Voting, Spending, and the Right To Participate

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The law governing the electoral process looks very different today than it did a decade ago. Campaign finance law was upended in 2010 by *Citizens United v. FEC* and the cases that followed it. The tide has decisively shifted against restrictions on campaign spending. At the same time, voting law has also changed significantly in the wake of the Supreme Court’s 2008 decision in *Crawford v. Marion County*, which left the door open to voter-ID requirements and similar regulations. Nearly half the states have tightened their voting rules, though the legality of many of these measures remains hotly contested. For the most part, these developments in the law of spending and voting have played out on separate tracks. The case law and commentary rarely examines them side by side.

This Article considers whether we should approach voting and spending more holistically and, if so, how. The Supreme Court took a small but potentially important step in this direction in its recent decision in *McCutcheon v. FEC*, which framed voting and spending (and other election-related activities) as part of a broader “right to participate” in the electoral process. Taking *McCutcheon’s* framing as its point of departure, the Article endeavors to flesh out this right, theoretically and doctrinally. It suggests that the right to participate might be invoked to reconcile several incongruities in the existing law of voting and spending that have gone largely unnoticed, and could serve to reorient the field of election law more broadly.