



CENTER *for*
COMPETITIVE
POLITICS

Roughing Up Even Candidate-Free Speech

Americans who don't spend their days and nights reading and writing about campaign finance restrictions—like we do here at the Center for Competitive Politics—may not realize just how bad it's gotten out there for citizens who want to exercise their political speech rights.

After all as the election draws near many Americans are bombarded with what appears to be an almost limitless amount of political speech. As they get ready for work, they not only see John McCain being interviewed on their favorite morning television show, but they also see “Paid for by McCain-Palin 2008” during the commercial break. As they emerge from their homes, they see their streets lined with yard signs supporting candidates up-and-down the ballot. And, as they get in their cars and turn on their favorite drive-time radio program, they hear that familiar tag line, “I'm Barack Obama, and I approved this message.” Only after seeing and hearing all of this have their work days just begun.

Given this perspective, how could Americans think campaign finance laws are making it tough to speak?

Well, what they don't know would probably shock them. Despite the vast amount of political advertising out there, the undeniable truth is that it has become shockingly rough out there for Americans who want to band together—apart from any candidate or political party—and exercise their constitutional right to make their voices heard, especially around election time.

Indeed, the environment for independent political speech is so bad that it is now unsurprising to read stories and hear commentaries more than suggesting that it is perfectly acceptable, even desirable, to investigate, regulate and restrict what should be the free speech of citizen groups. You see, if a someone, anyone, can argue that a citizen group's “major purpose” is to influence an election, and that the group has accepted more than \$1,000 in donations “used to support the election or defeat” of a federal candidate, then that someone, anyone, can argue that the citizens have actually formed a “political committee” subject to page after page of campaign finance laws and rules.

So even if a group of citizens goes painstakingly out of its way to avoid even the mention of any candidate—an action that itself could subject the group to campaign finance regulations—those same citizens still cannot be sure they're safe from the maze and mystery of federal election law.

Case in point is the brand new organization known as Leadership for America's Future. *The New York Sun* reported Monday that the group "was formally created on Thursday," and that it "hopes to run television advertisements" speaking directly to the public. According to its website, the mission of Leadership for America's Future "is to foster a national discussion on the kind of leadership needed to guide America into the 21st Century." And, that mission was echoed by the group's attorney, who told the *Sun* that "the purpose of the association [is] to educate the public on the traits of leadership."

Not surprisingly, the Leadership for America's Future wants—indeed, needs—to run television advertisements to get its perspective out to the public. After all, setting up a soapbox in the town square isn't effective and can't work in reaching other citizens nationwide, or even just across California where the group was formed. The Internet provides worldwide access, but even the best website in the world will go unnoticed if the public doesn't know it's there. So, as nearly any public relations firm will advise, the best way to reach millions of homes—not to mention millions of minds—is to buy some time for your message on the small screen.

Of course, television spots not only come with a significant monetary cost, but also can trigger a regulatory one when you're talking about political advertising. Thus, in designing its proposed pitch about the "leadership needed" for America's future, the group steered clear from referring to any current candidates—most notably those for President—in the hope of making a book full of federal campaign finance regulations and requirements wholly irrelevant.

Indeed, the organization went so far as to do the same on its website. As the *Sun*'s Josh Gerstein noted, "Neither the video nor the site mentions Mr. Obama or Mr. McCain." In fact, not only are candidates noticeably absent from any text, whether seen or heard in the proposed ad and on the live website, but also not a single candidate appears, not even as a background image.

Quite simply, both through their words and their actions, the citizens who created the Leadership for America's Future were saying one thing loud and clear—we are exercising our First Amendment rights to freely associate and speak about important issues. Nevertheless, the immediate reaction was to doubt the group's intentions and motives, all with the underlying implication that maybe its speech and association shouldn't be so free. Why? Well, because the group's speech could have been intended to—or, worse, would actually—influence the election.

The *Sun*'s Gerstein began the doubting by describing the Leadership for America's Future as "a new political organization which hopes to run television commercials undermining the central themes of Senator Obama's presidential campaign while underscoring the strengths of his Republican opponent, Senator McCain." Later Gerstein concluded, even more assertively, that "the language in the online video [of the proposed ad]"—which the story noted in the previous

sentence “mentions” neither candidate—“seems clearly intended to cut at the Democratic presidential nominee, Mr. Obama, while boosting Mr. McCain.”

Jeff Mitchell of PolitickerCA echoed the same concerns, characterizing the group’s candidate-free proposed ads as “TV commercials ... that subtly but clearly support McCain.” Indeed, Mitchell is even blunter in assessing what the “apparent mission” of this “independent expense organization” really is. Ignoring the actual mission of the Leadership for America’s Future, Mitchell claims in his lead that all these citizens want to do “is to sway independent and undecided voters from supporting Democratic presidential nominee Barack Obama.”

Then, of course, there was Frank D. Russo, writing for the California Progress Report, who could barely contain his disdain. “The folks involved in this new venture are trying to say this group is not partisan, is not designed to favor John McCain or blow a torpedo hole in Barack Obama’s boat,” Russo wrote right under a headline labeling the citizen group an “Anti-Obama Stealth Committee.” Later, Russo claims the citizens who formed the Leadership for America’s Future “are trying to varnish [the group] with the same phony even-handed non-partisan veneer that doesn’t cover up what is at stake.”

Undoubtedly, most Americans are not aware that without even mentioning a candidate’s name or showing a candidate’s face, a group of citizens who wants to speak out in order “to foster a national discussion on the kind of leadership needed to guide America,” can prompt all but an official complaint that the group should be subject to investigation, enforcement and prosecution by the campaign finance authorities. That is, and should be, a scary proposition. It also demonstrates just how rough it’s gotten out there for citizens who want to make their own voices heard and issues seen around election time.