

MONEY IN POLITICS

SCOPE OF THE LWVUS STUDY

The campaign finance position will be updated through a study and consensus process to consider: The rights of individuals and organizations, under the First Amendment, to express their political views through independent expenditures and the finance of election campaign activities; and

- How those rights, if any, should be protected and reconciled with the interests set out in the current position.

CURRENT NATIONAL LEAGUE POSITION ON CAMPAIGN FINANCE

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.

CORRUPTION AND RATIONALES FOR REGULATING CAMPAIGN FINANCE

Federal campaign laws reflect a belief that democracy works best when voters make informed choices based on as much information as possible. Public confidence in the electoral process, then, depends not only upon transparency in the disclosure of the sources of candidates' financial support, but also on the knowledge that those who violate campaign finance laws will be held accountable.

Money plays a huge role in the election process. In the 2012 elections, the candidates who raised and spent the most money won in the majority of cases—84% of House races and 67% of Senate races. (Money in Politics:

Contributions and Expenditures

"There is a critical distinction between contributions and expenditures. While contributions can be limited, expenditures generally cannot be, so long as they are independent—that is, not coordinated with a candidate's campaign. Whether a particular disbursement is treated as an expenditure or as a contribution thus depends on whether or not there is coordination with a candidate's campaign." (The New Soft Money, Daniel P. Tokaji and Renata E. B. Strause, published by The Ohio State University Michael E. Moritz College of Law, 2014, p. 21)

The 2010 *Citizens United* decision relates to **spending** in elections. The ruling removed the ban on independent expenditures and spending for electioneering communications by corporations and unions, allowing them to spend unlimited sums on ads and other means advocating for the defeat or the election of individual candidates. This ruling invalidated state laws prohibiting or limiting corporate and union expenditures. While *Citizens United* addressed federal law, its impact trickled down to impact expenditure regulations in 24 states.

The 2014 *McCutcheon v. FEC* decision involved **contributions**. This ruling removed caps on "aggregate" spending, i.e., contribution limits related to the number of candidates and political parties for donors. *McCutcheon* allows donors to give to as many candidates and parties as they want. However, base contribution limits – the amount one donor can contribute per candidate – remain. Given the recent trend in Supreme Court rulings, advocates of limits are justifiably concerned that state contribution limits are next on the chopping block.

All but six states, including Oregon, have limits on contributions of varying degrees, from contribution limits for individuals, parties, PACs, corporations and unions or outright prohibitions on contributions from corporations and/or unions. A comprehensive, state by state chart of contribution limits for 2013-2014 from the National Conference of State Legislatures provides useful, detailed information

Political Equality

Political equality is a fundamental value in American democracy and has been used as the basic foundation for concerns about undue influence and undue access. Legal scholars and others claim that unlimited money in campaigns is just “not fair” to citizens who do not have the financial resources to make large contributions or expenditures.

However, the Court reaffirmed its position in the *McCutcheon v. FEC* (2014) decision, which stated that aggregate limits on an individual person’s campaign contributions also violated the First Amendment guarantee of free speech. The majority 5-4 opinion cited the *Citizens United* decision’s position that “ ‘ingratiation and access...are not corruption...’ They embody a central feature of democracy – that constituents support candidates who share their beliefs and interests, and candidates who are elected can be expected to be responsive to those concerns.”

Electoral Integrity

Yale law professor, Robert Post’s argument identifies “electoral integrity” as the core value to be preserved by fostering public trust in democracy and confidence in elected officials. These fundamental characteristics of representative democracy are weakened by unlimited money in elections. Post goes back to the *Buckley v. Valeo* (1976) decision as wrongly decided. His reasoning can be related to arguments about the appearance of *quid pro quo* corruption that would create distrust in the integrity of public officials and large donors, whether wealthy individuals, corporations, or interest groups.

Corruption Defined in 1976-2010 Supreme Court Decisions

The nature of what constitutes corruption has been addressed in a number of Supreme Court decisions since *Buckley v. Valeo* (1976), which set out the *quid pro quo* standard to define corruption. The concept was broadened in Court decisions from the 1980s until 2010 to incorporate concerns about corruption that distorted the political process through undue influence on and undue access to officeholders, resulting in failure to address issues of public concern. Attention to the broader definitions of corruption also focused on issues of trust in the system of representative democracy and political equality.

Quid Pro Quo Corruption

Quid pro quo corruption continues to be an obvious justification for restricting campaign contributions. “*Quid pro quo*” (in Latin, “this for that”) refers to an exchange between a candidate and donor in which the candidate receives a personal gain (a contribution for election or re-election to office) from the “sale” of public power (a vote or other action that benefits the donor). This is often framed as a conflict of interest because an officeholder has a duty to act in the best interests of constituents, which overrides any agreement to follow the preferences of a donor. The Supreme Court specifically mentioned *quid pro quo* corruption as well as the appearance of *quid pro quo* in the *Buckley v. Valeo* (1976) decision, which supported restrictions on direct campaign contributions but not on campaign expenditures.

In *McConnell v. FEC* (2003), the Court expanded the concept of undue influence to include undue access to officeholders by wealthy contributors as a legitimate threat to democratic political processes. The *McConnell* case was particularly notable in its documentation of evidence that wealthy donors did receive special access to influence officeholders. Further, “implicit (and, as the record shows, sometimes explicit) in the sale of access is the suggestion that money buys influence. It is no surprise then that purchasers of such access unabashedly admit that they are seeking to purchase just such influence. It is not unwarranted for Congress to conclude that the selling of access gives rise to the appearance of corruption.”

Dependence Corruption

Dependence corruption describes the corrupting influence of the current system of reciprocity between donors and officeholders through lobbyists as intermediaries. These are not corrupt individuals who are crassly engaging in bribery, but rather participants in a system of “dependence” wherein the officeholders need the

funds to continue in office and the donors desire public policies favorable to their interests, whether ideological or economic.

Misalignment and Responsiveness to Large Donors

One argument makes the case against unlimited contributions because they create significant differences between elected officials and the constituencies they are elected to represent. This distinguishes misalignment from other arguments for limiting contributions by individuals who are ideologically motivated toward extreme positions. Contributions by political parties and by Political Action Committees are more likely to reflect centrist political philosophies and thus relate more closely to the median voter.

QUESTIONABLE DONATIONS AND CONTRIBUTIONS

Early political scandals involved money used for bribery or buying votes. Modern day scandals involve the appearances of corruption depending on where gifts and campaign money came from. The U.S. Supreme Court has made a number of controversial decisions expanding the amounts of money in politics by characterizing political donations and expenditures to be exercises of freedom of speech. Among other results, those decisions have created a large and growing category of election related donations and contributions called "dark money."

Dark Money

Twenty-nine types of corporations are listed in §501(c) of the Internal Revenue Code (IRC) as qualified for nonprofit status. Social Welfare Organizations under §501(c) (4), Labor Unions under §501(c)(5), and Trade Associations under §501(c)(6) of the Internal Revenue Code are not required to report from whom they get their donations. Hence these donations are referred to as dark money. Since social welfare or business interests often intersect with political issues, these groups are allowed to use funds to influence elections, but there is otherwise no dollar limit on how much that can be, and they only need to report the majority of their expenditures in general terms. In contrast, labor unions must disclose contributors above \$5,000 in a 12-month period to the Department of Labor; and some election expenditures as low as \$200 are reportable to the Federal Election Commission.

Semi-Dark Money

Contributors can also conceal their identity by shuffling money from one campaign entity to another. This takes advantage of the complex sources of law and regulation relating to different entities. For a perspective on the relative amounts of disclosed versus dark spending, as of June 2014, the FEC records showed that: 1383 House candidates received \$721 million, 224 Senate candidates received \$422 million, political parties had receipts of \$760.7 million, 7212 PACs had receipts of \$1.5 billion, and Super PAC's received \$74.5 million. Another category, independent expenditures, had an additional \$74.5 million for Super PACs along with other groups that totaled \$124 million. This increased significantly between June and November 2014 but those figures were not finalized as of this writing.

MONEY IN POLITICS DEFINITIONS

Communication: A public communication is "a communication by means of any broadcast, cable or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising." Communications over the Internet are not public communications unless the communications are placed for a fee on another person's web site.

A communication "expressly advocates" if it includes a message that unmistakably urges the election or defeat of a clearly identified candidate.

A "clearly identified candidate" is one whose name, nickname, photograph or drawing appears, or whose identity is apparent through unambiguous reference, such as "your Congressman," or through an

unambiguous reference to his or her status as a candidate, such as "the Democratic presidential nominee" or "Republican candidate for Senate in this state."

Coordinated Communication: Communication is "coordinated" if it is made in cooperation, consultation or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee or their agents, or a political party committee or its agents. Must uphold contribution limits.

Electioneering communication: A broadcast communication that refers to a federal candidate and is distributed to the relevant electorate 30 days before the primary election or 60 days before the general election.

Contributions: Gifts, money, loans or anything of value given for the purpose of influencing elections (candidate or ballot measure).

Corporation: A "for profit" corporation. Organization formed through state government to act as an artificial person for business purposes. Can sue or be sued unless a non-profit corporation, can issue stock. Officers and shareholders are protected from personal claims.

Dark (secret) Money: Money given to a non-profit for political spending.

Expenditures: Use of money or anything of value for purpose of influencing elections (candidate or ballot measure). Independent Expenditures is a sub-category.

Hard Money: Money given directly to a candidate. Donations only from individual or PAC. Limit: \$2700/individuals, \$5000/PAC's

Independent Expenditure (Outside spending): Money spent for communication that "expressly advocates" for election or defeat of a candidate. Cannot be coordinated with candidate or political party. Individuals, corporations and unions may contribute to a non-profit or a SuperPAC. That money is then spent under the non-profit/SuperPAC name. Limits: none

Issue Ads (Independent Expenditure): An advertisement that at least purports to address a policy issue rather than advocating for/against a candidate.

Labor Union: Organization of employees who band together to further their mutual interests with business entities.

Member Organizations: Labor organization, trade association, cooperative, or other organization composed of members. It seeks members and accepts members. Not organized to specifically target elections or candidates.

Non-profit Corporation: Conducts business for benefit of the general public without shareholders or profit motive.

PAC: Political action committee for purpose of raising/spending money to elect/defeat candidates. Limit: \$5000 to a candidate's committee.

Qualified Nonprofit Corporation (QNC): A corporation that may spend money to influence an election. Must meet five strict rules: 1) Is a social welfare organization, 2) Formed for the purpose of promoting political ideas, 3) Does not engage in business activities, 4) Has no shareholders, 5) Was not established by a business corporation or labor union and does not accept contributions from either. A QNC may make independent expenditures for candidates and issues.

Soft Money: Money given to a political party for “party-building” activities. Used for advocating for a law, voter registration. Cannot advocate for candidate. Donations only from individual/PAC. Limit: none

SuperPAC: A PAC that spends money to influence a federal election. **Cannot** coordinate directly with a candidate. Can advocate for or against a candidate. Only makes independent expenditures unless a separate account is setup for candidate contributions, which is then limited. Limit: none

PROVISIONS OF THE AMERICAN ANTI-CORRUPTION ACT

The American Anti-Corruption Act (AACA) was written by former FEC commissioner Trevor Potter along with other constitutional lawyers. It is a piece of model legislation crafted to limit the influence of money in politics by overhauling lobbying, transparency, and campaign finance laws. The AACA is serving as a model for state and local law through locally initiated ballot measures. (<https://en.wikipedia.org/wiki/Represent.Us>)

1. Stop politicians from taking bribes. Prohibit members of Congress from soliciting and receiving contributions from any industry or entity they regulate, including those industries’ lobbyists. Prohibit all fundraising during Congressional working hours.
2. Limit Super PAC contributions and coordination. Require Super PACs to abide by the same contribution limits as other political committees. Toughen rules regarding Super PACs’ and other groups’ coordination with political campaigns and political parties.
3. Prevent job offers as bribes. Close the “revolving door” where elected representatives and senior staff sell off their legislative power for high-paying jobs. Stop them from negotiating jobs while in office and, once they leave, bar them from all lobbying activity for five years.
4. Call all people who lobby, lobbyists. Significantly expand the definition of and register all lobbyists to prevent influencers from skirting the rules.
5. Limit lobbyist donations. Limit the amount that lobbyists and their clients can contribute to federal candidates, political parties, and political committees to \$500 per year and limit lobbyist fundraising for political campaigns. Federal contractors are already banned from contributing to campaigns: extend that ban to lobbyists, high-level executives, government relations employees, and PACs of federal government contractors.
6. End secret money. Mandate full transparency of all political money. Require any organization that spends \$10,000 or more on advertisements to elect or defeat federal candidates to file a disclosure report online with the Federal Election Commission within 24 hours. List each of the donors who gave \$10,000 or more to the organization to run such ads. This includes all PACs, 501c nonprofits, or other groups that engage in electioneering.
7. Empower all voters with a tax rebate. Build up the influence of voters by creating a biennial \$100 Tax Rebate that they can use to make qualified contributions to federal candidates, political parties and political committees. Flood elections with small-donor contributions that will offset the huge spenders. Candidates and political groups will only be eligible for these funds if they agree to a set of contribution limits: they will only accept money from small donors (giving \$500 or less a year), other groups abiding by the limits, and the Tax Rebates themselves.
8. Disclose “bundling.” Require federal candidates to disclose the names of individuals who bundle contributions for the member of Congress or candidate, regardless of whether such individuals are registered lobbyists.

9. Enforce the rules. Strengthen the Federal Election Commission's independence and strengthen the House and Senate ethics enforcement processes. Provide federal prosecutors the additional tools necessary to combat corruption, and prohibit lobbyists who fail to properly register and disclose their activities from engaging in federal lobbying activities for a period of two years. (Money in Politics: Developing a Common Understanding of the Issues, p. 38-39 May, 2014, <http://lww.org/content/money-politics-developing-common-understanding-issues>, downloaded 11/30/2014).

See LWVUS website <http://forum.lww.org/category/member-resources/our-work/money-politics-review>.

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LWVUS Consensus Questions

PART I QUESTIONS: Democratic Values and Interests with Respect to Financing Political Campaigns

1. What should be the goals and purposes of campaign finance regulation? *(Please respond to each item in Question 1. agree, disagree or no consensus)*

- a. Seek political equality for all citizens.
- b. Protect representative democracy from being distorted by big spending in election campaigns.
- c. Enable candidates to compete equitably for public office.
- d. Ensure that candidates have sufficient funds to communicate their messages to the public.
- e. Ensure that economic and corporate interests are part of election dialogue.
- f. Provide voters sufficient information about candidates and campaign issues to make informed choices.
- g. Ensure the public's right to know who is using money to influence elections.
- h. Combat corruption and undue influence in government.

2. Evaluate whether the following activities are types of political corruption: *(Please respond to each item in Question 2. agree, disagree or no consensus)*

- a. A candidate or officeholder agrees to vote or work in favor of a donor's interests in exchange for a campaign contribution.
- b. An officeholder or her/his staff gives greater access to donors.
- c. An officeholder votes or works to support policies that reflect the preferences of individuals or organizations in order to attract contributions from them.
- d. An office holder seeks political contributions implying that there will be retribution unless a donation is given.
- e. The results of the political process consistently favor the interests of significant campaign contributors.

PART II QUESTIONS: First Amendment Protections for Speakers and Activities in Political Campaigns

This set of questions is designed to determine the extent to which the First Amendment protections of free speech and freedom of the press should apply to different speakers or activities in the regulation of campaign finance. Free speech and free press provide essentially the same protections to speakers, writers, publishers and advertising, whether or not they are part of the institutional press, and largely regardless of the medium.

Essentially, these protections extend to any conduct that is expressive. Many of the options below would be found unconstitutional by the current Supreme Court, but we are seeking your League's views, not those of the Court. These are broad, overarching questions about spending to influence an election, including independent spending, contributions to candidates, broadcast news and other communication expenditures.

1. Many different individuals and organizations use a variety of methods to communicate their views to voters in candidate elections. Should spending to influence an election by any of the following be limited? *(Please respond to each item in Question 1.)*

- a. Individual citizens, including wealthy individuals like George Soros and the Koch Brothers.
 - Spending banned Some spending limits Unlimited spending No consensus
- b. Political Action Committees, sponsored by an organization, such as the League of Conservation Voters, Chevron, the American Bankers Association, and the International Brotherhood of Electrical Workers (IBEW), whose campaign spending comes from contributions by individuals associated with the sponsoring organization, such as employees, stockholders, members and volunteers.
 - Spending banned Some spending limits Unlimited spending No consensus
- c. For-profit organizations, like Exxon, Ben and Jerry's, General Motors, and Starbucks, from their corporate treasury funds.
 - Spending banned Some spending limits Unlimited spending No consensus
- d. Trade associations, like the U.S. Chamber of Commerce, the American Wind Energy Association, and the American Petroleum Institute, from the association's general treasury funds.
 - Spending banned Some spending limits Unlimited spending No consensus
- e. Labor unions, like the United Autoworkers and Service Employees International, from the union's general treasury funds.
 - Spending banned Some spending limits Unlimited spending No consensus
- f. Non-profit organizations, like the Sierra Club, Wisconsin Right to Life, Coalition to Stop Gun Violence, American Crossroads, and Priorities USA, from the organization's general treasury funds.
 - Spending banned Some spending limits Unlimited spending No consensus
- g. Non-partisan voter registration and GOTV (get out the vote) organizations and activities, like the LWV and Nonprofit Vote.
 - Spending banned Some spending limits Unlimited spending No consensus
- h. Political parties, like the Republicans, Libertarians, and Democrats.
 - Spending banned Some spending limits Unlimited spending No consensus
- i. Candidates for public office spending money the candidate has raised from contributors.
 - Spending banned Some spending limits Unlimited spending No consensus
- j. Candidates for public office spending their own money.
 - Spending banned Some spending limits Unlimited spending No consensus

2. The press plays a major role in candidate elections through editorial endorsements, news coverage, and other communications directly to the public that are often important to the outcome. Should such spending to influence an election by any of the following be limited? *(Please respond to each item in Question 2.)*

- a. Newspapers, like the New York Times and the Wall Street Journal.
 - Spending banned Some spending limits Unlimited spending No consensus
- b. Television and other electronic media, like Fox News, CNN, MSNBC and CBS.

- Spending banned Some spending limits Unlimited spending No consensus
- c. Internet communications, like Huffington Post, Breitbart, Daily Kos, and individual bloggers.
 Spending banned Some spending limits Unlimited spending No consensus

PART III QUESTIONS: Methods for Regulating Campaign Finance to Protect the Democratic Process

- 1. In order to achieve the goals for campaign finance regulation, should the League support?** *(Please respond to each item in Question 1 agree, disagree or no consensus)*
- a. Abolishing SuperPACs and spending coordinated or directed by candidates, other than a candidate's own single campaign committee.
 - b. Restrictions on direct donations and bundling by lobbyists? (Restrictions may include monetary limits as well as other regulations.)
 - c. Public funding for candidates? Should the League support: *(You may respond to more than one item in Question 1 c. agree, disagree or no consensus)*
 - i. Voluntary public financing of elections where candidates who choose to participate must also abide by reasonable spending limits?
 - ii. Mandatory public financing of elections where candidates must participate and abide by reasonable spending limits?
 - iii. Public financing without spending limits on candidates?
- 2. How should campaign finance regulations be administered and enforced?** *(You may choose more than one response for Question 2.)*
- a. By an even-numbered commission with equal representation by the two major political parties to ensure partisan fairness (current Federal Election Commission [FEC] structure)?
 - b. By an odd-numbered commission with at least one independent or nonpartisan commissioner to ensure decisions can be made in case of partisan deadlock?
 - c. By structural and budget changes to the FEC (e.g., commission appointments, staffing, security, budget, decision making process) that would allow the agency to function effectively and meet its legislative and regulatory mandates.
 - d. No consensus.