



Freezing out freedom of speech for ‘climate change deniers’

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A coalition of 17 attorneys general, representing 15 states, the District of Columbia and the Virgin Islands, announced that they will be targeting any companies that challenge the "accepted" wisdom regarding climate change.

Free speech is currently under increasing attack in America. Once considered an crucial element of a free society, that notion now appears open to question. In “On Liberty,” written in 1859, John Stuart Mill declared

“If all mankind minus one were of the opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind.”

When it comes to questioning the alleged consensus concerning climate change, however, an entirely different view has been adopted by some.

A coalition of 17 attorneys general representing 15 states, the District of Columbia and the Virgin Islands, announced at a press conference on March 29 that they would be targeting any companies that challenge the “accepted” wisdom regarding climate change. All Democrats, these public servants seem intent upon shutting down free and open debate on anything involving climate-related issues.

New York Attorney General Eric Schneiderman was clear about his goal of ending debate:

“You have to tell the truth. You can’t make misrepresentations...”

On April 7, the Competitive Enterprise Institute (CEI), a think tank, was subpoenaed by U.S. Virgin Islands Attorney General Claude Walker who demanded all the organization’s material on climate change and energy policy and information on its supporters over a ten year period, beginning in 1997. The subpoena purportedly focused is on CEI’s contacts with ExxonMobil, a former CEI donor corporation that publicly ended its support after 2005. Sam Kazman, general counsel of CEI, and Kent Lassman, the organization’s president, declared:

“That’s one hell of a burden to slap on a nonprofit. The coalition’s purported justification is that the risks of global warming are so important and the scientific basis for them so settled that disputing them constitutes fraud. But the rhetoric of the Attorneys General is blissfully oblivious

to the First Amendment. As for breaching donor confidentiality, the obvious aims here are intimidation and to limit future use of the constitutionally protected right of anonymous donation. In 1958, in *NAACP v. Patterson*, the Supreme Court held that such attempts were illegal under the First Amendment's right of association."

Kazman and Lassman noted:

"You might think that if the law is that clear, we have nothing to worry about. But fighting a subpoena is incredibly costly and time-consuming, especially when the attorneys general behind them have promised to 'use all the tools' at their disposal, courtesy of their states' taxpayers. Regardless of where you stand on global warming policy, the notion of a multi-state campaign to end the debate ought to make you worry. After all, there are many science-driven policy debates out there, on topics ranging from genetically modified food to population control. It is not as if the government has a sterling reputation when it comes to science. From Galileo to today's food plate, we know government politicizes science. It ought not to punish dissent too."

Some in Congress also seems interested in silencing dissent. In February, Senators Barbara Boxer (D-CA) and Sheldon Whitehouse (D-RI) sent 107 letters to think tanks, trade associations and companies demanding information about their funding. This followed an inquiry by House Democrat Rep. Rav Grijalra directed at seven academics who have questioned some of President Obama's climate policies. In response to these queries, John Allison, president of the Cato Institute, a Libertarian think tank, wrote a letter, which stated in part:

"It surprises nobody that you disagree with Cato's views on climate change among a host of issues—but that doesn't give you license to use the awesome power of the federal government to cow us or anybody else."

Professor Glenn Reynolds of the University of Tennessee Law School, notes

"Federal law makes it a felony 'for two or more persons to agree together to injure, threaten, or intimidate a person in any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the laws of the U.S. (or because of his/her having exercised the same)'. I wonder if the Attorneys General have read this federal statute. Because what they're doing looks like a concerted scheme to restrict the First Amendment free speech rights of people they don't agree with. They should look up 18 U.S.C. Sec. 241. I am sure they each have it somewhere in their offices."

Reynolds notes that,

"Not everyone believes that the planet is warming; not everyone who thinks that it is warming even believes that laws or regulation can make a difference. Yet the goal of these state attorneys general seems to treat disagreement as something more or less criminal. That's wrong."

As the Supreme Court wrote in *West Virginia Board of Education v. Burnette*,

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion."

Yet prescribing such orthodoxy seems to be just what they have in mind. Their approach is—and I use this term quite deliberately—thoroughly un-American. In pursuing this action they are betraying their oaths of office, abusing their powers, and behaving unethically as attorneys.”

As in other areas of discussion, the entire question of climate change should be open to free debate. In 2001, a report issued by the National Academy of Sciences said:

“Because there is considerable uncertainty in current understanding of how the climate system varies naturally and reacts to emissions of greenhouse gases and aerosols, current estimates of the magnitude of future warming should be regarded as tentative and subject to future adjustments (either upward or downward).”

Many scientists believe that this is a fair statement today. Accusing those in the climate debates of being “misleading,” and seeking to criminalize such discussion—as when Sen. Whitehouse suggests using the Racketeer Influence and Corrupt Organization Act, written to fight organized crime, to criminalize what he calls the “climate denial apparatus,” would chill free and open debate.

It might even find Al Gore guilty of “misleading” when he said seven years ago that computer modeling projected the Arctic to be ice-free during the summer in as few as five years.

Many experts say that considerable uncertainty remains with regard to climate change and what to do about it. There is disagreement about the extent to which human activity contributes to climate change and whether climate change models, some of which have projected models which were later refuted by events, are reliable enough to predict future developments. Others ask whether the costs of combating climate is less than the cost of adapting to it.

The world has seen dramatic climate change in the past. We experienced a Medieval Warm Period from the 9th century to the 13th century, and a “Little Ice Age” from the 1640s to the 1690s. In neither case were fossil fuels involved. Given such past history, why should the subject of climate change not be open to free and open discussion and debate as should every other subject?

It is true that producers of fossil fuel may have a financial incentive to question those who advocate strict measures to resist global warming. But many groups on all sides of many issues such as automobile manufacturers, tobacco producers, gun owners and producers and others promote their interests in our free marketplace of ideas. It is by such promotion and inquiry that truth is finally discovered.

For example, no one any longer disputes the danger of smoking. Truth has prevailed in the past without trying to outlaw those who promoted ideas which later proved false.

In a free society, even those who believe the earth is flat have a right to express their views. The idea of criminalizing differences of opinion about questions of science—or any other subject for that matter—should be anathema to all who believe in free speech.

Sadly, at the present time, there is an increasing number of Americans who have abandoned their belief in free speech. Many of them, such as the attorneys general launching the aforementioned

climate change campaign, call themselves “liberal.” Since when did liberals conclude it was their responsibility to silence and criminalize views with which they disagreed?

Who would have thought that in 2016, it would be necessary to mount a campaign on behalf of free speech? Yet that is precisely where we are today. It is important that men and women who believe in freedom, whatever their views about climate change, rise to the occasion and defend our freedom of speech.