

UNDOING CITIZENS UNITED: A CALL FOR AN AMENDMENT TO
OVERTURN *CITIZENS UNITED V FEC*

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Abstract

The purpose of this proposal is to examine if overturning the Supreme Court's *Citizens United vs FEC* ruling via a constitutional amendment would be a political win for Sen. Bernie Sanders. As Sen. Sanders seeks the Democratic nomination, and eventually the presidency this election cycle, campaign finance has become a focal point of his campaign. This proposal may provide the platform in which he can use to implement this policy change. Starting with the history and background, we examine where the American campaign finance system stands since the 2010 ruling. The following section examines the amendment that has been proposed to Congress via a nonprofit organization Move to Amend. A breakdown of the strengths and weaknesses of this proposal are examined from both a policy and political perspective. In conclusion, a recommendation is given to the Senator as he continues his run at the presidency.

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Action Forcing Event

As Jane Mayer illustrates in her new book *Dark Money: The Hidden History of the Radical Right*, the massive influx of dark money into our political system has begun to directly influence how our legislators come to policy decisions. Mayer brings to light a policy pact signed by 76 congressional hopefuls who would agree not to pass any legislation in regards to climate change unless it had zero impact on the deficit, in exchange for campaign contributions from the Koch brothers backed Super PAC (Political Action Committee) Americans for Prosperity.¹ Dark money has the potential to prove itself detrimental to the democratic processes of this country, further silencing the interests of the electorate at large beneath the financially-backed wishes of the wealthiest campaign donors.

History

On January 21, 2010, the Supreme Court of the United States (SCOTUS) made a monumental, and controversial, ruling when the court decided in a split 5-4 vote to rule in favor of Citizens United in the *Citizens United vs FEC* case. This case dealt with the issue of campaign finance, and whether or not the first amendment of the constitution prohibited the government from limiting campaign contributions from groups such as for-profit corporations, non-profit organizations, labor unions, or other entities. To fully understand the implications of the Citizens United decision, we must first look at the law that it was challenging to gain a more complete perspective.

¹ Jane Mayer, *Dark Money: The Hidden History of The Radical Right*, (New York: Penguin Random House, 2016), 315

In 2002, a piece of bipartisan legislation attempting to tackle the issue of campaign finance reform was enacted into law. This bill was called the Bipartisan Campaign Reform Act (BCRA), or the McCain-Feingold Act. This piece of legislation was the first comprehensive overhaul of the federal campaign finance system in decades. The bill's most important functions were to eliminate outside campaign donations by individuals and groups going to candidates seeking elected office, as well as election committees at every level of government. These donations were known as "soft money", and were alleged to influence decision-making by financial means..² The other main component addressed in the BCRA was the issue of "electioneering communication", and would have just as profound an effect on campaigning as the aforementioned "soft money".

Congress defined electioneering communication as any "broadcast, cable or satellite communication" that Corporate or unions spend from their general funds on ads during a window of time defined as the "election period,". Electioneering was strictly prohibited by the law.³ There was a three-part test to determine if the rules set by the BCRA were being broken. First, the source of payment needed to be examined.. Second, an examination of the content of the advertisement was conducted to see if it republishes the content of a candidate's advertisement. If the advertisement expressly advocates for the election or defeat of a clearly defined candidate, or if it is disseminated 120 days or fewer before an election, or is directed to voters in the jurisdiction where the candidate or

² Timothy K. Kuhner, *Capitalism v. Democracy: Money in Politics and the Free Market Constitution* (Stanford: Stanford Press, 2014) 106-107

³ Monica Young, editor. *Money, Politics, and the Constitution: Beyond Citizens United* (NYU School of Law: Century Foundation, Inc., 2011) 29-30

party appears on the ballot, then it must be declared invalid. Finally, the test examined the content of the advertisement. Soft money and electioneering were what the group Citizens United sought to challenge in the case it presented to the Supreme Court.

Citizens United v. FEC was born when the conservative organization wanted to air a short film entitled: Hilary, the Movie. The group wanted to air this film in 2007 in an effort to thwart Hilary Clinton's bid for President. In December 2007, Citizens United filed a grievance with the DC District court challenging the constitutionality of some of the provisions of the "electioneering communications" guidelines. After being turned away by the lower court, Citizens United appealed to the Supreme Court. The case ended in a 5-4 decision ruling in favor Citizens United.⁴

Considering the fact that this case centered around the First Amendment, the ruling elicited deep-seeded reactions for people on both sides of the aisle. Joel M. Gora, a law professor lawyer for the American Civil Liberties Union, said the case was a "great day for the First Amendment."⁵ One of the major points of contentment for those who opposed the court's ruling in this case was centered on the ruling giving First Amendment rights to corporations. Based on this ruling, corporations are viewed as people under the law. At the Iowa State Fair, 2012 presidential candidate Mitt Romney stated, "Corporations are people, my friend."⁶ This quote expressed the mindset that with

⁴ Jane Mayer, *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right* (New York: Penguin Random House, 2016) 237

⁵ "In Support of Citizens United, against Targeting Political Speech," last modified February 12, 2015, <http://thehill.com/blogs/congress-blog/politics/232535-in-support-of-citizens-united-against-targeting-political-speech>

⁶ "Mitt Romney Says Corporations Are People", last modified August 11, 2011, https://www.washingtonpost.com/politics/mitt-romney-says-corporations-are-people/2011/08/11/gIQABwZ38l_story.html

campaign contributions and content less regulated, individuals and corporations are more free to utilize their First Amendment right and advocate for the candidate they support, thereby strengthening our democracy.

There is evidence to suggest that the influx of money through the Citizens United decision has also helped keep candidates that otherwise would have been disregarded to remain competitive in their given elections. The ruling has been found to help candidates representing both major political parties. During the 2012 midterm race, a Super PAC was responsible for helping keeping George Holding competitive in North Carolina's 13th district race. Rep. Holding would go on to win the primary, and eventually the election. The same is true for Democratic challenger Tim Kaine, who defeated Republican front-runner George Allen for one of Virginia's Senate seats.⁷ The increase of funding is not just for federal positions, either. The impact of the Citizens United ruling can also be seen at both the state and local levels as well.

A flow of outside money through Super PACs helped reshape the political landscape of the Colorado State Legislature. In 2010, Democratic-backed PACs spent \$9.1 million in contributions, compared to \$2.2 million from their Republican counterparts.⁸ In Wisconsin, outside money was funneled into the state to help ensure Gov. Scott Walker survived his recall election. Gov. Walker spent \$36.1 million to survive, of which \$22 million or 66% of the money spent came from outside the state of Wisconsin. A preliminary review of Walker's contributors since January 2011 found 37

⁷ "Five Ways Citizens United is Making Politics Better," Tim Cavanaugh, last modified March 17, 2010, <http://reason.com/archives/2012/03/17/five-ways-citizens-united-is-making-poli/4>

⁸ "Spending by Super PACs in Colorado is the Dominion of Democrats," last modified March 10, 2012, http://www.denverpost.com/breakingnews/ci_20148556/spending-by-super-pacs-colorado-is-dominion-democrats

individuals, including 26 from outside Wisconsin, representing construction, manufacturing, finance and other powerful special interests who each gave the governor between \$50,000 and \$510,000 for a total of \$4.74 million.⁹ With the money clearly surging to amounts never seen before the Supreme Court heard a case that looked to build off of the Citizens United ruling.

In 2014 the Supreme Court took on *McCutcheon v. FEC*. The case examined the constitutionality of aggregate campaign limits. In another 5-4 decision, the Supreme Court ruled against the Federal Election Commission (FEC) and found that the limits infringed on their First Amendment right to use money to promote the candidate of their choosing. While the ruling overturned limits on aggregate federal campaign contributions, it did not affect individual limits on donations to specific political campaign, which remain at \$2,600 per election. Chief Justice John Roberts wrote in the legal opinion that "The government may no more restrict how many candidates or causes a donor may support than it may tell a newspaper how many candidates it may endorse."¹⁰ Shortly after this ruling the Senate took steps to establish a constitutional amendment which would overturn the Citizens United ruling.

On September 11, 2014, 54 Senators, all of whom were either Democrats or Independents, voted to take steps to amend the constitution by more aptly campaign finance terms. However, 42 Senators, all of whom were Republicans, voted in opposition, which enacted the filibuster. Since the filibuster was used, it effectively blocked further

⁹ "Recall Race for Governor Costs \$81 million," last modified January 31, 2013, <http://www.wisdc.org/pr072512.php>

¹⁰ "McCutcheon vs Federal Election Commission," last modified February 23, 2016, <https://www.oyez.org/cases/2013/12-536>

consideration of the amendment proposal, since 60 votes were needed to end debate and force a vote. Even if the Republicans had not filibustered the initiative, actual passage of an amendment would have required a two-thirds vote.¹¹ While at this time it is apparently a liberal vs conservative cause, reversing the Citizens United ruling has become much more bipartisan.

You need to look no further than the current candidates running for President to see that a dissatisfaction with the Citizens United ruling exists on both sides. While it is expected to be a theme from Democratic candidates such as Hilary Clinton and Bernie Sanders, what is surprising is to hear the criticisms from those on the right. Republican frontrunner Donald Trump has been very vocal when speaking in favor of campaign finance reform. Exposing the potential danger of super PACs, Trump tweeted, “Many Super PACs, funded by groups that want total control over their candidate, are being formed to ‘attack’ Trump. Remember when u see them.”¹² Former Republican candidate Jeb Bush has also spoke out against Citizens United. When asked about the ruling, he replied, "In a perfect world, which we don't have because the Supreme Court ruled in the way it did, I would say you'd have very few restrictions for candidates and total transparency,”¹³ The dislike and desire for the overturn of Citizens United has surprisingly achieved consensus among the populous in an increasingly polarized political atmosphere.

¹¹ “The Senate Tried to Overturn ‘Citizens United’ Today. Guess What Stopped Them?,” last modified September 11, 2014, <http://www.thenation.com/article/senate-tried-overturn-citizens-united-today-guess-what-stopped-them/>

¹² “Donald Trump and Citizens United: A Modest Proposal,” last modified February 12, 2016, <http://www.newyorker.com/news/daily-comment/donald-trump-and-citizens-united-a-modest-proposal>

¹³ “Jeb Bush on Citizens United: I don’t Understand it to be Honest with You,” last modified May 29, 2015, <http://gui.afsc.org/birddog/jeb-bush-citizens-united-decision-i-dont-really-understand-it-be-honest-you>

If you compare survey results when comparing the desire to overturn Citizens United in comparison to other contentious issues, the results are very telling. In a recent Bloomberg poll, 78% of those surveyed disagreed with the statement that corporations and unions may spend unlimited amounts on political causes. Comparing that with other major issues, 67% who agree with a woman's right to choose, 54% agree with same-sex marriage, and only 49% who agree with the court's decision to uphold Obamacare.¹⁴ This poll clearly shows that the Citizens United ruling does not sit well with the American populous, and overturning the ruling via constitutional amendment will be well received by the electorate.

Background

Establishing a constitutional amendment to overturn the Supreme Court decision in favor of Citizens United may seem dubious. However, this course of action has been proposed by multiple congressional members who consider the amount of dark money being funneled into political campaigns as a validation for these drastic measures. While it is too late for any action to make an impact on the 2016 election cycle, this is the perfect time to voice their opposition to, and promise to overturn Citizens United on the campaign trail.

The Citizens United ruling has been the biggest shift in campaign finance practices in decades. The case was brought to the Supreme Court by the conservative lobbying group Citizens United. The case was born when the FEC denied the group from

¹⁴ "Americans Want the Supreme Court to Turn off the Political Spending Spigot," last modified September 28, 2015, <http://www.bloomberg.com/politics/articles/2015-09-28/bloomberg-poll-americans-want-supreme-court-to-turn-off-political-spending-spigot>

airing a movie it had created with the intent of negatively affecting the outcome of presidential candidate Hilary Clinton during the 2008 presidential election cycle. The airing of the film would have violated terms set forth in the Bipartisan Campaign Reform Act (BCFA).¹⁵ Since the 2010 ruling we have seen massive amounts of money spent on elections at all levels of public service, including the elections of federal judges.

The judiciary branch of our democracy was meant to be the only pure nonpartisan segment of our government. However, since Citizens United came into effect, a substantial amount of dark money has been spent to get judges elected. One example that perfectly encapsulates this issue occurred during the 2013-14 election cycle in a fight for a seat on the Michigan Supreme Court.

Richard Bernstein sought to win the open seat during that election year. However, he had several important factors working against him: he is a registered Democrat, he has no prior experience as a judge, and he has been blind since birth. During the campaign, Mr. Bernstein put up \$1.3 million of his own money to finance his campaign. He said he had to commit that much money to “remain competitive.” It was found that candidates spent \$34 million on state Supreme Court races alone. Political parties, and outside interest groups spent an amazing \$13.8 million, or 40% of all contributions, on these races. While this figure was less than the 2011-12 cycle, that was in large part due to less vacant seats, Mr. Bernstein went on to win his campaign and become the first blind

¹⁵ Conor M. Dowling & Michael G. Miller: *Super PAC! Money, Elections, and Voters after Citizens United* (New York: Taylor and Francis Group, 2014), 12-13

justice in the state's history.¹⁶ This is just one example of the inflow of money, and its impact on elections at all levels.

The ruling by the Supreme Court has become viewed unfavorably by an increasing number of people in the US. Considering what the Citizens United case aimed to do, one would imagine that conservatives would be overwhelmingly supportive of the measure. Despite that, it has been found in numerous polls that this is not the case. A Washington Post-ABC News Poll back in February of 2010 found that 80% of those asked were opposed to the court's finding, and 65% would even say they were "strongly opposed." Opposition for Citizens United was found across ideological and party lines. 85% of self-identifying Democrats, 76% of Republicans, and 81% of independents polled did not agree with the Citizens United ruling.¹⁷ Amazingly, the number of people in opposition continues to increase.

A recent CBS/NY Times poll of self-identifying Republicans found that the number of those who believe that money has too much influence in our politics rose to 80%. In addition, 54% of those polled believe that politicians help those who give money to candidates. A total of 73% of these Republicans felt that super PAC spending should be limited by law. Finally, 76% in this group thought that super PACs should be required

¹⁶ *"Huge Sums Are Pouring into Judicial Elections, But That Would Never Affect Courts, Right?"* last modified October 25, 2015, <http://www.motherjones.com/politics/2015/10/buying-judges-dark-money-flowing>

¹⁷ *"Poll: Large Majority oppose Supreme Court's Decision on Campaign Financing,"* last modified February 17, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/02/17/AR2010021701151.html>

to disclose their donors.¹⁸ These numbers do not indicate a simple majority. They show an overwhelming majority of constituents agreeing on an issue and demanding change.

As shown, the Citizens United ruling has impacted election results on local, state, federal, and even judiciary campaigns. It would not be an exaggeration to say that every citizen has been impacted by the outcome of this court case. The negative feeling towards Citizens United has fueled the creation of organizations to help apply the pressure to congressional members to consider amending the constitution.

Move to Amend (MTA) is a group that was created in 2009 in preparation of the Citizens United ruling. Growing to consist of a coalition of over 380,000 people, with hundreds of organizations committed to fighting Citizens United. The organization seeks to, “unequivocally state that inalienable rights belong to human beings only, and that money is not a form of protected free speech under the First Amendment and can be regulated in political campaigns.”¹⁹ MTA is not the only such group that was constructed with the sole purpose of ending Citizens United, as this ruling has created a lot of backlash.

End Citizens United is a PAC which supports democratic candidates whom shares the view of wanting Citizens United ended. On their website they define their mission in the following way:

Corporations are NOT people and secrecy has no place in American campaigns. We support efforts to enact a Constitutional Amendment that would reverse the Supreme Court’s decisions in *Citizens United v. F.E.C.*, *McCutcheon v. F.E.C.*, and related cases, and give Congress and states the

¹⁸ “Poll Finds that 80% of Republicans Agree with Bernie Sanders on Citizens United,” last modified June 2, 2015, <http://www.politicususa.com/2015/06/02/poll-finds-80-republicans-agree-bernie-sanders-citizens-united.html>

¹⁹ Move to Amend “Mission Statement,” <https://movetoamend.org/about-us>

power to regulate campaign finance. We also support other meaningful forms of campaign finance reform on the local, state, and federal level.²⁰

The organization fights to support Democrats because its leadership feels that even though many Republican and Independent voters agree that undisclosed political spending is rampant, Republican leadership in Congress is standing squarely in the way of overturning this disastrous Supreme Court decision.²¹

Another major organization looking to repeal Citizens United is a group called Public Citizen. Public Citizen was founded in 1971 and aims to ensure that all people have a voice in the halls of power.²³ While MTA sought to negate Citizens United via constitutional amendment, Public Citizen has taken another approach. Along with 56 other organizations, they presented President Obama with a petition signed by over 851,000 signatures requesting an executive order to require disclosure of secret political spending by federal contractors.²⁴ Due to the nature of executive orders, the scope of power would be much more limited than a constitutional amendment. However, the sentiment remains the same. Considering the number of people that oppose Citizens United, there is little, if any public support coming from the majority of members of Congress in support of Citizens United, however there are voices openly opposing the ruling.

Republican Senator from Arizona John McCain, lead sponsor of the McCain-Feingold Campaign Finance Reform Law, has openly voiced his discontent with the

²⁰ End Citizens United "Mission Statement," last modified March 1, 2015, <http://endcitizensunited.org/about/>

²¹ Ibid

²³ "About Us," last modified 2016, <http://www.citizen.org/Page.aspx?pid=2306>

²⁴ "851,000 People Urge President to Sign Secret Money Executive Order," last modified November 10, 2015, <http://www.uspirg.org/news/usp/851000-citizens-urge-president-sign-secret-money-executive-order>

ruling that effectively overturned a key moment in legislative history. In a press release dated January 20, 2012, Sen. McCain, along with former senator Russ Feingold, stated, “On this anniversary, we call on both parties to work together to remedy the obvious damage to our political system caused by the *Citizens United* decision.”²⁵ This bipartisan communication shows that support for an amendment does exist in Washington.

There has been strong support calling for an amendment to be passed. One example comes from Sen. Richard Durbin (D-IL). On his senate page he clearly states that he, “will continue my efforts to pass a Constitutional amendment to fully protect and restore the First Amendment and ensure that elections are a contest of the best ideas—not just the ideas of multi-millionaires.”²⁶ Opposition towards Citizens United can also be found in the presidential candidates of this election cycle.

Secretary Hillary Clinton, who played a significant role in the creation of the Citizens United rulings by being the catalyst for the original Supreme Court lawsuit, wants to see the law overturned. “We need to fix our dysfunctional political system and get unaccountable money out of it once and for all—even if it takes a constitutional amendment.”²⁷ Sec. Clinton made this comment during a roundtable with students and instructors from Kirkwood Community College. Sen. Sanders, your website calls for an amendment on your campaign website, stating that, “real campaign finance reform must

²⁵ Senator John McCain, press release, <http://www.mccain.senate.gov/public/index.cfm/2012/1/post-fc2df4f4-07af-cc35-f5f6-3473226e995f>

²⁶ Senator Richard Durbin, “Impact of Citizens United,” <http://www.durbin.senate.gov/issues/campaigns-and-elections>

²⁷ “*Hilary Clinton Hints at Support for A Constitutional Amendment to Overturn Citizens United*,” Beth Ethier, http://www.slate.com/blogs/the_slatest/2015/04/14/hillary_clinton_says_she_d_want_to_overturn_citizens_united_her_super_pac.html

happen as soon as possible. That is why we must overturn, through a constitutional amendment, the disastrous *Citizens United* Supreme Court decision as well as the *Buckley v. Valeo* decision.”²⁸ Republican presidential frontrunner Donald Trump has also publically spoken out against Citizens United calling super PACs a “totally phony deal” and went on to say that the law “forces people into becoming somewhat dishonest.”²⁹ This demonstrates that major players in the presidential race from both political parties support the end of Citizens United.

A concerted effort to persuade members of Congress to overrule the Citizens United ruling via constitutional amendment is in continual motion. The push has come from many different outlets, this includes petitions from organizations such as Public Citizen, or calls for an amendment from MTA. Prominent politicians such as Sen. Richard Durbin and Sen. John McCain, have also publically joined the fight for an amendment. Even three of the major presidential candidates have spoken out against Citizens United in one way or another. While the opposition for the Supreme Court ruling is evident, the question remains: Do members of Congress contain the motivation necessary to act on the behalf of a majority of US citizens in this matter?

posal

The massive inundation of money into the US political system demands a course of action.. Allowing for unlimited spending has contributed to pledges such as the “No

²⁸ “*Getting Big Money Out of Politics and Restoring Democracy*,”
<https://berniesanders.com/issues/money-in-politics/>

²⁹ “*Donald Trump likes Volcker-and His Rule*,” last modified August 4, 2015,
<http://www.bloomberg.com/politics/articles/2015-08-04/trump-the-developer-loves-low-interest-rates-trump-the-candidate-sees-a-bubble->

Climate Tax Pledge” created by American’s for Prosperity as brought to light by Jane Mayer’s book *Dark Money: The Hidden History of the Radical Right*. While deals to secure campaign contributions may exist in larger numbers, the real problem is found in the of lack of transparency of these donations, so that voters have the opportunity to know who is truly funding the campaigns of their future elected leaders.

Authorizing-

A constitutional amendment would seek to accomplish something that has been attempted numerous times throughout US history: installing fairness and transparency into all levels of elections. While the occurrence is rare, a constitutional amendment is the most democratic way to get Citizens United overturned. First, amendments must be *proposed*, which can be accomplished in two different ways. An amendment can be proposed by the Congress if two-thirds of the members of both the House of Representatives and the Senate vote in its favor, or by a constitutional convention called for by two-thirds of the State legislatures.³⁰

The “We the People” amendment as drafted by the MTA organization is composed of two sections. The first establishes that corporations do not have constitutional rights, and the second secures that money is not the equivalent of free speech. This amendment had six original house sponsors: Rick Nolan (MN), Mark Pocan (WI), Matthew Cartwright (PA), Jared Huffman (CA), Raul Grijalva (AZ), Keith Ellison (MN). The proposed amendment reads as such:

³⁰ “*Amending the Constitution*,” last modified January 2015, <http://www.thisnation.com/textbook/constitution-amend.html>

Section 1. [Artificial Entities Such as Corporations Do Not Have Constitutional Rights]

The rights protected by the Constitution of the United States are the rights of natural persons only.

Artificial entities established by the laws of any State, the United States, or any foreign state shall have no rights under this Constitution and are subject to regulation by the People, through Federal, State, or local law.

The privileges of artificial entities shall be determined by the People, through Federal, State, or local law, and shall not be construed to be inherent or inalienable.

Section 2. [Money is Not Free Speech]

Federal, State, and local government shall 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 their money, substantially more access or ability to influence in any way the election of any candidate for public office or any ballot measure.

Federal, State, and local government shall require that any permissible contributions and expenditures be publicly disclosed.

The judiciary shall not construe the spending of money to influence elections to be speech under the First Amendment.³¹

Implementation

The Federal Election Commission (FEC) would be tasked with ensuring the new regulations brought on by the amendment would be followed. By placing tougher restrictions on campaign donations, the expectations and inherent power of this organization would expand. This does come with a great deal of concern, some justified, in the faith of the FEC to adequately solve any issues that may arise. However, since the FEC has been entrusted with this oversight since the mid 1970's, it should be left up to the commission to determine how best to address these issues.

Depending on when the amendment is ratified, its impact may not be felt until the following election cycle. Therefore, the 2018 mid-term elections would be the earliest any real changes might be seen. This timeframe would give the FEC time to work

³¹ "We the People Amendment," last modified April 29, 2015, <https://movetoamend.org/wethepeopleamendment>

through some of the issues it currently faces, such as political gridlock. The expansion of the role of the FEC may include an increase in funding in order to expand the staff, improve the organization's technological capabilities, and find best operating procedures to navigate the new regulations. Any budget increase would have to come through congressional budgets; to secure these funds the FEC would be tasked with coming up with a new budget proposal.

Policy Analysis

Since 1791, the year the Bill of Rights was ratified, the constitution has been amended 17 times. 16 if you take into account the 21st amendment repealed the 18th. That means the laws of this land have only changed 16 times in the past 225 years via constitutional amendment. The 13th amendment abolished slavery, the 15th granted African-Americans the right to vote, while the 19th gave that same right to women. It can be argued that these amendments were necessary because clear injustices were being done, and the American public was not yet ready to end these oppressions. The same cannot be said for campaign finance. There is debate as to whether any injustice or oppression is being done at all. Because of this, taking the drastic jump to amending the constitution has its pitfalls. Similar results may be found by a law that is voted on in congress. This course of action would require much less political cooperation, and given the state of affairs in Washington, an all-or nothing approach is a major leap of faith.

The creation of a constitutional amendment is among the most drastic measures available in US policymaking. An amendment requires the highest level of solidarity amongst our elected officials. Given the current political atmosphere of Washington, the idea that this level of bipartisanship is obtainable seems impossible. This is especially

true when perceived rights will become restricted if this amendment is to enacted. This proposal is classified as a stick; as this policy would limit eligible donations to campaigns.

If this amendment was enacted, the ruling of the Supreme Court would be nullified. Support for this amendment also represents the most aggressive policy method to campaign finance reform. On the other hand, because this is an “all-or-nothing” approach, there is a realistic chance that nothing will get accomplished.

History dictates that even if this amendment is enacted, third parties always seem to find ways around the rules. Looking at the results that came from McCain-Feingold is a perfect example. In 2002, when McCain-Feingold was it enacted, it was viewed as the law that would finally restore faith in our political system. But, perversely, the ban on “soft money” left individual and corporate donors free to direct their funds to outside groups, where donations are concealed from public scrutiny.

By the time *Citizens United* was decided in 2010, well-funded outside groups had proliferated on both sides. As outside groups expanded, the parties shrank. Adjusted in 2012 dollars, national party revenue steadily eroded from \$1.48 billion in the 2002 midterm election cycle to \$1.23 billion in the 2010 midterms. That’s a 17 percent drop in spending power.

In the 2006 midterms, four years before *Citizens United*, party fundraising was just \$1.24 billion in 2012 dollars, or \$240 million less than before McCain-Feingold became law. Party fundraising has fallen off during midterms and in presidential-election years, though the decline in the latter years has not been as steep. The parties raised \$1.66

billion in 2012 dollars during the 2000 election, the last full presidential cycle before McCain-Feingold took effect. In the 2012 election, they raised \$1.6 billion, down 3.6 percent.³² So while new campaign finance regulations may take on the current day issues, it is safe to assume those with invested interest will continue to adapt. One of the biggest challenges facing this policy will center around the manner in which public conversation is tailored.

At their core, laws are intended to either expand or retract rights or privileges of society. The argument of those who support the Supreme Court ruling take the argument that how they donate their money is an extension of their free speech, and that there would clearly be an infringement on the liberty of citizens, corporations, and unions alike if such an amendment were to become law. The Supreme Court ruled in 2010 that it was not the place of the government to limit free speech via campaign contributions. Speech is one of, if not the top, most cherished rights we have as Americans. Another potentially fatal flaw in this proposal lies in the fact that it would be placing faith in the dysfunctional FEC.

The FEC would be tasked with the responsibility of successfully monitoring all contributions being made to campaigns as this amendment would call for. Adding this much more oversight to the FEC will require more funding to the organization. Since the FEC is not viewed with the highest regard, this is an obstacle that will need to be overcome. Many reasons exist for this distrust of the effectiveness of the FEC.

³² Robert Kelner and Raymond La Raja, *"McCain-Feingold's Devastating Legacy,"* April 11, 2014, https://www.washingtonpost.com/opinions/mccain-feingolds-devastating-legacy/2014/04/11/14a528e2-c18f-11e3-bcec-b71ee10e9bc3_story.html

The FEC board consists of six individuals, with no more than three members being allowed to be from any one political party. There also must be at least four members to agree a violation has occurred for any action from the FEC to take place. This sparks many questions regarding the FEC and its ability to actually do anything about campaign violations that may be occurring.

According to the FEC Summary of Performance and Financial Information report for FY 2015 the operating budget totaled \$67.5 million.³³ The same report goes on to show that in FY 2015 the FEC collected \$730,000 in fines.³⁴ The final piece of information to note from this report is that the FEC self-evaluated three challenges facing the organization. Following is the list of the identified areas of concern:

- 1) Information Technology Project Planning and Management
- 2) Governance Framework
- 3) Human Capital Management / Human Resources Operations.³⁵

All three of these areas would be greatly impacted by the implementation of this amendment. Due to this, an increase in budget would be required to meet the demand of increased work load. This would require the budget committee to increase the funding for an often flawed organization.

An example of the FEC dysfunction occurred during the 2012 Presidential election when a wealthy friend of Republican candidate Mitt Romney spent around \$150,000 to fly campaign volunteers to Utah to help Romney's campaign. The three

³³ Federal Election Commission, "Summary of Performance and Financial Information FY 2015," released February 16, 2016, 5.

³⁴ Ibid. 16

³⁵ Ibid, 20

democrats alleged that this act violated the “in-kind” donation limit of \$2,600 in gifts per elections. However, the three Republicans disagreed, and stated that Romney’s friend was acting “in-behalf of”, rather than the illegal “on-behalf of.”³⁶ While this may seem like nothing more than semantics, there is a significant difference. This example is not intended to place blame on one side or another; rather, it is to show that this amendment is putting its faith in an agency constrained by political stagnation. So how can we have any faith that the FEC could effectively navigate the new rules an amendment would set forth? If such faith is misplaced, what would be the point of the amendment? Comparing our system of campaign finance with the rest of the world begins to shine light on why this issue needs to be addressed.

To look further into this, we can start by examining Finland, a nation whose elections have a history of illegal secrecy. The 2007 elections in Finland saw major controversy when campaign funding had been used to buy favors from politicians who then failed to declare their funding as mandated by Finnish law. After the general elections in March 2011, new laws were put in place to help ensure such incidences did not occur again. The new law dictates that only contributions less than 1500 euro-about \$1700-can remain anonymous.³⁷ So as expected when you have similar funding methods, you see similar results. However, the question remains: If an amendment is enacted, how can we ensure that contribution limits remain relevant?

There is also some doubt regarding the efficacy of an established donation limit. Considering the rates of inflation and other financial factors, the established limit on

³⁶ Christopher Rowland, “*Deadlock by Design Hobbles Election Agency*,” Boston Globe, July 7, 2013

³⁷ “*Finnish Parliamentary Elections and Campaign Funding*,” data journalism handbook, last accessed March 30, 2015, http://datajournalismhandbook.org/1.0/en/case_studies_4.html

donations may need to be adjusted accordingly.” In 2014, Canadian officials revised the campaign contribution limits they secured in 2007 and set the new limit at a maximum donation of \$1,500, with that number set to go up \$25 annually after 2015.³⁸ This small incremental increase will help ensure that in the future the amount given to political parties remains as relevant then as it is now.

With so many different approaches to figuring out the most efficient way to tackle campaign finance, the one approach not yet taken is a constitutional amendment. This amendment would establish that the federal government has the responsibility to ensure federal elections meet strict finance regulations. This amendment also does nothing to take on the wide variety of other issues facing our election system.

In addition to campaign finance problems, the United States has many other issues-some could argue more pressing-facing the way our elections are operated. One of these issues is voter turnout. The voter turnout in America for presidential elections is embarrassingly low, even worse in midterm years. In 2012, the voter turnout was 54.9%.³⁹ This means just over half of individuals eligible to vote in the country did so in a presidential cycle. The 2014 midterms saw an abysmal 36.4% turnout of voters.⁴⁰ These numbers pale in comparison to countries like Belgium (89.4%) in 2014, Sweden with 85.8% in their 2014 election, and Turkey (85.2%) this past year.⁴¹ Multiple factors play

³⁸ “*The Electoral System of Canada*,” last accessed March 30, 2015,

<http://www.elections.ca/content.aspx?section=res&dir=ces&document=part6&lang=e>

³⁹ “*2012 Voter Turnout Report*,” last updated November 8, 2012, <http://bipartisanpolicy.org/library/2012-voter-turnout/>

⁴⁰ Jose A. DelReal “*Voter Turnout in 2014 Lowest Since WWII*,” November 10, 2014,

<https://www.washingtonpost.com/news/post-politics/wp/2014/11/10/voter-turnout-in-2014-was-the-lowest-since-wwii/>

⁴¹ Drew Desilver “*U.S Voter Turnout Trails Most Developed Countries*,” last modified May 6, 2015, <http://www.pewresearch.org/fact-tank/2015/05/06/u-s-voter-turnout-trails-most-developed-countries/>

into these numbers being where they are, and why America is so far behind. These include: weekend voting, automatic voter registration, nationwide election day registration, and compulsory voting.

Admittedly, a few factors from that list would be likely to never work in the States; for example, the compulsory voting method. The right to vote should also include the right not to vote, if a citizen so chooses. The act of administering fines to individuals who do not vote is not something that would garner much, if any, support in the United States. Methods like automatic voter registration, or even same day registration do appear to be realistic options to help increase voter turnout. If we had a higher turnout on election night, then we may be able to assume that money will become less relevant.

Amending the constitution is not something that happens every day, or every decade for that matter. The proposed amendment by MTA and others like it aim to limit the amount of money being spent on campaigns. The feeling is that by allowing unlimited campaign contributions, our democracy suffers. This feeling is why the organization MTA has drafted a two-part amendment that tackles this issue. The first section aims to distinguish corporations as not persons, as one of the many takeaways from *Citizens United* was this new belief that corporations are people. The second part of the amendment seeks to establish that money does not equate to free speech. When speaking on constitutional amendments, there are two policy evaluative tools that immediately come to the forefront, the first of which is effectiveness. If the amendment becomes ratified, does the FEC have the ability to ensure the new rules are followed?

When taking a deeper look into the inner workings of the FEC you can begin to see why some of this dysfunction exists. First, we see that the money being spent on

elections continues to skyrocket. If we go back to the 1980 election year, there were total disbursements in federal elections of \$768 million⁴², as compared to the over six billion dollars spent in 2012.⁴³ While the amount of money being spent on elections continues to climb, the task of the FEC is becoming harder and harder. It is also important to note that the FEC relies heavily on tips from citizens who believe a finance rule was broken. This amendment would, in theory, help the effectiveness of the FEC, by opening up where contributions are coming from. Beyond the issue of the effectiveness of the FEC, this amendment also infringes on the speech of Americans, as established by *Citizens United*.

Looking at the section of the MTA drafted amendment, the second section clearly seeks to separate speech and money. The last sentence says as much, as it reads, “the judiciary shall not construe the spending of money to influence elections to be speech under the First Amendment.”⁴⁴ As Americans, we pride ourselves on the freedoms of our constitution. If one wants to give my money to a cause that is seeking to help a politician they support, why should they not be able to give as much as they see fit? There are no limits to contributions made to a charities of a favored cause. It is also important to note that this amendment, or any law like it, will not be the end of dark money in politics.

“Federal, State, and local government shall require that any permissible contributions and expenditures be publicly disclosed.”⁴⁵ It can be argued however that the goal of this amendment is not to eliminate outside money; rather, to make it so voters

⁴² Scott E. Thomas “Obstacles to Effective Enforcement of Federal Election Campaign Act,”

⁴³ “Overall Spending Inches up in 2014: Megadonors Equip Outside Groups to Capture a Bigger Share of the Pie,” last modified October 29, 2014, <http://www.opensecrets.org/news/2014/10/overall-spending-inches-up-in-2014-megadonors-equip-outside-groups-to-capture-a-bigger-share-of-the-pie/>

⁴⁴ Move to Amend, “*We the People Amendment*,” last modified April 29, 2015

⁴⁵ Move to Amend, “*We the People Amendment*,” last modified April 29, 2015

know exactly who is funding the advertisements they are seeing on television. It is important to know who is funding our candidates as we can then use that information to track if contributions influence voting patterns. We as voters can then use that information to either retain, or replace our representatives.

An example where it is evident that donations have had clear impacts on the voting of elected officials is the “No Climate Tax” pact. This pact was presented to numerous congressional candidates. The terms of the pact were as follows: if a candidate wanted to receive campaign contributions from Americans for Prosperity- a Koch brothers funded Super PAC- they had to agree to not support any climate change legislation if it had any impact on the national deficit.⁴⁶

A perfect example of the symbiotic relationship between The Koch’s pledge and the House Energy and Commerce Committee was Morgan Griffith, who defeated Rick Boucher in the district that represents Saltville, Virginia, and who was among the wave of new appointees to the committee during the 2010 elections. During the newly elected congressman’s victory rally in which he stated “I’m just thankful that you all helped me in so many ways.”⁴⁷

The investment made by the Koch’s soon paid off. Griffith soon became one of the most outspoken skeptics of mainstream climate science, drawing national ridicule for lecturing scientific experts, as they testified in Congress.⁴⁸ While the proposed

⁴⁶ Jane Mayer, *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right* (New York: Penguin Random House, 2016) 273

⁴⁷ Ibid 274

⁴⁸ Ibid 274

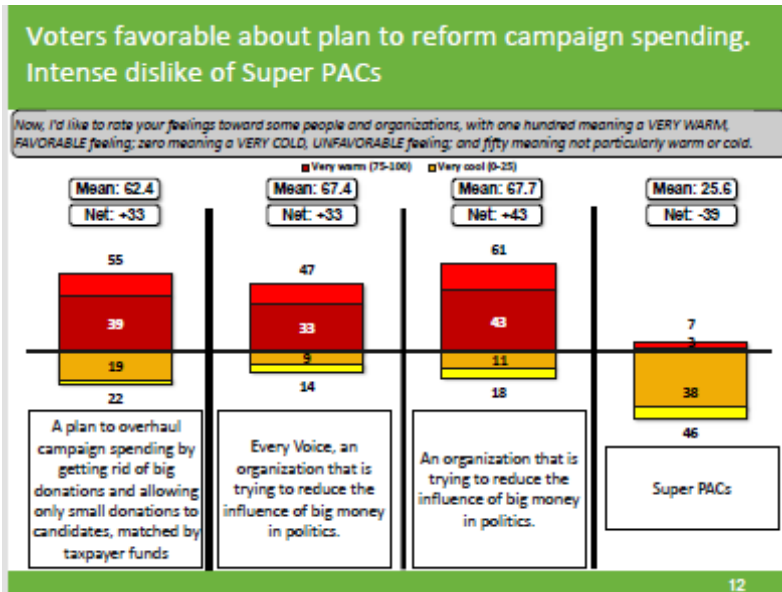
amendment cannot stop pacts like this from occurring, it can prevent donations from being significant enough to make signing pacts like this make sense.

This amendment does not give strict guidelines as to how much money in campaigns is too much, or how to make better use of the FEC. However, the flexibility and room for interpretation is how the constitution works. The second amendment doesn't specifically ban tanks or SAMs for private citizens, yet it is understood there are limitations to what weaponry citizens can possess. The first amendment doesn't protect an individual from the consequences of potentially dangerous speech. However, it accomplishes exactly what it sets out to do. First, it establishes that corporations are in fact not human, and corporations should in fact not have the same protections under the constitution as the citizens of America do. Secondly, our elections should be run in such a manner that monetary contributions should not influence decision making once in office.

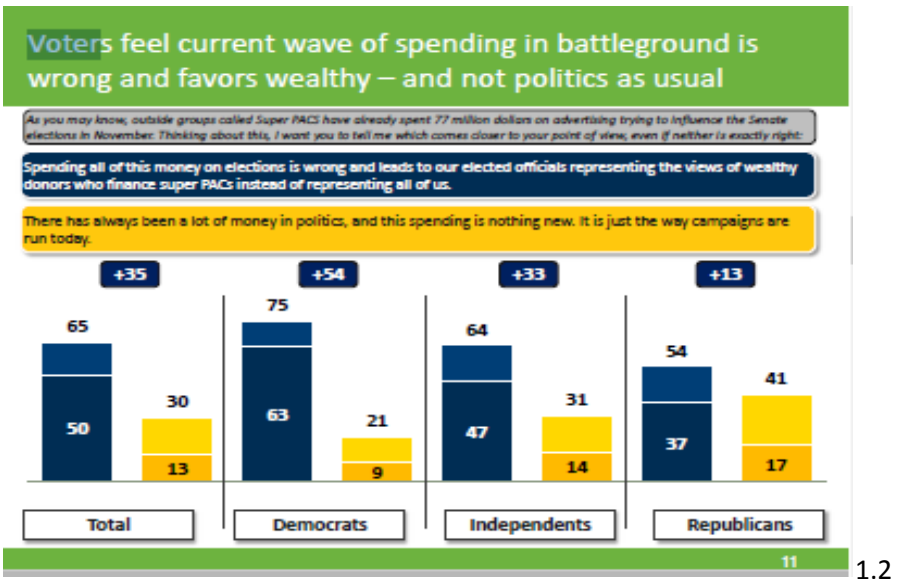
Political Analysis

Americans deserve to have a government where our elected officials represent the population in which they represent. By allowing interest groups to fund campaigns with no way to track spending, we begin a domino effect that has the potential to hurt or destroy our system of government. Arguably, the situation worsened when the Supreme Court ruled in favor of Citizens United. To best ensure our elections are fair and transparent, action is required at the federal level. Luckily for those who are in support of such reform, we can find advocates ranging from the public at whole, to numerous organizations, even to our elected officials.

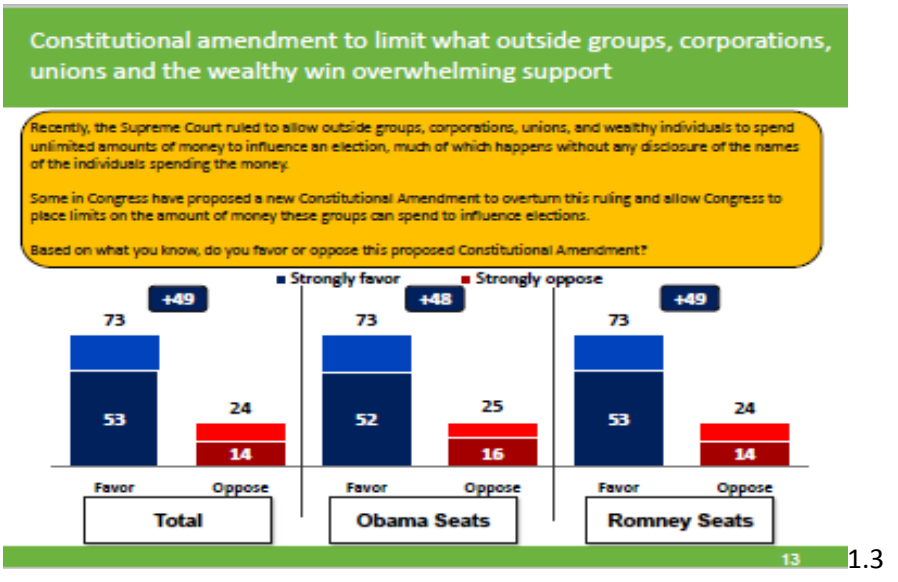
First, looking at the American population as a whole, polling shows rank-and-file members of both political parties support the overturning of *Citizens United*. Graph 1.1 shows the poll results conducted by Democracy Corps and Every Voice prior to the 2014 mid-term elections. There is a clear and overwhelming majority who favor campaign finance reform in some fashion, as well as a strong negative feeling for Super PACs.



Graph 1.2 shines light on the fact that the majority of voters spread all across the political spectrum feel that the current wave of spending on elections does in fact favor the rich, and is a step beyond politics as usual.



Finally, and what is most telling, looking at Graph 1.3 it becomes apparent that strong support exists for amending the constitution as a highly favorable mechanism to overturn *Citizens United*.⁴⁹



These polls show that the message of campaign finance reform resonates with individuals from all sides of the political spectrum. An exit poll following the Michigan

⁴⁹ Stan Greenberg, James Carville, David Donnelly and James Hazzard “An Idea Whose Time has Come,” July 31, 2014 Democracy Corps & Every Voice

democratic primary established that 86% of democratic voters believe that the current economic system favors the rich. Overturning *Citizens United* has seen a truly grassroots effort emerge across the country.

A total of 16 states to date have called for the reversal of this case. California for example, was one of the first when on July 5, 2012 the state congress passed House Bill AJR-22, which disagreed with *Citizens United* and called for a constitutional amendment to overturn the decision and restore constitutional rights and fair elections to the people. Three other attempts by the state have been made since then.⁵⁰ Vermont as well has attempted to do its part to overturn *Citizens United* via constitutional amendment. J.R.S 11 passed both chambers in the state on April 19, 2011. Disagreeing with the “money is speech” holdings in *Buckley* and *Citizens United* and urged the adoption of the S.J.Res. 29, which is a constitutional amendment in the US Congress, to provide that money is not speech and corporations are not persons under the Constitution, and to affirm natural persons’ constitutional rights. Towns all across the state including Albany, Craftsbury, and finally Burlington have all held meetings and voted to support an amendment.⁵¹ Due to the massive outcry over *Citizens United*, various organizations have been created with the sole purpose of seeing this ruling overturned.

One example of this is the MTA organization, which was created in 2009. Founded even before the *Citizens United* ruling came down, it consists of a conglomerate of smaller organizations who shared in the similar goals of seeing *Citizens United*

⁵⁰ “*State and Local Support*,” accessed March 31, 2016, <http://united4thepeople.org/state-and-local-support-2/>

⁵¹ “*State and Local Support*,” accessed March 31, 2016, <http://united4thepeople.org/state-and-local-support-2/>

undone. Their website contains a list of over 100,00 individuals who have signed on to see the court's ruling reversed.⁵² MTA has a committee that consists of ten members, which include its National Director Kaitlin Sopoci-Belknap. Ms. Sopoci-Belknap also serves as Executive Director for Democracy Unlimited.⁵³ This is the type of organization you have built your campaign around. It has a strong grassroots background fighting for a cause that you strongly support. MTA has built their success on the fact that Americans want to see some serious movement in campaign finance reform. Other organizations have also joined in this fight.

Public Citizen is another like-minded organization that strives to curb the influence of money in politics. They have set a goal to counteract the Supreme Court as they seek to "take democracy off the auction block and preserve constitutional rights for people - not corporations. Our big push is for a constitutional amendment to overturn the decision, which was handed down on Jan. 21, 2010."⁵⁴ Current and hopeful elected officials at the federal level also support seeing an amendment as means of elimination of the ruling.

On April 29th, 2015, 14 democratic congressional members co-sponsored the "We the People Amendment," which was introduced on the floor of the House on that day. Sen. Richard Durbin (D-IL) advocates not only for the repeal of *Citizens United*, but even calls for an amendment to do so, stating "I will continue my efforts to pass a Constitutional amendment to fully protect and restore the First Amendment and ensure

⁵² "About Us," last accessed March 18, 2016, <https://movetoamend.org/about-us>

⁵³ "National Leadership Team," last accessed March 18, 2016, <https://movetoamend.org/national-team>

⁵⁴ "About Us," last accessed May 11, 2016, <http://www.democracyisforpeople.org/page.cfm?id=9>

that elections are a contest of the best ideas—not just the ideas of multi-millionaires.”⁵⁵

Senator Tom Udall (D-NM) is another current member who has publically called for an amendment to the constitution “I’m also planning on introducing the best long-term solution to this problem, a constitutional amendment preserving the voice of the American people in the face of corporations and other special interests.”⁵⁶ Beyond Durbin and Udall, there are candidates running for office who have a vested interest in seeing Citizens United undone.

One prime example of this can be found in the state of Wisconsin. Here, Russ Feingold is seeking to retake the seat he lost during the rise of the Tea Party that occurred during the 2010 mid-term elections. Mr. Feingold was one of the founding sponsors of the McCain-Feingold campaign finance law. He states on his election site he plans to “lead the fight against runaway special interest money in American elections.”⁵⁷ If he can win this election, another voice for reform will be walking the halls of the capitol building.

One assumed ally would be the other half of the McCain-Feingold Act. Sen. McCain was given the opportunity to continue with his record of advocacy for reform on this issue. However, he was one of the 42 Republicans who voted against the amendment proposed by Sen. Udall. Even though back in 2012 Sen. McCain called the Citizens United ruling the “worst decision ever,” and “They said money is free speech. Since when is money free speech?” speaking at an event put on by the Oxford Union at the

⁵⁵ Sen. Dick Durbin “*Issues: Campaigns and Elections*” last accessed March 12, 2016, <http://www.durbin.senate.gov/issues/campaigns-and-elections>

⁵⁶ “*Reforming Washington*,” accessed March 31, 2016, <http://www.tomudall.senate.gov/?p=issue&id=920>

⁵⁷ Russ Feingold “*About Russ*,” last accessed May 12, 2016

University of Oxford.⁵⁸ Even with MTA, Public Citizen, and other entities seeking to overturn Citizens United, there will be major forces looking to stall or eradicate this proposal.

The Clinton campaign has made a concerted effort to paint the campaign of Sen. Sanders as one of far reaching ideals. "I believe that we should make community college free. We should have debt-free college if you got to a public college or university. You should not have to borrow a dime to pay tuition," Clinton said. "I disagree with free college for everybody. I don't think taxpayers should be paying to send Donald Trump's kids to college."⁵⁹ Similar attacks on the Senators' stance on healthcare have also been used by the Clinton campaign. While speaking at an event in Iowa, prior to the caucuses she stated:

"His plan would take Medicare and Medicaid and the Children's Health Insurance Program and the Affordable Care Act health-care insurance and private employer health insurance and he would take that all together and send health insurance to the states, turning over your and my health insurance to governors," Clinton said, naming the state's Republican Gov. Terry Branstad. "I don't believe number one we should be starting over. We had enough of a fight to get to the Affordable Care Act. So I don't want to rip it up and start over."⁶⁰

The themes of these attacks center around her claims that Sanders represents an extreme candidate. Given where things are in Washington, her claims are that a more moderate approach is required to continue the progress made by the Obama administration, as opposed to attempting to completely breakdown and build up

⁵⁸ Nick Wing "John McCain: Citizens United is 'Worst Decision Ever'....'Money is Money,' Not Speech," last modified October 12, 2012, http://www.huffingtonpost.com/2012/10/12/john-mccain-citizens-united_n_1960996.html

⁵⁹ Caitlin Macneal, "Clinton Slams Sanders' Free College Idea by Evoking Trump's Kids," November 13, 2015, <http://talkingpointsmemo.com/livewire/hillary-clinton-donald-trump-kids-tuition>

⁶⁰ Abby Phillip and Phillip Rucker, "Clinton in Iowa Attacks Sanders' Healthcare Plan as 'Risky Deal'," January 11, 2016, <https://www.washingtonpost.com/news/post-politics/wp/2016/01/11/clinton-in-iowa-attacks-sanders-health-care-plan-as-a-risky-deal/>

major policy areas. While it is clear the Clinton campaign would support the undoing of Citizens United, however once again the door is left open for attacks on the extremist views of Sen. Sanders. Even if Sanders is able to win the democratic nomination, similar attacks can be expected from whomever he would face in the general election.

Also correlated with the general election is the fact that a Sanders presidency will not be enough for this amendment. For this policy to move forward, the Democrats would have to see major wins down ticket this November as well. Republicans currently hold 54 seats, while 46 caucus with the Democrats. There are 34 seats up for grabs, with 24 of these being held by republican incumbents. To take control of the Senate, the Democrats would have to win four or five, while retaining all of their own seats. Even if they are successful in this, a simple majority may not suffice. With 2/3 vote required for ratification, if all Republicans vote together, the Democrats would have to pick up an unrealistic 21 seats.

Similar issues arise in the House, as the Republican Party has a majority control there as well. To get to a 2/3 majority in the House, Democrats would have to pick up 91 seats in 2016. Because these numbers do not represent any realistic plan, a major bipartisan coalition will be required, and is the only path for success.

A loss in the primaries would send Sen. Sanders back into the Senate, where he could then be an advocate for this proposal from congress. However, fresh off a campaign loss, it will be difficult to conjure up the support for what

would then have become a losing cause. The best prospects for this proposal revolve around a scenario in which the Senator wins the nomination, and is able to take the fight to the general elections.

Looking forward to the generals, assuming Sen. Sanders and this amendment do gain the momentum needed, there should be an expected backlash from those who seemingly benefit from the court's ruling. This has the potential to set up a real David v Goliath type battle. If money does buy the type of presumed influence, those who support the ruling will establish targeted marketing campaigns seeking to minimize the desires of individuals who do not share the strong negative feeling that the Senator has. This has the potential to completely derail the efforts, as this movement will be based on a strong grassroots campaign. By diminishing and silencing social outcry, this already uphill battle may be over before it even starts.

The Koch brothers have been firm supports of the way campaign finance has changed post *Citizens United*. The Koch backed Americans for Prosperity (AFP) Super PAC has contributed hundreds of millions of dollars in effort to get candidates elected into office at all levels. Looking at just the 2014 election cycle, the Koch network, mostly behind AFP, spent over \$100 million in effort to support, or oppose a candidate.⁶¹ It is safe to say that not only would corporations, but also that the wealthiest Americans would also be negatively impacted by the passing of this amendment. Fighting opposite

⁶¹ "Koch Brothers Spend \$100 Million This Election Cycle," National Journal, reviewed March 16, 2016, last modified November 4, 2014
https://www.google.com/search?q=americans+for+prosperity&oq=americans+for+pro&aqs=chrome.1.69i57j0l2.3649j0j4&sourceid=chrome&es_sm=93&ie=UTF-8#q=koch+brothers+spent+100+million+in+2014

the corporations and the financial powerhouses, everyday Americans overwhelmingly seek changes to how campaigns are funded.

While opposition from the Koch brothers is to be expected, this fight cannot be ignored. The Koch Brothers, as well as other wealthy business interests, have a vested interest in ensuring the status quo remains, and they have shown time and time again they are willing to spend money if the situation requires. Beyond the Koch's other organizations, there are certain left-leaning organizations who do not support undoing *Citizens United*.

Beyond the numerous individuals and groups who have taken advantage of *Citizens United*, many others have come out in support based mostly on the belief that unlimited campaign contributions are an extension on the first amendments right of free speech. The ACLU (American Civil Liberties Union) a major political think tank has openly endorsed the ruling for the aforementioned reason. They clearly state in their official memo regarding *Citizens United* "the ACLU does not support campaign finance regulation premised on the notion that the answer to money in politics is to *ban political speech*."⁶²

Since the Sanders campaign has made campaign finance reform a key vocal point, that is clearly doing well with his base, supporting this amendment has little downside for the presidential hopeful. The amendment proposal can be a policy he uses to help him win support for the democratic nomination, and hopefully the presidency. Even if he is not successful in his bid for the White House, this policy falls perfectly in line with his

⁶² "The ACLU and *Citizens United*," last accessed March 20, 2016, <https://www.aclu.org/aclu-and-citizens-united>

stance on Citizens United and its impact on our elections. This fight can continue from within the Senate walls if he is to return there after the campaign season ends.

Recommendation-

Campaign finance reform has been a focal point of Sen. Sanders' presidential campaign. Beyond his campaign, the cause is being trumpeted by Democrats and Republicans throughout the country. The premise for this argument will be that the American people deserve to have transparent elections with the ability to see if members of congress are being bought. Because of this, it is recommended that Sen. Sanders begin utilizing this amendment as a cornerstone for his campaign.

This amendment will give the Senator a defined policy proposal to attack one of his most pressing issues. It would silence his critics by giving a solid policy proposal to support. The MTA amendment also offers the most permanent means of changing the way or campaigns are financed, and puts an end to Citizens United. By publicly supporting this amendment, given your current platform, it will help bring awareness to its existence.

This proposal offers the Sen. an opportunity to secure a victory in the fight for campaign finance reform. Suppose the Senator wins the Democratic primaries, this issue will remain at the forefront of the entire election cycle. As the only presidential candidate who does not have the support of a Super PAC, campaign finance will be made a central issue. This area is one that Sen. Sanders is clearly going to have the majority support based on all recent poll results. While on the campaign trail the Senator should throw his support for Democratic candidates in contested battles such as the ones for the Senate

seats in Illinois and Wisconsin. If successful, he could build a strong coalition with members in Congress who would be tasked with bringing the amendment to fruition.

Even if the presidential bid is unsuccessful, Sen. Sanders still has a platform in which he can continue his fight against Citizens United. Returning to the Senate would allow the Senator to champion for this amendment from congress. However, attacking the issue from this angle is a less than ideal situation. A Sanders loss in the primaries would leave Sec. Clinton representing the Democratic Party. While she may voice opposition to Citizens United, and call for its termination, it will not come with the same fervor as is would coming from Sen. Sanders. Any real movement on this issue will be put lower on the president's list of priorities, effectively killing all hope that an amendment will pass any time in the near future.

There will be voices on both sides of the political spectrum who will view this as a proposal that is dead on arrival. First, amending the constitution is extraordinarily rare, so there will be a lot of hesitation to support such a drastic measure. Second, many of the people tasked with reforming the way our campaigns are financed used the current system to secure their own elections. On its surface, this would appear to be asking our elected officials to cast a vote against their self-interests. However, a copious number of attempts to figure out how to best regulate our campaign finance system have been tried and all have failed. What has yet to be enacted is a constitutional amendment. Taking this approach may be what it takes to finally obtain a resolution to the issue of excess money influencing our political system.

Curriculum Vitae

Tadeusz Marciniak was born in Chicago, Illinois. Recently married to the love of his life, Tadeusz and his wife have two beagle puppies: Seamus and Finnegan. Tadeusz earned his B.A in Political Science from Northeastern Illinois University where he graduated with honors. Tadeusz has spent time working on the staff of Sen. Richard Durbin, and Rep. Tammy Duckworth.