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Our country was formed in reaction to corrupt British politics. The Declaration of Independence was, among other things, a declaration of separation from the politics of dependence which the Founders saw in Britain. They perceived a country with a basically good constitutional structure that had rotted from the inside out because of the king's power to make officers and parliamentarians dependent upon him. They saw the way that "rotten boroughs" could be bought, that allegiances could be shifted because of money. Corruption fears—fears of a "conspiracy against liberty ... nourished by corruption" were "at the heart of the Revolutionary movement."¹ The fear of corruption was "near unanimous" as was the sense that corruption needed to be "avoided, that its presence in the political system produced a degenerative effect."² George Mason said as the Constitutional Convention got under way that "If we do not provide against corruption, our government will soon be at an end."³ In the Federalist Papers, Hamilton explained that "[n]othing was more to be desired than that every practicable obstacle should be opposed to cabal, intrigue, and corruption."⁴

They were right to be concerned about corruption and how money, allowed free rein in politics, can corrupt democracy. It is important to remember how rare self-government is in world history. Most governments are not representative; in most times and places, concentrated economic power rules, directly or indirectly. The founders were well aware of the tendency to oligarchy and monarchy. In John Dickinson's long speech on the value of mixed government, he argued that "If antient republics have been found to flourish for a moment only & then vanish for ever, it only proves that they were badly constituted; and that we ought to seek for every remedy for their diseases."⁵ After the Philadelphia convention, a woman allegedly asked Benjamin Franklin, "what have we got, a republic or a monarchy?" Franklin is rumored to have replied, "A republic, Madame, if you can keep it."

It is now our challenge to keep it. We are now again facing a new politics of dependence. *Citizens United* and its precursors threaten to destroy the rare self-government that we are privileged enough to have inherited.

The Supreme Court in *Citizens United* showed a lack of understanding of how politics actually worked. But it was also radical—in a doctrinal sense. To get a sense of how radical the First Amendment interpretation is, consider that the first century-and-a-half of our country, no

1 Bernard Bailyn, *The Ideological Origins of the American Revolution*, xiii (1992).

2 James D. Savage, *Virtue and Corruption at the Constitutional Convention*, 56 *The Journal of Politics* 1 (1994) .

3 Notes of Yates, June 22, 1787, in 1 *The Records of the Federal Convention of 1787* (Max Farrand ed.)

4 Alexander Hamilton, *Federalist* 68.

5 Notes of Madison, June 2, 1787 in *The Records of the Federal Convention of 1787* (Max Farrand ed.).

one seriously thought that the First Amendment should be used to prohibit legislation that built hurdles between economic and political power. In the 1870s, the Supreme Court refused to enforce a contract to lobby at all, because it was corrupt and against the public policy of the United States. The Court warned:

If any of the great corporations of the country were to hire adventurers who make market of themselves in this way, to procure the passage of a general law with a view to the promotion of their private interests, the moral sense of every right-minded man would instinctively denounce the employer and employed as steeped in corruption, and the employment as infamous.⁶

The First Amendment was not even raised as an issue in that case. Half a century later, the First Amendment became a valuable tool in protecting dissident speech but, starting with *Buckley v. Valeo*, also became a radical wedge used by ideologues who proposed that there should be no levies raised between money and politics. The great corporations of the country are invited, because of *Citizens United*, not only to lobby, but to promote their private interests through unlimited expenditures. They are invited to threaten would-be representatives with swift and brutal campaigns if they oppose their corporate agendas. The Court's use of the First Amendment is bad history, bad law, and bad political theory.

Obviously, money will always have an influence on politics. But it is one thing to say that money and politics will always have some relationship, it is another altogether to give up on responsive self-government altogether. Structural rules matter. The shape of that influence is not inevitable. As Members of Congress, you know how laws shape incentives.

In the short term—and regardless of what happens with Constitutional interpretation—we need to restructure how campaigns are funded. I urge Congress to pass a small donor matching funds system that would grant federal matching funds for small-dollar donations. Such a law would shape incentives, forcing representatives to think about the public. Now, faced with millions of dollars in Super PAC attack ads, candidates' incentives are to raise as much money as they can from people who can afford \$2,000 and more to give—basically, people in the top 1 to 4% of Americans. This means that their minds have to be oriented towards the concerns of the richest politically active people in the world. At the same time, they have to be afraid of the political activity of corporations. Right now, with Super PACs and the campaign funding system in place, Members of Congress are inside a system that corrupts each of them every day, and takes their talents and turns them towards the 1% instead of the 99%. With a matching funds system, where a \$100 donation was matched 5 to 1, their incentives would be to raise as many \$100 contributions as possible—their orientation would shift to the concerns of constituents. It wouldn't address all the problems with Super PACS, but would significantly change the way representatives think and represent. Similar systems have been very successful in the states, and have withstood court challenges.

Disclosure is essential, and any resistance to disclosure is very troubling. But disclosure is not a sufficient response to *Citizens United*. You cannot X-ray a sick man back to health.

⁶ *Trist v. Child*, 88 U.S. at 451 (1874).

We need to understand that the worst is yet to come. Much has been made of the involvement of Super PACs in the presidential election. These Super PACs are mere children compared to what Super PACs are likely to become. They are playing checkers now, and we will soon be playing chess; the power of Super PACs at the congressional district level and the local level is far greater than it can be in a presidential race, where substantial media attention can blunt some of the power. Moreover, the first banking Super PAC was formed just last week, after claims by many that corporations would never get directly involved in electioneering. Scholars and commentators argue that corporations don't "want" to get involved in politics, and that it will hurt their reputations; in short, that independent spending is tacky and graceless. We need to remember that the same arguments were made about lobbying, but—however tacky and graceless—the largest corporations in the world now all lobby, and accept the criticism in exchange for the power it gives them. I expect the same with independent expenditures. We are less than three years since *Citizens United* gave corporations permission to act. It takes time to change culture and habits and internal structures, but I anticipate that every major corporation will participate directly or indirectly in trying to shape policy through elections if the *status quo* holds. They will not be able to resist the temptation, and they, too, will seize the power they are given, because it will be a rational business decision to do so. Because it is just at the beginning, it is important to act now, before the structures are in place that would make change impossible.

Until Congress deals with money and politics, it cannot deal with much else fairly. Just as one example, it cannot pass a financial transactions tax, even with enormous popular support, because of the fear of Wall Street's money; it cannot even fairly address the question about whether a financial transaction tax makes sense. It cannot, in short, be responsive—be democratic—and live up to the hope of the founders.

The fight against corruption follows in the path of Madison, Hamilton, Franklin, Mason, and the other drafters of the Constitution, who worked so carefully to craft structures such that representatives would be able to serve their constituents, not the wealthy and powerful.

It is my hope that this hearing will be the beginning of the federal government's effort to focus intensely on ways to restructure political campaigns within the radically limited framework allowed by *Citizens United*. I urge Congress to hold many hearings on this subject, and fully explore what is possible, and the potential dangers of not acting quickly. I believe that the country wants a full public debate about the future of democracy after *Citizens United*, and it is the responsibility of the United States Congress to provide that, and to act as quickly and aggressively as possible to save our democracy.