Arkansas Educational Television Commission ("AETC"), explained that this particular type of debate was not a traditional public forum and also relied on simple calculations: To allow *all* interested candidates an opportunity to participate would generate the quintessential "Chairman's Problem," wherein the collective result would be *less* speech, not more.[88] Numbers, in other words, were the key considerations: the data indicated that in the 1988, 1992, and 1996 presidential elections, "no fewer than 19 candidates appeared on the ballot in at least one State."[89] And thus, the Court reasoned, "[w]ere it faced with the prospect of cacophony, on the one hand, and First Amendment liability, on the other, a public television broadcaster might choose not to air candidates' views at all."[90]

The dissenters, however, interpreted these data in a very different light. For them, the majority misjudged the significance of Forbes' financial resources and his anticipated impact on the election.[91] While he was labeled as "not a serious candidate" by the AETC staff, the dissenters noted that the Republican victor in the Third District race in 1992 received only 50.22% of the vote while the Democrat received 47.2%.[92] Thus, an independent candidate like Forbes *could* still have a very significant effect on the election in such a divided district, even if he was unlikely to win the seat. Further, while the majority tacitly accepted the AETC staff's evaluation of Forbes' financial resources—concluding that his limited financial backing suggested diminished viability as a candidate—the dissenters again drew the inverse conclusion: "[T]he fact that Forbes had little financial support was considered as evidence of his lack of viability when the factor might have provided an independent reason for *allowing* him to share a free forum with wealthier candidates."[93]

3. *Show Me the Data!*

One of the remarkable elements of the *Burson* case, discussed in more detail in Part III.A above, was the fact that the Court, inquiring as to the availability of statistics and data to justify the state's "campaign-free zone," found that the evidence was *incapable* of being provided—given the long tradition of these laws—and *still* upheld the zones as constitutionally sound efforts to protect the right to vote.[94] As the majority explained:

> As a preliminary matter, the long, uninterrupted, and prevalent use of these statutes make it difficult for States to come forward with the sort of proof the dissent wishes to require. The majority of these laws were adopted originally in the 1890's, long before States engaged in extensive legislative hearings on election regulations. The prevalence of these laws,

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[88] *See* Bertrand de Jouvenel, *Seminar Exercise: The Chairman's Problem*, 55 AM. POL. SCI. REV. 368, 368–72 (1961). In this fascinating theoretical exercise, de Jouvenel portrays the difficulties inherent in any effort to afford all speakers an "equal" voice in matters of public concern.
[89] *Ark. Educ. Television Comm'n*, 523 U.S. at 681.
[90] *Id.*
[91] *See id.* at 684 (Stevens, J., dissenting).
[92] *See id.* at 685.
[93] *Id.* at 692 (emphasis added).
[94] Burson v. Freeman, 504 U.S. 191, 206–08 (1992).

> both here and abroad, then encouraged their reenactment without much comment. The fact that these laws have been in effect for a long period of time also makes it difficult for the States to put on witnesses who can testify as to what would happen without them. Finally, it is difficult to isolate the exact effect of these laws on voter intimidation and election fraud. Voter intimidation and election fraud are successful precisely because they are difficult to detect.[95]

In other words, the "long period of time" satisfied the state's burden and thereby released the state from the obligation of empirically demonstrating the *continued* necessity of these zones.

But there are many issues in these cases that cannot necessarily be empirically demonstrated. What would distinguish these other issues (i.e., showing a causal link between large financial contributions and diminished public confidence, or proving that anonymous speech discourages vigorous public debate) from the Court's relaxed evidentiary requirement in *Burson*? Did the Court draw the right inferences from the lack of data presented, or should such restrictions be subject to an even more rigorous standard? In a broader sense, what these cases illustrate is the general imprecision and inconsistent manner with which the Court appeals to data, the ambiguity of its holdings (with respect to the guidance offered to lower courts and political actors), the problems associated with multiple interpretations of the same statistical "evidence," and the questions that must be confronted when the Court extrapolates from "missing" data in certain situations.

C. THE ASPIRATIONAL METHOD

Most individuals seem to accept the notion that justices' personal views, policy-related or otherwise, influence their views of the law—at least to *some* degree. While some sociological jurisprudes advanced this argument to its extreme (i.e., all that matters is "what the judge had for breakfast"), we can assume from Senate confirmation hearings—and the open discussion of likely court nominations during presidential campaigns, for example—that most Americans believe that a judge's personal values, perceptions, and experiences will influence her behavior on the court. Accepting that the nature and extent of the influence of personal characteristics and biases on judicial decisionmaking is the subject of considerable disagreement amongst scholars,[96] I argue in the next two sections that the justices' individual assessments of the intentions, design, and operations of the electoral process *itself* significantly influence their understanding of these issues.[97]

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[95] *Id.* at 208.

[96] See *supra* note 10 for a review of the major studies of judicial behavior.

[97] The concept of "corruption" in campaign finance provides an excellent example of how the evaluation of various electoral speech regulations requires the jurist to invoke some transcendent mental image of how the electoral process is *supposed* to operate. "Corruption," in other words,

> is thus a loaded term: you cannot call something corrupt without an implicit reference to some ideal. In order to employ the concept of corruption in the context of a political

In this regard, I am emphasizing what Professor Richard Pildes has called "judicial culture"—or, the "empirical assumptions, historical interpretations, and normative ideals of democracy" held by the justices.[98] In cases involving contestable democratic principles and practices, "judicial culture" necessarily influences conclusions of law:

> The cultural attitudes judges bring toward these kind of questions surely influence, if they do not completely dominate, how judges respond to empirical claims and open-ended precedents—which is why, perhaps, most justices end up consistently on the same side of these cases, despite differences in facts, partisan consequences, and precedents among the various cases involving democracy that have recently been before the Court.[99]

In this section of the Article I focus on a particular "judicial culture"—paying attention to arguments and assertions that express an overriding faith in human nature and man's capacity for self-governance; a spirit of optimism that idealizes vigorous and active citizenship; a trust in the potential of our electoral institutions; and a belief that, under the right conditions, political speech serves the ideals of representative government. This "aspirational" approach acknowledges that corruption and abuse are possible where speech liberties are concerned. Occasional bad apples, however, do not make for a tainted barrel: a free society, according to this perspective, should start from rosier assumptions rather than the more guarded, skeptical, and deferential judicial culture discussed in the following section.

My analysis of the aspirations expressed in these cases can be arranged according to two basic themes: 1) a trust and faith in the capacity of the *people* to be self-governing and to properly enjoy freedom of speech in an open society, and 2) a belief in the potential of the electoral *process* to serve the aims of democratic governance. We begin, in this first section, with a discussion of the Court's emphasis on the rational qualities of *individuals*—a vision of citizens capable of making difficult decisions and seeing liberty through to its proper end.

1. *The People*

Dissenting in *Austin v. Michigan Chamber of Commerce*, Justice Scalia chastised the majority for failing to appreciate the discerning qualities of the American citizen.[100] "The premise of our system," he reminded those justices who supported the state's efforts to muffle the corporate voice, "is that there is no such thing as too much speech—that the people are not

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> controversy, such as that over campaign finance, one must have some underlying notion of the pure, original or natural state of the body politic.

Thomas F. Burke, *The Concept of Corruption in Campaign Finance Law*, 14 CONST. COMMENT. 127, 128 (1997).

[98] Richard H. Pildes, *Democracy and Disorder, in* THE VOTE: BUSH, GORE & THE SUPREME COURT 140, 142 (Cass R. Sunstein & Richard A. Epstein eds., 2001).

[99] *Id.* at 151.

[100] 494 U.S. 652 (1990).

foolish but intelligent, and will separate the wheat from the chaff."[101] Government need not patronizingly restrict particular voices to protect the people; trusting in the citizen's ability to make distinctions and draw conclusions is preferable, according to Scalia, because it returns power to the ultimate source and sustenance of any healthy democratic society: rational and engaged individuals.[102] With equal vigor, Justice Scalia reasserted this claim in his recent dissent in *McConnell v. FEC*. As he put it:

> The premise of the First Amendment is that the American people are neither sheep nor fools, and hence fully capable of considering both the substance of the speech presented to them and its proximate and ultimate source. If that premise is wrong, our democracy has a much greater problem to overcome than merely the influence of amassed wealth. Given the premises of democracy, there is no such thing as *too much* speech.[103]

And yet, it was just such a rational and engaged individual who was shut out of the speech marketplace in the "campaign-free zone" case, *Burson v. Freeman*.[104] Rebecca Freeman, a longtime political activist and campaign worker, routinely advocated at the polling place for her candidates and causes because she had heard that "about 15% of the voters come to the polls undecided and that you can sway their vote" at the polling place.[105] For Ms. Freeman, then, the area around the polling place was the ideal location to interact with and persuade voters, especially regarding lower-salience issues, questions, and offices for which they may still be undecided. While the pragmatic method discussed below might lead one to accept the state's concern regarding the *potential* for fraud—viewing *interactions* as *interference*—from an aspirational perspective, as Justice Stevens indicates, "The hubbub of campaign workers outside a polling place may be a nuisance, but it is also the sound of vibrant democracy."[106]

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[101] *Id.* at 695.

> As conceded in Lincoln's aphorism about fooling "all of the people some of the time," that premise will not invariably accord with reality; but it will assuredly do so much more frequently than the premise the Court today embraces: that a healthy democratic system can survive the legislative power to prescribe how much political speech is too much, who may speak, and who may not.

Id.

[102] *Id.*

[103] McConnell v. Fed. Election Comm'n, 540 U.S. 93, 258–59 (2003) (Scalia, J., dissenting).

[104] 504 U.S. 191 (1992).

[105] *See* Pinaire, *supra* note 59.

[106] *Burson*, 504 U.S. at 228 (Stevens, J., dissenting). Justice Ginsburg expressed a similar trust in the nature of the exchange between citizens engaged in the initiative petition process. Writing for the majority in *Buckley v. Am. Const. Law Found.*, Justice Ginsburg concluded that several of the state's regulations meant to discourage fraud in the petition process constituted "undue hindrances to *political conversations* and the exchange of ideas." 525 U.S. 182, 192 (1999) (emphasis added). Despite suggestions to the contrary—in the form of academic and anecdotal evidence implying that petition circulation amounts to little more than deceptive "sales pitches," as opposed to "political conversations"—Justice Ginsburg emphasized and imagined (aspired to) the potential for genuine citizen-to-citizen discussions of issues and the vigorous grassroots, participatory benefits theoretically intended by the institutions of direct democracy. *See id.*

In the same spirit, Justice Stevens, in *McIntyre v. Ohio Elections Commission*,[107] the anonymous political pamphleteering case assessed in Part III.A above, made the case for the individual as the final and proper judge of truth and falsehood, of good and bad propositions. Writing for the majority, he offered:

> Don't underestimate the common man. People are intelligent enough to evaluate the source of an anonymous writing. They can see it is anonymous. They know it is anonymous. They can evaluate its anonymity along with its message, as long as they are permitted, as they must be, to read the message. And then, once they have done so, it is for them to decide what is 'responsible,' what is valuable, and what is truth.[108]

In the same tone as Scalia in the *Austin* case, though significantly involving a qualitatively different *form* of speech (see Part IV below),[109] Justice Stevens asserted that the *people* must be trusted to make such difficult determinations. The citizen/"consumer" in the "marketplace," in other words, is quite capable of evaluating the "products" that compete for his or her attention, no matter how they are presented.

Some engaged in the exchange of ideas might exploit the system, to be sure; but such abuses are not, according to this aspirational approach, endemic to the system. Justice Black made this clear in his dissent in *United Public Workers v. Mitchell*.[110] In this case, the Court upheld provisions of the Hatch Act that prohibited federal employees from "taking any active part in political management or in political campaigns."[111] Justice Black argued strongly that the Court had proceeded under the wrong assumptions.[112] Certainly there exists the *potential* for corruption in the political process, Black conceded, but *anticipated* impropriety should hardly be the starting premise:

> It is argued that it is in the interest of clean politics to suppress political activities of federal and state employees. It would hardly seem to be imperative to muzzle millions of citizens because some of them, if left their constitutional freedoms, might corrupt the political process. All political corruption is not traceable to state and federal employees. Therefore, it is possible that other groups may later be compelled to sacrifice their right to participate in political activities for the protection of the purity of the Government of which they are a part.
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> It may be true, as contended, that some higher employees, unless restrained, might coerce their subordinates or that government employees might use their official position to coerce other citizens. But is such a possibility of coercion of a subordinate by his employer limited to

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[107] 514 U.S. 334 (1995).
[108] *Id.* at 348 n.11 (quoting New York v. Duryea, 76 Misc. 2d 948, 966–67 (1974)).
[109] Recall, however, that Justice Scalia vigorously dissented from the majority in *McIntyre,* finding that the traditions and existing *practices* of the forty-nine states and federal government trumped the aspirational faith in the people's discerning faculties.
[110] 330 U.S. 75 (1947).
[111] *Id.* at 79 n.3 (internal citation omitted).
[112] *See id.* at 112–15 (Black, J., dissenting).

> governmental employer-employee relationships? The same quality of argument would support a law to suppress the political freedom of all employees of private employers, and particularly of employers who borrow money or draw subsidies from the Government. . . . *It hardly seems consistent with our system of equal justice to all to suppress the political and speaking freedom of millions of good citizens because a few bad citizens might engage in coercion.*[113]

That is, while offenses are *possible* in the political system, the dictates and expectations of vigorous citizenship should be controlling in such cases. Punishing *all* for the potential crimes of *some*, in other words, was a backwards approach that misconceived the ultimate source of legitimate governmental authority.

It is this spirit of citizen-sovereignty that Justice Thomas has repeatedly espoused in electoral speech cases, but especially in campaign finance cases. In *Nixon v. Shrink Missouri Government PAC*, Justice Thomas lamented the majority's continued adherence to inconsistent and improper first principles.[114] By again accepting a restriction on political speech rights—in the form of limits on contributions to candidates for state office—the Court had rejected the standard of the free and self-governing individual that serves as the foundation for American democracy. The right to free speech, Thomas argued, "is a right held by each American, not by Americans en masse."[115] To accept the notion that some candidates' free speech rights could be restricted, so long as others were still intact, "[flies] in the face of the premise of our political system—liberty vested in individual hands safeguards the functioning of our democracy."[116] The Constitution, Thomas concluded, "leaves it entirely up to *citizens* and *candidates* to determine who shall speak, the means they will use, and the amount of speech sufficient to inform and persuade."[117]

The assumptions and perceptions that the justices bring to these cases shape their understanding of the place and limits of freedom of speech in the electoral process. A vision of citizens engaged in the political process that is more inclined to pragmatically concede that the "bad man" will take advantage of speech liberties is obviously more inclined to support the state's proposed reform measures; but a set of beliefs and values that aspires to (and hopes for) the best—one that sees the glass as half full, rather than half empty—is more willing to stomach the occasional indiscretions of *some* for the greater good of *all*. This disposition not only promotes an abiding faith in the power of the individual to comprehend, digest, and evaluate political issues and situations, it also encourages faith in the capacity of American political *institutions* to fulfill their democratic mission.

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[113] *Id.* at 112–14 (emphasis added).
[114] Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377, 420 (2000) (Thomas, J., dissenting).
[115] *Id.*
[116] *Id.*
[117] *Id.* (emphasis added).

2. *The Process*

The aspirational method of reasoning and rhetoric posits that campaigns and elections can and do function as intended, so long as freedom and openness are preserved. This disposition is predicated on the assumptions about human nature explored above, but it extends these values, and this faith, to our electoral institutions and political practices. With free and open input, the people—evaluating candidates within campaigns and casting their votes in elections—can and do generally arrive at a desirable result; both the citizen and the political system can and do benefit, in other words,[118] from a regulatory approach that imagines our political practices in the best possible light, that trusts the electoral process to deliver optimal results, and that finds the electorate capable and rational.

This spirit is evident in the Court's treatment of cases pertaining to state restrictions on the amount and form of information—and the type and variety of speech—that reaches the voters. As we see the Court indicating in these cases, for the electorate to make wise and informed decisions, it must be able to consider speech and expression in its multiple forms. The First Amendment, as Justice Brennan reiterated in *Brown v. Hartlage*,

> embodies our trust in the free exchange of ideas as the means by which the people are to choose between good ideas and bad, and between candidates for political office. The State's fear that voters might make an ill-advised choice does not provide the State with a compelling justification for limiting speech. It is simply not the function of government to 'select which issues are worth discussing or debating' in the course of a political campaign.[119]

Thus, while abuses may occasionally occur, the electoral process is still best served, and functions in its best capacity, when speech and expression are generally uninhibited.

Justice Stewart sounded this theme, demonstrating faith in the capacity of a free and open electoral process, in *Monitor Patriot Co. v. Roy*.[120] *Roy*, which extended the *New York Times v. Sullivan*[121] reasoning to candidates for political office, expressed aspirations typical of those that frame classic marketplace of ideas reasoning: campaigns and elections function at their best, and achieve their desired ends, when the voters have the most complete information. Thus, Stewart reasoned, "it is by no means easy to

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[118] "We have never insisted that the franchise be exercised without taint of individual benefit," the Court explained in *Brown v. Hartlage*, a case that determined that a candidate's promise to lower salaries if elected could not constitutionally be enforced as a violation of Kentucky's Corrupt Practices Act (prohibiting the offering of material benefits to voters). "[I]ndeed," Justice Brennan's majority opinion continued, "our tradition of political pluralism is partly predicated on the expectation that voters will pursue their individual good through the political process, and that the summation of these individual pursuits will further the collective welfare." 456 U.S. 45, 56 (1982).

[119] *Id.* at 60 (internal citations omitted).

[120] 401 U.S. 265 (1971).

[121] Considered against the background of a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," the *Sullivan* Court declared that public officials could not recover damages for a defamatory falsehood absent proof that the statement was made with "actual malice." 376 U.S. 254, 270, 279–80 (1964).

see what statements about a candidate might be altogether without relevance to his fitness for the office he seeks."[122]

In this spirit the Court optimistically claimed in *Citizens Against Rent Control v. Berkeley* that full disclosure, *by itself*, had the capacity to preserve the integrity of the electoral process.[123] Over a vociferous dissent from Justice White, the majority found unconstitutional the municipal limit of $250 on contributions to committees formed to support or oppose ballot measures. As we will see in the discussion of the pragmatic method below, the dissent was concerned with the power of corporations and special interests to overwhelm the electoral process.[124] Yet, such concerns were unwarranted, the more aspirational majority concluded. The electoral system contains within it self-correcting qualities; therefore, deficiencies are addressed best by citizen-participants in the political process:

> Whatever may be the state interest or degree of that interest in regulating and limiting contributions to or expenditures of a candidate or a candidate's committees there is no significant state or public interest in curtailing debate and discussion of a ballot measure. . . . The integrity of the political system will be adequately protected if contributors are identified in a public filing revealing the amounts contributed.[125]

More recently, Justice Kennedy embraced this notion of openness in his concurrence in *Republican Party of Minnesota v. White*.[126] Recall that in this case the Court found unconstitutional Minnesota's restriction on judicial campaign speech, finding that such limits deprived voters of important information as they evaluated the records and interests of candidates for judgeships. While the majority seemed to acknowledge that certain conflicts of interest attached to the unique situation of an "impartial" judge running for office and addressing controversial issues of public concern, Justice Kennedy's concurrence underscored his faith in the voters and the self-regulating qualities of free exchange in the electoral process. "If Minnesota believes that certain sorts of candidate speech disclose flaws in the candidate's credentials," he wrote, "democracy and free speech are their own correctives. . . . Free elections and free speech are a powerful combination: Together they may advance our understanding of the rule of law and further a commitment to its precepts."[127]

But while lofty aspirations urge us to accept that a free and open electoral process can and does work efficiently and appropriately, there is a more particular message expressed in several of the Court's decisions: the notion that a broad range of speech and expression is deserving of protection and that information can and should come to the voters from an array of sources. In this spirit, Justice Powell, in *First National Bank of*

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[122] *Monitor Patriot Co.*, 401 U.S. at 275.
[123] 454 U.S. 290, 295–96 (1981).
[124] *See id.* at 305–06 (White, J., dissenting).
[125] *Id.* at 299–300.
[126] 536 U.S. 765 (2002).
[127] *Id.* at 795.

Boston v. Bellotti, found that the corporate voice, too, deserved a place in the free and open evaluation of matters of public concern.[128]

The Bank, in this case, wished to spend money in opposition to a referendum, but was barred from doing so by a Massachusetts criminal statute that prohibited various business entities from making expenditures of this sort when the public question did not "materially affect" them. In his decision, Powell expressed a notable faith in the referendum process *itself*, concluding that "[t]he risk of corruption perceived in cases involving candidate elections . . . simply is not present in a popular vote on a public issue."[129] Corporate bodies, he explained, also have the right to "speak" for or against political proposals, because ultimately "the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments."[130] "They may consider," he continued, "in making their judgment, the source and credibility of the advocate."[131]

Justice Marshall demonstrated a similar faith in the electoral process in *Eu v. San Francisco County Democratic Central Committee*.[132] In this case, Marshall, writing for the majority, explained that parties, too, have essential First Amendment speech rights in political campaigns and elections. While the state has a legitimate interest in preventing corruption in the process, the Court found, it could not prohibit the governing boards of party committees from endorsing candidates in primary races. Abuse, deal-making, and other sordid activities were surely possible where parties were involved; but, Marshall made clear, a party could still be an essential contributor to the debate:

> California's ban on primary endorsements, however, prevents party governing bodies from stating whether a candidate adheres to the tenets of the party or whether party officials believe that the candidate is qualified for the position sought. This prohibition directly hampers the ability of a party to spread its message and hamstrings voters seeking to inform themselves about the candidates and the campaign issues. . . . A "highly paternalistic approach" limiting what people may hear is generally suspect . . . but it is particularly egregious where the State censors the political speech a political party shares with its members.[133]

Marshall's views illustrate the significance of the justices' personal perceptions of, and biases toward, the various forms of speech in the electoral process. While he emphatically supported the rights of parties to communicate their messages in political campaigns,[134] he had a much different viewpoint, for example, when it came to the role of *corporate* participants in the electoral process—a tendency I will discuss more in Part

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[128] 435 U.S. 765 (1978).
[129] *Id.* at 790 (internal citations omitted).
[130] *Id.* at 791–92.
[131] *Id.*
[132] 489 U.S. 214 (1989).
[133] *Id.* at 223–24 (internal citations omitted).
[134] *See, e.g.*, Renne v. Geary, 501 U.S. 312, 349 (1991) (Marshall, J., dissenting).

IV below. These same sorts of preferences and inclinations will be evident in our review of the pragmatic method.

D. THE PRAGMATIC METHOD

The pragmatic approach to electoral speech regulations, as I refer to it, is informed and inspired by this basic premise: human beings are, to be sure, not angels (and not always or entirely rational), and the process is susceptible to malfunction and abuse. Regulations, revisions, and reforms proposed by legislators (those who draw from their own experiences with and observations of the electoral process) are, therefore, required to preserve right-functioning campaigns and elections. Eschewing abstractions and aspirations in favor of experimentation and, arguably, a more "realistic"[135] perspective, those who employ the pragmatic method understand that individuals and institutions are easily corrupted, or at least confused,[136] and that "common sense"[137] should guide the Court's consideration of these issues. State regulations, therefore, are essential to police the electoral process and to preserve the integrity of political institutions.

1. *The People*

While not *all* individuals are lacking in rational capacity or are likely to abuse freedom of speech during campaigns and elections, the pragmatic method tends to concentrate on those who are; it is skeptical when confronted with aspirations advancing some romantic vision of political speech, and it is more inclined to find the state's regulatory efforts to be reasonable and appropriate. While it supports the principle of an informed voting public, for example, it also anticipates trouble, reminding us that "[t]he First Amendment is not a shelter for the character assassinator."[138] And, while acknowledging that free and open public fora certainly vitalize the electoral process by allowing the people to consider and evaluate competing claims, this method reasons that "simple common sense," for example, demonstrates that a restricted zone around the polling place is necessary to prevent sinister speakers from casting a "taint of intimidation and fraud"[139] upon voting rights, and cautions that overuse or abuse of

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[135] In his majority opinion in *McConnell v. FEC*, Justice Souter made an appeal to "realism," incrementalism, and at least the spirit of pragmatism as he explained, "We are under no illusion that B.C.R.A. will be the last Congressional statement on the matter. Money, like water, will always find an outlet. What problems will arise, and how Congress will respond, are concerns for another day." 540 U.S. 93, 224 (2003).

[136] Professor James A. Gardner has stated it well: As the Court perceives it, in certain cases, when voters "venture into public to cast their votes . . . [they] become unsure, easily flummoxed, and susceptible to suggestion—in a word, incompetent." James A. Gardner, *Neutralizing the Incompetent Voter: A Comment on* Cook v. Gralike, 1 ELECTION L.J. 49, 49 (2002).

[137] Criticizing Justice Kennedy's "crabbed view of corruption," Justice Souter averred that such narrow conceptions unwisely ignored "precedent, common sense, and the realities of political fundraising exposed by the record in this litigation." *McConnell*, 540 U.S. at 152.

[138] St. Amant v. Thompson, 390 U.S. 727, 734 (1968) (Fortas, J., dissenting).

[139] Burson v. Freeman, 504 U.S. 191, 211 (1992).

access also tends to subject citizens to "the blare of political propaganda."[140]

Expressing a similar sentiment, Justice Scalia, dissenting in *McIntyre v. Ohio Elections Commission* (the pamphleteering case discussed above), saw the potential for serious problems if speakers were allowed to hide under the cover of a supposed right to anonymous speech. "I can imagine no reason," Scalia wrote,

> why an anonymous leaflet is any more honorable, as a general matter, than an anonymous phone call or an anonymous letter. It facilitates wrong by eliminating accountability, which is ordinarily the very purpose of the anonymity. . . . [T]o strike down the Ohio law in its general application—and similar laws of 49 other States and the Federal Government—on the ground that all anonymous communication is in our society traditionally sacrosanct, seems to me a distortion of the past that will lead to a coarsening of the future.[141]

This depiction could not differ more from Justice Stevens' aspirational, even gushing, exaltation of the noble dissident speaker, the courageous advocate that instantiates our democratic ideals.[142] In Scalia's rhetoric, we see not the virtuous potential of anonymous speech, but the likely *abuse* of this liberty; rather than being persuaded to accept the version of electoral speech that comes wrapped in the idealistic cover of principles and highest aspirations, we are admonished to reject such imagery in favor of more realistic concessions. On these opposing conceptions rest questions such as: Should freedom of speech in the electoral process be unfettered or carefully monitored? Should the Court start from lofty aspirations, or should it frankly admit to the potential for abuse and accede to state supervision of the process?

2. *The Process*

The central concern of the pragmatic method, however, is the vulnerability of the *institutions* of the electoral process itself. More than anything, this mode of reasoning and rhetoric echoes the state's expressed concerns over the role of money in political campaigns—assuming that with contributions come certain expectations, for example—and it is animated by an overriding interest in preserving the integrity of electoral

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[140] Lehman v. City of Shaker Heights, 418 U.S. 298, 304 (1974).

[141] McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 385 (1995) (Scalia, J., dissenting) (internal citations omitted).

[142] As we will see in Part IV *infra*, these two often clash in their dispositions toward different *forms* of speech. In a recently decided door-to-door solicitation case, Justice Scalia scoffed at Justice Stevens' excessively aspirational depiction of political dissidents who might be inclined not to speak *at all*, if they were required to register with town officials. Responding to Stevens' assertion that these individuals were "patriotic citizens," Scalia argued:

> As for the Court's fairytale category of "patriotic citizens," who would rather be silenced than licensed in a manner that the Constitution (but for their "patriotic" objection) would permit: If our free-speech jurisprudence is to be determined by the predicted behavior of such crackpots, we are in a sorry state indeed.

Watchtower Bible & Tract Soc'y of N. Y., Inc. v. Vill. of Stratton, 536 U.S. 150, 171 (2002) (internal citations omitted).

institutions and promoting public confidence in government.[143] In this respect, the pragmatist shares the aspirationalist's concern for the future, yet the former finds the latter group to be either shockingly naïve or remarkably oblivious as to the *actual* workings of electoral politics. "In the trenches," the argument would go, politics is not pretty and thus supervision is necessary; accepting the potential for abuse, distortion, and corruption where certain speakers and forms of speech are implicated is necessary to preserve the integrity of our political process and institutions.

To see the degree to which such concerns influence the justices' decisions in these cases is to appreciate how important perceptions, assumptions, and appearances are in the evaluation of electoral speech legislation. Perhaps the most influential case to rely on suppositions and appearances of wrongdoing with respect to the role of money in politics (in this body of law and beyond) is *Buckley v. Valeo*.[144] In this paradigmatic case—wherein the per curiam majority rejected the expenditure limitations of the Federal Election Campaign Act ("FECA") (as amended in 1974), but found the contribution limitations to be constitutional—the pervasive cynicism of the day colored the Court's acceptance of the state interest in preventing both corruption and the appearance of corruption. "To the extent that large contributions are given to secure a political *quid pro quo* from current and potential office holders," the Court acknowledged,

> the integrity of our system of representative democracy is undermined. Although the scope of such pernicious practices can never be reliably ascertained, the deeply disturbing examples surfacing after the 1972 election demonstrate that the problem is not an illusory one. Of almost equal concern as the danger of actual *quid pro quo* arrangements is the impact of the appearance of corruption stemming from public awareness of the opportunities for abuse inherent in a regime of large individual financial contributions.[145]

What this reasoning underscores is the fundamental skepticism at the heart of this method. Whereas the aspirationalist might be inclined to view contributions as an indication that a candidate and her supporters are committed to the same policies, or that money is the "voice" of the wealthy who lack the time to "speak" in a more conventional sense, the pragmatist arrives at the situation prepared to assume: 1) corruption is possible and/or likely once financial contributions pass a particular threshold, and, perhaps

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[143] Perhaps the most consistent practitioner of the pragmatic method, Justice Byron White explained in *Buckley v. Valeo* that the political process, in its current form, supported abuses of speech liberties and thus demanded reform to preserve the good name of political institutions:

> It is also important to restore and maintain public confidence in federal elections. It is critical to obviate or dispel the impression that federal elections are purely and simply a function of money, that federal offices are bought and sold or that political races are preserved for those who have the facility—and the stomach—for doing whatever it takes to bring together those interests, groups, and individuals that can raise or contribute large fortunes in order to prevail at the polls.

424 U.S. 1, 265 (1976).

[144] *Id.*

[145] *Id.* at 26–27.

more importantly, 2) even if there is no evidence of *actual* corruption, most people are likely to *assume* some degree of impropriety and this fact, in and of itself—and regardless of its accuracy—gives rise to a legitimate state interest because it could discourage participation and trust in the political process.

Later campaign finance cases, building on the reasoning set forth in *Buckley*, have continued to rely on this central pragmatist premise and have consistently demonstrated how significant the justices' personal perceptions are to their evaluation of electoral speech legislation.[146] In a recent case balancing speech rights against the dangers of large amounts of money in the political process, *FEC v. Colorado Republican Federal Campaign Committee* ("Colorado II"), the Court expressed the same skeptical sentiment that framed the *Buckley* case.[147] While "independent" expenditure limits on party spending were ruled unconstitutional in "Colorado I," this case involved expenditures by parties that were "coordinated" with particular candidates. Finding the limitations on such expenditures to be constitutional—because this type of "expenditure" was more akin to an evasive and indirect "contribution"—the five-member majority portrayed its pragmatic assessment of the workings of the political process. The fault in the argument that parties should not be held to such expenditure restrictions, the Court noted,

> is not so much metaphysics as myopia, a refusal to see how the power of money *actually* works in the political structure.
>
> When we look directly at a party's function in getting and spending money, it would ignore *reality* to think that the party role is adequately described by speaking generally of electing particular candidates. The money parties spend comes from contributors with their own personal interests.[148]

"What a realist would expect to occur has occurred," the majority reiterated later in the decision: "Donors give to the party with the tacit understanding that the favored candidate will benefit."[149] What this case indicates then is the frankness of the pragmatist's appeal to *intuition*—the reliance on assumptions, the understanding of the flaws and loopholes in the process, the expectation that most individuals will (or, at least, that most people *assume* they will) take advantage of the electoral process in such a way, and the willingness to accept reform measures in the form of state-imposed restrictions on speech and speakers of a certain kind.

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[146] Justice Souter made this abundantly clear during the oral argument in the *Shrink PAC* case:

> I mean, I assume a couple of things are meant by appearance of corruption, and you know, tell me if I'm wrong. One has been mentioned, and that is, *I think most people assume—I do, certainly—that someone making an extraordinarily large contribution is going to get some kind of extraordinary return for it. I think that is a pervasive assumption.*

Transcript at 11, Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377 (1999) (No. 98-963) (emphasis added).

[147] 533 U.S. 431 (2001).

[148] *Id.* at 450–51 (emphasis added).

[149] *Id.* at 458.

By pragmatic reasoning, the corporate voice, for example, tends to be an overpowering entity that threatens basic democratic principles—a bully with a bullhorn who dominates the process and drowns out the speech of regular citizens. Whereas an aspirational approach might be inclined to view corporations as legitimate participants in a larger public discussion—assuming that a healthy and pluralistic society can accommodate the input of *all* contributors—the pragmatic mode resists such a notion. Reflecting this skepticism, Justice White asserted in *First National Bank of Boston v. Bellotti*, that the electoral process is a special environment—the "essence of our democracy"—and an arena where the public has a heightened interest in preventing "corporate domination."[150] Furthermore, he explained in *Citizens Against Rent Control v. Berkeley*, allowing corporate involvement (large financial contributions) in referendum measures may conceivably overshadow the efforts of individuals, discourage participation, and undermine public confidence—and these dangers may be recognized even without *causal* evidence of undue influence.[151] What is central here—and for the pragmatist method generally—is the expectation that if the process *can* be misused or abused, it quite often *will* be, and thus some "breathing space" should be accorded to Congress.[152]

But while pragmatic concessions might take seriously the concerns over "war chests"[153] that corporations are capable of amassing and steering toward an "unfair advantage in the political marketplace"[154]—as well as the obvious "distortion"[155] this can cause in the electoral arena—those inclined toward this perspective are concerned, as well, with other practices within the electoral process that tend to, or may *appear* to[156] encourage behavior that sullies the reputation of the institutions themselves. In *Republican Party of Minnesota v. White*, for example, the Court was bitterly split over the speech rights of judicial candidates for office.[157] While the majority aspired to a vision of the public as fully capable of evaluating judicial candidates' comments, just as they would those of any other individual running for office, the pragmatic dissenters rejected this depiction. In another case, Justice Stevens emphasized the "critical difference between the work of the judge and the work of other public officials,"[158] and criticized the Court for failing to respect the tradition of "disinterestedness."[159] Justice Ginsburg, however, emphasized the harm

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[150] 435 U.S.765, 802 (1978) (White, J., dissenting).
[151] 454 U.S. 290, 310 (1981).
[152] According to Professor Robert Post, this "space to breathe" is precisely what the Court granted Congress in upholding the Bipartisan Campaign Reform Act of 2002 ("BCRA") in *McConnell v. FEC*. *See* Linda Greenhouse, *A Court Infused with Pragmatism*, N.Y. TIMES, Dec. 12, 2003, at A38.
[153] Fed. Election Comm'n v. National Conservative Political Action Comm., 470 U.S. 480, 501 (1985).
[154] Fed. Election Comm'n v. Mass. Citizens for Life, 479 U.S. 238, 257 (1986).
[155] Austin v. Mich. Chamber of Commerce, 494 U.S. 652, 660 (1990).
[156] U.S. Civil Serv. Comm'n. v. Nat'l Ass'n of Letter Carriers, AFL-CIO, 413 U.S. 548, 565 (1972) (upholding restrictions on political involvement by federal employees) ("[I]t is not only important that the Government and its employees in fact avoid practicing political justice, but it is also critical that they appear to the public to be avoiding it, if confidence in the system of representative Government is not to be eroded to a disastrous extent.").
[157] *See* 536 U.S. 765 (2002).
[158] *Nat'l Ass'n of Letter Carriers*, 413 U.S. at 798 (Stevens, J., dissenting).
[159] *Id.* at 802.

that speech by these particular individuals would cause to the political process. Judges must fulfill a "magisterial role"[160] in our system, she argued, and are expected to remain above the partisan fray in the interest of preserving the legitimacy of the judiciary. More speech, in other words, is *not* always better, at least not when the uninhibited exchange of ideas and information in the electoral process might actually be *detrimental* to the institutions of our democracy.

IV. IMPLICATIONS

What this analysis of the Court's methods of reasoning and rhetoric suggests is that four primary modes of assessment and argument can be found within the strange brew of influences (ingredients) that inform and accommodate the Court in its evaluation of electoral speech cases. But what are the broader implications of these findings? How does this enrich our understanding of the Court and its electoral speech jurisprudence? What I aver in this part is that understanding *how* the arguments were presented in these cases advances us toward a more comprehensive understanding of *why* particular results were reached. That is, once we see what the primary methods are, we can think in a more sophisticated way about why certain methods were employed above, or in conjunction with others. Why, for example, is history the guide, or justification, in certain cases, while empirical data is the directive in others? Why, in some cases, do jurists adopt a pragmatic posture, while others embrace a method that aspires to the best of people and the process? Moreover, what explains the inconsistent invocation of particular methods? That is, why might we see a fluctuation *between* various modes of argument? What can account for this variation in methodological approaches?

In this part I argue that by looking at the justices of the current Supreme Court, we can see interesting correlations between chosen methods of evaluation and argument and certain *forms* of speech. (See Figure 1 [following Part V] for the five major forms of speech implicated in this body of law.) That is, for certain justices, I contend that the method of reasoning employed depends in large part on the type of speech that is involved, making the particular form of speech perhaps the most significant causal factor. While some justices of the current Supreme Court consistently invoke a certain method, irrespective of the form of speech involved, others seem to allow the form to dictate the method. By sorting out the varieties of speech presented in these cases, and by correlating the methods of reasoning invoked to the forms of speech at stake, we see interesting patterns emerge. (See Figure 2 [following Part V] for a diagram connecting the four methods of reasoning and rhetoric to the five forms of speech represented in this study for each of the justices of the current Supreme Court.)

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[160] *Id.* at 807 (Ginsburg, J., dissenting).

What these correlations suggest is that certain justices show aspirational inclinations when their preferred speech forms are in question, while making pragmatic concessions when disfavored or otherwise suspect forms of speech are under review. Consider Justice Stevens, for example. We can see that, by and large, he adheres to aspirational reasoning when "activists" and "candidates" are the speakers in question, and by contrast shows pragmatic caution when "money" is the manner of speech involved. Justice Stevens' jurisprudence evinces what might be called a commitment to "citizen"-oriented speech—that is, expression carried out by political activists and candidates for office—suggesting a vision of politics that seeks to deemphasize some outlets of expression (money) while promoting more conventional, interactive varieties of political communication such as leafleting, petitioning, and polling place persuasion. We see, in other words, a commitment to forms of speech that might afford the proverbial "little guy" an opportunity to compete in the speech marketplace.

Chief Justice Rehnquist, for purposes of comparison, generally assumes the pragmatic method when candidates' and activists' speech rights are implicated—willing to accept the state's concerns regarding "bad apples" in the political process—while adopting an aspirational perspective when money (though not corporate money) is the form of speech at hand. Justices Thomas and Kennedy are entirely aspirational in their approach, *not once* invoking what I refer to as the pragmatic mode of reasoning, and rarely rejecting a speaker's claim at all. These justices seem committed to the aspirational method first and foremost, averring that virtually *all* forms of speech deserve protection in the electoral marketplace. Justice Scalia is nearly always as aspirational and allowing of an open marketplace as Justices Kennedy and Thomas, though these aspirations were trumped by his appeal to the historical method of evaluation in his dissent in *McIntyre* (a dissent that also involved vigorously pragmatic concessions) and his concurrence in *Burson*.

Justices Breyer and Ginsburg, in their electoral speech jurisprudence, show that they are much more inclined toward the pragmatic method across the board, though particularly when money is the form of speech seeking protection. Justice Ginsburg's reasoning and rulings suggest speech preferences reminiscent of Justice Stevens' interest in citizen-oriented speech, though Justice Breyer seems more committed to pragmatic evaluation as a method of review for virtually all forms of speech. And Justice O'Connor—consistent with her reputation among followers of the Court—does not show clear methodological preferences, though in three recent cases she has been pragmatic when money is the form of speech in question.[161]

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[161] It is interesting as well to consider the relationship between the various modes of reasoning and rhetoric. While we cannot pretend to know the exact causal sequence or connection between influences in this strange brew, we can see some interesting associations linking the various methods. In the context of campaign finance, for example, we see that justices invoking the aspirational and pragmatic methods generally also employ the empirical method to reach their conclusions. In four recent cases (*Colorado I*, *Shrink PAC*, *Colorado II*, and *McConnell*), justices on both sides of the debate have appealed to data, suggesting that a preference for—or resistance to—money as a form of speech lead

A preference for particular *forms* of speech and a consistent application of a particular *method* (i.e. an aspirational approach) suggest that electoral speech is more complex and nuanced than is sometimes acknowledged in academic studies. The values, insights, and assumptions that provide the analytical and argumentative structure for decisionmaking in this context go beyond the traditional, dichotomous "liberal" vs. "conservative" framework that is a staple of scholarship on judicial behavior and to some extent conventional and/or popular wisdom.[162] Indeed, those justices that we might call the most conservative by traditional measures (Thomas, Scalia, and Kennedy) are actually the most consistent advocates of aspirational reasoning where electoral speech is concerned.[163] Chief Justice Rehnquist, to be sure, is more consistently a pragmatist, though even he shows a committed aspirational outlook on certain (non-corporate and non-legacy-threatening[164]) campaign finance questions. Furthermore, by looking at the recently decided *McConnell* case, we can see that the justices' votes do not even correspond to the anticipated partisan advantages stemming from the Bipartisan Campaign Reform Act ("BCRA"). To the contrary, the liberals on the Court were—in a pragmatic mode—committed to preserving "reform" legislation that most analysts see as more detrimental to the fundraising efforts of the Democratic Party; meanwhile, the conservatives on the Court were—in an aspirational mode—eager to relieve political actors of such unnecessary state supervision of the electoral marketplace, even though the Republican Party stood to benefit from *upholding* the legislation. What such an example confirms, and what we can draw from our larger study, is that the outcomes in these cases transcend mere ideology or partisanship and speak instead to competing understandings of political life itself, the right-functioning of our polity, and the proper role for the Court to play in structuring the electoral process.[165]

V. CONCLUSION

Accepting Justice Cardozo's invitation, this study began as an investigation of the various "sources of information" that offer guidance to the justices as they review electoral speech cases. What are the primary

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the justices to mobilize an empirical argument to justify their preexisting or aspirational or pragmatic dispositions. Or, it could be that a survey of the available social science evidence on the relationship between donors and candidates, for example, played an important role in structuring or otherwise encouraging this disposition. We cannot, unfortunately, know whether the data influenced the disposition or whether the disposition drove the justices to the data.

[162] Segal and Spaeth's "attitude"-oriented analysis is the most prominent example of this approach to Supreme Court decisionmaking. *See generally* SEGAL & SPAETH, ATTITUDINAL MODEL, *supra* note 10; and SEGAL & SPAETH, ATTITUDINAL MODEL REVISITED, *supra* note 10.

[163] See *infra* Fig. 2.

[164] Chief Justice Rehnquist's upholding of the state contribution limits in *Shrink PAC*—limits pegged to those deemed constitutional in *Buckley*—could be interpreted as part of his effort to cultivate his legacy as Chief Justice, in much the same way that he upheld the principles of *Miranda v. Arizona*, 384 U.S. 436 (1966) against challenge in *Dickerson v. United States*, 530 U.S. 428 (2000).

[165] On the various theories of politics that can be found within the Court's treatment of election law questions, *see* Daniel Lowenstein, *The Supreme Court Has No Theory of Politics—And Be Thankful for Small Favors*, *in* THE U.S. SUPREME COURT AND THE ELECTORAL PROCESS, 245–266 (David K. Ryden, ed., 2000).

influences, approaches, and methods (ingredients) that comprise this "strange brew"? Furthermore, what is the significance of these elements? How do they react with one another? And how do they ultimately influence the Court's resolution of these questions? What we have seen is that four primary modes of reasoning and rhetoric structure the Court's electoral speech rulings; but what we have also seen is that we must consider *forms* of speech—and the correlation and interplay between the two—in order to truly appreciate the complexity of the Court's electoral speech jurisprudence and in order to enjoy the predictive power that attaches to this more comprehensive evaluation of freedom of speech in the electoral process.

FIGURE 1: FORMS OF SPEECH

The thirty-seven cases considered in this Article may involve five primary forms of speech:

1. Activism — State restrictions on the speech and expressive practices of activists and various political advocates

United Public Workers of America (C.I.O.) v. Mitchell, 330 U.S. 75 (1947)
United States v. Congress of Industrial Organizations, 335 U.S. 106 (1948)
United States Civil Service Commission v. National Association of Letter Carriers, AFL-CIO, 413 U.S. 548 (1973)
Greer v. Spock, 424 U.S. 828 (1976)
Hynes v. Mayor of Oradell, 425 U.S. 610 (1976)
Members of the City Council of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984)
Meyer v. Grant, 486 U.S. 414 (1988)
Burson v. Freeman, 504 U.S. 191 (1992)
McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995)
Buckley v. American Constitutional Law Foundation, 525 U.S. 182 (1999)

2. Money — State restrictions on the financing of campaigns, candidates, or causes, including both limits and disclosure/reporting requirements and as applied generally, to parties, corporations, and political organizations

United States v. International Union United Automobile, Aircraft and Agricultural Implement Workers of America (UAW-CIO), 353 U.S. 943 (1957)
Buckley v. Valeo, 424 U.S. 1 (1976)
First National Bank v. Bellotti, 435 U.S. 765 (1978)
Citizens Against Rent Control v. Berkeley, 454 U.S. 290 (1981)
California Medical Association v. FEC, 449 U.S.817 (1980)
Common Cause v. Schmitt, 455 U.S. 129 (1982)
FEC v. National Right to Work Committee, 459 U.S. 197 (1982)

FEC v. Massachusetts Citizens for Life, 479 U.S. 238 (1986)
Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)
Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996)
Nixon v. Shrink Missouri Government PAC, 528 U.S. 377 (2000)
FEC v. Colorado Republican Federal Campaign Committee, 533 U.S. 431 (2001)
FEC v. Beaumont, 539 U.S. 146 (2003)
McConnell v. FEC, 540 U.S. 93 (2003)

3. Candidates — State restrictions on the speech of candidates for office, or cases involving the communication of a candidate's message

St. Amant v. Thompson, 390 U.S. 727 (1968)
Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969)
Lehman v. City of Shaker Heights, 418 U.S. 298 (1974)
CBS, Inc. v. FCC, 453 U.S. 367 (1981)
Brown v. Hartlage, 456 U.S. 45 (1982)
Arkansas Educational Television Commission v. Ralph P. Forbes, 536 U.S. 666 (1998)
Republican Party of Minnesota v. White, 536 U.S. 765 (2002)

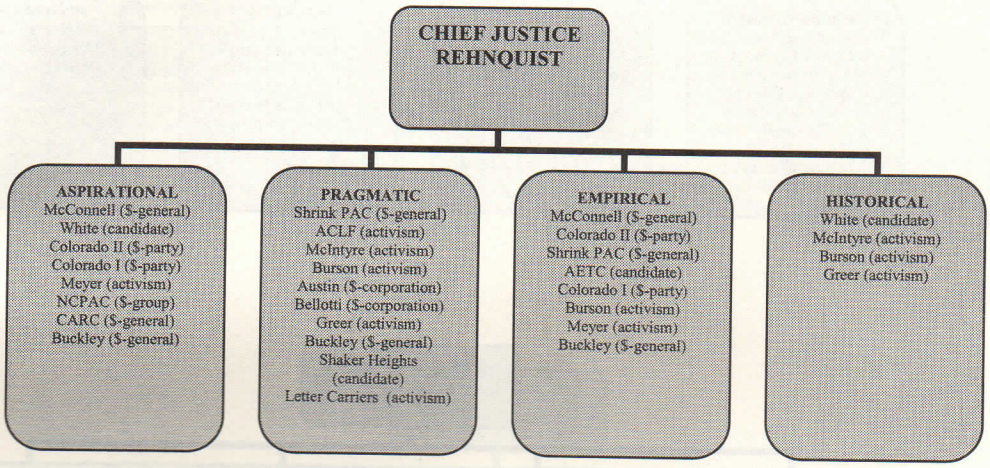
4. Newspapers — State restrictions on the speech rights of newspapers

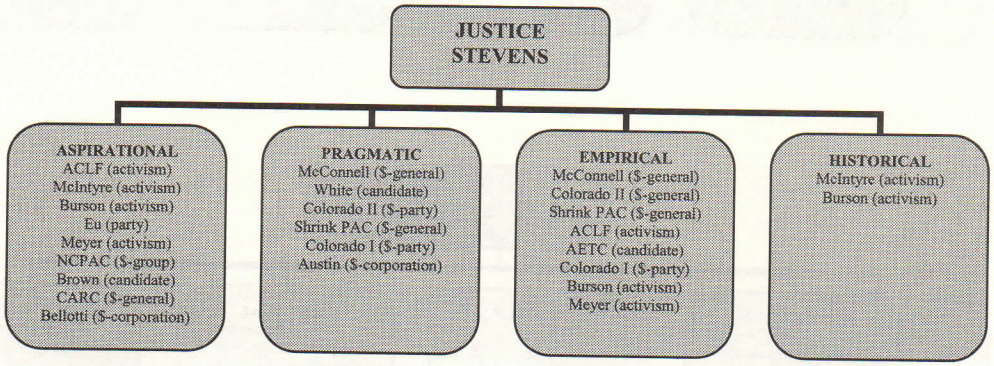
Mills v. Alabama, 384 U.S. 214 (1966)
Ocala Star-Banner Co. v. Damron, 401 U.S. 295 (1971)

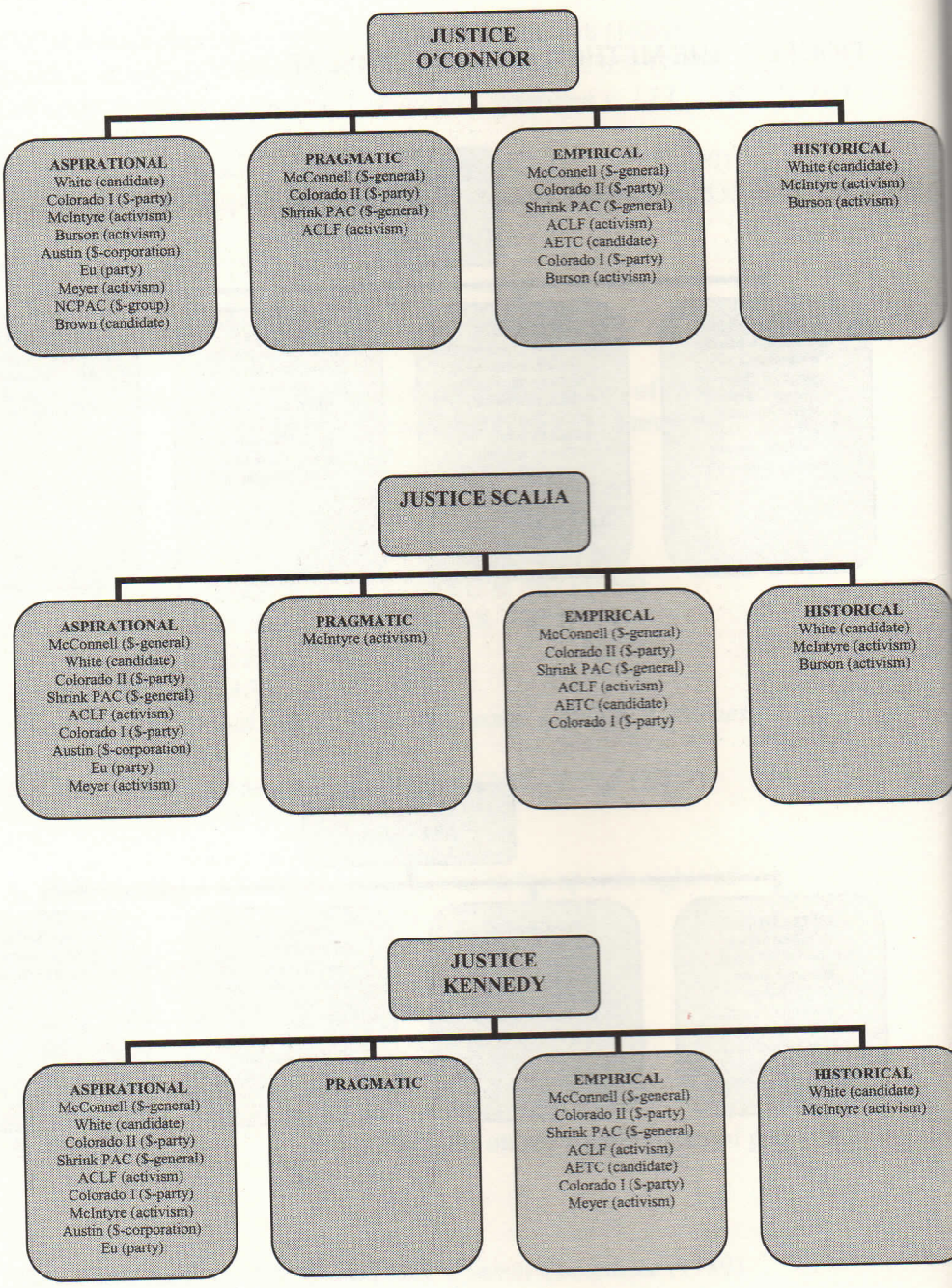
5. Parties — State restrictions on the speech rights of political parties

Eu v. San Francisco Cty. Democratic Central Committee (1989)
Renne v. Geary, 501 U.S. 312 (1991)

FIGURE 2: THE METHOD / FORM CORRELATION



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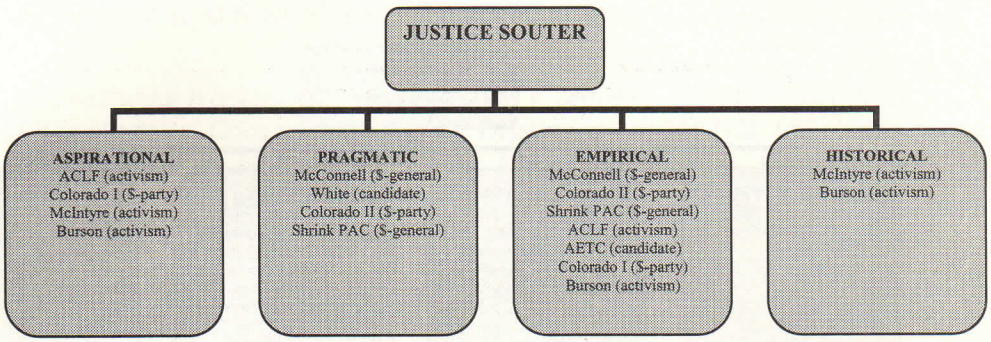
ASPIRATIONAL
White (candidate)
Colorado I ($-party)
McIntyre (activism)
Burson (activism)
Austin ($-corporation)
Eu (party)
Meyer (activism)
NCPAC ($-group)
Brown (candidate)
PRAGMATIC
McConnell ($-general)
Colorado II ($-party)
Shrink PAC ($-general)
ACLF (activism)
EMPIRICAL
McConnell ($-general)
Colorado II ($-party)
Shrink PAC ($-general)
ACLF (activism)
AETC (candidate)
Colorado I ($-party)
Burson (activism)
HISTORICAL
White (candidate)
McIntyre (activism)
Burson (activism)
JUSTICE SCALIA
ASPIRATIONAL
McConnell ($-general)
White (candidate)
Colorado II ($-party)
Shrink PAC ($-general)
ACLF (activism)
Colorado I ($-party)
Austin ($-corporation)
Eu (party)
Meyer (activism)
PRAGMATIC
McIntyre (activism)
EMPIRICAL
McConnell ($-general)
Colorado II ($-party)
Shrink PAC ($-general)
ACLF (activism)
AETC (candidate)
Colorado I ($-party)
HISTORICAL
White (candidate)
McIntyre (activism)
Burson (activism)
JUSTICE KENNEDY
ASPIRATIONAL
McConnell ($-general)
White (candidate)
Colorado II ($-party)
Shrink PAC ($-general)
ACLF (activism)
Colorado I ($-party)
McIntyre (activism)
Austin ($-corporation)
Eu (party)
PRAGMATIC
EMPIRICAL
McConnell ($-general)
Colorado II ($-party)
Shrink PAC ($-general)
ACLF (activism)
AETC (candidate)
Colorado I ($-party)
Meyer (activism)
HISTORICAL
White (candidate)
McIntyre (activism)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Burson (activism)
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White (candidate)
Colorado II ($-party)
Shrink PAC ($-general)
EMPIRICAL
McConnell ($-general)
Colorado II ($-party)
Shrink PAC ($-general)
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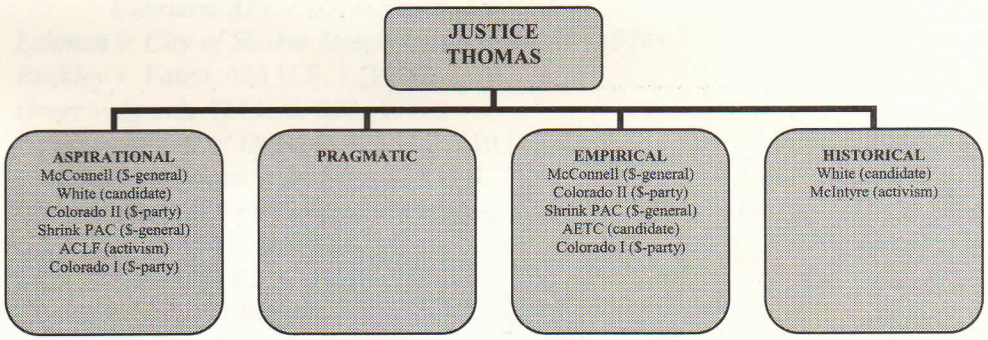
AETC (candidate)
Colorado I ($-party)
Burson (activism)
HISTORICAL
McIntyre (activism)
Burson (activism)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Shrink PAC ($-general)
ACLF (activism)
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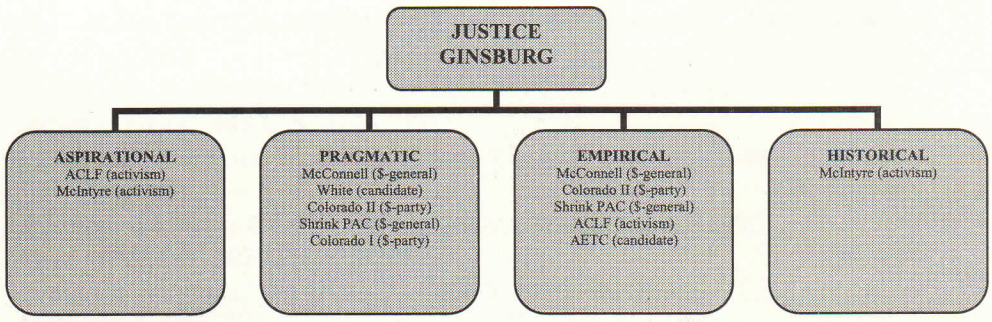
PRAGMATIC
EMPIRICAL
McConnell ($-general)
Colorado II ($-party)
Shrink PAC ($-general)
AETC (candidate)
Colorado I ($-party)
HISTORICAL
White (candidate)
McIntyre (activism)


JUSTICE GINSBURG
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McIntyre (activism)
PRAGMATIC
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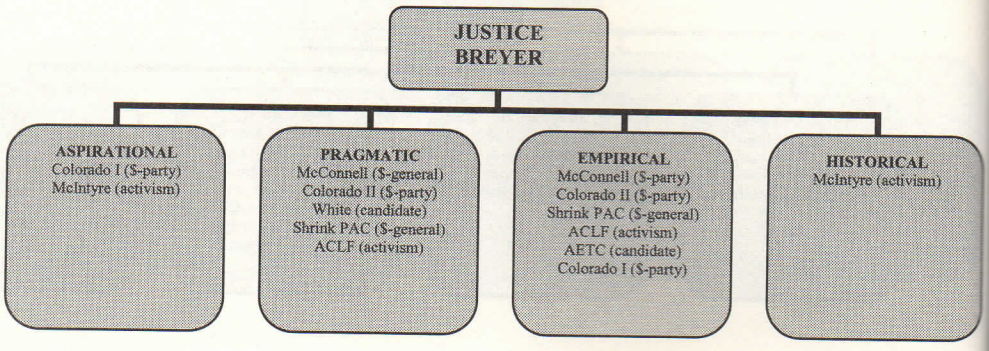
White (candidate)
Colorado II ($-party)
Shrink PAC ($-general)
Colorado I ($-party)
EMPIRICAL
McConnell ($-general)
Colorado II ($-party)
Shrink PAC ($-general)
ACLF (activism)
AETC (candidate)
HISTORICAL
McIntyre (activism)


JUSTICE BREYER
ASPIRATIONAL
Colorado I ($-party)
McIntyre (activism)
PRAGMATIC
McConnell ($-general)
Colorado II ($-party)
White (candidate)
Shrink PAC ($-general)
ACLF (activism)
EMPIRICAL
McConnell ($-party)
Colorado II ($-party)
Shrink PAC ($-general)
ACLF (activism)
AETC (candidate)
Colorado I ($-party)
HISTORICAL
McIntyre (activism)