

# SENATE BILL REPORT

## SJM 8002

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As of January 29, 2021

**Brief Description:** Requesting an amendment to the United States Constitution on campaign finance reform.

**Sponsors:** Senators Kuderer, Hunt, Conway, Das, Dhingra, Lovelett, Muzzall, Nguyen, Robinson, Stanford and Wilson, C..

**Brief History:**

**Committee Activity:** State Government & Elections: 1/29/21.

**Brief Summary of Joint Memorial**

- Requests that Congress pass and send to the states for ratification a constitutional amendment giving legislatures the authority to regulate campaign contributions, distinguish between natural and artificial entities, prohibit artificial entities from making campaign contributions, and require timely disclosure of contributions.
- Requests a constitutional convention for amendments on the same matter if no amendment is sent by November 5, 2024.

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### SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

**Staff:** Samuel Brown (786-7470)

**Background:** Campaign Finance. There are a series of federal laws regulating financing political campaigns and disclosure of campaign contributions. Two primary examples are the Federal Election Campaign Act, enacted in 1971, and the Bipartisan Campaign Reform Act (BCRA), enacted in 2002.

The United States Supreme Court has considered the constitutionality of aspects of these laws on numerous occasions. While provisions requiring disclosure have been upheld,

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

recent opinions have found provisions limiting amounts individuals or entities may contribute to violate constitutional free speech protections. In the 2010 case *Citizens United v. Federal Election Commission*, the court struck down a BCRA provision prohibiting the use of corporate or union general treasury funds to pay for independent political advertisements. In 2014, the court found that a BCRA provision limiting the aggregate amount an individual can contribute to congressional elections during an election cycle violated the First Amendment in *McCutcheon v. Federal Election Commission*.

Constitutional Amendment Process. Under Article V of the United States Constitution, there are two methods for amending the Constitution:

- Congress may propose an amendment if approved by a two-thirds vote in both the House and Senate; or
- Congress must call a constitutional convention to propose amendments when requested by two-thirds of state legislatures.

Any amendment proposed under either method must be ratified by three-fourths of state legislatures to take effect.

Legislatures in Vermont, California, Illinois, New Jersey, and Rhode Island have approved resolutions requesting that Congress call a convention to amend the Constitution in response to the Supreme Court's opinion in *Citizens United v. Federal Election Commission*.

Initiative 735. In 2016, Washington voters passed Initiative 735, which requested that Washington's congressional delegation propose a constitutional amendment providing the following:

- constitutionally enumerated rights apply only to individual persons;
- spending money is not free speech protected under the First Amendment and the government is fully empowered to regulate campaign finance to ensure no person or entity gains undue influence over government and the political process;
- all political contributions and expenditures must be disclosed before an election in an accessible manner; and
- the proposed amendment does not limit the people's First Amendment rights.

**Summary of Joint Memorial:** The Legislature requests that Congress pass and send to the states a proposed constitutional amendment returning to Congress and state legislatures the authority to:

- regulate the size and timing of campaign contributions and independent expenditures;
- distinguish between natural persons and artificial entities, including prohibiting artificial entities from making campaign contributions; and
- requiring timely disclosure of all campaign contributions.

If Congress does not pass a proposed constitutional amendment containing these provisions by November 5, 2024, the Legislature requests that Congress call a convention for the purpose of amending the Constitution to include these provisions as soon as two-thirds of

the states have submitted requests for a constitutional convention.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: Campaign spending has grown exponentially in the last decade since *Citizens United*. We are limited in our ability to regulate campaign finance despite the overwhelming public desire to do so. Just 400 individuals account for 21 percent of all campaign contributions. Officials are increasingly dependent on the very rich and out-of-state interests who provide campaign donations. Our system values money and the bottom line over human lives. My co-worker is dead because he could not afford to walk away from a job where his safety concerns were disregarded. This is an important part of the wake-up call our country has needed for a long time. Campaign finance reform gets consistent support from Americans of all political persuasions, speaking to the idea that the wealthy have too much influence. The nullification clause in this legislation makes it more robust. The majority of constitutional amendments were preceded by campaigns from the states for a convention, applying pressure on Congress.

Trust in our democratic institutions is dangerously low, and this would restore trust in the system by showing it does not matter how much money you have. Multinational corporations who aren't taxed in the United States should not be able to claim the same right to free speech as American citizens. After the 2020 election, things have gotten even worse - the government has not handled the pandemic, younger generations are losing hope and economic opportunities. Money in politics sows despair and discord as people see how little they have, particularly with access to food and health care.

This is a common sense and American thing to do - talking about how to get corporate fingers out of our democracy. Medicine is so expensive because of the effects of money on politics. I don't believe I can raise a family and live without fear until this issue is addressed. This bill attempts to apply the most pressure on Congress so it acknowledges the depth of despair and acts on it.

CON: Anything related to ballot measures with this legislation makes no sense because the people ultimately vote on the measure. Limiting the ability of citizens to spend money to get ideas on the ballot runs contrary to the First Amendment. There is historical precedent for a runaway convention. There should be a time limit on the call for a convention. This is concerning because there are no guarantees against a runaway convention. Enemies of freedom will try and take control of the convention process in spite of claims that the call for a convention can be rescinded.

This is a high-risk endeavor and we have much to lose. Well-funded groups would see a constitutional convention as a change to affect profound policy changes. We do not need more chaos and uncertainty in this time of crisis. The Founding Fathers devised a system that puts everything in place to deal with these issues without a constitutional convention. There is a reason the Constitution is difficult to amend. This is not the proper method for proposing a single amendment. There needs to be a sunset clause to show when the attempt is considered to have failed.

**Persons Testifying:** PRO: Senator Patty Kuderer, Prime Sponsor; Joseph Gardi, Wolf-PAC; Collin Carlson, Wolf-PAC; Jake Anderson, Wolf-PAC; Cassidy Faber, Wolf-PAC; Martin Talarico, Wolf-PAC; Joelle Craft; Lawrence Lessig; D'Arcy Monforte; Kimberly Larsen; Hilary Andersen; Jan Deininger.

CON: Tim Eyman, Permanent Offense; Sandra Belzer, Republican Liberty Caucus; Stephen Richter, The John Birch Society; Chuck Beck; Ezekiel Lyen; Suzanne Loeb; Celeste Vandal; Jay Hunter.

**Persons Signed In To Testify But Not Testifying:** No one.