SB115 #2
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League of Women Voters of Wisconsin
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Statement to the Senate Committee on Judiciary, Consumer Affairs, and Campaign Finance Reform Regarding SB 115, *Impartial Justice*

Thursday, April 19, 2001, 2:30
Janesville
Municipal Bldg - City Council Chambers

My name is ____ representing members of LWV Speaking to SB 115, Imp. Justice

member of LWV

We believe that substantial public financing of Supreme Court elections will enable Wisconsin citizens to have confidence that those holding the highest office in our justice system can serve with independence because they have been able to run campaigns which are adequately financed without needing private, possibly special interest, money.

In addition to providing public financing this bill also limits private contributions to participating candidates to $100 and substantially reduces the contribution limits to non-participating candidates. This means that possibilities for special interest influence will be reduced and incentives increased for candidates to use the public funds. This is good on both counts. Campaigns for the Supreme Court will no longer be funded by those with a professional interest in the administration of justice. Most importantly the independence and impartiality of the justices of our highest court will be greatly enhanced.

Additionally, the League believes that meaningful reform involves more than public funding for the candidates. Both independent spending and so-called *issue advocacy* spending must be controlled. We support the provision of this bill for supplemental/matching grants for candidates who are the victims of independent spending. We hope that this will once and for all discourage and effectively eliminate independent spending.

The League believes that the fullest possible disclosure must be the basis of strong campaign finance regulation. It's good that this bill requires disclosure of how much these groups have spent and that matching grants are provided. We believe that this bill is weak, however, in not requiring these "issue ad spenders" to disclose the sources of their funds and what the funds are spent on. We are also concerned that the timing of the disclosure after the activity will be too late for effective counter by victims even with matching grants. Will this limited disclosure be a way of making it now officially legal for corporate and union treasury funds to be used for campaign activity? We ask this question while at the same time applauding the bill's efforts to curb the outside spending activity which would inevitably happen.

Thank you for hearing this bill and looking at these issues.

LWVWI Legislative Committee contact: Sue Lloyd, 608/256-7250

My name is John Heckenlively, and in the interest of full disclosure, I should note that I'm the Secretary of both the Racine County and First District Democratic Party. I'd like to thank the committee for holding these public hearings.

I support the Impartial Justice Bill as an important step in cleaning up Wisconsin's political system. If people can't walk into the Supreme Court chambers knowing justices are unaffected by campaign contributions, how can anyone expect justice in this state?

I also support the other reform bills before you this morning. But I'd like to spend most of my time promoting the idea of full public financing of elections at all levels of government. It was the second column I wrote at Racine Labor back in 1995, and I believe it remains a vital step towards restoring true democracy - as Abraham Lincoln put it "Government of the people, by the people and for the people."

The most common objection to public financing is "Why should taxpayers pay to finance elections?" The answer is: they already do.

Every time bills regulating ATM fees are killed because the banking industry can afford lobbyists and campaign donations, the taxpayers pay.

When health care reform is killed because the insurance industry and pharmaceutical companies spend millions on lobbyists and campaigns, the taxpayers pay.

The benefit of fully funding elections for taxpayers is obvious: elected officials without strings attached. But let's cut to the bottom line. What's in it for you, the incumbent?

What's in it for you is your campaign staff having time to talk with voters, instead of chasing after contributions.

What's in it for you is not having to spend hours on the phone every week begging people for money for your next campaign.

What's in it for you is not having to go to insipid fundraisers where you're forced to pretend you like people you're asking for $1000 checks.

Finally, you would get news coverage that asked "Who has the best ideas?" instead of "Who has the biggest war chest?"

I urge you to back public financing now, before "government of, by and for the people" truly does perish from the Earth. Thank you.

State Representative Robert Turner
Talking Points on 2001 Senate Bill 15
Senate Comt. on Judiciary, Consumer Affairs, and Campaign Finance Reform
Racine, Wisconsin
April 19, 2001

The Impartial Justice Bill

- The Impartial Justice Bill is a bill that requires full public funding of Supreme Court elections. An earlier version last session passed the State Senate 30-3, but was not passed in the Assembly, despite evident majority support. Governor Thompson had even stated that he would sign the bill if it passed both houses of the Legislature.

- The Impartial Justice bill provides virtually 100% public funding to qualified candidates, limits campaign spending to the size of a grant, and prohibits special interest contributions to participating candidates. The most current version of the bill includes the ability to equalize funding in cases where publicly-funded candidates have been targeted by "independent expenditures" or "issue ads." The aim of the Impartial Justice Bill is to always ensure a financially-level playing field.

- In current practice, Supreme Court candidates depend on large individual contributions from a tiny number of wealthy couples and individuals. In the last Supreme Court election, 10 wealthy and largely white zip codes provided 43.3% of all contributions. In contrast, the 10 Wisconsin zip codes where people of color comprise the majority donated only 1.8%. The Supreme Court justices are clearly being funded and therefore elected by a small group of wealthy people in our state. These levels and sources of funding have undermined public trust in our state's highest court.

- Supreme Court candidates' self-contributions have increased 150 times since 1989. In the four elections from 1989 through 1994, the candidates contributed $16,092 to their own campaigns. Since then,

self-spending has escalated to $815,700. Allowing the candidates to contribute so much money towards their own campaigns results in a closed process that eliminates most of our state's citizens from participating in the election of these Justices, who rule on crucial cases that affect all of our lives.

- Key facts about support for the bill:

  --20 daily newspapers have editorialized in praise of the bill

  --24 organizations, including the State AFL-CIO, United Auto Workers, League of Women Voters, NAACP, and the Wisconsin Academy of Trial Lawyers endorse it.

  --An October, 1999 poll showed 71% support for this legislation among likely voters, including 69.5% of Republicans.

  --This legislation is endorsed by two former Supreme Court justices, former Chief Justice Nathan Heffernan and former Jusitice Janine Geske. It is also supported by U.S. Senator Russ Feingold, Wisconsin Attorney General Jim Doyle, and many other organizations and elected officials, including Racine Mayor Jim Smith.

- How The Impartial Justice plan would work:

  1. Candidates for Supreme Court choose to rely on "Impartial Justice" funding and agree to accept no private funding.

  2. Candidates qualify for impartial funding by accumulating small qualifying contributions and signatures showing that they are serious candidates with a broad base of support.

  3. Candidates receive full funding from the Impartial Justice Fund, with full funding defined as $300,000 for Supreme Court candidates and $100,000 for primary elections.

4. If an Impartial Justice-funded candidate encounters a privately-funded candidate, the Impartial Justice Fund would match spending above the grants.

5. Similarly, the fund will match independent expenditures or issue ads targeted at participating candidates.

6. The "Impartial Justice" funding would be derived from general-purpose tax revenues.

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Testimony to the Senate Committee on Judiciary, Consumer Affairs & Campaign Finance Reform

Support Senate Bill 115, the Impartial Justice Bill

John Stocks
Assistant Executive Director
Wisconsin Education Association Council

June 5, 2001

The Wisconsin Supreme Court plays a very powerful and important role in our state and its decisions have a profound impact on people's lives. As the Wisconsin Blue Book says, the court is "the final authority on matters pertaining to the Wisconsin Constitution and the highest tribunal for all actions begun in the state, except those involving federal issues appealable to the U.S. Supreme Court."

Because of its position, the Wisconsin Supreme Court must be seen as fair and impartial by the people of the state. The justices should not be tainted by questions relating to the financing of their campaigns.

Unfortunately, some of the recent Supreme Court races have raised serious concerns about how justices are elected. Spending has reached new heights and some independent spending led to a protracted legal battle that brought negative publicity to the court.

In order to maintain public confidence in the court, the Wisconsin Legislature should change the way we elect justices. **WEAC urges you to support Senate Bill 115, which would create a system of financing Wisconsin Supreme Court elections that would allow candidates to avoid concerns about the financing of their campaigns and at the same time encourage competitive races based on the qualifications of the candidates.**

The Wisconsin Education Association Council (WEAC) supports campaign finance reforms that are comprehensive, equitable, and practical. WEAC further believes the reforms must respect the constitutional rights of Wisconsin citizens.

Under the bill, candidates who raise "qualifying contributions" of between $10 and $100 from 500 state residents and agree to limit their spending would be given taxpayer-funded grants ($100,000 for primaries and $300,000 for general elections) to run their campaigns. To ensure competitive races, the bill would provide these "eligible candidates" with matching grants for spending by "nonparticipating candidates" that exceeds the grant amounts given to the eligible candidates.

The bill would also create a new definition of "independent expenditure" which would include communications made from 30 days prior to a primary until the date of the spring election (or, in the case of an election with no primary, 60 days prior to the spring election until the election) that include a "reference to a clearly identified candidate." This definition would be used only for the purpose of providing matching grants to the eligible candidates who are the subject of the independent expenditure communications.

Constitutionality Questions

As WEAC considers proposed campaign finance reforms, one of our bottom lines is that the reforms must respect the constitutional rights of Wisconsin citizens. We have opposed a number of bills over the years because the bills' authors have ignored the constitutional issues involved.

Senator George, on the other hand, has looked closely at the constitutional quagmire confronting campaign finance reform and developed a bold proposal designed to effect major reform that is constitutional. We cannot say with certainty that every aspect of the bill will be found constitutional, but we can say that a reasonable argument for constitutionality can be made.

Independent Expenditures

The independent expenditure provisions are a good example of how the bill attempts to work within the constitutional framework of campaign finance reform. It respects the one point that courts have made over and over again: that making independent expenditures is core First Amendment activity, subject only to reporting requirements, and not monetary limitations. Any proposed legislation cannot be seen as chilling or limiting the ability of those wishing to engage in such speech.

With the new definition of independent expenditure, the bill searches for a middle ground in the struggle between campaign reform advocates and free speech defenders. It does not attempt to define as "political" all of the ads with references to candidates, but rather puts them in a category for the matching funding only. This approach is attractive because the courts have consistently given a green light to public financing of campaigns.

Regarding the matching grants for candidates who are the victims of independent expenditures, there is an apparent conflict between courts on this issue that has not been resolved. In a 1994 decision invalidating Minnesota's similar statute (*Day v. Holahan*), the U.S. Court of Appeals for the 8th Circuit found a constitutional violation:

> "To the extent that a candidate's campaign is enhanced by the operation of the statute, the political speech of the individual or group who made the independent expenditure 'against' her (or in favor of her opponent) is impaired."

Last year, in upholding the Maine Clean Election Act in *Daggett v. Commission on Government Ethics*, the U.S. Court of Appeals for the 1st Circuit rejected the argument that responsive speech (the matching grant) impairs the speech of the initial speaker (the person or organization making an independent expenditure):

> "Merely because the Fund provides funds to match both campaign donations and independent expenditures made on behalf of the candidate does not mean that the statute equates the two."

SB 115 is based on the hope that a court will rule on the side of *Daggett* rather than *Day*. And while this is far from a certainty, at least the bill has a constitutional leg to stand on, unlike so many other bills that have been introduced in recent years.

Another positive aspect of the bill is its linkage of public funding bumps to actual communications funded by independent expenditures, as opposed to the spending, or even the obligation to spend, that is in other bills. In the real world of campaigns, money is sometimes spent or obligations are made in anticipation of making a communication, but the communication is ultimately never made. It would raise both practical and constitutional problems if matching funding were given for a communication that was never made.

Other Constitutional Concerns

There are other provisions in the bill which could be challenged on constitutional grounds. For example, the bill would impose certain reporting requirements only on candidates who do not agree to take part in the public financing system. Such requirements that apply only to non-participating candidates could be viewed by the courts as impermissibly coercive. But, as with the independent expenditure provisions, a strong argument can be made for this provision as part of the general funding scheme.

Nonseverability

Because the bill includes many provisions that are interdependent, it includes a nonseverability clause that says if a court were to find the independent expenditure provisions unconstitutional, then that section of the bill would be void. If the nonparticipating candidate provisions section were found unconstitutional, then the entire act would be void.

WEAC encourages the committee to take action to maintain public support for the Wisconsin Supreme Court by passing SB 115. Thank you.