

STATEMENT OF  
ART POPE  
CITIZEN OF NORTH CAROLINA

SUBMITTED TO THE U.S. SENATE JUDICIARY COMMITTEE IN RESPONSE TO THE  
HEARING ENTITLED  
“EXAMINING A CONSTITUTIONAL AMENDMENT TO RESTORE DEMOCRACY TO  
THE AMERICAN PEOPLE”

HEARING DATE TUESDAY, JUNE 3, 2014  
SUBMITTED FOR THE COMMITTEE RECORD JUNE 9, 2014

My name is Art Pope, with my full name being James Arthur Pope. I am a lifelong resident of North Carolina, currently residing in Raleigh, North Carolina. I am the person referred to by name in the testimony of Floyd McKissick, Jr., a North Carolina state senator, in his testimony submitted to this Committee on June 3, 2014.

I agree with several of the statements made by state Senator McKissick. Like state Senator McKissick, I also entered politics and public service because I saw “ways that North Carolina’s government could work more effectively to make a difference for the people in my community who needed a hand up, a solid education, better jobs, and safer communities.”

Like state Senator McKissick, I believe that “public service is a calling,” and I have a long record of public service. I served as a Special Counsel to North Carolina Governor Jim Martin in 1985. I was elected and served four terms in the North Carolina House of Representatives, from 1989-1992 and 1999-2002, representing parts of Wake County. Over the years I have been appointed to numerous public boards, commissions, and committees, both by a Republican Governor and by three different Democratic Speakers of the North Carolina House of Representatives. Since 2013, I have served on a volunteer basis as the State Budget Director of North Carolina.

Outside of public life, I am the owner and executive of a family retail business and Chairman and President of a family philanthropic foundation.

There are some differences between state Senator McKissick and myself. State Senator McKissick is a member of the Democratic Party and identifies himself as a progressive, while I am a member of the Republican Party and identify myself as a conservative.

State Senator McKissick did graciously concede in this testimony that “Art Pope has the same right as every citizen to *participate* in our democracy ...” (emphasis original). But, state Senator McKissick then went on to make the false and outlandish claim, that I, Art Pope, a single person, was able to “buy our democracy” in North Carolina, and that an amendment to the United States Constitution is needed so that some people cannot “buy” a legislature or governor’s mansion.

State Senator McKissick claims are false and outlandish for three primary reasons. First, spending money to communicate with the public simply does not constitute “buying” an election, legislature, or governor’s office. Spending money on politics or grassroots advocacy primarily consists of 1) going door to door to meet voters or potential activists; 2) holding rallies, forums and other events; 3) printing, mailing, and using radio and television to broadcast messages; and 4) using websites and social media to disseminate information and build online communities.

Second, in my case, it simply is not true that I or my company spent a single million dollars, much less spent millions, plural, of dollars for either the 2010 or 2012 North Carolina elections.

Third, if one believes that spending the most money “buys” an election, it was the Democratic Party and progressive organizations that spent more money during the 2010 North Carolina elections than the Republican Party and conservative organizations. Yet, the Republican Party’s legislative candidates won the majority, earning 59% of the statewide vote for legislators compared to 41% for the Democrats.

Rather than supporting State Senator McKissick claims, the actual history of North Carolina refutes the entire premise that elections can be “bought” by one party or side spending the most money. If North Carolina voters had sold out to the “highest bidders” during the 2010 election, then state Senator McKissick and his party would have retained their legislative majority.

State Senator McKissick and others try to divert attention away from the facts by using the vague term that I was “tied to” contributions made by others who made contributions totaling over a million dollars. However, if one wishes to use the approach of “tied to,” then it is state Senator McKissick who was “tied to” the Democratic Party and its progressive supporters who spent millions of dollars more than any groups I was “tied to.”

According to the reports of the North Carolina State Board of Elections, the NC Democratic Party and its legislative candidates in 2008 spent \$14.7 million — twice as much as the Republican Party and its legislative candidates, which spent only \$7 million — and the Democrats retained their majority in North Carolina. During the 2010 North Carolina legislative elections, the Democratic Party and its candidates again outspent the Republicans — \$15.3 million compared to \$11.6 million spent by the Republicans. The independent expenditures and electioneering communications that were characterized as benefitting Republicans helped narrow the gap. But the combined spending by the Democrats and progressive organizations totaled \$15.5 million, which still exceeded by 14 percent the combined spending by Republicans and conservative groups, which totaled \$13.6 million.

So if state Senator McKissick really believes that North Carolina is a state for sale, then he and his party should have retained their legislative majority in the 2010 elections because they spent the most money. However, North Carolina is not a democracy that has been bought. It is a democracy that works. Rather than admit that his party lost a fair election, state Senator McKissick and others seek to discredit the legitimacy of the elected Republican majority by claiming the election was tainted by money, even though the side he was “tied to,” his Democratic Party and progressive organizations, spent the most money.

Worse than simply trying to discredit the winning Republican majority in a state election, state Senator McKissick is now supporting an amendment to the U.S. Constitution to silence his opponents. The First Amendment of the Bill of Rights is very clear, stating “*Congress shall make no law . . . abridging the freedom of speech or of the press* (emphasis added).” The proposed amendment to the U.S. Constitution set forth in S.J. Res. 19 is also very clear, stating in part, “*Congress shall have power to regulate the raising and spending of money and in-kind equivalents with respect to Federal elections . . .*” with a similar power given to the states in respect to state elections (emphasis added). Note the very broad inclusion of “in-kind equivalents” and with “respect to” Federal elections.

The language of S.J. Res. 19 is so broad that it goes far beyond just overturning the U.S. Supreme Court’s decision in *Citizens United*. State Senator McKissick made it very clear that he wanted to silence organizations in North Carolina, referring by name to Americans for Prosperity, Civitas Action and Real Jobs NC. However, those organizations during the 2010 elections were only engaged in issue advocacy, also referred to as electioneering communications, that were allowed under existing federal and state law even before *Citizens*

*United.* With issue advocacy, people can come together to educate the public about the policy positions and voting records of incumbent politicians and candidates.

And yes, issue advocacy and voter education very often criticizes the incumbent politicians, letting their constituents and voters back home know how their representatives and senators voted in the Capitol. But is that not what the First Amendment and freedom of speech are about — the right to criticize incumbent politicians and candidates?

Yet, state Senator McKissick wants to amend the U.S. Constitution to give himself and other incumbent politicians in Congress and state legislatures the “power to regulate . . . with respect to” federal and state elections — in other words, to regulate what citizens can say about their re-election. That is frightening.

The proponents of S.J. Res. 19 apparently argue that it is not their goal to end free speech but simply to regulate who can spend how much “with respect to” elections. To regulate how much voluntary associations of individuals can spend communicating their messages during the elections, however, would be the same as regulating how much newspapers can spend on newsprint. Indeed, the sponsors of S. J. Res. 19 included the clause: “Nothing in this article shall be construed to grant Congress the power to abridge the freedom of the press.” Without this clause, S.J. Res. 19 would allow Congress to regulate spending by traditional newspapers on news reporting and editorial endorsement “with respect to Federal elections.” Why should news media companies and their reporters have their freedom protected from government regulation while the rest of us have that freedom stripped away?

As a member of the North Carolina House, I was once asked to vote to call for an amendment to the U.S. Constitution to limit free speech by overturning *Texas v. Johnson*, which had held desecration of the American flag was protected by the free speech clause of the First Amendment. During the debate, I agreed that the burning of the American flag was a despicable act. However, I argued that while the American flag was the symbol of freedom, the First Amendment of our United States Constitution *is* freedom. I then made the successful motion and voted to kill the bill, North Carolina HR 2033 (1989), by sending it back to committee where it was later postponed indefinitely.

I now respectfully request that the United States Senate protect our Constitution, protect our freedom, and affirmatively postpone indefinitely S.J. Res.19.

In the meanwhile, state Senator McKissick and I can both work for our common goal to improve the lives of the people of North Carolina, debate our differences on how best to achieve that goal, and trust the people to decide how to vote at the next election — rather than having that debate be restricted, even cut off, by the US Congress or a state legislature.

Respectfully submitted by Art Pope