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Conservative Justices Fail to See Corrupting Influence of Money

Alan E Garfield

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Are there any Americans who honestly believe the flood of money pouring into political campaigns is making our democracy stronger? Does anyone think the misleading ads this money buys make voters more informed? Is there anybody confident that politicians are not beholden to their financial benefactors?



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I find it hard to believe such Americans exist. How could they fail to see the corrupting influence of money on our democracy?

Yet, such people do exist. In fact, a whole gaggle of them sit on the U.S. Supreme Court. They are the court's conservative justices (currently five of the court's nine justices). These justices have let loose a tsunami of money upon our political system. But they seem oblivious to the destruction their decisions have wrought.

What are these justices thinking? Why do they think the First Amendment prevents regulation of campaign spending? Why aren't they worried about the corrupting influence of money on politics?

I'll lay out the logic of their reasoning below and point out where the liberal justices disagree. You can decide for yourself who's living in cloud cuckoo land.

It's important to recognize that both liberal and conservative justices permit limits on contributions given directly to candidates. The justices believe the danger of corruption is rife in these instances (that the money could be given in exchange for political favors) and acknowledge that regulation is justified.

But the situation changes radically when supporters themselves buy

ads to promote a candidate. These are called "independent expenditures" because third parties and not the candidates spend the money. Since the candidates never receive this money or control how it's spent, conservative justices think there is no risk of corruption and any limits are therefore unjustified and unconstitutional.

Liberal justices find this distinction naïve. They believe candidates are well aware of which independent groups are buying ads in support of their campaign and feel equally indebted to these "friends" as to direct contributors. Consequently, they believe both independent expenditures and direct contributions create a risk of corruption and each needs to be regulated.

But conservatives have a majority on the court and so unlimited independent expenditures are generally permitted. And thanks to the conservatives' blockbuster decision last year, *Citizens United*, this is true even for corporate and union expenditures.

Of course, the prospect of an Exxon Mobil or the billionaire Koch brothers spending unlimited sums in favor of a candidate might make one wonder whether the government should be able to regulate expenditures to "level the playing field" between candidates. But here, too, conservative and liberal justices part ways. The conservative majority thinks that government efforts to equalize political influence are never legitimate. The liberal minority thinks it is sometimes appropriate.

One area where liberal and conservative justices agree is on the legitimacy of offering candidates public financing as a means of curbing the influence of private money. But even here divisions can arise, as might occur in the case being argued before the Supreme Court today.

It concerns an Arizona public financing law that was enacted after years of rampant political corruption. Candidates are not required to accept public financing, but those who do must forswear private contributions. By contrast, non-participating candidates can raise private money to their heart's content.

Publicly financed candidates start with an initial installment of government money. But if non-participating opponents outspend this amount, the publicly financed candidates get matching funds up to three times their initial installment. Of course, nonparticipating candidates can raise and spend more than this.

So what's the issue?

Non-participating candidates – the ones raising private money – say that the matching plan chills their freedom of speech. They say that they are reluctant to spend money on their campaigns, knowing it will trigger matching funds for their publicly financed opponents. The non-participating candidates say these matching funds are intended to "level the playing field," which the court's conservative majority has said is an illegitimate purpose.

Arizona denies that the matching scheme is intended to level the playing field and instead says it protects public funds. By giving candidates modest initial installments, the plan avoids overfunding candidates whose non-participating opponents spend only small sums. At the same time, the state needs to provide matching funds in more expensive races to make public financing an attractive alternative.

We'll know by June which characterization the court accepts. But you can decide now which justices are more realistic about the corrosive influence of money on our political system.

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