

Campaign finance decision is a blow for democracy: Guest opinion

By Ofer Raban

Recently, the Supreme Court invalidated yet another campaign finance regulation that sought to curb the toxic influence of big money over our politics. The lawsuit was brought by an Alabama businessman and the Republican National Committee, who claimed that limiting an individual's campaign contributions in a two year election cycle to a total of \$117,000 was an unconstitutional violation of the freedom of speech. The decision left intact the limitations on the amount individuals can contribute to each political candidate, political party, and a political committee associated with them. But it removed the limit on the aggregate total amount individuals can contribute.

Mind you, individuals are free to spend as much money as they want on behalf of their preferred candidates. The question before the Court did not concern such so-called "independent expenditures" (which were the subject of the notorious Citizens United 2010 decision), but rather campaign contributions: that is, money handed to candidates and political parties, and controlled by them.

The principal opinion was written by Chief Justice Roberts and joined by Justices Scalia, Kennedy, and Alito. Justice Thomas, who agreed with the result, wrote a separate opinion advocating an even tougher position regarding campaign finance restrictions. Justice Breyer wrote a strongly worded dissenting opinion joined by Justices Ginsburg, Sotomayor, and Kagan.

The justices in the majority and the dissent were divided over a number of issues, including the importance of the (now invalidated) aggregate limits to prevent big money donors from circumventing the per-candidate contribution limits. But more fundamentally, they were divided over the very definition of political corruption in a democracy. For the dissent, a political system that allows big money to exercise exceptional influence over political decisions is politically corrupt, and the government acts constitutionally when it seeks to remove such influence. For the majority, by contrast, there is nothing wrong with politicians being influenced by big campaign contributions. To the contrary. As Chief Justice Roberts' opinion put it: "Representatives ... can be expected to be cognizant of and responsive [to their contributors'] concerns. Such responsiveness is key to the very concept of self-governance through elected officials." There is nothing illegitimate here for the government to combat.

There is something deeply amiss in the majority's picture of democracy. Elected representatives should, of course, be responsive to their constituents; but they should be responsive to them based on their votes, not based on their financial prowess. Indeed, given our society's enormous economic inequalities, the majority's view of democracy runs counter to the "one person one vote" principle. That principle was recognized as protected by the U.S. Constitution in an opinion that Chief Justice Earl Warren regarded as his greatest judicial achievement.

Fifty years later, another Chief Justice has a different achievement in mind.

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