



**Testimony of Kimberly McCullough, Legislative Director
In Opposition to HJM 201
House Committee on Rules
February 10, 2016**

Chair Williamson and Members of the Committee:

Thank you for the opportunity to provide testimony in opposition to HJM 201, which petitions Congress to call a constitutional convention to address the United States Supreme Court ruling in *Citizens United v. Federal Election Commission*, 558 US 310 (2010). Although we know this memorial is proposed with the best of intentions, the ACLU of Oregon is deeply concerned about the dangerous and unintended consequences that are likely to result from (1) calling a constitutional convention for the first time in the history of our republic, and (2) limiting the protections of the First Amendment.

A constitutional convention places our entire form of government and all of our carefully crafted freedoms and liberties at great risk.

In the entire history of our republic, a constitutional convention has never been convened, and it is no wonder.¹ To do so is a radical act that places our entire Constitution at risk. In recent years, however, numerous bills have been circulated among state legislatures calling for a convention. Some, like the memorials before you today, are based in a desire to address campaign finance issues. Others center on the desire for a federal balanced budget amendment and are modeled after a bill circulated by ALEC (the American Legislative Exchange Council).

While the idea of a constitutional convention may sound desirable and perhaps even necessary, the problem is that a convention is likely to create far worse problems than its proponents aim to solve. Why?

- Most importantly, a constitutional convention may not be confined to a single subject, nor is there any way to protect against a convention rewriting our nation's founding document wholesale. This means that those calling for various rights-limiting constitutional amendments in years past will undoubtedly advocate for additional changes on subjects as varied as reproductive rights and gun control.²

¹ Under Article V of the Constitution, there are two methods to amend the constitution. While a constitutional convention has never been convened, the other method of approving a specific amendment by two-thirds of the House and senate and three-fourths of the states has been repeated 27 times.

² To give a few examples, the ACLU has lobbied against a Flag Desecration Amendment (criminalizing expression), a School Prayer Amendment (giving school officials authority to mandate how, when and where students pray), and a Federal Marriage Amendment (denying same-sex couples marriage rights).

- There are no standards governing the conduct and procedures of a constitutional convention.
- There is no way to ensure that delegates will truly represent the will of the people.
- There is no mechanism for ensuring that the rules governing the convention's conduct are fair.

The ACLU finds the prospect of such a convention particularly troubling in light of the fact that many of our contemporary policymakers have strayed far from the wisdom of our Founders, particularly in the realm of checks on government power. We live in an age when national security is often used as the basis for the violation of individual rights. In order to challenge abuses of power, such as the overreaching of the NSA and executive branch secrecy, we all too often have to call on our Founders' wisdom, rooted in our Constitution and Bill of Rights. Such wisdom should not be lightly abandoned simply because we are frustrated and disillusioned by politics, particularly when we have very little idea exactly which direction such a decision will take us.

Amending the First Amendment in order to address the *Citizens United* decision will “fundamentally ‘break’ the Constitution and endanger civil rights and civil liberties for generations.”³

Citizens United is a complicated opinion, following a long line of complex case law. Although the opinion spans a massive 183 pages,⁴ it has been unfortunately reduced to two short sound bites in common discourse: corporations are people, and money is speech. This reductionist view makes it easy to believe that a simple solution will solve all of our problems: declare that corporations are not people, and declare that money is not speech. If only it was so simple...

Instead, constitutional amendments to address *Citizens United*, such as the amendment proposed by Senator Tom Udall (D-NM) last year, would lead directly to government censorship of political speech and a whole host of unintended consequences that would actually undermine the goals such amendments are intended to advance.⁵ Here are just two hypotheticals to demonstrate the type of consequences that would follow:

- Congress could criminalize a blog on the Huffington Post by Gene Karpinski, president of the League of Conservation Voters, that accuses Sen. Marco Rubio (R-FL) of being a “climate change denier.”

³ Laura W. Murphy, ‘Fixing’ *Citizens United* Will Break the Constitution, Huffington Post, June 28, 2012.

⁴ The *Citizens United* decision may be viewed online at <http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>.

⁵ Rather than setting out those consequences at length in this testimony, we encourage you to read an ACLU letter that lays out the issues with particular clarity, available at https://www.aclu.org/sites/default/files/assets/6-3-14_-_udall_amendment_letter_final.pdf.

- A state election agency, run by a corrupt patronage appointee, could use state law to limit speech by anti-corruption groups supporting reform.⁶

Please don't misconstrue this testimony as a rejection of meaningful campaign reform. On the contrary, the ACLU of Oregon would support legislation that would match low-dollar contributions with public financing: raising the floor, rather than selectively lowering the ceiling. And we support transparency and disclosure requirements.

What we are here to warn you against, however, is the mistaken belief that a federal constitutional convention is the remedy to what ails our political system. Rather than placing our Constitution and the First Amendment at risk, we urge you to vote against HJM 201.

⁶ These examples are taken directly from the ACLU letter cited above.