



The Commonwealth of Massachusetts
House of Representatives
State House, Boston 02133-1054

CARMINE L. GENTILE
STATE REPRESENTATIVE
13TH MIDDLESEX DISTRICT
SUDBURY • CONCORD • WAYLAND
MARLBOROUGH • LINCOLN

STATE HOUSE, ROOM 167
TEL. (617) 722-2810
Carmine.Gentile@MAhouse.gov

Vice Chair
Joint Committee on Higher Education

Committees:
Environment and Natural Resources
State Administration
and Regulatory Oversight
Elder Affairs

January 16, 2024

Representative Gerald J. Cassidy, Chair
Joint Committee on Veterans and Federal Affairs
State House, Room 171
Boston, MA 02133

Senator John C. Velis, Chair
Joint Committee on Veterans and Federal Affairs
State House, Room 513
Boston, MA 02133

Dear Chair Cassidy and Chair Velis,

I write to express my support for and ask a favorable report for two of my sponsored bills before the Committee:

- H.3502/S.3219, *Resolutions for a United States constitutional amendment and a limited amendment proposing convention*
- H.3768 *Resolutions for an application to Congress for an amendment overturning Citizens United*

This month is the 14th anniversary of the Supreme Court's disastrous 2010 decision in Citizens United v. Federal Election Commission, which recognized a "free speech" right of unlimited independent spending to influence elections. The ruling invalidated many campaign finance laws throughout the country and, in many cases, allowed PACs to refuse to disclose their donors. Since then, the amount of outside spending (money used to influence elections that is spent by people, groups, or entities without coordination with the candidate or party) in American elections has expanded enormously. From 2000 to 2020, outside spending in elections grew from \$33 million to almost \$2.9 billion.ⁱ

This rise in political spending has put our democracy under threat from the reach and influence of corporations and a wealthy minority of mega-donors. As our nation's elections have been flooded with cash, power and influence have been redistributed in politics. In 2020, just 25 ultrawealthy donors were responsible for nearly half (47%) of all contributions by individuals to super PACs since 2010, providing \$1.4 billion in super PAC contributions out of \$2.96 billion in super PAC contributions from other individuals.ⁱⁱ

Campaign spending is not just a national problem, it has also had major impacts on state politics here in Massachusetts. In the decade prior to Citizens United, around \$260 million was spent on Massachusetts' elections and ballot initiatives. In the decade since Citizens United, that number increased to approximately \$700 million.ⁱⁱⁱ Such a system clearly hinders the operation of democracy by promoting the undue influence of moneyed interests in government affairs. For instance, Uber, Instacart and other companies that rely on so-called "independent contractors" to perform their primary business (i.e. ridesharing, delivery, etc.) have been attempting to get their legislative agenda onto the ballot in Massachusetts. We can expect these companies to spend greatly to push passage of their legislation, as they did in California where they spent \$200 million to change state law in 2020.^{iv} (a very smart business decision as the \$200 Million spent on the ballot question increased the stock value of proponents \$10 Billion the day after the election). This level of spending drowns out the voices of those without deep pocketbooks.

The experts agree that the only solution to Citizens United is an amendment to the Constitution (barring the addition of several Justices on the Supreme Court). In 2012, this reality motivated the Commonwealth's General Court to join 21 other states to pass a resolution asking Congress to propose such a constitutional amendment.^v Yet today, Congress is functionally no closer to passing an amendment than in 2012. The Constitution, however, provides an alternative method for drafting amendments, a convention called for by at least 2/3 of the states in the Union. Considering the status quo, the purpose of H.3502/S.3219 is twofold. First, this legislation would help bring about an Article V convention with limited scope to address campaign finance reform. Second, it would help apply pressure to Congress to pass an amendment.

Amending the Constitution is always an uphill battle, but Massachusetts would not be in this fight alone. Passing this resolution would mirror action already taken by the states of California, Illinois, Vermont, and Rhode Island. Furthermore, polling undertaken on this issue shows that large majorities of not only Democrats and Independents, but also Republicans disagree with the Supreme Court's decision in Citizens United and would support a constitutional amendment to limit outside spending in elections.^{vi}

There are real parallels between the fight for a 28th Amendment to undo Citizens United and the movement for the direct election of Senators which culminated in the much-celebrated 17th Amendment. While the House repeatedly passed the 17th Amendment, the Senate unsurprisingly never took it up. That is, until 1912, by which time 29 states formally called for a limited constitutional convention, and Arizona and New Mexico achieved statehood. Expecting Arizona and New Mexico to trigger the threshold for an Article V convention, the Senate was compelled to act while they could.^{vii} This historical example makes clear that efforts to call an Article V convention are not in conflict with efforts to amend the Constitution in the typical manner, but in fact complimentary. This is the reason why Article V Convention campaigns have featured as a strategy prior to four of the last eleven constitutional amendments.

There remains concern in some camps that an Article V convention might be impossible to limit legally to the topic of campaign finance. That a so-called "runaway convention," like the original convention that scrapped the Articles of Confederation, could rewrite the constitution, or propose right-wing amendments. Beyond the fact that an Article V convention would likely never happen

in the first place, because Congress would be loathe to lose control over the amendment process, there are a couple major reasons why I am skeptical that this is a serious objection.

First, there is a strong legal argument that states can limit the scope of an Article V convention. If all calls for an Article V convention were tallied today, there would be more than enough to trigger a convention. The fact that these formal resolutions have not been tallied together suggests that the prevailing legal wisdom is that these resolutions are separate from one another.

Many legal scholars have come to this conclusion as well.^{viii} When a state elects “delegates” for a convention, they are literally delegating legal authority to them and thus can choose to limit that authority or impose restrictions on them. Many states have held constitutional conventions since independence to amend their own constitutions and limited the scope of the proceedings. This was one major reason why the Special Constitutional Study Convention Study Committee of the American Bar Association, noted in their 1973 report that “Since Article V specifically and exclusively vests the state legislatures with the authority to apply for a convention, we can perceive no sound reason as to why they cannot invoke limitations in exercising that authority.”^{ix}

Second, even if a runaway convention were to occur, any amendments proposed by the convention would still need to be ratified by three quarters or 38 of the states. This is such a remarkably high bar that it would almost entirely preclude partisan amendments from ever becoming law.

In prior years, this committee has considered testimony that suggested that the risk of a runaway convention and other unanswered concerns justified sending this resolution to study. In 2018, the voters of Massachusetts overwhelmingly voted (over 71 percent) in Ballot Question 2 to create a Citizens’ Commission to research, report, and issue recommendations on how advance a constitutional amendment to undo Citizens’ United.^x It was my privilege and honor to serve as one of Speaker DeLeo’s appointees on the Commission, which met on 20 occasions and voted unanimously to recommend H.3541’s enactment.^{xi} The issue has been studied and the benefits of a strategy pursuing an Article V convention have been shown to far outweigh the downsides. That is why this Committee has reported the Article V convention bill favorably since the 191st legislative session.

Additionally, the Citizen’s Commission has suggested revisiting our 2012 resolution to Congress, requesting a constitutional amendment. Therefore, I have drafted H.3768, adds the results of the 2018 ballot initiative to the original resolution and includes the text of a potential amendment, approved by the Commission. Although in my opinion, a resolution merely asking Congress to pass an amendment lacks the teeth of an Article V convention petition, it provides an opportunity for the legislature to take some action affirming our shared conviction in the necessity of reigning in out of control political spending in the Commonwealth.

Thank you for your consideration of this matter.

Sincerely,



Carmine L. Gentile
State Representative
13th Middlesex District

-
- ⁱ https://www.opensecrets.org/outsidespending/cycle_tots.php?cycle=2020&view=A&chart=N#summ
- ⁱⁱ <https://www.citizen.org/article/oligarch-overload/>
- ⁱⁱⁱ Page 4, <https://www.mass.gov/doc/citizens-commission-2019-report/download>
- ^{iv} <https://www.latimes.com/california/story/2020-10-16/skelton-proposition-22-uber-lyft-independent-contractors>
- ^v <https://americanpromise.net/take-action/see-whats-happening/>
- ^{vi} <https://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence/>
- ^{vii} <https://www.archives.gov/legislative/features/17th-amendment>
- ^{viii} <https://wolf-pac.com/about/resources/>
- ^{ix} Page 16, https://wolf-pac.com/wp-content/themes/wolf-pac-3-home/img/resources/pdf_ABA_Full_Report.pdf
- ^x Page 2, <https://www.mass.gov/doc/citizens-commission-2019-report/download>
- ^{xi} Page 15, <https://drive.google.com/file/d/1ErT9ufTYh5Z6Y-EYjVReGE7vefO6oFRp/view>