

**Testimony of Congressman Ted Deutch
House Committee on the Judiciary,
Subcommittee on the Constitution, Civil Rights, and Civil Liberties**

Citizens United at 10:
The Consequences for Democracy and Potential Responses by Congress
February 6, 2020

Thank you, Chairman Cohen, Ranking Member Johnson, and Members of the Subcommittee, for the invitation to testify today.

On January 21, 2010, the Supreme Court issued its decision in *Citizens United v. FEC*. In the majority opinion, Justice Anthony Kennedy dismissed concerns that opening our politics to unlimited spending by corporations, unions, and non-profits would corrupt our elections. “The appearance of influence or access... will not cause the electorate to lose faith in our democracy,” he wrote.¹ With that reasoning, four other justices joined him in knocking down longstanding, bipartisan campaign finance laws. The decision ushered in an era of explosive political spending, outside influence of wealthy individuals and corporate special interests, countless loopholes that leave our elections vulnerable to attack. Together, those impacts have undermined Americans’ faith in our democracy.

Citizens United, together with a few subsequent decisions, shredded nearly all campaign spending limits, leaving those intended to stop *quid pro quo* corruption. Although I’m sure most Americans are now quite comfortable with the Latin phrase itself, they also know very well that buying favors directly from politicians isn’t the only problem facing the American democratic experiment.

It’s been 10 years. What has changed? *Citizens United* prompted a dramatic increase in political spending. Outside groups increased their spending from \$750 million over the two decades before the decision to nearly \$4.5 billion in the *Citizens United* era.² That means 86 percent of all outside spending over the past 30 years came in the 10 years since the decision.

¹ *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

² Karl Evers-Hillstrom, *More Money, Less Transparency: A Decade Under Citizens United*, Center for Responsive Politics, (Jan. 14, 2020), <https://dkftve4js3etk.cloudfront.net/news/reports/citizens-united/OpenSecrets-more-money-less%20transparency-a-decade-under-citizens-united.pdf>.

The explosion of spending includes a massive increase in spending by groups that are not required to disclose their donors. The Center for Responsive Politics found that these so-called “dark money” groups spent \$963 million over the past decade compared to \$129 million in the ten years before Citizens United.³

While the five justices who got it wrong in 2010 may have been naive to the reality of political campaigns, those of us who serve in Congress are not. The Court downplayed the risks of a tidal wave of political cash by claiming that disclosure requirements and prohibitions against candidates coordinating with outside groups would prevent corruption. But we now know, just as many of us had feared, that those safeguards have been underutilized and ineffective.

Over the past 10 years, we have seen wealthy individuals and corporations evade disclosure and slip around anti-coordination rules. Candidates are not allowed to coordinate with Super PACs. But that has not stopped top staff from jumping from inside campaigns out to Super PACs and dark money groups, achieving the same result. While candidates are not allowed to ask for high-dollar contributions in excess of annual limits, we have seen them play tag team with super PACs to help tee up million-dollar asks. The Court left intact prohibitions on campaign spending by foreign individuals and corporations. But, without disclosure requirements on tax-exempt groups, we have seen foreign money laundered into American elections.

Last year, the House of Representatives responded to many of these concerns by passing comprehensive reforms in the For the People Act (H.R. 1) and the Voting Rights Advancement Act (H.R. 4) that would make it easier for Americans to vote, bolster voting rights, end gerrymandering, secure our elections, add disclosure requirements, empower all Americans to participate in politics, repair the Federal Election Commission, and fortify ethics laws.

But legislation can only go so far. The deeply rooted problem of money in politics requires a constitutional amendment. The Democracy for All Amendment (H. J. Res. 2) complements these

³ Id.

legislative reforms by overturning *Citizens United* and allowing the American people to put reasonable limits on money spent in our elections.

I want to thank Vice Chair Raskin, Representative Jim McGovern, and Representative John Katko for joining me in introducing this bipartisan amendment to give American voters equal footing in our elections.

Our amendment rejects the Supreme Court's idea that only *quid pro quo* corruption threatens our elections.

Our amendment overturns *Citizens United* and expands beyond the Supreme Court's narrow corruption framework laid out in *Buckley v. Valeo*. In that case, the Court wrongly presumed that limitless independent expenditures by individuals would not undermine our system of representative democracy.

Our amendment would correct the Court's missteps to level the electoral playing field, promote political equality, and protect the integrity of our government institutions and elections.

As of today, The Democracy for All amendment has earned the support of 210 cosponsors. I want to thank them all, including Congresswoman Jayapal and many members of this subcommittee, for their support. We understand that amending the constitution is a serious endeavor. It must be done very carefully and only to respond to problems that strike to the core structures of our democratic republic. That is what this amendment does, and it is supported by a movement that will see these important reforms through.

Millions of advocates around the country led by a coalition of over 150 reform groups support the Democracy for All Amendment. At the five-year anniversary of the *Citizens United* decision they sent over five million petition signatures to Congress calling for it to be overturned.

The American people also strongly support making this change. In 2018, the University of Maryland reported that 75 percent of Americans from both parties want their representatives to support an amendment to allow for limits on election spending, including 85 percent of

Democrats, 70 percent of Independents, and 66 percent of Republicans.⁴ This broad base of bipartisan support from grassroots advocates has helped pass resolutions supporting an amendment in 20 state legislatures and 800 local governments across the country.⁵

While millions support getting money out of our elections, a mere handful have dominated spending since *Citizens United*. The ten families who spent the most in our elections in the *Citizens United* decade spent a total of \$1.2 billion. If that spending should be viewed as an exercise of free speech rights—as supporters of *Citizens United* allege—those 10 billionaire couples would have the rights equal to 6 million Americans spending \$200 each in our elections.

What is now a “billionaire problem” was previously referred to in 1987 as a “millionaire problem.” That is when then-freshman U.S. Senator from Kentucky Mitch McConnell filed his own constitutional amendment to allow Congress to set limits on election spending. He said, “[Amending the constitution] would give the Congress an opportunity to level the playing field, eliminate the millionaire’s loophole, put everybody on the same footing, so that the meat-cutter and coal miner and taxicab driver and anybody else in American society who can go out and get a lot of support from a lot of people could still raise the money, use the television, get into the race and build the contest.”⁶

America has always been chasing the ideals we set at our nation’s founding. Progress has been defined by hard-fought steps toward the realization of equality under the law. The Democracy for All Amendment is one of those necessary steps because your status in our democracy should not reflect your status in our economy. Whether you work three jobs and barely get by or own three homes and barely work—the eyes of the law, our government, and our elections should see all Americans as equal.

⁴ Steven Kull, *Americans Evaluate Campaign Finance Reform: A Survey of Voters Nationwide*, University of Maryland School of Public Policy, Program for Public Consultation, (May 2018), http://www.publicconsultation.org/wp-content/uploads/2018/05/Campaign_Finance_Report.pdf

⁵ United For the People, State and Local Resolutions, <http://united4thepeople.org/state-local/> (Feb. 3, 2020).

⁶ Senator McConnell (KY). “The Dangerous Cliff of Campaign Spending” Congressional Record 133:132 (Aug. 6, 1987) p. 11338; Accessed: Feb. 2, 2020.

This amendment will take money out of our elections and put voters back in charge. The current system has this dynamic exactly backwards. Polling consistently shows that—contrary to Justice Kennedy’s prediction—money in politics has shaken Americans’ faith in our democracy. For example, 84 percent of Americans think that government works for special interests—not for the people.⁷

The toxic influence of money in our elections touches every issue we face as a nation. And makes it harder to solve problems. For example, over 90 percent of Americans want stronger background checks for gun purchases⁸ and 7 out of 10 want action to respond to climate change.⁹ When it comes to many of the most important issues we face as a nation, powerful special interests flood our elections with money to stand in the way of change.

In 2014, the Supreme Court further weakened campaign finance laws in *McCutcheon v. Federal Election Commission* by striking aggregate contribution limits. The decision permitted wealthy individuals to max out their donations to as many federal candidates as they wish. In his dissenting opinion, Justice Stephen Breyer warned, “Where enough money calls the tune, the general public will not be heard.” This amendment responds to that warning by getting high-dollar contributors and million-dollar spenders out of the ears of elected officials to reorient the priorities of lawmakers toward a broader and more representative cross-section of their constituencies.

Citizens United betrayed our fundamental American values, corrupted our elections, and elevated the interests of billionaires and corporations above the concerns of American voters. Ten years later, I urge all my colleagues to support the Democracy for All Amendment to put voters back in charge of Washington and restore the faith of the American people in our democracy.

⁷ Liz Kennedy, *Drain the Swamp: Conflicts of Interest, Lobbying, and Corruption Solutions to Restore Trust in Government that Works for Americans*, Center for American Progress, (Jan. 5, 2017), <https://www.americanprogress.org/issues/democracy/reports/2017/01/05/295947/drain-the-swamp/>.

⁸ Chris Abele, *90 percent of Americans “support universal background checks” for gun purchases*, Politifact, The Poynter Institute, <https://www.politifact.com/factchecks/2017/oct/03/chris-abele/do-90-americans-support-background-checks-all-gun/>

⁹ Yale Program on Climate Change Communication, *Poll: American Voters support Climate Action*, (Sept. 4, 2019), <https://climatecommunication.yale.edu/news-events/poll-american-voters-support-climate-action/>