

Testimony in support of HJM 2 and HJM 4, April 1, 2015

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Chair Hoyle, members of the committee, I am Charlie Swanson from Eugene, a member of We the People-Eugene. I urge that the legislature merge the best parts of HJM 2 and HJM 4, and pass an article V convention application.

Some may argue that the legislature needs to pass HJM 2 rather than HJM 4, since HJM 2 is a resolution put forward by Wolf-PAC, and the other states that have passed article V convention applications (Vermont, California, Illinois, and New Jersey) passed Wolf-PAC resolutions. But these resolutions are slightly different, some having been amended by legislators of the states in which they passed. Such amendments should happen in Oregon, merging not just the best parts of HJM 2, HJM 4, but also 2013's adopted HJM 6 (which called on Congress to propose an amendment, rather than calling for a convention to do so).

One amendment to HJM 2 that should be considered is changing section 1 of the "resolved" portion to match what Illinois' 2015 article V convention application says:

"This application shall be deemed an application to address each and any of the subjects listed in this resolution; for the purposes of determining whether two-thirds of the states have applied for a convention addressing any subject, this application is to be aggregated with the applications of any other state legislatures limited to one or more of the subjects listed in this resolution."

Some may argue that the legislature needs to pass HJM 4 rather than HJM 2, since HJM 4 is closer to the spirit of 2013's HJM 6, and that HJM 2 does not include anything related to corporate constitutional rights. But HJM 4 may be too prescriptive about an amendment, and could be considered part of the ratification process rather than the amendment proposal process.

More importantly, HJM 4 has some troubling language. In section (1)(b) of the "resolved" portion, there is the following phrase that clearly describes an appropriate reason for regulating political spending: *"To ensure a level playing field for all people regardless of their economic status, the people empower and direct federal, state and local governments to regulate, limit or prohibit the contribution and spending of moneys for political purposes."* The troubling aspect is the preceding clause: *"Money is property and may not be construed as speech."* Perhaps this is just innocuous and superfluous, and is intended to mean nothing other than the following appropriate "levelling the playing field" reason for regulating political spending. But if something to this effect were actually in an amendment, it is easy to imagine the courts saying that a law prohibiting the spending of money for a political purpose that the legislative body disagreed with was constitutional – after all, money may not be construed as speech, presumably so that the spending of money for political purposes does not have any constitutional protection and can be regulated however governments wish.

The only new reason that governments should be able to regulate political spending is what the Court unequivocally rejected in their *Buckley v. Valeo* (1976) decision - the promotion of equality of political influence. This new reason is to be added to the prevention of corruption or the appearance of corruption, the only compelling reason that the Court currently allows for curbing our first amendment freedom of speech related to election spending. Many would say

that the ridiculously unequal political spending that now exists clearly leads to corruption, but since the Supreme Court disagrees, we need an amendment.

With this in mind, HJM 2 has a better template to follow for an article V application, but it does not do a sufficient job of describing the problems to be addressed by an amendment. Perhaps the most important point in HJM 4 and HJM 6 that is not in HJM 2 is that the problem is not just money in elections, but money in politics more generally – money from “those who spend excessively to influence governmental or political decisions.” HJM 2 should be amended to include this problem.

The proposed HJM 4 and 2013’s adopted HJM 6 both recognize that court given corporate “rights” are inappropriate, and that people and corporations are politically different. People need to retain their first amendment right “peaceably to assemble”, and to not lose their rights even if they are assembled in a corporate form. But corporations themselves have no opinions. Another “whereas” should be added to HJM 2, something along the lines of:

“Whereas, only organizations funded solely by human beings for the purpose of furthering their joint political views may legitimately represent those views;”

A fear that often comes up with an article V convention is that the convention will “run away” and destroy our constitution. Presumably states will choose their delegates wisely, and most importantly, any amendment proposed by the convention must be ratified by three-fourths of the states to take effect. If three-fourths of the states want a change to the Constitution to make it worse, it seems enough of them could elect Senators and Representatives to get 2/3 of Congress to propose a bad amendment. Among the issues that get mentioned as possible constitutional amendments, the only one that gets more than 70% of support from Republicans and Democrats independently is that money in politics is a problem. There is no other issue one can imagine getting approval from three-fourths of the states – even this issue will have serious trouble in the short term. The convention may run away, but 75% of the state legislatures will not.

Thank you for the opportunity to present testimony to the committee.