

legally SPEAKING

Killing Campaign Finance Reform

No attorney has done more to weaken, if not kill, campaign finance laws than James Bopp Jr. As the principal plaintiffs attorney behind the Citizens United case (see Citizens United v. Fed. Election Comm'n, 558 U.S. 310 (2010)), he paved the way for the U.S. Supreme Court decision three years ago that allowed corporations to spend unlimited amounts of money to support the political candidates of their choice. Bopp also serves as general counsel of the National Right to Life Committee-a position he's held for three and a half decades. And just last spring the Republican National Committee appointed him special counsel. In August, Bopp spoke with California Lawyer editor Martin Lasden. Here are edited excerpts from that videotaped discussion.



James Bopp Jr.

Earn MCLE credit by viewing the full videotaped interview at callawyer.com.

Legally Speaking is a series of in-depth interviews with prominent lawyers, judges, and academics, coproduced by *California Lawyer* and UC Hastings College of the Law.

Q: Just as Wayne LaPierre of the NRA argues that the more guns we have in society and the fewer restrictions we have on those guns, the safer we all are, is it your view that the more money we have sloshing around our political system, the healthier our democracy?

I don't know what you mean by the word sloshing.

Moving around? Circulating? What verb would you use?

I'd say "using for campaign speech." Every dime we are seeking to protect whether it's a contribution to a candidate or a political party or a PAC, independent speech by all those entities, or protection of issue advocacy by any group—all of those things are speech. And that's what the First Amendment protects.

Is there any limit to that logic?

Well, there's a practical limitation. No one budgets an unlimited amount of money to convey a message because at a certain point they're wasting their money. I know reformers like to speak about unlimited expenditures. But practically speaking, that's ridiculous.

In 2010 you told the New York Times that you had a ten-year plan to "dismantle the entire regulatory regime that is called 'campaign finance law.' " Then after that quote appeared you acknowledged there was no such plan. However, let's say you had a ten-year plan—and I realize this is a trick question, but I'll ask it anywaywould you now be ahead of schedule?

I think we're on schedule, actually.

Does that mean there is a plan?

I didn't really have a ten-year plan that specific. But what I was saying was that I thought it was certainly plausible that within ten years, starting from 2007, we could see the Supreme Court dismantle all of the justifications for campaign finance reform. And we are on track to do that.

When people worry that their elected officials are overly influenced by money, in your mind is that a legitimate concern?

I don't even know what that means.

Well, to use an analogy: Let's say you have an illness and there are several treatment options. Certainly, you wouldn't want your

doctor to automatically choose the option that's manufactured by the company that's sending your doctor to Tahiti every year.

Your concept of democracy is that these politicians are experts; that they're like doctors, and that we should empower them to make decisions and not let anybody influence them. We'll put them in an ivory tower someplace, and make them our platonic guardians. Maybe you'll let us vote for them from time to time. But we certainly shouldn't do anything to influence them because, after all, they're the elites, they know better than we do.

See, I don't share that concept. I share the Jacksonian concept of popular sovereignty. To me, it's a good thing that public officials are influenced by popular will. And if I don't like the way somebody is getting influenced, I've got to get in there and fix that. But that doesn't mean passing a law that wipes out your influence or my influence and all the people's influence, and just leave it to the New York Times.

As the law now stands, do corporations have the same right to express them-

LEGALLY SPEAKING:

selves as, say, poets, or law professors?

Yes, definitely, because it's not about where the speech comes from. It's all protected under the First Amendment.

There's a petition before the SEC to obligate publicly traded corporations to disclose where their political spending is going. You're against that?

Yeah, I'm against that. I don't think you should burden political speech by imposing that requirement.

But say you're a shareholder in a corporation where the CEO is drawing from the general treasury to support a candidate who's pro-abortion, pro-Obamacare, and pro-socialism. As a shareholder, shouldn't you have the right to know how that money is being spent?

No. I mean it would be interesting, because I'd want to sell my stock, or if I figured that this violated the CEO's fiduciary responsibility to the corporation then he could be sued-and of course I'm in the business of suing people. But I don't have a right. What's my right?

With regard to the First Amendment, would you describe yourself as an absolutist?

No. I would, however, describe the First Amendment as written in absolute terms. Think of this for a second: The First Amendment says, "Congress shall make no law abridging the freedom of speech." If the founders really wanted Congress to make no law, what would they have said instead? They wrote it in absolute terms. Now, we do have a doctrine that recognizes there are compelling governmental interests. And, as a consequence, some of these provisions that seem absolute give way in rare or extreme situations. Like prohibiting the New York Times from publishing the travel schedules of convoys during World War II. But we've gone so far from there to where we are today. •

Watch the full interview at www.callawyer.com.

Legally Speaking is produced with the generous support of

GIRARDI | KEESE

Fighting for the rights of injured plaintiffs since 1965