

STEVENS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 98–963

JEREMIAH W. (JAY) NIXON, ATTORNEY GENERAL
OF MISSOURI, ET AL., PETITIONERS v. SHRINK
MISSOURI GOVERNMENT PAC ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[January 24, 2000]

JUSTICE STEVENS, concurring.

JUSTICE KENNEDY suggests that the misuse of soft money tolerated by this Court’s misguided decision in *Colorado Republican Federal Campaign Comm. v. Federal Election Comm’n*, 518 U. S. 604 (1996), demonstrates the need for a fresh examination of the constitutional issues raised by Congress’ enactment of the Federal Election Campaign Acts of 1971 and 1974 and this Court’s resolution of those issues in *Buckley v. Valeo*, 424 U. S. 1 (1976) (*per curiam*). In response to his call for a new beginning, therefore, I make one simple point. Money is property; it is not speech.

Speech has the power to inspire volunteers to perform a multitude of tasks on a campaign trail, on a battleground, or even on a football field. Money, meanwhile, has the power to pay hired laborers to perform the same tasks. It does not follow, however, that the First Amendment provides the same measure of protection to the use of money to accomplish such goals as it provides to the use of ideas to achieve the same results.*

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*Unless, of course, the prohibition entirely forecloses a channel of communication, such as the use of paid petition circulators. See, e.g., *Meyer v. Grant*, 486 U. S. 414, 424 (1988) (“Colorado’s prohibition of paid

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Our Constitution and our heritage properly protect the individual's interest in making decisions about the use of his or her own property. Governmental regulation of such decisions can sometimes be viewed either as "deprivations of liberty" or as "deprivations of property," see, *e.g.*, *Moore v. East Cleveland*, 431 U. S. 494, 513 (1977) (STEVENS, J., concurring in judgment). Telling a grandmother that she may not use her own property to provide shelter to a grandchild— or to hire mercenaries to work in that grandchild's campaign for public office— raises important constitutional concerns that are unrelated to the First Amendment. Because I did not participate in the Court's decision in *Buckley*, I did not have the opportunity to suggest then that those property and liberty concerns adequately explain the Court's decision to invalidate the expenditure limitations in the 1974 Act.

Reliance on the First Amendment to justify the invalidation of campaign finance regulations is the functional equivalent of the Court's candid reliance on the doctrine of substantive due process as articulated in the two prevailing opinions in *Moore v. East Cleveland*. The right to use one's own money to hire gladiators, or to fund "speech by proxy," certainly merits significant constitutional protection. These property rights, however, are not entitled to the same protection as the right to say what one pleases.

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petition circulators restricts access to the most effective, fundamental, and perhaps economical avenue of political discourse, direct one-on-one communication. . . . The First Amendment protects appellees' right not only to advocate their cause but also to select what they believe to be the most effective means for so doing").