

JUDGE J. SKELLY WRIGHT: POLITICS, MONEY AND EQUALITY

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Judge J. Skelly Wright would be appalled at the role of money in politics today. He believed passionately that large campaign contributions and expenditures by wealthy individuals and special interest groups were threats to the very foundations of democracy. In 1975, when the D.C. Circuit upheld the campaign finance legislation that Congress enacted after Watergate, Judge Wright wrote the ringing words that concluded the court's per curiam opinion in *Buckley v. Valeo*. When he circulated his proposed conclusion to his fellow judges in the majority, he wrote—with characteristic humor—"Only the brave need reply."¹ No replies are preserved in the archives.

In his conclusion, Judge Wright declared:

The corrosive influence of money blights our democratic processes. We have not been sufficiently vigilant; we have failed to remind ourselves, as we moved from the town halls to today's quadrennial Romanesque political extravagances, that politics is neither an end in itself nor a means for subverting the will of the people. The excesses revealed by this record . . . support the legislative judgment that the situation not only must not be allowed to deteriorate further, but that the present situation cannot be tolerated by a government that professes to be a democracy.²

Alas, Judge Wright's conception of the constitutionally

1. Memorandum from Judge J. Skelly Wright to Judges Bazelon, McGowan, Leventhal and Robinson (July 28, 1975) (on file with the Library of Congress, Manuscript Division, Papers of J. Skelly Wright, Box 83, Folder "Buckley v. Valeo (1), S.T. 1975").

2. *Buckley v. Valeo*, 519 F.2d 821, 897 (D.C. Cir. 1975), *rev'd in part*, 424 U.S. 1 (1976). Judge Wright stated in 1982 that he had written the closing words of the D.C. Circuit's opinion. J. Skelly Wright, *Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?*, 82 COLUM. L. REV. 609, 645 (1982) [hereinafter Wright, *Money and the Pollution of Politics*].

permissible scope of campaign finance regulation failed to persuade the Supreme Court, which found all limits on campaign expenditures to be unconstitutional. In the decades since *Buckley*, the situation has, indeed, deteriorated further. Much further.

In this essay, I discuss briefly the values of equality and honest government in Judge Wright's career before they intersected in the area of campaign finance. I then contrast Judge Wright's views on money, politics and the First Amendment—as set forth in the D.C. Circuit's opinion in *Buckley v. Valeo*—with the position taken by the Supreme Court on appeal the following year. My essay goes on to discuss a 1982 law review article by Judge Wright, which explained why, in his view, promoting political equality was fully consistent with the First Amendment properly understood. I conclude with a few remarks about the role of money in politics today.

Judge Wright's condemnation of the pernicious effects of big money in American politics reflected two of his fundamental values: equality and honest government. Equality was a thread that ran powerfully through many of Judge Wright's most noteworthy opinions—a theme of other papers in this symposium. In his rulings against racial segregation in Louisiana, the Judge again and again vindicated the equal protection of the laws, acting with great courage in the face of intense local resistance.³ After he joined the D.C. Circuit, Judge Wright wrote an opinion that invalidated many of the policies and practices of the D.C. public schools because he believed that they deprived minority students of equal educational opportunity.⁴

Judge Wright was deeply concerned about economic

3. *Bush v. Orleans Parish Sch. Bd.*, 138 F. Supp. 337, 341 (E.D. La. 1956) (ordering desegregation of New Orleans public schools), *aff'd*, 242 F.2d 156 (5th Cir. 1957); *id.* at 342 (“[W]e are, all of us, freeborn Americans, with a right to make our way, unfettered by sanctions imposed by man because of the work of God.”); *Dean v. Thomas*, 93 F. Supp. 129 (E.D. La. 1950) (enjoining registrar of voters from refusing to register eligible voters solely on ground of race or color); *Wilson v. Bd. of Supervisors of La. State Univ. & Agric. & Mech. Coll.*, 92 F. Supp. 986, 988-89 (E.D. La. 1950) (ordering admission of the black plaintiff to LSU law school). See generally LIVA BAKER, *THE SECOND BATTLE OF NEW ORLEANS: THE HUNDRED-YEAR STRUGGLE TO INTEGRATE THE SCHOOLS* (1996).

4. *Hobson v. Hansen*, 269 F. Supp. 401, 517 (D.D.C. 1967) (striking down school assignment practices and tracking of students based on standardized test performance).

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inequality as well as racial inequality. In his landmark consumer protection and housing cases, he sought to redress the gross inequality of bargaining power between the furniture store and the installment purchaser, and between the landlord and tenant.⁵ While these two cases are well known, Judge Wright also wrote other opinions aiming to reduce the effects of economic inequality. He ordered the local D.C. appellate court to provide free transcripts for some indigent appellants, emphasizing the need “to equalize the opportunities of rich and poor to obtain appellate review.”⁶ In another case, Judge Wright held that the plaintiff was not barred by the doctrine of laches—that is, unreasonable delay in asserting his rights—when his delay in bringing suit resulted from his inability to afford a lawyer. In his opinion, the Judge quoted Anatole France’s famous line that “[t]he law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”⁷

Another theme in Judge Wright’s career was the promotion of honest government. In 1939 and 1940, when he was a federal prosecutor here in New Orleans, the U.S. Attorney’s Office indicted more than twenty-five state officials for offenses including embezzlement, kickbacks, influence peddling and graft. Judge Wright described this period as the high point of his time in the U.S. Attorney’s Office. According to author Liva Baker, “Years later, Wright regaled dinner-party guests, lunch companions, and anyone else who was interested with his tales of the Louisiana scandals.”⁸

I was one of those listeners. I remember the Judge recounting proudly how he and his colleagues had sent the president of LSU to federal prison for taking kickbacks in connection with the university’s purchase of a building at an inflated price. There was no chance that state prosecutors would

5. *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071, 1079, 1082 (D.C. Cir. 1970) (implied warranty of habitability in residential leases); *Edwards v. Habib*, 397 F.2d 687, 699 (D.C. Cir. 1968) (illegal to evict a tenant in retaliation for reporting housing code violations); *Williams v. Walker-Thomas Furniture Co.*, 350 F.2d 445, 449 (D.C. Cir. 1965) (installment sales contract unenforceable due to unconscionability).

6. *Lee v. Habib*, 424 F.2d 891, 902 (D.C. Cir. 1970). The court required free transcripts in cases where “the trial judge or a judge of the DCCA certifies that the appeal raises a substantial question the resolution of which requires a transcript.” *Id.* at 904.

7. *Powell v. Zuckert*, 366 F.2d 634, 638 (D.C. Cir. 1966).

8. BAKER, *supra* note 3, at 97.

pursue the case. As I recall, Judge Wright said that the money was sent to the defendant in a shoebox (or it might have been a suitcase). The payments were made in cash and delivered by hand. Why was this a federal crime? Judge Wright and his fellow federal prosecutors figured out a way to charge the recipients of the kickbacks with the federal crime of mail fraud. The mails were used when LSU's check for the purchase price was deposited in the seller's bank and forwarded to LSU's bank for payment, even though the kickbacks were subsequently hand delivered. Judge Wright proudly told me that this theory prevailed at trial and on appeal to the Fifth Circuit.⁹

At the U.S. Attorney's Office, Judge Wright also prosecuted election fraud. He drafted an indictment charging a local official with ballot tampering in a state primary election. That case, *U.S. v. Classic*, went to the Supreme Court and established federal jurisdiction over state primaries.¹⁰ After his appointment to the D.C. Circuit, Judge Wright sat on several cases involving dishonesty in government. He wrote the court's opinion in a case involving accusations of impropriety against Senator Thomas Dodd, as well as two opinions in the appeals of Watergate defendants.¹¹

The themes of honest government and equality came together in the campaign finance legislation enacted by Congress in the wake of Watergate. The Watergate investigations revealed that President Nixon's 1972 re-election committee (known as CREP) had orchestrated widespread violations of existing campaign finance laws, including the ban on corporate

9. *Hart v. United States*, 112 F.2d 128, 131 (5th Cir. 1940) (upholding mail fraud charges against LSU president); JOHN WILDS ET AL., *LOUISIANA, YESTERDAY AND TODAY: A HISTORICAL GUIDE TO THE STATE* 125 (1996).

10. BAKER, *supra* note 3, at 97-100 (discussing the prosecution of Patrick Classic). Although the district court ruled for the defendant, the Supreme Court reversed and remanded the case for trial in *United States v. Classic*, 313 U.S. 299 (1941). See David M. Bixby, *The Roosevelt Court, Democratic Ideology, and Minority Rights: Another Look at United States v. Classic*, 90 *YALE L.J.* 741, 798-99, 812 (1981).

11. *Pearson v. Dodd*, 410 F.2d 701, 703, 706, 708 (D.C. Cir. 1969) (holding that columnists Drew Pearson and Jack Anderson were not liable to Senator Dodd for tortious invasion of privacy or for conversion when they received copies of documents in the senator's office files and published newspaper columns about his allegedly improper relationship with lobbyists for foreign interests); *United States v. Barker*, 514 F.2d 208, 226-27 (D.C. Cir. 1975) (affirming the district judge's denial of motion by Watergate burglars to withdraw their guilty pleas); *United States v. Mardian*, 546 F.2d 973, 979-81 (D.C. Cir. 1976) (reversing sentence because the district judge should have granted severance motion).

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contributions. CREP had systematically solicited large contributions from corporations with matters pending before the federal government. Congress was concerned that unlimited campaign contributions and expenditures gave rise to corruption and the appearance of corruption. Congress was also concerned about equality. The legislative history stated that the ever-increasing cost of campaigns deterred candidates of modest means from running for office, and that the possibility of unlimited expenditures by candidates and their supporters created the risk of untoward influence by the wealthy on the outcome of election campaigns.¹² In response to these concerns, the Federal Election Campaign Act of 1974 had four main substantive components: first, limits on campaign contributions to candidates, parties, and political committees; second, limits on campaign expenditures by candidates and by persons making independent expenditures in support of or in opposition to candidates; third, reporting and disclosure requirements; and fourth, public financing of presidential campaigns.

The constitutionality of all of the provisions of the Federal Election Campaign Act was promptly challenged by two members of Congress, three political party organizations, the New York Civil Liberties Union, and several other individuals and organizations. The case was called *Buckley v. Valeo*. In August 1975, the D.C. Circuit issued a per curiam decision that upheld the constitutionality of all the major provisions of the Federal Election Campaign Act. The court wrote its opinion under intense time pressure, so that the case could be heard and decided by the Supreme Court in time for the 1976 election campaign.¹³

Judge Wright was one of the five judges in the majority (out of seven D.C. Circuit judges who participated in the case) and played a leading role in organizing the group.¹⁴ Given the

12. Brief for Appellees Center for Public Financing of Elections, Common Cause, League of Women Voters of the United States, et al. at 44-74, *Buckley v. Valeo*, 424 U.S. 1 (1976) (No. 75-436), 1975 WL 171457, at *44-74.

13. Harold Leventhal, *Courts and Political Thickets*, 77 COLUM. L. REV. 345, 346, 348 (1977) (stating that the opinion was a “pressure cooking of multiple issues compressed for decision in a few months of effort” and led to “almost frenzied activity in [the] court”).

14. The five judges in the majority were Chief Judge David Bazelon (except for his dissent on one narrow issue), Judge Wright, Judge Harold Leventhal, Judge Carl McGowan, and Judge Spottswood Robinson.

complexity of the case and the number of issues involved, these five judges divided the drafting responsibilities and issued a per curiam opinion. The opinion explained that “the issues are so significant and far-reaching that the crafting of the opinion reflects the fact of participation of various judges, so that no single judge could fairly be designated as the author.”¹⁵ Judge Wright’s law clerk who worked on the *Buckley* case remembered the unique and fascinating experience of attending two post-conference discussions among the judges in the majority. Normally, law clerks never attend conferences among the judges, but this case was exceptional. One of these sessions, the clerk recalled, was in Judge Wright’s chambers. He has a vivid recollection of Judge Leventhal puffing on his pipe, looking thoughtful.

The goals of political equality and honest government pervaded the D.C. Circuit’s constitutional analysis in *Buckley v. Valeo*. The court wrote that the government had “a clear and compelling interest in safeguarding the integrity of elections and avoiding the undue influence of wealth.”¹⁶ The opinion began with a historical account, which repeatedly described big money as a source of corruption and “undue influence” in politics.¹⁷ Wealth, the court wrote, should not be exalted to an “undue preference in fundamental rights.” According to the court,

It would be strange indeed if, by extrapolation outward from the basic rights of individuals, the wealthy few could claim a constitutional guarantee to a stronger political voice than the unwealthy many because they are able to give and spend more money, and because the amounts they give and spend cannot be limited.¹⁸

Because of the importance of the governmental interests served

15. *Buckley v. Valeo*, 519 F.2d 821, 835 (D.C. Cir. 1975). Judge Wright’s papers at the Library of Congress include drafts of the lengthy section upholding public financing of presidential campaigns, a short section upholding mandatory disclosure by minor and third-party candidates and independent candidates, a short summary introduction, and a cover memo for Judge Wright’s suggested concluding paragraph. See J. Skelly Wright Papers (on file with the Library of Congress, Manuscript Division, Papers of J. Skelly Wright, Box 83) [hereinafter J. Skelly Wright Papers].

16. *Buckley v. Valeo*, 519 F.2d 821, 841 (D.C. Cir. 1975).

17. The word “wealth” and its variants appeared fourteen times, and the phrase “undue influence” appeared eight times, in the per curiam opinion of the Court. See *Buckley v. Valeo*, 519 F.2d 821 (D.C. Cir. 1975).

18. *Id.* at 841.

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by the campaign finance law, the D.C. Circuit held that what it called the “incidental restrictions” on First Amendment freedoms did not violate the Constitution.¹⁹

I reviewed the papers of Judge Wright, Judge Leventhal, and Judge McGowan at the Library of Congress. I have also been in touch with a number of people who were law clerks in 1975 for the D.C. Circuit judges in the majority in *Buckley*.²⁰ I was trying to find out which judge or judges produced the overview sections of the opinion—the history of campaign finance regulation and the standard of First Amendment review. Thirty-nine years is a long time, and nobody remembered which judge wrote which section. The archives do not include drafts of the overview sections. Judge Wright’s secretary, Martha Scallon, kept Judge Wright’s drafts of several other sections, so it seems that the Judge did not write the overview sections. But I know from discussions with Judge Wright during my clerkship that he was fully in accord with the D.C. Circuit’s analysis, and in particular, its emphasis on the importance of political equality.

On appeal, however, the Supreme Court took a very different approach to the constitutional issues in *Buckley v. Valeo*. The Court acknowledged that there was a compelling governmental interest in preventing corruption and the appearance of corruption. Thus, it upheld the statute’s limits on campaign contributions to candidates, parties, and political committees.²¹ But the Court strongly disagreed—by a vote of 7 to 1—with Judge Wright’s court on the constitutionality of expenditure limits. It struck them all down.²² The justification that expenditure limits helped to prevent the circumvention of contribution limits did not persuade the Supreme Court. More importantly, the Supreme Court repudiated the equality rationale that was a fundamental

19. *Id.* at 840-41 (quoting *United States v. O’Brien*, 391 U.S. 367, 376-77 (1968), and stating that *O’Brien* set forth the pertinent standard); *id.* at 860 (upholding the limitation on candidate campaign expenditures and stating that “compelling governmental interest, both as to need and public perception of need, . . . justifies any incidental impact on First Amendment freedoms”).

20. *See generally* J. Skelly Wright Papers, *supra* note 15; Harold Leventhal Papers (on file with the Library of Congress, Manuscript Division, Papers of Harold Leventhal); Carl McGowan Papers (on file with the Library of Congress, Manuscript Division, Papers of Carl McGowan). I spoke on the telephone or received e-mails from eleven people who were law clerks in 1975 for Judge Wright, Judge Leventhal, Chief Judge Bazelon, and Judge McGowan.

21. *Buckley v. Valeo*, 424 U.S. 1, 26-29 (1976) (per curiam).

22. *Id.* at 39-59.

element in the D.C. Circuit's opinion and in Judge Wright's own thinking.

The Supreme Court noted that proponents believed that the governmental interest in "equalizing the relative ability of individuals and groups to influence the outcome of elections" justified the limitation on independent expenditures by individuals or groups in support of or in opposition to candidates.²³ Not at all, said the Court. "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed to secure the widest possible dissemination of information from diverse and antagonistic sources."²⁴ (This language has been quoted again and again over the years in Supreme Court opinions invalidating campaign finance restrictions.) Striking down expenditure limits inevitably gave the wealthy more of a voice in the political arena. But, as the Supreme Court said in *Buckley v. Valeo*, "The First Amendment's protection against governmental abridgment of free expression cannot properly be made to depend on a person's financial ability to engage in public discussion."²⁵ The Court also expressly rejected the equalizing rationale in striking down the limits on campaign expenditures by candidates from their own resources.²⁶

Judge Wright profoundly disagreed with this part of the Supreme Court's decision in *Buckley v. Valeo*. Six months after the Supreme Court decided *Buckley*, Judge Wright published an article in the *Yale Law Journal* with the title *Politics and the Constitution: Is Money Speech?*²⁷ In the article, Judge Wright disagreed fundamentally with the Court's First Amendment analysis and its vision of the political process. Another

23. *Buckley v. Valeo*, 424 U.S. 1, 48 (1976) (per curiam).

24. *Id.* at 48-49 (internal quotations omitted).

25. *Id.* at 49. Justice Stewart drafted the section upholding contribution limits and striking down expenditure limits. Justice Stewart's language rejecting the equality rationale appeared in his original draft and was not changed during the drafting process. Richard L. Hasen, *The Untold Drafting History of Buckley v. Valeo*, 2 ELECTION L.J. 241, 245, 249 (2003). Justice White was the only Justice who dissented from the opinion of the Court on candidate expenditure limits.

26. The Court wrote that "equalizing the financial resources of candidates" did not justify limitations on expenditures, which infringed fundamental First Amendment rights. *Buckley*, 424 U.S. at 56.

27. J. Skelly Wright, *Politics and the Constitution: Is Money Speech?*, 85 YALE L.J. 1001 (1976).

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contributor to this volume, Professor Johanna Kalb, discusses Judge Wright's insight—set forth in his article—that arguments about campaign finance doctrine are actually constitutive conversations about the shape of our democracy.²⁸

Six years later, in 1982, Judge Wright decided to speak out once again on campaign finance. Columbia Law School invited him to give an endowed lecture, which would be published in the *Columbia Law Review*.²⁹ He knew exactly what he wanted to talk about—*Money and the Pollution of Politics: Is the First Amendment an Obstacle to Political Equality?* Once again, Judge Wright condemned the Supreme Court's jurisprudence on campaign finance. By then, there was more to condemn. Two years after *Buckley v. Valeo*, the Court had decided *First National Bank of Boston v. Bellotti*, which struck down a Massachusetts law prohibiting corporations from spending money for or against general ballot measures.³⁰ The Judge described both *Buckley* and *Bellotti* as “tragically misguided.”³¹

He set forth a compelling account of the consequences of big money in both congressional elections and referendum campaigns. Even then, some thirty years ago, money was distorting political outcomes in alarming ways. Congressmen received more contributions from out-of-state political action committees than from their own constituents, and their legislative votes were highly correlated with the interests of their PAC contributors. In candidate elections, the better-funded candidate won 80–90% of the time. In referendum campaigns, lopsided spending inequalities greatly increased the chances that the corporate position would prevail.³²

Turning to American history and political theory as well as Supreme Court cases, Judge Wright explained why political equality was essential to democracy. He noted that, in the one-person-one-vote cases, the Court had held that each vote must have a proportionately equal opportunity to influence the outcome of an election. But he believed that numerical voting equality was not enough. “A latter-day Anatole France,” he said,

28. Johanna Kalb, *J. Skelly Wright's Democratic First Amendment*, 61 LOY. L. REV. 107 (2015).

29. Wright, *Money and the Pollution of Politics*, *supra* note 2.

30. 435 U.S. 765 (1978).

31. Wright, *Money and the Pollution of Politics*, *supra* note 2, at 609.

32. *Id.* at 614-25.

might well write, after observing American election campaigns, “The law, in its majestic equality, allows the poor as well as the rich to form political action committees, to purchase the most sophisticated polling, media, and direct mail techniques, and to drown out each other’s voices by overwhelming expenditures in political campaigns.”³³

Judge Wright then gave his answer to the question he had posed in the subtitle of the article: *Is the First Amendment an Obstacle to Political Equality?* He said that he favored a powerful and expansive view of the First Amendment—one that protected “diverse, antagonistic, and unpopular speech” from regulation based on its content.³⁴ His D.C. Circuit opinions reflect that approach.³⁵ But, Judge Wright declared, “[t]o invoke the first amendment, not to protect diversity, but to prevent society from defending itself against the stifling influence of money in politics is to betray the historical development and philosophical underpinnings of the first amendment.”³⁶

Judge Wright examined the underlying purposes of the First Amendment and concluded that each of them was not harmed—

33. Wright, *Money and the Pollution of Politics*, *supra* note 2, at 631. Philip M. Stern, son of New Orleans philanthropists Edgar and Edith Stern (who had been among the few people in New Orleans society to support Judge Wright during the school desegregation controversy), quoted the Judge’s paraphrase of Anatole France in the preface to his book. PHILIP M. STERN, *THE BEST CONGRESS MONEY CAN BUY*, at xiv (1988). Stern dedicated his book to Judge Wright, “in appreciation of a lifetime of having a clear-sighted vision of justice, eloquently expressed, and always courageously pursued, especially when that was the most difficult.” *Id.* at v.

34. Wright, *Money and the Pollution of Politics*, *supra* note 2, at 635-36.

35. *See, e.g.*, *Dellums v. Powell*, 566 F.2d 167 (D.C. Cir. 1977) (Wright, J., opinion of the court) (arrests of antiwar protesters and member of Congress speaking to them on the steps of the U.S. Capitol violated their First Amendment rights); *Bus. Executives’ Move for Vietnam Peace v. FCC*, 450 F.2d 642 (D.C. Cir. 1971) (Wright, J., opinion of the court) (FCC approval of broadcast licensees’ policy of refusing all paid advertising on controversial issues unconstitutionally discriminated against controversial speech), *rev’d sub nom.* *Columbia Broad. Sys. v. Democratic Nat’l Comm.*, 412 U.S. 94 (1973); *Women Strike for Peace v. Morton*, 472 F.2d 1273, 1274-94 (D.C. Cir. 1972) (Wright, J., concurring) (federal government violated First Amendment by exercising standardless discretion to deny permission to antiwar group to erect a small temporary display in the Ellipse in Washington, D.C.); *Capital Broad. Co. v. Mitchell*, 333 F. Supp. 582, 587 (D.D.C. 1971) (Wright, J., dissenting) (federal statute favored by cigarette industry that prohibited radio and television advertising of cigarettes violated the First Amendment by shutting off debate on a vital public issue; “the First Amendment does not protect only speech that is healthy or harmless”).

36. Wright, *Money and the Pollution of Politics*, *supra* note 2, at 636.

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but in fact, promoted—by legislation that curbed the distorting influence of big money on election campaigns. For example, some assert that free expression requires protection because it is essential to the search for truth. According to Judge Wright, truth seeking “is not enhanced if some are allowed to monopolize the marketplace by wielding excessive financial resources.”³⁷ Others contend that the objective of First Amendment protections is to protect personal autonomy. In Judge Wright’s view, unchecked political expenditures may drown out opposing beliefs and subject individuals to the arbitrary control of others, thus undermining this First Amendment objective.³⁸ Then there is the safety valve function of the First Amendment. Justice Brandeis wrote that free expression provides a lawful opportunity to discuss grievances and proposed remedies, thus promoting order and stability. Here too, Judge Wright believed that these objectives would be better served by limiting the influence of concentrated wealth on the electoral process.³⁹

Finally, theorist Alexander Meiklejohn viewed self-government as the fundamental principle of the First Amendment. Freedom of expression, according to Meiklejohn, was necessary for informed, rational decision making and therefore essential to a self-governing populace of political equals. Judge Wright maintained that, in present-day politics, this objective required expenditure limits and other campaign finance restrictions. He wrote that such restrictions were “analogous to the rules of order at a town meeting, enforced so that the deliberative process is not distorted.” He added—this was very Judge Wright—that, “like the loud mouth and long talker at the town meeting, untrammelled spending during an election campaign does not serve the values of self-government, nor can it lay claim to first amendment protection.”⁴⁰

Thus, Judge Wright concluded, “[n]one of the rationales for strong protection of free expression—truth, autonomy and self-fulfillment, social stability, or self-government—justifies the continuing and unchecked abuses that excessive spending has

37. Wright, *Money and the Pollution of Politics*, *supra* note 2, at 636.

38. *Id.* at 637.

39. *Id.* at 637-38 (discussing Justice Brandeis’s concurrence in *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring)).

40. *Id.* at 638-39.

brought to the electoral process.”⁴¹ Rather, he wrote, “equality is part of the central meaning of the first amendment and underlies each of its most important purposes.”⁴²

Judge Wright concluded his 1982 article with a grim prediction.

The growing impact of concentrated wealth on the political process, and the glaring inequalities in political campaign resources, threaten the very essence of political equality. The warning signs are plain for all to see. Today’s threat to democracy is not the impending collapse of the structure of democratic institutions, but their continuing erosion from within. If this erosion is not checked, the principle of one person, one vote could become nothing more than a pious fraud.⁴³

A little more than thirty years later, we have seen an unseemly spectacle that the press called the “Sheldon primary.” Sheldon Adelson, a multibillionaire casino owner, made it known that he was looking for a Republican candidate to support for president in 2016. Four presidential hopefuls traveled to Las Vegas to try to win the massive financial support that Adelson was in a position to provide.⁴⁴ Surely this is an antithesis of “one person, one vote.” In April 2014, in *McCutcheon v. FEC*, the Supreme Court struck down aggregate ceilings on campaign contributions by wealthy individuals. These contribution limits had survived the Court’s decision thirty-eight years earlier in *Buckley v. Valeo*. Not this time. The plurality opinion flatly stated that leveling the playing field—in other words, political equality—is not an “acceptable governmental objective.”⁴⁵ As a

41. Wright, *Money and the Pollution of Politics*, *supra* note 2, at 636.

42. *Id.* at 642.

43. *Id.* at 645.

44. Dan Balz, ‘Sheldon Primary’ Symbolizes a Broken Political System, WASH. POST, Mar. 29, 2014, at A2; Dana Milbank, *The Power of the Purse*, WASH. POST, Apr. 2, 2014, at A19; *see also* Ashley Parker, ‘Koch Primary’ Tests Hopefuls in the G.O.P., N.Y. TIMES, Jan. 21, 2015, at A1.

45. *McCutcheon v. FEC*, 134 S. Ct. 1434, 1450 (2014). Reiterating the position first taken in *Buckley*, Chief Justice Roberts’ plurality opinion, joined by three other Justices, declared that, “[n]o matter how desirable it may seem, it is not an acceptable governmental objective to level the playing field, or to level electoral opportunities, or to equaliz[e] the financial resources of candidates.” *Id.* (internal quotations omitted). Justice Thomas, the fifth Justice concurring in the judgment, wrote that all contribution limits should have been struck down as unconstitutional. *Id.* at 1462-65 (Thomas, J., concurring).

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result, each individual may now contribute around two and a half million dollars to parties and candidates in a two-year federal election cycle, if the person gives only to one party.⁴⁶ Other Supreme Court decisions, notably *Citizens United*, have opened the door to unlimited spending by corporations, super PACs, and so-called social welfare organizations, to advocate the election or defeat of political candidates.⁴⁷

Judge Wright would be heartsick. It would be no comfort to him that his dire predictions about money and politics—and inequality—have come true.

46. Matea Gold, *Justices Strike Limit on Donors*, WASH. POST, Apr. 3, 2014, at A1; Press Release, Democracy 21, *The Consequences of Today's Disastrous Decision by the Supreme Court Majority in the McCutcheon Case* (Apr. 2, 2014), available at <http://www.democracy21.org/inside-the-courts/press-releases-inside-the-courts/fred-wertheimer-the-consequences-of-todays-disastrous-decision-by-the-supreme-court-majority-in-the-mccutcheon-case/>.

47. Richard Briffault, *Super PACs*, 96 MINN. L. REV. 1644 (2012); Matt Bai, *How Much Has Citizens United Changed the Political Game?*, N.Y. TIMES MAG. (July 17, 2012), http://www.nytimes.com/2012/07/22/magazine/how-much-has-citizens-united-changed-the-political-game.html?pagewanted=all&_r=0.