

DEMOCRACY IN THE BALANCE MONEY, SPEECH AND POWER

(Slide 1)

Part 1 – Introduction

(Slide 2)

Welcome to this Democracy in the Balance Discussion. My name is _____ and I'm a member of the League of Women Voters. As you may know, the League is non-partisan. We do not advocate for or against any candidate or political party.

We work to protect and strengthen our democracy by

- educating the public,
- urging citizens to participate in the political process by becoming informed voters and becoming active at all levels of government.

We study public policy issues.

We take positions on issues.

We advocate for change.

From the beginning in 1920 with the fight for women's suffrage, working for voter rights has been a cornerstone of the League of Women Voters.

Campaign Finance has been a major focus of the League since the 1970's. Our current position on the issue of Campaign Finance calls for:

- Full disclosure of campaign contributions, and
- A fair, open and accessible electoral process.

(Slide 3)

Our goal today is to explore the topic of how money affects our elections, and, as a result, how it impacts our democracy.

I am here as a facilitator, not an expert. I hope that we have a lively discussion today, and that the information and discussion will encourage you to explore this subject further, and share what you learn with others.

This topic is broad and complex, and there is so much information, some of which is changing in this very active political season.

[At this time, depending on the size of the group you can either encourage participants to jot down thoughts or questions to hold until the discussion later, or ask questions as they occur.]

(Slide 4)

We have a number of detailed handouts about Campaign Finance that will be helpful for your reference and further research.

The materials include:

- A timeline of the history of the laws and court rulings that have governed the financing of campaigns in this country.
- Eleven Shocking Facts About Campaign Finance.
- A resource list of books and websites.
- Questions for candidates who are seeking your vote.

Let's take a few minutes now to go around the room so that everyone can introduce themselves and say a few words about why they have come today.

[This will depend on the size and nature of the group. Suggest limiting group introductions to a total of 5 minutes.]

Okay, great. Now, we'll:

- Review the history of campaign finance;
- Watch a short video clip;
- Take a look at and discuss some of the remedies currently being pursued to address the impact of money, Super PACs and the Supreme Court decision in our elections and politics.

Part 2 - HISTORY

(Slide 5)

From our nation's beginning, how our leaders are elected and how our democracy works, have been evolving through legislation, Supreme Court decisions, regulations and amendments to the Constitution.

Many changes to our electoral process involved matters of inclusion. The 15th amendment to the Constitution in 1870 (guaranteeing the right to vote regardless of race, color or previous condition of servitude), the 19th amendment in 1920 (giving women the vote), and the Voting Rights Act of 1965, all opened access to the political process for disenfranchised citizens.

Laws passed in Congress and Supreme Court decisions also led to many changes over the years in how candidates for elected office were allowed to fund their campaigns.

By the turn of the 20th century, wealthy industrialists were wielding substantial political influence and corrupting the electoral process. A public outcry ensued, and in 1907, Congress responded to populist anger by passing the Tillman Act which forbade corporations from funding political campaigns.

Taft-Hartley was passed in 1947 banning union contributions to political campaigns.

Some groups responded by forming PACs – or Political Action Committees – beginning in the 1940's. These groups were regulated in terms of campaign donations and spending, and individual donations were limited.

The 1960's and 70's were a time of social change and citizen participation. The Civil Rights Movement, the Vietnam War Protests, Women's Rights, and the 1st Earth Day, led to the Civil Rights Act of 1964, The Clean Air Act of 1970, The Clean Water Act of 1972, and the establishment of the Environmental Protection Agency.

Many of the League of Women Voters' positions on social, environmental and political issues, that we still use today, were written during this time.

In the early 1970's, in the wake of the Nixon Watergate campaign scandal and other political corruption, Americans became fed up and Congress passed new campaign rules to regulate money in political campaigns.

(Slide 6)

The Federal Election Campaign Act in 1971: *(note: the Act was amended in '74 and again in '76)*

- Required donor disclosure;
- Set limits on how much an individual can contribute to a campaign including their own campaign;
- Set overall limits on campaign spending by candidates and on independent campaign expenditures;
- Created a framework for public funding for presidential primaries and general elections;
- And, established the Federal Election Commission (FEC) to oversee elections.

The reaction was strong to this sweeping legislation that attempted to regulate campaign contributions and spending.

Corporations, banks, and the U. S. Chamber of Commerce engaged in a methodical, well orchestrated and well financed campaign to overturn the Federal Election Campaign Act and subsequent reforms by bringing case after case before the Supreme Court.

(Slide 7)

Over the next 30 years the Federal Election Campaign Act and subsequent reforms were challenged in Court, with the decisions continually equating (reinforcing the equalization of) money and speech. In very narrow decisions, the Court...

- overturned contribution limits on a candidate self-funding their own campaign; *(note: 1976 Buckley v. Valeo)*
- overturned limits on campaign spending by candidates and limits on independent campaign expenditures; *(note: 1976 Buckley v. Valeo)*
- overturned the ban on corporations' spending to influence referendums and ballot questions *(note: 1978 First National Bank of Boston v. Bellotti);*
- And weakened public funding of campaigns. *(note: 2008 Davis v. FEC – Overturned McCain/Feingold Bipartisan Campaign Act of 2002, "Millionaire's Amendment", which raised contribution limits for those running against a self financed candidate to "level the playing field".)*

But despite all these efforts, time and again the Court continued, even as late as 2003, to uphold the constitutionality of the government's legitimate interest in preventing "both actual corruption threatened by large financial contributions, and...the appearance of corruption that might result from those contributions." *(note: 2003 McConnell v. FEC decision)*

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That all changed in January 2010 with the Supreme Court decision in the case of Citizens United v. Federal Election Commission.

(Slide 8)

In 2008, Citizens United, a non-profit, sought to use contributions from for-profit corporations to make and distribute a movie attacking a candidate for president. The McCain/Feingold Bipartisan Campaign Act restricted corporations, unions and nonprofits from advertising for or against a candidate within 30 days of a federal primary election. Citizens United sued the FEC, seeking to block enforcement of the Act.

(Slide 9)

When the case came before the Supreme Court, the court expanded the scope of the argument, and in a 5-4 decision ruled that corporations have the same free speech rights as people in the political process and that it is unconstitutional to restrict, in any way, corporate expenditures in our elections.

The Court dismissed past Supreme Court concerns about the corrupting influence of money in elections by stating that “this Court now concludes that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.” The majority also stated that even though some, because of their wealth, would have “influence over or access to elected officials does not mean that those officials are corrupt. And the appearance of influence or access will not cause the electorate to lose faith in this democracy.”

(Slide 10)

Let’s take a moment to carefully read their reasoned explanation.

The Citizens United decision overturns over a hundred years of legislation and Supreme Court precedent that had barred corporate money in our elections.

It is important to note, however, that four of the nine Supreme Court Justices disagreed with the majority, continuing to believe as past Courts had ruled time and again, that Congress and the states have the authority to prohibit corporate expenditures.

Justice Stevens stated that, “The Court's opinion is a rejection of the common sense of the American people, who have recognized a need to prevent corporations from undermining self-government since the founding.”

(Slide 11)

Again, let's take a minute to study the dissenting opinion.

In addition to this being an unwise decision, he also argued that corporations and people do not have interchangeable protections under the First Amendment, and that corporate spending on politics should be viewed as a business transaction designed for no purpose other than profit making.

Before we view the video, does anyone have any questions? What are your thoughts about what you have heard so far?

(Slide 12)

<http://www.youtube.com/watch?v=mWC2BogYIVk>

Part 4 – Remedies

So, can the people come together to change this situation? Should they? That is one reason why we're here today, to explore our options and discuss together what, if anything, we can work toward.

A poll conducted a year after the Citizens United ruling showed that 82% of Americans think Congress should take action to limit the amount of money corporations can spend on our elections, and 79% "support passage of an amendment to overturn the decision and make clear that corporations do not have the same rights as people."

(note: http://freespeechforpeople.org/sites/default/files/me10129b_public.pdf)

That is, 4 out of 5 of us agree that government has "a legitimate interest in preventing both actual corruption threatened by large financial contributions and... the appearance of corruption that might result from those contributions."

So let's take a look at the various solutions being proposed.

(Slide 13)

Enforcement of Current Campaign Finance Laws by Executive Order

With weakened campaign finance laws, it is important that the laws that still exist are enforced.

The agency charged with enforcement of campaign finance laws, the Federal Election Commission (FEC), has been lax if not negligent in the execution of its duties, as 3 of the 6 current FEC commissioners refuse to enforce existing campaign finance laws. Moreover, 5 of the 6 are serving even though their terms have expired.

The League of Women Voters has advocated for the appointment of new commissioners, gathering over 25,000 signatures for a petition campaign in Feb. 2012 urging this action by the President.

The appointment process doesn't require confirmation of Congress. It is an action that can be taken immediately by the President.

*(note: **LWVUS website:***

“The FEC is supposed to be the agency that enforces campaign finance laws, but it is dysfunctional. Of the six commissioners at the agency, three of them staunchly refuse to enforce the law, and five of the six are serving despite expired terms . . . While there are different avenues that can be taken to fight back against Citizens United and cut the influence of special interests, you can join us by taking the first step today by urging President Obama to appoint new commissioners to the FEC. Among other duties, the FEC can define what election efforts are “independent” from the candidates.”)

In addition, 60 House Democrats have sent a letter to President Obama urging him to sign an executive order to require any company receiving taxpayer dollars to disclose their political expenditures.

(note: see

http://eshoo.house.gov/index.php?option=com_content&task=view&id=1030&Itemid=79)

Again, this action doesn't require Congress, just the signature of the President.

The majority opinion of the Supreme Court in the Citizens United case specifically points to stronger disclosure provisions as a remedy for money in politics.

(Slide 14)

Legislation at the National Level: for Disclosure

The Disclose 2012 Act has been introduced, and is a 'tighter' version of a bill that was blocked in the Senate in 2010 by a Republican filibuster. This act would require disclosure of donor names within 24 hours for contributions of \$10,000 or more, in contrast to the current loose reporting deadlines for Super PACs.

In addition, unions and corporate leaders would have to disclose sponsorship in their ads, while informing union members and shareholders on how their money is politically spent. Lobbying groups would also be required to more clearly identify their campaign spending.

(note: NY Times, Feb. 12, 2012;

*http://vanhollen.house.gov/UploadedFiles/DISCLOSE_Summary_042910.pdf
<http://vanhollen.house.gov/News/DocumentSingle.aspx?DocumentID=279166>*

Legislation at the National Level: for Publicly Financed Campaigns

Money will always be a part of politics because communication requires money. But: where should the money come from? Voters? Wealthy individuals? Corporations? Public funding?

Currently, at the federal level only presidential candidates can obtain public funding. The Fair Elections Now Act (*note: S. 750 and H.R. 1404*) was re-introduced in 2011 in the Senate, and if passed, would allow all federal candidates to choose to run for office without relying on large contributions, donations from lobbyists or Super PACs. Public financing would free politicians from constant fundraising and would likely expand the pool of candidates able to run for office.

(note: Public funding is an option in many states for elected state office)

Campaign Finance Reform at the State level. State legislators can submit bills for campaign finance reform in their states. In Massachusetts, an Act has been filed requiring corporations to disclose their political spending and to identify themselves in ads they fund.

(note: An Act relative to disclosure of political spending: SB304 (SD1530) of 2011-2012 Session)

States can also challenge the federal government for the ability to enforce existing state laws regarding campaign finance. Montana recently defied the Supreme Court's Citizens United decision by ruling that Montana's century-old law barring corporate money in state elections should stand. While the Montana ruling may not hold, the case has forced the US Supreme Court to revisit the issue.

(note: see:

http://www.rollcall.com/news/montana_case_could_challenge_citizens_united_ruling-211323-1.html)

(Slide 15)

Corporate Charter Enforcement and Reform

Another way to make changes to the amount of influence of money from corporations in our elections and in government is to use current state charter laws that regulate the behavior of corporations, strengthen these laws, and/or create laws at the national level to govern international corporations.

(You can now take a few moments to scan the options presented in Slide 17.)

(Slide 16)

The Constitutional Amendment Process

The last potential solution I'd like to mention today is a Constitutional amendment.

(Slide 17)

Recently, there has been a lot of discussion on this topic, and there are a variety of proposals for amendments circulating, from citizens, states and members of Congress. They vary, but include many or all of the following provisions:

- The rights protected by the Constitution are the rights of natural persons (vs. entities like corporations or unions);
- Limits to how much corporations and individuals can contribute to, and spend on, political activity, including elections and ballot questions;
- Restoring the power of Congress and States to regulate the raising and spending of money for elections;
- Prohibiting contributions from foreign nationals and foreign or multi-national corporations to influence an election;

Some of these amendment suggestions were part of the original Federal Election Campaign Act that were later overturned by the Supreme Court.

(Slide 18)

The Constitution provides that an amendment may be proposed either by the Congress with a 2/3 majority vote in both the House of Representatives and the Senate, or by a constitutional convention called for by 2/3 of the State legislatures.

A proposed amendment then becomes part of the Constitution as soon as it is ratified by 3/4 of the States, or 38 of the 50 States.

(note: see <http://www.archives.gov/federal-register/constitution>)

Amending the Constitution is a long and arduous journey, but it's been done 27 times in our history. Many believe that we are at a critical crossroad in our history as a democracy and that amending the Constitution is essential to the survival of our democracy.

There is no one amendment that is being proposed at this time.

(Slide 19)

Conclusion

The League of Women Voters hopes that you have found this program interesting and informative. This is our democracy. Our action or inaction will soon determine its direction.

Now let's take some time to talk about what we've heard today. What do you think?

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