



Terrifying Senate Democrats Vote To Give Political Speech Less Protection Than Pornography

By Trevor Burrus

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This week, the Senate voted on and debated a [proposed](#) constitutional amendment that would give Congress and the states nearly unlimited power to regulate election spending. The 79-18 vote was only a cloture vote to advance the resolution to the floor, and the proposed amendment stands almost no chance of passing the high hurdle needed to become part of our Constitution—that is, a two-thirds vote from both houses of Congress and ratification by three-fourths (38) of the state legislatures.

Yet, even despite the resolution's poor political prospects, there is one word to best describe it: Terrifying. Even though this resolution can be properly classified as a political stunt, and even though some Senators (including some Republicans) only voted for it just to score political points, it is terrifying that this proposed amendment can even score political points.

If passed, the amendment would repeal the most important parts of the First Amendment, those that protect our right to advocate for political change. If passed, the amendment would create a world where pornography, videos depicting small animals being crushed, profanity-laden jackets, and Phelps family funeral protests all receive more protection from government interference than even the smallest amount of political speech.

By giving Congress and state governments essentially unlimited power to prohibit or regulate anyone who is spending money trying to “influence elections,” the Senate stooped to a level of governmental malfeasance previously reserved for the former Soviet Union, North Korea, Cuba, and Venezuela. In fact, if Venezuelan president Nicolás Maduro passed this same law, Americans would properly see it as a thinly veiled attempt to squelch the political rights of Venezuelans and to entrench himself in power.

In an America, though, where the words “spend money to influence elections” are increasingly spoken in same the ominous tones used to describe the actions of thieves and murderers, those who want to genuinely protect political speech are becoming distressingly rare. Many Democrats have fully jettisoned their historic support for free speech in the name of “equality of voice”—with numerous exceptions to that supposed equality principle, of course, for Oprah, the *New York Times*, actors, established political parties, and incumbent politicians.

Or perhaps not. Under this amendment, Congress could feasibly ban an hour-long Oprah special that featured current candidates, or even ban an all-star concert to raise awareness for some issue. The language of the resolution allows for “reasonable” regulations, up to and including prohibition, on spending money to influence elections. An Oprah special or an all-star concert certainly costs a lot of money, and they certainly influence elections.

Although the resolution claims to not impinge on freedom of the press, it is not clear who “the press” actually are. An Oprah special could easily be categorized as an “uncoordinated expenditure of a non-press media agency” and thus be prohibited. Oprah’s only recourse would be to plead that the categorization was “unreasonable,” an incredibly low standard of scrutiny that only requires that the regulation be “not crazy.”

Alternatively, Oprah could petition to government to be categorized as “press” and therefore be granted an exemption. Yet look carefully at what that means: In the world championed by the terrifying Senate Democrats, individuals will have to seek permission from the government to criticize it.

Look further into the crystal ball to imagine the world of the terrifying Senate Democrats: Hoping to continue to have their voice heard among the unequal voices of politicians, political parties, and the established press, the Koch brothers, Tom Steyer, and as-yet-unknown billionaires launch press organizations that have an ideological tilt, not unlike the Washington Free Beacon and the Huffington Post. Agencies promulgate guidelines and the IRS creates a new tax status. Congressional hearings are held over whether they qualify as “press” or illegitimate “influencers” on elections, a situation that mirrors the current controversy over the IRS’s targeting of conservative 501(c)(4)s.

Eventually, governmentally determined “bona fide press organizations” will have to register with the government in order to criticize it, and our previous right to free political speech will become a government permit, given out by the very officials whose careers are contingent upon political speech.

Given the current political climate, where some Democrats have called for the FCC to rescind Fox News’s license and the IRS targets conservative organizations to determine if they are illegitimately “influencing elections,” does any of this sound far-fetched?

But wait, it gets worse: The amendment could also effectively outlaw organizations like the ACLU, the Sierra Club, Planned Parenthood, as well as my own organization, the Cato Institute as illegitimate influencers of elections. Current law allows those organizations to avoid “electioneering communications” by abstaining from endorsing or criticizing candidates. But that

was the under the old, antiquated First Amendment, a relic of a bygone age in which people were properly skeptical about giving government the power “reasonable” censorship of those who “influence elections.”

Critics will respond that the resolution only regulates political spending, not political speech. This is one of the biggest pieces of piffle in modern political discourse. If regulating and drying up spending didn't affect any political speech, then the reformers wouldn't even want to do it. Rather than continuing to repeat that tired old line, Sen. Al Franken (D-MN) and other amendment supporters should come out and say precisely what they believe: that their view of “good government” requires giving them the broad power to censor political speech.

In short, the terrifying Senate Democrats should be called out for what they are: would be dictators with policy proposals that would make Pyongyang blush.

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