

First Amendment Abandoned

By: Representative Glenn Grothman

With the capture of Saddam Hussein and the joyous activity of the Christmas season upon us, it was easy to miss that on Thursday, December 10th, our United States Supreme Court announced the most disappointing decision in the last 30 years. The Court, which is supposed to uphold our Constitution, abandoned our First Amendment – the right of free speech.

At issue was the McCain Feingold Campaign Finance Act. The goal of this bill is to prevent independent groups (National Rifle Association, Sierra Club, and Right-to-Life) from making media buys (radio, television, or newspaper ads) sixty days before an election. Seems pretty straightforward to me. Is it legal to take out an ad criticizing the President, your senator, etc.? Of course it's legal – in America we have the First Amendment. No more. In a five to four decision that hopefully will one day be remembered alongside the Dred Scott decision (declaring a slave property in free states) or Plessy v. Ferguson (upholding segregation) our Supreme Court decided this is not protected free speech. Justice Antonio Scalia's dissent expresses my sentiments exactly:

“Who could have imagined that the same Court which, within the past four years, has sternly disapproved of restriction upon such inconsequential forms of expression as virtual child pornography, tobacco advertising, dissemination of illegally intercepted communications, and sexually explicit cable programming, would smile with favor upon a law that cut to the heart of what the First Amendment is meant to protect: the right to criticize the government.”

How could this happen? Congress passes a law designed to favor incumbents and to get favorable editorial page coverage. A President is too cowardly to veto it (and believes the Supreme Court will overturn it anyway). Finally, a Supreme Court whom no longer cares about (or at least, no longer respects) the Constitution.

The erosion of respect for our Constitution has been going on for some time. I attended the University of Wisconsin Law School and the idea that the Constitution was a document that changed over time was already being taught. This is dangerous territory – if the meaning of the Constitution changes over time, anything goes. Supreme Court Justices, like all people, want to have positive things said about them in the papers. Rather than respect the Constitution, they ingratiated themselves to the newspapers and what is popular at the Washington cocktail parties.

The law does not apply to what television stations and newspapers say on their own – perhaps, this is why they don't care. There are other ways to funnel money into politics and no one seriously expects there to be less money involved because of this law. Independent expenditures normally help challengers so Feingold and McCain did tilt the balance to incumbents some more.

While largely Democrats voted for the bill, McCain is a Republican. President Bush, a Republican, signed it and three of the five judges who approved it were appointed by Republicans (Stevens by Ford, O'Connor by Reagan, and Souter by the first Bush.)

Wayne LaPierre of the National Rifle Association was right when he called it, “the most significant change in the First Amendment since the Alien and Sedition Acts of 1798, which tried to make it a crime to criticize a member of Congress.”

Please let me know what you think on this issue.

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