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Greg Kesich: Clean Elections ruling will chill speech, not protect it

Under the ruling, wealthy candidates will be able to have more 'free speech' than opponents can afford.

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Someone must have forgotten to tell Eliot Cutler he was being chilled.

Despite the free-speech-killing matching funds that went to Libby Mitchell, his publicly financed Democratic opponent in the last gubernatorial election, the independent candidate continued to dip into his pockets and make his booming voice heard, overtaking Mitchell in the race and narrowly losing to Republican Paul LePage.

It's also amazing that Les Otten kept spending in the Republican primary, knowing that it would just enable Peter Mills, his publicly financed opponent, to get more to spend on his own campaign. It's strange that these well-heeled candidates didn't just give up.

Somehow they missed what Chief Justice John Roberts and his four colleagues on the U.S. Supreme Court divined from looking at the effect of public matching funds in a Clean Elections law in Arizona that is just like one in Maine.

Roberts found that ensuring spending by publicly financed candidates can keep pace with those who have either deep pockets or wealthy supporters is a violation of the First Amendment's protection of free speech. The way the chief justice sees it, a candidate or independent interest group with access to money may choose not to spend it because he or she knows that could just trigger a response from a publicly financed opponent.

Sure, why bother? What good is free speech if the other guy gets to speak, too?

But laws like Maine's Clean Elections Act, the citizen-initiated public financing system, are based on a very different idea, and will now need to be revised to fit Roberts' upside-down view of free speech.

As political races got more expensive, many Mainers feared that few ordinary people who did not have a personal fortune or the backing of powerful interests would bother trying to run for office.

The voices of working men and women with families would not be heard when the policies that affected their lives were written, and the highest office in the state would be off limits unless you were rich or on board with people who were.

The "Clean Elections" answer was not to deny access to the public for people who through their access to money have the ability to take it, but to give others a chance to be heard. Or, the solution was not less speech, but more speech.

Matching funds are how you make sure that the playing field stays level. Without them, a well-resourced traditionally financed candidate knows exactly how much an opponent can spend, and exactly how much he or she would have to spend to thoroughly drown the opponent out.

How this ruling will affect Maine campaigns will be the political story leading up to the next election. The justices did not overturn public financing, so the Clean Elections system will otherwise stay in place.

Some candidates will continue to use it, either because they believe it tells the voters that they are not beholden to donors, or because they have no choice.

They don't have an extra \$10,000 to spend on a Legislative campaign, and they don't know anyone who does.

The real chilling effect would come if those candidates choose not to run for office because they know they can't keep up.

Other candidates will likely run, but choose to avoid public financing because they are afraid of being trapped in a system in which they can be outspent. It would be hard to imagine a gubernatorial nominee from a major party taking this risk, for instance.

These changes will come on the heels of the Citizen United case that makes it easy for corporate money to influence elections in ways that we've already seen in Maine. Last fall, a national group called the Republican State Leadership Committee dropped \$400,000 in just five state Senate races in the closing days of the campaign. (The committee filed its spending report late, delaying the dispersal of matching funds for the Democratic candidates. It received the biggest fine in the history of the Maine ethics commission – \$26,000 – which the group paid without appeal.)

Essentially, a five-judge majority of the Supreme Court has created a system in which the folks with the most money get the most free speech.

Democrats who want to retake control of the Legislature will have to go toe-to-toe with the Republicans, with money from who knows where.

Maine remains a relative bargain for national groups looking to buy some influence, and the Supreme Court ruling should be good news for the TV and radio stations that sell ads at election time.

The rest of us will have to question whose free speech is getting chilled now.

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