

DEMOCRACY IS FOR PEOPLE



A Public Citizen project

An Amendment to Give Democracy Back to the People

In January 2010, the U.S. Supreme Court opened the floodgates to unlimited corporate cash in our elections with a perverse interpretation of the First Amendment in its *Citizens United v. FEC* decision. Two and a half years later, the Court majority dismissed Montana's case to keep its Corrupt Practices Act intact, making it clear that it has no intention of revisiting the flawed decision, even in light of the unprecedented levels of outside spending in the 2010 midterms and the 2012 Republican primary.ⁱ The only way to overturn this disastrous ruling is for Congress send a constitutional amendment to states for ratification.

Public Citizen has endorsed the constitutional amendment introduced by U.S. Sen. Bernie Sanders (I-Vt.) and U.S. Rep. Ted Deutch (D- Fla.), respectively titled the Saving American Democracy Amendment, S.J. Res. 33, and the OCCUPIED Amendment, H.J. Res. 90. The text of these amendments takes many of the necessary steps to build a democracy that is truly one of, for and by the people; as well as stating that constitutional rights established for individuals are not for for-profit corporations. It undoes the damage the Supreme Court has inflicted on our elections, not just in *Citizens United*, but dating back to the 1970s, by restoring the power of legislatures to make rules that will prevent the buying of elections. The amendment, though short, accomplishes a great deal:

Stop Corporations from Buying Elections

In the 2008 federal election cycle, the spending of all candidates, parties, and outside groups totaled approximately \$5.3 billion.ⁱⁱ If the 100 largest corporations had invested only 1% of their total profits that year on campaigning, an additional \$6 billion would have overwhelmed the contest.ⁱⁱⁱ When CEOs are allowed use the corporate treasury to bombard the airwaves with dubious political ads, our democratic process becomes distorted and corrupt. The Sanders/Deutch Amendment affirmatively prohibits for-profit corporations from making contributions or expenditures in elections.

Money Is Not Speech

American elections and candidates' viability are increasingly shaped by a small, homogeneous "donor class." Less than one percent of the U.S. population makes financial contributions over \$200 to federal candidates.^{iv} In the 2012 elections, 100 people and their spouses have contributed 73% of Super PAC funding.^v

The Sanders-Deutch Amendment overturns *Citizens United* and other Supreme Court decisions that improperly prevent Congress and the states from limiting campaign-related spending. The amendment would ensure that legislatures can pass laws to limit the influence of the wealthy few, and open the process to everyday Americans. A system that allows for corporations and the wealthiest among us to drown out the voices of others ensures unequal influence on elected officials. It also undermines the First Amendment's core purpose of maintaining a flourishing, democratic marketplace of ideas by drowning out the voice of the common person.

Corporations Are Not People

The constitution guarantees that We The People have fundamental rights to participate in our democracy. Corporations, on the other hand, are legal fictions that, as first Chief Justice John Marshall put it, "possess[] only those properties which the charter of its creation confers upon it."^{vi}



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The expansion of the constitutional rights of individuals to for-profit corporations, whether it is the right to spend money to influence elections or the right to not be subject to unannounced government inspections for work-place safety,^{vii} enables corporations to trump the rights of real people. Corporations were first created by law to serve narrow, socially productive purposes, but the Court has moved us closer and closer to a point where society must serve corporate interests instead.

The Sanders-Deutch Amendment restores the true intent of our constitution by protecting the rights of “natural persons” and striking down the Court’s extension of rights to state-created for-profit business entities.

Protecting the Rights of Non-Profits

Regardless of their goals or politics, non-profits are at their root associations of people that have come together for expressive purposes of the sort the Constitution was designed to protect. Throughout history, the constitutional rights of non-profits have been essential in fighting for the equality of women, minorities, and political dissenters.^{viii} “Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as [the Supreme] Court has more than once recognized ... the close nexus between the freedoms of speech and assembly.”^{ix}

Expressive associations that often incorporate under special sections of state and federal law include non-profit organizations, labor unions, and even some churches. Unlike for-profit businesses, these groups must have a public purpose, and the corporate form merely facilitates group participation in our democratic society. The Sanders-Deutch Amendment takes the correct path in protecting the constitutional rights of genuine expressive associations, ensuring that the government does not have the crack down on disfavored organizations.

Freedom of the Press

The press in all its forms plays a vital role in our democracy, and We The People have a right to receive and disseminate information and opinions. Modern media outlets operate primarily as for-profit businesses. Recognizing this, the Sanders-Deutch Amendment explicitly protects the right of media organizations to keep the public informed, regardless of corporate status, subject matter, or point of view.

ⁱ *American Tradition Partnership v. Bullock*, Docket No. 11-1179 (June 25, 2012).

ⁱⁱ Open Secrets, “The Money Behind Elections,” <http://www.opensecrets.org/bigpicture/index.php>, (accessed Aug. 23, 2012).

ⁱⁱⁱ See Robert Weissman, Let the People Speak: The Case for a Constitutional Amendment to Remove Corporate Speech from the Ambit of the First Amendment, 83 Temple L. Rev. 979, 987 (2011).

^{iv} Spencer Overton, The Donor Class: Campaign Finance, Democracy, and Participation, 153 U. Penn. L. Rev. 73, 105 (2004), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=569021.

^v Open Secrets, “2012 Top Donors to Outside Spending Groups,” <http://www.opensecrets.org/outsidespending/summ.php?disp=D> (accessed Aug. 21, 2012).

^{vi} *Dartmouth College v. Woodward*, 17 U.S. 518, 636 (1819).

^{vii} *Marshall v. Barlow’s Inc.*, 436 U.S. 307 (1978).

^{viii} See e.g., *Pittsburgh Press Co. v. Human Relations Commission*, 413 U.S. 376 (1973) (NOW complaint over employment discrimination); *NAACP v. Button*, 371 U.S. 415 (1963) (right to solicit pro bono clients in desegregation cases); *Williams v. Rhodes*, 393 U.S. 23 (1968) (ballot access of minor parties).

^{ix} *NAACP v. Ala. ex. rel. Patterson*, 357 U.S. 449, 460 (1958).



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