

**Testimony of  
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**Presented at  
*After Janus v. AFSCME: Why Teachers and Workers are Fighting Back Against the Secret  
Money Campaign to Take Away Their Rights*  
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Thank you, Senator Whitehouse and Senator Stabenow, for inviting me to participate in this crucial conversation. I am Nancy MacLean, a U.S. historian at Duke University and author, most recently, of *DEMOCRACY IN CHAINS: The Deep History of the Radical Right's Stealth Plan for America*, a book that bears directly on our topic.

I have spent the better part of the past decade researching and unraveling the historical roots of the ideas that the radical libertarian right funded by Charles Koch and his network of dark money donors are applying to transform our country. This anti-democratic, libertarian right consists of literally hundreds of organizations including national bodies such as the Cato Institute, the Heritage Foundation, the American Legislative Exchange Council, and the Federalist Society; state-level organizations whose work is aligned through the State Policy Network; organizing enterprises including Americans for Liberty, Concerned Veterans for America, the LIBRE Initiative, and Generation Opportunity; and campus-based centers of allied faculty.

Most of us who are critical of the changes coming from the right have not really grasped what this apparatus is seeking. In fact, one top Koch official gloated at a donor summit in late 2015 that “We’re close to winning,” while the network’s critics still “don’t have the real path.” I found that path in my research, so I would like to open today by identifying some key elements of this cause’s belief system, and then discussing what that means for policymakers in Washington.

Without this broader understanding, we tend to view cases like *Janus* in isolation.

Let me explain. Many Americans have interpreted *Janus* as a pure and simple case of union busting. However, the case was a pivotal piece of the radical right’s stealth plan to take power out of the hands of citizens and public officials alike--and make sure that that power never returns by radically altering the rules of our democracy as enshrined in the Constitution.

Stealth is critical to their success, I learned from reading thousands of pages of documents these people have produced over a half century. Why? Because they understand that the only way they can achieve their radical and anti-democratic transformation of American government is by putting their plan in place piece by piece, without announcing their true intent. That is part of the plan, because then, when the radical right attacks public education, Americans will see it as an assault on the schools. And when they go after entitlements like Social Security and Medicare, they can rest assured that Americans will see it

as an assault on entitlements. And so on. Stealth hides that these are all incremental attacks on our core democratic principles.

In setting all this in motion two decades ago, Charles Koch started from the presumption that “we are greatly outnumbered.” To win, therefore, his cause must overwhelm the other side with what he called “interrelated plays.”

So let me tell you about six key elements of the radical right’s overarching vision, which that guide the linked plays.

1) *Market forces should alone determine social outcomes, with no interference from government.* Government has only three legitimate roles: enforce the law, ensure social order, and defend us from foreign enemies. Everything else should be in time eliminated, because it interferes with property rights and economic liberty. That’s why the Koch network fought the Affordable Care Act, funded school voucher programs, blocked action on climate change, supported *mens rea* criminal justice reform, and worked to dismantle regulations of all kinds.

2) *Any attempt by the people to use their numbers to modify markets, as unions and government policies like minimum wages do, is illegitimate and akin to gangsterism.* The Koch team believes that we should only have the right to act as individuals, not muster any collective countervailing power to that of corporations, as Americans have been accustomed to doing for generations. That’s the core belief behind the *Janus* case. It’s also why organizations in the Koch-allied State Policy Network are now using FOIA laws to identify union members and going door-to-door to try to convince them to stop paying dues. Free speech is not the end goal here; the goal is breaking down the collective power to block implementation of the radical libertarian program, including privatization of public education, Social Security, Medicare and Medicaid, and more.

3) *Democracy does not require majority rule; in fact, democracy is not even an especially desirable form of decision-making.* The radical, anti-democratic libertarian cause believes in unanimity: only if everyone (above all, the very wealthiest among us) supports a particular policy and voluntarily agrees to pay for it can it be said to be truly representing the common good. That’s why the logic of the *Janus* anti-coercion arguments is likely to be applied to taxation, now that there’s a precedent. And it’s also why Koch-allied organizations and elected officials are working so hard to limit voting by those most likely to oppose their agenda, including African Americans, Latinos, and young people of all groups.

4) *Elected officials do not really care about the common good; they only care about getting re-elected, using other people’s money to dole out favors to ensure that.* That is why we have deficits even in times of prosperity. That is also why even the most conservative of Republican presidents, Ronald Reagan and George W. Bush, disappointed the radical libertarians: because they did not go nearly far enough to end the “dependency” of the people on government; they proved too deferential to the voters.

5) *Because the people cannot be trusted to restrain their claims on the wealthy and elected officials cannot be trusted with the power to tax and spend, ironclad binding restraints must be put on both.* The Nobel Prize-winning economist whose ideas have been weaponized by Koch, James McGill Buchanan, said the changes needed amounted to a “constitutional revolution.” That revolution would put shackles on what government could do, including things like making balanced budgets mandatory, imposing congressional term limits, limiting the right to vote, and requiring vast supermajorities for any change of substance after the constitutional revolution.

6) *The only way to achieve all this is by stealth,* spreading misinformation (like the myth of mass voter fraud) and relying, initially, on the branch of government that is easiest for corporations to capture and deploy. That is state government, as shown by my own North Carolina, a prime laboratory for all this.

Since the 2010 midterms and the great gerrymander that followed, State Policy Network affiliates funded by the Kochs’ longtime North Carolina partner, Art Pope, and allied elected officials have transformed a once-moderate state that was long a beacon to the wider South into a competitor with Alabama and Mississippi for which will do less for its people. To protect their unpopular policies, Koch-backed extremists have eliminated judicial primaries, made all judges run in partisan elections, taken away public financing, and gerrymandered judicial districts. And to keep future voters from reversing all this, they have put not 1 but 6 constitutional amendments on the docket this fall—including voter ID and a cap on top income tax rates.

Wisconsin, another state laboratory, illustrates how the sequencing of the Koch strategy of interrelated plays works. In 2011, as Governor Scott Walker he took away collective bargaining rights that public employees had enjoyed for half a century, he told his inner team: “This is our chance to change the course of history.” With unions mortally weakened since then, it was much easier to suppress voting, undermine public education, shift the tax burden, gut open records laws, and alter the state judiciary to lock all the changes in place.

Arizona illustrates another front of this integrated battle plan: how it is leveraging donor-created outposts in higher education. GOP legislators held up the appropriations for three state universities to compel their administrators to direct \$2 million in taxpayers’ money to expand Koch-backed “freedom schools”—while starving the rest of the state’s public education system. These “freedom schools” assist the Goldwater Institute in moving the State Policy Network agenda, and also push that agenda into school districts. How? By taking advantage of teachers’ need for continuing professional development to lure them into the programs, at a discounted cost, so that these teachers, in turn, bring biased and propagandistic courses to their students, as happened in the Tucson Unified School District.

With these elements of the endgame and grand strategy as context, let me turn in conclusion to three key implications of what I have outlined.

1) *What has made this audacious enterprise possible and evermore effective is something we have never seen before in American history.* That is: a concerted project by one extremely right-wing multi-billionaire who has taken it upon himself—and the network he has built—to radically alter our world. Let's be clear: never before has this much money, this much time, and this much political power been wielded on behalf of individuals who are unelected.

2) *Getting control of the courts is vital to this project, because the courts decide how the law will be applied in the battle against democracy as we know it.* The aim is to radically rewrite the overall rules of how our democracy works on everything from how we vote to what we are allowed to vote on and how we are represented. One of the greatest victories in this quest would be something almost no one is talking about, but is a good part of why the Koch network is spending tens of millions of dollars to get the President's Supreme Court nominee confirmed in short order. The Koch cause seeks to gut the interpretation of the Constitution's Commerce Clause that has enabled all federal regulation since the 1930s. That goal took a quantum leap forward with Chief Justice Roberts's odd comment on the Commerce Clause in his ruling in the Affordable Care Act case, saying that it "is not a general license to regulate an individual from cradle to grave," a comment a Stanford law professor called "a loaded gun."

3) *My last and final point: in light of all this, what should be the goal of those who believe in government of, by, and for the people? Inform, inform, inform.* Of course, inform your own colleagues and constituents. But do not stop there. All Americans need to understand how the libertarian ethical system is at odds with our political traditions and the best of every major religion in the world.

I'll close as I started: the *Janus* ruling cannot be fully understood without recognizing the larger radical right minority project that produced it. If that project is not stopped, and soon—by making use of the democratic tools we still have—we will find ourselves living in a country that none of us would recognize, and one that by design, will be almost impossible to change, even with supermajority demand for it.