



THE TYPICAL CAMPAIGN FOR A SCHOOL BOARD ELECTION is rarely slick or well-financed: a few hand-painted lawn signs, perhaps, or some flyers tacked to a community bulletin board.

So imagine the surprise of voters in Douglas County, Colorado, in 2013, when a series of polished and expensive ads appeared on television to support four conservative candidates for school board running on an anti-teachers union, school-choice platform. A mind-boggling \$800,000 was poured into the race, with almost half coming from the billionaire Koch brothers through their PAC, Americans for Prosperity — and the conservative slate won.

Astronomical political spending by the Kochs is predictable: their network of advocacy groups has pledged nearly \$1 billion to ensure that a candidate of their choice is elected as the next US president and in other 2016 races. But a \$350,000 investment in a school board race, in a state where they don't live, spotlights the new reality of American democracy.

"When you think about a local school board having a national organization, which has no local ties, funding almost half of the money spent on campaigning, it's really surprising," says Margaret Kwoka '07, an assistant professor at the University of Denver Sturm College of Law and an expert on government transparency and voting rights. Moreover, she adds, "The sheer quantity of money now available to influence the electoral process — often untraceable to its source — is really problematic."

It's an interesting time in American democracy.

MORE MONEY, LESS ACCESS

Five years ago, in the highly controversial *Citizens United v. FEC*, the US Supreme Court struck down restrictions on political advertisement spending by corporations, labor unions and some others. The case gave birth to super-PACs like Americans for Prosperity and also

allowed dark money contributions from certain organizations. In a subsequent case, *McCutcheon v. FEC*, the high court lifted total caps on donations in federal elections. Today, the floodgates of money in politics are wide open — and many fear the voices of the masses are being drowned out by those of the one percent.

But Big Money is only part of the picture, although a central issue that influences everything else. In 2013, in *Shelby County v. Holder*, the Supreme Court struck down key provisions of the iconic Voting Rights Act of 1965 — landmark legislation of the civil rights era that prohibits racially discriminatory voting laws. A number of states immediately passed laws making it harder to vote; today, more than 30 have some type of voter ID law, with at least seven requiring photo ID. These laws have a disproportionate impact on the young, the poor and people of color, who generally vote for more liberal candidates.

With that one-two punch — more influence on government by the rich, less access for everyone else, "we can reasonably say that American democracy right now is at a crisis point. That's not being hyperbolic," says Keesha Gaskins '99, an expert on voting rights and voter suppression issues, who heads the Democratic Practice-United States program for the Rockefeller Brothers Fund.



Gaskin's program provides grants to support inclusive and transparent US democracy.

Many find the motivation for these monumental changes to the political system highly suspect: after all, in the 10-year span between 2004 and 2014, there wasn't a single instance of in-person voter impersonation, the kind of fraud that restrictive voting laws are meant to prevent, according to a study by the US Department of Justice.

"You have a greater chance of being struck by lightning than of someone impersonating you at the polls, and it's certainly an extremely inefficient way to steal an election," says Rahsaan Hall '98, deputy director of the Lawyers' Committee for Civil Rights and Economic Justice in Boston, which is deeply involved in election protection initiatives. "These initiatives come from a place of wanting to keep historically disenfranchised communities out of power, under the guise of voter integrity."

And, he adds, "The browner this country becomes, there will be a more intensified effort to restrict access to the polls."

Indeed, some conservatives are openly promoting a new view of democracy. In the e-book *Political Realism:*

How Hacks, Machines, Big Money, and Back-Room Deals Can Strengthen American Democracy, Jonathan Rauch of the Brookings Institute argues that it's good for the country to limit control of money and nominations to political insiders, while reformers' insistence on widespread voter participation is not. "Rauch insists that political professionals should be empowered to run the government, and that we should stop letting amateurs — read activists — get involved," laments Gaskins.

"So now the argument becomes," she says with a sigh, "that there is such a thing as too much democracy."

HOPE SPRINGS ETERNAL

Given this legal landscape, it's surprising that many Northeastern law graduates working for democratic reforms are feeling optimistic. They say that *Citizens United* and its progeny have taken things so far that there is a growing backlash from people across the political spectrum. The battle is less about partisan politics than extreme corporate privilege to the exclusion of the average citizen, they believe.

Still, though it's not a new idea "to dress up an oligarchy in democracy's clothes," Gaskins says, the elite today now have the power to do more than just influence

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policy. “In many ways it’s a complete capture, with industry writing the bills and legislation” and choosing legislators at every level, she says.

Fortunately, crony capitalism is something that a spectrum of citizens — from the right to the left, and among Libertarians and the unaffiliated — rankle against. “I think *Citizens United* is actually so aggressive in its protection of corporate interests that the public has truly started to rally around a response,” says Kwoka. “The hope for us has to be that at some point, people in the US decide we have to take the government back for us. And when we start voting people back in who are willing to be aggressive about that, we can change the trajectory.”

From its inception, American democracy has been a battleground between the few and the many, and it’s easy to forget how far democracy has come in the past 50 years, says Pam Wilmot ’88, executive director of Common Cause Massachusetts, a nonpartisan organization that seeks to restore core democratic values, including fair financing of campaigns, voting rights and government integrity. In the 1970s, when Common Cause launched, there was little government transparency, notes Wilmot: few open-meeting laws, ethics standards and commissions, public-records laws or

reporting requirements for lobbyists — and cash contributions to candidates were legal.

“We’ve made huge strides — and the setbacks, while significant, just add fuel to the need for reform,” Wilmot says. “I think that issues of equality and of democratic participation are more in the public’s mind today, so I’m very hopeful for the future.”

With a number of organizations and individuals working to undo *Citizens United*, the case has become a household word, its own negative brand, so to speak, with bumper stickers and online campaigns to rout it. A broad-based effort for a constitutional amendment to overturn it has been endorsed by 16 states as well as President Obama, Hillary Rodham Clinton and many in Congress. A *New York Times*/CBS poll in 2014 found that 85 percent of Americans support fundamental changes to, or a complete overhaul of, the way political campaigns are financed in this country. Even conservative states show strong bi-partisan support, including Montana and Colorado.

THE POWER OF PERSEVERANCE

Still, “a constitutional amendment is a heavy lift,” says Wilmot, because the Republican leadership “has decided *Citizens United* is good for them.” But

their position doesn't reflect rank-and-file Republicans nationwide, she notes, and so there is hope. Declawing *Citizens United* "is the most critical thing we can do in the area of democratic reform," she insists, because the ability of billionaires to influence elections "dilutes the effectiveness of any other reforms."

As for voting rights, progressives are working on a number of fronts, including a proposed constitutional amendment to guarantee the right to vote. It's not widely known that such a right does not exist; if guaranteed in the Constitution, it would be much harder for states to restrict voting, says Cameron Ferrante '14, a legal fellow at FairVote, a national nonprofit promoting the *Citizens United* amendment and other electoral reforms to promote fairness in political representation. FairVote's other priorities include advocating for a national popular vote for president — which Common Cause also endorses — and ranked-choice voting, which would not only provide better representation to all voters, but could also do the seemingly impossible, Ferrante says: increase civility and decrease polarization in politics.

In terms of the *Shelby County* case, last year the Voting Rights Amendment Act of 2014 was introduced in Congress; if it passes — again, a tough battle — it will reinstate important voter protections for racial and other minorities. In the meantime, restrictive voter laws are being challenged in some states, although the Supreme Court declined to strike down Wisconsin's voter-ID law, one of the most restrictive in the country.

A number of efforts to modernize elections and make voting easier are underway in many states, including reforms such as online voting, automatic voter registration and election-day registration. Last year, the Massachusetts Legislature passed an election modernization bill, which moved the process "from the Stone Age into the 21st century," says Tyler Crosby '13, who volunteered with Common Cause to support the effort. Still, it did not include same-day voter registration even though that is "the single most effective way to increase turnout," notes Crosby, who continues to work on voter protection issues while running Specific Performance Consulting & Studios, his Boston-based company that teaches acting and speaking skills to lawyers.

Wilmot says there will "always be forces inside and outside government that want to hijack the process for themselves. That's what power does, and that's why a democracy movement is so critical."

Gaskin agrees. "I believe this is something that can be fixed," Gaskin says. "I believe there are amazing, creative people out there, some who've been working at this forever, and some who are new to this space, who are really thoughtful and see government, governance and democracy as a space worthy of attention."

"Is it enough? Probably not," she continues. "But we don't stop. It's a matter of perseverance."

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Mindfulness

Continued from page 23

watching the way his own mind works, through meditation, gives him insight that he applies to his scholarship. His research looks at the role of law in structuring business relationships globally, and how legal regimes allocate value, power and welfare among those relationships.

"Instead of seeing things as some linear story of here to there, the world manifests much more as an infinite set of places where things might have been otherwise," he says. "In our world, the ability to be attentive to those possibilities and choices makes them visible — more amenable to recognition, analysis and change."

Perhaps no one has done more to promote mindful lawyering than Charles Halpern, who co-founded the Berkeley Initiative for Mindfulness in Law at the University of California Berkeley School of Law and the Center for Contemplative Mind in Society. Halpern believes that mindfulness in legal settings is going to grow across the globe. It's gaining in popularity generally, he points out, and its benefits are being backed-up by science. Stressed-out lawyers will increasingly seek it, he predicts. "The institutions in which lawyers work will be encouraging this, in part, because it is going to make their employees more effective," he says.

Halpern, who was the founding dean of CUNY Law School, imagines a future where mindfulness can change the justice system itself. "The project that is currently in the center of my desk is one we are calling 'The Project to Transform Criminal Justice through Mindfulness,'" he says. Mindfulness initiatives in criminal justice settings are underway in places like San Quentin State Prison, police departments in Wisconsin and elsewhere. Halpern plans to catalog these initiatives, to theorize what a legal system grounded in mindfulness might look like and to identify practical opportunities for putting mindfulness to work.

Northeastern alumna Tamara Kuennen, Halpern's daughter-in-law, who uses mindfulness approaches in her clinical law courses, also sees the social benefits of mindful lawyering.

"Mindfulness cultivates not just the ability to be a clearer thinker and analyst," she says. "There is also a big emotional piece that really allows me to understand the connection between my heart and head a little better, to think about the law as a way of connecting people on a deeper level and to think about using the law in a way that feels more compassionate, with a deeper social justice meaning."

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