

# ACLU Now Defending This, Not Speech

The American Civil Liberties Union once deserved respect. The organization got a lot of issues wrong, but it consistently backed civil liberties.

Today the ACLU appears to be just another left-wing interest group. Civil liberties deserve protection if they're favored by the left. Free speech for conservatives? Not so much.

Many of the Founding Fathers saw no need for what became known as the Bill of Rights. After all, they said, the Constitution gave the federal government only limited authority. Why forbid action that isn't allowed?

However, those who insisted on adding the Bill of Rights proved prescient. It didn't take long for politicians to claim and judges to rule that there was an ocean of federal government power with only a few islands of state authority and individual liberty.

Today, freedoms not safeguarded by the Bill of Rights essentially don't exist. The current Supreme Court occasionally limits Uncle Sam's reach, but those opinions, unfortunately, are the exception rather than the rule.

Judges need to give the Bill of Rights full effect to protect Americans. For the First Amendment that means safeguarding religious liberty and free speech. The truest test of these provisions comes when they are applied to views and practices which are unpopular, even reviled, by those in power.

In today's world, that rarely means people who spout left-wing nostrums. Liberals are more likely to be oppressors in charge of government than victims of government. When is the last time conservatives controlled a major university and prevented

a “progressive” from speaking?

The ACLU made its reputation defending civil liberties irrespective of viewpoint. Four decades ago the organization famously backed the legal right of neo-Nazis to march through the Chicago suburb of Skokie. The case cost the group members, but that’s when the group believed in its principles.

Unfortunately, the ACLU was less supportive of religious liberty. And now, its commitment to free speech is wavering.

In an internal memo leaked to former board member Wendy Kaminer, ACLU employees admitted that they believe free speech only means some speech. They see themselves as liberal activists first, and only then defenders of civil liberties. Explained the memo: “Our defense of speech may have a greater or lesser harmful impact on the equality and justice work to which we are also committed.”

Thus, noted the memo, decisions to intervene legally will be based on “factors such as the (present and historical) context of the proposed speech; the potential effect on marginalized communities; the extent to which the speech may assist in advancing the goals of white supremacists or others whose views are contrary to our values; and the structural and power inequalities in the community in which the speech will occur.”

In short, they will defend speech they like or believe to be inoffensive or ineffective. Otherwise, Americans will be on their own defending their constitutional rights.

Beyond the pale will be any connection between the First and Second Amendments. If speakers intend to speak or march armed, even if legally entitled to do so, the organization “will generally not represent them.” After all, they essentially are to blame for the expanded government power they oppose. Gun rights activists “should strongly consider how much government intrusion and expanded power they’re willing to trade for those rights,” contended the ACLU’s Jay Stanley.

Of course, as a private organization, the ACLU is free to decide its own policies. But the memo is not simply a clarification of current policy. Or a minor shift in emphasis. It formally repudiates a storied if at times misguided heritage. The memo is the latest evidence, observed Kaminer, that the ACLU “has already lost its zeal for vigorously defending the speech it hates.”

Unfortunately, the group’s shift away from principle signals how the liberal establishment is giving way to a far more radical grassroots left. “Progressive” demonstrators now routinely disrupt events on college campuses. Though the victims are usually conservative, no one is safe. For instance, at William & Mary last year, Black Lives Matter assaulted an ACLU event. Protestors insisted that “liberalism is white supremacy” and stated the obvious, that “the revolution will not uphold the Constitution.” (No word on whether those who believe in the rule of law would be shot or merely pushed aside.)

Liberty increasingly is under siege in America, including by its one-time friends. The ACLU staff reassuringly declared that “no civil liberties or civil rights value should automatically be privileged over any other.” But political activism obviously now trumps civil liberties. It is a disappointing retreat for an organization that in the past demonstrated real courage even when its judgment otherwise lagged. {eo}

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