

The Democracy is for People Amendment
Congressman Ted Deutch (FL-21) & Senator Bernie Sanders (I-VT)

Legal Analysis by Gregory L. Colvin, Esq., Adler & Colvin, San Francisco

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SECTION I. Whereas the right to vote in public elections belongs only to natural persons as citizens of the United States, so shall the ability to make contributions and expenditures to influence the outcomes of public elections belong only to natural persons in accordance with this Article.

1. This amendment is grounded in protection of the human being's right to vote as a citizen. Because only natural persons who are citizens can vote, only natural persons under this amendment would be eligible devote money and other resources to influencing how other people vote. To avoid granting the constitutional right to spend money in elections, the language explicitly describes this activity as an ability – not a right – of natural persons.
2. This Section, upon ratification of the amendment, would immediately prevent all those who are not natural persons from spending in American elections. No longer could campaign donations or expenditures be made by:
 - Multi-national or domestic business corporations
 - Other for-profit entities, such as limited liability companies, partnerships, trusts, and associations
 - Nonprofit, tax-exempt 501(c)(4) social welfare organizations like Citizens United
 - 501(c)(6) business and professional associations, such as chambers of commerce
 - 501(c)(5) labor unions
 - Individuals who are not US citizens, unless authorized under this amendment (e.g. permanent US residents)All forms of organization would be placed on the same footing as 501(c)(3) charities and be prohibited from intervention in the campaigns of candidates for public office.
3. The impact of this amendment would not depend on subsequent action by Congress or the state legislatures; all campaign spending by those other than natural persons would become automatically unconstitutional upon ratification of the amendment.
4. All election campaigns throughout the United States would be covered, at the federal, state, and local levels. Campaigns to nominate and elect candidates would be affected, as well as initiatives, referenda, recalls, bonds, and other ballot measures placed before the people in a public election.
5. This amendment would restore and make universal the prohibition on corporate and union spending in elections as it existed prior to 2010 at the federal level and in many states. It would overturn the U.S. Supreme Court decisions allowing unlimited spending as corporate free speech in *Citizens United v. FEC* (2010) (against candidate Hillary Clinton) and in *First National Bank of Boston v. Bellotti* (1978) (against an income tax referendum). It would be aligned with the Court's decision in *Austin v. Michigan*

Chamber of Commerce (1990) that allowed states to prohibit corporate spending in candidate elections.

6. Corporations and other legal entities are not people and cannot be citizens entitled to vote, nor can they be natural persons enabled to finance campaigns. Therefore, this amendment would prevent use of the First and Fourteenth Amendments to confer a constitutional free speech right on corporations to spend in American elections. However, it would not disrupt corporate constitutional rights that may in appropriate cases be recognized by the courts as pertinent to their economic functioning, such as the right to enforce contracts, e.g. *Dartmouth College v. Woodward* (1819), due process, search and seizure, and eminent domain. Nor would it affect the right of individuals to freely associate in a nonprofit corporation without state harassment recognized in *NAACP v. Alabama* (1958).
7. The last phrase of the amendment, providing that the ability to spend to influence U.S. elections belongs only to natural persons “in accordance with this Article,” allows the federal and state governments to construct regulatory and enforcement systems to implement individual-based campaign financing, such as personal contribution limits and public financing designed to counteract the influence of private wealth.

SECTION II. Nothing in this Constitution shall be construed to restrict the power of Congress and the States to protect the integrity and fairness of the electoral process, limit the corrupting influence of private wealth in public elections, and guarantee the dependence of elected officials on the people alone by taking actions which may include the establishment of systems of public financing for elections, the imposition of requirements to ensure the disclosure of contributions and expenditures made to influence the outcome of a public election by candidates, individuals, and associations of individuals, and the imposition of content neutral limitations on all such contributions and expenditures.

1. The first part of Section 2 enunciates the purposes for empowering Congress and the states to regulate campaign finance. It goes beyond “corruption” as narrowly interpreted by the Court in *Citizens United* and gives constitutional legitimacy to reforms that aim to protect the integrity of elections, limit the influence of private wealth, and the relationship between public officials and the people they represent. This amendment recognizes the political equality of each voter, clearing the way for reforms that aim to limit the influence of individuals with virtually unlimited financial assets who spent unprecedented sums of money in the 2012 election cycle.
2. Public financing, which is compatible with financing by natural persons mandated by Section 1, could be enacted under this amendment at the option of Congress and the various states. This would allow experimentation with systems set up to equalize the ability of incumbents and candidates to reach the electorate without devoting so much of their time to the eternal raising of campaign contributions. Where public financing is designed to enhance the influence of small donors (e.g., matching funds or tax credits), it would advance the goal of political equality among voters.

3. Congress and the states would have the flexibility to design donor disclosure regimes to make contributions over certain amounts public immediately, to identify the person who is actually behind the contribution, and to allow small donors, such as those donating less than \$100 or \$200, to remain private. The language does not require Congress or the states to force disclosure of “all” contributions and expenditures. Reasonable thresholds can be put in place, as they are now, so that small donors can participate in financing campaigns and be anonymous, thereby broadening the popular base of support.
4. This Section makes it clear that Congress and the states can prevent unlimited spending by individuals who are candidates themselves, pursuing public office. It would thus overturn the U.S. Supreme Court decision in *Buckley v. Valeo* (1976). In the last California gubernatorial election, one candidate spent \$160 million on her own campaign.
5. The phrase “associations of individuals” refers to political parties and committees that may be set up by candidates or by individuals (separately from the treasuries of the unions, companies, or other organizations to which they may belong) exclusively for the purpose of influencing elections. Thus, the only associations with the ability to spend on election campaigns would be political action committees (PACs) that would continue to fall under the Internal Revenue Code’s current framework as 527 organizations required to disclose donors who give over certain threshold amounts. This would not enable other groups tax-exempt under 501(c)(4), (5), or (6) to make secondary expenditures, as they can now, to influence elections. Section 1 limits campaign spending to natural persons only, and Section 2 merely recognizes that individuals may associate together for that purpose. The legal structure of political committees has already been established by Congress and the states and has functioned fairly well for over 30 years.
6. Contribution limits are essential to counteract the rise of SuperPACs, funded mainly by extremely wealthy individual persons. This amendment does not automatically impose donation limits on them. Congress and the States would be empowered to do so, however, thus overruling the Court’s “money is speech” decision in *Buckley* which gave constitutional protection to unlimited independent campaign spending by individuals.
7. Regarding “content neutral” limitations on campaign contributions and expenditures, this should be understood to enable Congress and the states to impose dollar-value limitations on the amounts that an individual person can donate or spend for communications to voters that refer to and reflect a view upon candidates and ballot measures during election periods and otherwise attempt to influence the outcome of public elections. These limitations would be neutral as opposed to biased in favor of or against any particular candidate, party, political committee, or other contestant in an election based upon the ideology or viewpoint they may express.

SECTION III. Nothing in this Article shall be construed to alter the freedom of the press.

This Section simply continues the existing constitutional protection of press organizations. Although they may be corporations or other entities rather than individual people, this amendment would not restrict their long-held ability to influence elections through editorial

endorsements, opinions, and news coverage to the extent this is protected by First Amendment freedom of the press. Press freedom would not be increased or diminished by this amendment.

SECTION IV. Congress and the States shall have the power to enforce this Article through appropriate legislation.

The final Section makes explicit what is implicit in Section 2: legislation at the federal and state levels may impose spending limits, provide for public financing, require donor disclosure, and take other steps necessary to enforce the individual-based campaign finance system.

GREGORY L. COLVIN is a principal in the San Francisco law firm of Adler & Colvin, a firm that specializes in the representation of nonprofit organizations and their donors. He received his A.B., magna cum laude, in political science (1968) from the University of Washington, where he was elected to Phi Beta Kappa. He received his J.D. from Yale Law School in 1971, where he served on the Yale Law Journal. Mr. Colvin has taught as an Adjunct Professor at the University of San Francisco, Institute for Nonprofit Organization Management. He is the author of *Fiscal Sponsorship: 6 Ways To Do It Right* (Study Center Press, 1993, 2005), with a companion website at www.fiscalsponsorship.com. He is co-author of *Seize the Initiative* and *The Rules of the Game: An Election-Year Legal Guide for Nonprofit Organizations* (Alliance for Justice, 1996). Mr. Colvin has written over thirty articles and presented numerous seminars on the IRS political and lobbying rules, fiscal sponsorship, donor advised funds, and anonymous giving, and he served as the Co-Chair of the Subcommittee on Political and Lobbying Organizations and Activities of the Exempt Organizations Committee of the Tax Section of the American Bar Association from 1991 to 2009. He is also general nonprofit counsel to Toastmasters International, the worldwide public speaking organization, and to Community Initiatives, a leading regional fiscal sponsor based in San Francisco. Mr. Colvin is an active member of the bar in the states of California and Washington. He may be followed on Twitter @GregLColvin.

Mr. Colvin's analysis of this proposed constitutional amendment represents his personal viewpoint and is not offered on behalf of the firm Adler & Colvin nor its clients.

Gregory L. Colvin
Adler & Colvin
235 Montgomery Street, Suite 1220
San Francisco, CA 94104
Tel: 415-421-7555 x.211
Fax: 415-421-0712
email: colvin@adlercolvin.com
www.adlercolvin.com