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**Testimony before the Senate Education, Health, and Environmental Affairs
Committee in Support of SJ 2 – U. S. Constitution – Amendments Convention
Democracy Amendment**

March 5, 2020

The Vicious Cycle

Politics in the United States has been characterized by a vicious cycle of economic inequality, political spending by elite donors, followed by corrupt benefits flowing to those elites. In addition, voter suppression and so-called corporate constitutional rights provide alternative ways for the wealthy to maintain and increase their advantage. All this leads to even more inequality and continuation of the cycle.

The donor class gets tax subsidies and contracts for goods and services without regard to “Justice, Tranquility, or the General Welfare.” Please see the attached sheet entitled “Costs of Corruption,”ⁱ which documents some of the major ways in which income, wealth and well-being are transferred from the working class to the wealthy. With direct and indirect fossil fuel subsidies, lower tax rates for investment income compared to wages, high costs for drugs and health insurance, and other tax subsidies, we have calculated that this *partial* list of corporate welfare benefits comes to nearly \$6,000 per person annually – almost \$15,000 for a typical household.

According to renowned scholars at U.C. Berkeley and the Paris School of Economics, the bottom 50% of the U.S. population have no net worth – collectively, they’re about \$103 billion in debt.ⁱⁱ On the other hand, “The top 1% saw their share of wealth rise to 38.6% in 2016 [while] the share of wealth held by the bottom 90% of Americans has been falling steadily for 25 years, hitting 22.8% in 2016 from 33.2% in 1989.”ⁱⁱⁱ Since total net worth is almost \$100 trillion, the top 1% of households control almost \$40 trillion in wealth.^{iv}

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

The Article V path incorporated in SJ 2 uses the method of organizing from the bottom up. This is the best way that the People can overcome the money advantage of the super-wealthy and save our democratic republic.

Money in Politics

This year we observed the tenth anniversary of *Citizens United v. FEC*. Since this disastrous decision kicked the era of big money into overdrive, we have seen the following in federal elections:

- \$1 billion in dark money;
- \$4.5 billion in outside money and no effective coordination enforcement at the federal level;
- Spending by for-profit corporations is unknown due to dark channels;
- Foreign money is unchecked (see below).

Michael Bloomberg’s net assets are reported to be around \$62 billion – almost ten times the entire campaign spending in the 2016 federal election. His candidacy in the Democratic presidential primaries highlights a number of issues:

- He has spent an unprecedented amount on TV ads – \$409 million as of February 20.^v
- The Bloomberg campaign is cornering the market on campaign staff nationwide – offering field organizers, ... [\\$6,000 per month](#) and guaranteed pay through November.... The above-market pay often comes with housing included, as well as a laptop and an iPhone....^{vi}
- A candidate for a Connecticut House seat lost a special election by 79 votes after her campaign manager was hired by Bloomberg less than 3 weeks before election day.

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 – \$40 trillion – of the top 1% of households. The impact of money is felt most forcefully in primaries. Talented candidates without access to big money are excluded in most instances.

Please look at the table below from SBE tallying Maryland election contributions and spending and imagine that an individual or a consortium of wealthy individuals who live outside our State decided to do in Maryland what Mr. Bloomberg is doing on a national scale. The impact could be devastating to our collective belief that we are in charge of our democracy.

Election Cycle Name	Contributions		Expenditures
	Total \$ Amount Received	Total Number Received	
2007-2010	\$172,889,991	993,025	\$170,097,985
2011-2014	\$282,994,431	1,630,774	\$299,997,637
2015-2018	\$268,144,309	2,092,938	\$246,680,320

The current U.S. Treasury Department is opening the door to dark money and foreign money. In the 2018 federal election cycle, almost \$180 million was spent from undisclosed sources. This “dark money” can be spent directly by non-profit corporations or funneled through Super PACs.

Regulations were recently proposed so that even the IRS will not know the source of the 501(c)(4) funds, raising a serious question as to how the ban on election spending by foreign businesses and governments can be enforced.^{vii}

Public Opinion

When our election finance system is swamped with money from financial elites, business interests, wealthy ideologues, and sometimes even foreign businesses or national interests, the result is that policies favor those interests.

The result is that tax and labor policy, trade policy, financial and environmental regulation or lack thereof, and federal spending are all tilted toward entrenched interests who spend on elections.

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, 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,^{viii} 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*.”^{ix}

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.^x

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

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".

And most recently, 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, "After significant review of a broad collection of materials, the Commission supports the approach for a limited-purpose convention under Article V. The intent is to either propose the amendment or to force the issue in Congress."

The Commission endorsed resolutions similar to SJ 2 that are pending in the Massachusetts legislature. On February 26, a joint committee of the Massachusetts House and Senate reported favorably on these resolutions.

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.

Additional Provisions

The version of this legislation that passed the House of Delegates in 2018 limited the topic of an amendment convention to authorizing Congress and the states to regulate the contributing and spending of money intended to affect the outcome of elections.

In this version we have added two other possible topics of critical import to democracy: the affirmative right to vote of every citizen and limiting constitutional rights to human beings.

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.”

On a more current note, last week one of our Board members heard a radio interview with Stacey Abrams, recent candidate for Governor of Georgia, whose loss was widely attributed to voter suppression efforts by her Secretary-of-State opponent. When asked by the interviewer, “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 2, the Democracy Amendment Resolution.

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https://d3n8a8pro7vhmx.cloudfront.net/getmoneyoutmd/pages/223/attachments/original/1582926617/MIPFlyer_0120_v2.pdf?1582926617

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v <https://www.reuters.com/article/us-usa-election-bloomberg-spending/bloomberg-presidential-campaign-reports-409-million-in-total-spending-so-far-idUSKBN20E2M0>

vi <https://theintercept.com/2020/02/13/bloomberg-spending-local-state-campaigns/>

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