



# THE AMERICAN SPECTATOR

## The War on Speech Takes an Ugly Turn

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In any society, the prevailing power structure loathes dissent. It's been this way since time immemorial — when Christians dared suggest that there might be some other path to follow than the Roman gods, for instance, or when the leading lights of the Age of Enlightenment dared suggest that science and reason ought to guide mankind.

We see the ugliest of both now combined in the most-sinister fashion with today's War on Dissent throughout the world. That our own country was founded on the concept of protecting dissent as an essential element of revolution makes our nation's steps in that direction all the more damning. Worse, while this has been a long-time coming, the attacks on dissenting or skeptical speech have found ever-more devious tactics in recent years.

When the Obama Administration launched Operation Choke Point, the pretext was to combat fraud. Choke Point was an extra-legal effort run as a joint operation by several agencies: the FDIC, Treasury, Justice Department, and the Consumer Financial Protection Bureau. Despite the existence of strong anti-fraud laws at both the state and federal level, Choke Point instead used regulatory pressure to convince banks and credit card payment processors to shut down the accounts of businesses and industry classes the administration claimed had a higher incidence of fraudulent transactions.

What a congressional investigation concluded, however, was that Choke Point was being used by the Obama administration to target industries with which it had a personal animus — guns and ammunition manufacturers and dealers, for example, and so-called “payday lenders.”

In the course of investigating Operation Choke Point, it was discovered that federal authorities had created a target list — and on that target list were small 501(c)(3) organizations.

501(c)(3) organizations can be private charities. But they can also be organizations that engage in research and analysis on public policy — groups like the Cato Institute, the Heritage Foundation, and the Competitive Enterprise Institute.

At the time, some concerned individuals theorized that were Operation Choke Point to go unchallenged, all some creative person in government would need to do would be to label a position on a particular public policy as tantamount to committing fraud, and they could then use Choke Point (or Choke Point-style tactics) to go on the offensive against these organizations, choking off their donations by shutting down their bank accounts and their ability to take credit card donations.

And that may yet happen. But in the interim, 20 attorneys general, all Democrats, have upped-the-ante in their own way. Again under the pretext of combatting fraud, these officials, clothed in immense power, have started what can only be termed a campaign of intimidation against businesses and organizations advocating a thoughtful, cautious approach to public policies dealing with man's role in impacting the global climate.

Begun by New York Attorney General Eric Schneiderman, and followed-on by California AG Kamala Harris, this effort started by looking at the efforts of ExxonMobil in dealing with proposals that would have a tremendous impact on the energy sector in the United States. Among their concerns were the research and education organizations that ExxonMobil may have supported.

Schneiderman and Harris were soon joined by another eighteen attorneys general — and when this effort was questioned by CEI's Hans Bader in January, CEI found itself to be the target!

Last week, Claude Walker, the AG for the U.S. Virgin Islands, subpoenaed the donor records for CEI — sending a clear signal to both CEI *and* its donors that such dissent simply will not be tolerated.

Let's be clear here: Exxon has a fundamental right to support whatever non-profit organizations it wants to, and to do so privately. CEI has a right to accept donations from any U.S. Citizen or U.S. company it wants to. *Both* have the right to keep their donations private, a right that is protected under the First Amendment, and enshrined in the Supreme Court's 1957 *NAACP v. Alabama* decision.

The high court understood then that one of the ways that government could harm people was by using the powers of officialdom to intimidate individuals into not supporting important, but perhaps unpopular, causes.

In other words, the Supreme Court knew then that the power of government could have a tremendous impact in suppressing dissenting speech, merely by having demanding access to an organization's donor lists.

Using the battle against "fraud" as a pretext changes nothing — since voicing a dissenting opinion is not committing fraud. There is no doubt — climatology and the study of man's role in influencing climate are scientific endeavors. And researching the degree to which man has that impact is similarly scientific.

But what one does with the scientific research... what policies are created (if any)? That's a public policy question, and, to some extent, a political one. Determining whether man's role in impacting climate is a real threat, whether it should be a priority, how that threat stacks up to other threats... these are all policy and political questions.

Most importantly, because of the sweeping impacts that such policies could have on our society, how those policies impact the poor and America's working families — that's why having thoughtful and dissenting voices are essential.

Exxon and CEI aren't the only targets here. Any person, any business, any organization that has voiced a skeptical opinion regarding American climate policies could potentially be caught in the crosshairs of some state's attorney general or some federal agency with unchecked power.

But worst of all, a dangerous precedent is being set here — one that should give the progressives who are championing this pause. If an amorphous term like “fraud” can be used to gore free-market and limited government organizations on a progressive spear, there is no reason why some conservative power-monger couldn't use that same kind of spear to gore progressives.

Which is precisely why the Constitution protects conservative and progressive organizations alike.