

# Myths and Facts about the Constitutional Amendment to Get Big Money Out of Politics

## 1. MYTH: The Democracy for All Amendment would repeal the First Amendment.

### FACT:

- A key purpose of the First Amendment is to encourage a democracy where many points of view can be considered and debated. When a few can drown out the voices of the many using million-dollar megaphones, we can't have real political debate. This amendment is necessary to realize fundamental First Amendment values.
- The Democracy for All Amendment (S.J. Res 19) will *restore* the First Amendment to undo the damage done by the Court over the years – most recently with its decisions in *Citizens United* and *McCutcheon* – and allow Congress and the states to once again enact reasonable limits on money in elections.

## 2. MYTH: No other constitutional amendment has ever removed or changed a right contained in the Bill of Rights.

### FACT:

- The 13<sup>th</sup> Amendment, which abolished slavery, overturned nearly a century of Supreme Court authority that had enshrined the “property rights” that slave masters had in their slaves. The *Dred Scott* decision, for example, had held that slave owners’ Fifth Amendment due process rights were violated by the Missouri Compromise that freed slaves upon passage into the Territories.
- The 19<sup>th</sup> Amendment and women’s suffrage were seen by opponents as setting dramatic limits on their exclusive “rights” to govern and as diluting the value of the male political franchise, which had previously been upheld by the Supreme Court. As constitutional scholar and Maryland state Sen. Jamie Raskin has noted: “the people have been forced to amend the Constitution multiple times to reverse reactionary decisions of the Supreme Court that freeze into place the constitutional property rights and political privileges of the powerful against the powerless.” This is one of those times.

## 3. MYTH: This amendment will permit massive attacks on legitimate political speech, for example, by criminalizing an organization’s blog post criticizing a U.S. senator.

### FACT:

- Nothing in the language of the amendment would permit such actions. Criticism of elected officials can and will continue. All the amendment does is restore to Congress and the states the power to set reasonable, content and viewpoint neutral limits on

campaign contributions and expenditures. Congress was able to do this for many years, and we didn't see the kind of Congressional or state attacks on free speech that this myth predicts.

**4. MYTH: Congress and the states could prohibit distribution of voter guides, ban books, ban movies, and prevent advocacy organizations from saying anything regarding politics.**

**FACT:**

- Nothing in the language of the amendment would permit such actions. All the amendment does is restore to Congress and the states the power to set reasonable limits on campaign contributions and expenditures.
- The spending of money on these items or activities is not speech; the items and activities are the speech. And these items and activities are protected, because the Democracy for All Amendment does not eliminate the First Amendment's protections against content-based or viewpoint-based discrimination, nor does it eliminate other constitutional protections outside of the First Amendment, e.g. the Equal Protection Clause.
- Moreover, even if one believed that the spending of money equals speech, speech rights are sometimes limited to protect the public interest and public safety (e.g. bans on electioneering within a certain distance of polling places, limiting the volume of a concert in a public park so that others' use of the park wouldn't be impaired as in *Ward v. Rock Against Racism*).

**5. MYTH: The amendment would have the effect of benefitting incumbents – it's an incumbent protection measure.**

**FACT:**

- Incumbents already have a phenomenally high re-election rate, and removing campaign finance limits just makes it easier for them to raise money and get re-elected.
- A comparative study done by Edwin Bender and [reported in](#) the Montana Law Review found that in the state of Texas, with virtually unlimited contributions, winning -- and primarily incumbent -- candidates out-raised losing candidates more than twelve-fold (\$278,215 vs. \$22,897). By contrast, in Colorado, a state with low contribution limits (\$525 per person to statewide candidates and \$200 to legislative candidates), "the fundraising medians for legislative races are much closer... \$42,632 for winners and \$15,193 for losers." In other words, Texas has virtually no limits, and incumbents vastly outraise challengers; Colorado has limits, and there is far more equity between incumbents and challengers.

**6. MYTH: Section 3 of the Democracy for All Amendment, with its protection for freedom of the press, gives the press an exalted position and treats them differently.**

**FACT:**

- There is nothing in the amendment that changes the law with respect to freedom of the press. There will always be a need to draw lines about the scope and application of freedom of the press, and that will not be changed by this amendment.
- There has always been a difference between a newspaper publishing an editorial or an article (which is protected now and would continue to be protected under the amendment), and the corporate managers of a newspaper using millions from the corporate treasury to buy ads to influence an election. That distinction is clear and should be recognized.

**7. MYTH: The amendment is intended to silence those who criticize government; it's like the infamous Alien and Sedition Acts.**

**FACT:**

- The amendment does not silence government critics. Such critics would still be free to express their views. All this amendment does is re-establish the ability of Congress and the states to set reasonable limits on the raising and spending of money to influence elections. Its goal is to restore the First Amendment and set limits on the ability of corporations and the super- rich to drown out the voices of those they disagree with.
- A key purpose of the First Amendment is to encourage a democracy where many points of view can be considered and debated. When a few can drown out the voices of the many using million-dollar megaphones, we can't have real political debate.

**8. MYTH: The Democracy for All Amendment would give Congress absolute authority to regulate the political speech of every single American, with no limitations whatsoever; it could pass laws to throw a little old lady in jail for putting up a yard sign.**

**FACT:**

- First, let's be clear – *Citizens United* and *McCutcheon* were not about enabling a "little old lady" to put up a yard sign; they were about protecting the ability of corporate CEOs and the super wealthy to purchase outsized influence in our elections. That's the problem we're trying to address through this amendment.
- Further, the amendment does not give Congress absolute authority to do anything. The First Amendment's protections against viewpoint and content discrimination remain intact as do all of the other protections for individual liberty embedded in the constitution. All this amendment does is to re-establish the ability of Congress and the states to set reasonable limits on the raising and spending of money to influence elections.