

The Star-Ledger

Reverse Citizens United and jail Michael Moore? - Liberals confused on campaign funding

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October 25, 2016

Is there a difference between banning books and burning books?

That's the question that comes to mind after Michael Moore recently released a film critical of Donald Trump.

The release of "Michael Moore in Trumpland" does not represent the first time Moore has released a documentary critical of a presidential candidate right before an election. Just before the 2004 election, he released "Fahrenheit 9/11," a movie highly critical of George W. Bush.

The title is of course a play on the title of the Ray Bradbury science-fiction classic "Fahrenheit 451," which was about a future dystopia in which fire departments exist not to protect homes but to burn books deemed offensive by the government.

That led to a tangled trail of litigation that I wasn't aware of until the other day, when I read an excellent piece on the free-market Cato Institute website by Trevor Burrus.

The title of the essay is "['Michael Moore in Trumpland' Might Have Been Illegal Before Citizens United.](#)"

In it, Burrus endeavors to show how the 2010 Supreme Court decision in the Citizens United case – much reviled by liberals – actually protects the rights of liberals as well as conservatives against that overbearing federal bureaucracy known as the Federal Elections Commission.

Burrus shows how the case had its origins in 2004, when Moore released "Fahrenheit 9/11." The conservative activist group known as Citizens United was looking for a test case to attack the recently enacted Bipartisan Campaign Reform Act of 2002 – popularly known as McCain-Feingold.

Citizens United filed a complaint with the FEC on the grounds that ads for a movie highly critical of George W. Bush constituted illegal in-kind contributions by Moore's film company to the campaign of Democrat John Kerry.

The FEC ruled the movie didn't violate the law because it represented "bona fide commercial activity."

"They easily could have decided that its primary interest was to influence voters," he said of the FEC. At that point Moore might have been banned from showing ads for his movie.

Citizens United was still looking for a test case, so in 2008 the group released its own documentary, "Hillary: The Movie." The FEC promptly threatened the filmmakers of Citizens United – a nonprofit corporation funded by for-profit corporations - with fines and possible jail time if they broadcast the movie within 60 days of the election.

It was when that case got to the Supreme Court that the question of banning books arose. A justice asked the lawyer representing the government if the FEC could also ban a corporate-funded book if it had a political message. The lawyer argued it could indeed be banned.

"That's pretty incredible," said Justice Samuel A. Alito Jr.

It was bit too incredible for a majority of the justices. They couldn't accept the notion that the corporations that own newspapers and broadcasting stations have free-speech rights but other corporations don't.

"Although the First Amendment provides that 'Congress shall make no law ... abridging the freedom of speech,' 441b's (the statute's) prohibition on corporate independent expenditures is an outright ban on speech, backed by criminal sanctions," the decision stated.

Many of my fellow journalists howled in protest. But the justices had a point that is becoming more and more relevant in the internet era, Burrus said.

"If the court had gone the other way, it would have created this regulatory mess in which individual people could easily get wrapped up," he said.

Such a person was a sad-sack stock car racer named Kirk Shelmerdine, Burrus said. In 2004, Shelmerdine failed to get enough sponsors to fill up the space on his car, so he stuck a Bush-Cheney stick on it.

No one noticed but the FEC, which began a prosecution on the grounds that this was an illegal in-kind contribution to the Bush campaign because the value of the publicity exceeded the legal limit of \$250. The case lasted till 2006, when he was officially reprimanded but not fined.

Even after the Citizens United decision, the FEC is still looking for ways to regulate speech, he said. At the moment some activist members want to regulate YouTube for political content, he said.

Burrus blames this whole mess on the same 1976 Supreme Court decision I blame it on - Buckley v. Valeo. In that case, the court upheld spending limits on donors but made an exception for rich guys. They can spend as much as they want.

That decision paved the way for a guy like media mogul Michael Bloomberg to run for office. Here on this side of the Hudson, Goldman-Sachs alumnus Phil Murphy seems to be following the example of fellow Goldman Sachs alum Jon Corzine in using his cash to corner the Democratic gubernatorial nomination.

That's fine with me – and fine with Burrus. Let them - and everyone else - spend to their heart's content.

But that \$250 limit on everybody else sure seems silly compared to the kind of swag those guys can spend.