

Comparative Advantage: The Ends and Means of Campaign Regulation A Response to Professor Ringhand

DANIEL P. TOKAJI*

Comparative election law is poised for a breakthrough. The global study of laws governing elections and politics has not exactly been moribund over the years, but it has not been especially robust either. That is particularly true in the United States. American election law scholars have tended to focus on U.S. election law, not surprisingly given the perceived exceptionalism of our speech law. But in an era when public faith in democracy is so imperiled around the world,¹ the need for comparative study of election law has never been stronger. The laws governing campaign speech and finance are a particularly vital subject for analysis, given the proliferation of false and misleading information—much of it coming from non-domestic sources and amplified globally through digital media.² Now more than at any point in the modern history of democracy, we must pay attention to what other democratic countries are doing to protect themselves from those who would seek to undermine collective self-government.³

Professor Lori Ringhand materially advances the comparative study of election law through her article, *First Amendment (Un)Exceptionalism: A Comparative Taxonomy of Campaign Finance Reform Proposals in the United States and United Kingdom*.⁴ Her discussion of reform efforts in the U.S. and U.K. squarely confronts the myth that the American speech tradition renders the comparative study of campaign law pointless.⁵ The article also offers a

* Associate Dean for Faculty, Charles W. Ebersold and Florence Whitcomb Ebersold Professor of Constitutional Law, The Ohio State University Moritz College of Law. The author thanks Lori Ringhand for her comments on an earlier version.

¹ See Aziz Huq & Tom Ginsburg, *How to Lose a Constitutional Democracy*, 65 UCLA L. REV. 78, 78 (2018). For evidence of the worldwide decline of public faith in democracy, see Roberto Stefan Foa & Yascha Mounk, *The Signs of Deconsolidation*, 28 J. DEMOCRACY 5, 7 (2017), and Daniel P. Tokaji, *Vote Dissociation*, 127 YALE L.J.F. 761, 762–63 (2018).

² See Richard L. Hasen, *Deep Fakes, Bots, and Siloed Justices: American Election Law in a “Post-Truth” World*, 36 ST. LOUIS U. L.J. (forthcoming 2020) (manuscript at 23–24), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3418427 [<https://perma.cc/E9XM-4CEL>]; Nathaniel Persily, *Can Democracy Survive the Internet?*, 28 J. DEMOCRACY 63, 63–64 (2017).

³ For a detailed examination of the role of courts in protecting democracy from authoritarianism and division, see SAMUEL ISSACHAROFF, *FRAGILE DEMOCRACIES: CONTESTED POWER IN THE ERA ON CONSTITUTIONAL COURTS* 21 (2015).

⁴ Lori A. Ringhand, *First Amendment (Un)Exceptionalism: A Comparative Taxonomy of Campaign Finance Reform Proposals in the United States and United Kingdom*, 81 OHIO ST. L.J. 405 (2020).

⁵ *Id.* at 418–19.

taxonomy of reform proposals that goes beyond the traditional mechanisms of campaign regulation,⁶ thus providing a helpful template for organizing future comparative work.

This essay attempts to further the goals of Professor Ringhand's article by considering how the comparative study of campaign regulation might be expanded beyond the U.S. and U.K. Part I discusses the contributions of her article, not only in fruitfully comparing these two countries, but also in providing a framework for the future study of campaign regulation. Part II steps back to considerations that are in the background of Professor Ringhand's article, but essential to future work on the subject. It identifies the ends of campaign regulation that are shared by the U.S., U.K., and other democratic countries now under tremendous strain due to societal divisions and skepticism of public institutions. Part III suggests how the comparative study of campaign regulation might move forward, identifying three questions that are particularly vital to the sustenance of democracy around the world: 1) combatting digital disinformation, 2) strengthening electoral institutions, including those charged with campaign regulation, and 3) confronting the harmful effects of rising economic inequality on democratic governance.

I. A TAXONOMY OF CAMPAIGN REGULATION

There is no denying that the American free speech tradition is distinctive in important respects, including its libertarian orientation, skepticism of content discrimination, and tendency to value expressive freedom over other interests.⁷ Although we are an outlier in some ways, U.S. free speech law isn't quite as exceptional as is commonly supposed.⁸ First Amendment jurisprudence has never adopted the absolutist rule that anything that can be characterized as speech is protected, regardless of its consequences.⁹ To the contrary, American

⁶ *Id.* Here and throughout, I use the term "campaign regulation" to encompass both laws regulating election campaign-related speech (including restrictions on false and misleading statements), and laws regulating campaign finance. The term "regulation" is used in a broad sense, to include not only traditional command-and-control regulation that attempts to mandate or prohibit certain actions through a publicly enforceable rule, but also government interventions designed to influence conduct through other means. See Barak Orbach, *What Is Regulation?*, 30 YALE J. ON REG. ONLINE 1, 3 (2012) (discussing different ways in which term "regulation" is used).

⁷ See ISSACHAROFF, *supra* note 3, at 21; Ronald J. Krotoszynski, Jr., *Free Speech Paternalism and Free Speech Exceptionalism: Pervasive Distrust of Government and the Contemporary First Amendment*, 76 OHIO ST. L.J. 659, 660–61 (2015).

⁸ See Ringhand, *supra* note 4, at 407.

⁹ *Virginia v. Black*, 538 U.S. 343, 358 (2003) ("The protections afforded by the First Amendment . . . are not absolute, and we have long recognized that the government may regulate certain categories of expression consistent with the Constitution."); 1 RODNEY A. SMOLLA, SMOLLA AND NIMMER ON FREEDOM OF SPEECH § 2:50 (2019) ("[A]bsolutism is fundamentally too simplistic a method of analysis to be a viable method for handling modern

free speech law has long recognized certain categories of expression—including bribery, threats, defamation, obscenity, and child pornography—that are unprotected or less protected.¹⁰

As Professor Ringhand observes, the U.S. constitutional law governing electoral campaigns is at once exceptional and not-so-exceptional. The First Amendment does not prevent public entities from countering false and misleading speech with truthful speech. To the contrary, our tradition has long recognized counterspeech as the preferred antidote for such speech.¹¹ As she also observes, the Supreme Court has generally been receptive to transparency rules that compel disclosure of campaign contributions and expenditures, even in *Citizens United v. FEC*.¹² And contribution limits are permissible if closely drawn to the interest in preventing the appearance or reality of political corruption.¹³ This is an exception to the general First Amendment rule that content discrimination is subject to strict scrutiny.¹⁴ Campaign contribution limits are a form of content discrimination—they regulate expression based on its campaign-related content¹⁵—but they are not subject to strict scrutiny.¹⁶ On the other hand, restrictions on campaign *expenditures* are subject to strict scrutiny and may only be justified if narrowly tailored to a compelling interest.¹⁷

First Amendment conflicts. Numerous judicial decisions recognize that absolutism cannot function as a magic talisman in First Amendment litigation, as it cannot so function in most arenas of constitutional law.”)

¹⁰ See, e.g., Ringhand, *supra* note 4, at 452 (describing many of the unprotected or less-protected categories).

¹¹ *Whitney v. California*, 274 U.S. 357, 377 (1927) (Brandeis, J., concurring) (remedy for false speech is “more speech, not enforced silence”).

¹² Ringhand, *supra* note 4, at 439–40 (citing *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 372 (2010)).

¹³ *Nixon v. Shrink Mo. Gov’t PAC*, 528 U.S. 377, 387–88 (2000) (campaign contribution restrictions must be “closely drawn” to a “sufficiently important interest,” such as preventing corruption and its appearance).

¹⁴ See, e.g., *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2228 (2015) (“A law that is content based on its face is subject to strict scrutiny regardless of the government’s benign motive, content-neutral justification, or lack of ‘animus toward the ideas contained’ in the regulated speech.”); Ashutosh Bhagwat, *In Defense of Content Regulation*, 102 IOWA L. REV. 1427, 1430–36, 1439–46 (2017) (explaining how the Roberts Court has broadened and hardened the prohibition on content discrimination).

¹⁵ The lower level of constitutional scrutiny for contribution limits, relative to expenditure limits, derives from *Buckley*. Ringhand, *supra* note 4, at 425–26. The *Buckley* Court viewed the impingement on speech arising from contribution limits as “marginal,” thus warranting a more relaxed standard. *Buckley v. Valeo*, 424 U.S. 1, 20–23 (1976). *Buckley* nevertheless recognized that contribution limits impinge to some degree on speech, as well as association. *Id.* at 21–22. And because they restrict speech based upon its campaign-related content, they are properly understood as a form of content regulation. Under FECA, for example, a contribution to an election campaign or PAC is subject to a limit to which other contributions—say to a human rights or gun rights group—are not subject. Ringhand, *supra* note 4, at 413–14.

¹⁶ *Shrink Mo. Gov’t PAC*, 528 U.S. at 387–88.

¹⁷ See *Buckley*, 424 U.S. at 44–45.

Since *Buckley v. Valeo*, the Court has held that promoting political equality is not such an interest, and therefore may not be used to justify restrictions on campaign finance.¹⁸ This aspect of U.S. campaign finance law is indeed exceptional, as other countries have recognized that restrictions on campaign spending are justifiable—and even necessary—to prevent wealthy interests from exercising undue influence.¹⁹

Against this backdrop, Professor Ringhand's article offers two novel contributions to the existing literature. The first is to identify important similarities between the American and British approaches to campaign regulation.²⁰ She helpfully begins by noting the similar concerns surrounding the 2016 elections in both countries, including the influx of foreign money and the rise of false, misleading, and inflammatory expression spread through digital media.²¹ Both countries were targets of Russian disinformation campaigns, designed to spread false information, fan the flames of political polarization, and ultimately to undermine our democratic systems.²² As Professor Ringhand explains, the U.S. and U.K. approaches to this set of problems hasn't been identical. The U.S. has focused more on foreign interference, the U.K. on data breaches, microtargeting, and campaign finance violations.²³ But our two countries are attempting to confront the similar set of problems that emerged in the Brexit and U.S. presidential elections of 2016.²⁴ After providing an overview of the law regulating campaign finance in the U.S. and U.K.,²⁵ Professor Ringhand turns to four distinct forms of campaign regulation that both countries have embraced.²⁶

This is where Professor Ringhand offers her second and most important contribution to the comparative study of campaign regulation: a taxonomy of reform proposals. Aiming to bring greater “systemic coherence to comparative

¹⁸ *Id.* at 48–49.

¹⁹ See INT'L IDEA, FUNDING OF POLITICAL PARTIES AND ELECTION CAMPAIGNS: A HANDBOOK ON POLITICAL FINANCE 21–22, 262–63 (Elin Falguera et al. eds., 2014), <https://www.idea.int/sites/default/files/publications/funding-of-political-parties-and-election-campaigns.pdf> [<https://perma.cc/2K7Y-J3SS>] (contrasting the U.S. with other Anglophone democracies); Daniel P. Tokaji, *The Obliteration of Equality in American Campaign Finance Law: A Trans-Border Comparison*, 5 J. PARLIAMENTARY & POL. L. 381, 393–94 (2011) (contrasting the U.S. and Canada).

²⁰ I use the term “British” as shorthand for the U.K., even though its territorial reach extends beyond the island of Britain.

²¹ Ringhand, *supra* note 4, at 408–10.

²² Larry Diamond, *Russia and the Threat to Liberal Democracy: How Vladimir Putin Is Making the World Safe for Autocracy*, ATLANTIC (Dec. 9, 2016), <https://www.theatlantic.com/international/archive/2016/12/russia-liberal-democracy/510011/> [<https://perma.cc/S7PW-5HDP>]; Andrew Higgins, *Putin's Russia, Punching Above Its Weight, Keeps Adversaries Off Balance*, N.Y. TIMES (Dec. 23, 2019), <https://www.nytimes.com/2019/12/23/world/europe/russia-putin.html> [<https://perma.cc/R2AY-TX5B>].

²³ Ringhand, *supra* note 4, at 409–10.

²⁴ *Id.* at 410.

²⁵ *Id.* at 410–18.

²⁶ *Id.* at 418–62.

work in this area,”²⁷ she identifies four different types of reform proposals. Going from least to most speech-intrusive, they are:

1. *Public education.* One suggestion is to adopt measures designed to make voters better informed consumers of information, especially that which is distributed electronically.²⁸ This might include so-called “digital literacy” efforts by government actors.²⁹ As she explains, this form of public intervention does not face serious legal barriers in either the U.S. or U.K., both of which have taken modest steps in this area.³⁰

2. *Disclosure and disclaimer requirements.* Another means by which to help voters become better information consumers is to require candidates, political parties, and other groups to provide information about who is behind their speech.³¹ As she notes, the U.S. Supreme Court has looked more favorably on compelled disclosure and disclaimer requirements than it has on other forms of campaign regulation.³² But existing U.S. law leaves major gaps, exacerbated by the Federal Election Commission’s narrow interpretation of statutory requirements,³³ which have given rise to the proliferation of so-called “dark money”—campaign spending whose ultimate source is unknown.³⁴ Professor Ringhand explains that the U.K. Supreme Court (formerly the Lords of Appeal in the House of Lords) has taken a similarly deferential approach to disclosure and disclaimer, upholding them against challenge under the free expression requirements of the European Convention on Human Rights.³⁵ While the U.K. has disclaimer requirements more extensive those applicable in the U.S., it too faces gaps in its transparency laws, especially with respect to social media.³⁶ This highlights the enormous challenges that the U.S., U.K., and other

²⁷ *Id.* at 418.

²⁸ *Id.* 421–22.

²⁹ NATHANIEL PERSILY, KOFI ANNAN FOUND., *THE INTERNET’S CHALLENGE TO DEMOCRACY: FRAMING THE PROBLEM AND ASSESSING REFORMS* 7 (2019), https://storage.googleapis.com/kofiannanfoundation.org/2019/02/a6112278-190206_kaf_democracy_internet_persily_single_pages_v3.pdf [<https://perma.cc/58HG-FVDS>] (defining digital literacy as “[e]ducating users to become more discerning consumers of information and more skilled in understanding the platforms on which communication takes place”).

³⁰ Ringhand, *supra* note 4, at 421–22.

³¹ *Id.* at 422–23.

³² *Id.* at 413.

³³ *Id.* at 427–28.

³⁴ Maggie Severns, *Dark-Money Groups Were Ordered to Reveal Their Donors. They Didn’t.*, POLITICO, <https://www.politico.com/story/2018/10/16/donors-to-dark-money-groups-still-mostly-hidden-despite-court-ruling-905894> [<https://perma.cc/7KX9-5SUL>] (last updated Oct. 16, 2018).

³⁵ Ringhand, *supra* note 4, at 432–33 (citing *R (Animal Defenders International) v. Secretary of State for Culture, Media, and Sport* [2008] UKHL 15, [28], [2008] 1 AC 1312 (appeal taken from Eng.)).

³⁶ *Id.* at 450.

democracies face in helping keep voters informed about the sources of information—including disinformation³⁷—that they are consuming.

3. *Source Exclusions.* Both the U.S. and U.K. have attempted to prohibit certain entities from giving or spending money to influence election campaigns.³⁸ One form of source exclusion is to prohibit for-profit corporations from making campaign expenditures, as the U.S. did for many years before that ban was struck down in *Citizens United*,³⁹ and as many countries still do.⁴⁰ Another form of source exclusion is to prohibit foreign governments or individuals from giving or spending money to influence elections. In the U.S., federal law has long prohibited any “foreign national”—defined to include foreign governments and their agents, as well as individuals who are not U.S. citizens or permanent residents⁴¹—from making campaign contributions or expenditures in any U.S. election.⁴² Before he was elevated to the Supreme Court, then-Judge Brett Kavanaugh wrote an opinion that upheld the ban on foreign contributions and expenditures, while narrowing it to exclude electioneering communications.⁴³

As Professor Ringhand explains, the U.K. also has a ban on foreign contributions, adopted as part of the Political Parties, Elections, and Referendum Act of 2000, though it defines “foreign” in a more nuanced way than the U.S..⁴⁴ Both countries have also experienced challenges in enforcing their restrictions on foreign campaign intervention. In the U.K., these concerns came to the fore with questionable contributions to the Leave campaign prior to the Brexit vote, as well as with social media advertising designed to influence the vote.⁴⁵ Our two countries’ difficulties in figuring out who is paying for digital speech, much less enforcing the limits on foreign subsidization, are emblematic of the worldwide challenge that democracies face in attempting to cabin foreign influence on their elections.

³⁷ See Dean Jackson, *How Disinformation Impacts Politics and Publics*, NAT’L ENDOWMENT FOR DEMOCRACY (May 29, 2018), <https://www.ned.org/issue-brief-how-disinformation-impacts-politics-and-publics/> [<https://perma.cc/X8QK-KA9H>].

³⁸ Ringhand, *supra* note 4, at 437–38.

³⁹ *Id.* at 438–40. Though corporations are now allowed to make independent expenditures, federal law continues to prohibit corporations from making contributions in federal election campaigns. 52 U.S.C. § 30118(a) (2012).

⁴⁰ See INT’L IDEA, *supra* note 19, at 368–91.

⁴¹ Federal Election Campaign Act Amendments of 1976, Pub. L. 94-283, § 324(b), 90 Stat. 475, 493; Foreign Agents Registration Act of 1938, Pub. L. 89-486, § 1, 80 Stat. 244, 244 (1966).

⁴² Federal Election Campaign Act Amendments of 1976 § 324(a).

⁴³ *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 289–90 (D. D.C. 2011), *aff’d*, 565 U.S. 1104 (2012); see Daniel P. Tokaji, *What Trump Jr. Did Was Bad, but It Probably Didn’t Violate Federal Campaign Finance Law*, JUST SEC. (July 14, 2017), <https://www.justsecurity.org/43116/trump-jr-bad-didnt-violate-federal-campaign-finance-law/> [<https://perma.cc/LF3Q-MECH>].

⁴⁴ Ringhand, *supra* note 4, at 442–44.

⁴⁵ *Id.* at 446–47.

4. *Content Exclusions*. Restricting speech based on its content raises the most serious constitutional concerns, particularly in the U.S.⁴⁶ Yet even here, there are areas where speech may be treated differently based upon its subject.

Campaign contribution limits are an example of permissible content-based discrimination. The Court has long recognized that the interests in preventing the appearance and reality of corruption may justify closely drawn limits on the amount of money given to candidates and parties.⁴⁷ Although there is no general exception to the First Amendment for false speech,⁴⁸ Professor Ringhand is right to argue that some false and misleading statements may constitutionally be prohibited.⁴⁹ Under *New York Times v. Sullivan* and its progeny, defamation of public officials and public figures may be proscribed, if made with “actual malice”—that is, with knowledge of its falsity or reckless disregard for whether it is true or false.⁵⁰ She helpfully draws on *Brown v. Hartlage*, a post-*Sullivan* opinion authored by Justice Brennan, in which the Court struck down an overly broad restriction on campaign speech while acknowledging a compelling interest in preventing “demonstrable falsehoods,” and holding that the law’s flaw was its failure to incorporate *Sullivan*’s “actual malice” standard.⁵¹ This suggests that false campaign speech may be prohibited, if it is made with knowledge of its falsity or reckless disregard of whether it is true. A more recent example is the Supreme Court’s decision in *Minnesota Voters Alliance v. Mansky*.⁵² While striking down an overly broad ban on political apparel at or near polling places, the Court stated in a footnote: “We do not doubt that the State may prohibit messages intended to mislead voters about voting requirements and procedures.”⁵³ This suggests that false or misleading speech concerning elections may be prohibited, if the ban is narrowly tailored to a compelling interest or satisfies *Sullivan*’s scienter requirement.

Content-based restrictions are the biggest area in which U.K. and U.S. law diverge. Article 10 of the European Convention on Human Rights, as well as the U.K. Human Rights Act, do restrict the government’s authority to regulate political expression.⁵⁴ But these laws don’t impose the same prohibition on content discrimination that is a core feature of American speech law.⁵⁵ On this

⁴⁶ *Id.* at 452.

⁴⁷ *Id.* at 439–40 (discussing *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310, 372 (2010)).

⁴⁸ *United States v. Alvarez*, 567 U.S. 709, 718 (2012).

⁴⁹ Ringhand, *supra* note 4, at 456.

⁵⁰ *N.Y. Times v. Sullivan*, 376 U.S. 254, 279–80 (1964); *see also* *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 154–55 (1967) (extending *Sullivan* standard to public figures); *Garrison v. Louisiana*, 379 U.S. 64, 67–75 (1964) (extending *Sullivan* standard to criminal libel cases).

⁵¹ *Brown v. Hartlage*, 456 U.S. 45, 60–62 (1982).

⁵² *Minn. Voters All. v. Mansky*, 138 S. Ct. 1876 (2018).

⁵³ *Id.* at 1889 n.4. For discussion of this statement, see William Marshall, *The Constitutionality of Campaign Deceptive Practices Acts* (Jan. 10, 2020) (unpublished abstract) [on file with author].

⁵⁴ Ringhand, *supra* note 4, at 432–33.

⁵⁵ *Id.* at 457.

basis, one U.K. court set aside an election result where the winning candidate made intentionally false statements, while another upheld the BBC's refusal to broadcast an anti-abortion advertisement due to its graphic content.⁵⁶ While limits on offensive speech go beyond what American First Amendment law would likely tolerate,⁵⁷ there is a strong basis for defending restrictions on false and misleading speech under *Sullivan*, *Brown v. Hartlage*, and *Mansky*, at least where it is knowingly false or made with reckless disregard of its truth or falsity.⁵⁸

Professor Ringhand's taxonomy provides a helpful framework for comparing campaign regulation in the U.S. and U.K., despite the significant differences in our free speech law. It also furnishes a promising foundation for comparing the regulatory regimes of other countries. But for us to move forward, we must first step back. Before considering the different means through which democratic countries regulate campaign speech and finance, we should take a more careful look at the underlying values that such reforms are designed to serve.

II. THE ENDS OF CAMPAIGN REGULATION

Professor Ringhand's taxonomy of regulatory reforms offers a useful starting point for comparative analysis, not just of the U.S. and U.K. systems, but also those of other democratic countries. If election law scholars are to pursue such comparative work, as I think we should, then it is essential for us to have clear understanding of the goals of reform. This might go without saying, but it should not. For we cannot determine which means of campaign regulation work best, without a clear understanding of what its ends are. Those ends, moreover, may well vary from one country to another.

My only significant concern about Professor Ringhand's excellent article is that it risks conflating means and ends. The introduction to her taxonomy identifies four goals of reform, corresponding to the four types campaign regulation she discusses:

- [1] better educating the public about digital literacy (public education);
- [2] enhancing the transparency of online campaigning (transparency);
- [3] reducing the influence of foreign interests over voters' choices (source exclusions), and

⁵⁶ *Id.* at 458–60.

⁵⁷ *See, e.g., Matal v. Tam*, 137 S. Ct. 1744, 1765 (2017) (striking down federal law prohibiting disparaging trademarks); *Street v. New York*, 394 U.S. 576, 592 (1969) (speech may not be prohibited merely because it is offensive to some listeners).

⁵⁸ I discuss this issue in greater depth in a forthcoming essay, Daniel P. Tokaji, *Truth, Democracy, and the Limits of Law*, 64 ST. LOUIS U. L.J. (forthcoming 2020) (manuscript at 15–23) [on file with author].

[4] excluding deceptive or otherwise content from online distribution (content exclusions).⁵⁹

These are all important objectives, to be sure, but they are not the only goals of campaign regulation. Nor do these encompass the universe of regulatory means that might be pursued to achieve these ends. The remainder of this section identifies the main goals of campaign speech and finance regulation. This will set the stage for Part III, which identifies the means of campaign regulation on which scholars and advocates might most productively focus, with a clear eye on the ultimate goals of reform.

1. *Preventing Corruption.* Across democratic countries, this is a universally shared goal of campaign finance regulation. Because this interest is so widely recognized, I will address it only briefly here, focusing on the way in which the American understanding of corruption has changed over the years.

Since *Buckley v. Valeo*, the Supreme Court has recognized prevention of corruption and its appearance as an important interest that may justify some forms of campaign regulation.⁶⁰ That said, the Court's understanding of corruption has changed over time.⁶¹ *Buckley* seemed to define corruption narrowly, as limited to a quid pro quo exchange of campaign money for political favors. But in subsequent decades, the Court understood corruption more expansively, to include the disproportionate access and influence enjoyed by wealthy donors and spenders.⁶² The most striking example was *Austin v. Michigan Chamber of Commerce*, which understood corruption to include "the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form."⁶³ The Roberts Court has adopted a much less generous conception of corruption and a correspondingly stricter approach to contribution and expenditure limits. The most notorious example is *Citizens United*, which understand corruption as limited to quid pro quo exchanges of campaign money for officials acts.⁶⁴ The anti-corruption rationale has thus been like an accordion, starting narrow, then widening under the Rehnquist Court years, only to have the air squeezed out of it in the hands of the Roberts Court.

2. *Informing Voters.* Another interest that the Supreme Court has long recognized as a justification for campaign regulation is to inform the electorate. This interest also goes back to *Buckley v. Valeo*, which recognized the interest in an informed electorate (alongside the anti-corruption interest) as a

⁵⁹ Ringhand, *supra* note 4, at 419–20.

⁶⁰ *Buckley v. Valeo*, 424 U.S. 1, 48–49 (1976).

⁶¹ For a longer description, see Renata E. B. Strause & Daniel P. Tokaji, *Between Access and Influence: Building a Record for the Next Court*, 9 DUKE J. CONST. L. & PUB. POL'Y 179, 182–88 (2014).

⁶² *See id.* at 185–87.

⁶³ *Austin v. Mich. Chamber of Commerce*, 494 U.S. 652, 659–60 (1990).

⁶⁴ *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 359 (2010).

justification for compelled disclosure requirements of the Federal Election Campaign Act of 1974.⁶⁵

Disclosure and disclaimer requirements are just one means through which voters and other citizens can be informed. As Professor Ringhand notes, public education of would-be voters is another means through which they can be better informed.⁶⁶ That includes digital literacy efforts that seek to help people develop critical analysis skills that will help them distinguish what's true from what's false. Public and private entities might also engage in a variety of other efforts to limit false and misleading campaign speech.⁶⁷ At one extreme is government censorship, but that is not the only available means of regulation, nor is it necessarily the most effective. The point is that false and misleading speech can be poisonous to democracy. That includes not only lies, but also bullshit. As philosopher Harry Frankfurt has explained, the difference is that a lie is a knowingly false statement made with a motive to deceive, while bullshit is a statement made with indifference to its truth or falsity with some other motive.⁶⁸

The proliferation of lies and bullshit—particularly its worldwide and instantaneous dissemination through digital means—is an alarming development.⁶⁹ Bullshit is deadly to democracy, even more so than lies, because democracy depends on a shared commitment to truth.⁷⁰ And digital dissemination spread through bots, trolls, and other technological means allows for false and misleading speech to be magnified, while making it hard to counteract such speech effectively. While First Amendment theory and doctrine have long recognized truth as essential to self-government,⁷¹ the rapid expansion of digital disinformation provides a grave threat to the interest in a well-informed citizenry.

3. *Limiting Foreign Influence.* Every country has an interest in ensuring that its political processes are not manipulated by another country. The idea of democratic self-government, moreover, proposes a self—that is a polity—that is distinct from other governments and peoples. The Supreme Court has recognized this interest in holding that non-U.S. citizens may be excluded from activities “intimately related to the process of democratic self-government.”⁷² Then-Judge Kavanaugh’s opinion for the three-judge district court in *Bluman*

⁶⁵ *Buckley*, 424 U.S. at 66–68.

⁶⁶ Ringhand, *supra* note 4, at 421–22.

⁶⁷ See PERSILY, *supra* note 29, at 36–50. These possibilities are discussed *infra* Part III.

⁶⁸ HARRY FRANKFURT, ON BULLSHIT 55, 61 (2005).

⁶⁹ Tokaji, *supra* note 58, at 48.

⁷⁰ See STEVEN LEVITSKY & DANIEL ZIBLATT, HOW DEMOCRACIES DIE 197 (2018); TIMOTHY SNYDER, ON TYRANNY: TWENTY LESSONS FROM THE TWENTIETH CENTURY 65–71 (2017).

⁷¹ See Tokaji, *supra* note 58, at 24.

⁷² *Bernal v. Fainter*, 467 U.S. 216, 220 (1984).

relied on this interest to uphold the longstanding federal ban on foreign campaign contributions and expenditures.⁷³

As Professor Ringhand notes, the interest in preventing foreign interference with elections is especially acute today, with Russian efforts to interfere in recent U.S. and U.K. elections.⁷⁴ Russia is not the only source of such threats, nor are the U.S. and U.K. its only potential targets.⁷⁵ None of this should be understood to deny that information and perspectives from foreign sources often enriches domestic political discourse.⁷⁶ At the same time, we cannot ignore evidence—like that contained in the Mueller report⁷⁷ and the recent bipartisan report of the Senate Intelligence Committee⁷⁸—of deliberate attempts by a foreign government to undermine our democracy. These attempts sometimes take the form of false and misleading information, so there is a link between this interest and the previous ones. But not all foreign attempts at interference take the form of false and misleading speech; nor does all false and misleading speech have a foreign source. Accordingly, it is important to recognize informing citizens and limiting foreign influence as distinct goals of campaign regulation.

4. *Diminishing Polarization.* A large and ever-growing body of literature documents the alarming rise in political polarization in the U.S. and other established democracies.⁷⁹ While there are advantages to parties with well-

⁷³ *Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281, 287–88 (D. D.C. 2011), *aff'd*, 565 U.S. 1104 (2012).

⁷⁴ Ringhand, *supra* note 4, at 408–10.

⁷⁵ See, e.g., LARRY DIAMOND, *ILL WINDS: SAVING DEMOCRACY FROM RUSSIAN RAGE, CHINESE AMBITION, AND AMERICAN COMPLACENCY* (2019); Tim Mak, *Experts Warn U.S. Should Prepare for Election Interference from China*, NPR (Sept. 5, 2019), <https://www.npr.org/2019/09/05/757803903/experts-warn-u-s-should-prepare-for-election-interference-from-china> [<https://perma.cc/T9H7-VRVD>]; Josh Rogin, *China's Efforts to Undermine Democracy Are Expanding Worldwide*, WASH. POST (June 27, 2019), <https://www.washingtonpost.com/opinions/2019/06/27/chinas-efforts-undermine-democracy-are-expanding-worldwide/> [<https://perma.cc/4KH7-JU9D>].

⁷⁶ See generally Ronald J. Krotoszynski, Jr., *Transborder Speech*, 94 NOTRE DAME L. REV. 473 (2018); Joseph Thai, *The Right to Receive Foreign Speech*, 71 OKLA. L. REV. 269 (2018).

⁷⁷ ROBERT S. MUELLER, III, U.S. DEP'T OF JUSTICE, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION 185–88 (Mar. 2019), <https://www.justice.gov/storage/report.pdf> [<https://perma.cc/F7PF-HSPL>] (redacted).

⁷⁸ 2 SENATE SELECT COMM. ON INTELLIGENCE, RUSSIAN ACTIVE MEASURES CAMPAIGNS AND INTERFERENCE IN THE 2016 U.S. ELECTION 4–8 (2019), https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume2.pdf [<https://perma.cc/5JRC-DMPE>] (redacted).

⁷⁹ For a small sampling of the U.S. literature, see ALAN I. ABRAMOWITZ, *THE DISAPPEARING CENTER: ENGAGED CITIZENS, POLARIZATION, AND AMERICAN DEMOCRACY* (2010); THOMAS E. MANN & NORMAN J. ORNSTEIN, *IT'S EVEN WORSE THAN IT LOOKS: HOW THE AMERICAN CONSTITUTIONAL SYSTEM COLLIDED WITH THE NEW POLITICS OF EXTREMISM* (2012); and Richard H. Pildes, *Why the Center Does Not Hold: The Causes of*

identified positions on key issues, an overly polarized electorate can lead to democratic erosion.⁸⁰ It can make it more difficult for opposing parties to compromise and create an us-versus-them mentality among different segments of the electorate, ultimately resulting in a loss of faith in public institutions—and even in democracy itself.⁸¹ Fomenting such disunity appears to have been precisely the goal of the Russian disinformation campaign during the 2016 U.S. presidential election. As documented in the bipartisan report of the Senate Intelligence Committee, one of that campaign’s primary goals was to animate and mobilize U.S. citizens against one another.⁸² The goal was to mobilize opposing sides of “socially divisive issues—such as race, immigration, and Second Amendment rights—in an attempt to pit Americans against one another and against their government.”⁸³ No group was targeted more heavily than African Americans, with fake social media accounts like “Blacktivist” created to generate millions of contacts.⁸⁴ The point is not that digital communication is the source of partisan and racial polarization, but rather that campaign speech can exacerbate these divisions, ultimately impairing the project of democratic self-government.

The way in which campaigns are financed can either exacerbate or ameliorate political polarization and its deleterious effects on democracy. There is increasing evidence that the American campaign finance system—in which less and less money flows through political parties, and more and more through outside groups⁸⁵—is making things worse. For our report, *The New Soft Money*, Renata Strause and I interviewed political players from across the ideological spectrum. Most of those we interviewed, whether aligned with the Democratic or Republican Party, were dissatisfied with the existing system. A persistent complaint was the way in which the current system diminishes the role of political parties, especially state and local parties, relative to outside groups.⁸⁶ More recently, Ray La Raja and Brian Schaffner have empirically documented how the current system inadvertently favors ideologically extreme candidates,

Hyperpolarized Democracy in America, 99 CALIF. L. REV. 273, 276–81 (2011). For a discussion of political polarization worldwide, see BROOKINGS INST., DEMOCRACIES DIVIDED: THE GLOBAL CHALLENGE OF POLITICAL POLARIZATION (Thomas Carothers & Andrew O’Donohue eds., 2019), and Jennifer McCoy et al., *Polarization and the Global Crisis of Democracy: Common Patterns, Dynamics, and Pernicious Consequences for Democratic Polities*, 62 AM. BEHAV. SCIENTIST 16 (2018).

⁸⁰ McCoy et al., *supra* note 79, at 17.

⁸¹ *Id.* at 18.

⁸² SENATE SELECT COMM. ON INTELLIGENCE, *supra* note 78, at 6.

⁸³ *Id.*

⁸⁴ *Id.*; see also Spencer Overton, *State Power to Regulate Social Media Companies to Prevent Voter Suppression*, 53 U.C. DAVIS L. REV. (forthcoming 2020) (manuscript at 103–12) [on file with author] (summarizing evidence on Russia’s microtargeting of black voters).

⁸⁵ DANIEL P. TOKAJI & RENATA E. B. STRAUSE, *THE NEW SOFT MONEY: OUTSIDE SPENDING IN CONGRESSIONAL ELECTIONS* 35 (2014).

⁸⁶ *Id.* at 62–63.

thus worsening political polarization.⁸⁷ To be sure, there is disagreement on who is to blame for the U.S.' dysfunctional system of campaign finance regulation—Republicans blame Congress for the restrictions on party fundraising adopted as part of the Bipartisan Campaign Reform Act of 2002, while Democrats blame the Supreme Court for *Citizens United* and other cases that have unleashed a tidal wave of outside spending. The point here is not to resolve this disagreement, but simply to recognize that the flow of campaign-related funding can affect political polarization, for better or for worse.

5. *Promoting Equality.* A central principle of democracy is that it should accord equal consideration to the interests of all its members.⁸⁸ That the strength of one's political voice should not depend on one's race or affluence is a cardinal principal of U.S. constitutional law. The leading example is the Supreme Court's decision in *Harper v. Virginia Board of Elections*, which struck down the poll tax on the ground that our wealth or affluence should not determine whether we are able to vote.⁸⁹ Yet the Court had declined to extend this equality principle to the realm of campaign finance regulation. *Buckley* infamously declared "the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others . . . wholly foreign to the First Amendment."⁹⁰ Since then, the Court has resisted the claim that equality can ever justify restrictions on campaign contributions or expenditures, although *Austin*'s expansive conception of the anti-corruption interest can be seen as allowing equality in through the back door.⁹¹

Other countries have been more accepting of equality—and more specifically, preventing wealthy individuals and groups from exercising disproportionate political power—as a rationale for campaign finance regulation. A leading example is Canada, whose Supreme Court has embraced equality as a justification for limiting campaign expenditures. *Harper* is the leading case here too, but a different case of that name: *Harper v. Canada*, in which the Supreme Court of Canada upheld restrictions on third-party expenditures (what we in the U.S. would call independent or outside

⁸⁷ RAYMOND J. LA RAJA & BRIAN F. SCHAFFNER, CAMPAIGN FINANCE AND POLITICAL POLARIZATION: WHEN PURISTS PREVAIL 7 (2015).

⁸⁸ See *Bush v. Gore*, 531 U.S. 98, 104 (2000) ("[O]ne source of [the right to vote's] fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter.").

⁸⁹ *Harper v. Va. Bd. of Elections*, 383 U.S. 663, 670 (1966).

⁹⁰ *Buckley v. Valeo*, 424 U.S. 1, 48–49 (1976).

⁹¹ Tokaji, *supra* note 19, at 388. As Rick Hasen and others have observed, there are multiple different forms of equality that might be considered in designing or assessing a campaign finance system. See generally RICHARD L. HASEN, PLUTOCRATS UNITED: CAMPAIGN MONEY, THE SUPREME COURT, AND THE DISTORTION OF AMERICAN ELECTIONS (2016). The theory of equality advanced here is that a person's affluence should not determine their influence on elections or policymaking. See Tokaji, *supra* note 19, at 385–86. The U.S. Supreme Court has rejected this conception of equality as a rationale for contribution or expenditure limits. *Id.* at 391–93.

spending).⁹² In a self-conscious repudiation of *Buckley*, the Court declared that “the State can restrict the voices which dominate the political discourse so that others may be heard as well.”⁹³ Other countries likewise recognize that a core function of the campaign finance system is to prevent wealthy interests from exercising undue influence over politics.⁹⁴

There are special reasons to be concerned about the unequal effects of concentrated wealth on politics in the present moment. For several decades, we have seen a well-documented increase in economic inequality within established democracies.⁹⁵ Although the U.S. is not alone in this respect, rising income and wealth inequality has been especially dramatic here. Economic inequality is linked to political polarization, for reasons that remain incompletely understood, but seem to be linked to growing public disenchantment with government generally.⁹⁶ What’s abundantly clear from historical experience in other countries is that rising economic inequality poses an existential threat to democratic governance.⁹⁷ An increasing body of social science evidence, moreover, documents the degree to which wealth determines political influence in the U.S.⁹⁸ Summing up the research, Adam Bonica and his co-authors explain that “the rich have been able to use their resources to influence electoral, legislative, and regulatory processes through campaign contributions, lobbying, and revolving door employment of politicians and bureaucrats.”⁹⁹ Though our campaign finance system is not the only factor contributing to rising economic inequality and attendant dysfunction, we must not lose sight of equality as a core end of our campaign finance system, notwithstanding the U.S. Supreme Court’s emphatic rejection of this as a legitimate democratic interest.

⁹² *Harper v. Canada*, [2004] S.C.R. 827 (Can.).

⁹³ *Id.* ¶ 62.

⁹⁴ INT’L IDEA, *supra* note 19, at 20.

⁹⁵ See generally THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* (2014).

⁹⁶ See Tokaji, *supra* note 1, at 771.

⁹⁷ LEVITSKY & ZIBLATT, *supra* note 70, at 227; Huq & Ginsburg, *supra* note 1, at 81.

⁹⁸ See, e.g., LARRY M. BARTELS, *UNEQUAL DEMOCRACY: THE POLITICAL ECONOMY OF THE NEW GILDED AGE 2* (2008); MARTIN GILENS, *AFFLUENCE AND INFLUENCE: ECONOMIC INEQUALITY AND POLITICAL POWER IN AMERICA* 81 (2012); Elizabeth Rigby & Gerald C. Wright, *Whose Statehouse Democracy?: Policy Responsiveness to Poor Versus Rich Constituents in Poor Versus Rich States*, in *WHO GETS REPRESENTED?* 189 (Peter K. Enns & Christopher Wlezien eds., 2011); KAY LEHMAN SCHLOZMAN ET AL., *THE UNHEAVENLY CHORUS: UNEQUAL POLITICAL VOICE AND THE BROKEN PROMISE OF AMERICAN DEMOCRACY* 15 (2012); Martin Gilens & Benjamin I. Page, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, 12 *PERSP. ON POL.* 564, 564 (2014); Bertrall L. Ross II & Su Li, *Measuring Political Power: Suspect Class Determinations and the Poor*, 104 *CALIF. L. REV.* 323, 355–76 (2016); Nicholas O. Stephanopoulos, *Political Powerlessness*, 90 *N.Y.U. L. REV.* 1527, 1577–79 (2015).

⁹⁹ Adam Bonica et al., *Why Hasn’t Democracy Slowed Rising Inequality?*, 27 *J. ECON. PERSP.* 103, 105 (2013).

This is not intended to be an exclusive list of the goals that campaign regulation seeks to serve. There are other interests, like promotion of robust competition and protecting shareholders, that could also be advanced in support regulation.¹⁰⁰ The main point is that any discussion of the means of campaign regulation should be grounded in an understanding of its multifarious goals, which are sometimes complementary and sometimes competing. This complicates the picture that Professor Ringhand draws. For one thing, it highlights other essential interests besides the ones on which she focuses (a point on which I have no doubt she would agree). It also suggests that there are often multiple regulatory means by which to pursue a goal—and that one form of regulation can sometimes advance multiple goals. There is not, in other words, a one-to-one correspondence between the means and ends of campaign regulation. With this in mind, I now turn to the means of campaign regulation that election law scholars and reformers should focus on, in the face of the existential threats to democratic self-government that countries around the world confront.

III. THE MEANS OF CAMPAIGN REGULATION

Having addressed the ends that campaign regulation should serve, I return to the means of regulation. As discussed in Part I, Professor Ringhand's taxonomy organizes the means of regulation employed in the U.S. and U.K. into four categories: public education, transparency, source exclusions, and content exclusions. This is a good start, but it only begins to capture the various regulatory options that countries have at their disposal. To her list, we might add *private regulation* by social media and other electronic platforms,¹⁰¹ public/private *co-regulation* through the setting of norms,¹⁰² *quantity restrictions* (i.e., limits on the amount that people may spend or contribute), *public financing*, and *timing* limitations (i.e., campaign periods or blackout periods during which electoral speech is limited).¹⁰³ And the list could go on.

¹⁰⁰ See DANIEL HAYS LOWENSTEIN ET AL., ELECTION LAW: CASES AND MATERIALS 810–11 (6th ed. 2017) (identifying interests served by campaign finance regulation).

¹⁰¹ See Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1618–25 (2018).

¹⁰² See Yasmin Dawood, *Disinformation and Democracy: Canada's Public-Private Approach to Electoral Integrity in the Digital Era*, OHIO ST. TECH. L.J. (forthcoming 2020) (manuscript at 2) [on file with author].

¹⁰³ France's 44-hour blackout period may be partly responsible for the failure of a hacking and smear attack mounted against President Emmanuel Macron just before the 2017 election. See Amanda Erickson, *Macron's Emails Got Hacked. Here's Why French Voters Won't Hear Much About Them Before Sunday's Election*, WASH. POST (May 6, 2017), <https://www.washingtonpost.com/news/worldviews/wp/2017/05/06/macrons-emails-got-hacked-heres-why-french-voters-wont-hear-much-about-them-before-sundays-election/> [https://perma.cc/9W4X-5WQY].

International IDEA, for example, has developed a country-by-country table identifying twenty-two regulatory features on which countries differ, drawn from a list of forty-three questions.¹⁰⁴

My goal in this Response isn't to identify and categorize all the different means of campaign regulation that different countries have adopted or might adopt. Nor is it to align these means of reform with the ends described in Part II, although I think that such an effort would be valuable.¹⁰⁵ Rather my goal is to identify the major challenges that should be the focus of campaign regulation in the U.S., U.K., and other democratic countries, and to sketch out the various means that they might consider through which to address these challenges. I suggest that comparative election law scholars and reformers focus on three areas:

1. *Confronting digital disinformation.* One of the greatest challenges facing democracies, both emerging and established, is the proliferation of lies and bullshit. Democracy depends on a shared commitment to truth. Yet we live in a world of false and misleading information, as well as political polarization, in which it has become increasingly difficult to find agreement on what is and isn't true.¹⁰⁶ Technology isn't entirely to blame for these problems, of course, though it can make them worse. Government censorship of false and misleading speech is one regulatory approach, but it is not the only and probably not the most effective solution—even putting aside the formidable free speech issues. Professor Nate Persily has identified seven “D”s for addressing the harms of online speech: deletion, demotion, disclosure, delay, dilution/diversion, deterrence, and digital literacy.¹⁰⁷ Professor Rick Hasen likewise suggests a multi-pronged approach that would include government counterspeech, disclosure and disclaimer requirements, and government prohibitions on knowingly or recklessly false speech.¹⁰⁸ And there are other possible solutions, including further restrictions on campaign-related speech by foreign governments, which could help address both the informational and foreign interference issues discussed in Part II. For present purposes, the key point is that responding to the increasing threat posed by digital disinformation is a common threat facing all democratic countries. It thus provides a prime opportunity for comparative election law scholars, allowing countries to learn from each other's experience.

¹⁰⁴ INT'L IDEA, *supra* note 19, at 367–91. For the full database, see *Political Finance Database*, INT'L IDEA, <https://www.idea.int/data-tools/data/political-finance-database> [<https://perma.cc/M7CA-DXUC>].

¹⁰⁵ A project that students of comparative campaign regulation might consider is to create a database identifying the different means and ends of reform that countries have adopted. Such a database might, for example, list the ends of reform along one axis and the means of reform (drawing on the International IDEA table mentioned in the preceding note) on the other, with the different countries that have adopted these means listed in each box.

¹⁰⁶ See Tokaji, *supra* note 58, at 1.

¹⁰⁷ PERSILY, *supra* note 29, at 36–50.

¹⁰⁸ Hasen, *supra* note 2, at 19, 24–30.

2. *Improving Electoral Institutions.* Democracy depends not only on the rules governing the electoral process, but on the institutions responsible for administering and enforcing those rules. Although electoral institutions aren't the main focus of Professor Ringhand's article, it does allude in passing to the difficulties the Federal Election Commission has faced in recent years.¹⁰⁹ The FEC routinely stalemates over all but the most routine matters, so much so that observers jokingly refer to it as the "Failure to Enforce Commission."¹¹⁰ The larger lesson is that the sustenance of democracy depends on our public institutions, including legislative bodies, administrative agencies, and courts.¹¹¹ Comparative election law scholars should therefore devote their attention not only to the rules governing electoral campaigns, but also to the administrative and judicial entities responsible for implementing those rules.¹¹²

3. *Ensuring Equal Regard for All Citizens Regardless of Economic Status.* The most urgent challenge that democracies across the world face is confronting the challenge imposed by rising economic inequality. As I have already noted, wealthy individuals and groups have become increasingly adept at obtaining what they want through the political process. Giving and spending on election campaigns is one means by which they do so. The most disastrous feature of American free speech doctrine is its refusal to recognize political equality as an interest that can ever justify limits on campaign spending. Although there is much to admire in American free speech law, this is one respect in which U.S. free speech law is truly exceptional—and not in a good way. The U.S. Supreme Court is not likely to recognize equality as a permissible end of campaign finance regulation, at least not as long as the current conservative majority sits. But this shouldn't stop us as scholars from continuing to affirm the centrality of equality, embodied in America's and Canada's *Harper* decisions, to constitutional law. Comparative study of different countries' approaches to the shared problem of rising economic inequality, including through their campaign finance laws, will embolden this effort. And ultimately, we may hope to see the overruling of the U.S. Supreme Court's unfortunate repudiation of equality in

¹⁰⁹ Ringhand, *supra* note 4, at 423–31.

¹¹⁰ Daniel P. Tokaji, *Beyond Repair: FEC Reform and Deadlock Deference*, in *DEMOCRACY BY THE PEOPLE: REFORMING CAMPAIGN FINANCE IN AMERICA* 172 (Eugene D. Mazo & Timothy K. Kuhner eds., 2018).

¹¹¹ See SNYDER, *supra* note 70, at 22 (“It is institutions that help us to preserve our decency. They need our help as well.”).

¹¹² In prior work, I have examined and compared the institutions charged with enforcing campaign finance laws in the U.S., Mexico, and Canada. See generally Daniel P. Tokaji, *Campaign Finance Regulation in North America: An Institutional Perspective*, 17 *ELECTION L.J.* 188 (2018). In a forthcoming book chapter, I consider how the administrative and judicial institutions across countries might fruitfully be compared. See generally Daniel P. Tokaji, *Comparative Election Administration: A Legal Perspective on Electoral Institutions*, in *Comparative Election Law* (Moritz Coll. of Law, Pub. Law & Legal Theory Research Paper Series, Paper No. 520, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3500868 [on file with author].

Buckley and *Citizens United*. Things don't look so rosy at the moment, but we must not give up the fight.

IV. CONCLUSION

All of us who study election law should thank Professor Ringhand for invigorating and structuring the comparative study of campaign regulation. She has provided a helpful framework for analyzing the different means of regulation that different countries employ, that should provide the basis for further research in this area. She has also given us an opportunity to reconsider the ends of regulation. As we consider contemporary challenges, we would do well to consider five major objectives of campaign regulation: preventing corruption, informing the electorate, limiting foreign interference, diminishing polarization, and promoting equality. A fruitful comparison of different countries' campaign finance systems can only proceed if we keep these goals in mind. While there are multiple means through which we might perceive these goals, I suggest that comparative legal scholars focus on confronting digital disinformation, the deterioration of electoral institutions, and spiraling economic inequality. Though these are dark days for democracy, they provide us with an ideal opportunity to advance the field of comparative election law. Professor Ringhand's article provides the seeds from which many flowers might bloom.