

# SENATE BILL REPORT

## SJM 8001

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As of January 23, 2018

**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, Hunt and Keiser.

**Brief History:**

**Committee Activity:** State Government: 1/11/17.

**Brief Summary of Joint Memorial**

- Requests that Congress pass, and send to the states for ratification, an amendment to the Constitution to give the legislative branch the authority to regulate campaign contributions, distinguish between natural persons and artificial entities, and require timely disclosure of campaign contributions.

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### SENATE COMMITTEE ON STATE GOVERNMENT

**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 violate constitutional free speech protections. In the 2010 case of *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 the case known as *McCutcheon 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 a part of the legislation nor does it constitute a statement of legislative intent.*

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

1. Congress may propose an amendment if approved by a two-thirds vote in both the House and Senate.
2. 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 and California 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 for ratification, a constitutional amendment 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.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Staff Summary of Public Testimony:** PRO: People are dissatisfied with the amount of money that is flowing into our elections. This is a problem that dates back to shortly after the enactment of the Fourteenth Amendment, when corporations began trying to get the rights of personhood guaranteed by the Constitution. While corporate charters initially limited corporations' purposes, that is no longer the case. Corporations, unlike people, do not die, and keep amassing power. This Joint Memorial is intended to clarify that rights like freedom of speech only apply to natural persons. This Joint Memorial does not call for a convention, just a specific amendment. There's no guarantee of a narrowly-scoped constitutional

convention. This is the process that has been followed for all 27 constitutional amendments we have.

**Persons Testifying:** PRO: Senator Bob Hasegawa, Prime Sponsor.

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