



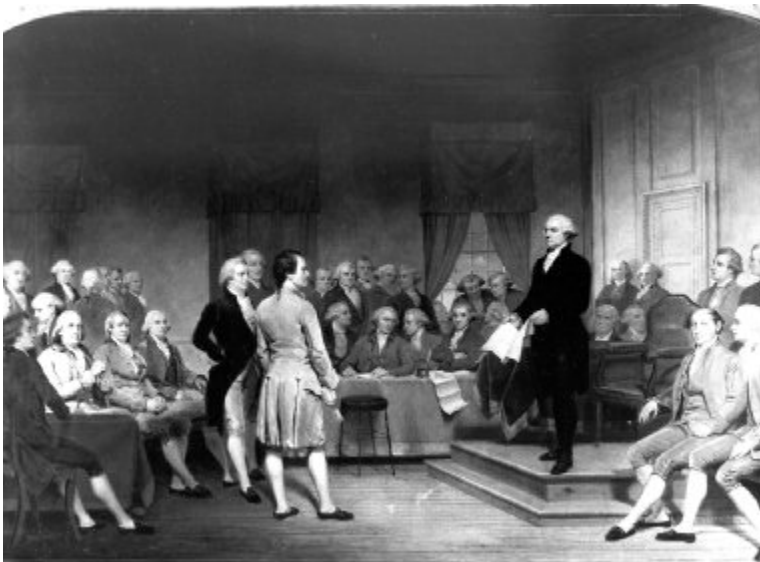
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Edward Achorn: Bill of Rights bars Congress from redistributing speech

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By EDWARD ACHORN



Decades ago when I wrote my first news story, the legend of Watergate hovered over the business. To me, it was a story of dogged journalists who bravely defied the most powerful politician in America and, ultimately, brought him down for his misdeeds, demonstrating that constitutional government and the rule of law are greater than any man.

I didn't think that it was about "getting" the Republican and advancing the Democrats. But these days, I wonder.

The watchdog ethos that the great H.L. Mencken embraced — "The only way a reporter should look at a politician is down," he said — seems sadly outmoded. Many journalists have become open cheerleaders and enablers for the party they favor.

But, until recently, I have clung to the belief that journalists would shed their partisanship when it came to the First Amendment, at least. The First Amendment, after all, is the guarantor of our power to speak out and report facts.

Yet the Fourth Estate's outrage over a House bill passed last week that takes dead aim at the First Amendment was distinctly muffled. Indeed, many journalists were cheering, apparently because they believe that the Democrats are out to restrain the "right" people — fat-cat corporations, some of them foreign-owned, and other loudmouths who might oppose their power.

The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech." Yet that is what the House voted to do last week, in trying to get around the Supreme Court's defense of the First Amendment (in the Citizens United ruling) earlier this year.

The cynicism of this highly partisan bill with the Orwellian name of the "Democracy is Strengthened by Casting Light on Spending in Elections (DISCLOSE) Act" should have been clear, at least to those among us who still view politicians as generally self-interested people rather than always gallant defenders of the public good.

Under the bill, certain people would be compelled to register their names with the government if they wish to fund political speech — notably leaders of corporations and some members of citizens groups and nonprofits. The concept seems to be to chill the speech of some, and not others, on the basis of the ideas they are apt to express. Corporations and nonprofits targeted by the legislation tend to be those who might criticize the ruling party, while groups that strongly support the Democrats (such as public-employee unions) are protected.

The DISCLOSE Act "presents itself as high-minded concern in the public interest. The truth is uglier. The majority party in Congress fears that free spending on speech will lead to electoral losses in November," wrote John Samples of the Cato Institute.

In the past, campaign-finance rules covered both corporations and unions. But as Eugene Scalia, a lawyer who is son of Supreme Court Justice Antonin Scalia, wrote in an op-ed for Politico, the ruling party crafted the legislation to "stifle only corporate speech, while simultaneously enabling unions — and Democratic incumbents — to benefit from the enhanced First Amendment freedoms recognized by the court."

Isn't it only fair to make corporations and nonprofits influencing elections through advertising disclose their involvement?

Not according to the Founders. Though the press in early America was owned and operated by special interests capable of swaying elections in ways that were not always "fair," the First Amendment specifically barred Congress from taking control. The Founders did not mandate that certain citizens, under the threat of fines or jail, put their names on a government list and state how much money they spent in criticizing politicians.

They wisely comprehended that it is far more dangerous to permit government to restrain speech than to permit citizens to be swayed or even deceived in the marketplace of ideas. They trusted citizens to sort out the barrage of information (often false, and often self-interested) — or at least, they distrusted Congress to serve as an impartial referee, recognizing that government control of speech is a straight highway to tyranny.

What happens when politicians redistribute speech to VIPs was painfully obvious during the horse-trading over the bill. To win enough votes, the House extended protection to the powerful National Rifle Association. Under the bill, unrestricted speech is the privilege of the favored, strong and plugged-in, rather than an equal right of all.

If history shows us anything, it is that the Founders had it generally right. Free speech has been the bulwark of liberty. It's not always fair or pleasant or perfect — the First Amendment protects a lot of ugliness — but it is better than the alternative, which George Orwell aptly described as “a boot stamping on a human face — forever.”

Edward Achorn is The Journal's deputy editorial-pages editor (eachorn@projo.com).