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**COMMENTS IN OPPOSITION TO 2013-H 6051, TO APPROVE
A STATE CONSTITUTIONAL AMENDMENT (WE THE PEOPLE)
May 2013**

The American Civil Liberties Union of Rhode Island, Inc. strongly opposes this attempt to editorialize against the United States Supreme Court's *Citizens United* decision from 2010. The meaning, scope, and correctness of that controversial ruling are certainly deserving of discussion and debate, as are proposals to attempt to address some of the issues raised by the decision. However, this proposed constitutional amendment is not the appropriate method for doing so.

H-6051 is itself clearly unconstitutional, and severely undermines basic First Amendment rights. Asking voters to approve a measure that will assuredly be struck down as soon as it is passed is, however unintended, a cynical use of the electoral process.

Without providing a detailed analysis, we wish to briefly note a few of the ramifications of the actual language of this amendment. The first sentence categorically provides that "artificial entities" established by the state "shall have no rights under this Constitution." As a result, should this General Assembly decide that organizations like the ACLU have no right to exist or that our corporate registration fee should be ten times higher than that of the Chamber of Commerce, it would be legally allowed to do so. If a school committee wishes to banish from meetings any reporters from a TV station, the *Providence Journal* or *RI Future* (all of which are artificial entities under state law) for running stories critical of the school committee, it could do so. Should "the people" decide that only certain types of corporations should be allowed to exist -- say, those that pledge allegiance to certain political principles -- doing so would be perfectly acceptable under the R.I. Constitution.

The second section of the proposed amendment authorizes the state and municipalities to prohibit *any* contributions and expenditures. While this restriction is to "ensure that all citizens, regardless of their economic status, have access to the political process," all it would really ensure, if it were actually implemented, is an easier time for incumbents. It would make it virtually impossible for an opponent, barred from spending any money on a campaign, to overcome the built-in name recognition that incumbents have. Further, its requirement that "any permissible contributions," no matter how small, be publicly disclosed means, as happened in a lawsuit we once handled, that a Catholic wishing to make a \$25 contribution to a pro-choice PAC or candidate, will have to consider very carefully the consequences of trying to participate in this small way on an issue of importance to her.

The amendment also declares that "the spending of money to influence elections shall not be construed as speech." While saying that "money is not speech" is a catchy slogan, the amendment's potential impact on speech could be devastating. There are few examples of speech

that don't involve the spending of money, whether it's renting a hall to hold a political rally or going to Kinkos to print fifty copies of a flyer in support of this constitutional amendment. Under a "money is not speech" approach, the government could ban the hall rental or the commercial copying of the flyer. And, taken with the amendment's previous provision -- giving the government unbridled discretion to regulate contributions -- the state or municipalities could allow some people to make larger contributions than others, without any recourse under the state Constitution.

Constitutional amendments are serious business. Proposing one -- not to mention one that is facially unconstitutional -- merely in order to generate debate about an important issue is extremely troubling. In fact, there is an eerily similar precedent in Rhode Island for this proposal. Supporters of H-6051 claim that the U.S. Supreme Court has issued an illegitimate decision distorting the meaning of what constitutes a "person" under the Constitution, prompting the need for such a drastic solution. There are many people who feel exactly the same way about another very controversial Supreme Court decision defining personhood for constitutional purposes -- *Roe v. Wade*. And, in 1986, eager to send a very similar message to H-6051, opponents of that decision in Rhode Island succeeded in proposing a state constitutional amendment, just as problematic as this one, declaring that, notwithstanding *Roe*, life begins at conception and banning almost all abortions in the state. The amendment was defeated, but only after the expenditure of tens of thousands -- if not hundreds of thousands -- of dollars in a highly polarizing political campaign.

If opponents of *Citizens United* are concerned about expenditures of money in political campaigns, we would respectfully suggest there are better ways to address the issue than by passing a proposal whose only effect will be to lead to the expenditure of significant amounts of money in a political campaign. We do not question the good intentions behind this bill, but it represents a dangerous step with substantial ramifications for all of our free speech rights. We therefore urge rejection of H-6051.