

This American Life Interview
with John McCain and Russ Feingold on 3/15/12
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Andrea Seabrook: So when McCain-Feingold, your bill passed, were you like, "Okay, problem solved, done?"

John McCain: That's what I thought, and I even thought so, and I think Russ would agree, the first time around, that it was upheld. When Justice O'Connor and Rehnquist were members of the Supreme Court, and then of course they were replaced, and that swung it to a 5-4 in the other direction.

And, you know, could I just say, on that issue—and I know that Russ has a lot to say about it—but when Jack Kennedy became president and Lyndon Johnson was vice president, they, the reporters came to Lyndon Johnson, said, "Boy, wow, look at all these whiz kids, these great captains of industry, the most brilliant cabinet ever assembled," and said, "What do you think?"

And Lyndon Johnson said, "I just wish one of 'em had run for county sheriff."

Russ Feingold: [laughs]

McCain: I, I feel that same way about the United States Supreme Court. Sandra Day O'Connor had been a State Senator, she understood what campaigns were about. Justice Rehnquist had been actually

legal counsel for the Republican Party in Arizona in his, in his youth. And when Russ and I went over to observe the arguments, it was probably one of the most depressing times I've ever had here in Washington, because the complete naïveté ass, displayed by some of these justices, particularly Scalia, with his sarcasm, and the questions they asked, showed they had that, not the slightest clue as to what a political campaign is all about, and the role of money that it plays in political campaigns.

And I remember, when Russ and I walked out of there, I said, "Russ," I said, "We're gonna lose, and, and it's because they are clueless." I think it was one of the worst decisions in the history of the United States Supreme Court, certainly in the 20th century. You, you remember that day we were over there, Russ?

Feingold: Absolutely, John, I couldn't agree with you more. It, it clearly was one of the worst decisions ever of the Supreme Court, and question was, you know, was it problem solved? Well, we had solved a problem, which was unlimited campaign contributions being given to political parties, by unions and corporations, and frankly, corrupt conversations of politicians raising the money.

That's still the law. So the problem that we solved is still solved. It's still a federal crime to do that. The problem is they took all the bricks underneath this, and in a decision that had nothing to do with the law, they found a way to knock out Teddy Roosevelt's 1907 law preventing corporations from getting involved in politics, and the 1947 Taft-Hartley Act that prevented labor unions.

And there was no real basis in the case. You know, John and I wrote the bill, we weren't trying to get at a movie about Hillary Clinton. That's what the case was about. [laughs] But the court was so hellbent on bringing corporate money into politics that they went ahead and made what I have called and believe is a lawless decision.

And this is a direct change in our system of government. People are scared of it, and I think even the court's beginning to realize they've got to do something to change this, because our entire system is being altered by unlimited corporate and union money being spent, drowning out what candidates say.

So a much bigger problem was created, even though McCain-Feingold solved a problem.

McCain: And corporations are people, which is certainly [laughs] a phenomenal thought. And of course, that, that unlimit, that money does not really matter in elections. That unlimited amount of money will not affect elections. You know, today we're watching a Republican primary where a Las Vegas media, gambling mogul has given over \$20 million to one campaign, and a lotta that money comes from his earnings in a casino in Macao.

So we now have, clearly, some Chinese money entering into the American political scene. And consider this one: We have a Senate race in Arizona. Suppose that ten people got together and put in \$10 million each in a campaign. I guarantee you that would affect the outcome of that election.

I mean, \$100 million, a Senate race in the state of Arizona, which is a larger than normal-sized state, or Wisconsin. I mean, so what they've done is that they have unleashed the worst aspects of money in politics, and that's what Russ and I tried to address, and we did address, and could I just finally say—and Russ, you might want to talk a little bit more about this—the phony suit, they, they'd, they shot a movie for the express purpose of going to the United States Supreme Court, for, that was the only reason why they made that film about our now Secretary of State.

That's—

Feingold: If it—

McCain: —unbelieve... Go ahead, Russ, I'm sorry.

Feingold: No, it feels like, you know, the whole thing was engineered, and you know, the fact is in 2004 and 2006 and 2008, there couldn't be these unlimited contributions from corporations and unions. Because of McCain-Feingold, the money couldn't go through the parties, and, you know, people started turning to the internet, and I think we actually were moving in the direction of, of real change, need to do more, I think we need public financing, I think, you know, John and I both think we need to have a, a real enforcement arm, not the Federal Elections Commission.

But the trouble with this issue—and I think John would agree with this—is people have gotten so down about it, they think it's always been this way. Well, it's never been this way since 1907. It's never been the case that when you buy toothpaste or detergent or

a gallon of gas, that the next day that money can be used on a candidate that you don't believe in. That's brand new.

That's never happened since the Tillman Act and the Taft-Hartley Act. And so people have to realize this is a whole new deal; it's not business as usual.

Seabrook: Let me ask, just to back us up for one second, when, when McCain-Feingold passed and when it was upheld by the, by the court the first time, what problem did it solve?

Feingold: It solved the problem of unlimited contributions being given to the political parties, the Democrat and re, Republican parties, uh, through what was called soft money. And those contributions, I heard people talking about the contributions that they were getting, both Democrats and Republicans, for a Wednesday night Republican dinner and a Thursday night Democrat dinner.

And I, and I think it affected a lot of the votes at that time. The Supreme Court not only upheld it; it's still the law. They have not overturned that piece. But when you let corporations and unions do it directly, through these so, phony independent expenditures, basically, what you've done is, is sort of made that, that's still an issue you need to resolve because members of Congress shouldn't be involved in this. But you have this avalanche coming, in addition to the problem we solved.

But that, the problem it solved was the transferring of the money from the political parties, to the political parties, and raised by members of Congress, which was a, a really corrupting thing.

McCain: Could we talk for, just for a minute about the arm of government that's supposed to enforce these rules? One of the problems that Russ and I ran into from the beginning, and that is a Federal Election Commission, which is a joke. They're the only commission where there's not a odd number.

They're equally divided between the two parties. Now, these parties have different philosophies, different priorities, and different ways that advantage their party. So what happens? They end up with a three-to-three gridlock. It, it, they're, it's... it's beyond disgraceful. It's beyond... outrageous.

The, there have been cases that come before the FEC that are clear violations, clear violations, and yet they'll gridlock three-three because it may favor one party or the other. And it's done by both sides. And I have to lay part of the blame at the feet of the majority leaders and the presidents and the people that appoint these people.

They could appoint people who are well-qualified, who are honest people of integrity, and honesty. Instead, they appoint people clearly on the basis, "Will this individual always vote to uphold my party's position?" Isn't it right, Russ?

Feingold: That's completely right, and John and I went through this time and again. I fought both Democrat and Republican appointees, as did John, because the people they chose—

McCain: We would put holds on their, on their nominations.

Feingold: I think you put a mass hold of about 73 people once [laughs] to deal with this. I was teaching some law students about that the other day. And yeah, the fact is you'd have a, whether it was a Democrat or Republican, the guy that gets appointed or the gal that gets appointed is the one that can sort of protect the cash cow of their own party, instead of, as John said, somebody that's really a good sort of evenhanded person.

So John and I proposed creating a real enforcement arm with a real administrative power to enforce it. There is even examples of where the staff of the FEC recommended in one case—

McCain: Yeah—

Feingold: —I know of at least, actually, two cases, that some Democrats get fined. And the Democrats on the panel were going to vote to fine them, but the Republicans blocked it, and I imagine the reverse has occurred, because they don't want any campaign finance laws at all [laughs]. It's like, "We don't even want the Democrats fined; we just want the OK Corral here."

So the joke, John's characterization of the agency is completely accurate. It's a joke. And no matter what we do, overturn Citizens United or, or pass other laws to deal with the problem, if there's no enforcement, what are you gonna do? So we have to change that too.

Alex Blumberg: And, and it, and it's especially relevant after Citizens United because there are these, these laws that sort of, that, that say you can't coordinate your—if it's a, if it's a independent—

Feingold: That's right.

Blumberg: —Super PAC, it's not supposed to coordinate with the campaign, and yet you have these instances where somebody, you know, the, the actual candidate in question will appear in the advertisement of the Super PAC, but there's allegedly no coordination. So you're saying if, if it's, those laws are hard to, hard enough to monitor and enforce, and with the current FEC you don't have much hope for, for those laws being enforced?

Feingold: Yeah. Fir, first of all, the law probably should be strengthened and made tougher on this kinda joke non-coordination, which everybody knows is a farce, when somebody's former chief of staff goes over and runs the thing. But you know, even if the law is tightened, as John and I've been saying, if you don't have an agency that's actually gonna take the law and enforce it, the people of this country continue to have what is effectively a, a non-regulated system that is very unfair to, to people who are playing it straight.

McCain: Alex, I think you just mentioned [laughs] the, the joke that they are not coordinating with the campaigns. I mean again, it's, it's, it's beyond ridiculous. As Russ pointed out, people who are part of their campaigns go over to run the PAC, but they're not, they're not coordinating anything. [laughter] Don't, don't get me wrong.

Gambling is not taking place in this establishment. I mean it's... [laughter] It's, it's beyond belief. And, you know, and, and to ss, sum up in one respect, what does it do to the view of young

Americans that Russ is talking to every day out there at Stanford?
It makes 'em cynical.

It makes' em cynical, and therefore demotivating; therefore it's harder to get highly qualified men and women to seek public office, if they think we're all a bunch of crooks.

Seabrook: Yeah.

Feingold: Yeah, exactly. I had a number of students come up to me—it kind of encouraged me—is that when I got here earlier in the year and say, "You know, I'd like to run for office," and you know, as they hear about this, can you imagine what it's like to think, "How do I get a Super PAC?" [laughter] as opposed to, "How do I get my nomination papers filed?" [laughs]

It's, it's kind of sad.

Blumberg: I want to just talk, though, quickly, about—so beef, I wanna get back to Citizens United. But just to sort of, let's just talk about the period of time between the passage of McCain-Feingold and the Citizens United decision. After your legislation passed, but before Citizens United, were you, were you completely happy with everything that was happening or were there still problems to solve, as, as you saw it?

Feingold: I wasn't completely happy, but there were very significant changes. The unlimited contributions were gone, because McCain-Feingold had passed, so they couldn't do it through the

parties. Citizens United hadn't gone through, so the corporations and unions couldn't do it directly.

The 527s were trying to do it, but the FEC actually ruled that what they had done was illegal. John and I both thought for quite some time that the, the current law rih, with regard to those, those 520 expenditures was adequate. And so actually, in the, in the campaigns in 2004, 2006 and 2008, it really wasn't as much about who had the most money, because, you know, a lotta the money was raised through smaller contributions.

There was bundling, which is a process that's not the best, does involve a lot smaller dollars. The other reforms that John and I have advocated had not been put through. But I would say it was a major change. We had made a big step in the right direction. We were ready to do more.

And then the Supreme Court basically torpedoed it. And, and here's, the other thing I just want to mention, John, is, we think about the money being spent: Where's the money going? Who's getting it?

McCain: Yeah.

Feingold: That's part of the story too. There's a huge world of consultants and broadcast and others that are making huge amounts of money off of this. So the focus tends to be on the contributors and the politicians, but the problem, of course, is there's money to be made here. A gigantic amount of money be, to be made.

McCain: You know what I'd love to—

Feingold: From corporations.

McCain: You know what I'd love to see—

Feingold: Yeah—

McCain: —Russ, you know, when you see them, all these talking heads now, you know, that were campaign consultants on both sides, so that's their sideline, I guess it helps 'em in getting their clients. What I'd like to see one of 'em asked, "Hey, Alex, how much, how much were you paid last year? How much money did you make last year in consulting and being out there?"

I'm telling you, these guys and women are very very wealthy.

Feingold: It's a wreck, this whole—

McCain: They're doing well by doing good.

Feingold: —this whole thing's a racket, where the money's getting poured in from, from these corporate treasuries—and labor treasuries sometimes—and then it goes over to TV stations, it goes to all these consultants, and we all get to sit here and watch what's basically a circus instead of a democracy.

Ben Calhoun: I, I just want to ask if we're in a situation where increasingly we're gonna have members of, of Congress who, you know, if you've got, you know, \$5 million in a presidential race is still a drop in a bucket, but if you've got \$1 million in a House race and you can make or break somebody—

McCain: Sure.

Calhoun: —if you've got an increasing number of members who have been put into political existence or kept alive by a single entity, how does that, how does that change, do you think, the, the country? How does it change it for just everyday people?

McCain: Well, I think very obviously that if one person controls the activities and the voting patterns of a member of Congress, that is in direct contravention to everything we stand for and believe in—of the people, by the people, for the people. [laughs] I mean, it's just, I think—

Calhoun: You think it's that frank.

McCain: I don't know that if it's gotten that far yet. But I think, I predict to you again, there will be scandals. I don't know exactly what it's gonna be. I, but I guarantee you, there's too much money washing around the political arena today. And it's just, it's inevitable, as, as the, as the sun will come up tomorrow.

Feingold: If I was an investigative reporter, this is what I'd be doing every day. I would be trying to find out—you know, I've had conversations with Democratic givers out here in the Bay Area, and I'll tell ya, you wouldn't believe the requests they're getting. It, the opening ante is \$1 million.

You know, it's not, "Gee, it'd be nice if you'd give \$1 million." That's sort of the baseline. [laughs] This is unprecedented. And, and so John's right that, you know, whether it's technically a

scandal or not, I mean actually illegal or not, you know, it doesn't really matt, matter. A scandal can be, involve simply the appearance of corruption.

And in fact, one thing that John and I experienced was that sometimes the corporations that didn't like this system would come to us and say, "You guys, it's not legalized bribery, it's legalized extortion," because it's not like the, the company CEO comes up and say, "Gee, I'd love to give you some money." It's usually the other way around.

The politician or their agent who's got the Super PAC, they're the ones that are calling up and asking for the money. So a lotta businesses I think are gonna help us rebel against this and say, "You know, we don't want to be a part of this mess."

Blumberg: Is there a threat on that when they call up, they call up a company and say, "Will you help us, or...?"

McCain: Oh no, they don't—

Feingold: I would hope not.

McCain: —they don't, they don't do that.

Feingold: Who knows?

McCain: What they do is they call up and it isn't the member that calls; it's one of the fundraisers, that says, "You know, Senator McCain is a member of the HELP Committee." It's, that's, that's Health Care, Education, Labor—

Seabrook: [Entrance].

McCain: And, you know, the, this Obamacare is on the floor, and the issue of pharmaceuticals, generics is, is gonna be, you know, one of the more contentious issues. And I'm sure you might want to give your views to Senator McCain. And by the way, over at Johnny's Half Shell or—

Feingold: [laughs]

McCain: —the Mono, the Monocle, or, you know, whatever one of the watering holes is, where you'll get a free canapé with, you know, smoked salmon on a little cracker and—

Feingold: [laughs]

McCain: And, you know, you have a chance to, to talk to Senator McCain about these generic drugs. He's been a real jerk because he's been saying we oughta go ahead and ease their path into the marketplace, whereas the big, you know... So, I mean that's, that's the way it works.

And, and I, and I agree with Russ: I think so many people that I know in business say, "God. The phone calls, you know, they just come one after another," and frankly one of the big fundraisers in this town was, during, when we were debating Obamacare. Because the health care industry is so broad and has, entails so many different industries and parts of, well, about a fifth of our economy. You can imagine.

Calhoun: To, to what extent, the two of you, given the, the time and political capital that you put into, into passing the reform that you did—

McCain: We've still got the scars to... [laughter] I mean it.

Seabrook: Can show us 'em? Or...? [laughs]

McCain: Wow.

Feingold: Sure.

Calhoun: And, and given that, I mean when you look at the current situation, to, to what extent do you feel like sort... I wonder if you feel a little bit like Sisyphus with the rock at the bottom.

McCain: I feel a, a great sense of disappointment and sorrow, because we did see the corruption that existed before, and now, if you, you could make an argument that we've gone back further, even, than we had been before. Before there were at least some restrictions, particularly on corporations and unions. But now, you know, and there is not the transparency.

So I just feel sad about it, rather than outraged. First, I was outraged. The day that Russ and I went over and observed the, the arguments, the questions that were asked, the naïveté of the questions that were asked, and the arrogance of, of some of the questions was just stunning.

Seabrook: Can you think of any?

McCain: And so...

Blumberg: Yeah, do you remember one in particular?

McCain: It was more the tenor. "Well, why shouldn't these people be able to, to be able to engage in this process? Why do you want to restrict them from their rights of free speech? I mean, what is this?" I mean, right, Russ? It was that kind of—

Feingold: Yeah, I remember Justice Kennedy making statements about corporations. There was no factual record at all for him to, to make the statement about how corporations do their business. You know, John and I put together a very extensive record that the Supreme Court relied on.

Justice Kennedy was just popping off on his own personal views about what corporations do and don't do. And to me that was an example—many people have, have criticized the decision for that reason, because they really made no effort, as John said, to even pretend that they knew what was going on in the political process before they actually roiled it in a terrible way.

McCain: And how could a Supreme Court justice say that a corporation is the same as an individual, when we have a set, entirely different set of laws that govern corporations and their behavior? I mean it's just, it's—

Feingold: We create corporations. The people—

McCain: Yeah.

Feingold: —create corporations through their elected representatives. They are not the sovereign. They are not the people that, you know, make up the citizenry.

McCain: And corporations don't vote, last time I checked.

Feingold: They can't run for office.

Seabrook: Senator Feingold—

Feingold: I hope. [laughs]

Seabrook: —do you want to, do you want to answer the, the Sisyphus question?

Feingold: You bet, you bet. You know, course I've gone through the same process, and having experienced this with John has been a, a tremendous experience in my life, 'cause the ups and downs are there, but we, we're both dedicated to this in our own way. And, and to me, there certainly was a feeling of, "You've got be kidding me, that they're willing to do this."

But I agree with John, that because there will be a scandal, I think by the time this chapter is over, you will have a repeat of 100 years ago, when the robber barons basically had control of the United States Supreme Court, they struck down everything, until finally people like Teddy Roosevelt and people like Bob [Lafollette] of Wisconsin came forward, and they finally laid the hammer down.

They got the Sherman Antitrust Act through, and they passed the Tillman Act, which is the law that prevented corporations from doing this. So I think by the time this chapter's over—and it may take 10 years or something—I think you're gonna see people reasserting their control through their elected representatives, because I think it's gonna be just too much when people realize the scandalous nature of what's going on.

Blumberg: I'm struck, just sort of to hear you, to hear you both talk and, and, and the way you talk about it is, is you, you guys are so clearly down this path together, so clearly in line with the way you think about it. And you know, Andrea and I and, and Ben and I have been talking to lots and lots of people who were involved, and politicians, lobbyists, talking to them about the process of fundraising.

And most of the people we talk to hate it. They hate making those phone calls, they hate going into that room. They hate going to the fundraisers morning, noon and night. They hate sucking up to people, to give them money to get elected. Why, where, why don't more people try to change it?

Feingold: After this program, I'm going to a fundraiser. [laughter] For, it's for a guy whose name is Kirk Adams, who is running for the US House of Representatives. And I can assure you, I would much prefer to be watching the first round of March Madness. [Laughter] So, so you, if I may illustrate your point [laughter], it, it, it's the, it's the system, and it's the, and the water in which we swim.

And as you say, we, I know of no one who likes it, but it is the, it is the system. I happen to think—

Blumberg: But why don't more people join you in fighting it? That's what I don't understand.

Feingold: Well, they, they did. We managed to get, against all odds, frankly, a Republican House and Senate, to vote for this thing, and to get a Republican president to sign it. We did get people. It took a lotta hard work. Now, the problem is, of course, is people are reticent to do that because they got elected under the system.

So most people don't like to change it. One of my biggest problems was my fellow Democrats, who were fearful that somehow, you know, independent expenditures would blow them away under the old system if we eliminated the, the soft money from the political parties.

So John and I used to talk about maybe having lunch together during the political party caucuses on Tuesdays, when he'd be with the Republicans, and I'd be with the Democrats, because each of us basically ate alone. [laughter] It was, we weren't popular because we were trying to change a system that had worked for people, even though I know most of them thought it was wrong and didn't want to do it.

Blumberg: So it was just fear of change.

Feingold: Sure. When you win a certain way, it's, your people say to you, "Hey, this is how we do it, and this is, this is how we won. We'd

better not mess with success." I think that's a, that's one of the problems in this presidential race, where not only the Republicans, but even my candidate, President Obama has opened the door to this unlimited money through some of his people.

I, you know, it's, it's hard to get people to change something after they win that way, and that's one of my worries about it.

McCain: Yeah, that's... I think that's, that's the point, is that also, if they believed that the system wasn't gonna change, which they didn't, until we started this, I almost used the word crusade—certainly, long struggle—that they thought, "Well, that's the system as it, as it is, and so we have to play by the rules," which means you go to the fundraisers, da-da, da-da, da-da.

We did, I guarantee you, after we passed it, after it was signed by the president, a lot of people came over and thanked us, say, even those who had voted against it.

Blumberg: One of the things that we've been, we've been looking at is just this—and, and Senator McCain, you've mentioned, you've sort of referred to this several times—there, that the, that the, the I, the, the way that money is, is often raised is through these fundraisers where, you know, you serve on a committee, you meet with people—

McCain: Mm-hm.

Blumberg: —the representatives of the industry that, that that committee has jurisdiction—

McCain: Mm-hm.

Blumberg: —over, is passing legislation about, and take the money and then, and then legislate [laughs] you know, on them. And the, you know, and we've talked to lots and lots of people about it, and you know, the, the general takeaway is that like, no, you can't, you, it's not that your vote is being bought when you go to these fundraisers. You're meeting with many people, often you're meeting with people on the other side.

McCain: Just been rented. [laughs]

Blumberg: [laughs] But I mean that's a, that's a scenario that, that exists, that's a scenario that existed before, before Citizens United.

McCain: Yes.

Blumberg: How do you, how, how should we think about that? Is that something that—

McCain: 'Cause there were limits then. There were limits.

Blumberg: Yeah, yeah. There, there are limits, but there are still like, you know, on the finance committee you get a lot more money from the banking lobby.

McCain: Yeah, and we don't live in a perfect world.

Blumberg: Yeah.

McCain: But there were limits to, to that. And we'd, and, and Russ and I also believe that, that small donations are a very important part of

the political process. It's your investment in that candidate. That's, that's a great thing to have, in my view. That's why I've always been against public financing, is 'cause somebody gives me ten, if they give me \$10, I guarantee that not only, I've not only got their vote, but I got all their friends' vote too.

I mean, so we're not for banning contributions.

Feingold: Yeah, and there is obviously a huge difference [laughs] between \$2,500 and \$1 million. I mean it's, it's almost an absurdity to think that that's the same kind of situation. And a, a politician, whether it's a challenger or an incumbent, if somebody's given 'em 2,500 bock, bucks, and tries to put the, the arm on 'em, he'd just laugh at 'em, he'd never talk to 'em again.

Blumberg: Right.

Feingold: You know, "This is ridiculous." On the other hand, how does that work when you, when you've had this sort of corrupt discussion about giving a million or \$2 million? That, as John said, that's the reason that we have limits, that's the reason Supreme Court has approved limits in Buckley v. Vallejo, and now we don't have such limits with regard to the phony independent contributions of corporations and unions.

That's a complete different thing than the Washington fundraisers, which are unfortunate, but don't compare to what we're talking about here.

- Blumberg: Right. So that's what I'm trying to get at. But the, the Washington fundraiser, that's like, that's, it's a problem, but that's a problem that, that you feel like we can live with.
- Feingold: Well, it might be a Super PAC, it might be a Super PAC fundraiser, though, now. See—
- Blumberg: Right, right.
- Feingold: —John and I almost put the Monocle out of business once because we passed the gift ban, and they were mad at us because members of Congress couldn't get free meals. So now John says, as John says, they put out the canapés, and you got people in there giving \$1 million. So they're back in business.
- Feingold: Yeah.
- Seabrook: The last thing that we want to ask is this sort of cyclical problem: It seems like the PACs were supposed to make things better, right? Because they were individuals joining together. The Super PACs were supposed to make things better. But everything that's supposed to make things better, yesterday's solution becomes today's problem.
- Feingold: I completely disagree with that because of what I said earlier. Notice, we passed McCain-Feingold. We had a system in place where there weren't unlimited contributions. People have to remember that things were different in 2006 and 2008. There were not these unlimited contributions. It's only, as John has said, because the Supreme Court went out of its way and some people

went out of their way, to gut the system through the Supreme Court.

So it's not like we didn't have the right concepts and we didn't have the right laws in place, and we wanted to add to it. So it isn't the case that this thing can never change; it isn't the case that every time they find a way, unless you include manipulating the law at the Supreme Court is a way—if that's, if that's gonna be the way things are, we got bigger problems than campaign finance. We no longer have a system of law in this country if the Supreme Court can pull stunts like this. So I think we're onto a higher plane of frustration than just campaign finance.

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