



Written by [Thomas R. Eddlem](#) on March 23, 2009

Is Anonymous Criticism of a Clinton Legal?

Citizens United sought not to reveal their donors' names for the video, which was released as the presidential primary season was heating up, but was [suppressed by the U.S. Court of Appeals](#) for the District of Columbia back in January 2008.



The McCain-Feingold statute purports to be able to ban anonymous political speech within 30 days of an election, even though the [First Amendment](#) requires that "Congress shall make no law ... abridging the freedom of speech, or of the press."

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The [transcript](#) of the January 15, 2008 appellate court decision is troubling on several levels: "In [McConnell](#), the Supreme Court upheld § 203 [of McCain-Feingold] on its face, rejecting claims that the financing of 'electioneering communications' constituting express advocacy or its functional equivalent were within the protection of the First Amendment.... Only the Supreme Court may overrule its decisions. The lower courts are bound to follow them."

Those last sentences bring up the following question: didn't these appellate court justices swear an oath to support the U.S. Constitution? While it's true that lower courts should try whenever constitutionally possible to keep continuity with the Supreme Court, they have no license to ignore their oath to uphold the U.S. Constitution.

The appellate court was correct in that the Supreme Court did indeed hold that the First Amendment is of no effect with respect to political speech within 30 days of an election or primary.

[Justice Clarence Thomas](#) correctly dissented in the *McConnell* case that "the First Amendment provides that 'Congress shall make no law ... abridging the freedom of speech.' Nevertheless, the Court today upholds what can only be described as the most significant abridgment of the freedoms of speech and association since the Civil War."

The ACLU-left may think that the whole purpose of the First Amendment was to protect pornography. But the real primary purpose of the First Amendment was to protect political speech, the ability of Americans to criticize their political leaders — particularly at the time of election.

Anonymous political speech has a long tradition in this country, and it is as American as the anonymously written [Federalist Papers](#) (not to mention the [Anti-Federalist Papers](#)). The United States would likely never have had its current Constitution — or even become a nation — without anonymous speech. The Father of the American revolution, Samuel Adams, frequently [wrote anonymously](#) under the pen name "Vindex." Other Founding Fathers did the same.

Americans should all hope that the Supreme Court recovers its sanity and upholds the First Amendment.



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