




12-19-2016

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Larson, Bruce A. "Commentary: Justice Who Follows Scalia's Path Would Hurt the Working Class." Philly.com (December 19, 2016).

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# Commentary: Justice Who Follows Scalia's Path Would Hurt the Working Class

## **Abstract**

During the campaign, Donald Trump released a list of 21 conservatives from which he promised to pick Supreme Court justices, should he win the election. With President-elect Trump apparently nearing a decision on a nominee to replace the late Justice Scalia, Senate Republicans are no doubt eagerly awaiting the chance to confirm Trump's pick and restore a conservative majority on the court. [*excerpt*]

## **Keywords**

presidential campaign, supreme court, Antonin Scalia, Donald Trump

## **Disciplines**

American Politics | Supreme Court of the United States



## Commentary: Justice who follows Scalia's path would hurt the working class

**Updated:** December 19, 2016 — 3:01 AM EST

By Bruce Larson

During the campaign, Donald Trump released a list of 21 conservatives from which he promised to pick Supreme Court justices, should he win the election. With President-elect Trump apparently nearing a decision on a nominee to replace the late Justice Scalia, Senate Republicans are no doubt eagerly awaiting the chance to confirm Trump's pick and restore a conservative majority on the court.

But the replacement of Scalia with a like-minded conservative should trouble working-class voters who bought Trump's promise to fix the rigged system that undermines their interests. That's because any conservative nominee to the court is likely to back the conservative agenda of gutting campaign-finance regulations, the result of which has been to fortify the rigged system Trump vowed to fix.

U.S. elections are awash in so-called "outside spending" - money spent by groups and individuals independently of candidates - and conservatives on the Supreme Court deserve much of the blame.

In two cases, *Wisconsin Right to Life v. Federal Election Commission* (2006) and *Citizens United v. Federal Election Commission* (2010), a 5-4 conservative majority on the court voted to invalidate key restrictions on big spenders seeking to influence elections. In a third case, *SpeechNow.Org v. Federal Election Commission* (2010), a federal appeals court relying on the precedent set in *Citizens United* gave constitutional backing to Super PACs, groups empowered to raise and spend money without limit in political campaigns.

The results of the court's crusade to deregulate campaign finance should come as no surprise. According to the nonpartisan Center for Responsive Politics, the 2016 election set a record for outside spending, with roughly \$1.7 billion spent by groups, individuals, and political parties. In the nine most competitive U.S. Senate contests alone, outside spending by groups totaled more than \$576 million. In several of these contests, groups spent more money than the candidates themselves.

Only a small share of the outside money flooding U.S. political campaigns advances the interests of working-class voters so vital to Trump's victory. Disclosure in this area is murky, and final breakdowns have yet to be tallied. But the Center for Responsive Politics reports that, by mid-October, business interests had poured \$864 million into federal campaigns, including \$246 million spent by the securities and investment sector. Meanwhile, labor groups were responsible for only \$74 million of the outside money spent in federal contests.

Campaign money is hardly the only feature of Washington politics that undercuts working-class interests, and it may not even be the most important. The millions spent on lobbying between elections may be more pernicious to working-class concerns than money spent in campaigns. Moreover, gridlock in Congress has kept it from updating programs important to working-class citizens. Still, working-class Americans are surely not helped by the fact that such a small share of the outside money flooding U.S. political campaigns comes from groups that don't speak for their interests.

The reality is that nearly any deregulation of campaign finance is likely to harm working-class citizens because political donors are so unrepresentative of this group. Yet nearly any conservative nominated to replace Scalia is likely to share his zeal for deregulating campaign finance.

An emboldened conservative majority on the court might even move to finish off the few campaign-finance restrictions still in place. In his book *Plutocrats United*, election law expert Richard Hasen explains how Chief Justice John Roberts' majority opinion in *McCutcheon v. Federal Election Commission* (2014) - another 5-4 decision loosening campaign-finance restrictions - practically invites lower courts to further dismantle campaign-finance laws. Such cases will then inevitably make their way to the high court, where Roberts and his fellow conservatives can complete their assault on the campaign-finance system.

Voters don't naturally link the Supreme Court to a political system awash in campaign money. Senators concerned about the influence of big money in elections (Bernie Sanders comes to mind) need to help voters make the connection.

With the eight sitting members of the court evenly split on campaign finance, a Trump nominee who shares Scalia's contempt for regulation will almost assuredly doom any reasonable restrictions on campaign money for the foreseeable future. That would further erode the interests of working-class voters for whom Trump promised to speak.

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