

SENATE BILL REPORT

SJM 8001

As Reported by Senate Committee On:
State Government, Tribal Relations & Elections, February 22, 2019

Brief Description: Calling on Congress to exercise its authority under Article V of the United States Constitution to regulate money spent on elections.

Sponsors: Senators Hasegawa and Frockt.

Brief History:

Committee Activity: State Government, Tribal Relations & Elections: 2/22/19 [DPS, w/oRec].

Brief Summary of First Substitute Joint Memorial

- Requests that Congress pass, and send to the states for ratification, an amendment to the Constitution regarding campaign finance regulation.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & ELECTIONS

Majority Report: That Substitute Senate Joint Memorial No. 8001 be substituted therefor, and the substitute joint memorial do pass.

Signed by Senators Hunt, Chair; Kuderer, Vice Chair; Hasegawa and Takko.

Minority Report: That it be referred without recommendation.

Signed by Senator Zeiger, Ranking Member.

Staff: Samuel Brown (786-7470)

Background: Campaign Finance. There are a series of federal laws regulating the financing of 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, recent opinions have found provisions limiting amounts individuals or entities may contribute to

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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.
- 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.

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 bill as referred to committee not considered.

Summary of Joint Memorial (First Substitute): The Legislature requests that Congress pass, and send to the states for ratification, a constitutional amendment that returning to Congress and state legislatures the authority to:

- regulate the size and timing of campaign contributions;
- distinguish between natural persons and artificial entities, including prohibiting artificial entities from spending money to influence elections; and
- require timely public disclosure of campaign contributions.

The amendment must also provide that:

- constitutionally enumerated rights apply only to individual persons;
- spending money is not free speech protected under the First Amendment;
- 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.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony on First Substitute: PRO: Corporate personhood has elevated conglomerations of money to the status of human persons, but corporations never die. Corporations seem like they are running the world. We are trying to re-assert control over our own democracy. Asserting that a person is a natural human being promotes democracy. This contains the initiative that was passed by the people. Corporations should be treated differently under the law, especially when it comes to elections. There is no reason to believe we can't amend the Constitution again, especially when it's so vital to democracy. This memorial is a letter from the Legislature to its citizens, telling them their votes count and it is standing by them. This will be useful when a proposed amendment comes forward for ratification.

CON: This undermines treasured political freedoms. Ballot measures cannot be bribed like candidates can. This would restrict freedom of association. The unfortunate reality is that political speech has some cost attached to it somehow.

Persons Testifying: PRO: Senator Bob Hasegawa, Prime Sponsor; Tomi Stefnik, citizen; Cindy Black, Executive Director, Fix Democracy First.

CON: Rebecca Faust, citizen.

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