

H. J. RES. 2 (116th Congress)

Background

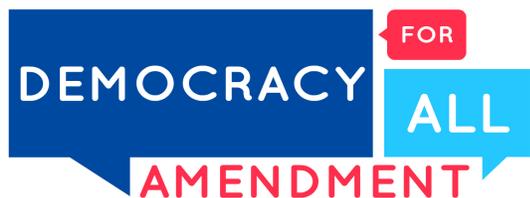
Sponsored by Reps. Ted Deutch (FL-22), Jim McGovern (MA-02), Jamie Raskin (MD-08) and John Katko (NY-24) in the House of Representatives and Senators Tom Udall (D-NM) and Michael Bennet (D-CO) in the U.S. Senate, the Democracy for All Amendment would reverse Supreme Court decisions like *Citizens United* by enshrining in the Constitution the right of the American people to enact state and federal laws that regulate spending in public elections.

The Democracy for All Amendment is the end result of extensive collaboration between the House and Senate sponsors of previously proposed constitutional amendments and several grassroots advocacy organizations committed to getting big money out of politics, including Public Citizen, People for the American Way, Free Speech for People, and Common Cause.

In 2010, the Supreme Court's highly controversial ruling in *Citizens United v. FEC* held that corporations and other private entities - including 501(C) organizations that do not have to disclose their donors - have a First Amendment right to spend unlimited sums of money influencing the outcome of public elections. In his far-reaching opinion for the 5-4 majority, Justice Kennedy held that any election law that goes beyond preventing quid pro quo, bribery-style corruption between candidates and donors risks violating the First Amendment.

The result of the *Citizens United* decision has been elections dominated by record-breaking spending by Super PACs and unaccountable outside groups funded by corporations and a tiny, extraordinarily wealthy sliver of the American population. In 2012, the first presidential election cycle after *Citizens United*, 93 percent of Super PAC funding came from 3,318 donors, amounting to less than .01 percent of the U.S. population. Likewise, the 2014 midterm election cycle was the most expensive in history, with record-shattering spending by outside groups emboldened by the Supreme Court. The Center for Responsive Politics estimates that each of the presidential election cycles since broke spending records; \$6.3 billion in 2012 and \$6.9 billion in 2016. In 2018 we saw the most expensive midterms in history coming in at \$5.2 billion, a 35 percent increase.

In 2014, the Supreme Court awarded America's wealthiest donors even more influence in our elections with its 5-4 ruling in *McCutcheon v. FEC*, which struck down caps limiting how much money a single donor can contribute in federal elections. As a result of this ruling, one individual can give up to \$3.6 million to candidates and various fundraising committees per federal election cycle. In addition, Chief Justice John Roberts' opinion for the majority in *McCutcheon* went as far as to argue that the influence awarded to donors is not a corrupting quid pro quo transaction, but a First Amendment right.



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In addition to overturning the *Citizens United* and *McCutcheon* rulings, the Democracy for All Amendment also reverses the Supreme Court's controversial holding in *Buckley v. Valeo* that money spent in elections is a form of speech protected by the First Amendment.

With elected officials spending more and more of their time raising millions of dollars to defend themselves from multi-million dollar smear campaigns from outside groups, it has become harder for everyday Americans living on a budget to be heard in the post-*Citizens United* era. In addition to concluding that donors receive greater access to legislators than non-donors, several academic studies have now confirmed that elected officials' growing reliance on large dollar donations have skewed the agenda in Washington towards special interests and away from the priorities of ordinary voters.

The Democracy for All Amendment (H.J. Res. 2)

Section I. 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 II. 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 III. Nothing in this article shall be construed to grant Congress or the States the power to abridge the freedom of the press.