

MONEY IN POLITICS: INTRODUCTION AND OVERVIEW

LWV Update on Campaign Finance Position

For the 2014-2016 biennium, the LWVUS Board recommended and the June 2014 LWVUS Convention adopted a multi-part program including, “A review and update of the League position on campaign finance in light of forty years of changes since the Watergate reforms, in order to enhance member understanding of the new schemes and structures used to influence elections and erode protections against corruption in our political process, and to review possible responses to counter them in the current environment.”

After Convention 2014, we worked diligently to develop solid operational details for the committee. Our efforts led us to conclude that a gap exists in the LWV campaign finance position with regard to the First Amendment.

Adopted in 1974, the League’s campaign finance position focuses only on the financing of election campaigns as it relates to the democratic process, i.e., opportunities for undue influence, opportunities to ensure equity among candidates, protection of the public right to know and to fully participate. In 1976, the United States Supreme Court approached the question of financing of election campaigns from the point of view of what the money actually funds and the interests of donors, candidates and independent spenders in preserving their ability to express political views through the activities being financed.

The activities that the U.S. Supreme Court focused on largely involve free speech. Election campaigns develop messages for publication, from speeches and debates to paid advertising in various media. Money is required to coordinate the messaging and pay for the advertising. Under the Court’s approach, a system of campaign finance protects the rights of the individual candidate to disseminate her message as well as the rights of her donors to express their own views through her message -- and also protects the rights of other political actors who may wish to make election expenditures independent of the candidates or to advocate in support or opposition to particular public policy issues. To the Court, this campaign speech (as opposed to campaign finance) is central to American democracy and is what the First Amendment was designed to protect.

The League position, with its more collective approach, does not answer the question of whether all or some political activity constitutes free speech protected under the First Amendment. Because it does not address that question, the position does not balance the First Amendment interests of candidates, donors, independent spenders, and issue advocates against the interest in equitable competition among candidates for office, preventing undue influence, and enhancing voter participation.

For almost 40 years, the Supreme Court's approach and the League's approach intersected in one important aspect. Over that time, the Court recognized the risk that campaign contributions are corrupting or appear corrupting, especially if those contributions are very large or come from the general funds of corporations or unions. Historically, the League has been able to argue successfully through litigation and through legislative action that contribution limits and the exclusion of corporations from participating directly in the political process should be upheld. The position has also allowed us to support enforcement mechanisms and other reforms. That changed with the *Citizens United v. Federal Election Commission* decision. The Court drastically extended its views on free speech to allow unlimited independent spending in candidate elections by corporations and unions and entirely discounted any danger from any undue influence other than *quid pro quo* ("something for something") corruption. That radically transformed the election landscape.

Proposed constitutional amendments in response to *Citizens United* and subsequent cases have focused on reversing the Court's rulings that corporations have full political speech rights and that funding a political campaign is protected speech, and give Congress and the states the authority to regulate "the raising and spending of money by candidates and others to influence elections," which the Court has deemed protected speech.

The League is pursuing a strategic, multi-dimensional approach at the federal and state levels to overcome or limit the Court's decision in *Citizens United*. To date, the League has not supported or opposed particular legislation to amend the Constitution. Even putting aside the considerable practical barriers to ratifying an amendment as well as unintended consequences of the various proposed amendments, we believe that our current campaign finance position does not address First Amendment considerations.

To update the League position on campaign finance to include the First Amendment requires member understanding and agreement on these issues. The Money in Politics Committee has thus been tasked with undertaking member study and consensus, in addition to educating members and the public broadly about money in politics issues.

The League's Position

Statement of Position on Campaign Finance, as Announced by National Board, January 1974 and Revised March 1982:

The League of Women Voters of the United States believes that the methods of financing political campaigns should ensure the public's right to know, combat corruption and undue influence, enable candidates to compete more equitably for public office and allow maximum citizen participation in the political process. *This position is applicable to all federal campaigns for public office — presidential and congressional, primaries as well as general elections. It also may be applied to state and local campaigns.*

The League's position on Campaign Finance reflects continuing concern for open and honest elections and for maximum citizen participation in the political process. The League's campaign finance reform strategy has two tracks: 1) achieve incremental reforms where possible in the

short term, and 2) build support for public financing as the best long-term solution.

To varying degrees, current law reflects some League goals: full and timely disclosure of campaign contributions and expenditures; one central committee to coordinate, control and report financial transactions for each candidate, party or other committee; an independent body to monitor and enforce the law; and the encouragement of broad-based contributions from citizens.

LWV Action on Money in Politics

Year in and year out since 1974, the League has fought for comprehensive campaign finance reform to address the abuses in the existing system, supporting bills that curbed special-interest contributions and provided public financing for candidates who accepted voluntary spending limits. The League has called for limits to PAC and large contributor donations, for closing the soft-money loophole. It also strongly supports a strong and effective Federal Election Commission.

The League continues to look for ways to limit the size and type of contributions from all sources as a means of combating undue influence in the election process. League action on this issue is built on a careful assessment of all proposed changes in campaign finance law. The League continues to assess proposals that allow challenger and incumbent candidates to compete more equitably. The League favors shortening the time period between primaries and general elections.

The League continues its support for comprehensive reform through multiple channels: lobbying, testimony, grassroots action, and work with the media. Members push for voluntary spending limits; public benefits, such as reduced-cost broadcasting and postal services, for participating candidates; aggregate limits on the total amounts candidates could receive in PAC and large individual contributions; and closing the loopholes that allow huge amounts of special-interest money to influence the system.

The League has also worked at the state level, which has contributed to real progress. Public financing, the "Clean Money Option," has been adopted in several states, including Connecticut, Arizona, and Maine; other state reform efforts have made progress in Massachusetts and Vermont. Reform measures were on the 2000 ballot in Missouri and Oregon but fell short.

The League expended incredible effort in the five-year campaign for the McCain-Feingold-Shays-Meehan bill, which reached fruition when President Bush signed the legislation into law. The bill, known as the *Bipartisan Campaign Reform Act (BCRA)*, closed the most significant loopholes in campaign finance regulation – the "soft money" loophole that allowed unlimited corporate, union, and individual contributions, and the "sham" issue ad loophole that allowed undisclosed contributions to campaign advertising advocating particular candidates. The League was instrumental in developing this approach and pushing it – at the grassroots and in Congress – to final enactment.

In more recent Congresses, the League has lobbied actively for the passage of the “Disclose Act” which would close the disclosure loopholes that are allowing outside groups to make secret contributions in federal elections

The League has also used litigation strategies to advance and protect campaign finance reform by filing *amicus curiae* briefs, which are documents supporting one side or another in a court case without actually being party to the case, or joining in those of others. The League filed *amicus* briefs in both the *Citizens United v. FEC* and *McCutcheon v. FEC* cases in support of minority views on the Court.

Of course, litigation has recently overturned significant aspects of what has been achieved over the years with the *Citizens United v. FEC* case. The impact of *Citizens United* has dramatically changed the political landscape, and the League’s current work is directed towards finding feasible ways to correct the massive problems created by the decision. Further inroads were made by the *McCutcheon v. FEC* decision.¹

Why Money in Politics Matters to the League of Women Voters

Money in politics matters because the goal of campaigning is to convince voters, either for or against a candidate or issue. Thus, campaigning is ultimately about communication. In our modern age, this includes speech and money. It is very important that one continually keeps combining campaign, communication, free speech, and money in their thinking.

Purpose of a Campaign Finance System

A campaign finance system is intended to control and limit the money spent on election campaigns. Why do that? The first reason is to protect the right of voters to know who is spending money to influence their vote. The second reason is to prevent corruption. The only corruption that the current U.S. Supreme Court acknowledges is *quid pro quo* which, in the context of political campaign finance, refers to an explicit agreement by a candidate or elected official to perform a specific act in exchange for something of value. But reformers believe that money in politics should be controlled because it may allow undue access or influence. Third, reformers want to control money out of a belief that unlimited spending gives an unfair advantage to candidates and spenders. Finally, there is a concern that the rise in spending corrupts representative government by downplaying the role of the voters and allowing for unfair competition, possibly leading to lower voter turnout

Conclusion

Whatever else it may or may not have done, the United States Supreme Court’s decisions in the 2010 *Citizens United v. Federal Election Commission* and 2014 *McCutcheon, et al. v. FEC* cases

galvanized the campaign finance reform movement. Any education and discussion of these issues must attempt to be comprehensive, which means complex. The task of the Money in Politics Committee is to make the issues understandable to the members of LWV and all citizens. Work done by the 2012-2014 LWVUS Campaign Finance Task Force and LWV of Massachusetts Campaign Finance Study Committee (presented at the LWVUS Convention in June 2014) contributed immensely to this project.

¹ For a more complete and detailed history of the League's activities in the area of campaign finance reform, consult "Representative Government" in *Impact on Issues*. Access at <http://lww.org/content/impact-issues>.