



## Ten Years Since Citizens United: The Growth of a Movement

January 15, 2020

### Introduction

*Citizens United vs. FEC*, handed down by the Supreme Court on January 21, 2010, has proven to be one of the most consequential decisions in our country's recent history. This case and those that are related have unleashed a torrent of spending on our elections, including a huge jump in outside spending that has been used to influence races on the local, state and national levels for the last decade.

This campaign finance landscape, coupled with other methods of using financial resources to influence politics and public policy, has created a system in which the voices of individuals and their communities are often drowned out by private interests whose agendas diverge significantly from that of the average American. Certainly, American democracy was already plagued by self-serving powerful interests well before *Citizens United*, but the increase in outside money spent in elections since then has exacerbated the overwhelming challenge of creating an equitable democracy.

During a time when our country faces innumerable threats both foreign and domestic, a government and electoral process that is stymied by unlimited special interest money is dangerous and calls for urgent action.

We know the American public is driving those calls for action, with polls consistently showing 70% to 80% of the population in support of reforms to counterbalance the influence of big money in politics, [including strong majorities](#) of Republicans and Democrats. And in 2019, we saw an aggressive response to that call with passage in the House of Representatives of H.R. 1, the For The People Act, and the introduction of its companion measure in the Senate, S. 949, co-sponsored by every member of the Democratic caucus.

The For the People Act is the biggest and boldest package of reforms to [pass in decades](#). In addition to a broad spectrum of important provisions pertaining to voting rights, redistricting, ethics in government and campaign finance reforms, the For the People Act includes [findings](#) on the need for a constitutional amendment to overturn Supreme Court decisions such as *Citizens United*. The For the People Act recognizes that in order to definitively address the rise of outside spending and the influence of money in politics writ large, there must be a constitutional amendment to overturn such decisions and establish a constitutional framework supporting reasonable regulations around the raising and spending of money on elections.

As a matter of law, aside from an amendment, the only other means to wholly address the threat of unchecked money in politics is for the Supreme Court to revisit and overturn its decision in *Citizens United v. FEC*, an increasingly unlikely prospect given the current makeup of the Court.

In fact, to the contrary, a [series of decisions](#) that occurred both prior to and following *Citizens United*, such as *Buckley v. Valeo* (1976), *SpeechNow v. FEC* (2010) and *McCutcheon v. FEC* (2014), suggest that this matter, so central to the integrity of our elections, cannot be simply left to the courts to decide. For our democracy to strive toward our founders' vision of greater political equality, Congress and state legislatures [must be able](#) to enact laws that establish commonsense restrictions on political spending.

Fortunately, in the 10 years since *Citizens United*, advocates have made significant progress toward an amendment at the local, state and federal levels, bringing together a broad and diverse coalition to advance its ultimate passage and ratification. Ten years ago, harnessing a national movement for a constitutional amendment seemed like a nearly insurmountable task. Yet over the past decade, through the efforts of a few dedicated organizations and our collective millions of members, by the metrics of public opinion, grassroots organizing, electoral and legislative victories, a movement for an amendment to get big money out of politics – part of an even broader movement focused on a range of reforms to create a democracy that works for everyone – has emerged and become a force to be reckoned with.

## By the numbers: Money in Federal Elections

The overall amount of money spent on elections has ratcheted up in each successive cycle. At first glance, while the increases are significant, they only tell part of the story. Given the loopholes around political advocacy, untold amounts can and have been spent to influence elections, through television ads, online ads, mailers, robocalls and other means, without being disclosed publicly to the Federal Election Commission (FEC).

### [Midterm elections](#)<sup>1</sup>

- Total cost of election 2006 (midterm): \$2,852,658,140
- Total cost of election 2010 (midterm): \$3,631,712,836
- Total cost of election 2014 (midterm): \$3,845,393,700
- Total cost of election 2018 (midterm): \$5,725,183,133

### [Presidential elections](#)

- Total cost of election 2008 (presidential): \$5,285,680,883
- Total cost of election 2012 (presidential): \$6,285,557,223

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<sup>1</sup> These figures include money spent by presidential candidates, Senate and House candidates, political parties and independent interest groups reported as trying to influence federal elections.

- Total cost of election 2016 (presidential): \$6,511,181,587
- Total cost of election 2020 (presidential): TBD

## By the numbers: Outside Spending

While the overall rise in electoral spending may be significant, *Citizens United* led to a drastic increase in outside spending. Every new cycle, more outside money is spent in our elections. That spending in the 2010 midterm election was approximately \$205.5 million, compared to \$1.1 billion spent in 2018 – a whopping 435% increase in just eight years.

### Midterm elections

- Outside spending in 2006 election (midterm): \$37.8 million
- Outside spending in 2010 election (midterm): \$205.5 million
- Outside spending in 2014 election (midterm): \$549.4 million
- Outside spending in 2018 election (midterm): \$1.1 billion

### Presidential elections

- Outside spending in 2008 election (presidential): \$143.7 million
- Outside spending in 2012 election (presidential): \$1 billion
- Outside spending in 2016 election (presidential): \$1.4 billion
- Outside spending in 2020 election (presidential): TBD

## Outside Spending

*Citizens United* and its progeny have fueled the rise of entities' ability to spend unlimited sums to influence our elections because of the Court's determination that such limitless spending – referred to as independent expenditures – "[do not give rise to corruption](#) or the appearance of corruption," provided there is no coordination with the candidates' campaigns. The decision is based on the fundamentally flawed premise that candidates will not be improperly influenced by unlimited money spent on their behalf if they or their campaigns have not coordinated in that spending. In addition, the troubling fact is that regulating the coordination has proven [difficult to achieve](#), effectively adding more fuel to the explosion in outside political spending.

In addition to allowing unlimited spending from corporate and union treasuries to influence elections, *Citizens United* has given rise to extensive spending by [501\(c\)4 organizations](#), nonprofit organizations whose primary purpose is to benefit "social welfare." Such organizations cannot spend more than 50% of their total annual budgets on political activities – and [do not have to disclose their donors](#), i.e., the source of the money that they are spending. Moreover, in seeking to stay under this threshold, special interests seeking to maximize the influence of their money in elections can use a range of tactics to [circumvent the rules](#) surrounding the "social

welfare” primary purpose requirements. For instance, a 501(c)4 can issue grants to other 501(c)4s and have that money count toward the requirement of using more than half of their annual budget toward furthering social welfare. Virtually [no details are required](#) in granting money to other social welfare organizations.

A special interest group can therefore create a network of 501(c)4 organizations that can donate to each other, without disclosing who the original donors are, passing money around that counts toward their “primary purpose” requirement, while allowing a greater percentage – if not all – of that money to ultimately be used for political purposes, since each time it changes hands it can count as a nonpolitical expenditure. This is made possible because disclosure requirements mandate that 501(c)4 groups need only report direct political expenditures to the FEC, whereas expenses listed as "educational" or "membership-building" fall under the organization’s primary purpose, allowing for this activity to occur without any reporting.

*Citizens United* also led to the creation of a new type of political action committee (PAC) that can raise unlimited sums of money from wealthy donors, without the restrictions placed on traditional PACs, which are limited in the amounts that they can accept, and who they can accept them from. These super PACs can accept money from any corporation, union or other entity without limitation. Super PACs cannot donate directly to candidates, making them "independent expenditure only committees," but they are free to raise and [spend unlimited sums of money](#). While super PACs are required by the FEC to disclose their donors, they can receive donations directly from 501(c)4s, which as mentioned, do not need to disclose their donors. Thus, taken together, 501(c)4s and super PACs can be used in a coordinated fashion to funnel unlimited, undisclosed sums of money into elections.

## Impact on Frontline Issues

The influence of big money in politics, exacerbated by Supreme Court cases like *Citizens United*, makes it more difficult to address many of the most pressing frontline issues. This is in part why such a broad and diverse coalition of organizations has come together to support a constitutional amendment to undo the harm caused by the Supreme Court’s flawed rulings. Virtually any issue can be traced back to the influence of unlimited special interest money in politics, here are just a few examples and statistics compiled by our partners at End Citizens United.

### Health Care

An estimated [80% of Americans](#) blame corporate greed and the pharmaceutical industry for rising costs of prescription drugs, while [one in four Americans](#) say it’s difficult to afford their prescribed medications. Meanwhile, drug companies give hundreds of millions of dollars to political campaigns. Since 1990, the industry has spent nearly [\\$204 million](#) on campaign contributions, and the trade association for Big Pharma has given at least [\\$13 million to dark money groups](#), including efforts to try and defeat the Affordable Care Act.

And that's not all. These campaign contributions are also backed by billions of dollars spent on lobbying the same public officials they help get elected. The industry spent a staggering [\\$3.7 billion lobbying](#) Congress and the executive branch from 1998-2018. In 2018 alone, the pharmaceutical and health products industries had [three lobbyists for every member of the House](#) on their payroll. While lobbying is not a direct result of *Citizens United*, the industry can use campaign contributions and outside spending to leverage the influence of its lobbyists, many of whom used to work in government themselves, to help push deregulation and tax cuts to maximize profitability for their shareholders. The Republican tax bill of 2017 alone gave the 10 biggest pharmaceutical companies a [\\$76 billion tax cut](#).

## Gun Violence

A significant, [bipartisan majority](#) of Americans are concerned about the epidemic levels of gun violence in this country, and support reforms to address it. An full [90% of Americans](#) support proposals to expand background checks. However, the NRA has spent millions on lobbying and political campaigns to stymie these efforts. From 1998-2017, the NRA contributed [\\$144.3 million](#) in outside spending, and [88%](#) of campaign contributions from gun rights groups since 1990 have gone to Republicans. Just since 2016, the NRA put at least \$54 million into outside spending, including [\\$34 million through its dark money arm](#). Additionally, pro-gun groups have spent upwards of [\\$76 million on lobbying](#) since 2013, which has included efforts to oppose legislation that would require greater transparency in political spending.

## Climate Change

An estimated [70% of Americans](#) understand climate change is happening and consider it to be an important issue. Moreover, [69% of Americans](#) – including a majority of Republicans – believe the U.S. needs to take aggressive measures to address it. But again, millions of dollars in political spending from the fossil fuel industry are preventing any action. Since the *Citizens United* decision, the energy sector has made [\\$685 million in contributions](#), and in 2018, [10 of the 17](#) biggest corporate donations to outside groups were from oil and gas companies. This big money system has effectively turned climate change into a partisan wedge issue. Since *Citizens United*, [zero](#) Senate Republicans have supported major climate change legislation, compared to 14 such instances occurring in the seven years prior to the Supreme Court decision. Meanwhile, as a return for their investment, the 2017 Republican tax bill disbursed [\\$25 billion in benefits](#) to just 17 oil and gas companies.

## Milestones of the Movement

Passing and ratifying an amendment to the United States constitution is a herculean task that is only possible with a massive social movement exerting sustained pressure across the country. Such a movement for an amendment to address the influence of big money in politics has come into existence and has seen incredible growth and development over the past decade, catalyzed in

part by a network of organizations that have invested in the infrastructure to mobilize public support, shape public opinion, organize voters and work with elected officials.

When the Supreme Court first handed down its decision in Citizens United in 2010, a number of organizations began working to amend the Constitution to correct the harm done by the Court. In just a few short years, the landscape went from speculating about a range of different approaches in terms of amendment language to a broad consensus across the reform community.

By building on the [framework established](#) through previous amendment efforts that began after the Buckley decision in 1976, it took intensive relationship-building and perseverance to fashion a consensus among a growing coalition around proposed language for an amendment, one that a critical mass of groups could support. That process produced the [Democracy For All amendment](#), sponsored by Senators Tom Udall (D-N.M.) and Jeanne Shaheen (D-N.H.) and Representatives Ted Deutch (D-Fla.) and John Katko (R-N.Y.), which gives Congress and state legislatures the ability to enact reasonable restrictions on the raising and spending of money in elections.

By 2014, the Democracy For All amendment already enjoyed broad support in both chambers (although almost entirely Democrats) and was even brought to the [Senate floor](#) for a week of debate, followed by 54 senators voting in favor. While not the two-thirds majority needed for a constitutional amendment, achieving this sizeable majority of the Senate was a historic milestone for the movement.

The community of organizations that have come together to work on an amendment has grown significantly since 2010. By 2014, when the Democracy For All amendment was debated on the Senate floor, 25 different organizations had collaborated to collect more than three million petition signatures in support of an amendment to overturn Citizens United, which were delivered on the Capitol steps during the week of the vote. By the next year, the 5th anniversary of the decision, more than 60 organizations had come together to gather more five million petition signatures in support of an amendment. Now, as we enter the 10th year since Citizens United we have built a network of more than 120 organizations that support not just an amendment, but specifically the Democracy For All amendment. We have generated countless calls into Congress, letters to the editor, and grassroots events in support of an amendment, and our efforts are beginning to show.

At the time of this writing, the Democracy For All amendment has the support of all 47 Democrats [in the Senate](#), as well as over 200 members of the House of Representatives. The coalition of groups that has come together to build support for the Democracy For All amendment is currently working with members of the House of Representatives to hold hearings on the amendment this year, with the broader goal of a vote on the House floor before the end of the term.

Support for an amendment to overturn *Citizens United* is reflected by a robust effort in states and localities around the nation to pass resolutions in support of amending the constitution to address the harm caused by *Citizens United*. In the past 10 years, [20 states and more than 800 localities](#) have passed measures supporting a constitutional amendment. And these measures consistently pass with anywhere from 60% to-80% in support. More than 141 million Americans – 46% of the population – live in a state or locality that has supported an amendment. This includes red states, blue states, and swing states.

And perhaps most importantly of all, public support is there. In fact, [polling shows](#) that framing the problem broadly and in terms of political equality, as the amendment does, serves as an entry point for the public to consider a full range of money in politics solutions. While Republicans in Congress have by and large yet to come out in support of an amendment to overturn Supreme Court cases like *Citizens United*, the population broadly supports an amendment, including self-identified conservatives. This being the case, it may only be a matter of time until Republicans, in Congress and in state legislatures alike, realize that it is firmly the desire of their constituents to support and pass an amendment to get big money out of politics.

## Conclusion

The past 10 years have seen a drastic evolution in the relationship between big money, outside spending and elections enabled by the Supreme Court in *Citizens United* and related decisions. The emergence of the Democracy For All Amendment and the widespread support for an amendment at the state and local levels signify that the movement to overturn Supreme Court decisions like *Citizens United* has reached a critical mass, where the political momentum will only continue to grow. To nurture this movement, we must keep working together to make the case for a constitutional amendment, by continuing to build our coalition and by connecting the issue of money in politics to other fights of our time.