

SUPREME COURT OF ARIZONA

CENTER FOR ARIZONA POLICY, INC.,
et al.,

Plaintiffs/Appellants,

v.

ARIZONA SECRETARY OF STATE,
et al.,

Defendants/Appellees,

ARIZONA ATTORNEY GENERAL,
et al.,

Intervenors-Defendants/Appellees.

Arizona Supreme Court
No. CV-24-0295-PR

Court of Appeals
Division One
No. 1 CA-CV 24-0272 A

Maricopa County Superior Court
No. CV2022-016564

**BRIEF OF AMICI CURIAE FIFE SYMINGTON, VERNON PARKER,
AND BOB BURNS
FILED WITH WRITTEN CONSENT OF ALL PARTIES**

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IDENTITY AND INTEREST OF AMICI CURIAE¹

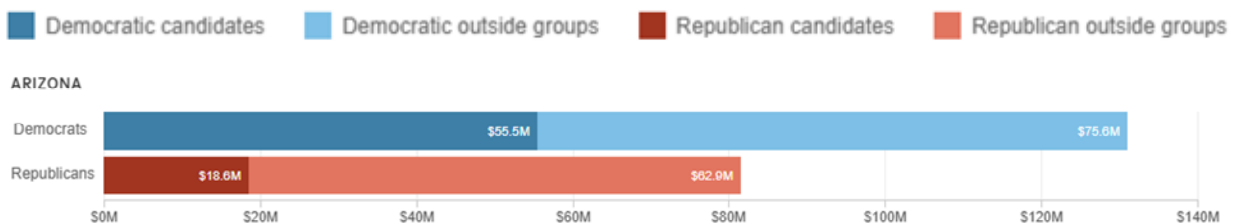
Amici Curiae former Governor Fife Symington, former mayor Vernon Parker, and former Commissioner Bob Burns are all former Republican public officials who have collectively spent decades serving the people of Arizona and participating in the state's electoral process.

Drawing from extensive firsthand experience, Amici submit this brief to support the constitutionality and sound public policy of Proposition 211, also known as the Voters' Right to Know Act. Based on their service in elected office and experience as candidates for their elected offices, Amici are well-positioned to explain why Proposition 211's meaningful campaign finance disclosure is essential to protecting electoral fairness, ensuring accountability, and preserving the integrity of Arizona's democracy. They also believe that this Court should be reluctant to override the will of the people as expressed through the initiative process unless the initiative is plainly violative of an express restriction of the United States or Arizona Constitution. The presumption must always be that an initiative is constitutional and the party challenging it must carry a heavy burden of demonstrating its unconstitutionality.

¹ No counsel to any party authored this brief in whole or part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief.

INTRODUCTION

Until Proposition 211, Arizona elections were increasingly being shaped not by voters or candidates themselves, but by powerful outside entities—often national organizations or shell nonprofits—that poured money into campaigns to influence outcomes without ever revealing who is behind the curtain. This was not a uniquely Republican- or Democrat-phenomenon. For example, in 2022, record amounts from both parties’ outside-Arizona groups were spent on television advertisements in Arizona’s Senate race.



See Domenico Montanaro, “Dark-money groups have spent nearly \$1 billion so far to boost GOP Senate candidates,” NPR (Oct. 22, 2022), <https://www.npr.org/2022/10/22/1129976565/dark-money-groups-midterm-elections-republicans-democrats-senate>. Before Proposition 211, these groups hid behind vague or misleading names that told the public nothing about the motivations behind the political advertisements.

Arizona voters approved Proposition 211 overwhelmingly with more than 72.34% (1,736,496 votes in favor) in favor during the 2022 election. This landmark

support reflected a clear message: Arizonans want to know who is seeking to influence their elections. Candidates for Arizona’s public offices, as Amici know well, want to know too. As illustrated below, campaign disclosure requirements like those in Proposition 211 are supported by both political parties. Proposition 211 does not limit speech or prohibit political activity; it merely ensures that all Arizonans— Democrats, Independents, and Republicans alike—are informed about *who* is seeking to influence our elections.

ARGUMENT

I. CAMPAIGN DISCLOSURE REQUIREMENTS ENJOY BIPARTISAN SUPPORT.

Proposition 211 reflects a core democratic principle that transcends party lines: transparency in the political process. This is not a Democrat-led or progressive idea; transparency is integral to the democratic process and to a candidate’s ability to effectively run for office whether that candidate is a Democrat or a Republican. Indeed, many conservative leaders have commented in support of the exact type of disclosure that Proposition 211 champions:

U.S. Senator Mitch McConnell (R)

“I have previously indicated and now reiterate my support for complete disclosure of ALL donors, regardless of the size of the contributions.”²

² Zach Beauchamp, “Mitch McConnell’s Campaign Finance Reform Crusade,” Vox, Feb. 15, 2019, <https://www.vox.com/2019/2/15/18224850/mitch-mcconnell-campaign-finance-reform-hr1>.

“Money is essential in politics, and not something that we should feel squeamish about, provided the donations are limited and disclosed, everyone knows who’s supporting everyone else.”³

U.S. Senator Susan Collins (R)

“Certainly, there are improvements that can be made in our election laws. I support efforts to disclose ‘dark money’ in campaigns.”⁴

U.S. Senator Josh Hawley (R)

“But who is funding this overseas dark money group - Big Tech? Billionaire activists? Foreign governments? We have no idea. Americans deserve to know what foreign interests are attempting to influence American democracy.”⁵

U.S. Senator Tom Cotton (R)

“Dark money, gerrymandering, misinformation, filibustering, voter suppression—everything the left complains about is projection.”⁶

³ Editorial Board, “Disclose Act Would Shine Light on Secret Political Spending,” Los Angeles Times, July 8, 2014, <https://www.latimes.com/opinion/editorials/la-ed-disclose-act-20140708-story.html>.

⁴ Senator Susan Collins, “Senator Collins Expresses Opposition to S.1, a Partisan Bill That Would Overturn Election Laws in Every State,” Office of Senator Susan Collins (July 18, 2021), <https://www.collins.senate.gov/newsroom/senator-collins-expresses-opposition-s1-partisan-bill-would-overturn-election-laws-every>

⁵ Josh Hawley (@HawleyMO), X (formerly Twitter), We must demand that the Department of Justice open an investigation into who ordered the Capitol to be unguarded on Jan 6, X (July 20, 2021, 7:14 AM), <https://x.com/HawleyMO/status/1417487321868521475>.

⁶ Tom Cotton (@TomCottonAR), X (formerly Twitter), “[exact text of the tweet],” (Nov. 22, 2021, 7:20 AM), <https://x.com/TomCottonAR/status/1460986700570714116>.

Former U.S. Senator Olympia Snowe (R)

“What we are saying is disclose who you are. Let’s unveil this masquerade. Let’s unveil this cloak of anonymity. Tell us who you are. Tell us who is financing these ads to the tune of \$500 million in this last election. The public has the right to know. We have the right to know. That is what this amendment is all about. It is not an infringement on free speech. It is political speech. Even my colleague from Ohio said it is political speech, political speech you have to disclose.”⁷

Former U.S. Senator William Roth (R)

“I believe in full disclosure of who is funding political campaigns. The public has a right to know who is paying for the political advertisements and direct mail that they see.”⁸

II. KNOWLEDGE IS POWER: DISCLOSURE ARMS CANDIDATES AND VOTERS WITH VALUABLE INFORMATION.

As the Amici here know all too well, if the sources of large political contributions are hidden, such secrecy has the potential to unfairly tilt a political contest. The voters should have a right to know who is behind large scale media expenditures supporting a candidate or even more significantly attacking a candidate. When candidates are targeted by anonymous attack ads, they are left in the dark about the source and motivation behind the messaging. Without knowledge of *who* is speaking, candidates cannot identify for the voters *who* it is that opposes

⁷ [147 Cong. Rec. S3070-01, 147 Cong. Rec. S3070-01, S3074, 2001 WL 303410.](#)

⁸ [146 Cong. Rec. S6041-06, 146 Cong. Rec. S6041-06, S6041, 2000 WL 868317.](#)

them. The candidate cannot effectively counter falsehoods, contextualize arguments, or hold the speaker accountable to the public. Candidates and voters all pay the price: the absence of effective disclosure allows misleading messages to survive unchallenged.

Further, without meaningful disclosure, candidates face a deeply uneven playing field. They must abide by strict contribution limits and publicly report all donors, making their funding both limited and fully transparent. In contrast, dark money groups can raise and spend unlimited sums on attack ads without revealing who is behind them. This allows anonymous funders to influence elections from the shadows while candidates are left to defend themselves with fewer resources and no secrecy. Proposition 211 helps correct this imbalance by requiring disclosure of the true sources of campaign media spending, which ultimately promotes fairness and accountability in the electoral process.

Nondisclosure also deprives the voters of key information about who is supporting or opposing a particular candidate or ballot measure. Voters may wish to know, for example, that an organization such as the Ku Klux Klan is contributing large sums to support or oppose a candidate or ballot measure. In a less dramatic fashion, voters should be entitled to know that large contributions from out-of-state economic interests are paying for the media support of expanded gaming laws or laws permitting the use of controlled substances. Voters should similarly be entitled

to know that out-of-state organized labor groups rather than Arizona unions are supporting a minimum wage increase. Who pays for an ad often reveals why it is run and what agenda it advances. When sponsors are identified, voters are better informed and candidates can tailor rebuttals or disclaimers accurately. By mandating the identification of original funding sources, Proposition 211 strengthens the ability of candidates to respond to—and the electorate to evaluate—campaign communications.

Take, for example, State Senator Vince Leach. During the 2024 election cycle, \$417,174.62 was spent in opposition to Senator Leach’s campaign.⁹ The Arizona political action committee, Future Freedoms, spent \$369,090.47 or over 85% of the total opposition spending. Now, with the advent of Proposition 211, Future Freedoms had to reveal the source of its funding—which was overwhelmingly from political action committees and corporations based in Washington, D.C.¹⁰ In other words, Proposition 211 allowed Senator Leach and

⁹ Arizona Secretary of State, See the Money Campaign Finance Portal, <https://seethemoney.az.gov/> (last visited June 20, 2025) (to view detailed 2024 campaign finance filings, select “Explore,” filter by year and office, and select candidate name).

¹⁰ Arizona Secretary of State, 2024 Post-General Report for Future Freedoms, <https://seethemoney.az.gov/PublicReports/2024/F8B5CDBE-A8FC-4FD7-B250-72B0BA1C390D.pdf> (last visited June 20, 2025).

Arizona voters to see that out-of-state actors were spending exorbitant amounts to influence our state senate elections.

Individuals and groups seeking to influence an election are, like candidates, political actors themselves. Critics of Proposition 211, like Center for Arizona Policy Action President Cathi Herrod, have commented that they fear their speech will have repercussions: “Prop 211 is a clear attempt to chill speech of some individuals, opening them up to harassment and bullying and is likely unconstitutional.”¹¹ However, “[t]here are laws against threats and intimidation; and harsh criticism, short of unlawful action, is a price our people have traditionally been willing to pay for self-governance. Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed.” *John Doe No. 1 v. Reed*, [561 U.S. 186, 228](#) (2010) (Scalia, J., concurring). According to the late Justice Scalia, he “d[id] not look forward to a society which, thanks to the Supreme Court, campaigns anonymously . . . and even exercises the direct democracy of initiative and referendum hidden from public scrutiny and protected from the accountability of criticism. **This does not resemble the Home of the Brave.**” *Id.* (emphasis added).

¹¹ “Proposition 211 Would Get Rid of ‘Dark Money’ for Arizona Political Advertisements,” KTAR News (Oct. 27, 2022), <https://ktar.com/arizona-news/proposition-211-would-get-rid-of-dark-money-for-arizona-political-advertisements/5299527/>.

III. INITIATIVES ARE PRESUMED CONSTITUTIONAL AND SHOULD NOT BE INVALIDATED UNLESS CLEARLY UNCONSTITUTIONAL.

The voters approved Proposition 211 with an overwhelming vote in its favor (72.34%). That is the highest percentage of votes in favor of any ballot measure (either referendum or initiative) in the last twenty-five years. *See* Appendix A (Chart of Ballot Initiatives' Passage Rates).

Any enactment of the legislature or of the people carries a strong presumption of constitutionality, and the Court should be reluctant to declare it unconstitutional unless it is clearly so. *Gallardo v. State*, [236 Ariz. 84, 87, ¶ 9](#) (2014) (courts presume that “the legislature acts constitutionally”); *State v. Bonnewell*, [196 Ariz. 592, 594, ¶ 5](#) (App. 1999) (presumption of constitutionality applies equally to laws enacted through initiatives). This should be especially true of an initiative favored by almost three-fourths of the Arizona electorate.

Petitioners invite the Court to declare Proposition 211 unconstitutional based on hypothetical concerns about its impact and ultimately on a belief that it is unwise public policy. But that is not the proper role of the Court here. As was cogently expressed by Justice Holmes in his landmark dissent in *Lochner v. New York*:

[M]y agreement or disagreement [with a statute] has nothing to do with the right of a majority to embody their opinions in law. . . . [A constitution] is made for people with fundamentally differing views, and the accident of our finding certain opinions natural and familiar or novel and even shocking ought not to conclude our judgment on the question of whether statutes embodying them conflict with the Constitution of the United States.

[198 U.S. 45, 75–76](#) (1905). Similarly, “[t]he judges, themselves abstracted from, removed from political institutions by several orders of magnitude ought never to impose an answer on the society merely because it seems prudent and wise to them personally, or because they believe that an answer—always provisional—arrived at by the political institutions is foolish.” A. Bickel, *The Morality of Consent* 26 (1975), an excerpt which is attached as Appendix B.

This Court has repeatedly recognized this principle applies to the Arizona Constitution, particularly in light of Article 3, which expressly embodies the principle of separation of powers. *See generally Arizona Minority Coal. for Fair Redistricting v. Arizona Indep. Redistricting Comm’n*, [220 Ariz. 587, 595, ¶¶ 20–21](#) (2009). That is because “the wisdom and propriety of the legislative action is not for the determination of the courts, but is a matter for the determination of the people.” *Am. Fed’n of Lab. v. Am. Sash & Door Co.*, [67 Ariz. 20, 40–41](#) (1948), *aff’d*, 335 U.S. 538 (1949); *see also Local 266, Int’l Bhd. of Elec. Workers v. Salt River Project Agric. Improvement & Power Dist.*, [78 Ariz. 30, 40–41](#) (1954) (“We have said that statements of public policy must be made by the people through the legislature.”); *Ray v. Tucson Medical Ctr.*, [72 Ariz. 22, 35](#) (1951) (“The declaration of ‘public policy’ is primarily a legislative function.”).

With Proposition 211, the people have spoken: they want to know who is spending large sums of money (particularly out-of-state or foreign money) to

influence them at the ballot box. The Court should defer to the people and only declare an initiative unconstitutional where it clearly violates an express restriction that the Constitution imposes on the people’s lawmaking power. *See Cave Creek Unified Sch. Dist. v. Ducey*, [233 Ariz. 1, 5, ¶ 11](#) (2013) (observing that “[w]hen the statute in question involves no fundamental constitutional rights or distinctions based on suspect classifications, we presume the statute is constitutional and will uphold it unless it clearly is not”). Here, it does not do so.

CONCLUSION

Proposition 211 addresses a common-sense principle backed by elected officials across the political spectrum: voters deserve to know who is spending money to influence their elections. Amici urge this Court to affirm the Court of Appeals’ decision.

RESPECTFULLY SUBMITTED this 24th day of June, 2025.

FENNEMORE CRAIG, P.C.

By /s/ Timothy J. Berg

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APPENDIX A

2024 General Election¹²			
Ballot Measure	Subject Matter	Votes Cast	Passage Rate
Prop 139	Establish abortion constitutional right	2,000,287 Yes 1,246,202 No	61.62%
Prop 311	First responder line-of-duty benefit (conviction fee)	2,016,450 Yes 1,126,070 No	64.13%
Prop 312	Property tax refunds for not enforcing public nuisance laws	1,804,728 Yes 1,274,031 No	58.61%
Prop 313	Mandatory life sentence for child sex trafficking	2,025,608 Yes 1,112,951 No	64.54%
Prop 314	Immigration and border enforcement measures	1,949,529 Yes 1,165,237 No	62.58%

2022 Election¹³			
Ballot Measure	Subject Matter	Votes Cast	Passage Rate
Prop 129	Single-subject rule for initiatives	1,311,046 Yes 1,062,533 No	55.23%
Prop 130	Disabled veterans' property tax exemption	1,478,583 Yes 840,299 No	63.76%
Prop 131	Establish lieutenant governor position	1,299,484 Yes 1,056,433 No	55.16%
Prop 132	60% supermajority required for tax initiatives	1,210,702 Yes 1,176,327 No	50.72%

¹² Arizona Secretary of State, 2024 General Election Canvass (Nov. 22, 2024), https://apps.azsos.gov/election/2024/ge/canvass/20241105_GeneralCanvass_Signed.pdf.

¹³ Arizona Secretary of State, 2022 General Election Canvass (Nov. 8, 2022), https://apps.azsos.gov/election/2022/General/canvass/2022dec05_general_election_canvass_web.pdf.

2022 Election¹³			
Ballot Measure	Subject Matter	Votes Cast	Passage Rate
Prop 209	Cap medical-debt interest & expand exemptions	1,747,363 Yes 679,089 No	72.01%
Prop 211	“Dark-money” disclosure requirement	1,736,496 Yes 664,111 No	72.34%
Prop 308	In-state tuition for undocumented students (“Dreamers”)	1,250,320 Yes 1,189,877 No	51.24%

2020 General Election¹⁴			
Ballot Measure	Subject Matter	Votes Cast	Passage Rate
Prop 207	Legalize recreational marijuana	1,956,440 Yes 1,302,458 No	60.04%
Prop 208	3.5% Surcharge to increase educating funding	1,675,810 Yes 1,562,639 No	51.74%

2016 Election¹⁵			
Ballot Measure	Subject Matter	Votes Cast	Passage Rate
Prop 123 (May)	Education funding increase	536,365 Yes 516,949 No	50.92%
Prop 124 (May)	Public employee retirement benefits	719,554 Yes 302,195 No	70.42%
Prop 206 (Nov)	Minimum wage hike & paid sick leave	1,465,639 Yes 1,046,945 No	58.33%

¹⁴ Arizona Secretary of State, 2020 General Election Canvass (Nov. 30, 2020), https://apps.azsos.gov/election/2020/2020_general_state_canvass.pdf.

¹⁵ Arizona Secretary of State, 2016 Special Election Canvass (June 6, 2016), <https://apps.azsos.gov/election/2016/special/canvass2016special.pdf> and Arizona Secretary of State, 2016 General Election Canvass (Dec. 5, 2016), <https://apps.azsos.gov/election/2016/General/Official%20Signed%20State%20Canvass.pdf>.

2010 Election¹⁶			
Ballot Measure	Subject Matter	Votes Cast	Passage Rate
Prop 100 (May)	Temporary 1% sales tax (Referendum reauthorize)	750,850 Yes 416,571 No	64.31%
Prop 106 (Nov)	Ban on mandated health-care participation	892,693 Yes 722,300 No	55.27%
Prop 107 (Nov)	Ban racial/promotional preferences	952,086 Yes 647,713 No	59.49%
Prop 113 (Nov)	Secret ballot in union elections	978,109 Yes 639,692 No	60.47%
Prop 203 (Nov)	Medical marijuana legalization	841,348 Yes 837,008 No	50.13%

2004 Election¹⁷			
Ballot Measure	Subject Matter	Votes Cast	Passage Rate
Prop 101	Constitutional amendment relating to initiative and referendum measures	894,807 Yes 726,167 No	55.23%
Prop 103	Constitutional amendment relating to judicial department	896,706 Yes 767,253 No	53.91%

¹⁶ Arizona Secretary of State, 2010 Special Election Canvass (June 1, 2010), https://apps.azsos.gov/election/2010/may_Special/2010_Special_Election_Official_Canvass.pdf and Arizona Secretary of State, 2010 General Election Canvass (Nov. 29, 2010), <https://apps.azsos.gov/election/2010/General/Canvass2010GE.pdf>.

¹⁷ Arizona Secretary of State, 2004 General Election Canvass (Nov. 22, 2004), <https://apps.azsos.gov/election/2004/General/Canvass2004General.pdf>.

2004 Election¹⁷			
Ballot Measure	Subject Matter	Votes Cast	Passage Rate
Prop 105	Constitutional amendment relating to education	1,046,048 Yes 638,620 No	62.09%
Prop 200	Public benefits & proof-of-citizenship requirements	1,041,741 Yes 830,467 No	55.64%

2000 Election¹⁸			
Ballot Measure	Subject Matter	Votes Cast	Passage Rate
Prop 101	Constitutional amendment regarding textual terminology	886,774 Yes 546,439 No	61.87%
Prop 103	Constitutional amendment regarding Corporation commission membership	743,284 Yes 659,748 No	52.97%
Prop 104	Constitutional amendment regarding Residential property tax evaluation	906,395 Yes 513,825 No	63.82%
Prop 105	Constitutional amendment regarding public debt	975,869 Yes 450,971 No	68.39%
Prop 106	Constitutional amendment regarding gerrymandering	784,272 Yes 612,686 No	56.14%

¹⁸ Arizona Secretary of State, 2000 General Election Canvass (Nov. 27, 2000), <https://apps.azsos.gov/election/2000/General/Canvass2000GE.pdf>.

2000 Election¹⁸			
Ballot Measure	Subject Matter	Votes Cast	Passage Rate
Prop 200	Tobacco Settlement Fund Allocation for Children's Health	837,557 Yes 605,094 No	58.05%
Prop 203	English-only ELL instruction	925,415 Yes 542,942 No	63.02%
Prop 204	AHCCCS	903,134 Yes 532,317 No	62.91%

APPENDIX B

THE MORALITY OF CONSENT

Alexander M. Bickel

New Haven and London Yale University Press

stant change, found that they believed nothing and could not judge any change as better or worse than another? They drove the very seekers after change up the wall in frustration. Nobody wants everybody not to believe in anything. And who wants politicians who, as Burke said, "see no merit or demerit in any man, or any action, or any political principle" except in terms of a desired political end, and who "therefore take up, one day, the most violent and stretched prerogative, and another time the wildest democratic ideas of freedom, and pass from one to the other."

Our problem, as much as Burke's, is that we cannot govern, and should not, in submission to the dictates of abstract theories, and that we cannot live, much less govern, without some "uniform rule and scheme of life," without principles, however provisionally and skeptically held. Burke's conservatism, if that is what it was, belongs to the liberal tradition, properly understood and translated to our time.

The Supreme Court and Evolving Principle

Since few principles are inscribed sharply in the Constitution itself, the Supreme Court speaking in the name of the Constitution fills, in part, the need for middle-distance principles that Burke described. It proffers, with some important exceptions, a series of admonitions, an eighteenth-century checklist of subjects; it does this cautiously and with some skepticism. It recognizes that principles are necessary, have evolved, and should continue to evolve in the light of history and changing circumstance. That—and not Hugo Black's—is the Constitution as the Framers wrote it. And that is what it must be in a secular democratic society, where the chief reliance for policy-making is placed in the political process.

The Constitution, said Justice Holmes in a famous dissent in 1905,¹⁷ "is made for people of fundamentally differing views." Few definite, comprehensive answers on matters of social and

17. *Lochner v. New York*, 198 U.S. 45 (1905).

economic policy can be deduced from it. The judges, themselves abstracted from, removed from political institutions by several orders of magnitude, ought never to impose an answer on the society merely because it seems prudent and wise to them personally, or because they believe that an answer—always provisional—arrived at by the political institutions is foolish. The Court's first obligation is to move cautiously, straining for decisions in small compass, more hesitant to deny principles held by some segments of the society than ready to affirm comprehensive ones for all, mindful of the dominant role the political institutions are allowed, and always anxious first to invent compromises and accommodations before declaring firm and unambiguous principles.

Yet in the end, and even if infrequently, we do expect the Court to give us principle, the limits of which can be sensed but not defined and are communicated more as cautions than as rules. Confined to a profession, the explication of principle is disciplined, imposing standards of analytical candor, rigor, and clarity. The Court is to reason, not feel, to explain and justify principles it pronounces to the last possible rational decimal point. It may not itself generate values, out of the stomach, but must seek to relate them—at least analogically—to judgments of history and moral philosophy. We tend to think of the Court as deciding, but more often than not it merely ratifies or, what is even less, does *not* disapprove, or less still, decides not to decide. And even when it does take it upon itself to strike a balance of values, it does so with an ear to the promptings of the past and an eye strained to a vision of the future much more than with close regard to the present. Burke's description of an evolution meets the case: to produce nothing wholly new and retain nothing wholly obsolete. The function is canalized by the adversary process, which limits the occasions of judgment and tends to structure issues and narrow their scope to manageable proportions.

In 1905, when Holmes wrote the *Lochner* dissent, the justices were grinding out annual answers to social and economic questions on the basis of personal convictions of what was wise—derived, as it happens, from the laissez-faire philosophy of Herbert Spencer. That would not do, Holmes told them, and it did