



## Who and What Can Possibly Save American Democracy? 4 Key Questions

*We're deep in the hole with Citizens United and unlimited campaign spending. How should we try to resolve this problem?*

July 26, 2012 |

When the final gavel fell on Tuesday ending the Senate Judiciary Committee's hearing on "taking back our democracy," it was hard to tell if this exercise was striking political theater or actually the start of something bigger—the first steps toward reforming America's dysfunctional campaign finance system.

A handful of mostly Democratic senators and left-leaning witnesses shared vivid war stories about the many ways big money in elections is destroying our democracy. They agreed that a terrible situation has been made even worse by the Supreme Court's 2010 *Citizens United* ruling further deregulating campaign finances. But they backed off discussing proposed solutions or suggesting a timetable for next steps.

While it was temporarily satisfying to hear senators Patrick Leahy, Dick Durbin, Bernie Sanders, Max Baucus, Thomas Udall, Richard Blumenthal, Chris Coons, Amy Klobuchar and Rep. Donna Edwards, and witnesses Buddy Roemer—an ex-congressman, governor and 2012 Republican presidential candidate—and Harvard Law School professor Larry Lessig describe exactly how big money and an illogical Supreme Court have undermined the founders' vision of what a citizen-based democracy is supposed to be, they reluctantly—or perhaps deliberately—put off hard talk about solutions.

"You are faced with raising a million dollars a month to be competitive, under the old rules, before the arrival of super PACs," said Illinois' Sen. Durbin, chairman of the Subcommittee on the Constitution, Civil Rights and Human Rights, speaking of his campaigns. "Most Americans, I think, would be maybe a little embarrassed, certainly surprised, about how much time that members of Congress spend talking about raising money, and actually raising money..."

"Now, air drop in super PACS and you don't know what's going to happen in the closing days. So far, a couple of our colleagues have faced \$10 and \$12 million of super PAC negative advertising, unanswered, in their election campaigns. That's the new world."

What can be done about that new world was Tuesday's topic. Durbin's panelists sat across from 1.7 million signed petitions calling for Congress to send a constitutional amendment to the states to address the distorting effects of big money in elections and politics. He and other witnesses mentioned that six legislatures—California, Maryland, Hawaii, Vermont, Rhode Island and New Mexico—and 275 local governments have demanded similar action. Four hundred people watched in total from the hearing room and an overflow room. New and old grassroots groups—Move to Amend, Free Speech For People, People for the American Way, Common Cause and others—demonstrated there is tremendous public support for sweeping political reform.

Three senators who have proposed different amendments—Sanders, Udall and Baucus—and Edwards, who offered an amendment in the House, sketched out their ideas. Witnesses then added their thoughts. Some amendment proposals seek to strip corporations of political and constitutional rights. Some just want to empower Congress to regulate campaign donations and spending in elections—no matter who is doing it. A few blend those approaches. But not one of the Senate and House sponsors were asked to distinguish their proposals from others, or say where there was common ground.

The witnesses also spoke of laws Congress could pass—if the Supreme Court could be stopped from eviscerating its ability to regulate money in politics. They cited the need for full and timely disclosure of campaign donations and spending, banning contributions from lobbyists, making rules on PACs the same as on individuals, closing 2012's new loopholes exploited by billionaires and corporations, and improving public financing options. And almost everyone agreed—except for the libertarian Cato Institute's representative, who defended unlimited spending by wealthy people and interests (no Republican senators were present for the hearing)—that a line of Supreme Court decisions dating back to 1976 could only be reversed by a constitutional amendment.

Baucus called it "the only way to solve this." Leahy said, "Constitutional remedies have to be considered." Udall said, "James Madison argued that the U.S. Constitution should be amended only on 'great and extraordinary occasions.' I believe we have reached one of those occasions." Sanders said, "We are well on our way to seeing our great country move toward an oligarchic form of government, where virtually all of the economic and political power rest with a handful of very wealthy families."

The most interesting questions, outside occasional discussions about how inconsistent and imperious the Supreme Court was in *Citizens United* and other recent campaign finance cases, concerned an assertion by Harvard's Lessig, who told the panel that Americans did not trust Congress to propose a solution to fix the vast problem of how money has corrupted elections and lawmaking.

"You have evolved a government that is dependent upon the people and dependent upon the funders," he said. "And that different and conflicting dependence is a corruption of our framers' design now made radically worse by the errors of *Citizens United*. But in responding to those errors, please, do not lose sight of one critical fact: On January 20, 2010, the day before *Citizens United* was decided, our democracy was already broken. *Citizens United* may have shocked the body. But the body was already cold. And any response to *Citizens United* must also respond to that more fundamental corruption."

"Now how you do that will be as important as what you do," Lessig said, without addressing what any of the proposals would do.

"For America's cynicism about this government, whether fair or not, is too profound to imagine that this Congress alone could craft a response that would earn the confidence of the American people," he continued. "Instead, this Congress needs to find a process that could discover the right reforms that itself could earn the trust of the American people. That process should not be dominated by politicians or law professors, indeed, [or] by any of the professional institutions of American government. It should be dominated instead by the people."

Lessig suggested that the Committee convene four super-sized, grand jury-like panels—one in each corner of the country—where citizens would be randomly chosen and paid to meet and discuss all the amendment proposals and suggest the best remedies for the Judiciary Committee. It wouldn't be the same as the formal convention envisioned under the Constitution's Article 5 that could revise the actual Constitution, but would create debate, discussion, non-binding suggestions and legitimacy for the effort. He described the panels as "a civic jury... convened to advise Congress about the best means for reform."

Lessig's "citizen convention" plan might be described as the "new kid on the block" among many well-known reform proposals. Several senators seemed intrigued by it—or, at least compared to proposals put forth by colleagues, asked questions about it, even though it was premised on Congress's inability to produce an amendment that the public would support.

But for people who have worked on campaign finance reform for years, the prospect of more delays, pushing initial deliberations past the 2012 presidential election, and lack of any detailed discussion on what the various proposals would mean for various interests is frustrating. The different amendment proposals are not hard to understand. They break down along straightforward lines. For example, does it affect the Koch brothers or not? Or wealthy candidates? Does it affect non-profit corporations? Or labor unions? What kinds of corporations would be affected? Would it affect more than their speech rights? And what words would allow Congress and the states to regulate all campaign cash—fixing the root problem created by the Supreme Court?

That discussion—with its comparisons, a decision tree and diagnosis of the problems—has yet to be constructed or occur. If there is good news from Tuesday's hearing, it is that Democrats do not need convincing that the problems of big money in politics need a big solution. They agree. But they also need Republicans who abhor the current system to join them. In the past, Republican senators did propose or co-sponsor amendments to do just that, Udall said.

But it is an open question whether today's Republicans (and Democrats) will be so beaten up by the excesses of money—from both sides of the aisle—in the 2012 campaign that November's victors will want a solution that dismantles the current campaign finance system. In the past, winners of elections tend to want to preserve the system that awards them power. And their contributors or patrons want to see returns on their investments.

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