LEAGUE OF WOMEN VOTERS® OF NEW HAMPSHIRE

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To: Senate Election Law Committee

From: Liz Tentarelli, president, League of Women Voters NH

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Re: SB 304 campaign contributions and expenditures (voter owned elections)

The League of Women Voters has long held positions regarding campaign finance reform, beginning in 1973 which allowed League to advocate for the Federal Election Campaign Act of 1974. The law was challenged in court. Eventually the national League and other organizations were pleased that several parts were held constitutional by the US Supreme Court, including the section on public financing of elections.

League is nothing if not patient, and we have supported a number of campaign finance bills on the federal and state level over the years.

In SB 304 we in New Hampshire have the opportunity to join several other states that offer candidates for Governor public financing, as a way to ensure that candidates with support from the voters themselves have a fair shot at office. League believes that voters—not special interests nor corporations—should be heard when candidates create their platforms. Voter financed elections make our voices heard.

The League of Women Voters New Hampshire urges this committee to recommend OUGHT TO PASS on SB 304. We are the first in the nation presidential primary state; let us also be in the forefront of campaign finance reform. SB 304 is one step in that direction.

Appendix:

OPTIONS FOR REFORMING MONEY IN POLITICS – from League of Women Voters national website: https://www.lwv.org/league-management/voting-rights-tools/options-reforming-money-politics

This paper summarizes available options to address a series of decisions made by the U.S. Supreme Court since 1976 that have weakened the procedures that regulate the spending and giving to political campaigns. These reform strategies remain constitutional in the wake of these Court decisions.

Legislative Approaches

Disclose sources of contributions and expenditures (action by Congress and states). The 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.

Tighten rules governing coordination in order to limit "independent" spending such as Super PACs (action by Congress and states). 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 (see below).

Adopt public funding for all candidates (action by Congress and states). Congress could extend public funding to candidates for all federal offices and more states could adopt public financing. Currently, only candidates for president can receive public funding at the federal level, and in the past several 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.

Prohibit members of Congress from fundraising from the interests they most directly regulate (action by Congress). For example, Congress could prohibit contributions from PACs and lobbyists associated with federal government contractors. It could close the "revolving door" by significantly extending the existing time limitations on negotiating or accepting a high-paying job with a firm with whom they have been involved as members of Congress.

Change the makeup of the U.S. Supreme Court by including more justices friendly to reform (action by the Congress and/or the President). Congress could expand the court, adding additional justices to change the majority opinion on campaign finance regulation. Supreme Court "packing" was last attempted during the Roosevelt administration. (1)

Use or expand state corporate law (action by states). There are efforts to use or expand state corporate laws to regulate the behavior of corporations. One possibility would be to require directors to obtain shareholder approval before making campaign donations and expenditures, as well as public disclosure of such spending. Another possibility is to require noninterference in state and local elections as a condition for obtaining a business license in a given state.

Regulatory Approaches

Enforce campaign finance laws (action by the Federal Election Commission and state regulatory agencies). 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 areas. 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.

Adopt a Securities and Exchange Commission (SEC) rule governing corporate political expenditures (action by the SEC or possibly Congress). 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. (2) An SEC rule change would not require Congressional approval.

Strengthen and enforce 501(c)(4) political activity rules (action by the Internal Revenue Service; IRS). To be tax-exempt as a social welfare organization according to the Internal Revenue Code (IRC) section 501(c)(4), an organization must not be organized for profit and must be operated exclusively to promote social welfare. It is argued that the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, under long-standing IRS regulations a section 501(c)(4) social welfare organization is allowed to engage in some political activities, so long as that is not its primary activity. There is need for strict enforcement of the rules applicable to 501(c)(4)s. The IRS could close loopholes that allow unlimited secret spending in elections by 501(c)(4) groups while protecting truly non-partisan voter service activity.

Other Approaches

Overturn Buckley and/or Citizens United rulings by the Supreme Court. An example promoted by Prof. Lawrence Lessig is to move the existing Court using a case with an originalist justification for broadening the definition of corruption. Lessig submitted an *amicus* brief along these lines in the case of *McCutcheon v. FEC*. (3) New state laws can be passed that seek to plug loopholes or continue to challenge the Court's decisions.

Wait for the ideological makeup on the Court to change (action by the President and Congress). The composition of the Court will likely change in time, the pendulum will swing back, and the closely divided decisions of the recent Court may be overturned by Justices appointed by new Presidents.

Work for a Congress comprised of members committed to reform (action by the grassroots). Ultimately, the voters decide.

Amend the US Constitution to overturn rulings (action by Congress and the states). (4) Amendment resolutions that have been offered contain provisions that fall into the following categories:

Restore the authority of Congress and the states to limit campaign spending. Some of the proposed amendments in this category are fairly limited, allowing Congress and the states to regulate contributions and expenditures only by corporate entities. But most state simply that Congress and the states shall have the power to regulate both contributions and expenditures by anyone. Some specifically say that regulation must be "content-neutral," while others explicitly protect freedom of the press. Some mention only elections of candidates, while others include spending on ballot measures.

1. Assert that the rights protected by the Constitution are those of natural persons only. Some of these proposals address First Amendment speech rights only. Those that are broader argue that the privileges of corporate entities and other collective entities are created by statute and, unlike the rights of natural persons protected by the Constitution, are not inalienable.

Some of these proposals also:

- Allow Congress and the states to enact measures such as public financing and disclosure in order to protect the integrity and fairness of elections, to limit the corrupting effect of private wealth, and to guarantee the dependence of elected officials on the public alone;

- Forbid the judiciary from construing the expenditure of money as protected speech;

- State that nothing in the amendment shall be construed as limiting freedom of the press.

1 See the issue paper Money in Politics: The Role of the Supreme Court, http://forum.lwv.org/member-resources/article/money-politics-role-supreme-court
2 http://www.sec.gov/rules/petitions/2011/petn4-637.pdf
3 http://www.lessig.org/2013/07/the-original-meaning-of-corruption/
4 See LWVUS Constitutional Amendment Study for process for amending the Constitution, http://forum.lwv.org/category/member-resources/our-work/constitutional-amendment-study