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The Chilling Effect of Oil & Gas Money on Democracy

Environmental Policy and Oversight Influenced by Polluter Interests

Spring 2016

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Clean Water Action is a national 501(c)(4) environmental organization with nearly one million members nationwide. Since our founding during the campaign to pass the landmark Clean Water Act in 1972, Clean Water Action has worked to win strong health and environmental protections by bringing issue expertise, solution-oriented thinking and people power to the table.

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Clean Water Fund is a national 501(c)(3) research and education organization that has been promoting the public interest since 1978. Clean Water Fund supports protection of natural resources, with an emphasis on water quality and quantity issues. Clean Water Fund's organizing has empowered citizen leaders, organizations and coalitions to improve conditions in hundreds of communities, and to strengthen policies at all levels of government.

Executive Summary

The oil and gas industry, aided by the erosion of campaign finance laws and nearly boundless lobbying budgets, asserts enormous influence over legislative processes in real time while also enjoying legacy influence in regulatory frameworks. The results can be devastating to the health of the environment and the public.

In the American political system, influence is leveraged by strategically spending money in campaigns at the federal and state level to elect politicians who will push for policies beneficial to their campaign contributors. Donations are made by corporations or their officers, and often both, to candidate committees or political organizations, to Super PACs which do not have contribution limits, or to "social welfare" organizations that also have no contribution limits or public disclosure requirements.

Since a series of controversial court decisions in 2010, more than $1 billion has been donated to Super PACs, of which over 60 percent was given by only 195 individuals. In 2014, the oil and gas industry contributed $64 million to campaigns, committees and outside groups.

Spending on advertisements has also increased dramatically. In 2012, more than $153 million was spent on ads promoting coal, oil and gas — four times as much as was spent advocating clean energy. In federal and gubernatorial races in 2014, ad spending by outside groups reached $1 billion. Nearly 40 percent came from so-called "dark money" groups not required to disclose sources of funding. In some competitive races, outside spending is actually larger than candidate spending.

Campaign finance laws allow the oil and gas industry to help elect candidates who support efforts to undermine environmental protections, drive pro-industry legislation and secure taxpayer subsidies to the industry. Recent studies show every $1 the industry spends on campaign contributions and lobbying efforts returns $100 back in subsidies — a 10,000 percent return on investment.

The industry utilizes its massive lobbying operations to influence policy decisions. In 2014, the industry spent more than $141 million and employed over 800 lobbyists for Congress alone. Un-

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matched lobbying power extends to the states too. When state lawmakers in California proposed several bills to protect the state's water, air, and communities, the oil industry spent $22 million to defeat the bills.

Influencing legislation is not the only strategy to weaken public health and environmental protections that impact industry bottom lines. Oil and gas interests also push elected officials to reduce oversight budgets at the Environmental Protection Agency (EPA) and other federal and state agencies. This can render vital safeguards ineffective as inspections decline and existing protections are unenforced. For example, despite a dramatic increase in oil and gas development in recent years, budgets for critical programs like EPA's Underground Injection Control (UIC) program, which has oversight authority over some aspects of the industry to protect drinking water, have been stagnant for years. As a result our land, air and water face increased risks. A 2016 Government Accountability Office investigation found that,"EPA headquarters and regional officials said that they have few resources to oversee state and EPA-managed programs."[1]

The consequences for the public and our environment are huge. Landmark environmental and public health laws are weakened and new protections, based on current science, are often stalled in Congress and state legislatures. The way campaign finance has disintegrated into a free for all with opportunities to funnel money through groups with no public disclosure creates an environment where lobbying and campaign activity cannot be fully policed.

How It Works

Oil and gas companies give money directly to political candidate organizations, fund trade associations (American Petroleum Institute, Independent Petroleum Association of America, etc) and funnel money through Super PACs and "social welfare" groups commonly referred to as "dark money" operations.

For the purpose of this report, the "oil and gas industry" encompasses companies including exploration, production and refiners, pipeline companies, and also ultra-rich donors with interests in oil and gas development.

Each year, and more dramatically during election cycles, companies give directly to candidate committees or political party organizations such as the Republican Governors Association or Republican Attorney General Associations.[2,3] Most large oil companies have their own political action committees (PAC) like the ExxonMobil PAC or the Marathon Oil Employees PAC. These groups allow the company to spend even more on the political process. PACs are required by the Federal Exchange Commission (FEC) to publicly disclose contributions.

Citizens United, Super PACs, Outside Money

While the oil and gas industry has long been involved in politics in order to garner political favor, a series of court decisions kicked its political spending into overdrive. In 2010, the Supreme Court ruling in *Citizens United vs. FEC* overturned decades old campaign finance restrictions and allowed corporations or unions, as a matter of free speech, to spend money on advertisements in support or opposition of a political candidate as long as the money was not spent in direct coordination with official campaigns.[4, 5]

Soon after this ruling, a lower court, using the precedent set in *Citizens United*, ruled that there could be no limit on this type of spending, formally referred to as "independent expenditures." This led to the creation of Super PACs, or vehicles to aggregate and disperse the new influx of "outside money." Outside money is defined as money spent not by the political parties themselves but from outside groups intending to influence the political process without coordination with any political party.

At the time, the justices issuing these court decisions thought policymakers would still be seen as immune to corruption because of public disclosure of the contributions. Super PACs are now able to accept unlimited funds from corporations and ultra rich individuals, including many with interests in the oil and gas sector, but they are still required to report these contributions and spending to the FEC. However, the Supreme Court did not foresee groups funneling money through a tax loophole to circumvent public disclosure laws and leave the public in the dark.

After *Citizens United*, nonprofits classified as "social welfare groups" or "business leagues" exploited the tax code to transform into machines financing election ads attacking candidates without needing to disclose publicly where the

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money originated.[6] So called "dark money" activity has increased significantly in every election cycle since 2010. **Over $300 million was spent in 2012, twice as much as 2010.**[7] **In federal and gubernatorial races in 2014, advertisement spending by outside groups hit an astonishing $1 billion with around 40 percent coming from dark money groups.**[8]

Fossil fuel interests were well represented during the last presidential election. **In 2012, more than $153 million was spent on ads promoting coal, oil and gas…four times as much as was spent advocating clean energy.**[9] The top industry trade association, the American Petroleum Institute, alone spent $37 million. In addition, there were a dozen other outside groups promoting an expansion of fossil fuel development.

In 2012, small donors contributed a total of $313 million to President Obama and Mitt Romney.[10] This included over 4 million people donating $200 or less. That total "was matched by just the top 32 donors to Super PACs who gave $9.9 million each on average."[11] In a particularly stunning windfall, Romney netted $7 million in one day from oil industry executives at a Texas fundraiser.[12]

The Brennan Center at New York University Law's analysis of outside spending in the 2014 election offers a glimpse of the changes brought by outside money. First, the majority of the money is contributed by a few ultra rich individuals or families. **Of the over $1 billion given to Super PACs since Citizens United, over 60 percent was given by only 195 individuals.**[13] Second, outside spending was higher than actual candidate spending in competitive races. In the Senate, the eleven **winners of the most competitive races were aided by $131 million in dark money**.[14]

As concentrated wealth exercises oversized influence via political spending, the oil and gas industry is a consistent top player in the race to buy political favor. **In 2014, the industry gave over $64 million to directly to candidates, parties or outside groups.**[15] Almost 90% went to Republicans.

In the early stages of the 2016 presidential campaign, a New York Times investigation found that 158 families had donated $176 million.[16] The oil and gas industry ranked second within that total of reported money spent up to that point. Most of the money came either from inherited oil wealth or from "wildcatters" who made millions developing fracking technologies and servicing expanded oil and gas operations.

The concentration of contributions continued through February of 2016 when the Washington Post reported that just the top 50 donors had accounted for 41 percent, or $248 million, of all contributions to Super PACs.[17]

Lobbying

Another mechanism for industry influence is lobbying on Capitol Hill. **According to the Center for Responsive Politics, the oil and gas sector spent $141,600,720 on lobbying in 2014, or $387,945.00 a day. It employed over 800 lobbyists, enough to easily cover each member of Congress.**[18]

One example of the powerful lobbying groups on Capitol Hill is the American Petroleum Institute (API). API represents all aspects of the oil and natural gas industry to the media, in Congress and the Administration. The trade association's budget is largely made up of $133 million in annual "dues" contributed by its members from smaller companies, all the way up to the major oil companies like Exxon.[19]

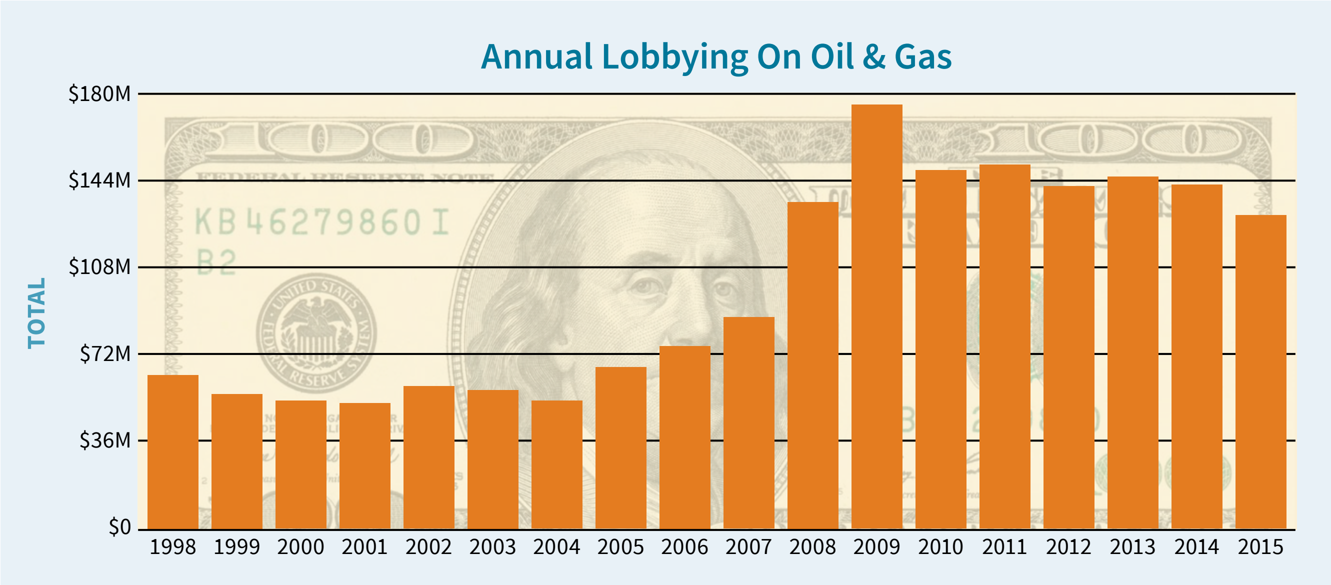

Figure 1. *Center for Responsive Politics: Oil and Gas Annual Lobbying Expenditures https://goo.gl/yAODa2*

API lobbies against regulations on oil and gas development,[20] and generally advocates aggressively for a energy future centered around oil, gas and coal.[21]

In 2015, API spent close to $65 million in "obstructive climate lobbying" which included at least $43 million in ads and PR campaigns along with direct political contributions and lobbyist spending.[22]

Return on Investment

Favorable Votes and Legislation

Through investments in the political process during campaigns, followed by consistent lobbying, the industry has gained the upper hand in policy making. There appears to be a link between members who take the most money from the oil and gas industry and the types of bills written and votes cast.[23]

Republicans won the majority in the US House of Representatives in 2010, and began a coordinated assault on environmental protections. More than 300 anti environmental votes were taken during the 112th Congress in 2011 and 2012. Some of these included 95 attempts to weaken the Clean Air Act and 145 attacks on EPA authority, policies and budgets.[24] It was widely considered the "Most Anti-Environmental House in History."

The political power of the oil and gas lobby was evident in 2015 when Congress lifted the ban on crude oil exports. The ban was first passed by Congress in 1975 during the Arab oil embargo in order to conserve domestic crude in the event of another oil embargo and prevent shocks to the economy. However, four decades later, with the industry reeling from oversupply and depressed crude prices, it redoubled its efforts to overturn the ban. The Center for Responsive Politics reported the industry "began lobbying on the issue in earnest in early 2013, with the effort building until they accomplished their long-sought goal when language was inserted into a must-pass spending bill that funds the government until October 2016."[25]

A steady increase in activity culminated with over 200 lobbyists and $38 million spent to lift the ban.[26] Opponents didn't stand a chance.

Oversight Budgets

In addition to supporting bills to weaken protections, the oil and gas industry also lobbies hard to reduce or restrict budgets at the EPA and other federal agencies. In 2011, the Republican controlled House of Representatives approved a 27

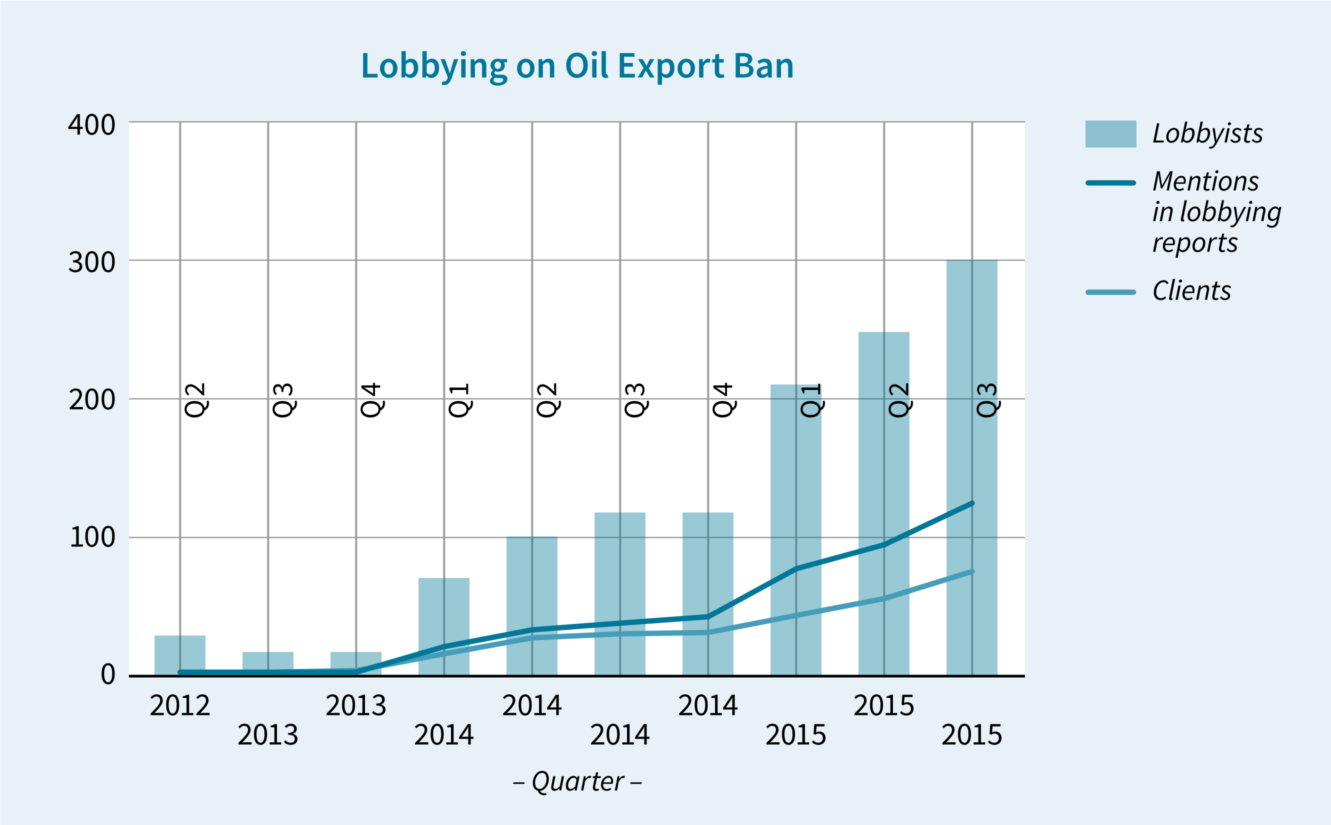

Figure 2. *Center for Responsive Politics. https://goo.gl/Qoa3hf*

percent reduction in funding, one of the largest cuts ever to EPA.[27] The Senate eventually approved a smaller yet still significant cut later that year.

Since 2010, EPA's budget has been cut by $2.2 billion, or over 20 percent.[28] Staffing levels are their lowest point since 1989.[29] As EPA's budget declines, so too have inspections and enforcement actions,[30] further benefiting the oil and gas industry at the expense of our environment and communities.

Budget cuts are felt throughout the Agency. For example, funding cuts that led to EPA library closures. Official EPA libraries contain rare environmental data; reduced access impaired EPA staff's ability to do their jobs and curbed public access to vital federal information.[31]

Additionally, reduced funding left critical programs like the Underground Injection Control (UIC) program unable to evolve to protect public health and the environment from the impacts of increased oil and gas development. The UIC program is intended to protect underground sources of drinking water from contamination via injection of fluids underground. The program regulates wastewater and fluids connected to oil and gas development.

From 2007–2011, annual US production of gas and oil increased 4 and 5 fold respectively.[32] Along with the increase in production came serious wastewater management issues. The industry creates more wastewater than actual gas or oil. Every barrel of oil produced brings roughly 10 barrels of wastewater to the surface.[33] This wastewater is often laced with heavy metals, high salt contents, radioactive constituents and chemical additives, such as those used in well stimulation, enhanced recovery, and well maintenance.[34] It's estimated that the industry produced over 20 billion barrels of wastewater in 2012.[35]

This wastewater disposal needs effective oversight at the federal and state levels. The majority of it is injected underground. Every day over 2 billion gallons of fluids are injected into more

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than 170,000 wells for permanent disposal or to further enhance oil production.[36] This activity is regulated by EPA and state UIC programs.

EPA's budget for the UIC program has essentially been flat since the 1990s, even as the number of wells has increased.[37] **Most recent data shows an increase from 144,000 wells in 2005 to 172,000 wells in 2012.**[38] Federal grants to state UIC programs, when adjusted for inflation and rising costs, are actually in decline.[39] Increased oil and gas production, necessitating more UIC wells with less funding for oversight leaves underground sources of drinking water vulnerable to contamination. A Government Accountability Office (GAO) investigation into the program concluded, "EPA faces additional challenges maintaining sufficient oversight and enforcement of these different programs and requirements in a budget-constrained environment."[40] For example, EPA Region 3 has only 1 full time and 3 part time inspectors in charge of 29,000 injection wells.[41]

Staffing and inspections are especially important because of emerging threats from increased injection activity. One of the most critical new risks is "induced seismicity" or, earthquakes.[42] Earthquakes connected to wastewater injection are on the rise and confirmed in a number of locations.[43] **United States Geological Survey reported that 7 million people in the US are at risk from manmade earthquakes connected to oil and gas injection activity.**[44]

EPA's inability to consistently carry out annual onsite evaluations of state UIC programs is troubling and could be made worse as a result of decreased funding and staffing.[45]

While federal oversight budgets for wastewater and enhanced oil recovery injection activity are being reduced, federal authority over drilling and well integrity was effectively delegated to the states over a decade ago in the Energy Policy Act of 2005.[46] This is part of a more subtle strategy from the oil and gas industry to influence policy, which includes insisting that regulation at the state level is the best way to watch the industry.

While the oil and gas industry would prefer to have regulation handled at the state level, it's not because of some long held philosophical belief that "states do it better." It is because the political mechanisms to regulate the industry at the state level may even be more porous to the influence of money in politics. We spotlight California, the country's third largest oil producer, to see how this works in practice.

California Spotlight

California's UIC program has been in disarray for years. The extent of the dysfunction and regulatory failure was exposed to the public beginning in 2014, when it was learned that California's Division of Oil Gas and Geothermal Resources (DOGGR), the agency responsible for implementing and managing the program, issued permits that allowed more than 5,000 enhanced recovery wells and 500 disposal wells to inject waste and other chemicals into in aquifers that were supposed to be protected by the Safe Drinking Water Act.[47]

The reasons for the problems are still being uncovered, yet the influence of industry spending can be linked to some aspects of the failure. In 2011, EPA conducted a review of California's implementation of the UIC Class II program.[48] The critique identified numerous shortcomings in the program, including inadequate staffing for inspections and oversight and improper imple-

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mentation of key provisions of the Safe Drinking Water Act. DOGGR notified EPA of its improper interpretation of which aquifers were exempt from SDWA protections and committed to bring the program into compliance with federal standards.[49]

However, without proper oversight or adequate funding at the Federal level, there was little accountability for DOGGR to make changes, and a lack of will and/or ability at EPA to compel reform. For three years the reforms were delayed and the problems with the California's UIC program remained largely unknown to the public.

In 2011, the heads of DOGGR, Elena Miller and its parent agency, the Department of Conservation, Derek Chernow, were both fired by Governor Jerry Brown after they were accused of creating a permitting backlog in order to conduct environmental review and more strongly enforce SDWA. Within months of the firings, Governor Brown received a combined $750,000 from Occidental Petroleum and Aera Energy as seed funding for Proposition 30, a ballot measure which raised the state sales tax allowing Brown to balance the budget, his crowning accomplishments of his first term. Former Governor Gray Davis, who was working for Occidental, the largest onshore producer in California, lobbied Brown to remove Miller and Chernow, in order to expedite permitting and work around SDWA requirements. These revelations have been documented in court filings and reported by the Associated Press in September 2015.[50]

In 2014, after the State Water Resources Control Board — an agency that previously had a minimal role in regulating oil field activities — gained new authority to oversee some aspects of well stimulation, the Central Valley Regional Water Quality Control Board conducted a survey of where oil and gas activities were occurring in their region, discovering some cases of injection in protected aquifers.

The California State Legislature, responding to widespread public concern, proposed a number of bills to increase oversight of the CA UIC program. This is where the state level oil industry's inside game sprung into action.

As the UIC improvement bills[51] and other bills designed to help reform the oil industry snaked their way through the state legislative process, so too did the Western States Petroleum Association (WSPA), a powerful lobbying force in Sacramento. WSPA broke new lobbying records and spent $6,750,666 in the third quarter of 2015 alone.[52] **Industry groups spent over $22 million in 2015, or $60,000 a day, lobbying the state capitol against reform measures and crafting policies in their favor.**[53] The most public casualty was a provision that would have required the state to reduce petroleum consumption by 50% by 2013, which was a provision of the landmark climate change and clean energy bill, SB 350. The UIC reform efforts, as well as attempts at reining in coastal drilling and wastewater dumping, were also derailed by the onslaught of industry spending.

Critics bemoaned the rise of a state level "Oil Caucus" of legislators whose campaigns were heavily funded by the oil industry and "who worked publicly on behalf of industry priorities, often at the expense of their own constituents."[54] The California example is remarkable. Even in one of the most progressive states, with many strong environmental laws, the oil and gas industry has continued to wield outsized power in the Legislature, Governor's office and

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at the regulatory level. And when an under-resourced EPA cannot properly oversee state efforts, industry's efforts at de-funding programs are felt even stronger.

Legacy Influence

Industry spending on campaigns and lobbying at the both the federal and state level in recent years has been successful in stopping commonsense environmental and public health protections. But in some instances, the oil and gas industry has had a head start when it comes to policy making.

From the very beginning of modern environmental protection in the United States, the oil and gas industry has been able to circumvent or weaken the laws and regulations intended to protect our natural resources and public health. The legacy of oil and gas influence on environmental laws is corrosive, even impacting our landmark protections. In 1974, Congress passed the Safe Drinking Water Act (SDWA). But the final law contains curious language in Section 1421 (b)(2). The section effectively states that any regulations developed as a result of the act intended to protect groundwater from contamination must not "interfere with or impede" oil and gas activities.[55]

This provision ensures that fossil fuel production is prioritized over drinking water protection — some potential sources of drinking water have been largely written off as a result.[56] Little is known, outside of congressional committee reports from the time, of exactly how the industry secured that critical language. What is known is that from the very beginning of the environmental protection framework in this country, the oil and gas industry, while being responsible for disparate threats to environmental resources, was given a leg up in circumventing or dulling the regulation necessary to adequately protect our natural resources and public health.

Another example of the industry's outsized influence is exploration and production subsidies. Analysis by Oil Change International concluded that **federal and state governments "give away" over $21 billion each year to incentivize development of fossil fuels (coal, oil and gas).**[57] Subsidies include "any government action that lowers the cost of production, lowers the cost of consumption, or raises the price received by producers."[58]

One particularly egregious subsidy is the allowance to deduct the cost paid for pollution cleanup on corporate taxes.[59] This "worst-practice" scenario encourages risky environmental operations while shifting the pollution burden onto the public.

The Obama administration has proposed eliminating as least some of these outdated subsidies in many of its annual budget proposals. All of these attempts have failed along with multiple bills that recognize a mature industry does not need billions of taxpayer subsidies to compete.

The true value of these subsidies is illuminated when comparing the amount spent by the industry on campaigns and lobbying versus the benefits of federal and state subsidies on their operations. **Oil Change International estimated that for every $1 dollar spent on campaign contributions and lobbying, they received $100 back in subsidies, over a 10,000 percent return on investment.**[60] It is not surprising that Con-

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gress failed to pass any measures to reform oil and gas subsides given how important these subsidies are to the industry.

It would seem obvious that one of the most profitable industries on the planet does not still need subsides designed to benefit emerging companies. However, with the influence of money as we've described, rational fixes are not a given.

Looking Forward

What can be done? A number of actions could reverse the damage done in recent years, restoring and strengthening control over the influence of corporate money in politics.

First, the Supreme Court should reverse the decision in *Citizens United vs. FEC*, restoring the protections that existed prior to this decision. In order to ensure that no subsequent Court takes a similar action, the US Congress and the states should pass a constitutional amendment that clearly articulates the authority of the federal and state government to regulate campaign contributions and spending.

Second, the federal government should strengthen rules requiring disclosure of campaign contributions by corporations. The White House should issue an executive order requiring federal contractors to disclose their campaign contributions; and other federal agencies like the FEC should act to strengthen disclosure requirements. The US Congress should also pass legislation to mandate broader disclosure and close existing loopholes.

Finally, states and the federal government should establish "clean election" funding programs that incentivize small contributions to candidates and provide public funding to candidates who agree to limit their spending and private fundraising.

The money flooding into Congress and fueling lobbying efforts of the oil and gas industry has a chilling effect on our democracy. Simply put, oil and gas interests overshadow the public's best interests.

Balancing out the economics to incentivize positive behaviors over the business plans of a polluting industry should be at the top of the list for any political party.

Instead, policies are manipulated to benefit a sector of the economy that enjoys billions in taxpayer subsidies and has whole blocks of politicians willing to vote and introduce legislation in lockstep with industry priorities.

Without constraints on outside political spending by these polluting interests, a "significant ramp up in investment and activity will be required"[61] to meaningfully compete in a democracy where money could tip the scales.

Supreme Court Justice Stevens summed up the current situation wisely in his dissenting opinion on the seminal *Citizens United* decision, "While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics."[62]

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