

HOUSE BILL REPORT

HJM 4001

As Passed House:
March 7, 2013

Brief Description: Requesting an amendment to the United States Constitution to return the authority to regulate election campaign contributions to congress and state legislatures.

Sponsors: Representatives Pedersen, Hope, Carlyle, Goodman, Kagi, Sells, Van De Wege, Haigh, Springer, Lytton, Tharinger, Jinkins, Hunt, Cody, Morrell, Ormsby, Hudgins, Pettigrew, Moeller, Upthegrove, Reykdal, Fitzgibbon, Ryu, Liias, Roberts, Maxwell, Sawyer, Riccelli, Farrell, Pollet, Moscoso, Santos and Hansen.

Brief History:

Committee Activity:

Government Operations & Elections: 2/13/13, 2/20/13 [DP].

Floor Activity:

Passed House: 3/7/13, 55-42.

Brief Summary of Bill

- Requests that Congress pass and send to the states for ratification a constitutional amendment returning the authority to regulate campaign financing to Congress and state legislatures.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass. Signed by 6 members: Representatives Hunt, Chair; Bergquist, Vice Chair; Carlyle, Fitzgibbon, Orwall and Van De Wege.

Minority Report: Do not pass. Signed by 5 members: Representatives Buys, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Alexander, Kristiansen and Manweller.

Staff: Jasmine Vasavada (786-7301).

Background:

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.

Over the past three decades, the Supreme Court of the United States (Supreme Court) has struck down several congressional campaign finance reform efforts on First Amendment grounds. In 1974 Congress amended the Federal Election Campaign Act of 1971 to limit the amount of money any individual could contribute to a political campaign, and to require public disclosure of all contributions over a certain amount. In the case of *Buckley v. Valeo*, the Supreme Court upheld disclosure requirements and restrictions on individual contributions, but ruled that the government cannot cap the amount of personal money that an individual can spend on his or her own campaign. In the following decades, donations of "soft money" were increasingly used to circumvent campaign finance regulations, donations made not to a clearly identified candidate but instead to political parties for party building activities or issue advertisements.

Congress ultimately passed a bipartisan Campaign Reform Act of 2002 (often denominated "McCain-Feingold," after its prime sponsors), which prohibited national political parties from spending soft money, prohibited groups associated with corporations and unions from spending money to advocate for or against candidates just before elections, and required candidates to appear in their advertisements and directly take credit for them. In 2010 in *Citizens United v. the Federal Election Commission (Citizens United)*, the Supreme Court struck down large portions of this law. As a result, corporations and labor organizations are no longer subject to bans on independent spending and the use of general treasury funds for federal campaign advertising.

Since *Citizens United*, there has been a proliferation of super Political Action Committees (super PACs). Super PACs are restricted from coordinating with campaigns and limited in their ability to donate to campaigns directly, but may otherwise spend unlimited funds to advocate their agendas, by purchasing television advertising, for example. Corporations, unions, and other groups can contribute an unlimited amount of money to these outside organizations.

Although the *Citizens United* ruling did not directly affect existing state laws, the National Conference of State Legislatures reports that many states with laws limiting corporate and union spending in statewide campaigns responded to the ruling by repealing independent expenditure bans, either through legislative action or through a ruling by the Attorney General, Secretary of State, Elections Board, or Ethics Commission.

Summary of Bill:

The Legislature requests that Congress pass and send to the states for ratification a constitutional amendment returning the authority to regulate campaign financing to Congress and state legislatures.

Appropriation: None.

Fiscal Note: Not requested.

Staff Summary of Public Testimony:

(In support) The Supreme Court has aggressively departed from tradition in how it is reading the First Amendment. As a consequence, there is mounting concern about the influence of money in politics and the ability of the people's voice to be heard. The best way to ensure that the ground rules work is to clarify, in the United States Constitution, that Congress and the states have the power to regulate and restrict the size of financial contributions to political candidates and ballot initiatives. Although a joint memorial like this is sometimes referred to as a letter to Santa Claus, this memorial can have an important effect on the political process.

Washington should make good on the promise of government of, by, and for the people. This is a nonpartisan issue uniting those who believe in liberty, opportunity, and representative self-government. Passage of this legislation is a necessary first step to ensuring the nation does not lose its promise as a representative republic. Allowing unlimited amounts of spending in elections creates an unequal balance of power between people and corporations. A corporation can flood elections in a town where the local government was attempting to adopt measures to curb abuses by that corporation. If corporations want to contribute money to political campaigns, they should be required to do so openly with full transparency.

This memorial would allow Washington to join others across the nation in demanding restoration of the state's prerogative in controlling the spending of money in elections. *Citizens United* indirectly provided support for the creation of Super PACs, allowing 501(c)(4) advocacy groups and corporations to spend much more money to influence elections. Spending tripled between the 2008 and 2012 general elections. Thirty-two Super PAC donors with an average contribution of \$9.9 million matched all small voter contributions in the last general election. This favors anonymous donors over a well-informed electorate. Nonprofit groups spent big in 2012 and were able to hide their identity from the voters. "Dark money" sources paid for nearly 60 percent of all television advertising. People have travelled from clear across the state to support this measure. The public is extremely aware of the problem of "dark money" in politics, but people are cynical that their officials will not do anything about it. Many people surveyed about politicians report that politicians are corrupt because of the influence of money in politics. A ballot initiative filed in the city of Spokane last year garnered 40,000 signatures from people who are very unhappy about unlimited and largely unregulated campaign spending. This is part of a huge national movement. A multinational corporation that earns \$20 billion across the world in a year can make tens of millions of dollars in hard money contributions, untold amounts in soft money contributions, and, through its might, avoid paying taxes. A corporation can influence the process through its employees and stockholders, who are individual people, but should not be able to draw upon the treasury of the corporation. In at least one state, more than half of the money spent in a state election race came from out-of-state. This undermines representational democracy.

(In support with concerns) The unequal political advantage that corporations have over the people, via the court's rulings interpreting the First Amendment, is not the only problem. The resolution fails to address the issue of corporate personhood. A constitutional amendment that also addresses corporate personhood, distinguishing between the rights of natural persons and the privileges of corporations, would not dismantle corporations, but would restore supervision by "We the People."

(Opposed) Money is not speech, and regulating money will not stop what is happening. Put regulations on the message that is going out, check it for accuracy, and check it for civility. This bill will not solve the problem.

Persons Testifying: (In support) Representative Pedersen, prime sponsor; Micaela Preskill, Washington Public Interest Research Group; Jim Street, Seth Armstrong, and Nancy Amidei, Washington State Amendment; Mary Murphy, Chris Nerison, Bonnie Mager, and Rosemarie Bisiar, Spokane Moves to Amend the Constitution; Linda Sutton; Michael Savoca; Oske Buckley, Free Speech for People; Ariel Davis; Patricia Chapman, University Unitarian Church for Getting Money Out of Politics; Mike Regan, Move to Amend; and Al Kapp.

(In support with concerns) Jackie Aase.

(Opposed) Virginia Beech.

Persons Signed In To Testify But Not Testifying: None.