



**General Court of the Commonwealth of Massachusetts
Joint Committee on Veterans & Federal Affairs**

**Written Testimony of Jeff Clements
CEO, American Promise
Member, Massachusetts Citizen Commission**

- H3819 - *An Act to continue the Citizens Commission concerning a Constitutional Amendment to secure government of the people*
- H3502/S2319 - *Resolutions for a United States Constitutional Amendment*
- H3768 - *Application to Congress for a Constitutional Amendment*

January 12, 2024

Members of the Joint Committee:

Thank you for the opportunity to testify in this important hearing. I respectfully request that you act favorably on the above-referenced bills.

Summary of Testimony

1. According to most Americans across the political spectrum, unlimited money in politics is the number one reason for the grave threat to American democracy.
2. The surge in unlimited and unaccountable money in elections, often from undisclosed and even foreign sources, and largely sourced from an elite “donor class,” is a result of the Supreme Court’s mistaken interpretation of the First Amendment. The disastrous experiment of the Supreme Court to equate the spending of money to influence elections with freedom of speech denigrates the rights of Americans — almost all Americans — who lack the means to compete for representation with wealthy donors.
3. A constitutional amendment is necessary to correct the Court’s mistaken interpretation of the First Amendment, to protect freedom of speech for all Americans, and to enable the people, the States, and Congress to ensure election integrity and constitutional representation in government with effective anti-corruption laws and limits on election spending.

4. Americans overwhelmingly support this constitutional amendment. Massachusetts is one of 22 States that have enacted resolutions or laws backing the proposed amendment.
5. The For Our Freedom Amendment language proposed by American Promise has been recommended by the Massachusetts Citizens Commission after a multi-year public and expert engagement process.
6. This Committee and the General Court should act favorably on the above-referenced bills to advance established Massachusetts policy in favor of the For Our Freedom Amendment, and to accelerate the process of a favorable 2/3 vote in Congress and rapid ratification in Massachusetts and 3/4 of the States upon passage by Congress.

Background

I serve as CEO of American Promise, a national, nonpartisan organization based in Concord, Massachusetts with members and staff throughout the country.¹

Before founding American Promise in January 2016, I was a partner at Mintz Levin in Boston and in my own firm. I also have served as Assistant Attorney General and Chief of the Public Protection Bureau in the Massachusetts Attorney General's Office. I have taught election law at New England Law School, and, since 2012 I have managed Whaleback Partners, which invests in farmers and food systems in New England. In 2019, I was appointed by then-Attorney General, now Governor Maura Healey to serve on the Massachusetts Citizens Commission Concerning a Constitutional Amendment to Secure Government of the People.

Detail

1. *According to most Americans across the political spectrum, unlimited money in politics is the number one reason for the grave threats to American self-government.*

The American people have repeatedly voiced serious concern about money in politics. Recently, the influence of money in politics was cited as the [top threat to democracy](#) by 86% of both Republicans and Democrats. In another, “reducing [the] influence of money in politics” ranked among the top four [policy priorities](#) that Americans want the President and Congress to tackle (above crime, education, drugs and immigration). Eighty percent (80%) of Americans believe campaign donors and lobbyists have [too much influence](#) on Congress, and seventy percent (70%) believe that actual constituents have too little influence. In the September 2023 Pew survey, the second most popular term Americans listed as the [one word that comes to mind](#) when they think

¹ <https://americanpromise.net/who-we-are/about-us/>

of politics is “corrupt.” Public [trust in government](#) is at an historic low, and [just 4%](#) of Americans believe the government is working very well.

These statistics are alarming but not surprising. We the people do not feel well-served by our government, and the pernicious influence of money in politics is a root cause.

2. The surge in unlimited and unaccountable money in elections, often from undisclosed and even foreign sources, and largely sourced from an elite “donor class,” was caused by the Supreme Court’s mistaken interpretation of the First Amendment as a bar to Americans enacting effective anti-corruption laws and limits on money in elections.

[Spending in federal elections](#) has grown from \$8 billion in 2012 to \$16.4 billion in 2020. Much more is expected in 2024. “Outside spending” — spending by entities such as PACs or other organizations that are not candidate or party committees — increased even more dramatically over the past two decades. In 2000, federal races saw a total of [\\$33 million](#) in independent expenditures for or against a candidate; by 2020 that had grown to [\\$3.2 billion](#). And it is not just federal elections that are awash in money: spending in [state elections](#) reached \$7.8 billion in 2022.

Most of this money comes from a [tiny fraction](#) of Americans residing in a few dozen [zip codes](#). As we approach the 2024 Presidential election cycle, there is no end in sight. This was never how America was supposed to function.

Americans did not ask for this. Neither Congress nor the State legislatures chose this system. Our current predicament of distrusted elections, swamped in corrupting levels and methods of spending, came from Supreme Court mistakes about the Constitution.

The origin of our current regime of unlimited money in campaigns and elections dates back to the Supreme Court’s decision in [Buckley v. Valeo](#), 424 U.S. 1 (1976). *Buckley* arose after Congress amended the Federal Election Campaign Act (FECA) to address problems that came to light after the Watergate scandal. Soon after Congress amended FECA to require limits and disclosure for campaign contributions and expenditures, challengers filed lawsuits claiming that the provisions violated the First Amendment.

For two hundred years, Americans never equated money with free speech. For two hundred years, the Supreme Court had never once considered anti-corruption limits on money in elections to be a First Amendment issue. But in *Buckley*, for the first time in two hundred years of the American nation, the Supreme Court created a new theory and struck down several of FECA’s provisions.

In *Buckley*, the Court functionally equated the spending of money in politics with freedom of speech — thereby subjecting campaign finance laws to the type of exacting judicial scrutiny that had previously been applied to laws that actually regulated speech. And over the past five decades, the Supreme Court has applied the *Buckley* doctrine in striking down several attempts — by the States and Congress — to regulate election spending. Some of *Buckley*'s best-known progeny include:

- [*First National Bank of Boston v. Bellotti*](#), 435 U.S. 765 (1978), holding that corporations have a First Amendment right to spend money to publicize opposition to a ballot initiative.
- [*Citizens United v. Federal Election Commission*](#), 558 U.S. 310 (2010), holding that corporations have a First Amendment right to make unlimited independent expenditures in elections.
- [*Speechnow.org v. FEC*](#), 599 F.3d 686, (D.C. Cir. 2010), giving rise to “super PACS” by holding that individuals have a First Amendment right to make unlimited contributions to independent political action committees.
- [*Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*](#), 564 U.S. 721 (2011), invalidating Arizona's public financing scheme in which candidates received supplemental funds based on an opponent's spending.
- [*American Tradition Partnership v. Bullock*](#), 567 U.S. 516 (2012) (per curiam), announcing that the holding of *Citizens United* also applies to state campaign finance laws.
- [*McCutcheon v. Federal Election Commission*](#), 572 U.S. 185 (2014), holding that aggregate limits applicable to individuals' political contributions are unconstitutional.

The *Buckley* doctrine has had the practical effect of converting the judicial branch into the nation's apex campaign finance regulator. The *Buckley* doctrine — scrutinizing anti-corruption laws as if spending money is tantamount to speech — is not only an aberration, it is a danger. Such a narrow frame of analysis comes at the expense of the core feature of American representative democracy: the sovereignty of the people.

3. *A constitutional amendment is necessary to correct the Court's mistaken interpretation, protect freedom of speech for all Americans, and enable the people, the States, and Congress to enact effective anti-corruption laws.*

The American people understand viscerally that money in politics interferes with genuine self-government. But because of the Supreme Court's *Buckley* doctrine — which has effectively judicialized all questions of campaign finance policy — our options for addressing money in politics are currently very limited.

Under our system of separated powers, the States and Congress are meant to have primary responsibility for making policy and the flexibility to adapt to new challenges. But in matters of campaign finance, the Supreme Court has occupied the field, decreeing that regulations of money in politics are generally prohibited unless they address the narrow problem of *quid pro quo* corruption. Attempts to temper or reverse the *Buckley* doctrine through litigation have not been successful, leaving the States and Congress powerless to address the threats to self-government posed by out-of-control money in our campaigns and elections.

Eight of our twenty-seven amendments to the Constitution have reversed and nullified Supreme Court interpretations of the Constitution that the American people rejected as wrong, unjust, and dangerous. When the Supreme Court will not correct its own errors about constitutional interpretation about a matter going to the heart of popular sovereignty, liberty, and representative government, a constitutional amendment is necessary. This is such a case.

4. *Americans overwhelmingly support this constitutional amendment. Massachusetts is one of 22 States that have enacted resolutions or laws backing the proposed amendment.*

Three out of four Americans support ratification of a constitutional amendment such as the For Our Freedom Amendment. <https://americanpromise.net/research-polling/>

To date, Massachusetts and twenty-one other states have taken action to back the constitutional amendment, and support in Congress is growing.

<https://americanpromise.net/build-support-in-your-state/>

The Massachusetts General Court passed a bipartisan resolution in 2012 that called on Congress to pass, and the States to ratify, an amendment to the U.S. Constitution that permits the States and Congress to reasonably regulate money in campaigns, elections, and ballot measures.

In 2018, the people of Massachusetts passed a citizen's ballot initiative by a wide margin to reiterate this policy of support for the constitutional amendment and to create a Citizens

Commission to advance the proposed amendment. The ballot measure passed with a supermajority vote of the people in *every single county, city and town* in Massachusetts.²

5. The For Our Freedom Amendment language proposed by American Promise has been recommended by the Massachusetts Citizens Commission after a multi-year public and expert engagement process.

The idea to amend the Constitution to address the problem of money in American elections is not new. The concepts and constitutional principles are well-developed. Versions of such an amendment have been proposed by Democrats and Republicans in Congress since the post-Watergate reforms were struck down by the Supreme Court in *Buckley*. And just recently, the [American Academy of Arts and Sciences endorsed](#) such an amendment as a reform necessary to secure equality of voice and representation in the 21st century.

At American Promise, we've spent the last several years vetting proposed amendment language by engaging Americans from across the political spectrum and from every region of the country, as well as elected officials, political experts, law professors, judges and lawyers, and leaders across many sectors. We convened dozens of town halls and community meetings in every region of the country. We received comments, suggestions, and criticism through our website. Out of this process emerged proposed language for a Constitutional amendment that we believe can achieve the super-majority support demanded by Article V's amendment procedures. We call it the [For Our Freedom Amendment](#) because it would enable genuine representative self-government — an essential guarantor of freedom in a society where the people are meant to be sovereign.

After hearings, and public and expert testimony, and study of all the amendment proposals on this issue currently pending in Congress, the Massachusetts Citizens Commission endorsed the language of the For Our Freedom Amendment.³

² https://electionstats.state.ma.us/ballot_questions/view/7304/;
<https://www.wbur.org/news/2018/11/06/question-2-passes-citizens-united-constitutional-amendment>.

³ See Testimony of William Kilmartin, and First and Second Report of the Massachusetts Citizens Commission.

Proposed Text of the For Our Freedom Amendment

Section 1. We the People have compelling sovereign interests in the freedom of speech, representative self-government, federalism, the integrity of the electoral process, and the political equality of natural persons.

Section 2. Nothing in this Constitution shall be construed to forbid Congress or the States, within their respective jurisdictions, from reasonably regulating and limiting contributions and spending in campaigns, elections, or ballot measures.

Section 3. Congress and the States shall have the power to implement and enforce this article by appropriate legislation and may distinguish between natural persons and artificial entities, including by prohibiting artificial entities from raising and spending money in campaigns, elections, or ballot measures.

6. This Committee and the General Court should act favorably on these bills to advance the process of a favorable 2/3 vote in Congress on the For Our Freedom Amendment and readying Massachusetts for rapid ratification of the amendment upon passage by Congress.

In addition to the 22 states that have joined Massachusetts in moving this process forward, similar measures are pending in multiple states, with Maine voters passing a citizen ballot initiative on this issue with the support of 86% of the voters in November 2023. Positive action on these bills will encourage other states to join this effort.

More than two hundred members of Congress and over forty Senators support this constitutional amendment. Progress toward the 2/3 vote in Congress is accelerating. In May 2024, American Promise is hosting a citizen lobby day in Washington, D.C. for hundreds of Americans who will come from their states, including many from Massachusetts. Congress needs to know that Massachusetts stands behind its twice-passed law backing the constitutional amendment.

The Massachusetts Citizens Commission has done significant and useful work for the people of Massachusetts, who expect this legislative body to move forward its recommendations and enable continuation of its effective work.

For all these reasons, I respectfully request favorable action on these proposed measures.

Thank you for your consideration. Please do not hesitate to let me know if you have questions or additional information would be of assistance.

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