

2015 HOUSE JUDICIARY

HCR 3030

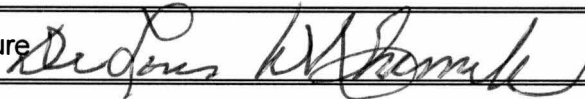
2015 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HCR 3030
2/23/2015
24257

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Clarifying that the rights protected under the constitution are the rights of natural persons and not the rights of artificial entities and that spending money to influence elections is not speech under the first amendment.

Minutes:

Testimony #1

Chairman K. Koppelman: Opened the hearing with testimony in support.

Rep. M. Nelson: Introduced the bill. (See testimony #1) Read through the HCR. (:45-3:07) I am not very much for the position that it is important to call a convention to deal with my purpose and my purpose only; but your purpose is dangerous and should be prevented at all cost. I think the calling of a convention and then muzzling your delegate to the convention is like going to a gun fight without a bullet. We do have a government, of, by and for the people and if someone were to use that convention to propose something else and it is ratified by $\frac{3}{4}$ of the state well I am OK with that.

Rep. Mary Johnson: Rights protected are you referring to? Can you give me a list?

Rep. Nelson: It is when we are talking about constitutional rights. A corporation is a creation under law and it can have rights, but they are rights under the law; not so much under the constitution. A corporation doesn't have the right to vote. Does a corporation have the right to speech? Maybe there do and maybe they don't. Now in our laws we have to say individual. Corporations are not a creation of God. They are a creation of man and their rights are at a different level than the inherent rights of a human being.

Rep. Mary Johnson: We also have a group of natural rights for persons and so you are saying any Constitutional rights as taxable entities should have some rights as to the taxation. So you give them rights and define which subject matter those rights apply to by law? Is that what I am hearing?

Rep. Nelson: Let's say a corporation has no natural right to life. There is the right of free speech and you notice in the bill there is that argument that while a newspaper, as a corporation, has the right to free speech. Actually the news media etc. was excluded from

this because of the difficulties brought about by that. I would not for one moment say that there is no difficulties in saying corporations have no constitutional rights; but at the same time our system we start recognizing rights of corporations by in the 1800s and then what happens is corporations continue to develop rights, but in many cases they do not have corresponding responsibilities. You say you commit a felony; a person can go to jail, but you don't put a corporation in jail. So that person has many of their basic rights taken away from them on account of that felony, but a corporation doesn't. About the only thing you can take from a corporation is money so why should the corporation have those same freedoms when it doesn't have those same responsibilities?

Rep. Mary Johnson: Certainly in law corporations in law; especially where the IRS is concerned corporations will suffer not only civil charges, but their board of directors can be put in jail for criminal charges so I wouldn't say corporations are not subject to criminal law because they are.

Rep. L. Klemin: This bothers me that the rights in the Constitution are rights of natural persons only. I can think of a number of them off the top of my head would be free of unreasonable search and seizure. Then you wouldn't need a warrant for taking the property of an artificial entity. I think it is wrong for you to say only natural persons have any rights under the constitution. There are a lot of rights in the constitution for a natural person.

Rep. Nelson: To qualify for a charitable non-profit you have to do some things and some of those things are providing excess to your records. If they have a constitutional right to privacy then how can we under the law require them to have their records open? When you form a regular corporation we could require under the law those records to be open, but we don't?

Rep. L. Klemin: There are a lot of other things like search on the premise of a corporation that has nothing to do with records.

Rep. Mary Johnson: The portion where spending of money is not construe the spending of money to influence elections to free speech under the first amendment. Again we have the judge made priority of freedom of speech; the least protected is commercial is the most protected is political. Tell me why speech found in strippers at the Northern will be more protected than my giving \$100 because I like what a candidate is saying?

Rep. Nelson: Your giving in many ways is protected, but to an unlimited extent. We do limit under the state law of ND today to giving of corporations. There is question whether it is legal under current rulings, but we do it. So the legislature of ND has already decided to limit the spending on campaigns by corporations. So I would say this isn't so radical.

Rep. L. Klemin: The US Constitution amendment requires at least 2/3 of the states to propose to adopt the same or substantially similar constitutional amendments. Is this part of a movement throughout the states to do this promoted by a group or is this a first time thing for ND? Where are we at on this?

Rep. Nelson: Yes it is going around the country and different states have passed a lot of things on this. Montana had a very interesting ballot initiative where the directive was to leaders of the state to the greatest extent possible under federal law to do this. It was a very extensive and wordy ballot measure. I believe it passed with something like 70%. There are different groups who have different wordings that they like. We The People is one group. The language came from Congress; joint resolution 29 has those clauses.

Chairman K. Koppelman: Was it a resolution Congress passed?

Rep. Nelson: It did not pass, but it could pass. It was introduced last session.

Chairman K. Koppelman: Are you aware of other provisions in the Constitutions are designed with the idea of protecting rights; not removing them. Are you aware of other provisions of the Constitution that seek to removing rights?

Rep. Nelson: No, but I don't find a lot in language about corporate rights?

Chairman K. Koppelman: You talked about freedom of the press and you wanted to be sure that was protected. That could be corporate or individual. When you are talking about freedom of the press was something they were keen on protecting. That could be corporate or individual. When you talk about freedom of the press you are potentially talking about a corporation yet you are saying you don't think money should be protected. I spent many of my years in journalism and advertising but the whole idea of an individual or business or corporation being able to be considered a freedom of speech since you are paying for advertising?

Rep. Nelson: I think that is a question that was a desire to avoid. If something is published in the newspaper; is the newspaper responsible for publishing my letters. Free speech of a newspaper or is that free speech of Marvin Nelson? It becomes a blurry line in some cases. Often then to the desire of power and government to limit that; we wanted to make for sure that it is not a desire to limit free speech. Money is different in that a TV station only has so many hours in the day and if I have enough money to buy all the time for the next election; can I do that? Maybe I can if I get there first. By too much money being involved potentially I am limiting other people's excess to speak. Can we as a state limit that forum and I would argue that we should be able to but it is not going to be done that there is no money; that is not going to happen. States would have the ability to regulate that and make it so everybody gets their speech.

Chairman K. Koppelman: I assume whether it was a TV or whatever it might be you would have to set up some kind of censorship board to say what we say in terms of our professional journalists is free speech, but we decide when someone comes in and buys an ad whether it is or isn't. There are federal restrictions for buying up all the ads. Is this a big issue that you see?

Rep. Nelson: It seems to be a growing issue.

Vice Chairman Karls: We have talked quite a bit on corporations but there are other groups that try to influence political thought or feelings with money like unions, packs, 527s. Would they also be covered under this?

Rep. Nelson: Yes they too would be impacted by this.

Opposition: None

Neutral: None

Hearing closed.

Rep. Mary Johnson: This resolution is totally unworkable. I never did get an answer to my question regarding 6.

Do Not Pass Motion Made by Rep. Mary Johnson: Seconded by Rep. Kretschmar

Rep. Mary Johnson: We certainly spend money to influence elections from the smallest amount to very large amounts. Most of the corporations, limited liability companies; limited liability partnership's etc. are mom and pops in this nation. So this is obviously a way to get fortune 500s out of the election business. Mom and pops will spend money to influence elections. They have to especially the one I am involved in. It is our business to transport school children; we do what the school district tells us to do, but you get a rough school board member out there that wants to change the way something is done to our detriment; we are going to spend the money and maybe get that person off the board. I didn't get an answer about the hooker from the Northern whose dance is protected speech and my expenditure of whatever I can scrape up is not protected and I believe political speech should continue to be protected in this country.

Rep. L. Klemin: Part of this is directed toward campaign finance, but the beginning of it is much broader than that. It says only natural people have rights under the constitution and artificial entities have no rights and there are all kinds of rights that artificial entities should have. Like you can't go in and search their property without a warrant or reasonable cause. I think this has a lot of problems and I think it is way too broad.

Chairman K. Koppelman: The resolution sponsor talked about changing the term person to individual in our law. We have all seen that frequently. I think that has been happening as long as I can remember in the legislature.

Rep. K. Wallman: I am going to resist because I think Article 5 of the Constitution and it is problematic for a lot of reasons. The way I read it on page 2 lines 3, the privileges of artificial entity should be determined by the people through federal, state or local law and shall not be construed to be inherent or inalienable. The way I read it doesn't that actually reinforce that buy law they can have rights, but they are not inalienable? So laws can be made to protect corporations?

Rep. K. Hawken: I think the reason this is here is the non-reporting piece. The fact that they are now corporations that can spend as much money as they chose to and never ever

have to have a face is what I find as unconscionable. I don't think you have the right to secretary. You certainly have the right to your opinion and you have the right to spend your money. This does not address my concern and that is that you can do it in secrete. You are not responsible because your name is not on there. When you tell an absolutely falsehood or another person or an initiated measure or whatever it is I find it very embarrassing that in the state of ND we have such limited ethics laws. I think people are not happy with politicians; they feel like they have been purchased and in many respects some of them have. I can't support this because I don't think it gets to what I really want it to get to, but sure hope someday somebody does because I think the way we are going is not good.

Roll Call Vote: 10 Yes 3 No 0 Absent Carrier: Rep. Kretschmar

Date: 2-23-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 3030

House JUDICIARY Committee

Subcommittee Conference Committee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
Other Actions: Reconsider _____

Motion Made By Rep. Johnson Seconded By Rep. Kretschmar

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore		✓
Rep. Brabandt	✓		Rep. K. Wallman		✓
Rep. Hawken	✓				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos		✓			
Rep. Paur	✓				

Total (Yes) 10 No 3

Absent 0

Floor Assignment Rep. Kretschmar

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HCR 3030: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **DO NOT PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HCR 3030 was placed on the Eleventh order on the calendar.

2015 TESTIMONY

HCR 3030

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HCR 3030

Chairman Koppelman, members of the Committee, I am Marvin Nelson Representative District 9.

HCR3030 is a resolution for Congress to propose an Amendment to the US Constitution or call a Constitutional Convention. The language of the clauses is based on House Joint Resolution 29 of the 113th Congress.

The basic idea is that the US Supreme Court's "People's United" ruling and associated rulings are not the will of the people. That corporations are a creation of man and as such do not have inherent rights and that money is not free speech. It also requires campaign donations and expenditures be reported at all levels of government.

Let me read the clauses:

One part that I don't know if I really like my own wording is for the calling of the Constitutional Convention. I'm not much for the position that it's important to call a convention for my purpose and my purpose only but every other proposal is dangerous and must be prevented. I believe we do have a government of, by and for the people and if someone were to use that convention to propose something else and it is ratified by ¾ of the states, well, I'm okay with that. I don't see that as some sort of abuse or dangerous thing.