

leadership. This bill is moving. This bill is picking up support across the Nation. Again, we need to get it done. We cannot wait. These patients cannot wait.

CITIZENS UNITED

Ms. KLOBUCHAR. I am here today also to talk about something that is very important to the future of our democracy; that is, campaign finance reform and the Citizens United decision by the Supreme Court which had its second anniversary a few days ago.

I see Senator GILLIBRAND from New York is also here to speak on this important issue. She is a leader. The Presiding Officer has done some very important work in this area as well, which I will get to in a minute. Most fundamentally, I am here to talk about the public lack of trust and our need to ensure that the American people have a government that is responsive to their concerns.

It is vital that the American people have trust and confidence in their government. Right now it is clear they do not have either. The American people believe Washington is focused more on scoring political points for special interests and not looking out for their interests, for the interests of the people of this country, for the interests of the middle class. They have seen the preservation of oil company subsidies while at the same time the price of gasoline has remained painfully high. Simply put, they think the system is broken.

While most people probably do not have the time to study the intricate details of campaign finance law, which unfortunately has loopholes and things written in it that make it hard to figure, the American people have a pretty good sense there is something wrong with how we conduct our elections. The American people know spending on campaigns has gotten out of control and that spending by special interest groups is contributing greatly to that problem—and they are right.

The Supreme Court Citizens United decision has made it profoundly worse by loosening the rules on special interest spending on political campaigns. We are now in a situation where candidates have to report every single contribution they raise over a certain amount. That is good. But literally millions of dollars in special interest money can come in in attack ads, can come in and do whatever it wants, and you literally cannot prove who that person is who put in that money. It shakes the very foundation of our democracy when the people who are voting in these elections cannot even tell where the money is coming from that is paying for the ads.

Citizens United has unleashed a new wave of special interest spending, and the American people have been inundated with negative ads on their televisions. Worse, they are constantly hearing about the increased role that

special interests are playing in our elections, and that heightens their suspicions that Washington is working only for the powerful, only for the people who can pay for issue ads. The public justifiably believes the more money outside groups spend on campaigns the less their voices are heard. How can they have a voice when people are drowning out their voices with multimillions of dollars? This is a big problem and it is something I think we need to address.

The President touched on this issue of money in politics in his State of the Union this week, and in his address last year he took on Citizens United directly. He knows we need change, and I agree. Unfortunately, the Citizens United decision makes it very difficult to take action legislatively. That is why I am a sponsor of a constitutional amendment which would allow Congress to pass laws regulating campaign fundraising and spending.

TOM UDALL has worked on one. I know the Presiding Officer also has a similar bill as well. I hope we can advance this amendment, but I realize it will be an uphill battle, especially as we enter an election year. But we must change this system. In the meantime, even before the election, I am hopeful we will take some steps to make it more transparent so at least we can start finding out who is spending this money—the people of Vermont or the people of New York or the people of Minnesota can find out who is putting in millions of dollars, and they can draw their own conclusions—they are pretty smart—about why they are spending that money.

We need it to be transparent. We also have to stem this great abuse of power, this great amount of money that is coming into the system. But in the end we will need a constitutional amendment.

Mrs. FEINSTEIN. Mr. President, I rise today to join my colleagues in marking the 2-year anniversary of the Supreme Court's decision in Citizens United. I want to express my support for legislation to reverse the harmful impact of this decision and restore accountability, transparency and common sense to our Nation's electoral system.

Nearly 2 years ago, on January 21, 2010, the Roberts Court handed down a 5-4 decision striking down parts of the "Bipartisan Campaign Reform Act."

That decision—Citizens United v. Federal Election Commission—flew in the face of nearly a century of Congressional law and overturned two prior rulings of the Supreme Court.

This case is not alone.

It is part of a pattern of decisions from the Roberts Court that have overturned precedent.

I have a real concern that this Court is going out of its way to rewrite and reinterpret prior law with decisions, I am sorry to say, seem to favor corporate interests over the interests of the American people.

The Citizens United decision may be the most troubling of these activist decisions.

This decision does not only impact one group of people or one area of the law—it affects the very functioning of our elections and the democracy of more than 300 million Americans.

The Court's decision in this case opened the door to unlimited corporate spending in Federal elections.

Let me repeat: unlimited spending.

The Court held that the First Amendment of the Constitution protects the rights of corporations to spend freely—in the millions or even the billions—on election ads to support or defeat a particular candidate.

What does this mean in the real world?

This means that an oil company like ExxonMobil—a company that earned \$45 billion in profits last year—could spend unlimited money to support a candidate who supports more drilling, or to defeat a candidate who opposes more oil drilling.

It means that Xe Services, formerly known as Blackwater, and other defense contractors could spend unlimited sums toward the election of candidates who view their defense positions favorably.

Or large banks like Bank of America would be free to use their corporate treasury to attack candidates who favor financial regulation and consumer protection.

As Fred Wertheimer of Democracy 21 testified at a Rules Committee hearing in 2010, "It would not take many examples of elections where multimillion corporate expenditures defeat a Member of Congress before all Members quickly learn the lesson, vote against the corporate interest at stake in a piece of legislation and you run the risk of being hit with a multimillion-dollar corporate ad campaign to defeat you."

Is this what we want?

Four years ago in 2008, at this same point in the presidential election cycle, \$12.9 million was spent by super PACs in support of candidates.

The fall 2010 midterm elections ushered in this new political landscape with outside groups spending a record \$300 million on political advertisements and other messages. This amount represents a 340 percent increase above 2006 spending levels.

According to the Center for Responsive Politics, the spending by presidential super PACs in this year's election cycle has quadrupled since 2008 to an astonishing \$42.5 million spent as of January 24, 2012.

More money is being spent than ever before.

Do not take my word for it.

Take a look at what is going on in the Republican Presidential primary. Corporations and wealthy individuals are funding these super PACs and spending vast amounts of money to attack candidates.

My concerns with these dramatic increases in spending are heightened by a

recent finding from the Center for Responsive Politics that approximately 44 percent of the outside spending in 2010 came from anonymous sources.

The Roberts Court's decision in *Citizens United* was, I believe, the wrong one.

It protects corporate free speech and will drown out an individuals' free speech. It has threatened to put democratic elections in the United States up for sale to the highest bidder. And it will, I believe, lead to voters having less reliable information about candidates, not more.

The Court gets the final word on the Constitution, and it has spoken.

However, Congress should pass the DISCLOSE Act or Senator TOM UDALL's campaign finance constitutional amendment.

I supported the DISCLOSE Act in the last Congress because I believe it is a critical step forward, but the bill was narrowly defeated on a cloture vote of 59–39 in September of 2010.

Given what we have seen in the Republican primaries this year, I think this body must try again to pass the DISCLOSE Act. In 2010, we came close to passing it and needed just one additional yea vote to move the bill forward.

The DISCLOSE Act ensures the American public knows who is funding an ad when they see it on television, and it will close loopholes that could have otherwise allowed unlimited spending in our elections by foreign nationals and corporations receiving government assistance.

I understand that Senator SCHUMER is working to reintroduce this legislation, and I fully support him in this effort.

Senator UDALL's resolution to amend the Constitution would authorize Congress to regulate the raising and spending of money for federal campaigns, including the independent spending of super PACs.

This resolution is a critical step to ensure that corporate dollars will not flow in the dark to one candidate and against another, but, instead, our election process will regain the transparency it has lost after *Citizens United*.

I believe it is essential that we pass legislation to address this growing problem, and I look forward to working with my colleagues to do so.

Mr. LEAHY. Mr. President, two years ago, with the stroke of a pen, five Supreme Court justices acted in a case known as *Citizens United* to overturn a century of law designed to protect our elections from corporate spending. They ran roughshod over longstanding precedent to strike down key provisions of our bipartisan campaign finance laws, and ruled that corporations are no longer prohibited from direct spending in political campaigns. I was troubled at the time and remain troubled today that in that case, the Supreme Court extended to corporations the same First Amendment

rights in the political process that are guaranteed by the Constitution to individual Americans.

Now, 2 years later, the American people have seen the sudden and dramatic effects of the *Citizens United* decision. The flood of corporate money flowing into campaigns from undisclosed and unaccountable sources has had an enormous influence in the Republican primary elections this year, just as it did in the 2010 mid-term elections. Instead of hearing the voices of voters, we see a barrage of negative advertisements from so-called Super PACs. This comes as no surprise to the many of us in Congress and around the country who worried at the time of the *Citizens United* decision that it turns the idea of government of, by and for the people on its head. We worried that the decision created new rights for Wall Street at the expense of the people on Main Street. We worried that powerful corporate megaphones would drown out the voices and interests of individual Americans. Two years later, it is clear those concerns were justified.

We held a hearing in the Senate Judiciary Committee last year to explore how the *Citizens United* decision affects the lives of hardworking Americans. I began that hearing by talking about how our Constitution starts with the words, "We the People of the United States." In designing the Constitution, ratifying it, adopting the Bill of Rights and creating our democracy, we spoke of, thought of, and guaranteed, fundamental rights to the American people, not corporations.

There are reasons for that. Corporations are not the same as individual Americans. Corporations do not have the same rights, the same morals or the same interests. Corporations cannot vote in our democracy. They are artificial legal constructs to facilitate business. The Founders understood this. Americans across the country have long understood this.

Corporations are not people. That is common sense rooted in core American values. Nowhere does our Constitution mention corporations. The great Chief Justice John Marshall understood this distinction when he wrote in 1819 that, "A corporation is an artificial being . . . the mere creature of law, it possesses only those properties which the charter of its creation confers upon it. . . ."

The distinction between corporations and people is one that was at the heart of the campaign finance reforms proposed by Teddy Roosevelt more than a century ago limiting the role of corporations in the political process. Those reforms were preserved and extended through another century of legal developments that followed. Nine years ago, it was these same values that informed bipartisan efforts in Congress, on behalf of the American people, to enact the landmark McCain-Feingold Act. That legislation strengthened the laws protecting the interests of all Americans by ensuring

a fair electoral process where individual Americans could have a role in the political process, regardless of wealth.

As I pointed out at our hearing last year, when the Supreme Court first reviewed the constitutionality of the McCain-Feingold Act in 2003, in *McConnell v. Federal Election Commission*, it upheld the key provisions of the Act against a First Amendment challenge. Six years later, a thin majority of the Supreme Court, made possible by President Bush's appointment of Justice Samuel Alito, reversed course on the very same question. In so doing, the conservative activist majority discarded not only the *McConnell* decision, but ignored longstanding precedent to effectively redraft our campaign finance laws. As Justice Stevens noted in dissent: "The only relevant thing that has changed since . . . *McConnell* is the composition of the Court." The Constitution had not changed, but five Justices rewrote it.

The reason so many Americans continue to recoil from the *Citizens United* decision 2 years later is that the brand of conservative judicial activism on display in that decision is a threat to the rule of law and an effective representative democracy. At the core of the First Amendment is the right of individual Americans to participate in the political process to speak and, crucially, to be heard. That is what the campaign finance laws were designed to ensure—that Americans can be heard and fairly participate in elections. Rather than abiding by the limitations that Congress has developed to ensure a multitude of voices in the marketplace of election contests, five justices on the Supreme Court decided that the biggest corporations should be unleashed, and can be the loudest and most dominant, and drown out individual Americans. They showed no deference to Congress, and little deference to the precedents of the Supreme Court.

The risks we feared at the time of the *Citizens United* decision, the risks that drove Congress to pass bipartisan laws based on longstanding precedent, have been apparent in the elections since that decision. *Citizens United* has opened the floodgates of corporate influence in American elections. In these tough economic times, I believe individual Americans should not have their voices stifled by unfettered corporate interests. I remain concerned that this decision will invite foreign corporate influence into our elections.

Recently, Justice Scalia responded to the criticism of the *Citizens United* decision and the advent of Super PACs and their overwhelming influence by saying that if people do not like it, they should turn off their televisions. That response misses the point. Americans should not be told to tune out from democracy or from considering a fair exchange of ideas. American voters should be able to speak, be heard and to hear competing voices, not be overwhelmed by corporate influence and

driven out of the governing process. Even some whose response to the Citizens United decision was more muted have turned a corner, and recently, Senator McCAIN, a lead co-author of the McCain-Feingold Act, conceded that Super PACs are “disgraceful.” They allow nothing more than to have corporations or wealthy individuals dominate and control local elections.

We have tried to curtail some of the worst abuses allowed by the Supreme Court’s decision, but Senate Republicans have blocked those efforts. In 2010, Senate Republicans filibustered the DISCLOSE Act, preventing the Senate from even debating the measure, let alone having an up-or-down vote in the Senate. The DISCLOSE Act would have added transparency to the campaign finance laws to help prevent corporations from abusing their newfound constitutional rights. It would have preserved the voices of hardworking Americans in the political process by limiting the ability of foreign corporations to influence American elections, prohibiting corporations receiving taxpayer money from contributing to elections, and increasing disclosure requirements on corporate contributors, among other things.

By preventing us from even debating the DISCLOSE Act, Senate Republicans ensured the ability of wealthy corporations to dominate all mediums of advertising and out the voices of individuals, as we have seen and will continue to see in our elections.

We continue to try to fight the effects of corporate influence unleashed by Citizens United. We have introduced the Fair Elections Now Act, to establish a voluntary program for viable congressional candidates to accept Federal grants, matching funds, and vouchers to supplement money from small dollar donors. Rather than fundraising, this legislation will enable incumbent candidates more time to better represent their constituents, and it will level the playing field to give challengers the chance to better compete with established candidates without relying on wealthy donors to fund their entire campaign. The Fair Elections Now Act represents one important step toward minimizing corporate influence in the electoral process, and ensuring that candidates for Congress are neither beholden to corporate influence, nor so consumed with fundraising that they do not have the time necessary to legislate. I hope that Senators on both sides of the aisle will work to enact this important measure.

We continue to work to protect shareholders of publicly held corporations from having their money spent on political activity without their consent, another consequence of the Citizens United decision. I am a cosponsor of the Shareholder Protection Act, which would require shareholder authorization and full disclosure of any political spending by publicly held corporations. Last week, I joined with 14

other Democratic Senators in sending a letter to the Securities and Exchange Commission, SEC, urging it to consider using its authority to immediately implement part of this legislation requiring full disclosure of corporate political spending. Such an action is within the SEC’s power to do today. This information is not only material to shareholders, but it is something shareholders continue to request from corporations. As we wrote last week, a corporation’s money belongs to the shareholders, not the executives, and they deserve a voice in how it is spent.

Vermont is a small State. It is easy to imagine the wave of corporate money we are seeing spent on elections around the country lead to corporate interests flooding the airwaves with election ads, and transforming even local elections there or in other small States. It would not take more than a tiny fraction of corporate money to outspend all of our local candidates combined. If a local city council or zoning board is considering an issue of corporate interest, why would the corporate interests not try to drown out the view of Vermont’s hardworking citizens? I know that the people of Vermont, like all Americans, take seriously their civic duty to choose wisely on Election Day. Vermonters cherish their critical role in the democratic process and are staunch believers in the First Amendment. Vermont refused to ratify the Constitution until the adoption of the Bill of Rights in 1791. The rights of Vermonters and all Americans to speak to each other and to be heard should not be undercut by corporate spending.

When the Citizens United decision was handed down, I said that it was the most partisan decision since *Bush v. Gore*. As in *Bush v. Gore*, the conservative activists on the Supreme Court unnecessarily went beyond the proper judicial role to substitute their preferences for the law. But Citizens United is broader and more damaging, because rather than intervening to decide a single election, we have seen the Court’s intervention affecting all elections. On the 2 year anniversary of Citizens United, I call on all Senators, Republican or Democratic, to come together to restore the ability of every American to be heard and participate in free and fair elections.

I yield the floor.

THE PRESIDING OFFICER. The Senator from New York.

Mrs. GILLIBRAND. Mr. President, I ask to speak as in morning business.

THE PRESIDING OFFICER. Without objection, it is so ordered.

STOCK ACT

Mrs. GILLIBRAND. Like millions of Americans all across our country, I was shocked to learn that insider trading by Members of Congress, in fact, and their families and their staff, using nonpublic information gained through their congressional work, is not clearly

and expressly prohibited by law and the rules of Congress. The American people need to know that their elected leaders play by the exact same rules by which they have to play. They also deserve the right to know their lawmakers’ only interest is what is best for the country, not what is best for their own financial interests.

Members of Congress, their families and staff, should not be able to gain personal profits from information they have access to that everyday middle-class American families do not. It is simply not right. Nobody should be above the rules.

I introduced a bipartisan bill in the Senate with 28 of our Senate colleagues from both sides of the aisle to close this loophole. The STOCK Act legislation is very similar to the legislation introduced by my friends in the House, Congresswoman LOUISE SLAUGHTER and Congressman TIM WALZ. I thank them for their longstanding dedication and leadership to this important issue. I also thank Chairman LIEBERMAN, Ranking Member COLLINS, and all of the committee members for their work in acting swiftly to move this bipartisan bill out of committee with a sense of common purpose straight to the floor for a vote. I thank Leader REID for his leadership and support in bringing up this bill before the full Senate.

Our bill, which has received the support of at least seven good government groups, covers two important principles. First, Members of Congress, their families and their staff, should be barred from buying or selling securities on the basis of knowledge gained through their congressional service or from using the knowledge to tip off someone else. The SEC and the CFTC must be empowered to investigate these cases. To provide additional teeth, such acts should also be in violation of Congress’s own rules to make it clear that this activity is not only against the law but inappropriate for this body.

Second, Members should also be required to disclose major transactions within 30 days, to make information available online for their constituents to see, providing dramatically improved oversight and accountability from the current annual reporting requirements.

I am pleased the final product that passed with bipartisan support in the committee is a strong bill with teeth and includes measures such as ensuring that Members of Congress cannot tip off others with nonpublic information gained through their duties and ensured trading from this information would also be a violation of Congress’s own ethics rules.

Some critics say the bill is unnecessary and is already covered under current statutes. I have spoken to experts tasked in the past with investigations of this nature and they strongly disagree. We must make it unambiguous that this kind of behavior is illegal. As