

A Gift of Fire

Third edition

Sara Baase

Chapter 3: Freedom of Speech

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Slides prepared by Cyndi Chie and
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What We Will Cover

- Changing Communication Paradigms
- Controlling Offensive Speech
- Censorship on the Global Net
- Political Campaign Regulations in Cyberspace
- Anonymity
- Protecting Access and Innovation: Net Neutrality or De-regulation?

What We Will Cover

Also:

- Principles of Free Speech
- Free Speech on Campus

Free Speech

I disapprove of what you say, but
I will defend to death your right
to say it.

Voltaire's view on freedom of speech

First Amendment

- Congress shall make no laws ...
abridging freedom of speech, or of the
press ...

First Amendment

- Congress shall make no laws ...
abridging freedom of speech, or of the
press ...
- It protects controversial speech

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- Congress shall make no laws ...
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- It protects controversial speech
but beware of speech that goes against
the purpose of the Constitution

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Exposing children in schools on sexually-explicit materials was NOT the purpose of the Constitution

First Amendment

- but beware of speech that goes against the purpose of the Constitution

A quote from "The Merchant of Venice"
by William Shakespeare:

First Amendment

- but beware of speech that goes against the purpose of the Constitution

A quote from "The Merchant of Venice" by William Shakespeare:

"The devil can cite Scripture for his purpose."

First Amendment

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abridging freedom of speech, or of the
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- It protects controversial speech
- Particularly, expression of opinion

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- Congress shall make no laws ...
abridging freedom of speech, or of the
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- It protects controversial speech
- Particularly, expression of opinion
or thought

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press ...
- It protects controversial speech
- Particularly, expression of opinion
or thought – and unconditionally so

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First Amendment cont'd.

- Loopholes:

First Amendment cont'd.

- Loopholes:
 - State and local governments not covered

First Amendment cont'd.

- Loopholes:
 - State and local governments not covered (fixed by 14th Amendment)

First Amendment cont'd.

- Loopholes:
 - State and local governments not covered (fixed by 14th Amendment)
 - Judiciary branch makes laws, too

First Amendment cont'd.

- Loopholes:
 - State and local governments not covered (fixed by 14th Amendment)
 - Judiciary branch makes laws, too (unfortunately)

First Amendment cont'd.

- Loopholes:
 - State and local governments not covered (fixed by 14th Amendment)
 - Judiciary branch makes laws, too (unfortunately)
 - Electronic media and the Internet not covered

First Amendment cont'd.

- Loopholes:
 - State and local governments not covered (fixed by 14th Amendment)
 - Judiciary branch makes laws, too (unfortunately)
 - Electronic media and the Internet not covered (still not entirely settled)

First Amendment cont'd.

- Some restrictions in the US

First Amendment cont'd.

- Some restrictions in the US
 - false alarms

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities

community standards are used to define what is obscene and what is not

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities
 - fighting words

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities
 - fighting words
 - incitement of violence

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities
 - fighting words
 - incitement of violence

thought

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities
 - fighting words
 - incitement of violence

thought → speech

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities
 - fighting words
 - incitement of violence

thought → speech → action

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities
 - fighting words
 - incitement of violence
 - classified information

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities
 - fighting words
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 - classified information

spies cannot use 1st Amendment defense

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities
 - fighting words
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 - classified information

spies cannot use 1st Amendment defense

Why?

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities
 - fighting words
 - incitement of violence
 - classified information
 - self-censorship (a.k.a. “political correctness”)

First Amendment cont'd.

- Some restrictions in the US
 - false alarms
 - obscenities
 - fighting words
 - incitement of violence
 - classified information
 - self-censorship (a.k.a. “political correctness”)
 - “chilling effect”

First Amendment cont'd.

- Some restrictions in the US
 - “chilling effect”

First Amendment cont'd.

- Some restrictions in the US
 - “chilling effect”

Depriving someone of anonymity (an aspect of privacy) may have a chilling effect on the exercise of freedom of speech.

First Amendment cont'd.

- Some restrictions in the US
 - “chilling effect”

Depriving someone of anonymity (an aspect of privacy) may have a chilling effect on the exercise of freedom of speech. (According to the courts.)

First Amendment cont'd.

- Some restrictions in the US
 - “chilling effect”

Depriving someone of anonymity (an aspect of privacy) may have a chilling effect on the exercise of freedom of speech. (According to the courts – e.g., Supreme Court in *Talley v. California* (1960) and *McIntyre v. Ohio Elections Commission* (1995).)

First Amendment cont'd.

- Some restrictions in the US
 - “chilling effect”

Depriving someone of anonymity (an aspect of privacy) may have a chilling effect on the exercise of freedom of speech. (According to the courts.)

So, there is no truly free speech!

First Amendment cont'd.

- Some restrictions in the US
 - “chilling effect”

Depriving someone of anonymity (an aspect of privacy) may have a chilling effect on the exercise of freedom of speech. (According to the courts.)

So, there is no truly free speech!
(According to the courts.)

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Depriving someone of anonymity (an aspect of privacy) may have a chilling effect on the exercise of freedom of speech. (According to the courts.)

▪ So, there is no truly free speech!

(According to the courts.)

First Amendment cont'd.

- Some restrictions in the US
 - “chilling effect”

Depriving someone of anonymity (an aspect of privacy) may have a chilling effect on the exercise of freedom of speech. (According to the courts.) Thus anonymity is protected.

First Amendment cont'd.

- Some restrictions in the US
 - “chilling effect”

Depriving someone of anonymity (an aspect of privacy) may have a chilling effect on the exercise of freedom of speech. (According to the courts.) Thus anonymity is protected.

NYT and Facebook disagree.

First Amendment cont'd.

- Some restrictions in the US
 - “chilling effect”

Depriving someone of anonymity (an aspect of privacy) may have a chilling effect on the exercise of freedom of speech. (According to the courts.) Thus anonymity is protected.

NYT and Facebook disagree.

So, they are against free speech

First Amendment cont'd.

- Some restrictions in the US
 - “chilling effect”

Depriving someone of anonymity (an aspect of privacy) may have a chilling effect on the exercise of freedom of speech. (According to the courts.)

NYT and Facebook disagree.

So, they are against free speech,
at least, partially so.

First Amendment cont'd.

Many restrictions elsewhere

First Amendment cont'd.

Many restrictions elsewhere

- censorship

First Amendment cont'd.

Many restrictions elsewhere

- censorship (prevention of “speech crime”)

First Amendment cont'd.

Many restrictions elsewhere

- censorship (prevention of “speech crime”)
- persecution of dissidents

First Amendment cont'd.

Many restrictions elsewhere

- censorship (prevention of “speech crime”)
- persecution of dissidents
- prevention of access to means of communication

First Amendment cont'd.

Many restrictions elsewhere

- censorship (prevention of “speech crime”)
- persecution of dissidents
- prevention of access to means of communication

First Amendment cont'd.

Many restrictions elsewhere

- censorship (prevention of “speech crime”)

- persecution of dissidents

- prevention of access to means of communication

First Amendment cont'd.

Many restrictions elsewhere

- censorship (prevention of “speech crime”)
- persecution of dissidents
- prevention of access to means of communication
- wide networks of spies and informers

First Amendment cont'd.

Many restrictions elsewhere

- censorship (prevention of “speech crime”)
- persecution of dissidents
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- wide networks of spies and informers

This explains how Stasi terror worked

First Amendment cont'd.

Many restrictions elsewhere

- wide networks of spies and informers

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First Amendment cont'd.

Many restrictions elsewhere

- wide networks of spies and informers

This explains how Stasi terror worked

The spies and informers made anonymity a necessary precondition for free speech.

First Amendment cont'd.

Many restrictions elsewhere

- wide networks of spies and informers

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First Amendment cont'd.

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This explains how Stasi terror worked

The spies and informers made anonymity a necessary precondition for free speech. Hence the *chilling effect*.

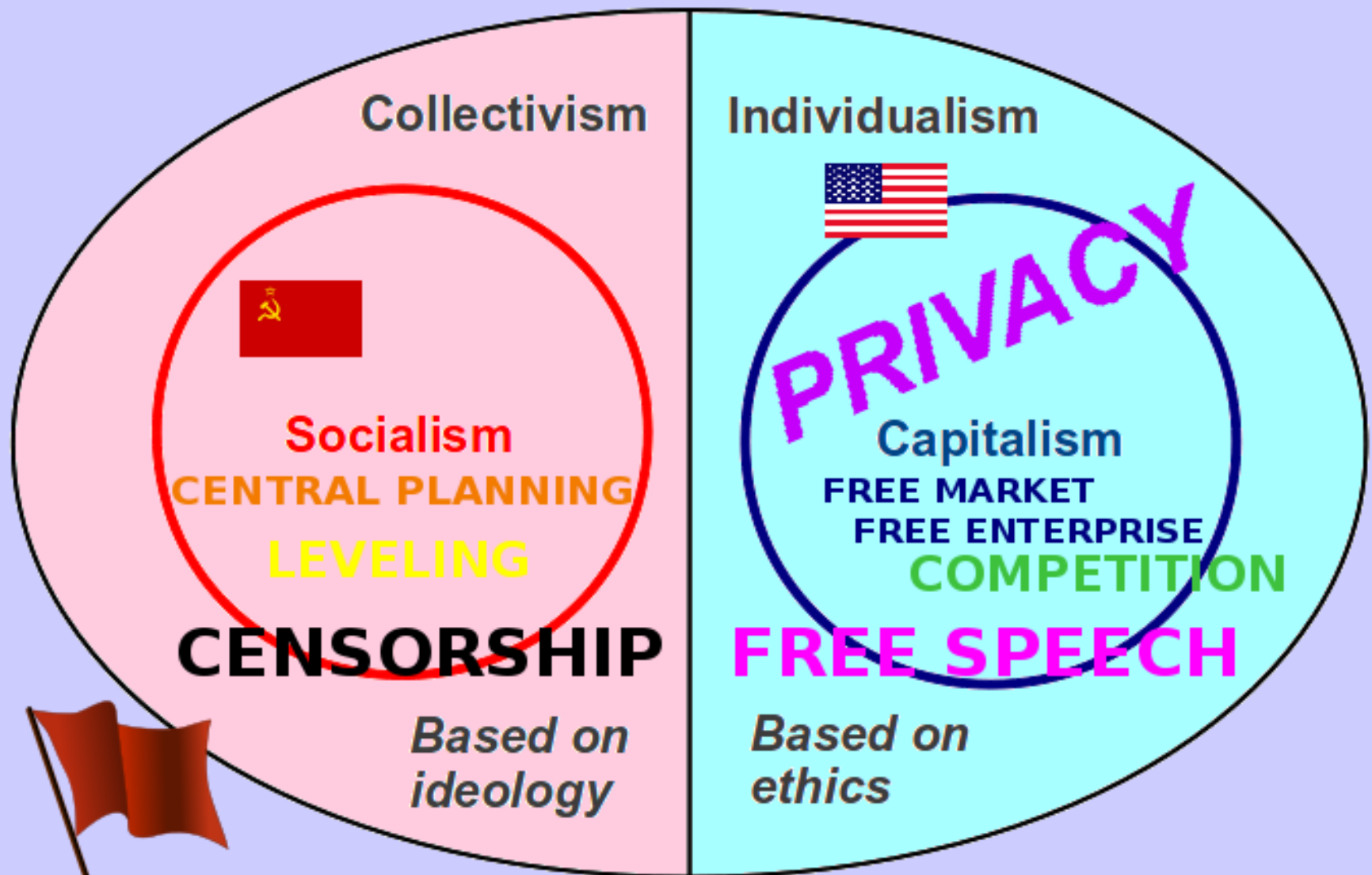
First Amendment cont'd.

Many restrictions elsewhere

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This explains how Stasi terror worked

The spies and informers made anonymity a necessary precondition for free speech. Hence the *chilling effect*.



United Left



Divided Right

First Amendment cont'd.

- Freedom of thought is the necessary precondition of freedom of speech.

First Amendment cont'd.

-
- Freedom of thought is the necessary precondition of freedom of speech.

First Amendment cont'd.

- Freedom of thought is the necessary precondition of freedom of speech.
- No such thing as “crime of thought”

First Amendment cont'd.

- Freedom of thought is the necessary precondition of freedom of speech.
-
- No such thing as “crime of thought”
-

First Amendment cont'd.

- Freedom of thought is the necessary precondition of freedom of speech.

No such thing as “crime of thought” (however, remember “**crimethink**” in “1984”)

First Amendment cont'd.

- Freedom of thought is the necessary precondition of freedom of speech.
- No such thing as “crime of thought” (however, remember “1984”; how about *hate crime*?)

First Amendment cont'd.

- Freedom of thought is the necessary precondition of freedom of speech.
- No such thing as “crime of thought” (however, remember “1984”; how about *hate crime*?)
- Statements “I believe that ...” are protected

First Amendment cont'd.

- Freedom of thought is the necessary precondition of freedom of speech.
- No such thing as “crime of thought” (however, remember “1984”; how about *hate crime*?)
- Statements “I believe that ...” are protected
- Or are they?

First Amendment cont'd.

“We should ... not tolerate private beliefs about sexual orientation ...”

Dr. Chai Feldblum, the Georgetown University law professor and a former nominee to Equal Employment Opportunity Commission

First Amendment cont'd.

▪
“We should ... not tolerate private beliefs
about sexual orientation ...”
▪

Dr. Chai Feldblum, the Georgetown University law professor and a former nominee to Equal Employment Opportunity Commission

First Amendment cont'd.

▪
“We should ... not tolerate private beliefs about sexual orientation ...”
▪

- Dr. Chai Feldblum, the Georgetown University law professor and a former nominee to Equal Employment Opportunity Commission

First Amendment cont'd.

“We should ... not tolerate private beliefs about sexual orientation ...”

That's wrong perspective.

You have the right to chose your beliefs anyway you wish, and express them.

No one has the right to dictate you what you believe in, or to coerce/intimidate you in order to make you change your beliefs.

As long as you do not act on them, no one can punish you for that.

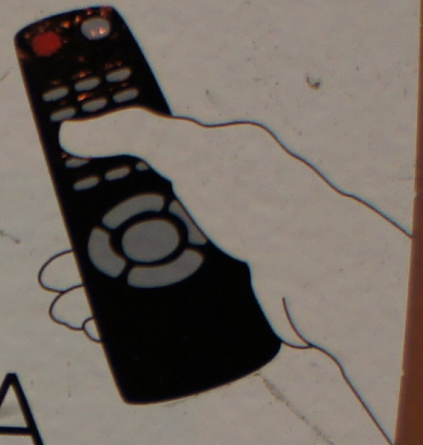
First Amendment cont'd.

Here is a post from the door of office of another defender of freedom:

**TURN
OFF
FOX**

TURNOFFFOX.ORG

BAD
NEWS
FOR
AMERICA



SPRING 2005

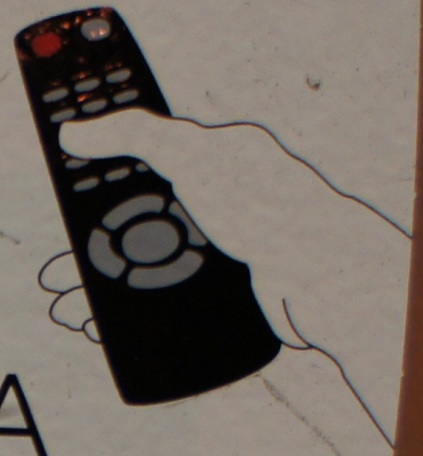
First Amendment cont'd.

Silencing a speaker is not “free speech”!

**TURN
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TURNOFFFOX.ORG

BAD
NEWS
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SPRING 2005

"The further a society drifts from the truth, the more it will hate those that speak it."



Free speech on campus

A decorative graphic consisting of a large, light blue arc that starts from the top left and curves towards the bottom right. A smaller, solid blue triangle is positioned at the end of this arc, pointing towards the bottom right corner of the slide.

Free speech on campus

Freedom of thought and expression is essential to any institution of higher learning.

Free speech on campus

Freedom of thought and expression is **essential** to any institution of higher learning.

Free speech on campus

On a campus that is free and open, no idea can be banned or forbidden.

Free speech on campus

On a campus that is free and open, no idea can be banned or forbidden.

Free speech on campus

No viewpoint or message may be deemed so hateful or disturbing that it may not be expressed.

Free speech on campus

In response to verbal assaults
and use of hateful language,
some campuses have felt it
necessary ...

Free speech on campus

... to forbid the expression of racist, sexist, homophobic, or ethnically demeaning speech, along with conduct or behavior that harasses.

Free speech on campus

But [...] rules that ban or punish speech based upon its content cannot be justified.

Free speech on campus

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Free speech on campus

An institution of higher learning fails to fulfill its mission if it asserts the power to proscribe ideas—

Free speech on campus

- . An institution of higher learning fails to fulfill its mission if it asserts the power to proscribe ideas—

Free speech on campus

—and racial or ethnic slurs, sexist epithets, or homophobic insults almost always express ideas, however repugnant.

Free speech on campus

Indeed, by proscribing any ideas, a university sets an example that profoundly disserves its academic mission.

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a university sets an example
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Free speech on campus

The above are excerpts from the statement adopted by the

American Association of University Professors (AAUP) – the most influential and respected organization of university faculty in November 1994.

Free speech on campus

Some 2,400 years ago:

[Despite] Athens's allegiance to the ideal of freedom of speech, [...] Socrates [...] was legally prosecuted not for an overt act that directly harmed the public or some individual—such as treason, corruption, or slander—but for **alleged harm indirectly caused by the expression and teaching of ideas.**

[Encyclopedia Britannica]

Free speech on campus

Some 400 years ago:

Giordano Bruno, a harmless scholar, was
burned on stake for expression and
teaching of his ideas.

Free speech on campus

Some 80 years ago:

University students in Nazi Germany publicly burned books that expressed “politically incorrect” (at that time) ideas.



Free speech on campus

In 2017:

Students at UC Santa Cruz (CA) demanded:

“No freedom for hate speech”.

NO
FREEDOM
FOR
HATE
SPEECH



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Who decide what is “hate” speech?

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If your government is oppressive and despotic, don't
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Is expressing ideas that someone hates a case of “hate speech”?

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Is expressing ideas that someone hates a case of “hate speech”?

Can “hate speech” restrictions be used to silence “heretics” and political adversaries? They sometimes are.

Is criticism of disrespecting the Constitution and the Bill of Rights (the so-called “conservative” speech) a case of “hate speech”?

Free speech on campus

Many universities, under pressure to respond to the concerns of those who are the objects of hate, have adopted codes or policies prohibiting speech that offends any group based on race, gender, ethnicity, religion or sexual orientation.

Free speech on campus

- Many universities, under pressure to respond to the concerns of those who are the objects of hate, have adopted codes or policies
- prohibiting speech that offends any group based on race, gender, ethnicity, religion or sexual orientation.

Free speech on campus

That's the wrong response, well-meaning or not.

Free speech on campus

▪ That's the wrong response, well-meaning or not. ▪

Free speech on campus

The First Amendment to the United States Constitution protects speech no matter how offensive its content.

Free speech on campus

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Free speech on campus

Speech codes adopted by government-financed state colleges and universities amount to government censorship, in violation of the Constitution.

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Free speech on campus

And the ACLU believes that all campuses should adhere to First Amendment principles because academic freedom is a bedrock of education in a free society.

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Free speech on campus

This is particularly true at universities, whose mission is to facilitate learning through open debate and study, and to enlighten.

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Free speech on campus

Speech codes are not the way to go on campuses, where all views are entitled to be heard, explored, supported or refuted.

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Free speech on campus

The above are excerpts from **ACLU**
article “Hate Speech on Campus”,
December 31, 1994

Free speech on campus

"There is no clash between the constitutional right of free speech and equality. Both are crucial to society. Universities ought to stop restricting speech and start teaching."

[ACLU Executive Director Ira Glasser]

Free speech on campus

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Changing Communication Paradigms

Regulating Communications Media:

Changing Communication Paradigms

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- First Amendment protection and government regulation

Changing Communication Paradigms

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 - Print media (newspapers, magazines, books)

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Changing Communication Paradigms (cont.)

Telecommunication Act of 1996:

Changing Communication Paradigms (cont.)

Telecommunication Act of 1996:

- Changed regulatory structure and removed legal divisions of service areas and restrictions on services that telephone companies can provide

Changing Communication Paradigms (cont.)

Telecommunication Act of 1996:

- Changed regulatory structure and removed legal divisions of service areas and restrictions on services that telephone companies can provide
- No provider or user of interactive computer service shall be treated as a publisher of any information provided by another information-content provider (Section 230)

Changing Communication Paradigms (cont.)

Telecommunication Act of 1996:

- No provider or user of interactive computer service shall be treated as a publisher of any information provided by another information-content provider (Section 230)

The above provision was granted under assumption that ICS providers would not edit or censor the content provided by another information-content provider

Changing Communication Paradigms (cont.)

Telecommunication Act of 1996:

The above provision was granted under assumption that ICS providers **would not edit or censor** the content provided by another information-content provider

As of today, several ICS providers (e.g., Facebook, Twitter) **do edit and censor** the said content

Changing Communication Paradigms (cont.)

Telecommunication Act of 1996:

As of today, several ICS providers (e.g., Facebook, Twitter) **do edit and censor** the said content

Thus part of the Telecommunication Act (Title V, Communication Decency Act, **Section 230**) *de facto* delegated a mandate to **censor free speech** to ICS providers

Changing Communication Paradigms (cont.)

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Changing Communication Paradigms (cont.)

Telecommunication Act of 1996:

Thus part of the Telecommunication Act (Title V, Communication Decency Act, **Section 230**) *de facto* delegated a mandate to censor free speech to ICS providers

The above fact **invalidates the argument** that censorship by private ICS providers is not violating 1st Amendment and is Constitutional

Changing Communication Paradigms (cont.)

The above fact invalidates the argument that censorship by private ICS providers is not violating 1st Amendment and is Constitutional, because:

- Provisions of Section 230 gave ICS providers (a.k.a. “social media platforms”) a privileged position by immunizing them from lawsuits
- This allowed them to become *de facto* utility companies and to lure tens of millions of unsuspecting users and then to censor them
- The above goes against the purpose of the Constitution
- Due to *de facto* “delegation” to censor from the Federal Legislature, restrictions of 1st Amendment should apply to ICS providers

Principles

Free-speech Principles:

Principles (cont.)

Free-speech Principles:

- **Subject of protection:** offensive and/or controversial speech and ideas

Principles (cont.)

Free-speech Principles:

- **Subject of protection:** offensive and/or controversial speech and ideas
- **Form less protected than the contents**

Principles (cont.)

- The U.S. Supreme Court has consistently held that governments may impose “reasonable time, place, and manner” restrictions to regulate nuisances attendant upon expression. A court will uphold such a regulation if it is tailored to meet a significant governmental interest, such as noise abatement, and if it does not discriminate based on the content of expression. The rule that applies for a rock concert, for example, must also apply to an equally loud opera performed at the same time of day.

Principles (cont.)

- The U.S. Supreme Court has consistently held that governments may impose “reasonable time, place, and manner” restrictions to regulate nuisances attendant upon expression. A court will uphold such a regulation if it is tailored to meet a significant **governmental interest**, such as noise abatement, and if it does not discriminate based on the content of expression. The rule that applies for a rock concert, for example, must also apply to an equally loud opera performed at the same time of day.

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- Restriction on the power of government, not individuals or private businesses
- **However, the purpose of the Constitution was not to facilitate censorship by consortia of private businesses**

Principles (cont.)

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- Restriction on the power of government, not individuals or private businesses
- **However, the purpose of the Constitution was not to facilitate censorship by consortia of private businesses**
- **Therefore, First Amendment may restrict private businesses in actions that go against the purpose of the Constitution**

Principles (cont.)

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- **Subject of protection:** offensive and/or controversial speech and ideas
- **Form less protected than the contents**
- Restriction on the power of government, not individuals or private businesses
- However, the purpose of the Constitution was not to facilitate censorship by consortia of private businesses
- Therefore, First Amendment may restrict private businesses in actions that go against the purpose of the Constitution, particularly if said businesses implement mandates and directives from governmental agencies.

Principles (cont.)

Free-speech Principles:

- **Subject of protection:** offensive and/or controversial speech and ideas
- **Form less protected than the contents**
- Restriction on the power of government, not individuals or private businesses

But who will guard our guardians?

Principles (cont.)

If the government "nationalizes" everything, it will spell out the end of free speech.

No matter which side are you on, you will suffer from governmental intrusion, even if you think that it benefits you at this time.

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No matter which side are you on, you will suffer from governmental intrusion, even if you think that it benefits you at this time.

Besides, look what gov'ts did to 2nd Amendment

Principles (cont.)

Amendment II:

"A well regulated Militia, being necessary to the security of free State, the right of the people to keep and bear Arms, shall not be infringed."

Principles (cont.)

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Principles (cont.)

Here is some redacted satire from the Internet:

**If some politicians treat the
people this poorly when we
are armed to the teeth,**



**well then, just imagine if you
will, what they will be willing
to do to you once they've
taken away your guns.**

Principles (cont.)

Free-speech Principles (cont.):

- Supreme Court principles and guidelines

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 - Advocating illegal acts is illegal

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 - but only if "such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action" [Brandenburg v. Ohio (395 U.S. 444, 1969)]

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 - Why?

Principles (cont.)

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 - Advocating illegal acts may be illegal
 - Does not protect libel and direct, specific threats
 - Inciting violence is illegal
 - Allows some restrictions on advertising
 - Protects anonymous speech

Controlling Offensive Speech

A large, light blue curved shape that starts from the top left and sweeps across the top and right side of the slide, ending in a vertical bar on the right edge.

Controlling Offensive Speech

What constitutes offensive speech?

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Who decides if any particular expression is offensive?

Controlling Offensive Speech

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Can telling the truth be considered offensive?

Controlling Offensive Speech

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Who decides if any particular expression is offensive?

Can telling the truth be considered offensive?

Can expression of opinion or belief be considered offensive?

Controlling Offensive Speech

Those questions cannot be dismissed easily.

Controlling Offensive Speech

What is it? What is illegal?

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- Answer depends on who you are

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 - Depicts these acts in a patently offensive manner that appeals to prurient interest as judged by a reasonable person using community standards
 - Lacks literary, artistic, social, political or scientific value

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Controlling Offensive Speech (cont.)

Internet Censorship Laws & Alternatives:

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 - Federal judge stated that the Internet is the most participatory form of mass communication
 - Attempted to avoid conflict with first amendment by focusing on children
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 - The worst material threatening children was already illegal
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A propos of the **least restrictive** means:

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Internet Censorship Laws & Alternatives (cont.):

- Children's Internet Protection Act of 2000 (CIPA):
 - Requires schools and libraries that participate in certain federal programs to install filtering software
 - Upheld in court:
 - Does not violate First Amendment since it does not require the use of filters, impose jail or fines
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 - Recall the Power of Purse

Controlling Offensive Speech (cont.)

Internet Censorship Laws & Alternatives (cont.):

- Filters
 - Blocks sites with specific words, phrases or images
 - Parental control for sex and violence
 - Updated frequently but may still screen out too much or too little
 - Not possible to eliminate all errors
 - What should be blocked?

Controlling Offensive Speech (cont.)

Spam:

- What's the problem?
 - Loosely described as unsolicited bulk email
 - Mostly commercial advertisement
 - Angers people because content and the way it's sent
- Free speech issues
 - Spam imposes a cost on others not protected by free speech
 - Spam filters do not violate free speech (free speech does not require anyone to listen)

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Controlling Offensive Speech (cont.)

Spam (cont.):

- Anti-spam Laws
 - Controlling the Assault of Non-Solicited Pornography and Marketing Act (CAN-SPAM Act)
 - Targets commercial spam
 - Criticized for not banning all spam, legitimized commercial spam

Controlling Offensive Speech

Discussion Questions

- Why is 'least restrictive means' important?
- Do you consider the Internet an appropriate tool for young children? Why or why not?

Censorship on the Global Net

Global Impact of Censorship

- Global nature of the Internet protects against censorship (banned in one country, move to another)
- May impose more restrictive censorship (block everything in an attempt to block one thing)
- Yahoo and French censorship
 - Yahoo, eBay and others make decisions to comply with foreign laws for business reasons

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Censorship on the Global Net (cont.)

As a result of Yahoo!'s collaboration with the authorities in People's Republic of China, the following dissidents were identified, arrested, and punished for their speech:

Shi Tao (10 years in prison, in 2005)

Li Zhi (8 years in prison, in 2003)

Wang Xiaoning (10 years in prison, in 2003)

[Source:

https://en.wikipedia.org/wiki/Criticism_of_Yahoo!#Outing_of_Chinese_dissidents

]

Censorship on the Global Net (cont.)

Yahoo!, along with Google China, Microsoft, Cisco, AOL, Skype, Nortel and others, has cooperated with the Communist Party of China in implementing a system of Internet censorship in mainland China.

[A quote from:

https://en.wikipedia.org/wiki/Criticism_of_Yahoo!]

Censorship on the Global Net (cont.)

Censorship in Other Nations

Censorship on the Global Net (cont.)

Censorship in Other Nations

“Today, censorship in the West comes primarily from the left.”

[A quote from:

<https://humanevents.com/2020/10/22/pressing-mute-the-threat-of-censorship-in-america/>

]

Censorship on the Global Net (cont.)

Censorship in Other Nations:

- Attempts to limit the flow of information on the Internet similar to earlier attempts to place limits on other communications media
- Some countries own the Internet backbone within their countries, block at the border specific sites and content
- Some countries ban all or certain types of access to the Internet

Censorship on the Global Net (cont.)

Aiding Foreign Censors:

- Companies who do business in countries that control Internet access must comply with the local laws
- Google argued that some access is better than no access

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Censorship on the Global Net (cont.)

Foreign Censors:

- North Korean worker executed for passing on news
- <http://www.guardian.co.uk/world/2010/mar/04/north-korea-human-rights-execution>

Censorship on the Global Net (cont.)

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Censorship on the Global Net Discussion Questions

- What impact does the global net have on free speech?
- Does censorship in other countries have an impact on free speech in the U.S.?
- How does free speech in 'free countries' impact more restrictive countries?

Censorship in the US

- In the recent years, censorship has been prevalent on various social media platforms

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Remember the 4th Branch of the US Gov't?

Changing Communication Paradigms (cont.)

The above fact invalidates the argument that censorship by social media platforms” is not violating 1st Amendment and is Constitutional, because:

- Provisions of Section 230 gave social media platforms a privileged position by immunizing them from lawsuits
- This allowed them to become *de facto* utility companies and to lure tens of millions of unsuspecting users and then to censor them
- The above goes against the purpose of the Constitution
- Due to *de facto* “delegation” to censor from the Federal Legislature, restrictions of 1st Amendment should apply to social media platforms

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- Campaign Laws and the Internet:
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Political Campaign Regulations in Cyberspace

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Political Campaign Regulations in Cyberspace

RCP Poll Average: Republican Presidential Nomination



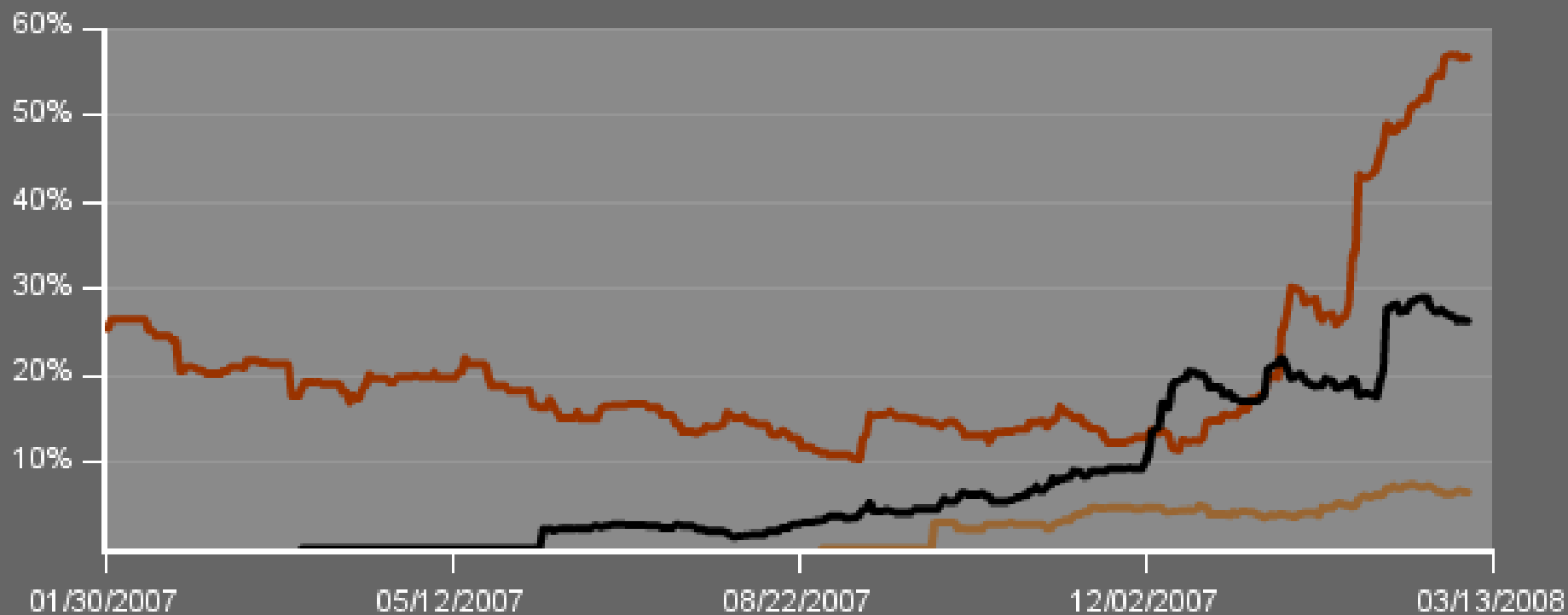
McCain



Huckabee



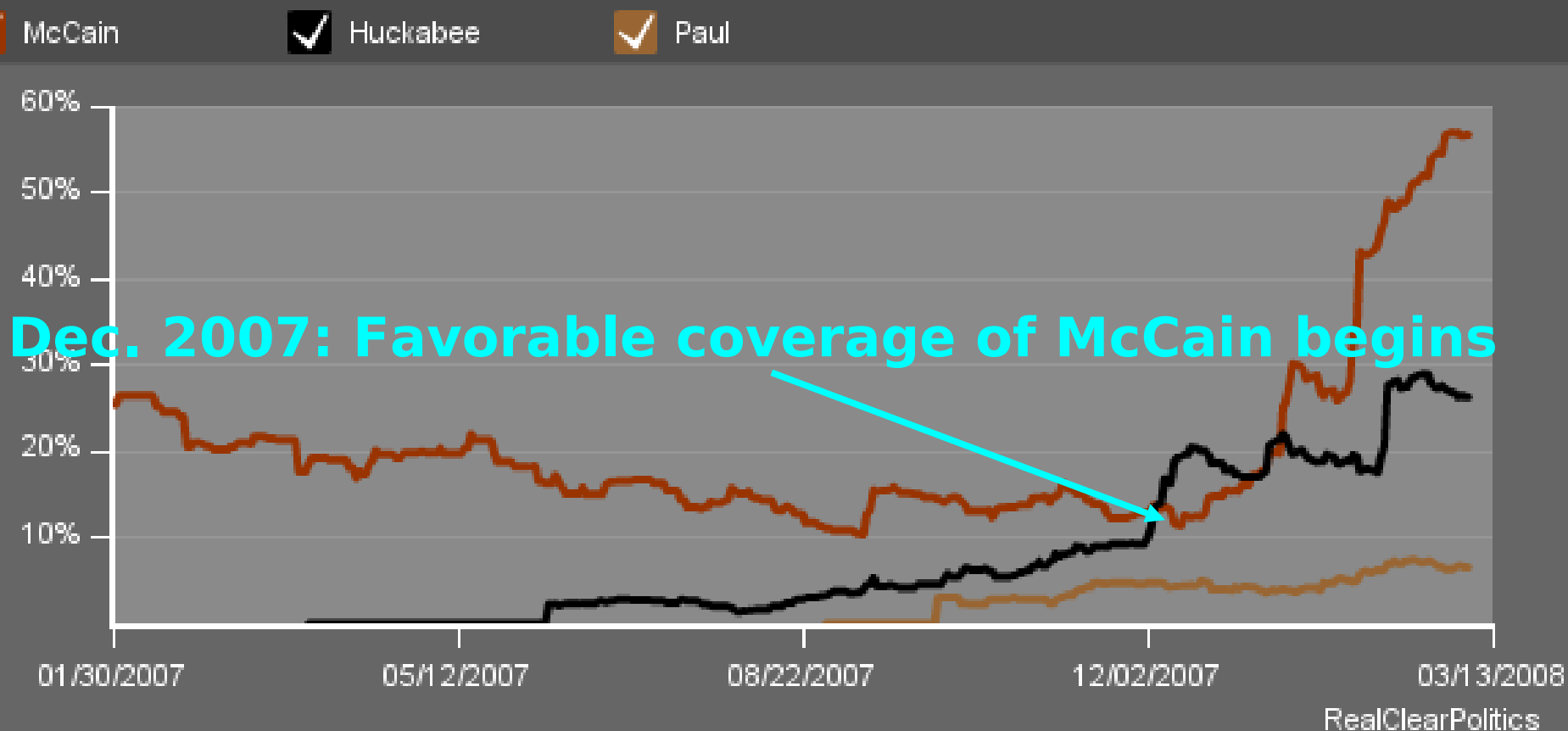
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RealClearPolitics

Political Campaign Regulations in Cyberspace

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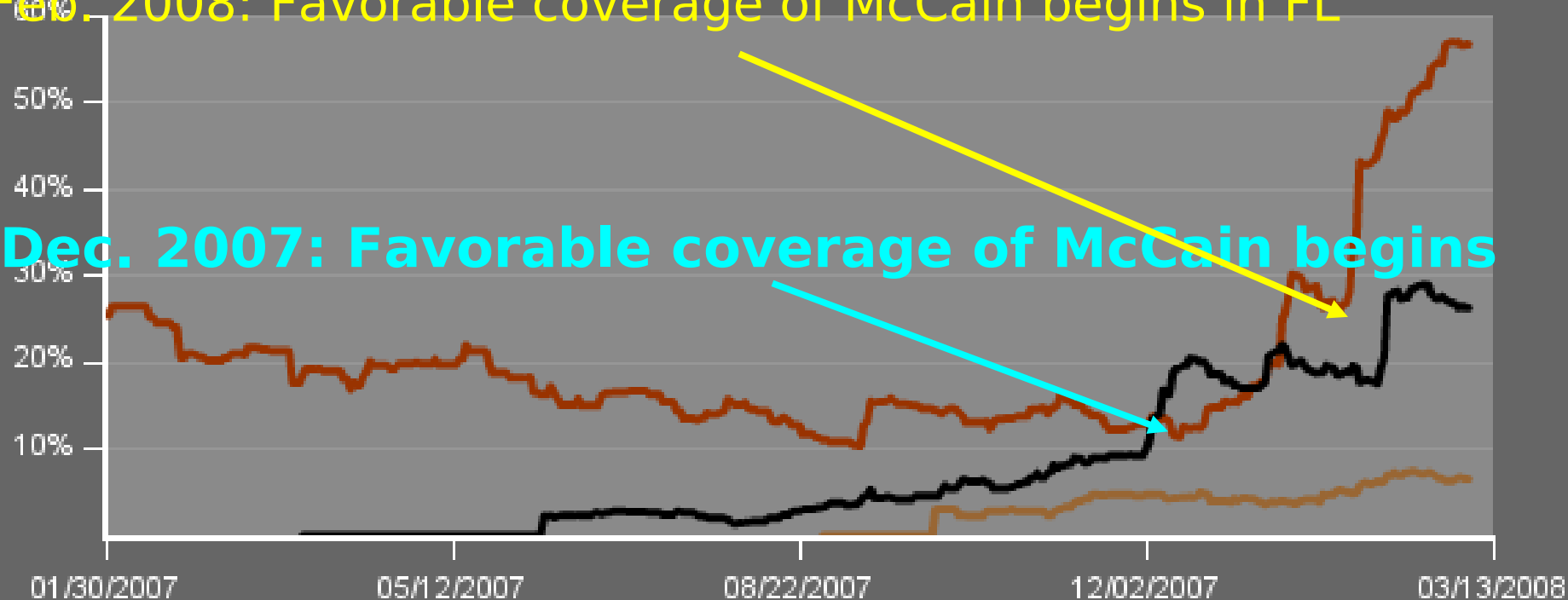
✓ McCain

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Feb. 2008: Favorable coverage of McCain begins in FL

Dec. 2007: Favorable coverage of McCain begins



Political Campaign Regulations . . . (cont.)

Campaign Laws and the Internet (cont.):

- Federal Election Commission (FEC) administers election laws
 - Covers content placed on the Internet for a fee
 - Unpaid individuals may put political content on their Web site, send emails, blog, create or host a campaign-related Web site and provide links to campaign sites

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 - **Media exemption** applies to traditional news media and those whose only presence is on the Web

Political Campaign Regulations . . . (cont.)

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Media are exempt from restrictions on political speech before and during elections.

Any doubts why those favored by the majority of media supported BCRA?

Political Campaign Regulations . . . (cont.)

"The press's job is to stand in the
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freedom of all of us from a government
and from organized governmental
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Political Campaign Regulations . . . (cont.)

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"When they desert those ramparts and [...] decide that their job is not simply to tell you who you may vote for, and who you may not, but, worse [...] what truth [...] you may know [...] and what truth you are not allowed to know,

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Political Campaign Regulations . . . (cont.)

"they have, then, made themselves a fundamental threat to the democracy, and, in my opinion, made themselves the enemy of the American people."

Pat Caddell

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Anonymity

Common Sense and the Internet:

- Anonymity protected by the First Amendment
- Services available to send anonymous email (Anonymizer.com)
- Anonymizing services used by individuals, businesses, law enforcement agencies, and government intelligence services

Anonymity (cont.)

Is Anonymity Protected?

- FEC exempted individuals and organizations that are not compensated from election laws that restrict anonymity
- Supreme Court has overturned state laws that restrict anonymity
- SLAPP, a Strategic Lawsuit Against Public Participation - lawsuits filed (generally libel) used to obtain the identities (via subpoena) of those expressing critical or dissenting opinions

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- FEC exempted individuals and organizations that are not compensated from election laws that restrict anonymity

Supreme Court has overturned state laws that restrict anonymity – e.g., in *McIntyre v. Ohio Elections Commission* (1995)

- SLAPP, a Strategic Lawsuit Against Public Participation - lawsuits filed (generally libel) used to obtain the identities (via subpoena) of those expressing critical or dissenting opinions

Anonymity (cont.)

Against Anonymity:

- Fears
 - It hides crime or protects criminals
 - Glowing reviews (such as those posted on eBay or Amazon.com) may actually be from the author, publisher, seller, or their friends
- U.S. and European countries working on laws that require ISPs to maintain records of the true identity of each user and maintain records of online activity for potential use in criminal investigations

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Anonymity (cont.)

Against Anonymity:

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- Fear is one of the driving forces behind restrictions on free speech.

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Anonymity Discussion Questions

- Where (if anywhere) is anonymity appropriate on the Internet?
- What are some kinds of Web sites that should prohibit anonymity?
- Where (if anywhere) should laws prohibit anonymity on the Internet?

Protecting Access and Innovation

Net Neutrality or De-regulation?

- FCC eliminated line-sharing requirements (2003-2005)
- Should companies be permitted to exclude or give special treatment to content transmitted based on the content itself or on the company that provides it?
- Should companies be permitted to provide different levels of speed at different prices?

Protecting Access and Innovation (cont.)

Net Neutrality or De-regulation? (cont.)

- Net Neutrality
 - Argue for equal treatment of all customers

Protecting Access and Innovation (cont.)

Net Neutrality or De-regulation? (cont.)

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Protecting Access and Innovation (cont.)

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Protecting Access and Innovation (cont.)

Net Neutrality or De-regulation? (cont.)

- Net Neutrality
 - Argue for equal treatment of all customers

But: "Quis custodiet ipsos custodes?"

Protecting Access and Innovation (cont.)

Net Neutrality or De-regulation? (cont.)

- De-regulation

Protecting Access and Innovation (cont.)

Net Neutrality or De-regulation? (cont.)

- De-regulation
 - Flexibility and market incentives will benefit customer

Protecting Access and Innovation (cont.)

Net Neutrality or De-regulation? (cont.)

- De-regulation
 - Flexibility and market incentives will benefit customer
 - Most compatible with individualism

Protecting Access and Innovation (cont.)

Net Neutrality or De-regulation? (cont.)

- De-regulation

- Flexibility and market incentives will benefit customer

- Most compatible with individualism

- It has worked for centuries in the U.S. and elsewhere!

Protecting Access and Innovation (cont.)

Net Neutrality or De-regulation? (cont.)

- Net Neutrality was passed into the law in 2015.

Protecting Access and Innovation (cont.)

Net Neutrality or De-regulation? (cont.)

- Net Neutrality was passed into the law in 2015.
- However, in 2017 the FCC has reversed many previous net neutrality rulings.

Discussion Questions

- What are the pros and cons to **anonymity** on the Internet?

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To be continued ...

See the Lecture Notes