

Testimony of Senator Bernard Sanders and Congressman Ted Deutch
Senate Committee on the Judiciary
Hearing on “Examining a Constitutional Amendment
to Restore Democracy to the American People”
June 3, 2014

Mr. Chairman, thank you for convening a hearing on the critically important issue of restoring democracy to the American people.

We are at a pivotal moment in American history. The democratic foundations of our country are now facing the most severe attack, both economically and politically, that we have seen in modern times.

The history of this country has been an arduous and difficult journey, but one which has moved forward towards a more inclusive democracy—a form of government President Lincoln described as “of the people, by the people, for the people.” As part of that struggle to expand democracy throughout the ages, courageous Americans have risked their lives, and died defending those ideals.

When this country was founded, let us not forget that only white male property owners over the age of 21 could vote. After the Civil War, we amended the Constitution to allow non-white men to vote. In 1920, fully 72 years after the Seneca Falls convention, we ratified the Nineteenth Amendment, extending the franchise to women. It took another fifty years to outlaw discrimination at the polling place on the basis of skin color, ban poll taxes, and lower the voting age to 18. But each hard-fought change was worth the sacrifices required to make our democracy inclusive of, and responsive to, more and more Americans.

At the same time, we have made the election process more transparent and less corrupt. Historically, as the influence of corporate money crept into politics, ordinary people spoke out to right the process. During the Gilded Age there was rampant political corruption. Government workers were expected to pay off their political bosses in order to keep their jobs. Candidates relied heavily on corporate contributions of robber barons, and there were no federal requirements mandating disclosure or even the most basic forms of record-keeping.

But the people spoke out, and in response to allegations involving improper contributions to his own presidential campaign, Teddy Roosevelt signed the Tillman Act into law. The first comprehensive campaign finance reform bill in American history, the Tillman Act banned campaign contributions from corporations and national banks.

In the years since, we have placed greater, sensible restrictions on campaign finance, often in response to election scandals, culminating in the 2002 Bipartisan Campaign Reform Act, led by Senators McCain and Feingold.

Despite these efforts—or perhaps, because of them—a handful of billionaires, including the Koch brothers, have worked doggedly to try to circumvent and dismantle these regulations and return us to an era where the wealthy and powerful have an unlimited ability to influence—or

outright purchase—elections. In that process, they have been aided and abetted by the five conservative members of the US Supreme Court.

The 2010 Court decision in *Citizens United v. Federal Election Commission* opened the floodgates for a rush of secret money to flow into elections, and those of us interested in clean and fair elections saw our worst fears play out in during the 2010 and 2012 cycles.

Thanks to *Citizens United* and its progeny, the new “super PACs” were able to collect and spend literally hundreds of millions of dollars, often from only a handful of donors. In fact it only took 32 major super PAC donors to contribute more than the \$313 million that all the small donors gave to the Obama and Romney campaigns combined. Further analysis from the US Public Interest Research Group and Demos showed that only 159 Americans, each giving more than \$1 million, combined to donate more than \$500 million to super PACs in the 2012 election cycle.

All the more disturbing is that this is only the money we know about; this does not include millions of dollars of “dark” money, funneled through political nonprofits. Through those organizations, secret millions are shielded from the standards applied to political parties and campaigns.

Even if we accept the premise that money equals speech, we cannot let a handful of wealthy individuals drown out the voices of millions. Americans are disgusted with this pay-to-play system of politics, as poll after poll shows the American people do not want a political system awash in corporate cash, with politicians beholden to the mega-donors who put them in power.

Unfortunately, this year, the 5-4 majority on the Supreme Court extended their reasoning in *Citizens United* even further with its ruling in *McCutcheon v. Federal Election Commission*. In this case, a wealthy donor from Alabama claimed his First Amendment rights were violated by the \$123,200 limit on total contributions to federal candidates during an election cycle. The Court agreed and struck down that limit, paving the way for wealthy individuals to donate up to \$6 million to federal candidates, political parties, and joint election funds during a single election cycle. That’s more than 120 times the median income in America.

Already, several donors have taken advantage of the *McCutcheon* ruling by surpassing the now defunct \$123,200 limit. Though the limits still stand on donations to individual candidates and parties, challenges to those limits are already making their way through the court system, including one filed in May by the Republican National Committee. A bill to abolish the limits would never be passed and signed into law under this Congress and this President, so instead the wealthy opponents of free and fair elections are turning to their allies in the last available branch of government.

Yet the most dangerous assertion made by the Supreme Court in *McCutcheon* does not involve aggregate limits; it is the 5-4 majority’s holding that the First Amendment gives campaign donors just as much of a right to influence elected officials as the very voters who elected them.

Such an opinion undermines the very concept of elected representation, for those donors are actually able to exert more influence on public officials than their own constituents.

The issue of campaign finance reform and the role of the Supreme Court may sound like a lawyers' debate over abstract constitutional issues. The truth is there is no single issue more important to the needs of ordinary Americans than the issue of money in politics. If we cannot control the power of the billionaire class to buy elections, there is no question that more and more people elected to office will be responsive to the needs of a wealthy few, rather than working to safeguard the interests of all their constituents, including the sick, the poor, and working families.

Candidates should be elected based on their ideas, not their ability to raise huge sums of money. The votes we take should be based on the best interests of the American people, not the fear of retribution from shadowy figures prepared to spend millions of dollars on negative advertisements.

Frankly, we are not great fans of constitutional amendments and we would rather be able to enact sensible regulations through the regular lawmaking process. But when the Supreme Court says, for purposes of the First Amendment, that corporations are people, that writing checks from the company's bank account is constitutionally-protected speech, and that attempts by the federal government and states to impose reasonable restrictions on campaign ads are unconstitutional, it is time to pass a constitutional amendment to address that absurdity.

That is why we introduced the Democracy is for People Amendment (S. J. Res. 11/H. J. Res. 34).

Our amendment would allow Congress to set reasonable limits on campaign spending. One of the major problems with the *Citizens United* ruling is the Court's insistence that the only permissible reason to regulate campaign finance is to prevent *quid pro quo* corruption—the Court goes so far as to say “Ingratiation and access . . . are not corruption” and “Independent expenditures do not lead to, or create the appearance of, *quid pro quo* corruption.”

Insisting on such a narrow definition of corruption leads to some truly bizarre scenarios. Take, for example, a Member of Congress who is opposed to the Keystone XL pipeline. If that Member is offered a dollar to vote for the pipeline, and does so, we all agree that equals corruption. However, if that Member is threatened with millions of dollars of negative ads unless they support the pipeline, and they succumb to the pressure to avoid the onslaught of super PAC spending, then the Supreme Court deems that acceptable.

We do not find the latter scenario at all acceptable. While preventing *quid pro quo* corruption is important, we must also be able to maintain the integrity of the electoral process and prevent both actual corruption and the appearance of corruption, in order to keep the faith of American voters.

Other amendments offered by our colleagues, including the one at issue here today from Senator Udall, are also positive steps forward. While there are some differences in language, we all agree on the most important point—*Citizens United* is an affront to our democracy and must be overturned.

Together we must advance a constitutional amendment that overturns these deeply flawed decisions.

Such an amendment must do away with the absurd distinction drawn by the Court decades ago in *Buckley v. Valeo*, which allowed for limitations on campaign contributions but not individual expenditures.

Such an amendment must make clear that limits on contributions and expenditures do not disenfranchise the wealthy few but promote the political equality of all Americans in our democracy.

And finally, such an amendment must make clear that limits on spending in our elections, systems of public financing for elections, and the promotion of transparency all represent legitimate exercises of congressional power.

Eventually, in an ideal world, we would establish a system of total public financing—completely barring private donations and expenditures. But in the meantime, Congress must be allowed to do its job and set up reasonable limits on money in politics.

At a time when 16 states and more than 500 towns and cities have passed resolutions supporting a constitutional amendment, we see there is also strong grassroots support for this approach.

Congress must be able to make it clear to the country that elections should express the priorities of all Americans, not a handful of billionaires who choose to invest a fraction of their net worth by spending millions in our elections. Unfortunately, the Supreme Court has largely tied our hands in this regard.

A constitutional amendment is therefore the best approach to restore our democracy to the American people, and we thank the Committee for taking up this very important issue.