SPEAKING FREELY

A Publication of the Institute for Free Speech

SUMMER 2025 VOL. 19 NO. 2 IFS.org

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Our amicus brief in State of Washington v. Meta Platforms, Inc. *argues that the state's law is overly burdensome on platforms like Meta*

Institute Amicus Briefs Help Spur Two State Supreme Courts to Review Key Free Speech Cases

Arizona and Washington Supreme Courts to hear pivotal campaign finance cases

By Tom Garrett

The highest courts in Arizona and Washington have agreed to hear challenges to major political speech laws—cases in which the Institute for Free Speech filed amicus briefs urging review.

In *Center for Arizona Policy, Inc. v. Arizona Secretary of State*, the Arizona Supreme Court has granted review in a challenge to Proposition 211, the nation's most intrusive donor disclosure law. Notably, the court will hear the case as a facial challenge—even though the plaintiffs did not request such review. The Institute's brief was the only one to urge the Court to review whether Proposition 211 is facially invalid under the First Amendment, meaning unconstitutional in nearly all of its applications.

The Institute's brief explained how Proposition 211 expands every axis of traditional disclosure law—who must be disclosed, what qualifies as campaign-related speech, when such disclosure applies, and where it applies. The brief argues that this convergence "accomplishes a shift in kind, not merely degree," turning ordinary regulatory burdens into what it calls "a cataclysmic free speech violation." Arizona's Constitution, which guarantees that "every person may freely speak, write, and publish," provides even broader speech protection than the federal Constitution's First Amendment does—a point the Institute's brief drives home.

Meanwhile, in *State of Washington v. Meta Platforms, Inc.*, the Washington Supreme Court will review the constitutionality of an obscure but important provision in its Fair Campaign Practices Act. The provision has effectively shut down political advertising on major platforms across the state. Meta, formerly Facebook, stopped accepting political ads in Washington rather than attempting to comply with the Act's redundant and onerous requirements. All other platforms, including Google and Yahoo, also banned such ads to avoid financially ruinous fines.

The Institute's amicus brief, prepared by Davis Wright Tremaine, one of the nation's top First Amendment law firms, argues that the law places unlawful burdens on platforms that act as intermediaries for political speech.

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INSTITUTE FOR FREE SPEECH

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ABOUT THIS PUBLICATION

Speaking Freely is a quarterly newsletter published by the Institute for Free Speech.

The Institute for Free Speech is a nonpartisan, nonprofit 501(c)(3) organization that promotes and defends the political speech rights to freely speak, assemble, publish, and petition the government guaranteed by the First Amendment. Originally known as the Center for Competitive Politics, it was founded in 2005 by Bradley A. Smith, a former Chairman of the Federal Election Commission. The Institute is the nation's largest organization dedicated solely to protecting First Amendment political rights.

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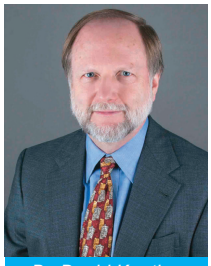
From the President

The political freedoms guaranteed by the First Amendment form the cornerstone of our republic. As this newsletter demonstrates, the Institute's impact in protecting those freedoms continues to expand through important litigation and successful policy advocacy.

I'm particularly pleased to report that our amicus briefs helped persuade two state supreme courts to review critical free speech cases. In Arizona, the state's highest court will examine Proposition 211—the nation's most intrusive donor exposure law. The court will consider whether the law is facially unconstitutional. While the plaintiffs themselves did not request this broader review, our brief was the only one that advocated for this approach, arguing that the law's unprecedented disclosure rules represent "a cataclysmic free speech violation."



By David Keating

Similarly, in Washington, the state supreme court will review onerous advertising regulations that have effectively banished political ads from digital platforms statewide. Our brief explained how the law harms grassroots candidates and outsider voices who rely on affordable digital ads. These high-profile cases could forge strong precedents for political speech rights in those states and may influence other courts nationwide.

I'm equally encouraged by our policy impact in Kansas, where Governor Laura Kelly recently signed two far-reaching bills incorporating key Institute recommendations. These bills were spurred in part by our successful lawsuit on behalf of Fresh Vision OP, demonstrating how our litigation work can complement our policy work.

The Kansas reforms clarify vague laws governing independent expenditures, properly define a political committee and "cooperation or consent," and increase contribution limits for candidates for the first time since 1990. Most significantly, the legislation eliminated donation caps from political parties to candidates in general elections. These changes will allow citizens and advocacy groups to speak much more freely about candidates.

Our litigation efforts also continue at a rapid pace. The University of Oregon finally settled our lawsuit on behalf of Professor Bruce Gilley, acknowledging that his comment that "all men are created equal" should never have led to his social media blocking. The school also agreed to establish safeguards to protect speech on university accounts.

In Utah, we're representing journalist Bryan Schott, who is suing legislative officials for denying his press credentials shortly after his critical reporting on the Senate President.

Our New Hampshire case representing parents who wore "XX" wristbands to support women's sports has drawn major media coverage and support from U.S. Attorney General Bondi and Assistant Attorney General Dhillon, who called the ruling against our clients "unconstitutional."

At the Fifth Circuit, we defended nonprofits' right to provide pro bono legal services to political candidates, with Chief Judge Elrod questioning state attorneys on their lack of a compelling interest in restricting such speech.

As governments continue to attempt to restrict political speech, the Institute's work has never been more vital. With your support, we stand ready to defend Americans' First Amendment rights.

Thank you for standing with us.

RECENTLY IN THE MEDIA

FOX NEWS

By David Rutz

Texas legislation could weaken protections against frivolous lawsuits, warn free speech advocates

4/21/25 SB 336, which has an identical companion bill in the House, HB 2459, would repeal that provision that stays discovery and trial in a SLAPP case "until such time that an appeals court has ruled, if asked to do so, on an anti-SLAPP motion," according to an article in the Institute for Free Speech.

COURTHOUSE NEWS SERVICE

By Cameron Thompson

Fifth Circuit signals support for free speech claims in legal services dispute

4/28/25 A Fifth Circuit panel appeared likely Monday to side with a campaign finance advocacy group in a dispute over a small piece of Texas election law.

The Institute for Free Speech, a nonprofit focusing on First Amendment and campaign finance litigation, appealed to the three-judge panel that the Texas Election Commission's 2022 advisory opinion on providing free legal services to political candidates unfairly restricted their First Amendment rights.

The institute wanted to represent a City Council candidate in a small town south of Dallas, Texas, who himself wanted to challenge a separate piece of the election code related to a warning printed on political signs. When they asked the commission if that conduct would violate campaign contribution laws, the commission voted 5-3 to find it would be a form of "in kind" contribution.

NH JOURNAL
AN INSIDESOURCES PUBLICATION

By Damien Fisher

Judge Rules Nashua Had Right to Ban Pine Tree Flag; Plaintiffs to Appeal

Plaintiffs Stephen and Beth Scaer sued for use of citizen's flag pole

Photo by: Visuals by Mugsy

3/30/25 A federal judge ruled Friday the City of Nashua did not violate resident Beth Scaer's First Amendment rights when it denied her permission to fly the "Appeal to Heaven" Pine Tree flag on the citizen's flag pole…

"The flag is not in harmony with the message that the city wishes to express and endorse. Therefore, we must deny your request," wrote Jennifer L. Deshaies, whose job title in city government is "risk manager."

Scaer sued, and her cause was taken up by the Institute for Free Speech (IFS). The case went before Magistrate Judge Talesha Saint-Marc last year.

During testimony before Saint-Marc, City Attorney Jonathan Barnes compared flying the Pine Tree flag at City Hall to flying a Nazi flag…

"The abrupt repeal of Nashua's flag policy is a tacit admission that the old policy was unconstitutional," IFS attorney Nathan Ristuccia told NHJournal at the time.

Media, Officials Shine Spotlight on Institute Case after Court Denies Preliminary Injunction

Public officials and national media raise awareness of New Hampshire parents' free speech battle in "XX" wristband case

By Tom Garrett

Last September, the Institute for Free Speech filed suit on behalf of four New Hampshire parents who were punished for wearing pink "XX" wristbands at a high school girls' soccer game. The symbolic protest in support of women's sports led school officials to threaten the parents with arrest and ban them from school grounds after they argued with officials about removing the wristbands.

At a hearing in November 2024, the school district confirmed that it would prevent adults from wearing the XX wristbands at future school sporting events because they deemed the message to be "trans-exclusionary," but would not prevent adults from displaying a Pride flag because the message was "inclusionary."

On April 14, the U.S. District Court for New Hampshire denied our clients' motion for a preliminary injunction, ruling that the Bow School District could suppress the parents' speech to protect students from what the judge characterized as "harassment, intimidation, and anxiety." While this decision does not end the case, it triggered an extraordinary wave of media attention and high-profile criticism.

Within days of the ruling, U.S. Attorney General Pam Bondi announced that the Department of Justice would investigate the case, stating, "This DOJ stands with women and their supportive parents." Assistant Attorney General Harmeet Dhillon was even more direct, declaring: "This ruling is unconstitutional and will not stand."

Additional support on social media came from a wide range of prominent figures, including Senator Cynthia Lummis, Congressman Dan Crenshaw, Congresswoman Nancy Mace, women's sports activist and former NCAA swimmer Riley Gaines, and tennis legend Martina Navratilova.

The decision also garnered extensive coverage across major media outlets. Fox News, *The Boston Globe*, *The Daily Wire*, and *The Daily Caller* each published feature stories. Plaintiffs Kyle Fellers and Anthony Foote appeared on Fox's *The Ingraham Angle* to share their experience, and *WORLD Magazine* interviewed Fellers.

Legal commentators also criticized the ruling, with former Deputy Assistant Attorney General and *National Review* "Bench Memos" author Ed Whelan calling it "bonkers" for equating silent symbolic speech with "directly assaulting" transgender individuals. Several outlets highlighted the contrast between this decision and the Supreme Court's *Tinker* precedent protecting symbolic expression.

On May 2, 2025, the Plaintiffs filed their notice of appeal. As the case proceeds, the Institute will continue to fight for our clients' First Amendment right to silent protest. The recent wave of attention has helped raise awareness and recognition of our clients' story and the underlying First Amendment principles at stake.

Tom Garrett
Chief Communications Officer

Institute Amicus Briefs Help Spur Two State Supreme Courts...

Continued from Page 1

These burdens create a chilling effect by encouraging platforms to self-censor or exit the political advertising space entirely. As the brief details, this harms not just the platforms, but the grassroots candidates and outsider voices who rely on digital ads to communicate affordably with voters.

In both cases, the Institute's voice helped elevate the constitutional concerns raised by these overbroad laws that the respective state supreme courts will now consider.

Now that the two high courts will rule on these laws, the Institute plans to file amicus briefs on the merits of the cases. While the rulings by these top courts are binding only inside each state, such precedents can be cited as persuasive authority nationwide.

Tom Garrett
Chief Communications Officer

Institute Client Sues Utah Officials after Denial of Press Credentials

Utah officials rewrote credential rules to exclude independent journalists following reporter Bryan Schott's critical coverage

By Tom Garrett

A journalist with 25 years of experience covering Utah politics is fighting back after being denied press credentials under a revised policy targeting independent reporting.

In January, the Institute for Free Speech filed suit on behalf of Bryan Schott and Utah Political Watch (UPW) against Utah legislative officials who denied Schott's credential application. The case follows the Utah Legislature revising its credentialing rules to exclude "blogs, independent media outlets [and] freelance media." This change occurred shortly after Schott inquired about obtaining credentials for the 2025 session through the newly created UPW, after Schott returned to independent journalism following a multi-year stint with legacy media.

The lawsuit, *Utah Political Watch, et al. v. Musselman, et al.*, challenges the credential policy as unconstitutionally vague and discriminatory, with undefined terms like "independent" and "reputable" allowing arbitrary decisions on credentials.

Schott, who received the National Press Foundation's Election Journalism Fellowship and Utah's Best Newspaper Reporter award, founded UPW in October 2024 after departing *The Salt Lake Tribune*. Despite receiving credentials since at least 2013, Schott was denied in 2025.

This denial followed Schott's investigative reporting on Senate President Stuart Adams regarding his campaign finance disclosures. After the article published, Adams attacked Schott on social media, calling him a "former media member" and questioning his journalistic integrity. That same day, Utah Senate Deputy Chief of Staff Aundrea Peterson messaged Schott about the credential process while dismissing him as "someone who claims to be a journalist" and accusing him of a "lack of journalistic integrity."

Plaintiff Bryan Schott is fighting for free press rights in the Beehive State

Without credentials, Schott cannot cover key events and is barred from daily Senate leadership meetings, media availabilities with the House Speaker, and press-designated Capitol areas.

"The First Amendment prohibits government officials from excluding journalists based on arbitrary reasons like independent status. Nebulous standards make it easier to exclude journalists based on tough coverage or the journalist's viewpoint," said Institute for Free Speech Senior Attorney Charles "Chip" Miller. "The revised credentialing policy gives officials unbridled discretion to deny credentials to reporters whose coverage they dislike. And to threaten others with similar banishment for not toeing the government's line."

"For over two decades, I've worked to hold policymakers accountable and to keep Utahns informed about their state government," explained Bryan Schott, who has the text of the First Amendment proudly tattooed on his arm. "Now, legislative officials are trying to shut me out—and shut me up—simply because I am once again an independent journalist, as I was until 2020. There is no legitimate reason to exclude me now."

"This isn't just about me. It's about protecting press freedom for all reporters who work outside traditional media organizations," Schott concluded.

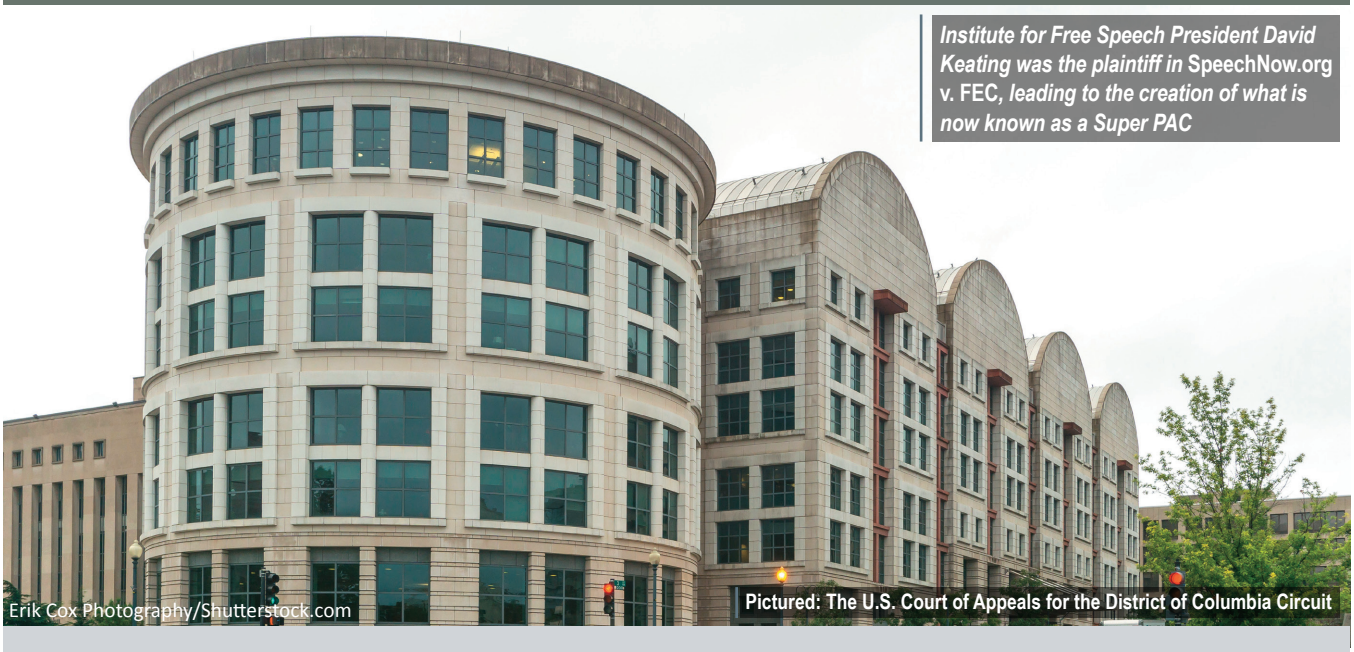
Tom Garrett
Chief Communications Officer

reason
FREE MINDS AND FREE MARKETS

15 Years of Super PACs

The SpeechNow *ruling expanded political speech and reshaped elections.*

By David Keating



Institute for Free Speech President David Keating was the plaintiff in SpeechNow.org v. FEC, *leading to the creation of what is now known as a Super PAC*

Erik Cox Photography/Shutterstock.com

Pictured: The U.S. Court of Appeals for the District of Columbia Circuit

Super PACs ushered in a new era of speech freedoms and improved American democracy more than I imagined. And I should know—fifteen years ago, I created the first one.

On March 26, 2010, the District of Columbia Circuit Court of Appeals decided *SpeechNow.org v. Federal Election Commission (FEC)*, unanimously striking down a provision of the Federal Election Campaign Act that capped individual contributions to independent expenditure-only committees at $5,000.

I'm proud to have been the lead plaintiff in that case. While *Citizens United v. FEC* is a watershed political speech case in its own right, commentators often incorrectly give it credit—or blame—for Super PACs. The anniversary of *SpeechNow* seems an appropriate time to set that record straight.

Citizens United established that corporations and unions could make independent expenditures in political campaigns. However, *SpeechNow* recognized individuals' First Amendment right to pool their resources for independent political speech.

Why is *SpeechNow* still so important 15 years later? Super PACs have fundamentally delivered on their promise to expand political speech rights guaranteed by the First Amendment.

In *Buckley v. Valeo* (1976), the landmark Supreme Court decision on campaign finance, the Court ruled that an individual could independently spend unlimited amounts advocating for or against a candidate. The *SpeechNow* decision took the next logical step. The First Amendment protects the right of two, ten, or 10,000 or more citizens to pool resources to speak as much as they want about a candidate.

What could be more American than that? Those who share a belief form a group, contribute to it, and then use the funds to speak to our fellow citizens about who should govern our nation.

This enhanced freedom has had a substantial impact, making campaigns more informative and competitive.

First, as incumbents feared, election campaigns are more hotly contested than they've been for decades by

a significant measure. In 2010, Republicans gained 63 seats, the most since 1948. Democrats gained 40 seats in 2018, topped just twice since 1974. In the Senate, Democrats lost nine seats, the most flipped seats since President Ronald Reagan won in 1980. Party control of the White House changed hands three times since 2016—the last time that happened in three straight elections was between 1888 and 1896.

Super PACs also benefit voters, who get more information about candidates from campaign spending. These new groups are a significant factor in the record spending on federal campaigns, which has more than doubled since 2008, with most of the gains in congressional races. However, the roughly $16 billion spent in the last election cycle is still less than how much we spent on potato chips.

All this spending helped drive turnout, which in 2020 was the highest in over 100 years, with the 2024 election a close second. I won't claim that correlation is causation, but the critics claim the ruling threatened democracy. Those dire warnings have proven wildly off-base.

Perhaps most crucially, *SpeechNow* recognized that meaningful political communication requires resources. In a nation of over 330 million people, spending money to reach voters is a prerequisite for effective political discourse. By removing artificial constraints on political groups, *SpeechNow* liberated and bolstered political speech.

Genuinely free political speech can yield powerful results. In 1967, opposition to the Vietnam War continued building. Fortunately, there were no limits on giving money to candidate campaign committees at the time, allowing a few wealthy, anti-war liberals to fund Eugene McCarthy's challenge to President Lyndon B. Johnson. They poured over $13 million in today's money into his campaign in New Hampshire, a massive sum for one state. McCarthy didn't win, but he shocked everyone by getting 42 percent of the vote, which drove LBJ out of the race and became a turning point in political opposition to the war.

In the *New York Times v. Sullivan* ruling, the Supreme Court noted our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." Letting incumbent politicians have the power to limit how much we can spend our funds to criticize them is an affront to this commitment.

Fifteen years after *SpeechNow*, it's time to recognize its essential wisdom: limiting the money we citizens can spend on political speech means limiting our free speech rights.

The experience of the past 15 years has proven that more speech, not government limits on speech, best preserves our freedoms and American democracy.

This article was published in *Reason Magazine* on March 26, 2025.

David Keating
President

Institute's Brief Urges Entire Sixth Circuit to Vacate Ruling Undermining *Citizens United*

In April, the Institute for Free Speech filed an amicus brief in the U.S. Court of Appeals for the Sixth Circuit, urging the court to rehear *Boone County Republican Party Executive Committee v. Wallace* en banc.

The case involves a Kentucky law that prevents political parties from speaking on any ballot issues unless the parties form a separate political committee with separate funding raised specifically for that purpose. Last year, several local political parties used their general funds to create campaign materials supporting two ballot issues in the general election. A Sixth Circuit panel of three judges initially issued a ruling greenlighting the party mailers in time for the election. Later, the same panel upheld the law, stifling the parties' ability to speak to citizens about ballot measures in the future.

The brief argues that the panel decision undermines *Citizens United* and reduces the historic case to mean "precisely nothing." The brief notes that the Sixth Circuit's decision creates a "gaping loophole in the most important campaign-finance decision of this century. And in doing so, the panel hands every government in this circuit a roadmap to maneuver around the First Amendment."

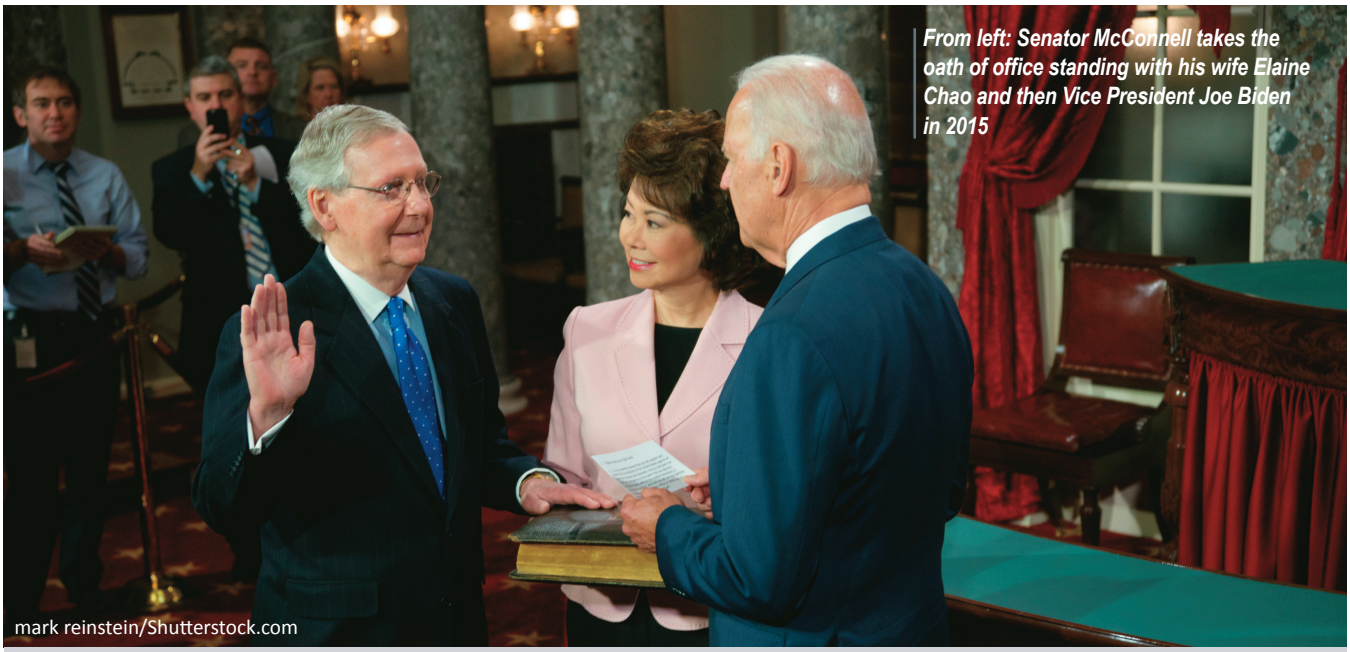
Sarah Fisher
Associate Director of Communications

courier journal

McConnell's most underappreciated legacy: His unwavering support of free speech

Sen. Mitch McConnell's career reminds us that the First Amendment's protections must extend to all Americans — particularly those with whom we disagree.

By Brett Nolan



mark reinstein/Shutterstock.com

From left: Senator McConnell takes the oath of office standing with his wife Elaine Chao and then Vice President Joe Biden in 2015

Sen. Mitch McConnell's recent retirement announcement closes a chapter on one of the most consequential legislative careers in modern American history.

His most underappreciated legacy, though, may be as the Senate's foremost advocate for free speech.

For four decades, Sen. McConnell has stood as a bulwark against restrictions on speech and association, regardless of who led the attack. His principled defense of these fundamental rights often put him at odds with popular opinion — or his own party.

Despite those challenges, Sen. McConnell remained steadfast in his support for free speech. As he said in 2014 in response to a bipartisan effort to restrict election spending, "If incumbent politicians were in charge of political speech, a majority could design the rules to benefit itself and diminish its opponents. And when roles reversed, you could expect a new majority to try to disadvantage the other half of the country. And on it would go."

He understands something that many fail to appreciate: Government restrictions on anyone's speech threaten everyone's liberty.

On this issue, Sen. McConnell's record has been as consistent as it has been courageous.

In 2006, he was one of only three Republicans who voted against sending a constitutional amendment to ban flag burning to the states for ratification. It failed by just one vote — his. Despite his belief that flag-burners were "degenerate attention-seekers," he recognized that even the most grotesque and misguided speech could not justify chipping away at our First Amendment rights.

This commitment to principle was perhaps most evident in his fight against the McCain-Feingold campaign finance law in 2002. Sen. McConnell not only led the legislative effort against the bill, but he took the

battle to the courts as the lead plaintiff in *McConnell v. FEC*. While that case resulted in an initial setback, subsequent Supreme Court decisions like *Citizens United v. FEC* strengthened First Amendment protections for political speech.

Yet the bipartisan attacks on free speech haven't abated. Recently, Republican Sen. Josh Hawley introduced a bill that would try an end run around *Citizens United*, opening the door to limiting the speech rights of organizations including advocacy groups, newspaper publishers, or labor unions. *Citizens United* has long been a boogeyman for Democrats, and it was disheartening to see Sen. Hawley join their misguided criticism.

But Sen. McConnell stood firm. He warned his colleagues of incoming fire if they joined the doomed effort to restrict political speech. Hawley's bill never made it to the floor.

Sen. McConnell's consistency has been matched by practical effectiveness. In 1994, he helped defeat legislation that would have used taxpayer dollars to fund political campaigns. Three decades later, he blocked the deeply flawed S.1, the Senate counterpart to House Democrats' sweeping effort to impose new restrictions on advocacy groups and their supporters.

Protecting the speech and privacy rights of such groups has frequently been top-of-mind for Sen. McConnell. Throughout his career, he has resisted attempts to force nonprofit organizations to disclose their donors, understanding that privacy is essential to protecting dissident voices.

The Supreme Court established that principle in *NAACP v. Alabama*, a 1958 decision that prevented Alabama's Attorney General from discovering the identity of civil rights supporters and exposing them to intimidation and harassment. And 60 years later, when the California Attorney General tried to force charities to disclose their donors for little to no reason, Sen. McConnell urged the Supreme Court to shut it down. Thankfully, the Court did just that.

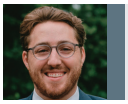
In celebrating his well-earned legacy, we must also grapple with this reality: Sen. McConnell's retirement comes at a critical moment for free speech rights. Both parties have shown a troubling eagerness to weaponize government power against their adversaries, with no sign that this will stop.

Unfortunately, Sen. McConnel's retirement means we'll have one less voice standing up for speech when we need it most.

Perhaps Sen. McConnell's commitment to "uninhibited, robust, and wide-open" public debate will inspire future lawmakers. His career reminds us that the First Amendment's protections must extend to all Americans — particularly those with whom we disagree.

Free speech is not always popular. Kentuckians (and all Americans) are fortunate to have had a long-serving senator committed to defending it anyway.

This article was published in the *Louisville Courier Journal* on March 3, 2025.



Brett Nolan
Senior Attorney

Institute Urges Supreme Court to Hear Lobbying Law Case

Alexander Hamilton: Unregistered Lobbyist?

The Institute filed an amicus brief urging the U.S. Supreme Court to hear *Sullivan v. Texas Ethics Commission*, a case challenging the constitutionality of Texas's lobbying registration law. If such a law applied at the nation's founding, the brief warns that Alexander Hamilton could have been "an unregistered lobbyist based on insignificant details like whether James Madison reimbursed him for the cost of printing *The Federalist Papers*."

Texas law requires many individuals who communicate directly with government officials about policy matters to register as lobbyists and publicly disclose their activities, even when they engage only in pure speech without providing gifts or other benefits to officials.

The Federalist Papers were published anonymously, and similar tracts today would be illegal in many states under such laws. The brief, filed in March, contends that "these laws do not prevent any meaningful danger, but they chill the kind of speech that helped give birth to our Nation," urging the Supreme Court to revisit the outdated 1954 precedent of *United States v. Harriss* regarding lobbying registration laws.

The brief concludes that the *Harriss* precedent relies "on a foundation that crumbles under modern [First Amendment] scrutiny." The Court should hear the case "to reevaluate when the state's interest in disclosure can overcome an individual's First Amendment right to privately engage in core political speech."

Tom Garrett
Chief Communications Officer

Fifth Circuit Hears Institute's Challenge to Texas Ban on Pro Bono Legal Work

Panel questions government's interest in restricting free court advocacy to candidates, PACs

By Tom Garrett

William A. Morgan/Shutterstock.com

Scan the QR code to listen to the oral argument on our website

On April 28, Institute for Free Speech Senior Attorney Del Kolde appeared before the U.S. Court of Appeals for the Fifth Circuit to defend the right of nonprofit corporations to provide free legal services to political candidates and committees in Texas. The case, *Institute for Free Speech v. J.R. Johnson, et al.*, challenges the interpretation of a law that, under an unhelpful advisory opinion issued by the Texas Ethics Commission (TEC), prohibits such pro bono representation because it is a prohibited corporate campaign contribution.

The Institute had sought the TEC's guidance by requesting an advisory opinion before it represents a Texas candidate or political committee in pro bono litigation against the TEC. The TEC responded by voting 5-3 that providing such legal services would violate Texas law—meaning that the Institute would face jeopardy if it exercised its First Amendment rights to associate and speak on behalf of a Texas candidate or committee by filing a pro bono legal challenge to the TEC's regulations.

Attorneys for the Institute then filed a pre-enforcement challenge to the TEC's interpretation in U.S. District Court, but the case was dismissed for lack of standing. Among other reasons, the district court reasoned that IFS needed to take some other unspecified step toward violating the law. On appeal, the Institute argued that taking a substantial step toward violating Texas law would constitute the crime of attempt, which also subjects IFS and its attorneys to legal jeopardy. The Institute also argued that the TEC's regime cannot meet strict scrutiny.

Chief Judge Jennifer Walker Elrod appeared skeptical of the state's arguments, repeatedly pressing counsel for the TEC on the lack of a compelling state interest in banning pro bono legal work provided by corporations. At one point, Elrod stated bluntly: "It chills speech. It chills legal representation. What is the compelling interest?"

The Institute argues that the TEC's advisory opinion forces an unconstitutional choice: either refuse potential clients whose constitutional rights are being violated by the state or risk facing civil and criminal penalties for helping such persons or groups.

"We asked the Commission whether we could do this work. They said no. That created a credible threat of enforcement," Kolde told the panel. He also pointed out that similar pro bono activity has long been protected under Supreme Court precedents like *NAACP v. Button*.

While the court's ruling will likely take several months, the panel's questioning suggests that they may be inclined to revive the case.

The full audio and transcript of the oral argument are available on the Institute's website.

Tom Garrett
Chief Communications Officer

News in Brief

Highlights of some of the Institute's latest contributions to free speech advocacy

By Sarah Fisher

Plaintiff and Fresh Vision OP President James Muir (pictured here) helped HB 2206 become law through the success of Fresh Vision OP, Inc., et al. v. Skoglund, et al.

Photo by: Tenille's Photography

Kansas Adopts Institute's Recommendations for Pro-Free Speech Reforms

Two far-reaching bills were signed into law by Governor Laura Kelly that adopted key Institute for Free Speech recommendations for improving campaign finance laws. President David Keating gave invited expert testimony to the Legislature earlier this year and in previous years with specific suggestions for improvement.

House Bill 2206 was passed in part in response to our successful lawsuit on behalf of Fresh Vision OP[1] and brought the state's definition of a political committee into compliance with the First Amendment. But it also adopted two other changes Keating recommended. The act clarified a vague law governing independent expenditures by groups that are not registered political committees. It also defined for the first time what constitutes "cooperation or consent." The changes will allow advocacy groups to speak much more freely about candidates with confidence they won't be hauled before the state's campaign finance regulator for violating laws that, prior to the new law, were unclear.

House Bill 2054 enacted a doubling of campaign contribution limits to candidates, the first adjustment to the limits for the governor or state legislative races since 1990. This landmark legislation also doubled limits for local offices and, most importantly, eliminated donation caps from political parties to candidates in general elections.

1 See the Fall 2024 issue of *Speaking Freely*

School Board to Pay Over $150,000 in Attorneys' Fees

Following our successful First Amendment lawsuit on behalf of Harry Pollak, a Wyoming federal judge awarded attorneys' fees totaling $156,000. Mr. Pollak was represented by Institute for Free Speech Senior Attorney Brett Nolan and local counsel Seth Johnson after he was wrongfully censored at a school board meeting in 2022. The Institute hopes that this outcome will encourage school board officials everywhere to think twice before unconstitutionally censoring speech they don't like.

Institute Comments: Proposed Foreign Agents Registration Act Rule Would Chill Speech

This spring, the Institute for Free Speech submitted comments to the Department of Justice on the implications of newly proposed changes to the Foreign Agents Registration Act of 1938, calling on the DOJ to more clearly delineate speech on behalf of foreign entities and free speech by American citizens on their own behalf.

Institute Comments: FCC Went Beyond the Law on Text Messaging Regulations

In April, the Federal Communications Commission issued a public request seeking help identifying FCC rules to alleviate unnecessary regulatory burdens. The Institute responded, urging the Commission to revisit its interpretation of the Telephone Consumer Protection Act to exclude text messages from the statutory limitations on voice calls. Such messaging is vitally important to political speech, and the rules expose advocacy groups to nuisance lawsuits.

Sarah Fisher
Associate Director of Communications

Victory: Professor Bruce Gilley Secures Settlement in University of Oregon Social Media Censorship Case

Settlement requires the university to reform social media policies after blocking professor for saying "all men are created equal"

By Tom Garrett

A straightforward expression of support for equality spawned a lengthy legal battle that ended with the University of Oregon acknowledging that its employee should not have blocked Professor Bruce Gilley over constitutionally protected speech.

From left: Bruce Gilley and local counsel Angus Lee celebrate their free speech victory

After two-and-a-half years of litigation led by the Institute for Free Speech, the parties reached a settlement in March that vindicates Professor Gilley's rights while establishing safeguards for protected speech by citizens interacting with university social media accounts.

The lawsuit began in 2022 after the school's Division of Equity and Inclusion blocked Professor Gilley from its official X (formerly Twitter) account after he responded to a "racism interrupter" post by re-posting it with the comment "all men are created equal." The university now acknowledges that Professor Gilley's comment "is constitutionally protected speech and should not have been blocked."

"This settlement represents a significant victory for free speech in the digital age," said Professor Bruce Gilley. "Universities cannot silence viewpoints they disagree with on their official social media platforms. It's especially troubling that my simple statement that 'all men are created equal' prompted this response. This principle isn't just a founding ideal of our nation, it's protected speech that public institutions cannot censor—as the University of Oregon found out."

The settlement requires the University of Oregon to implement meaningful speech-protecting reforms, including clarifying social media guidelines to explicitly protect speech from viewpoint-based censorship, creating an appeals process for those who believe they were wrongfully blocked, conducting annual First Amendment training for staff who manage university social media accounts, and maintaining judicial oversight for 180 days to ensure settlement implementation.

"This victory sends an unmistakable message that university officials cannot act as ideological gatekeepers on social media platforms, including when seeking to promote DEI, which has become a sort of state religion on many university campuses," said Institute for Free Speech Senior Attorney Del Kolde. "The settlement acknowledges that Bruce Gilley should not have been blocked for quoting one of our founding documents and should lead to changes that allow for greater freedom of speech going forward. Public universities should serve as marketplaces of ideas, not echo chambers."

The case will now proceed toward a final resolution with the preliminary injunction in place.

Tom Garrett
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