

SENATE BILL REPORT

SJM 8000

As of February 10, 2023

Brief Description: Concerning contributions to election campaigns.

Sponsors: Senators Kuderer, Shewmake, Cleveland, Frame, Lovelett, Nobles, Valdez and Wilson, C..

Brief History:

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

Brief Summary of Bill

- Requests that Congress pass and send to the states for ratification a constitutional amendment giving legislatures the authority to regulate campaign contributions, distinguish between natural and artificial entities, prohibit artificial entities from making campaign contributions, and require timely disclosure of contributions.
- Requests a constitutional convention for amendments on the same matter if no amendment is sent by November 5, 2026.

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

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.

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*. 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 a proposed constitutional amendment returning to Congress and state legislatures the authority to:

- regulate the size and timing of campaign contributions and independent expenditures;
- distinguish between natural persons and artificial entities, including prohibiting artificial entities from making campaign contributions; and
- require timely disclosure of all campaign contributions.

If Congress does not pass a proposed constitutional amendment containing these provisions by November 5, 2026, the Legislature requests that Congress call a convention for the

purpose of amending the Constitution to include these provisions as soon as two-thirds of the states have submitted requests for a constitutional convention on the same subject. The request is rescinded if the convention is not limited to this specific purpose. The Legislature urges the legislatures of other states to pass similar resolutions.

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: Money is not free speech—it drowns the voices of most Americans and erodes democracy. Most dark money originates from out of state and is not spent with Washington’s best interest at heart. Dark money exaggerates underrepresentation by concentrating power among the wealthy. Voters stop participating because the influence of money means their policies aren't being pursued. Accepting dark money is more important to politicians on both sides of the aisle than caring for their everyday constituents. Because of dark money and greed, people are at risk of having to serve overseas in unnecessary wars and struggle to get housing, insurance, and medical care. The state has not dealt with its obligations under *McCleary* because of money in politics. Tribal sovereignty is threatened by the influence of big money on politics. Passing this memorial will show that Washington cares about its people. It must be passed so that Congress takes action. If we don't force Congress to do something, with the threat of a convention, they will not act. This will not lead to a runaway convention, it's a call for a convention on a single issue.

CON: Passing this memorial will not be enough to create change; instead, it will lead to a runaway convention. Delegates may still be swayed by dark money. This method is wrong, and the state should instead pass SJM 8002. Constituents need to start by writing to their Congressional representatives, since amending the Constitution is their responsibility.

Persons Testifying: PRO: Senator Patty Kuderer, Prime Sponsor; Joelle Craft; Sarah Steever, Wolf PAC; Marc Mixon, Wolf-Pac; Anita Schumacher, Wolf-Pac; Dennis Graham, Wolf-Pac; Philip Hymel, Wolf-Pac; Jeff Eidsness, Wolf-Pac; Sam Fieldman, Wolf-Pac.

CON: Charles Beck; Ralph Powers; Chuck Gades; Ezekiel Lyen; Stephen Richter; Timothy Ramsey, Retired.

Persons Signed In To Testify But Not Testifying: PRO: John Godfrey, Washington CAN; Cassidy Faber; JAMES LEE.

CON: Paul Rising; Alan Van Cleave; Hannah Joy; Lawrence Cook; Paul Glumaz, N/A.