of government authority, Roberts wrote, would threaten to "strip corporations of all free speech rights."[19] *Wisconsin Right to Life* carved out a huge exception to the law, allowing corporations to spend unlimited sums of money on issue ads, but Justice Scalia, joined by Justices Kennedy and Thomas, argued that the Court should have stricken the corporate electioneering ban in its entirety. Roberts's opinion, they argued, was simply an exercise in "faux judicial restraint,"[20] effectively overruling past precedent without saying so. The four dissenters, too, agreed,

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[15] Richard L. Hasen, *No Exit? The Roberts Court and the Future of Election Law*, 57 S.C. L. REV. 669, 687 (2006).
[16] *See McCutcheon*, 134 S. Ct. at 1462-63 (Thomas, J., concurring); *Randall*, 548 U.S. at 265-67 (Thomas, J., concurring).
[17] 540 U.S. 93 (2003).
[18] *Wis. Right to Life, Inc.*, 551 U.S. at 474.
[19] *Id.* at 480.
[20] *Id.* at 498 n.7 (Scalia, J., concurring).

castigating Roberts for departing from the Court's recent precedent upholding limitations on the free speech rights of corporations.

Next came *Citizens United*, which began as a sleepy case concerning whether a non-profit corporation should be entitled to run a feature length film critical of Hilary Clinton available only to viewers willing to pay to download it. According to Jeffrey Toobin's reporting, Chief Justice Roberts initially authored a draft opinion resolving the case narrowly, but was convinced to go faster and further by the rest of his conservative colleagues, who wanted to overrule *McConnell* and other past Supreme Court precedent and strike down the federal ban on electioneering by corporations.[21] As Toobin tells the story, when the other conservative Justices balked at a narrow ruling, Roberts withdrew his narrow majority opinion and replaced it with a new opinion, written by Justice Kennedy, that "transformed Citizens United into a vehicle for rewriting decades of constitutional law in a case where the lawyer had not even raised those issues."[22] When the Court's liberal wing "accused the Chief Justice of violating the Court's own procedures to engineer the result he wanted,"[23] Toobin explained, Roberts and his conservative colleagues scheduled the case for re-argument, asking the parties to address whether the Court's precedents upholding limits on campaign spending by corporations should be overruled.

Not surprisingly, given these behind-the-scenes maneuvers, Roberts and his conservative colleagues joined together to give corporations the same free speech rights as individuals to spend unlimited sums of money on elections, overruling past precedents and sharply limiting the power of government to protect the integrity of the electoral process. In January 2010, when the opinion was released, the Chief Justice joined Justice Kennedy's majority opinion in full, writing separately to explain that "corporations as well as individuals enjoy the pertinent First Amendment rights" and to justify the Court's decision to roll back existing precedents.[24] *Citizens United* signaled a decisive shift in Roberts's writing on money and politics, embracing a sweeping ruling protecting the rights of corporations and overturning prior precedent rather than following traditional principles of judicial restraint. As Justice Stevens charged in dissent, "five Justices were unhappy with the limited nature of the case before us, so they changed the case to give themselves an opportunity to change the law."[25]

So far, *Citizens United* has marked the only occasion when the Chief Justice voted to overturn Supreme Court precedent upholding campaign finance legislation. It's also a rare instance where Roberts was pushed by his conservative colleagues to overrule a precedent. That's been the exception rather than the rule in the Roberts Court. More commonly, Roberts

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[21] *See* Jeffrey Toobin, *Money Unlimited: How Chief Justice John Roberts Orchestrated the Citizens United Decision*, NEW YORKER (May 21, 2012), *available at* http://www.newyorker.com/magazine/2012/05/21/money-unlimited.
[22] *Id.*
[23] *Id.*
[24] *Citizens United*, 558 U.S. at 376, 379-80 (Roberts, C.J., concurring).
[25] *Id.* at 398 (Stevens, J., concurring in part and dissenting in part).

has moved the law to the right by giving a cramped interpretation to prior precedent standing in his way. That's what happened in Roberts's two most recent campaign finance rulings.

In 2011, in yet another 5-4 split, Chief Justice Roberts wrote the majority opinion in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, striking down Arizona's public financing system as a violation of the First Amendment. In 1976, in *Buckley*, the Supreme Court had upheld public financing of elections as constitutional, reasoning that such programs do not "abridge, restrict, or censor speech" but rather "use public money to facilitate and enlarge public discussion and participation in the electoral process, goals vital to a self-governing people."[26] But in *Arizona Free Enterprise*, Roberts found *Buckley* inapplicable to the case at hand, holding that Arizona's public financing system, which provided matching funds to ensure that publicly financed candidates could remain competitive with candidates that relied on private financing, substantially burdened speech without any compelling justification. Roberts concluded that Arizona's measure was an improper attempt "to equalize electoral opportunities" and that "such basic intrusion by the government into the debate over who should govern goes to the heart of First Amendment values."[27] The dissenters criticized Roberts for failing to follow *Buckley*, arguing that "additional campaign speech and electoral competition is not a First Amendment injury."[28]

Last April, in *McCutcheon*, Chief Justice Roberts wrote the lead opinion striking down federal limits on aggregate campaign contributions (which allowed individuals to spend up to $123,000 in contributions per election cycle). Aggregate contribution limits had been upheld in *Buckley*, but Roberts dismissed that precedent since the Court there had only "spent a total of three sentences analyzing th[e aggregate] limit."[29] Roberts concluded that the $123,000 limit "seriously restrict[s] participation in the democratic process" and could not be squared with "the First Amendment right of citizens to choose who shall govern them."[30] In classic Roberts fashion, the Chief Justice framed his ruling as a narrow one, refusing to consider whether contributions limits should be subject to strict scrutiny and suggesting that Congress had a number of other avenues open to it to curb corruption. But despite this narrow frame, *McCutcheon* moved the law in significant ways.

First, as noted at the outset, *McCutcheon* treated the right to contribute as a fundamental right on par with the right to vote. Second, *McCutcheon* doubled-down on *Citizens United*'s cramped definition of corruption, holding that the only justification for limiting campaign contributions was to prevent *quid pro quo* corruption – essentially bribery – and "[s]pending large sums of money in connection with elections . . . does not give rise to such *quid pro quo* corruption."[31] In the process, the Chief Justice ignored powerful framing-era

[26] *Buckley v. Valeo*, 424 U.S. 1, 92-93 (1976) (per curiam).
[27] *Ariz. Free Enter. Club's Freedom Club PAC*, 131 S. Ct. at 2826.
[28] *Id.* at 2833 (Kagan, J., dissenting).
[29] *McCutcheon*, 134 S. Ct. at 1446.
[30] *Id.* at 1442, 1462.
[31] *Id.* at 1450.

history that showed that our Constitution's Founders had a much more capacious understanding of corruption and the power of government to ensure the integrity of the electoral process. Third, Roberts suggested that the government does not have an interest in limiting huge donations by individuals to political parties, undercutting that part of *McConnell* that upheld the ban on soft money contributions to parties. "When donors furnish widely distributed support . . . , all members of the party or supporters of the cause may benefit, and the leaders of the party or cause may feel particular gratitude. That gratitude stems from the basic nature of the party system . . . . To recast such shared interest, standing alone, as an opportunity for *quid pro quo* corruption would dramatically expand government regulation of the political process."[32] Each of these holdings opens the door to new challenges to campaign finance laws.

Together, these rulings, as Justice Breyer explained in dissent in *McCutcheon*, "eviscerate[] our Nation's campaign finance laws," dealing a grave setback to our Constitution's "effort to create a democracy responsive to the people."[33] In nearly a decade at the Court's helm, Roberts has steadily moved the law to the right, sometimes, as in *Citizens United*, overruling precedents that stand in his way, and sometimes, as in *Arizona Free Enterprise* and *McCutcheon*, by giving cramped readings to prior precedents upholding campaign finance regulation. What's next on the chopping block? The federal ban on soft money?[34] Restrictions on contributions on government contractors?[35] Contribution limits themselves? The legal underpinnings for an assault on what remains of campaign finance law are there – especially after *Citizens United* and *McCutcheon*. The only remaining question is whether, in future cases, Roberts's notions of restraint and prudence separates him from the more radical positions espoused by his conservative colleagues, something that did not happen in *Citizens United*.

II. John Roberts and the Right to Vote

While John Roberts has repeatedly elevated constitutional protection for the right of corporations and the wealthy to spend money to elect candidates, in his first decade as Chief Justice he has repeatedly given short shrift to the right to vote. In his confirmation hearing testimony before the Senate Judiciary Committee, John Roberts called the right to vote one of "the most precious rights we have as Americans," and a fundamental right, "preservative of all other rights,"[36] but as Chief Justice he has made it harder for Americans to vote, gutting a key portion of the Voting Rights Act and striking a severe blow to the rights of political participation he celebrated in *McCutcheon*. As in the campaign finance cases, the Court under Roberts's

[32] *Id.* at 1461.
[33] *Id.* at 1465, 1468 (Breyer, J., dissenting).
[34] *Rufer v. FEC*, No. 14-5240 (D.C. Cir. scheduled for argument Feb. 27, 2015) (en banc).
[35] *Wagner v. FEC*, No. 13-5162 (D.C. Cir. argued Sept. 30, 2014) (en banc).
[36] *Hearings on the Nominations of John G. Roberts, Jr. to be Chief Justice of the Supreme Court of the United States,* 109th Cong., 1st Sess. 171, 173, 184, 246, 318 (2005), *available at* http://www.gpo.gov/fdsys/pkg/GPO-CHRG-ROBERTS/content-detail.html (hereinafter "Confirmation Hearing").

leadership is steadily moving the law to the right by giving a cramped reading to precedents that recognize the right to vote as a fundamental right and give Congress broad authority to ensure that the right to vote is enjoyed by all regardless of race.

The story begins with the 2009 ruling in *Northwest Austin Municipal Utility District v. Holder*,[37] the Roberts Court's first examination of the constitutionality of the preclearance requirement contained in Section 5 of the Voting Rights Act. The Supreme Court had upheld the preclearance requirement on four separate occasions as appropriate legislation enforcing the Fifteenth Amendment's ban on racial discrimination in voting,[38] but in *Northwest Austin*, Chief Justice Roberts cast doubt on the constitutionality of the provision, arguing that "[t]hings have changed in the South" and that "[t]he evil that § 5 is meant to address may no longer be concentrated in the jurisdictions singled out for preclearance."[39] Avoiding what he termed "serious constitutional questions," Roberts construed the Act's bailout provision to allow a local utility district to show that it had a clean voting rights record and should be exempted from the preclearance requirement.[40] Roberts's 8-1 ruling was hailed as an act of "judicial modesty,"[41] but it's clear now that Roberts was simply biding his time, using the doctrine of constitutional avoidance as a way to establish a precedent to strike down a core part of the Voting Rights Act.

That's exactly what Justice Roberts did four years later in *Shelby County*, when he authored the 5-4 majority ruling holding that Congress violated the Constitution when it renewed the preclearance requirement of the Voting Rights Act in 2006. Roberts's opinion opened not by stressing that the right to vote is a fundamental right enjoyed by all, but by treating the Voting Rights Act as a constitutional outlier.[42] That's quite a contrast from Roberts's full throated embrace of the right to contribute in *McCutcheon*.

The Chief Justice's opinion in *Shelby County* focused less on the Fifteenth Amendment and its express grant of power to Congress to prevent racial discrimination in voting and more on the equal sovereignty of the states. Of course, no provision of the Constitution guarantees the equality of states, but Roberts implied one, and then used it to gut the Voting Rights Act, holding that the preclearance requirement, as renewed in 2006, could not be squared with the "'fundamental principle of equal sovereignty' among the States."[43] A long line of cases, dating back to the 1960s, had rejected identical arguments, holding that the preclearance requirement was constitutional because, in order to enforce the Fifteenth Amendment, Congress could create stronger remedies applicable to states with a long history of racial discrimination in voting. Relying on the precedent he himself had created in *Northwest Austin*, Roberts

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[37] 557 U.S. 193 (2009).

[38] *South Carolina v. Katzenbach*, 383 U.S. 301 (1966); *Georgia v. United States*, 411 U.S. 526 (1973); *City of Rome v. United States*, 446 U.S. 156 (1980); *Lopez v. Monterey Cnty.*, 525 U.S. 266 (1999).

[39] *Nw. Austin Mun. Util. Dist.*, 557 U.S. at 202, 203.

[40] *Id.* at 204.

[41] *See, e.g.*, *A Victory for the Voting Rights Act*, L.A. TIMES, June 23, 2009, http://articles.latimes.com/2009/jun/23/opinion/ed-voting23.

[42] *Shelby Cnty.*, 133 S. Ct. at 2618.

[43] *Id.* at 2623 (quoting *Nw. Austin Mun. Util. Dist.*, 557 U.S. at 203)

dismissed these precedents, holding the 2006 renewal unconstitutional on the grounds that Congress had not updated the coverage formula used to determine which states were subject to the preclearance requirement. The result, as Justice Ginsburg explained in a blistering dissent, turned a blind eye to the fact that "the Constitution vests broad power in Congress to protect the right to vote, and in particular to combat racial discrimination in voting," and ignored the Reconstruction Framers' purpose "to arm Congress with the power and authority to protect all persons within the Nation from violations of their rights by the States."[44]

In *Shelby County*, the Chief Justice wrote that "any racial discrimination in voting is too much,"[45] but over the course of his career, Roberts has voted to uphold the authority of states against claims of discrimination. In 2006, in *League of United Latin American Citizens v. Perry*,[46] the Chief Justice dissented from Justice Kennedy's 5-4 ruling that Texas had unlawfully diluted the votes of Hispanic voters, finding that the State had rewritten the district lines just as a Hispanic majority was poised to unseat a Republican incumbent. Rejecting Kennedy's conclusion that "the State took away the Latinos' opportunity because Latinos were about to exercise it,"[47] Roberts saw no denial of equal opportunity. In his view, the Texas legislature had provided ample opportunities for Latin American citizens in South and West Texas, creating six majority-minority districts out of a total of seven. Roberts argued that the bottom line – not the specifics of the line-drawing in one particular district – should control. "The State has drawn a redistricting plan that provides six of seven congressional districts with an effective majority of Latino voting-age citizens in south and west Texas, and it is not possible to provide more. . . . Whatever the majority believes it is fighting with its holding, it is not vote dilution on the basis of race or ethnicity."[48] Urging a narrower role for the courts, Roberts commented that "[i]t is a sordid business, this divvying us up by race."[49]

The question now is whether Roberts, after annulling in *Shelby County* the most important and successful remedy against racial discrimination in voting, will bolster or dilute protections for voting rights contained in the Constitution and Section 2 of the Voting Rights Act, which prohibits laws and practices that result in racial discrimination on a nationwide basis, and helps ensure that the right to vote is actually enjoyed by all citizens. This month, the Justices will face a crucial test in *Alabama Legislative Black Caucus v. Alabama,* which raises the question of how far states may go in packing African Americans into majority-minority districts to reduce their influence state wide. When Alabama redistricted in 2011, the Alabama Legislature added to the percentage of minorities in established majority-minority districts, creating super-majorities of up to 75%, thereby ensuring minorities a number of unquestionably safe seats but weakening their political influence overall. The question in the case is whether this is a form of intentional racial discrimination prohibited by the Constitution.

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[44] *Id.* at 2638, 2637 (Ginsburg, J., dissenting).
[45] *Id.* at 2631.
[46] 548 U.S. 399 (2006).
[47] *Id.* at 440.
[48] *Id.* at 510-11 (Roberts, C.J., concurring in part and dissenting in part).
[49] *Id.* at 511.

Even bigger cases are on the horizon. Challenges to some of the nation's most restrictive voter identification laws are moving through the lower courts, and may reach the Supreme Court by the 2016 election cycle. In 2008, Roberts joined the ruling upholding Indiana's authority to require voter identification, but did so because of a failure of proof by the plaintiffs.[50] Notably, he did not sign on to Justice Scalia's separate opinion (joined by Thomas and Alito) in *Crawford*, which argued that it was constitutionally irrelevant that a voter identification law has a greater impact on some voters. In Scalia's view, the burden the voter identification law placed on all voters "is minimal and justified" and "our precedents refute the view that individual impacts are relevant to determining the severity of the burden it imposes."[51] This fissure between Roberts and some of his other conservative colleagues came to the fore this term, when Chief Justice Roberts joined a six-Justice majority that refused to allow Wisconsin to put into effect its strict voter identification law for the 2014 election over the dissent of Justices Scalia, Thomas, and Alito.[52] That said, the Chief Justice joined a different six-Justice majority in allowing Texas to implement its voter identification law despite a lower court's finding that it would disenfranchise many thousands of voters.[53]

These new cases involve laws considerably stricter than Indiana's and factual records showing that the voter identification laws make it harder for minorities, low-income persons, and others citizens to cast a ballot. How John Roberts resolves these new cases working their way back to the Court will tell us much about his commitment to a right he once described as "preservative of all other rights."[54]

III. Conclusion: What's Next for Our Democracy Under John Roberts

Chief Justice Roberts has described the right to vote and the right to contribute money as fundamental rights, both aspects of the "right to participate in electing our political leaders."[55] In the first nine years of his tenure, Roberts has repeatedly elevated protections for the right to contribute, while gutting the Voting Rights Act and permitting additional limits on the right to vote. As we look past Roberts's first nine years as Chief Justice, and to his first ten years and beyond, the fundamental question is whether what Roberts has called "the First Amendment right of citizens to choose who shall govern them,"[56] will eclipse the Constitution's explicit protections for the right to vote and the Founders' dire warnings about the need to prevent corruption. John Roberts has started down that path, rewriting our Constitution's system of democracy to give outsized influence to corporations and the wealthy while undercutting our Constitution's promise of a multiracial democracy open to all. Time will tell

[50] *Crawford*, 553 U.S. at 200-02.
[51] *Id.* at 204, 205 (Scalia, J., concurring).
[52] *Frank*, No. 14A352, 2014 WL 5039671 (U.S. Oct. 9, 2014).
[53] *Veasey,* Nos. 14A393, 14A402, 14A404, 2014 WL 5311490 (U.S. Oct. 18, 2014).
[54] Confirmation Hearing, *supra* note 37, at 173, 184, 246, 318.
[55] *McCutcheon*, 134 S. Ct. at 1440-41.
[56] *Id.* at 1462.

whether John Roberts is willing to enforce the right to vote along with other fundamental rights of political participation or simply wants to lead an assault on what remains of our campaign finance laws.