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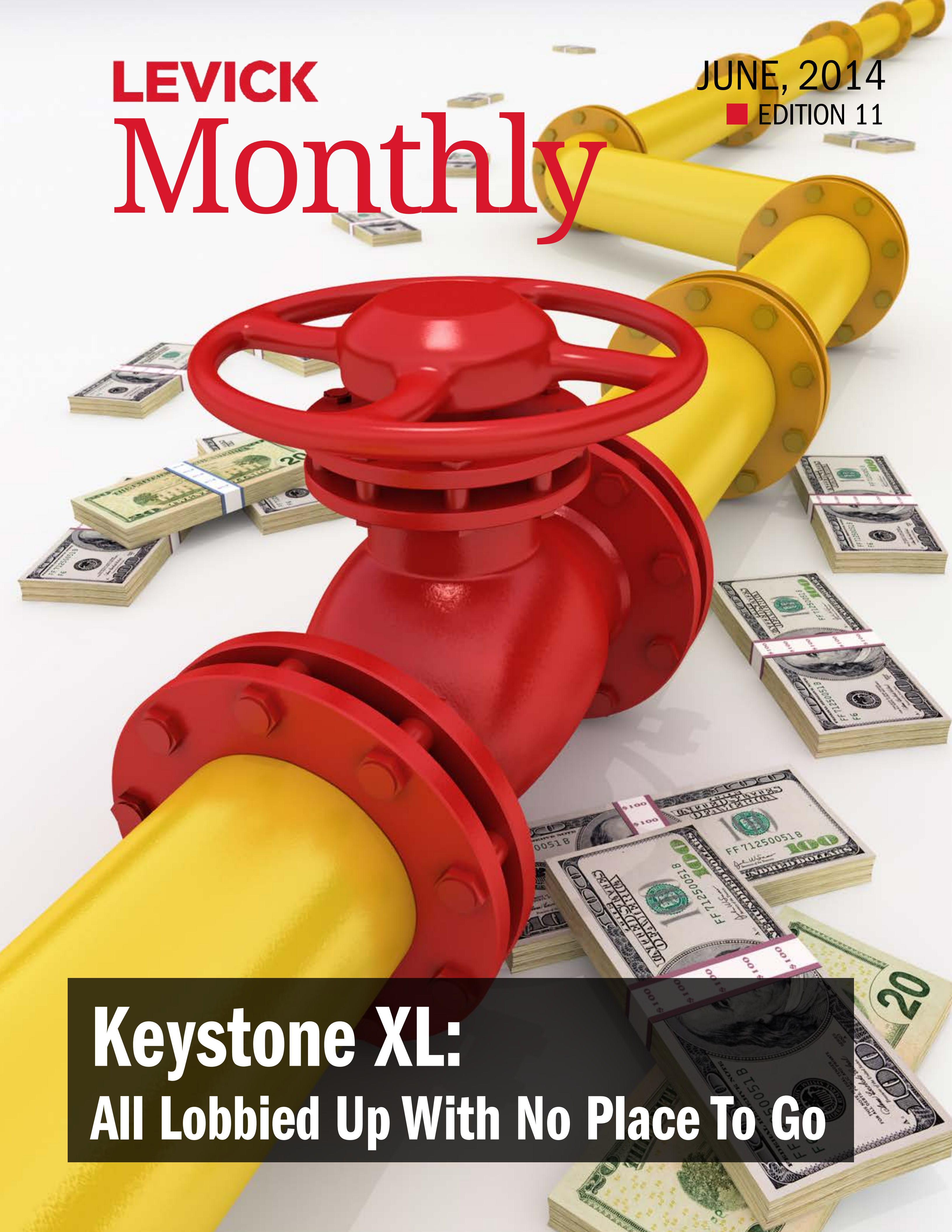

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All Lobbied Up With No Place To Go


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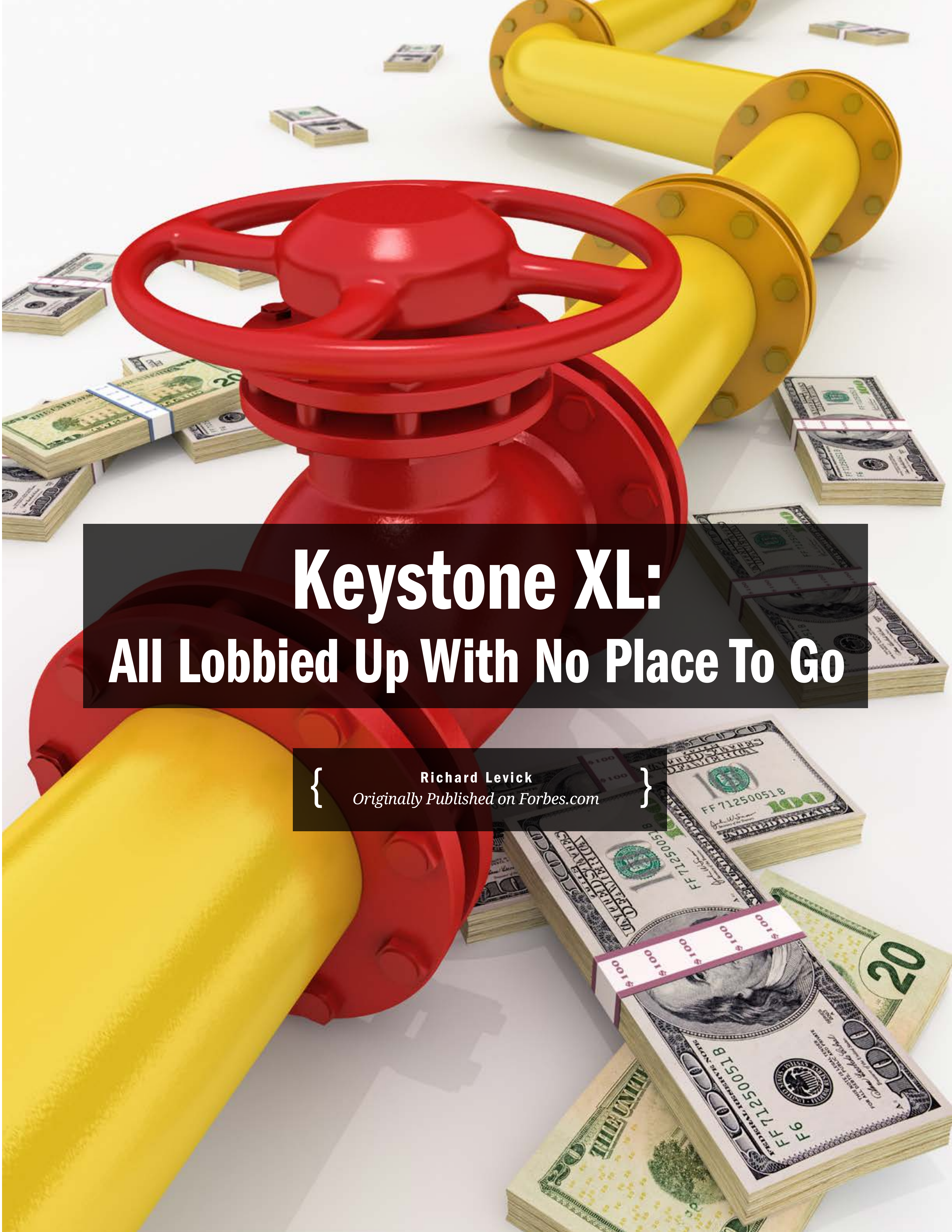


Keystone XL:

All Lobbied Up With No Place To Go

{ **Richard Levick**
Originally Published on Forbes.com }

Two possibilities now loom over Keystone XL and, by extension, the energy industry. Neither one is good.

Possibility One: Rasmussen Reports was incorrect in stating that its survey finding of 61% support for the pipeline represents an all-time high. Wrong, because last June a Harris Poll found that 82% of respondents believe that Keystone is in the best national interest.

Consider the ramifications. The energy industry has pulled out every stop, outspending their adversaries on lobbyists, PR, advertising, television, and radio. A total expenditure by both sides in the tens of millions, elaborated on recently in Politico, may even be a somewhat conservative estimate once you start adding in the soft costs. The total spend on Keystone reportedly equals or exceeds the resources invested in the acid rain and Arctic drilling debates.

And what hath this mighty armada wrought? A 21% tailspin in less than a year!

Possibility Two: Rasmussen Reports was not incorrect. Not only is 61% the best result ever, TransCanada has enjoyed a recent 4% gain.

Alas, Possibility Two is just as ominous for the industry. Either way, we're not just talking about majority approvals. We're talking about demonstrable consensus. With such numbers, the industry should be able to steamroll its way toward Day One of construction, exerting irresistible pressure on Congress to exert irresistible pressure on President Obama to finally issue his approval ASAP.

To some extent, the logjam can be blamed on the current partisan contentiousness that stymies legislative initiative at every turn. "Given the level of support for the pipeline, if this was the D.C. of the Tip O'Neill era, it would have been horse-traded and wrapped up into a large transportation/infrastructure bill that would sail through both chambers and be signed by the President," says Stefan Hankin, the founder and president of Lincoln Park Strategies.

Bottom line: the needle hasn't moved, the trench warfare continues, and the anti-Keystone activists are undaunted. In fact, they're exhilarated. Listen to Bill McKibben, a driving force behind 350.org, one of the NGOs arrayed on the anti-Keystone front. "Everyone is working together in a pretty unprecedented way," says McKibben, and that's "the greatest joy of the whole fight, since we're badly going to need unity for all the battles against the fossil fuel industry to come."

"Bottom line: the needle hasn't moved, the trench warfare continues, and the anti-Keystone activists are undaunted."

"Joy" is an odd but telling word to use in this context. But it is, after all, precisely what impassioned activists feel when they organize and speak to the world. Importantly, they're also shrewd enough to speak directly to anyone who will listen, using the same traditional media as their adversaries and a great deal more of the social media to enlist mainstream support. That's called grassroots communications: mobilizing congressional constituents even as industry lobbyists focus on congressmen. In the process, the anti-Keystone minority imbibes the same passion, the same willingness to take action. Low poll numbers bother them nary a whit.

By contrast, 82% of the public may support Keystone, but to what effect? Most likely, that support is such that they won't even bother mentioning it to their elected officials. If the industry has made a key mistake in the Keystone fracas, it's in focusing their massive PR blitz on opinion elites and Beltway insiders. With all the TV and print ads targeting Washington,

DC audiences, you'd think the pipeline is scheduled to run underneath K Street.

The industry strategy is called grass tops communication, and the tragedy of it is that the industry is squandering what should be an insuperable advantage. If they'd talk directly to that 82% or 61%, most Americans would do the lobbying for them.

"The challenge for the energy industry is that they don't have the intensity," says Hankins. "It is hard to mobilize supporters over an infrastructure project with which most Americans won't have a direct relationship."

Yet there's no reason why such a relationship couldn't have been fostered, especially as the industry does have a compelling story that Main Street will understand. It's about Keystone as the kind of energy infrastructure development that is sorely needed to remediate an aging pipeline system and reap the benefits of the new oil and gas production. Yet instead of that story, the recent focus, at least in the media, has been on the relative insignificance of Keystone's job-creation potential.

The energy industry is well-advised to recalibrate strategy for the next big fight, and to remember what McKibben said – that "we're badly going to need unity for all the battles against the fossil fuel industry to come."

> **"we're badly going to need unity for all the battles against the fossil fuel industry to come."**

For McKibben's side, Keystone has been invaluable regardless of outcome and, at the least, a learning experience for the environmentalists. This trench warfare bears the same relationship to the next energy controversy as World War I bore to World War II. After all the protracted carnage, it was training ground for future Rommels and Pattons.

Time will tell if the energy industry joins the classroom. If nothing else, they'd do well to think about whose hearts and minds they really need to capture before they spend tens of millions more on a public affairs campaign.

THE 5 APOLOGY RULES THAT STERLING BROKE

Gene Grabowski

Originally Published in CNN.com

Opinion: Sterling apology was an epic fail

It seemed as if billionaire Donald Sterling apparently didn't have enough money left after buying apartments, cars and dresses for V. Stiviano to pay for appropriate legal or communications advice before his exclusive interview with CNN's Anderson Cooper.

We don't know for sure, but that's the only conclusion one can draw from the Los Angeles Clippers owner's disastrous attempt at exoneration that aired Monday night on "AC 360." Gene Grabowski

Sterling broke just about every rule of crisis communications during his taped and edited interview with Cooper, starting with issuing an obviously half-hearted apology for his racially offensive remarks surreptitiously recorded by Stiviano during a private discussion.

Channeling Richard Nixon, Sterling three times declared unconvincingly "I am not a racist," when fumbling for an explanation for why he ranted in an audio recording about his disapproval of Stiviano being seen with black men at Clippers home basketball games.

"Twenty-five percent of my whole game are black people and I love them. I can't explain some of the stupid, foolish uneducated words that I uttered."

Opinion: Sterling apology was an epic fail.

The interview went downhill from there, with Sterling rambling from subject to subject, with no apparent goal except to somehow look sympathetic to viewers. Obviously he failed.

Here are some of the most important rules of crisis communications he broke during his time on camera:
Spike Lee weighs in on Sterling scandal
Sterling to AC: You're more of a racist
Sterling: I'm so sorry, I'm so apologetic

1. Apologize sincerely, then move on to say what you are doing to ensure the transgression never happens again. Announce that you are entering rehabilitation, meeting with the group you have offended to make amends or taking sensitivity training. But you must demonstrate that you are taking concrete steps to correct your future behavior. Sterling apologized to his 29 fellow NBA franchise owners and to Commissioner Adam Silver, yet he neglected to say what he would do to improve.

2. Make a sacrifice. Whether you are wealthy or not, you must give something up as a gesture of your commitment to seek forgiveness from the people you have offended. If you offend the African-American community, a generous contribution of money and your personal time to an inner-city charity may be in order. If you offend a religious group, a donation to a church or charitable group is appropriate.

And the bigger the offense, the larger the gift should be. In Sterling's case, we're probably talking millions of dollars and hundreds of hours.

3. Ask forgiveness of those whom you have offended. Sterling assumed that NBA players, owners, fans and everyone in America would understand his plight and give him a pass because he is a well-intentioned 80-year-old billionaire with a big mouth. He skipped a major step when he forgot to even ask.

Whether you are wealthy or not, you must give something up as a gesture of your commitment to seek forgiveness from the people you have offended.

4. Never blame others for the crisis you have created. First, Sterling claimed Stiviano baited him into making his racially offensive comments. Then he said she wasn't really a bad person and moved on to gratuitously criticize NBA Hall of Famer, philanthropist and businessman Earvin "Magic" Johnson.

"What does he do for the black people? He doesn't do anything. He acts so holy. He made love to every girl in every city in America and he had AIDS," Sterling said. "Is he an example to children? Because he has money, he is able to treat himself. ... He should fade into the background." With these statements, Sterling created another crisis for himself and for the NBA.

5. Never blame the news media. Sterling claimed that NBA players and owners still like him and that he has received "thousands of phone calls" of support from friends and colleagues. Who then is attacking the Clippers owner for his remarks?

"It's the media that's out to get me," Sterling said. Cooper and every other journalist watching the interview or seeing the news reports afterward is now his foe, whether or not they were before he made that comment. Appearing on CNN immediately after the jaw-dropping interview, African-American film maker Spike Lee perhaps captured it best for all communications experts when he said of Sterling: "Why do they let him speak? Who's around him?" Who indeed.

Abramson Gets The Axe,

But It's Sulzberger Who Lost His Head

Richard Levick

Originally Published on Forbes.com

In 2011, the New York Times lambasted the GOP in an editorial that elevated "The War on Women" to top billing on the liberal agenda. With this week's firing of its first female executive editor, Jill Abramson, the dominant perception is that the Times was throwing stones in a glass house.

The criticism may likely be grossly unfair, given the Times' sizable roster of female editors (many of whom Abramson brought in); but that doesn't change the fact that the paper is embroiled in a reputational crisis of its own design.

Now, instead of celebrating the first African-American executive editor in its history, The Paper of Record is fighting allegations that it's been on the wrong side of the very war it helped define.

The firing of a chief executive seldom goes smoothly where reputation is concerned and it gets all the more complicated when the tenure in question is as short as Abramson's – and in a business where editors are far more often "reassigned" for a purported managerial deficiency. Here, that deficiency is depicted as a "combative management style."

There has long been conjecture that Abramson's approach to running the paper was anything but warm and fuzzy, and it is now evident that her bristly nature did little to endear her to the Times' staff or publisher Arthur Sulzberger. The situation apparently reached critical mass when Abramson learned she was being (allegedly) paid less than her predecessor and hired a lawyer to help prepare a complaint.

It may have been just the last in a series of episodes that strained the working relationship to the breaking point. Sulzberger needed to anticipate that the fair compensation complaint would serve as a prevailing narrative whenever you jettison someone as well-connected and media-savvy as Abramson.

The fact that he acted on Abramson without much tangible documented evidence of her detrimental impact on the newsroom (the kind of evidence all employers need to provide) only enables that narrative to thrive unchecked. It's possible the Times' status as a liberal demigod might have beguiled Sulzberger to believe the paper would be beyond reproach on issues of gender equality.

In fact, the opposite is true. When you make your bones espousing a code of definitive ethics, you'd better live that agenda. Would this story have half the traction had it been a Rupert Murdoch media property accused of discriminatory pay practices?

Significantly, it was the social media – the very media that are squeezing traditional bastions of journalism like the Times – that broke the inequality angle and enhanced its allure. According to Politico, liberal blogs such as Think Progress, Salon, and Vox first reported on Abramson's frustration with her pay. On Wednesday, both "Abramson" and "New York Times" were trending on Twitter and Abramson's name has been tweeted more than 19,000 times in just the last 24 hours (as of this writing).

The viral firestorm even reached the U.S. Senate where erstwhile Times ally Harry Reid (D – Nev.) cited Abramson's plight as a "perfect example, if it's true, of why we should pass paycheck equity."

Moving forward, the online onslaught will only compound the challenge ahead for Sulzberger and the Times. After all, what good is that barrel of ink when your audience communicates via, and is influenced by, ones and zeroes?

There are times in every business when a boss must accommodate someone with leverage simply because of optics. Here a lot more is also at stake. Jill Abramson was, by most accounts, effective if not affable. Indeed, it was on her watch that the paper returned to profitability.

Oh, by the way....is it any less socio-politically heretical to find a woman's "combative management style" more vexatious than a man's? A man can earn begrudged plaudits, and even respect bordering on affection, for being oh such a tough boss. But that's a question for another day. L

Do Investors Care About Sustainability Programs?

Wall Street Answers 'Yes'

Holly Holt
Published on LEVICK Daily

Are sustainability programs merely another 'do good' phenomenon or is there substance that actually impacts the valuation of a company's stock? That's a question that is being debated in boardrooms and by investors as Corporate Social Responsibility (CSR) programs gain momentum.

During the dark days of the economic downturn, CSR programs were indeed building, but failed to sway the investment community. In 2010, an article in Businessweek concluded that "investors do not care" about sustainability programs. It was based on a study by Accenture called 'A New Era of Sustainability.' The study pointed out that socially responsible investment (SRI) groups were a minority on Wall Street. Through interviews with CEOs, the study concluded that, if Wall Street isn't paying attention, then companies don't pay attention to CSR programs.

There appeared to be little evidence that CSR programs actually move the needle and result in positive movements of a company's stock. So what's the reason? Investors need tangible and comparable Environmental, Social and Governance (ESG) data, presented in a format they can understand and can use. Many experts claimed that CSR reports have been largely immaterial and investors cannot provide a standard benchmark against peers to evaluate how companies measure up against each other.

The tide currently appears to be shifting. Wall Street is evolving and mainstream investors are becoming more attuned to CSR programs and demanding more accountability from large corporations. In today's regulatory environment, both sides are increasingly focused on regulation and risks – and how these elements translate to long-term value. A report from Ernst & Young says that CFO's are paying more attention to sustainability due to a push from the investment community. According to their study, 65% of the companies queried said that their CFO is now involved in sustainability discussions. Roughly two-thirds of companies have seen an increase in inquiries about sustainability-related issues in the past 12 months, and more than one-third believe that equity analysts consider sustainability valuations.

The phenomenon appears to be a symbiotic evolution sparked by a healthy fear, causing public companies to turn up the volume on positive initiatives such as CSR programs. According to Columbia University Professor John Wilson, corporate and environmental disasters continue to take a toll on companies and create an urgency to establish CSR programs. Today, nearly 6,000 companies worldwide report on their social responsibility issues. He notes that at the same time, in 2012, more than 900 institutional investors with assets of over $30 trillion had endorsed the United Nations Principles for Responsible Investment (UNPRI).

In turn, investors have been looking for ways to package and interpret this information. A thorough study of the issue PWC - Do Investors Care About Sustainability? says 'Yes'. According to the study, "a review of investor research reveals a trend that more investors are using corporate sustainability reporting to inform investment strategies." The report claims that "sustainable investing outpaces the growth rate of conventional investments under professional management." With this new perspective, major financial institutions are forming sustainability research departments to support investment strategies. Sustainability data is now readily available on analysts' computer terminals from traditional financial reporting sources. New valuation tools are being developed to enable investors to assess the impacts of ESG factors on company earnings and share price. Thomson Reuters offers analytics to identify a range of stock signals and MSCI offers ESG Impact Monitor which allows investors to analyze and manage CSR impacts. Bloomberg also offers a new ESG valuation tool, applying financial methodology to assess impacts of ESG factors on company earnings.

The Sustainability Accounting Standards Board (SASB) also sees the need for uniform sustainability standards that will help investors analyze the impact of ESG programs. In order to build an even playing filed with standard metrics, these standards will soon be available in the form of a 10-K for companies.

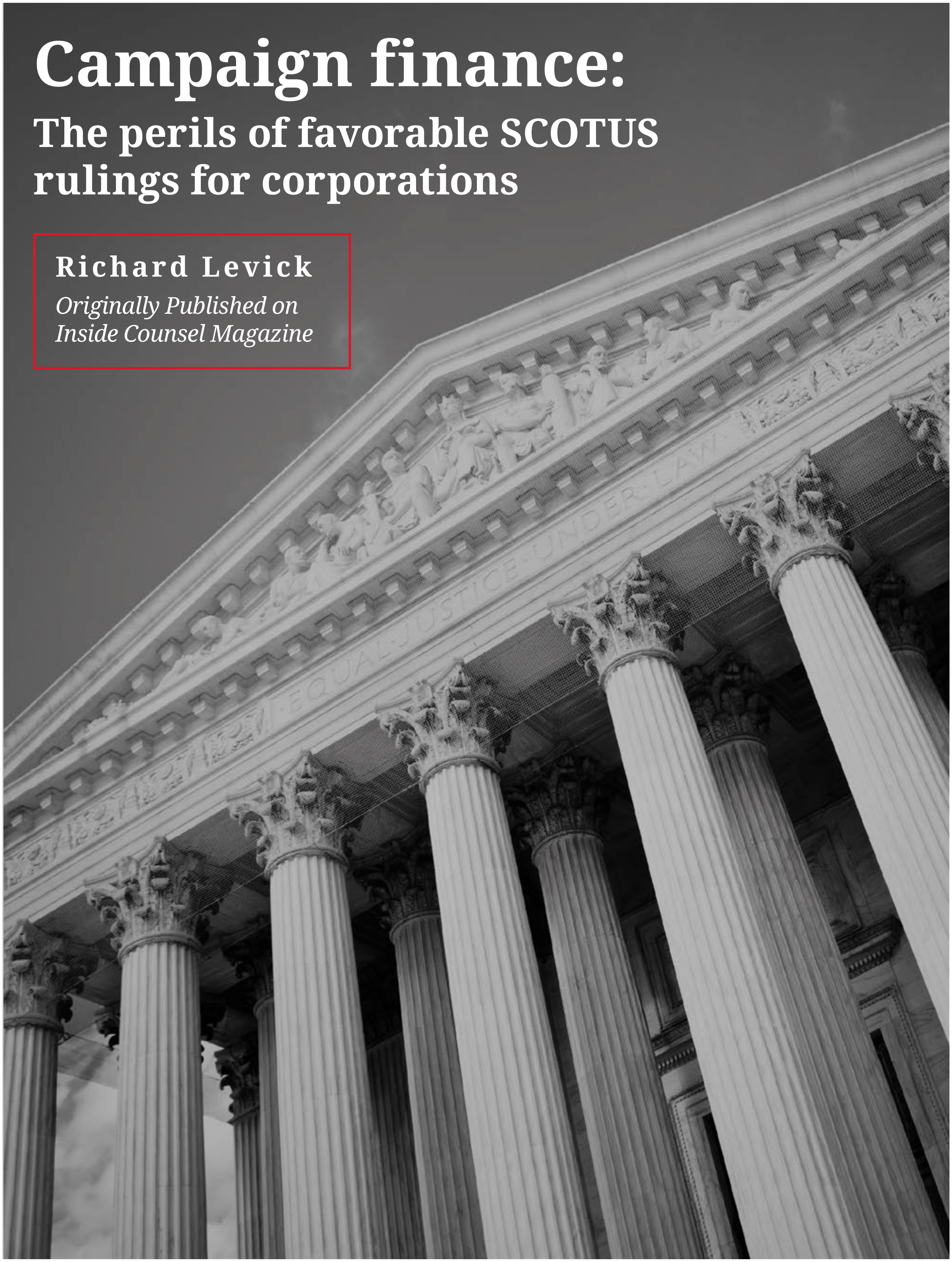
As these new sophisticated valuation methods are developed to help assess the difficult-to-quantify sustainability initiatives, we may begin to hear more companies discuss their CSR initiatives with investors. The benefit to such philanthropic initiatives is indeed positive – a shift which will hopefully resonate throughout communities on a global level.

Campaign finance:

The perils of favorable SCOTUS rulings for corporations

Richard Levick

Originally Published on Inside Counsel Magazine



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COMMUNICATING TRUST™

It's been a persistent theme of this column that, in the current business environment, there is compelling need for chief legal officers to play more strategic business roles as C-suite advisors and on boards of directors (an increasingly common phenomenon). Extraordinarily diverse issues now flash across the GC's radar screen, transcending the limits of strictly legal oversight.

Two events that occurred this spring underscore this diversity.

First, on April 2, 2014, the Supreme Court, in a 5-4 decision written by Chief Justice John Roberts, overturned the section of federal election law setting "aggregate limits" on campaign contributions. In McCutcheon v. FEC, brought by engineer and businessman Shaun McCutcheon as a First Amendment case, McCutcheon's team successfully argued that donors can give allowable contributions to as many politicians as they'd like.

McCutcheon's team successfully argued that donors can give allowable contributions to as many politicians as they'd like.

While my communications firm represented McCutcheon in this matter, it is not my intention here to advocate his position. Instead, it is my purpose to highlight the case as further signaling a generally deregulatory trend that seems most favorable to corporations in their efforts to influence policy-making. The barriers are toppling in the wake of Citizens United v. FEC.

All that can change with the next presidential administration if a Democrat has the opportunity to appoint even one Supreme Court judge supportive of stricter controls, but for now at least the ball's in the corporate court.

The McCutcheon decision has the additional effect of reviving a question that was asked—if rather too quietly—after Citizens United. Are corporations simultaneously exposed, not legally but from a business perspective, by this newfound license? Should campaign contributors have reason to beware what they've wished for?

The aforementioned second event does indeed suggest the need for a commitment to manage the risks that accompany political giving. Around the same time as the McCutcheon decision, the CEO of Mozilla, Brendan Eich, resigned soon after his appointment. Disclosure that he gave $1,000 in support of California's anti-gay marriage Prop 8 in 2008 infuriated Mozilla employees, users and business partners.

True, it was a contribution by an individual, therefore not directly related to the substance of Citizens United. But the controversy highlights the potential impact of any form of giving by a company or its officers, all the more so as McCutcheon green-lights a limitless aggregate number of donations. A modest $1,000 check can unravel years of reputational positioning without a single law being broken.

> **A modest $1,000 check can unravel years of reputational positioning without a single law being broken.**

It's a question of brand, regardless of whether the contributor is the corporate entity or the CEOs who, as the business' "rock stars," increasingly define that brand in many markets. The risk management demanded entails assessment of specific benefits against predictable negative public reaction—and to that discussion GCs can bring their trained eye for spotting just such perilous "what-ifs" lying ahead.

If we give to Candidate X or Issue Y, what are the benefits compared to the risks of alienating Candidate X supporters or Issue Y's detractors? What do we lose if we play it safe and give to neither? What if we give to both sides in the interest of "encouraging open dialogue and the democratic process?" A well-known law firm once used similar language in a race for state insurance commissioner and was then questioned in the press about trying to buy favors no matter who won.

SCOTUS has handed corporations important new rights, but there are consequences to the unexamined exercise of those rights. If Mozilla Corp. tells us anything in the wake of these SCOTUS rulings, it is that CEOs and their own once-personal views are themselves a brand as much as whatever positioning their companies assume. The best practice is to anticipate worst-case public scenarios for the dual brands—both the company and the CEO—as comprehensively as practical circumstances warrant. It's a job in-house lawyers are well trained and prepared to handle.

Want Real Economic Recovery?

Look To Mom And Pop

Richard Levick
Originally Published on Forbes.com

At first glance, the latest jobs report provided encouraging signs that America's economic recovery is beginning to gain momentum. The U.S. Department of Labor reported that 288,000 jobs were created in April 2014, the biggest jump in more than two years. At the same time, unemployment dipped 0.4 percentage points to a five-and-a-half year low of 6.3%.

Dive one layer down, however, and that light at the end of the tunnel isn't quite as bright. 800,000 Americans either retired or gave up looking for work last month. Not only does that figure largely account for the 0.4% decrease in unemployment; it drove the labor force participation rate (a measure some believe to be a far more accurate accounting of the employment landscape) down to 62.8% – or as low as it's been since March 1978.

Seven years past the financial crisis, we're still not out of the woods. At this rate, the Great Recession may end up outdistancing the Great Depression before real recovery takes hold (which is not altogether surprising, given that the complexities of today's global economy require more time to reverse periodic downturns). Yet, still, the policy fixes that have been implemented and floated since Bear and Lehman collapsed continue to overlook the one economic sector that creates more jobs than any other: small business.

According to the U.S. Small Business Administration (SBA), small businesses account for 55% of all jobs in the U.S. and 66% of all new net jobs created since the 1970s. During America's salad years of 1994 to 2008, small business lending exploded from $308 billion to a peak of $659 billion.

If you need more evidence of the powerful correlation between small business growth and economic stability, consider the fact that by June 2011, small business lending had constricted by 18% overall, and that the number of commercial and industrial loans of less than $1 million dropped by 344,000 between 2007 and 2012 – despite an increase of more than 100,000 small business over that period.

It is statistics such as these that led former Federal Reserve Chairman Ben Bernanke to state "Making credit accessible to sound small businesses is crucial to our economic recovery and so should be front and center among our current policy challenges." And yet, the sweeping programs implemented to date – such as TARP and Dodd-Frank – have been singularly focused on big banks and big business.

While TARP helped shore up behemoths such as Citi and Bank of America, it did little for the community banks small businesses predominantly rely upon, which are in steep decline since 2008. At the same time, the Dodd-Frank measures that built confidence in the big banks created undue regulatory burdens for community lenders that still can't adequately funnel capital through all that red tape.

As a result, big business lending is up 36% since 2000 and has largely recovered from 2008 lows, according to a 2014 report issued by the Institute for Local Self Reliance. Over the same period, small business loans are down 14% and micro-business loans are down 33% – and neither has begun to climb out of the tailspin that began seven years ago.

While the big banks – some of which slashed small business lending by as much as 84% post-crisis – continue to keep a tight grip on the faucet due to higher monitoring costs per dollar of funds borrowed and lack of capital to back up incurred debt, the community banks willing to back small business are drowning in policy that puts them at the back of the line.

Worse yet, the problems aren't solely relegated to the banking sector. Non-bank institutions seeking market-based solutions to small business lending are feeling a policy squeeze as well. Sam Hodges is the Founder and Managing Director of Funding Circle USA, an online loan marketplace and underwriter that seeks to connect investors with small businesses seeking loans of up to $500,000. Mr. Hodges and others see great potential in non-bank lending's ability to get capital flowing to small business, but he is operating under a regulatory framework that simply hasn't kept pace with innovation.

"Marketplace lenders such as Funding Circle face complex, oftentimes overlapping sets of state and federal regulation. Current securities rules didn't anticipate online securities marketplaces," says Mr. Hodges. "That means we are forced to work across the entire regulatory framework to ensure total compliance. Regulation is necessary to build trust in what we do and weed out those organizations that might not employ rigorous credit screens or might not be fully transparent about rates or with investors. But right now, there is no doubt that the number and complexity of the rules are keeping quality loans out of the hands of small business. We absolutely need investor and borrower protection, but the current regime is cumbersome and discourages innovation."

At a time when 42% of small business owners seeking loans over the last two years report that they are unable secure capital; when the inability to secure credit is the third most frequently cited financial problem small business owners face; and when it takes as much as six months to secure capital from the SBA, America needs build on the progress that's been made by diminishing the barriers that stand between strong demand for credit and the supply of capital that can get America's real job creators growing again.

It's Mom and Pop that hold the keys to real recovery. It's time we empowered them with the tools they need to succeed.

Bill Beutler
ON EDITING WIKIPEDIA

In this LEVICK Daily video interview, Bill Beutler, founder of the content marketing firm Beutler Ink, explains the dos and don’ts of Wikipedia editing, especially when conflicts of interest are readily apparent.

THE URGENCY OF NOW.