



The Campaign Finance Law Trump Is Accused Of Breaking Was Unconstitutional To Begin With

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Attorney and radio host Mark Levine, speaking on Fox News' Hannity program and quoted in [realclearpolitics](#), reasons that President Trump's use of former attorney Michael Cohen as a go-between to pay women hush money is not a campaign contribution and there is no campaign law violation. Levine explained that, "A candidate who spends money on an event that occurred not as a result of the campaign is not a campaign expenditure."

The debate has brought the contentious issue of campaign finance regulation back to the public's attention. There have been extensive analyses that indicate that campaign finance restrictions violate First Amendment rights.

Over two decades ago, testifying on behalf of the [CATO](#) Institute, Bradley Smith, addressing a Congressional Committee on the Judiciary, Subcommittee on the Constitution, noted: "We should scrap most all of the present system of campaign finance regulation, remembering the admonition of the First Amendment to the Constitution, that Congress shall make no law abridging the rights of free speech..."

In addition to First Amendment issues, research indicates that campaign regulation efforts have not achieved the goal of reducing the influence of money in politics.

The expertise required to comply with reporting requirements and other campaign regulatory measures gives political professionals and party bosses an advantage over novices running for office. In some ways, the gauntlet of regulatory compliance and restrictions on fund raising makes American politics resemble that of [ancient Rome](#), where leadership was restricted to a small field of "great men" with the personal resources or key connections to run.

Supporters of campaign restrictions allege that this type of legislation reduces the influence of money in politics. In reality, they provide a form of establishment-candidate protection. By providing complicated and arcane rules concerning filing reports, with significant penalties for any less than perfect compliance, they impose onerous financial and legal burdens on challengers. Absent the access to professional assistance incumbents or party boss-favored candidates possess, citizens seeking to run must spend scarce resources and even more scarce time running a legally hazardous maze of requirements largely established by and for incumbents.

There have been campaign-related measures, some of which have passed and others blocked, that have sought to reduce the effectiveness of the First Amendment.

One extremist measure that failed was legislation introduced by Senator Charles Schumer (D-NY) to initiate the constitutional amendment process in order to limit the effectiveness of the First Amendment. The proposed limitation on free speech rights would have excluded paid political speech from constitutional protection.

The anti-First Amendment drive involves regulation as well as legislation. Previously, The Democrat members of the Federal Election Commission attempted to impose a penalty on one news station that had been uniformly critical of the Obama Administration, based on a complaint from an obscure candidate that he wasn't invited to a televised debate. Of course, those same commissioners never considered imposing similar sanctions against the Democrat National Committee, which had inappropriately tilted towards Hillary Clinton in her primary effort against Bernie Sanders. The attempt was blocked by Republican Commissioners.

The U.S. Supreme Court has repeatedly held, even long before the Citizens United case, that campaign contributions and expenditures are protected by the First Amendment. Legalities aside, common sense in a free nation dictates that public statements, however financed, made by citizens or organizations disagreeing (or agreeing) with their elected officials is a vital activity.

The numerous attempts to use campaign regulation, which should reasonably only consist of open disclosure of all contributions, as a vehicle to immunize incumbents and "establishment" favorites from criticism, is both a threat to the First Amendment and a true gift to party bosses.