

# Article V Constitutional Convention Proposal Draft

Rich Hart

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## 1 Absctract

There is clear evidence that capaign fiance laws in the United State are no longer sufficient at preventing abuse of the electoral process. This enviroment is in direct controdition with the obligation that Pennsylvania's state legislators have towards ensuring that elections in the Pennsylvania are fair and free. Since the cause of this current electoral enviroment is due to the supreme court's interpretation that campaign donations are protected under the first ammendment of the United State constitution, the only way the current electoral enviroment can be changed is with an ammendment to the consitution. Ammendments to the United States constitution can be proposed in one of two ways, the first is by ammendments proposed by the United States Congress and the second is by a constitutional convention called by two thirds of states in the union. This proposal is meant show the legal justification and precidence of an Article V Constitutional Convention and that calling a convention, with the express purpose of reforming campaign finance laws in the United States, is the best way in which Pennsylvania state legistlators can fulfill their obligation toward ensure that elections are fair and free.

## 2 Introduction

### 2.1 History of Campaign Finance

- The Federalist Papers are considered the framework in which the US constitution was based. The intent of how the House of Representatives should function is stated as: "To have submitted it to the legislative discretion of the States, would have been improper for the same reason; and for the additional reason that it would have rendered too dependent on the State governments that branch of the federal government which ought to be dependent on the people alone." (James Madison, Federalist 52).
- The idea of representatives should be dependent on the people alone has changed with supreme court desisions Buckley v. Valeo 1974 and Citizens United v. Federal Election Commission 2008 which have allow unlimited campaign controbutions be spent of political office.

Total US Population (estimate)	310,823,152
Pct of US population giving \$ 200+	0.40 %
Pct of US population giving \$ 2,500+	0.08 %

Table 1: Percentage of US population that donates to campaigns.

	Count	Total*	To Dems*	To Reps*	To PACs*
Donors giving \$200-\$2,499	1,003,011	\$659.4	\$272.3	\$281.9	\$106.0
Donors giving \$2,500+	237,640	\$2,128.6	\$807.5	\$1,139	\$207.7
\$2,500-\$9,999	193,380	\$802.4	\$297.2	\$405.1	\$105.8
\$10,000+	44,260	\$1,326.3	\$510.3	\$734.6	\$101.9
\$95,000	1,819	\$217.8	\$82.3	\$127.3	\$10.8
\$1,000,000	1	\$1.9	\$0.0	\$0.1	\$0.0

Table 2: How much each donator bracket contributes to campaigns. (\* in millions of dollars)

## 2.2 Present Day Campaign Finance

- Elections are now primarily decided by campaign funds: "In 93 percent of House of Representatives races and 94 percent of Senate races that had been decided by mid-day Nov. 5, the candidate who spent the most money ended up winning, according to a post-election analysis by the nonpartisan Center for Responsive Politics. The findings are based on candidates' spending through Oct. 15, as reported to the Federal Election Commission." (see Tables) [2]
- The primary funders of campaign donations today make up a very small percent of the population: "Only a tiny fraction of Americans actually give campaign contributions to political candidates, parties or PACs. The ones who give contributions large enough to be itemized (over \$200) is even smaller. The impact of those donations, however, is huge." [1]
- Given the influence campaign funds have on deciding an election and the small percentage of the population that actually contributes to campaigns, the current electoral process of this country is unfairly skewed towards wealthy donors and provides a clear disadvantage to low income voters.
- This is likely why 63% support limits from individual campaign donations. [5]
- This is likely why 83% support limits from corporate campaign donations. [5]
- This is likely why current polling states that 62% of voters support the public financing of campaigns. [4]
- Despite this support Since it is now the view of the supreme court that campaign contributions are protected under the constitutions, all attempts by state legis-

lators to prevent the influence of money in politics have been overturned by the supreme court. ( Arizona Free Enterprise Club v. Bennett, 2010.)

### 3 Constitutional Law on Electoral Regulation

- State legislatures can regulate national elections for their state: "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators." (Article I, Section4, US Constitution).
- The PA constitution states that elections must be fair amongst it's citizens: "Elections shall be free and equal; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." (Article I, Section5, PA Constitution).
- State legislators in PA take an oath to uphold the PA Constitution: "Senators, Representatives and all judicial, State and county officers shall, before entering on the duties of their respective offices, take and subscribe the following oath or affirmation before a person authorized to administer oaths. "I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of this Commonwealth and that I will discharge the duties of my office with fidelity." The oath or affirmation shall be administered to a member of the Senate or to a member of the House of Representatives in the hall of the House to which he shall have been elected. Any person refusing to take the oath or affirmation shall forfeit his office. "
- Since PA constitution states that elections must be fair. Also, since PA legislators have sworn to uphold the PA constitution, then PA legislators are obligated to do every thing withing their legislative power to ensure that elections are fair in Pennsylvania.
- Given that the supreme court has ruled that campaign funds are protected under the constitution, the only legislation that will regulate the funding of campaigns is an ammendment to the United States Constitution.

### 4 Article V Constitutional Convetion

#### 4.1 Article V of the US Constitution

- Article V of the United states Constitution States: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified

by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate. ” (Article V of the US Consitution).

- Therefore, consitutional conventions can be called by any reason
- Therefore, consitutional conventions can be called at any time.
- Therefore, consitutional conventions can be called by state legislators.
- A constitutional convention is called when 2/3 of all states pass resolutions calling for a convention.
- Ammendments proposed by the constitution are ratified when 3/4 of states approve.

#### 4.2 How it works

- Larrence Lessig, a constitutional law professor at Harvard University, has describe in detail how a consitutional convention would work:
  1. PA state senators would call for a convention though by voting on a resolution that petitions congress to create a convention. The petition would specify the purpose of the convention and that only ammendments relatated to that specific reason be considered.
  2. Once 2/3 of states passed similar resolutions a constitutional convention would be called.
  3. Delagetes for each state would be chosen by a random sample of the voting population.
  4. The delagates would be sequested until an ammendment or series of ammendments is braught forth to address the purpose of that convention.
  5. The ammendments would be summitted to the states for ratification and would only be passed if 3/4 of all states aproved them.
- Larrence Lessig notes that in the case of a, 'runaway convention', a convention that proposed ammendments unrealated to the reason why the convention was called, the ammendments in question would be considered invalid and therefore would hold no legal athority.
- Given the historical paralles between the direct election of US senators in the past and the need for campaign finance laws today, a constitutional convention is likely the best chance for electoral reform.

### 4.3 History of Article V Constitutional Conventions In the Past

- Historically no constitutional convention has ever been called.
- Several attempts have been made to call for a constitutional convention. The closest attempt was a call for a constitutional convention for the direct election of US senators by popular vote.
- Pennsylvania's State legislators were among the list of states that passed resolutions calling for a constitutional convention on this issue.
- The push for a constitutional convention is largely credited with the final decision of the United States congress creating and passing the 17th amendment of the United States which establishes the direct election of United States Senators by popular vote.
- According to Larrence Lessig , this event shows that the pressure of the states calling a constitutional convention is enough to convince the US congress to pass the necessary reforms to address the concerns of states calling for the constitutional convention.
- Lessig also states that the 'threat' of a constitutional convention is an excellent tactic when trying to get congress to pass reforms that are in opposition to their personal interest. tactic is especially

### 4.4 Support for a Constitutional Convention Today

- Texas legislators have recently proposed a resolution calling for a constitutional convention for campaign finance. [3]
- Vermont legislators have recently proposed a resolution calling for a constitutional convention campaign finance. (citation needed)
- Massachusetts legislators have recently proposed a resolution calling for a constitutional convention campaign finance. (citation needed)
- PA house representative Steve Santarsiero a resolution calling for a constitutional convention campaign finance. [?]

## References

- [1] Donor Demographics — OpenSecrets.
- [2] Money Wins Presidency and 9 of 10 Congressional Races in Priciest U.S. Election Ever - OpenSecrets Blog.

- [3] Aaburnam H C R Ano, House Concurrent Resolution, United States, James Madison, United States, Supreme Court, Citizens United, Federal Election Commission, Whereas Article, United States Constitution, United States Congress, and United States Constitution. No Title. pages 2–4.
- [4] From Stan Greenberg, Jesse Contario, Andrew Baumann, Mark Mckinnon, and Mckinnon Media. Strong Campaign Finance Reform : Good Policy , Good Politics. 2010.
- [5] Ap-national Constitution Poll, Abt Srbi Any, and The Associated Press. The AP-National Constitution Center Poll. pages 1–33, 2012.