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Summary

At the end of 2003 the U.S. Supreme Court narrowly upheld the McCain-Feingold campaign finance law, which undermines the First Amendment. Instead of undercutting free speech the Court and campaign finance reform supporters should work to prohibit government favor-peddling, the reason big money is attracted to politics in the first place.

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“Five members of the Supreme Court (including the ‘liberals’) are willing to accept limits on free speech because in their view it will help avoid the appearance of corrupt access to government favor-peddlers.”

Keep politics away from money

by *Sheldon Richman*

The supporters of campaign-finance regulation, and now a bare majority on the U.S. Supreme Court, are trying to square the circle. They want a vast distributive state—in which politicians dispense favors at the expense of others—without the appearance of corruption. An inherently corrupt system with no appearance of corruption is about as likely as, well, a square circle.

The Court has upheld by a 5–4 vote the McCain-Feingold law, which among other things prohibits political parties from raising unregulated “soft money” and restricts “issue” advertising on television 60 days before a general election and 30 days before a primary.

This is no minor matter. Five members of the Supreme Court (including the “liberals”) are willing to accept limits on free speech because in their view it will help avoid the appearance of corrupt access to government favor-peddlers. Since it won’t actually do that—as even the majority admitted—that flimsy excuse to violate natural and First Amendment rights has no legs to stand on.

One wonders whether the advocates of such controls are dealing in good faith. They complain that previous restrictions have not worked; eventually everyone found a way to evade them. So now they try again. Do they seriously think the new rules won’t be gotten around? (No, they don’t.) What then? More restrictions on Americans’ freedom?

This is where it is headed. The logic is relentless: Once the government’s authority to transfer wealth from one person to another is declared nonnegotiable, liberty becomes highly negotiable.

Let’s state plainly what the champions of campaign-finance laws refuse to acknowledge. Government today is mostly a wealth-transfer machine. This takes roughly two forms: taxation and regulation. Through taxation politicians loot productive people and give the proceeds to favored constituencies, rich and poor. For example, when government subsidizes a business or a person, it first has to take the money from someone else without consent. Through regulation government can accomplish much the same goal. A regulation imposing quotas on

imported clothing will raise the price of clothing in the American market and benefit domestic producers who otherwise would have lost out to foreign competitors. The regulation is equivalent to a cash subsidy procured by taxation.

Since government has the muscle to bestow wealth in these ways, it is no surprise that people lobby to become beneficiaries. The prospective rewards are so great that those aiming for them are willing to spend considerable sums in the effort. What better way to get a piece of the action than to contribute money to elect or reelect friendly candidates?

Money isn't spent only to obtain the unearned. Sometimes those threatened with taxation or regulation do it to protect themselves from state encroachment. They too have an interest in finding sympathetic candidates. When government has life-and-death power over business and other areas of life, we should expect to see such defensive activities.

The second group of people is more honorable than the first, although campaign-finance reformers regard both as equally corrupt.

But notice that the surest way to end that corruption is to prohibit government from engaging in favor-peddling in the first place. If government has nothing to sell, no one will try to buy.

Unfortunately, it's a rare politician who would deny himself the power to hand out booty. That's how one wins votes and makes a career of politics.

The Court didn't take its own reasoning seriously enough. If it really wanted to remove the appearance of corrupt access to government, it would have voided the entire distributive state. There's a simple way to keep money away from politics: keep politics away from money.

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