

We the People Massachusetts

Why Support the We the People Amendment proposal in the U.S. Congress?

Members of Congress are proposing several different versions of an amendment to the U.S. Constitution to overturn Supreme Court rulings that have undermined our democracy by giving powerful special interests undue influence over our government.

We urge support for only *one* of these amendment proposals: The We the People Amendment (HJR 48). Please see the full text at the end of this document.

The amendment we need must overturn two interrelated legal doctrines.

These two doctrines, which have seriously damaged our democracy, emerged from multiple Supreme Court rulings over the past few decades.

In *Buckley v. Valeo* (1976), the Supreme Court first crafted the finding that money spent to influence elections is First Amendment-protected free speech. This legal doctrine was used in the *Citizens United v FEC* decision in 2010 to stop Congress and the states from regulating “outside spending” to influence elections (i.e., money not donated directly to candidates). *McCutcheon v. FEC* (2014) later invalidated FEC limits on direct contributions to candidates based on the doctrine that they, too, are a form of First Amendment speech. These rulings have enabled global corporations and billionaires to exercise undue influence over elected representatives through unlimited political spending,

The second legal doctrine undermining our democracy is that artificial legal entities such as corporations are “persons” and therefore have the same Constitutional rights as human individuals. Extending the inalienable Constitutional rights of human individuals to incorporated entities has enabled them to invoke these rights in court to overturn democratically enacted public interest laws. For example, in *First National Bank of Boston v. Bellotti* (1978), the Supreme Court ruled that Massachusetts could not limit corporate spending to influence ballot questions based on the doctrine that corporations had the protection of free speech under the First Amendment. Similarly, *Lorillard Tobacco Company v. Reilly* (2001) claimed that the right of free speech of tobacco corporations supersedes the Massachusetts law to protect children by banning cigarette advertising within 1000 feet of schools and playgrounds. And the Fourth Amendment has repeatedly been invoked by regulated industries to prevent unscheduled inspections mandated by OSHA and EPA regulations designed to protect workers and the public (e.g. *Marshall v Barlow's*, 1978).

The Supreme Court based its 5-4 *Citizens United v. FEC* decision on both court-fabricated doctrines. When the court ruled that 1) incorporated entities such as corporations, unions and SuperPACs are “persons” with First Amendment speech rights, and that 2) spending money to influence elections is a form of First Amendment speech, the court tied the hands of Congress and the states with respect to regulating election fundraising and spending.

These two activist court-fabricated doctrines went beyond the original meaning of the Constitution; they are based on flawed Supreme Court decisions. They must be overturned. Because the current Supreme Court is highly unlikely to reverse itself, this can only be done with a Constitutional amendment.

The Solution: the We the People Amendment (HJR 48)

We support HJR 48 for two key reasons:

1. The We the People Amendment is the only current amendment proposal that unequivocally overturns both of these damaging legal doctrines. It states, in part:

Section 1: *"The rights protected by the Constitution of the United States are the rights of natural persons only...Artificial entities shall have no rights under this Constitution and are subject to regulation by the People..."*

Section 2: *"The judiciary shall not construe the spending of money to influence elections to be speech under the First Amendment."*

2. The We the People Amendment requires action.

The use of the verb "shall" in HJ Res 48 would mandate federal, state and local action to ensure more equal access to the political process for all citizens, not just wealthy individuals and corporations. It also mandates that artificial entities shall not be given constitutional rights.

Section 2 includes: *"Federal, State, and local government shall regulate, limit, or prohibit contributions and expenditures... to ensure that all citizens, regardless of their economic status, have access to the political process..."*

Therefore, after this amendment is ratified by the states and becomes part of the U.S. Constitution, Congress and the states will be directed to pass laws to implement the amendment and citizens will have a constitutional basis to go to court to challenge inaction.

Comparison to Other Amendment Proposals

Other amendment proposals have been/will be proposed in the effort to overturn the damage caused by decisions such as *Citizens United v FEC*. In considering these alternatives, it is important to assess whether *both* damaging doctrines ("money is free speech", "corporations have constitutional rights") are clearly addressed, and whether action to limit the unequal influence of wealth is required or merely permitted.

For example, the Democracy for All Amendment (HJR 2; text below), is limited to the issue of election spending and would not end the use of Constitutional rights by corporations, unions and other artificial entities. In addition, by use of the verb "may" ("*Congress and the states may regulate and set limits...*") it only *enables* the regulation of money in elections and does not require it, thereby allowing for the possibility of "business as usual." Note that while Congress and the states "*may distinguish between natural persons and corporations or other artificial entities*", HJR 2 similarly does not require this to be done and this consideration would apply to campaign spending regulations only.

What we need: Government of, by, and for the people

If we aspire to Lincoln's vision of government of, by, and for the people, we must amend the Constitution to eliminate the conflict of interest that arises when our elected representatives depend on large donors for re-election, and we must ensure that corporations cannot undermine democratically enacted laws by invoking the inalienable Constitutional rights of real people.

THE WE THE PEOPLE AMENDMENT (HJR 48)

SECTION 1. The rights protected by the Constitution of the United States are the rights of natural persons only. Artificial entities established by the laws of any State, the United States, or any foreign state shall have no rights under this Constitution and are subject to regulation by the People, through Federal, State, or local law. The privileges of artificial entities shall be determined by the People, through Federal, State, or local law, and shall not be construed to be inherent or inalienable.

SECTION 2. Federal, State, and local government shall regulate, limit, or prohibit contributions and expenditures, including a candidate's own contributions and expenditures, to ensure that all citizens, regardless of their economic status, have access to the political process, and that no person gains, as a result of their money, substantially more access or ability to influence in any way the election of any candidate for public office or any ballot measure.

Federal, State, and local government shall require that any permissible contributions and expenditures be publicly disclosed.

The judiciary shall not construe the spending of money to influence elections to be speech under the First Amendment.

SECTION 3. Nothing contained in this amendment shall be construed to abridge the freedom of the press.

THE DEMOCRACY FOR ALL AMENDMENT (HJR 2)

SECTION 1. To advance democratic self-government and political equality, and to protect the integrity of government and the electoral process, Congress and the States may regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.

SECTION 2. Congress and the States shall have power to implement and enforce this article by appropriate legislation, and may distinguish between natural persons and corporations or other artificial entities created by law, including by prohibiting such entities from spending money to influence elections.

SECTION 3. Nothing in this article shall be construed to grant Congress or the States the power to abridge the freedom of the press.

For more information contact:

Info@WtPMass.org

ver. 2-11-19