

**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**  
**Written Testimony of Congresswoman Pramila Jayapal**

Ten years ago, the Supreme Court issued its 5-4 landmark ruling in *Citizens United v Federal Elections Commission*.<sup>1</sup> The implications of the *Citizens United* ruling reach far beyond electoral politics and political donations—it expanded the notion of corporate personhood and brought in a new age of outside money in politics. In the ten years since the ruling, our nation has felt the profound impact of this decision in our elections, our policy making, and our daily lives.

I am proud to sponsor House Joint Resolution 48, the We The People Amendment, a strong, comprehensive solution to the *Citizens United* decision. Corporations and the ultra-rich have hijacked our elections for far too long. The We The People Amendment would bring that power back to everyday people by ending corporate personhood and clarifying that money does not equal free speech. Specifically, the resolution proposes a constitutional amendment that ends corporate personhood by providing that:

1. the rights protected by the Constitution are the rights of natural persons only;
2. artificial entities (such as corporations, limited liability companies, and other entities established by the laws of any state, the United States, or any foreign state) shall have no rights under the Constitution and are subject to regulation by the people, through federal, state, or local law; and
3. the privileges of such artificial entities shall not be construed to be inherent or inalienable.

The amendment further requires federal, state, and local governments to:

1. regulate, limit, or prohibit contributions and expenditures, including a candidate's own contributions and expenditures, to ensure that all citizens, regardless of their economic status, have access to the political process and that no person gains, as a result of that person's money, substantially more access or ability to influence the election of any candidate for public office or any ballot measure; and
2. require that any permissible contributions and expenditures be publicly disclosed. The judiciary is prohibited from construing the spending of money to influence elections to be speech under the First Amendment.

Amending the Constitution is a grave matter, but the impact of *Citizen's United* on our democracy demands a serious response. Prior to the Supreme Court's decision in *Citizen's*

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<sup>1</sup> *Citizens United v. Federal Election Commission*, 130 S.Ct. 876 (2010).

*United*, the majority of political donations were from individuals, in small amounts, and given directly to campaigns in a public and traceable fashion.<sup>2</sup> Then *Citizens United* established political spending as protected speech under the First Amendment of the Constitution, and further prevented the government from limiting corporations and other entities from spending money on candidates in elections. This established a dangerous precedent of corporate personhood that the We the People Amendment reverses by specifying that the rights provided by the Constitution are for real people, not corporations.

The Supreme Court's decision further empowered the Federal Elections Commission (FEC) to subsequently issue rulings that allow outside groups to accept unlimited political donations.<sup>3</sup> These outside groups have morphed into Super PACs, political action committees that may accept unlimited donations and expend unlimited resources, so long as it is not in direct coordination with a specific candidate's campaign.<sup>4</sup> This allowed corporations and the ultra-rich to exert their power in elections without any restrictions, and support candidates that further their corporate interests. This creates an enormous imbalance of power, in which the average American is outweighed in their ability to influence their elected officials. My We the People Amendment would regulate political donations and ensure that they are publicly disclosed to ensure transparency and public accountability.

Our nation cannot afford to wait any longer to take action. *Citizens United* resulted in a flood of money into politics at the federal, state, and local level. Since January 2010, every election has been more costly than the last as outside spending has ballooned. In the 2008 election—the last election prior to the *Citizens United* ruling—outside spending constituted only six percent of total election spending.<sup>5</sup> Since 2010 outside spending has grown exponentially. In the 2010 elections, just months after the decision, outside spending grew to nine percent of total election spending.<sup>6</sup> By the 2012 Presidential election, that number grew to 17 percent, nearly triple that of the 2008 Presidential election.<sup>7</sup> In the 2016 Presidential election, outside spending constituted 22 percent of total election spending.<sup>8</sup>

This translates to a dizzying amount of money in our elections. Since January 2010, over 2,200 corporations have publicly disclosed \$313 million in donations to over 500 Super PACs.<sup>9</sup> This is supplemented by \$226 million spent by 30 corporate trade groups that do not disclose

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<sup>2</sup> Karl Evers-Hillstrom, et. al., *More money, less transparency: A decade under Citizens United*, Center for Responsive Politics (Jan. 14, 2020) <https://www.opensecrets.org/news/reports/a-decade-under-citizens-united>

<sup>3</sup> Tim Lau, *Citizens United Explained*, Brennan Center for Justice (Dec. 12, 2019) <https://www.brennancenter.org/our-work/research-reports/citizens-united-explained>

<sup>4</sup> Alan Zibel, *Oligarch Overload: How Ultra-Rich Donors Have Flooded American Politics With Cash Since Citizens United*, Public Citizen (Jan. 15, 2020) <https://www.citizen.org/article/oligarch-overload/?eType=EmailBlastContent&eId=33ce6cd2-22f1-49a4-bc83-d7f0ae5a1d41>

<sup>5</sup> Karl Evers-Hillstrom, et. al., *More money, less transparency: A decade under Citizens United*, Center for Responsive Politics (Jan. 14, 2020) <https://www.opensecrets.org/news/reports/a-decade-under-citizens-united>

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Rick Claypool, *Corporations United*, Public Citizen (Jan. 15, 2020) <https://www.citizen.org/article/corporations-united-citizens-united-10-years-report/>.

their donors.<sup>10</sup> Yet it is individual donors who have taken true advantage of the *Citizens United* decision and the new ability to donate unlimited amounts into super PACs. Nearly \$1.4 billion has been donated by 25 individuals, constituting half of all super PAC donations.<sup>11</sup>

As Congress grapples with the most crucial issues of our time such as climate change, immigration, and an inequitable health care system, we must recognize the power that those with financial stakes in these industries exert in our elections. Scientists are unanimous on the need to reduce our reliance on coal and oil immediately. Yet of the top 20 corporate political spenders between 2010 and 2020, a quarter were either oil/gas or coal corporations with a financial stake in electing candidates that will oppose policies to address climate change.<sup>12</sup> The number of migrants detained in for-profit detention facilities grew 442 percent between 2000 and 2016.<sup>13</sup> The profiteers have taken notice. GEO Group, the largest private actor in immigration detention donated hundreds of thousands of dollars to PACs that supported Donald Trump and spent \$4 million in lobbying in Washington, DC on candidates that would support the expansion of detention.<sup>14</sup> As Congress and Presidential candidates debate the role of private insurers in health care reform, insurance companies have already spent \$4.5 million in the 2020 election cycle.<sup>15</sup>

Yet the true impact of the *Citizens United* decision is not limited to the role of money in politics. It is also important to consider the dangerous precedent of corporate personhood in *Citizens United* that laid the foundation for the Supreme Court's 2013 decision in *Sebelius v. Hobby Lobby Stores*. In the decision before the 10<sup>th</sup> Circuit court, Judge Tymkovitch writes, "We see no reason the Supreme Court would recognize constitutional protection for a corporation's political expression but not its religious expression."<sup>16</sup> The freedom of expression granted to corporations in *Citizens United* directly led to the freedom of religious expression in *Hobby Lobby*. This decision granted a corporation the ability to opt out of provisions of the Affordable Care Act in order to deny basic health care to women employees, on the basis that a corporation has religious liberty.<sup>17</sup> The We The People Amendment does not simply limit corporate personhood in the context of elections, but ensures that Constitutional rights are for the people not corporations in contexts similar to that of the *Hobby Lobby* decision and across the board.

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<sup>10</sup> *Id.*

<sup>11</sup> Alan Zibel, *Oligarch Overload: How Ultra-Rich Donors Have Flooded American Politics With Cash Since Citizens United*, Public Citizen (Jan. 15, 2020) <https://www.citizen.org/article/oligarch-overload/?eType=EmailBlastContent&eId=33ce6cd2-22f1-49a4-bc83-d7f0ae5a1d41>

<sup>12</sup> Rick Claypool, *Corporations United*, Public Citizen (Jan. 15, 2020) <https://www.citizen.org/article/corporations-united-citizens-united-10-years-report/>.

<sup>13</sup> Hauwa Ahmed, *How Private Prisons Are Profiting Under the Trump Administration*, Center for American Progress (Aug. 30, 2019) <https://www.americanprogress.org/issues/democracy/reports/2019/08/30/473966/private-prisons-profiting-trump-administration/>.

<sup>14</sup> Nick Schwellenbach, Katherine Hawkins, Adam Zagorin, *Private Prison Exec Pursues Federal Cash, Spends at Trump Hotel*, The Daily Beast (Nov. 18, 2019). <https://www.thedailybeast.com/private-prison-executive-at-geo-group-pursues-federal-funds-spends-at-trump-hotel>

<sup>15</sup> Alex Gangitano, *Progressives raise red flags over health insurer donations*, The Hill (Jan. 16, 2020) <https://thehill.com/policy/healthcare/478511-progressives-raise-red-flags-over-health-insurer-donations>.

<sup>16</sup> *Hobby Lobby Stores Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir., 2013)

<sup>17</sup> Jamie Raskin, *The Gospel of Citizens United: In Hobby Lobby, Corporations Pray For the Right To Deny Workers Contraception*, People for the American Way Foundation (March 2014) <http://www.pfaw.org/report/the-gospel-of-citizens-united-in-hobby-lobby-corporations-pray-for-the-right-to-deny-workers-contraception/>.

Research has found that 77 percent of Americans believe that there should be limits on the amount that both individuals and groups can spend on campaigns.<sup>18</sup> States and localities across the country have attempted to reel in the outsize power of corporations in elections. I am immensely proud to represent Seattle, the first city in the nation to adopt a policy to distribute “Democracy Vouchers” to support public campaign financing and establish contribution limits for lobbyists and contractors.<sup>19</sup> And I was proud that my amendment to establish a national pilot for Democracy Vouchers passed as part of H.R. 1, the “For the People Act.” But there is so much more to do. The time has come for Congress to intervene and that is why I am so proud to be the House sponsor, with Senator Markey, of the We The People Amendment.

I am also a proud cosponsor of Congressman Deutch’s Democracy for All Amendment. This legislation takes a crucial step to ensure that Congress and the States may regulate and limit the amount for campaign contributions and expenditures and distinguish between natural persons and artificial entities when creating campaign finance legislation. But without a clear end to corporate personhood, Americans will still feel the impact of the dangerous precedent set by *Citizens United*. The We the People Amendment goes further to end corporate constitutional rights and ensure that our democracy are really of the people, by the people.

I believe our democratic values are worth more than what any corporation can pay. In the dissenting opinion in *Citizens United*, Justice Stevens wrote, “corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. Corporations help structure and facilitate the activities of human beings, to be sure, and their 'personhood' often serves as a useful legal fiction. But they are not themselves members of ‘We the People’ by whom and for whom our Constitution was established.” As Members of Congress, we are here to serve the people; living, breathing people, not corporations. I look forward to working with my colleagues on this committee to reverse the harmful impacts of *Citizens United* and to advance the goals set forth in my We The People Amendment to ensure that Constitutional rights are for the people.

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<sup>18</sup> Bradley Jones, *Most Americans want to limit campaign spending, say big donors have greater political influence*, Pew Research Center (May 8, 2018) <https://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence/>.

<sup>19</sup> Democracy Voucher Program, Seattle.gov (accessed Feb. 1, 2020) <https://www.seattle.gov/democracyvoucher/about-the-program>.