

We the People Act

For a U.S. Constitutional Amendment and Amendments Convention

Massachusetts Legislation for 2017-2018 Session

S. 2243: Senate Sponsor Sen. Jamie Eldridge, House Sponsor Rep. Carmine Gentile

The Problem: “We the People” no longer govern

The U.S. Supreme Court, in *Citizens United v. FEC* and other rulings, has given corporations and other artificial entities constitutional rights that our Founders intended only for human beings. Using the Bill of Rights, wealthy individuals and corporations have persuaded the courts to overturn state and federal campaign finance laws and many other democratically enacted laws protecting our health, safety, environment, and democracy.

And by declaring money spent to influence elections to be free speech protected by the First Amendment, the Supreme Court has allowed special interest money to flood into elections and overwhelm the voice of the average voter. The system of “one person, one vote” has become “one dollar, one vote.”

What does this bill do and what must be accomplished by a democracy amendment?

The bill first calls on Congress to propose an amendment to the U.S. Constitution affirming that

- 1) **the rights protected by the Constitution are the rights of natural persons; i.e., human individuals, only and**
- 2) **Congress and the states shall place limits on political contributions and expenditures, and the spending of money to influence elections is not protected free speech under the First Amendment.**

The necessity of prohibiting rights for artificial entities is illustrated by the following example: In the 1990s Massachusetts tried to protect the health of schoolchildren by passing a law that banned cigarette ads within a thousand feet of schools and playgrounds. In 2001, the Supreme Court struck down the law on the grounds that it violated the constitutional free speech rights of tobacco companies. Yet correctly viewed, the law regulated commercial conduct, not a person's free speech.

Establishing limits on campaign spending is necessary because of the obvious congressional dependence on funders and the inevitable corruption that results. Global corporations are spending millions to influence US elections. It can be argued that due to the flood of special interest money into our elections, government now serves corporations and billionaires rather than “We the People.”

If Congress does not propose the amendment described above, this legislation petitions for a convention to *propose an amendment* to the Constitution. Article V of the Constitution provides that such a convention can be called upon application of 2/3, or 34, of the states. An Amendment Convention can then be held to propose a constitutional amendment that then must still be ratified by 3/4 (38) of the states.

Hasn't the Massachusetts Legislature already taken action?

In July of 2012, and February 2016, the Massachusetts House and Senate passed resolutions that called on Congress to propose a constitutional amendment to fix these problems caused by Supreme Court decisions.. To date, a total of 17 states have called on Congress to propose such an amendment, but Congress has not acted. A Congress responsive to the public is urgently needed to deal effectively with a wide array of pressing societal and environmental problems.

The Legislature must clarify to the Massachusetts congressional delegation what the needed amendment must accomplish and put pressure on Congress to act by applying for an Article V amendment convention.

Why petition for an Article V Amendment Convention?

While the common path has been for Congress to propose amendments, the framers recognized the need for a failsafe in the event that Congress is part of the problem the voters wanted addressed. The states are the essential back up in the system outlined in Article V, which allows the state legislatures to bypass an unresponsive Congress. The convention route is a tool that allows state legislators, who are closer and thus responsive to the voters, to represent the people when popular sentiment finds no voice in Congress.

History has shown that when numerous state legislatures apply for such a convention, Congress can be induced to propose an amendment. The Populists and their allies used this strategy in the early twentieth century to persuade a reluctant Congress to put forth the 17th Amendment, which established the direct election of the U.S. Senate. Congress relented only when it became clear that the call for a convention was on the verge of succeeding. In fact, 4 of the last 11 constitutional amendments began with state level resolutions that helped pressure Congress to propose them.

An Article V Amendment Convention *proposes an amendment* that must be ratified by 3/4 (38) of the states to pass. In today's polarized political climate, this requirement ensures that only a proposed amendment supported by elected officials of multiple political ideologies stands a chance of being adopted. Opposition from one chamber in a mere 13 states would be enough to kill a proposed amendment. Thus any proposal that does not speak to a broad consensus among Americans of different political stripes is doomed to fail the ratification process, even if it somehow makes it out of a convention.

What is the support for a democracy amendment among voters?

It is clear that momentum is building for an amendment to bring about a true democracy. Voters across party lines – Democrats, Republicans, and Independents – and across political persuasions – progressives, moderates, and conservatives – believe that we have lost control of our government. Polls have repeatedly indicated that a majority of Americans oppose the *Citizens United* decision and that a majority of small businesses believe the decision is bad for them. In November 2012, one million Massachusetts voters were asked in a ballot question if they support a strong amendment with the provisions in this bill. The question passed easily with 79% support. In 2014, the voters in 18 additional state representative districts voted overwhelmingly (over 70%) for this amendment.

The legislatures of Vermont, California, Illinois, New Jersey and Rhode Island have led the way by formally calling for a convention to address this crisis of democracy. The Massachusetts Legislature can join them in leading the nation toward an amendment that will bring about government of, by, and for the people.

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