

PassMassAmendment

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Legal Discussion

We feel a need to start with the actual Preamble of the [Constitution of the Commonwealth of Massachusetts](#):

PREAMBLE

"The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility, their natural rights, and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode for making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish the following Declaration of Rights, and Frame of Government, as the CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS."

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We believe that the Preamble, the hallowed words quoted above, is the basis of our Constitution. The most important words are stated first. As a society, we need to protect the body politic, which is the Legislature and the Governor; and in that we are given the right to alter the government. The second paragraph of the Preamble states that the body politic is a social compact with the ultimate aim of providing for the common good.

We feel that the body politic is threatened by the unlimited amounts of money that have been allowed to affect our elections. This includes money from outside of the state, from outside of the U.S.A., and the unfettered influence of corporations in our elections, the political process, and our Government. Thus, we feel that the ultimate objective of providing for the common good is under attack, and therefore, so is our Constitution.

In support of this, we cite two cases:

1) Attorney General v Apportionment Commissioners 224 Mass. 604 - "There can be no equality among citizens if the vote of one counts for considerably more than that of another in electing public officers. The true meaning and spirit of the Constitution is that each voter has an equal voice in the enactment of laws and in the election of officers of the State. Such equality must be secured in all laws for the choosing of representatives in the General Court or the Constitution is violated."

2) Bowe v Secretary of the Commonwealth 320 Mass. 249 - "We see nothing in either of the proposed laws that impairs the freedom of the voter to express his choice as to men or measures. Indeed, the proposed law forbidding political contributions, like corrupt practices acts in general, would tend to increase the freedom of elections by removing influences upon the voter that the use of money can bring to bear."

The basis of our Amendment is "**Corporations are not people and may be regulated, Money is not speech and may be regulated.**"

The Massachusetts Constitution awarded corporations no rights, only restrictions. See **Article VI** below, which begins, "*No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public...*". Corporations have been given rights in Massachusetts. But those rights are NOT INALIENABLE. The only rights that are inalienable are guaranteed by the Massachusetts Constitution, which corporations do not have. The rights corporations currently have are granted by the Massachusetts Legislature through the Massachusetts General Laws and their charters. Those rights are not inalienable.

Massachusetts General Laws Chapter 155 Section 3 Acts of incorporation and corporate organizations subject to legislative action - "Every act of incorporation passed since March 11th, eighteen hundred and thirty-one, shall be subject to amendment, alteration or repeal by the general court. All corporations organized under general laws shall be subject to such laws as may be hereafter passed affecting or altering their corporate rights or duties or dissolving them. Corporations shall, notwithstanding such repeal or dissolution, be subject to sections fifty-one and fifty-two. Such laws of amendment, alteration or repeal or such dissolution shall not take away or impair any remedy which may exist by law consistently with said sections against the corporation, its members or officers, for a liability previously incurred."

As for money being considered speech, we refer to the original language in **Article XXI** of our Constitution. At the time, the only free speech that was mentioned, and therefore protected under our constitution was: "The freedom of deliberation, speech and debate in either house of the Legislature, is so essential to the rights of the people, that it can not be the foundation of any accusation or prosecution, action or complaint, in any other court or place whatsoever. [See **Amendments, Article XLVIII, The Initiative, II, sec. 2.**]" It effectively, protected free speech only within the "houses of the Legislature."

Since the 1884 enactment of **Massachusetts General Law Chapter 320, Section 7**, and subsequent editions of that law, any solicitation or accepting of money by any elected official in the Houses of the Legislature or any public building is illegal. These laws applied to only specific physical locations: those locations where free speech was protected. The distinct connection between disallowing money specifically where free speech was protected and the importance of protecting free speech from the influence of money can not be denied. These laws limited the use of money in places where free speech was guaranteed by the state constitution at that time. If the framers of the law had believed that money was protected speech that they would have, at that time, not barred its use in those hallowed chambers. The law was intended to uphold the validity of the constitutional protections of our democracy by taking money out of the place of protected speech. We feel that this validates our claim that money has never been considered speech in Massachusetts.

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The process that we are engaged in is referred to as "Amending the Massachusetts Constitution through a Ballot Initiative". We are not actually comfortable using that phrase, because we look at what we are doing as a "clarification".

We would like to bring attention to Articles I, IV, V, VI, VII, IX;

Article I: (Annulled by Amendments, Article CVI) Article CVI: "*All people are born free and equal and have certain natural, essential and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness. Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.*"

Article IV: "*The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign, and independent state; and do, and here forever hereafter shall, exercise and enjoy every power, jurisdiction and right, which is not, or may not hereafter, be by them expressly delegated to the United States of America in Congress assembled.*"

Article V: *"All the power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them."*

Article VI: *"No man, nor corporation, or association of men, have any other title to obtain advantages, or particular and exclusive privileges, distinct from those of the community, than what arises from the consideration of services rendered to the public: and this title being in nature neither hereditary, nor transmissible to children, or descendants, or relations by blood, the idea of a man born a magistrate, lawyer, or judge, is absurd and unnatural."*

Article VII: *"Government is instituted for the common good; for the protection, safety, prosperity and happiness of the people; and not for the profit, honor, or private interest of any one man, family, or class of men: Therefore the people alone have an incontestable, unalienable, and indefeasible right to institute government; and to reform, alter, or totally change the same, when their protection, safety, prosperity and happiness require it."*

Article IX: *"All elections ought to be free; and all the inhabitants of this commonwealth, having such qualifications as they shall establish by their frame of government, have an equal right to elect officers, and to be elected, for public employments. [See **Amendments, Articles XLV and XLVIII, The initiative, sec. 2.**] [For compulsory voting, see **Amendments, Article LXI.**] [For use of voting machines at elections, see **Amendments, Article XXXVIII.**] [For absentee voting, see **Amendments, Article LXXVI.**]"*

We make note that the first, large scale action against a corporation on these shores was the Boston Tea Party. The action was against the East India Company. The tea dumped into the harbor was that owned by the East India Company. No other tea was dumped into the harbor and no one was allowed to salvage any of that tea, a total loss.

At the time of our nation's birth, corporations were strictly regulated. Corporations had a limited lifespan and had to accomplish a public service. The charters were vary narrowly structured. And if a corporation did not adhere to any part of its charter, it would be disbanded.

Over time, money and influence helped corporations get laws changed to support the lessening of restrictions in their charters. This led to more money and power for corporations. After the Civil War, railroad corporations had a stanglehold on the U.S. The people formed Unions to fight back, but, the corporations still accumulated money, power, and influence, which allowed a small number of people to put an increasingly large burden on the common people, while the elite wallowed in riches. In the 1917 Constitutional Convention debates, delegates referred to the unnatural power of corporations as "the invisible government," and asked the Convention to enact provisions to allow for Citizens Initiative and Referendum, in order to allow citizens to keep the Legislature "in "check."

In contrast to the strict charters that our forefathers insisted on, to keep corporations "in check," today, a corporation in Massachusetts need only say that it will engage in "any lawful activity," to receive its charter. We now have huge corporations paying no tax, sometimes even receiving rebates for shipping our jobs overseas, all at a cost to the poor, the middle class, and our communities. And unions, which were established to protect workers from profiteers, are suffering a downward trend.

It is again time for the people to rise up and voice their displeasure and say, "This has to stop".

In 1998, the "**Clean Elections Law**" was passed by a 2 to 1 margin by Ballot Initiative. The Legislature refused to fund it and at a later time had a voice vote to end it. In response to this lack of action to clean up elections and with corporate money flooding into the election process, people have organized around the state, asking their Legislators to declare that "Corporations Are Not People; Money Is Not Speech." And the voice of the people has again been disregarded. By using a voice-vote to end the **Clean Elections Law**, the Legislature made it impossible for the citizens to know which Legislator voted for or against. In doing so, they could not be held accountable for their vote. And therefore violated **Article V** of the State Constitution, which guarantees that Legislators will be held accountable to their voters.

The Massachusetts Constitution is the longest lasting document of its kind. And it has remained fairly unchanged since its inception. Citizens were guaranteed, in the original Constitution, the right to alter government. But the original Constitution did not offer a process for doing so. The citizens were finally awarded the ability to amend the

Constitution and establish law after the Constitutional Convention started in 1917, which put forth the Initiative and Referendum Amendment; it was enacted by vote of the people.

The 1917 Constitutional Convention was convened because of the pressure applied to the General Court by the people. An "invisible government" had taken over, and the people needed a way to directly effect change. Back then, as today, the problem was the corrupting influence of corporations and money on Government and the political process. The citizens wanted to be able to restrain the body politic from doing harm, thus strengthening the social compact and preserving the common good. The citizens had been ignored. The people were finally heard and ended up with what could be one of the most conservative I and R processes available.

We have previously stated the longevity and durability of our Constitution. The process to Amend our Constitution is arduous, and it should be. We at PassMassAmendment have a great respect for our Constitution, the Framers of said document and our forefathers who took up arms to battle for the human rights that we enjoy today. In respect of those efforts, no one gets paid at PassMassAmendment. This is an all volunteer effort. PassMassAmendment will not pay anyone to gather signatures. It has been suggested that this has never worked in the past; that we have little chance. We already acknowledged the process as being arduous. If people do not rise up and volunteer, on an issue that transcends party lines and is so important to the future of our nation; if the people do not respond, then this Amendment does not deserve to be on the Ballot. This is a true "grassroots" effort and we have faith, but we need help.

We issue a call to arms. We need those arms to hold clipboards as we ask registered voters to use their own arms to propel a pen to attach their signature to a petition sheet. We need those arms to pick up the phone and call friends and neighbors to say, "Have you heard?" We will need those arms to hold their brothers and sisters, at the end of the effort, as we all exclaim, "We did it," and feel the pride of accomplishing something that will make a difference and hopefully lead the rest of the country to help wrest back control of our Government from the corrupting influence of large, global corporations and money. At that time we can put our arms to rest, inside a ballot booth, as we fill out a ballot, knowing that our vote does again matter.