



BY EDWARD H. CRANE

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## President's Message

# “Clean Government” versus the First Amendment

The bipartisan attack on free expression in America, cloaked in the language of “clean government,” is aimed directly at the core of the First Amendment: political speech. In a typically pugnacious and reflexively dismissive-of-any-criticism appearance recently on the *Don Imus Show*, Sen. John McCain (R-AZ), chief architect and cheerleader for so-called campaign finance reform, informed the audience that he “would rather have a clean government than one where quote First Amendment rights are being respected, that has become corrupt. If I had my choice, I'd rather have the clean government.”

And to think that the front-runner for the GOP presidential nomination is a man who can speak the words, “quote First Amendment rights.” Breathtaking. One wonders just what is “clean” about a government that constrains freedom of speech. This is an important point, because anyone who has followed the campaign finance debate knows that the true purpose behind it is to shut down criticism of Congress. The groups that added the most interest and information to the 2004 federal elections (and, hence, threats to incumbents) were called 527s, for the section of the IRS Code under which they qualify.

The House of Representatives, on pretty much a straight party lines, recently voted to effectively shut down 527s by limiting contributions to them to \$5,000. The hypocrisy surrounding the vote was remarkable, even for Congress. Republicans, who generally opposed the McCain-Feingold political expression restrictions, voted for shutting down 527s, while the Democrats, who almost unanimously supported McCain-Feingold, opposed shutting them down. Some even had the chutzpah to do so on First Amendment grounds. To make a long story short, Democrats benefited more from 527s in 2004 than did Republicans. Hence, the “principled” party line votes.

On an ominous note, the ranking Democrat on the House Rules Committee, Rep. Louise Slaughter (D-NY), criticized the 527 legislation for not going far enough because it did not limit contributions to 501(c)3s (that would include your favorite think tank) or 501(c)4s, which include most activist groups. After all, those groups often criticize Congress. Let's see, from where else does Congress receive flak? Oh yes, radio and television. So, Rep. Slaughter has introduced a bill called the “Fairness and Accountability in Broadcasting Act.” Take that, Rush Limbaugh and Fox News! This is all so Orwellian. “Fairness” by whose standards? Louise Slaughter's? And, “accountability” to whom? Congress?

Rep. Slaughter is also working with Sen. McCain on legislation that would reduce broadcast licenses from eight years to three years. All the better to intimidate. All this broadcast regulation business—used by the left and the right (particularly the religious right)—is based on the socialist fallacy of the “public” ownership of the airwaves. There are no airwaves; there is an electromagnetic spectrum. It takes a huge capital investment to turn that spectrum into something useful to consumers—much like it takes a huge investment in another natural resource, iron ore, to turn it into steel. Same principle. And just as we don't want the “public,” i.e., government, owning our steel mills, so we should object to this alleged government right to control the broadcast media.

If the argument is one of scarcity, please. There are a thousand times more radio and television stations than newspapers. Should we have the government control the editorial content of newspapers? It turns out that this too is on the agenda of the campaign finance activists. If the *New York Times* and the *Washington Post* had their editorial freedom taken from them in defiance of the First Amendment, it would be wrong. But, given their support of this kind of legislation, it would be poetic justice.

In their excellent study of George W. Bush's constitutional record, my colleagues Gene Healy and Timothy Lynch begin with a discussion of his appalling record on campaign finance reform. During the 2000 presidential campaign candidate Bush promised to veto, as an unconstitutional infringement on the First Amendment, an earlier version of McCain-Feingold that was, in fact, less intrusive on free speech than the bill he ultimately signed. That bill makes it a crime to mention the name of a candidate for federal office in a radio or television advertisement within 60 days of a general election. Don't think about a rational case for civil disobedience, because the law President Bush signed also makes it a criminal offense for the producers and executives at the radio or television station to run the ad.

President Bush took an oath to uphold the Constitution of the United States of America. When he signed what he knew to be a blatantly unconstitutional law (he as much as said so at the signing ceremony), he broke that oath. At least John McCain, who also took that oath, doesn't pretend to give a damn about it.