LEAGUE OF WOMEN VOTERS®

STATEMENT
BY
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LEAGUE OF WOMEN VOTERS OF THE UNITED STATES
BEOFRE THE
COMMITTEE ON HOUSE ADMINISTRATION
ON
"DEFINING THE FUTURE OF CAMPAIGN FINANCE
IN AN AGE OF SUPREME COURT ACTIVISM"

Wednesday, February 3, 2010

Mr. Chairman, members of the Committee, I am Mary G. Wilson, president of the League of Women Voters of the United States. I am very pleased to be here today to voice the League's deep concern about the Supreme Court's recent decision in *Citizens United v. FEC* and our strong support for legislation to address the problems it creates for our electoral system. The League would like to commend you for holding this hearing at this critical time.

The League of Women Voters is a nonpartisan, community-based political organization that has worked for 90 years to educate the electorate, register voters and make government at all levels more accessible and responsive to citizens. Organized in more than 850 communities and in every state, the League has more than 150,000 members and supporters nationwide. The League has been a leader in ensuring that democracy works for all citizens and in seeking campaign finance reform at the state, local, and federal levels for more than three decades.

Mr. Chairman, there is one overriding message I hope the Committee will take away from this hearing: With the 2010 elections fast approaching, Congress must pass and send to the President legislation governing corporate and union spending that will take effect immediately.[1] Waiting until after the 2010 elections is simply not a viable option. We urge you to craft legislation so it can be passed by both houses of Congress and be signed by the President by Memorial Day.

The Supreme Court decision in *Citizens United v. FEC* now allows corporations to spend unlimited amounts of money to support or oppose candidates at every level of government. This

[1] While the issues surrounding corporate and union activity are not always the same, many of the recommendations with regard to corporations may apply to unions as well.

throws out the protections against direct corporate and union spending in elections that have served our democracy for decades. It has given the green light for corporations, including foreign corporations, to intervene directly in elections – from the local school board or zoning commission to Congress and the President of the United States -- taking the power away from voters. And it has set the stage for corruption to skyrocket out of control – now that the Court has allowed unlimited corporate and union expenditures, the power of well-paid lobbyists linked with those interests will greatly increase.

Right now, the stakes are very high. We must act to protect open, honest government and a healthy democracy.

In days since the Court's decision, we have heard from citizens around the country who are deeply concerned about the direction the Court is moving and the effects this case will have on our elections and our government. They want to know what they can do to respond to the decision. Since it is unusual for us to hear from people about a Supreme Court decision, we believe this response shows a broader concern among the public. It reinforces the need for you to act. We have also heard from state Leagues and others asking how they can counteract the decision at the state level since, as you know, the Court's decision invalidates the laws of many states.

The Court's decision in *Citizens United* upends basic campaign finance law. It changes the foundation on which decades of congressional enactments on money in elections are built. Such a fundamental change, with perhaps more coming as the Court considers other cases, requires a strong and considered response from Congress and the Executive. We believe such responses are essential, and we support a wide variety of approaches. But we do not expect that legislation to be adopted this year can address every possible issue. We want to reemphasize that some steps are vital to govern the conduct of the 2010 elections.

Disclosure. After *Citizens United*, we urgently need enhanced disclosure. This is the most basic step toward protecting the role of the voter in making decisions in elections. It now seems possible for corporations, and perhaps unions, to secretly provide funds that another corporation uses to intervene in an election through independent expenditures. This is simply unacceptable. Voters need information about the sources of funding for the charges and countercharges that come during elections. That is one key way that voters test the accuracy of campaign statements and is essential if the "free and open marketplace of ideas" is to function properly. This is especially true in the case of huge expenditures that could drive out other political speech.

The Court pointed in the direction of enhanced disclosure when it said that disclosure is important to "providing the electorate with information." It also supported disclaimer requirements "so that the people will be able to evaluate the arguments to which they are being subjected." We couldn't agree more.

The League of Women Voters supports strong disclosure requirements for both those who receive election funds and those who provide such funds. For example, if corporation A receives significant funds from corporation B, and subsequently makes an election expenditure, then

corporation A should disclose both its own expenditure and the contribution from corporation B, and corporation B should disclose its contribution to corporation A.

Thus a trade association or other corporation that receives funds should have to disclose all the funds going into its treasury if it makes or contributes to election expenditures. And all corporations that provide funds to the trade association or corporation should also have to disclose on their own behalf. The only exception should be if the entity uses a segregated account for these monies. In that case, only the funds provided to the corporation's segregated account would be disclosed, both by the corporation and by the ones providing funds.

The issue of corporate intermediaries is one the Congress should address quickly and fully. It should not be possible for a corporation to avoid disclosure and disclaimers if it provides significant sums to another corporation which then provides funds to a third corporation that makes independent expenditures. We do not believe this type of disclosure should be avoided even if one of the corporations calls such payments a "membership" fee.

Corporations should have the responsibility for providing disclosure to the public through disclaimers and the Internet, directly to their stockholders or members, and to the Federal Election Commission and the Securities and Exchange Commission.

Disclaimers on public communications should be required for every corporation that provides funds above a certain amount directly or indirectly to an election expenditure. The Court clearly approved of disclaimers in *Citizens United*, and remarked that "With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."

We believe that disclosure should be cumulative so that the public and stockholders can get a full picture of the corporation's entire election activity. In other words, there should be a listing of all candidates, amounts spent in each candidate election, total amounts expended during the reporting period, and amounts and identities for funds provided to others who make election expenditures.

Do No Harm. After providing enhanced disclosure, the next most important step for Congress is to do no further harm. A decision as far-reaching in its implications as *Citizens United* will provoke a number of proposals that, we believe, could make our election system and government processes worse. Some will call for increasing or doing away with contribution limits to candidates. Others will probably support changes in limits on contributions to and from PACs. There will likely be calls to allow corporations and unions once again to make huge contributions to the political parties, effectively repealing the soft money ban in BCRA. There may even be those who call for unlimited corporate and union contributions to candidates.

The League of Women Voters strongly urges you not to do any of these things. We need fair elections, not greater involvement of big money in elections and government. Each of these steps would increase corruption or the appearance of corruption. We are also concerned that they would distort our political processes and undermine shareholder protections, the Supreme Court's rationale in *Citizens United* notwithstanding.

There are a number of other concepts which we support for moving forward in the post-*Citizens United* context. I would like to mention them, and, in some cases, make a few comments.

Corporate Governance. We support the concept that shareholders should approve election expenditures by corporations, as well as other possible reforms to corporate governance in the campaign finance context. The Court recognized the importance of disclosure to corporate governance, thereby setting the stage for additional shareholder involvement. The Court said, "Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits…"

In large, for-profit corporations, the mechanisms for achieving shareholder approval or disapproval will need special attention because large amounts of stock are held in mutual funds, pension and retirement funds (including government entities) and in other forms that don't reflect the interests of the underlying owners or beneficiaries. Non-profit corporations, including large ones such as health plans and hospitals, also raise a number of issues. We will look carefully at proposals for enhanced corporate governance.

Foreign Corporations. The Court's decision in *Citizens United* clearly opens the door for independent expenditures by foreign corporations in American elections. Indeed the rationale that only *quid pro quo* corruption can justify government limitations on corporate expenditures would obviously apply to foreign corporations. And in disparaging any anti-distortion rationale, the Court seems to undercut limitations based on the identity of the corporation.

Still, we urge Congress to carefully consider blocking election spending by foreign corporations. The obvious example of course is that of the corporation owned by a foreign government. Beyond that, issues arise as to what constitutes a foreign corporation and what form of regulation might be appropriate in each case.

Governments. We believe it is entirely inappropriate for government to intervene in elections. Thus, those corporations that have substantial governmental involvement, particularly financial involvement, should be barred from making independent election expenditures. The Congress will have to address a number of issues in determining which corporations have the requisite involvement. We believe that several approaches might work. Corporations that have received substantial funds (through TARP, for example) or have government guarantees deserve attention. Certainly government pension and insurance funds are another example. We believe that corporations receiving government contracts above a certain level raise issues of excessive government involvement or the potential for corruption.

Connections with Lobbyists. After *Citizens United*, every member of Congress who receives a visit from a lobbyist for a corporation knows that the corporation can make unlimited expenditures in his or her election. Surely this is a recipe for corruption. The process is corrupted even if the threat is not made or the spending is not carried out. Lawmakers will change their behavior because of the potential for unlimited expenditures. We urge Congress to explore methods to deal with this issue. Surely the anti-corruption rationale should provide a basis for regulation. The problem extends not just to registered lobbyists (after all, the lobby

disclosure laws were designed for disclosure rather than regulatory purposes) but includes the actions of corporate officers and others who control corporate expenditures.

At the same time, we support additional regulation of bundling by lobbyists and increased disclosure of lobbying activities.

Coordination. Though the FEC has yet to develop acceptable anti-coordination rules following enactment of BCRA, it is worth looking at tighter controls to ensure that "independent" expenditures by corporations and unions are truly independent.

Public financing. As a long-time supporter of clean money in elections, the League of Women Voters supports enactment of congressional public financing and repair and updating of the presidential public financing system. Enhanced small contributions through a fair elections system would provide candidates with clean funds, challenging both corruption and the appearance of corruption in our electoral system. We urge Congress to enact such legislation.

Conclusion. The League of Women Voters believes that the Court's majority decision in *Citizens United v. FEC* was fundamentally wrong and a tragic mistake. The majority mistakenly equated corporate free speech rights with those of natural persons. And the majority confused associations of individuals with corporations. But this is the decision of the Court. Even though we believe it will be overturned eventually, both in the judgment of history and in the law, Congress needs to respond now, recognizing its own authority and responsibility to uphold the Constitution.

Fair and clean elections, determined by the votes of American citizens, should be at the center of our democracy. We urge Congress to act quickly, but also deliberately, in addressing the Court's decision.

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