



Senate Committee on Legislative Operations & Elections

Carson City, Nevada

April 3, 2017

Testimony of Jeff Clements, President of American Promise, in Support of Senate Joint Resolution 4

Thank you for the opportunity to submit this testimony on behalf of American Promise, a cross-partisan non-profit organization made up of Americans all over the country, including many in Nevada, who are working for the 28th Amendment to the United States Constitution.

I testify in support of the amendment to the United States Constitution that this Resolution will help accelerate, one that affirms every citizen's right to vote; reserves constitutional rights to natural persons; and authorizes the regulation of contributions and expenditures intended to influence elections.

This 28th Amendment to the U.S. Constitution will replace the Supreme Court's doctrine of political inequality, reflected in decisions such as *Citizens United v. Federal Election Commission*, with foundational American principles of equal citizenship and representation and safeguards against systemic corruption.

This is not a partisan issue, and many Republicans join Democrats in supporting this cause.¹ On this past election day in November, millions of voters in Wisconsin, Ohio, California and Washington had a chance to vote on ballot initiatives to support the 28th Amendment. They all passed, no matter whether the voters were mostly Republicans or mostly Democrats. In Wisconsin, 18 communities passed 28th Amendment resolutions at levels of support ranging from 65% to 91%.

To date, more than 740 cities and towns and eighteen states have passed resolutions to overturn Citizens United.

These resolutions work: More members of Congress are now on board, and many more Americans now know that we must act to win the 28th Amendment before it's too late. The Resolution you are considering now will make a very important contribution to this historic national cause. We very much hope this resolution receives strong cross-partisan support.

¹ See Statement of Fmr. Sen. Alan Simpson (R-Wyoming) (http://www.americanpromise.net/alan_simpson_letter); Congressman Walter Jones (R-North Carolina) (<http://www.charlotteobserver.com/news/politics-government/election/article106380887.html>); Fmr. Congressman James Leach (http://www.americanpromise.net/nina_turner_and_jim_leach_op_ed_desmoines_register)



Background

I serve as President of American Promise, a non-profit corporation which I co-founded after nearly thirty years of law practice, both in private practice and in the Massachusetts Attorney General's Office. I have represented some of the largest corporations in the world as well as people and corporations owned and operated by small business owners. I also invest in and help grow businesses.

In addition, American Promise has a deep reservoir of Constitutional and other expertise. Our cross-partisan [Advisory Council](#) includes Justice James Nelson, who recently retired from the Montana Supreme Court after twenty years of service; law professors such as John Coates of Harvard Law School and Tamara Piety of the University of Tulsa College of Law; former Members of Congress, Governors, and state legislators with a century of combined experience in the law, lawmaking, and federalism, including Senator Alan Simpson (R-Wyoming), Governor Mike Dukakis (D-Massachusetts), Congressman Jim Leach (R-Iowa) and State Senator Nina Turner (D-Ohio). In addition, our Advisory Council and members include Americans from all walks of life and every region of the country. (full list here: http://www.americanpromise.net/about#ap_advisory_council)

Why a Constitutional Amendment.

A 28th Amendment to the United States Constitution is urgent because we face a Constitutional crisis, not just a "campaign finance" problem. As former member of Congress and American Promise Advisory Council member James Leach (R-Iowa) has said, the Supreme Court's decision in *Citizens United v. Federal Election Commission* is pushing America toward "corporatism and oligarchy," where money rather than people rule.

Oligarchy or democracy: That is our choice, and a 28th Amendment enables us to make the right choice.

In *Citizens United*, the Court decreed that corporations, unions, and billionaires have a "free speech" right to spend unlimited money to decide elections and policy; and they are doing so with a vengeance. Billions of dollars have recently flooded into our federal, state, and local elections. This money comes from a very few sources who now "buy" virtually all of the access, influence, and representation that our Constitution is supposed to guarantee to every American on equal terms.

Most Americans feel excluded by our political system because we are excluded: money increasingly controls who can run, who can serve, and what issues matter. And most Americans



don't have the money to play the game. Thus, our political system increasingly is dominated by the resources of the very few.

The 2016 election was the most expensive in American history, and most of the money came from less than 1% of the population. In fact, three billionaires alone spent \$200 million. In general, only 4% of Americans participate in the political money game in any way at all. And the money from only 0.5% accounts for most of the total contributions and spending.²

While unions and the very wealthy account for a great deal of money, global corporations also are spending massively in federal, state and local elections. In recent years, for example, just three conduits for corporate money in elections—the U.S. Chamber of Commerce, the Democratic Governors Association, and the Republican Governor's Association, accounted for more than \$700 million in election spending.

This is the American reality now: With only rare exceptions, money decides who runs, who wins, who governs, and what laws pass and don't pass. Even the most basic public interest protections are now threatened by legal challenges based on new theories of corporate rights under the Constitution. In this system, most Americans become second-class citizens, treated more like consumers than citizens, and as mere spectators to fights between competing factions of the donor class.

This is a dangerous breach of our national covenant, and the 28th Amendment will fix it. The 28th Amendment will renew our American promise that every one of us, no matter how poor or how rich, is an equal citizen.

The 28th Amendment will secure the rights of all Americans to participate and be represented equally, regardless of wealth; one person, one vote.

The 28th Amendment will limit concentrated money in elections, end the corrupt pay-to-play lobbying system, and keep corporations in business and out of politics. Money isn't speech, it's power. The 28th Amendment will give free speech rights to all Americans, not just those few who now "speak" so loudly with money and corporate clout.

Constitutional amendments are an essential tool of American democracy, and Americans have used this tool twenty-seven times before, including in eight out of the ten decades of the 20th century. It is time to turn to this essential tool once again.

² 66-80%, depending on various calculations. OpenSecrets; Demos-PIRG 2015.



When the Supreme Court makes a catastrophically mistaken interpretation of the Constitution, that mistake may only be corrected by the Court itself or a Constitutional amendment. This is why seven of our Constitutional amendments so far have overturned Supreme Court mistakes—including those that secured equal protection for all, civil rights like the vote regardless of race and the end to the poll tax, votes for women, the progressive income tax, and more.

Suggestions Regarding S. J. Res. 4

Senate Joint Resolution 4 correctly highlights how recent federal Supreme Court decisions such as *Citizens United v. FEC* and *American Tradition Partnership v. Bullock* wrongly stripped the people of Nevada and all the States of the right and responsibility to prevent corporate ‘independent expenditures’ from corrupting our political process and drowning out the voices and interests of the people.

As Americans have recognized since the founding of the Republic, however, the dangers of systemic corruption and plutocracy arise from concentrated money power, whether that source of money is corporations, billionaires, unions or other factions with interests. That danger is not because any of these groups or the people involved in them are “bad” but because concentrated money is concentrated power. It can deprive the rights of other Americans, make lawmaking in the public interest impossible, prevent good ideas from being heard and good people from serving their fellow citizens.

That is why, until recently, the idea of unregulated money in politics was universally recognized as a danger to be guarded against with sound, reasonable law. Limits on contributions to PACs or candidates; restrictions on election spending by corporations and unions; effective enforcement against secret or even foreign money, and more all have long been considered necessary to preserve our Republic of equal, self-governing citizens. They still are.

For these reasons, we would respectfully recommend modest amendments to the Resolution to call for a 28th Amendment that will enable Nevadans and all Americans to enact reasonable limits and sound regulation of concentrated money in elections, no matter the source of that concentrated money. An example of such an Amendment has already been introduced in the United States Senate and House, and has growing support, including from most of the Nevada delegation (see <https://www.congress.gov/bill/115th-congress/senate-joint-resolution/8/text>; <https://www.congress.gov/bill/115th-congress/house-joint-resolution/31/text>).

Thank you again for this opportunity to share our views and to offer our support. Senate Joint Resolution 4 is a critical step forward in the historic drive for the 28th Amendment to secure American democracy for generations to come. I hope it finds strong cross-partisan support.