OPINION

**Money in politics might seem distasteful, but the First Amendment protects it |**

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**Floyd Abrams, For the Inquirer**

Since the ratification of the Bill of Rights in 1791, 17 additional amendments have been added to the U.S. Constitution. None of them sought to limit the scope of the First Amendment's protection of freedom of speech and press, as interpreted by the Supreme Court.

The result has been that the U.S. offers — sometimes controversially — more legal protection for disturbing and sometimes loathsome speech than anywhere else in the world. [Armed Nazis march in Charlottesville](https://www.cnn.com/2018/08/12/us/unite-the-right-charlottesville-anniversary/index.html)carrying flags emblazoned with swastikas and chanting fascist slurs; religious zealots stand as close as they are permitted to churches, as services proceed honoring American soldiers who die in combat, carrying placards that denounce the soldiers as well as all gay Americans; filmmakers create crush videos for sale that show dogs savagely fighting each other to the death and women wearing stiletto heels stepping on and killing kittens and other small animals. All receive First Amendment protection.

Constitutional amendments have now been proposed to limit the amounts of money that may be contributed to or spent on elections. The amounts that may be contributed to candidates, [the Supreme Court has held](http://www.scotusblog.com/case-files/cases/citizens-united-v-federal-election-commission/), may already be regulated; the amounts that may be spent independently of candidates may not be. The latter result was reached in two cases, the first relating to expenditures by individuals and the second (the famous, and some think infamous, [Citizens United case](http://www.scotusblog.com/case-files/cases/citizens-united-v-federal-election-commission/)) with respect to corporations.

Shall we adopt an amendment that limits the First Amendment right of all to participate in the political process by empowering Congress to limit the amounts spent in doing so?  When a constitutional amendment was considered by Congress in 1997, Sen. Ted Kennedy opposed it, saying that "in the entire history of the Constitution, we have never amended the Bill of Rights, and now is no time to start."

More recently, [Chief Justice John Roberts went further.](https://www.washingtonpost.com/politics/supreme-court-strikes-down-limits-on-federal-campaign-donations/2014/04/02/54e16c30-ba74-11e3-9a05-c739f29ccb08_story.html)"Money in politics," he wrote, "may seem at times repugnant to some, but so too does much of what the First Amendment vigorously protects. If the First Amendment protects flag burning, funeral protests, and Nazi parades — despite the profound offense such spectacles cause — it surely protects political campaign speech despite popular opposition."

I would go further. The First Amendment is rooted in the notion that government simply cannot be trusted when it engages in the process of deciding how much speech as well as what speech may be permitted. We see every day the  impact of gerrymandering by state legislatures when they are empowered to define the boundaries of electoral districts and then do not make the slightest effort to do so fairly but only to aid the party then in power. Would you trust those same legislators to decide how much speech about elections is "reasonable" — a word used in a number of the proposed constitutional amendments? I wouldn't and don't.

One interest that can be accomplished by legislation is that of more public knowledge of the identity of larger contributors and spenders of money in the political sphere. Much is already disclosed. The identity of individuals and corporations who contribute to so-called super PACs — entities that spend money they have raised to support candidates — and the amount contributed by each is publicly disclosed. As a result, we not only know that far more of that money comes from individuals than corporations but also who they are and how much they contributed. There remains, however, a significant lack of public information about the sources of "dark money" that is spent in electoral campaigns by supposedly charitable entities. That is a reality that can be dealt with either by legislation or changes in policy by the Internal Revenue Service.

More broadly, those who seek a constitutional amendment are correct about one significant reality. There is vast income disparity in the nation and on every level that inevitably favors the wealthy. What need not follow from that, however, is that a wise response is to limit the amount of speech in political campaigns, including speech that advocates changes in our society, legislative and otherwise, to deal with the problem.  Economic issues require economic solutions, not speech-limiting ones.

We should leave the First Amendment alone.

Floyd Abrams is the author of "The Soul of the First Amendment." (Yale U. Press 2017)

***Floyd Abrams will be among the panelists discussing "***[***Should We Amend the Constitution to Authorize Political Spending Limits?***](https://constitutioncenter.org/calendar/should-we-amendment-the-constitution-to-authorize-political-spending-limits)***" at 6:30 p.m. Monday at the National Constitution Center.***

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**America needs a 28th Amendment for more liberty, more representation and better government**

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The Constitution was written here in Philadelphia 231 years ago, but that was the beginning, not the end, of creating the constitutional architecture of American democracy. Nearly half of today's Constitution was not written in 1787 when the Convention finished its work. Only because generation after generation of Americans have used the Constitution's amendment power have we added the Bill of Rights; abolished slavery; guaranteed the right to vote for all citizens, regardless of race, gender, or age over 18; guaranteed due process and equal protection of the law; and much more.

Now, amid mounting concerns about the billions of dollars flooding our elections, and the resulting systemic corruption, unequal representation and undue control of policymaking by powerful wealthy interests, a new constitutional amendment is under consideration in Congress and the states. This amendment will empower Americans to regulate money in elections and secure equal representation for all citizens in our republic.

The amendment — the 28th Amendment to the Constitution — would nullify Supreme Court decisions, such as Citizens United v. FEC in 2010, that misconstrued the First Amendment's freedom of speech clause as requiring unlimited spending by corporations, unions, and individuals with the financial means to influence elections.

The billions of dollars now dominating our politics is not free speech; it is power. [Every election in the past eight years has set new records for spending.](https://www.opensecrets.org/overview/topindivs.php?cycle=2016&view=fc) Most of this money has come from less than 1 percent of Americans. Three billionaires alone spent $200 million in the 2016 election, and [just 11 people](https://www.washingtonpost.com/amphtml/politics/eleven-donors-plowed-1-billion-into-super-pacs-since-2010/2018/10/26/31a07510-d70a-11e8-aeb7-ddcad4a0a54e_story.html) have plowed $1 billion into super PACs in the past eight years.  At the same time, [corporations and big unions have invested more than a billion dollars in political races](http://graphics8.nytimes.com/packages/pdf/politics/20100225LOBBY/20100225LOBBY-DGA.pdf) through front groups that conceal their donors — such as the U.S. Chamber of Commerce, the Democratic Governors Association, and the Republican Governors Association.

This is not what the First Amendment requires. Our freedoms to speak, petition, worship, and express and hear diverse views with a free press are not the same as corporations and billionaires spending vast amounts of money to buy political outcomes. Laws have regulated how money is used in elections for more than a century. Not until [1976 did the Supreme Court apply the First Amendment to any federal or state election contribution](https://transition.fec.gov/info/appfour.htm) or spending limit, and not until [2010 did the Supreme Court rule that corporations or unions have a free-speech right to use funds to influence the outcome of elections.](http://www.scotusblog.com/case-files/cases/citizens-united-v-federal-election-commission/)

The results of the court's reckless experiment now are clear: Billions of dollars from the most partisan and self-interested elites drown out the voices of Americans, deprive voters of diverse views and candidates to choose from, block any compromise and action on overdue and urgent needs, and increase alienation and cynicism.[A study by the Public Religion Research Institute](https://www.washingtonpost.com/opinions/americans-see-a-government-of-by-and-for-the-rich/2015/11/18/8c8e001a-8e19-11e5-acff-673ae92ddd2b_story.html) found that Americans, by a 2-1 ratio, now believe our "vote does not matter because of the influence that wealthy individuals and big corporations have on the electoral process."

The theory that unlimited money would somehow make elections more competitive or challenge incumbents' advantage has failed the reality test. Incumbents and party bosses are in the dominant position to demand the money, punish those who don't play, and reward those who can pay for favorable policy. That is why [incumbency reelection rates and uncontested legislative races](https://www.followthemoney.org/research/institute-reports/money-incumbency-in-2015-and-2016-state-legislative-races) have risen, not declined, in the past decade, according to the Center for Responsive Politics and the Campaign Finance Institute.

The proposed amendment would ensure a level playing field and protect our liberty by providing for reasonable and even-handed rules and limits on money from any source. Our election laws will be better able to keep foreign money out of our elections, and keep corporations and unions operating in the economy, rather than using other people's money to run election operations and buy political influence.

The 28th Amendment will give all citizens a voice. That's what the Constitution and our republic that began here in Philadelphia are all about.

Jeff Clements is president of [*American Promise*](http://www.americanpromise.net/), the cross-partisan national organization leading the 28th Amendment campaign. He previously served as assistant attorney general and chief of the Public Protection Bureau in the Massachusetts Attorney General's Office.

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