

Senator Whitehouse Opening Remarks

It's timely for us to be doing this hearing right now, in the week in which President Trump has announced a new nominee for the Supreme Court, someone who will protect the 5-4 republican phalanx that has so reliably delivered decision after decision after decision for the Republican Party's election interests and for the big corporations' financial interests. So, we have a lot that is relevant to today's conversation because the Janus case is very much in that tradition. It began with a highly unusual invitation by one of the five republican justices on the Supreme Court to challenge this aspect of a decision that was what in their confirmation guise the Republican judges would all call on binding precedent, we need to follow precedent, it's part of our conservative doctrine that we need to follow precedent. And of course they got on the court and smashed precedent left, right, and center on their way to delivering the results for Republican election interests and corporate financial interests. So, we're getting a little tired of seeing that. This then rolled on with essentially faux litigation. With faux parties, backed by big Republican special interests bringing cases that they asked to lose so they could move rapidly through the litigation process to their destination at the Supreme Court where they believed that five welcoming justices awaited them to deliver the promised outcome. Of course the death of Scalia interfered with that little scheme and at 4-4, the challenge failed. But it took almost zero time after Gorsuch was put on the court for those same big Republican dark money interests to gin the litigation back up and come racing back to the court, now with new plaintiffs with equally questionable standing. But the court overlooked all of those problems because it had a pet political project which was to get rid of this source of funding for unions. And that's where we are today. It rolls over from the political into the personal and we have the teacher of the year from Arizona and a home-care worker as well to talk a little about the personal side. Let me ask Professor Nancy MacLean, the author of a terrific book about dark money influence and the way in which very, very big money has infiltrated our public debate over many, many years and tried to control the narrative for big special interests. So, we'll start with Professor MacLean, the author of *Democracy in Chains*, a truly wonderful book.

Senator Whitehouse Closing Remarks [\[1:29:45\]](#)

Sheldon Whitehouse: Let me rap up since we just have just a few minutes left. This hearing has touched on a lot of topics, but it's related fundamentally to the Janus decision and to the sentiment many of us have that that decision was a pet political project by the five Republican judges on the court and they went out of their way to signal to the big special interest lawyers that they would undertake this task for their corporate clients and then we went through the whole Friedrichs saga and then into Janus. So, it's really a three case long term project that shows all sorts of bizarre signals. I am a lawyer, I have been a litigator, I was my States attorney general, I was my states United States attorney, I was legal counsel of the governor, I was a staff lawyer doing cases in the attorney general's office. I have never in my life seen a case where someone deliberately went into court to lose. *Please your honor, let us loose so that we can rush up to what we think is going to be such a friendly reception up at the Supreme Court that we are willing to have the record of this case have a loss below because we are so confident that these judges are baked in for us that we don't care.* That is a very peculiar set of facts and that ought to

be an alarm bell about where the Supreme Court is. This is a Supreme Court in 5-4 installed a Republican President in Bush v. Gore stopping the national election process. We have a president right now who was not elected by the popular vote. Our candidate won the popular vote. Back in 2010, the Jubelirer decision, five Republican judges of the Supreme Court, again, opened up the opportunity for what was called the Red Map Program. The Red Map Program allowed bulk gerrymandering of the entire Congressional Delegation from a battleground state. The result of the decision by the Supreme Court followed up by the Republican Red Map project was that in 2010, Congress went Democrat in the popular vote by over a million votes but went Republican because of the gerrymander of only thirty seats. So, we have had cases where the popular vote has not been respected at the Presidency because of a variety of machinations. We have had situations in which the popular vote was not respected in the makeup of Congress because of gerrymandering that was cleared in advance because of the Jubelirer decision of the Supreme Court and right now the majority leader of the senate, Mitch McConnell, because dark money artillery barrages of negative commercials took out three senate candidates so early in the process that they didn't have the chance to get their campaigns up and running in an effective way and was enormous amounts of the dark money that the Citizens United decision, the five judges of the Supreme Court had put in place that then were deployed to take out by and Strickland and Feingold and if those three seeds gone the other way Chuck Schumer would be the major leader right now and we wouldn't be having this conversation about a far right extremist being appointed on a mission given by the president to undo Roe vs. Wade. Even though we still do not control the senate, notwithstanding all of this. Never the less, Democrats in the Senate represent 40 million more Americans than Republicans in the Senate do because of the built in small state bias in the Senate, largely in the American West. So, we need to have the courage of our convictions, to your point, Ms. Weingarten, we need to understand that we are not actually in the minority, we got more votes in the Presidency than Trump did. In the past, we won the house but not actually got the house because of machinations and gerrymandering and right now in the Senate we represent more Americans than they do. So we need to be ready to stand up and have some confidence about who we represent and what we can do and what you have said and what we have seen the teachers do in states where we have felt was highly improbable was just fantastic and inspiring and proves what can be done. So, thank you all so much for your testimony. Thank you for participating in this hearing and we will conclude with that. I am very appreciative of all the witnesses and so many collogues that attended. Thank you so much, it was a really big turn out by our coccus. Thank you so much, it shows that it matters. With that, we are adjourned.