

# [***Josh Hawley makes a point about corporate money in politics. Would his bill make a difference?***](https://advance.lexis.com/api/document?collection=news&id=urn:contentItem:69J3-W4B1-JBSS-S066-00000-00&context=1516831)

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**Body**

(CNN) &#8212; It was something of a shock on Halloween when Sen. Josh Hawley, the Missouri Republican, introduced a bill that at first blush made him sound like Elizabeth Warren, the Massachusetts Democrat, joining the [*fight against corporate money in* ***politics***](https://www.cnn.com/2023/10/31/politics/mitch-mcconnell-josh-hawley-citizens-united/index.html).

There's something weird about Hawley, the senator who objected to the counting of legitimate electoral votes on January 6, 2021, now standing up for the voices of individual voters.

**Hawley's bill is a narrowly tailored proposal aimed only at publicly traded companies.** It would ban publicly traded corporations from making independent expenditures andcreating political ads or other election communications; it wouldalso ban them from contributing to super PACs, the advocacy organizations that can raise unlimited amounts of money from individual donors but cannot technically coordinate with political campaigns.

It's not clear how much corporate money, exactly, is pouring into ***politics***. While campaign contributions must be publicly reported, dark-money groups have found ways to[*shield the identity of donors*](https://www.cnn.com/2022/08/22/politics/dark-money-donation-conservative-group-invs/index.html).

**Clearly, there's a problem.** If nothing else, Hawley's proposal is an acknowledgment that the US campaign finance system is flawed and there's a bipartisan frustration among voters, even if they are coming at the issue from opposite ends of the political spectrum.

Hawley doesn't want corporations pushing what he calls "woke, social agendas." Warren, among others, doesn't want corporations or other groups to have undue influence.

Sen. Mitch McConnell, the Senate GOPleader who raises large amounts of money for outside groups to spend on select Senate races, including Hawley's in 2018, warned fellow Republicans this week to oppose Hawley's idea. Republicans and Democrats both rely on these groups.

When it was pointed out to Hawley by a reporter on Capitol Hill that outside groups supported him in his 2018 election, he said this:

"I can't control who spends money," he said. "I can control what I do. And I don't take corporate contributions. I don't take corporate PAC contributions."

**Is this constitutional?** Despite the Supreme Court's protection of corporate, union and nonprofit contributions in the 2010 Citizens United decision that rewrote US campaign financelaw, Hawley, pointing out he's an originalist like some conservative Supreme Court justices, said he doesn't think there's anything in the text of the Constitution to preclude his proposal. Plus, he argued it would resonate with voters.

"Go talk to voters and see how they feel about it, because they don't like it," Hawley said of corporate money. "And they don't like having these corporations tell them what they should do, and they don't like having these corporations set policy either."

**Corporations like to notoriously have it both ways.** For one example of how corporations play both sides of the political aisle, [*here's a Harvard Business Review*](https://hbr.org/2022/01/corporate-political-spending-is-bad-business) report about how when [*Google was publicly opposing new laws*](https://www.cnn.com/2021/04/14/business/voting-letter-restrictions/index.html) that restricted voting access in Georgia in 2021, it had just quietly given financial backing to a groupthat helped engineer those same new laws.

Would such a narrowly tailored bill aimed specifically at publicly traded corporations do much to change US ***politics***?

I talked to [*Saurav Ghosh*](https://campaignlegal.org/staff/saurav-ghosh), director of federal campaign finance reform at the Campaign Legal Center, to get his thoughts on Hawley's proposal. Ghosh did not give high marks to the plan,whichhe dismissed as an exercise in signaling a desire to address corporate money in ***politics*** without having any chance of accomplishing that goal. Excerpts of our conversation are below.

Banning corporate money sounds good. Would this plan work?

**WOLF:** I think it'ssurprising to quite a few people that a Republican senator - and Josh Hawley at that - would introduce a bill to end corporate money in US ***politics***. What did you make of his proposal?

**GHOSH:** The main takeaway I had from it is that it's simply not a serious effort to actually remove corporate money from ***politics***, and it certainly would not have the effects that he's claiming it would have, undoing Citizens United or getting corporate money out of our elections.

Basically, there are two reasons I would focus on for why I think that.

The first is the broader legal issue, which is that Citizens United was a Supreme Court decision based on the First Amendment of the Constitution. And so any legislation that challenged that decision on its face would not survive a single day in court.

And Josh Hawley is a lawyer, a former clerk to Chief Justice John Roberts. He surely knows that, I would assume. The idea of implementing by a congressional piece of legislation a corporate spending ban in our elections would fly right in the face of what the Supreme Court said corporations have a right to do under the First Amendment.

And then the second thing is the face of the bill itself. The idea of limiting a corporate spending ban on elections to for-profit corporations doesn't make really any sense for anyone who knows the first thing about the problems with Citizens United and the effect it's had on our election system.

Most of the dark money, the money that is not disclosed to the public, is coming from nonprofit corporations or other nonprofit entities. That's the basis for which they are able to avoid disclosing their donors, that they're claiming the nonprofit status under section 501(c) of the tax code.

So the fact that this bill doesn't even confront that shows that it's really not a serious campaign finance reform effort and is more of a signaling piece of legislation.

Is corporate money a problem?

**WOLF:** What do we know about who is behind the nonprofits funding super PACs? Are corporations involved? Is the issue of corporate money in US ***politics*** a problem?

**GHOSH:** Corporate money in US ***politics*** is a problem, but I think it is really a narrow slice of a much larger problem.

Is corporate money behind these nonprofits? We don't know. There's no way to know because these nonprofits don't have to disclose their donors.

So again, the idea of only selectively prohibiting for-profit - and I believe "publicly traded" was the term used in the bill, for-profit, publicly traded corporations - that doesn't really get at the problem.

Privately held, closely held companies are another major source of spending in our elections today. It's unclear why you would limit the (bill to)for-profit corporations, if you were actually trying to get at the problem of corporate spending in our elections.

Who is funding the super PACs in presidential elections?

**WOLF:** My understanding of the current state of affairs in presidential primaries is that candidates don't communicate with but work in parallel alongside super PACs that are oftenfunded by wealthy individuals. And it is oftentimes individuals with deep pockets rather than corporations that are behind the super PACs. Is that wrong?

**GHOSH:** I think it would be wrong to look at it as mostly wealthy individuals that are supporting super PACs. I think they often tend to get mentioned in the press and so they have a certain prominence in how we think about the problem. Somebody like [*Jeff Yass gives millions of dollars*](https://www.cnn.com/2023/02/22/politics/ron-desantis-donors/index.html) to a bunch of super PACs, so we tend to regard people like that as mega donors, and it's what you end up reading.

But I think a lot of corporations are giving money to super PACs. And there's no telling how many corporations are giving to nonprofits and then that money is going to a super PAC through that route. So corporations are definitely a big piece of this spending through the super PAC entity.

And I think the other gloss I would put on what you're saying is the idea that super PACs are working alongside candidates. That's the theory. That's how the law says they are supposed to work. But I think that practical reality has differed a lot and this election cycle is sort of breaking new ground in terms of super PACs supplanting candidates' campaigns and them working directly together.

What's a better solution?

**WOLF:** If you could fix things, what would be a better way than a three-page bill to get corporate money, specifically, out of ***politics***?

**GHOSH:** Oh boy, that's a big question. How much time do you have? The solutions are going to come on different issues and at different levels.

If you want to talk about, well, how do we, in one fell swoop, go back to a world before Citizens United? I think any good lawyer will tell you that you're going to need either a [*constitutional amendment*](https://www.cnn.com/2019/05/08/politics/schiff-constitutional-amendment/index.html) or a Supreme Court decision. But that's not really the goal that we work toward at CLC.

We often look at how do we improve the system within the confines of Citizens United. That decision relied on two of the things we've been talking about: that corporate spending is disclosed, which today it often isn't, and then its independence; it's genuinely not coordinated with candidates or political parties.

There's legislation thatwould do both of those things, or at least work toward both of those goals.

Every Congress, Sen. Sheldon Whitehouse has the [*DISCLOSE Act*](https://www.cnn.com/2022/09/22/politics/campaign-finance-bill-fails/index.html), and it's a great piece of legislation. CLC has consistently endorsed it.

What it would do is require these 501(c)(4)s and other groups that are spending more than $10,000 on elections to disclose their donors. These are people who are giving money to influence elections, and voters have a right to know.

It's a nuanced bill because it even includes a carve-out for folks who only want to give to the issues on which the (c)(4) group is advocating. So if you don't want to be disclosed, because you're not looking to influence elections, the bill actually provides for that. That would go a long way in fixing the transparency piece.

A lot of these ideas were in the Freedom to Vote Act, about keeping super PACs actually independent of the candidates. Ideas like preventing candidates from fundraising for super PACs.

Right now, (Florida Gov.)[*Ron DeSantis literally travels*](https://www.desmoinesregister.com/story/news/elections/presidential/caucus/2023/07/22/desantis-super-pac-never-back-down-increasingly-will-hold-events/70450322007/) from one fundraiser to another on a Never Back Down super PAC bus, and he's the face offundraising money for that organization. There's nothing in Citizens United that protects that.

And other ideas, like we have a lot of former campaign staff who end up going to work for the super PAC. You could prohibit that for a year or two after somebody leaves a campaign, they can't work for a super PAC that's spending money to support the candidate they used to work for - these are very achievable goals if we had the legislative will.

It's been two decades since a major campaign finance law

**WOLF:** The last major campaign finance law was passed in 2002, which means campaign finance law has essentially evolved around court decisions.

**GHOSH:** The idea that there have been no significant campaign finance laws passed since Citizens United (2010) is itself absurd, because that decision and the decisions following it, they have changed fundamentally the groundwork of the campaign finance system.

And yet, Congress has not actually implemented new safeguards that are meant to work within the framework the Supreme Court laid out. There could be all kinds of protections like the ones I've mentioned.

Congress has not developed any of those guardrails and neither has the FEC (Federal Election Commission). There has not been a significant effort by the supposed regulator of money in ***politics*** to actually regulate money in ***politics***, and that's a huge abdication of their responsibility.

Is transparency the bigger problem?

**WOLF:** You said we really don't know how much money is going in from corporations. So is the more important issue the amount of money going into American ***politics*** or the lack of transparency about the money going into American ***politics***?

**GHOSH:** I honestly couldn't choose. I would say they're both significant problems.

Sorry to give you a lawyer's answer to that question, but they're both huge. They're both fundamental problems that are effectively undermining the electoral voice of voters. They're ensuring corporations have a preferential seat at the policymaking table.

And that's what campaign finance laws are supposed to prevent. And right now, they're not. So no, I think we need reform on both pieces.

Is it good to see another senator raising this issue?

**WOLF:** The last major piece of legislation before Citizens United was bipartisan. It was signed by a Republican president, George W. Bush. It was pushed by a Democratic senator, Russ Feingold of Wisconsin, and a Republican senator, John McCain. From that perspective, and given the realities of passing legislation, is a Republican senator saying this is a problem a step in the right direction?

**GHOSH:** I think it's a step in the right direction to see a Republican take these problems seriously, but I don't think that's what we are seeing here.

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