

# SENATE BILL REPORT

## SJM 8002

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As of February 10, 2023

**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, Lovelett, Saldaña, Valdez and Wilson, C..

**Brief History:**

**Committee Activity:** State Government & Elections: 2/10/23.

**Brief Summary of Bill**

- Calls for Congress to pass and submit to the states for ratification a constitutional amendment allowing Congress and state legislatures to regulate campaign contributions.

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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.

Federal courts have 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 violate constitutional free speech protections. In the 2010 case *Citizens United v. Federal Election Commission*, the Supreme Court struck down a BCRA provision prohibiting the use of corporate or union general treasury funds to pay for independent political advertisements. That same year, the D.C. Circuit Court of Appeals struck down BCRA's contribution limits to groups making independent expenditures in *SpeechNow v. Federal Election Commission*.

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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.*

In 2014, the Supreme 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 Bill:** 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.

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

**Staff Summary of Public Testimony:** PRO: Congress is unlikely to pass a constitutional amendment in the next few years, so this memorial is the best way to proceed with making change. The people will never accumulate as much money into a political process as corporations can. This is an attempt to get real voices back into the process so that money doesn't define our political conversations. A constitutional convention sits above and writes the Constitution; it can't be limited or controlled to focus on a single issue.

**Persons Testifying:** PRO: Senator Bob Hasegawa, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** PRO: Cindy Black, Fix Democracy First; Linda Brewster.

CON: Kathleen Cooper; Amy Gleixner.