

MONEY IN POLITICS CONSENSUS QUESTIONS

**PART I QUESTIONS: Democratic Values and Interests with Respect to Financing Political Campaigns
CORRUPTION AND RATIONALES FOR REGULATING CAMPAIGN FINANCE**

1. What should be the goals and purposes of campaign finance regulation? (Please respond to each item in Question 1.)

a. Seek political equality for all citizens.

<p>AGREE: 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. Richard Hasen has argued that citizens have the equal right to expect that their legislative representatives will be responsive to their needs and interests and not just those of large donors. Therefore, campaign contributions may be regulated if they are found to diminish these rights.ⁱ From <i>Corruption and Rationales for Regulating Campaign Finance</i></p>	<p>DISAGREE: Arguments based exclusively upon political equality have not been supported by the Supreme Court in campaign finance cases, although they have been used as a secondary consideration, as in the <i>McConnell</i> case. in the <i>Buckley v. Valeo</i> decision: “[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment <i>Corruption and Rationales for Regulating Campaign Finance</i></p>
<p>The egalitarian approach, by contrast, holds that the state regulation of speech is required in some instances to prevent the wealthy from monopolizing political discourse. <i>Debate: Can Government Regulate Money in Politics?</i></p>	<p>According to the libertarian approach, the government should not restrict electoral speech because individuals should be free from state control, democracy depends on a free market of ideas, and speech should be rebutted rather than censored. <i>Debate: Can Government Regulate Money in Politics?</i></p>

b. Protect representative democracy from being distorted by big spending in election campaigns.

<p>AGREE: 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.ⁱⁱ These fundamental characteristics of representative democracy are weakened by unlimited money in elections. If voters believe that large campaign contributions shift an officeholder’s votes away from supporting their interests, voters are less likely to vote and otherwise participate in the political process. <i>Corruption and Rationales for Regulating Campaign Finance</i></p>	<p>DISAGREE “In <i>Buckley vs. Valeo</i> the Court recognized the possibility that large contributions could be given directly to campaigns in exchange for official government action by the legislator. Preventing the reality or appearance of such corruption was important enough to justify contribution limits. By contrast the Court concluded that expenditures do not present the same risk of corruption, so long as they are not made in conjunction with a candidate’s campaign.</p> <p><i>Buckley</i> also held that spending restrictions cannot be justified by the interest in promoting equality. In defense of the Federal Election Campaign Act Amendments’ expenditure limits, the government relied on the interest in democratizing federal elections by lessening the ‘disproportionate advantage, the distorting effect, of wealthy special interest groups.’ The <i>Buckley</i> Court held that this interest may not justify spending restrictions, saying that: ‘the concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment.’” From: <u>The New Soft Money</u>, Chapter I. A Primer on Federal Campaign Finance, By Daniel P. Tokaji & Renata E. B. Strause</p>
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c. Enable candidates to compete equitably for public office.

The Current position: The LWVUS believes that the methods of financing political campaigns should ... enable candidates to compete more 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.

<p>AGREE: “Freedom of speech normally includes not only the right to speak, but it also protects the right to hear. The rights or identity of the speaker is not the only relevant consideration -- the need for citizens in a democracy to hear full discussion of issues is also protected. Thus in <i>Citizens United</i>, as in previous decisions by a more liberal Court, the right to hear was included in the First Amendment reasoning. Even if corporations should not have full free speech rights to spend unlimited sums in a candidate election, the right for the public to hear the views of corporations was constitutionally important. FROM: “THE FIRST AMENDMENT TO THE U.S. CONSTITUTION.”</p>	<p>DISAGREE: The concept that “More money allows for more speech” could be that some people just hear the same idea over and over. Another argument against this is that large quantities of some speech may interfere or not allow for the speech of others. “<i>THE FIRST AMENDMENT TO THE U.S. CONSTITUTION</i>”</p>
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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.

<p>AGREE: The current position: The LWVUS believes that the methods of financing political campaigns should ensure the public’s right to know,...</p>	
<p>Supreme Court has upheld disclosure as a means of providing information to the electorate and avoiding corruption or the appearance of corruption. Legislation has been introduced in Congress to expand disclosure. States are introducing, and in some instances passing, stronger disclosure laws for political spending – Options for reforming MIP</p>	

h. Combat corruption and undue influence in government.

<p>AGREE: The current position: The LWVUS believes that the methods of financing political campaigns should... combat corruption and undue influence</p>	
<p>Lessig: “Dependence Corruption::The compelling state interest in regulating campaign contributions is to limit, if not eliminate, the system of dependence between officeholders, lobbyists, and large donors. From: <i>Corruption and Rationales for Regulating Campaign Finance</i></p>	

2. Evaluate whether the following activities are types of political corruption: (Please respond to each item in Question 2.)

According to Zephyr Teachout, the Founders used the term “corruption” to mean “excessive private interests influencing the exercise of public power,”ⁱⁱⁱ ranging from when the political system operates to benefit private interests over the public interest to when a legislator accepts a bribe.

a. A candidate or officeholder agrees to vote or work in favor of a donor’s interests in exchange for a campaign contribution.

This is Quid pro quo (a contribution in exchange for official government action). Citizen’s United contended that Quid pro quo is unacceptable.

b. An officeholder or her/his staff gives greater access to donors.

<p>AGREE: Distortion is understood as favoring the interests of large campaign contributors and independent spenders when they conflict with the public interest or the best interests of constituents. An officeholder votes or works to support policies that reflect the preferences of individuals or organizations in order to attract contributions from them. In <i>McConnell v. FEC</i> (2003), the Court expanded the concept of undue influence to include <u>undue access</u> to officeholders by wealthy contributors as a legitimate threat to democratic political processes. The <i>McConnell</i> case was particularly notable in its documentation of evidence that wealthy donors did receive special access to influence officeholders. From <i>Corruption and Rationales for Regulating Campaign Finance</i></p>	
<p>Lobbyist Rozen testified to the Supreme Ct. about the motivations of donors: They give soft money because they believe that’s what helps establish better contacts with members of Congress and gets doors opened when they want to meet with Members. There is no question that money creates the relationships. Companies with interest before particular committees need to have access to the chairman of that committee, make donations, and go to events where the chairman will be. - Tokaji</p>	

c. An officeholder votes or works to support policies that reflect the preferences of individuals or organizations in order to attract contributions from them.

<p>AGREE: The people from outside spending groups we interviewed were even more direct than the former Members in discussing the desire for a relationship between their independent election activities and governance, but also noted the results were a mixed bag. Rarely do office holders receive direct threats. But they do report responding to indirect threats: e.g. it seems to me we are putting more carbon in the atmosphere, and there is a relationship between that and the temperatures rising, and that’s going to be very bad for the world. We’d better do something about it, but if I do something about it, I know the Koch brothers are going to run an ad against me. I know they’re going to put a lot of money to try to defeat me in a primary ... they’re threatening because you know what they can do. This idea of an implied threat came up again and again in our interviews, -Tokaji</p>	
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d. An office holder seeks political contributions implying that there will be retribution unless a donation is given.
This too is Quid pro quo

e. The results of the political process consistently favor the interests of significant campaign contributors.

<p>AGREE: Rep. Boren: you can’t tell me that if somebody spends a couple of million dollars in your race that you’re not going to ... that’s not going to affect the decision making process... It never did with me but I can tell you I’m sure it has an influence. A candidate may have limited information about the outside spending in her race in real time, but may learn more about the spending after the election. The expectation that</p>	
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the same group or donors will make similar efforts two years later may affect the Member's legislative behavior during the interim. The potential impact of this information delay appeared throughout our interviews, both with staff and with Members. The NRA keeps "scorecards" and requires 100% scores for support. We heard in general terms that the threat of outside spending had made Congress more conservative. Groups like Club for Growth, Heritage, and Freedom Works sent out these voter alerts, and I saw them sink legislation where Boehner couldn't get 218 votes to move forward in an agenda based upon the vote alerts sent by these groups. And they became, you know, sort of the Moveon.org of the right and that is the 800lb gorilla – that if you didn't behave in a certain way they would come into your district and spend a lot of money to make sure you were defeated in the primary. -Tokaji

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.

BACKGROUND: Top Spending groups:

NRCC (Natl.Repub.Congress.Comm.)	\$69,366,306
DCCC (Dem.Congress.Campaign Comm.)	\$65,893,959
DSCC (Dem. Senat.Campaign Comm.)	\$62,210,337
Crossroads GPS (Shadow Party)	\$48,822,464
NRSC (Natl.Republ.Senat.Comm.)	\$39,715,150
Majority PAC (Shadow Party)	\$37,210,757
US Chamber of Commerce	\$32,355,439
House Majority PAC (Shadow Party)	\$30,464,549
Freedomworks for America	\$19,014,635
Club for Growth Action	\$16,573,650
Americans for Tax Reform	\$15,794,552
AFSCME	\$14,700,859
American Crossroads (Shadow Party)	\$13,631,239
American Action Network	\$11,689,399
League of Conservation Voters	\$11,499,718
SEIU	\$11,324,106
Congressional Leadership Fund (Shadow Party)	\$ 9,450,223
Independence USA PAC	\$ 8,230,454
National Assn of Realtors	\$ 8,210,268
Now or Never PAC	\$ 7,760,174
Women Vote!	\$ 7,737,991

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.

BACKGROUND: PACs have spending limits. Some PACs are formed by unions, some by corporations, and some by groups of people with a common ideological agenda. For the most part they operate the same way, except that when a PAC is run by a union or corporation, there are special limits on *who* from the union or business can be asked to give money. The donations can only come from individuals but the overhead costs of operating the PAC can be paid for from the union or corporate treasury.

c. For-profit organizations, like Exxon, Ben and Jerry's, General Motors, and Starbucks, from their corporate treasury funds.

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.

Independent political expenditures by trade associations increased dramatically after 2006, while those by labor unions spiked in 2008 and declined markedly thereafter. The most dramatic increase in independent political expenditures by 501(c) organizations occurred among 501(c)(4) social welfare organizations, which enjoyed the benefits of unlimited

BANNED or LIMITED: In <i>Citizens United</i> and <i>McCutcheon</i> , the Court overruled the 1990 decision in <i>Austin v. Michigan Chamber of Commerce</i> , where that Supreme Court recognized a compelling state interest in combating a "different type of corruption in the political arena: the corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas." In rejecting that compelling state interest and in rejecting that form of corruption, some argue that the current Court has embarked on a dangerous path.	
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expenditures, donor anonymity, and loose oversight. FROM: "INDEPENDENT EXPENDITURES"

Chamber of Commerce, NRA, etc. determine a candidate's positions before supporting.

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

Some of these are PACs

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.

LWV advocacy (501 c 4) should be listed with the examples in II 1 f.

American Crossroads is a "Shadow party: The key distinguishing feature of a Shadow Party group is that it supports either Democratic or Republican candidates, without being associated with a particular issue area or region of the country. Priorities USA was Obama's Super PAC.

BANNED or LIMITS <u>Dark money:</u> Although a Super PAC must report its donors to the FEC, if some of its money comes from a 501(c)(4) social welfare organization, the Super PAC will only report the name and address of the nonprofit that actually wrote the check. That nonprofit's coffers may be filled entirely by one or two very	
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wealthy people or it may reflect the pooling of thousands of small contributions. Corporations, Unions, and individuals can contribute money to a group that isn't subject to disclosure requirements. It is now common for independent spending to come through a nonprofit organization claiming tax-exempt status under Section 501(c) of the tax code. DARK money: Although a Super PAC must report its donors to the FEC, if some of its money comes from a 501(c)(4) social welfare organization, the Super PAC will only report the name and address of the nonprofit that actually wrote the check. That nonprofit's coffers may be filled entirely by one or two very wealthy people or corporations or it may reflect the pooling of thousands of small contributions.

Transfers can allow allied social welfare organizations to increase the amount of money they can dedicate to political activity without crossing the threshold that would make electoral politics their "primary purpose."
Tokaji

g. Non-partisan voter registration and GOTV (get out the vote) organizations and activities, like the LWV and Nonprofit Vote.

This is the 501 c 3 Education Fund of LWV

h. Political parties, like the Republicans, Libertarians, and Democrats.

i. Candidates for public office spending money the candidate has raised from contributors.

j. Candidates for public office spending their own money.

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.

b. Television and other electronic media, like Fox News, CNN, MSNBC and CBS.

c. Internet communications, like Huffington Post, Breitbart, Daily Kos, and individual bloggers

BANNED or LIMITS The media spend large sums of money in candidate elections, and sometimes plays a decisive role through news coverage, editorial endorsements, and other communications directly to the public.

This raises the question: If additional restrictions are needed to control campaign expenditures by individuals and corporations, shouldn't the money expended by the media also be restricted in order to meet the goals of campaign finance regulation?

Contrary to popular belief, free speech and free press provide essentially the same protections to speakers, writers, publishers, internet communications and advertising, whether or not they are part of the institutional press, and largely regardless of the medium. Basically, these protections extend to any conduct that is expressive.

Some argue that freedom of the press is thus a giant loophole in campaign finance regulation because existing contribution limits don't apply. A

UNLIMITED

In addition to free speech, the First Amendment protects freedom of the press.

Others argue that restrictions on spending and contributions can be limited in the free speech area while still protecting freedom of the press. They suggest that the courts will sort out the differences and provide different levels of protection to each. Courts have so far

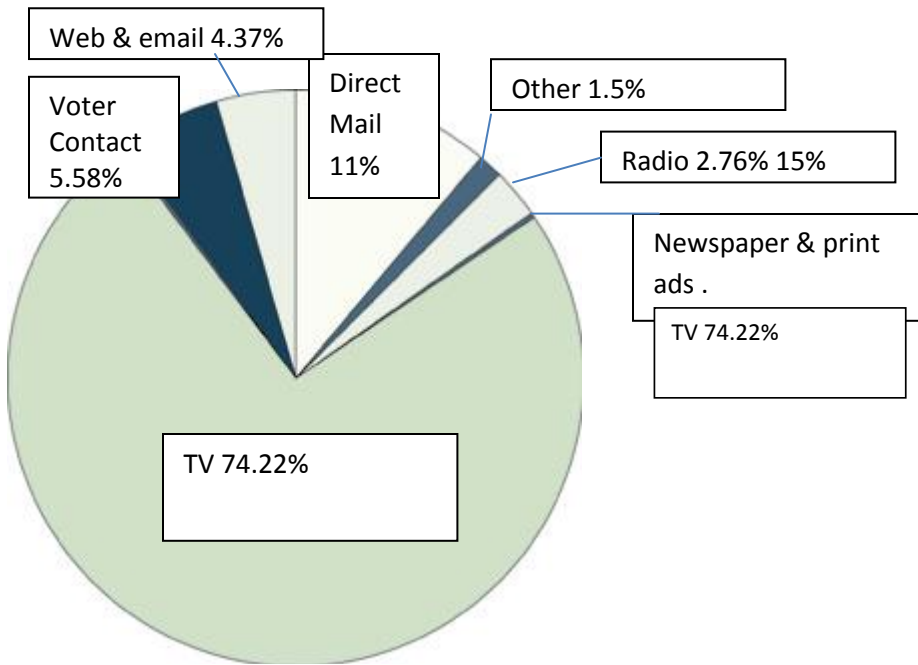
newspaper can, for instance, spend unlimited amounts in candidate endorsements and repeated editorializing and it doesn't count as a contribution to the candidate and is not regulated in any way. Some suggest that slanted or biased news coverage can provide enormous benefit to a candidate and, of course, news coverage is clearly covered by freedom of the press. In a world where the media is increasingly politicized -- in an era with Fox News and MSNBC -- spending big money through a media voice can have an important effect. Moreover, advertising in the press and media currently is protected under freedom of the press.

Under this logic, an individual with sufficient resources who wants to change the course of an election can simply purchase a news outlet or blog and carry his or her message through news coverage instead of making donations or large independent expenditures in favor of a candidate. *From: "The 1st Amendment to the US Constitution"*

resisted entering this thicket, which would require some sort of official recognition of which media outlets are protected and/or a determination of the type and content of protected and unprotected communications.

FROM: "THE FIRST AMENDMENT TO THE U.S. CONSTITUTION"

Purposes of Outside spending for 2012 Congressional elections:



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 a and b.)

a. Abolishing SuperPACs and spending coordinated or directed by candidates, other than a candidate's own single campaign committee.

A Super PAC is a political committee that can accept contributions in any amount and from any source, because it only makes independent expenditures without coordination with a campaign/candidate. A Super PAC may not contribute any of the money it collects to campaigns or parties. Instead, they make expenditures directly on ads, etc.

<p>AGREE: Some argue that Super PACs only came into being because of spending limits on candidates, and if those limits were lifted Super PACS would disappear. Others doubt that. Campaign professionals and outside groups work hard to avoid illegal coordination but do engage in cooperation through a tapestry of signals that allow them to pursue their electoral goals in concert.-Tokaji</p>	<p>DISAGREE: Don't need to abolish – just tighten rules: Supreme Court decisions allowing unlimited campaign spending by outside groups are premised on the notion that such spending is truly independent and not coordinated with a candidate in any way. But in fact, the current rules are quite weak and allow coordination in a number of ways. Through legislation, Congress and the states can tighten these rules. The FEC could also take action – Options for reforming MIP</p>
	<p>The Federal Election Commission (FEC) established in 1974, could be much more effective at enforcing remaining federal campaign finance laws, such as disclosure requirements, and coordination rules. Lawsuits are pending to force FEC action in these area. At present, the FEC is functioning ineffectively and no longer exercises its enforcement powers. Of concern is the fact that any campaign finance laws are ineffective unless they are enforced – Options for Reforming MIP</p>

b. Restrictions on direct donations and bundling by lobbyists? (Restrictions may include monetary limits as well as other regulations.)

<p>AGREE: In 2011, a group of ten corporate and securities law professors petitioned the Securities and Exchange Commission to require public companies to disclose their political activities, including campaign donations and lobbying efforts [ii] An SEC rule change would not require Congressional approval. – Options for Reforming MIP</p>	
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c. Public funding for candidates? Should the League support: (You may respond to more than one item in Question 1 c.)

BACKGROUND: Currently, ½ of our Senators are millionaires

- 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?**

Two people on the Elgin panel said that we cannot force this on any candidate.

iii. Public financing without spending limits on candidates?

BACKGROUND: Currently, only candidates for president can receive public funding at the federal level, and in the past two presidential elections, the candidates have opted out of the public funding system. Resources to support public financing would need to be established. Some States offer public financing to candidates for some offices, although in some, perhaps most, of these the funding is insufficient and/or unreliable. In all cases, public financing is a voluntary option. Both LWVUS and many state Leagues consistently support public financing of elections. – Options for Reforming MIP

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)?

This is the current situation, which causes a gridlock and nothing gets done – according to the chair of the FEC.

- 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?

If 3 Republicans and 3 Democrats, many decisions would be made by one person (the “independent”).
The panel in Elgin on Nov. 12 suggested that all 7 should be independent.

- 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.

ⁱ Richard L. Hasen, 2003. *The Supreme Court and Election Law: Judging Equality from Baker v. Carr to Bush v. Gore*. New York: New York University Press.

ⁱⁱ Robert C. Post, 2014. *Citizens Divided: Campaign Finance Reform and the Constitution*. Cambridge: Harvard University Press.

ⁱⁱⁱ Zephyr Teachout, 2014. *Corruption in America: From Benjamin Franklin’s Snuff Box to Citizens United*. Cambridge: Harvard University Press, p. 38.

Current position:

The LWVUS 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.