

**Written Testimony of Jeff Clements  
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U.S. House of Representatives  
Committee on the Judiciary  
Subcommittee on the Constitution, Civil Rights, and Civil Liberties

*Hearing on Citizens United at 10: The Consequences for Democracy  
& Potential Responses By Congress*  
February 6, 2020

Mr. Chairman, Ranking Member Johnson, and Members of the Committee:

Thank you for the opportunity to submit testimony in this important hearing. I serve as president and CEO of American Promise. Before founding American Promise in January 2016, in my legal career I have been a partner in a large national law firm and in my own firm, taught election law, and served as Assistant Attorney General and Chief of the Public Protection Bureau in the Massachusetts Attorney General's Office.

American Promise is a national non-partisan organization with a mission to unite and empower Americans to build a strong republic and healthy democracy. American Promise -- our board, staff, advisory council and hundreds of thousands of supporters across fifty states -- is comprised of Republicans, Democrats and independents, and Americans of every walk of life. We come together to pass and ratify the next amendment to the United States Constitution, which will replace the dark, divided, and broken political system driven by out-of-control, concentrated money influence with a Constitutional foundation for government of we the people.

To date, 20 states and more than 800 cities and towns have passed formal resolutions calling on Congress to pass such an amendment, and support for such action receives overwhelming cross-partisan support, whether in polls or at the ballot box. American Promise's programs have brought together legal experts, elected officials, and Americans in every state together to achieve this historic task and renew our national commitment to freedom and self-government.

This testimony summarizes three points:

- (1) we are at a crisis point with respect to the connection between money influence and the breakdown of trust and faith in American democracy;
- (2) a constitutional amendment is necessary because of the unintended consequences of aggressive judicial intervention in traditional checks and balances of election regulation by the elected branches and the states;
- (3) principles and language for the Constitutional amendment are ready, and the time for cross-partisan support in Congress is now.

I also attach an article with greater detail, as well as statements from American Promise members across the country and across the political spectrum, will I hope will be of assistance to the Committee.<sup>1</sup>

### ***The Crisis Point***

Our current election funding system has us hurtling towards oligarchy. The lack of trust between the American people and our representatives in government has reached a crisis point.

The problem of money influencing elections is not merely about the amount of money, it is that most of the money comes from a small slice of the Americans. Consider political contributions of \$200 or more: Such contributions account for over 70% of national election spending, yet they are coming from only 0.47% of the U.S. population. Let that sink in: The vast majority of election spending (over 70%) is coming from less than ½ of one percent of all Americans.

Americans know that this lop-sided system has an effect on political representation. Overwhelming donor influence is producing a pervasive public cynicism that undermines trust in our political institutions. In the 1990s, more than half of Americans had a favorable view of Congress but now barely 1 in 5 have such a view.<sup>2</sup> A large majority (72%) now believe that people who contribute to campaigns have more influence than other people. And Americans (76%) believe that government is run by a few self-serving interests.

Although the picture is grim, it is not hopeless. Americans' negative views of our current political system are coupled with a desire for reform. "There is broad support for making sweeping changes to the political system: 61% say 'significant changes' are needed in the fundamental 'design and structure' of American government to make it work for current times." With specific regard to campaign finance, a wide bipartisan majority of Americans (77%) believe that there should be limits on campaign spending.<sup>3</sup> There is also bipartisan agreement on the importance of voting: 76% of Republicans and 76% of Democrats say it is very important. On the whole, the public opinion data suggest that Americans are yearning for representative integrity, and overwhelmingly – across partisan divides- support a Constitutional amendment to address the undue influence of money in elections.<sup>4</sup>

### ***An Amendment Is Necessary***

A constitutional Amendment is necessary because the Supreme Court has left us with no other choice. From its 1976 decision in *Buckley v. Valeo* to more recent decisions, the Supreme Court

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<sup>1</sup> Jeffrey D. Clements, "[But It Will Happen": A Constitutional Amendment to Secure Political Equality in Election Spending and Representation](#)", 13 Harvard Law & Policy Review 373 (2019); Statements of Jim Rubens, Elizabeth Doty, John Pudner, Devin Height, Rod Morrison, Alan LaPolice, Ellen Green Bush-Marie Henseler Kimmel-Robbi Duda, and Chet Hunt.

<sup>2</sup> Gallup - 2019 [https://news.gallup.com/poll/257762/congressional-approval-steady.aspx?g\\_source=link\\_NEWSV9&g\\_medium=TOPIC&g\\_campaign=item\\_&g\\_content=Congressional%2520Approval%2520Steady%2520at%252020%2525](https://news.gallup.com/poll/257762/congressional-approval-steady.aspx?g_source=link_NEWSV9&g_medium=TOPIC&g_campaign=item_&g_content=Congressional%2520Approval%2520Steady%2520at%252020%2525)

<sup>3</sup> Pew, <https://www.people-press.org/2018/04/26/the-public-the-political-system-and-american-democracy/>

<sup>4</sup> University of Maryland, School of Public Policy, <https://www.publicconsultation.org/redblue/very-large-majorities-support-congressional-bills-to-reduce-influence-of-big-campaign-donors/>

launched the country into an experiment in aggressive judicial intervention against the traditional balancing of interests that the people and our representatives had brought to free speech and money in elections for the first two centuries of our Republic.

The general public began to understand the drastic nature of the Court's jurisprudence after *Citizens United v. Federal Election Commission* was decided in 2010. In that 5-4 decision, the Court held that corporations and unions could spend unlimited money from their general treasuries to advocate for or against candidates. With several additional decisions, the Court effectively decreed that the American people cannot legislate election funding limits regardless of the loss of equal rights to representation and free speech, and regardless of the problem of systemic corruption.

Because the Court has made an interpretation of constitutional text in these decisions, the only solution is to amend the Constitution and make clear that the Court's approach has been wrong.

### ***Elements of the Amendment***

A well-crafted amendment should protect free speech and representation rights of all Americans, restore traditional anti-corruption Constitutional principles, and protect the integrity of the elections and government by enabling Congress and the States to enact reasonable limits on expenditures to influence elections.

H.J. Res. 2 and other proposals for an effective amendment are taking the right direction. However, constitutional amendments require national consensus, and cross-partisan support. We encourage this Committee to work together to craft language that can both be effective and command supermajority support in Congress and in the states. To be effective, such language for an amendment should incorporate the following elements:

- The amendment should explicitly elevate the values of self-government, electoral integrity, anti-corruption, and political equality of Americans.
- The amendment should give Congress and the States some flexibility in experimenting with reasonable election regulations. This might be achieved through language that points to a level of scrutiny based on proportionality or fit between the regulations and the governmental interests being served by those regulations.
- The amendment should affirm the freedom of the press and the freedom of speech of *all* Americans, recognizing that in the political context, from Congress to town meetings to simple conversation and debate among Americans, reasonable limits on volume (but not on ideas) protects the free speech rights of every citizen, and allow more debate, more ideas, more listening, more deliberation, and make effective government of the people possible.
- The amendment should allow Congress and the States to distinguish between human beings and artificial entities (such as corporations or union entities) when regulating campaign finance.

Thank you again. We look forward to being of assistance to your deliberations on this matter and would be happy to provide any additional information.