

Form Name:
Submission Time:

Citizens Commission
March 3, 2019 5:31 pm

Name	David Pierce
Address	<div></div> <div></div>
Phone	<div></div>
Email	<div></div>
Citizenship Affirmation	I am a U.S. Citizen
Residency Affirmation	I am a resident of the Commonwealth of Massachusetts
Statement of Intent	I intend to comply with and advance the policy established by this Act.
Statement of Interest	<p>Before moving to Massachusetts in 2016, I served two terms as a New Hampshire State Senator and three terms as a New Hampshire State Representative. In each of those terms as a legislator, I was very active on election law issues, including campaign finance reform issues informed by the Citizens United decision.</p> <p>My extensive experience researching, writing, debating and speaking on these issues is my qualification to serve on the Question 2 citizens commission. I deeply miss being involved in public policy making and, particularly, helping shape public policy on election law and campaign finance issues. I therefore represent that I am intensely interested in serving on the Question 2 citizens commission.</p>
Résumé or Summary of Qualifications Upload	https://s3.amazonaws.com/files.formstack.com/uploads/3282862/71887710/482654782/71887710_sen._pierce_question_2_application.pdf
Political Party Affiliation, if any, over the previous five years	Democratic
City or Town where you reside	WATERTOWN
Employment Status	Employed
Occupation	attorney
Employer	Robert Half Legal

SEN. DAVID PIERCE

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]



March 3, 2019

Governor Charlie Baker
24 Beacon Street, Room 280
Boston, MA 02133

Secretary of the Commonwealth
William Francis Galvin
One Ashburton Place, Suite 1611
Boston, MA 02108

Senator Karen E. Spilka
President, Massachusetts State Senate
24 Beacon Street, Room 332
Boston, MA, 02133

Representative Robert A. DeLeo
Speaker, Massachusetts State
House of Representatives
24 Beacon Street, Room 356
Boston, MA, 02133

Attorney General Maura Healey
One Ashburton Place
Boston, MA 02108

Re: Appointment to the Question 2 Citizens Commission

Dear Governor Baker, Secretary Galvin, President Spilka, Speaker DeLeo and Attorney General Healey,

I write to seek your consideration for an appointment to the citizens commission created by the passage of Question 2, the so-called "Citizens United" ballot measure, in the November 2018 election.

Question 2 requires that "[a]n application by any citizen who seeks to serve on this Commission shall state: i) The intent of the applicant to comply with and advance the policy established by this Act; ii) The applicant's qualifications and interest in serving on the Citizens Commission; iii) The political party affiliation, if any, of the applicant over the previous 5 years; iv) The city or town in which the applicant resides; [and] v) The employment of the applicant, if employed." See Massachusetts Secretary of the Commonwealth Information For Voters, State Election Tuesday, November 6, 2018 (hereinafter "Voter's Guide"), at p. 11, § 3(c), http://www.sec.state.ma.us/ele/elepdf/IFV_2018.pdf.

I. Intent to Comply With and Advance the Policy Established by Question 2

The passage of Question 2 "establishes a non-partisan Citizens Commission to advance the [two] polic[ies] of Massachusetts in favor of amending the Constitution of the United States (i) to affirm that artificial entities do not possess the inalienable Constitutional rights of the People, and (ii) in order to eliminate the undue

influence of concentrated money on elections and on governmental policy, campaign contributions and spending may be regulated and limited.” Voter’s Guide, at p. 10, § 1(a).

If appointed, I pledge that I intend to advance these two policies by supporting language of a proposed constitutional amendment that (i) restores to Congress and the States the power to regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections; (ii) restores to Congress and the States the power in this context to distinguish between natural persons and corporations or other entities created by law; and (iii) makes clear that the amendment would not operate to limit or affect other constitutional freedoms.¹²

Policy 1: Affirming That Artificial Entities Do Not Possess the Inalienable Constitutional Rights of The People

Although the language I would support as a member of the citizens commission does not reflect a strict “constitutional rights belong to people, not corporations” formulation that Question 2 somewhat suggests, I do not believe my proposed language is fundamentally at odds with the core intent of Question 2. I am therefore comfortable representing that I would indeed advance the policies set forth in Question 2.

Let me explain:

- Distinguishing Corporate Rights

First, the core intent of Question 2 is to restore legislative power to regulate the raising and spending of money by candidates and others to influence elections. See Voter’s Guide, at p. 10, Argument of Jeff Clements, of the group People Govern, Not Money, in support of the passage of Question 2 (“A YES vote advances an amendment to the U.S. Constitution to limit the influence of money in elections and ensure all Americans have an equal voice in our democracy.”). The inclusion of language in a constitutional amendment that, e.g., “constitutional rights belong to people, not corporations,” without further qualification, is simply not indispensable to reach the core purpose of Question 2 and, in fact, could be very detrimental. I therefore could not support its inclusion; the issue is a bit more nuanced than that.

The core intent of Question 2 is not to *deprive* corporations or other entities created by law of any constitutional rights, as an exacting “constitutional rights belong to people, not corporations” formulation would suggest. Rather, Question 2’s core purpose is merely to *distinguish* that, solely

¹ The language I support closely follows the language proposed by Sen. Tom Udall of New Mexico in S.J. Res. 8 (2017), “Proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.” Both of Massachusetts’ U.S. senators, Senators Warren and Markey, co-sponsored Senator Udall’s proposed amendment.

² Although Question 2 does not reference this third point, my experience as a legislator informs its inclusion as important to help persuade passage.

for the purpose of regulating election-related contributions and expenditures, natural persons and entities created by law are not to be treated the same.

This distinction is well-founded in the law. Justice Stevens, in his *Citizens United* dissent, noted a long line of Supreme Court precedent in which the Court “held that speech can be regulated differentially on account of the speaker’s identity, when identity is understood in categorical or institutional terms. The Government routinely places special restrictions on the speech rights of students, prisoners, members of the Armed Forces, foreigners, and its own employees.” *Citizens United v. Federal Election Comm’n*, 558 U.S. 310, 420 (2010) (Stevens, J., concurring in part and dissenting in part).

Justice Stevens dissented from giving corporations such concentrated influence on elections and on governmental policy because, in part, with specific reference to corporations:

[n]ot only has the distinctive potential of corporations to corrupt the electoral process long been recognized, but within the area of campaign finance, corporate spending is also ‘furthest from the core of political expression, since corporations’ First Amendment speech and association interests are derived largely from those of their members and of the public in receiving information.’

Id., at 423-24. (citing *FEC v. Beaumont*, 539 U.S. 146, 161 n.8 (2003)). Stevens pointed out, rather insightfully, that failing to make First Amendment distinctions based on the corporate identity of the speaker would make it “a First Amendment problem that corporations are not permitted to vote, given that voting is, among other things, a form of speech.” *Id.*, at 424-25 (citations omitted).

The point here is that the language I would support would restore the long line of Supreme Court authority recognizing the constitutional power of Congress and the States to distinguish between natural persons and corporations for election spending purposes.

- Unintended Consequences of the Wholesale Deprivation of Constitutional Protections for Corporations and Other Associations

Second, and quite importantly, a constitutional amendment that asserts the blanket, non-specific statement that “corporations are not people” or that “the rights extended by the constitution are intended solely for human beings” could result in severe and adverse unintended consequences.

Under that language, if we constitutionalize language that “rights extended by the constitution are intended solely for human beings,” corporations would, for example, have no due process rights under the 5th or 14th Amendments, as human beings do. In such a regime, the government would be empowered take a corporation’s property without constitutional recourse. Because such a rule would lay waste to one of the primary purposes of a for-profit corporation – acquiring and owning property – a good portion of the American economy and, therefore, the American standard of living could be severely jeopardized.

Indeed, the problem is not that corporate “persons” have free speech rights. Most media are organized in the corporate form. The First Amendment’s free speech/free press guarantees would be meaningless if the government is empowered to censor American media simply because “corporations are not people.” It is also not the problem the idea that “money is speech,” a formulation to which some point as a corollary to corporate non-personhood. But the First Amendment would have no meaning if the government could prohibit anyone from paying to publish her political views or being paid to publish them.

Rather, the fundamental problem with *Citizens United*, as Justice Stevens wrote in his dissent, is “[t]he conceit that corporations must be treated *identically* to natural persons in the political sphere . . .” *Id.*, at 394 (emphasis added). Accordingly, *distinguishing* First Amendment rights based on the speaker’s corporate identity should be constitutionally permissible to restore a degree of integrity to our elections while at the same time avoiding the risk of some pretty dire consequences.

Policy 2: Campaign Contributions and Spending May Be Regulated and Limited

As stated, I support Senator Udall’s constitutional amendment formulation that any such amendment “restores to Congress and the States the power to regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections.”

It should be noted that this second policy that Question 2 articulates refers to “campaign contributions and spending.” By adding the words “and spending” to that policy statement, Question 2 must refer to something other than campaign contributions. See *Commonwealth v. Williamson*, 462 Mass. 676, 682 (2012) (a statute’s use of different words strongly suggests an intent to convey a different meaning) (citations omitted).

Indeed, the impetus for Question 2 -- the need to address the Supreme Court’s *Citizens United* decision³ -- had nothing to do with direct campaign contributions. Rather, *Citizens United* operates to prohibit the government from restricting *independent expenditures* for communications by corporations, labor unions, and other associations.

This is important because an independent expenditure is distinguishable from a contribution to a political candidate’s campaign. Rather, an independent expenditure is

an expenditure by a person—(A) expressly advocating the election or defeat of a clearly identified candidate; and (B) that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate’s authorized political committee, or their agents, or a political party committee or its agents.

52 U.S.C. § 30101(17) (emphasis added). Accordingly, because Question 2 articulates and distinguishes between “campaign contributions” and campaign “spending,” it must be made clear

³ Section 2(a) of Question 2 seeks to justify the creation of the citizens commission based on no other references to Supreme Court decisions other than *Citizens United*.

that any proposal the Question 2 citizens commission makes must address *both* campaign contributions and independent expenditures.

Because the language I support, which more generically "restores to Congress and the States the power to regulate and set reasonable limits on the raising and spending of money by candidates and others to influence elections[,]” addresses both campaign contributions and independent expenditures, I believe it is a more comprehensive and dispositive approach to the issue.

II. The Applicant’s Qualifications and Interest in Serving on The Citizens Commission

Question 2 requires that any applicant disclose his/her qualifications and interest in serving on the Question 2 citizens commission. In support of my application for your appointment, I maintain that I am well qualified to serve on the citizens commission.

Before moving to Massachusetts in 2016, I served two terms as a New Hampshire State Senator and three terms as a New Hampshire State Representative. In each of those terms as a legislator, I was very active on election law issues, including campaign finance reform issues informed by the *Citizens United* decision. See discussion below. My extensive experience researching, writing, debating and speaking on these issues is my qualification to serve on the Question 2 citizens commission.

I deeply miss being involved in public policy making and, particularly, helping shape public policy on election law and campaign finance issues. I therefore represent that I am intensely interested in serving on the Question 2 citizens commission.

The *Citizens United*-Related Proposals I Sponsored in New Hampshire

In 2011, as a State Representative in the New Hampshire House, I prime-sponsored HR 8 to urge a constitutional amendment “to re-establish the authority of the states and Congress to regulate campaign spending by corporations.” The bill proposed language that

[t]he sovereign right of the people to govern and hold free elections being essential to a free democracy, the right of the people to cast an educated ballot shall not be abridged. Nothing in this constitution shall be construed to limit the authority of Congress or the States to regulate, with regard to the impact on any political campaign or campaign for election for public office, the spending and activities of any entity created by State or Federal law or the law of another nation. Nothing contained in this article shall be construed to abridge the freedom of the press.

A RESOLUTION urging the New Hampshire congressional delegation to sponsor and support a constitutional amendment to re-establish the authority of the states and Congress to regulate campaign spending by corporations, HR 8, 2011 Session (N.H. 2011), <http://www.gencourt.state.nh.us/legislation/2011/HR0008.html>. The Resolution unfortunately failed on a voice vote, which is unremarkable in light of the stark partisan imbalance in the New Hampshire House following the 2010 elections.

In 2013, I co-sponsored HR 7, a resolution essentially mirroring the 2011 resolution, but changing the 2011 reference in the resolution title from "corporations" to a reference to "entities created by law" to ensure no non-corporate entity, like an LLC, could circumvent the measure. This updated resolution proposed that

Nothing in this constitution shall be construed to limit the authority of Congress or the States to regulate the spending and activities of any entity created by law, with regard to any campaign for election to public office. Nothing contained in this article shall be construed to abridge the freedom of the press.

A RESOLUTION urging the New Hampshire congressional delegation to sponsor and support a constitutional amendment to re-establish the authority of the states and Congress to regulate campaign spending by entities created by law, HR 7, 2013 Session (N.H. 2013), <http://www.gencourt.state.nh.us/legislation/2013/HR0007.html>. The bill earned an unfortunate but very close 6-4 House committee recommendation of "Inexpedient to Legislate," and was later tabled and died on the table.

In 2014, I wrote the floor amendment that replaced the entirety of Senate Bill 120 as introduced. Although SB 120 did not seek to propose a constitutional amendment as Question 2 does, it did mandate stricter reporting requirements for political committees. The bill sought greater transparency in election spending reporting in an effort to educate the electorate in light of the *Citizens United* decision to allow unlimited corporate money for independent expenditures. AN ACT relative to political contributions and expenditures and relative to reporting by political committees, SB 120, 2014 Session (N.H. 2014), <http://www.gencourt.state.nh.us/legislation/2014/SB0120.html>.

The floor amendment -- and the bill -- passed the Republican-controlled Senate 19-4. A slightly revised version of the bill then passed the Democratically-controlled House 186-119. Governor Hassan signed the bill and SB 120 has since become important in New Hampshire elections. See Jay Surdukowski, *Heart of Darkness: New Hampshire Campaign Finance Law Since Citizens United*, 14 U.N.H. L. REV. 227 (2016), available at http://scholars.unh.edu/unh_lr/vol14/iss2/1.

In 2016, I co-sponsored SB 136. That bill would have established a legislative committee to review the proposed amendments pending in Congress regarding the *Citizens United* decision. Specifically, it charged the committee to

- I. Examine the impact of the *Citizens United* ruling and related cases on New Hampshire elections.
- II. Examine the different approaches and language being proposed by the United States Congress for a constitutional amendment. [and]
- III. Examine short term solutions to issues raised by the *Citizens United* ruling and related cases.

AN ACT establishing a committee to review constitutional amendments pending in Congress regarding the *Citizens United* decision and related cases that have been introduced in the United

States Supreme Court, SB 136, 2016 Session (N.H. 2016), http://www.gencourt.state.nh.us/bill_status/billText.aspx?sy=2016&id=177&txtFormat=html. It passed the Senate on a voice vote but failed in the House on a vote of 166-137.

The Citizens United-Related Proposals I Declined to Support

Considering the views I expressed above regarding the corporate personhood issue, I expressly declined to support any measure that would seek a constitutional amendment establishing that only human beings, not corporations, are entitled to constitutional rights. See A RESOLUTION urging the congressional delegation to begin the process for a constitutional amendment establishing that human beings, not corporations, are entitled to constitutional rights, HCR 1, 2011 Session (N.H. 2011), <http://www.gencourt.state.nh.us/legislation/2011/HCR0001.html>; A RESOLUTION requesting Congress to begin the process for a constitutional amendment establishing that human beings, not corporations, are entitled to constitutional rights, HCR 2, 2013 Session (N.H. 2013), <http://www.gencourt.state.nh.us/legislation/2013/HCR0002.html>; and A RESOLUTION petitioning the Congress of the United States to call a constitutional convention for the purpose of proposing an amendment to the Constitution to provide that rights extended by the constitution intended for people are granted only to human beings, HJR 11, 2014 Session (N.H. 2014), <http://www.gencourt.state.nh.us/legislation/2014/HJR0011.html>.

III. The Political Party Affiliation, If Any, Of the Applicant Over the Previous 5 Years

Question 2 requires that any applicant disclose his/her party affiliation, if any, over the previous five years. I have been a registered Democrat over the previous five years, both in New Hampshire and in Massachusetts.

IV. The City or Town in Which the Applicant Resides

Question 2 requires that any applicant disclose where he/she lives. I have lived in Watertown since moving to Massachusetts in 2016.

V. The Employment of The Applicant, If Employed

Question 2 requires that any applicant disclose his/her employment, if employed. I am not employed, but still provide services for my legal clients in New Hampshire.

Conclusion

I am very interested in serving on the Question 2 citizens commission and well qualified to do so. I would sincerely appreciate any consideration any of you could give to my application.

Best regards,

David Pierce

Attachments

SENATOR DAVID PIERCE
RESUME

SENATOR DAVID PIERCE

KEY EXPERIENCE AND SKILLS

2-term New Hampshire State Senator
3-term New Hampshire State Representative
Attorney with 16+ years of transactional law experience and
10+ years of commercial litigation experience
International Business MBA
CPA credential
Strong expertise in government affairs analyzing legislation
and regulations affecting diverse business sectors
Strong direct advocacy and public policy development skills in
relation to proposed legislation and regulations

Proven track record of lobbying for and implementation of
strategic initiatives and effective project management
Exceptional analytical and problem-solving skills to
address impact of proposed legislation / regulations
Expertise in managing complex issues across many legal,
business and compliance subject matters
Polished presentation, interpersonal written and verbal
communications skills
Proficient in GSuite and Microsoft Word, PowerPoint,
Excel and Access database management
Strong attention to detail and able to work independently,
resolve issues and meet tight deadlines

GOVERNMENTAL EXPERIENCE

New Hampshire State Senate

State Senator, serving on Commerce, Judiciary, and Public and
Municipal Affairs Committees; Deputy Minority Whip

Concord, NH
12/2012-08/2016

- Built collaborative strategic coalitions among legislators of both parties, regulators and stakeholder interest groups to advance legislation on diverse subject matters, including constitutional, business development, labor law, energy/environmental, transportation, public safety and healthcare issues. Skilled in identifying and impacting legislation and lobbying regulatory processes for implementation of practical solutions to complex problems.
- Played key role in wholesale revisions to state's LLC and corporate statutes, and led efforts on various healthcare, labor law, public safety, civil rights, election law, campaign finance reform and governmental accountability issues.
- Brought legal, CPA and MBA credentials to bear to develop expertise on the Commerce Committee in business development, labor, healthcare insurance, environmental, public safety and healthcare law and regulations, as well as legal, constitutional and criminal justice experience to the Judiciary and Public and Municipal Affairs Committees.
- Collaborated with legislative staff to monitor legislation and proposed executive action affecting key institutional constituents. Regularly lobbied majority and minority members and used flexibility to advocate strategy and bring compromise in pursuit of constituent and political allies' interests.
- Gained leadership in public policy advocacy, executive government relations and committee/floor/lobbying strategies to pass legislation. Earned a reputation as a flexible, analytical, intelligent and consensus-building legislator by members from both political parties. First openly-gay person ever elected to the New Hampshire State Senate.
- Worked regularly with the Governor and federal Congressional delegation on diverse range of public policy issues.
- Represented the Dartmouth College community and regularly engaged students and faculty, as well as the public in general, in legislative advocacy work. Regularly organized constituent and stakeholder outreach and helped lead in identifying and executing public relations opportunities on several issues.

New Hampshire State House of Representatives

State Representative, Election Law, Legislative Administration and
Redistricting Committees; Deputy Floor Leader

Concord, NH
12/2006-12/2012

- Recognized as a public policy leader on constitutional issues re: election law, campaign finance and voting rights.
- Built coalitions among representatives of both parties and stakeholder interest groups to advance legislation and served in a key role in passing business development, marriage equality and healthcare insurance legislation.

Federal Farm Credit System Assistance Board

Special Advisor to the President

Washington, DC
08/1988-07/1990

- Served as chief of staff to support the President of the Board, which was charged with the \$4 billion rehabilitation of the US Farm Credit System and the management of lender requests for federal financial sustainability assistance.
- Advised and supported the Secretary of Agriculture, the Secretary of the Treasury and other Presidential appointees as they managed the health of the Farm Credit System and led its recovery pursuant to applicable legislation.

SENATOR DAVID PIERCE

LEGAL EXPERIENCE

Upper Valley Law Group

Principal, Commercial Transactions, Corporate Governance and Contract Law

Hanover, NH and Watertown, MA

08/2004 – present

- Served as corporate counsel for several types of clients, including a Fortune 100 global market research company, a highly-regulated healthcare data information technology company, a large regional hospital, an assisted living center, a pharmaceutical research firm, a medical device company and several engineering firms.
- Drafted and negotiated complex commercial intellectual property licensing, purchasing agreements and MSAs/SOWs working with Sales and internal stakeholder cross-functional teams for over \$60 million worth of business deals. Counseled on HIPAA regulations and sub-regulatory guidance and other applicable regulations. Hailed by clients for legal research and negotiation skills. Accomplished with fast-paced workloads focused on the needs of the business and “getting to yes.”

Akin Gump Strauss Hauer & Feld LLP

Counsel (*partner-track position*), Litigation Department

Los Angeles, CA

08/1998–07/2004

- Litigated a wide range of complex commercial matters for over \$1.2 billion in cases related to unfair business practices, intellectual property issues, commercial fraud, and complex financing for several types of clients, including a global marketing company, a chemical manufacturer, a Hollywood studio, and a large pharmaceutical company.
- Developed strong management skills while serving as director of multiple teams of junior litigation attorneys simultaneously working on multiple clients' cases. Helped build support for associate training protocols.

Epstein Becker & Green

Associate Attorney, Litigation and Corporate Law Departments

Washington, DC and Los Angeles, CA

08/1995–07/1998

- Completed due diligence and managed extensive and complex contract negotiations and drafting for about \$850 million in mergers and acquisitions for health care clients. Served as lead associate on a \$750 million contract dispute litigation between a Fortune 100 commercial aerospace company and a foreign country's space agency as well as on \$250 million in several employment law and commercial transaction actions.

Supreme Court of Pennsylvania

Law Clerk

Philadelphia, PA

01/1994–07/1995

- Drafted numerous majority, concurring, dissenting and *allocatur* (discretionary review) opinions for review, circulation to the other members of the Court, and publication in official reporters of the state's highest court. Assigned and managed an extensive caseload of significant complex business matters and constitutional issues.

OTHER PROFESSIONAL EXPERIENCE

Arthur Andersen LLP

Senior Auditor

Washington, DC

07/1986–07/1988

- Served most notably on the external audit staff for Amtrak and a Fortune 50 hospitality company. Promoted to Senior Auditor after just one year and served as lead auditor for several non-profit and for-profit companies.

EDUCATION

The George Washington University National Law Center

Juris Doctor

Washington, DC

05/1993

The George Washington University Graduate School of Business

Master of Business Administration, International Business

Washington, DC

05/1993

Baylor University

Bachelor of Business Administration, Accounting

Waco, TX

05/1986

PROFESSIONAL CREDENTIALS

Active Bar Admissions

New Hampshire

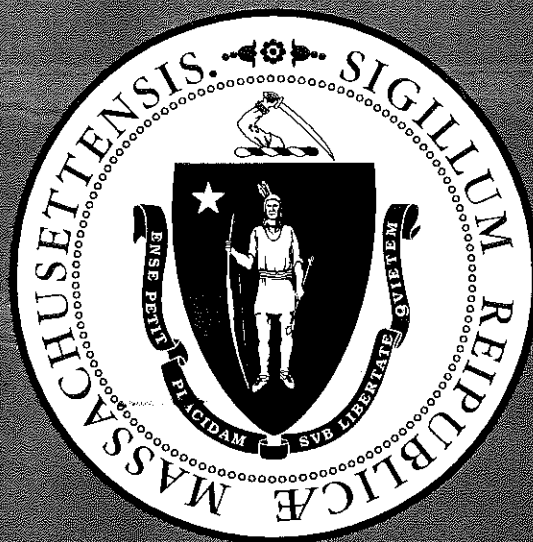
07/2007

Certified Public Accountant

Virginia (currently inactive)

05/1994

**MASSACHUSETTS NOVEMBER 6, 2018
INFORMATION FOR VOTERS**



Massachusetts **INFORMATION FOR VOTERS**

2018 Ballot Questions **STATE ELECTION**

Tuesday, November 6, 2018

Voter Registration Mail-In Form Enclosed!



Massachusetts Register to Vote Online

registertovotema.com

Published by

William Francis Galvin
Secretary of the Commonwealth

2

QUESTION 2: Law Proposed by Initiative Petition

Commission on Limiting Election Spending and Corporate Rights

Do you approve of a law summarized below, on which no vote was taken by the Senate or the House of Representatives on or before May 2, 2018?

SUMMARY ►

As required by law, summaries are written by the State Attorney General.

This proposed law would create a citizens commission to consider and recommend potential amendments to the United States Constitution to establish that corporations do not have the same Constitutional rights as human beings and that campaign contributions and expenditures may be regulated.

Any resident of Massachusetts who is a United States citizen would be able to apply for appointment to the 15-member commission, and members would serve without compensation. The Governor, the Secretary of the Commonwealth, the state Attorney General, the Speaker of the state House of Representatives, and the President of the state Senate would each appoint three members of the commission and, in making these appointments, would seek to ensure that the commission reflects a range of geographic, political, and demographic backgrounds.

The commission would be required to research and take testimony, and then issue a report regarding (1) the impact of political spending in

Massachusetts; (2) any limitations on the state's ability to regulate corporations and other entities in light of Supreme Court decisions that allow corporations to assert certain constitutional rights; (3) recommendations for constitutional amendments; (4) an analysis of constitutional amendments introduced to Congress; and (5) recommendations for advancing proposed amendments to the United States Constitution.

The commission would be subject to the state Open Meeting Law and Public Records Law. The commission's first report would be due December 31, 2019, and the Secretary of the Commonwealth would be required to deliver the commission's report to the state Legislature, the United States Congress, and the President of the United States.

The proposed law states that, if any of its parts were declared invalid, the other parts would stay in effect. The proposed law would take effect on January 1, 2019.

WHAT YOUR VOTE WILL DO

As required by law, the statements describing the effect of a "yes" or "no" vote are written jointly by the State Attorney General and the Secretary of the Commonwealth.

A YES VOTE would create a citizens commission to advance an amendment to the United States Constitution to limit the influence of money in elections and establish that corporations do not have the same rights as human beings.

A NO VOTE would not create this commission.

STATEMENT OF FISCAL CONSEQUENCES

As required by law, statements of fiscal consequences are written by the Executive Office of Administration and Finance.

The proposed law has no discernible fiscal consequences for state and municipal government finances.

QUESTION 2: Law Proposed by Initiative Petition

ARGUMENTS ► **IN FAVOR:** A YES vote advances an amendment

As provided by law, the 150-word arguments are written by proponents and opponents of each question, and reflect their opinions. The Commonwealth of Massachusetts does not endorse these arguments, and does not certify the truth or accuracy of any statement made in these arguments. The names of the individuals and organizations who wrote each argument, and any written comments by others about each argument, are on file in the Office of the Secretary of the Commonwealth.

to the U.S. Constitution to limit the influence of money in elections and ensure all Americans have an equal voice in our democracy.

Behind our nation's challenges is a crisis of billionaires and special interests using money to buy access and influence with politicians. These special interests are well-represented, while most Americans are not.

The Supreme Court says that laws limiting political spending violate the First Amendment. Most Americans know this is incorrect: Money is not speech, it is power, and concentrated power requires checks and balances. 75% of Americans, including liberals and conservatives, support this amendment to correct the Court, with 19 states and over 200 Massachusetts communities formally calling for it.

This measure creates a non-partisan, unpaid Citizens Commission to be the people's advocate for this amendment, with commissioners serving at no cost to taxpayers.

Jeff Clements
People Govern, Not Money
33 Bradford St.
Concord, MA 01742
978-254-6275
<https://voteyeson2ma.org>

AGAINST: The controversy surrounding the *Citizens United* decision hinges on our cherished right to Freedom of Speech. In the decision, the court ruled to expand that freedom and apply it equally to all entities and organizations, rather than just the arbitrary list of winners and losers selected by elected officials in previous campaign finance laws.

This is a good thing. The First Amendment protection of our Freedom of Speech is one of the pillars of our democracy and should be preserved and expanded at every possible opportunity. The less government standing in the way of the exercise of that right, the stronger it is.

However, even if you disagree with the *Citizens United* decision, an amendment to the United States Constitution is a dangerous and misguided way to go about undoing it. Please vote no on this question.

Massachusetts Fiscal Alliance
18 Tremont St., Suite 527
Boston, MA 02108
www.MassFiscal.org
www.MassFiscalScorecard.org

FULL TEXT OF QUESTION

Be it enacted by the People, and by their authority:

Section 1. Policy and Purpose

- a. This Act establishes a non-partisan Citizens Commission to advance the policy of Massachusetts in favor of amending the Constitution of the United States (i) to affirm that artificial entities do not possess the inalienable Constitutional rights of the People, and (ii) in order to eliminate the undue influence of concentrated money on elections and on governmental policy, campaign contributions and spending may be regulated and limited.
- b. It is the intent of this Act that the proposed federal constitutional amendment or amendments that are the subject matter of this Act shall be drafted and construed so as to protect the integrity and fairness of elections and government; prevent corruption; secure the right of all Americans to be represented and to participate in self-government as equal citizens; protect the freedom of speech, of the press and other rights of all Americans

over the privileges of artificial entities; and ensure the constitutionality of sound regulation and operation of corporations and other economic entities by the people.

- c. To further this intent and advance the constitutional amendment(s) and the policies described herein, an independent, non-partisan Citizens Commission is hereby established for the purpose of reporting and making such recommendations as may be of assistance in drafting, promoting, proposing and ratifying such constitutional amendment(s).
- d. This Act shall be known as the Citizens Commission Concerning a Constitutional Amendment for Government of the People Act.

Section 2. Establishment of Citizens Commission Concerning a Constitutional Amendment for Government of the People

- a) This Act establishes a Citizens Commission Concerning a Constitutional Amendment for Government of the People to advance the policies of the Commonwealth of

QUESTION 2: Law Proposed by Initiative Petition

FULL TEXT OF QUESTION (continued)

Massachusetts, (1) that inalienable Constitutional rights are the rights of individual living human beings and not of artificial entities or aggregations of people, and (2) as set forth in a Resolution passed by the General Court of Massachusetts in 2012, which resolved that "the Commonwealth of Massachusetts hereby calls upon the United States Congress to pass and send to the states for ratification a constitutional amendment to restore the First Amendment and fair elections to the people" based on the following:

- i) "Whereas, the First Amendment to the United States Constitution was designed to protect the free speech rights of people, not corporations;
 - ii) Whereas, for the past three decades, a divided United States Supreme Court has transformed the First Amendment into a powerful tool for corporations seeking to evade and invalidate democratically-enacted reforms;
 - iii) Whereas, this corporate takeover of the First Amendment has reached its extreme conclusion in the United States Supreme Court's recent ruling in *Citizens United v. FEC*;
 - iv) Whereas, the United States Supreme Court's ruling in *Citizens United v. FEC* overturned longstanding precedent prohibiting corporations from spending their general treasury funds in our elections;
 - v) Whereas, the United States Supreme Court's ruling in *Citizens United v. FEC* will now unleash a torrent of corporate money in our political process unmatched by any campaign expenditure totals in United States history;
 - vi) Whereas, the United States Supreme Court's ruling in *Citizens United v. FEC* presents a serious and direct threat to our democracy;
 - vii) Whereas, the people of the United States have previously used the constitutional amendment process to correct those egregiously wrong decisions of the United States Supreme Court that go to the heart of our democracy and self-government."
- b) The People find and declare that the establishment of a non-partisan Citizens Commission as provided herein will ensure prudent consideration of such a constitutional amendment by the Massachusetts Congressional delegation and by the citizens and the General Court of Massachusetts during the ratification process to follow Congressional approval.
- c) The Citizens Commission shall research, take testimony, report, and make such recommendations as

may be of assistance in drafting, promoting, proposing, and ratifying such a constitutional amendment.

Section 3. Composition, Appointments, and Deliberative Process

- a) The Citizens Commission shall be comprised of 15 United States citizens who are residents of Massachusetts, and shall be appointed as follows:
 - i) The Governor shall appoint 3 members;
 - ii) The Secretary of the Commonwealth shall appoint 3 members;
 - iii) The Attorney General shall appoint 3 members;
 - iv) The Speaker of the House shall appoint 3 members; and
 - v) The President of the Senate shall appoint 3 members.
- b) No person shall be appointed to the Citizens Commission who has not publicly applied for such appointment, which applications the Governor shall cause to be posted on a page established for the public knowledge and oversight of the appointment and operation of the Citizens Commission on the official website of the Commonwealth of Massachusetts.
- c) An application by any citizen who seeks to serve on this Commission shall state:
 - i) The intent of the applicant to comply with and advance the policy established by this Act;
 - ii) The applicant's qualifications and interest in serving on the Citizens Commission;
 - iii) The political party affiliation, if any, of the applicant over the previous 5 years;
 - iv) The city or town in which the applicant resides;
 - v) The employment of the applicant, if employed.
- d) All applications for service on the Citizens Commission shall be submitted within 60 days of the posting of the appointment opportunity on the official website of the Commonwealth of Massachusetts, which posting the Governor shall cause to be made within 30 days of effective date of this Act.
- e) All appointments to the Citizens Commission shall be made no sooner than 90 days and no later than 120 days after the effective date of this Act.
- f) In making appointments to the Commission, the Governor, Secretary of State, Attorney General, President of the Senate and Speaker of the House of Representatives shall have due regard for the non-partisan nature of the Citizens Commission, and shall seek to ensure that the Citizens Commission reflect

QUESTION 2: Law Proposed by Initiative Petition

FULL TEXT OF QUESTION (continued)

a range of geographic, political, and demographic backgrounds.

- g) Appointees to the Citizens Commission shall serve without compensation.
- h) Members of the Citizens Commission shall elect a chair or co-chairs, in the manner as the members of the Commission may decide by majority vote.
- i) The Citizens Commission shall meet on a regular basis to gather evidence, testimony, and advice in the manner that the members of the Commission determine is most conducive to achieving the objectives of this Act, provided however, that the Citizen Commission proceedings and activities shall be subject to the Open Meeting Law and the Public Records Law, and that all residents of Massachusetts have a reasonable opportunity to offer their views and ideas related to the policies herein to the Commission.

Section 4. Report and Recommendations

- a) The Citizens Commission shall issue a Report of Findings and Recommendations, which shall include the following:
 - i) The nature and impact of political and election spending in Massachusetts;
 - ii) The limitations, if any, on the legal ability of the Commonwealth and its citizens to reasonably regulate corporations and other entities due to the Supreme Court's conclusion that corporations may assert Constitutional rights of human beings;
 - iii) Recommendations as to the scope and language of one or more constitutional amendment resolutions that would address the problem and policies described herein, and that would be prudent for the Commonwealth of Massachusetts to ratify under Article V of the United States Constitution;
 - iv) An analysis of the constitutional amendments that have been introduced in Congress to date in response to the Supreme Court's decision in *Citizens United v. FEC*, an assessment of their alignment with the policies and objectives set forth in this Act; and
 - v) Recommendations for actions to be taken by Congress, the General Court of Massachusetts,

the Governor, Secretary of the Commonwealth, the Attorney General and other public officials and bodies, and citizens of the Commonwealth of Massachusetts to further promotion, proposal, and ratification of the recommended constitutional amendment or amendments.

- b) The Citizens Commission shall deliver its first Report and Recommendations to the President of the Senate, the Speaker of the House of Representatives, the Governor, the Secretary of the Commonwealth, the Attorney General and the citizens of Massachusetts on or before December 31, 2019.
- c) Within 5 days of receipt, the Secretary of the Commonwealth is instructed to deliver the Report and Recommendations of the Citizens Commission to all current members of the General Court of Massachusetts, all current members of the United States Congress, and the President of the United States.
- d) The Secretary of the Commonwealth is directed to immediately deliver copies of this law, when enacted, to the following persons: The Governor, the Attorney General, all current members of the General Court of Massachusetts, all current members of the United States Congress, and the President of the United States.
- e) With the Act, the People hereby urge that Congress, the General Court of Massachusetts, the Governor, Secretary of the Commonwealth, the Attorney General and other public officials and bodies, and citizens of the Commonwealth of Massachusetts carefully review the Citizen Commission's findings and take all constitutional and lawful actions to further the proposal and ratification of the recommended constitutional amendment or amendments.

Section 5. Severability

The several provisions of this Act are independent and severable and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the Act invalid or inoperative.

Section 6. Effective Date

This act shall take effect on January 1, 2019.

SENATE JOINT RESOLUTION 8
115TH CONG. 1ST SESS. S.J.RES. 8 (2017).

115TH CONGRESS
1ST SESSION

S. J. RES. 8

Proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

IN THE SENATE OF THE UNITED STATES

JANUARY 24, 2017

Mr. UDALL (for himself, Mr. BENNET, Mr. DURBIN, Mr. SANDERS, Mr. TESTER, Ms. BALDWIN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. BROWN, Ms. CANTWELL, Mr. CARPER, Mr. CASEY, Mr. COONS, Ms. CORTEZ MASTO, Mr. FRANKEN, Mrs. GILLIBRAND, Ms. HASSAN, Mr. HEINRICH, Ms. HIRONO, Mr. KING, Ms. KLOBUCHAR, Mr. MARKEY, Mrs. MCCASKILL, Mr. MENENDEZ, Mr. MURPHY, Mrs. MURRAY, Mr. NELSON, Mr. PETERS, Mr. REED, Mrs. SHAHEEN, Ms. STABENOW, Mr. VAN HOLLEN, Ms. WARREN, Mr. WHITEHOUSE, Mr. WYDEN, and Mr. CARDIN) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

JOINT RESOLUTION

Proposing an amendment to the Constitution of the United States relating to contributions and expenditures intended to affect elections.

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled (two-*
3 *thirds of each House concurring therein), That the fol-*
4 *lowing article is proposed as an amendment to the Con-*
5 *stitution of the United States, which shall be valid to all*
6 *intents and purposes as part of the Constitution when*

1 ratified by the legislatures of three-fourths of the several
2 States:

3 "ARTICLE —

4 "SECTION 1. To advance democratic self-government
5 and political equality, and to protect the integrity of gov-
6 ernment and the electoral process, Congress and the
7 States may regulate and set reasonable limits on the rais-
8 ing and spending of money by candidates and others to
9 influence elections.

10 "SECTION 2. Congress and the States shall have
11 power to implement and enforce this article by appropriate
12 legislation, and may distinguish between natural persons
13 and corporations or other artificial entities created by law,
14 including by prohibiting such entities from spending
15 money to influence elections.

16 "SECTION 3. Nothing in this article shall be con-
17 strued to grant Congress or the States the power to
18 abridge the freedom of the press."

○

CITIZENS UNITED V. FEDERAL ELECTION COMM'N,
558 U.S. 310 (2010)

KeyCite Yellow Flag - Negative Treatment

Declined to Extend by Prison Legal News v. Secretary, Florida Department of Corrections, 11th Cir.(Fla.), May 17, 2018

130 S.Ct. 876

Supreme Court of the United States

CITIZENS UNITED, Appellant,

v.

FEDERAL ELECTION COMMISSION.

No. 08-205.

Argued March 24, 2009.

Reargued Sept. 9, 2009.

Decided Jan. 21, 2010.

Synopsis

Background: Nonprofit corporation brought action against Federal Election Commission (FEC) for declaratory and injunctive relief, asserting that it feared it could be subject to civil and criminal penalties if it made through video-on-demand, within 30 days of primary elections, a film regarding a candidate seeking nomination as a political party's candidate in the next Presidential election. The United States District Court for the District of Columbia, A. Raymond Randolph, Circuit Judge, and Royce C. Lamberth and Richard W. Roberts, District Judges, 2008 WL 2788753, denied corporation's motion for preliminary injunction and granted summary judgment to Commission. Probable jurisdiction was noted.

Holdings: The Supreme Court, Justice Kennedy, held that:

[1] government may not, under the First Amendment, suppress political speech on the basis of the speaker's corporate identity, overruling *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652;

[2] federal statute barring independent corporate expenditures for electioneering communications violated First Amendment, overruling *McConnell v. Federal Election Com'n*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491;

[3] disclaimer and disclosure provisions of Bipartisan Campaign Reform Act of 2002 did not violate First Amendment, as applied to nonprofit corporation's film and three advertisements for the film.

Affirmed in part, reversed in part, and remanded.

Justice Thomas joined as to all of Justice Kennedy's opinion except for Part IV.

Justices Stevens, Ginsburg, Breyer, and Sotomayor, JJ., joined as to Part IV of Justice Kennedy's opinion.

Chief Justice Roberts filed a concurring opinion, in which Justice Alito joined.

Justice Scalia filed a concurring opinion, in which Justice Alito joined and Justice Thomas joined in part.

*391 In passing, the dissent also claims that the Court's conception of corruption is unhistorical. The Framers "would have been appalled," it says, by the evidence of corruption in the congressional findings supporting the Bipartisan Campaign Reform Act of 2002. *Post*, at 963. For this proposition, the dissent cites a law-review article arguing that "corruption" was originally understood to include "moral decay" and even actions taken by citizens in pursuit of private rather than public ends. Teachout, *The Anti-Corruption Principle*, 94 *Cornell L.Rev.* 341, 373, 378 (2009). It is hard to see how this has anything to do with what sort of corruption can be combated by restrictions on political speech. Moreover, if speech can be prohibited because, in the view of the Government, it leads to "moral decay" or does not serve "public ends," then there is no limit to the Government's censorship power.

The dissent says that when the Framers "constitutionalized the right to free speech in the First Amendment, it was the free speech of individual Americans that they had in mind." *Post*, at 950. That is no doubt true. All the provisions of the Bill of Rights set forth the rights of individual *392 men and women—not, for example, of trees or polar bears. But the individual person's right to speak includes the right to speak *in association with other individual persons*. Surely the dissent does not believe that speech by the Republican Party or the Democratic Party can be censored because it is not the speech of "an individual American." It is the speech of many individual Americans, who have associated in a common cause, giving the leadership of the party the right to speak on their behalf. The association of individuals in a business corporation is no different—or at least it cannot be denied the right to speak on the simplistic ground that it is not "an individual American." ⁷

**929 But to return to, and summarize, my principal point, which is the conformity of today's opinion with the original meaning of the First Amendment. The Amendment is written in terms of "speech," not speakers. Its text offers no foothold *393 for excluding any category of speaker, from single individuals to partnerships of individuals, to unincorporated associations of individuals, to incorporated associations of individuals—and the dissent offers no evidence about the original meaning of the text to support any such exclusion. We are therefore simply left with the question whether the speech at issue in this case is "speech" covered by the First Amendment. No one says otherwise. A documentary film critical of a potential Presidential candidate is core political speech, and its nature as such does not change simply because it was funded by a corporation. Nor does the character of that funding produce any reduction whatever in the "inherent worth of the speech" and "its capacity for informing the public," *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 777, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). Indeed, to exclude or impede corporate speech is to muzzle the principal agents of the modern free economy. We should celebrate rather than condemn the addition of this speech to the public debate.

Justice STEVENS, with whom Justice GINSBURG, Justice BREYER, and Justice SOTOMAYOR join, concurring in part and dissenting in part.

The real issue in this case concerns how, not if, the appellant may finance its electioneering. Citizens United is a wealthy nonprofit corporation that runs a political action committee (PAC) with millions of dollars in assets. Under the Bipartisan Campaign Reform Act of 2002 (BCRA), it could have used those assets to televise and promote *Hillary: The Movie* wherever and whenever it wanted to. It also could have spent unrestricted sums to broadcast *Hillary* at any time other than the 30 days before the last primary election. Neither Citizens United's nor any other corporation's speech has been "banned," *ante*, at 886. All that the parties dispute is whether Citizens United had a right to use the funds in its general treasury to pay for broadcasts during the 30-day period. The notion that the First Amendment *394 dictates an affirmative answer to that question is, in my judgment, profoundly misguided. Even more misguided is the notion that the Court must **930 rewrite the law relating to campaign expenditures by *for-profit* corporations and unions to decide this case.

The basic premise underlying the Court's ruling is its iteration, and constant reiteration, of the proposition that the First Amendment bars regulatory distinctions based on a speaker's identity, including its "identity" as a corporation. While that glittering generality has rhetorical appeal, it is not a correct statement of the law. Nor does it tell us when

a corporation may engage in electioneering that some of its shareholders oppose. It does not even resolve the specific question whether Citizens United may be required to finance some of its messages with the money in its PAC. The conceit that corporations must be treated identically to natural persons in the political sphere is not only inaccurate but also inadequate to justify the Court's disposition of this case.

In the context of election to public office, the distinction between corporate and human speakers is significant. Although they make enormous contributions to our society, corporations are not actually members of it. They cannot vote or run for office. Because they may be managed and controlled by nonresidents, their interests may conflict in fundamental respects with the interests of eligible voters. The financial resources, legal structure, and instrumental orientation of corporations raise legitimate concerns about their role in the electoral process. Our lawmakers have a compelling constitutional basis, if not also a democratic duty, to take measures designed to guard against the potentially deleterious effects of corporate spending in local and national races.

The majority's approach to corporate electioneering marks a dramatic break from our past. Congress has placed special limitations on campaign spending by corporations ever since the passage of the Tillman Act in 1907, ch. 420, 34 Stat. 864. We have unanimously concluded that this "reflects a *395 permissible assessment of the dangers posed by those entities to the electoral process," *FEC v. National Right to Work Comm.*, 459 U.S. 197, 209, 103 S.Ct. 552, 74 L.Ed.2d 364 (1982) (*NRWC*), and have accepted the "legislative judgment that the special characteristics of the corporate structure require particularly careful regulation," *id.*, at 209–210, 103 S.Ct. 552. The Court today rejects a century of history when it treats the distinction between corporate and individual campaign spending as an invidious novelty born of *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 110 S.Ct. 1391, 108 L.Ed.2d 652 (1990). Relying largely on individual dissenting opinions, the majority blazes through our precedents, overruling or disavowing a body of case law including *FEC v. Wisconsin Right to Life, Inc.*, 551 U.S. 449, 127 S.Ct. 2652, 168 L.Ed.2d 329 (2007) (*WRTL*), *McConnell v. FEC*, 540 U.S. 93, 124 S.Ct. 619, 157 L.Ed.2d 491 (2003), *FEC v. Beaumont*, 539 U.S. 146, 123 S.Ct. 2200, 156 L.Ed.2d 179 (2003), *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 107 S.Ct. 616, 93 L.Ed.2d 539 (1986) (*MCFL*), *NRWC*, 459 U.S. 197, 103 S.Ct. 552, 74 L.Ed.2d 364, and *California Medical Assn. v. FEC*, 453 U.S. 182, 101 S.Ct. 2712, 69 L.Ed.2d 567 (1981).

In his landmark concurrence in *Ashwander v. TVA*, 297 U.S. 288, 346, 56 S.Ct. 466, 80 L.Ed. 688 (1936), Justice Brandeis stressed the importance of adhering to rules the Court has "developed ... for its own governance" when deciding constitutional questions. Because departures from those rules always enhance the risk of error, I shall review the background of this case in some detail before explaining why the Court's analysis rests on a faulty understanding of *Austin* and *McConnell* and **931 of our campaign finance jurisprudence more generally.¹ I regret the length of what follows, but the importance and novelty of the Court's opinion require a full response. Although *396 I concur in the Court's decision to sustain BCRA's disclosure provisions and join Part IV of its opinion, I emphatically dissent from its principal holding.

I

The Court's ruling threatens to undermine the integrity of elected institutions across the Nation. The path it has taken to reach its outcome will, I fear, do damage to this institution. Before turning to the question whether to overrule *Austin* and part of *McConnell*, it is important to explain why the Court should not be deciding that question.

Scope of the Case

The first reason is that the question was not properly brought before us. In declaring § 203 of BCRA facially unconstitutional on the ground that corporations' electoral expenditures may not be regulated any more stringently

by its own account is "one of the most active conservative PACs in America," Citizens United Political Victory Fund, <http://www.cupvf.org/>.⁴⁰

So let us be clear: Neither *Austin* nor *McConnell* held or implied that corporations may be silenced; the FEC is not a "censor"; and in the years since these ***945 cases were decided, corporations have continued to play a major role in the national dialogue. Laws such as § 203 target a class of communications that is especially likely to corrupt the political process, that is at least one degree removed from the views of individual citizens, and that may not even reflect the views of those who pay for it. Such laws burden political speech, and that is always a serious matter, demanding careful scrutiny. But the majority's incessant talk of a "ban" aims at a straw man.

Identity-Based Distinctions

The second pillar of the Court's opinion is its assertion that "the Government cannot restrict political speech based on the speaker's ... identity." *Ante*, at 902; accord, *ante*, at 886, 898, 900, 902–904, 912–913. *420 The case on which it relies for this proposition is *First Nat. Bank of Boston v. Bellotti*, 435 U.S. 765, 98 S.Ct. 1407, 55 L.Ed.2d 707 (1978). As I shall explain, *infra*, at 958–960, the holding in that case was far narrower than the Court implies. Like its paeans to unfettered discourse, the Court's denunciation of identity-based distinctions may have rhetorical appeal but it obscures reality.

"Our jurisprudence over the past 216 years has rejected an absolutist interpretation" of the First Amendment. *WRTL*, 551 U.S., at 482, 127 S.Ct. 2652 (opinion of ROBERTS, C.J.). The First Amendment provides that "Congress shall make no law ... abridging the freedom of speech, or of the press." Apart perhaps from measures designed to protect the press, that text might seem to permit no distinctions of any kind. Yet in a variety of contexts, we have held that speech can be regulated differentially on account of the speaker's identity, when identity is understood in categorical or institutional terms. The Government routinely places special restrictions on the speech rights of students,⁴¹ prisoners,⁴² members of the Armed Forces,⁴³ foreigners,⁴⁴ and its own employees.⁴⁵ *421 When such restrictions are justified by a legitimate governmental ***946 interest, they do not necessarily raise constitutional problems.⁴⁶ In contrast to the blanket rule that the majority espouses, our cases recognize that the Government's interests may be more or less compelling with respect to different classes of speakers,⁴⁷ cf. *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 585, 103 S.Ct. 1365, 75 L.Ed.2d 295 (1983) ("[D]ifferential treatment" is constitutionally suspect "unless justified by some special characteristic" of the regulated class of speakers (emphasis added)), and that the constitutional rights of certain categories of speakers, in certain contexts, "are not automatically coextensive with the rights" that are normally accorded to members of our society, *422 *Morse v. Frederick*, 551 U.S. 393, 396–397, 404, 127 S.Ct. 2618, 168 L.Ed.2d 290 (2007) (quoting *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 682, 106 S.Ct. 3159, 92 L.Ed.2d 549 (1986)).

The free speech guarantee thus does not render every other public interest an illegitimate basis for qualifying a speaker's autonomy; society could scarcely function if it did. It is fair to say that our First Amendment doctrine has "frowned on" certain identity-based distinctions, *Los Angeles Police Dept. v. United Reporting Publishing Corp.*, 528 U.S. 32, 47, n. 4, 120 S.Ct. 483, 145 L.Ed.2d 451 (1999) (STEVENS, J., dissenting), particularly those that may reflect invidious discrimination or preferential treatment of a politically powerful group. But it is simply incorrect to suggest that we have prohibited all legislative distinctions based on identity or content. Not even close.

The election context is distinctive in many ways, and the Court, of course, is right that the First Amendment closely guards political speech. But in this context, too, the authority of legislatures to enact viewpoint-neutral regulations based on content and identity is well settled. We have, for example, allowed state-run broadcasters to exclude independent candidates from televised debates. *Arkansas Ed. Television Comm'n v. Forbes*, 523 U.S. 666, 118 S.Ct. 1633, 140 L.Ed.2d 875 (1998).⁴⁸ We have upheld statutes that prohibit the distribution or display of campaign materials near a polling place. ***947 *Burson v. Freeman*, 504 U.S. 191, 112 S.Ct. 1846, 119 L.Ed.2d 5 (1992).⁴⁹ Although we have not reviewed

*423 them directly; We have never cast doubt on laws that place special restrictions on campaign spending by foreign nationals. See, e.g., 2 U.S.C. § 441e(a)(1). And we have consistently approved laws that bar Government employees, but not others, from contributing to or participating in political activities. See n. 45, *supra*. These statutes burden the political expression of one class of speakers, namely, civil servants. Yet we have sustained them on the basis of longstanding practice and Congress' reasoned judgment that certain regulations which leave "untouched full participation ... in political decisions at the ballot box," *Civil Service Comm'n v. Letter Carriers*, 413 U.S. 548, 556, 93 S.Ct. 2880, 37 L.Ed.2d 796 (1973) (internal quotation marks omitted), help ensure that public officials are "sufficiently free from improper influences," *id.*, at 564, 93 S.Ct. 2880, and that "confidence in the system of representative Government is not ... eroded to a disastrous extent," *id.*, at 565, 93 S.Ct. 2880.

The same logic applies to this case with additional force because it is the identity of corporations, rather than individuals, that the Legislature has taken into account. As we have unanimously observed, legislatures are entitled to decide "that the special characteristics of the corporate structure require particularly careful regulation" in an electoral context. *NRWC*, 459 U.S., at 209–210, 103 S.Ct. 552.⁵⁰ Not only has the distinctive potential of corporations to corrupt the electoral process long been recognized, but within the area of campaign finance, corporate spending is also "furthest from the core of political expression, since corporations' First Amendment speech and association interests are derived largely *424 from those of their members and of the public in receiving information," *Beaumont*, 539 U.S., at 161, n. 8, 123 S.Ct. 2200 (citation omitted). Campaign finance distinctions based on corporate identity tend to be less worrisome, in other words, because the "speakers" are not natural persons, much less members of our political community, and the governmental interests are of the highest order. Furthermore, when corporations, as a class, are distinguished from noncorporations, as a class, there is a lesser risk that regulatory distinctions will reflect invidious discrimination or political favoritism.

If taken seriously, our colleagues' assumption that the identity of a speaker has *no* relevance to the Government's ability to regulate political speech would lead to some remarkable conclusions. Such an assumption would have accorded the propaganda broadcasts to our troops by "Tokyo Rose" during World War II the same protection as speech by Allied commanders. More pertinently, it would appear to afford the same protection to multinational corporations **948 controlled by foreigners as to individual Americans: To do otherwise, after all, could "enhance the relative voice" of some (*i.e.*, humans) over others (*i.e.*, nonhumans). *Ante*, at 904 (quoting *Buckley*, 424 U.S., at 49, 96 S.Ct. 612).⁵¹ Under the *425 majority's view, I suppose it may be a First Amendment problem that corporations are not permitted to vote, given that voting is, among other things, a form of speech.⁵²

In short, the Court dramatically overstates its critique of identity-based distinctions, without ever explaining why corporate identity demands the same treatment as individual identity. Only the most wooden approach to the First Amendment could justify the unprecedented line it seeks to draw.

Our First Amendment Tradition

A third fulcrum of the Court's opinion is the idea that *Austin* and *McConnell* are radical outliers, "aberration[s]," in our First Amendment tradition. *Ante*, at 907; see also *ante*, at 910, 916 – 917 (professing fidelity to "our law and our tradition"). The Court has it exactly backwards. It is today's holding that is the radical departure from what had been settled First Amendment law. To see why, it is useful to take a long view.

1. Original Understandings

Let us start from the beginning. The Court invokes "ancient First Amendment principles," *ante*, at 886 (internal quotation marks omitted), and original understandings, *ante*, at 906 – 907, to defend today's ruling, yet it makes only a perfunctory attempt to ground its analysis in the principles or *426 understandings of those who drafted and ratified

COMMONWEALTH V. WILLIAMSON,
462 MASS. 676 (2012)

*/

Page 250

971 N.E.2d 250 (2012)

462 Mass. 676

COMMONWEALTH

v.

CHARLES L. WILLIAMSON, JR

SJC-11132

Supreme Judicial Court of Massachusetts, Berkshire

July 9, 2012

Argued: March 8, 2012.

Indictment found and returned in the Superior Court Department on November 20, 2008. A motion to correct sentence, filed on March 11, 2010, was heard by John A. Agostini, J. The Supreme Judicial Court on its own initiative transferred the case from the Appeals Court.

Elizabeth Caddick for the defendant.

John P. Bossé, Assistant District Attorney, for the Commonwealth.

Present: Ireland, C.J., Spina, Cordy, Botsford, Gants, Duffly, & Lenk, JJ.

OPINION

Page 251

LENK, J.

The defendant pleaded guilty before a Superior Court judge to the charge of failing to register as a sex offender, first offense, pursuant to G. L. c. 6, § 178H (a) (3). In open court, the defendant was sentenced to incarceration for one year in a house of correction. Thereafter, a sentence to community parole supervision for life (CPSL)^[1] also entered on the docket. The defendant subsequently filed an " emergency motion to correct [462 Mass. 677] the sentence," arguing that the CPSL portion of the sentence should be vacated. The motion was denied and we transferred the defendant's appeal to this court on our own motion.

The defendant claims, among other issues, that the imposition of CPSL is discretionary, not mandatory, under the terms of G. L. c. 6, § 178H (a) (3). We agree, and conclude that, because it is evident from the record that the sentencing judge mistakenly believed that imposition of CPSL was mandatory, we must vacate the sentence and remand for resentencing to ensure proper exercise of the judge's discretion.

1. Background.

a. Statutory framework.

General Laws c. 6, § 178C-178O, provides " an extensive statutory registration scheme for sex offenders, in order to protect the public from 'the danger of recidivism posed by sex offenders' and to aid law enforcement officials in protecting their communities by providing them with

Page 252

information." *Commonwealth v. Rosado*, 450 Mass. 657, 659-660, 881 N.E.2d 112 (2008), quoting

section or clause of a statute is questioned, it is proper, no doubt, to look into the other parts of the statute" *Commonwealth v. Galvin*, 388 Mass. 326, 328, 446 N.E.2d 391 (1983), quoting *Holbrook v. Holbrook*, 18 Mass. 248, 1 Pick. 248, 250 (1823). Statutes should be read " as a whole to produce an internal consistency." *Commonwealth v. Fall River Motor Sales, Inc.*, 409 Mass. 302, 316, 565 N.E.2d 1205 (1991).

The three subsections of G. L. c. 6, § 178H (a), set forth the penalties for failure to register for three differently situated groups of defendants. Subsection 178H (a) (1), which applies to those convicted of certain enumerated sex offenses,^[7]

Page 255

provides that defendants convicted under this subsection " shall . . . be punished by a term of community parole supervision for life" (emphasis supplied). Subsection 178H (a) (2), which applies to those level 2 and level 3 offenders convicted of a subsequent offense of failing to register, identically states that anyone convicted under the subsection " shall . . . be punished by a term of community parole supervision for life" (emphasis supplied). This language, on its face, requires the mandatory imposition **[462 Mass. 682]** of CPSL for those convicted under the first two subsections. By contrast, the language of § 178H (a) (3), the provision at issue, reads: " Any person convicted under this subsection who is a level 2 or level 3 sex offender shall . . . be subject to community parole supervision for life . . ." (emphasis supplied).

" Where the Legislature used different language in different paragraphs of the same statute, it intended different meanings." *Ginther v. Commissioner of Ins.*, 427 Mass. 319, 324, 693 N.E.2d 153 (1998). See *DePierre v. United States*, 131 S.Ct. 2225, 2234, 180 L.Ed.2d 114 (2011). We see no need to dispense with this general rule of construction in this case. The Legislature utilized clear language in the first two subsections imposing mandatory CPSL (" shall . . . be punished by") but subsequently adopted ambiguous language (" shall . . . be subject to") in § 178H (a) (3). This use of different language strongly suggests the legislative intent to convey a different meaning.

The legislative history of § 178H (a) (3) reinforces this reading. See *Commonwealth v. Raposo*, 453 Mass. 739, 746, 905 N.E.2d 545 (2009). Subsections 178H (a) (1) and (2) were added in July, 2006, see St. 2006, c. 139, § § 26, 27, while § 178H (a) (3) was added separately, effective December 20, 2006, see St. 2006, c. 303, § 4. The first version of the bill adding § 178H (a) (3) included language identical to the other subsections (" shall . . . be punished by"), see 2005 House Doc. No. 5234, § 4, but the final, approved version of the bill amended the text to its current form (" shall . . . be subject to"). See St. 2006, c. 303, § 4. The Legislature thus considered and rejected specific language that would have required CPSL as a mandatory portion of a sentence, language it had included as part of statutory amendments to the same statute earlier the same year. This change counsels in favor of reading G. L. c. 6, § 178H (a) (3), as calling for discretionary imposition of CPSL. See *Furtado v. Plymouth*, 451 Mass. 529, 537 n.14, 888 N.E.2d 357 (2008) (" the contemporaneous decision of the Legislature to adopt one form of a proposed bill and not another may highlight the intended meaning of the adopted language"); *Commonwealth v. Harris*, 443 Mass. 714, 736, 825 N.E.2d 58 (2005) (Marshall, C.J., concurring in part and dissenting in part), quoting *Transportation Ins. Co. v. Maksyn*, 580 S.W.2d 334, 338 (Tex. 1979) (" The deletion of a provision in a pending **[462 Mass. 683]** bill discloses the legislative

52 U.S.C. § 30101(17)

(3) The Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff et seq.) [now 52 U.S.C. 20301 et seq.].

(4) The National Voter Registration Act of 1993 (42 U.S.C. 1973gg et seq.) [now 52 U.S.C. 20501 et seq.].

(5) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

(6) The Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.).

(b) No effect on preclearance or other requirements under Voting Rights Act

The approval by the Administrator or the Commission of a payment or grant application under subchapter I or subchapter II, or any other action taken by the Commission or a State under such subchapter, shall not be considered to have any effect on requirements for preclearance under section 5 of the Voting Rights Act of 1965 (42 U.S.C. 1973c) [now 52 U.S.C. 10304] or any other requirements of such Act [52 U.S.C. 10301 et seq.].

(Pub. L. 107-252, title IX, § 906, Oct. 29, 2002, 116 Stat. 1729.)

REFERENCES IN TEXT

The National Voter Registration Act of 1993, referred to in subsec. (a), is Pub. L. 103-31, May 20, 1993, 107 Stat. 77, which is classified principally to chapter 205 (§ 20501 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

This chapter, referred to in subsec. (a), was in the original "this Act", meaning Pub. L. 107-252, Oct. 29, 2002, 116 Stat. 1666, known as the Help America Vote Act of 2002, which is classified principally to this chapter. For complete classification of this Act to the Code, see Tables.

The Voting Rights Act of 1965, referred to in subsecs. (a)(1) and (b), is Pub. L. 89-110, Aug. 6, 1965, 79 Stat. 437, which is classified generally to chapters 103 (§ 10301 et seq.), 105 (§ 10501 et seq.), and 107 (§ 10701 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

The Voting Accessibility for the Elderly and Handicapped Act, referred to in subsec. (a)(2), is Pub. L. 98-435, Sept. 28, 1984, 98 Stat. 1678, which is classified generally to chapter 201 (§ 20101 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

The Uniformed and Overseas Citizens Absentee Voting Act, referred to in subsec. (a)(3), is Pub. L. 99-410, Aug. 28, 1986, 100 Stat. 924, which is classified principally to chapter 203 (§ 20301 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

The Americans with Disabilities Act of 1990, referred to in subsec. (a)(5), is Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to chapter 126 (§ 12101 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (a)(6), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, which is classified generally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

CODIFICATION

Section was formerly classified to section 15545 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

Subtitle III—Federal Campaign Finance

CHAPTER 301—FEDERAL ELECTION CAMPAIGNS

SUBCHAPTER I—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

Sec.	
30101.	Definitions.
30102.	Organization of political committees.
30103.	Registration of political committees.
30104.	Reporting requirements.
30105.	Reports on convention financing.
30106.	Federal Election Commission.
30107.	Powers of Commission.
30108.	Advisory opinions.
30109.	Enforcement.
30110.	Judicial review.
30111.	Administrative provisions.
30112.	Maintenance of website of election reports.
30113.	Statements filed with State officers; "appropriate State" defined; duties of State officers; waiver of duplicate filing requirement for States with electronic access.
30114.	Use of contributed amounts for certain purposes.
30115.	Authorization of appropriations.
30116.	Limitations on contributions and expenditures.
30117.	Modification of certain limits for House candidates in response to personal fund expenditures of opponents.
30118.	Contributions or expenditures by national banks, corporations, or labor organizations.
30119.	Contributions by Government contractors.
30120.	Publication and distribution of statements and solicitations.
30121.	Contributions and donations by foreign nationals.
30122.	Contributions in name of another prohibited.
30123.	Limitation on contribution of currency.
30124.	Fraudulent misrepresentation of campaign authority.
30125.	Soft money of political parties.
30126.	Prohibition of contributions by minors.

SUBCHAPTER II—GENERAL PROVISIONS

30141.	Extension of credit by regulated industries; regulations.
30142.	Prohibition against use of certain Federal funds for election activities.
30143.	State laws affected.
30144.	Partial invalidity.
30145.	Period of limitations.
30146.	Collection and use of conference fees.

SUBCHAPTER I—DISCLOSURE OF FEDERAL CAMPAIGN FUNDS

§ 30101. Definitions

When used in this Act:

(1) The term "election" means—

(A) a general, special, primary, or runoff election;

(B) a convention or caucus of a political party which has authority to nominate a candidate;

(C) a primary election held for the selection of delegates to a national nominating convention of a political party; and

(D) a primary election held for the expression of a preference for the nomination of individuals for election to the office of President.

(2) The term "candidate" means an individual who seeks nomination for election, or election,

cordance with section 30104(a)(4)(A)(ii) of this title with respect to any general election;

(iv) the payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card or sample ballot, or other printed listing, of 3 or more candidates for any public office for which an election is held in the State in which such committee is organized, except that this clause shall not apply to costs incurred by such committee with respect to a display of any such listing made on broadcasting stations, or in newspapers, magazines, or similar types of general public political advertising;

(v) any payment made or obligation incurred by a corporation or a labor organization which, under section 30118(b) of this title, would not constitute an expenditure by such corporation or labor organization;

(vi) any costs incurred by an authorized committee or candidate in connection with the solicitation of contributions on behalf of such candidate, except that this clause shall not apply with respect to costs incurred by an authorized committee of a candidate in excess of an amount equal to 20 percent of the expenditure limitation applicable to such candidate under section 30116(b) of this title, but all such costs shall be reported in accordance with section 30104(b) of this title;

(vii) the payment of compensation for legal or accounting services—

(I) rendered to or on behalf of any political committee of a political party if the person paying for such services is the regular employer of the individual rendering such services, and if such services are not attributable to activities which directly further the election of any designated candidate to Federal office; or

(II) rendered to or on behalf of a candidate or political committee if the person paying for such services is the regular employer of the individual rendering such services, and if such services are solely for the purpose of ensuring compliance with this Act or chapter 95 or chapter 96 of title 26,

but amounts paid or incurred by the regular employer for such legal or accounting services shall be reported in accordance with section 30104(b) of this title by the committee receiving such services;

(viii) the payment by a State or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids, and yard signs) used by such committee in connection with volunteer activities on behalf of nominees of such party: *Provided, That—*

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or particular candidates;

(ix) the payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of nominees of such party for President and Vice President: *Provided, That—*

(1) such payments are not for the costs of campaign materials or activities used in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising;

(2) such payments are made from contributions subject to the limitations and prohibitions of this Act; and

(3) such payments are not made from contributions designated to be spent on behalf of a particular candidate or candidates; and

(x) payments received by a political party committee as a condition of ballot access which are transferred to another political party committee or the appropriate State official.

(10) The term "Commission" means the Federal Election Commission.

(11) The term "person" includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government.

(12) The term "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(13) The term "identification" means—

(A) in the case of any individual, the name, the mailing address, and the occupation of such individual, as well as the name of his or her employer; and

(B) in the case of any other person, the full name and address of such person.

(14) The term "national committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the national level, as determined by the Commission.

(15) The term "State committee" means the organization which, by virtue of the bylaws of a political party, is responsible for the day-to-day operation of such political party at the State level, as determined by the Commission.

(16) The term "political party" means an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization.

(17) INDEPENDENT EXPENDITURE.—The term "independent expenditure" means an expenditure by a person—

(A) expressly advocating the election or defeat of a clearly identified candidate; and

(B) that is not made in concert or cooperation with or at the request or suggestion of

such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents.

(18) The term "clearly identified" means that—

(A) the name of the candidate involved appears;

(B) a photograph or drawing of the candidate appears; or

(C) the identity of the candidate is apparent by unambiguous reference.

(19) The term "Act" means the Federal Election Campaign Act of 1971 as amended.

(20) FEDERAL ELECTION ACTIVITY.—

(A) IN GENERAL.—The term "Federal election activity" means—

(i) voter registration activity during the period that begins on the date that is 120 days before the date a regularly scheduled Federal election is held and ends on the date of the election;

(ii) voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot);

(iii) a public communication that refers to a clearly identified candidate for Federal office (regardless of whether a candidate for State or local office is also mentioned or identified) and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office (regardless of whether the communication expressly advocates a vote for or against a candidate); or

(iv) services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election.

(B) EXCLUDED ACTIVITY.—The term "Federal election activity" does not include an amount expended or disbursed by a State, district, or local committee of a political party for—

(i) a public communication that refers solely to a clearly identified candidate for State or local office, if the communication is not a Federal election activity described in subparagraph (A)(i) or (ii);

(ii) a contribution to a candidate for State or local office, provided the contribution is not designated to pay for a Federal election activity described in subparagraph (A);

(iii) the costs of a State, district, or local political convention; and

(iv) the costs of grassroots campaign materials, including buttons, bumper stickers, and yard signs, that name or depict only a candidate for State or local office.

(21) GENERIC CAMPAIGN ACTIVITY.—The term "generic campaign activity" means a campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate.

(22) PUBLIC COMMUNICATION.—The term "public communication" means a communication by

means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising.

(23) MASS MAILING.—The term "mass mailing" means a mailing by United States mail or facsimile of more than 500 pieces of mail matter of an identical or substantially similar nature within any 30-day period.

(24) TELEPHONE BANK.—The term "telephone bank" means more than 500 telephone calls of an identical or substantially similar nature within any 30-day period.

(25) ELECTION CYCLE.—For purposes of sections 30116(i) and 30117 of this title and paragraph (26), the term "election cycle" means the period beginning on the day after the date of the most recent election for the specific office or seat that a candidate is seeking and ending on the date of the next election for that office or seat. For purposes of the preceding sentence, a primary election and a general election shall be considered to be separate elections.

(26) PERSONAL FUNDS.—The term "personal funds" means an amount that is derived from—

(A) any asset that, under applicable State law, at the time the individual became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had—

(i) legal and rightful title; or

(ii) an equitable interest;

(B) income received during the current election cycle of the candidate, including—

(i) a salary and other earned income from bona fide employment;

(ii) dividends and proceeds from the sale of the candidate's stocks or other investments;

(iii) bequests to the candidate;

(iv) income from trusts established before the beginning of the election cycle;

(v) income from trusts established by bequest after the beginning of the election cycle of which the candidate is the beneficiary;

(vi) gifts of a personal nature that had been customarily received by the candidate prior to the beginning of the election cycle; and

(vii) proceeds from lotteries and similar legal games of chance; and

(C) a portion of assets that are jointly owned by the candidate and the candidate's spouse equal to the candidate's share of the asset under the instrument of conveyance or ownership, but if no specific share is indicated by an instrument of conveyance or ownership, the value of $\frac{1}{2}$ of the property.

(Pub. L. 92-225, title III, § 301, Feb. 7, 1972, 86 Stat. 11; Pub. L. 93-443, title II, §§ 201(a), 208(c)(1), Oct. 15, 1974, 88 Stat. 1272, 1286; Pub. L. 94-283, title I, §§ 102, 115(d), (h), May 11, 1976, 90 Stat. 478, 495, 496; Pub. L. 96-187, title I, § 101, Jan. 8, 1980, 93 Stat. 1339; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 106-346, § 101(a) [title V, § 502(b)], Oct. 23, 2000, 114 Stat. 1356, 1356A-49; Pub. L. 107-155, title I, §§ 101(b), 103(b)(1), title II, § 211, title III, § 304(c), Mar. 27, 2002, 116 Stat. 85, 87, 92, 100.)

HOUSE RESOLUTION 8
2011 SESSION (N.H. 2011)

HR 8 – AS INTRODUCED

2011 SESSION

11-0917

03/09

HOUSE RESOLUTION 8

A RESOLUTION urging the New Hampshire congressional delegation to sponsor and support a constitutional amendment to re-establish the authority of the states and Congress to regulate campaign spending by corporations.

SPONSORS: Rep. Pierce, Graf 9; Rep. G. Richardson, Merr 4

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This resolution urges the New Hampshire congressional delegation to sponsor and support a constitutional amendment to re-establish the authority of the states and Congress to regulate campaign spending by corporations.

11-0917

03/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

A RESOLUTION urging the New Hampshire congressional delegation to sponsor and support a constitutional amendment to re-establish the authority of the states and Congress to regulate campaign spending by corporations.

Whereas, the authors of the First Amendment to the United States Constitution designed it to protect the free speech rights of people, not corporations; and

Whereas, the United States Supreme Court's ruling in Citizens United v. Federal Elections Commission overturned longstanding precedent prohibiting corporations from spending their general treasury funds in our elections; and

Whereas, the United States Supreme Court's ruling in Citizens United v. Federal Elections Commission has unleashed a torrent of corporate money into our political process that presents a serious and direct threat to our democracy by drowning out the voices of ordinary citizens; and

Whereas, the people of the United States have previously used the constitutional amendment process to correct egregiously wrong decisions on the part of the United States Supreme Court that threaten our democracy and self-government; and

Whereas, there is growing awareness in Congress of the urgent need to address the harm to our representative democracy of the Citizens United v. Federal Elections Commission decision via amendment to the U.S. Constitution; now, therefore, be it

Resolved by the House of Representatives:

That the New Hampshire house of representatives hereby urges the New Hampshire congressional delegation to sponsor and support an amendment to the United States Constitution to re-establish the authority of the states and Congress to regulate campaign spending by corporations, in the following form:

"The sovereign right of the people to govern and hold free elections being essential to a free democracy, the right of the people to cast an educated ballot shall not be abridged. Nothing in this constitution shall be construed to limit the authority of Congress or the States to regulate, with regard to the impact on any political campaign or campaign for election for public office, the spending and activities of any entity created by State or Federal law or the law of another nation. Nothing contained in this article shall be construed to abridge the freedom of the press;" and

That copies of this resolution be transmitted by the house clerk to each member of the New Hampshire congressional delegation.

HOUSE RESOLUTION 7
2013 SESSION (N.H. 2013)

HR 7 - AS INTRODUCED

2013 SESSION

13-0636

03/09

HOUSE RESOLUTION **7**

A RESOLUTION urging the New Hampshire congressional delegation to sponsor and support a constitutional amendment to re-establish the authority of the states and Congress to regulate campaign spending by entities created by law.

SPONSORS: Rep. Pastor, Graf 12; Rep. Cushing, Rock 21; Rep. Higgins, Graf 12;
Sen. Pierce, Dist 5; Sen. Fuller Clark, Dist 21

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This resolution urges the New Hampshire congressional delegation to sponsor and support a constitutional amendment to re-establish the authority of the states and Congress to regulate campaign spending by entities created by law.

HR 7 - AS INTRODUCED

13-0636
03/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

A RESOLUTION urging the New Hampshire congressional delegation to sponsor and support a constitutional amendment to re-establish the authority of the states and Congress to regulate campaign spending by entities created by law.

1 Whereas, the authors of the First Amendment to the United States Constitution designed it to
2 protect the free speech rights of people, not corporations or other entities created by law; and

3 Whereas, the sovereign right of the people to govern and hold free elections being essential to a
4 free democracy, the right of the people to cast an educated ballot shall not be abridged; and

5 Whereas, because only natural persons can vote and seek election to office, they hold an interest
6 that is superior to that of entities created by law in the maintenance and vitality of our democracy;
7 and

8 Whereas, the United States Supreme Court's ruling in Citizens United v. Federal Elections
9 Commission overturned longstanding precedent prohibiting corporations from spending their general
10 treasury funds in our elections; and

11 Whereas, in the wake of the Citizens United decision, the United States Court of Appeals for the
12 District of Columbia Circuit in SpeechNow.org v. Federal Elections Commission enabled the creation
13 of entities authorized to accept and spend unlimited amounts of money for the purpose of influencing
14 the outcome of elections and ballot measures; and

15 Whereas, the rulings in Citizens United v. Federal Elections Commission and SpeechNow.org v.
16 Federal Elections Commission have unleashed a torrent of money into our political process that
17 presents a serious and direct threat to our democracy by drowning out the voices of ordinary citizens;
18 and

19 Whereas, the people of the United States have previously used the constitutional amendment
20 process to correct egregiously wrong decisions on the part of the United States Supreme Court and
21 other federal courts that threaten our democracy and self-government; and

22 Whereas, there is growing awareness in Congress of the urgent need to address the harm to our
23 representative democracy of the Citizens United v. Federal Elections Commission and the
24 SpeechNow.org v. Federal Elections Commission decisions via amendment to the U.S. Constitution;
25 now, therefore, be it

26 Resolved by the House of Representatives:

27 That the New Hampshire house of representatives hereby urges the New Hampshire
28 congressional delegation to sponsor and support an amendment to the United States Constitution to
29 re-establish the authority of the states and Congress to regulate campaign spending by entities
30 created by law, in the following form:

31 "Nothing in this constitution shall be construed to limit the authority of Congress or the States to

HR 7 - AS INTRODUCED

- Page 2 -

1 regulate the spending and activities of any entity created by law, with regard to any campaign for
2 election to public office,. Nothing contained in this article shall be construed to abridge the freedom
3 of the press;" and

4 That copies of this resolution be transmitted by the house clerk to each member of the
5 New Hampshire congressional delegation.

**FLOOR AMENDMENT 2014-0425S
TO SENATE BILL 120
2014 SESSION (N.H. 2014)**

Sen. Pierce, Dist. 5

Sen. Odell, Dist. 8

February 5, 2014

2014-0425s

03/05

Floor Amendment to SB 120-FN

Amend the bill by replacing all after the enacting clause with the following:

1 Definitions; Political Committee. RSA 664:2, III is repealed and reenacted to read as follows:

III. "Political committee" means:

- (a) Any organization of 2 or more persons that promotes the success or defeat of a candidate or candidates or measure or measures, including the political committee of a political party;
- (b) Any segregated fund established by any organization the purpose of which is to promote the success or defeat of a candidate or candidates or measure or measures;
- (c) Any organization that has as its major purpose to promote the success or defeat of a candidate or candidates or measure or measures and whose receipts or expenditures total \$2,500 or more in a calendar year for that purpose;
- (d) Any organization that does not have as its major purpose to promote the success or defeat of a candidate or candidates or measure or measures but that makes expenditures that total \$5,000 or more in a calendar year; or
- (e) Any segregated fund that is voluntarily registered with the secretary of state for the purpose of reporting its receipts and expenditures under this chapter or any organization that voluntarily registers with the secretary of state, without regard to whether such segregated fund or organization meets the receipt or expenditure thresholds described in this paragraph.

As used in this paragraph, "organization" includes, but is not limited to, one or more natural persons; entities formed under state law, except those entities qualified under section 501(c)(3) of the United States Internal Revenue Code of 1986; committees formed by a candidate, exploratory campaign, or political party; and any other association of natural persons or entities formed under state law that is not registered as a business entity.

2 Definitions; Expenditure. Amend RSA 664:2, IX to read as follows:

IX. "Expenditure" shall mean the disbursement of money or thing of value or the making of a legally binding commitment to make such a disbursement in the future *or the transfer of funds by a political committee to another political committee or to a candidate* for the purpose of ~~[influencing the nomination for election or election of any candidate]~~ *promoting the success or defeat of a candidate or candidates and measure or measures. "Expenditures" includes disbursements constituting independent expenditures, as defined in paragraph XI.* It does not include:

- (a) The candidate's filing fee or his *or her* expenses for personal travel and subsistence;
- (b) *Activity designed to encourage individuals to register to vote or to vote, if that activity or communication does not mention a clearly identified candidate;*
- (c) *Any communication by any membership organization or corporation to its members or stockholders, if the primary purpose of that membership organization or corporation is not for the purpose of promoting the success or defeat of a candidate or candidates and measure or measures; or*
- (d) *Any communication by any political committee member that is not made for the purpose of promoting the success or defeat of a candidate or candidates and measure or measures.*

3 Definitions; Independent Expenditures. Amend RSA 664:2, XI to read as follows:

XI. "Independent expenditures" means expenditures ~~[by a person, political committee, or other entity]~~ *that pay for the development and distribution of a communication that expressly [advocating] advocates the election or defeat of a clearly identified candidate or candidates or the success or defeat of a measure or measures or pay for a communication that is functionally equivalent to express advocacy because, when taken as a whole, such communication is likely to be interpreted by a reasonable person only as advocating the election or defeat of a clearly identified candidate or candidates or the success or defeat of a measure or*

measures, taking into account whether the communication involved mentions a candidacy or a political party, or takes a position on a candidate's character, qualifications, or fitness for office, which are made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which are not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate. ~~[As used in this paragraph, "clearly identified" means that the name of the candidate involved appears; a photograph or drawing of the candidate appears; or the identity of the candidate is apparent by unambiguous reference.]~~

4 New Paragraphs; Definitions. Amend RSA 664:2 by inserting after paragraph XVII the following new paragraphs:

XVIII. "Receipts" shall mean the receipt of money or thing of value or the receipt of a legally binding commitment to receive money or thing of value in the future for the purpose of promoting the success or defeat of a candidate or candidates or a measure or measures. Receipts shall not include amounts received by a political committee in commercial transactions in the ordinary course of any trade or business conducted by the political committee or in the form of investments in the political committee or amounts received by the political committee from payors who, at the time of payment, prohibited, in writing, the use of the payment as an expenditure.

XIX. "Segregated fund" shall mean a segregated account of money that consists of funds that were paid directly to such account by persons other than the covered political committee that controls the account from which only expenditures defined in paragraph IX are made.

XX. "Clearly identified candidate" shall mean that the name of the candidate involved appears; a photograph or drawing of the candidate appears; or the identity of the candidate is apparent by unambiguous reference.

5 Registration of Political Committees. Amend RSA 664:3, I to read as follows:

I. Any political committee, except the political committee of a political party, shall register with the secretary of state as provided in this section. *A political committee may register for an election cycle at any time after the final report is due following the then-most-recent general election.* The ~~[committee shall register with]~~ *committee's registration shall be received by* the secretary of state not later than ~~[24]~~ *48* hours after ~~[receiving any contribution in excess of \$500 or before making any expenditure in excess of \$500; but in no event later than 14 days after the formation of the committee]~~ *the committee meets at least one of the criteria under RSA 664:2, III. The registration shall be accompanied by an itemized statement of the receipts and expenditures, if any, made by the political committee in the election cycle prior to registration. Such itemization shall be made pursuant to the manner set forth in RSA 664:6.* The registration shall *also* be accompanied by a fee of \$50, which shall be deposited by the secretary of state into the general fund; provided, however, that the political committee of a candidate ~~[which]~~ *that* registers under this section shall not be required to pay the \$50 fee. Each political committee shall designate a treasurer or agent who is a citizen of this state and who is authorized to receive all process and other legal documents on behalf of the political committee, and through whom may be obtained access to all books and records of the political committee. The political committee shall file with the secretary of state a statement of the purpose of the committee and shall indicate whether the committee will be making independent expenditures ~~[in support of or in opposition to any candidate including]~~. *The registration shall also include* a statement of the name, address, occupation, and principal place of business of its chairperson and treasurer or agent, and the names and addresses of other officers. The committee shall file an amendment to its registration within 14 days of any change in the officers or purpose of the committee.

6 New Paragraph; Registration of Political Committees. Amend RSA 664:3 by inserting after paragraph IV the following new paragraph:

V. Any political committee that is exempt from taxation under sections 501(c)(4), 501(c)(5), or 501(c)(6) of the United States Internal Revenue Code of 1986 may disclose, but shall not be required to disclose in its itemized statement of receipts, the identity of its donors.

7 Reporting by Political Committee. Amend RSA 664:6, I to read as follows:

I. Any political committee whose receipts or expenditures ~~[in support of a candidate, measure, or political party]~~ exceed \$500 except, for the purposes of this paragraph only, the political committee of a political party or the political committee of a candidate, shall file with the secretary of state an itemized statement *in the form prescribed by the secretary of state*, signed by its chairman and treasurer showing each of its receipts exceeding \$25 with the full name and ~~[home post office]~~ *postal* address of the contributor in alphabetical order and the amount of the contribution, the date it was received, and the aggregate total for each election for each contributor of over \$100. The statement shall be filed not later than the Wednesday 12 weeks immediately preceding a primary election, before 5 o'clock in the afternoon, and shall cover the period from the day of the committee registration up to and including the Monday before the statement is due. All receipts of \$25 or under shall appear on the statements as unitemized receipts. Any listing ~~[which]~~ *that* exceeds an individual's aggregate total of \$100 for each election shall be accompanied by the contributor's occupation including official job title, the name of the contributor's employer, and the city or town of the contributor's principal place of business, if any. The statement shall also show each committee expenditure *exceeding \$25* with the full name and ~~[city or town of persons, corporations, committees, or to whomever paid or to be paid]~~ *postal address of the payee or promise of payment*, the date paid *or obligated*, and the election for which the expenditure was made, with the specific nature and amount of each expenditure since the date of the registration.

8 Reporting by Political Committee. Amend RSA 664:6, II-a to read as follows:

II-a. A political committee shall file a statement in the same form as in paragraph I with the secretary of state not later than the Wednesday immediately preceding a primary and a general election, before 5 o'clock in the afternoon. The statement shall summarize the statements under paragraphs I and II if such statements are filed and itemize all receipts and expenditures since the cutoff of the statement under paragraph II up until the Monday preceding the filing of the statement under this paragraph. In addition to the reporting requirements contained in this section, the secretary of state shall be notified by the fiscal agent within [24] 48 hours of any contribution exceeding \$500 [which] **that** is received after the statement under this paragraph is filed and prior to the day of election.

9 Reporting by Political Committee. Amend RSA 664:6, IV-a to read as follows:

IV-a. Any political committee whose independent expenditures, in aggregate, exceed \$500 shall file an itemized statement with the secretary of state **which shall be received by the secretary of state** not later than [24] 48 hours after such expenditures are made, and thereafter each time a further \$500 is expended. Such itemized statements shall cover the period during which independent expenditures totaling \$500 were made. Each statement shall include a certification by **the chairman of** the political committee that the independent expenditure meets the definition in RSA 664:2, XI. Each statement shall contain the date of each independent expenditure; the name and address of the person to whom the expenditure was made; the name of the candidate on whose behalf or against whom each **independent** expenditure was made; the amount of each expenditure; the purpose of each expenditure, and the aggregate amount of all previous independent expenditures. If the independent expenditure is made in support of or ~~to oppose~~ **in opposition to** more than one candidate, the statement made under this paragraph shall allocate the way in which the expenditure was made among the candidates on a reasonable basis. For the purposes of this paragraph, "reasonable basis" means a statement [which] **that** reflects the benefit or the burden reasonably expected to be derived or suffered by each candidate. The filing requirements of this paragraph shall be in addition to ~~all other filing~~ requirements under this section, and shall not be limited to the filing periods during which expenditures must otherwise be reported.

10 New Paragraph; Reporting by Political Committee. Amend RSA 664:6 by inserting after paragraph VIII the following new paragraph:

IX. Any political committee that is exempt from taxation under sections 501(c)(4), 501(c)(5), or 501(c)(6) of the United States Internal Revenue Code of 1986 may disclose, but shall not be required to disclose in its itemized statement of receipts, the identity of its donors.

11 New Paragraphs; Penalties. Amend RSA 664:21 by inserting after paragraph VI the following new paragraphs:

VII.(a) A political committee other than a political committee of a candidate that fails to register in accordance with RSA 664:3 shall be subject to a fine up to 25 percent of the total amount of independent expenditures made during the period from the date the political committee was required to register to the date the political committee registered.

(b) A political committee that fails to report independent expenditures in accordance with RSA 664:6, IV-a shall be subject to a fine up to 25 percent of the total amount of independent expenditures not reported or reported late.

VIII. Any person who willfully makes and subscribes to any statement filed under this chapter that he or she does not believe to be true and correct as to every material matter shall be guilty of false swearing under RSA 641:2.

12 Effective Date. This act shall take effect upon its passage.

2014-0425s

AMENDED ANALYSIS

This bill:

I. Modifies the definitions of "political committee," "expenditure," and "independent expenditure" and establishes a definition of "receipts."

II. Modifies registration and reporting requirements for political committees.

JAY SURDUKOWSKI,
HEART OF DARKNESS: NEW HAMPSHIRE CAMPAIGN
FINANCE LAW SINCE CITIZENS UNITED,
14 U.N.H. L. REV. 227 (2016)

University of New Hampshire Law Review

Volume 14 | Number 2

Article 1

May 2016

Heart of Darkness: New Hampshire Campaign Finance Law Since Citizens United

Jay Surdowski

Partner at Sulloway & Hollis, P.L.L.C., Concord, NH

Follow this and additional works at: https://scholars.unh.edu/unh_lr



Part of the [American Politics Commons](#), and the [Law and Politics Commons](#)

Repository Citation

Jay Surdowski, *Heart of Darkness: New Hampshire Campaign Finance Law Since Citizens United*, 14 U.N.H. L. REV. 227 (2016), available at http://scholars.unh.edu/unh_lr/vol14/iss2/1

This Article is brought to you for free and open access by the University of New Hampshire – School of Law at University of New Hampshire Scholars' Repository. It has been accepted for inclusion in University of New Hampshire Law Review by an authorized editor of University of New Hampshire Scholars' Repository. For more information, please contact ellen.phillips@law.unh.edu.

Heart of Darkness: New Hampshire Campaign Finance Law Since Citizens United

Abstract

[Excerpt] “Perhaps one of the greatest election law paradoxes in the United States is that New Hampshire—the First in the Nation Presidential Primary State—a State whose citizenry famously prides itself on political engagement—is also a State with some of the most complicated and sporadically enforced campaign finance laws in any jurisdiction. The post-Citizens United world, wherein vast quantities of unlimited and anonymous corporate and individual donations by some of the wealthiest citizens are freely flowing (so-called “Dark Money” because the identities of donors are shielded by law), has only exacerbated the loud creaks of the rickety campaign finance law firmament in New Hampshire. Further, a maze of statutory loopholes, known to few and understood by fewer, operate to allow for parallel large-dollar transactions of campaign financing which echo the freewheeling spending of corporations and individuals through nonprofit organizations and Super PACs that Citizens United and subsequent court cases allow. Republican Grant Bosse, a one-time congressional candidate and conservative political commentator, captured the sense of the New Hampshire campaign finance law landscape in 2010 in a line that became prophetic of what the next four years would hold, and what this article takes as its daunting subject: “Over the years, a series of legal cases and administrative rulings have poked so many holes into New Hampshire’s once strict campaign and expenditure limits that even Gov. John Lynch has been forced to ask the attorney general what’s allowed and what isn’t.”

With these dynamics as a backdrop, this article examines two spheres of major change in New Hampshire campaign finance law in 2014 in an effort to shed some light on the dark heart of campaign finance law in the most political of states. First, a great deal of campaign finance law was made during the contentious 2014 midterm election in the form of decision letters issued by the New Hampshire Attorney General’s office—the office charged by law with enforcement of campaign finance and election law. The significance of these administrative law decision letters—typically issued to a small circle of attorneys, candidates, and political leaders—cannot be underestimated in both understanding New Hampshire’s campaign finance law as it stands today, and the contribution of these quietly-issued letters to the general state of confusion, where such significant legal developments are often neither statutory nor even a matter of case precedent. Like weathered and tattered family histories, these decision letters are jealously guarded and handed down from campaign to campaign as the stuff of lore—and, for better or worse, the stuff of precedent. The frequency of and publicity surrounding high-profile campaign finance law complaints in the 2014 election have also established campaign finance complaints and litigation as a new arena for sophisticated electoral battle in New Hampshire, as this article will show.

Second, this article reviews changes to New Hampshire state law, which have been made in reaction to the influx of Dark Money and related outside spending since 2010. The reforms contained in Senate Bill 120, proposed by Senator Jeb Bradley of Wolfeboro, the Senate Majority Leader, are summarized along with a discussion of post-Citizens United developments in New Hampshire that illustrate some of the perceived ills Senate Bill 120 is intended to remedy. Compliance with the new law is mixed, and rumblings of constitutional challenge are on the horizon, as this article will discuss.

From the outset I note, for the purposes of full disclosure, that I served as counsel to Governor Maggie Hassan’s reelection campaign. I have endeavored to write with reasonable objectivity about major changes to campaign finance law that have recently evolved—many of which arose out of complaints against the

was spent overall.¹⁹⁵ On the high end, the Cataldo-Leonard race saw 68.4% in outside spending,¹⁹⁶ followed close behind by the Hosmer-Rago race at 62.7% and the Gilmour-Avard race at 56.8%.¹⁹⁷ The second most expensive race, to the tune of \$437,613.13, was the Sanborn-Nyquist race.¹⁹⁸ This election saw 46.9% of its spending by outside parties.¹⁹⁹ The upshot of all of this spending is that in some instances, as with the 2012 Governor's race, more money is being spent by outside parties than candidates—in the case of a candidate like Kathy Rago, a whopping 80% of the money spent to elect her was not raised by her.²⁰⁰ These figures are consistent with national trends in which outside money is fast becoming king.

E. SB 120: An Effort to Shine a Light on "Dark Money"

At the tail end of its 2014 session, the New Hampshire Legislature enacted Senate Majority Leader Jeb Bradley's bill to require 501(c)(4) organizations to register with the Secretary of State and to report receipts and expenditures just like political committees and parties have long done.²⁰¹ Such organizations are now required to report if they spend more than \$5,000 in a year on communications that are "functionally equivalent to express advocacy" because "when taken as a whole, such communication is likely to be interpreted by a reasonable person only as advocating the election or defeat of a clearly identified candidate or candidates or the success or defeat of a measure or measures."²⁰² The new law provides that the calculus for functional equivalence must take into account "whether the communication involved mentions a candidacy or a political party, or takes a position on a candidate's character, qualifications, or fitness for office."²⁰³

SB 120 was crafted in such a way to shed light on the communications 501(c)(4)'s were making heretofore without disclosure. The tricky thing is that in order to maintain their 501(c)(4) status as social welfare organizations, at least fifty-one percent of a 501(c)(4)'s activities must be focused on issue advocacy and education.²⁰⁴ "Issue advocacy" falls outside the realm of disclosure laws while "express advocacy" or its functional equivalent brings communications into a sphere where voters have a right to

¹⁹⁵ E-mail from Gene Martin, *supra* note 194.

¹⁹⁶ *Id.*

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ *Supra* note 194 and accompanying text.

²⁰¹ *Id.*

²⁰² N.H. REV. STAT. ANN. § 664:2, XXII (2014).

²⁰³ N.H. REV. STAT. ANN. § 664:2, XXII.

²⁰⁴ 26 C.F.R. § 1.501(c)(4)-1(a)(1) (1990).

know who is making such communications in an effort to influence politics. The line between educating voters on candidate's positions through issue advocacy and expressly advocating for defeat or election of a given candidate is perilous to discern at times. The "functional equivalent" language incorporated in SB 120 and intended to bring transparency to these kinds of expenditures closely hews to language from Chief Justice John Roberts decision in *Federal Election Commission v. Wisconsin Right to Life, Inc.*,²⁰⁵ a decision in which the United States Supreme Court held that mentioning a candidate's name is not the only hallmark of express advocacy—other communications are the functional equivalent if "the ad is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."²⁰⁶

F. SB 120: Is it Working?

Compliance with SB 120 has been mixed. Since the law was implemented in late July of 2014, a number of 501(c)(4)'s from both sides of the political spectrum have complied, including New Hampshire Citizen's Alliance for Action, the National Rifle Association (NRA) Political Victory Fund, Planned Parenthood of N.H. Action Fund, and Cornerstone Action.²⁰⁷ Planned Parenthood and New Hampshire Citizen's Alliance may be categorized as liberal or progressive groups and the NRA and Cornerstone Action tend to be described as conservative.²⁰⁸

On the other hand, various prominent 501(c)(4) outfits active in New Hampshire have openly defied the law by claiming it doesn't apply to them. The most nationally famous of all the Dark Money groups tops this list: Americans for Prosperity, a national organization heavily funded by Charles and David Koch—the oft' decried (usually by Democrats) Koch Brothers—billionaire siblings with significant industrial interests and

²⁰⁵ Fed. Election Comm'n v. Wis. Right to Life, Inc., 551 U.S. 449, 465–66 (2007).

²⁰⁶ *Id.* at 469–70.

²⁰⁷ See generally *Political Committees*, N.H. SEC'Y OF STATE, available at <http://sos.nh.gov/PolComm.aspx> (last visited Apr. 8, 2015) [hereinafter *Political Committees*].

²⁰⁸ Planned Parenthood, at least, might bristle at its description as a liberal group. The organization is adamant about supporting both Republicans and Democrats who support their cause. In recent memory, former State Senator Bob Odell and Seacoast Senator Nancy Stiles have both been endorsed by Planned Parenthood. See John DiStaso, *Granite Reports Update: Rubens-backer Humphrey says it's 'imperative' to elect Brown*, NHJOURNAL (Sept. 12, 2014), <http://nhjournal.com/granite-reports-update-rubens-backer-humphrey/>; *2012-PPNNE Action Fund NH-PAC Endorses Candidates for State Senate*, PLANNED PARENTHOOD OF N. NEW ENG. ACTION FUND, <http://web.archive.org/web/20140101090413/http://www.ppnneactionfund.org/campaigns-elections/new-hampshire/2012-ppnne-action-fund-nh-pac-endorses-candidates-for-state-senate/>.

purchased political clout. Americans for Prosperity New Hampshire—the New Hampshire Chapter of the group—has not registered or reported any of its electoral spending this cycle according to records maintained at the New Hampshire Secretary of State.²⁰⁹ In a New Hampshire Public Radio story by Brian Wallstin, AFP-NH's chief Greg Moore was dubious about the constitutionality of SB 120, stating “the direction federal court rulings are taking” makes it doubtful that the functional equivalent test will survive.²¹⁰ He noted that a test case will come when an attempt to regulate issue advocacy is made using the functional equivalent test—and such a test case represents “a collision course with litigation.”²¹¹ Another group that was active in the 2014 election, the New Hampshire Advantage Coalition, has also failed to register or report its expenditures.²¹² A third conservative group, Citizens for a Strong New Hampshire, has also refused to register or make required reports.²¹³ Derek Dufresne, spokesman for Citizens for a Strong New Hampshire, stated at the time of SB 120's passage that the First Amendment shields their activity and that “all legal options” are on the table for a challenge.²¹⁴

As of the time of this writing, two complaints are pending at the Attorney General's office over non-compliance with SB 120.²¹⁵ State Representative Robert “Renny” Cushing of Hampton—who narrowly won reelection after a recount of a tied election was decided in his favor—complained about two different mailings targeting his reelection to a Seacoast-area House seat.²¹⁶ One mailing sent by the New Hampshire Advantage Coalition, an AFP affiliate, implied that Representative Cushing was opposed to efforts to crack down on welfare abuse.²¹⁷ The ad depicts a stereotypical “welfare queen” smoking with a liquor bottle in the foreground and a teenage-looking man smoking a cigarette with text that states: “Robert Cushing Refuses to Stop Welfare Abuse” and “People are abusing welfare by buying alcohol and tobacco with your tax dollars.”²¹⁸ Another mailing, by Packing NH, a

²⁰⁹ *Political Committees*, *supra* note 207.

²¹⁰ Brian Wallstin, *Can N.H.'s New Campaign Finance Rules Hold Up In Court*, NHPR.ORG (July 21, 2014, 4:00 p.m.), <http://nhpr.org/post/can-nh-s-new-campaign-finance-rules-hold-court>.

²¹¹ *Id.*

²¹² *Political Committees*, *supra* note 208.

²¹³ *Id.*

²¹⁴ Wallstin, *\$11 Million in Outside Spending*, *supra* note 166.

²¹⁵ Telephone Conference with Stephen Labonte, Assistant Att'y Gen., N.H. Dep't of Justice, in Concord, N.H. (Dec. 15, 2014) [hereinafter Telephone Conference with Labonte].

²¹⁶ Kyle Stucker, *Cushing files complaint over 'shady' political ads*, ELECTION 2014, SEACOSTONLINE.COM (Nov. 6, 2014, 6:43 p.m.), <http://www.seacoastonline.com/article/20141106/News/141109359>.

²¹⁷ *Id.*

²¹⁸ *Id.*

pro-gun rights entity, accused Representative Cushing of supporting higher property taxes.²¹⁹ At the time of this writing, both complaints are still pending.²²⁰ Depending on how the Attorney General rules, more litigation may be in the offing.

III. CONCLUSION

The changes in the campaign finance landscape noted in this article are likely to demarcate battle lines in New Hampshire elections for years to come in at least two significant ways.

First, both major political parties (and the campaigns they serve) have used more campaign finance complaints as a political weapon than before. In the new era of social media where any citizen can serve as a beacon of political information and news, campaign finance complaints have a certain snappy resonance—with the public's natural aversion to the intersection of money and politics, allegations of wrongdoing in this arena can be potent attacks. During the Campaign Finance Summer, the Republican State Committee was especially fond of tweeting an image of Governor Hassan surrounded by union cash with the caption "Lifestyles of the Rich and Liberal."²²¹ And as previously noted, Republicans also sought to make some dubious connection in the public's mind between Hassan's acceptance of IBEW funds and the union's high-profile support of the Northern Pass Hydroelectric Project.²²² Neither ploy especially worked in the end.

Of course, the Republicans' zeal was dampened when the Attorney General dinged candidate Havenstein for significant campaign finance improprieties. This cautionary tale represents that a campaign or political party should be wary of throwing stones if they live in glass houses. A corollary lesson from the Campaign Finance Summer is New Hampshire campaigns not only must be hyper-careful of their own practices, they should also scrutinize the compliance of their donors or run the risk of wearing the sins of their contributors (i.e., PACs that don't register or file reports). Campaigns can be fairly or unfairly conflated with the acts or omissions of their contributors, especially if they are significant contributors. A final observation on campaign finance litigation as a political move: like any litigation, outcomes can be very uncertain. And like any other high profile

²¹⁹ *Id.*

²²⁰ Telephone Conference with Labonte, *supra* note 215.

²²¹ See *NHGOP Presents: Lifestyles of the Rich and Liberal*, REPUBLICAN PARTY OF N.H. (June 19, 2014), <http://nhgop.org/news/nhgop-presents-lifestyles-of-the-rich-and-liberal>.

²²² Kevin Landrigan, *Republicans question Hassan accepting \$25K from pro-Northern Pass electrical union*, NASHUA TELEGRAPH (July 17, 2012).

litigation, the pressure points may not always align with legal process or norms, just the way a “bet-the-company litigation” may not always align with bottom line concerns and can sometimes be tethered to passion or expediency. For example, the Attorney General’s retrospective application of the newly invented “release of control” rule to the Hassan campaign was ripe for challenge as an impermissible retrospective application of newly-minted administrative law that did not exist at the time of the contributions. However, in the thick of a campaign, when the currency is daily (or even intra-daily) press headlines, moving on as swiftly as possible may be the best course politically, even if the legal option for further contest is plainly viable. One might also speculate to what degree Attorney General Joseph Foster—an appointee of the Governor but a politically independent actor—was compelled to split the baby in some fashion in an effort to amplify the non-partisan nature of his office.²²³

Second, the vast majority of political spending will go on in the dark—perhaps in perpetuity—and that spending will be a bigger and bigger portion of the pie in New Hampshire and elsewhere. At the time of this writing, a number of states have called for a Constitutional amendment to overturn the *Citizens United* decision²²⁴ and the New Hampshire Legislature is currently debating such a resolution.²²⁵ Indeed, at the time of this writing, a ragged band of activists affiliated with Harvard Law School’s Professor Lawrence Lessig that call themselves the New Hampshire Rebellion are braving the harsh New Hampshire winter and walking across the state in protest of the post-*Citizens United* world, as a homage to activist Doris Haddock who once walked from California to Washington, D.C. in a bid to raise awareness about the overflow of money in politics.²²⁶

Ironically, it is worth noting in these concluding paragraphs that Professor Lessig has been criticized in New Hampshire and elsewhere for endeavoring to end spending excesses by using a Super PAC of the very kind he decries—the so-called May Day PAC that dumped over a million and a

²²³ Attorney General Foster recused himself from subsequent investigations at the request of the Republican State Committee. Mr. Foster had served on Governor Hassan’s finance team in 2012. See John DiStaso, *Updated: AG Foster has recused himself from review of GOP complaint vs. Hassan campaign*, NH JOURNAL (Aug. 15, 2014), <http://nhjournal.com/ag-foster-says-recuse/>.

²²⁴ Fredreka Schouten, *President Obama wants to reverse Citizens United*, U.S.A. TODAY (Feb. 9, 2015), <http://onpolitics.usatoday.com/2015/02/09/president-obama-wants-to-reverse-citizens-united/>.

²²⁵ See H.B. 371, 2015 Sess. (N.H. 2015), <https://legiscan.com/NH/text/HB371/id/1075901>.

²²⁶ Jennifer Harper, *Cold fury: ‘New Hampshire Rebellion’ walks 250 frozen miles to protest big money in politics*, WASH. TIMES (Jan. 17, 2015), <http://www.washingtontimes.com/news/2015/jan/17/snow-wont-stop-new-hampshire-rebellion-250-walk-p/>.

half dollars into supporting a quixotic primary challenge to former Senator Scott Brown, an obscure, right wing former-Republican legislator from the 1990s. Lessig expressed public regret for this move later by stating, “in the end, the burden of this mistake rests with me, and me alone.”²²⁷ The May Day-backed former state senator garnered a paltry twenty-three percent of the vote in a primary chiefly fought with two Former US Senators from Massachusetts and New Hampshire, respectively.²²⁸ Former Senator Scott Brown took a commanding fifty percent of the vote.²²⁹

The prospects for change of a constitutional magnitude any time soon are likely dim. Simply put, Constitutions are hard to change—the last amendment about congressional pay raises, the Twenty-Seventh Amendment, took 202 years to ratify.²³⁰ Other efforts that gained great currency on the wings of civil rights-scale movements, such as the Equal Rights Amendment first introduced in 1923, have failed.²³¹ Finally, those who hold the megaphones of this new brand of Free Speech are not likely to go gently into the good night—presumably hundreds of millions or even billions could be deployed to defeat any attempt to amend the Constitution to reverse *Citizens United*. Indeed, at the time of this writing, the Koch Brothers—who are worth over forty billion dollars²³² and are the seventh richest people in the world—have announced they will spend \$889 million on the 2016 election, a sum that continues to dwarf spending by the two major political parties.²³³ For comparison, the May Day PAC, which is clumsily attempting to fight money in politics, is said to have spent about ten million dollars on the 2014 midterms with little success.²³⁴

Senate Bill 120 is a well-intentioned law that seeks to shine light in the darkness. However, the continued uncertainty with regards to the survival of campaign finance laws, which are increasingly seen by the United States

²²⁷ Lawrence Lessig, *We Lost, Badly*, LESSIG BLOG, v2 (Sept. 10, 2014), <http://lessig.tumblr.com>.

²²⁸ See N.H. SEC’Y OF STATE, 2014 United States Senate—Republican Primary (2014), <http://sos.nh.gov/2014USSRepPrim.aspx?id=8589938878>.

²²⁹ *Id.*

²³⁰ Richard Berke, *1789 Amendment Is Ratified But Now the Debate Begins*, N.Y. TIMES (May 8, 1992), at A1.

²³¹ David Crary, *90 Years On, The Fight For The Equal Rights Amendment Continues*, CONCORD MONITOR (Aug. 11, 2014).

²³² *The World’s Billionaires*, FORBES, <http://www.forbes.com/billionaires> (last visited Feb. 25, 2014).

²³³ Kenneth Vogel, *The Kochs put a price on 2016: \$889 million*, POLITICO (Jan. 26, 2015), http://www.politico.com/story/2015/01/koch-2016-spending-goal-114604.html#ixzz3QVTvp_gOy.

²³⁴ Byron Tau & Kenneth Vogel, *How to Waste \$10 Million*, POLITICO (Nov. 6, 2014), <http://www.politico.com/story/2014/11/2014-elections-mayday-pac-larry-lessig-112617.html>.

Supreme Court and appellate courts trying to follow its lead as constraining free speech, means that the law may face legal challenge sooner as opposed to later. At least one of the groups that has been evading compliance likely has the capacity to bankroll any and all litigation necessary as a Koch Brother affiliate.²³⁵ And of course, other practices—unlimited political committee to political committee contributions, unlimited pre-filing contributions, and the LLC loophole—have not been the subject of successful legislation to-date in New Hampshire. These avenues for substantial electoral contributions remain viable—indeed, even more viable thanks to recent developments—than ever before.

For now, like Conrad's protagonists penetrating deeper into the darkling jungle, even those who would ban money's influence in politics or reform the system,²³⁶ such as Professor Lessig's May Day PAC, have been forced to live the very mores of the heart of darkness they decry—a place where the thrall of money is only a matter of degree and no one comes with clean hands.²³⁷

²³⁵ Americans for Prosperity is funded by the Koch Brothers and other wealthy allies. See Kenneth Vogel, *Koch brothers' Americans for Prosperity plans \$125 million spending spree*, POLITICO (May 9, 2014), <http://www.politico.com/story/2014/05/koch-brothers-americans-for-prosperity-2014-elections-106520.html>.

²³⁶ Of note, both Governor Hassan and Mr. Havenstein called for campaign finance reform in the Summer of 2014.

²³⁷ This article has given the reader a map to the heart of darkness and is agnostic on where elected leaders and candidates should go from here in terms of future legislation or campaign fundraising practices.

SENATE BILL 136
2016 Session (N.H. 2016)¹

¹ The text of SB 136 states it is from the 2015 session. SB 136 was introduced in the 2015 session, referred to Interim Study over the summer of 2015, and then dispositively voted on in the 2016 session.

SB 136 - AS AMENDED BY THE SENATE

03/26/2015 1038s
03/26/2015 1138s

2015 SESSION

15-0973
03/09

SENATE BILL **136**

AN ACT establishing a committee to review constitutional amendments pending in Congress regarding the *Citizens United* decision and related cases that have been introduced in the United States Supreme Court.

SPONSORS: Sen. Fuller Clark, Dist 21; Sen. Lasky, Dist 13; Sen. Pierce, Dist 5; Rep. Elliott, Rock 8; Rep. Burton, Straff 6; Rep. Cushing, Rock 21; Rep. Moody, Rock 17

COMMITTEE: Rules, Enrolled Bills and Internal Affairs

AMENDED ANALYSIS

This bill establishes a committee to review constitutional amendments pending in Congress regarding the *Citizens United* decision and related cases that have been introduced in the United States Supreme Court.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears ~~in brackets and struck through~~.
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

03/26/2015 1038s
03/26/2015 1138s

15-0973
03/09

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fifteen

AN ACT establishing a committee to review constitutional amendments pending in Congress regarding the *Citizens United* decision and related cases that have been introduced in the United States Supreme Court.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Committee Established. There is established a committee to review constitutional amendments pending in Congress regarding the *Citizens United* decision and related cases that have been introduced in the United States Supreme Court.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Two members of the senate, one appointed by the president of the senate and one appointed by the senate minority leader.

(b) Two members of the house of representatives, one of whom shall be appointed by the speaker of the house of representatives, and one of whom shall be appointed by the house minority leader.

II. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties. Recognizing the need for a United States Constitutional Amendment to address the *Citizens United* ruling and related cases, that protects New Hampshire's ability to make its own laws regarding campaign finance while protecting the First Amendment, the committee shall:

I. Examine the impact of the *Citizens United* ruling and related cases on New Hampshire elections.

II. Examine the different approaches and language being proposed by the United States Congress for a constitutional amendment.

III. Examine short term solutions to issues raised by the *Citizens United* ruling and related cases.

4 Chairperson; Quorum. The members of the committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Three members of the committee shall constitute a quorum.

5 Report. The committee shall report its findings and any recommendations for proposed legislation or resolution to the New Hampshire congressional delegation, the president of the senate, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2015.

6 Effective Date. This act shall take effect upon its passage.

HOUSE CONCURRENT RESOLUTION 1
2011 SESSION (N.H. 2011)

HCR 1 – AS INTRODUCED

2011 SESSION

11-0309

05/03

HOUSE CONCURRENT RESOLUTION I

A RESOLUTION urging the congressional delegation to begin the process for a constitutional amendment establishing that human beings, not corporations, are entitled to constitutional rights.

SPONSORS: Rep. Weed, Ches 3; Rep. Carr, Ches 4

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This resolution urges the congressional delegation to begin the process for a constitutional amendment establishing that human beings, not corporations, are entitled to constitutional rights.

11-0309

05/03

STATE OF NEW HAMPSHIRE*In the Year of Our Lord Two Thousand Eleven*

A RESOLUTION urging the congressional delegation to begin the process for a constitutional amendment establishing that human beings, not corporations, are entitled to constitutional rights.

Whereas, government was established to provide a social contract between naturally born persons; and

Whereas, the founders of the U.S. Constitution and Republic clearly and emphatically intended freedom of speech to mean freedom to communicate with and by natural born persons either directly or through the free press; and

Whereas, the U.S. Supreme Court ruled on January 21, 2010 in Citizens United v. Federal Election Commission that corporations have the same first amendment rights as people, and that they can spend unlimited amounts of money on elections; and

Whereas, the Supreme Court is misguided in principle, and wrong on the law, because in a democracy, the people rule; now, therefore, be it

Resolved by the House of Representatives, the Senate concurring:

That the general court urges the New Hampshire congressional delegation to encourage and expedite a constitutional amendment based on the following principle:

The freedoms of speech and the press, and the right to assemble peaceably and to petition the Government for the redress of grievances, as protected by this Constitution, shall not encompass the speech, association, or other activities of any corporation or other artificial entity created for business purposes, except for a corporation or entity whose business is the publication or broadcasting of information, when such corporation or entity is engaged in that business. A corporation or other artificial entity created for business purposes includes a corporation or entity that, although not itself engaged in business pursuits, receives the majority of its funding from other corporations or artificial entities created for business purposes; and

That it is the intent of the general court to firmly establish that money is not speech, and that human beings, not corporations, are persons entitled to constitutional rights; and

That copies of this resolution, signed by the speaker of the house of representatives and the president of the senate, be forwarded by the house clerk to each member of the New Hampshire congressional delegation.

HOUSE CONCURRENT RESOLUTION 2
2013 SESSION (N.H. 2013)

HCR 2 - AS INTRODUCED

2013 SESSION

13-0290

05/04

HOUSE CONCURRENT RESOLUTION **2**

A RESOLUTION requesting Congress to begin the process for a constitutional amendment establishing that human beings, not corporations, are entitled to constitutional rights.

SPONSORS: Rep. Cushing, Rock 21; Rep. Cooney, Graf 8; Rep. Weed, Ches 16;
Rep. Pastor, Graf 12

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This resolution urges the congressional delegation to begin the process for a constitutional amendment establishing that human beings, not corporations, are entitled to constitutional rights.

HCR 2 – AS INTRODUCED

13-0290
05/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

A RESOLUTION requesting Congress to begin the process for a constitutional amendment establishing that human beings, not corporations, are entitled to constitutional rights.

1 Whereas, government was established to provide a social contract between naturally born
2 persons; and

3 Whereas, the founders of the United States Constitution and Republic clearly and emphatically
4 intended freedom of speech to mean freedom to communicate with and by natural born persons
5 either directly or through the free press; and

6 Whereas, the United States Supreme Court ruled on January 21, 2010 in Citizens United v.
7 Federal Election Commission that corporations have the same First Amendment rights as people,
8 and that they can spend unlimited amounts of money on elections; and

9 Whereas, the Supreme Court is misguided in principle, and wrong on the law, because in a
10 democracy, the people rule; now, therefore, be it

11 Resolved by the House of Representatives, the Senate concurring:

12 That the general court urges the New Hampshire congressional delegation to encourage and
13 expedite a constitutional amendment to firmly establish:

14 I. That human beings, not corporations, are endowed with Constitutional rights protected by
15 the First Amendment; and

16 II. That money is not speech, and therefore regulating political contributions and spending is
17 not equivalent to limited political speech; and

18 III. That the freedoms of speech and the press, and the right to assemble peaceably and to
19 petition the government for the redress of grievances, as protected by this Constitution, shall not
20 encompass the speech, association, or other activities of any corporation or other artificial entity
21 created for business purposes, except for a corporation or entity whose business is the publication or
22 broadcasting of information, when such corporation or entity is engaged in that business. A
23 corporation or other artificial entity created for business purposes includes a corporation or entity
24 that, although not itself engaged in business pursuits, receives the majority of its funding from other
25 corporations or artificial entities created for business purposes; and constitutional rights; and

26 That copies of this resolution, signed by the speaker of the house of representatives and the
27 president of the senate, be forwarded by the house clerk to each member of the New Hampshire
28 congressional delegation.

HOUSE JOINT RESOLUTION 11
2014 SESSION (N.H. 2014)

HJR 11 - AS INTRODUCED

2014 SESSION

14-2303

03/08

HOUSE JOINT RESOLUTION **11**

A RESOLUTION petitioning the Congress of the United States to call a constitutional convention for the purpose of proposing an amendment to the Constitution to provide that rights extended by the constitution intended for people are granted only to human beings.

SPONSORS: Rep. Ulery, Hills 37

COMMITTEE: State-Federal Relations and Veterans Affairs

ANALYSIS

This joint resolution petitions the Congress of the United States to call a constitutional convention for the purpose of proposing an amendment to the Constitution to provide that rights extended by the constitution intended for people are granted only to human beings.

.....

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

A RESOLUTION petitioning the Congress of the United States to call a constitutional convention for the purpose of proposing an amendment to the Constitution to provide that rights extended by the constitution intended for people are granted only to human beings.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Whereas, under Article V of the Constitution of the United States, on the application of the
2 legislatures of two-thirds of the several states the Congress shall call a constitutional convention for
3 the purpose of proposing amendments; now, therefore, be it

4 Resolved by the Senate and House of Representatives in General Court convened:

5 That pursuant to Article V of the Constitution of the United States, the New Hampshire general
6 court makes application to the Congress of the United States of America to call a convention for the
7 specific and exclusive purpose of proposing an amendment to the Constitution of the United States,
8 for submission to the states for ratification as follows: "That the rights extended by this Constitution,
9 intended for people, refer to and are granted only to natural human beings of the species homo
10 sapiens"; and

11 That if Congress adopts, within 90 days after the legislatures of two-thirds of the states have
12 made application for such convention, an amendment to the Constitution of the United States
13 similar in subject matter to that contained in this resolution, then this application for a convention
14 shall no longer be of any force or effect; and

15 That this application and request be deemed null and void, rescinded, and of no effect in the
16 event that such convention not be limited to the aforementioned specific and exclusive purpose of
17 limiting to human beings rights granted to persons in the Constitution; and

18 That this application shall be deemed null and void, rescinded, and of no effect in the event the
19 United States Supreme Court rules that a convention cannot be limited to the subject stated in 34
20 such applications; and

21 That this application by the New Hampshire general court constitutes a continuing application
22 in accordance with Article V of the Constitution of the United States until at least two-thirds of the
23 legislatures of the several states have made application for a similar convention pursuant to Article
24 V or Congress has proposed an amendment to the Constitution of the United States similar in
25 subject matter to that contained in this concurrent resolution; and

26 That certified copies of this concurrent resolution be transmitted by the house clerk to the
27 President of the United States Senate, to the Speaker of the United States House of Representatives,
28 to each member of the New Hampshire delegation to the Congress, and to the presiding officer of
29 each house of each state legislature in the United States.