

House Joint Memorial 201

Sponsored by Representatives HUFFMAN, HOYLE, Senators EDWARDS, THOMSEN; Representatives BARKER, BARNHART, BARRETO, BUCKLEY, ESQUIVEL, GALLEGOS, GORSEK, HELM, HOLVEY, KENY-GUYER, LIVELY, NOSSE, PILUSO, RAYFIELD, REARDON, SMITH WARNER, VEGA PEDERSON, WILSON, Senators BATES, BEYER, BOQUIST, DEMBROW, HASS, MONNES ANDERSON, MONROE, RILEY, ROBLAN, SHIELDS, STEINER HAYWARD (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Applies to Congress to call amendment convention for purpose of proposing amendments to United States Constitution that address campaign finance reform.

JOINT MEMORIAL

1

2 To the Senate and the House of Representatives of the United States of America, in Congress as-
3 assembled:

4 We, your memorialists, the Seventy-eighth Legislative Assembly of the State of Oregon, in leg-
5 islative session assembled, respectfully represent as follows:

6 Whereas American elections should be free of the corrupting influence of excessive spending by
7 outside interests and fair enough that any citizen can run for public office; and

8 Whereas the first President of the United States, George Washington, stated, "The basis of our
9 political systems is the right of the people to make and to alter their constitutions of government";
10 and

11 Whereas it was the stated intention of the framers of the United States Constitution that Con-
12 gress should be "dependent on the people alone" (James Madison, Federalist No. 52); and

13 Whereas that dependency has evolved from a dependency on the people alone to a dependency
14 on those who spend excessively in elections, through campaigns or third-party groups; and

15 Whereas the United States Supreme Court ruling in *Citizens United v. Federal Election Com-*
16 *mission* (558 U.S. 310 (2010)) removed restrictions on amounts of independent political spending, and
17 further decisions of the nation's high court both before and afterward have eroded the foundations
18 of representative democracy in America; and

19 Whereas these decisions have resulted in powerful economic forces having unjust influence that
20 supplants the will of the people by undermining our ability to choose political leadership, write our
21 own laws and determine the fate of our state; and

22 Whereas the founding fathers of this nation never intended the rights of natural persons pro-
23 tected in the Constitution of the United States to be applied to artificial entities; and

24 Whereas Congress and the states should be authorized to place limits on political contributions
25 and expenditures to ensure that all citizens have access to the political process and to require that
26 all contributions and expenditures be fully and immediately disclosed to the public; and

27 Whereas Article V of the United States Constitution empowers the people and states of the
28 United States of America to use the constitutional amendment process to correct those egregiously
29 wrong decisions of the United States Supreme Court that undermine the heart of our democracy and

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 republican form of government; and

2 Whereas Article V of the United States Constitution requires Congress to call a convention for
3 proposing amendments to the Constitution upon “the Application of the Legislatures of two thirds
4 of the several States”; and

5 Whereas the State of Oregon sees the need for a convention to propose amendments in order
6 to address concerns such as those raised by the decision of the United States Supreme Court in
7 *Citizens United* and related cases and events long before and afterward addressing a substantially
8 similar purpose, and desires that said convention should be limited to these concerns; and

9 Whereas the State of Oregon desires that the delegates to the convention be composed equally
10 of individuals currently elected to state and local office, or be selected by election in each con-
11 gressional district for the purpose of serving as delegates; and

12 Whereas the State of Oregon desires that individuals elected or appointed to federal office, now
13 or in the past, be prohibited from serving as delegates to the convention, and intends to retain the
14 ability to restrict or expand the power of its own delegates within the limits expressed herein; and

15 Whereas the State of Oregon intends that this be a continuing application considered together
16 with applications calling for a convention adopted or currently pending in other states, including the
17 State of New Jersey, the State of Vermont, the State of Illinois and the State of California, and fu-
18 ture applications until such time as two-thirds of the several states have applied for a convention
19 and said convention is convened by Congress; now, therefore,

20 **Be It Resolved by the Legislative Assembly of the State of Oregon:**

21 (1) We, the members of the Seventy-eighth Legislative Assembly, pursuant to Article V of the
22 United States Constitution, hereby petition Congress to call a convention for the purpose of pro-
23 posing amendments to the United States Constitution relating to the subjects described in the pre-
24 amble of this joint memorial as soon as two-thirds of the several states have applied for a
25 convention.

26 (2) For purposes of determining whether two-thirds of the states have applied for a convention,
27 we intend that this application be aggregated with the applications of any other state legislature
28 that includes any of the subjects set forth in the preamble of this joint memorial.

29 (3) A copy of this memorial shall be sent to the Vice President of the United States, to the
30 Senate Majority Leader, to the Secretary of the Senate, to the Speaker of the House of Represen-
31 tatives, to the Clerk of the House of Representatives, to the Archivist of the United States, to each
32 member of the Oregon Congressional Delegation and to the presiding officers of the legislative
33 chambers in each state of the United States requesting their cooperation in issuing a petition to
34 Congress to call a convention for the purpose of proposing amendments pursuant to Article V of the
35 United States Constitution.

36

Restoring Free and Fair Elections through an Article V Convention

-FACT SHEET-

THE PROBLEM

- American Democracy is in crisis. When our elected officials spend up to 75% of their time fundraising and courting favor with special interests, they are no longer responsive to the needs of the average American citizens they are supposed to be representing.
- 9 out of 10 Americans agree we have a problem in our electoral process because of the influence money buys. We know our voices aren't being heard and want the problem fixed.
- When our federal government is this dysfunctional we are unable to solve all of the big problems of our time.
- Congress is incapable of honestly dealing with this situation. We can't expect them to fix it.

THE SOLUTION

- The only thing above the Supreme Court is the U.S. Constitution. No state or federal law can be protected without an amendment. We must ensure Free & Fair Elections for future generations once and for all.
- Historically, most amendments to the Constitution have started at the state level with a call for a convention. 4 of the last 10 amendments and the Bill of Rights began with the states calling for a convention. Most notably the 17th amendment came within a couple states of the 2/3 needed to force a convention and Congress proposed the amendment themselves.
- Our founding fathers put the state-based route to an amendment in the Constitution for exactly the situation we find ourselves in today; when the federal government is no longer responsive to the people. They knew our state legislators were closer to the people. It is a critical part of their balance of powers.
- We know you can limit a convention to a single topic - with over 700 applications from the states on a variety of issues, there has never been a convention before because only applications on the same topic are counted together, which also means the scope of the convention is limited to that single subject matter.
- There have been over 200 conventions at the state level to amend and adopt those individual state constitutions and ZERO of those ever exceeded the scope of their mandate.
- A convention would simply be a place to have a conversation, somewhere other than Congress, about how we can make our electoral process work better for the average American. Only the most populist of proposals can survive the ratification gauntlet that is 75% of our state governments. A likely outcome of such a convention would be much stronger disclosure laws at the federal level.

A Letter Co-Signed by Cenk Uygur, Buddy Roemer, and Larry Lessig

To all those currently serving as State Legislators in United States of America,

As fathers, we are deeply concerned about the political state we are leaving as our legacy to the next generation of Americans. In this generation, we should ask ourselves if our children will enjoy the blessings of representative democracy or will their voices be silenced by outside interests dominating the political debate? Though we come from varying political perspectives, it is our shared belief that it is our generation's greatest responsibility to fix our democracy and save the republic.

87% of Americans are deeply troubled by the corrupting influence that outside interests have over the actions of the federal government¹. Congress currently has a 9% approval rating², which makes them less popular than the King of England during the times of the Revolutionary War³. The federal decision in Citizens United has taken the appearance of impropriety and encoded it into our nation's legal code. At the highest levels of American government, something is rotten in the state of representative democracy.

As Americans who believe in self-government, we believe that citizens should be the ones choosing our elected representatives, the ones writing our own laws, and the ones determining the fate of our country. As James Madison said, "The federal government ... ought to be dependent on the people alone", but as Thomas Jefferson said, "The issue is the same today as it has been throughout all history, whether man shall be allowed to rule himself or be ruled by a small elite." When Congress is not dependent upon the people alone, Americans are ruled by a small elite, but that's not our destiny as a country.

All Americans who support freedom and oppose corruption should stand up for these American values. This is not a left or right issue; it's not a Republican or Democrat issue; it's not liberal vs. conservative – this is an American issue. In America, we believe very deeply in self-government – the ability of educated citizens to select representatives to serve in positions of public trust and to serve in the public interest.

But the dangerous and foolhardy decision in Citizens United places all that we hold sacred in jeopardy. It reverses decades of federal campaign finance regulation and over-rides a century of effective campaign finance law at the state level. When states have objected to this travesty and attempted to pass laws remedying the situation (such as Montana), their cases were rejected by federal courts or not even heard in Washington DC. Like Congress, our nation's highest court is refusing to listen to the will of the people.

It is clear now that the only remedy available to fix this problem, before it becomes even worse, is an Amendment to the United States Constitution. There exist only two ways to amend the Constitution provided to us by the Founding Fathers in Article V of the United States Constitution – one path is through Congress and one way is through the many States, which is why we are writing to you today.

Since Congress is the source of the dysfunction we aim to fix, they cannot be trusted to fix it. Members of Congress themselves have asked that we "free them from fundraising", and others state plainly that "the current Congress is incapable of proposing an amendment." Congress could not even pass something as simple and decent as the DISCLOSE Act, which would merely illuminate the illicit sources of the money pouring into our politics, some of which may come from foreign sources.

¹ USA Today/Gallup poll, July 19-22, 2012

² USA Today/Gallup poll, November, 2013

³ "Loyalists, Fence-Sitters, & Patriots" Independence Hall Association, ushistory.org/us/11b.asp; see also "Encyclopedia of the Age of Political Revolutions and New Ideologies, 1760-1815", edited Gregory Fremont-Barnes, Greenwood Press 2007 p 436

This makes it plainly clear to us that the only path available to amending the Constitution is through the many States, including your state. As a State Legislator, the Founding Fathers intentionally gave you the power to rein in an out-of-control Congress, especially when they encroached on the states' rights to govern themselves. A convention of the states to propose amendments is the Founding Father's safeguard for representative democracy, and it is our right and our responsibility to use it.

The Constitution was originally sold by the Founders to the ratifying states on the basis that they retained their ultimate authority over the federal government through the amendment powers in Article V, which is the closing argument that Alexander Hamilton makes in the final Federalist Paper (No. 85). This process has been used at the state level hundreds of times to amend state constitutions, and there is ample evidence that a convention of this nature at the federal level is necessary, safe, and long overdue.

Once proposed at a convention, any amendment proposed to fix the corruption in our federal politics would then need to be ratified by 75% of the state legislatures. This is a high bar of support that must be passed before our nation's most cherished document can be successfully amended, and for good reason. The United States Constitution has been amended 27 other times, and at least once by every generation of Americans. We live in one of the longest stretches of time without an amendment since the creation of our union, but that's going to be fixed soon with the help of state leaders like you.

U.S. President Dwight D. Eisenhower favored a federal convention, and he once said, "Through their state legislatures and without regard to the federal government, the people can demand a convention to propose amendments that can and will reverse any trends they see as fatal to true representative government." That time is now upon us, and the question is whether we leave our children a nation where the citizens embrace self-government or a country that is ruled by illegitimate outside interests.

Let's take action today to wash away the corruption that is plaguing our nation's politics, to remove the appearance of impropriety for our elected officials, and to restore the faith between the citizens of our country and those they elect to positions of public trust. Let us ensure that the elections our children vote in someday are free and fair here in America, so that their elected representatives are beyond repute and citizen's voices are heard once again in the halls of our governments. Let us use the tools the Founding Fathers provided to revitalize our democracy and save the republic.

Thank you for your consideration of the proposals before you today that will address this most vital issue. We implore you to consider how the decisions that you make today will affect our children, your children, and the many generations of Americans yet to come. Our country's original Founding Fathers placed their lives, their fortunes, and their sacred honor on the line in order to create a more perfect union, and we encourage you to act in that patriotic spirit today.

Sincerely and Patriotically Yours,



Cenk Uygur
Host & Businessman
The Young Turks
Wolf-PAC.com



Larry Lessig
Law Professor
Harvard University
Rootstrikers.org



Buddy Roemer
Fmr. Governor (LA)
Fmr. Congressman
TheReformProject.org

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U.S. Department of Justice
Office of Legal Policy



Report to the Attorney General

Limited Constitutional
Conventions under Article V
of the
United States Constitution

September 10, 1987

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EXECUTIVE SUMMARY

The attached paper examines the process of amending the Constitution through a constitutional convention. Specifically, the paper explores the question of whether such a convention, authorized by Article V of the Constitution, can be limited to the consideration of particular subjects.

The paper concludes that Article V permits the states to apply for, and the Congress to call, a constitutional convention for limited purposes, and that a variety of practical means to enforce such limitations are available. The language and structure of Article V, as well as the history of its drafting, support this conclusion because the two methods of constitutional amendment, Congressional initiative and the state-called convention, are treated by Article V as equally available procedural alternatives. There is no suggestion that the alternative modes are substantively distinct, that one is subordinate to the other, or that use of one mode is restricted to particular topics or circumstances.

Since it is undisputed that Congress possesses the authority to propose amendments limited to a single topic or group of topics, it follows that the applications of the states for calling a constitutional convention also may be limited. This understanding is reinforced by the normal practice of the states in limiting by subject their applications to the Congress.

The paper also notes that the requirements of Article V are designed to ensure that a consensus exists as to the desirability of amendment, whichever method of amendment is employed. As the Supreme Court has held, an Article V consensus is a super-majority agreement on the same subject at the same time that has been made manifest and clear by following the procedures outlined in Article V. If the states choose to condition their application for a convention on discussion of a particular amendment or subject, then the Congress must call a convention of that kind if the principle of consensus is to be vindicated.

After establishing that Article V does permit limited constitutional conventions, the paper examines the procedural strictures available to ensure that such limitations are enforced. In particular, the paper concludes that Congress has the authority to adopt legislation providing for the enforcement of limitations. The report also suggests that judicial review to curb convention irregularities and the possibility of holding convention delegates to their oaths of office are other potentially effective enforcement devices.

The paper concludes by recognizing that there are inevitable uncertainties associated with any as-yet-untried process. However, it is suggested that the adoption of convention-procedures legislation by the Congress would minimize greatly any remaining uncertainties associated with the convention method of amendment.