
**State Government & Tribal Relations
Committee**

HJM 4004

Brief Description: Asking Congress to call a limited convention, authorized under Article V of the United States Constitution, for the purpose of proposing a free and fair elections amendment to that Constitution.

Sponsors: Representatives Riccelli, Wylie, Kirby, Peterson, Cody, Fitzgibbon, Dolan, Orwall, Gregerson, Springer, Senn, Frame, Tarleton, Valdez, Ormsby and Pollet.

Brief Summary of Bill

Petitions the United States Congress to call a convention to propose a constitutional amendment in response to the United State Supreme Court's decision in *Citizens United v. Federal Election Commission*.

Hearing Date: 2/15/19

Staff: Jason Zolle (786-7124).

Background:

Amending the United States Constitution.

Article V of the United States Constitution provides the process for amending the Constitution. An amendment must first be formally proposed, and it then must be ratified by the states.

Proposing an amendment. Article V provides two methods for formally proposing an amendment. The first method lies with the United States Congress. Two-thirds of each of the House of Representatives and the Senate may pass a joint resolution that formally proposes an amendment and sends it to the states for ratification. The resolution does not need to be signed

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

by, and cannot be vetoed by, the President. This is the process by which all 33 amendments submitted to the states have originated.

The second method lies with the states. If two-thirds of the states (34 or more) apply for a convention to propose amendments, Congress is required to call such a convention. Over the years, every state except for Hawaii has applied for a convention for one purpose or another. There is no official count of how many applications have been submitted, although the House of Representatives has begun to track them. As this method for proposing constitutional conventions has never been used, there are some outstanding questions about how it would work in practice.

Washington has called for a convention three times in its history. In 1903 it called for a convention for an amendment providing for the direct election of U.S. senators (the 17th Amendment, which addresses this topic, was proposed by Congress after 28 states had called for a convention). The state again called for a convention in 1909 to prohibit polygamy and in 1963 to allow states with initiative processes to establish legislative districts by non-proportional methods, an attempt to overrule the United States Supreme Court's 1962 decision in *Baker v. Carr*.

Ratifying an amendment. After an amendment is officially proposed, the amendment becomes valid only after it is ratified by three-fourths (38 or more) of the states. States may ratify an amendment by passing it through the legislature or by approving it at a state convention. Once the requisite number of states ratify the amendment, it goes into effect without any further action required. There have been 27 ratified amendments to the United States Constitution.

Citizens United v. Federal Election Commission (2010).

Legal background. In the Tillman Act of 1907, Congress prohibited corporations from making monetary contributions in connection with elections for President or Congress. Amended several times over the years, federal law as of 2003 prohibited corporations and unions from using their general treasury funds to make direct contributions to federal candidates or to sponsor advertisements that expressly advocated the election or defeat of a federal candidate. To do so was a felony.

The case. In January 2008 the nonprofit organization Citizens United released a documentary about then-Senator Hilary Clinton, who was a candidate in the Democratic Party's 2008 presidential primary. Citizens United wanted to promote its movie by running advertisements on television. Because the documentary was an express appeal to vote against Clinton, the advertisements promoting it were barred by federal law.

Citizens United sued the Federal Election Commission (FEC), arguing that the law prohibiting its advertisements was unconstitutional. The case made its way to the United States Supreme Court in 2009.

The Supreme Court's opinion. In a January 2010 opinion written by Justice Kennedy on behalf of five justices, the Supreme Court concluded that the federal law prohibiting Citizen United's advertisements violated the First Amendment's guarantee of free speech.

The Supreme Court gave three other examples of speech that would be prohibited under the same campaign finance law:

- the Sierra Club runs an advertisement urging the public to disapprove of a congressman who favors logging in National Forests;
- the National Rifle Association publishes a book urging the public to vote against an incumbent senator who supports a handgun ban; and
- the American Civil Liberties Union creates a website telling the public to vote for a presidential candidate who defends free speech.

Prohibiting such political speech, Justice Kennedy reasoned, was a "classic example[] of censorship" in violation of the First Amendment.

The Court had previously struck down a Massachusetts law that prohibited corporations from purchasing advertisements related to referendums on the ballot. But the Court also had upheld a Michigan law that prohibited corporations from making independent expenditures to support or oppose candidates. Faced with somewhat conflicting precedent, the Supreme Court overruled the latter case. The Court concluded that the government may not equalize the relative ability of people and groups to influence the outcome of elections. The Court also reasoned that independent expenditures by a corporation on behalf of a candidate do not, without more, give rise to the appearance of corruption.

A dissent written by Justice Stevens on behalf of four justices viewed the issue differently. The restrictions on corporate political advertisements were not a total ban, Justice Stevens reasoned, because Citizens United could have legally used a political action committee to promote its advertisements. Justice Stevens also believed that the government's antidistortion and anticorruption interests were sufficient to uphold the law.

Eight members of the Court joined together to reject Citizen United's additional challenge to disclaimer and disclosure requirements under federal law. The Court concluded that the government had sufficiently important reasons to require political advertisements to state that they were not authorized by a candidate and to disclose the source of their funding. Justice Thomas dissented from this holding, reasoning that people have the right to anonymously donate to political causes in order to avoid retaliation.

Calls to Amend the Constitution.

Five states have applied to Congress calling for a convention for state delegates to propose a constitutional amendment in response to the *Citizens United* decision. Those states are California, Illinois, New Jersey, Rhode Island, and Vermont.

Ten other states—Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Nevada, New Mexico, New York, Oregon, and West Virginia—have passed resolutions or sent letters to Congress on behalf of legislative majorities calling for Congress to propose an amendment in response to *Citizens United*. California, New Jersey, and Rhode Island have also made such a request of Congress.

In addition, citizens in four states have passed initiatives urging their federal congressional delegations to propose an amendment in response to *Citizens United*. Those states are

California, Colorado, Montana, and Washington. Maine passed a joint resolution similarly calling on its congressional delegation to propose an amendment.

Washington's initiative (I-735) passed in 2016, receiving 62.82 percent of 3,061,942 total votes.

Summary of Bill:

The Washington State Legislature petitions Congress to call a convention for state delegates to propose a constitutional amendment to address concerns raised by the *Citizens United* decision and related cases. The state will send 10 delegates to the convention—one from each federal congressional district—half of which are state and local elected officials and half of which are elected for this purpose.

Appropriation: None.

Fiscal Note: Not requested.