



Constitutional amendment required to undo Citizens United, Senate panel told

By Warren Richey | *Christian Science Monitor* – 11 hrs ago

It will take a constitutional amendment to reverse the flood of independent money inundating American elections in the aftermath of the [US Supreme Court's](#) controversial [Citizens United decision](#), a Senate Judiciary subcommittee was told on Tuesday.

New laws alone will not be enough to counter the impact of the 2010 high court decision establishing that corporations have a [First Amendment right](#) to make independent political expenditures during election season, witnesses told the panel.

The hearing of the [Judiciary Committee's](#) subcommittee on the Constitution, Civil Rights, and Human Rights arises in a particularly heated election season in which new political spending enabled by Citizens United has played a prominent role. The hearing was chaired by [Sen. Richard Durbin \(D\)](#) of [Illinois](#) and was entirely a production of Democratic members of the Senate.

"I believe, as you believe, that the solution here is a constitutional amendment to restore the power to the hands of the people, not the corporations," said [Senator Max Baucus \(D\)](#) of [Montana](#), one of the witnesses.

"My proposal would right the wrong of Citizens United – simply overturn it – and give back to the people, like those in Montana, the ability to once again say we are not for sale," he said.

A campaign to amend the Constitution is already underway with nearly 1.9 million signatures, supportive resolutions from 275 cities and towns, and the backing of state legislatures in [California](#), [Maryland](#), [Hawaii](#), [Vermont](#), and Rhode Island.

Senator Durbin compared the campaign finance issue to other historic national problems that required constitutional amendments to resolve, such as ending slavery, extending the vote to women, and invalidating poll taxes.

"I have reached the conclusion that a constitutional amendment is necessary," Senator Durbin said. "It is an uphill battle. It may take years."

The hearing came a week after a campaign spending disclosure law – the [DISCLOSE Act](#) – was bottled up in [the US Senate](#) by Republican opposition. It also comes amid what is expected to be the most expensive presidential election season in history – including massive spending by so-called super PACs.

The Citizens United decision and a related federal appeals court ruling five months later set the stage for the current proliferation of organizations seeking to influence the outcome of national elections while working independently of candidates and their political parties.

By remaining independent they are protected by the First Amendment from federal campaign finance restrictions, under the court decisions.

[President Obama](#) and other [Democrats](#) have denounced the Citizens United decision as a setback for American democracy by empowering wealthy corporations at the expense of ordinary voters.

Republicans have defended the decision on free speech grounds. Not a single Republican committee member made an appearance at Tuesday's hearing.

The hearing featured Senator Baucus and three other Democratic lawmakers who have introduced measures designed to undercut or completely overturn Citizens United.

The committee also heard testimony from two constitutional law scholars, [Ilya Shapiro](#) of the libertarian [Cato Institute](#) in [Washington](#), and [Lawrence Lessig](#), a professor at [Harvard Law School](#).

Mr. Shapiro was the only individual at the hearing who sought to defend the Citizens United decision. He called it one of the most misunderstood high court decisions ever.

"It doesn't stand for half of what many people say it does," he said.

“Take for example President Obama’s famous statement that the decision ‘reversed a century of law that I believe will open the floodgates of special interests – including foreign corporations – to spend without limit in our elections,’ ” Shapiro said, quoting the president. “In that sentence, the former constitutional law professor stated four errors of constitutional law.”

Shapiro said the decision did not reverse a century of law. Instead, it invalidated a 1990 decision that allowed restrictions on political speech to level the electoral playing field rather than the accepted rationale of preventing corruption, he said.

Citizens United had nothing to do with foreign influence in elections, which remains illegal, he said. And there is no indication that corporate spending has greatly increased this election cycle, Shapiro said.

Instead, the spending increases are coming from wealthy individuals.

Shapiro said the best response to the Citizens United decision would be to require full disclosure of donors to super PACs and to lift current restrictions on contributions to federal candidates.

Professor Lessig disagreed. He said such proposals fail to recognize the pernicious nature of a broader form of corruption of the election process.

Lessig said the problem is the concentration of influence in a handful of wealthy donors capable of wielding large amounts of money quickly.

“It is as if America runs two elections each election cycle – one a money election, and one a voting election,” he said. “To succeed in the latter, you must succeed in the former first.”

The professor said that in post-Citizens United campaigns, the problem is not the amount of money, it is the source of the money. Candidates will understand the importance of such “independent” donors, and that understanding exerts a kind of corrupting influence, he said.

Lessig said mere disclosure laws alone would not be a sufficient response to such corruption. The answer, he said, requires a system of publicly financed elections.

“Only a system of citizen funded elections – where dependence upon ‘the funders’ is the same as dependence upon ‘the People’ – could reform that corruption,” Lessig told the senators.

Joining Lessig and Shapiro was former Republican presidential candidate Charles “Buddy” Roemer, the former governor of [Louisiana](#), who is a firm advocate of limits on campaign contributions.

Another witness at the hearing, [Vermont Sen. Bernard Sanders](#), an independent, said the democratic foundations of the nation are currently enduring their most severe attack in history on both economic and political fronts.

“We are well on our way to see our country move to an oligarchy, where power rests in the hands of a few families,” he said.

Senator Sanders said inequality in the US is worse than it has been at any time since the 1920s. He noted that 23 billionaire families have contributed at least \$250,000 each so far in this year’s campaigns.

He added that the wealthiest 400 individuals own more wealth than the bottom 150 million Americans – roughly half the country.

“What the Supreme Court did in Citizens United is to say to these same billionaires and the corporations they control: ‘You own and control the economy, you own [Wall Street](#), you own the coal companies, you own the oil companies. Now, for a very small percentage of your wealth, we’re going to give you the opportunity to own the [United States](#) government.’ ” Sanders said.

“This is the essence of what Citizens United is all about – and that’s why it must be overturned,” he said.