



Written by [Jack Kenny](#) on July 11, 2014

Sen. Judiciary Committee Endorses Amendment to Abridge Free Speech

A proposed constitutional amendment to abridge the freedom of speech received the endorsement of the Senate Judiciary Committee by a 10-8 vote Thursday in an effort to overturn U.S. Supreme Court decisions in *Citizens United v. Federal Elections Commission* and *McCutcheon v. FEC*.



The 2010 *Citizens United* ruling rejected on First Amendment grounds restrictions in the McCain-Feingold Campaign Reform Act of 2002 on spending for political advertising. In this year's *McCutcheon* decision, the high court ruled that limits on how much a donor may contribute in aggregate to candidates for federal office, political parties, and political action committees are also violations of the First Amendment. Both decisions were by 5-4 votes of the justices, with the more conservative Republican appointees voting to strike down the restrictions and the liberal justices, appointed by Democratic presidents, voting to uphold them. Similarly, Thursday's Judiciary Committee vote was strictly along party lines, with all 10 of the committee's Democrats voting for the amendment and all eight of its Republican members voting against.

The Democrats voting for the proposed amendment were Committee Chairman Patrick Leahy (Vermont), Dianne Feinstein (California), Charles Schumer (New York), Dick Durbin (Illinois), Sheldon Whitehead (Rhode Island), Amy Klobuchar and Al Franken (Minnesota), Christopher Coons (Delaware), Richard Blumenthal (Minnesota), and Mazie Hirono (Hawaii). Republicans voting against it were Charles Grassley (Iowa), Orrin Hatch and Mike Lee (Utah); Ted Cruz and John Cornyn (Texas), Lindsey Graham (South Carolina), Jeff Sessions (Alabama), and Jeff Flake (Arizona).

The amendment, as proposed in Senate Joint Resolution 19, says in Section 1:

Congress shall have power to regulate the raising and spending of money and in-kind equivalents with respect to federal elections, including through setting limits on

- 1) the amount of contributions to candidates for nomination for election to, or for election to,



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Federal office; and

(2) the amount of funds that may be spent by, in support of, or in opposition to such candidates.

Section 2 gives the same power to the States. And just as McCain-Feingold exempted media corporations from federal regulation, S.J. Res. 19 states in Section 3: "Nothing in this article shall be construed to grant Congress the power to abridge the freedom of the press."

Freedom of speech is a different matter, however. The *Citizens United* case challenged the McCain-Feingold law over restrictions that prevented the Citizens United organization from broadcasting ads about a negative documentary it had produced about Hillary Clinton when the U.S. senator and former first lady was a candidate for the 2008 Democratic presidential nomination. The law banned independent expenditure ads (those not sponsored by or coordinated with any campaign) about any candidate with 60 days of a primary or 90 days of a general election. Citizens United wanted to run its ads within 60 days of the New Hampshire presidential primaries on January 8, 2008.

In ruling the ban unconstitutional, the majority of the court upheld the freedom of speech provision of the First Amendment, which states: "Congress shall make no law ... abridging the freedom of speech."

Defenders of the ban claimed that elections are being corrupted by the influence of inordinate amounts of money. Opponents argued that organizations such as Citizens United, a non-profit corporation, allowed citizens to exercise their free speech right by pooling their resources to present arguments about candidates, campaigns, and issues during an election contest. The ban on such ads in the weeks and months immediately preceding an election prohibited such advertising at the very time the public was paying most attention to the campaigns. By exempting media corporations from the ban, the law allowed the politicians and the media organs to frame the issues and debates in while shutting out independent citizens and organizations during the most critical period in election campaigns.

During the original arguments before the Supreme Court, Deputy Solicitor General Malcolm Stewart said the government would even have the power to ban books that advocated the election or defeat of a candidate if the books were published or distributed by a corporation or union.

Organizations as diverse as National Right to Life, the American Civil Liberties, and the National Rifle Association opposed the law as a violation of freedom of speech.

Sen. Tom Udall (D-N.M.), the prime sponsor of the resolution, hailed the Judiciary Committee's endorsement Thursday in a statement following the vote:

Momentum for meaningful campaign finance reform continues to build as Americans in New Mexico and all around the country call on their elected leaders to get money out of politics and give elections back to the people. Today's committee approval of my constitutional amendment is an important step in answering their call.

Though Udall has 45 Senate cosponsors, chances of the measure becoming the 28th Amendment to the Constitution appear remote, since it would have to be approved by 2/3 of each house of Congress and ratified by 3/4, or 38, of the states. So far 16 states have formally notified Congress of their support for such an amendment. It appears unlikely that there would be a 2/3 vote even in the Democratic Senate, however, or that it would even come to a vote in the House, where Republicans are in the majority.

Republicans on the Judiciary Committee accused the Democrats of using the resolution as a campaign issue for this fall's congressional election to stir up resentment against wealthy donors who contribute



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to Republican campaigns. While Senate majority leader Harry Reid of Nevada and other Democrats have frequently inveighed against the billionaire Koch brothers over their bankrolling of conservative organizations supporting Republican candidates and causes, Republicans were quick to point out that wealthy investors such as George Soros and Tom Steyer have done the same for left-leaning Democratic groups.

“We want to ban the billionaires on both sides of the aisle,” countered Schumer. “The Soros and the Steyers will be just as banned as the Kochs and the others.” Republicans argued that that simply proved that the proposed amendment would jeopardize the free speech rights of people on all points of the political spectrum.

“The plain text of this amendment would allow Congress to ban books, to ban movies and to silence the NAACP,” said Cruz. Durbin told Cruz the NAACP supports the amendment.

The debate was a carry-over from last month’s hearing when the resolution was introduced. Committee Chairman Leahy opened that hearing with a statement describing the proposed amendment as an effort to “repair the damage done by a series of flawed Supreme Court decisions that overturned longstanding precedent and eviscerated campaign finance laws.”

Grassley the committee’s ranking Republican, vehemently disagreed. “It’s outrageous,” he argued, “to say that limiting speech is necessary for democracy.” Flake of Arizona agreed with his Iowa colleague, while expressing confidence that the measure would not get the needed 2/3 support from the full Senate.

“Putting Congress in charge of who gets free speech is about the worst idea I’ve heard in a long, long time,” Flake said. “So let them bring it to the floor.”



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