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**Testimony before the Senate Education, Health, and Environmental Affairs
Committee in Support of SJ 7 – U. S. Constitution – Amendments
Convention Democracy Amendment**

February 18, 2021

The Vicious Cycle

In previous testimony in favor of this resolution we have described the decades-long cycle of worsening income and wealth inequality caused principally by political corruption of policymakers who are dependent on wealthy donors for campaign financing. We’ve graphically shown you the immense scale of elite fortunes and the mass collective indebtedness of the of bottom half of the U.S. households. We’ve documented an incomplete list of corporate welfare or subsidies for wealthy taxpayers that, nevertheless, total almost \$6,000 per person per year.

Now, partially as a result of the pandemic, all these trends have worsened frighteningly. Fifteen billion dollars (\$15 billion) was spent on the 2020 federal election compared to \$7 billion in 2016 and \$5.3 billion in 2008.

There is a paradox in considering the U.S. campaign finance system. The money usually required to win office is daunting to almost anyone who considers running for office. At the same time, it is chicken feed compared to the accumulated wealth of the super-rich.

As of 2018, the top 0.1% are estimated to control about 17% of the total wealthⁱ of \$98 trillion.ⁱⁱ Then we have learned that the top households have experienced a windfall of increased asset valueⁱⁱⁱ after the Federal Reserve Board of Governors poured \$3 trillion into asset markets causing a stock boom – or some might call it asset inflation. “The combined fortune of the nation’s 660 billionaires as of Monday, January 18, 2021 was \$4.1 trillion, up 38.6% from their collective net worth of just under \$3 trillion on March 18, 2020.” There is a similar trend during this COVID-19 pandemic for income inequality to widen.

Another irony is that ultimately the money used to make big expenditures and contributions wielded against the 99% comes from consumers themselves or – in many cases – from the taxpayers themselves. Energy companies can use revenues from customers or ratepayers to gain access to officials and government contractors such as weapons-makers can use revenue from the contracts to spend on elections. Buying products we need or paying our taxes forces us to finance the big-money interests that work to erode our right to representation.

As wealth and income get more and more concentrated among the elite, our government becomes less able to hear the will of the people. Big money doesn't guarantee a candidate's election, but it creates a huge barrier to candidates without connections to wealth – especially in primary elections, and it buys huge influence on policymakers after an election.

In the 2020 cycle, Democrats and Democrat-leaning groups outspent Republicans by \$700 million – and that doesn't include the \$1.4 billion that Tom Steyer and Mike Bloomberg spent on their own campaigns.¹ The Brennan Center recently said that dark money may be underestimated by 650% - they coined the term “black hole money” to describe this trend.

The Public Is Fed Up with Money Corruption in Politics

Through their political spending, lobbying, and control of media, the corporate elite gain advantage that has caused the ever-increasing and disproportionate wealth and income gaps. They have defanged anti-trust enforcement. We all live under their monopoly realm and we suffer from the tax and labor policies, trade policies, financial and environmental regulation, or lack thereof, and misguided federal spending that results.

The average citizen – whether they are a voter or whether they have given up on voting – may not know the details of the policies arrayed against them that cost them \$6,000 per year, and they may not know the statistics of income and wealth inequality. But they know that the cards are marked, and the game is rigged.

In the fall of 2017, the *Washington Post* and the University of Maryland conducted a poll on dysfunction in the U. S. political system. Ninety-six percent (96%) blamed big money for dysfunction in our political system,^{iv} the highest percentage of any factor in the poll.

More recently, the Center for Public Integrity found that “three-fourths of survey respondents – including 66 percent of Republicans and 85 percent of Democrats – back a constitutional amendment overturning *Citizens United*.”^v

Listen to this from a West Virginia group that held 10,000 conversations with voters in 2020:

There was one answer that came up 5 times more often than anything else. It came up more than roads, or schools, or safe water, or overdose deaths, or jobs. The number 1 issue? Political corruption....

We see it everywhere. 88% of West Virginians oppose giving public money to private charter schools, but the bill passed. The public relations guy for the controversial [Rockwool facility in Jefferson County](#) is also the House Majority Leader. Last May, instead of funding a state Black Lung Pension Fund for

¹ <https://www.brennancenter.org/our-work/analysis-opinion/dark-money-2020-election>

miners and a nursing home in Beckley for veterans, lawmakers voted to [give \\$60 million more to out-of-state coal executives.](#)”

Minorities lost much of their wealth in the financial crash due to outright corruption and profound failure of regulatory agencies, yet the political system let criminal behavior of corporate finance go unpunished. Meanwhile, we have more than 20 states engaging in active voter suppression to erase the voting power of minority and younger voters.

The Article V path incorporated in SJ 7 uses the method of organizing from the bottom up. This is the one way that We the People can overcome the money advantage of the super-wealthy and save our democratic republic.

A U. S. Constitutional Amendment Is Necessary

Statutory remedies – either at the Federal or State levels – cannot fix the problems created by a string of perverse Supreme Court decisions because the court has twisted the meaning of the First Amendment to make billionaire’s and artificial entities’ “right” to spend money more important than the citizens’ right to equal representation.

It is necessary to amend because a long series of decisions by the Supreme Court - *Buckley v. Vallejo* (1976) – *Citizens United v. FEC* (2010) – *Arizona Free Enterprise Club v. Bennett* (2011) – *American Tradition Partnership, Inc. v. Bullock*, (2012) – *McCutcheon v. FEC* (2014), has systematically removed nearly all limits on corporate, union, and non-profit spending to influence our elections.

The 2011 case overturned aspects of Arizona’s public campaign financing law and the 2014 case nullified Maryland’s limits on aggregate campaign contributions. In the 2012 case, the Supreme Court threw out huge chunks of Montana’s state campaign finance laws without even granting a hearing.

The current Supreme Court is certainly not about to change its interpretation of the “Constitutional Rights of Corporations.” We are not about to get a more balanced Supreme Court, not for many years. The Roberts court exercised breathtaking activism in the *Citizens United* case, A case that started as a non-profit advocacy group objecting to a statute limiting spending was expanded by the court to grant for-profit corporations the right to spend from their treasuries. No plaintiff even requested this expansion.^{vi}

With the present complement of justices on the Supreme Court, it appears that the court will not be favorable to the interests of the average voter for decades. Even good reform laws passed by Congress or the states will be subject to the Court’s zeal for protecting the “fragile” rights of the ultra-wealthy.

The Convention Is Much Safer than Failing to Amend

The constellation of forces now in place portends disaster for the interests of almost every citizen, except for a tiny elite who benefit from the policies favored by the major donors and spenders. Letting this corruption of our elections – through voter

suppression, corporate constitutional rights, and big money – continue unchecked is a very frightening prospect. It is, by far, the most dangerous force in our political system.

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Every reform movement has factions and disagreements about the best way to achieve democratic changes. This was true in the Abolition movement, the civil rights movement, and the movement for women's suffrage. Fear of the unknown and the untried is common and can be paralyzing.

While many people discuss the fear of a runaway convention, the most reliable sources say this fear is not justified.

In 1979, Justice Antonin Scalia, who is often quoted out of context when referring to an Article V Convention, said "If the only way to get that convention is to take this minimal risk then I think it is a reasonable risk to be undergone. The alternative is continuing with a system that provides no means of obtaining a constitutional amendment except through the kindness of Congress." He knew the difference between a Constitutional Convention and an amendment Convention under Article V.

In 1987, the US Department of Justice concluded that Congress "may decline to designate a mode of ratification" of a proposal if it is outside the scope of the convention's original subject matter.

In 2011, Prof. Laurence Tribe, who is also often quoted out of context, referring to Article V conventions on exactly this topic of big money in politics, said "I think we're at least in the territory where I think there's perhaps a plausible systemic case for a limited purpose convention..."

In 2016, the Congressional Research Service concluded that a call for an Article V Convention can be disapproved by Congress for "a departure from the policy issue for which the convention had been called".

In December 2019, the first Report of the Citizens Commission Concerning a Constitutional Amendment for Government of the People for the Commonwealth of Massachusetts concluded that "After significant review of a broad collection of materials, the Commission supports the approach for a limited-purpose convention under Article V." This Commission was created by the voters of the Commonwealth by referendum, and its members were appointed by the Governor, Attorney General, Secretary of the Commonwealth, Speaker of the House, and Senate President. The Commission went on to say, "The intent is to either propose the amendment or to force the issue in Congress."

Opponents state that this hypothetical convention of states, which has never happened, will occur with dangerous chaotic results. But many hundreds of convention

applications have been filed by states. Often, these applications had no effect, but in several foundational cases, they have led to Congress proposing amendments that broadened and deepened our democracy. When weighing a hypothetical risk versus the real and present danger of big money in politics, you must choose bold action for reform.

Here's what's not hypothetical. In 1913, we got the 17th amendment – Direct Election of Senators – when the states were one state short of the required number to call a convention. That's the model that moves us. Build the calls, state by state and build a movement, a reform movement of like-minded citizens who with their state legislatures put Congress on notice that our democracy is broken, and we want it fixed.

The Rights of Citizens

Corporations, unions, and other artificial entities are created by statute. We strongly believe that their rights and responsibilities should likewise be laid out in statute.

The affirmative right to vote was written into the very first version of this legislation by then state Senator and constitutional scholar Jamie Raskin. USLegal.com, a service that provides a collection of legal guides and handbooks that detail laws and legal processes states, “The right to vote is not granted or secured by the Constitution of the U.S. The right of exemption from prohibited discrimination is secured by the Constitution.”

The American Bar Association published an article on February 10, 2020 about “purging voters from the rolls for flimsy reasons.” This is only one of many voter suppression techniques that have arisen in the wake of another Supreme Court decision, *Shelby County v. Holder*. The ABA author stated, “State election officials do, of course, have the obligation to try to keep voter registration records up to date.... But a minority of states go further and engage in a practice that ought to be seen as glaringly unconstitutional—purging people from the rolls solely because they have skipped voting in several consecutive elections and they have not responded to a letter asking them to confirm where they live.

“This practice results in the deletion of hundreds of thousands of registrants each year. Very often, those people get energized to vote in a given election but find when they show up at the polls that they are no longer registered and cannot cast a ballot.”

Stacey Abrams, voting rights advocate from Georgia was asked, “What Amendment would you put into the Constitution if you could add just one?” Without hesitation, Ms. Abrams said, “I'd add every citizen's affirmative right to vote in every Local, State and Federal election. Only then will we have the basis to finally eliminate all the forms of voter suppression which create the inequality we are fighting against.”

We Ask for Your Favorable Report

Opponents cite public financing as the election reform that will address the problems unleashed by SCOTUS in *Citizens United* and other rulings. While we enthusiastically support public campaign financing as an important reform with numerous benefits, it will not be able to completely stop the flood of dark money or challenge the effects of big

money in the media marketplace. The Supreme Court struck down aspects of Arizona's public financing law and could go further.

Rep. Raskin reminds us that *state legislators are the people who can actually amend the Constitution*. It is the State Legislatures that can, based on Article V, call for an Amendment-Proposing Convention, and it is the State Legislatures that ultimately are the ones who can ratify any amendments to the Constitution.

We ask you to please take this important step towards restoring our democracy and vote favorable for SJ 7, the Democracy Amendment Resolution.

ⁱ <https://eml.berkeley.edu/~saez/SaezZucman2020JEP.pdf>

ⁱⁱ <https://www.brookings.edu/blog/up-front/2019/06/25/six-facts-about-wealth-in-the-united-states/>

ⁱⁱⁱ <https://inequality.org/great-divide/updates-billionaire-pandemic/>

^{iv} https://www.washingtonpost.com/page/2010-2019/WashingtonPost/2017/10/28/National-Politics/Polling/release_497.xml

^v <https://publicintegrity.org/federal-politics/study-most-americans-want-to-kill-citizens-united-with-constitutional-amendment/>

^{vii} https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2954&context=journal_articles