

Money in Politics (MIP) PowerPoint Script

Slide 1 - The League of Women Voters is a citizens' organization that has worked since 1920 to improve local, state and federal government and engage all citizens in the decisions that impact their lives. As we approach 2020, the 100th anniversary of the ratification of the 19th Amendment and the League's founding by leaders of the decades-long struggle for women's voting rights, we are celebrating our past and embracing the future.

Slide 2 - The League has been a force in the US since our founding in 1920. The centerpiece of the League's efforts remains the expansion of citizen participation in our democracy, giving a voice to all Americans.

The League neither supports nor opposes candidates or parties. But we do interact with elected leaders at all levels based on our positions on public policy issues that are formed after member research, study and consensus. We are passionate advocates – both women and men – who work to influence public policy issues.

Slide 3 - The League has been a national leader on campaign finance reform since the 1970s, even before the Supreme Court's landmark 1976 ruling in *Buckley v. Valeo*. (Leader: Read the points on the slide)--

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
- Allow maximum citizen participation in the political process

The League lobbied for the passage of the Federal Election Campaign Act of 1971 and for the 1974 FECA amendments, which set contribution limits, established public financing for presidential elections, and required disclosure of campaign spending. The League's position on campaign finance was last modified in 1982.

Slide 4 - *Leader: Read the slide—*

Using these positions, the League has worked toward two main goals in recent years:

- Transparency in financing political campaigns
- Fighting big money and its influence on elections and government.

In a five-year campaign, the League successfully fought for legislation in 2002 to close the loopholes used during the 1996 elections. The League now fights to close the loopholes created by the *Citizens United* decision.

LWV uses various methods of working toward its goals. Not only do we lobby Congress, the LWV has filed amicus briefs in most of the Supreme Court cases.

Slide 5 -- As shown here, efforts to regulate money in elections go back to the Progressive Era with the passage of the Tillman Act in 1907, which banned campaign contributions from banks and corporations. The 1947 Taft Hartley Act banned contributions from unions. Revelations of financial abuses in the Watergate scandal led to amendments that significantly reworked the 1971 Federal Election Campaign Act. The 2002 Bipartisan Campaign Finance Act, also known as McCain-Feingold, dealt with the “soft money” loophole which allowed corporations, unions and individuals to make huge campaign contributions to political parties and “sham” issue ads which were campaign ads masquerading as lobbying on an issue.

Slide 6 - The First Amendment has been at the center of the campaign finance debate since the Watergate years in the 1970s. A key provision says “Congress shall make no law . . . abridging the freedom of speech, or the press . . .”

Since the 1970s, Justices of the Supreme Court have been unanimous in agreeing that regulating the financing of political speech raises First Amendment concerns because, in modern society, political speech is not limited to a man on a soapbox; it includes paid advertising, paid voter mobilization, and other modern methods of communicating political messages. The League has a position in favor of protecting the individual rights guaranteed by the Constitution, including the free speech protections of the First Amendment.

When fundamental rights like freedom of speech and of the press are involved, the usual constitutional analysis asks three questions: 1) Is there a significant or compelling governmental interest that justifies some limitation; 2) is the limitation the appropriate or the least restrictive means of protecting that governmental interest; and 3) does the limitation apply too broadly, to situations where the governmental interest is not in play?

In the campaign finance context, the disputes within the Supreme Court, as well as the American people, have focused on the first question: What are the significant or compelling governmental interests that justify some limitations on spending money to convey a candidate’s, or anyone else’s, electoral message?

The answer? The Supreme Court Justices have agreed that guarding against corruption is the compelling governmental interest that justifies campaign finance regulation. However, members of the Court have VERY different definitions of corruption.

Slide 7 -- The League is now updating our position on campaign finance through study and consensus to consider First Amendment-political speech issues. Accomplishing this requires member understanding and agreement about these issues. The Money in Politics Committee has been tasked with providing members and the public with information on these issues and facilitating member study and consensus.

We are focusing on the extent to which political campaigns are protected speech under the First Amendment.

Slide 8 - In its 1976 landmark *Buckley v. Valeo* decision, a unanimous Supreme Court ruled that the First Amendment rights of candidates to get their messages to the public could not be curtailed by limits on their spending. But the Court said that limits on donations to candidates can be limited in order to prevent corruption or the appearance of corruption. The Court also said that truly independent spending in elections could not be curtailed. But if any spending was coordinated with a candidate, then it counted as a contribution to the candidate which could be limited. This structure of limits on donations but no limits on spending has governed campaign finance ever since.

Slide 9 -- In a 1990 Supreme Court case known as “Austin,” Justice Marshall, writing for a 6 to 3 majority, recognized a state's compelling 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. “ This was indeed a “different type of corruption” than simple quid pro quo corruption which focuses on the candidates and elected officials. Austin recognized the distorting effect of big money on elections and the political system itself.

Slide 10 -- In *Citizens United v. FEC*, decided in 2010, a 5 to 4 Supreme Court majority held that all forms of corporations – including non-profit organizations, trade associations and for-profit multi-national corporations -- as well as labor unions -- have a First Amendment free speech right to make independent campaign expenditures, just as individuals do. The majority emphasized its view that free speech rights do not depend on the identity of the speaker – whether corporate or individual.

Slide 11 -- The majority opinion in *Citizens United* stressed the view that independent expenditures do not corrupt political candidates or elected officials. Because independent expenditures are defined as ones not coordinated with any candidate or political party committee, the Court said, they cannot corrupt.

The *Citizens United* decision effectively overturned the Tillman Act, which had prevented direct corporate and union spending in elections for many decades. It also overturned the Austin decision and narrowly defined the corruption -- quid pro quo corruption -- that could justify limits on the First Amendment.

Slide 12 -- Justice Stevens wrote a dissent in *Citizens United*, opposing the idea that corporate money is not a corrupting influence. He attacked the majority's absolutist views both on the First Amendment and on the meaning of corruption.

He said, “In a variety of contexts, we have held that speech can be regulated differentially on account of the speaker's identity, when identity is understood in categorical or institutional terms. The Government routinely places special restrictions on the speech rights of students, prisoners, and its own employees” among others.

Stevens pointed out that before *Citizens United* the Court “did not rest our holding on a narrow notion of quid pro quo corruption. Instead we relied on the governmental interest in combating

the unique forms of corruption threatened by corporations, as recognized in Austin’s anti-distortion . . . rationale.”

He concluded “While American democracy is imperfect, few outside the majority of this Court would have thought its flaws included a dearth of corporate money in politics.”

Slide 13 -- The top square on this slide illustrates illegal Quid Pro Quo in politics--The quid is the money; the quo is the candidate or elected official giving a favor in return for that money.

In the context of political campaign finance, quid pro quo 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. Thus the Court ignores the subtle influence or favored access granted to a large donor, and rejects the idea that big money distorts the election process or reduces political equality.

In addition to the Court's emphasis on quid pro quo, the *Citizens United* decision also focused on so-called “independent expenditures.”

Slide 14 -- The Court says that independent expenditures cannot corrupt because, supposedly, they are not coordinated with a candidate or campaign. With no restrictions on independent expenditures, Super PACS have stepped in to spend unlimited amounts in elections and to serve as vehicles for donors and candidates to bypass the contribution limits that apply to a candidate’s campaign. And weak rules have allowed many kinds of coordination – a candidate can even raise money for a Super PAC supporting his or her candidacy so long as the candidate uses the right words to get around the law. So now, virtually every Presidential candidate has a Super PAC and candidates at every level want one in order to compete.

Slide 15 -- In 2014, the Supreme Court reached a 5-4 decision in *McCutcheon v. FEC*. The split among the justices was the same as that in *Citizens United*. Mr. McCutcheon, an Alabama businessman, gave the maximum campaign contribution to many candidates and to state and national political party committees, but was prevented from giving more by the FECA’s overall limitation on individual contributions. The Court held that the overall limitation infringed on his free speech rights, and there was no quid pro quo with a particular candidate. Consequently, a donor can legally give the maximum amount to each and every candidate and state and national political party committee, which could amount to millions of dollars. McCutcheon is not about independent expenditures, as it refers to direct contributions to candidates.

Slide 16 -- The majority justices dismissed the idea that widely distributed contributions among members of a political party could cause corruption. As can be seen in the quote on the slide. (*Leader: read the quote*—)“Government regulation may not target the general gratitude a candidate may feel toward those who support him or his allies, or the political access such support may afford.”

Slide 17 – In dissent, Justice Breyer wrote that *McCutcheon*, taken together with *Citizens United*, “eviscerates our Nation’s campaign finance laws, leaving a remnant incapable of dealing with the grave problems of democratic legitimacy that those laws were intended to resolve.” Writing for the minority, he argued that corruption should be defined more broadly than merely quid pro

quo, to include influence over or access to elected officials. The opinion pointed to the fundamental importance of protecting the integrity of the electoral process as a First Amendment value.

Justice Breyer said that campaign finance regulations “are rooted in the constitutional effort to create a democracy responsive to the people—a government where laws reflect the very thoughts, views, ideas, and sentiments, the expression of which the First Amendment protects.” “We should see these laws as seeking . . . to strengthen, rather than weaken, the First Amendment.”

Slide 18 -- There has always been a tension between the First Amendment right to speak out about politics -- political speech -- and regulating of the money used to communicate in modern society. Thus there are many views about the relationship between speech and money in political campaigns. *Buckley*, *Austin*, *Citizens United*, and *McCutcheon* each changed the Supreme Court’s jurisprudence regarding the role the First Amendment plays in campaign finance. As the Court has more and more used the First Amendment as a sword against campaign finance regulation instead of a shield protecting the voices of all citizens in our democracy, the question of money and speech has become even more contentious.

Slide 19 -- Historically money has always been a part of the system. Here are some arguments in support of unlimited money in politics.

- Money allows the funding of modern communications, such as television and the Internet.
- Political communication informs the voters.
- Government should not regulate political speech.
- Just because a candidate takes contributions does not mean that as an elected official they will take orders from the contributor--especially if it is “independent” spending,
- The funds simply flow to representatives who believe in the position of the group who is making the donation.

Slide 20 - Opponents of big money in elections argue that:

- There is a growing cynicism among the US population based on the idea that democracy is now for sale,
- The large amounts of money spent on campaigns make Congress dependent on these dollars and responsive to their contributors and less likely to listen to "the people" – whom the Founders meant for Congress to represent.

In a study at UC Berkeley, when someone seeking a meeting with a member of Congress was explicitly revealed to be a donor, he was four times as likely to get a meeting with the chief of staff, and twice as likely to get a meeting with the member of Congress.

Slide 21 -- In recent decisions, the Supreme Court has said that only the threat of quid pro quo corruption can justify limits on First Amendment freedoms. But the Court has also said that

disclosure does not threaten the First Amendment – so full disclosure can be required. Whatever the current Supreme Court may say, however, there are many reasons that might justify campaign finance regulations. Read.

Slide 22 -- Regulating money in politics can get complicated. Many organizations -- including non-profits and trade associations -- lobby members of Congress and carry out campaigns on issues they care about. And many register voters and try to get them to participate. These are activities protected by the First Amendment. But when is campaigning on an issue or getting citizens out to vote really a way to boost one candidate over another? Can secret donors give big money to issue work or voter turnout to help their favorite candidates? How do we draw the line?

Slide 23 – Now let's examine amounts of money in recent U.S. elections. Today, American elections are a multi-billion dollar enterprise.

Slide 24 – This diagram presents an overview of money in elections.

Slide 25 -- Ultimately, voters decide about money in politics just like they do on other issues. The people we put into office make the laws, and appoint the people who enforce the laws and the people who interpret the laws.

Citizens need to vote, and they need to know that their votes matter, but we certainly don't need procedural obstacles to voting.

In 2013, the Supreme Court struck down a key provision of the 1965 Voting Rights Act, which safeguards against racial discrimination in voting⁴.

This gave added momentum to the effort in many states to pass legislation that restricts the right to vote – laws sold to the public as combating “fraud” in spite of numerous studies that show fraud is simply not an issue³. However, controlling who votes has potential to affect who wins and who loses elections³.

These laws need to be reversed and voter access and convenience need to be enhanced with provisions such as Election Day Registration, weekend and evening voting periods, and on-line voter registration for all. States can act to protect voter rights.

Many good government organizations, including the League, support publicly funded elections as one of the most effective ways to offset the influence of big money donors and diversify the candidate pool.

New York City and Connecticut have model systems in place, and jurisdictions in Maryland, and states like Maine, North Carolina, Illinois and New York State are fighting to keep, strengthen or enact public funding systems⁸.

Clean election reforms such as stronger disclosure, anti-coordination and ethics rules are also needed to restore transparency and reduce the role of big money.

In response to Citizens United, California, Delaware, Maryland, Massachusetts, Hawaii, Vermont and North Carolina have updated and expanded their disclosure regulations and enforcement⁹.

Cracking down on coordination between candidates, campaigns and outside groups is particularly challenging, but Connecticut, Minnesota, and Vermont have promising new policies in place that could serve as a model for other states.

Other advocates are pushing for a constitutional amendment. As of January 2015, 16 state legislatures have passed bills calling on Congress to pass amendments addressing money in politics and corporate personhood, with similar resolutions pending in 16 other states.

1. US Census Bureau: <http://www.census.gov/newsroom/releases/archives/voting/cb13-84.html>; accessed June 2014
2. <http://www.fairvote.org/research-and-analysis/voter-turnout/>; accessed January 2015
3. Scholars Strategy Network, January 2015: http://www.scholarsstrategynetwork.org/sites/default/files/ssn_key_findings_minnite_on_the_myth_of_voter_fraud.pdf; accessed January 2015.
4. Liptak, Adam: Supreme Court Invalidates Key Part of Voting Rights Act, June 25, 2013. NYTimes: <http://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html?pagewanted=all&r=1&#h>; accessed February 9, 2015.
5. Scholars Strategy Network, January 2015: http://www.scholarsstrategynetwork.org/sites/default/files/ssn_key_findings_minnite_on_the_myth_of_voter_fraud.pdf; accessed February 9, 2015.
6. [Golden, Nicholas](#): Massachusetts Expands Voting Rights, June 13, 2014: <http://www.fairvote.org/research-and-analysis/blog/massachusetts-expands-voting-rights/>; accessed February 9, 2015.
7. Scholars Strategy Network, January 2014: http://www.scholarsstrategynetwork.org/sites/default/files/ssn_basic_facts_obrien_and_green_on_voting_rights_in_massachusetts.pdf; accessed February 9, 2015.
8. Kennedy, Liz: Top 5 Ways Citizens United Harms Democracy & Top 5 Ways We're Fighting to Take Democracy Back (January 15, 2015). Demos: <http://www.demos.org/sites/default/files/publications/Citizens%20United%20Top%205%200.pdf>; accessed February 17, 2015.
9. [Ibid](#)
10. NYTimes Editorial Board: Gov. Cuomo Talks Reform: <http://www.nytimes.com/2015/02/05/opinion/gov-cuomo-talks-reform.html?ref=topics>, February 5, 2015; accessed February 9, 2015.

Reference Notes re Voting Rights Act

[http://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html?pagewanted=all&_r=0#h\[\]](http://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html?pagewanted=all&_r=0#h[])

Slide 26 -- (Leader: Read the slide.) What can you do? Learn how politics is financed at federal, state and local levels.

- Offer community education forums.
- Use Money in Politics Review resources found on the Money In Politics Review webpage, <http://forum.lwv.org>.

Slide 27

- Participate in the League's Money in Politics member study and consensus.
- Leagues will receive study guide and consensus questions in Fall 2015.
- Hold consensus meetings.
- Report consensus results to LWVUS by February 1, 2016.

Slide 28 -- And remember to vote and encourage your friends and family to vote. Vote in every election—local, state and national. And let your representatives know where you stand on issues. Your vote is your voice, so make yourself heard!

Slide 29 – Come join the effort, and become a member of the League, if you are not one already.