



Study Guide for the Money In Politics Consensus

LWVUS Money In Politics Review and Update Chair

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MONEY IN POLITICS REVIEW AND UPDATE STUDY GUIDE

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.”*

ORIENTATION

After Convention 2014, the LWVUS Board worked diligently to develop solid operational details for the new Money in Politics (MIP) Review and Update Committee. These efforts led to a conclusion 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* 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.

SCOPE OF THE MIP REVIEW AND UPDATE

The scope of the study, as adopted by the LWV Education Fund Board, October 2014, states:

The Committee will conduct an update of the League’s position on campaign finance for the purpose of addressing the lack of member understanding and agreement on the extent to which political campaigns are protected speech under the First Amendment. 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 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.*

LEAGUE GUIDING PRICIPLES

<http://lwv.org/files/Impact%20on%20Issues%202014-2016%20Principles.pdf>

TIMELINE FOR THE MIP REVIEW AND UPDATE

Money in Politics Review and Update adopted at the League of Women Voters of the U.S. Convention, Dallas, Texas, June 2014

Committee members, timeline and scope of work approved by the LWV Education Fund Board, October 2014

Background materials, consensus questions and study guide under development, October 2014 through October 2015

Background materials available, beginning July 2015

Consensus questions approved by LWVEF Board, September 2015

Consensus materials available, October 2015

Leagues hold consensus meetings and report results by February 1, 2016

Committee analyzes data from the consensus, drafts an updated position based on member agreement, and submits to LWVEF Board, February through March 2016

LWVEF Board reviews the consensus results for comment and approval of an updated position, April 2016

RESOURCES FOR MIP REVIEW AND UPDATE

To assist members in understanding the complex issues around MIP and in responding to the consensus questions, the MIP Committee has prepared ready to-use resources and strategies including a series of MIP background papers, a consensus handbook (see below), event suggestions, and a PowerPoint presentation. All are available for download on the MIP webpage, *<http://forum.lwv.org/category/member-resources/our-work/money-politics-review>*.

HANDBOOK FOR SUCCESSFUL CONSENSUS MEETINGS

This handbook is intended as a resource for local and state League committees. It is designed to help you be successful in sharing materials with your League, conducting productive consensus meetings, and submitting results to LWVUS.

<http://forum.lwv.org/member-resources/article/handbook-successful-consensus-meetings>

BACKGROUND PAPERS

- **Money in Politics: Introduction and Overview** (5 pages)

<http://forum.lwv.org/member-resources/article/money-politics-mip-introduction-and-overview>

- **History of Campaign Finance Chart** (5 pages)

<http://forum.lwv.org/member-resources/article/history-campaign-finance-chart>

- **First Amendment Topics**

Shifts in Supreme Court Opinion about Money in Politics (6 pages)

<http://forum.lwv.org/member-resources/article/money-politics-shifts-supreme-court-opinion-about-money-politics>

The First Amendment (5 pages)

<http://forum.lwv.org/member-resources/article/money-politics-first-amendment>

The Role of the Supreme Court in Interpreting the Constitution (5 pages)

<http://forum.lwv.org/member-resources/article/money-politics-role-supreme-court-interpreting-constitution>

The Debate: Can Government Regulate Money in Politics? (2 pages)

<http://forum.lwv.org/member-resources/article/money-politics-debate-can-government-regulate-money-politics>

Corruption and Rationales for Regulating Campaign Finance (5 pages)

<http://forum.lwv.org/member-resources/article/money-politics-corruption-and-rationales-regulating-campaign-finance>

- **Current System of Campaign Finance Regulation**

The New Soft Money, Daniel P. Tokaji & Renata E. B. Strause (free e-book). Sections of Chapter 1 including *The New Rules of the Game*, pp. 17-23 and *The Players*, pp. 23-27 are helpful in understanding the current campaign finance system.

<http://forum.lwv.org/member-resources/article/new-soft-money-daniel-p-tokaji-renata-e-b-strause-e-book>

Hard, Soft and Dark Money (to be added)

Independent Expenditures (8 pages)

<http://forum.lwv.org/member-resources/article/money-politics-independent-expenditures>

Options to Reform Money in Politics (to be added)

Evidence of Spending's Impact on Electoral and Legislative Outcomes (5 pages)

<http://forum.lwv.org/member-resources/article/evidence-spendings-impacts-electoral-and-legislative-outcomes>

Enforcement of Federal Campaign Finance Law (6 pages)

<http://forum.lwv.org/member-resources/article/mip-enforcement-federal-campaign-finance-law>

Campaign Finance Activity and Reform in the States (8 pages)

<http://forum.lwv.org/member-resources/article/money-politics-action-states>

- **Definitions for Money in Politics Terms**

Official definitions for many terms are found in the statutes dealing with campaign finance reporting. For example, many terms are defined in the Federal Election Commission's (FEC) compilation and index of federal election campaign laws at <http://www.fec.gov/law/feca/feca.pdf>. Those include: "election," "candidate," "political committee," "campaign committee," "national committee," "state committee," "political party," "contribution," "expenditure," "independent expenditure," "coordination," and "public communication."

For convenience, unofficial definitions of some of these terms and others follow, but it is important to know that for legal purposes many of these have detailed and well-established meanings in law that are only approximated here.

Candidate's Committee or Party Committee. These have the purpose of aiding an individual candidate or a particular political party respectively.

Contribution. Gifts, money, loans, or anything of value given for the purpose of influencing an election (candidate or ballot initiative), including services paid for by a third party. Services provided by volunteers are excluded.

Coordination. An expenditure for express advocacy made in "cooperation, consultation or concert" with or at the request of a candidate, or an agent of the candidate's committee or of a political party committee. However, the FEC's interpretations exclude many common-sense examples of cooperation.

Corruption. In *Buckley v. Valeo* (1976), the Supreme Court ruled that corruption or the appearance of corruption is a justification for limiting free speech rights in campaign finance law. The current Court has continuously narrowed the definition of corruption as a quid pro quo exchange. This fails to recognize the corruption of the political process when millionaires and billionaires can spend unlimited sums in an election. It also fails to recognize the subtle influence or favored access granted to a large donor by an elected official who was supported by big spending. (See *quid pro quo*.)

Dark Money. Political spending, the source of which is not disclosed under current regulations. This is typically accomplished through an arrangement whereby the originating donor contributes to a nonprofit corporation (that is not required to disclose) and that in turn makes an expenditure disclosed under the name of the corporation rather than the originating donor.

Electioneering Communication. Broadcast, cable or satellite transmissions that refer to a clearly identified candidate, targeted to the relevant electorate and made within 30 days before a primary election or 60 days before a general election.

Expenditure. Any purchase, payment or other use of money or anything of value for the purpose of influencing an election. It includes the transfer of money or anything of value between political committees. It does not include any news story, or editorial; any nonpartisan voter registration or get out the vote activity; or communications by an organization to its members.

Express Advocacy. Political communications that explicitly advocate for the defeat or election of a clearly identified federal candidate. *Citizens United v. FEC* (2010) allowed corporations, unions and non-profit groups to use their general treasuries to fund express advocacy so long as it was not done in coordination with a candidate. (See *coordination* and *independent expenditure*.)

Federal Election Commission (FEC). The six-member, bi-partisan federal commission with enforcement, regulatory and interpretative authority over federal campaign finance law. Four votes are required for the FEC to act.

Hard Money. Direct contributions to a political candidate. These contributions may only come from an individual or a political action committee, and are limited to \$2,600 per election for an individual. They are subject to broad disclosure rules set by the FEC. Corporations and unions may not contribute directly to federal candidates. (See *soft money*.)

Independent Expenditure. An expenditure that is not coordinated with any candidate or political party committee. (See *coordination* and *express advocacy*.) See, Money in Politics “Independent Expenditure” issue paper.

Issue Advocacy. Political communications in the form of advertising that is framed around an issue. Outside the election cycle, many groups use issue ads as part of their lobbying campaigns, but close to an election they can point a voter toward or against a candidate even if the ad doesn’t contain express advocacy. Congress and the Court have not been able to agree what constitutes a “true” issue ad and a “sham” one for regulating contributions and expenditures in elections. Issue ads that explicitly mention or depict a candidate that are broadcast within 30 days of a primary election or 60 days of a general election must be reported to the FEC as electioneering communications.

Political Action Committee (PAC). A political committee organized for the purpose of raising and spending money to elect and defeat candidates. Most PACs represent business, labor or ideological interests. PACs can give \$5,000 to a candidate committee per election. (See *hard money*.)

Public Financing. Money provided by local state, or federal governments to candidates to fund their campaigns. Public financing is a way to reduce the dependence on private money from individuals and organizations that characterizes our current campaign finance system. For decades, the presidential public financing system worked to reduce corruption, protect the election process and move toward greater political equality. Inflation, the rise of soft money and unlimited independent expenditures sounded the political death knell for the presidential system.

Legislation has been introduced to reestablish the presidential system and to provide for congressional public financing

Quid Pro Quo. A Latin phrase that literally means “this for that.” In the context of political campaign finance, it refers to the kind of corruption that justifies limits on First Amendment rights. The Supreme Court has been narrowing its definition of quid pro quo corruption so it is virtually the same as bribery -- an explicit agreement by a candidate or elected official to perform a specific act in exchange for something of value. Hence the Court ignores the subtle influence or favored access granted to a large donor, and rejects the notion of corrupting the election process or achieving greater political equality. (See *corruption*.)

Soft Money. Prior to the Bipartisan Campaign Reform Act (BCRA, 2002), soft money consisted of huge contributions to a political party for "party-building activities." Such contributions had no limits but could not lawfully be used for express advocacy. They did, however, provide access and special treatment for donors. Soft money is still barred by BCRA, but *Citizens United* opened a similarly large loophole by providing for unlimited independent expenditures by corporations, unions and non-profit organizations.

SuperPAC. A political action committee that makes unlimited independent expenditures that are not coordinated with any candidate or party. SuperPACs run ads, send mail or communicate in other ways with messages that may advocate the election or defeat of a particular candidate. There are no limits or restrictions on the sources of funds or on the amounts of SuperPAC expenditures. However, both PACs and Super PACs are required to file timely financial reports with the FEC that include the names and amounts from donors above a base level (generally \$200), along with the amounts of their expenditure.

SUGGESTIONS TO HELP RESPOND TO MIP CONSENSUS QUESTIONS

The *Handbook for Successful Consensus Meetings* (<http://forum.lwv.org/member-resources/article/handbook-successful-consensus-meetings>) offers direction for Leagues on participating in a national League study, from the general study process all the way to submitting your League's consensus report. In addition, here is some guidance that is more particular to the MIP consensus process.

- The LWV intentionally words its public policy positions in the broadest possible way so our positions are relevant for many years. Boards of the future must decide when and how to use those positions. For this reason, the MIP consensus questions are also worded in broad, general language. If in doubt about the meaning of a certain word in a question, participants should interpret it in the broadest possible sense.
- Over the past four decades, major U.S. Supreme Court decisions on financing political campaigns have been handed down. We ask that you respond to the questions without regard for the Supreme Court's current views on the First Amendment. The purpose of the MIP review and update is to determine what the League believes about these issues.
- An optional comment section is included at the end of Parts I, II and III of the consensus questions. Please note that while comments will be read and considered, only responses to questions can be tabulated.
- The issues under study are currently in the news, sometimes making headlines and possibly distracting from or even influencing your League's consensus process. If late-breaking news events arise around the time of your consensus meeting, or are brought up during the meeting, you might explain that these events, though interesting, are not part of the consensus process. Acknowledge the concerns and move them to the "parking lot" for discussion at another time. This is the role of the local study committee.
- Because money in politics and its First Amendment implications are so complex, there is some overlap in the topics covered in the background papers. We have linked consensus questions for Parts I, II and III with suggested committee papers. The consensus questions with links to background papers can be found at <http://forum.lwv.org/member-resources/article/money-politics-consensus-questions-links-background-papers>.

MONEY IN POLITICS CONSENSUS QUESTIONS

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

Here are readings that provide background on the issues that the Part I questions are asking about:

- *Money in Politics: Introduction and Overview* (<http://forum.lwv.org/member-resources/article/money-politics-mip-introduction-and-overview>)
- *Shifts in Supreme Court Opinion about Money in Politics* (<http://forum.lwv.org/member-resources/article/money-politics-shifts-supreme-court-opinion-about-money-politics>)
- *The Role of the Supreme Court in Interpreting the Constitution* (<http://forum.lwv.org/member-resources/article/money-politics-role-supreme-court-interpreting-constitution>)
- *Evidence of Spending's Impact on Electoral and Legislative Outcomes* (<http://forum.lwv.org/member-resources/article/evidence-spending-impacts-electoral-and-legislative-outcomes>)
- *Corruption and Rationales for Regulating Campaign Finance* (<http://forum.lwv.org/member-resources/article/money-politics-corruption-and-rationales-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.

Agree Disagree No consensus

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

Agree Disagree No consensus

c. Enable candidates to compete equitably for public office.

Agree Disagree No consensus

d. Ensure that candidates have sufficient funds to communicate their messages to the public.

Agree Disagree No consensus

e. Ensure that economic and corporate interests are part of election dialogue.

Agree Disagree No consensus

f. Provide voters sufficient information about candidates and campaign issues to make informed choices.

Agree Disagree No consensus

g. Ensure the public's right to know who is using money to influence elections.

Agree Disagree No consensus

h. Combat corruption and undue influence in government.

Agree Disagree No consensus

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

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

Agree Disagree No consensus

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

Agree Disagree No consensus

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

Agree Disagree No consensus

d. An office holder seeks political contributions implying that there will be retribution unless a donation is given.

Agree Disagree No consensus

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

Agree Disagree No consensus

OPTIONAL COMMENTS (250 word limit):

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 Readings

Here are readings that provide background on the issues that the Part II questions ask about:

- *The First Amendment* (<http://forum.lwv.org/member-resources/article/money-politics-first-amendment>)
- *The Debate: Can Government Regulate Money in Politics?* (<http://forum.lwv.org/member-resources/article/money-politics-debate-can-government-regulate-money-politics>)
- *Hard, Soft and Dark Money*
- *Independent Expenditures* (<http://forum.lwv.org/member-resources/article/money-politics-independent-expenditures>)
- *The New Soft Money, pp. 17-27* (<http://forum.lwv.org/member-resources/article/new-soft-money-daniel-p-tokaji-renata-e-b-strauss-e-book>)

. 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

OPTIONAL COMMENTS (250 word limit):

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

Here are readings that provide background on the issues that the Part III questions are asking about:

- *Options to Reform Money in Politics*
- *Action in the States* (<http://forum.lwv.org/member-resources/article/money-politics-action-states>)
- *Enforcement of Federal Campaign Finance Law*(<http://forum.lwv.org/member-resources/article/mip-enforcement-federal-ca...>)

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.

- Agree Disagree No consensus

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

- Agree Disagree No consensus

c. Public funding for candidates? Should the League support: *(You may respond to more than one item in Question 1 c.)*

i. Voluntary public financing of elections where candidates who choose to participate must also abide by reasonable spending limits?

- Agree Disagree No consensus

ii. Mandatory public financing of elections where candidates must participate and abide by reasonable spending limits?

- Agree Disagree No consensus

iii. Public financing without spending limits on candidates?

- Agree Disagree No consensus

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.

OPTIONAL COMMENTS (250 word limit):