



Why Virginia should support an Amendment to the U.S. Constitution to allow Congress and the states to effectively regulate election spending

Need for a U.S. Constitutional Amendment

Addressing comprehensive campaign finance reform for Virginia requires measures not only at the state level, but also a national-level amendment of the U.S. Constitution. This amendment would allow Congress and states to regain their rights to regulate elections spending that have been severely curtailed by decisions of the Supreme Court of the United States (SCOTUS). In summary, these decisions equate “money as free speech” and “corporations as people.” More specifically, they have removed all limits on the amounts that individuals, corporation, and unions, can donate to independent (i.e., non-candidate/campaign) entities such as PACs.

Such an Amendment would enable Congress and the states to address the exponential growth of high donor and often undisclosed “Dark Money” spending which has completely overwhelmed the small donations of common citizens. To this end, Twenty-one states (but not Virginia), representing 141 million Americans, have passed resolutions supporting such a constitutional amendment.

U.S. Supreme Court (SCOTUS) rulings on state campaign finance legislation

Over the last half century, SCOTUS rulings have led to increased restrictions on the authority of states to regulate campaign financing pursuant to the authority granted them by the 10th Amendment to the U.S. Constitution. Some of the key decisions include:¹

- a) **Buckley v. Valeo (1976).** The Court, in distinguishing between contributions and expenditures, stripped States of the legal authority to impose limits on independent (i.e., non-candidate/campaign) expenditures. Furthermore, while retaining State legal authority to impose limits on contributions, it undercut this authority striking down limitations on personal contributions to a candidate’s own campaign, thus prohibiting restrictions on wealthy self-financed candidates. On the positive side, this ruling upheld public disclosure requirements.
- b) **Randall v. Sorrell (2006).** In effect, the Court ruled that States cannot limit independent expenditures. Further, States must ensure that contribution limits on candidates are high enough to enable the candidate to run an effective campaign. This decision adjusted earlier SCOTUS decisions which held that contribution limits must allow candidates and political committees to “amass the resources necessary for effective advocacy.”
- c) **Citizens United v. Federal Elections Commission (2010).** SCOTUS, in a 5-4 ruling striking down the 60-year-old federal prohibition on independent expenditures by corporations and unions, opened the door to political committees that make only independent expenditures and may take in unlimited money – so-called “super PACs”. Once again, this time by a vote of 8-1, SCOTUS upheld the importance and constitutionality of potential state and Federal donor disclosure requirements.

Given the breadth of the above decisions, a Constitutional Amendment is necessary to correct these and related SCOTUS decisions that adversely affect the proper regulation of campaign financing.

¹ National Conference of State Legislatures, <https://www.ncsl.org/research/elections-and-campaigns/campaign-finance-and-the-supreme-court.aspx#buckley>.

What would an Amendment say? An example of the “For Our Freedom Act”

The national non-profit American Promise has proposed one possible phrasing for a constitutional amendment that would address these rulings and restore congressional and state control over campaign finance:

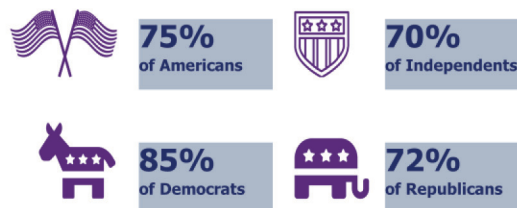
- *“Section 1: We the People have compelling sovereign interests in representative self-government, federalism, the integrity of the electoral process, and the political equality of natural persons.*
- *Section 2: Nothing in this Constitution shall be construed to forbid Congress or the States, within their respective jurisdictions, from reasonably regulating and limiting contributions and spending in campaigns, elections, or ballot measures.*
- *Section 3: Congress and the States shall have the power to implement and enforce this article by appropriate legislation, and may distinguish between natural persons and artificial entities, including by prohibiting artificial entities from raising and spending money in campaigns, elections, or ballot measures.”*

Proposed Actions within Virginia

According to national polls and a 2021 public opinion poll undertaken in Virginia, a majority of Americans and voters in the Commonwealth support an amendment to the U.S. Constitution which would restore the right of states and Congress to regulate election spending. Now is the time for state and local jurisdictions to advocate for a U.S. constitutional amendment through resolutions, which would not only represent the views of their citizens, as well as promote state control over campaign contributions and expenditures under its jurisdiction.

A Groundswell of Support to Get Big Money Out of Politics

Who supports a constitutional amendment to allow Congress and the states to regulate election spending.?



Source: Univ of Maryland Study, 2018



Specific steps could include:

- **Virginia House of Delegates Resolution.** We propose that the House of Delegates approve a state resolution supporting amendment to the US Constitution.
- **Virginia Senate Sign-on Letter.** Given that current legislative rules prevent VA State Senate resolutions on federal legislation, we propose that as many as possible VA state senators individually sign a formal letter to Virginia’s U.S. Congressional Delegation supporting amendment to the U.S. Constitution.
- **County and municipal resolutions.** Over 1000 counties and municipalities, including four in Virginia², have approved resolutions supporting a campaign finance amendment to the US Constitution, and we urge additional Virginia jurisdictions to approve comparable resolutions.

² Alexandria, Falls Church, Charlottesville and the County of Alexandria.