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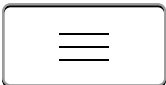
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## Rollins: Free speech and speaking freely

Posted: 6:00 p.m. Tuesday, May 13, 2014

BY BROOKE ROLLINS - SPECIAL TO THE AMERICAN-STATESMAN

Recently, a handful of U.S. senators proposed a constitutional amendment that would effectively rewrite the First Amendment by placing political speech under state and federal regulatory control, all in the name of campaign-finance reform.

The senators see a sudden need to amend the First Amendment because of the supposedly pernicious influence of “dark money” on state and federal elections, made possible by the U.S. Supreme Court’s rulings in *Citizens United* and *McCutcheon*.

In the *Citizens United* case, the government tried to ban a film that was critical of a presidential candidate because it was financed by a nonprofit corporation. Those who argued against free speech claimed that corporations should not be protected by the First Amendment the way individuals are. In *McCutcheon v. FEC*, the government tried to prevent a private citizen from making small donations to a dozen different candidates

on the presumption that giving small amounts to multiple candidates would somehow breed corruption.

Both cases illustrate a growing tendency among power-holders of both major parties to oppose the kind of political speech that has always come under the protection of the First Amendment. Giving to candidates and nonprofits, after all, is another way to exercise free speech.

Sadly, the urge to suppress political speech is not confined to Washington. Here in Texas, it took the form of 2013's SB 346, a so-called "dark money" bill passed last session that would have required politically active nonprofits to disclose their donors. Fortunately, Gov. Rick Perry vetoed it.

Under the guise of "transparency," SB 346 would have stripped donors of their anonymity – a constitutional right explicitly upheld by the Supreme Court in *NAACP v. Alabama*. In that case, Alabama officials were trying to run the NAACP out of the state by forcing the group to disclose its donors, potentially subjecting them to intimidation and even violence. The court saw this for what it was, and affirmed that "freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment."

SB 346 would have placed Texas officials in the role of Alabama's state officials half a century ago. By requiring nonprofits that engage in political advocacy to disclose confidential donor lists, the state would deprive donors from their constitutional right to freely associate and engage in political speech without fear of intimidation.

That's really what all the talk about donor disclosure and campaign finance reform is about: silencing free speech. We at the Texas Public Policy Foundation know something about it. In 2012, our own confidential donor list was illegally leaked by the IRS and ended up in the hands of the Texas Observer, which published it.

Money in politics – or in policy debates – might offend some people, but as Chief Justice John Roberts wrote in the *McCutcheon* decision, "so too does much of what the First Amendment vigorously protects." Political speech is a constitutional right, and it's not up to our elected officials to decide what we can and cannot do to advocate for or against a candidate or a public policy.

This week, TPPF will hold a building dedication for our future offices at Ninth Street and Congress Avenue, a few blocks from the Texas Capitol. At a time when freedom of speech and association are under attack both by Washington and some lawmakers here in Austin, it's more important than ever for groups like TPPF to stand up and be heard. And that's just what we mean to do.

*Rollins is president and CEO of the Texas Public Policy Foundation.*

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