



CITIZENS UNITED AND AMENDING THE U.S. CONSTITUTION

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QUESTIONS

How is the U.S. Constitution amended and what is an Article V convention? In which states have both houses of the legislature passed resolutions calling for a constitutional amendment to overturn the U.S. Supreme Court's decision in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)?

SUMMARY

Article V of the U.S. Constitution establishes two amendment procedures. The first is for both houses of Congress to pass a proposed amendment by a two-thirds vote. The second is for legislatures in two-thirds of the states (a total of 34) to petition Congress to call a constitutional convention (i.e., an Article V convention) at which amendments may be proposed and approved. In both cases, a proposed amendment must subsequently be ratified by three-quarters of the states (a total of 38). State ratification is by either the legislature or a state convention; Congress determines the ratification method.

Several questions exist about how an Article V convention would be triggered and operate, partly because (1) the U.S. has never held an Article V convention and (2) the Constitution does not specify a process for holding one. These questions include whether (1) state applications for an Article V convention are valid indefinitely or only for a specified period, (2) a state can rescind its application, (3) the call of the convention would cover the entire Constitution or be limited to a specific issue, and (4) a convention called for a limited purpose could consider issues outside its mandate (i.e., become a "runaway" convention). During the 20th Century, issues that came closest to triggering an Article V convention included (1) direct election of U.S. senators, (2) state legislative apportionment, and (3) a federal balanced budget requirement.

We identified 11 states in which both houses of the legislature have passed resolutions calling for a constitutional amendment to overturn the *Citizens United* decision. In some states, both chambers passed a joint resolution; in others, each chamber separately passed companion resolutions. Each state called on Congress itself to propose an amendment. In 2014, Vermont also called for an Article V convention; thus far it is the only state to do so.

In *Citizens United*, the U.S. Supreme Court held that corporations and unions have the same political speech rights as individuals under the First Amendment. It found no compelling government interest for prohibiting corporations and unions from using their general treasury funds to make election-related independent expenditures. Thus, it struck down a federal law banning this practice and also overruled two of its prior decisions. For more information about *Citizens United*, please see OLR Report [2010-R-0124](#).

STATE RESOLUTIONS

Table 1 lists the 11 states we identified as having passed joint or companion resolutions calling for a constitutional amendment to overturn the *Citizens United* decision. Some of the resolutions explicitly call for the decision to be overturned, while others call for it implicitly by advocating for the right of government to regulate elections-related spending.

Table 1: State Resolutions Calling for a Constitutional Amendment to Overturn *Citizens United*

State	Year	Resolution(s)	Resolution Excerpt
California	2012	AJR 22	"The Legislature of the State of California calls upon the United States Congress to propose and send to the states for ratification a constitutional amendment to overturn <i>Citizens United v. Federal Election Commission</i> and to restore constitutional rights and fair elections to the people..."
Hawaii	2010	HCR 282	"The Legislature respectfully requests that the U.S. Congress propose and send to the states for ratification a constitutional amendment to clarify the distinction between the rights of natural persons and the rights of corporations, thereby preserving the power of Congress and the States to place limits on the ability of corporations to influence the outcome of elections through political expenditures..."
Illinois	2013	SJR 27	"We, as elected representatives of the people...call upon the United States Congress to propose and send to the states for ratification a constitutional amendment to overturn <i>Citizens United v. FEC</i> , <i>SpeechNow.org v. FEC</i> , <i>Buckley v. Valeo</i> , and other related cases that allow for unlimited election spending..."
Maine	2013	SP 548	"We... hereby declare our support for an amendment to the United States Constitution regarding campaign finance that would reaffirm the power of citizens through their government to regulate the raising and spending of money in elections..."

Table 1 (continued)

State	Year	Resolution(s)	Resolution Excerpt
Massachusetts	2012	S772	“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...”
New Jersey	2012	SR 47 AR 86	“The Senate of the State of New Jersey...calls upon the Congress of the United States to propose an amendment to the United States Constitution to provide that with regard to corporation campaign spending, a person means only a natural person for First Amendment protection of free speech...” (SR 47) AR 86 is an identical Assembly resolution
New Mexico	2012	SM 3 HM 4	“The Senate of the State of New Mexico...calls upon the United State Congress to propose and send to the states for ratification an amendment to the United State Constitution to restore republican democracy to the people of the United States...” (SM 3) HM 4 is an identical House resolution
Oregon	2013	HJM 6	“We... respectfully urge the Congress of the United States of America to propose and send to the states for ratification an amendment to the United States Constitution consistent with the findings of this memorial, clarifying the distinction between the rights of natural persons and the rights of corporations and other legal entities [and clarifying] that Congress and state legislatures may regulate all moneys raised and spent for political purposes...”
Rhode Island	2012	S2656 H7899	“That this General Assembly of the State of Rhode Island and Providence Plantations respectfully urges the Congress of the United States to pass and send to the states for ratification an amendment to the constitution to effectively overturn the holding of <i>Citizens United</i> and its progeny and to permit the governments of the United States and the several states to regulate and restrict independent political expenditures by corporations and wealthy individuals...” Both chambers passed identical joint resolutions
Vermont	2012	JRS 11	“The General Assembly urges Congress to consider the request of many Vermont cities and towns to propose a U.S. constitutional amendment for the state’s consideration that provides that money is not speech and corporations are not persons under the U.S. Constitution and that also affirms the constitutional rights of natural persons...”
	2014	JRS 27	“The General Assembly, pursuant to Article V of the U.S. Constitution, hereby petitions the U.S. Congress to call a convention for the sole purpose of proposing amendments to the Constitution of the United States of America that would limit the corrupting influence of money in our electoral process, including, inter alia, by overturning the <i>Citizens United</i> decision...this petition shall not be considered by the U.S. Congress until 33 other states submit petitions for the same purpose as proposed by Vermont in this resolution and unless the Congress determines that the scope of amendments to the Constitution of the United States considered by the convention shall be limited to the same purpose requested by Vermont...”

Table 1 (continued)

State	Year	Resolution(s)	Resolution Excerpt
West Virginia	2013	SR 24 HR 9	<p>“The Senate hereby calls upon the United States Congress to propose a constitutional amendment addressing the Supreme Court decision in <i>Citizens United v. Federal Elections Commission</i>...to establish that corporations and unions are not entitled to the same rights and protections as natural persons under the Constitution...[and] assure the power of the federal, state and local governments to limit, regulate and require disclosure of sources of all money spent in the course of political elections...” (SR 24)</p> <p>HR 9 is a similar House resolution</p>

Sources: United For The People (a coalition of organizations and public officials that support amending the constitution to overturn *Citizens United*)
 National Conference of State Legislatures
 State legislative websites

ADDITIONAL RESOURCES

Congressional Research Service: *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress*
<http://www.fas.org/sgp/crs/misc/R42589.pdf>

Congressional Research Service: *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress*
<http://www.fas.org/sgp/crs/misc/R42592.pdf>

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