

Testimony of Senator Tom Udall
Senate Judiciary Subcommittee on the Constitution, Civil Rights and Human Rights
Hearing on “Taking Back Our Democracy:
Responding to Citizens United and the Rise of Super PACs”
July 24, 2012

Good afternoon Chairman Durbin, Ranking Member Graham, and members of the Subcommittee.

Thank you for holding this important hearing.

Today’s hearing comes at an ideal time, as the 2012 election cycle provides a perfect example of just how broken our national campaign finance system really is. The integrity of our elections, and ultimately our governance, depends on a vigorous debate in which American citizens truly have a voice. Unfortunately, our elections no longer focus on the needs and interests of individual voters, but are instead shaped by multi-million dollar ad campaigns funded by special interest groups with seemingly limitless resources.

In January 2010, the Supreme Court issued its opinion in *Citizens United v. FEC*. Two months later, the DC Circuit Court of Appeals decided the *SpeechNow v. FEC* case. These two cases opened the door to Super PACs. Millions of dollars now pour into negative and misleading campaign ads, often without disclosing the true source of the donations.

But our campaign finance system was hardly a model of democracy before these opinions. We have been on this dangerous path for a long time. The *Citizens United* and *SpeechNow* decisions may have picked up the pace, but the Court laid the groundwork many years ago.

We can go all the way back to 1976. That year, the Court held in *Buckley v. Valeo* that restricting campaign spending, as well as limiting independent expenditures, violates the First Amendment right to free speech. In effect, the Court said that money and speech are the same thing.

This is a flawed premise, but the Court has continued to rely on it to issue more disastrous opinions, such as *Citizens United* and *Speech Now*. Unfortunately, the outcome is hardly surprising – Americans’ right to free speech is now determined by their net worth.

But the founding principle of this nation is that all Americans deserve the same constitutionally guaranteed rights. We don’t tell the wealthy they can choose any religion, but the poor can only pick from a few. But that’s exactly what the Court said about the freedom of speech. For average Americans, they get one vote. They go to the polls and cast their ballot with millions of others. But for the wealthy, and the super wealthy, *Buckley* says that they can spend unlimited amounts of money to influence the outcome of our elections. And now, with *Citizens United*, that right has been extended to corporations and other special interests.

The damage is clear. Elections become more about the quantity of cash, and less about the quality of ideas. More about special interests, and less about public service.

We cannot truly fix this broken system until we undo the flawed, inherently undemocratic premise that spending money on elections is the same thing as exercising free speech. That can only be achieved in two ways. The Court could overturn *Buckley* and the subsequent decisions based on it – which seems highly unlikely given its current ideological makeup. Or we amend the Constitution. To not only overturn the previous bad Court decisions, but to also prevent future ones. Until then, we will fall short of the real reform that is needed.

That is why Senator Bennet and I, along with several members of this subcommittee, introduced S.J. Res. 29 last November. We're up to 23 cosponsors, with several other senators expressing support for a constitutional amendment in floor speeches and press interviews.

This amendment is similar to bipartisan proposals in previous Congresses. It would restore the authority of Congress – stripped by the Court – to regulate the raising and spending of money for federal political campaigns, including independent expenditures, and it would allow states to do so at their level. It would not dictate any specific policies or regulations. But, it would allow Congress to pass sensible campaign finance reform legislation that withstands constitutional challenges.

In *The Federalist* No. 49, James Madison argued that the Constitution should be amended only on “great and extraordinary occasions.” I believe we have reached one of those occasions. In today's political campaigns, our free and fair elections – a founding principle of our great democracy – are for sale to the highest bidder.

I know amending the Constitution is difficult. And it should be. Last week during the debate on the DISCLOSE Act, Chairman Leahy commented that we must pass that bill now because of the “years and years that a constitutional amendment might take.”

But those “years and years” started decades ago. There is a long – and bipartisan – history here. Many of our predecessors from both parties understood the corrosive effect money has on our political system. They spent years championing the cause.

In 1983 – the 98th Congress – Senator Ted Stevens introduced an amendment aimed at overturning *Buckley*. And in every Congress from the 99th to the 108th, Senator Fritz Hollings introduced bipartisan constitutional amendments similar to mine. After he retired, Senators Schumer and Cochran continued the effort in the 109th Congress.

And that was before the *Citizens United* decision. Before things went from bad to worse. The out of control spending since that decision has further poisoned our elections. Fortunately, it has also ignited a broad movement to amend the Constitution.

I participated in a panel discussion in January with several activists in this movement. One of the panelists, Maryland State Senator Jamie Raskin, was asked about overcoming the difficulty of amending the Constitution. Jamie said that “a constitutional amendment always seems impossible until it becomes inevitable.” I think we are finally reaching the point of inevitability.

Across the country, more than 275 local resolutions have passed calling for a constitutional amendment to overturn *Citizens United*. Legislatures in six states – California, Maryland, Hawaii, Vermont, Rhode Island, and my home state of New Mexico – have called on Congress to send an amendment to the states for ratification. Many more states have similar resolutions pending.

Over 1.9 million citizens have signed petitions in support of an amendment. More than a hundred organizations, under the banner of United For the People, are advocating for constitutional remedies.

This grassroots movement is yielding progress. In addition to our Senate amendments, several other campaign finance related amendments have been introduced in the House.

But an amendment can only succeed if Republicans join us in this effort, as they have in the past. I know the political climate of an election year makes things even more difficult, but I'm hopeful that we can work together and reach consensus on a bipartisan constitutional amendment that can be introduced early in the next Congress.

We must do something. The voice of the people is clear, and so is their disgust. A recent Washington Post–ABC News poll found that nearly 70% of registered voters would like Super PACs to be illegal. Among independent voters, that figure rose to 78%.

Since his retirement, Senator Hollings has continued to call for passage of an amendment. After the *Citizens United* decision, he wrote on The Huffington Post that, “Like a dog chasing its tail, Congress has tried for thirty-five years to control spending in federal elections, only to be thwarted by the Supreme Court intent on equating speech with money. To return to Madison’s freedom of speech, Congress needs to pass a Joint Resolution amending the Constitution to authorize Congress to limit or control spending in federal elections.”

Senator Hollings also recognized the deterioration of our legislative branch due to the increasing influence of money on our elections. In another Huffington Post piece, Senator Hollings wrote:

“Money has not only destroyed bi-partisanship but corrupted the Senate. Not the senators, but the system. In 1966 when I came to the Senate, Mike Mansfield, the Leader, had a roll call every Monday morning at 9:00 o’clock in order to be assured of a quorum to do business. And he kept us in until 5:00 o’clock Friday so that we got a week’s work in . . . Today, there’s no real work on Mondays and Fridays, but we fly out to California early Friday morning for a luncheon fundraiser, a Friday evening fundraiser, making individual money appointments on Saturday and a fundraising breakfast on Monday morning, flying back for perhaps a roll call Monday evening.”

I agree with his assessment, and also remember when fundraising wasn’t the priority it is today. My father was elected to Congress in 1954. I was in first grade. And the legislative branch was a Citizens’ Congress. Members were in Washington for six

months, and then they went home for six months and worked at their profession. But during those six months in session, Congress focused on legislating.

And unlike today, where it's a weekly race to get out of town every Thursday, everyone socialized. I remember there were Saturday night potlucks with many members of Congress and their families. My mom told me she didn't even know who was a Republican and who was a Democrat. When you socialize like this on the weekend, it makes it much harder to attack each other the following week on the House or Senate floor. Unlike the political climate we're in today, there was a willingness to put partisanship aside for the common good.

Unfortunately, our current campaign finance system has locked members of Congress into an endless campaign cycle. Elected officials spend far too much time raising money for campaigns, and not enough time carefully considering legislation or listening to constituents. The drive to raise money is constant, and allowing vast new amounts of special interest money into the system will only increase the pressure. This causes a deterioration of Congress's ability to function, including its ability to adequately represent and respond to its constituents. As the money raised and spent on campaigns by special interests continues to climb, members of Congress will have to devote more time trying to keep up in the fundraising race. It is no wonder that, as the pursuit of campaign money has come to dominate politics, the American people have become increasingly dissatisfied with Congress' performance.

The pressure to raise money also discourages many qualified Americans from running for office. After the 2010 elections, former U.S. Senators Warren Rudman (R-NH) and Tim Wirth (D-CO) published a joint op-ed in which they state:

“If there's one reason for leaving [the Senate] that both Senators [George] Voinovich [R-OH] and [Evan] Bayh [D-IN] – and ourselves in our time – share in common, it's money. [They] are just the latest in a stream of moderate Senators who are too fed up to seek another term. Congress is stuck in the mud of strident partisanship, excessive ideology, never-ending campaigns, and – at the heart of it all – a corrosive system of private campaign funding and the constant fundraising it demands.”

Money has poisoned our political system. And the Supreme Court has incorrectly equated that money with speech, leaving us with one option for real reform. We must work towards a constitutional amendment that will restore integrity to our elections and legislative process. We, as Americans, believe in government “of the people, by the people, for the people.” Generations of Americans before us have spoken out, worked tirelessly, and even given up their lives so that we might have the chance to have such a government. We cannot sit by as that ideal is lost.

Thank you again for holding this hearing.