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The Supreme Court, the Constitution and the First Amendment

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The Supreme Court's First Amendment opinions result not from interpreting the First Amendment but from deliberately and insidiously changing its diction in ways that make the Amendment unrecognizable. The Court's arguments in these opinions are pure cant and do nothing but turn the Justices' personal opinions into law. This practice has enabled the Court to act as an oligarchy that has usurped the Constitution and ruled the nation without ever have been elected or given the authority to do so.

Reading the First Amendment makes one wonder how the Supreme Court could have turned its clear and unambiguous words into a mishmash of ambiguity.

"Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The writers of the Constitution did not use the words "expression," "association," "affiliation," or "common political goals." What they did do was name different kinds of things using ordinary diction—speech, press, assemble, petition, and grievance. In ordinary parlance, speech means talk and in the Eighteenth century, press meant print. The press as we know it today did not then exist. Assemble means to get together in the same place, petition means a written request, and a grievance is a perceived injustice. How much plainer could the framers have written this amendment?

Yet, in Buckley Et Al. v. Valeo, the Court writes:

"(b) The First Amendment requires the invalidation of the Act's independent expenditure ceiling, its limitation on a candidate's expenditures from his own personal funds, and its ceilings on overall campaign expenditures, since those provisions place substantial and direct restrictions on the ability of candidates, citizens, and associations to engage in protected political expression, restrictions that the First Amendment cannot tolerate."

In support of this interpretation, the Court cites Mills v. Alabama; yet that decision clearly dealt only with printed matters. "The Constitution specifically selected the press, which includes not only newspapers, books, and magazines, but also humble leaflets and circulars, see Lovell v. Griffin." The other decisions cited in the section on General Principles all also relate solely to printed matters. So how do speech and press come to mean expression, a far more generic term, and how did the court use this embellishment to make unlimited campaign expenditures a First Amendment right?

The court writes, "The Act's contribution and expenditure limitations also impinge on

protected associational freedoms. Making a contribution, like joining a political party, serves to affiliate a person with a candidate. In addition, it enables like-minded persons to pool their resources in furtherance of common political goals. The Act's contribution ceilings thus limit one important means of associating with a candidate or committee, but leave the contributor free to become a member of any political association and to assist personally in the association's efforts on behalf of candidates. And the Act's contribution limitations permit associations and candidates to aggregate large sums of money to promote effective advocacy. By contrast, the Act's $1,000 limitation on independent expenditures "relative to a clearly identified candidate" precludes most associations from effectively amplifying the voice of their adherents, the original basis for the recognition of First Amendment protection of the freedom of association. See NAACP v. Alabama. The Act's constraints on the ability of independent associations and candidate campaign organizations to expend resources on political expression "is simultaneously an interference with the freedom of [their] adherents," Sweezy v. New Hampshire (plurality opinion).

Notice how the diction has changed. "Assemble" has become associate and affiliate. "Grievance" has become political goals. So this decision is not based on the text of the Constitution; rather it results from replacing that text. To the Supreme Court, the Constitution reads something like this:

Congress shall make no law . . . abridging the freedom of political expression, or of the press; or the right of the people peaceably to associate and affiliate with candidates, and to petition the Government for the furtherance of political goals.

This paragraph is pure poppycock when compared to the Constitution's clear and unambiguous diction.

Sweezy v. New Hampshire makes identical substitutions: "Equally manifest as a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the media of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents."

The mistaken result then goes something like this: A person expresses his preferences by the way in which he spends his money. Freedom of expression is guaranteed by the First Amendment. So to limit a person's expenditures on a political campaign infringes his First Amendment rights. More simply put, freedom of speech (read talk) is guaranteed by the First Amendment. Money talks; therefore spending money is speech protected by the First Amendment. But the First Amendments doesn't guarantee anyone's freedom to spend money.

Some would claim that political expression is a form of speech. But it isn't. The bombing of the Alfred P. Murrah Federal Building in Oklahoma City was a political expression but it was not speech and no court would have released the bomber because arresting him violated his First Amendment rights. Throwing a shoe at a President would be an act of political expression, but it is not speech and no court would excuse it. In fact, the Court has turned the concept of free speech into bought speech which the constitution never mentions. Likewise, the American Automobile Association never assembles, and those who attended

the Super Bowl in Arlington Texas assembled there but did not associate. Allowing the bankers who brought down the economy to receive their bonuses while requiring automobile workers to relinquish their pensions which the automobile companies were contractually obliged to provide is a perceived injustice, not a political goal, and campaigning on a platform advocating smaller government is a political goal but not a grievance.

The court, while claiming to be involved in a process of interpretation is in fact involved in a process of rewriting by replacement. But there is no logical relationship between interpretation and replacement. The sentence, "he claimed that Iraq has weapons of mass destruction" cannot be interpreted to mean, "he claimed that Iran has weapons of mass destruction." Yet that's the kind of thing the Supreme Court does all the time.

Sure metaphorically, money can be said to talk. So can many other things, as for instance, scant or revealing attire, expectorating in the face of an official, turning your back on a judge in a courtroom, refusing to pay taxes on the grounds that they support unjust governmental activity, and more.

Isn't it strange that spending money on political campaigns in ways that at least foster the appearance of governmental corruption is ruled to be protected speech, but that more honest ways of speaking metaphorically or symbolically, that is, expressing ourselves metaphorically, are not? How can anyone justify these substitutions? Is it merely incidental that the Justices have described American political campaigns as "a marketplace of ideas"? A marketplace it certainly has become but no ideas are ever marketed there.

The argument presented in any judicial decision is almost impossible to ferret out because of citations to previous cases. A decision includes a quotation from a previous case and appends its citation. When one goes to the cited case, one finds the same practice, and the chain of previous cases is lengthy and following it is cumbersome. At times a reader gets the feeling that the citations are circular; the beginning of the chain can't be found. And if any court in the chain commits an error of equivocation or amphiboly or a fallacy, as in the cases cited above, it is perpetuated throughout all the other cases that cite it. So the exact reasoning is obfuscated, and bad decisions are the result. The judicial system does not use a rational process while issuing opinions; in fact, it uses a long discarded system known as arguing from authority which was used by medieval Church Fathers in arguing matters of faith. And, in reality, judicial opinions are merely matters of faith, mere beliefs that the justices have an overzealous faith in.

The Supreme Court's First Amendment opinions result not from interpreting the First Amendment but from deliberately and insidiously changing its diction in ways that make the Amendment unrecognizable. The Court's arguments in these opinions are pure cant and do nothing but turn the Justices' personal opinions into law. This practice has enabled the Court to act as an oligarchy that has usurped the Constitution and ruled the nation without ever have been elected or given the authority to do so. And what is most distressing about all of this is that the American legal community lacks a voice in opposition.

A recent study of several thousand undergraduates through four years of college found that "large numbers didn't learn . . . critical thinking, complex reasoning and written communication skills. . . . Many . . . graduated without knowing how to sift fact from opinion, make a clear written argument or objectively review conflicting reports of a situation or event. The students . . . couldn't determine the cause of an increase in neighborhood crime

or how best to respond without being swayed by emotional testimony and political spin." Forty-five percent of students made no significant improvement in their critical thinking, reasoning or writing skills during the first two years of college, and after four years, 36 percent showed no significant gains. The only thing surprising about this study is that people were surprised by its results. How many members of Congress, most with at least one earned college degree, have demonstrated these abilities, especially the ability to keep from being swayed by emotional testimony and political spin.?

But what is most bothersome is America's legal community, including its academics. What keeps the legal community from vociferously refuting and mocking the logically absurd opinions of the nefarious nine? Is it cowardice within the legal community or a demonstration that lawyers are merely hired guns for the their clients without brains or values of their own? Do they, in fact, comprise the 36% of gradates who fail to learn these skills in college? The plethora of law reviews regularly published should be replete with analyses of the Court's opinions, but they are not, which is why, perhaps, lawyers have for centuries had reputations as jackals (read Erasmus) and are even today the butt of unending deprecating jokes; yet our nation is, in fact, run by nine of them.

John Kozy is a retired professor of philosophy and logic who writes on social, political, and economic issues. After serving in the U.S. Army during the Korean War, he spent 20 years as a university professor and another 20 years working as a writer. He has published a textbook in formal logic commercially, in academic journals and a small number of commercial magazines, and has written a number of guest editorials for newspapers. His on-line pieces can be found on http://www.jkozy.com/ and he can be emailed from that site's homepage.
