



May 4, 2015

Dear Member of Congress:

On behalf of the hundreds of thousands of members of People For the American Way (PFAW), I write to urge you to cosponsor the Democracy for All constitutional amendment (H.J.Res. 22 & S.J.Res. 5).

The flow of big money into our political system—and the associated effects on our democratic processes—has reached a crisis level. In the wake of *Citizens United v. FEC*, 558 U.S. 310 (2010), *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014), and other damaging Supreme Court decisions that have left Congress and the states unable to enact commonsense election spending regulations, American elections have grown increasingly expensive. Indeed, the 2014 elections once again made clear the overwhelming political power of wealthy special interests—to the tune of nearly \$4 billion.ⁱ

Americans have also witnessed an explosion of outside spending in elections since *Citizens United* was decided. Outside spending increased more than 300 percent between the 2008 and 2012 presidential election years.ⁱⁱ And as political entities adapt to a post-*Citizens United*, post-*McCutcheon* landscape, these trends are only getting worse, as evidenced by the experience in the 2014 midterm congressional elections, where outside spending increased nearly 200 percent,ⁱⁱⁱ and the amount of spending from “dark money” social welfare groups and trade associations that do not have to disclose their donors increased nearly 130 percent.^{iv}

The torrent of money into our political system has a profound effect on the democratic process for everyday Americans, whose voices and policy preferences are increasingly being drowned out by those of wealthy special interests. The more campaign cash from wealthy special interests can flood our elections, the more policies that favor those interests are reflected in the national political agenda. On policies like unemployment benefits, minimum wage, and health coverage, our nation’s wealthiest tend to have fundamentally different views than do average Americans.^v Princeton professor Martin Gilens has noted that these views are not equally reflected in policy outcomes, writing: “[W]hen Americans with different income levels differ in their policy preferences, actual policy outcomes strongly reflect the preferences of the most affluent but bear virtually no relationship to the preferences of poor or middle-income Americans.”^{vi} Unsurprisingly, as they see a system increasingly unresponsive to their needs and preferences, the American people are losing faith in our democratic system. For instance, a November 2013 poll found that more than seven in 10 American voters think that our election system is “biased in favor of the candidate with the most money.”^{vii}

This deluge of spending also takes a toll on the effectiveness of individual lawmakers. To reach the average amount it took to win a Senate seat in 2012, a Senator had to raise roughly \$4,600 each day of his or her six-year term, including weekends and holidays; a House member had to raise roughly \$2,000 each day of his or her two-year term to reach the winning average.^{viii} With elected officials so focused on raising money, they inevitably have far less time for listening to their constituents, providing constituent services, and crafting effective public policy.

The Democracy for All constitutional amendment seeks to address the problem of a democracy overwhelmed by big money by restoring to Congress and the states the constitutional authority to regulate the raising and spending of money to influence elections. At present, Congress and the states are constitutionally prohibited from:

- 1) Setting limits on independent expenditures or on contributions to independent election spending entities made by corporations or by individuals;^{ix}
- 2) Barring corporations from spending general treasury funds to independently influence elections;^x
- 3) Setting caps on self-funded campaigns;^{xi}
- 4) Setting aggregate limits on direct contributions by individuals to candidates, PACs and party committees;^{xii}
- 5) Implementing a range of other innovative election reform measures.

The Court has tied the hands of Congress and the states, prohibiting them from setting limits on campaign spending and saying that the only legitimate rationale under the First Amendment for such laws is to counter narrowly defined *quid pro quo* corruption (bribery). The Court has ruled illegitimate any attempt to reduce the ability of the nation's wealthiest and most powerful to buy inappropriate and outsized influence in our elections. This distortion of the Constitution has prevented any meaningful regulation or reform of the way we finance elections in America.

The Democracy for All constitutional amendment would correct the Court's misreading of the First Amendment, and would, in fact, strengthen the First Amendment's core purpose. As Justice Breyer noted in his *McCutcheon* dissent, the interests of the Court in preventing corruption or the appearance of corruption are "rooted in the First Amendment itself ... in the constitutional effort to create a democracy responsive to the people—a government where the laws reflect the very thoughts, views, ideas, and sentiments, the expression of which the First Amendment protects."^{xiii} As such, Justice Breyer urges, "[w]e should see [campaign finance laws] as seeking in significant part to strengthen, rather than weaken, the First Amendment."^{xiv} To restore the First Amendment's contribution to a government whose laws reflect the people's "thoughts, views, ideas, and sentiments,"^{xv} short of changing the composition or the jurisprudence of the Court, we have no choice but to amend the Constitution.

While amending the Constitution is unquestionably a weighty matter—only warranted in rare and compelling circumstances—this is one of those moments in our nation's history. The American people and their elected officials are increasingly speaking out about the need for an amendment. As of April 30, H.J.Res. 22 had 108 cosponsors,^{xvi} and S.J.Res. 5 had 40 cosponsors.^{xvii} The building momentum in Congress for an amendment mirrors the robust grassroots organizing taking place across the country at the state and local levels. Since the landmark *Citizens United* decision, 16 states and more than 650 municipalities, including large cities like New York, Los Angeles, Chicago and Philadelphia, have gone on record supporting congressional passage of a constitutional amendment to be sent to the states for ratification. Transcending political leaning and geographic location, voters in states and municipalities that have placed amendment questions on the ballot have routinely supported these initiatives by large margins.^{xviii} Five million American have signed their names to the amendment support petitions circulated by dozens of reform groups.^{xix} The momentum to address the issue of big money in politics grows stronger by the day.

The Democracy for All constitutional amendment sets a framework for addressing this problem. It provides, in a simple and straightforward way, that Congress and the states have the authority to regulate and limit the raising and spending of money on elections. It gives Congress and the states the power to enact appropriate legislation to implement and enforce the amendment. And it provides the important clarification that nothing in the amendment should be construed to abridge the freedom of the press.

Importantly, Democracy for All also rejects the current Court's misguided interpretation that the only basis for campaign finance regulation is to address corruption in the form of *quid quo pro* bribery.^{xx} In fact, in addition to preventing corruption, there are multiple rationales that justify campaign finance regulation, including but not limited to: leveling the electoral playing field; advancing the fundamental principle of equality for all; and protecting the integrity of the governmental and electoral processes. These are concepts incorporated in the proposed amendment, which provide guidance for a new post-amendment campaign finance jurisprudence to be developed by the Court.

The time to amend the Constitution to put our democracy back in the hands of "We, the People" is now. Moneyed interests have overwhelmed the political process, leaving everyday Americans struggling to have their voices heard over the roar of massive political spending. This is not the democracy the American people want, and it is certainly not the democracy envisioned by our founders.

We urge Representatives to contact Representative Deutch ([Joel Richard](#), x53001) and Senators to contact Senator Udall ([Matt Nelson](#), x46621) to cosponsor the Democracy for All constitutional amendment. Thank you to members of Congress who have already registered their support.

We all need to work together to restore our democracy to one that is truly of, by, and for the people.

Sincerely,



Marge Baker
Executive Vice President for Policy and Program

ⁱ *OpenSecrets.org* by the *Center for Responsive Politics*, "Estimated Cost of Election 2014," accessed on February 18, 2015: <https://www.opensecrets.org/overview/cost.php>.

ⁱⁱ *OpenSecrets.org* by the *Center for Responsive Politics*, "Total Outside Spending by Election Cycle, Excluding Party Committees," accessed on February 18, 2015: https://www.opensecrets.org/outsidespending/cycle_tots.php.

ⁱⁱⁱ *Id.*

^{iv} *OpenSecrets.org* by the *Center for Responsive Politics*, "Outside Spending by Nondisclosing Groups, Cycle Totals, Excluding Party Committees," accessed on February 11, 2015: <https://www.opensecrets.org/outsidespending/disclosure.php>.

^v *Demos*, "Stacked Deck": <http://www.demos.org/stacked-deck-how-dominance-politics-affluent-business-undermines-economic-mobility-america>.

^{vi} Martin Gilens, *Public Opinion Quarterly*, "Inequality and Democratic Responsiveness": <http://qipsr.as.uky.edu/sites/default/files/Gilens-Inequality%20and%20Democratic%20Responsiveness-POQ.pdf>.

^{vii} Jeff Harrelson and Ben Tulchin, *MFour Research and Tulchin Research*, “National Voter Survey Findings (Insider Analysis)”: https://represent.us/wp-content/uploads/2013/12/RepresentUs_FullAnalysis.pdf.

^{viii} Russ Choma, *OpenSecrets.org* by the *Center for Responsive Politics*, “Election 2012: The Big Picture Shows Record Cost of Winning a Seat in Congress”: <http://www.opensecrets.org/news/2013/06/2012-overview/>.

^{ix} *SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010). Available at [http://www.cadc.uscourts.gov/internet/opinions.nsf/4B824DD5C7D7C4EF85257807005A9A46/\\$file/08-5223-1236837.pdf](http://www.cadc.uscourts.gov/internet/opinions.nsf/4B824DD5C7D7C4EF85257807005A9A46/$file/08-5223-1236837.pdf). See also <http://www.scotusblog.com/case-files/cases/speechnow-org-v-fcc/> for case history and media analysis.

^x *Citizens United v. FEC*, 588 U.S. 310 (2010). Available at <http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>. See also <http://www.scotusblog.com/case-files/cases/citizens-united-v-federal-election-commission/> for case history and media analysis.

^{xi} *Buckley v. Valeo*, 424 U.S. 1, 51-54 (1976). Available at http://www.law.cornell.edu/supct/html/historics/USSC_CR_0424_0001_ZO.html#424_US_1n65ref.

^{xii} *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014). Available at http://www.supremecourt.gov/opinions/13pdf/12-536_e1pf.pdf. See also <http://www.scotusblog.com/case-files/cases/mccutcheon-v-federal-election-commission/> for case history and media analysis.

^{xiii} *McCutcheon v. FEC*, 134 S.Ct. 1434, 1468 (2014).

^{xiv} *Id.*

^{xv} *Id.*

^{xvi} *Congress.gov* by the *Library of Congress*, “Cosponsors: H.J.Res.22 — 114th Congress (2015-2016),” accessed on May 1, 2015: <https://www.congress.gov/bill/114th-congress/house-joint-resolution/22/cosponsors?pageSort=lastToFirst>.

^{xvii} *Congress.gov* by the *Library of Congress*, “Cosponsors: S.J.Res.5 — 114th Congress (2015-2016),” accessed on May 1, 2015: <https://www.congress.gov/bill/114th-congress/senate-joint-resolution/5/cosponsors?pageSort=lastToFirst>.

^{xviii} *United For The People*, “State and Local Support,” accessed on April 24, 2015: <http://united4thepeople.org/state-and-local-support/>.

^{xix} *People For the American Way*, “On Eve of Fifth Anniversary of Citizens United, Advocates Reach 5 Million Signatures Calling to Overturn Decision”: <http://www.pfaw.org/press-releases/2015/01/eve-fifth-anniversary-citizens-united-advocates-reach-5-million-signatures-ca>.

^{xx} See *McCutcheon v. FEC*, 134 S.Ct. 1434 (2014). See also Richard Hasen, *Reuters*, “Opening the political money chutes,” <http://blogs.reuters.com/great-debate/2014/04/07/opening-the-political-money-chutes/>.