

Sustaining Democratic Life: An Interview with the ACLU's Anthony Romero

This is a lightly edited transcript of an interview conducted by Mark Dow and Kent Worcester with Anthony Romero in April 2004 in his lower Manhattan office.

New Politics: Yesterday during the September 11 Commission hearings, when he was defending some of the Patriot Act measures that have been criticized, Ashcroft said that a lot of what the Patriot Act did was simply to extend measures that were already in existence.

Anthony Romero: Patently false.

NP: Okay, I'd like you to respond to that. Also, in what specific ways are things worse than they were under Clinton after the 1996 laws that changed so much about habeas review, expanded anti-immigrant measures . . .

AR: It is certainly true that the seeds for the Patriot Act were found in the 1996 law signed by President Clinton, and that were championed by the Justice Department under Janet Reno. That's why it's not surprising to find Janet Reno in some agreement with the policies of the Justice Department under John Ashcroft, because you find the very beginnings, in terms of the erosion of judicial review, questions around court stripping, the limiting of immigrants' rights, all of that preceded the Patriot Act. It became much worse under the Patriot Act, but the seeds of it were certainly found in the 1996 laws with the response to the Oklahoma City bombing and the litigation after that that ensued in terms of both the immigration reform law of 1996 and then also some of the anti-

terrorism law – the Illegal Immigration Reform and Immigrant Responsibility Act, the Anti-Terrorism and Effective Death Penalty Act, and the Prison Reform Litigation Act. These were a trilogy of laws that all had a very similar set of undercurrents: to erode judicial review, to limit due process rights for immigrants and for prisoners, shifting burdens of proof onto immigrants and others for potential wrongdoing. What's notable is that the Oklahoma City bombing happened one year before the 1996 laws were enacted, so you took a full year in the legislative process to debate and discuss what the legislation ultimately would look like. That stands in marked contrast to the Patriot Act, which was rammed through Congress in record time – 45 days – after the 9/11 attacks. And the Patriot Act goes many steps further than the 1996 laws. And the statement of Mr. Ashcroft and Mr. Bush that they just really codified what was existing law enforcement practice or policies is untrue; it's just patently untrue.

One example of this radical departure from existing law is seen of course in Section 215 of the Patriot Act, which grants the government expansive and radical new powers in being able to seize employment information, library records, financial information, even, quote, tangible information, tangible data if you will, that could extend to genetic data on individuals. Even John Ashcroft, before one of the congressional hearings, said that that would extend to genetic data. And that it did so with a much lower standard than probable cause, making it much harder for judges to play their essential role in overseeing the actions of the executive branch. So when you water down these legal standards, you make it much harder for judges to serve as a check and balance on the executive branch. And that power does not need to flow from individualized criminal suspicion. The government can just use it in contexts and circumstances where it does not have individualized criminal suspicion, or which doesn't even show probable cause.

Now, we've been arguing throughout that this is a power that's just too breathtaking, that you don't want to give it to the executive branch, and after a lot of back and forth the Justice Department finally came clean recently, about six or nine months ago, saying that they had never used these Section 215 powers. This was only after a lot of badgering from Congress, that John Ashcroft finally told Congress that he hadn't used these new Section 215 powers.

So the question obviously flows, if you haven't had to use these powers in the last two and a half, almost three years since 9/11, why do you need them? Isn't stockpiling law enforcement powers bad for a democracy? It's like leaving around a loaded gun, saying I don't need to shoot anyone today, but some day I might have to pick up the gun and shoot at someone. The fear we have of course is that at another moment in history, when perhaps there's not as much attention on Section 215, or the Patriot Act, or this attorney general, or another attorney general, maybe someone might want to pick up that weapon and use it under a very different set of circumstances for a much more nefarious use than we can even imagine.

The second example of how the Patriot Act is just a radical departure from existing law and existing law enforcement practice is found in Section 213 which deals with "sneak and peek" searches that allows the government new sweeping powers to be able to come into people's homes, search their personal effects, download information off their computers, and not tell them about those searches for weeks if not months after the fact. Now, it is true, under some limited circumstances, like when the government was investigating organized crime, or when it was investigating crimes having to do with contraband or other issues where the government was worried about the suspect fleeing the jurisdiction or evidence being tampered with, that they always had the ability to conduct those secret, what we call "sneak and peek" searches. It was uneven

in various jurisdictions, it was not a matter of established federal law, that in some circuits you could do it certain ways, that in other circuits you could do it other ways, but there was judicial oversight throughout, that it was limited in a certain set of circumstances, in terms of certain crimes, and certain investigations, and what the Patriot Act did was it took that power and it made it apply across the country, and it provided law enforcement agents with that power under any and all criminal investigations.

So basically the Patriot Act allows the government to come into people's homes and conduct secret searches for anything like tax evasion, a crime that maybe some Americans commit – but do you want to grant the government the ability to come rifling through your tax records while you're at work to see whether or not you're cheating on your taxes? What most Americans don't realize is that the Patriot Act went much further than just dealing with terrorism. Most Americans believe that when George Bush signed that law, and John Ashcroft held the sword of Damocles over the heads of members of Congress, that they were providing a remedy to the terrorist attacks of 9/11. And now when the American public understands that what's in the Patriot Act is much broader than dealing with terrorism, they're beginning to feel duped, to really begin to say, we really didn't understand that this was a much larger set of measures, that this wasn't just your generic crime bill, that if it was going to affect any and all criminal investigations, then maybe we should have had a little more debate, a little bit more discussion, maybe our members of Congress should have engaged it a little bit more vigorously than they did.

Outside the Law

NP: Some of the concerns you're raising have to do with setting precedents, or creating certain possibilities. But

then there are actual developments that have alarmed critics, such as Guantànamo Bay. Do you want to talk about what conditions are like there, what are the most serious concerns that the ACLU has, and what do Americans not know about what the government is doing?

AR: Well, the last point is exactly the point. We do not know. We do not know how bad conditions are at Guantànamo, we don't know the experiences of the men who are being held there, we don't know for how long they expect to be held, and frankly our biggest concern is that there is no review or scrutiny of the government's actions in Guantànamo. Only the International Red Cross has been granted access to the detainees in Guantànamo. They have a longstanding practice of not commenting on the conditions that they find when they visit detainees and prisoners of war, although this time they broke with some of their standard practice, and they did offer a very carefully worded statement about what their concerns were for the Guantànamo detainees. Our point is a very simple one, that you can't create an island outside of law where basic rights are denied. That's just not the American way, nor is it the way the international system works.

And what's remarkable is that you have the government argue that, on the one hand, international law and the Geneva Conventions don't apply, because these are not, quote, prisoners of war. If you look at the Geneva Conventions, you actually see that under Article 5 of the Geneva Conventions there is a requirement that if there is a doubt about whether someone is a prisoner of war, you are to provide a hearing to adjudicate that status. And this process worked perfectly well for the American government during Operation Desert Storm, where during the last war that occurred in the Gulf, we had 1,196 individuals who the government asserted were prisoners of war, after Article 5 hearings under the Geneva Conventions, the government continued to hold 310 of them as prisoners of war, and the remainder, almost 900 or so, were determined,

under these Article 5 hearings, to be displaced civilians and refugees who were just caught up in the hostilities. That process worked perfectly well for us under Operation Desert Storm. This administration has not made a convincing case as to why that process would not work now.

So on the one hand they say that international law doesn't apply, and on the other hand they say that domestic law doesn't apply, the Constitution doesn't apply because this is not on American soil, this is in the sovereign nation of Cuba, and I'm sure Fidel Castro and the Cuban government would have a very different view of that. We have a perpetual lease that only the U.S. government can rescind in Guantànamo; we have exclusive dominion over the military base there, unlike other military bases we have in Germany, or Japan, or elsewhere. And what's just absolutely untenable is the idea that the government can say, international law doesn't apply and domestic law doesn't apply, and we're going to hold these guys for as long as we want without giving them access to their family members and their loved ones.

NP: The Guantànamo cases in the Supreme Court will be argued in a few days, and this issue of *New Politics* will probably be at the printer around the time of the decision. In the ACLU's amicus brief in *Rasul v. Bush*, there are arguments about the Geneva Conventions. You're going into the U.S. Supreme Court to argue about international law. What does that mean? Can you reflect a little bit on the future of bringing international law to bear on things going on here?

AR: First, as good lawyers, we throw every argument that we think might convince the court into our briefs. We believe that the international law argument is one that will increasingly make this Court wary of upholding the administration's actions. I think it's remarkable the level of outcry that we have seen among our allies, not outcry from our critics, which you would expect, but outcry from our allies, from the British, from the French, from the Germans, people in

countries and governments that have normally agreed with the U.S. and are working with the U.S. on the war on terror absolutely have broken ranks with the American government. And what's remarkable is that in the Guantànamo case you have a number of briefs that are filed by international groups who have never before weighed in on a domestic civil liberties issue or a civil rights issue in the U.S. You have the International Bar Association, which I think for the very first time filed a brief before the U.S. Supreme Court because the issues are so large, and so significant that they require foreign non-profit organizations to weigh in on this controversy.

For the U.S. it's kind of interesting; it's very sad when you think about the fact that this government and our country have distanced themselves from a very important legacy that we had, actually a very important accomplishment that we had during the Second World War and after, where we were one of the critical forces for establishing international law. It was Eleanor Roosevelt who played a critical role in the drafting and the thinking about and the articulation of the Universal Declaration of Human Rights. And about those principles found in international instruments, in the international documents were very much based upon our very own Bill of Rights and the Constitution. So somehow, in the last fifty or sixty years or so, we've become much more critical and hostile to international law in ways that I think undercut our patrimony, if you will.

And I think at this point, if we think about these issues, these are all global issues, the war on terror is clearly a global issue, you can't wage a response unilaterally or focus only domestically. It requires an international lens. And so the response to the civil liberties and human rights violations also has to be a global one. Where nonprofit groups like ours are in touch with and working with our counterparts in other countries whether in England or in France or in

Germany, and working with some of the human rights activists that you find in the developing world. It's clear that in other aspects of policy, that we understand the importance of globalization, that global laws and global norms will govern tariffs and trade, for instance, or they will govern the environment – at least we hope they will govern the environment. It's only a more recent recognition in U.S. circles that global norms, global mechanisms, global instruments should also play an important role on domestic civil liberties, on domestic civil rights and human rights.

Actually, the U.S. Supreme Court, I think in the last two cases in the last term, sent a very important signal that it was willing to consider international law, in both the *Lawrence vs. Texas* case and in the affirmative action case at the University of Michigan, they directly cited international law, not in a footnote, but actually in the body of the opinion. In the *Lawrence* case they actually cited the decisions from the European Court for Human Rights. So it reflects that the Supreme Court itself is willing not only to consider but is willing to articulate international precedent as authority for whatever decisions they themselves render.

So it's a long-term effort, but it's one that I think the ACLU, as this nation's oldest and largest human rights organization, addressing the rights of everyone, that we have a role to play in the global movement for human rights. That role is about making sure that we hold the U.S. government accountable for its domestic record under every forum that we can, whether it's under federal courts or the U.S. Constitution, or state courts and state constitutions, or even some of the international instruments and some of the international treaties that the U.S. has ratified.

Now to get back to Guantànamo for a second, Guantànamo is not just a human rights issue; it's also poor military policy. [You might also want to look at] the briefs submitted by military officials and by military leaders who really make the

point with convincing clarity that to detain men without access to lawyers and without access to a legal system, and by denying them due process rights indefinitely, puts our own soldiers at risk. Because the only thing that gives our soldiers who are out there in theaters of battle, whether it's in Iraq or Afghanistan or in other military operations that may ensue, the only thing that gives them the comfort to know that they won't be arbitrarily held by nations or by rogue actors is knowing that the U.S. government can always appeal to the Geneva Conventions and the rules that govern war and wartime prisoners. And if we hold other soldiers or other men in violation of those basic norms and international instruments, than our own soldiers have to be a little bit more worried about when they step into uniform and step into battle on behalf of this country.

NP: Isn't it strange that the debates since September 11, a lot of people on the quote-unquote left are for the first time . . .

AR: Quiet? At least initially they were quiet.

NP: Right. But I'm thinking specifically about what you were saying about Guantànamo and that it's bad military policy. We've also heard people on the left talking about whether mass roundups of immigrants, for example, is good law enforcement policy. It's just striking to me that people in that part of the political spectrum are talking about what's good law enforcement. It makes me wonder if the arguments are disingenuous, are just a way of criticizing something that we're already against.

AR: I don't think anyone on the left can be against the need for good law enforcement, and for good national security. Certainly no one who's lived through 9/11, and certainly not anyone at the ACLU, where we're five or six blocks away. Let's face it folks, the government has an affirmative obligation to protect the safety and security of our people, but, and this

is a significant but, it must do so within the confines of our laws, and it must do so in a way that comports with the best of American values, and the best of American principles.

Now does that mean that when we argue about the need for ensuring safety and freedom, for making law enforcement arguments, against racial profiling, or making arguments why detentions in Guantànamo put soldiers at risk, does that mean we're being disingenuous? I don't think so. I think it shows that we're willing to adapt under this set of circumstances and that we recognize that the government has this affirmative obligation, and that it must discharge those duties as best and as well as it can. I think there's a certain part of the political spectrum that is very often willing to speak about that they're against, but has a much harder time of describing what they're fighting for. And I think that's one of the things that we try very hard in the ACLU to parcel out, where we think things are necessary and appropriate, and where we think they've just crossed a line.

For instance, we do not call for the wholesale repeal of the Patriot Act. There are parts of the Patriot Act that we think were necessary improvements of the law. Providing increased funding for FBI and for intelligence operations. For insuring that our agents had training in foreign languages, and had the expertise and ability to translate foreign documents that might come in to intelligence officers so that we can understand the benefits of this intelligence. The principle that Mr. Ashcroft spoke about last night [before the September 11 Commission] about breaking down the wall between different federal agencies – who would argue with that in principle? We all remember how it was the government, the federal government, Mr. Ashcroft's very own Justice Department that issued Mohammed Atta another student visa two months after he took the plane into the World Trade Center. So who can argue with the need to ensure that the right hand and left hand are working together?

What we argue about is the how, that as you ensure the coordination of activities across the federal agencies, that you not do so in a way that erodes some key protections that are essential. That you not erode the probable cause standard. That you not allow intelligence investigations with much lower standards and much fewer protections on individual rights and freedoms to be used in criminal investigations where you're supposed to have a higher standard.

I also think it's important to note that some of our liberal colleagues on the left were initially as reticent and as quiet as they may now be vociferous. It was enormously frustrating that the ACLU was something of a lone voice in the aftermath of 9/11. And you can go back, and you can pull up the quotes of some of our friends now who have understood where we've gone, and how troubling or how problematic it was. They were members of Congress who normally had been our greatest allies in stopping these actions and policies from getting into law, who were absolutely shut down and too afraid to raise these tough questions. Unwilling, rather, not unable, but unwilling to do their job. And that frankly, it's interesting, this may not endear me to your readers, but I actually think that some of the libertarians on the right wing of the political spectrum, frankly, were much more vocal and critical than some of the lefties.

NP: No, we can accept that.

AR: And I think it is notable that you had individuals like Dick Armey and Bob Barr, and David Kean, and Grover Norquist and Phyllis Schlafly, all critical of the Patriot Act, and of the Justice Department and Mr. Ashcroft. You have Butch Otter, a Republican from Idaho, who was the one introducing legislation in the House to repeal part of the "sneak and peek" provisions. You have Arlen Specter who is one of the cosponsors of a piece of legislation that would repeal a part of the Patriot Act. Now let's ask, where are some of our Democratic senators, and our liberal senators in that

struggle? I don't think it falls as easily in terms of left and right as you would like. Certainly – and I'll get off the soapbox after this – certainly when it came to immigration, it was remarkable, even some of our good colleagues in the civil rights struggle were more willing to say, well, you know, before 9/11 I was against racial profiling, but now after 9/11 maybe we do need a little bit of racial profiling. And it was remarkable how willing members of the quote opposition were willing to give the president the benefit of the doubt. It's heartening to see where we've come in three short years, but we cannot forget the very dark moments of that crisis when conservatives and liberals were silenced.

Connecting the Dots

NP: We've been talking about the corridors of power. Let's turn that around and say, for peace activists or antiwar folks in Montana or Iowa, there have been these isolated stories about police . . .

AR: Not so isolated when you connect them all.

NP: How significant is the danger that political protest in this country will be subject to all kinds of arbitrary repression from civil and political authorities?

AR: It's not a question of will be, it's the question of they are, and I think we're only beginning to recognize it now. Of course one of the major criticisms John Ashcroft has leveled against the ACLU and other critics of his government and his policies is that we are "hysterical." And what I love to use in response to that comment of us being hysterical is to just walk people through the actual facts of certain cases and people can decide for themselves. You look at, for instance, the Drake University case, where you have law enforcement officials issuing subpoenas on local campus groups, to obtain their minutes, their meeting records, their finance records,

all because they were involved in discussions against the war, and because the government thought it could provide some insight into either illegal or potentially terrorist activities. And that they issued these subpoenas to get the meeting records and to find out who was attending what meetings, and it was only after the ACLU jumped in, the ACLU of Iowa jumped in and said, wait a minute here, why do you need these subpoenas, why do you need this information, that the government ultimately backtracked and said no, we don't really need it, thank you very much.

Connect that dot to an FBI bulletin that was leaked to the *New York Times* about a month earlier, that under the heading "Counter Terrorism Investigation and Analysis" went into excruciating detail only about individuals engaged in their First Amendment rights and in lawful speech. They completely conflated activities like civil disobedience, and protests, and marches, with quote unquote suspected terrorism. The memo reads with an Orwellian ring, the idea that individuals who are engaged in nothing more than turning out for anti-war marches or engaged in exercising their First Amendment rights, were being talked about in this FBI law enforcement intelligence bulletin, that was going to all law enforcement officials, telling them this is what you should watch out for, i.e. individuals exercising their First Amendment rights, and that you were to report any suspicious activities to the Joint Terrorism Task Force. Why, when you have individuals engaged in lawful First Amendment activities, would you have the locus of that activity be the Joint Terrorism Task Force?

You have the lifting of what were the Levy guidelines that were put in place, that were going to make sure that the FBI, because of J. Edgar Hoover's infamous legacy, not get involved in infiltration of political and social and civil movements. And those guidelines were summarily lifted to allow the FBI officials to go into mosques, and infiltrate groups, and attend meetings. And in fact you have stories, you have an

article in the *Sacramento Bee* that talked about an FBI agent infiltrating a local peace group, and that the local peace group only found out that he was an FBI agent when he had an unfortunate motorcycle accident and died, and his picture appeared in the local newspaper and the peace activists say, "wait a minute, this is this guy who's been coming to our meetings for the last several months."

You have the shutting down of dissent and debate where even if it's not the actions explicitly of the Justice Department or the FBI, it's the tone they have set which is then reverberated in local- and state-level jurisdictions where you have protesters being turned down for march permits like in New York City, or in Pleasantville, New Jersey, or in Georgia. Or you have instances of high school teenagers being sent home from school because they're wearing a t-shirt that says that Bush is a terrorist and because the school administrators think that's unpatriotic and un-American. Or in the case of a young college sophomore who has a rowdy keg party one night, and the police come out to tell her to turn down the music, and the next day she's visited by the Secret Service because the police had told them that she had an anti-Bush poster on her wall visible through the front door. And that after they had interrogated her, they asked her whether she had any pro-Taliban stuff in her apartment. Or you have the case of these peace activists who now find themselves on the "no-fly" list, and when they go to check into airports, are not allowed to board airplanes because somehow they've gotten onto a list, and they don't know how to get themselves off, and they don't know what criterion they've used to get themselves on, and ultimately the ACLU has to bring a lawsuit to get at the "no-fly" list because we realized you've got to provide individuals who are adversely affected by these lists at least some mechanism, some recourse.

All of these instances, when you connect the dots, really point to a very different climate of fear, and of the shutting

down of dissent and debate the likes of which we haven't seen since the fifties and sixties. And of course it begins with the statements coming from our highest ranking law enforcement official who had the audacity to stand before the Senate Judiciary Committee and basically say, if you criticize me, you're un-American, you're unpatriotic. Your questions and your criticism only, quote, aids the terrorists. That's what set the tone in this country. When you connect these dots, these become the canaries in the coalmine, these are the canaries that begin to become curiously silent, and that show you that the oxygen in the mineshaft may begin to dry up, and it may not be sufficient to sustain democratic life. And that's what we've got to be mindful of, as individuals who are committed to First Amendment freedoms and First Amendment principles, that no matter what, we've got to make sure that this is as loud a process as possible. That whether it is uncomfortable, or whether something is unpatriotic, or whether something is unnecessary or even wrongheaded, that what democracy is is a robust process, it should never be a quiet business. That unfortunately in the times when fear and insecurity grip the nation, and when our political leaders and political pundits seize the fear of the public in a way that shuts down discourse, is the time when you have to worry the most about it.

NP: Speaking of fear and insecurity, Rush Limbaugh . . .

AR: Equal opportunity ally, equal opportunity opponent. We've defended Oliver North, we've defended many individuals whose values and whose statements the ACLU disagrees with. Rush Limbaugh is most recently one of our clients, where we represent his right to medical privacy, which attaches even to people that I don't like to listen to on the radio. But he's got a right to make sure that his medical records are not inappropriately seized by law enforcement officials. And that it makes an essential point that the ACLU is not about liberal or conservative or left or right, this is about core American

values that attach to anybody. I don't expect him to be coming out for gay marriage, but I think he realizes now the power of having an ACLU around, and making a point that this is not about somebody fighting a personal battle, but this is about larger points and principles.

And that they could do it to him, what's to make you think they would respect the privacy of an unwed, Latina, immigrant mom who may be conferring with her doctors about an addiction issue. And that's precisely why we find that when you take these seminal moments when an issue is crystallized for the public, even though they may not fully understand what the principles are at stake, they understand that Rush Limbaugh has got his knickers in a twist. And maybe you can pull the camera back and get the public to understand the fact that this isn't about Rush Limbaugh's addictions or problems, this is really about the American public's right to live with privacy rights that protect our autonomy. The right to be left alone is one of the most critical civil liberties that we all have, attached to all of us.

It's always fun to flip the expectations of you on its head. I'm the first gay and the first Latino executive director of the ACLU, and I hire Bob Barr, author of the "Defense of Marriage Act" because he's been incredibly helpful in getting us this kind of coalition of Republicans and individuals on the right who agree with us. It's great to be representing individuals like Rush Limbaugh. When Pat Robertson initially made the statement that the reason why the U.S. was attacked was because God had lowered his protection on the American public because of the ACLU and of homosexuals and others, and then several months later his ministry also found itself on the other side of government intrusion when they were denying certain permits for his church, and we went to his defense and we offered to represent him because the right to free exercise of religion is important, and even Pat Robertson's operation and his ministries deserve a right to exercise their religious

beliefs freely in a country dedicated to the First Amendment. Those are teachable moments where you can show the American public that this isn't about a partisan agenda. That's the power of the work that we do – it's not about liberal or conservative, it's not about Republican or Democrat, it's not about immigrant or citizen, it's just about everybody's rights.

NP: Two final questions. First, in 1951 the National Emergency Civil Liberties Union was formed to defend political activists (some Communists, some not) whom the ACLU and other civil rights groups refused to defend or did not defend when they were brought up before the House Un-American Activities Committee. What are the parameters today of the ACLU's decisions to defend or not to defend?

AR: The ACLU receives many more requests for assistance than we can possibly provide. In deciding on cases that we will undertake, we weigh the seriousness of the civil liberty violations, the number of people affected and the ability to achieve a meaningful result through litigation.

NP: Finally, is it accurate to say the ACLU opposes campaign finance restrictions on First Amendment grounds? If so, that seems like a counter-intuitive reading of freedom of speech. After all, if political speech is correlated with wealth, then how meaningful, really, is the freedom of speech of those who can't afford it?

AR: The implication of your question is that the ACLU opposes all campaign finance laws on First Amendment grounds. That is not the case. We support among other things, public financing, and providing free airtime for qualified candidates. We did oppose the Mc Cain- Feingold legislation because we believed important parts of the bill violated First Amendment rights. We challenged this law on constitutional grounds in the Supreme Court. What most progressives and liberals fail to understand about the new campaign finance law is that it is

chilling speech they would normally want to protect. The new law for instance, imposes restrictions on the ACLU in its public education efforts – barring us from running ads prior to the national political conventions. That bar is unconstitutional and wrong-headed in my view, since the ACLU has never opposed or supported any candidate for political office for 84 years.

While it is true that wealth is a factor in whose voices rise above others in political discourse, citizens can offset the political money generated by individual and corporate wealth joining interest group or membership organizations like unions, environmental groups, reproductive rights groups, etc. By pooling resources of individuals who are not wealthy, powerful voices can emerge. MoveOn is an example of such a voice.

As a matter of principle, we do not want to give the government the power to silence certain voices so that other voices can be heard in the name of "leveling the playing field." When the government is given this power to regulate political expression then, more often than not, they will use that power to silence the voices of its critics. An example of this is the recent attempt by the Federal Election Commission to issue regulations that would restrict the advocacy of the so-called 527 groups and non-partisan, non-profit groups like the ACLU. Many groups that supported McCain-Feingold realized that the FEC was embarking upon an ill-conceived gambit to regulate political speech. The outcry was so great that the implementation of the regulations have been delayed indefinitely.

Footnotes