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SIDEBAR

After 34 Years, a Plainspoken Justice Gets Louder

By [ADAM LIPTAK](#)

WASHINGTON

The [Supreme Court](#) announced its big [campaign finance decision](#) at 10 in the morning last Thursday. By 10:30 a.m., after Justice [Anthony M. Kennedy](#) had offered a brisk summary of the majority opinion and Justice [John Paul Stevens](#) labored through a 20-minute rebuttal, a sort of twilight had settled over the courtroom.

It seemed the Stevens era was ending.

Justice Stevens, who will turn 90 in April, joined the court in 1975 and is the longest-serving current justice by more than a decade. He has given signals that he intends to retire at the end of this term, and his dissent on Thursday was shot through with disappointment, frustration and uncharacteristic sarcasm.

He seemed weary, and more than once he stumbled over and mispronounced ordinary words in the lawyer's lexicon — corruption, corporation, allegation. Sometimes he would take a second or third run at the word, sometimes not.

But there was no mistaking his basic message. "The rule announced today — that Congress must treat corporations exactly like human speakers in the political realm — represents a radical change in the law," he said from the bench. "The court's decision is at war with the views of generations of Americans."

That was the plainspoken style of the last years of Justice Stevens's tenure. In cases involving prisoners held without charge at Guantánamo Bay and the mentally retarded on death row, his version of American justice was propelled by common sense and moral clarity, and it commanded a majority. He was on the short end of the 2008 decision finding that the Second Amendment protected an individual right to bear arms, and he had mixed success in fighting what he saw as illegitimate justifications for discrimination against African-Americans, women and homosexuals.

Justice Stevens is the leader of the court's liberal wing, and its three other members — Justices [Ruth Bader Ginsburg](#), [Stephen G. Breyer](#) and [Sonia Sotomayor](#) — all joined his 90-page dissent. They must have been tempted to write separately as well, as the case was bristling with issues of particular interest to all of them. Instead, they allowed the spotlight to shine solely on Justice Stevens.

There was no such solidarity among the conservatives. Though Chief Justice [John G. Roberts Jr.](#) and Justices [Antonin Scalia](#), [Clarence Thomas](#) and [Samuel A. Alito Jr.](#) all joined Justice Anthony M. Kennedy's majority opinion on its main point, three of them added separate concurrences.

In his dissent, Justice Stevens said no principle required overruling two major campaign finance precedents. “The only relevant thing that has changed since” those two decisions, he wrote, “is the composition of this court.”

In Justice Stevens’s early years on the court, his views often seemed idiosyncratic, and he would often write separate opinions joined by no other justice. Over the years, though, he has emerged as a master tactician, and he came to use his seniority to great advantage. The senior justice in the majority has the power to assign the majority opinion, and Justice Stevens used that power with patience and skill.

This term, though, Justice Stevens has been more of a loner. Thursday’s decision, *Citizens United v. [Federal Election Commission](#)*, was only the 10th signed decision of the term. In the previous nine, Justice Stevens wrote separately and only for himself three times. On a fourth occasion, he was joined only by Justice Kennedy.

A theme ran through these recent opinions: that the Supreme Court had lost touch with fundamental notions of fair play. In two of the cases, Justice Stevens lashed out at the court’s failure to condemn what he called shoddy work by defense lawyers in death penalty cases.

On Wednesday, in *[Wood v. Allen](#)*, Justice Stevens dissented from a majority decision that said that a lawyer fresh out of law school had made a reasonable strategic choice in not pursuing evidence that his client was mentally retarded.

“A decision cannot be fairly characterized as ‘strategic’ unless it is a conscious choice between two legitimate and rational alternatives,” Justice Stevens wrote. “It must be borne of deliberation and not happenstance, inattention, or neglect.”

He made a similar point this month in a second capital case, *[Smith v. Spisak](#)*.

“It is difficult to convey how thoroughly egregious counsel’s closing argument was,” Justice Stevens wrote of a defense lawyer’s work. “Suffice it to say that the argument shares far more in common with a prosecutor’s closing than with a criminal defense attorney’s. Indeed, the argument was so outrageous that it would have rightly subjected a prosecutor to charges of misconduct.”

In the second case, Justice Stevens did vote to uphold the death sentence, saying that even a closing argument worthy of Clarence Darrow would not have spared the defendant.

That carefully calibrated distinction was of a piece with the view he announced in 2008 in *[Baze v. Rees](#)*, when he said he had come to the conclusion that the death penalty violates the Eighth Amendment. But he went on to say that his conclusion did not justify “a refusal to respect precedents that remain a part of our law.”

Thursday’s decision in the *Citizens United* case was more full-throated.

“The majority blazes through our precedents,” he wrote, “overruling or disavowing a body of case law” that included seven decisions.

Justice Stevens, who served in the Navy during World War II, reached back to those days to show the depth of his outrage at the majority’s conclusion that the government may not make legal distinctions based on whether a corporation or a person was doing the speaking.

“Such an assumption,” he wrote, “would have accorded the propaganda broadcasts to our troops by ‘Tokyo Rose’ during World War II the same protection as speech by Allied commanders.”

The reference to Tokyo Rose was probably lost on many of Justice Steven’s readers. But the concluding sentence of what may be his last major dissent could not have been clearer.

“While American democracy is imperfect,” he wrote, “few outside the majority of this court would have thought its flaws included a dearth of corporate money in politics.”

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