

Written Testimony of Jim Rubens
Hanover, NH

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

*Hearing on Citizens United at 10: The Consequences for Democracy
& Potential Responses By Congress*
February 6, 2020

I am a Republican, past New Hampshire state senator and New Hampshire GOP platform committee chair, and 2014 and 2016 candidate for U.S. Senate. In business, I'm a serial entrepreneur and venture investor, and my non-profit work includes service as a board member for [American Promise](#) and New England chair of [Take Back Our Republic](#). My opinions here are my own, not necessarily those of any organization. I am happy to provide hard copies of the hyperlinked sources and can be reached at JimRubens@gmail.com.

Pragmatism partially explains what seems a partisan divide on campaign finance reform in Congress. Until recently, Republicans have been able to marshal larger sums of concentrated, scientifically-targeted campaign money. This tilt reversed with the 2018 election cycle, when liberal dark money groups mastered the concentrated-money game and outspent conservatives by [almost 2 to 1](#). For the [2020 cycle](#), as measured by total direct and indirect money reported to date, Democrat and liberal groups are again ahead, by more than 2 to 1.

For this coldly pragmatic reason alone, Congressional Republicans might soon join the push for a corruption reform amendment. But Republican backing is far more powerfully compelled by our constitutional conservatism and by fundamental conservative principles.

To defend federalism.

Since the *Citizens United* ruling, concentrated, strategically-targeted, out-of-state money from Tom Steyer, George Soros, Sheldon Adelson and the big unions have flooded campaigns with hundreds of millions of dollars. In swing states and Congressional districts -- even in state legislative races -- money sources controlled by not more than [a few hundred](#) San Francisco, Manhattan and likely foreign individuals are picking our candidates. "Outside spending surpassed candidate spending in 126 races since the ruling. That happened just 15 times in the five election cycles prior," according to original analysis by [OpenSecrets.org](#).

Home-grown, locally-funded candidates are often overwhelmed. Campaign ads, increasingly funded by independent money, have become more negative and more false. Debate over key issues is narrowed, voters get even more cynical ... and issues get nationalized. Warns former Congressman [Zach Wamp](#), R-TN, "[T]his should be a wake-up call to Republicans. Secret spending in elections has the potential to denigrate every candidate in every election, and candidates are losing complete control of the messages in their campaigns."

Three people including me (the conservative challenger) ran in New Hampshire's 2016 race for U.S. Senate. \$132 million was spent, \$100 for every living person in my state, 95 percent from out-of-state sources, the race decided for the Democrat by 1,700 votes. It is a near certainty that New Hampshire voters did not determine the outcome of this election.

The 10th Amendment reserves to the states and people, respectively, all powers not expressly granted by the Constitution to the federal government. The 10th Amendment guarantees respect for local preferences and political space to test and replicate successful policies. The 10th Amendment permits Americans to live in peace with one another, despite our differences. The 10th Amendment is our protection against remote, ivory-tower, one-size-fits-all government. The out-of-state, big-money system is now eclipsing federalism, one of our strongest protections against the tyranny that history shows grows in the dark swamps of concentrated power.

To defend capitalism.

American free-market capitalism has bestowed greater aggregate wealth, progress and well-being worldwide than in all of prior human history. But the current system of pay-to-play, concentrated money politics has mutated free-market capitalism into crony capitalism. Under crony capitalism, government picks economic winners and losers by doling out tax breaks, loan guarantees, regulatory favors and contract awards. Instead of delivering better products and services to customers, business competes by buying influence or submitting to extortion in Washington.

The result? Innovation and new business formation have dropped to historic lows. Financial engineering is in, and capital investment and long-term r&d are out. It's why the United States has the world's highest drug prices, broadband and cellular dead zones, and trillion-dollar, sitting-duck weapons systems that don't work. It's why young and non-white voters – who will be the majority in a generation -- now favor socialism over capitalism. The pay-to-play influence economy enabled by our corrupt campaign finance system is the single most direct threat to free-market capitalism.

To defend fiscal sanity.

Sustainably low taxes come from sustainably low spending. Conservatives have learned that big-money donors do not care much about conservative philosophy. Big money is united around the endless push for more spending and tax loopholes for their favored policies. And big money is driving big spending in a big way – because crony capitalism is so much more profitable than slugging it out in the competitive marketplace.

A recent [Forbes magazine](#) study found that, for each one dollar of lobbying, the top ten spenders got \$1,000 in grants and contracts ... paid for by taxpayers. A [Sunlight Foundation](#) study showed that for every dollar of lobbying and political contributions, politically active corporations received \$760 in the form of tax breaks, loan guarantees and contracts ... paid for by taxpayers.

Legalized pay-to-play corruption is why we've got trillion-dollar deficits as far as the eye can see. It's why Washington recklessly loads crushing future debt service onto the backs of young people, our kids and our grandkids. Warns [Admiral Mike Mullen](#), former chairman of the Joint Chiefs of Staff, "... the single greatest threat to our national security is our debt." We can draw a straight line

from the corrupt, big-money system to weakened national security, short-termism, twisted monetary policy, unsustainable spending commitments, and punishing future tax increases.

To defend constitutional conservatism.

Those supporting [Citizens United](#) view most limits on campaign contributions or spending as violations of First Amendment free-speech protections. However, as the Court has long recognized, the Constitution is to be understood as a whole, with its provisions sometimes in conflict with one another and thereby subject to balancing tests.

Citizens United weighed two such First Amendment tests: “anti-distortion” (i.e., fairness to un-moned speakers) and political corruption. The Court found that neither justified the contribution limits it struck down. While most *Citizens United* opponents view the Court as having erred in not applying both tests, I argue here only for corruption.

Central to its ruling, the Court conjured from thin air and against all evidence to the contrary its assertion as “fact” that billions in concentrated money have not corrupted American politics:

“[I]ndependent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption ... The fact that speakers may have influence over or access to elected officials does not mean that these officials are corrupt ... The appearance of influence or access ... will not cause the electorate to lose faith in our democracy.”

Objectively considered, *Citizens United* and its progeny enabled the current campaign money system. This system features billions of dollars in increased spending controlled by [tiny fraction](#) of voters. The Court’s cribbed conception of corruption (bags of cash for votes) is flatly disproven by a ground-breaking [2014 study](#) by two Princeton political scientists. They traced the outcomes of 1,779 contested federal policy issues over a twenty-year period, finding -- little surprise -- that economic elites and organized business interests enjoy substantial impact. The stunner: average members of public have statistically zero influence.

The Court was also factually wrong about the appearance of corruption. At [17 percent](#), public trust in our federal government sits today at a historic low. Two recent national polls ([Rasmussen](#) 4/24/19; [Campaign Legal Center](#) 11/8/19) show that Americans now rank political corruption as our nation’s number one most serious and crisis-level issue.

The corruption we must now address is that American citizens, to whom our Founders designed our government to be solely accountable, now have zero influence. Even more damaging, we know it. Constitutional conservatives have a sound factual basis -- grounded in First Amendment protections and in a careful reading of *Citizens United* -- to support an anti-corruption amendment.

An amendment grand bargain.

The facts about our corrupted political process are blazingly obvious to the public. These facts are why [supermajorities](#) -- 66 percent of Republicans and 85 percent of Democrats -- back a constitutional amendment to restore to Congress and the states the power to set reasonable limits on campaign spending and contributions. Resolutions to launch exactly this amendment, [H.J.Res.2](#) and [S.J.Res.51](#), have been introduced into both bodies of Congress. But, of the 256

combined co-sponsors, only two are Republicans, not propitious for the bi-partisan two-thirds majority required for passage.

In the eerily parallel partisan universe, since 1995 when the Supreme Court [struck down](#) term limits for members of Congress, Republicans in Congress have repeatedly backed a Congressional term-limits amendment, but never with sufficient Democrat support. But just as with an anti-corruption amendment, a [supermajority](#) of voters – 76 percent of Democrats and 89 percent of Republicans -- support term limits. However, the leading resolutions to launch a term-limits amendment, [H.J.Res.20](#) and [S.J.Res.1](#), have a combined 63 co-sponsors, only two of whom are Democrats.

If a bi-partisan group of House members were to agree to such a grand bargain, combining campaign anti-corruption and term limits amendments, Congress would not only give the overwhelming majority of Americans what we have been seeking for years, but would renew the American Republic and government of the people for generations to come. With this grand bargain, Congress could break gridlock and send two extraordinarily popular amendments to the states for potential ratification. (These amendments should be considered by the states as separate questions.)

As a longtime citizen, candidate and elected Republican advocate for both amendments, I strongly believe that advocates for both amendments can be persuaded to get behind a combined resolution. The breakthrough bi-partisanship needed to get this done will be the biggest move in many years to restore faith in democracy and to heal our divided republic.