

SENATE BILL REPORT

SJM 8002

As of February 25, 2019

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: Senators Kuderer, Palumbo, Wellman and Takko.

Brief History:

Committee Activity: State Government, Tribal Relations & Elections: 2/22/19.

Brief Summary of Joint Memorial

- Requests that Congress call a convention to amend the Constitution regarding campaign finance and political spending.

SENATE COMMITTEE ON STATE GOVERNMENT, TRIBAL RELATIONS & 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.

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 *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*.

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:

- 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 Joint Memorial: The Legislature requests that Congress call a convention for the purpose of amending the Constitution on the issue of campaign finance and political spending as soon as two-thirds of the states have submitted requests for a constitutional convention.

Appropriation: None.

Fiscal Note: Not requested.

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

Staff Summary of Public Testimony: PRO: There are serious concerns about the corrupting influence of money in our democracy. Whether an initiative passes or fails is largely determined by which side has more money. We need to make sure we are using all strategies to put optimal pressure on Congress to act to amend the Constitution. There is one issue that unites the vast majority of us—getting corporate money out of our political system. This is not a left or right issue, but an American issue. There is no danger of a runaway convention. This is an urgent issue and we have to act now. Congress spends more time raising money for the next election than helping constituents with their issues. The significance of individuals' voices has become less important. This is a logical and historically proven strategy - convention applications pressure Congress to act. The movement for a constitutional convention has persuaded Congress to follow the lead of the states and act on campaign finance reform. Washington has never operated or made

decisions out of fear—we should not fear a runaway convention. Campaign finance affects most legislative outcomes—if this continues, it will lead to increased instability and sectional violence. Empires fail when people no longer believe in it—this happens when people lose their votes. We lobby for changes to laws, but are told that industry and other lobbies have too much money.

CON: There is precedent for a runaway convention—the only time we have had a constitutional convention, the delegates scrapped the Articles of Confederation and created a whole new Constitution. Every constitutional amendment has been passed by Congress sending an amendment to the states to ratify. Political bodies would not be able to select objective delegates to protect our rights. There is historical precedent for changing the method of ratification at the convention. This application for a constitutional convention should sunset after a reasonable amount of time. Given the procedural control Congress will have over a constitutional convention, we might as well just ask Congress to submit an amendment for ratification. We do not know what the ratification process will be if there is a constitutional convention. The convention could make its own rules and set its own agenda—courts or Congress cannot intervene. Interest groups would spend money to influence delegate selection. Freedoms of press, speech, and association should not be restricted. The Constitution has endured and it would be foolhardy to tinker with it.

Persons Testifying: PRO: Senator Patty Kuderer, prime sponsor; D'Arcy Monforte, John Shen, Cenk Uygur, Michael Monetta, Sara Smith, Collin Carlson, Wolf-PAC; John Novak, VIPER PAC; Courtney N Love, Our Revolution Pierce County; Danny Hankins, Clay Johnson, Willow Thompson, Jeff Eidsness, Philip Hymel, Cassidy Faber, Reed Rasmussen, citizens.

CON: James Jackson, Stephen Richter, Charles Beck, Gracie Sudano, Ezekiel Lyen, Calvin Riley, Celeste Vandal, Rebecca Faust, Jerry Cooper; citizens.

Persons Signed In To Testify But Not Testifying: None.