



Written by [Warren Mass](#) on June 25, 2014

Reid Pushes Senate Resolution That Would Abridge Free Speech

Forty-three senators have co-sponsored S.J. Res. 19, which proposes an amendment to the Constitution “relating to contributions and expenditures intended to affect elections.” Senate Majority Leader Harry Reid (shown, D-Nev.) recently said of the resolution, “We’re going to push a constitutional amendment so we can limit spending because what is going on today is awful.”



Originally introduced in the Senate by Sen. Tom Udall (D-N.M.) — and in the House by Rep. James McGovern (D-Mass.) — the joint resolution would give Congress (and also the states) the power to regulate the raising and spending of money and in-kind equivalents for Federal elections, including setting limits on

- (1) the amount of contributions to candidates for Federal office; and
- (2) the amount of funds that may be spent in support of, or in opposition to, these candidates.

What should be readily apparent to anyone studying the resolution is that contributing funds to candidates to public office is akin to verbally supporting those candidates, since most campaign money is spent on ads, commercials, and campaign literature that exercises the candidates’ (and the candidates’ supporters’) right to freedom of speech. So by attempting to limit such spending, if the resolution and subsequent constitutional amendment were to be passed, any legislation passed by Congress to regulate campaign spending would represent a blatant attack on free speech. This would amount to a direct violation of the First Amendment’s prohibition: “Congress shall make no law ... abridging the freedom of speech....”

In “Amending the First Amendment,” a commentary on S.J. Res. 19 posted on Justia.com June 9, law professor, legal scholar, and prolific law textbook author Ronald D. Rotunda marvels at the audacity of those who think they can “improve” the First Amendment with such a proposal. Rotunda observes,

S.J. Res. 19 would give political speech less protection than the First Amendment now gives to movies, novels, comic books and Nazis marching through Skokie, Illinois.

Rotunda provides a possible motivation for what impelled 43 senators to support this attack on free speech:

Many of the supporters of S.J. Res. 19 were incensed that the Supreme Court upheld the First Amendment right of Citizens United (an organization with political views contrary to those of Michael Moore) to distribute its 90-minute documentary, called *Hillary: the Movie*. One movie was an attack on George W. Bush; the other was an attack on Hillary Clinton. Both are constitutionally protected, *until* S.J. Res. 19 becomes law.

Professor Rotunda then continues to explain just how bad the resolution is:



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Section 3 of S.J. Res. 19 makes clear that its intention is to limit free speech. It says, “Nothing in this article shall be construed to grant Congress the power to abridge the freedom of the press.” The First Amendment prohibits Congress from “abridging the freedom of speech, or of the press.” Tellingly, the Senators cosponsoring the “improved First Amendment” left out the phrase “freedom of speech.”

Rotunda is not the only legal scholar who has warned about the implications of S.J. Res. 19. Floyd Abrams, a renowned constitutional law attorney who has argued many First Amendment cases before the Supreme Court, provided his testimony about the Udall amendment before a Senate Judiciary Committee hearing regarding S.J. Res. 19 on June 3. Early in his testimony, Abrams hit the nail on the head:

The description of the constitutional amendment [S.J. Res. 19] proposes states, in its text, that it “relate[s] to contributions and expenditures intended to affect elections.” That’s one way to say it, but I think it would have been more revealing to have said that it actually “relate[s] to speech intended to affect elections.” And it would have been even more revealing, and at least as accurate, to have said that it relates to limiting speech intended to affect elections. And that’s the core problem with it. *It is intended to limit speech about elections and it would do just that.* [Emphasis added.]

Abrams concurred with Rotunda’s opinion that “It is no secret that the prime target of the proposed amendment is the *Citizens United* opinion of the Supreme Court.”

In *Citizens United v. Federal Election Commission*, the Supreme Court held that the First Amendment prohibits the government from restricting political independent expenditure by corporations, associations, or labor unions. Justice Kennedy wrote, in the court’s majority opinion, “If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech.”

An editorial in the *Augusta* [Georgia] *Chronicle* on June 24 noted, “Not even Democrats’ most reliably liberal ally — the American Civil Liberties Union — will get behind [S.J. Res. 19], calling it a danger to civil liberties.”

The editorial quoted the ACLU’s statement that S.J. Res. 19 would “lead directly to government censorship of political speech and result in a host of unintended consequences that would undermine the goals the amendment has been introduced to advance” and that doing so would “fundamentally break the constitution and endanger civil rights and civil liberties for generations.”

Because S.J. Res. 19 would impact and destroy the effectiveness of all advocacy groups — whether conservative, liberal, or constitutionalist — pro-life advocates (among others) are understandably concerned about its potential effects. Life News reported on June 23 that the National Right to Life Committee (NRLC), a nationwide federation of state pro-life organizations, sent a letter to members of the U.S. Senate, warning them that it will “scorecard” the upcoming Senate roll call on S.J. Res. 19.

The letter, noted Life News, signed by NRLC President Carol Tobias, Executive Director David N. O’Steen, and Legislative Director Douglas Johnson, said that any senator who votes for the proposed amendment is voting “to empower elected lawmakers, federal and state, to restrict and criminalize speech that is critical of their positions and votes on crucial public policy issues, including abortion.” The letter also said that the Senate roll call will be included in NRLC’s widely followed “scorecard” of key roll call votes of the 113th Congress.



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The NRLC letter also charged:

Among the many incumbent-protection-racket proposals that have been put forth under the banner of “campaign finance reform,” this radical constitutional amendment is the most ambitious power grab — a naked attempt to permanently empower the political patrician class to substantially insulate its members from criticism by and accountability to the plebeians.

S.J. Res. 19 may be the most ambitious proposal yet to curtail free speech under the name of campaign finance “reform,” but it is not the first. And just as the “Gang of Eight” Senate proposal to secure immigration “reform,” included Republicans such as John McCain as “partners in crimes,” Republicans are also involved with restrictions on campaign financing and contributions. McCain, for instance, was a key player in this arena as the cosponsor (with Democrat Wisconsin Senator Russ Feingold) of the McCain-Feingold bill “to reform the financing of Federal elections” that was introduced in the Senate on January 21, 1997.

“If you were a politician and wanted to enact a law forbidding private citizens to criticize you, what would you call it?” asked commentator David Frum in the November 17, 1997 *Weekly Standard*. His answer — “Campaign finance reform.”

The Bipartisan Campaign Reform Act (it was not McCain-Feingold, but the House version, Shays-Meehan, that eventually became law) which was enacted on March 27, 2002, gave the Federal Election Commission unprecedented new powers to regulate political speech before elections, and clearly violated the First Amendment’s prohibition on Congress to make laws abridging the freedom of speech or of the press.

Thankfully, McCain has not cosponsored S.J. Res. 19.

S.J. Res. 19, if ever passed, would make the Bipartisan Campaign Reform Act seem like a child’s pop gun in comparison.

Photo of Sen. Majority Leader Harry Reid (D-Nev.): AP Images

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