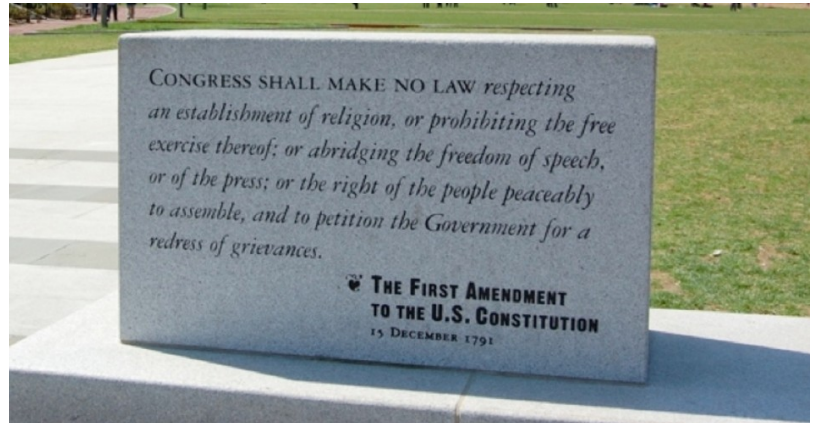




Written by [Jack Kenny](#) on May 1, 2014

Senate Dems Take Aim at First Amendment

Democrats in the U.S. Senate are planning a vote sometime this year on a proposed constitutional amendment to overturn two U.S. Supreme Court decisions on campaign spending, [The Hill reported](#) Wednesday. Legislation sponsored by Sen. Tom Udall (D-N.M.) calls for amending the Constitution to negate high court rulings in *Citizens United v. Federal Elections Commission* and *McCutcheon v. FEC*.



In its 2010 *Citizens United* decision, the court ruled in favor of a non-profit organization that had sought to advertise its unfavorable documentary film about Hillary Clinton shortly before the Iowa Caucuses and the New Hampshire primaries of 2008, when then-Sen. Clinton (D-N.Y.) was a candidate for her party's nomination for president. The court struck down provisions of the Bipartisan Campaign Reform Act of 2002 that prohibited independent expenditure ads that mention a candidate within 30 days of a primary or 90 days of a general election in which that candidate is running. By a 5-4 vote, the justices declared that the freedom of speech guarantee of the First Amendment prohibits restrictions on expenditures by individuals or corporations, including non-profit corporations.

In last month's *McCutcheon* decision, five justices ruled against limits on how much a donor may spend in total in contributions to a number of candidates in any year's federal elections.

"The Supreme Court is trying to take this country back to the days of the robber barons, allowing dark money to flood our elections," said Senate Rules Committee Chairman Charles Schumer (D-N.Y.) in announcing the amendment plan. "That needs to stop, and it needs to stop now." Schumer predicted that the vote would take place by year's end, and he called on Republicans to join with Democrats in supporting the amendment so "the wealthy can't drown out middle-class voices in our Democracy."

Udall's bill calls for an amendment that would authorize both Congress and state legislatures to enact limits on fundraising and spending for and by candidates for federal office and on independent expenditures by outside groups. It would deny the judiciary power to overturn such legislation. If passed by two thirds of each house of Congress, the measure would have to be ratified by three fourths of the states to become an amendment to the U.S. Constitution. It is unlikely to survive the first of those tests however, since congressional Republicans generally oppose campaign finance restrictions.

The First Amendment states unequivocally that "Congress shall make no law ... abridging the freedom of speech, or of the press." In the *Citizens United* and the *McCutcheon* rulings, the Supreme Court rejected the argument that the free speech limitations enacted by Congress serve a compelling government interest by limiting the corrupting influence of money in politics.

Concerning another legislative proposal threatening the freedom of speech, a [Boston Herald editorial](#) recently took Sen. Edward Markey (D-Mass.) to task over Markey's proposed "Hate Crime Reporting Act of 2014," a measure the *Herald* described as "a frankly chilling proposition." The bill would require an obscure federal agency, the National Telecommunications and Information Administration, to report to Congress on "the use of telecommunications ... to advocate and encourage violent acts and the



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commission of crimes of hate.” Noting that authority already exists to prosecute threats, the *Herald* warned that under Markey’s bill, “new government hall monitors” would determine “what qualifies as impermissible speech” and then recommend to Congress steps that would be, in the language of the bill, “appropriate and necessary to address such use of telecommunications.” Such actions must be, the bill says, “consistent with the First Amendment.” The *Herald*, among others, is more than a little skeptical about that assurance.

“And for the life of us,” the editorial proclaimed, “we can’t fathom any further government limit on Internet postings or talk radio callers that could be structured to protect an American’s right to free expression.” To civil liberties lawyer Harvey Silvergate the bill is “worse than merely silly. It is dangerous.... It is not up to Sen. Markey, nor to the federal government, to define for a free people what speech is, and is not, acceptable.”

Now the junior U.S. senator of Massachusetts, Markey, 67, served for more than 26 years in the U.S. House before winning a special election last June to fill the unexpired term of Sen. John Kerry, who had resigned from the Senate to become the U.S. Secretary of State. Markey is an Army veteran and holds a bachelor of arts degree from Boston College and a doctorate from the Boston College Law School. Somehow, with all that education and experience, the senator still does not comprehend that “Congress shall make no law” abridging the freedom of speech means that Congress shall make no law that abridges the freedom of speech. Perhaps he has been so busy preparing and promoting unconstitutional legislation that he hasn’t had time to read the Bill of Rights lately — or even have an aide brief him on it.



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