

LWVUS MONEY IN POLITICS REVIEW AND UPDATE: BACKGROUND LWV Position

So, why is the League updating the position on campaign finance? Our current position dates back to the 1970s and predates Supreme Court decisions that changed campaign finance law significantly. The current update will address a gap in our current position. It aims to get League member understanding and agreement as to the extent to which our organization believes that financing a political campaign is speech protected by the First Amendment. Leagues are being asked to consider through the consensus process: the rights of individuals and organizations to express their political views through the financing of political campaign activities; and how those rights, if any, should be protected and reconciled with the interests set out in the current LWV 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 current League position takes a collective approach to financing political campaigns. It focuses on achieving political equality in areas of combating corruption and undue influence, ensuring equitable competition, and protecting the rights of citizens to know and to fully participate. This position has enabled the League to advocate strongly for transparency in campaign finance and against big money and its influence on elections and government.

But there are still questions to consider and this is why we are studying the issue: What about the First Amendment interests of candidates and donors particularly as compared with equitable competition; preventing corruption and undue influence; enhancing voter participation? These are questions that the position update is considering.

The First Amendment has been at the center of the campaign finance debate since the 1970s. A key provision says, “Congress shall make no law...abridging the freedom of speech or of the press...”

Before the 1970s, the Supreme Court rarely heard cases on campaign finance regulation. But the issue of money in politics has a long history in the U.S. The 1907 Tillman Act banned contributions from national banks and corporations, in response to corruption in the Gilded Age. The 1947 Taft Hartley Act extended the ban to labor unions. The 1971 Federal Election Campaign Act and its 1974 amendments put further restrictions on campaign contributions and spending, expanded disclosure, and created the Federal Election Commission to oversee compliance. The 2002 Bipartisan Campaign Reform Act (McCain-Feingold) tried to remedy the explosion of soft money we saw in the 1980s and 1990s.

The activities that the 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 a candidate to disseminate her message as well as the rights of her donors to express their own views through her message -- It 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.

Whatever else it may or may not have done, the 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.

From the LWVUS Money in Politics Study