

Congress of the United States
Washington, DC 20515

September 8, 2014

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Republican Leader
United States Senate
Washington, DC 20510

Dear Majority Leader Reid and Republican Leader McConnell,

As members of the U.S. House of Representatives who have sworn to “support and defend the Constitution of the United States,” including the First Amendment right of freedom of speech, we write in opposition to S.J. Res. 19, a joint resolution proposing an amendment to the Constitution of the United States regarding campaign finance that would severely curtail First Amendment rights. Further, we note the urgency of this matter in light of the Senate Judiciary Committee’s recent hearing and markup of this proposal, and the Majority Leader’s actions to bring this proposal before the full Senate for a vote.

The full Senate has twice rejected similar proposed constitutional amendments to reduce First Amendment rights, by a vote of 38 to 61 in 1997 and by a vote of 40 to 56 in 2001. It should also reject S.J. Res. 19. As Senator Kennedy stated on the Senate floor in opposition to the 1997 measure, “In the entire history of the Constitution, we have never amended the Bill of Rights, and now is no time to start. It would be wrong to carve an exception in the First Amendment.” Similarly, Senator Feingold took to the floor to oppose the 2001 bill, stating, “This proposed constitutional amendment would change the scope of the First Amendment. I find nothing more sacred and treasured in our Nation’s history than the First Amendment....I want to leave the First Amendment undisturbed.”

Free speech is essential to a representative democracy. It is the way the people can hold their elected officials accountable. Advocates of this proposal claim it will “restore” democracy to the American people, but in fact, limiting speech will do no such thing. In fact, this is an unprecedented effort. Never before in the history of our nation has a provision in the Bill of Rights been amended, and rightly so.

Existing campaign finance law already sets caps on the amount of contributions that can be donated to candidates; requires disclosure of funding sources for candidate, party, and PACs; bans direct contributions to candidates by corporations, labor unions, and foreign nationals. Yet this proposed constitutional amendment goes much further than existing law. For example, this sweeping proposal could empower Congress to restrict speech by pastors and churches by claiming it influenced the political process.

Simply put, bans on money are bans on speech. In other words, restricting the amount of money that may be spent on political speech and activity is the same as restricting the speech itself. It is self-evident that all means of communication require spending money, from the “humblest handbill or leaflet” to political ads run on TV, radio, Internet, or other mass media. No one with any experience in public advocacy or campaigning could possibly claim that one can engage in political speech and activity effectively without the funding required to support such efforts and to distribute such communications.

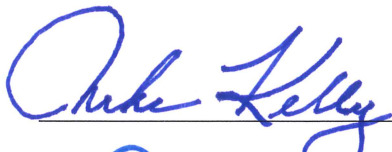
Furthermore, “political equality,” a stated objective of this proposal, is not a fundamental right. So-called speech equalizing is an affront to the First Amendment, which is supposed to protect the free marketplace of ideas. In the free marketplace of ideas, free people, not the government, assess the quality of arguments and decide which they find persuasive. Advocates of this amendment claim that open debate does not promote democracy, but rather threatens it – a complete inversion of the First Amendment.

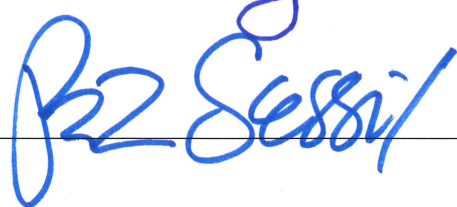
Nor would this proposal level the playing field between incumbents and challengers. Again, the opposite is true, because this proposal could be used to protect incumbent politicians. Sitting members of Congress will be able to use their new power under this proposal to tie the hands of candidates seeking to unseat them.

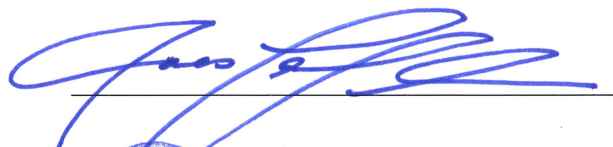
Lastly, the language in the proposals creating an exemption for “the press,” creates even more problems. The proposal fails to define what “the press” is, thereby inviting government to draw arbitrary lines to favor some speech and punish other speech. As a result, bloggers and other new media, “the lonely pamphleteer” of today, may be limited in their political speech, but the institutional press will continue to spend as much money, newsprint, and airtime as they want to support their preferred candidates (or attack those they oppose). This will give large media companies like the New York Times and MSNBC greater speech protections than anyone else. Moreover, this press exemption would elevate the freedom of the press above all the other rights recognized in the First Amendment: freedom of speech, religious freedom, the right to assemble, and the right to petition the government.

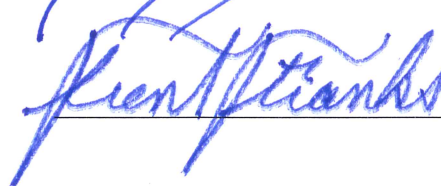
For the above reasons, we, the undersigned members of Congress, urge you to uphold the First Amendment and to reject S.J. Res. 19.

Sincerely,









Jim Jackson

William Long

Al Boutwell Jr.

Mind Madsen
us

Josh Fleming

Pete Olson

Tim Anderson

Mig Pompa

Richard Baker

~~Steve~~ Reid

Paul Skry

Fred R. Wenzel

Rudy K. Weber

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