
Shut Up, They Explained

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This selection first appeared in the *Weekly Standard*, November 17, 1997, pp. 18–19. Frum’s point in this article is that so-called campaign finance reform is an effort by politicians to limit criticism from the public. Frum looks at the effect in Canada of a law similar to the provisions of McCain-Feingold in limiting the amount of money individuals can spend to express their own views, concludes that the system allows political parties the right to speak but limits the ability of private citizens to speak out, calling them “third-party intervenors.” This article is reprinted with permission of the *Weekly Standard*. For information on subscribing to the *Weekly Standard*, please call 1-800-283-2014 or visit the website <http://www.weeklystandard.com>.

If you were a politician and wanted to enact a law forbidding private citizens to criticize you, what would you call it? If you possessed any flair for publicity at all, you’d do what nearly half the Senate and almost all of the media have done: You’d call it “campaign finance reform.” Proponents of campaign finance reform nearly always declare that they’re trying to protect ordinary citizens from the dangerous influence of Big Money in politics. But it would be closer to the truth to say that they’re trying to protect ordinary citizens from the even more dangerous influence of ordinary citizens in politics. The campaign finance legislation now temporarily blocked in the Senate—the so-called McCain-Feingold bill—imposes startling new restrictions on the right of private citizens to speak up during an election.

Defenders of campaign finance reform justify these restrictions by promising voters that government supervision of political speech will result in a healthier democracy. The National Right to Life Committee—one of the organizations that would be shut up by McCain-Feingold—observed a remarkable bit of reasoning by a prominent advocate of campaign finance reform, Burt Neuborne, legal director of the Brennan Center for Justice.

At a February 27 hearing before the Constitution subcommittee of the House Judiciary Committee, Neuborne commended the panel's chairman, Charles Canady of Florida, "for the disciplined way the hearing has been run, and how carefully you maintained the ground rules that allowed real free speech to come out here. And I'm really saying that the same idea has to be thought of in the electoral process. . . . In a courtroom, speech is controlled. In this room, speech is controlled, and the net result is good speech."

Is it really? If you look just across the border, you'll see a version of McCain-Feingold in operation in Canada. (Canada is to American liberalism what Cuba is to the American automobile industry: a place where broken-down old jalopies are kept running decades after they should have been scrapped.) Is it promoting free speech and democracy?

Consider the case of Gary Nixon of British Columbia. In the summer of 1996, the socialist government of British Columbia called an election. It argued it deserved to be returned to office because it had balanced the province's budget without harsh cuts in social services. Mr. Nixon, a civic-minded accountant, believed that the government was fudging its figures. He dug into his own pocket and paid \$6,300 Canadian (about \$4,500) for a series of small newspaper and local radio ads denouncing the province's budget as a sham.

The socialists won the election. But it turned out that Mr. Nixon had been right: The province was running a big deficit, and the government *had* been manipulating the numbers to get itself reelected. Unfortunately being right has not done him any good. The chief electoral officer of the province has hit him with a \$13,000 fine—without trial—for violating the campaign finance law by speaking up. He got off lightly. A British Columbian advocacy group, the B.C. Fisheries Survival Coalition, bought ads in the same election accusing the socialist government of mismanaging the province's fish stocks. They have been hit, again without a trial, with a \$220,000 Canadian fine.

By Canadian standards, British Columbia runs a fairly tolerant regime. Private citizens are allowed to spend up to \$5,000 Canadian of

their own money to express themselves during a campaign. That pays for a few minutes of radio or a few square inches of newspaper. In the province of Quebec, by contrast, citizen speech has been virtually outlawed: Until the Canadian Supreme Court struck down Quebec's law in October, Quebecers were permitted to spend no more than \$600. What that meant was that Quebecers dissatisfied with the left-leaning policies of the province's two main parties were forbidden to use any technological device invented after 1400 to communicate their unhappiness with the choices on offer: no newspaper ads, no radio, no television, no meeting halls large enough to require a microphone, no web pages, pretty much nothing except quiet muttering over the back fence.

The Canadian federal government has been attempting to impose a gag law like British Columbia's and Quebec's since 1983, with the support of the three old-line parties: the Liberals, the Conservatives, and the Socialists. It's lost twice in the intermediate-level courts, but the Supreme Court decision that struck down Quebec's \$600 limit indicated pretty strongly that a slightly higher limit—the court proposed the figure of \$1,000—would be constitutional for both federal and provincial governments. For politicians who believe, with Neuborne and senators McCain and Feingold, that controlled speech is good speech, it was a welcome green light.

Canadian governments so disdain the right of private citizens to have a say in the elections that choose their rulers that they have invented a marvelous phrase for those who try. The law calls them "third-party intervenors." The political parties, you see, are the principals. Private citizens who try to have an influence on their own with any device more sophisticated than a graffiti spraycan or a sandwich board are interlopers, "third parties," meddling where they do not belong. This is the path down which American campaign reformers would take the United States—a path toward a two-class political system. At the top would be the politicians and the media, who may say whatever they please. At the bottom would be everyone else, whose rights to comment on their electoral choices would be regulated and circumscribed.

Over the years, the right of free speech has taken on a strange and even rococo shape in the United States. But at the very same time that it has been twisted and stretched to cover activities that are only remotely speech-like, its core value—the right of citizens to make their voices heard when it’s time to decide who will govern them—has come under assault. What kind of free speech right can be understood as guaranteeing government money for smearing your naked body with chocolate on stage, but not your right to take out an ad in the newspaper saying “Joe Smith says he loves the environment but he voted to pave Yellowstone”?

The senators who support McCain-Feingold profess to care about free speech. They say they are protecting it. But the law they’ve written frankly jettisons the right to speak during an election, in order to make workable the law’s otherwise ramshackle and futile latticework of restrictions, regulations, and general bossiness. If McCain-Feingold should ever pass, the right of Americans to speak their minds about the governance of their country, a bedrock right if there ever was one, will depend on the forbearance and good sense of the regulators of electoral speech. And as Gary Nixon can tell you, that’s not a position the citizens of a democracy should ever find themselves in.