

Gorsuch's Free-Speech Lesson

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ABSTRACT

Senate Democrats have been flailing this week trying to land a punch against Neil Gorsuch, but the Supreme Court nominee has had much more success in his role as a legal counterpuncher. Take the nominee's response to Democratic hectoring over the First Amendment. Judge Gorsuch offered the Senator a tutorial on free speech. "The First Amendment, which I'm sworn to uphold as a judge, contains two competing messages," he explained. On the one hand, Congress has the right to pass legislation requiring more disclosure in political spending. On the other hand, the Supreme Court has an obligation to ensure that such disclosure doesn't "chill expression." He cited in particular the 1958 Supreme Court decision, *NAACP v. Alabama*, that protected donors to the civil-rights group from disclosure in the Jim Crow era.

FULL TEXT

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Rhode Island limelighter Sheldon Whitehouse on Tuesday took to badgering Judge Gorsuch about some \$10 million in "dark money" that is being spent on advertising to support his confirmation. He demanded to know if the appellate judge believes these dollars are "corrupting our politics." Progressives like Mr. Whitehouse want to ban anonymous political spending, the better to harass and intimidate opponents from participating in politics. Recall the IRS attacks on Tea Party groups, or the Wisconsin John Doe raids against conservative activists.

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This is reassuring. In recent decades, the High Court with the honorable exception of Justice Clarence Thomas has been too willing to tolerate mandated donor disclosure, even as evidence mounts that activists and prosecutors have used it to target and shut down political opponents. A return to the *NAACP* standard would be an enormous boon to free speech and political participation.

Mr. Whitehouse complained that Judge Gorsuch wouldn't recognize his "simple" point that money in politics is corruption. "I don't think this is simple stuff at all. I think this is hard stuff," the judge replied. Justice Thomas may soon have a new ally on the bench.

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