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*Citizens United* and Campaign Finance: history, issues, efforts to modify

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## Introduction

Fair and free elections are a foundation of American democracy. Elections are vital to the democratic process but require the candidates to raise money in order to run a successful campaign. Major candidates for federal office must raise large sums of money to meaningfully compete in elections. When and how people can donate money to campaigns has created interesting and vexing legal and ethical questions that have led to the development of campaign finance law and policy. The issue of corporations' role in elections may seem like a contemporary issue, but questions surrounding the role of corporations in campaigns have been debated for many decades.

Congress has enacted legislation to regulate the role of money in federal elections, but these laws have been scrutinized in decisions of the United States Supreme Court. While the elected representatives have been working to put up guardrails on campaign finance, the Supreme Court, in *Citizens United v. Federal Election Commission*, has struck down those laws based upon its interpretation of the First Amendment. The citizens of some states have responded to the actions of the court. The question becomes how are citizens and state governments using state legislative measures to curb the effects of the *Citizens United* decision and why? This article argues that the decision in *Citizens United* has had negative effects, explains the rationale as to why citizens and states would want the decision of *Citizens United* overturned, and that voters have acted through different ballot initiatives with the goal of remedying the harmful effects of that decision. To place the Court's decision in *Citizens United* in context, this paper first examines the history of federal election legislation and recent changes to the philosophy surrounding it.

## History

Early in the 20th Century, the Federal government of the United States took action to address corporation and union spending in federal campaigns. The Tillman Act of 1907 was the first effort made to regulate campaign spending. The act came about because of accusations that a campaign in a presidential election received campaign funding from corporations in exchange for that corporation being able to exercise political influence (Bitzer, 2009). There were other efforts made by the government on campaign spending after the Tillman Act, but the most consequential legislation was the Federal Election Campaign Act of 1971. This act's purpose was to "regulate money raised and spent" by candidates and political parties (Sandler, 2009). It established the framework for the creation of the Federal Election Commission (FEC) which was created to oversee campaign finance laws and enforce the regulations established by the executive branch. The FEC is responsible for challenging violations of the federal government's acts on campaign spending. The enactment of this law led to the first major Supreme Court case regarding the topic, *Buckley v. Valeo* in 1976. In *Buckley*, the Supreme Court ruled that "mandatory expenditure limits" in federal elections violated the First Amendment (Levit, 1993). The court claimed money could not be "separated from its speech component" and contribution limits were only justified to "avoid corruption." (Levit, 1993). The protection of political speech was highlighted by the Court as the belief that "political speech is at the core of First Amendment protection." If not protected vigorously, political speech would be regulated, and the effects would bleed into "mainstream" speech (Winter, 1997). Therefore, political speech was to be given more emphasis in the view of the Court, and the Court in *Buckley v. Valeo* held that an extension of that freedom of speech to include money was warranted. After the *Buckley* case in

which the Court revealed its thoughts on money as speech, the Congress wanted to enact legislation to curb the impact of this decision.

With the FECA no longer deemed constitutional, a new effort was made to restrict campaign spending through the McCain-Feingold Act 2001, or the Bipartisan Campaign Finance Reform Act (BCRA). The goals of this act were to prohibit “unlimited soft money contributions” to political parties for federal elections. It prohibited the use of this money in “electioneering,” as in creating political advertisements (Malbin, 2006). The BCRA was challenged in court and the opponents advanced similar arguments that had been used in *Buckley v. Valeo*. Because campaign contributions were deemed freedom of political speech protected by the First Amendment, it was argued this should also “allow corporations to spend unlimited sums independently to support or oppose candidates for office” through independent expenditures. (Hasen, 2011). The court agreed and held that, “in the campaign finance context neither the identity of the speaker nor any distortion of the political process caused by disproportionate spending can ever be the basis to limit someone’s right to spend in elections” (Hasen, 2011). This leads to the more recent decision, and one that has caused many citizens and governments to act, *Citizens United v. Federal Election Commission*. The Supreme Court maintained strict protection of political speech through the decision in *Citizens United*.

### ***Citizens United v. FEC: Dissenting Legal Arguments:***

The *Citizens United v. FEC* case was controversial, even among the Supreme Court justices as evidenced by the dissenting opinions. While the legal reasoning of freedom of political speech was the foundation for the majority’s argument, many scholars disagree with this legal reasoning. In her case review, Tucker emphasizes five realities she believes the Supreme

Court ignored that should have been vital to the outcome of the case. These realities of corporate political speech are:

“(1) corporate speech, even when political, has an economic motivation; (2) there is no singular corporate voice; (3) unrestricted corporate political speech poses a risk of compelled speech; (4) corporate speech is already regulated based solely on the identity of the corporate speaker; and (5) corporate law, in the form of securities regulations, employs the equalization rationale” (Tucker, 2010).

These five “realities” play a role in the legal reasoning of corporation spending. The “economic motivations” of corporate speech and the “risks of compelled speech” are the main focus in the efforts to overturn *Citizens United*. Tucker argues that the Supreme Court simply ignored the idea of economic motivation by companies which could lead to corruption or “compelled speech.”

Another legal argument made against the decision in *Citizens United* is the idea that regulating speech occurs frequently based on less dangerous principles. Lawyer Alan Morrison points out that there are accepted legal limitations of speech for prisoners, armed forces members, government employees, foreigners, and students and believes these limitations should be extended to corporations: “we distinguish between categories of speakers all the time- some of them even on the basis of what they were actually going to say, although here there was no viewpoint discrimination whatsoever. Other laws are justified by the circumstances. And I say, why is it the fact that this is an election, and it is money being spent by corporations? Why aren’t those circumstances that at least can be considered, instead of taking the total absolutist view that the majority held?” (Abrams, 2012). Morrison claims that speech is limited frequently in the United States based on the “category” the speaker falls into. An individual has different speech freedoms than other categories, so corporations should not hold the same rights as people. The

two arguments presented by Morrison and Tucker converge as the reason the Court should and can classify corporations in their own speech category. The necessity of a separate category is because, as Tucker reasons, corporates are economically motivated and inclined to be corrupt/empowered to compel speech.

### **Consequences of *Citizens United***

The largest and most vocalized potentially negative effect of the *Citizens United* decision is the potential for corruption and the erosion of democracy, which, by definition, is government by the people. While a lot of the arguments made by dissenters were hypothetical, some of the real consequences are beginning to affect democracy and the citizenry. One of the impacts of the decision in *Citizens United* is that it is easier for incumbents to be reelected and the vast sums of money required to run a campaign discourages candidate entry. While the reelection of incumbents seems like a natural part of the American political process, the decision of *Citizens United* has paved the way for a statistically significant advantage for Republican incumbents. In his article, Klumpp finds, “that *Citizens United* is associated with statistically significant increases of approximately 5 percentage points in the probability that a Republican incumbent runs for reelection and of approximately 6 percentage points in the probability that a Republican incumbent is reelected conditional on seeking reelection in state house races” (2016). While particularly harmful to Democratic candidates trying to enter elections, this finding proves the idea that the ability of corporations to influence campaign results due to *Citizens United* creates unfair elections. This research proves that corporations possess the ability to influence election results through unlimited contributions to campaigns. While Democrats may be more inclined to dislike this effect of the *Citizens United* decision, it is dangerous for the political system because it allows for the “potential for corporate speech to overwhelm a democratic system built to serve

individual voters” (Dana, 1999). The high reelection rate of any incumbent will also discourage any future candidate entry as well. These combined effects lead to an erosion of principles that make up the foundation of democracy.

Because corporations can in fact influence the outcome of elections, it creates an environment in which the idea “quid pro quo corruption” can exist (Levit, 1993). Because this form of corruption<sup>1</sup> can then exist, the public may see more negative effects than expected by the Supreme Court.

*Citizens United* has not only paved the way for corruption because of its influence on election results, but it also has the potential to affect the policies and stances of politicians as well. With an uncorrupted democratic process, one presumes that elected officials will protect the health and wellbeing of its citizens because these are the voters who elected them. But, because corporations now have an outsized influence on election results, these corporations can demand results and can have a major impact on policy. One negative impact of *Citizens United* is its effect on public health. In his article, Wiist gives two main reasons as to why the court’s decision has the potential to negatively affect public health. Because corporations have power to heavily influence who is elected, they can support or oppose candidates depending on their position on public health issues, and health advocacy campaigns cannot compete with corporate spending (Wiist, 2011). Corporations in the tobacco industry, pharmaceuticals, firearm sellers, alcohol industry and many others will be able to influence campaigns significantly, and this effect can cause politicians “who might otherwise publicly espouse a public health position” on a topic that is unfavorable to a powerful corporation may choose to change their opinion or stay

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<sup>1</sup> It is argued the court takes unsupported empirical claims that there will be a lack of corruption. The court is said to have taken a “narrow, crabbed view” of what corruption is (Hasen, 2011).



silent on the issue altogether. This means that candidates and officials must question whether they “represent citizens or corporations” as it is the duty to protect and promote the public health of citizens. Wiist explains this is powerful because “The power corporations exert on democratic processes through various tactics, including political campaign contributions and lobbying, has been shown to influence health and health policy” (2011).

On top of the public health of citizens, the decision also gives corporations more power than unions. Citizens are able to join unions as protection against larger organizations, but with the decision of *Citizens United*, organizations’ wants will be vocalized more than the union needs. Garden explains in his essay that, “unions’ influence must be measured as a function of corporations’ clout. Because corporations in the aggregate have much more money to spend than do unions-and because corporations' collective political expenditures dwarf unions' political expenditures - likely, *Citizens United* will only increase business interests' comparative advantage over unions” (Garden, 2011). This influence is even more impactful because unions are nonprofit organizations, and therefore do not have the same amount of money to spend as corporations for political influence. Because unions are more tailored towards workers’ rights and interests than businesses, the lack of influence unions possess compared to corporations should be a cause for concern. Unions and corporations have very conflicting political views, and because one is allowed more influence than the other, it gives corporations political views more importance in the financial sphere. Any political figure running for office that is pro-union may have a difficult time competing against a corporation funded candidate. This leads to the election of candidates who favor policies that benefit the monied interests rather than labor. Due to the negative consequences of *Citizens United* on workers’ rights, this may push unionized workers and states with a pro-union stance to act against the decision.

## Motivations to Take Action

Congress has attempted to regulate campaign contributions more strictly in elections, but the Court has struck down those limitations in the name of free speech. This has led to “dark money” coming into the electoral process. The effects of the decision in *Citizens United* are a cause for citizen groups and state governments. If citizens are aware of the effects listed above, each of these consequences should be of concern for voters in a democracy. The consequences of unregulated money include potential negative impact on public health and the almost inevitable reelection of incumbents which diminishes the reliability of the democratic process. The consequences described surrounding public health will result in negative repercussions for everyone as politicians no longer enact policies to protect the public from public health dangers. Allowing corporations involved with tobacco, alcohol, unhealthy food and agriculture, firearm sellers, and automobile manufacturers to unduly influence public policy and warps perception regarding the safety of these products and therefore affects all people along all demographics and political lines.

This outcome is the same for the effect of *Citizens United* on the reelection of incumbents. Democracy and the American political process are reliant on free and fair elections to allow citizens to make the best choice. If this political choice is corrupted and voters are manipulated into voting for the same candidates every election due to the unfair influence of money and political action committees, then the principles of democracy have been destroyed<sup>2</sup>. Ameliorating these harmful effects is doubly important for Democrats because reelection of incumbents is adversely helpful to Republicans, according to Klumpp (2016). Along the same

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<sup>2</sup> The decision also allows for influence on ballot initiative measures as well, giving corporations more power to attempt to stop measures impeding on them. This factor gives even further motivations to states that have an initiative process (Dana, 1999).

lines, citizens in unions or those that support unions should also be motivated to act because corporate influence drowns out union influence. The more union-oriented states and candidates tend to have progressive political alignments, so this would aid in believing the more progressive states would contribute to attempting to curb the effects mentioned above.

## Ballot Initiatives

Because *Citizens United* is a decision that is premised on an interpretation of the First Amendment, it is not possible to enact legislation at the Federal level to reverse the decision. It would require a constitutional amendment. One method used by critics of *Citizens United* has been the use of ballot initiatives. Ballot initiatives have proven to be a useful way to attempt to blunt the negative impact of *Citizens United*. Since 2012, shortly after the *Citizens United* decision was announced, there have been 5 ballot initiatives in different states that have made efforts to undercut *Citizens United* by “changing the definition of corporation.” These 5 initiatives were included in the Colorado 2012 ballot, Montana 2012 ballot, California 2016 ballot, Washington 2016 ballot, and the Massachusetts 2018 ballot. These five initiatives are the only ones related to the topic of *Citizens United*, and all five were passed by the voters with a very high margin. Each of these ballot initiatives also included a provision to add an amendment to the US Constitution to change some aspect of the decision made in *Citizens United*.

In a general sense, the overall purpose of these initiatives is to change the definition of corporation, but each initiative has some variation in terms of the specific goals and course of action to achieve these goals. Through a critical analysis of the findings and goals in each ballot initiative presented, citizens and states have used different methods to overturn the decision and consequences of *Citizens United*.

## Colorado 2012

The Colorado Ballot initiative was passed by voters and was originally called, “Colorado Congressional Delegation to Support Campaign Finance Limits,” but eventually named the “Voter Protection Act.” The purpose of this initiative was to change the Colorado Constitution and statutes to add a section directing officials to propose, support, and ratify a federal constitutional amendment concerning campaign finance. The initiative, which passed into law, provides that the voters instruct the elected officials of Colorado to propose, support, and ratify an amendment that ensures citizens can express political views on a level playing field. To ensure this, the bill pushes for allowing Congress and state governments to regulate and put limits on political contributions and require timely disclosure of these contributions. The findings that support the passing of this bill are some of the same negative consequences of the *Citizens United* decision. While this initiative does not specifically mention the case, it is apparent that it aimed at addressing the corrosive impacts of the decision by allowing government regulation and campaign spending limits. The legislation is premised on certain findings. Among the findings mentioned in the bill are the potential corruption that could be created, that corporations and organizations can “exercise a disproportionate level of influence” on the political process and election outcomes, and the rising costs of campaigns have impeded on “qualified citizens” from running for public office (SB 65, General Assembly). These findings point to some foundational elements of democracy and the erosion of these principles due to *Buckley v. Valeo* and *Citizens United*. While there is no direct mention of concern for democracy, these findings indicate that the voters in Colorado were concerned key elements of the American political process being negatively impacted by the current law.

## Montana 2012

Montana passed an initiative entitled: “Prohibition on Corporate Contributions and Expenditures in Montana Elections Act” the main goal of which was to pass a federal constitutional amendment. The Montana initiative has different goals than the one seen in Colorado. Section 2 of the initiative provides a brief history of Montana’s involvement with corporations in campaign finance. It notes an initiative passed in 1996 (prior to *Citizens United v. FEC*) with a goal of keeping corporate money out of the direct democratic process and how this initiative was ruled unconstitutional by the courts. But Montana then mentions an initiative passed in 1912 that was challenged in court entitled “Corrupt Practices Act” which “prohibited corporate contributions to and expenditures on candidate elections.” Unlike the 1996 legislation, this initiative was deemed constitutional in 2011 for several different reasons. In reviewing the legislation, the court mentions: “examples of well-financed corruption” in Montana, and that this meant political spending is “still a vital interest to the people of Montana,” and unlimited spending would “irrevocably change the dynamic of local Montana political office races.” The court further held that the average Montana citizen would be “unable to compete” against corporate sponsored candidates and this would “shut-out” citizens from the political process and create a “dominating impact” on the political process in Montana. Section 2 of this initiative gives Montana’s legal reasoning to challenge the decision of *Citizens United*. Next, the legislation moves into Section 3, which is the formal policy that reflects three specific goals. These goals are:

“(1) establishing a state policy that corporations are not human and do not deserve constitutional rights, (2) elected and appointed officials must implement this policy and “advance the philosophy” by prohibiting corporate contributions whenever possible, and

(3) charge elected and appointed officials to propose a constitutional amendment to overturn *Citizens United v. FEC* and use “every procedural method” to pass and ratify the amendment.” (I-166, 2012 Montana Senate).

These goals pertain to both the state of Montana and the federal government and the United States as a whole. First, the state policy clearly seeks to reverse the decision of the United States Supreme Court in *Citizens United* relative to the status of corporations as persons and it empowers officials to enforce this policy on the state level. Then, there is a directive for elected and appointed governmental officials to advance federal legislation and that officials in positions of power federally to “advance the philosophy” of the Montana state policy. The voters wanted state and federal change and demanded officials to use “every procedural method” available to achieve the stated goals. Another interesting section in the initiative talks about “severability,” so if parts of the initiative are deemed unconstitutional, the parts that were constitutional remain in effect.

### **California 2016**

The intent of the relevant ballot initiative in California was clear from the title of the law. The act was bluntly named, “Overturn *Citizens United* Act.” The main goal of the act was to advance a Constitutional amendment to overturn the decision in *Citizens United* by establishing a rule that corporations are not entitled to the same legal rights as human beings. The initiative demands that the elected officials in California are required to use their authority to propose and ratify one or more amendments to overturn *Citizens United*, or at least to allow limitation and regulation of campaign contributions. The initiative goes on to cite phrases in the United States Constitution, the California Constitution, Supreme Court and other Court cases, as well as polls to support the positions in the initiative and the amendment process. The reference to the US

Constitution articulates the idea that “corporations are not mentioned” in the Constitution nor has there been a decree giving them the same rights as people (SB 254, Allen.). It also cites Article V of the Constitution as “empowering and obliging” people to use constitutional amendments as ways to “correct egregiously wrong” decisions made by the court (SB 254, Allen.). The initiative notes that the people of California have used this process before to instruct their representatives about actions they desire to see. It also cites previous court cases which highlight either decisions that aid in California’s understanding of *Citizens United*, or decisions that it disagrees with to further push for a need for an amendment. Some of these citations included judges highlighting that corporations enjoy “special advantages” over humans already, or that nowhere in the Constitution is money equated with speech. The authors of the ballot initiative also point to the erosion of democratic ideals. The bill highlights principles of democracy such as the ability of officials to protect public health, theories of self-governance, and threats of corruption.

### **Washington 2016**

Washington’s approach to addressing the concerns of *Citizens United* and the definition of corporations is to highlight all the negative effects of the decision and analyze the Constitution as it relates to the issues raised by the *Citizens United* case. The measure provides that the citizens in Washington support and urge an amendment to the Constitution that eliminates the “undue influence of concentrated money and political power on elections” and policy (United States, Congress, Washington Senate, 2016). The initiative, entitled “Government of, by, and for the People Act,” wants the proposed amendment to include statements that would “overturn decisions” by the Supreme Court and to say that corporations do not deserve the constitutional right that equates money with free speech. The amendment also would provide for regulation and disclosure of political contributions and spending. The initiative includes findings that support

the decision to create an amendment which focuses primarily on the principles of democracy and the wording and intent of the Constitution. While the initiative includes important findings, there are no cases, statistics or research included in Washington's initiative. The findings focus on the principles of democracy and the vital need for "free and fair elections," constitutional protections, and its intentions. The democratic foundation of "free and fair elections" depends on voters having faith in the process and system. Washington's ballot initiative advances the theory that these principles are being lost as voters see corporate participation as corrupt and have lost faith in the system. The initiative also looks at the language in the Constitution and notes that there is "no mention" of either corporations, artificial entities, or money as speech. The next section of the initiative "urges immediate action" by "current and future" elected representatives. The initiative sets forth expectations for what an amendment should include, such as stating that rights are for "human beings only" and that political contributions must be "disclosed" (United States, Congress, Washington Senate, 2016). The initiative also contains a statement that the people of Washington "urge" the congressional delegation to choose the most efficient ratification process and represents what the people of Washington believe.

### **Massachusetts 2018**

The basis of the Massachusetts initiative is to create a citizen's commission in order to pass one or more constitutional amendments. The goal of the proposed amendment(s) would be to establish: (1) that corporations are not people and therefore not entitled to the same constitutional protections and (2) that campaign contributions and expenditures may be regulated. The initiative also outlines the formation and composition of the commission. It provides that after being appointed by Massachusetts elected officials, the commission would range in "geographic, political, and demographic backgrounds" (I-2, 2018 Massachusetts



Statewide Election). Next, the initiative outlines the roles and functions of the commission and directs that it conduct research, secure testimony and 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.” Lastly, the initiative expresses the expectation of a commission report to the state legislature, United State Congress and the President. This report is required to include a severability section and required to be submitted and take effect on January 1, 2019.

Because a report by the Commission was demanded and required within the ballot initiative, the report is an extension of the initiative and is important to analyze. With the passage of the initiative, the Commission released its first report to describe the research, findings and further specified goals since the creation of the Commission. The sections of the report correspond to the initiative's five points of emphasis. The first section explains the “impact of political spending in Massachusetts” as the commission reports that the impact is “out of hand” in Massachusetts and nationwide. The report sets forth three points which are (1) “a vast amount of money influences elections,” (2) “most of this money comes from a small ‘donor class,’” and (3) Massachusetts citizens have less choice, and this results in frustration and cynicism corrodes faith in democracy. These findings were backed by a plethora of evidence including graphic data, statistics, and testimonies. The report includes graphic data of the rising cost of elections since 1998 as well as the rising total of outside spending in election cycles since 1990 (The Citizens Commission, 2019). There are graphics which establish that money is necessary in elections, but

that it influences the operations of a campaign. The report also supports the conclusion that the average citizen is being removed from the political process. It found that: “A tiny elite: 0.47%...delivers a hefty sum” of 71.0% of political donations. (The Citizens Commission, 2019). Lastly, the report aims to demonstrate Massachusetts citizens’ frustration and distrust of democracy since the allowance of unlimited corporation contributions. The report includes the testimony of seven people at the public meetings conducted by the Commission across the state. All these testimonies indicate the vexation of the tainted democratic process due to the impact of *Citizens United*.

In the next section, the initiative aims to explain the several limitations on the “legal ability...to regulate corporations and other entities.” In that section, the Commission lays out twelve court cases that have restricted Massachusetts and other states from enacting public regulation of campaign money. The report claims these “invalidate state and federal laws regulating corporations” based on many different Constitutional Amendments. These prohibitions allow “people using an artificial entity” to protect acts that are considered constitutional.

In the third section, the Commission organizes its analysis for the “preferred language for one or more constitutional amendments.” Their plan is broken into four sections which are the “problem and policies” that should be addressed in the amendment, considerations of prudence, consideration of modern Supreme Court doctrines, and lastly to guide principles of recommendations for the scope and language of the proposed amendment.

The fourth section of the initiative provides examples of past proposed amendments. It notes that a proposed Amendment must be carefully written as it needs to be supported by the public and not open for interpretation or misinterpretation.

The fifth section of the report provides recommendations to governing bodies in Massachusetts and its citizens relative to “further promotion, proposal, and ratification to the recommended constitutional amendment or amendments.” There are three specific recommendations that include redundancy in efforts, to “acknowledge and consider” proponents to an amendment passing, to have “proactive outreach” with organizations in Massachusetts and gain their input on wording and rationale.

## Comparison

While all the initiatives have a similar goal in mind, the initiatives have different specific findings and required actions within the framework. Every initiative includes a statement about proposing and ratifying a federal constitutional amendment, but the wording of the proposed amendment varies slightly state to state. In Colorado, the main goal of an amendment being passed is to allow Congress and state legislatures to overlook and regulate corporate spending in campaigns as well as require disclosure of this spending. This initiative was passed in 2012, which was very shortly after the decision in *Citizens United* was announced which may indicate why there is no mention of the case or there was some hesitancy to criticize the decision because there were no real, statistical effects seen at that point. All the initiatives in Montana, California, Washington, and Massachusetts call for Constitutional amendments, that expressly include a goal of overturning the decision made in *Citizens United*. While the goal of the proposed amendments is practically the same, there are slight differences. Montana, California, and Massachusetts rely on the principle that corporations are not the same as humans and do not deserve the same Constitutional rights as humans. In Washington, the initiative focuses on the principle that money is not free speech and should not be equated as such. While nearly all the initiatives point to the language in the U.S. Constitution and the lack of a connection between

free speech and money, that point is the main focus of the initiative in Washington. These goals, while they accomplish the same task of overturning *Citizens United* do have slightly different future consequences depending on which one, or if both, are added into a constitutional amendment.

Another point of comparison between and amongst the initiatives is the language used to direct responsibility in the goal of passing an Amendment. The “officials” in charge and the level of accountability differs depending on the initiative. In Colorado, Washington, Montana, and California the initiative puts heavy responsibility on elected and non-elected officials to play a role in the passing of an Amendment. But, even between these states, there is a difference in the level of responsibility given to these officials. In California, Montana, and Colorado, the states use stricter language such as the voters “demand” or “instruct” them to propose, support and ratify an amendment. On the other hand, Washington provides that citizens “support” the action of an Amendment being passed and urge their representatives to support the action as well. The language in the Washington initiative gives more leniency on their officials when it comes to the goal of passing an amendment.

Massachusetts had a much different approach than the approach reflected in the other four initiatives. Instead of asking elected/non-elected officials to research and draft constitutional amendments, a citizen’s commission was created to research and find testimony to use to pass a state law. This law would include a draft of what is needed or desired in a constitutional amendment. While elected representatives could be included on “citizens commission,” Massachusetts’s idea was to find people committed to the cause of researching the negative effects of *Citizens United* and drafting an effective amendment regardless of political affiliation or demographics. This concept is obviously much different than the ones seen in the other

initiatives as there is no real need to “urge” or demand the support of an Amendment since this commission will be full of committed citizens. While the Citizen’s Commission have no authority to pass a constitutional amendment, they were given authority to declare state legislation. Their report makes it state law that requires Massachusetts representatives to propose, support, and ratify a constitutional amendment. This statement means Massachusetts has the strictest expectations and accountability put on their officials.

Another point of comparison between all the initiatives is the findings, or evidence, used to support the initiatives passing. Because these initiatives are expressly trying to reverse something already declared constitutional by the Supreme Court, the findings provide the underpinnings for the initiative and give the initiative a sense of legitimacy. All the initiatives all use a variety of sources within their findings including the US Constitution, the Declaration of Independence, Supreme Court and lower court cases, state laws, statistical data, citizen’s testimony, and even hypothetical consequences. Both Massachusetts and Montana point to their states own “personal” problems such as a history of corruption or conflicting state laws. While all the findings point to slightly different evidence, one very apparent finding in all initiatives is the actual or hypothetical, erosion of democratic ideals. It seems the most important point made in each initiative, regardless of the overall goal, is to emphasize the manner in which the negative consequences of *Citizens United* materially hinder the democratic political process. Colorado claims the decision has created the lack of an “even playing field.” Montana states that the average voter is “shut out” from the political process. California states that the decision “threatens self-government” and hinders the government from protecting citizens from harm. Washington states that the decision has caused voters to lose faith in government and those elections are no longer “fair and free.” Massachusetts claims the “qualified citizen” is now

obstructed from running for public office. All these philosophies are essential foundations of democracy, and each of these initiatives claim they are being destroyed. Another essential finding mentioned in both Washington and California is Article V of the US Constitution which empowers citizens and states to use the amendment process to enhance the purpose of the Constitution, which is to outline American representative democracy.

## Predictions

Montana mentions within its own ballot initiative, and Susan Dana mentions in her article, their 1996 initiative trying to regulate business spending in ballot measure campaigns was challenged and deemed unconstitutional by the Supreme Court (1999). To avoid this same outcome, all the initiatives took a different approach. Instead of proposing law on the state level, these initiatives push for a Constitutional Amendment, which by the reading of Article V, is perfectly legal. One worry is, without the inclusion of Article V in their findings, it may be more difficult to prove the constitutionality of the passing of the initiative. While these initiatives would still most likely hold up because there is no real need to include this finding, its inclusion may be important for any future initiative proposed. There are 26 states in total with the ballot measure processes, leaving 21 more states the opportunity to pass similar legislation (Underhill, 2021). As mentioned, states that are more progressive are predicted to dislike the decision in *Citizens United* more<sup>3</sup>. Out of the 21 remaining states, based on the political affiliation of a state in the 2020 election,<sup>4</sup> there are 8 states that are progressively leaning. It is predicted that these

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<sup>3</sup> There are currently 19 states that have already called on Congress to pass an amendment to overturn *Citizens United* to allow regulations on campaign finance. While some included legislation, there have been no ballot initiatives on the subject. Wyoming attempted to have a ballot initiative in 2018, but never got to the ballot (Steininger, 2019).

<sup>4</sup> Using the election map results from Cable News Network. Cable News Network. (2020). *2020 presidential election results*. CNN. Retrieved December 17, 2021, from <https://www.cnn.com/election/2020/results/president#mapmode=call>

states will use their initiative process to create similar legislation seen in the analyzed ballot initiatives. Overall, if the negative consequences are judged in totality, the decision made in *Citizens United v. FEC* will be overturned with the ratification of one or multiple constitutional amendments.

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