How Supreme Court Chief Justice Roberts and Former Justice Kennedy Knowingly Misrepresented Court Precedent to Justify Increasing Legalized Corruption

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For decades, the United States had strong campaign finance laws aimed at deterring corruption and safeguarding the integrity of our political system.

According to the Supreme Court, these laws prevented both "corruption" and "the appearance of corruption," and this included buying influence over candidates and officeholders.

For 34 years, starting with *Buckley v. Valeo* (1976), the laws sought to deter this "corruption" until former Justice Anthony Kennedy and Chief Justice John Roberts wrote disingenuous opinions for the Court in *Citizens United v. Federal Election Commission* (2010) and *McCutcheon v. Federal Election Commission* (2014), respectively.

This is a story about how Roberts and Kennedy, in these two opinions, falsely described precedent to greatly narrow the Court's definition of "corruption" while claiming they were not changing it, and thereby greatly increased the opportunities for legalized corruption.

This is also a story about how the Supreme Court majority, led by Kennedy and Roberts, eviscerated the campaign finance laws which had been enacted to prevent the corruption and appearance of corruption of our federal officeholders. (The Supreme Court has also crippled the bribery laws that apply to public officials, but that's a story for another day.)

The erosion of anti-corruption laws by our nation's highest court is a dangerous development for our democracy.

In the 2024 elections, the Super Rich in our country contributed billions of dollars and obtained undue influence over the presidential and congressional elections and coming government policies.

For example, Elon Musk, the richest person in the world, took advantage of a campaign finance system corrupted by Supreme Court decisions in C*itizens United* and *McCutcheon* to provide more than $250 million to help elect President Donald Trump in 2024.

In return, Trump provided Musk with virtual carte blanche, unaccountable power to ransack and deconstruct the federal government as Musk saw fit.

(The top 25 billionaires and millionaires making contributions in the 2024 election cycle, according to *Open Secrets*, included 17 Republican donors whose donations totaled more than $1.3 billion and eight Democratic donors whose donations totaled more than $257 million – illustrating how an oligarchy is created.)

The institutionalization of corruption poses a grave threat to our democracy, erodes public trust, and undermines the credibility of our government.

Chief Justice Roberts and former Justice Kennedy, in their *McCutcheon* and *Citizens United* decisions, led the way to two fundamental changes in our democracy.

First, their opinions changed the Supreme Court definition of "corruption" to greatly limit its scope, while falsely asserting that they were using the same definition that the Court had used since the *Buckley* decision in 1976. In fact, they changed the definition of "corruption," and, in so doing, legalized the buying and selling of influence.

Second, the opinions of Roberts and Kennedy in *McCutcheon* and *Citizens United* opened the door to the explosion of influence-seeking, unlimited contributions to Super PACs and "dark money" nonprofits. These groups have since spent, and rich donors have given, billions of dollars to influence federal elections and federal officeholders.

More than $4.5 billion in unlimited contributions was spent in the 2024 election cycle, according to *Open Secrets.*

This explosive growth of spending by Super PACs and dark money nonprofits led to the evisceration of the candidate contribution limits established in 1974 and upheld in *Buckley* as necessary to prevent corruption and the appearance of corruption.

The Kennedy and Roberts opinions in practice mean that a Super Rich donor can now give the maximum contribution to a federal candidate – $3,500 per election – and can also give $1 million or more to a Super PAC that the donor knows will spend that money only to support that same candidate.

There are currently 291 such single-candidate Super PACs – PACs that spend unlimited contributions to support only one candidate. Thus, in practical terms, the candidate knows that the wealthy donor is making a huge contribution to support him or her.

The biggest Super PAC donors during the 2023-2024 election cycle, according to *Open Secrets*, were:

Elon Musk, $290 million;

Timothy Mellon, $197 million;

Miriam Adelson, $144 million;

Richard and Elizabeth Uihlein, $139 million;

Kenneth Griffin; $107 million; and

Jeffrey and Janine Yass, $100 million.

Unlike with Super PACs, the public does not know who the biggest donors are to nonprofit groups because those donations are not disclosed. Super PAC donors, by contrast, are publicly reported to the Federal Election Commission.

The Kennedy and Roberts opinions turned millionaires and billionaires into a dominant force in American politics. They are now able to use their enormous wealth for legalized corrupt practices.

This report provides an examination of how *Buckley* defined corruption and how that same definition was used by the Court in several cases that followed – including *Nixon v. Shrink Missouri* (2000), *Federal Election Commission v. Colorado Republican* (2001), and *McConnell v. Federal Election Commission* (2003).

This report also examines how *Citizens United* and *McCutcheon* changed and restricted the definition of corruption that had been established in *Buckley* and its progeny – while falsely claiming they were simply applying the *Buckley* definition.

***Buckley v. Valeo*, 424 U.S. 1 (1976)**

Buckley v. Valeo (1976) was a seminal decision that addressed the constitutionality of anti-corruption campaign finance laws enacted in 1974 in the wake of the Watergate scandals. In its decision, the Court held that deterring corruption and the appearance of corruption are the only constitutional grounds for upholding campaign finance restrictions, such as contribution limits.

Thus, the definition of "corruption" provided in the *Buckley* opinion was central to whether contribution limits and other campaign finance restrictions could survive First Amendment scrutiny.

In upholding the contribution limits, the Court in *Buckley* said:

> To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders, the integrity of our system of representative democracy is undermined. […] Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.
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> 424 U.S. 1 at 27.

But the Court never said its definition of "corruption" was limited to actual or apparent "*quid pro quo* arrangements." In fact, the Court defined "corruption" in the *Buckley* opinion as much broader than the *quid pro quo* bribery standard, stating:

> Appellants contend that the contribution limitations must be invalidated because bribery laws and narrowly drawn disclosure requirements constitute a less restrictive means of dealing with "proven and suspected *quid pro quo* arrangements." But laws making criminal the giving and taking of bribes deal with only the most blatant and specific attempts of those with money to influence governmental action. And while disclosure requirements serve the many salutary purposes discussed elsewhere in this opinion, Congress was surely entitled to

> conclude that disclosure was only a partial measure, and that contribution ceilings were a necessary legislative concomitant to deal with the reality or appearance of corruption inherent in a system permitting unlimited financial contributions, even when the identities of the contributors and the amounts of their contributions are fully disclosed.
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> *Id.* at 28-29, (emphasis added).

Thus, the *Buckle*y opinion made clear that "*quid pro quo* arrangements" were already prohibited by bribery laws and that if the "corruption" definition was limited to the bribery standard, the campaign contribution limits would have been unnecessary. But the Court found that contribution limits were necessary to deal with a broader understanding of "corruption" that is "inherent" in a system that allows unlimited campaign contributions.

The Court in *Buckley* also describes "corruption" as "seeking to exert improper influence," as "desiring to buy influence," and as seeking "to obtain improper influence" over candidates and officeholders.

These definitions of "corruption" go well beyond only "*quid pro quo* arrangements."

Further, in defining "appearance of corruption," the Court stated that:

> Congress could legitimately conclude that the avoidance of the appearance of improper influence "is also critical … if confidence in the system of representative Government is not to be eroded to a disastrous extent."
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> *Id.* at 27, quoting *United States Civil Service Commission v. Letter Carriers*, (emphasis added).

This "corruption" definition also goes well beyond only "*quid pro quo* arrangements."

***Nixon v. Shrink Missouri*, 528 U.S. 377 (2000)**

The Court majority in *Nixon v. Shrink Missouri* (2000) quoted *Buckley*'s reference to "actual *quid pro quo* arrangements," and then pointed out that *Buckley*'s "corruption" definition went well beyond that language. The opinion stated about *Buckley*:

> In speaking of "improper influence" and "opportunities for abuse" in addition to "*quid pro quo* arrangements," we recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors.
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> 528 U.S. at 389, (emphasis added).

The Court further stated:

> These were the obvious points behind our recognition that the Congress could constitutionally address the power of money "to influence governmental action" in ways less "blatant and specific" than bribery. *Buckley v. Valeo,* 424 U.S., at 28, 96 S.Ct. 612.
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> *Id.,* (emphasis added).

Thus, the Supreme Court explicitly stated in *Shrink Missouri* that its discussion in *Buckley* about "corruption" extended beyond only "*quid pro quo* arrangements," was "not confined to bribery," and encompassed the "broader threat" of campaign money being used to make politicians "too compliant with the wishes of large contributors."

Referring to the "appearance of corruption" standard, the Court stated:

> While neither law nor morals equate all political contributions, without more, with bribes, we spoke in *Buckley* of the perception of corruption "inherent in a regime of large individual financial contributions" to candidates for public office […] as a source of concern "almost equal" to *quid pro quo* improbity. […] Leave the perception of impropriety unanswered, and the cynical assumption that large donors call the tune could jeopardize the willingness of voters to take part in democratic governance.
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> *Id.* at 390.

Thus, in upholding campaign finance contribution limits, the Court in *Shrink Missouri* stated that, as it had set forth in *Buckley*, the perception of corruption "inherent" in large individual contributions is of concern "almost equal" to "*quid pro quo* improbity."

***Federal Election Commission v. Colorado Republican*, 533 U.S. 440 (2001) (*Colorado Republican II*)**

The Court in *Federal Election Commission v. Colorado Republican* (2001) (*Colorado Republican II*), also stated explicitly that deterring "corruption" extended well beyond "*quid pro quo* arrangements" to encompass the broader concept of "undue influence."

In discussing the distinction between laws regulating contributions and those regulating expenditures, the Court said:

> A further reason for the distinction is that limits on contributions are more clearly justified by a link to political corruption than limits on other kinds of unlimited political spending are (corruption being understood not only as *quid pro quo* agreements, but also as undue influence on an officeholder's judgment, and the appearance of such influence.)
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> 533 U.S. at 440-441, (emphasis added).

***McConnell v. Federal Election Commission*, 540 U.S. 93 (2003)**

In *McConnell v. Federal Election Commission* (2003), the Court relied on the "corruption" definitions stated in *Buckley*, *Colorado Republican II,* and *Shrink Missouri* as precedent for similarly concluding that that the definition of "corruption" extends well beyond "*quid pro quo* arrangements."

The *McConnell* opinion stated:

> Our cases have made clear that the prevention of corruption or its appearance constitutes a sufficiently important interest to justify political contribution limits. We have not limited that interest to the elimination of cash-for-votes exchanges. In *Buckley,* we expressly rejected the

> argument that antibribery laws provided a less restrictive alternative to FECA's contribution limits, noting that such laws "deal[t] with only the most blatant and specific attempts of those with money to influence governmental action."
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> 540 U.S. at 143, quoting *Buckley,* (emphasis added).

The opinion further stated:

> Thus, "[i]n speaking of 'improper influence' and 'opportunities for abuse' in addition to '*quid pro quo* arrangements,' we [have] recognized a concern not confined to bribery of public officials, but extending to the broader threat from politicians too compliant with the wishes of large contributors." *Shrink Missouri,* 528 U.S., at 389, 120 S.Ct. 897; see also *Colorado II,* 533 U.S., at 441, 121 S.Ct. 2351 (acknowledging that corruption extends beyond explicit cash-for-votes agreements to "undue influence on an officeholder's judgment").
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> *Id.*, (emphasis added).

In rejecting the narrow definition of "corruption" urged by the *McConnell* plaintiffs, the Court said:

> More importantly, plaintiffs conceive of corruption too narrowly. Our cases have firmly established that Congress' legitimate interest extends beyond preventing simple cash-for-votes corruption to curbing "undue influence on an officeholder's judgment, and the appearance of such influence." *Colorado II, supra,* at 441, 121 S.Ct. 2351. Many of the "deeply disturbing examples" of corruption cited by this Court in *Buckley,* 424 U.S., at 27, 96 S.Ct. 612, to justify FECA's contribution limits were not episodes of vote buying, but evidence that various corporate interests had given substantial donations to gain access to high-level government officials. See *Buckley,* 519 F.2d, at 839–840, n. 36; nn.5–6, *supra.* Even if that access did not secure actual influence, it certainly gave the "appearance of such influence." *Colorado II, supra,* at 441, 121 S.Ct. 2351; *see also* 519 F.2d, at 838.
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> *Id.* at 150, (emphasis added).

The Court in *McConnell* went on to cite "examples of national party committees peddling access to federal candidates and officeholders in exchange for large soft-money donations." The Court made clear that "peddling access" was included in its definition.

Justice Kennedy dissented from part of the majority opinion in the case, and in doing so, he relied on a much narrower version of what constitutes "corruption." The majority, at length, expressly rejected the Kennedy definition of "corruption."

The majority stated:

> Despite this evidence and the close ties that candidates and officeholders have with their parties, Justice KENNEDY would limit Congress' regulatory interest *only* to the prevention of the actual or apparent *quid pro quo* corruption "inherent in" contributions made directly to, contributions made at the express behest of, and expenditures made in coordination with, a federal officeholder or candidate. *Post,* at 745, 748. Regulation of any other donation or expenditure – regardless of its size, the recipient's relationship to the candidate or

> officeholder, its potential impact on a candidate's election, its value to the candidate, or its unabashed and explicit intent to purchase influence – would, according to Justice KENNEDY, simply be out of bounds. This crabbed view of corruption, and particularly of the appearance of corruption, ignores precedent, common sense, and the realities of political fundraising exposed by the record in this litigation.
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> Justice KENNEDY's interpretation of the First Amendment would render Congress powerless to address more subtle but equally dispiriting forms of corruption. Just as troubling to a functioning democracy as classic *quid pro quo* corruption is the danger that officeholders will decide issues not on the merits or the desires of their constituencies, but according to the wishes of those who have made large financial contributions valued by the officeholder. Even if it occurs only occasionally, the potential for such undue influence is manifest. And unlike straight cash-for-votes transactions, such corruption is neither easily detected nor practical to criminalize.
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> *Id.* at 152-153, (emphasis added).

Thus, the Court in *McConnell* could not have been clearer that its jurisprudence for 27 years defined "corruption" as extending well beyond only "*quid pro quo* arrangements."

***Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010)**

In *Citizens United v. Federal Election Commission* (2010), a majority opinion written by Justice Kennedy and joined by Chief Justice Roberts, the Court struck down a federal ban on corporate campaign expenditures, ending a policy that had existed for nearly 80 years. In doing so, the Court overruled its own decision two decades earlier in *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652 (1990), which had upheld the corporate spending ban.

The Kennedy opinion in *Citizens United* explicitly states that the anti-corruption interest identified in *Buckley* was "limited only to *quid pro quo* corruption." This was flatly false.

The *Citizens United* opinion completely ignored the Court's decisions in *Colorado Republican II, Shrink Missouri,* and *McConnell* that, like *Buckley,* made clear that the definition of "corruption" went well beyond "*quid pro quo* arrangements."

Instead, Kennedy in *Citizens United* cited his *dissenting* opinion in *McConnell* as precedent, failing to even note that it was a dissent whose reasoning had been expressly rejected by the majority opinion. In *Citizens United*, Kennedy repeatedly cited his *McConnell* opinion not as a "dissent" but instead as "Opinion of Kennedy, J.":

> When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption. See *McConnell, supra,* at 296–298, 124 S.Ct. 619 (opinion of KENNEDY, J.) (citing *Buckley, supra,* at 26–28, 30, 46–48, 96 S.Ct. 612); *NCPAC,* 470 U.S., at 497, 105 S.Ct. 1459 (''The hallmark of corruption is the financial *quid pro quo:* dollars for political favors''); *id.* at 498, 105 S.Ct. 1459. The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt:

> "Favoritism and influence are not … avoidable in representative politics. It is in the nature of an elected representative to favor certain policies, and, by necessary corollary, to favor the voters and contributors who support those policies. It is well understood that a substantial and legitimate reason, if not the only reason, to cast a vote for, or to make a contribution to, one candidate over another is that the candidate will respond by producing those political outcomes the supporter favors. Democracy is premised on responsiveness." *McConnell,* 540 U.S., at 297, 124 S.Ct. 619 (opinion of KENNEDY, J.).
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> Reliance on a "generic favoritism or influence theory … is at odds with standard First Amendment analyses because it is unbounded and susceptible to no limiting principle." *Id.,* at 296, 124 S.Ct. 619.

130 S.Ct. at 910, (emphasis added).

Kennedy's *Citizens United* opinion repeatedly cites as precedent his dissent in *McConnell*, when his dissent in *McConnell* was not precedent for anything.

***McCutcheon v. Federal Election Commission*, 134 S.Ct. 1434 (2014)**

In a majority opinion by Chief Justice Roberts in *McCutcheon v. Federal Election Commission* (2014), the Court declared unconstitutional the federal limit on the aggregate amount an individual could give to all federal candidates and political committees in an election cycle. This decision overturned a portion of the *Buckley* decision, which had upheld the aggregate contribution limit nearly 40 years earlier.

In his opinion, Roberts also falsely described the definition of "corruption" in *Buckley*. The Roberts opinion in *McCutcheon*, like the Kennedy opinion in *Citizens United*, asserted that under the *Buckley* decision "corruption" is restricted to "*quid pro quo* arrangements":

> Any regulation must instead target what we have called "*quid pro quo*" corruption or its appearance. See *id.,* at 359, 130 S.Ct. 876. That Latin phrase captures the notion of a direct exchange of an official act for money. See *McCormick v. United States,* 500 U.S. 257, 266, 111 S.Ct. 1807, 114 L.Ed.2d 307 (1991). "The hallmark of corruption is the financial *quid pro quo*: dollars for political favors." *Federal Election Comm'n v. National Conservative Political Action Comm.,* 470 U.S. 480, 497, 105 S.Ct. 1459, 84 L.Ed.2d 455 (1985).

134 S.Ct. at 1441, (emphasis added).

And:

> The primary purpose of FECA was to limit *quid pro quo* corruption and its appearance; that purpose satisfied the requirement of a "sufficiently important" governmental interest. 424 U.S., at 26–27, 96 S.Ct. 612.

Id., (emphasis added).

The Roberts opinion in *McCutcheon,* like the *Citizens United* opinion, falsely represents the *Buckley* opinion, claiming it said that the anti-corruption rationale for campaign finance laws covers "only a specific type of corruption – *quid pro quo* corruption":

> Moreover, while preventing corruption or its appearance is a legitimate objective, Congress may target only a specific type of corruption – "*quid pro quo*" corruption. As *Buckley* explained, Congress may permissibly seek to rein in "large contributions [that] are given to secure a political *quid pro quo* from current and potential office holders." 424 U.S., at 26, 96 S.Ct. 612. In addition to "actual *quid pro quo* arrangements," Congress may permissibly limit "the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions" to particular candidates. *Id*., at 27, 96 S.Ct. 612; *see also Citizens United*, 558 U.S., at 359, 130 S.Ct. 876 ("When *Buckley* identified a sufficiently important governmental interest in preventing corruption or the appearance of corruption, that interest was limited to *quid pro quo* corruption").
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> *Id*. at 1450, (emphasis added).

The Roberts opinion also claims that influence-buying is not covered by the definition of "corruption," without ever acknowledging that decades of precedent, starting with *Buckley* in 1976, held that influence buying was included in the Court's definition of "corruption":

> Spending large sums of money in connection with elections, but not in connection with an effort to control the exercise of an officeholder's official duties, does not give rise to such *quid pro quo* corruption. Nor does the possibility that an individual who spends large sums may garner "influence over or access to" elected officials or political parties. *Id*., at 359, 130 S.Ct. 876; *see McConnell v. Federal Election Comm'n*, 540 U.S. 93, 297, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003) (KENNEDY, J., concurring in judgment in part and dissenting in part). And because the Government's interest in preventing the appearance of corruption is equally confined to the appearance of *quid pro quo* corruption, the Government may not seek to limit the appearance of mere influence or access. *See Citizens United*, 558 U.S., at 360, 130 S.Ct. 876.
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> *Id.* at 1450-1451, (emphasis added).

Roberts uses selective quotes from *Buckley* that refer to *quid pro quo* corruption. But he entirely ignores multiple other passages in *Buckley* which made clear the Court adopted a much broader reading of "corruption" that went well beyond "*quid pro quo* arrangements":

> It is fair to say, as Justice Stevens has, "that we have not always spoken about corruption in a clear or consistent voice." *Id.,* at 447, 130 S.Ct. 876 (opinion concurring in part and dissenting in part). The definition of corruption that we apply today, however, has firm roots in *Buckley* itself. The Court in that case upheld base contribution limits because they targeted "the danger of actual *quid pro quo* arrangements and "the impact of the appearance of corruption stemming from public awareness" of such a system of unchecked direct contributions. 4 24 U.S., at 27, 96 S.Ct. 612. *Buckley* simultaneously rejected limits on spending that was less likely to "be given as a *quid pro quo* for improper commitments from the candidate." *Id.,* at 47, 96 S.Ct. 612.

Id. at 1451, (emphasis added).

Roberts ends by again falsely stating that in *Buckley* only "a specific kind of corruption – *quid pro quo* corruption" can serve as a compelling interest to justify campaign finance restrictions:

> The Government has a strong interest, no less critical to our democratic system, in combatting corruption and its appearance. We have, however, held that this interest must be limited to a specific kind of corruption – *quid pro quo* corruption – in order to ensure that the Government's efforts do not have the effect of restricting the First Amendment right of citizens to choose who shall govern them. For the reasons set forth, we conclude that the aggregate limits on contributions do not further the only governmental interest this Court accepted as legitimate in *Buckley*.

Id. at 1462, (emphasis added).

Conclusion

In their opinions in *McCutcheon* and *Citizens United*, Chief Justice John Roberts and former Justice Anthony Kennedy grossly misrepresented the *Buckley* definition of "corruption" and by so doing have done a grave disservice to the integrity of the Supreme Court and to honest jurisprudence.

The enormous damage done by the Supreme Court in its *Citizens United* and *McCutcheon* decisions has undermined our democracy and legalized corruption. Roberts and Kennedy, in issuing these grossly misleading opinions, have failed the country, the courts, and the rule of law.

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