



Written by [Jack Kenny](#) on September 12, 2014

## Amendment to Curb Free Speech Dies in U.S. Senate

A proposal by Senate Democrats to amend the U.S. Constitution to give both the federal and state governments a broad authority to curb expenditures for political speech died in the Senate Thursday, the *Washington Examiner* reported, in a vote that fell short of the required super majority.

A two-thirds vote favorable of each house of Congress is necessary to pass a proposed constitutional amendment to the states, where adoption requires approval of three-fourths of the states by their respective legislatures or state conventions. The fatal vote on Thursday, however, came on a procedural motion that required only three-fifths approval, or a minimum of 60 votes. The effort fell short by a party-line vote of 54-42.



The proposed amendment, sponsored by Democrats Tom Udall of New Mexico and Michael Bennett of Colorado, was offered as an effort to overturn the U.S. Supreme Court decision in *Citizens United v. Federal Election Commission*. The decision struck down provisions of the Bipartisan Campaign Reform Act of 2002 that prohibited corporations, including non-profits, media, and labor unions (but exempting news media corporations), from sponsoring broadcast ads that mentioned a candidate within 30 days of a primary or caucus or 60 days of a general election. Based on that law, the Federal Election Commission ruled that a non-profit group called Citizens United could not be allowed to broadcast ads for its negative documentary about Hillary Clinton within 30 days of the Iowa Caucuses and the New Hampshire primary, since Clinton, then a candidate for president, was on the ballot in both contests.

The Supreme Court ruled the ban was an unconstitutional abridgment of the First Amendment freedom of speech. The ruling expanded the court's free speech protection in a 2007 case, *Federal Election Commission v. Wisconsin Right to Life, Inc.*, in which the court ruled the ban unconstitutional when the ad could reasonably be interpreted as calling for something other than the election or defeat of a named candidate. The Right to Life ads in 2004 had urged citizens to call Wisconsin Senators Russ Feingold and Herbert Kohl to urge them to oppose filibusters by Senate Democrats that were blocking votes on several of President George W. Bush's judicial nominations. The FEC had ruled against the ads because they mentioned the senators by name and Feingold was on the ballot that fall.

Feingold, a Democrat defeated in a bid for a fourth term in 2010, and Republican Senator John McCain were co-sponsors of the Senate version of the Bipartisan Campaign Finance Act, the law that, as columnist George Will put it, "orders people to shut up when political speech matters most." Given Feingold's stands on other civil liberties issues — he cast the only vote in the Senate against the PATRIOT Act in 2001 because it authorized government invasions of privacy that violate constitutional rights — his sponsorship of a bill to curb citizens' political speech, making it illegal for them to urge



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their fellow citizens to call on him with their concerns about senate votes, was ironic. McCain has continually cited the corruption he perceives in politicians beholden to the “special interest” groups that contribute to their campaigns or support their candidacy with independent expenditure ads. The evil “special interests” are, of course, those that oppose McCain. The incorruptible Arizonan seems to have had no problem with accepting apparently non-corrupting contributions, while welcoming the wholesome support of people and organizations whose interests have coincided nicely with his own election to two terms in the U.S. House and five terms in the U.S. Senate.

“I work in Washington and I know that money corrupts,” McCain said in a 2006 interview with radio talk-show host Don Imus. “And I and a lot of other people were trying to stop that corruption. Obviously, from what we’ve been seeing lately, we didn’t complete the job. But I would rather have a clean government than one where “First Amendment rights” are being respected that has become corrupt. If I had my choice, I’d rather have the clean government.”

John McCain’s concept of cleanliness, however ill defined, was not then and is still not written into the Constitution, the efforts of Senate Democrats notwithstanding. The freedom of speech is stated in clear, unequivocal terms in the First Amendment to the Constitution that members of Congress swear to “support and defend.” The Amendment in its entirety states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

Compare that with what the Senate dared to vote on Thursday.

SECTION 1. To advance democratic self-government and political equality, and to protect the integrity of government and the electoral process, Congress and the States may regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.

SECTION 2. Congress and the States shall have power to implement and enforce this article by appropriate legislation, and may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections.

SECTION 3. Nothing in this article shall be construed to grant Congress or the States the power to abridge the freedom of the press.

The inherent contradiction between Sections 1 and 3 can be missed only by people mesmerized by the oft-stated but ill-considered argument that “money is not speech.” That is true in the same sense that trains, planes, and automobiles are not transportation. They require fuel in order to move and fuel costs money. So does speech that is going to be heard by more than the few people who may be within shouting distance.

As the *Examiner* reported, Senate Majority Leader Harry Reid (D-Nev.) brought up the bill knowing the Republicans would block it. The move was designed to make a point for this fall’s elections and to rally Democratic voters who want the overturn of both *Citizens United* and this year’s *McCutcheon v. Federal Election Commission* decision in which the Supreme Court, while not striking down limits on contributions to any one candidate, ruled a donor may contribute up to the maximum to an unlimited number of candidates.



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Minority Leader Mitch McConnell (R-Ky.) criticized Reid for wasting the Senate's time on a bill he knew wouldn't pass, a criticism Democrats have often leveled at Republicans in both houses over efforts to repeal ObamaCare. Reid, for his part, used the occasion as an opportunity to renew his attack on McConnell and the Republicans for their dependence on money from the billionaire Koch brothers, who contribute heavily to political action committees backing Republicans. Reid is considerably less vocal about billionaires like Michael Bloomberg, George Soros of Moveon.org, and Tom and Jim Steyer, who are among the heavy hitters contributing to liberal causes and organizations aligned with Democrats.



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