



MELISSA RATCLIFF

WISCONSIN STATE REPRESENTATIVE
46TH ASSEMBLY DISTRICT

To: Assembly Committee on Campaigns and Elections
From: Representative Melissa Ratcliff
Re: Testimony on Assembly Bill 599
Date: January 9, 2024

Good afternoon Chair Krug, Ranking Member Snodgrass, and members of the Assembly Committee on Campaigns and Elections.

It is an honor to be here with you this afternoon to offer testimony on Assembly Bill 599, relating to: expressly prohibiting a foreign national from making a contribution to a referendum committee.

Over the last few years there has been heightened instances and awareness of foreign influence and blatant interjection into our democratic process. As many or all of you know, financial contributions can have significant ramifications on our democracy as a whole but also seep down to our local communities. Since the 1974 amendments to the Federal Election Campaign Act ("FECA"), FECA has prohibited political spending by foreign nationals at the federal, state, and local levels. However, these amendments failed to offer protections against foreign national contributions to referendum committees. Many of the issues states face are weighed for public opinion via referendum committees. For example, a state could seek to get public opinion on a variety of issues including advisory referenda, approval of an increase to a school district budget, or a constitutional amendment. Depending on what certain foreign entities have to gain, they could contribute to one side or another in order to skew results one way that would be of benefit to them.

While we are not aware of these instances occurring in Wisconsin, we have seen increased instances nationwide of foreign investment in land. It is imperative that we remain proactive and vigilant about this before it becomes an even larger scale issue. By expressly prohibiting foreign nationals from making contributions to referendum committees, this legislation addresses a potential gap in the existing laws highlighted by the 2021 Federal Elections Commission decision. According to the National Conference of State Legislators (NCSL), four states have including our neighboring state Minnesota, have taken steps to ban foreign spending on referendums or ballot initiatives.

This bill reinforces our commitment to fair and transparent elections in the state of Wisconsin. This measure ensures that foreign influence is kept out of the referendum process, upholding the integrity of our democratic system and giving more voice to the people whom it directly impacts.

The people influencing any part of our democratic processes should be American voters rather than those who seek to take advantage of our loopholes for their own personal gain. I would like to thank Senator Larson for championing these policy initiatives and introducing this bill with me. I would also like to thank Chair Krug, Ranking Member Snodgrass, and the rest of the committee members for their consideration.

We would be happy to answer any questions you might have at this time.

Thank you



CHRIS LARSON

WISCONSIN STATE SENATOR

DISTRICT 7

January 9, 2024

Contact: Senator Chris Larson
T: (608) 266-7505
E: Sen.Larson@legis.wisconsin.gov

TO: Chairman Krug, Ranking Member Snodgrass, and esteemed members of the Assembly Committee on Campaigns and Elections

SUBJECT: Written testimony on AB 599/SB 563 – Relating to: expressly prohibiting a foreign national from making a contribution to a referendum committee.

The integrity of our political process is of the utmost importance. One way we have historically tried to achieve this is through campaign finance regulations. While contribution limits and various disclosure requirements have sadly been rolled back significantly in recent years, with the *Citizens United* decision of the United States Supreme Court being the most famous example, one rule that has remained in place with almost universal support has been the federal ban on foreign contributions in American elections.

Unfortunately, a July 2021 FEC ruling on a case out of Montana revealed that for the purposes of campaign finance laws, referendums are not technically considered elections and are thus not subject to the ban on foreign contributions. Since Wisconsin has no laws of its own regarding foreign contributions, any foreign actor who wishes to weigh in on an impending referendum could do so legally.

The implications of this loophole are significant. Imagine, for example, a foreign entity owned significant property in a community that is holding a school funding referendum. To avoid paying additional taxes, they decide to spend large sums of money to defeat the referendum. One can see how this could corrupt our political process and harm the quality of our children's education.

Another example of the dangers of the foreign contribution loophole has to do with how we amend our state constitution. While Wisconsin does not have binding ballot initiatives like many other states, constitutional amendments are ratified by voter referendum after passing two consecutive sessions of the legislature. Would we want foreign actors to have influence over changes to our state constitution? I'm certainly not comfortable with that, and I'm confident most of the people in this room aren't comfortable with it either.

The purpose of this bill (AB 599 and SB 563) is simple - it eliminates this glaring loophole in our election laws by explicitly banning foreign contributions to referendum committees in Wisconsin.

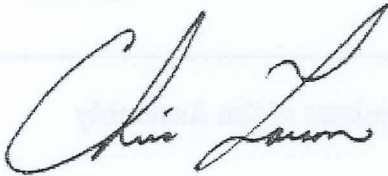
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Since the 2021 FEC ruling, the National Conference of State Legislatures (NCSL) reports that at least 4 states, including our neighbor Minnesota in 2023, have implemented express bans on foreign spending on referendums or ballot initiatives.

The 2024 elections are sure to be closely contested, just as they have been in our state for years. In addition to the more high-profile races, there are likely to be dozens of local government funding referendums and at least once constitutional amendment on the ballot as well. By passing this bill, we can help maintain local control and help protect the integrity of our political process.

I want to sincerely thank Rep. Krug for scheduling this bill for a hearing, giving the public a chance to make their voice heard on an important if often overlooked issue.

Sincerely,





NATIONAL CONFERENCE of STATE LEGISLATURES

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Initiative & Referendum States that Prohibit Foreign Intervention in Elections

January 2024

State	Prohibits Foreign Entities from forming Committees	Prohibits Foreign Contributions, specifically to ballot measures	Prohibits Foreign Contributions, generally
Alaska	n/a	n/a	Alaska Stat. § 15.13.068 (a) A foreign-influenced corporation or foreign national may not, directly or indirectly, in connection with an election under this chapter, make a contribution or expenditure or make an express or implied promise to make a contribution or expenditure.
Arizona	n/a	n/a	n/a
Arkansas	n/a	n/a	n/a
California	n/a	Cal Gov Code § 85320 (a) No foreign government or foreign principal shall make, directly or through any other person, any contribution, expenditure, or independent expenditure in connection with the qualification or support of, or opposition to, any state or local ballot measure.	n/a

Colorado	C.R.S. 1-45-103.7 (5.5) A natural person who is not a citizen of the United States, a foreign government, or a foreign corporation shall not establish, register, or maintain a political committee, small donor committee, political party, issue committee, or small-scale issue committee, or make an electioneering communication or regular biennial school electioneering communication.	n/a	C.R.S. 1-45-107.5 (1) Notwithstanding any other provision of law, no natural person who is not a citizen of the United States, foreign government, or foreign corporation may expend money on an independent expenditure in connection with an election of a candidate in the state, and no independent expenditure committee may knowingly accept a donation from any natural person who is not a citizen of the United States, any foreign government, or any foreign corporation.
Florida	n/a	n/a	FSA 106.08 (b) A foreign national may not make or offer to make, directly or indirectly, a contribution or expenditure in connection with any election held in the state.

Idaho	n/a	IS ST §67-6610D Foreign contributions, foreign independent expenditures, and foreign electioneering communications prohibited. (1) A foreign national shall not make a contribution, directly or indirectly, to any candidate, political committee, or measure or make electioneering communications or independent expenditures.	n/a
Illinois	n/a	n/a	n/a
Maine	n/a	21-A MRSA §1064 A foreign government influenced entity may not make, directly or indirectly, a contribution, expenditure, independent expenditure, electioneering communication or any other donation or disbursement of funds to influence the nomination or election of a candidate or the initiation or approval of a referendum.	n/a
Maryland	n/a	Md. Election Law Code Ann. Section 13-236.1 (b) In general. -- A foreign principal may not: (1) make a contribution to a ballot issue committee; or (2) make a donation to a person that makes independent expenditures or electioneering communications relating to a ballot issue.	n/a
Massachusetts	n/a	n/a	n/a

Michigan	n/a	n/a	n/a
Mississippi	n/a	n/a	n/a
Missouri	n/a	n/a	Mo. Const. Art. VIII, § 23 (16) No campaign committee, candidate committee, continuing committee, exploratory committee, political party committee, and political party shall knowingly accept contributions from: (a) Any natural person who is not a citizen of the United States; (b) A foreign government; or (c) Any foreign corporation that does not have the authority to transact business in this state pursuant to Chapter 347, RSMo, as amended from time to time.
Montana	n/a	n/a	n/a
Nebraska	n/a	n/a	n/a

Nevada	n/a	n/a	<p>Nev. Rev. Stat. Ann. § 294A.325</p> <p>1. A foreign national shall not, directly or indirectly, make a contribution or a commitment to make a contribution to:</p> <ul style="list-style-type: none"> (a) A candidate; (b) A committee for political action; (c) A committee for the recall of a public officer; (d) A person who makes an independent expenditure; (e) A political party or committee sponsored by a political party that makes an expenditure for or against a candidate or group of candidates; (f) An organization made up of legislative members of a political party whose primary purpose is to provide support for their political efforts; (g) A personal campaign committee or the personal representative of a candidate who receives contributions or makes expenditures that are reported as contributions or expenditures by the candidate; or (h) A nonprofit corporation that is registered or required to be registered pursuant to NRS 294A.225.
New Mexico	n/a	n/a	n/a

North Dakota	n/a	n/a	N.D. Cent. Code, § 16.1-08.1-03.15 1. A foreign national may not make or offer to make, directly or indirectly, a contribution or expenditure in connection with any election.
Ohio	n/a	n/a	n/a
Oklahoma	n/a	n/a	n/a
Oregon	n/a	n/a	n/a

South Dakota	n/a	<p>S.D. Codified Laws § 12-27-47.1. Foreign contributions to statewide ballot. Prohibition.</p> <p>Any contribution to a statewide ballot question committee by a person who is not a resident of the state at the time of the contribution, a political committee that is organized outside South Dakota, or an entity that is not filed as an entity with the secretary of state for the four years preceding such contribution is prohibited. If a statewide ballot question committee accepts a contribution prohibited by this section, the secretary of state shall impose a civil penalty equal to two hundred percent of the prohibited contribution after notice and opportunity to be heard pursuant to chapter I-26. Any civil penalty collected pursuant to this section shall be deposited into the state general fund.</p>	<p>S.D. Codified Laws § 12-27-21 12-27-21. No candidate or political committee may accept any contribution from any state, state agency, political subdivision of the state, foreign government, Indian tribal entity as defined in the Federal Register Vol. 72, No. 55 as of March 22, 2007, federal agency, or the federal government. A violation of this section is a Class 2 misdemeanor. A subsequent offense within a calendar year is a Class 1 misdemeanor.</p>
Utah	n/a	n/a	n/a

Washington	n/a	<p>RCWA 42.17A.417</p> <p>(1) A foreign national may not make a contribution to any candidate or political committee, make an expenditure in support of or in opposition to any candidate or ballot measure, or sponsor political advertising or an electioneering communication.</p> <p>(2) A person may not make a contribution to any candidate or political committee, make an expenditure in support of or in opposition to any candidate or ballot measure, or sponsor political advertising or an electioneering communication, if:</p> <p>(a) The contribution, expenditure, political advertising, or electioneering communication is financed in any part by a foreign national; or</p> <p>(b) Foreign nationals are involved in making decisions regarding the contribution, expenditure, political advertising, or electioneering communication in any way.</p>	n/a
Wyoming	n/a	n/a	n/a



To: Members of the Assembly Committee on Campaigns and Elections
From: Brian Boyle, Executive Director & General Counsel at American Promise
Re: Assembly Bill 599
Date: January 9, 2024

**American Promise Testimony Concerning AB 599 And The Related Need For
An Amendment To The United States Constitution**

Introduction

My name is Brian Boyle and I currently serve as Executive Director & General Counsel at American Promise. Thank you for the opportunity to submit testimony concerning 2023 Assembly Bill 599 (“AB 599”).

American Promise is a nationwide nonprofit organization that mobilizes broad, cross-partisan support for an amendment to the United States Constitution that would empower the States and Congress to set reasonable guardrails on money in our political system. We are proud to have over 2,500 supporters in the State of Wisconsin, including several volunteer leaders who dedicate countless hours to educating their fellow citizens about a workable and enduring constitutional solution to the vexing problem of money in politics.

As explained more fully below, AB 599 would close an existing loophole in Wisconsin law by expressly prohibiting foreign nationals from making financial contributions to referendum committees. I offer my testimony today both in support of AB 599, and to urge the legislature to consider a future resolution in support of an amendment to the U.S. Constitution that would strengthen the legal basis for crucial measures like AB 599.

The Need For Assembly Bill 599

Foreign interests understand that America's existing campaign finance system presents many opportunities to exert influence over policy in the United States.¹ In recent years, they have not been shy in their attempts to influence ballot elections across the country. For example, foreign government-owned entities reportedly spent more than \$100 million in Maine's ballot elections over the past three years.² In response to this threat, last year 86% of Maine's voters passed a new law to prevent foreign government-owned entities from spending money in that state's elections.³

By passing AB 599, Wisconsin can join Maine and several other states in protecting its ballot elections from foreign interference. Wisconsin's current laws concerning campaign finance are contained in Chapter 11 of the state's statutes.⁴ Chapter 11 is a comprehensive regulatory scheme designed to vindicate "the right of the public to have a full, complete, and readily understandable accounting of those activities expressly advocating for or against candidates for office or for or against referendums."⁵ Chapter 11 also prohibits certain practices, such as the filing of false campaign finance reports or coordination between an independent expenditure committee and a candidate.⁶ Such provisions reflect the legislature's reasoned judgment that certain campaign finance practices should be prohibited in the public interest.

One of the prohibitions contained in Chapter 11 mirrors the existing federal prohibition on political contributions by foreign nationals. Section 11.1208 currently incorporates by reference federal provisions codified at 11 C.F.R. 110.20(a)(3) and 52 U.S.C. 30121(b). However, in 2021, a decision by the Federal Election Commission ("FEC") held that those provisions do not apply to ballot measures. Construing the Federal Election Campaign Act, the FEC explained:

¹ American Promise provides more context on this vulnerability in our November 2023 report, *The Problem of Foreign Money in Politics*.

² See Utility parent companies spend millions opposing public power amid foreign electioneering concerns.

³ See Question 2 passes, banning foreign electioneering in Maine ("With the passage of Question 2, Maine closes a loophole in state law, preventing organizations owned by a foreign government from spending money on state referendum elections.").

⁴ See generally <https://docs.legis.wisconsin.gov/statutes/statutes/11>.

⁵ Wis. Stat. § 11.0100.

⁶ See generally Wis. Stat. § 11.1201-11.1208.

The United States Supreme Court has long recognized that the Act “regulates only candidate elections, not referenda or other issue-based ballot measures.” [*McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 356 (1995).] Consistent with the Act and court precedents, the Commission has observed that spending relating only to ballot initiatives is generally outside the purview of the Act because such spending is not “in connection with” elections.⁷

When that FEC decision came out, many recognized that this loophole—permitting foreign nationals to spend money in ballot elections—posed an immediate and concrete threat to American self-government.⁸

It would be wise and appropriate for Wisconsin’s legislature to pass AB 599 to protect the state’s ballot referenda from foreign influence. In doing so, Wisconsin would join eleven other states that have already taken similar steps to guard against foreign interference in their ballot elections.⁹ Furthermore, passage of AB 599 would be consistent with current bi-partisan support in Congress, which is now considering multiple proposals to close this loophole as a matter of federal law, including a proposal co-sponsored by Congressman Mike Gallagher (R-WI-8).¹⁰ Indeed, the FEC itself is unanimously urging Congress to pass a law that would prohibit foreign nationals from spending money in U.S. ballot elections.¹¹

⁷ See <https://s3.documentcloud.org/documents/21096628/fec-ballot-measure-ruling.pdf>. See also Statement of Reasons of Chair Broussard, MURs 7523 & 7512, at 4 (“Until Congress expands the Act’s foreign national prohibition to encompass state and local ballot activities, which I urge it to do, the Commission is bound by the law as it currently stands.”).

⁸ See, e.g., <https://www.axios.com/2021/11/02/fec-foreign-money-referendum>

⁹ These states include California, Colorado, Florida, Idaho, Maine, Maryland, Nebraska, Nevada, North Dakota, South Dakota, and Washington. See Cal. Gov’t Code § 85320; Colo. Rev. Stat. § 1-45-107.5; Fla. Stat. § 106.08(12)(b); Idaho Code Ann. § 67-6610d; 21-A Me. Rev. Stat. § 1064; Md. Code, Election Law § 13-236.1; Neb. Rev. Stat. § 49-1479.03; Nev. Rev. Stat. § 294A.325; N.D. Cent. Code § 16.1-08.1-03.15; S.D. Codified Laws § 12-27-21; Wash. Rev Code § 42.17A.417.

¹⁰ See, e.g., H.R. 3229 (Stop Foreign Funds in Elections Act); H.R. 6471 (Stop Foreign Interference in Ballot Measures Act), which is co-sponsored by Congressman Mike Gallagher.

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In sum, AB 599 is a smart, sensible, and timely policy that should easily earn bi-partisan support from the Wisconsin legislature.

The Need For An Amendment To The United States Constitution

Unfortunately, even if Wisconsin passes AB 599, its ballot elections will remain vulnerable to foreign influence. Why? Because decisions by the United States Supreme Court over the past five decades have emboldened foreign entities to claim that they have a right—*under the United States Constitution*—to spend money in American elections, regardless of state or federal laws to the contrary.

If you haven't been closely following the Supreme Court's campaign finance decisions, it might sound absurd that foreign entities are asserting a constitutional right to spend money in our elections. But it's no laughing matter. At this moment, foreign entities are asserting such rights in federal district court in Maine in their attempts to overturn that state's recently-enacted law protecting its elections.¹²

So how did we get to this point? Over a number of years, the Supreme Court has made itself the nation's chief regulator of money-in-politics, and along the way it has decided cases that take most options off the table for policymakers in the States and Congress.

The crucial first step came in 1976 in *Buckley v. Valeo*.¹³ Although the First Amendment had been in existence for 185 years at that point, *Buckley* held for the first time that spending money in elections is a form of political expression and association that is protected by the First Amendment.¹⁴ As a practical matter, what *Buckley* created is a system where the judiciary—and ultimately the Supreme Court—gets to have the final say on all issues of campaign finance.

How does this work in practice? Well, the Supreme Court has created a basic framework for analyzing whether a particular campaign finance regulation has adequate

Campaign Act's] foreign national prohibition to include state and local ballot initiatives, referenda and any recall elections that are not already included in the prohibition.”).

¹² See *Central Maine Power Co. (CMP) v. Maine Commission on Governmental Ethics and Election Practices*, No. 1:23-cv-00450-NT (D. Me. 2023) and *Versant Power, et al. v. Schneider*, No. 1:23-cv-00451-NT (D. Me. 2023).

¹³ 424 U.S. 1 (1976).

¹⁴ *Id.* at 25.

legal justification. Step one is to ask whether the regulation serves a “compelling interest.”¹⁵ One might imagine that campaign finance regulations could serve a variety of compelling interests, such as preventing bribery and corruption, protecting the integrity of the electoral process, safeguarding self-government from outside interference, and promoting the political equality of citizens. However, over the past 50 years, the Supreme Court has identified one—and only one—compelling interest that can justify a campaign finance regulation: preventing *quid pro quo* corruption or its appearance.¹⁶

The Supreme Court’s extremely limited recognition of the types of interests that can justify a campaign finance regulation leaves AB 599 and similar state and federal laws vulnerable to challenge. Why? Because the most natural and intuitive interests served by laws such as AB 599 are the compelling interests in protecting the integrity of Wisconsin’s electoral process and in safeguarding self-government from foreign interference—but those interests have never been recognized explicitly by the Supreme Court as adequate to justify a campaign finance regulation.

Regrettably, the Supreme Court has not created a workable and enduring framework for dealing with money in politics, but a new constitutional amendment would do just that. I hope that in the near future the Wisconsin legislature will consider and adopt a resolution in support of the For Our Freedom Amendment. More than one hundred and seventy municipalities in Wisconsin have already passed local resolutions in support of such an amendment,¹⁷ and recent polling on the amendment shows support from 78% of Wisconsinites.¹⁸

The For Our Freedom Amendment provides as follows:

Section 1. We the People have compelling sovereign interests in the freedom of speech, representative self-government, federalism, the

¹⁵ *McCutcheon v. Fed. Election Comm’n*, 572 U.S. 185, 197 (2014).

¹⁶ *Id.* at 206-207 (“This Court has identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or the appearance of corruption.”).

¹⁷ See <https://americanpromise.net/state/wisconsin/>.

¹⁸ See American Promise - Wisconsin Polling Toplines (Question 1).

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.

The For Our Freedom Amendment understands that questions about whether and how to regulate money in our political system are ultimately *policy* questions that should rest with state and federal policymakers. The amendment also radically lowers the stakes of “bad” campaign finance laws. Under our current system, if the Supreme Court makes a bad campaign finance ruling—for example, by holding that foreign entities *do* have a right to spend money in American ballot elections—the only way to correct that mistake is through a constitutional amendment. But, once the For Our Freedom Amendment is in place, “bad” campaign finance laws would always be subject to change or correction through the normal legislative process at the state or federal level. As a matter of prudence and constitutional structure, that makes good sense.

Conclusion

Thank you again for the opportunity to submit this testimony. I hope that AB 599 becomes part of Wisconsin law soon, and I look forward to the legislature’s future consideration of a bi-cameral, bi-partisan resolution in support of the For Our Freedom Amendment to the United States Constitution.

Brian Boyle
Executive Director & General Counsel
American Promise
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legal justification. Step one is to ask whether the regulation serves a “compelling interest.”¹⁵ One might imagine that campaign finance regulations could serve a variety of compelling interests, such as preventing bribery and corruption, protecting the integrity of the electoral process, safeguarding self-government from outside interference, and promoting the political equality of citizens. However, over the past 50 years, the Supreme Court has identified one—and only one—compelling interest that can justify a campaign finance regulation: preventing *quid pro quo* corruption or its appearance.¹⁶

The Supreme Court’s extremely limited recognition of the types of interests that can justify a campaign finance regulation leaves AB 599 and similar state and federal laws vulnerable to challenge. Why? Because the most natural and intuitive interests served by laws such as AB 599 are the compelling interests in protecting the integrity of Wisconsin’s electoral process and in safeguarding self-government from foreign interference—but those interests have never been recognized explicitly by the Supreme Court as adequate to justify a campaign finance regulation.

Regrettably, the Supreme Court has not created a workable and enduring framework for dealing with money in politics, but a new constitutional amendment would do just that. I hope that in the near future the Wisconsin legislature will consider and adopt a resolution in support of the For Our Freedom Amendment. More than one hundred and seventy municipalities in Wisconsin have already passed local resolutions in support of such an amendment,¹⁷ and recent polling on the amendment shows support from 78% of Wisconsinites.¹⁸

The For Our Freedom Amendment provides as follows:

Section 1. We the People have compelling sovereign interests in the freedom of speech, representative self-government, federalism, the

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¹⁶ *Id.* at 206-207 (“This Court has identified only one legitimate governmental interest for restricting campaign finances: preventing corruption or the appearance of corruption.”).

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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.

The For Our Freedom Amendment understands that questions about whether and how to regulate money in our political system are ultimately *policy* questions that should rest with state and federal policymakers. The amendment also radically lowers the stakes of “bad” campaign finance laws. Under our current system, if the Supreme Court makes a bad campaign finance ruling—for example, by holding that foreign entities *do* have a right to spend money in American ballot elections—the only way to correct that mistake is through a constitutional amendment. But, once the For Our Freedom Amendment is in place, “bad” campaign finance laws would always be subject to change or correction through the normal legislative process at the state or federal level. As a matter of prudence and constitutional structure, that makes good sense.

Conclusion

Thank you again for the opportunity to submit this testimony. I hope that AB 599 becomes part of Wisconsin law soon, and I look forward to the legislature’s future consideration of a bi-cameral, bi-partisan resolution in support of the For Our Freedom Amendment to the United States Constitution.

Brian Boyle
Executive Director & General Counsel
American Promise
brianb@americanpromise.net



To: Members of the Assembly Committee on Campaigns and Elections
From: Brian Boyle, Executive Director & General Counsel at American Promise
Re: Assembly Bill 599
Date: January 9, 2024

**American Promise Testimony Concerning AB 599 And The Related Need For
An Amendment To The United States Constitution**

Introduction

My name is Brian Boyle and I currently serve as Executive Director & General Counsel at American Promise. Thank you for the opportunity to submit testimony concerning 2023 Assembly Bill 599 (“AB 599”).

American Promise is a nationwide nonprofit organization that mobilizes broad, cross-partisan support for an amendment to the United States Constitution that would empower the States and Congress to set reasonable guardrails on money in our political system. We are proud to have over 2,500 supporters in the State of Wisconsin, including several volunteer leaders who dedicate countless hours to educating their fellow citizens about a workable and enduring constitutional solution to the vexing problem of money in politics.

As explained more fully below, AB 599 would close an existing loophole in Wisconsin law by expressly prohibiting foreign nationals from making financial contributions to referendum committees. I offer my testimony today both in support of AB 599, and to urge the legislature to consider a future resolution in support of an amendment to the U.S. Constitution that would strengthen the legal basis for crucial measures like AB 599.

The Need For Assembly Bill 599

Foreign interests understand that America's existing campaign finance system presents many opportunities to exert influence over policy in the United States.¹ In recent years, they have not been shy in their attempts to influence ballot elections across the country. For example, foreign government-owned entities reportedly spent more than \$100 million in Maine's ballot elections over the past three years.² In response to this threat, last year 86% of Maine's voters passed a new law to prevent foreign government-owned entities from spending money in that state's elections.³

By passing AB 599, Wisconsin can join Maine and several other states in protecting its ballot elections from foreign interference. Wisconsin's current laws concerning campaign finance are contained in Chapter 11 of the state's statutes.⁴ Chapter 11 is a comprehensive regulatory scheme designed to vindicate "the right of the public to have a full, complete, and readily understandable accounting of those activities expressly advocating for or against candidates for office or for or against referendums."⁵ Chapter 11 also prohibits certain practices, such as the filing of false campaign finance reports or coordination between an independent expenditure committee and a candidate.⁶ Such provisions reflect the legislature's reasoned judgment that certain campaign finance practices should be prohibited in the public interest.

One of the prohibitions contained in Chapter 11 mirrors the existing federal prohibition on political contributions by foreign nationals. Section 11.1208 currently incorporates by reference federal provisions codified at 11 C.F.R. 110.20(a)(3) and 52 U.S.C. 30121(b). However, in 2021, a decision by the Federal Election Commission ("FEC") held that those provisions do not apply to ballot measures. Construing the Federal Election Campaign Act, the FEC explained:

¹ American Promise provides more context on this vulnerability in our November 2023 report, *The Problem of Foreign Money in Politics*.

² See Utility parent companies spend millions opposing public power amid foreign electioneering concerns.

³ See Question 2 passes, banning foreign electioneering in Maine ("With the passage of Question 2, Maine closes a loophole in state law, preventing organizations owned by a foreign government from spending money on state referendum elections.").

⁴ See generally <https://docs.legis.wisconsin.gov/statutes/statutes/11>.

⁵ Wis. Stat. § 11.0100.

⁶ See generally Wis. Stat. § 11.1201-11.1208.

The United States Supreme Court has long recognized that the Act “regulates only candidate elections, not referenda or other issue-based ballot measures.” [*McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 356 (1995).] Consistent with the Act and court precedents, the Commission has observed that spending relating only to ballot initiatives is generally outside the purview of the Act because such spending is not “in connection with” elections.⁷

When that FEC decision came out, many recognized that this loophole—permitting foreign nationals to spend money in ballot elections—posed an immediate and concrete threat to American self-government.⁸

It would be wise and appropriate for Wisconsin’s legislature to pass AB 599 to protect the state’s ballot referenda from foreign influence. In doing so, Wisconsin would join eleven other states that have already taken similar steps to guard against foreign interference in their ballot elections.⁹ Furthermore, passage of AB 599 would be consistent with current bi-partisan support in Congress, which is now considering multiple proposals to close this loophole as a matter of federal law, including a proposal co-sponsored by Congressman Mike Gallagher (R-WI-8).¹⁰ Indeed, the FEC itself is unanimously urging Congress to pass a law that would prohibit foreign nationals from spending money in U.S. ballot elections.¹¹

⁷ See <https://s3.documentcloud.org/documents/21096628/fec-ballot-measure-ruling.pdf>. See also Statement of Reasons of Chair Broussard, MURs 7523 & 7512, at 4 (“Until Congress expands the Act’s foreign national prohibition to encompass state and local ballot activities, which I urge it to do, the Commission is bound by the law as it currently stands.”).

⁸ See, e.g., <https://www.axios.com/2021/11/02/fec-foreign-money-referendum>

⁹ These states include California, Colorado, Florida, Idaho, Maine, Maryland, Nebraska, Nevada, North Dakota, South Dakota, and Washington. See Cal. Gov’t Code § 85320; Colo. Rev. Stat. § 1-45-107.5; Fla. Stat. § 106.08(12)(b); Idaho Code Ann. § 67-6610d; 21-A Me. Rev. Stat. § 1064; Md. Code, Election Law § 13-236.1; Neb. Rev. Stat. § 49-1479.03; Nev. Rev. Stat. § 294A.325; N.D. Cent. Code § 16.1-08.1-03.15; S.D. Codified Laws § 12-27-21; Wash. Rev Code § 42.17A.417.

¹⁰ See, e.g., H.R. 3229 (Stop Foreign Funds in Elections Act); H.R. 6471 (Stop Foreign Interference in Ballot Measures Act), which is co-sponsored by Congressman Mike Gallagher.

¹¹ See <https://www.opensecrets.org/news/2023/12/fec-urges-congress-to-close-foreign-money-loophole/>. See also FEC’s Draft Legislative Recommendations 2023, at p. 9 (“Congress should revise [the Federal Election

In sum, AB 599 is a smart, sensible, and timely policy that should easily earn bi-partisan support from the Wisconsin legislature.

The Need For An Amendment To The United States Constitution

Unfortunately, even if Wisconsin passes AB 599, its ballot elections will remain vulnerable to foreign influence. Why? Because decisions by the United States Supreme Court over the past five decades have emboldened foreign entities to claim that they have a right—*under the United States Constitution*—to spend money in American elections, regardless of state or federal laws to the contrary.

If you haven't been closely following the Supreme Court's campaign finance decisions, it might sound absurd that foreign entities are asserting a constitutional right to spend money in our elections. But it's no laughing matter. At this moment, foreign entities are asserting such rights in federal district court in Maine in their attempts to overturn that state's recently-enacted law protecting its elections.¹²

So how did we get to this point? Over a number of years, the Supreme Court has made itself the nation's chief regulator of money-in-politics, and along the way it has decided cases that take most options off the table for policymakers in the States and Congress.

The crucial first step came in 1976 in *Buckley v. Valeo*.¹³ Although the First Amendment had been in existence for 185 years at that point, *Buckley* held for the first time that spending money in elections is a form of political expression and association that is protected by the First Amendment.¹⁴ As a practical matter, what *Buckley* created is a system where the judiciary—and ultimately the Supreme Court—gets to have the final say on all issues of campaign finance.

How does this work in practice? Well, the Supreme Court has created a basic framework for analyzing whether a particular campaign finance regulation has adequate

Campaign Act's] foreign national prohibition to include state and local ballot initiatives, referenda and any recall elections that are not already included in the prohibition.”)

¹² See *Central Maine Power Co. (CMP) v. Maine Commission on Governmental Ethics and Election Practices*, No. 1:23-cv-00450-NT (D. Me. 2023) and *Versant Power, et al. v. Schneider*, No. 1:23-cv-00451-NT (D. Me. 2023).

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