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Supreme Court Guts First Amendment

The First Amendment to the United States Constitution mandates that "Congress shall make no law . . . abridging the freedom of speech." Today the United States Supreme Court has gutted that mandate by upholding nearly all of the Bipartisan Campaign Reform Act of 2002 (BCRA). "No law" has been replaced by a ninety-page statute implemented by a thousand pages of complex regulations.

BCRA (often referred to as "McCain-Feingold" after its chief Senate sponsors) imposes onerous restrictions on the ability of citizens of ordinary means to pool their resources in citizen groups to amplify their voices on public issues. One of the worst restriction is the ban on "electioneering communications," defined as mentioning a candidate's name in a broadcast communication within 60-days of a general election (30 days before primaries). By upholding this ban, the Court prohibits public-interest groups from telling the public where candidates stand on such vital issues as abortion, health care, the environment, cloning, euthanasia, taxation, and the war on terror. Legislation is often being finalized in the weeks before an election, and the BCRA ban prohibits citizen groups from broadcasting an appeal to call Senator X (who is a candidate) and tell him to oppose a bill called by its sponsors' names (who are candidates).

Madison Center General Counsel James Bopp, Jr. said: "The Court's affirmation of BCRA severely damages citizen participation in the American system of government and fundamentally alters American political discourse without any constitutional warrant and in direct contravention of constitutional mandate. The Court and Congress have empowered incumbent politicians, corporations owning media outlets, and wealthy individuals, at the expense of people of ordinary means."

When America acquiesced in the Court's assertion of the right of judicial review of statutes for constitutionality, Americans did not authorize the Court to gut plain provisions of the Constitution and fundamentally alter the system of participatory government created by that Constitution. Once again the Court has seized power not granted it in the Constitution. That is commonly known as a coup d'etat.