Written by **Kurt Williamsen** on August 3, 2010

# No Compromise on Compromise

From infancy on, most Americans hear a steady litany of "compromise, compromise, compromise." Whether parents are breaking up a toddler fight in a sandbox over a big, yellow Tonka truck or a teen scrape between siblings over which child will get to use the home computer, kids hear, "Work it out. Compromise!"

On a certain level that makes sense because compromise is better than selfishness, an attitude that leads children to bicker. Compromise usually leads to good ends: Toddler tantrums dissipate (along with the amount of sand that you have to dig out of the wee ones' eyes, tossed there by retaliatory tots) and household harmony can be quickly reestablished when siblings scream, "Mine!"

But compromise is not all that it's cracked up to be. For an extreme example, say you're on the verge of being tortured by our government. For your part, you don't want to be tortured at all, while the government wants to torture you to the very brink of death. You would not be exhibiting magnanimous behavior, or even good sense, by saying, "I know, let's compromise. Torture me half to death, and we'll call it good!"

Just as that would be crazily foolish, there is another type of compromise that can be equally ludicrous, though for some reason it is often lauded in the press as a panacea for our country's political problems: bipartisanship.

Let's use a real example. When one political party, in this case chiefly Democrats, says in so many words, "We need to water down the First Amendment's protections on freedom of speech and of the press," as happened in 2002, if any member of the Republican Party were to compromise one little bit on the First Amendment, that member would also be contributing to the erasure of our freedoms, regardless of his intent. Why? Because once an untouchable right becomes touchable, it soon withers to inconsequence under a sustained assault — unless a major effort is put forth to resurrect the right's unassailability.

The official title of the 2002 anti-free-speech law is the Bipartisan Campaign Reform Act of 2002. It is commonly known as the McCain-Feingold law. This law allows, among other things, some big corporations, such as newspapers, radio stations, and television networks, to air their views about candidates *any time*, while forbidding other corporations, such as the NRA and the Sierra Club, from expressing their views within 60 days of an election.

This censorship came despite the very clear words of the First Amendment: "Congress shall make no law … abridging the freedom of speech or of the press."

The McCain-Feingold legislation is itself the result of a steady progression of creeping limits on free speech and press that penalize the American people. The Espionage Act of 1917 made it a crime to speak out against the draft in WWI. After its passage, Charles Schenk was arrested for distributing pamphlets opposed to the draft, and he took his free-speech case all the way to the Supreme Court in *Charles T. Schenk v. United States*, where the U.S. Supreme Court promptly upheld this clearly unconstitutional law.

Of course, the justices "justified" their decision — reasons are always given for taking away rights. Justice Oliver Wendell Holmes, Jr. wrote: "The question in every case is whether the words used are used in such a circumstance and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent."

Holmes likened Schenk's distribution of pamphlets to shouting fire in a crowded theatre and proclaimed that such an action would not fall under the First Amendment. Then free speech was fair game.

Even though the justices tried to formulate phraseology to intelligently categorize speech as legal or not, and despite the unanimous vote in the case, *Schenk* was overturned in *Brandenburg v. Ohio*, whereupon a new limit was set on free speech: Speech could now only be banned when it was likely to incite "imminent lawless action."

Before long, language no longer had to be dangerous to be banned and McCain-Feingold came into existence, as did numerous other speech restrictions. Even "free speech" is effectively curtailed because the laws are so convoluted that people who can't afford to hire a law firm can't decipher the laws. New reasons to eliminate free speech replaced old reasons. But the reasons were always irrelevant because no limits on free speech were ever really needed. Under U.S. law, one is responsible for one's actions, and legitimately dangerous actions can be curtailed. For instance, though Congress may not restrict speech, it may outlaw the transference of government secrets. Similarly state and local governments may hold someone responsible for negligently causing bodily harm — such as that caused by a riot in a theatre — and use one's words in court as evidence of an intent to cause harm.

The lesson is obvious: "Never compromise on freedom!" This is especially relevant as Republicans call to "repeal and replace" ObamaCare. Care must be exercised to make sure the replacement isn't as antithetical to individual rights as is ObamaCare.

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