

In Support of HJM 201

*I believe that the opinions of Justice Byron R. White related to the 1976 Buckley v. Valeo decision of the U.S. Supreme Court offer valuable insights into the need for a Constitutional amendment **establishing that money is not speech**. I hope you will read and consider the following summary of his opinions. Thank you!*

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Judging in Interestiing Times: The Free Speech Clause Jurisprudence of Justice Byron R. White

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*Quoting from pages 909 to 911 (without the footnotes; **bold/blue emphasis added**):*

Justice White disagreed with virtually every limitation the Court placed on campaign finance legislation. First, he objected to the proposition that limiting the financing of speech limited "speech" itself; **he believed that funding speech, whether one's own or someone else's, was a form of "conduct," and thus susceptible to more extensive regulation than pure speech.**" This demonstrates Justice White's approach of carefully **distinguishing the speech and non-speech elements of communications.**"

Thus, for White, limitations on contributions to political candidates and restrictions on campaign expenditures, either in favor of political candidates or related to ballot propositions, were all governed by the analysis set forth in *United States v. O'Brien*.² Under the moderately deferential *O'Brien* test, Justice White found virtually every campaign finance regulation constitutional.³

Second, he fundamentally disagreed with many of his brethren about the legitimacy of the government interests served by campaign finance regulation. For Justice White, preventing corruption or the appearance of corruption was not the only legitimate justification for regulating the financing of political campaigns.⁴ Rather, **he accepted the proposition that legislatures may seek to equalize the resources available to both sides in elections,**⁵ a proposition a majority of the Court emphatically rejected in *Buckley v. Valeo*. Justice White also identified other **legitimate governmental interests** furthered by various campaign finance regulations,

including "maintain[ing] public confidence in the integrity of federal elections ... and hold[ing] the overall amount of money devoted to political campaigning down to a reasonable level.""⁶ Ultimately, **he feared unfair dominance of the political processes by those who wielded economic power.**

In addition, Justice White viewed the largely unregulated private financing of campaigns as an impediment to communication between public officials and the public they are elected to serve. In particular, **he found quite compelling the concerns of campaign finance reform's proponents about the demands of fundraising upon elected officials' ability to devote attention to the public business.** He argued that reducing candidates' need to raise funds would improve communication between candidates and the public." Thus, in *Buckley v. Valco*, Justice White expressed confidence that "limiting the total that can be spent will ease the candidate's understandable obsession with fundraising, and **so free him and his staff to communicate in more places and ways unconnected with the fundraising function.**"⁹ In his view, the government could assert "weighty interest in... insulat[ing] the political expression of [a] federal candidate from the influence inevitably exerted by the endless job of raising increasingly large sums of money., 120

Third, Justice White was more willing to justify restrictions that have First Amendment implications in order to allow governments the leeway needed to construct sensible, comprehensive systems of campaign finance regulation. Thus, he found expenditure limitations necessary in order to reinforce contribution limits, and to ensure that workable campaign finance regulation remained possible. ¹² Similarly, Justice White complained about the Court's distinction between independent and coordinated expenditures. ¹²² He had little sympathy for the argument that independent expenditures were protected by the First Amendment, and **was particularly concerned that independent expenditures could replace campaign contributions and thus could pose many of the same risks of apparent or real corruption.** ²³ In short, Justice White was perhaps the Court's most consistent voice in favor of effective campaign finance regulation.