



**Testimony of Heather C. McGhee, President of Demos
Before the Committee on the Judiciary of the United States Senate
Regarding the Nomination of Judge Neil Gorsuch to Become
Associate Justice of the United States Supreme Court
March 23, 2017**

Introduction

Chairman Grassley, Ranking Member Feinstein, Senators, thank you for the privilege of testifying before the Senate Judiciary Committee today.

My name is Heather McGhee and I am the President of Demos, a public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy.

I've come here today to urge this Committee to reject President Trump's nomination of Judge Neil Gorsuch to a lifetime appointment on the nation's highest court.

With the Supreme Court split four-to-four on so many critical issues, the stakes could not be higher. Judge Gorsuch has gone out of his way to support the wealthy and powerful over the rest of us, often breaking with his appellate court colleagues to do so.¹ On issues ranging from Wall Street accountability and workers' rights to criminal justice and the environment, he would move the country backwards.²

Beyond these critical topics, what's at stake today is the very shape and structure of our democracy: the way we make decisions about everything from who gets health care to whether a family with a full time worker will live in poverty; and whose voices are heard in that process.

Judge Neil Gorsuch has the potential to be the deciding vote to destroy the few remaining protections against big money dominating our democracy. His troubling record on money in politics, especially when added to the rest of his record of favoring wealthy interests over the rights of ordinary people, requires this Committee to reject his nomination to the U.S. Supreme Court.³

¹ Alicia Parlapiano & Karen Yourish, "[Where Neil Gorsuch Would Fit on the Supreme Court](#)," THE NEW YORK TIMES (February 1, 2017); Elliot Minberg, [The Dissents of Judge Neil Gorsuch: Far to the Right and Out of the Mainstream](#), PEOPLE FOR THE AMERICAN WAY (February 2017).

² [The Gorsuch Record](#), ALLIANCE FOR JUSTICE (February 2017).

³ [Judge Gorsuch's Extreme Views Could Undermine Urgently Needed Money-in-Politics Reforms](#), DEMOS & CAMPAIGN LEGAL CENTER (January 31, 2017).

I'd like to make three basic points in this testimony.

First, the way we fund our election campaigns in the U.S. enables wealthy individuals and institutions to translate their economic might directly into political power—and that is a serious problem for our democracy.

Second, putting Judge Gorsuch into a lifetime seat on the Supreme Court will make this worse, and could return us to an era in which powerful interests ran roughshod over workers, consumers, and anyone without a large checkbook and financial megaphone of their own.

Finally, there is an overwhelming bipartisan consensus supporting safeguards for our democracy, and Judge Neil Gorsuch is far outside that consensus. The public cares broadly and deeply about building a democracy where we can all be heard. Your constituents want you to stand up against big money, and your vote on this pivotal Supreme Court seat will be one of the best chances you will ever have to do so.

Our Billion-Dollar Democracy Resembles a Plutocracy

Our democracy is already under threat, with average voters convinced that their government is working not for them, but for powerful interests and the wealthy few.⁴ This should not surprise us when so much of the \$7 billion spent on 2016 federal elections came from so few.⁵ The concentration of political spending is even more severe than the increasing concentration of wealth afflicting our broader society.⁶

Just 25 people pumped more than \$600 million into last year's elections through political action committees, Super PACs, and direct contributions to candidates and parties.⁷ Less than 1 percent of the population provides the majority of the funds that determine who runs for office, who wins elections, and what issues get attention from our elected officials.⁸

⁴ [“Majority of Americans See Congress as Out of Touch, Corrupt,”](#) GALLUP (Sept. 2015) (reporting that 69% of respondents said the majority of Congressional members are focused on the needs of special interests, not constituents).

⁵ See [“Cost of Election,”](#) CENTER FOR RESPONSIVE POLITICS (visited Mar. 21, 2017).

⁶ Research demonstrates that in 2012, the top 0.10% (the top tenth of the top 1%) of families in terms of wealth distribution controlled roughly 22% of all wealth. In the 2012 election cycle, the top 0.01% (the top one *one-hundredth* of 1%) of the adult population accounted for 25% of all fundraising to political committees. Compare, e.g., Angela Monaghan, [US wealth inequality - top 0.1% worth as much as the bottom 90%](#), THE GUARDIAN (Nov. 13, 2014) with Peter Olsen-Phillips, Russ Choma et al., [The Political One Percent of the One Percent in 2014: Mega Donors Fuel Rising Cost of Elections](#), CENTER FOR RESPONSIVE POLITICS (April 30, 2015).

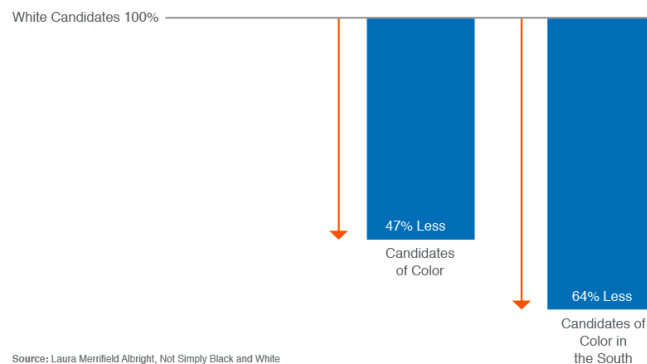
⁷ [“Top Individual Contributors: All Federal Contributions,”](#) CENTER FOR RESPONSIVE POLITICS (visited Mar. 21, 2017).

⁸ [“Donor Demographics,”](#) CENTER FOR RESPONSIVE POLITICS (visited Mar. 21, 2017).

These big donors and spenders aren't reflective of the country—they're wealthier, obviously, but they are also less likely to be women or people of color, and they have starkly different priorities when it comes to core public policies such as fair wages or debt free college.⁹

Studies show that candidates of color are less likely to run for office due to the money barrier and raise substantially less when they do.¹⁰ This is a key reason 90 percent of elected officials across the country are white—despite the fact that nearly 40 percent of us across this great country are people of color.¹¹

Figure 13. Candidates of color raise 47% less than white candidates overall, and 64% less than white candidates in the South (in 2006 state legislative races)



The result is that the deck is stacked, as Demos has shown in a series of reports with that name.¹² Our public policies are skewed towards top donors' preferences, and away from working families and people of color as a whole.

Princeton political scientist Martin Gilens has demonstrated that when the preferences of the wealthiest 10 percent of Americans conflict with those of the rest of the population, the 10 percent trumps the 90 percent.¹³ He concluded that “under most circumstances, the preferences of the vast majority of Americans appear to have essentially no impact on which policies the

⁹ See Sean McElwee, [Whose Voice, Whose Choice? The Distorting Influence of the Political Donor Class in Our Big-Money Elections](#), DEMOS (December 2016).

¹⁰ See Adam Lioz, [Stacked Deck: How the Racial Bias In Our Big Money Political System Undermines Our Democracy And Our Economy](#), DEMOS 27-29 (December 2014).

¹¹ [Who Leads Us?](#), WOMEN DONORS NETWORK (visited Mar. 21, 2017).

¹² David Callahan & J. Mijin Cha, [Stacked Deck: How the Dominance of Politics by the Affluent & Business Undermines Economic Mobility in America](#), DEMOS (February 2013); Adam Lioz, [Stacked Deck: How the Racial Bias in Our Big Money Political System Undermines Our Democracy and Our Economy](#), DEMOS (December 2014).

¹³ MARTIN GILENS, AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA (2012) at 83-84.

government does or doesn't adopt" and that "patterns of responsiveness... often correspond more closely to a plutocracy than to a democracy."¹⁴

This combination of disparate preferences and differential responsiveness creates a vicious cycle: the wealthy translate their economic might into political power; this allows them to write rules for our economy that keep them on top while working families struggle to stay afloat; which in turn allows the wealthiest few to pump even more money into politics each year. As we lather, rinse, and repeat in this vicious cycle, we take our democracy ever farther from the vision of political equality embodied in the principle of one person, one vote.

As senators, every member of this Committee has had to run for office in our big money system; so you know this problem better than most. You know, for example, that anyone wanting to run for a seat in the United States Senate needs to raise \$3,300 *every single day for six years* just to match the median winner.¹⁵ This equals the total income the average worker earns in a month.¹⁶

Figure 1.



Put another way, more than 2,000 times over the course of six years you have to be able to go out and find people who can give you \$3,000 or \$4,000 in just one day. And who are those contributors? Most of them are not your typical constituents. One of your colleagues, Senator Chris Murphy, was admirably frank about who he is reaching out to when dialing for dollars and the effect that has on the type of worldviews he's exposed to on a daily basis. When making fundraising appeals, he said he's "not call[ing] anyone who could not drop at least \$1,000," people who he estimated make at least \$500,000 to \$1 million per year.¹⁷

¹⁴ *Id.* at 1; *Id.* at 234.

¹⁵ Adam Lioz & Karen Shanton, [*The Money Chase: Moving From Big Money Dominance in the 2014 Midterms to a Small Donor Democracy*](#), DEMOS (2015).

¹⁶ [*Median usual weekly earnings of full time wage and salary workers by sex, quarterly averages, seasonally adjusted*](#), BUREAU OF LABOR STATISTICS (2016).

¹⁷ Paul Blumenthal, ["Chris Murphy: 'Soul-Crushing' Fundraising is Bad for Congress."](#) HUFFINGTON POST (May 7, 2013).

I talked a lot more about carried interest inside of that call room than I did in the supermarket . . . [The people I'm calling] have fundamentally different problems than other people. And in Connecticut especially, you spend a lot of time on the phone with people who work in the financial markets. And so you're hearing a lot about problems that bankers have and not a lot of problems that people who work at the mill in Thomaston, Conn., have. You certainly have to stop and check yourself.¹⁸

Senator Murphy is not alone. In the 2012 elections, 64 percent of the money your Senate colleagues and their election opponents raised from individual donors came in contributions of at least \$1,000, from just 0.04 percent of the population.¹⁹

That doesn't just skew your colleagues' worldviews; it acts as a critical barrier to entry. Most Americans can't hope to raise that much money from so few people—they just aren't that well connected to the one percent of the one percent. This is one of the reasons the Senate has far fewer women than it should, and only 10 African Americans, Latinos, or Asian Americans.²⁰

The Supreme Court Distorts Our Democracy

This is certainly not the democracy our Constitution *mandates*, or the one the public wants or deserves. Rather, this is the distorted democracy that Supreme Court decisions have forced upon us—a broken system where the size of our wallets determines the strength of our voices.

Supreme Court rulings have played a central role in creating and sustaining the current crisis. The justices' flawed approach to money in politics has shredded a series of common-sense protections against the power of special interests and wealthy individuals.²¹

At the heart of this flawed approach is the misguided notion that the people and our representatives may limit political contributions or spending only to fight corruption or its appearance, narrowly defined as cash-for-votes exchanges.²² Fighting corruption is important, but clean governance is not the only value at stake when concentrated wealth meets public power. There are also critical questions at play regarding the integrity of our democracy, full participation in our political system, and the relationship between economic might and political power.

Over several decades, the Court has struck down some of the most effective common-sense protections against big money, taking the following policy options off the table: limits on how

¹⁸ *Id.*

¹⁹ Blair Bowie & Adam Lioz, [Billion-Dollar Democracy: The Unprecedented Role of Money in the 2012 Elections](#), DEMOS & U.S. PIRG EDUCATION FUND (January 2013).

²⁰ Sheryl Estrada, ["The 115th Congress Not a Model for Diversity."](#) DIVERSITY, INC. (January 4, 2017).

²¹ Adam Lioz, [Breaking the Vicious Cycle: Rescuing our Democracy and Our Economy by Transforming the Supreme Court's Flawed Approach to Money in Politics](#), DEMOS (December 2015).

²² *Id.*

much personal or family wealth candidates can spend on their own campaigns; limits on total candidate spending; limits on contributions to, or spending by, individuals or groups supposedly not connected to candidates' campaigns; limits on contributions to ballot initiatives; bans on corporate spending on ballot initiatives; strict contribution limits set at levels that average Americans can afford to give; bans on corporate spending on candidate elections; providing additional "matching funds" to publicly financed candidates who face big money spending by opposing candidates or interest groups; and limits on the total amount one wealthy donor can contribute to candidates, parties, and political committees in an election cycle.²³

A recent Demos report called *Court Cash: 2016 Election Money Resulting Directly From Supreme Court Rulings* quantified the Court's impact for the first time.²⁴ We found that Supreme Court rulings enabled more than \$3 billion in 2016 election spending, including more than three-quarters of the money spent in the most competitive congressional races.²⁵

Federal Election Spending Attributable to Supreme Court Rulings (2016)



Demos

²³ *Id.*

²⁴ Adam Lioz, Juhem Navarro-Rivera & Sean McElwee, [Court Cash: 2016 Election Money Resulting Directly From Supreme Court Rulings](#), DEMOS (March 2017).

²⁵ *Id.*

**Portion of Competitive Congressional Race Spending
Attributable to Supreme Court Rulings (2016)**



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The most damaging Roberts Court rulings have been five-to-four decisions in which the majority’s basic assumptions about politics have been proven false, including the idea that so-called “independent expenditures” are actually independent of candidates and can’t be corrupting, or that disclosure laws would be comprehensive or effective by themselves in reining in the influence of big money.²⁶ With a Supreme Court responsive to the facts rather than ideology we could end Super PACs and get corporate money back out of our elections.

Judge Gorsuch’s Confirmation Would Threaten Remaining Protections

The next Supreme Court justice will have a pivotal role in ensuring our Constitution protects the rights and voices of all Americans. We need a ninth justice who understands that a true democracy cannot elevate big money over the voices of ordinary people and who will be open to reasonable limits on campaign spending. But from all we know of his record, Judge Neil Gorsuch would take us further down the Roberts Court’s extreme path.

Judge Gorsuch models himself after Justice Scalia, an extreme skeptic of protections against big money, and his own record speaks volumes.²⁷ Judge Gorsuch has faced two directly relevant cases. In *Hobby Lobby*, he voted to expand First Amendment rights for corporations, building on *Citizens United’s* troubling logic.²⁸ In *Riddle v. Hickenlooper*, he signaled openness to applying the harshest possible standard of review to campaign contribution limits—giving financial contributions a level of protection that the Supreme Court has not always afforded even our precious right to vote.²⁹

²⁶ Lawrence Norden & Iris Zhang, [Fact Check: What the Supreme Court Got Wrong in its Money in Politics Decision](#), THE BRENNAN CENTER FOR JUSTICE (January 2017).

²⁷ Adam Liptak, [“In Judge Neil Gorsuch, an Echo of Scalia in Philosophy and Style.”](#) THE NEW YORK TIMES (January 31, 2017).

²⁸ [Judge Gorsuch’s Extreme Views Could Undermine Urgently Needed Money-in-Politics Reforms](#), DEMOS & CAMPAIGN LEGAL CENTER (January 31, 2017).

²⁹ *Id.*

Judge Gorsuch's *Riddle* concurrence is notable because he went out of his way to write an opinion to discuss a matter—the potential for strict scrutiny—that was not necessary to decide the case; and because he cited non-majority opinions by Justice Thomas and Chief Justice Burger suggesting that all contribution limits should be subject to this type of review.³⁰ Given the opportunity by Senator Klobuchar to clarify his perspective on the subject during this hearing, Judge Gorsuch shed no meaningful light on his views.³¹

Taken together, these opinions show that Judge Gorsuch would be receptive to the anticipated attacks on our few remaining democratic safeguards. Even a relatively narrow reading suggests he would vote to strike down the current bans on both soft money contributions to political parties and corporations contributing directly to candidates.³² If confirmed, he could have the opportunity to do so in short order. The Supreme Court could hear a soft money challenge soon; and an ongoing case in Texas presents a challenge to the corporate ban.³³

Judge Gorsuch's opinions also appear to take one more step towards applying “strict scrutiny” to all contribution limits. We could see jurisdictions required to supply an absurd level of evidence to justify common-sense limits—such as proving the going rate to bribe local politicians is \$5,001 to support a \$5,000 contribution limit. Ultimately, dozens of contribution limits could be wiped away, creating a Wild West atmosphere for donors and politicians.

In a world where Judge Gorsuch joins a majority bloc of pro-big money justices, the vicious cycle churns ever faster. Large corporations and wealthy individuals enjoy virtually unlimited ability to translate their economic might into political power. Our legislatures and other elected offices become even more skewed by race and class; policy becomes even more tilted towards the preferences of a donor class that is disproportionately male and largely excludes people of color; and working families and people of color across the nation continue to fall behind economically and be alienated politically.³⁴

In this world, we could return to the scandal-plagued days of unlimited soft money contributions to political parties.³⁵ We could see oil companies, Wall Street banks, and secret money groups

³⁰ *Riddle v. Hickenlooper*, 742 F.3d 922, 31 (10th Cir. 2014).

³¹ [Nomination of the Honorable Neil M. Gorsuch to be an Associate Justice of the Supreme Court of the United States \(Day 2\)](#), U.S. SENATE JUDICIARY COMMITTEE (March 21, 2017).

³² Richard L. Hasen, [“Why Gorsuch could lead court in wrong direction.”](#) CNN.COM (March 1, 2017).

³³ [Republican Party of Louisiana v. FEC](#), No. 16-865 (before the United States Supreme Court); [Texas Democratic Party v. King Street Patriots](#), No. 15-0320 (before the Texas Supreme Court).

³⁴ Adam Lioz, [Stacked Deck: How the Racial Bias in our Big Money Political System Undermines Our Democracy and Our Economy](#), DEMOS (2014).

³⁵ S. Rep. No. 105-167, at 4565-69 (1998). The report concluded “[t]he evidence indicates that the soft-money loophole is fueling many of the campaign abuses investigated by the Committee Soft money also supplied the

giving directly to candidates—something that hasn't happened since 1907.³⁶ And we could see contribution limits fall across the country, encouraging politicians to seek out only the views of the largest check-writers and ignore the middle and working classes.

Let's not forget what life was like before we banned corporations from dominating our politics in the first place. Workers were run ragged in round-the-clock shifts with meager pay, and regularly died on the job.³⁷ The right of laborers to form a union was not protected by state or federal law, and union organizers often faced violence.³⁸ The massive gap between rich and poor Americans was especially apparent to labor organizer Mary Harris ("Mother") Jones who noticed a breakout of Yellow Fever was killing predominantly poor and working class people, while wealthy individuals had the resources to avoid the disease or get proper treatment.³⁹ She described the conditions at the turn of the Twentieth Century that drove her organizing:

Hours of work down under ground were cruelly long. Fourteen hours a day was not uncommon, thirteen, twelve. The life or limb of the miner was unprotected by any laws. Families lived in company-owned shacks that were not fit for their pigs. Children died by the hundreds due to the ignorance and poverty of their parents.⁴⁰

It was against this backdrop of robber barons hoarding wealth at the expense of the poor and vulnerable that our longstanding history of limiting corporate political contributions emerged.

funds parties used to make contributions to tax-exempt groups, which in turn used the funds to pay for election-related activities." *Id.* at 4565.

³⁶ See, e.g., S. REP. NO. 113-223, at 9 (2014) (citing Tillman Act, 34 Stat. 864 (1907)).

³⁷ See JANNETTE THOMAS GREENWOOD, *THE GILDED AGE: A HISTORY IN DOCUMENTS* 57-59 (Oxford Univ. Press 2003). Author Jannette Greenwood notes:

As late as 1907, 500,000 workers were killed or injured each year. Workers in heavy industry—such as steelmaking, mining, and rail-roads—were especially susceptible. Approximately 2,000 coal miners died every year from mine explosions and cave-ins. In 1893 alone, 433 men died while attempting to couple railway cars. Workers had little recourse for being compensated by negligent companies. Liability laws limited the responsibility of companies to such an extent that workers rarely received restitution. While industrialized nations in western Europe, such as Germany and Great Britain, provided state-funded accident insurance for workers, the United States lagged far behind.

Id. at 59. Nor were workers compensated adequately for their work: "[a]round 1900, the average wage for workers in manufacturing was around 21.6 cents an hour, and the workweek lasted six ten-hour days. Average annual earnings were \$490, with no compensation for time off." *Id.* at 57.

³⁸ See generally *id.* at 49-65 ("Chapter Three: The Sorrows of Labor"). The author points out that while neither state nor federal laws protected laborers' right to organize, "throughout the Gilded Age government officials seldom hesitated to send state militias and federal troops to quell labor unrest." *Id.* at 50-51.

³⁹ See *id.* at 49.

⁴⁰ *Id.* at 57-58 (excerpting from Mary Harris Jones' autobiography).

The Public is Demanding Change

The public is counting on this Committee, and the Senate as a whole, not to let this happen again. Americans are deeply concerned about the impact of concentrated wealth on our democracy and understand the role of the Court. Ninety-four percent of voters believe that the power of big money in politics is a problem, and 90 percent say that the Supreme Court plays an important role in setting the rules.⁴¹

This is reflected in the fact that 110 members of Congress have taken the unusual step of writing to this Committee to request that its members press Judge Gorsuch on his record and views on money in politics.⁴² This call was joined in a similar letter from 121 organizations representing millions of members concerned with democracy, civil rights, workers' rights, environmental protection, faith values, and more.⁴³

Outside the Beltway, this is not a partisan issue at all. Ninety-one percent of President Trump's own voters thought it was important that he appoint someone to the Supreme Court who is open to limiting big money.⁴⁴ Seventy percent of Republicans say that Congress should reject any nominee "who will help the wealthy and privileged wield too much power in our elections."⁴⁵

In fact, 85% of Americans believe we need fundamental changes to our system for funding political campaigns.⁴⁶ The influence of special interest money is the biggest problem voters have with politicians.⁴⁷

The American people are demanding change to a political system that favors the already-wealthy and well-connected. Put simply, Judge Gorsuch has not shown sufficient commitment to our constitutional values of liberty, equality, and justice for all to earn Demos' support, or yours. We urge you to vote against Judge Gorsuch's confirmation, and tell your constituents that a key reason you did was to stand with them over big money. They will thank you.

⁴¹ [The Supreme Court and Money in Politics: Survey Topline Findings](#), HATTAWAY COMMUNICATIONS (January 2017).

⁴² Rep. John Sarbanes, "[110 House Members Demand Public Answers from Judge Gorsuch on Money in Politics](#)" (March 14, 2017).

⁴³ "[120 Groups Ask: Will Gorsuch Defend the Rights of Everyday People to be Heard Over Big Donors?](#)," DEMOS & EVERY VOICE (March 14, 2017).

⁴⁴ [The Supreme Court and Money in Politics: Survey Topline Findings](#), HATTAWAY COMMUNICATIONS (January 2017).

⁴⁵ *Id.*

⁴⁶ Nicholas Confessore & Megan Thee-Brenan, "[Poll Shows Americans Favor an Overhaul of Campaign Financing](#)," THE NEW YORK TIMES (June 2, 2015).

⁴⁷ [Beyond Distrust: How Americans View Their Government](#), PEW RESEARCH CENTER (November 23, 2015).