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OPINION

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Can We Really Take Money Out of Politics?

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U.S. Senator Josh Hawley (R-Mo.) speaks during a Senate Judiciary Subcommittee hearing on May 16, 2023. ANDREW CABALLERO-REYNOLDS/AFP via Getty Images

Last week, a big headline made waves: “[Senator Hawley to Introduce Bill to Reverse Citizens United](#).” Well... not exactly. Headlines like this got it wrong, technically speaking.

[Citizens United v. Federal Election Commission](#) was a 2010 Supreme Court ruling. Only a constitutional amendment can reverse a Supreme Court decision when the court

A constitutional amendment can reverse a Supreme Court decision when the Court does not do so itself. Yet, the spirit of Sen. Josh Hawley's (R-Mo.) bill to check the power of global corporations is a ringing rejection of the Supreme Court's much-criticized decisions that unleashed unlimited spending in our elections. Hawley says his "goal is to get corporate money out of our politics."

The path to do that, however, is blocked by that 2010 ruling that created a "free speech" right for corporations to spend unlimited money to influence elections. But Hawley rejects those decisions as wrong about the First Amendment. "I am an originalist" about the Constitution, [he said](#) last week, "and I don't think you can make an originalist case for business corporations being treated like individuals when it comes to the right to political speech."

I agree with that — and so do most Americans. Hawley is the first conservative Republican in the Senate to directly challenge the Supreme Court's flawed approach to money in politics. In doing so, he's parting ways [with his old boss](#), Chief Justice John Roberts, as well as with the Republican Senate leader, Sen. Mitch McConnell (R-Ky.). Instead, Hawley is siding with grassroots conservatives and [the vast majority](#) of Americans who reject the Supreme Court's unlimited money theory and [want a constitutional solution](#) to fix it.

Hawley's criticism carries weight because he has been a leading conservative constitutional lawyer for many years. After clerking for Roberts, he went on to become Missouri's attorney general and appear before the Supreme Court, [challenging Obamacare](#) and [litigating religious freedom cases](#). Hawley's embrace of originalism has been a throughline in his legal and political career, and it is noteworthy that someone with his background is publicly leveling an originalist critique of the Supreme Court's campaign finance jurisprudence.

Hawley's proposal to end election spending by public corporations is perfectly consistent with a First Amendment that protects free speech. Yet, it runs afoul of the lawyer-invented First Amendment theory that the Supreme Court has imposed on the country, most famously in *Citizens United*. Under that judicially-created doctrine, spending unlimited money to influence elections is "free speech" and corporations and unions are "people" with free speech rights.

Hawley, however, points to the original meaning of the Constitution to show why that's wrong. He emphasizes that the purpose of the First Amendment and Bill of Rights is to protect individual rights and check concentrated power. Explaining what motivated his proposed bill, Hawley said, "big corporations and big government work hand in hand," noting that in his view the corporations "have been in favor of almost everything that has been devastating for us." Big corporations, according to Hawley, "now want to dictate voting laws in the states," and much else.

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By contrast, McConnell has seemed less interested in whether the court has been faithful to the original meaning of the First Amendment, or in the harm to causes conservatives care about but may not get sufficient action in Congress seemingly because of undue corporate influence. McConnell used the *Citizens United* decision to amass concentrated election spending power in a [Super PAC known as the Senate Leadership Fund](#), and he reportedly was [outraged by Hawley's proposal](#). In a private senators' lunch, he reportedly blasted Hawley and listed more than a dozen Republican senators (including Hawley) who benefit from corporate money from the Senate Leadership Fund.

Yet, it seems Hawley is not backing down. He [says](#) McConnell is wrong and that he will fight for the First Amendment and free speech for all Americans who now are politically drowned out by the power of global corporations. "As an originalist, there is no original meaning giving corporations the right to make political contributions, and it's warping our politics. It is giving them incredible power, and I just think it's a big mistake."

While Hawley may find temporary obstruction in Washington, Americans across the country are backing his approach with a proposed constitutional amendment: the [Our Freedom Amendment](#), advanced by my non-partisan organization, [American Promise](#). A similar amendment approach has been [introduced](#) by Sen. Jeanne Shaheen (D-N.H.), which has support on the Democratic side of the aisle. Combined, the emerging consensus on the right and the left, with strong support in the most conservative and the most liberal states alike, can vanquish the big-money beast that has held Americans hostage for far too long.

[Jeff Clements](#) is the CEO of [American Promise](#), a national grassroots non-profit advocacy organization that is non-partisan, working toward a 28th Amendment to the U.S. Constitution to allow Congress and state governments to set reasonable limits on campaign and election spending. He has practiced law for three decades in public service and private practice, and he is the author of "[Corporations Are Not People: Reclaiming Democracy From Big Money & Global Corporations](#)." Previously, Clements

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