

Free Speech, Free Markets, and Barriers to Civil Liberties Coalitions

By Wendy Kaminer

"ACT now and get 6 months of *The Nation* free," a fund-raising email from ACLU executive director Anthony Romero blares. With "a monthly pledge of \$12, \$15, \$20 or more" you'll receive a free six-month subscription to *The Nation*, "one of America's leading political magazines... you'll get insightful reporting on the issues that matter to you."

It's a bit disconcerting to hear the ACLU aggressively promoting a magazine that is aggressively promoting [amending](#) the First Amendment (to enable campaign-finance restrictions that the ACLU [partly opposes](#).) Still, the ACLU's partnership with *The Nation* is not much of a surprise. It confirms the organization's increasing identification with progressivism, which is not always friendly to civil liberty; and it points to the difficulties of forming left/right coalitions in defense of liberty, which Glenn Greenwald has rightly [described](#) as essential.

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The initial willingness of eight Republicans to vote against extending controversial provisions of the Patriot Act last week hinted that the right wing's commitment to freedom might eventually encompass more than low taxes, no abortion rights, and no health care mandate. I'm pessimistic or, at best, skeptical that this symbolic vote signaled a trend, but I do want to acknowledge it and express the hope that allegedly freedom loving tea partiers will eventually prove my previous [criticisms](#) of their post 9/11 anti-libertarianism at least partly wrong, or premature. (Today the House passed the Patriot Act extension, with 27 Republicans voting against it.) Maybe someday, authoritarians like Michelle Bachmann (who voted for the Patriot Act) will lose their seats on the freedom bandwagon; maybe someday Ron Paul's victory in the CPAC straw poll (for what it's worth,) as well as his willingness to partner with Barney Frank on cutting defense spending, or recently declared Senate candidate Jeff Flake's libertarian leanings ([enumerated](#) by David Weigel) will not seem quite so anomalous.

But if conservative libertarians are outliers on the right, they're not exactly welcomed by the left. Given a continuing economic crisis, the extension of tax cuts for the very rich, the prospect of deep budget cuts affecting the poor, and unprecedented concentrations of wealth, it's not surprising that left-leaning civil libertarians find it hard to ally with conservatives whose vision of individual liberty demands low taxes and unregulated markets. The passion of self-styled progressives for campaign-finance reform and a tendency to demonize reform opponents exacerbates the difficulties of forming civil liberties coalitions, as does the popular progressive belief (which I've long lamented) that insuring equality requires suppressing presumptively offensive or hurtful speech.

Is there any neutral ground on which left and right leaning libertarians might meet? The Cato Institute consistently defends economic, political, and personal liberties, but it's regarded as an enemy by many on the left precisely because it consistently defends economic, political, and personal liberties: The dominant liberal perspective equates economic liberty with economic royalism. The ACLU is often regarded with suspicion if not hostility on the right partly because of its extensive civil-rights agenda that demands market regulation and its increasingly unreliable commitment to protecting speech that's deemed a threat to equality (reflected in the ACLU [model school harassment](#) policy). For years, it also persistently declined to recognize or even seriously consider recognizing Second Amendment rights, alienating conservative libertarians who hold the Second Amendment as dear as liberals used to hold the First. (The ACLU [regards](#) the Second Amendment as a source of collective rights -- an odd position for an organization devoted to defending the individual liberties promised by the Bill of Rights.)

So while the ACLU and CATO share some important, official common ground, they don't share a base of support. And while the ACLU sometimes lobbies in alliance with liberal nemeses, like the NRA (and once hired former Republican Congressman Bob Barr as a consultant), it is popularly, strongly identified with the left, or "the Democratic wing of the Democratic Party," with good reason. Reporting on the recent retirement of Ramona Ripston after 40 years as executive director of the Southern California ACLU (one of the largest, richest, most influential, least civil-libertarian and most liberal of all ACLU affiliates), the *Los Angeles Times* accurately [declared](#), "A leftist Southern California icon puts down her torch."

It's a lost opportunity. As a high-profile, national-membership organization, the ACLU might at least try to exploit right-wing, pro-freedom rhetoric in an effort to attract politically diverse civil libertarians. Instead, the national ACLU is increasingly liberal. The ACLU's 2011 fundraising workplan, for example, omits discussion of free speech and a wide range of civil liberties violations flowing from anti-terrorism laws, regulations, and practices (among other civil liberties concerns), according to an ACLU veteran who has reviewed it. Instead, the plan focuses mostly on immigrant rights, gay and lesbian rights, and reproductive freedom and is "remarkably similar" to the Ford Foundation's agenda during the years ACLU executive director Anthony Romero worked there.

I'm not criticizing the ACLU's attention to the issues included in this plan; I'm lamenting inattention to issues left out of it. I'm not suggesting the ACLU should abandon its long-standing commitment to equality and the protection of subordinated minorities. But I do wish it would err on the side of individual liberties as much as it errs on the side of collective civil rights. I wish I could imagine it shilling for *Reason Magazine* along with *The Nation* (if it must shill at all) since *Reason* is a much more consistent defender of individual liberties. But like the Cato Institute, *Reason* promotes free markets as well as "free minds."

Coalitions require a willingness to work with people who agree with you on some important issues and disagree on others, obviously. It's too bad for civil liberty that

advocates of limiting free speech can feel more at home in the ACLU than advocates of expanding free markets.